

# INITIAL STATEMENT

## BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

### Application for License for Existing Project

#### 1. APPLICANT AND REQUEST TERM OF NEW LICENSE

PacifiCorp, doing business as (dba) Pacific Power and Light Company, a corporation under the laws of the state of Oregon and having its executive offices and principal place of business at Portland, in the state of Oregon, referred to herein as the "Applicant," hereby makes application to the Federal Energy Regulatory Commission (FERC) for a new license for the existing Klamath Hydroelectric Project, FERC Project No. 2082. The following license application has been prepared in accordance with Chapter 18 of the Code of Federal Regulations (CFR) Section 4.51, license for Major Project, Existing Dam.

#### 2. LOCATION OF THE PROJECT

The location of the Project is:

State:	Oregon California
County:	Klamath (OR) Jackson (OR) Siskiyou (CA)
Town:	Klamath Falls and Keno (OR) Copco (Unincorporated) (CA)
Body of Water:	Klamath River Fall Creek Spring Creek

#### 3. APPLICANT'S ADDRESS AND TELEPHONE NUMBER

The exact name, business address, and telephone number of the Applicant are:

PacifiCorp  
825 NE Multnomah, Suite 1500  
Portland, Oregon 97232  
Telephone: (503) 813-5000

#### 4. APPLICANT'S AUTHORIZED AGENT

The exact name and business address of each person authorized to act as agent for the Applicant in this application are:

Mr. Todd Olson  
Hydro Licensing  
825 NE Multnomah, Suite 1500  
Portland, Oregon 97232  
Telephone: (503) 813-6657

Mr. Toby Freeman  
Hydro Licensing  
825 NE Multnomah, Suite 1500  
Portland, Oregon 97232  
Telephone: (503) 813-6208

FERC is also requested to send copies of all its communications with regard to the Application to:

Mr. Todd Olson  
Hydro Licensing  
825 NE Multnomah, Suite 1500  
Portland, Oregon 97232  
Telephone: (503) 813-6657

## 5. APPLICANT'S ORGANIZATIONAL STATUS

The Applicant is a corporation organized under the laws of the state of Oregon and is qualified to transact business as an electric utility in the states of Oregon, Washington, California, Idaho, Utah, Montana, and Wyoming. The Applicant is not claiming preference under Section 7(a) of the Federal Power Act.

## 6. PERTINENT OREGON AND CALIFORNIA STATUTORY AND REGULATORY REQUIREMENTS

The statutory or regulatory requirements of the states of Oregon and California, the states in which the Project is located, that affect the Project with respect to: 1) bed and banks; 2) appropriation, diversion, and use of water for power purposes; 3) right to engage in the business of developing, transmitting, and distributing power; and 4) any other business necessary to accomplish the purposes of the license under the Federal Power Act, are:

Oregon:

- 1) Oregon Revised Statutes, 197.180(1)—Requires state agency actions to be consistent with acknowledged land use plans and implementing regulations.
- 2) Oregon Revised Statutes, Chapter 468B *et seq.*—Governs the Oregon Department of Water Quality's (ODEQ's) water quality certification of hydroelectric projects.
- 3) Oregon Revised Statutes, 496.012—Wildlife Policy; establishes wildlife management policy to prevent serious depletion of any indigenous species and maintain all species of fish and wildlife at optimum levels.
- 4) Oregon Revised Statutes, 541.405—Oregon Plan for Salmon and Watersheds; restores native fish populations and the aquatic systems that support them, to productive and sustainable levels that will provide environmental, cultural, and economic benefits.

- 5) Oregon Revised Statutes, 496.435—Policy to Restore Native Stocks; establishes goal of the state of Oregon to restore native stocks of salmon and trout to their historical levels of abundance.
- 6) Oregon Revised Statutes, 509.580 – 509.645—Fish Passage Law; governs fishways and screening.
- 7) Oregon Revised Statutes, Chapter 543 *et seq.*—Governs appropriation, diversion, and use of water for hydropower generation.
- 8) Oregon Revised Statutes, Chapter 543A *et seq.*—Provides for the reauthorization of existing hydropower projects.
- 9) Oregon Revised Statutes, Chapter 757 *et seq.*—Defines public utilities and regulates the business of retail distribution of electricity by the Public Utility Commission of Oregon.
- 10) Oregon Administrative Rules, 141-087—Provides a procedure for obtaining hydroelectric power leases and easements on lands managed by the State Land Board.
- 11) Oregon Administrative Rules, 340-041—State Water Quality Management Plan; identifies Oregon’s water quality standards, water quality policies, and required treatment criteria.
- 12) Oregon Administrative Rules, 340-048-005 through -0040—Prescribes the state’s water quality standards and procedures for receiving, evaluating, and taking final action on a Section 401 certification application.
- 13) Oregon Administrative Rules, 340-041-962—Designates beneficial uses for the Klamath Basin.
- 14) Oregon Administrative Rules, 635-007-0510—General Fish Management Goals; establishes goals for managing fish to take full advantage of the productive capacity of natural habitats; Oregon Department of Fish and Wildlife (ODFW) to address losses in fish productivity resulting from habitat degradation through habitat restoration.
- 15) Oregon Administrative Rules, 635-007-0521 through -0524—Natural Production Policy; protects and promotes natural production of indigenous fishes.
- 16) Oregon Administrative Rules, 635-007-0501 through -0506—Native Fish Conservation Policy; conserves and recovers native fish in Oregon to avoid serious depletion of native fish; provides ecological and societal benefits; provides opportunities for fisheries and other societal uses.
- 17) Oregon Administrative Rules, 635-007-0525 through -0529—Wild Fish Management Policy; protects genetic resources of wild fish.
- 18) Oregon Administrative Rules, 635-007-0536 through -0538—Wild Fish Gene Resource Conservation Policy; manages wild fish to maintain their adaptiveness and genetic diversity.

- 19) Oregon Administrative Rules, 635-500-0100 through -0120—Trout Management; maintains the genetic diversity and integrity of wild trout stocks; protects, restores, and enhances trout habitat.
- 20) Oregon Administrative Rules, 635-415-0000 through -0025—Fish and Wildlife Habitat Mitigation Policy; requires or recommends mitigation for losses of fish and wildlife habitat.
- 21) Oregon Administrative Rules, 635-100-001 through -0030—Wildlife Diversity Plan; maintains Oregon’s wildlife diversity by protecting and enhancing populations and habitats of native wildlife at self-sustaining levels throughout natural geographic ranges.
- 22) Oregon Administrative Rules, 635-500-3600 through -3860—Klamath Basin Fish Management Plan; protects and promotes natural production of indigenous species and protect and restores those habitats through coordination and cooperation with other agencies, entities, and landowners.

#### California

- 1) California Fish and Game Code § 1600 *et seq.*—Requires that parties notify the California Department of Fish and Game (CDFG) prior to conducting any work in a streambed.
- 2) California Fish and Game Code § 1802—Establishes CDFG as a trustee agency and an agency with special expertise with regard to the state of California fish and wildlife resources.
- 3) California Fish and Game Code § 2050 *et seq.*—California Endangered Species Act; addresses activities involving Lost River and shortnose suckers and coho salmon.
- 4) California Fish and Game Code § 5517—Addresses fully protected fish species, including the Lost River and shortnose suckers.
- 5) California Fish and Game Code § 5900 *et seq.*—Addresses the need to provide fishways at dams, sufficient flow below dams to keep fish in good condition, and hatcheries as mitigation in lieu of passage at dams.
- 6) California Fish and Game Code § 5981—Provides for installation of a screen on a conduit when, according to opinion of the department, a screen is necessary.
- 7) California Fish and Game Code § 6900 *et seq.*—Salmon, Steelhead Trout, and Anadromous Fisheries Program Act; requires CDFG to undertake major efforts to restore the state’s salmon, steelhead trout, and anadromous fisheries.
- 8) California Water Code §106.7—Establishes state policy regarding development of environmentally compatible small hydroelectric projects.

- 9) California Water Code § 1200 *et seq.*—Governs appropriation and beneficial use of water, including appropriation and use of water for power generation purposes.
- 10) California Water Code § 13160 and California Code of Regulations, title 23, § 3855 *et seq.*—Implements State Water Resource Control Board responsibilities related to water quality certification for activities otherwise required to obtain such a certification under federal law.
- 11) California Water Code § 6000 *et seq.*—Requires owners of dams to cooperate with the California Division of Safety of Dams (CDSOD) in the inspection and maintenance of dams.
- 12) Public Utilities Code, Division 1, § 201 *et seq.*—Regulates the right of a public utility to produce, generate, transmit, or furnish power to the public.

#### Oregon and California

- 1) Federal Clean Water Act, 33 USC § 1341—Establishes requirements for state certification of proposed projects or activities that may result in any discharge of pollutants to navigable waters.

The steps that the Licensee has taken or plans to take to comply with each of the laws cited above are as follows:

- 1) The Licensee has the water rights necessary to operate the Project.
- 2) The Licensee will file applications for water quality certificates with ODEQ and the California State Water Resources Control Board (CSWRCB) according to FERC licensing protocol.
- 3) The Licensee will cooperate with the Oregon Division of State Lands (ODSL) to determine whether a hydroelectric power lease is required for any Project facility; if required, the Licensee will negotiate such a lease with ODSL.
- 4) The Licensee will cooperate with CDSOD on annual inspections of Project dams.
- 5) The Licensee has demonstrated the ability to engage in the business of developing, transmitting, and distributing power under the appropriate California statute.

Additional statutes, regulations, and comprehensive plans are discussed in Exhibit E of this license application.

#### 7. APPLICANT'S PROJECT WATER RIGHTS

The Applicant holds various Certificates of Water Right for seven diversions on the Project.

**Oregon Water Rights.** Oregon's water laws are based on the system of prior appropriation, and Oregon water rights are controlled by state law and administered by the Oregon Water Resources Department (OWRD). Some of the Project facilities located in Oregon use water pursuant to

rights that have been recognized, quantified, and certificated under Oregon law. Other facilities operate with water rights perfected before Oregon's Water Code was enacted in 1909; these rights are currently being determined in a general stream adjudication for the Klamath Basin.

**State of Oregon Hydropower Permits.** Hydropower water rights in Oregon are governed by Oregon Revised Statutes (ORS) Chapter 543 and Chapter 543A, pursuant to which hydropower generators may operate under either a "Power Claim" or a "Hydroelectric License." Both types of permit require payment of annual fees to OWRD. Functionally, there are two types of Power Claims. A hydropower water right that was developed before 1909 and is unadjudicated may be recognized as a Power Claim; the water rights associated with such claims are vested but inchoate, not limited or subordinated to other water uses, and assumed to be perpetual. Hydropower water rights developed from 1909 through 1931 are also subject to Power Claims and are given a perpetual, certificated water right. Such certificates typically contain a subordination clause making the right subject and subordinate to junior as well as senior irrigation water rights. Neither unadjudicated nor certificated Power Claims require reauthorization by the state. Since 1932, the use of water for hydropower generation has been governed by the state Hydroelectric License, which is a time-limited permit to use water for hydropower purposes and does not include a separate certificated water right until after it is reauthorized pursuant to ORS Chapter 543A. Hydroelectric Licenses contain limitations similar to the subordination clauses found in Power Claim certificates and, because they are time-limited, are subject to reauthorization by the state.

The Applicant holds all three types of licenses permitting the use of water to generate electricity. Specifically, the Oregon water rights and hydroelectric permit types for each of the Project facilities within Oregon may be summarized as follows:

- *East Side Power Plant.* State of Oregon Certificate of Water Right No. 24508 certifies the right to use 1,000 cubic feet per second (cfs) of the waters of the Link River (Klamath River) at East Side powerhouse for the purpose of development of electricity, with a priority date of February 24, 1919. The state permits this use through Power Claim No. 667. The certificate contains a subordination clause in which the right is "made subject and subordinate in right and time to any appropriations of water which may hereafter be made at points above on Upper Klamath Lake or its tributaries, for irrigation, or for storage for irrigation purposes for use on lands in Oregon."

The East Side Power Plant also generates electricity with a second, unadjudicated water right for 150 cfs, which is permitted under Power Claim No. 34. This unadjudicated right is further discussed below.

- *West Side Power Plant.* The West Side Power Plant generates electricity with a 205-cfs unadjudicated water right, which is further discussed below. The state of Oregon permits this use through Power Claim No. 35. The Applicant also holds an unadjudicated, nonhydropower water right for irrigation at the plant operator's cottage located at this facility.
- *J.C. Boyle Dam and Power Plant.* Water for electric generation at the J.C. Boyle facility is permitted through State of Oregon Hydropower License No. HE 180 (HE 180), issued in 1956 for the period between January 1, 1957, and December 31, 2006. Article 9 of the

license provides for use of 2,500 cfs from the Klamath River for hydroelectric power at the plant. The water right has a priority date of April 17, 1951, and is vested in the licensee during the period of the license as well as any renewal. The use of water under HE 180 is subject to any junior water right permit for “domestic, stock, or irrigation purposes” issued after April 17, 1951. In addition, the right is subject to bypass limitations. Specifically, Article 3 of the license requires up to 150 cfs to be bypassed for the “preservation of fish” and for a minimum flow of 200 cfs to be maintained below the powerhouse.

- *Fall Creek Power Plant.* The Fall Creek hydroelectric facility is located in California; however, the plant uses water that is diverted in Oregon from Spring Creek (a tributary of Jenny Creek, which is a tributary of the Klamath River) into a canal that runs into Fall Creek above the powerhouse. The Oregon water right, for 16.5 cfs, is unadjudicated and is discussed further below. The water right is not subject to a state Power Claim or Hydroelectric License because ORS Chapters 543 and 543A apply to the generation of electricity rather than specifically to the diversion of water, and they do not have extraterritorial application.

**Unadjudicated Oregon Water Right Claims.** The state is currently adjudicating pre-1909 water rights in the Klamath Basin. The contest period closed in May 2000 and the adjudication is ongoing. The Applicant has made claim to four hydropower rights or rights associated with hydropower facilities. For each claim, the Applicant has completed the evidentiary hearing (or stipulation) process, and each claim has been recommended, in a proposed final order issued by a hearing officer from the Hearing Officer Panel, for the amounts listed in the following summaries of the four unadjudicated claims:

**Claim No. 168:**

Source	Link River
Type of Use	Power—West Side powerhouse
Priority Date	December 11, 1891
Rate of diversion	205 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

**Claim No. 164:**

Source	Link River
Type of Use	Irrigation for operator’s cottage
Priority Date	December 11, 1891
Rate of diversion	0.01 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

**Claim No. 167:**

Source	Link River
Type of Use	Power—East Side powerhouse
Priority Date	November 1, 1895
Rate of diversion	150 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

**Claim No. 218:**

Source	Spring Creek
Type of Use	Power—Fall Creek facility
Priority Date	September 23, 1902
Rate of diversion	16.5 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

The Applicant's unadjudicated claims will become enforceable water rights when the Adjudicator issues a Final Order. It is unclear when a Final Order will be issued, however, because many claims and contests have yet to be heard and the OWRD has not provided a schedule for issuing a Final Order. The Final Order will be reviewed by the Klamath County Circuit Court and that court will issue a final decree. The decree can be appealed. Final resolution of the Klamath adjudication is likely years away. Oregon law provides that pre-1909 water rights are vested rights. The Applicant is entitled to use the water under the unadjudicated claims while the Final Order is pending.

## **REAUTHORIZATION OF OREGON HYDROPOWER LICENSE NO. 180**

HE 180 is a state hydropower license that includes a time-limited water right for the generation of electricity at the J.C. Boyle development. HE 180 is subject to reauthorization by the state of Oregon. Oregon law requires that the state "shall issue a water right for continued operation of an existing hydroelectric project upon a finding that the proposed use will not impair or be detrimental to the public interest . . . ." ORS 543A.025(1). The quoted statute provides several factors the state must consider in making its finding. Those factors are addressed in the discussion that follows.

**ORS 543A.025(1)(a).** The Applicant's use of water under HE 180 conserves the highest use of such water for all purposes. First, the water right is subject to all prior rights to water on the Klamath River and is also made expressly subordinate to junior water rights for "domestic, stock, or irrigation purposes." Thus, no upstream water users for domestic, stock watering, or irrigation purposes are affected by HE 180. Because the use is nonconsumptive, no downstream users are affected. Second, HE 180 requires bypass flows and the maintenance of instream flows below the powerhouse. These requirements, along with ramping limitations, ensure the protection of both aquatic wildlife and recreational use.

**ORS 543A.025(1)(b).** The Applicant's use of water under HE 180 maximizes the economic development of that resource. The Applicant manages and operates the J.C. Boyle development, in conjunction with all other Project developments, to use water efficiently for hydroelectric generation, as well as to protect and conserve such water for other beneficial uses, as discussed above. The Applicant's operation of Project developments produces numerous economic benefits, such as the provision of local employment, contribution to the local tax base, and the availability of electricity at reasonable rates.

**ORS 543A.025(1)(c).** The Applicant's operation of Project developments controls the water used at the J.C. Boyle development to provide several resource benefits to the public, including minor flood control and recreational opportunities. For example, the United States Bureau of Land Management manages a segment of the Klamath River downstream of the J.C. Boyle development under the federal Wild and Scenic Rivers Act. The federally designated segment is popular for whitewater rafting and other recreation. The Applicant supports such recreational use as evidenced by its consideration of flow (generation) timing of releases downstream of J.C. Boyle and by providing and maintaining a number of recreational facilities, such as take-out points for rafters in the California segment of that federally managed Klamath River reach.

**ORS 543A.025(1)(e).** Because the Applicant manages and operates the J.C. Boyle facility efficiently for hydroelectric generation, and because Project operations provide resource and economic benefits as described above, the use of water under HE 180 prevents wasteful, uneconomic, impracticable, or unreasonable use of this resource.

**ORS 543A.025(1)(f).** The Applicant's use of water under HE 180 protects vested and inchoate rights to water or its use. Under the prior appropriation system, the Applicant's rights are subordinate to all prior rights to water on the Klamath River, which includes all rights perfected before April 17, 1951. Vested and inchoate water rights on the Klamath River are now in the process of being adjudicated (see discussion above). Until the adjudication is complete, holders of those rights cannot have the Applicant's rights enforced against them, pursuant to OWRD policy. In addition, the express terms of HE 180 make the Applicant's use of water subject to junior water rights for "domestic, stock, or irrigation purposes" and to bypass and instream flow requirements. Thus, no upstream water users for domestic, stock watering, or irrigation purposes are affected by HE 180, whether their water rights are junior or senior to the Applicant's. In addition, no downstream users are affected because the use is nonconsumptive.

**ORS 543A.120(2)(b).** The Applicant's use of water at the J.C. Boyle development and other Project developments is compatible with applicable basin programs and land use plans. First, the state of Oregon implements its statewide water allocation policies through individual "basin plans" established by administrative rules promulgated by the Oregon Water Resources Commission. However, the Commission has not adopted a basin plan for the Klamath Basin, so use of the waters of the Klamath River is subject to general statutes and rules, including ORS 542.620 (see Oregon Administrative Rule 690-500-0010(5)). The Applicant's use of water under HE 180 complies with such statutes and rules. For example, the Applicant's use of water throughout the Project represents an efficient use of that resource for hydroelectric generation, as mandated by ORS 542.620, Article IV. Second, Klamath County's Comprehensive Plan establishes goals for the use of land and resources in the county. For example, Policy 1 of Goal 13, the "Energy Conservation" portion of the Comprehensive Plan, states: "The County shall encourage the use of renewable and efficient energy sources in residential, commercial, and industrial development." The Applicant's nonconsumptive use of water — a renewable energy source — at Project developments is compatible with this goal.

Because the Applicant's use of water under HE 180 meets the public interest and other requirements set forth in ORS Chapter 543A, the Applicant anticipates that the state of Oregon will reauthorize the license.

**California Water Rights.** Since 1914, appropriative water rights have been acquired and regulated pursuant to the California Water Code, section 1200, *et seq.*, and predecessor statutes. These "post-1914" appropriative water rights are administered by the State Water Resources Control Board (SWRCB) through water right permits and licenses. Prior to 1914, appropriative rights were established by diversion and continuous use of water for reasonable and beneficial purposes. So long as the appropriation was diligently prosecuted, the relative priority date of a "pre-1914" appropriative right relates back to the first act indicating an intent to appropriate water. No SWRCB permit or license is required to exercise pre-1914 appropriative water rights, and SWRCB jurisdiction and authority over these rights is more limited than with permitted and licensed water rights. Pre-1914 water right holders are encouraged to file Statements of Water Diversion and Use (SWDU) with the SWRCB, which provide the SWRCB with information

regarding diversion and use under pre-1914 appropriative water rights. Riparian rights attach to lands adjacent to a water course, and authorize reasonable use of water on that riparian land. No SWRCB permit or license is required to exercise riparian rights, and SWRCB jurisdiction and authority over these rights is more limited than with permitted and licensed water rights.

The Applicant exercises both pre-1914 appropriative water rights and post-1914 licenses issued by the SWRCB for its hydroelectric project developments in California. Specifically, the California water rights for each of the hydroelectric project developments in California can be summarized as follows:

- *Iron Gate Dam and Powerhouse.* Water diversion at Iron Gate dam for use at the Iron Gate powerhouse and the Iron Gate fish hatchery is authorized pursuant to SWRCB License No. 9457 (Permit No. 12259, Application No. 17527). License No. 9457 was initiated in 1957 via application filed by the Applicant's predecessor-in-interest, Pacific Power and Light Company. The license authorizes year-round diversion of up to 3,300 cfs at Iron Gate dam, of which up to 1,800 cfs may be diverted through the Iron Gate powerhouse and up to 50 cfs may be diverted through the fish hatchery facilities. Water diverted in excess of power and fish propagation needs may be temporarily stored or regulated in Iron Gate for later use. License No. 9457 contains the standard terms and conditions ordinarily included in water rights licenses, and several special license terms. The special terms and conditions provide that: (1) License No. 9457 is generally subordinate to rights previously or subsequently acquired for certain uses in the Shasta Valley-Ager area; (2) License No. 9457 is subject to the Klamath River Basin Compact and Article 38 of Applicant's FERC License No. 2082; (3) Licensee must ensure a specific release and flow schedule downstream of Iron Gate dam; and (4) Licensee must adhere to a specific ramping rate for reservoir releases.

The Applicant also claims a separate water right, documented in SWDU No. 12968, to divert up to 48 cfs, year-round, for fish propagation purposes at the Iron Gate fish hatchery. SWDU No. 12968 claims a pre-914 water right, but a riparian water right may also be claimed. Diversions to the Iron Gate fish hatchery also are authorized under License No. 9457, as discussed above.

- *Copco Dams and Powerhouses.* The Applicant exercises three pre-1914 appropriative water rights for diversions at Copco No. 1 and Copco No. 2 dams, and for use at the associated Copco No. 1 and No. 2 powerhouses. These rights are documented by three SWDUs filed with the SWRCB in 2002, as follows:
  - SWDU No. 15374 (2002): SWDU No. 15374 documents a pre-1914 appropriation initiated by the Applicant's predecessor-in-interest, Siskiyou Electric Power and Light Company, for diversion at Copco No. 1 dam. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on February 13, 1909. The claim is for year-round diversion of 50,000 miners inches (conservatively, 1,000 cfs), for various beneficial uses, including power generation.
  - SWDU No. 15375 (2002): SWDU No. 15375 documents a pre-1914 appropriation initiated by the Applicant's predecessor-in-interest, Siskiyou Electric Power and Light

Company, for diversion at Copco No. 1 dam. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on February 4, 1909. The claim is for year-round diversion of 150,000 miners inches (conservatively, 3,000 cfs), for various beneficial uses, including power generation.

- SWDU No. 15376 (2002): SWDU No. 15376 documents a pre-1914 appropriation initiated by the Applicant's predecessor-in-interest, Siskiyou Electric Power and Light Company, for diversion at Copco No. 2 dam. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on February 13, 1909. The claim is for year-round diversion of 400,000 miners inches (conservatively, 8,000 cfs), for various beneficial uses, including power generation.
- *Fall Creek Diversion and Powerhouse*. The Applicant diverts water from Fall Creek via the Fall Creek diversion dam for power generation uses at the Fall Creek powerhouse. Water diverted at the Fall Creek diversion dam originates from two watersheds: (1) the Fall Creek watershed ("native water"), and (2) water diverted and conveyed from Spring Creek in the Jenny Creek watershed ("foreign water"). Foreign water from the Jenny Creek watershed is released into Fall Creek above the Fall Creek diversion dam and commingled with the native Fall Creek water for diversion and use at the Fall Creek powerhouse. The foreign water from the Jenny Creek watershed is diverted in Oregon under Oregon's water laws, and rights to this water is addressed above in the discussion of Oregon water rights. The native water from the Fall Creek watershed is diverted in California under California's water laws. As to the native Fall Creek water, the Applicant exercises two pre-1914 appropriative water rights for diversions at the Fall Creek diversion dam, for use at the Fall Creek powerhouse. These rights are documented by two SWDUs filed with the SWRCB in 2002, as follows:
  - SWDU No. 15372 (2002): SWDU No. 15372 documents a pre-1914 appropriation initiated by the Applicant's predecessors-in-interest, E.H. Steele and J.W. Churchill, for diversion of native flow from Fall Creek. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on July 2, 1902. The claim is for year-round diversion of 3,000 miners inches (conservatively, 60 cfs), for power generation use.
  - SWDU No. 15373 (2002): SWDU No. 15373 documents a pre-1914 appropriation initiated by the Applicant's predecessors-in-interest, E.H. Steele and J.W. Churchill, for diversion of native flow from Fall Creek. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on May 14, 1902. The claim is for year-round diversion of 1,000 miners inches (conservatively, 20 cfs), for power generation use.

In addition to the above-referenced California water rights, which are exercised in the operation of the Applicant's Klamath Hydroelectric Project, the Applicant holds other California water rights to the Klamath River and its tributaries. Those other water rights are not required for the operation of the Project, and therefore are not discussed in this document.

## 8. BRIEF DESCRIPTION OF THE EXISTING PROJECT

The currently licensed Klamath Hydroelectric Project consists of seven mainstem hydroelectric developments on the Upper Klamath River and one tributary hydroelectric development on Fall Creek. PacifiCorp owns and operates the Project under a single license issued in 1956 by FERC. The 30-year license (FERC Project No. 2082) expires on March 1, 2006.

The Project is located on the Upper Klamath River in Klamath County, south-central Oregon, and Siskiyou County, north-central California. The nearest principal cities are Klamath Falls, Oregon, located at the northern end of the Project area, Medford, Oregon, 45 miles northwest of the downstream end of the Project, and Yreka, California, 20 miles southwest of the downstream end.

The East Side (3.2 megawatt [MW]) and West Side (0.6 MW) developments associated with the U.S. Bureau of Reclamation (USBR) Link River dam are the most upstream developments. The developments are located near river mile (RM) 254 within the city limits of Klamath Falls, Oregon. USBR owns the Link River dam and PacifiCorp currently operates it under USBR's directive. PacifiCorp's obligation to operate the dam for USBR concludes in 2006 when the 1956 contract expires. As a federal dam, it is not considered part of the licensed Project. The dam was originally built to supply water to USBR's Klamath Irrigation Project and to assist PacifiCorp's operation of the Klamath Hydroelectric Project.

The East Side and West Side powerhouses and associated waterways are part of the licensed FERC Project. Keno dam, a reregulating facility with no generation capability, is the next development, 20 miles downstream at RM 233. Keno reservoir buffers inflow and outflow of USBR's Irrigation Project. The next development is J.C. Boyle (80 MW). The dam is at RM 224.7 and the powerhouse is several miles downstream at RM 220.4. As the river continues into California, it enters Copco reservoir, which supplies Copco No. 1 (20 MW) and No. 2 (27 MW) hydroelectric facilities, at RM 198.6 and RM 196.8, respectively. The Iron Gate development (18 MW) is farthest downstream at RM 190. Fall Creek, a tributary, flows through a small powerhouse (2.2 MW) and then into the upper end of Iron Gate reservoir.

Long-term (30-year) average annual generation of the existing Project is 715,879 MW-hours.

## 9. PROPOSED NEW PROJECT FACILITIES

Although not included in the existing Project, the Spring Creek diversion dam and waterway is proposed to be included as part of the Fall Creek development in the proposed Project. The diversion dam has been used periodically since its original construction in 1902. Water from this dam assists the Fall Creek powerhouse in reaching its capacity of 2.2 MW. The inclusion of the Spring Creek diversion dam and waterway will not result in additional generation capacity.

PacifiCorp periodically implements capital investments for the purpose of enhancing the generation capabilities of existing turbine-generator units at the Project. In such cases, the driver for the overhaul and upgrade of a turbine or generator has been a need to replace major components that have reached the end of their useful life. While turbine technology has not changed significantly in many years, the advent of more powerful computers and numerical flow analysis has allowed for optimization of turbine runner designs, resulting in efficiency and

capacity gains associated with a turbine overhaul incorporating a runner replacement. In this manner and considering the length of a new license, PacifiCorp expects to take advantage of the new design and analysis technology to obtain incremental gains to the efficiency and capacity for the units at the Klamath Hydroelectric Project. Implementation of such upgrades will be determined by the condition of generating equipment and future streamflow conditions through the Project.

PacifiCorp is not proposing any modifications to its operation that would affect the Project's ability to meet USBR's flow requirements downstream of Iron Gate dam.

## 10. REMOVAL OF FACILITIES FROM PROPOSED PROJECT

PacifiCorp is proposing to remove the East Side and West Side developments, the Keno Development, and associated FERC boundaries from service. For the East Side and West Side developments, this would include modifications at the Link River dam face, removal and reconfiguration of the water conveyance system, and removal of all electrical, chemical, and other potential public hazards that exist related to power generation. The powerhouse structures will not be removed but will be disabled, with all electrical components removed and secured from public access. Keno will continue to operate under existing conditions.

### East Side Development

The seven intake slide gates that currently supply water from Link River dam to the East Side forebay will be anchored in place and rendered inoperable by removing the individual gate lifting devices. Downstream of each gate, concrete water tight bulkheads will be constructed.

The concrete and stone cobble forebay walls will be broken up and used as subgrade-fill material to recontour the area west of the fish ladder. Above the cobble-fill soil, native vegetation will be distributed and hydroseeded.

The entire length of the 12-foot-diameter flowline made of 1,730 feet of woodstave pipe and 1,443 feet of steel pipe will be dismantled and removed from the site along with the associated support structures. The alignment of the flowline will be recontoured and all disturbed areas will be hydroseeded. The steel surge tank and the concrete support pedestal will also be removed and regraded.

Any powerhouse components associated with power generation that contain chemical or hazardous materials will be removed from the site, including transformers, batteries, tanks, and asbestos-based products. All windows and doors will be sealed to prevent public access. The incoming potable water line will be disconnected. The penstock to the turbine and the draft tube discharge will be sealed, assuring that access is prevented.

The transmission line (No. 56-8) from East Side powerhouse to a tap-point on transmission line 11 will also be removed.

### West Side Development

Four of the six steel slide gates that control flow at the West Side intake at Link River dam will be made inoperable by welding the gates in place and removing the lifting devices. Downstream

of each of the gates, new water-tight concrete bulkheads will be constructed. The area below the new bulkheads and the 5,575 feet of unlined earth canal leading to the powerhouse intake will be recontoured using native materials. The concrete spillway structure (400 cubic yards) and the concrete intake structure (180 cubic yards) will be removed and these areas will be regraded. The 140-foot penstock and support structures will also be removed. All areas that have been disturbed will be hydroseeded.

Any powerhouse components associated with power generation that contain chemical or hazardous materials will be removed from the site, including transformers, batteries, tanks, and asbestos-based products. All windows and doors will be sealed to prevent public access. The incoming potable water line will be disconnected and the septic system will be disconnected and backfilled. The penstock to the turbine and the draft tube discharge will be sealed, assuring that access is prevented.

The small powerhouse-related substation and transmission lines leading to the larger nearby substation will be removed. The nearby West Side substation will remain in place. It is not associated with the West Side hydroelectric development and is needed for the location transmission system.

### Keno Development

PacifiCorp is excluding the Keno Development from the relicensed Project because the development is no longer subject to FERC jurisdiction. In the original license, FERC exercised jurisdiction over the Keno Development because it was anticipated that the development would include generation (see Pacific Power & Light Co., 34 FPC 1387 (1965)). However, PacifiCorp has not installed generation at the development and does not intend to do so. Moreover, PacifiCorp's operation of the Keno Development does not substantially benefit generation at PacifiCorp's downstream Project facilities. As a result, there is no longer any basis upon which to conclude that the Keno Development is subject to FERC jurisdiction.

## 11. UNITED STATES-OWNED LANDS AFFECTED BY THE PROJECT

The proposed FERC license Project boundary encompasses approximately 3,737 acres. Of this area, 156 acres are United States-owned land managed by the U.S. Bureau of Land Management.

## 12. COUNTIES, CITIES, AND INDIAN TRIBES AFFECTED BY THE PROJECT

The names and mailing addresses of the counties in which the Project is located are as follows:

Klamath County  
County Commissioners  
305 Main Street  
Klamath Falls, OR 97601

Jackson County  
Planning and Development  
10 South Oakdale Avenue, Room 199  
Medford, OR 97501

Siskiyou County  
Board of Supervisors  
311 4th Street  
Yreka, CA 96097

The name and mailing address of the city with a population of 5,000 or more and within 15 miles of the Project boundary is:

City of Klamath Falls  
City Manager  
P.O. Box 237  
Klamath Falls, OR 97601

The names and mailing addresses of any irrigation district, drainage district, or similar special purpose political subdivision affected by Project operations are as follows:

Klamath Basin Improvement District 6640 Kid Lane Klamath Falls, OR 97603	Klamath Drainage District 280 Main Street Klamath Falls, OR 97601
Klamath Water Users Association 2455 Patterson Road—Suite 3 Klamath Falls, OR 97603	Klamath Irrigation District 6640 Kid Lane Klamath Falls, OR 97603

In addition to the entities noted above, the Applicant is aware of the following political subdivisions or other entities in the general area of the Project that would likely be interested in or affected by this document:

Jackson County Planning and Development 10 S. Oakdale Avenue—Room 199 Medford, OR 97501	County of Humboldt Board of Supervisors 825 5th Street Eureka, CA 95501
County of Del Norte Board of Supervisors 981 H Street—Suite 200 Crescent City, CA 95531	City of Yreka Yreka City Hall 701 Fourth Street Yreka, CA 97097

Indian tribes both recognized and not recognized by the federal government that may be affected by the Project are:

Klamath Tribes PO Box 436 Chiloquin, OR 97624	Yurok Tribe 15900 Highway 101 N. Klamath, CA 95548
Karuk Tribe of California PO Box 282 Orleans, CA 95556	Resighini Rancheria PO Box 529 Klamath, CA 95548
Hoopa Tribe PO Box 1348 Hoopa, CA 95546	Shasta Tribes, Inc. PO Box 773 Yreka, CA 96097

PacifiCorp  
Klamath Hydroelectric Project  
FERC No. 2082

Shasta Nation  
PO Box 5385  
Bend, OR 97708-5385

The Applicant has provided a copy of this document to each of the parties listed above.

### 13. FEDERAL AND STATE RESOURCE AGENCIES CONSULTED

The Applicant has consulted with the following federal and state resource agencies regarding the relicensing of the Project:

U.S. Bureau of Indian Affairs  
Pacific Region  
2800 Cottage Way  
Sacramento, CA 95825

U.S. Bureau of Indian Affairs  
911 NE 11th Avenue  
Portland, OR 97232

U.S. National Park Service  
2800 Cottage Way—Suite W-1834 CA942  
Sacramento, CA 95825

U.S. Bureau of Reclamation  
6600 Washburn Way  
Klamath Falls, OR 97603

U.S. Fish and Wildlife Service  
1829 S. Oregon Street  
Yreka, CA 96097

U.S. Forest Service—Klamath and Six  
Rivers National Forest  
1312 Fairlane Road  
Yreka, CA 96097

U.S. Bureau of Land Management  
1301 South G Street  
Lakeview, OR 97630

U.S. Environmental Protection Agency  
Region 10  
811 SW 6th Avenue, 3rd Floor  
Portland, OR 97204

U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street—CMD2  
San Francisco, CA 94105

National Marine Fisheries Service  
SWO22  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404-6528

Federal Energy Regulatory Commission  
Office of Hydropower Relicensing  
888 First Street, N.E. Room 51-19  
Washington, DC 20426

Oregon Department of Fish and Wildlife  
3042 SE Paulina Highway  
Prineville, OR 97754-9071

Oregon Department of Environmental  
Quality  
2146 NE 4th Street  
Bend, OR 97701

Oregon Water Resources Department  
151 12th Street, NE  
Salem, OR 97310

Oregon Parks and Recreation  
20300 Empire #B1  
Bend, OR 97701

Oregon State Historic Preservation Office  
1115 Commercial Street NE., Suite 2  
Salem, OR 97301-1001

California State Water Resources Control  
Board  
PO Box 100 /1001 I Street  
Sacramento, CA 95814

California Department of Fish and Game  
601 Locust Street  
Redding, CA 96001-2711

California Regional Water Quality Control  
Board  
5550 Skylane Blvd.  
Santa Rosa, CA 95403

California Office of Historic Preservation  
PO Box 942896  
Sacramento, CA 94296-0001

California Department of Parks and  
Recreation  
PO Box 942896  
Sacramento, CA 94296-0001

The Applicant has provided a copy of this document to each of the parties listed above.

#### 14. INFORMATION AVAILABLE TO THE PUBLIC

The Applicant makes the following information available to the public:

- Complete copy of this document (with the exception of confidential or sensitive materials)
- Complete copy of the current license, including all exhibits, appendices, and any amendments
- Comments, pleadings, and supplementary or additional information received regarding the current license
- Correspondence served, filed, and received by the Applicant in connection with the current license and the application for new license

The above information is available to the public during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Applicant's place of business:

PacifiCorp  
825 NE Multnomah, Suite 1500  
Portland, OR 97232  
(503) 813-6657

The public is instructed to contact Mr. Todd Olson by telephone at (503) 813-6657 to make an appointment to review the information.

A copy of the document is also available at the following public libraries:

Klamath County Library  
126 S. Third Street  
Klamath Falls, OR 97601

Humboldt County Library  
1313 Third Street  
Eureka, CA 95501

Siskiyou County Library  
719 Fourth Street  
Yreka, CA 96097

Jackson County Library  
413 W. Main Street  
Medford, OR 97501

Lastly, a copy of this document is available on the Applicant's Klamath relicensing website ([www.pacificorp.com](http://www.pacificorp.com)).

## 15. LICENSE APPLICATION CONTENTS

The following exhibits are submitted herewith and are hereby made a part of this application:

- Exhibit A Project Description
- Exhibit B Project Operation and Resource Utilization
- Exhibit C Construction History and Proposed Construction
- Exhibit D Statement of Costs and Financing
- Exhibit E Environmental Report
- Exhibit F\* Design Drawings
- Exhibit G\* Maps of Project
- Exhibit H Applicant's Qualification to Operate the Project

\*Note: FERC issued Order No. 630 on February 21, 2003. That Order provides that the material prepared for Exhibits F and G is critical energy infrastructure information (CEII) and should be filed with FERC as confidential information pursuant to 18 CFR § 388.112. Exhibits F and G are in Volumes 4 and 5 of the final license application. The Applicant will consider individual distribution of volumes on written request. Such requests should be made to Todd Olson, Project Manager for Hydro Licensing (see above address).

Date: 2/10/04


By: Todd Olson  
Todd Olson  
Project Manager for Hydro Licensing

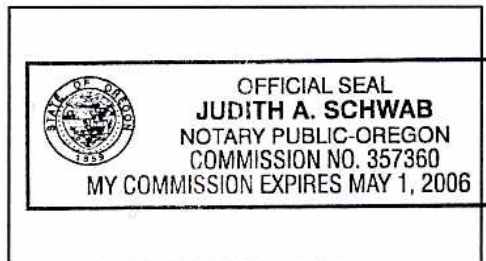
This Application for License for Major Project—Existing Dam is executed in the

STATE OF OREGON  
CITY OF PORTLAND  
COUNTY OF MULTNOMAH

By: William Eaquinto  
Vice President  
Hydro Licensing  
PacifiCorp  
825 NE Multnomah Avenue, Suite 1500  
Portland, Oregon 97232

William Eaquinto, being first 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 10 day of February, 2004.

  
William Eaquinto  
Vice President, Hydro Licensing



SUBSCRIBED AND SWORN TO before me, a Notary Public of the state of Oregon, this 10 day of February, 2004.

  
NOTARY PUBLIC

