

2022-013870
Klamath County, Oregon
12/01/2022 01:19:01 PM
Fee: \$137.00

Recording Requested By
and When Recorded Mail to:

Water and Power Law Group PC
2140 Shattuck Avenue
Suite 801
Berkeley, CA 94704
Attn: Richard Roos-Collins

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
(OREGON)**

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Easement Agreement"), is made as of the last signature date below by and between PACIFICORP, an Oregon corporation with an address at 825 Northeast Multnomah Street, Suite 2000, Portland, Oregon 97232 ("Grantor"), and KLAMATH RIVER RENEWAL CORPORATION, a California nonprofit corporation with an address at 2001 Addison Street, Suite 300, Office 317, Berkeley, California 94704 ("Grantee").

RECITALS

A. Grantor and Grantee are parties to the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as amended ("KHSA") and to a certain Property Transfer Agreement, dated as of January 13, 2021 ("PTA");

B. Pursuant to the KHSA Grantee is charged with removing the JC Boyle, Copco 1, Copco 2 and Iron Gate hydroelectric dams and performing certain related work including environmental mitigation, all in accordance with the Definite Plan as such term is defined in the KHSA (collectively, the "Removal Work"). Pursuant to the PTA Grantor is transferring to Grantee contemporaneously herewith the property on which most of the Removal Work is to occur;

C. Certain portions of the Removal Work, described generally in Exhibit A (the “Easement Work”) require access over and work upon property that continues to be owned by Grantor and is described more particularly in Exhibit B (the “Property”).

D. In order to facilitate the Easement Work Grantee has requested, and Grantor has agreed to grant, a temporary construction easement as more particularly provided for in this Easement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement.

a. Subject to the terms and conditions of this Easement Agreement, Grantor hereby grants to Grantee, and Grantee hereby accepts, a temporary right and easement in gross upon, across and through the portion of the Property described in Exhibit C (the “Easement Area”) in order to perform the Easement Work, including any and all activities relating to implementation of the Definite Plan and compliance with the Approvals (as defined in the PTA), including, but not limited to, (i) construction activities, (ii) mitigation activities, (iii) ingress and egress of construction and other vehicles, (iv) ingress and egress of personnel, including Grantee’s employees, directors, officers, representatives, agents, contractors, subcontractors of any tier, consultants and suppliers, (v) staging, use and operation of heavy equipment and machinery, and (vi) storage of materials, equipment and vehicles. Such easement shall terminate when (y) the Definite Plan is complete in accordance with its terms and (z) the terms and conditions of the Approvals relating to the Property have been satisfied as determined by the applicable governmental authority, provided that to the extent the Definite Plan or any Approvals require post-completion activities relating to the Property, including but not limited to monitoring or further construction or remediation activities, then this Easement Agreement shall continue to the extent reasonably necessary to perform all such post-completion activities and satisfy all post-completion requirements of the Definite Plan and all Approvals.

b. Grantor acknowledges and consents to the Easement Work and its effect on the Property.

c. Grantor reserves for itself, its successors and its assigns, the right to access and use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with Grantee’s rights and activities under this Easement Agreement.

d. Grantee shall comply with all laws, ordinances, and regulations, including but not limited to all regulatory, environmental, and safety requirements applicable to the Easement Area or the use of the Easement, all at Grantee’s sole cost and expense.

2. Coordination and Cooperation

a. Grantee shall cause its contractors to provide reasonable prior notice to Grantor of its work scope and schedule within the Easement Area and shall provide periodic updates to reflect

any material changes to such work scope and schedule. Reasonable notice of scope and schedule will be deemed satisfied upon Grantee's contractor's copying Grantor on a two week look ahead schedule for the Definite Plan work affecting the Easement Area. In conducting any activities pursuant to this Easement Agreement Grantee and its contractors, subcontractors of any tier, consultants and suppliers shall avoid any material impact to PacifiCorp's equipment and installations except to the extent required under or consistent with the Definite Plan or the requirements of any Approvals. Grantor shall take reasonable measures to assist in avoiding any such impact.

b. Grantor reserves the right to access its active transmission lines and other equipment located in the Easement Area, provided that, Grantor shall provide reasonable prior notice of such access and shall exercise commercially reasonable efforts under the circumstances to avoid any impact on the work of Grantee or its contractors. The parties acknowledge that in the event of exigent circumstances posing a material threat to property or public safety Grantor shall have immediate access to address such threat.

c. Grantor and Grantee acknowledge and agree that each has a significant interest in the orderly and coordinated use of the Easement Area and in avoiding undue delay, damage or expense in connection with each other's operations within the Easement Area. Grantor and Grantee each agrees to cooperate and coordinate with each other in good faith and in a timely and reasonable manner to minimize to the extent reasonably practicable any adverse impact on each other's operations within the Easement Area.

3. Costs and Expenses; Liens.

Grantee shall be responsible for any and all costs and expenses of the Easement Work. Grantee shall promptly pay all such costs and expenses and shall not place, permit or suffer any mechanics liens, judgments or other liens or encumbrances upon any portion of the Property, including the Easement Area.

4. Insurance.

Grantee will at all times maintain, and have on file with Grantor evidence of, property, liability and worker's compensation insurance in amounts and scopes of coverage reasonably satisfactory to Grantor and naming Grantor and its directors, officers, employees, agents, representatives and affiliates as additional insureds. In addition, each insurance coverage required under this Easement Agreement shall waive the insurer's right of subrogation against Grantor and shall provide that it shall not be canceled, terminated, changed, modified or not renewed by any insurance carrier unless fifteen (15) days' prior written notice is sent by overnight mail, to Grantor.

5. Responsibility for Damage; Indemnification.

a. Grantee shall be responsible for any damage to the Property (including the Easement Area) and any other property resulting from any exercise of any of Grantee's rights provided for in this Easement Agreement, including but not limited to fire, soil erosion, subsidence, or other damage resulting therefrom. Grantee shall promptly repair and restore, as

nearly as practicable, to its original condition or, if applicable, to the condition required by the Definite Plan, the Property and any other property, including but not limited to roads, utilities, buildings and fences that may be damaged as a result of any exercise of any of Grantee's rights provided for in this Easement Agreement.

b. Grantee covenants and agrees to protect, save harmless, indemnify, and defend Grantor, its directors, officers, employees, agents, representatives, contractors and subcontractors of any tier ("Grantee Parties") from and against any and all claims, losses, costs, expenses, damages (including punitive, special and consequential damages), liability, judgments, fines or penalties (collectively, "Claims") arising as a result of any acts or omissions by any Grantee Parties relating to this Easement, provided that Grantee shall not be responsible for Claims to the extent attributable to the contributory or comparative negligence of any Grantor Parties. "Grantor Parties" are Grantor, its directors, officers, employees, agents, representatives, contractors or subcontractors of any tier.

c. Grantor covenants and agrees to protect, save harmless, indemnify, and defend Grantee Parties from and against any and all Claims relating to the Easement Work or the exercise of rights under this Easement Agreement by any Grantor Parties and caused by, arising out of, or in any way connected with (i) negligent acts or omissions by any Grantor Parties, or (ii) a breach of this Easement Agreement by any Grantor Parties, excepting in each instance that portion of any Claims attributable to the contributory or comparative negligence of Grantee Parties.

6. Notices.

All notices and other communications required or given under this Easement shall be in writing and addressed as follows:

Grantee: Klamath River Renewal Corporation
2001 Addison Street, Suite 300, Office 317
Berkeley, California 94704
Attention: Chief Operating Officer

With copy to:

Water and Power Law Group PC
2140 Shattuck Avenue, Suite 801
Berkeley, CA 94704
Attn: Richard Roos-Collins

Grantor:

PacifiCorp
825 Northeast Multnomah Street, Suite 2000
Portland, Oregon 97232
Attention: Legal Department

or to such other address as a party may specify by written notice to the other. All notices and other communications shall be deemed to have been duly given and received: (a) upon personal delivery, or (b) as of the third business day after mailing by United States mail, postage prepaid, addressed as set forth above, or (c) the immediately succeeding business day after deposit (for next-day delivery) with FedEx or other similar overnight courier that guarantees next-day delivery.

7. Covenants Running With the Land.

This instrument shall run with the land and shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

8. Miscellaneous.

a. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior representations, understandings or agreements concerning this instrument are merged herein and superseded hereby and shall be of no further force or effect.

b. This Easement Agreement may be amended only by a written instrument signed by both parties.

c. Any term or provision of this Easement Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument executed by such party. Any waiver or failure to enforce any provision or requirement of this Easement Agreement in any instance or circumstance shall not affect the enforceability of such provision or requirement in any subsequently occurring instance or circumstance.

d. This Easement Agreement shall be governed and construed by the laws of the State of Oregon without reference to Oregon choice of law principles.

e. The invalidity of any one or more provisions of this Easement Agreement shall not affect the remaining portions of this Easement Agreement or any part thereof. If one or more of the provisions contained herein should be invalid, or should operate to render this Easement Agreement invalid, this Easement Agreement shall be construed as if such invalid provisions had not been inserted.

f. This Easement Agreement may be executed in two or more counterparts, each of which counterparts shall be deemed an original, and all of which together shall constitute one and the same Easement Agreement.

g. The captions and headings in this Easement Agreement are solely for convenience of reference and shall not constitute a part of this Easement Agreement nor shall they affect its meaning, construction or effect.

h. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Easement Agreement, refer to this Easement Agreement in its entirety and

not the particular section of this Easement Agreement in which they appear, and the term “hereafter” means after, and the term “heretofore” means before, the date of this Easement Agreement.

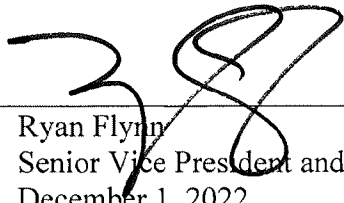
i. The word “including” and words of similar import mean “including but not limited to.”

j. This Easement Agreement shall be recorded in the appropriate land records in Klamath County, Oregon. Grantee shall be solely responsible for the payment of all costs, fees, or expenses in connection with such recording.


[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year last written below.

GRANTOR: PACIFICORP

By 
Name Ryan Flynn
Title Senior Vice President and Chief Legal Officer
Date December 1, 2022

GRANTEE: KLAMATH RIVER RENEWAL CORPORATION

By 
Name Mark Bransom
Title Chief Executive Officer
Date December 1, 2022

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

Acknowledgment in a Representative Capacity

State of OREGON

County of Multnomah

This record was acknowledged before me on November 30, 2022
(date)

by Ryan Flynn as Senior Vice President and Chief Legal
(name of individual) (type of authority) officer

of Pacificorp
(name of party on whose behalf record was executed)

Rosa Jane Wolf
Notary Public - State of Oregon



Official Stamp

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

Acknowledgment in a Representative Capacity

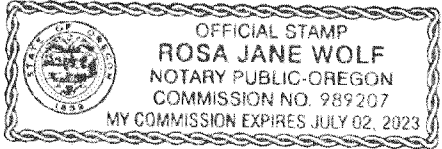
State of OREGON
County of Multnomah

This record was acknowledged before me on November 30, 2022
(date)

by Mark Bransom as Chief Executive Officer
(name of individual) (type of authority)

of Klamath River Renewal Corporation.
(name of party on whose behalf record was executed)

Rosa Jane Wolf
Notary Public - State of Oregon



Official Stamp

EXHIBIT A

(Easement Work)

Oregon / JC Boyle flume and vicinity:

Overhead line work, concrete flume removal, access roads and related work

EXHIBIT B

(Description of Property)

That portion of the Northeast one-quarter of the Northwest one-quarter (NE1/4 NW1/4) and of the Southeast one quarter of the Northwest one-quarter (SE1/4 NW1/4 or Lot 7) of Section 12, Township 40 South, Range 6 East, Willamette Meridian, more particularly described as follows, to-wit:

Beginning at the West one-quarter corner of said Section 12; thence North $87^{\circ} 00' 36''$ East along the South line of the Northwest one-quarter of said Section a distance of 1427.91 feet to the TRUE POINT OF BEGINNING of this description; thence north $27^{\circ} 46'$ East a distance of 509.26 feet to a point 30 feet westerly of the center line of an existing road, when measured at right angles to said road center line; thence continuing parallel to and 30 feet westerly of the center line of said road, when measured at right angles thereto, on the following courses and distances: North $8^{\circ} 36'$ West a distance of 421.25 feet; North $37^{\circ} 11'$ East a distance of 551.16 feet; North $54^{\circ} 57' 37''$ East a distance of 251.74 feet; North $31^{\circ} 33' 36''$ East a distance of 673.50 feet; thence leaving a course parallel to the road run North $27^{\circ} 46'$ East a distance of 308.53 feet to a point in the East line of the Northwest one-quarter of said Section 12, which point is south $1^{\circ} 00' 22''$ West a distance of 320.49 feet from the Northeast corner of said Northwest one-quarter; thence South $1^{\circ} 00' 22''$ West a distance of 2236.88 feet to the center of said Section 12; thence South $87^{\circ} 00' 36''$ West a distance of 1172.03 feet to the point of beginning; containing 34.415 acres, more or less

Being Klamath County, Oregon tax parcels R-4006-01200-0400, R-4006-01200-0500, R-4006-01200-0600, and R-4006-01200-0800.

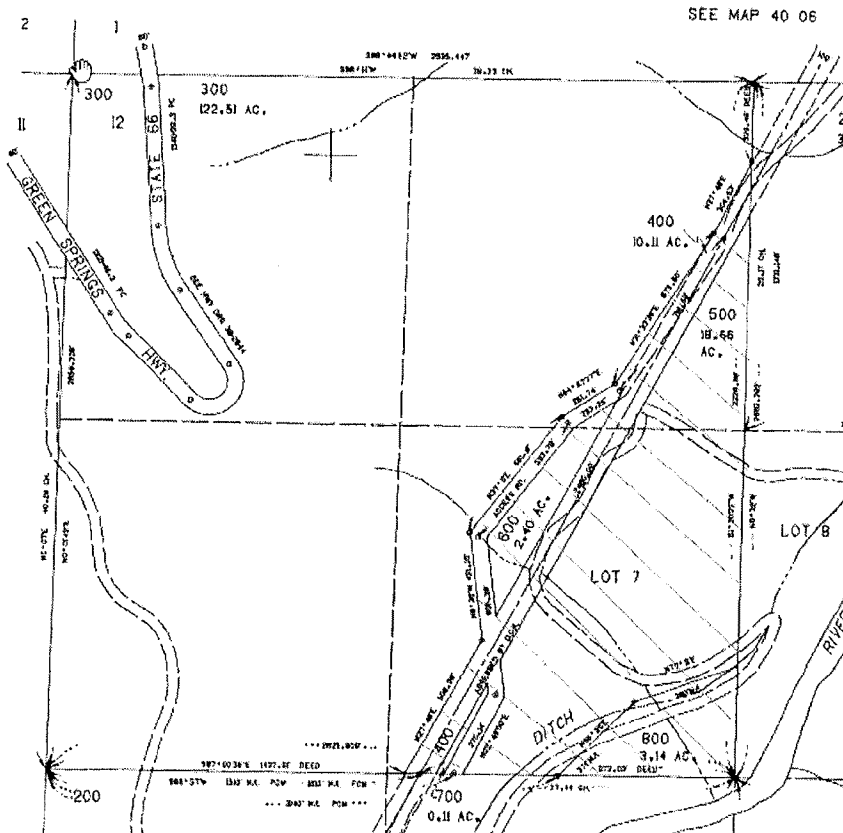


EXHIBIT C

(Easement Area)

Oregon – JC Boyle Flume and Upper Access Road

Entire parcel