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**KLAMATH HYDROELECTRIC  
SETTLEMENT AGREEMENT**

**February 18, 2010  
as amended \_\_\_\_\_, 2016**

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- B. Interim Measures Implementation Committee (Interim Measure 1)
- C. Interim Conservation Plan (ICP) Interim Measures
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**EXHIBITS**

- 1. Water Right Agreement between PacifiCorp and the State of Oregon
- 2. Sequence of Performance Chart—KHSA
- 3. Maps
- 4. Estimated Timelines—Amended KHSA

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The original KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT, ~~was~~ made and entered into by and among the following entities:

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**Deleted:** ("Settlement")  
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**Deleted:** who sign this Settlement

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

**Deleted:** Del Norte County, California;

**Deleted:** Pine Grove Irrigation District;¶

**Deleted:** Siskiyou County, California;¶

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Westside Improvement District #4;  
Winema Hunting Lodge, Inc.; and  
Yurok Tribe;

This amended Klamath Hydroelectric Settlement Agreement (“Settlement”) is entered into by and among the entities who sign the Settlement.

**Deleted:** Each of these signatories is referred to individually as a “Party” and collectively as “Parties.”¶

**1. Introduction**

1.1 Recitals

**WHEREAS**, the States, the United States and PacifiCorp entered into the 2008 Agreement in Principle that addressed issues pertaining to the resolution of certain litigation and other controversies in the Klamath Basin, including a path forward for possible Facilities Removal; and

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**Deleted:** (“AIP”)

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**WHEREAS**, the 2008 AIP provided that the parties to the 2008 AIP would continue good-faith negotiations to reach a final settlement agreement in order to minimize adverse impacts of dam removal on affected communities, local property values and businesses and to specify substantive rights, obligations, procedures, timetables, agency and legislative actions, and other steps for Facilities Removal; and

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

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

**WHEREAS**, the 2008 AIP established a “commitment to negotiate” a settlement “based on existing information and the preliminary view of the governmental Parties (the United States, Oregon, and California) that the potential benefits for fisheries, water and other resources of removing the Facilities outweigh the potential costs, risks, liabilities or other adverse consequences of such removal”; and

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

**WHEREAS**, the Parties understand that the Project dams are currently the property of PacifiCorp, and that they are currently operated subject to applicable state and federal law and regulations. The other Parties understand that the decision before PacifiCorp is whether the decommissioning and removal of certain Facilities is appropriate and in the best interests of PacifiCorp and its customers. PacifiCorp asserts that prudent and reasonable long-term utility rates and protection from any liability for damages caused by Facilities Removal are central to its willingness to voluntarily transfer the dams and the low-carbon renewable energy they produce and to concur in the removal of the dams by the DRE; and

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

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

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

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

**WHEREAS**, in 2016, PacifiCorp, the United States, and the States signed the 2016 Agreement in Principle to signify their intent to negotiate an amended KHSA that would facilitate Facilities Removal through the existing authority of FERC under the Federal Power Act; and

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

**NOW, THEREFORE**, the Parties agree as follows:

1.2 Purpose of Settlement

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

1.3 Parties Bound by Settlement

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

1.4 Definitions

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

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

**"2016 Agreement in Principle"** or **"2016 AIP"** refers to the Agreement in Principle executed on February 2, 2016, by the states of Oregon and California, Interior, the U.S. Department of Commerce, and PacifiCorp signifying their intent to negotiate an amended KHSA that would facilitate Facilities Removal through the existing authority of FERC under the Federal Power Act.

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**"Amended KHSA"** refers to the KHSA as amended on the Amendment Effective Date.

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

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“**Applicable Law**” means general law that (1) exists outside of this Settlement, including, but not limited to a Constitution, statute, regulation, court decision, or common law, and (2) applies to obligations or activities of Parties contemplated by this Settlement. The use of this term is not intended to create a contractual obligation to comply with any law that would not otherwise apply.

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“**Authorizing Legislation**” refers to the statutes enacted by the Oregon and California Legislatures, respectively, to authorize and implement certain aspects of this Settlement, if necessary.

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Deleted: . Appendices E and G state the proposals for federal and California legislation, which the Parties will support pursuant to Section 2.1.1. The term “federal legislation” as used in this Settlement includes but is not limited to federal Authorizing Legislation

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

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

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

Deleted: “Concurrence” means the decisions by each State whether to concur with an Affirmative Determination and, if applicable, a designation of a non-federal DRE. ¶

“**Counties**” refers to Del Norte County, California; Humboldt County, California; and Klamath County, Oregon.

Deleted: Siskiyou County, California;

“**Dam Removal Entity**” or “**DRE**” is the Klamath River Renewal Corporation and will be the entity responsible for Facilities Removal under this Settlement.

Deleted: means an entity designated by the Secretary that has the legal, technical, and financial capacities set forth in Section 7.1. The Secretary may designate Interior to

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

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“**Definite Plan**” means a plan and timetable for Facilities Removal submitted by the DRE or any of its contractors or assigns under Section 7.2.1.

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“**Detailed Plan**” means the plan dated July 2012 that includes elements described in Section 7.2.2.

Deleted: prepared to inform the Secretarial Determination under Section 3.3.1 and including the

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“**Dispute Resolution Procedures**” means the procedures established by Section 8.6.

“**Due Diligence**” means a Party’s taking all reasonable steps to implement its obligations under this Settlement.

“**Effective Date**” is defined in Section 8.2.

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

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

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

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

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

“**FERC**” refers to the Federal Energy Regulatory Commission.

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

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

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

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

Deleted: facilities

**“Klamath Hydroelectric Settlement Agreement” or “KHSA” means the Klamath Hydroelectric Settlement Agreement executed February 18, 2010.**

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

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

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

Deleted: “Negative Determination” means a determination by the Secretary under Section 3 of this Settlement that Facilities Removal should not proceed. ¶

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

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

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

“**Oregon Surcharge Act**” is defined in Section 2.2.

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“**PacifiCorp’s Economic Analysis**” means the primary economic analysis prepared by PacifiCorp and relied upon by PacifiCorp to compare the present value revenue requirement impact of the KHSA against the present value revenue requirement of relicensing of the Facilities under defined prescriptions generally based on the FERC Final Environmental Impact Statement dated November 2007, which analysis PacifiCorp filed with the Public Utility Commission of Oregon (“Oregon PUC”) pursuant to Section 4(1) of the Oregon Surcharge Act and with the California Public Utilities Commission (“California PUC”) in accordance with Section 4 of the KHSA. This analysis was used to compare the relative cost of relicensing with the relative cost of the KHSA.

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“**Parties**” or “**Party**” means the signatories to this Amended KHSA, collectively or a signatory individually.

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

“**Public Agency Party**” means each Tribe, the Federal Parties, the agencies of each of the States, the Counties, and each other Party that is a public agency established under Applicable Law.

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

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

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“**Secretarial Determination**” means the determination contemplated in Section 3.3 of the KHSA.

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“**Secretary**” refers to the Secretary of the Interior.

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

“**Settlement**” means the entirety of the Amended KHSA and Appendices A through L, as amended and applicable. “Settlement” does not include Exhibits 1 through 4, which are related documents attached for informational purposes.

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“States” refers to the State of Oregon by and through the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, and Oregon Water Resources Department, and the State of California by and through the California Department of Fish and Wildlife and the California Natural Resources Agency.

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“State Cost Cap” means the collective maximum monetary contribution from the states of California and Oregon as described in Section 4.1.3 of this Settlement.

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

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“Tribes” means the Yurok Tribe, the Karuk Tribe, the Hoopa Valley Tribe, and the Klamath Tribes, so long as such tribe is a signatory to the Settlement.

“Value to Customers” means potential cost reductions described in Section 7.3.8. These cost reductions would (1) decrease the Customer Contribution defined in Section 4.1.1.C, (2) decrease the costs of ongoing operations, or (3) decrease the costs of replacement power, as compared against the assumptions contained in PacifiCorp’s Economic Analysis.

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1.5 Compliance with Legal Responsibilities

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

1.6 Reservations

1.6.1 Generally

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

1.6.2 Reservations Regarding Federal Appropriations

All actions required of the Federal Parties in implementing this Settlement are subject to appropriations for that purpose by Congress. Nothing in this Settlement shall be interpreted as or constitute a commitment or requirement that any Federal agency obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C.

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§ 1341, or other Applicable Law. Nothing in this Settlement is intended or shall be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Settlement is intended to or shall be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Settlement.

**1.6.3 Availability of Public Funds**

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

**1.6.4 Reservations Regarding Legislative Proposals**

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

**1.6.5 Reservations Regarding Regulations**

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

**1.6.6 No Pre-Decisional Commitment**

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

**1.6.7 No Waiver of Sovereign Immunity**

Nothing in this Settlement is intended or shall be construed as a waiver of sovereign immunity by the United States, the State of Oregon, the State of California, ~~any other Public Agency Party, or the Tribes~~. This Settlement does not obligate the United States or any Federal Party to affirmatively support this Settlement regarding any state or local legislative, administrative, or judicial action before a state administrative agency or court.

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**1.6.8 No Argument, Admission, or Precedent**

This Settlement shall not be offered for or against a Party as argument, admission, or precedent regarding any issue of fact or law in any mediation, arbitration,

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litigation, or other administrative or legal proceeding, except that this Settlement may be used in any future proceeding to interpret or enforce the terms of this Settlement, consistent with Applicable Law. This Settlement may also be used by any Party in litigation by or against non-Parties to implement or defend this Settlement. This section shall survive any termination of this Settlement.

1.6.9 Protection of Interests

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

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1.7 Trinity River

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

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

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

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

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

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

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

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

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

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**1.8 Tribal Water Rights**

This Settlement does not waive or in any way limit any treaty right, federally reserved right, or other right of the Tribes, or any federally recognized tribe, including any water or fishing right.

**1.9 Klamath Basin Agreement**

On the Amendment Effective Date, the States, the Federal Parties, and other entities are entering into a corresponding but separate agreement concerning certain issues in the Klamath Basin. More broadly, the Parties other than PacifiCorp are committed to engage in good faith efforts to enter into a longer-term agreement pertaining to the sustainability of management of water and land in the Klamath Basin for the benefit of fisheries, irrigation (including regulatory assurances related to reintroduction), counties, tribes, and refuges. Specifically, such longer-term agreement will establish procedures, schedules, and other appropriate guidance to resolve remaining issues between the Parties related to such management.

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

¶

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

¶

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

¶

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

¶

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

¶

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

¶

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

**2. Implementation of Settlement**

**2.1 General Duty to Support Implementation**

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

**2.1.1 Legislation**

A. The Parties understand and agree that federal legislation is not necessary to carry out this Settlement.

B. Within 60 days of the Amendment Effective Date, the CDFW will provide draft legislation to the Parties regarding a limited authorization for incidental take of Lost River Suckers, Shortnose Sucker, Golden Eagles, southern Bald Eagles, Greater Sandhill Cranes, or American Peregrine Falcon contingent upon the fulfillment of certain conditions, if such authorization is necessary for implementation of this Settlement. After reasonable opportunity for Parties to provide comments on the draft legislation, the State of California shall Timely recommend the legislation.



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2.1.2 Regulatory Approvals

Subject to Sections 1.6.1, ~~2.1, and 7.1.5~~, each Party shall support the application for and granting of Regulatory Approvals consistent with this Settlement. The preceding sentence shall not apply to the Public Agency Party exercising the regulatory approval or to a Public Agency Party not participating in the proceeding.

2.1.3 Defense of Settlement

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

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

2.1.4 Obligation to Implement

A. General

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

B. Cooperation Among the Parties

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

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

~~(1) No Party shall~~ directly or indirectly through other entities oppose the DRE's securing all permits and entering all contracts necessary

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

(2) After transfer of the Facilities to the DRE, each Party covenants not to sue any other Party for monetary or non-monetary relief for harm arising from removal of any of the Facilities, provided this covenant does not apply to claims against the DRE arising from the negligence, recklessness, or willful misconduct of the DRE or any of its contractors, subcontractors, or assigns, or from the actions or omissions of the DRE or any of its contractors, subcontractors, or assigns, inconsistent with the Definite Plan or in violation of a Regulatory Approval. This provision does not apply to rights under the indemnifications established in Section 7.1.3 or the States' agreements with the DRE required in Section 4.12.

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

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

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2.1.5 Timeliness

Exhibit 4 describes the sequence of performance of specific obligations necessary to achieve the bargained-for benefits of this Settlement. Exhibit 4 is subject to change and modification as needed and is provided for guidance only. The Parties shall undertake to implement this Settlement in a manner consistent with this sequence. If any Party requires more time than permitted by this Settlement to perform an obligation, that Party shall provide Notice to other Parties 30 days before the applicable deadline, unless the applicable provision in this Settlement establishes a different period. The Notice shall explain: (1) the obligation that the Party is attempting to perform; (2) the reason that performance is or may be delayed; and (3) the steps the Party has taken or proposes to take to Timely complete performance.

2.1.6 Force Majeure

A. Definition of Force Majeure

The term "Force Majeure" means any event reasonably beyond a Party's control, that prevents or materially interferes with the performance of an obligation of that Party, that could not be avoided with the exercise of due care, and that occurs without the fault or negligence of that Party. Force Majeure events may be unforeseen, foreseen, foreseeable, or unforeseeable, including without limitation: natural events; labor or civil disruption; breakdown or failure of Project works not caused by failure to properly design, construct, operate, or maintain; or new regulations or laws that are applicable to the Project (other than the Authorizing Legislation). Force Majeure is presumed not to include normal inclement weather, which presumption can be overcome by a preponderance of the evidence provided by the non-performing Party.

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**B. Suspension of Obligation**

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

**C. Remedies**

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

- (1) A Party that believes it is excused from performance pursuant to Section 2.1.6.B shall provide Notice within 10 days of the onset of the event. Such Notice shall describe the occurrence, nature, and expected duration of such event and describe the steps the Party has taken or proposes to be taken to prevent or minimize the interference with the performance of any affected obligation under this Settlement;
- (2) A Party shall thereafter provide periodic Notice to the other Parties of the efforts to address and resolve a Force Majeure event; and
- (3) If any other Party disputes the Party's claim of a Force Majeure event, or the adequacy of the efforts to address and resolve such event, such Party shall initiate the Dispute Resolution Procedures stated in Section 8.6.

**2.2 Ratemaking Legislation and Proceedings**

Each Party shall support implementation of the Oregon Surcharge Act enacted as Senate Bill 76, 2009 Or. Session Laws Chapter 690 in 2009 and authorizing the collection of a customer surcharge for the costs of Facilities Removal, which was codified as ORS 757.732 through 757.744. The Oregon Surcharge Act as codified is attached to this Settlement as Appendix F.

The Parties understand and agree that the costs of Facilities Removal shall be funded as specified in Section 4 of this Settlement. The Parties further understand and agree that funds allocated for Facilities Removal shall be managed and disbursed as specified in Section 4 of this Settlement. In the event that (1) the California Legislature does not adopt legislation by the time of the Secretarial Determination to place a ballot measure before California voters that contains a provision to fund up to \$250,000,000 (in nominal dollars) of the costs of Facilities Removal, or (2) the California voters do not adopt such

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Each Party, other than PacifiCorp and the Federal Parties, shall execute this Settlement and the KBRA concurrently. ¶  
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ballot measure by the time of the Secretarial Determination, or (3) the California PUC does not adopt a California Klamath Surcharge, as defined herein and specified in Section 4, or (4) the Oregon PUC does not adopt an Oregon Klamath Surcharge, as defined in the Oregon Surcharge Act and specified herein, the Parties shall Meet and Confer to attempt, in good faith, to identify substitute funding and/or other alternatives to cover the costs of Facilities Removal.

**2.3 Project Water Rights; Klamath Basin Adjudication**

**2.3.1 Project Water Rights**

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

**2.3.2 Klamath Basin Adjudication**

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

**2.4 Lease of State-Owned Beds and Banks**

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

**3. Secretarial Designation and Statement of Support**

**3.1 Statement of Support**

Based upon Interior's record and in cooperation with the Secretary of Commerce and other Federal agencies as appropriate, the Secretary will make an affirmative statement of support for Facilities Removal if, in the Secretary's judgment, Facilities Removal will (1) will advance restoration of the salmonid fisheries of the Klamath Basin, and (2) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes.

**3.2 Secretarial Designation**

The Secretary, through execution of the Settlement, agrees that [an agency of the state of Oregon] will act as the entity with authority under ORS 757.738(3) to request transfer of funds held in the appropriate trust account established under ORS 757.738, to hold

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¶

3.2 - Studies and Environmental Review¶

¶

3.2.1 - Support for Secretarial Determination¶

¶

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

¶

3.2.2 - Coordination with Parties and Public¶

¶

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

¶

<#>Recommendations Regarding Inter-Agency Coordination and Environmental Documents¶

¶

In the conduct of the environmental compliance actions described in Sections 3.2.1 and 3.2.5, the ...

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transferred funds, and to disburse transferred funds to the DRE, its assign, or successor, in accordance with a funding agreement as specified in Section 4.12.2, in the amounts necessary to pay “the costs of removing the Klamath River dams” as that phrase is used in ORS 757.736(11). [Before making a request for any of these funds, ODEQ, ODFW, and OWRD will collectively identify and inform the Parties of the state agency that will be making the request and holding and disbursing the transferred funds.]

**4. Costs**

**4.1 Funds for the Purpose of Facilities Removal**

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

**4.1.1 The Customer Contribution**

- A. Within 30 days of the Effective Date, PacifiCorp shall request that the Oregon PUC, pursuant to the Oregon Surcharge Act, establish two non-bypassable customer surcharges, the Oregon J.C. Boyle Dam Surcharge and the Oregon Copco I and II/Iron Gate Dams Surcharge (together, the “Oregon Klamath Surcharges”), for PacifiCorp’s Oregon customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the Oregon PUC set the Oregon Klamath Surcharges so that to the extent practicable the total annual collections of the surcharges remain approximately the same during the collection period.
- B. Within 30 days of the Effective Date, PacifiCorp shall request that the California PUC establish a non-bypassable customer surcharge (the “California Klamath Surcharge”) for PacifiCorp’s California customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the California PUC establish the California Klamath Surcharge so that it will collect an approximately equal amount each year that it is to be collected. PacifiCorp shall request that such surcharge assigns responsibility among the customer classes in an equitable manner. PacifiCorp shall also request that the California PUC set the California Klamath Surcharge so that it at no time exceeds two percent of the revenue requirements set by the California PUC for PacifiCorp as of January 1, 2010.
- C. The Parties agree that the total amount of funds to be collected pursuant to the Oregon Klamath Surcharges and the California Klamath Surcharge shall not exceed \$200,000,000 (in nominal dollars); these funds shall be referred to as the “Customer Contribution.”

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3.3.2 - Detailed Plan for Facilities Removal¶  
¶  
As a part of developing the basis for the Secretarial Determination, the Secretary shall develop a Detailed Plan to implement Facilities Removal. This Detailed Plan will also serve as the basis for the Definite Plan described in Section 7.2.1.A. The Detailed Plan may include:¶  
¶  
A. - The physical methods to be undertaken to effect Facilities Removal, including but not limited to a timetable for Decommissioning and Facilities Removal, which is removal of all or part of each Facility as necessary to effect a free-flowing condition and volitional fish passage as defined in Section 1.4; ¶  
¶  
B. - As necessary and appropriate, plans for management, removal, and/or disposal of sediment, debris, and other materials; ¶  
¶  
C. - A plan for site remediation and restoration; ¶  
¶  
D. - A plan for measures to avoid or minimize adverse downstream impacts;¶  
¶  
E. - A plan for compliance with all Applicable Laws, including anticipated permits and permit conditions; ¶  
¶  
F. - A detailed statement of the estimated costs of Facilities Removal; ¶  
¶  
G. - A statement of measures to reduce risks of cost overruns, delays, or other impediments to Facilities Removal; and¶  
¶  
H. - The identification, qualifications, management, and oversight of a non-federal DRE, if any, that the Secretary may designate.¶  
¶  
**3.3.3 - Egress Agreement Related to the Detailed Plan and Definite Plan to be Negotiated Between the Secretary, the DRE and PacifiCorp**¶  
¶  
The Parties agree that within three months of the Effective Date, the Company and the Secretary shall enter into a contract to manage, control, and permit entry onto Company lands for the express purpose of developing the Detailed Plan for Facilities Removal including without limitation: to control entry and egress activities at the Facilities in a manner that will not damage or disturb existing structures and terrain at the points of access to the Facilities except as specifically necessary for the development of the Detailed Plan for Facilities Removal; require the DRE to mitigate damage to an affected area to an equivalent condition as that existing prior to the actions that caused the damage; to be aware of, initiate, maintain, and supervise compliance with all safety laws, regulations, precautions, and programs in connection with the performance of the contract; and, to make themselves aware of and adhere to (¶  
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- D. PacifiCorp shall request that the Oregon PUC establish a surcharge so that the amount collected under the Oregon Klamath Surcharges is 92% (a maximum of approximately \$184,000,000) of the total Customer Contribution, and with 75% of the total Oregon Klamath Surcharges amount collected through the Oregon Copco I and II/Iron Gate Dams Surcharge and 25% collected through the Oregon J.C. Boyle Dam Surcharge.
- E. PacifiCorp shall request that the California PUC establish a surcharge so that the amount collected under the California Klamath Surcharge is 8% (a maximum of approximately \$16,000,000) of the Total Customer Contribution. The trustee of the California Klamath Surcharge shall apply 75% of the total California Klamath Surcharge amount collected to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the total California Klamath Surcharge amount collected to the California J.C. Boyle Dam Trust Account.
- F. PacifiCorp shall collect and remit the surcharges collected pursuant to this section to the trustee(s) described in Section 4.2, below, to be deposited into the appropriate California Klamath Trust Accounts and Oregon Klamath Trust Accounts.
- G. Consistent with Section 2.1 of this Settlement, each non-Federal Party shall support the California Klamath Surcharge and the Oregon Klamath Surcharges in the proceedings conducted by the California PUC and the Oregon PUC, respectively, to the extent the proposed Surcharges are consistent with this Settlement.

4.1.2 The California Bond Funding

- A. The California Legislature has approved a general obligation bond (“Bond Measure”) containing a provision authorizing the issuance of bonds for the amount necessary to fund the difference between the Customer Contribution and the actual cost to complete Facilities Removal, which bond funding in any event shall not exceed \$250,000,000 (in nominal dollars). The bond language is set forth in Appendix G-1. At its sole discretion, the State of California may also consider other appropriate financing mechanisms to assist in funding the difference between the Customer Contribution and the actual cost of complete Facilities Removal, not to exceed \$250,000,000 (in nominal dollars).
- B. Consistent with Applicable Law and Section 2.1, each non-federal Party shall support the Klamath bond language in Appendix G-1; provided that nothing in this Settlement is intended or shall be

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construed to require a Party to support a Bond Measure that includes authorizations unrelated to the implementation of this Settlement.

4.1.3 State Cost Cap

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

4.2 Establishment and Management of Trust Accounts and California Bond Funding

4.2.1 The Oregon Klamath Trust Accounts

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

4.2.2 The California Klamath Trust Accounts

- A. Upon execution of this Settlement, California shall request, and each non-Federal Party shall support the request, that the California PUC establish two interest-bearing trust accounts where funds collected by PacifiCorp pursuant to the California Klamath Surcharge for the purpose of Facilities Removal shall be deposited until needed for Facilities Removal purposes. The non-Federal Parties shall also request that California and the California PUC establish the trust accounts in a manner that ensures that the surcharge funds will not be taxable revenues to PacifiCorp. The California J.C. Boyle Dam Trust Account shall be established to hold 25% of the funds collected pursuant to the California Klamath Surcharge. The California Copco I and II/Iron Gate Dams Trust Account shall be established to hold 75% of the funds collected pursuant to the California Klamath Surcharge. The California J.C. Boyle Dam Trust Account and the California Copco I and II/Iron Gate Dams Trust Account may be referred to together as the “California Klamath Trust Accounts.”



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

4.2.3 The California Bond Funding

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

4.2.4 Management of the Trust Accounts

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

(1) Whether and when to disburse funds from the Oregon Klamath Trust Accounts and California Klamath Trust Accounts to the DRE;

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

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

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(4) Disbursement of funds under the circumstances described in Section 4.4 below;

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

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

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B. As necessary, the States, in consultation with PacifiCorp and the DRE, will prepare draft trustee instructions revised as appropriate, and request that the California PUC or another designated agency of the state of California, and the Oregon PUC, work cooperatively to prepare revised joint instructions to the trustee(s) of the Oregon Klamath Trust Accounts and California Klamath Trust Accounts consistent with the draft revised instructions. The States and PacifiCorp will take such other actions as may be reasonably necessary to facilitate the distribution of the Customer Contribution.

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4.3 Adjustment to Surcharges

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As appropriate, the States shall consult with each other, PacifiCorp, and the Federal Parties regarding adjustments to the California Klamath Surcharge or Oregon Klamath Surcharges necessitated by or appropriate considering the circumstances. Following such consultation, PacifiCorp will request that the California PUC and Oregon PUC adjust the Klamath Surcharges to be consistent with the recommendations developed through the consultation. Any adjustment shall not alter the maximum level of the Customer Contribution or State Cost Cap.

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

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

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

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

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

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- A. All or part of the Oregon Klamath Surcharges shall be terminated and the Oregon Klamath Trust Accounts disposed as set forth in Section 4(10) of the Oregon Surcharge Act and the trustee instructions; and
- B. PacifiCorp shall request that the California PUC direct PacifiCorp to terminate all or part of the surcharge, that the California PUC direct the trustee to apply any excess balances in the California Klamath Trust Account to California's allocated share of prudently incurred costs to implement FERC relicensing requirements, and that, if any excess amount remains in the trust accounts after that application, that the California PUC order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers.

4.5 Recovery of Net Investment in Facilities

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

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

- A. That the California PUC determine a depreciation schedule for each Facility based on the assumption that the Facility will be removed in 2020, and change that depreciation schedule at any time if removal of the Facility will occur in a year other than 2020; and
- B. That the California PUC use the depreciation schedules adopted consistent with Section 4.5.2.A above to establish rates and tariffs for the recovery of California's allocated share of undepreciated amounts prudently invested by PacifiCorp in the Facilities, with amounts recoverable including but not limited to:

(1) Return on investment and return of investment;

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

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~~(3)~~ Amounts spent by PacifiCorp in seeking relicensing of the Project before the Effective Date of this Settlement;

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~~(4)~~ Amounts spent by PacifiCorp for settlement of issues relating to relicensing or removal of the Facilities; and

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~~(5)~~ Amounts spent by PacifiCorp for the Decommissioning of the Facilities in anticipation of Facilities Removal.

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

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

4.6 Recovery of Costs of Ongoing Operations and Replacement Power

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

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

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

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

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

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4.8 Acknowledgment of Independence of Oregon PUC and California PUC

The Parties acknowledge that the Oregon PUC and California PUC each is a separate state agency that is not bound by this Settlement. Nothing in this Settlement expands,

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limits, or otherwise affects any authority of the respective commissions regarding the customer surcharges and trust accounts, recovery of net investment, or recovery of costs of ongoing operations or replacement power. Because the Parties cannot provide assurance that either commission will decide to or be allowed to implement any of the provisions for funding Facilities Removal, failure of a commission to do so is not a breach of this Settlement by any Party.

4.9 Consultation

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

4.10 United States Not Responsible for Costs of Facilities Removal

The United States shall not be liable or responsible for costs of Facilities Removal.

4.11 Parties' Costs Related to Facilities Removal

Subject to Section 4.4, the funds accumulated pursuant to Section 4 are solely for use in accomplishing Facilities Removal, **including but not limited to** development of the Definite Plan, all necessary permitting and environmental compliance actions, **provisions for the City of Yreka under Section 7.2.3**, and construction/project management for Facilities Removal. **Nothing in this section shall be interpreted as a limitation on the State of California's use of California Bond Funding, or funds collected pursuant to the California Klamath Surcharge and deposited into the California Copco 1 and 2 and Iron Gate Dams Trust Account, for environmental review; provided the use of any funds from California Copco 1 and 2 and Iron Gate Dams Trust Account may be offset by California Bond Funds to achieve the target dates set forth in Section 7.3.**

**Deleted:** , whether such costs are identified prior to the Secretarial Determination or arise at any time thereafter, including during physical activities to accomplish Facilities Removal. If the Secretary determines pursuant to Section 3.3.5.A.i that Interior or one of its agencies or bureaus shall serve as the DRE, neither that decision nor performance of that role shall provide any basis for holding the United States or any of its agencies liable or responsible for any of the DRE's costs of Facilities Removal. Without limiting the generality of the foregoing, the United States will cooperate with the DRE to prepare the Definite Plan and regulatory submittals required for Facilities Removal.

**Deleted:** If an agency of the United States serves as the DRE, that agency will abide by its ordinary guidance documents and general accounting and contracting principles in determining which expenses may be claimed for reimbursement as costs of Facilities Removal consistent with this Settlement.

**Deleted:** as described in Section 3.2.5

4.12 Funding and Grant Agreements

**4.12.1 On or around June 15, 2016, CNRA will enter into an agreement with the Oregon state agency designated by the Secretary under Section 3.2 pertaining to the use of funds from the Customer Contribution and California Bond Funding.**

**4.12.2 On or around June 15, 2016, the Oregon state agency designated by the Secretary under Section 3.2 will enter into a grant agreement with the DRE. The grant agreement will include conditions not inconsistent with**

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the Settlement pertaining to the use of the Oregon Klamath Trust Accounts.

4.12.3 On or around June 15, 2016, CNRA will enter into a funding agreement with the DRE and any other entity as appropriate. The funding agreement will include conditions not inconsistent with the Settlement pertaining to the use of the California Klamath Trust Accounts.

4.12.4 On or around July 15, 2016, CNRA will enter into a grant agreement with the DRE. The grant agreement shall include conditions not inconsistent with the Settlement pertaining to the use of the California Bond Funding.

**5. Local Community Power**

**5.1 Power Development**

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

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

**5.2 [Section deleted]**

**5.3 Transmission and Distribution of Energy**

Interior, KWAPA, KWUA and UKWUA agree that federal power can contribute to meeting power cost targets for irrigation in the Upper Klamath Basin. To that end, and

**Deleted: PacifiCorp Billing Crediting System ¶**  
¶  
PacifiCorp, KWAPA, and Upper Klamath Water Users Association (UKWUA) shall Timely enter into one or more mutually-acceptable Billing Services Offset Agreements (“BSO Agreements”) outlining each party’s obligations related to the implementation of billing credits on PacifiCorp’s bills to eligible customers who are billed by PacifiCorp. ¶  
¶  
**5.2.1 - Parties to Agreement¶**  
¶  
The parties to the BSO Agreement(s) will be PacifiCorp, KWAPA and UKWUA.¶  
¶  
**5.2.2 - Funding to be Provided by KWAPA and UKWUA¶**  
¶  
KWAPA and UKWUA will establish one or more Bill Credit Accounts using funds made available for that purpose through the KBRA. The BSO Agreement(s) will establish the process for and necessary information by which KWAPA and UKWUA will remit funds available in the Bill Credit Account(s) to PacifiCorp so that KWAPA and UKWUA ensure that there are sufficient funds available for payment of the billing credit.¶  
¶  
**5.2.3 - Credits to be Implemented by PacifiCorp¶**  
¶  
PacifiCorp will, through its existing billing system, provide credits on PacifiCorp electric service bills to eligible customers identified by KWAPA and UKWUA. The credits will be determined by the formulas set forth in the BSO Agreement(s), and approved pursuant to Section 5.2.6, below. ¶  
¶  
**5.2.4 - KWAPA and UKWUA to Provide Notice and Data to PacifiCorp¶**  
¶  
KWAPA and UKWUA must provide to PacifiCorp 120 days written notice prior to the date they desire commencement of the bill credits. KWAPA and UKWUA must also provide the names of eligible customers and other pertinent information necessary for PacifiCorp to identify the eligible customers in its billing system at least 90 days before commencement of the crediting system. The necessary information, as well as the procedures for updating the information, will be described in the BSO Agreement(s). PacifiCorp shall provide the billing credit to all eligible customers with respect to whom KWAPA and UKWUA provide such information. To the extent allowed by Applicable Law or by order of the public utility commissions having jurisdiction, PacifiCorp will reasonably assist KWAPA and UKWUA in its efforts to create efficient means to identify eligible customers and provide benefits. ¶  
¶  
**5.2.5 - PacifiCorp Not Liable ¶**  
¶  
PacifiCorp will not be liable for any errors or omissions related to KWAPA’s and UKWUA’s identification of eligible customers. ¶  
¶  
**5.2.6 - Regulatory Approval ¶**  
¶

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

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

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

- 5.3.1 The terms and conditions related to accessing PacifiCorp’s transmission system, to the extent that it is necessary, will be consistent with PacifiCorp’s Open Access Transmission Tariff (“OATT”).
- 5.3.2 The terms and conditions related to accessing PacifiCorp’s distribution system will remain subject to the jurisdiction of the California Public Utilities Commission for distribution facilities located in California and the Oregon Public Utility Commission for distribution facilities located in Oregon. In California and Oregon, the respective PUCs have approved unbundled delivery service tariffs for PacifiCorp to implement direct access legislation. The Parties agree that these unbundled delivery service tariffs can enable the delivery of federal power. For power acquired by Interior from Bonneville, PacifiCorp will charge an unbundled distribution rate that is based on the Oregon Commission-approved tariff applicable to the delivery of Bonneville power to eligible loads in Oregon.

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

The Parties understand and agree that PacifiCorp shall recover its costs incurred in providing the delivery services required under the mutually agreeable approach and that such services will not be subsidized by PacifiCorp’s other retail customers. PacifiCorp, Interior, KWUA,

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KWAPA, and UKWUA agree to work cooperatively to identify and analyze, as necessary, PacifiCorp's costs for delivery services as part of identification of any such mutually agreeable approach. The Parties further agree that the costs of providing delivery services will be recovered pursuant to a tariff or tariffs established by the respective PUC based on cost-of-service principles and a finding by the PUC that the rates charged under the tariff[s] are fair, just, reasonable and sufficient.

- 5.3.3 PacifiCorp agrees to work in good faith to develop mutually agreeable revisions to existing provisions of state or federal law, if necessary to implement the mutually agreeable approach.
- 5.3.4 PacifiCorp agrees to work in good faith with Bonneville, Interior, KWAPA, KWUA and UKWUA and other Parties as the case may be, to resolve, on a mutually agreeable basis, any technical and administrative issues (such as billing and metering) that may arise with respect to PacifiCorp's delivery of power to the eligible loads.
- 5.3.5 It is the Parties' intent that this Agreement will not require PacifiCorp to modify its existing transmission or distribution facilities. PacifiCorp may elect to do so at the sole cost and expense of the Party or entity requesting such modification.
- 5.3.6 At such time as the eligible loads are prepared to and technically able to receive federal power, PacifiCorp, Interior, KWAPA, KWUA and UKWUA agree to work cooperatively with each other to transition the eligible loads from full retail service on a mutually agreeable basis. The Parties acknowledge that for any eligible load that has received federal power pursuant to this section, PacifiCorp will no longer have the obligation to plan for or meet the generation requirements for these loads in the future, provided, however, that PacifiCorp agrees to work cooperatively to provide generation services to eligible loads in a manner that is cost-neutral to other PacifiCorp customers in the event that a contract for federal power is no longer available. Interior, KWAPA, KWUA and UKWUA agree to provide notice to PacifiCorp as soon as practicable after becoming aware that federal power will no longer be available to serve any eligible loads.
- 5.3.7 Interior, in consultation with KWAPA, KWUA and UKWUA, shall timely develop a preliminary identification of the eligible loads for purposes of Section 5.3. Interior, in consultation with KWAPA, KWUA and UKWUA, shall provide notification to PacifiCorp identifying the final eligible loads for purposes of Section 5.3, not later than 120 days before delivery of federal power to any such eligible loads is to begin. The mutually agreeable approach will address the manner by which Interior provides notification to PacifiCorp of any changes to eligible loads.

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- 5.3.8 Interior agrees to work cooperatively to assign or delegate or transition functions of Interior to KWAPA or another appropriate entity subject to the terms of this Section.
- 5.3.9 If Interior or KWAPA or UKWUA are able to acquire power from any entity other than Bonneville for eligible loads in either Oregon or California, PacifiCorp, KWAPA, UKWUA, Interior, and KWUA, as applicable, will work cooperatively to agree on a method for transmission and delivery.
- 5.3.10 Upon termination of this Settlement, PacifiCorp agrees to provide service under the terms of its approved delivery tariff until or unless the respective PUC determines that the applicable tariff should no longer be in place. It is the intention of PacifiCorp, Interior, KWUA, KWAPA, and UKWUA that the general principles of cooperation expressed in Section 5 continue beyond the term of this Settlement.

**5.4 Irrigator Rates**

In consultation with Klamath Basin irrigators, PacifiCorp will continue to explore alternative rate structures and programs, such as time-of-use rates or demand control programs.

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**6. Interim Operations**

**6.1 General**

Interim Measures under this Settlement consist of: (1) Interim Measures included as part of PacifiCorp’s Interim Conservation Plan (“ICP Interim Measures”) (Appendix C); and (2) Interim Measures not included in the Interim Conservation Plan (“Non-ICP Measures”) (Appendix D). In addition, PacifiCorp’s Interim Conservation Plan includes certain measures for protection of listed sucker species not included as part of this Settlement.

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**6.1.1 PacifiCorp Performance**

PacifiCorp shall perform the Interim Measures in accordance with the terms and schedule set forth in Appendices C and D as long as this Settlement is in effect during the Interim Period, except as provided in Interim Measure 20. However, if this Settlement terminates, PacifiCorp shall continue performance of the Iron Gate Turbine Venting until the time FERC issues an order in the relicensing proceeding. PacifiCorp shall have no obligation under this Settlement to perform any other of the Interim Measures if this Settlement terminates, but may implement certain ICP and Non-ICP Interim Measures for ESA or CWA purposes or for any other reason. PacifiCorp reserves its right to initiate termination

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pursuant to Section 8.11.1.C, if the Services fail to provide incidental take authorization in a Timely way.

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6.1.2 Duty to Support

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

6.1.3 Permitting

- A. PacifiCorp or the DRE (as applicable) shall comply with all federal, state, and local laws and obtain all federal, state, and local permits related to Interim Measures, to the extent such laws and permits are applicable.
- B. FERC Enforcement and Jurisdiction

- (1) The Parties agree that enforcement of the terms of the current license, as extended through annual licenses, shall be exclusively through FERC. If the annual license is amended to incorporate any of the Interim Measures, a Party may seek compliance pursuant to any remedies it may have under Applicable Law.
- (2) Subject to the reservations in Section 6.3.4, PacifiCorp will implement Interim Measures and the Klamath River TMDLs, subject to any necessary FERC or other Regulatory Approvals.

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6.1.4 Interim Power Operations

Consistent with the operation and maintenance agreement contemplated in Section 7.1.6, PacifiCorp shall continue to operate the Facilities for the benefit of customers and retain all rights to the power from the Facilities until each Facility is transferred and Decommissioned, including all rights to any power generated during the time between transfer of the Facility to the DRE and Decommissioning of the Facility by PacifiCorp.

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6.1.5 Adjustment for Inflation

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

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

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WHERE:

AD = Adjusted dollar amount payable.

D = Dollar amount prescribed in the Interim Measure.

CPI-U<sub>t</sub> = the value of the published version of the Consumer Price Index-Urban for the month of September in the year prior to the date a dollar amount is payable. (The CPI-U is published monthly by the Bureau of Labor Statistics of the federal Department of Labor. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by written agreement of the Parties.)

CPI-U<sub>0</sub> = the value of the Consumer Price Index-Urban for the month and year corresponding to the Effective Date of this Settlement.

6.2 Interim Conservation Plan

6.2.1 Application by PacifiCorp

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

6.2.2 Applicable Actions by the Services under the ESA

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

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6.2.3 Potential Modifications of Measures

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

6.3 TMDLs

6.3.1 PacifiCorp Implementation

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

6.3.2 TMDL Implementation Plans

- A. No later than 60 days after ODEQ's and the North Coast Regional Water Quality Control Board (NCRWQCB)'s approval, respectively, of a TMDL for the Klamath River, PacifiCorp shall submit to ODEQ and NCRWQCB, as applicable, proposed TMDL implementation plans for agency approval. The TMDL implementation plans shall be developed in consultation with ODEQ and NCRWQCB.
- B. To the extent consistent with this Settlement, PacifiCorp shall prepare the TMDL implementation plans in accordance with OAR 340-042-0080(3) and California Water Code section 13242, respectively. The plans shall include a timeline for implementing management strategies and shall incorporate water quality-related measures in the Non-ICP Interim Measures set forth in Appendix D. Facilities Removal by the DRE shall be the final measure in the timeline. At PacifiCorp's discretion, the proposed plans may further include other planned activities and management strategies developed individually or cooperatively with other sources or designated management agencies. ODEQ and NCRWQCB may authorize PacifiCorp's use of offsite

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pollutant reduction measures, subject to an iterative evaluation and approval process; provided, any ODEQ authorization of such offsite measures conducted in Oregon solely to facilitate attainment of load allocations in California waters shall not create an ODEQ obligation to administer or enforce the measures.

**6.3.3 Keno Load Allocation**

Subject to Section 6.3.4, in addition to other Project facilities and affected waters, PacifiCorp's TMDL implementation plan under Section 6.3.2 shall include water quality-related measures in the Non-ICP Interim Measures set forth in Appendix D that are relevant to the Keno facility and affected waters for which the Project is assigned a load allocation. PacifiCorp shall implement Keno load allocations in accordance with the approved TMDL implementation plan under Section 6.3 up until the time of transfer of title to the Keno facility to Interior. Upon transfer of title to the Keno facility as set forth in Section 7.5 of this Settlement, the load allocations shall no longer be PacifiCorp's responsibility. Funding, if necessary, for post-transfer Keno load allocation implementation requirements will be provided by other non-PacifiCorp sources.

**6.3.4 TMDL Reservations**

- A. PacifiCorp's TMDL implementation obligations under this Settlement are limited to the water quality-related measures in the Interim Measures set forth in Appendices C and D and any additional or different measures agreed to by PacifiCorp and incorporated into an approved TMDL implementation plan. If a TMDL implementation plan for PacifiCorp as finally approved, ~~or a final discharge permit or other regulatory decision intended to implement a TMDL or water quality standard or regulation,~~ requires measures that have not been agreed to by PacifiCorp and that are materially inconsistent with the Interim Measures, PacifiCorp may initiate termination ~~under~~ Section 8.11.1.C.
- B. PacifiCorp reserves the right to seek modification of a TMDL implementation plan in the event this Settlement terminates. The States reserve their authorities under the CWA and state law to revise or require submission of new TMDL implementation plans in the event this Settlement terminates or an implementation plan measure or Facilities Removal does not occur in accordance with the timeline in the approved implementation plans. Other Parties reserve whatever rights they may have under existing law to challenge the TMDLs or TMDL implementation plans in the event this Settlement terminates.
- C. To the extent it possesses rights outside of this Settlement, no Party waives any right to contest: a Klamath River TMDL; specific TMDL

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load allocation; ~~decision on a PacifiCorp TMDL implementation plan; or final discharge permit or other regulatory decision intended to implement a TMDL or water quality standard or regulation,~~ if materially inconsistent with this Settlement.

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6.4 Other Project Works

6.4.1 East Side/West Side Facilities

- A. PacifiCorp will apply to FERC for an order approving partial surrender of ~~the Project~~ license for the purpose of decommissioning the East Side/West Side generating facilities ~~unless PacifiCorp, in consultation with the state of Oregon and the Federal Parties, agrees to an alternative disposition of these facilities.~~ PacifiCorp will file the application consistent with applicable FERC regulations, and after consultation with the Parties. Notwithstanding Section 2.1.2, the Parties reserve their rights to submit comments and otherwise participate in the FERC proceeding regarding the conditions under which decommissioning should occur. PacifiCorp reserves the right to withdraw its surrender application ~~for these facilities if any FERC~~ order or other Regulatory Approval in connection with the surrender application would impose unreasonable conditions on ~~that~~ surrender.

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- B. Upon FERC approval, and in coordination with Reclamation and pursuant to Section 7.5.2, PacifiCorp shall decommission the East Side/West Side facilities in accordance with the FERC order approving the decommissioning, with the costs of such decommissioning to be recovered by PacifiCorp through standard ratemaking proceedings.
- C. Upon completion of decommissioning and subject to FERC's and state requirements, PacifiCorp and Interior shall discuss possible transfer of the following lands to Interior: Klamath County Map Tax Lots R-3809-00000-05800-000, R-3809-00000-05900-000, and R-3809-00000-05700-000, or any other mutually-agreeable lands associated with the East Side and West Side Facilities on terms and conditions acceptable to PacifiCorp and Interior.

6.4.2 Fall Creek Hydroelectric Facility

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

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6.5 Abeyance of Relicensing Proceeding

6.5.1 Within 30 days of the Amendment Effective Date, PacifiCorp will file the Settlement with FERC and an expedited motion asking FERC to hold PacifiCorp's Project relicensing proceeding in abeyance until after FERC takes action on the DRE's surrender application as provided in Section 7.1.7.D Each Party agrees to refrain from any action that does not support PacifiCorp's request to abate the FERC relicensing docket for the Project.

6.5.2 Within 15 days after FERC issues an abeyance order for the Project relicensing docket, PacifiCorp will withdraw its CWA Section 401 certification applications currently pending before the California State Water Resources Control Board and ODEQ.

6.5.3 If FERC denies PacifiCorp's motion to abate or fails to rule on the motion before July 1, 2016, PacifiCorp will ask the California State Water Resources Control Board and the Oregon Department of Environmental Quality to abate permitting and environmental review for PacifiCorp's FERC Project No. 2082 licensing activities, including but not limited to water quality certifications under Section 401 of the CWA and review under CEQA, during the Interim Period. If FERC does not hold the Project relicensing proceeding in abeyance, PacifiCorp will withdraw and re-file its relicensing applications for Section 401 certifications as necessary to avoid the certifications being deemed waived under the CWA during the Interim Period.

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6.5.4 If no abeyance of relicensing proceedings is approved by FERC or, as applicable, the California State Water Resources Control Board or the ODEQ, or an abeyance is ordered then later lifted, then the Parties are excused from their duty to support this Settlement to the extent necessary to maintain their rights and arguments in the Project relicensing proceedings.

**7. DRE, Transfer, Surrender, and Facilities Removal**

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

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7.1 DRE

7.1.1 Execution of Settlement

The DRE will execute the Settlement within 60 days of the Amendment Effective Date.

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7.1.2 Capabilities

A. The Parties agree that the DRE must possess the legal, technical, and financial capacity to:

(1) Accept and expend non-federal funds consistent with Section 4.2.4;

(2) Accept transfer of the FERC license and title for the Facilities from PacifiCorp;

(3) Seek and obtain necessary permits and other authorizations to implement Facilities Removal;

(4) Enter into appropriate contracts and grants for effectuating Facilities Removal;

(5) Perform, directly or by oversight, Facilities Removal;

(6) Prevent, mitigate, and respond to damages the DRE or any of its contractors, subcontractors, or assigns cause during the course of Facilities Removal, and, consistent with Applicable Law, respond to and defend associated liability claims against the DRE or any of its contractors, subcontractors, or assigns, including costs thereof and any judgments or awards resulting therefrom;

(7) Carry the required insurance and bonding set forth in Appendix L to respond to liability and damages claims associated with Facilities Removal against the DRE or any of its contractors, subcontractors, or assigns;

(8) Meet the deadlines set forth in Exhibit 4; and

(9) Perform such other tasks as are reasonable and necessary for Facilities Removal.

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B. Before the DRE and PacifiCorp file the joint application to transfer the license for the Facilities, the DRE will Timely demonstrate to the reasonable satisfaction of the States and PacifiCorp that it possesses the legal, technical, and financial capacity to accomplish the tasks in Sections 7.1.2.A(1) through (5), (8), and (9). PacifiCorp and the States will consult if the DRE fails to make the demonstration required in this subsection.

C. Within six months of the DRE's execution of the Settlement, the DRE will include in an informational filing in the FERC license transfer proceeding proof that it possesses the legal, technical, and financial

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capacity to accomplish the tasks in Sections 7.1.2.A(6) and (7). This filing will include documentation that the DRE meets the requirements of Parts II, III, and IV of Appendix L and is capable of fulfilling its obligations under Section 7.1.3. The DRE will not provide the filing if either of the States of PacifiCorp objects to the filing after a reasonable opportunity to review before submission to FERC. The six-month deadline may be changed by agreement of the DRE, the States, and PacifiCorp. The Parties will Meet and Confer if the DRE fails to provide the informational filing to FERC.

7.1.3 Liability Protection

A. By executing this Settlement, the DRE agrees, on its behalf and on behalf of the DRE's employees, contractors, subcontractors, and authorized agents or assigns to indemnify, hold harmless, and defend PacifiCorp, the state of California, and the state of Oregon for, from, and against any and all claims, actions, proceedings, damages, liabilities, monetary or non-monetary harms or expense arising from, relating to, or triggered by Facilities Removal, including but not limited to:

- (1) Harm, injury, or damage to persons, real property, tangible property, natural resources, biota, or the environment;
- (2) Harm, injury, or damage caused by the release, migration, movement, or exacerbation of any material, object, or substance, including without limitation hazardous substances; and
- (3) Breaches or violations of any Applicable Law, Regulatory Approval, authorization, agreement, license, permit, or other legal requirement of any kind.

B. If the DRE partially assigns its responsibilities under this Settlement, the DRE and its assign will be jointly and severally obligated under this section.

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7.1.4 License Transfer Conditions and Timing

Before the FERC license transfer to the DRE will become effective, the DRE must demonstrate to PacifiCorp's and the States' reasonable satisfaction that the DRE has met the obligations in Appendix L and the following conditions:

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A. The DRE has provided Notices required under Section 7.2.1.B;

B. The DRE has met the requirements of Section 7.1.3, and Appendix L;

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- C. PacifiCorp and the States agree that the DRE has made sufficient and Timely progress in obtaining necessary permits and approvals to effectuate Facilities Removal;
- D. The DRE, the States, and PacifiCorp are assured that sufficient funding is available to carry out Facilities Removal;
- E. The DRE, the States, and PacifiCorp are each assured that their respective risks associated with Facilities Removal have been sufficiently mitigated consistent with Appendix L;
- F. The DRE, the States, and PacifiCorp agree that no order of a court or FERC is in effect that would prevent Facilities Removal;
- G. The DRE and PacifiCorp have executed documents conveying the property and rights necessary to carry out Facilities Removal; and
- H. The DRE accepts license transfer under the conditions specified by FERC in its order approving transfer.

7.1.5 FERC Application for Transfer

- A. On or before July 1, 2016, PacifiCorp and the DRE will jointly file an application to remove the Facilities from the Project license, redesignate the Facilities with a new project number, and transfer the redesignated FERC license for the Facilities to the DRE.
- B. The application for transfer may include proposals to decommission the East Side and West Side facilities, subject to Section 6.4.1 of this Settlement; remove the Keno facilities from the Project license under Section 7.5 of this Settlement; and transfer the Fall Creek development to a third party for purposes of relicensing.
- C. PacifiCorp and the DRE will file the joint application for transfer at FERC concurrent with the DRE's application for surrender and removal of the Facilities, retaining the 2020 target date for Facilities Removal.
- D. The joint application for transfer will request that FERC incorporate the conditions in Section 7.1.4 into the transfer order and require that transfer will not become effective until the DRE, or PacifiCorp and the DRE jointly (as appropriate), file notice with FERC when those conditions have been satisfied.

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

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7.1.6 Operation and Maintenance Agreement

On or before July 1, 2016, the DRE and PacifiCorp will enter into an operation and maintenance agreement allowing PacifiCorp to continue operating the Facilities for the benefit of its customers following transfer of the FERC Facilities license to the DRE. The conditions of operation under this agreement will be consistent with interim operations described in Section 6 and Appendices B, C, and D, and will include requirements that PacifiCorp pay all costs associated with operating the Facilities and indemnify, defend, and hold harmless the DRE with respect to those operations. The DRE and PacifiCorp will obtain the concurrence of the States for any such agreement.

7.1.7 FERC Application for Surrender

A. Concurrently with the joint application for license transfer, the DRE will file an application with FERC to surrender the FERC license for the Facilities for the purpose of Facilities Removal, which will include a copy of this Settlement and the Detailed Plan. The DRE will request that FERC defer acting on the application until the conditions in Section 7.1.4 are satisfied. The DRE will take any action necessary to obtain necessary FERC authorization to carry out Facilities Removal in accordance with this Settlement. PacifiCorp will provide technical support to the DRE and to FERC in processing the surrender application, but will not be a co-applicant or co-licensee on the surrender application unless otherwise mutually agreed upon with the DRE.

B. Concurrently with the joint application for license transfer and the DRE's application to FERC for surrender, the DRE will file applications seeking state water quality 401 certifications for Facilities Removal with the California State Water Resources Control Board and the ODEQ.

7.1.8 Performance of Facilities Removal

The DRE will perform Facilities Removal in accordance with the Definite Plan, as approved and as may be modified by the FERC surrender order and other applicable Regulatory Approvals. The DRE will complete final design and cost estimates before initiating Facilities Removal.

7.1.9 Other Regulatory Approvals for Facilities Removal

The DRE will take any action necessary to obtain other Regulatory Approvals necessary to effectuate Facilities Removal in accordance with this Settlement, except that PacifiCorp will file and support applications to obtain the necessary

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state commission approvals for the transfer of assets to the DRE in accordance with this Settlement.

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**7.1.10 Assignment**

The DRE may assign to another entity any of its responsibilities under this Settlement, including the DRE responsibilities described in this section. This assignment is subject to any necessary Regulatory Approvals. The DRE may not assign its responsibilities under this Settlement without the prior written consent of the States and PacifiCorp.

**7.2 Definite Plan and Detailed Plan**

**7.2.1 Development and Use of Definite Plan**

The DRE will develop a Definite Plan for Facilities Removal that, once completed, may be included as a part of any applications for permits or other authorizations. The Definite Plan must be consistent with this Settlement.

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**A. Elements of Definite Plan**

The Definite Plan may be based on all elements of the Detailed Plan described in Section 7.2.2 and will be consistent with FERC requirements for surrender. Such elements shall be in the form required for physical performance, such as engineering specifications for a construction activity, and shall also include consideration of prudent cost overrun management tools such as performance bonds. The Definite Plan shall also include:

- (1) A detailed estimate of the actual or foreseeable costs associated with: the physical performance of Facilities Removal consistent with the Detailed Plan; each of the tasks associated with the performance of the DRE's obligations as stated in Section 7.1; seeking and securing permits and other authorizations; and insurance, performance bond, or similar measures, as set forth in Appendix L to this Settlement;

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- (2) The DRE's analysis demonstrating that the total cost of Facilities Removal is likely to be less than the State Cost Cap, which is the total of Customer Contribution and California Bond Funding as specified in Section 4;

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- (3) Appropriate procedures consistent with state law to provide for cost-effective expenditures within the cost estimates stated in (1);

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- (4) Accounting procedures that will result in the earliest practicable disclosure of any actual or foreseeable overrun of cost of any task relative to the detailed estimate stated in (1); and

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(5) Appropriate mechanisms to modify or suspend performance of any task subject to such overrun. Upon receipt of Notice from the DRE of any actual or foreseeable cost overrun pursuant to (2), the Parties shall use the Meet and Confer procedures to modify the task (to the extent permitted by the FERC surrender order, an applicable permit, or other authorization) or to modify this Settlement as appropriate to permit Facilities Removal to proceed.

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**B. Notice of Completion**

The DRE shall provide Notice to the Parties upon completion of the Definite Plan.

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**C. Use of Definite Plan**

The DRE must incorporate the Definite Plan, once completed, into any FERC application to surrender the Facilities license. After FERC issues an order on the FERC Facilities license surrender application, the Parties will review the consistency of the Definite Plan, FERC's surrender order, and this Settlement. If either of the States or the DRE finds that the FERC surrender order is materially inconsistent (as defined in Section 8.11.2) with the Definite Plan or this Settlement, either the DRE or the States may initiate Meet and Confer proceedings.

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**7.2.2 Detailed Plan for Facilities Removal**

The Secretary developed the Detailed Plan, which may serve as a basis for the Definite Plan described in Section 7.2.1.A. The Detailed Plan includes A through F below; the detailed plan includes A through F below; G is addressed in Appendix L and will be fully developed in the Definite Plan; H will be addressed during solicitation and selection of engineering and construction contract(s) for development of a Definite Plan and for Facilities Removal.

Deleted: With respect to any elements of the Definite Plan that are undisputed, and otherwise at the conclusion of any Dispute Resolution described in Section 7.2.1.B, the DRE shall use the Definite Plan as appropriate in applications for any applicable federal, state, and local permits for Facilities Removal.

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

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

C. A plan for site remediation and restoration;

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

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

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

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

H. The qualifications, management, and oversight of a non-federal DRE.

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

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

- A. The Parties collectively and each Party individually shall agree not to oppose the City of Yreka's continued use of California State Water Right Permit 15379, which provides for the diversion of up to 15 cfs for municipal uses by the City of Yreka.
- B. As part of implementation of this Settlement, an engineering assessment to study the potential risks to the City of Yreka's water supply facilities as a result of implementation of Facilities Removal shall be funded and conducted by the Secretary. Actions identified in the engineering assessment necessary to assure continued use of the existing, or equivalent replacement, water supply facilities by the City of Yreka shall be funded from the California Bond Measure and implemented. Actions that may be required as a result of the engineering assessment include, but are not limited to:
  - (1) Relocation, replacement, and/or burial of the existing 24-inch diameter water line and transmission facilities from the City of Yreka's Fall Creek diversion;
  - (2) Assessment, mitigation, and/or funding to address potential damage to the City of Yreka's facilities located along the Klamath River, including mitigation of potential impacts that may occur as a result of a dam breach. Such assessment, mitigation, and/or funding shall include consideration of the cathodic protection field located near the north bank of the Iron Gate crossing and the facilities that house the City's diversion and pump station; and
  - (3) Assessment, mitigation, and/or funding to address any impacts resulting from implementation of the Settlement, on the ability of

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the City to divert water consistent with its Water Right Permit 15379.

C. As part of implementation of this Settlement, ~~an assessment of the potential need for fish screens on the City of Yreka's Fall Creek diversion facilities was completed in the Detailed Plan and it identified the need for fish screens on Dam A and Dam B.~~ As a result of implementation of this Settlement, in order to meet regulatory requirements and screening criteria, construction of the required fish screens, including, but not limited to, necessary costs to preserve City facilities with additional species protection, shall be funded through the California Bond Measure pursuant to Section 4.2.3, or through other appropriate sources.

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**7.3 Schedule for Facilities Removal**

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

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7.3.2 The Parties acknowledge and agree that the schedule to accomplish Facilities Removal will be determined by the DRE in accordance with Section 7.3.4. ~~The Parties intend to implement this Settlement based on the following approach to achieve the target dates for Decommissioning and Facilities Removal set forth in Section 7.3.1:~~

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- A. Collect \$172 million of the total Customer Contribution by December 31, 2019, consistent with Section 4;
- B. Earn approximately \$28 million in interest on the Klamath Trust Accounts to provide Value to Customers, which results in a total of \$200 million in the accounts available for Facilities Removal costs as illustrated in Appendix H to this Settlement;
- C. Implement Decommissioning and Facilities Removal in a manner that permits PacifiCorp to generate sufficient electricity at the Facilities to achieve the economic results included in PacifiCorp's Economic Analysis; and

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

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

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

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

7.3.4 Within 90 days of the DRE's execution of the Settlement, or at such additional time as may be necessary, the Parties shall Meet and Confer to: (1) review progress in implementing the Settlement based upon the approach described in Section 7.3.2; (2) review the DRE's schedule to procure contractor(s) to prepare a Definite Plan based on the Detailed Plan and to provide required liability protection and risk mitigation in accordance with Appendix L; and (3) identify the Value to Customers necessary to implement the schedule, the mechanisms as described in Section 7.3.8 that will be used, and the estimated cost reduction from each mechanism through December 2019. The Parties will subsequently Meet and Confer if the estimated additional Value to Customers has not been timely secured, a Regulatory Approval is inconsistent with that schedule, or the Definite Plan or final designs are inconsistent with the schedule.

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If the Parties determine that the identified Value to Customers is less than the amount required to achieve the schedule, then the Parties at that time will consider additional actions to address the funding deficiency, including but not limited to extending the schedule and securing additional funding to protect PacifiCorp customers. The Parties may thereafter Meet

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and Confer if additional Value to Customers is secured in excess of what was previously estimated.

7.3.5 PacifiCorp, in its sole and absolute discretion, may determine that Facilities Removal may begin earlier than January 1, 2020.

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7.3.6 If the Parties determine that the schedule for Facilities Removal must extend beyond December 31, 2020, then the Parties shall also consider whether (1) modification of Interim Measures is necessary to appropriately balance costs to customers and protection of natural resources, and (2) continuation of the collection of the customer surcharges up to the maximum Customer Contribution is warranted.

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

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

A. Interest on the Klamath Trust Accounts

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

B. Third-Party Funding

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



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**C. Other**

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

7.3.9 PacifiCorp's Economic Analysis that will be used to implement this section was filed by PacifiCorp with the Oregon PUC pursuant to Section 4(1) of the Oregon Surcharge Act and with the California PUC in accordance with Section 4 of this Settlement. The Parties may seek to intervene in these state proceedings before the Commissions, and may request to view PacifiCorp's Economic Analysis consistent with the limitations imposed by Section 4(6) of the Oregon Surcharge Act, applicable PUC protective orders, and general PUC discovery practices and legal requirements. PacifiCorp shall not oppose either request. PacifiCorp reserves the right to request that the PUCs restrict Parties' access to commercially sensitive material, other than PacifiCorp's Economic Analysis, consistent with Section 4(6) of the Oregon Surcharge Act, applicable PUC protective orders, and general PUC discovery practices and legal requirements.

7.4 Transfer, Decommissioning, and Facilities Removal

7.4.1 DRE Notice

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

7.4.2 Decommissioning and Transfer

PacifiCorp will transfer ownership of each Facility, including the underlying land for each Facility in accordance with Section 7.6.4 (except for the Keno Development, which shall be disposed in accordance with Section 7.5), and the FERC license transfer order. Once the DRE notifies PacifiCorp that all conditions in Section 7.1.4 have been met, and PacifiCorp concurs, PacifiCorp will transfer ownership of the Facilities to the DRE. PacifiCorp will continue to operate and maintain the Facilities in accordance with Section 7.1.6 until the DRE is ready to begin removal of a Facility and requests that PacifiCorp discontinue operation of that Facility.

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

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

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7.5 Keno Facility

7.5.1 Study

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

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7.5.2 Keno Facility Determination

~~In 2012, the Bureau of Reclamation and PacifiCorp entered into an in principle agreement for transfer of title to the Keno facility from PacifiCorp to Interior.~~

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Within 60 days of the Amendment Effective Date, Interior and PacifiCorp shall commence negotiations on Keno transfer informed by the analyses described in Section 7.5.1. Every six months or as necessary after the Amendment Effective Date, and subject to Section 8.17, Interior and PacifiCorp shall report to the Parties on the status of Keno negotiations, including as appropriate, drafts of a proposed Keno transfer agreement, a summary of negotiations and issues in dispute, and supporting documents. Interior and PacifiCorp shall use their best efforts to complete a final Keno transfer agreement within 180 days of the Amendment Effective Date. The Secretary will accept transfer of title to the Keno facility when the DRE notifies the Parties and FERC pursuant to Section 7.4.1 that J.C. Boyle Facility Removal is ready to commence.

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**Deleted:** in principle by June 1, 2011. If acceptable terms of a final transfer agreement are not reached by October 1, 2011, the Parties may Meet and Confer in accordance with Section 8.7. Interior and PacifiCorp shall use their best efforts to complete a final Keno transfer agreement by March 31, 2012. If the Secretary makes an Affirmative Determination, the Secretary shall then

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

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7.5.3 PacifiCorp Operations Prior to Transfer

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

7.5.4 Operations After Transfer

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

7.5.5 Landowner Agreements

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

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7.6 Dispositions of PacifiCorp Interests in Lands and other Rights

7.6.1 Lands

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

PacifiCorp is the fee owner of approximately 8,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California that is associated with the Klamath Hydroelectric Project and/or included within the FERC project boundary. This property is more particularly described on Page 3 of the PacifiCorp Land Maps, Exhibit 3, and referenced as Parcel B. It is the intent of the Parties that Parcel B property be disposed in accordance with Section 7.6.4, except for the Keno Development which shall be disposed in accordance with Section 7.5. In addition to Exhibit 3, PacifiCorp owns significant electric transmission and distribution facilities which will remain under its ownership and subject to applicable taxes.

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7.6.2 Potential Non-Project Land Exchanges

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

7.6.3 BLM Easements and Rights of Way

The Parties agree that ~~before~~ Facilities Removal, the FERC license for ~~the Facilities~~ shall control the ingress and egress to the Facilities within the FERC project boundary. Access by PacifiCorp outside of the project boundary to BLM-administered lands may require a separate Right Of Way agreement.

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

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

7.6.4 PacifiCorp Klamath Hydroelectric Project Lands

- A. It is the intent of the Parties that ownership of PacifiCorp lands associated with the Klamath Hydroelectric Project and/or included within the FERC Project boundary, identified as Parcel B in Exhibit 3, shall be transferred to ~~the DRE before Facilities Removal begins. It is the intent of the Parties that, once the DRE has completed Facilities Removal and all surrender conditions have been satisfied, ownership of these lands will be transferred to the respective States, as applicable, or to a designated third-party transferee, upon Notice by the relevant State that it has completed to its satisfaction a final property (land and facilities) inspection in accordance with Applicable Law and in accordance with the indemnification(s) provided in Section 7.1.3 and Appendix L.~~ It is also the intent of the Parties that transferred lands shall thereafter be managed for public interest purposes such as fish and wildlife habitat restoration and enhancement, public education, and public recreational access.

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

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C. Without predetermining the final terms of transfer for a specific property, proposed terms of transfer may include but are not limited to: (1) final property inspection; (2) specification of structures and improvements to remain on the property after Decommissioning and Facilities Removal; (3) liability protection for the State, or designated third party transferee, and the DRE, for any harm arising from post-transfer Decommissioning or power operations at the property; (4) liability protection for the State, or designated third party transferee, for any harm arising from post-transfer Facilities Removal by the DRE at the property; (5) easements or other property interests necessary for access to and continued operation of PacifiCorp transmission and distribution system assets that will remain on the property; and (6) notice or acknowledgement of the State's claim of ownership to beds and banks of the Klamath River. The DRE shall be a party to the transfer document as necessary and appropriate. The consideration required for transfer of a property to a State or third party transferee under this section shall be limited to the liability protections and other benefits conferred upon PacifiCorp and the DRE under this Settlement. Transfer of Parcel B lands shall be subject to applicable regulatory approvals and the reservations set forth in Section 1.6.

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D. PacifiCorp shall convey Parcel B lands to the the DRE, after the DRE provides Notice to the Parties and FERC that all necessary permits and approvals have been obtained for Facility Removal, and all contracts necessary for Facility Removal have been finalized, PacifiCorp shall convey all right, title, and interest in a subset of the Parcel B lands

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

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

**7.6.5 PacifiCorp Water Rights**

- A. PacifiCorp shall assign its revised hydroelectric water rights to the OWRD for conversion to an instream water right pursuant to ORS 543A.305, and OWRD shall take actions to effect such conversion, in accordance with the process and conditions set forth in *Water Right Agreement between PacifiCorp and Oregon* (Exhibit 1). Nothing in this Section 7.6.5 or Exhibit 1 is intended in any way to affect, diminish, impair, or determine any federally-reserved or state law-based water right that the United States or any other person or entity may have in the Klamath River.
- B. Except as provided in this paragraph, within 90 days of completion of Facilities Removal at the Copco No. 1, Copco No. 2 and Iron Gate Facilities, respectively, PacifiCorp shall submit a Revocation Request to the California State Water Resources Control Board for License No. 9457 (Application No. 17527), and shall notify the State Water Resources Control Board of its intent to abandon its hydroelectric appropriative water rights at the Copco No. 1 and Copco No. 2 Facilities, as applicable, as identified in Statement of Water Diversion and Use Nos. 15374, 15375, and 15376. Should ongoing operations of the Iron Gate Hatchery or other hatchery facilities necessitate

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continued use of water under License No. 9457 (Application No. 17527) beyond 90 days after completion of Facilities Removal, PacifiCorp shall consult with the Department of Fish and Wildlife, and the State Water Resources Control Board and shall take actions directed by such Department and Board as are necessary to ensure a sufficient water supply to the Iron Gate Hatchery or other hatchery facilities under License No. 9457.

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7.6.6 PacifiCorp Hatchery Facilities

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

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A. Hatchery Funding

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

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B. Hatchery Production Continuity

PacifiCorp will fund a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options and water reuse technologies that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and increasing production potential at existing or new facilities in the Klamath Basin as well as development of a test well or groundwater supply well. Based on the study results and with the approval of the California Department of Fish and Wildlife and the National Marine Fisheries

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Service, PacifiCorp will provide one-time funding to construct and implement the measures identified as necessary to continue to meet current mitigation production objectives for a period of eight years following the Decommissioning of Iron Gate Dam. PacifiCorp's 8-year funding obligation assumes that Facilities Removal will occur within one year of cessation of power generation at Iron Gate Dam. If dam removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years. Production facilities capable of meeting current hatchery mitigation goals must be in place and operational upon removal of Iron Gate Dam. PacifiCorp shall not be responsible for funding hatchery programs, if any, necessary to reintroduce anadromous fish in the Klamath basin.

**8. General Provisions**

8.1 Term of Settlement

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

8.2 Effectiveness

~~The KHSA was effective upon execution on February 18, 2010 ("Effective Date"). This Settlement will take effect on March 31, 2016 ("Amendment Effective Date").~~

8.3 Successors and Assigns

This Settlement shall apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Settlement. Except as provided by Section 7.1.10, no assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

8.4 Amendment

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

**Deleted:** 7.7 - Federal Power Act Jurisdiction¶  
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The non-federal Parties intend that the Authorizing Legislation shall provide that (i) FERC's jurisdiction over each Facility shall end upon transfer of that Facility to the DRE for Removal pursuant to Section 7.4.2; and (ii) in the event this Settlement terminates before all Facilities have been transferred, the FERC relicensing proceeding shall resume as to all remaining Facilities. ¶  
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8.5 Notices

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

8.6 Dispute Resolution

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

8.6.1 Cooperation

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

8.6.2 Costs

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

8.6.3 Non-Exclusive Remedy

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

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8.6.4 Dispute Resolution Procedures

A. Dispute Initiation Notice

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

B. Informal Meetings

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

C. Mediation

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

D. Dispute Resolution Notice

The Disputing Parties shall provide Notice of the results of the Dispute Resolution Procedures. The Notice shall: (1) restate the disputed matter, as initially described in the Dispute Initiation Notice; (2) describe the alternatives which the Disputing Parties considered for resolution; and (3) state whether resolution was achieved, in whole or part, and state the specific relief, including timeline, agreed to as part of the resolution. Each Disputing Party shall promptly implement any agreed resolution of the dispute.

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8.7 Meet and Confer

8.7.1 Applicability

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

8.7.2 Meet and Confer Procedures

A. Any Party may initiate the Meet and Confer procedures by sending Notice: (1) describing the event that requires the Parties to confer, and (2) scheduling a meeting or conference call.

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

C. The Meet and Confer procedures will result in: (1) amendment pursuant to Section 8.4; (2) termination or other resolution pursuant to the procedures of Section 8.11; or (3) such other resolution as is appropriate under the applicable section.

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8.8 Remedies

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

8.9 Entire Agreement

This Settlement contains the complete and exclusive agreement among all of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, agreements in principle, and other writings among the Parties, including the 2008 AIP and 2016 AIP, before the Amendment Effective Date of this Settlement, with respect to its subject matter. Appendices B, C, D, F, H, K, and L are hereby incorporated by reference into this Settlement as if fully restated herein. Exhibits 1 through 4 are attached to this Settlement for informational purposes only and are not incorporated by reference except as otherwise noted herein.

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8.10 Severability

This Settlement is made on the understanding that each provision is a necessary part of the entire Settlement. However, if any provision of this Settlement is held by a Regulatory Agency or a court of competent jurisdiction to be invalid, illegal, or unenforceable: (1) the validity, legality, and enforceability of the remaining provisions of this Settlement are not affected or impaired in any way; and (2) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal, or unenforceable) that is valid, legal, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Settlement.

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8.11 Termination

8.11.1 Potential Termination Events

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

A. A condition precedent to license transfer set forth in Section 7.1.4 is not met;

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

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

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

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

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

G. If no abeyance of relicensing proceedings as described in Section 6.5 is approved by FERC or, as applicable, the California State Water Resources Control Board or the ODEQ, following the Amendment Effective Date, or an abeyance is ordered then later lifted.

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

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8.11.2 Definitions for Section 8.11

- A. For purposes of this ~~section and Section 7.2.1.C~~, “materially inconsistent” means diverging from the Settlement or part thereof in a manner that: ~~(1)~~ fundamentally changes the economics or liability protection such that a Party no longer receives the benefit of the bargain provided by this Settlement; or ~~(2)~~ frustrates the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished. Events occurring independent of this Settlement, other than those identified in Section 8.11.1, shall not be construed to create a material inconsistency or materially adverse effect.
- B. For purposes of this section, “materially adversely affected” means that a Party no longer receives the benefit of the bargain due to: (i) fundamental changes in the economics or liability protection; or (ii) frustration of the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished.
- C. For purposes of this ~~section~~, a “result of any litigation” is materially inconsistent with this Settlement or a part thereof if a Party is materially adversely affected by: (i) costs to defend the litigation; or (ii) a final order or judgment.

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8.11.3 Cure for Potential Termination Event

- A. A Party that believes that a potential termination event specified in Section 8.11.1 has occurred shall provide Notice.
- ~~(1)~~ The Parties shall use the Meet and Confer Procedures specified in Section 8.7 to consider whether to deem the event to conform to the Settlement, or adopt a mutually agreeable amendment to this Settlement. These procedures shall conclude within 90 days of Notice.
- ~~(2)~~ If these procedures do not resolve the potential termination event, the Federal Parties, the States, ~~the DRE if a Party~~, and PacifiCorp may, within 90 days thereafter, agree to an amendment, or deem the event to conform to the Settlement; otherwise, this Settlement shall terminate. In no event shall any amendment under this subsection provide for Facilities Removal with respect to fewer than four Facilities.
- B. If the Federal Parties, the States, ~~the DRE if a Party~~, and PacifiCorp disagree whether a potential termination event specified in Section

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

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

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

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C. A Party may reasonably suspend performance of its otherwise applicable obligations under this Settlement, upon receipt of Notice and pending a resolution of the potential termination event as provided in Section 8.11.3.A or B.

D. If the Federal Parties, the States, the DRE if a Party, and PacifiCorp, pursuant to the procedures in Section 8.11.3.A, agree to an amendment or other cure to resolve a potential termination event absent agreement by all other Parties pursuant to Section 8.4, any other Party may accept the amendment by Notice. If it objects, such other Party: (1) may seek a remedy regarding the potential termination event that resulted in the disputed amendment, to the extent provided by Section 8.8; (2) may continue to suspend performance of its obligations under this Settlement; and (3) in either event shall not be liable in any manner as a result of its objection or the suspension of its performance of its obligations under this Settlement.

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

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**8.11.4 Obligations Surviving Termination**

A. Upon termination, all documents and communications related to the development, execution, or submittal of this Settlement to any agency,

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

This provision does not prohibit the disclosure of: (1) any information held by a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act or other applicable law; (2) any information held by a state or local agency that is not protected from disclosure pursuant to the California Public Records Act, the Oregon Public Records Law, or other applicable state or federal law; or (3) disclosure pursuant to Section 1.6.8.

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

8.12 No Third Party Beneficiaries

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

8.13 Elected Officials Not to Benefit

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

8.14 No Partnership

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

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8.15 Governing Law

8.15.1 Contractual Obligation

A Party's performance of an obligation arising under this Settlement shall be governed by (1) applicable provisions of this Settlement, and (2) Applicable Law for obligations of that type.

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8.15.2 Regulatory Obligation

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

8.15.3 Reference to Applicable Law

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

8.16 Federal Appropriations

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

8.17 Confidentiality

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

**9. Execution of Settlement**

9.1 Signatory Authority

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



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9.2 Signing in Counterparts

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

9.3 New Parties

With the exception of the DRE as set forth in Section XXX, any entity listed on pages 1 through 2 of this Settlement that does not execute this Settlement on the Amendment Effective Date will become a Party, by signing the Settlement within 90 days of the Amendment Effective Date. After 90 days from the Amendment Effective Date, any such entity, or any other entity, may become a Party, through an amendment of this Settlement in accordance with Section 8.4.

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- Deleted: , without amendment of this Settlement or other action by existing Parties.
- Deleted: 6
- Deleted: subject to Section 2.2

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**IN WITNESS THEREOF,**

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

**United States Department of the Interior**

\_\_\_\_\_  
By: Sally Jewell, Secretary of the Interior      Date: \_\_\_\_\_

Deleted: Ken Salazar

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

\_\_\_\_\_  
By: Dr. Kathryn D. Sullivan  
Under Secretary of Commerce for  
Oceans and Atmosphere      Date: \_\_\_\_\_

Deleted: Jane Lubchenco

**PacifiCorp d/b/a Pacific Power**

\_\_\_\_\_  
By: Stefan A. Bird, President and CEO      Date: \_\_\_\_\_

Deleted: Gregory E. Abel

Deleted: Chairman

**STATES**

**California Natural Resources Agency**

\_\_\_\_\_  
By: Edmund G. Brown, Jr., Governor      Date: \_\_\_\_\_

Deleted: Arnold SchwarzeneggerGerald

**State of Oregon**

\_\_\_\_\_  
By: Kate Brown, Governor      Date: \_\_\_\_\_

Deleted: Theodore R. Kulongoski

**California Department of Fish and Wildlife**

\_\_\_\_\_  
By: Chuck Bonham, Director      Date: \_\_\_\_\_

Deleted: Game

Deleted: John McCamman,

Deleted: Acting

Amended Klamath Hydroelectric Settlement Agreement  
Signature Page

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**Oregon Department of Environmental Quality**

\_\_\_\_\_  
By: ~~Joni Hammond, Interim~~ Director Date: \_\_\_\_\_

Deleted: Dick Pedersen  
Deleted: Deputy

**Oregon Department of Fish and Wildlife**

\_\_\_\_\_  
By: ~~Curt Melcher~~ Director Date: \_\_\_\_\_

Deleted: Roy Elicker

**Oregon Water Resources Department**

\_\_\_\_\_  
By: ~~Thomas Byler~~, Director Date: \_\_\_\_\_

Deleted: Phillip C. Ward

**TRIBES**

**Karuk Tribe**

\_\_\_\_\_  
By: Arch Super, Chairman Date: \_\_\_\_\_

**Klamath Tribes**

\_\_\_\_\_  
By: ~~Chairman~~ Date: \_\_\_\_\_

Deleted: Joseph Kirk,

**Yurok Tribe**

\_\_\_\_\_  
By: ~~James Dunlap~~, Chairperson Date: \_\_\_\_\_

Deleted: Thomas O'Rourke

**COUNTIES**

**Del Norte, California**

\_\_\_\_\_  
By: Gerry Hemmingsen,  
Chairman, Board of Supervisors Date: \_\_\_\_\_

**Amended** Klamath Hydroelectric Settlement Agreement  
Signature Page

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**Humboldt County, California**

\_\_\_\_\_  
By: ~~Mark Lovelace,~~  
~~Chairman, Board of Supervisors~~ Date: \_\_\_\_\_

Deleted: Jill K. Duffy  
Deleted: Fifth District

**Klamath County, Oregon**

\_\_\_\_\_  
By: John Elliott, Commissioner Date: \_\_\_\_\_

Deleted: Siskiyou County, California  
\_\_\_\_\_  
Date: \_\_\_\_\_  
by: \_\_\_\_\_ Chairman, Board of Supervisors

**IRRIGATORS**

**Ady District Improvement Company**

\_\_\_\_\_  
By: Robert Flowers, President Date: \_\_\_\_\_

**Collins Products, LLC**

\_\_\_\_\_  
By: Eric Schooler  
President and Chief Executive Officer Date: \_\_\_\_\_

**Enterprise Irrigation District**

\_\_\_\_\_  
By: Michael Beeson, President Date: \_\_\_\_\_

**Don Johnston & Son**

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

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

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

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**Klamath Irrigation District**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: David Cacka, President

**Klamath Drainage District**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: ~~Tim O'Connor~~, President

Deleted: Luther Horsley

**Klamath Basin Improvement District**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Warren Haught, Chairman

**Klamath Water Users Association**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Luther Horsley, President

**~~Bradley S. Luscombe~~**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Bradley S. Luscombe

Deleted: Klamath Water and Power Agency  
\_\_\_\_\_  
Date: \_\_\_\_\_  
By: Edward T. Bair, Chairman of the Board

**Malin Irrigation District**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Harold Hartman, President

**Midland District Improvement Company**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Frank Anderson, President

**Pine Grove Irrigation District**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Doug McCabe, President

**Amended Klamath Hydroelectric Settlement Agreement  
Signature Page**

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**Pioneer District Improvement Company**

\_\_\_\_\_  
By: Lyle Logan, President

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

**Plevna District Improvement Company**

\_\_\_\_\_  
By: Steve Metz, President

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

**Poe Valley Improvement District**

\_\_\_\_\_  
By: William Kennedy, President

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

**Reames Golf and Country Club**

\_\_\_\_\_  
By: L.H. Woodward, President

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

**Shasta View Irrigation District**

\_\_\_\_\_  
By: Claude Hagerty, President

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

**Sunnyside Irrigation District**

\_\_\_\_\_  
By: Charles Kerr, President

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

**Tulelake Irrigation District**

\_\_\_\_\_  
By: John Crawford, President

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

**Upper Klamath Water Users Association**

\_\_\_\_\_  
By: Matthew Walter, President

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

Deleted: Karl Scronce

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**Van Brimmer Ditch Company**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Gary Orem, President

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

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Jane Walthall

**Westside Improvement District #4**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Steven L. Kandra, President

**Winema Hunting Lodge, Inc.**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: R. David Bolls, III

**OTHER ORGANIZATIONS**

**American Rivers**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Rebecca Wodder, President

**California Trout**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: George Shillinger, Executive Director

**Institute for Fisheries Resources**

\_\_\_\_\_ Date: \_\_\_\_\_  
By: Glen Spain  
Northwest Regional Director

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

\_\_\_\_\_  
By: Lowell Ashbaugh  
Vice-President, Conservation

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

Deleted: Mark Rockwell

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

\_\_\_\_\_  
By: Glen Spain  
Northwest Regional Director

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

**Salmon River Restoration Council**

\_\_\_\_\_  
By: Petey Brucker

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

Deleted: , President

**Trout Unlimited**

\_\_\_\_\_  
By: Chris Wood  
Chief Executive Officer

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

**Klamath Riverkeeper**

\_\_\_\_\_  
By: Konrad Fisher, Exective Officer

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

**INDIVIDUAL NON-PARTY SIGNATORY**

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

\_\_\_\_\_  
By: Arthur G. Baggett, Jr.

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

<sup>1</sup> Mr. Baggett is signing this Agreement as a recommendation to the California State Water Resources Control Board, and not as a Party.



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**APPENDICES**

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**APPENDIX A TO ORIGINAL KHSA; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSA**

**APPENDIX A**  
**Coordination Process for the Studies Supporting the Secretarial Determination**

1. Introduction

While the proposed Secretarial Determination is an inherently governmental function that may not be delegated to others, the Federal Parties understand and recognize the unique nature of this task and are committed to participating in the development of the basis for the Secretarial Determination in a Timely, open, transparent manner and employing the highest standards of scientific integrity. As part of that process and as appropriate and governed by Applicable Law, the Secretary will:

- A. seek the input from the other Parties and the public, on:
  - i. identification of data and analysis necessary to make the Secretarial Determination;
  - ii. identification of existing data and analysis and the protocols needed to assess its sufficiency;
  - iii. work plans to obtain and study new information necessary to fill material data gaps that may exist, which may include sediment contamination studies (including but not limited to dioxin); and
  - iv. any other process to gather, develop, and assess any additional data, existing data, or analysis determined necessary by the United States to support the Secretarial Determination,
- B. utilize the expertise each of the Parties may have with regard to data and analysis that is necessary to support the Secretarial Determination; and
- C. create the means by which the Parties can ensure Timely performance of the studies.

Further, the Federal Parties have expressed their commitment to ensuring that the studies, reports, and analyses utilized to inform the Secretarial Determination are supported by a complete and scientifically-sound record.

2. Purpose of the Coordination Process

The purpose of the Coordination Process is to seek, discuss, and consider the views of the Parties regarding the basis of the Secretarial Determination in a Timely manner in support of the Secretary's decision-making process. As described in Section 3 below, the Secretary will foster communication between the Federal agencies engaged in the Determination and the Parties to

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**APPENDIX A TO ORIGINAL KHSA; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSA**

this Settlement. This includes providing Timely notice to allow the Parties and the public to provide meaningful input to the items identified in Section 1 above.

3. The Process

- A. To provide an opportunity for the non-federal Parties to provide input to the Secretary on the categories of data outlined in Section 1 above, there is established under the terms of this Settlement a Technical Coordination Committee (TCC) consisting of membership from all of the non-Federal Parties to this Settlement. The TCC will meet or hold conference calls on a monthly basis, at a minimum, and more often as deemed necessary. The TCC will also form sub-teams and hold separate workshops/meetings as necessary to address specific technical and scientific issues. The principal objective of the TCC will be to exchange information and data, as appropriate, among the non-federal Parties on technical aspects of the Secretarial Determination that may affect the resources of the non-federal Parties and provide input to the Federal Parties. The Federal Parties will hold public workshops or otherwise provide Timely information to the TCC and the public concerning the status of the Determination, the studies in support of the Determination and the environmental compliance actions. To the extent practicable and in accordance with Applicable Law, the Federal Parties will provide the information necessary for the non-federal Parties to have Timely and meaningful input consistent with the schedule for completing the Secretarial Determination. The TCC will provide its input in writing to the Federal Parties for their consideration, consistent with the Coordination Process.
- B. The Parties may participate in the NEPA process as cooperating agencies, if eligible under the applicable Federal regulations and guidance, or as members of the public.
- C. Nothing in this Settlement shall restrict the Department of the Interior or other Federal agency from providing funding through other agreements or memoranda of understanding.

4. Meet and Confer

This Coordination Process is intended to provide the Parties with the opportunity to provide Timely and meaningful input to the Federal Parties' actions in carrying out the terms of this Settlement. If the Parties find that their needs are not being met by this Coordination Process, then the Parties may engage in Meet and Confer Procedures to try to address the Parties' concerns.

5. Limitations

This Process is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United

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**APPENDIX A TO ORIGINAL KHSAs; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSAs**

States, its agencies, its officers, or any other person. The provisions of this Process are not intended to direct or bind any person.

6. Government-to-Government Relationship

In accordance with Applicable Law, nothing in this Coordination Process is intended to waive or supersede any obligation of the United States to fulfill its government-to-government relationship with any Indian Tribe, state, county, or local government concerning the Secretarial Determination or this Settlement.

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**APPENDIX B**

**Interim Measures Implementation Committee (Interim Measure 1)**

1. Purpose and Goal of Committee

The purpose of the Interim Measures Implementation Committee (IMIC or Committee) is to collaborate with PacifiCorp on ecological and other issues related to the implementation of the Interim Measures set forth in Appendix D of the Settlement. The primary goals of the IMIC are: (i) to achieve consensus where possible; and (ii) timely implementation of the matters within the scope of the IMIC's responsibilities under the Settlement.

2. Committee Functions and Responsibilities

2.1 The IMIC shall meet, discuss, and seek to reach consensus on implementation of the following Non-ICP Interim Measures as detailed in each Interim Measure:

2.1.1 Interim Measure 7. The IMIC will consult with PacifiCorp to approve gravel placement projects and approve third parties to implement the projects.

2.1.2 Interim Measure 8. The IMIC will consult with PacifiCorp on a plan to remove the sidecast rock barrier located upstream of the J.C. Boyle Powerhouse, and approve a schedule for the removal.

2.1.3 Interim Measure 11. The IMIC will consult with PacifiCorp to identify studies or pilot projects and to develop a priority list of projects to be carried out following the DRE's acceptance of the FERC surrender order, as approved by the agencies specified in Interim Measure 11.

**Deleted:** to be carried out prior to the date of the Secretarial Determination,

**Deleted:** an Affirmative Secretarial Determination

2.1.4 Interim Measure 13. The IMIC will identify species specific habitat needs on which to base J.C. Boyle Dam instream flow releases in the event dam removal occurs in a staged manner and anadromous fish are naturally and volitionally present in the J.C. Boyle Bypass Reach.

2.1.5 Interim Measure 15. The IMIC will resolve significant disputes that may arise regarding the water quality monitoring plan content or funding.

**Deleted:** <#>Interim Measure 14. The IMIC will develop a protocol within nine months of the Effective Date for quantifying and managing any additional flows in the Klamath River made available through implementation of the KBRA and for coordinating with operation of the J.C. Boyle Facility the timing and manner of release of such KBRA flows to meet fish habitat needs.¶  
¶

2.2 The IMIC shall advise the Settlement Parties concerning any proposed amendments to the Interim Measures based on monitoring conducted under the Interim Measures and any other adaptive management considerations.

2.3 PacifiCorp will prepare and provide to the IMIC periodic reports, no less frequently than annually, on the status of implementation of the Interim Conservation Plan measures set forth in Appendix C of the Settlement.

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3. Committee Membership and Meeting Participation

3.1 The IMIC shall be comprised of PacifiCorp and the following members, subject to their signing the Settlement:

- A. State and Federal Members: One representative each from: U.S. Department of the Interior, National Marine Fisheries Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Water Resources Department, and the California Department of Fish and ~~Wildlife~~.
- B. Tribal Members: One representative each from ~~the Tribes~~.
- C. Other Members: One representative each from: conservation group Parties, fishing group Parties, signatory counties, and irrigation group Parties.

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Deleted: : Yurok Tribe, Klamath Tribes, and Karuk Tribe

3.2 The California State Water Resources Control Board and the North Coast Regional Board may also be members of the IMIC even though they have not signed the Settlement.

3.3 Each member or category of members may designate a primary representative to the IMIC within 30 days after the Effective Date of the Settlement, or at any time thereafter with five days' notice. Designation shall be by Notice to the Parties in accordance with Section 8.5 of the Settlement. Each member or category of members may name alternative representatives to the IMIC. Failure to designate a representative shall not prevent the IMIC from convening or conducting its functions in accordance with the time schedules established in the Settlement.

3.4 The IMIC, by unanimous agreement not subject to Dispute Resolution, may grant any other Party to the Settlement membership status on the IMIC, provided that the entity seeking membership submits a proposal to the IMIC that requests membership and demonstrates: (i) reasons why its interests are not adequately represented by present IMIC membership; and (ii) appropriate qualifications of the entity to participate in the IMIC.

3.5 Each member should select a representative who has relevant training or experience with natural resource management.

3.6 Participation by identified state and federal resource agencies complements their statutory responsibility and does not otherwise affect their authority. Issues involving the exercise of specific agency authority can be discussed, but decisions are not delegated to the Committee.

3.7 The IMIC may establish technical working groups to facilitate implementation of individual Interim Measures or categories of Interim Measures, such as a

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Fisheries Technical Working Group and a Water Quality Technical Working Group. The role of the technical working groups would be to make recommendations to the IMIC.

4. Meeting Provisions

- 4.1 PacifiCorp shall convene the IMIC not later than three months after the Effective Date of the Settlement.
- 4.2 PacifiCorp will arrange, administer, and chair all meetings. A meeting facilitator may be used if necessary. PacifiCorp will provide no fewer than 10 days' prior notice of any meeting to the IMIC members, other Settlement Parties and agencies with jurisdictional authority, unless otherwise agreed to by the IMIC or required in order to meet a Settlement deadline or other emergency circumstance.
- 4.3 PacifiCorp, or the facilitator, will provide draft meeting summaries for concurrence by the IMIC prior to final distribution. Meeting summaries will note member concerns.
- 4.4 The IMIC will establish protocols for meetings such as agenda development, location and scheduling. Meetings will be fairly distributed between Portland, the Medford area, and Sacramento with teleconferencing provided between sites.
- 4.5 The meeting agenda will list specific Interim Measures and all other topics for action or discussion.
- 4.6 Meetings will be scheduled as required by the actions contained within specific Interim Measure provisions, but no less frequently than annually.
- 4.7 PacifiCorp will bear all costs associated with conducting meetings. Each member will bear its own cost of attendance.
- 4.8 PacifiCorp will circulate final meeting summaries and any other written comments.
- 4.9 The role of the IMIC will be evaluated at the end of five years after the Effective Date of the Settlement. The members will review the IMIC and determine if it should remain the same, be modified or discontinued.

5. Committee Deliberations

- 5.1 During meetings, prior to Committee deliberations, other Settlement Parties and agencies with jurisdictional authority may address the Committee and provide comments on each agenda topic being discussed.

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- 5.2 Following Committee deliberation, the Committee shall seek to reach consensus of all members present. Committee decisions shall be based on a two-thirds majority vote of those participating.
- 5.2.1 PacifiCorp or the facilitator will provide the results of the vote to all IMIC members within three working days.
- 5.2.2 Decisions of the Committee will stand unless a Party provides Notice within seven working days that it will seek Dispute Resolution pursuant to Section 8.6 of the Settlement on the ground of inconsistency with the Settlement.
- 5.2.3 In the event that PacifiCorp believes a proposed action or failure Timely to propose an action: (i) is inconsistent with this Settlement or any other contract to which it is a party; (ii) violates the terms of the FERC license or other regulatory requirement; (iii) interferes with operations; or (iv) subjects PacifiCorp to undue risk of litigation, cost overruns, or liability, PacifiCorp will consult with the IMIC to identify a modified or alternative action. In the event the IMIC does not approve PacifiCorp's modified or alternative action, PacifiCorp may implement its proposed action after obtaining approval by any agency specifically assigned that decision under the particular Interim Measure, and after obtaining any necessary regulatory approvals. An IMIC member who disagrees with the elements of PacifiCorp's proposed actions that are not specified in the Interim Measures may dispute those elements in applicable regulatory processes. The Parties agree that such disputes are beyond the scope of Settlement Section 2.1.
- 5.3 Any requirements for PacifiCorp to consult with a resource agency or other member under an Interim Measure that specifically references that agency or other member shall be deemed satisfied by consultation with that agency or other member through the IMIC, provided that the IMIC is in existence and that agency or other member has participated through the IMIC in consultation on the requisite items. To the extent agency consultation is not provided through Committee participation, PacifiCorp shall comply with all applicable regulatory consultation requirements including plan submission to appropriate agencies, including agencies specified in the Interim Measure. However, consultation with an agency representative participating in the Committee shall not be deemed to satisfy or predetermine any Regulatory Approval required under Applicable Law.
- 5.4 PacifiCorp will seek to resolve concerns expressed by the federal and state fish and wildlife agencies and the state water quality agencies on matters in which they have expertise prior to seeking consensus of the IMIC.
- 5.5 These provisions for Committee deliberations do not supersede a decision by an agency specifically assigned that responsibility under an Interim Measure.



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6. Support for Committee Decisions

- 6.1 Committee members shall first use the Dispute Resolution process of Settlement Section 8.6 to resolve disputes arising from Committee deliberations.
- 6.2 If Dispute Resolution is unsuccessful and time allows, the IMIC may convene an independent science advisory panel. The IMIC may consider the recommendations of the independent science advisory panel to resolve the dispute.
- 6.3 All Committee members participating in a consensus decision will support PacifiCorp's defense of such decision in any forum where the decision is challenged and the member is participating, to the extent permitted by Applicable Law and consistent with Section 2.1.3 of the Settlement. For this purpose, participating means non-opposition and does not include absence.

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**APPENDIX C**  
**Interim Conservation Plan (ICP) Interim Measures<sup>2</sup>**

**Interim Measure 2: California Klamath Restoration Fund / Coho Enhancement Fund**

PacifiCorp shall establish a fund to be administered in consultation with the California Department of Fish and Wildlife (after providing notice and opportunity for comment to the State Water Resources Control Board and North Coast Regional Water Quality Control Board) and NMFS to fund actions within the Klamath Basin designed to enhance the survival and recovery of coho salmon, including, but not limited to, habitat restoration and acquisition. PacifiCorp has provided \$510,000 to this fund in 2009 and shall continue to provide this amount of funding annually by January 31 of each subsequent year in which this funding obligation remains in effect. Subject to Section 6.1.1, this funding obligation shall remain in effect until the time of decommissioning of all of the Facilities in California.

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**Interim Measure 3: Iron Gate Turbine Venting**

PacifiCorp shall implement turbine venting on an ongoing basis beginning in 2009 to improve dissolved oxygen concentrations downstream of Iron Gate dam. PacifiCorp shall monitor dissolved oxygen levels downstream of Iron Gate dam in 2009 and develop a standard operating procedure in consultation with NMFS for turbine venting operations and monitoring following turbine venting operations in 2009.

**Interim Measure 4: Hatchery and Genetics Management Plan**

Beginning in 2009, PacifiCorp shall fund the development and implementation of a Hatchery and Genetics Management Plan (HGMP) for the Iron Gate Hatchery. PacifiCorp, in consultation with the National Marine Fisheries Service and the California Department of Fish and Wildlife, will develop an HGMP for approval by NMFS in accordance with the applicable criteria and requirements of 50 C.F.R. § 223.203(b)(5). To implement the HGMP, PacifiCorp, in consultation with NMFS and CDFW, will develop and agree to fund an adequate budget. When completed, CDFW shall implement the terms of the HGMP at Iron Gate Hatchery in consultation with PacifiCorp and NMFS. Funding of this measure is in addition to the 100 percent funding described in Non-ICP Interim Measure 18.

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**Interim Measure 5: Iron Gate Flow Variability**

In coordination with NMFS, USFWS, States and Tribes, PacifiCorp and Reclamation shall annually evaluate the feasibility of enhancing fall and early winter flow variability to benefit salmonids downstream of Iron Gate Dam, subject to both PacifiCorp's and Reclamation's legal

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<sup>2</sup> The complete ICP was filed at FERC on November 25, 2008 and includes some additional measures not reflected in this Appendix that are not part of this Settlement.

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and contractual obligations. In the event that fall and early winter flow variability can feasibly be accomplished, PacifiCorp, in coordination with NMFS, USFWS, and Reclamation will, upon a final Incidental Take Permit issued to PacifiCorp by NMFS becoming effective, annually develop fall and early winter flow variability plans and implement those plans. Any such plans shall have no adverse effect on the volume of water that would otherwise be available for the Klamath Reclamation Project or wildlife refuges.

**Interim Measure 6: Fish Disease Relationship and Control Studies**

PacifiCorp has established a fund in the amount of \$500,000 in total funding to study fish disease relationships downstream of Iron Gate Dam. Research proposals will be solicited and agreed upon by PacifiCorp and NMFS for the purpose of determining that the projects are consistent with the criteria and requirements developed by PacifiCorp and NMFS in the ESA review process applicable under Settlement Section 6.2. PacifiCorp will consult with the Klamath River Fish Health Workgroup regarding selection, prioritization, and implementation of such studies, and such studies shall be consistent with the standards and guidelines contained in the Klamath River Fish Disease Research Plan and any applicable recovery plans.

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**APPENDIX D**  
**Non-ICP Interim Measures<sup>3</sup>**

**Interim Measure 7: J.C. Boyle Gravel Placement and/or Habitat Enhancement**

Beginning on the Effective Date and continuing through decommissioning of the J.C. Boyle Facility, PacifiCorp shall provide funding of \$150,000 per year, subject to adjustment for inflation as set forth in Section 6.1.5 of the Settlement, for the planning, permitting, and implementation of gravel placement or habitat enhancement projects, including related monitoring, in the Klamath River above Copco Reservoir.

Within 90 days of the Effective Date, PacifiCorp, in consultation with the IMIC, shall establish and initiate a process for identifying such projects to the Committee, and, upon approval of a project by the Committee, issuing a contract or providing funding to a third party approved by the Committee for implementation of the project.

The objective of this Interim Measure is to place suitable gravels in the J.C. Boyle bypass and peaking reach using a passive approach before high flow periods, or to provide for other habitat enhancement providing equivalent fishery benefits in the Klamath River above Copco Reservoir.

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**Interim Measure 8: J.C. Boyle Bypass Barrier Removal**

Within 90 days of the Effective Date, PacifiCorp, in consultation with the Committee, shall commence scoping and planning for the removal of the sidecast rock barrier located approximately 3 miles upstream of the J.C. Boyle Powerhouse in the J.C. Boyle bypass reach. In accordance with a schedule approved by the Committee, PacifiCorp shall obtain any permits required for the project under Applicable Law and implement removal of the barrier. If blasting will be used, PacifiCorp shall coordinate with ODFW to ensure the work occurs during the appropriate in-water work period. The objective of this Interim Measure is to provide for the safe, timely, and effective upstream passage of Chinook and coho salmon, steelhead trout, Pacific lamprey, and redband trout.

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**Interim Measure 9: J.C. Boyle Powerhouse Gage**

Upon the Effective Date, PacifiCorp shall provide the U.S. Geological Survey (USGS) with continued funding for the operation of the existing gage below the J.C. Boyle Powerhouse (USGS Gage No. 11510700). Funding will provide for continued real-time reporting capability for half-hour interval readings of flow and gage height, accessible via the USGS website.

<sup>3</sup> The Parties agree that PacifiCorp will implement the interim measures as provided in this Appendix. Pursuant to Section 7.3.6 of the Settlement, if the Parties determine that the schedule for Facilities Removal must extend beyond December 31, 2020, then the Parties shall consider whether modification of Interim Measures is necessary to appropriately balance costs to customers and protection of natural resources based on circumstances at that time.

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PacifiCorp shall continue to provide funding for this gage until the time of decommissioning of the J.C. Boyle Facility.

**Interim Measure 10: Water Quality Conference**

PacifiCorp shall provide one-time funding of \$100,000 to convene a basin-wide technical conference on water quality within one year from the Effective Date of this Settlement. The conference will inform participants on water quality conditions in the Klamath River basin and will inform decision-making for Interim Measure No. 11, with a focus on nutrient reduction in the basin including constructed wetlands and other treatment technologies and water quality accounting. PacifiCorp, the North Coast Regional Water Quality Control Board, and the Oregon Department of Environmental Quality, will convene a steering committee to develop the agenda and panels.

**Interim Measure 11: Interim Water Quality Improvements**

The purpose of this measure is to improve water quality in the Klamath River during the Interim Period leading up to dam removal. The emphasis of this measure shall be nutrient reduction projects in the watershed to provide water quality improvements in the mainstem Klamath River, while also addressing water quality, algal and public health issues in Project reservoirs and dissolved oxygen in J.C. Boyle Reservoir. Upon the Effective Date of the Settlement until the date of the DRE's acceptance of the FERC surrender order, PacifiCorp shall spend up to \$250,000 per year to be used for studies or pilot projects developed in consultation with the Implementation Committee regarding the following:

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- Development of a Water Quality Accounting Framework
- Constructed Treatment Wetlands Pilot Evaluation
- Assessment of In-Reservoir Water Quality Control Techniques
- Improvement of J.C. Boyle Reservoir Dissolved Oxygen

Within 60 days of the DRE's acceptance of the FERC surrender order, PacifiCorp shall develop a priority list of projects in consultation with the Implementation Committee. The priority list will be informed by, among other things, the information gained from the specific studies conducted before the DRE's acceptance of the FERC surrender order and the information generated at the water quality conference specified in Interim Measure 10. Following the DRE's acceptance of the FERC surrender order, PacifiCorp shall provide funding of up to \$5.4 million for implementation of projects approved by the Oregon Department of Environmental Quality (ODEQ) and the State and Regional Water Boards, and up to \$560,000 per year to cover project operation and maintenance expenses related to those projects, these amounts subject to adjustment for inflation as set forth in Section 6.1.5 of this Settlement. Recognizing the emphasis on nutrient reduction projects in the watershed while also seeking to improve water

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quality conditions in and downstream of the Project during the Interim Period, the Parties agree that up to 25 percent of the funding in this measure for pre-~~surrender-order-acceptance~~ studies and post-~~surrender-order-acceptance~~ implementation may be directed towards in-reservoir water quality improvement measures, including but not limited to J.C. Boyle.

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**Interim Measure 12: J.C. Boyle Bypass Reach and Spencer Creek Gaging**

PacifiCorp shall install and operate stream gages at the J.C. Boyle Bypass Reach and at Spencer Creek. The J.C. Boyle Bypass Reach gaging station will be located below the dam and fish ladder and fish bypass outflow, but above the springs in order to record flow releases from J.C. Boyle Dam. The Spencer Creek gage will utilize an existing Oregon Water Resources Department gaging location. It is assumed that the required measurement accuracy will be provided using stage gaging at existing channel cross-sections with no need for constructed weirs. The installed stream gages shall provide for real-time reporting capability for half-hour interval readings of flow and gage height, accessible via an agreed-upon website, until such time as it is accessible on the USGS website. The Spencer Creek gage shall be installed in time to provide flow indication for Iron Gate Flow Variability (ICP Interim Measure 5). Both gages shall be installed and functional prior to September 1, 2010. Installation of the bypass gage, and measurement and maintenance shall conform to USGS standards. The Spencer Creek gage will be maintained according to USGS standards, as applicable.

**Interim Measure 13: Flow Releases and Ramp Rates**

PacifiCorp will maintain current operations including instream flow releases of 100 cubic feet per second (cfs) from J.C. Boyle Dam to the J.C. Boyle bypass reach and a 9-inch per hour ramp rate below the J.C. Boyle powerhouse prior to transfer of the J.C. Boyle facility.

Provided that if anadromous fish have volitional passage<sup>4</sup> to the J.C. Boyle bypass reach after removal or partial removal of the lower dams and before J.C. Boyle is transferred, PacifiCorp will operate J.C. Boyle as a run of river facility with a targeted ramp rate not to exceed 2 inches per hour, and flows will be provided in the J.C. Boyle bypass reach to provide for the appropriate habitat needs of the anadromous fish species. The operation will also avoid and minimize take of any listed species present. Daily flows through the J.C. Boyle powerhouse will be informed by reservoir inflow gages below Keno Dam and at Spencer Creek. Provided further that if anadromous fish have volitional passage upstream of Iron Gate Dam before the Copco Facilities are transferred, PacifiCorp will operate the remaining Copco Facility that is furthest downstream as a run of the river facility with a targeted ramp rate not to exceed 2 inches per hour and coordinate with NMFS and FWS to determine if any other flow measures are necessary to avoid or minimize take of any listed species present. In either event, flows in the respective bypass reaches will be based on species-specific habitat needs identified by the IMIC.

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<sup>4</sup> Volitional passage shall not be deemed to have occurred if presence of anadromous fish is the result of anthropogenic placement of such fish above, within or below the J.C. Boyle Bypass Reach, including as a result of scientific studies, experiments or investigations, prior to removal of Facilities downstream of the J.C. Boyle Bypass Reach to the extent sufficient to provide fish passage past those Facilities.

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The Parties agree that if dam removal occurs in a staged manner, J.C. Boyle is intended to be the last dam decommissioned. If, however, the FERC surrender order or Definite Plan directs a different sequence for Decommissioning and Facilities Removal, then the Parties shall Meet and Confer to identify adjustments necessary to implement Facilities Removal in a manner that is consistent with PacifiCorp's Economic Analysis.

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**Interim Measure 14: 3,000 cfs Power Generation**

Upon approval by OWRD in accordance with Exhibit 1, PacifiCorp may divert a maximum of 3,000 cfs from the Klamath River at J.C. Boyle dam for purposes of power generation at the J.C. Boyle Facility prior to decommissioning of the facility. Such diversions shall not reduce the minimum flow releases from J.C. Boyle dam required of PacifiCorp under Interim Measure 13. The implementation of this interim measure shall not: reduce or adversely affect the rights or claims of the Klamath Tribes or the Bureau of Indian Affairs for instream flows; affect the operation of Link River dam or Keno Dam or any facility of the Klamath Reclamation Project; or otherwise adversely affect lake levels at Upper Klamath Lake, flows in Link River, or Keno reservoir elevations.

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

**Interim Measure 15: Water Quality Monitoring**

PacifiCorp shall fund long-term baseline water quality monitoring to support dam removal, nutrient removal, and permitting studies, and also will fund blue-green algae (BGA) and BGA toxin monitoring as necessary to protect public health. Funding of \$500,000 shall be provided per year. The funding shall be made available beginning on April 1, 2010 and annually on April 1 until the time the dams are removed. Annual coordination and planning of the monitoring program with stakeholders will be performed through the Klamath Basin Water Quality Group or an entity or entities agreed upon by the Parties and in coordination with the appropriate water quality agencies. The Regional Board and ODEQ will take responsibility for ensuring that the planning documents will be completed by April 1 of each year. Monitoring will be performed by the Parties within their areas of regulatory compliance or Tribal responsibility or, alternatively, by an entity or entities agreed upon by the Parties. Monitoring activities will be coordinated with appropriate water quality agencies and shall be conducted in an open and transparent manner, allowing for participation, as desired, among the Parties and water quality agencies.

Significant disputes that may arise between the Parties, or with the Regional Board, regarding the monitoring plan content or funding will be resolved by the Implementation Committee, acting on input and advice, as necessary, from the water quality agencies. Notwithstanding the forgoing, the Oregon Department of Environmental Quality and the California State Water Resources Control Board shall make final decisions regarding spending of up to \$50,000 dedicated to BGA and BGA toxin monitoring as necessary to protect public health.

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**Interim Measure 16: Water Diversions**

PacifiCorp shall seek to eliminate three screened diversions (the Lower Shovel Creek Diversion – 7.5 cfs, Claim # S015379; Upper Shovel Creek Diversion – 2.5 cfs, Claim # S015381; and Negro Creek Diversion – 5 cfs, Claim # S015380) from Shovel and Negro Creeks and shall seek to modify its water rights as listed above to move the points of diversion from Shovel and Negro Creeks to the mainstem Klamath River. Should modification of the water rights be feasible, and then successful, PacifiCorp shall remove the screened diversions from Shovel and Negro creeks associated with PacifiCorp’s water rights prior to the time that anadromous fish are likely to be present upstream of Copco reservoir following the breach of Iron Gate and Copco dams. To continue use of the modified water rights, PacifiCorp will install screened irrigation pump intakes, as necessary, in the Klamath River. The intent of this measure is to provide additional water to Shovel and Negro creeks while not significantly diminishing the water rights or the value of ranch property owned by PacifiCorp. Should costs for elimination of the screened diversions and installation of a pumping system to provide continued use of the water rights exceed \$75,000 then the Parties will Meet and Confer to resolve the inconsistency.

**Interim Measure 17: Fall Creek Flow Releases**

Within 90 days of the Effective Date and during the Interim Period for the duration of its ownership while this Settlement is in effect, PacifiCorp shall provide a continuous flow release to the Fall Creek bypass reach targeted at 5 cfs. Flow releases shall be provided by stoplog adjustment at the diversion dam and shall not require new facility construction or the installation of monitoring equipment for automated flow adjustment or flow telemetry.

Additionally, if anadromous fish have passage to the Fall Creek following removal of the California dams, flows will be provided in the Fall Creek bypass reach to provide for the appropriate habitat needs of the anadromous fish species of any kind that are naturally and volitionally present in the Fall Creek bypass reach. Flows will be based on species specific habitat needs identified by the IMIC. The operation will also avoid and minimize take of any listed species present.

**Interim Measure 18: Hatchery Funding**

Beginning in 2010, PacifiCorp shall fund 100 percent of Iron Gate Hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and ~~Wildlife~~, in consultation with the National Marine Fisheries Service and consistent with existing FERC license requirements. PacifiCorp shall provide funding of up to \$1.25 million dollars per year for operations and maintenance costs, subject to adjustment for inflation as set forth in Section 6.1.5 of the Settlement. These operations and maintenance costs shall include a program for 25 percent fractional marking of chinook at the Iron Gate Hatchery facilities as well as the current 100 percent marking program for coho and steelhead. Labor and materials costs associated with the 25 percent fractional marking program (fish marking, tags, tag recovery, processing, and data entry) shall be included within these operations and

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maintenance costs. This operations and maintenance funding will continue until the removal of Iron Gate Dam.

PacifiCorp will provide one-time capital funding of \$1.35 million for the 25 percent fractional marking program. This funding will include the purchase of necessary equipment (e.g. electrical upgrades, automatic fish marking trailer, tags and a wet lab modular building for processing fish heads). PacifiCorp will ensure the automatic fish marking trailer is available for use by April 2011. PacifiCorp is not responsible for funding the possible transition to a 100 percent Chinook marking program in the future.

**Interim Measure 19: Hatchery Production Continuity**

Within 6 months of the Effective Date of the Settlement, PacifiCorp will begin a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options, water reuse technologies or operational changes that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and the feasibility of increasing the production potential at existing or new hatchery facilities in the basin.

Based on the study results, and within 6 months following the DRE's acceptance of the FERC surrender order, PacifiCorp will propose a post-Iron Gate Dam Mitigation Hatchery Plan (Plan) to provide continued hatchery production for eight years after the removal of Iron Gate Dam. PacifiCorp's 8 year funding obligation assumes that dam removal will occur within one year of cessation of power generation at Iron Gate Dam. If dam removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the 8 years. PacifiCorp's Plan shall propose the most cost effective means of meeting hatchery mitigation objectives for eight years following removal of Iron Gate Dam. Upon approval of the Plan by the California Department of Fish and Wildlife or Oregon Department of Fish and Wildlife (as appropriate) and the National Marine Fisheries Service, PacifiCorp will begin implementation of the Plan. Plan implementation may include PacifiCorp contracting with the owners or administrators of other identified hatchery facilities and/or funding the planning, design, permitting, and construction of measures identified in the Plan as necessary to continue to meet mitigation production objectives. Five years after the start of Plan implementation, or as otherwise agreed by PacifiCorp, the California Department of Fish and Wildlife or Oregon Department of Fish and Wildlife (as appropriate) and the National Marine Fisheries Service, the CDFW or ODFW (as appropriate) and the NMFS shall meet to review the progress of Plan implementation. The five year status review will also provide for consideration of any new information relevant to Plan implementation. Plan implementation shall ultimately result in production capacity sufficient to meet hatchery mitigation goals for the eight year period being in place and operational upon removal of Iron Gate Dam.

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**Interim Measure 20: Hatchery Funding After Removal of Iron Gate Dam**

After removal of Iron Gate Dam and for a period of eight years, PacifiCorp shall fund 100 percent of hatchery operations and maintenance costs necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Wildlife in consultation with the National Marine Fisheries Service. The hatchery mitigation goals will focus on chinook production, with consideration for steelhead and coho, and may be adjusted downward from current mitigation requirements by the California Department of Fish and Wildlife, and National Marine Fisheries Service, in consultation with the other Klamath River fish managers, in response to monitoring trends.

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**Interim Measure 21: BLM Land Management Provisions**

Beginning in 2010 and continuing until Decommissioning of the J.C. Boyle facility, PacifiCorp shall fund land management activities by the Bureau of Land Management as specified in this interim measure. BLM will provide PacifiCorp an annual Work Plan for the management measures described below for road maintenance, invasive weed management, cultural resource management, and recreation. The Work Plan will include the status of Work Plan tasks from the prior year, a description of the prioritized tasks for the upcoming year, and their estimated costs. PacifiCorp or BLM will mutually establish the annual delivery date of the Work Plan taking into consideration fiscal and maintenance calendars and may request a meeting to coordinate the content of the plan. PacifiCorp will provide funding within 60 days of concurring with the Work Plan. Administrative services, environmental review or permitting efforts, if necessary, to implement actions under the funds shall not require additional PacifiCorp funding beyond the amounts specified below.

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- A. PacifiCorp shall provide up to \$15,000 per year to BLM towards projects identified through the coordination process described above for the purpose of road maintenance in the Klamath Canyon. This funding will be used to annually maintain the access road from State Highway 66 to the J.C. Boyle Powerhouse and terminate at the BLM Spring Island Boat Launch. Remaining funds will be used to do non-recurring road maintenance work on roads within the Canyon as mutually agreed upon in writing by BLM and PacifiCorp.
- B. PacifiCorp shall provide up to \$10,000 per year to BLM for use by the Oregon Department of Agriculture (ODA) towards projects identified through the coordination process described above for the purpose of integrated weed management of invasive weed species along the road system and river corridor within the Klamath Canyon. Noxious weed control projects will be coordinated with Siskiyou County to ensure that weeds are controlled along the river corridor from the Oregon-California boundary to the top of Copco Reservoir.
- C. PacifiCorp shall provide up to \$10,000 per year to BLM towards projects identified through the coordination process described above for the management of the following 5 BLM cultural sites which are within, or partially within, the T1

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terrace of the J.C. Boyle full flow reach: 35KL21/786, 35KL22, 35KL24, 35KL558, and 35KL577. Management of additional sites with these funds can occur with mutual written agreement between PacifiCorp and BLM.

- D. PacifiCorp shall provide up to, but no more than, \$130,000 in funding for the development and implementation of a Road Management Plan to be implemented during the Interim Period. The Road Management Plan shall be developed by BLM and PacifiCorp and will determine priorities for operation and maintenance, including remediation or restoration of redundant or unnecessary facilities, of the shared BLM/PacifiCorp road system within the Klamath River Canyon from J.C. Boyle Dam to the slack water of Copco Reservoir.

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**APPENDIX E**  
**Elements for the Proposed Federal Legislation**

**Elements Related to the Klamath Basin Restoration Agreement**

- A. Confirm, ratify or approve as necessary to ensure the effectiveness of the Klamath Basin Restoration Agreement (KBRA), including any amendments approved by the Parties prior to enactment. Authorize and direct the Secretary of the Interior, Secretary of Commerce, and the Secretary of Agriculture or their designees to execute and implement the KBRA.
- B. Confirm that execution of the KBRA by the Secretary of the Interior, Secretary of Commerce, and the Secretary of Agriculture or their designees is not a major federal action for purposes of the National Environmental Policy Act, 42 U.S.C. § 4321, and direct all Federal Agency Parties to comply with all applicable environmental laws in consideration and approval of actions in implementation of the KBRA following its execution.
- C. Authorize Federal Agency Parties to enter into contracts, cooperative agreements, and other agreements in implementation of the KBRA; and authorize the acceptance and expenditure of non-federal funds or in-kind services for KBRA implementation.
- D. Notwithstanding any other provision of law, enactment of the KBRA title of this legislation and implementation of KBRA will not restrict the Tribes' or other Parties' eligibility for or receipt of funds, or be construed as an offset against any obligations or existing funds, under any federal or state laws.
- E. Establish in the Treasury the type and number of funds necessary for the deposit of appropriations and other monies, including donated funds, for implementation of the KBRA. Management of funds shall be in accordance with the KBRA. Monies donated by non-federal entities for specific purposes to implement the KBRA shall be expended for those purposes only and shall not be subject to appropriation.
- F. Authorize appropriation of such sums as are necessary to carry out the programs, projects, and plans of the KBRA. Costs associated with any actions taken pursuant to this Agreement shall be non-reimbursable to Reclamation Project contractors.
- G. Provide that the purposes of the Klamath Reclamation Project include irrigation, reclamation, domestic, flood control, municipal, industrial, power (as necessary to implement the KBRA), National Wildlife Refuge, and fish and wildlife. Nothing in the project purposes section of the legislation shall be deemed to create a water right or affect existing water rights or water right claims. The fish and wildlife

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and National Wildlife Refuge purposes of the Klamath Reclamation Project shall not adversely affect the irrigation purpose of the Project, *provided* that the provisions regarding water allocations and delivery to the National Wildlife Refuges agreed upon in Section 15.1.2, including any additional water made available under Sections 15.1.2.E.ii and 18.3.2.B.v, of the Klamath River Basin Restoration Agreement are hereby deemed not to constitute an adverse effect upon the Klamath Reclamation Project's irrigation purpose. For purposes of the determination of water rights in the KBA, the purpose or purposes of the Klamath Reclamation Project shall be as existed prior to the enactment of this legislation; this provision shall be inapplicable upon the filing of Appendix E-1 to the KBRA.

- H. Provide that: notwithstanding any other provision of law, the disposition of net revenues from the leasing of refuge lands within the Tule Lake National Wildlife Refuge and Lower Klamath National Wildlife Refuge, under section 4 of Public Law 88-567, 78 Stat. 850 (Sept. 2, 1964) (Kuchel Act) shall hereafter be:
1. Ten percent of said net revenues to Tule Lake Irrigation District, as provided in article 4 of Contract No. 14-06-200-5954 and section 2(a) of the Act of August 1, 1956;
  2. Payment to Counties in lieu of taxes as provided in section 3 of Public Law 88-567;
  3. Twenty percent of said net revenues directly, without further authorization, to the U.S. Fish and Wildlife Service, Klamath Basin Refuges, for wildlife management purposes on the Tule Lake National Wildlife Refuge and Lower Klamath National Wildlife Refuge;
  4. Ten percent of said net revenues directly, without further authorization to Klamath Drainage District for operation and maintenance responsibility for the Reclamation water delivery and drainage facilities within the boundaries of both Klamath Drainage District and Lower Klamath National Wildlife Refuge exclusive of the Klamath Straits Drain, subject to Klamath Drainage District's assuming the U.S. Bureau of Reclamation's Operation and Maintenance duties for Klamath Drainage District (Area K) lease lands; and
  5. The remainder shall be covered to the Reclamation fund to be applied as follows:
    - (a) to operation and maintenance costs of Link River and Keno Dams; and
    - (b) in any year where the remainder exceeds the actual costs in (a), for the Renewable Power Program in Section 17.7 of the KBRA or future

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capital costs of the Klamath Reclamation Project, pursuant to an expenditure plan submitted to and approved by the Secretary.

- I. As applicable for the United States and the signatory Tribes:
  - 1. Confirm the commitments made in the KBRA, including the Assurances in Section 15.3 of the KBRA, and that such commitments are effective and binding according to their terms.
  - 2. Authorize the Tribes to issue the voluntary relinquishment and release of claims against the United States as provided in Section 15.3 of the KBRA.
  - 3. Establish terms limiting the effect of the commitments of the United States and Tribes to only those provided in the KBRA.
  - 4. Authorize and direct the Secretary to publish the notice identified in KBRA Sections 15.3.4.A or 15.3.4.C as applicable.
- J. Provide for judicial review of a decision by the Secretary affecting rights or obligations created in Sections 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, and 15.3.9 under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
- K. Authorize the United States and the Klamath Tribes to enter into agreements consistent with Section 16.2 of the KBRA.
- L. Provide that nothing in the KBRA title of the legislation shall: determine existing water rights, affect existing water rights beyond what is stated in the KBRA, create any private cause of action, expand the jurisdiction of state courts to review federal agency actions or determine federal rights, provide any benefit to a federal official or member of Congress, amend or affect application or implementation of the Clean Water Act, Endangered Species Act, Federal Land Management Policy Act, Kuchel Act (Public Law 88-567), National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57), or supersede otherwise applicable federal law, except as expressly provided in the federal legislation.
- M. The KBRA title of the legislation shall provide that the provisions of the KBRA are deemed consistent with 43 U.S.C. § 666.
- N. Require that if the KBRA terminates, any federal funds provided to Parties that are unexpended must be returned to the United States, and any federal funds expended for the benefit of a Party shall be treated as an offset against any claim for damages by such Party arising from the Agreement.

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**Elements Related to the Klamath Hydroelectric Settlement Agreement**

- A. Authorize and direct the Secretary of the Interior (Secretary), Secretary of Commerce, and Federal Energy Regulatory Commission (FERC) to implement the Klamath Hydroelectric Settlement Agreement (KHSA).
- B. Authorize and direct the Secretary to make the determination by March 31, 2012 as set forth in Section 3 of the KHSA: whether facilities removal will advance restoration of the salmonid fisheries of the Klamath Basin and is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes.
- C. Prohibit the Secretary from making the determination set forth in Section 3 of the KHSA if the conditions specified in Section 3.3.4 of the KHSA have not been satisfied.
- D. Authorize and direct the Secretary, if the Secretarial determination provides for facilities removal, to designate as part of that determination a dam removal entity (DRE) with the capabilities and responsibilities set forth in Section 7 of the KHSA; the Secretary may designate either the Department of the Interior or a non-federal entity as the DRE, consistent with the requirements of Section 3.3.4.E of the KHSA.
- E. Direct the Secretary to publish notification of the Secretarial Determination in the Federal Register.
- F. Provide jurisdiction for judicial review of the Secretarial determination in the U.S. Court of Appeals for the 9th Circuit or the D.C. Circuit.
- G. Authorize the DRE: to accept, expend and manage non-federal funds for facilities removal; to enter into appropriate agreements with the States of California and Oregon, Tribes, other public agencies, or others to assist in implementation of the KHSA; to develop a definite plan for facilities removal; to accept from PacifiCorp all rights, title, and other interests in the facilities upon providing notice that it is ready to commence with facilities removal; and to perform such removal, all as provided in Sections 4 and 7 of the KHSA.
- H. Authorize and direct the DRE to seek and obtain necessary permits, certifications, and other authorizations to implement facilities removal, including but not limited to a permit under 33 U.S.C. § 1344.
- I. Provide that Facilities Removal shall be subject to applicable requirements of State and local laws respecting permits, certifications and other authorizations, to the extent such requirements are consistent with the Secretarial determination and the Definite Plan, including the schedules for Facilities Removal.

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**APPENDIX E TO THE ORIGINAL KHSA; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSA**

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- J. Direct the Department of the Interior or the Non-Federal DRE to enter into a contract with PacifiCorp that provides that: upon transfer of title to the facilities, and until notified by the DRE to cease generation of electric power, PacifiCorp shall continue such generation, retain title to any and all power so generated by the facilities, and continue to use the output for the benefit of its retail customers under the jurisdiction of relevant state public utility commissions.
- K. Authorize and direct the Secretary of the Interior, upon notice that the DRE is ready to perform removal of the J.C. Boyle development, to accept transfer of the Keno Dam from PacifiCorp, to be managed as a part of the Klamath Reclamation Project, as provided in Section 3.3.4.B and Section 7.5 of the KHSA.
- L. Provide PacifiCorp with protection from liability as follows: “Notwithstanding any other federal, state, local law or common law, PacifiCorp shall not be liable for any harm to persons, property, or the environment, or damages resulting from either Facilities Removal or Facility operation arising from, relating to, or triggered by actions associated with Facilities removal, including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances.”
- M. Further provide: “Notwithstanding any other federal, state, local law or common law, no person or entity contributing funds for facilities removal pursuant to the KHSA shall be held liable, solely by virtue of that funding, for any harm to persons, property, or the environment, or damages arising from either facilities removal or facility operation arising from, relating to, or triggered by actions associated with facilities removal, including any damage caused by the release of any material or substance, including hazardous substances.”
- N. Further provide that: “Notwithstanding Section 10(c) of the Federal Power Act, this protection from liability preempts the laws of any State to the extent such laws are inconsistent with this Act, except that this Act shall not be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.”
- O. Further provide that the liability protections in Paragraphs L through N, above, shall take effect as they relate to any particular facility only upon transfer of title to that facility from PacifiCorp to the DRE.
- P. Direct FERC to issue annual licenses authorizing PacifiCorp to continue to operate Project No. 2082 until PacifiCorp transfers title to the DRE, and provide that FERC’s jurisdiction under the Federal Power Act shall terminate with respect to a given facility upon PacifiCorp’s transfer of title for such facility to the DRE; if the facilities are removed in a staged manner, annual FERC license conditions applying to the facility being removed shall no longer be in effect, and PacifiCorp



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shall continue to comply with license conditions pertaining to any facility still in place to the extent such compliance is not prevented by the removal of any other facility.

- Q. Direct FERC to stay its proceeding on PacifiCorp's pending license application for Project No. 2082 as long as the KHSA remains in effect, and resume such proceeding, and take final action on the license application, only if the KHSA terminates; except that FERC will resume timely consideration of the pending FERC license application for the Fall Creek development within 60 days of the transfer of the Iron Gate Facility to the DRE.
- R. Provide that if the KHSA terminates, the Secretarial Determination and findings of fact shall not be admissible or otherwise relied upon in FERC's proceedings on the license application.
- S. Provide that on PacifiCorp's filing of an application for surrender of the Eastside and Westside developments of Project No. 2082 pursuant to Section 6.4.1 of the KHSA, FERC shall issue an appropriate order regarding partial surrender of the license specific to the Eastside and Westside developments, including any reasonable and appropriate conditions.
- T. Provide that nothing in the KHSA title of the legislation shall: modify existing water rights; affect the rights of any Tribe; or supersede otherwise applicable federal law, except as expressly provided in the legislation.

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**APPENDIX F**  
**Oregon Surcharge Act (as codified)**

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**757.732 Definitions for ORS 757.732 to 757.744.**

As used in ORS 757.732 to 757.744:

- (1) “Agreement in principle” means the agreement signed November 13, 2008, by the states of Oregon and California, by the United States Department of the Interior and by PacifiCorp.
- (2) “Allocated share” means the portion of PacifiCorp’s costs assigned to this state under the interjurisdictional cost allocation methodology used by the Public Utility Commission for the purpose of establishing rates for PacifiCorp.
- (3) “Customers” means the Oregon retail electricity customers of PacifiCorp.
- (4) “Final agreement” means a successor agreement to the agreement in principle.
- (5) “Klamath River dam” means the J.C. Boyle Dam located in Oregon, the Copco 1 Dam located in California, the Copco 2 Dam located in California or the Iron Gate Dam located in California. [2009 c.690 §2]

**757.734 Recovery of investment in Klamath River dams.**

- (1) Not more than six months after the execution of a final agreement, the Public Utility Commission shall determine a depreciation schedule under ORS 757.140 for each Klamath River dam based on the assumption that the dam will be removed in 2020. The commission may change a depreciation schedule determined under this section at any time if removal of a dam will occur during a year other than 2020.
- (2) The commission shall use the depreciation schedules prepared under this section to establish rates and tariffs for the recovery of Oregon’s allocated share of undepreciated amounts prudently invested by PacifiCorp in a Klamath River dam. Amounts recoverable under this section include, but are not limited to:
  - (a) Return of investment and return on investment;
  - (b) Capital improvements required by the United States or any state for continued operation of the dam until dam removal;
  - (c) Amounts spent by PacifiCorp in seeking relicensing of the dam before July 14, 2009;
  - (d) Amounts spent by PacifiCorp for settlement of the issues of relicensing or removal of the dam; and
  - (e) Amounts spent by PacifiCorp for the decommissioning of the dam in anticipation of the dam’s removal.
- (3) If any amount specified under subsection (2) of this section has not been recovered by PacifiCorp before a dam is removed, the Public Utility Commission shall allow recovery of that amount by PacifiCorp in PacifiCorp’s rates and tariffs. The commission shall allow the recovery without an amortization schedule if the impact of the recovery does not exceed one-half of one percent of PacifiCorp’s annual revenue requirement. If the impact exceeds one-half of one percent of PacifiCorp’s annual revenue requirement, the commission may establish an amortization schedule that limits the annual impact to one-half of one percent of PacifiCorp’s annual revenue requirement. [2009 c.690 §3]

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**757.736 Surcharges for funding costs of removing Klamath River dams; judicial review.**

(1) Not more than 30 days after the execution of a final agreement, PacifiCorp must file a copy of the final agreement with the Public Utility Commission along with full and complete copies of all analyses or studies that relate to the rate-related costs, benefits and risks for customers of removing or relicensing Klamath River dams and that were reviewed by PacifiCorp during the decision-making process that led to PacifiCorp's entering into the final agreement.

(2) PacifiCorp must include with the filing made under subsection (1) of this section tariffs for the collection of two nonbypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams as described in subsection (11) of this section. Notwithstanding the commission's findings and conclusions under subsection (4) of this section, the commission shall require PacifiCorp to begin collecting the surcharges on the date that the filing is made under subsection (1) of this section, or on January 1, 2010, whichever is later, and PacifiCorp shall continue to collect the surcharges pending a final decision on the commission's order under subsection (4) of this section. The surcharges imposed under this section shall be:

- (a) A surcharge for the costs of removing the J.C. Boyle Dam; and
- (b) A surcharge for the costs of removing the Copco 1 Dam, the Copco 2 Dam and the Iron Gate Dam.

(3) The surcharges imposed under this section may not exceed the amounts necessary to fund Oregon's share of the customer contribution of \$200 million identified in the agreement in principle. In addition, the total amount collected in a calendar year under both surcharges may not exceed more than two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last case under ORS 757.210 decided by the commission before January 1, 2010.

(4) Not more than six months after a filing is made under subsection (1) of this section, the commission shall conduct a hearing under ORS 757.210 on the surcharges imposed under this section, and shall enter an order setting forth findings and conclusions as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable.

(5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an order entered under subsection (4) of this section is conferred on the Supreme Court, and a person seeking judicial review of the order must file a petition for review with the Supreme Court in the manner provided by ORS 183.482. ORS 183.482 (3) does not apply to an order entered under subsection (4) of this section. If a petition for review is filed, the surcharges imposed under the terms of the final agreement shall remain in effect pending a final decision on the petition, but shall be refunded if the rates resulting from the surcharges are finally determined not to be fair, just and reasonable. A petition filed under this subsection must indicate on its face that the petition is filed pursuant to this subsection.

(6) The commission may not use any commercially sensitive information provided to the commission in a filing made under subsection (1) of this section for any purpose other than determining whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable. Notwithstanding ORS 192.410 to 192.505, the commission may not release commercially sensitive information provided to the commission under this section, and shall require any person participating in a proceeding relating to the

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surcharge to sign a protective order prepared by the commission before allowing the participant to obtain and use the information.

(7) The surcharges imposed under this section must be of a specified amount per kilowatt hour billed to retail customers, as determined by the commission. The amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of \$200 million identified in the agreement in principle. To the extent practicable, the commission shall set the surcharges so that total annual collections of the surcharges remain approximately the same during the collection period, and, when setting the rate for the surcharges, the commission shall account for the actual and expected changes in energy usage over the collection period and account for the actual and expected changes in interest rates on the collected funds over the collection period. The commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020.

(8) Except as provided in ORS 757.738 (2), all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under ORS 757.738.

(9) If the commission determines at any time that amounts have been collected under this section in excess of those needed, or in excess of those allowed, the commission must:

- (a) Direct the trustee of the appropriate trust account under ORS 757.738 to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers;
- or
- (b) Adjust future surcharge amounts as necessary to offset the excess amounts.

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

(11) For the purposes of subsection (2) of this section, "the costs of removing Klamath River dams" includes costs of:

- (a) Physical removal of the dams;
- (b) Site remediation and restoration;
- (c) Avoiding downstream impacts of dam removal;
- (d) Downstream impacts of dam removal;
- (e) Permits that are required for the removal;
- (f) Removal and disposal of sediment, debris and other materials, if necessary; and
- (g) Compliance with environmental laws. [2009 c.690 §4; 2011 c.394 §1]

**757.738 Surcharge trust accounts related to removal of Klamath River dams.**

(1)(a) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under ORS 757.736. The commission shall establish the trust accounts as interest-bearing accounts:

- (A) With an agency of the United States identified in the final agreement;

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(B) In a depository that is qualified under ORS 295.001 to 295.108 to receive public funds; or

(C) With the State Treasurer, to be invested as provided in ORS 293.701 to 293.857.

(b) The commission may establish each of the two trust accounts with a different trustee among those listed in paragraph (a) of this subsection.

(c) The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the Klamath River dams.

(2) If an agreement is entered into under ORS 757.742 (2), the parties to the agreement may agree that a portion of the amounts collected under one surcharge may be deposited in the trust account established for amounts collected under the other surcharge.

(3) Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to pay the costs of removing the Klamath River dams as described in ORS 757.736 (11).

(4) If any amounts remain in a trust account established under this section after the trustee makes all payments necessary for the costs of removing the Klamath River dams as described in ORS 757.736 (11), the commission shall direct the trustee of the account to refund those amounts to customers or to otherwise use the excess amounts for the benefit of customers. [2009 c.690 §5; 2011 c.394 §2]

**757.740 Recovery of other costs incurred as result of changes in operation to or removal of Klamath River dams.**

Pursuant to ORS 757.210, the Public Utility Commission shall allow PacifiCorp to include in its rates and tariffs this state's allocated share of any costs that are prudently incurred by PacifiCorp from changes in operation of Klamath River dams before removal of the dams, or that are prudently incurred for replacement power after the dams are removed, that are not otherwise recovered under ORS 757.734 and 757.736. [2009 c.690 §6]

**757.742 Public Utility Commission authorization to enter agreement with California related to cost apportionment and trust fund.**

(1) The State of Oregon may enter into an agreement with representatives of the State of California, either as part of a final agreement or by separate agreement, that establishes each state's share of the customer contribution of \$200 million identified in the agreement in principle.

(2) The Public Utility Commission may enter into an agreement with representatives of the State of California to establish and administer the trust accounts authorized under ORS 757.738 and to ensure that trust account moneys are disbursed for dam removal costs that are necessary and appropriate. [2009 c.690 §7]

**757.744 Disclaimers.**

(1) ORS 757.732 to 757.744 do not authorize the expenditure of any public moneys for removal of Klamath River dams.

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(2) ORS 757.732 to 757.744 do not create a cause of action against the State of Oregon or against any of the officers, employees or agents of the state and may not be used as the basis for an assertion of liability on the part of the State of Oregon or of any officers, employees or agents of the state. [2009 c.690 §8]

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**APPENDIX G-1 TO THE ORIGINAL KHSA; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSA**

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

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

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

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

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

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

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

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**APPENDIX G-2 TO THE ORIGINAL KHSA; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSA**

**APPENDIX G-2**  
**CEQA Legislation Language (California)**

Uncodified Statute

Application of Division 13 of the Public Resources Code to activities and approvals related to the Klamath Basin, as more particularly described in two agreements between the United States, the State of California, the State of Oregon and other Klamath Basin Stakeholders, shall be limited as follows:

(a) The following activities related to restoration of the Klamath Basin are not a “project” as defined in Public Resources Code section 21065:

- (1) Execution of the Klamath Hydroelectric Settlement Agreement;
- (2) Execution of the Klamath Basin Restoration Agreement;
- (3) A request to the California Public Utilities Commission to establish a surcharge to fund dam removal activities pursuant to the Klamath Hydroelectric Settlement Agreement, or the California Public Utilities Commission's action on such request.

(b) Division 13 of the Public Resources Code shall apply to the decision of whether to concur with the determination by the United States to remove any or all of the dams described in the Klamath Hydroelectric Settlement Agreement, whether to approve any projects that are proposed for approval pursuant to such determination and whether to approve any projects that are proposed pursuant to the Klamath Basin Restoration Agreement after its execution.

Environmental review prepared pursuant to this subdivision shall focus on the issues that are ripe for decision at the time of the concurrence and/or proposal, and from which later environmental review may tier. The Department of Fish and Game may be the lead agency for the environmental review of the decision of whether to concur in the determination by the United States described in this subdivision.



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**APPENDIX H**

**Calculation of Initial Customer Surcharge Target**

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**APPENDIX I TO THE ORIGINAL KHSA; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSA**

**APPENDIX I**  
**Study Process Guidelines**

In providing the information to support the Secretarial Determination as set forth fully in Section 3 of the Settlement, the federal team will address three decisions to be made by the Secretary:

- Whether Facilities Removal can be completed within the State Cost Cap or an amount otherwise agreed to by the Parties,
- The “Secretarial Determination” of whether Facilities Removal will benefit the fisheries and will otherwise be in the public interest, and
- Whether Interior will be the Dam Removal Entity in the event of an Affirmative Determination.

Overall, the supporting analyses will, at a minimum, address the following:

- A cost estimate of Facilities Removal;
- Identification and management of risks and of foreseeable liabilities associated with Facilities Removal;
- The environmental effects of Facilities Removal;
- The impacts on local and Tribal communities; and
- An economic analysis.

This Appendix outlines the approach to complete the analyses needed to support the Secretarial Determination. The key discipline areas that need study and analysis for the Secretarial Determination fall into six categories, including:

- Engineering
- Sediment Composition, Fate and Transport
- Water Quality
- Fisheries
- Economics
- Liability and Risk Management

The study efforts will concentrate on these areas. However, if other key disciplines are identified in the process, they will be included. The Parties recognize that other studies and analyses are established in the existing record. The non-federal Parties agree to collaborate and provide recommendations for prioritized activities related to the Secretarial Determination for each of the six categories and shall communicate through the Technical Coordination Committee

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**APPENDIX I TO THE ORIGINAL KHSa; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSa**

(TCC). See Appendix A. Such recommendations will include developing key questions or objectives for the Secretarial Determination in order to provide context for the near-term priority studies and analyses. However, final decisions on studies and analyses remain at the Secretary's discretion.

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**APPENDIX J TO THE ORIGINAL KHSA; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSA**

**APPENDIX J**  
**Science Process**

**1. Introduction**

The federal team agrees to an open and transparent science process for the 2012 Secretarial Determination and continuing through the subsequent phases, if there are any, leading up to Facilities Removal in the event of an Affirmative Determination. The goal of this science process is to provide for transparency and integrity in the preparation, identification, and use of scientific and technological information that supports the actions and decisions arising from the Settlement.

**2. Description of Science in Settlement**

For purposes of the Settlement,

**Science Process** means the essential technical studies undertaken that will support the Secretarial Determination and that will continue through subsequent phases up to Facilities Removal. Consistent with well established scientific standards, the process shall seek to make reasonable, objective, accurate, technically appropriate use of data and analyses, including existing work, and not advocate or otherwise limit the analyses and conclusions of the studies to fit a predetermined outcome. The studies developed or used or the process used to review existing studies will be conducted in accordance with Memorandum on Scientific Integrity attached herein.

**Sufficiency of Science** means that all new studies and analyses undertaken, or any existing data sets or studies relied upon in whole or in part, shall be of high technical quality, scientifically defensible, and of sufficient depth and scope to support fully informed decision-making by the Secretary.

**3. Application**

The Secretary of the Interior will determine whether Facilities Removal should proceed.

Elements of the science process to be established to support the Secretarial Determination are described in the *Coordination Process for the Studies Supporting the Secretarial Determination (Appendix A)* and the peer review process outlined below. The Secretary and the federal team will also seek public input during the Secretarial Determination process.

For the Secretarial Determination there may be opportunities to include findings and raw data from previous studies conducted in the Klamath Basin that could reduce, minimize, or even eliminate the need for new data collection and studies. The federal team will coordinate with the Parties, through the TCC, to identify those important previous studies, current data gaps, and work plans as outlined in Section 1.A of Appendix A.

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**APPENDIX J TO THE ORIGINAL KHSa; NO LONGER EFFECTIVE UNDER THE**  
**AMENDED KHSa**

**4. Peer Review Process**

The federal parties will consider input from the Parties, through the TCC, and from the public regarding which studies should be peer reviewed. At the discretion of the Secretary, reports and data sets with the potential of having a major effect on the Secretarial Determination will be peer reviewed by subject-matter experts.

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

**For PacifiCorp:**

[Sarah E. Kamman](#)  
Vice President & General Counsel  
PacifiCorp [d/b/a Pacific Power](#)  
[825 NE Multnomah Street, Suite 2000](#)  
[Portland, Oregon 97232](#)  
Tel: [503-813-5865](#)  
[sarah.kamman@pacificorp.com](mailto:sarah.kamman@pacificorp.com)

Deleted: Dean Brockbank  
Deleted: ,  
Deleted: Energy  
Deleted: 1407 W. North Temple, Suite 320  
Deleted: Salt Lake City, Utah 84116  
Deleted: 801-220-4568  
Deleted: Dean.brockbank

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

[Sally Jewell](#)  
Secretary of the Interior  
Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Deleted: Ken Salazar

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

[William W. Stelle, Jr.](#)  
[Regional Administrator](#)  
[NOAA Fisheries West Coast Region](#)  
[U.S. Department of Commerce](#)  
[7600 Sand Point Way NE, Seattle, WA 98115](#)  
Tel: [206-526-6150](#)  
[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)

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

**For Oregon Department of Environmental Quality:**

[Chris Stine](#)  
Oregon Department of Environmental Quality  
[165 E. 7<sup>th</sup> Avenue, Suite 100](#)  
[Eugene, OR 97401](#)  
Tel: [541-686-7810](#)  
[chris.stine@state.or.us](mailto:chris.stine@state.or.us)

Deleted: Steve Kirk  
Deleted: 475 NE Bellevue Dr.  
Deleted: Bend  
Deleted: 7  
Deleted: 633-2023  
Deleted: [steve.kirk](#)

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

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Ken Homolka  
Oregon Department of Fish and Wildlife  
[4034 Fairview Industrial Drive SE](#)  
Salem, Or. 97302  
Tel: 503-947-6090  
[Ken.Homolka@state.or.us](mailto:Ken.Homolka@state.or.us)

Deleted: 3406 Cherry Ave. NE

Deleted: 3

**For Oregon Water Resources Department:**

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

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

Deleted: Game

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

Deleted: John McCamman

Deleted: Acting

**For California Natural Resources Agency:**

[Tom Gibson](#)  
Deputy Secretary and General Counsel  
Natural Resources Agency  
1416 Ninth Street, Ste. 1311  
Sacramento, CA 95814  
Tel: 916-653-0569  
[Thomas.gibson@resources.ca.gov](mailto:Thomas.gibson@resources.ca.gov)

Deleted: Kirk E. Miller

Deleted: t

Deleted: om

Deleted: [kirk.miller](#)

**For Karuk Tribe:**

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

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**For Klamath Tribes:**

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

Deleted: Joseph Kirk¶

**For Yurok Tribe:**

Chairman  
Yurok Tribe  
190 Klamath Boulevard  
Klamath, CA 95548  
Tel: 707-482-1374

Deleted: Thomas P. O'Rourke¶  
Senior

Deleted: P.O. Box 1027

**For Humboldt County, California:**

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

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

**For Klamath County, Oregon:**

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

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**Del Norte County, California:**

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



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**For Trout Unlimited:**

California Director  
Trout Unlimited  
1808B 5th Street  
Berkeley, CA 94710  
Tel: 510-528-4164

Deleted: Charlton H. Bonham¶

Deleted: ¶  
[cbonham@tu.org](mailto:cbonham@tu.org)

**For California Trout:**

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

**For American Rivers:**

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

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

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Glen H. Spain  
Northwest Regional Director  
Pacific Coast Federation of Fishermen's Associations  
P.O. Box 11170  
Eugene, OR 97740-3370  
Tel: 541-689-2000  
Email: [fish1ifr@aol.com](mailto:fish1ifr@aol.com)

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

Lowell Ashbaugh

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

Deleted: Mark Rockwell

**Salmon River Restoration Council:**

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

Deleted: President

**For Institute for Fisheries Resources:**

Glen H. Spain  
Northwest Regional Director  
Institute for Fisheries Resources  
P.O. Box 11170  
Eugene, OR 97740-3370  
Tel: 541-689-2000  
Email: [fish1ifr@aol.com](mailto:fish1ifr@aol.com)

**For Upper Klamath Water Users Association:**

Matthew Walter, President  
Upper Klamath Water Users Association  
18150 Sprague River Road  
Chiloquin, OR 97624  
541-281-6827  
webew3@aol.com

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Deleted: 219 Pine Street, Klamath Falls, OR  
97601

Deleted: 2053

Deleted: [Karl.scronce@gmail.com](mailto:Karl.scronce@gmail.com)

**For Tulelake Irrigation District:**

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

**DRAFT**

**For Klamath Irrigation District:**

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

**For Klamath Drainage District:**

Mary Cheyne, Secretary,  
270H Main Street/P.O. Box 1090  
Klamath Falls, OR 97601  
Tel: 541-884-1739  
Kdd280@yahoo.com

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- Deleted: 2-4436
- Deleted: [lhorsley1@charter.net](mailto:lhorsley1@charter.net)

**For Klamath Basin Improvement District:**

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

**For Ady District Improvement Company:**

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

**For Enterprise Irrigation District:**

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

**DRAFT**

**For Malin Irrigation District:**

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

**For Midland District Improvement Company:**

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

**For Pine Grove Irrigation District:**

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

**For Pioneer District Improvement Company:**

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

**For Poe Valley Improvement District:**

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

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**For Shasta View Irrigation District:**

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

**For Sunnyside Irrigation District:**

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

**For Don Johnston & Son:**

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

**For Bradley S. Luscombe:**

Brad Luscombe  
16622 Lower Klamath Lake Road  
Tulelake, CA 96134  
Tel: 530-667-3237

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

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

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

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

**DRAFT**

**For Reames Golf and Country Club:**

Deleted: ¶

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

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

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

**For Van Brimmer Ditch Company:**

Gary Orem, Manager  
~~620 Main Street~~  
Klamath Falls, OR 97601  
Tel: 541-882-6331  
[kayheath@parksandratliff.com](mailto:kayheath@parksandratliff.com)

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Deleted: [vanbrimmer@e-isco.com](mailto:vanbrimmer@e-isco.com)

**For Collins Products, LLC:**

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

**For Plevna District Improvement Company:**

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

**DRAFT**

**For Klamath Water Users Association:**

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

**For Klamath Water and Power Agency:**

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

**Westside Improvement District #4:**

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

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**APPENDIX L**  
**DRE and Contractor Qualifications, Insurance, Bonding, and Risk Mitigation**  
**Requirements**

**Part I: Contractor Qualifications**

The DRE agrees to conduct a competitive procurement process, including price and qualifications, to select a contractor(s) to perform Facilities Removal and to provide risk mitigation as described below. The DRE further agrees that a contractor(s) must meet the following minimum qualifications:

1. Past performance in performing similar projects in scope, magnitude (complexity and size, such as but not limited to performance of work at multiple locations at the same time), and type (water way work; environmentally regulated);
2. Sufficient financial strength, including basic financial metrics such as corporate net worth and profitability;
3. Experience with federally-regulated permitting processes; and
4. Longevity in industry.

**Part II: Insurance**

The DRE agrees to follow, or to contract with a contractor(s) that will follow, the consolidated insurance program (“CIP”) approach so the DRE, or the contractor(s) that it contracts with, will purchase the General Liability insurance and Worker’s Compensation insurance for all the contractors involved in Facilities Removal. The DRE further agrees that it will obtain the support of a nationally established insurance advisor to assist with the design and implementation of the insurance program, and that as part of its best value evaluation and procurement of a contractor(s) that will perform Facilities Removal or provide liability protection or both, it will consider savings and other benefits obtained by selecting a contractor(s) that already has CIP infrastructure in place.

Unless the States and PacifiCorp agree otherwise, the DRE will obtain the following project-specific types of insurance policies, if applicable. The policy types and coverage limits ultimately obtained by the DRE to provide risk mitigation to the States and PacifiCorp are subject to the approval of the States and PacifiCorp in consultation with the Federal Parties:

1. Commercial General Liability (“CGL”) policy to cover third-party property damage and third-party bodily injury that occurs from activity performed at the dam deconstruction site;
2. Workers Compensation / Employer’s Liability / USL&H policy to provide coverage for injuries that occur on the dam deconstruction site to individual workers;



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3. Builder's Risk / Inland Marine or Commercial Property policy to provide property coverage for damage to any equipment or components of the dam that will be restored or salvaged;
4. Automobile Liability policy to provide coverage for third-party property damage and third-party bodily injury for the auto fleet used related to the construction activities;
5. Umbrella Liability policy to provide excess coverage for General Liability and Automobile Liability;
6. Professional Liability policy to provide coverage to protect an insured if their client is financially harmed from the rendering of their professional services or advice (including lack thereof) and for which the insured is held legally liable;
7. Contractors Pollution Liability ("CPL") policy to provide third-party coverage for clean-up and remediation costs, bodily injury, property damage (including natural resource damages, loss of use and diminution in value) and legal defense expenses, as a result of pollution conditions arising from operations performed by or on behalf of the contractor;
8. Fixed Site Pollution Liability ("PLL") policy to provide coverage for on-site & off-site clean-up/remediation costs, third-party claims for bodily injury and property damage (including natural resource damages, loss of use and diminution in value) and defense expenses and legal costs not otherwise addressed by the CPL (i.e. Pollution Conditions not caused or exacerbated by the contractors) and arising from Pollution Conditions on, at, under, migrating to and migrating from property owned or leased by the Insured.

The DRE further agrees that the insurance required above will include PacifiCorp, the State of Oregon, the State of California, and their respective officers, agents, employees, and members as additional insureds. As evidence of this required insurance coverage, the DRE will furnish a certificate or certificates of insurance including all of the foregoing coverage(s) to PacifiCorp and the States before any contract for Facilities Removal is effective and before Facilities Removal work begins. The following language shall be used for naming additional insureds:

**ADDITIONAL INSURED: PacifiCorp, the State of Oregon, the State of California, and their respective officers, employees and agents are Additional Insureds for the CONTRACTOR's activities to be performed under this Contract. Coverage is primary and non-contributory with any other insurance and self-insurance.**

**Part III: Bonding**

The DRE agrees to provide, or to contract with entities that will provide, conventional performance and payment bonding, unless otherwise agreed to by the States, DRE, and

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PacifiCorp, from a financially sound surety company to assure that Facilities Removal will be performed as required:

1. Bid Bond;
2. Performance Bond (in an amount equivalent to original contract value); and
3. Payment Bond (in an amount equivalent to original contract value).

The DRE agrees to include PacifiCorp and the States as Third Party Beneficiaries in any contract with a contractor(s) that will perform Facilities Removal or any activities associated with Facilities Removal.

**Part IV: Risk Mitigation**

A. Contractual Indemnification

The DRE agrees to contract with a specialty corporate indemnitor (“Liability Transfer Corp.”) to protect the States and PacifiCorp against any harm to persons, property, or the environment, or damages resulting from either Facilities Removal or Facility operation arising from, relating to, or triggered by actions associated with Facilities Removal, including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances that is not covered contractually or by insurance. Without limiting the generality of the foregoing, this liability protection must include protection from third-party diminution in value and or property claims to the extent not already covered by contractor(s) insurance or mitigation funding.

The Parties agree that the approval of a Liability Transfer Corp. is not subject to the provisions of Section 8.3 of this Settlement; *provided, however,* that the Parties further agree that the selection of a Liability Transfer Corp. will be subject to the approval of the States and PacifiCorp, in consultation with the Federal Parties, whose approval may not be unreasonably withheld.

PacifiCorp and the States agree that in the selection of a Liability Transfer Corp. that the following parameters constitute the minimum indicia of sufficiency:

1. Appropriate corporate capitalization as agreed to by the States and PacifiCorp;
2. Past performance in performing similar projects in scope, magnitude (complexity and size, such as but not limited to performance of work at multiple locations at the same time), and type (water way work; environmentally regulated);
3. Experience with federally regulated permitting processes; and
4. Longevity in industry.

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The Parties agree that the DRE may contract with a Liability Transfer Corp. to provide contractual indemnification for the above-described risks, and further agree that the DRE may also transfer its ownership of the Facilities and Parcel B Lands, in whole or in part, to that entity.

The Parties further agree that the Liability Transfer Corp. will become a party to this Settlement before ownership of the Facilities, in whole or in part, is transferred to the Liability Transfer Corp.

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**EXHIBITS**

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**EXHIBIT 1**

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

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**EXHIBIT 2**  
**Sequence of Performance Chart—KHSA**

<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
Enactment of Oregon Legislation (SB 76)	Oregon Legislature and Governor	Passed and signed.	2.3
Release of Public Review Draft	All Parties	September 30, 2009	N/A
Execution of Settlement	All Parties	February 18, 2010	8.2
Execution of Water Right Agreement between PacifiCorp and State of Oregon	PacifiCorp and OWRD	February 18, 2010	2.4.1
PacifiCorp implement ICP Interim Measures 2-6	PacifiCorp	Ongoing or upon Effective Date	Appendix C
PacifiCorp implement Non-ICP Measures 7 (funding), 9, 11 (studies), 13, 17, 21	PacifiCorp	Upon Effective Date	Appendix D
Parties designate representative for IMIC	Each party or category of parties	Within 30 days of Effective Date of Settlement	Appendix B Section 3.3
Parties, except ODEQ, request to the California SWRCB and the ODEQ that permitting and environmental review for PacifiCorp's licensing activities be held in abeyance during the Interim Period	All Parties except ODEQ	Within 30 days of the Effective Date	6.5
PacifiCorp applies for leases authorizing occupancy of submerged and submersible lands by the J.C. Boyle Dam, J.C. Boyle Powerhouse, and Keno Dam	PacifiCorp	Within 60 days of Effective Date of Settlement	2.5
PacifiCorp and the Secretary enter into contract to permit entry onto PacifiCorp lands	PacifiCorp and Interior	Within 3 months of Effective Date of Settlement	3.3.3

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<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
PacifiCorp convene IMIC	PacifiCorp	Within 3 months of Effective Date	Appendix B 4.1
PacifiCorp implement Non-ICP Interim Measures 7 (impl.), 8 (planning)	PacifiCorp	Within 90 days of Effective Date	Appendix D
PacifiCorp files Economic Analysis and requests the Oregon PUC to establish customer surcharges	PacifiCorp	Within 30 days of Effective Date	4.1.1.A, 7.3.9
PacifiCorp files Economic Analysis and requests the California PUC to establish customer surcharge	PacifiCorp	Within 30 days of Effective Date	4.1.1.B, 7.3.9
Parties except ODEQ request California SWRCB and ODEQ to hold permitting and environmental review in abeyance during Interim Period	Parties except ODEQ	Within 30 days of Effective Date	6.5
Enactment of Federal legislation	United States Congress	Legislation to be proposed within 90 days of Effective Date	2.1.1.A
Enactment of California Bond Measure	California Legislature and Voters	Passed in November 2009, to be voted on before March 31, 2012	4.1.2.A
Enactment of California CEQA Legislation	California Legislature; Governor	At the beginning of the next legislative session	2.1.1.C
States submit draft trustee instructions to PUCs	States in consultation with Federal Parties	Within 6 months of Effective Date	4.2.4.A
PacifiCorp implement Non-ICP Interim Measure 19 (study)	PacifiCorp	Within 6 months of Effective Date	Appendix D
PacifiCorp and IMIC develop protocol regarding KBRA flows	PacifiCorp and IMIC	Within 9 months of Effective Date	Appendix D Interim Measure 14

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<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
PacifiCorp implement Non-ICP Interim Measure 14	PacifiCorp	Upon OWRD approval	Appendix D
PacifiCorp submit TMDL Implementation Plans	PacifiCorp	Within 60 days of TMDL approval	6.3.2.A
PacifiCorp implement Non-ICP Interim Measure 18	PacifiCorp	Beginning in 2010	Appendix D
PacifiCorp implement Non-ICP Interim Measure 12	PacifiCorp	Before Sept.1, 2010	Appendix D
PacifiCorp implement Non-ICP Interim Measure 10	PacifiCorp	Within 1 year of Effective Date	Appendix D
PacifiCorp implement Non-ICP Interim Measure 15	PacifiCorp	Beginning Feb.1, 2010	Appendix D
PacifiCorp files Application for Partial Surrender of license to decommission East Side/West Side facilities	PacifiCorp	Within 6 months of enactment of federal legislation	6.4.1.A
Identify proposed transfer of Parcel B Lands	PacifiCorp and States	Before January 31, 2012	7.6.4.B
Identification of non-federal DRE, if applicable	Secretary of the Interior	Prior to issuance of the Secretarial Determination and DRE designation	3.3.4.E
California and Oregon Concurrence with non-federal DRE-designate, if any	California and Oregon	Prior to Secretarial Determination	3.3.5.A.iii
Secretarial Determination and DRE designation	Secretary of the Interior	March 31, 2012	3.2.5.A and 3.3.5.A
Release of Detailed Plan	Secretary of the Interior	On or before March 31, 2012	3.3.2
Oregon Concurrence with Affirmative Determination	State of Oregon	Within 60 days of publication of an Affirmative Determination in the Federal Register	3.3.5.A



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<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
California Concurrence with Affirmative Determination	State of California	Within 60 days of publication of an Affirmative Determination in the Federal Register	3.3.5.A
States submit draft revised trustee instructions to PUCs	States in consultation with Federal Parties and DRE	Within 3 months of States' Concurrence on Affirmative Determination	4.2.4.B
PacifiCorp implement Non-ICP Interim Measure 8, 11	PacifiCorp	Upon Affirmative Determination	Appendix D
PacifiCorp implement Non-ICP Interim Measure 19	PacifiCorp	Within 6 months of Affirmative Determination	Appendix D
Parties Meet and Confer to establish schedule to implement Affirmative Determination and Detailed Plan and identify Value to Customers necessary to implement schedule	All Parties	Within 90 days of Affirmative Determination	7.3.4
DRE becomes Party to Settlement	DRE	Within 30 days of Notice from both States of their respective Concurrence with an Affirmative Determination	7.1.3
DRE and PacifiCorp enter into contract and permit of entry	DRE and PacifiCorp	After designation of a DRE	Legislation
DRE releases Definite Plan	DRE	Prior to applying for permits and authorizations for Facilities removal	7.2
Parties review the Definite Plan	All Parties	Within 60 days after the DRE provides Notice to the Parties of the completion of the Definite Plan	7.2.1.B and 2.1.4.C

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<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
DRE provides Notice to Parties and FERC that Facilities Removal is ready to commence	DRE		7.4.1
PacifiCorp conveys Parcel B Lands	PacifiCorp	After DRE Notice that Facilities Removal is ready to commence	7.6.4.D
FERC issues Order approving transfer of the Iron Gate hatchery from PacifiCorp to CDFG	FERC	Within 60 days of transfer of Iron Gate Dam to DRE	Legislation
FERC resumes timely consideration of pending FERC licensing application for Fall Creek Development	FERC	Within 60 days of transfer of the Iron Gate Hatchery from PacifiCorp to CDFG	Legislation
PacifiCorp transfers title in the Facilities to the DRE	PacifiCorp	Per facility, upon receipt of DRE Notice that all permits and approvals have been obtained	7.4.2
Complete AIP for Keno transfer; complete Keno transfer agreement	Interior and PacifiCorp	June 11, 2011; March 31, 2012	7.5.2
PacifiCorp transfer Keno Development to the United States	PacifiCorp	At the time of transfer of J.C. Boyle	7.5.2
Commencement of Decommissioning	PacifiCorp	January 1, 2020	7.3.1
Completion of Facilities Removal	DRE	December 31, 2020	7.3.1
PacifiCorp assigns its hydroelectric water rights to OWRD for conversion to an instream water right	PacifiCorp	Per Exhibit 1	7.6.5.A
PacifiCorp submits a Revocation Request to California SWRCB and notification of intent to abandon its water rights	PacifiCorp	Within 90 days of completion of Facilities Removal at Copco No. 1, Copco No. 2 and Iron Gate Facilities	7.6.5.B
PacifiCorp implement Non-ICP Interim Measure 20	PacifiCorp	After removal of Iron Gate	Appendix D
PacifiCorp ceases hatchery funding	PacifiCorp	8 years following Decommissioning of Iron Gate Dam	7.6.6.A

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<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
PacifiCorp, KWAPA, and UKWUA enter into Billing Services Offset Agreement(s)	PacifiCorp, KWAPA, and UKWUA	Timely	5.2
Notify PacifiCorp of desire to commence billing credits	KWAPA / UKWUA	120 days before desired commencement	5.2.4
Provide PacifiCorp with names and other pertinent information re eligible customers	KWAPA / UKWUA	90 days before commencement of bill crediting system	5.2.4
File for any necessary regulatory approval of tariffs implementing bill crediting	PacifiCorp	Within 30 days of receiving names and eligible customers and other pertinent information	5.2.6
Enter agreements and provide notification re federal power	Interior, KWAPA, PacifiCorp	Timely	5.3

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**EXHIBIT 3**  
**Maps**

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**EXHIBIT 4**  
**Estimated Timeline—Amended KHSA**