



# COUNTY OF SISKIYOU

## Board of Supervisors

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March 3, 2009

**VIA FAX (202) 273-3559**

Committee Management Secretariat  
U. S. General Services Administration  
1800 F Street, NW, Rm. 7138  
Washington, DC 20405

Attention: Tabitha Dove

Re: Agreement in Principle–  
Klamath Basin Restoration Agreement Negotiations

Dear Ms. Dove:

This letter is to request that the Committee Management Secretariat advise the County of Siskiyou as to whether the confidential meetings and negotiations being undertaken by the State of California, State of Oregon, Department of the Interior, and other federal agencies, and PacifiCorp, fall within the scope of the Federal Advisory Committee Act (FACA) of 1972 (Public Law No. 92-463).

Attached with this letter is a copy of the Agreement in Principle (AIP) between the parties, as well as the Protocols for continued negotiations. Additionally, these same parties have participated in one degree or another in the Klamath Basin Restoration Agreement (KBRA) negotiations (although PacifiCorp has not had a current presence of which the County is aware in the KBRA negotiations), and a link to the document released may be found at [edsheets.com](http://edsheets.com).

Both of these processes have involved extensive meetings and negotiations which have not been open to the public. Currently, it is our understanding that the Federal Energy Regulatory Commission (FERC) is assigning a representative to participate in these discussions as part of its processes as well.

Essentially, the purpose of these groups is to develop federal legislation for the removal of four hydroelectric facilities in the States of California and Oregon. It is the concern of the County of Siskiyou that conducting these secret negotiations may be inconsistent with FACA.

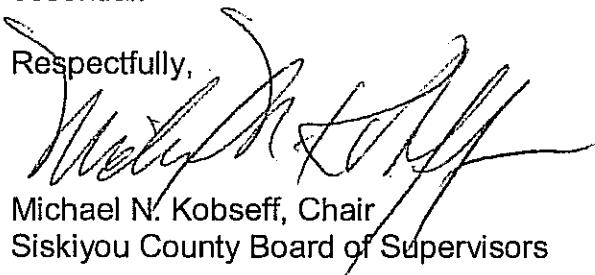
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As these negotiations are ongoing, your response at your earliest convenience is essential.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael N. Kobseff". The signature is written in a cursive style with a large, sweeping initial "M".

Michael N. Kobseff, Chair  
Siskiyou County Board of Supervisors

Encls.        [AIP document]  
                 [Protocol document]

cc:    Governor Arnold Schwarzenegger  
       Governor Ted Kulongoski  
       Del Norte County Board of Supervisors  
       Trinity County Board of Supervisors

## AGREEMENT IN PRINCIPLE

### I. INTRODUCTION

WHEREAS, the Parties to this Agreement in Principle (“Agreement”) have entered into arms-length negotiations to address issues pertaining to the resolution of certain litigation and other controversies in the Klamath Basin, including a path forward for possible Facilities removal; and

WHEREAS, this Agreement memorializes broad principles designed to function as a framework for the development of a Final Agreement; and

WHEREAS, the Parties agree to continue good-faith negotiations to reach a Final Agreement consistent with the principles outlined herein that will minimize adverse impacts of dam removal on affected communities, local property values and businesses and will specify substantive rights, obligations, procedures, timetables, agency and legislative actions, and other steps; and

WHEREAS, the Parties understand that the Project dams are currently the property of the Company, as defined below, and that they are currently operated subject to applicable State and Federal law and regulations. The United States and the States (both as defined below) understand that the decision before the Company is whether the decommissioning and removal of certain Facilities is appropriate and in the best interests of the Company and its customers. Prudent and reasonable long term utility rates and protection from any liability for damages caused by Facilities removal are central to the Company’s willingness to voluntarily surrender the dams and the low-carbon renewable energy they produce to the removal of the dams; and

WHEREAS, the United States and the States have a strong interest in addressing long-standing disputes over scarce water resources and fisheries restoration in the Klamath Basin. The United States, since 2003, has spent over \$500 million in the Klamath basin for irrigation, fisheries, wildlife refuges, and other resource enhancements and management actions; and

WHEREAS, all of the Parties agree that it appears to be in the public interest and the interest of all Parties to proceed to a Final Agreement consistent with this Agreement in Principle.

NOW, THEREFORE, the Parties agree as follows:

### II. CONDITIONS APPLICABLE TO ALL COMPONENTS

#### A. Definitions

- i. “Agreement in Principle” or “Agreement” refers to the agreement described herein.
- ii. “Dam Removal Entity” or “DRE” refers to a non-Federal entity that is technically competent to perform the tasks necessary for Facilities removal and financially capable to assure performance of the tasks, and, if applicable, pay restitution for any damages caused by Facilities removal, and respond to and defend all associated liability claims and costs associated therewith,

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including any judgments or awards resulting therefrom, consistent with the other terms of this Agreement in Principle. The obligations of the DRE are set forth in Section VIII of this Agreement in Principle.

- iii. "Definite Plan" refers to a timetable for decommissioning and removal of the Facilities; including, but not limited to: the plans for removal and disposal of sediment, debris, and other materials; a plan to avoid downstream impacts from facility removal; a plan for compliance with all applicable environmental laws; a detailed explanation of the estimated costs of decommissioning and removal; and a complete Plan for engineering, decommissioning, and Facilities removal.
- iv. "Facilities" or "Facility" refer to the following specific hydropower facilities, within the jurisdictional boundary of FERC project number 2082: Iron Gate dam, Copco 1 dam, Copco 2 dam and J.C. Boyle dam and appurtenant works presently licensed to PacifiCorp.
- v. "Facilities removal" refers to physical removal of the Facilities, site remediation and restoration, measures to avoid downstream impacts and associated permitting, as described in the Definite Plan.
- vi. "Final Agreement" is a binding agreement among those parties signatory to it, pertaining to the subject matter of this Agreement in Principle, including terms in this Agreement in Principle that are agreed shall be in the Final Agreement.
- vii. "Meet and Confer" refers to a process, as specified in the Final Agreement, by which the Parties shall discuss, negotiate and attempt to resolve issues and disputes.
- viii. "Multi-State Protocol" or "MSP" refers to the PacifiCorp Inter-jurisdictional Cost Allocation Methodology, known as the Revised Protocol that resulted from the Multi-State Process.
- ix. "Nominal dollars" are dollars that are not adjusted for inflation at the time they are collected.
- x. "Non-bypassable surcharge" is a surcharge authorized by the appropriate state utility commission through a tariff schedule that applies to all retail customers who rely on the Company's transmission and distribution system for the delivery of electricity.
- xi. "PacifiCorp" or "Company" refers to PacifiCorp, an Oregon corporation, the owner of the Project.
- xii. "Parties" or "Party" refers to the United States, PacifiCorp, the State of California and the State of Oregon, all of whom are duly authorized to execute this Agreement.

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- xiii. "Project" refers to the Klamath Hydroelectric Project as licensed by FERC under Project Number 2082.
- xiv. "Right of Withdrawal" refers to the right of a Party, after engaging in a Meet and Confer process with the other Parties and giving at least 30-days written notice to all other Parties, to fully withdraw from the Agreement in Principle or the Final Agreement for any reason allowed in this Agreement in Principle or the Final Agreement.
- xv. "States" refers to the State of Oregon or the State of California Resources Agency and its constituent departments and excludes all other state agencies, departments, boards and commissions.
- xvi. "State Cost Cap" refers to the collective maximum monetary contribution from the States of California and Oregon.
- xvii. "United States" refers to the following Departments of the Federal Government including their component agencies and bureaus: the United States Department of Agriculture, the Department of Commerce, and the Department of the Interior.
- xviii. "United States Determination" means the determination by the United States whether the benefits of Facilities removal justify the risks, costs, liabilities, and other consequences as set forth in Section III of this Agreement in Principle.

**B. Conditions**

- i. The Parties shall in good faith negotiate a Final Agreement as soon as possible. If a Final Agreement is not fully executed by all the Parties by June 30, 2009, unless all Parties agree to an extension, each Party shall have a Right of Withdrawal from this Agreement.
- ii. Neither this Agreement nor any part thereof shall be construed as admissions against interest or be used in any legal or regulatory proceeding by a Party against any other Party. The Parties agree that the documents, analysis, and positions shared in negotiating this Agreement in Principle are protected from subsequent dissemination to the fullest extent under Federal Rule of Evidence 408 and similar Oregon and California statutes. This paragraph is binding on the Parties and survives termination of this Agreement.
- iii. It is the Parties' intention to pursue a Final Agreement and to seek the introduction and passage of legislation consistent with the material terms of this Agreement in Principle.
- iv. The Parties recognize that the Final Agreement will require the enactment of State and Federal legislation, and that if all of the required legislation does

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not pass, each Party shall have a Right of Withdrawal from this Agreement and from the Final Agreement.

- v. The Parties agree that all drafts of the Agreement in Principle shall be held strictly confidential among the Parties to the extent allowed by applicable law, unless unanimously agreed otherwise by the Parties. Representatives of the Parties may share the draft Agreement with their principals and attorneys. Except as provided above, disclosure of drafts of the Agreement in Principle or any of the material terms contained herein, in violation of this paragraph, shall be grounds for termination of negotiations. The executed Agreement in Principle will be a public document. This paragraph is binding on the Parties and survives termination of this Agreement.
- vi. This Agreement in Principle and the Final Agreement are subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, similar requirements of state law, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or a State General Fund. This paragraph is binding on the parties and survives termination of this Agreement, except to the extent it is superceded by mutual agreement of the Parties in the Final Agreement or subsequent written agreements.
- vii. The Parties agree that there are no binding obligations or commitments contained in this Agreement other than are expressly stated in this Agreement. There shall be no remedy for any potential or alleged breach of non-binding provisions of this Agreement, and none of the Parties shall be subject to specific performance, damages, or any other remedy or type of relief for failure to perform the non-binding provisions. For any binding provisions, the remedy shall be a Right of Withdrawal.

Prior to a Final Agreement, the Parties agree to attempt to resolve as much as practicable pending litigation and other controversies related to the Klamath River Basin involving one or more Parties. If litigation is filed by non-parties against a Party to this Agreement alleging a cause of action based on the Party's support of this Agreement in Principle, the Final Agreement, or the Klamath Basin Restoration Agreement (KBRA), the Parties shall Meet and Confer with the other Parties. If the issue is not resolved satisfactorily, such litigation is grounds for the Party to exercise their Right of Withdrawal from this Agreement and the Final Agreement.

- viii. Nothing in this Agreement shall be read as an admission or determination by the Parties that any of the actions anticipated by this Agreement are necessarily required as a matter of any State or Federal law, including, but not limited to, CERCLA, 42 U.S.C. §§ 9601-9675, the Endangered Species Act, 16 U.S.C. §§ 1531-1544, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, 1251(a) (Clean Water Act), the National

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Environmental Policy Act, 42 U.S.C. §§ 4321-4370f, or any similar Oregon or California State statutes or regulations.

- ix. Until a Final Agreement is executed, the Parties agree to refrain from any actions that do not support or further cooperative discussions toward the commitments being contemplated by this Agreement; provided, the Parties reserve their Right of Withdrawal and their rights to protect, defend, and discharge their interests and duties before any regulatory agency, court, or other forum.
- x. This Agreement in Principle has been extensively negotiated as a package of rights, obligations, and allocated costs for certain actions to be set forth in the Final Agreement. Imposition on any Party of significant costs inconsistent with this Agreement in Principle shall give the Party a Right of Withdrawal from this Agreement.
- xi. The Parties agree to cooperate and coordinate in the development of individual or joint press releases or public statements with respect to the Agreement in Principle and the Final Agreement. Subsequent statements shall be consistent with this provision. This paragraph is binding on the Parties and terminates if this Agreement in Principle terminates.
- xii. Unless otherwise required by law, Oregon will not issue for public notice and comment any proposed Clean Water Act certification of the Project as proposed to be relicensed or require further studies for certification of the project as proposed to be relicensed, during the time period from the effective date of this Agreement in Principle to the effective date of a Final Agreement. Imposition on PacifiCorp of significant regulatory costs for a Clean Water Act certification of the relicensing project during the time that PacifiCorp is devoting resources to this Agreement in Principle and the Final Agreement shall give PacifiCorp a Right of Withdrawal from this Agreement in Principle.
- xiii. Imposition on or incurrence by PacifiCorp of significant costs for a Clean Water Act certification of the relicensing project, including review pursuant to CEQA, during the time that PacifiCorp is devoting resources to this Agreement in Principle and the Final Agreement shall give PacifiCorp a Right of Withdrawal from this Agreement in Principle.

### III. DETERMINATION BY THE UNITED STATES

The Parties entered into the negotiations leading to this Agreement in Principle as well as the commitment to negotiate a Final Agreement 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. The United States, as the lead governmental Party with regard to the removal decision and implementation, has determined that further study of the costs, feasibility, and resulting benefits, risks, liabilities, alternatives, and

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impacts is needed to confirm the actual costs, benefits, risks, and potential liabilities prior to pursuing the removal of the Facilities.

Thus, pursuant to Federal authorizing legislation to be proposed for introduction pursuant to this Agreement in Principle, the United States shall undertake and conduct appropriate studies, informed by science and engineering and consistent with applicable Federal guidance, including the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies" or its successor documents, to determine the likely costs of Facilities removal and whether the potential benefits of Facilities removal outweigh the potential costs, risks, liabilities, impacts to persons and property or other adverse consequences of removing the Facilities. The United States shall determine the scope of the studies and make the determination, but shall consult with State, local, and Tribal governments, PacifiCorp, and other parties to the Final Agreement in carrying out these responsibilities. Those parties shall endeavor in the Final Agreement to further refine the standards for making the Secretary's determination.

The United States shall complete such studies and make a determination whether to remove the Facilities only after enactment of Federal and State Klamath River legislation described in the Final Agreement, and shall then make the determination no later than March 31, 2012. Promptly upon making its determination, the United States shall publish in the Federal Register and submit to the appropriate congressional committees the determination of whether the potential benefits of Facilities removal justify the potential costs, risks, liabilities or other adverse consequences associated with removal. The United States shall not publish the determination or make findings of fact unless federal legislation required by this Agreement in Principle has been enacted, and the States have authorized funding for Facilities removal as set forth in this Agreement in Principle and the Parties have set forth a method for resolving any such post-determination cost overruns. The published determination shall include an analysis of the studies conducted by the United States.

If the United States determines that the benefits of Facilities removal justify the potential costs, risks, liabilities or other adverse consequences associated with Facilities removal, confirming its preliminary view, the United States shall designate a non-Federal DRE to remove the Facilities. The selection of the DRE is subject to concurrence by the States of Oregon and California that the DRE meets the definition of a DRE and further subject to the DRE agreeing to meet its obligations under Section VIII of this Agreement in Principle. Within 60 days after the United States' Determination, California and/or Oregon may exercise a Right of Withdrawal from this Agreement in Principle and the Final Agreement based on liability or cost concerns. If California or Oregon exercises a Right of Withdrawal, this Agreement in Principle and the Final Agreement shall be null and void as to all Parties. After the necessary permits and authorizations have been obtained, and subject to the conditions set forth in Section VII, PacifiCorp shall transfer the dams to the non-Federal DRE upon the request of the United States for no additional consideration.

If the United States determines that the benefits of Facility removal do not justify the potential costs, risks, liabilities or other adverse consequences associated with removal of any specific hydropower Facility or Facilities licensed to PacifiCorp, including but not limited to a determination that the costs of Facilities removal are likely to exceed the \$450,000,000 non-Federal contributions defined in "Section VI. Costs," then the United States will not proceed to remove the Facilities unless the Parties reach a subsequent written agreement on the matter through Meet and Confer as provided in the Final Agreement. Upon a determination by the United States not to remove the Facilities, then this Agreement in Principle and the Final Agreement shall be null and



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void as to all Parties, and this Agreement in Principle and the Final Agreement shall have no effect as to any Party and PacifiCorp shall return to the pending FERC licensing proceeding pursuant to the Federal Power Act. Before the Final Agreement terminates, however, the Parties to the Final Agreement shall engage in a Meet and Confer process in accordance with procedures to be specified in the Final Agreement, to determine whether the Final Agreement may be conformed to the United States' Determination.

### IV. FEDERAL LEGISLATION

As described in further detail below, the United States intends to offer, and the Parties intend to support, Federal legislation that authorizes the United States to determine whether the potential benefits of Facility removal outweigh the potential costs, risks, liabilities or other adverse consequences of removing the Facilities as described in Section III above. The Parties further intend that the same legislation will authorize transfer of the Facilities to a non-Federal DRE in a manner consistent with this Agreement in Principle and the Final Agreement, and that the non-Federal DRE will be empowered to secure the necessary permits and authorizations to promptly remove the Facilities.

In order to reduce uncertainty and eliminate the need to seek additional federal legislation at a subsequent date, the legislation described in this section shall also provide the Company with immunity from environmental liabilities arising from the Company's ownership and operation of the Facilities-provided, however, that liability protection related to any particular Facility shall not become operative until such time as title to the Facility in question has been transferred to the non-Federal DRE. Provided, however, if transfer of any Facility to the non-Federal DRE does not occur, the Company shall retain any liability as it may otherwise have for any environmental liabilities resulting from its ownership and operation of such Facility.

Accordingly, no later than upon the execution of the Final Agreement, the United States shall offer and support Federal legislation that: (1) authorizes, funds and directs the United States to conduct the studies and make the determination set forth in Section III of this Agreement in Principle; (2) authorizes and directs the United States to select a non-Federal DRE if the United States decides to pursue Facilities removal, consistent with the process set forth in this Agreement in Principle and the Final Agreement; (3) authorizes transfer of the Facilities to the non-Federal DRE for the express purpose of removal; (4) provides the legal capacity for the non-Federal DRE to remove the Facilities and to obtain necessary permits and authorizations; (5) authorizes PacifiCorp to continue to operate the Facilities with annual licenses under FERC jurisdiction subject to the interim operations specified in the Final Agreement, until decommissioning of each Facility; (6) provides that Facilities removal shall not be subject to FERC jurisdiction or require FERC approval; and (7) provides that no person or entity contributing funds for dam removal pursuant to Section VI of this Agreement shall be held liable, solely by virtue of that funding, for any harm to persons, property, or the environment, or damages arising from, or relating to, Facility operation or removal after the transfer of ownership and control of the Facilities to the non-Federal DRE, including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances.

The Federal legislation shall also provide the Company with protection from liability with provisions that are materially consistent with the following:

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1. Notwithstanding any other federal or state law or common law, in consideration for transfer of ownership of the Facilities, no previous licensee, owner or operator of aforesaid Facilities shall, after the transfer of ownership and control of the Facilities to the non-Federal DRE, be liable for any harm to persons, property, or the environment, or damages arising from, or relating to, Facility operation or removal including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances.
2. 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.
3. This liability protection shall become operative as it relates to any particular Facility only upon transfer of title to that Facility from the Company to the non-Federal DRE.

Although this Agreement is the full and complete Agreement of the Parties at this time, the Parties agree that the KBRA and Final Agreement will be indivisible parts of a unified approach to resolving Klamath Basin issues in the broad public interest. The Parties will ensure that the Final Agreement and legislation proposed or supported by the Parties are consistent with this principle.

## V. SCIENCE

The Parties agree that the Final Agreement will address and specify the elements of an objective, transparent, independent, and scientific process to advise the United States in making its determination whether to pursue removal of the Facilities. The Final Agreement will specify funding and contracting procedures for the science process.

## VI. COSTS

### A. Facility Removal Costs

This section of the Agreement addresses the contributions from California and Oregon to fund Facilities removal.

The Parties agree to make arrangements for the following contributions, and the documentation for such contributions, such as legal papers, legislation, ballot measures, bond documents or other commitments, shall specify that the contributions are expressly subject to, and conditioned upon, the Right of Withdrawal of each Party and other conditions set forth in the Final Agreement, and that no contributions shall be made unless all conditions are satisfied.

Subject to the foregoing conditions:

Two hundred million in nominal dollars of the total state contribution toward Facility removal costs will be provided by customers in the states of California and Oregon (Customer Contribution). This contribution will come from a surcharge to be set by the California Public Utilities Commission and

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the Public Utility Commission of Oregon (the State Commissions). In addition to the Customer Contribution of \$200,000,000, California will seek voter approval of a general obligation bond which will include Facilities removal funds of \$250,000,000 in nominal dollars to provide the \$450,000,000 necessary to reach the total state contribution (State Cost Cap).

The Final Agreement shall resolve how to provide for further funding of costs in excess of the State Cost Cap, if during the process of Facilities removal it becomes reasonably apparent that actual Facility removal costs are likely to exceed \$450,000,000 or in fact do exceed that amount. The United States, California, Oregon, PacifiCorp, and PacifiCorp's customers do not accept liability for any costs in excess of \$450,000,000 for Facilities removal, absent specific subsequent agreement.

1. The Customer Contribution will come from two accounts.
  - a. The "J.C. Boyle Trust Account," dedicated to Facility removal at J.C. Boyle and initially funded at 25 percent of the Customer Contribution, will consist of: (i) surcharges collected by PacifiCorp from its customers in California and Oregon based on the respective MSP allocation to each state, and (ii) as to any balance necessary to achieve 25 percent of the Customer Contribution, surcharges collected by PacifiCorp from its Oregon customers.
  - b. The "California Dams Trust Account," dedicated to Facility removal at Copco 1, Copco 2 and Iron Gate and initially funded at 75 percent of the Customer Contribution, will consist of: (i) surcharges collected by PacifiCorp from its customers in California and Oregon based on the respective MSP allocation to each state, and (ii) as to any balance necessary to achieve 75 percent of the Customer Contribution, surcharges collected by PacifiCorp from its customers in California and Oregon based on a two state MSP allocation to each state.
2. Beyond the Customer Contribution, California will ask its voters to approve, subject to the conditions specified in this Agreement and in the Final Agreement, general obligation bonds necessary to bridge the gap between the \$200,000,000 Customer Contribution and the actual cost of Facilities removal but in no event to exceed \$250,000,000. The anticipated funding amounts and percentages to be contributed through surcharges and bond moneys shall be set forth in the Final Agreement.
3. With respect to the Customer Contribution, it is intended that each State Commission will:
  - a. Approve a PacifiCorp tariff to collect a non-bypassable surcharge from customers over the estimated lives of J.C. Boyle and the California Dams, and to turn the surcharge over to trustees selected by each State Commission for deposit in an interest bearing account.
  - b. Require the trustees, upon request of the United States, to transfer to the United States or its designees, sums in the trust funds necessary to cover Facilities removal costs, and require the trustees to retain the balances, if any, for further disposition at the direction of the commissions.

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- c. Ensure that the two surcharges, taken together, at no time exceed two percent of the revenue requirements set by each commission for PacifiCorp in the most recent general rate case decided before adoption of the surcharge.
  - d. Assign responsibility among the customer classes for payment of the two surcharges on the basis of equal cents per kilowatt hour.
  - e. To the extent possible, set the surcharges each year on a real levelized basis.
  - f. Establish the two trust accounts as soon as reasonably possible to spread the costs over as long a period as possible to minimize impacts on customers.
4. Upon review of the United States Determination described in Section III of this Agreement, or as appropriate thereafter, and subject to the conditions set forth in this Agreement in Principle and in the Final Agreement, the resource agencies of California and Oregon and the State Commissions shall consult with each other and the United States regarding any changes in the trust accounts necessitated by the Determination. Following the consultation, the State Commissions, to the extent practicable, shall revise the surcharges to be consistent with any changes in the trust accounts. Any revisions shall not alter the overall level of the Customer Contribution or the State Cost Cap, or otherwise obligate the United States to provide funding.
  5. If the United States Determination concludes that any dam should not be removed, or a Party exercises a Right of Withdrawal, or this Agreement in Principle or the Final Agreement is terminated, then each State Commission, after consultation with its Governor, may: (a) end collection of the surcharges; (b) direct that any existing balances of the trust accounts be used to implement Federal Energy Regulatory Commission relicensing requirements; or (c) if any excess exists after funding the relicensing requirements, order that any remaining balances be used for the benefit of customers, or refunded to customers. PacifiCorp may seek the same disposition of the surcharge and trust accounts from the State Commissions if the United States Determination concludes that any dam should not be removed, any party exercises a Right of Withdrawal, or this Agreement in Principle or the Final Agreement is terminated.
  6. In the event a State Commission finds that a trust account contains more funds than are necessary for Facilities removal, then it shall direct that any excess be refunded to customers or otherwise be used for their benefit.
  7. The Parties acknowledge that each State Commission is a separate state agency that is not bound by this Agreement or by any Final Agreement regarding Facilities removal. Because the Parties cannot provide assurance that any State Commission will implement any of the provisions for funding Facilities removal, failure of the State Commissions to do so is not a breach of this Agreement by California or Oregon, but it shall give each Party a Right of Withdrawal. In addition, failure of any Party to provide for the conditional contributions specified in this Agreement in Principle and in the Final Agreement shall give each Party a Right of Withdrawal from this Agreement in Principle and the Final Agreement.

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8. To ensure that the State Commissions are able to assist in carrying out the terms of this Agreement, each State will act in good faith for the passage of necessary legislation, and in the case of California, for the passage of a general obligation bond for the California Dams Trust Account.

**B. Recovery of Net Investment and Expenses**

Subject to the conditions in this Agreement in Principle and in the Final Agreement, California and Oregon will support rate treatment, by legislation or otherwise, for the return of, and on, amounts that represent PacifiCorp's undepreciated investment in the dams, including investment and recovery of expenses required by the United States or any agency of the States for continued operations and for decommissioning of the Facilities up to their removal dates, and investment previously made by PacifiCorp for relicensing and the settlement process.

**C. Replacement Power Costs**

Subject to the conditions in this Agreement in Principle and in the Final Agreement:

1. Oregon will provide through legislation that its State Commission will use its regulatory processes, including those that involve rate setting, to reflect in rates the additional costs for power that PacifiCorp will incur from changes in operation of the dams prior to removal and for replacement costs after removal.
2. California will use its state utility regulatory processes to reflect in rates the additional cost for power that PacifiCorp will incur from changes in operation of the dams prior to removal and for replacement costs after removal.

**D. Renewable Portfolio Standards and Climate Change Legislation**

The Parties will consider whether there are any feasible provisions to address customer impacts from renewable portfolio standards and climate change emissions requirements that might be included in the Final Agreement.

**E. Local Community Power**

The Final Agreement will identify any specific renewable generation projects on lands in the Klamath Basin for which PacifiCorp may be eligible to bid for the right to join in a public and private partnership.

The Final Agreement will include details agreed to by the Parties relating to the following local community power issues:

1. A description and analysis to determine whether different project development activities are feasible whereby PacifiCorp and Klamath Basin federal irrigation project and/or off-project customers would jointly develop and own certain renewable generation resources.
2. A description and analysis to determine whether PacifiCorp would purchase power from local renewable energy projects developed by Klamath Basin federal irrigation

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project and/or off-project customers or a designated entity as a qualifying facility under the Public Utility Regulatory Policies Act.

3. PacifiCorp will undertake an analysis to determine the feasibility and cost-effectiveness of PacifiCorp administering, through its billing system, an irrigation customer credit to be paid by an entity other than PacifiCorp to eligible irrigation customers' electric bills, as contemplated in the Klamath Basin Restoration Agreement.
  - a. PacifiCorp will work with representatives from the federal government to compare the costs of PacifiCorp's administration of such a customer credit mechanism with the costs of a third-party's administration of the credit mechanism.
  - b. If PacifiCorp undertakes the administration of the bill credit mechanism, all costs will be borne by the affected customers with no cross-subsidization from other customers.
  
4. PacifiCorp agrees to transmit and deliver any federal power that is acquired pursuant to the Klamath Basin Restoration Agreement for Klamath Reclamation Project federal loads, on-project irrigation customer, and off-project irrigation loads:
  - a. This delivery through PacifiCorp's transmission and distribution system will be priced under the Company's approved unbundled delivery service tariff schedules as approved by the California Public Utilities Commission and the Oregon Public Utility Commission.
  - b. To the extent that the eligibility requirements of PacifiCorp's existing delivery service tariffs require revisions, PacifiCorp will initiate and the Parties will support a filing with the respective Commission.
  - c. The United States is exploring whether power is obtainable from Bonneville Power Administration, Western Area Power Administration, or other alternative sources. The United States and PacifiCorp agree to address in the Final Agreement whether PacifiCorp's facilities might be used to deliver or wheel such power to customers at a reasonable cost, subject to applicable state regulations. Within 30 days of the signing of the Agreement in Principle, PacifiCorp and the United States agree to request that the Bonneville Power Administration participate in good faith discussions with PacifiCorp Klamath Water and Power Agency, Klamath Water Users Association, off-project water users and the United States. The purpose of these discussions would be to explore and agree upon the terms and conditions under which PacifiCorp would provide transmission service for any federal power that is acquired pursuant to the Klamath Basin Restoration Agreement.

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- d. Any provisions in the Final Agreement related to delivery services will be cost-neutral for all of PacifiCorp's other customer classes and designed in a manner that will not result in cross-subsidization between customer classes.
5. PacifiCorp agrees that any disposition of lands it owns shall be at fair market value to an entity that is not exempt from payment of property or other taxes, or contributes equivalent revenues in lieu of taxes.

**VII. DAM TRANSFER, DECOMMISSIONING AND REMOVAL SCHEDULE AND INTERIM OPERATIONS**

Subject to the conditions in this Agreement and in the Final Agreement, the Final Agreement will include a schedule for Facilities removal and interim project operations substantially as follows:

**A. Stage 1:**

Stage 1 shall commence upon execution of this Agreement in Principle. The Stage 1 will continue until the following events have occurred: (1) publication of a United States Determination under Section III of the Agreement in Principle; (2) completion of a period of 60 days after the Secretary's determination during which neither California nor Oregon exercise a Right of Withdrawal; (3) the United States' designation of a non-Federal DRE to remove the Facilities, subject to the concurrence by the States of Oregon and California, as set forth in Section III; and (4) the DRE's execution of a written agreement to meet its obligations under Section VIII of this Agreement in Principle.

**B. Stage 2:**

Stage 2 shall commence at the conclusion of Stage 1. The end of Stage 2 is envisioned to be the removal of all of the Facilities. Parties agree that if Facilities removal occurs in a staged manner, J.C. Boyle is intended to be the last dam removed. Should Facilities removal occur such that Copco No. 1, Copco No. 2, and Iron Gate dams are removed and J.C. Boyle removal is delayed, PacifiCorp will operate J.C. Boyle as a run of river facility. Provided, however, that if the scientific and engineering study results indicate that another sequencing for Facilities removal is necessary, then the Parties will Meet and Confer to resolve the inconsistency.

Contingent on FERC approval, the West Side and East Side hydropower facilities licensed to PacifiCorp shall be decommissioned by PacifiCorp, as soon as reasonably feasible subsequent to the execution of the Final Agreement, with the costs of such decommissioning to be recovered by PacifiCorp through standard ratemaking proceedings subject to the provisions of Section VI.

Contingent on Congressional authorization and pursuant to the terms and conditions in the Final Agreement, the Keno Facility within the jurisdictional boundaries of the Project shall be transferred to the United States at the time of transfer of J.C. Boyle or such other time agreed by the Parties in the Final Agreement, and thereafter operated by the United States as specified in the Final Agreement.

The non-Federal DRE shall obtain all approvals and contracts necessary for Facilities removal. PacifiCorp shall transfer the Facilities to the non-Federal DRE as soon as the non-Federal DRE notifies PacifiCorp that all necessary approvals and contracts have been received for removal of each Facility; all contracts necessary for removal have been finalized; and removal is ready to

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commence. Physical removal shall occur immediately after transfer provided, any litigation, appeals, or circumstances beyond the Parties' control may be grounds for extending this schedule for transfer and removal in accordance with procedures to be specified in the Final Agreement. The Final Agreement shall specify the circumstances beyond the Parties' control that may be grounds for extending the schedule for transfer and removal in accordance with procedures to be specified in the Final Agreement.

PacifiCorp will continue to operate the Facilities for the benefit of customers and retain all rights to the power from the Facilities until each dam is finally transferred and removed, including all rights to any power generated during the time between dam transfer to the non-Federal DRE and ultimate physical removal by the non-Federal DRE. PacifiCorp shall be responsible for decommissioning of the Facilities before removal.

### **C. Dam Transfer Scenarios:**

The target date for initiation of removal of the Facilities is 2020, provided that the actual date for initiation of removal shall be determined as a function of the following: (1) the level of the customer surcharge for Facilities removal agreed by the Parties; (2) the flow requirements during interim operations; and (3) the requirements for investment in interim measures. Exhibit 1 to this agreement contains six potential scenarios which represent the range of possible outcomes in determining initiation of removal of the Facilities. The Final Agreement will contain one or more scenarios that are economically equivalent for PacifiCorp's customers to the scenarios outlined in Exhibit 1. The Final Agreement may also contain other elements that may affect the initiation of removal of the Facilities by providing additional value to PacifiCorp's customers. These additional elements may include the following: (1) additional flows created by the Klamath Basin Restoration Agreement, (2) third-party funding for restoration and replacement power, (3) earnings on the surcharge trust, (4) generation during the Facility removal stage, and (5) any other option to provide additional value or offset costs that can be identified and agreed upon by the Parties.

The interim measures shall no longer be required if: (a) the United States determines that the benefits of Facility removal do not justify the potential costs, risks, liabilities or other adverse consequences associated with removal of any specific hydropower Facility or Facilities licensed to PacifiCorp, and determines not to remove the hydropower Facility or Facilities; or (b) any Party exercises a Right of Withdrawal; or (c) the Final Agreement is terminated prior to Facilities removal.

### **D. Interim Conservation Plan:**

The Parties acknowledge that the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) (hereinafter referred to collectively as the "Services") have signed a letter addressing an ESA interim conservation plan upon which NMFS, USFWS and PacifiCorp have agreed. A copy of this letter and plan will be filed with FERC. PacifiCorp has agreed to work expeditiously and in good faith to cooperatively develop a request that PacifiCorp will file with FERC to incorporate, as appropriate, the interim conservation plan measures as an amendment to the current Project license and request consultation under ESA Section 7 on that request. The Final Agreement will address procedures for appropriate FERC filings for other interim measures not included in the interim conservation plan.



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The Parties understand that as necessary, the Services will work with FERC under ESA Section 7 and implementing regulations and thereby provide appropriate authorization under the ESA for Project operations pursuant to the interim conservation plan. The Services have reserved their right to reassess these interim measures or reinitiate consultation on any final biological opinion pursuant to 50 C.F.R. § 402.16. Imposition of materially inconsistent measures that result in significant new costs inconsistent with this Agreement in Principle and the Final Agreement shall give PacifiCorp a Right of Withdrawal from this Agreement in Principle and the Final Agreement. The term "materially inconsistent measures" will be defined in the Final Agreement.

### VIII. FACILITIES REMOVAL ENTITY BOUND BY AGREEMENT OF PARTIES

Pursuant to Federal legislation, the Parties intend that the United States shall be authorized to designate a non-Federal DRE as an entity to which each Facility shall, in the judgment of the Secretary, be transferred before any Facilities removal occurs. The selection of the DRE is subject to concurrence by the States of Oregon and California that the DRE meets the definition of a DRE, as provided in this Agreement in Principle and the Final Agreement. Such non-Federal DRE shall be solely responsible for removal of any Project Facilities. The non-Federal DRE shall respond to and defend all liability claims and costs caused by Facilities removal, and the non-Federal DRE shall indemnify and hold harmless the other Parties to this Agreement for any such damages, costs, judgments or awards. The Final Agreement will describe the detailed role and responsibilities of the non-Federal DRE. The non-Federal DRE shall become a Party to the Final Agreement or otherwise be bound to act in accordance with the Final Agreement.

### IX. MISCELLANEOUS

The Final Agreement may address terms and conditions materially consistent with the goals of the Agreement in Principle, as well as other subjects, including but not limited to the following:

- A. An economic impact study on the effect Facilities removal will have on Siskiyou County, California;
- B. Disposition of the Fall Creek hydropower Facility and other associated Project Facilities in a manner that would protect the City of Yreka's water supply;
- C. Disposition of BLM easements and rights of way;
- D. Terms and conditions for Right of Withdrawal, termination for cause, the Meet and Confer process, other dispute resolution procedures, remedies, and any other appropriate terms consistent with this Agreement in Principle. If the Final Agreement retains a Right to Withdraw from the Final Agreement for California and Oregon subsequent to the Secretary's determination, in accordance with Section III, the Final Agreement shall also address PacifiCorp's incremental increase in risk or potential liability, if any, as a result thereof;

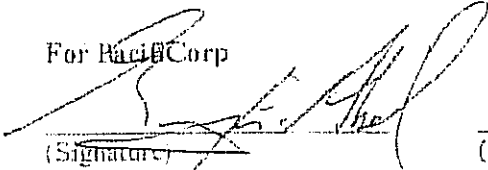
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- E. Provisions for funding any costs in excess of \$450,000,000 which arise after the Secretary makes a determination to remove the dams, consistent with provisions previously set forth in this Agreement in Principle;
- F. Treatment of the pending relicensing application and ancillary approvals, including but not limited to the Section 401 certification processes in the states of California and Oregon and the federal licensing process;
- G. Lease of bed and banks and disposition of Project lands and disposition of water rights;
- H. The Final Agreement shall describe the processes for obtaining timely approvals, authorizations, or certifications, as applicable, from agencies of competent jurisdiction for the Interim Measures and other measures in the Final Agreement pursuant to applicable federal and state laws, including but not limited to the CERCLA, the Clean Water Act, and the Endangered Species Act. The Final Agreement will also describe any necessary reservations of authority by the agencies of competent jurisdiction for these approvals, authorizations, or certifications. Imposition of materially inconsistent measures that result in significant new costs inconsistent with this Agreement in Principle and the Final Agreement shall give any Party a Right of Withdrawal from this Agreement in Principle and the Final Agreement. Provided, the term "materially inconsistent measures" will be defined in the Final Agreement; and
- I. The Final Agreement shall include specific provisions to assure that the schedule of environmental review, permit applications, and permitting for such Facilities removal, subsequent to the Secretary's determination, will be consistent with Section VII herein and will be coordinated with applicable KBRA provisions which are linked to the Final Agreement or Facilities removal.

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X. SIGNATURES

For Kaci Corp



(Signature)

11/12/2008  
(Date)

Gregory E. Abel  
(Name)

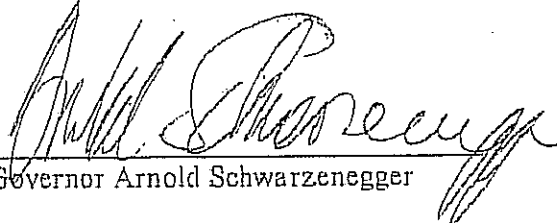
Chairman and CEO  
(Title)

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For State of Oregon  
Theodore R. Kaloupek 11/10/08  
(Signature) (Date)  
Theodore R. Kaloupek  
(Name)  
Governor of Oregon  
(Title)

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For California Resources Agency

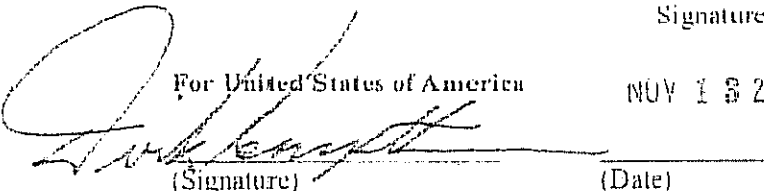
  
Governor Arnold Schwarzenegger

November 13, 2008  
Date

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For United States of America

NOV 15 2008



(Signature)

(Date)

DIRK KEMPTHORNE

(Name)

U.S. SECRETARY OF THE INTERIOR

(Title)

**EXHIBIT 1**  
**KLAMATH HYDROELECTRIC PROJECT DAM REMOVAL SCENARIOS**  
**AGREEMENT IN PRINCIPLE**

The following chart lists six potential dam removal scenarios that will form the basis of discussions to narrow the scenarios for the Final Agreement. The Final Agreement will endeavor to include one or more scenarios that are economically equivalent to the scenarios below:

Target Removal Date	Customer Surcharge (\$ millions)	Interim Measures and Flows	Additional Third-Party Funding and Cost Offsets (\$ millions)
2020	\$ 150.00	Case A	\$13.00
2020	\$ 200.00	Case A	\$63.00
2023	\$ 150.00	Case B	\$13.00
2024	\$ 175.00	Case B	\$13.00
2024	\$ 150.00	Case C	\$ 0
2025	\$ 200.00	Case C	\$ 0

The three cases of Interim Measures and Flows are Exhibits 1A, 1B and 1C that follow.

Case A is comprised of a limited set of interim measures designed to address the needs of the Interim Conservation Plan and water quality improvements as required by the California Water Resources Control Board and the Oregon Department of Environmental Quality. Case A further requires no additional flow releases from current requirements. Additional third-party funding or cost offsets to PacifiCorp's customers will be necessary to reach the 2020 target removal date.

Case B is comprised of the same limited set of interim measures as contained in Case A and requires third-party funding or cost offsets to reach the target date. Case B requires PacifiCorp to release additional instream flows as compared to current requirements as detailed in item 7 of Exhibit 1B.

Case C is comprised of a more extensive set of interim measures, the same instream flow requirements as in Case B, and no additional third-party funding or cost offsets to achieve the target date.

The Parties agree to identify third-party funding and cost offset options in the Final Agreement. These options may include: (1) additional flows created by the Klamath Basin Restoration Agreement, (2) third-party funding for restoration and replacement power, (3) earnings on the surcharge trust, (4) generation during the Facility removal stage, and (5) and other options that can be identified and agreed upon by the Parties.

**EXHIBIT 1A**  
**KLAMATH HYDROELECTRIC PROJECT INTERIM MEASURES**  
**AGREEMENT IN PRINCIPLE**

*Case A*

**Interim Measures Description and Timing<sup>1</sup>**

#	Interim Measure Task Title
1	<b>Interim Measures Implementation Coordination.</b> PacifiCorp and the Federal Agencies, Indian Tribes and States of Oregon and California will collaboratively develop a written plan which describes the process for communicating, coordinating and implementing interim measures and ongoing operations and maintenance (O & M) activities of the Klamath Hydroelectric Project with agencies and the general public.
2	<b>J.C. Boyle Gravel Placement and/or Habitat Enhancement.</b> PacifiCorp will commit \$150,000 per year to improve habitat in the Klamath River below J.C. Boyle dam. As an example of one approach, suitable spawning-sized gravels will be placed in the J.C. Boyle bypass and/or full flow reach. Gravel will be supplied using a passive approach prior to the high flow period. Other habitat enhancement measures of similar cost to this scope and method of gravel placement may be conducted instead of or in combination with more limited gravel placement, as agreed by PacifiCorp, Agencies, and Tribes.
3	<b>J.C. Boyle Bypass Barrier Removal.</b> PacifiCorp will remove the sidecast rock barrier approximately 2.5 mile upstream of the J.C. Boyle Powerhouse in the J.C. Boyle bypass reach to provide for the safe, timely, and effective upstream passage of Chinook and coho salmon, steelhead trout, Pacific lamprey, and redband trout. If blasting will be used to remove this barrier, PacifiCorp shall coordinate with the Oregon Department of Fish and Wildlife to ensure the work occurs during the appropriate in-water-work period.
4	<b>J.C. Boyle Powerhouse Gage.</b> PacifiCorp will 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.
5	<b>J.C. Boyle Reservoir Water Quality.</b> PacifiCorp will take measures to improve water quality within J.C. Boyle Reservoir. PacifiCorp will study the feasibility of installing an aeration or mixing system to improve dissolved oxygen within the reservoir, or other measures such as wetland developments that will yield water quality improvements at J.C. Boyle. Costs for these measures are estimated at \$400,000 for capital outlay and \$60,000 annually for operations and maintenance. If measures implemented within the cost estimate do not perform to the satisfaction of Parties, Parties shall Meet and Confer with the objective of resolving issues at reasonable cost. All water quality improvement actions shall be coordinated with the Oregon Department of Environmental Quality. Studies will begin upon signing a Final Agreement. Implementation of feasible enhancement measures will begin upon 61 days following the Federal Determination.

<sup>1</sup> The Company will begin implementation of a water quality monitoring and planning program, consistent with the programs identified in Interim Measures Numbers 11 and 12, when the Agreement in Principle is signed by all Parties. The Company will also implement the ESA interim conservation plan upon which NMFS, USFWS and PacifiCorp have agreed as noted on page 14 of the Agreement in Principle. The timing of implementation of other measures will be specified in the Final Agreement.



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6	<p><b>J.C. Boyle Bypass Reach and Spencer Creek Gaging.</b> PacifiCorp will 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. It is assumed that 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 the USGS website.</p>
7	<p><b>J.C. Boyle Dam Instream Flow Releases.</b> 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 prior to removal of J.C. Boyle.</p> <p>Parties agree that if dam removal occurs in a staged manner, J.C. Boyle is intended to be the last dam removed. Should dam removal occur such that Copco No. 1, Copco No. 2, and Iron Gate dams are removed and J.C. Boyle removal is delayed, PacifiCorp will operate J.C. Boyle as a run of river facility. Provided, however, that if scientific and engineering study results indicate another sequence for dam removal, the parties shall meet and confer to resolve the inconsistency.</p>
8	<p><b>3,000 cfs Power Generation.</b> PacifiCorp may divert a maximum of 3,000 cfs from the Klamath River for purposes of power generation prior to the removal of J.C. Boyle. Water diversions for power generation shall not reduce minimum flow requirements in the J.C. Boyle bypass reach.</p>
9	<p><b>California Klamath Restoration Fund / Coho Enhancement Fund.</b> PacifiCorp will provide \$500,000 annually to establish a fund to be administered jointly by the California Department of Fish and Game (in conjunction with the State Water Resources Control Board) and NOAA Fisheries to fund habitat and fish restoration actions within the Klamath Basin that will benefit coho salmon. This funding obligation will remain in effect until the California dams are removed.</p>
10	<p><b>Iron Gate Turbine Venting.</b> PacifiCorp shall test turbine venting at Iron Gate dam and, if determined to be a successful and viable tool for improving dissolved oxygen concentrations downstream of Iron Gate dam, shall implement turbine venting on an ongoing basis. Studies will begin upon signing the Agreement in Principle with implementation, if feasible, to follow as soon as practicable.</p>
11	<p><b>Nutrient Reduction Measures.</b> PacifiCorp shall implement nutrient reduction measures addressing Basin Plan implementation (Section 401, TMDL's, etc.) with consideration for projects in Oregon and California to improve water quality within Copco and Iron Gate Reservoirs utilizing an adaptive approach based on State Water Resources Control Board recommendations. Estimated costs of \$5 million plus \$500,000 per year for operation. This effort will also provide for specific studies and planning efforts. Studies will begin upon signing a Final Agreement. Implementation of feasible enhancement measures will begin upon 61 days following the Federal Determination.</p>
12	<p><b>Water Quality Monitoring.</b> PacifiCorp will fund water quality monitoring, including on-going BGA and BGA toxin monitoring. Funding of \$500,000 will be provided per year. Monitoring will be performed by an entity agreed upon by the Parties and in coordination with appropriate water quality agencies.</p>
13	<p><b>Water Diversions.</b> PacifiCorp will seek to eliminate screened diversions from Shovel and Negro Creeks, and will seek to modify its water rights to move the point of diversion from Shovel and Negro Creeks to the Klamath River.<sup>2</sup></p>
14	<p><b>Fall Creek Flow Releases.</b> PacifiCorp will provide a continuous flow release to the Fall Creek bypass reach of 5 cfs.</p>
15	<p><b>Hatchery Funding.</b> PacifiCorp will fund 100 percent of hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Game in</p>

<sup>2</sup> The intent of this measure is to provide additional water to Shovel and Negro creeks while not diminishing the value of ranch property owned by PacifiCorp. Consistent with Section IX of the AIP, disposition of water rights in a manner that does not economically disadvantage PacifiCorp's customers will be addressed in the Final Agreement.

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	consultation with the National Marine Fisheries Service. This includes funding the Iron Gate Hatchery facility as well funding of other hatcheries necessary to meet ongoing mitigation objectives following dam removal. Funding will be provided for hatchery operations to meet mitigation requirements and will continue for 8 years following the removal of Iron Gate Dam.
16	<b>Hatchery Genetics Management Plan.</b> PacifiCorp will fund the development and implementation of a Hatchery Genetics Management Plan for the Iron Gate Hatchery.
17	<b>Hatchery: 25 Percent Fractional Marking.</b> PacifiCorp will fund 25 percent fractional marking at Iron Gate hatchery facilities. Funding will include purchase of necessary equipment (e.g. automatic fish marking trailer and tags) as well as personnel costs. PacifiCorp is not responsible for funding possible transition to 100 percent marking program in the future.
18	<b>Hatchery Production Continuity.</b> PacifiCorp will fund a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options and water reuse technologies that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and increasing production potential at existing or new facilities in the basin as well as development of a test well or groundwater supply well. Based on the study results, 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 8 years following the removal of Iron Gate Dam. Production facilities capable of meeting current hatchery mitigation goals must be in place and operational upon removal of Iron Gate Dam.
19	<b>Iron Gate Flow Variability.</b> PacifiCorp shall consult with NMFS and the Bureau of Reclamation, and establish variable flows below Iron Gate Dam through powerhouse releases, if feasible.
20	<b>Iron Gate Gravel Placement.</b> PacifiCorp will place approximately 200 cubic yards of gravels (sizes to be determined by the Agencies and Tribes) into the river downstream of Iron Gate Dam. The delivery area will be monitored each summer to estimate the amount of gravel that has been dispersed during the preceding year and to determine the need for repeated gravel placement. Repeated placement, if necessary, will be limited to no more than 200 cubic yards of gravel annually.
21	<b>Fish Disease Relationship and Control Studies.</b> PacifiCorp will provide funding to study fish disease relationships downstream of Iron Gate Dam. Research will be performed by an entity agreed upon by the Parties, and will include recommendations for control measures as appropriate. Estimated \$500,000 total cost.
22	<b>Water Quality Technical Conference.</b> PacifiCorp will provide one-time funding of \$100,000 to convene a basin-wide technical conference on water quality.

**EXHIBIT 1B**  
**KLAMATH HYDROELECTRIC PROJECT INTERIM MEASURES**  
**AGREEMENT IN PRINCIPLE**

*Case B*

**Interim Measures Description and Timing<sup>3</sup>**

#	Interim Measure Task Title
1	<p><b>Interim Measures Implementation Coordination.</b> PacifiCorp and the Federal Agencies, Indian Tribes and States of Oregon and California will collaboratively develop a written plan which describes the process for communicating, coordinating and implementing interim measures and ongoing operations and maintenance (O &amp; M) activities of the Klamath Hydroelectric Project with agencies and the general public.</p>
2	<p><b>J.C. Boyle Gravel Placement and/or Habitat Enhancement.</b> PacifiCorp will commit \$150,000 per year to improve habitat in the Klamath River below J.C. Boyle dam. As an example of one approach, suitable spawning-sized gravels will be placed in the J.C. Boyle bypass and/or full flow reach. Gravel will be supplied using a passive approach prior to the high flow period. Other habitat enhancement measures of similar cost to this scope and method of gravel placement may be conducted instead of or in combination with more limited gravel placement, as agreed by PacifiCorp, Agencies, and Tribes.</p>
3	<p><b>J.C. Boyle Bypass Barrier Removal.</b> PacifiCorp will remove the sidecast rock barrier approximately 2.5 mile upstream of the J.C. Boyle Powerhouse in the J.C. Boyle bypass reach to provide for the safe, timely, and effective upstream passage of Chinook and coho salmon, steelhead trout, Pacific lamprey, and redband trout. If blasting will be used to remove this barrier, PacifiCorp shall coordinate with the Oregon Department of Fish and Wildlife to ensure the work occurs during the appropriate in-water-work period.</p>
4	<p><b>J.C. Boyle Powerhouse Gage.</b> PacifiCorp will 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.</p>
5	<p><b>J.C. Boyle Reservoir Water Quality.</b> PacifiCorp will take measures to improve water quality within J.C. Boyle Reservoir. PacifiCorp will study the feasibility of installing an aeration or mixing system to improve dissolved oxygen within the reservoir, or other measures such as wetland developments that will yield water quality improvements at J.C. Boyle. Costs for these measures are estimated at \$400,000 for capital outlay and \$60,000 annually for operations and maintenance. If measures implemented within the cost estimate do not perform to the satisfaction of Parties, Parties shall meet and confer with the objective of resolving issues at reasonable cost. All water quality improvement actions shall be coordinated with the Oregon Department of Environmental Quality. Studies will begin upon signing a Final Agreement. Implementation of feasible enhancement measures will begin upon 61 days following the Federal Determination.</p>

<sup>3</sup> Implementation of the measures identified in the Interim Conservation Plan referenced in Section VII.D of the AIP will begin upon execution of the AIP. The timing of implementation of other measures will be specified in the final agreement.

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6	<p><b>J.C. Boyle Bypass Reach and Spencer Creek Gaging.</b> PacifiCorp will 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. It is assumed that 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 the USGS website.</p>
7	<p><b>J.C. Boyle Dam Instream Flow Releases.</b> PacifiCorp will provide flow releases from J.C. Boyle Dam to the J.C. Boyle bypass reach as follows:</p> <p style="padding-left: 40px;">Provide 100 cubic feet per second (cfs) below the dam from December through January Provide 300 cfs below the dam from February through May Provide 200 cfs below the dam from June through November</p> <p>These flow releases will be provided at J.C. Boyle Dam. Ramp rates will comply with current license requirements.</p> <p>The above flow schedule shall be implemented by means of existing facilities. Due to the difficulty of providing precise flow releases with the existing spillgates at the dam, monitoring for purposes of determining compliance with this requirement shall be based upon average daily flows.</p> <p>Any additional flows accrued through implementation of the KBRA, or other conservation efforts, shall be made available for the enhancement of aquatic resources, as requested by the Agencies and Tribes in coordination with PacifiCorp. The Parties shall develop protocols for quantifying any additional flows made available through implementation of the KBRA, and for coordinating with PacifiCorp on the timing and manner of release of such flows.</p> <p>Parties agree that if dam removal occurs in a staged manner, J.C. Boyle is intended to be the last dam removed. Should dam removal occur such that Copco No. 1, Copco No. 2, and Iron Gate dams are removed and J.C. Boyle removal is delayed, PacifiCorp will operate J.C. Boyle as a run of river facility. Provided, however, that if scientific and engineering study results indicate another sequence for dam removal, the parties shall Meet and Confer to resolve the inconsistency.</p>
8	<p><b>3,000 cfs Power Generation.</b> PacifiCorp may divert a maximum of 3,000 cfs from the Klamath River for purposes of power generation prior to the removal of J.C. Boyle. Water diversions for power generation shall not reduce minimum flow requirements in the J.C. Boyle bypass reach.</p>
9	<p><b>California Klamath Restoration Fund / Coho Enhancement Fund.</b> PacifiCorp will provide \$500,000 annually to establish a fund to be administered jointly by the California Department of Fish and Game (in conjunction with the State Water Resources Control Board) and NOAA Fisheries to fund habitat and fish restoration actions within the Klamath Basin that will benefit coho salmon. This funding obligation will remain in effect until the California dams are removed.</p>
10	<p><b>Iron Gate Turbine Venting.</b> PacifiCorp shall test turbine venting at Iron Gate dam and, if determined to be a successful and viable tool for improving dissolved oxygen concentrations downstream of Iron Gate dam, shall implement turbine venting on an ongoing basis. Studies will begin upon signing the Agreement in Principle with implementation, if feasible, to follow as soon as practicable.</p>
11	<p><b>Nutrient Reduction Measures.</b> PacifiCorp shall implement nutrient reduction measures addressing Basin Plan implementation (Section 401, TMDL's, etc.) with consideration for projects in Oregon and California to improve water quality within Copco and Iron Gate Reservoirs utilizing an adaptive approach based on State Water Resources Control Board recommendations. Estimated costs of \$5 million plus \$500,000 per year for operation. This effort will also provide for specific studies and planning efforts. Studies will begin upon signing a Final Agreement. Implementation of feasible enhancement measures will begin upon 61 days following the Federal Determination.</p>

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12	<b>Water Quality Monitoring.</b> PacifiCorp will fund water quality monitoring, including on-going BGA and BGA toxin monitoring. Funding of \$500,000 will be provided per year. Monitoring will be performed by an entity agreed upon by the Parties and in coordination with appropriate water quality agencies.
13	<b>Water Diversions.</b> PacifiCorp will seek to eliminate screened diversions from Shovel and Negro Creeks, and will seek to modify its water rights to move the point of diversion from Shovel and Negro Creeks to the Klamath River. <sup>4</sup>
14	<b>Fall Creek Flow Releases.</b> PacifiCorp will provide a continuous flow release to the Fall Creek bypass reach of 5 cfs.
15	<b>Hatchery Funding.</b> PacifiCorp will fund 100 percent of hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Game in consultation with the National Marine Fisheries Service. This includes funding the Iron Gate Hatchery facility as well funding of other hatcheries necessary to meet ongoing mitigation objectives following dam removal. Funding will be provided for hatchery operations to meet mitigation requirements and will continue for 8 years following the removal of Iron Gate Dam.
16	<b>Hatchery Genetics Management Plan.</b> PacifiCorp will fund the development and implementation of a Hatchery Genetics Management Plan for the Iron Gate Hatchery.
17	<b>Hatchery: 25 Percent Fractional Marking.</b> PacifiCorp will fund 25 percent fractional marking at Iron Gate hatchery facilities. Funding will include purchase of necessary equipment (e.g. automatic fish marking trailer and tags) as well as personnel costs. PacifiCorp is not responsible for funding possible transition to 100 percent marking program in the future.
18	<b>Hatchery Production Continuity.</b> PacifiCorp will fund a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options and water reuse technologies that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and increasing production potential at existing or new facilities in the basin as well as development of a test well or groundwater supply well. Based on the study results, 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 8 years following the removal of Iron Gate Dam. Production facilities capable of meeting current hatchery mitigation goals must be in place and operational upon removal of Iron Gate Dam.
19	<b>Iron Gate Flow Variability.</b> PacifiCorp shall consult with NMFS and the Bureau of Reclamation, and establish variable flows below Iron Gate Dam through powerhouse releases, if feasible.
20	<b>Iron Gate Gravel Placement.</b> PacifiCorp will place approximately 200 cubic yards of gravels (sizes to be determined by the Agencies and Tribes) into the river downstream of Iron Gate Dam. The delivery area will be monitored each summer to estimate the amount of gravel that has been dispersed during the preceding year and to determine the need for repeated gravel placement. Repeated placement, if necessary, will be limited to no more than 200 cubic yards of gravel annually.
21	<b>Fish Disease Relationship and Control Studies.</b> PacifiCorp will provide funding to study fish disease relationships downstream of Iron Gate Dam. Research will be performed by an entity agreed upon by the Parties, and will include recommendations for control measures as appropriate. Estimated \$500,000 total cost.

<sup>4</sup> The intent of this measure is to provide additional water to Shovel and Negro creeks while not diminishing the value of ranch property owned by PacifiCorp. Consistent with Section IX of the AIP, disposition of water rights in a manner that does not economically disadvantage PacifiCorp's customers will be addressed in the Final Agreement.

Signature Copy

22	Water Quality Technical Conference. PacifiCorp will provide one-time funding of \$100,000 to convene a basin-wide technical conference on water quality.
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**EXHIBIT 1C**  
**KLAMATH HYDROELECTRIC PROJECT INTERIM MEASURES**  
**AGREEMENT IN PRINCIPLE**

*Case C*

**Interim Measures Description and Timing<sup>5</sup>**

#	Interim Measure Task Title
1	<b>Interim Measures Implementation Coordination.</b> PacifiCorp and the Federal Agencies, Indian Tribes and States of Oregon and California will collaboratively develop a written plan which describes the process for communicating, coordinating and implementing interim measures and ongoing operations and maintenance (O & M) activities of the Klamath Hydroelectric Project with agencies and the general public.
2	<b>J.C. Boyle Gravel Placement and/or Habitat Enhancement.</b> PacifiCorp will commit \$150,000 per year to improve habitat in the Klamath River below J.C. Boyle dam. As an example of one approach, suitable spawning-sized gravels will be placed in the J.C. Boyle bypass and/or full flow reach. Gravel will be supplied using a passive approach prior to the high flow period. Other habitat enhancement measures of similar cost to this scope and method of gravel placement may be conducted instead of or in combination with more limited gravel placement, as agreed by PacifiCorp, Agencies, and Tribes.
3	<b>J.C. Boyle Bypass Barrier Removal.</b> PacifiCorp will remove the sidecast rock barrier approximately 2.5 mile upstream of the J.C. Boyle Powerhouse in the J.C. Boyle bypass reach to provide for the safe, timely, and effective upstream passage of Chinook and coho salmon, steelhead trout, Pacific lamprey, and redband trout. If blasting will be used to remove this barrier, PacifiCorp shall coordinate with the Oregon Department of Fish and Wildlife to ensure the work occurs during the appropriate in-water-work period.
4	<b>J.C. Boyle Powerhouse Gage.</b> PacifiCorp will 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.
5	<b>J.C. Boyle Reservoir Water Quality.</b> PacifiCorp will take measures to improve water quality within J.C. Boyle Reservoir. PacifiCorp will study the feasibility of installing an aeration or mixing system to improve dissolved oxygen within the reservoir, or other measures such as wetland developments that will yield water quality improvements at J.C. Boyle. Costs for these measures are estimated at \$1.5 million for capital outlay and \$125,000 annually for operations and maintenance. If measures implemented within the cost estimate do not perform to the satisfaction of Parties, Parties shall meet and confer with the objective of resolving issues at reasonable cost. All water quality improvement actions shall be coordinated with the Oregon Department of Environmental Quality. Studies will begin upon signing a Final Agreement. Implementation of feasible enhancement measures will begin upon 61 days following Federal Determination.

<sup>5</sup> Implementation of the measures identified in the Interim Conservation Plan referenced in Section VII.D of the AIP will begin upon execution of the AIP. The timing of implementation of other measures will be specified in the Final Agreement.

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6	<p><b>J.C. Boyle Bypass Reach and Spencer Creek Gaging.</b> PacifiCorp will 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. It is assumed that 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 the USGS website.</p>
7	<p><b>J.C. Boyle Dam Instream Flow Releases.</b> PacifiCorp will provide flow releases from J.C. Boyle Dam to the J.C. Boyle bypass reach as follows:</p> <p style="padding-left: 40px;">Provide 100 cubic feet per second (cfs) below the dam from December through January          Provide 300 cfs below the dam from February through May          Provide 200 cfs below the dam from June through November</p> <p>These flow releases will be provided at J.C. Boyle Dam. Ramp rates will comply with current license requirements.</p> <p>The above flow schedule shall be implemented by means of existing facilities. Due to the difficulty of providing precise flow releases with the existing spillgates at the dam, monitoring for purposes of determining compliance with this requirement shall be based upon average daily flows.</p> <p>Any additional flows accrued through implementation of the KBRA, or other conservation efforts, shall be made available for the enhancement of aquatic resources, as requested by the Agencies and Tribes in coordination with PacifiCorp. The Parties shall develop protocols for quantifying any additional flows made available through implementation of the KBRA, and for coordinating with PacifiCorp on the timing and manner of release of such flows.</p> <p>Parties agree that if dam removal occurs in a staged manner, J.C. Boyle is intended to be the last dam removed. Should dam removal occur such that Copco No. 1, Copco No. 2, and Iron Gate dams are removed and J.C. Boyle removal is delayed, PacifiCorp will operate J.C. Boyle as a run of river facility. Provided, however, that if scientific and engineering study results indicate another sequence for dam removal, the parties shall Meet and Confer to resolve the inconsistency.</p>
8	<p><b>3,000 cfs Power Generation.</b> PacifiCorp may divert a maximum of 3,000 cfs from the Klamath River for purposes of power generation prior to the removal of J.C. Boyle. Water diversions for power generation shall not reduce minimum flow requirements in the J.C. Boyle bypass reach.</p>
9	<p><b>California Klamath Restoration Fund / Coho Enhancement Fund.</b> PacifiCorp will provide \$500,000 annually to establish a fund to be administered jointly by the California Department of Fish and Game (in conjunction with the State Water Resources Control Board) and NOAA Fisheries to fund habitat and fish restoration actions within the Klamath Basin that will benefit coho salmon. This funding obligation will remain in effect until the California dams are removed.</p>
10	<p><b>Iron Gate Turbine Venting.</b> PacifiCorp shall test turbine venting at Iron Gate dam and, if determined to be a successful and viable tool for improving dissolved oxygen concentrations downstream of Iron Gate dam, shall implement turbine venting on an ongoing basis. Studies will begin upon signing the Agreement in Principle with implementation, if feasible, to follow as soon as practicable.</p>
11	<p><b>Nutrient Reduction Measures.</b> PacifiCorp shall implement nutrient reduction measures addressing Basin Plan implementation (Section 401, TMDL's, etc.) with consideration for projects in Oregon and California to improve water quality within Copco and Iron Gate Reservoirs utilizing an adaptive approach based on State Water Resources Control Board recommendations. Estimated costs of \$10 million plus \$1 million per year for operation. This effort will also provide for specific studies and planning efforts. Studies will begin upon signing a Final Agreement. Implementation of feasible enhancement measures will begin upon 61 days following Federal Determination.</p>



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12	<b>Water Quality Monitoring.</b> PacifiCorp will fund water quality monitoring including on-going BGA and BGA toxin monitoring. Funding of \$500,000 will be provided per year. Monitoring will be performed by an entity agreed upon by the Parties and in coordination with appropriate water quality agencies.
13	<b>Fish Tissue Consumption Risk Analysis.</b> PacifiCorp will provide funding of \$250,000 for California Office of Environmental Health Hazard Assessment fish tissue consumption risk analysis studies to be performed by an entity agreed upon by Parties.
14	<b>Water Diversions.</b> PacifiCorp will seek to eliminate screened diversions from Shovel and Negro Creeks, and will seek to modify its water rights to move the point of diversion from Shovel and Negro Creeks to the Klamath River. <sup>6</sup>
15	<b>Fall Creek Flow Releases.</b> PacifiCorp will provide a continuous flow release to the Fall Creek bypass reach of 5 cfs.
16	<b>Hatchery Funding.</b> PacifiCorp will fund 100 percent of hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Game in consultation with the National Marine Fisheries Service. This includes funding the Iron Gate Hatchery facility as well funding of other hatcheries necessary to meet ongoing mitigation objectives following dam removal. Funding will be provided for hatchery operations to meet mitigation requirements and will continue for 8 years following the removal of Iron Gate Dam.
17	<b>Hatchery Genetics Management Plan.</b> PacifiCorp will fund the development and implementation of a Hatchery Genetics Management Plan for the Iron Gate Hatchery.
18	<b>25 Percent Fractional Marking.</b> PacifiCorp will fund 25 percent fractional marking at Iron Gate hatchery facilities. Funding will include purchase of necessary equipment (e.g. automatic fish marking trailer and tags) as well as personnel costs. PacifiCorp is not responsible for funding possible transition to 100 percent marking program in the future.
19	<b>Hatchery: Hatchery Production Continuity.</b> PacifiCorp will fund a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options and water reuse technologies that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and increasing production potential at existing or new facilities in the basin as well as development of a test well or groundwater supply well. Based on the study results, 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 8 years following the removal of Iron Gate Dam. Production facilities capable of meeting current hatchery mitigation goals must be in place and operational upon removal of Iron Gate Dam.
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<sup>6</sup> The intent of this measure is to provide additional water to Shovel and Negro creeks while not diminishing the value of ranch property owned by PacifiCorp. Consistent with Section IX of the AIP, disposition of water rights in a manner that does not economically disadvantage PacifiCorp's customers will be addressed in the Final Agreement.

Signature Copy

22	<b>Fish Disease Relationship and Control Studies.</b> PacifiCorp will provide funding to study fish disease relationships downstream of Iron Gate Dam. Research will be performed by an entity agreed upon by the Parties, and will include recommendations for control measures as appropriate. Estimated \$500,000 total cost.
23	<b>Water Quality Technical Conference.</b> PacifiCorp will provide one-time funding of \$100,000 to convene a basin-wide technical conference on water quality.

AGREEMENT FOR CONFIDENTIALITY OF SETTLEMENT COMMUNICATIONS  
AND NEGOTIATIONS PROTOCOL  
RELATED TO THE KLAMATH HYDROELECTRIC PROJECT

1. Purpose

The purpose of this Agreement is to facilitate the negotiation of a final agreement for the removal of PacifiCorp's Klamath Hydroelectric Project and related issues, consistent with the principles of the Agreement in Principle, through (i) establishing a protocol for negotiations, and (ii) ensuring that communications exchanged during negotiations are kept confidential to the extent permitted by law.

2. Definitions

2.1. "*Agreement in Principle*" or "*AIP*" means the Agreement in Principle entered in November 2008 by PacifiCorp, the United States, the State of California, and the State of Oregon, which Agreement in Principle committed the parties to continue good-faith negotiations to reach a final agreement regarding the removal of the Project and related issues and established the baseline terms for such final agreement.

2.2. "*Klamath Basin Restoration Agreement*" or "*KBRA*" means the document proposed in January 2008 addressing Klamath Basin issues.

2.3. "*KSG*" means the Klamath Settlement Group.

2.4. "*Negotiation Group*" means Participants as a whole.

2.5. "*Participant*" means each entity signing this Agreement and participating in this negotiation, including the entity's boards, officers, directors, managers, employees, attorneys, consultants, agents, successors, assigns, and other representatives.

2.6. "*Project*" means J.C. Boyle Dam, Copco No. 1 Dam, Copco No. 2 Dam, and Iron Gate Dam and appurtenant works as currently licensed to PacifiCorp (FERC Project No. 2082).

2.7. "*Proprietary Commercial Information*" and related terms have the meanings set forth below.

"*Commercial Information*" means: (i) any discussion materials, compilations, and analyses, whether prepared by PacifiCorp or another Participant, pertaining to Project generation, historic and future Project costs and estimates, financial and operational performance projections, and models and other such data related to historic and future Project performance; (ii) any information regarding the development and output of PacifiCorp's pricing models and forward price curves; or (iii) any information about the nature, terms, conditions, costs, operational characteristics, or other facts and data respecting any resource development alternatives or opportunities.

"*Proprietary Commercial Information*" means any Commercial Information that is trade secret or otherwise confidential information as defined by and protected under the laws of the State of Oregon or other applicable law, including the federal Freedom of Information Act, 5 U.S.C. § 552(b)(4).

*“Non-Proprietary Commercial Information”* means any Commercial Information that at the time of disclosure: (i) is generally available to the public (other than as a result of improper disclosure by a Participant); (ii) has been filed as public information in any public forum; (iii) was available to a Participant on a non-confidential basis from a source other than a third-party under a duty of confidentiality to PacificCorp; or (iv) was independently developed by a Participant or known to the Participant prior to its receipt.

2.8. *“Settlement Communication”* means any verbal or written communication made by a Participant in this negotiation, excluding: (i) any document consistent with the AIP that is filed, or that the Negotiating Group agrees may be filed, with FERC, Congress, state legislatures, state public utility commissions, or state water quality agencies; and (ii) any document a Participant is required to disclose by law or regulation under subpoena or other mandatory legal or regulatory process. For purposes of this Agreement, Settlement Communication includes Proprietary Commercial Information, as defined above.

### 3. Confidentiality

3.1. Settlement Communications shall be kept confidential by each Participant to the extent permitted by applicable law, and shall not be admissible as evidence, argument, or admission in the FERC relicensing proceeding or other administrative, regulatory, arbitral, judicial, or similar proceeding, in accordance with this Agreement and, as applicable, with Federal Rule of Evidence 408 and similar Oregon and California statutes.

3.2. Participants shall use Settlement Communications only to facilitate settlement. Individual Participants may distribute Settlement Communications within the entity they represent, provided that each recipient is notified that Settlement Communications are confidential and is required to preserve the confidentiality of Settlement Communications pursuant to the terms of this Agreement. Participants shall not disclose such communications to non-Participants. Notwithstanding the prohibition of the preceding sentence, a Participant who is a public agency may disclose such communications to a non-Participant that requests disclosure, to the extent such disclosure is required or warranted by the Freedom of Information Act, state public records laws, or other applicable law; provided that: (i) the agency shall notify the Negotiation Group of the request or any required disclosure at least seven days before disclosure, and (ii) all Participants, other than the agency making the decision about the disclosure, shall not support, and to the extent they deem appropriate shall oppose, the disclosure of such Settlement Communications, in any appropriate proceeding or forum.

3.3. Each Participant shall make best efforts to label its written communications made in negotiations as follows: “Confidential and Privileged—For Settlement Purposes Only.” However, such a document shall be a Settlement Communication if it meets the definition of Settlement Communication even if not so labeled.

3.4. Before disclosure of Commercial Information, a Participant shall characterize Commercial Information as Proprietary or non-Proprietary. This characterization shall not be altered by disclosure of such information through this process, and the use of such information by the originating Participant outside of this process shall not be restricted through this Agreement. Each Participant shall also make best efforts to rely on and disclose only non-Proprietary Commercial Information, on any issue where such

information has probity (for settlement purposes) similar to Proprietary Commercial Information.

3.5. Unless otherwise agreed to by the Negotiation Group, Participants shall not initiate contact with the media to discuss or disclose any information regarding the negotiations. If media initiate contact, a Participant may state its interests in the negotiations, but shall not disclose Settlement Communications or the status or prospects for success of negotiations, or characterize other Participants' interests or positions, unless disclosure is required or warranted by law. The Participants shall cooperate and coordinate in the development and issuance of individual or joint media releases regarding the negotiations, and on appropriate outreach to non-Participants. The Participants also shall provide periodic reports on the progress of the negotiations to the KSG members including those who are not Participants.

#### 4. Negotiations Protocol

4.1. The Participants shall use the AIP as the basis for negotiating and developing in good faith a final agreement consistent with the principles of the AIP, including the principle that the AIP and KBRA are indivisible parts of a unified approach to resolving Klamath Basin issues. The Participants shall endeavor to complete negotiations no later than June 30, 2009.

4.2. The Participants shall periodically meet as a whole through the Negotiation Group. The Negotiation Group shall establish small work groups to address specific assigned substantive issues. The work groups shall provide written proposed settlement terms to the Negotiation Group for acceptance or revision. The Negotiation Group shall use a single-text approach to record decisions, revisions, and final wording in a single document for ultimate use in a final agreement.

4.3. Participants shall dedicate staff and resources necessary to prepare for and attend meetings of the Negotiation Group and applicable work groups.

4.4. Participants shall apply good faith, common courtesies, and professionalism in their conduct in negotiations and meetings.

4.5. A neutral and independent facilitator may be used to help manage negotiations. The facilitator's duties may include but not be limited to preparing agendas, schedules, meeting logistics, and follow-up action items.

4.6. The Negotiation Group shall strive to make decisions by consensus of all Participants. Any Participant may request a caucus at any reasonable time during a meeting for the purpose of exploring resolution of a disputed issue. A Participant disagreeing with a proposed resolution shall offer an alternative resolution. If the Negotiation Group is unable to achieve consensus on an issue, the alternative proposed by an objecting Participant shall be noted. At the request of the objecting Participant, or at another appropriate time before the conclusion of negotiations, the Participants shall return to a disputed issue for the purpose of considering new alternatives or information in an effort to achieve consensus. A Participant's dispute on any particular issue shall not be grounds for exclusion from the Negotiation Group.

4.7. If, after every reasonable effort to reach consensus on an issue has been exhausted, and no consensus has been achieved on the issue, the Participants shall consider whether

the final agreement will include, omit, or remain neutral on resolution of the issue. This consideration will be individual to the Participants and shall not be subject to consensus. Each Participant will make its own decision whether to support and sign the final agreement.

4.8. During negotiations, each Participant shall refrain from any action that does not support or further cooperative negotiations.

4.9. After December 11, 2008, the Participants may consider adding new entities as Participants. Any such entity must sign this Agreement to become a Participant. New Participants joining the negotiations agree to take the negotiations as they find them and not to seek to reopen resolved issues.

#### 5. Remedies and Reservations

5.1. Each Participant reserves its rights to protect, defend, and discharge its interests and duties in any administrative, regulatory, legislative, or judicial proceeding, including but not limited to the FERC relicensing proceeding; provided, Participants shall not disclose Settlement Communications in such proceedings.

5.2. Nothing in this Agreement obligates any Participant to enter any other agreement. No contractual relationship, express or implied, shall be deemed to exist between Participants by virtue of this Agreement.

5.3. A Participant's failure to abide by this Agreement shall be grounds for other Participants to withdraw from negotiations or to continue negotiations only with other Participants abiding by this Agreement.

5.4. A Participant's remedies for a violation of this Agreement are limited to: (i) withdrawal from negotiations; (ii) continued negotiation with complying Participants; or (iii) enforcement of non-admissibility of Settlement Communications and non-disclosure of Proprietary Commercial Information in accordance with this Agreement and applicable law.

5.5. The confidentiality provisions of this Agreement shall survive termination of this Agreement and remain binding on any Participant withdrawing from negotiations.

#### 6. Miscellany

6.1. This Agreement supersedes the *Agreement Concerning Confidentiality of Communications Made during Settlement Negotiations, Including Exchange of Proprietary Commercial Information, related to Relicensing of the Klamath Project (FERC P-2082)*, as amended May 2006.

6.2. This Agreement does not establish any third-party beneficiary.

6.3. This Agreement shall be binding on each Participant, including its boards, officers, directors, managers, employees, attorneys, consultants, agents, successors, assigns, and other representatives, and on the facilitator.

6.4. This Agreement may be amended upon consensus and signature of the Participants.

6.5. This Agreement shall be effective on December 11, 2008.

6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.

Dean Brockbank

Signature

Dean Brockbank

Name Typed/Printed

Dec. 3, 2008

Date

V.P. & General Counsel  
Title Pacific Energy

Pacific Corp

Participant Represented

6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.

Michael Carrier

Signature

Michael Carrier

Name Typed/Printed

December 3, 2008

Date

Natural Resources Policy Director


Title

Office of Governor - State of Oregon

Participant Represented



6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.

  
Signature for Rodney R. McInnis  
Regional Administrator, Southwest Region  
National Marine Fisheries Service

Steven A. Edmondson

Name Typed/Printed

December 3, 2008

Date

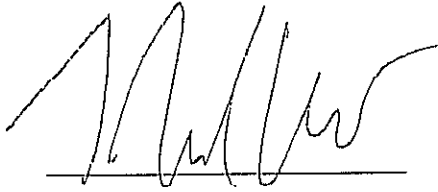
Northern California Habitat Supervisor

Title

National Marine Fisheries Service

Participant Represented

6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.



Signature

L. MICHAEL ROBERT

Name Typed/Printed

DECEMBER 3, 2008

Date

COUNSEL TO THE SECRETARY

Title

UNITED STATES / DEPARTMENT OF THE INTERIOR

Participant Represented