

January 14, 2021

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**RE: UP 415/UE 219—PacifiCorp's Application for Approval of a Property Transfer Agreement with the Klamath River Renewal Corporation**

PacifiCorp d/b/a Pacific Power encloses for filing with the Public Utility Commission of Oregon its Application for Approval of a Property Transfer Agreement with the Klamath River Renewal Corporation for four hydroelectric dams and approximately 8,000 acres of real and personal property associated with the dams.

PacifiCorp is filing this application both as a utility property disposition and as an implementation filing in docket UE 219. Concurrent with this filing, PacifiCorp is filing a motion to consolidate this filing with docket UE 219.


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

By email (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

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

Please direct any informal inquiries regarding this filing to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Etta Lockey  
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UP 415  
UE 219**

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of a Property Transfer Agreement for the Lower Klamath Project

**APPLICATION FOR APPROVAL  
OF PROPERTY TRANSFER  
AGREEMENT**

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In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application to Implement the Provisions of Senate Bill 76

Under ORS 757.480 and OAR 860-027-0025, PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) seeks approval from the Public Utility Commission of Oregon (Commission) of the Property Transfer Agreement (Transfer Agreement) between PacifiCorp and the Klamath River Renewal Corporation (Renewal Corporation), attached as Exhibit 1. The Transfer Agreement provides for transfer from PacifiCorp to Renewal Corporation of four hydroelectric dams (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate), as well as approximately 8,000 acres of real and personal property associated with the dams (collectively, the Lower Klamath Project). The property in Oregon and California conveyed under the Transfer Agreement is shown in maps attached as Exhibit 2. PacifiCorp requests approval of this application within six months, on or before July 15, 2021.

In 2009, the Oregon Legislature enacted Senate Bill (SB) 76, codified at ORS 757.732 et seq., to facilitate removal of the Lower Klamath Project dams under the Klamath Hydroelectric Settlement Agreement (KHSA).<sup>1</sup> In accordance with SB 76, in Order No. 10-364 in docket UE 219, the Commission concluded that dam removal under the KHSA was in the best interests of customers and that customer surcharges to cover a portion of the removal costs were fair, just, and reasonable.<sup>2</sup> In Order No. 10-325, the Commission set accelerated depreciation rates for these facilities to support dam removal consistent with the anticipated 2020 target date contained in the KHSA.<sup>3</sup>

Approving the transfer of the Lower Klamath Project to the Renewal Corporation for removal under the Transfer Agreement is one of the remaining key steps to implement the KHSA. Additionally, transfer of the Lower Klamath Project is consistent with the Memorandum of Agreement (MOA) dated November 16, 2020,<sup>4</sup> which sets forth commitments among PacifiCorp, the states of Oregon and California, the Renewal Corporation, the Karuk Tribe, and the Yurok Tribe to fully implement the KHSA, consistent with SB 76 and Commission Order Nos. 10-325 and 10-364.

The Transfer Agreement is a required step to implement the KHSA. The Transfer Agreement is in the public interest and will not harm customers. PacifiCorp is filing this application both as a utility property disposition or “UP” case and as an implementation

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<sup>1</sup> The KHSA, signed in 2010, is attached as Appendix A to Order No. 10-364 in docket UE 219. The KHSA was amended in 2016 and the KHSA, as amended, is attached as Exhibit 3 to this application. All references in this application to the KHSA after 2016 refer to the KHSA, as amended.

<sup>2</sup> *In the Matter of PacifiCorp, dba Pacific Power, Application to Implement the Provisions of Senate Bill 76*, Docket UE 219, Order No. 10-364, at 12-13 (Sept. 16, 2010), corrected by Errata Order No. 10-390 (Oct. 11, 2010).

<sup>3</sup> Docket UE 219, Order No. 10-325 (Aug. 18, 2010).

<sup>4</sup> The MOA is attached as Exhibit 4.

filing in docket UE 219, along with a motion to consolidate the “UP” filing with docket UE 219.

## I. BACKGROUND

The Klamath Hydroelectric Project, located primarily on the Klamath River in Klamath County, Oregon and Siskiyou County, California, includes seven hydroelectric developments—East Side, West Side, Fall Creek, J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate—and one non-generating development, Keno (Larger Klamath Project). The Federal Energy Regulatory Commission (FERC) originally licensed the Larger Klamath Project in 1954 as license P-2082.<sup>5</sup> This original license expired in 2006. Since that time, PacifiCorp has operated the project under annual licenses.<sup>6</sup>

### A. The KHSA

In 2004, PacifiCorp filed an application with FERC to relicense the Larger Klamath Project.<sup>7</sup> In 2007, FERC Staff issued a final Environmental Impact Statement for the relicensing application, which ultimately recommended relicensing with mandatory conditions to provide for fish passage improvements at the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments.<sup>8</sup> PacifiCorp determined that these protection, mitigation, and enhancement (PM&E) measures would reduce power generation for the Lower Klamath Project and increase the costs of a new license.<sup>9</sup>

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<sup>5</sup> *In the Matters of the California Oregon Power Co.*, 13 F.P.C. 1 (Jan. 28, 1954). On June 16, 1961, the license was transferred to Pacific Power and Light Company, *The California Oregon Power Co. and Pacific Power & Light Co.*, 25 F.P.C. 1154 (June 16, 1961), and then to PacifiCorp on November 23, 1988. *PacifiCorp, d.b.a. Pacific Power & Light Co. and PC/UP&L Merging Corp.*, 45 FERC ¶ 62,146 (Nov. 23, 1988).

<sup>6</sup> *Order Approving Partial Transfer of License, Lifting Stay of Order Amending License, and Denying Motion for Clarification and Motion to Dismiss*, 172 FERC ¶ 61,062, at ¶ 2 (July, 16, 2020); *see also* 16 U.S.C. § 808(a)(1).

<sup>7</sup> 172 FERC 61,062 at ¶ 3.

<sup>8</sup> *Id.* at ¶ 3.

<sup>9</sup> Order No. 10-364 at 3.

Concurrent with the relicensing process, PacifiCorp engaged in relicensing settlement talks with a wide range of parties to address the complex resource management issues raised in the relicensing process. After many years of settlement negotiations, on February 18, 2010, the KHSA was executed by 48 parties, including PacifiCorp; the states of Oregon and California (collectively, the States); the U.S. Department of the Interior (Interior); the U.S. Department of Commerce’s National Marine Fisheries Service (NMFS); several Native American tribes; and irrigation, conservation, and fishing groups.

The KHSA provides a framework to decommission and remove the four mainstem hydroelectric developments comprising the Lower Klamath Project—J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate—and sets forth requirements related to their operation until removal.<sup>10</sup> To facilitate dam removal, the KHSA requires PacifiCorp to transfer the Lower Klamath Project developments to a Dam Removal Entity (DRE) once each facility is decommissioned<sup>11</sup> and ready for removal.<sup>12</sup> Initially, this transfer was contingent on several conditions, including Congressional approval and authorization of the KHSA and a companion settlement agreement, the Klamath Basin Restoration Agreement (that addressed broader Klamath Basin resource issues), and a scientific assessment by the Secretary of Interior confirming that dam removal is in the public interest.<sup>13</sup> The KHSA also conditioned removal upon federal legislation to authorize implementation of the KHSA and provide liability protection for PacifiCorp and its customers.<sup>14</sup>

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<sup>10</sup> KHSA § 1.2.

<sup>11</sup> Under the KHSA, “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.” The term does not refer to dam removal activities. *See* KHSA Definitions section.

<sup>12</sup> KHSA § 7.4.2.

<sup>13</sup> *See* KHSA § 7.4.1.

<sup>14</sup> Order No. 10-364 at 4.

## **B. SB 76 and Approval of Customer Surcharges for Dam Removal**

The Oregon Legislature passed SB 76 in 2009, following the execution of the precursor to the KHSA, the Klamath Agreement in Principle. SB 76 was intended to facilitate the settlement outcomes envisioned by the Klamath Agreement in Principle and realized in the KHSA in 2010. The KHSA provides \$450 million in customer contributions and public funds to cover the costs of dam removal.<sup>15</sup> Specifically, PacifiCorp’s Oregon and California customers would supply \$200 million through dam removal surcharges,<sup>16</sup> and California bond funding would supply the remaining \$250 million.<sup>17</sup>

Among other provisions, SB 76 allowed the Commission to approve surcharges for Oregon customers under a prescribed framework.<sup>18</sup> SB 76 required PacifiCorp to file the KHSA with the Commission within 30 days of execution, along with relevant studies and the economic analysis of customer costs and benefits PacifiCorp relied upon in assessing the rate-related costs, benefits and risks for customers of dam removal or relicensing. Within six months of this filing, SB 76 required the Commission to determine whether the surcharges imposed by the KHSA were fair, just, and reasonable.<sup>19</sup>

PacifiCorp timely filed the KHSA in docket UE 219.<sup>20</sup> To support the surcharges, PacifiCorp explained the four core principles guiding the KHSA: “(1) protect customers from uncertain costs of removal of the Klamath dams; (2) transfer the dams to a third party for removal; (3) protect customers from liabilities of dam removal; and (4) ensure that customers

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<sup>15</sup> *Id.*

<sup>16</sup> KHSA § 4.1.1.

<sup>17</sup> KHSA § 4.1.2. In 2014, California voters passed Proposition 1, a water bond that included \$250 million for implementation of the KHSA.

<sup>18</sup> *See generally* ORS § 757.736.

<sup>19</sup> ORS § 757.736(5).

<sup>20</sup> Order No. 10-364 at 6.

continue to benefit from the low-cost power of the dams until the dams are removed.”<sup>21</sup> The KHSA addressed these principles in several ways. First, the \$200 million cap on customer contributions protected customers from any “uncertain costs associated with dam removal.”<sup>22</sup> Second, the KHSA reduced risk by transferring ownership of the Lower Klamath Project dams to a DRE that would be solely responsible for designing and conducting dam removal.<sup>23</sup> Third, the passage of federal legislation enacting the KHSA would provide liability protection to further reduce risk once PacifiCorp transferred ownership of the properties to the DRE.<sup>24</sup> Finally, PacifiCorp committed to operating the dams until at least 2020, allowing Oregon customers to benefit from low-cost power from the facilities while dam removal surcharges were collected.<sup>25</sup>

At the time, PacifiCorp estimated the cost of relicensing the Lower Klamath Project dams and implementing the required PM&E measures would be at least \$400 million in capital and \$60 million in operations and maintenance (O&M) costs over a 40-year license term.<sup>26</sup> These projected costs were conservative, and it was understood they could go much higher considering the risks of escalating PM&E costs, litigation, and the risk that the project could not successfully be relicensed (thereby potentially exposing PacifiCorp customers to the costs and risks of dam removal).<sup>27</sup>

Conversely, under the KHSA, PacifiCorp’s capital costs for dam removal would be capped at \$200 million with an additional amount (approximately \$70 million) in O&M costs

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<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at 8–9.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*, citing PPL/300, Scott/6; PPL/301 (confidential).

<sup>27</sup> *Id.*

to manage hatchery operations, monitor and improve water quality, and enhance the aquatic habitat for threatened species until decommissioning.<sup>28</sup> PacifiCorp’s Present Value Revenue Requirement (PVR) analysis of the alternatives showed that dam removal under the KHSA was more beneficial to Oregon customers than the uncapped and unknown costs and risks of relicensing.<sup>29</sup>

The Commission approved the customer surcharges contemplated by the KHSA on August 18, 2010. Specifically, the Commission determined “that continued pursuit of the relicensing option would pose significant risks to ratepayers.”<sup>30</sup> Because the KHSA limited costs and managed risks better than relicensing, the Commission determined that the KHSA surcharges were fair, just, and reasonable.<sup>31</sup>

The Commission also addressed the future necessity for PacifiCorp to apply for approval of the property transfer to the DRE under ORS 757.480.<sup>32</sup> The Commission acknowledged “that there is a presumption that the dams will be transferred to the DRE” should all the conditions precedent in the KHSA occur.<sup>33</sup> The Commission determined that ORS 757.480 remained operative even with the passage of SB 76, and directed PacifiCorp to file a separate application for property transfer in the future.<sup>34</sup>

Since the Commission authorized the dam removal surcharges in 2010, PacifiCorp

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 10, citing PPL/200, Kelly/14-15 (confidential and highly confidential).

<sup>30</sup> *Id.* at 12.

<sup>31</sup> *Id.* at 13. The California Public Utilities Commission also affirmed the KHSA surcharges in a separate proceeding. See *In the Matter of the Application of PacifiCorp (U901E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011 and Granting Conditional Authorization to Transfer Assets, pursuant to the Klamath Hydroelectric Settlement Agreement*, CPUC Application 10-03-015, *Decision Approving a Rate Increase for PacifiCorp Pursuant to the Klamath Hydroelectric Settlement Agreement*, Decision 11-05-002 (Mar. 5, 2011).

<sup>32</sup> Order No. 10-364, at 28–29.

<sup>33</sup> *Id.* at 29.

<sup>34</sup> *Id.* (“Although the Klamath Dams must be transferred to the DRE to fully execute the KHSA, SB 76 does not address our approval of the transfer.”).



has collected surcharge funds and deposited these funds into four separate interest-bearing accounts, two for each state, each managed by a trustee appointed by either the California Public Utilities Commission (CPUC) or the Commission.

PacifiCorp has now collected the authorized surcharges in both states. As of December 31, 2020, the four trust accounts contained a total of \$106,629,265.31, reflecting total customer surcharge collections of \$187,840,579.23, net earnings of \$15,772,649.08, and disbursements to the Renewal Corporation of \$96,983,963.00 to fund engineering and planning related to dam removal.

### **C. The KHSA Amendments**

Implementation of the KHSA was delayed because Congress did not pass the necessary legislation by December 2015, which triggered a potential termination of the settlement. Consequently, in January 2016, the KHSA's dispute resolution procedures were triggered, resulting in proposed limited amendments to the KHSA.<sup>35</sup> The amendments were executed on April 6, 2016 by the principal parties to the KHSA, including PacifiCorp, the States, Interior, NMFS, the Yurok Tribe, and the Karuk Tribe.<sup>36</sup>

The KHSA, as amended, retained the core customer protections of the original settlement while charting a new procedural course for dam removal. Rather than relying on federal legislation, the amended settlement established a process by which PacifiCorp's FERC license for the Lower Klamath Project would be transferred to a newly formed DRE (the Renewal Corporation) for the purpose of license surrender authorizing dam removal.

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<sup>35</sup> KHSA at § 8.11.3.

<sup>36</sup> Other signatories to the amendments are the California Department of Fish and Wildlife; the California Natural Resources Agency; the Oregon Department of Environmental Quality; the Oregon Department of Fish and Wildlife; the Oregon Water Resources Department; Humboldt County, California; American Rivers; California Trout; the Institute for Fisheries Resources; Northern California Council, Federation of Fly Fishers; Pacific Coast Federation of Fishermen's Association; Trout Unlimited; and Sustainable Northwest.

The amended settlement relies upon FERC’s existing authority under the Federal Power Act to review and approve such license transfer and surrender. As was the case in the original settlement, the lands associated with the project will be transferred to the respective states once dam removal is complete so the property can be used to benefit the public in other ways such as habitat conservation and recreation.<sup>37</sup>

The parties have worked diligently to implement the amended settlement. In March 2016, the Renewal Corporation was incorporated for the exclusive purpose of accepting the transfer and conducting the removal of the Lower Klamath Project dams.<sup>38</sup> The Renewal Corporation is a public benefit corporation organized under the laws of California.<sup>39</sup> Consistent with its bylaws, the Renewal Corporation has a fully functioning independent board of directors, including members who represent Oregon interests. The directors have considerable technical, legal, and political experience in water issues, environmental planning, and the Klamath Basin.<sup>40</sup>

On September 23, 2016, and later supplemented, PacifiCorp and the Renewal Corporation filed a license amendment and transfer application with FERC to: “(1) amend the Klamath Project license to administratively remove the [Lower Klamath Project] to be decommissioned and place those developments into a new license that would become the Lower Klamath Project; and (2) transfer the license for the Lower Klamath Project from

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<sup>37</sup> KHSa § 7.6.4.D.

<sup>38</sup> Certified copies of the Renewal Corporation’s articles of incorporation, bylaws, and certificate of good standing are submitted with this application as Exhibit 5. Section § 1.2 of the Renewal Corporation’s Bylaws describes the organization’s purpose.

<sup>39</sup> Exhibit 5, Renewal Corporation Articles of Incorporation § II.

<sup>40</sup> See Exhibit 5, Renewal Corporation Bylaws § 3.1.

PacifiCorp to [the Renewal Corporation].”<sup>41</sup> In a concurrent filing with FERC, the Renewal Corporation applied to surrender the Lower Klamath Project license and remove the four dams.<sup>42</sup>

On March 15, 2018, FERC approved the proposed amendment to separate the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments from the existing FERC license and transfer them into a new license created for the Lower Klamath Project under license No. 14803.<sup>43</sup> At the same time, FERC deferred a ruling on the pending request to transfer the license to the Renewal Corporation, and instead solicited additional financial, insurance, and risk management information to inform its assessment of the Renewal Corporation’s capacity to become the FERC licensee for the Lower Klamath Project.<sup>44</sup>

#### **D. FERC’s July 2020 Order**

Following the filing of the 2016 Application and FERC’s March 2018 Order, the Renewal Corporation—with the assistance of PacifiCorp and the States—developed and provided significant information to FERC regarding the legal, technical, and financial capacity of the Renewal Corporation to accept the new license and to decommission and remove the facilities.

Based on the information provided to FERC regarding the Renewal Corporation’s capacity, on July 16, 2020, FERC approved a partial transfer of the Lower Klamath Project license from PacifiCorp to the Renewal Corporation (the July 2020 Order).<sup>45</sup> FERC

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<sup>41</sup> *Order Approving Partial Transfer of License, Lifting Stay of Order Amending License, and Denying Motion for Clarification and Motion to Dismiss*, 172 FERC ¶ 61,062, at ¶ 6 (July 16, 2020). The other four developments—East Side, West Side, Keno, and Fall Creek—are still under license P- 2082.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at ¶ 9.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

determined that it was “generally satisfied that the Renewal Corporation has the capacity to carry out its proposed decommissioning . . . .”<sup>46</sup> But rather than approving a full transfer of the license, FERC determined that, as a matter of policy, “the public interest would be best served by approving a partial transfer of the license and requiring PacifiCorp to remain on as co-licensee.”<sup>47</sup> FERC observed that by remaining a co-licensee, “PacifiCorp not only can provide legal and technical expertise, as the parties envisioned, but can also provide further assurance that there will be sufficient funding to carry out decommissioning, should we approve the surrender application.”<sup>48</sup>

FERC acknowledged that its conclusion to authorize only a partial transfer of the Lower Klamath Project license “represents a significant change from what the parties envisioned” because the KHSA required a full transfer of the license to the Renewal Corporation for purposes of dam removal.<sup>49</sup> FERC also recognized that the parties to the KHSA “may elect to amend their arrangement” to provide resources “sufficient to cover the costs of decommissioning.”<sup>50</sup>

#### **E. The November 2020 Memorandum of Agreement**

Because PacifiCorp concluded that the July 2020 Order conflicted with the KHSA by not allowing PacifiCorp to be fully discharged from the license, the KHSA’s dispute resolution mechanisms were once again triggered.<sup>51</sup> PacifiCorp engaged with parties to determine how to resolve the conflicts between the KHSA and the July 2020 Order. On November 16, 2020, PacifiCorp, the State of Oregon, the State of California, the Renewal

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<sup>46</sup> *Id.* at ¶ 71.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at ¶ 46.

<sup>50</sup> *Id.*

<sup>51</sup> KHSA § 8.11.

Corporation, the Karuk Tribe, and the Yurok Tribe entered into an MOA to implement the KHSA while satisfying FERC's public interest considerations as stated in the July 2020 Order.<sup>52</sup> Under the MOA, PacifiCorp will be removed from the license and the States, along with the Renewal Corporation, will become co-licensees for the purpose of license surrender authorizing removal of the Lower Klamath Project dams.<sup>53</sup>

To ensure commencement of the dam removal process, the MOA required that PacifiCorp and the Renewal Corporation file an amended license surrender application (ALSA) with FERC to begin the environmental review process.<sup>54</sup> The ALSA, which was filed November 17, 2020, updates the Renewal Corporation's 2016 surrender application with a detailed design for achieving a free-flowing river, volitional fish passage, site remediation, and restoration.<sup>55</sup> The ALSA also asks FERC to commence technical review of the dam removal proposal, including evaluations under the National Environmental Policy Act, the Endangered Species Act, and other federal resource laws. On December 16, 2020, FERC provided general notice of the ALSA and invited protests, comments, and interventions.<sup>56</sup>

Pursuant to the MOA, a new license transfer application was filed January 13, 2021.<sup>57</sup> The license transfer application notified FERC that PacifiCorp and the Renewal Corporation are not accepting the July 2020 Order that included PacifiCorp as a co-licensee but instead

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<sup>52</sup> Exhibit 4, MOA at 1.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* at 2.

<sup>55</sup> Amended Application for Surrender of License for Major Project and Removal of Project Works, Dockets P-14803-001, P-2082-063 (Nov. 17, 2020) (ALSA) at <http://www.klamathrenewal.org/wp-content/uploads/2020/11/Klamath-Amended-Surrender-Application-2020-11-17.pdf>.

<sup>56</sup> FERC, Notice of Application for Surrender of License, Soliciting Comments, Motions to Intervene, and Protests, Dockets P-14803-001, P-2082-063 (Dec. 16, 2020).

<sup>57</sup> Joint Application for Approval of License Transfer and Request for Expedited Review and Other Relief, Docket P-14803-xxx (Jan. 13, 2021)(sub-docket number not available at time of filing).

seek an order to remove PacifiCorp from the Lower Klamath Project license and approve a transfer of the license to the Renewal Corporation and the States as co-licensees, in connection with FERC issuing a license surrender order consistent with the MOA section 3(c).

By removing PacifiCorp and adding the States as co-licensees with the Renewal Corporation, the MOA is intended to address the public interest concerns that caused FERC, in the July 2020 Order, to approve only a partial license transfer. Specifically, the role of the States as co-licensees together with contingency funding pledges in the MOA are intended to provide FERC the assurances it requires to approve a license transfer.

Once the new license transfer application is approved by FERC, the MOA requires that within 30 days of issuance of a final license surrender order by FERC, the States and the Renewal Corporation will accept the license transfer order making the Renewal Corporation and States co-licensees for the Lower Klamath Project. This must occur unless the States and PacifiCorp, in consultation with Karuk and Yurok Tribes, mutually agree to reject the license surrender order on the basis that the terms of the order, including terms of any federal agency consultation concerning the order, are significantly outside the norm for FERC orders involving major project construction or deconstruction in a manner that creates significant financial risk to the States or PacifiCorp.<sup>58</sup> This approach maintains the KHSA's foundational license transfer structure (which provides significant liability protection benefits for PacifiCorp) while addressing FERC's concerns regarding adequate assurances that the project is supported by appropriate entities and commitments.

Under the MOA and the KHSA, and consistent with the concept that the FERC

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<sup>58</sup> Exhibit 4, MOA at 3.

license is inextricably tied to physical assets, PacifiCorp will transfer its property interests in the Lower Klamath Project to the Renewal Corporation once all anticipated FERC orders and state disposition approvals are secured.<sup>59</sup>

PacifiCorp and the Renewal Corporation have negotiated a Transfer Agreement to effectuate the property transfer provisions of the KHSA as implemented by the MOA. Under the MOA, PacifiCorp agreed to file applications before this Commission and other public utility commissions to approve the Transfer Agreement. This application is in fulfillment of that obligation.<sup>60</sup>

PacifiCorp also agreed to concurrently file a license transfer application at FERC consistent with the MOA. This alignment in regulatory reviews is necessary to implement the KHSA, and specifically the requirement that the Renewal Corporation accept license transfer before commencing dam removal. PacifiCorp is seeking state approvals of the Transfer Agreement, so that property transfer to the Renewal Corporation is ready to occur when the Renewal Corporation and States accept license transfer. Under the Federal Power Act, an applicant for license transfer must show that it holds fee title to the properties subject to the license, as a precondition for the license transfer to be effective.<sup>61</sup>

The MOA includes a schedule in Exhibit A designed to ensure that all necessary regulatory approvals are obtained expeditiously. This is critical because the Renewal Corporation has determined that costs will increase if dam removal is delayed.<sup>62</sup> For this reason, PacifiCorp is seeking approval of this application within six months.

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<sup>59</sup> *Id.* at 4.

<sup>60</sup> *Id.*

<sup>61</sup> 18 C.F.R. § 9.3(a).

<sup>62</sup> ALSA Exhibit D-1, Section 2.6 (estimating annual cost escalation of 4 percent) at <http://www.klamathrenewal.org/wp-content/uploads/2020/11/Klamath-ALSA-Exhibit-D.pdf>.

The Renewal Corporation’s current budget shows that, with a high degree of certainty, dam removal can be completed with the funds available under the KHSA. The Renewal Corporation has negotiated guaranteed maximum price contracts with experienced, best-in-class firms (Kiewit Infrastructure West and Resource Environmental Solutions, Inc.) for all dam removal and restoration work. Those contracts are based on detailed project designs and are backed by parent company guarantees. The Renewal Corporation has developed a comprehensive risk mitigation program, including insurance, broad indemnifications, and liability transfer mechanisms. The Renewal Corporation’s current budget also includes a \$35.1 million contingency fund supported by a comprehensive risk register. That reserve, combined with an additional \$15 million built into the guaranteed maximum price contracts, provides combined contingency coverage over \$50 million.<sup>63</sup>

An independent Board of Consultants (BOC), convened at FERC’s direction, has reviewed the Renewal Corporation’s budget, guaranteed maximum price contracts for dam removal and restoration, and insurance/risk mitigation program. The BOC found that the Renewal Corporation's cost estimate for the Project “meets or exceeds” cost estimation standards applicable to the hydropower industry.<sup>64</sup> The Board of Consultants also determined that the “[c]osts and contingencies appear to be reasonable and have a high likelihood of being adequate given the PDB [progressive-design-build] contracting model, the choice of a proven, competent contractor and proposed Risk Management Plan.”<sup>65</sup> And in the July 2020 Order, FERC found that the BOC had “thoroughly examined ... concerns

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<sup>63</sup> ALSA Exhibit D, pg. D-2 at <http://www.klamathrenewal.org/wp-content/uploads/2020/11/Klamath-ALSA-Exhibit-D.pdf>.

<sup>64</sup> *Letter Report: Board of Consultants Mtg. No. 1* at 3-4 (December 12, 2018) at [https://elibrary.ferc.gov/eLibrary/filelist?document\\_id=14728045&accessionnumber=20181212-5147](https://elibrary.ferc.gov/eLibrary/filelist?document_id=14728045&accessionnumber=20181212-5147).

<sup>65</sup> *Letter Report: Supplement to Board of Consultants Mtg. No. 1* at 5 (July 29, 2019), available as Attachment A at: [https://elibrary.ferc.gov/eLibrary/filelist?document\\_id=14788704&accessionnumber=20190729-5039](https://elibrary.ferc.gov/eLibrary/filelist?document_id=14788704&accessionnumber=20190729-5039).



[about the Renewal Corporation’s capacity] and found the Renewal Corporation’s financing, insurance, and contingencies to be appropriate for what it proposes to do.”<sup>66</sup> FERC concluded that it was “generally satisfied that the Renewal Corporation has the capacity to carry out its proposed decommissioning,”<sup>67</sup> including financial capacity based on the \$450 million of funds committed under the KHSA.

Nevertheless, to satisfy FERC’s expressed desire for additional “assurances” and provide a clear and definitive commitment of resources that will ensure the successful completion of dam removal, the MOA provides additional financial commitments if dam removal costs exceed the KHSA budget.<sup>68</sup> Under the MOA, PacifiCorp and the States each pledge an additional, fixed amount of \$15 million to a \$45 million contingency fund, to be utilized only in the unlikely event the \$450 million available to the Renewal Corporation needs to be augmented to ensure completion of dam removal.<sup>69</sup> Should cost overruns deplete the fixed \$45 million MOA contingency fund, then any additional costs shall be shared equally by PacifiCorp and the States.<sup>70</sup>

PacifiCorp is not seeking cost recovery associated with any potential contingency funding contemplated by the MOA at this time. In the unlikely event that contingency funding is necessary, PacifiCorp will consider whether and how to bring that before the Commission.

## **F. The Transfer Agreement**

The Transfer Agreement governs the conveyance of the Lower Klamath Project to

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<sup>66</sup> July 2020 Order, 172 FERC ¶ 61,062 at ¶ 71.

<sup>67</sup> *Id.*

<sup>68</sup> Exhibit 4, MOA at 4.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

the Renewal Corporation so that dam removal may begin. The Transfer Agreement provides for PacifiCorp’s reservation of easements for all transmission, distribution, service, substation, and communications assets required to preserve the safe and reliable function of the utility system after the land upon which the assets are located is transferred to the Renewal Corporation. The Transmission Facility Easement Area is designed to aid vegetation management and fire prevention by establishing a 100-foot buffer from PacifiCorp facilities including conductors. PacifiCorp may also remove trees outside the 100-foot buffer if those trees present a threat of contact with PacifiCorp facilities. The reservation of easement interests includes access rights and other rights necessary for PacifiCorp to protect and manage its reserved facilities and easement areas in perpetuity.

The Transfer Agreement also anticipates the grant of a Fall Creek Hatchery leasehold interest. The approximately four acres of land subject to the Fall Creek lease are currently occupied by a non-functional hatchery that will be rehabilitated by the Renewal Corporation and the State of California in furtherance of section 7.6.6, B. of the KHSA. Other, immaterial grants are anticipated in the Transfer Agreement including temporary construction easements over certain lands not conveyed to the Renewal Corporation. Surveys and potential modifications to easements are anticipated to accommodate dam removal activity but such modifications are limited to those that pose no material threat to the reliability of the transmission facilities.<sup>71</sup>

The Transfer Agreement contains a set of conditions precedent to closing in Sections 4.2 (Renewal Corporation’s) and 4.3 (PacifiCorp’s) including that: a FERC Surrender Order has issued and has not been rejected; a FERC License Transfer Order has issued; all state

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<sup>71</sup> Exhibit 1, Section 11.3 of Transfer Agreement.

utility commission property transfer approvals are obtained; and other permitting and financial matters are completed such that the Renewal Corporation is ready to take title and implement dam removal.

The Transfer Agreement contains other provisions that are typical to land transfer transitions or that anticipate the continued technical coordination between PacifiCorp and the Renewal Corporation.

## **II. COMPLIANCE WITH OAR 860-027-0025(1) FILING REQUIREMENTS**

### **A. Name and Address**

PacifiCorp's exact name and address of its principal business office are:

PacifiCorp  
825 NE Multnomah Street  
Portland, OR 97232

### **B. State in which Incorporated; Date of Incorporation; Other States in which Authorized to Transact Utility Business**

PacifiCorp is a corporation organized and existing under and by the laws of the State of Oregon. PacifiCorp's date of incorporation is August 11, 1987. PacifiCorp is authorized to provide retail electric service in Oregon, California, Idaho, Utah, Washington, and Wyoming.

### **C. Communications and Notices**

All notices and communications with respect to this application should be addressed to:

Robert Betcone Jr.  
Senior Attorney  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
Telephone: (503) 813-5620  
Email: [bob.betconejr@pacificorp.com](mailto:bob.betconejr@pacificorp.com)

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

Additionally, PacifiCorp respectfully requests that all data requests regarding this

matter be addressed to:

By email (**preferred**): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

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

Informal inquiries should also be directed to Jennifer Angell, Regulatory Project Manager, at (503) 331-4414.

**D. Principal Officers**

NAME	TITLE
William H. Fehrman	Chairman of the Board & Chief Executive Officer of PacifiCorp
Gary W. Hooegeven	President & Chief Executive Officer, Rocky Mountain Power
Stefan Bird	President & Chief Executive Officer, Pacific Power
Nikki L. Kobliha	Vice President, Chief Financial Officer & Treasurer

**E. Description of Business; Designation of Territories Served**

PacifiCorp engages in the generation, purchase, transmission, distribution, and sale of electric energy in Benton, Clackamas, Clatsop, Coos, Crook, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wallowa, Wasco, and Washington Counties in Oregon. PacifiCorp also engages in the generation, purchase, transmission, distribution, and sale of electric energy in the states of California, Idaho, Utah, Washington, and Wyoming.

**F. Statement Showing for each Class and Series of Capital Stock: Brief Description; Amount Authorized; Amount Outstanding; Amount Held as Required Securities; Amount Pledged; Amount Owned by Affiliated Interests; Amount Held in any Fund**

Not applicable. This transaction does not involve the sale of financial instruments or PacifiCorp capital stock.

**G. Statement Showing for each Class and Series of Long-term Debt and Notes: Brief Description of Amount Authorized; Amount Outstanding; Amount Held as Required Securities; Amount Pledged; Amount Held by Affiliated Interests; Amount in Sinking and Other Funds**

Not applicable. This transaction does not involve the sale of long-term debt or notes.

**H. Purpose of Application; Description of Consideration and Method of Arriving at Amount Thereof**

The purpose of this application is to satisfy ORS 757.480 and OAR 860-027-0025 and obtain Commission approval of the Transfer Agreement. The consideration is described primarily in the KHSA.

**I. Statement of Facilities to be Disposed of; Description of Present Use and Proposed Use; Inclusion of all Operating Facilities of Parties to the Transaction**

As described above, this transaction involves the transfer of the Lower Klamath Project to the Renewal Corporation. The hydroelectric developments included in this transfer are J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate, as shown in Exhibit 2. Together these four developments and their appurtenant properties make up the Lower Klamath Project.<sup>72</sup> Currently, the four dams have a nameplate capacity of 163 MW of electricity and they are utilized for system-allocated power generation.<sup>73</sup> Over the next three years, the KHSA and the MOA outline a detailed plan under which the Renewal Corporation will decommission the facilities of the Lower Klamath Project, draw down reservoir water levels, and remove the dam structures to allow for fish passage along the mainstem of the Klamath River. Following dam removal and habitat restoration, the Renewal Corporation will transfer the land to the States of Oregon and California for habitat conservation and recreation.

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<sup>72</sup> 162 FERC ¶ 61,236, at ¶ 43.

<sup>73</sup> *Id.* at ¶ 46.

**J. Statement by Primary Account of Cost of the Facilities and Applicable Depreciation Reserve**

The Oregon-allocated book value of the Company property on December 31, 2020 is \$593,912.<sup>74</sup> While the Oregon-allocated amount is below the recently amended statutory threshold for property transfer approvals under ORS 757.480(1)(a) and (4), PacifiCorp is making this filing because in Order No. 10-364, the Commission directed the Company to “file a request to transfer the Klamath Dams pursuant to ORS 757.480.”<sup>75</sup>

**K. Required Filings with Other State or Federal Regulatory Bodies**

In addition to approval by the Commission, the property transfer will also require property disposition approval by the California Public Utilities Commission,<sup>76</sup> the Idaho Public Utilities Commission,<sup>77</sup> and the Wyoming Public Service Commission.<sup>78</sup> PacifiCorp will file a notice of the intended transfer with the Utah Public Service Commission. As discussed above, PacifiCorp’s application to transfer its FERC license to the Renewal Corporation and the States as co-licensees, and the related application to surrender the license and remove the dams, also require FERC approval.

**L. Facts Relied Upon by Applicant to Show Transaction is in the Public Interest**

ORS 757.480 requires Commission pre-approval for sales of property necessary and useful in the performance of a utility’s duties with a value in excess of \$1 million.<sup>79</sup> ORS 757.480’s attendant administrative rule, OAR 860-027-0025(1)(I), requires PacifiCorp to

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<sup>74</sup> This amount may change prior to closing as a function of both additional capital costs allocated to Oregon for matters such as continued dam safety and operations and depreciation over the same period.

<sup>75</sup> Order No. 10-364 at 30.

<sup>76</sup> See California Public Utilities Code § 851 (The transfer of the project was approved by CPUC in the context of the surcharge proceedings but subject to conditions that require additional filings to confirm the readiness of the project to close).

<sup>77</sup> See Idaho Code § 61-328.

<sup>78</sup> Wyoming Public Service Commission Rules Chapter 3, Section 21.

<sup>79</sup> ORS § 757.480.

show that such a proposed sale is “consistent with the public interest.” The Commission has previously held that this standard requires a showing of “no harm.”<sup>80</sup> The Commission has stated that determinations under the no harm standard are made on a case-by-case basis by demonstrating that the sale or transfer of the property in question will cause no public detriment.<sup>81</sup> Specifically, the Commission analyzes the no harm standard by determining the transaction’s financial impact on customers,<sup>82</sup> assessing any risk associated with the

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<sup>80</sup> See, e.g., *In the Matter of Alsea Properties, Inc., Request for Approval to Sell Westwood Village to Highland Water Corp.*, Docket UP 300, Order No. 14-236, at 2 (June 24, 2014) (“ORS 757.480 and ORS 757.485 require approval by the Commission, but do not explicitly express a standard. The Commission has interpreted these statutes as requiring a no harm standard.”); *In re Legal Standard for Approval of Mergers*, Docket UM 1011, Order No. 01-778, at 10 (Sept. 4, 2001) (“The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a ‘not contrary to the public interest’ standard (ORS 757.490, .495.)”) (emphasis added); *In the Matter of the Application of PacifiCorp for an Order Approving the Sale of its Interest in the Centralia Steam Electric Generating Plant and Related Other Assets*, Docket UP 168, Order No. 00-112, at 6 (Feb. 29, 2000) (regarding the sale of the Centralia generating plant); *Re West Coast Telephone Co.*, Docket UF 2438, Order No. 40271, 1964 OR PUC LEXIS 1 at \*16 (June 24, 1964) (“The terms ‘not contrary to the public interest’ and ‘consistent with the public interest’ when used or considered in connection with comparable regulatory statutes have been defined as being ‘compatible with and not opposed to public interest; that they do not imply a public benefit be derived; and that they mean no more than that the transfer will not result in detriment to consumers and investors.’”) (citing *Pacific Power & Light Co. v. Federal Power Commission*, 111 F2d 1014 (9th Cir. 1940)).

<sup>81</sup> *In re Application of Portland General Electric Co. for Approval to Sell Its 2.5 Percent Ownership Share of the Centralia Steam Electric Generating Plant to Avista Corp.*, Dockets UP 165 & UP 170, Order No. 00-152, at 4 (Mar. 16, 2000) (“Staff found that the Commission has interpreted the public interest standard not to generally require a positive public benefit but merely a showing that no public detriment will result. This determination is made on a case-by-case basis.”).

<sup>82</sup> See, e.g., *In the Matter of Avista Corp., dba Avista Utilities, Application for Approval of the Sale of the Klamath Falls Former Service Center Located in Klamath Falls*, Docket UP 257, Order No. 10-130, App’x A at 2 (Apr. 6, 2010) (determining that a sale of utility property conformed to the no harm standard because the property at issue is no longer used and useful, and was sold at a gain); Docket UP 168, Order No. 00-112, at 5-6 (Feb. 29, 2000) (determining that PacifiCorp’s sale of its interest in the Centralia plant met the no harm standard because the distribution of profits was properly spread between ratepayers and shareholders).

transaction,<sup>83</sup> and considering whether the transaction aligns with state public policy goals.<sup>84</sup>

The property transfer reflected in the Transfer Agreement is consistent with the public interest, as previously articulated in SB 76 and the Commission Order Nos. 10-325 and 10-364. The Transfer Agreement will not harm customers.

As stated above, after years of settlement negotiations following PacifiCorp's 2004 filing of its project relicensing application with FERC, the KHSA was executed on February 18, 2010, by 48 parties, including PacifiCorp; the States; Interior; NMFS; several Native American tribes; several local counties; and irrigation, conservation, and fishing groups. This diverse group of stakeholders worked collaboratively to resolve issues related to the relicensing of the Klamath Project. PacifiCorp agreed to allow an independent DRE to conduct the Lower Klamath Project's removal and executed the KHSA based upon the negotiated terms of this collaborative effort.

The Oregon Legislature endorsed dam removal under the framework laid out in the KHSA by enacting SB 76. The Commission concurred in docket UE 219 by finding that the terms of the KHSA advance and protect the interests of customers, justifying rate surcharges to fund the Oregon customer contribution to dam removal costs.<sup>85</sup>

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<sup>83</sup> See *In The Matter of the Application of Portland General Electric Company in Regard to the Sale of Property*, Docket UP 158, Order No. 00-111, at 14-15 (Feb. 29, 2000).

<sup>84</sup> See, e.g., *In the Matter of the Joint Application of U S West Communications Inc and Telephone Utilities of Eastern Oregon, Inc Dba PTI Communications, for an Order Authorizing it to Sell Certain Telephone Exchanges*, Docket UP 96, Order No. 95-0526, 1995 OR PUC LEXIS 48 at \*6-7 (May 31, 1995) ("In determining whether a sale and transfer of allocated territory meet the public interest standard set out above, the Commission looks at the impact of the transaction on the customers in the areas transferred, its effect on the other customers of the companies, and its consequences for the companies themselves and for the industry as a whole."); *In the Matter of Portland General Electric Co., Request to Transfer Land to the City of Sherwood*, Docket UP 268, Order No. 10-463, App'x A at 3 (Nov. 30, 2010) (finding that PGE's transfer of land to the City of Sherwood met the no harm standard, in part, because it allowed the connection of two busy roads); *In the Matter of PacifiCorp, dba Pacific Power, Application for Approval of the Sale of Transmission Line and Removal of Switching Station*, Docket UP 242, Order No. 07-489, App'x A at 4-5 (Nov. 13, 2007) (determining that PacifiCorp's sale of a transmission line met the no harm standard because it would not affect wholesale wheeling rates).

<sup>85</sup> Order No. 10-364 at 13.



In a similar case, the Commission approved property conveyances to effectuate the decommissioning of PacifiCorp’s Powerdale dam in 2012.<sup>86</sup> In that case, PacifiCorp reached a multi-party settlement to decommission the Powerdale dam after a lengthy, complicated negotiation process.<sup>87</sup> The settlement agreement required PacifiCorp to convey title of property to a land trust and certain government entities for “conservation and public recreation purposes.”<sup>88</sup> PacifiCorp’s application for approval of these conveyances relied on economic analysis showing that dam decommissioning through the settlement agreement was in the best interest of customers.<sup>89</sup>

The Commission approved the property transfer as a part of the overall Powerdale settlement, concluding that decommissioning was the least-cost, least risk option for Oregon customers.<sup>90</sup> The Commission found that decommissioning would not only benefit customers financially, but would also benefit the public generally by creating public recreation areas on the former site of the dam.<sup>91</sup> Because conveyances of the Powerdale property were “a necessity of the decommissioning Settlement Agreement,” and because “decommissioning was the least-cost alternative to relicensing” the Commission approved the conveyances as consistent with the public interest under ORS 757.480.<sup>92</sup>

Like Powerdale, PacifiCorp conducted extensive economic analysis showing that

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<sup>86</sup> *In the Matter of PacifiCorp, dba Pacific Power, Application Requesting Approval of Conveyance of Powerdale Property*, Docket UP 279, Order No. 12-108 (Mar. 27, 2012).

<sup>87</sup> *Id.* App’x A at 6.

<sup>88</sup> *Id.* App’x A at 3.

<sup>89</sup> *Id.* App’x A at 6. “The model used assumptions and inputs such as price curves for replacement power, estimated cost of decommissioning the [Powerdale] Project, estimated cost of making the improvements necessary for relicensing, and approved rates of return to calculate the net present value of both options (relicensing or decommissioning) for the Powerdale Project.” *Id.*

<sup>90</sup> *Id.* App’x A at 7.

<sup>91</sup> *Id.* App’x A at 6.

<sup>92</sup> *Id.* App’x A at 7.

removal of the Lower Klamath Project dams under the KHSA is the least-cost, least-risk option for Oregon customers compared to the uncapped and unknown costs of relicensing and related litigation. PacifiCorp estimated that relicensing would cost at least \$460 million and present significant risk, as compared to the KHSA pathway, including disposition, which defined and limited PacifiCorp’s costs to \$270 million. In accordance with SB 76, the Commission reviewed those studies in Order No. 10-364 and determined that dam removal under the KHSA was the best option for customers.<sup>93</sup> The Commission also stated its belief that there were “substantial unquantified risks associated with continued pursuit of a FERC license” not captured in the economic analysis.<sup>94</sup> Because transfer of property under the Transfer Agreement is an integral part of the KHSA and the MOA, approval of the Transfer Agreement is consistent with the public interest under ORS 757.480.

The KHSA and MOA preserve the settlement outcomes that the Commission reviewed and approved in Order No. 10-364. The commitment in the MOA to remove PacifiCorp from the license and for the States to become co-licensees with the Renewal Corporation responds to FERC’s concerns. While the MOA does provisionally commit additional funds to the dam removal process, the parties to the MOA have mutually agreed that these funds will likely be unnecessary.<sup>95</sup> Even with these additional, contingent financial commitments, relicensing remains a much more costly and risky alternative than dam removal under the KHSA. Moreover, this responsibility for additional funding is shared by both the States and PacifiCorp. The cost sharing mechanisms of the MOA show

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<sup>93</sup> Order No. 10-364, at 13.

<sup>94</sup> *Id.*

<sup>95</sup> Exhibit 4, MOA at 4 (“The Implementing Agreement Parties believe that funding for Facilities Removal beyond the [Amended] KHSA State Cost Cap is unlikely to be needed ....”).

PacifiCorp’s commitment to mitigate the risks associated with the dam removal process while ensuring that removal occurs in a timely and orderly fashion.

Significantly, the Renewal Corporation’s current budget shows that dam removal can be completed within the funds available under the KHSA (including over \$50 million in contingency funding coverage), so the additional contingency funding provided for in the MOA will not be needed. As noted above, both the BOC and FERC have expressed confidence in the Renewal Corporation’s ability to complete the project within the funds available under the KHSA.<sup>96</sup>

This transfer of the Lower Klamath Project to the Renewal Corporation culminates a regulatory process that started with this Commission over ten years ago. PacifiCorp has already collected all of the surcharges associated with dam removal and has concurrently depreciated the book value of the Lower Klamath Project over that same time period. PacifiCorp has modeled the removal and replacement of the Lower Klamath Project in its integrated resource plans for many years, and the Company’s growing portfolio of renewable resources helps mitigate the impact of removing zero emissions resources at this time.

Furthermore, the property transfer (as a required step to implement the KHSA) will reduce PacifiCorp’s risks and liabilities by eliminating the Company’s need to relicense the Lower Klamath Project. In 2010, PacifiCorp and Staff agreed, and the Commission determined, that the risks of higher costs associated with relicensing far exceeded the concrete plan outlined in the KHSA.<sup>97</sup> Over the past ten years, the risks of higher costs associated with relicensing have only increased while the plans and estimated costs for

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<sup>96</sup> *Letter Report: Board of Consultants Mtg. No. 1* (November 28, 2018) and *Letter Report: Supplement to Board of Consultants Mtg. No. 1* (July 29, 2019); July 2020 Order, 172 FERC ¶ 61,062 at ¶ 71.

<sup>97</sup> Order No. 10-364 at 13.

decommissioning and removal have become more concrete and reliable. For example, since the execution of the KHSA, the California State Water Resources Control Board and Oregon Department of Environmental Quality have adopted stringent new water quality standards for the Klamath River that would substantially increase operation costs if applied to the Lower Klamath Project dams.<sup>98</sup> Additionally, deteriorating anadromous fish returns in the Klamath Basin, similar to those experienced elsewhere on the West Coast, continue to exacerbate natural resource conflicts in the basin, and create challenges for Tribal communities that depend on the Klamath River and its aquatic resources. These deteriorating conditions imperil PacifiCorp's ability to secure a long-term license for the facilities.

The States' strong support of dam removal has increased the uncertainty of relicensing considering the States' role in the relicensing process. At the same time, the ALSA that PacifiCorp and the Renewal Corporation recently submitted to FERC describes a detailed scope of work for decommissioning the Lower Klamath Project based on 60 percent design specifications and a record incorporating information gleaned from years of technical, environmental, and regulatory analysis. Together the KHSA and the MOA outline an attainable scope of work, schedule and cost estimate for the project.

Finally, approval of the Transfer Agreement (as a required step to implement the KHSA) will advance Oregon's public policy goals by providing an equitable solution to the

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<sup>98</sup> In March 2010, the California State Water Quality Control Board adopted the North Coast Regional Water Quality Control Board's Final Staff Report for the Klamath River Total Maximum Daily Loads (TMDLs) Addressing Temperature, Dissolved Oxygen, Nutrient, and Microcystin Impairments in California, the Proposed Site Specific Dissolved Oxygen Objectives for the Klamath River in California, and the Klamath River and Lost River Implementation Plans. In December 2010, the Oregon Department of Environmental Quality adopted the Upper Klamath and Lost River Subbasins Total Maximum Daily Load (TMDL) and Water Quality Management Plan (WPMP). The TMDL requirements of both states would impose additional operational limitations and water quality compliance costs on the operation of the Klamath Hydroelectric Project.

issues surrounding the Lower Klamath Project. These public policy goals are a critical component of the KHSA and the MOA and are essential to help resolve long-standing and complex conflicts over hydroelectric resources in the Klamath Basin. The KHSA and the MOA represent an unprecedented level of collaboration among a FERC licensee, federal agencies, two states, Native American tribes, conservation organizations, and recreation groups. This collaboration will result in the restoration and long-term protection of a large landscape and critical habitat, a new demonstration of respect for Native Americans, as well as reduced costs to PacifiCorp's customers.

As demonstrated above, Commission approval of this application will cause no harm to Oregon customers. The Renewal Corporation is fully qualified to accept the Lower Klamath Project properties and remove the dams. Furthermore, the transfer will reduce the risk of further costs to PacifiCorp associated with the dam removal and advance the public policy goals of Oregon. Approval of this application within six months will allow the Transfer Agreement to take effect according to its terms upon FERC's approval of the ALSA and the license transfer application.

**M. Reasons Relied Upon for Entering into the Proposed Transaction; Benefits to Customers**

Please refer to sections II.H. and II.L. above, as well as section I for a full discussion of the reasons for entering the Transfer Agreement.

**N. Amount of Stock, Bonds, or Other Securities, Now Owned, Held or Controlled by Applicant, of the Utility from which Stock or Bonds are Proposed to be Acquired**

Not applicable. This transaction does not involve the sale of stock or other financial instruments.

**O. Statement of Franchises Held; Date of Expiration; Facilities of Transferees**

Not applicable. The transaction will not affect PacifiCorp's Oregon service territory in any way.

**III. COMPLIANCE WITH OAR 860-027-0025(2)  
FILING REQUIREMENTS**

**A. Exhibit A—Articles of Incorporation**

Not applicable. Review of the Articles of Incorporation would not advance the Commission's analysis of this application because the subject transaction involves the conveyance of utility property and does not affect PacifiCorp's corporate structure or governance.

**B. Exhibit B—Bylaws**

Not applicable. Review of PacifiCorp's bylaws would not advance the Commission's analysis of this application because the subject transaction involves the conveyance of utility property and does not affect PacifiCorp's corporate structure or governance.

**C. Exhibit C—Resolution of Directors Authorizing Transaction**

Not applicable. A board of directors' resolution is not necessary to authorize PacifiCorp's execution of the Transfer Agreement.

**D. Exhibit D—Mortgages, Trust, Deeds or Indentures Securing Obligation of each Party**

The transaction will not involve the creation of any security instruments.

**E. Exhibit E—Balance Sheet Showing Booked Amounts, Adjustments to Record the Proposed Transaction and Pro Forma, with Supporting Fixed Capital or Plant Schedules in Conformity with the Forms in the Annual Report**

The Company respectfully requests that the requirement to provide pro forma information be waived because the property disposition will not materially affect the Company's financial statements.

**F. Exhibit F—Known Contingent Liabilities**

Known contingent liabilities associated with the property disposition are as follows:

- 1) **Pre-Existing Environmental Conditions.** PacifiCorp agrees to address specified environmental conditions that currently exist on lands that will be conveyed to the Renewal Corporation, and for which PacifiCorp already has responsibility for addressing based on its status as the property owner. These pre-existing site conditions were identified during environmental site assessments conducted by the Renewal Corporation as part of its site due diligence. The Renewal Corporation’s contractors estimate that the cost of mitigating the pre-existing environmental conditions ranges from \$4.2 million (low) to \$31.5 million (high). The risk associated with this obligation is mitigated partly by the establishment of a finite list of pre-existing environmental conditions identified on Exhibit C to the Transfer Agreement. This obligation is further mitigated by a “reasonable satisfaction” standard as reflected in Section 3.5 of the Transfer Agreement and in Exhibit F to the Transfer Agreement – the Form of Post-Closing Environmental Resolution Agreement.
- 2) **Later Found Encumbrances.** PacifiCorp agrees to address real estate title encumbrances that are not currently reflected on Exhibit B to the Transfer Agreement. The risk associated with this obligation is considered low due to title examination work done by the Renewal Corporation and shared with PacifiCorp, independent title review conducted by PacifiCorp, the long period during which PacifiCorp has held the assets without title encumbrance problems and a

materiality threshold that attends the obligation.

- 3) **Other typical or less material commitments.** PacifiCorp agrees to a number of other obligations in the Transfer Agreement that are typical to a real estate transaction or that are not likely to generate a material risk or cost relative to the matters and amounts addressed above. Examples of such obligations include cooperation with the Renewal Corporation to survey and adjust easements (Section 11.3 of Transfer Agreement) and to assess mitigation necessary in response to changed river flow at the Copco II 115/69kv facility (noted in Exhibit J to the Transfer Agreement).
- 4) **Other ancillary commitments.** While not directly associated with the disposition of the property, the KHSA and MOA contain other commitments made by PacifiCorp.<sup>99</sup>

**G. Exhibit G—Comparative Income Statements Showing Recorded Results of Operations, Adjustments to Record the Proposed Transaction and Pro Forma, in Conformity with the Form in the Annual Report**

The Company respectfully requests that this requirement be waived because the property disposition will not materially affect the Company's financial statements.

**H. Exhibit H—Analysis of Surplus for the Period Covered by Income Statements Referred to in G**

The Company respectfully requests that this requirement be waived because the property disposition will not materially affect the Company's financial statements.

**I. Exhibit I—Copy of Contract for Transaction and Other Written Instruments**

A copy of the Transfer Agreement is included as Exhibit 1.

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<sup>99</sup> For example, as discussed in preceding sections of this application, there are contingency fund pledges made under the MOA and a commitment to fund hatchery construction under section 7.6.6 of the KHSA.



**J. Exhibit J—Copy of Each Proposed Journal Entry to be Used to Record the Transaction**

The Company respectfully requests that this requirement be waived because the Company has not completed the proposed journal entries.

**K. Exhibit K—Copy of each Supporting Schedule Showing the Benefits, if any, which each Applicant Relies upon to Support the Facts Required by (1)(L) of this Rule and Reasons as Required by (1)(m)**

To assist the Commission in its decision, PacifiCorp has included the Transfer Agreement, a project map, the KHSA, the MOA, and the Renewal Corporation's articles of incorporation, bylaws, and letter of good standing as exhibits to this application. Additionally, the record in docket UE 219 supporting Order Nos. 10-325 and 10-364 also supports approval of the Transfer Agreement.<sup>100</sup> PacifiCorp is prepared to provide additional information as requested by the Commission.

**IV. PRAYER FOR RELIEF**

Approval of this application within six months will allow the Transfer Agreement to take effect according to its terms after the conditions of closing in the Agreement are met, including FERC approval of the ALSA and FERC approval of the license transfer application.

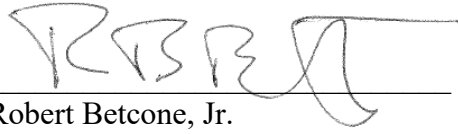
PacifiCorp respectfully requests a Commission order (1) approving the Transfer Agreement based on the finding that it will not harm PacifiCorp's customers and is consistent with the public interest; and (2) granting other such relief as the Commission deems necessary and proper.

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<sup>100</sup> Confidential and highly confidential information in docket UE 219 is governed by Special Protective Order No. 10-148 (April 19, 2010) (covering all parties except the Industrial Customers of Northwest Utilities (ICNU)) and Modified Protective Order No. 10-152 (April 21, 2010) (covering ICNU).

Respectfully submitted this 14<sup>th</sup> day of January, 2021.

By:

A handwritten signature in black ink, appearing to read 'R. Betcone, Jr.', written over a horizontal line.

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# **Exhibit 1**

EXECUTION

# **PROPERTY TRANSFER AGREEMENT**

**Between**

**PACIFICORP, as Transferor**

**And**

**KLAMATH RIVER RENEWAL CORPORATION, as Transferee**

**Dated as of January 13, 2021**

**Relating to the  
Lower Klamath Project**

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## PROPERTY TRANSFER AGREEMENT

THIS PROPERTY TRANSFER AGREEMENT (this “**Agreement**”) is entered into as of January 13, 2021 (the “**Effective Date**”) between PACIFICORP, an Oregon corporation (“**PacifiCorp**”) and KLAMATH RIVER RENEWAL CORPORATION, a California nonprofit corporation (“**KRRC**”).

### RECITALS

A. KRRC and PacifiCorp are among the parties to the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as amended on April 6, 2016 and as it may have thereafter been, or may hereafter be, amended (the “**KHSA**”). KRRC and PacifiCorp are also among the parties to the Memorandum of Agreement, dated November 16, 2020 (the “**MOA**”), under which certain of the KHSA signatories have clarified and supplemented certain of their commitments to implement the KHSA. The KHSA, as clarified by the MOA, contemplates certain property transactions between PacifiCorp and other parties, including KRRC, to carry out the purposes of the KHSA.

B. Among the property transfers contemplated by the KHSA is a transfer of certain properties to KRRC in connection with the transfer of the FERC License (as defined below) to KRRC and the States to facilitate KRRC’s removal, in whole or in part, of certain dams and related improvements from the Klamath River and to implement certain related projects, including dam removal mitigation measures.

C. The KHSA further contemplates that following dam removal KRRC will transfer the properties it receives from PacifiCorp to the State of California and the State of Oregon, as applicable (or to such other parties as the respective States may direct), for public interest purposes such as fish and wildlife habitat restoration and enhancement, public education, and public recreational access. KRRC intends to enter into separate agreements with each of the States to provide for such post-dam removal property transfers.

D. The PacifiCorp facilities currently subject to the FERC License include the Iron Gate fish hatchery which, under the KHSA, PacifiCorp is to transfer to the State of California, and which was expected to be modified as part of the work necessary to achieve certain dam removal mitigation objectives. PacifiCorp, KRRC and the State of California currently anticipate, however, that the Iron Gate fish hatchery will be removed and the currently inactive hatchery facilities at Fall Creek will be modified and re-activated instead.

E. To facilitate the removal of the Iron Gate fish hatchery and the creation of additional hatchery facilities at Fall Creek as provided for in the Definite Plan (as defined below), and to avoid the additional cost and administrative burden of severing the Iron Gate fish hatchery from the FERC License to permit PacifiCorp to transfer it directly to the State of California, KRRC, PacifiCorp and the State of California have agreed that the Iron Gate fish hatchery will initially be transferred to KRRC and that the Fall Creek Premises will initially be leased to KRRC, and that following completion of the necessary modifications, KRRC will

transfer title to the Iron Gate fish hatchery, and assign the Fall Creek lease, to the State of California.

F. KRRC and PacifiCorp now desire to memorialize the foregoing in furtherance of the KHSA.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the parties agree as follows:

## **SECTION 1. DEFINITIONS; CONSTRUCTION**

### **Section 1.1. Definitions.**

(a) Capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed to such terms in the KHSA.

(b) For purposes of this Agreement, the following words and phrases shall have the respective meanings set forth below:

**“Additional Property Interests”** means such leases, licenses, easements, rights of way and other occupancy or access arrangements with Persons other than PacifiCorp, including the State of California, the State of Oregon, and the United States Bureau of Land Management, as are not part of the Real Property or Occupied Third-Party Premises but are reasonably necessary for KRRC’s implementation of the Definite Plan.

**“Approval(s)”** means, as applicable, any consent, approval or other authorization of a third party, including any Governmental Authority, required in connection with the referenced matter.

**“Appurtenances”** has the meaning set forth in Section 3.1(a)(iii).

**“CDFW”** means California Department of Fish and Wildlife.

**“Claim(s)”** has the meaning set forth in Section 10.3.

**“Closing”** has the meaning set forth in Section 4.1.

**“Closing Conditions”** means the conditions precedent to Closing set forth in Sections 4.2 and 4.3.

**“Closing Date”** has the meaning set forth in Section 4.1.

**“CWA”** has the meaning set forth in the definition of Environmental Laws.

**“Decommissioned Property”** means property to be removed from the Real Property in connection with Decommissioning under the KHSA and identified on Schedule 3.1(b)(i).

“**Decommissioning**” has the meaning ascribed to such term in the KHSA.

“**Definite Plan**” has the meaning ascribed to such term in the KHSA. References in this Agreement to the Definite Plan include reference to any modifications pursuant to any Removal Permits, the Surrender Order, or otherwise occurring.

“**Effect**” has the meaning set forth in the definition of Material Adverse Effect.

“**Effective Date**” means the date stated above, as of which the parties have entered into this Agreement.

“**Encumbrance**” means any lien, pledge, security interest, charge, claim, restriction, lease, license, easement, restriction, right of way or other encumbrance of any type whatsoever.

“**Environmental Law(s)**” means all Legal Requirements relating to pollution, the protection of the environment or drinking or domestic water supply, including but not limited to laws relating to safe drinking water, emissions, discharges, releases or threatened releases of Hazardous Materials into ambient air, surface water, ground water, drinking or domestic water supply, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, refinement, production, disposal, transport or handling of Hazardous Materials, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. and otherwise (“**CERCLA**”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 69016901, et seq. and otherwise (“**RCRA**”); the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (“**FWPCA**”); the Hazardous Materials Transportation Act, 49 U.S.C. § 5101; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 et seq. (“**EPCRA**”); the Atomic Energy Act, 42 U.S.C. § 20142014, et seq.; the Endangered Species Act, 16 U.S.C. § 1531 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq. (“**FIFRA**”); the Clean Air Act, 42 U.S.C. § 74017401, et seq. (“**CAA**”); the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (“**CWA**”); and their state analogs, state counterparts, and other state laws, regulations, statutes and common law relating to protection of human health and the environment.

“**Equipment**” has the meaning set forth in Section 3.1(a)(v).

“**Excluded Property**” has the meaning set forth in Section 3.1(b).

“**Facilities Handover Procedure**” has the meaning set forth in Section 6.1(g).

“**Facilities Removal**” has the meaning set forth in the KHSA.

“**Facility**” and “**Facilities**” have the meanings ascribed to such terms in the KHSA.

“**Fall Creek Lease**” means the lease of the Fall Creek Property substantially in the form attached as Exhibit D.

“**Fall Creek Premises**” means the land to be demised under the Fall Creek Lease and described in Exhibit E.

“**Fall Creek Property**” means the leasehold interest in the Fall Creek Premises, and any improvements, structures, equipment or appurtenances demised to KRRC or otherwise provided for under the Fall Creek Lease.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FERC License**” means License No. P-14803 or such other license as may be issued by FERC relating to the Lower Klamath Project.

“**FERC License Transfer Instruments**” means such documents and instruments as are necessary to evidence KRRC’s acceptance of the FERC License.

“**Governmental Authority**” means any federal, state or local governmental entity, any subdivision thereof, or any Native American Tribe, exercising any executive, legislative, judicial, regulatory, administrative or other governmental function with respect to the Property or any Person, as applicable.

“**Hatchery Operation Agreement**” has the meaning set forth in Section 4.2(h).

“**Hazardous Materials**” means asbestos or any substance containing asbestos, polychlorinated biphenyls (“PCB”), PCB contaminated material, including, but not limited to, PCB contaminated electrical equipment as defined in 40 C.F.R. 761.3, lead, lead in the form of lead based paint materials or paint with lead (“LBP”), flammable explosives, radioactive materials, petroleum, petroleum fractions, petroleum constituents, petroleum distillates, chemicals known to cause cancer or reproductive toxicity or that pose a risk to human health or safety or the environment or that are regulated under Environmental Law, pollutants, effluents, residues, contaminants, emissions or related materials, natural gas liquids, and any items defined or regulated as “hazardous waste,” “hazardous materials,” “hazardous substances,” “toxic waste,” “toxic materials,” or “toxic substances” or words of similar import, all under any applicable Environmental Law. The term “Hazardous Materials” shall not include items that are “household hazardous waste” including chemicals, lubricants, refrigerants, household supplies, materials for common residential purposes, and other substances kept in amounts typical for, and used as, standard janitorial supplies, office supplies, and the like in connection with the routine maintenance and operation of facilities similar to the Premises, to the extent kept, used, and maintained in a manner consistent with their intended uses and in compliance with Environmental Law.

“**IGH**” has the meaning set forth in Section 2.1(c).

“**Improvements**” has the meaning set forth in Section 3.1(a)(iv).

“**Intangibles**” has the meaning set forth in Section 3.1(a)(vii).

“**Keno Land**” means the property described in Exhibit I.

“**KHSA**” has the meaning set forth in the Recitals.

“**KRRC Easement Properties**” has the meaning set forth in Section 11.5.

“**KRRC Temporary Construction Easements**” have the meaning set forth in Section 11.5.

“**Laws**” means laws (including common law), statutes, codes, treaties, orders, rules, regulations, ordinances, requirements, judgments, orders, decrees or determinations of any Governmental Authority, including the Americans with Disabilities Act of 1990, in each case as in effect at the time of reference.

“**Legal Requirement(s)**” means, (i) with reference to any Person (A) the articles of organization, operating agreement, certificate of incorporation and by-laws or partnership agreement, certificate of limited partnership or other organizational or governing documents of such Person, and (B) any Laws applicable to or binding upon such Person or its property (to the extent thereby affecting the Project Property); and (ii) with reference to the Project Property (A) any Laws applicable to or binding upon the Project Property, any appurtenance thereto, or the use or manner of use thereof, including without limitation (1) any applicable environmental, ecological, zoning, building, landmark, subdivision and land use Laws, (2) the requirements, terms or conditions of any Approvals of any Governmental Authority, and (3) the terms, conditions and requirements of any easement, restrictive declaration or other encumbrance upon the Project Property, and (B) the orders, rules and regulations of the Board of Fire Underwriters or any body now or hereafter performing similar functions. “Legal Requirements” shall not include any law, regulation or requirement that is inapplicable to any Person, the Project Property, its operation, or any activities relating to the Project Property or Facilities Removal as a result of pre-emption by FERC jurisdiction or otherwise.

“**Liabilities**” means liabilities or obligations of any type or nature, including any direct or indirect indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, whether known or unknown, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured.

“**Lower Klamath Project**” means the four hydroelectric generating developments (J.C. Boyle, Copco No. 1, Copco No. 2 and Iron Gate) and

associated lands to be transferred from PacifiCorp to KRRC under the KHSA, including lands referred to in the KHSA as Parcel B lands.

**“Material Adverse Effect”** means any state of facts, circumstance, condition, event, occurrence, result or effect (each, an **“Effect”**) that, individually or in combination with any other Effect, is or would reasonably be expected to become materially adverse to the ability of the applicable party to perform their obligations under this Agreement, applicable Laws, any Permit or the KHSA.

**“NMFS-PacifiCorp Implementing Agreement”** means the Implementing Agreement between PacifiCorp and the National Marine Fisheries Service, dated February 24, 2012.

**“O&M Agreement”** means the Operations and Maintenance Agreement, dated September 20, 2017, between KRRC and PacifiCorp.

**“Occupied Third-Party Premises”** has the meaning set forth in Section 3(a)(ii).

**“Operating Permits”** has the meaning set forth in Section 3.1(a)(vi).

**“PacifiCorp Easement Properties”** has the meaning set forth in Section 11.2(a).

**“PacifiCorp Easements”** has the meaning set forth in Section 11.1.

**“Parcel B Land”** has the meaning set forth in Section 3.1(a)(i).

**“Permits”** means the Removal Permits and the Operating Permits.

**“Permitted Encumbrances”** means the matters set forth on Exhibit B.

**“Person”** means natural persons, corporations, companies, partnerships, limited liability companies, trusts, associations, public bodies, joint ventures and similar entities, including Governmental Authorities.

**“Personal Property”** means all property to be transferred to KRRC under this Agreement that is not Real Property.

**“Pole Attachment(s)”** means a third party’s installation or maintenance of a pole or similar structure to support utility lines (including for telecommunications) and related equipment on the Real Property or a third party’s installation or maintenance of utility lines (including for telecommunications) and related equipment on poles or similar structures owned or maintained by PacifiCorp.

**“Pole Attachment Agreement(s)”** means an agreement with a third party that authorizes a Pole Attachment.

**“Post-Closing Environmental Resolution Agreement”** has the meaning set forth in Section 3.5(c).

**“Pre-Existing Environmental Condition”** means (a) means the conditions identified in Exhibit C, and (b) any condition or circumstance relating to Hazardous Materials arising after the effective date of Exhibit C and prior to the Closing Date that results in or could reasonably be expected to result in Liability to an owner of the Property unless caused by KRRC or its contractors or subcontractors of any tier.

**“Project Property”** has the meaning set forth in Section 3.1(a)(vii).

**“Real Property”** has the meaning set forth in Section 3.1(a)(iv).

**“Records”** has the meaning set forth in Section 3.1(a)(vii).

**“Removal Permit(s)”** means the federal, state or local approvals, consents, permits or licenses as may be required or appropriate to implement the Definite Plan. “Removal Permit” does not include reference to the Surrender Order.

**“Retained Environmental Obligations”** has the meaning set forth in Section 3.5

**“Retained Facilities”** has the meaning set forth in Section D.1 of Exhibit H-1.

**“Service Contract(s)”** means contracts, agreements and other arrangements between PacifiCorp and any third parties (including any Governmental Authorities) relating to services to be performed or goods or materials to be provided in connection with the Property, including construction contracts and subcontracts, maintenance contracts, consulting agreements, utility agreements, supply agreements, road maintenance agreements and other agreements that affect or relate to the Property, provided that Service Contracts shall not include any such contracts or agreements that relate solely to the PacifiCorp Easements.

**“State(s)”** means the State of California and/or the State of Oregon, as the context requires.

**“Surrender Order”** means an order authorizing the surrender of the FERC License on terms and conditions consistent with the KHSAs, the Definite Plan and otherwise reasonably acceptable to KRRC.

**“Termination Event”** means the occurrence of any of the following:

- (i) FERC has denied in any material respect the joint application of KRRC, the States and PacifiCorp for the Transfer Order submitted pursuant to the MOA;
- (ii) FERC has denied in any material respect the amended application for the Surrender Order submitted by KRRC and PacifiCorp pursuant to the MOA;

- (iii) Any Removal Permit has been denied notwithstanding good faith efforts to obtain it, or has been issued on terms unacceptable to KRRC;
- (iv) The KHSA has been terminated;
- (v) KRRC has been delayed in its prosecution of Facilities Removal by any legally effective injunction, order, or stay, including a stay of any FERC order or Removal Permit, or by any other litigation rendering it impossible, as a legal matter, or impractical, applying commercially reasonable standards, for KRRC to proceed with and complete Facilities Removal in accordance with the Definite Plan;
- (vi) The occurrence or pendency of any proceedings under Section 8.6 or 8.7 of the KHSA or the occurrence of any event or circumstance described in Section 8.11 of the KHSA rendering it, in any such case, impossible or impractical, applying commercially reasonable standards, for KRRC to proceed with and complete Facilities Removal in accordance with the Definite Plan;
- (vii) The occurrence or pendency of any change in applicable Legal Requirements rendering it impossible or impractical, applying commercially reasonable standards, for KRRC to proceed with Facilities Removal in accordance with the Definite Plan;
- (viii) A lapse, reversion, expiration or termination of any material portion of KRRC's funding rendering it impossible or impractical, applying commercially reasonable standards, for KRRC to proceed with Facilities Removal in accordance with the Definite Plan;
- (ix) The O&M Agreement has terminated for any reason other than terminations provided for in Section 3.2 thereof;
- (x) PacifiCorp is in material default of its funding obligations under the KHSA;
- (xi) KRRC is unable to enter into a contract or contracts for Facilities Removal in accordance with the Definite Plan with qualified contractors at a cost that is within the funding available to KRRC for Facilities Removal;
- (xii) The occurrence of any other matter or circumstance rendering it impossible or impractical, applying commercially reasonable standards, for KRRC to proceed with Facilities Removal in accordance with the Definite Plan;



- (xiii) A casualty rendering it impossible or impractical, applying commercially reasonable standards, for KRRC to proceed with Facilities Removal in accordance with the Definite Plan;
- (xiv) Any public utility commission with jurisdiction over PacifiCorp has, by final and unappealable action, declined to issue an order that allows PacifiCorp to transfer the Property in accordance with this Agreement; or
- (xv) The failure of National Marine Fisheries Service to approve the modification, transfer, or assignment of the Property pursuant to the NMFS-PacifiCorp Implementing Agreement on terms satisfactory to both KRRC and PacifiCorp.

“**Title Company**” means Stewart Title Insurance Company or such other title insurance company selected by KRRC that is licensed in California or Oregon, as applicable.

“**Title Objections**” has the meaning set forth in Section 3.2(b).

“**Title Searches**” has the meaning set forth in Section 3.2(b).

“**Transaction(s)**” has the meaning set forth in Section 2.1(a).

“**Transfer Order**” means an order authorizing the transfer of the FERC License from PacifiCorp to KRRC and the States.

“**Tribal Cultural Inventory**” means the materials listed in Section 9 of Appendix L to the Definite Plan.

“**Tribal Cultural Resources**” has the meaning ascribed to such term under applicable Laws.

“**Use and Possession Agreements**” has the meaning set forth in Section 3.1(a)(ii).

**Section 1.2. Construction.** Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

(a) Words importing the singular number include the plural number and vice versa.

(b) Words importing the feminine, masculine and neuter genders each include correlative words of the other genders.

(c) All references to particular articles or sections without reference to a specific document are references to articles or sections of this Agreement.

(d) The captions and headings in this Agreement are solely for convenience of reference and neither constitute a part of this Agreement nor affect its meaning, construction or effect.

(e) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement in its entirety and not the particular article or section of this Agreement in which they appear. The term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement.

(f) The word “including” and words of similar import mean “including but not limited to.”

(g) Except where this Agreement expressly provides for a different standard, any approvals, consents and acceptances required to be given or made by any person or party hereunder may be granted or withheld in the sole and absolute discretion of the person or party whose approval, consent or acceptance is required. For purposes of the forgoing “acceptance” includes a party’s confirmation that a document required to be delivered to such party or a state of affairs required by such party to exist is acceptable to such party.

(h) All references in this Agreement to any Laws mean such Laws as they may be amended and in effect at the time of reference.

(i) All references in this Agreement to any other document, agreement or instrument mean such document, agreement or instrument as it may be amended, modified, supplemented or restated.

(j) All exhibits, attachments and appendices to this Agreement, including any amendments and supplements thereto, are hereby incorporated into and made a part of this Agreement.

## **SECTION 2. THE TRANSACTIONS; TERM OF AGREEMENT**

### **Section 2.1. Purpose of Agreement.**

(a) This Agreement establishes the procedures, terms and conditions under which the parties agree to implement the KHSA relating to PacifiCorp’s transfer of the Parcel B Land and other property to KRRC so that KRRC, along with the States, can accept the FERC License and KRRC can thereafter carry out Facilities Removal. The transfers will be effectuated through the transfer of the Parcel B Land and other Facilities-related property as described more particularly below (the “**Property Transfer**”). The parties also wish to memorialize certain agreements regarding IGH, the currently inactive hatchery facilities at Fall Creek, and the Keno Lands, including (i) the transfer of IGH to KRRC rather than the State of California, (ii) the leasing of the currently inactive hatchery facility at Fall Creek to KRRC in anticipation of its renovation by KRRC and assignment to the State of California for operation (the “**Fall Creek Transaction**”), and (iii) the exclusion of the Keno Land from the Property Transfer in anticipation of its transfer by PacifiCorp directly to the State of Oregon, all as described below. The Property Transfer and the Fall Creek Transaction are each referred to as a “**Transaction**” and are referred to collectively as the “**Transactions**”.

(b) The Property Transfer shall consist of the following matters, all as set forth more particularly in this Agreement:

(i) PacifiCorp will:

- (A) transfer to KRRC fee title to the Parcel B Land and all of its right, title and interests in all other Project Property, subject to a reservation of the PacifiCorp Easements;
- (B) deliver possession of the Project Property to KRRC in the condition required under this Agreement; and
- (C) grant to KRRC certain temporary easements over non-Parcel B Land to facilitate certain aspects of Facilities Removal.

(ii) KRRC will:

- (A) accept title to and possession of the Project Property, and
- (B) along with the State of California and the State of Oregon as provided in the MOA, accept the FERC License.

(c) The parties acknowledge that the Iron Gate Fish Hatchery (“**IGH**”) is subject to the FERC License and that hatchery operations will be necessary following Facilities Removal. The parties acknowledge further that Section 7.6.6 of the KHSA contemplates transfer of IGH to the State of California at the time the Parcel B Lands are transferred to KRRC, or at such other time as the parties may agree. As recited above, the parties also acknowledge that the State of California has agreed to a transfer of IGH to KRRC prior to its transfer to the State of California. Accordingly, the parties acknowledge that the transfer of the Parcel B Land will include all of PacifiCorp’s interests in IGH. Pursuant to the Hatchery Operation Agreement, CDFW will continue to operate IGH following the transfer of ownership of the IGH Property to KRRC. Notwithstanding the continuation of CDFW’s operations, however, KRRC shall not be liable to CDFW for any amounts incurred or matters arising prior to Closing, all of which shall remain PacifiCorp’s responsibility. In addition, the parties agree that PacifiCorp and KRRC will enter into the Fall Creek Lease and that PacifiCorp will deliver, and KRRC will accept, possession of the Fall Creek Premises in the condition required under this Agreement. Following completion of the improvements to the Fall Creek Premises provided for under the Fall Creek Lease, KRRC will assign the Fall Creek Lease to CDFW.

(d) The parties acknowledge that while the Keno Land is designated as part of the “Parcel B land” under the KHSA, it is not material to Facilities Removal. Accordingly, the parties have agreed to exclude it from the Property Transfer and have entered into a memorandum of understanding with the State of Oregon that contemplates a direct transfer of the Keno Land by PacifiCorp to the State of Oregon at a time expected to be not later than when the Keno Land would be transferred to the State of Oregon by KRRC if it were to take title to the Keno Land under this Agreement. KRRC shall have no obligations under this Agreement in connection with the transfer of the Keno Land to the State of Oregon.

**Section 2.2. Agreement to Perform Transactions.** PacifiCorp and KRRC each agrees to carry out the Transactions in accordance with and subject to the terms and conditions of this Agreement.

**Section 2.3. Term of Agreement.** This Agreement is effective as of the Effective Date and shall terminate upon the sooner to occur of:

- (a) the Closing; or
- (b) termination of this Agreement by either party following the occurrence of a Termination Event in accordance with Section 14.3.

### **SECTION 3. THE PROPERTY**

#### **Section 3.1. The Project Property.**

(a) For purposes of this Agreement the “**Project Property**” consists of the following, subject to Subsection 3.1(b);

- (i) Fee simple title to the approximately 8,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California, referred to as “Parcel B property” in Section 7.6.1 of the KHSa and more particularly described in Exhibit A, including IGH but not including the Keno Land (the “**Parcel B Land**”); and
- (ii) All leases, licenses or other rights of use or occupancy (“**Use and Possession Agreements**”) relating to any land owned by any Person other than PacifiCorp but leased to or otherwise occupied or used by PacifiCorp or any of its Affiliates in connection with the ownership or operation of the Facilities, including the following at the J.C. Boyle hydroelectric facility:
  - (A) property leased from the State of Oregon;
  - (B) submerged lands; and
  - (C) portions of the J.C. Boyle hydroelectric facility located on property owned by the United States of America (individually and collectively, as applicable, “**Occupied Third-Party Premises**” );
- (iii) All easements, rights of way, licenses, privileges, strips, gores, rights and interests of any kind (including water, timber and mineral rights) appurtenant to or otherwise relating to the Parcel B Land, any Occupied Third-Party Premises or any Facilities (the “**Appurtenances**”);

- (iv) All buildings, improvements, structures, utility infrastructure, and fixtures located on the Parcel B Land or, to the extent of PacifiCorp's interest, located on Occupied Third-Party Premises or on any Appurtenances (the "**Improvements**"; the Parcel B Land, Occupied Third-Party Premises, Appurtenances, and Improvements are referred to collectively as the "**Real Property**");
- (v) All equipment, machinery, building systems, trade fixtures and other personal property located on the Parcel B Land or, to the extent of PacifiCorp's interest, located on Occupied Third-Party Premises or any Appurtenances (the "**Equipment**");
- (vi) All licenses, certificates, authorizations, registrations, permits, consents and approvals called for by any Legal Requirement in connection with (i) the ownership, occupancy, use, maintenance or operation of any Real Property or Equipment as presently operated or as contemplated under the O&M Agreement or the KHSA (the "**Operating Permits**"), provided, however, that "Operating Permits" do not include the Removal Permits; and
- (vii) All books, records, data, manuals, plans, specifications, manuals, Service Contracts and similar materials relating to the use, operation or ownership of the Real Property or the Equipment (the "**Records**") required to be delivered pursuant to Section 4.4(bb), and any other personal or intangible property relating to the Real Property (the "**Intangibles**"; the Intangibles along with the Real Property, Equipment, Records and Operating Permits are referred to collectively as the "**Project Property**").

(b) Notwithstanding anything to the contrary in subsection 3.1(a), the Project Property does not include the following (the "**Excluded Property**"):

- (i) Decommissioned Property;
- (ii) Retained Facilities; and
- (iii) The easement interests in the Real Property reserved under the PacifiCorp Easements.

### **Section 3.2. Title Matters.**

(a) At the Closing PacifiCorp must deliver, and KRRC must accept, such state of title to the Real Property as the Title Company is willing to insure without special premium pursuant to a standard extended coverage owner's title policy insuring that fee simple title to the Parcel B Land, along with the related rights to all Appurtenances and Improvements, is vested in KRRC free and clear of all Encumbrances except for Permitted Encumbrances.

(b) KRRC has engaged the Title Company and KPFF to conduct title searches and surveys of the Parcel B Land, the cost of which shall be shared equally by PacifiCorp and KRRC (the “**Title Searches**”) and has furnished copies of the Title Searches to PacifiCorp and the States. PacifiCorp acknowledges that all matters set forth in the Title Searches, including any updates thereof, that are not listed as Permitted Encumbrances (“**Title Objections**”) must be removed as encumbrances upon the Real Property at or prior to Closing or, if removal of any Title Objections is not possible using PacifiCorp’s best efforts, PacifiCorp shall cause such Title Objections to be bonded or otherwise addressed in a manner acceptable to KRRC. KRRC shall promptly deliver to PacifiCorp any Title Search updates along with a notice stating which, if any matters shown in such updates are Title Objections.

(c) PacifiCorp may, at its sole cost, purchase a joint protection title insurance policy to the extent available.

**Section 3.3. Property Condition.**

(a) The Project Property and the Fall Creek Premises shall be delivered to KRRC at Closing in safe condition and in compliance with applicable Legal Requirements, including the FERC License, and otherwise in substantially the same condition as on the Effective Date, subject to Section 3.5.

(b) The parties acknowledge that, pursuant to the KHSA, KRRC will undertake Facilities Removal and implement the Definite Plan, and that, subject to PacifiCorp’s compliance with its obligations under the O&M Agreement, KRRC will be responsible for all physical conditions at the Real Property covered by the Definite Plan. The parties further acknowledge, however, that Pre-Existing Environmental Conditions are not KRRC’s responsibility. Accordingly, PacifiCorp shall deliver the Project Property to KRRC free of any Pre-Existing Environmental Conditions except as expressly provided for in Section 3.5.

**Section 3.4. Diligence/Inspections.** PacifiCorp will cooperate with KRRC in conducting such further diligence regarding the Project Property and the Fall Creek Premises as KRRC may determine to be necessary, including continued reasonable access under mutually agreeable terms and consistent with current practices.

**Section 3.5. Environmental Matters.**

(a) PacifiCorp shall cause all Pre-Existing Environmental Conditions to be resolved, at its sole cost and expense, to the reasonable satisfaction of KRRC in consultation with the respective States. Such reasonable satisfaction shall be documented in a mutually agreeable form acceptable to the States.

(b) In discharging its obligations under this Section 3.5 and prior to commencing any activity to implement its proposed resolution of a condition, PacifiCorp shall provide to KRRC and the States, as to each Pre-Existing Environmental Condition, a written report containing a reasonably detailed description of:

(i) its efforts to assess the scope of the condition,

- (ii) the results of such efforts,
- (iii) its proposed approach to resolving the condition,
- (iv) the legal and regulatory requirements applicable to the condition and the compliance of the proposed approach with such requirements, including any regulatory approvals required to be obtained,
- (v) any obligations or limitations relating to such approach that would survive the proposed resolution, including monitoring or institutional controls, and any effect they would have on the design or implementation of the Definite Plan and on the prospective uses of the Real Property following Facilities Removal as anticipated by the KHSA, and
- (vi) PacifiCorp's proposed schedule for performing any work, making any required regulatory filings, and receiving any required regulatory approvals.

PacifiCorp shall update such reports from time to time so that they remain accurate, shall promptly notify KRRC and the States of any Pre-Existing Environmental Conditions arising subsequent to the effective date of Exhibit C, and shall generally keep the States and KRRC apprised of its progress. KRRC and the States shall have the right to observe and inspect any remediation work and to review any lab results. In the event KRRC or the States reasonably requests any additional information from time to time or notifies PacifiCorp of any objections or concerns regarding any report, including its completeness or the proposed resolution of a condition, PacifiCorp shall address such request, objection or concern to the reasonable satisfaction of KRRC and the States. No Pre-Existing Environmental Conditions shall be resolved in a way that would (i) impose any subsequent obligation or limitation on KRRC or that would materially adversely affect the design or implementation of the Definite Plan without the prior written consent of KRRC, or (ii) impose any subsequent obligation or limitation upon the States or the prospective uses of the Real Property following Facilities Removal as anticipated by the KHSA without the prior written consent of the States.

(c) Except as expressly provided in subsection (d) below, PacifiCorp shall cause all Pre-Existing Environmental Conditions to be resolved in accordance with this Section 3.5 prior to transfer of the FERC License. Not later than sixty (60) days prior to the scheduled transfer of the FERC License PacifiCorp shall provide KRRC and the States with a report on the status of its efforts to resolve the Pre-Existing Environmental Conditions. To the extent that any Pre-Existing Environmental Condition is not susceptible to resolution prior to transfer of the FERC License such report shall describe why it was not able to be cost-effectively resolved prior to transfer of the FERC License, what further actions must be taken or circumstances must occur in order to permit cost-effective resolution, and when PacifiCorp reasonably anticipates being able to cause its resolution to occur.

(d) At Closing PacifiCorp shall enter into an agreement with KRRC and the States in the form set forth in Exhibit F (the “**Post-Closing Environmental Resolution Agreement**”) with respect to all Pre-Existing Environmental Conditions not resolved in accordance with this Section 3.5 as of Closing (“**Retained Environmental Obligations**”).

## **SECTION 4. CLOSING**

### **Section 4.1. The Closing**

(a) The closing of the Transactions (the “**Closing**”) shall occur upon the satisfaction by the parties of their respective obligations under Sections 4.4 and 4.5, except for any such obligations that have been waived in writing by the other party.

(b) The Closing shall take place on or about the date that is thirty (30) days after the Closing Conditions have been satisfied or waived in writing, or such other date and time as shall be mutually satisfactory to the parties. The date of the Closing is referred to as the “**Closing Date.**”

(c) The Closing shall be administered in escrow by the Title Company through its offices, or those of its affiliate, in Portland, Oregon. The parties shall share equally the cost of such escrow services, if any.

(d) If the Title Company is unable or unwilling to provide escrow closing services, or if the parties agree not to close in escrow, then the Closing shall take place at 10:00 am on the Closing Date at the offices of Hawkins Delafield & Wood LLP in Portland, Oregon or such other location as the parties may agree.

**Section 4.2. Conditions Precedent to KRRC’s Closing Obligations.** KRRC’s obligations under this Agreement in respect of the Closing are subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent, any of which may be waived by KRRC in its sole and absolute discretion:

(a) All representations and warranties of PacifiCorp under this Agreement are true, complete and correct in all material respects as if made on the Closing Date.

(b) PacifiCorp has performed and complied with all agreements and conditions required by this Agreement to be performed or complied with prior to or at the Closing and KRRC has been furnished with a certificate or certificates of PacifiCorp dated the Closing Date, signed by an officer of PacifiCorp acceptable to KRRC certifying, in such detail as KRRC may reasonably request, to the fulfillment of the foregoing condition.

(c) The KHSA is in full force and effect and no proceeding under Section 8.6 or 8.7 thereof is pending, nor has any event described in Section 8.11 thereof, or that could otherwise result in a termination of the KHSA, occurred and be continuing uncured or unwaived.

(d) FERC has issued a Transfer Order and a Surrender Order and (i) the Surrender Order has not been rejected in accordance with Section 3(c) of the MOA within thirty



(30) days of its issuance, and (ii) the Transfer Order and the Surrender Order are final and non-appealable.

(e) The conditions set forth in the MOA implementing Sections 7.1.4 of the KHSA have been satisfied;

(f) The O&M Agreement is in full force and effect.

(g) No Termination Event has occurred and is continuing.

(h) KRRC has entered into an agreement with CDFW providing for the operation of the Fall Creek Property and/or such other hatchery operations as may be required under the FERC License, Transfer Order, Surrender Order or any Removal Permit (the "**Hatchery Operation Agreement**").

(i) KRRC has entered into one or more contracts for Facilities Removal with a fixed price, guaranteed maximum price or other definitive pricing in amounts consistent with the Definite Plan and within the funding available to KRRC.

(j) PacifiCorp has delivered such surveys, maps and other materials as may be required under Section 11.4 of this Agreement.

(k) PacifiCorp has obtained and delivered to KRRC copies of such instruments, agreements, consents and approvals (including any approvals from any Governmental Authorities) as may be required to transfer its interest in any Project Property, or to lease the Fall Creek Premises, to KRRC, such that following the Closing all property rights and rights of access necessary to own and operate the Facilities, implement the Definite Plan and otherwise comply with the KHSA, the Transfer Order, the Surrender Order and the Removal Permits have been documented to KRRC's reasonable satisfaction;

(l) KRRC has acquired such Additional Property Interests as it has determined to be necessary or convenient for implementing the Definite Plan and complying with the Transfer Order, the Surrender Order and the Removal Permits.

(m) PacifiCorp and the Project Property are in compliance with the terms of the FERC License.

(n) KRRC has entered into agreements with the State of California and the State of Oregon with respect to post-Facilities Removal transfers of the Property.

(o) NMFS has approved the transfer of the Property under the NMFS-PacifiCorp Implementing Agreement on terms acceptable to KRRC.

(p) PacifiCorp has delivered to KRRC copies of its notice to each counterparty under a Pole Attachment Agreement informing them of the transfer of the Real Property and of the need to seek permission for access from KRRC as of the Closing Date.

**Section 4.3. Conditions Precedent to PacifiCorp's Closing Obligations.**

PacifiCorp's obligations under this Agreement in respect of the Closing are subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent, any of which may be waived by PacifiCorp in its sole and absolute discretion:

(a) All representations and warranties of KRRC under this Agreement shall be true, complete and correct in all material respects as if made on the Closing Date.

(b) KRRC has performed and complied with all agreements and conditions required by this Agreement to be performed or complied with prior to or at the Closing and PacifiCorp has been furnished with a certificate or certificates of KRRC, dated the Closing Date, signed by the Chief Executive Officer or Chief Operating Officer of KRRC, certifying, in such detail as PacifiCorp may reasonably request, to the fulfillment of the foregoing condition.

(c) The KHSA is in full force and effect and there shall not be pending any proceeding under Section 8.6 or 8.7 thereof, nor shall any event described in Section 8.11 thereof, or that could otherwise result in a termination of the KHSA, have occurred and be continuing uncured or unwaived.

(d) FERC has issued a Transfer Order and a Surrender Order and (i) the Surrender Order has not been rejected in accordance with Section 3(c) of the MOA within thirty (30) days of its issuance, and (ii) the Transfer Order and the Surrender Order are final and non-appealable.

(e) PacifiCorp has received such approvals of the Transactions, if any, as are legally required from the Oregon Public Utility Commission, the California Public Utilities Commission, the Wyoming Public Service Commission, the Idaho Public Service Commission and such other public utility commissions and Governmental Authorities as have jurisdiction over PacifiCorp or the Property, provided that any conditions to the effectiveness of each such approval are acceptable to PacifiCorp.

(f) PacifiCorp has concurred, pursuant to Section 7.4.2 of the KHSA, that the conditions stated therein have been fulfilled.

(g) NMFS has approved the transfer of the Property under the NMFS-PacifiCorp Implementing Agreement on terms acceptable to PacifiCorp.

**Section 4.4. PacifiCorp's Closing Deliveries.** At the Closing, subject to the terms and conditions contained in this Agreement, PacifiCorp will deliver to KRRC the following:

(a) Evidence acceptable to KRRC that PacifiCorp has taken such corporate measures as are necessary to authorize the execution and delivery of the deeds to the Parcel B Land, the assignment of the Use and Possession Agreements, the execution and delivery of the Fall Creek Lease and the execution and delivery of all other agreements, instruments, and other documents to be executed and delivered by PacifiCorp at the Closing pursuant to this Agreement;

(b) One or more fully executed grant deeds to the Parcel B Land located in California, with the PacifiCorp Easements reserved, in recordable form and otherwise acceptable to KRRC;

(c) One or more fully executed KRRC Temporary Construction Easements covering the KRRC Easement Properties in the State of California, in recordable form and otherwise acceptable to KRRC;

(d) Such accompanying executed reports, returns, affidavits and other documents as are necessary to record the deeds and KRRC Temporary Construction Easements in California;

(e) One or more fully executed bargain and sale deeds to the Parcel B Land located in Oregon, with the PacifiCorp Easements reserved, in recordable form and otherwise acceptable to KRRC;

(f) One or more fully executed KRRC Temporary Construction Easements covering the KRRC Easement Properties in the State of Oregon, in recordable form and otherwise acceptable to KRRC;

(g) Such accompanying executed reports, returns, affidavits and other documents as are necessary to record the deeds and KRRC Temporary Construction Easements in Oregon;

(h) An executed assignment of all Use and Possession Agreements and Appurtenances in the form attached as Exhibit G, along with evidence of any required consent to such assignments;

(i) Such accompanying executed reports, returns, affidavits and other documents as are necessary to record the assignment in California;

(j) Such accompanying executed reports, returns, affidavits and other documents as are necessary to record the assignment in Oregon;

(k) Such other executed instruments, documents, affidavits, and certificates necessary for the Title Company to issue to KRRC title insurance policies for the Real Property with extended coverage except for Permitted Encumbrances and sufficient to eliminate any exceptions to coverage for mechanics liens;

(l) An executed bill of sale for all Personal Property;

(m) An executed assignment and assumption of any of any Service Contracts KRRC elects to accept in a form acceptable to KRRC;

(n) An executed FIRPTA Affidavit;

(o) To the extent not already provided to KRRC, Operating Permits, keys, security codes and other items necessary to afford KRRC full access to the Project Property and the Fall Creek Premises,

(p) To the extent required under Article 11, maps, diagrams and other materials, including surveys that have been stamped and certified to KRRC, the State of California, the State of Oregon and the Title Company by a duly licensed surveyor and that is otherwise acceptable to KRRC;

(q) Two (2) original executed counterparts of the Fall Creek Lease that have been executed by PacifiCorp;

(r) Three (3) original executed counterparts of the Post-Closing Environmental Resolution Agreement that have been executed by PacifiCorp;

(s) Possession of the Project Property and the Fall Creek Premises, vacant and free of any occupants or rights of occupancy or possession, except as permitted under this Agreement or the O&M Agreement, and in the condition required under this Agreement;

(t) A written statement certifying that the O&M Agreement is in full force and effect and that neither PacifiCorp nor KRRC is in default thereunder nor has any event, condition or circumstance occurred that, with the giving of notice and/or the passage of time, would constitute a default thereunder.

(u) Such other executed instruments, documents or certificates required under the terms of this Agreement or otherwise necessary to effectuate the terms of this Agreement relating to the Closing;

(v) Any net amount due to KRRC in respect of apportionments pursuant to Section 4.7 below;

(w) Payment of any transfer taxes, tax withholdings or other amounts payable by a seller pursuant to law or local custom;

(x) Payment of all recording charges (including the Title Company service fee) for recording each of the deeds;

(y) Payment of all other amounts then due to KRRC under this Agreement;

(z) The Certificate required under Section 7.3;

(aa) Evidence of the insurance required under the O&M Agreement; and

(bb) Such Records as KRRC and the States are obligated to have under the FERC License or as they reasonably request, provided that PacifiCorp shall have the right to retain such copies as it reasonably requires to comply with all Legal Requirements relating to records retention.

**Section 4.5. KRRC's Closing Deliveries.** At the Closing, subject to the terms and conditions contained in this Agreement, KRRC shall deliver to PacifiCorp the following:

(a) A resolution of the board of directors of KRRC, certified by the secretary of KRRC, authorizing the execution and delivery of the Fall Creek Lease and all other agreements, instruments, and other documents to be executed and delivered at the Closing by KRRC;

(b) One or more fully executed KRRC Temporary Construction Easements covering the KRRC Easement Properties in the State of California, in recordable form and otherwise acceptable to KRRC;

(c) One or more fully executed KRRC Temporary Construction Easements covering the KRRC Easement Properties in the State of Oregon, in recordable form and otherwise acceptable to KRRC;

(d) An executed acceptance of PacifiCorp's assignment of all Use and Possession Agreements and all Appurtenances in the form attached as Exhibit G;

(e) An executed assignment and assumption of any of the Service Contracts that KRRC elects to accept in a form acceptable to KRRC;

(f) Two (2) original counterparts of the Fall Creek Lease that have been executed by KRRC;

(g) Three (3) original executed counterparts of the Post-Closing Environmental Resolution Agreement that have been executed by KRRC and each of the States;

(h) Such other executed instruments, documents or certificates required under the terms of this Agreement or otherwise necessary to effectuate the terms of this Agreement relating to the Closing;

(i) Payment of any transfer taxes, tax withholdings or other amounts payable by a purchaser pursuant to law or local custom;

(j) Any net amount due to PacifiCorp in respect of apportionments pursuant to Section 4.7 below;

(k) Two (2) original executed sets of the FERC License Transfer Instruments, executed by KRRC; and

(l) The Certificate required under Section 7.5.

**Section 4.6. Violations.** All notes or notices of violations of Legal Requirements noted or issued prior to the Closing by any Governmental Authority having jurisdiction over the Property, and all Encumbrances resulting from any such violations, shall be removed or complied with by PacifiCorp and any fines or penalties resulting from such violations shall be paid by PacifiCorp, in each instance prior to Closing.

**Section 4.7. Apportionments.**

(a) Subject to PacifiCorp's obligations for certain expenses under the O&M Agreement, the following costs relating to the Property will be apportioned between PacifiCorp and KRRC at the Closing as of 11:59 p.m. on the day immediately preceding the Closing Date:

- (i) Ad valorem taxes, school taxes, assessments (general and special) and other such amounts imposed in respect of the Project Property;
- (ii) Water, sewer and other third party utility charges; and
- (iii) Other items customarily prorated at real estate closings.

(b) Any errors in computations reported within six (6) months after the Closing will be corrected. After that the apportionments made shall be final.

(c) Notwithstanding any other provision of this Agreement, KRRC shall not be responsible for apportioning any costs or expenses that are PacifiCorp's responsibility under the O&M Agreement.

**Section 4.8. Further Assurances.** PacifiCorp, from time to time after the Closing, at KRRC's request, will execute, acknowledge and deliver to KRRC such other instruments of conveyance and transfer and will take such other actions and execute and deliver such other documents, certifications and further assurances as KRRC may reasonably request in order to vest more effectively in KRRC, or to put KRRC more fully in possession of, any of the Project Property.

**SECTION 5. POST-CLOSING MATTERS**

**Section 5.1. Acknowledgement of Post-Closing Requirements of the KHSA.** The parties acknowledge that the transfers provided for under this Agreement are being made in contemplation of certain further actions by the parties pursuant to the KHSA, including:

(a) the transfer of IGH and the Fall Creek Lease by KRRC to CDFW or such other agency or department as the State of California may direct;

(b) the transfer of the Parcel B Land, and certain related property to the State of California and the State of Oregon, as applicable, acting through such departments or agencies as they may respectively direct, or to such other parties as either such State may direct, all as provided for in Section 7.6.4 of the KHSA;

(c) the termination, reversion, lapse or abandonment of certain Use and Possession Agreements and Appurtenances following the completion of Facilities Removal; and

(d) the assignment, abandonment, surrender or revocation of certain water rights pursuant to Section 7.6.5 of the KHSA.

**Section 5.2. Cooperation.** The parties agree to cooperate in effectuating the post-Closing matters referenced in Section 5.1 above or otherwise relating to the Project Property and provided for in the KHSA.

**Section 5.3. Compliance With Certain Agreements.** Notwithstanding any assignment to, or assumption by, KRRC of the NMFS-PacifiCorp Implementation Agreement and any other agreement relating to the use or operation of the Project Property, PacifiCorp shall continue to comply with such agreements for so long as the O&M Agreement is in effect.

**Section 5.4. Tax Lot Adjustments.** PacifiCorp will cooperate with KRRC in timely effectuating any tax lot adjustments necessary to assure that all of the Parcel B Land is within tax lots that do not include any land that is not Parcel B Land. In the event that at Closing any Parcel B Lands are within the same tax lot as any land owned by PacifiCorp then until separate tax lots are established, and subject to PacifiCorp's responsibilities in respect of taxes under the O&M Agreement, each party shall timely pay its proportionate share of the taxes identified in clause (i) of Section 4.7(a), which shall be determined with reference to the respective acreage within such tax lot owned by each party.

**Section 5.5. Coordination at Copco 2 115KV Substation.** The parties acknowledge that the potential for altered river flows at the current 115 KV substation at Copco 2 following Facilities Removal will be appropriately addressed as part of implementing the Definite Plan. To the extent not resolved prior to Closing, each party agrees to timely cooperate with the other to develop a mutually acceptable plan to accomplish the foregoing so that the reliability of PacifiCorp's Retained Facilities at the substation is preserved and the implementation of the Definite Plan is supported.

## **SECTION 6. COVENANTS**

### **Section 6.1. PacifiCorp Covenants.**

(a) **Maintain the Property.** Prior to the Closing Date PacifiCorp will maintain the Project Property and the Fall Creek Premises substantially in their current condition and will not make any changes to the Facilities or their operation that would have a Material Adverse Effect on KRRC's implementation of the Definite Plan.

(b) **Service Contracts.** PacifiCorp shall not enter into any new Service Contracts without KRRC's prior written approval except for Service Contracts that are terminable upon not less than thirty (30) days' notice. PacifiCorp shall terminate, prior to the completion of Decommissioning, such Service Contracts as may be identified to PacifiCorp in writing by KRRC prior to Decommissioning.

- (c) **Copies of Notices.** PacifiCorp shall promptly furnish to KRRC a copy of:
- (i) each notice received from any Governmental Authority relating to the Project Property or the Fall Creek Premises; and
  - (ii) any notice or correspondence from any third party asserting any claim relating to the Project Property or the Fall Creek Premises,

including any claim relating to a Use and Occupancy Agreement, an Appurtenance, a Service Contract or a Pole Attachment Agreement.

(d) **Payment For Title Searches.** PacifiCorp shall promptly pay to KRRC upon demand PacifiCorp's share of the costs of the Title Searches.

(e) **Approvals.** PacifiCorp will diligently seek all Approvals not yet obtained and as may be required to authorize its transfer of the Project Property to KRRC, including Approvals from the grantor or landlord under any Use and Possession Agreements or Appurtenances, the issuer of any Operating Permits, and any other Approval set forth in Schedule 7.1(c). PacifiCorp will endeavor to obtain all such Approvals no later than one hundred eighty (180) days after the Effective Date, will keep KRRC regularly apprised of its progress, and will report on its efforts not less frequently than every ninety (90) days. In seeking the Approvals PacifiCorp shall use reasonable best efforts at its sole cost and expense. In the event that KRRC has not received all such instruments (other than approvals from any public utility commissions) within two hundred and seventy (270) days after the Effective Date, then KRRC may, but has no obligation to, seek to obtain directly such Approvals as KRRC reasonably determines are necessary to avoid any Material Adverse Effect on KRRC, in which event PacifiCorp shall reimburse KRRC for all of its costs and expenses in obtaining such Approvals, including reasonable attorneys' fees and expenses, provided that the foregoing shall not be construed as authorizing KRRC to seek any approvals from any public utility commission on PacifiCorp's behalf.

(f) **Additional Property Interests.** PacifiCorp will, upon request, provide commercially reasonable assistance to KRRC in obtaining any Additional Property Interests to the extent that such assistance does not generate a material cost to PacifiCorp and does not have a Material Adverse Effect on PacifiCorp's interest in the Retained Transmission Facilities.

(g) **Decommissioning and Facilities Handover.** PacifiCorp will timely conduct any Decommissioning in a manner that will not have a Material Adverse Effect on KRRC's ability to comply with the terms of the Surrender Order, the Removal Permits or to otherwise carry out Facilities Removal in accordance with the Definite Plan. In addition, PacifiCorp will reasonably and timely cooperate with KRRC and its contractors and subcontractors in developing handover procedures to assure a safe and efficient transfer of possession of the Project Property in anticipation of Facilities Removal (the "**Facilities Handover Procedures**"). Such procedures shall address the topics set forth on Exhibit J and such additional topics as either PacifiCorp or KRRC may reasonably require. Upon completing the Decommissioning of a Facility PacifiCorp will comply with the Facilities Handover Procedure for such Facility and will timely deliver the Facility to KRRC in a safe condition consistent with the condition contemplated by the Definite Plan and will pay all third parties that participated in Decommissioning that might otherwise have the ability to impose an Encumbrance upon the Property.

(h) **Documentation of Use and Possession Agreements and Appurtenances.** PacifiCorp shall cooperate with and provide reasonable assistance to KRRC in obtaining written instruments documenting any Use and Possession Agreements and Appurtenances for which



documentation has not been provided to KRRC as of the Effective Date, except for such Appurtenances as are inherent as a matter of law in the ownership of the benefitted real property interest or are not material to implementation of the Definite Plan, compliance with any Legal Requirements or the general use and occupancy of the Real Property.

(i) **No Further Encumbrances.** PacifiCorp shall not enter into, permit or suffer any further Encumbrance of the Project Property or the Fall Creek Premises except for Permitted Encumbrances. Without limiting the foregoing PacifiCorp acknowledges that any existing Encumbrances that terminate or expire prior to the Closing Date, including grazing leases, shall not be extended, renewed or replaced without the prior written consent of KRRC.

(j) **IGH Operation Costs.** PacifiCorp shall timely discharge its obligation to pay any costs relating to the operation of IGH that arise prior to the Closing.

(k) **Pole Attachments.** PacifiCorp shall give to each counterparty under an existing Pole Attachment Agreement the notice provided for in Section A.4 of Exhibit H-1 and shall not enter into any new Pole Attachment Agreement without KRRC's prior written approval except in compliance with Section A.4 of Exhibit H-1. In the event either party identifies a Pole Attachment that is not subject to a written Pole Attachment Agreement, it shall notify the other party and PacifiCorp shall promptly, at its sole cost and expense, either cause such Pole Attachment to be removed, or enter into a Pole Attachment Agreement with respect to such Pole Attachment and shall give to each counterparty under such new Pole Attachment Agreement the notice provided for in Section A.4 of Exhibit H-1. PacifiCorp acknowledges that KRRC will not be assuming any obligations under any Pole Attachment Agreement and agrees to comply with its obligations under each Pole Attachment Agreement such that KRRC shall not become subject to any claim or liability thereunder. Any amendment to a Pole Attachment Agreement shall be consistent with the foregoing requirements. PacifiCorp shall relocate Pole Attachments as necessary under the provisions of Section 11.3 of this Agreement.

## **Section 6.2. KRRC Covenants.**

(a) **No Pre-Closing Modification of the Property.** Prior to the Closing KRRC will not take any action to materially alter the physical condition of the Property, except for due diligence investigations or pre-removal preparations, in each case as contemplated in the KHSAs or the Definite Plan and provided that any such work does adversely affect the Facilities or violate any Legal Requirements, provided further that all such work shall be subject to the PacifiCorp's review and approval which shall not be unreasonably withheld, delayed or conditioned.

(b) **Copies of Notices.** Until Decommissioning has been completed, KRRC will promptly furnish to PacifiCorp a copy of:

- (i) each notice received from any Governmental Authority relating to the Project Property; and
- (ii) any notice or correspondence from any third party asserting any claim relating to the Project Property.

(c) **Additional Property Interests.** KRRC will use commercially reasonable efforts to timely obtain all such Additional Property Interests as it determines to be necessary.

(d) **Hatchery Operation Agreement.** KRRC will use commercially reasonable efforts to timely enter into the Hatchery Operation Agreement with CDFW.

## **SECTION 7. REPRESENTATIONS AND WARRANTIES**

**Section 7.1. PacifiCorp Transactional Representations and Warranties.** PacifiCorp represents, warrants and covenants to KRRC as of the date of this Agreement as follows:

(a) **Organization.** PacifiCorp is a corporation, duly formed, validly existing and in good standing under the laws of the State of Oregon and qualified to do business in the State of California.

(b) **Authorization.** PacifiCorp has full power and authority to execute and deliver this Agreement and all other instruments, agreements, certificates and documents contemplated to be executed and delivered by PacifiCorp and to consummate the Transactions. PacifiCorp has taken all action required by its organizational documents to authorize the execution and delivery of this Agreement and all other instruments, agreements, certificates and documents contemplated to be executed and delivered by PacifiCorp and to authorize the consummation of the Transactions. The President and CEO, Pacific Power, is authorized to execute and deliver this Agreement on behalf of PacifiCorp and to thereby bind PacifiCorp to its terms. This Agreement and all other instruments, agreements, certificates and documents contemplated to be executed and delivered by PacifiCorp have been duly and validly executed and delivered by PacifiCorp and constitute legal, valid and binding obligations of PacifiCorp, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, creditors' rights generally or other equitable principles.

(c) **No Conflicts or Violations; No Consents or Approvals Required.** Neither the execution and delivery of this Agreement nor the consummation of the Transactions will (i) conflict with or violate any provision of the organizational documents of PacifiCorp, (ii) conflict with or violate any statute, law, rule, regulation, ordinance, order, writ, injunction, judgment or decree applicable to PacifiCorp, or (iii) conflict with or result in any breach of or constitute a default (or an event that with notice or lapse of time or both would constitute a default) under, or give rise to any Encumbrance on the Property pursuant to, any agreement or other instrument to which PacifiCorp is a party or to which any of the Property is subject. Except for such Approvals as may be required from any public utility commission, no notice, declaration, report or other filing or registration with, and no Approval of any Governmental Authority or any other Person, is required to be made or obtained by PacifiCorp in connection with the execution and delivery of this Agreement by PacifiCorp or, except as set forth in Schedule 7.1(c), the consummation by PacifiCorp of the Transactions.

(d) **Litigation.** No claim, action, suit, proceeding or, to PacifiCorp's knowledge, investigation is pending or, to PacifiCorp's knowledge, threatened before any

arbitrator or Governmental Authority with respect to the Property or that would have a Material Adverse Effect on PacifiCorp, except for matters set forth in Schedule 7.1(d).

(e) **Taxes**. PacifiCorp has filed all material and necessary foreign, federal, state and local tax returns and notices and has paid all taxes of any nature which have become due (including all income, unemployment compensation, social security, payroll, sales and use, excise, privilege, property, ad valorem, franchise, license, school and any other tax under the laws of the United States or any state or municipal or political subdivision thereof or any special district) and are disclosed on such returns, for the periods ending through the end of PacifiCorp's last fiscal year and has paid or covenants to pay such taxes subsequently accrued up to the Closing Date. There are no pending or, to PacifiCorp's knowledge, threatened Federal or State tax audits involving PacifiCorp. PacifiCorp shall indemnify KRRC from any and all tax liability arising in connection with the Property prior to the Closing Date.

(f) **Not Insolvent**. PacifiCorp is not insolvent nor will the execution and delivery of this Agreement or the performance of its obligations hereunder render it insolvent.

(g) **Bankruptcy**. PacifiCorp has not filed any petition seeking or acquiescing in any arrangement, composition, dissolution, liquidation, readjustment, reorganization or similar relief under any Laws on bankruptcy or insolvency, nor has any such petition been filed against it. No general assignment of its property has been made for the benefit of its creditors. No liquidator, master, receiver or trustee has been appointed for it or the Property.

(h) **FIRPTA**. PacifiCorp is not a "foreign person" under the Foreign Investment in Real Property Act.

(i) **Permitted Counterparty**. PacifiCorp is a Person with whom a United States citizen, entity organized under any United States or State Laws, or Person having its principal place of business within the United States may legally transact business.

**Section 7.2. PacifiCorp Property Representations and Warranties.** PacifiCorp represents, warrants and covenants to KRRC as of the date of this Agreement as follows:

(a) **Title to Property**. PacifiCorp is, and will at Closing be, the sole owner of the Real Property (except for the Occupied Third-Party Premises as to which it is the sole owner of the leasehold or other interest provided for in the applicable Use and Possession Agreement), and the Fall Creek Premises, free and clear of any Encumbrances other than Permitted Encumbrances. PacifiCorp is the sole owner of all Personal Property and has, and will at Closing have, good title to such property, free and clear of any Encumbrances other than Permitted Encumbrances. None of the Project Property nor the Fall Creek Premises are owned by an affiliate of PacifiCorp.

(b) **Facilities**. All Facilities and related structures, improvements fixtures and equipment are located on Parcel B Land, Occupied Third-Party Premises or Appurtenances. To the best of its knowledge after reasonable inquiry, upon Closing in accordance with this Agreement, KRRC will own all material rights or interests necessary for access to and ownership of the Property, and operation of the Facilities.

(c) **Occupied Third Party Premises and Use and Possession Agreements.**

Set forth on Schedule 7.2(c) is a list of all Occupied Third Party Premises and the corresponding Use and Possession Agreements. PacifiCorp has furnished to KRRC, a complete and correct copy of each Use and Possession Agreement. Each Use and Possession Agreement is in full force and effect and, to the best of PacifiCorp's knowledge after reasonable inquiry, neither PacifiCorp nor the respective counterparties thereunder are in default nor is there any condition, occurrence or circumstance that with the giving of notice and/or the passage of time would result in a default thereunder. No Use and Possession Agreement requires payment of any fee or other amount, now or in the future, for its continued validity except as set forth in Schedule 7.2(c). Each Use and Possession Agreement may be assigned to KRRC without any Approval from the landlord or grantor thereunder except as noted in Schedule 7.2(c).

(d) **Certain Appurtenances.** Schedule 7.2(d) sets forth certain Appurtenances

relating to principal access routes to the Parcel B Lands and to Occupied Third Party Premises that are utilized by PacifiCorp in the ordinary course of operating and maintaining the Project Property and are not public roads, as well as all water rights appurtenant to the Project Property that are not inherent in ownership of the Project Property. Each listed Appurtenance is in full force and effect and, to the best of PacifiCorp's knowledge after reasonable inquiry, neither PacifiCorp nor PacifiCorp's respective counterparties thereunder are in default nor is there any condition, occurrence or circumstance that with the giving of notice and/or the passage of time would result in a default thereunder. No listed Appurtenance requires payment of any fee or other amount, now or in the future, for its continued validity. Each listed Appurtenance may be assigned to KRRC without any Approval from the counterparty thereunder except as noted in Schedule 7.2(c).

(e) **Operating Permits.** PacifiCorp is duly licensed to own and operate the

Project Property as now owned and operated. A list of PacifiCorp's Operating Permits is attached as part of Schedule 7.2(e). To the best of its knowledge after reasonable inquiry, neither PacifiCorp nor the Property is in violation of any such Operating Permits or any other Legal Requirements in any material respect. To PacifiCorp's knowledge, no other Permits or Approvals are required to own and operate the Project Property as presently owned and operated.

(f) **Service Contracts.** Schedule 7.2(f) sets forth all of the material Service

Contracts for the Project Property. Neither party is in default nor is there any condition that with the giving of notice or passage of time would constitute a default under any Service Contract. Except as noted on Schedule 7.2(f), PacifiCorp is not bound by any Service Contract that is not terminable upon thirty (30) days' notice.

(g) **No Options or Other Agreements.** There are no existing agreements,

options, commitments or rights with, to or in any Person (other than this Agreement) to acquire any of the Project Property or the Fall Creek Premises.

(h) **Consents.** Except as set forth on Schedule 7.1(c), no Approvals are

required to transfer any of the Project Property or the Fall Creek Property to KRRC in accordance with this Agreement.

(i) **Labor Agreements.** PacifiCorp is not a party to any (a) contract with any guild or labor union, (b) pension, profit sharing, retirement, bonus, insurance or similar plan in effect with respect to its employees or others, or (c) other similar contract, agreement or understanding, in each such case affecting or relating to the Project Property or under which KRRC would have any Liabilities following transfer of the Project Property.

(j) **Pre-Existing Environmental Conditions.** To the best of its knowledge after reasonable inquiry, the Project Property is not subject to any conditions relating to Hazardous Materials that could reasonably be expected to result in a material Liability to an owner of the Property except as set forth in Exhibit C.

(k) **Tribal Cultural Resources.** To the best of its knowledge after reasonable inquiry, there are no Tribal Cultural Resources located on the Project Property except as set forth in the Tribal Cultural Inventory previously delivered to KRRC.

(l) **No Underground Retained Transmission Facilities.** To the best of its knowledge after reasonable inquiry, the Retained Transmission Facilities do not include any subsurface facilities or equipment that are not marked so as to be clearly visible based on a physical inspection.

(m) **Governmental Authority Agreements.** Except for the NMFS-PacifiCorp Implementation Agreement, the Operating Permits or as expressly identified in one of the schedules to this Agreement, there are no agreements between PacifiCorp and any Governmental Authority that apply to a transferee of the Property.

(n) **Pole Attachments.** Schedule 7.2(n) sets forth a complete list of all Pole Attachment Agreements. A complete and correct copy of each such agreement has been delivered to KRRC. Neither party is in default in any material respect, nor to the best of PacifiCorp's knowledge after reasonable inquiry, is there any condition that with the giving of notice or passage of time would constitute a default, under any Pole Attachment Agreement. To the best of PacifiCorp's knowledge after reasonable inquiry, the map and schedule appended to Schedule 7.2(n) accurately indicate the approximate location of each pole subject to such agreements. To the best of PacifiCorp's knowledge after reasonable inquiry, there are no Pole Attachments on the Real Property other than those identified in the above-referenced map. The Pole Attachment Agreements are not Encumbrances and are not binding on successors to PacifiCorp as owners of the Parcel B Land.

**Section 7.3. PacifiCorp Representations and Warranties True at Closing.** The representations and warranties of PacifiCorp set forth in this Agreement shall be true in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such date. PacifiCorp shall deliver to KRRC at Closing a certificate confirming the foregoing.

**Section 7.4. KRRC Transactional Representations and Warranties.** KRRC represents, warrants and covenants to PacifiCorp as of the date of this Agreement as follows:

(a) **Organization.** KRRC is a nonprofit corporation, duly formed, validly existing and in good standing under the laws of the State of California and authorized to do business in the State of Oregon.

(b) **Authorization.** KRRC has full power and authority to execute and deliver this Agreement and all other instruments, agreements, certificates and documents contemplated to be executed and delivered by KRRC and to consummate the Transactions. KRRC has taken all action required by its organizational documents to authorize the execution and delivery of this Agreement and all other instruments, agreements, certificates and documents contemplated to be executed and delivered by KRRC and to authorize the consummation of the Transactions. This Agreement and all other instruments, agreements, certificates and documents contemplated to be executed and delivered by KRRC have been duly and validly executed and delivered by KRRC and constitute legal, valid and binding obligations of KRRC, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, creditors' rights generally or other equitable principles.

(c) **No Conflicts or Violations; No Consents or Approvals Required.** Neither the execution and delivery of this Agreement nor the consummation of the Transaction will (i) conflict with or violate any provision of the organizational documents of KRRC, (ii) to KRRC's knowledge, conflict with or violate any statute, law, rule, regulation, ordinance, order, writ, injunction, judgment or decree applicable to KRRC, or (iii) conflict with or result in any breach of or constitute a default (or an event that with notice or lapse of time or both would constitute a default) under, or give rise to any Encumbrance on the Property pursuant to, any agreement or other instrument to which KRRC is a party or to which any of the Property is subject. To KRRC's knowledge, no notice, declaration, report or other filing or registration with, and no waiver, consent, approval or authorization of, any Governmental Authority or any other Person is required to be made or obtained by KRRC in connection with the execution and delivery of this Agreement by KRRC or the consummation by KRRC of the Transaction, except the Transfer Order, the Removal Permits and the Surrender Order.

(d) **Litigation.** No claim, action, suit, proceeding or, to KRRC's knowledge, investigation is pending or, to KRRC's knowledge, threatened before any arbitrator or Governmental Authority with respect to KRRC except for the pending applications for the Removal Permits, the Transfer Order and the Surrender Order.

(e) **Not Insolvent.** KRRC is not insolvent nor will the execution and delivery of this Agreement or the performance of its obligations hereunder render it insolvent.

(f) **Bankruptcy.** KRRC has not filed any petition seeking or acquiescing in any arrangement, composition, dissolution, liquidation, readjustment, reorganization or similar relief under any Laws on bankruptcy or insolvency, nor has any such petition been filed against it. No general assignment of its property has been made for the benefit of its creditors. No liquidator, master, receiver or trustee has been appointed for it or its property.

(g) **Permitted Counterparty.** KRRC is a Person with whom a United States citizen, entity organized under any United States or State Laws, or Person having its principal place of business within the United States may legally transact business.

**Section 7.5. KRRC Representations and Warranties True at Closing.** The representations and warranties of KRRC set forth in this Agreement shall be true in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such date. KRRC shall deliver to PacifiCorp at Closing a certificate confirming the foregoing.

**Section 7.6. Reliance.** Notwithstanding any investigation or audit conducted before or after the Closing Date or the decision of any party to complete the Closing, each party will be entitled to rely upon the representations, warranties, covenants and agreements set forth in this Agreement.

**Section 7.7. Survival of Representations and Warranties.** The representations and warranties set forth in Sections 7.1, 7.2, and 7.4 will not merge into the deed or deeds delivered at Closing. The representations set forth in Section 7.1 and 7.2 will survive the Closing for the period ending one year after Facilities Removal has been completed, and the representations and warranties set forth in Section 7.4 will survive the Closing for the period ending one year after transfer of the FERC License, provided in all instances that no claim may be made based on any alleged inaccuracy of any such representations or warranties unless (i) such inaccuracy has a Material Adverse Effect, and (ii) the party that made such representation or warranty has had a reasonable opportunity to cure such Material Adverse Effect. For purposes of this Section 7.7, any additional cost in excess of \$50,000 shall be deemed to be a Material Adverse Effect. The provisions of this Section 7.7 are subject to Section 18.11.

## **SECTION 8. [RESERVED].**

## **SECTION 9. CASUALTY AND CONDEMNATION**

**Section 9.1. Notice of Casualty or Condemnation.** PacifiCorp will promptly notify KRRC if, before the Closing, any Facility or any other portion of the Property suffers material damage by fire or other casualty or becomes the subject of a condemnation or similar proceeding.

**Section 9.2. Restoration.** Subject to any termination of this Agreement in accordance with Section 14.3, within forty-five (45) days after KRRC's receipt of notice of any casualty or condemnation that would materially affect KRRC's implementation of the Definite Plan, the parties must confer and attempt in good faith to determine a mutually agreeable response to such casualty or condemnation that is consistent with the KHSA, the Definite Plan and, to the extent applicable, the terms of the FERC License and the Removal Permits.

## **SECTION 10. INDEMNITIES**

**Section 10.1. Indemnification by PacifiCorp.** PacifiCorp will indemnify KRRC, its directors, officers, employees, agents, contractors and representatives from Liabilities in respect of the Project Property and the Fall Creek Premises arising prior to the Closing Date, including Encumbrances, Pole Attachment Agreements, Service Contracts, Pre-Existing Environmental Conditions, Retained Environmental Obligations, and costs or liabilities incurred in connection with the operation and maintenance of IGH, but excluding matters for which KRRC or its

contractors or consultants are responsible under their respective access agreements with PacifiCorp or any other applicable written agreements.

**Section 10.2. Indemnification by KRRC.** KRRC will indemnify PacifiCorp, its directors, officers, employees, agents, contractors and representatives from Liabilities in respect of the Project Property arising after the Closing Date except for any matter or for which PacifiCorp is responsible under the O&M Agreement or Section 10.1 above. The foregoing indemnity obligation shall be in addition to KRRC's obligation under Section 7.1.3 of the KHSA.

**Section 10.3. Procedure.**

(a) Notice must be given within a reasonable time after discovery of any fact or circumstance on which a party could claim indemnification (“**Claim**” or “**Claims**”). The notice must describe the nature of the Claim, the amount of the Claim, if determinable or, if not determinable, an estimate of the amount of the Claim. If the party, in order to fulfill its obligations to the other party must take legal action or if the party is involved in legal action, the outcome of which could give rise to its seeking indemnification, one party must consult with the other party with respect to such legal action and allow it to participate therein.

(b) No Claim for which indemnification is asserted may be settled or compromised without the written consent of the indemnified party; provided, however, if an indemnified party does not consent to a bona fide settlement proposed by the other, the other party will be liable for indemnification only to the lesser of the final judgment or the amount that had been proposed to be paid in settlement.

(c) For a period of thirty (30) days following the giving of the notice of such Claim, PacifiCorp and KRRC will attempt to resolve any differences they may have with respect to such Claim. If a resolution is not reached within the thirty (30) day period (unless the parties agree to extend the period), the matter may be submitted to a court of competent jurisdiction.

(d) Notwithstanding any provision of Section 10.1 or 10.2 to the contrary, no party is obligated to indemnify any Person against negligent or wrongful acts or omissions by such Person or by Persons acting on its behalf.

**Section 10.4. Defense Obligation.** Whenever any provision of this Agreement requires one party to indemnify any other party, the party on whom the indemnification obligation is imposed is obligated to defend, indemnify and hold the other party harmless from and against any and all claims, demands, losses, damages, liens, Liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgments and awards, costs and expenses, including, but not limited to, reasonable attorneys' fees, arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition for which the indemnification is sought, whether such act, omission, event, occurrence or condition is caused by the indemnifying party or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen.



## **SECTION 11. EASEMENTS.**

**Section 11.1. Reservation of PacifiCorp Easements.** Notwithstanding its conveyance of the Project Property to KRRC, PacifiCorp shall retain easements necessary for its continued operation, maintenance, access to and replacement of the Retained Facilities. Such easements shall be reserved in the deeds to be delivered by PacifiCorp under Section 4.4, which reservations shall be in the form set forth as Exhibit H -1 (the “**PacifiCorp Easements**”).

### **Section 11.2. Identification of PacifiCorp Easement Property and Access Routes.**

(a) The portions of the Project Property to be encumbered by the PacifiCorp Easements (the “**PacifiCorp Easement Properties**”) will be defined as the location of the presently existing Retained Facilities and One Hundred (100) feet on any side, except as otherwise provided for in Exhibit H-1. A general orienting map of the Reserved Transmission Facilities is included in Schedule 3.1(b)(ii) and will be made a part of the PacifiCorp Easements. In the event of discrepancies between the actual location of any Retained Transmission Facility and its depiction or lack of depiction in Schedule 3.1(b)(ii) , the actual current location shall control. The Retained Transmission Facilities shall not include any subsurface facilities or equipment that is not marked so as to be clearly visible based on a physical inspection.

(b) Primary Access to the PacifiCorp Easement Properties shall be by way of primary routes identified in Exhibit B to the PacifiCorp Easements.

**Section 11.3. Modification, Permit Upon and Locating of PacifiCorp Easement Property Boundaries.** If, prior to Closing, either party reasonably determines that modifications to any portion of the description of PacifiCorp Easement Properties as reflected in Exhibit H-1 are necessary it will provide to the other party and to the States a description and depiction of the proposed modification in reasonable detail. Neither party will unreasonably withhold its approval of any requested modification, provided that (a) in the case of KRRC, it will not adversely affect in any material respect Facilities Removal and the implementation of the Definite Plan, including the cost or timing thereof, (b) in the case of PacifiCorp it will not in any material respect pose a threat to the reliability or safety of any Retained Facilities or to the efficiency of PacifiCorp’s operations, and (c) in all instances, it is acceptable to the States. Any modifications following Closing shall be in accordance with the terms and conditions of the PacifiCorp Easements as recorded.

**Section 11.4. Locating/Surveys.** If, prior to Closing, KRRC anticipates that the proximity of a PacifiCorp Easement to Facilities Removal activity or mitigation activity may generate conflict then KRRC may request and PacifiCorp shall order the boundary of such Easement in the area of the potential conflict to be located and marked by a surveyor. If an actual conflict arises with regard to the boundary of a PacifiCorp Easement due to its proximity to Facilities Removal activity or KRRC mitigation activity then KRRC may request that PacifiCorp conduct a survey and metes and bounds description of such property, certified by a licensed surveyor and in form sufficient for recording.

### **Section 11.5. KRRC Temporary Construction Easements.**

(a) To facilitate Facilities Removal, at Closing PacifiCorp will grant to KRRC temporary construction easements on PacifiCorp-owned property that is not part of the Parcel B Lands, which easements shall be in the form set forth in Exhibit H-2 (the “**KRRC Temporary Construction Easements**”). The properties encumbered by the KRRC Temporary Construction Easements are identified in Exhibit H-2 (the “**KRRC Easement Properties**”).

(b) If KRRC reasonably determines that modifications to the KRRC Easement Properties boundaries are necessary it will provide to PacifiCorp a description and depiction of the proposed modification in reasonable detail. PacifiCorp will not unreasonably withhold its approval of any requested modification, provided that it will not adversely affect in any material respect PacifiCorp’s operation of the Retained Transmission Facilities.

(c) If, following Closing, KRRC reasonably determines that additional KRRC Temporary Construction Easements are necessary to facilitate Facilities Removal, then the parties shall cooperate to establish such additional temporary easements on mutually agreeable terms.

## **SECTION 12. TRANSFERS AND ASSIGNMENTS**

**Section 12.1. Prohibition on Transfers and Assignments.** Except as provided under Section 12.2, neither party may assign or otherwise transfer its interest in or rights under this Agreement, directly or indirectly, without the prior written consent of the other party. Purported transfer or assignment in violation of the preceding sentence will be null and void.

**Section 12.2. Permitted Assignments.** Notwithstanding Section 12.1, the following transfers are permitted upon notice to, but without the consent of, either party:

(a) Transfers that are the result of corporate mergers, acquisitions or reorganizations undertaken for a bona fide business reason (as opposed to circumvention of this prohibition on transfers and assignments) where substantially all of the assets of the transferring party are being transferred and where the transferee:

- (i) Is the surviving or successor entity;
- (ii) Expressly assumes the transferring party’s obligations under the Agreement and all other agreements then existing between the transferring party and the other party to this Agreement, including but not limited to all access agreements;
- (iii) Becomes a party to the KHSA; and
- (iv) Executes and delivers a confidentiality agreement and a common defense agreement substantially in the form of the existing agreements between the parties.

## SECTION 13. DISPUTES

**Section 13.1. General.** The parties acknowledge their mutual interest in resolving any disputes relating to the Transactions in an efficient and expeditious manner, consistent with the timely implementation of the KHSAs. Each party covenants to work toward promptly resolving any disputes through good faith discussions and negotiation.

**Section 13.2. Dispute Procedures.** In the event of any disputes or disagreements under this Agreement the parties shall follow the following procedures prior to initiating litigation or arbitration:

(a) In the event that the parties have not been able to resolve a dispute or disagreement under this Agreement in a mutually acceptable manner notwithstanding informal discussions among their respective staff and consultants charged with implementing this Agreement, then:

- (i) Either party may issue to the other a notice (x) identifying in reasonable detail the subject of the dispute or disagreement, (y) describing the resolution that such party proposes and the basis therefor, including the specific provisions of this Agreement that such party believes are applicable, and (z) the impact, if any, that the pendency of such dispute or disagreement is having or is expected to have on the progress of the Transactions (a “**Notice of Dispute**”).
- (ii) The party receiving a Notice of Dispute shall provide a written response within fourteen (14) days after receipt thereof, which response shall set forth in reasonable detail (x) the extent to which such party disagrees with any statements in the Notice of Dispute, which shall include an explanation of the basis for such disagreements, (y) a description of any additional subjects as to which the receiving party believes there is a dispute or disagreement, including the specific provisions of this Agreement that such party believes are applicable, and (z) the receiving party’s proposed resolution of all identified disputes and disagreements (a “**Response to Notice of Dispute**”). A failure to timely and fully respond to a Notice of Dispute shall be deemed to be the receiving party’s acceptance of the proposed resolutions set forth in the Notice of Dispute.

(b) Within fourteen (14) days after issuance of a Response to Notice of Dispute the senior staff of each party charged with implementing the Transactions shall meet, in person to the extent practicable, to discuss the matters identified in the Notice of Dispute and the Response to Notice of Dispute (collectively, the “**Dispute Notices**) and to work in good faith toward a mutually acceptable resolution. In the event that within forty-five (45) days after the issuance of a Response to Notice of Dispute the parties have not resolved all disputes and disagreements to their mutual satisfaction then each party shall promptly so notify its senior

management and the States, which notifications shall include a good faith description in reasonable detail of the matters in dispute, the resolution proposed by each party, and the reasonable objections to the resolution proposed by the other party.

(c) Within seventy-five (75) days after the issuance of a Response to Notice of Dispute members of the senior management of each party, along with representatives of the States if they elect to participate, shall meet, in person to the extent practicable, to discuss in good faith mutually acceptable resolution to all disputed matters. In the event that within one hundred and five (105) days after the issuance of a Response to Notice of Dispute any disputes or disagreements have not been resolved, then either party may seek such other remedies as are available under this Agreement, including litigation or arbitration as permitted hereunder, provided that any claims in such proceedings shall be limited to matters set forth in the Dispute Notices.

### **Section 13.3. Effect of Disputes Resolution Procedures Under the KHSA.**

(a) The parties intend for this Agreement to implement the provisions of the KHSA relating to transfer of the Facilities and the Parcel B Lands, and for the terms and conditions of this Agreement to reflect the more particularized understanding and agreement of the parties as to such matters. Accordingly, to the greatest extent possible the parties agree to handle any disputes under this Agreement without invoking Section 8.6 or 8.7 of the KHSA.

(b) In the event either party determines in good faith that a dispute under this Agreement cannot be resolved without invoking Section 8.6 or 8.7 of the KHSA due to policy issues not addressed in this Agreement, it shall notify the other party and the States, which notice shall include an explanation of the basis for such determination. In such event, unless the party seeking to invoke Section 8.6 or 8.7 of the KHSA withdraws its notice within ten (10) business days thereafter, the dispute resolution procedures in Section 13.2 shall be tolled pending the resolution of proceedings under the KHSA.

(c) In the event any disputes not originating under this Agreement but being addressed under Section 8.6 or 8.7 of the KHSA result in disputes under this Agreement, the resulting dispute hereunder shall be tolled until resolution of the KHSA dispute

## **SECTION 14. DEFAULTS AND REMEDIES**

### **Section 14.1. Events of Default.**

(a) For purposes of this Section 14 a party whose act or omission gives rise to an Event of Default is referred to as the “**Defaulting Party**”; the other party is referred to as the “**Non-Defaulting Party**.”

(b) The occurrence and continuance of one or more of the following events shall constitute an “**Event of Default**” under this Agreement:

(i) If either party defaults in the performance or observance of any covenant, condition or agreement that it is obligated to observe or perform under this Agreement and the default has continued for

more than 60 days after the Non-Defaulting Party provided notice to the Defaulting Party identifying the default; or

- (ii) Any representation or warranty of a party contained in this Agreement, or in any document, agreement or instrument furnished in compliance with this Agreement, is untrue or misleading in any material respect when made.

**Section 14.2. Remedies.** Upon the occurrence of an Event of Default and subject to Section 13.1, the Non-Defaulting Party has such rights and remedies as may be available under this Agreement, at law or in equity, including the right to seek damages, provided, however, that both parties waive any right to seek consequential, punitive, special or indirect damages.

**Section 14.3. Termination.** Notwithstanding any other provision of this Agreement or applicable Laws, neither party has the right to terminate this Agreement as a result of an Event of Default unless a Termination Event has occurred. If a Termination Event has occurred and is continuing then either party may, upon ninety (90) days' written notice, terminate this Agreement, provided that in the event that during such ninety (90) day period the applicable Termination Event has been cured or mitigated to the satisfaction of the terminating party then the termination notice shall be null and void, and provided further that, in the case of a Termination Event arising as a result of a proceeding under Section 8.6 or 8.7 of the KHSA, any termination shall be tolled until the conclusion of the applicable proceeding.

**Section 14.4. Remedies Cumulative.** Each right or remedy of the parties provided for in this Agreement shall be cumulative and shall be in addition to (and not exclusive of) every other right, remedy or means of redress provided for in this Agreement or now or hereafter existing at law or in equity. The exercise or the beginning of the exercise by a party of any one or more of the rights or remedies shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies.

**Section 14.5. Injunctions.** In addition to the other remedies in this Agreement, the parties shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions, terms, agreements, provisions or limitations of this Agreement as though any other remedies were not provided for in this Agreement.

## **SECTION 15. NOTICES**

**Section 15.1. Notices.** Any notice, request, demand, statement, authorization, approval or consent made hereunder must be in writing and shall be hand delivered or sent by Federal Express, or other reputable courier service, or by postage pre-paid registered or certified mail, return receipt requested. Notice under this section will be deemed given (i) when received at the following addresses if hand delivered or sent by Federal Express, or other reputable courier service, and (ii) three (3) business days after being postmarked and addressed as follows if sent by registered or certified mail, return receipt requested:

to PacifiCorp at:

PacifiCorp  
825 Northeast Multnomah Street  
Suite 2000  
Portland, Oregon 97232  
Attention: President or Chief Executive Officer

with a copy (which shall not constitute notice) to:

PacifiCorp  
825 Northeast Multnomah Street  
Suite 2000  
Portland, Oregon 97232  
Attention: Dustin Till

to KRRC at:

Klamath River Renewal Corporation  
2001 Addison Street  
Suite 300, Office 317  
Attention: Chief Executive Officer

with a copies (which shall not constitute notice) to:

Water and Power Law Group PC  
2140 Shattuck Avenue, Ste. 801  
Berkeley, CA 94704-1229  
Attention: Richard Roos-Collins

And:

Hawkins Delafield & Wood LLP  
7 World Trade Center, 41<sup>st</sup> Floor  
250 Greenwich Street  
New York, New York 10007  
Attention: Lloyd S. Lowy

**Section 15.2. Change of Notice Addresses.** Either party may from time to time designate by notice in writing, given in the manner specified in Section 15.1, a new or other address to which such notice or demand must be given or made.

## **SECTION 16. SURVIVAL**

**Section 16.1. Certain Provisions to Survive Closing.** Notwithstanding anything to the contrary in this Agreement, the following provisions will survive Closing: Subsection 2.1(c), Subsection 3.2(b) Section 3.5 (Environmental Matters), Section 4.6 (Violations), Section 4.7 (Apportionments), Section 4.8 (Further Assurances), Section 5 (Post-Closing Matters), Section 6.1 (Covenants), Subsection 7.1(e) (Taxes), Section 7.7 (Survival of Representations and Warranties), Section 10 (Indemnities), Section 11.5(c), Section 13 (Disputes), Section 14

(Defaults and Remedies), Section 15 (Notices), Section 16 (Survival), Section 17 (Confidentiality), and Section 18.11 (Third Party Beneficiaries).

**Section 16.2. Certain Provisions to Survive A Termination Prior to Closing.** Notwithstanding anything to the contrary in this Agreement, the following provisions will survive a termination of this Agreement prior to Closing: Section 13 (Disputes), Section 14 (Defaults and Remedies), Section 15 (Notices), Section 16 (Survival), Section 17 (Confidentiality). Any claim arising under this Agreement prior to termination shall survive such termination as part of Section 14.

## **SECTION 17. CONFIDENTIALITY**

**Section 17.1. Common Interest Defense Agreement.** The parties acknowledge and agree that to the extent that this Agreement or any information shared pursuant to this Agreement is confidential or privileged it is the intent of the parties that such information is protected from disclosure by any confidentiality and common interest defense agreements that the parties have entered into in connection with the KHSAs.

## **SECTION 18. MISCELLANEOUS**

### **Section 18.1. State Specific Clauses.**

(a) The parties intend that this Agreement shall include all provisions required to be included in an arms-length commercial contract for that transfer or real property under the Laws of the State of Oregon and the State of California, including the following as to the State of Oregon:

- (i) THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A

LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

(ii) THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505.

(b) Any other legally required provisions not recited herein is deemed incorporated by reference. For purposes of this Section 18.1 any provision the inclusion of which may be waived or excluded are hereby waived and excluded.

**Section 18.2. Integration of Agreement.** In accordance with Section 2.1, this Agreement contains all the promises, agreements, conditions and understandings between the parties relative to the Transactions and, except as provided in the KHSA or any other agreement expressly referenced in this Agreement there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implied, relating thereto between them relating to the Transactions other than as set forth in this Agreement.

**Section 18.3. Waivers and Amendments Must Be In Writing.** No failure by either party to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Agreement or to exercise any right or remedy hereunder, and no acceptance by either party of full or partial performance by the other party during the continuance of any such breach, will constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Agreement to be kept, observed or performed by either party, and no breach thereof, may be waived, altered or modified except by a written instrument executed and acknowledged by and delivered to PacifiCorp and KRRC. No waiver of any breach will affect or alter this Agreement, but each and every term, covenant, agreement, provision, condition and limitation of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**Section 18.4. Captions For Convenience Only.** The captions of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

**Section 18.5. Table of Contents For Convenience Only.** The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as a part of the Agreement or supplemental thereto or amendatory thereof.



**Section 18.6. Negotiated Document.** The provisions of this Agreement were fully negotiated by PacifiCorp and KRRC, each of whom was represented by competent counsel, and this Agreement will not be construed for or against either party, but will be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

**Section 18.7. Severability of Provisions.** If any term or provision of this Agreement, or portion thereof, or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby and each term and provision of this Agreement will remain valid and enforceable to the fullest extent permitted by law.

**Section 18.8. Successors and Assigns; Assumption of Obligations.** The covenants, conditions and agreements of this Agreement, will bind and inure to the benefit of PacifiCorp and KRRC and their respective permitted successors and assigns, each of whom will be deemed to have assumed this Agreement and the applicable party's respective obligations hereunder, as the case may be, without any further act or the delivery of any further instruments by either party. Without impairing the self-operative nature of the foregoing, any such successor or assign will, if requested by the other party, promptly execute and deliver to the requesting party a written instrument in recordable form confirming its assumption of this Agreement and of the terms, conditions and obligations hereunder.

**Section 18.9. Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by California law (without giving effect to California conflict of law principles), except that matters inherently relating to property located in Oregon, such as determination of whether an instrument is in recordable form, as opposed to matters of general contractual interpretation, shall be governed by Oregon law.

**Section 18.10. Waiver of Jury Trial; Arbitration in California.** To the fullest extent permitted by law each of the parties waives any right it may have to trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this Agreement. Each party further waives any right to consolidate, or to request consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. To the extent that a dispute arises in California, or is to be heard in a California court of general jurisdiction, and the foregoing jury waiver is not enforceable then the dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Section 18.11. Third Party Beneficiaries.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and, in the case of Section 10 hereof, the other indemnified parties, and their heirs, administrators, legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other persons, provided that the States shall be third party beneficiaries of, and entitled to rely upon, Sections 3.5 and 7.2 as if they were parties to this Agreement, which right to rely shall survive the Closing until the date that is one year after the Parcel B Land has been conveyed to the respective States.

**Section 18.12. Expenses.** Except as expressly provided otherwise in Section 3.2(b) or elsewhere in this Agreement, each party shall pay its own expenses incidental to the preparation of this Agreement and any related documents, instruments or agreements, carrying out the provisions of this Agreement and any activities contemplated by this Agreement, and the consummation of the Transactions.

**Section 18.13. Counterparts; PDFs.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed counterpart signature page delivered in Portable Document Format (PDF) or by telecopier shall be as effective as an original signature page.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto caused their respective duly authorized representatives to execute and deliver this Agreement as of the Effective Date.

**PACIFICORP**

By:   
Name: Stefan Bird  
Title: President and CEO, Pacific Power

**KLAMATH RIVER RENEWAL  
CORPORATION**

By: \_\_\_\_\_  
Name: Mark Bransom  
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties have hereunto caused their respective duly authorized representatives to execute and deliver this Agreement as of the Effective Date.

**PACIFICORP**

By: \_\_\_\_\_  
Name: Stefan Bird  
Title: President and CEO, Pacific Power

**KLAMATH RIVER RENEWAL  
CORPORATION**

By: Mark Bransom \_\_\_\_\_  
Name: Mark Bransom  
Title: Chief Executive Officer

## **EXHIBITS AND SCHEDULES**

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PARCEL B LAND

*[More particular legal descriptions will be added to this Exhibit following finalization of title commitments and review and approval by KRRC, KPFF and PacifiCorp]*

#### A. PARCEL B PROPERTY LOCATED IN OREGON

Those pieces and parcels of land located in Klamath County, Oregon more particularly described as follows:

Parcel 1:

Parcel 12:

Parcel 17:

[SEE ATTACHED MAP]



**B. PARCEL B PROPERTY LOCATED IN CALIFORNIA**

Those pieces and parcels of land located in Siskiyou County, California more particularly described as follows

Parcel 1

Parcel 2

Parcel 3

Parcel 4

Parcel 5

Parcel 6

Parcel 7

Parcel 8

Parcel 9

Parcel 10

Parcel 11

Parcel 13

Parcel 14

Parcel 15

Parcel 16

Parcel 17

Parcel 18

Parcel 19

Parcel 20

Parcel 21

[SEE ATTACHED MAP]





**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

**A. PARCEL B LANDS LOCATED IN OREGON**

1. Real Property Taxes not yet due and payable.
2. Rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways. (as to all Parcels)
3. Rights of the public and of governmental bodies in and to that portion of the premises described herein, now or at any time lying below the high water mark of the Klamath River, including any ownership rights which may be claimed by the State of Oregon, in and to any portion of the premises now or at any time lying below the ordinary high water mark thereof. (as to All Parcels EXCEPT Parcel 1)
5. Any adverse claim based upon the assertion that
  - A. A. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Klamath River or has been formed by accretion to any such portion.
  - B. Some portion of said property has been created by deposit of artificial fill.

And Excepting:

- C. The rights of the public and governmental bodies for fishing, navigation and commerce in and to any portion of the premises herein described, lying below the high/low water line of the Klamath River.
  - D. The right, title and interest of the State of Oregon in and to any portion lying below the high/low water line of Klamath River.
- (As to All Parcels EXCEPT Parcel 1)
6. Easement granted to The California Oregon Power Company for ingress and egress, dated July 18, 1956, recorded September 17, 1956 in Book 286, Page 550. (as to Parcel 1)
  7. Reservation to International Paper Company, its successors and assigns the right to plant and grow thereon and to cut and remove therefrom trees and forest products and to administer the same as forest lands, recorded October 28, 1960, in Volume 325, Page 74. (Affects portions of Parcel 17 included within Lots One (1), Two (2), Three (3), Six (6), and Seven (7) of Section Twenty-nine (29), Township Thirty-nine (39) South, Range

Seven (7) East. Lots One (1), Two (2), Three (3), Four (4), and Five (5) of Section Thirty-one (31), Township Thirty-nine (39) South, Range Seven (7) East. All Willamette Meridian.)

8. Reservation of an undivided one-half interest in and to minerals and right of entry made by The Long-Bell Lumber Company, recorded July 14, 1959, in Volume 314, Page 190. (Affects portions of Parcel 17 included within the NW 1/4 of the NW 1/4 of Section 29 and Lots 2, 1, 3, and 4 of Section 30, Township Thirty-nine (39) South, Range Seven (7) East, Willamette Meridian.)
9. PacifiCorp Easements reserved in the deeds from PacifiCorp to KRRC.

**B. PARCEL B LANDS LOCATED IN CALIFORNIA**

1. Real Property Taxes not yet due and payable.
2. Any titles or rights asserted by anyone including but not limited to, persons, corporations, governments or other entities, to tide lands, or lands comprising the shores or bottoms of navigable rivers, lakes, bays, oceans or gulf, or lands beyond the line of the harbor or bulkhead lines as established or changed by the United States Government or water rights, if any.
3. An Easement granted to The Pacific Telephone and Telegraph Company, a corporation, recorded August 17, 1955 in Book 354. Page 448. (as to Parcel 1)
4. Easement in favor of George Pettee and Lillian Pettee, husband and wife, recorded August 27, 1962 in Book 479 at Page 677. (as to Parcel 18)
5. Road Easement in favor of H.J. Rhodes, recorded July 9, 1964 in Book 505 at Page 193. (as to Parcel 14)
6. PacifiCorp Easements reserved in the deeds from PacifiCorp to KRRC

**C. FALL CREEK PROPERTY**

1. Such matters as do not impose any liability, restriction or expense on KRRC or any successor as lessee or on the development and operation of a fish hatchery as contemplated by the Definite Plan.

**D. GENERAL**

1. Such other matters as have been disclosed to and approved by KRRC, which approval shall not be unreasonably withheld as to any matter that does not render title uninsurable or, either singly or in the aggregate, impose any material liability, restriction or expense on KRRC's use or occupancy of the Property for purposes of implementing the Definite Plan or upon any successor owner's use of the Property as contemplated under the KHSA.

**EXHIBIT C**

**PRE-EXISTING ENVIRONMENTAL CONDITIONS**

As of June 4, 2020

	<b>Condition</b>	<b>Brief Description</b>	<b>Additional Notes</b>
1.	Iron Gate Shooting Range (Parcel B REC 9)	Active non-permitted shooting range within the Iron Gate upland disposal site being considered (See Parcel B Phase I ESA). This is located within the proposed disposal site for the Iron Gate development. (Current design (60%) shows stockpile in this area and proposes to strip and stockpile topsoil.)	
2.	Copco No. 2 Burn Pit (Parcel B REC 6)	Burn pit (See Parcel B Phase I ESA)	
3.	Wood-Stave Penstock	Wood and soil contamination (See Wood-Stave Phase II ESA)	
4.	Copco No. 1 Dynamite Cave	Potential unexploded ordinances (See KRRC Facility Phase I ESA)	
5.	Undiscovered Impacted Soil and Groundwater at the four Powerhouses	Potential to discover impacted soil and groundwater during the demolition process of the 4 Facilities (See KRRC Facility Phase I ESA)	
6.	Underground Storage Tanks (USTs)	Three (3) USTs identified but specific locations unknown (See KRRC Facility Phase I ESA)	
7.	Copco No. 2 Former Mobile Oil Containment Building	A Mobile Oil Containment Building was noted at the location of the current Maintenance Building which may have leaked oil (See KRRC Facility Phase I ESA)	
8.	High voltage switchyards	High voltage switch yards viewed from exterior fence lines (See Parcel B Phase 1 ESA)	

9.	Undiscovered Impacted Soil and Groundwater at the 4 Dam Developments	Contingency for potential to discover impacted soil and groundwater during the demolition process of the 4 Dams	
10.	J.C. Boyle Dispersed Recreation Area - 2 (Parcel B REC 1)	Recently used burn pit (See Parcel B Phase I ESA)	
11.	Copco No. 1 Debris Piles/Scrap Yard (Parcel B REC 4)	Burn pit, scrap metal, household materials, soil pile (See Parcel B Phase I ESA)	
12.	Copco No. 2 Wood Pile (Parcel B REC 7)	Wood pile (See Parcel B Phase I ESA)	
13.	Iron Gate Fish Hatchery Burn Pit	Burn Pit (See KRRC Facility Phase I ESA and the Burn Pit Investigation Report)	
14.	Iron Gate Fish Hatchery Settling Ponds	Potential pollutants including certain metals and fish fecal matter at the bottom or dredge materials from the 2 settling ponds (See KRRC Facility Phase I ESA)	
15.	Inaccessible areas	Areas were identified in aerial photographs as locations of potential interest that were inaccessible for field reconnaissance due to either unsafe road conditions or locked gates (See Parcel B Phase 1 ESA)	
16.	Retained easement areas	Any conditions in retained easement areas relating to the presence or operation of retained transmission facilities	
17.	Undiscovered Impacted Soil and Groundwater outside the removal work zone	Contingency for potential to discover impacted soil and groundwater outside the demolition process of the four Dam Developments	

**EXHIBIT D**  
**FORM OF FALL CREEK LEASE**

DRAFT 1/7/21

**LEASE AGREEMENT**

**BETWEEN**

**PACIFICORP, as Landlord,**

**AND**

**KLAMATH RIVER RENEWAL CORPORATION, as Tenant**

**Dated as of \_\_\_\_\_, 20\_\_**

**Relating to the Following Premises Located in  
Siskiyou County, State of California:**

**Portions of the following parcels:**

**APN 004-370-010-000**

**APN 004-050-010-000**

**APN 004-370-030-000**

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### EXHIBITS

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Exhibit B	Permitted Encumbrances
Exhibit C	Landlord's Facilities
Exhibit D	Hatchery Facilities Design
Exhibit E	Hatchery Decommissioning Requirements



## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this “**Lease**”), dated as of \_\_\_\_\_, 20\_\_, by and between **PACIFICORP**, an Oregon corporation, having an office at 825 NE Multnomah Street, Portland, Oregon 97232 (“**Landlord**”) and **KLAMATH RIVER RENEWAL CORPORATION**, a California nonprofit corporation, having an office at 2001 Addison Street, Suite 300, Berkeley, California 94704 (“**Tenant**”).

### RECITALS

**A.** Landlord is the owner of certain property in Siskiyou County, California, known as Fall Creek and more particularly described in Exhibit A (the “**Land**”); and

**B.** Landlord and Tenant are parties to the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as amended (the “**KHSA**”); and

**C.** Under the KHSA, upon receipt of certain Approvals (as defined below) from certain Governmental Authorities (as defined below), Tenant will remove certain hydroelectric facilities, including the facility known as Iron Gate dam, and will be responsible for providing fish hatchery facilities and operations in order to comply with the Approvals relating to the removal of Iron Gate dam; and

**D.** The parties have agreed to enter into this Lease to allow Tenant to comply with its fish hatchery obligations under the Approvals; and

**E.** After Tenant constructs the fish hatchery facilities, the parties anticipate Tenant assigning the Lease to CDFW (as defined below) to operate and maintain the fish hatchery facilities;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, intending to legally bind themselves and their respective successors and assigns, hereby covenant and agree as follows:

### ARTICLE 1

#### Definitions; Construction

**Section 1.1. Definitions.** For all purposes of this Lease, the following words and phrases shall have the respective meanings set forth below.

“**Additional Rent**” means any and all amounts payable by Tenant hereunder, other than Basic Rent.

“**Approval(s)**” means all licenses, certificates, authorizations, registrations, permits, consents and approvals called for by any Legal Requirement in connection with (i) the occupancy or ownership of a leasehold interest in the Premises, (ii) the construction, operation or maintenance of any Improvements, (iii) the operation of the Premises for the purposes permitted under this Lease, or (iv) any other activity to be conducted by or on behalf of Tenant on the Premises.

“**Basic Rent**” has the meaning set forth in Section 4.1.

“**CDFW**” means California Department of Fish and Wildlife and any Governmental Authority succeeding to its role as operator of the Premises.

“**Definite Plan**” has the meaning ascribed to such term in the KHSA. References in this Agreement to the Definite Plan include reference to any modifications pursuant to any Approvals, including any Approvals relating to Facilities Removal, or otherwise occurring.

“**Environmental Law(s)**” means all Legal Requirements relating to pollution, the protection of the environment or drinking or domestic water supply, including but not limited to laws relating to safe drinking water, emissions, discharges, releases or threatened releases of Hazardous Materials into ambient air, surface water, ground water, drinking or domestic water supply, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, refinement, production, disposal, transport or handling of Hazardous Materials, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6901, et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (“FWPCA”); the Hazardous Materials Transportation Act, 49 U.S.C. § 5101; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 et seq. (“EPCRA”); the Atomic Energy Act, 42 U.S.C. § 2014-2014, et seq.; the Endangered Species Act, 16 U.S.C. § 1531 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq. (“FIFRA”); the Clean Air Act, 42 U.S.C. § 7401-7401, et seq.; and their state analogs, state counterparts, and other state laws, regulations, statutes and common law relating to protection of human health and the environment.

“**Event of Default**” has the meaning set forth in Section 18.1.

“**Facility**” and “**Facilities**” have the meanings ascribed to those terms in the KHSA.

“**Facilities Removal**” has the meaning ascribed to that term in the KHSA.

“**Governmental Authority**” means any federal, state or local governmental entity, or any subdivision thereof, exercising any executive, legislative, judicial, regulatory, administrative or other governmental function with respect to the Premises or any Person, as applicable.

“**Hatchery Design**” means the design set forth in Exhibit D.

“**Hatchery Facilities**” means the fish hatchery facilities and related improvements required to comply with FERC License No. P-14803 and any other Approval relating to Facilities Removal.

“**Hatchery Funding Agreement**” means the Hatchery Funding Agreement between and among Landlord, Tenant and CDFW, dated [[\_\_\_\_\_, 202\_\_]].

“**Hatchery Imposition**” has the meaning set forth in Section 7.1.

“**Hazardous Materials**” means asbestos or any substance containing asbestos, polychlorinated biphenyls (“PCB”), PCB contaminated material, including, but not limited to, PCB contaminated electrical equipment as defined in 40 C.F.R. 761.3, lead, lead in the form of lead based paint materials or paint with lead (“LBP”), flammable explosives, radioactive materials, petroleum,

petroleum fractions, petroleum constituents, petroleum distillates, chemicals known to cause cancer or reproductive toxicity or that pose a risk to human health or safety or the environment or that are regulated under Environmental Law, pollutants, effluents, residues, contaminants, emissions or related materials, natural gas liquids, and any items defined or regulated as “hazardous waste,” “hazardous materials,” “hazardous substances,” “toxic waste,” “toxic materials,” or “toxic substances” or words of similar import, all under any applicable Environmental Law. The term “Hazardous Materials” shall not include items that are “household hazardous waste” including chemicals, lubricants, refrigerants, household supplies, materials for common residential purposes, and other substances kept in amounts typical for, and used as, standard janitorial supplies, office supplies, and the like in connection with the routine maintenance and operation of facilities similar to the Premises, to the extent kept, used, and maintained in a manner consistent with their intended uses and in compliance with Environmental Law.

“**Impositions**” has the meaning set forth in Article 7.

“**Improvements**” means all structures, improvements, fixtures, equipment and other appurtenances now or hereafter located on, above or under the surface of, or otherwise appurtenant to, the Land, including all Alterations and any replacements of, additions to, and substitutions for any Improvements, but excluding Landlord’s Facilities.

“**Iron Gate Completion Date**” means the date on which removal of Iron Gate dam is substantially complete under any Federal Energy Regulatory Commission order authorizing Facilities Removal.

“**KHSA**” has the meaning set forth in Recital B.

“**Land**” has the meaning ascribed to such term in Recital A above.

“**Landlord**” means PacifiCorp and its permitted successors and assigns.

“**Landlord’s Facilities**” means the overhead transmission line identified on Exhibit C and its supporting structures and equipment.

“**Landlord Indemnified Parties**” means Landlord, its shareholders, members, partners, equity holders, directors, officers, trustees and employees.

“**Laws**” means laws (including common law), statutes, codes, treaties, orders, rules, regulations, ordinances, requirements, judgments, orders, decrees or determinations of any Governmental Authority, including the Americans with Disabilities Act of 1990.

“**Legal Requirement(s)**” means, (i) with reference to any Person (A) the articles of organization, operating agreement, certificate of incorporation and by-laws or partnership agreement, certificate of limited partnership or other organizational or governing documents of such Person, and (B) any Laws applicable to or binding upon such Person or its property (to the extent thereby affecting the Premises); and (ii) with reference to the Premises (A) any Laws applicable to or binding upon the Premises, any appurtenance thereto, or the use or manner of use thereof, including without limitation (1) any applicable environmental, ecological, zoning, building, landmark, subdivision and land use Laws, (2) the requirements, terms or conditions of any Approvals of any Governmental Authority, and (3) the terms, conditions and requirements of any easement, restrictive declaration or other encumbrance upon the Premises, and (B) the orders, rules and regulations of the Board of Fire Underwriters or any body now or hereafter performing similar functions.

“**Patriot Act**” means the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and all other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including Executive Order 3224 effective September 24, 2001.

“**Permitted Encumbrances**” means the matters set forth in Exhibit B.

“**Person**” means natural persons, corporations, companies, partnerships, limited liability companies, trusts, associations, public bodies, joint ventures and similar entities.

“**Pre-Existing Condition**” means any condition or circumstance relating to Hazardous Materials affecting the Premises as of the date of this Lease.

“**Premises**” has the meaning set forth in Section 2.1

“**Rent**” means Basic Rent and Additional Rent.

“**Tenant**” means Klamath River Renewal Corporation, a California nonprofit corporation and its permitted successors and assigns.

“**Tenant Indemnified Parties**” means Tenant, its members, directors, officers and employees

“**Term**” has the meaning set forth in Section 3.1.

“**Term Commencement Date**” has the meaning set forth in Section 3.1.

“**Terminate**”, “**Terminated**”, and “**Termination**” of this Lease shall refer to the expiration of the Term of this Lease or any sooner termination pursuant to any of the provisions of this Lease or of applicable law.

“**Transfer**” whether in the noun or verb form, means any transaction or series of transactions in which a Person’s direct or indirect interest in the Premises, this Lease or the leasehold estate hereby granted is transferred, voluntarily or by operation of law or any other involuntary means, or in which any interest, however remote, in the Person (including Tenant or Landlord) shall be transferred.

“**Utility Services**” has the meaning ascribed to such term in Section 5.3.

**Section 1.2. Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Lease:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the feminine, masculine and neuter genders shall each include correlative words of the other genders.

(c) All references herein to particular articles or sections without reference to a specific document are references to articles or sections of this Lease.

(d) The captions and headings herein are solely for convenience of reference and shall not constitute a part of this Lease nor shall they affect its meaning, construction or effect.

(e) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Lease, refer to this Lease in its entirety and not the particular article or section of this Lease in which they appear, and the term “hereafter” means after, and the term “heretofore” means before, the date of this Lease.

(f) The word “including” and words of similar import mean “including but not limited to.”

(g) Except where this Lease expressly provides for a different standard, any approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, delayed or conditioned by the person or party whose approval, consent or acceptance is required. Acceptance for this purpose shall include a party’s confirmation that a document required to be delivered to such party or a state of affairs required by such party to exist is acceptable to such party.

(h) All references herein to any other document, agreement or instrument shall mean such document, agreement or instrument as it may be amended, modified, supplemented or restated.

(i) All exhibits and appendices to this Lease, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Lease.

(j) Requirements in this Lease that Tenant take any action at its own expense, or at no expense to Landlord, shall not be construed as limiting any funding obligation Landlord may have under the KHSA or the Hatchery Funding Agreement, or as prohibiting Tenant from utilizing any such funding for the stated purpose. The parties intend that any limitation on the use of any such funding shall be as set forth in the applicable agreement. In no event shall Tenant be deemed to be in default of any payment obligation under this Lease if Landlord has not provided any of the funding required under the Hatchery Funding Agreement.

## ARTICLE 2

### Premises

**Section 2.1. Demise of the Premises.** Landlord for and in consideration of the rents, covenants and agreements herein contained, hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to Permitted Encumbrances and the terms, covenants, conditions, and agreements hereinafter expressed, the Land and the Improvements; together with all the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in any way appertaining, including by way of illustration the water rights provided for in Statement 12966 and any other appurtenant water rights and the right to use driveways, service roads and such other appurtenances as may be necessary for the purpose of ingress and egress, as these appurtenances exist on the Term Commencement Date, or as they may thereafter exist (hereafter referred to collectively as the “**Premises**”).

**Section 2.2. Ownership of Improvements.** During the Term, Tenant shall be deemed to be the owner, and is hereby granted ownership, of the Improvements including any Alterations. Upon any reversion of possession of the Land to Landlord in connection with a Termination of this Lease, all right, title and interest in and to the Improvements shall automatically vest in Landlord without any further act or compensation on the part of either Party, and Tenant shall promptly execute and deliver such bills of sale, deeds and other instruments, affidavits and returns as may be requested by Landlord in confirmation thereof.

### ARTICLE 3

#### Term

##### **Section 3.1. Term.**

(a) *Commencement and Expiration.* The “**Term**” of this Lease, during which Tenant shall be entitled to possess, use and occupy the Premises, shall commence on the date this Lease was entered into as written above (the “**Term Commencement Date**”) and shall expire at midnight on the day that is eight (8) years after the Iron Gate Completion Date, unless this Lease is Terminated sooner in accordance with the terms of this Lease, in which case the Term (and all of the rights and obligations of Landlord and Tenant hereunder) shall end on the date of such earlier Termination.

(b) *Confirmation of Iron Gate Completion Date.* Upon request by either party following the Iron Gate Completion Date the parties shall execute an instrument confirming the date on which the Iron Gate Completion Date occurred.

### ARTICLE 4

#### Rent

##### **Section 4.1. Basic Rent.**

(a) Throughout the Term of this Lease, Tenant shall pay to Landlord, over and above any additional payments provided for in this Lease, an absolutely net rent (“**Basic Rent**”) of One Dollar (\$1.00) for the entire Term, receipt of which Landlord hereby acknowledges.

**Section 4.2. Additional Rent.** Any sums that may become payable to Landlord by Tenant under this Lease shall be deemed Additional Rent and shall be payable at Landlord’s address as provided above. Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment of Additional Rent as Landlord has in the case of default by Tenant in the payment of Basic Rent. Additional Rent shall be due and payable thirty (30) days after Landlord shall have sent Tenant written notice of the amount due accompanied by a statement in reasonable detail of the basis therefor..

### ARTICLE 5

#### Construction of Hatchery Facilities

**Section 5.1. Construction of the Hatchery Facilities.** Tenant shall develop, construct, and equip the Hatchery Facilities upon the Premises substantially in accordance with the Hatchery Design and the terms and conditions of this Lease.

##### **Section 5.2. Approvals.**

(a) Tenant, at its own expense, shall be responsible for timely obtaining all licenses, certificates, authorizations, permits, consents and approvals called for by any Legal Requirement relating to the Hatchery Facilities. Tenant shall keep each Approval obtained in full force and effect for as long as necessary under any Legal Requirement,

(b) Landlord shall reasonably cooperate with Tenant in the filing of applications and documents necessary to obtain the Approvals, provided that the foregoing shall not expand Landlord's obligations regarding Approvals for Facilities Removal beyond Landlord's obligations under the KHSAs. To the extent requested by Tenant, Landlord's cooperation shall include, without limitation, the execution by Landlord of applications for Approvals, provided that any application the execution of which Tenant desires shall have been completed in a manner reasonably acceptable to Landlord and furnished to Landlord not less than thirty (30) days prior to the date on which Tenant intends to file such application, and provided further that execution by Landlord of any such application shall be solely for the purpose of evidencing its acquiescence thereto but shall not constitute Landlord's approval thereof or in any way relieve Tenant of sole responsibility for determining the appropriateness of making any such application or the contents thereof.

**Section 5.3. Utilities.**

(a) The Tenant shall make (or shall cause to be made) application for, obtain, and be solely responsible for providing all utilities required, used, or consumed at the Premises, including, but not limited to gas, water (including water for domestic uses and for fire protection), telephone, electricity, internet connection, sewer service, or any similar service (collectively referred to as "**Utility Services**").

(b) Landlord shall, at Tenant's sole cost and expense, cooperate with Tenant in the filing of applications and documents necessary to obtain Utility Services. To the extent requested by Tenant, Landlord's cooperation shall include, without limitation, the execution by Landlord of applications for Utility Services, provided that any application the execution of which Tenant desires shall have been completed in a manner reasonably acceptable to Landlord and furnished to Landlord not less than thirty (30) days prior to the date on which Tenant intends to file such application, and provided further that execution by Landlord of any such application shall be solely for the purpose of evidencing its acquiescence thereto but shall not constitute Landlord's approval thereof or in any way relieve Tenant of sole responsibility for determining the appropriateness of making any such application or the contents thereof. Nothing in this Lease shall require Landlord to prosecute or participate in the prosecution of any application or other procedure relating to any Utility Services.

**Section 5.4. Commencement and Prosecution of Work.**

(a) Prior to mobilization at the Premises by Tenant's contractor, Tenant shall deliver, or shall cause its contractor to deliver, to Landlord:

(i) evidence that all Approvals necessary for the work have been obtained and are in full force and effect except for such Approvals as are not yet required for that stage of the work; and

(ii) evidence that all insurance required under this Lease is in place.

(b) Once Tenant has commenced construction of the Hatchery Facilities, including excavation or demolition in contemplation thereof, it shall complete construction of the Hatchery Facilities with commercially reasonable diligence.

(c) The Hatchery Facilities shall be constructed in a good and workmanlike manner, in compliance with applicable Legal Requirements, and without materially affecting any Landlord's Facilities except as provided for in the Hatchery Design;

(d) The cost of constructing the Hatchery Facilities shall be timely paid by Tenant so that the Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Premises, excepting liens the collection of which has been indemnified or insured against by a bonding or title insurance company; and

(e) Landlord shall in all cases have the right to enter upon the Premises at reasonable times and on reasonable notice to monitor and inspect the work and its progress and to post such notices of non-responsibility as may be permitted under applicable Law.

**Section 5.5. Tenant's Contractors.** Tenant's contractors, subcontractors of any tier, suppliers, and consultants shall have such access to the Premises as Tenant determines to be necessary to carry out any work relating to construction, equipping and commissioning of the Hatchery Facilities, including the right to store supplies and materials at the Premises. Tenant shall require such parties to comply with all applicable terms of this Lease and Tenant shall be responsible to Landlord for the acts and omissions of such parties on or about the Premises in connection with the construction, equipping and commissioning of the Hatchery Facilities.

## ARTICLE 6

### Use and Operation of Premises

**Section 6.1. Permitted Uses.** The Premises shall be utilized during the Term of this Lease for the operation of a fish hatchery and for purposes ancillary to or supportive of such use, including any use necessary to comply with Tenant's Approvals for Facilities Removal.

**Section 6.2. Nuisance Prohibited.** Tenant shall not use or allow the Premises or any part thereof to be used, occupied or operated in any manner or for any purpose that shall constitute a public or private nuisance, or void, or make voidable, any insurance then in force with respect to the Premises.

**Section 6.3. Responsibility for Maintenance and Operation.** Tenant shall have sole responsibility for the condition, operation, maintenance, management, restoration and repair of the Premises and shall exercise such responsibility at its sole cost and expense and in its sole discretion, subject only to the express terms of this Lease and all Legal Requirements.

**Section 6.4. Operator.** Landlord acknowledges that prior to Tenant's Transfer of this Lease pursuant to Section 17.2 any operation of the Premises will be carried out by CDFW or such other party or successor as Tenant may designate in accordance with Legal Requirements. Landlord will accept performance by such operator as if it were rendered by Tenant, provided that operation by a third party shall not relieve Tenant of its obligations under this Lease and Tenant shall require any such third party to comply with the applicable terms of this Lease.

**Section 6.5. Contractors.** Landlord acknowledges that Tenant and its operators may provide access to the Premises to contractors, subcontractors, consultants, vendors and such other Persons as Tenant or its operator determines to be necessary or convenient for the operation, maintenance and repair of the Premises and the conduct of Tenant's activities under this Lease. Tenant shall require such parties to comply with all applicable terms of this Lease and Tenant shall be responsible to Landlord for the acts and omissions of such parties on or about the Premises in connection with the operation, maintenance and repair of the Hatchery Facilities.



**Section 6.6. Signage.** Tenant shall have the right to install, remove and otherwise maintain from time to time such signage in and about the Premises as is permitted by Legal Requirements, whether or not visible from outside the Premises.

## ARTICLE 7

### Impositions

#### **Section 7.1. Impositions.**

(a) For purposes of this Lease the following are referred to collectively as “**Impositions**”: all taxes, assessments, water and sewer rents and charges, and other charges, together with all interest and penalties thereon, which are assessed, levied, confirmed, or otherwise imposed by any Governmental Authority or provider of Utility Services upon or against the Premises or the value of the Premises or the making of Improvements thereon, or the possession of any interest hereunder, in each instance payable with respect to the Term of this Lease, or any portion thereof.

(b) Landlord covenants and agrees to pay when due (subject to the remaining provisions of this Article), all Impositions payable in respect of the Premises except for Impositions imposed specifically on or because of the Hatchery Facilities or the leasehold under this Lease (a “**Hatchery Imposition**”), which must be timely paid by Tenant. Landlord shall promptly forward to Tenant any bill for Impositions payable by Tenant. Hatchery Impositions for the fiscal period of the taxing authority in which the commencement or Termination of this Lease occurs will be prorated between Landlord and Tenant.

**Section 7.2. Right to Contest.** Tenant shall have the right to contest the amount or validity, in whole or in part, of any Hatchery Imposition by appropriate proceedings and may postpone or defer payment of any contested Hatchery Imposition, provided that no such deferral or postponement shall be allowed to generate an enforcement action against Landlord’s interest in the Premises. In the event Landlord receives any refund or credit of Hatchery Impositions paid by Tenant Landlord shall promptly forward to Tenant a payment in the amount if such refund or credit. Landlord and Tenant shall reasonably cooperate with each other, if requested, in any application or petition for exemption from Impositions.

**Section 7.3. Survival.** The provisions of this Article 7 shall survive the Termination of this Lease.

## ARTICLE 8

### Insurance

**Section 8.1. General Insurance Requirements.** Tenant shall maintain, or cause to be maintained, insurance covering the risks enumerated below. The policies procured hereunder shall provide that such insurance shall not be modified, altered or cancelled without ten (10) days’ written notice to the Landlord, and that the insurance required under subsections (c), (d) and (f) of Section 8.2 shall name Landlord as an additional insured. The insurance policies purchased by Tenant, or provided on behalf of Tenant, must be issued by a company authorized to conduct business in the State of California and which has a rating of A-VII or better by the latest Best Insurance Report (or a substantially equivalent publicly available rating if A. M. Best has ceased publication of insurance ratings).

**Section 8.2. Required Coverages.** During the Term Tenant shall obtain and maintain, the following coverages:

(a) *Property/Casualty* – fire and casualty insurance insuring the Premises against loss and damage by fire and other hazards covered by a standard extended coverage, “all risk” insurance policy, in amounts equal to the full replacement cost of the Premises, including Improvements and business personal property, and the cost of debris removal;

(b) *Commercial General Liability* - commercial general liability insurance covering both on-site and off-site events and activities sponsored or supervised by Tenant on an occurrence basis, covering all claims for bodily injury and property damage, including loss of use thereof, including independent contractor liability, products/completed operations liability, watercraft operations, personal and advertising injury and contractual liability coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, with deductible provisions not to exceed a commercially reasonable amount per occurrence;

(c) *Automobile* - comprehensive automobile insurance (with deductible provisions not to exceed a commercially reasonable amount per occurrence) with liability limits of not less than One Million Dollars (\$1,000,000.00) combined single limit covering liability arising out of the use of any Tenant vehicle, or such vehicles used in conjunction with the business of Tenant, whether owned, non-owned or hired;

(d) *Statutory Employees’ Insurance* - workers’ compensation and disability insurance and such other forms of insurance required by law to provide covering loss resulting from injury, death, sickness, disability or death of the employees of Tenant, or any contractor or subcontractor performing work with respect to the Premises; and

(e) *Excess Umbrella* - additional excess and/or umbrella liability coverage in an amount of Ten Million Dollars (\$10,000,000) in the aggregate, which shall include all insured coverages required by subsections (c), (d) and (e) of this Section 8.2.

**Section 8.3. Policy Loss Payable; Other Policy Requirements.**

(a) Tenant shall be the loss payee under all insurance provided for in this Article 8 except with respect to Landlord’s interest as an additional insured under any liability insurance.

(b) All insurance policies and endorsements required pursuant to this Article 8 shall be fully paid for and nonassessable, shall contain such provisions and expiration dates and be in such form and amounts as indicated above. Without limiting the foregoing, each policy shall specifically provide that no act or thing done by Tenant shall invalidate the policy as against Landlord.

(c) Tenant and, to the extent it maintains separate insurance, Landlord, shall each procure and maintain a clause or endorsement to their respective insurance policies pursuant to which their respective insurers waive subrogation. Provided its rights of recovery under the insurance policy that it maintains is not adversely affected, Landlord and Tenant each releases the other from any claim under this Lease for any loss or damage to the extent covered by its own insurance.

(d) Tenant’s insurance shall be and shall include provisions stating that it is primary with respect to Landlord’s interest in the Premises to the extent of Tenant’s negligent acts or omissions, and shall state that any other insurance or self-insurance maintained by Landlord is excess and not

contributory with the insurance required hereunder. Tenant's insurance shall include a cross-liability or severability of interest clause or endorsement.

**Section 8.4. Delivery of Evidence of Insurance.** Upon the commencement of this Lease and annually thereafter, Tenant shall furnish to Landlord evidence of all insurance required to be carried by Tenant in accordance with this Lease. Such insurance evidence must document that the liability insurance coverage purchased by or maintained on behalf of Tenant includes contractual liability coverage.

**Section 8.5. Notice Prior to Change or Cancellation.** Tenant shall notify Landlord as soon as possible in the event that any policies become subject to cancellation and must provide to Landlord proof of replacement coverage prior to the cancellation effective date or as soon as practicable thereafter.

**Section 8.6. Separate Insurance.**

(a) Tenant shall not carry separate insurance concurrent in coverage with any insurance required to be furnished by Tenant under the provisions of this Lease unless Landlord shall be included as a named insured or additional insured, as the case may require, with loss payable as hereinabove provided. Tenant shall promptly notify Landlord of the issuance of any such separate insurance and shall cause certified copies of such policies to be delivered to Landlord as provided in this Article.

(b) Tenant shall, at all times, observe and comply with the requirements of all policies of insurance in effect with respect to the Premises.

**Section 8.7. CDFW as Tenant.** Landlord acknowledges that CDFW is self-insured and that upon CDFW's assumption of this Lease following its assignment pursuant to Article 17 the foregoing requirements to maintain insurance shall not apply.

## ARTICLE 9

### **Covenants Against Waste and to Repair and Maintain the Premises**

**Section 9.1. No Waste.** Tenant shall not intentionally or negligently cause or permit any physical waste on the Premises, provided that nothing in this Lease shall prohibit Tenant from removing any Improvements or otherwise modifying the Premises or any portion thereof except as expressly prohibited by this Lease.

**Section 9.2. Maintenance of Premises.** Tenant shall cause the Premises to be maintained in good order and condition, and shall make such repairs and replacements (including structural repairs), foreseen and unforeseen, ordinary and extraordinary, necessary to maintain the Premises in good working order, provided that nothing in this Lease shall prohibit Tenant from maintaining the Premises or any portion of the Premises in an unimproved or rustic condition.

**Section 9.3. Maintenance of Personal Property.** Tenant shall keep and maintain all Improvements and related personal property in a safe condition throughout the Term of this Lease, subject to Section 9.4 below.

**Section 9.4. Right to Modify or Remove Certain Property.** Tenant shall be entitled to modify or remove and dispose of Improvements and moveable or immovable property located on the Land in its sole discretion, without payment of any compensation to Landlord in respect thereof, provided

only that such modification or removal is in furtherance of Tenant's permitted operations under this Lease.

**Section 9.5. Landlord's Facilities.**

(a) Landlord shall be solely responsible for maintaining and repairing Landlord's Facilities. Landlord shall carry out its maintenance, repair and any modification of Landlord's Facilities in a manner that does not materially adversely affect the Hatchery Facilities or their operation.

(b) Except as may be provided for in the Hatchery Design, Tenant shall not modify, remove or adversely affect any Landlord Facilities without Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided that Tenant's proposed action does not materially adversely affect the function or maintenance of Landlord's Facilities and is in compliance with all applicable Laws.

**ARTICLE 10**

**Compliance with Legal Requirements**

**Section 10.1. Tenant to Comply.** Tenant shall, at its sole cost and expense, comply with all applicable Legal Requirements relating to the use, operation and/or possession of the Premises.

**Section 10.2. Right to Contest.** Tenant shall have the right to contest by appropriate administrative or legal proceedings the validity or application of any Legal Requirement, and, if compliance therewith may be held in abeyance under applicable Legal Requirements without (i) the incurrance of a lien, charge or liability of any kind against the Premises or Tenant's leasehold interest therein, (ii) subjecting Landlord to any liability or any material risk of forfeiture or penalty for failure to comply therewith, or (iii) creating or allowing the persistence of any unsafe conditions, Tenant may postpone compliance until the final determination of the proceedings, provided that such proceedings shall be prosecuted with all due diligence and dispatch.

**ARTICLE 11**

**Damage to or Destruction of the Improvements**

**Section 11.1. Restoration.** In case of damage to or destruction of the Premises by fire or any other cause, similar or dissimilar, Tenant shall promptly notify Landlord and Tenant at its discretion may remove all debris resulting from such damage or destruction, and may, in its discretion, either rebuild, restore, repair and replace, as applicable, the Premises or any improvements, betterments, fixtures and equipment, furnishings and physical property located thereon, or any part thereof, substantially as they existed prior to such damage or destruction or make such other repairs, replacements, changes or alterations, if any, as Tenant may, in all instances, determine in its sole discretion, subject to applicable Legal Requirements and Section 9.5. Such rebuilding, restoration, repairs, replacements, or alterations shall be commenced promptly and shall be subject to the terms and conditions of this Lease, including, without limitation, Article 13.

## ARTICLE 12

### Condemnation

**Section 12.1. Taking of All or Substantially All of the Premises.** If, at any time during the Term of this Lease, the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or by agreement between Landlord, Tenant and those authorized to exercise such right, this Lease shall Terminate on the date of such taking. For purposes of this Lease “substantially all” of the Premises shall be deemed to have been taken if, following such taking, the balance of the Premises would not, under applicable Legal Requirements, economic conditions or otherwise, permit the reasonable operation of the Premises as provided for in this Lease.

**Section 12.2. Taking of Less Than Substantially All.** If less than substantially all of the Premises shall be taken, then this Lease shall be deemed Terminated as to the part so taken as of the date of such taking, but shall continue in full force and effect for that part not taken.

**Section 12.3. Application of Award.** In the event of any taking referred to in Section 12.1 or 12.2, partial, whole or substantially all, as the case may be, Landlord and Tenant agree that the award or awards resulting from condemnation or eminent domain as determined by a court of competent jurisdiction or the proceeds pursuant to a written agreement in lieu thereof shall be allocated between Landlord and Tenant and paid in the following order of priority:

(a) If the award shall have been made in respect of a taking of the type referred to in Section 12.2, then there shall be paid to Tenant an amount sufficient to pay in full the cost of any repair, replacement, rebuilding and modification necessitated by such taking and required by the terms of this Lease.

(b) From the remainder of the proceeds, if any, or if the award shall have been made in respect of a taking of the type referred to in Section 12.1, then Landlord shall be paid an amount equal to the value of Landlord’s reversionary interest in the Land so taken, but as if the Land so taken were unencumbered and free and clear of this Lease.

(c) Any balance shall be payable to Tenant.

**Section 12.4. Restoration.** If the Premises shall be damaged or partially destroyed by any taking referred to in Section 12.2, Tenant shall give prompt notice thereof to Landlord and, regardless of the amount or allocation of any award made in respect of such taking, Tenant may proceed with reasonable diligence to conduct any necessary demolition and to repair, replace, rebuild or modify the portion of the Premises not so taken so as to constitute such remaining portion suitable for use by Tenant as provided for under this Lease, all as determined by Tenant in its sole discretion.

## ARTICLE 13

### Alterations

**Section 13.1. Alterations.** Tenant shall have the right, in its sole discretion, to remove any Improvements or make alterations, installations, or structural changes, to the Premises, or any part thereof, or make any addition and/or improvement thereto or construct any additional buildings or other improvements on the Premises, (any such action being herein referred to as an “**Alteration**”), subject only to Section 9.5(b) and the following requirements:

(a) All Alterations, when completed, shall be of such a character as is consistent with the continued use of the Premises for its permitted uses;

(b) All Alterations shall be made promptly and in good and workmanlike manner and in compliance with applicable Legal Requirements;

(c) The cost of any Alterations shall be timely paid by Tenant so that the Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Premises, excepting liens the collection of which has been indemnified or insured against by a bonding or title insurance company; and

(d) Landlord shall in all cases have the right to enter upon the Premises at reasonable times and on reasonable notice to monitor and inspect the work and its progress and to post such notices of non-responsibility as may be permitted under applicable law.

**Section 13.2. Tenant's Contractors.** Tenant's contractors, subcontractors of any tier, suppliers, and consultants shall have such access to the Premises as Tenant determines to be necessary to carry out any work relating to Tenant's Alterations, including the right to store supplies and materials at the Premises. Tenant shall require such parties to comply with all applicable terms of this Lease and Tenant shall be responsible to Landlord for the acts and omissions of such parties on or about the Premises in connection with Tenant's Alterations.

**Section 13.3. Landlord Cooperation.** Landlord shall, at Tenant's sole cost and expense, timely cooperate with Tenant in the filing of applications and documents necessary to obtain any necessary Approvals. To the extent requested by Tenant, Landlord's cooperation shall include, without limitation, the execution by Landlord of applications for Approvals, provided that any application the execution of which Tenant desires shall have been completed in a manner reasonably acceptable to Landlord and furnished to Landlord not less than ten (10) days prior to the date on which Tenant intends to file such application, and provided further that execution by Landlord of any such application shall be solely for the purpose of evidencing its acquiescence thereto but shall not in any way impose liability or cost of any kind on Landlord or relieve Tenant of sole responsibility for determining the appropriateness of making any such application or the contents thereof.

## ARTICLE 14

### Liens

**Section 14.1. No Liens.** Tenant shall not suffer or permit any vendor's, mechanic's, laborer's or materialman's statutory or similar lien to be filed against the Premises or any interest of Landlord or Tenant therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant (or anyone claiming by, through or under Tenant) or anyone holding the Premises or any part thereof directly or by, through or under Tenant. If any such lien shall at any time be filed, Tenant shall, within twenty (20) days after notice of the filing thereof, initiate action to cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by Legal Requirements and shall continue to diligently pursue such actions until such lien is discharged. If Tenant shall fail to commence action to cause such lien to be discharged within the period aforesaid or shall fail to diligently pursue such actions to completion, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, following notice to Tenant of its intention to do so, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor

and to pay the amount of the judgment for and in favor of the lienor with interest, cost and allowances. Nothing in this Lease shall be deemed or construed in any way as constituting (i) the consent of Landlord to the filing of any such lien on Landlord's interest in the Premises or this Lease or (ii) the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman or the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of the Premises or any part thereof. Any amounts paid by Landlord pursuant to this Article 14 shall be reimbursed by Tenant to Landlord upon demand.

## ARTICLE 15

### Surrender of the Premises

#### **Section 15.1. End of Term; Surrender of Premises.**

(a) Upon Termination of this Lease, Tenant shall surrender the Premises to Landlord, free and clear of all lettings and occupancies and free and clear of all liens and encumbrances other than Permitted Encumbrances and otherwise in accordance with this Section 15.1.

(b) Prior to surrender of the Premises Tenant shall decommission the Hatchery Facilities in accordance with the requirements set forth in Exhibit E.

(c) Tenant shall have no obligation to remove any Improvements except for removal of the portions of the Hatchery Facilities designated for end of Term removal on Exhibit D, or as expressly required as part of the decommissioning requirements in Exhibit E. All remaining Improvements shall become the property of Landlord as provided for in Section 2.2, provided that Tenant may remove and retain such trade fixtures and other equipment as Tenant may determine.

**Section 15.2. Abandoned Property.** Any personal property or other property of Tenant that shall remain at the Premises after the Termination of this Lease may, at the option of Landlord, be deemed to have been abandoned, and may, in Landlord's sole discretion, be retained by Landlord as its property, be stored by Landlord (if required by law) at the expense of Tenant, or be disposed of, without accountability on the part of Landlord to Tenant.

**Section 15.3. Hold Over.** In the event Tenant shall not have vacated the Premises on or before the Termination of the Lease such holding over shall not be deemed to extend the Term or renew the Lease, but such holding over shall continue upon the covenants and conditions herein set forth as a month to month tenancy that either party may terminate upon thirty (30) days' written notice.

**Section 15.4. Survival.** The provisions of this Article 15 shall survive any Termination of this Lease.

## ARTICLE 16

### Indemnification

#### **Section 16.1. Indemnity by Tenant.**

(a) To the fullest extent permitted by Law Tenant agrees to indemnify the Landlord Indemnified Parties against, and to defend and save Landlord harmless from any and all third-party claims by or on behalf of any person, and any and all judgments, costs, expenses and liabilities (including reasonable attorneys' fees) relating to any such third-party claims (a) arising on or after the Term

Commencement Date in connection with Tenant's use or occupancy of the Premises, including any claim arising in connection with (i) any condition of the Premises (other than a Pre-Existing Condition), (ii) any act or omission of Tenant, or any of its agents, contractors, servants, employees, licensees, or invitees, or (iii) any accident, injury or damage whatsoever caused to any person or property occurring in or about the Premises or any property adjacent thereto, or (b) arising in connection with any work or other activity whatsoever done in or about the Premises by or on behalf of Tenant, except, in each instance, for any claim to the extent arising out of negligence, bad faith or willful misconduct by Landlord, its agents or representatives. If any action or proceeding is brought against Landlord by reason of any of the foregoing then, upon request of Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord. Counsel appointed by Tenant's insurer shall be deemed to be acceptable to Landlord.

(b) Upon the Transfer of this Lease to CDFW, CDFW will, to the extent authorized under Section 14662.5 of the Government Code and in lieu of the indemnity under subsection (a) above, indemnify and hold harmless Landlord against all third-party claims by or on behalf of any person, and any and all judgments, costs, expenses and liabilities (including reasonable attorneys' fees) relating to any such third-party claims (i) arising on or after the Term Commencement Date in connection with Tenant's use or occupancy of the Premises, including any claim arising in connection with (A) any condition of the Premises (other than a Pre-Existing Condition or Landlord's Facilities), (B) any act or omission of Tenant, or any of its agents, contractors, servants, employees, licensees, or invitees, or (C) any accident, injury or damage whatsoever caused to any person or property occurring in or about the Premises or any property adjacent thereto, or (ii) arising in connection with any work or other activity whatsoever done in or about the Premises by or on behalf of Tenant, except, in each instance, for any claim to the extent arising out of negligence, bad faith or willful misconduct by Landlord, its agents or representatives, or arising from Landlord's Facilities and CDFW shall repair or pay for any damage proximately caused by reason of the uses authorized by this Lease.

**Section 16.2. Indemnity by Landlord.** To the fullest extent permitted by Law Landlord agrees to indemnify the Tenant Indemnified Parties against, and to defend and save Tenant harmless from any and all third-party claims by or on behalf of any person, and any and all judgments, costs, expenses and liabilities (including reasonable attorneys' fees) relating to any such third-party claims arising (a) prior to the Term Commencement Date in connection with the Premises, including any such claim arising in connection with (i) any condition of the Premises (including any Pre-Existing Condition), (ii) the prior operation of the Premises, or (iii) any accident, injury or damage whatsoever caused to any person or property occurring in or about the Premises or upon any property adjacent thereto, or (b) in connection with Landlord's Facilities, except, in each instance, for any claim to the extent arising out of negligence, bad faith or willful misconduct by Tenant, its agents or representatives. If any action or proceeding is brought against Tenant by reason of any of the foregoing then, upon request of Tenant, Landlord covenants to defend such action or proceeding by counsel reasonably satisfactory to Tenant. Counsel appointed by Landlord's insurer shall be deemed to be acceptable to Tenant.

**Section 16.3. Survival.** The provisions of this Article 16 shall survive the Termination of this Lease.

## ARTICLE 17

### Transfers

**Section 17.1. Prohibited Transfers.** Except as permitted under Section 17.2, Tenant shall not Transfer this Lease without Landlord's prior written consent.



**Section 17.2. Permitted Transfer.** Notwithstanding Section 17.1, the originally named Tenant has the unconditional right to Transfer this Lease at any time to CDFW or any other governmental department, agency or subdivision of the State of California designated by CDFW for purposes of assuming responsibility for operating the Hatchery Facilities or succeeding to CDFW's responsibilities relating to the Hatchery Facilities by operation of law. Upon the acceptance of this Lease by CDFW or such other Person the originally-named Tenant under this Lease shall be relieved of any obligations or liabilities thereafter arising under this Lease, but shall remain responsible to Landlord for any liability arising under this Lease prior to such Transfer.

## **ARTICLE 18**

### **Default Provisions**

#### **Section 18.1. Events of Default.**

(a) The occurrence of one or more of the following events shall constitute an “**Event of Default**” under this Lease:

(i) if Tenant fails to perform or observe any covenant, condition or agreement under this Lease, and the failure continues for a period of sixty (60) days after written notice specifying the failure has been given to Tenant; provided, however, that if the failure is susceptible to cure but cannot, with due diligence, be remedied by Tenant within sixty (60) days, the period of time to cure the failure shall be extended for such period as may be reasonably necessary to cure the failure with all due diligence, provided that Tenant has commenced curing the failure within the initial sixty (60) day period and is continues its efforts to cure the failure with due diligence; or

(ii) if Tenant files or consents to the filing of any petition in any bankruptcy, insolvency, reorganization of debt or similar debtor relief proceeding, or any proceeding for the liquidation or dissolution of Tenant under law or statute, or makes a general assignment of all or substantially all of its assets, or consents to or acquiesces in the appointment of a trustee, liquidator or receiver of Tenant or of the whole or any substantial part of Tenant's assets or of Tenant's interest in the Premises; or

(iii) if pursuant to an order, judgment or decree entered by any court of competent jurisdiction (A) a receiver, trustee or liquidator of Tenant or of all or any substantial part of Tenant's assets or of Tenant's interest in the Premises is appointed in any proceeding, or (B) Tenant is adjudicated bankrupt or insolvent, or (C) a petition seeking liquidation or dissolution of Tenant, or reorganization of Tenant or an arrangement with creditors or to take advantage of any law or statute, whether now existing or hereafter in effect, of the federal or any state government, or any subdivision thereof, relating to bankruptcy, insolvency, readjustment of debt or similar debtor-relief measures, is approved; and any such order, judgment or decree referred to in clauses (A), (B) and (C) above is not vacated, set aside or stayed within ninety (90) days from the date of entry thereof, or a stay thereof shall be thereafter set aside

#### **Section 18.2. Remedies.**

(a) Upon the occurrence of an Event of Default Landlord has such rights and remedies as may be available under this Lease, at law or in equity, including the right to seek damages, provided, however, that both parties waive any right to seek consequential, punitive, special or indirect damages.

(b) Notwithstanding any other provision of this Lease or applicable Laws to the contrary, Landlord may Terminate this Lease as a result of an Event of Default only if the following additional conditions have been satisfied:

(i) The Event of Default results or is likely to result in a material cost or liability to Landlord, or materially adversely affects Landlord's ability to operate Landlord's Facilities;

(ii) Landlord has given Tenant not less than thirty (30) days' notice stating its intention to terminate this Lease as of a date certain and identifying with reasonable specificity the cost, liability or adverse operational impact of the Event of Default on Landlord; and

(iii) Tenant has failed to cure the Event of Default or otherwise reasonably mitigate the effects of the Event of Default identified in Landlord's notice under clause (ii) above within the time period set forth in such notice.

If the foregoing conditions have been satisfied then Landlord shall have the right to terminate this Lease on not less than thirty (30) days' notice, provided that if within the period set forth in Landlord's notice the Event of Default is substantially cured or the effects identified in Landlord's notice under clause (ii) above have been reasonably mitigated then Landlord's notice of termination shall be deemed withdrawn and of no effect and this Lease shall continue in full force and effect.

(c) In addition to the other remedies in this Lease, the parties shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions, terms, agreements, provisions or limitations of this Lease as though any other remedies were not provided for in this Lease.

## ARTICLE 19

### Notices

**Section 19.1. Notices.** Any notice, request, demand, statement, authorization, approval or consent made hereunder must be in writing and shall be hand delivered or sent by Federal Express, or other reputable courier service, or by postage pre-paid registered or certified mail, return receipt requested. Notice under this section will be deemed given (i) when received at the following addresses if hand delivered or sent by Federal Express, or other reputable courier service, and (ii) three (3) business days after being postmarked and addressed as follows if sent by registered or certified mail, return receipt requested:

to Landlord at:

PacifiCorp  
825 Northeast Multnomah Street  
Suite 2000  
Portland, Oregon 97232  
Attention President or Chief Executive Officer

with a copy (which shall not constitute notice) to:

PacifiCorp  
825 Northeast Multnomah Street

Suite 2000  
Portland, Oregon 97232  
Attention: Dustin Till

to Tenant at:

Klamath River Renewal Corporation  
2001 Addison Street  
Suite 300, Office 317  
Attention: Chief Executive Officer

with a copies (which shall not constitute notice) to:

Water and Power Law Group PC  
2140 Shattuck Avenue, Ste. 801  
Berkeley, CA 94704-1229  
Attention: Richard Roos-Collins

**Section 19.2. Change of Notice Addresses.** Either party may from time to time designate by notice in writing, given in the manner specified in Section 19.1, a new or other address to which such notice or demand must be given or made

## ARTICLE 20

### Quiet Enjoyment

**Section 20.1. Quiet Enjoyment.** Landlord covenants and agrees that, so long as no Event of Default has occurred and is continuing, Tenant shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Lease without hindrance or molestation, subject, however, to Permitted Encumbrances and the terms, conditions and reservations of this Lease.

## ARTICLE 21

### Condition of the Premises

**Section 21.1. Condition of Premises.** Tenant represents that the Premises, including the existing structures and facilities, and the present uses and nonuses thereof, have been examined by Tenant and that Tenant shall accept the same "AS IS" on the Term Commencement Date except as provided in Article 22. Prior to entering into this Lease Tenant has made, or caused to be made, such examinations and reviews of the Premises, the operations thereof, the income and expenses thereof and all other matters of every kind whatsoever relating to this transaction as Tenant has deemed to be necessary or desirable.

**Section 21.2. No Representations By Landlord or Reliance By Tenant.** Tenant has entered into this Lease based solely on the results of its own examinations and reviews and has not been induced by, and is not relying upon, any representations, warranties or statements (written or oral, express or implied) made, or materials furnished, with respect to the Premises by Landlord or any agent, employee or representative of Landlord, or any broker or other person purporting to be acting on Landlord's behalf or with Landlord's knowledge, which are not expressly set forth in this Lease.

## ARTICLE 22

### Hazardous Materials

**Section 22.1. Tenant's Obligations Regarding Hazardous Materials.** Tenant shall not, and shall not permit any Person to, use, handle, store, generate, manufacture, transport, discharge, or release any Hazardous Materials in, on or under the Premises except in substantial compliance with Legal Requirements. Tenant shall promptly notify Landlord (including oral notification in the event of an emergency) of any event or circumstance relating to Hazardous Materials on, in, under or otherwise affecting the Premises that fails to comply with or requires or may require remediation or any other response under Environmental Laws or any other Legal Requirement. In addition, promptly after receipt, Tenant shall notify Landlord, and provide copies, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to non-compliance with Environmental Laws at the Premises or the use, storage, handling, transportation, disposal, or release of Hazardous Materials in, on or under the Premises by Tenant or a Person which is in violation of Legal Requirements. To the extent required by Legal Requirements, but subject to Section 22.2 below, Tenant shall, at its sole cost, promptly clean up, remove and otherwise fully remediate, in compliance with all Legal Requirements, any Hazardous Materials situated in, on, under or otherwise affecting the Premises. Tenant shall maintain and provide to Landlord copies of all documentation required under Legal Requirements relating to any Hazardous Materials or other substances removed from the Premises and disposed of off of the Premises.

**Section 22.2. Pre-Existing Conditions.** Notwithstanding the foregoing provisions of this Article 22, for all purposes under this Lease Landlord, rather than Tenant, shall remain responsible for any Pre-Existing Conditions and Tenant shall have no responsibility or liability in respect thereof. Upon written notice of any Pre-Existing Condition requiring remediation or any other response Landlord shall promptly, in consultation with Tenant, and at Landlord's sole cost, clean up, remove and otherwise fully remediate, in compliance with all Legal Requirements, any such Hazardous Materials situated in, on, under or otherwise affecting the Premises. Landlord shall maintain and provide to Tenant copies of all documentation required under Legal Requirements relating to any Hazardous Materials or other substances removed from the Premises. Landlord shall perform any such remediation in such manner as will minimize any interference with or disruption of Tenant's construction, operation and maintenance of the Hatchery Facilities

## ARTICLE 23

### Entry on Premises by Landlord

**Section 23.1. Landlord's General Right of Entry.** Tenant shall permit Landlord and its authorized representatives to enter the Premises at all reasonable times for the purpose of (a) inspecting the same, and (b) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or commence such work within sixty (60) days after written notice from Landlord or without notice in case of an emergency posing an immediate threat of material loss, damage or injury to Persons or the Premises. Nothing herein shall create or imply any duty upon Landlord to make any such repairs or do any such work, and performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord will exercise its right of entry in a manner that minimizes any interference with Tenant's use, occupancy, and operation of the Premises.

**Section 23.2. Landlord's Right of Entry in Connection With Landlord's Facilities.** Landlord reserves the right to enter or cross the Premises at any time and for any purpose related to Landlord's or Landlord's agent's management of Landlord's Facilities. Landlord shall, and shall cause its

agent to, exercise such right of entry in a manner that avoids any adverse effect on the Hatchery Facilities or the construction or operation thereof.

## ARTICLE 24

### Representations and Warranties

**Section 24.1. Tenant's Representations.** Tenant represents and warrants to Landlord as of the date hereof that:

- (a) it is a validly existing California nonprofit corporation;
- (b) it has the legal power and authority to enter into and perform this Lease;
- (c) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Lease by Tenant;
- (d) this Lease constitutes a legal, valid, and binding obligation of Tenant, enforceable in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws respecting the rights of creditors or the application of general principles of equity;
- (e) the individual signing this Lease on behalf of Tenant is authorized and empowered to execute and deliver this Lease on behalf of Tenant; and
- (f) Landlord is not prohibited from entering into this Lease pursuant to the Patriot Act.

**Section 24.2. Landlord's Representations.** Landlord represents and warrants to Tenant as of the date hereof that:

- (a) it is a validly existing Oregon corporation;
- (b) it has the legal power and authority to enter into and perform this Lease;
- (c) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Lease by Landlord;
- (d) this Lease constitutes a legal, valid, and binding obligation of Landlord, enforceable in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws respecting the rights of creditors, general principles of equity;
- (e) the individual signing this Lease on behalf of Landlord is authorized and empowered to execute and deliver this Lease on behalf of Landlord;
- (f) Landlord is the sole owner in fee simple of the Premises;
- (g) to Landlord's knowledge after reasonable inquiry, the Premises are not subject to any liens, encumbrances or judgments except Permitted Encumbrances; and
- (h) Tenant is not prohibited from entering into this Lease pursuant to the Patriot Act.

**Section 24.3. No Other Representations.** Landlord and Tenant agree that except as expressly contained in this Lease, no representations, statements or warranties, express or implied, have been made by or on behalf of Landlord or Tenant in respect of the Premises, and that neither Landlord nor Tenant has relied on any such representations, statements or warranties.

## ARTICLE 25

### Broker

**Section 25.1. No Broker.** Each party covenants, warrants and represents to the other that it has dealt with no broker in connection with the negotiation or execution of this Lease and each party agrees to indemnify and hold harmless against any claims for brokerage commissions of any kind or nature which are based in any way on any breach of the foregoing representation.

## ARTICLE 26

### Emergencies

**Section 26.1. Tenant's Obligation in the Event of an Emergency.** Tenant shall promptly respond, at its sole cost and expense, in a commercially reasonable manner to conditions arising at the Premises that pose imminent and material threats to persons or property so as to avoid or mitigate the occurrence of injury to persons or damage to any property of Landlord, provided that if such conditions arise as a result of acts or omissions of Landlord relating to Landlord's Facilities or otherwise then Tenant's sole obligations shall be to notify Landlord of such conditions and to take commercially reasonable measures to temporarily stabilize such conditions and Landlord shall promptly reimburse Tenant for all costs and expenses reasonably incurred. If Tenant fails to timely respond to such conditions then Landlord may, upon not less than five (5) days prior notice, enter upon the Premises and address the applicable conditions, in which case Tenant shall reimburse Landlord for the reasonable costs and expenses incurred in doing so, except as provided in the preceding sentence. And Section 26.2.

**Section 26.2. Landlord's Obligation in the Event of an Emergency.** Landlord shall promptly respond, at its sole cost and expense, in a commercially reasonable manner to conditions for which it is responsible under Section 26.1 and shall do so in a manner that minimizes any adverse effect on the Premises or interference with Tenant's operations. If Landlord fails to timely respond to such conditions then Tenant may, upon not less than five (5) days prior notice, enter upon Landlord's Facilities and address the applicable conditions, in which case Landlord shall promptly reimburse Tenant for the reasonable costs and expenses incurred in doing so.

## ARTICLE 27

### Miscellaneous Provisions

**Section 27.1. Integration of Agreement.** This Lease contains all the promises, agreements, conditions and understandings between Landlord and Tenant relative to the grant by Landlord to Tenant of a leasehold interest in the Premises and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implied, relating thereto between them other than as set forth in this Lease.

**Section 27.2. Waivers and Amendments Must Be In Writing.** No failure by Landlord or by Tenant to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy hereunder, and no acceptance by Landlord of

full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Landlord or by Tenant, and no breach thereof, may be waived, altered or modified except by a written instrument executed and acknowledged by and delivered to Landlord and Tenant. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**Section 27.3. Governing Law.** This Lease and the performance thereof shall be governed, interpreted, construed and regulated by California law (without giving effect to California conflict of law principles).

**Section 27.4. Dispute Resolution.** In the event of any dispute arising under this Lease, the parties shall first attempt to resolve the matter through direct negotiation between the representatives of the parties. If the representatives are unable to resolve the issue within ten (10) days after presentation of the dispute, then the parties hereby agree to binding arbitration. Such arbitration shall be in accordance with the rules and procedures of the American Arbitration Association (AAA). Notwithstanding any AAA rules and procedures or any other provisions or any state or federal laws, the parties agree that the arbitrators shall not consider or award punitive, consequential, special or indirect damages as a remedy. Either party may request that AAA provide the parties a list of arbitrators each of whom have experience and expertise with respect to construction or fish hatchery operations, as applicable. Upon each of the party's receipt of such list, each party shall have ten (10) days to select an arbitrator. The two selected arbitrators shall then select a similarly qualified third arbitrator within thirty (30) days from the date the initial two arbitrators were selected and the matter subject to arbitration shall be arbitrated within sixty (60) days after the selection of the third arbitrator

**Section 27.5. Captions For Convenience Only.** The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

**Section 27.6. Table of Contents For Convenience Only.** The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as a part of the Lease or supplemental thereto or amendatory thereof.

**Section 27.7. Negotiated Document.** The provisions of this Lease were fully negotiated by Tenant and Landlord, each of whom was represented by competent counsel, and this Lease shall not be construed for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

**Section 27.8. Severability of Provisions.** Each of the provisions of this Lease shall be enforceable independently of any other provision of this Lease and independent of any other claim or cause of action. If any term or provision of this Lease, or portion thereof, or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

**Section 27.9. Successors and Assigns; Assumption of Obligations.** The covenants, conditions and agreements of this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective permitted successors and assigns, each of whom shall be deemed to have assumed this

Lease and Landlord's or Tenant's respective obligations hereunder, as the case may be, without any further act or the delivery of any further instruments by Landlord or Tenant, as applicable. Without impairing the self-operative nature of the foregoing, any such successor or assign shall, if requested by the other party, promptly execute and deliver to the requesting party a written instrument in recordable form confirming its assumption of this Lease and of the terms, conditions and obligations hereunder.

**Section 27.10. Force Majeure.** In the event either party is prevented from timely performing any of its obligations under this Lease by reason of extreme weather, acts of God, terrorism, acts of war, civil unrest, labor strikes, national or regional shortages, any event as to which a state of emergency has been declared by a Governmental Authority, changes in Legal Requirements or any other occurrence or circumstance beyond such party's reasonable control, then such party shall be excused from performance provided that such party (i) timely notifies the other party of the circumstance or occurrence preventing such party's performance and (ii) endeavors diligently and in good faith to eliminate or mitigate the effect of such occurrence or circumstance. In no event will force majeure operate to excuse Tenant from prompt payment of Rent or any other payment required by the terms of this Lease.

**Section 27.11. References to Days.** Provisions in this Lease relating to number of days shall be calendar days.

**Section 27.12. No Partnership or Joint Venture.** Notwithstanding any other provision of this Lease, Landlord is not for any purpose a partner or joint venturer of Tenant in the construction of any Improvements or the operation of the Premises. Landlord shall not under any circumstances be responsible or obligated for any losses or liabilities of Tenant.

**Section 27.13. Counterparts; PDFs.** This Lease may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed counterpart signature page delivered in Portable Document Format (PDF) or by telecopier shall be as effective as an original signature page.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



IN TESTIMONY WHEREOF, the parties have hereunto caused their respective duly authorized representatives to execute and deliver this Lease as of the day and year first hereinabove written.

**PACIFICORP,**  
Landlord

By: \_\_\_\_\_  
Name:  
Title:

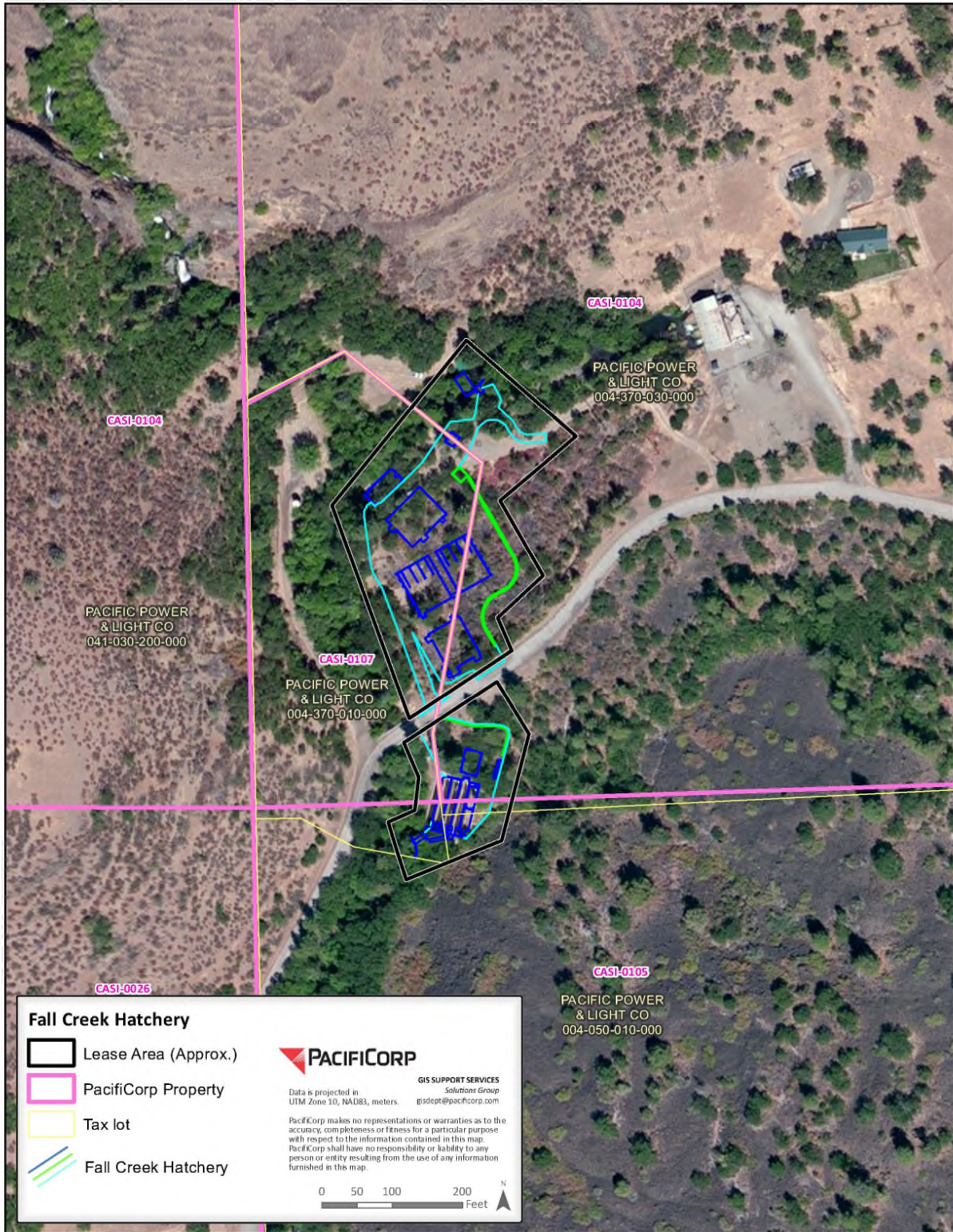
**KLAMATH RIVER RENEWAL CORPORATION,**  
Tenant

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

(Description of Premises)

[See Attached Map]



12/07/2020 p36722 G:psdept@pacifiCorp.com U:\Projects\2020\20-319\Fall Creek Hatchery.mxd

**EXHIBIT B**

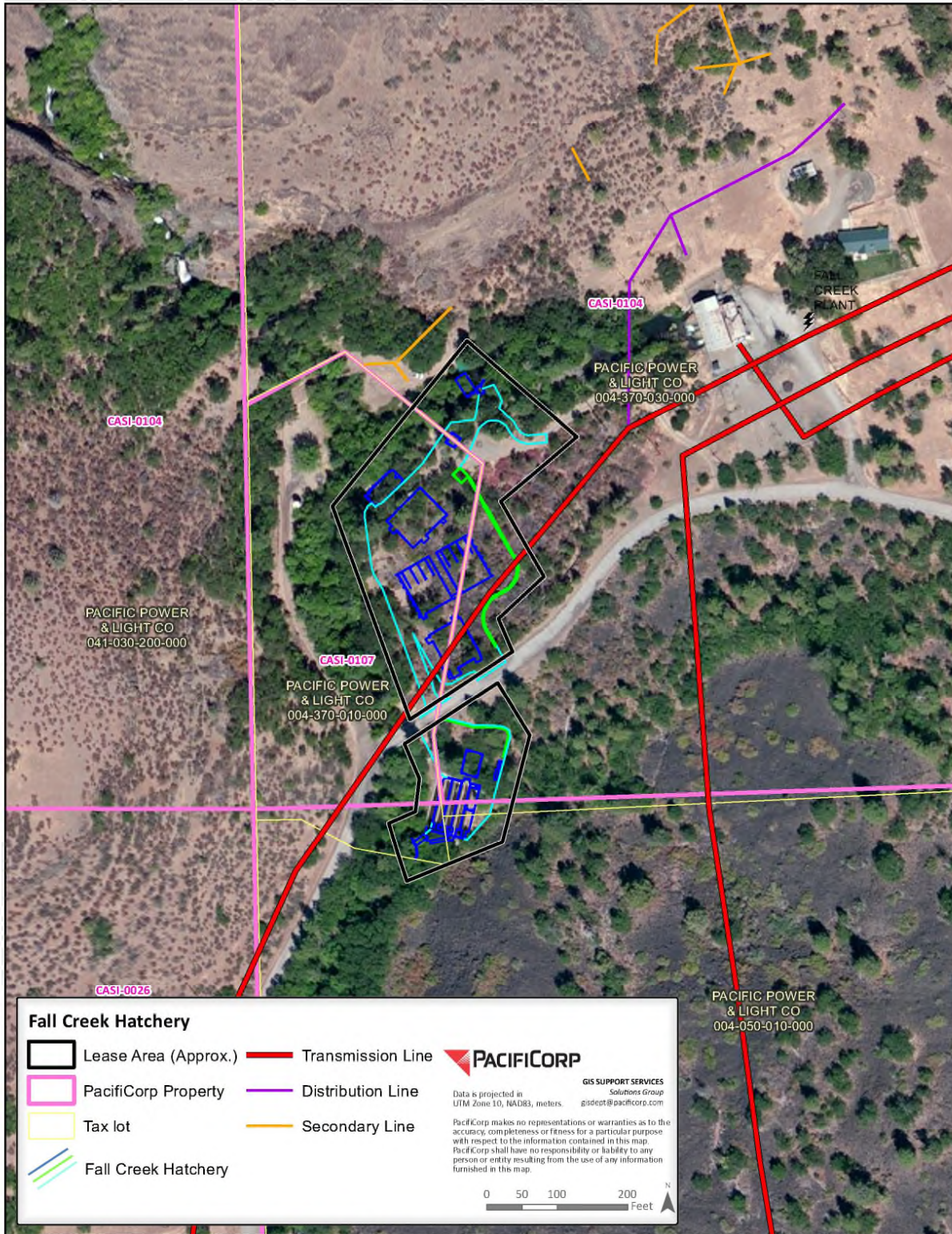
(Permitted Encumbrances)

*[[Will be based on title report to be provided by PacifiCorp; will generally include such matters as do not impose any liability, restriction or expense on KRRC or any successor as lessee or on the development and operation of a fish hatchery as contemplated by the Definite Plan]]*

**EXHIBIT C**

**Landlord's Facilities**

[See Attached Map]



12/17/2020 p36722 G:edep@pacifiCorp.com U:\Projects\2020\20-319\Fall Creek Hatchery.mxd

**EXHIBIT D**  
**Hatchery Facilities Design**

[See Attached]





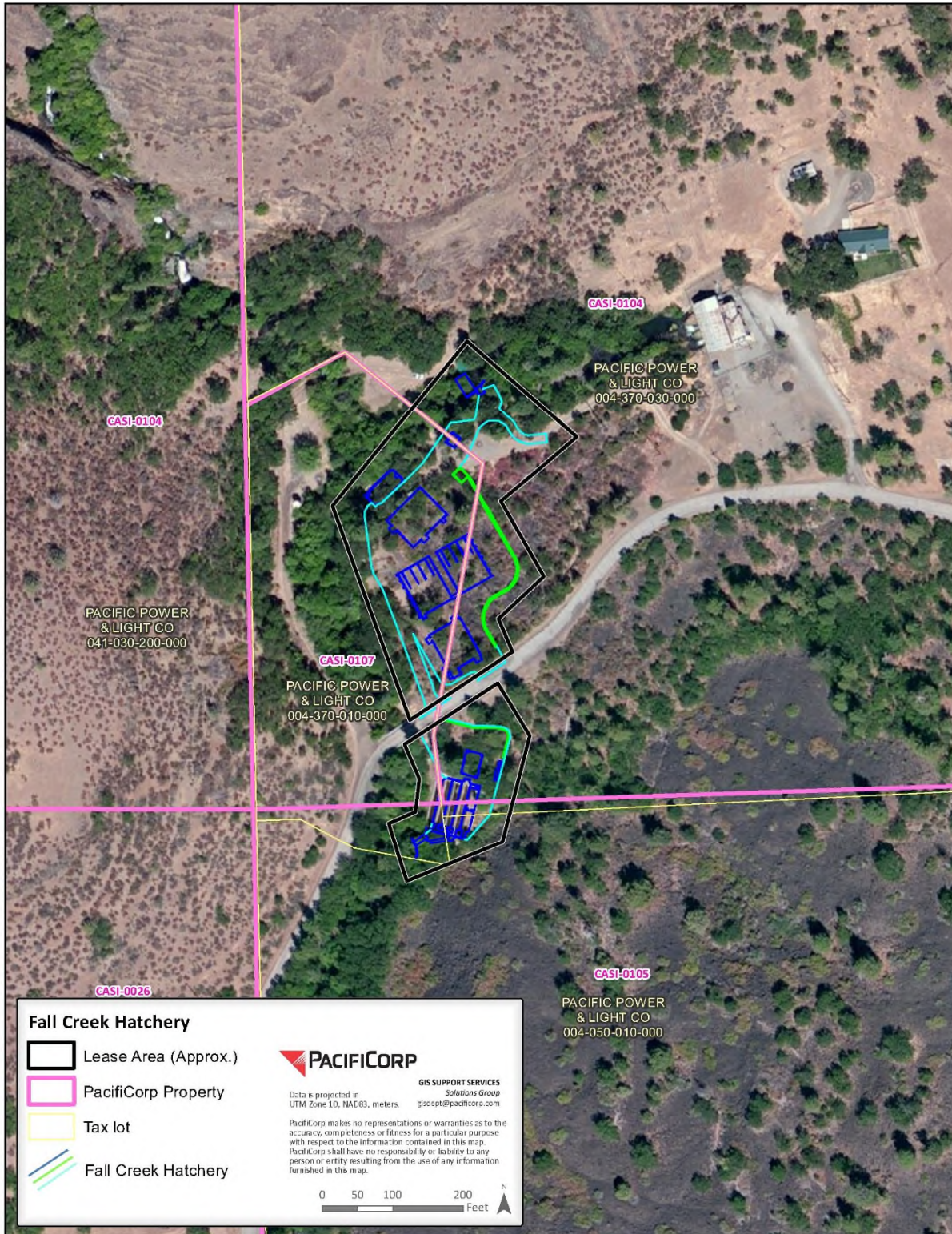
## **EXHIBIT E**

### **Hatchery Decommissioning Requirements**

- Secure the property
  - Ensure chain link fencing is in an appropriate condition to deter trespassing.
  - Cease water diversions and secure access to associated water control structures.
  - Remove non-permanent equipment such as fiberglass troughs, egg trays, screens, etc.
  - Disconnect electricity to potentially dangerous equipment (e.g. anesthetize tank).
- Remove human health and safety and environmental hazards from the property
  - Remove all flammable materials and the associated equipment that uses them (e.g. propane tanks, generators (including non-portable ones).
  - Remove all fish health chemicals (e.g. hydrogen peroxide, etc.)
  - Remove all fish food from the property and other items that could lead to water quality or environmental issues.
  - Clean and dispose of settling basin materials (e.g. solid waste).
  - Clean all raceways and other areas of the property of that could lead to water quality issues.
- Remove attractive nuisances
  - Remove items that are visible from public spaces (e.g. road) that could lead to increase trespass/vandalism issues (e.g. scrap metal).

**EXHIBIT E**  
**DESCRIPTION OF FALL CREEK LAND**

[See Attached Map]



12/01/2020 p36722 G:\dept@pacificcorp.com U:\Projects\2020\319\Fall Creek Hatchery.mxd

**EXHIBIT F**  
**FORM OF POST-CLOSING ENVIRONMENTAL RESOLUTION AGREEMENT**

DRAFT 1/7/21

## EXHIBIT F

### POST-CLOSING ENVIRONMENTAL RESOLUTION AGREEMENT

This Post-Closing Environmental Resolution Agreement (this “**Agreement**”) is entered into as of the \_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”) between and among PACIFICORP, an Oregon corporation (“**PacifiCorp**”), KLAMATH RIVER RENEWAL CORPORATION, a California nonprofit corporation (“**KRRC**”), the STATE OF CALIFORNIA (“**California**”), and the STATE OF OREGON (“**Oregon**”; Oregon and California being referred to individually as a “**State**” and collectively as the “**States**”).

### RECITALS

A. PacifiCorp, KRRC and the States are parties to the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as amended on April 6, 2016, and as it may have been thereafter or may hereafter be amended (the “**KHSA**”) and to a certain Memorandum of Agreement, dated November 17, 2020 (the “**MOA**”);

B. PacifiCorp and KRRC are parties to a certain Property Transfer Agreement, dated \_\_\_\_\_ (the “**PTA**”);

C. This Agreement is entered into pursuant Section 3.5(c) of the PTA in connection with and as a condition of the Closing in order to provide for the Retained Environmental Obligations (as such terms are defined in the PTA);

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

### SECTION 1. DEFINITIONS; CONSTRUCTION

**Section 1.1. Definitions.** Capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed to such terms in the PTA.

**Section 1.2. Construction.** Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

(a) Words importing the singular number include the plural number and vice versa.

(b) All references to particular articles or sections without reference to a specific document are references to articles or sections of this Agreement.

(c) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement in its entirety and not the particular article or section of this Agreement in which they appear. The term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement.

(d) The word “including” and words of similar import mean “including but not limited to.”

(e) All references in this Agreement to any other document, agreement or instrument mean such document, agreement or instrument as it may be amended, modified, supplemented or restated.

(f) All exhibits, attachments and appendices to this Agreement, including any amendments and supplements thereto, are hereby incorporated into and made a part of this Agreement.

## **SECTION 2. RESOLUTION OF RETAINED ENVIRONMENTAL OBLIGATIONS**

**Section 2.1. Existence of Retained Environmental Obligations.** The parties acknowledge and agree that attached as Exhibit A is PacifiCorp’s report pursuant to Section 3.5(b) of the PTA setting forth the parties’ understanding of the Retained Environmental Obligations.

### **Section 2.2. Resolution of Retained Environmental Obligations.**

(a) PacifiCorp shall cause all Retained Environmental Conditions to be resolved, at its sole cost and expense, to the reasonable satisfaction of KRRC in consultation with the respective States. Such reasonable satisfaction shall be documented in a mutually agreeable form acceptable to the States.

(b) In discharging its obligations under this Section 2.2 and prior to commencing any activity to implement its proposed resolution of a condition, PacifiCorp shall provide to KRRC and the States, as to each Retained Environmental Condition, a written report containing a reasonably detailed description of:

- (i) its efforts to assess the scope of the condition,
- (ii) the results of such efforts,
- (iii) its proposed approach to resolving the condition,
- (iv) the legal and regulatory requirements applicable to the condition and the compliance of the proposed approach with such requirements, including any regulatory approvals required to be obtained,
- (v) any obligations or limitations relating to such approach that would survive the proposed resolution, including monitoring or institutional controls, and any effect they would have on the design or implementation of the Definite Plan and on the prospective uses of the Real Property following Facilities Removal as anticipated by the KHSA, and

- (vi) PacifiCorp's proposed schedule for performing any work, making any required regulatory filings, and receiving any required regulatory approvals.

PacifiCorp shall update such reports from time to time so that they remain accurate, shall promptly notify KRRC and the States of any Retained Environmental Conditions arising subsequent to the effective date of Exhibit A, and shall generally keep the States and KRRC apprised of its progress. KRRC and the States shall have the right to observe and inspect any remediation work and to review any lab results. In the event KRRC or the States reasonably requests any additional information from time to time or notifies PacifiCorp of any objections or concerns regarding any report, including its completeness or the proposed resolution of a condition, PacifiCorp shall address such request, objection or concern to the reasonable satisfaction of KRRC and the States. No Retained Environmental Conditions shall be resolved in a way that would (i) impose any subsequent obligation or limitation on KRRC or that would materially adversely affect the design or implementation of the Definite Plan without the prior written consent of KRRC, or (ii) impose any subsequent obligation or limitation upon the States or the prospective uses of the Real Property following Facilities Removal as anticipated by the KHSAs without the prior written consent of the States.

(c) PacifiCorp acknowledges that KRRC is obligated to transfer the property affected by the Retained Environmental Obligations to the States following completion of Facilities Removal and agrees to cause all Retained Environmental Obligations to be resolved in accordance with this Agreement prior to the date upon which such transfer is to occur. In the event the foregoing transfer occurs prior to the completion of its obligations under this Agreement, PacifiCorp's obligations shall not be affected and shall continue until all such obligations have been performed.

**Section 2.3. Cooperation and Coordination.** The parties acknowledge that KRRC will commence Facilities Removal as of the Effective Date and that PacifiCorp's performance of its obligations under this Agreement must be coordinated with KRRC's performance of its obligations under the KHSAs relating to Facilities Removal, including restoration and mitigation activities and any other requirements of the Definite Plan and any Removal Permits, without causing KRRC to incur material delays or additional expenses. The parties shall timely communicate and cooperate in order to facilitate such coordination.

### **SECTION 3. MISCELLANEOUS**

**Section 3.1. Representations and Warranties As To Authority.** Each party represents as and warrants to the others that (a) it is a duly formed and validly existing entity, (b) it is authorized to conduct business in the locations it operates for purposes of this Agreement, (c) it has the requisite entity power and authority to enter into this Agreement and perform its obligations hereunder, (d) it is duly authorized to enter into this Agreement and perform its obligations hereunder, (e) execution, delivery and performance of its obligations under this Agreement does not contravene any law, regulation or agreement by which it or its property is bound, nor require the consent of any other person, entity or governmental authority, (f) the individual executing this Agreement on its behalf is authorized to do so and to thereby bind such party, and (g) upon execution and delivery of this Agreement it constitutes the legal, valid and binding obligation of

such party, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, creditors' rights generally or other equitable principles.

**Section 3.2. Notices.**

(a) Any notice, request, demand, statement, authorization, approval or consent made hereunder must be in writing and shall be hand delivered or sent by Federal Express, or other reputable courier service, or by postage pre-paid registered or certified mail, return receipt requested to all parties. Notice under this section will be deemed given (i) when received at the following addresses if hand delivered or sent by Federal Express, or other reputable courier service, and (ii) three (3) business days after being postmarked and addressed as follows if sent by registered or certified mail, return receipt requested:

to PacifiCorp at:

PacifiCorp  
825 Northeast Multnomah Street  
Suite 2000  
Portland, Oregon 97232  
Attention President or Chief Executive Officer

with a copy (which shall not constitute notice) to:

PacifiCorp  
825 Northeast Multnomah Street  
Suite 2000  
Portland, Oregon 97232  
Attention: Dustin Till

to KRRC at:

Klamath River Renewal Corporation  
2001 Addison Street  
Suite 300, Office 317  
Attention: Chief Executive Officer

with a copies (which shall not constitute notice) to:

Water and Power Law Group PC  
2140 Shattuck Avenue, Ste. 801  
Berkeley, CA 94704-1229  
Attention: Richard Roos-Collins

to the State of California at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



with a copy (which shall not constitute notice) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

to the State of Oregon at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy (which shall not constitute notice) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Any party may from time to time designate by notice in writing, given in the manner specified in Section 3.2(a), a new or other address to which such notice or demand must be given or made.

**Section 3.3. Common Interest Defense Agreement.** The parties acknowledge and agree that to the extent that this Agreement or any information shared pursuant to this Agreement is confidential or privileged it is the intent of the parties that such information is protected from disclosure by any confidentiality and common interest defense agreements that the parties have entered into in connection with the KHSAs.

**Section 3.4. Integration of Agreement.** This Agreement contains all the promises, agreements, conditions and understandings between the parties relative to the matters provided for herein and, except as provided in the KHSAs, MOA, PTA or any other agreement expressly referenced in this Agreement there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implied, relating thereto between them relating to the Transactions other than as set forth in this Agreement.

**Section 3.5. Waivers and Amendments Must Be In Writing.** No failure by any party to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Agreement or to exercise any right or remedy hereunder, and no acceptance by any party of full or partial performance by another party during the continuance of any such breach, will constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Agreement to be kept, observed or performed by any party, and no breach thereof, may be waived, altered or modified except by a written instrument executed and acknowledged by and delivered to each party. No waiver of any breach will affect or alter this Agreement, but each and every term, covenant, agreement, provision, condition and limitation of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**Section 3.6. Negotiated Document.** The provisions of this Agreement were fully negotiated by the parties, each of whom was represented by competent counsel, and this Agreement will not be construed for or against any party, but will be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

**Section 3.7. Severability of Provisions.** If any term or provision of this Agreement, or portion thereof, or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby and each term and provision of this Agreement will remain valid and enforceable to the fullest extent permitted by law.

**Section 3.8. Successors and Assigns; Assumption of Obligations.** The covenants, conditions and agreements of this Agreement, will bind and inure to the benefit of the parties and their respective permitted successors and assigns, each of whom will be deemed to have assumed this Agreement and the applicable party's respective obligations hereunder, as the case may be, without any further act or the delivery of any further instruments by any party. Without impairing the self-operative nature of the foregoing, any such successor or assign will, if requested by another party, promptly execute and deliver to the requesting party a written instrument in recordable form confirming its assumption of this Agreement and of the terms, conditions and obligations hereunder.

**Section 3.9. Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by California law (without giving effect to California conflict of law principles), except that matters inherently relating to property located in Oregon, such as determination of whether an instrument is in recordable form, as opposed to matters of general contractual interpretation, shall be governed by Oregon law.

**Section 3.10. Waiver of Jury Trial; Arbitration in California.** To the fullest extent permitted by law each of the parties waives any right it may have to trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this Agreement. Each party further waives any right to consolidate, or to request consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. To the extent that a dispute arises in California, or is to be heard in a California court of general jurisdiction, and the foregoing jury waiver is not enforceable then the dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Section 3.11. Third Party Beneficiaries.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons.

**Section 3.12. Counterparts; PDFs.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed counterpart signature page delivered in

Portable Document Format (PDF) or by telecopier shall be as effective as an original signature page.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto caused their respective duly authorized representatives to execute and deliver this Agreement as of the Effective Date.

**PACIFICORP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KLAMATH RIVER RENEWAL CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF OREGON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF CALIFORNIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**RETAINED ENVIRONMENTAL OBLIGATIONS**

**EXHIBIT G**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**Between and Among**

**PACIFICORP, as Assignor**

**and**

**KLAMATH RIVER RENEWAL CORPORATION,  
as Assignee**

**Dated as of \_\_\_\_\_**

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) dated as of \_\_\_\_\_, between PACIFICORP, an Oregon corporation (“Assignor”) and KLAMATH RIVER RENEWAL CORPORATION, a California nonprofit corporation (“Assignee”).

### **BACKGROUND**

A. Assignor and Assignee have entered into a certain Property Transfer Agreement dated as of \_\_\_\_\_, (the “PTA”) providing for the transfer by Assignor to Assignee of certain personal property, all as more particularly provided for therein;

B. Among the property to be transferred pursuant to the PTA are certain leases and other agreements to which Assignor is a party, each of which is more particularly described in Schedule A annexed hereto and made a part hereof (the “Assigned Agreements, Contracts and Appurtenances”);

C. The parties are this day closing the transactions contemplated under the PTA; and

D. Capitalized terms used but not defined in this Agreement (including the Schedule hereto) shall have the respective meanings ascribed to such terms in the PTA;

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignors, each as to itself, and Assignee hereby covenant and agree as follows:

1. **Assignment.** Assignor hereby grants, assigns, conveys, transfers and sets over to Assignee, its successors, heirs and assigns, all of Assignors’ respective rights, title and interests with respect to the Assigned Agreements, Contracts and Appurtenances.

2. **Acceptance and Assumption.** Assignee hereby accepts the foregoing grant, assignment, conveyance and transfer of Assignors’ interests in the Assigned Agreements, Contracts and Appurtenances, and hereby assumes and agrees to pay, perform, observe, discharge and otherwise be bound by all of the respective duties and obligations of Assignors under the Assigned Agreements, Contracts and Appurtenances arising on or after the date hereof.

3. **PacifiCorp Easements.** Where PacifiCorp’s utilization of any PacifiCorp Easement as contemplated by the terms thereof so requires, any assignment hereunder shall be subject to the PacifiCorp’s retention and use of the applicable PacifiCorp Easement.

4. **Water Rights.** The assignment herein of Assignor’s water rights is subject to Section 7.6.5 of the KHSAs, the requirements of which shall survive this assignment.

5. **Subject to PTA.** This Agreement is being delivered pursuant to, and is subject in all respects to, the terms and conditions of the PTA. This Agreement, and such provisions of the PTA as survive the Closing thereunder, embody and constitute the entire



understanding between the parties with respect to the transactions contemplated hereby, and all prior or other agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

4. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument.

*[Signatures appear on the following page.]*

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written.

**PACIFICORP, Assignor**

By: \_\_\_\_\_  
Name:  
Title:

**KLAMATH RIVER RENEWAL CORPORATION, Assignee**

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE A

### Assigned Agreements, Contracts and Appurtenances

#### 1. Use and Possession Agreements

All leases, licenses and other occupancy agreements relating to any land owned by any person other than Assignor but leased to or otherwise occupied or used by Assignor in connection with the ownership or operation of the Facilities, including submerged lands and portions of the J.C. Boyle hydroelectric facility, including but not limited to:

- (a) State of Oregon Department of State Lands Lease for J.C. Boyle Dam (44581-HY) between the State of Oregon and PacifiCorp, dated June 23, 2011
- (b) Rights to use lands of the United States of America in connection with the Facilities pursuant to FERC License for Project 14803.

#### 2. Appurtenances

All easements, rights of way, licenses, privileges, strips, gores, rights and interests of any kind (including water, timber and mineral rights) appurtenant to or otherwise relating to the Real Property, including but not limited to:

- (a) Access and Easement agreement dated February 13, 2017 by County of Siskiyou to PacifiCorp, recorded in the records of Siskiyou County under Recorder's Series No. 2017-001728
- (b) Right of access to Copco 1 parcel reserved under deed from The California Oregon Power Company to Frank Lathrop, dated August 23, 1954, recorded in the records of Siskiyou County on September 8, 1954 at Vol. 336, Page 848
- (c) Easement for Ingress and Egress to The California Oregon Power Company, recorded in the land records of Klamath County, Oregon, on July 18, 1956, in Book 286, Page 550.
- (d) Right of access over lands of the United States of America in connection with the Facilities pursuant to FERC License for Project 14803.

#### 3. Service Contracts

- (a) *[[To be completed at time of property transfer]]*

#### 4. Licenses and Permits

All material certificates, licenses, permits, authorizations and approvals, that Assignor maintains as of the date hereof in connection with the ownership or operation of the Real Property, including but not limited to:

- (a) *[[See Schedule 7.2(d) Part B and Schedule 7.2(e)]]*
- (b)

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**EXHIBIT H-1**  
**FORM OF PACIFICORP RESERVATION OF EASEMENTS**

DRAFT 1/7/21

*[To be Attached to Parcel B Deeds]*

## RESERVATION OF EASEMENTS

PacifiCorp, an Oregon corporation, as “Grantor” hereby reserves, for itself and for its successors and assigns, the following perpetual easements (collectively, the “Easements”) in gross over and upon the respective portions of the Property described below (collectively, the “Easement Areas”). “Grantee” means the Klamath River Renewal Corporation, a California nonprofit corporation, and its successors and assigns. “Property” means the property conveyed by this deed.

### A. TRANSMISSION FACILITIES EASEMENT

Grantor reserves a non-exclusive easement (the “Transmission Facilities Easement”) over and upon the Transmission Facilities Easement Area, as defined below.

#### 1. Purpose.

The Transmission Facilities Easement is for the purpose of accessing, maintaining, operating, repairing, replacing, enlarging, reconstructing or removing Grantor’s Retained Transmission Facilities. “Retained Transmission Facilities” means the electrical transmission facilities retained by Grantor in connection with Grantor’s conveyance of the Property to Grantee, and includes, but is not limited to, transmission, distribution, service and other lines conducting electricity as well as related facilities (including but not limited to towers, poles, pads, guys, anchors, props, supports, transformers, switches, vaults, substations, communications facilities, fiber optic or other communications equipment, and any other improvements and facilities associated with or connected to or that aid in the management or function of such improvements and related facilities), and any replacement, enlargement, or reconstruction of the foregoing from time to time. The Transmission Facilities Easement includes the Grantor’s right to keep the Transmission Facilities Easement Area (as defined below) clear of all brush, trees, timber, structures, buildings and other hazards which might, in Grantor’s judgment, endanger the Retained Transmission Facilities or impede Grantors activities within the Transmission Facilities Easement Area. Grantor shall, at its sole cost and expense, maintain the Transmission Facilities Easement Area and the Retained Transmission Facilities in an orderly and safe condition and comply with all laws, including all regulatory, environmental, and safety requirements, applicable to Grantor and its activities under the Transmission Facilities Easement including the use and management of the Retained Transmission Facilities and the Transmission Facilities Easement Area.

#### 2. Transmission Facilities Easement Area.

The “Transmission Facilities Easement Area” is the physical location of the Retained Transmission Facilities as they exist on the date this deed is recorded, along with an additional area of one hundred (100) feet, measured on the surface of the Property from each side of the Retained Transmission Facilities. For illustrative purposes but not as a legal constraint on the establishment of the Transmission Facilities Easement Area boundaries, Easement Exhibit A reflects the approximate location of the Retained Transmission Facilities. Neither the installation of any new Retained Transmission Facilities, nor the repair, replacement, enlargement, or

reconstruction of, nor any other change to, any Retained Transmission Facilities existing on the date this deed is recorded shall increase the size or otherwise modify the boundaries of the Transmission Facilities Easement Area. Notwithstanding the foregoing, (a) the one hundred foot buffer area is modified to the extent shown on Easement Exhibit B, and (b) the Transmission Facilities Easement Area shall not include any underground facilities unless sufficiently marked to be reasonably ascertainable by visual surface inspection.

*[[NOTE: Exhibit A will be the final map attached as Schedule 3.1(b)(ii) to the Agreement. Exhibit B will be provided by PacifiCorp prior to Closing following KRRC and State feedback regarding Copco 1, Copco 2 and any other areas calling for Definite Plan work in close proximity to ongoing power operations or where for any other reason a 100 foot buffer is not feasible. KRRC to provide relevant feedback following receipt and review of final Exhibit A from PacifiCorp.]]*

3. Grantee Rights.

Grantee, its successors and its assigns, shall have the right to access and use the Transmission Facilities Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with Grantor's rights under this Transmission Facilities Easement. Prior to granting any use within the Transmission Facilities Easement Area, other than for public recreation, land management, and scientific uses, or for legally required joint use pursuant to Section A.4 below, the Grantee shall first seek the permission of Grantor and Grantor shall not unreasonably deny such permission.

4. Joint Use/Pole Attachments.

The Transmission Facilities Easement includes a reservation of the right to continue to permit third-party use of space on Grantor's Retained Transmission Facilities for communications equipment or fiber optic capacity or power utility purposes (Pole Attachment) that is in place on Grantor-owned poles at the time this deed is recorded and in response to any later application under Ca. Pub Util. Code § 9511 or ORS 755.270-290 and OAR 860-028-0020 through 860-028-0310 or similar law or regulation where Grantor is legally obligated to accommodate attachments to its facilities ("Pole Attachment Laws"). With regard to any new Pole Attachment permit or license granted by Grantor to third-parties, intended to be effective after the date of recording of this deed, Grantor shall condition such permit or license upon the applicant obtaining the prior express written permission of the Grantee. With regard to those Pole Attachment permits or licenses existing at the time of this grant the Grantor shall provide written notice to parties holding such permits or licenses that new access permissions are required from Grantee. Grantor's rights under this Section 4 are limited to its reserved Easement interest and nothing in this Easement authorizes Grantor to encumber Grantee's interest or to impose on Grantee any obligation or liability to any third party.

5. Restrictive Covenant.

At no time shall Grantee, its successors or assigns place, use or permit in the Transmission Facilities Easement Area any structure, equipment, or material of any kind that exceeds twelve (12) feet in height, nor shall it light any fires, nor place nor store any flammable materials in the Transmission Facilities Easement Area.



## B. EXCLUSIVE SUBSTATION EASEMENT

Grantor reserves an exclusive easement (the “Substation Easement”) over and upon the Substation Easement Areas, as defined below.

### 1. Purpose.

The Substation Easement is for the purpose of accessing, maintaining, operating, repairing, replacing, enlarging, reconstructing or removing Grantor’s Retained Substation Facilities. “Retained Substation Facilities” means the 230KV substation and the 115KV substation retained by Grantor from its conveyance of the Property to Grantee and located near Copco 2 in the respective Substation Easement Areas as defined below on the date this deed is recorded, and include, but are not limited to, transformers, conductors, switches, circuit breakers, underground grounding grids, lightning arresters, switches, busses, capacitors, control buildings, communications facilities and any other improvements and facilities associated with, connected to or that aid in the management or function of an electrical transmission or distribution substation, and any replacement, enlargement, or reconstruction of the foregoing from time to time. Grantor shall, at its sole cost and expense, maintain the Substation Easement Areas and the Retained Substation Facilities in an orderly and safe condition and comply with all laws, including all regulatory, environmental, and safety requirements, applicable to Grantor and its activities under the Substation Easement including the use and management of the Retained Substation Facilities and the Substation Easement Areas.

### 2. Substation Easement Areas.

The Substation Easement Areas are depicted and described on the [[surveys / maps / diagrams]] attached as Easement Exhibit C. Grantor shall maintain a demarcation of the perimeter of the Substation Easement Areas by fence or other methods sufficient to provide actual visual notice to third parties, provided that the Retained Substation Facilities shall each, in all events, be enclosed within secure fencing, except for the subsurface grounding grid, which need not be within a fenced area provided that it, and any subsurface connections to the fenced area, are adequately marked to provide actual visual notice to third parties.

### 3. Restrictive Covenant.

At no time shall Grantee, its successor or assigns place, use or permit in the Substation Easement Areas any overhead structure such as but not limited to the boom of construction cranes without the express written permission of Grantor.

## C. COMMUNICATIONS FACILITIES EASEMENT

Grantor reserves an exclusive easement (the “Communications Facilities Easement”) over and upon the Communications Facilities Easement Area, as defined below.

### 1. Purpose.

The Communications Facilities Easement is for the purpose of accessing, maintaining, operating, repairing, modifying, replacing, enlarging, reconstructing or removing Grantor’s Retained

Communications Facilities. “Retained Communications Facilities” means the communications equipment and related facilities retained by Grantor from its conveyance of the Property and located in the Communications Facilities Easement Area (as defined below) on the date this deed is recorded, and include but are not limited to, wires, cables, fiber optics, dishes, antennae, towers, electrical equipment, control sheds, or any other facilities intended for or in support of or associated with the sending or receiving of information, and any replacement, enlargement, or reconstruction of the foregoing from time to time. Grantor shall, at its sole cost and expense, maintain the Communications Facilities Easement Area and the Retained Communications Facilities in an orderly and safe condition and comply with all laws, including all regulatory, environmental, and safety requirements, applicable to Grantor and its activities under the Communications Facilities Easement including the use and management of the Retained Communications Facilities and the Communications Facilities Easement Area.

2. Communications Facilities Easement Area:

The Communications Facilities Easement Area is depicted and described on the map attached as Easement Exhibit D. Grantor shall maintain a demarcation of the perimeter of the Communications Facilities Easement Areas by fence or other methods sufficient to provide actual visual notice to third parties, provided that the Retained Communications Facilities shall, in all events, be enclosed within secure fencing.

3. Restrictive Covenant.

At no time shall Grantee, its successor or assigns place, use or permit in the Communications Facilities Easement Area any overhead equipment such as but not limited to the boom of construction cranes without the express written permission of Grantor.

4. Use of Communications Facilities Easement Area by Grantee.

Grantor shall use its best efforts to accommodate any request by Grantee or its contractors to utilize the Communications Facilities Easement Area, including a request to co-locate its equipment on the Retained Communications Facilities, provided that Grantor may impose such conditions or requirements as are reasonably necessary to comply with FCC requirements regarding interference and to comply with regulatory and standard industry requirements regarding cybersecurity.

D. GENERAL PROVISIONS

1. Access.

The Easements reserved hereby include the right of ingress and egress for Grantor, its contractors, or agents, to the Retained Facilities and the applicable Easement Areas for all purposes for which the respective Easements are reserved. “Retained Facilities” means the Retained Transmission Facilities, the Retained Substation Facilities and the Retained Communications Facilities, collectively or individually as the context requires.

a. Primary Routes. The primary access routes shall be the routes that exist on the date this deed is recorded and as are depicted on Easement Exhibit E, provided that

Grantee may modify any existing roads from time to time, including their route, as long as Grantor's ability to reasonably access the Easement Areas is not materially impaired.

b. Alternative Routes. If at any time a primary route is impassible or unsafe for any reason other than Grantee's work to modify or use such route, then Grantor may, at its sole cost and expense, establish and utilize an alternative route on Property as set forth below.

i. Grantee's Modification or Use. Prior to Grantee's modification or use of a primary route that materially impacts Grantor's ability to utilize such route the Grantee shall establish at Grantee's cost and expense an alternative route for Grantor to use. Such alternative route shall be of comparable quality to that route otherwise impacted.

ii. Establishment of Alternative Routes. Prior to establishing or using an alternative route, Grantor will acquire permission from Grantee for such use or establishment if the need for access is routine, and Grantee shall not unreasonably deny such permission. If the impassibility or unsafe condition of the primary access route is cured then Grantor shall promptly resume utilization of the primary access route. Grantor shall reasonably restore the alternative routes to the same condition prior to use. However, Grantor shall have no obligation to restore the alternative route if the impassibility or unsafe condition of the primary access route was primarily due to acts or uses by parties other than Grantor.

iii. Emergencies: Notwithstanding any other provision of the Easements, Grantor shall have the right to respond promptly and appropriately to any emergency relating to any Easement Area or Retained Facilities, including the removal of Danger Trees outside an Easement Area or access over the Property by means other than primary access routes. Grantor shall use reasonable efforts to notify Grantee as promptly as practicable under the circumstances of such emergency access or removal of Danger Trees. The foregoing express right of emergency response shall not relieve Grantor of responsibility for any damage or other liabilities arising in connection with any emergency, including damage resulting from using alternative routes of access to any Easement Area. For purposes of establishing alternative routes of access the term "emergency" means a non-routine need to prevent compromise in the reliability of electrical power delivery or to prevent or to respond to any safety issue or to prevent or respond to forest fire. "Emergency" includes but is not limited to such occurrences as extreme weather conditions, fire, flood, earthquake, or downed power line. A Danger Tree" is one that poses a threat of fire by way of potential contact with a Retained Facility.

c. Road Maintenance and Repair. Grantee shall reasonably repair damage to access routes caused by the implementation of the Definite Plan, as that term is defined in the Klamath Hydroelectric Settlement Agreement. Grantor shall repair, or may be invoiced by Grantee for its repair of, damage to an access route when such damage is caused by Grantor or its agents. At no time shall any dispute over payment for repair costs be the

basis for denial of Grantor's access rights. The parties acknowledge that there is no general requirement to maintain access routes.

d. Remote-Controlled Vehicles. Grantor may also utilize remote-controlled, including aerial, vehicles to access and inspect its Retained Facilities. Grantor shall not use remote-controlled vehicles outside of an Easement Area or access routes except with written permission from Grantee. With regard to the use of remote controlled aerial vehicles by Grantor for inspection of Retained Facilities, for purposes of any portion of the Property transferred to the California Department of Fish and Wildlife ("Department"), the Grantor shall not be deemed a "visitor" upon Department lands under California Code of Regulations, Title 14, section 550(aa).

2. Additional Survey or Locating of Boundaries.

a. Additional Locating. If reasonably requested by Grantee due to a concern regarding a particular location or activity, Grantor shall cause the boundaries of the identified Easement Area to be located and marked by a licensed surveyor.

b. Additional Survey Work. In the event of a dispute regarding the boundaries of any Easement Area the parties shall cooperate in having the disputed area surveyed, certified and marked by a licensed surveyor and to cause this Easement to be amended in accordance with Section D.8 below. The parties shall share equally in the cost of such survey work and the recording of the amendment.

3. Coordination of Activities.

a. Relating to Facilities Removal and the Definite Plan. Grantor acknowledges Grantee's plan to remove JC Boyle, Copco 1, Copco 2 and Iron Gate dams and related work necessary to implement the Definite Plan, including work within and adjacent to certain of the Easement Areas. Grantor and Grantee will cooperate and coordinate with each other to facilitate Grantee's work pursuant to the Definite Plan and to minimize interference with each other in connection with their respective work and operations. Grantor shall permit temporary uses of and access to the Easement Areas necessary for Grantee to complete Facilities Removal and mitigation activity (including post-completion monitoring activities, if any) to the extent that such activity does not unreasonably threaten the function and reliability of the applicable Retained Facilities. In the event that Grantor reasonably determines that Grantee's proposed activities within an Easement Area poses a material potential threat to the function or reliability of the applicable Retained Facilities then Grantor and Grantee shall cooperate with each other in a timely manner to determine and implement reasonable mitigating measures to permit Grantee's activities and protect the Retained Facilities. Grantor and Grantee shall in all events use their best efforts to minimize delays in Grantee's work and the incurrence of additional costs.

b. Other Coordination. If Grantor plans significant, non-emergency construction activity in any of the Easement Areas then Grantor shall provide notice to Grantee of such planned activity and Grantor and Grantee shall use reasonable efforts to

coordinate the activity prior to commencement so that the potential for conflict between Grantor's and Grantee's rights are reduced. If Grantee plans significant, non-emergency construction activity on property that is adjacent to any Easement Area or is otherwise reasonably likely to affect any Easement Areas or Grantor's access to or use of any Easement Areas, then Grantee shall provide notice to Grantor of such planned activity and Grantor and Grantee shall use reasonable efforts to coordinate the activity prior to commencement so that the potential for conflict between Grantor's and Grantee's rights are reduced.

4. Notices.

Any notice, approval or communication that either party is required to give in writing may be served personally or mailed to:

To Grantor: PacifiCorp  
Attn: General Counsel  
825 Northeast Multnomah Street, Suite 2000  
Portland, OR 97232

To Grantee: Klamath River Renewal Corporation  
Attn:  
2001 Addison Street  
Suite 300, Office 317  
Berkeley, CA 94704

To State of Oregon: Oregon Department of Fish and Wildlife  
Realty Department  
4034 Fairview Industrial Drive SE  
Salem, OR 97302

To State of  
California: California Department of Fish and Wildlife  
Northern Region  
Attn: Regional Manager  
601 Locust Street  
Redding, CA 96001

Notice to the State of Oregon and the State of California in this paragraph shall only apply if the states are owners of the Property.

5. Insurance.

Grantor maintains and shall maintain a program of self-insurance and will, upon request from Grantee, provide a letter in confirmation of the program.

6. Indemnification.

a. By Grantor. Subject to the last sentence of this subsection (a), Grantor covenants and agrees to protect, save harmless, indemnify, and defend Grantee, its directors, officers, employees, agents, representatives, contractors and subcontractors of any tier (“Grantee Parties”) from and against any and all claims, losses, costs, expenses, damages (including punitive, special and consequential damages), liability, judgments, fines or penalties (collectively, “Claims”) arising in connection with the Retained Facilities (including any Claim arising in connection with any Pole Attachment arrangements), or, except as expressly permitted under any of these Easements, any acts or omissions by any Grantor Parties relating to an Easement, provided that Grantor shall not be responsible for Claims to the extent attributable to the contributory or comparative negligence of any Grantee Parties. “Grantor Parties” are Grantor, its directors, officers, employees, agents, representatives, contractors or subcontractors of any tier. Nothing in this indemnity is intended to address the liabilities or obligations of any Grantor Parties in the event of a wildfire, as to which Grantee and Grantor each reserves all rights and remedies available at law or in equity.

b. By Grantee (Non-State). Grantee covenants and agrees to protect, save harmless, indemnify, and defend Grantor Parties from and against any and all Claims relating to the Retained Facilities or the exercise of rights under these Easement by any Grantee Parties and caused by, arising out of, or in any way connected with (i) negligent acts or omissions by any Grantee Parties, or (ii) a breach of an Easement by any Grantee Parties, excepting in each instance that portion of any Claims attributable to the contributory or comparative negligence of Grantor Parties.

c. By State Grantee. If Grantee or its successor or assign is the State of California or the State of Oregon, then its obligations under subdivision (b) of this Section D.6 shall be subject to the limitations, as applicable, of Oregon and California law, including the Oregon Constitution, Oregon Tort Claims Act, and the California Tort Claims Act..

7. Costs and Expenses.

Grantor shall be responsible for any and all costs and expenses associated with any work or activity by Grantor on or in connection with any Easement or Easement Area. Grantor shall promptly pay all such costs and expenses and shall not place, permit or suffer any mechanics liens, judgments or other liens or encumbrances upon any portion of the Property, including the Easement Areas, provided that Grantor is not precluded from disputing any amount claimed by a third party, provided that such dispute is timely and diligently prosecuted and any delay in payment does not result in any liability to Grantee or adversely affect Grantee’s title to the Easement Area. In the event that such lien is filed then Grantor shall, within twenty (20) days after notice of the filing thereof, initiate action to cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted and shall continue to diligently pursue such actions until such lien is discharged. Grantor shall pay any and all taxes, assessments (general or special), charges or use fee(s) levied by any governmental authority against Grantor’s interest in any Easement Area or against the any of the Property as a result of the Easements.

8. Amendments.

a. General. The terms and conditions of the Easements may be modified only by written instrument signed by Grantor and Grantee or their respective successors and assigns and recorded in the applicable land records. The costs of recording shall be borne by the party requesting the amendment except as provided in Section D.2.b above.

b. Updates and Corrections to Easement Area Boundaries. In the event either party reasonably determines that the access routes or the boundaries of any of the Easement Areas are no longer accurately reflected by the attached exhibits then the parties shall cooperate to execute and record such amendments to the exhibits as are appropriate.

c. Other Modifications to Easement Area Boundaries. If either party reasonably determines that modifications to any portion of the description of Easement Areas are necessary it will provide to the other party a description and depiction of the proposed modification in reasonable detail. Neither party will unreasonably withhold its approval of any requested modification, provided that (a) in the case of a modification proposed by Grantor, it will not adversely affect in any material respect the work of Grantee provided for in Section D.3.a above, including the cost or timing thereof, (b) in the case of a modification proposed by Grantee, it will not in any material respect pose a threat to the reliability or safety of any Retained Facilities or to the efficiency of Grantor's operations, and (c) if the request is made to the originally named Grantee, it is acceptable to the State of [California / Oregon] as the anticipated successor to the originally named Grantee.

9. Termination.

The Easements may be terminated as to all or any portion of the Easement Areas by mutual, written agreement and the tender and recording of a quitclaim deed by Grantor. In the event Grantor elects to terminate any Easement or portion thereof it shall so notify Grantee, and in a timeframe that is reasonable relative to Grantor's other public utility duties, remove the Retained Facilities from the portions of the Easement Areas relating to the Easement to be terminated. Grantor shall not terminate any aspect of the Easements without removing the associated Retained Facilities.

10. Interpretation/Enforcement.

The Easement Areas are located in both Oregon and California. The terms herein shall be interpreted and made enforceable as to any particular Easement Area or Retained Facilities under the laws of the State where such Easement Area or Retained Facilities are located.

11. Running With the Land; Successors and Assigns.

The terms and conditions of the Easements are intended to run with the land and shall bind and inure to the benefit of Grantor's and Grantee's respective successors and assigns.

###

EASEMENT EXHIBIT A  
RETAINED TRANSMISSION FACILITIES

*[Description and final map from Schedule 3.1(b)(ii), Part A, of the PTA to be attached]*



EASEMENT EXHIBIT B

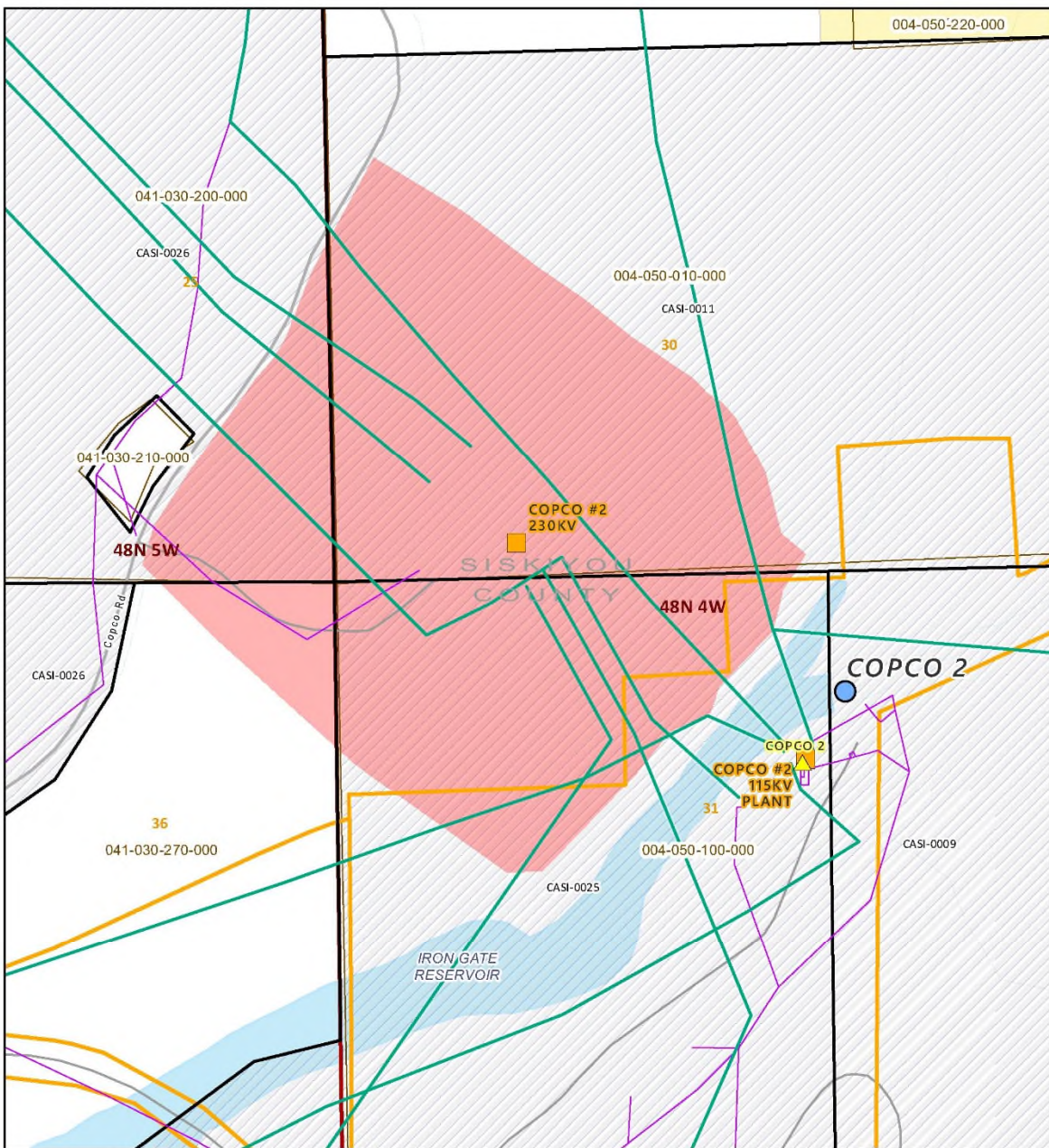
MODIFICATIONS TO TRANSMISSION FACILITIES BUFFER ZONES

*[To be incorporated in accordance with Note to Section A.2 above]*

EASEMENT EXHIBIT C  
SUBSTATION EASEMENT AREAS

*[The attached maps represent the parties' preliminary understandings but are subject to modification following further development of Facilities Removal plans in order to accommodate Facilities Removal activities and PacifiCorp's ongoing operational, security and safety requirements]*

[See Attached Maps]



**Exclusive Substation Easement: Copco #2 - 230KV**  
approximately 39 acres



- Exclusive Substation Easement - 230kv
- Parcel B Lands
- FERC Boundary
- Generation - to be removed
- Transmission Sub
- Tax lot
- Highway
- Major Road
- Street
- Township
- Section
- Distribution Sub
- Distribution Line
- Transmission Line

**PACIFICORP**  
GIS SUPPORT SERVICES  
Solutions Group  
gisdept@pacificorp.com

Data is projected in UTM Zone 10, NAD83, meters.

PacificCorp makes no representations or warranties as to the accuracy, completeness or fitness for a particular purpose with respect to the information contained in this map. PacificCorp shall have no responsibility or liability to any person or entity resulting from the use of any information furnished in this map.

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**Exclusive Substation Easement: Copco #2 - 115KV**  
approximately 3.4 acres



- Exclusive Substation Easement - 115kv
- Parcel B Lands
- FERC Boundary
- Generation - to be removed
- Transmission Sub
- Distribution Sub
- Distribution Line
- Transmission Line
- Tax lot
- Highway
- Major Road
- Street
- Township
- Section

**PACIFICORP**  
GIS SUPPORT SERVICES  
Solutions Group  
gisdept@pacificorp.com

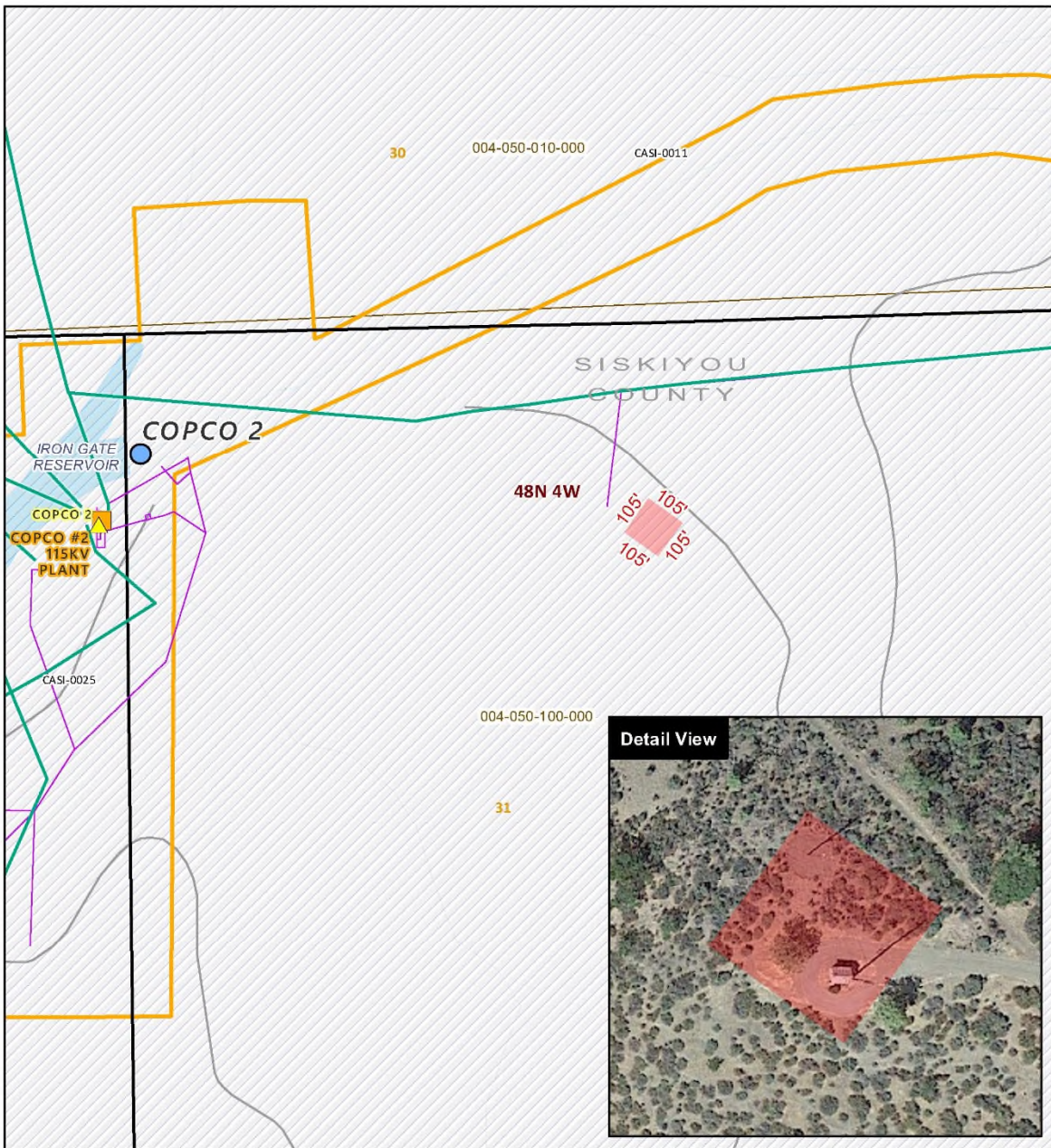
Data is projected in UTM Zone 10, NAD83, meters.

PacificCorp makes no representations or warranties as to the accuracy, completeness or fitness for a particular purpose with respect to the information contained in this map. PacificCorp shall have no responsibility or liability to any person or entity resulting from the use of any information furnished in this map.

0 100 200 400 Feet

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EASEMENT EXHIBIT D  
COMMUNICATIONS FACILITIES EASEMENT AREA



**Exclusive Communication Easement: Copco #2 Hilltop Site**  
approximately .25 acres



- Exclusive Communication Easement Copco #2 Hilltop Site
- Parcel B Lands
- FERC Boundary
- Generation - to be removed
- Transmission Sub
- Distribution Sub
- Distribution Line
- Transmission Line
- Tax lot
- Highway
- Major Road
- Street
- Township
- Section



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gisdept@pacificorp.com

Data is projected in UTM Zone 10, NAD83, meters.

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EASEMENT EXHIBIT E  
PRINCIPAL ACCESS ROUTES

*[Final map from Schedule 3.1(b)(ii), Part B, of the PTA to be attached]*

**EXHIBIT H-2**  
**FORM OF KRRC TEMPORARY CONSTRUCTION EASEMENT**



Recording Requested By  
and When Recorded Mail to:

Water and Power Law Group PC  
2140 Shattuck Avenue  
Suite 801  
Berkeley, CA 94704  
Attn: Richard Roos-Collins

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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## **TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

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THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Easement Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between PACIFICORP, an Oregon corporation with an address at 825 Northeast Multnomah Street, Suite 2000, Portland, Oregon 97232 ("Grantor"), and KLAMATH RIVER RENEWAL CORPORATION, a California nonprofit corporation with an address at 2001 Addison Street, Suite 300, Office 317, Berkeley, California 94704 ("Grantee").

### RECITALS

A. Grantor and Grantee are parties to the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as amended ("KHSA") and to a certain Property Transfer Agreement, dated \_\_\_\_\_ ("PTA");

B. Pursuant to the KHSA Grantee is charged with removing the JC Boyle, Copco 1, Copco 2 and Iron Gate hydroelectric dams and performing certain related work including environmental mitigation, all in accordance with the Definite Plan as such term is defined in the KHSA (collectively, the "Removal Work"). Pursuant to the PTA Grantor is transferring to Grantee contemporaneously herewith the property on which most of the Removal Work is to occur;

C. Certain portions of the Removal Work, described generally in Schedule A (the "Easement Work") require access over and work upon property that continues to be owned by Grantor and is described more particularly in Schedule B (the "Property").

D. In order to facilitate the Easement Work Grantee has requested, and Grantor has agreed to grant, a temporary construction easement as more particularly provided for in this Easement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement.

a. Subject to the terms and conditions of this Easement Agreement, Grantor hereby grants to Grantee, and Grantee hereby accepts, a temporary right and easement in gross upon, across and through the portion of the Property described in Exhibit C (the "Easement Area") in order to perform the Easement Work, including any and all activities relating to implementation of the Definite Plan and compliance with the Approvals (as defined in the PTA), including, but not limited to, (i) construction activities, (ii) mitigation activities, (iii) ingress and egress of construction and other vehicles, (iv) ingress and egress of personnel, including Grantee's employees, directors, officers, representatives, agents, contractors, subcontractors of any tier, consultants and suppliers, (v) staging, use and operation of heavy equipment and machinery, and (vi) storage of materials, equipment and vehicles. Such easement shall terminate when (y) the Definite Plan is complete in accordance with its terms and (z) the terms and conditions of the Approvals relating to the Property have been satisfied as determined by the applicable governmental authority, provided that to the extent the Definite Plan or any Approvals require post-completion activities relating to the Property, including but not limited to monitoring or further construction or remediation activities, then this Easement Agreement shall continue to the extent reasonably necessary to perform all such post-completion activities and satisfy all post-completion requirements of the Definite Plan and all Approvals.

b. Grantor acknowledges and consents to the Easement Work and its effect on the Property.

c. Grantor reserves for itself, its successors and its assigns, the right to access and use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with Grantee's rights and activities under this Easement Agreement.

d. Grantee shall comply with all laws, ordinances, and regulations, including but not limited to all regulatory, environmental, and safety requirements applicable to the Easement Area or the use of the Easement, all at Grantee's sole cost and expense.

2. Coordination and Cooperation

a. Grantee shall cause its contractors to provide reasonable prior notice to Grantor of its work scope and schedule within the Easement Area and shall provide periodic updates to reflect any material changes to such work scope and schedule. Reasonable notice of scope and schedule will be deemed satisfied upon Grantee's contractor's copying Grantor on a two week look ahead schedule for the Definite Plan work affecting the Easement Area. In conducting any activities pursuant to this Easement Agreement Grantee and its contractors, subcontractors of any tier, consultants and suppliers shall avoid any material impact to PacifiCorp's equipment and installations except to the extent required under or consistent with the Definite Plan or the

requirements of any Approvals. Grantor shall take reasonable measures to assist in avoiding any such impact.

b. Grantor reserves the right to access its active transmission lines and other equipment located in the Easement Area, provided that, Grantor shall provide reasonable prior notice of such access and shall exercise commercially reasonable efforts under the circumstances to avoid any impact on the work of Grantee or its contactors. The parties acknowledge that in the event of exigent circumstances posing a material threat to property or public safety Grantor shall have immediate access to address such threat.

c. Grantor and Grantee acknowledge and agree that each has a significant interest in the orderly and coordinated use of the Easement Area and in avoiding undue delay, damage or expense in connection with each other's operations within the Easement Area. Grantor and Grantee each agrees to cooperate and coordinate with each other in good faith and in a timely and reasonable manner to minimize to the extent reasonably practicable any adverse impact on each other's operations within the Easement Area.

3. Costs and Expenses; Liens.

Grantee shall be responsible for any and all costs and expenses of the Easement Work. Grantee shall promptly pay all such costs and expenses and shall not place, permit or suffer any mechanics liens, judgments or other liens or encumbrances upon any portion of the Property, including the Easement Area.

4. Insurance.

Grantee will at all times maintain, and have on file with Grantor evidence of, property, liability and worker's compensation insurance in amounts and scopes of coverage reasonably satisfactory to Grantor and naming Grantor and its directors, officers, employees, agents, representatives and affiliates as additional insureds. In addition, each insurance coverage required under this Easement Agreement shall waive the insurer's right of subrogation against Grantor and shall provide that it shall not be canceled, terminated, changed, modified or not renewed by any insurance carrier unless fifteen (15) days' prior written notice is sent by overnight mail, to Grantor.

5. Responsibility for Damage; Indemnification.

a. Grantee shall be responsible for any damage to the Property (including the Easement Area) and any other property resulting from any exercise of any of Grantee's rights provided for in this Easement Agreement, including but not limited to fire, soil erosion, subsidence, or other damage resulting therefrom. Grantee shall promptly repair and restore, as nearly as practicable, to its original condition or, if applicable, to the condition required by the Definite Plan, the Property and any other property, including but not limited to roads, utilities, buildings and fences that may be damaged as a result of any exercise of any of Grantee's rights provided for in this Easement Agreement.

b. Grantee covenants and agrees to protect, save harmless, indemnify, and defend Grantor, its directors, officers, employees, agents, representatives, contractors and subcontractors of any tier ("Grantee Parties") from and against any and all claims, losses, costs, expenses,

damages (including punitive, special and consequential damages), liability, judgments, fines or penalties (collectively, "Claims") arising as a result of any acts or omissions by any Grantee Parties relating to this Easement, provided that Grantee shall not be responsible for Claims to the extent attributable to the contributory or comparative negligence of any Grantor Parties. "Grantor Parties" are Grantor, its directors, officers, employees, agents, representatives, contractors or subcontractors of any tier.

c. Grantor covenants and agrees to protect, save harmless, indemnify, and defend Grantee Parties from and against any and all Claims relating to the Easement Work or the exercise of rights under this Easement Agreement by any Grantor Parties and caused by, arising out of, or in any way connected with (i) negligent acts or omissions by any Grantor Parties, or (ii) a breach of this Easement Agreement by any Grantor Parties, excepting in each instance that portion of any Claims attributable to the contributory or comparative negligence of Grantee Parties.

6. Notices.

All notices and other communications required or given under this Easement shall be in writing and addressed as follows:

Grantee: Klamath River Renewal Corporation  
2001 Addison Street, Suite 300, Office 317  
Berkeley, California 94704  
Attention: Chief Operating Officer

With copy to:

Water and Power Law Group PC  
2140 Shattuck Avenue  
Suite 801  
Berkeley, CA 94704  
Attn: Richard Roos-Collins

Grantor:

PacifiCorp  
825 Northeast Multnomah Street, Suite 2000  
Portland, Oregon 97232  
Attention: \_\_\_\_\_

or to such other address as a party may specify by written notice to the other. All notices and other communications shall be deemed to have been duly given and received: (a) upon personal delivery, or (b) as of the third business day after mailing by United States mail, postage prepaid, addressed as set forth above, or (c) the immediately succeeding business day after deposit (for next-day delivery) with FedEx or other similar overnight courier that guarantees next-day delivery.

7. Covenants Running With the Land.

This instrument shall run with the land and shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

8. Miscellaneous.

a. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior representations, understandings or agreements concerning this instrument are merged herein and superseded hereby and shall be of no further force or effect.

b. This Easement Agreement may be amended only by a written instrument signed by both parties.

c. Any term or provision of this Easement Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument executed by such party. Any waiver or failure to enforce any provision or requirement of this Easement Agreement in any instance or circumstance shall not affect the enforceability of such provision or requirement in any subsequently occurring instance or circumstance.

d. This Easement Agreement shall be governed and construed by the laws of the State of [[California / Oregon]] without reference to [[California / Oregon]] choice of law principles.

e. The invalidity of any one or more provisions of this Easement Agreement shall not affect the remaining portions of this Easement Agreement or any part thereof. If one or more of the provisions contained herein should be invalid, or should operate to render this Easement Agreement invalid, this Easement Agreement shall be construed as if such invalid provisions had not been inserted.

f. This Easement Agreement may be executed in two or more counterparts, each of which counterparts shall be deemed an original, and all of which together shall constitute one and the same Easement Agreement.

g. The captions and headings in this Easement Agreement are solely for convenience of reference and shall not constitute a part of this Easement Agreement nor shall they affect its meaning, construction or effect.

h. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Easement Agreement, refer to this Easement Agreement in its entirety and not the particular section of this Easement Agreement in which they appear, and the term “hereafter” means after, and the term “heretofore” means before, the date of this Easement Agreement.

i. The word “including” and words of similar import mean “including but not limited to.”

j. This Easement Agreement shall be recorded in the appropriate land records in [[Siskiyou County, California / Klamath County, Oregon]]. Grantee shall be solely responsible for the payment of all costs, fees, or expenses in connection with such recording.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

GRANTOR: PACIFICORP

By \_\_\_\_\_  
Title \_\_\_\_\_

GRANTEE: KLAMATH RIVER RENEWAL CORPORATION

By \_\_\_\_\_  
Title \_\_\_\_\_

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public in and for said County and State, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

(Signature of Notary Public)

Rev. 9/29/99



CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public in and for said County and State, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

(Signature of Notary Public)

EXHIBIT A

(Easement Work)

*Descriptions to be updated prior to property transfer. General descriptions are as follows:*

California/Copco Lake:

The work will likely be primarily restoration work. The specific work scope has not yet been determined with precision as it may be affected by the requirements of governmental approvals that have not yet been received but will likely include seeding the reservoir bed, including aerial seeding, IEV management and assisted sediment evacuation as needed. Other types of restoration may also be necessary so KRRC will need the ability to do any and all activities in support of restoration, likely including developing access roads, grading, in water work, placement of large wood, stream gravels, upland plantings, maintenance, IEV control, and monitoring

Oregon / JC Boyle flume and vicinity:

Overhead line work, concrete flume removal, access roads and related work

EXHIBIT B

(Description of Property)

[[*Legal Descriptions to be provided*]]

California – East End of Copco Lake - Siskiyou County APN 004-030-580 and APN 004-030-570



Oregon - J.C. Boyle Flume and Upper Access Road - Klamath County R-4006-01200-0800



## EXHIBIT C

(Easement Area)

*[[Diagrams to be attached prior to execution]]*

### California / Copco Lake

The specific work area has not yet been determined with precision as the scope of work may be affected by the requirements of governmental approvals that have not yet been received. For present purposes it should be assumed to extend approximately 4,800 feet upstream of the Copco Road Bridge and approximately 700 feet outward from the currently existing shorelines

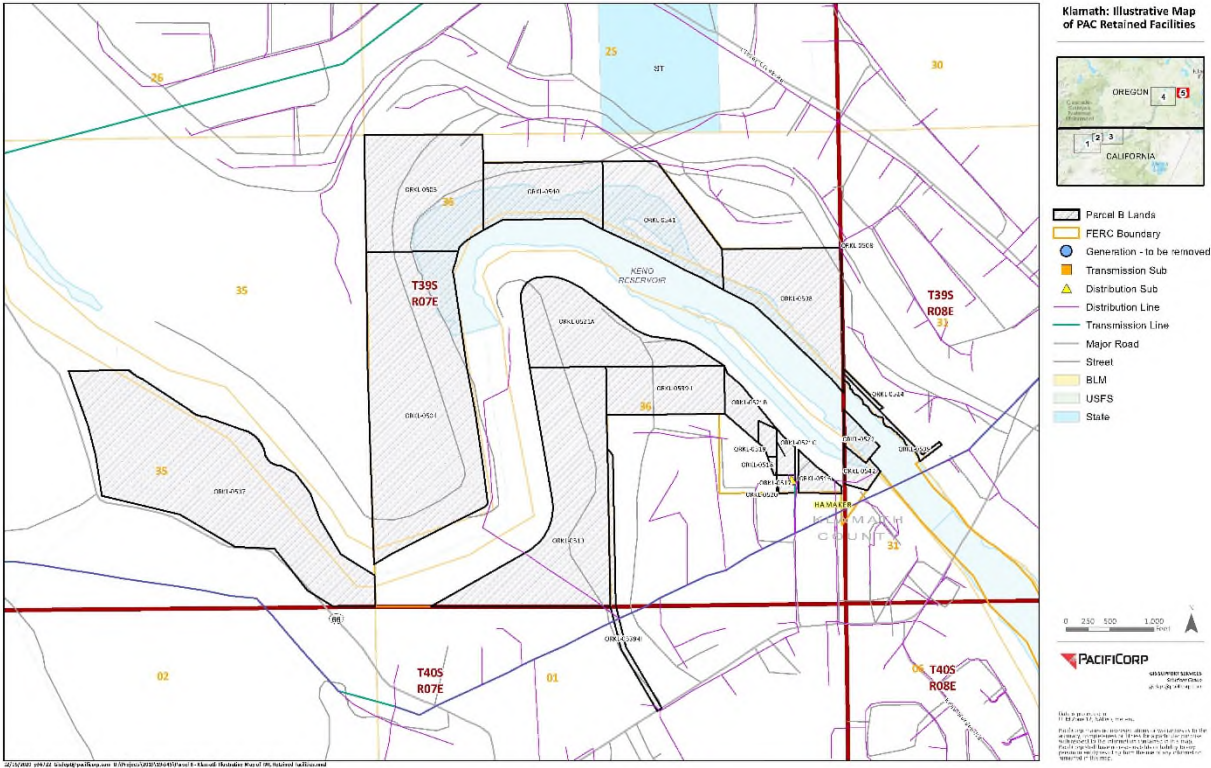
### Oregon – JC Boyle Flume and Upper Access Road

Entire parcel

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# EXHIBIT I

## DESCRIPTION OF THE KENO LAND



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## EXHIBIT J

### FACILITIES HANDOVER TECHNICAL PROTOCOLS

- **Temporary Power** – Protocol for addressing cost and scope of installing temporary electrical service at a variety of locations in support of activities under the Definite Plan
- **Access to Substations** – Protocol for providing Kiewit with on-site observation at substations for design and disconnection points; will include appropriate safety training and PacifiCorp escorts for Kiewit personnel
- **Communication Equipment** – Protocol for addressing Kiewit’s request to co-locate within the Communications Facilities Easement to provide for communications facilities necessary for general safety during Facilities Removal
- **Electrical Disconnection Design** - Protocol for design and coordination of disconnecting PacifiCorp’s generation assets (dams) from the transmission and distribution system PacifiCorp will be retaining
- **Operational Information** – Protocol to develop and provide educational and safety materials and information to support the physical handover of the dam facilities
- **Timing of PacifiCorp Work to be Completed** – Protocol to establish scope and timing of work to be performed by PacifiCorp in connection with physical handover of dam facilities (e.g., disconnection of transformers; possible re-routing of certain transmission and distribution lines)
- **Identification and Final Removal of Salvaged Equipment** – Protocol for finalizing list, and physical removal, of salvage equipment
- **Pole Attachments** – Protocol for removal or relocation of Pole Attachments as may be required under Sections 6 and 11
- **Copco 2 River Flow Analysis** – Coordination to assess and, to the extent necessary address, potential post-dam removal flood risk at the Copco 2 115kV substation
- **Copco 1 Exploratory Dredging** – Protocol for possible exploratory dredging of debris located at face of Copco 1 Dam
- **Marking of Certain Boundaries and Subsurface Facilities** – Protocol to identify and mark areas where potential conflict may exist between PacifiCorp reserved easements and dam removal activities, including underground facilities reserved by PacifiCorp, all as provided in the Agreement and the Reserved Easements. PacifiCorp will survey and provide field markers where such measures would aid the parties to avoid such conflict. The survey will include boundary of Substation Easement Areas, grounding grids where



such extend beyond fence line and may include other PacifiCorp reserved interests consistent with Section 11

**SCHEDULE 3.1(b)(i)**

**DECOMMISSIONED PROPERTY**

*[[PacifiCorp has generated this preliminary list of equipment to be salvaged based simply on the equipment assigned to each of the four Klamath facilities in PacifiCorp's accounting system. This desktop review was conducted by senior engineers and managers familiar with the Klamath Hydroelectric Project, PacifiCorp's other hydroelectric projects, and the interchangeable equipment between the different facilities. No onsite inventories or reviews were conducted and there was no effort yet directed to validate the equipment lists with that actually onsite. This list is considered preliminary and subject to ongoing review and mutually agreeable revision at any time prior to decommissioning.]]*

<b>Development</b>	<b>Item(s)</b>	<b>Number of Units</b>
All	Vehicles	Assorted
All	Heavy Equipment (graders, dump trucks, loaders, backhoes, etc.)	Assorted
All	All-Terrain Vehicles (e.g., ATVs/UTVs)	Assorted
All	Network Communications Equipment	Assorted
All	Computers, Phones, etc.	Assorted
All	Tools (all general hand and power tools including but not limited to portable generators, welders, etc.)	Assorted
Iron Gate	Controls and Instrumentation	Assorted
Iron Gate	Iron Gate Battery System (130 VDC)	1
Iron Gate	Governor	1
Iron Gate	Iron Gate Powerhouse Stoplog Hoist	1
Iron Gate	Iron Gate Generator Energy Meters	2
Iron Gate	Iron Gate Station Battery Charger	1
Copco 2	Exciters	2
Copco 2	Controls and Instrumentation	Assorted
Copco 2	Copco 21 Unit Breaker 6G21	1
Copco 2	Copco 22 Unit Breaker 6G22	1
Copco 2	Transformers	Miscellaneous
Copco 2	Plant Emergency Generator	1
Copco 2	Dam Emergency Generator	1
Copco 2	Governors (Copco 21 and 22)	2
Copco 2	Station Service Energy Meter	1
Copco 2	Copco 21 and 22 Generator Energy meters	2
Copco 2	Copco 2 Station Batteries (130 VDC)	1
Copco 2	Copco 2 Station Battery Charger (130 VDC)	1
Copco 2	Copco 2 Station Service Breaker 6G9	1
Copco 2	Copco 21 Station Service Breaker 6G36	1
Copco 2	Copco 22 Station Service Breaker 6G37	1

Copco 2	Copco 2 Communications Equipment	Assorted
Copco 1	Exciters	2
Copco 1	Controls and instrumentation	Assorted
Copco 1	Emergency Generator	1
Copco 1	Copco 1 Station Battery System (120 VDC)	1
Copco 1	Copco 1 Station Battery Charger	1
Copco 1	Governors for Copco 11 and Copco 12	2
Copco 1	Copco 11 Generator Energy Meter	1
Copco 1	Copco 12 Generator Energy Meter	1
J.C. Boyle	Exciters	2
J.C. Boyle	Controls and Instrumentation	Assorted
J.C. Boyle	J.C. Boyle 1 Generator Breaker 5L51	1
J.C. Boyle	J.C. Boyle 2 Generator Breaker 5L52	1
J.C. Boyle	Transformer - GSU – J.C. Boyle 2	1
J.C. Boyle	Transformer - GSU – J.C. Boyle SPARE	1
J.C. Boyle	JCB Powerhouse Stop Log Crane	1
J.C. Boyle	Governors for J.C. Boyle Units 1 and 2	2
J.C. Boyle	Transformer - GSU – J.C. Boyle 1	1
J.C. Boyle	J.C. Boyle 1 REL-P GEN 12Y-1 Overspeed – Airpax	1
J.C. Boyle	J.C. Boyle 2 REL-P GEN 12Y-2 Overspeed – Airpax	1
J.C. Boyle	J.C. Boyle 1 Rel-W Swgr Arc Flash Monitor	1
J.C. Boyle	J.C. Boyle 2 Rel-W GSU Arc Flash Monitor	1
J.C. Boyle	J.C. Boyle 1 Rel-W Gen 11 - 3425a-1	1
J.C. Boyle	J.C. Boyle 1 Rel-W Gen 11 - 3425b-1	1
J.C. Boyle	J.C. Boyle 1 REL-W GEN 64F-1 Field Ground Detect	1
J.C. Boyle	J.C. Boyle 1 Rel-W GSU 11 - 3311-1	1
J.C. Boyle	J.C. Boyle 1 REL-P GEN 25 Sync Check 188A-1	1
J.C. Boyle	J.C. Boyle 1 REL-P GEN 25-1 Syncrocluser 193B-1	1
J.C. Boyle	J.C. Boyle 1 REL-P GEN 25-1 Gen Control 194-1	1
J.C. Boyle	J.C. Boyle 2 Rel-W Gen 11 - 3425a-2	1
J.C. Boyle	J.C. Boyle 2 Rel-W Gen 11 - 3425b-2	1
J.C. Boyle	J.C. Boyle 2 REL-W GEN 64F-2 Field Ground Detect	1
J.C. Boyle	J.C. Boyle 2 REL-W GSU 11 - 3311-2 Multi-Function	1
J.C. Boyle	J.C. Boyle 2 REL-P GEN 25 Sync Check 188A-2	1
J.C. Boyle	J.C. Boyle 2 REL-P GEN 25-2 Syncrocluser 193B-2	1
J.C. Boyle	J.C. Boyle 2 REL-P GEN 25-2 Gen Control 194-2	1
J.C. Boyle	J.C. Boyle Station Battery System - 125 V	1
J.C. Boyle	J.C. Boyle Dam Battery System - 125 V	1
J.C. Boyle	J.C. Boyle Station Batteries - 125 Vdc	1
J.C. Boyle	J.C. Boyle Stn Battery Charger - 125 Vdc	1

J.C. Boyle	J.C. Boyle Stn Battery Inverter - 125 Vdc	1
J.C. Boyle	J.C. Boyle Dam Batteries - 125 Vdc	1
J.C. Boyle	J.C. Boyle Dam Battery Charger - 125 Vdc	1
J.C. Boyle	J.C. Boyle Dam Battery Inverter - 125 Vdc	1
J.C. Boyle	J.C. Boyle 1 Rel-W Gen WECC Relays - 10 Yr	1
J.C. Boyle	J.C. Boyle 1 Rel-W GSU WECC Relays - 10 Yr	1
J.C. Boyle	J.C. Boyle 2 Rel-W Gen WECC Relays - 10 Yr	1
J.C. Boyle	J.C. Boyle 2 Rel-W GSU WECC Relays - 10 Yr	1
J.C. Boyle	J.C. Boyle Plant Rel-W Ss WECC Relays-10 Y	1
J.C. Boyle	J.C. Boyle Plant Energy Meters	Assorted

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**SCHEDULE 3.1(b)(ii)**  
**RETAINED TRANSMISSION FACILITIES**

**A. DESCRIPTION OF FACILITIES**

1. The electrical transmission facilities located on the Parcel B Land and comprising the electrical transmission facilities indicated on the attached map, including but not limited to, transmission, distribution, service and other lines conducting electricity as well as related facilities (including but not limited to towers, poles, pads, guys, anchors, props, supports, transformers, switches, vaults, substations, communications facilities, fiber optic or other communications equipment, and any other improvements and facilities associated with or connected to or that aid in the management or function of such improvements and related facilities).
  
2. See Attached Map

*[NOTE – The map attached represents an approximation of the Retained Transmission Facilities and their location as currently understood. An update and clarification of the map will be substituted prior to Closing that depicts in greater detail the final configuration of the Retained Transmission Facilities and that reflects Easement Area modifications pursuant to Section 11.3.]*

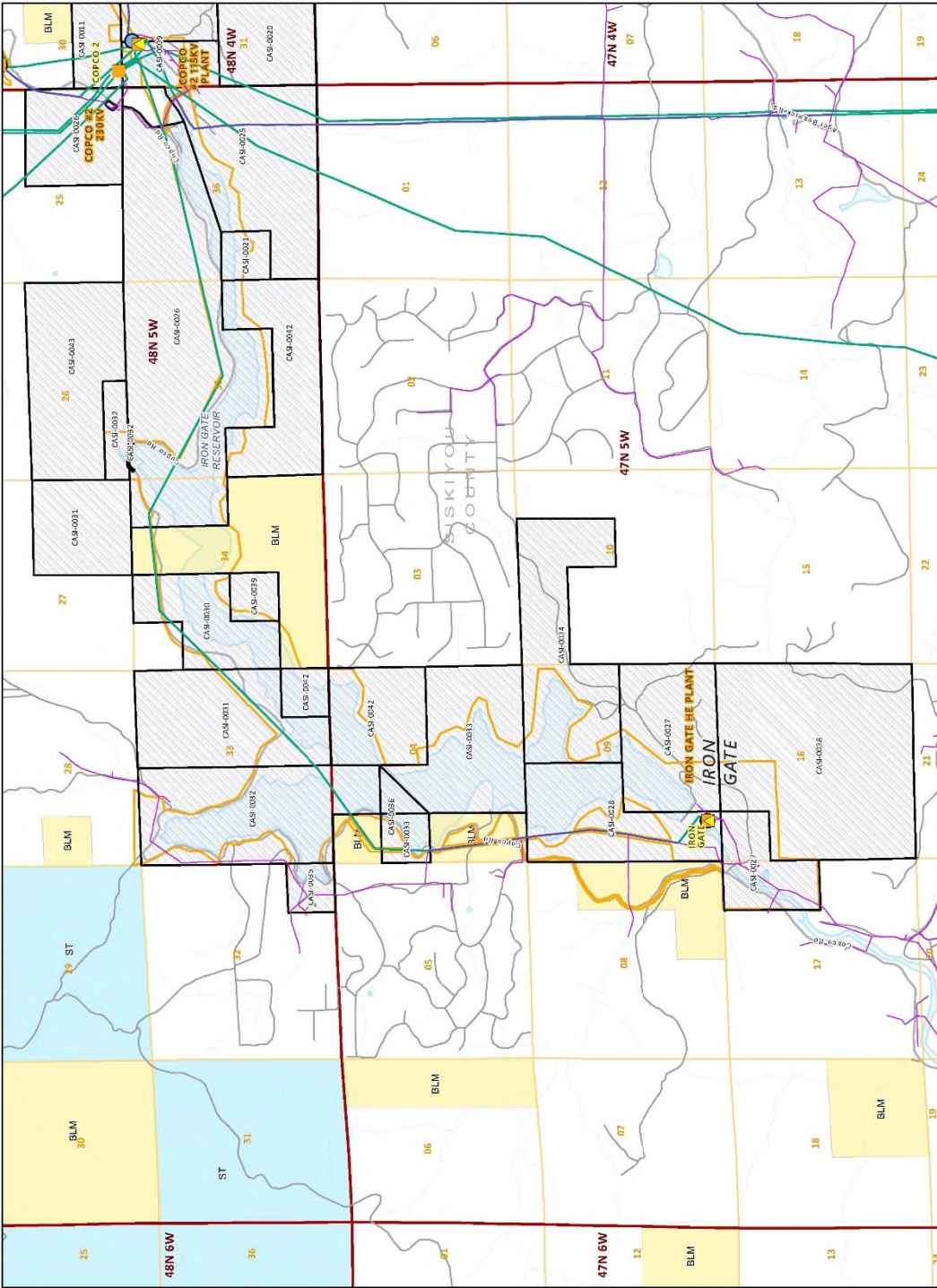
**Klamath: Illustrative Map  
of PAC Retained Facilities**



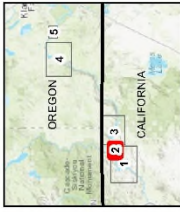
- Parcel B Lands
- FERC Boundary
- Generation - to be removed
- Transmission Sub
- Distribution Sub
- Distribution Line
- Transmission Line
- Major Road
- Street
- Township
- Section
- BLM
- USFS
- State



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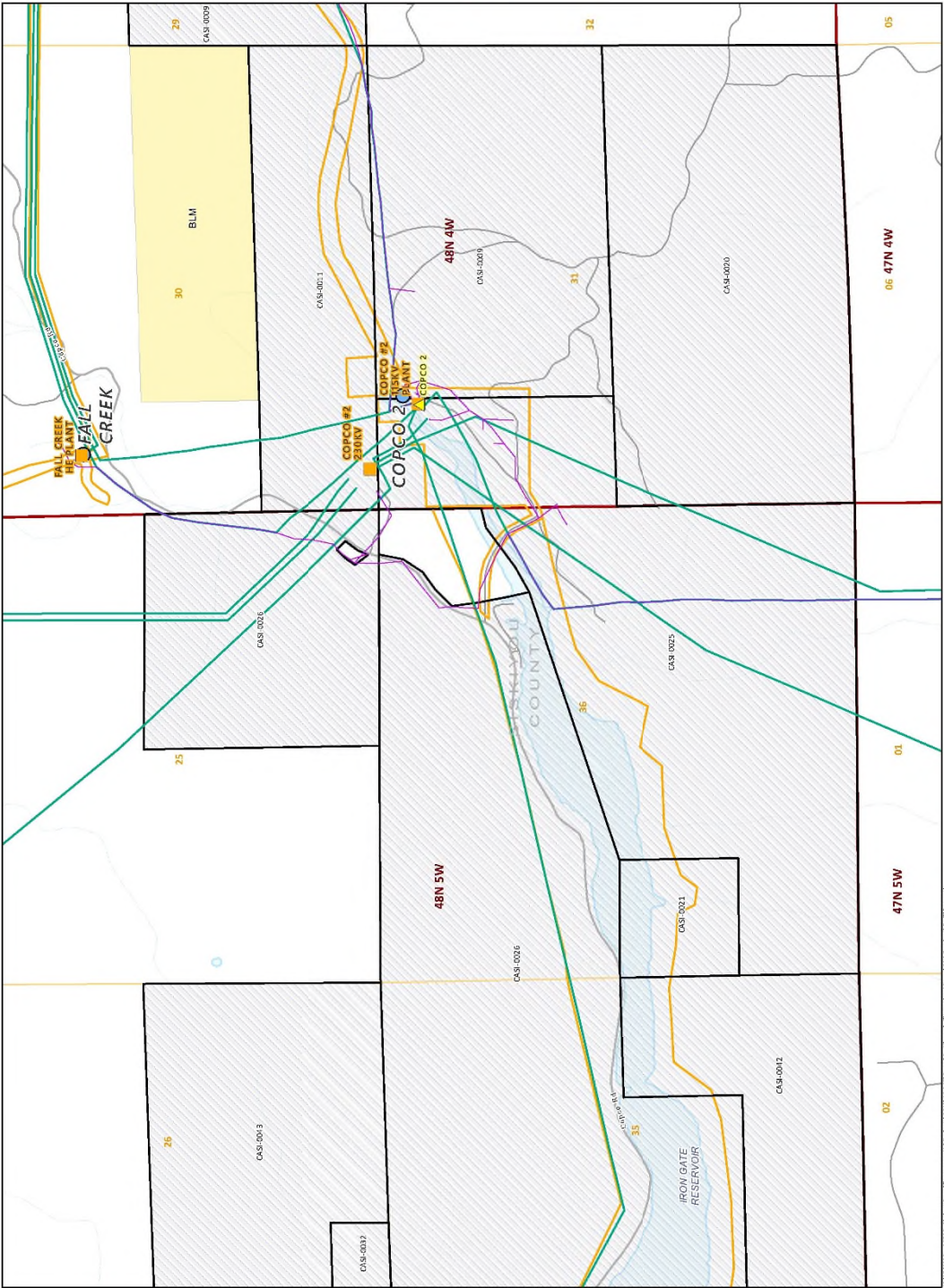
**Klamath: Illustrative Map  
of PAC Retained Facilities**



- Parcel B Lands
- FERC Boundary
- Generation - to be removed
- Transmission Sub
- Distribution Sub
- Distribution Line
- Transmission Line
- Major Road
- Street
- Township
- Section
- BLM
- USFS
- State



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**Klamath: Illustrative Map  
of PAC Retained Facilities**

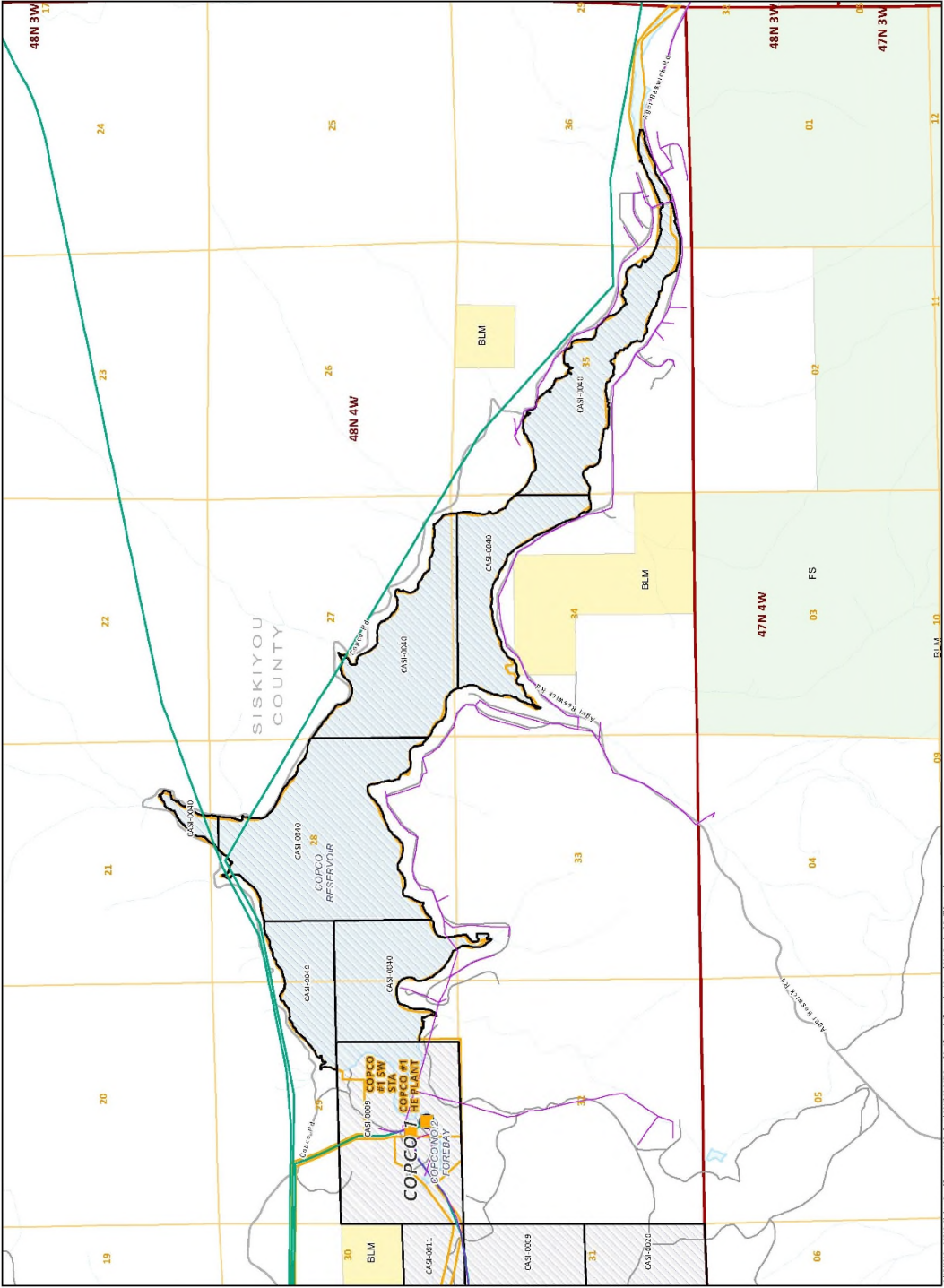


- Parcel B Lands
- FERC Boundary
- Generation - to be removed
- Transmission Sub
- Distribution Sub
- Distribution Line
- Transmission Line
- Major Road
- Street
- Township
- Section
- BLM
- USFS
- State

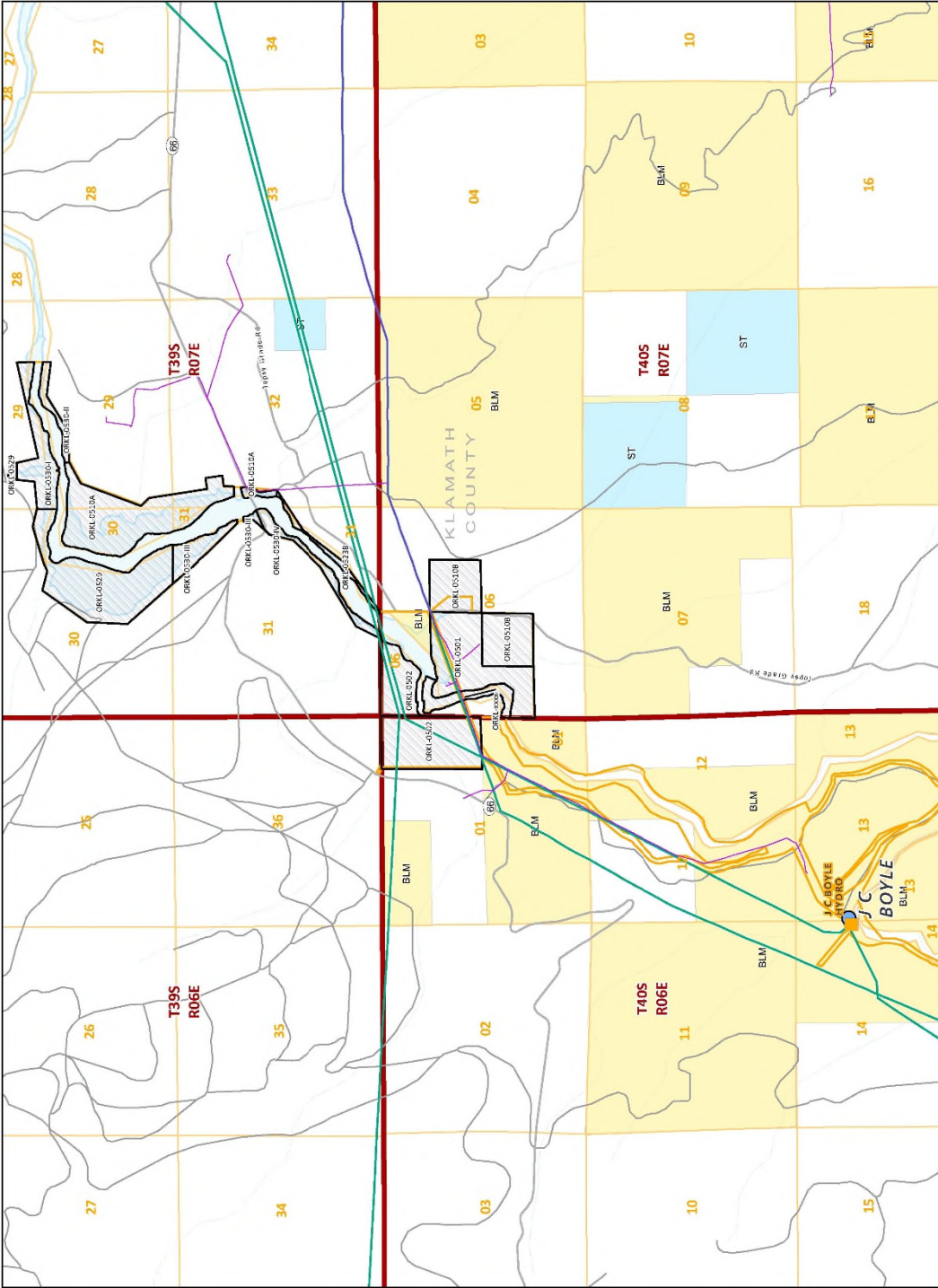
0 25000 1000 FEET

**PACIFIC CORP**  
an indirect subsidiary  
of PacifiCorp

This map is for informational purposes only. It is not intended to be used as a legal document. The information on this map is derived from various sources and is not guaranteed to be accurate. The user assumes all responsibility for the use of this map.



Klamath: Illustrative Map  
of PAC Retained Facilities



B. ACCESS ROUTES

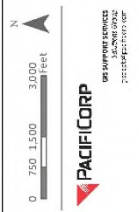
*[NOTE: The attached maps depict PacifiCorp's primary access routes to its reserved easement areas at a very high-level; maps showing greater detail and mutually agreeable to the parties may be substituted prior to Closing]*

**Klamath: Reserved Road Access**

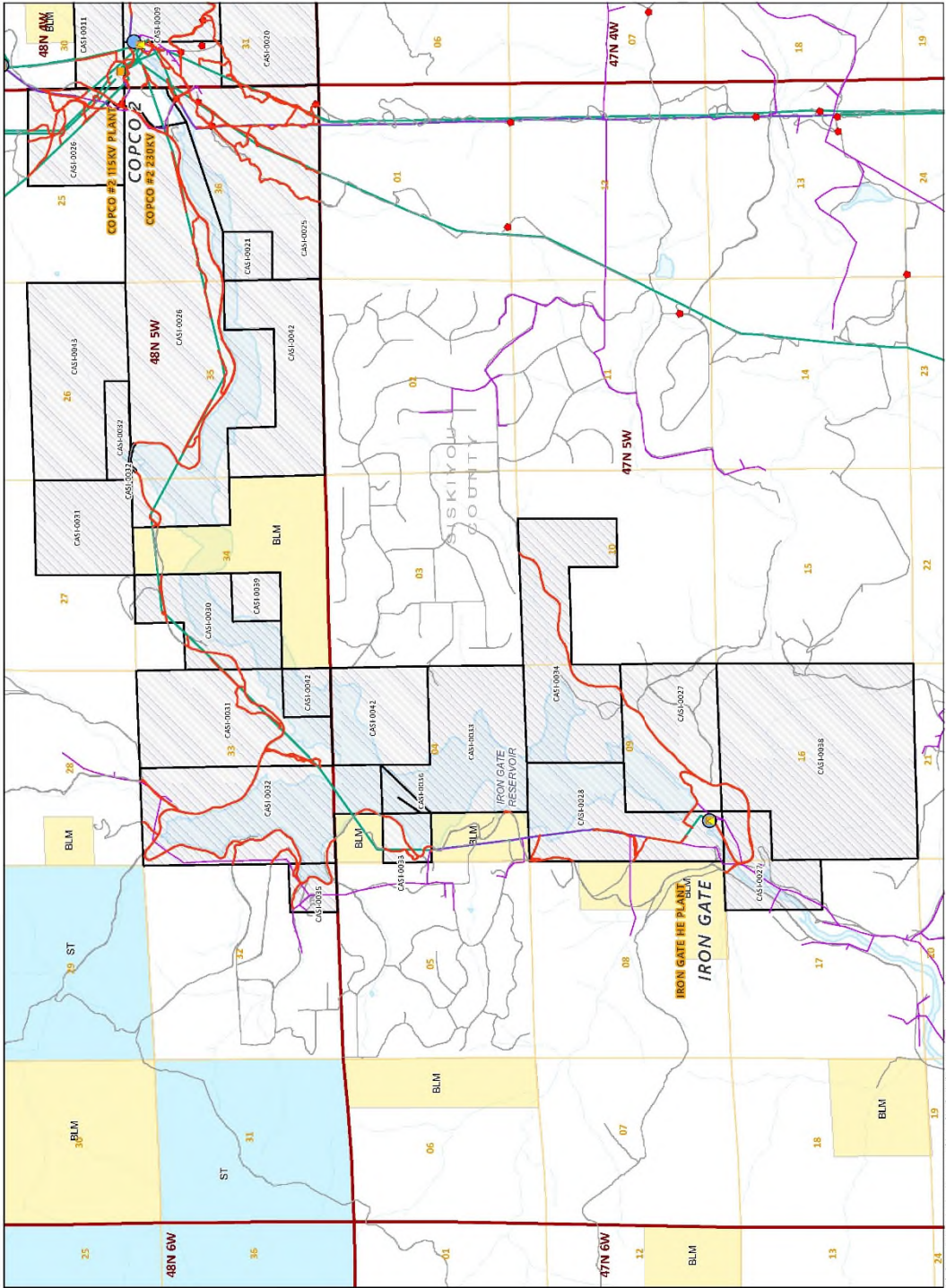


- Parcel B Lands
- Reserved Primary Access Routes
- Other Roads, non-reserved
- Gate
- Generation - to be removed
- Transmission Line
- Distribution Line
- Distribution Sub
- Distribution Sub
- Township
- Section

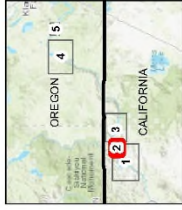
**Note:**  
Primary Access Routes not otherwise depicted are also reserved within the Reserved Transmission Facility Easement Areas.  
The Primary Access Routes depicted are not surveyed and particular location in the field may vary.



**PACIFICORP**  
US SURVEY SERVICES  
3500 NE 17th Ave  
Portland, OR 97232  
703.344.4000 ext. 400



**Klamath: Reserved Road Access**

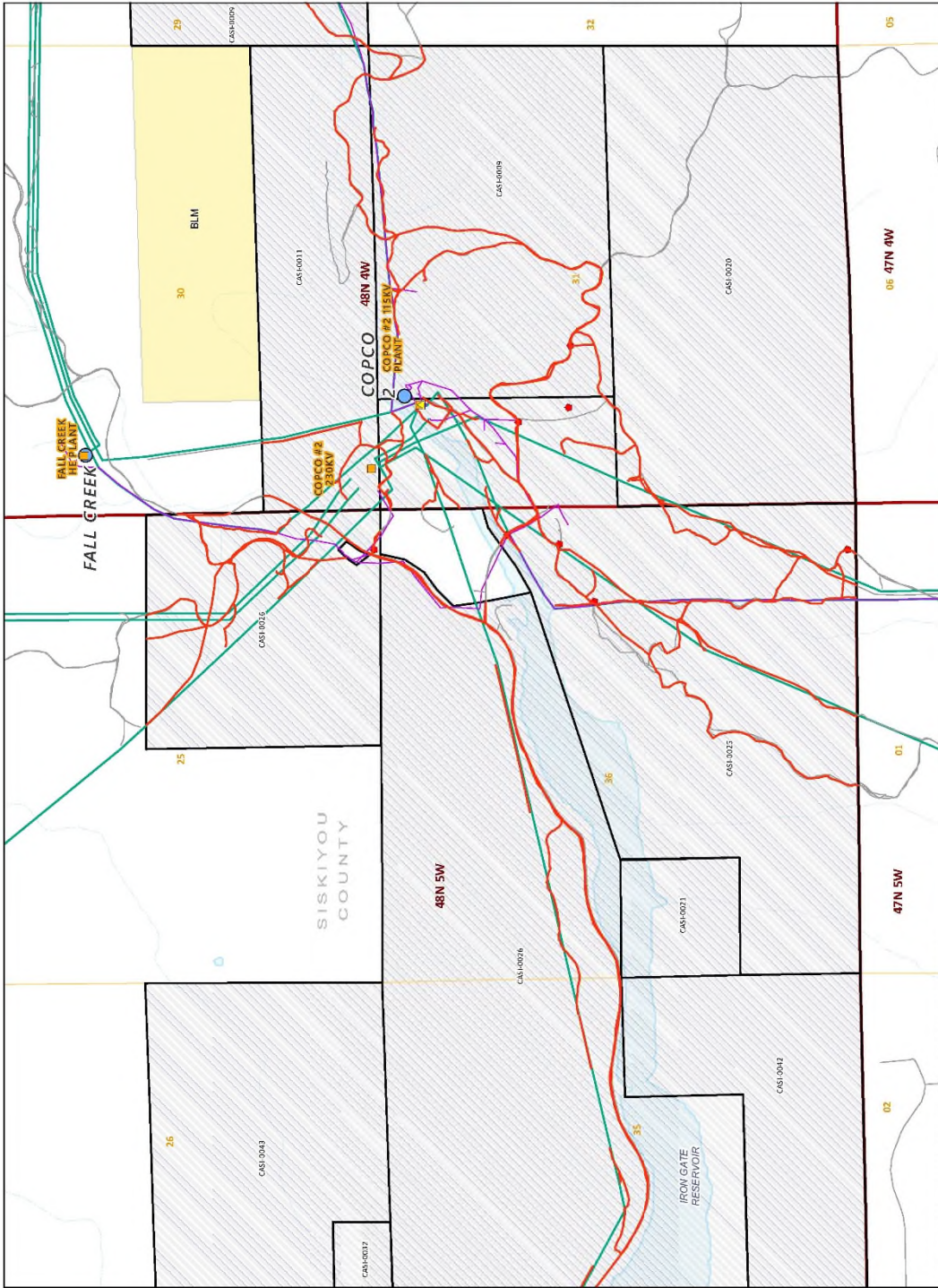


- Parcel B Lands
- Reserved Primary Access Routes
- Other Roads, non-reserved
- Gate
- Generation - to be removed
- Transmission Line
- Distribution Line
- Transmission Sub
- Distribution Sub
- Township
- Section

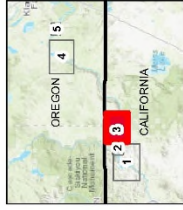
**Note:**  
Primary Access Routes not otherwise depicted are also reserved within the Reserved Transmission Facility Easement Areas.  
The Primary Access Routes depicted are not surveyed and particular location in the field may vary.



**PACIFICORP**  
US SURVEY SERVICES  
3500 NE 17th Ave  
Portland, OR 97232  
720.244.4000



**Klamath: Reserved Road Access**



- Parcel B Lands
- Reserved Primary Access Routes
- Other Roads, non-reserved
- Gate
- Generation - to be removed
- Transmission Line
- Distribution Line
- Transmission Sub
- Township
- Section

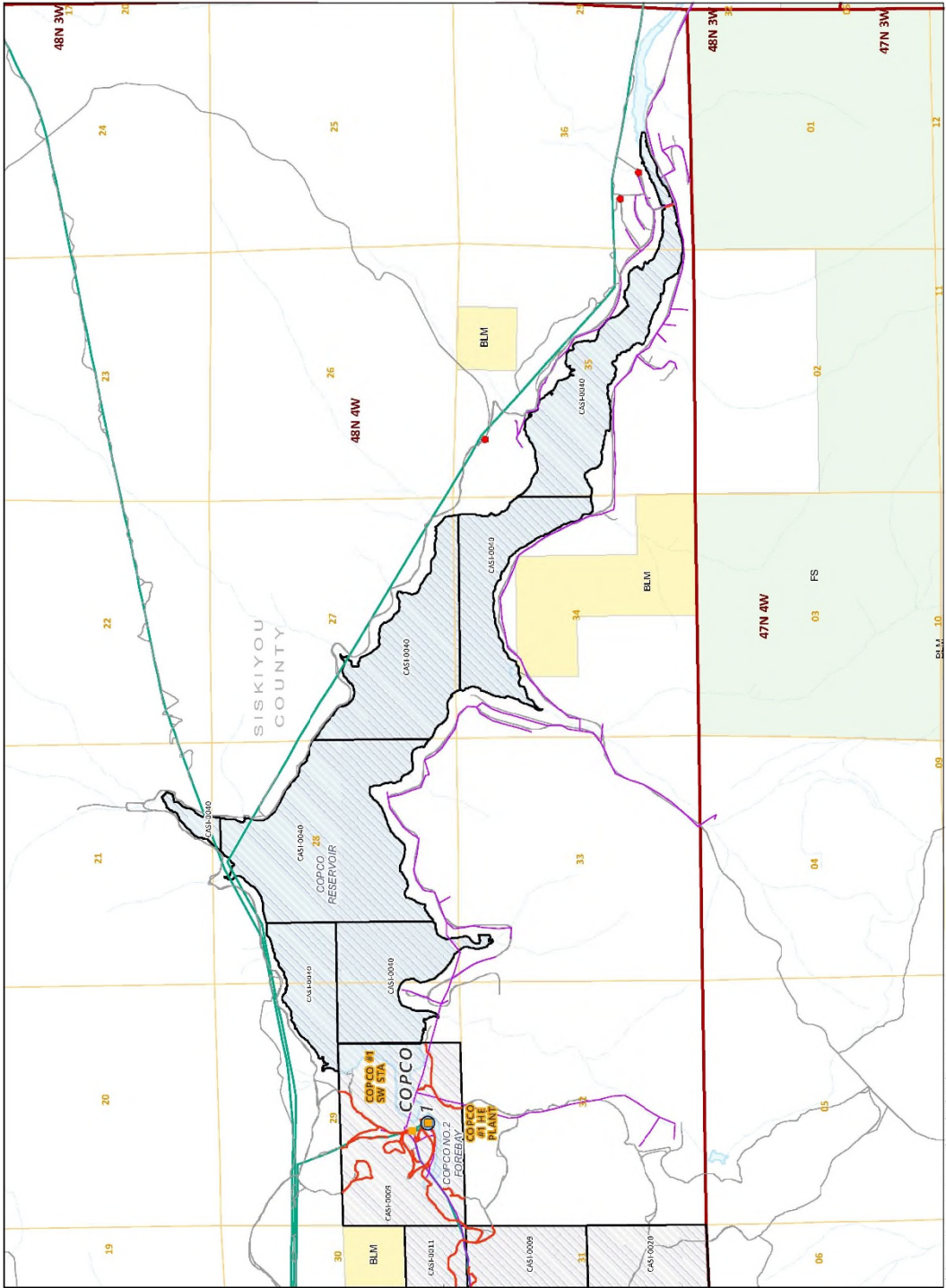
**Note:**  
Primary Access Routes not otherwise depicted are also reserved within the Reserved Transmission Facility Easement Areas.  
The Primary Access Routes depicted are not surveyed and particular location in the field may vary.

0 600 1200 2400 FEET

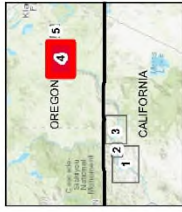
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**PACIFICORP**  
US SUPPLY SERVICES  
3500 NE ORANGE  
PORTLAND, OREGON 97218

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**Klamath Reserved Road Access**



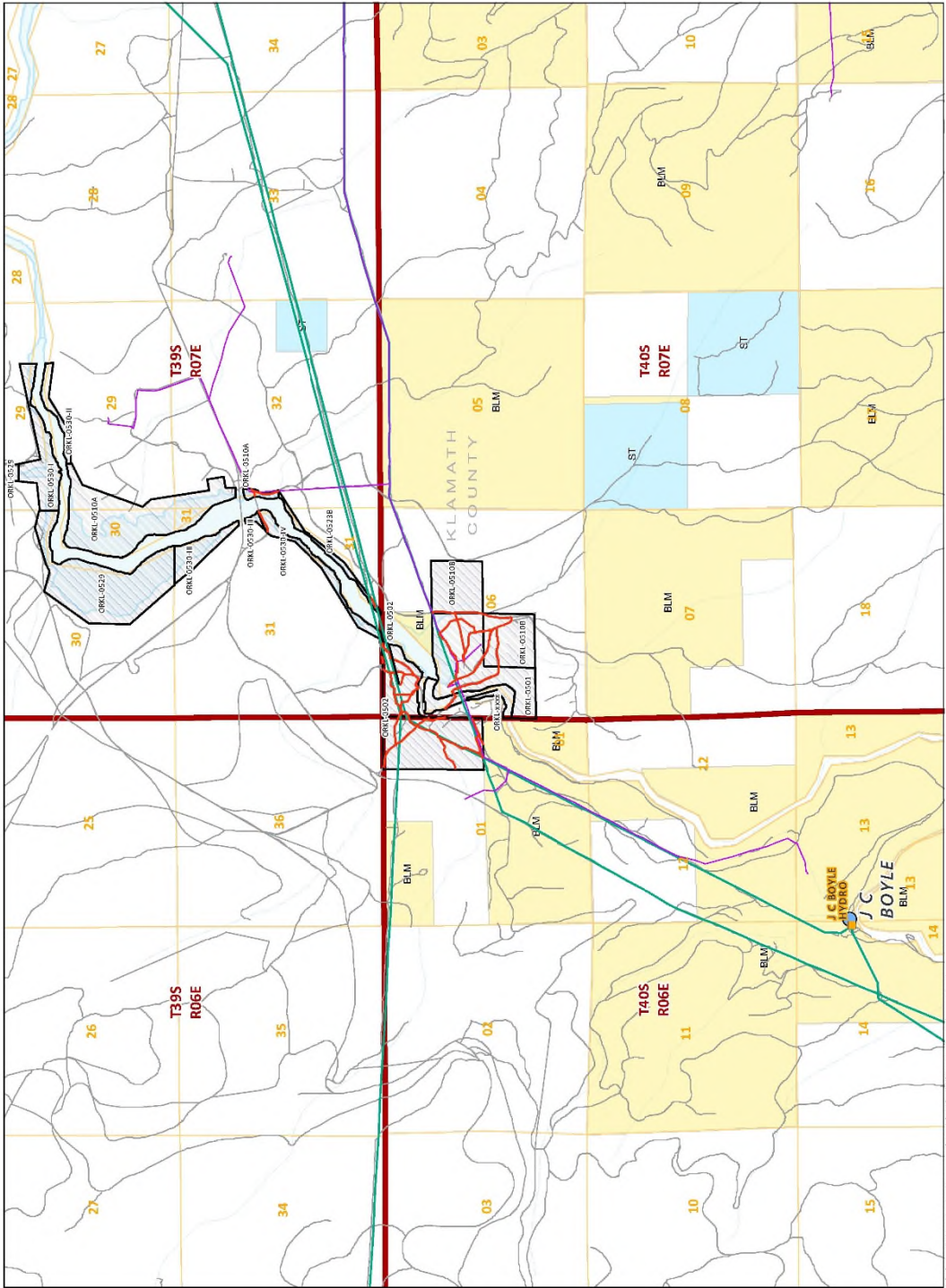
- Parcel B Lands
- Reserved Primary Access Routes
- Other Roads, non-reserved
- Generation - to be removed
- Transmission Line
- Distribution Line
- Transmission Sub
- Township
- Section

**Note:**  
Primary Access Routes not otherwise depicted are also reserved within the Reserved Transmission Facility Easement Areas.  
The Primary Access Routes depicted are not surveyed and particular location in the field may vary.

0 700 1,400 2,800 FEET

**PACIFIC CORP**  
US SURVEY SERVICES  
3500 NW 17th Ave  
Portland, OR 97209

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## **SCHEDULE 7.1(c)**

### **CONSENTS**

1. Receipt of the Transfer Order
2. Counterparties to the following Appurtenances
  - a. N/A
3. Counterparties to the following Use and Possession Agreements
  - a. State of Oregon as landlord under State Lands Lease for J.C. Boyle Dam (44581-HY) between the State of Oregon and PacifiCorp, dated June23, 2011
4. Counterparties to the following agreements:
  - a. NMFS-PacifiCorp Implementing Agreement



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**SCHEDULE 7.1(d)**  
**LITIGATIONS AND PROCEEDINGS**

1. The FERC license transfer application currently pending before FERC;
2. The FERC license surrender application pending before FERC;
3. Property Disposition applications before:
  - California Public Utility Commission
  - Oregon Public Utility Commission
  - Wyoming Public Service Commission
  - Idaho Public Utility Commission
4. ODEQ regarding the Klamath Total Maximum Daily Load (TMDL; Multnomah County Case No. 20CV12262)
5. U.S. Environmental Protection Agency regarding the Klamath River TMDL (Superior Court of California, Sacramento County Case No. 34-2011-80000769-CU-WM-GDS). This proceeding is subject to a tolling agreement between PacifiCorp and the U.S. Department of Justice.
6. North Coast Regional Water Quality Control Board – California Water Code Section 13267 – Investigative Order R1-2017-0051 (directed at PacifiCorp and the California Department of Fish and Wildlife as the owner and operators respectively, of the Iron Gate Hatchery).
7. Application to FERC for a new operating license for the Klamath Hydroelectric Project (P-2082; Submitted in February 2004, formally placed in abeyance by FERC on June 16, 2016).

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**SCHEDULE 7.2(c)**  
**OCCUPIED THIRD-PARTY PREMISES AND**  
**USE AND POSSESSION AGREEMENTS**

PREMISES	OWNER	RELEVANT AGREEMENT	PAYMENT/CONSENT
J.C. Boyle Property (See agreement for description)	State of Oregon	State of Oregon Department of State Lands Lease for J.C. Boyle Dam (44581-HY) between the State of Oregon and PacifiCorp, dated June23, 2011	Rent payable  Assignable in accordance with the KHSA and applicable Oregon Administrative Rules
Klamath County APN 4006-00000-00400	United States Bureau of Land Management	FERC License	
Klamath County APN 4006-00000-00400	United States Bureau of Land Management	FERC License	
Siskiyou County APN 041-030-260-000	United States Bureau of Land Management	FERC License	
Siskiyou County APN 041-060-030-000	United States Bureau of Land Management	FERC License	
Siskiyou County APN 041-060-080-000	United States Bureau of Land Management	FERC License	
Siskiyou County APN 041-060-160-000	United States Bureau of Land Management	FERC License	

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**SCHEDULE 7.2(d)**  
**APPURTENANCES**

A. Easements and Rights of Way

California

The following access roads

- i. Right of access to Copco 1 parcel reserved under deed from The California Oregon Power Company to Frank Lathrop, dated August 23, 1954, recorded in the records of Siskiyou County on September 8, 1954 at Vol. 336, Page 848
- ii. Right of access over lands of the United States of America in connection with the Facilities pursuant to FERC License for Project 2082

Oregon

The following access roads

- i. Easement for Ingress and Egress to The California Oregon Power Company, recorded in the land records of Klamath County, Oregon, on July 18, 1956, in Book 286, Page 550.
- ii. Right of access over lands of the United States of America in connection with the Facilities pursuant to FERC License for Project 2082

B. Water Rights

California

- i. License 9457
- ii. Statements 15374,15375, 15376
- iii. S012968

Oregon

The Oregon water rights used for the Project are assigned to Oregon Water Resources Department pursuant to the “Water Rights Agreement between PacifiCorp and the State of Oregon” (2010), Exhibit 1 to the Klamath Hydroelectric Settlement Agreement

C. Others

California

- i. Access and Easement agreement dated February 13, 2017 by County of Siskiyou to PacifiCorp, recorded in the records of Siskiyou County under Recorder's Series No. 2017-001728

**SCHEDULE 7.2(e)**  
**OPERATING PERMITS**

[See following pages]



Current operating permits associated with the Klamath Hydroelectric Project. Note that this does not include permits for completed activities (e.g., U.S. Army Corps of Engineers, State Water Resources Control Board Section 401 permits, etc.).

State	Location	Type 1	Type 2	Effective Date	Expiration Date	Agency
OR/CA	Klamath Project	FERC Project License 2082	n/a	1/28/1954	Renewed Annually	Federal Energy Regulatory Commission
OR	Klamath Project	Scientific Taking Permit - Fish	Permit No. 23948	6/12/2020	12/31/2020 Renewed Annually	Oregon Department of Fish and Wildlife
OR	Klamath Project	Scientific Taking Permit - Wildlife (birds, mammals, reptiles, amphibians)	Permit No. 036-20		12/31/2020 Renewed Annually	Oregon Department of Fish and Wildlife
OR/CA	Klamath Project	Permit for Incidental Take of Endangered/Threatened Species	Federal No. MB93024C-1	1/10/2020		NOAA's National Marine Fisheries Service
OR/CA	Klamath Project	Permit for Incidental Take of Endangered/Threatened Species	Permit No. 17158	2/24/2012	2/24/2022	U.S. Fish and Wildlife Service
CA	Copco No. 1	Air Quality Permit, Emergency/Standby Generator	Permit No. TE52096A-0	2/20/2014	2/20/2024	Siskiyou County, Air Pollution Control District
CA	Iron Gate Hatchery	Air Quality Permit, Emergency/Standby Generator	Permit No. PTO 092818-BUG	9/28/2018	None	Siskiyou County, Air Pollution Control District
OR	J.C. Boyle	NPDES Permit	Permit No. ATC/PTO 073118-BUG	9/28/2018	None	Oregon Department of Environmental Quality
CA	Iron Gate Hatchery	NPDES Permit	100-J Cooling Water Discharge			North Coast Regional Water Quality Control Board (Note: PacifiCorp has attempted to renew this permit but the TMDL for the Klamath in California prohibits any net loading in discharged water. Years of discussion led to the 13267 Investigative Order on Sept 29, 2017.)
CA	Iron Gate Hatchery	California Water Code Section 13267 Investigative Order	Permit No. CA006688	2/24/2000	2/24/2005	North Coast Regional Water Quality Control Board
CA	Copco No. 2	Water Supply Permit	Order No. R1-2017-0051	9/29/2017	n/a	Siskiyou County Community Development Department
OR	J.C. Boyle	Limited License	n/a	2/1/2020	2/1/2021	Oregon Water Resources Department
			LL 1849	12/1/2020	11/30/2021	

Pressure vessel permits associated with the PacifiCorp Klamath Hydroelectric Project  
(note that permit requirements are different between Oregon and California)

State	State Permit Number	Location	Type	Expiration Date
CA	A000619-12	Copco 1 - Turbine Floor	Air	4/18/2023
CA	L000395-14	Generator House Entrance	LPG	1/13/2024
CA	A000828-03	Fall Creek Generator Room	Air	1/13/2024
CA	A006991-17	Copco 2-Main Floor	Air	12/14/2022
CA	A070735-10	Copco 2-Shop	Air	1/13/2024
CA	A031914-77	Copco 2-Basement Auxiliary #1 Receiver	Air	1/13/2024
CA	A031913-77	Copco 2- Basement Auxiliary #2 Receiver	Air	1/13/2024
CA	L000397-14	Copco 2 Diversion Dam	LPG	1/13/2024
CA	L000396-14	Copco 2 Emergency Generator	LPG	1/13/2024
CA	A000580-13	Iron Gate Service Air (Hp)	Air	4/18/2023
CA	A008259-62	Iron Gate Service Air (Lp)	Air	4/18/2023
CA	A000438-16	Hatchery Building	Air	4/24/2021
CA	A000439-16	Hatchery	Air	4/25/2021
CA	A006990-17	Hatchery Building	Air	12/14/2022
CA	L001932-94	Hatchery Building 6	LPG	4/24/2021
OR	X1857-60X	J.C. Boyle 1 Governor accumulation tank	Air	3/31/2021
OR	X1855-60X	J.C. Boyle 2 Governor accumulation tank	Air	3/31/2021
OR	X1858-60X	Blue air tank left of Generator 1	Air	3/31/2021
OR	8294	Red Barn	Air	3/31/2021
OR	61292	Fire Pump at J.C. Boyle Dam	Air	3/31/2021
OR	93339	OCB-1L35	Air	3/31/2021
OR	93340	OCB-1L36	Air	3/31/2021
OR	99226	Blue air tank by Unit 1 governor	Air	3/31/2021
OR	115059	J.C. Boyle garage air compressor	Air	3/31/2021

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## SCHEDULE 7.2(f)

### SERVICE CONTRACTS

*This list of service contracts is valid as of December 15, 2020 and is subject to change as contracts expire or are added. A variety of services may be provided under a Master Services Agreement (MSA) that are not specified here. Those services are not separate agreements and are subject to the terms of the MSA. The MSA does not apply to the Facilities following transfer except as PacifiCorp may elect for its own account under its O&M Agreement with KRRC.*

<b>Vendor</b>	<b>Service Provided</b>
Basic Laboratory	Iron Gate Hatchery NPDES monitoring
Bio-Oregon	Fish food
Cardno Inc.	Aquatic services MSA
E&S Environmental Chemistry, Inc.	Water quality and monitoring and evaluation Services MSA
Farmers Conservation Alliance	Interim Measure 11 Implementation
Jacobs Engineering, Inc.	Air, land, and water permitting and other technical assistance contract
JR Merit Industrial Contractors	General construction MSA
Karuk Tribe	Interim Measure 15 Water Quality Sampling
Klamath Watershed Partnership	Interim Measure 11 Implementation
Marquess	Engineering MSA
Meridian Environmental	Monitoring and evaluation services MSA
Mid Klamath Watershed Council	Coho Salmon spawning surveys in tributaries downstream of Iron Gate Dam
National Fish and Wildlife Foundation	Implementation of Coho Enhancement Fund per PacifiCorp Habitat Conservation Plan for Coho Salmon and the Habitat Conservation Plan for Lost River and Shortnose suckers
Pacific States Marine Fisheries Commission	Constant fractional marking/tagging at Iron Gate Hatchery
Quality Water Systems	Iron Gate Hatchery filtration media
S&B James Construction Company	Construction services contract
Skretting	Fish food
The Nature Conservancy	Interim Measure 11 Implementation
Trout Unlimited	Interim Measure 11 Implementation
Watercourse Engineering, Inc.	Environmental monitoring MSA
Weekly Brothers, Inc.	General construction MSA
Yurok Tribe	Interim Measure 15 Water Quality Sampling

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**SCHEDULE 7.2(n)**  
**POLE ATTACHMENT AGREEMENTS**

1. Transmission Pole Contact Agreement for Joint Use of Wood Transmission Poles Between Pacific Power & Light Company and The Pacific Telephone and Telegraph Company, dated April 12, 1977
2. General Agreement for Joint Use of Wood Transmission Poles Between Pacific Power & Light Company and The Pacific Telephone and Telegraph Company, dated April 12, 1977 and stated to expire April 12, 1997 but continued by the parties in accordance with its terms

[See Attached Map and Schedule]

**ATTACHMENT TO SCHEDULE 7.2(n)**  
**POLE ATTACHMENT SCHEDULE AND MAP**

[See Attached Schedule of Locations and Maps]

**Schedule of Pole Attachments and Locations**

	map_latitu	map_longit	transmissi	copco_name	mapstring/pole #	OWNERSHIP_	LOC_ADDRES	Utility Code	STAT	Licensee
1	41.969433	- 122.272951		655E E 17738	06248004.0356400	O		165	A	AT&T
2	41.968762	- 122.272576		655E E 14365	06248004.0356401	O	5 E/O 27008 COPCO RD	165	A	AT&T
3	41.975336	- 122.357675		655E E 9532	06248004.0312802	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
4	41.973927	- 122.359315		655E E 9534	06248004.0311700	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
5	41.973638	- 122.360263		655E E 9536	06248004.0311703	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
6	41.972927	- 122.360717		655E E 9538	06248004.0310701	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
7	41.972505	- 122.361299		655E E 13598	06248004.0310600	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
8	41.972068	- 122.361801		655E E 9541	06248004.0310601	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
9	41.97073	- 122.362407		655E E 12550	06248004.0310500	O	DAGGETT RD DAGGETT RD	165	A	AT&T
10	41.961603	- 122.443537		655E E 11660	06248005.0328000	O		165	A	AT&T
11	41.93078	- 122.441341		655E E 11637	06247005.0179802	O		165	A	AT&T
12	41.93022	- 122.441715		655E E 11636	06247005.0179806	O	HATCHERY OFF COPCO RD. (KRCE)	165	A	AT&T
13	41.96385	- 122.445327		655E E 14369	06248005.0327100	O	12015 COPCO RD- HORN BROOK	165	A	AT&T
14	41.964123	- 122.444444		655E E 11663	06248005.0328100	O	12015 COPCO RD. (IGLE)	165	A	AT&T



15	41.963396	-122.44372	655E E 11662	06248005.0328101	O	12015 COPCO RD. (IGLE)	165	A	AT&T
16	41.962892	- 122.443479	655E E 11661	06248005.0328102	O	12015 COPCO RD. (IGLE)	165	A	AT&T
17	41.929471	- 122.442293	655E E 16224	06247005.0179811	O	HATCHERY OFF COPCO RD. (KRCE)	165	A	AT&T
18	41.970616	-122.36286	655E E 12356	06248005.0369501	O	DAGGETT RD BY SCHOOL	165	A	AT&T
19	41.971214	- 122.363313	655E E 9543	06248005.0369600	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
20	41.980662	- 122.324893	655E E 13350	06248004.0299201	O	17147 JANICE RD COPCO LAKE, CA	165	A	AT&T
21	41.981221	-122.3363	655E E 10048	06248004.0293301	O	SUB COPCO #1	165	A	AT&T
22	41.938921	- 122.439836	655E E 14054	06247005.0090401	O	ON HILL ABOVE IRON GATE DAM, HORN BROOK; X-FROM 10709 OLD HWY 99 (E 838), GREENDA, CA	165	A	AT&T
23	41.932671	- 122.439872	655E E 12826	06247005.0090003	O	IRON GATE VILLAGE OFF COPCO RD. (IGLE)	165	A	AT&T
24	41.97333	- 122.360111	655E E 9537	06248004.0311705	O	END OF DAGGETT RD HORN BROOK, CA	165	A	AT&T
25	41.927045	- 122.443824	655E E 11632	06247005.0178601	O	ON HILL BEHIND HATCHERY OFF COPCO RD. (KRCE)	165	A	AT&T
26	41.981977	- 122.336139	655E E 4505	06248004.0293300	O	21600 COPCO RD HORN BROOK, CA; SUB COPCO #1	165	A	AT&T
27	41.928193	- 122.444953	655E E 16258	06247005.0177701	O	NEAR HATCHERY ON COPCO RD. (KRCE)	165	A	AT&T

28	41.928568	-	122.442992	655E E 11634	06247005.0179701	O	IN FIELD BEHIND HATCHERY OFF COPCO RD. (KRCE)	165	A	AT&T
29	41.969703	-122.27299		655E E 1815 T	06248004.0356440	F	2 E/O 27008 COPCO RD; 2 PLS B4 27008 COPCO RD MONTAGUE	166	A	AT&T PP&L Attached
30	41.963339	-	122.263939	655E E 5/1737	06248004.0360042	F	4 EAST OF 21235 AGER BISWICK RD	166	A	AT&T PP&L Attached
31	41.963588	-	122.262733	655E E 5/1739	06248004.0361040	F		166	A	AT&T PP&L Attached
32	41.970897	-	122.276383	655E E 2350T	06248004.0354540	F	26834 COPCO RD; 2ND PL PAST 27008 COPCO MONTAGUE	166	A	AT&T PP&L Attached
33	41.973171	-	122.439861	655E E 1951T	06248005.0330841	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
34	41.972768	-	122.440244	655E E 1950T	06248005.0330842	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
35	41.971615	-122.4402		655E E 1949T	06248005.0330740	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
36	41.970175	-	122.440145	655E E 1948T	06248005.0330640	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
37	41.968702	-	122.440083	655E E 1947T	06248005.0330540	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
38	41.966301	-	122.439992	655E E 1945T	06248005.0330340	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached

39	41.964874	-	122.439937	655E 1944T	06248005.0330240	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
40	41.964543	-	122.440295	655E 1943T	06248005.0330241	F	ON HILL NEAR END OG IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
41	41.964342	-	122.441779	655E E 1942- T	06248005.0329240	F	COPCO RD & QUASI RD- HORN BROOK CA	166	A	AT&T PP&L Attached
42	41.963771	-	122.44295	655E 1941T	06248005.0328140	F		166	A	AT&T PP&L Attached
43	41.964244	-	122.260485	655E 2224T	06248004.0362040	F		166	A	AT&T PP&L Attached
44	41.96399	-	122.261141	655E E 2223 T	06248004.0362041	F	2 E/O IRON GATE LAKE RD; 21632 AGER BESWICK RD MONTAGUE, CA	166	A	AT&T PP&L Attached
45	41.963753	-	122.261846	655E 5/1740	06248004.0361041	F	1 EAST OF IRON GATE LAKE RD	166	A	AT&T PP&L Attached
46	41.975118	-	122.438008	655E 1953T	06248005.0331940	F	COPCO RD. AT END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
47	41.97382	-	122.439243	655E E 1952- T	06248005.0330840	F	NEAR END OF IRONGATE LAKENW CORNER, HORN BROOK, CA; NEXT TO COPCO RD. AT END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
48	41.964713	-	122.259708	655E 2226T	06248004.0362140	F		166	A	AT&T PP&L Attached
49	41.968299	-	122.272176	655E E 1812 T	06248004.0356340	F	27204 COPCO RD MONTAGUE	166	A	AT&T PP&L Attached

50	41.968978	-	122.272542	655E E 1813 T	06248004.0356441	F	4 E/O 27008 COPCO RD	166	A	AT&T PP&L Attached
51	41.967508	-	122.440037	655E E 1946T	06248005.0330440	F	ON HILL NEAR END OF IRON GATE LK. (IGLE)	166	A	AT&T PP&L Attached
52	41.967636	-	122.271236	655E E 1811 T	06248004.0357340	F	1 E/O 27204 COPCO RD; 1ST PL B4 27204 COPCO RD MONTAGUE	166	A	AT&T PP&L Attached
53	41.963469	-	122.263998	655E E 5/1738	06248004.0360041	F		166	A	AT&T PP&L Attached
54	41.969982	-	122.273716	655E E 1816 T	06248004.0355541	F	1 E/O 27008 COPCO RD 1 PL B4 27008 COPCO RD MONTAGUE	166	A	AT&T PP&L Attached
55	41.983699	-	122.337161	668003/00 7X/001	06248004.0293460	O		167	A	AT&T (trans)
56	41.983012	-	122.336895	668003/00 6X/001	06248004.0293461	O		167	A	AT&T (trans)
57	41.982406	-	122.336908	668003/00 5X/001	06248004.0293360	O		167	A	AT&T (trans)
58	41.980629	-	122.336195	668003/00 2/01X	06248004.0293260	O	21600 COPCO RD HORN BROOK, CAL	167	A	AT&T (trans)
59	41.980295	-	122.336049	668003/00 1/01X	06248004.0293263	O	21600 COPCO RD HORN BROOK, CAL; COPCO 1	167	A	AT&T (trans)
60	41.970785	-	122.360603	668014/00 5/001		O		167	A	AT&T (trans)
61	41.962659	-	122.366658	668002/00 2/002	06248005.0368060	O		167	A	AT&T (trans)

Notes:

- "AT&T" means that AT&T is attached to a PacifiCorp-owned distribution Pole
- "AT&T PP&L Attached" means that PacifiCorp service is attached to an AT&T-owned Pole
- "AT&T (trans)" means AT&T is attached to PacifiCorp-owned transmission structures

**PacifiCorp Klamath River  
Hydroelectric Project Land  
Disposition: Parcel B**

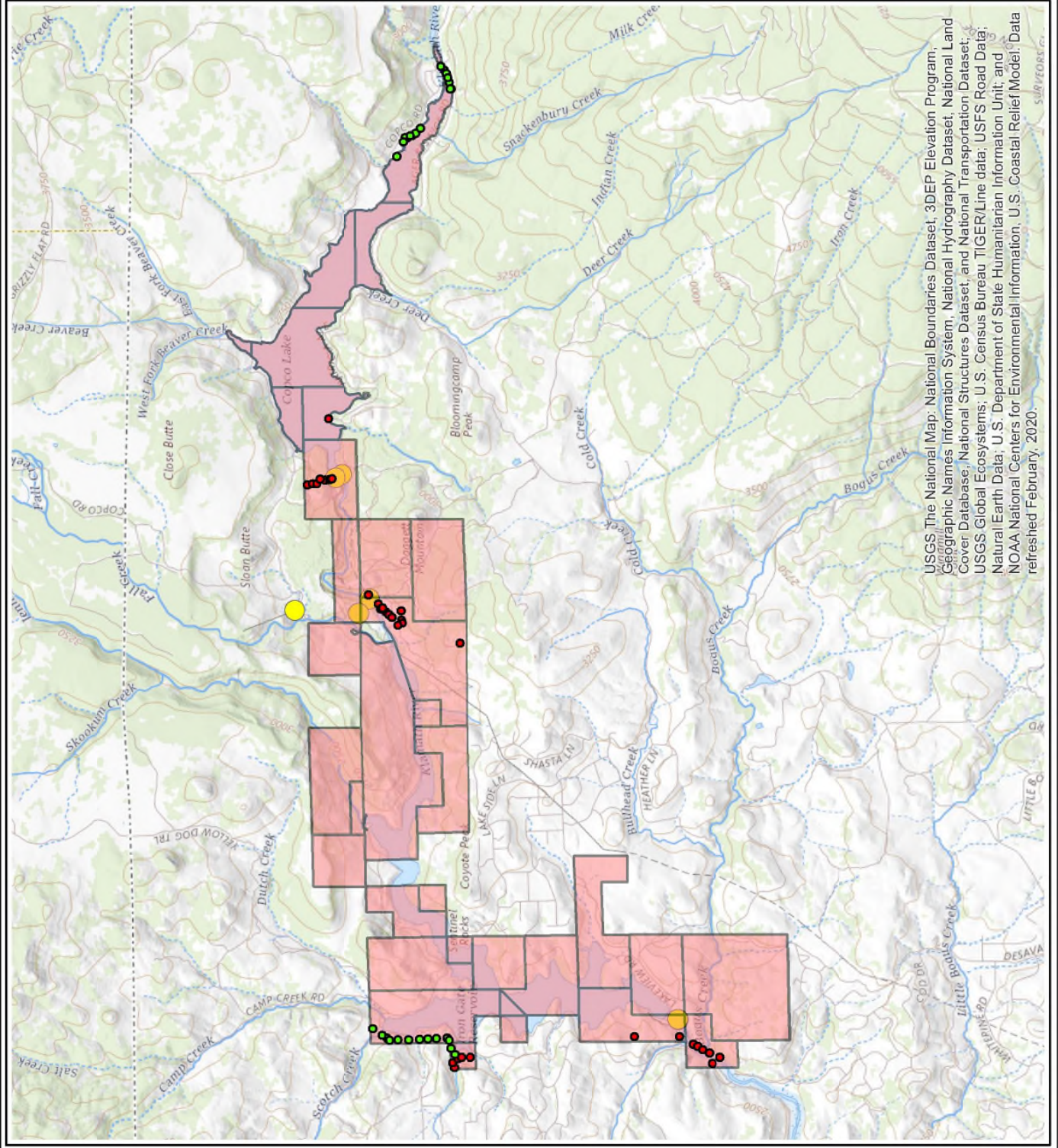
**CALIFORNIA**

**JOINT USE  
Attached Poles  
within  
PARCEL B**

- AUKT Attachments within Parcel B
- AUKT with PacifiCorp Attached within Parcel B
- Parcel B lands
- Substation Buffer

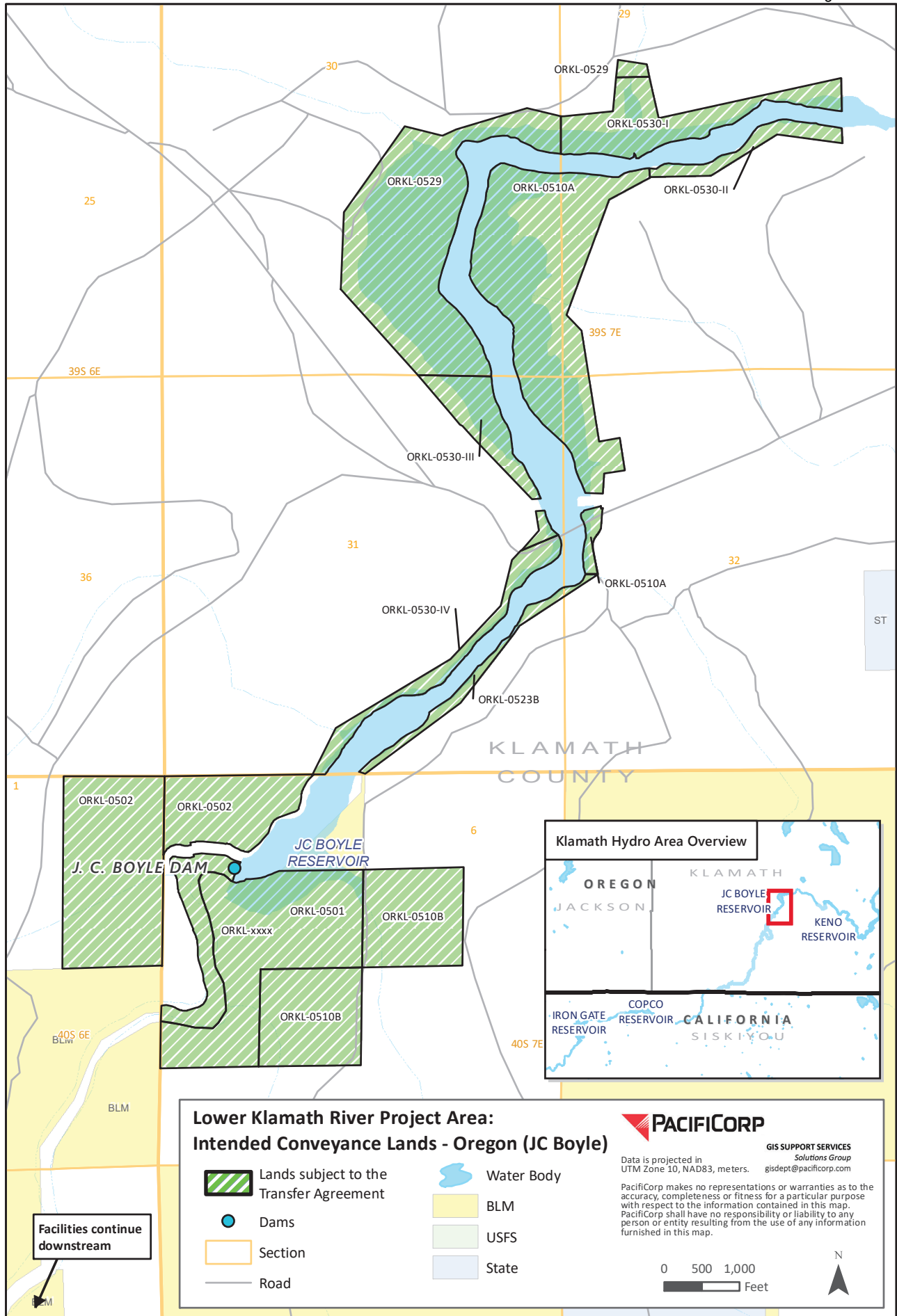


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USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographical Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road Data; Natural Earth Data; U.S. Department of State Humanitarian Information Unit; and NOAA National Centers for Environmental Information, U.S. Coastal Relief Model; Data refreshed February, 2020.

## **Exhibit 2**



**Lower Klamath River Project Area:  
Intended Conveyance Lands - Oregon (JC Boyle)**

- Lands subject to the Transfer Agreement
- Dams
- Section
- Road
- Water Body
- BLM
- USFS
- State

**PACIFICORP**

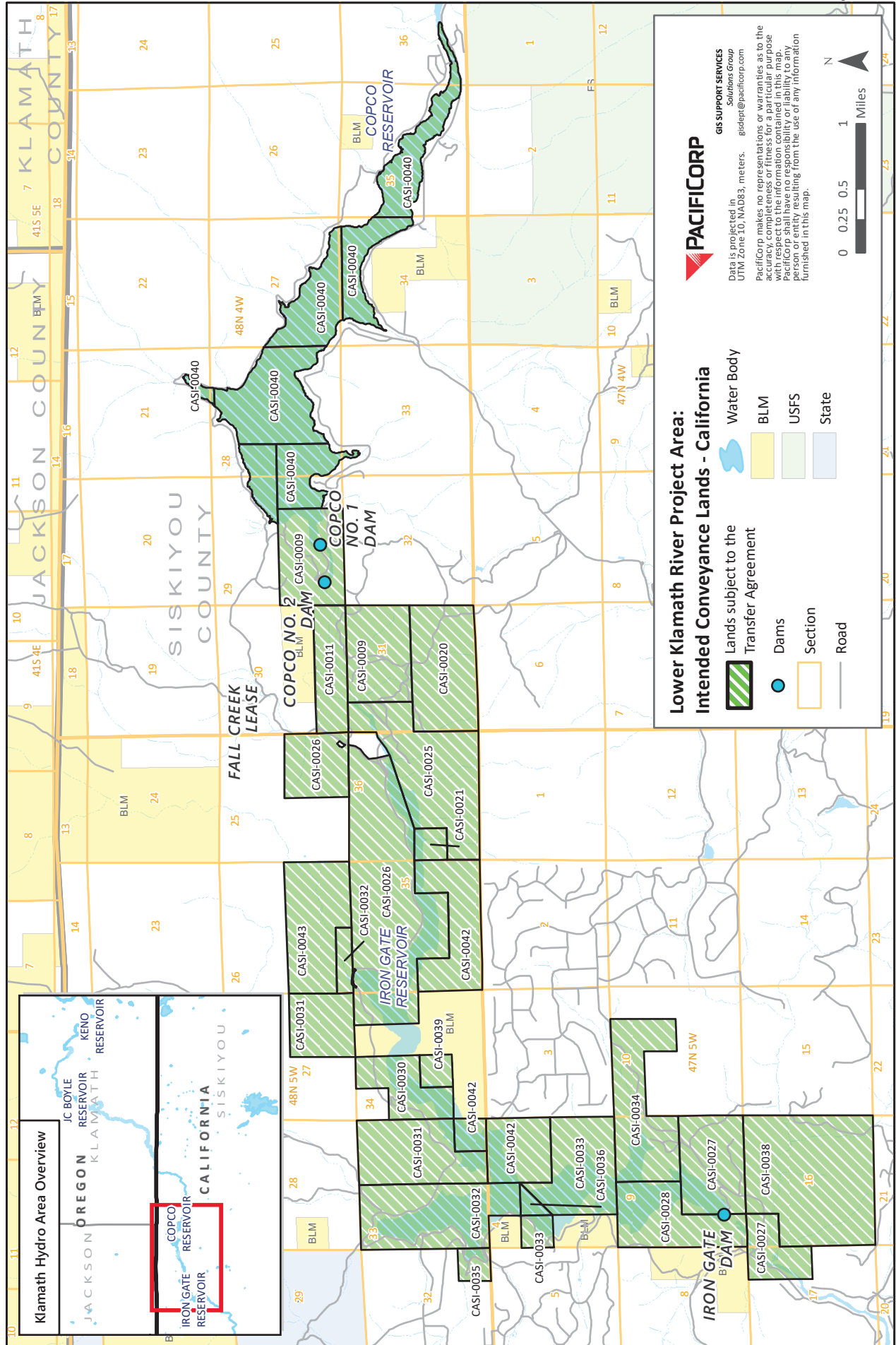
GIS SUPPORT SERVICES  
Solutions Group  
gisdept@pacificorp.com

Data is projected in UTM Zone 10, NAD83, meters.

PacificCorp makes no representations or warranties as to the accuracy, completeness or fitness for a particular purpose with respect to the information contained in this map. PacificCorp shall have no responsibility or liability to any person or entity resulting from the use of any information furnished in this map.

0 500 1,000 Feet

N





## **Exhibit 3**

# **KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

**February 18, 2010  
as amended April 6, 2016  
& November 30, 2016**

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## **APPENDICES**

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## **EXHIBITS**

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- 2. Sequence of Performance Chart—KHSA
- 3. Maps
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The KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT was made and entered into by and among the following entities:

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



Winema Hunting Lodge, Inc.; and  
Yurok Tribe;

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

## 1. Introduction

### 1.1 Recitals

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Purpose of Settlement

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

1.3 Parties Bound by Settlement

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

1.4 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“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, J.C. Boyle Dam, and appurtenant works currently licensed to PacifiCorp.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 1.5 Compliance with Legal Responsibilities

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

#### 1.6 Reservations

##### 1.6.1 Generally

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

##### 1.6.2 Reservations Regarding Federal Appropriations

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

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

#### 1.6.3 Availability of Public Funds

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

#### 1.6.4 Reservations Regarding Legislative Proposals

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

#### 1.6.5 Reservations Regarding Regulations

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

#### 1.6.6 No Pre-Decisional Commitment

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

#### 1.6.7 No Waiver of Sovereign Immunity

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

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

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

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

#### 1.6.9 Protection of Interests

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

#### 1.7 Trinity River

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

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

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

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



### 1.8 Tribal Water Rights

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

### 1.9 Klamath Basin Agreement

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

## 2. **Implementation of Settlement**

### 2.1 General Duty to Support Implementation

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

#### 2.1.1 Legislation

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

### 2.1.2 Regulatory Approvals

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

### 2.1.3 Defense of Settlement

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

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

### 2.1.4 Obligation to Implement

#### A. General

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

#### B. Cooperation Among the Parties

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

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

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

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

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

#### 2.1.5 Timeliness

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

#### 2.1.6 Force Majeure

##### A. Definition of Force Majeure

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

## B. Suspension of Obligation

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

## C. Remedies

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

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

## 2.2 Ratemaking Legislation and Proceedings

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

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

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

### 2.3 Project Water Rights; Klamath Basin Adjudication

#### 2.3.1 Project Water Rights

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

#### 2.3.2 Klamath Basin Adjudication

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

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

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

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

### 3.1 Statement of Support

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

### 3.2 Secretarial Designation

The Secretary, through execution of Amendment No. 1, agrees that the DRE will act as the entity with authority under ORS 757.738(3) to request transfer of funds held in the appropriate trust account established under ORS 757.738. The DRE, its assigns, or successors, shall expend funds in the amounts necessary and as consistent with the Settlement to pay "the costs of removing the Klamath River dams" as that phrase is used in ORS 757.736(11).

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

#### **4. Costs**

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

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

##### **4.1.1 The Customer Contribution**

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

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:
- (1) Whether and when to disburse funds from the Oregon Klamath Trust Accounts and California Klamath Trust Accounts to the DRE;
  - (2) The methodology to be used by the trustee(s) to determine which account or accounts to draw funds from for the purpose of disbursing funds to the DRE;
  - (3) A protocol for the trustee(s) to use to ensure that the management of the Customer Contribution is consistent with and complementary to the management of the California Bond Funding;
  - (4) Disbursement of funds under the circumstances described in Section 4.4 below;
  - (5) A protocol for reallocating between Trust Accounts monies that have already been deposited into the Trust Accounts, to be used by the trustees, at the request of the States, for removal of specific facilities; and

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

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

#### 4.3 Adjustment to Surcharges

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

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

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

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

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

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

4.5 Recovery of Net Investment in Facilities

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

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

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

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

#### 4.6 Recovery of Costs of Ongoing Operations and Replacement Power

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

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

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

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

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

#### 4.8 Acknowledgment of Independence of Oregon PUC and California PUC

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

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

#### 4.9 Consultation

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

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

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

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

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

#### 4.12 Funding and Grant Agreements

4.12.1 On or around June 15, 2016, CNRA will enter into an agreement with the DRE pertaining to the use of funds from the Customer Contribution and California Bond Funding.

4.12.2 On or around June 15, 2016, and as is necessary at any time thereafter, the DRE will enter into an agreement with the Oregon PUC pertaining to the use of funds from the Customer Contribution in a manner not inconsistent with the Settlement and ORS 757.738(3).

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

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

## **5. Local Community Power**

### **5.1 Power Development**

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

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

5.2 [Section deleted]

### 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.

#### 5.4 Irrigator Rates

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

### **6. Interim Operations**

#### 6.1 General

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

##### 6.1.1 PacifiCorp Performance

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

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

#### 6.1.2 Duty to Support

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

#### 6.1.3 Permitting

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

#### B. FERC Enforcement and Jurisdiction

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

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

#### 6.1.4 Interim Power Operations

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

#### 6.1.5 Adjustment for Inflation

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

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

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's (NCRWQCB's) approval, respectively, of a TMDL for the Klamath River, PacifiCorp shall submit to ODEQ and NCRWQCB, as applicable, proposed TMDL implementation plans for agency approval. The TMDL implementation plans shall be developed in consultation with ODEQ and NCRWQCB.
- B. To the extent consistent with this Settlement, PacifiCorp shall prepare the TMDL implementation plans in accordance with OAR 340-042-0080(3) and California Water Code section 13242, respectively. The plans shall include a timeline for implementing management strategies and shall incorporate water quality-related measures in the Non-ICP Interim Measures set forth in Appendix D. Facilities Removal by the DRE shall be the final measure in the timeline. At PacifiCorp's discretion, the proposed plans may further include other planned activities and management strategies developed individually or cooperatively with other sources or designated management agencies. ODEQ and NCRWQCB may authorize PacifiCorp's use of offsite

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

### 6.3.3 Keno Load Allocation

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

### 6.3.4 TMDL Reservations

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

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

#### 6.4 Other Project Works

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

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

##### 6.4.2 Fall Creek Hydroelectric Facility

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

## 6.5 Abeyance of Relicensing Proceeding

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

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

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

### 7.1 DRE

#### 7.1.1 Execution of Settlement

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

7.1.2 Capabilities

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



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

### 7.1.3 Liability Protection

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

### 7.1.4 License Transfer Conditions and Timing

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

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

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

7.1.5 FERC Application for Transfer

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

#### 7.1.6 Operation and Maintenance Agreement

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

#### 7.1.7 FERC Application for Surrender

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

#### 7.1.8 Performance of Facilities Removal

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

#### 7.1.9 Other Regulatory Approvals for Facilities Removal

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

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

#### 7.1.10 Assignment

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

### 7.2 Definite Plan and Detailed Plan

#### 7.2.1 Development and Use of Definite Plan

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

##### A. Elements of Definite Plan

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

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

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

B. Notice of Completion

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

C. Use of Definite Plan

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

7.2.2 Detailed Plan for Facilities Removal

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

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

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

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

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

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

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

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

### 7.3 Schedule for Facilities Removal

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

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

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

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

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

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

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

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

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



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

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

A. Interest on the Klamath Trust Accounts

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

B. Third-Party Funding

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

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

## 7.4 Transfer, Decommissioning, and Facilities Removal

### 7.4.1 DRE Notice

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

### 7.4.2 Decommissioning and Transfer

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

## 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, with specific focus on addressing water quality, fish passage, transfer of title to the Keno facility from PacifiCorp to Interior, future operations and maintenance, and landowner agreements. The study of the Keno facility will be designed with the goals of addressing these issues and maintaining the benefits the dam currently provides.

### 7.5.2 Keno Facility Determination

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

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

### 7.5.3 PacifiCorp Operations Prior to Transfer

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

### 7.5.4 Operations After Transfer

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

### 7.5.5 Landowner Agreements

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

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

### 7.6.1 Lands Owned by PacifiCorp

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

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

#### 7.6.2 Potential Non-Project Land Exchanges

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

#### 7.6.3 BLM Easements and Rights of Way

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

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

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

#### 7.6.4 PacifiCorp Klamath Hydroelectric Project Lands

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

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

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

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

#### 7.6.5 PacifiCorp Water Rights

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

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

#### 7.6.6 PacifiCorp Hatchery Facilities

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

##### A. Hatchery Funding

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

##### B. Hatchery Production Continuity

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



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

## **8. General Provisions**

### **8.1 Term of Settlement**

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

### **8.2 Effectiveness**

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

### **8.3 Successors and Assigns**

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

### **8.4 Amendment**

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

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

##### B. Informal Meetings

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

##### C. Mediation

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

##### D. Dispute Resolution Notice

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

## 8.7 Meet and Confer

### 8.7.1 Applicability

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

### 8.7.2 Meet and Confer Procedures

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

## 8.8 Remedies

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

## 8.9 Entire Agreement

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

## 8.10 Severability

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

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

### 8.11.2 Definitions for Section 8.11

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

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

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

#### 8.11.3 Cure for Potential Termination Event

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

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

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

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

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

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

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

#### 8.11.4 Obligations Surviving Termination

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

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

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

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

#### 8.12 No Third-Party Beneficiaries

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

#### 8.13 Elected Officials Not to Benefit

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

#### 8.14 No Partnership

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



## 8.15 Governing Law

### 8.15.1 Contractual Obligation

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

### 8.15.2 Regulatory Obligation

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

### 8.15.3 Reference to Applicable Law

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

## 8.16 Federal Appropriations

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

## 8.17 Confidentiality

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

## **9. Execution of Settlement**

### 9.1 Signatory Authority

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

## 9.2 Signing in Counterparts

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

## 9.3 New Parties

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

## 9.4 DRE and Liability Transfer Corp. as Parties

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

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FOLLOWING PAGE]

**IN WITNESS THEREOF,**


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

**United States Department of the Interior**

  
By: Sally Jewell, Secretary of the Interior


Date: April 6, 2016

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

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

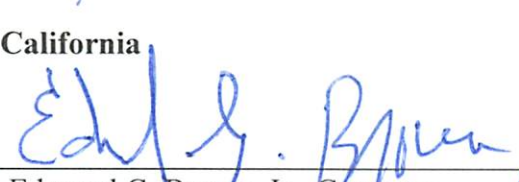
Date: April 6, 2016

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

  
By: Stefan A. Bird, President and CEO

Date: 4/6/16

**State of California**

  
By: Edmund G. Brown, Jr., Governor


Date: 4/6/2016

**State of Oregon**

  
By: Kate Brown, Governor

Date: 4/6/16

**California Department of Fish and Wildlife**

  
By: Chuck Bonham, Director

Date: 4/6/16

**California Natural Resources Agency**

  
By: John Laird, Secretary

Date: 4/16/16

**Oregon Department of Environmental Quality**

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

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

**Oregon Department of Fish and Wildlife**

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

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

**Oregon Water Resources Department**

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

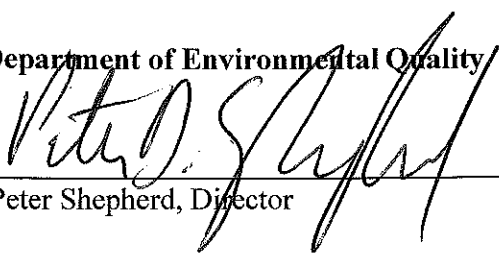
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**California Natural Resources Agency**

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

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

**Oregon Department of Environmental Quality**

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

Date: 4-26-2016

**Oregon Department of Fish and Wildlife**

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

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

**Oregon Water Resources Department**

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

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

**California Natural Resources Agency**

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

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

**Oregon Department of Environmental Quality**

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

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

**Oregon Department of Fish and Wildlife**

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

Date: 4/27/16

**Oregon Water Resources Department**

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

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

**California Natural Resources Agency**

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

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

**Oregon Department of Environmental Quality**

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

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

**Oregon Department of Fish and Wildlife**

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

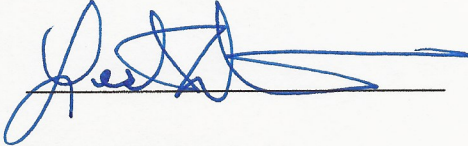
Date: \_\_\_\_\_

**Oregon Water Resources Department**

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

Date: 4/27/16

**Klamath River Renewal Corporation**



Date: August 30, 2016

By: Lester Snow

Title: Vice President




**Yurok Tribe**



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

Date: 4-6-16

**Karuk Tribe**

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

Date: 4-6-16

**Klamath Tribes**

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

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

Humboldt County, California



By: Mark Lovelace  
Chairman, Board of Supervisors

Date: 5-31-16

**Ady District Improvement Company**

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

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

**Collins Products, LLC**

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

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

**Enterprise Irrigation District**

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

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

**Don Johnston & Son**

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

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



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

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

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

**Klamath Irrigation District**

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

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

**Klamath Drainage District**

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

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

**Klamath Basin Improvement District**

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

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

**Klamath Water Users Association**

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

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

**Bradley S. Luscombe**

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

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

**Malin Irrigation District**

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

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

**Midland District Improvement Company**

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

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



**Pioneer District Improvement Company**

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

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

**Plevna District Improvement Company**

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

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

**Reames Golf and Country Club**

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

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

**Shasta View Irrigation District**

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

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

**Sunnyside Irrigation District**

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

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

**Tulelake Irrigation District**

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

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

**Upper Klamath Water Users Association**

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

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

**Van Brimmer Ditch Company**

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

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



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

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

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

**Westside Improvement District #4**

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

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

**Winema Hunting Lodge, Inc.**

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

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

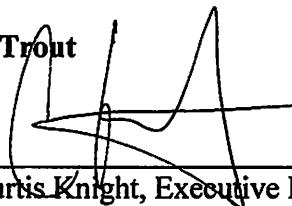
**American Rivers**



By: W. Robert Irvin, President

Date: 4/14/16

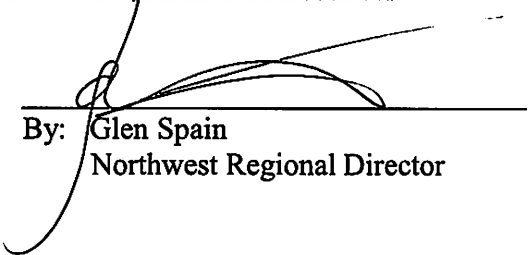
**California Trout**

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

By: ~~Curtis Knight~~, Executive Director

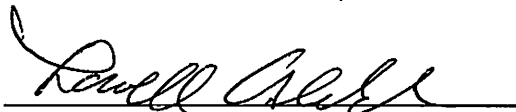
Date: 4/13/2016

**Institute for Fisheries Resources**

  
By: Glen Spain  
Northwest Regional Director

Date: 5/25/16

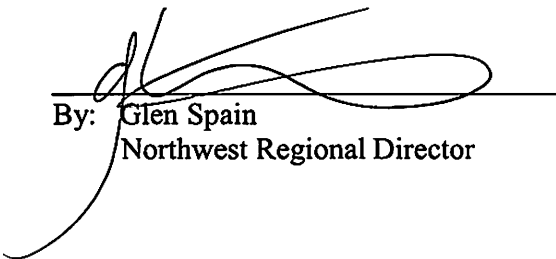
**Northern California Council, Federation of Fly Fishers**



By: Lowell Ashbaugh  
Vice-President, Conservation

Date: 5/3/2016

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

  
By: Glen Spain  
Northwest Regional Director

Date: 5/25/14



**Salmon River Restoration Council**

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

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

**Trout Unlimited**



By: Chris Wood  
Chief Executive Officer

Date: 7/6/16

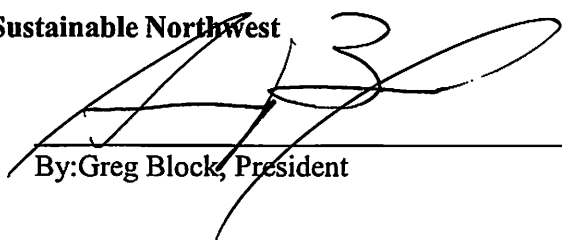
Ben Johnson  
California Director

**Klamath Riverkeeper**

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

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

Sustainable Northwest

A large, stylized handwritten signature in black ink, appearing to be 'G. Block', is written over a horizontal line.

By: Greg Block, President

Date: 4/25/10

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

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

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

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

# **APPENDICES**

**ACTIONS IN APPENDIX A HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

**APPENDIX A**

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

1. Introduction

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

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

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

2. Purpose of the Coordination Process

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

**ACTIONS IN APPENDIX A HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

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



**ACTIONS IN APPENDIX A HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

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.

## **APPENDIX B**

### **Interim Measures Implementation Committee (Interim Measure 1)**

#### 1. Purpose and Goal of Committee

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

#### 2. Committee Functions and Responsibilities

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

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

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

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

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

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

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

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

3. Committee Membership and Meeting Participation

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

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

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.

**APPENDIX C**  
**Interim Conservation Plan (ICP) Interim Measures<sup>2</sup>**

**Interim Measure 2: California Klamath Restoration Fund / Coho Enhancement Fund**

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

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

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

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

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

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

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

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

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

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

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



**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.

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

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

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

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

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

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

### **Interim Measure 10: Water Quality Conference**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Interim Measure 15: Water Quality Monitoring**

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

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

### **Interim Measure 16: Water Diversions**

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

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

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

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

### **Interim Measure 18: Hatchery Funding**

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

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

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

### **Interim Measure 19: Hatchery Production Continuity**

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

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

### **Interim Measure 20: Hatchery Funding After Removal of Iron Gate Dam**

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

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

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

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

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.



**ACTIONS IN APPENDIX E HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

**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

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

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

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

**ACTIONS IN APPENDIX E HAVE BEEN COMPLETED  
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**Elements Related to the Klamath Hydroelectric Settlement Agreement**

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

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

**ACTIONS IN APPENDIX E HAVE BEEN COMPLETED  
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place to the extent such compliance is not prevented by the removal of any other facility.

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

**APPENDIX F**  
**Oregon Surcharge Act (as codified)**

**757.732 Definitions for ORS 757.732 to 757.744.**

As used in ORS 757.732 to 757.744:

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

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

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

**757.736 Surcharges for funding costs of removing Klamath River dams; judicial review.**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

- (B) In a depository that is qualified under ORS 295.001 to 295.108 to receive public funds; or
- (C) With the State Treasurer, to be invested as provided in ORS 293.701 to 293.857.

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

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

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

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

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

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

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

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

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

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

#### **757.744 Disclaimers.**

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

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

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

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

**ACTIONS IN APPENDIX G-2 HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

**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**

APPENDIX H

Monthly Interest Estimator

Assumptions:

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

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

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

APPENDIX H

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>



**ACTIONS IN APPENDIX I HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

**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

**ACTIONS IN APPENDIX I HAVE BEEN COMPLETED OR ARE NO LONGER  
APPLICABLE**

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.

**ACTIONS IN APPENDIX J HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

**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.

**ACTIONS IN APPENDIX J HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

**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.

**APPENDIX K**  
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**For Malin Irrigation District:**

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shastaviewirrigation@hotmail.com

**For Midland District Improvement Company:**

Joe Frost, Manager  
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Midland, OR 97634  
Tel: 541-332-3294  
dccar@earthlink.net

**For Pioneer District Improvement Company:**

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

**For Shasta View Irrigation District:**

Luke Robinson, Manager  
Shasta View Irrigation District  
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**For Sunnyside Irrigation District:**

Dean Hill, Secretary  
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Merrill, OR 97633  
Tel: 541-798-5511

**For Don Johnston & Son:**

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

**For Bradley S. Luscombe:**

Brad Luscombe  
16622 Lower Klamath Lake Road  
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

**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

**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

**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

**For Van Brimmer Ditch Company:**

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**For Collins Products, LLC:**

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**For Plevna District Improvement Company:**

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**For Klamath Water Users Association:**

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**For Klamath Water and Power Agency:**

Hollie Cannon, Executive Director  
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**Westside Improvement District #4:**

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**APPENDIX L**  
**DRE and Contractor Qualifications, Insurance, Bonding, and Risk Mitigation Requirements**

**Part I: Contractor Qualifications**

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

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

**Part II: Insurance**

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

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

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

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

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

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

### **Part III: Bonding**

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



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

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

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

#### **Part IV: Risk Mitigation**

##### **A. Contractual Indemnification**

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

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

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

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

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

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

# **EXHIBITS**

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

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

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**

**1.1 Salaries**

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

**Total**

**1.2 NRS 4**

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

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

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

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

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

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

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

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

Subtotal SALARY: \$69,875.82

\$69,875.82

**2.0 Travel**

Destination	Trips/Yr	Mileage & Per Diem
PDX	1	\$300.75
Southern Oregon	1	\$274.13
Northern California	1	\$658.00
		=====
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
=====	
Grand TOTAL:	
=====	
83,574.44	

83,574.44

Lodging	Meals	Nights per trip	Mileage per Trip	Total Costs	Destination
87	44	1	350	\$300.75	Southern Oregon
116	49	1	225	\$274.13	Portland
114	59	2	500	\$658.00	Northern California (2 nights per)

=====  
Total: \$1,232.88

0.485	Mileage Rate
-------	--------------



## 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
	Private Consulting to review Study Results	\$15,000
<b>Consulting Costs Subtotal</b>		<b>\$25,000</b>
Agency Indirect (at 22.74% of Subtotal)		\$5,685
<b>Consulting Costs Total</b>		<b>\$30,685</b>
<b>Total Agency Specific Cost</b>		<b>\$63,935</b>

**EXHIBIT 2**  
**Sequence of Performance Chart—KHSA**

Action	Actor	Target Date	Section Reference
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

Action	Actor	Target Date	Section Reference
PacifiCorp implement Non-ICP Interim Measure 14	PacifiCorp	Upon OWRD approval	Appendix D
PacifiCorp submit TMDL Implementation Plans	PacifiCorp	Within 60 days of TMDL approval	6.3.2.A
PacifiCorp implement Non-ICP Interim Measure 18	PacifiCorp	Beginning in 2010	Appendix D
PacifiCorp implement Non-ICP Interim Measure 12	PacifiCorp	Before Sept.1, 2010	Appendix D
PacifiCorp implement Non-ICP Interim Measure 10	PacifiCorp	Within 1 year of Effective Date	Appendix D
PacifiCorp implement Non-ICP Interim Measure 15	PacifiCorp	Beginning Feb.1, 2010	Appendix D
PacifiCorp files Application for Partial Surrender of license to decommission East Side/West Side facilities	PacifiCorp	Within 6 months of enactment of federal legislation	6.4.1.A
Identify proposed transfer of Parcel B Lands	PacifiCorp and States	Before January 31, 2012	7.6.4.B
Identification of non-federal DRE, if applicable	Secretary of the Interior	Prior to issuance of the Secretarial Determination and DRE designation	3.3.4.E
California and Oregon Concurrence with non-federal DRE-designate, if any	California and Oregon	Prior to Secretarial Determination	3.3.5.A.iii
Secretarial Determination and DRE designation	Secretary of the Interior	March 31, 2012	3.2.5.A and 3.3.5.A
Release of Detailed Plan	Secretary of the Interior	On or before March 31, 2012	3.3.2
Oregon Concurrence with Affirmative Determination	State of Oregon	Within 60 days of publication of an Affirmative Determination in the Federal Register	3.3.5.A

Action	Actor	Target Date	Section Reference
California Concurrence with Affirmative Determination	State of California	Within 60 days of publication of an Affirmative Determination in the Federal Register	3.3.5.A
States submit draft revised trustee instructions to PUCs	States in consultation with Federal Parties and DRE	Within 3 months of States' Concurrence on Affirmative Determination	4.2.4.B
PacifiCorp implement Non-ICP Interim Measure 8, 11	PacifiCorp	Upon Affirmative Determination	Appendix D
PacifiCorp implement Non-ICP Interim Measure 19	PacifiCorp	Within 6 months of Affirmative Determination	Appendix D
Parties Meet and Confer to establish schedule to implement Affirmative Determination and Detailed Plan and identify Value to Customers necessary to implement schedule	All Parties	Within 90 days of Affirmative Determination	7.3.4
DRE becomes Party to Settlement	DRE	Within 30 days of Notice from both States of their respective Concurrence with an Affirmative Determination	7.1.3
DRE and PacifiCorp enter into contract and permit of entry	DRE and PacifiCorp	After designation of a DRE	Legislation
DRE releases Definite Plan	DRE	Prior to applying for permits and authorizations for Facilities removal	7.2
Parties review the Definite Plan	All Parties	Within 60 days after the DRE provides Notice to the Parties of the completion of the Definite Plan	7.2.1.B and 2.1.4.C

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

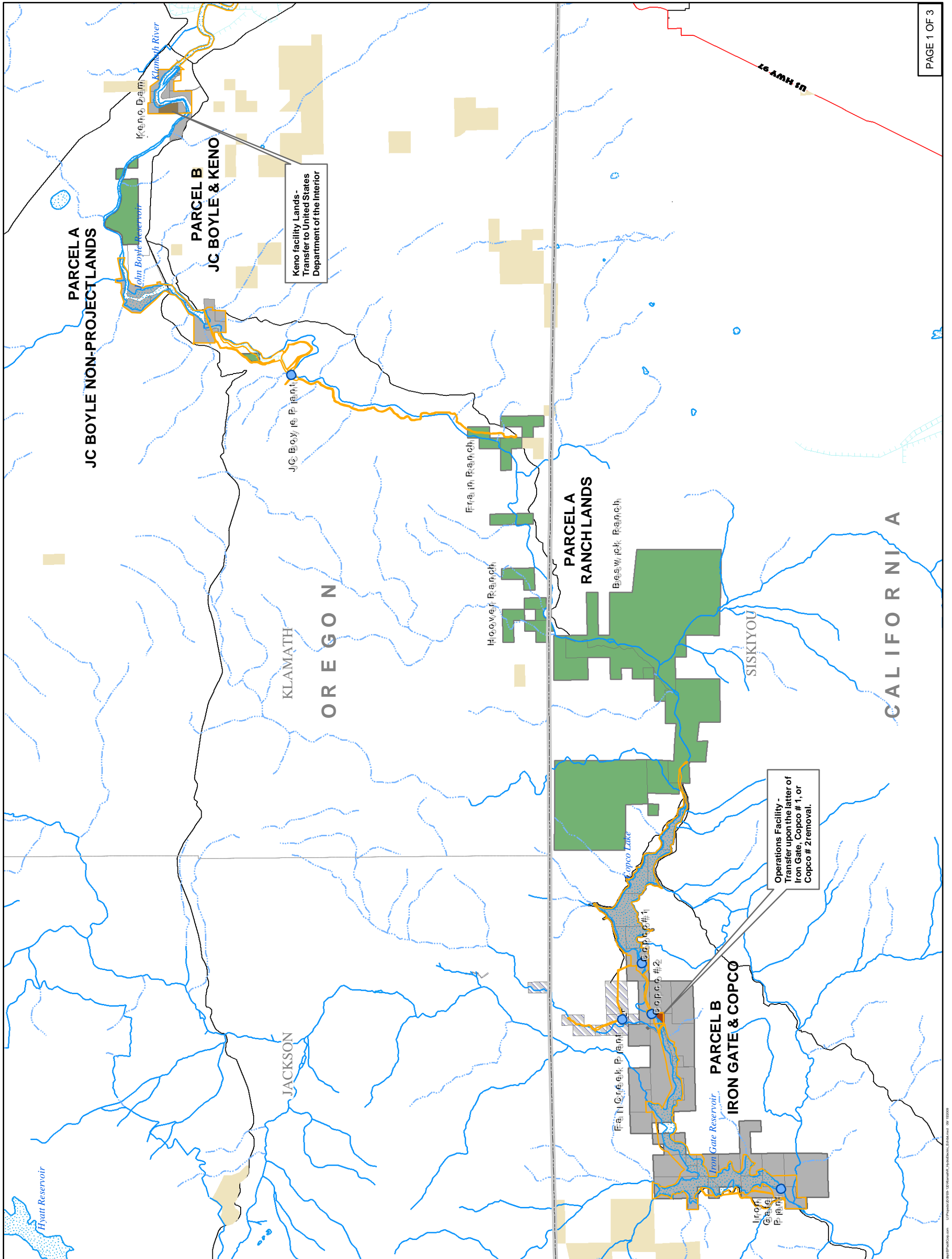


Action	Actor	Target Date	Section Reference
PacifiCorp, KWAPA, and UKWUA enter into Billing Services Offset Agreement(s)	PacifiCorp, KWAPA, and UKWUA	Timely	5.2
Notify PacifiCorp of desire to commence billing credits	KWAPA / UKWUA	120 days before desired commencement	5.2.4
Provide PacifiCorp with names 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



Data Management  
gisdept@pacifi.com

Data are projected in UTM Zone 10, NAD83, meters.  
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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

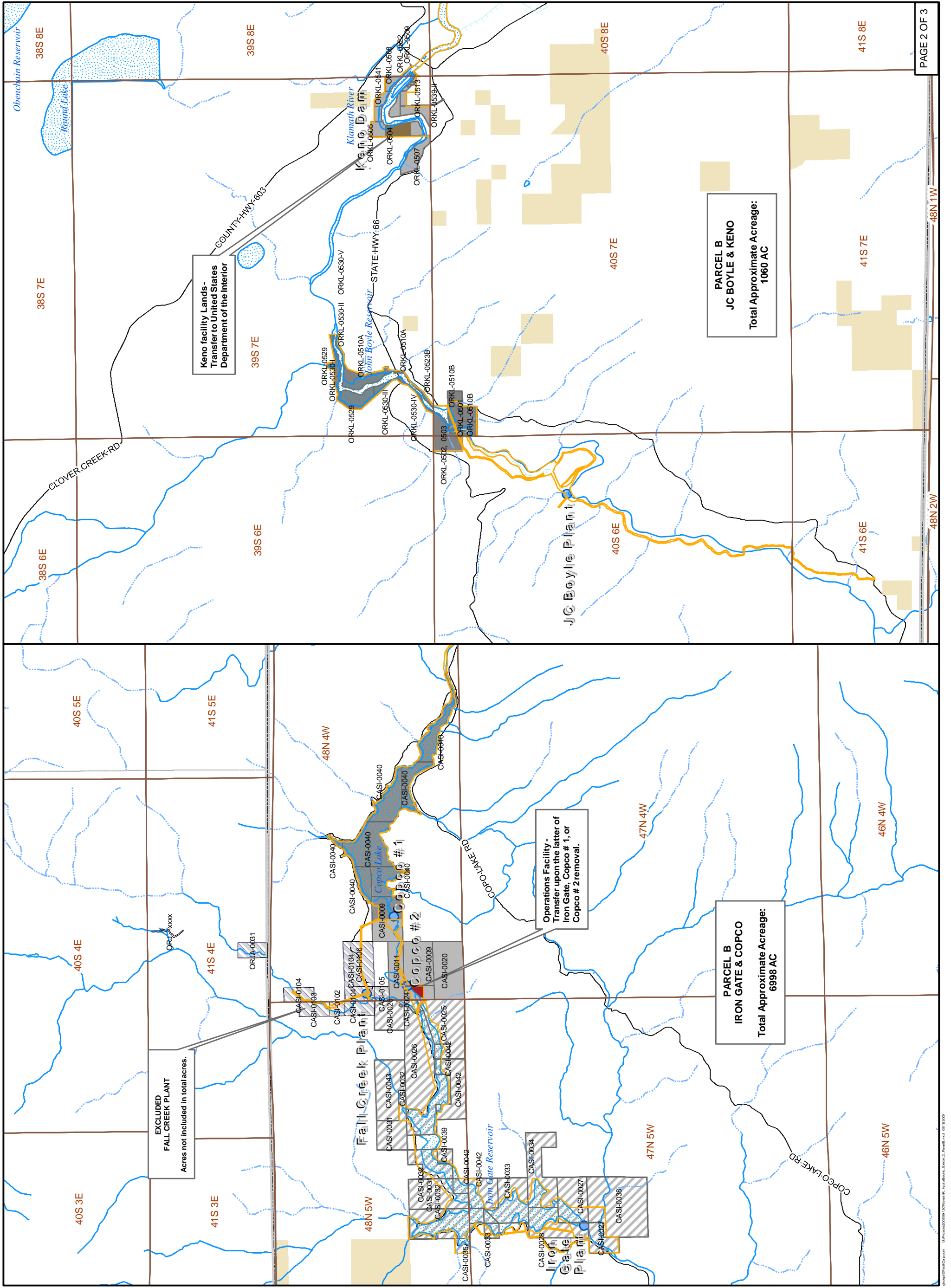
Parcel/B

## Legend

- Project Parcels**
- Excluded - Fall Creek Plant
- Parcel B Lands**
- Iron Gate
  - Copco # 1
  - Copco # 2
  - 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 Type**
- Hydro
- Major Roads**
- PRIMARY, INTERSTATE HWY
  - PRIMARY, U.S. & STATE HWY
  - SECONDARY, CONNECTING, STATE & COUNTY HWY

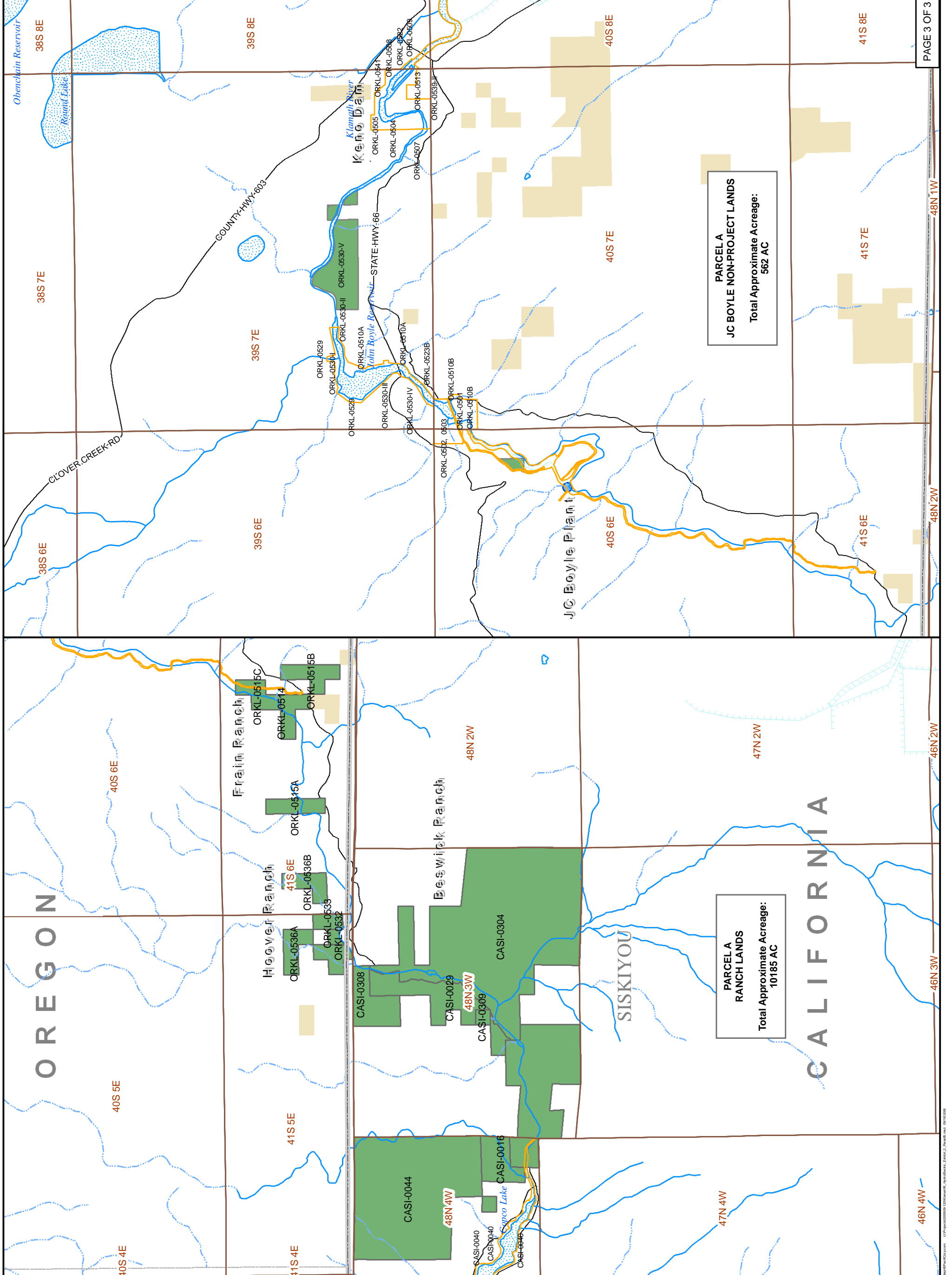


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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

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**
    - Hydro
  - Major Roads**
    - PRIMARY, INTERSTATE HWY
    - PRIMARY, U.S. & STATE HWY
    - SECONDARY, CONNECTING, STATE & COUNTY HWY

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

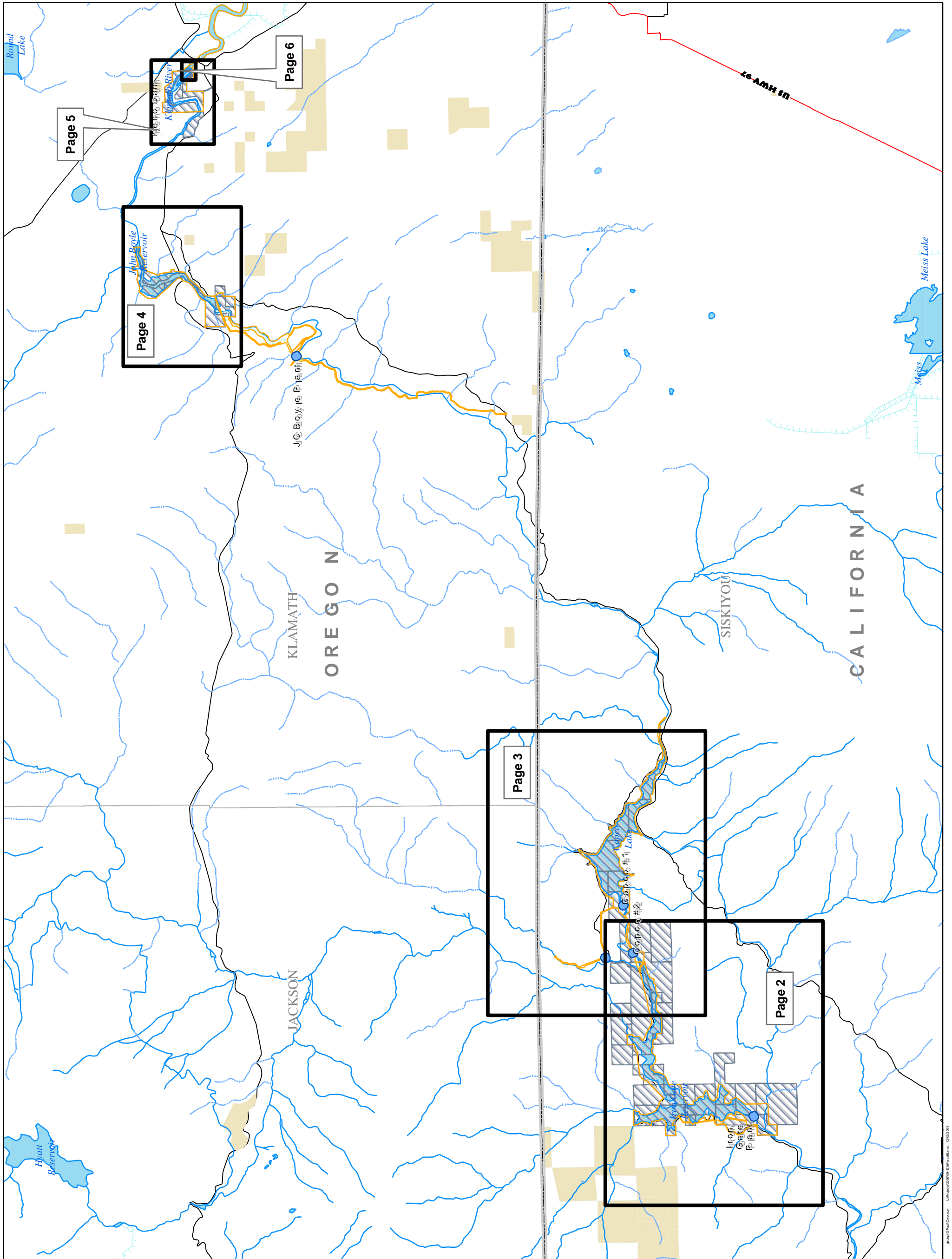
**PARCEL A  
RANCH LANDS**  
Total Approximate Acreage:  
10185 AC



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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels



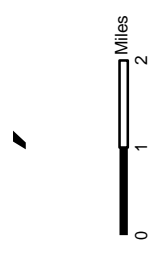
**Parcel B Lands**  
State Lands

**Administrative Boundaries**  
State  
County  
FERC Boundary

**Generation Facilities**  
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

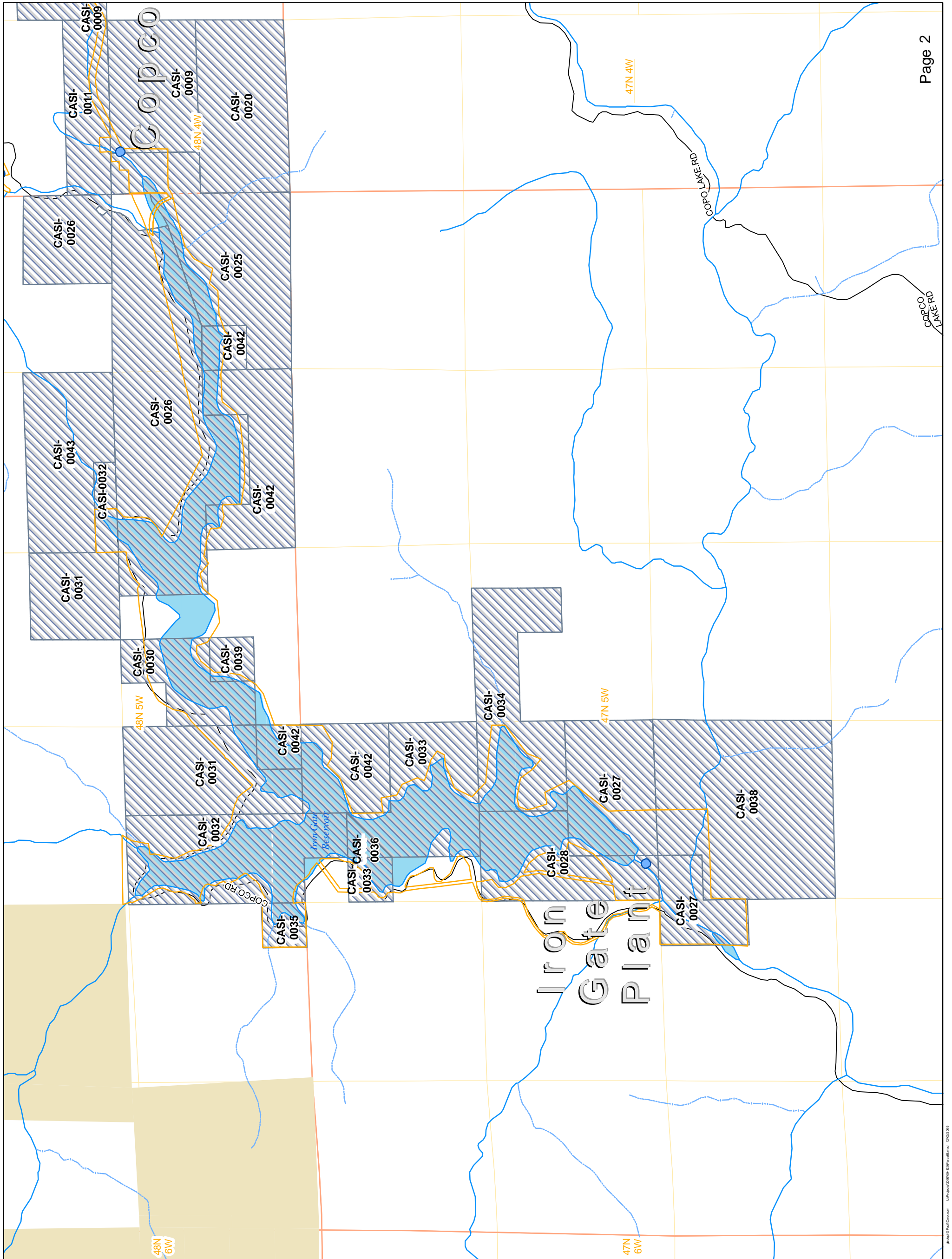


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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

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

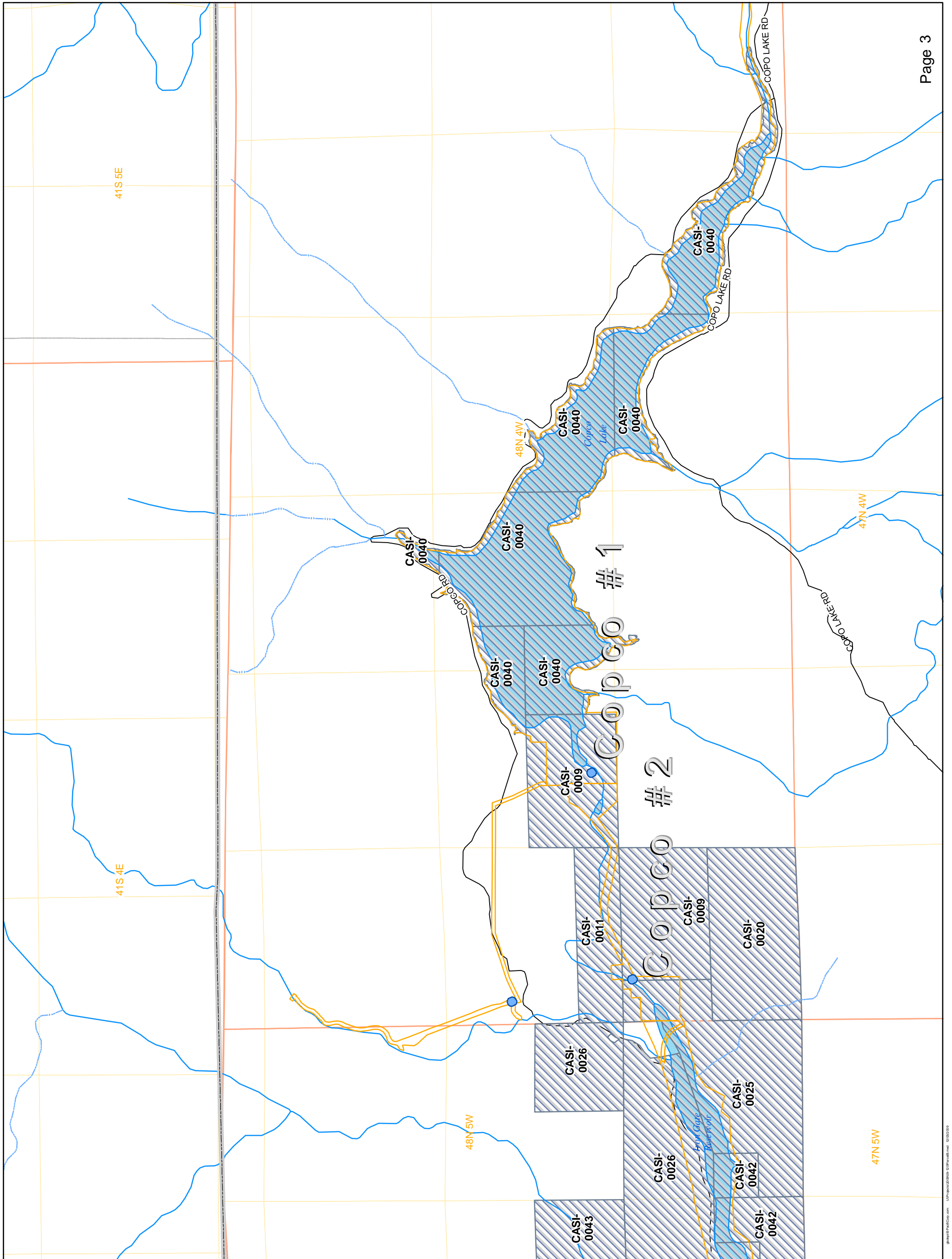


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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels



**Parcel B Lands**  
State Lands

**Administrative Boundaries**  
State  
County

**FERC Boundary**

**Generation Facilities**  
Hydro

**Major Roads**  
PRIMARY, INTERSTATE HWY  
PRIMARY, U.S. & STATE HWY  
SECONDARY, CONNECTING, STATE & COUNTY HWY

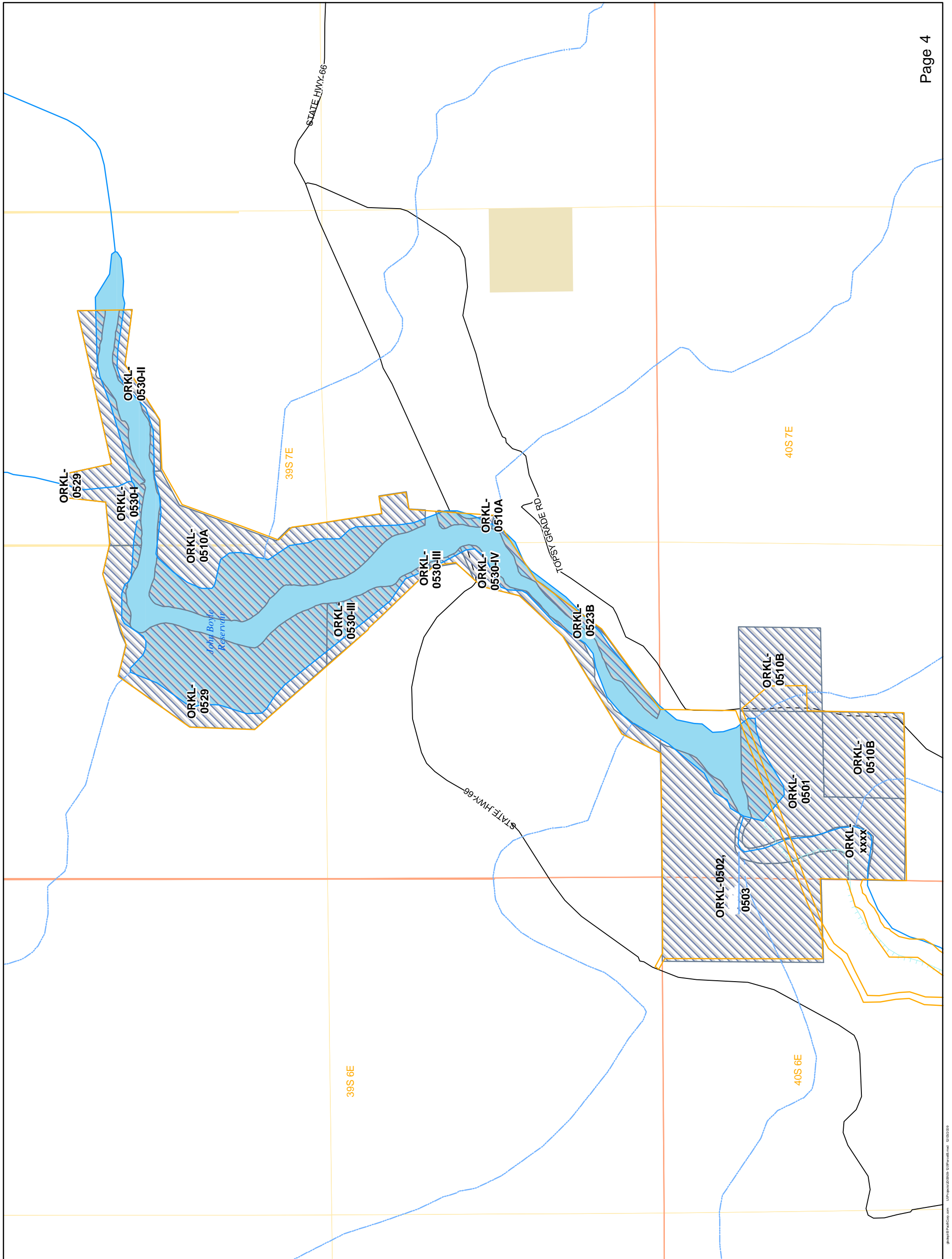
**Aquatic Features**  
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INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH  
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Regional Lakes



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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
- Aquatics Features**
  - INTERMITTENT CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
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  - Regional Lakes



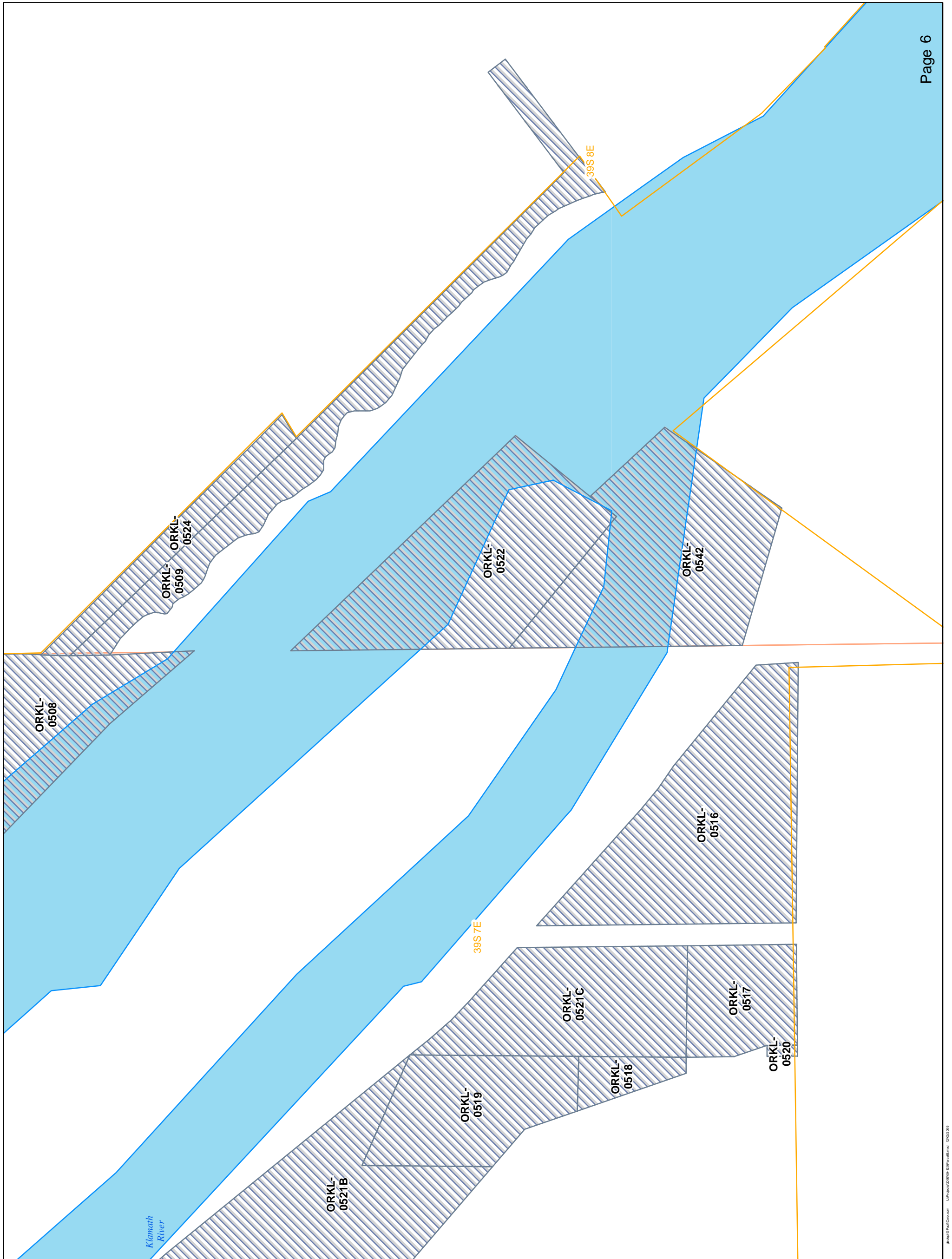
Data Management  
Geographic Information Systems  
gisdept@pacifiCorp.com

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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  
INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH  
PERENNIAL CANAL, DITCH, AQUADUCT  
PERENNIAL WATER FEATURE, STREAM, RIVER, WASH  
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 1<sup>st</sup>, 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  $44^{\circ}01'$  East 1316.7 feet to a point on the Northerly boundary line of Riverside Addition to the Town of Keno, Oregon; thence South  $53^{\circ}30'$  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 ( $NE\frac{1}{4}NW\frac{1}{4}$ ), and North half of Northwest quarter ( $N\frac{1}{2}NE\frac{1}{4}$ ) section Thirty-two (32) in Township Thirty-nine (39) South, Range Seven (7) East of Willamette Meridian, also the following described parcels of land, to-wit:

(1) Commencing at a point Twenty (20) chains South of the corner of sections 28, 29, 32 and 33 marked by a stake marked  $\frac{1}{4}$ ; 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 Section 32, Township Thirty nine (39) South, Range Seven (7) East of Willamette Meridian.

Northwest quarter of Northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) and South half of Northwest quarter ( $S\frac{1}{2}NW\frac{1}{4}$ ) and North half of Southwest quarter ( $N\frac{1}{2}SW\frac{1}{4}$ ) of section Thirty-three (33) in Township Thirty-nine (39) South, Range Seven (7) East of Willamette Meridian.

Southwest quarter of Northeast quarter ( $SW\frac{1}{4}NE\frac{1}{4}$ ), West half of Southeast quarter ( $W\frac{1}{2}SE\frac{1}{4}$ ), East half of Southwest quarter ( $E\frac{1}{2}SW\frac{1}{4}$ ), and Southwest quarter of Southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$ ) of section 6, in Township Forty (40) South, Range Seven (7) East Willamette Meridian,

Lots Three (3) and Four (4), Southeast quarter of Southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ), and Southwest quarter of Southeast quarter ( $SW\frac{1}{4}SE\frac{1}{4}$ ) of section Seven (7) Township Forty South, Range Seven (7) East Willamette Meridian.

less property sold to the International Paper Company (all or a portion of Lot 2, Section 32, T39S, R7E, W.M.

less property sold to Ernest and Judy Smith 9/4/87 (a portion located in the N1/2 of Section 32, T39S, R7E, W.M. lying south of State Highway 66 )

less property sold in Section 33 T39S, R7E, W.M.

ORKL-0513

**Government Lots 11, 12 and 13 in Section 36, Township 39 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon. EXCEPTING therefrom those portions conveyed to the United States of America.**

ORKL-0516

Beginning at a point 1282.2 feet north of a point 308.7 feet west of the corner to Townships 39 and 40 South Ranges 7 and 8 East Willamette Meridian, Oregon thence North 263 feet; thence N. 47°41' W. 282.2 feet; thence South 452 feet; thence East 208.7 feet to the place of beginning, containing 1.71 acres, more or less.

ALSO beginning at a point 1282.2 feet north of a point 100 feet west of the corner to Townships 39 and 40 South Ranges 7 and 8 East Willamette Meridian, Oregon; thence North 116 feet; thence N. 54°56' W. 255.5 feet; thence South 263 feet; thence East 208.7 feet to the place of beginning, all of said property being situate in Section 36, Township 39 South, Range 7 East Willamette Meridian.

ORKL-0518

PARCEL NO. 2. Beginning at a point 1490.9 feet north of a point 766.1 feet west of the corner to Townships 39 and 40 South, Ranges Seven (7) and Eight (8) East Willamette Meridian, Oregon; THENCE North 208.7 feet; THENCE West 208.7 feet; THENCE South 208.7 feet; THENCE East 208.7 feet to the place of beginning, containing one acre, more or less, all of said property being situate in Section 36, Township 39 S. R. 7 E. W. M. less that part conveyed to Leo J. Brennan et al by deed dated February 7, 1967.

ORKL-0519

Beginning at a point 1699.6 feet north of a point 766.1 feet west of the corner to Townships 39 and 40 South, Ranges Seven (7) and Eight (8) East Willamette Meridian, Oregon; THENCE North 273.5 feet; THENCE N. 74° 28' W. 216.6 feet; THENCE South 331.6 feet; THENCE East 208.7 feet to the place of beginning, containing 1.45 acres, more or less, and being situate in Section 36, Township 39 South Range 7 East Willamette Meridian  
less that part conveyed to Leo J. Brennan et al by deed dated February 7, 1967.

ORKL-0520

Beginning at a point 1282.2 feet north of a point 766.1 feet west of the corner to Townships 39 and 40 South Ranges Seven (7) and Eight (8) East of the Willamette Meridian, Oregon;  
THENCE North 208.7 feet;  
THENCE West 208.7 feet;  
THENCE South 208.7 feet;  
THENCE East 208.7 feet to the place of beginning, excepting that part of the herein described land conveyed to Leo J. Brennan et al by deed dated February, 7, 1967 and recorded in Book M67 at Page 942 deed records of Klamath County, Oregon.

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 K-519  
August, 1927, and recorded in Volume 81 of Deeds,  
Page 62, records of said County.
- 4;- To George Crossen, by deed dated August 10, 1928, K-518  
and recorded in Volume 89 of Deeds, page 348,  
Records of said County.
- 5;- To Everett Hotchkiss, by deed dated December 6, K-520 (?)  
1928, and recorded in Volume 86 of Deeds, page  
346, records of said County.
- 6;- To Sam Harris and Ray Harris, by deed dated July K-517  
16, 1928, and recorded in Volume 86 of Deeds,  
page 505, records of said County.
- 7;- To A. W. Reents, by deed dated May 15, 1926 and K-516  
recorded in Volume 78 of Deeds, page 93, records  
of said County.

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°00' East along the Northerly boundary of said tract 572.6 feet to a point; thence North 59°59' East 51.5 feet to a point; thence North 44°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°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°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°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°03' East 250 feet, more or less, to said point designated LB 11; thence South 80°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°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, Townsmp 39 South, Range 7 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of said Section 30; thence South  $0^{\circ}08'$  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 tms 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 tms description, being referenced by a copper-nickel pipe,  $5/8$  inch in diameter and 40 inches in length, driven adjacent thereto until its top is 10 inches above the ground; thence North  $75^{\circ}46'$  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 NW  $1/4$  NE  $1/4$  of said Section 31; thence North along said East line for a distance of 640 feet, more or less, to the Northeast corner of said NW  $1/4$  NE  $1/4$ ; thence East along the South line of said Section 30 to the Southeast corner of said Lot 4; thence Northerly along the Easterly line of said Lot 4, the Easterly line of said Lot 3 and the Southeasterly line of said Lot 2 to the Southwest corner of said Lot 1; thence Easterly along the South line of said Lot 1 to the Southeast corner thereof; thence North along the East line of said Section 30 to the true point of beginning.

ORKL-0530

Parcel I

Parts of Lots One (1), Two (2), and Three (3) of Section Twenty-nine (29), Township Thirty-nine (39) South, Range Seven (7) East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the section corner common to Sections 19, 20, 30, and 29, Township 39 South, Range 7 East, Willamette Meridian; thence South  $0^{\circ} 02' 53''$  East, along the West line of Section 29, a distance of 1,805.49 feet to the TRUE POINT OF BEGINNING of this description; thence South  $75^{\circ} 57' 45''$  East, a distance of 48.18 feet to a point; thence North  $84^{\circ} 47' 58''$  East, a distance of 653.11 feet to a point; thence North  $6^{\circ} 51' 53''$  East to the intersection with the  $1/16$  Section line between the Northwest Quarter of the Northwest Quarter and Lot 1, a distance of 443.51 feet to an iron pin; thence East along the said  $1/16$  section line, a distance of 446.09 feet to an iron pin; thence South  $11^{\circ} 33' 51''$  East, a distance of 548.51 feet to an iron pin; thence North  $78^{\circ} 04' 23''$  East, a distance of 2,490.78 feet to a point in Lot 3 from which point the Northeast corner of said Section 29 bears North  $48^{\circ} 22' 12''$  East a distance of 2,082.39 feet; thence South  $0^{\circ} 24' 58''$  East, to the intersection with the Meander Line, along the right bank of the Klamath River, a distance of 365 feet, more or less; thence Westerly along the Meander 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  $82^{\circ} 03' 06''$  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  $89^{\circ} 56' 42''$  East along the South line of said Section 31, a distance of 1,960.02 feet to a point marked by an iron pin and the TRUE POINT OF BEGINNING of this description thence North  $27^{\circ} 31' 03''$  East, a distance of 688.07 feet to a point marked by an iron pin; thence North  $59^{\circ} 46' 33''$  East, a distance of 1,721.22 feet to a point marked by an iron pin; thence North  $44^{\circ} 16' 57''$  East, a distance of 969.68 feet to a point marked by an iron pin; thence North  $14^{\circ} 50' 18''$  East, a distance of 629.93 feet to a point marked by an iron pin; thence North  $41^{\circ} 45' 43''$  East to the intersection with the South Boundary of the Right of Way of State Highway No. 21; thence North-easterly along the said highway right of way to the intersection with the Meander Line along the East side of said Lot 4; thence Southwesterly along the Meander Lines of said Lots 4, 3, 2, and 1 to the intersection with the South line of said Section 31; thence North  $89^{\circ} 56' 42''$  West along the South line of said Section 31, a distance of 165 feet, more or less, to the true point of beginning; containing 17.10 acres, more or less, of which 0.27 acres, more or less, are in said Lot 1, 1.33 acres, more or less, in said Lot 2, 3.57 acres, more or less, in said Lot 3, and 3.93 acres, more or less, in said Lot 4.

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 (NW $\frac{1}{4}$  of SE $\frac{1}{4}$ )  
South half of South East quarter (S $\frac{1}{2}$  of SE $\frac{1}{4}$ ) and South West  
quarter (SW $\frac{1}{4}$ ) of Section Twenty-nine (29), East half of  
North West quarter (E $\frac{1}{2}$  of NW $\frac{1}{4}$ ) and North East quarter (NE $\frac{1}{4}$ )  
of Section Thirty-one (31), in Township Forty-eight (48) North,  
Range Four (4) West, Mount Diablo Meridian,  
containing Five hundred and twenty (520)  
\_\_\_\_\_ acres, according to the United States Surveys;*

less property sold consisting of 31.85 acres of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  lying south and east of the present reservoir.

CASI-0011

Lot Four (4) and the South East quarter of the South West quarter (SE $\frac{1}{4}$  of SW $\frac{1}{4}$ ) and the South half of the South East quarter (S $\frac{1}{2}$  of SE $\frac{1}{4}$ ) of Section Thirty (30), Township Forty-eight (48) North Range Four (4) West, Mount Diablo meridian;

CASI-0020

South Half (S $\frac{1}{2}$ )  
of Section Thirty-one (31), Township Forty-eight (48) North, Range Four (4) West  
Mount Diablo Base and Meridian, containing Three Hundred Fifteen and 17/100 (315.17)  
\_\_\_\_\_ Acres, according to the United States Public Surveys;

CASI-0021

The northwest quarter of the southwest quarter (NW $\frac{1}{4}$  of SW $\frac{1}{4}$ ) of Section thirty-six (36), Township forty-eight (48) North, Range five (5) West, Mount Diablo Base and Meridian.

CASI-0024

That certain fractional portion of the NE $\frac{1}{4}$  of Section thirty-six (36) TWP forty-eight (48) North of Range five (5) West M.D.M., bounded by a line described as beginning at the Northeast corner of said Section 36 and extending westerly four hundred sixty one and nine-tenths (461.9) feet along the section line between said Section 36 and Section 25 of the same Township and Range to the center line of Fall Creek; thence southwesterly along the center line of Fall Creek to the point of intersection of the center lines of Fall Creek and the Klamath River, thence northeasterly along the center line of the Klamath River to the east line of said Section 36, thence northerly along said east line of Section 36, ten hundred ninety (1090) feet to the point of beginning, said tract containing 25.93 acres, more or less: also, a right of way 60 feet wide for a railroad and wagon road across the remaining portion of the N.E. $\frac{1}{4}$  of Section 36, Township 48 North, Range 5 West, the center line of said right of way being more particularly described as follows

Beginning at a point on the quarter section line running north and south in Section 36 T. 48 N. Range 5 West, which is seventeen hundred two and seven-tenths (1702.7) feet south of the quarter section corner on the north line of said section 36, thence north fifty two degrees, eighteen and one half minutes ( $52^{\circ} 18\frac{1}{2}'$ ) east twenty five and three-tenths (25.3) feet to the beginning of a curve whose total deflection angle is thirty degrees and thirty four minutes ( $30^{\circ} 34'$ ) to the right tangent length is one hundred twenty and three-tenths (120.3) feet, radius is four hundred forty and eighty four hundredths (440.84) feet and length is two hundred thirty five and one-tenth (235.1) feet, thence north

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 ( $W\frac{1}{2}NW\frac{1}{4}$ ) of Section Thirty one (31) in Township Forty eight (48) North of Range Four (4) West, Mount Diablo Meridian; also all of that portion of Section Thirty Six (36) Township Forty Eight (48) North of Range Five (5) West, Mount Diablo Meridian, lying South of the Klamath River, saving and excepting the Northwest quarter of the Southwest quarter ( $NW\frac{1}{4}SW\frac{1}{4}$ ) of said Section Thirty Six (36).

CAISI-0026

The Southeast quarter ( $SE\frac{1}{4}$ ) of Section 25; the East half of the Northeast quarter ( $E\frac{1}{2}NE\frac{1}{4}$ ) of Section 34; the Northeast quarter ( $NE\frac{1}{4}$ ) and the Northwest quarter of the Southeast quarter ( $NW\frac{1}{4}SE\frac{1}{4}$ ) and the Northeast quarter of the Southwest quarter ( $NE\frac{1}{4}SW\frac{1}{4}$ ) and the Northwest quarter ( $NW\frac{1}{4}$ ) of Section 35; the North half of the Northwest quarter ( $N\frac{1}{2}NW\frac{1}{4}$ ) and the Northwest quarter of the Northeast quarter ( $NW\frac{1}{4}NE\frac{1}{4}$ ) and the Northeast quarter of the Northeast quarter ( $NE\frac{1}{4}NE\frac{1}{4}$ ) and that fractional portion of the Southehalf of the North half ( $S\frac{1}{2}N\frac{1}{2}$ ), lying North of the Klamath River, of Section 36; all in Township Forty-eight (48) North of Range Five (5) West M.D.M.; together with the appurtenances thereunto belonging; save and excepting therefrom that certain fractional portion of the Northeast quarter ( $NE\frac{1}{4}$ ) of Section Thirty-six (36), Township Forty-eight (48) North of Range Five (5) West M.D.M., bounded by a line described as beginning at the Northeast corner of said Section 36, thence extending westerly four hundred sixty one and nine tenths feet (461.9) along the section line between said Section 36 and Section 25 of the same Township

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, ( $E\frac{1}{2}$ ), of the North West quarter ( $NW\frac{1}{4}$ ) of Section Nine (9), lying on the East side of the Klamath River where it flows through said land; The North East quarter ( $NE\frac{1}{4}$ ) of Section Nine (9); the North half ( $N\frac{1}{2}$ ) of the North West quarter ( $NW\frac{1}{4}$ ) and the West half ( $W\frac{1}{2}$ ) of the North East quarter ( $NE\frac{1}{4}$ ) of Section Ten (10); all in Township Forty-seven (47), North of Range Five (5) West, Mt. Diablo Meridian, containing in all 340 acres, more or less; together with all water rights, water ditches and water privileges used or enjoyed on the above described property, or in connection therewith, particularly including all rights of said first party in the waters of Bogus Creek.

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,

**EXHIBIT 4**  
**Estimated Timeline—KHSA as Amended**

<b>TARGET DATE</b>	<b>ACTION</b>	<b>ACTOR</b>
4/6/2016	2016 AIP Signatories and others execute Amended KHSA (“Amendment Effective Date”).	2016 AIP Signatories
By 5/6/2016	PacifiCorp files Amended KHSA with FERC; files expedited motion asking FERC to hold in abeyance relicensing proceeding for Project No. 2082.	PacifiCorp
Within 15 days of FERC’s relicensing abeyance order	PacifiCorp withdraws pending 401 applications in Oregon and California.	PacifiCorp
By July 1, 2016	If FERC denies PacifiCorp’s motion to abate or fails to rule on the motion before July 1, 2016, PacifiCorp will ask the SWRCB and the ODEQ to abate 401 certification and other environmental reviews related to PacifiCorp’s relicensing activities	PacifiCorp
4/2016–6/2016	DRE conducts due diligence review of Amended KHSA, draft funding agreements, and draft FERC filings.	DRE
6/15/2016	Oregon-DRE and California-DRE funding agreements executed.	States, DRE
On or around 7/1/2016	DRE executes Amended KHSA.	DRE
On or around 7/1/2016	File FERC application for license transfer.	PacifiCorp, DRE
On or around 7/1/2016	DRE and PacifiCorp will enter into an operation and maintenance agreement	PacifiCorp, DRE
On or around 7/1/2016	File FERC application for surrender and decommissioning, retaining 2020 target date for removal.	DRE
On or around 7/1/2016	File applications for 401 certifications regarding decommissioning with California Water Resources Control Board and Oregon Department of Environmental Quality.	DRE

TARGET DATE	ACTION	ACTOR
7/2016–1/2017	<p>DRE develops and files non-FERC regulatory permits, including:</p> <ul style="list-style-type: none"> <li>• 404 application for Facilities Removal with U.S. Army Corps, biological assessments for associated ESA Section 7 consultations, and associated Section 106 historic preservation reviews</li> <li>• 402 construction storm water permit applications</li> <li>• Oregon removal-fill permit with Oregon Department of State Lands</li> <li>• Other regulatory approvals as necessary</li> </ul>	DRE, with technical assistance from Federal Parties, States, and PacifiCorp
By 12/31/19	FERC approves license transfer.	FERC
By 12/31/2019	FERC approves decommissioning and surrender.	FERC
1/1/2020	DRE begins Facilities Removal in accordance with Definite Plan.	DRE

## **Exhibit 4**

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Implementing Agreement”) is entered into between PacifiCorp, a wholly-owned subsidiary of Berkshire Hathaway Energy, the Karuk Tribe, Yurok Tribe, State of Oregon, State of California, and Klamath River Renewal Corporation (“KRRC”), which are collectively referred to as the “Implementing Agreement Parties.”

- A. The Implementing Agreement Parties recognize and acknowledge the importance of the Klamath River to the livelihood and culture of Klamath Basin Tribes whom have depended on these resources since time immemorial. Furthermore, the Implementing Agreement Parties are Signatories to the Amended Klamath Hydroelectric Settlement Agreement (“AKHSA” or “KHSA”) and are committed to removal of the JC Boyle, Copco 1, Copco 2, and Iron Gate dams in order to achieve a free-flowing Klamath River with volitional fish passage (“the Project”).
- B. On September 23, 2016, PacifiCorp and KRRC filed a joint application with the Federal Energy Regulatory Commission (“FERC”) to amend the Klamath Hydroelectric Project No. 2082 license by placing the J.C. Boyle Dam, Copco I, Copco II, and Iron Gate dams into a separate license (the “Lower Klamath Project”) and to transfer that license to KRRC.
- C. On March 15, 2018, FERC approved the request to separate License No. 2082 and created the Lower Klamath Project License No. 14803 and, on June 21, 2018, stayed the order amending the license pending further action on the license transfer application.
- D. On July 16, 2020, FERC issued an order approving the partial transfer of the Lower Klamath Project license from PacifiCorp individually to PacifiCorp and KRRC jointly (“July 16 Order”). In so approving, FERC lifted the stay of the order amending the license but made its effectiveness coincident with the effectiveness of the July 16 Order.
- E. On July 23, 2020, PacifiCorp sent to the KHSA Signatories a letter that “provides formal Notice of the occurrence of an event specified in amended KHSA section 8.11.1 and triggers the cure mechanisms in section 8.11.3” (“Section 8.11 Notice”).
- F. After several meetings among different groups of the Implementing Agreement Parties, the Implementing Agreement Parties, with support from Berkshire Hathaway Energy, have agreed to this Implementing Agreement as a means of resolving the issues identified in PacifiCorp’s Section 8.11 Notice at this time and allowing for the continued implementation of the KHSA as amended.



- G. The Implementing Agreement Parties, with support from Berkshire Hathaway Energy, agree to this Implementing Agreement as a demonstration of their continuing support and commitment to dam removal.
- H. The Implementing Agreement Parties understand and agree that Oregon and California (collectively referred to as "the States") are acting as defined in the AKHSA by and through state departments and agencies with independent regulatory responsibilities and funding subject to the control of their respective legislatures. In this agreement the state of California is acting through the California Natural Resources Agency. Any commitment to State funds in this Implementing Agreement is contingent upon and subject to receipt of legislative appropriations or other expenditure authority specific to and sufficient to allow States, in the exercise of their reasonable administrative discretion, to carry out their obligations herein.

The Implementing Agreement Parties agree to the following terms as a means of carrying out their respective rights and duties under the AKHSA and achieving dam removal.

1. Amended License Surrender Application. KRRC and PacifiCorp will file an amended license surrender application ("ALSA") with FERC within seven days of execution of this Implementing Agreement. The ALSA will clearly explain and demonstrate the proposed pathway for the States to become co-licensees with KRRC, and the process and timeline for filing a new license transfer application as described in Section 3 herein, including treatment of the July 16 Order and confirmation that KRRC will continue to be the Dam Removal Entity.
2. Permits and Authorizations. KRRC will submit other work products to the applicable agencies that KRRC deems necessary to obtain permits and authorizations (including but not limited to biological assessments submitted to the National Marine Fisheries Service and U.S. Fish and Wildlife Service) to implement license surrender and Facilities Removal.<sup>1</sup> These submissions will occur on a timeline determined by KRRC. PacifiCorp will provide technical support and advice in the development of these submittals and will join in such submittals if necessary.

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<sup>1</sup> Capitalized terms not otherwise defined in this agreement will have the same meaning as that in the Amended KHSA.

3. License Transfer Application.

- a. Upon execution of this Implementing Agreement, KRRC, PacifiCorp, and the States will prepare a new license transfer application requesting a transfer of the FERC license, which will propose to remove PacifiCorp from the license for the Lower Klamath Project and add the States and KRRC as co-licensees for the purposes of surrender of the Lower Klamath FERC license ("New Transfer Application"). The New Transfer Application will include a description that it is "building on" the original license transfer application approved in the July 16 Order.
- b. The States, PacifiCorp, and KRRC will file the New Transfer Application by January 16, 2021, and will notify FERC that PacifiCorp and KRRC are not accepting co-licensee status under the July 16 Order, and instead are seeking the license transfer outcome described in the New Transfer Application.
- c. The Implementing Agreement Parties will jointly support the ALSA and the New Transfer Application filings. Within 30 days of issuance of a final license surrender order by FERC, the States and KRRC will accept the license transfer order making the KRRC and States co-licensees for the Lower Klamath Project unless the States and PacifiCorp, in consultation with Karuk and Yurok Tribes, mutually agree to reject the license surrender order on the basis that the terms of the order, including terms of any federal agency consultation concerning the order, are significantly outside the norm for FERC orders involving major project construction or deconstruction in a manner that creates significant financial risk to the States or PacifiCorp.

4. Due Diligence.

Due diligence conducted by KRRC and the States related to the conveyance of Parcel B Lands has identified certain pre-existing environmental conditions ("Pre-Existing Environmental Site Conditions"). Prior to acceptance of license transfer by KRRC and the States, PacifiCorp shall:

- i. resolve at PacifiCorp's sole cost and expense all Pre-Existing Environmental Site Conditions that can be resolved prior to acceptance of a license transfer, to the reasonable satisfaction of the States, and
- ii. for Pre-Existing Environmental Site Conditions that cannot be cost effectively resolved prior to acceptance of a license transfer order, enter into an agreement with KRRC and the States to resolve at PacifiCorp's sole cost and

- expense such unresolved Pre-Existing Environmental Site Conditions prior to transfer of lands by KRRC to the States.
5. Section 8.11 Notice. PacifiCorp shall issue a letter to all KHSA Signatories to rescind the Section 8.11 notice immediately upon release of the press release announcing the execution of this MOA.
  6. PUC Processes. Concurrent with submission of the New Transfer Application to FERC, PacifiCorp shall seek approvals with the state utility regulators ("PUC") to transfer PacifiCorp's property interests consistent with the New Transfer Application. PacifiCorp shall request expedited action to satisfy the requirement that PUC approvals are obtained prior to or contemporaneously with acceptance of license transfer by KRRC and the States.
  7. Additional Contingency Funding. To address the unlikely event that costs for Facilities Removal exceed the AKHSA State Cost Cap, PacifiCorp and the States agree to create an additional contingency fund. This additional contingency is intended to express PacifiCorp's and the State's full commitment to dam removal. The additional contingency funding will be in the amount of \$45 million to ensure Facilities Removal will occur and be completed. The Implementing Agreement Parties believe that funding for Facilities Removal beyond the AKHSA State Cost Cap is unlikely to be needed, but have agreed that this additional contingency fund provides a clear and definitive commitment of resources that will ensure Facilities Removal is completed. PacifiCorp and the States will each contribute \$15 million for this additional contingency fund and share any cost overruns that may occur over this amount equally.
  8. Third-Party Litigation. KRRC will serve as the Dam Removal Entity, which includes providing the identified insurance, bonding, contracting, and indemnity provisions to the States and PacifiCorp. KRRC and the States, as co-licensees, will carry out the final license surrender order to effectuate Facilities Removal. Once ownership of the Facilities is transferred for purposes of Facilities Removal, the States will defend PacifiCorp to the fullest extent of the law possible, including seeking to dismiss or remove PacifiCorp from any litigation asserting damages arising from harm caused by Facilities Removal (as distinguished from third-party litigation that is the responsibility of PacifiCorp because it is related to actions taken by PacifiCorp in operating and maintaining the facilities prior to the States becoming co-licensees).

9. Limitations of Implementing Agreement Parties.

- a. The Implementing Agreement Parties understand and agree that the States' actions described in this Implementing Agreement are contingent upon and subject to receipt of legislative appropriations or other expenditure authority specific to and sufficient to allow the States, in the exercise of their reasonable administrative discretion, to carry out their obligations described herein. State law, future legislative actions, and budget limitations may constrain the States in carrying out these actions and nothing in this Implementing Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any funds by the States except as otherwise permitted by applicable law.
- b. The Implementing Agreement Parties understand and agree that the States are, *inter alia*, regulatory bodies, and nothing in this Implementing Agreement is intended nor should be construed as affecting or limiting the States from complying with their obligations under applicable laws or otherwise carrying out such regulatory obligations or processes.
- c. The Implementing Agreement Parties acknowledge that the States' inability to achieve their obligations herein will impact the other Implementing Agreement Parties' obligations.

10. Status of KHSA. In the event that amendments to the AKHSA are proposed by any Implementing Agreement Party, all of the Implementing Agreement Parties will work collaboratively and in good faith to achieve agreement concerning such amendments by January 16, 2021.

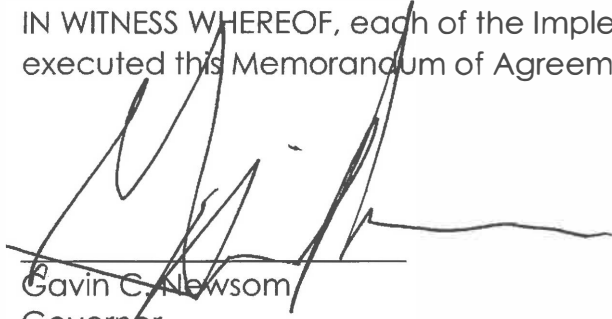
11. Support. The Implementing Agreement Parties agree to support all filings and submittals to regulatory agencies. This support includes cooperating to meet submittal/filing timelines and to refrain from opposing any filing, or submitting any opposition through comments, litigation, or otherwise. This support includes not challenging approvals that KRRC has already obtained. This support also includes covenants not to sue by and among all Implementing Agreement Parties pursuant to the KHSA.

12. Good Faith. The Implementing Agreement Parties agree to support in good faith the implementation of this agreement to effectuate Facilities Removal.

13. Filing of the Implementing Agreement. This Implementing Agreement as signed by the Implementing Agreement Parties is a public document and may be filed in any applicable regulatory proceeding.
14. Milestones. The Implementing Agreement Parties propose the attached timeline for drawdown and Facilities Removal subject to regulatory approvals.
15. Entire Agreement. This Implementing Agreement is intended to implement certain rights and responsibilities under the AKHSA of the Implementing Agreement Parties. Together with the AKHSA, this Implementing Agreement is the entire agreement between the Implementing Agreement Parties.
16. Counterparts. This Implementing Agreement may be executed in counterparts, with separate signature pages, to be effective as of the last signature date.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.



\_\_\_\_\_  
Gavin C. Newsom  
Governor  
State of California

Date: 11-16-2020

\_\_\_\_\_  
Kate Brown  
Governor  
State of Oregon

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

\_\_\_\_\_  
Joseph L. James  
Yurok Tribal Chairman

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

\_\_\_\_\_  
Russell A. Attebery  
Karuk Tribal Chairman

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

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

\_\_\_\_\_  
State of California  
Date:\_\_\_\_\_

*Kate Brown*

\_\_\_\_\_  
State of Oregon  
Date:\_\_\_\_\_

\_\_\_\_\_  
Joseph L. James  
Yurok Tribal Chairman  
Date:\_\_\_\_\_

\_\_\_\_\_  
Russell A. Attebery  
Karuk Tribal Chairman  
Date:\_\_\_\_\_

\_\_\_\_\_  
Jim Root  
President, Klamath River Renewal Corporation  
Date:\_\_\_\_\_

\_\_\_\_\_  
William J. Fehrman  
CEO and Chairman, PacifiCorp  
President & CEO, Berkshire Hathaway Energy  
Date:\_\_\_\_\_

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

\_\_\_\_\_  
Gavin C. Newsom  
Governor  
State of California

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

\_\_\_\_\_  
Kate Brown  
Governor  
State of Oregon

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

  
\_\_\_\_\_  
Joseph L. James  
Yurok Tribal Chairman

Date: 11-13-2020

\_\_\_\_\_  
Russell A. Attebery  
Karuk Tribal Chairman

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



IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

\_\_\_\_\_  
Gavin C. Newsom  
Governor  
State of California

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

\_\_\_\_\_  
Kate Brown  
Governor  
State of Oregon

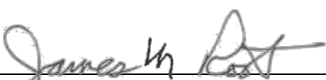
Date: \_\_\_\_\_

\_\_\_\_\_  
Joseph L. James  
Yurok Tribal Chairman

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

  
\_\_\_\_\_  
Russell A. Attebery  
Karuk Tribal Chairman

Date: 11-12-2020



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Jim Root  
President, Klamath River Renewal Corporation

Date: 11/13/2020

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William J. Fehrman  
CEO and Chairman, PacifiCorp  
President & CEO, Berkshire Hathaway Energy

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

\_\_\_\_\_  
Jim Root  
President, Klamath River Renewal Corporation

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

  
\_\_\_\_\_  
William J. Fehrman  
CEO and Chairman, PacifiCorp  
President & CEO, Berkshire Hathaway Energy

Date: 11/13/20

Attachment A

	2020	2021			2022			2023		
Memorandum of Agreement on Co-Licensee Pathway										
Submit Amended License Surrender Application										
Submit Amended License Transfer Application										
Draft Management Plans										
State PUC Property Disposition Review										
License Surrender Process										
FERC Dam Safety Review										
Parties Accept License and License Transfers										
Notice to Proceed & Predrawdown Construction										
Drawdown/Dam Removal Begins										

## **Exhibit 5**

ARTICLES OF INCORPORATION  
OF  
KLAMATH RIVER RENEWAL CORPORATION

FILED *DM*Secretary of State  
State of California *SH*

100 FEB 29 2016

ARTICLE I  
NAME

The name of the corporation (hereinafter referred to as the "Corporation") shall be KLAMATH RIVER RENEWAL CORPORATION.

ARTICLE II  
PURPOSES

Section 1. The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The Corporation is formed and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to lessen the burdens of government by facilitating the implementation of the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, between and among the United States Department of the Interior, the United States Department of Commerce's National Marine Fisheries Service, PacifiCorp, the California Department of Fish and Wildlife, the California Natural Resources Agency, the Oregon Department of Environmental Quality, the Oregon Department of Fish and Wildlife, the Oregon Water Resources Department, and various other parties, as it may be amended from time to time ("KHSA"), and the implementation of any related agreements among the same or similar parties with respect to the Klamath Basin, all in a manner determined by the Corporation's Board of Directors.

Section 2. In furtherance of the purposes set forth in Section 1 above and as necessary or desirable in order to accomplish such purposes, the Corporation shall have the power to:

- (a) acquire or transfer, by deed, lease or otherwise, ownership or possession of real and personal property, improvements and facilities;
- (b) maintain, operate, modify, remove and restore real and personal property, improvements and facilities;
- (c) seek, obtain and administer funding (including gifts, grants, borrowings or other sources);
- (d) seek, obtain, hold, transfer, or surrender such governmental and other approvals, permits and licenses;
- (e) engage the services of such consultants, advisors, attorneys and other persons; and

(f) in general, perform any and all acts and things and exercise any and all powers that may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State for the purpose of accomplishing any of the foregoing purposes and functions of the Corporation and any other purpose or function ancillary to, or supportive of, the foregoing purposes and functions.

### ARTICLE III SPECIAL PROVISIONS AND LIMITATIONS

Section 1. The Corporation shall exist until the date that is one year after it has completed its purposes and functions in connection with the KHSA, as determined by a majority of the Corporation's Board of Directors, at which time it shall be dissolved in accordance with Article IV of these Articles of Incorporation and applicable law. The Corporation shall not be liquidated, dissolved, or merged or combined with any other business entity prior to the foregoing date without the affirmative vote of a majority of the members of the Board of Directors of the Corporation.

Section 2. The Corporation shall not engage in any activities not permitted to be carried on by an organization exempt from federal income tax pursuant to Section 501(c)(3) of Internal Revenue Code of 1986 ("Code"), as amended, and the regulations promulgated thereunder, or the corresponding section of any future tax code;

Section 3. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; provided that the Corporation shall have the power to make an election under Code Section 501(h). Likewise; no substantial part of the activities of the Corporation shall be the provision of "commercial type insurance" within the meaning of Section 501(m) of the Code. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws; and

Section 4. The property of the Corporation is irrevocably dedicated to charitable purposes. No part of the income or earnings of the Corporation shall inure to the benefit or profit of, nor shall any distribution of its property or assets be made to, any director or officer of the Corporation, or private person, corporate or individual, or to any other private interest; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to it and reimbursement of expenses, and to make reasonable payments and distributions in furtherance of the purposes of the Corporation.

### ARTICLE IV ASSET DISTRIBUTION ON DISSOLUTION

Upon the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, and after compliance with Chapters 15, 16 and 17 of the California Nonprofit Public Benefit Corporation Law, distribute all of the remaining assets and property of the

Corporation for charitable or public purposes among such entities as the Board determines in its discretion, all to the extent permitted under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, and other applicable law.

ARTICLE V  
DIRECTORS

Section 1. The number of Directors shall be as determined from time to time pursuant to the Bylaws of the Corporation.

Section 2. The Directors of the Corporation shall have no liability for dues or assessments. There shall be no members of the Corporation.

ARTICLE VI  
MISCELLANEOUS

Section 1. The name and address of the Corporation's initial agent for service of process is:

National Corporate Research Ltd.

Section 2. The initial address of the Corporation shall be:

28 Liberty Street, 42<sup>nd</sup> Floor  
New York, New York 10005  
Attn: Eric Petersen

IN WITNESS WHEREOF, for the purposes of forming the corporation under the laws of the State of California, the undersigned has executed these Articles of Incorporation this 29<sup>th</sup> day of February, 2016.



---

Lloyd S. Lowy  
Incorporator



As amended through September 26, 2019

Effective August 1, 2016

**BYLAWS  
OF  
KLAMATH RIVER RENEWAL CORPORATION**

**ARTICLE I  
NAME, PURPOSE AND PRINCIPAL OFFICE**

Section 1.1. Name. The name of the Corporation shall be: KLAMATH RIVER RENEWAL CORPORATION (the “Corporation”).

Section 1.2. Purposes. The charitable purposes of the Corporation shall be as set forth in its Articles of Incorporation, related to the implementation of the Klamath Hydroelectric Settlement Agreement, as amended (hereafter, “KHSA”).

Section 1.3. Principal Office. The principal office of the Corporation for the transaction of business may be established at any place or places within or without the State of California. The principal office may be changed from time to time by the Board of Directors (the “Board”).

**ARTICLE II  
MEMBERSHIP**

Section 2.1. Members. The Corporation shall have no members. Any action which would otherwise require the approval of members shall require only the approval of the Board. All rights which would otherwise vest in the members shall vest in the Board.

**ARTICLE III  
BOARD OF DIRECTORS**

Section 3.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation, subject to any limitations set forth in the Articles of Incorporation, these Bylaws or relevant provisions of the California Nonprofit Public Benefit Corporation Law. The Board may delegate the management of the activities of the Corporation to any person or persons, a management company, or committees, however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 3.2. Number of Directors.

(a) The Board shall have at least one and no more than two directors until July 15, 2016. One initial director shall be appointed by the Governor of Oregon, or the Oregon Governor's designee, and one director shall be appointed by the Governor of California, or the California Governor's designee. The period of time prior to July 15, 2016 is referred to as the "Initial Directors Period."

(b) After the Initial Directors Period, the Board shall have at least two and no more than 15 directors comprised of the following: the two initial directors; four additional directors appointed by the Governor of California or the California Governor's designee; three additional directors appointed by the Governor of Oregon or the Oregon Governor's designee, one director appointed by the Karuk Tribe; one director appointed by the Yurok Tribe; one director appointed by the Klamath Tribes; two directors appointed by the entities listed in part A of Exhibit 1; and one director appointed by the entities listed in Part B of Exhibit 1; provided that, only parties to the KHSA may participate in the foregoing appointment authority. An appointing authority may also appoint up to two alternate directors, each of whom shall have the same rights as the director, except that an alternate director (i) may be counted for the purpose of quorum, and may vote, in a meeting of the Board or of a committee on which the director serves as a member, only in the absence of the director; and (ii) may not serve as a member, or vote in the meetings, of the Executive Committee. Under item (i), only one alternate may vote at a meeting attended by both alternates, such alternate to be confirmed by the chair at the start of the meeting. Appointing authorities shall make their appointments by providing written notice of the appointment and its effective date, in advance, to the Board. In the case of the appointments by the entities in Exhibit 1, the respective notices of appointment shall be executed on behalf of a majority of the entities appearing in part A of Exhibit 1, and on behalf of both of the entities appearing in Part B of Exhibit 2.

Section 3.3. Selection and Term of Office. Unless earlier removed as provided hereunder, each director shall hold office for six years and shall serve until a successor has been appointed, except as provided in Sections 3.4 and 3.5. Upon the expiration of the term of any director, that director's successor shall be appointed in the same manner as that director whose term expired. There shall be no limits on the number of consecutive full or partial terms a director may serve on the Board. The Board may provide for staggered terms by resolution.

Section 3.4. Vacancies.

(a) Subject to the provisions of Section 5226 of the California Nonprofit Corporation Law, any director may resign by giving written notice to the Secretary and to the entity that appointed the director, which resignation shall be effective upon the Secretary's receipt thereof, unless the notice specifies a later time for the effectiveness of such resignation. Promptly after receiving any notice of resignation by a director, the Secretary shall notify the Board and the appointing authority that appointed the resigning director. If the resignation is effective at a future time, a successor may be selected before such time, to take office when the resignation becomes effective. If the Secretary is the resigning director then the notice of resignation notice shall go to the President, who shall provide the foregoing notices to the Board and the appointing authority.

(b) Each vacancy in the Board shall be filled in the same manner as the director whose office is vacant was selected. Each director so selected shall hold office until the expiration of the term of the replaced director and until a successor has been selected and qualified, except for directors removed pursuant to Section 3.5 of this Article III, whose terms shall expire upon removal.

(c) A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of directors is increased.

Section 3.5. Removal.

(a) The Board may by resolution declare vacant the office of a director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty arising under Article 3 of Chapter 2 of Part 2 of the California Nonprofit Corporation Law.

(b) A director may be removed for cause by a majority vote of the directors then in office. Such cause shall be at the sole discretion of the Board.

(c) A director may be removed at any time by the appointing authority for that director, in its sole discretion, by notice to the Secretary that meets the requirements for an appointment notice under Section 3.2(b).

Section 3.6. Place of Meetings. Meetings of the Board may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation.

Section 3.7. Annual Meetings. The Board shall hold an annual meeting for the purpose of organization, selection of officers and the transaction of other business.

Section 3.8. Other Regular Meetings. Other regular meetings of the Board shall be held on such dates and at such times as may be fixed by the Board.

Section 3.9. Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the President of the Board or at the request of not less than by 25% of the directors then in office. The Board shall adopt policies relating to holding informational meetings that are open to the public at least once each year.

Section 3.10. Notice.

(a) Notice of the time, place and agenda for a regular meeting of the Board shall be provided to each member of the Board at least seven (7) calendar days before the date of such meeting by telephone, including a voice messaging system or other system of technology designed to record and communicate messages, facsimile, U.S. mail, hand-delivery, electronic mail, or other electronic means. Notice of the time, place and agenda for a special meeting of the Board shall be provided to each member of the Board with at least four (4) days' notice by first-class mail or 48 hours' notice given personally or by telephone, including a voice messaging system or other system

of technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the Corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

(b) Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver. The notice shall signify the time and place of the special meeting and the business to be transacted.

Section 3.11. Quorum. Presence of a majority of the number of directors then in office at a meeting of the Board constitutes a quorum for the transaction of business, except as otherwise provided in these Bylaws. During the Initial Directors Period the presence of the first director appointed shall constitute a quorum.

Section 3.12. Conduct of Meeting. The President or, in the President's absence, the Vice President, shall preside. If neither the President nor a Vice President is present at a meeting then such meeting shall be chaired by a director selected by a majority of the directors present.

Section 3.13. Participation in Meetings by Conference Telephone. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Any director so participating shall be deemed to be present in person at such meeting.

Section 3.14. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting, without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.15. Adjournment. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. If the meeting is adjourned for 24 hours or less, notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 3.16. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board, individually or collectively,

consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 3.17. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation of which such person is a director.

Section 3.18. Fees and Compensation. Directors shall not be compensated for their services but may receive reimbursement for expenses reasonably incurred in performance of duties as may be fixed or determined by the Board.

#### ARTICLE IV COMMITTEES

##### Section 4.1. Executive Committee.

(a) The Board may designate an Executive Committee. The Executive Committee shall be charged with the general supervision of the Corporation's activities, policies, financial resources and investments. The Executive Committee shall have and exercise all of the powers of the Board during the interim between meetings of the Board except to amend the Articles of Incorporation or Bylaws or to convey real property of the Corporation.

(b) The Executive Committee shall be comprised of the officers designated pursuant to Section 5.1 and at least one director who is not an officer. Non-officer members of the Executive Committee shall be appointed by the Board.

(c) The Executive Committee shall meet at least monthly. The regular meetings of the Executive Committee shall be scheduled by the President. In special cases or emergencies the President may convene a meeting of the Executive Committee upon such notice as is reasonably available and necessary to advise the members of the Executive Committee.

(d) The Minutes of the Executive Committee shall be provided to the Board prior to the next Board meeting.

Section 4.2. Audit Committee. The Board shall appoint an audit committee who shall act pursuant to procedures adopted by the Board from time to time.

Section 4.3. Advisory Council. The Board may, in its sole discretion, appoint an Advisory Council to advise the Board in such of its activities as the Board may from time to time determine. The Advisory Council shall consist of such persons, and such number of persons, as the Board shall appoint from time to time in its sole discretion to provide advice and reflect the views of communities, groups and other interests that may be affected by or interested in the activities of the Corporation, provided that if the Board elects to establish an Advisory Council it shall invite each of the U.S. Department of Interior, the U.S. Department of Commerce, the Oregon Department of Fish and Wildlife, the California Department of Fish and Wildlife, the Oregon Governor's Natural Resources Office, and the California Natural Resources Agency (collectively

the “permanent Advisory Council members”) to designate a representative to serve on the Advisory Council. The Board shall have the right, with or without cause and at any time, to add a member to or remove a member from the Advisory Council, except that the Board shall not remove a representative of a permanent Advisory Council member without cause. The Advisory Council shall meet at such time(s) as are determined by the Board. The Board shall call a meeting of the Advisory Council if (i) one-third or more of the Advisory Council’s members make a request to the President for such a meeting, or (ii) the representative of any permanent Advisory Council member makes such a request. The Board shall send a representative to meetings of the Advisory Council, or may, in its discretion, meet directly with the Advisory Council. The Advisory Council shall make recommendations to the Board on matters referred to the Advisory Council by the Board, and may make recommendations on matters that the Advisory Council determines are relevant to the Corporation’s activities. Individual members of the Advisory Council may decline to participate in particular recommendations of the Advisory Council. The designated representatives of the permanent Advisory Council members shall be given notice of each meeting of the Board in accordance with Section 3.10 hereunder, and shall be invited to attend each such meeting unless it is to be held in executive session.

Section 4.4. Other Committees. Other standing or temporary committees may be established from time to time by the Board. These committees' membership may consist of directors only, both directors and non-directors, or non-directors only (each, a "Board Committee"). Except for the Executive Committee, Board Committees have no legal authority to act for the Corporation except and to the extent that the Board authorizes a Board Committee or member thereof to take a specific action on behalf of the Board. Board Committees shall report their findings and recommendations to the Executive Committee and the Board.

Section 4.5. Acts of a Board Committee. Each Board Committee shall act pursuant to procedures adopted by the Board; provided, however, that when the Board has by resolution authorized a Board Committee to take a specific action on behalf of the Board, such Board Committee shall follow the same decision-making procedures adopted by the Board for acts of the full Board or any other decision-making procedures adopted by the Board for such committee.

Section 4.6. Fees and Compensation. Members of Board Committees may receive reasonable compensation of up to an amount to be determined by the Board. Reimbursement for expenses incurred in performance of duties may be fixed or determined by the Board.

## ARTICLE V OFFICERS, EMPLOYEES AND AGENTS OF THE CORPORATION

Section 5.1. Officers. The officers of the Corporation shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be a director. Any number of such offices may be held by the same person, except as provided in the Articles or in these Bylaws and except that, other than during the Initial Directors Period, neither the Secretary nor the Treasurer may serve concurrently as the President of the Board.

Section 5.2. Election. The officers of the Corporation shall be elected annually by a majority of the directors then in office, and each shall serve at the pleasure of the Board.

Section 5.3. Subordinate Officers. The Board may appoint, by a majority vote of the directors then in office, such additional officers, who need not be directors, as the business of the Corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the Board.

Section 5.4. Removal and Resignation.

(a) Any officer may be removed from such office, with or without cause, at any time, by a majority vote of the directors then in office. The officer in question, if a director, shall not be included when determining the quantity of votes required for a majority vote.

(b) Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

Section 5.5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular election or appointment to that office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 5.6. Employees and Other Agents. The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and receive such compensation, if any, as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities and duties.

Section 5.7. President. Subject to the control of the Board, the President shall supervise the Corporation's activities, affairs, and officers. Subject to Section 3.12, the President shall preside at all Board meetings. The President shall have such other powers and duties as the Board or the Bylaws may prescribe.

Section 5.8. Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for the Vice President by the Board or by the Bylaws.

Section 5.9. Secretary. The Secretary shall attend to the following:

(a) Book of minutes. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of directors and Board Committees, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings and the proceedings of such meetings.

(b) Notices, seal and other duties. The Secretary shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws to be given. The Secretary shall keep the seal of the Corporation in safe custody. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 5.10. Treasurer. The Treasurer shall attend to the following:

(a) Books of account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any director at all reasonable times.

(b) Deposit and disbursement of money and valuables. The Treasurer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse the funds of the Corporation as may be ordered by the Board; shall render to the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the Corporation; and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 5.11. Compensation. Officers shall not be compensated for their services but may receive reimbursement for expenses incurred in the performance of their duties as may be fixed or determined by the Board.

## ARTICLE VI EXPENDITURES

Section 6.1. Corporation Expenditures. The Board shall adopt appropriate financial and accounting procedures for its expenditures, including criteria for reimbursement of expenditures by committee members or any director for the costs of outside experts, consultants or advisors involved in implementing the KHSa or any other purpose of the Corporation, or for costs charged by a governmental entity with authority over any applications to dispose of property pursuant to Section 851 of the California Public Utilities Code ("Section 851") or the resulting transactions.

## ARTICLE VII RECORDS AND REPORTS

Section 7.1. Corporate Records. The Corporation shall keep:

- (a) Adequate and correct books and records of accounts;
- (b) Written minutes of the proceedings of its Board and Board Committees; and
- (c) The original or a copy of the Articles and Bylaws, as amended, to date.



Section 7.2. Annual Report.

(a) Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

(1) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year;

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year;

(3) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;

(4) The expenses or disbursements of the Corporation, for both general and restricted purposes during the fiscal year;

(5) Any transaction during the previous fiscal year to which the Corporation or a subsidiary was a party and in which any directors or officers of the Corporation or subsidiary had or has a direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; and

(6) The amount and circumstances of any indemnification or advances paid during the fiscal year to any officer or director of the Corporation.

(b) Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

(c) To the extent required by law, a report including the financial statements prescribed above shall be furnished annually to all directors of the Corporation.

ARTICLE VIII  
**OTHER PROVISIONS**

Section 8.1. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsement thereof executed or entered into between the Corporation and any other person, when signed by the President, the Treasurer, or such other officer as is delegated such authority by the Board, shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no agent or employee shall have any power or authority to bind the

Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount. The Corporation is under no obligation to enter into contracts for goods and services with any individual or other entity that may have created or sponsored it.

Section 8.2. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

Section 8.3. Amendments. These Bylaws may be amended or repealed or new Bylaws adopted by a majority vote of the directors then in office, provided that the Bylaws may not be amended in such a way to cause the corporation to lose its status as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Code.

Section 8.4. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board.

Section 8.5. Corporate Seal. The Corporation may have a seal which shall be specified by resolution of the Board.

## ARTICLE IX DEDICATION OF ASSETS

The property of the Corporation is irrevocably dedicated to charitable and public purposes and no part of the net earnings or assets of the Corporation shall inure to the benefit of (or be distributable to) any director or officer of the Corporation or other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its charitable and public purposes. Upon any dissolution of the Corporation, the disposition of any assets that originated as public funds shall, to the extent permitted under applicable law, including Section 501(c)(3) of the Internal Revenue Code or any corresponding section of any future federal tax code, be governed by the agreement which disbursed such funds to the Corporation.

## ARTICLE X LIABILITY: INDEMNIFICATION

Section 10.1. Directors, Agents, and appointing entity. The Corporation is solely liable for all its debts and obligations. The individual property of the directors, officers, employees, or agents of the Corporation, and the entities that appointed the directors, shall not be held liable for the debts or obligations of the Corporation.

Section 10.2. Indemnification of Directors and Officers. To the fullest extent permitted by law, the Corporation shall in all cases indemnify any existing or former director or officer of the Corporation who was or is a party (or is threatened to be made a party) to any threatened or pending action, suit, or other proceeding by reason of the fact that he or she is or was a director or officer of the Corporation, or by reason of his or her conduct in any such capacity, against expenses (including, without limitation, costs of investigation and attorneys' fees, judgments, fines,

penalties, and amounts paid in settlement) actually and reasonably incurred by him or her in connection with such proceeding.

Section 10.3. Indemnification of Employees and Agents. The Corporation may indemnify any other person who was or is a party (or is threatened to be made a party) to any threatened or pending action, suit, or other proceeding by reason of the fact that he or she is or was an employee or agent of the Corporation (or is or was serving at the request of the Corporation as a director, officer, trustee, employee, partner, fiduciary, or agent of another entity), or by reason of his or her conduct in any such capacity, against expenses actually and reasonably incurred by him or her in connection with such proceeding. Such indemnification shall be subject to any restrictions imposed by applicable law or by the Board in its discretion.

Section 10.4. Advance Payment of Expenses. In its discretion the Board may, to the extent permitted by applicable law and on such conditions as it deems appropriate, authorize the Corporation to pay or reimburse costs of investigation, attorneys' fees, and other expenses incurred by a person entitled to reimbursement under this Article, even in advance of the final disposition of the proceeding in question.

Section 10.5. Nonexclusive Remedy; Benefit. The rights provided by this Article shall not be deemed exclusive of any other right of indemnification or payment provided by contract, the Articles, vote of directors, or otherwise. Any right of indemnity or payment arising under this Article shall continue as to a person who has ceased to hold the office or position in which such right arose; shall inure to the benefit of his or her heirs, executors, and administrators; and shall survive any subsequent amendment of this Article.

Section 10.6. Insurance. The Corporation may, at the discretion of the Board, purchase and maintain insurance on behalf of the persons described in Sections 10.2 and 10.3 against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person under the laws of the State of California.

## ARTICLE XI CONFLICTS OF INTEREST

Section 11.1. Fiduciary Obligation. In conducting the affairs of the Corporation, each director shall owe a fiduciary obligation exclusively to the Corporation, and not to any other person or entity, including the entity that appointed such director to the Board of the Corporation.

Section 11.2. Statement of Potential Conflicts. Prior to taking his or her position on the Board, and annually thereafter, each director shall submit in writing to the President of the Board a list of all businesses and other organizations of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), a shareholder (other than a *de minimis* ownership interest), employee or agent with which the Corporation has, or might be expected to have, a relationship or a transaction in which the director might have an interest conflicting with the fiduciary obligation stated in Section 11.1. The statements shall be made available to all directors.

Section 11.3. Conduct of Meetings of the Board of Directors When a Conflict Exists. At such time as any matter comes before the Board which involves or may involve a conflict of interest, the affected director shall make known the potential conflict, whether disclosed by his or her written statement or not. Such director shall answer any questions that might be asked of him or her and shall disclose all material facts. At the request of the President, or the request of the Vice-President if the director with a conflict is the President, such director shall withdraw from the meeting for so long as the matter shall continue under discussion. If by withdrawing there is no longer a quorum, consideration of the matter shall be rescheduled until such time when there is a quorum despite the withdrawn director.

Section 11.4. Effect of Conflict. A director may be interested, directly or indirectly, in any contract, transaction or act relating to or incidental to the operations conducted by the Corporation, and may freely make contracts, enter into transactions, or otherwise act for or on behalf of the Corporation in such matters; provided that (i) the direct or indirect interest of the director in the proposed contract, transaction or act shall first be disclosed to and approved by the Board, (ii) any director directly or indirectly interested in the contract, transaction or act shall refrain from voting on the matter, and (iii) no contract, transaction or act shall be entered into or taken on behalf of the Corporation if such contract, transaction or act would jeopardize the Corporation's tax-exempt status under Section 501(c)(3) of the Code.

\* \* \* \* \*

## EXHIBIT 1

- A. The following entities may appoint two directors as provided in Section 3.2(b) of the Bylaws.

American Rivers  
California Trout  
Klamath Riverkeeper  
Northern California Council, Federation of Fly Fishers  
Salmon River Restoration Council  
Sustainable Northwest  
Trout Unlimited

- B. The following entities may appoint one director as provided in Section 3.2(b) of the Bylaws.

Institute for Fisheries Resources  
Pacific Coast Federation of Fishermen's Associations

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

## **Attachment J**

# **Klamath River Renewal Corporation Certificate of Good Standing**

State of California  
Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME:

KLAMATH RIVER RENEWAL CORPORATION

FILE NUMBER: C3879848  
FORMATION DATE: 02/29/2016  
TYPE: DOMESTIC NONPROFIT CORPORATION  
JURISDICTION: CALIFORNIA  
STATUS: ACTIVE (GOOD STANDING)

I, ALEX PADILLA, Secretary of State of the State of California,  
hereby certify:

The records of this office indicate the entity is authorized to  
exercise all of its powers, rights and privileges in the State of  
California.

No information is available from this office regarding the financial  
condition, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate  
and affix the Great Seal of the State of  
California this day of September 16, 2016.

A handwritten signature in black ink, appearing to read "Alex Padilla".

ALEX PADILLA  
Secretary of State