

Environmental Law Institute 20th Annual Western Boot Camp

Clean Water Act Session
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Water Quality Certifications (Section 401)

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Overview

- **Function – reasonable assurance that federally permitted activity protects water quality**
- **Statutory delegation of authority to states to issue or deny certification**
- **Certification as mandatory condition of federal permit**
- **Appealable through state administrative process and judicial review**

Elements of Section 401

- **Application for federal permit (inc. license or other authorization)**
- **Involving discharge into navigable waters**
- **Approvable only if state certifies compliance with water quality standards**
- **Reasonable conditions related to discharge and activity as a whole**
- **One year clock for state process**

Frequently Litigated Issues

- **When does clock for state process start?**
- **What is permitted scope of conditions in water quality certification?**
- **May state reopen certification after issuance of federal license?**

Case Study – Dam Removal on Klamath River

- **Largest dam removal in history**
- **Subject to license surrender order issued by the Federal Energy Regulatory Commission (FERC)**
- **Subject to water quality certifications by States of California and Oregon**





FISHING
MOUTH KLAMATH R.
REQU. CALIF.

Klamath River Basin



Klamath Tribes

Klamath Hydroelectric Project

Upstream Irrigators

BLM Land

National Wildlife Refuges

Oregon

California

Karuk

Yurok

Hoopa

Pacific Ocean

Eureka

Medford

Klamath Falls

Yreka

Weaverville

Trinity River

LEWISTON DAM

BUCKHORN DAM

Redding

Crater Lake

Wood River

Williamson River

Agency Lake

CHILDQUIN DAM

Upper Klamath Lake

LINK RIVER DAM

KENO DAM

J. C. DOYLE DAM

IRON GATE

OPCO

OPRO NO 2

OPRO NO 1

Shasta River

Scott River

Salmon River

Trinity Lake

Trinity DAM

Trinity Lake

Trinity Lake

Trinity Lake

Trinity Lake

Trinity Lake

Trinity Lake

Trinity Lake

Trinity Lake

Trinity Lake

Trinity Lake

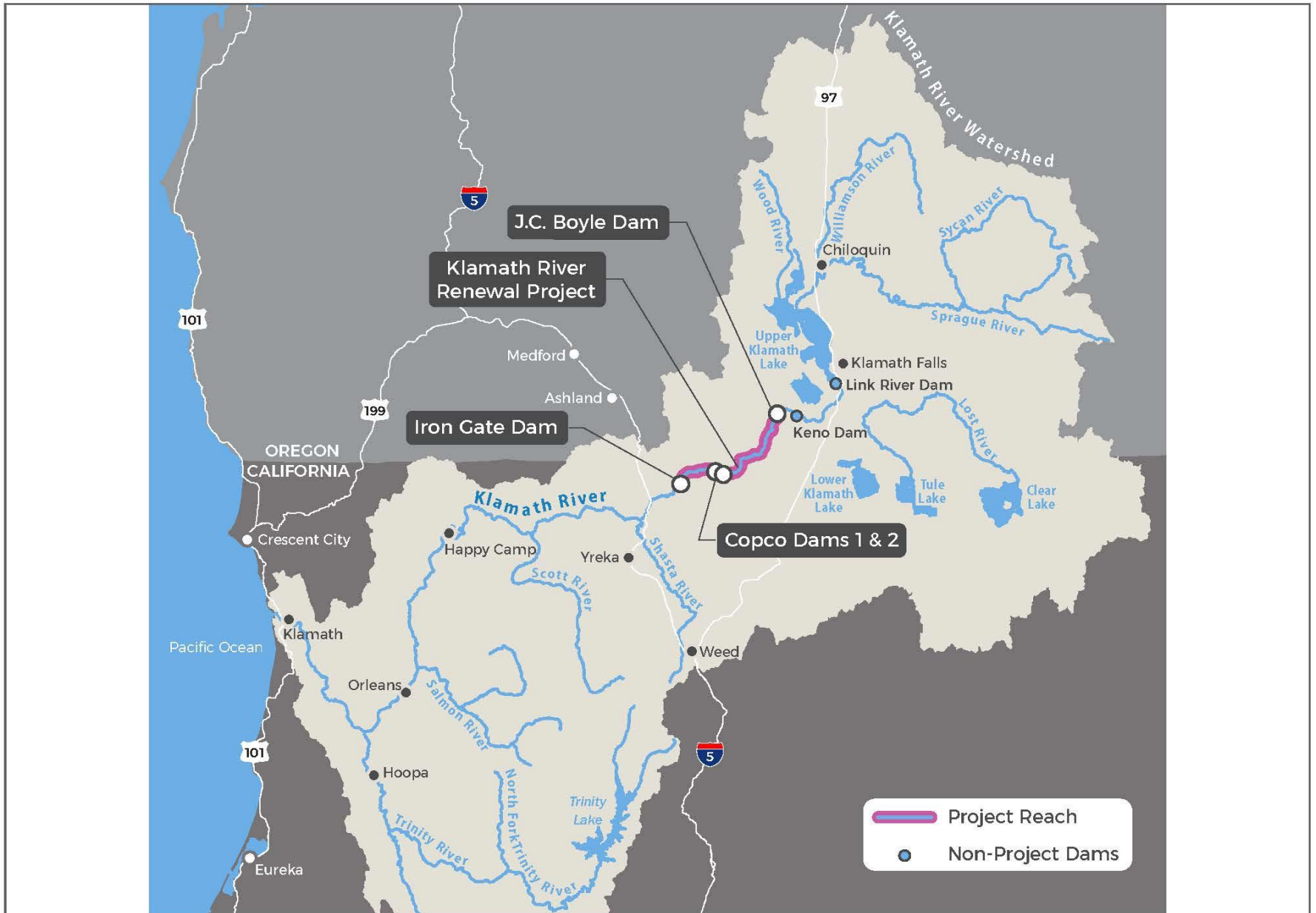
Trinity Lake

Trinity Lake

Downstream Irrigators

Klamath Irrigation Project





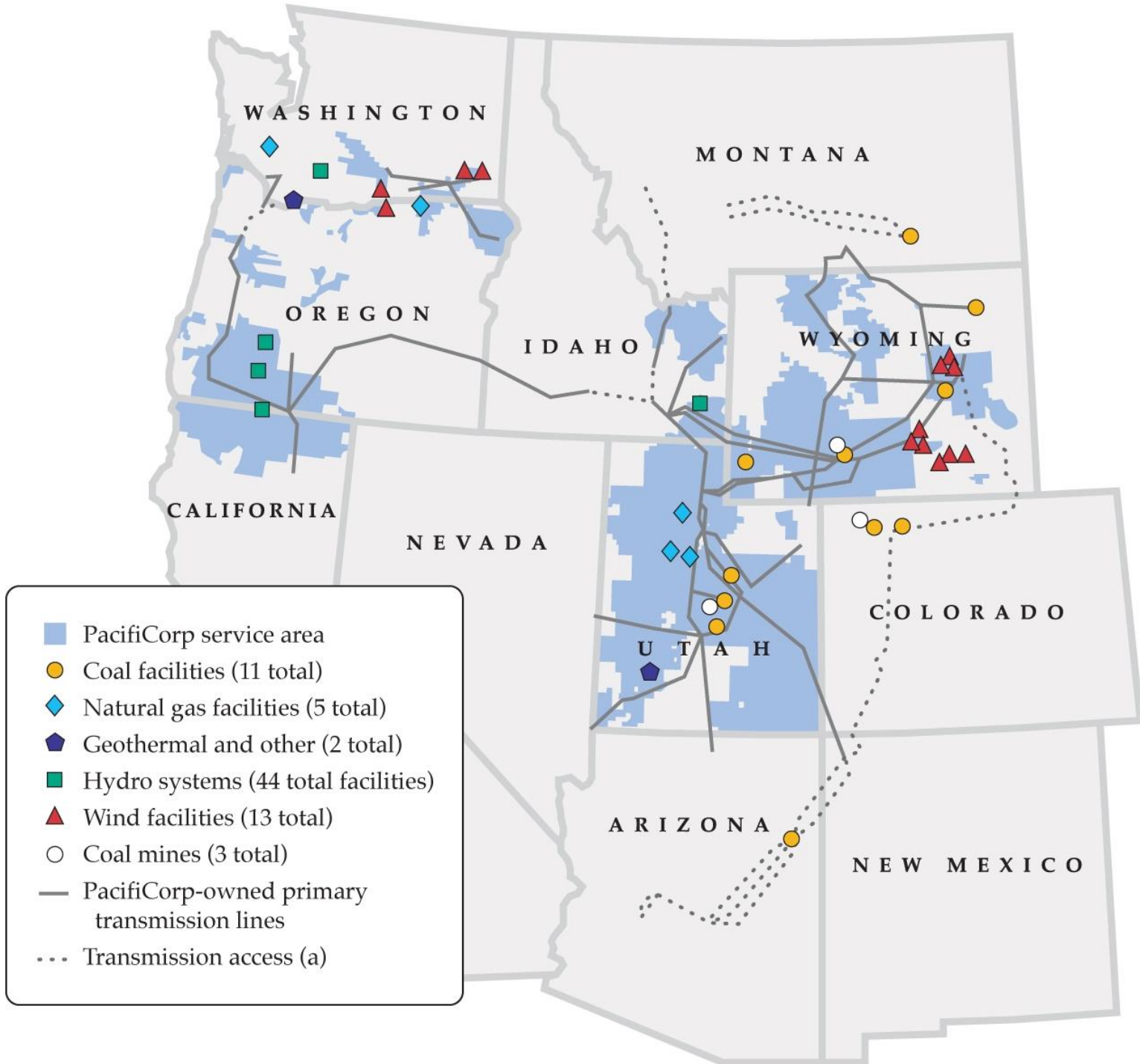












Klamath Hydroelectric Settlement Agreement

- **2002 – start of relicensing for Klamath Hydro Project under Federal Power Act**
- **2006 – start of negotiations between PacifiCorp (licensee) and other parties**
- **2010 – signing of Klamath Hydroelectric Settlement Agreement (KHSA)**
- **2016 – Amended KHSA**

Terms of KHSA

- **Purpose – restore sustainable fisheries**
- **Proposal – license transfer and surrender**
- **Committed funds**
 - \$200 million from PacifiCorp's ratepayers
 - \$250 million from CA's taxpayers
- **Status quo power operations until 2022**
- **No liability for PacifiCorp, States, or US**





Permits Needed to Implement KHSA

- License transfer (PacifiCorp to Klamath River Renewal Corporation)
- License surrender order
- Biological Opinions under Endangered Species Act section 7(a)(2)
- Water quality certifications by States of California and Oregon
- More than 70 permits total

Permitting Strategy

Secure shovel-ready approvals based on Definite Plan:

- Final design for dam removal (100% specifications)
- Management Plans (total of 54) – habitat restoration, historical resources, and all other elements
- Risk management program





Water Quality Certifications (2020 – 2022)

- **Conditions related to:**
 - Reservoir drawdown
 - Sediment deposit
 - Methods of deconstruction
 - Future recreation facilities
 - Hatchery
 - Fire protection
 - Comprehensive monitoring

- **Incorporated into FERC's license surrender order (2022)**











Further Information

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