



Pacific Power |
Rocky Mountain Power
825 NE Multnomah, Suite 2000
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**Via Electronic Mail
and U.S. Mail**

July 23, 2020

Dear KHSA Signatories:

For over a decade, we have worked in close partnership with Tribes, the States of California and Oregon, the federal government, irrigators, and a number of other stakeholders in the Klamath Basin to craft a solution to long-standing and complex natural resource challenges. In 2008, this diverse group of stakeholders – all having different priorities and interests in the Klamath Basin – came together in releasing the draft Klamath Basin Restoration Agreement (KBRA) that called for removal of PacifiCorp's Klamath hydroelectric facilities, expansive restoration activities, and a solution for a seemingly intractable conflict over water allocation. We subsequently worked as a part of this group in initiating the original Agreement in Principle (AIP) to outline a potential path forward to achieve dam removal via a separate settlement. We are proud to have been part of that original group and have remained demonstrably resolute in our commitment to a carefully balanced settlement that provides a pathway for dam removal, while providing cost certainty and liability protection to our customers.

In 2010, we were one of over 40 entities that came together to formally execute the Klamath Hydroelectric Settlement Agreement (KHSA). The KHSA, and the interrelated KBRA, established a historic framework for potential dam removal, funding of river restoration and habitat improvement actions, and increased water and regulatory certainty for Basin farmers, among other benefits. The KHSA embodied our longstanding bedrock principles that have guided PacifiCorp's participation since the initial 2008 AIP – cost certainty, liability protection, dam removal by a third party, and continued generation for the benefit of all of our customers until dam removal was ready to start. PacifiCorp demonstrated to state utility commissions that the KHSA, and the Oregon and California customer funding trust accounts, presented a net benefit and the agreement was determined to be in our customers' interest because of our consistent promise and commitment to our customers and regulators that these core protections would be honored and delivered.

Due to the complexities and the novel solutions envisioned in these agreements, the KHSA and KBRA required Congressional approval. PacifiCorp, together with our settlement partners, worked tirelessly over several Congressional sessions in an attempt to achieve the required federal legislation.

In the aftermath of the unsuccessful Congressional effort, the KBRA expired in December 2015 – an event that was a potential termination event under the terms of the KHSA. PacifiCorp chose to resume efforts at that critical juncture to explore an amended settlement pathway, rather than return directly to a contentious Federal Energy Regulatory Commission (FERC) relicensing process. PacifiCorp immediately entered into a renewed settlement negotiation under section 8.11 of the KHSA with many of our settlement partners, and together crafted another novel framework as part of the 2016 amendments to

the KHSA. These amendments provided for an independent dam removal entity to assume PacifiCorp's federal license and then remove the dams – preserving the customer protections upon which KHSA implementation was always predicated.

The Klamath River Renewal Corporation (Renewal Corporation) was formed to be the successor licensee and dam removal entity under the amended KHSA. The Renewal Corporation would have access to the \$450 million available under the settlement (including \$200 million collected from PacifiCorp's Oregon and California customers). In exchange, the Renewal Corporation would assume sole responsibility and liability for accepting the operating license for the facilities and then pursuing dam removal.

By its terms, the central feature of the amended KHSA requires a license transfer of the Lower Klamath Project (i.e., J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) to the Renewal Corporation, such that the Renewable Corporation would become the sole licensee for the Lower Klamath Project. The amended KHSA required the Renewal Corporation to demonstrate to FERC that it is capable of delivering dam removal as the sole licensee within available funding, including the requirement that the Renewal Corporation contract with a liability transfer company to provide added financial assurance and risk management capacity, among other things.

Thus, in September 2016, PacifiCorp and the Renewal Corporation jointly applied to FERC to transfer the Lower Klamath Project license from PacifiCorp to the Renewal Corporation. Since that time, the Renewal Corporation – working closely with other KHSA parties and its consulting team – has worked extraordinarily hard to address FERC's questions regarding the Renewal Corporation's fitness to hold the project license and serve as the dam removal entity, the costs of the dam removal proposal, and the risks and liabilities associated with what would be the largest dam removal project in U.S. history. We commend our settlement partners for their contributions to this work.

On July 16, 2020, FERC ruled on the license transfer application. Although recognizing the unique structure of the amended KHSA, FERC did not approve the concept of transferring hydropower license responsibilities and liabilities solely to a third party. Thus, FERC rejected the Renewal Corporation's ability to become the sole licensee for removal of the Lower Klamath Project and did not approve the required license transfer as proposed by PacifiCorp and the Renewal Corporation under the KHSA. Instead, FERC approved a "partial" license transfer, which conditionally allows the Renewal Corporation to become a co-licensee of the Lower Klamath Project and requires PacifiCorp to remain a co-licensee and fully liable for the costs and liabilities associated with dam removal.¹

FERC's rejection of the license transfer structure as a matter of policy, and its proposed co-licensee scenario, cannot be reconciled with the carefully negotiated and foundational condition embodied in all the Lower Klamath Project removal solutions since the 2008 AIP.

As in 2016, we remain committed to working with our settlement partners to navigate these changed circumstances. Fortunately, the KHSA parties have already established the agreed-upon mechanism – KHSA section 8.11 – for addressing developments and setbacks impacting core settlement terms. From PacifiCorp's perspective, section 8.11 does not establish an unavoidable path to settlement termination. Instead, it represents the agreed-to framework for settlement partners to do what we have done for the

¹ *PacifiCorp*, 172 FERC ¶ 61,062 (2020).

past dozen years: work together to address key developments and other implementation setbacks via an amendment to the settlement in a timely manner.

Now more than ever, it is time for the settlement parties to work together on potential solutions that will deliver the necessary benefits and bargains that have been included in the KHSA for over ten years. The settlement coalition has a proven track record of overcoming setbacks like the one we are facing. PacifiCorp reaffirms its commitment to achieving the balanced outcome we have negotiated in good faith with our settlement partners, our customers, our regulators, and other Klamath Basin stakeholders. We are confident that we can continue to work together to craft an amendment to the agreement that will allow this important settlement to move forward.

In the spirit of continued commitment to the terms of our settlement, this letter provides formal Notice of the occurrence of an event specified in amended KHSA section 8.11.1 and triggers the cure mechanisms in section 8.11.3.

We are eager to begin this process as soon as possible, and we look forward to continuing our important work together over the next six months as provided in KHSA section 8.11.3.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan L. Flynn". The signature is fluid and cursive, with a large loop at the end.

Ryan L. Flynn
Chief Legal Officer
PacifiCorp

APPENDIX K
List of Authorized Representatives

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