

162 FERC ¶ 61,236  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

PacifiCorp

Project Nos. 2082-062 and  
14803-000

ORDER AMENDING LICENSE AND DEFERRING CONSIDERATION  
OF TRANSFER APPLICATION

(Issued March 15, 2018)

1. On September 23, 2016, and supplemented on March 1, June 23, December 1, and December 4, 2017, PacifiCorp, licensee for the Klamath Hydroelectric Project No. 2082,<sup>1</sup> together with the Klamath River Renewal Corporation (Renewal Corporation), filed an application to amend and partially transfer the project license from PacifiCorp to the Renewal Corporation. Specifically, PacifiCorp and the Renewal Corporation propose that PacifiCorp's existing license be amended to administratively remove four developments, create and administratively place the four developments into a new license for the Lower Klamath Project No. 14803, and transfer the Lower Klamath Project No. 14803 license to the Renewal Corporation.
2. For the reasons discussed below, we grant the application to amend the project license, and defer our decision on the proposed partial license transfer.

**I. Background**

3. The 169-megawatt (MW) Klamath Project is located primarily on the Klamath River in Klamath County, Oregon and Siskiyou County, California and includes federal lands administered by the U.S. Bureau of Reclamation (Reclamation) and U.S. Bureau of Land Management (BLM). The project consists of eight developments: seven developments with hydroelectric generation and one non-generating development. From upstream to downstream, the eight developments are the East Side, West Side, Keno (non-generating), J.C. Boyle, Copco No. 1, Copco No. 2, Fall Creek, and Iron Gate developments. All but the Fall Creek development are on the Klamath River between

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<sup>1</sup> *The California Oregon Power Company*, 13 FPC 1 (1954).

river miles (RM) 190.1 and 254.3.<sup>2</sup> The Fall Creek development is on Fall Creek, a tributary to the Klamath River at RM 196.3, about 0.4 miles south of the Oregon-California border.

4. The original license for the Klamath Project No. 2082 was issued on January 28, 1954,<sup>3</sup> and expired on February 28, 2006. The project has been operating under annual licenses since that time.<sup>4</sup>

5. On February 25, 2004, PacifiCorp filed an application for a new license to continue to operate and maintain the Klamath Project No. 2082. In December 2005, the Commission issued a notice that the license application was ready for environmental analysis and soliciting comments, interventions, protests, terms, conditions, prescriptions, and recommendations. In response to the notice, the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) filed preliminary mandatory fishway prescriptions under Section 18 of the Federal Power Act (FPA).<sup>5</sup> BLM filed preliminary mandatory conditions under section 4(e) of the FPA.<sup>6</sup>

6. In November 2007, Commission staff issued a final Environmental Impact Statement (EIS) on the application. The final EIS analyzed alternatives that included decommissioning and physically removing the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments, but ultimately recommended issuing a new license that included those four developments with additional mitigation measures.<sup>7</sup>

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<sup>2</sup> River miles are measured from the mouth or confluence of a river (RM 0) to a point upstream.

<sup>3</sup> *The California Oregon Power Company*, 13 FPC 1. On June 16, 1961, the license was transferred to Pacific Power and Light Company (25 FPC 1154) and then to PacifiCorp on November 23, 1988 (45 FERC ¶ 62,146). The original license order was for the construction of the Big Bend No. 2 development, also known as the J.C. Boyle development. Later orders incorporated the other project developments into the license.

<sup>4</sup> 16 U.S.C. § 808(a)(1) (2012).

<sup>5</sup> 16 U.S.C. § 811 (2012).

<sup>6</sup> 16 U.S.C. § 797(e)(2012).

<sup>7</sup> The staff alternative recommended issuing a new license for the Fall Creek development, decommissioning the East Side and West Side developments, and

7. PacifiCorp evaluated the mandatory fishway prescriptions, section 4(e) mandatory conditions, and Commission staff's recommended conditions for relicensing, which it determined together would cause the project to operate at an annual net loss.<sup>8</sup> Thereafter, PacifiCorp entered into negotiations with federal and state resource agencies, tribes, local governments, nongovernmental organizations, and irrigation districts in order to evaluate alternatives to relicensing.

8. In November 2008, Oregon, California, U.S. Department of the Interior (Interior), U.S. Department of Commerce (Commerce), and PacifiCorp developed a framework, known as the Agreement in Principle, for the potential removal of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments to restore the lower portion of the Klamath River to a "free-flowing" condition. In February 2010, PacifiCorp and 47 other parties, including Oregon, California, Interior, and NMFS, executed the Klamath Hydroelectric Settlement Agreement (Settlement Agreement), which provided for the removal of the four developments after passage of federal legislation and approval by the Secretary of the Interior.

9. Congress, however, did not enact the required legislation by January 2016, which triggered the Settlement Agreement's dispute resolution procedures.<sup>9</sup> Following several dispute resolution meetings, Oregon, California, Interior, Commerce, and PacifiCorp proposed amendments to the Settlement Agreement that would eliminate the need for federal legislation and instead achieve dam removal through a license transfer and surrender process.

10. On April 6, 2016, PacifiCorp, California, Oregon, Interior, NMFS, the Yurok Tribe, and the Karuk Tribe executed the Amended Klamath Hydroelectric Settlement Agreement (Amended Settlement Agreement).<sup>10</sup> The Amended Settlement Agreement

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removing the Keno development from the project license because it is not necessary for power generation.

<sup>8</sup> See Klamath Hydroelectric Project Agreement in Principle, Nov. 24, 2008, at 5.

<sup>9</sup> The Klamath Basin Restoration Agreement, which was executed concurrently with the Settlement Agreement and was part of the basis for federal legislation to remove the dams, expired on December 31, 2015.

<sup>10</sup> PacifiCorp attached the Amended Settlement Agreement to its May 6, 2016 motion to hold the relicensing proceeding in abeyance and to its September 23, 2016 application for amendment and transfer. The parties have provided the Commission with the Amended Settlement Agreement for informational purposes only. The Amended Settlement Agreement itself is not for Commission approval.

sets out a process by which PacifiCorp would transfer the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments (with a total of 163 MW) to the Renewal Corporation, which would then seek to physically remove the developments under the Commission's license surrender procedures.

11. On May 6, 2016, PacifiCorp requested that the Commission hold the relicensing proceeding for the Klamath Project in abeyance in accordance with the Amended Settlement Agreement. On June 16, 2016, the Commission granted PacifiCorp's motion.<sup>11</sup>

## II. Application and Amended Settlement Agreement

### A. Application

12. On September 23, 2016, PacifiCorp and the Renewal Corporation filed an application to amend the Klamath Project No. 2082 to remove all references to the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments from the current project license and boundary, create a new Lower Klamath Project No. 14803 license that would include those four developments, and transfer the Lower Klamath Project No. 14803 to the Renewal Corporation. On the same day, the Renewal Corporation filed an application to surrender the Lower Klamath Project license and physically remove those four developments from the Klamath River. The transfer and surrender applications, and the effects associated with dam removal, are being addressed in separate Commission proceedings.<sup>12</sup> The applicants ask that, after our approval of the license amendment and transfer, we allow six months for the Renewal Corporation to accept the license for the Lower Klamath Project before acting on the surrender application.<sup>13</sup>

13. On March 1, June 23, December 1, and December 4, 2017, PacifiCorp and the Renewal Corporation supplemented the amendment and transfer application in response to additional information requests from Commission staff on the Renewal Corporation's

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<sup>11</sup> *PacifiCorp*, 155 FERC ¶ 61,271 (2016).

<sup>12</sup> The applicants also request that upon approval of the license transfer, the Commission allow six months for the Renewal Corporation to accept the license, because the Amended Settlement Agreement requires that the Renewal Corporation satisfy certain requirements before accepting the license. The applicants additionally request that the effective date of the amendment be made concurrent with the Renewal Corporation's acceptance of the new license for the Lower Klamath Project. We will address these requests with the applications for transfer and surrender.

<sup>13</sup> See Renewal Corporation's September 23 Application.

legal, technical, and financial capacity to fulfill its contractual obligations under the Amended Settlement Agreement.

**B. Amended Settlement Agreement**

14. As noted above, PacifiCorp and the Renewal Corporation filed the license amendment and transfer application in accordance with the Amended Settlement Agreement, which provides that PacifiCorp will continue to operate and maintain the proposed Lower Klamath Project and will assume the financial and legal liabilities for the developments pending surrender of the transferred license.<sup>14</sup> PacifiCorp and the Renewal Corporation have entered into an operation and maintenance agreement allowing PacifiCorp to continue operating the four dams for the benefit of its customers following transfer to the Renewal Corporation. However, the Amended Settlement Agreement provides that PacifiCorp will not be a co-applicant or co-licensee for the Renewal Corporation's surrender application (although, as discussed below, it allows for that possibility) and that the Renewal Corporation alone will remove the dams.<sup>15</sup> The parties state that they view this division of the Klamath Project as a necessary precondition of the request for approval of the partial license transfer.

15. The Amended Settlement Agreement provides that, before the license transfer will become effective, the Renewal Corporation must demonstrate to PacifiCorp and the States that a number of conditions have been met.<sup>16</sup> These conditions include the following: (a) the Renewal Corporation has provided notice of completion of the Definite Plan;<sup>17</sup> (b) the Renewal Corporation has met the requirements of section 7.1.3 (indemnification of PacifiCorp, Oregon, and California) and Appendix L (contractor qualifications) of the Amended Settlement Agreement; (c) PacifiCorp and the States agree that the Renewal Corporation has made sufficient and timely progress in obtaining necessary permits and approvals to effectuate facilities removal; (d) the Renewal Corporation, the States, and PacifiCorp are assured that sufficient funding is available to carry out facilities removal; (e) the Renewal Corporation, the States, and PacifiCorp are each assured that their respective risks associated with facilities removal have been sufficiently mitigated consistent with Appendix L; (f) the Renewal Corporation, the States, and PacifiCorp agree that no order of a court or the Commission is in effect that

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<sup>14</sup> Amended Settlement Agreement at 7.1.6.

<sup>15</sup> *Id.* at 7.1.7.

<sup>16</sup> *Id.* at 7.1.4.

<sup>17</sup> The Definite Plan, described in more detail below, is to include a detailed plan and timetable for dam decommissioning and removal.

would prevent facilities removal; (g) the Renewal Corporation and PacifiCorp have executed documents conveying the property and rights necessary to carry out facilities removal; and (h) the Renewal Corporation accepts license transfer under the conditions specified by the Commission in its order approving transfer.

16. The Amended Settlement Agreement provides that the target date to begin dam removal is January 1, 2020.<sup>18</sup> It also states that the Renewal Corporation will remove the four developments in accordance with a decommissioning plan and will have three sources of funding for decommissioning and restoration activities: (1) an Oregon PacifiCorp Customer Surcharge; (2) a California PacifiCorp Customer Surcharge; and (3) a California Bond Funding measure. The Oregon and California Customer Surcharges, which will be administered by each state's Public Utilities Commission (PUC), are charges to PacifiCorp's customers in those states to generate funds for dam removal. The Amended Settlement Agreement states that the California Bond Funding is part of a state water bond that will fund, up to \$250 million, the difference between the funds raised by the state customer surcharges and the actual cost to complete removal of the four dams.<sup>19</sup> In total, these three sources of funding will make \$450 million available to the Renewal Corporation, which is the maximum monetary contribution of the States of California and Oregon.

17. The Amended Settlement Agreement provides that the three accounts will be managed by trustees selected by the states' PUCs, who will manage the funds using instructions prepared by the states in consultation with the federal parties. Instructions will dictate, among other things, whether and when to disburse funds to the Renewal Corporation.

### **III. Public Notice, Interventions, and Comments**

18. On October 5, 2017, the Commission issued public notice of the license amendment and transfer application, establishing November 6, 2017, as the deadline for filing comments, interventions, and protests. Timely notices of intervention were filed by Oregon Department of Fish and Wildlife, Public Utility Commission of Oregon, Oregon Department of Environmental Quality (Oregon DEQ), Oregon Water Resources Department, California Natural Resources Agency, California Department of Fish and

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<sup>18</sup> Amended Settlement Agreement at 7.3.1.

<sup>19</sup> *Id* at 4.1.

Wildlife, Interior, California State Water Resources Control Board, NMFS, and U.S. Forest Service.<sup>20</sup>

19. The following tribes, local governments, non-governmental entities, and individuals filed timely, unopposed motions to intervene: Hoopa Valley Tribe; Karuk Tribe; Yurok Tribe; Siskiyou County, California; Klamath County, Oregon; American Whitewater; Friends of the River; Klamath Irrigation District; Klamath Water Users Association; Pacific Coast Federation of Fishermen's Associations together with the Institute for Fisheries Resources; Siskiyou County Water Users Association (Siskiyou Water Users); Trout Unlimited together with American Rivers, California Trout, Northern California Council of Fly Fishers International, Salmon River Restoration Council, and Sustainable Northwest; WaterWatch of Oregon; Bart Kent together with Mary Cunningham; Chrissie Reynolds; Jan Hamilton; John and Loy Beardsmore; Mark and Lisa Fischer; Phil Reynolds; and William Jackson.<sup>21</sup> Klamath Riverkeeper, Klamath Tribes, Kikaceki Land Conservancy, Oregon Wild, and Humboldt County, California, filed late motions to intervene, which were unopposed. The Commission granted the late motions to intervene.<sup>22</sup> Congressman Jared Huffman, other non-governmental entities, and hundreds of individuals filed comments on the proposed amendment and transfer, as well as on the proposed surrender application to physically remove the four dams.

20. Several intervenors and commenters support the amendment and transfer application and ask that the Commission take prompt action to ensure that the removal of the Lower Klamath Project developments commences no later than January 1, 2020. They maintain that the Renewal Corporation has secured the financial, legal, and technical capabilities and resources needed and conclude the license amendment and transfer is in the public interest and would ultimately result in benefits to Klamath-origin salmon, namely by removing physical barriers, increasing fish habitat, and improving water quality.

21. The Klamath, Hoopa Valley, Karuk, and Yurok Tribes all filed comments supporting the proposed amendment, transfer, and surrender of the Lower Klamath Project developments. They state that removal of the dams will restore over 400 miles of salmon habitat in the Klamath River, which in turn will result in improvements in human health in their communities, including decreased rates of diabetes and heart disease.

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<sup>20</sup> Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, the agencies filing timely notices of intervention became parties to the proceeding upon the timely filing of their notices of intervention. 18 C.F.R. § 385.214(a)(2) (2017).

<sup>21</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2017).

<sup>22</sup> December 12, 2017, and January 18, 2018, Notices Granting Late Intervention.

They indicate that many tribal members also rely on salmon and other anadromous fish for their livelihoods, and the Yurok Tribe hopes that dam removal will allow it to reestablish its commercial fishery, which ceased operation in 2016 due to low salmon returns. Additionally, they state that salmon has significant religious and cultural significance to the tribes of the Klamath River Basin.

22. Many commenters assert that the project has operated under the existing license without proper mitigation for adverse impacts to fish and other aquatic resources in the basin. They state that dam removal will improve water quality in the Klamath River. Specifically, the Yurok Tribe explains that warmer and more stagnant water in the reservoirs during the fall delays salmon spawning and hatching, which increases the risk of exposing juvenile salmonids to higher spring and summer water temperatures and high concentrations of disease-causing spores and toxic algae blooms.

23. Other commenters support dam removal for economic reasons, arguing that keeping the dams in place would likely require costly upgrades, including the development of fish passage facilities. They allege that, given the relatively low power output of the dams, customers would be charged higher rates to finance any upgrades. They also state that dam removal and restoration will create hundreds of jobs in the area, increase tourism and recreational fishing industries, and may also result in lower electricity costs. American Whitewater and others support the amendment, transfer, and surrender of the license in order to provide for enhanced recreation, including the opportunity for multi-day boating trips on a freely-flowing river.

24. Those filing motions to intervene in opposition to the proposal include Siskiyou Water Users, John and Loy Beardsmore, Chrissy Reynolds, Jan Hamilton, William Jackson, Phil Reynolds, Mark and Lisa Fischer, Bart Kent and Mary Cunningham, and Siskiyou County. Numerous commenters also oppose the amendment and transfer application. Many question whether the Renewal Corporation is technically and financially capable of operating the project, removing the developments, and restoring the environment. Siskiyou County suggests that the Renewal Corporation is a 'shell' corporation, created for the purpose of shielding PacifiCorp, California, and Oregon from liability associated with dam removal, with limited resources to address costs in excess of those anticipated.

25. Others question the science and engineering in support of dam removal, arguing that the developments have not caused declines in anadromous fisheries nor have they adversely affected water quality. Further, they maintain that dam removal will adversely affect the salmon fishery, release toxic sediment downstream, expose tribal burial grounds and artifacts, increase flooding, reduce downstream flows, affect lake recreation, and reduce property values. They also maintain that dam removal will adversely affect private wells, the local tax base, access to potable water, water storage for fighting fires, drought and irrigation, terrestrial and aquatic wildlife; will eliminate a source of renewable power, resulting in an increase in electricity costs; and will affect local

roadways and traffic, and eliminate jobs. Several commenters suggest that feasible alternatives to dam removal exist and have not been sufficiently considered. The Kikaceki Land Conservancy and John and Loy Beardsmore note that ceremonial and burial sites of the Shasta Nation may be affected by dam removal.

26. Several commenters raise issues related to the physical decommissioning of the four dams, including: Commission staff's evaluation of the environmental and socioeconomic effects of the proposed surrender; the conditions that the Commission would impose on decommissioning to address the potential loss of property values and to improve recreation; and the consistency of dam removal with various federal statutes, the Klamath Water Compact, and water rights. Siskiyou County and several local property owners state that the Commission cannot transfer the license to the Renewal Corporation without completing an environmental review of the entire river system under the National Environmental Policy Act (NEPA) that adequately discusses adverse impacts of dam removal and alternatives to dam removal.

27. The Siskiyou Water Users believe that dam removal will result in a substantial reduction in flows that will adversely affect salmon and other wildlife in the river. The group believes this reduction in flows may also lead to increased pressure to retrieve additional water from the Siskiyou Water Users for the benefit of those salmon. The Siskiyou Water Users also state that the Amended Settlement Agreement has not been approved by the California PUC; that the Renewal Corporation's dam removal plans will violate NEPA, minimum flow release requirements at Iron Gate dam, and the Klamath Water Compact, and will lead to the creation of additional water storage projects in the basin along the tributaries of the Sycan, Williamson, and Sprague Rivers. The Siskiyou Water Users alternatively recommend that the four dams be relicensed to PacifiCorp or another entity.

28. Siskiyou County also notes the potential for adverse impacts, including: release of contaminated sediment and its impacts to fish and aquatic resources; the removal of water storage that aids in drought mitigation and wildfire protection in the county; increased risk of flooding; lower property values; and lower local government revenues. Siskiyou County also questions the research supporting the conclusion that dam removal will benefit salmon.

29. The Klamath Irrigation District (District) filed comments regarding the Amended Settlement Agreement and the related Klamath Power and Facilities Agreement and seeks to ensure that these agreements are carried out and properly considered by the Commission to determine the public interest. Although it supports the Amended Settlement Agreement, the District expresses concern with other parties' commitments to mitigating the adverse consequences that implementation of the Amended Settlement Agreement may have on the District.

30. The Klamath Water Users Association indicates it has no position on the application, but is extremely interested in the future of Keno Dam, which is a significant asset to its members for irrigation purposes. Klamath County, Oregon states that it does not object to the amendment and transfer, provided that the Renewal Corporation files additional information regarding its ability to fund and operate the project in the event the Commission fails to authorize surrender of the Lower Klamath Project. Klamath County adds that it should not have to absorb the loss of property tax revenue that will result from the transfer of the Lower Klamath Project facilities to the Renewal Corporation, a non-profit, and thus recommends that the Renewal Corporation make a payment to the county in lieu of taxes.

31. By letters dated October 18 and 26, 2017, Commission staff invited tribes with interest in either the amendment and transfer, or surrender proceedings to meet. A total of six tribes requested to meet with Commission staff: the Hoopa Valley Tribe, the Karuk Tribe, the Quartz Valley Indian Community of the Quartz Valley Indian Reservation, the Klamath Tribe, the Yurok Tribe, and the Modoc Tribe of Oklahoma. The meetings were public noticed on December 29, 2017, and January 18, 2018. Tribal meetings with all tribes except for the Modoc Tribe of Oklahoma, were held from January 16-19, 2018, at the tribes' office locations in Oregon and California. A meeting with the Modoc Tribe was held on February 5, 2018.<sup>23</sup>

32. The Hoopa Valley Tribe supports the amendment and transfer application but opposes the transfer of ownership of the Iron Gate Hatchery to the California Department of Fish and Wildlife, as provided for in section 7.6.6 of the Amended Settlement Agreement. The Tribe maintains that operation of the hatchery is necessary to fulfill federal trust responsibilities owed to the Tribe and that control of the hatchery should be maintained by the federal government, acting through Interior.

33. The Quartz Valley Tribe expresses concern about the timing of dam removal and its impact on salmon and migratory bird species in the Scott River Watershed.<sup>24</sup> The Klamath, Karuk, and Yurok Tribes are generally supportive of dam removal based on its intended effect of opening up hundreds of miles of habitat to salmon, steelhead, and other anadromous fish used by the tribes for subsistence, religious practices, and commercial activity. The Modoc Tribe expresses concerns about water rights, the Renewal Corporation's liability for damage associated with dam decommissioning and removal, the potential for discovery of sensitive cultural resources, and the loss of water storage in the reservoirs for fire-fighting.

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<sup>23</sup> Written transcripts from these meetings, as well as a presentation from the Yurok Tribe, were placed in the Commission record for these proceedings.

<sup>24</sup> The Scott River is a major tributary to the Klamath River in northern California.

34. Many of the comments we received in this proceeding concern the decommissioning and removal of the Lower Klamath Project facilities from the river, and the environmental impacts from those actions. Those comments are beyond the scope of this order, which considers only the application for amendment of PacifiCorp's license. Those impacts will be considered when the Commission takes up the applications for transfer and surrender of the Lower Klamath Project facilities.

#### **IV. Discussion**

35. As explained below, we find it appropriate at this stage of the proceeding to consider only the application to amend the license for the existing Klamath Project to create the new Lower Klamath Project, and are thus separating the amendment application from the application to transfer the Lower Klamath Project to the Renewal Corporation.

36. We see no reason why the proposed amendment should not be approved. The amendment would simply move administratively the four dams and their associated exhibits and articles from the license for the Klamath Project to the new license for the Lower Klamath Project, still under license to PacifiCorp, and without material change. To accomplish this, PacifiCorp and the Renewal Corporation provided certain revised exhibits and draft license articles to be included in each license. We have reviewed their proposed changes and generally agree with them, except as discussed below.

37. As noted, the license for the Klamath Project expired on February 28, 2006, and the project has been operating on annual licenses since. The proposed amendment does not alter the license term for the Klamath Project and, likewise, the newly-created Lower Klamath Project should have the same license term. Therefore, both projects will continue operating under annual licenses until the Commission takes further action on them.

##### **A. Amendment**

##### **1. Klamath Hydroelectric Project No. 2082**

##### **a. Revised Exhibits**

38. Under the proposed amendment, the East Side, West Side, Keno, and Fall Creek developments, and appurtenant facilities, would remain part of the Klamath Project. The amendment application includes a revised Exhibit M which reflects these four

developments.<sup>25</sup> PacifiCorp states that it is in the process of revising the Exhibit K and L drawings that show the revised project boundary and features. In this order we approve the revised Exhibit M and require the licensee to file revised Exhibits K and L drawings for Commission approval, to reflect the four developments that remain in the license for the Klamath Project No. 2082. The revised Exhibit K and L drawings must comply with sections 4.39 and 4.41(g) and (h) of the Commission's regulations.<sup>26</sup>

**b. License Articles**

39. The license as amended over the years since its issuance was subject to terms and conditions set forth in Form L-6, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States," described as Articles 1 through 27, in addition to individual articles 28 through 73. Previous amendment orders deleted six of the individual articles: 39 through 43, and 63. In the current proceeding, 13 additional articles will be removed as discussed herein. For consistency purposes we will preserve the numbering of the articles in this proceeding.

40. Commission staff reviewed the proposed changes to license articles included in the application. We find the articles to be consistent with the Commission's ongoing oversight of these facilities. Therefore in this order, we remove the articles that are specific to the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments from the Klamath Project No. 2082 license and include them in the new license for the Lower Klamath Project No. 14803. The specific articles to be removed from the Klamath Project license are Articles 28, 31-34, 36, 44-46, 49-51, and 52.

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<sup>25</sup> At the time the project was licensed, the naming conventions the Commission used were different. Exhibit K referred to project maps, currently referred to as Exhibit G in 18 C.F.R. § 4.41(h); Exhibit L referred to general design drawings, currently referred to as Exhibit F in 18 C.F.R. § 4.41(g); and Exhibit M referred to the project description, currently referred to as Exhibit A in 18 C.F.R. § 4.41(b) (2017).

<sup>26</sup> We note that there are minor discrepancies in the detailed descriptions of project facilities included in the filings in this proceeding, the Final EIS, various operation reports, and previously-approved exhibit drawings for the project. These discrepancies must be resolved upon the filing of revised Exhibits K and L, as applicable, as required by this order.

**c. Authorized Installed Capacity and Annual Charges**

41. As amended, the Klamath Project has a total authorized installed capacity of 6 MW. The Commission collects annual charges from licensees for administration of Part I of the Federal Power Act.<sup>27</sup> To reflect the revised authorized installed capacity, this order revises Article 35(a) of the license, which provides for the collection of such funds.

42. As amended, the Klamath Project includes 82.0 acres of federal land administered by Reclamation. None of the federal land in the amended project boundary contains project transmission lines. The Commission collects annual charges from licensees for the use of federal lands. Accordingly, this order makes the following changes to Article 35: revises item (b) to reflect 82.0 acres of federal lands used by the project for other than transmission line use; removes item (c) since the 5.75 acres of federal lands for transmission line use would be under the new license for the Lower Klamath Project, and re-labels item (d) which provides for the collection of compensation for the use of a government dam, as (c).

**2. Lower Klamath Project No. 14803**

**a. Revised Exhibits**

43. As amended, the Lower Klamath Project includes the following four developments: J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate, and appurtenant facilities. The amendment application and supplemental filings included a revised Exhibit M which describes the project features. PacifiCorp states that it is in the process of preparing the Exhibit K and L drawings that show the project boundary and project features. Therefore, in this order we approve the revised Exhibit M and require the licensee to file for Commission approval revised Exhibits K, and L, as applicable, to reflect these developments.<sup>28</sup>

**b. License Articles**

44. The Lower Klamath Project No. 14803 should be subject to all the articles under the Klamath Project No. 2082, with the exception of those articles that specifically

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<sup>27</sup> 16 U.S.C. § 803(e) (2012).

<sup>28</sup> As discussed above, minor discrepancies in the detailed description of project facilities exist among the various documents we have reviewed as part of this proceeding. These discrepancies must be resolved upon the filing of revised Exhibits K and L, as applicable, as required by this order. The revised Exhibit K and L drawings must comply with sections 4.39 and 4.41(g) and (h) of the Commission's regulations.

pertain to the developments that would remain under the Klamath Project (these articles include: 38, 55-57, 60, and 66-71). Therefore, the Lower Klamath Project is subject to the terms and conditions set forth in Form L-6, December 15, 1953, described as Articles 1 through 27, in addition to individual articles 28-37, 44-54, 58, 59, 61-65, and 72-73.

45. In addition, we revise Article 35(a), (b) and (c), which address the annual charges due for this project, as discussed below.

**c. Authorized Installed Capacity and Annual Charges**

46. As amended, the Lower Klamath Project has a total authorized installed capacity of 163 MW. As noted, the Commission collects annual charges from licensees for administration of Part I of the Federal Power Act. License article 35(a) for this project provides for the collection of such funds.

47. The Lower Klamath Project No. 14803 occupies 395.09 acres of federal land, other than for transmission line right-of-way and 5.75 acres of federal lands for transmission line right-of-way. These federal lands are under the administration of the BLM. The Commission collects annual charges from licensees for the use of federal lands. License articles 35(b) and (c) for this project provide for the collection of these funds, respectively.

**d. Licensee for the Lower Klamath Project**

48. Until the Commission takes action on the transfer application, PacifiCorp is and will remain the sole licensee for the Lower Klamath Hydroelectric Project.

**B. Transfer**

49. Section 8 of the Federal Power Act (FPA),<sup>29</sup> which governs license transfers, does not articulate a standard for approving a transfer application.<sup>30</sup> However, the Commission has held that a transfer may be approved on a showing that the transferee is qualified to hold the license and operate the project, and that a transfer is in the public interest.<sup>31</sup> Section 9.2 of the Commission's regulations requires applicants to "set forth in

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<sup>29</sup> 16 U.S.C. § 801 (2012); *see also* 18 C.F.R. §§ 9.1-9.3 (2017).

<sup>30</sup> *See Potosi Generating Station, Inc.*, 100 FERC ¶ 61,115 (2002).

<sup>31</sup> *See* 18 C.F.R. pt. 9.3 (2017); *See also Confederated Salish and Kootenai Tribes Energy Keepers, Inc.*, 153 FERC ¶ 61,217 (2015); *Gallia Hydro Partners*, 110 FERC ¶ 61,237 (2005); *Wisconsin v. FERC*, 104 F.3d 462 (D.C. Cir. 1997).

appropriate detail the qualifications of the transferee to hold such license and to operate the property under license.”<sup>32</sup>

50. The Commission has not previously considered an application to transfer a license to a new entity whose sole purpose is to surrender the license and decommission the project, as is the case here. Typically, a transferee intends to continue to operate the project, and the Commission’s public interest inquiry is limited to the transferee’s financial, legal, and technical fitness to carry out its responsibilities under the license.

51. Transferring a project to a newly formed entity for the sole purpose of decommissioning and dam removal raises unique public interest concerns, specifically whether the transferee will have the legal, technical, and financial capacity to safely remove project facilities and adequately restore project lands. If a project is transferred to an entity that lacks the financial and operational capacity to complete these measures, and if the Commission can no longer hold the former licensee liable, the responsibility to decommission a project or restore project lands may fall to federal or state authorities. To prevent this, Commission staff applies more scrutiny to transfer applications where the transferee intends to surrender and decommission the project.<sup>33</sup> While the Commission itself has not previously considered the transfer of a license to a new entity for the purpose of decommissioning and surrender, Commission staff has considered this type of application in two notable, uncontested cases.

52. The first case concerned the Penobscot River Projects in Penobscot County, Maine (*Penobscot*).<sup>34</sup> There, because a settlement agreement did not allow the transfer of project facilities to the Penobscot River Restoration Trust to become effective until the Commission’s acceptance of the surrender, the Trust could not comply with the conditions in the transfer order and had to request several extensions of time to file the conveyance instruments and acceptance of the transfer. The second case involved the decommissioning of the Hogansburg Project in Franklin County, New York.<sup>35</sup> In that

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<sup>32</sup> 18 C.F.R. § 9.2 (2017).

<sup>33</sup> See Policy Statement on *Project Decommissioning at Relicensing*, 60 Fed. Reg. 339, 346 (Jan. 4, 1995); see also FERC States. & Regs, ¶ 31,011, 31,232-33 (1994); *Fraser Papers Inc.*, 87 FERC ¶ 61,177, *order on reh’g*, 89 FERC ¶ 61,286 (1999).

<sup>34</sup> *PPL Maine, LLC*, 126 FERC ¶ 62,005 (2009) (approving transfer of the Veazie and Howland Projects); *PPL Great Works LLC*, 126 FERC ¶ 62,004 (2009) (approving transfer of the Great Works Project); *Penobscot River Restoration Trust*, 131 FERC ¶ 62,238 (2010) (accepting surrender of the three projects).

<sup>35</sup> *Erie Boulevard Hydropower, LP*, 150 FERC ¶ 62,149 (2015).

case, Erie Boulevard Hydropower filed an application to transfer the project license to the St. Regis Mohawk Tribe, which in turn filed an application to surrender and decommission the project. In light of administrative inefficiencies and liability concerns that arose in *Penobscot*, and the Tribe's lack of experience operating or decommissioning a hydroelectric project, staff denied the applications as initially proposed and instead advised that Erie and the Tribe become co-licensees. Erie and the Tribe jointly applied to partially transfer the license to the Tribe, and as co-licensees applied to surrender and decommission the project. Staff approved the license transfer in March 2015 and the surrender in June 2016.

53. In the present case, PacifiCorp and the Renewal Corporation have made a number of filings seeking to demonstrate the Renewal Corporation's capacity to remove the project facilities in a way that is consistent with the public interest, including a Detailed Plan to implement dam removal, which describes plans for facilities removal, site remediation and restoration, estimated cost, and risk mitigation.<sup>36</sup> The Renewal Corporation has stated that the Detailed Plan will serve as the basis for the Definite Plan, which will include a complete discussion of the physical and technical aspects of facilities removal and remediation, as well as a detailed estimate of costs associated with those activities, and procedures for addressing potential cost overruns.<sup>37</sup> The Renewal Corporation previously stated that it would provide Commission staff with the Definite Plan by December 31, 2017.<sup>38</sup> However, on December 5, 2017, it requested an extension until July 1, 2018, to submit the Definite Plan. Commission staff granted this extension on December 14, 2017.

54. As discussed below, staff has evaluated the filings concerning the Renewal Corporation's capacity to complete decommissioning and removal of the Lower Klamath Project facilities, and has determined that additional information is needed, including information to be provided in the Definite Plan, before the transfer application can be considered. We agree, and will review this information before acting on the transfer. In addition to the information discussed below, we will also require that PacifiCorp provide us with all the information required by section 7.1.4 of the Amended Settlement Agreement discussed above in paragraph 16 (except for the conveyance documents and the Renewal Corporation's acceptance of the transfer, which must await Commission action on the transfer application).

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<sup>36</sup> See Renewal Corporation's December 1, 2017 Filing.

<sup>37</sup> See Renewal Corporation's September 23, 2016 Application for Surrender at 37.

<sup>38</sup> *Id* at 3.

## 1. Funding for Dam Operation and Removal

55. As discussed above, the Amended Settlement Agreement provides that the Renewal Corporation will have three sources of funding for decommissioning, removal, and restoration of the Lower Klamath Project, totaling \$450,000,000: (1) \$184,000,000 from the Oregon Customer Surcharge; (2) \$16,000,000 from the California Customer Surcharge; and (3) \$250,000,000 from the California Bond Measure. These funds, known as the state cost cap, are the maximum monetary contributions available from the states of Oregon and California. The applicants have not identified any additional sources of funding if the cost of the measures required exceeds the state cost cap.

56. The Amended Settlement Agreement provides for the creation of four trust accounts – two in each state – to hold and administer charges collected from PacifiCorp’s retail customers in California and Oregon. The collection of the customer surcharges began in May 2011 pursuant to orders issued by the Oregon and California PUCs.<sup>39</sup> The Renewal Corporation is the beneficiary of the trust accounts.

57. On January 24, 2017, the Oregon PUC approved the Oregon Funding Agreement for the disbursement of funds from the two Oregon trust accounts over three phases: startup activities, planning, and regulatory work (Phase 1); development of the Definite Plan and procurement of contractors (Phase 2); and implementation of the Definite Plan (Phase 3).<sup>40</sup> In its March 1, 2017 filing, the Renewal Corporation provided that it had entered into an agreement with the Oregon Department of Fish and Wildlife for the disbursement of \$308,369 in initial startup costs as part of Phase 1.<sup>41</sup> The Oregon Funding Agreement provides that, before disbursements may be made for Phase 2 or 3 activities, the Renewal Corporation must submit project descriptions and budgets for those activities.<sup>42</sup>

58. The Renewal Corporation has not yet entered into a California Funding Agreement for the disbursement of the California customer surcharge. In August 2016, PacifiCorp filed a motion with the California PUC to modify the May 5, 2011

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<sup>39</sup> Amendment and Transfer Application at Exhibit K.

<sup>40</sup> See the Renewal Corporation’s March 1, 2017 Filing at 9.

<sup>41</sup> *Id.* at Attachment F; Oregon Funding Agreement at 7.

<sup>42</sup> *Id.*

authorization of the California customer surcharge.<sup>43</sup> In its December 4 filing, the Renewal Corporation filed a proposed California Funding Agreement that provided for disbursement of funds over three phases, similar to the Oregon Funding Agreement, but has not yet filed a final agreement. We will require an executed California Funding Agreement before we act on the transfer application. We are concerned, however, that these state funding mechanisms are not subject to the Commission's direction, but rather are subject to the terms of the Amended Settlement Agreement, to which the Commission is not a signatory.

59. The California bond measure is part of a water bond enacted by the California legislature in November 2009 and approved by voters in 2014 to fund the difference between the customer surcharges administered by the California and Oregon PUCs and the actual cost of dam removal, up to \$250,000,000.<sup>44</sup> In 2016, the state legislature appropriated the bond funds to the California Natural Resources Agency for disbursement to the Renewal Corporation pursuant to the California Natural Resources Agency Grant Agreement.<sup>45</sup>

60. The Renewal Corporation has stated that both the Oregon and California Funding Agreements have expiration dates of January 31, 2022, and that the California Bond Measure has an expiration date of June 30, 2021, with exceptions for funds devoted to ongoing mitigation or monitoring activities.<sup>46</sup> In response to staff's question about whether the funding sources would still be available if facilities removal extends beyond these dates, the Renewal Corporation only stated that it would seek extensions from the states, but provided no assurance that the states would be amendable to those extensions.<sup>47</sup>

61. In an October 5, 2017 additional information request, Commission staff requested that PacifiCorp and the Renewal Corporation provide the results of an independent review of the most probable and maximum cost estimates, adequacy of a projected contingency reserve for risks retained by the Renewal Corporation, and proposed

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<sup>43</sup> PacifiCorp moved to amend the 2011 authorization to reflect the 2016 Amendments to the Klamath Hydroelectric Settlement Agreement that eliminated the need for Congressional authorization for dam decommissioning and removal.

<sup>44</sup> See Renewal Corporation's March 1, 2017 Filing at 11.

<sup>45</sup> *Id.* at Exhibit G.

<sup>46</sup> *Id.* at 11-12.

<sup>47</sup> *Id.*

insurance and bonding arrangements. PacifiCorp and the Renewal Corporation did not provide the requested review. Instead, the Renewal Corporation proposed in its response<sup>48</sup> that review of these matters be deferred to an Independent Board of Consultants that Commission staff has required to be convened for the surrender application to “review and assess all aspects of the proposed dam removal process,” including among other things the adequacy of available funding, reasonableness of updated estimates for the most probable and maximum cost of the full removal alternative, and adequacy of amounts and types of insurance coverage and bonding arrangements for dam removal.<sup>49</sup> The Renewal Corporation stated that it plans to convene the Independent Board of Consultants in connection with the surrender application to review updated cost estimates, as well as the assumptions used to calculate those estimates, and will provide the qualifications of its third-party experts for FERC approval, together with a plan and schedule for the requested report, no later than April 5, 2018.<sup>50</sup> The Renewal Corporation added that it was exploring the possibility of having the Board of Consultants review portions of, or the complete, Definite Plan before it is filed with the Commission.<sup>51</sup>

62. Also in its December 4 response, the Renewal Corporation stated that its most probable cost estimate to carry out decommissioning and removal of the Lower Klamath Project facilities is \$274,350,000.<sup>52</sup> This estimate is based on a budget prepared by Reclamation in 2010 and updated by its contractor AECOM in 2017. However, the Renewal Corporation did not include an update to Reclamation’s maximum cost estimate of \$493,100,000 or evaluate the probability that the most probable and maximum cost estimates will occur.<sup>53</sup> Instead, the Renewal Corporation deferred these matters to its filing of the Definite Plan.

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<sup>48</sup> Renewal Corporation’s December 4, 2017 Filing at 2.

<sup>49</sup> See Letter from David Capka, FERC, to Mark Sturtevant, PacifiCorp, and Michael Carrier, Renewal Corporation (issued October 5, 2017).

<sup>50</sup> Renewal Corporation’s December 4, 2017 Filing at 2.

<sup>51</sup> *Id.* at 2, 4.

<sup>52</sup> *Id.* at 3.

<sup>53</sup> See Reclamation’s July 2012 Detailed Plan for Dam Removal at 8 (filed as Exhibit E.3 to PacifiCorp’s and the Renewal Corporation’s September 23, 2016 surrender application).

63. The Renewal Corporation stated in its December 4, 2017 filing that, “[c]ommitted and available funds to implement the [Amended Settlement Agreement] exceed AECOM’s verified budget by well over \$100,000,000,” but acknowledged that “it is theoretically possible that the full amount of the \$450 million would not be sufficient” to fully remove the project facilities and restore the area.<sup>54</sup> In updating Reclamation’s cost estimate, the contractor stated that “[f]ield and engineering studies are underway that are expected to result in changes to quantities and production rates, which could result in costs going up or down.”<sup>55</sup>

64. We also note that PacifiCorp and the Renewal Corporation have entered into an operations and maintenance agreement that provides for PacifiCorp to continue to operate and maintain the project until the removal of the facilities is imminent.<sup>56</sup> However, the agreement is not effective until the Renewal Corporation accepts the transfer of license for the Lower Klamath Project.

65. As a result, we require updated maximum and probable cost estimates, the probability that each will occur, and a detailed explanation of how the Renewal Corporation would provide or obtain the funds necessary to operate and maintain the Lower Klamath in the event that the Commission does not approve the surrender application. In addition, we require a detailed explanation of how the Renewal Corporation would provide or obtain the funds necessary to decommission and remove the Lower Klamath Project in the event that funds equal to or greater than the maximum cost estimate for the full removal alternative are required. We anticipate that this information will be provided in the Definite Plan.

## **2. Contingency Reserve, Insurance, and Risk Mitigation**

66. Separate from the issue of the project’s estimated cost is the amount of a contingency reserve to address the risk of project delays or additional costs caused by circumstances out of the applicants’ control, such as changes in law, force majeure events, the discovery of cultural resources, and dam conditions unknown at the time the contract for removal is executed. In its December 4 filing, the Renewal Corporation provided that its contingency reserve would likely be between 5% and 15% of the projected project cost, which it states is typical for development projects of this

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<sup>54</sup> Renewal Corporation’s December 4, 2017 Filing at 3.

<sup>55</sup> See Renewal Corporation’s June 23, 2017 Filing, Initial Budget Verification Report at 5.

<sup>56</sup> Renewal Corporation’s December 4, 2017 Filing at Exhibit D.

magnitude.<sup>57</sup> The Renewal Corporation also notes, however, that an updated most probable cost estimate “will be a more reasonable and current cost estimate from which to assess the need for and amount of any ...contingency fund.”<sup>58</sup> We require an updated projected contingency reserve based on the updated project costs discussed above, before we can act on the application for license transfer, as well as an assessment of its adequacy in light of the probable and maximum cost estimates.

67. The Renewal Corporation has also stated that it expects to enter into a fixed-price agreement with a contractor to undertake decommissioning and removal of the project facilities, and that it expects the agreement to provide that any project costs in excess of the contract price would be the responsibility of the contractor, not the Renewal Corporation.<sup>59</sup> We note that a licensee is responsible for all costs of operating, maintaining, and, if authorized, removing project facilities, regardless of what contractual arrangements it may enter into.

68. In its April 24 and October 5, 2017 additional information requests, Commission staff asked the Renewal Corporation to provide information on insurance, performance bonds, and risk mitigation measures it planned to obtain in connection with the decommissioning and removal of the Lower Klamath Project facilities. In its December 4 response, the Renewal Corporation stated that there were “insufficient details available at this time to obtain an appropriately-tailored insurance policy,” but provided a list of the types of insurance policies it expected to secure, along with estimates of coverage limits for each.<sup>60</sup>

69. Additionally, the Renewal Corporation stated that AECOM, the contracting company secured by the Renewal Corporation to develop the Definite Plan, is working to develop a risk-management plan that will identify all potential project risks and develop mitigation strategies to avoid and reduce the impact of unexpected events associated with facilities removal. As part of the risk-management plan, AECOM is developing a risk register to assist in identifying potential risk elements, their likelihood, and expected consequences.<sup>61</sup>

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<sup>57</sup> *Id.* at 4.

<sup>58</sup> *Id.*

<sup>59</sup> Renewal Corporation’s June 23, 2017 Filing at 15.

<sup>60</sup> *Id.* at 5-7.

<sup>61</sup> *See* Renewal Corporation’s June 23, 2017 Filing at 14-15.

70. Accountability and transparency will be paramount in this case. The size of the proposed dam removal and estimated cost are unprecedented before the Commission.<sup>62</sup> The Amended Settlement Agreement expressly transfers all liability for dam removal to the Renewal Corporation. This is a concern, because it would leave the Commission with no authority to require PacifiCorp to take any action required for the removal, or to pay for any unexpected costs that might arise. In order to more fully evaluate the risks associated with dam decommissioning, removal, and remediation, we will need to review the risk register and risk-management plan.

## V. Conclusion

71. The applicants have filed a combined amendment and transfer application. For the reasons discussed above, we approve only the amendment application at this time. We need additional financial, insurance, and risk management information before any transfer can be considered. Therefore, PacifiCorp will remain the licensee for both the Klamath and Lower Klamath Project licenses until we receive and review the additional information required below.

72. In its December 4 response to staff's October 5 Additional Information Request, the Renewal Corporation addressed many of the topics described above by stating that this information would be provided in the Definite Plan, to be filed with the Commission in July 2018. As a result, we will need to review the information provided in the Definite Plan before acting on the transfer application. In addition, we will need the results of an independent review of the adequacy of the proposed funding, insurance, and bonding arrangements, which the Renewal Corporation proposes to defer to the independent Board of Consultants for the surrender application. Depending on how soon the Board of Consultants can be convened, this approach may provide an acceptable means of obtaining that review.

73. We acknowledge that the application before us is the result of a collaborative process between a number of parties – many with disparate interests – that began several years ago. However, as discussed above, we cannot act on the application for transfer until the Renewal Corporation submits the information listed in the Appendix. Because of this fact, and since we are not acting on the application for transfer in this proceeding, we will defer our determinations on the Renewal Corporation's legal and technical

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<sup>62</sup> To staff's knowledge, the most extensive decommissioning plan approved by the Commission was that for the 14.7-MW Condit Project No. 2342, located on the White Salmon River in Washington, which involved the removal of a 471-foot-long, 125-foot-high dam and other facilities, at an estimated cost of \$32 million. *See PacifiCorp*, 133 FERC ¶ 61,232 (2010).

capacity to accept transfer of the license and carry out project decommissioning to our review of the transfer application.

The Commission orders:

(A) PacifiCorp and Klamath River Renewal Corporation's application for amendment and transfer, filed September 23, 2016, and supplemented on March 1, 2017, June 23, 2017, December 1 and December 4, 2017, is approved for the amendment only, and is deferred for the transfer, pending receipt of the required additional information. PacifiCorp must file, or cause to be filed, the additional information in the Appendix to this order.

*For the Klamath Project No. 2082:*

(B) The license for the Klamath Project No. 2082 is amended as provided by this order, effective the day this order is issued.

(C) The Klamath Project No. 2082 consists of the following four developments, three on the Klamath River between river mile (RM) 233 and RM 254, and the fourth development on Fall Creek, a Klamath River tributary at about RM 196. The four developments are as follows: (1) the East Side development; (2) the West Side development; (3) the Keno development; and (4) the Fall Creek development. The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, described in the project description of this order. Project works consisting of:

(2) The East Side development, consisting of: (a) 670 feet of mortar and stone canal; (b) an intake structure; (c) 1,729 feet of 12-foot-diameter, wood stave flowline; (d) 1,362 feet of 12-foot diameter, steel flowline; (e) a surge tank; and (f) a powerhouse containing a single vertical Francis turbine with a rated discharge of 975 cubic feet per second (cfs) and a rated capacity of 3.188 MW, a generator with a rated capacity of 3.2 MW; (g) three single-phase step-up transformers at the powerhouse; and (h) a 69-kilovolt (kV) primary transmission line approximately 0.36 miles long connecting to PacifiCorp's Line No. 11.

(3) The West Side development, consisting of: (a) a 5,575-foot-long concrete-lined and unlined canal; (b) a spillway and discharge structure; (c) an intake; (d) 140 feet of 7-foot-diameter steel flowline; (e) a powerhouse housing a single, horizontal, pit-type Francis turbine with a rated capacity of 0.78 MW, a generator with a rated capacity of 0.6 MW; (f) three single-phase step-up transformers at the powerhouse; and (h) a 69-kV primary transmission line approximately 0.36 miles long connecting to PacifiCorp's Line No. 11.

(4) The non-generating, re-regulating Keno development consisting of: (a) a 680-foot-long, 25-foot high dam, made of a combination of earth embankment and reinforced-concrete, with a non-overflow section, and a 265-foot-wide ogee-type spillway section with six tainter gates; (b) a reservoir with a maximum surface area of 2,475 acres at elevation 4,085 feet mean sea level and a total storage capacity of 18,500 acre-feet; and (c) a 24-pool weir and orifice-type fish ladder.

(5) The Fall Creek development consisting of: (a) a 127-foot-long, 7-foot-high diversion dam composed of two earth embankment sections separated by a 32-foot long, concrete and timber flashboard spillway structure; (b) a 4,560-foot long earthen and rock-cut power canal; (c) 2,834 feet of steel penstock; (d) a powerhouse containing three horizontal shaft Pelton turbines; Unit 1 turbine has a rated discharge capacity of 14 cfs and a rated output of 0.75 MW and a generator rated at 0.5 MW; Unit 2 turbine has a rated discharge capacity of 21 cfs and a rated output of 1.125 MW, and a generator rated at 0.45 MW; Unit 3 has a rated discharged capacity of 25 cfs and a rated output of 1.35 MW, and a generator rated at 1.25 MW, for a total authorized capacity of 2.2 MW; (e) three single phase, step-up transformers; and (f) a 69-kV primary transmission line that taps to PacifiCorp's Line 18, which runs nearly overhead, and a 69-kV line, 1.65-mile-long that connects to Copco No. 1 switchyard.

The project works generally described above are more specifically shown and described by those portions of Exhibit M shown below for the Klamath Project:

Exhibit M: The following section of Exhibit M filed on September 23, 2016:

M.2.1 entitled: "Project Facilities" and Table M2.1-1 "Key data regarding the Klamath Hydroelectric Project developments."

(D) Within 90 days of the date of this order, the licensee must file for Commission approval revised Exhibits K and L, as applicable, to reflect the East Side, West Side, Keno, and Fall Creek developments, as-built.

(E) The following articles are deleted from the Klamath Project No. 2082 license: Articles 28, 31, 32, 33, 34, 36, 44, 45, 46, 49, 50, 51, and 52.

(F) Article 35 of the license for the Klamath Project is revised to read as follows:

Article 35. The licensee must pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the cost of administering Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 6,000 kW, effective the first day of the month in which this order is issued.

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of 82.0 acres of its lands, other than for transmission line right-of-way.

(c) For the purpose of recompensing the United States for the East Side and West Side developments' use of surplus water or water power from Link River Dam, a reasonable amount as determined in accordance with the provisions of the Commission's regulation in effect from time to time.

*For the Lower Klamath Project No. 14803:*

(G) This license is issued to PacifiCorp with an expiration date of February 28, 2006, which is currently on annual license, to operate and maintain the Lower Klamath Project No. 14803. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(H) The Lower Klamath Project No. 14803 consists of the following four developments on the Klamath River between river mile (RM) 190 and RM 228. The four developments are as follows: (1) the J.C. Boyle development; (2) the Copco No. 1 development; (3) the Copco No. 2 development; and (4) the Iron Gate development. The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, described in the project description of this order. Project works consisting of:

(2) The J.C. Boyle development (also known as the Big Bend development) consists of: (a) a 68-foot-high by 693-foot-long earthfill and concrete dam with an intake structure and spillway section containing three 36-foot-wide by 12-foot-high radial gates and a two-bay diversion culvert with stoplogs; (b) a 420-acre reservoir; (c) a 24-inch diameter fish screen bypass pipe; (d) a 569-foot-long pool and weir fishway; (e) a 638-foot-long, 14-foot diameter steel flow line; (f) a 2-mile long concrete power canal; (g) two 956-foot-long by 10.5-foot-diameter steel penstocks; (h) a powerhouse containing two units with an authorized capacity of 98 MW; (i) a 0.24-mile-long, primary transmission line connecting to J. C. Boyle substation ; and (j) two three-phase step up transformers.

(3) The Copco No. 1 development consists of: (a) a 230-foot-high by 415-foot-long dam with a spillway section containing 13 14-foot by 14-foot tainter gates; (b) a

1,000-acre reservoir (Copco Lake) with approximately 33,724 acre-feet of total storage capacity; (c) three penstocks varying from 8-14 foot in diameter; (d) a powerhouse containing two units for a total authorized capacity of 20 MW; (e) four single-phase step up transformers; and (f) four associated primary 69-kV transmission lines as follows: (1) two lines, each approximately 0.07-mile long, connecting Copco No. 1 powerhouse to the Copco No. 1 switchyard; (2) a 1.29-mile-long line connecting the Copco No. 1 switchyard to Copco No. 2; and (3) a 1.66-mile-long line connecting Copco No 1 switchyard to a tap on the 69-kV line from Fall Creek plant.

(4) The Copco No. 2 development consists of: (a) a 33-foot-high by 278-foot-long dam with a 130-foot long spillway section contain five tainter gates; (b) a 40-acre reservoir with a storage capacity of about 73 acre-feet; (c) a flowline consisting of 2,440 feet of concrete-lined tunnel and 1,313 feet of wood-stave pipeline; an addition 1,110 feet of concrete-lined tunnel; (d) a surge tank; (e) two steel penstocks, one 405.5 feet long and one 410.6 feet long, with a diameter ranging from 8-16 feet; (f) a powerhouse containing two units with a total authorized capacity of 27 MW; (g) three single-phase transformers connected to three single-phase step-up transformers; and (h) a 0.4-mile-long 69-kV primary transmission line connecting to Copco No. 2 switchyard.

(5) The Iron Gate development consists of: (a) a 173-foot-high by 740-foot-long dam with a 727-foot-long side channel spillway; (b) a 944-acre reservoir with 58,794 acre-feet of storage capacity; (c) an intake structure with a 12-foot diameter penstock; (d) a powerhouse containing one unit with a total authorized capacity of 18 MW; (e) a single three-phase step-up transformer; one 6.55-mile-long, 69-kV primary transmission line connecting to Copco No. 2 switchyard; and (f) the Iron Gate Fish Hatchery.

The project works generally described above are more specifically shown and described by those portions of Exhibit M shown below for the Lower Klamath Project:

Exhibit M: The following section of Exhibit M filed on September 23, 2016:

M.2.1 entitled: "Project Facilities" and Table M2.1-1 "Key data regarding the Lower Klamath Project developments."

(I) Within 90 days of the date of this order, the licensee must file for Commission approval revised Exhibits K, and L, as applicable, to reflect the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments, as built.

(J) This license is subject to the articles set forth in Form L-6, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States (see 12 FPC 1267)" and the following additional articles:

Article 28. The Licensee, having commenced construction of the Iron Gate Development, shall continue to prosecute such construction and complete the Iron Gate Development not later than December 31, 1961.

Article 29. The licensee must, prior to flooding, clear all lands in the bottoms and margins of reservoirs up to high-water level, clear and keep clear to an adequate width lands of the United States along open conduits, and must dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along margins of reservoirs which may die during operation of the project must be removed. The clearing of the lands and the disposal of the material must be done with due diligence and to the satisfaction of the authorized representatives of the Commission.

Article 30. The Commission reserves the right to determine at a later date which additional transmission lines and facilities, if any, must be included in the license as part of the project works.

Article 31. The Licensee shall file for Commission approval revised Exhibits F and K for the Iron Gate Development within one year following completion of construction of such development.

Article 32. The Licensee must at the J.C. Boyle development: construct, operate, and maintain fishways, screens at the intake, and deer escape facilities in and around the open portions of the conduit. Plans for fishways, screens, and deer escape facilities must be submitted in advance of construction of these facilities for approval by the Commission with advice of the Secretary of the Interior and the Oregon State Game Commission.

Article 33. The Licensee must replace the egg-taking station on the Klamath River at the mouth of Spencer Creek as may be prescribed hereafter by the Commission upon the recommendation of the Oregon State Game Commission.

Article 34. The Licensee must for the protection of fishlife maintain in the natural channel of the Klamath River immediately below the diversion dam a reasonable minimum flow consistent with the primary purpose of the project to be fixed hereafter by the Commission after notice to interested parties and opportunity for hearing.

Article 35. The Licensee must pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the cost of administering Part I of the FPA, a reasonable amount as determined in accordance with the provisions

of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 163,000 kilowatts.

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of 395.09 acres of its lands, other than for transmission line right-of-way.

(c) Effective January 1, 1981, for the purpose of recompensing the United States for use, occupancy, and enjoyment of 5.75 acres of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulation in effect from time to time.

Article 36. The J.C. Boyle development must be so operated as to increase or decrease gradually the rise or fall of the river at a rate not to exceed nine (9) inches per hour at a point one-half (1/2) miles below the powerhouse, subject to conditions beyond the control of the Licensee; provided that the permissible limits and rate of change will be subject to review and adjustment by the Commission from time to time, after notice and opportunity for hearing.

Article 37. The Licensee must guarantee continuing access to and across lands of the United States within the project area for legitimate business and must allow the use by any agency of the United States or its permittees of any access road or roads, constructed in connection with the project for the purpose of removing forest products with the understanding that the user of such road or roads for such purpose must make appropriate arrangements with the Licensee to provide for any extraordinary road maintenance, that would be required as a result of that use.

Article 44. Prior to the construction and operation of the Iron Gate Development, the Licensee must, to the extent of conditions within its control, operate its existing Copco No. 1 and Copco No. 2 plans so as to limit fluctuations of the surface of the Klamath River at a recording station located one-half (1/2) mile below the lower of said plants to a maximum of nine (9) inches per hour increase or decrease, and so that the minimum flow of said river at said point is 500 cubic feet per second (cfs).

Article 45. The Licensee must communicate with the California Archeological Surveys Department of Archeology, University of California, Berkeley, California, to determine the most satisfactory means of accomplishing any necessary archeological reconnaissance and salvage at the Iron Gate site.

Article 46. The Licensee must consult with the California Department of Natural Resources, Division of Beaches and Parks, Sacramento, California, to determine means for protecting and enhancing recreational values at the Iron Gate development.

Article 47. The actual legitimate original cost estimates were not known, and the accrued depreciation of the parts of the project completed prior to the effective date of the licensee must be determined by the Commission as of such effective date, in accordance with the Act, and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, must be the net investment in the project as of such effective date.

Article 48. The actual legitimate original cost of the parts of the project to be completed after the effective date of the license, and of any addition to or betterment of the project, must be determined by the Commission in accordance with the Act and the rules and regulations of the Commission thereunder.

Article 49. The Licensee must construct or arrange for the construction, at its expense, of a fish hatchery at Iron Gate development, together with supplemental structures and ancillary equipment as detailed in the agreement filed with the Commission on August 17, 1962, by the State of California Department of Fish and Game and the Licensee, of a size and capacity to annually hatch and rear 200,000 yearling steelhead trout to a total weight not to exceed 20,000 pounds, 75,000 yearling silver salmon to a total weight not to exceed 5,000 pounds, 6,000,000, fingerling king salmon to a total weight not to exceed 20,000 pounds, and 5,500 king salmon swimup fry; provided not more than 12,800,000 king salmon eggs must be required to be accommodated in any one year at the Iron Gate hatchery facility; and provided further that if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000, the fish hatchery facilities described herein must not be required to accommodate more than 81 percent of the total king salmon eggs taken during the year. Plans for the aforesaid facility must be prepared by the Licensee, in cooperation with the State of California Department of Fish and Game and the U.S. Fish and Wildlife Service, Department of the Interior, and must be submitted to the Commission for approval no later than October 15, 1963. The facility must be constructed within one year from the date of approval of the plans by the Commission.

Article 50. The Licensee must reimburse the State of California Department of Fish and Game for 80 percent of the combined annual cost of operation and maintenance of the facilities and appurtenances constructed pursuant to Article 49 and of the permanent fish trapping, collecting, holding, and spawn-taking facilities and appurtenances constructed at Iron Gate dam. Should Licensee and the State of California Department of Fish and Game fail to agree on the amount to be paid by the Licensee for this purpose, the Commission reserves the right to determine the amount of such annual payment, after notice and opportunity for hearing.

Article 51. The Licensee shall, concurrently with or prior to the construction of Iron Gate Development, construct temporary fish and wildlife protective facilities and devices together with appurtenant works including, but not limited to, those required to

trap and transport adult and young of both salmon and steelhead trout past the dam site or otherwise accommodate such fish during the construction period, the type of such facilities and devices to conform to plans and specifications as prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior and California Department of Fish and Game, after notice and opportunity for hearing.

Article 52. The Licensee must release to the streambed below Iron Gate Dam not less than the flows specified in the following schedule:

Periods	Flows, second-feet
September 1-April 30	1,300
May 1-May 31	1,000
June 1-July 31	710
August 1-August 31	1,000

Provided that the Licensee must not be responsible for conditions beyond its control nor required to release more water than it has lawful right to use for hydroelectric purposes, and provided further that the Licensee must restrict the changes of release rates to not more than 250 second-feet per hour or a 3-inch change in river stage per hour whichever produces the least change in stage as measured at a gage located not less than 0.5 mile downstream from Iron Gate Dam.

Article 53. The Licensee must, construct, maintain, and operate, or must arrange for the construction, maintenance, and operation of permanent wildlife facilities and protective devices including, but not limited to, deer protective fences, and comply with such reasonable modification in the project structures and operation in the interest of wildlife as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior, and the California Department of Fish and Game, after notice and opportunity for hearing.

Article 54. The construction, operation, and maintenance of the project and any work incident to additions or alterations must be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, San Francisco, California, or of such other officer or agent as the Commission may designate, who must be the authorized representative of the Commission for such purposes. The Licensee must cooperate fully with said representative and must furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof must not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee must also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and must notify him of the date upon which work will begin, and as far in advance thereof as said

representative may reasonably specify, and must notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee must allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 58. The Licensee must, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, Oregon State Game Commission, or California Department of Fish and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 59. Whenever the United States desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee must permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonable required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee must modify the project operation as may be prescribed by the Commission, reasonable consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article must not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 61. The Licensee must construct, maintain, and operate, or must arrange for the construction, maintenance, and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 62. So far is consistent with proper operation of the project, the Licensee must allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and must allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities must not without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 64. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs and other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidenced cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 65. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 72. Pursuant to Section 10(d) of the Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. The extent that there is a deficiency of

project earnings below the specified rate of return per annum for any fiscal year the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserved account shall be maintained until further order of the Commission. The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 73. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other

environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planning of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into the project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if (i) the amount of land conveyed for a particular use is five acres or less; (ii)

all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d) (7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this articles does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude

lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(K) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2017). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix

### **Additional Information Required for License Transfer Application**

1. An executed California Funding Agreement
2. The Definite Plan
3. The following information, either separately or included in the Definite Plan:
  - (a) An updated maximum and probable cost estimate, and the probability that each will occur,
  - (b) A detailed explanation of how the Renewal Corporation would provide or obtain the necessary funds to operate the Lower Klamath Project if the surrender is not approved before the expiration of the California and Oregon Funding Agreements and the California Bond Measure,
  - (c) A detailed explanation of how the Renewal Corporation would provide or obtain the necessary funds to decommission and remove the Lower Klamath Project facilities in the event that funds equal to or greater than the maximum cost estimate for the full removal alternative are required,
  - (d) An updated project contingency reserve based on updated project costs,
  - (e) A detailed explanation of how operation and maintenance of the Lower Klamath Project will continue in the event the surrender is denied,
  - (f) A complete list of the types and amounts of insurance policies and surety arrangements anticipated to be secured by the Renewal Corporation, and
  - (g) A risk register and risk management plan
4. An independent review, either separately or by the independent Board of Consultants to be convened for the surrender application (depending on the schedule established for the review), of the reasonableness of the most probable and maximum cost estimates for the full removal alternative, adequacy of available funds for facilities removal, adequacy of the proposed contingency reserve, and adequacy of the proposed insurance and bonding arrangements,

5. A detailed explanation of the basis for the determinations required to be made by PacifiCorp, the Renewal Corporation, and the States of California and Oregon, that the following conditions have been met:
  - (a) The Renewal Corporation has met the requirements of section 7.1.3 of the Amended Settlement Agreement for indemnification of PacifiCorp, Oregon, and California, and Appendix L of the Amended Settlement Agreement regarding contractor qualifications,
  - (b) The Renewal Corporation has made sufficient and timely progress in obtaining necessary permits and approvals to effectuate facilities removal,
  - (c) PacifiCorp, the Renewal Corporation, and the States are each assured that their respective risks associated with facilities removal have been sufficiently mitigated consistent with Appendix L of the Amended Settlement Agreement, and
  - (d) PacifiCorp, the Renewal Corporation, and the States agree that no order of a court or the Commission is in effect that would prevent facilities removal.