

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

Klamath River Renewal Corporation

Project No. _____

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

Pursuant to Federal Power Act (“FPA”) section 6, 16 U.S.C. § 798, and 18 C.F.R. §§ 4.51 and 6.1, the Klamath River Renewal Corporation (“Applicant” or “KRRC”) files this application for surrender of the license for the Lower Klamath Project (“Surrender Application”). The Lower Klamath Project will consist of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments and appurtenant lands. This application is filed concurrently with the “Joint Application for Approval of License Amendment and License Transfer” (“License Transfer Application”), which PacifiCorp and KRRC filed today for Project no. 2082.

**I.
INTRODUCTION**

This application is made pursuant to the Amended Klamath Hydroelectric Settlement Agreement (“Amended KHSA”) (Exhibit H.1). On April 6, 2016, PacifiCorp as the current licensee, the states of Oregon and California, U.S. Department of the Interior, U.S. Department of Commerce’s National Marine Fisheries Service, the Yurok Tribe, the Karuk Tribe, and other entities signed this comprehensive agreement to resolve disputes that arose in the relicensing proceeding for Project no. 2082.¹ On May 6, 2016,

¹ The Amended KHSA differs from its predecessor in two primary respects: the decision on license surrender and Facilities Removal is submitted to the Commission (Section 7.1.8), and risk management is strengthened (Sections 7.1.2, 7.1.7 and 7.1.8, and Appendix L).

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PacifiCorp filed the Amended KHSA for informational purposes in the docket for that project (eLibrary 20160506-5164). On June 16, 2016, the Commission stayed further relicensing proceeding, pending the final determinations on the Transfer and Surrender Applications filed today. “Order Holding Relicensing Proceeding in Abeyance,” 155 FERC ¶ 61,271 (2016).

The KRRC seeks to surrender the license for the purpose of removing the four developments (“Facilities Removal”) to achieve a free-flowing condition and volitional fish passage through the reach currently occupied by the Lower Klamath Project. *See* Amended KHSA section 7.2.2.A. Parties to that agreement, including the United States Departments of Interior and Commerce, intend that Facilities Removal, on the terms specified in the Amended KHSA, will advance restoration of anadromous and other native fishes in the basin and will serve the public interest. *See id.*, section 3.1.

II. **PROPOSED SEQUENCE OF EVENTS**

Applicant respectfully requests that the Commission use its discretion to sequence events in the dockets for the License Transfer Application and this License Surrender Application. The sequence described below will assure a full hearing on the merits of this application, while managing the risks and benefits of the parties in resolving disputes about Project no. 2082 that have continued for decades.

A. Period after Filing of License Surrender Application

KRRC submits that this application conforms to the requirements of 18 C.F.R. § 4.32(a), (b), and (c) and other rules applicable to such a filing. By March 1, 2017, KRRC

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will submit an informational filing in this proceeding attaching executed agreements that confirm its control of financial resources in the amount of \$450 million for the purpose of Facilities Removal, including prevention, mitigation, and response to damages to third parties or natural resources. *See* Amended KHSA sections 4.2.3 and 4.2.4.

B. Designation as Non-Federal Representative under ESA

KRRC requests to be designated as the Commission’s non-federal representative for purpose of consultation under the Endangered Species Act (“ESA”), the Magnuson-Stevens Fishery Conservation and Management Act, and the National Historic Preservation Act.

C. Period after Final Action on License Transfer Application

KRRC respectfully requests that the Commission act on this application after it submits notice, pursuant to Amended KHSA section 7.1.4, that it is ready to accept license transfer. By December 31, 2017, KRRC will submit the Definite Plan, superseding the Detailed Plan (attached as the Exhibit E.3), as the basis for the Commission’s completing environmental review. *See* Amended KHSA section 7.2.1.C.

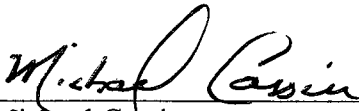
III.
CONCLUSION

In light of the foregoing, Applicant requests that the Commission: (1) accept this License Surrender Application as filed; (2) designate the KRRC as its non-federal representative for purposes of consultation under the ESA, Magnuson-Stevens Fishery Conservation and Management Act, and National Historic Preservation Act; and (3) act

on this application after the Applicant submits notice, pursuant to Amended KHSA section 7.1.4, that it is ready to accept license transfer.

Dated: September 23, 2016

Respectfully submitted,



Michael Carrier
President, Board of Directors
Klamath River Renewal Corporation

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INITIAL STATEMENT PURSUANT TO 18 C.F.R. § 4.51(A)

(1). Application. Klamath River Renewal Corporation (“Applicant”) applies to the Federal Energy Regulatory Commission for a surrender of the license for the Lower Klamath Project, Project no. ____, consisting of J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments and appurtenant lands, as proposed in Section III of the “Joint Application for Approval of License Amendment and License Transfer” (“License Transfer Application”) filed in Project no. 2082.

(2). Location of Project. The exact location of the Lower Klamath Project is:

State: Oregon (J.C. Boyle Development)
California (Copco 1, Copco 2, and Iron Gate developments)

County: Klamath County, Oregon
Siskiyou County, California

Township: Klamath Falls and Keno, Oregon

Water body: Klamath River

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(3). Applicant's Name, Address, and Agent. The exact name and business address of the Applicant are:

Michael Carrier
President, Board of Directors
Klamath River Renewal Corporation
423 Washington Street, 3rd Floor
San Francisco, CA 94111.

(4). Status. Applicant is a domestic non-profit public benefit corporation incorporated in the State of California. Its Articles of Incorporation and By-laws are Exhibit H.2 and H.3, respectively, to this License Surrender Application. Applicant is not claiming preference under Federal Power Act section 7(a).

(5). Statutory and Regulatory Requirements. Applicant incorporates by reference the statement of statutory and regulatory requirements included in PacifiCorp's Initial Statement in the relicensing proceeding for Project no. 2082, pp. 2-5 ("Initial Statement for New License") (eLibrary 20040227-0148). These requirements are potentially pertinent to the License Surrender Application.

On June 23, 2016, PacifiCorp withdrew the pending requests for certification associated with the relicensing proceeding. *See* eLibrary 20160624-5112. Applicant will today file requests for water quality certification with Oregon Department of Environmental Quality and the California Water Resources Control Board, for the purpose of this License Surrender Application.

Applicant will begin other actions necessary to obtain other regulatory approvals necessary to perform Facilities Removal. *See* Amended KHSA section 7.1.9. Among

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other things, Applicant will seek approval from the U.S. Army Corps of Engineers under Clean Water Act section 404(a), 33 U.S.C. § 1344(a) and begin discussions with the California Coastal Commission regarding compliance with the Coastal Zone Management Act.

Applicant may seek an easement or other right-of-way from U.S. Department of Interior's Bureau of Land Management for the purpose of access across federal lands to perform Facilities Removal. *See* Amended KHSA section 7.6.3. In the Definite Plan, Applicant will specify its intent in this regard.

PacifiCorp will transfer to the Applicant certain lands within the boundary for Project no. 2082, before Facilities Removal begins. *See* Amended KHSA section 7.6.4. PacifiCorp will apply to Oregon Water Resources Department to assign its hydroelectric water rights associated with J.C. Boyle Dam; and it will submit a revocation request to the California Water Resources Control Board regarding the water rights for Copco no. 1, Copco no. 2, and Iron Gate developments, upon completion of Facilities Removal. *See id.*, section 7.6.5.

(6). Project Owner. As of the date of filing of the License Surrender Application, the owner of Project no. 2082, including those developments proposed to be re-designated as the Lower Klamath Project, is:

PacifiCorp
825 NE Multnomah, Suite 1500
Portland, OR 97232.

In accordance with the License Transfer Application, PacifiCorp will remain the owner of the developments proposed to be re-designated as the Lower Klamath Project until

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PacifiCorp transfers ownership of the developments to the Applicant. *See* Amended KHSA section 7.4.2. Accordingly, before the Commission's action on this License Surrender Application, the ownership of these developments will be transferred to Applicant, whose name and address are:

Michael Carrier
President, Board of Directors
Klamath River Renewal Corporation
423 Washington Street, 3rd Floor
San Francisco, CA 94111.

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STATEMENT UNDER 18 C.F.R. § 4.32(A)

(1). Proprietary Rights. “...*identify every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project*”

As of the date of filing of this License Surrender Application, PacifiCorp has the proprietary rights to operate and maintain Project no. 2082, including the developments proposed to be re-designated as the Lower Klamath Project. Applicant incorporates by reference the demonstration in the Initial Statement for New License, pp. 7-12. Pursuant to the License Transfer Application and Amended KHSA sections 7.4.2, PacifiCorp will retain those rights, including all rights associated with power generation, until license transfer is effective. At that time and pursuant to the Amended KHSA, PacifiCorp will assign Applicant the proprietary rights necessary to perform Facilities Removal.

(2). Affected Governments. “...*identify (providing names and mailing addresses):*

(i) Every county in which any part of the project, and any Federal facilities that would be used by the project, would be located;

Applicant incorporates by reference the information contained in the Initial Statement for New License, pp. 14-15.

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(ii) Every city, town, or similar local political subdivision: (A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or (B) That has a population of 5,000 or more people and is located within 15 miles of the project dam;

Applicant incorporates by reference the information contained in the Initial

Statement for New License, p. 15.

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision: (A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or (B) That owns, operates, maintains, or uses any project facilities or any Federal facilities that would be used by the project;

Applicant incorporates by reference the information contained in the Initial

Statement for New License, p. 15.

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application; and

Applicant incorporates by reference the information contained in the Initial

Statement for New License, p. 15.

(v) All Indian tribes that may be affected by the project.

Applicant incorporates by reference the information contained in the Initial

Statement for New License, pp. 15-16.

(3). Consultation. “... state that the applicant has made, either at the time of or before filing the application, a good faith effort to give notification by certified mail of the filing of the application to: (A) Every property owner of record of any interest in the property within the bounds of the project, or in the case of the project without a specific boundary, each such owner of property which would underlie or be adjacent to any project works including any impoundments; and (B) The entities identified in paragraph (a)(2) of this section, as well as any other Federal, state, municipal or other local government agencies that there is reason to believe would likely be interested in or affected by such application.

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On the date of this filing, Applicant has sent a notice of this application by certified mail to (A) every property owner on record, per Exhibit E.4;² and (B) the governmental agencies identified in the Initial Statement for New License, pp. 16-17. Additionally, before the filing of the License Surrender Application, the U.S. Departments of the Interior and Commerce and California Department of Fish and Wildlife engaged in extensive consultation with stakeholders, including the entities identified above, to prepare the *Klamath Facilities Removal Environmental Impact Statement and Report* (2012), attached at Exhibit E.1.

² KRRC has not located the assessed entities for six parcels listed in Exhibit E.4: APN 004-393-191, 004-393-371, 004-393-381, 004-510-231, 004-510-371, and “RW.” KRRC will continue best efforts to locate such contact information.

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SUBSCRIPTION AND VERIFICATION UNDER OATH

The License Surrender Application for the Lower Klamath Project is executed in:

State of Idaho
County of Ada

by: Michael Carrier
President, Board of Directors
Klamath River Renewal Corporation
423 Washington Street, 3rd Floor
San Francisco, CA 94111,

who, being duly sworn, deposes and says that the contents of this application are true to the best of his knowledge or belief. The undersigned applicant has signed the application this 21 day of September, 2016.

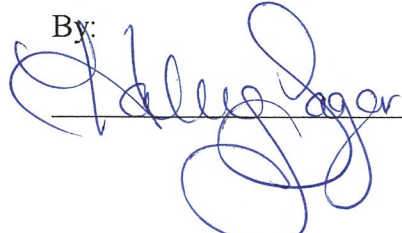
By:


Michael Carrier
President, Board of Directors
Klamath River Renewal Corporation

Subscribed and sworn to before me, a notary public of the State of Idaho, this 21st day of September, 2016.



My Commission Expires
October 31, 2020

By:


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**EXHIBIT A.
PROJECT DESCRIPTION**

(1). Introduction. Applicant applies to surrender the license for the Lower Klamath Project. The Lower Klamath Project will consist of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments and appurtenant lands, as proposed in Section III of the “Joint Application for Approval of License Amendment and License Transfer,” which PacifiCorp and KRRC filed on September 23, 2016 for Project no. 2082.

(2). Project Works. Applicant attaches Exhibit M,³ as filed in the License Transfer Application for Project no. 2082, to describe the project works of the Lower Klamath Project.

(3). Lands of the United States. Exhibit M describes the federal lands occupied by the Lower Klamath Project.

³ Exhibit M contained the project description in the original license. For consistency, PacifiCorp uses that classification in the License Transfer Application filed today for Project no. 2082. Critical Energy Infrastructure Information (“CEII”) in that Exhibit M is redacted from the version attached to this License Surrender Application.

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**EXHIBIT B.
PROJECT OPERATION AND RESOURCE UTILIZATION**

(1) Current Project Operations. Applicant incorporates by reference the description of current operations of Project no. 2082, as stated in Exhibit B filed with the New License Application (eLibrary 20040227-0148). PacifiCorp is voluntarily operating Project no. 2082 to provide additional instream flows and other environmental protections, as described in the *KHSA Implementation Reports (2011-2014)*.⁴ *See also* Amended KHSA section 6.1.

(2) Proposed Project Operations. PacifiCorp will continue to operate each of the four developments proposed as the Lower Klamath Project until the Commission approves the License Transfer Application and the KRRC accepts the license. From the effective date of license transfer until Facilities Removal begins, PacifiCorp will continue to operate and maintain each of these developments under an Operations and Maintenance Agreement with KRRC. *See* Amended KHSA sections 6.1.4, 7.1.6.

⁴ *See* <http://www.pacificorp.com/es/hydro/hl/kr.html#>.

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**EXHIBIT C.
PROPOSED CONSTRUCTION SCHEDULE**

(1). Commencement. Applicant proposes to commence deconstruction activities at the Lower Klamath Project on or about January 1, 2020. *See* Amended KHSA section 7.3.1,

(2) Completion. The Detailed Plan, which is attached as Exhibit E.3, describes the schedule for completion of such deconstruction activities. Applicant will submit a Definite Plan superseding the Detailed Plan, with respect to schedule and also deconstruction activities. *See id.*, section 7.2.1.C.

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**EXHIBIT D.
STATEMENT OF COSTS AND FINANCING**

(1). Costs. The Detailed Plan (Exhibit E.3) estimates that Facilities Removal, including all deconstruction activities and mitigation measures, has a most probable cost of \$291.6 million. The Applicant will test and refine this cost estimate in the course of development of the Definite Plan. *See* Amended KHSA section 7.2.1.

(2) Financing. In 2010 and 2011, respectively, the Public Utility Commission of Oregon and the Public Utilities Commission of California authorized surcharges totaling \$200 million (including interest accrued on surcharge funds held in trust) for the purpose of Facilities Removal under the KHSA. *See* Public Utility Commission of Oregon, Order No. 10-364 (2010) (Exhibit D.1), as modified by Order No. 10-390 (2010) (Exhibit D.2) and Order No. 16-218 (2016) (Exhibit D.3); Public Utilities Commission of California, Decision 11-05-002 (2011) (Exhibit D.4) as modified by Decision 12-10-028 (2012) (Exhibit D.5). The funds have accrued to trust accounts, which held \$120,019,563.91 as of August 31, 2016. Applicant is finalizing contractual agreements

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with the States of Oregon and California to designate it as the beneficiary of these trust accounts.

Under authority of Proposition 1 (2014), the State of California has appropriated an additional \$250 million for the purpose of Facilities Removal. *See* California Water Code section 79736 and Budget Act of 2016, Appropriation Item 0540-001-6083(1) (Exhibit D.6). Applicant is finalizing a contractual arrangement with the State of California with respect to this funding.

Amended KHSA sections 4.2.3, 4.2.4, and 7.1.2.A(4) describe the intended effect of these funding agreements. *See* also memorandum by Lloyd Lowy, Hawkins Delafield & Wood (September 22, 2016) (Exhibit D.7). Applicant will submit these agreements to the Commission by March 31, 2017.

- Exhibit D.1. Public Utility Commission of Oregon, Order No. 10-364 (2010)
- Exhibit D.2. Public Utility Commission of Oregon, Order No. 10-390 (2010)
- Exhibit D.3. Public Utility Commission of Oregon, Order No. 16-218 (2016)
- Exhibit D.4. Public Utilities Commission of California, Decision 11-05-002 (2011)
- Exhibit D.5. Public Utilities Commission of California, Decision 12-10-028 (2012)
- Exhibit D.6. California Water Code section 79736 and Budget Act of 2016, Appropriation Item 0540-001-6083(1)
- Exhibit D.7. Memorandum by Lloyd Lowy, Hawkins Delafield & Wood (September 22, 2016)

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**EXHIBIT E.
ENVIRONMENTAL REPORT**

(1) New License Application. Applicant incorporates Exhibit E from the New License Application (eLibrary 20040227-0151). This exhibit is a necessary part of the record of this proceeding for the purpose of its analysis of baseline conditions.

(2). Facilities Removal EIS/R. Applicant incorporates the following documents which comprise or relate to the *Klamath Facilities Removal Environmental Impact Statement/Report* (2012), published by the U.S. Department of Interior and California Department of Fish and Wildlife. These documents, attached as Exhibits E.1 – E.3, provide a substantial basis for analysis of the environmental impacts of Facilities Removal under the Amended KHSA.

Exhibit E.1. *Final Klamath Facilities Removal Environmental Impact Statement/Report* (2012), Volumes 1-3. Volume 1 is the primary analysis of the environmental impacts of Facilities Removal; Volume 2 consists of supporting appendices; and Volume 3 shows the history of consultation and comment.⁵

⁵ The EIS/R addressed Facilities Removal under KHSA (2010), which proposed that Congress authorize such removal by amendment to the Federal Power Act. See KHSA (Feb. 18, 2010) (available at http://klamathrestoration.gov/sites/klamathrestoration.gov/files/Klamath_Agreements/Klamath-Hydroelectric-Settlement-Agreement-2-18-10signed.pdf). The physical actions to accomplish Facilities Removal under the KHSA and Amended KHSA are the same, although the latter agreement uses the authority of the Federal Power Act.

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- Exhibit E.2. *Klamath Dam Removal Overview Report for the Secretary of the Interior: An Assessment of Science and Technical Information* (2013)
- Exhibit E.3. *Detailed Plan for Dam Removal – Klamath River Dams, Klamath Hydroelectric Project, FERC License No. 2082, Oregon – California* (2012)⁶
- Exhibit E.4. Contact list for property owners pursuant to 18 C.F.R. § 4.32(a)(3)

⁶ KRRC attaches a version of the Detailed Plan from which CEII has been redacted. The Definite Plan that KRRC will file subsequently will include information subject to CEII protection, as well as public information, as necessary to describe the exact methods of Facilities Removal.

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**EXHIBIT G.
LOWER KLAMATH PROJECT LANDS AND BOUNDARY**

(1). Project Description. The Lower Klamath Project will consist of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments and appurtenant lands, as proposed in Section III of the “Joint Application for Approval of License Amendment and License Transfer” (“License Transfer Application”), which PacifiCorp and KRRC filed today for Project no. 2082.

(2). Maps. Applicant incorporates by reference the maps for these developments, as contained in Figure M2.1-1 in Exhibit M, attached hereto.

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**EXHIBIT H.
APPLICANT'S QUALIFICATIONS**

(1). General. Applicant is a domestic non-profit public benefit corporation incorporated in the State of California. Its sole purpose is implementation of Facilities Removal under the Amended KHSA. Funds in the amount of \$450 million have been set aside pursuant to the Amended KHSA by the states of Oregon and California expressly for the Applicant's use for Facilities Removal. *See* Exhibit D, above.

Exhibit H.1 Amended Klamath Hydroelectric Settlement Agreement (2016)

Exhibit H.2. Articles of Incorporation, Klamath River Renewal Corporation

Exhibit H.3. By-laws, Klamath River Renewal Corporation

(2). KRRC Board. The Board of Directors of the Applicant has substantial expertise in hydropower, water quality and other aspects of management of natural resources, and the developmental and other uses of lands and waters in the Klamath Basin, as stated in the License Transfer Application.

(3) Technical Expertise. Applicant will engage expert general contractor and sub-contractors to develop and, upon the Commission's approval, implement the Definite

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Plan. *See* Amended KHSA section 7.12. Applicant will notify the Commission of these engagements.

CERTIFICATE OF SERVICE

I, Tina Dent, hereby certify that I have caused a copy of the "APPLICATION FOR SURRENDER OF LICENSE FOR MAJOR PROJECT AND REMOVAL OF PROJECT WORKS," to be served on each person designated on the service list compiled by the Office of the Secretary for Project no. 2082.

Dated: September 23, 2016



Tina Dent
CABLE HUSTON LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204-1136

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