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VIA ELECTRONIC FILING

January 13, 2021

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

**Re: Lower Klamath Project, FERC Project No. 14803-____;
Joint Application for Approval of License Transfer and Request
for Expedited Review and Other Relief**

Dear Secretary Bose:

On November 16, 2020, the States of California and Oregon (collectively, States), the Karuk Tribe, the Yurok Tribe, PacifiCorp and the Klamath River Renewal Corporation (Renewal Corporation) executed a Memorandum of Agreement (MOA), which addresses the surrender of the Federal Energy Regulatory Commission (Commission or FERC) license for the Lower Klamath Project, FERC Project No. 14803, and removal of its associated J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate dams in order to achieve a free-flowing Klamath River with volitional fish passage.

As provided by the MOA, the Renewal Corporation and PacifiCorp, on November 17, 2020, filed with the Commission the Amended Application for Surrender of License for Major Project and Removal of Project Works for the Lower Klamath Project (Amended Surrender Application). As explained in the transmittal letter for the Amended Surrender Application, to implement the license surrender and dam removal effort, the MOA contemplates, among other things, that the Renewal Corporation, PacifiCorp, and the States (collectively, Applicants) will prepare a license transfer application requesting to remove PacifiCorp from the license for the Lower Klamath Project and add the States and Renewal Corporation as co-licensees for the purposes of surrender of the Lower Klamath license.

In accordance with the MOA and as contemplated in the Amended Surrender Application, the Applicants hereby file the attached Joint Application for Approval of License Transfer and Request for Expedited Review and Other Relief (Transfer Application) the Lower Klamath Project. As detailed in the attached Transfer Application, Applicants seek the following expeditious actions from the Commission:

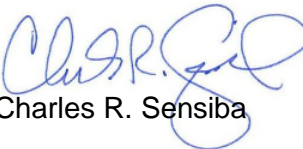
1. Approve a transfer of the Lower Klamath Project license from PacifiCorp to the Renewal Corporation and the States as co-licensees, thereby removing PacifiCorp from the license;

2. Establish in its order approving the attached Transfer Application an extended period of time, until 30 days following the Commission's order approving the Amended Surrender Application, for the States and the Renewal Corporation to accept license transfer and co-licensee status, and that PacifiCorp, as sole licensee until that date, will continue to be responsible for annual charges until the Renewal Corporation and States become co-licensees;
3. Establish the effective date of the Commission's March 15, 2018, *Order Amending License and Deferring Consideration of Transfer Application*¹ as the same date as the Commission approves the attached Transfer Application; and
4. Establish a requirement for PacifiCorp to file revised Exhibits K and L for the Klamath Hydroelectric Project No. 2082 and for the Applicants to file revised Exhibits K and L for the Lower Klamath Project No. 14803. Applicants propose to file these revised exhibits within 90 days of the Commission's order approving the attached Transfer Application.

In addition to these requests for Commission action, the attached Transfer Application notifies the Commission that PacifiCorp and the Renewal Corporation will not be accepting co-licensee status for the Lower Klamath Project under the July 16, 2020, *Order Approving Partial Transfer of License, Lifting Stay of Order Amending License, and Denying Motion for Clarification and Motion to Dismiss*.²

Should the Commission have any questions or require any further information, please direct any such requests to counsel as identified in the attached Transfer Application.

Respectfully submitted,



Charles R. Sensiba

Counsel to PacifiCorp

Attachment

cc: Official Service List for Project No. 14803

¹ *PacifiCorp*, 162 FERC ¶ 61,236 (2018).

² *PacifiCorp*, 172 FERC ¶ 61,062 (2020).

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

PacifiCorp)	
)	
Klamath River Renewal Corporation)	Project No. 14803-____
)	
State of California)	
)	
State of Oregon)	

**JOINT APPLICATION FOR APPROVAL OF LICENSE TRANSFER
AND REQUEST FOR EXPEDITED REVIEW AND OTHER RELIEF**

In accordance with Section 8 of the Federal Power Act (FPA)¹ and Part 9 of Federal Energy Regulatory Commission (FERC or Commission) regulations,² PacifiCorp, licensee for the Lower Klamath Project No. 14803, jointly with the Klamath River Renewal Corporation (Renewal Corporation), the State of California, and the State of Oregon (collectively, the Applicants), submit this Application for License Transfer (Application). Applicants respectfully request the Commission to expeditiously approve this Application. Expeditious approval will achieve a critical milestone in realizing the long-overdue benefits that dam removal is expected to accomplish for the Klamath Basin.

This Application builds upon the Commission’s July 16, 2020, *Order Approving Partial Transfer of License, Lifting Stay of Order Amending License, and Denying Motion for Clarification and Motion to Dismiss* (July 2020 Order), in which the Commission, *inter alia*, determined that the Renewal Corporation has the capacity to hold the license for the Lower Klamath Project and authorized a partial transfer of the Lower

¹ 16 U.S.C. § 801.

² 18 C.F.R. § 9.1 *et seq.*

Klamath Project to PacifiCorp and the Renewal Corporation as co-licensees.³ There, the Commission—after analyzing an extensive administrative record developed over several years regarding the Renewal Corporation’s legal, technical, and financial capacity to accept the Lower Klamath Project license and decommission the Project—determined that it is “generally satisfied that the Renewal Corporation has the capacity to carry out its proposed decommissioning.”⁴ Because circumstances have not changed and in reliance on the precedent set by the July 2020 Order, this Application adopts the Commission’s findings and conclusions regarding the Renewal Corporation’s capacity to carry out its proposed decommissioning and its qualifications to hold the license of the Lower Klamath Project as a co-licensee.⁵

In addition, this Application presents an alternative to addressing the “unique public interest concerns”⁶ cited in the July 2020 Order that required PacifiCorp to remain on the license as the Renewal Corporation’s co-licensee. Instead of PacifiCorp, this Application proposes that the States of California and Oregon (the States) become co-licensees with the Renewal Corporation to implement the Commission’s license surrender order. In the July 2020 Order, the Commission recognized that its decision to require PacifiCorp to continue as co-licensee “represents a significant change from what the parties envisioned” in the Amended Klamath Hydroelectric Settlement Agreement (2016) (Amended KHSA). It noted, however, that “it is not necessarily the case that the

³ *PacifiCorp*, 172 FERC ¶ 61,062 (2020).

⁴ *Id.* at P 71.

⁵ The July 2020 Order is a final and non-appealable order of the Commission and is dispositive of the Renewal Corporation’s qualifications to hold the license of the Lower Klamath Project as a co-licensee. *See* 16 U.S.C. § 825l.

⁶ *PacifiCorp*, 172 FERC ¶ 61,062, at P 67 (2020).

final results will change from those the parties anticipated.”⁷ In fact, the Commission identified several ways, including contractual arrangements, in which parties may protect their interests under the Amended KHSA while maintaining Commission policies.

Guided by these principles, the Applicants, together with the Karuk Tribe and Yurok Tribe, have worked diligently and in good faith since issuance of the July 2020 Order to develop a license transfer arrangement that responds to the Commission’s public interest considerations and maintains the Amended KHSA’s foundational license transfer structure. This effort produced a Memorandum of Agreement (MOA) among the Applicants, the Karuk Tribe, and Yurok Tribe allowing for the continued implementation of the Amended KHSA,⁸ for the “removal of the Lower Klamath Project dams in order to achieve a free-flowing Klamath River with volitional fish passage.”⁹ Among other things, detailed in this Application below, Applicants are no longer seeking to transfer the Lower Klamath Project license solely to the Renewal Corporation. Instead, both States have agreed to serve as co-licensees with the Renewal Corporation to implement the Commission’s license surrender order¹⁰—fully addressing the Commission’s “unique public interest concerns” and fully resolving the Commission’s concern of any possibility that the dam removal effort might unintentionally “fall to federal or state authorities.”¹¹

⁷ *Id.* at P 46.

⁸ The MOA is appended hereto as Exhibit 7 for information purposes.

⁹ MOA ¶ A.

¹⁰ *Id.* ¶ 3.a.

¹¹ *PacifiCorp*, 172 FERC ¶ 61,062, at P 67 (2020).

In response to the Commission’s suggestion that parties may protect their interests through contract,¹² the States and PacifiCorp have now agreed to \$45 million in additional contingency funding for purposes of “addressing the unlikely event that costs for Facilities Removal exceed the [Amended KHSA] State Cost Cap.”¹³ Further, the MOA specifies that “PacifiCorp and the States will each contribute \$15 million for this additional contingency fund and share any cost overruns that may occur over this amount equally.”¹⁴ Added to the \$450 million available under the Amended KHSA, these contingency funding commitments ensure that funding is available to remove the dams, complete all restoration work, and comply with all permit terms and conditions including the Commission’s surrender order.

In addition, in response to the Commission’s concerns as to technical experience after license transfer is approved, the Commission may continue to rely on PacifiCorp’s expertise and experience in “operating the facilities associated with the Lower Klamath Project for the last nearly 32 years.”¹⁵ Specifically, once the license transfers to the States and the Renewal Corporation, PacifiCorp—although a non-licensee at that point—will continue to maintain project operations on a contractual basis until electric operations cease and the Lower Klamath Project powerhouses are physically disconnected from the transmission grid, pursuant to the 2017 Agreement for the Operation and Maintenance of the Lower Klamath Project Between Klamath River

¹² “PacifiCorp and the Renewal Corporation may elect to amend their arrangement in order for the Renewal Corporation to indemnify PacifiCorp for any expenses it bears as result of it being a co-licensee.” *PacifiCorp*, 172 FERC ¶ 61,062, at P 46 (2020).

¹³ MOA ¶ 7.

¹⁴ *Id.*

¹⁵ *PacifiCorp*, 172 FERC ¶ 61,062, at P 45 (2020).

Renewal Corporation and PacifiCorp (O&M Agreement).¹⁶ Moreover, the States provide additional complimentary resources in the form of departments, agencies, and bureaus with the technical, scientific and regulatory experience related to large public infrastructure projects.

Having addressed all the Commission's concerns identified in the July 2020 Order by adding the two States as co-licensees for the Lower Klamath Project, the Applicants respectfully submit that this Application unquestionably meets Commission requirements for license transfer. All three transferees are eminently qualified to be co-licensees.¹⁷

And the public interest consideration supporting this Application is plainly manifest,¹⁸ as its approval will achieve a critical milestone in attaining the long-overdue benefits that dam removal is expected to accomplish. Indeed, the Applicants "recognize and acknowledge the importance of the Klamath River to the livelihood and culture of the Klamath Basin Tribes whom have depended on these resources since time immemorial."¹⁹ Given the compelling case presented herein supported by an extensive record already before the Commission,²⁰ Applicants request that the Commission grant this Application expeditiously, without delay.

¹⁶ The O&M Agreement is appended hereto as Exhibit 6 for information purposes.

¹⁷ 18 C.F.R. § 9.3.

¹⁸ *Kootenai Tribes Energy Keepers, Inc.*, 153 FERC ¶ 61,217 (2015); *Gallia Hydro Partners*, 110 FERC ¶ 61,237 (2005); *Wisconsin v. FERC*, 104 F.3d 462 (D.C. Cir. 1997).

¹⁹ MOA ¶ A.

²⁰ In particular, the Commission's record contains thousands of pages filed in FERC Docket Nos. P-2082-062 and P-14803, including the following major filings demonstrating the Renewal Corporation's capacity to be licensee for the Lower Klamath Project, all of which are hereby incorporated by reference:

1. March 1, 2017: Klamath River Renewal Corporation Informational Filing in Support of Joint Application for License Transfer and License Amendment (Accession Nos. 20170301-5273 & 20170301-5327).

(continued on next page)

I. EXECUTIVE SUMMARY

As presented in the proposed Ordering Paragraphs appearing in Exhibit 1, Applicants in this Application request that the Commission:

1. Expeditiously approve a transfer of the Lower Klamath Project license from PacifiCorp to the Renewal Corporation and the States as co-licensees, thereby removing PacifiCorp from the license;²¹
2. Establish in its order approving this Application an extended period of time, until 30 days following the Commission's order approving the Amended License Surrender Application (ALSA),²² for the States and the Renewal Corporation to accept license transfer and co-licensee status, and

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2. June 23, 2017: Response to April 24, 2017 Additional Information Request (Accession No. 20170623-5103).
 3. December 1, 2017: Application for License Surrender, Non-Redacted Detailed Plan (Accession Nos. 20171201-5385 & 20171201-5386).
 4. December 4, 2017: Response to October 5, 2017 Additional Information Request (Accession No. 20171204-5131).
 5. June 28, 2018: Response to Information Request Including Submittal of the Definite Plan (Accession Nos. 20180629-5017, 20180629-5018 & 20180629-5019).
 6. December 12, 2018: Additional Information Regarding Report of Independent Board of Consultants Meeting No. 1 (Accession Nos. 20181212-5147, 20181212-5229, 20181212-5235, 20181212-5270, 20181212-5304, 20181212-5305, 20181212-5306, 20181212-5307, 20181212-5315, 20181212-5316, 20181212-5322, 20181212-5323, 20181212-5327, 20181212-5328, 20181212-5330, 20181212-5331, 20181213-5006, 20181213-5007, 20181213-5008, 20181213-5009, 20181213-5010, 20181213-5011, 20181213-5012, 20181213-5013, 20181213-5014, 20181213-5015, 20181213-5016, 20181213-5017, 20181213-5039, 20181213-5040, 20181213-5041, 20181213-5042, 20181213-5049, 20181213-5050, 20181213-5055, 20181213-5056 & 20181213-5085).
 7. July 29, 2019: Response to Independent Board of Consultants' Recommendations (Accession Nos. 20190729-5039, 20190729-5052, 20190729-5074, 20190729-5075 & 20190729-5082).
 8. February 28, 2020: Supplemental Response to Independent Board of Consultants' Recommendations (Accession Nos. 20200228-5325 & 20200228-5326).
 9. June 10, 2020: Supplemental Response to Recommendation No. 1; Lower Klamath Project Independent Board of Consultants Meeting No. 2 Letter Report (March 18, 2020) (Accession No. 20200610-5029).

²¹ See Exhibit 1, Proposed Ordering Paragraph (A).

²² Amended Application for Surrender of License for Major Project and Removal of Project Works and Request for Expedited Review, Project Nos. 2082-063 & 14803-001 (filed Nov. 17, 2020) [hereinafter, ALSA].

that PacifiCorp, as sole licensee until that date, will continue to be responsible for annual charges until the Renewal Corporation and States become co-licensees;²³

3. Establish the effective date of its March 15, 2018, *Order Amending License and Deferring Consideration of Transfer Application* (March 2018 Order)²⁴ as the same date as the Commission approves this Application;²⁵ and
4. Establish a requirement for PacifiCorp to file revised Exhibits K and L for the Klamath Hydroelectric Project No. 2082 and for the Applicants to file revised Exhibits K and L for the Lower Klamath Project No. 14803. Applicants propose to file these revised exhibits within 90 days of the Commission's order approving this Application.²⁶

In addition to these requests for Commission action, a purpose of this Application is to notify the Commission that PacifiCorp and the Renewal Corporation will not be accepting co-licensee status for the Lower Klamath Project under the July 2020 Order.²⁷

²³ See Exhibit 1, Proposed Ordering Paragraphs (B) and (C).

²⁴ *PacifiCorp*, 162 FERC ¶ 61,236 (2018).

²⁵ See Exhibit 1, Proposed Ordering Paragraph (D).

²⁶ See Exhibit 1, Proposed Ordering Paragraph (E).

²⁷ See MOA ¶ 3.b. Specifically, the Commission approved license transfer to the Renewal Corporation “contingent on PacifiCorp remaining as co-licensee.” *PacifiCorp*, 172 FERC ¶ 61,062, at P 1 (2020); see also *id.* (Ordering Paragraph (C)). As agreed to in the MOA, PacifiCorp and the Renewal Corporation will not be submitting to the Commission the documentation required to effectuate the partial license transfer authorized in the July 16 Order. However, and as noted above, this Application relies on and adopts the findings and conclusions of the July Order regarding the Renewal Corporation's capacity to carry out its proposed decommissioning and its qualifications to hold the license of the Lower Klamath Project as a co-licensee.

II. BACKGROUND

In its July 2020 Order, the Commission authorized a partial transfer of the license for the Lower Klamath Project to PacifiCorp and the Renewal Corporation as co-licensees. As mentioned above, this Application is building on the July 2020 Order and, as such, supplements the extensive record already developed before the Commission,²⁸ including the September 23, 2016 Joint Application for Approval of License Amendment and License Transfer (2016 Application), with the goal of facilitating the Commission's expedited consideration of this Application. This Application is yet another product of considerable discussions among stakeholders and exemplifies the many years of prior negotiations and agreements which are discussed more fully below and which produced paths forward for removal of the four lowermost dams on the Klamath River in California and Oregon in a manner that achieves a free-flowing Klamath River with volitional fish passage.²⁹

As mentioned in the 2016 Application, the original license for the Klamath Hydroelectric Project No. 2082, including the four facilities now comprising the Lower Klamath Project No. 14803, was issued in 1954.³⁰ Before the original license expired, PacifiCorp, on February 25, 2004, filed its application for a new license to continue to operate and maintain the Klamath Hydroelectric Project No. 2082. The original license expired in 2006, and since that time PacifiCorp has continued operations and maintenance under an annual license.³¹ In parallel with the FERC relicensing process,

²⁸ See *supra* note 20.

²⁹ KHSa § 1.1.

³⁰ *California Oregon Power Co.*, 13 F.P.C. 1 (1954).

³¹ See 16 U.S.C. § 808(a)(1); Notice of Authorization for Continued Project Operation, Project No. 2082-000 (issued Mar. 9, 2006).

PacifiCorp engaged in relicensing settlement talks with a wide range of parties to address the difficult resource management issues raised in the relicensing process. A summary of these efforts, along with a review of Commission action in response to these efforts, follows.

A. The KHSA

After years of settlement negotiations, on February 18, 2010, the KHSA was executed by 48 parties, including PacifiCorp; the States; U.S. Department of the Interior (Interior); the U.S. Department of Commerce's National Marine Fisheries Services (NMFS); the Karuk Tribe; the Klamath Tribes; the Yurok Tribe; and irrigation, conservation, and fishing groups. PacifiCorp filed a copy of the KHSA with the Commission for informational purposes on March 5, 2010.³²

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

B. The Amended KHSA

Congress did not pass the necessary implementing legislation to enact the KHSA within the requisite time period, and consequently, in January 2016, the KHSA's dispute resolution procedures were triggered. Following a series of meetings, the States, Interior,

³² Settlement Agreement for Removal of Klamath River Dams, Project No. 2082-000 (filed Mar. 5, 2010).

NMFS, and PacifiCorp proposed limited amendments to the KHSA.³³ The Amended KHSA was executed on April 6, 2016, by PacifiCorp, the States, Interior, NMFS, Yurok Tribe, and Karuk Tribe. Other signatories to the Amended KHSA are the Renewal Corporation; Humboldt County, California; American Rivers; California Trout; Institute for Fisheries Resources; Northern California Council, Federation of Fly Fishers; Pacific Coast Federation of Fishermen's Association; Trout Unlimited; Upper Klamath Water Users Association; Salmon River Restoration Council; and Sustainable Northwest.³⁴

C. 2016 License Amendment and Transfer Application

The Amended KHSA sets out a process by which PacifiCorp's J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments would be transferred from PacifiCorp for ultimate removal under the Commission's license transfer and surrender procedures. The Amended KHSA anticipates a full transfer of the license for the Lower Klamath Project from PacifiCorp to the Renewal Corporation, which was formed to be the successor licensee and dam removal entity, such that the Renewal Corporation would become the sole licensee for the Project.³⁵ In accordance with the Amended KHSA, the 2016 Application was submitted on September 23, 2016. In the 2016 Application, PacifiCorp and the Renewal Corporation requested that the Commission:

1. Approve an amendment to the Klamath Hydroelectric Project No. 2082

³³ Under the KHSA's dispute resolution provisions, the States, Interior, NMFS, and PacifiCorp are authorized to unilaterally amend the agreement's terms. *See* KHSA § 8.11.

³⁴ The Amended KHSA was filed with the Commission as Attachment A to the Joint Application for Approval of License Amendment and License Transfer, Project No. 2082-062 (filed Sep. 23, 2016).

³⁵ *See* Amended KHSA § 7.1.7.A; *see also PacifiCorp*, 162 FERC ¶ 61,236, at P 14 (2018) (stating that "the Amended Settlement Agreement provides that PacifiCorp will not be a co-applicant or co-licensee for the Renewal Corporation's surrender application (although . . . it allows for that possibility) and that the Renewal Corporation alone will remove the dams").

license that would move the four lowermost dams on the Klamath River into a separate license, designated as the Lower Klamath Project No.

14803; and

2. Transfer the license for the Lower Klamath Project from PacifiCorp to the Renewal Corporation.

Consistent with the Amended KHSAs' terms, the Renewal Corporation also filed an Application for Surrender of License for Major Project and Removal of Project Works on September 23, 2016—the same day PacifiCorp and the Renewal Corporation filed the 2016 Application.

D. FERC's March 2018 Order

In its March 2018 Order, the Commission amended the license for the Klamath Hydroelectric Project No. 2082 by removing the four lowermost dams on the Klamath River (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) from the license and simultaneously issuing a license to PacifiCorp for the Lower Klamath Project No. 14803, which consists of these four dams.³⁶ The Commission later stayed the March 2018 Order, pending its decision on the license transfer proposed in the 2016 Application.³⁷

Although approving the requested license amendment, the Commission in its March 2018 Order deferred action on the request for transfer, stating that “a transfer may be approved on a showing that the transferee is qualified to hold the license and operate the project, and that a transfer is in the public interest.”³⁸ The Commission indicated that

³⁶ *PacifiCorp*, 162 FERC ¶ 61,236 (2018) (Ordering Paragraphs (G) through (J)).

³⁷ *PacifiCorp*, 163 FERC ¶ 61,208 (2018).

³⁸ *PacifiCorp*, 162 FERC ¶ 61,236, at P 49 (2018).

additional information regarding the Renewal Corporation’s qualifications was needed before it could decide on the license transfer.³⁹

E. Establishing the Renewal Corporation’s Capacity

Following the filing of the 2016 Application, and particularly after the Commission’s March 2018 Order, the Renewal Corporation developed and provided extensive information regarding its legal, technical, and financial capacity to accept the new license and to decommission and remove the facilities—including responses to the Commission’s requests for additional information in its March 2018 Order.⁴⁰ Details about the Renewal Corporation’s capacity is extensively documented in the Commission’s record for the 2016 Application. That detailed record, which formed the basis for the Commission’s July 2020 determination that the Renewal Corporation has the capacity to hold the license for the Lower Klamath Project, is incorporated herein by reference.⁴¹

F. FERC’s July 2020 Order

On July 16, 2020, the Commission approved a partial transfer of the Lower Klamath Project license. The Commission in its July 2020 Order stated that it “applied more than usual scrutiny to this transfer application, as evidenced by the extensive review the transfer application has undergone.”⁴² The Commission acknowledged that the Board of Consultants “found the Renewal Corporation’s financing, insurance, and contingencies

³⁹ *Id.* at Appendix.

⁴⁰ Responses to the Commission’s additional information requests are identified, *supra* note 20.

⁴¹ *See id.*

⁴² *PacifiCorp*, 172 FERC ¶ 61,062, at P 71 (2020).

to be appropriate for what it proposes to do.”⁴³ Accordingly, the Commission determined that it was “generally satisfied that the Renewal Corporation has the capacity to carry out its proposed decommissioning”⁴⁴

The July 2020 Order did not approve a complete transfer of the Lower Klamath Project to the Renewal Corporation. Instead, the Commission determined that, as a matter of policy, “the public interest would be best served by approving a partial transfer of the license and requiring PacifiCorp to remain on as co-licensee.”⁴⁵ The Commission observed that by remaining a co-licensee, “PacifiCorp not only can provide legal and technical expertise, as the parties envisioned, but can also provide further assurance that there will be sufficient funding to carry out decommissioning, should we approve the surrender application.”⁴⁶

In reaching this conclusion, the Commission acknowledged that its decision to authorize only a partial transfer of the Lower Klamath Project license “represents a significant change from what the parties envisioned”⁴⁷ The Commission determined that “unique public interest concerns” required that a party with additional resources and experience serve as co-licensee with the Renewal Corporation.⁴⁸

Accordingly, the Commission in the July 2020 Order:

1. Approved a partial license transfer of the Lower Klamath Project that would result in PacifiCorp and the Renewal Corporation as co-licensees,

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at P 46.

⁴⁸ *Id.*

contingent upon: (a) the transfer of properties and project files to the Renewal Corporation; (b) the Renewal Corporation acknowledging its acceptance of the license by signing the acceptance sheet; and (c) PacifiCorp and the Renewal Corporation filing “as co-licensees” certified copies of the instruments of conveyance and the signed acceptance sheet within six months of the July 2020 Order;⁴⁹

2. Lifted the stay of its March 2018 Order, making that order effective as of “the effective date of the partial transfer of the Lower Klamath Project license”;⁵⁰ and
3. Directed PacifiCorp and the Renewal Corporation to file revised Exhibits K and L for the Klamath Hydroelectric Project No. 2082 and Lower Klamath Project No. 14803 within six months of the July 2020 Order.⁵¹

G. The MOA

Informed by the policies and considerations articulated by the Commission in its July 2020 Order for only partially transferring the license for the Lower Klamath Project to the Renewal Corporation, the Applicants, Karuk Tribe, and Yurok Tribe met and agreed to seek a mutually agreeable path to successfully implementing the Amended KHSa while maintaining its bargained-for benefits. These efforts were focused on finding an alternative path forward that addresses the unique public interest concerns expressed in the July 2020 Order in a manner that is better aligned with state public utility commission (PUC) orders and related statutes regarding the settlement.

⁴⁹ *Id.* (Ordering Paragraph (C)).

⁵⁰ *Id.* (Ordering Paragraph (F)).

⁵¹ *Id.* (Ordering Paragraph (G)).

The MOA is the result of these efforts. Signed by Governor Gavin Newsom of California, Governor Kate Brown of Oregon, Yurok Tribal Chairman Joseph L. James, Karuk Tribal Chairman Russell A. Attebery, PacifiCorp’s Chief Executive Officer and Chairman William J. Fehrman, and the Renewal Corporation’s President Jim Root, the MOA is a substantial step in achieving the goals of the Amended KHSA to advance the long-awaited benefits of dam removal consistent with the public interest considerations articulated by the Commission in its July 2020 Order.

The MOA builds upon the Commission’s July 2020 Order in several important ways. First, in response to the Commission’s concern that license transfer to a newly formed entity for purposes of license surrender potentially could result in “the responsibility to decommission a project or restore project lands . . . fall[ing] to federal or state authorities,”⁵² the MOA provides that PacifiCorp will be removed and the States, together with the Renewal Corporation, will affirmatively become co-licensees for the Lower Klamath Project for purposes of license surrender.⁵³ This Application is filed in conformance with this concern.

Second, in response to the Commission’s concern that the Renewal Corporation “might ultimately be faced with matters that it is not equipped to handle,”⁵⁴ the MOA and Amended KHSA provide for PacifiCorp to continue to provide technical support and

⁵² *Id.* at P 67.

⁵³ MOA ¶¶ 1, 3.a. Under the MOA, the States and the Renewal Corporation will accept the license transfer and become co-licensees for the Lower Klamath Project, “unless the States and PacifiCorp, in consultation with Karuk and Yurok Tribes, mutually agree to reject the license surrender order on the basis that the terms of the order, including terms of any federal agency consultation concerning the order, are significantly outside the norm for FERC orders involving major project construction or deconstruction in a manner that creates significant financial risk to the States or PacifiCorp.” *Id.* ¶ 3.c. If this occurs, the KHSA parties will meet and confer as provided under section 8.11 of the KHSA.

⁵⁴ *PacifiCorp*, 172 FERC ¶ 61,062, at P 45 (2020).

advice.⁵⁵ PacifiCorp will continue as sole licensee through the Commission's consideration of the license surrender application. Once the Commission issues the license surrender order, PacifiCorp will be removed and the license will transfer to the States and Renewal Corporation; however, PacifiCorp will continue to maintain project operations on a contractual basis until electric operations cease and the Lower Klamath Project powerhouses are physically disconnected from the transmission grid, pursuant to the 2017 O&M Agreement.

Third, to address the Commission's concern that "[c]osts could escalate beyond the level anticipated,"⁵⁶ and in recognition of the Commission's suggestion that the risk protection measures of the Amended KHSA may be achieved by contract,⁵⁷ the MOA provides for the States and PacifiCorp to create a contingency fund in the amount of \$45 million "to ensure Facilities Removal will occur and be completed."⁵⁸ Although the MOA parties "believe that funding for Facilities Removal beyond the [Amended KHSA] State Cost Cap is unlikely to be needed," this additional funding "provides a clear and definitive commitment of resources that will ensure Facilities Removal is completed."⁵⁹ The States and PacifiCorp "will each contribute \$15 million for this additional contingency fund and share any cost overruns that may occur over this amount equally."⁶⁰

Finally, recognizing that the States will now become co-licensees with the Renewal Corporation as provided in the MOA, and the Commission's reasons stated in the July 2020

⁵⁵ MOA ¶ 2; KHSA § 7.1.7.A.

⁵⁶ *PacifiCorp*, 172 FERC ¶ 61,062, at P 45 (2020).

⁵⁷ *Id.* at P 46.

⁵⁸ MOA ¶ 7.

⁵⁹ *Id.*

⁶⁰ *Id.*

Order for requiring PacifiCorp to remain as a co-licensee have been addressed, PacifiCorp and the Renewal Corporation will not accept co-licensee status under the July 2020 Order.⁶¹

Following execution of the MOA, the Applicants prepared this Application, which: (1) adopts the Commission's findings in its July 2020 Order with respect to the Renewal Corporation's capacity to carry out its proposed decommissioning and its qualifications to hold the license of the Lower Klamath Project as a co-licensee; and (2) implements the MOA reached by the Applicants, Karuk Tribe, and Yurok Tribe.

III. REQUEST FOR TRANSFER OF LICENSE

In accordance with the form set forth in Part 131 of the Commission's Rules and Regulations,⁶² and in support of this Application, Applicants state, verify and subscribe:⁶³

1. PacifiCorp (Transferor), licensee of the Lower Klamath Project No. 14803, located in Klamath County, Oregon and Siskiyou County, California, and
2. The State of California, State of Oregon, and Klamath River Renewal Corporation (collectively, Transferees);
3. Hereby jointly and severally apply for the written approval by the Commission of the transfer of the license for the Lower Klamath Project, as described above, from the Transferor to the Transferees and request that the instrument of such approval by the Commission be made effective as of the date of conveyance of the Lower Klamath Project properties to the

⁶¹ MOA ¶ 3.b.

⁶² 18 C.F.R. § 131.20.

⁶³ Exhibit 2 contains the Subscription and Verification for each Applicant.

Renewal Corporation;⁶⁴ and in support thereof show the Commission as follows:

4. The said Transferees are:
 - a. *State of California*. California is acting by and through the California Natural Resources Agency (CNRA), an agency of the State of California organized and existing pursuant to the laws of the State of California, and through constituent departments, specifically Department of Water Resources (DWR) and Department of Fish and Wildlife (DFW).⁶⁵ Subject to the condition in the MOA, California has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee.⁶⁶ California has the requisite experience and expertise to carry out the functions of a licensee given its considerable experience in large construction projects and infrastructure management as well as regulatory oversight of dam safety/integrity and fish and wildlife habitat. In this regard,

⁶⁴ Consistent with the Amended KHSA, Applicants will be transferring all Project property solely to the Renewal Corporation, and not the States. *See* Amended KHSA § 7.6. For this reason, Proposed Ordering Paragraph (C) provides for property transfer only to the Renewal Corporation. *See* Exhibit 1. Such an approach is wholly consistent with Commission precedent. *See, e.g., Portland Gen. Elec. Co.*, 93 FERC ¶ 61,183, at p. 61,603 (2000) (“[T]he Commission does not involve itself with the co-licensees’ internal arrangements regarding ownership interests and operational responsibilities.”); *Fourth Branch Assocs. (Mechanicville) v. Niagara Mohawk Power Corp.*, 89 FERC ¶ 61,194, at p. 61,596 (1999).

⁶⁵ Cal. Gov’t Code §§ 12802, 12805, 12805.3 (West 2020); Cal. Water Code §§ 120-147.5, 225-347, 6000-6470, 8360-8362, 10004-10013 (West 2020); Cal. Fish & Game Code §§ 700-715, 1000-1227, 1500-1591, 1600-1617, 1650-1657, 1800-1802 (West 2020).

⁶⁶ *See* 16 U.S.C. § 801; 18 C.F.R. Part 9; *Edwards Mfg. Co., Inc.*, 84 FERC ¶ 61,227, at p. 62,095 (1998) (“[T]he proposed transfer is a key element of the settlement. We find that Maine is qualified to hold the license and to operate the project under the license terms. Specifically, subject to the conditions in the settlement, Maine has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee.”) (internal citations omitted).

CNRA's DWR through its Division of Safety of Dams is vested with the regulatory authority over the maintenance, operation, and removal of all jurisdictional dams and reservoirs in the State of California to protect public safety, including the Lower Klamath Project dams in California. Through its Division of Safety of Dams, DWR supervised California's largest dam removal project for the San Clemente Dam on the Carmel River in Monterey County. The San Clemente Dam removal project was completed in 2015. CNRA's DFW complements DWR's role with respect to restoration of habitat associated with removal of the Lower Klamath Project. As California's trustee for fish and wildlife resources, DFW has jurisdiction over the conservation, protection, and management of fish and wildlife, including the power to restore and protect terrestrial and aquatic habitat. California possesses the financial resources to carry out all licensee responsibilities for the Lower Klamath Project. Thus, the Commission should have no concern that the Project may be transferred to a new licensee that lacks the financial resources and technical expertise to carry out its responsibilities under relevant Commission orders. Notably, the State of California, by and through DWR, owns, constructed, maintains, and operates the largest state-owned water project in the United States, the State Water Project (SWP). The SWP has several facilities that are

under license with this Commission: South SWP Project (P-2426), Devil Canyon Project (P-14797), and Oroville Facilities (P-2100). As a result, DWR has substantial technical expertise maintaining and operating dams with hydroelectric facilities.

- b. *State of Oregon.* The State of Oregon is acting by and through its Departments of Fish and Wildlife (ODFW), Environmental Quality (ODEQ), and Water Resources (OWRD), with each agency organized and existing pursuant to the laws of the State of Oregon.⁶⁷ Subject to the condition in the MOA, Oregon has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee.⁶⁸ Oregon has the requisite experience and expertise to carry out the functions of a licensee given its considerable experience in large construction projects and infrastructure management, including oversight of state-regulated dams. Oregon possesses the financial resources to carry out all licensee responsibilities for the Lower Klamath Project. Notably, the State of Oregon, by and through ODFW, also owns and operates the Oak Springs Hatchery Hydroelectric Project (P-14235); thus, ODFW is currently engaged in the business of developing, transmitting, and distributing

⁶⁷ See generally 41 Or. Rev. Stat. Chapters 496, 468, 536.

⁶⁸ See 16 U.S.C. § 801; 18 C.F.R. Part 9; *Edwards Mfg. Co., Inc.*, 84 FERC ¶ 61,227, at p. 62,095 (1998) (“[T]he proposed transfer is a key element of the settlement. We find that Maine is qualified to hold the license and to operate the project under the license terms. Specifically, subject to the conditions in the settlement, Maine has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee.”) (internal citations omitted).

electricity in Oregon where the Lower Klamath Project is partially located.

- c. *Klamath River Renewal Corporation.* As determined by the Commission in the July 2020 Order, the Renewal Corporation has the capacity to carry out its proposed decommissioning and is qualified to hold the license of the Lower Klamath Project as a co-licensee.⁶⁹ The facts and circumstances supporting the Renewal Corporation's qualifications are unchanged since the July 2020 Order. The Renewal Corporation is a public benefit corporation organized under the laws of California in March 2016. Pursuant to section 7.1.8 of the Amended KHSA, the Renewal Corporation was created and exists for the express and exclusive purpose, subject to its becoming co-licensee for the Lower Klamath Project, of conducting removal of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments.

5. The Transferees submit the following exhibits as evidence of their compliance with all applicable State laws as required by section 9(a)(2) of the FPA:⁷⁰

⁶⁹ The July 2020 Order is a final and non-appealable order of the Commission and is dispositive of the Renewal Corporation's qualifications to hold the license of the Lower Klamath Project as a co-licensee. *See* 16 U.S.C. § 825*l*.

⁷⁰ 16 U.S.C. § 802(a)(2).

Exhibit No.	Description
3	Klamath River Renewal Corporation Articles of Incorporation
4	Klamath River Renewal Corporation Bylaws
5	Klamath River Renewal Corporation Certificate of Good Standing
6	Agreement for the Operation and Maintenance of the Lower Klamath Project Between Klamath River Renewal Corporation and PacifiCorp (2017)
7	Memorandum of Agreement (November 16, 2020)

6. The Transferees will submit certified copies of all instruments of conveyance whereby title to the Lower Klamath Project properties is conveyed to the Renewal Corporation, upon the completion of such conveyance, if and when the Commission shall have given its approval to the proposed transfer, and no later than 30 days following the Commission's order approving surrender of the Lower Klamath Project license;⁷¹
7. If and when the Commission shall have given its approval to the proposed transfer, and upon completion of conveyance of the Lower Klamath Project properties to the Renewal Corporation, the Transferor will deliver to the Transferees and the Transferees will accept and permanently retain all license instruments and all maps, plans, specifications, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating to the original Lower Klamath Project and to all additions thereto and betterments thereof. Transferor will comply with any applicable property disposition rules of the PUCs of the states in which it provides retail electric service. Concurrent with filing this

⁷¹ Applicants seek waiver of the requirement that acknowledgement of acceptance be filed within 60 days of the issuance of an order approving transfer of the license. 18 C.F.R. § 9.3(b). *See infra* Part V.B.

Application with FERC, Transferor is seeking approvals with state PUCs to transfer its property interests to the Renewal Corporation consistent with the Application;⁷²

8. Transferor certifies that it has fully complied with the terms and conditions of its license for the Lower Klamath Project, and that it has fully satisfied and discharged all of its liabilities and obligations thereunder to the date hereof, and obligates itself to pay all annual charges accrued under the license to the date of transfer;
9. Contingent upon the final written approval by the Commission of the transfer of the Lower Klamath Project license,⁷³ the Transferees accept all the terms and conditions of the said license and they act, and agree to be bound thereby to the same extent as though they were the original licensee thereunder;
10. The name, title, and post office address of the person or persons to whom correspondence in regard to this Application shall be addressed are as follows:
 - a. For PacifiCorp:

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⁷² PacifiCorp is requesting expedited action of the PUCs to satisfy the requirement that PUC approvals are obtained prior to or contemporaneously with acceptance of license transfer by the Renewal Corporation and the States. *See* MOA ¶ 6.

⁷³ *See supra* note 53.

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Counsel for State of Oregon

IV. TRANSFER OF THE LICENSE IS IN THE PUBLIC INTEREST

The Commission has held that a transfer may be approved on a showing that the transferee is qualified to hold the license and operate the project, and that a transfer is in the public interest.⁷⁴ Here, the proposed transferees—the States of California and Oregon, together with the Renewal Corporation—unquestionably are qualified to hold the license for the Lower Klamath Project and carry out the requirements of the Commission’s license surrender order. The Commission very recently determined that the Renewal Corporation has the capacity to carry out its proposed decommissioning and its qualifications to hold the license of the Lower Klamath Project as a co-licensee,⁷⁵ and the facts and circumstances supporting the Commission’s determination remain unchanged. As the Renewal Corporation’s co-licensees, moreover, the States of California and Oregon bring experience in owning and operating Commission-authorized hydropower facilities, along with the resources that are unique to state governance—departments, agencies, and bureaus with the technical, scientific and regulatory experience related to large public infrastructure projects. As the Commission itself acknowledged in the July 2020 Order, in the absence of a capable dam removal entity,

⁷⁴ See 18 C.F.R. § 9.3; see also *Kootenai Tribes Energy Keepers, Inc.*, 153 FERC ¶ 61,217 (2015); *Gallia Hydro Partners*, 110 FERC ¶ 61,237 (2005); *Wisconsin v. FERC*, 104 F.3d 462 (D.C. Cir. 1997).

⁷⁵ *PacifiCorp*, 172 FERC ¶ 61,062, at PP 71, 77 (2020).

the responsibility for overseeing removal would fall to the States.⁷⁶ With this Application, the States have volunteered to assume co-licensee status for the removal effort. Moreover, the Project lands will be returned to the States after surrender conditions are satisfied, providing them additional incentive to ensure that dam removal is completed in a satisfactory manner. These facts confirm that the transfer as proposed in this Application is in the public interest.

Other factors demonstrate satisfaction of the public interest in considering and granting this Application. Although the MOA and this Application provide for PacifiCorp to be removed as the licensee, under the Amended KHSA, PacifiCorp will continue to provide technical support and expertise to the new co-licensees as they implement the dam removal project.⁷⁷ Moreover, in the MOA, both the States and PacifiCorp have committed to additional contingency funding by establishing a \$45 million fund “and shar[ing] any cost overruns that may occur over this amount equally.”⁷⁸

Finally, the removal of PacifiCorp from the license as proposed in this Application offends no known rule or policy of the Commission.⁷⁹ Rather, it advances the Commission policies of favoring settlements⁸⁰ and approving license surrender orders that advance state interests.⁸¹ It is consistent with the Commission’s abeyance order issued in the relicensing of

⁷⁶ *Id.* at P 67.

⁷⁷ Amended KHSA § 7.1.7.A; *see also PacifiCorp*, 172 FERC ¶ 61,062, at P 71 (2020) (recognizing PacifiCorp’s legal and technical expertise).

⁷⁸ MOA ¶ 7.

⁷⁹ The July 2020 Order alludes to but does not reference any specific policy of the Commission that would require PacifiCorp to stay on the license under these circumstances. *PacifiCorp*, 172 FERC ¶ 61,062, at P 71 (2020).

⁸⁰ Policy Statement on Hydropower Licensing Settlements, 116 FERC ¶ 61,270 (2006).

⁸¹ Policy Statement on Project Decommissioning at Relicensing, 60 Fed. Reg. 339 (Jan. 4, 1995).

the Klamath Hydroelectric Project No. 2082, which endorsed consideration of surrender as an alternative to relicensing,⁸² as well as Commission precedent in *Arizona Public Service Co.*, which held that the prohibition of contingent applications under section 4.32(j) of the Commission's regulations was not intended to address circumstances, like here, that would implement an agreed-upon surrender process.⁸³ It follows Commission precedent that has approved a license transfer to a state for purposes of decommissioning.⁸⁴ Finally, the removal of PacifiCorp as a licensee better aligns with state PUC orders and related statutes regarding the settlement.

The Amended KHSA and more recent MOA reflect years of hard work and compromise by many parties with divergent interests. The benefits to the Klamath basin that will flow from the implementation of this settlement have yet to be realized and are long overdue. Although the merits of dam removal will be evaluated in the interrelated ALSA proceeding and not this license transfer proceeding, the public interest is served in many ways by the settlement; restoring the Klamath River fishery is paramount, and time is of the essence. For example, the 2016 and 2017 Klamath fall chinook runs were among the smallest on record, and the 2019 chinook run size was only approximately a third of the average adult Chinook abundance from 2000 – 2019, and approximately a third of the average run size during the prior 10-year period, and the Klamath coho continue to be at risk as evidenced by their threatened status. Receiving the necessary regulatory approvals for achieving a free-flowing Klamath

⁸² See *PacifiCorp*, 155 FERC ¶ 61,271, at P 13 (2016) (Abeyance Order) (“[W]e will hold the relicensing proceeding in abeyance, pending our determination on the license transfer and surrender applications that the Amended Settlement Agreement provides will be filed with the Commission on or around July 1, 2016.”).

⁸³ See *Ariz. Pub. Serv. Co.*, 97 FERC ¶ 61,315, at p. 62,450 (2001) (“[A]pplying Section 4.32(j) to the situation here, we agree with [the licensee] that our traditional concerns are absent.”).

⁸⁴ *Edwards Mfg. Co.*, 84 FERC ¶ 61,227 (1998).

River with volitional fish passage on the Applicants' revised schedule would help avoid future delays in achieving the public benefits envisioned under the Amended KHSA. The Applicants therefore request expedited review of this Application, so that the Klamath basin can be restored, and the citizens of California and Oregon can enjoy the long-awaited benefits of the KHSA.

V. CONNECTION TO CONCURRENT PROCEEDINGS AND REQUESTS FOR EXPEDITED ACTION, WAIVER, AND ESTABLISHMENT OF EFFECTIVE DATE

Applicants understand that the Commission will exercise its discretion in sequencing events in this license transfer docket and the related license surrender and license amendment dockets to ensure that the proposals advanced by Applicants in these dockets are given full and proper consideration, consistent with the Commission's obligation to safeguard the public interest. As described below, Applicants seek certain procedural adjustments to the Commission's approach in these inter-related dockets, to assist in navigating the path established by the MOA's signatories and fully implementing the Amended KHSA.

A. Request for Expedited Action

On November 17, 2020, PacifiCorp and the Renewal Corporation filed the ALSA. In their submission, PacifiCorp and the Renewal Corporation requested that the Commission expeditiously advance the license surrender process in order to secure a Commission order approving license surrender by April 15, 2022. On December 16, 2020, the Commission issued public notice of the ALSA.

Similarly, Applicants hereby request that the Commission expeditiously issue an order approving this Application for license transfer. Expedious approval of this

Application is important for several reasons. First, near-term approval of license transfer will allow Applicants to advance ongoing property conveyance arrangements, including proceedings before state PUCs, as needed, such that Project property can be conveyed to the Renewal Corporation within 30 days after the Renewal Corporation and the States accept license transfer.⁸⁵

Second, expeditious approval of this Application will give Applicants the assurance that the proposed sequencing and interrelated procedures between this Application, the license amendment proceeding pursuant to the March 2018 Order, and the ALSA are all acceptable to the Commission.

Finally, and most importantly, near-term approval of this Application will position the Renewal Corporation and States to promptly commence dam removal activities after the Commission approves license surrender and to quickly attain the Applicants' shared objectives of removing the Lower Klamath Project dams and achieving a free-flowing Klamath River with volitional fish passage.

B. Request for Waiver

Concurrent with its request for expedited Commission action on this Application, Applicants request a waiver of Commission regulations⁸⁶ to permit the Renewal Corporation an extended period—until 30 days following the Commission's order approving license surrender—to accept transfer of the Lower Klamath Project license.⁸⁷

⁸⁵ See Exhibit 1, Proposed Ordering Paragraph (C).

⁸⁶ See 18 C.F.R. § 9.3(b) (requiring “acknowledgment of acceptance shall be filed in triplicate with the Commission within sixty (60) days from date of issuance accompanied by a certified copy of the deed of conveyance or other instrument evidencing transfer of the property under license, together with evidence of the recording thereof”).

⁸⁷ See Exhibit 1, Proposed Ordering Paragraph (C).

This request is made consistent with the terms of the MOA and is intended to afford the States and PacifiCorp the opportunity to evaluate the terms of the surrender order before the Renewal Corporation and States accept license transfer.⁸⁸ Good cause exists to approve this request because this sequenced approach—allowing acceptance of license transfer to occur after issuance of the license surrender order—will ensure that transfer and surrender are carried out as contemplated by the Commission and that the intended transferees knowingly assume the obligations of the order approving surrender.

Applicants recognize that the simultaneous requests herein for expeditious license transfer approval, coupled with a request for the Commission to waive its regulation that would allow a prolonged period for the Renewal Corporation and States to accept license transfer, initially may appear to be a contradictory request for the Commission to “hurry up and wait.” This certainly is not Applicants’ intent. Rather, these dual requests are necessary for the Applicants to fulfill their shared objectives. On this note, Applicants do not expect the Commission to issue a ruling on the ALSA until approximately April 15, 2022.⁸⁹ Therefore, Applicants’ roles and duties under any surrender order would not be known until issuance of an order approving surrender. However, for the reasons expressed in the prior paragraphs, the Applicants need certainty from the Commission in proceeding with property conveyances and in positioning the intended transferees and necessary contractors to promptly commence dam removal activities after the Commission issues an order approving license surrender. For these reasons, these dual

⁸⁸ See *supra* note 53.

⁸⁹ See ALSA, Explanatory Statement, at ES-8 to ES-9.

proposals, necessitated by the connection of the license transfer proceeding to the concurrent surrender proceeding, are in the public interest.

C. Request to Establish Effective Date of March 2018 Order and Submission of Revised Exhibits K and L

As indicated above, the Commission's March 2018 Order approved an amendment of the Klamath Hydroelectric Project No. 2082 license to remove the four lowermost dams on the Klamath River and to place those dams in a new license for the Lower Klamath Project No. 14803.⁹⁰ Subsequently, on June 21, 2018, the Commission issued its *Order Granting Stay and Dismissing Request for Rehearing*, which stayed the effectiveness of the amendment pending its decision on the license transfer.⁹¹ The July 2020 Order approving a partial license transfer lifted the stay and established the effective date of the amendment as the effective date of the partial license transfer.⁹²

Because PacifiCorp and the Renewal Corporation will not be accepting co-licensee status under the July 2020 Order, Applicants hereby request that the Commission reestablish the effective date of the March 2018 Order. The MOA requires the States and PacifiCorp to accept transfer of the Lower Klamath Project license, except under narrow and unanticipated circumstances.⁹³ Thus, the likelihood of an unnecessary bifurcation of the existing license for the Klamath Hydroelectric Project No. 2082 is low, and it is no longer necessary for the effective date of the March 2018 Order to coincide with acceptance of license transfer.

⁹⁰ *PacifiCorp*, 162 FERC ¶ 61,236 (2018).

⁹¹ *PacifiCorp*, 163 FERC ¶ 61,208 (2018).

⁹² *See PacifiCorp*, 172 FERC ¶ 61,062 (2020) (Ordering Paragraph (F)).

⁹³ *See supra* note 53.

For this reason, Applicants request that the Commission reestablish the effective date of the March 2018 Order as the date of its approval of this Application.⁹⁴ Relatedly, Applicants also request that the Commission establish a new deadline for Applicants to file revised Exhibits K and L for the Klamath Hydroelectric Project No. 2082 and Lower Klamath Project No. 14803, such that these exhibits are filed within 90 days of the effective date of the March 2018 Order.⁹⁵

D. Anticipated Procedural Sequencing

Should the Commission approve the actions proposed above, Applicants anticipate that the procedural milestones in the interrelated amendment, ALSA, and transfer proceedings would follow the sequencing described below:

1. With this Application, Applicants seek expeditious Commission approval of license transfer.⁹⁶
2. The Commission's order approving license transfer would waive section 9.3(b) of its regulations,⁹⁷ allowing the Renewal Corporation and the States additional time—until 30 days following the Commission's issuance of the license surrender order in response to the ALSA—to formally accept the license.⁹⁸
3. The Commission's license transfer order would make the March 2018 Order effective as of the date of its issuance of the transfer order.⁹⁹

⁹⁴ See Exhibit 1, Proposed Ordering Paragraph (D).

⁹⁵ See *id.*, Proposed Ordering Paragraph (E).

⁹⁶ See *id.*, Proposed Ordering Paragraphs (A), (B).

⁹⁷ 18 C.F.R. § 9.3(b).

⁹⁸ See Exhibit 1, Proposed Ordering Paragraph (C).

⁹⁹ See *id.*, Proposed Ordering Paragraph (D).

4. Within 90 days of the Commission's order approving license transfer, PacifiCorp would file revised Exhibits K and L for the Klamath Hydroelectric Project No. 2082, and the Applicants would file revised Exhibits K and L for the Lower Klamath Project No. 14803.¹⁰⁰
5. Following any Commission order approving license transfer, the Applicants would continue to diligently advance the ALSA, as well as pursue the requirements of the Commission's license transfer order,¹⁰¹ particularly the conveyance of all Lower Klamath Project lands to the Renewal Corporation.¹⁰²
6. Within 30 days of issuance of a license surrender order, the States and the Renewal Corporation will accept the license transfer order making the Renewal Corporation and States co-licensees for the Lower Klamath Project unless the States and PacifiCorp, in consultation with the Karuk and Yurok Tribes, mutually agree to reject the license surrender order on the basis that the terms of the order, including terms of any federal agency consultation concerning the order, are significantly outside the norm for FERC orders involving major project construction or deconstruction in a manner that creates significant financial risk to the States or PacifiCorp.¹⁰³

¹⁰⁰ See *id.*, Proposed Ordering Paragraph (E).

¹⁰¹ See *generally* Exhibit 1.

¹⁰² See *supra* note 64.

¹⁰³ MOA ¶ 3.a; see *supra* note 53.

VI. CONCLUSION

WHEREFORE, for the reasons stated above, Applicants request that the Commission expeditiously approve this Application to transfer the Lower Klamath Project license from PacifiCorp to the States of California and Oregon and the Renewal Corporation as co-licensees and grant the other relief sought herein with respect to the interrelated March 2018 Order and ALSA proceedings.

Respectfully submitted,

/s/ Charles R. Sensiba

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Counsel for the State of Oregon

DATED: January 13, 2021

EXHIBIT 1
Proposed Ordering Paragraphs

EXHIBIT 1
Proposed Ordering Paragraphs

The Commission orders:

(A) The transfer of the license for the Lower Klamath Project No. 14803 from PacifiCorp to the Klamath River Renewal Corporation, State of California, and State of Oregon, as co-licensees, is approved as modified by paragraphs (B) and (C) below.

(B) PacifiCorp must pay all annual charges that accrue up to the effective date of the transfer. Klamath River Renewal Corporation, State of California, and State of Oregon will be jointly responsible for subsequent annual charges through the remaining term of the license and any extensions.

(C) Approval of the transfer is contingent upon: (1) transfer of title of the properties under the license to Klamath River Renewal Corporation; (2) transfer of all project files including all dam safety related documents, and delivery of all license instruments to Klamath River Renewal Corporation, State of California, and State of Oregon, which must be subject to the terms and conditions of the license as though they were the original co-licensees; and (3) Klamath River Renewal Corporation, State of California, and State of Oregon, as co-licensees, acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 30 days from the date of the Commission's order on the Amended Application for Surrender of License for Major Project and Removal of Project Works (Project Nos. 2082-063 & 14803-001), Klamath River Renewal Corporation, State of California, and State of Oregon, as co-licensees, must submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(D) The Order Amending License and Deferring Consideration of Transfer Application (162 FERC ¶ 61,236 (2018)) is effective as of the date of this order.

(E) PacifiCorp must file revised Exhibits K and L for the Klamath Hydroelectric Project No. 2082 within 90 days of the date of this order. PacifiCorp, Klamath River Renewal Corporation, State of California, and State of Oregon must file revised Exhibits K and L for the Lower Klamath Project No. 14803 within 90 days of the date of this order.

EXHIBIT 2

Subscriptions and Verifications

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

PacifiCorp)
)
Klamath River Renewal Corporation)
)
State of California)
)
State of Oregon)

Project No. 14803-____

VERIFICATION

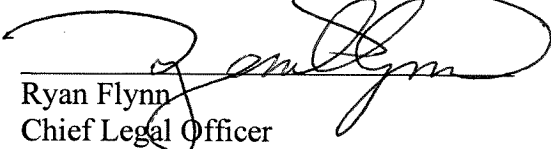
In witness whereof the Transferor PacifiCorp has caused its name to be hereunto signed by Ryan Flynn, its Chief Legal Officer, and its corporate seal to be hereunto affixed by Ryan Flynn, its Chief Legal Officer, thereunto authorized, this 11th day of January, 2021.

State of Oregon
County of Multnomah

PACIFICORP

by: Ryan Flynn
Chief Legal Officer
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, OR 97232

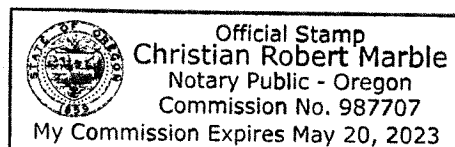
being duly sworn, deposes and says that he is the Chief Legal Officer of PacifiCorp, one of the applicants for approval of transfer of license; that he has read the foregoing Approval of License Transfer and Request for Expedited Review and knows the contents thereof; and that the same are true to the best of his knowledge and belief.



Ryan Flynn
Chief Legal Officer
PacifiCorp

Subscribed and sworn to before me, a Notary Public of the State of Oregon, this 11th day of January, 2021.

Signature: _____
/SEAL/



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

PacifiCorp)	
)	
Klamath River Renewal Corporation)	Project No. 14803-____
)	
State of California)	
)	
State of Oregon)	

VERIFICATION

In witness whereof Transferee State of Oregon has caused its name to be hereunto signed by Jason Miner, Natural Resources Policy Director, Office of Governor Kate Brown, thereunto authorized, this 11th day of January, 2021.

State of Oregon
County of Multnomah


STATE OF OREGON

by: Jason Miner
Natural Resources Policy Director
Office of Governor Kate Brown
775 Court Street NE
Salem, OR 97301

being duly sworn, deposes and says that he is the Natural Resources Policy Director of the Office of Governor Kate Brown representing the State of Oregon, one of the applicants for approval of transfer of license; that he has read the foregoing Approval of License Transfer and Request for Expedited Review and knows the contents thereof; and that the same are true to the best of his knowledge and belief.

Jason Miner 
Jason Miner
Natural Resources Policy Director
Office of Governor Kate Brown

Subscribed and sworn to before me, a Notary Public of the Commonwealth of Virginia, this 11 day of January, 2021.

Signature: *Elizabeth Scott Vaughan* 
/SEAL/

Elizabeth Scott Vaughan Electronic Notary Public Reg# 7847484 Commonwealth of Virginia My Commission Expires: 03/31/2023
--

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp)
)
Klamath River Renewal Corporation)
)
State of California)
)
State of Oregon)

Project No. 14803-__

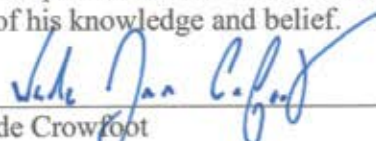
VERIFICATION

In witness whereof Transferee State of California has caused its name to be hereunto signed by Wade Crowfoot, Secretary of the California Natural Resources Agency, thereunto authorized, this 12th day of January, 2021.

STATE OF CALIFORNIA

by: Wade Crowfoot
Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

being duly sworn, deposes and says that he is the Secretary of the California Natural Resources Agency representing the State of California, one of the applicants for approval of transfer of license; that he has read the foregoing Approval of License Transfer and Request for Expedited Review and knows the contents thereof; and that the same are true to the best of his knowledge and belief.



Wade Crowfoot
Secretary
Natural Resources Agency

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

Subscribed and sworn to before me, a Notary Public of the State of California, this 12th day of January, 2021 by Wade Crowfoot, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

(Seal)

Signature:  Notary Public
David Paul Smith



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

PacifiCorp)	
)	
Klamath River Renewal Corporation)	Project No. 14803-____
)	
State of California)	
)	
State of Oregon)	

VERIFICATION


In witness whereof Transferee Klamath River Renewal Corporation has caused its name to be hereunto signed by Mark Bransom, its Chief Executive Officer, and its corporate seal to be hereunto affixed by Mark Bransom, its Chief Executive Officer, thereunto authorized, this 13th day of January, 2021.

State of California
County of Alameda


KLAMATH RIVER RENEWAL CORPORATION

by: Mark Bransom
Chief Executive Officer
Klamath River Renewal Corporation
2001 Addison Street, Suite 317
Berkeley, CA 94704

being duly sworn, deposes and says that he is the Chief Executive Officer of the Klamath River Renewal Corporation, one of the applicants for approval of transfer of license; that he has read the foregoing Approval of License Transfer and Request for Expedited Review and knows the contents thereof; and that the same are true to the best of his knowledge and belief.

Mark Bransom 
Mark Bransom
Chief Executive Officer
Klamath River Renewal Corporation

Subscribed and sworn to before me, a Notary Public of the Commonwealth of Virginia, this 13th day of January, 2021.

Signature: Elizabeth Scott Vaughan 
/SEAL/

Elizabeth Scott Vaughan Electronic Notary Public Reg# 7847484 Commonwealth of Virginia My Commission Expires: 03/31/2023
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EXHIBIT 3
**Klamath River Renewal Corporation Articles of
Incorporation**

ARTICLES OF INCORPORATION
OF
KLAMATH RIVER RENEWAL CORPORATION

FILED *DM*
Secretary of State
State of California *SH*
1PC FEB 29 2016

ARTICLE I
NAME

The name of the corporation (hereinafter referred to as the "Corporation") shall be KLAMATH RIVER RENEWAL CORPORATION.

ARTICLE II
PURPOSES

Section 1. The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The Corporation is formed and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to lessen the burdens of government by facilitating the implementation of the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, between and among the United States Department of the Interior, the United States Department of Commerce's National Marine Fisheries Service, PacifiCorp, the California Department of Fish and Wildlife, the California Natural Resources Agency, the Oregon Department of Environmental Quality, the Oregon Department of Fish and Wildlife, the Oregon Water Resources Department, and various other parties, as it may be amended from time to time ("KHSA"), and the implementation of any related agreements among the same or similar parties with respect to the Klamath Basin, all in a manner determined by the Corporation's Board of Directors.

Section 2. In furtherance of the purposes set forth in Section 1 above and as necessary or desirable in order to accomplish such purposes, the Corporation shall have the power to:

- (a) acquire or transfer, by deed, lease or otherwise, ownership or possession of real and personal property, improvements and facilities;
- (b) maintain, operate, modify, remove and restore real and personal property, improvements and facilities;
- (c) seek, obtain and administer funding (including gifts, grants, borrowings or other sources);
- (d) seek, obtain, hold, transfer, or surrender such governmental and other approvals, permits and licenses;
- (e) engage the services of such consultants, advisors, attorneys and other persons; and

(f) in general, perform any and all acts and things and exercise any and all powers that may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State for the purpose of accomplishing any of the foregoing purposes and functions of the Corporation and any other purpose or function ancillary to, or supportive of, the foregoing purposes and functions.

ARTICLE III SPECIAL PROVISIONS AND LIMITATIONS

Section 1. The Corporation shall exist until the date that is one year after it has completed its purposes and functions in connection with the KHSA, as determined by a majority of the Corporation's Board of Directors, at which time it shall be dissolved in accordance with Article IV of these Articles of Incorporation and applicable law. The Corporation shall not be liquidated, dissolved, or merged or combined with any other business entity prior to the foregoing date without the affirmative vote of a majority of the members of the Board of Directors of the Corporation.

Section 2. The Corporation shall not engage in any activities not permitted to be carried on by an organization exempt from federal income tax pursuant to Section 501(c)(3) of Internal Revenue Code of 1986 ("Code"), as amended, and the regulations promulgated thereunder, or the corresponding section of any future tax code;

Section 3. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; provided that the Corporation shall have the power to make an election under Code Section 501(h). Likewise; no substantial part of the activities of the Corporation shall be the provision of "commercial type insurance" within the meaning of Section 501(m) of the Code. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws; and

Section 4. The property of the Corporation is irrevocably dedicated to charitable purposes. No part of the income or earnings of the Corporation shall inure to the benefit or profit of, nor shall any distribution of its property or assets be made to, any director or officer of the Corporation, or private person, corporate or individual, or to any other private interest; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to it and reimbursement of expenses, and to make reasonable payments and distributions in furtherance of the purposes of the Corporation.

ARTICLE IV ASSET DISTRIBUTION ON DISSOLUTION

Upon the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, and after compliance with Chapters 15, 16 and 17 of the California Nonprofit Public Benefit Corporation Law, distribute all of the remaining assets and property of the

Corporation for charitable or public purposes among such entities as the Board determines in its discretion, all to the extent permitted under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, and other applicable law.

ARTICLE V
DIRECTORS

Section 1. The number of Directors shall be as determined from time to time pursuant to the Bylaws of the Corporation.

Section 2. The Directors of the Corporation shall have no liability for dues or assessments. There shall be no members of the Corporation.

ARTICLE VI
MISCELLANEOUS

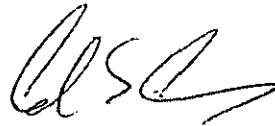
Section 1. The name and address of the Corporation's initial agent for service of process is:

National Corporate Research Ltd.

Section 2. The initial address of the Corporation shall be:

28 Liberty Street, 42nd Floor
New York, New York 10005
Attn: Eric Petersen

IN WITNESS WHEREOF, for the purposes of forming the corporation under the laws of the State of California, the undersigned has executed these Articles of Incorporation this 29th day of February, 2016.



Lloyd S. Lowy
Incorporator

EXHIBIT 4
Klamath River Renewal Corporation Bylaws

**BYLAWS
OF
KLAMATH RIVER RENEWAL CORPORATION**

**ARTICLE I
NAME, PURPOSE AND PRINCIPAL OFFICE**

Section 1.1. Name. The name of the Corporation shall be: KLAMATH RIVER RENEWAL CORPORATION (the “Corporation”).

Section 1.2. Purposes. The charitable purposes of the Corporation shall be as set forth in its Articles of Incorporation, related to the implementation of the Klamath Hydroelectric Settlement Agreement, as amended (hereafter, “KHSA”).

Section 1.3. Principal Office. The principal office of the Corporation for the transaction of business may be established at any place or places within or without the State of California. The principal office may be changed from time to time by the Board of Directors (the “Board”).

**ARTICLE II
MEMBERSHIP**

Section 2.1. Members. The Corporation shall have no members. Any action which would otherwise require the approval of members shall require only the approval of the Board. All rights which would otherwise vest in the members shall vest in the Board.

**ARTICLE III
BOARD OF DIRECTORS**

Section 3.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation, subject to any limitations set forth in the Articles of Incorporation, these Bylaws or relevant provisions of the California Nonprofit Public Benefit Corporation Law. The Board may delegate the management of the activities of the Corporation to any person or persons, a management company, or committees, however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 3.2. Number of Directors.

(a) The Board shall have at least one and no more than two directors until July 15, 2016. One initial director shall be appointed by the Governor of Oregon, or the Oregon Governor's designee, and one director shall be appointed by the Governor of California, or the California Governor's designee. The period of time prior to July 15, 2016 is referred to as the "Initial Directors Period."

(b) After the Initial Directors Period, the Board shall have at least two and no more than 15 directors comprised of the following: the two initial directors; four additional directors appointed by the Governor of California or the California Governor's designee; three additional directors appointed by the Governor of Oregon or the Oregon Governor's designee, one director appointed by the Karuk Tribe; one director appointed by the Yurok Tribe; one director appointed by the Klamath Tribes; two directors appointed by the entities listed in part A of Exhibit 1; and one director appointed by the entities listed in Part B of Exhibit 1; provided that, only parties to the KHSA may participate in the foregoing appointment authority. An appointing authority may also appoint up to two alternate directors, each of whom shall have the same rights as the director, except that an alternate director (i) may be counted for the purpose of quorum, and may vote, in a meeting of the Board or of a committee on which the director serves as a member, only in the absence of the director; and (ii) may not serve as a member, or vote in the meetings, of the Executive Committee. Under item (i), only one alternate may vote at a meeting attended by both alternates, such alternate to be confirmed by the chair at the start of the meeting. Appointing authorities shall make their appointments by providing written notice of the appointment and its effective date, in advance, to the Board. In the case of the appointments by the entities in Exhibit 1, the respective notices of appointment shall be executed on behalf of a majority of the entities appearing in part A of Exhibit 1, and on behalf of both of the entities appearing in Part B of Exhibit 2.

Section 3.3. Selection and Term of Office. Unless earlier removed as provided hereunder, each director shall hold office for six years and shall serve until a successor has been appointed, except as provided in Sections 3.4 and 3.5. Upon the expiration of the term of any director, that director's successor shall be appointed in the same manner as that director whose term expired. There shall be no limits on the number of consecutive full or partial terms a director may serve on the Board. The Board may provide for staggered terms by resolution.

Section 3.4. Vacancies.

(a) Subject to the provisions of Section 5226 of the California Nonprofit Corporation Law, any director may resign by giving written notice to the Secretary and to the entity that appointed the director, which resignation shall be effective upon the Secretary's receipt thereof, unless the notice specifies a later time for the effectiveness of such resignation. Promptly after receiving any notice of resignation by a director, the Secretary shall notify the Board and the appointing authority that appointed the resigning director. If the resignation is effective at a future time, a successor may be selected before such time, to take office when the resignation becomes effective. If the Secretary is the resigning director then the notice of resignation notice shall go to the President, who shall provide the foregoing notices to the Board and the appointing authority.

(b) Each vacancy in the Board shall be filled in the same manner as the director whose office is vacant was selected. Each director so selected shall hold office until the expiration of the term of the replaced director and until a successor has been selected and qualified, except for directors removed pursuant to Section 3.5 of this Article III, whose terms shall expire upon removal.

(c) A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of directors is increased.

Section 3.5. Removal.

(a) The Board may by resolution declare vacant the office of a director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty arising under Article 3 of Chapter 2 of Part 2 of the California Nonprofit Corporation Law.

(b) A director may be removed for cause by a majority vote of the directors then in office. Such cause shall be at the sole discretion of the Board.

(c) A director may be removed at any time by the appointing authority for that director, in its sole discretion, by notice to the Secretary that meets the requirements for an appointment notice under Section 3.2(b).

Section 3.6. Place of Meetings. Meetings of the Board may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation.

Section 3.7. Annual Meetings. The Board shall hold an annual meeting for the purpose of organization, selection of officers and the transaction of other business.

Section 3.8. Other Regular Meetings. Other regular meetings of the Board shall be held on such dates and at such times as may be fixed by the Board.

Section 3.9. Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the President of the Board or at the request of not less than by 25% of the directors then in office. The Board shall adopt policies relating to holding informational meetings that are open to the public at least once each year.

Section 3.10. Notice.

(a) Notice of the time, place and agenda for a regular meeting of the Board shall be provided to each member of the Board at least seven (7) calendar days before the date of such meeting by telephone, including a voice messaging system or other system of technology designed to record and communicate messages, facsimile, U.S. mail, hand-delivery, electronic mail, or other electronic means. Notice of the time, place and agenda for a special meeting of the Board shall be provided to each member of the Board with at least four (4) days' notice by first-class mail or 48 hours' notice given personally or by telephone, including a voice messaging system or other system

of technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the Corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

(b) Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver. The notice shall signify the time and place of the special meeting and the business to be transacted.

Section 3.11. Quorum. Presence of a majority of the number of directors then in office at a meeting of the Board constitutes a quorum for the transaction of business, except as otherwise provided in these Bylaws. During the Initial Directors Period the presence of the first director appointed shall constitute a quorum.

Section 3.12. Conduct of Meeting. The President or, in the President's absence, the Vice President, shall preside. If neither the President nor a Vice President is present at a meeting then such meeting shall be chaired by a director selected by a majority of the directors present.

Section 3.13. Participation in Meetings by Conference Telephone. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Any director so participating shall be deemed to be present in person at such meeting.

Section 3.14. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting, without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.15. Adjournment. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. If the meeting is adjourned for 24 hours or less, notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 3.16. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board, individually or collectively,

consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 3.17. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation of which such person is a director.

Section 3.18. Fees and Compensation. Directors shall not be compensated for their services but may receive reimbursement for expenses reasonably incurred in performance of duties as may be fixed or determined by the Board.

ARTICLE IV COMMITTEES

Section 4.1. Executive Committee.

(a) The Board may designate an Executive Committee. The Executive Committee shall be charged with the general supervision of the Corporation's activities, policies, financial resources and investments. The Executive Committee shall have and exercise all of the powers of the Board during the interim between meetings of the Board except to amend the Articles of Incorporation or Bylaws or to convey real property of the Corporation.

(b) The Executive Committee shall be comprised of the officers designated pursuant to Section 5.1 and at least one director who is not an officer. Non-officer members of the Executive Committee shall be appointed by the Board.

(c) The Executive Committee shall meet at least monthly. The regular meetings of the Executive Committee shall be scheduled by the President. In special cases or emergencies the President may convene a meeting of the Executive Committee upon such notice as is reasonably available and necessary to advise the members of the Executive Committee.

(d) The Minutes of the Executive Committee shall be provided to the Board prior to the next Board meeting.

Section 4.2. Audit Committee. The Board shall appoint an audit committee who shall act pursuant to procedures adopted by the Board from time to time.

Section 4.3. Advisory Council. The Board may, in its sole discretion, appoint an Advisory Council to advise the Board in such of its activities as the Board may from time to time determine. The Advisory Council shall consist of such persons, and such number of persons, as the Board shall appoint from time to time in its sole discretion to provide advice and reflect the views of communities, groups and other interests that may be affected by or interested in the activities of the Corporation, provided that if the Board elects to establish an Advisory Council it shall invite each of the U.S. Department of Interior, the U.S. Department of Commerce, the Oregon Department of Fish and Wildlife, the California Department of Fish and Wildlife, the Oregon Governor's Natural Resources Office, and the California Natural Resources Agency (collectively

the “permanent Advisory Council members”) to designate a representative to serve on the Advisory Council. The Board shall have the right, with or without cause and at any time, to add a member to or remove a member from the Advisory Council, except that the Board shall not remove a representative of a permanent Advisory Council member without cause. The Advisory Council shall meet at such time(s) as are determined by the Board. The Board shall call a meeting of the Advisory Council if (i) one-third or more of the Advisory Council’s members make a request to the President for such a meeting, or (ii) the representative of any permanent Advisory Council member makes such a request. The Board shall send a representative to meetings of the Advisory Council, or may, in its discretion, meet directly with the Advisory Council. The Advisory Council shall make recommendations to the Board on matters referred to the Advisory Council by the Board, and may make recommendations on matters that the Advisory Council determines are relevant to the Corporation’s activities. Individual members of the Advisory Council may decline to participate in particular recommendations of the Advisory Council. The designated representatives of the permanent Advisory Council members shall be given notice of each meeting of the Board in accordance with Section 3.10 hereunder, and shall be invited to attend each such meeting unless it is to be held in executive session.

Section 4.4. Other Committees. Other standing or temporary committees may be established from time to time by the Board. These committees' membership may consist of directors only, both directors and non-directors, or non-directors only (each, a "Board Committee"). Except for the Executive Committee, Board Committees have no legal authority to act for the Corporation except and to the extent that the Board authorizes a Board Committee or member thereof to take a specific action on behalf of the Board. Board Committees shall report their findings and recommendations to the Executive Committee and the Board.

Section 4.5. Acts of a Board Committee. Each Board Committee shall act pursuant to procedures adopted by the Board; provided, however, that when the Board has by resolution authorized a Board Committee to take a specific action on behalf of the Board, such Board Committee shall follow the same decision-making procedures adopted by the Board for acts of the full Board or any other decision-making procedures adopted by the Board for such committee.

Section 4.6. Fees and Compensation. Members of Board Committees may receive reasonable compensation of up to an amount to be determined by the Board. Reimbursement for expenses incurred in performance of duties may be fixed or determined by the Board.

ARTICLE V OFFICERS, EMPLOYEES AND AGENTS OF THE CORPORATION

Section 5.1. Officers. The officers of the Corporation shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be a director. Any number of such offices may be held by the same person, except as provided in the Articles or in these Bylaws and except that, other than during the Initial Directors Period, neither the Secretary nor the Treasurer may serve concurrently as the President of the Board.

Section 5.2. Election. The officers of the Corporation shall be elected annually by a majority of the directors then in office, and each shall serve at the pleasure of the Board.

Section 5.3. Subordinate Officers. The Board may appoint, by a majority vote of the directors then in office, such additional officers, who need not be directors, as the business of the Corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the Board.

Section 5.4. Removal and Resignation.

(a) Any officer may be removed from such office, with or without cause, at any time, by a majority vote of the directors then in office. The officer in question, if a director, shall not be included when determining the quantity of votes required for a majority vote.

(b) Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

Section 5.5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular election or appointment to that office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 5.6. Employees and Other Agents. The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and receive such compensation, if any, as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities and duties.

Section 5.7. President. Subject to the control of the Board, the President shall supervise the Corporation's activities, affairs, and officers. Subject to Section 3.12, the President shall preside at all Board meetings. The President shall have such other powers and duties as the Board or the Bylaws may prescribe.

Section 5.8. Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for the Vice President by the Board or by the Bylaws.

Section 5.9. Secretary. The Secretary shall attend to the following:

(a) Book of minutes. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of directors and Board Committees, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings and the proceedings of such meetings.

(b) Notices, seal and other duties. The Secretary shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws to be given. The Secretary shall keep the seal of the Corporation in safe custody. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 5.10. Treasurer. The Treasurer shall attend to the following:

(a) Books of account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any director at all reasonable times.

(b) Deposit and disbursement of money and valuables. The Treasurer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse the funds of the Corporation as may be ordered by the Board; shall render to the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the Corporation; and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 5.11. Compensation. Officers shall not be compensated for their services but may receive reimbursement for expenses incurred in the performance of their duties as may be fixed or determined by the Board.

ARTICLE VI EXPENDITURES

Section 6.1. Corporation Expenditures. The Board shall adopt appropriate financial and accounting procedures for its expenditures, including criteria for reimbursement of expenditures by committee members or any director for the costs of outside experts, consultants or advisors involved in implementing the KHSa or any other purpose of the Corporation, or for costs charged by a governmental entity with authority over any applications to dispose of property pursuant to Section 851 of the California Public Utilities Code ("Section 851") or the resulting transactions.

ARTICLE VII RECORDS AND REPORTS

Section 7.1. Corporate Records. The Corporation shall keep:

- (a) Adequate and correct books and records of accounts;
- (b) Written minutes of the proceedings of its Board and Board Committees; and
- (c) The original or a copy of the Articles and Bylaws, as amended, to date.

Section 7.2. Annual Report.

(a) Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

(1) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year;

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year;

(3) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;

(4) The expenses or disbursements of the Corporation, for both general and restricted purposes during the fiscal year;

(5) Any transaction during the previous fiscal year to which the Corporation or a subsidiary was a party and in which any directors or officers of the Corporation or subsidiary had or has a direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; and

(6) The amount and circumstances of any indemnification or advances paid during the fiscal year to any officer or director of the Corporation.

(b) Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

(c) To the extent required by law, a report including the financial statements prescribed above shall be furnished annually to all directors of the Corporation.

ARTICLE VIII
OTHER PROVISIONS

Section 8.1. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsement thereof executed or entered into between the Corporation and any other person, when signed by the President, the Treasurer, or such other officer as is delegated such authority by the Board, shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no agent or employee shall have any power or authority to bind the

Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount. The Corporation is under no obligation to enter into contracts for goods and services with any individual or other entity that may have created or sponsored it.

Section 8.2. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

Section 8.3. Amendments. These Bylaws may be amended or repealed or new Bylaws adopted by a majority vote of the directors then in office, provided that the Bylaws may not be amended in such a way to cause the corporation to lose its status as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Code.

Section 8.4. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board.

Section 8.5. Corporate Seal. The Corporation may have a seal which shall be specified by resolution of the Board.

ARTICLE IX DEDICATION OF ASSETS

The property of the Corporation is irrevocably dedicated to charitable and public purposes and no part of the net earnings or assets of the Corporation shall inure to the benefit of (or be distributable to) any director or officer of the Corporation or other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its charitable and public purposes. Upon any dissolution of the Corporation, the disposition of any assets that originated as public funds shall, to the extent permitted under applicable law, including Section 501(c)(3) of the Internal Revenue Code or any corresponding section of any future federal tax code, be governed by the agreement which disbursed such funds to the Corporation.

ARTICLE X LIABILITY: INDEMNIFICATION

Section 10.1. Directors, Agents, and appointing entity. The Corporation is solely liable for all its debts and obligations. The individual property of the directors, officers, employees, or agents of the Corporation, and the entities that appointed the directors, shall not be held liable for the debts or obligations of the Corporation.

Section 10.2. Indemnification of Directors and Officers. To the fullest extent permitted by law, the Corporation shall in all cases indemnify any existing or former director or officer of the Corporation who was or is a party (or is threatened to be made a party) to any threatened or pending action, suit, or other proceeding by reason of the fact that he or she is or was a director or officer of the Corporation, or by reason of his or her conduct in any such capacity, against expenses (including, without limitation, costs of investigation and attorneys' fees, judgments, fines,

penalties, and amounts paid in settlement) actually and reasonably incurred by him or her in connection with such proceeding.

Section 10.3. Indemnification of Employees and Agents. The Corporation may indemnify any other person who was or is a party (or is threatened to be made a party) to any threatened or pending action, suit, or other proceeding by reason of the fact that he or she is or was an employee or agent of the Corporation (or is or was serving at the request of the Corporation as a director, officer, trustee, employee, partner, fiduciary, or agent of another entity), or by reason of his or her conduct in any such capacity, against expenses actually and reasonably incurred by him or her in connection with such proceeding. Such indemnification shall be subject to any restrictions imposed by applicable law or by the Board in its discretion.

Section 10.4. Advance Payment of Expenses. In its discretion the Board may, to the extent permitted by applicable law and on such conditions as it deems appropriate, authorize the Corporation to pay or reimburse costs of investigation, attorneys' fees, and other expenses incurred by a person entitled to reimbursement under this Article, even in advance of the final disposition of the proceeding in question.

Section 10.5. Nonexclusive Remedy; Benefit. The rights provided by this Article shall not be deemed exclusive of any other right of indemnification or payment provided by contract, the Articles, vote of directors, or otherwise. Any right of indemnity or payment arising under this Article shall continue as to a person who has ceased to hold the office or position in which such right arose; shall inure to the benefit of his or her heirs, executors, and administrators; and shall survive any subsequent amendment of this Article.

Section 10.6. Insurance. The Corporation may, at the discretion of the Board, purchase and maintain insurance on behalf of the persons described in Sections 10.2 and 10.3 against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person under the laws of the State of California.

ARTICLE XI CONFLICTS OF INTEREST

Section 11.1. Fiduciary Obligation. In conducting the affairs of the Corporation, each director shall owe a fiduciary obligation exclusively to the Corporation, and not to any other person or entity, including the entity that appointed such director to the Board of the Corporation.

Section 11.2. Statement of Potential Conflicts. Prior to taking his or her position on the Board, and annually thereafter, each director shall submit in writing to the President of the Board a list of all businesses and other organizations of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), a shareholder (other than a *de minimis* ownership interest), employee or agent with which the Corporation has, or might be expected to have, a relationship or a transaction in which the director might have an interest conflicting with the fiduciary obligation stated in Section 11.1. The statements shall be made available to all directors.

Section 11.3. Conduct of Meetings of the Board of Directors When a Conflict Exists. At such time as any matter comes before the Board which involves or may involve a conflict of interest, the affected director shall make known the potential conflict, whether disclosed by his or her written statement or not. Such director shall answer any questions that might be asked of him or her and shall disclose all material facts. At the request of the President, or the request of the Vice-President if the director with a conflict is the President, such director shall withdraw from the meeting for so long as the matter shall continue under discussion. If by withdrawing there is no longer a quorum, consideration of the matter shall be rescheduled until such time when there is a quorum despite the withdrawn director.

Section 11.4. Effect of Conflict. A director may be interested, directly or indirectly, in any contract, transaction or act relating to or incidental to the operations conducted by the Corporation, and may freely make contracts, enter into transactions, or otherwise act for or on behalf of the Corporation in such matters; provided that (i) the direct or indirect interest of the director in the proposed contract, transaction or act shall first be disclosed to and approved by the Board, (ii) any director directly or indirectly interested in the contract, transaction or act shall refrain from voting on the matter, and (iii) no contract, transaction or act shall be entered into or taken on behalf of the Corporation if such contract, transaction or act would jeopardize the Corporation's tax-exempt status under Section 501(c)(3) of the Code.

* * * * *

EXHIBIT 1

- A. The following entities may appoint two directors as provided in Section 3.2(b) of the Bylaws.

American Rivers
California Trout
Klamath Riverkeeper
Northern California Council, Federation of Fly Fishers
Salmon River Restoration Council
Sustainable Northwest
Trout Unlimited

- B. The following entities may appoint one director as provided in Section 3.2(b) of the Bylaws.

Institute for Fisheries Resources
Pacific Coast Federation of Fishermen's Associations

EXHIBIT 5
Klamath River Renewal Corporation Certificate of
Good Standing

State of California

Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME:

KLAMATH RIVER RENEWAL CORPORATION

FILE NUMBER: C3879848
FORMATION DATE: 02/29/2016
TYPE: DOMESTIC NONPROFIT CORPORATION
JURISDICTION: CALIFORNIA
STATUS: ACTIVE (GOOD STANDING)

I, ALEX PADILLA, Secretary of State of the State of California,
hereby certify:

The entity is authorized to exercise all of its powers, rights and
privileges in California.

This certificate relates to the status of the entity on the Secretary
of State's records and does not reflect documents that are pending
review or other events that may affect status.

No information is available from this office regarding the financial
condition, status of licenses, if any, business activities or
practices of the entity.



IN WITNESS WHEREOF, I execute this certificate
and affix the Great Seal of the State of
California this day of December 03, 2020.

ALEX PADILLA
Secretary of State

EXHIBIT 6

**Agreement for the Operation and Maintenance of the
Lower Klamath Project Between Klamath River
Renewal Corporation and PacifiCorp (2017)**

AGREEMENT

for the

OPERATION AND MAINTENANCE

of the

LOWER KLAMATH PROJECT

between

KLAMATH RIVER RENEWAL CORPORATION

and

PACIFICORP

Consistent with the Amended Klamath Hydroelectric Settlement Agreement (KHSA), the Klamath River Renewal Corporation (KRRC), a California non-profit corporation, and PacifiCorp, an Oregon corporation, entered into this Agreement for the Operation and Maintenance of the Lower Klamath Project (the Agreement) on September 20, 2017. KRRC and PacifiCorp are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

1. RECITALS: This Agreement is made with reference to the following facts, among others:

1.1 PacifiCorp is engaged in the generation, transmission, and distribution of electric power and energy as an electric utility in Oregon, California, Idaho, Utah, Washington, and Wyoming. PacifiCorp has been the Federal Energy Regulatory Commission (FERC) licensee for the Klamath Hydroelectric Project – a series of eight generating and non-generating developments on the Klamath River and its tributaries in Klamath County, Oregon and Siskiyou County, California (the Project). On April 6, 2016, PacifiCorp entered into the KHSA with, among others, the State of California, the State of Oregon, the United States Department of the Interior, the Yurok Tribe, the Karuk Tribe, and the National Marine Fisheries Service.

1.2 The KRRC is a California non-profit corporation incorporated on February 29, 2016, pursuant to the KHSA for the sole purpose of becoming the “Dam Removal Entity” under that agreement. The KRRC became a party to the KHSA on August 30, 2016.

1.3 Pursuant to the KHSA, on September 23, 2016, PacifiCorp and KRRC filed a joint application to FERC asking it to remove J.C. Boyle, Copco No. 1, Copco No. 2, and Iron

Gate from the Project license and designate them as a new project – the Lower Klamath Project – and to transfer the FERC license for the new Lower Klamath Project from PacifiCorp to KRRC.

1.4 Concurrently with the joint license transfer application, KRRC filed an application with FERC to surrender the FERC license for the Lower Klamath Project for purposes of Facilities Removal, as defined in the KHSA. As of the date the Parties entered into this Agreement, FERC has not yet approved the Parties' joint license transfer application or KRRC's license surrender application.

1.5 The KHSA provides that after the license for the Lower Klamath Project is transferred to the KRRC, PacifiCorp will continue to operate the Facilities for the benefit of its customers and retain all rights to the power from the Facilities until each Facility is Decommissioned. The KHSA also provides that Parties will enter into an operations and maintenance agreement under which PacifiCorp will pay all costs associated with operating and maintaining the Facilities between the time of license transfer and Decommissioning, and indemnify, defend, and hold KRRC harmless with respect to those operations.

1.6 Accordingly, PacifiCorp and KRRC desire to enter into this Agreement for the purpose of establishing the respective obligations of the parties with respect to the interim operation and maintenance of the Lower Klamath Project.

2. AGREEMENT:

In consideration of the mutual covenants below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PacifiCorp and

KRRC agree with respect to the operation and maintenance of the Lower Klamath Project as set forth in this Agreement.

3. TERM:

3.1 The Effective Date of this Agreement is the date on which KRRC shall have executed a Signed Acceptance of Transfer of License for the Lower Klamath Project from PacifiCorp.

3.2 This Agreement will terminate as to each Facility on the applicable Facility Termination Date or as otherwise provided for in this Agreement.

4. DEFINITIONS; CONSTRUCTION:

4.1 The capitalized terms set forth below, when used in this Agreement, will have the respective meanings specified below. Capitalized terms used in this Agreement but not defined below will have the respective meanings ascribed to such terms in the KHSa.

(a) **Copco No. 1:** means the Copco No. 1 hydroelectric development and associated lands located in Siskiyou County, California, which generally consists of a concrete dam, reservoir and powerhouse (20 megawatt [MW]) located at River Mile (RM) 198.6.

(b) **Copco No. 2:** means the Copco No. 2 hydroelectric development and associated lands located in Siskiyou County, California, which generally consists of a dam located at RM 198.3, a water conveyance system, a powerhouse (28 MW) located at RM 196.8, and a substation adjacent to the powerhouse.

(c) **Decommissioning:** has the meaning ascribed in Section 1.4 of the KHSA.

(d) **Effective Date:** has the meaning set forth in Section 3.1.

(e) **Facility and Facilities:** individually or collectively Copco No. 1, Copco No. 2, Iron Gate or J.C. Boyle, as the context requires. For purposes of this Agreement each Facility shall be deemed to include all associated real property interests transferred to KRRC, consistent with Section 7.6.4 of the KHSA, whether or not such interests are included by FERC in the applicable boundaries of the Lower Klamath Project.

(f) **Facility Termination Date:** means, as to each Facility, the date on which KRRC intends to commence substantial physical Facilities Removal activities and as to which KRRC has requested that PacifiCorp discontinue operation of such Facility, provided that, except as may be otherwise agreed by the Parties, such date shall be consistent with Section 7.3 of the KHSA and shall have been set forth in a notice from KRRC to PacifiCorp not less than 90 days before the proposed Facility Termination Date, and provided further that PacifiCorp shall have complied with its obligations under Section 11 with respect to turning over the Facility to KRRC.

(g) **FERC:** means the Federal Energy Regulatory Commission.

(h) **Iron Gate:** means the Iron Gate hydroelectric development and associated lands located in Siskiyou County, California, which generally consists of a reservoir, an earth embankment dam, and a powerhouse located at RM 190.1. The Iron Gate development does not include the Iron Gate Fish Hatchery, which is a facility owned by PacifiCorp and operated by the California Department of Fish and Wildlife.

(i) **J.C. Boyle:** means the J.C. Boyle hydroelectric development and associated lands located in Klamath County, Oregon, which generally consists of a reservoir, a combination embankment and concrete dam located at RM 224.7, a water conveyance system, a powerhouse (98 MW) on the Klamath River at RM 220.4, and a substation adjacent to the powerhouse.

(j) **KHSA:** means the Klamath Hydroelectric Settlement Agreement, originally entered into on February 18, 2010, as heretofore amended, a copy of which is attached to this Agreement as Exhibit A, and as it may hereafter be amended.

(k) **Lower Klamath Project:** means the four hydroelectric generating developments (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) and associated lands to be transferred from PacifiCorp to KRRC under the KHSA, including lands referred to in the KHSA as Parcel B lands.

(l) **Operating Expenses:** means those expenses set forth in Section 6.

(m) **Project:** means the Klamath Hydroelectric Project licensed by FERC under project license number P-2082. The Project is located in Klamath County, Oregon and Siskiyou County California, and includes seven generating facilities (East Side, West Side, J.C. Boyle, Copco No. 1, Copco No. 2, Fall Creek, and Iron Gate) and associated lands, and one non-generating dam (Keno) and associated lands.

4.2 Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

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

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

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

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

(e) All references to any law, regulation, directive, order, license, permit, approval or other legal or regulatory requirement shall refer to same as in effect at the time of reference.

5. PROJECT OPERATION:

5.1 From and after the Effective Date, PacifiCorp will, at its sole cost and expense, operate and maintain the Lower Klamath Project in accordance with the terms, conditions, and covenants contained in this Agreement.

5.2 PacifiCorp will operate and maintain the Lower Klamath Project in a prudent, efficient, and skillful manner, consistent with its manner of operation and maintenance before the Effective Date and in accordance with the standards and requirements of the KHSA and the standards prevailing in the utility industry for hydroelectric projects of a similar size and nature.

5.3 PacifiCorp will comply with the requirements and conditions of all federal, state and local laws, regulations and requirements (including any final orders or regulations of regulatory or other agencies having jurisdiction) applicable to the operation or maintenance of the Lower Klamath Project, including the requirements and conditions of the FERC license and applicable directives, protocols, plans or procedures issued or required by FERC with respect to the Lower Klamath Project.

5.4 PacifiCorp acknowledges that it will at all times be acting as an independent contractor and that neither its employees nor the employees of any of its contractors will be considered to be servants, employees or agents of KRRC and that it will be responsible for all employment matters relating to its employees, including but not limited to workplace conditions and reporting and notification obligations.

5.5 PacifiCorp will pay promptly all sums due its employees or due any governmental or other agency on its employees' behalf, and will not permit any labor claims to become a liability of KRRC or a lien against the Lower Klamath Project.

5.6 PacifiCorp will promptly notify KRRC of any emergency affecting the Lower Klamath Project. Consistent with the standards prevailing in the utility industry for hydroelectric projects of a similar size and nature, PacifiCorp will take all necessary action to prevent or mitigate any emergency affecting the Lower Klamath Project.

5.7 PacifiCorp will keep and maintain the Lower Klamath Project in a safe and orderly condition, and will not cause or permit the existence of a public or private nuisance or commit or permit waste.

5.8 PacifiCorp will not do any thing or fail to take any act that would impair the coverage of or increase the premium for any policy of insurance maintained by KRRC, and no provision of this Agreement will be construed as authorizing any such result.

5.9 For purposes of this Agreement operation and maintenance means activities, services and functions necessary or otherwise performed in connection with the Lower Klamath Project, including, without limitation, their operation, maintenance, repair, replacement, refurbishment, restoration, security, safety, engineering, testing, staffing, and inspection, and any measures necessary to comply with applicable contracts, agreements, laws, regulations, requirements, permits, approvals, consents, certificates, authorizations or reporting obligations or to comply with “operation and maintenance” standards or practices prevailing in the utility industry for hydroelectric projects of a similar size and nature. Operation and maintenance shall include Decommissioning of a Facility but shall not include (a) capital improvements or alterations unless required to be undertaken as part of the foregoing or (b) Facilities Removal activities by KRRC.

5.10 PacifiCorp shall accept its responsibilities under this Agreement without regard to the condition of the Lower Klamath Project on the Effective Date, which PacifiCorp shall be deemed to have accepted in its AS IS condition, and PacifiCorp’s operations and maintenance obligations shall not be limited or impaired by any condition, circumstance or occurrence in existence as of the Effective Date, provided that nothing in this Section 5.10 shall be construed to impair PacifiCorp’s rights under Section 7.1.3 of the KHSA.

5.11 KRRC shall notify and consult with PacifiCorp regarding any proposed amendments or modifications to the FERC license or other license, permit, authorization, or approval applicable to the Lower Klamath Project. KRRC shall not initiate or voluntarily participate in a process to amend or modify any license, permit, authorization, or approval applicable to the Lower Klamath Project that would materially increase Operating Expenses without prior consultation and approval with PacifiCorp.

6. EXPENSE OF OPERATION, MAINTENANCE, REPAIRS AND REPLACEMENTS:

6.1 PacifiCorp will be solely responsible for all Operating Expenses, including costs of repairs, replacements, restoration, operations, maintenance, engineering, administrative, accounting and general expenses, in each instance arising in connection with the operation or maintenance of the Lower Klamath Project.

6.2 “Operating Expenses” include:

(a) The cost of all PacifiCorp activities, functions and services arising in connection with the operation or maintenance of the Lower Klamath Project.

(b) All employee costs, including related employee benefit costs such as Social Security taxes, unemployment insurance expense, group life insurance, group hospitalization and medical insurance, pension funding expense, workmen's compensation, long-term disability and other insurance and paid leave.

(c) Materials and supplies including related purchasing and handling costs.

(d) Royalties.

- (e) Fuel costs
- (f) Equipment rental or replacement.
- (g) Traveling expense including use of PacifiCorp transportation equipment.
- (h) All federal, state or local taxes and fees associated with operating and maintaining the Lower Klamath Project and payments in lieu of such taxes, and all real estate taxes, assessments or similar charges imposed upon the Lower Klamath Project.
- (i) Costs associated with implementation of the Interim Measures described in the KHSA.
- (j) Premiums for all insurance required to be obtained by PacifiCorp under this agreement
- (k) Costs associated with regulatory or permit requirements imposed after the Effective Date of this Agreement, including but not limited to alterations to or modifications of any Facility, environmental compliance, costs associated with dam safety, new infrastructure, changed operations, regulatory compliance actions, or mitigation requirements regardless of whether resulting from new, renewed, or extended permits, authorizations, or license terms or changes in applicable requirements.
- (l) Other miscellaneous costs

6.3 Notwithstanding Section 6.2, Operating Expenses do not include:

(a) Costs incurred by KRRC in connection with its Facilities Removal activities.

(b) Costs relating to the Facilities that would not have been incurred but for KRRC's Facilities Removal activities, other than immaterial costs such as costs relating to administrative functions or assistance in connection with KRRC's Facilities Removal planning activities.

6.4 PacifiCorp will keep and maintain the Lower Klamath Project free from all liens or other encumbrances except for real estate taxes not yet due or encumbrances arising as a direct result of KRRC's Facilities Removal activities.

6.5 KRRC shall not be responsible for any fee or other compensation to PacifiCorp in respect of its operation and maintenance activities.

7. ACCESS; SECURITY:

7.1 KRRC will grant PacifiCorp, and PacifiCorp's contractors and subcontractors, such access to the Lower Klamath Project as is necessary for PacifiCorp to operate and maintain the Facilities in accordance with this Agreement.

7.2 PacifiCorp shall secure, and shall have the right to grant third party access to, the Lower Klamath Project consistent with applicable regulatory requirements and procedures, including the procedures PacifiCorp used before the Effective Date. Such procedures will provide for any necessary access by federal, state, or local regulatory agencies or entities

involved in the necessary regulation, supervision, permitting, or oversight of activities related to operation and maintenance of the Lower Klamath Project.

7.3 PacifiCorp will keep KRRC apprised of requests for access by third parties and will seek KRRC approval of any requested third party access that is not legally required or directly related to the operation or maintenance of the applicable Facility.

7.4 KRRC retains the right to: (i) enter upon the Lower Klamath Project from time to time, with persons and equipment, to ensure compliance with the FERC license and regulations and orders of FERC and to take such steps with respect to the Lower Klamath Project as KRRC deems reasonably necessary in order to maintain its status as a FERC licensee under the FERC license; (ii) perform, or to obtain PacifiCorp's timely performance of, any and all acts required by an order of FERC or its successor regarding the Lower Klamath Project without the prior approval of PacifiCorp or any other person; and (iii) enter upon the Lower Klamath Project to conduct studies or other activities related to Facilities Removal or other purposes. KRRC will endeavor to provide reasonable prior notice to PacifiCorp of any intended access by KRRC or its contractors or consultants that could reasonably be expected to have any material impact on the operation of any Facilities. The Parties will cooperate and coordinate in order to minimize any interference with each others' activities on or about the Lower Klamath Project.

8. OPERATION, SCHEDULING, HYDROELECTRIC OUTPUT:

8.1 PacifiCorp will operate the Lower Klamath Project for the benefit of its customers consistent with applicable license requirements, biological opinions, permits, and federal, state, and local law. Subject to the requirements of this Agreement, PacifiCorp will have the right and

discretion to schedule and direct river flows, reservoir elevations, and electric output from the Lower Klamath Project's facilities. Unless required to comply with applicable license requirements, biological opinions, permits, and federal, state, and local law, in no event will PacifiCorp take any such actions in a manner that could reasonably be expected to materially adversely affect KRRC's Facilities Removal activities, including the planning, study or permitting aspects of such activities.

8.2 PacifiCorp will exclusively own all electric output, renewable energy credits, and other energy and environmental attributes associated with generation produced by each Facility as provided for in the KHSA.

9. OPERATIONS AND MAINTENANCE, REPLACEMENTS, REPAIR PROJECTS:

9.1 PacifiCorp will perform all of the operation and maintenance functions with respect to the Lower Klamath Project that it would have performed, in its sole discretion, if it were the owner of the Lower Klamath Project and the holder of the FERC license. Operations and maintenance functions include making all replacements, repairs and refurbishments necessary to operate and maintain the Facilities in a safe and orderly condition and to maintain the existing capabilities of Lower Klamath Project developments, during operations prior to the commencement of Facilities Removal activities, in order to: (1) pass flows through and/or over dams and spillways and comply with applicable flow and ramp rate limitations; (2) provide for the monitoring of flows and flowrates through existing measurement devices on penstocks, spillgates, canals, and in the Klamath River; (3) comply with dam safety monitoring requirements; (4) comply with applicable environmental or water quality monitoring

requirements, (5) comply with FERC directives related to the operation and maintenance of the Lower Klamath Project, and (6) generate hydroelectricity for the benefit of PacifiCorp's customers.

9.2 PacifiCorp shall keep KRRC reasonably apprised of its operations and maintenance activities, including any alterations or other construction activities. PacifiCorp shall notify KRRC prior to undertaking any material modification or alteration to the Facilities and, unless required by FERC or other governmental authority with jurisdiction, shall not undertake any alteration or modification that will materially adversely affect KRRC's Facilities Removal activities.

9.3 Except as may arise under Section 6.3, KRRC shall not be responsible for the cost of any capital improvements or alterations to the Facilities unless it has agreed in writing, in its sole discretion, to be so responsible prior to the commencement of such improvement or alteration.

10. FACILITIES TURNOVER:

10.1 Upon receipt of a notice from KRRC setting forth a Facilities Termination Date, PacifiCorp will, before the proposed Facilities Termination Date, commence and complete Decommissioning of such Facility and, except as may be otherwise directed by KRRC, terminate any and all agreements with third parties relating to such Facility and pay all amounts due in respect of any such agreement.

10.2 Upon the Facilities Termination Date of a particular Facility, PacifiCorp will withdraw all of its employees from the applicable Facility and deliver it to KRRC in a safe

condition free of all liens and encumbrances not permitted under this Agreement and otherwise in the condition required by this Agreement, including any applicable requirements or conditions of the FERC license or FERC's approval of the license surrender. In addition, to the extent requested by KRRC, PacifiCorp will turn over copies of applicable records. The parties will confirm the occurrence of a Facilities Termination Date in a written instrument.

10.3 The Parties shall, in all events, reasonably coordinate and cooperate with each other in connection with Decommissioning and the turnover of each Facility.

11. RECORDS:

In addition to delivering FERC license documents to KRRC as required by FERC regulations, consistent with its current document retention policies, PacifiCorp will maintain copies of all records and reports related to the Lower Klamath Project that were created before this Agreement's Effective Date, including records and reports required by the FERC License, and continue its record keeping and reporting activities related to the Lower Klamath Project that existed before this Agreement's Effective Date. Records maintained by PacifiCorp will include, but not be limited to, records necessary to reflect the efficiency of Lower Klamath Project operation and maintenance programs, records of generation of power, dam safety, and other records as required by regulatory authorities. Further, PacifiCorp will maintain current versions of all drawings, specifications, and other materials related to the Lower Klamath Project as it would have done had it remained the Licensee of the Lower Klamath Project. Upon request, PacifiCorp will provide the KRRC with copies of any relevant records, drawings, specifications, and other materials related to the Lower Klamath Project that were created before the Effective

Date. KRRC shall have access to all such records, reports, drawings, specifications and other materials relating to the Lower Klamath Project at any time.

12. INSURANCE:

12.1 PacifiCorp will maintain in effect at all times during the term of this Agreement, insurance for the operation and maintenance of the Lower Klamath Project in such amounts as is commercially reasonable for utility industry projects of similar size and nature. Such insurance will be maintained with responsible insurers and will name KRRC as an additional insured and with losses payable to the respective parties for their benefit as their respective interests may appear to protect and insure against: (i) Workmen's Compensation and Employer's Liability, (ii) public liability for bodily injury and property damage, (iii) all risks of physical damage to property or equipment, including transportation and installation perils, and (iv) such other insurance as the parties deem necessary, with reasonable limits and subject to appropriate exclusions and deductibles. Upon request, PacifiCorp will provide KRRC with copies of the applicable policies, insurance binders or other evidence reasonably acceptable to KRRC that such insurance is in effect at all times.

12.2 The premium costs for such insurance coverages will be an Operating Expense of the Lower Klamath Project.

13. LICENSES AND PERMITS:

13.1 Upon the expiration of any licenses or permits required for the Operation and Maintenance of the Lower Klamath Project, or should any additional or further licenses or permits for operations and maintenance activities be required, the Parties will cooperate to cause

timely applications for a new or further license or permit to be filed. PacifiCorp's cost of preparation and submission of such applications will be an Operating Expense of the Lower Klamath Project.

13.2 In the event that compliance with any federal or state license or permit necessary for the operation of the Lower Klamath Project, or with any order or directive issued pursuant to or in connection with any such license or permit, requires the submission of materials to a state or federal regulatory agency, PacifiCorp will prepare and submit such materials on behalf of the KRRC, provided that PacifiCorp shall furnish the foregoing to KRRC for its review and approval reasonably prior to submission thereof. The preparation and submission of the materials will be an Operating Expense of the Lower Klamath Project.

13.3 Notwithstanding the prior Section 13.2, the KRRC, with technical support from PacifiCorp, will be solely responsible for the preparation and submission of any materials necessary to obtain state or federal regulatory agency approval of Facilities Removal.

14. INDEMNIFICATION:

PacifiCorp will indemnify, hold harmless, and defend KRRC for, from, and against any loss, expense, cost, liability, damage, claim, fine or penalty resulting from or otherwise related to the operation, maintenance, replacement, restoration or repair of the Lower Klamath Project or any failure by PacifiCorp to observe and comply with the terms and conditions of this Agreement. This Section 15 will survive termination of this Agreement.

15. UNCONTROLLABLE FORCES:

No Party will be considered to be in default in the performance of any of the obligations hereunder, other than obligations of the parties to pay costs and expenses, if failure of performance will be due to uncontrollable forces. The term “uncontrollable forces” will mean any cause beyond the control of the Party affected and which, by the exercise of reasonable diligence, the Party is unable to overcome, and will include, but not be limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies with proper jurisdiction prohibiting acts necessary to performance hereunder or permitting any such act only subject to unreasonable conditions, insurrection or riot, an act of the elements, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Nothing contained herein will be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. A Party rendered unable to fulfill any obligation by reason of uncontrollable forces will promptly notify the other party of the occurrence and nature of the uncontrollable forces and shall exercise due diligence to remove such inability with all reasonable dispatch.

16. TRANSFER AND ASSIGNMENTS; SECURED INTERESTS:

16.1 Subject to the prior written consent of the other Party, which may be granted or withheld in the sole discretion of such party, a Party may assign its obligations under this Agreement as follows but not otherwise:

(a) To any corporation or other entity acquiring all or substantially all the property of the Party making the transfer.

(b) To any corporation or entity into which or with which the Party making the transfer may be merged or consolidated.

(c) To any corporation or entity, the stock or ownership of which is wholly owned by the Party making the transfer.

(d) To any other person.

16.2 No assignment or transfer of this Agreement or any obligations hereunder shall be effective until the assignee or transferee shall expressly assume the obligations of the assigning Party's obligations under this Agreement, provided that no transfers or assignment will relieve a Party of any obligation hereunder, notwithstanding the other party's consent except to the extent expressly agreed in writing by the other Party.

17. OBLIGATIONS ARE SEVERAL:

The duties, obligations and liabilities of the Parties hereunder are intended to be several and not joint or collective and neither of the Parties will be jointly or severally liable for the acts, omissions or obligations of the other. Nothing herein contained will be construed to create an association, joint venture, partnership, or impose a partnership duty, fiduciary relationship, obligation or liability, on or with regard to either of the Parties. No Party will have the right or power to bind the other Party without its express, written consent, except as expressly provided in this Agreement.

18. SUCCESSORS AND ASSIGNS:

Subject to the restrictions on transfer and assignment herein provided, all of the respective covenants and obligations of each of the Parties will be and become the respective obligations of the successors and assigns of each such Party and will be obligations running with the respective party's rights, titles and interests in the Lower Klamath Project. It is the specific intention of this provision that all such covenants and obligations will be binding upon any party which acquires any of the right, title and interest of either of the Parties in the Lower Klamath Project or under this Agreement.

19. REPRESENTATIONS AND WARRANTIES:

19.1 KRRC represents and warrants to PacifiCorp as of the date hereof and as of the Effective Date that:

- (a) it is a validly existing California not-for-profit corporation;
- (b) it has the legal power and authority to enter into and perform this Agreement;
- (c) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Agreement by KRRC;
- (d) this Agreement constitutes a legal, valid, and binding obligation of KRRC, enforceable in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws respecting the rights of creditors or the application of general principles of equity;

(e) the individual signing this Agreement on behalf of KRRC is authorized and empowered to execute and deliver this Agreement on behalf of KRRC and to thereby bind KRRC.

19.2 PacifiCorp represents and warrants to KRRC as of the date hereof and as of the Effective Date that:

- (a) it is a validly existing Oregon corporation;
- (b) it has the legal power and authority to enter into and perform this Agreement;
- (c) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Agreement by PacifiCorp;
- (d) this Agreement constitutes a legal, valid, and binding obligation of PacifiCorp, enforceable in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws respecting the rights of creditors or the application of general principles of equity;
- (e) the individual signing this Agreement on behalf of PacifiCorp is authorized and empowered to execute and deliver this Agreement on behalf of PacifiCorp and to thereby bind PacifiCorp.

20. JURY WAIVER:

TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED.

21. APPLICABLE LAWS AND REGULATIONS:

The Parties in their performance of their obligations hereunder will conform to all applicable laws, rules and regulations and, to the extent that their operations may be subject to the jurisdiction of state or federal regulatory agencies, subject to the terms of valid and applicable orders of any such agencies. This Agreement will be subject to the laws of the State of Oregon.

22. INTERPRETATION:

22.1 The Parties have participated jointly in the negotiation and drafting of this Agreement with the assistance of counsel and other advisors. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

22.2 In the event of any conflict between this Agreement and the KHSA (or any portion thereof), the terms of this Agreement will prevail.

23. NOTICES:

Any notice, demand, or request provided for in this Agreement served, given, or made in connection therewith will be deemed properly served, given, or made if sent by registered or certified mail, postage prepaid, addressed to the Party at its principal place of business as set out below:

PacifiCorp

President or Chief Executive Officer
825 Northeast Multnomah Street
Suite 2000
Portland, OR 97232

Klamath River Renewal Corporation

President or Executive Director
423 Washington Street, 3rd Floor
San Francisco, CA 94111

A party may at any time, and from time to time, change its designation of the person to whom notice will be given by written notice to the other Party as hereinabove provided.

24. ADDITIONAL DOCUMENTS:

Each party, upon request by the other Party, will make, execute and deliver any and all documents reasonably required to implement the terms of this Agreement, provided that such documents are in a form reasonably acceptable to such Party and does not increase such Party's obligations or reduce its rights or benefits under this Agreement.

25. EFFECTIVENESS OF THIS AGREEMENT:

The Parties' respective executory rights and obligations hereunder will become effective, if at all, on the Effective Date. For the avoidance of doubt, no aspect of this Agreement, other than this Section 25, will have any effect unless and until the Effective Date occurs, provided that the foregoing is not intended to impair the binding contractual nature of this Agreement prior to the Effective Date. If the KHSA is terminated before the Effective Date then this Agreement, including this Section 25, will terminate ninety (90) days after the termination of the KHSA unless the Parties have agreed otherwise in writing..

26. MODIFICATION; WAIVERS:

This Agreement may be supplemented, amended, or modified only by a written instrument signed by the Parties. No failure or delay by either Party in asserting or enforcing any provision of this Agreement will constitute a waiver thereof unless such waiver is expressly set forth in a written instrument signed by such Party. No waiver of any provision of this Agreement by either Party in any particular instance shall impair such Party's right to thereafter enforce such provision in any other instance.

27. ENTIRE AGREEMENT:

This Agreement is entered into pursuant to the KHSA and is intended to supplement and facilitate implementation of the KHSA. This Agreement, together with Exhibits hereto, along with the KHSA embody the entire agreement and understanding of the Parties in respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof.

28. DEFAULTS AND REMEDIES:

28.1 In the event either party breaches its obligations under this Agreement and such breach persists more than thirty (30) days after written notice, the non-breaching party shall have such rights and remedies as may be available at law or in equity, including a right to damages, injunction or specific performance, subject to Section 29. In addition, subject to Section 29, the non-defaulting party shall thereafter have the right to terminate this Agreement on not less than thirty (30) days' notice.

28.2 In addition to the remedies provided for in Section 28.1, in the event of a default beyond notice and cure on the part of PacifiCorp KRRC shall have the right, where practical, to cause the default to be cured at PacifiCorp's cost and expense using such qualified personnel or contractors as KRRC may select.

28.3 Notwithstanding the foregoing, in no event shall either party be entitled to consequential, indirect, punitive or special damages, and each party waives and covenants not to assert any claim for such damages.

29. DISPUTES:

The dispute resolution provisions in Section 8.6.4 of the KHSA will govern any dispute arising under or relating to this Agreement. In the event of a dispute under or relating to this Agreement, either Party may initiate dispute resolution consistent with Section 8.6.4 of the KHSA.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts.

Klamath River Renewal Corporation

By: Michael Carrier

Date: 9-20-17

Name: Michael Carrier

Title: President

PacifiCorp

By: Sarah K. Link

Date: 9-20-17

Name: Sarah K. Link

Title: VP + General Counsel

EXHIBIT 7
Memorandum of Agreement
(November 16, 2020)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Implementing Agreement") is entered into between PacifiCorp, a wholly-owned subsidiary of Berkshire Hathaway Energy, the Karuk Tribe, Yurok Tribe, State of Oregon, State of California, and Klamath River Renewal Corporation ("KRRRC"), which are collectively referred to as the "Implementing Agreement Parties."

- A. The Implementing Agreement Parties recognize and acknowledge the importance of the Klamath River to the livelihood and culture of Klamath Basin Tribes whom have depended on these resources since time immemorial. Furthermore, the Implementing Agreement Parties are Signatories to the Amended Klamath Hydroelectric Settlement Agreement ("AKHSA" or "KHSA") and are committed to removal of the JC Boyle, Copco 1, Copco 2, and Iron Gate dams in order to achieve a free-flowing Klamath River with volitional fish passage ("the Project").
- B. On September 23, 2016, PacifiCorp and KRRRC filed a joint application with the Federal Energy Regulatory Commission ("FERC") to amend the Klamath Hydroelectric Project No. 2082 license by placing the J.C. Boyle Dam, Copco I, Copco II, and Iron Gate dams into a separate license (the "Lower Klamath Project") and to transfer that license to KRRRC.
- C. On March 15, 2018, FERC approved the request to separate License No. 2082 and created the Lower Klamath Project License No. 14803 and, on June 21, 2018, stayed the order amending the license pending further action on the license transfer application.
- D. On July 16, 2020, FERC issued an order approving the partial transfer of the Lower Klamath Project license from PacifiCorp individually to PacifiCorp and KRRRC jointly ("July 16 Order"). In so approving, FERC lifted the stay of the order amending the license but made its effectiveness coincident with the effectiveness of the July 16 Order.
- E. On July 23, 2020, PacifiCorp sent to the KHSA Signatories a letter that "provides formal Notice of the occurrence of an event specified in amended KHSA section 8.11.1 and triggers the cure mechanisms in section 8.11.3" ("Section 8.11 Notice").
- F. After several meetings among different groups of the Implementing Agreement Parties, the Implementing Agreement Parties, with support from Berkshire Hathaway Energy, have agreed to this Implementing Agreement as a means of resolving the issues identified in PacifiCorp's Section 8.11 Notice at this time and allowing for the continued implementation of the KHSA as amended.

- G. The Implementing Agreement Parties, with support from Berkshire Hathaway Energy, agree to this Implementing Agreement as a demonstration of their continuing support and commitment to dam removal.
- H. The Implementing Agreement Parties understand and agree that Oregon and California (collectively referred to as "the States") are acting as defined in the AKHSA by and through state departments and agencies with independent regulatory responsibilities and funding subject to the control of their respective legislatures. In this agreement the state of California is acting through the California Natural Resources Agency. Any commitment to State funds in this Implementing Agreement is contingent upon and subject to receipt of legislative appropriations or other expenditure authority specific to and sufficient to allow States, in the exercise of their reasonable administrative discretion, to carry out their obligations herein.

The Implementing Agreement Parties agree to the following terms as a means of carrying out their respective rights and duties under the AKHSA and achieving dam removal.

1. Amended License Surrender Application. KRRC and PacifiCorp will file an amended license surrender application ("ALSA") with FERC within seven days of execution of this Implementing Agreement. The ALSA will clearly explain and demonstrate the proposed pathway for the States to become co-licensees with KRRC, and the process and timeline for filing a new license transfer application as described in Section 3 herein, including treatment of the July 16 Order and confirmation that KRRC will continue to be the Dam Removal Entity.
2. Permits and Authorizations. KRRC will submit other work products to the applicable agencies that KRRC deems necessary to obtain permits and authorizations (including but not limited to biological assessments submitted to the National Marine Fisheries Service and U.S. Fish and Wildlife Service) to implement license surrender and Facilities Removal.¹ These submissions will occur on a timeline determined by KRRC. PacifiCorp will provide technical support and advice in the development of these submittals and will join in such submittals if necessary.

¹ Capitalized terms not otherwise defined in this agreement will have the same meaning as that in the Amended KHSA.

3. License Transfer Application.

- a. Upon execution of this Implementing Agreement, KRRC, PacifiCorp, and the States will prepare a new license transfer application requesting a transfer of the FERC license, which will propose to remove PacifiCorp from the license for the Lower Klamath Project and add the States and KRRC as co-licensees for the purposes of surrender of the Lower Klamath FERC license ("New Transfer Application"). The New Transfer Application will include a description that it is "building on" the original license transfer application approved in the July 16 Order.
- b. The States, PacifiCorp, and KRRC will file the New Transfer Application by January 16, 2021, and will notify FERC that PacifiCorp and KRRC are not accepting co-licensee status under the July 16 Order, and instead are seeking the license transfer outcome described in the New Transfer Application.
- c. The Implementing Agreement Parties will jointly support the ALSA and the New Transfer Application filings. Within 30 days of issuance of a final license surrender order by FERC, the States and KRRC will accept the license transfer order making the KRRC and States co-licensees for the Lower Klamath Project unless the States and PacifiCorp, in consultation with Karuk and Yurok Tribes, mutually agree to reject the license surrender order on the basis that the terms of the order, including terms of any federal agency consultation concerning the order, are significantly outside the norm for FERC orders involving major project construction or deconstruction in a manner that creates significant financial risk to the States or PacifiCorp.

4. Due Diligence.

Due diligence conducted by KRRC and the States related to the conveyance of Parcel B Lands has identified certain pre-existing environmental conditions ("Pre-Existing Environmental Site Conditions"). Prior to acceptance of license transfer by KRRC and the States, PacifiCorp shall:

- i. resolve at PacifiCorp's sole cost and expense all Pre-Existing Environmental Site Conditions that can be resolved prior to acceptance of a license transfer, to the reasonable satisfaction of the States, and
- ii. for Pre-Existing Environmental Site Conditions that cannot be cost effectively resolved prior to acceptance of a license transfer order, enter into an agreement with KRRC and the States to resolve at PacifiCorp's sole cost and

expense such unresolved Pre-Existing Environmental Site Conditions prior to transfer of lands by KRRC to the States.

5. Section 8.11 Notice. PacifiCorp shall issue a letter to all KHSA Signatories to rescind the Section 8.11 notice immediately upon release of the press release announcing the execution of this MOA.
6. PUC Processes. Concurrent with submission of the New Transfer Application to FERC, PacifiCorp shall seek approvals with the state utility regulators ("PUC") to transfer PacifiCorp's property interests consistent with the New Transfer Application. PacifiCorp shall request expedited action to satisfy the requirement that PUC approvals are obtained prior to or contemporaneously with acceptance of license transfer by KRRC and the States.
7. Additional Contingency Funding. To address the unlikely event that costs for Facilities Removal exceed the AKHSA State Cost Cap, PacifiCorp and the States agree to create an additional contingency fund. This additional contingency is intended to express PacifiCorp's and the State's full commitment to dam removal. The additional contingency funding will be in the amount of \$45 million to ensure Facilities Removal will occur and be completed. The Implementing Agreement Parties believe that funding for Facilities Removal beyond the AKHSA State Cost Cap is unlikely to be needed, but have agreed that this additional contingency fund provides a clear and definitive commitment of resources that will ensure Facilities Removal is completed. PacifiCorp and the States will each contribute \$15 million for this additional contingency fund and share any cost overruns that may occur over this amount equally.
8. Third-Party Litigation. KRRC will serve as the Dam Removal Entity, which includes providing the identified insurance, bonding, contracting, and indemnity provisions to the States and PacifiCorp. KRRC and the States, as co-licensees, will carry out the final license surrender order to effectuate Facilities Removal. Once ownership of the Facilities is transferred for purposes of Facilities Removal, the States will defend PacifiCorp to the fullest extent of the law possible, including seeking to dismiss or remove PacifiCorp from any litigation asserting damages arising from harm caused by Facilities Removal (as distinguished from third-party litigation that is the responsibility of PacifiCorp because it is related to actions taken by PacifiCorp in operating and maintaining the facilities prior to the States becoming co-licensees).

9. Limitations of Implementing Agreement Parties.

- a. The Implementing Agreement Parties understand and agree that the States' actions described in this Implementing Agreement are contingent upon and subject to receipt of legislative appropriations or other expenditure authority specific to and sufficient to allow the States, in the exercise of their reasonable administrative discretion, to carry out their obligations described herein. State law, future legislative actions, and budget limitations may constrain the States in carrying out these actions and nothing in this Implementing Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any funds by the States except as otherwise permitted by applicable law.
- b. The Implementing Agreement Parties understand and agree that the States are, *inter alia*, regulatory bodies, and nothing in this Implementing Agreement is intended nor should be construed as affecting or limiting the States from complying with their obligations under applicable laws or otherwise carrying out such regulatory obligations or processes.
- c. The Implementing Agreement Parties acknowledge that the States' inability to achieve their obligations herein will impact the other Implementing Agreement Parties' obligations.

10. Status of KHSA. In the event that amendments to the AKHSA are proposed by any Implementing Agreement Party, all of the Implementing Agreement Parties will work collaboratively and in good faith to achieve agreement concerning such amendments by January 16, 2021.

11. Support. The Implementing Agreement Parties agree to support all filings and submittals to regulatory agencies. This support includes cooperating to meet submittal/filing timelines and to refrain from opposing any filing, or submitting any opposition through comments, litigation, or otherwise. This support includes not challenging approvals that KRRC has already obtained. This support also includes covenants not to sue by and among all Implementing Agreement Parties pursuant to the KHSA.

12. Good Faith. The Implementing Agreement Parties agree to support in good faith the implementation of this agreement to effectuate Facilities Removal.

13. Filing of the Implementing Agreement. This Implementing Agreement as signed by the Implementing Agreement Parties is a public document and may be filed in any applicable regulatory proceeding.
14. Milestones. The Implementing Agreement Parties propose the attached timeline for drawdown and Facilities Removal subject to regulatory approvals.
15. Entire Agreement. This Implementing Agreement is intended to implement certain rights and responsibilities under the AKHSA of the Implementing Agreement Parties. Together with the AKHSA, this Implementing Agreement is the entire agreement between the Implementing Agreement Parties.
16. Counterparts. This Implementing Agreement may be executed in counterparts, with separate signature pages, to be effective as of the last signature date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.



Gavin C. Newsom
Governor
State of California

Date: 11-16-2020

Kate Brown
Governor
State of Oregon

Date: _____

Joseph L. James
Yurok Tribal Chairman

Date: _____

Russell A. Attebery
Karuk Tribal Chairman

Date: _____

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

State of California
Date:_____



State of Oregon
Date:_____

Joseph L. James
Yurok Tribal Chairman
Date:_____

Russell A. Attebery
Karuk Tribal Chairman
Date:_____

Jim Root
President, Klamath River Renewal Corporation
Date:_____

William J. Fehrman
CEO and Chairman, PacifiCorp
President & CEO, Berkshire Hathaway Energy
Date:_____

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

Gavin C. Newsom
Governor
State of California

Date: _____

Kate Brown
Governor
State of Oregon

Date: _____



Joseph L. James
Yurok Tribal Chairman

Date: 11-13-2020

Russell A. Attebery
Karuk Tribal Chairman

Date: _____

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

Gavin C. Newsom
Governor
State of California

Date: _____

Kate Brown
Governor
State of Oregon

Date: _____

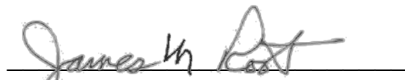
Joseph L. James
Yurok Tribal Chairman

Date: _____



Russell A. Attebery
Karuk Tribal Chairman

Date: 11-12-2020



Jim Root
President, Klamath River Renewal Corporation

Date: 11/13/2020

William J. Fehrman
CEO and Chairman, PacifiCorp
President & CEO, Berkshire Hathaway Energy

Date: _____

Jim Root
President, Klamath River Renewal Corporation

Date: _____



William J. Fehrman
CEO and Chairman, PacifiCorp
President & CEO, Berkshire Hathaway Energy

Date: 11/13/20

Attachment A

	2020	2021				2022				2023			
Memorandum of Agreement on Co-Licensee Pathway													
Submit Amended License Surrender Application													
Submit Amended License Transfer Application													
Draft Management Plans													
State PUC Property Disposition Review													
License Surrender Process													
FERC Dam Safety Review													
Parties Accept License and License Transfers													
Notice to Proceed & Predrawdown Construction													
Drawdown/Dam Removal Begins													