

AGREEMENT FOR CONFIDENTIALITY OF SETTLEMENT COMMUNICATIONS
AND NEGOTIATIONS PROTOCOL
RELATED TO THE KLAMATH HYDROELECTRIC PROJECT

1. Purpose

The purpose of this Agreement is to facilitate the negotiation of a final agreement for the removal of PacifiCorp's Klamath Hydroelectric Project and related issues, consistent with the principles of the Agreement in Principle, through (i) establishing a protocol for negotiations, and (ii) ensuring that communications exchanged during negotiations are kept confidential to the extent permitted by law.

2. Definitions

2.1. "*Agreement in Principle*" or "*AIP*" means the Agreement in Principle entered in November 2008 by PacifiCorp, the United States, the State of California, and the State of Oregon, which Agreement in Principle committed the parties to continue good-faith negotiations to reach a final agreement regarding the removal of the Project and related issues and established the baseline terms for such final agreement.

2.2. "*Klamath Basin Restoration Agreement*" or "*KBRA*" means the document proposed in January 2008 addressing Klamath Basin issues.

2.3. "*KSG*" means the Klamath Settlement Group.

2.4. "*Negotiation Group*" means Participants as a whole.

2.5. "*Participant*" means each entity signing this Agreement and participating in this negotiation, including the entity's boards, officers, directors, managers, employees, attorneys, consultants, agents, successors, assigns, and other representatives.

2.6. "*Project*" means J.C. Boyle Dam, Copco No. 1 Dam, Copco No. 2 Dam, and Iron Gate Dam and appurtenant works as currently licensed to PacifiCorp (FERC Project No. 2082).

2.7. "*Proprietary Commercial Information*" and related terms have the meanings set forth below.

"*Commercial Information*" means: (i) any discussion materials, compilations, and analyses, whether prepared by PacifiCorp or another Participant, pertaining to Project generation, historic and future Project costs and estimates, financial and operational performance projections, and models and other such data related to historic and future Project performance; (ii) any information regarding the development and output of PacifiCorp's pricing models and forward price curves; or (iii) any information about the nature, terms, conditions, costs, operational characteristics, or other facts and data respecting any resource development alternatives or opportunities.

"*Proprietary Commercial Information*" means any Commercial Information that is trade secret or otherwise confidential information as defined by and protected under the laws of the State of Oregon or other applicable law, including the federal Freedom of Information Act, 5 U.S.C. § 552(b)(4).

“*Non-Proprietary Commercial Information*” means any Commercial Information that at the time of disclosure: (i) is generally available to the public (other than as a result of improper disclosure by a Participant); (ii) has been filed as public information in any public forum; (iii) was available to a Participant on a non-confidential basis from a source other than a third-party under a duty of confidentiality to PacifiCorp; or (iv) was independently developed by a Participant or known to the Participant prior to its receipt.

2.8. “*Settlement Communication*” means any verbal or written communication made by a Participant in this negotiation, excluding: (i) any document consistent with the AIP that is filed, or that the Negotiating Group agrees may be filed, with FERC, Congress, state legislatures, state public utility commissions, or state water quality agencies; and (ii) any document a Participant is required to disclose by law or regulation under subpoena or other mandatory legal or regulatory process. For purposes of this Agreement, Settlement Communication includes Proprietary Commercial Information, as defined above.

3. Confidentiality

3.1. Settlement Communications shall be kept confidential by each Participant to the extent permitted by applicable law, and shall not be admissible as evidence, argument, or admission in the FERC relicensing proceeding or other administrative, regulatory, arbitral, judicial, or similar proceeding, in accordance with this Agreement and, as applicable, with Federal Rule of Evidence 408 and similar Oregon and California statutes.

3.2. Participants shall use Settlement Communications only to facilitate settlement. Individual Participants may distribute Settlement Communications within the entity they represent, provided that each recipient is notified that Settlement Communications are confidential and is required to preserve the confidentiality of Settlement Communications pursuant to the terms of this Agreement. Participants shall not disclose such communications to non-Participants. Notwithstanding the prohibition of the preceding sentence, a Participant who is a public agency may disclose such communications to a non-Participant that requests disclosure, to the extent such disclosure is required or warranted by the Freedom of Information Act, state public records laws, or other applicable law; provided that: (i) the agency shall notify the Negotiation Group of the request or any required disclosure at least seven days before disclosure, and (ii) all Participants, other than the agency making the decision about the disclosure, shall not support, and to the extent they deem appropriate shall oppose, the disclosure of such Settlement Communications, in any appropriate proceeding or forum.

3.3. Each Participant shall make best efforts to label its written communications made in negotiations as follows: “Confidential and Privileged—For Settlement Purposes Only.” However, such a document shall be a Settlement Communication if it meets the definition of Settlement Communication even if not so labeled.

3.4. Before disclosure of Commercial Information, a Participant shall characterize Commercial Information as Proprietary or non-Proprietary. This characterization shall not be altered by disclosure of such information through this process, and the use of such information by the originating Participant outside of this process shall not be restricted through this Agreement. Each Participant shall also make best efforts to rely on and disclose only non-Proprietary Commercial Information, on any issue where such

information has probity (for settlement purposes) similar to Proprietary Commercial Information.

3.5. Unless otherwise agreed to by the Negotiation Group, Participants shall not initiate contact with the media to discuss or disclose any information regarding the negotiations. If media initiate contact, a Participant may state its interests in the negotiations, but shall not disclose Settlement Communications or the status or prospects for success of negotiations, or characterize other Participants' interests or positions, unless disclosure is required or warranted by law. The Participants shall cooperate and coordinate in the development and issuance of individual or joint media releases regarding the negotiations, and on appropriate outreach to non-Participants. The Participants also shall provide periodic reports on the progress of the negotiations to the KSG members including those who are not Participants.

4. Negotiations Protocol

4.1. The Participants shall use the AIP as the basis for negotiating and developing in good faith a final agreement consistent with the principles of the AIP, including the principle that the AIP and KBRA are indivisible parts of a unified approach to resolving Klamath Basin issues. The Participants shall endeavor to complete negotiations no later than June 30, 2009.

4.2. The Participants shall periodically meet as a whole through the Negotiation Group. The Negotiation Group shall establish small work groups to address specific assigned substantive issues. The work groups shall provide written proposed settlement terms to the Negotiation Group for acceptance or revision. The Negotiation Group shall use a single-text approach to record decisions, revisions, and final wording in a single document for ultimate use in a final agreement.

4.3. Participants shall dedicate staff and resources necessary to prepare for and attend meetings of the Negotiation Group and applicable work groups.

4.4. Participants shall apply good faith, common courtesies, and professionalism in their conduct in negotiations and meetings.

4.5. A neutral and independent facilitator may be used to help manage negotiations. The facilitator's duties may include but not be limited to preparing agendas, schedules, meeting logistics, and follow-up action items.

4.6. The Negotiation Group shall strive to make decisions by consensus of all Participants. Any Participant may request a caucus at any reasonable time during a meeting for the purpose of exploring resolution of a disputed issue. A Participant disagreeing with a proposed resolution shall offer an alternative resolution. If the Negotiation Group is unable to achieve consensus on an issue, the alternative proposed by an objecting Participant shall be noted. At the request of the objecting Participant, or at another appropriate time before the conclusion of negotiations, the Participants shall return to a disputed issue for the purpose of considering new alternatives or information in an effort to achieve consensus. A Participant's dispute on any particular issue shall not be grounds for exclusion from the Negotiation Group.

4.7. If, after every reasonable effort to reach consensus on an issue has been exhausted, and no consensus has been achieved on the issue, the Participants shall consider whether

the final agreement will include, omit, or remain neutral on resolution of the issue. This consideration will be individual to the Participants and shall not be subject to consensus. Each Participant will make its own decision whether to support and sign the final agreement.

4.8. During negotiations, each Participant shall refrain from any action that does not support or further cooperative negotiations.

4.9. After December 11, 2008, the Participants may consider adding new entities as Participants. Any such entity must sign this Agreement to become a Participant. New Participants joining the negotiations agree to take the negotiations as they find them and not to seek to reopen resolved issues.

5. Remedies and Reservations

5.1. Each Participant reserves its rights to protect, defend, and discharge its interests and duties in any administrative, regulatory, legislative, or judicial proceeding, including but not limited to the FERC relicensing proceeding; provided, Participants shall not disclose Settlement Communications in such proceedings.

5.2. Nothing in this Agreement obligates any Participant to enter any other agreement. No contractual relationship, express or implied, shall be deemed to exist between Participants by virtue of this Agreement.

5.3. A Participant's failure to abide by this Agreement shall be grounds for other Participants to withdraw from negotiations or to continue negotiations only with other Participants abiding by this Agreement.

5.4. A Participant's remedies for a violation of this Agreement are limited to: (i) withdrawal from negotiations; (ii) continued negotiation with complying Participants; or (iii) enforcement of non-admissibility of Settlement Communications and non-disclosure of Proprietary Commercial Information in accordance with this Agreement and applicable law.

5.5. The confidentiality provisions of this Agreement shall survive termination of this Agreement and remain binding on any Participant withdrawing from negotiations.

6. Miscellany

6.1. This Agreement supersedes the *Agreement Concerning Confidentiality of Communications Made during Settlement Negotiations, Including Exchange of Proprietary Commercial Information, related to Relicensing of the Klamath Project (FERC P-2082)*, as amended May 2006.

6.2. This Agreement does not establish any third-party beneficiary.

6.3. This Agreement shall be binding on each Participant, including its boards, officers, directors, managers, employees, attorneys, consultants, agents, successors, assigns, and other representatives, and on the facilitator.

6.4. This Agreement may be amended upon consensus and signature of the Participants.

6.5. This Agreement shall be effective on December 11, 2008.

6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.

Dean Brockbank

Signature

Dean Brockbank

Name Typed/Printed

Dec. 3, 2008

Date

V.P. & General Counsel
Title PacifiCorp Energy

PacifiCorp

Participant Represented

6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.

Michael Carrier

Signature

Michael Carrier

Name Typed/Printed

December 3, 2008

Date


Natural Resources Policy Director

Title

Office of Governor - State of Oregon

Participant Represented

6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.


Signature for Rodney R. McInnis
Regional Administrator, Southwest Region
National Marine Fisheries Service

Steven A. Edmondson
Name Typed/Printed

December 3, 2008
Date

Northern California Habitat Supervisor
Title

National Marine Fisheries Service
Participant Represented

6.6. Each signatory represents that he or she has the authority to execute this Agreement on behalf of the represented Participant.



Signature

L. MICHAEL ROBERT

Name Typed/Printed

DECEMBER 3, 2008

Date

CONSULTANT TO THE SECRETARY

Title

UNITED STATES / DEPARTMENT OF THE INTERIOR

Participant Represented