

SETTLEMENT AGREEMENT

BETWEEN
PACIFICORP ENERGY
AND
OREGON DEPARTMENT OF FISH AND WILDLIFE

OCTOBER 24, 2006

CONCERNING THE RESOLUTION OF CERTAIN RESIDENT TROUT ISSUES FOR
RELICENSING THE PROSPECT NOS. 1, 2 AND 4 HYDROELECTRIC PROJECT,
FERC PROJECT NO. 2630, JACKSON COUNTY, OREGON

Prospect Hydroelectric Project Settlement Agreement

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PARTIES TO THE AGREEMENT

This Settlement Agreement (the "Agreement") is made pursuant to Federal Energy Regulatory Commission ("FERC") Rule 602, 18 C.F.R. § 385.602, by and between PacifiCorp Energy, an Oregon corporation ("PacifiCorp"), and Oregon Department of Fish and Wildlife ("ODFW"), each referred to individually as a "Party" and together as the "Parties." The "Effective Date" is the day that the last of the Parties executes the Agreement.

RECITALS

A. PacifiCorp is the licensee for the Prospect Hydroelectric Project (FERC No. 2630) (the "Project"), which is located on the Rogue River, Middle Fork Rogue River, and Red Blanket Creek in Jackson County, Oregon. The Project consists of three diversion dams, three powerhouses, and a number of canals, flumes, and penstocks. The Project has a generating capacity of 41.56 megawatts and produces on average 280,657 megawatt-hours annually. PacifiCorp operates the Project in a run-of-river mode. Power from the Project serves PacifiCorp's residential and commercial customers in the communities of northern Jackson County and southern Douglas County, Oregon.

B. Rainbow trout and coastal cutthroat trout (referred to collectively in this Agreement as "Resident Trout") are native to the Rogue River basin. Rainbow trout are more prevalent in the Project area, inhabiting all reaches sampled by PacifiCorp on the Rogue River, Middle Fork Rogue River, and Red Blanket Creek. Coastal cutthroat trout were not found in surveys of Project area waters, but are understood to occur in the basin. Resident Trout in the Project area have the potential to be exposed to some Project-related effects over the course of a year.

C. On June 27, 2003, PacifiCorp filed an application for a new major license ("New License") to continue operating the Project. FERC issued its draft environmental assessment ("DEA") pursuant to the National Environmental Policy Act ("NEPA") on November 18, 2006. PacifiCorp and ODFW subsequently entered into discussion to reach an agreement in principle ("AIP") pursuant to which the Parties agreed to work diligently to reach settlement on several issues related to Resident Trout. The Parties have since decided to narrow the focus of settlement to the issues of Ramping below the Project (Ramping is defined in Section 3.1.1), gravel augmentation, and large woody debris.

NOW, THEREFORE, in consideration of their mutual covenants in this Agreement, the Parties agree as follows:

DEFINITIONS

"401 Certification" is defined in Section 4.3.

"ADR Procedures" is defined in Section 4.2.

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“AIP” is defined in Recital C.

“Agreement” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“cfs” is defined in Section 3.1.1.

“DEA” is defined in Recital C.

“Effective Date” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“FERC” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“FPA” is defined in Section 1.1.

“Force Majeure” is defined in Section 5.3.

“Matters Addressed” is defined in Section 1.1.

“Mediation Request” is defined in Section 4.12.3.2.

“NEPA” is defined in Recital C.

“New License” is defined in Recital C.

“ODFW” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“PacifiCorp” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Party” and “Parties” are defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Permits” is defined in Section 2.2.

“Proceeding” is defined in Section 2.2.

“Project” is defined in Recital A.

“Ramping” is defined in Section 3.1.1.

“Resident Trout” is defined in Recital B.

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SECTION 1: PURPOSE AND EFFECT OF THIS AGREEMENT

1.1 Purpose of Agreement. The Parties have entered into this Agreement to resolve the following three issues: (1) Ramping; (2) gravel augmentation; and (3) large woody debris. The Parties agree that the Agreement is fair and reasonable and in the public interest within the meaning of FERC Rule 602 governing offers of settlement. 18 C.F.R. § 385.602(g)(3). In addition, the Parties agree that PacifiCorp's performance of its obligations under this Agreement, and obligations under the New License and any Permit consistent with this Agreement, will fulfill any obligation PacifiCorp may have to protect, mitigate, and enhance Resident Trout resources for the Project with respect to Matters Addressed. "Matters Addressed" means any obligation PacifiCorp may have at or in the vicinity of the Project related to Ramping, gravel, and large woody debris. Furthermore, the Parties agree that PacifiCorp should not be required to enlarge its Project boundary to accommodate the measures set forth in this Agreement, and ODFW will, at PacifiCorp's request, submit comments to FERC to this effect. The Parties shall request that FERC include in its order issuing a New License for the Project articles that are consistent with measures required by this Agreement, except as may be necessary to enable FERC to ascertain and monitor PacifiCorp's compliance with the New License and FERC's rules and regulations under the Federal Power Act ("FPA") and other federal and state laws.

1.2 Ability to Advocate or Oppose Other Measures. ODFW shall not, directly or indirectly, advocate for measures inconsistent with the measures set forth in Section 3 regarding Matters Addressed for the Project for the time period from the Effective Date through the New License term and including any annual licenses issued thereafter. This Agreement shall not restrict ODFW's ability to continue to advocate for measures not related to Matters Addressed, including but not limited to measures to address the impacts of unplanned outages at the Prospect No. 2 Powerhouse. This Agreement does not restrict PacifiCorp's ability to object to any such other measures. PacifiCorp shall not seek administrative or judicial review of any Clean Water Act 401 Certification on the basis of the Certification's incorporation of the measures set forth in this Agreement regarding Matters Addressed, but may seek administrative or judicial review of any 401 Certification on the basis of its incorporation of any other measures.

1.3 Limitations. This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement or with regard to either Party's participation in any other pending or future licensing or decommissioning proceeding with respect to other hydroelectric projects, or in proceedings related to licensing of the Project upon expiration of the New License and any annual licenses issued thereafter. Further, neither Party to this Agreement shall be deemed to have approved, accepted, agreed to, or otherwise consented to any operation, management, valuation or other principle underlying any of the matters covered by this Agreement, except as expressly provided in this Agreement. By entering into this Agreement, neither Party shall be deemed to have made any admission or waived any contention of fact or law that it did make or could have made in FERC proceedings related to this Project. This Agreement shall not be offered in evidence or cited as precedent by either Party to this Agreement in any administrative or judicial litigation, arbitration, or other adjudicative

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proceeding, except in a proceeding to establish the existence of or to enforce or implement this Agreement. This Section 1.3 shall survive any termination of this Agreement.

1.4 Representations Regarding Consistency and Compliance with Statutory Obligations.

Except as provided herein, ODFW believes its statutory and other legal obligations with regard to Matters Addressed are, or can be, met through implementation of this Agreement; provided, nothing in this Agreement may be construed to limit ODFW from complying with its obligations under applicable laws and regulations or from considering public comments received in any environmental review or regulatory process related to the Project. This Agreement shall not be interpreted to predetermine the outcome of any environmental or administrative review or appeal process; provided, PacifiCorp may not seek administrative or judicial review of any Clean Water Act 401 Certification on the basis of the certification's incorporation of the measures set forth in Section 3.

1.5 Conditions Precedent and Conditions Subsequent. The Parties' respective obligations under this Agreement are subject to conditions precedent and conditions subsequent, as more fully set forth in Section 4 below.

SECTION 2: ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1 FERC Filings. Within 30 days following the Effective Date, PacifiCorp shall file with FERC a fully executed copy of this Agreement and an offer of settlement in accordance with FERC regulations at 18 C.F.R. § 385.602.

2.2 Permits. In accordance with this Agreement, PacifiCorp shall apply for and use all reasonable efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications (including a Section 401 Certification), determinations, and other governmental approvals for purposes of implementing this Agreement ("Permits") and the New License. The Parties shall cooperate during the permitting, environmental review, and implementation of this Agreement. ODFW, upon PacifiCorp's request, shall use all reasonable efforts to support PacifiCorp's applications for Permits, provided that this sentence shall not apply to Permits issued by ODFW. Except as expressly provided in this Agreement, PacifiCorp may not be required by this Agreement to implement any action under this Agreement until all applicable Permits required for that action are obtained in a form that is consistent with this Agreement and any and all applicable, prescribed periods for a petition for administrative or judicial review or appeal or any similar proceeding relating to any Permit ("Proceeding") have expired without any such Proceeding having been commenced or, in the event any such Proceeding is commenced, until any such Proceeding is terminated on terms and conditions that are consistent with this Agreement. Each Party shall bear its own costs of participating in any Proceeding. In the event any Proceeding is commenced, the Parties shall confer to evaluate the effect of such Proceeding on implementation of this Agreement. Nothing in this Section 2.2 shall be construed to limit PacifiCorp's ability to apply for a Permit before issuance of the New License.

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2.3 Communications with FERC and Other Government Agencies. Except as required to comply with applicable law, the Parties shall (i) make and respond to comments made in the context of a New License, Permit, or other proceeding only in a manner that is consistent with this Agreement; and (ii) to the extent the Parties participate in relevant regulatory proceedings, actively support this Agreement and the incorporation of terms that are consistent with this Agreement into a New License, Permits, and other authorizations. If either Party advocates, after the Effective Date, to FERC or in any other forum, conditions that are inconsistent with this Agreement, the matter shall be addressed in accordance with Section 4.2 of this Agreement.

SECTION 3: RESIDENT TROUT MEASURES

3.1 Ramping.

3.1.1 Definition of Ramping. For purposes of this Agreement, and subject to Section 3.1.2 below, the term “Ramping” means those Project-induced increases and decreases in river discharge and associated changes in river surface elevation over time below a Project dam or the Prospect No. 2 Powerhouse caused by Project operations or for Project maintenance. Ramping rate is the rate of change in stage resulting in regulated discharges. Ramping rates in this Agreement are stated in cubic feet per second (“cfs”) per 30 minutes or in inches of change in the surface elevation of the river per hour.

3.1.2 Application of Ramping Restrictions. The Ramping limitations in this Section 3.1 apply only to Project-induced increases or decreases in river stage; they do not apply to (1) changes in flows due to natural increases or decreases in natural river flow input or surface runoff, (2) unplanned (including forced) outages, (3) any emergency situations requiring immediate flow changes for flood management, public safety or protection of Project facilities, or (4) periodic flow releases through the Project’s several spill gates at the North Fork Dam for purposes of passing large woody debris, in accordance with a large woody debris plan developed by PacifiCorp in consultation with ODFW pursuant to the New License.

3.1.3 Ramping Measures. Within 6 months after issuance of the New License, PacifiCorp shall submit to FERC for approval a flow monitoring plan consistent with Sections 3.1.3.1 and 3.1.3.2 and developed in consultation with ODFW. Upon FERC approval of a flow monitoring plan consistent with Sections 3.1.3.1 and 3.1.3.2, PacifiCorp shall implement the plan. Prior to FERC approval of the flow monitoring plan, PacifiCorp shall make reasonable efforts using existing equipment to meet the Ramping rates set forth in Sections 3.1.3.1 and 3.1.3.2.

3.1.3.1 Ramping in North Fork Bypassed Reach and Full Flow Reach Below Prospect No. 2 Powerhouse. PacifiCorp shall target a Ramping rate of 100 cfs increase or decrease per 30 minute increment, and shall not exceed a Ramping rate of 130 cfs per 30 minute increment, year-round in the North Fork bypassed reach and full-flow reach below the Prospect No. 2 powerhouse. Ramping rates shall be measured at gauging locations established as close as practicable to the head of the North Fork bypass reach

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and at a location within the Prospect 2 penstocks using generator-based output. The specific gauging location shall be established through the flow monitoring plan developed in accordance with this Section 3.1.3.

3.1.3.2 Ramping in the Middle Fork and Red Blanket Bypassed Reaches.

PacifiCorp shall implement the following Ramping rates: (1) during the period of May 1 through September 30 each year, PacifiCorp shall target a Ramping rate of 1 inch per hour, and shall not exceed a Ramping rate of 2 inches per hour, in the Middle Fork and Red Blanket bypassed reaches; (2) during the period of October 1 through April 30 each year, PacifiCorp shall target a Ramping rate of 2 inches per hour, and shall not exceed a Ramping rate of 3 inches per hour, in the Middle Fork and Red Blanket bypassed reaches. Ramping rates shall be measured at gauging locations established as close as practicable to the head of each bypass reach. The specific gauging locations shall be established through the flow monitoring plan developed in accordance with this Section 3.1.3.

3.2 Large Woody Debris. If, at PacifiCorp's discretion, it removes large woody debris from above the Project dams, PacifiCorp shall place that large woody debris below the dam if practicable. In placing any large woody debris below a dam, PacifiCorp shall place it in locations that, during high flow events, could reasonably be expected to result in its movement.

3.3 Gravel Augmentation. PacifiCorp shall not be required to augment gravel below the Project dams.

SECTION 4: IMPLEMENTATION OF AGREEMENT

4.1 Parties Bound. Except as provided in Section 4.13, the Parties shall be bound by this Agreement for the term of the New License and any annual licenses issued thereafter, unless this Agreement is sooner terminated as provided in Section 4.14.

4.2 Inconsistent Actions by the Parties. If at any time a Party seeks in any forum to impose measures inconsistent with this Agreement, the other Party may initiate alternative dispute resolution procedures ("ADR Procedures") pursuant to Section 4.12 and, within 60 days after the conclusion of such ADR Procedures if the Party persists in advocating for inconsistent measures, the objecting Party may withdraw from this Agreement.

4.3 Inconsistent New License or Permit. Should the New License as issued, amended or administered by FERC, the Clean Water Act Section 401 Certification ("401 Certification"), or any other governmental approval be inconsistent with this Agreement, or should FERC's order issuing the New License require an enlarged Project boundary for the measures set forth in this Agreement, then this Agreement shall be deemed modified to conform with the New License, 401 Certification, or other governmental approval, unless a Party (a) provides notice to the other Party that it objects to the inconsistency, within 30 days after the Party has actual knowledge of the New License, Section 401 Certification, or other governmental approval; and (b) initiates the

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ADR Procedures set forth in Section 4.12. If, after completion of ADR Procedures, the inconsistency is not resolved, the objecting Party or Parties may, within 60 days after completion of ADR Procedures, withdraw from this Agreement. The Parties reserve any remedies under applicable law to enforce measures required under this Agreement but omitted or altered by FERC or other agency (or after appeals), if the FERC or other agency action is disputed under this Section 4.3.

4.4 PacifiCorp Fails to Perform. If PacifiCorp fails to perform any provision of this Agreement, whether or not the provision is included in the New License, and such failure is not excused by Force Majeure, ODFW may give PacifiCorp notice and an opportunity to cure within 30 days of such notice. If PacifiCorp fails to cure the problem within that period, or if such failure is not curable within 30 days and PacifiCorp has not commenced a cure within that period and diligently completed such cure, ODFW may object to such failure to perform by giving notice to PacifiCorp and commencing ADR Procedures. In addition, ODFW may petition FERC or other agency to enforce such provision, if appropriate, may seek judicial review of any decision on such a petition, or may pursue the remedies of mandamus or specific performance, if applicable. If, after any applicable remedies are exhausted, PacifiCorp does not perform the provision, then ODFW may withdraw from this Agreement, except that ODFW may not withdraw if: (1) FERC or other petitioned agency determines that PacifiCorp is in compliance with the disputed portion of the Agreement and ODFW does not appeal that decision; (2) a court upholds FERC's or other petitioned agency's determination that PacifiCorp is in compliance with the disputed portion of the Agreement and ODFW does not appeal that decision; or (3) a court determines that PacifiCorp is in compliance with the disputed portion of the Agreement and ODFW does not appeal that decision.

4.5 Review of Governmental Actions. To the extent provided by applicable law, any Party may request rehearing of or appeal any act or omission by FERC or any other governmental agency that the Party believes is inconsistent with this Agreement. The ADR Procedures and the timelines established by this Section 4 shall not preclude PacifiCorp from timely rejecting a New License as initially or finally issued, shall not preclude any Party from timely filing for and pursuing rehearing under 18 C.F.R. § 385.713 or other agency's applicable rules, and shall not preclude any Party from seeking judicial review. However, if PacifiCorp is rejecting the New License for reasons related to this Agreement, the Parties shall follow ADR Procedures to the extent reasonably practicable prior to rejection of the New License by PacifiCorp or while any rehearing or appeal of an inconsistency between the Agreement and the New License is being pursued. If a Party has filed for administrative rehearing or judicial review of any action that is inconsistent with this Agreement, and the Parties subsequently agree to modify this Agreement to conform to the inconsistent action, the filing Party or Parties shall withdraw the request for rehearing or appeal, or recommend such withdrawal, as appropriate.

4.6 Reopener or Modification. Except as expressly provided in this Agreement, during the term of the New License or any annual license issued thereafter, neither Party may seek measures that are inconsistent with this Agreement or seek to amend the New License pursuant to standard FERC reopener provisions, except in the event of materially changed factual circumstances or material facts not known or understood at the time of issuance of the New

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License, or as required by statutes or regulations enacted or amended after issuance of the New License. If a Party seeks inconsistent measures, it shall provide the other Party at least 60 days' prior notice. A Party shall not be required to comply with this 60-day-notice provision if it believes an emergency situation exists, or if required to meet its responsibilities under a statute or regulation enacted or amended after issuance of the New License. If a Party imposes or succeeds in requiring measures inconsistent with this Agreement, the other Party may initiate ADR Procedures under Section 4.12, seek administrative or judicial review, withdraw from this Agreement, or exercise any remedy under applicable law.

4.7 Responsibility for Costs. PacifiCorp shall be responsible for the cost of actions required of PacifiCorp by this Agreement and the New License. PacifiCorp shall have no obligation to reimburse or otherwise pay ODFW for its assistance, participation, or cooperation in any activities pursuant to this Agreement, except as required by law.

4.8 State Ratemaking Proceedings. ODFW agrees that the Agreement is fair and reasonable and in the public interest, and will support this Agreement for purposes of any reasonable cost recovery application that PacifiCorp may file with a state regulatory commission that has ratemaking authority. Upon request of PacifiCorp at least 30 days prior to the deadline for such comments, ODFW shall use its reasonable best efforts to submit an appropriate general letter of support of this Agreement.

4.9 PacifiCorp Solely Responsible for Operations of Project. By entering into this Agreement, ODFW has not accepted any legal liability or responsibility for Project operations.

4.10 Availability of Funds. Implementation of this Agreement by ODFW is subject to the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of Oregon. The Parties acknowledge that ODFW shall not be required under this Agreement to expend any appropriated funds unless and until an authorized ODFW official affirmatively acts to commit such expenditures, as evidenced in writing.

4.11 Amendment of Agreement. This Agreement may be amended at any time upon written agreement of ODFW and PacifiCorp. As appropriate, the Parties shall submit a statement to FERC in support of the amendment.

4.12 ADR Procedures.

4.12.1 General. Except to the extent that FERC or another agency with jurisdiction over the Project has a procedure that precludes implementation of this Section 4.12, all disputes between the Parties regarding the obligations of the Parties under this Agreement shall, at the request of either Party, be the subject of nonbinding ADR Procedures. The Parties shall cooperate in good faith to promptly schedule, attend, and participate in ADR Procedures. The Parties agree to devote such time, resources, and attention to ADR Procedures as are needed to attempt to resolve the dispute at the earliest time possible. The Parties shall implement promptly all final agreements reached, consistent with applicable statutory and regulatory responsibilities.

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Nothing in this Section 4.12 is intended or shall be construed to affect or limit the authority of FERC or other agency with jurisdiction over the Project to resolve a dispute brought before it in accordance with its own procedure and applicable law, or is intended or shall be construed to alter the statute of limitations or other requirements for administration or judicial review of any action. ADR Procedures shall not preclude PacifiCorp from timely rejecting a New License for any reason nor prevent either Party from timely filing for and pursuing rehearing under 18 C.F.R. § 385.713 or other agency's applicable rules, or judicial review. However, if PacifiCorp is rejecting the New License for reasons related to this Agreement, the Parties shall follow ADR Procedures to the extent reasonably practicable prior to rejection of the New License by PacifiCorp or while any rehearing or appeal of an inconsistency between the Agreement and the New License is pursued. If a Party has filed for administrative rehearing or judicial review of any action that is inconsistent with this Agreement, and the Parties subsequently agree to modify this Agreement to conform to the inconsistency, the filing Party or Parties shall withdraw the request for rehearing or appeal, or recommend such withdrawal, as appropriate.

4.12.2 Cost. Unless otherwise agreed between the Parties, each Party shall bear its costs for its own participation in ADR Procedures. Pending resolution of any dispute under these ADR Procedures, and subject to the authority of FERC or other agency with jurisdiction to order otherwise, PacifiCorp shall continue operating the Project in accordance with this Agreement and any New License, except to the extent that such operations may be directly affected by the results of such ADR Procedures and ceasing such actions will not violate the New License, a Permit, or any other law or regulation.

4.12.3 Process.

4.12.3.1 Notice of Dispute. A Party claiming a dispute shall give notice of the dispute within 30 days of the Party's actual knowledge of the act, event, or omission that gives rise to the dispute, unless this Agreement provides otherwise. Notification under Section 5.7 of this Agreement, when effective, shall constitute actual knowledge. Service of process on a Party's registered agent shall also constitute actual knowledge.

4.12.3.2 Meeting of the Parties. In any dispute subject to these ADR Procedures, the Parties shall hold two informal meetings within 30 days after notice, or as soon as practicable thereafter, to attempt to resolve the disputed issue or issues; provided, that the Parties may choose to postpone these meetings pending action by FERC or other governmental agency. A representative from each of the Parties shall attend who has authority to make a decision on the disputed issue and who is superior to the Party's principal representative during the dispute. Within 15 days after the second meeting or any scheduled meeting thereafter, a Party still disputing the issue or issues shall notify the other Party that the informal meetings failed to resolve the dispute and may request mediation (a "Mediation Request"). If a Mediation Request is not so provided, ADR Procedures will be considered complete.

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4.12.3.3 Mediation. Upon a Mediation Request, the Parties may attempt to resolve the dispute using a neutral mediator agreeable to the Parties. If, within 15 days after receiving a Mediation Request, the Parties have not agreed to mediate the dispute, ADR Procedures shall be considered complete. The costs for any mediation shall be shared equally by the Parties. Any Party may withdraw from mediation at any time, at which point mediation shall be considered complete.

4.12.4 Enforcement of Agreement After ADR Procedures. Either Party may seek specific performance of this Agreement by the other Party, before FERC, or before an agency or court of competent jurisdiction, after compliance with ADR Procedures. Neither Party shall be liable in damages for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement, except that a Party may seek monetary penalties under applicable laws. Nothing in this Section 4.12 is intended or shall be construed to affect or limit the jurisdiction of any agency or court as established under applicable law.

4.13 Withdrawal from Agreement.

4.13.1 Withdrawal of a Party from Agreement. A Party may withdraw from this Agreement only as expressly provided in this Agreement. In addition, if a Party ceases to exist and has no successors or assigns, it shall be deemed to have withdrawn.

4.13.2 Method of Withdrawal. A Party may exercise its right to withdraw from this Agreement by providing 60 days' advance notice to the other Party.

4.13.3 Effect of Withdrawal. Withdrawal by a Party shall terminate this Agreement.

4.14 Termination of Agreement. This Agreement may be terminated by written agreement of both Parties, by withdrawal of either PacifiCorp or ODFW in accordance with Section 4.13, or by PacifiCorp's rejection of a New License as initially or finally issued by FERC. Section 1.3 of this Agreement shall survive any such termination.

SECTION 5: GENERAL PROVISIONS

5.1 No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to the public and third parties shall remain as imposed under applicable law.

5.2 Successors and Assigns. This Agreement shall apply to and be binding on the Parties and their successors and approved assigns. Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Agreement, but shall remain secondarily liable for

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the performance of the assignee. No change in ownership of the Project or transfer of the Project license by PacifiCorp shall in any way modify or otherwise affect ODFW's interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, PacifiCorp shall provide in any transaction for a change in ownership of the Project or transfer of the Project license that such new owner or owners shall be bound by and shall assume the rights and obligations of this Agreement and the New License upon completion of the change of ownership and any requisite FERC approval. PacifiCorp shall provide notice to ODFW at least 60 days prior to completing such transfer or assignment.

5.3 Failure to Perform Due to Force Majeure. Neither Party shall be liable to the other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by Force Majeure. The term "Force Majeure" means any cause reasonably beyond the affected Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, and without the fault or negligence of the affected Party. Force Majeure may include, but is not limited to, natural events, labor or civil disruption, breakdown or failure of Project works, orders of any court or agency having jurisdiction of the Party's actions, delay in issuance of the New License, or delay in issuance of any required Permit. Increased cost for the performance of any measure required under this Agreement, or change in market conditions for the sale of electricity, shall not be deemed to constitute Force Majeure, provided that PacifiCorp shall not be obligated to perform measures other than those commitments specified in this Agreement. The Party whose performance is affected by Force Majeure shall notify the other Party in writing within 24 hours after becoming aware of the Party's inability to perform due to a Force Majeure. Such notice shall identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of delayed measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Party written notice to that effect. If PacifiCorp's inability to perform any obligation pursuant to any provision of this Agreement continues or is reasonably anticipated to continue for more than 180 days due to Force Majeure, ODFW may withdraw from this Agreement and may pursue any other remedy available under applicable law.

5.4 Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

5.5 No Partnership. Except as otherwise expressly set forth herein, this Agreement does not, and shall not be deemed to, make either Party the agent for or partner of the other Party.

5.6 Reference to Statutes or Regulations. Any reference in this Agreement to any federal or state statute or regulation shall be deemed to be a reference to such statute or regulation or successor statute or regulation in existence as of the date of the action.

5.7 Notice. Any notice required by this Agreement shall be written. Notice shall be sent by first-class mail or comparable method of distribution to the authorized representative of each Party, or a Party's successor or assign if applicable. For the purpose of this Agreement, a notice

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shall be effective on the date it is postmarked or otherwise distributed. The authorized representative of each Party as of the Effective Date is:

PacifiCorp Representative:

Randy Landolt
Managing Director, Hydro Resources
PacifiCorp Energy
1500 Lloyd Center Tower
825 NE Multnomah Street
Portland, OR 97232-2135
Tel: (503) 813- 6650
Fax: (503) 813- 6659
Randy.Landolt@pacificorp.com

ODFW Representative:

Dave Harris
Hydropower Coordinator
Oregon Dept. of Fish and Wildlife
4192 North Umpqua Highway
Roseburg, Oregon 97470
Tel: (541) 440-3353
Fax: (541) 673-0372
Dave.A.Harris@state.or.us

Each Party is responsible for providing notice to the other Party of any change in its authorized representative. When sending notice pursuant to this Section, each Party shall also send a copy of the notice to the following person or persons:

PacifiCorp copies:

David Leonhardt
Project Manager
PacifiCorp Energy
1500 Lloyd Center Tower
825 NE Multnomah Street
Portland, OR 97232-2135
Tel: (503) 813-6658
Fax: (503) 813- 6633
dave.leonhardt@pacificorp.com

ODFW copies:

Ken Homolka
Hydropower Program Leader
Oregon Dept. of Fish and Wildlife
3406 Cherry Avenue
Salem, Oregon 97303
Tel: (503) 947-6090
Fax: (503) 947-6070
Ken.Homolka@state.or.us

5.8 Section Titles for Convenience Only. The titles of the sections in this Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties. Reference to a given section of this Agreement shall be deemed to include all subsections of that section.

5.9 Entire Agreement. This Agreement sets forth the entire agreement and processes to be followed by the Parties with regard to Matters Addressed.

SECTION 6: EXECUTION OF AGREEMENT

6.1 Signatory Authority. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

