

Idaho Public Utilities Commission
Office of the Secretary
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JAN 14 2021

Boise, Idaho

Exhibit 5

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Implementing Agreement") is entered into between PacifiCorp, a wholly-owned subsidiary of Berkshire Hathaway Energy, the Karuk Tribe, Yurok Tribe, State of Oregon, State of California, and Klamath River Renewal Corporation ("KRRRC"), which are collectively referred to as the "Implementing Agreement Parties."

- A. The Implementing Agreement Parties recognize and acknowledge the importance of the Klamath River to the livelihood and culture of Klamath Basin Tribes whom have depended on these resources since time immemorial. Furthermore, the Implementing Agreement Parties are Signatories to the Amended Klamath Hydroelectric Settlement Agreement ("AKHSA" or "KHSA") and are committed to removal of the JC Boyle, Copco 1, Copco 2, and Iron Gate dams in order to achieve a free-flowing Klamath River with volitional fish passage ("the Project").
- B. On September 23, 2016, PacifiCorp and KRRRC filed a joint application with the Federal Energy Regulatory Commission ("FERC") to amend the Klamath Hydroelectric Project No. 2082 license by placing the J.C. Boyle Dam, Copco I, Copco II, and Iron Gate dams into a separate license (the "Lower Klamath Project") and to transfer that license to KRRRC.
- C. On March 15, 2018, FERC approved the request to separate License No. 2082 and created the Lower Klamath Project License No. 14803 and, on June 21, 2018, stayed the order amending the license pending further action on the license transfer application.
- D. On July 16, 2020, FERC issued an order approving the partial transfer of the Lower Klamath Project license from PacifiCorp individually to PacifiCorp and KRRRC jointly ("July 16 Order"). In so approving, FERC lifted the stay of the order amending the license but made its effectiveness coincident with the effectiveness of the July 16 Order.
- E. On July 23, 2020, PacifiCorp sent to the KHSA Signatories a letter that "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" ("Section 8.11 Notice").
- F. After several meetings among different groups of the Implementing Agreement Parties, the Implementing Agreement Parties, with support from Berkshire Hathaway Energy, have agreed to this Implementing Agreement as a means of resolving the issues identified in PacifiCorp's Section 8.11 Notice at this time and allowing for the continued implementation of the KHSA as amended.

- G. The Implementing Agreement Parties, with support from Berkshire Hathaway Energy, agree to this Implementing Agreement as a demonstration of their continuing support and commitment to dam removal.
- H. The Implementing Agreement Parties understand and agree that Oregon and California (collectively referred to as "the States") are acting as defined in the AKHSA by and through state departments and agencies with independent regulatory responsibilities and funding subject to the control of their respective legislatures. In this agreement the state of California is acting through the California Natural Resources Agency. Any commitment to State funds in this Implementing Agreement is contingent upon and subject to receipt of legislative appropriations or other expenditure authority specific to and sufficient to allow States, in the exercise of their reasonable administrative discretion, to carry out their obligations herein.

The Implementing Agreement Parties agree to the following terms as a means of carrying out their respective rights and duties under the AKHSA and achieving dam removal.

1. Amended License Surrender Application. KRRC and PacifiCorp will file an amended license surrender application ("ALSA") with FERC within seven days of execution of this Implementing Agreement. The ALSA will clearly explain and demonstrate the proposed pathway for the States to become co-licensees with KRRC, and the process and timeline for filing a new license transfer application as described in Section 3 herein, including treatment of the July 16 Order and confirmation that KRRC will continue to be the Dam Removal Entity.
2. Permits and Authorizations. KRRC will submit other work products to the applicable agencies that KRRC deems necessary to obtain permits and authorizations (including but not limited to biological assessments submitted to the National Marine Fisheries Service and U.S. Fish and Wildlife Service) to implement license surrender and Facilities Removal.¹ These submissions will occur on a timeline determined by KRRC. PacifiCorp will provide technical support and advice in the development of these submittals and will join in such submittals if necessary.

¹ Capitalized terms not otherwise defined in this agreement will have the same meaning as that in the Amended KHSA.

3. License Transfer Application.

- a. Upon execution of this Implementing Agreement, KRRC, PacifiCorp, and the States will prepare a new license transfer application requesting a transfer of the FERC license, which will propose to remove PacifiCorp from the license for the Lower Klamath Project and add the States and KRRC as co-licensees for the purposes of surrender of the Lower Klamath FERC license ("New Transfer Application"). The New Transfer Application will include a description that it is "building on" the original license transfer application approved in the July 16 Order.
- b. The States, PacifiCorp, and KRRC will file the New Transfer Application by January 16, 2021, and will notify FERC that PacifiCorp and KRRC are not accepting co-licensee status under the July 16 Order, and instead are seeking the license transfer outcome described in the New Transfer Application.
- c. The Implementing Agreement Parties will jointly support the ALSA and the New Transfer Application filings. Within 30 days of issuance of a final license surrender order by FERC, the States and KRRC will accept the license transfer order making the KRRC and States co-licensees for the Lower Klamath Project unless the States and PacifiCorp, in consultation with Karuk and Yurok Tribes, mutually agree to reject the license surrender order on the basis that the terms of the order, including terms of any federal agency consultation concerning the order, are significantly outside the norm for FERC orders involving major project construction or deconstruction in a manner that creates significant financial risk to the States or PacifiCorp.

4. Due Diligence.

Due diligence conducted by KRRC and the States related to the conveyance of Parcel B Lands has identified certain pre-existing environmental conditions ("Pre-Existing Environmental Site Conditions"). Prior to acceptance of license transfer by KRRC and the States, PacifiCorp shall:

- i. resolve at PacifiCorp's sole cost and expense all Pre-Existing Environmental Site Conditions that can be resolved prior to acceptance of a license transfer, to the reasonable satisfaction of the States, and
- ii. for Pre-Existing Environmental Site Conditions that cannot be cost effectively resolved prior to acceptance of a license transfer order, enter into an agreement with KRRC and the States to resolve at PacifiCorp's sole cost and

- expense such unresolved Pre-Existing Environmental Site Conditions prior to transfer of lands by KRRC to the States.
5. Section 8.11 Notice. PacifiCorp shall issue a letter to all KHSA Signatories to rescind the Section 8.11 notice immediately upon release of the press release announcing the execution of this MOA.
 6. PUC Processes. Concurrent with submission of the New Transfer Application to FERC, PacifiCorp shall seek approvals with the state utility regulators ("PUC") to transfer PacifiCorp's property interests consistent with the New Transfer Application. PacifiCorp shall request expedited action to satisfy the requirement that PUC approvals are obtained prior to or contemporaneously with acceptance of license transfer by KRRC and the States.
 7. Additional Contingency Funding. To address the unlikely event that costs for Facilities Removal exceed the AKHSA State Cost Cap, PacifiCorp and the States agree to create an additional contingency fund. This additional contingency is intended to express PacifiCorp's and the State's full commitment to dam removal. The additional contingency funding will be in the amount of \$45 million to ensure Facilities Removal will occur and be completed. The Implementing Agreement Parties believe that funding for Facilities Removal beyond the AKHSA State Cost Cap is unlikely to be needed, but have agreed that this additional contingency fund provides a clear and definitive commitment of resources that will ensure Facilities Removal is completed. PacifiCorp and the States will each contribute \$15 million for this additional contingency fund and share any cost overruns that may occur over this amount equally.
 8. Third-Party Litigation. KRRC will serve as the Dam Removal Entity, which includes providing the identified insurance, bonding, contracting, and indemnity provisions to the States and PacifiCorp. KRRC and the States, as co-licensees, will carry out the final license surrender order to effectuate Facilities Removal. Once ownership of the Facilities is transferred for purposes of Facilities Removal, the States will defend PacifiCorp to the fullest extent of the law possible, including seeking to dismiss or remove PacifiCorp from any litigation asserting damages arising from harm caused by Facilities Removal (as distinguished from third-party litigation that is the responsibility of PacifiCorp because it is related to actions taken by PacifiCorp in operating and maintaining the facilities prior to the States becoming co-licensees).

9. Limitations of Implementing Agreement Parties.

- a. The Implementing Agreement Parties understand and agree that the States' actions described in this Implementing Agreement are contingent upon and subject to receipt of legislative appropriations or other expenditure authority specific to and sufficient to allow the States, in the exercise of their reasonable administrative discretion, to carry out their obligations described herein. State law, future legislative actions, and budget limitations may constrain the States in carrying out these actions and nothing in this Implementing Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any funds by the States except as otherwise permitted by applicable law.
- b. The Implementing Agreement Parties understand and agree that the States are, *inter alia*, regulatory bodies, and nothing in this Implementing Agreement is intended nor should be construed as affecting or limiting the States from complying with their obligations under applicable laws or otherwise carrying out such regulatory obligations or processes.
- c. The Implementing Agreement Parties acknowledge that the States' inability to achieve their obligations herein will impact the other Implementing Agreement Parties' obligations.

10. Status of KHSA. In the event that amendments to the AKHSA are proposed by any Implementing Agreement Party, all of the Implementing Agreement Parties will work collaboratively and in good faith to achieve agreement concerning such amendments by January 16, 2021.

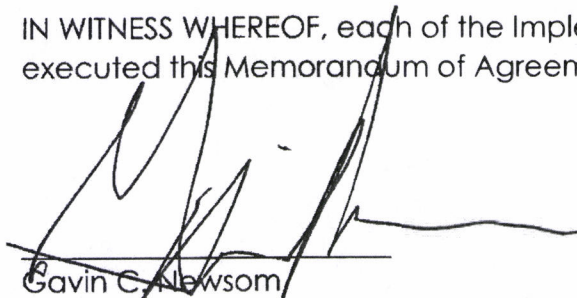
11. Support. The Implementing Agreement Parties agree to support all filings and submittals to regulatory agencies. This support includes cooperating to meet submittal/filing timelines and to refrain from opposing any filing, or submitting any opposition through comments, litigation, or otherwise. This support includes not challenging approvals that KRRC has already obtained. This support also includes covenants not to sue by and among all Implementing Agreement Parties pursuant to the KHSA.

12. Good Faith. The Implementing Agreement Parties agree to support in good faith the implementation of this agreement to effectuate Facilities Removal.

13. Filing of the Implementing Agreement. This Implementing Agreement as signed by the Implementing Agreement Parties is a public document and may be filed in any applicable regulatory proceeding.
14. Milestones. The Implementing Agreement Parties propose the attached timeline for drawdown and Facilities Removal subject to regulatory approvals.
15. Entire Agreement. This Implementing Agreement is intended to implement certain rights and responsibilities under the AKHSA of the Implementing Agreement Parties. Together with the AKHSA, this Implementing Agreement is the entire agreement between the Implementing Agreement Parties.
16. Counterparts. This Implementing Agreement may be executed in counterparts, with separate signature pages, to be effective as of the last signature date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.



Gavin C. Newsom
Governor
State of California

Date: 11-16-2020

Kate Brown
Governor
State of Oregon

Date: _____

Joseph L. James
Yurok Tribal Chairman

Date: _____

Russell A. Attebery
Karuk Tribal Chairman

Date: _____

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

State of California
Date:_____

Kate Brown

State of Oregon
Date:_____

Joseph L. James
Yurok Tribal Chairman
Date:_____

Russell A. Attebery
Karuk Tribal Chairman
Date:_____

Jim Root
President, Klamath River Renewal Corporation
Date:_____

William J. Fehrman
CEO and Chairman, PacifiCorp
President & CEO, Berkshire Hathaway Energy
Date:_____

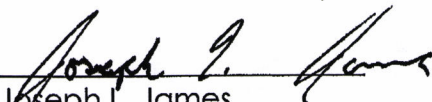
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Gavin C. Newsom
Governor
State of California

Date: _____

Kate Brown
Governor
State of Oregon

Date: _____



Joseph L. James
Yurok Tribal Chairman

Date: 11-13-2020

Russell A. Attebery
Karuk Tribal Chairman

Date: _____

IN WITNESS WHEREOF, each of the Implementing Agreement Parties has executed this Memorandum of Agreement.

Gavin C. Newsom
Governor
State of California

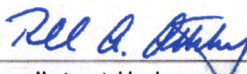
Date: _____

Kate Brown
Governor
State of Oregon

Date: _____

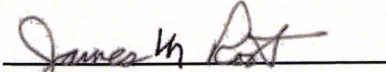
Joseph L. James
Yurok Tribal Chairman

Date: _____



Russell A. Attebery
Karuk Tribal Chairman

Date: 11-12-2020



Jim Root
President, Klamath River Renewal Corporation

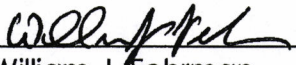
Date: 11/13/2020

William J. Fehrman
CEO and Chairman, PacifiCorp
President & CEO, Berkshire Hathaway Energy

Date: _____

Jim Root
President, Klamath River Renewal Corporation

Date: _____



William J. Fehrman
CEO and Chairman, PacifiCorp
President & CEO, Berkshire Hathaway Energy

Date: 11/13/20

Attachment A

	2020	2021			2022			2023		
Memorandum of Agreement on Co-Licensee Pathway	█									
Submit Amended License Surrender Application	█									
Submit Amended License Transfer Application		█								
Draft Management Plans	█	█								
State PUC Property Disposition Review		█	█	█	█	█				
License Surrender Process		█	█	█	█	█				
FERC Dam Safety Review	█	█	█	█						
Parties Accept License and License Transfers				█	█	█				
Notice to Proceed & Predrawdown Construction						█	█	█		
Drawdown/Dam Removal Begins								█	█	█