

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

**Klamath River Renewal Corporation
PacifiCorp**

**Project Nos. 14803-001;
2082-063**

**AMENDED APPLICATION FOR SURRENDER OF LICENSE FOR MAJOR
PROJECT AND REMOVAL OF PROJECT WORKS**

Attachment B

**MEMORANDUM OF AGREEMENT
BETWEEN
THE FEDERAL ENERGY REGULATORY COMMISSION
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICE
THE OREGON STATE HISTORIC PRESERVATION OFFICE**

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**MEMORANDUM OF AGREEMENT
BETWEEN
THE FEDERAL ENERGY REGULATORY COMMISSION
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICE
THE OREGON STATE HISTORIC PRESERVATION OFFICE**

**REGARDING
THE LOWER KLAMATH HYDROELECTRIC PROJECT LICENSE SURRENDER
IN KLAMATH COUNTY, OREGON AND SISKIYOU COUNTY, CALIFORNIA
(FERC No. 14803)**

WHEREAS, the Federal Energy Regulatory Commission (hereinafter, “Commission”) is considering a proposal filed by the Klamath River Renewal Corporation, State of Oregon, and State of California (“Licensee”) to surrender the license for the Lower Klamath Hydroelectric Project (FERC No. 14803) (hereinafter, “Project”) and to remove Project facilities in accordance with Part I of the Federal Power Act, 16 U.S.C §§ 791(a) through 825(r) *as amended* , and

WHEREAS, the Commission has determined that the issuing of such license surrender order will affect properties included in or eligible for inclusion on the National Register of Historic Places (hereinafter, “historic properties”) and that issuing a license surrender order is an undertaking for the Commission subject to review under Section 106 of the National Historic Preservation Act as implemented in the Advisory Council on Historic Preservation (hereinafter, “Council”) regulations, “Protection of Historic Properties” (36 C.F.R. Part 800); and

WHEREAS, the *Historic Properties Management Plan, Lower Klamath Hydroelectric Project License Surrender (FERC Project No. 14803)* (hereinafter, “HPMP”) dated [insert date], provides a description of construction activities related to the license surrender order, the area of potential effects (hereinafter, “APE”), known historic properties and anticipated effects, as of the date of this Memorandum of Agreement; and

WHEREAS, consistent with 36 C.F.R. § 800.2, the APE encompasses lands enclosed by the Project boundary as well as those areas beyond the Project boundary where the license surrender activities may cause changes in the character or use of historic properties, if any historic properties exist; and

WHEREAS, the U.S. Department of Interior, Bureau of Land Management, Redding Field Office and Klamath Falls Resource Area, Lakeview District (hereinafter, “BLM”) manages lands within the Project, and has responsibilities for the issuance of permits for archaeological work on BLM lands under the authorities of the Archaeological Resources Protection Act (16 U.S.C. §§ 470aa to mm); the Antiquities Act of 1906 (16 U.S.C. §§ 431-33); and Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1732); and

WHEREAS, the U.S. Department of Agriculture, U.S. Forest Service, Klamath National Forest and Six Rivers National Forest (hereinafter, “Forest Service”) manages lands in the Project area and has responsibilities for issuance of permits for archaeological work on Forest Service lands under the

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Project No. 14803
California and Oregon

1 authorities of the Archaeological Resources Protection Act (16 U.S.C. §§ 470aa to mm; hereinafter,
2 “ARPA”); the Antiquities Act of 1906 (16 U.S.C. §§ 431-33); and the Organic Act of 1897; and
3

4 **WHEREAS**, the United States Army Corps of Engineers San Francisco District (hereinafter
5 “Corps”) has responsibilities for the issuance of permits under Section 404 of the Clean Water Act of
6 1972 as amended (22 U.S.C. § 1344); and
7

8 **WHEREAS**, the BLM, Forest Service, and Corps (“Federal Agencies”) have agreed to participate in
9 the Section 106 consultation regarding the license surrender under the terms of this Memorandum of
10 Agreement, and have been invited to concur in the Memorandum of Agreement; and
11

12 **WHEREAS**, the Commission has consulted with the Oregon and California State Historic
13 Preservation Officers (hereinafter, “SHPOs”) regarding the license surrender pursuant to 36 C.F.R.
14 § 800.14(b) Memorandum of Agreement, and are Signatories to this Memorandum of Agreement; and
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16 **WHEREAS**, the Commission authorized the Licensee to initiate the Section 106 process pursuant
17 to 36 C.F.R. § 800.2(c)(4), the Licensee has participated in the consultation, and has been invited to
18 concur in this Memorandum of Agreement; and
19

20 **WHEREAS**, the Commission, as part of its responsibility to make a good faith effort to identify
21 and consult with Indian tribes that might attach religious and cultural significance to the properties that
22 may be affected by the project, contacted the Klamath Tribes, Shasta Indian Nation, Modoc Nation,
23 Karuk Tribe, Yurok Tribe Yurok Reservation, Shasta Nation, Quartz Valley Indian Community of the
24 Quartz Valley Reservation of California, Confederated Tribes of Siletz Indians of Oregon, Resighini
25 Rancheria, Cher-Ae Heights Indian Community of Trinidad Rancheria, and the Hoopa Valley Tribe
26 (hereinafter, “Tribes”) and the Tribes have been invited to sign this Memorandum of Agreement as
27 concurring parties; and
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29 **WHEREAS**, the Commission has consulted with representatives of relevant local governments,
30 including the City of Yreka (CA), County of Siskiyou (CA), County of Klamath (OR) and these local
31 governments have been invited to sign this MOA as concurring parties; and
32

33 **WHEREAS**, the Commission has sought and considered the views of the public in regard to the
34 license surrender and its effects on historic properties consistent with the Commission’s procedures for
35 public involvement under the National Environmental Policy Act and the Federal Power Act; and
36

37 **WHEREAS**, the Commission will require the Renewal Corporation to implement the provisions of
38 this Memorandum of Agreement as a condition of any license surrender order for the Project; and
39

40 **WHEREAS**, all conditions of this Memorandum of Agreement and associated HPMP will be met
41 at the completion of the license surrender if authorized by the Commission; and
42

43 **WHEREAS**, the HPMP identifies certain activities related to the license surrender order that will
44 involve the removal of Project facilities on a constrained timeframe, and implementation cannot be
45 materially delayed or stopped once commenced due to public safety as well as on engineering and
46 biological considerations;

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NOW THEREFORE, the Commission and the SHPOs (“Signatories”) agree that the license surrender will be administered in accordance with the following stipulations in order to satisfy the Commission’s Section 106 responsibilities.

STIPULATIONS

The Commission will ensure that the Licensee complies with the following stipulations in implementing the license surrender order in the period between the issuance and the effective date of the license surrender order (“Implementation Period”). Compliance with any of the following stipulations does not relieve the Licensee of any other obligations it has under the Federal Power Act, the Commission’s regulations, or the terms of any license surrender order.

I. HISTORIC PROPERTIES MANAGEMENT PLAN

- A. Upon the license surrender order issuing for this Project, the Licensee will implement the final Historic Properties Management Plan (hereinafter, “HPMP”). All consulting parties need to respond within 30 days of receipt of a request for review of a finding or determination involving the HPMP.
- B. During the Implementation Period, the Licensee will, within 30 days of every anniversary of the license surrender order issuing, file a report with the Commission, SHPO, USFS, BLM, Corps, and Tribes of activities conducted under the implemented HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the Licensee will be prepared to that effect, and will satisfy the intent of this stipulation. This obligation will end when the Licensee has fulfilled all of the requirements of the surrender order and the Memorandum of Agreement is no longer in effect.

II. COORDINATION WITH OTHER FEDERAL REVIEWS

If a federal agency not initially consulted regarding this Memorandum of Agreement receives an application for federal funding, permit or other authorization related to the license surrender order, that agency may fulfill its Section 106 responsibilities by stating, in writing, that it concurs with the terms of the Memorandum of Agreement and notifying the Commission, Oregon and California SHPOs that it intends to do so. Any necessary modification to the Memorandum of Agreement will be considered in accordance with Stipulation IV.

III. DISPUTE RESOLUTION

- A. This Stipulation applies to an objection by a Signatory, Federal Agency, or Licensee, regarding Memorandum of Agreement, or the HPMP as approved by the Commission, during the Implementation Period.
 - 1. This Stipulation does not include disputes related to Determinations of Eligibility for the National Register of Historic Places (NRHP). Disagreements related to NRHP eligibility would be resolved consistent with the procedures contained in 36 CFR § 800.4(c)(2).

- 1
2 2. This Stipulation does not include disputes related to the sufficiency of the HPMP
3 (including individual measures) once approved by the Commission.
4
5 B. A dispute is initiated by filing a written objection with the Commission. Upon such a filing, the
6 Commission will follow the steps listed below.
7
8 1. The Commission will consult with the objecting party, and with other parties as
9 appropriate, to resolve the objection.
10
11 2. The Commission may initiate, on its own, such consultation to resolve any of the
12 objections.
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14 C. If the Commission so determines, the Commission will forward all documentation relevant to
15 the dispute to the Council and request that the Council comment. The Council shall provide the
16 Commission with its advice on the resolution of the objection within thirty (30) days of receiving
17 adequate documentation. Prior to reaching a final decision on the dispute, the Commission
18 shall prepare a written response that takes into account timely advice or comments regarding
19 the dispute from the Council and consulting parties and provide them with a copy of this written
20 response. The Commission will then proceed with its final decision.
21
22 D. If the Council does not provide its advice regarding the dispute within the thirty (30) day time
23 period, the Commission may make a final decision on the dispute and proceed accordingly.
24 Prior to reaching such a final decision, the Commission shall prepare a written response that
25 takes into account timely comments regarding the dispute from the consulting parties and
26 provide the consulting parties and the Council with a copy of the written response.
27
28 E. The Commission's responsibility to enforce all actions required under this Memorandum of
29 Agreement that are not subject of the dispute shall remain unchanged.
30

31 **IV. AMENDMENT OF THIS MEMORANDUM OF AGREEMENT**

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33 Any Signatory may propose that the Memorandum of Agreement be amended, whereupon the
34 Commission shall consult with the other Signatories to consider such an amendment. All Signatories
35 must agree to the proposed amendment in accordance with 36 C.F.R. § 800.6(c)(7). The amendment
36 will be effective on the date a copy signed by all Signatories is filed with the Council.
37

38 **V. TERMINATION**

- 39
40 A. If any Signatory determines that the terms of this Memorandum of Agreement will not or
41 cannot be carried out, that Signatory shall immediately consult with the other Signatories to
42 attempt to develop an amendment per Stipulation IV. If within thirty (30) days (or another time
43 period agreed to by all Signatories) an amendment cannot be reached, any Signatory may
44 terminate the Memorandum of Agreement upon written notification to the other Signatories.
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1 B. In the event of termination, the Commission shall either (a) execute a new Memorandum of
2 Agreement pursuant to 36 C.F.R. § 800.6 and or (b) request, take into account, and respond to
3 the comments of the Council under 36 C.F.R. § 800.7. The Commission shall notify the
4 Signatories as to the course of action it will pursue. In either case, the Licensee shall continue to
5 implement the provisions of its approved HPMP during the Implementation Period.
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7 **VI. DURATION**

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9 This Memorandum of Agreement shall be implemented if the Commission issues a license surrender
10 order, and the Licensee accepts the order, for the Project. The Memorandum of Agreement shall
11 remain in effect during the Implementation Period.
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13 **VII. EFFECTIVE DATE**

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15 This Memorandum of Agreement is considered effective upon the date of its execution by all
16 Signatories.
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18 **VIII. EXECUTION OF THIS MEMORANDUM OF AGREEMENT IN COUNTERPARTS**

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20 This Memorandum of Agreement may be executed in counterparts, with a separate page for each
21 Signatory. The Commission shall ensure that each Signatory is provided with a copy of the fully
22 executed Memorandum of Agreement.
23

24 **EXECUTION** of this Memorandum of Agreement, and its subsequent implementation, is evidence that
25 the Commission has satisfied its responsibilities pursuant to Section 106 of the National Historic
26 Preservation Act, *as amended*, for all individual actions carried out under the order for the surrender of
27 the license. Provided, however, that unless and until the Commission issues the surrender of the license
28 for the Project and this Memorandum of Agreement is incorporated by reference therein, this
29 Memorandum of Agreement has no independent legal effect for any specific licensee or project.
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31 [Signatures]
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