BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 219

In the Matter of PACIFICORP, dba PACIFIC POWER Application to Implement the Provisions of Senate Bill 76.	ORDER

DISPOSITION: SURCHARGES AFFIRMED

I. INTRODUCTION

A. Overview

The 2009 Oregon Legislative Assembly passed Senate Bill 76 (SB 76) which requires, among other things, that PacifiCorp, dba Pacific Power (Pacific Power or the Company) file a copy of the Klamath Hydroelectric Settlement Agreement (KHSA) within 30 days after the document's execution, along with analyses of rate-related costs, benefits and risks to customers of relicensing. SB 76 also requires Pacific Power to concurrently file tariffs for the collection of two non-bypassable surcharges to pay costs associated with removing dams within the Klamath Hydroelectric Project (Klamath Project or the Project).

Pursuant to this legislation, Pacific Power filed an Application to Implement Provisions of SB 76 (Application) along with Schedule 199 to institute the surcharges (KHSA surcharges), as well as supporting economic analyses of the costs and benefits of removing Project dams under the KHSA versus continuing to pursue relicensing of the dams.

Based on the results of the analyses, the Company asks the Commission to find the surcharges filed in Advice No. 10-008 result in fair, just, and reasonable rates. The Company also requests the Commission grant final approval of Pacific Power's Schedule 199, remove refund language in Schedule 199, approve the Company's proposed method for evaluating collections under Schedule 199 on an annual basis, and conditionally approve the transfer of the Project to the Dam Removal Entity (DRE) as contemplated in the KHSA. Staff and other parties raised certain issues regarding the calculation of the KHSA surcharges. The Industrial Customers of Northwest Utilities (ICNU) also challenged whether the KHSA surcharges should be suspended until funding of the KHSA by California becomes certain.

1. The Klamath Project

Pacific Power owns and operates the Klamath Project, which Pacific Power describes as follows:

> The Project is a 169 megawatt hydroelectric facility on the Klamath River in southern Oregon and northern California. It consists of eight developments including seven powerhouses, four mainstem hydroelectric dams on the Klamath River (Iron Gate, Copco No. 1, Copco No. 2, and J.C. Boyle), as well as two small diversion dams on Spring Creek and Fall Creek, a tributary to the Klamath River. The Project as currently licensed includes the East Side and West Side generating facilities which use water diverted by the Link River Dam, a facility owned by the Bureau of Reclamation that regulates the elevation and releases of water from Upper Klamath Lake and which is not included in the Project. The Project also includes Keno Dam, which has no hydroelectric generation facilities, but which serves to regulate water levels in Keno Reservoir as required by the Project license. The Company operates all developments under one Federal Energy Regulatory Commission (FERC) license (FERC Project No. 2082). The Project is partially located on federal lands administered by the Bureau of Land Management and the Bureau of Reclamation.[1]

Pacific Power describes the licensing and relicensing process for the Project, as follows:

> Under the Federal Power Act (FPA), FERC has exclusive authority to license nonfederal hydropower projects on navigable waterways. Original licenses are issued for a term of 50 years. FERC may issue subsequent licenses for a term of between 30 and 50 years. FERC regulations require that a licensee file a Notice of Intent to apply for a new license five and a half years prior to license expiration. A licensee must file an application for a new license two years prior to expiration of an existing license. On average, licensing takes eight to ten years, and some applications have taken as long as 30 years. During the relicensing process, FERC typically allows projects to continue operating on annual license extensions under the same terms and conditions once the old license has expired. Such is the case with the Project at this time, as the Project license expired in 2006.[2]

[1] *See* PPL/100, Brockbank/2, ll. 6-20. (Direct Testimony of Dean S. Brockbank, Mar 18, 2010).
[2] *Id*. at 3, ll 12-23; *See also* PPL/100, Brockbank/4.

The Klamath Project is currently operating under an annual license, as the original license expired in 2006.[3] Pacific Power filed a Notice of Intent to relicense the Project on December 15, 2000.[4] Pacific Power initially pursued a collaborative approach to relicensing, significantly involving stakeholders in the relicensing process even before submitting plans to FERC.[5] Pacific Power filed a final license application with FERC in February 2004.[6] The application proposed changes to the Project in order to avoid the imposition of mitigation measures unrelated to the operation of the hydroelectric facilities.[7]

In March 2006, the Company submitted applications to California and Oregon for Clean Water Act (CWA) Section 401 water quality certifications of the Project, a prerequisite to FERC licensing.[8] The same month, four federal agencies that were parties to the relicensing proceeding (National Marine Fisheries Service, U.S. Fish and Wildlife Service, the Bureau of Reclamation, and the Bureau of Land Management) issued draft terms and conditions for a new license for the Klamath Project.[9] Conditions were proposed that would require implementation of protection, mitigation, and enhancement (PM&E) measures associated with fish passage and other environmental benefits.[10] Pacific Power indicates that these measures would likely reduce power generation at the Klamath Project and increase the costs of a new license.[11] Pacific Power challenged the proposed terms and conditions in a formal administrative proceeding, and the agencies issued modified terms and conditions in accordance with an administrative law judge's findings in that proceeding.[12] These terms and conditions are set forth in the FERC's final environmental impact statement.[13]

Pacific Power initiated settlement discussions in October 2004 with stakeholders and held settlement meetings in 2005 and 2006.[14] During settlement discussions, representatives of the federal government and the states of Oregon and California expressed strong preferences for removing the dams.[15] As a result of these settlement meetings, on November 13, 2008, Pacific Power, the states of Oregon and California and the United States Department of Interior (DOI) entered into the Klamath Agreement in Principle (AIP).[16] The AIP provided a framework to decommission and remove the four mainstem hydroelectric dams in the Project: J.C. Boyle, Copco No. 1, Copco No. 2 and Iron Gate (the Klamath dams).[17] Pacific Power indicates that the AIP

[3] PPL/100, Brockbank/3-4.
[4] *Id*. at 6.
[5] *Id*.
[6] *Id*.
[7] *Id*. at 10.
[8] *Id*. at 5, 7. Since the execution of the KHSA, the applications for water quality certification of the Project have been held in abeyance. PPL/100, Brockbank/13.
[9] *Id*. at 7.
[10] *Id*.
[11] *Id.*
[12] *Id.* at 8.
[13] PPL/300, Scott/4-5 (Direct Testimony of Cory E. Scott, Mar 18, 2010).
[14] PPL/100, Brockbank/10-11.
[15] PPL/200, Kelly/10-11 (Direct Testimony of Andrea L. Kelly, Mar 18, 2010).
[16] PPL/100, Brockbank/11; Preamble to SB76.
[17] PPL/100, Brockbank/11.

reflected the preliminary view of its parties that the benefits of removing the Klamath dams outweighed the costs.[18]

After execution of the AIP, Pacific Power pursued further negotiations with an expanded group of stakeholders, government agencies and interested persons.[19] The negotiations culminated in execution of the KHSA on February 18, 2010.[20]

On July 14, 2009, the Oregon Legislature passed SB 76 to facilitate removal of the Klamath dams pursuant to an agreement in principle, the KHSA, among the states of Oregon and California, the United States DOI, and Pacific Power. SB 76 establishes procedures to implement the KHSA. Review by the Commission of rates resulting from implementation of the KHSA is included among the procedures.

2. The Klamath Hydroelectric Settlement Agreement

On February 18, 2010, the AIP parties and other stakeholders signed the KHSA.[21] (The KHSA is attached to this order as Appendix A.) The KHSA provides a framework for removal of the Klamath dams after transfer to a DRE no earlier than 2020, contingent on certain actions, including Congressional approval and a scientific assessment by the Secretary of the Interior confirming that removal is in the public interest.[22] The KHSA conditions also include passage of federal legislation to authorize implementation of the KHSA and provide liability protection for Pacific Power and its customers.[23]

If the Secretary of the Interior makes an affirmative determination, the states of California and Oregon have 60 days to concur. If the Secretary makes a negative determination, the KHSA terminates, unless the parties agree to cure the termination or amend the KHSA.[24]

The KHSA sets a $450 million cost cap for facilities removal. Customer contributions are capped at $200 million, prorated between Pacific Power's customers in Oregon (up to $184 million) and California (up to $16 million).[25] The state of California is also obligated to provide the remaining $250 million, either through the issuance of a bond or some other means.[26]

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[18] Pacific Power's Opening Brief on Surcharge Issues (Surcharge Opening Brief) at 4 (Aug 9, 2010); *See* Preamble of SB 76.
[19] PPL/100, Brockbank/12.
[20] *Id* .
[21] *Id*.
[22] PPL/200, Kelly/2. The Secretary of the Interior will use best efforts to make this determination by March 31, 2010. *See also* PPL/103, Brockbank/1-2.
[23] PPL/103, Brockbank/2.
[24] *Id*.
[25] *Id*.
[26] *Id.* at 2-3.

3. Senate Bill 76

SB 76 requires Pacific Power to file a copy of the KHSA with the Commission within 30 days after execution, along with complete copies of any analyses and studies of rate-related costs, benefits and risks to customers of removing versus relicensing the Klamath River dams reviewed by the Company during evaluation of the KHSA.[27]

SB 76 requires Pacific Power to also file "tariffs for the collection of two non-bypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams."[28] As specified by the statute, one surcharge should be designed to collect removal costs for the J.C. Boyle Dam and the other surcharge should collect removal costs for the other three dams.[29] Removal costs may include costs related to: (1) physical removal of the dams; (2) site remediation and restoration; (3) avoiding downstream impacts of dam removal; (4) downstream impacts of dam removal; (5) permits required for the removal; (6) removal and disposal of sediment, debris and other materials; and (7) compliance with environmental laws.[30] SB 76 directs the Commission to allow Pacific Power to begin collecting the surcharges on the date the KHSA final agreement is filed with the analyses and tariffs.[31]

SB 76 mandates two caps on the amount collected by the surcharges. Total collection may not exceed $200 million (calculated as Oregon's share of the costs) and yearly collection may not exceed more than two percent of Pacific Power's annual revenue requirement, as determined by the Company's last general rate case pursuant to ORS 757.210 as of January 1, 2010.[32] In addition, the surcharges must be of a specified amount per kilowatt-hour billed to retail customers, as determined by the Commission.[33] SB 76 provides that all amounts collected under the surcharges are to be remitted into specially created trust accounts.[34]

Within six months of the filing of the KHSA, analyses, and tariffs by Pacific Power, SB 76 requires the Commission to conduct a hearing pursuant to ORS 757.210 and enter an order making a determination as to whether the surcharges result in fair, just, and reasonable rates.[35]

If one or more of the dams will not be removed, the Commission will direct Pacific Power, under SB 76, to terminate all or part of the surcharges.[36] The Commission

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[27] ORS 757.736 (1).
[28] ORS 757.736 (2).
[29] *Id*.
[30] ORS 757.736(11).
[31] ORS 757.736 (2).
[32] ORS 757.736 (11).
[33] ORS 757.736 (7).
[34] ORS 757.736 (8); ORS 757.738 (1).
[35] ORS 757.736 (5). ORS 757.734 (1) also requires the Commission to enter an order establishing an accelerated depreciation schedule for the Project within six months of the date of execution of the KHSA. On August 18, 2010, the Commission entered Order No. 10-325.
[36] ORS 757.736 (10).

will also "direct the trustee of the appropriate trust account under ORS 757.738 (Surcharge trust accounts related to removal of Klamath River dams) to apply any excess balances in the accounts to Oregon's allocated share of prudently incurred costs to implement relicensing requirements."[37] Remaining excess amounts in the trust accounts after this application shall be refunded to customers or otherwise used for the benefit of customers.[38]

II. PROCEDURAL HISTORY

On March 18, 2010, within 30 days of the execution of the KHSA, Pacific Power filed an Application to Implement Provisions of Senate Bill 76 and supporting testimony with the Commission. Pacific Power concurrently filed Advice No. 10-008 implementing surcharges filed in the Application through Schedule 199, effective March 18, 2010.

Schedule 199 spreads the surcharges among customer classes based on each class' share of generational revenues, while ensuring that no customer class increase exceeded two percent or was less than 1.5 percent.[39] Staff addressed Advice No. 10-008 in a Public Meeting Memo, dated March 22, 2010. Staff recommended that the Commission allow Schedule 199 to remain in effect. At the Public Meeting held on March 30, 2010, the Commission allowed Schedule 199 to remain in effect pending further investigation.

Special protective orders for confidential and highly confidential information filed in this proceeding were entered on April 19, 2010 (Order No. 10-148), and April 21, 2010 (Order No. 10-152).

On May 26, 2010, the following parties filed direct testimony: Staff[40]; the Citizens' Utility Board of Oregon (CUB); ICNU; the Oregon Department of Fish and Wildlife; the Oregon Water Resources Department; and the Oregon Department of Environmental Quality. (The three intervening state agencies are collectively the Intervenor State Agencies.) Three parties, American Rivers, California Trout and Trout Unlimited (collectively the Joint Parties), filed joint testimony. Pacific Power filed reply testimony on June 21, 2010.

On July 2, 2010, a bench request directed Pacific Power to file Highly Confidential work papers that had been informally provided to Staff and signatories to Special Protective Order No. 10-148. On July 9, 2010, Pacific Power filed the requested information.

On July 23, 2010, the Commission held a workshop. Pacific Power, Staff, CUB and Trout Unlimited made technical presentations and answered questions regarding cost-benefit analyses of decommissioning the dams pursuant to the KHSA versus relicensing

[37] *Id*.
[38] *Id*.
[39] PPL/200, Kelly/9.
[40] Staff filed direct testimony pertaining to depreciation issues only on June 4, 2010. *See* Staff/200, Ping.

the Project. Technical questions with regard to the other issues in this case were also addressed.

Opening briefs were filed on August 9, 2010. Opening and reply briefs were filed by the Joint Parties, Intervenor State Agencies, Staff and other intervening parties.

III. DISCUSSION

A. Issues

1. What is the Standard of Review for the KHSA Surcharges?

a. Positions of the Parties

The legislature, Pacific Power states, delegated broad authority to the Commission to evaluate whether the KHSA surcharges produce rates that are fair, just, and reasonable.[41] Under the fair, just, and reasonable standard, Pacific Power asserts that the Commission must evaluate whether the rates—as opposed to the methodologies used to calculate the rates—are fair, just, and reasonable. Pacific Power observes that the Commission "has previously found that its duty under the just, and reasonable standard is to 'balance the interest of the customer and the utility under ORS 756.040.'"[42] Customers' interests include adequate and safe service at a just, and reasonable price, Pacific Power observes. Pacific Power argues that the Commission should review the surcharges in context of the Company's overall rates, "including the fact that the surcharges are a relatively modest rate increase to base rates approved by the Commission within the past year."[43]

CUB argues, however, that "[t]he size of an increase, no matter how small, or how modest, is an improper test for determining whether a rate is fair, just and reasonable."[44] Rather, CUB asserts that rates are fair, just, and reasonable if they reflect costs that are "prudently incurred and are necessary to provide adequate services to customers."[45] CUB argues that the Commission should review KHSA surcharges under a prudence standard.[46]

Pacific Power responds that SB 76 applies the prudence standard to the Company's recovery of investment, operational costs and replacement power, but applies a fair, just, and reasonable standard to the review of the surcharges.[47] In any case, the Company observes that the Commission need not resolve the issue, as CUB finds the surcharges to be prudent as well as fair, just, and reasonable.

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[41] Pacific Power's Surcharge Opening Brief at13-14.
[42] Pacific Power's Surcharge Opening Brief at 14, citing *In Re Portland Gen. Elec. Co.*, Order No. 08-487 at 63.
[43] *Id.* at 14.
[44] CUB's Opening Brief at 4. (Aug 9, 2010).
[45] *Id*.
[46] CUB/100, Feighner/4 (Direct Testimony of Gordon Feighner, May 26, 2010).
[47] Pacific Power's Surcharge Opening Brief at 15.

b. Resolution

SB 76 defines the scope of the Commission's review of the surcharges for funding the costs of removing the Klamath River dams. Pursuant to ORS 757.736(4), we must determine, using the information contained in the rate-related analyses and studies filed by Pacific Power with the KHSA, whether the imposition of surcharges under the terms of the KHSA results in rates that are fair, just, and reasonable.

Our general ratemaking function is to determine an overall level of rates that are just, and reasonable, and to do so, we traditionally balance the competing interests of a utility and its customers. This balance conventionally means that customers receive adequate service at fair and reasonable rates, and the serving utility has an opportunity to collect sufficient revenue to recover reasonable operating expenses and earn a reasonable return on investments made to provide service.[48] Typically, we apply this standard with regard to a utility's overall service, investments, and earnings.

This proceeding is unique, however, as it focuses on service and investments related to the Klamath Project only. It is also unique because the 2009 Legislative Assembly directs us to consider only the "rate-related costs, benefits and risks for customers of removing or relicensing [the] Klamath River dams."[49] In this proceeding, we have the unique opportunity to compare two competing rate scenarios to evaluate what scenario we believe will likely be in the best of interests of customers, resulting in rates that are fair, just, and reasonable. [50]

2. Do the Surcharges Result in Fair, Just, and Reasonable Rates?

a. Positions of the Parties

ORS 757.736(2) provides for surcharges to fund the costs of removing the Klamath dams pursuant to the KHSA. Pacific Power asserts that the surcharges are fair, just, and reasonable because they implement the KHSA, a settlement agreement negotiated for the economic benefit of customers.

Negotiation of the KHSA was guided, the Company claims, by four core principles: (1) protect customers from uncertain costs of removal of the Klamath dams; (2) transfer the dams to a third party for removal; (3) protect customers from liabilities of dam removal; and (4) ensure that customers continue to benefit from the low-cost power of the dams until the dams are removed.[51] Pacific Power represents that the KHSA delivers on each of these principles, thereby benefiting customers. With regard to the first principle, Pacific Power states that the KHSA protects customers from uncertain costs related to dam removal by putting a $200 million cap on the Company's Oregon customer contribution to

[48] Order No. 08-487 at. 6-7.
[49] *See* ORS 757.736(1).
[50] All costs are estimated, however. Unlike a prudency review, we do not compare actual expenditures with other estimated scenarios.
[51] PPL/200, Kelly/10-11.

the total costs of dam removal.[52] As to the second principle, the KHSA requires designation of a DRE.[53] The third principle is addressed by the requirement of federal legislation providing liability protection to Pacific Power and its customers.[54] As the Klamath dams will continue to operate until 2020, Pacific Power claims that the fourth principle is also met.[55]

Pacific Power assessed and compared the relative costs of implementing the KHSA versus relicensing the Klamath project to evaluate whether the KHSA was in the economic best interests of ratepayers.[56] The Company filed such analysis with the KHSA.

Pacific Power estimates that relicensing would incur costs in excess of $400 million in capital costs (majority of costs result from implementation of aquatic resource PM&E measures) and $60 million in operations and maintenance costs over a 40-year license term.[57] (The relicensing scenario includes a reduction in energy production by twenty percent that would be replaced with renewable, non-carbon emitting resources.[58]) Pacific Power asserts that costs estimated for the baseline relicensing scenario are conservative, and could go much higher.[59] Pacific Power asserts that one of the greatest benefits of the KHSA is that it protects customers from any additional risks and liabilities potentially associated with relicensing, including escalating PM&E costs, litigation and the possibility that the Project would not ever be relicensed.[60]

In comparison, the Company estimates capital costs of approximately $9 million (involving interim water quality and hatchery improvements) and operations and maintenance (O&M) costs of approximately $70 million to implement the KHSA.[61] Operating and maintaining the hatcheries, monitoring water quality and enhancing the aquatic habitat are examples of O&M costs that would be incurred until decommissioning.[62] The Company estimates $3 million to decommission the East Side and West Side developments and a $172 million dam removal surcharge. Assuming generation at the Project would end as of December 31, 2019, KHSA costs also include renewable replacement power costs.[63]

To evaluate the costs and benefits of relicensing versus decommissioning the Project, the Company compared the Present Value Revenue Requirement (PVRR) of a 40-year relicense to the PVRR of the KHSA over a 44-year period beginning in 2010.[64]

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[52] PPL/104, Brockbank, § 4.1.1.C.
[53] PPL/104, Brockbank, 4.
[54] PPL/104, Brockbank, § 2.1.1.E.
[55] PPL/104, Brockbank § 7.3.3.
[56] To estimate costs of relicensing, the Company relied on costs and data developed as part of the 2007 Final Environmental Impact Statement (FEIS). PPL/200, Kelly/14. The Company also included potential CWA Section 401 water quality certifications from California and Oregon. PPL/300, Scott/8.
[57] PPL/300, Scott/6; PPL/301 (Confidential).
[58] PPL/200, Kelly/15.
[59] *Id*. at 14.
[60] PPL/300, Scott/10; PPL/200, Kelly/16.
[61] PPL/300, Scott/8.
[62] *Id.*
[63] PPL/200, Kelly/15; Tr. at 9, ll 7-9.
[64] *Id* at 14-15. The Company detailed costs in confidential and highly confidential analyses.

Pacific Power reports that the economic analysis shows the KHSA PVRR is less than the relicensing PVRR.[65] Pacific Power also indicates that the KHSA specifically provides Oregon customers with a PVRR benefit over the costs of relicensing.[66]

Staff and all parties, other than ICNU, agree that KHSA costs are likely lower than Project relicensing costs, particularly given the significant escalation risk for relicensing costs. Staff and all parties conclude that surcharges to implement the KHSA are fair, just, and reasonable.

Staff thoroughly reviewed Pacific Power's analysis of the costs and risks associated with relicensing versus dam removal, finding the Company's estimates to be reasonable.[67] Staff finds it significant that mitigation measures, which are difficult to estimate and likely to escalate over time, are the largest cost associated with relicensing, while the greatest KHSA costs, absent dam removal costs, are replacement power costs.[68] Staff observes that the Company's estimates of mitigation costs are supported by independent analysis by the California Energy Commission, in cooperation with the U. S. DOI.[69] Staff concludes that Pacific Power has demonstrated that customer costs under the KHSA are capped below projected costs to relicense and continue operation of the Klamath dams.[70] In consideration of the significant risk that relicensing costs will escalate in the future, Staff determines that the KHSA is the less risky option for ratepayers, and urges the Commission to determine that the KHSA surcharges result in rates that are fair, just, and reasonable.[71]

The Intervenor State Agencies observe that the reasonableness of the surcharges are evident "when the unbounded costs and risks to customers of relicensing the hydroelectric project are compared to dam removal under the KHSA, which caps customer costs and liabilities."[72] The Intervenor State Agencies testify that relicensing can be expected to cost $4,182,750 and $406,600, respectively, for state hydro fee and rental payments (over a 50-year license term).[73] The Intervenor State Agencies caution that water quality certification proceedings pending before the Oregon and California water quality agencies are particularly subject to uncertainty about cost and outcome.[74]

The Joint Parties assert that the KHSA manages ratepayer risks better than relicensing. The KHSA offers capped costs and fixed benefits versus the numerous and

[65] Id. at 15.
[66] Tr. 31, ll 22-25; Confidential Attachment to Bench Request 1-4.
[67] Staff's Opening Brief on Surcharge Issues (Staff Surcharge Opening Brief), p. 3. (Aug 9, 2010).
[68] Staff/100, Brown/8-15. (Direct Testimony of Kelcey Brown, May 26, 2010).
[69] Staff's Surcharge Opening Brief at 2-3. The two agencies commissioned a study regarding "Economic Modeling of Relicensing and Decommissioning Options for the Klamath Basin Hydroelectric Project." Staff indicates that estimates by Pacific Power and the study of relicensing mitigation costs are comparable in 2009 dollars.
[70] Staff's Surcharge Opening Brief at 4.
[71] *Id*.
[72] Intervenor State Agencies' Brief on Dam Removal Surcharges 2. (Aug 9, 2010).
[73] WRD/1, Grainey, 3-5 (Oregon Department of Water Resources' Direct Testimony of Mary Grainey, May 26, 2010; ODFW/2, Pustis, pp. 4-5 (Oregon Department of Fish and Wildlife's Direct Testimony of Nancy Pustis, May 26, 2010).
[74] DEQ/1, Stine/5. (Direct Testimony of Chris Stine, May 26, 2010).

significant contingencies associated with the relicensing effort that are not fully quantifiable in terms of cost, schedule or legal liability, the Joint Parties observe.[75] In contrast, the Joint Parties observe that "the KHSA and the Surcharges incorporate procedures and requirements to manage all contingencies associated with dam removal."[76] The Joint Parties explain that these procedures and requirements:

> (i) avoid almost all capital investment in the project facilities; (ii) permit existing power operations largely to continue until 2020; (iii) cap PacifiCorp's investment in dam removal at $200 million, including $172 million subject to this application; and (iv) exempt PacifiCorp from any liability for damages associated with dam removal once the facilities are transferred for that purpose.[77]

At the July 23, 2010 Commission workshop, Steve Rothert spoke on behalf of the Joint Parties about their perspective on the risks associated with relicensing. Observing that the process started in 2000 and has no projected end date, he called the relicensing proceeding "one of the most contentious and difficult such proceedings in the 75-year history of the Federal Power Act."[78]

CUB took note of this testimony when assessing risks associated with relicensing the Project.[79] After performing a financial analysis of its own, and considering the prudency, as well as the fairness and reasonableness of the KHSA, CUB supports the settlement and the rates resulting from surcharges established under it. CUB states:

> Continuing to operate the Klamath River dams until 2020 provides substantial benefits to customers, especially when potential carbon costs are taken into consideration. The guarantee of limited financial liability to Oregon customers makes the settlement preferable to the lack of certainty that would accompany the FERC relicensing process. CUB's analysis of [Pacific Power]'s financial work papers confirms the Company's own assertion that the rate increase associated with the KHSA is prudent and is, therefore, fair, just and reasonable.[80]

CUB made this determination despite recognition that the cost to Oregon customers of is large and disproportionate—as typically the costs of relicensing would be allocated across Pacific Power's entire service territory spanning six states.[81] CUB concluded:

> CUB's analysis of the dam removal project's costs has determined that the portion of the project's costs incurred by the Oregon customers of [Pacific Power] while large is acceptable given the expected benefits

[75] Joint Opening Brief on Surcharge Issues at 4-6. (Aug 9, 2010).
[76] *Id.* at 6.
[77] *Id.* at 6-7. *See* PPL/104; *Sees also* ORS 757.736(3); KHSA §4.1.1.C.
[78] Tr. 72-73.
[79] CUB's Opening Brief at 6-7. (Aug 9, 2010).
[80] *Id.* at 7 (internal citations omitted).
[81] *Id.* at 5.

> of the project as compared to the quantity of financial risks that will be assumed by customers. The SB 76 legislation which provides that the overall contribution be limited to $200 million (184 million to Oregon customers) provides adequate assurances that ratepayers will not be responsible for cost overruns or other unanticipated charges. The predicted costs of decommissioning compare favorably with the costs associated with relicensing the dams, and decommissioning poses significantly fewer risks to [Pacific Power] and other project stakeholders.[82]

ICNU is the only party that expresses caution with regard to costs under the KHSA to remove the Klamath Dams, "the total cost to Oregon is higher than would be the case, absent SB 76."[83] ICNU's comparison point is different than all the other parties. ICNU estimates that if the Klamath Dams were removed under ordinary ratemaking treatment the total annual revenue requirement that would be assigned to Oregon ratepayers would be 30 percent less than it is under the funding mechanism and other requirements of SB 76. [84] Pacific Power responds that ICNU's conclusion is faulty because it considers removal costs and not the totality of costs associated with removal of the Klamath dams without the KHSA, as traditional ratemaking requires.[85] Pacific Power observes that ICNU did not review the full economic analysis supporting the KHSA and has not produced quantitative evidence of its position.

b. Resolution

Ratepayers will be responsible for significant future costs for the Klamath Project (regardless of the disposition of the dams). The nature and scope of these costs has been unclear, however, since 2000 when Pacific Power first provided notice of the Company's need to seek federal relicensing of the Project. We are persuaded that continued pursuit of the relicensing option would pose significant risks to ratepayers. The nature and scope of the costs involved with relicensing would remain uncertain and subject to significant escalation for a considerable period of time.

The KHSA in contrast, offers a more certain path for the Project's future, providing a timeline for continued operation until December 31, 2010, followed by transfer of the facilities to a third party responsible for removing the dams. The KHSA also caps customer costs and liabilities for Klamath dam removal and the environmental restoration of the Klamath River at a reasonable level, while providing customers with renewable replacement power. Further, we believe that Pacific Power has reasonably estimated the cost of replacement power if the Klamath dams are decommissioned. Due to significant tangible and intangible benefits associated with the KHSA, we conclude it is in the best interest of customers and find the KHSA surcharges to be fair, just and reasonable.

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[82] *Id.* at 5-6 (internal citations omitted).
[83] ICNU/100, Falkenberg/4 (Direct Testimony of Randall Falkenberg, May 26, 2010).
[84] PPL/203, Kelly/3.
[85] *See* Pacific Power's Reply Brief on Surcharge Issues (Surcharge Reply Brief) (Aug 9, 2010).

We reviewed the detailed economic studies of the KHSA surcharges, we analyzed the projected costs of both relicensing and decommissioning of the dams, and we asked specific questions of Pacific Power, Staff and the parties at a workshop. We considered both the quantifiable and unquantifiable benefits and risks of the KHSA and relicensing options.

We are persuaded that Pacific Power carefully analyzed the nature and scope of projected costs for both futures for the dams. As Staff and others do, we believe that there are substantial unquantified risks associated with continued pursuit of a FERC license that is not captured in the economic analysis. Pacific Power and parties deeply involved in the relicensing process, such as the Intervenor State Agencies and the Joint Parties, all testified that the relicensing option analysis significantly underestimates the true cost of relicensing. These parties indicate that the projected relicensing costs are subject to significant risk of escalation with no guarantee that a FERC license will ever be issued due, in particular, to great uncertainty about water quality certification. Yet, even though the full expected costs of the relicensing option is not captured in Pacific Power's analysis, the analysis still shows that the KHSA results in lower rates for Oregon customers, as well as all customers of Pacific Power. If the risks associated with the relicensing scenario could be quantified, we believe that the relative economic benefits of the KHSA would likely be great.

We observe that no party testified that the relicensing option would likely result in lower rates and better service for customers. ICNU criticizes the KHSA surcharge rates, but does so in comparison to hypothesized "normal" ratemaking for costs associated with removing a hydroelectric dam. Ten years into a process to resolve the future of the Klamath Project with no "normal" resolution in sight, we conclude that it's not reasonable to compare proposed solutions to so-called "normal" ratemaking scenarios.

Because the KHSA limits costs and manages risk better than relicensing, we find the KHSA to be in the best interest of customers, and we determine that the KHSA surcharges are, therefore, fair, just and reasonable.

3. Are the Surcharges Calculated Reasonably and Consistently with Senate Bill 76?

Section 7.3.2.A of the KHSA anticipates collecting $172 million in customer contributions to pay for removal of the Klamath dams. Section 7.3.2.B expects to earn approximately $28 million in interest on these contributions. The sum of the collected surcharge and interest earnings "results in a total of $200 million in the accounts available for Facilities Removal costs."[86] SB 76 sets forth certain requirements to calculate surcharges to collect Oregon's share of the customer contributions.

In Advice No. 10-008, the Company filed Schedule 199, with an effective date of March 18, 2010. Pacific Power, Staff and other parties evaluated whether the Company's tariff implementing the surcharges, Schedule 199, is consistent with SB 76. ICNU challenged an assumption that amounts collected under the surcharges would earn

[86] *Id*.

3.5 percent interest in the trust accounts. ICNU also argued that calculation of the KHSA surcharges should assume annual increases in sales growth for Pacific Power. In response, Pacific Power and Staff recommended that the surcharges should be annually reviewed. ICNU asserted that interested parties should participate in such reviews.

a. Positions of the Parties

As required by ORS 757.736(2), Pacific Power states, Schedule 199 includes two dam removal surcharges, one for J. C. Boyle Dam and the other for the Copco 1, Copco 2 and Iron Gate dams. The Company asserts that these surcharges are calculated consistently with the requirements of SB 76.

The surcharges are calculated to collect no more than Oregon's share of the total customer contribution of $200 million, Pacific Power states, as required by ORS 757.736(3).[87] Oregon's 92 percent share of the $172 million target is calculated to be $158.24 million.[88] Pacific Power indicates that Schedule 199 calculates the surcharges based on a collection schedule funding this amount by December 31, 2019.[89] The Company represents that the analysis undertaken during settlement negotiations assumed collection of the surcharges over a ten-year period, as well as a 3.5 percent interest rate on the trust balance.[90] As Staff explains, this assumption of a 3.5 percent annual interest rate is an estimate only, and actual earnings may vary considerably over the trust period.[91] Staff does not object to assuming a 3.5 percent annual interest rate.[92]

ICNU challenges the assumption of a 3.5 percent interest rate, however. ICNU argues that the rate is too low, as it is below the current rate for conservative interest-bearing investments.[93] ICNU recommends that a 6 percent interest rate be assumed, to thereby reduce the initial amount to be collected by the surcharges by $1.72 million.[94] In support of the 6 percent rate as reasonable and conservative, ICNU argues that cost of capital experts for both Pacific Power and ICNU recently testified that single A utility bonds will earn between 6.19 and 6.27 percent.[95] ICNU also argues that negotiation of the interest rate during the KHSA is insufficient reason to rely on it.[96]

Staff responds, however, that based on research[97], there is a strong chance that 3.5 percent is actually too high, and that undercollection is more likely than overcollection.

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[87] PPL/200, Kelly/7-8.
[88] *Id*.
[89] *Id*.
[90] PPL/200, Kelly/8; PPL/104, Appendix H.
[91] Staff 's Surcharge Reply Brief at 2.
[92] Tr. at 81, ll 23-82.
[93] ICNU/100, Falkenberg/6.
[94] ICNU's Opening Brief at . 13; ICNU/100, Falkenberg/7.
[95] ICNU's Opening Brief at 14; ICNU/100, Falkenberg/6.
[96] ICNU's Reply Brief at 9.
[97] Staff's Surcharge Reply Brief at 2, n. 3. Staff cites the Federal Reserve Statistical Release H.15 website at http://federalreserve.gov/release/h15/data.htm, and asks that we take official notice under OAR 860-014-0050(1)(a) and (b) of the United States Treasury Rates posted there. We do not find it necessary to take official notice and deny the request.

Staff notes that the average annual '[m]arket yield[s] on U.S. Treasury securities at [the specified] constant maturity, quoted on [an] investment basis" for the week ending August 6, 2010 are as follows: 30-day bill 0.15 percent; 90-day bill 0.16 percent; 6-month bill 0.20 percent; 1-year bill 0.27 percent; 2-year note 0.54 percent; and 3-year note 0.82 percent. [98] On this basis, ICNU's assertion in its Opening Brief that the 3.5 percent interest rate used to determine an annual revenue requirement is 'too-low' is believed by Staff to be exactly the opposite given the desideratum of principal preservation that current yields on investments considered by Staff to be suitable."[99] Staff considers the "more reasonable, yet conservative 6% interest rate" assumption advocated by ICNU to be mistaken.

ICNU's argument assumes that the surcharges will be deposited in investments putting principal at risk, Pacific Power responds, while KHSA parties expect the opposite.[100] Staff confirms that surcharge balances will be invested in a manner not putting principal under risk.[101] Under ORS 757.738(1), the Commission is required to establish trust accounts to hold the surcharge collections. Pacific Power's role is to collect the surcharges on customers' bills and then remit the proceeds to the Oregon trust accounts on a monthly basis. The Commission will manage the trusts, with specific trustee instructions that are to be developed in consultation with the federal government and the state of California. The Commission currently is depositing surcharge collections into a money market account.[102] Pacific Power asserts that ICNU did not provide evidence that an interest rate of 3.5 percent is unreasonable for accounts qualified to receive public funds under ORS 295.001 to 295.008.

Pacific Power responds that the surcharges are carefully calculated to implement the KHSA, pursuant to SB 76. Pacific Power states:

> The KHSA specifies that the Parties acknowledge that the surcharges will earn approximately $28 million in interest based on a 3.5 percent interest rate assumption. PPL/104 at 48; Appendix H. The Parties used this calculation to determine how to reach the Customer Contribution of $200 million. PPL/104 at 48. PacifiCorp then used this agreed-upon calculation from the KHSA as the basis of its surcharge calculations in this proceeding. Under Sections 2.3 and 4.1.1 of the KHSA, the Parties agreed that the costs of dam removal shall be funded in part through Oregon surcharges that amount to approximately $158 million. PPL/104 at 16, 24. If the Oregon Commission does not adopt the surcharges as specified in the KHSA, the Parties must Meet and Confer to attempt to find alternatives to cover the costs of dam removal. PPL/104 at 16. Because the Oregon surcharge amount is a material condition of the KHSA, the KHSA may be terminated if the parties cannot negotiate alternative funding during

[98] Staff's Surcharge Reply Brief at 2.
[99] *Id*.
[100] PPL/203, Kelly/6.
[101] Staff's Surcharge Reply Brief at 3.
[102] Tr. at 76.

> the Meet and Confer process. As a result changing the interest rate would present a significant threat to the viability of the KHSA.[103]

Pacific Power alleges that ICNU's interest rate proposal is an attempt to undermine the KHSA, contrary to the intent of SB 76.

The Company calculated the surcharges to equally spread the $158.24 million amount over the collection period beginning on March 18, 2010, and ending on December 31, 2019, resulting in an annual collection rate of approximately $16.16 million per year, thereby increasing Oregon rates by approximately 1.6 percent a year.[104] Pacific Power asserts that this approach complies with ORS 757.736(7), directing the Commission to set the surcharges so that the total annual collections of the surcharges remain approximately the same during the collection period. As reflected in the tariff, however, Pacific Power points out that the Commission and the Company will need to monitor the collections under the surcharge tariff given variations in load forecasts and may need to adjust the cents per kWh rate in the future. Pacific Power also indicates that pursuant to ORS 757.736(3), the annual collection rate was compared against Pacific Power's revenue requirement in Oregon as of January 1, 2010, to ensure that the annual collection rate does not exceed 2 percent. Finally, Pacific Power asserts that the surcharges are calculated to remain approximately the same during the collection period and are of a specified amount per kilowatt hour, as required by ORS 757.736(7).[105]

ICNU expresses concern that the Company did not factor sales growth into calculation of the KHSA surcharges.[106] As collection under the surcharges will increase with sales growth, currently forecast to grow slightly in excess of 1 percent per annum, ICNU asserts that the surcharges are designed to over-collect.[107] ICNU recommends that the Commission mandate periodic reductions to reflect sales growth, and that the Commission monitor the surcharges on an annual basis, providing both Staff and intervenors with opportunities to review and challenge surcharge inputs.[108]

Pacific Power alternatively proposes that the Commission direct the Company to meet with Staff each year, within 30 days of the Company's filing of the TAM. Based on the updated load forecast filed in the TAM, Pacific Power indicates that Staff and the Company can review the status of collections in relation to the new forecast to determine if Schedule 199 rates should be revised. If revisions are needed, then Pacific Power proposes that the Company be required to file a revised tariff within 60 days of the TAM filing. The tariff would have an effective date of at least 30 days from the date of filing. The Company argues that its proposal ensures that amounts collected under Schedule 199 reflect changes in load, without speculating as to load growth.

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[103] Pacific Power's Surcharge Reply Brief at 5-6.
[104] PPL/100, Kelly/8.
[105] PPL/203, Kelly/6.
[106] ICNU/100, Falkenberg/7.
[107] *Id*.
[108] *Id*.; ICNU Reply Brief at 8.

Staff proposes a similar process, as follows:

> Staff recommends that the Commission require the Company to file annually updated surcharge rates, using its most recent forecast of future loads, the history of interest earned, and other transactions impacting actual and projected trust account balances.[109] Such a requirement should include that no less than thirty days following the annual Transition Adjustment Mechanism (TAM) filing, [Pacific Power], Staff and other interested parties will meet to review the actual interest earned, the surcharge balance, and the load forecast to determine whether it is necessary to file a revised surcharge tariff. If there is over- or under-collection of the surcharge relative to obtaining a cumulative total of surcharge collected plus interest earned of approximately $184 million by December 31, 2019, Staff would recommend [Pacific Power] file a modified Schedule 199 tariff within 60 days following the TAM filing, with the revised tariff to be effective 30 days from the revised tariff filing.[110]

b. Resolution

ORS 757.736 sets forth a framework for the calculation of two dam removal surcharges, one for J. C. Boyle Dam and another for the Copco 1, Copco 2 and Iron Gate dams. Staff and parties reviewed the calculation of Schedule 199 to ensure that it was correctly calculated. The surcharges are calculated to collect an amount that when added to interest on the collected amount will total $200 million, Oregon's share of the customer contribution, by December 31, 2010. Pacific Power calculated this amount to be $158.24 million, with the rate collection period beginning on March 18, 2010.

This calculation assumes a 3.5 percent interest rate, as negotiated as part of the KHSA, to be earned on amounts collected and deposited in trust accounts established and managed by the Commission. The interest rate is an assumption and actual earnings may vary over the period of time that the amounts collected under the surcharge are held in a trust account. The Company calculated the surcharges to equally spread the $158.24 million amount over the collection period, resulting in an annual collection rate of approximately $16.16 million per year, thereby increasing Oregon rates by approximately 1.6 percent a year. Pacific Power asserts that this approach complies with ORS 757.736(7), directing the Commission to set the surcharges so that the total annual collections of the surcharges remain approximately the same during the collection period.

We find that Pacific Power correctly calculated the surcharges pursuant to the requirements of SB 76. As a primary intent of SB 76 is to implement the KHSA, we find it appropriate to honor the assumption of a 3.5 percent interest rate. Nevertheless, we are

[109] In a footnote Staff indicates that, "'Other'' transactions should include estimates prepared by the Company as to the amount and timing of requested disbursements prior to December 31, 2019." (Staff's Surcharge Reply Brief at 3, n. 6),

[110] Staff's Surcharge Reply Brief at 3.

mindful of ICNU's challenges to that assumption, as well as to Staff's concerns that the 3.5 percent interest rate assumption is actually too high. We are also mindful of ICNU's challenge to annual distribution of the rates on an equal basis, without adjustments for changes in Pacific Power's sales. Consequently, we adopt Staff's proposed annual review process, finding that this approach provides a sufficient opportunity for the Company, Staff and interested parties to review and adjust the surcharges, as appropriate.

4. How Should Schedule 199 Rates be Spread Among Customer Classes?

a. Positions of the Parties

Pacific Power proposes to allocate the surcharges among customer classes based on each class' share of generation revenues, while ensuring that the impact on each customer class does not exceed 2 percent and is not less than 1.5 percent.[111] This proposal recognizes that the dam removal surcharges are a generation-related cost, while mitigating disparity among the classes.[112] Pacific Power calculates the surcharge will increase the average customer's monthly bill by approximately $1.25 per month, for a total of $14.88 per year.[113]

Rather than spreading the surcharges based on each class' share of generation revenues, subject to a two percent cap and 1.5 percent floor for each customer class, ICNU proposes that the surcharges should be spread equally across all customer classes, similar to the rate spread methodology proposed by the Company in direct testimony in its most recently filed general rate case, UE 217.[114] ICNU argues that "the rate spread proposed by [Pacific Power] is not based on cost of service principles, but on an arbitrary methodology that penalizes industrial customers."[115] ICNU additionally argues that dam removal costs would ordinarily be considered demand-related and not spread on the basis of energy use.[116]

ICNU further complains that Pacific Power's proposal does not even spread the surcharges on the basis of energy use due to the floor of 1.5 percent and ceiling of 2 percent on rate increases to each customer class.[117] The floor level selected by the Company is arbitrary, ICNU charges.[118]

In any case, ICNU concludes, the Klamath surcharges are outside of ordinary ratemaking as they represent costs "foisted upon ratepayers by the legislature to achieve political and environmental goals."[119] ICNU argues that "[s]ince SB 76 includes a revenue based cap and is similar to special purpose legislation, 'it would be most reasonable to treat

[111] PPL/200, Kelly/9.
[112] PPL/203, Kelly/7.
[113] *Id.*
[114] ICNU/100, Falkenberg/8.
[115] ICNU's Opening Brief at. 9.
[116] ICNU/100, Falkenberg/9.
[117] *Id.* at 9-10.
[118] *Id.* at 10.
[119] ICNU's Opening Brief at 10.

[the Klamath surcharge] as a revenue tax and apply the same percentage increase to all customer classes.'"[120]

Pacific Power responds that the Company's proposed rate spread methodology is consistent with Commission policy and precedent.[121] The KHSA surcharges fund dam removal costs, which are traditionally spread on the basis of generation. Pacific Power explains that costs to remove generation are fundamentally generation-based.[122] Pacific Power notes as well, that the Company's methodology to spread KHSA surcharges is consistent with how net power costs are spread in the TAM,[123] and with how relicensing costs would be spread.[124]

Pacific Power observes that ICNU's proposal to use the rate spread from the Company's direct case in UE 217 ignores the fact that the costs at issue in a general rate case relate to distribution and transmission as well as generation.[125] It also ignores the rate spread contained in the stipulation in UE 217 to which ICNU is a party.

Staff concurs with the Company's methodology because it is consistent with a functional approach to ratemaking that was endorsed by the Commission in Order No. 98-374, entered in docket UM 827 on September 11, 1998.[126] In that order, the Commission adopted a stipulation providing that marginal costs and revenue requirements be reconciled on a functional basis—i.e., separated according to the functions of generation, transmission, distribution and customer service prior to being allocated to customer classes.[127]

Staff explains that, "[t]he Company's proposed rate spread follows the functional approach endorsed by the Commission in UM 827 by basing the surcharges on generation revenues since the associated costs are generation-related; *i.e.*, reflecting the cost of removal of a generation resource, the dams." ICNU's proposal, however, would contrarily "incorporate distribution- and transmission-related costs and therefore does not appropriately apportion the generation-identified cost of dam removal."[128] ICNU's proposal is problematic, Staff observes, because it allocates a larger share of dam removal surcharges to residential class customers due to this class' greater distribution costs.[129]

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[120] *Id.* at 10-11, citing ICNU/100, Falkenberg/10.
[121] Pacific Power Surcharge Power's Reply Brief at 4.
[122] PPL/203, Kelly/8.
[123] PPL/203, Kelly/7.
[124] Tr. at 98.
[125] PPL/203, Kelly/8.
[126] Staff's Surcharge Opening Brief at 7. *See In Re Methods for Estimating Marginal Cost of Service for Electric Utilities*, Docket UM 827, Order No. 98-374 (Sept 11, 1998).
[127] Order No. 98-374 at 3. (The Commission praised the value of the functional approach, "[t]his new approach will improve our historical efforts to **allocate cost** responsibility to customer **classes** in ways that lead to more efficient price signals for **customers** and efficient use of electrical service. It will also improve fairness in our rates by ensuring that the **costs** of another function (e.g., distribution) do not affect the **allocation** of the **costs** of another function (*e.g.*, generation)" (emphasis in original).)
[128] Staff's Opening Brief at 8.
[129] *Id*.

Staff also supports the Company's floor and ceiling as a reasonable means to mitigate the impact on any customer class. Staff explains that each class' share of the dam removal costs is limited to a range between 1.5 and 2 percent of that class's overall revenue requirement (as opposed to only the generation portion of the overall revenue requirement).[130]

Pacific Power calls ICNU's allegation that industrial customers are penalized by the Company's proposed rate spread false. As CUB observed at the Commission workshop, residential customers actually pay a larger amount of the total surcharges.[131] Moreover, the Company observes, the rates per kilowatt-hour for residential customers, $0.0010 and $0.00033, are higher than for Schedule 48 Large General Service customers, $0.00079 and $0.00026.[132]

b. Resolution

We agree with Staff's analysis finding the Company's proposed methodology to spread KHSA surcharge rates to be consistent with the functional ratemaking approach we endorsed in Order No. 08-374. The KHSA provides for continued generation by the Klamath dams until at least December 31, 2019, with decommissioning thereafter. KHSA costs are generation-related, therefore, and should be allocated accordingly. We also agree with Staff's assessment that the Company's floor and ceiling reasonably mitigate the impact on any customer class. Although ICNU criticized the floor as arbitrary, ICNU failed to support an alternative.

5. Should the Surcharges be Suspended if a KHSA Condition Precedent May not be Met?

a. Positions of the Parties

At the July 23, 2010 Commission workshop, ICNU suggested, for the first time, that the Commission may decline to approve the surcharges on the basis that a condition precedent to the KHSA may not be met.[133] ICNU argues that the Commission should suspend the Klamath surcharges until the state of California decides whether it will provide its share of funding to remove the Klamath dams in 2020.[134] At the workshop, ICNU indicated that California Governor Arnold Schwarzenegger issued a press release on June 29, 2010, stating that he wants to delay placement on California's ballot of a bond measure expected to raise $250 million towards dam removal until 2012, [135] despite the fact that the Secretary of the Interior is required to make a determination that California has authorized

[130] *Id*. at. 6.
[131] Pacific Power's Surcharge Opening Brief at 20, citing CUB witness Jenks' discussion in Tr. at 97, ll 2-8.
[132] *Id*.
[133] Tr. at 83, ll 14-16.
[134] ICNU's Opening brief at 5-7.
[135] ICNU included the press release as Attachment A to its opening brief and requests the Commission take judicial notice of it pursuant to ORS 40.065 and 40.090. We take official notice of the press release under OAR 860-014-0055. Any party may object to the facts noticed within 15 days of this order.

funding or does not need to do so by March 31, 2012.[136] Although ICNU acknowledges that California could "theoretically raise the funds through other measures,"[137] ICNU argues that the state's ability to do so is highly uncertain given severe budget shortfall issues. ICNU represents that "the KHSA will be terminable because of the inability of the Secretary to conclude that there are sufficient funds to remove the dams."[138]

ICNU asserts that the Commission "has the discretion under SB 76 to change or eliminate the surcharges 'at any time' if it is likely that dam removal will occur after 2020."[139] ICNU cites to ORS 757.736(7) providing, "[t]he commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020." ICNU also cites to ORS 757.736(10) providing in pertinent part that, "[i]f one or more Klamath River dams will not be removed, the commission shall direct Pacific Power to terminate collection of all or part of the surcharges."

Pacific Power questions whether the Commission has a sufficient record to resolve this issue.[140] In any case, Pacific Power asserts that SB 76 does not provide the Commission with the discretion to suspend the surcharges, before they are even approved. The Company observes that ORS 757.736(7) only allows the Commission to change the collection schedule after a finding that the Project dams will not be removed, or will be removed in a year other than 2020.[141] Pacific Power argues that such a finding cannot be made if there is only a possibility that the dams will not be removed, or will be removed in a year other than 2020.[142] Pacific Power also argues that ORS 757.736(10) is inapplicable because there has been no decision that one or more of the Klamath dams will not be removed.

The Intervenor State Agencies agree that the Commission likely does not have discretion to suspend collection of the surcharges. The State Agencies state:

> Pursuant to ORS 757.736(2), the Surcharges are already being collected. Under ORS 757.736(4), the Commission "shall enter an order" whether the Surcharges will result in rates that are fair, just and reasonable, within six months of Pacific Power's filing. ICNU did not describe how the Commission might "put on hold" collection of the Surcharges. The Commission is not given express authority to suspend or postpone the Surcharges. The Commission does have authority to decide that the Surcharges will *not* result in rates that are fair, just, and reasonable, but even in this event the Surcharges remain in effect pending a final decision on Supreme Court review.[143]

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[136] PPL/104 (KHSA § 3.3.4.C); ICNU/102, Falkenberg/5.
[137] *See* PPL/104 (KHSA § 4.12).
[138] ICNU's Opening Brief at 6. *See* PPL/104 (KHSA §8.11.1); ICNU/102, Falkenberg/5.
[139] ICNU's Opening Brief at 5.
[140] Pacific Power's Surcharge Opening Brief at 15.
[141] *Id*. at 15-16.
[142] *Id*. at 16.
[143] ORS 757.736(5).

> The Intervenor State Agencies strongly rebut ICNU's allegation that the Secretary will be unable to make the necessary determination:
>
> First, a California bond of up to $250 million is in fact a potential source of dam removal funding contemplated under the KHSA, *KHSA § 4.1.2.A*, and could affect the prerequisite for the secretarial determination that the states have provided funding for dam removal. *See KHSA § 3.3.4.C*. However, voter approval of the California bond by March 2012 is not an absolute prerequisite to the secretarial determination and dam removal is going forward. If the bond funding has not been approved by that time, the Secretary of Interior may still make a dam removal determination if the customer contribution funding (i.e., $200 million) will be sufficient to accomplish dam removal, or if California provides assurances that bond funding is necessary to effect dam removal will be timely provided after March 2010.[144] California may pursue financing mechanisms other than a bond. *See KHSA § 4.1.2.A.*[145]

Staff agrees with the Intervenor State Agencies' position that ICNU misreads the KHSA.

ICNU responds to all of the criticism by asserting, "California's decision to delay the water bond is significant, will likely result in termination or amendment of the Klamath Hydro Settlement Agreement ('KHSA'), and provides the Commission with ample support to place the Klamath surcharges on hold or otherwise adopt reasonable ratepayer protections." Pacific Power's arguments are for naught, ICNU reports, as the California Legislature recently voted to move the water bond to the 2012 election. ICNU alleges that the KHSA should be considered "terminable" because it is now unlikely that California will be able to raise its share of the dam removal funds.[146]

b. Resolution

The KHSA contains several conditions precedent to the transfer of the Klamath Dams to the DRE, including conditions precedent relating to funding by the states of Oregon and California. Under SB 76, we do not have the discretion to undermine conditions precedent relating to funding by Oregon due to a possibility that conditions precedent relating to funding by California may not occur. ORS 757.736(10) provides in pertinent part, "[i]f one or more Klamath River dams will not be removed," then the Commission must direct Pacific Power to terminate collection of the surcharges, and excess funds already collected will be applied to relicensing costs, refunded or otherwise used for the benefit of customers. Similarly, in the event of delay, not termination, of the removal of the Klamath Dams, ORS 757.736(7) provides in pertinent part, "[t]he commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020."

[144] *See* KHSA § 3.3.4(1) and (2).
[145] Intervenor State Agencies' Brief on Dam Removal Surcharges at 3.
[146] ICNU's Reply Brief at2.

ICNU asks us to suspend KHSA surcharge collections pursuant to one or both of these statutory provisions—and to thereby undermine conditions precedent relating to Oregon's funding of costs to remove the Klamath Dams--, pursuant to one or both of these statutory provisions based on a *possibility* that California will undermine conditions precedent relating to that state's funding of dam removal costs by delaying placement of a pertinent bond measure on California's ballot. ORS 757.736(10) and ORS 757.736(7) respectively apply, however, only if there is *certainty*—not the *possibility*—that the Klamath Dams will either not be removed or that removal will be delayed. We acknowledge ICNU's identification of risks associated with how California will fund that state's share of the costs to remove the Klamath Dams, but risks mean possibility, not certainty, and we cannot take action under ORS 757.736(10) on the basis of possibility.

Regardless of our legal ability to suspend the KHSA surcharges on the basis of California's delayed bond measure, we do not agree with ICNU that voter approval of a bond measure that funds California's share of KHSA is a condition precedent to KHSA implementation. We agree with the Intervenor State Agencies that the Secretary of the Interior may otherwise determine that removal of the Klamath dams should continue.

6. Should the Refund Language Schedule 199 be Modified?

a. Positions of the Parties

In Advice No. 10-008, the Company filed Schedule 199 with a refund provision stating that the tariff shall remain in effect "pending review by the Commission as to whether the imposition of surcharges under the KHSA results in rates that are fair, just and reasonable or during any period of judicial review of such a finding." As filed, Schedule 199 further provided that, "[i]f the rates resulting from these surcharges are finally determined not to be fair, just and reasonable the surcharges shall be refunded pursuant to ORS 757.736, subsection (5)." [147] Pacific Power proposes modifications to this language, but Staff and other parties object, or propose differing modifications.

Pacific Power recommends revising Schedule 199 to remove the refund condition once the Commission makes a final determination pursuant to ORS 757.736(5) that the dam removal surcharges are fair, just, and reasonable.[148] Pacific Power observes that such a determination would be final 60 days after entry of the pertinent order should no petition for review be filed, or at the conclusion of a proceeding before the Oregon Supreme Court should a petition for review be filed. At either of these points, Pacific Power contends that there is no basis for refund under ORS 757.736(5). Instead, refunds would be available

[147] ORS 757.736(5) states that judicial review of an appeal of the Commission's decision on the reasonableness of the rates resulting from the surcharges is conferred on the Supreme Court, and that the surcharges shall be refunded if the rates are determined not to be fair, just, and reasonable.
[148] Pacific Power's Surcharge Opening Brief at 27-28; PPL/200, Kelly/7; Tr. at 107, ll 16-18.

only under ORS 757.736(10). [149] Pacific Power observes that it would be appropriate, although not necessary, to replace the sentence the Company proposes to remove with the following sentence: "The surcharges may be refundable only as provided in ORS 757.736(9) and 757.736(10)."[150] Pacific Power asserts that such language would mirror the statutory language.

Staff recommends that the Commission retain refund language in Schedule 199. Staff proposes, however, modifications to the refund language indicating that refunds are available if there is the possibility of appeal.[151] Staff recommends modifying the refund language in Schedule 199, as follows:

> * * * ~~pending review by the Commission as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable or during any period of judicial review of such a finding~~. If the rates resulting from these surcharges are ~~finally~~ determined not to be fair, just and reasonable the surcharges shall be refunded pursuant to ORS 757.736, Subsection (5).[152]

Pacific Power expresses concern that this language suggests that Schedule 199 rates could be determined to be not fair, just, and reasonable at any time.[153]

CUB asserts that tariff language should mirror statutory language. Consequently, CUB does not support any modification to the refund language in UE 199.[154]

ICNU also argues that the refund language in UE 199 should not be changed. Moreover, ICNU expresses concern that Pacific Power's proposal to add language regarding refunds pursuant to ORS 757.736(10) would limit refunds to future customers only and is unnecessarily narrow. ICNU urges the Commission to explicitly maintain the subject to refund provisions in Schedule 199.

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[149] ORS 757.736(10) provides:

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

[150] Pacific Power's Surcharge Reply Brief at 12.
[151] Staff's Surcharge Reply Brief at 5.
[152] Staff/100, Brown/13.
[153] Pacific Power's Surcharge Opening Brief at 29.
[154] CUB's Opening Brief at 17.

b. Resolution

Our role in this proceeding is to implement SB 76 by ensuring that surcharges for funding the costs to remove Klamath dams comply with statutory requirements. As such, we agree with CUB that tariff language in Schedule 199 should precisely execute the provisions of that statute.

Under SB 76, refunds may be appropriate under several scenarios. Under ORS 757.736(5), surcharges imposed and collected under Schedule 199 are subject to refund until our determination is *final* that such surcharges are fair, just, and reasonable pursuant to ORS 757.736(4). ORS 757.736(5) modifies the review process by providing that the Supreme Court of Oregon has *judicial review* jurisdiction to review any order entered under ORS 757.736(4). SB 76 does not address, nor modify, the applicability of a request for rehearing of any order entered under ORS 757.736(4) pursuant to ORS 756.561. Consequently, we find it premature to remove or modify the language included in Schedule 199 relating to refunds under ORS 757.736(5).

In order to ensure that tariff language fully reflects the provisions of SB 76, we find it appropriate to modify Schedule 199, to reflect that this order is subject to a request for rehearing, judicial review, and to indicate that surcharges may be refunded as provided in ORS 757.736(9) and 757.736(10), as follows (**additions in bold**):

> * * * pending review by the Commission as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable **becoming final** or during any period of judicial review of such finding. If the rates resulting from these surcharges are finally determined not to be fair, just and reasonable the surcharges shall be refunded pursuant to ORS 757.736, Subsection (5). **Surcharges are also refundable as provided in ORS 757.736(9) and 757.736(10).**

7. Should Surcharge Collections be Tracked by Customer or Class?

a. Positions of the Parties

ICNU recommends tracking surcharge collections under Schedule 199 on a customer-by-customer basis, at least for all large customers taking service at one MW and above.[155] ICNU argues that this level of accounting will prevent future disputes regarding amounts owed under refunds, and will allow all customers that paid a Klamath surcharge rate to receive the appropriate refund regardless of service status at the time of the refund.[156]

[155] ICNU/100, Falkenberg/5-6; ICNU's Opening Brief at 8.
[156] *Id*.

Pacific Power calls ICNU's proposal unnecessarily burdensome, particularly in relation to the likelihood of refunds.[157] Pacific Power represents that tracking collections for hundreds of existing, departing and new customers on Schedules 47 and 48 over a ten-year period would be onerous.[158] Pointing to Commission precedent for the distribution of refunds by rate surcredit to existing customers on a going forward basis,[159] the Company proposes to track collections under the surcharges on a customer class basis.[160]

b. Resolution

SB 76 is silent regarding the accounting for possible refunds, leaving us with the discretion to determine how to plan for them. We want to balance fairness to customers with practicality and efficiency. We are mindful that surcharges are already being collected under Schedule 199, and that accounting must be timely. For that reason, we are hesitant to direct Pacific Power to undertake the development of new accounting systems to track collections under Schedule 199 on a customer-by-customer basis when the Company has testified that doing so would be unduly burdensome. We agree, however, that collections under Schedule 199 should be tracked, at a minimum, by customer class.

8. Do Customers Need Additional Notification Regarding the Klamath Surcharges?

a. Positions of the Parties

In direct testimony, ICNU recommended that the Commission require Pacific Power to provide a "bill stuffer" on an annual basis that explained the reasons for the charge and identified the status of the trust fund. ICNU requests that Pacific Power identify the Klamath surcharge on each customer's monthly bill.

Pacific Power responds that ICNU's recommendations are unnecessary because customers have already been made aware of the level and purposes of the surcharge.[161] Pacific Power explains that explanatory messages were already provided on the first bills that included the surcharges.[162] The Company further explains that the surcharge is separately identified as a line item on every bill.[163] Pacific Power indicates that any future changes to the surcharges will be announced to customers according to the Company's normal business practices.[164]

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[157] PPL/203, Kelly/5. Pacific Power explains that a refund could occur after the Commission determines that rates resulting from the surcharges are fair, just and reasonable only if two conditions are met: (1) dam removal doesn't happen; and (2) amounts collected under the surcharges are in excess of the Company's Oregon-allocated relicensing costs.
[158] Pacific Power's Surcharge Reply Brief at 7.
[159] Pacific Power's Surcharge Opening Brief at 22-23. *See* Advice No. 04-005(Apr 16, 2004).
[160] PPL/203, Kelly/5.
[161] ICNU/100, Falkenberg/4.
[162] PPL/203, Kelly/5-6.
[163] *Id.* at 5.
[164] *Id.* at 6.

b. Resolution

We find Pacific Power's customer notification actions to date to be sufficient. As we have mandated annual review of the Klamath surcharges, we anticipate that changes and updates can be noticed as appropriate.

9. Disclaimer of jurisdiction under ORS 757.480:

a. Parties' Positions

Pacific Power asks the Commission to recognize that SB 76 preempts the operation of the Commission property transfer statute, ORS 757.480.[165] Pacific Power argues that ORS 757.480 is repealed by implication by SB 76 because the two statutes are in irreconcilable conflict, citing *Oregon v. Ferguson*, 228 Or App 1 (2009).[166] In the alternative, the Company requests the Commission presently approve the transfer under the statute, contingent upon satisfaction of certain conditions precedent for the transfer in the KHSA, and the filing by Pacific Power of the information required by OAR 860-027-0025.[167]

Staff opposes Pacific Power's request for disclaimer of jurisdiction under ORS 757.480, finding no provision in SB 76 that preempts the Commission's property transfer law, nor any language in the statute indicating that the legislature intended this result.[168] In direct testimony, Staff asserts that the Commission should not address Pacific Power's request "until such time as Pacific Power decides on dam removal."[169]

Pacific Power takes the position, however, that the Company already decided to remove the dams by executing the KHSA.[170] Pacific Power observes that the Company is obligated to transfer the dam if KHSA conditions are met.[171] Pacific Power further argues that waiting to evaluate the transfer is inconsistent with the legislature's intent that SB 76 be implemented immediately, and violates the principle of administrative efficiency. Pacific Power asserts that requiring subsequent approval proceedings to review transfer of the project would effectively create a new precondition on KHSA implementation, thereby creating uncertainty about the Commission's support for implementation of the KHSA.

[165] Pacific Power indicates that ORS 757.480(1) requires a utility to obtain Commission approval before disposing of any utility property in excess of $100,000 that is necessary or useful in the performance of utility duties. The Company further provides that OAR 860-027-0025(1)(l) requires the utility to show that disposition of such property is consistent with the public interest, which is a "no harm" standard.
[166] Pacific Power's Surcharge Opening Brief at 24, n. 7.
[167] *Id*. at 23-25.
[168] Staff's Surcharge Opening Brief at 5.
[169] Staff/100, Brown/3.
[170] PPL/203, Kelly/2.
[171] *Id*.

CUB argues that SB 76 does not legally preempt ORS 757.480. Among other points made, CUB asserts that SB 76 is intended to facilitate the funding of costs associated with removing the Klamath dams, but does not address removal itself.[172] Although SB 76 may be intended to facilitate implementation of the KHSA, CUB observes that even KHSA Section 7.6.5.B anticipates state inspection and due diligence before any transfer of Klamath Project land.[173] CUB argues that "SB 76 has nothing to do with land transfers."[174] While KHSA Section 7.6.5.A anticipates a transfer of the Klamath dams to the DRE after a set of conditions precedent are met, an agreement may not repeal a statute.[175]

Both Staff and ICNU argue that Pacific Power's argument that SB 76 preempts the property transfer statute is inconsistent with rules of statutory construction.[176] Noting that the Oregon courts follow the rule of statutory construction that amendment by implication is not favored and only recognized when the inconsistency of two statutes is clear, ICNU observes that SB 76 neither specifically mentions nor indirectly refers to Oregon's property transfer statute.[177] In contrast, ICNU asserts, SB 76 specifically amends ORS 757.736(5), the judicial review statute, which demonstrates the legislature was aware of the laws governing the Commission and elected to amend certain statutes, but not others.[178] Staff further observes that a newer statute will be held to repeal by implication an older one only when the two statutes are either irreconcilably inconsistent or when there is a "persuasive indication" that the newer statute was intended to prevail over the earlier one.[179] Staff asserts that Pacific Power fails to demonstrate either.

ICNU also argues that the Commission cannot conditionally approve the transfer as Pacific Power requests because the Company fails to provide the required information. [180] Staff asserts that it is not administratively inefficient to wait to review a property transfer under ORS 747.480 until the transfer is about to occur.[181]

b. Resolution

This proceeding was opened to review certain filings that SB 76 directs Pacific Power to make for the purpose of facilitating the rate recovery of costs associated with removing the Klamath Dams. SB 76 does not direct Pacific Power to make a filing regarding the transfer of the Klamath Dams to the DRE. The issue is simply outside the scope of this proceeding.

[172] CUB's Opening Brief at 13-14.
[173] *Id*. at 14.
[174] CUB's Reply Brief at 9.
[175] Staff's Surcharge Reply Brief at 4.
[176] ICNU's Opening Brief at 15; Staff's Surcharge Reply Brief at 3.
[177] *Id*. *See Balzer Machinery Co. v. Klineline Sand & Gravel Co.*, 271 Or 596, 601 (1975).
[178] *Id*.
[179] Staff's Surcharge Reply Brief at 4. *See Pioneer Trust Bank v. Mental Health Division*, 8 Or App 132, 136 (1987); *Harris v. Craig*, 299 Or 12, 15 n 1 (1985).
[180] Staff's Surcharge Reply Brief at 15-16.
[181] *Id.* at 5.

As discussed above, there is some uncertainty regarding whether and when all conditions precedent to the transfer of the Klamath Dams will occur. Pacific Power is correct that there is a presumption that the dams will be transferred to the DRE, and that Pacific Power has agreed to transfer the dams should all conditions precedent occur. However, SB 76 anticipates that one or more of the Klamath Dams may not be transferred, providing for refunds in such a situation, as also discussed above. Moreover, as CUB observes, the KHSA itself, at Section 7.6.5.B, anticipates state inspection and due diligence prior to the transfer of Klamath Project land. As such, we do not agree that SB 76 repeals ORS 757.480 by implication.

While we are responsible for implementing the explicit requirements of SB 76, we do not have the discretion to undertake additional actions to implement the KHSA that are not specifically authorized by the statute. Although the Klamath Dams must be transferred to the DRE to fully execute the KHSA, SB 76 does not address our approval of the transfer. In absence of doing so, the property transfer statute, ORS 757.480 applies. Pacific Power did not make a filing that satisfies the requirements of ORS 757.480. Consequently, we cannot approve a property transfer, even on a conditional basis.

IV. ORDER

IT IS ORDERED that:

1. Rates instituted by Schedule 199, as filed by PacifiCorp, dba Pacific Power, on March 18, 2010, are affirmed.

2. PacifiCorp, dba Pacific Power, must file annually updated surcharge rates according to the review process provided for in this order.

3. PacifiCorp, dba Pacific Power, must modify Schedule 199 language regarding refunds as provided for in this order.

4. PacifiCorp, dba Pacific Power, must track collections under Schedule 199 by customer class.

5. PacifiCorp, dba Pacific Power, must file a request to transfer the Klamath Dams pursuant to ORS 757.480 at a later time.

Made, entered, and effective SEP 16 2010.

Ray Baum
Chairman

John Savage
Commissioner

Susan K. Ackerman
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT

February 18, 2010

TABLE OF CONTENTS

Appendices

A. Coordination Process for the Studies Supporting the Secretarial Determination

B. Interim Measures Implementation Committee (Interim Measure 1)

C. Interim Conservation Plan (ICP) Interim Measures

D. Non-ICP Interim Measures

E. Elements for the Proposed Federal Legislation

F. Oregon Surcharge Act

G-1. California Legislation, Water Bond Language

G-2. California Legislation, CEQA Legislation Language

H. Calculation of Initial Customer Surcharge Target

I. Study Process Guidelines

J. Science Process

K. List of Authorized Representatives

Exhibits

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

2. Sequence of Performance Chart

3. Maps

This KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT ("Settlement") is made and entered into by and among the following entities who sign this Settlement:

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

United States Department of the Interior ("Interior");
Upper Klamath Water Users Association ("UKWUA");
Van Brimmer Ditch Company;
Westside Improvement District #4;
Winema Hunting Lodge, Inc.; and
Yurok Tribe;

each referred to individually as a "Party" and collectively as "Parties."

1. Introduction

1.1 Recitals

WHEREAS, the States, the United States and PacifiCorp entered into an Agreement in Principle ("AIP") to address issues pertaining to the resolution of certain litigation and other controversies in the Klamath Basin, including a path forward for possible Facilities Removal;

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

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

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

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

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

WHEREAS, the Parties understand that the Project dams are currently the property of PacifiCorp, and that they are currently operated subject to applicable State and Federal law and regulations. The other Parties understand that the decision before PacifiCorp is whether the decommissioning and removal of certain Facilities is appropriate and in the best interests of PacifiCorp and its customers. PacifiCorp asserts that prudent and reasonable long term utility rates and protection from any liability for damages caused by Facilities Removal are central to its

willingness to voluntarily surrender the dams and the low-carbon renewable energy they produce and to concur in the removal of the dams; and

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

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

WHEREAS, PacifiCorp is a regulated utility and did not participate in the KBRA negotiations and will not have obligations for implementation of the KBRA; and

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

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

NOW, THEREFORE, the Parties agree as follows:

1.2 Purpose of Settlement

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

1.3 Parties Bound by Settlement

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

1.4 Definitions

"Affirmative Determination" means a determination by the Secretary under Section 3 of this Settlement that Facilities Removal should proceed.

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

"Applicable Law" means general law which (i) exists outside of this Settlement, including, but not limited to a Constitution, statute, regulation, court decision, or common law, and (ii) applies to obligations or activities of Parties contemplated by this

Settlement. The use of this term is not intended to create a contractual obligation to comply with any law that would not otherwise apply.

"Authorizing Legislation" refers to the statutes enacted by Congress and the Oregon and California Legislatures, respectively, to authorize and implement this Settlement. Appendices E and G state the proposals for federal and California legislation, which the Parties will support pursuant to Section 2.1.1. The term "federal legislation" as used in this Settlement includes but is not limited to federal Authorizing Legislation.

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

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

"**Concurrence**" means the decisions by each State whether to concur with an Affirmative Determination and, if applicable, a designation of a non-federal DRE.

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

"**Counties**" refers to Siskiyou County, California; Humboldt County, California; and Klamath County, Oregon.

"**Dam Removal Entity**" or "**DRE**" means an entity designated by the Secretary that has the legal, technical, and financial capacities set forth in Section 7.1. The Secretary may designate Interior to be the DRE.

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

"**Definite Plan**" means a plan and timetable for Facilities Removal prepared by the DRE under Section 7.2.1 after an Affirmative Determination by the Secretary.

"**Detailed Plan**" means the plan prepared to inform the Secretarial Determination under Section 3.3.1 and including the elements described in Section 3.3.2.

"Dispute Resolution Procedures" means the procedures established by Section 8.6.

"Due Diligence" means a Party's taking all reasonable steps to implement its obligations under this Settlement.

"**Effective Date**" is defined in Section 8.2.

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

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

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

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

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

"**FERC**" refers to the Federal Energy Regulatory Commission.

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

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

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

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

"**Klamath Basin Restoration Agreement**" or "**KBRA**" refers to the Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities entered on February 18, 2010.

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

"**Negative Determination**" means a determination by the Secretary under Section 3 of this Settlement that Facilities Removal should not proceed.

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

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

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

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

"**Oregon Surcharge Act**" is defined in Section 2.3.

"**PacifiCorp's Economic Analysis**" means the primary economic analysis prepared by PacifiCorp and relied upon by PacifiCorp to compare the present value revenue requirement impact of this Settlement against the present value revenue requirement of relicensing of the Facilities under defined prescriptions generally based on the FERC Final Environmental Impact Statement dated November 2007, which analysis PacifiCorp will file with the Oregon PUC pursuant to Section 4(1) of the Oregon Surcharge Act and with the California PUC in accordance with Section 4 of this Settlement. This analysis is used to compare the relative cost of relicensing with the relative cost of this Settlement.

"**Parties**" or "**Party**" means the signatories to this Klamath Hydroelectric Settlement Agreement.

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

"**Public Agency Party**" means each Tribe, the Federal Parties, the agencies of each State, Counties, and each other Party, which is a public agency established under Applicable Law.

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

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

"**Secretarial Determination**" means the determination by the Secretary as set forth in Section 3 of this Settlement.

"**Secretary**" refers to the Secretary of the Interior.

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

"**Settlement**" means the entirety of this Klamath Hydroelectric Settlement Agreement and Appendices A through K. "Settlement" does not include Exhibits 1 through 3, which are related documents attached for informational purposes.

"**States**" refers to the State of Oregon by and through the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, and Oregon Water Resources Department, and the State of California by and through the California Department of Fish and Game and the California Resources Agency.

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

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

"**Tribes**" means the Yurok Tribe, the Karuk Tribe, and the Klamath Tribes.

"**Value to Customers**" means potential cost reductions described in Section 7.3.8. These cost reductions would (1) decrease the customer contribution for Facilities Removal, (2) decrease the costs of ongoing operations, (3) decrease the costs of replacement power, or (4) increase the amount of generation at the Facilities, as compared against the assumptions contained in PacifiCorp's Economic Analysis.

1.5 Compliance with Legal Responsibilities

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

1.6 Reservations

1.6.1 Generally

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

the States. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Settlement.

1.6.2 Reservations Regarding Federal Appropriations

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

1.6.3 Availability of Public Funds

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

1.6.4 Reservations Regarding Legislative Proposals

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

1.6.5 Reservations Regarding Regulations

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

1.6.6 No Pre-decisional Commitment

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

1.6.7 No Waiver of Sovereign Immunity

Nothing in this Settlement is intended or shall be construed as a waiver of sovereign immunity by the United States, the State of Oregon, the State of

California, or any other Public Agency Party. This Settlement does not obligate the United States or any Federal Party to affirmatively support this Settlement regarding any state or local legislative, administrative, or judicial action before a state administrative agency or court.

1.6.8 No Argument, Admission, or Precedent

This Settlement shall not be offered for or against a Party as argument, admission, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding, except that this Settlement may be used in any future proceeding to interpret or enforce the terms of this Settlement, consistent with Applicable Law. This Settlement may also be used by any Party in litigation by or against non-Parties to implement or defend this Settlement. This section shall survive any termination of this Settlement.

1.6.9 Protection of Interests

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

1.7 Trinity River

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

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

1. Restoration of the Trinity River fish populations to pre-Trinity Dam construction levels;

2. Fishery restoration shall be measured not only by returning anadromous fish spawners but also by the ability of dependent tribal and non-tribal fishers to participate fully in the benefits of restoration through meaningful subsistence and commercial harvest opportunities;

3. An appropriate balance between stocks of natural and hatchery origins shall be maintained to minimize negative interactions upon naturally produced fish by hatchery mitigation releases;

4. A collaborative- working relationship between federal agencies and the above mentioned Tribes;

5. Portions of federal activities that are associated with fishery restoration programs are Indian Programs for the purposes of the Indian Self-Determination Act; and

6. The Tribes support full funding implementation of the Trinity River Record of Decision from funding sources outside of this Settlement.

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

2. Implementation of Settlement

2.1 General Duty to Support Implementation

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

2.1.1 Legislation

A. The Parties acknowledge that legislation is necessary to provide certain authorizations and appropriations to carry out this Settlement as well as the KBRA. Obligations under this Settlement that require such additional authorizations or appropriations shall become effective as provided in that legislation. Each non-Federal Party shall support the proposal and enactment of legislation materially consistent with Appendix E; provided that nothing in this Settlement shall be deemed to limit the authority or discretion of the federal or state Executive Branch consistent with Applicable Law. The Parties agree that the goal is introduction of legislation within 90 days of the Effective Date.

B. The United States may also request and support the enactment of federal legislation materially consistent with Appendix E, subject to the requirements of Executive Order 12,322, 46 Fed. Reg. 46,561 (1981), and Circular No. A-19 of the Office of Management and Budget, and the President's authority to make such legislative recommendations to Congress as he shall judge necessary and expedient. The Parties intend and anticipate that such federal legislation will provide certain federal authorizations

necessary for the Federal Parties to carry out the federal obligations under this Settlement and the KBRA.

C. The State of California shall Timely recommend legislation materially consistent with Appendix G-1 and G-2. Further, within sixty days of Concurrence by the State of California with an Affirmative Determination, CDFG will provide draft legislation to the Parties regarding a limited authorization for incidental take of Lost River Suckers, Shortnose Sucker, Golden Eagles, southern Bald Eagles, Greater Sandhill Cranes, or American Peregrine Falcon contingent upon the fulfillment of certain conditions, if such authorization is necessary for implementation of this Settlement. After reasonable opportunity for Parties to provide comments on the draft legislation, the State of California shall Timely recommend the legislation.

D. Upon the Effective Date and prior to the enactment of Authorizing Legislation, the Parties shall perform obligations under this Settlement that can be performed under their existing authorities.

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

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

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

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

c. This liability protection shall become operative as it relates to any particular Facility upon transfer of title to that Facility from PacifiCorp to the DRE.

ii. Authorize and direct the Secretary to issue a Secretarial Determination consistent with the provisions of Section 3.

2.1.2 Regulatory Approvals

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

2.1.3 Defense of Settlement

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

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

2.1.4 Obligation to Implement

A. General

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

B. Cooperation Among the Parties

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

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

After the DRE provides Notice to the Parties of the completion of the Definite Plan pursuant to Section 7.2.1, the Parties shall have 60 days to review the Definite Plan and initiate Meet and Confer provisions pursuant to Section 8.7, if they dispute the material consistency of the Definite Plan with this Settlement. The Parties shall complete such Meet and Confer process within 60 days. If within that 60 day period a Party files a Notice under Section 8.11.3.A, the Parties shall complete any process under Section 8.11 within 180 days of its initiation. If there is no dispute with the Definite Plan, or the dispute is Timely resolved within either the process under Section 8.7 (60 days) or Section 8.11 (180 day period), or the 240 day period to resolve any such dispute(s) regarding the material consistency between the Definite Plan and this Settlement has elapsed and the Settlement has not been terminated pursuant to Section 8.11.3, each Party:

i. Shall not directly or indirectly through other entities oppose the DRE's securing all permits and entering all contracts necessary for Facilities Removal consistent with the Definite Plan, provided this clause does not apply to a Public Agency Party exercising a Regulatory Approval;

ii. Hereby covenants not to bring any claim or claims for monetary or non-monetary relief against the United States, in any judicial or administrative forum, arising from any federal DRE's actions performing Facilities Removal consistent with the Definite Plan and any applicable Regulatory Approval; provided, that this covenant not to sue does not apply to a Regulatory Agency's enforcement action, or to claims for monetary relief sounding in tort, subject to the limitations of the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*, arising from harm caused by acts of a federal DRE that are not in substantial compliance with the Definite Plan.

iii. Except as provided in subsection (ii) of this Section, after transfer of each Facility to the DRE, each Party covenants not to sue any other Party for monetary relief for harm arising from removal of that Facility, provided this covenant does not apply to claims against a non-federal DRE arising from the negligence of the non-federal DRE or from the non-federal DRE's actions inconsistent with the Definite Plan or in violation of a Regulatory Approval.

D. Monetary Obligations

None of the Parties shall be responsible for Facilities Removal costs in excess of the State Cost Cap.

2.1.5 Timeliness

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

2.1.6 Force Majeure

A. Definition of Force Majeure

The term "Force Majeure" means any event reasonably beyond a Party's control, that prevents or materially interferes with the performance of an obligation of that Party, that could not be avoided with the exercise of due care, and that occurs without the fault or negligence of that Party. Force Majeure events may be unforeseen, foreseen, foreseeable, or unforeseeable, including without limitation: natural events; labor or civil disruption; breakdown or failure of Project works not caused by failure to properly design, construct, operate, or maintain; new regulations or laws that are applicable to the Project (other than the Authorizing Legislation); orders of any court or agency having jurisdiction over the Party's actions; delay in a FERC order becoming final; or delay in issuance of any required permit. Force Majeure is presumed not to include normal inclement weather, which presumption can be

overcome by a preponderance of the evidence provided by the non-performing Party.

B. Suspension of Obligation

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

C. Remedies

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

i. A Party that believes it is excused from performance pursuant to Section 2.1.6.B shall provide Notice within 10 days of the onset of the event. Such Notice shall describe the occurrence, nature, and expected duration of such event and describe the steps the Party has taken or proposes to be taken to prevent or minimize the interference with the performance of any affected obligation under this Settlement;

ii. A Party shall thereafter provide periodic Notice to the other Parties of the efforts to address and resolve a Force Majeure event; and

iii. If any other Party disputes the Party's claim of a Force Majeure event, or the adequacy of the efforts to address and resolve such event, such Party shall initiate the Dispute Resolution Procedures stated in Section 8.6.

2.2 KBRA Execution

Each Party, other than PacifiCorp and the Federal Parties, shall execute this Settlement and the KBRA concurrently.

2.3 Ratemaking Legislation and Proceedings

Each Party shall support implementation of the Oregon legislation enacted in 2009 authorizing the collection of a customer surcharge for the costs of Facilities

Removal, which legislation was enacted as Senate Bill 76, 2009 Or. Session Laws Chapter 690, is attached to this Settlement as Appendix F, and for purposes of this Settlement is referred to as the "Oregon Surcharge Act."

The Parties understand and agree that the costs of Facilities Removal shall be funded as specified in Section 4 of this Settlement. The Parties further understand and agree that funds allocated for Facilities Removal shall be managed and disbursed as specified in Section 4 of this Settlement. In the event that (1) the California Legislature does not adopt legislation by the time of the Secretarial Determination to place a ballot measure before California voters that contains a provision to fund up to $250,000,000 (in nominal dollars) of the costs of Facilities Removal, or (2) the California voters do not adopt such ballot measure by the time of the Secretarial Determination, or (3) the California PUC does not adopt a California Klamath Surcharge, as defined herein and specified in Section 4, or (4) the Oregon PUC does not adopt an Oregon Klamath Surcharge, as defined in the Oregon Surcharge Act and specified herein, the Parties shall Meet and Confer to attempt, in good faith, to identify substitute funding and/or other alternatives to cover the costs of Facilities Removal.

2.4 Project Water Rights; Klamath Basin Adjudication

2.4.1 Project Water Rights

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

2.4.2 Klamath Basin Adjudication

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

2.5 Lease of State-Owned Beds and Banks

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

3. Studies, Environmental Review and Secretarial Determination

3.1 Introduction

This Settlement addresses the proposed Secretarial Determination regarding the removal of all four Facilities, defined in Section 1.4 as Facilities Removal. This Section describes the process for studies, environmental review, and participation by the Parties and public to inform the Secretarial Determination.

3.2 Studies and Environmental Review

3.2.1 Support for Secretarial Determination

The Secretary, in cooperation with the Secretary of Commerce and other Federal agencies as appropriate, will: (i) use existing studies and other appropriate data, including those in the FERC record for this project, including but not limited to environmental impact studies, EPAct proceedings, and other pertinent material; (ii) conduct further appropriate studies, including but not limited to an analysis of sediment content and quantity; (iii) undertake related environmental compliance actions, including environmental review under NEPA; and (iv) take other appropriate actions as necessary to determine whether to proceed with Facilities Removal pursuant to Section 3.3. No Party may be reimbursed for any costs associated with completing the Secretarial Determination from the funds collected for Facilities Removal under Section 4 of this Settlement, except as provided in Section 4.11.

3.2.2 Coordination with Parties and Public

In conducting such studies and related environmental compliance actions, the Secretary shall coordinate and seek input from the Parties and the public, in accordance with Applicable Law and policy, and as further described in Appendix A.

3.2.3 Recommendations Regarding Inter-Agency Coordination and Environmental Documents

In the conduct of the environmental compliance actions described in Sections 3.2.1 and 3.2.5, the Parties, other than the Federal Parties, California, and Oregon, support and will urge that:

A. The United States, California, and Oregon will cooperate as appropriate in the preparation of environmental documents, and

B. The environmental documents will be prepared, not only as the basis for the Secretarial Determination and State Concurrence with an Affirmative Determination, but also, to the extent practicable

and permitted by Applicable Law and consistent with the schedule stated in Section 3.3.4, to support permits that may be necessary for Facilities Removal, if the Secretary determines to proceed.

3.2.4 Study and Science Process

The study process to support the Secretarial Determination shall be focused, prioritized, and shall include review and assistance, as described in Appendices A, I, and J. Nothing in this Section or in the attached Appendices shall impair or constrain the discretion of the Secretary to determine the scope, sufficiency, or content of any study undertaken pursuant to this Settlement. The Secretary will, however, coordinate with the Parties as described in Appendices A, I and J.

3.2.5 Schedule for Environmental Reviews

A. Secretary

The Secretary shall use best efforts to complete the environmental review described in Section 3.2.1 by March 31, 2012.

B. California

Consistent with Section 1.5, the State of California shall conduct CEQA review of Facilities Removal and associated actions prior to its decision whether to concur with an Affirmative Determination as provided in Section 3.3.5.A. To the extent practicable and as described in Section 3.2.2, the State and the Secretary shall consult and cooperate with the studies, environmental compliance and other actions, for the purpose of informing the State's CEQA review. The California Department of Fish and Game shall be the lead agency for the CEQA review. The State shall use best efforts to complete its environmental review by March 31, 2012.

C. Oregon

The State of Oregon shall prepare environmental documents as appropriate under applicable State laws to inform a decision whether to concur with any Affirmative Determination. Oregon shall use best efforts to complete its environmental review by March 31, 2012.

D. Notice

The Secretary or either State shall provide Notice to the other Parties as soon as practicable, if it anticipates that its environmental compliance actions review will not be concluded by

the specified date. Upon receipt of such Notice, the Parties shall follow the Meet and Confer procedures in Section 8.7 to consider potential amendments to this Settlement. Nothing in this Settlement shall require the Secretarial Determination or each State's Concurrence, as provided in Section 3.3.5, to occur before completion of the environmental compliance actions.

3.3 Secretarial Determination

3.3.1 Standards

Based upon the record, environmental compliance and other actions described in Section 3.2, and in cooperation with the Secretary of Commerce and other Federal agencies as appropriate, the Secretary shall determine whether, in his judgment, the conditions of Section 3.3.4 have been satisfied, and whether, in his judgment, Facilities Removal (i) will advance restoration of the salmonid fisheries of the Klamath Basin, and (ii) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes.

3.3.2 Detailed Plan for Facilities Removal

As a part of developing the basis for the Secretarial Determination, the Secretary shall develop a Detailed Plan to implement Facilities Removal. This Detailed Plan will also serve as the basis for the Definite Plan described in Section 7.2.1.A. The Detailed Plan may include:

A. The physical methods to be undertaken to effect Facilities Removal, including but not limited to a timetable for Decommissioning and Facilities Removal, which is removal of all or part of each Facility as necessary to effect a free-flowing condition and volitional fish passage as defined in Section 1.4;

B. As necessary and appropriate, plans for management, removal, and/or disposal of sediment, debris, and other materials;

C. A plan for site remediation and restoration;

D. A plan for measures to avoid or minimize adverse downstream impacts;

E. A plan for compliance with all Applicable Laws, including anticipated permits and permit conditions;

F. A detailed statement of the estimated costs of Facilities Removal;

G. A statement of measures to reduce risks of cost overruns, delays, or other impediments to Facilities Removal; and

H. The identification, qualifications, management, and oversight of a non-federal DRE, if any, that the Secretary may designate.

3.3.3 Egress Agreement Related to the Detailed Plan and Definite Plan to be Negotiated Between the Secretary, the DRE and PacifiCorp

The Parties agree that within three months of the Effective Date, the Company and the Secretary shall enter into a contract to manage, control, and permit entry onto Company lands for the express purpose of developing the Detailed Plan for Facilities Removal including without limitation: to control entry and egress activities at the Facilities in a manner that will not damage or disturb existing structures and terrain at the points of access to the Facilities except as specifically necessary for the development of the Detailed Plan for Facilities Removal; require the DRE to mitigate damage to an affected area to an equivalent condition as that existing prior to the actions that caused the damage; to be aware of, initiate, maintain, and supervise compliance with all safety laws, regulations, precautions, and programs in connection with the performance of the contract; and, to make themselves aware of and adhere to the Company Work Site regulations including, without limitation, environmental protection, loss control, dust and sediment control, safety, and security.

The Parties further agree that within three months of the designation of a DRE by the Secretary pursuant to Section 3.3.5.A.i, the Company, the Secretary and the DRE shall make any necessary amendments to the contract to permit access to the Facilities to allow for the development of the Definite Plan and for implementation of the Definite Plan. Provided that, title transfer shall specify the legal description of lands conveyed from PacifiCorp to the DRE for the purpose of implementing the Definite Plan to effect Facilities Removal.

3.3.4 Schedule for Secretarial Determination

By March 31, 2012, the Secretary shall use best efforts to (i) determine whether the costs of Facilities Removal as estimated in the Detailed Plan, including the cost of insurance, performance bond, or similar measures, will not exceed the State Cost Cap, and (ii) otherwise complete his determination whether to proceed with Facilities Removal as described in Section 3.3.1, provided that any such determination shall not be made until the following conditions have been satisfied:

A. Federal legislation, which in the judgment of the Secretary is materially consistent with Appendix E, has been enacted;

B. The Secretary and PacifiCorp have agreed upon acceptable terms of transfer of the Keno facility pursuant to Section 7.5.2;

C. The States of Oregon and California have authorized funding for Facilities Removal as set forth in Section 4 of this Settlement;

D. The Parties have developed a plan to address the excess costs, consistent with Section 4.10 of the Settlement, if the estimate of costs prepared as part of the Detailed Plan (including the cost of insurance, performance bond, or similar measures) shows that there is a reasonable likelihood such costs are likely to exceed the State Cost Cap; and

E. The Secretary has identified a DRE-designate, and, if the DRE-designate is a non-federal entity: (i) the Secretary has found that the DRE-designate is qualified; (ii) the States have concurred in such finding; and (iii) the DRE-designate has committed, if so designated, to perform Facilities Removal within the State Cost Cap.

If the above conditions are not satisfied, the Secretary shall not make a determination. Instead, the Secretary shall provide Notice to the Parties, who shall follow the Meet and Confer procedures in Section 8.7 to consider potential modifications to this Settlement.

However, if the conditions set forth in Sections 3.3.4.A, B, D, and E are satisfied and, with respect to the condition set forth in Section 3.3.4.C, the Customer Contribution required by Sections 4.1.1 has been established but California Bond Funding required by Section 4.1.2 has not been approved, in whole or part, the Secretary may still make an Affirmative Determination so long as one of the following additional conditions is met:

(1) Based on the Detailed Plan, the Secretary finds that the Customer Contribution and any approved California Bond Funding will be sufficient to accomplish Facilities Removal; or,

(2) If the Secretary finds that the Customer Contribution and any approved California Bond Funding may not be sufficient to accomplish Facilities Removal, the Secretary has received satisfactory assurances from the State of California that the California Bond Funding pursuant to Section 4.1.2.A necessary to effect Facilities Removal will be Timely available.

3.3.5 Use and Consequences of Secretarial Determination

A. Affirmative Determination

In the event of an Affirmative Determination, California and Oregon each shall provide Notice to the Secretary and other Parties whether the State concurs with the Affirmative Determination. In its Concurrence, each State shall consider, in its discretion and independent judgment, whether: (i) significant impacts identified in its environmental review can be avoided or mitigated as provided under state law; and (ii) Facilities Removal will be completed within the State Cost Cap.

i. Designation of DRE Concurrent with Any Affirmative Determination

Any Affirmative Determination shall include designation of a DRE. The Secretary may designate Interior as the DRE, unless the Secretary, in his sole judgment and discretion, designates a non-Federal entity as the DRE consistent with Section 3.3.4.E. The Secretary shall consult with the Parties prior to designating a non-federal DRE.

ii. Concurrences By States in Event of Designation of a Federal DRE

In the event of the designation of a federal DRE, no Concurrence in such designation is required, and each State's Concurrence decision shall be limited to the Affirmative Determination under Section 3.3.5.A. Each State shall undertake to concur in the Affirmative Determination within 60 days of such determination.

iii. Concurrence by States in Event of Designation of a Non-Federal DRE

If the Secretary designates a non-federal DRE, and each State has concurred in the designation of the DRE as provided in Section 3.3.4.E, each State shall then undertake to concur in the Affirmative Determination within 60 days of Notice of the Determination.

If either State proposes to withhold Concurrence with the Affirmative Determination, the Parties shall undertake Dispute Resolution pursuant to Section 8.6 to consider potential modifications to this Settlement.

B. Negative Determination

If the Secretary determines not to proceed with Facilities Removal, which is removal of all or part of each Facility as necessary to effect a free-flowing condition and volitional fish passage as defined in Section 1.4, this Settlement shall terminate unless the Parties agree to a cure for this potential termination event. Prior to adopting or public release of such a determination, the Secretary shall provide Notice to the Parties of his tentative determination and its basis. The Parties shall consider whether to amend the Settlement, pursuant solely to the provisions of Section 8.11.3.A.i, in a manner that will permit the Secretary to make an Affirmative Determination.

4. Costs

4.1 Funds for the Purpose of Facilities Removal

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

4.1.1 The Customer Contribution

A. Within 30 days of the Effective Date, PacifiCorp shall request that the Public Utility Commission of Oregon ("Oregon PUC"), pursuant to the Oregon Surcharge Act, establish two non-bypassable customer surcharges, the Oregon J.C. Boyle Dam Surcharge and the Oregon Copco I and II/Iron Gate Dams Surcharge (together, the "Oregon Klamath Surcharges"), for PacifiCorp's Oregon customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the Oregon PUC set the Oregon Klamath Surcharges so that to the extent practicable the total annual collections of the surcharges remain approximately the same during the collection period.

B. Within 30 days of the Effective Date, PacifiCorp shall request that the California Public Utilities Commission ("California PUC") establish a non-bypassable customer surcharge (the "California Klamath Surcharge") for PacifiCorp's California customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the California PUC establish the California Klamath Surcharge so that it will collect an approximately equal amount each year that it is to be collected. PacifiCorp shall request that such surcharge assigns responsibility among the customer classes in an equitable manner. PacifiCorp shall also request that

the California PUC set the California Klamath Surcharge so that it at no time exceeds two percent of the revenue requirements set by the California PUC for PacifiCorp as of January 1, 2010.

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

D. PacifiCorp shall request that the Oregon PUC establish a surcharge so that the amount collected under the Oregon Klamath Surcharges is 92% (a maximum of approximately $184,000,000) of the total Customer Contribution, and with 75% of the total Oregon Klamath Surcharges amount collected through the Oregon Copco I and II/Iron Gate Dams Surcharge and 25% collected through the Oregon J.C. Boyle Dam Surcharge.

E. PacifiCorp shall request that the California PUC establish a surcharge so that the amount collected under the California Klamath Surcharge is 8% (a maximum of approximately $16,000,000) of the Total Customer Contribution. The trustee of the California Klamath Surcharge shall apply 75% of the total California Klamath Surcharge amount collected to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the total California Klamath Surcharge amount collected to the California J.C. Boyle Dam Trust Account.

F. PacifiCorp shall collect and remit the surcharges collected pursuant to this section to the trustee(s) described in Section 4.2, below, to be deposited into the appropriate California Klamath Trust Accounts and Oregon Klamath Trust Accounts.

G. Consistent with Section 2.1 of this Settlement, each non-Federal Party shall support the California Klamath Surcharge and the Oregon Klamath Surcharges in the proceedings conducted by the California PUC and the Oregon PUC, respectively, to the extent the proposed Surcharges are consistent with this Settlement.

4.1.2 The California Bond Funding

A. The California Legislature has approved a general obligation bond ("Bond Measure") containing a provision authorizing the issuance of bonds for the amount necessary to fund the difference between the Customer Contribution and the actual cost to complete Facilities Removal, which bond funding in any event shall not

exceed $250,000,000 (in nominal dollars). The bond language is set forth in Appendix G-1. At its sole discretion, the State of California may also consider other appropriate financing mechanisms to assist in funding the difference between the Customer Contribution and the actual cost of complete Facilities Removal, not to exceed $250,000,000 (in nominal dollars).

B. Consistent with Applicable Law and Section 2.1, each non-federal Party shall support the Klamath bond language in Appendix G-1; provided that nothing in this Settlement is intended or shall be construed to require a Party to support a Bond Measure that includes authorizations unrelated to the implementation of this Settlement.

4.1.3 State Cost Cap

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

4.2 Establishment and Management of Trust Accounts and California Bond Funding

4.2.1 The Oregon Klamath Trust Accounts

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

B. In accordance with the Oregon Surcharge Act, the Oregon PUC will select a trustee to manage the Oregon Klamath Trust Accounts. The Parties may recommend a trustee for consideration by the Oregon PUC.

4.2.2 The California Klamath Trust Accounts

A. Upon execution of this Settlement, California shall request, and each non-Federal Party shall support the request, that the California PUC establish two interest-bearing trust accounts where funds collected by PacifiCorp pursuant to the California Klamath

Surcharge for the purpose of Facilities Removal shall be deposited until needed for Facilities Removal purposes. The non-Federal Parties shall also request that California and the California PUC establish the trust accounts in a manner that ensures that the surcharge funds will not be taxable revenues to PacifiCorp. The California J.C. Boyle Dam Trust Account shall be established to hold 25% of the funds collected pursuant to the California Klamath Surcharge. The California Copco I and II/Iron Gate Dams Trust Account shall be established to hold 75% of the funds collected pursuant to the California Klamath Surcharge. The California J.C. Boyle Dam Trust Account and the California Copco I and II/Iron Gate Dams Trust Account may be referred to together as the "California Klamath Trust Accounts."

B. California shall request, and each non-Federal Party shall support the request, that the California PUC select a trustee to accept surcharge funds from PacifiCorp and manage the California Klamath Trust Accounts. The Parties may recommend a trustee for consideration by the California PUC.

4.2.3 The California Bond Funding

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

4.2.4 Management of the Trust Accounts

A. Within six months of the Effective Date, the States in consultation with the Federal Parties shall prepare draft trustee instructions for submission to the respective PUCs. The States shall then request that the California PUC or another designated agency of the State of California, and the Oregon PUC work cooperatively to prepare joint instructions to the trustee(s) of the Oregon Klamath Trust Accounts and California Klamath Trust Accounts, consistent with the draft instructions, as to the following:

i. Whether and when to disburse funds from the Oregon Klamath Trust Accounts and California Klamath Trust Accounts to the DRE;

ii. The methodology to be used by the trustee(s) to determine which account or accounts to draw funds from for the purpose of disbursing funds to the DRE;

iii. A protocol for the trustee(s) to use to ensure that the management of the Customer Contribution is consistent with and complementary to the management of the California Bond Funding;

iv. Disbursement of funds under the circumstances described in Section 4.4 below;

v. A protocol for reallocating between Trust Accounts monies that have already been deposited into the Trust Accounts, to be used by the trustees, at the request of the States, for removal of specific facilities; and

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

B. Within three months of the States' Concurrence with an Affirmative Determination, the States in consultation with the Federal Parties and the DRE shall prepare draft trustee instructions revised as appropriate to reflect the Affirmative Determination, Detailed Plan, and DRE designation, and request that the California PUC or another designated agency of the State of California, and the Oregon PUC, work cooperatively to prepare revised joint instructions to the trustee(s) of the Oregon Klamath Trust Accounts and California Klamath Trust Accounts consistent with the draft revised instructions.

4.3 Adjustment Following Secretarial Determination

Upon review of the Secretarial Determination described in Section 3 of this Settlement, or as appropriate thereafter (such as, for example, in the event of a significant change in the relative revenues between California and Oregon), the States shall consult with each other, PacifiCorp, and the Federal Parties regarding adjustments to the California Klamath Surcharge or Oregon Klamath Surcharges necessitated by or appropriate considering the Secretarial Determination or other circumstances. Following such consultation, PacifiCorp will request that the California PUC and Oregon PUC adjust the Klamath Surcharges to be consistent with the recommendations developed through the consultation. Any adjustment shall not alter the maximum level of the Customer Contribution or State Cost Cap.

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

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

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

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

4.4.4 If, as a result of the Secretarial Determination, termination of this Settlement, or other cause, one or more Project dams will not be removed:

A. All or part of the Oregon Klamath Surcharges shall be terminated and the Oregon Klamath Trust Accounts disposed as set forth in Section 4(10) of the Oregon Surcharge Act and the trustee instructions; and

B. PacifiCorp shall request that the California PUC direct PacifiCorp to terminate all or part of the surcharge, that the California PUC direct the trustee to apply any excess balances in the California Klamath Trust Account to California's allocated share of prudently incurred costs to implement FERC relicensing requirements, and that, if any excess amount remains in the trust accounts after that application, that the California PUC order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers.

4.5 Recovery of Net Investment in Facilities

4.5.1 Consistent with Section 3 of the Oregon Surcharge Act, PacifiCorp shall request, and each non-Federal Party shall support the request, that the Oregon PUC allow recovery of PacifiCorp's net investment in the Facilities.

4.5.2 PacifiCorp shall request, and each non-Federal Party shall support the request, that the California PUC conduct one or more proceedings to implement the following:

A. That the California PUC determine a depreciation schedule for each Facility based on the assumption that the Facility will be removed in 2020, and change that depreciation schedule at any time if removal of the Facility will occur in a year other than 2020; and

B. That the California PUC use the depreciation schedules adopted consistent with Section 4.5.2.A above to establish rates and tariffs for the recovery of California's allocated share of undepreciated amounts prudently invested by PacifiCorp in the Facilities, with amounts recoverable including but not limited to:

i. Return on investment and return of investment;

ii. Capital improvements required by the Federal Parties or any agency of the United States or any agency of the States for the continued operation of the Facility until Facility removal;

iii. Amounts spent by PacifiCorp in seeking relicensing of the Project before the Effective Date of this Settlement;

iv. Amounts spent by PacifiCorp for settlement of issues relating to relicensing or removal of the Facilities; and

v. Amounts spent by PacifiCorp for the Decommissioning of the Facilities in anticipation of Facilities Removal.

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

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

4.6 Recovery of Costs of Ongoing Operations and Replacement Power

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

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

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

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

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

4.8 Acknowledgment of Independence of Oregon PUC and California PUC

The Parties acknowledge that the Oregon PUC and California PUC each is a separate state agency that is not bound by this Settlement. Nothing in this Settlement expands, limits, or otherwise affects any authority of the respective commissions regarding the customer surcharges and trust accounts, recovery of net investment, or recovery of costs of ongoing operations or replacement power. Because the Parties cannot provide assurance that either commission will decide to or be allowed to implement any of the provisions for funding Facilities Removal, failure of a commission to do so is not a breach of this Settlement by any Party.

4.9 Consultation

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

4.10 United States Not Responsible for Costs of Facilities Removal

The United States shall not be liable or responsible for costs of Facilities Removal, whether such costs are identified prior to the Secretarial Determination or arise at any time thereafter, including during physical activities to accomplish Facilities Removal. If the Secretary determines pursuant to Section 3.3.5.A.i that Interior or one of its agencies or bureaus shall serve as the DRE, neither that decision nor performance of that role shall provide any basis for holding the United States or any of its agencies liable or responsible for any of the DRE's costs of Facilities Removal.

4.11 Parties' Costs Related to Facilities Removal

Subject to Section 4.4, the funds accumulated pursuant to Section 4 are solely for use in accomplishing Facilities Removal, development of the Definite Plan, all necessary permitting and environmental compliance actions, and construction/project management for Facilities Removal. If an agency of the United States serves as the DRE, that agency will abide by its ordinary guidance documents and general accounting and contracting principles in determining which expenses may be claimed for reimbursement as costs of Facilities Removal consistent with this Settlement. Nothing in this section shall be interpreted as a limitation on the State of California's use of California Bond Funding, or funds collected pursuant to the California Klamath Surcharge and deposited into the California Copco 1 and 2 and Iron Gate Dams Trust Account, for environmental review as described in Section 3.2.5; provided the use of any funds from California Copco 1 and 2 and Iron Gate Dams Trust Account may be offset by California Bond Funds to achieve the target dates set forth in Section 7.3.

5. Local Community Power

5.1 Power Development

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

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

5.2 PacifiCorp Billing Crediting System

PacifiCorp, KWAPA, and Upper Klamath Water Users Association (UKWUA) shall Timely enter into one or more mutually-acceptable Billing Services Offset Agreements ("BSO Agreements") outlining each party's obligations related to the implementation of billing credits on PacifiCorp's bills to eligible customers who are billed by PacifiCorp.

5.2.1 Parties to Agreement

The parties to the BSO Agreement(s) will be PacifiCorp, KWAPA and UKWUA.

5.2.2 Funding to be Provided by KWAPA and UKWUA

KWAPA and UKWUA will establish one or more Bill Credit Accounts using funds made available for that purpose through the KBRA. The BSO Agreement(s) will establish the process for and necessary information by which KWAPA and UKWUA will remit funds available in the Bill Credit Account(s) to PacifiCorp so that KWAPA and UKWUA ensure that there are sufficient funds available for payment of the billing credit.

5.2.3 Credits to be Implemented by PacifiCorp

PacifiCorp will, through its existing billing system, provide credits on PacifiCorp electric service bills to eligible customers identified by KWAPA and UKWUA. The credits will be determined by the formulas set forth in the BSO Agreement(s), and approved pursuant to Section 5.2.6, below.

5.2.4 KWAPA and UKWUA to Provide Notice and Data to PacifiCorp

KWAPA and UKWUA must provide to PacifiCorp 120 days written notice prior to the date they desire commencement of the bill credits. KWAPA and UKWUA must also provide the names of eligible customers and other pertinent information necessary for PacifiCorp to identify the eligible customers in its billing system at least 90 days before commencement of the crediting system. The necessary information, as well as the procedures for updating the information, will be described in the BSO Agreement(s). PacifiCorp shall provide the billing credit to all eligible customers with respect to whom KWAPA and UKWUA provide such

information. To the extent allowed by Applicable Law or by order of the public utility commissions having jurisdiction, PacifiCorp will reasonably assist KWAPA and UKWUA in its efforts to create efficient means to identify eligible customers and provide benefits.

5.2.5 PacifiCorp Not Liable

PacifiCorp will not be liable for any errors or omissions related to KWAPA's and UKWUA's identification of eligible customers.

5.2.6 Regulatory Approval

PacifiCorp's implementation of the bill credit will remain subject to the approval and jurisdiction of the respective state utility commissions of California and Oregon. PacifiCorp will file for any required regulatory approval of new tariffs implementing the bill credits within 30 days of PacifiCorp's receipt of the names of eligible customers and other pertinent information necessary for PacifiCorp to identify the eligible customers in its billing system, provided pursuant to Section 5.2.4, above. PacifiCorp, KWAPA and UKWUA will cooperate in developing regulatory filings to update the tariffs implementing the bill credits, as necessary.

5.2.7 Estimate of Aggregate Monthly Credits

The BSO Agreement(s) shall contain provisions that provide for coordination between KWAPA, UKWUA and PacifiCorp to exchange relevant data to assist KWAPA and UKWUA in estimating the aggregate amount of the Bill Credit to be provided during each billing cycle based on the identified eligible customers' historic usage data and the credit amount stated in the approved tariffs.

5.2.8 Payment to PacifiCorp for Administrative Costs

PacifiCorp will be reimbursed for the administrative costs it incurs for establishing and providing the billing credit service. This payment will be remitted from the Bill Crediting Account(s) on a priority basis so as to ensure that PacifiCorp's costs are paid before any bill credits are issued to eligible customers. Upon request, PacifiCorp shall make available to KWAPA and UKWUA an accounting of such administrative expenses. PacifiCorp's administrative costs shall be consistent with a budget for such costs established in the BSO Agreement(s).

5.2.9 Execution and Term of BSO Agreement

The BSO Agreement(s) shall become effective upon approval by the respective public utility commissions, and shall continue in effect until terminated by KWAPA, UKWUA or PacifiCorp consistent with the termination rights specified in the BSO Agreement(s). The execution of the BSO Agreement(s) is subject to

the demonstration to PacifiCorp by KWAPA and UKWUA of their legal and financial ability to fulfill the requirements of this Section.

5.2.10 Termination

KWAPA and UKWUA shall provide at least 90 days advance written notice of the expected date on which funds will no longer be available so that PacifiCorp may seek all necessary approvals from the state PUCs to terminate the bill credit prior to exhaustion of available funds. At termination of the credit, KWAPA and UKWUA shall be responsible for remitting to PacifiCorp any remaining balance related to bill credits that have been paid to customers within 90 days of such termination.

5.2.11 Failure to Perform

The BSO Agreement(s) will establish each party's remedy if the other party fails to perform its obligations arising thereunder, as well as procedures to meet and confer for dispute resolution.

5.2.12 KWAPA and UKWUA

KWAPA and UKWUA will resolve: (i) whether there is to be a single BSO Agreement among the three parties or separate BSO Agreements between PacifiCorp and KWAPA and PacifiCorp and UKWUA; and (ii) if there is a single BSO Agreement, the respective obligations of KWAPA and UKWUA under that Agreement.

5.3 Transmission and Distribution of Energy

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

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

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

5.3.1 The terms and conditions related to accessing PacifiCorp's transmission system, to the extent that it is necessary, will be consistent with PacifiCorp's Open Access Transmission Tariff ("OATT").

5.3.2 The terms and conditions related to accessing PacifiCorp's distribution system will remain subject to the jurisdiction of the California Public Utilities Commission for distribution facilities located in California and the Oregon Public Utility Commission for distribution facilities located in Oregon. In California and Oregon, the respective PUCs have approved unbundled delivery service tariffs for PacifiCorp to implement direct access legislation. The Parties agree that these unbundled delivery service tariffs can enable the delivery of federal power. For power acquired by Interior from Bonneville, PacifiCorp will charge an unbundled distribution rate that is based on the Oregon Commission-approved tariff applicable to the delivery of Bonneville power to eligible loads in Oregon.

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

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

5.3.3 PacifiCorp agrees to work in good faith to develop mutually agreeable revisions to existing provisions of state or federal law, if necessary to implement the mutually agreeable approach.

5.3.4 PacifiCorp agrees to work in good faith with Bonneville, Interior, KWAPA, KWUA and UKWUA and other Parties as the case may be, to resolve, on a mutually agreeable basis, any technical and administrative

issues (such as billing and metering) that may arise with respect to PacifiCorp's delivery of power to the eligible loads.

5.3.5 It is the Parties' intent that this Agreement will not require PacifiCorp to modify its existing transmission or distribution facilities. PacifiCorp may elect to do so at the sole cost and expense of the Party or entity requesting such modification.

5.3.6 At such time as the eligible loads are prepared to and technically able to receive federal power, PacifiCorp, Interior, KWAPA, KWUA and UKWUA agree to work cooperatively with each other to transition the eligible loads from full retail service on a mutually agreeable basis. The Parties acknowledge that for any eligible load that has received federal power pursuant to this section, PacifiCorp will no longer have the obligation to plan for or meet the generation requirements for these loads in the future, provided, however, that PacifiCorp agrees to work cooperatively to provide generation services to eligible loads in a manner that is cost-neutral to other PacifiCorp customers in the event that a contract for federal power is no longer available. Interior, KWAPA, KWUA and UKWUA agree to provide notice to PacifiCorp as soon as practicable after becoming aware that federal power will no longer be available to serve any eligible loads.

5.3.7 Interior, in consultation with KWAPA, KWUA and UKWUA, shall Timely develop a preliminary identification of the eligible loads for purposes of Section 5.3. Interior, in consultation with KWAPA, KWUA and UKWUA, shall provide notification to PacifiCorp identifying the final eligible loads for purposes of Section 5.3, not later than 120 days before delivery of federal power to any such eligible loads is to begin. The mutually agreeable approach will address the manner by which Interior provides notification to PacifiCorp of any changes to eligible loads.

5.3.8 Interior agrees to work cooperatively to assign or delegate or transition functions of Interior to KWAPA or another appropriate entity subject to the terms of this Section.

5.3.9 If Interior or KWAPA or UKWUA are able to acquire power from any entity other than Bonneville for eligible loads in either Oregon or California, PacifiCorp, KWAPA, UKWUA, Interior, and KWUA, as applicable, will work cooperatively to agree on a method for transmission and delivery.

5.3.10 Upon termination of this Settlement, PacifiCorp agrees to provide service under the terms of its approved delivery tariff until or unless the respective PUC determines that the applicable tariff should no longer be in place. It is the intention of PacifiCorp, Interior, KWUA, KWAPA, and UKWUA

that the general principles of cooperation expressed in Section 5 continue beyond the term of this Settlement.

6. Interim Operations

6.1 General

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

6.1.1 PacifiCorp Performance

PacifiCorp shall perform the Interim Measures in accordance with the terms and schedule set forth in Appendices C and D as long as this Settlement is in effect during the Interim Period. However, if the Secretarial Determination under Section 3 is that Facilities Removal should not proceed, or this Settlement otherwise terminates, PacifiCorp shall continue performance of the Iron Gate Turbine Venting until the time FERC issues an order in the relicensing proceeding. PacifiCorp shall have no obligation under this Settlement to perform any other of the Interim Measures if this Settlement terminates, but may implement certain ICP and Non-ICP Interim Measures for ESA or CWA purposes or for any other reason. PacifiCorp reserves its right to initiate termination pursuant to Section 8.11.1.E, if the Services fail to provide incidental take authorization in a Timely way.

6.1.2 Duty to Support

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

6.1.3 Permitting

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

B. FERC Enforcement and Jurisdiction

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

ii. PacifiCorp will implement Interim Measures and the Klamath River TMDLs, subject to any necessary FERC or other Regulatory Approvals.

6.1.4 Interim Power Operations

PacifiCorp shall continue to operate the Facilities for the benefit of customers and retain all rights to the power from the Facilities until each Facility is transferred and decommissioned, including all rights to any power generated during the time between transfer of the Facility to the DRE and Decommissioning of the Facility by PacifiCorp.

6.1.5 Adjustment for Inflation

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

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

WHERE:
AD = Adjusted dollar amount payable.
D = Dollar amount prescribed in the Interim Measure.
$CPI\text{-}U_t$ = 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.)

$CPI\text{-}U_o$ = the value of the Consumer Price Index-Urban for the month and year corresponding to the Effective Date of this Settlement.

6.2 Interim Conservation Plan

6.2.1 Application by PacifiCorp

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

6.2.2 Applicable Actions by the Services under the ESA

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

6.2.3 Potential Modifications of Measures

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

6.3 TMDLs

6.3.1 PacifiCorp Implementation

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

6.3.2 TMDL Implementation Plans

A. No later than 60 days after ODEQ's and the North Coast Regional Water Quality Control Board (NCRWQCB)'s approval, respectively, of a TMDL for the Klamath River, PacifiCorp shall submit to ODEQ and NCRWQCB, as applicable, proposed TMDL implementation plans for agency approval. The TMDL implementation plans shall be developed in consultation with ODEQ and NCRWQCB.

B. To the extent consistent with this Settlement, PacifiCorp shall prepare the TMDL implementation plans in accordance with OAR 340-042-0080(3) and California Water Code section 13242, respectively. The plans shall include a timeline for implementing management strategies and shall incorporate water quality-related measures in the Non-ICP Interim Measures set forth in Appendix D. Facilities Removal by the DRE shall be the final measure in the timeline. At PacifiCorp's discretion, the proposed plans may further include other planned activities and management strategies developed individually or cooperatively with other sources or designated management agencies. ODEQ and NCRWQCB may authorize PacifiCorp's use of offsite pollutant reduction measures, subject to an iterative evaluation and approval process; provided, any ODEQ authorization of such offsite measures conducted in Oregon solely to facilitate attainment of load allocations in California waters shall not create an ODEQ obligation to administer or enforce the measures.

6.3.3 Keno Load Allocation

Subject to Section 6.3.4, in addition to other Project facilities and affected waters, PacifiCorp's TMDL implementation plan under Section 6.3.2 shall include water

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

6.3.4 TMDL Reservations

A. PacifiCorp's TMDL implementation obligations under this Settlement are limited to the water quality-related measures in the Interim Measures set forth in Appendices C and D and any additional or different measures agreed to by PacifiCorp and incorporated into an approved TMDL implementation plan. If a TMDL implementation plan for PacifiCorp as finally approved requires measures that have not been agreed to by PacifiCorp and that are materially inconsistent with the Interim Measures, PacifiCorp may initiate termination pursuant to Section 8.11.1.E.

B. PacifiCorp reserves the right to seek modification of a TMDL implementation plan in the event this Settlement terminates. The States reserve their authorities under the CWA and state law to revise or require submission of new TMDL implementation plans in the event this Settlement terminates or an implementation plan measure or Facilities Removal does not occur in accordance with the timeline in the approved implementation plans. Other Parties reserve whatever rights they may have under existing law to challenge the TMDLs or TMDL implementation plans in the event this Settlement terminates.

C. To the extent it possesses rights outside of this Settlement, no Party waives any right to contest: a Klamath River TMDL; specific TMDL load allocation; or decision on a PacifiCorp TMDL implementation plan if the decision is materially inconsistent with this Settlement.

6.4 Other Project Works

6.4.1 East Side/West Side Facilities

A. Within six months of enactment of federal legislation consistent with Appendix E, PacifiCorp will apply to FERC for an order approving partial surrender of license for the purpose of

decommissioning the East Side/West Side generating facilities. PacifiCorp will file the application consistent with applicable FERC regulations, and after consultation with the Parties. Notwithstanding Section 2.1.2, the Parties reserve their rights to submit comments and otherwise participate in the FERC proceeding regarding the conditions under which decommissioning should occur. PacifiCorp reserves the right to withdraw its surrender application in the event any FERC order or other Regulatory Approval in connection with the surrender application would impose unreasonable conditions on the surrender.

B. Upon FERC approval, and in coordination with Reclamation and pursuant to Section 7.5.2, PacifiCorp shall decommission the East Side/West Side facilities in accordance with the FERC order approving the decommissioning, with the costs of such decommissioning to be recovered by PacifiCorp through standard ratemaking proceedings.

C. Upon completion of decommissioning and subject to FERC's and state requirements, PacifiCorp and Interior shall discuss possible transfer of the following lands to Interior: Klamath County Map Tax Lots R-3809-00000-05800-000, R-3809-00000-05900-000, and R-3809-00000-05700-000, or any other mutually-agreeable lands associated with the East Side and West Side Facilities on terms and conditions acceptable to PacifiCorp and Interior.

6.4.2 Fall Creek Hydroelectric Facility

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

6.5 Abeyance of Relicensing Proceeding

Within 30 days of the Effective Date, the Parties, except ODEQ, will request to the California State Water Resources Control Board and the Oregon Department of Environmental Quality that permitting and environmental review for PacifiCorp's FERC Project No. 2082 licensing activities, including but not limited to water quality certifications under Section 401 of the CWA and review under CEQA, will be held in abeyance during the Interim Period under this Settlement. PacifiCorp shall withdraw and re-file its applications for Section 401 certifications as necessary to avoid the certifications being deemed waived under the CWA during the Interim Period.

7. DRE, Transfer, Decommissioning, and Removal

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

7.1 DRE

7.1.1 Capabilities

Pursuant to the Authorizing Legislation, any rules necessary or appropriate for implementation, or any existing authority, any entity designated as DRE shall, in the judgment of the Secretary, have the legal, technical, and financial capacities to:

A. Accept and expend non-federal funds as provided in Section 4.2.4;

B. Seek and obtain necessary permits and other authorizations to implement Facilities Removal;

C. Enter into appropriate contracts;

D. Accept transfer of title to the Facilities for the express purpose of Facilities Removal;

E. Perform, directly or by oversight, Facilities Removal;

F. Prevent, mitigate, and respond to damages the DRE causes during the course of Facilities Removal, and, consistent with Applicable Law, respond to and defend associated liability claims against the DRE, including costs thereof and any judgments or awards resulting therefrom;

G. Carry appropriate insurance or bonding or be appropriately self-insured to respond to liability and damages claims against the DRE associated with Facilities Removal; and

H. Perform such other tasks as are reasonable and necessary for Facilities Removal, within the authority granted by the Authorizing Legislation or other Applicable Law.

7.1.2 Responsibilities

A. Contracts

The DRE shall enter all contracts it determines to be appropriate for Facilities Removal.

B. Performance of Facilities Removal

The DRE shall perform Facilities Removal in accordance with the Definite Plan and applicable permits and other environmental compliance requirements. Any work conducted by a federal DRE for Facilities Removal shall be done in accordance with relevant federal construction, design, safety, and procurement standards. Final design and cost estimates will be completed prior to initiation of Facilities Removal.

7.1.3 DRE to Be Party

Within 30 days of Notice from both States of their respective Concurrence with an Affirmative Determination, a non-federal DRE, if any, shall execute and become a Party to this Settlement, and shall be fully bound by the terms of this Settlement without any further act, approval, or authorization by the Parties. If the DRE fails to execute and become a Party to this Settlement, the Secretary will designate another DRE.

7.2 Definite Plan

7.2.1 Development and Use of Definite Plan

Upon an Affirmative Determination and the States' Concurrence pursuant to Section 3.3.5, the DRE shall develop a Definite Plan for Facilities Removal to include it as a part of any applications for permits or other authorizations. The Definite Plan shall be consistent with this Settlement, the Authorizing Legislation, the Detailed Plan, and the Secretarial Determination.

A. Elements of Definite Plan

The Definite Plan shall be based on all elements of the Detailed Plan described in Section 3.3.2. Such elements shall be in the form required for physical performance, such as engineering specifications for a construction activity, and shall also include consideration of prudent cost overrun management tools such as performance bonds. The Definite Plan shall also include:

i. A detailed estimate of the actual or foreseeable costs associated with: the physical performance of Facilities removal consistent with the Detailed Plan; each of the tasks associated with the performance of the DRE's obligations as stated in Section 7.1; seeking and securing permits and other authorizations; and insurance, performance bond, or similar measures;

ii. The DRE's analysis demonstrating that the total cost of Facilities Removal is likely to be less than the State Cost Cap, which is the total of Customer Contribution and California Bond Funding as specified in Section 4. If the DRE determines that the total cost of Facilities Removal is likely to exceed the State Cost Cap, the DRE shall not make any public release of the Definite Plan and shall instead provide Notice to the Parties, who shall undertake to Meet and Confer pursuant to Section 8.7 to consider modifications to the Definite Plan consistent with the State Cost Cap;

iii. Appropriate procedures consistent with state law to provide for cost-effective expenditures within the cost estimates stated in (i);

iv. Accounting procedures that will result in the earliest practicable disclosure of any actual or foreseeable overrun of cost of any task relative to the detailed estimate stated in (i);

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

vi. A form of Notice to the Parties and FERC for each Facility that all necessary permits and approvals have been obtained for removal of the Facility, all contracts have been finalized, and Facilities Removal is ready to commence.

B. Notice of Completion

The DRE shall provide Notice to the Parties upon completion of the Definite Plan. After such Notice, the Parties shall undertake to address the consistency of the plan and this Settlement, through the procedures and pursuant to the schedule stated in Section 2.1.4.C.

C. Use of Definite Plan as Basis for Permit Applications

With respect to any elements of the Definite Plan that are undisputed, and otherwise at the conclusion of any Dispute Resolution described in Section

7.2.1.B, the DRE shall use the Definite Plan as appropriate in applications for any applicable federal, state, and local permits for Facilities Removal.

7.2.2 Process for Further Review of Cost Estimates Before and During Facilities Removal in the Event of a Federal DRE

If there is a federal DRE, the Secretary, in consultation with the federal DRE, will confirm, immediately prior to commencement of Facilities Removal, that, based on the final design described in Section 7.2.1.A, the cost of Facilities Removal will be lower than the State Cost Cap. If the Secretary estimates at that time that the cost of Facilities Removal is likely to exceed the State Cost Cap, the DRE will not commence Facilities Removal but shall instead provide Notice to the Parties of the anticipated cost overruns. The Parties shall then use the Meet and Confer procedures to consider modifications to the final design or securing alternate sources of funding or such other measures as appropriate to permit Facilities Removal to proceed. In no event will the DRE commence Facilities Removal if the issue of anticipated cost overruns has not been resolved to the Secretary's satisfaction. If during Facilities Removal the DRE determines that its costs are likely to exceed the State Cost Cap, the DRE shall suspend Facilities Removal. The DRE will resume Facilities Removal after the Meet and Confer procedures have produced modifications to the final design or alternate sources of funding or such other measures as appropriate to permit Facilities Removal to proceed.

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

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

A. The Parties collectively and each Party individually shall agree not to oppose the City of Yreka's continued use of California State Water Right Permit 15379, which provides for the diversion of up to 15 cfs for municipal uses by the City of Yreka.

B. As part of implementation of this Settlement, an engineering assessment to study the potential risks to the City of Yreka's water supply facilities as a result of implementation of Facilities Removal shall be funded and conducted by the Secretary. Actions identified in the engineering assessment necessary to assure continued use of the existing, or equivalent replacement, water supply facilities by the City of Yreka shall be funded from the California Bond Measure and implemented. Actions that may be required as a result of the engineering assessment include, but are not limited to:

i. Relocation, replacement, and/or burial of the existing 24-inch diameter water line and transmission facilities from the City of Yreka's Fall Creek diversion;

ii. Assessment, mitigation, and/or funding to address potential damage to the City of Yreka's facilities located along the Klamath River, including mitigation of potential impacts that may occur as a result of a dam breach. Such assessment, mitigation, and/or funding shall include consideration of the cathodic protection field located near the north bank of the Iron Gate crossing and the facilities that house the City's diversion and pump station; and

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

C. As part of implementation of this Settlement, the Secretary shall conduct an assessment of the potential need for fish screens on the City of Yreka's Fall Creek diversion facilities. If the assessment finds that installation of fish screens is necessary, as a result of implementation of this Settlement, in order to meet regulatory requirements and screening criteria, construction of the required fish screens, including, but not limited to, necessary costs to preserve City facilities with additional species protection, shall be funded through the California Bond Measure pursuant to Section 4.2.3, or through other appropriate sources.

7.3 Schedule for Facilities Removal

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

7.3.2 The Parties acknowledge and agree that the schedule to implement the Secretarial Determination and the Detailed Plan, to the extent such Determination leaves discretion for that purpose, shall be determined by the Parties in accordance with Section 7.3.4. Pending the Secretarial

Determination and the development of the Detailed Plan, the Parties intend to implement this Settlement based on the following approach to achieve the target dates for Decommissioning and Facilities Removal set forth in Section 7.3.1:

A. Collect $172 million of the total Customer Contribution by December 31, 2019, consistent with Section 4;

B. Earn approximately $28 million in interest on the Klamath Trust Accounts to provide Value to Customers, which results in a total of $200 million in the accounts available for Facilities Removal costs as illustrated in Appendix H to this Settlement;

C. Implement Decommissioning and Facilities Removal in a manner that permits PacifiCorp to generate sufficient electricity at the Facilities to achieve the economic results included in PacifiCorp's Economic Analysis; and

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

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

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

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

7.3.4 Within 90 days of the Secretarial Determination or at such additional time as may be necessary, the Parties shall Meet and Confer to: (i) review progress in implementing the Settlement based upon the approach described in Section 7.3.2; (ii) establish the schedule to implement the Secretarial Determination and the Detailed Plan, to the extent such Determination leaves discretion for that purpose; and (iii) identify the Value to Customers necessary to implement the schedule, the mechanisms as described in Section 7.3.8 that will be used, and the estimated cost reduction from each mechanism through December 2019. The Parties (including the DRE) will subsequently Meet and Confer if the estimated additional Value to Customers has not been timely secured, a Regulatory Approval is inconsistent with that schedule, or the Definite Plan or final designs are inconsistent with the schedule.

If, within 90 days of the Secretarial Determination or such additional time as may be necessary, the Parties determine that the identified Value to Customers is less than the amount required to achieve the schedule, then the Parties at that time will consider additional actions to address the funding deficiency, including but not limited to extending the schedule and securing additional funding to protect PacifiCorp customers. The Parties may thereafter Meet and Confer if additional Value to Customers is secured in excess of what was previously estimated.

7.3.5 PacifiCorp, in its sole and absolute discretion, may determine that commencement of Decommissioning may occur earlier than January 1, 2020.

7.3.6 If the Parties determine that the schedule for Facilities Removal must extend beyond December 31, 2020, then the Parties shall also consider whether (i) modification of Interim Measures is necessary to appropriately balance costs to customers and protection of natural resources, and (ii) continuation of the collection of the customer surcharges up to the maximum Customer Contribution is warranted.

7.3.7 The Parties agree that if Decommissioning and Facilities Removal occurs in a staged manner, J.C. Boyle is intended to be the last Facility decommissioned. If, however, the Secretarial Determination directs a different sequence for Decommissioning and Facilities Removal, then the Parties shall Meet and Confer to identify adjustments necessary to implement the Secretarial Determination in a manner that is consistent with PacifiCorp's Economic Analysis.

7.3.8 The Parties have identified the following potential mechanisms for creating Value to Customers:

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

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

C. Value of Additional Generation due to KBRA. The Parties acknowledge that the KBRA contains elements that are designed to increase flows in the Klamath River. These elements include a water use retirement program above Upper Klamath Lake, increased storage capacity of Upper Klamath Lake, an interim flow and lake-level program, limitations on diversions of water for the Klamath Reclamation Project, and implementation of a drought plan. Increased or altered flows in the Klamath River may provide increased generation at the Facilities prior to Decommissioning and Facilities Removal. As the KBRA is implemented, the Parties agree that the value of additional generation as a direct result of measurable increased flows consistent with the protocol described in Interim Measure 14 may be used as a Value to Customers.

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

7.3.9 PacifiCorp's Economic Analysis that will be used to implement this section shall be filed by PacifiCorp with the Oregon PUC pursuant to Section 4(1) of the Oregon Surcharge Act and with the California PUC in accordance with Section 4 of this Settlement. The Parties may seek to intervene in these state proceedings before the Commissions, and may request to view PacifiCorp's Economic Analysis consistent with the limitations imposed by Section 4(6) of the Oregon Surcharge Act,

applicable PUC protective orders, and general PUC discovery practices and legal requirements. PacifiCorp shall not oppose either request. PacifiCorp reserves the right to request that the PUCs restrict Parties' access to commercially sensitive material, other than PacifiCorp's Economic Analysis, consistent with Section 4(6) of the Oregon Surcharge Act, applicable PUC protective orders, and general PUC discovery practices and legal requirements.

7.4 Transfer, Decommissioning, and Facilities Removal

7.4.1 DRE Notice

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

7.4.2 Decommissioning and Transfer

PacifiCorp shall transfer ownership of each Facility, including the underlying land for each Facility in accordance with Section 7.6.4 (except for the Keno Development, which shall be disposed in accordance with Section 7.5), once the DRE notifies PacifiCorp that all necessary permits and approvals have been obtained for removal of that Facility, all contracts necessary for Facility Removal have been finalized, and Facility Removal is ready to commence. If the Facilities are removed in a staged manner, annual FERC license conditions applying to the Facility being removed shall no longer be in effect as provided in the Authorizing Legislation, and PacifiCorp shall continue to comply with license conditions pertaining to any Facility still in place to the extent such compliance is not prevented by the removal of any other Facility. Upon transfer of ownership of all Facilities, the FERC annual license shall terminate as provided in the Authorizing Legislation. As further provided in the Authorizing Legislation pursuant to Appendix E, as a precondition of transfer the DRE and PacifiCorp will enter into a contract under which PacifiCorp will continue to operate and maintain the Facility pending commencement of Facility Removal, and PacifiCorp will take title to any electric power generated by the Facility. To the extent engineering and safety best practices require that water continue to be diverted through the Facility powerhouse during the Facility Removal process, PacifiCorp will take title to the incidental electric power generated. PacifiCorp will have responsibility for Decommissioning of each Facility. PacifiCorp and the DRE will coordinate on the timing of PacifiCorp's removal of any personal property or equipment which PacifiCorp deems in its sole discretion to have salvage value. PacifiCorp and the DRE will further coordinate on the timing of PacifiCorp's disconnection of the Facility from the electric grid and cessation of electric generation. Costs of Decommissioning if any shall be recovered by PacifiCorp through standard ratemaking proceedings.

7.5 Keno Facility

7.5.1 Study

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

7.5.2 Keno Facility Determination

The Secretary shall not make an Affirmative Determination pursuant to Section 3.3 until there is agreement between Interior and PacifiCorp on acceptable terms for transfer of title to the Keno facility from PacifiCorp to Interior. Within 60 days of the Effective Date, Interior and PacifiCorp shall commence negotiations on Keno transfer informed by the analyses described in Section 7.5.1. Every six months or as necessary after the Effective Date, and subject to Section 8.17, Interior and PacifiCorp shall report to the Parties on the status of Keno negotiations, including as appropriate, drafts of a proposed Keno transfer agreement, a summary of negotiations and issues in dispute, and supporting documents. Interior and PacifiCorp shall use their best efforts to complete a Keno transfer agreement in principle by June 1, 2011. If acceptable terms of a final transfer agreement are not reached by October 1, 2011, the Parties may Meet and Confer in accordance with Section 8.7. Interior and PacifiCorp shall use their best efforts to complete a final Keno transfer agreement by March 31, 2012. If the Secretary makes an Affirmative Determination, the Secretary shall then accept transfer of title to the Keno facility when the DRE provides Notice to the Parties and FERC pursuant to Section 7.4.1 that J.C. Boyle Facility Removal is ready to commence.

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

between Interior and PacifiCorp prior to transfer. Costs associated with any improvements necessary to meet Department of Interior's Directives and Standards criteria for dam safety shall be funded by other non-PacifiCorp sources.

7.5.3 PacifiCorp Operations Prior to Transfer

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

7.5.4 Operations After Transfer

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

7.5.5 Landowner Agreements

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

7.6 Dispositions of PacifiCorp Interests in Lands and other Rights

7.6.1 Lands

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

PacifiCorp is the fee owner of approximately 8,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California that is associated with the Klamath Hydroelectric Project and/or included within the FERC project boundary. This property is more particularly described on Page 3 of the PacifiCorp Land Maps, Exhibit 3, and referenced as Parcel B. It is the intent of the Parties that Parcel B property be disposed in accordance with Section 7.6.4, except for the Keno Development which shall be disposed in accordance with

Section 7.5. In addition to Exhibit 3, PacifiCorp owns significant electric transmission and distribution facilities which will remain under its ownership and subject to applicable taxes.

7.6.2 Potential Non-Project Land Exchanges

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

7.6.3 BLM Easements and Rights of Way

The Parties agree that prior to Secretarial Determination and Facilities Removal, the FERC license for Project No. 2082 shall control the ingress and egress to the Facilities within the FERC project boundary. Access by PacifiCorp outside of the project boundary to BLM-administered lands may require a separate Right Of Way agreement.

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

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

7.6.4 PacifiCorp Klamath Hydroelectric Project Lands

A. It is the intent of the Parties that ownership of PacifiCorp lands associated with the Klamath Hydroelectric Project and/or included within the FERC Project boundary, identified as Parcel B in Exhibit 3, shall be transferred to the State of Oregon or the State of California, as applicable, or to a designated third party transferee, before Facilities Removal is commenced. It is also the intent of the Parties that transferred lands shall thereafter be managed for public interest purposes such as fish and wildlife habitat restoration and enhancement, public education, and public recreational access.

B. Each State shall undertake inspection and preliminary due diligence regarding the nature and condition of Parcel B lands located within its state boundaries. PacifiCorp shall provide each State all cooperation and access to the lands and pertinent records necessary to the inspection and due diligence. On or before January 31, 2012, each State and PacifiCorp shall identify and provide to the Parties, for each specific property in Parcel B: (i) the proposed transferee for the property; and (ii) the proposed terms of transfer for the property. Each State and PacifiCorp shall consult with the Parties and other stakeholders before identifying the proposed transfer of a specific Parcel B property. The States and PacifiCorp may coordinate this evaluation and identification with the Secretary's development of a Detailed Plan under Section 3.3.2. Following such evaluation, the State of Oregon and the State of California may, each in its sole and absolute discretion, elect not to accept the transfer of all or any portion of Parcel B lands; provided, if a State, PacifiCorp, or Interior believes that the proposed transfer for a property (or lack thereof) will not achieve the intent set forth in Section 7.6.4.A, those Parties shall Meet and Confer in accordance with Section 8.7.

C. Without predetermining the final terms of transfer for a specific property, proposed terms of transfer may include but are not limited to: (i) final property inspection; (ii) specification of structures and improvements to remain on the property after Decommissioning and Facilities Removal; (iii) liability protection for the State, or designated third party transferee, and the DRE, for any harm arising from post-transfer Decommissioning or power operations at the property; (iv) liability protection for the State, or designated third party transferee, for any harm arising from post-transfer Facilities Removal by the DRE at the property; (v) easements or other property interests necessary for access to and continued operation of PacifiCorp transmission and distribution system assets that will remain on the property; and (vi) notice or acknowledgement of the State's claim of ownership to beds and banks of the Klamath River. The DRE shall be a party to the transfer document as necessary and appropriate. The consideration required for transfer of a property to a State or third party transferee under this Section shall be limited to the liability protections and other benefits conferred upon PacifiCorp under this Settlement. Transfer of Parcel B lands shall be subject to applicable regulatory approvals and the reservations set forth in Section 1.6.

D. PacifiCorp shall convey Parcel B lands to the State, or designated third party transferee, and the DRE, after the DRE provides Notice

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

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

7.6.5 PacifiCorp Water Rights

A. PacifiCorp shall assign its revised hydroelectric water rights to the OWRD for conversion to an instream water right pursuant to ORS 543A.305, and OWRD shall take actions to effect such conversion, in accordance with the process and conditions set forth in *Water Right Agreement between PacifiCorp and Oregon* (Exhibit 1). Nothing in this Section 7.6.5 or Exhibit 1 is intended in any way to affect, diminish, impair, or determine any federally-reserved or state law-based water right that the United States or any other person or entity may have in the Klamath River.

B. Except as provided in this paragraph, within 90 days of completion of Facilities Removal at the Copco No. 1, Copco No. 2 and Iron Gate Facilities, respectively, PacifiCorp shall submit a Revocation

Request to the California State Water Resources Control Board for License No. 9457 (Application No. 17527), and shall notify the State Water Resources Control Board of its intent to abandon its hydroelectric appropriative water rights at the Copco No. 1 and Copco No. 2 Facilities, as applicable, as identified in Statement of Water Diversion and Use Nos. 15374, 15375, and 15376. Should ongoing operations of the Iron Gate Hatchery or other hatchery facilities necessitate continued use of water under License No. 9457 (Application No. 17527) beyond 90 days after completion of Facilities Removal, PacifiCorp shall consult with the Department of Fish and Game and the State Water Resources Control Board and shall take actions directed by such Department and Board as are necessary to ensure a sufficient water supply to the Iron Gate Hatchery or other hatchery facilities under License No. 9457.

7.6.6 PacifiCorp Hatchery Facilities

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

A. Hatchery Funding

PacifiCorp will fund 100 percent of hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Game in consultation with the National Marine Fisheries Service. This includes funding the Iron Gate Hatchery facility as well as funding of other hatcheries necessary to meet ongoing mitigation objectives following Facilities Removal. Hatchery operations include development and implementation of a Hatchery Genetics Management Plan as well as a 25% constant fractional marking program. Funding will be provided for hatchery operations to meet mitigation requirements and will continue for eight years following the Decommissioning of Iron Gate Dam. PacifiCorp's 8-year funding obligation assumes that dam removal will occur within one year of cessation of power generation at Iron Gate Dam. If Facilities Removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years.

B. Hatchery Production Continuity

PacifiCorp will fund a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options and water reuse technologies that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and increasing production potential at existing or new facilities in the basin as well as development of a test well or groundwater supply well. Based on the study results and with the approval of the California Department of Fish and Game and the National Marine Fisheries Service, PacifiCorp will provide one-time funding to construct and implement the measures identified as necessary to continue to meet current mitigation production objectives for a period of eight years following the Decommissioning of Iron Gate Dam. PacifiCorp's 8-year funding obligation assumes that Facilities Removal will occur within one year of cessation of power generation at Iron Gate Dam. If dam removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years. Production facilities capable of meeting current hatchery mitigation goals must be in place and operational upon removal of Iron Gate Dam. PacifiCorp shall not be responsible for funding hatchery programs, if any, necessary to reintroduce anadromous fish in the Klamath basin.

7.7 Federal Power Act Jurisdiction

The non-federal Parties intend that the Authorizing Legislation shall provide that (i) FERC's jurisdiction over each Facility shall end upon transfer of that Facility to the DRE for Removal pursuant to Section 7.4.2; and (ii) in the event this Settlement terminates before all Facilities have been transferred, the FERC relicense proceeding shall resume as to all remaining Facilities.

8. General Provisions

8.1 Term of Settlement

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

8.2 Effectiveness

This Settlement shall take effect upon execution on February 18, 2010 ("Effective Date"). As provided in Section 2.2, this Settlement shall be executed concurrently with the KBRA.

8.3 Successors and Assigns

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

8.4 Amendment

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

8.5 Notices

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

8.6 Dispute Resolution

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

8.6.1 Cooperation

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

8.6.2 Costs

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

8.6.3 Non-Exclusive Remedy

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

8.6.4 Dispute Resolution Procedures

A. Dispute Initiation Notice

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

B. Informal Meetings

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

C. Mediation

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

D. Dispute Resolution Notice

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

8.7 Meet and Confer

8.7.1 Applicability

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

8.7.2 Meet and Confer Procedures

A. Any Party may initiate the Meet and Confer procedures by sending Notice: (i) describing the event that requires the Parties to confer, and (ii) scheduling a meeting or conference call.

B. The Parties will meet to discuss the problem and identify alternative solutions. The Parties agree to dedicate a reasonable amount of time sufficient to resolve the problem.

C. The Meet and Confer procedures will result in: (i) amendment pursuant to Section 8.4; (ii) termination or other resolution pursuant to the procedures of Section 8.11; or (iii) such other resolution as is appropriate under the applicable section.

8.8 Remedies

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

8.9 Entire Agreement

This Settlement contains the complete and exclusive agreement among all of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, agreements in principle, and other writings among the Parties, including the AIP, prior to the Effective Date of this Settlement, with respect to its subject matter.

8.10 Severability

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

8.11 Termination

8.11.1 Potential Termination Events

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

A. Authorizing Legislation materially inconsistent with Appendix E is enacted, or Authorizing Legislation is not Timely enacted;

B. The Secretarial Determination: (i) does not provide for the Timely removal of all four dams; (ii) is materially inconsistent with the provisions of Sections 3.3.1 and 3.3.2; or (iii) is not made consistent with Section 3.3.4;

C. A State does not provide Concurrence;

D. The Oregon PUC or California PUC do not implement the funding provisions set forth in Sections 4.1 through 4.6;

E. Conditions of any Regulatory Approval of Interim Measures, denial of Regulatory Approval of Interim Measures including the failure Timely to approve ESA incidental take authorization, or results of any litigation related to this Settlement are materially inconsistent with the provisions of Section 6.1 through 6.3 and Appendices C and D;

F. Conditions or denial of any Regulatory Approval of Facilities Removal or the results of any litigation about such removal, are materially inconsistent with the Settlement;

G. The DRE notifies the Parties that it cannot proceed with Facilities Removal because it cannot obtain all permits and contracts necessary for Facilities Removal despite its good faith efforts; or

H. California, Oregon, the Federal Parties, or PacifiCorp is materially adversely affected by another Party's breach of this Settlement.

8.11.2 Definitions for Section 8.11

A. For purposes of this Section, "materially inconsistent" means diverging from the Settlement or part thereof in a manner that: (i) fundamentally changes the economics or liability protection such that a Party no longer receives the benefit of the bargain provided by this Settlement; or (ii) frustrates the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished. Events occurring independent of this Settlement, other than those identified in Section 8.11.1, shall not be construed to create a material inconsistency or materially adverse effect.

B. For purposes of this section, "materially adversely affected" means that a Party no longer receives the benefit of the bargain due to: (i) fundamental changes in the economics or liability protection; or (ii) frustration of the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished.

C. For purposes of this Section, a "result of any litigation" is materially inconsistent with this Settlement or a part thereof if a Party is materially adversely affected by: (i) costs to defend the litigation; or (ii) a final order or judgment.

8.11.3 Cure for Potential Termination Event

A. A Party that believes that a potential termination event specified in Section 8.11.1 has occurred shall provide Notice.

i. The Parties shall use the Meet and Confer Procedures specified in Section 8.7 to consider whether to deem the event to conform to the Settlement, or adopt a mutually agreeable amendment to this Settlement. These procedures shall conclude within 90 days of Notice.

ii. If these procedures do not resolve the potential termination event, the Federal Parties, the States, and PacifiCorp may, within 90 days thereafter, agree to an amendment, or deem the event to conform to the Settlement; otherwise, this Settlement shall terminate. In no event shall any amendment under this subsection provide for Facilities Removal with respect to fewer than four Facilities.

B. If the Federal Parties, the States, and PacifiCorp disagree whether a potential termination event specified in Section 8.11.1 has occurred, these Parties shall follow the Dispute Resolution Procedures in Section 8.6 to attempt to resolve that dispute. If such a Notice of Dispute is filed while the Meet and Confer Procedures referenced in 8.11.3.A are ongoing, those Meet and Confer Procedures are deemed concluded, subject to being recommenced in accordance with the remainder of this Subsection. Upon conclusion of the Dispute Resolution Procedures in Section 8.6, the Federal Parties, the States, and PacifiCorp shall issue a Notice of Dispute Resolution.

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

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

C. A Party may reasonably suspend performance of its otherwise applicable obligations under this Settlement, upon receipt of

Notice and pending a resolution of the potential termination event as provided in Section 8.11.3.A or B.

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

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

8.11.4 Obligations Surviving Termination

A. Upon termination, all documents and communications related to the development, execution, or submittal of this Settlement to any agency, court, or other entity, shall not be used as evidence, admission, or argument in any forum or proceeding for any purpose to the fullest extent allowed by Applicable Law, including 18 C.F.R. § 385.606. This provision does not apply to the results of studies or other technical information developed for use by a Public Agency Party. This provision does not apply to any information that was in the public domain prior to the development of this Settlement or that became part of the public domain at some later time through no unauthorized act or omission by any Party. Notwithstanding the termination of this Settlement, all Parties shall continue to maintain the confidentiality of all settlement communications.

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

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

8.12 No Third Party Beneficiaries

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

8.13 Elected Officials Not to Benefit

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

8.14 No Partnership

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

8.15 Governing Law

8.15.1 Contractual Obligation

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

8.15.2 Regulatory Obligation

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

8.15.3 Reference to Applicable Law

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

8.16 Federal Appropriations

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

8.17 Confidentiality

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

9. Execution of Settlement

9.1 Signatory Authority

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

9.2 Signing in Counterparts

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

9.3 New Parties

Any entity listed on pages 1 through 2 of this Settlement that does not execute this Settlement on the Effective Date will become a Party, subject to Section 2.2, by signing the Settlement within 60 days of the Effective Date, without amendment of this Settlement or other action by existing Parties. After 60 days from the Effective Date, any such entity, or any other entity, may become a Party, subject to Section 2.2 through an amendment of this Settlement in accordance with Section 8.4.

IN WITNESS THEREOF,

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

United States Department of the Interior

Date: 2/18/2010

by: Ken Salazar, Secretary of the Interior

United States Department of Commerce's National Marine Fisheries Service

Date: 2/18/2010

by: DeJane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator

PacifiCorp

Date: 2/18/2010

by: Gregory E. Abel, Chairman and CEO

States

California Natural Resources Agency

Date: 2.18.10

by: Arnold Schwarzenegger, Governor

State of Oregon

Date: 2/18/10

by: Theodore R. Kulongoski, Governor

California Department of Fish and Game

Date: 2-18-10

by: John McCamman, Acting Director

Oregon Department of Environmental Quality

Date: 2/18/10

by: Dick Pedersen, Director

Oregon Department of Fish and Wildlife

Date: 2/18/10

by: Roy Elicker, Director

Oregon Water Resources Department

Date: 2/18/10

by: Phillip C. Ward, Director

Tribes

Karuk Tribe

Date: 02/18/10

by: Arch Super, Chairman

Klamath Tribes

Date: 2-18-10

by: Joseph Kirk, Chairman

Yurok Tribe

Date: 2-18-10

by: Thomas O'Rourke, Chairperson

Counties

Del Norte, California

Date: _____

by: Gerry Hemmingsen, Chairman, Board of Supervisors

Humboldt County, California

Date: 2/16/10

by: Jill K. Duffy, Fifth District Supervisor

Klamath County, Oregon

Date: 2/16/2010

by: John Elliott, Commissioner

Siskiyou County, California

_____ Date: _____

by: Chairman, Board of Supervisors

Irrigators

Ady District Improvement Company

Robert Flowers Date: 4-15-10

by: Robert Flowers, President

Collins Products, LLC

_____ Date: _____

by: Eric Schooler, President and Chief Executive Officer

Enterprise Irrigation District

Tracy L. Ronningen Date: 2/18/10

by: TRACY L. RONNINGEN, PRESIDENT

Don Johnston & Son

_____ Date: _____

by: Donald Scott Johnston, Owner

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

Darrel E Pierce Date: FEB. 18, 2010

by: Darrel E. Pierce

Siskiyou County, California

_____ Date: _____

by: Chairman, Board of Supervisors

Irrigators

Ady District Improvement Company

_____ Date: _____

by: Robert Flowers, President

Collins Products, LLC

Eric Schooler Date: 2/19/2010

by: Eric Schooler, President and Chief Executive Officer

Enterprise Irrigation District

_____ Date: _____

by: Michael Beeson, President

Don Johnston & Son

_____ Date: _____

by: Donald Scott Johnston, Owner

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

_____ Date: _____

by: Darrel E. Pierce

Siskiyou County, California

_____ Date: _____

by: Chairman, Board of Supervisors

Irrigators

Ady District Improvement Company

_____ Date: _____

by: Robert Flowers, President

Collins Products, LLC

_____ Date: _____

by: Eric Schooler, President and Chief Executive Officer

Enterprise Irrigation District

_____ Date: _____

by: Michael Beeson, President

Don Johnston & Son

Donald Scott Johnston Date: 2-25-10

by: Donald Scott Johnston, Owner

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

_____ Date: _____

by: Darrel E. Pierce

Klamath Irrigation District

Date: 2/18/2010

by: David Cacka, President

Klamath Drainage District

Date: 2/18/2010

by: Luther Horsley, President

Klamath Basin Improvement District

Date: 2-18-2010

by: Warren Haught, Chairman

Klamath Water Users Association

Date: 2/18/2010

by: Luther Horsley, President

Klamath Water and Power Agency

Date: 2/18/2010

by: Edward T. Bair, Chairman of the Board

Bradley S. Luscombe

Date: 2-18-10

by: Bradley S. Luscombe

Malin Irrigation District

_____ Date: 2/16/2010

by: Harold Hartman, President

Midland District Improvement Company

_____ Date: _____

by: Frank Anderson, President

Pine Grove Irrigation District

_____ Date: _____

by: Doug McCabe, President

Pioneer District Improvement Company

_____ Date: _____

by: Lyle Logan, President

Plevna District Improvement Company

_____ Date: _____

by: Steve Metz, President

Poe Valley Improvement District

_____ Date: _____

by: William Kennedy, President

Malin Irrigation District

_____ Date: _____

by: Harold Hartman, President

Midland District Improvement Company

Frank Anderson Date: April 10, 2010

by: Frank Anderson, President

Pine Grove Irrigation District

_____ Date: _____

by: Doug McCabe, President

Pioneer District Improvement Company

Lyle C. Logan Date: Feb 18-10

by: Lyle Logan, President

Plevna District Improvement Company

_____ Date: _____

by: Steve Metz, President

Poe Valley Improvement District

_____ Date: _____

by: William Kennedy, President

Malin Irrigation District

_____ Date: _____

by: Harold Hartman, President

Midland District Improvement Company

_____ Date: _____

by: Frank Anderson, President

Pine Grove Irrigation District

_____ Date: _____

by: Doug McCabe, President

Pioneer District Improvement Company

_____ Date: _____

by: Lyle Logan, President

Plevna District Improvement Company

_____ Date: 2/19/2010

by: Steve Metz, President

Poe Valley Improvement District

_____ Date: _____

by: William Kennedy, President

Reames Golf and Country Club

L H Woodward

Date: 2-18-10

by: L.H. Woodward, President

Shasta View Irrigation District

Claude Hagerty

Date: 4/15/10

by: Claude Hagerty, President

Sunnyside Irrigation District

Gary L Pa

Date: 2-18-10

~~by: Charles Kerr, President~~

Tulelake Irrigation District

John Crawford

Date: 2/18/10

by: John Crawford, President

Upper Klamath Water Users Association

Date:

by: Karl Scronce, President

Van Brimmer Ditch Company

Gary D. Orem

Date: 2/23/10

by: Gary Orem, President

Reames Golf and Country Club

_____ Date: _____

by: L.H. Woodward, President

Shasta View Irrigation District

_____ Date: _____

by: Claude Hagerty, President

Sunnyside Irrigation District

_____ Date: _____

by: Charles Kerr, President

Tulelake Irrigation District

John Crawford Date: _____

by: John Crawford, President

Upper Klamath Water Users Association

Date: 2-18-10

by: Karl Scronce, President

Van Brimmer Ditch Company

_____ Date: _____

by: Gary Orem, President

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

Jane Walthall Date: 2-24-10

by: Jane Walthall

Westside Improvement District #4

_____ Date: _____

by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

_____ Date: _____

by: R. David Bolls, III

Other Organizations

American Rivers

_____ Date: _____

by: Rebecca Wodder, President

California Trout

_____ Date: _____

by: George Shillinger, Executive Director

Institute for Fisheries Resources

_____ Date: _____

by: Glen Spain, Northwest Regional Director

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

_____ Date: _____

by: Jane Walthall

Westside Improvement Distrpict #4

Steven L Kandra Date: 2-18-2010

by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

_____ Date: _____

by: R. David Bolls, III

Other Organizations

American Rivers

Rebecca R. Wodder Date: 2-18-2010

by: Rebecca Wodder, President

California Trout

G L Shillinger Date: 2-18-2010

by: George Shillinger, Executive Director

Institute for Fisheries Resources

_____ Date: 2/18/10

by: Glen Spain, Northwest Regional Director

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

_____ Date: _____

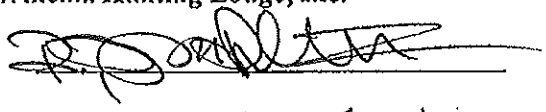
by: Jane Walthall

Westside Improvement District #4

_____ Date: _____

by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

 Date: 04/06/2010

by: R. David Bolls, III, Secretary

Other Organizations

American Rivers

_____ Date: _____

by: Rebecca Wodder, President

California Trout

_____ Date: _____

by: George Shillinger, Executive Director

Institute for Fisheries Resources

_____ Date: _____

by: Glen Spain, Northwest Regional Director

Northern California Council, Federation of Fly Fishers

C. Mark Rockwell, Sr. Date: 2/18/10

by: Mark Rockwell, Vice-President, Conservation

Pacific Coast Federation of Fishermen's Associations

Date: 2/18/10

by: Glen Spain, Northwest Regional Director

Salmon River Restoration Council

Peter Brucker Date: 2/18/10

by: Petey Brucker, President

Trout Unlimited

Chris Wood Date: 2/18/10

by: Chris Wood, Chief Executive Officer

Individual Non-Party Signatory

Arthur G. Baggett, Jr.[1]

Arthur G. Baggett, Jr. Date: 2/18/2010

by: Arthur G. Baggett, Jr.

[1] Mr. Baggett is signing this Agreement as a recommendation to the California State Water Resources Control Board, and not as a Party.