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8 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

9 UM 1209

10 **In the Matter of**

11 **MIDAMERICAN ENERGY HOLDINGS**
12 **COMPANY**
13 **Application for Authorization to Acquire**
14 **Pacific Power & Light, dba PacifiCorp.**

TESTIMONY OF
TROUT UNLIMITED AND
AMERICAN RIVERS

15 **TESTIMONY OF TROUT UNLIMITED AND AMERICAN RIVERS**

16 My name is Kaitlin L. Lovell, and I am the Salmon Policy Coordinator for Trout
17 Unlimited. I am testifying on behalf of my organization and American Rivers, and I will identify
18 the two groups collectively in this testimony as “Conservation Groups.” My qualifications are
19 attached as Exhibit 101.

20 Trout Unlimited (TU) is a national, nonprofit, coldwater conservation organization with
21 more than 149,000 members nationwide. It is the leading coldwater fisheries conservation
22 organization in the nation. In Oregon, TU has approximately 3,400 members, many of whom are
23 PacifiCorp ratepayers. Our mission is to conserve, protect, and restore North America’s trout
24 and salmon fisheries and their watersheds. Trout Unlimited is participating in this proceeding to
25 implement its mission.
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1 American Rivers (AR) is a nonprofit conservation organization, incorporated under the
2 laws of the District of Columbia, with its principal place of business in Washington, D.C., and
3 regional offices in Oregon and other western states. With more than 30,000 members throughout
4 the nation, including 800 in Oregon, AR is America's leading river conservation organization.
5 American Rivers' mission is to protect and restore rivers and the variety of life they sustain for
6 people, fish and wildlife. Many of AR's members in Oregon are also PacifiCorp ratepayers.

7 Conservation Groups intervened for three primary reasons. First, TU and AR have
8 executed settlement agreements with PacifiCorp, which are also contracts, for the relicensing of
9 the Condit Project (FERC No. 2342) and Lewis River Projects (FERC Nos. 935, 2071, 2111,
10 2213). In addition, AR has executed a settlement agreement with PacifiCorp for the Powerdale
11 Project (FERC No. 2659). Second, Conservation Groups are concerned that the proposed
12 transaction could result in adverse changes to PacifiCorp operations or its capital improvement
13 program. The facility operator retains a great deal of discretion in day-to-day operations, but the
14 Application does not make clear how operations might change, or demonstrate that they would
15 change in a manner that provides a net benefit. *See* In the Matter of Oregon Electric Utility
16 Company, UM 1121, Oregon PUC Order No. 05-114. Similarly, the Application promises
17 major investments in renewable energy, a concept we support, but does not rule out large
18 investments in hydroelectric generation, which we believe should be limited in a "renewable"
19 portfolio in light of the declining conditions of rivers, salmon and steelhead in Oregon. Third,
20 Conservation Groups question whether the proposed transaction would affect the ability of
21 PacifiCorp to comply with, implement, or finance any future regulatory conditions for the
22 Klamath Hydroelectric Project (FERC No. 2082) and other facilities.

23 Based on the information so far provided by MEHC in its application and responses,
24 Conservation Groups cannot agree that the proposed sale is in the public interest or provides a
25 net benefit with respect to these three areas. Rather, the transaction as proposed could adversely
26 affect our ability to restore and enhance rivers, salmon and trout affected by PacifiCorp's
27 hydroelectric operations. Conservation Groups believe that in order for any acquisition of
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1 PacifiCorp to provide a net benefit for these subjects, the Commission must ensure that the
2 companies make a number of improvements to the proposal, as explained below.

3 **I. The Application Does Not Provide a Benefit With Respect to the**
4 **Implementation of the Condit, Lewis, or Powerdale Settlements.**

5 The Condit settlement agreement, effective September 22, 1999, is attached hereto as
6 Exhibit 102. An amendment to the Condit settlement agreement, effective February 8, 2005, is
7 attached hereto as Exhibit 103. The Condit settlement agreement as amended (hereinafter
8 “Condit settlement agreement”) relates to the relicensing of the Condit Hydroelectric Project
9 (FERC No. 2342), which is located at approximately mile 3.3 on the White Salmon River in
10 Washington, a tributary to the Columbia River, an Oregon waterway. Ex. 102, p. 1.

11 The Lewis settlement agreement, dated November 30, 2004, together with the parties’
12 joint explanatory statement regarding that agreement, is attached hereto as Exhibit 104. The
13 Lewis settlement agreement relates to the relicensing of four Lewis Hydroelectric Projects
14 (FERC Nos. 935, 2071, 2111, 2213) on the Lewis River in Washington, a tributary to the
15 Columbia River. Ex. 104, pp. 25, 67. (PacifiCorp owns and operates Projects Nos. 935, 2071,
16 and 2111, and operates Project 2213; the latter project is owned by the Cowlitz PUD, which is
17 also a party to that agreement.)

18 The Powerdale settlement agreement, dated June 6, 2003, together with the offer of
19 settlement and joint explanatory statement regarding that agreement, is attached hereto as Exhibit
20 105. The Powerdale settlement agreement relates to the relicensing of the Powerdale
21 Hydroelectric Project (FERC No. 2659) on the Hood River in Oregon. Ex. 105, p. 22.

22 While the three agreements are complex, they can be summarized as follows. The Condit
23 and Powerdale settlement agreements provide for interim operations and decommissioning of the
24 two projects. Ex. 102, p. 1; Ex. 103, p. 1. The Lewis settlement agreement provides, among
25 other things, for improved fish passage, instream flows, and aquatic habitat. See Ex. 104, p. 19.

26 These projects are located in Oregon or on tributaries to the Columbia River, a significant
27 Oregon waterway, or both. Oregon customers of PacifiCorp pay the largest percentage of costs
28 associated with the utility’s hydroelectric obligations. However, we have been unable to locate

1 any provisions in the Application related to any of these three settlement agreements, or even any
2 meaningful discussion of PacifiCorp’s hydroelectric projects generally. The Application does
3 state that “MEHC will also review and extend the commitments that have been previously made
4 by PacifiCorp as set forth in Exhibit (BEG-1) in the testimony of MEHC witness Gale. . .[.]”
5 Appl., p. 9. But this Exhibit contains no mention of hydroelectric projects or existing
6 commitments related to such projects. Appl., Ex. 301.

7 Instead of addressing hydro operations or these settlement agreements, the Application
8 simply states generally that MEHC “plans to operate PacifiCorp much as it is operated today.”
9 Appl., p. 9. Even if this is true, however, it would represent only a commitment to the status
10 quo, not a benefit for Oregonians.

11 Given that MEHC has no prior history of operating hydro projects in the West,
12 Conservation Groups remain concerned that the companies will be unable or unwilling to follow
13 through on PacifiCorp’s commitments. Implementation of the agreements subjects the company
14 to increased costs and potential liability. These costs can affect rates and the company’s ability
15 to protect Oregon’s waters and trust resources like salmon and trout. Even if the new owner
16 intends to maintain its commitment in these areas, the acquisition raises the question whether the
17 different financial circumstances of the new owner would impair PacifiCorp’s ability to perform.
18 New ownership could result in the reduction of staff or other resources dedicated to hydro
19 operations or devoted to environmental management.

20 At a minimum, Applicants should be specifically obligated to implement the conservation
21 provisions of the settlement agreements. MEHC could also commit to act as a financial surety
22 for PacifiCorp with respect to its obligations arising from the agreements, or to otherwise
23 demonstrate that the company will have the financial wherewithal to meet those obligations. It is
24 important to recognize, however, that even if Applicants can demonstrate that PacifiCorp will be
25 operated “much as it is operated today,” those assurances would not provide a benefit. Such
26 commitments, while necessary, would merely maintain the status quo. *See* In the Matter of
27 Oregon Electric Utility Company, UM 1121, Oregon PUC Order No. 05-114.

1 There are a number of ways MEHC could provide a benefit relative to these three
2 settlement agreements. First, MEHC could commit to additional investments in environmental
3 mitigation, above and beyond PacifiCorp's commitments in the settlement agreements. The
4 companies have committed to expand or accelerate beneficial investments in other areas, and
5 they could do so with respect to hydro. *See, e.g.,* Rev. Appl., p. 19 (investments of \$812 million
6 in emissions reduction technology for existing coal fired power plants).

7 For example, the Condit dam removal effort has experienced certain delays and cost
8 overruns related to permitting costs beyond the costs contemplated by the original agreement.
9 *See generally* Ex. 103, p. 2-3 (Amendment to Settlement Agreement). The original agreement
10 provided for project operations for a certain period of time, and then for decommissioning and
11 removal, subject to certain cost caps for permitting expenses and removal, and provided that if
12 the permitting costs exceeded the initial cap, PacifiCorp could return to relicensing. *Id.* When
13 permitting costs exceeded the initial cap, PacifiCorp and the other parties elected not to return to
14 relicensing, but to negotiate an amendment to the agreement that provided for project operations
15 for two more years and an increase in the cost cap for permitting. *Id.* It is not clear whether
16 there will be additional delays or overruns, but they are possible, especially in light of the new
17 energy rules (70 Fed. Reg. 69804, Nov. 17, 2005) and possible legal action. With the proposed
18 sale would come different financial circumstances for the company, and such circumstances
19 could cause the company to make a different decision in the future, and to look for a way out of
20 the settlement. The Application provides no insight into how PacifiCorp will respond to these
21 future hurdles. To mitigate the harm potentially caused by the proposed sale, and attempt instead
22 to provide a benefit, MEHC could commit now to seeing Condit and the other settlement
23 agreements through, provided that future investments, if any, beyond PacifiCorp's existing
24 obligations are reasonable and prudent. Alternatively, MEHC could simply make an additional
25 investment toward decommissioning Condit beyond PacifiCorp's existing obligation.

26 The Lewis River settlement agreement also presents an opportunity for MEHC to provide
27 a benefit to Oregonians. In particular, the Lewis settlement agreement contains terms aimed at
28 protecting and restoring naturally spawning steelhead and chinook salmon, an important issue for

1 Oregonians who fish on the Lewis and Columbia Rivers. Implementation of the agreement
2 depends, to some extent on developing a better understanding of whether Lower Columbia River
3 fisheries in Oregon and Washington are having an adverse effect on naturally spawning
4 steelhead and chinook in the Lewis River that are listed as threatened under the Endangered
5 Species Act, 16 U.S.C. §1531 et seq. A study into this effect has been request by the Oregon
6 Department of Fish and Wildlife, but to date ODFW does not have the funding or resources to
7 implement the study. This knowledge may affect PacifiCorp's obligations under the Lewis River
8 settlement agreement, such as hatchery production and habitat improvements. *See generally* Ex.
9 104, p. 64. One way Applicants could provide a benefit relative to the Lewis agreement is to
10 participate in and fund a study designed to collect this information.

11 **II. The Transaction Could Adversely Affect Pacificorp's Operations and Its** 12 **Investments in Renewable Energy.**

13 In addition to our specific concerns regarding the Condit, Lewis and Powerdale projects,
14 Conservation Groups wish to emphasize the extent to which the proposed sale could affect
15 PacifiCorp's day-to-day operations and its schedule of capital investments. Although many
16 basic parameters of PacifiCorp's hydro operations are determined by the projects' licenses, state
17 and federal laws, and other agreements, it remains the case that the facility operator exercises a
18 considerable amount of discretion. The Application does not make clear how operations might
19 change, or ensure that they change in a manner that provides a benefit.

20 For example, the successor might be less willing than the current management to take a
21 discretionary action like a flow release from a storage dam under an existing good-neighbor
22 practice that benefits a rural community dependent on boating, angling, or other river-related
23 activities during the summer. Similarly, sufficient discretion may exist to change present
24 operations to increase or decrease energy generation, and such a change may have consequences
25 for the integrity of the river, as well as the wildlife and people who depend on it. For example,
26 while the settlement agreement in the Lewis River Project is still too young to have experienced
27 this problem, another project geographically close to the Lewis River Project has had to convene
28 emergency meetings of the settlement parties to reduce beneficial flow releases due to extreme

1 drought conditions. The discretionary balance between flow releases and energy production
2 could be profoundly impacted by the proposed sale and there are no assurances in the
3 Application to suggest that this discretion will be exercised in a way that provides a net benefit to
4 Oregonians. Moreover, the FERC licenses do not regulate water supply, a beneficial use outside
5 that agency's jurisdiction. Therefore, new ownership could alter water supply arrangements,
6 with consequences for the state. New ownership might result in staffing or funding reductions
7 for those devoted to the safe and sound management of hydro facilities; MEHC might see such
8 measures as a sound business decision, but they would be a detriment to Oregonians.

9 Conservation Groups do not claim that the proposed transaction would definitely cause
10 such harm. At the same time, however, Applicants have not demonstrated otherwise. As noted
11 above, generalized commitments to operate the company "much as it is operated today" are not
12 adequate assurance of even the status quo, much less a net benefit.

13 When it comes to capital investments, one area deserves special mention. While
14 Conservation Groups support investments in renewable energy, we wish to clarify that
15 Applicants' investment plans for new renewable generation do not include substantial
16 investments in hydro projects, which carry significant ecological and financial liabilities.
17 "Renewable" energy is not defined in the Application, and the various states have differing and
18 sometimes contradictory definitions of renewable. In Oregon, ORS § 469.185(a) defines
19 "renewable energy resource" to include "straw, forest slash, wood waste, or other wastes from
20 farm or forest land, industrial waste, solar energy, wind power, water power or geothermal
21 energy" but then limits the definition to exclude "hydroelectric generating facility larger than one
22 megawatt of installed capacity unless the facility qualifies as a research, development or
23 demonstration facility." If the Applicants do not clarify a commitment to limit hydro projects
24 within the Oregon definition of "renewable energy resource," Conservation Groups would have a
25 hard time agreeing that its renewable investments provide a benefit.

1 **EXHIBIT 101: Qualifications**

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3 **Kaitlin L. Lovell, Salmon Policy Coordinator, Trout Unlimited**

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5 Kaitlin is Trout Unlimited's Salmon Policy Coordinator. In this capacity she has been
6 the organization's responsible party on all hydro projects in Oregon and Washington since 2003,
7 including the negotiation of the Lewis settlement agreement and the implementation of the
8 Condit settlement agreement. Trout Unlimited is represented in the settlement negotiations by
9 Brett Swift of American Rivers, and the two organizations work closely and regularly on the
10 negotiations of the settlement agreements. Kaitlin makes the final recommendations to Trout
11 Unlimited on whether to be a signatory to any hydro settlement agreement.

12 Kaitlin oversees and implements the day to day advocacy for wild Pacific salmon and
13 steelhead in the Pacific Northwest by synthesizing the best science into sound, effective local,
14 state and federal policies. Her work includes participating in federal and state recovery planning,
15 working with scientists to ensure their research is incorporated into policies, contributing to
16 administrative processes, initiating and coordinating litigation, legislation, public education and
17 outreach in the areas of federal and state fish protection and recovery, hatchery reform, public
18 and private hydropower reform, and harvest management through the implementation of federal
19 environmental laws such as the ESA, CWA, and NEPA, as well as state laws such as the Oregon
20 Native Fish Conservation Policy and Oregon Plan.

21 Kaitlin is a member in good standing of the bar in the State of Oregon and the State of
22 New York.

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3 **CERTIFICATE OF SERVICE**
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5 I hereby certify that I served the Testimony of TROUT UNLIMITED and AMERICAN
6 RIVERS in docket UM 1209 on the following named person(s) via email as indicated on the
7 Service List for UM 1209 unless no email was provided, in which case service was made via
8 regular prepaid postage mail in a sealed envelope, addressed to said person(s) at his or her
9 address on the date indicated below.
10

11 DATED: November 21, 2005

12 /s/
13

14 Brian J. Johnson
15 Trout Unlimited

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Testimony of Trout Unlimited and American Rivers

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CONDIT HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between PacifiCorp, licensee and relicensing applicant for the Condit Hydroelectric Project, FERC No. 2342 (the "Project"), intervenors American Rivers, American Whitewater Affiliation, Columbia Gorge Audubon Society, Columbia Gorge Coalition, Columbia River United, Federation of Fly Fishers, Friends of the Columbia Gorge, Friends of the Earth, Friends of the White Salmon, The Mountaineers, Rivers Council of Washington, The Sierra Club, Trout Unlimited, Washington Trout, and the Washington Wilderness Coalition (hereinafter "American Rivers, et al."), the Columbia River Intertribal Fish Commission ("CRITFC"), the Yakama Indian Nation ("Nation"), the U.S. Forest Service ("USFS"), U.S. Department of the Interior ("Interior"), the National Marine Fisheries Service ("NMFS"), the Washington Department of Ecology ("Ecology"), and the Washington Department of Fish and Wildlife ("WDFW") (collectively the "Intervenors"), pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission"), 18 C.F.R. § 385.602 (1997). PacifiCorp and the Intervenors constitute the parties to this Agreement (the "Parties," any one of whom may be referred to as a "Party").

Recitals

- A. PacifiCorp owns and operates the Project, which is located at approximately river mile 3.3 on the White Salmon River in Skamania and Klickitat counties, Washington.
- B. The Project, which was completed in 1913, blocks fish access to habitat above Condit Dam.
- C. In 1963, PacifiCorp's predecessor, Pacific Power & Light Company, applied to the predecessor of the Commission, the Federal Power Commission, for a license to operate the Project, and in 1968 the Commission issued a license containing an effective date of May 1, 1965 and a termination date of December 31, 1993.
- D. In December 1991, pursuant to Part I of the Federal Power Act of 1920, 16 U.S.C. 791a et seq. (the "FPA"), PacifiCorp filed an application with the Commission for a new license for continued operation of the Project (the "Relicensing Proceeding").
- E. PacifiCorp's initial FPA license to operate the Project expired on December 31, 1993. Since that time, PacifiCorp has been operating the Project pursuant to annual licenses issued pursuant to Section 15(a) of the FPA, 16 U.S.C. § 808(a), pending determination by the Commission of PacifiCorp's application for issuance of a new license for the Project.

F. In response to the Commission's request for comments, recommendations, and prescriptions regarding PacifiCorp's application for a new license, various Intervenor filed comments, recommendations, and prescriptions. After review of the comments, recommendations, and prescriptions from the Intervenor, the Commission staff issued a Final Environmental Impact Statement dated October 1996 and recommended a preferred alternative for a new Project license.

G. PacifiCorp has determined that Project operations would be uneconomic if a new Project license were issued by the Commission in accordance with recommendations of the Final Environmental Impact Statement.

H. In lieu of fish passage facilities and other measures recommended for a new Project license in the Final Environmental Impact Statement, the Nation, CRITFC and American Rivers, et al. requested that PacifiCorp remove the Project in order to restore anadromous fish and natural flow conditions in the White Salmon River. Intervenor Ecology, WDFW, Interior, USFS, and NMFS have supported investigation of dam removal.

I. On January 29, 1997, PacifiCorp requested a temporary abeyance of the Relicensing Proceeding in order to investigate the feasibility of various dam removal alternatives in collaboration with the Intervenor and other interested entities and individuals.

J. At the request of the Nation, CRITFC, and PacifiCorp, R.W. Beck, an independent, consulting engineer firm, prepared an initial engineering feasibility and cost study, dated March 1997, of Project removal alternatives.

K. On July 30, 1997, PacifiCorp filed a renewed motion with the Commission to hold the Relicensing Proceeding in abeyance in order to afford the Parties further time to collaborate. This motion was supported by American Rivers et al., Interior, NMFS, USFS, WDFW, Ecology, and the Nation.

M. On March 19, 1998, PacifiCorp filed a renewed motion with the Commission to hold the Relicensing Proceeding in abeyance to afford the Parties additional time to collaborate.

N. In May 1998, R.W. Beck, with assistance from a consulting engineer employed by American Rivers, prepared an additional, more detailed summary report of Project removal alternatives.

O. On August 31, 1998, PacifiCorp and the Intervenor filed a request with the Commission to hold the Relicensing Proceeding in abeyance to afford the Parties additional time to collaborate.

P. As a result of collaboration, the Parties have reached agreement on a dam removal plan for the Project, described as the "Selected Approach" in the Condit Hydroelectric Project Removal Summary Report dated May 1998 as supplemented by the removal costs worksheet attached thereto (collectively the "Removal Plan"), which is set forth in Exhibit A. The Parties believe the Removal Plan is technically, legally, biologically, and economically feasible.

SECTION 1 PURPOSE AND EFFECT OF OFFER OF SETTLEMENT

1.1 Purpose of Agreement. The Parties have entered into this Agreement for the purpose of resolving all issues that were or could have been raised by the Parties in the Relicensing Proceeding, and for the purpose of obtaining a Commission order approving an extension and amendment of PacifiCorp's Project license in accord with Sections 3 and 4 below (the "Amended License"), an application for which will be submitted to the Commission pursuant to Sections 2 and 4 herein and 18 C.F.R. Part 6 (1997).

1.2 Limitations. This Agreement is the product of negotiation and cooperation among the Parties in an effort to investigate the economic, technical and environmental feasibility of dam removal as a preferred alternative in the Relicensing Proceeding. This Agreement reflects the Parties' agreement that Project removal, under the terms and conditions set forth in this Agreement, constitutes a fair, reasonable and just resolution to the issues in the Relicensing Proceeding. The Parties believe this Agreement also serves the public interest. By entering this Agreement, no party shall be deemed to have made any admission or waived any contention of fact or law which it did make or could have made in the Relicensing Proceeding. This Agreement shall not be offered in evidence or cited as precedent by any Party to this Agreement in any administrative or judicial litigation, arbitration, or other proceeding, except a proceeding to establish the existence of or to enforce or implement this Agreement. This Section 1.2 shall survive any termination of this Agreement. The Parties acknowledge that PacifiCorp disputes the Commission's authority to issue a decommissioning order as such in this or any further relicensing proceeding. However, PacifiCorp and the Parties agree that the Commission has authority under the FPA to issue an order consistent with this Agreement.

SECTION 2 ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1 Commission Filings. Within thirty (30) days of the date on which this Agreement is signed by all of the Parties (the "Effective Date"), PacifiCorp shall file with the Commission: (a) a petition or application requesting the Commission to issue PacifiCorp an Amended License in accord with this Agreement ("Application"), and (b) a fully executed copy of this Agreement (including a copy of the Removal Plan).

2.2 Permits. In accordance with this Agreement, PacifiCorp shall apply for and use its best reasonable efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications, determinations, and other governmental approvals, including but not limited to the Amended License, necessary to commence Project removal in accordance with the Removal Plan and this Agreement ("Permits"). The Parties shall in good faith and with due diligence cooperate during the permitting, environmental review, and implementation of this Agreement for the purpose of avoiding unreasonable delay in Project removal. The Intervenor who are permit issuing agencies will vigorously defend Permit Challenges to their respective permits. PacifiCorp will support any such litigation as a necessary party. Each Party shall bear its own costs of defense. The Parties agree that PacifiCorp shall not be required by this Agreement to cease generating power at the Project or to otherwise implement the Removal Plan or any Permit until any and all applicable Permits are obtained 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 consistent with the Removal Plan and this Agreement. In the event any Proceeding is commenced, the Parties shall collaborate on the effect of such Proceeding on implementation of this Agreement.

2.3 Representations Regarding Consistency and Compliance with Statutory Obligations. By entering into this Agreement, Ecology, Interior, NMFS, USFS and WDFW represent that they believe their statutory and other legal obligations are, or can be, met consistent with this Agreement. Nothing in this Agreement shall be construed to limit any government agency, including Ecology, Interior, NMFS, USFS, and WDFW, with jurisdiction directly related to Project removal in accordance with the Removal Plan and this Agreement from complying with its obligations under applicable laws and regulation or from considering public comments received in any environmental review or regulatory process related to Project removal in accordance with the Removal Plan and this Agreement. This Agreement shall not be interpreted to predetermine the outcome of any National Environmental Policy Act ("NEPA") or State Environmental Policy Act ("SEPA") environmental review process or any Permit process.

2.4 Environmental Review. The Parties shall jointly request that the Commission promptly initiate NEPA compliance and coordination with other environmental review processes under federal, state, regional, and local laws which may be necessary for issuance of the Amended License and the issuance of Permits required to implement Project removal in accordance with the Removal Plan and this Agreement. The Parties shall make all reasonable efforts to expedite compliance with NEPA, SEPA, and environmental review required by other federal, state, regional, and local laws for issuance of the Amended License and the Permits to implement Project removal in accordance with the Selected Approach identified in the Removal Plan and this Agreement.

2.5 Communications with the Commission and other ^{2.3}Government Agencies.

Except as may be authorized for governmental agencies in Section 2.4 of this Agreement, no Party shall (a) propose, support, or otherwise communicate to the Commission or any other government agency any comments, proposals or recommendations relating to the Amended License or Permit terms and conditions or any environmental review process relating to the Project or Project removal (including but not limited to any comments, proposals or recommendations relating to mitigation or fishery enhancements), other than comments, proposals or recommendations which support and are consistent with the terms of this Agreement, or (b) oppose any Amended License or Permit term or condition that PacifiCorp is authorized or directed to carry out in accordance with the Agreement.

SECTION 3 EXTENSION OF COMMISSION LICENSE; ADDITIONAL CONDITIONS

PacifiCorp shall apply to the Commission for an order amending PacifiCorp's original Project license, to extend the expiration date thereof to October 1, 2006, and add to the existing terms and conditions the following conditions: (a) that PacifiCorp shall comply with this Agreement, and (b) that PacifiCorp shall notify the Commission of PacifiCorp's decision to do one of the following: (1) cease generation of electricity at the Project and commence Project removal in accordance with the Removal Plan, the terms and conditions of this Agreement, and applicable Permits, or (2) not remove the Project because of the occurrence of one of the conditions set forth in Section 5 of this Agreement, whereupon PacifiCorp shall request the Commission to renew action on PacifiCorp's December 1991 application for a new license.

SECTION 4 PROJECT REMOVAL

4.1 Project Removal and PacifiCorp's Financial Commitment. PacifiCorp shall implement and finance Project removal in accordance with the schedule set forth in the Removal Plan and in this Section 4 and in accordance with the terms and conditions of this Agreement, subject to the availability of and in accordance with all Permits necessary to implement the Removal Plan, unless otherwise agreed to by the Parties.

4.1.1 Project Removal Costs and PacifiCorp's Financial Commitment. Project removal costs include the sum of the following: (a) \$ 13,650,000 for planning, engineering, design, mobilization, demobilization, construction, and deconstruction costs associated with Project removal in accordance with this Agreement ("Construction Costs"), (b) \$2,000,000 collectively for technical, engineering and legal costs incurred by PacifiCorp in obtaining any Permits ("Permitting Costs") and technical, engineering, design, mobilization, demobilization, construction, deconstruction and legal costs associated with implementing and complying with permitting and mitigation measures required by any Permit ("Mitigation Costs"), (c) \$1,000,000 which PacifiCorp shall contribute to the Nation for the enhancement, supplementation, and conservation of

fishery resources in the White Salmon River Basin ("Fishery Enhancement Fund"), and (d) \$500,000 which PacifiCorp shall contribute for the enhancement, maintenance or other use of the Underwood In Lieu Site located near the confluence of the White Salmon and Columbia Rivers or other in lieu sites owned and managed by the United States for the use of the Nation, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Reservation, and the Nez Perce Tribe and the members thereof (collectively the "Tribes") for fishing purposes ("In Lieu Site Enhancement Fund"). The In Lieu Site Enhancement Fund shall be administered by the Tribes for the purposes described in this Section 4.1.1. Expenditures from the In Lieu Site Enhancement Fund and any actions taken concerning the Underwood or other in lieu sites shall be by the concurrence of the four Tribes and the Bureau of Indian Affairs. The items listed in (a) through (d) of this Section 4.1.1 are deemed "Project Removal Costs". Project Removal Costs shall be measured in lawful currency of the United States as of the Effective Date and adjusted using the methodology stated in Section 4.1.2. PacifiCorp's commitment to finance Project Removal Costs shall not exceed \$17,150,000 measured in lawful currency of the United States as of the Effective Date. Project Removal Costs shall begin accruing on the Effective Date of this Agreement. Any costs incurred by PacifiCorp prior to the Effective Date of this Agreement related to Project removal, including but not limited to costs of preparing the Removal Plan and other technical information shared with the Intervenor, shall not be included in nor credited to Project Removal Costs but shall be recognized nonetheless as contributions made by PacifiCorp to Project removal. So long as this Agreement is not terminated by October 1, 2004, PacifiCorp shall make its \$500,000 contribution to the In Lieu Site Enhancement Fund by October 1, 2004 or within thirty (30) days after receiving written notice from the Tribes of the location of the account to which such contribution shall be made, whichever is later.

4.1.2 Quarterly Adjustment of Project Removal Costs to 1999 Dollars. Project Removal Costs paid in any given calendar quarter shall be stated in terms of lawful currency of the United States as of the Effective Date ("1999 Dollars"). Project Removal Costs paid in any given calendar quarter shall be converted to and stated in 1999 Dollars by adjusting for the percentage change in the Gross Domestic Product - Implicit Price Deflator Index published by the United States Department of Commerce, Bureau of Economic Analysis (being on the basis of 1992 = 100) ("GDP-IPD Index") from the Effective Date through the end of the calendar quarter in question. To determine the appropriate adjustment, the GDP-IPD Index values used shall be those published in the third month after the end of the calendar quarter in question, which values shall be compared with the GDP-IPD Index published in the third month after the Effective Date. If the GDP-IPD Index or any revision or equivalent of that index ceases to be published by a federal agency, the Parties shall replace it with a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute for the GDP-IPD Index. A sample calculation is set forth in Exhibit B.

4.2 Determination of Project Removal Costs and Schedule; Bids. The total Project Removal Costs defined in Section 4.1.1 shall be determined in accordance with the procedure set forth in this Section 4.2. PacifiCorp shall initiate bid procurement procedures in a manner calculated to meet the schedule set forth in Section 4.4 at least ninety (90) days prior to the date construction on Project removal starts. At the time construction bids are received, PacifiCorp shall provide the Intervenor with an itemized estimate and supporting documentation of the total Project Removal Costs and a proposed schedule for Project removal in accordance with Section 4.4. Within twenty (20) days of receipt of PacifiCorp's estimate of Project Removal Costs and proposed schedule, the Parties shall meet for the purpose of reaching agreement on the Project Removal Costs and the final schedule for Project removal. Upon request by one or more of the Intervenor, PacifiCorp shall make available to the Intervenor any additional relevant technical and financial information used by PacifiCorp in arriving at its Project Removal Costs estimate. If the bids PacifiCorp receives indicate that Construction Costs will exceed \$13,650,000, the Intervenor shall have the opportunity to seek alternative funding sources and to make recommendations to PacifiCorp on opportunities for reducing Construction Costs to bring those costs within \$13,650,000. If the Intervenor are unable to obtain financing to make up the difference or to propose cost reductions acceptable to PacifiCorp, PacifiCorp shall have the option to withdraw from this Agreement in accordance with Section 5.1.6.

4.3 Final Contract for Project Removal. PacifiCorp shall provide the Intervenor with a copy of the final contract(s) for Project removal.

4.4 Schedule for Project Removal. PacifiCorp shall commence implementation of the construction schedule described in the Removal Plan not later than August 1, 2006, cease generating power at the Project not later than October 1, 2006, commence Project removal during October 2006, and finance Project Removal Costs in accordance with Section 4.1.1. The schedule attached hereto as Exhibit C illustrates activities that will be carried out under the schedule for Project removal. The Parties agree to consider commencement of removal in October 2005 or earlier if the Intervenor can identify additional funds which significantly reduce PacifiCorp's financial contribution to Project Removal Costs, provided that no change shall be made to the Project removal schedule described in this Section 4.4 except in writing approved by all Parties to this Agreement.

4.5 Construction Costs Risk Allocation. Once PacifiCorp awards one or more contracts to perform work within the scope of matters covered by Construction Costs, if actual Construction Costs exceed \$13,650,000, PacifiCorp may use unobligated funds available from Permitting Costs, Mitigation Costs, and Fishery Enhancement Fund, if any, in that order and to the extent necessary to satisfy Construction Costs which exceed \$13,650,000. PacifiCorp shall not so use the Fishery Enhancement Fund without consultation with and the approval by the Nation. If PacifiCorp reasonably anticipates that Construction Costs will exceed \$13,650,000 and that available unobligated funds from Permitting Costs, Mitigation Costs, In

Lieu Site Enhancement Fund, and the Fishery Enhancement Fund will not be sufficient to cover the difference between \$13,650,000 and actual Construction Costs, PacifiCorp shall give immediate notice to the Intervenor. Thereafter, if alternative funding is not provided by the Intervenor in a timely manner to cover Construction Costs in excess of \$13,650,000 or if Intervenor fail to identify cost reduction strategies acceptable to PacifiCorp, PacifiCorp may stop further work on Project removal and shall not be obligated to finance Project removal beyond the sum of Construction Costs, Permitting Costs, Mitigation Costs, In Lieu Site Enhancement Fund, and Fishery Enhancement Fund available in accordance with this Section 4.5. PacifiCorp shall be deemed, upon contribution of \$17,150,000 toward Project removal, to have fully satisfied its obligations to finance and implement Project removal the same as though Project removal had been completed in accordance with this Agreement.

4.6 Project Removal Costs and Tax Savings Allocations. If actual Project Removal Costs are less than \$17,150,000, PacifiCorp shall retain one-half the difference between the actual Project Removal Costs and \$17,150,000 and PacifiCorp shall contribute the remaining one-half of such savings to the In Lieu Site Enhancement Fund. PacifiCorp shall make such contribution to the In Lieu Site Enhancement Fund within thirty (30) days of completion of all mitigation and monitoring requirements of any governmental authority in connection with the removal of the Condit Dam. In addition, PacifiCorp shall contribute to the In Lieu Site Enhancement Fund one-half of any savings which the State of Washington forgoes if the Washington Department of Revenue determines that, due to an exemption, the Washington State Sales Tax on services, RCW 82.08, does not apply to services provided by contractors implementing removal of the Condit Dam in accordance with this Agreement. Any funds contributed by PacifiCorp to the In Lieu Site Enhancement Fund under this Section 4.6 shall be administered by the Tribes for mitigation and enhancement projects and activities benefitting resources of the White Salmon River Basin which are approved by the Intervenor.

SECTION 5 MODIFICATION OR WITHDRAWAL AND TERMINATION

5.1 Withdrawal. A Party may withdraw from this Agreement in accordance with this Section 5.1 after complying with Section 5.2.

5.1.1 Amended License Not Timely Issued by the Commission. Any Party may withdraw from this Agreement if the Amended License is not issued by the Commission within three (3) years of the Effective Date of this Agreement.

5.1.2 Amended License Inconsistent With This Agreement. Any Party may withdraw from this Agreement if the Amended License issued by the Commission contains terms or conditions materially inconsistent with those set forth in this Agreement. In the event the Commission modifies, fails to require compliance with, or changes in the Amended License a term or condition that the Parties have agreed to in this Agreement, and this Agreement is not terminated in accordance with Section 5.3, the term or

condition as set forth in this Agreement shall remain a binding covenant among the non-withdrawing Parties, enforceable in accordance with the law of contracts (except to the extent the Amended License prohibits or precludes the performance of that term or condition). In the event a notice of intent to withdraw is filed, the provisions of Section 5.2 shall come into effect unless the Amended License is revised to conform to the Agreement. All Parties shall request the Commission to stay the rehearing proceeding pending the completion of the activities specified in Section 5.2.

- 5.1.3 **Permit Terms and Conditions Inconsistent with Agreement.** If any Permit includes a term or condition which is materially inconsistent with the terms and conditions of this Agreement, any Party affected by such inconsistency may withdraw from this Agreement.
- 5.1.4 **Inability to Obtain Required Permit.** PacifiCorp may withdraw from this Agreement if it is not able to obtain a Permit in final form on terms and conditions consistent with this Agreement which is necessary to implement the Removal Plan or the Amended License after exercising all good faith efforts and fully exhausting all avenues of appeal.
- 5.1.5 **Inability to Obtain Required Easement, Right-of-Way, Other Interest in Property, or Third-Party Consent.** PacifiCorp may withdraw from this Agreement if it is not able to obtain an easement, right-of-way, other interest in or to property, or the consent of any person or entity which is required by law to implement the Removal Plan or the Amended License after exercising all good faith efforts and fully exhausting all applicable avenues of appeal, if any.
- 5.1.6 **Inability to Obtain Contracts to Perform Removal and Implement Mitigation.** PacifiCorp may withdraw from this Agreement if it is not able after exercising all good faith efforts to obtain a contract with a qualified, responsive bidder to perform Project removal and to implement mitigation required by this Agreement or any Permit in accordance with the limitations on Project Removal Costs and other terms and conditions of this Agreement.
- 5.1.7 **Injunction Prohibiting Project Removal or Implementation of Any Permit or Mitigation.** PacifiCorp may withdraw from this Agreement if an injunction or similar order in any Proceeding prohibits PacifiCorp from implementing Project removal or any Permit or mitigation required by this Agreement after exercising all good faith efforts and fully exhausting all applicable avenues of appeal to have such injunction or other similar order vacated or modified to conform with this Agreement.
- 5.1.8 **Inability to Confirm In Lieu Site Enhancement Agreement.** PacifiCorp may withdraw from this Agreement if it is unable after due diligence to confirm an In Lieu

Site Enhancement Agreement with the Tribes within forty-five (45) days of the Effective Date of this Agreement.

5.1.9 **Inability to Obtain Release of Claims from the United States in Its Capacity as Trustee.** PacifiCorp may withdraw from this Agreement if the United States in its capacity as trustee on behalf of Indian tribes fails to provide, within forty-five (45) days of the Effective Date of this Agreement, a release and discharge to PacifiCorp's satisfaction of any and all claims for legal or equitable relief, causes of action, damages, or liabilities caused by, associated with, or in any way attributable to (a) PacifiCorp's ownership, use, operation or maintenance of the Project or (b) the removal of the Project with respect to Tribal interests in the fishery resources or fishery habitat of the White Salmon River and the Columbia River and in lieu sites, except for PacifiCorp's obligations under this Agreement.

5.2 **Notice of Intent to Withdraw; Duty to Negotiate; Modification of Agreement.** If a Party intends to withdraw from this Agreement, it shall first give the other Parties written notice of its intent to do so. The Parties shall meet within twenty (20) days of such mailing in a good faith attempt to negotiate changes to this Agreement that would resolve the cause of the proposed withdrawal. If the Parties are unable to reach agreement within ninety (90) days of the notice of intent, the objecting party may withdraw from this Agreement by notifying the other Parties in writing within one hundred (100) days of the date on which it gave notice of intent to withdraw to the other Parties. This Section 5.2 shall not preclude a Party from seeking rehearing on or otherwise appealing modification of the Amended License to which an objection is made within the prescribed time periods. The Party shall promptly withdraw the request for rehearing or appeal if the Parties subsequently agree to change this Agreement to reflect the Commission's modifications.

5.3 **Effect of Withdrawal.** If any party except PacifiCorp withdraws from this Agreement, this Agreement shall continue in effect, unless the other Parties affirmatively agree to terminate the Agreement. If PacifiCorp withdraws, this Agreement shall terminate.

5.4 **Effect of Termination.** Section 1.2 of this Agreement shall survive any termination of this Agreement. In the event of termination before the Amended License is issued, the Parties intend that the Relicensing Proceeding be restored to its status prior to the first motion to abey the proceedings, filed by PacifiCorp on January 29, 1997. If this Agreement is terminated after the Commission shall have issued an Amended License but before the Amended License is accepted by PacifiCorp, the Amended License shall be deemed rejected with the understanding that the existing relicensing proceeding will be resumed and that all Parties to this Agreement will be restored to the status quo in the relicensing proceeding prior to the Effective Date of this Agreement. If this Agreement is terminated after the Amended License is accepted by PacifiCorp, PacifiCorp shall promptly surrender the Amended License in accord with Commission rules with the understanding that the existing

relicensing proceeding will be resumed and that all Parties to this Agreement will be restored to the status quo in the relicensing proceeding prior to the Effective Date of this Agreement.

5.5 Remedy for Unlawful Withdrawal or Termination of Agreement. If any Party believes another Party has withdrawn from or terminated this Agreement in violation of the terms and conditions of this Agreement, the sole remedy for such alleged violation, after exhausting dispute resolution procedures under Section 10, shall be by a proceeding seeking specific performance of the obligations of the Party seeking to withdraw from or to terminate this Agreement.

SECTION 6 MITIGATION; POST-REMOVAL COVENANTS

6.1 Mitigation Provided by Project Removal. The Parties agree that Project removal in accordance with Section 4 of this Agreement is the primary means of protection, mitigation, and enhancement of fish, wildlife, and other resources affected by the Project for the purposes of achieving a fair, reasonable and just resolution of issues in the Relicensing Proceeding and serving the public interest.

6.1.1 The Commission's draft and final environmental impact statements found that "dam removal would optimize anadromous fish access and use of upstream habitat because the river profile would rapidly change to the natural pre-dam slope conditions. A natural channel and slope without obstructions provides the best access and migration route for anadromous fish." In addition, the Secretaries of Commerce and Interior noted that dam removal would be the most fail-safe method to pass anadromous fish through the Project area.

6.1.2 The Commission's final environmental impact statement found additional benefits from dam removal, several of which are listed below:

"Project retirement and dam removal would end facility entrainment and passage of fish over the dam. Juvenile salmonids spawned and reared in the upstream habitat could safely out-migrate from the basin. Long-term anadromous fish restoration success with dam removal would result from a combination of increasing upstream passage effectiveness and eliminating downstream migrant mortality caused by project operations and spillway passage over the dam."

"Condit dam removal would restore natural bed load movement processes in the river Downstream of the powerhouse, aquatic resources, particularly salmonid productivity, would benefit from the elimination of short-term low flows An increased gravel supply combined with a stable flow regime would significantly increase salmonid production potential."

"Dam removal would also benefit water quality by passing cooler water to the downstream habitat during the summer and fall. Beneficial ecosystem processes would result from an increase in large organic debris (LOD) transported to the downstream habitat that was formerly retained behind the dam. Natural flow processes would also distribute the carcasses of post-spawn anadromous fish to the downstream habitat [supporting] an increase in the diversity and abundance of aquatic invertebrates Carcasses . . . would contribute valuable nutrients to the aquatic system and provide prey and nutrients to wildlife species."

"Dam removal would eliminate the adverse impacts associated with rapid and unrestricted flow fluctuations, including juvenile fish stranding and redd dewatering and reduced primary and secondary productivity."

"Dam removal would restore unobstructed river flows . . . and allow for continuous and unified management of the river."

"[T]he total recreational benefits and expenditures associated with whitewater boating and salmon fishing would exceed the benefits and expenditures generated by the current flatwater boating and fishing activities within the project area."

"[Dam removal] would provide significant traditional cultural resource benefits by restoring to the Yakama Indian Nation access to and fishing from anadromous fish-bearing areas . . . unblocked by Condit dam for the first time in 80 years. . . . The Yakama Indian Nation would once again have access to areas that they cite as important for traditional ceremonial, spiritual, and gathering uses by restoring to near natural conditions the area previously occupied by Condit dam and Northwestern Lake."

"[Dam removal] would allow for continued whitewater recreation, and the connection and enhancement of recreational opportunities between the scenic river area and the Columbia River Gorge. It would also provide long-term recreational opportunities from a natural free-flowing river. This alternative best addresses cumulative recreational impacts by eliminating the impoundment at Northwest Lake and restoring natural river conditions, allowing for full development to the inherent whitewater boating potential of the river reach from BZ Corners to a take-out point near the confluence with the Columbia River."

6.2 Mitigation Provided To Implement the Removal Plan. The Parties agree that the mitigation to implement the Removal Plan shall be in accordance with specific mitigation required by the Permits.

6.3 Post-Removal Requirements. So long as PacifiCorp implements the Amended License, the Removal Plan, and this Agreement, including mitigation required by any Permit,

(a) no Party shall claim that the Condit Dam constitutes an obstruction of the White Salmon River, (b) PacifiCorp shall not be required to take any further action with respect to the Project or enhancement or restoration of fish and wildlife resources or habitats in the White Salmon River Basin, and (c) the State of Washington shall not impose and no other Party to this Agreement shall request or seek to require the State of Washington to impose additional requirements on the Project or require additional mitigation or removal efforts under RCW 75.08.011, 75.08.012, 75.20.040, 75.20.060, 75.20.061, 75.20.090, 77.16.210, 77.16.220, 77.12.425 or otherwise on account of any matter arising from PacifiCorp's ownership, use, operation, maintenance, or removal of the Project.

6.4 Contingent Mitigation Fund. The Parties agree that fishery and other resource enhancements associated with Project removal outweigh mitigation opportunities that will be foregone between the Effective Date and the date of Project removal. The Parties also agree that it is appropriate to provide for a contingent mitigation fund to recapture foregone mitigation opportunities if Project removal does not occur because this Agreement is terminated in accordance with Section 5 above ("Contingent Mitigation Fund"). PacifiCorp shall contribute \$550,000 based upon appropriate mitigation measures to the Contingent Mitigation Fund within sixty (60) days after this Agreement is terminated in accordance with Sections 5.2 and 5.3 above, or fifteen (15) days after PacifiCorp receives written notice from the Intervenors designating with reasonable specificity the location and identification of the account into which PacifiCorp's contribution shall be made, whichever time is longer. The Contingent Mitigation Fund, if established, shall be used only to enhance fishery resources, fishery habitat, and other natural resources of the White Salmon River Basin.

SECTION 7 IMPLEMENTATION TEAM

7.1 Purpose and Function. The Parties agree to cooperate in implementing the letter and spirit of this Agreement. To that end, this Agreement establishes an Implementation Team to facilitate such cooperative efforts. Without limiting the purpose and function of the Implementation Team, the Implementation Team shall meet as necessary to address issues relating to: implementation of this Agreement and the Removal Plan; determining Permits which are necessary to implement this Agreement and the Removal Plan; assisting PacifiCorp with processes for obtaining and complying with Permits; determination and coordination of mitigation requirements; and implementation and monitoring of mitigation. The Parties anticipate that there will be regular meetings of the Implementation Team to address these and other matters arising under this Agreement, as illustrated by the Schedule in Exhibit C.

7.2 Meetings. In addition to regularly scheduled meetings, the Implementation Team shall meet whenever requested by a Party. If a Party desires to convene such a meeting, it may do so by advance written notice to the other Parties of at least twenty (20) days, which notice shall also identify the matter or matters to be submitted to the Implementation Team for consideration. Each Party shall make good faith efforts to raise any issues of which that Party

is aware at regularly scheduled meetings or at a meeting convened by written notice given by any other Party in order to reduce the number of meetings. The Implementation Team will be used as the primary means of consultation and coordination among the Parties in connection with the implementation of this Agreement.

SECTION 8 CERTIFICATION OF PROJECT REMOVAL

8.1 Certification of Project Removal. Not more than six (6) months nor less than one hundred (100) days prior to the date that PacifiCorp believes that Project removal will be completed in accordance with this Agreement, the Removal Plan, and Permits, PacifiCorp shall provide pre-certification notice to the Intervenor ("Pre-Certification Notice"). Within forty-five (45) days of the date of PacifiCorp's Pre-Certification Notice, the Parties shall meet to review those actions taken by PacifiCorp to remove the Project and those further actions proposed to be taken by PacifiCorp before the projected completion date ("Proposed Actions"). Upon the request of any Intervenor, PacifiCorp shall provide information in reasonable detail regarding Project removal. Any Intervenor who believes that Project removal will not be completed in accordance with this Agreement, the Removal Plan, and Permits by the date specified by PacifiCorp in its Pre-Certification Notice shall specify in reasonable detail its objection(s) in writing and provide a copy thereof to all other Parties within one hundred (100) days of the date of PacifiCorp's Pre-Certification Notice ("Objection"). No Party shall unreasonably object to PacifiCorp's Pre-Certification Notice. If no timely Objection is submitted by any Intervenor, PacifiCorp shall be deemed to have completed Project removal in accordance with this Agreement, the Removal Plan, and Permits as of the date PacifiCorp provides written certification to the Intervenor that Project removal has been completed in accordance with this Agreement, the Removal Plan, and Permits ("Certification"), so long as PacifiCorp complies with the Proposed Actions.

8.2 Resolution of Objections to Pre-Certification Notice. In the event any Intervenor provides a timely written Objection to the Pre-Certification Notice, the Parties shall meet within twenty (20) days of the date of such Objection for the purpose of resolving any dispute over completion of Project removal. If the Parties cannot resolve such dispute within thirty (30) days of the first such meeting date by means of a written acknowledgment of satisfaction, the dispute shall be submitted to informal, non-binding mediation in accordance with Section 10 of this Agreement. No Party shall unreasonably withhold such written acknowledgment of satisfaction. In the event a timely Objection is submitted in accordance with Section 8.1, PacifiCorp shall be deemed to have completed Project removal in accordance with this Agreement, the Removal Plan, and Permits upon receipt of a written acknowledgment of satisfaction from Intervenor that Project removal has been completed in accordance with this Agreement, the Removal Plan, and Permits. Such acknowledgment shall not unreasonably be withheld, conditioned or delayed.

SECTION 9 ENFORCEABILITY

9.1 Authority and Enforceability. Each Party represents that it has full power and authority to execute this Agreement and perform its obligations under this Agreement. Each Party further represents that no further consent or approval is required to allow it to enter into and make this Agreement in accordance with its terms and conditions the valid, legal, binding, and enforceable obligation of such Party, subject to applicable law.

SECTION 10 DISPUTE RESOLUTION

10.1 Informal Dispute Resolution. The Parties shall use their best reasonable efforts to resolve any dispute that may arise under this Agreement in accordance with this Section and without resort to administrative or judicial or other formal dispute resolution procedures. The purpose of this Section is to provide all Parties an opportunity to fully and candidly discuss and resolve disputes without the expense, risk and delay of formal dispute resolution. To these ends, if any dispute arises under or relating to this Agreement, any Party may provide to the other Parties a general statement of its claim(s) and position(s). If the Parties cannot resolve the dispute within thirty (30) days of receipt of any such written statement, any Party may within thirty-seven (37) days after delivery of such written statement commence non-binding mediation by giving written notice to all other Parties. The mediation shall be conducted and the mediator shall be selected in accordance with the then applicable American Arbitration Association Commercial Mediation Rules. The mediator's costs shall be shared equally among the Parties participating in the mediation. If the mediation resolves the dispute, the resolution shall be reduced to writing. Any Party may terminate its participation in the mediation without resolution of the dispute by giving written notice to the other Parties.

10.2 Formal Dispute Resolution. The Parties shall endeavor in good faith to resolve any disputes arising under this Agreement in accordance with Section 10.1 before resorting to other dispute resolution procedures. Each Party reserves all rights it may have to resort to administrative, judicial, or other formal dispute resolution procedures.

10.3 Reliance on Agreement. Any Party may rely upon and offer this Agreement as evidence in any administrative or judicial litigation, arbitration, mediation, or other proceeding to establish the existence of and to enforce or implement this Agreement. This Section 10.3 shall survive any termination of this Agreement.

SECTION 11 MUTUAL RELEASE OF CLAIMS BY PACIFICORP AND THE NATION

11.1 Nation's Release of Past Claims. For the benefit of PacifiCorp and each of PacifiCorp's directors, officers, employees, and representatives, the Nation does hereby, for itself and any person, entity, agent, successor or assign claiming through or under the Nation, provide a full and complete release and discharge of any and all rights, matters, and interest

giving rise, directly or indirectly, to any kind or nature of claim, loss, harm, cost, damage, expense, or liability caused by, associated with, or otherwise in any way attributable to (a) PacifiCorp's ownership, use, operation or maintenance of the Project or (b) the removal of the Project (collectively, the "Nation's Claims"), including, but not limited to, any and all of the Nation's Claims heretofore alleged or asserted, or that could have been alleged or asserted, against PacifiCorp or the Project, and the Nation shall be deemed to have consented to and ratified PacifiCorp's ownership, use, operation, and maintenance of the Project (collectively, the "Nation's Release"). The Nation's Release is conditioned on and shall become effective on the date when PacifiCorp shall have both ceased generating power at the Project and commenced removal of the Project in accordance with the Removal Plan and this Agreement. Pending the effective date of the Nation's Release and for as long as this Agreement is in effect, the Nation shall not bring any action against PacifiCorp or its directors, officers, employees or representatives with respect to any of the Nation's Claims; *provided, however*, that the Nation may bring an action against PacifiCorp to the extent required to enforce this Agreement.

11.2 PacifiCorp's Release of Past Claims. For the benefit of the Nation and each of the Nation's directors, officers, employees, and representatives, PacifiCorp does hereby, for itself and any person, entity, agent, successor or assign claiming through or under the PacifiCorp, provide a full and complete release and discharge of any and all rights, matters, and interest giving rise, directly or indirectly, to any kind or nature of claim, loss, harm, cost, damage, expense, or liability caused by, associated with, or otherwise in any way attributable to the acts or omissions of the Nation affecting (a) PacifiCorp's ownership, operation or maintenance of the Project, or (b) removal of the Project in accordance with this Agreement (collectively "PacifiCorp's Claims"), including, but not limited to, any and all of PacifiCorp's Claims heretofore alleged or asserted by PacifiCorp against the Nation in connection with the Project (collectively, "PacifiCorp's Release"). PacifiCorp's Release is conditioned on and shall become effective on the date when PacifiCorp shall have both ceased generating power at the Project and commenced removal of the Project in accordance with the Removal Plan and this Agreement. Pending the effective date of PacifiCorp's Release and for as long as this Agreement is in effect, PacifiCorp shall not bring any action against the Nation or its officials, employees or representatives with respect to any of PacifiCorp's Claims; *provided, however*, that PacifiCorp may bring an action against the Nation to the extent required to enforce this Agreement.

11.3 Release of Future Claims. So long as either PacifiCorp or the Nation is in full compliance with its obligations under this Agreement, this Agreement shall be deemed to fully satisfy and release the complying party's obligations to the other as to any rights, matters, or interests that may give rise to the Nation's Claims or PacifiCorp's Claims (as applicable) arising after the Effective Date of Agreement. As to other rights, matters, or interests, PacifiCorp and the Nation reserve the same.

SECTION 12 ECOLOGY AND WDFW'S RELEASE

For the benefit of PacifiCorp and each of PacifiCorp's directors, officers, employees and representatives, Ecology and WDFW ("State Agencies") do hereby provide a full and complete release and discharge of any past claims for natural resource or public nuisance damages caused by, associated with, or otherwise in any way attributable to the blockage of the White Salmon River caused by the Project or the absence of fish passage facilities at the Project. The State Agencies' Release is conditioned on and shall become effective on the date when PacifiCorp shall have both ceased generating power at the Project and commenced removal of the Project in accordance with the Removal Plan and this Agreement. Pending the effective date of the State Agencies' Release and for as long as this Agreement is in effect, the State Agencies shall not bring any action against PacifiCorp or its directors, officers, employees or representatives with respect to past claims for natural resource or public nuisance damages as particularly described above.

SECTION 13 MISCELLANEOUS

13.1 **Support for Implementation.** The Parties shall support this Agreement in good faith and to take all reasonable actions to implement the Agreement without delay.

13.2 **Applicable Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Washington and the United States of America.

13.3 **No Partnership.** Nothing contained in this Agreement shall create or be construed as creating a partnership or joint venture relationship among the Parties.

13.4 **Waiver.** Waiver by any Party of the strict performance of any term or covenant of this Agreement, or of any right under this Agreement, shall not be a continuing waiver, and must be in writing.

13.5 **Notice.** All notices required under this Agreement must be in writing, and shall be addressed to each of the Parties as their respective addresses as set forth in this Section. All notices shall be effective and be deemed given if delivered (a) by personal delivery, on the date of delivery, (b) by certified or registered mail, return receipt requested, three (3) days after the date delivered to the United States Postal Service as shown on the receipt, and (c) by electronic communication on the date confirmation is delivered to the United States Postal Service as shown on the actual receipt. A party may change its address by notice to the other Parties. Notices under this Agreement shall be sent to the following persons:

Randy Landolt, Managing Director
Hydro Resources Group
PacifiCorp
825 NE Multnomah, Suite 1500
Portland, OR 97232

Katherine Ransel
American Rivers
150 Nickerson Street, Suite 311
Seattle, WA 98109

John Gangemi
American Whitewater Affiliation
482 Electric Avenue
Big Fork, Montana 59911

Dennis White
Columbia Gorge Audubon Society
367 Oakridge Road
White Salmon, WA 98672

Chuck Williams
Columbia Gorge Coalition
P.O. Box 155
White Salmon, WA 98672

Cindy Debruler
Columbia River United
P.O. Box 912
Bingen, WA 98605

Pete Soverel
Federation of Fly Fishers
16430 - 72nd Avenue W.
Edmonds, WA 98206

Gary Kahn
Friends of the Columbia Gorge
P.O. Box 86100
Portland, OR 97286

Shawn Cantrell
Friends of the Earth
6512 - 23rd Avenue NW, Suite 320
Seattle, WA 98117

Michael Fitzsimons
Jaques Sharp and Sherrered
205 Thirs Street
Hood River, OR 97301

Scott Andrews
Rivers Council of Washington
509 - 10th Ave E., Suite 200
Seattle, WA 9898102

Johan Helman
The Mountaineers
300 Third Avenue W.
Seattle, WA 98119

Jeff Curtis
Trout Unlimited
231 SW Ash, Suite 208
Portland, OR 97204

Kurt Beardslee
Washington Trout
P.O. Box 402
Duvall, WA 98019

John Leary
Washington Wilderness Coalition
4649 Sunnyside Avenue N., #242
Seattle, WA 98103

Executive Director
Columbia River Intertribal Fish Commission
729 NE Oregon Street, Suite 200
Portland, OR 97232

Chairman
Yakama Tribal Council
P.O. Box 151
Toppenish, WA 98948

Regional Forester
Regional Office, R-6
Forest Service
U.S. Department of Agriculture
P.O. Box 3623
Portland, OR 97208-3623

Bill Arthur
The Sierra Club
180 Nickerson Street, Suite 103
Seattle, WA 98109-1631

Northwest Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Brian Faller
Assistant Attorney General
WA State Attorney General's Office
Attorney for WA Department of Ecology
P.O. Box 40117
Olympia, WA 98504-0117

Neil L. Wise
Assistant Attorney General
Office of the Attorney General
Fish & Wildlife Division
P. O. Box 40100
Olympia, WA 98504-0100

Tom Luster
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

David Mudd
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091

Barbara Scott-Brier
Attorney-Advisor
Office of the Solicitor, Pacific Northwest
Region
U.S. Department of the Interior
500 N.E. Multnomah Street, Suite 607
Portland, OR 97232

Area Director
Bureau of Indian Affairs
911 N.E. 11th Street
Portland, OR 97232

Regional Director
U.S. Fish & Wildlife Service
911 N.E. 11th Street
Portland, OR 97732

13.6 Modifications. This Agreement may be modified only in a writing signed by all Parties.

13.7 Captions. All captions used in this Agreement are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

13.8 Counterparts. This Agreement may be executed in counterparts, each of which taken together shall constitute a single agreement. A telecopied or facsimile signature shall have the same effect as an original.

13.9 Implied Covenants. The Parties agree that in construing this Agreement no covenants shall be implied between the Parties except the covenants of good faith and fair dealing.

13.10 Force Majeure. No Party shall be deemed to have defaulted in the performance of its obligations under this Agreement to the extent such performance is wholly or partially prevented or delayed by Force Majeure. Force Majeure means events or causes that are not reasonably within the control or contemplation of the Party whose ability to perform under this Agreement is delayed by the events or causes, including, without limitation and by way of example only: landslides, lightning, forest fires, storms, floods, freezing, drought, earthquakes, civil disturbances, strikes, or other disturbances associated with labor relations, acts of public enemy, war, public riots, breakage, explosion, accident to machinery or equipment (reasonably related to the delayed performance), government restraint, or other causes outside of the reasonable control or contemplation of a Party. Unless the Force Majeure prevents the performance of obligations under this Agreement, the Force Majeure event may not operate to excuse, but only to delay, the performance of obligations under this Agreement. In the event of such delay, the affected obligations hereunder shall be suspended for the duration of the Force Majeure event, the time for the performance of such obligations shall be extended for as long as is reasonable in light of the Force Majeure, and the schedule set forth in the Removal Plan shall be amended to account for such delay. The Party affected by Force Majeure shall use good faith efforts to attempt, in a commercially reasonable manner, to rectify the conditions brought about by the Force Majeure and to avoid or minimize delay. Upon learning of the existence of or potential for an event that qualifies as Force Majeure, the affected Party shall promptly notify the other Parties of such situation, describing in reasonable detail the nature of the event or events in question.

13.11 Terms and Conditions Negotiated. The provisions of this Agreement have been negotiated by the Parties in good faith and with the representation of legal counsel. Consequently, in construing this Agreement, no Party shall be entitled to a presumption against any other Party based on drafting.

13.12 Third Party Beneficiaries. The Parties do not intend to create, nor are there any, third party beneficiaries of this Agreement.

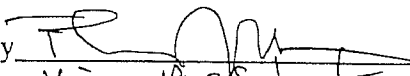
13.13 Entire Agreement. This Agreement, including attached Exhibits, is the entire and final understanding of the Parties and supersedes all prior agreements and understandings between the Parties related to the subject matter of this Agreement. Each provision of this Agreement is a necessary part of the Agreement, and this Agreement is not severable.

13.14 Officials Not to Benefit. No member of, Delegate to, or Resident Commissioner in, Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.

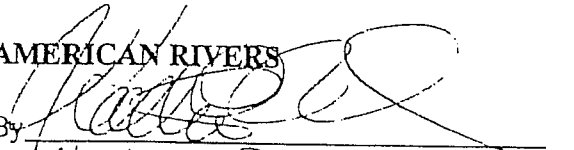
13.15 Anti-Deficiency Act. Nothing contained in this Agreement shall be construed as binding Interior, USFS or NMFS to expend in any one fiscal year any sum in excess of appropriations made by Congress, and available for purposes of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

13.16 Effective Date. As defined in Section 2.1, the Effective Date is the date on which this Agreement is signed by all of the Parties.

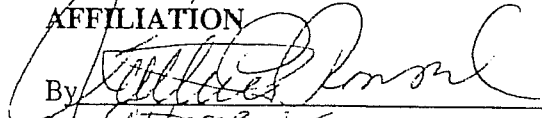
PACIFICORP

By 
Its Vice President
Date: 22 September 1999

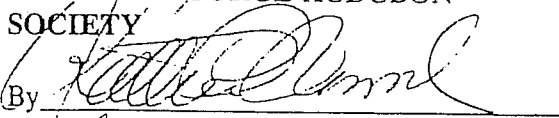
AMERICAN RIVERS

By 
Its Northwest Director
Date: Sept 17, 1999

**AMERICAN WHITEWATER
AFFILIATION**

By 
Its Attorney
Date: Sept 17, 1999

**COLUMBIA GORGE AUDUBON
SOCIETY**

By 
Its Attorney
Date: Sept 17, 1999

COLUMBIA GORGE COALITION

By [Signature]
Its Attorney
Date: Sept 17, 1999

COLUMBIA RIVER UNITED

By [Signature]
Its Attorney
Date: Sept 17, 1999

FEDERATION OF FLY FISHERS

By [Signature]
Its Attorney
Date: Sept 17, 1999

FRIENDS OF THE COLUMBIA GORGE

By [Signature]
Its Attorney
Date: Sept 17, 1999

FRIENDS OF THE EARTH

By [Signature]
Its Attorney
Date: Sept 17, 1999

THE SIERRA CLUB

By [Signature]
Its Attorney
Date: Sept 17, 1999

RIVERS COUNCIL OF WASHINGTON

By [Signature]
Its Attorney
Date: Sept 17, 1999

THE MOUNTAINEERS

By [Signature]
Its Attorney
Date: Sept 17, 1999

TROUT UNLIMITED

By [Signature]
Its Attorney
Date: Sept 17, 1999

WASHINGTON TROUT

By [Signature]
Its Attorney
Date: Sept 17, 1999

**WASHINGTON WILDERNESS
COALITION**

By [Signature]
Its Attorney
Date: Sept 17, 1999

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By _____
Its _____
Date: _____

COLUMBIA GORGE COALITION

By _____
Its _____
Date: _____

COLUMBIA RIVER UNITED

By _____
Its _____
Date: _____

FEDERATION OF FLY FISHERS

By _____
Its _____
Date: _____

FRIENDS OF THE COLUMBIA GORGE

By _____
Its _____
Date: _____

FRIENDS OF THE EARTH

By _____
Its _____
Date: _____

THE SIERRA CLUB

By _____
Its _____
Date: _____

RIVERS COUNCIL OF WASHINGTON

By _____
Its _____
Date: _____

THE MOUNTAINEERS

By _____
Its _____
Date: _____

TROUT UNLIMITED

By _____
Its _____
Date: _____

WASHINGTON TROUT

By _____
Its _____
Date: _____

**WASHINGTON WILDERNESS
COALITION**

By _____
Its _____
Date: _____

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By *James J. [Signature]*
Its *[Signature]*
Date: *9-16-94*

FRIENDS OF THE EARTH

By _____
Its _____
Date: _____

THE SIERRA CLUB

By _____
Its _____
Date: _____

RIVERS COUNCIL OF WASHINGTON

By _____
Its _____
Date: _____

THE MOUNTAINEERS

By _____
Its _____
Date: _____

TROUT UNLIMITED

By _____
Its _____
Date: _____

WASHINGTON TROUT

By _____
Its _____
Date: _____

**WASHINGTON WILDERNESS
COALITION**

By _____
Its _____
Date: _____

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By _____
Its _____
Date: _____

YAKAMA INDIAN NATION

By William Gallup Jr.
Its Chairman of Yakama Nation
Date: Sept. 22, 1999

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

**U.S. DEPARTMENT OF THE
INTERIOR**

By _____
Its _____
Date: _____

**NATIONAL MARINE FISHERIES
SERVICE**

By William Gallup Jr.
Its NW Tribes Regional Council
Date: Sept. 1999

TU/102
Lovell/25

YAKAMA INDIAN NATION

By _____
Its _____
Date: _____

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

U.S. DEPARTMENT OF THE INTERIOR

By _____
Its _____
Date: _____

NATIONAL MARINE FISHERIES SERVICE

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF ECOLOGY

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON River

By Phyllis J. Clausen
Its President
Date: September 15, 1999

YAKAMA INDIAN NATION

By _____
Its _____
Date: _____

U.S. FOREST SERVICE

By Linda D. Hodgman
Its Deputy Regional Forester
Date: 9/10/77

U.S. DEPARTMENT OF THE
INTERIOR

By _____
Its _____
Date: _____

NATIONAL MARINE FISHERIES
SERVICE

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF
ECOLOGY

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF
FISH AND WILDLIFE

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

WASHINGTON WILDERNESS
COALITION

By _____
Its _____
Date: _____

COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION

By _____
Its _____
Date: _____

YAKAMA INDIAN NATION

By _____
Its _____
Date: _____

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

U.S. DEPARTMENT OF THE
INTERIOR

By *[Signature]*
Its _____
Date: 9/10/99

NATIONAL MARINE FISHERIES
SERVICE

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF
ECOLOGY

By _____
Its _____
Date: _____

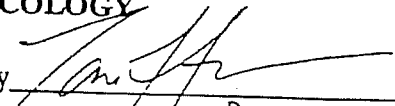
WASHINGTON DEPARTMENT OF
FISH AND WILDLIFE

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF
ECOLOGY

By 
Its Director
Date: 9-8-99

WASHINGTON DEPARTMENT OF
FISH AND WILDLIFE

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF
ECOLOGY

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF
FISH AND WILDLIFE

By J. Koenig
Its Director
Date: Sept. 13th, 1999

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

TU/102
Lovell/30

EXHIBIT A
REMOVAL PLAN

CONDIT HYDROELECTRIC PROJECT REMOVAL COSTS WORKSHEET

(Cost estimates are all expressed in 1999\$x1000)

Removal Costs Elements	
Bonding & Insurance (Mobilization)	410
Demobilization	38
Site Set up	177
Construction of Tunnel	505
Gate House & Pier removal	104
Blast Tunnel Plug	57
Pressure Grout Dam	100
Blast & Drain Tunnel	57
Dam Demolition - crest	2,006
Dam Demolition - base	1,568
Reclamation at dam	81
Upstream Cofferdam Removal	350
Tunnel Fish protection	12
Spill gate removal	60
Turbine removal dewatering	42
Property Acquisition	400
Sediment Management Activities:	
Canyon Debris Management	100
Additional Contrib. to Sediment Mgmt.	400
Woody Debris Mgmt near Dam	400
Accelerate (Blast) Sediment From Reserv. Shoreline Slopes	300
Revegetation of Reservoir Area	300
Revegetation spoil area	75
Log Boom Removal	10
Concrete Disposal	240
Penstock removal	398
Switchyard removal	50
Transmission Line removal	15
Tailrace Infilling	28
Powerhouse Preservation	50
Pwrhse. Parking Lot Protection	50
Mt. Adams Water Supply	38
White Salmon Water Supply	450
Gas Line remediation	10
Northwestern Lake Park	10
Habitat Enhancement	25
Noxious Weed Control	12
Warning Signs	2
Raceway Protectcons	5
Northwestern Lake Bridge	630
Community Dock Removal	6
Lake Invest. Testing & Boring	93
Subtotal 1) of Above Items =	9,664
Overhead & Contingencies (25% of SubTotal 1)	2,416
Subtotal 2) Contr. Activities =	12,080
Legal, Admin & Engineering (10% of Subtotal 2)	1,208
Minor Bldg. Permits (3% of Subtotal 2)	362
Total of Removal Cost Elements =	\$13,650
Permitting & Mitigation:	
YIN Fishery Enhancement	2,000
In Lieu Site Enhancement Fund	1,000
Total Project Removal Costs	500
	\$17,150

CONDIT HYDROELECTRIC PROJECT

FERC NO. 2342

REMOVAL PLAN SUMMARY

INTRODUCTION

Parties to the Condit Hydroelectric Project Settlement Agreement ("Settlement Agreement") reached agreement on a proposed removal plan for Condit Dam and demolition and removal of all Condit Hydroelectric Project ("Project") facilities with the exception of the Project's powerhouse. The proposed removal plan described as the "Selected Approach" in the Condit Hydroelectric Project Removal Summary Report (May 1998) submitted to the Commission in 1998 as supplemented by removal activities and cost modifications listed in the Cost Removal Worksheet, a copy of which is attached hereto, collectively are the "Removal Plan."

This document, the "Removal Plan Summary," describes the basic elements of the proposed Removal Plan and includes a schedule of the removal activities. The demolition and removal of Condit Dam and other Project facilities, except for the Project powerhouse, are estimated to take one (1) year. In accordance with the Settlement Agreement, PacifiCorp's contribution to planning, engineering, design, mobilization, demobilization, construction and demolition costs for Project removal in accordance with the Removal Plan shall not exceed \$13,650,000 (1999 dollars). In the event of any conflict between this Removal Plan Summary and the Settlement Agreement or the Removal Plan, the Settlement Agreement and the Removal Plan shall control.

The method for Project removal agreed upon in the Settlement Agreement was not reviewed in the Commission's October 1996 Final Environmental Impact Statement. The Settlement Agreement contemplates that before the Commission takes final action on PacifiCorp's application for the Amended License that the Commission needs to prepare a supplement to the October 1996 Final Environmental Impact Statement, engage in consultation as appropriate under Section 7 of the Endangered Species Act, and take other actions as appropriate.

REMOVAL PLAN ELEMENTS

Dam Removal.

The removal of Condit Dam would be accomplished by excavating a drain tunnel through the concrete base of the dam to rapidly drain the reservoir and to allow the dam to be removed in quarried blocks of concrete using conventional construction techniques.

The drain tunnel is to be 12 feet high by 18 feet wide and would be excavated using drilling and explosives at the base of the dam, at elevation 174. The tunnel size is capable of passing 10,000 cfs. Concrete excavated from the tunnel would be transported to a spoil area adjacent to the dam by trucks that are loaded by a rough-terrain crane. An access road would be constructed to the existing spillway apron deck. The last 15 feet of the tunnel would be drilled and blasted, allowing the reservoir and impounded sediments to be sluiced through the tunnel, lowering the reservoir to stream level in about 6 hours.

Prior to this final tunnel blast, a barge mounted clamshell crane would be floated in front of the dam to excavate sediment and debris from the area in front of the projected tunnel hole-through. When the area has been sufficiently cleaned out, the crane and barge

would be removed from the reservoir and the final tunnel blast would be detonated to drain the reservoir. Should the tunnel plug with woody reservoir debris, measures will be taken to clear the jam.

To allow anadromous fish to pass the site during the dismantling of the dam, a series of protective fish pockets would be excavated in each of the walls of the tunnel to allow a place for fish to rest during their passage upstream.

Concrete excavation of the dam would proceed in the dry and start at the East End of the dam. Using drilling and explosives, concrete blocks with dimensions of 10 feet high by 4 feet deep by 6 feet wide would be removed with a highline yarder-type system to trucks for transport to the spoil area. The block size was selected to minimize the cost of excavation and hoist capacity, which would require average lifts of about 33,600 lbs.

Construction would proceed across the dam in a series of top slicing cuts at ten-foot vertical intervals. The very top cut and the front and back faces of the dam in each cut would be drilled and blasted into blocks and loaded into trucks with an excavator and hauled off the dam. As the top slice cuts progress downward and the dam widens, the center section would be drilled and blasted into rubble much like a highway rock cut excavation. The concrete rubble would be loaded into trucks with an excavator and hauled off the dam. This procedure would significantly decrease the cost of concrete demolition.

As the top slice cuts across the top of the dam progress downwards below elevation 225, the existing river channel gets narrow and steep. At this point a crane would be set up on the spillway slab to hoist concrete from this lower area. As the

excavation reaches the level of the drain tunnel, the center portion of the area adjacent to the tunnel would be excavated down to bedrock leaving sections of intact concrete along the edge of the tunnel and along the front and back faces of the dam to hold the water out. When the center section is completely excavated to bedrock, the edge sections are blasted into blocks and hoisted out of the river channel. This should put the river down to its original channel. Lastly, the area around the drain tunnel is excavated in a similar method. This work must be scheduled during low river flows in order to perform a good job of removing the concrete from the footprint of the dam in this lower section.

An earlier proposal for Project removal called for a gate to be fitted to the dam drain tunnel to control releases. Based on subsequent studies of sediment removal and with the concurrence of involved parties, it was decided as reflected in the Condit Hydroelectric Project Removal Summary Report that a more rapid removal of the sediments was preferred.

Appurtenant Facilities Removal.

In addition to removing the concrete gravity dam including its Obermeyer crest spillway gate and other spillway and intake gates, demolition of the Project facilities also would involve removal of the upstream cofferdams, wood stave pipeline, steel surge tank, and the wooden and steel penstocks.

Upstream Cofferdams: Photographs and drawings show that the cofferdams used to divert and control water during the original construction of the dam were flooded when the reservoir was allowed to fill, and would require removal to return the site to pre-construction conditions. To remove these structures, it is envisioned that a road would be

constructed from the top of the excavated concrete dam and would ramp down to area of the cofferdams. The cofferdams are expected to be at least partially exposed by the erosive flushing of the reservoir. Some blasting would probably be necessary to remove one of the cofferdams, since the photographs indicate that fill concrete was probably placed in one cofferdam in lieu of the puddled earthen materials shown on the original construction drawings. The concrete, stones and boulders, and timber members of the cofferdams would be excavated and trucked to the spoil area. The temporary construction road would also allow access to the upstream area where logs and other debris have sunk to the bottom of the reservoir. Some of these logs would be removed, as necessary, to promote reservoir sediment erosion.

Surge Tank: The steel surge tank and its concrete foundations would be removed to eliminate a future public safety hazard. To allow demolition of the concrete foundation of the tank, drilling and blasting techniques would be used. The foundation and tank materials would be loaded into trucks and transported to the spoil area for burial.

Wood Stave Pipeline and Steel & Wood Penstocks: The existing 13.5 foot diameter, 5100 foot long wood stave pipeline and the 650 foot long steel and wood penstocks, would be removed along with their concrete foundations. All of these materials would be transported to the spoil area and buried. At the time of construction it may be economically feasible to re-cycle some of these materials, and transport them to an off site recycling firm. For example, the scrap steel from the penstock, surge tank, and steel bands and fittings of the wood stave pipeline could have value at the time of removal.

Site Preparations.

Because the dam is located in a steep area, room for construction-demolition adjacent to the dam is limited. It is proposed that a ten-acre area be purchased and used for a site setup and staging area, a borrow pit and a spoil area. Site setup facilities would include an office trailer, equipment parts vans, equipment fueling and maintenance station, an equipment parking area and an explosives magazine site.

It is estimated that two to three thousand cubic yards of fill material may be required for the construction of access roads to various areas of the project. This material could be removed from this spoil area and later back filled as the construction site is reclaimed.

A significant volume of waste materials would be generated from the demolition of the dam and associated facilities. Estimated quantities of some of these materials are listed as follows:

- Concrete - over 45,000 cubic yards (broken volume)
- Wood Pipe Staves- over 6,000 cubic yards stacked
- Steel - over 400 tons
- Woody Reservoir Debris - from drained reservoir area (unknown quantity)

Certainly, some of this material could be hauled off and recycled dependant on the market economics of recycling at the time of construction. A fairly large area would be required to store, sort and transport this material for recycling.

Access Road Construction.

One of the first activities of the project would be construction of an access road to the spillway slab below the dam to permit excavation of the reservoir drain tunnel located at the base of the dam. Access roads into the drained reservoir area would be used during

removal of the cofferdams immediately upstream. Other access roads would be required for the removal of the 5100-foot long wood stave flowline.

REMOVAL PLAN SCHEDULE

An aggressive schedule has been developed to complete the dam removal project within one year. The attached schedule, Figure 1, shows the sequence and timing of the major tasks. Certain criteria have been used to develop the schedule and includes the following:

- Work that affects water quality and quantity should be performed after October 1st. (US Fish & Wildlife Service, 21 January 1998 memo)
- The diversion dam used in the original construction of the dam should be removed prior to May 1st to allow fish passage. (US Fish & Wildlife Service, 21 January 1998 memo)
- Excavation of the 12X18 ft. drain tunnel at the base of the dam and the removal of low level concrete in the old river channel must be performed during low river flows (July through November)

The success of this schedule is dependent upon many factors that are difficult to predict such as actual river flows and weather conditions that would be encountered and the impact of buried wood debris in the reservoir. If significant wood debris is encountered, the speed of sediment erosion could be reduced and additional time may be required to handle the debris and to keep the drain tunnel through the dam open.

REMOVAL PLAN CONSTRUCTION COSTS

Although the structural removal work and the flushing of trapped sediments in the reservoir would consist primarily of demolition, rather than construction, the work has been referred to in the Settlement Agreement as "construction" because construction contractors would perform the work. The Condit Hydroelectric Project Removal Summary Report (May 1998) prepared by an independent consultant identified removal

elements and estimated construction costs of \$10,420,000 (1998 dollars) for the "Selected Approach," including allowances for overhead and contingencies (15%), legal, administration and engineering (10%), and minor building permits (3%). With the assistance of another independent consultant, parties to the Settlement Agreement reviewed and adjusted both removal elements and construction costs. Based on that review, the Removal Costs Worksheet identifies removal elements and construction costs of \$13,650,000 (1999 dollars) for the Selected Approach, " including allowances for overhead (15%), legal, administration, and engineering (10%), and minor building permits (3%). The "Removal Cost Elements" total set forth in the Removal Cost Worksheet is the basis of "Construction Costs" set forth in Section 4.1.1 of the Settlement Agreement.

EXHIBIT B

**GROSS DOMESTIC PRODUCT-IMPLICIT PRICE DEFLATOR INDEX
SAMPLE CALCULATION**

Example 1:

Assume that PacifiCorp has a contractual obligation to pay \$500,000 (1999 Dollars) on October 1, 2004. Assume that the Gross Domestic Product-Implicit Price Deflator Index ("GDP-IDP") on the Effective Date, which is assumed to be September 1, 1999, is 114.0. Finally, assume that the most current GDP-IDP index published as of October 1, 2004 is 119.0 which is the index for the 2nd quarter of 2004. The amount paid in 2004 dollars on October 1, 2004 would be:

$$\begin{aligned} & \text{Obligation Amount} * ((2004 \text{ GDP-IDP}) / (1999 \text{ GDP-IDP})) \\ & \$500,000 * (119.0 / 114.0) = \$521,930 \end{aligned}$$

Example 2:

Assume that PacifiCorp pays \$500,000 (2004\$) in Project Removal Costs on October 1, 2004. Assume the GDP-IDP on the Effective Date, which is assumed to be September 1, 1999, is 114.0. Finally, assume that the most current GDP-IDP index published as of October 1, 2004 is 120.0 for the last quarter of 2004. The amount credited (in 1999 Dollars) against PacifiCorp's contribution for Project Removal Costs would be:

$$\begin{aligned} & \text{Obligation Amount} * ((1999 \text{ GDP-IDP}) / (2004 \text{ GDP-IDP})) \\ & \$500,000 * (114 / 120) = \$475,000 \end{aligned}$$

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EXHIBIT C
SCHEDULE

825 N.E. Multnomah, Suite 1500
Portland, Oregon 97232
(503) 813-5000

TU/103
Lovell/1

FILED
OFFICE OF THE
SECRETARY

2005 FEB 25 11:25



February 25, 2005

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

ORIGINAL

**Re: FERC Docket No. 2342
PacifiCorp's Amendment of Decommissioning Application and Request for
Continued Abeyance of Decommissioning and Licensing Proceedings**

Dear Secretary Salas:

Enclosed please find for filing an original and 8 copies of PacifiCorp's Amendment of Decommissioning Application and Request for Continued Abeyance of Decommissioning and Licensing Proceedings.

Questions regarding this filing should be directed to Jeff Lovinger at (503) 230-7120.

Respectfully,

Ken Kaufmann
for Jeffrey S. Lovinger
Jeffrey S. Lovinger
Lovinger Norling Kaufmann LLP

JSL:anp
Enclosures
Cc: Service List

ORIGINAL

TU/103
Lovell/2

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FILED
OFFICE OF THE
SECRETARY
FEB 28 11:25
BY

PacifiCorp

)

Project No. 2342

**AMENDMENT OF DECOMMISSIONING APPLICATION AND
REQUEST FOR CONTINUED ABEYANCE OF
DECOMMISSIONING AND LICENSING PROCEEDINGS**

Pursuant to 18 C.F.R. § 385.215, PacifiCorp amends its Application for Amendment of License and for Approval of Offer of Settlement in the above-captioned proceeding to reflect that the Condit Hydroelectric Project Settlement Agreement has been modified by the attached Memorandum of Agreement. In addition, PacifiCorp respectfully requests that the Commission continue to hold in abeyance the pending decommissioning proceedings until December 2007 to facilitate implementation of the Settlement Agreement as modified by the attached Memorandum of Agreement.

I. Background

PacifiCorp is licensee of the Condit Hydroelectric Project, FERC No. 2342 ("Project"). In 1991, PacifiCorp timely applied for a new license. There were no competing applications. In 1996, Commission staff issued a Final Environmental Impact Statement recommending relicense with new protection, mitigation, and enhancement measures, including fish passage. PacifiCorp concluded that the new license would be uneconomic and asked the Commission not to issue the license so that it could negotiate an alternative resolution.

In September 1999, PacifiCorp and other stakeholders executed the Condit Hydroelectric Project Settlement Agreement ("Settlement Agreement"). The Settlement Agreement provides for continued Project operation through October 1, 2006, followed by Project decommissioning and removal. The Settlement Agreement limits PacifiCorp's commitment to fund decommissioning at \$17,150,000 in 1999 dollars (including a \$2,000,000 limit on permitting and mitigation costs). In the event these cost limits are exceeded, the Settlement Agreement provides that PacifiCorp may withdraw from the agreement and return to relicensing of the Project.

In October 1999, PacifiCorp filed with the Commission an Application to Amend License and for Approval of Settlement Agreement ("Decommissioning Application"). In the Decommissioning Application, PacifiCorp asked the Commission: (1) to approve the Settlement Agreement without modification or condition; (2) to issue an environmental

impact statement reviewing and approving decommissioning as proposed in the Settlement Agreement; and (3) to amend the original Project license by (a) extending the license term through October 1, 2006, and (b) incorporating the provisions of the Settlement Agreement into the extended license.

II. Amendment of Settlement Agreement

It has become clear that permitting and mitigation costs will exceed the Settlement Agreement limitation of \$2,000,000 in 1999 dollars. In order to provide additional funding and avoid a potential withdrawal from the Settlement Agreement and a return to a contentious and lengthy relicensing process, the twenty-two parties to the Agreement have executed a Memorandum of Agreement ("MOA") modifying the Settlement Agreement. The MOA modifies the Settlement Agreement by: (1) altering the agreed date to cease Project generation from October 1, 2006 to October 1, 2008; (2) altering the agreed date to commence Project removal from October 2006 to October 2008; (3) altering the limitation on PacifiCorp's commitment to fund permitting costs and mitigation costs from \$2,000,000 in 1999 dollars to \$5,300,000 in 1999 dollars; and (4) altering the limitation on PacifiCorp's commitment to fund total project removal costs from \$17,150,000 in 1999 dollars to \$20,450,000 in 1999 dollars. These changes are intended to preserve the benefit of the Settlement Agreement and avoid a return to relicensing by allowing the Project to generate additional funds to address increased permitting costs. A fully executed and effective copy of the MOA is attached hereto as Exhibit A.

III. Amendment of Decommissioning Application

By this filing, PacifiCorp seeks to amend the Decommissioning Application pending in FERC Docket No, P-2342-011: (1) to incorporate the attached MOA into the Decommissioning Application; (2) to treat all references to the Settlement Agreement in the Decommissioning Application as references to the Settlement Agreement as modified by the MOA; (3) to treat all requests in the Decommissioning Application to extend the term of the original license through October 1, 2006 as requests to extend the term of the original license through October 1, 2008; and (4) to treat the Decommissioning Application and its exhibits as altered in every way necessary to conform to the Settlement Agreement as modified by the MOA. This amendment of the Decommissioning Application does not alter or affect the environmental impact of the decommissioning proposal analyzed by Commission staff in its FSFEIS.¹

IV. Renewed Request to Hold Decommissioning Proceedings in Abeyance

On July 29, 2002, PacifiCorp filed with the Commission a document entitled Comments on Approach to Implementation of Settlement Agreement ("Comments"). PacifiCorp's

¹ The environmental costs and benefits associated with decommissioning and removal of the Project are the same under the original Settlement Agreement and the Settlement Agreement as modified by the MOA. Therefore there is no need for Commission staff to conduct yet another supplemental environmental review.

Comments were submitted in response to the Commission's Declaratory Order, 97 FERC ¶ 61,348 (2001), and Order on Motion for Clarification, 98 FERC ¶ 61,301 (2002), in the Condit proceeding (collectively, "Declaratory Orders"). The Declaratory Orders indicated the Commission's concern with issuing what the Commission characterized as a final "surrender" order finding dam removal in the public interest, when the obligation to pursue dam removal under the Settlement Agreement was subject to various future contingencies which, if not satisfied, would result in reinstatement of PacifiCorp's relicense application asking the Commission to find relicensing the Project in the public interest. 97 FERC at p. 62,628. PacifiCorp's Comments suggest two approaches to address the Commission's concerns: (1) the Commission could approve decommissioning subject to future contingencies; or (2) the Commission could hold its approval of decommissioning in abeyance until shortly before the scheduled removal date (i.e., hold the decommissioning proceeding in abeyance until December 31, 2005) in order to allow PacifiCorp to resolve the future contingencies prior to issuance of a Commission decommissioning order so that there would be no need or opportunity to return to relicensing once the Commission's order was issued.

By this submission PacifiCorp respectfully renews the request contained in its July 29, 2002 letter that the Commission hold the decommissioning proceeding in abeyance until the December 31st before the scheduled removal date. This approach should allow PacifiCorp to address the contingencies contained in the Settlement Agreement *before* the Commission issues its order on decommissioning. Because the attached MOA alters the proposed date of Project removal from October 1, 2006 to October 1, 2008, PacifiCorp respectfully requests continued abeyance in conformity with the MOA, specifically that the Commission: (1) permit continued operation of the Project while resolution of the Settlement Agreement contingencies is pursued by allowing PacifiCorp to continue operating the Project under annual licenses until October 1, 2008; (2) defer final action on PacifiCorp's proposal to remove the Project until PacifiCorp notifies the Commission, pursuant to Section 3 of the Settlement Agreement, whether PacifiCorp will either (a) *cease generation and commence Project removal, or (b) not remove the Project; and (3) continue to hold PacifiCorp's relicense application in abeyance, and withhold final action on that application in order to allow for continued implementation of the Settlement Agreement. Under this approach, PacifiCorp would notify the Commission of its decision under Section 3 of the Settlement Agreement no later than December 31, 2007, in order to give the Commission sufficient opportunity (if PacifiCorp intends to proceed with Project removal) to take appropriate action by August 1, 2008, the date specified in the Settlement agreement (as amended) for commencement of pre-dam removal activities.*

V. Conclusion

By this submission PacifiCorp amends its pending Decommissioning Application to reflect that the Settlement Agreement has been modified by the attached Memorandum of

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Lovell/5

Agreement. In addition, by this submission PacifiCorp requests continued abeyance of the decommissioning and licensing proceedings as described above.

Respectfully submitted,

*Ken Kaufman for
Jeffrey S. Lovinger*

Jeffrey S. Lovinger

Lovinger Norling Kaufmann LLP

825 NE Multnomah, Suite 925

Portland, Oregon 97232

Phone: (503) 230-7120

Fax: (503) 230-8313

Counsel for PacifiCorp

DATED: February 25, 2005

TU/103
Lovell/6

EXHIBIT A

TU/103
Lovell/7

MEMORANDUM OF AGREEMENT
MODIFYING THE
CONDIT HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT

This Memorandum of Agreement (MOA) modifies the Condit Hydroelectric Project Settlement Agreement (Settlement Agreement) by: (a) replacing each occurrence of the term "2006" in the Settlement Agreement with the term "2008"; (b) replacing each occurrence of the term "\$2,000,000" in the Settlement Agreement with the term "\$5,300,000"; and (c) replacing each occurrence of the term "\$17,150,000" in the Settlement Agreement with the term "\$20,450,000". Except as provided in this paragraph, the Settlement Agreement shall remain unmodified.

This MOA may be executed in counterparts. No party shall be entitled to a presumption against any other party based on the drafting of this MOA.

IT IS SO AGREED,

PACIFICORP

AMERICAN RIVERS

By *A. Adams*
Its *CEO/President*
Date: *2/8/05*

By _____
Its _____
Date: _____

**AMERICAN WHITEWATER
AFFILIATION**

**COLUMBIA GORGE AUDUBON
SOCIETY**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

COLUMBIA GORGE COALITION

COLUMBIA RIVER UNITED

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TU/103
Lovell/8

MEMORANDUM OF AGREEMENT
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IT IS SO AGREED,

PACIFICORP

AMERICAN RIVERS

By _____
Its _____
Date: _____

By Rebecca R Wodden
Its President
Date: 11/17/04

**AMERICAN WHITEWATER
AFFILIATION**

**COLUMBIA GORGE AUDUBON
SOCIETY**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

COLUMBIA GORGE COALITION

COLUMBIA RIVER UNITED

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TU/103
Lovell/9

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CONDIT HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT**

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IT IS SO AGREED,

PACIFICORP

AMERICAN RIVERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**AMERICAN WHITEWATER
AFFILIATION**

**COLUMBIA GORGE AUDUBON
SOCIETY**

By John T. Gangan
Its Cooperative Director
Date: November 18, 2004

By _____
Its _____
Date: _____

COLUMBIA GORGE COALITION

COLUMBIA RIVER UNITED

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TU/103
Lovell/10

**MEMORANDUM OF AGREEMENT
MODIFYING THE
CONDIT HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT**

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IT IS SO AGREED,

PACIFICORP

AMERICAN RIVERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**AMERICAN WHITEWATER
AFFILIATION**

**COLUMBIA GORGE AUDUBON
SOCIETY**

By _____
Its _____
Date: _____

By Dave Thies (DAVE THIES)
Its PRESIDENT, C.G.A.S.
Date: NOV. 19, 2004

COLUMBIA GORGE COALITION

COLUMBIA RIVER UNITED

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TU/103
Lovell/11

**MEMORANDUM OF AGREEMENT
MODIFYING THE
CONDIT HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT**

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IT IS SO AGREED,

PACIFICORP

AMERICAN RIVERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**AMERICAN WHITEWATER
AFFILIATION**

**COLUMBIA GORGE AUDUBON
SOCIETY**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

COLUMBIA GORGE COALITION

COLUMBIA RIVER UNITED

By Chuck Williams
Its DIRECTOR
Date: Dec. 3, 2004

By _____
Its _____
Date: _____

TU/103
Lovell/12

**MEMORANDUM OF AGREEMENT
MODIFYING THE
CONDIT HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT**

This Memorandum of Agreement (MOA) modifies the Condit Hydroelectric Project Settlement Agreement (Settlement Agreement) by: (a) replacing each occurrence of the term "2006" in the Settlement Agreement with the term "2008"; (b) replacing each occurrence of the term "\$2,000,000" in the Settlement Agreement with the term "\$5,300,000"; and (c) replacing each occurrence of the term "\$17,150,000" in the Settlement Agreement with the term "\$20,450,000". Except as provided in this paragraph, the Settlement Agreement shall remain unmodified.

This MOA may be executed in counterparts. No party shall be entitled to a presumption against any other party based on the drafting of this MOA.

IT IS SO AGREED,

PACIFICORP

AMERICAN RIVERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**AMERICAN WHITEWATER
AFFILIATION**

**COLUMBIA GORGE AUDUBON
SOCIETY**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

COLUMBIA GORGE COALITION

COLUMBIA RIVER UNITED

By _____
Its _____
Date: _____

By Cindy deBruin
Its Erick Director
Date: 11-14-04

TU/103
Lovell/13

FEDERATION OF FLY FISHERS

**FRIENDS OF THE COLUMBIA
GORGE**

By [Signature]
Its Representative
Date: January 4, 2005

By _____
Its _____
Date: _____

FRIENDS OF THE EARTH

THE SIERRA CLUB

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

RIVER COUNCIL OF WASHINGTON

THE MOUNTAINEERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TROUT UNLIMITED

WASHINGTON TROUT

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**WASHINGTON WILDERNESS
COALITION**

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TU/103
Lovell/14

FEDERATION OF FLY FISHERS

By _____
Its _____
Date: _____

**FRIENDS OF THE COLUMBIA
GORGE**

By Keri Bowman
Its EXECUTIVE DIRECTOR
Date: 12/19/04

FRIENDS OF THE EARTH

By _____
Its _____
Date: _____

THE SIERRA CLUB

By _____
Its _____
Date: _____

RIVER COUNCIL OF WASHINGTON

By _____
Its _____
Date: _____

THE MOUNTAINEERS

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Its _____
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TROUT UNLIMITED

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WASHINGTON TROUT

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**WASHINGTON WILDERNESS
COALITION**

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Its _____
Date: _____

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By _____
Its _____
Date: _____

TU/103
Lovell/15

FEDERATION OF FLY FISHERS

By _____
Its _____
Date: _____

FRIENDS OF THE COLUMBIA GORGE

By _____
Its _____
Date: _____

FRIENDS OF THE EARTH

By DAVID HIRSCH
Its Program Director
Date: 11/16/04

THE SIERRA CLUB

By _____
Its _____
Date: _____

RIVER COUNCIL OF WASHINGTON

By _____
Its _____
Date: _____

THE MOUNTAINEERS

By _____
Its _____
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WASHINGTON TROUT

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COLUMBIA RIVER INTERTRIBAL FISH COMMISSION

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FEDERATION OF FLY FISHERS

By _____
Its _____
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FRIENDS OF THE COLUMBIA GORGE

By _____
Its _____
Date: _____

FRIENDS OF THE EARTH

By _____
Its _____
Date: _____

THE SIERRA CLUB

By Kathleen Casey
Its KCC
Date: 11-22-04

RIVER COUNCIL OF WASHINGTON

By _____
Its _____
Date: _____

THE MOUNTAINEERS

By _____
Its _____
Date: _____
Kathleen Casey
NW Alaska Regional
Director
The Sierra Club

TROUT UNLIMITED

By _____
Its _____
Date: _____

WASHINGTON TROUT

By _____
Its _____
Date: _____

WASHINGTON WILDERNESS COALITION

By _____
Its _____
Date: _____

COLUMBIA RIVER INTERTRIBAL FISH COMMISSION

By _____
Its _____
Date: _____

TU/103
Lovell/17

FEDERATION OF FLY FISHERS

**FRIENDS OF THE COLUMBIA
GORGE**

By _____
Its _____
Date: _____

By _____
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Date: _____

FRIENDS OF THE EARTH

THE SIERRA CLUB

By _____
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By _____
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Date: _____

RIVER COUNCIL OF WASHINGTON

THE MOUNTAINEERS

By _____
Its _____
Date: _____

By *[Signature]*
Its PRESIDENT
Date: 1 Dec 2004

TROUT UNLIMITED

WASHINGTON TROUT

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**WASHINGTON WILDERNESS
COALITION**

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

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TU/103
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FEDERATION OF FLY FISHERS

**FRIENDS OF THE COLUMBIA
GORGE**

By _____
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By _____
Its _____
Date: _____

FRIENDS OF THE EARTH

THE SIERRA CLUB

By _____
Its _____
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By _____
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Date: _____

RIVER COUNCIL OF WASHINGTON

THE MOUNTAINEERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TROUT UNLIMITED

WASHINGTON TROUT

By *Jeff Kenty*
Its *Western Director*
Date: *11/17/04*

By _____
Its _____
Date: _____

**WASHINGTON WILDERNESS
COALITION**

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TU/103
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FEDERATION OF FLY FISHERS

**FRIENDS OF THE COLUMBIA
GORGE**

By _____
Its _____
Date: _____

By _____
Its _____
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FRIENDS OF THE EARTH

THE SIERRA CLUB

By _____
Its _____
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By _____
Its _____
Date: _____

RIVER COUNCIL OF WASHINGTON

THE MOUNTAINEERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TROUT UNLIMITED

WASHINGTON TROUT

By _____
Its _____
Date: _____

By *Paul Beardsley*
Its *EXECUTIVE DIRECTOR*
Date: *11.17.04*

**WASHINGTON WILDERNESS
COALITION**

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TU/103
Lovell/20

FEDERATION OF FLY FISHERS

**FRIENDS OF THE COLUMBIA
GORGE**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

FRIENDS OF THE EARTH

THE SIERRA CLUB

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

RIVER COUNCIL OF WASHINGTON

THE MOUNTAINEERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TROUT UNLIMITED


WASHINGTON TROUT

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**WASHINGTON WILDERNESS
COALITION**

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By 
Its Executive Director
Date: November 23, 2004

By _____
Its _____
Date: _____

TU/103
Lovell/21

FEDERATION OF FLY FISHERS

**FRIENDS OF THE COLUMBIA
GORGE**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

FRIENDS OF THE EARTH

THE SIERRA CLUB

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

RIVER COUNCIL OF WASHINGTON

THE MOUNTAINEERS

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

TROUT UNLIMITED

WASHINGTON TROUT

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**WASHINGTON WILDERNESS
COALITION**

**COLUMBIA RIVER INTERTRIBAL
FISH COMMISSION**

By _____
Its _____
Date: _____

By Oliver Pett Jr.
Its Executive Director
Date: 11/19/04

TU/103
Lovell/22

YAKAMA INDIAN NATION

U.S. FOREST SERVICE

By *Christine Lovell*
Its _____
Date: 11/15/04

By _____
Its _____
Date: _____

U.S. DEPARTMENT OF THE INTERIOR

NATIONAL MARINE FISHERIES SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF ECOLOGY

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

TU/103
Lovell/23

YAKAMA INDIAN NATION

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

By *Regina Goodwin*
Its *Regina Goodwin*
Date: *12/16/07*

U.S. DEPARTMENT OF THE INTERIOR

NATIONAL MARINE FISHERIES SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF ECOLOGY

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

TU/103
Lovell/24

YAKAMA INDIAN NATION

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

**U.S. DEPARTMENT OF THE
INTERIOR**

**NATIONAL MARINE FISHERIES
SERVICE**

By *Gale A Norton*
Its *Secretary*
Date: *Feb. 1, 2005*

By _____
Its _____
Date: _____

**WASHINGTON DEPARTMENT OF
ECOLOGY**

**WASHINGTON DEPARTMENT OF
FISH AND WILDLIFE**

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

TU/103
Lovell/25

YAKAMA INDIAN NATION

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

U.S. DEPARTMENT OF THE INTERIOR

NATIONAL MARINE FISHERIES SERVICE

By _____
Its _____
Date: _____

By D. Robert Loh
Its Regional Administrator
Date: 01/07/05

WASHINGTON DEPARTMENT OF ECOLOGY

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

TU/103
Lovell/26

YAKAMA INDIAN NATION

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

U.S. DEPARTMENT OF THE INTERIOR

NATIONAL MARINE FISHERIES SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF ECOLOGY

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By Billy Zehm
Its Deputy Director
Date: 12/2/04

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

TU/103
Lovell/27

YAKAMA INDIAN NATION

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

U.S. DEPARTMENT OF THE INTERIOR

NATIONAL MARINE FISHERIES SERVICE

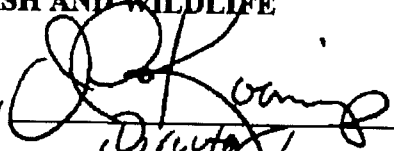
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By _____
Its _____
Date: _____

WASHINGTON DEPARTMENT OF ECOLOGY

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By _____
Its _____
Date: _____

By  _____
Its *D. Gupta* _____
Date: *11/23/04* _____

FRIENDS OF THE WHITE SALMON

By _____
Its _____
Date: _____

TU/103
Lovell/28

YAKAMA INDIAN NATION

U.S. FOREST SERVICE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

U.S. DEPARTMENT OF THE INTERIOR

NATIONAL MARINE FISHERIES SERVICE

By _____
Its _____
Date: _____

By _____
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Date: _____

WASHINGTON DEPARTMENT OF ECOLOGY

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

FRIENDS OF THE WHITE SALMON

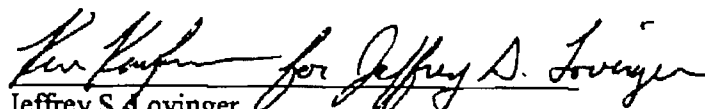
By *Robert Auld*
Its *President*
Date: *November 30, 2004*

CERTIFICATE OF SERVICE

TU/103
Lovell/29

I hereby certify that on February 25th, I served true copies of the foregoing PacifiCorp's Amendment of Decommissioning Application and Request for Continued Abeyance of Decommissioning and Licensing Proceedings on FERC Docket No. 2342 by first-class mail, postage prepaid, to each person designated on the FERC website service list as of today's date in this proceeding.

Dated this 25th day of February, 2005 at Portland, Oregon.


Jeffrey S. Lovinger
Lovinger Norling Kaufmann LLP

ORIGINAL

825 N.E. Multnomah, Suite 1500
Portland, Oregon 97232
(503) 813-5000



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OFFICE OF THE
SECRETARY
2004 DEC -2
2004 DEC -2 A B 39
FEDERAL ENERGY
REGULATORY COMMISSION

1/12

TU/104
Lovell/1

November 30, 2004

Ms. Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Subject: Settlement Agreement for the Lewis River Hydroelectric Projects (Merwin, FERC Project No. 935; Yale, FERC Project No. 2071; Swift No. 1; FERC Project No. 2111; and Swift No. 2, FERC Project No. 2213)

Dear Ms. Salas:

On November 30, 2004, PacifiCorp, licensee for the Merwin, Yale and Swift No. 1 projects, Cowlitz PUD licensee for the Swift No. 2 project, and a number of other Parties, including five federal agencies; two state agencies; one Indian tribe; several local governments, non-governmental organizations and local citizens, signed a settlement agreement concerning the relicensing of the Lewis River Hydroelectric Projects. Enclosed please find one original, one paper copy and seven CD copies of the Offer of Settlement and a Supplemental Preliminary Draft Environmental Assessment (SPDEA). The SPDEA includes an analysis of the Offer of Settlement prepared by PacifiCorp and Cowlitz PUD, but was not a joint Party document.

The Offer of Settlement includes the following documents:

- (1) Joint Explanatory Statement for the Settlement Agreement dated November 30, 2004 Concerning the Relicensing of the Lewis River Hydroelectric Projects, FERC Project Nos. 935, 2071, 2111, Cowlitz, Clark, and Skamania Counties, Washington; and
- (2) Settlement Agreement Concerning the Relicensing of the Lewis River Hydroelectric Projects, FERC Project No. 935, 2071, 2111, Cowlitz, Clark, and Skamania Counties, Washington (November 22, 2004); including appendices, exhibits and schedules.

The parties to the Settlement Agreement have entered into the Agreement for the purpose of resolving all issues regarding relicensing of the above-referenced projects and believe the Agreement is fair, reasonable, and in the public interest within the meaning of

TU/104
Lovell/2

Commission Rule 602 governing offers of settlement. 18 C.F.R. § 385.602. The parties request that the Commission accept this Offer of Settlement in its license orders and incorporate, without material modification, all of PacifiCorp's obligations under the Settlement Agreement into each of its New Licenses for the Merwin, Yale and Swift No. 1 Projects. In addition, the parties intend that the Commission incorporate the protection, mitigation and enhancement measures provided under the Settlement Agreement as the Commission's preferred alternative in its National Environmental Policy Act documents.

While we believe that the Cowlitz Indian Tribe, Clark County, Skamania County, and the Lower Columbia Fish Recovery Board will likely sign the Agreement based on recommendations from their negotiators to do so, they had not concluded their internal authorization processes and as a result were unable to execute the Agreement at the signing event on November 30. Under the terms of the Agreement, these entities have until December 31 to execute the Agreement. At that time, we will file with the Commission an original and eight copies of any additional signature pages, and will provide copies of such signature pages to the official service list.

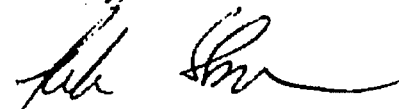
In addition to the above documents, PacifiCorp, together with Cowlitz PUD, intends to file Biological Evaluations for the Commission's use in its consultations with the National Marine Fisheries Service and the United States Fish and Wildlife Service on salmon and steelhead species and bull trout, respectively, by January 15, 2005.

On behalf of the parties to the Settlement Agreement, we request that the Commission schedule a technical conference to be attended (either in person or by conference call) by interested parties to the Agreement for the purpose of reviewing the Agreement and providing an opportunity for the parties to answer any questions that Commission staff may have. Due to the complexity of this matter and the importance of participation by as many parties as possible, we respectfully request that the Commission confer with the parties to the Agreement before scheduling the technical conference.

By copy of this letter, all participants are hereby notified, in compliance with Rule 602(d)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.602), that comments on the Offer of Settlement may be filed not later than 20 days after the filing of the Offer of Settlement and reply comments may be filed not later than 30 days after the filing of the Offer, unless otherwise provided by the Commission or the presiding officer.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Frank Shrier
Licensing Project Manager
PacifiCorp

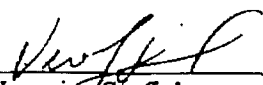
cc: Jon Cofrancesco, FERC
Ann Miles, FERC
FERC Service Lists for Projects 935, 2071, 2111

TU/104
Lovell/3

CERTIFICATE OF SERVICE

I certify that I have served, by U.S. Mail, the foregoing documents upon each person designated on the official Service List compiled by the Secretary of this proceeding.

Dated at Portland, Oregon this 1st day of December, 2004.



Veronica Stofiel
Licensing Project
Coordinator
Merwin Hydroelectric Project

TU/104
 Lovell/4

Service List for P-935-000 - PacifiCorp

Principal/Party Name/Address	Representative Name/Address
ALAN H. RICHARDSON American Public Power Association 2301 M St NW Washington, DC 20037-1427 UNITED STATES	
Brett Swift American Rivers, Inc. 320 SW Stark St Ste 418 Portland, OR 97204-2634 UNITED STATES	
Frank W Frisk Jr. GREAT LAKES ELECTRIC CONSUMERS ASSOC 1054 31st St NW Ste 125 Washington, DC 20007-4403 UNITED STATES	
IDAHO COOPERATIVE UTILITIES ASSOCIATION	
KETCHIKAN ELECTRIC CO	Donald H Clarke , Esquire Wilkinson Barker Knauer, LLP 1500 K St NW Ste 330 Washington, DC 20005-1227 UNITED STATES
THOMAS P. GRAVES EXECUTIVE DIRECTOR MID-WEST ELECTRIC CONSUMERS ASSN. SUITE 330 4350 Wadsworth Blvd Wheat Ridge, CO 80033-4641 UNITED STATES	
Keith Kirkendall National Marine Fisheries Service Hydro Division 525 NE Oregon St Ste 500 Portland, OR 97232-2778 UNITED STATES	
Michelle Day National Marine Fisheries Service Hydropower Division	

Hydro Power Division
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TU/104
Lovell/5

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CITY CLERK
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TU/104
Lovell/6

TED COOMBES
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US Fish and Wildlife Service
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MAYOR

PO Box 9
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TU/104
Lovell/7

Service List for P-2071-000 - PacifiCorp

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IDAHO COOPERATIVE UTILITIES ASSOCIATION	
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Michelle Day National Marine Fisheries Service Hydropower Division 525 NE Oregon St Ste 500 Portland, OR 97232-2778 UNITED STATES	
Steven Fransen National Marine Fisheries Service	Jane S Hannuksela National Oceanic & Atmospheric Admin

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Wallace F. Tillman
General Counsel
National Rural Electric Cooperative Assn
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Arlington, VA 22203-1867
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PacifiCorp

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Van Ness Feldman PC
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Managing Director
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General Manager
PUD #1 of Cowlitz County, WA
PO Box 3007
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SOUTHEASTERN POWER RESOURCES COMMITTEE

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CHARLES T. MERTSCHING
Walstead, Mertsching, Husemoen, Et al.
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Longview, WA 98632-7934
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Washington Dept. of Fish & Wildlife

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Washington Office of Attorney General
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Joan M. Marchioro
Washington State Department of Ecology
PO Box 40117
Olympia, WA 98504-0117
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TU/104
 Lovell/11

Service List for P-2111-000 - PacifiCorp

Principal/Party Name/Address	Representative Name/Address
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Brett Swift American Rivers 320 SW Stark St Ste 418 Portland, OR 97204-2634 UNITED STATES	
Frank W Frisk Jr. GREAT LAKES ELECTRIC CONSUMERS ASSOC 1054 31st St NW Ste 125 Washington, DC 20007-4403 UNITED STATES	
IDAHO COOPERATIVE UTILITIES ASSOCIATION	
THOMAS P. GRAVES EXECUTIVE DIRECTOR MID-WEST ELECTRIC CONSUMERS ASSN. SUITE 330 4350 Wadsworth Blvd Wheat Ridge, CO 80033-4641 UNITED STATES	
National Marine Fisheries Service	Jane S Hannuksela National Oceanic & Atmospheric Admin. 7600 Sand Point Way NE Seattle, WA 98115-6349 UNITED STATES
Michelle Day National Marine Fisheries Service Hydropower Division 525 NE Oregon St Ste 500 Portland, OR 97232-2778 UNITED STATES	Keith Kirkendall National Marine Fisheries Service Hydro Division 525 NE Oregon St Ste 500 Portland, OR 97232-2778 UNITED STATES
Wallace F. Tillman General Counsel National Rural Electric Cooperative Assn	

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UNITED STATES

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Sr. Project Manager
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Portland, OR 97232-2135
UNITED STATES

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Leighton & Sherline
8211 Chivalry Rd
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UNITED STATES

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Managing Director
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Portland, OR 97232
UNITED STATES

Thomas H. Nelson
Thomas H. Nelson & Associates
825 NE Multnomah St Ste 925
Portland, OR 97232-2150
UNITED STATES

Dennis P Robinson
General Manager
PUD #1 of Cowlitz County, WA
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UNITED STATES

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Oglethorpe Power Corporation
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UNITED STATES

TED COOMBES
EX. DIRECTOR
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UNITED STATES

William C Frymire
US Fish and Wildlife Service
PO Box 40100
Olympia, WA 98504-0100
UNITED STATES

CURT LEIGH, MS GJ-11
US Fish and Wildlife Service
600 CAPITOL WAY NORTH
Olympia, WA 98504-0001
UNITED STATES

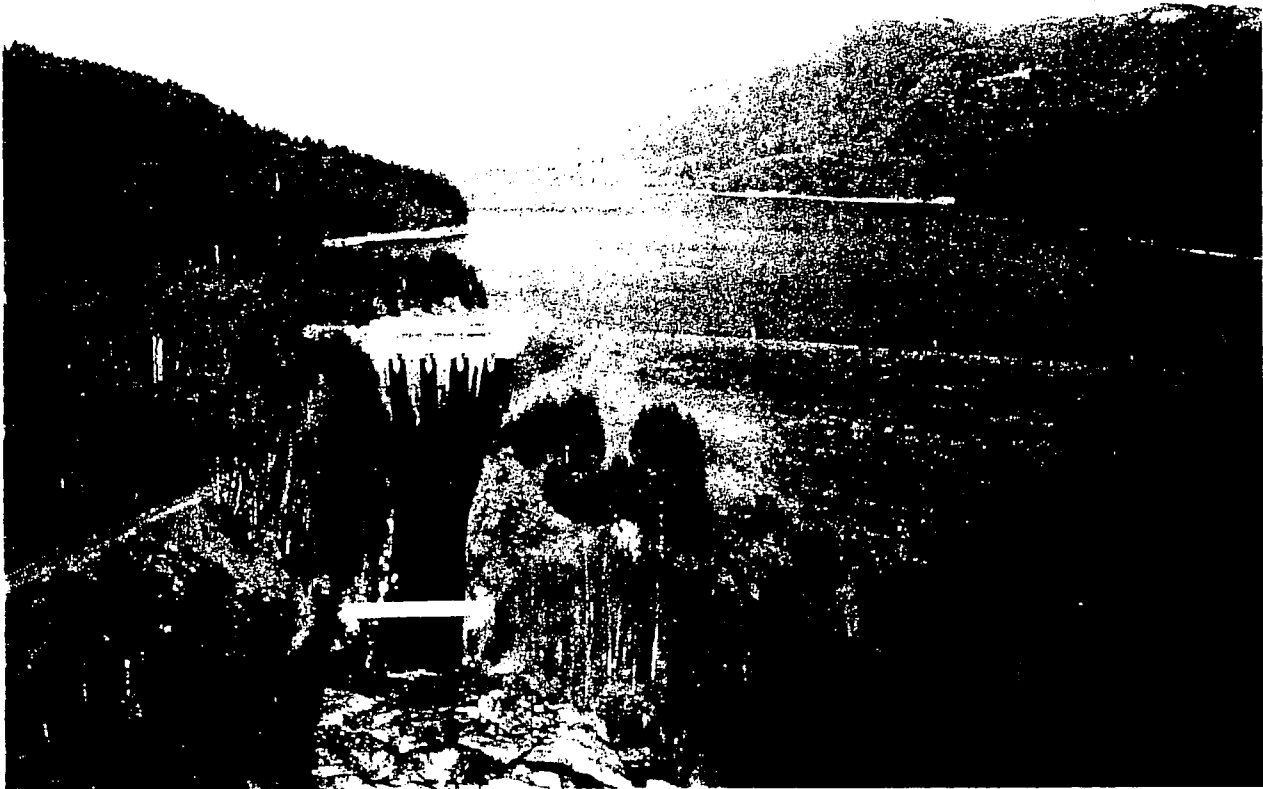
TU/104
Lovell/13

Washington Dept. of Fish & Wildlife

Neil L. Wise
Washington Office of Attorney General
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PO Box 40100
Olympia, WA 98504-0100
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ORIGINAL

TU/104
Lovell/14



SETTLEMENT AGREEMENT

CONCERNING THE RELICENSING OF THE LEWIS
RIVER HYDROELECTRIC PROJECTS
FERC PROJECT NOS. 935, 2071, 2111, 2213
COWLITZ, CLARK, AND SKAMANIA COUNTIES,
WASHINGTON

DATED

NOVEMBER 30, 2004

ORIGINAL

(original signatures section 17)

ORIGINAL

TU/104
Lovell/15

JOINT EXPLANATORY STATEMENT
for the

SETTLEMENT AGREEMENT

DATED
NOVEMBER 30, 2004

CONCERNING THE RELICENSING OF THE
LEWIS RIVER HYDROELECTRIC PROJECTS
FERC PROJECT NOS. 935, 2071, 2111, 2213
COWLITZ, CLARK, AND SKAMANIA COUNTIES, WASHINGTON

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WASHINGTON, D.C. 20426

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Joint Explanatory Statement
Lewis River Hydroelectric Projects Settlement Agreement

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Joint Explanatory Statement
Lewis River Hydroelectric Projects Settlement Agreement

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**JOINT EXPLANATORY STATEMENT FOR THE LEWIS RIVER HYDROELECTRIC
PROJECT SETTLEMENT AGREEMENT**

**MERWIN (P-935), YALE (P- 2071), SWIFT No. 1 (P-2111),
SWIFT No. 2 (P-2213)**

1.0 INTRODUCTION

Pursuant to the Federal Energy Regulatory Commission's ("the Commission") regulations at 18 C.F.R. § 385.602, PacifiCorp ("PacifiCorp") and Public Utility District No. 1 of Cowlitz County, Washington ("Cowlitz PUD"), together the "Licensees," submit this Joint Explanatory Statement ("JES") describing the rationale behind the agreed-upon terms in the *Settlement Agreement Concerning the Relicensing of the Lewis River Hydroelectric Projects FERC Nos. 935, 2071, 2111, 2213 Cowlitz, Clark & Skamania Counties, Washington* ("Settlement Agreement") under which the Parties will support the Commission's issuance of New Licenses to PacifiCorp for the Merwin (P-935), Yale (P2071), Swift No. 1 (P-2111) Projects, and to Cowlitz PUD for the Swift No. 2 Project (P-2213).

Together with the Licensees, the following entities, hereinafter collectively the "Parties," submit this Explanatory Statement:¹

Agencies

- National Marine Fisheries Service ("NOAA Fisheries")
- National Park Service ("NPS")
- United States Bureau of Land Management ("USBLM")
- United States Fish and Wildlife Service ("USFWS")
- USDA Forest Service ("USDA-FS")
- Washington Department of Fish and Wildlife ("WDFW")
- Washington Interagency Committee for Outdoor Recreation ("IAC")

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Indian Governmental Entities

- Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation")

Other Governmental Entities

- Cowlitz County
- City of Woodland

Non-Governmental Entities

- Cowlitz-Skamania Fire District No. 7 ("FD#7")
- North Country Emergency Medical Service ("NCEMS")
- Woodland Chamber of Commerce

¹ Additional entities may become Parties to the Agreement pursuant to Section 17.3 of the Agreement. By executing the Agreement, such Parties indicate that they also endorse this JES. The Parties prepared this statement with the assumption that Cowlitz Indian Tribe will sign the Settlement Agreement before December 31, 2004. If this is not the case, references to the Cowlitz Indian Tribe in this JES should be considered deleted.

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Lewis River Community Council
Lewis River Citizens At-Large

Conservation Groups

American Rivers
Fish First
Rocky Mountain Elk Foundation, Inc. ("RMEF")
Trout Unlimited
The Native Fish Society

1.1. SETTLEMENT AGREEMENT

On November 30, 2004 the Parties entered into a *Settlement Agreement Concerning the Relicensing of the Lewis River Hydroelectric Projects FERC Nos. 935, 2071, 2111, 2213 Cowlitz, Clark & Skamania Counties, Washington* ("Settlement Agreement") which resolves all issues between the Parties related to the relicensing and ongoing operations of the Lewis River Projects and which describes the terms under which the Parties will support the Commission's issuance of New Licenses for the Lewis River Projects. The Settlement Agreement was reached after nearly three years of intense, interest-based negotiations covering a broad array of resource areas including fish passage, instream flow, hatcheries and supplementation, aquatic habitat, monitoring and evaluation, wildlife habitat, recreation, cultural resources, flood management, socioeconomics, reporting, and coordination among the Parties.

1.2. PURPOSE OF JOINT EXPLANATORY STATEMENT

The purpose of this Explanatory Statement is to summarize the rationale for the measures in the Settlement Agreement. Nothing in this JES is intended to modify the terms of the Settlement Agreement.

The overall objective of the Parties in reaching the Settlement Agreement was to include measures to protect and enhance fish, wildlife and other ecological resources affected by the Lewis River Projects while providing for other beneficial uses, including hydroelectric generation, flood management and recreation. The Parties to the Settlement Agreement submit that the Settlement Agreement is fair and reasonable and in the public interest within the meaning of the Commission's Rule 602, 18 C.F.R. § 385.602(g)(3), for the following reasons:

1. The Settlement Agreement contains specific measures that will mitigate project impacts and substantially improve resource conditions in the North Fork Lewis River basin by, among other things:
 - (a) taking steps to achieve genetically viable, self-sustaining, naturally-reproducing, harvestable anadromous salmonid populations above Merwin Dam greater than minimum viable populations;
 - (b) reconnecting all life stages of bull trout populations in the Lewis River basin;

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- (c) funding measures to enhance and improve wetlands, riparian, and riverine habitats for salmonids and resident species, enhance and improve riparian and aquatic species connectivity that may be affected by the continued operation of the Projects, and increase the probability for a successful reintroduction program;
 - (d) restoring marine-derived nutrients to the upper watershed to benefit fish and wildlife;
 - (e) developing a hatchery and supplementation program that supports the reintroduction of anadromous fish to the upper watershed, and the continued harvest of resident and native anadromous fish species;
 - (f) implementing instream flows, including ramping rates, that benefit fish and wildlife in the basin;
 - (g) acquiring interests in land and managing lands to benefit a broad range of fish, wildlife and native plant species, including large and small game, amphibians, bats, forest raptors, neo-tropical birds, and culturally significant native plants;
 - (h) diversifying and managing a comprehensive suite of recreational opportunities tailored to the recreation potential of the projects, while protecting the Lewis River Basin's natural resources;
 - (i) improving flood management during the likely high-flow event periods while continuing to provide necessary project operating flexibility;
 - (j) protecting known and yet-to-be discovered cultural resources in consultation with Yakama Nation and Cowlitz Indian Tribe and oversight agencies;
 - (k) addressing project-related transportation, communications, public safety, and law enforcement needs; and
 - (l) maintaining and preserving a cost effective source of electric energy and related project benefits for PacifiCorp and Cowlitz PUD customers.
2. The Settlement Agreement provides that certain important resource protection measures will be implemented in the near term, providing immediate benefit to fish, wildlife and other natural resources;
 3. The Settlement Agreement provides that certain important resource protection measures will be implemented in a deliberate phased approach that allows the Parties to adaptively manage the resources and the resource protection measures;
 4. The Settlement Agreement provides for various interests and waterway uses, including power production, flood management, natural resource values, and recreation;

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5. The Settlement Agreement provides a forum for collaboration and coordination between the Licensees and the other Parties on implementation and adaptive management of aquatic and terrestrial protection, mitigation and enhancement measures using reliable and scientifically credible information to inform sound and effective policy and resource decisions over the terms of the New Licenses; and,

6. The Settlement Agreement creates rigorous monitoring and evaluation programs of protection, mitigation, and enhancement measures to track progress and results and provide for adaptive management.

1.3. NATIONAL ENVIRONMENTAL POLICY ACT ("NEPA") PROCESSES.

The measures contained in the Settlement Agreement represent the Parties' preferred alternative to measures proposed in PacifiCorp's Applications for Yale (1999), Merwin (2004) and Swift No. 1 (2004) and Cowlitz PUD's Application for Swift No. 2 (2004). The Parties anticipate that the Settlement Agreement will form the basis for the Commission's preferred alternative in its NEPA analysis.

1.4. PRESCRIPTIONS, RECOMMENDATIONS, CONDITIONS AND COMMENTS

The Parties intend to submit final prescriptions, recommendations, conditions, and comments pursuant to Sections 18, 4(e), 10(j) and 10(a) of the Federal Power Act that are consistent with the Settlement Agreement.

1.5. INCORPORATION OF AGREEMENT INTO COMMISSION LICENSES

As more fully described in Section 1.1 of the Settlement Agreement, the Parties request that the Commission accept the Settlement Agreement and incorporate, without material modification, all of PacifiCorp's obligations under the Settlement Agreement into each of its New Licenses and all of Cowlitz PUD's obligations under the Settlement Agreement into its New License.

1.6. TERM OF LICENSES

After considerable discussion and negotiation, the Parties have agreed to support or not oppose the Licensees' request that the Commission issue New Licenses for 50 years. The Licensees believe that the requested terms for the New Licenses balances the need to recover their investments in the Projects with the desire to ensure that Project operations conform with applicable laws and regulations and provide environmental enhancements and improvements.

1.7. COORDINATION

The Settlement Agreement establishes a high level of communication and coordination among the Parties to facilitate adaptive management and ensure that collaborative processes and relationships developed during the settlement process will be maintained and continued, thus fostering an atmosphere of cooperation that will speed implementation of the Settlement Agreement and ensure its efficacy.

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The Settlement Agreement creates committees to enhance coordination and cooperation. The Aquatic Coordination Committee ("ACC") and the Terrestrial Coordination Committee ("TCC") will oversee the implementation of the aquatic and terrestrial measures in the Settlement Agreement respectively; including coordinating and consulting on the development and implementation of plans, implementation of measures, and preparation of reports; reviewing information; and in specific cases, making decisions and granting approvals. In addition to the ACC and TCC, under the Settlement Agreement, PacifiCorp will establish a Lewis River Recreation Advisory Committee ("LRC") to provide information to the Parties about implementation of recreation measures. PacifiCorp also will convene a "Flow Coordination Committee" to review information and data during low flow periods and determine whether temporary adjustments to the minimum instream flows need to be made. And, PacifiCorp will host an annual meeting of emergency management officials to review the previous year's activities and discuss issues.

1.8. TIMING

The Settlement Agreement outlines a detailed plan for implementing close to 100 measures, some of which begin on the effective date of the Settlement Agreement, most of which continue throughout the terms of the New Licenses.

A significant benefit provided by the Settlement Agreement is increased certainty concerning the timing and implementation of resource measures. The Parties have negotiated a comprehensive schedule for implementing the measures contained in the Settlement Agreement. The Parties' intent in developing this schedule is to ensure that beneficial measures are implemented in a timely manner and to enable the Licensees to better plan and coordinate future capital expenditures. In addition, detailed designs and plans developed for specific measures pursuant to the Settlement Agreement will address implementation timing to minimize disturbance to sensitive species and areas.

The Licensees have agreed to implement a suite of measures before the New Licenses are issued by the Commission. Such measures include (1) provision of instream flows, (2) upgrades to hatcheries, (3) provision of funds for acquisition of wildlife habitat, (4) provision of funds for enhancement of aquatic habitat, (5) placement of adult hatchery salmon into the upper watershed for habitat preparation, (6) flood management notification and information support, (7) contributions toward forest road maintenance, and (8) development and implementation of a variety of studies, plans and designs. Such early implementation measures provide significant resource benefits earlier than would otherwise occur without a settlement, and which might not be possible if delayed until license issuance. In addition, the ongoing benefits to the resources that these measures are expected to provide throughout the terms of the New Licenses are an important factor in the Parties' determination that the Settlement Agreement is fair and reasonable.

Also, in the first five years of the New Licenses, the Licensees will begin implementing a wide variety of measures, including but not limited to fish passage, instream flows, water quality monitoring, aquatic habitat enhancement, hatchery production and supplementation, wildlife habitat acquisition, protection and management, recreation upgrades and expansion, flood

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management, cultural resources protection, and socioeconomic actions. The benefit to the resources from these actions will continue to accrue over the terms of the New Licenses.

The Settlement Agreement lays out a detailed adaptive management program in which implementation of specific measures in the early years, together with intensive monitoring of the measures, provides the needed information to ensure, to the maximum extent possible, that measures implemented in subsequent years are biologically effective and cost effective. For example, the Settlement Agreement provides for reintroduction outcome goals to assess the effectiveness of a phased program to reintroduce anadromous salmonids to 174 miles of habitat from which they have been extirpated for over 70 years. The Licensees will design and build state-of-the-art facilities to collect and transport anadromous salmonids upstream and downstream past four hydroelectric projects, including three high head dams and three reservoirs. The Parties have agreed to provide passage into and out of each of the three project reservoirs. However, given the uncertainties associated with collecting downstream migrants in storage reservoirs, and recognizing that the greatest potential for success is above Swift No. 1 Dam, it makes the most biological sense to install downstream passage facilities first at the upper most dam (Swift No. 1) and then refine that facility over several generations of salmonid returns before installing additional downstream collectors at the other two dams.

To ensure that the fish passage and aquatics programs are effective over the long term, the Settlement Agreement includes a number of check-in opportunities. Ongoing monitoring will provide opportunities to evaluate passage performance. In addition, prior to construction of passage facilities into Yale Lake and Lake Merwin, Parties will have an opportunity to consider new information and the Services will determine what effect, if any, the information will have on reintroduction into Yale Lake and Lake Merwin. Furthermore, in year 27 the Services will determine whether the reintroduction outcome goals have been met. If not, and the failure to meet the reintroduction outcome goals is related to project effects, the Settlement Agreement requires limited measures to provide biological benefits substantially equivalent to the impact of the identified project-related limiting factors. A similar assessment of progress toward meeting the reintroduction outcome goals occurs in year 37 of the New License and, if reintroduction outcome goals are not being met due to project effects at that time, then the licensees will consult with the Services to determine what further actions would be necessary to meet those goals, and if agreement is not reached, the Services may exercise their applicable authorities to direct what actions should be implemented.

The wildlife habitat management program calls for a review of habitat effectiveness in year 17. In response to this review, modifications to the wildlife habitat management plans ("WHMPs") will be made to the extent needed to achieve the original Habitat Evaluation Procedure habitat value projections.

1.9. RELATED DOCUMENTS

This Joint Explanatory Statement is provided as a companion to the Settlement Agreement.

The Licensees have already filed the following related documents, among others, with the Commission:

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- Merwin Hydroelectric Project. FERC Project No. 935. Final Application for New License for Major Project (filed April 2004);
- Yale Hydroelectric Project. FERC Project No. 2071. Final Application for New License for Major Project (filed April 1999);
- Swift No. 1 Hydroelectric Project. FERC Project No. 2111. Final Application for New License for Major Project (filed April 2004);
- Swift No. 2 Hydroelectric Project. FERC Project No. 2213. Final Application for New License (filed April 2004);
- Lewis River Hydroelectric Projects. Preliminary Draft Environmental Assessment (filed April 2004); and
- Final Lewis River Technical Studies Reports.

In addition, the Licensees intend to file the following documents related to the Settlement Agreement that are not joint Party documents and that were prepared by the Licensee:

- Supplemental Preliminary Draft Environmental Assessment;
- Draft Biological Evaluation of Listed, Proposed, and Candidate Salmon and Steelhead Species as Related to PacifiCorp and Cowlitz PUD's Lewis River Hydroelectric Projects; and
- Draft Biological Evaluation of USFWS Listed, Proposed, and Candidate Species as Related to PacifiCorp and Cowlitz PUD's Lewis River Hydroelectric Projects.

2.0 BACKGROUND

2.1. HISTORY OF THE COLLABORATIVE PROCESS

In January 1999, PacifiCorp and Cowlitz PUD filed a request with the Commission for approval to use the Commission's Alternative Licensing Procedures ("ALP") and for the simultaneous and coordinated processing of the license applications for all four projects. The purpose of ALP is to facilitate communication and collaboration among parties during the relicensing proceeding. On April 1, 1999, the Commission approved the requested use of ALP and issued an order accelerating the expiration of the Merwin license to coincide with the other projects (letter from J. Mark Robinson, Director of Licensing and Compliance, the Commission to Dave Leonhardt, PacifiCorp and Dennis Robinson, Cowlitz PUD; Order Accelerating License Expiration Date, issued April 8, 1999).

Upon securing the Commission's approval for the use of ALP, PacifiCorp and Cowlitz PUD convened meetings on April 29 and April 30, 1999, to initiate the collaborative process. Following the initial meeting, a series of public meetings were held to establish the structure and

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ground rules of the process, and goals and objectives of the participants. Through these meetings, the participants established the Lewis River Hydroelectric Project Relicensing Steering Committee and Resource Workgroups.

The Steering Committee was responsible for overseeing the collaborative process and establishing work group goals and objectives. The Steering Committee established the following Resource Groups to study and address particular resource issues: (1) Aquatics; (2) Terrestrial/Land Use; (3) Flood Management; (4) Recreation/Aesthetics; (5) Socioeconomics; and (6) Cultural. The Resource Groups defined resource goals and objectives, developed an approach to achieve those goals and objectives, and provided recommendations to the Steering Committee. The Steering Committee acted on Resource Group recommendations, and resolved outstanding issues. Initially, the Resource Groups designed studies to evaluate resource issues and project effects; later, the Groups devised conservation measures to address identified resource issues.

In March 2002, the Steering Committee formed the Negotiating, Policy, and Legal groups to engage in formal negotiations aimed at developing and reaching a comprehensive settlement for issues identified in the relicensing of the Lewis River projects.

2.2. LICENSE APPLICATIONS

PacifiCorp filed its Application for New License for Yale in April 1999, followed by Applications for New License for Merwin and Swift No. 1 in April 2004. Cowlitz PUD also filed its Application for New License for Swift No. 2 in April 2004. The Licensees intend that the Settlement Agreement replace the measures contained in the preferred alternative (Alternative B) in the Licensees' Preliminary Draft Environmental Assessments contained in their respective Applications for New Licenses submitted to the Commission in April 2004.

2.3. LEWIS RIVER PROJECTS

2.3.1. Project Description

The following description covers all four hydroelectric projects in the North Fork Lewis River basin. The projects begin approximately 10 miles east of Woodland, Washington. The upstream sequence of the projects from the confluence of the Lewis and Columbia Rivers is as follows: Merwin, Yale, Swift No. 1, and Swift No. 2. Merwin, Yale, and Swift No. 1 are owned and operated by PacifiCorp. Swift No. 2 is owned by Cowlitz PUD and currently operated and maintained by PacifiCorp under contract with Cowlitz PUD. The Merwin, Yale, and Swift No. 1 projects represent a linked reservoir/powerhouse system covering over 30 miles of the Lewis. The Swift No. 2 project does not include a dam and reservoir. It utilizes water directly from the tailrace of Swift No. 1, which flows into a 3 mile-long canal that releases through the Swift No. 2 powerhouse into Yale Lake.

Swift No. 1 is the largest of the projects, consisting of an embankment dam which forms an 11.5-mile-long reservoir with a 4,600-acre surface area known as Swift Reservoir. A concrete powerhouse with a generating capacity of 240,000 kW (kilowatts) sits just downstream of the dam and transmits to an adjacent substation. All flow from the Swift No. 1 powerhouse is

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released to the Swift No. 2 canal, which extends approximately three miles before terminating at the Swift No. 2 powerhouse.

Swift No. 2 consists of the canal previously mentioned, a powerhouse, substation, and tailrace which releases into Yale Lake. Swift No. 2 operates solely on flows released from the Swift No. 1 powerhouse to the Swift No. 2 canal. The powerhouse is capable of generating 70,000 kW which it transmits to an adjacent substation. The river channel between Swift No. 1 and the Swift No. 2 tailrace is referred to as the Lewis River bypass reach.

Yale, the middle project in the Lewis River system, includes two embankment dams, a 10.5-mile-long reservoir with a 3,800-acre surface area known as Yale Lake, a powerhouse and an 11.5 mile-long transmission line that connects to the Merwin substation. The Yale Project can generate 134,000kW. A secondary feature of the Yale Project is the Speelyai Canal, which was constructed to divert a portion of flows from Speelyai Creek to Yale Lake. Floods in 1996 altered the channel of Speelyai Creek such that all flow from the upper drainage enters the canal and Yale Lake.

The oldest and most downstream project in the basin is Merwin which consists of a concrete dam, 14.5-mile-long reservoir with 4,000-acre surface area known as Lake Merwin, a powerhouse located immediately downstream of the dam with an adjacent substation and two transmission lines. The Merwin powerhouse has a generating capacity of 136,000 kW, which is carried by two transmission lines to the Merwin substation. Merwin is operated to regulate downstream river flows, and is currently operated in accordance with a down ramping rate.

PacifiCorp and Cowlitz PUD provide funding for three hatcheries in the project area, the Lewis River Hatchery, the Speelyai Hatchery and the Merwin Hatchery. These hatcheries produce spring Chinook, early- and late-run coho, winter- and summer-run steelhead, kokanee, and rainbow trout.

2.3.2. Operational Constraints

The three-reservoir system is operated in a coordinated fashion to achieve benefits for power production, flood management, recreation and natural resources. The four projects utilize the water resources within the North Fork Lewis River basin from elevation 50 ft msl (Merwin Project tailwater) to 1,000 ft msl (Swift No. 1 normal pool). The total usable storage in the reservoirs is 814,000 acre-ft. The total installed capacity for the four projects is 580 MW.

The Lewis River Projects are used to maximize the value of PacifiCorp's generation assets and power purchases to provide customer benefits. The operational flexibility of the projects enhances PacifiCorp's ability ensure system reliability and meet customer and grid fluctuating power requirements. PacifiCorp's power is provided to the regional grid to serve its 1.5 million residential and commercial customers. Also, under a 1983 contract with FEMA, PacifiCorp provides a minimum of 70,000 acre feet of flood storage between November 1 and April 1 of each year which allows most high-runoff events to be controlled to a release of 60,000 cfs or less.

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Cowlitz PUD allocates the majority (about 90 percent) of its Swift No. 2 power to its approximately 40,000 residential customers, with the remaining 10 percent going to its 5,000 commercial and small industrial customers. Swift No. 2 meets 10 to 15 percent of the energy load and up to 30 percent of the peak load of these three customer classes.

2.3.3. Lewis River Basin

The Lewis River basin is located on the western slopes of the Cascade Mountain Range. Two volcanic peaks, Mount Adams and the recently active Mount St. Helens, lie on the northern and eastern extremities of the basin. Foothills in the central portion of the watershed are generally steep and forested and extend up to approximately 3,000 feet mean sea level. Downstream of Lake Merwin, the Lewis River enters a terrain of rolling hills that eventually transition to the essentially flat land near the river's confluence with the Columbia River. Forested areas are dominated by conifer, including Douglas fir and western hemlock forests. Upland deciduous and mixed conifer-deciduous forests also occur in the watershed. The Lewis River basin has the predominantly temperate marine climate typical of the Pacific Northwest. A narrow range of temperatures, dry summers, and mild but rainy winters are typical.

2.3.4. Project Area

The four Lewis River Projects are the dominant feature in the central portion of the Lewis River basin. Large reservoirs are formed by the high-head Swift, Yale and Merwin dams. Generally the surrounding area is wooded and rural with forest lands dominating the landscape around Swift Reservoir, transitioning to more mixed forestry and rural uses in the vicinity of Yale Lake and Lake Merwin. The nearest sizeable community is Woodland, located 10 miles downstream of Merwin Dam along the Interstate 5 corridor. A state highway brings many visitors to the project area. Visitor destinations include not only the popular project reservoirs, but this is one of the primary routes to the Mount St. Helens National Volcanic Monument. The USDA Forest Service manages extensive portions of the upper basin and WDNR manages sizeable holdings in the central basin. PacifiCorp and Cowlitz PUD own and manage lands in the vicinity of the four projects while the lower basin is largely in private ownership. The entire basin is within the jurisdiction of three counties: Cowlitz, Clark and Skamania.

3.0 DESCRIPTION AND RATIONALE FOR AQUATIC RESOURCES

3.1.1. AQUATIC RESOURCES IN THE NORTH FORK LEWIS RIVER BASIN

The North Fork Lewis River basin supports several anadromous fish species. The North Fork Lewis River below Merwin Dam supports populations of fall Chinook salmon (*Oncorhynchus tshawytscha*), spring Chinook, early and late coho salmon (*O. kisutch*), winter and summer steelhead (*O. mykiss*), chum salmon (*O. keta*), Pacific lamprey (*Lampetra tridentata*), and sea-run cutthroat trout (*O. clarki clarki*). Except for occasional releases of excess hatchery fish, no anadromous fish populations are currently present above Merwin Dam.

Resident fish species that are present in the North Fork Lewis River basin include bull trout (*Salvelinus confluentus*), kokanee (landlocked *O. nerka*), cutthroat trout, rainbow trout (*O. mykiss*), northern pikeminnow (*Ptychocheilus oregonensis*), and tiger muskie (*Esox*

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masquinongy X Esox lucius). Kokanee are not native to the North Fork Lewis River basin but were introduced following dam construction to enhance the recreational fishery. Similarly, tiger muskie are not native to the North Fork Lewis River basin but were introduced by WDFW to enhance the recreational fishery and reduce northern pikeminnow population.

Of the species listed above, the following anadromous salmonids are listed as threatened pursuant to the Endangered Species Act and occur in the North Fork Lewis River basin: Lower Columbia River Chinook salmon, Lower Columbia River steelhead, and Columbia River chum salmon. The Lower Columbia coho, which also occurs in the North Fork Lewis River basin, is proposed for listing as threatened. In addition, two subpopulations of Columbia River bull trout, which is listed as threatened, occur in the North Fork Lewis River basin. On September 21, 2004, the USFWS designated bull trout critical habitat in the Lewis River basin which includes the lower Lewis River downstream of Merwin Dam; the upper Lewis River up to the barrier falls; a portion of Pine Creek and one tributary; and an un-named tributary (referred to as S15) to Swift Reservoir.

3.2. REINTRODUCTION OF ANADROMOUS SALMONIDS

3.2.1. Program Overview

The anadromous salmonid reintroduction program above Merwin Dam is a centerpiece of the Settlement Agreement and is key to meeting the interests of many of the Parties. Providing fish passage and connectivity for fish species throughout the projects has been a particular concern for many of the Parties, including the Yakama Nation, Cowlitz Indian Tribe and NOAA Fisheries. Reintroduction of anadromous salmonids also provides mitigation for effects of the Projects on anadromous salmonids and will:

- assist in the recovery of natural runs of Chinook, steelhead and coho;
- reconnect fish habitat and fish populations in the basin,
- support interconnected and spatially distributed populations of anadromous fish; and
- provide marine-derived nutrients and trace elements to support reintroduction and to benefit riparian habitats and riparian-dependent wildlife.

The reintroduction program includes a comprehensive suite of salmon protection and restoration measures and actions that will be implemented in a phased approach over the terms of the licenses to primarily benefit spring Chinook, winter steelhead, and coho. Such measures include supplementation of hatchery-origin juveniles and adults to jump-start the reintroduction program, habitat enhancement and protection, and fish passage. The fish passage elements of the program will be subject to rigorous performance standards to meet the goal of safe, timely and effective passage. These include overall quantitative survival standards, specific salmon life stage standards and facility design standards. These will assist in gauging program success and whether there is need for facility adjustments or modifications.

The overarching goal of the comprehensive reintroduction program is to achieve genetically viable, self-sustaining, naturally reproducing, harvestable populations of these species above Merwin Dam at greater than minimum viable populations. This goal is distinctly separate from

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the hatchery targets included in the hatcheries measures. The Parties recognize that commercial, recreational and tribal harvest, as well as ocean conditions, may dramatically affect program results but are not within the Licensees' control.

The Settlement Agreement includes "Reintroduction Outcome Goals" for anadromous fish to evaluate the program's success and status checks are built into the program over the long term to monitor progress and adaptively manage the program as needed to maximize the expected benefits.

The reintroduction of extirpated coho, spring Chinook and steelhead into their historical range upstream of Merwin Dam relies on a passage program that will provide access to an estimated 174 miles of potential anadromous fish habitat. Of this, approximately 117 miles of habitat above Swift No. 1 Dam will become available in the fourth year of the reintroduction program as fish are trapped at Merwin Dam and transported upstream to above Swift Reservoir. Later, unless otherwise directed by NOAA Fisheries and the USFWS (the "Services"), these species will be reintroduced to Lake Merwin and Yale Lake via newly constructed upstream fish passage facilities at the Yale and Swift Projects and downstream passage at Yale Lake and Lake Merwin. Ultimately, this program is expected to result in connectivity through each of the reservoirs associated with the Lewis River Projects providing for naturally distributed anadromous salmonid populations.

The measures in the Settlement Agreement are structured to provide the best opportunity for a successful reintroduction program despite the challenges that such a program faces. In particular, the trap-and-transport system will include the best available technology and designs to address the specific technological challenges posed by the high-head, high flow Lewis River Projects. The program also includes many other important and complementary measures to underpin and strengthen the reintroduction effort. These include habitat preparation activities in the tributaries to the project reservoirs prior to reintroduction, funding for habitat protection and restoration projects on key tributary streams, and hatchery supplementation over a period of years both to launch the reintroduction effort and provide support over time.

The Settlement Agreement recognizes and anticipates that it will take many years to reap the full benefits of all the measures and activities connected with the reintroduction program and for the program to fully succeed, for example:

- Funding will be provided over a 20-year period for habitat restoration activities to improve habitat function and productivity over time;
- Several life cycles of salmon will likely be needed to determine whether the comprehensive program is delivering anticipated benefits and to better understand how actions outside the Lewis River basin potentially affect the success of the program;
- Experience and knowledge gained from reintroduction above Swift No. 1 Dam can subsequently be applied to reintroduction into Yale Lake and Lake Merwin; and
- Following construction of fish passage facilities, determinations will be made regarding whether modifications are needed to meet established performance standards.

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In regard to the temporal aspects of the program, the Settlement Agreement includes rigorous facility and fish-related performance standards as well as an aggressive program to monitor and evaluate progress towards meeting the passage performance standards. The Settlement Agreement also includes built-in, major "status checks" in years 27 and 37 to provide for a detailed review of program measures and activities. If the reintroduction outcome goal is not being met for a particular species in years 27 or 37, "limiting factors analyses" will be undertaken to more precisely determine why the goal has not been met, and what factors are undermining the effort to meet that goal. If in year 27 the failure to meet the reintroduction outcome goal is related to project effects, the Settlement Agreement requires limited measures to provide biological benefits substantially equivalent to the impact of the identified project-related limiting factors. If in year 37 the reintroduction outcome goal is not being met due to project effects, then the Licensees will consult with the Services to determine what further actions would be necessary to meet that goal, and if agreement is not reached, the Services may exercise their applicable authorities to direct what actions should be implemented.

3.2.2. Fish Passage

The following specific fish passage measures address the issue of restoring anadromous fish access to historically accessible spawning and rearing habitat. Providing for fish passage through the Projects is intended to re-establish and maintain ecological processes and habitat in condition sufficient to support interconnected and well-distributed populations of anadromous salmonids in the North Fork of the Lewis River watershed. Fish passage measures, as described below, will address the biological requirements of the upstream and downstream movement of fish at the Projects, enabling safe, timely, and effective passage of anadromous salmonids at all life stages. Fish passage facility designs will be robust to contemplate possible expansions or changes to facilities; facilities will be designed to provide flexibility and ease in adapting them to meet performance standards.

3.2.3. Upstream Passage Facilities

Of the four projects, only Merwin Dam is currently equipped with upstream fish passage facilities. The upstream facility at Merwin is a trap-and-transport system that is operated continuously throughout the year. The current Merwin trap design and mode of operation raises concerns for the fish (especially wild fall Chinook) that are handled at the trap, as well as for the safety of workers operating the trap when flows are over a certain level. The Settlement Agreement provides for an upgrade of the trap to reduce these concerns in year two of the license term for the Merwin Project, prior to completing trap upgrades and implementing the trapping and transporting of anadromous salmonids to above Swift Dam in year 4.5 of the Merwin license.

The Settlement Agreement provides upstream passage via trap-and-transport from below Merwin Dam to Swift Reservoir by year 4.5; from below Merwin Dam to Yale Lake by year 13; and from below Merwin Dam to Lake Merwin, from Lake Merwin into Yale Lake, and from Yale Lake to Swift Reservoir by year 17. The Licensees, in consultation with the ACC and with the approval of the Services, will develop a plan (the "Upstream Transport Plan"), which will describe the frequency and procedures to achieve safe, timely and effective upstream passage. The initial plan will be submitted to the Commission before completion of the Merwin Upstream

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transport facility and will be modified in consultation with the Parties to address upstream transport at Yale and Swift before completion of those facilities. The plan will initially provide for all transport to be by truck. At the time upstream passage is provided through all of the Projects, however, alternative transport technologies (e.g., fish lifts or trams) will be evaluated and will be substituted for trucking if certain economic and biological conditions are met.

3.2.4. Downstream Passage Facilities

No project structures are currently equipped with downstream fish passage facilities. Juvenile and adult migrants can, however, pass downstream of each facility through the project turbines and spillways. Both turbine and spillway entrainment have the potential to injure or kill fish, although survival rates are currently unknown. For purposes of determining whether passage standards are being met prior to completion of studies regarding turbine mortality, the Parties have agreed to assume 100 percent mortality of fish passing through the turbines.

Downstream passage facilities will be provided at all three dams, and will consist of modular surface collectors to collect, sort, tag, and transport downstream migrating species to stress release ponds located below Merwin Dam. Downstream passage will occur at Swift Reservoir at the same time as upstream passage at Merwin in year 4, followed by installation of collectors and associated facilities at Yale in year 13 and Merwin in year 17. Downstream passage facilities will reduce fish mortality and injury and the stress release ponds will provide a place for transported fish to recover from transport efforts. If practicable, the ponds will be located downstream of important rearing habitat to minimize interaction of transported fish with juvenile wild fall Chinook. The Settlement Agreement provides for consideration of possible juvenile bypass system alternatives. As with the upstream passage facilities, PacifiCorp, in consultation with the ACC and with the approval of the Services will develop a plan (the "Downstream Transport Plan") which will describe the frequency and procedures to achieve safe, timely and effective downstream passage. The initial plan will be submitted to the Commission before completion of the Swift modular collector facility. The plan will be modified in consultation with the Parties, at appropriate times, to address downstream transport for Yale and Merwin before completion of those facilities.

Passage for bull trout is also provided under the Settlement Agreement. The initial focus is on continuing to collect upstream migrating bull trout at the Yale and Swift No. 2 tailraces. These bull trout will be transported to Yale Lake and Swift Reservoir. Bull trout collected in the Yale tailrace are released in Yale Lake because there are no known spawning sites in the tributaries to Lake Merwin or the mainstem below Merwin Dam. (Bull trout found in Lake Merwin are believed to have moved downstream from Yale Lake). Because bull trout have more specific habitat requirements than other salmonids, with cold water temperature the most important habitat component, most bull trout spawning and juvenile rearing occurs in Cougar, Rush and Pine creeks (tributaries to Yale Lake and Swift Reservoir).

As a result, and until passage is provided for anadromous fish, the Licensees will continue collecting and moving bull trout to locations in Yale Lake or Swift Reservoir as determined by the USFWS. The Licensees will also investigate better upstream collection methods for bull trout, and if more effective and efficient methods are discovered, the Licensees will implement those measures. The downstream passage facilities to be installed first at Swift Dam and later at

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Yale and Merwin dams will be designed to collect and transport downstream migrating bull trout as well. Together, these measures will continue to provide access to high-quality habitat to increase local populations and opportunity for genetic exchange among local populations in the Lewis River basin.

3.2.5. Benefits of Phased Approach

As described above, the Settlement Agreement outlines a phased approach to providing and evaluating the success of fish passage above Merwin Dam. The phased approach allows the Parties to initially focus their efforts and resources, including broodstock, above Swift Dam, providing access to a large proportion of the historical habitat above Merwin Dam. Importantly, this approach will allow the Parties to learn from initial fish passage results prior to designing and constructing additional passage facilities while spreading the cost of implementing fish passage over a reasonable period of time.

For example, after reintroduction begins above Swift Dam, the Merwin upstream and Swift downstream passage facilities will be operated for approximately 5 years (at least one complete life-cycle) before the first assessment of returns of ocean recruits that were naturally spawned above Merwin Dam. The end of that 5 year period will coincide with the beginning of the design process for the Yale downstream facility, which will incorporate any information learned in the previous reintroduction phase. Once the Yale downstream facility is operating (year 13), it will be allowed to operate for 2 years, during which time the Licensees and fish management agencies will evaluate its success prior to designing or constructing remaining fish passage facilities. Since the Yale and Merwin downstream facilities are expected to be configured differently than the Swift downstream collector, this evaluation is critical because it will allow the Licensees and fish management agencies time to develop the Yale downstream facility and establish the best operating conditions for fish collection before considering passage at Merwin.

Implementing the Phase I Status Check on the 27th anniversary after issuance of the new licenses allows time after fish are introduced into Lake Merwin for facilities to be fine-tuned toward achieving performance standards, for supplementation to be implemented in all reservoirs for a reasonable period of time, for habitat restoration projects to occur and begin contributing to fish production, and for the habitat to be seeded. The success of the reintroduction program can be most accurately evaluated after these actions have been completed. Similarly, if additional measures are implemented following the Phase I Status Check to address any failure to meet the reintroduction outcome goals, holding the Phase II Status Check on the 37th anniversary after issuance of the new licenses will allow time for such measures to be implemented and properly evaluated.

3.2.6. Funding in Lieu of Passage

The Parties recognize that new information may become available to the Services prior to implementing the passage of anadromous fish into Yale Lake and/or Lake Merwin. This information could lead the Services to determine that fish reintroduction at one or both of these reservoirs is inappropriate. In that event, the Settlement Agreement calls for PacifiCorp to provide funding up to \$30 million in lieu of construction of the respective passage facilities for use in achieving equivalent or greater benefits to anadromous fish populations as would have

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occurred if passage through Yale Lake and/or Lake Merwin had been provided. Emphasis for the use of these funds would be first placed on benefiting anadromous fish of the North Fork Lewis River, and if those opportunities are exhausted, then would be used to benefit other populations in the applicable ESUs. The list of potential projects in Schedule 7.6.2 of the Settlement Agreement illustrates projects in both the North Fork and East Fork of the Lewis River that would qualify as mitigation measures under the In Lieu Fund, for example:

Improve fish passage through identification and removal of diversions on Cedar Creek and other tributaries;

- Increase functional Large Woody Debris structures in appropriate stream reaches;
- Reconnect, enhance and restore degraded habitat and wetland areas;
- Fence livestock and control farm run-off.

Through this provision of the Agreement, the projects' impacts on anadromous fish migration in the basin will continue to be mitigated to achieve the Parties' overarching biological and ecological goals of restoring and enhancing fish populations to achieve viable, sustainable and harvestable levels of fish.

3.3. INSTREAM FLOWS AND RAMPING

3.3.1. Swift Bypass Reach Flows

The 3-mile reach of the Lewis River, located between Swift Dam and the upper end of Yale Lake, is known as the Swift bypass reach. Currently, river flows are bypassed around this reach through the canal between the dam and the Swift No. 2 powerhouse. Under the current Commission licenses, there is no minimum flow requirement for this reach, but seepage from the canal provides approximately 21 cubic feet per second (cfs) of flow to the reach. Groundwater seepage and Ole Creek, which enters the lower portion of the reach, also are sources of some flow. In addition, occasional high river flows require water to be spilled from the Swift Reservoir into the bypass reach. These spills are often in excess of 5,000 cfs and have been as high as 45,000 cfs.

The Parties have agreed to a regime of increased flows in the Swift bypass reach totaling 55,200 acre-feet per year at a rate of 60 cfs to 100 cfs according to a monthly schedule, to be provided at two release points. Construction of a water delivery structure will provide flows to the upper reach and connect large pools located there to the lower portions of the reach. The existing canal drain located approximately one third the length of the canal downstream of the Swift No. 1 tailrace will provide flows up to the drain's maximum capacity of approximately 47 cfs. Flows from the canal drain will be provided once reconstruction of the Swift No. 2 project is complete, benefiting aquatic resources even before the licenses are issued. In addition, a "constructed channel" associated with the canal drain discharge location will be built to increase habitat benefits from flow releases and to improve connectivity. The constructed channel includes the channel to be built and any measures undertaken in the lower Bypass Reach to connect that

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channel to Yale Lake. The constructed channel will be built as soon as practicable after construction of the upper release point.

The flow regime and constructed channel agreed to by the Parties will reduce the hydrologic isolation of the reach and increase overall habitat diversity and connectivity to benefit a variety of aquatic species. Increased flows from the upper release point will connect large pools in the upper end of the reach and provide a flow corridor through to the lower end of the reach. Additional, higher quality habitat for overwintering and rearing will be provided by the constructed channel for several species of resident fish (bull trout, kokanee, lamprey, mountain whitefish, cutthroat and rainbow trout) and anadromous salmonids once reintroduction into Yale Lake takes place. Also, construction of the channel in the bypass reach will maximize the biological benefits of canal drain flows. Construction of the channel also will help to reduce the overall negative impacts of large spill events into the bypass reach by providing a protected area that will not be as subject to large-scale scouring.

3.3.2. Flows and Ramping Below Merwin Dam

The Settlement Agreement requires minimum flows below Merwin Dam for the purpose of maintaining and enhancing habitat for species downstream of Merwin Dam, including native fall Chinook, amphibians, aquatic insects, and plant life, while balancing the needs for recreation and power production. Among other things, these flows protect against dewatering of fish redds.

Rapid changes in river flow due to hydroelectric project operations (i.e., changes in generation, shutdowns associated with maintenance, powerhouse failures, spill events, or other activities) have the potential to adversely affect aquatic resources. Such changes can affect fish behavior that could reduce survival or growth. In most cases, the faster the reduction in water surface elevation, the more likely fish and other aquatic organisms are to be stranded or adversely affected. The Settlement Agreement provides for restrictions on ramping and plateau operations to protect anadromous fish from the adverse effects of stranding (resulting in immediate or delayed mortality) and the temporary loss of habitat or loss of habitat access. Ramping rates would be unrestricted above the critical flow of 8,000 cfs (the flow at which gravel bars in the lower North Fork Lewis River become inundated). However, PacifiCorp will also conduct a stranding study and habitat evaluation to better assess the potential effects of project operations on anadromous fish below the projects.

3.4. AQUATIC HABITAT ENHANCEMENT ACTIONS

3.4.1. Aquatics Fund

The Settlement Agreement establishes a \$5.72 million Lewis River Aquatics Fund ("Aquatics Fund") to support resource protection measures that mitigate for the continued operations of the Projects to: 1) enhance and improve wetlands and create additional habitat; 2) enhance and improve riparian and riverine habitats, to improve aquatic species connectivity; and, 3) increase the probability for a successful anadromous fish reintroduction program. The Aquatics Fund shall be maintained by the Licensees with all accrued interest being credited to the Aquatics Fund. PacifiCorp will provide \$5.2 million and Cowlitz PUD will provide \$520,000, with Cowlitz PUD's contribution going to projects upstream of Swift No. 2. In addition, PacifiCorp

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will provide \$10,000 annually for large woody debris projects in the mainstem of the Lewis River below Merwin Dam specifically to benefit anadromous fish.

The Licensees will provide funds over the first twenty years of the new licenses according to established schedules providing a consistent stream of funds with which to undertake and implement projects while spreading the cost of habitat enhancement projects over time. Funds also have been earmarked to provide specific biological benefits as follows: \$600,000 is designated for projects to benefit bull trout and meet bull trout recovery goals; up to \$20,000 is provided annually to maintain the Swift bypass constructed channel, if needed; \$400,000 is dedicated to projects to address reservoir mortality (should that be determined to be a problem with respect to meeting the overall downstream survival standard).

The ACC will provide oversight and guidance on Fund expenditures, giving priority to projects that will:

- (1) benefit fish recovery throughout the North Fork Lewis River, with priority to federal Endangered Species Act-listed species;
- (2) support the reintroduction of anadromous fish throughout the Basin; and
- (3) enhance fish habitat in the Lewis River Basin, with priority given to the North Fork Lewis River.

3.4.2. Large Woody Debris Program

The Settlement Agreement provides that PacifiCorp will, at the request of the ACC, store Large Woody Debris (LWD) collected from Swift Reservoir and make it available for instream projects. In addition, as noted above, PacifiCorp will provide \$10,000 annually for large woody debris projects in the mainstem of the Lewis River below Merwin Dam specifically to benefit anadromous fish. The Parties believe that making LWD available for instream projects and providing funding for LWD programs will help mitigate the projects' effects by improving, over the long-term, transport of such materials from the upper watershed to the lower river. Other biological and ecological benefits anticipated from large woody debris projects include providing: 1) rearing habitat and protection for fry and juveniles below Merwin Dam; 2) additional food base; 3) cover from predators; and 4) retention of gravels for spawning. These types of projects are viewed by the Parties as important mitigation for project impacts on the river and are expected to contribute to the success of the reintroduction program.

3.4.3. Spawning Gravel Program

Sufficient levels of gravel are needed for spawning, incubation and early rearing. Gravel in the Lewis River downstream of Merwin Dam is of an appropriate size for spawning and provides space for the fry to hide and take cover. PacifiCorp will implement a spawning gravel study and, on the basis of the study results, develop an ongoing gravel monitoring plan. If monitoring suggests that gravel levels have dropped below existing conditions, then PacifiCorp will provide

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gravel augmentation downstream from Merwin Dam. These commitments will ensure that gravel levels will be preserved and future actions taken to protect gravel levels well into the future.

3.4.4. Predator Study

Some Parties are concerned that predation may impact the success of the reintroduction program, particularly into Lake Merwin. PacifiCorp shall conduct a study of whether predation in Lake Merwin is likely to be a limiting factor to the success of the reintroduction program. This study will provide information to determine whether predation is a limiting factor to reintroduction and, if it is, may help identify steps that may be undertaken to control predation.

3.4.5. Habitat Preparation Plan

PacifiCorp will develop a Habitat Preparation Plan to release live adult hatchery anadromous salmonids for five years into each of the Swift Reservoir, Yale Lake and Lake Merwin for the purpose of preparing the habitat in those locations for the reintroduction of anadromous salmonids. This is expected to promote nutrient enrichment in the waters through decay of the adult hatchery fish, and tilling of the gravel by the released hatchery adults as they attempt to spawn. Developing and implementing the plan as described will provide for a better nutrient base as fish are reintroduced and will help to prepare the habitat in advance of reintroduction to improve overall chances for program success.

3.5. LEWIS RIVER HATCHERY PROGRAM AND SUPPLEMENTATION

3.5.1. Program Overview

Hatchery Chinook, coho, steelhead, and other species from one or more of the three facilities comprising the Lewis River Hatchery Complex (Lewis River, Merwin, and Speelyai hatcheries) have been released into the Lewis River basin for over 70 years. Although hatchery production and management strategies have changed over time, the ultimate goal of this program has been to provide adult resident and anadromous fish for commercial and recreation harvest (in lieu of lost natural production associated with dam construction). In general, the Lewis River Hatchery Complex has been able to meet this goal; however, hatchery practices and out-of-basin stock releases, mixed-stock fisheries, lost historical habitat, and habitat degradation have adversely affected a number of native Lewis River salmon and steelhead stocks. Hatchery production has been used as a strategy for maintaining fish runs; however, the release of millions of hatchery fish into a stream can impact native fish populations through competition for food and space, predation, disease outbreaks, genetic alteration, and harvest. These interactions may result in the loss or reduction of wild native fish population abundance and diversity. The Hatchery and Supplementation Plan will be designed to reduce these shortcomings by implementing improved fish culture practices, modernizing facilities, and implementing monitoring and adaptive management. The Parties believe the Settlement Agreement includes hatchery and supplementation measures that will provide for harvest opportunities, support the reintroduction program, and minimize impacts on native fish species as discussed below.

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3.5.2. Hatchery and Supplementation Programs

The Settlement Agreement provides for a hatchery and supplementation program (i) as an important element of the reintroduction program to achieve self-sustaining, naturally-producing, harvestable native anadromous salmonid species throughout their historical range in the North Fork Lewis River basin, and (ii) to support the continued harvest of resident and native anadromous fish species. The program shall be consistent with the priority objective of recovery of wild stocks in the basin to healthy and harvestable levels. The intention of the foregoing sentence is not necessarily to eliminate the hatchery program but it recognizes the importance of recovering wild stocks and a potential that hatchery production may adversely affect recovery. To ensure that this program is meeting the established goals, PacifiCorp and Cowlitz PUD will develop and implement a hatchery and supplementation plan to adaptively manage and guide the program. The plan will be designed to achieve the adult hatchery fish targets identified in the Settlement Agreement, taking into account harvest and escapement levels. Production obligations will include juveniles for the supplementation program and for harvest opportunities; and production levels will be adjusted to address the result of ongoing monitoring to achieve the same number of returning adults. Anadromous fish stocks used in the reintroduction program will include a mixture of indigenous and hatchery stocks.

Existing hatchery facilities will be modernized and upgraded to facilitate the dual roles of supporting supplementation into the upper watershed and continuing to produce fish that will support sport, commercial and tribal harvest. Additional spring Chinook rearing capacity will be obtained with the use of net pen rearing technology in the Swift power canal or in the Swift Reservoir. Supplementation techniques, including the development of upstream acclimation sites and supplementation-specific hatchery practices will be used to provide additional support to the reintroduction program. The juvenile acclimation sites will allow juveniles time to imprint to local watershed conditions prior to their seaward migration.

The Settlement Agreement includes a reduction in anadromous fish hatchery production that occurs gradually over time as natural production increases. Annual monitoring of wild production would be used to adjust juvenile hatchery fish production levels. As hatchery production is reduced, any adverse hatchery effects on natural stocks will decrease. To jump start the reintroduction program, a supplementation program above Merwin Dam will be implemented. Supplementation will help achieve a wide geographic distribution of reintroduced anadromous fish, which in turn is anticipated to increase life history diversity, gene flow, and genetic fitness of introduced stocks. Over time, the resulting naturally produced fish should be better adapted to the Lewis River and its tributaries and, theoretically, exhibit higher smolt to adult survival rates than their hatchery counterparts. Increasing the number of returning adults into the watershed will also increase system productivity.

Although hatchery production will decrease as natural production increases, the Settlement Agreement provides for a minimum level of hatchery production to be supported. This will support harvest opportunities, maintain a source of locally adapted broodstock for use if natural populations suffer a catastrophic loss, and help mitigate for the long-term loss of habitat due to inundation.

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In addition to the above anadromous species, the Settlement Agreement calls for continued production and stocking of rainbow trout in Swift Reservoir, and resident kokanee in Lake Merwin, which will provide recreational opportunities for anglers and economic opportunities for local businesses.

3.6. AQUATIC MONITORING AND EVALUATION

Numerous measures will be implemented under the Settlement Agreement to protect and enhance salmon and steelhead populations and their habitat in the Lewis River basin. PacifiCorp and Cowlitz PUD will monitor and evaluate the effectiveness of various aquatic measures including fish passage performance standards; adult anadromous salmonid migration, spawning, distribution, and abundance; water quality; hatchery supplementation programs; bull trout populations; and resident fish populations. PacifiCorp and Cowlitz PUD will prepare annual monitoring reports.

Monitoring is a necessary tool for providing data critical to adaptive management. Implementation of proposed monitoring and evaluation measures in the Settlement Agreement will help determine if environmental measures are providing the desired level of protection and enhancement for target fish species, and will aid in the development of responsive adaptive management strategies. This monitoring information will allow adaptive management decisions to be made to ensure the long-term persistence of native fish species in the Lewis River basin, as well as the ability to respond to significant changes in environmental conditions. In addition, this monitoring and evaluation program will develop information that may be helpful to regional recovery planning efforts.

3.7. SUMMARY OF AQUATICS MEASURES

The measures included in the Settlement Agreement provide significant protection and enhancement benefits to aquatic species and mitigate project impacts from operating the Merwin, Yale, and Swift No. 1 and Swift No. 2 Projects. Settlement measures will (1) expand the range of anadromous salmonids by providing access to 174 miles of habitat (2) maintain and improve water quality and ecological productivity in the project area; (3) protect salmonid species and their progeny from stranding as a result of rapid flow fluctuations; and (4) preserve and protect juvenile and adult anadromous and resident fish habitat.

Significant benefits from Settlement measures accrue to aquatic species in the following key ways:

- 1) upstream habitat to which anadromous species have not had access to for over 70 years is made available;
- 2) overall anadromous salmonid population numbers will increase over present levels due to increased production from upstream tributaries;
- 3) habitat will be improved and protected through funding of aquatic enhancement projects and improved instream flow conditions;

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- 4) hatchery production will continue to provide for harvest while eventually decreasing as success of the reintroduction program increases; and,
- 5) for bull trout, settlement measures will increase connectivity, reduce entrainment, and enhance habitat, supporting overall bull trout recovery.

These benefits and many others will contribute to the protection, mitigation and enhancement of aquatics species in the Lewis River basin.

4.0 DESCRIPTION AND RATIONALE FOR RECREATION RESOURCES

4.1. RECREATION AREA AND FACILITIES

The Merwin, Yale, and Swift developments create scenic reservoirs with unique opportunities for outdoor recreation close to large urban populations in Washington and Oregon States. The project area is an important regional recreation destination and just south of the Mount Saint Helens National Volcanic Monument. The recreation resources and setting created by the reservoirs and Company lands are an integral part of the local culture and resident quality of life.

Access to all developed recreation facilities in the project area is provided via SR 503, SR 503 Spur, and FR 90. These roads connect Interstate 5 (I-5) with the southern and eastern portions of Mount St. Helens National Monument and also provide access to Mount Adams and the Columbia River Gorge (National Scenic Area).

PacifiCorp has developed recreation facilities to provide public access to Project lands, waters, and other amenities for travelers moving through the area. These facilities support many recreation pursuits. The predominate ones include RV and tent camping, power boating, water skiing, fishing and hunting and general day-use pursuits including picnicking, sightseeing and swimming. The nearby Mount St. Helens National Volcanic Monument (Monument), Columbia Gorge National Scenic Area and the Gifford Pinchot National Forest (GPNF) are nearby significant national recreation destinations. Many visitors to these national attractions stop at project recreation facilities as part of trips through the area, especially those at Yale Lake.

The larger project area can be characterized in five recreation areas with somewhat different recreation attributes. These areas include Swift Reservoir, the Swift No. 2 canal area, Yale Lake, Lake Merwin and the Lewis River reach below Merwin Dam.

Recreation use in these different areas varies by location, activity type, and season. During the peak summer months, reservoir recreation activities typically include power boating, boat fishing, water-skiing, RV and tent camping, and personal watercraft (PWC) use; in other areas, recreation activities, such as shoreline fishing, relaxing, hunting, wildlife observation, and non-motorized boating, occur during much of the year.

These different recreation areas have unique characteristics that are defined by the presence or absence of private shoreline residences, distance from major urban areas, elevation, weather, number of users and level of support facilities.

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In general, outside of developed recreation facilities, the shorelines of the three reservoirs are accessed by boat and/or foot trails. Due to the steep terrain, dispersed shoreline sites are generally small and limited in number, particularly around Swift Reservoir and Lake Merwin. One exception is on Yale Lake along the IP Road (also called Yale Road) corridor, which receives extensive use by trail users and unauthorized motorized use for camping and off-road driving.

PacifiCorp currently has 4 campgrounds and 14 day use areas throughout the project area. Most facilities were developed and are operated by PacifiCorp. Two of the five river access sites downstream of Merwin Dam are owned by the Washington Department of Fish and Wildlife (WDFW) and are managed and maintained by PacifiCorp. In addition, the Vancouver-Clark Parks and Recreation Department developed and operates the Haapa River access site on land donated by PacifiCorp. There are no developed recreation facilities associated with Cowlitz PUD's Swift No. 2 Project, but bank fishing at the canal is allowed and the canal has been used for an annual children's fishing day. As part of the ongoing reconstruction of the Swift No. 2 Project, Cowlitz PUD shall provide an ADA-compliant bank fishing facility at the Swift No. 2 canal bridge.

4.2. SETTLEMENT AGREEMENT MEASURES

The Parties to the Settlement Agreement collaboratively developed the draft Recreation Resource Management Plan ("RRMP") which includes five programs with specific measures that will be implemented by PacifiCorp during the license terms. PacifiCorp has submitted the draft RRMP to the Commission in its Final Application for New License Volume III of III. PacifiCorp will finalize the RRMP as necessary to make it consistent with the Settlement Agreement and as directed by the Commission. The RRMP is expected to guide implementation of measures agreed to in the Settlement Agreement.

PacifiCorp's obligations under the Settlement Agreement include a: 1) capital improvement program; 2) operations and maintenance program; 3) dispersed shoreline use program; 4) use monitoring; and, 5) Interpretation and Education Program. This plan will guide park and other improvements, ensure enhanced access for the disabled, and provides for a diversity of recreation opportunities in the project area.

The operation and maintenance program details how public use and associated impacts in the project area would be managed and facilities maintained. The interpretation and education (I&E) program focuses on the history of the basin, including hydropower generation, natural, historic and cultural resources. This program also will provide information on ways recreation visitors can lower their impact on natural resources. The use monitoring program includes an early notice system to announce when project campgrounds and day use areas are full or approaching capacity. Visitors to the project area would continue to affect or be affected by adjacent recreation areas such as the Monument and GPNF. Visitation to the project area as well as the Monument and GPNF is anticipated to increase during the term of the new licenses, and as use levels at project facilities reach capacity, some facility capacity expansion will be provided by PacifiCorp. Additionally, enhanced and expanded recreation facilities would reduce perceived crowding and displacement of area residents by providing a larger supply of facilities in the areas most used by local residents.

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Recreation measures to be completed by Cowlitz PUD are identified in the Settlement Agreement itself and include: operating and maintaining an ADA-compliant bank fishing facility at the Swift No. 2 canal bridge, develop and implement an Interpretation and Education Program for recreation opportunities on lands within the Swift No. 2 project boundary, provide \$780 annually (2004 dollars) to the USDA-FS to manage project-related dispersed camping. In addition, Cowlitz PUD will continue to allow non-motorized public access to lands within the Swift No. 2 project boundary for recreational purposes, subject to certain limitations.

4.2.1. Visitor Management

PacifiCorp will continue to allow appropriate non-motorized access to all existing and future PacifiCorp-owned lands except where safety or security needs requires the exclusion of the public. When possible, similar access will be established on conservation easements obtained through the terrestrial habitat enhancement funds. PacifiCorp will also implement additional visitor management controls, such as signs, barriers, and enforcement, to ensure a high quality recreation experience and to enhance public health and safety. In general, PacifiCorp will continue to discourage dispersed upland (non-shoreline) camping and motorized use by keeping project roads gated and maintained as necessary (see Recreation Access below). An increased management program for dispersed shoreline camping will be instituted and is described in the following section on Camping.

4.2.2. Camping

Multiple new and/or improved camping facilities will be provided under the Settlement Agreement to help meet some of the anticipated overnight needs during the term of the new licenses. Campground improvements and/or expansions, including expanding camping facilities at Yale and Swift Reservoirs, would occur when needed based on monitoring. Similarly, renovation of the existing Cougar Camp, plus development of new capacity and renovation of the Beaver Bay Campground and expansion of Swift will be done when needed based on monitoring. Other camping measures include continuing to allow late season camping for hunters at Swift Forest Camp and, acquiring ownership or a long term lease of the Swift Forest Camp property plus allowing public use of existing RV dump stations (for a fee). PacifiCorp will provide funding to the USFS to better manage dispersed camping on USFS-managed land, primarily north of Yale Lake where some project-induced dispersed camping is occurring.

Dispersed shoreline camping will be managed under a plan detailed in the RRMP. Dispersed shoreline use on PacifiCorp lands adjacent to Swift and Yale Reservoirs will be managed according to the Recreation Dispersed Use Program in the RRMP, which will result in improved waste disposal management, hardening of particular dispersed sites, and the signing of some sites in sensitive resource areas as closed. Under this plan all dispersed shoreline camping will be prohibited at Lake Merwin. Shoreline camping on non-PacifiCorp lands, such as the USDA-FS lands at Drift Creek on Swift Reservoir and other agency and private lands at Swift and Yale may be included in the program if acceptable to the landowners or managers.

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4.2.3. Day Use Areas

Improvements to day use facilities under the Settlement Agreement will increase the diversity of recreation opportunities and accessibility to disabled persons along with some capacity improvements. During consultation with agencies and stakeholders, it was agreed that the project area should absorb only a limited amount of additional day use. Several existing sites will be significantly improved, including redesigning and renovating Eagle Cliff Park; providing additional day use site facilities at Merwin Park; providing several new group picnic shelters in the project area (one each at Swift Reservoir and Yale Lake and two at Lake Merwin); and upgrading and/or renovating restroom buildings at day use sites at Speelyai Bay Park and Cougar Camp. Additionally, PacifiCorp may partially fund a partnership with the USDA-FS to build and maintain a visitor center in the town of Cougar.

Several improvements to the five Lewis River access sites below Merwin Dam will be implemented, including new vault toilets and picnic tables. Below Merwin Dam on the south shore of the Lewis River PacifiCorp will retain an existing ownership (Switchback Property) for when use levels at the other river access sites reach capacity. The site will be developed similar to the existing Johnson Creek River Access Site and would include a small parking area, vault toilet and trail. Also, access for a new Clark/ Vancouver Park and Recreation District developed park will be evaluated by PacifiCorp, with a proposed location is on the southern shoreline of Merwin Reservoir above Merwin Dam.

Demand for many boating-related activities is projected to increase by at least 100 percent during the term of the new licenses. To better accommodate this anticipated increase in demand and to provide boat ramps at usable lower reservoir levels, the Settlement Agreement includes several improvements and enhancements to boating-related facilities. During the new licenses, boat ramp lanes would be extended at Speelyai Bay, Yale Park, and Beaver Bay, ranging from 6 to 45 feet (horizontal). At the Beaver Bay Campground boat launch, a new earthen berm and fence would be constructed between the boat launch parking area and the adjacent wetland complex to clearly define the separation between the parking area and wetland. The Settlement Agreement includes provisions for PacifiCorp accepting maintenance responsibility if another party builds a new boat ramp on Swift Reservoir that provides access at lower reservoir levels than the current Swift Forest Campground boat ramp.

An improved river access site would also be provided at Yale Bridge to provide a take-out area primarily for kayakers on Canyon Creek, a tributary to the Lewis River entering the system below Yale Dam. These new and improved boating facilities would accommodate most existing and projected boating needs while maintaining a quality user experience.

4.2.4. Trails

Demand for trail-related activities including day hiking and backpacking are projected to increase significantly over the next 30 years (157 and 114 percent, respectively). The Settlement Agreement provides for multiple new and/or improved trails to accommodate existing and future demand for trails. Actions would include improving the existing Marble Creek Trail from Merwin Park to ADA-accessibility standards, formalizing the trail link between Saddle Dam Park and Saddle Dam Trail including parking for vehicles with horse trailers, developing a non-

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motorized trail from Eagle Cliff Park to the USDA-FS boundary for a future connection to the USDA-FS lower Lewis River Trail, developing a shoreline trail between Cougar Campground and Beaver Bay Campground. The largest trail project is pursuing the conversion of 12 miles of shoreline private roadway on Yale Lake for non-motorized recreation use while allowing use as needed for timber harvest. This project is in Clark County's Comprehensive Plan.

4.3. SUMMARY OF RECREATIONAL BENEFITS

The Settlement Agreement provides for improved recreation access in the project area. In addition to improving and enhancing many of the existing developed recreation sites, several new recreation sites would be developed that would provide additional public access. Potential new sites include a developed trail along the existing IP (Yale) Road, a river access site at the Yale Bridge for non-motorized watercraft, a river access site below the Merwin Dam when and if needed (Switchback property), and a visitor information center in the Town of Cougar. These new sites will increase the level of public use and recreation access in the project area. Camping opportunities will be improved and expanded. Expanded opportunities are planned at Cougar Campground and Swift Campground and renovation of the existing Cougar Campground and Beaver Bay Campground.

Many existing PacifiCorp-maintained recreation facilities will be modified to comply with new ADA-accessibility requirements (ADAAG, as amended) under the Settlement Agreement. This will include upgrading or replacing worn facilities and improving accessibility to recreation facilities (boat ramps, picnic sites, campsites, parking, restrooms, trails, program areas, etc.). New ADA-accessible facilities will be provided, including at least one ADA-accessible bank fishing site (likely at or near an existing recreation site) and several ADA-accessible restrooms or vault toilet buildings at existing recreation sites.

Implementation of the Settlement Agreement will improve and enhance recreation opportunities in the project area through the term of the new licenses. It would help reduce existing and future capacity and displacement concerns. The additional and improved existing recreation facilities will require more operations and maintenance staff and would require some expanded law enforcement and other emergency services, both of which are addressed elsewhere in the Settlement Agreement.

5.0 DESCRIPTION AND RATIONALE FOR FLOOD MANAGEMENT

5.1. FLOOD MANAGEMENT OPERATIONS

The three-reservoir, four project system is currently operated to provide power production with Merwin, Yale, and Swift No. 1 also operated to meet Commission and Federal Emergency Management Agency (FEMA) requirements for flood management and minimum instream flows below Merwin Dam. In addition, PacifiCorp voluntarily maintains reservoir water levels during the recreation season.

Currently flood management operations are carried out in accordance with procedures formalized under a 1983 contract between PacifiCorp and FEMA, the terms of what are

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conditions of the existing Merwin, Yale and Swift No. 1 licenses. Under Article 43 of the Merwin license, flood control storage is increased from zero on September 20 to a minimum of 70,000 acre-feet by November 1 of each allocated among all three reservoirs. This minimum level must be maintained from November 1 through April 1. The reservoirs are then gradually refilled to their normal full pool levels by April 30 for the start of the recreation season. These procedures, documented in PacifiCorp's Standard Operating Procedure (1994), are referred to as the "High Runoff Procedures."

Under the existing High Runoff Procedures ("HRPs"), releases from Merwin Dam are made during a flood as a function of the magnitude of the estimated natural inflow and the amount of flood control storage remaining at any particular point in time. Project releases are increased in a stepped fashion as available flood storage space is filled during high runoff. After the runoff peak has passed, a similar set of requirements applies to operations on the receding or falling limb of the runoff hydrograph, with the intent of restoring the mandatory minimum flood control storage as rapidly as is reasonable in anticipation of the occurrence of another high runoff event.

5.2. SETTLEMENT AGREEMENT MEASURES AND BENEFITS

The Projects provide important flood management control for the local communities below Merwin Dam. The Settlement Agreement details how PacifiCorp will modify its HRPs to improve the level of protection during the time of year that high flow and runoff events are likely to occur, and contribute funding to agencies that provide emergency notification of high flow events on the Lewis River.

5.2.1. FEMA Agreement

PacifiCorp is subject to a 1983 agreement with the Federal Emergency Management Agency (FEMA), in which PacifiCorp is obligated to follow the existing standard operating procedures manual. However, PacifiCorp will seek to consult with FEMA and amend the FEMA agreement along with the current standard operating procedures so that they conform to the provisions of the Settlement Agreement for forecast-based high runoff procedures.

The Parties desire that FEMA make no changes to its Flood Insurance Rate Map to reduce the existing base flood elevations, and that no governmental organization rely on flood management provided by PacifiCorp's projects as a basis to allow additional development in the floodplain of the Lewis River. Agencies and other governmental agencies that are Parties will not alter projected flood potential, to the extent they have control over those issues, based on the additional flood management procedures contained in the agreement.

5.2.2. Notification Systems

PacifiCorp will provide funding for a new emergency telephone notification service for those areas of Clark County and Cowlitz County that are subject to inundation from the Lewis River to enhance early notification and response. The implementation of this system by the Counties, along with the existing system, should allow notification of all persons that may be subject to potential flooding damage from the projects. This funding may be in either the form of a one time payment plus half of the annual service maintenance cost or a set amount annually for the

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system for the term of the new licenses. The funding for the system is contingent on both Clark County and Cowlitz County having secured any additional funding required or having contracted for the notification service. As this emergency telephone notification service is a high priority for the Parties and time is of the essence, the Parties intend that this measure proceed as soon after the effective date of the Settlement Agreement as possible, without waiting until the new licenses have been issued. The counties will use the system to notify citizens of possible inundation when flow levels exceed 15,000 cfs below Merwin Dam. The Parties agree that PacifiCorp, by execution of the Settlement Agreement, does not intend to assume or incur any liability for flood damages except to the extent PacifiCorp is liable under the FEMA agreement.

PacifiCorp also has entered into a separate agreement with NOAA to reimburse NOAA for the installation and maintenance of a weather radio transmitter at Davis Peak for up to \$9,500 per year. PacifiCorp has already paid for installation of a conduit and phone line to facilitate transmissions from a USGS voice synthesizer modem intended to provide real-time flow information from the Ariel gage, and will transfer ownership of the phone line to the USGS. PacifiCorp will also reimburse the USGS for monthly operating costs of the phone line during the terms of the new licenses. These measures, although separate from the Settlement Agreement, support and further enhance the measures included in the Agreement intended to improve the efficiency and effectiveness of responses to high runoff, flood conditions.

5.2.3. High Runoff Procedures

As noted above, the Parties have agreed that PacifiCorp will seek amendment of the FEMA agreement and the manual to implement a revised high runoff procedure. This revised procedure includes:

- a) The "Flood Control Season" would be revised to November 1 through March 15 in years with a below average March runoff forecast.
- b) The term "Pre-Releases" will mean water discharged at Merwin in excess of turbine capacity and in anticipation of high runoff when the existing "hole" for high runoff exceeds 17 feet. The total discharge from Merwin during Pre-Releases of greater than 25,000 cfs will not exceed the natural inflow or 40,000 cfs, whichever is the lesser.
- c) PacifiCorp will receive 3-day river flow forecasts from a reputable third party forecasting organization (e.g. National Weather Service's River Forecasting Center) for the Lewis River basin. This third party forecast will be used by PacifiCorp in its forecast-based runoff procedure. PacifiCorp will also periodically evaluate the forecasts being used against other available forecasts with the goal of improving forecasting accuracy.
- d) PacifiCorp will calculate the forecasted flow for the Lewis River from the 3-day forecast by determining the forecasted flow that has an 85% probability of occurring. If the forecasted flow will result in inflows significant enough to utilize a portion of the 17 foot of "hole," PacifiCorp will make a Pre-Release to provide additional capacity to store inflow during the high runoff event.
- e) If and when FEMA has approved the changes described in the Settlement Agreement, PacifiCorp will modify its manual accordingly. Nothing in the Settlement Agreement

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will prevent PacifiCorp from updating or refining the forecast-based high runoff procedure in the future subject to FEMA approval and consultation with the parties.

PacifiCorp will also convene an annual meeting for the coordination of these procedures with emergency management officials and provide at least 30 days advance public notice for annual public workshops. PacifiCorp will identify an employee to work with the counties both during emergencies and on an on-going basis, and will provide a telephone number that is manned at all times.

5.3. SUMMARY OF FLOOD MANAGEMENT BENEFITS

Revisions to the HRPs as described above and as further defined in the Settlement Agreement will provide for improved forecasting, coordination with federal and local governments, and communication of high runoff events to benefit citizens of the local area affected by such events. The revised HRPs also provide for maintenance of minimum instream flows below Merwin Dam to benefit fish and other aquatic species. Recreational interests will continue to benefit as the reservoirs are managed to maintain levels to provide for recreational pursuits. In addition, PacifiCorp continues to maintain operational flexibility afforded by the projects to benefit its customers and the regional grid system.

6.0 DESCRIPTION AND RATIONALE FOR CULTURAL RESOURCES

6.1. CULTURAL RESOURCE STUDIES AND SITES

Cultural resources include prehistoric and historic-period archaeological sites, historical buildings and structures, and traditional cultural properties ("TCPs"). The latter are places that may or may not have human alterations but are important to maintaining the cultural identity of a community such as an Indian tribe. Consistent with the National Historic Preservation Act and FERC's regulations, PacifiCorp has: 1) inventoried and evaluated cultural resources at the projects to determine eligibility for listing in the National Register of Historic Places; 2) determined project effects on such resources; and, 3) consulted with affected parties, including the Gifford Pinchot National Forest, the State Office of Archaeology and Historic Preservation, and the Cowlitz Indian Tribe and Yakama Nation about mitigation and management measures.

Studies of traditional cultural properties have been conducted of the Lewis River area, both for the hydroelectric projects and for other purposes such as management of the Gifford Pinchot National Forest. Studies were guided by a Cultural Resource Group including the agencies and the Cowlitz Indian Tribe and Yakama Nation. The Area of Potential Effects ("APE") is the area in which National Register-listed or eligible resources, if they occur, could be affected by the projects. APEs for archaeological sites and historical structures were defined close to the reservoir shorelines. It encompasses the hydroelectric, recreation, and fishery enhancement and other mitigation lands. Detailed inventories were conducted for the primary APE, with inventories to be conducted as needed for specific project activities in the secondary APE.

Studies for TCPs also adopted primary and secondary APEs, which differ from those mentioned above. The primary APE for TCPs encompasses the North Fork of the Lewis River from its

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mouth to the headwaters, its tributaries, and lands lying within one mile of the river channels. The primary APE investigation placed emphasis on the locations of the four hydroelectric projects. The secondary APE provided a regional context for the TCP study, stretching from the Cowlitz River on the north, to Mount Adams on the east, and to the Columbia River on the south and west.

Most of the known archaeological sites are within the drawdown zones of PacifiCorp's reservoirs, where they can be affected by the rise and fall of pool levels as well as by the erosive effects of waves. Archaeological sites near campgrounds, fishing access spots, and other areas that experience human contact are vulnerable to erosive effects of human traffic as well as the impact of unauthorized artifact collectors. Project operations also could have several effects on the buildings and structures. Ongoing maintenance activities and upgrades to the structures could degrade the character-defining elements that make these districts National Register eligible. Ongoing project operations could effect traditional cultural properties and resources in several ways. The presence of campgrounds, particularly many of the dispersed sites, as well as logging and other forest management activities, would continue to affect native plants and animals, and the ability of Indian people to use these resources.

6.2. SETTLEMENT AGREEMENT MEASURES AND DRAFT HISTORIC PROPERTIES MANAGEMENT PLAN (HPMP)

PacifiCorp, in consultation with the Cultural Resource Group, developed a HPMP which includes, but is not limited to, the following measures and activities to mitigate for project impacts on cultural resources:

- Continued consultation with Cowlitz Indian Tribe and Yakama Nation on the management of historic properties;
- Appointment of a Project Cultural Resources Coordinator to work with the Yakama Nation and Cowlitz Indian Tribe to implement a Historic Cultural Management Plan and coordinate activities;
- Development and implementation in consultation with the Yakama Nation and Cowlitz Indian Tribe, a Monitoring Plan to identify methods and intervals for examining archaeological sites and areas affected by the Project and for identifying new sites for protection;
- Patrols to ensure the protection of cultural and traditional sites and properties to minimize artifact collecting;
- Protection and maintenance of historic buildings and structures, including preservation, rehabilitation, restoration and reconstruction activities;
- Funds to curate culturally sensitive artifacts and create educational opportunities, materials and brochures;

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- Implementation of educational and interpretative activities with the local community and with the general public; and,
- Specialized training relating to protection of cultural resources for project operations and recreation staff.

Investigations for Swift No. 2 revealed that no historic properties were present within the project boundary, nonetheless, Cowlitz PUD will follow the Cultural Resources Unanticipated Discovery Plan filed with the Commission as Volume 2 Appendix 3 in its Application for New License for Swift No. 2.

6.3. SUMMARY OF CULTURAL RESOURCES BENEFITS

Measures and activities in the HPMP as described above will provide for ongoing coordination with the Yakama Nation, Cowlitz Indian Tribe and agencies; identification and protection of traditional sites and artifacts; and educational opportunities for the public and project operators to help protect cultural and habitat values. The Settlement Agreement also provides for the introduction of native runs of fish and hatchery supplementation during the initial years of the anadromous fish reintroduction program which are important tribal goals. Fish passage facilities could also benefit the movement of lamprey which are of especial importance and significance to the Yakama Nation and Cowlitz Indian Tribe. Terrestrial habitat funding, along with implementation of a WHMP (which shall replace the Merwin Wildlife Habitat Management Plan) and protection of sensitive habitats from timber operations and construction disturbances, will help address and sustain traditional cultural values by protecting a variety of native plant and animal resources.

7.0 DESCRIPTION AND RATIONALE FOR TERRESTRIAL RESOURCES

7.1. TERRESTRIAL LANDS

Located in the Cascade Mountains and foothills of western Washington, the Lewis River basin supports a diverse assemblage of wildlife. Wildlife surveys and studies for relicensing the Lewis River Projects were conducted on all lands owned by PacifiCorp and Cowlitz PUD in the Project vicinities, and all lands within one-half mile of the project facilities and reservoirs. These studies documented 16 amphibian species, 4 reptile species, 114 bird species, and 13 mammal species (PacifiCorp and Cowlitz PUD 2003c). Most wildlife species inhabit the coniferous forest stands that dominate the area. The local distribution of these populations is continually affected by the harvest cycle and age of managed forest stands. Many of these species are dependent on the wetland and riparian habitats found in the vicinity of the Projects. Wildlife species composition and distribution has also been influenced by the Project reservoirs and associated facilities, as well as by residential and recreational developments in the Lewis River valley.

Currently, PacifiCorp implements the Merwin Wildlife Habitat Management Plan ("MWHMP"), as stipulated in Article 48 of the Merwin license order issued on October 6, 1983 following a 50-year original license period. This plan, developed in cooperation with WDFW, mitigates the effects of habitat loss from the original construction and operation of the Merwin Project. The

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plan includes a variety of measures and practices to enhance wildlife habitat on approximately 5,600 acres of PacifiCorp lands known as the Merwin Wildlife Habitat Management Area (MWHMA). Management focuses on key habitats, including forest and old-growth habitat, oak groves, shrublands, farmland, orchard areas, meadows, transmission rights-of-way (ROW) and wetlands. In addition, PacifiCorp voluntarily manages most of the land under their ownership adjacent to Swift No. 1 and Yale for the benefit of wildlife. Timber harvest activities on these lands are focused on improving wildlife habitat and are governed by the Washington Department of Natural Resources (WDNR) forest practice rules. These rules describe the minimum acceptable level of resource protection, guide how silviculture treatments are applied to the landscape, and provide recommendations for maintaining aquatic connectivity and controlling erosion along forest roads. Annual raptor surveys are conducted in conjunction with the WDFW.

Cowlitz PUD currently manages 284 acres on Devil's Backbone in a manner that allows natural succession to occur. Forest stands on these lands would not be harvested, nor are they actively managed for wildlife. Roads would be managed to maintain existing aquatic connectivity and to control erosion.

7.2. SETTLEMENT AGREEMENT FUNDS

The Settlement Agreement provides for the establishment of three funds to acquire and protect wildlife habitat, including one that will be available prior to the issuance of new licenses. These funds are established to enable the acquisition (through fee simple or through conservation easements or other protection methods) of wildlife habitat in the vicinity of the Projects (primarily Yale, Swift No. 1 and Swift No.2 Projects). The Parties believe that managing lands associated with Lake Merwin pursuant to a WHMP will satisfactorily meet PacifiCorp's obligation to mitigate for terrestrial impacts caused by the Merwin Project throughout the new license and provide for a significant measure of habitat enhancement.

In general, these funds would be used to address the following objectives:

- Provide movement corridors for elk through the Yale Project area to improve connectivity between winter and summer range areas.
- Increase the amount of protected low elevation elk winter range, including areas where forage production can be emphasized.
- Increase the amount of forested habitat that would be managed specifically to provide wildlife habitat for a broad range of wildlife species, especially in the upper portions of the project areas adjacent to Swift Reservoir where little protection or management for wildlife exists at the present time.
- Protection of riparian and wetland areas for wildlife species associated with these types of habitats.

The Yale Land Acquisition and Habitat Protection Fund is being established prior to license issuance to ensure funds are available to address high priorities for the Parties to protect some key areas for elk winter range connectivity and forage from impending development in those areas.

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The Parties have determined that the establishment of these funds is the best way to meet their collective interests and provide maximum flexibility to meet protection, mitigation and enhancement objectives for wildlife species and habitats impacted by the Projects. Consultation amongst the Parties participating in the Terrestrial Coordination Committee leading to a consensus for the use of the funds in specific acquisitions allows for better analysis of how a parcel might meet the objectives for wildlife habitat in the area, without the need to identify particular target parcels that may inflate costs. The Parties anticipate that the dollar amounts provided by the licensees to these funds, coupled with the annual funding provided for the ongoing management of these lands to meet the objectives of the WHMPs, will be sufficient to meet protection, mitigation and enhancement needs for wildlife habitat over the next license terms. The potential for the contribution of additional matching funds for the Lewis River Land Acquisition and Habitat Enhancement Fund provides incentive to enter into partnerships that leverages these funds even more.

7.3. WILDLIFE HABITAT MANAGEMENT PLANS

Other Terrestrial measures proposed under the Settlement Agreement also include the development of integrated WHMPs (PacifiCorp's WHMP will replace the MWHMP) and would specify the program for how Project-associated lands referred to in Exhibits A and B to the Settlement Agreement (including lands acquired to protect and enhance wildlife habitat in the future) would be managed over the next license periods for the benefit of wildlife species and their habitat. Similar in concept to the MWHMP, the WHMPs will be broadened to address all habitat types found on those lands and include additional specificity for other aspects of habitat management. The PacifiCorp WHMP may preclude or limit timber harvest on some PacifiCorp project lands as appropriate to meet wildlife habitat objectives. The WHMPs will likely include, but are not limited to, the following types of measures:

- Managing forests to improve habitat for big game and other native species;
- Planting native hydrophytic species to enhance wetlands;
- Installing water control structures, if needed, to improve or protect wetland hydrology;
- Planting shrubs or creating other visual barriers along roads, rights-of-way (ROWs), and open areas to provide wildlife cover;
- Managing existing grasslands and pastures, as appropriate, to meet specific objectives to enhance wildlife habitat and provide high-quality forage for big game;
- Creating/protecting habitat for species that use cavities and snags for reproduction and foraging;
- Developing and managing additional big game forage areas;
- Maintaining and/or increasing areas of late-successional forest (large trees);
- Controlling bullfrog populations in created wetlands, if feasible; and
- Developing and implementing a noxious weed control program.

The Habitat Evaluation Procedure ("HEP") completed as part of the relicensing studies serves as the baseline for developing the initial WHMPs and will be based on the objectives identified in the Settlement Agreement. The WHMPs will include an evaluation and monitoring plan to gauge the results of management activities performed under the Settlement Agreement. The Settlement Agreement also provides for reanalysis using the HEP at year 17 of the license terms to

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determine progress towards the objectives of the WHMPs, which can be used in adapting the WHMPs to better achieve wildlife habitat objectives or redefine objectives based on new science available at that time.

The Settlement Agreement provides for annual funding that the licensees will utilize or provide to implement the WHMPs based on the number of acres owned or controlled by each licensee at that time. Management funds carry over from year to year, providing greater flexibility in developing annual management programs tailored to the needed management actions at that time to meet the objectives of the WHMPs, alleviating the need to specifically identify and schedule which management actions would occur in any given year in the WHMPs.

If a licensee proposes to take actions on its lands managed under its WHMP, other than actions specifically prescribed in the Settlement Agreement or its WHMPs, and that action makes those lands no longer available for wildlife habitat, additional mitigation may be required for that loss of wildlife habitat.

7.4. OTHER BENEFITS

Other aspects of the Settlement Agreement would also have beneficial effects to terrestrial resources. For example, the availability of fish carcasses from anadromous fish passed upstream to spawn would potentially increase wildlife use of riparian habitats along tributaries to the Projects' reservoirs and in the upper North Fork Lewis River. These carcasses would also likely increase overall productivity of the area due to the addition of marine-derived nutrients.

The LWD program described above (Section 3.4.2 of the JES) may also provide benefits to wildlife. Specifically, any surplus LWD will be made available to the TCC to be placed on lands administered under the WHMPs in order to enhance the terrestrial habitat structure.

8.0 DESCRIPTION AND RATIONALE FOR SOCIO-ECONOMIC MEASURES

8.1. LAW ENFORCEMENT

There are a limited number of year-round residents within the project area and as a result there are relatively few calls for law enforcement in the project area. The main demand for law enforcement services is responding to calls from the project recreation facilities during the peak recreation season (Memorial Day through Labor Day). The seasonal nature of this demand and the low population base in the area creates special challenges. Law enforcement in the project area is primarily provided by the sheriff's departments of Clark, Cowlitz and Skamania County. In addition, the Washington State Patrol has jurisdiction for patrolling SR 503 and SR 503 spur which are the main routes through the project area. Under the terms of the Settlement Agreement, PacifiCorp will provide annual funding for the direct cost of two full-time equivalent law enforcement officers to augment the land- and marine-based traditional law enforcement activities and patrols provided by the counties as part of their responsibilities to protect public health, safety and welfare. PacifiCorp and the Counties will enter into contracts to facilitate this funding and clearly define responsibilities for enforcement activities in the project vicinity. The

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Parties believe this cooperation between PacifiCorp and the Counties will provide adequate law enforcement to mitigate for project impacts.

The reintroduction of anadromous fish to the North Fork Lewis River basin above Swift Dam, the presence of the federally-listed bull trout in the projects, and the expected improvements in wildlife habitat will also contribute to the need for additional law enforcement presence to protect these resources in the vicinity of the projects. As a result, PacifiCorp will provide annual funding to WDFW for the direct cost of one full-time equivalent law enforcement officer to augment the law enforcement activities provided by the State as part of their responsibility. PacifiCorp and WDFW will enter into contracts to facilitate this funding and clearly define responsibilities for enforcement activities in the project vicinity. The Parties believe that this enhanced fish and wildlife enforcement presence will provide significant protection to the resources.

The State and Counties will coordinate their activities to provide the most effective law enforcement possible with the available resources. PacifiCorp will, in consultation with local and state law enforcement during the contracting process, consider the need for additional law enforcement coverage that may be needed as a result of project related recreation activities.

8.2. FOREST ROAD 90 MAINTENANCE

Forest Road 90 is a paved two-lane road extending from SR 503B at the Skamania County line and continuing up the Lewis River Drainage. This road is the primary access to the Swift No. 1 and Swift No. 2 projects. As the primary east/west route through the National Forest, average daily traffic is above 600 vehicles per day and summer weekend daily traffic averages 2000 vehicles. (USDA Forest Service 2002). The segment most related to the projects begins at the Skamania County line and continues 15 miles to the Pine Creek Information Center towards the upper end of Swift Reservoir. The road has served as a primary timber haul route from federal, state and private timberlands in the area, although recent use for these purposes has declined substantially. The road is also important for public access to winter and summer recreation sites in the southern and eastern portions of the Mt. St. Helens National Volcanic Monument (Marble Mt. Snow Park, Ape Cave, Lava Canyon, Climbers Bivouac) as well recreation sites along Swift Reservoir (Swift Forest Camp, Northwoods Cabins, Eagle Cliff). This road is a primary evacuation route from the Mt. St. Helens area and is an important link to an anticipated future Forest Highway route following the Curly Creek and Wind River Highway segments.

Two bridges cross major drainages. A third bridge crosses the power canal for the Swift No. 2 project. The canal bridge would not exist at all except for the Swift No. 2 power canal. Inspections and repairs on all these bridges are dangerous and expensive.

Road maintenance funding received by the USDA Forest Service has been steadily decreasing over the last several years, principally due to the reductions in timber harvest. The previous high levels of timber harvest also necessitated a higher standard of road to carry the heavy loads. This trend is expected to continue for the foreseeable future. The USDA Forest Service has desired to enter into cost share agreements with commercial users of Forest Road 90 to share in maintenance costs. As both PacifiCorp and Cowlitz PUD must use this road to access their Swift

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No. 1 and Swift No. 2 projects, and the road is also the primary access route to project-related recreation occurring on Swift Reservoir, it is appropriate that they contribute some share of the road maintenance cost for Forest Road 90, including a share of the cost to repair the canal bridge.

Both PacifiCorp and Cowlitz PUD must use this road to access their Swift No. 1 and Swift No. 2 projects. In addition, the road is also the primary access route to project-related recreation occurring on Swift Reservoir.

Under the Settlement Agreement, PacifiCorp will pay \$7,474 and Cowlitz PUD will pay \$2,626 to the USDA Forest Service for a portion of the estimated repair costs of the canal bridge. In addition to fees that may be assessed by the USDA Forest Service for use of the road to haul heavy loads, PacifiCorp will pay \$19,980 and Cowlitz PUD will pay \$7,020 per year to the USDA Forest Service specifically for the maintenance of Forest Road 90. Both of these amounts will be adjusted for inflation to compensate for any rise in road maintenance costs. The Parties believe that this funding will adequately mitigate for the project impacts, including project related recreation, to Forest Road 90.

8.3. PINE CREEK WORK CENTER COMMUNICATIONS LINK

The USDA Forest Service has an administrative site, the Pine Creek Work Center, located near the head of Swift Reservoir, 18 miles east of Cougar on Forest Road 90. Prior to dam construction, a grounded telephone system existed to the Work Center site and was connected to commercial telephone service at the Lewis River Guard Station. Communications to the site is now provided by radio-telephone system which partially utilizes PacifiCorp facilities at Swift Dam. In order to mitigate for the ongoing project impact, PacifiCorp will continue to support the USDA-FS radio-telephone link between Swift Dam and the Pine Creek Work Center.

8.4. VISITOR INFORMATION FACILITY

There is interest among some of the parties in developing a facility in the town of Cougar to provide visitors with information, interpretation, and education on basin resources and history. Such a facility may also include curation for prehistoric artifacts and provide periodic displays highlighting the culture of local Indian tribes. If there is sufficient interest by other agencies and citizens in the area to assure availability of necessary resources to support the facility then PacifiCorp will allow the 1,000 to 1,200 square foot Visitor's Information Facility to be constructed on its property in Cougar, Washington, subject to the approval of the current lessee, the Port of Woodland. In addition PacifiCorp and Cowlitz PUD will either:

- (a) make a one-time contribution of \$75,000 (not adjusted for inflation) as matching funds for potential grants to design and construct a Visitor Information Facility in Cougar, Washington (PacifiCorp's portion of such contribution would be \$65,250 and Cowlitz PUD's portion will be \$9,750), or
- (b) provide periodic maintenance (painting, exterior window washing, power washing, building repair, etc.) for the Visitor Information Facility for the term of the New Licenses which could be used as the match for potential grants for design and

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construction of the Visitor Information Facility. If this option (b) is selected, Cowlitz PUD will pay 13% and PacifiCorp will pay 87% of the Licensees' share of the cost of such maintenance.

PacifiCorp would own the Visitor Information Facility structure upon its completion, and will allow reasonable public use of the Visitors Information Facility throughout the term of its New Licenses. The Parties anticipate that the Facility, if constructed, will be staffed approximately five months of the year (from late spring through early fall). While the construction of a Visitor Information Facility would benefit visitors to the project area, the Gifford Pinchot National Forest, and the community, if it were not constructed the Parties believe that the Settlement Agreement adequately protects, mitigates and enhance the socio-economics of the project area.

9.0 LITERATURE CITED

PacifiCorp, Meridian Environmental, Public Utility District No. 1 of Cowlitz County, Washington. 2004. Draft Biological Evaluation of Listed, Proposed, and Candidate Salmon and Steelhead Species, as Related to PacifiCorp and Cowlitz PUD's North Fork Lewis River Hydroelectric Projects. November 30, 2004.

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ORIGINAL

SETTLEMENT AGREEMENT

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AMONG
PACIFICORP
PUBLIC UTILITY DISTRICT NO. 1 OF COWLITZ COUNTY, WASHINGTON
NATIONAL MARINE FISHERIES SERVICE
NATIONAL PARK SERVICE
UNITED STATES BUREAU OF LAND MANAGEMENT
UNITED STATES FISH AND WILDLIFE SERVICE
USDA FOREST SERVICE
CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
WASHINGTON INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION
COWLITZ COUNTY
COWLITZ-SKAMANIA FIRE DISTRICT NO. 7
NORTH COUNTRY EMERGENCY MEDICAL SERVICE
CITY OF WOODLAND
WOODLAND CHAMBER OF COMMERCE
LEWIS RIVER COMMUNITY COUNCIL
LEWIS RIVER CITIZENS AT-LARGE
AMERICAN RIVERS
FISH FIRST
ROCKY MOUNTAIN ELK FOUNDATION, INC.
TROUT UNLIMITED
THE NATIVE FISH SOCIETY

DATED
NOVEMBER 30, 2004

CONCERNING THE RELICENSING OF THE
LEWIS RIVER HYDROELECTRIC PROJECTS
FERC PROJECT NOS. 935, 2071, 2111, 2213
COWLITZ, CLARK, AND SKAMANIA COUNTIES, WASHINGTON

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Schedule 9.3	Monitoring for Wild Fall Chinook
Schedule 10.8	Wildlife Objectives
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PARTIES TO THIS AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 30th day of November, 2004 (the "Effective Date") pursuant to Federal Energy Regulatory Commission (the "Commission") Rule 602, 18 C.F.R. § 385.602, by and between PacifiCorp ("PacifiCorp") and Public Utility District No. 1 of Cowlitz County, Washington ("Cowlitz PUD") (each individually, the "Licensee" and collectively, the "Licensees"); National Marine Fisheries Service ("NOAA Fisheries"); National Park Service ("NPS"); United States Bureau of Land Management ("USBLM"); United States Fish and Wildlife Service ("USFWS"); USDA Forest Service ("USDA-FS"); Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"); Washington Department of Fish and Wildlife ("WDFW"); Washington Interagency Committee for Outdoor Recreation ("IAC"); Cowlitz County; Cowlitz-Skamania Fire District No. 7 ("FD#7"); North Country Emergency Medical Service ("NCEMS"); the City of Woodland; Woodland Chamber of Commerce; Lewis River Community Council; Lewis River Citizens At-Large; American Rivers; Fish First; Rocky Mountain Elk Foundation, Inc. ("RMEF"), Trout Unlimited, and The Native Fish Society, each of which, once having signed this Agreement, are referred to individually, as a "Party" and collectively, as the "Parties."

RECITALS

A. The Lewis River Hydroelectric Projects consist of the Merwin Project (Project No. 935), Yale Project (Project No. 2071), Swift No. 2 Project (Project No. 2213), and Swift No. 1 Project (Project No. 2111) (each individually referred to as a "Project" and collectively as the "Projects") and associated powerhouses, transmission facilities, recreational facilities, hatcheries, reservoirs, canals, and lands within the Projects' Boundaries and wildlife lands managed outside the Project Boundaries. PacifiCorp owns the Merwin Yale and Swift No. 1 Project, while Cowlitz PUD owns the Swift No. 2 Project (the combined Projects of Swift No. 1 and Swift No. 2 are referred to collectively as the "Swift Projects"). Construction of the Projects began with the Merwin Dam in 1929 and was completed with the construction of Swift No. 1 and Swift No. 2 ending in 1958. The Federal Power Commission issued the first license for Merwin on November 29, 1929, which expired on November 29, 1979. That license was renewed on October 6, 1983 and was originally due to expire on April 30, 2009 but was accelerated by a Commission Order and now expires on April 30, 2006. The original license for Yale was issued on April 24, 1951 and expired on April 30, 2001. The original license for Swift No. 1 was issued on May 1, 1956 and expires on April 30, 2006. The original license for Swift No. 2 was issued on November 29, 1956, effective May 1, 1956, and expires on April 30, 2006.

B. In January 1999, PacifiCorp and Cowlitz PUD filed a request with the Commission for approval of the use of the Commission's Alternative Licensing Procedures and for the simultaneous and coordinated processing of the license applications for all four Projects. In April 1999, the Commission approved this request and issued an order accelerating the Merwin license expiration. An application to relicense the Yale Project was submitted to the Commission in 1999. The Commission granted PacifiCorp's request that processing of the Yale license application be deferred until the applications for Merwin, Swift No. 1, and Swift No. 2 were filed on or before April 30, 2004. The Parties anticipate concurrent environmental review

of all four Projects. On April 29 and 30, 1999, PacifiCorp and Cowlitz PUD initiated the collaborative process with a public meeting. A Memorandum of Agreement and Communications Protocol among the Parties was developed for the collaborative process.

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

DEFINITIONS

"*401 Certification*" is a certification issued by WDOE pursuant to section 401 of the Clean Water Act.

"*ACC*" is the Aquatics Coordination Committee described in Section 14.

"*ADAAG*" is defined in Section 11.2.1.4.

"*Adjusted for Inflation*" means that the stated dollar amount shall be adjusted according to the following formula:

$$AD = D \times (NGDP / IGDP)$$

WHERE:

AD - Adjusted dollar amount as of April 30 of the year in which the adjustment is made.

D - Dollar amount prior to adjustment.

IGDP - GDP-IPD for the fourth quarter of the year prior to the previous April 30 adjustment date.

NGDP - GDP-IPD for the fourth quarter of the year prior to the current April 30 adjustment date.

"GDP-IPD" is the value published for the Gross Domestic Product Implicit Price Deflator by the U.S. Department of Commerce, Bureau of Economic Analysis (being on the basis of 2000 = 100), in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by the Parties. If the base year for GDP-IPD is changed or if publication of the index is discontinued, the Parties shall promptly make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect.

If a sum is stated in 2003 dollars, then the first adjustment shall be as of April 30, 2004. If a sum is stated in 2004 dollars, then the first adjustment shall be as of April 30, 2005.

"*Adjustment Period*" is defined in Section 6.1.4.a.

"*Adult Trap Efficiency*" or "*ATE*" is defined in Table 4.1.4.

"*Agencies*" means NOAA Fisheries, NPS, USBLM, USFWS, USDA-FS, WDFW, and IAC, and, if a Party, Washington State Department of Natural Resources.

"*Agreement*" means the entirety of this agreement and all attached exhibits, schedules, and appendices.

"*Alternative Dispute Resolution*" or "*ADR Procedures*" refers to the dispute resolution process set forth in Section 15.10 of this Agreement.

"*American Rivers*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Americans with Disabilities Act*" or "*ADA*" means the federal statute set forth at 42 U.S.C. §§ 12101-12213.

"*Annual Release Quantity*" is defined in Section 6.1.

"*Annual Operating Plan*" is defined in Section 8.2.3.

"*Annual Plan*" is defined in Section 10.8.3.

"*Appeal*" means a request for rehearing, or appeal or other formal agency adjudication during the designated period as provided under the applicable agency's statutes and regulations.

"*Aquatics Fund*" is defined in Section 7.5.

"*Bypass Reach*" is defined in Section 6.1.

"*Canal Drain*" is defined in Section 6.1.

"*CTI*" or "*Cowlitz Indian Tribe*" is listed as a potential additional Party to this Agreement in Section 17.3.

"*City of Woodland*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Clark County*" is listed as a potential additional Party to this Agreement in Section 17.3.

"*Clark Skamania Fishers*" is listed as a potential additional Party to this Agreement in Section 17.3.

"*Clean Water Act*" means the federal statute set forth at 33 U.S.C. §§ 1251-1387.

"*Collection Efficiency*" or "*CE*" is defined in Table 4.1.4.

"*Collection Survival*" or "*CS*" is defined in Table 4.1.4.

"*Combined Flow Schedule*" is defined in Section 6.1.

"*Commission*" means the Federal Energy Regulatory Commission (defined herein), or any successor agency created during the terms of the New Licenses.

"*Consensus*" means that all Parties participating in a committee or other decision-making group consent to a decision. Consent does not necessarily imply that a Party agrees completely with a particular decision, just that the Party is willing to go along with the decision rather than block the action.

"*Conservation Groups*" means American Rivers, Fish First, RMEF, Trout Unlimited, and The Native Fish Society, and, if Parties, Clark Skamania Fishers and Federation of Fly Fishers.

"*Constructed Channel*" is defined in Section 6.1.3.a.

"*Construction Costs*" is defined in Section 6.1.3.b.

"*Consultation*" or "*Consult*" means that the Licensees shall obtain the views of and attempt to reach Consensus among the specified Parties whenever this Agreement requires the Licensees to Consult with one or more of the Parties. When Consultation is required under this Agreement, the Licensees shall allow a minimum of 30 days for the specified Parties to provide comments prior to filing written plans, reports, or other items with the Commission. If Consensus is not reached, the Licensees shall take action according to the schedule provided in this Agreement or the New Licenses and shall describe to the Commission how the Licensees' submission accommodates the comments and recommendations of the Parties. If the Licensees do not adopt a recommendation, the filing shall include the Licensees' reasons, based on Project-specific information. The Licensees shall provide the Commission with a copy of the Parties' comments. Any Party may seek to resolve such disagreements in accordance with the ADR Procedures provided under Section 15.10. The Parties may submit their own comments to the Commission.

"*Cougar Creek Conservation Covenant*" is defined in Section 10.6.2.

"*Counties*" means Cowlitz County and, if Parties, Clark County and Skamania County.

"*Cowlitz County*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Cowlitz PUD*" or "*Public Utility District No. 1 of Cowlitz County, Washington*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Decaling*" is defined in Table 4.1.4.

"*Devil's Backbone Conservation Covenant*" is defined in Section 10.6.1.

"*Downstream Transport Plan*" is defined in Section 4.1.8.e.

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

"*Endangered Species Act*" or "*ESA*" means the federal statute set forth at 16 U.S.C. §§ 1531-1544.

"*Evaluation Methodology*" is defined in Section 3.1.1.

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"*FCC*" is the Flow Coordination Committee described in Section 6.2.5.

"*FD#7*" or "*Cowlitz-Skamania Fire District No. 7*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Feasibility Report*" is defined in Section 6.1.3.a.

"*Federal Power Act*" or "*FPA*" means the federal statute set forth at 16 U.S.C. §§ 791a-828c.

"*Federation of Fly Fishers*" is listed as a potential additional Party to this Agreement in Section 17.3.

"*Fec Agreement*" is defined in Section 11.2.17.

"*FEMA*" is the Federal Emergency Management Agency.

"*FEMA Agreement*" is defined in Section 12.2.

"*Final Terms and Conditions*" refers, individually and collectively, to the following terms, conditions, recommendations, and prescriptions filed with the Commission by certain of the Agencies in final or modified form as of the date of issuance of each of the New Licenses: (1) final terms and conditions filed by USDA-FS under section 4(e) of the FPA; (2) fishway prescriptions filed by NOAA Fisheries or USFWS under section 18 of the FPA; (3) recommendations filed by NOAA Fisheries, USFWS, or WDFW under section 10(j) of the FPA; (4) terms of the 401 Certifications for the Projects given by WDOE; and (5) terms and conditions of the biological opinion(s) and incidental take statement(s) issued by USFWS and NOAA Fisheries under section 7 of the ESA. "*Fish First*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Flood Management Season*" is defined in Section 12.8.a.

"*Force Majeure*" is defined in Section 16.3.

"*Forecasted Flow*" is defined in Section 12.8.d.

"*Forest Road 90*" is defined in Section 13.2.2.1.

"*Habitat Preparation Plan*" is defined in Section 7.4.

"*Hatchery Facilities*" is defined in Section 8.1.

"*Hatcheries Capacity Limit*" is defined in Section 8.1.

"*Hatchery and Supplementation Plan*" or "*H&S Plan*" is defined in Section 8.1.

"*Hatchery and Supplementation Program*" is defined in Section 8.1.

"*Hatchery Ocean Recruits*" means those Ocean Recruits that were spawned in a hatchery.

"*Hatchery Target*" is defined in Section 8.3.

"*Hatchery Target Floor*" is defined in Section 8.3.2.3.

"*HEP*" is defined in Section 10.8.4.

"*HGMPS*" is defined in Section 8.2.

"*HPA*" means Hydraulic Project Approval, set forth in Washington State Law at RCW 77.55.100.

"*HPMP*" is defined in Section 13.1.1.

"*HSI*" is defined in Section 10.8.4.1.

"*I&E Program*" is defined in Section 11.2.5.

"*IAC*" or "*Washington Interagency Committee for Outdoor Recreation*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*In Lieu Fund*" is defined in Section 7.6.

"*Inconsistent*" or "*Inconsistency*" means one or more of the Final Terms and Conditions, terms in the New Licenses (defined below), Permits, or other measures issued by courts or agencies materially, either individually or cumulatively, conflicts with, or adds to, omits portions of or prevents implementation of the PM&E Measures (defined below) and other commitments made in this Agreement.

"*Injury*" is defined in Table 4.1.4.

"*Interests in Land*" is defined in Section 10.1.

"*Issuance*" or "*Issued*" means that WDOE has issued its 401 Certification for the referenced New License(s), NOAA Fisheries and USFWS have issued their biological opinions and incidental take statements for the referenced New License(s), and the Commission has issued the referenced New License(s).

"*Issuance of all New Licenses*" means that WDOE has issued its 401 Certification for all four of the New Licenses, NOAA Fisheries and USFWS have issued their biological opinions and incidental take statements for all four of the New Licenses, and the Commission has issued the last of the four New Licenses.

"*Juvenile Production*" is defined in Section 8.4.

"*Juvenile Production Targets*" is defined in Section 8.4.1.

"LCFRB" or "The Lower Columbia Fish Recovery Board" is listed as a potential additional Party to this Agreement in Section 17.3.

"Lewis River Citizens At-Large" refers to John Clapp of 9315 N.E. Etna Road, Woodland, Washington, and Noel Johnson of 6412 N.W. Amidon Road, Woodland, Washington, and is listed in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"Lewis River Fund" is defined in Section 10.3.

"License" means the regulatory authorization for construction, maintenance, and operation of a hydroelectric project subject to the jurisdiction of the Commission pursuant to the FPA.

"Licensee" and "Licensees" are defined in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"Lower Lewis River Access Sites" means the Cedar Creek River Access Site, Island River Access Site, Merwin Hatchery River Access Site, Johnson Creek River Access Site, and Lewis River Hatchery River Access Site.

"LRC" is the Lewis River Recreation Advisory Committee described in Section 11.2.16.

"Lewis River Community Council" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"LWD" means large woody debris.

"LWD Fund" is defined in Section 7.1.1.

"M&E Plan" is defined in Section 9.1.

"Manual" is defined in Section 12.2.

"Merwin Downstream Bull Trout Facility" is defined in Section 4.10.1.

"Merwin Downstream Facility" is defined in Section 4.6.

"Merwin Trap" is defined in Section 4.2.b.

"Merwin Trap Upgrades" is defined in Section 4.2.c.

"Merwin Upstream Transport Facility" is defined in Section 4.3.

"National Environmental Policy Act" or "NEPA" means the federal statute set forth at 42 U.S.C. §§ 4321-4370f.

"Natural Ocean Recruits" means those Ocean Recruits that were produced on natural spawning grounds.

"*Natural Production Threshold*" is defined in Section 8.3.2.3.

"*NCEMS*" or "*North Country Emergency Medical Service*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*New Information*" is defined in Section 4.1.9.e.

"*New License*" or "*New Licenses*" means the license for one or more Projects contained in an order or orders issuing new licenses and issued by the Commission under the FPA, 16 U.S.C. §808.

"*NOAA*" is the National Oceanic and Atmospheric Administration.

"*NOAA Fisheries*" or "*National Marine Fisheries Service*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*NPS*" or "*National Park Service*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to this Agreement."

"*Ocean Recruit Methodology*" is defined in Section 8.3.2.2.

"*Ocean Recruits*" is defined in Section 8.1.

"*Other Governmental Entities*" means Cowlitz County and City of Woodland, and, if Parties, Clark County, Skamania County, and ICFRB.

"*Overall Downstream Survival*" or "*ODS*" is defined in Table 4.1.4.

"*PacifiCorp*" is an Oregon corporation and is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Party*" and "*Parties*" are defined in the first paragraph of this Agreement, entitled "Parties to This Agreement," and include additional entities that become Parties pursuant to Section 17.3.

"*Permit*" and "*Permits*" are defined in Section 2.2.

"*Phase I Status Check*" is defined in Section 3.4.

"*Phase II Status Check*" is defined in Section 3.5.

"*Phase One*" is defined in Section 11.2.2.2.

"*Phase Three*" is defined in Section 11.2.2.4.

"*Phase Two*" is defined in Section 11.2.2.3.

"*Plateau Change*" is defined in Section 6.2.2.b.

"*Plateau Step*" is defined in Section 6.2.2.a.

"*Pre-Releases*" is defined in Section 12.8.b.

"*Proceeding*" is defined in Section 2.2.

"*Project*" and "*Projects*" are defined in Recital A.

"*Project Boundary*" refers, for the Yale, Merwin, and Swift No. 1 Projects, to the boundary of each Project described in Exhibit G to each of PacifiCorp's Applications for New Licenses for the Yale, Merwin, and Swift No. 1 Projects (submitted in April 2004 for Merwin and Swift No. 1, and April 1999 for Yale), and for the Swift No. 2 Project, to the boundary of the Swift No. 2 Project described in Exhibits G-1 and G-6 (submitted to the Commission in April 2004).

"*Protection, Mitigation, and Enhancement Measures*" or "*PM&E Measures*" refers to the measures set forth in Sections 3 through 13 of this Agreement for the protection and enhancement of the environment of the Projects and for the mitigation of any adverse impacts of the Projects.

"*Ramping*" is defined in Section 6.2.1.

"*RDSUP*" is defined in Section 11.2.1.1.

"*Recreation Resources Management Plan*" or "*RRMP*" is defined in Section 11.1.

"*Reintroduction Outcome Goal*" is defined in Section 3.1.

"*Release Points*" is defined in Section 6.1.

"*Release Ponds*" is defined in Section 4.4.3.

"*Relicensing Proceeding*" means the process of applying for and obtaining New Licenses for the Projects.

"*Reservoir Survival*" is defined in Section 7.5.3.

"*Resource Projects*" is defined in Section 7.5.

"*RMEF*" or "*Rocky Mountain Elk Foundation, Inc.*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*RRMP*" is defined in Section 11.1.

"*Section*" includes the referenced section number as well as all subsections of and tables included in that particular section.

"*Services*" means NOAA Fisheries and USFWS.

"*Skamania County*" is listed as a potential additional Party to this Agreement in Section 17.3.

"*Swift Downstream Facility*" is defined in Section 4.4.1.

"*Swift Fund*" is defined in Section 10.2.

"*Swift Projects*" is defined in Recital A.

"*Swift Upstream Bull Trout Facility*" is defined in Section 4.10.2.

"*Swift Upstream Facility*" is defined in Section 4.8.

"*TCC*" means the Terrestrial Coordination Committee described in Section 14.

"*The Native Fish Society*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Tracking Account*" means a record maintained by a Licensee either electronically or on paper that functions like a checkbook register that is used to keep track of the amount of funding that such Licensee is obligated to provide under a particular provision of this Agreement. Tracking Accounts shall indicate the amounts disbursed, interest accrued, if any, and remaining balance available for expenditure for each fund. The Licensees shall maintain separate Tracking Accounts for each fund established under this Agreement. A Tracking Account does not represent an actual cash or bank account. Interest on funds is provided in the following Sections: 7.7, 10.5, and 10.8.2.3.

"*Transported Anadromous Species*" is defined in Section 4.1.7.

"*Transported Species*" is defined in Section 4.1.7.

"*Trout Unlimited*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Turbine Entrapment*" is defined in Section 9.2.1.f.

"*Turbine Survival*" is defined in Section 9.2.1.g.

"*Undeveloped Lands Agreement*" is defined in Section 11.2.17

"*Upper Release Point*" is defined in Section 6.1.

"*Upstream Passage Survival*" or "*UPS*" is defined in Table 4.1.4.

"*Upstream Transport Plan*" is defined in Section 4.1.8.c.

"*USBLM*" or "*United States Bureau of Land Management*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*USDA-FS*" or "*USDA Forest Service*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to this Agreement."

"*USFWS*" or "*United States Fish and Wildlife Service*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*USGS*" means the United States Geological Survey. "*WDFW*" or "*Washington Department of Fish and Wildlife*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*WDNR*" or "*Washington State Department of Natural Resources*" is listed as a potential additional Party to this Agreement in Section 17.3.

"*WDOE*" means the Washington Department of Ecology.

"*Wildlife Habitat Management Plan*" or "*WHMP*" is defined in Section 10.8.

"*Woodland Chamber of Commerce*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*WSDOT*" means the Washington State Department of Transportation.

"*Yakama Nation*" or "*Confederated Tribes and Bands of the Yakama Nation*" is listed as a Party in the first paragraph of this Agreement, entitled "Parties to This Agreement."

"*Yale Downstream Bull Trout Facility*" is defined in Section 4.10.1.

"*Yale Downstream Facility*" is defined in Section 4.5.

"*Yale Fund*" is defined in Section 10.1.

"*Yale Upstream Bull Trout Facility*" is defined in Section 4.10.2.

"*Yale Upstream Facility*" is defined in Section 4.7.

SECTION 1: PURPOSE AND EFFECT OF THIS AGREEMENT

1.1 Purpose of Agreement. The Parties have entered into this Agreement for the purpose of resolving all issues between the Licensees and the other Parties regarding relicensing of the Projects and for the purpose of obtaining a Commission order or orders issuing to PacifiCorp and to Cowlitz PUD New Licenses for their respective Projects, subject to the Protection, Mitigation, and Enhancement Measures set forth in this Agreement. For these purposes, the Parties agree that this Agreement is fair and reasonable and in the public interest within the meaning of Commission Rule 602 governing offers of settlement, 18 C.F.R. § 385.602. The Parties request that the Commission accept this Agreement in its license orders and incorporate, without material modification, all of PacifiCorp's obligations under this Agreement into each of its New Licenses and all of Cowlitz PUD's obligations under this Agreement into its New License. The Parties request that the Commission incorporate into each of the New Licenses for both PacifiCorp and Cowlitz PUD any obligations that both Licensees are obligated to perform under this Agreement. The Parties request that the Commission refrain from including in the New Licenses any conditions Inconsistent with this Agreement or any PM&E Measures or other commitments contained in this Agreement, except as may be necessary to enable the Commission to ascertain and monitor the Licensees' compliance with the New Licenses, and to comply with the FPA and its implementing regulations and other federal and state laws. Each of the Parties agrees that, except as specifically provided below, each Licensee's performance of its obligations under this Agreement and the Final Terms and Conditions will be consistent with and will fulfill the Licensee's existing statutory and regulatory obligations as to each Party relating to relicensing and operation of the Projects under the New Licenses. Subject to the terms of this Agreement, so long as the Licensees faithfully implement the terms of this Agreement and the New Licenses, the other Parties will not assert before the Commission or in other proceedings that the Licensees' operation of the Projects under the New Licenses is in breach of or inconsistent with the laws referenced in Section 1 of this Agreement. Subject to the terms of this Agreement, so long as the Licensees faithfully implement the terms of this Agreement and the New Licenses, the CIT and the Yakama Nation will not assert before the Commission or in other proceedings that the Licensees' operation of the Projects under the New Licenses is inconsistent with the rights of the CIT and the Yakama Nation referenced in Section 1.1.4 below. So long as a Licensee does not withdraw from this Agreement in the manner provided in Section 15 below, such Licensee's obligations under this Agreement and its New License(s) shall include any Inconsistent provisions incorporated into the New License(s) or any Permits. Without limiting the generality of the preceding sentences, the Parties agree that each Licensee's performance of its obligations in this Agreement and the Final Terms and Conditions are consistent with and will fulfill all obligations under the following laws:

1.1.1 Section 18 of the FPA, 16 U.S.C. § 811. Section 18 of the FPA states that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as the Secretaries of the U.S. Departments of Commerce (through NOAA Fisheries) and of the Interior (through USFWS) may prescribe. NOAA Fisheries and USFWS intend that any Final Terms and Conditions under section 18 of the FPA will be consistent with the relevant provisions of this Agreement, and that any Inconsistency shall be resolved in accordance with Section 15 below.

1.1.2 Section 4(e) of the FPA, 16 U.S.C. § 797(e). Section 4(e) of the FPA states that the Commission may issue a license for a project on a reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired. Such a reservation includes, without limitation, USDA-FS- and USBLM-administered land. Section 4(e) of the FPA requires that a Commission license for a project located on a reservation include the conditions that the Secretary of the department under whose supervision the reservation falls deems necessary for the adequate protection and utilization of such reservation. USDA-FS and USBLM intend that any Final Terms and Conditions under section 4(e) of the FPA will be consistent with the relevant provisions of this Agreement and that any Inconsistency shall be resolved in accordance with Section 15 below.

1.1.3 Section 10(j) of the FPA, 16 U.S.C. § 803(j). Section 10(j) of the FPA requires the Commission, when issuing a license, to consider and include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the Projects. NOAA Fisheries, USFWS, and WDFW intend that their Final Terms and Conditions under section 10(j) of the FPA will be consistent with the relevant provisions of this Agreement and that any Inconsistency shall be resolved in accordance with Section 15 below.

1.1.4 Federal Trust Responsibility and Treaty Rights. Nothing in this Agreement is intended to nor shall it in any way abridge, limit, create, expand, diminish, abrogate, adjudicate, acknowledge, or resolve any Tribal or Indian right reserved or protected in any treaty, executive order, statute, court decree, federal trust responsibility, or other federal law. Nothing in this Agreement shall establish or be used as evidence of the absence or presence of usual and accustomed places, grounds, stations, traditional use areas, aboriginal rights, or any other Tribal or Indian rights or claims under any treaty of the United States or federal law. The Projects are not located upon tribal reservation land.

1.1.5 Threatened and Endangered Species. Section 7 of the ESA requires a federal agency to ensure that its actions are not likely to jeopardize the continued existence of federally listed or proposed-for-listing threatened or endangered species or result in the destruction or adverse modification of designated or proposed-for-designation critical habitat. The Commission's relicensing of the Projects will be the basis for a section 7 consultation between the Commission and NOAA Fisheries and USFWS. It is anticipated that the Commission will use the provisions of this Agreement as the proposed federal action, and any ESA biological opinions and incidental take statements issued by NOAA Fisheries and USFWS relating to relicensing of the Projects will address and evaluate such provisions. The Commission has designated PacifiCorp and Cowlitz PUD as the nonfederal representatives for the purpose of preparing draft biological assessments for the proposed federal action (which is anticipated to be consistent with the provisions of this Agreement). NOAA Fisheries and USFWS anticipate that the measures in this Agreement will be adequate to avoid jeopardy to the continued existence of any federally listed threatened or endangered species, to avoid the destruction or adverse modification of any designated critical habitat, and to minimize any incidental take occurring as a result of the Projects' operations for listed threatened or endangered species. In addition, NOAA Fisheries anticipates that the measures in this Agreement will be adequate to avoid jeopardy to the continued existence of any species proposed for listing under the ESA as a threatened or endangered species. As of the Effective Date, there are no species proposed for

listing by the USFWS that are affected by the Projects and there is no habitat proposed for designation as critical habitat by either USFWS or NOAA Fisheries. As of the Effective Date, consultation under section 7 of the ESA has not been completed on relicensing of the Projects consistent with the PM&E Measures and any other relevant commitments in this Agreement. Therefore, NOAA Fisheries and USFWS do not formally bind themselves to take any particular action with respect to ESA compliance or to issue any specific terms and conditions in the biological opinions and incidental take statements. NOAA Fisheries and USFWS are not prejudging the outcome of any consultation and expressly reserve the right, consistent with federal law, to make findings and take such future actions as necessary to meet their obligations under the ESA. The Services expressly contemplate that the Commission will take subsequent actions with respect to issuance of the New Licenses, and any subsequent modification, change, condition, or omission made with respect to the New Licenses, must fully satisfy the requirements of ESA section 7, including the terms and conditions contained in any biological opinions and incidental take statements issued by NOAA Fisheries and/or USFWS. The Parties acknowledge that the Commission may not issue the New Licenses until it has completed ESA section 7(a)(2) consultation with NOAA Fisheries and USFWS with respect to any threatened or endangered species that may be affected by the Projects. The Parties reserve the right to request rehearing and seek judicial review in the event that the Commission issues the New Licenses prior to completing consultation.

1.1.6 401 Certification. Except as provided expressly in Section 6.1.7 below, the non-utility Parties do not take a position on the adequacy of the PM&E Measures to meet water quality standards and uses. The Licensees shall include, without limitation and in addition to addressing all water quality standards, in their respective applications for 401 Certification, methods to bring the Projects into compliance with numerical water quality standards, if necessary. PacifiCorp has developed a draft Water Quality Adaptive Management Plan and has distributed copies to the Parties. Cowlitz PUD has developed a draft Water Quality Assessment and Management Plan and has distributed copies to the Parties. While it is uncertain whether such plans will be accepted as adequate by WDOE, the Licensees acknowledge that inclusion in the 401 Certification of the measures contemplated by PacifiCorp's draft Water Quality Adaptive Management Plan and Cowlitz PUD's draft Water Quality Assessment and Management Plan submitted to WDOE would not be Inconsistent with this Agreement, provided that if WDOE requires additional material measures it may be considered an Inconsistency. Measures required, if any, by WDOE as part of its 401 Certification to resolve the water right at the Speelyai Power Canal Diversion shall not be considered Inconsistent with this Agreement.

1.1.7 NEPA Analysis. In connection with the issuance of the New Licenses, the Commission will complete an environmental analysis under NEPA. The Parties intend that the Commission will incorporate the PM&E Measures under this Agreement into the Commission's preferred alternative for the draft and final environmental analysis under NEPA. If the draft or final environmental analysis issued by the Commission indicates that the final license order may contain measures that are Inconsistent with this Agreement, the Parties will confer to determine how to preserve the benefits of this Agreement.

With respect to PM&E Measures to be implemented by the Licensees on National Forest System or USBLM lands, if the PM&E Measure is specified as to nature and location in the Commission's environmental analysis (such as changes to shoreline recreation sites under Section 11.2.1.1 below), and is consistent with this Agreement, then USDA-FS or USBLM,

respectively, agree no further analysis is necessary from USDA-FS or USBLM, respectively, and USDA-FS or USBLM shall not unreasonably withhold written authorization for such activities. If any PM&E Measure is not specified as to its nature and location in the Commission's environmental analysis (such as Juvenile Acclimation Sites to be created under Section 8.8 below), then the Licensees shall conduct further environmental analysis as determined by the Commission and shall obtain written authorization of USDA-FS or USBLM prior to implementation of the measure. For any proposed measure on USDA-FS or USBLM lands outside existing Project Boundaries, the Licensees shall request a USDA-FS or USBLM special use authorization for the measure. The Licensees shall fund any USDA-FS or USBLM environmental analyses related to the issuance of the special use authorization. USDA-FS or USBLM does not intend that its written authorization of any project shall impose upon the Licensees conditions inconsistent with this Agreement or impose any additional costs or charges beyond stipulations for fire protection, safety, or other standard special use authorization measures consistent with the requirements in effect at the time for implementation of similar actions on National Forest System or USBLM lands prior to their being undertaken by the Licensees or their contractors. This paragraph does not apply to projects implemented by third parties or Parties other than the Licensees, or projects funded from the Aquatics Fund, the In Lieu Fund, the Swift Fund, the Yale Fund, the LWD Fund, or the Lewis River Fund, for which such costs shall be paid from the funds or by project sponsors. The provisions of this paragraph are subject to changes in statutes or regulations governing USDA-FS or USBLM NEPA procedures.

1.2 Limitations. This Agreement establishes no principle or precedent with respect to projects or matters not covered by this Agreement, or with regard to any Party's participation in any other pending or future licensing proceeding. Further, no 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. Without affecting the enforceability of this Agreement, by entering into this Agreement, no 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 the Relicensing Proceeding. This Agreement shall not be offered as evidence or cited as precedent except in a proceeding to establish the existence of or to enforce or implement this Agreement including filing this Agreement with the Commission under 18 C.F.R. § 385.602. This Section 1.2 shall survive any termination of this Agreement.

1.3 Representations Regarding Consistency and Compliance with Statutory Obligations. By entering into this Agreement, the Agencies represent that they believe their statutory and other legal obligations are, or can be, met through implementation of this Agreement and the Final Terms and Conditions. Nothing in this Agreement shall be construed to limit any government agency with jurisdiction directly related to the Projects from complying with its obligations under applicable laws and regulations or from considering and responding to public comments received in any required environmental review or regulatory process related to the Projects, in accordance with this Agreement. This Agreement shall not be interpreted to predetermine the outcome of any environmental review or appeal process.

1.4 License Terms. The Licensees will seek a 50-year term for each of the New Licenses and the Parties agree to support or not to oppose such request.

1.5 Commission Approval. The Parties recognize that implementation of the PM&E Measures contained in this Agreement, including development of plans, studies, and designs, may be subject to the approval of the Commission. The Licensees shall file plans, studies, and designs with the Commission for review and approval, as necessary. The Licensees shall notify the Aquatic Coordination Committee ("ACC") (Section 14) or the Terrestrial Coordination Committee ("TCC") (Section 14) as appropriate, of any changes required by the Commission.

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SECTION 2: ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1 Commission Filings. Following the Effective Date, on or about November 30, 2004, PacifiCorp and Cowlitz PUD shall jointly file with the Commission a fully executed copy of this Agreement in accordance with Commission regulations at 18 C.F.R. § 385.602.

2.2 Permits. In accordance with this Agreement, PacifiCorp and Cowlitz PUD shall apply for and use their best reasonable efforts to obtain in a timely manner and in final form all necessary federal, state, regional, and local permits, licenses (not including the New Licenses), authorizations, certifications, determinations, and other governmental approvals (each individually, a "Permit" and collectively, the "Permits") for purposes of implementing this Agreement and the New Licenses for their respective Projects. The Parties anticipate that the Permits will be issued in a timely manner. PacifiCorp and Cowlitz PUD shall also use their best reasonable efforts to obtain the New Licenses in a timely manner. Except as expressly provided in this Agreement, PacifiCorp and Cowlitz PUD shall not be required by this Agreement to implement any action under this Agreement or the Final Terms and Conditions until all applicable Permits required for that action are obtained and are final. For the purposes of this provision, "final" means that any and all applicable periods for a petition for administrative or judicial rehearing, review, or appeal or any similar proceeding (collectively, "Proceeding") relating to any Permit have expired without any such Proceeding having been commenced or, in the event any such Proceeding is commenced, any such Proceeding is terminated. In the event any Permit is not obtained and final in a timely manner, the Parties shall confer to evaluate the effect of such delay on implementation of this Agreement and seek to develop actions to respond to the delay. If prolonged delay in performance of one or more PM&E Measures due to delay in receiving required Permits materially reduces the benefit of this Agreement, a Party may initiate the ADR Procedures and, if unsuccessful in agreeing upon alternative actions or courses of performance, may withdraw from this Agreement. In addition, if delay in obtaining a Permit prevents performance of one or more PM&E Measures for a prolonged period, the Parties recognize that reinitiation of consultation under the ESA may be required.

2.3 Actions Required upon License Issuance. Where this Agreement requires an action to be implemented or completed at or upon issuance or Issuance of one or more of the New Licenses, such action shall not be required to be implemented or completed until the 10th day following the issuance or Issuance of the referenced New License or New Licenses.

SECTION 3: ANADROMOUS FISH REINTRODUCTION OUTCOME GOALS

3.1 Anadromous Fish Reintroduction Outcome Goals. The reintroduction outcome goal of the comprehensive aquatics program contained in Sections 4 through 9 of this Agreement is to achieve genetically viable, self-sustaining, naturally reproducing, harvestable populations above Merwin Dam greater than minimum viable populations ("Reintroduction Outcome Goal"). For the purpose of this Section 3, "harvest" includes all forms of harvest including, without limitation, commercial, tribal, and recreational. Notwithstanding the previous sentences, the Licensees shall not be responsible for limiting factors that are not related to Project effects, e.g., harvest. The Licensees shall implement the relevant PM&E Measures in this Agreement, including the commitments in this Section 3, to achieve Reintroduction Outcome Goals for stocks of Chinook, steelhead, and coho that are being transported under this Agreement. These Reintroduction Outcome Goals are separate from and shall have no relationship to the targets listed under Section 8 below relating to numbers of returning hatchery fish.

3.1.1 Phase I Reintroduction Outcome Goals. Prior to the later of: (a) the 27th anniversary of Issuance of all New Licenses, or (b) the 12th year after reintroduction of anadromous fish above Swift No. 1 Dam together with the operation of both the Merwin Upstream Transport Facility (Section 4.3) and the Swift Downstream Facility (Section 4.4), the Services, after discussion with the ACC, shall determine how they will assess whether Reintroduction Outcome Goals have been met, e.g., metric, model, qualitative factors ("Evaluation Methodology"). The determination shall take into account the variability of the factors influencing the success of the comprehensive aquatics program over time such as cycles of ocean conditions and will include an appropriate temporal component in developing and applying the Evaluation Methodology. The Services will evaluate the program pursuant to Section 3.4 using the Evaluation Methodology to determine if Reintroduction Outcome Goals have been achieved.

3.1.2 Phase II Reintroduction Outcome Goals. Prior to the later of the following: (a) the 37th anniversary of Issuance of all New Licenses, or (b) the seventh year after the Phase I Status Check (Section 3.4), the Services, in Consultation with the ACC, shall determine whether changed circumstances make it appropriate to update the Reintroduction Outcome Goals applied in the Phase I Status Check and, if so, how to update such Reintroduction Outcome Goals.

3.2 Monitoring and Evaluation. The Licensees, in Consultation with the ACC and with the final approval of the Services, shall monitor progress for achieving Reintroduction Outcome Goals periodically as set forth in Section 9. The results of such monitoring shall be included in the reports on monitoring and evaluation to be provided by the Licensees under Section 9.1 below. The Licensees' monitoring shall rely on the work of regional recovery groups (e.g., the Technical Recovery Team and the LCFRB) relating to North Fork Lewis River populations to the extent possible, in combination with the data gathered by the Licensees under Section 9 below. The Licensees shall supplement such work if needed to determine whether the Reintroduction Outcome Goals have been achieved or whether they are on track to being achieved on a timely basis.

3.3 First Phase of Aquatics Program. Prior to the Phase I Status Check (Section 3.4), the Licensees shall implement Sections 4 through 9 below.

3.4 Phase I Status Check. On or after the later of: (a) the 27th anniversary of Issuance of all New Licenses, or (b) the 12th year after reintroduction of anadromous fish above Swift No. 1 Dam together with the operation of both the Merwin Upstream Transport Facility (Section 4.3) and the Swift Downstream Facility (Section 4.4), the Services, using the approach developed pursuant to Section 3.1.1 above, shall determine whether the Reintroduction Outcome Goal has been achieved for each North Fork Lewis River anadromous fish population that is being transported pursuant to this Agreement ("Phase I Status Check").

3.4.1 Reintroduction Outcome Goals Met. If the Phase I Status Check shows that all Reintroduction Outcome Goals have been met, the Licensees shall continue to implement the measures provided in Sections 4 through 9 for the remainder of each New License term, including adjusting and modifying fish passage facilities as needed to meet relevant performance standards as provided in Section 4.1.6.

3.4.2 Any Reintroduction Outcome Goal Not Met. If the Phase I Status Check shows that any of the Reintroduction Outcome Goals have not been met, PacifiCorp shall perform a limiting factors analysis, in Consultation with the ACC and subject to final approval and acceptance of the Services.

a. If the limiting factors analysis concludes, for all Reintroduction Outcome Goals that are not being met, that all significant limiting factors contributing to the failure to meet such goals are unrelated to Project effects, the Licensees shall continue implementation of the measures contained in Sections 4 through 9, including adjusting and modifying fish passage facilities as provided in Section 4.1.6, but shall not be obligated to implement any additional measures. Examples of factors unrelated to Project effects include, but are not limited to, harvest, upstream of Merwin off-Project habitat conditions (e.g., degradations in habitat due to forest management practices and natural catastrophic events), and ocean conditions.

b. If the limiting factors analysis concludes that a Project effect is a significant limiting factor in any Reintroduction Outcome Goal not being met, in addition to continuing implementation of the measures contained in Sections 4 through 9, including adjusting and modifying fish passage facilities as provided in Section 4.1.6, PacifiCorp shall implement those actions that the Services, informed by discussions with the ACC in a meeting that PacifiCorp shall convene, determine would provide biological benefits adequate to thoroughly offset the impact of the identified Project-related limiting factor(s) for North Fork Lewis populations (e.g., habitat enhancement projects, continuing juvenile supplementation, etc.) provided the Licensees shall not be required to (1) make structural or operational changes with respect to their generating facilities or Project reservoirs to achieve standards, (2) replace any fish passage facility with another passage facility, or (3) install additional collection and transport facilities or alternative fish passage facilities.

3.5 Phase II Status Check. On or after the later of: (a) the 37th anniversary of Issuance of all New Licenses, or (b) the seventh year after the Phase I Status Check, the Services, using the approach developed pursuant to Section 3.1.1 above, shall determine whether the Reintroduction Outcome Goals have been achieved ("Phase II Status Check").

3.5.1 Reintroduction Outcome Goals Met. If the Phase II Status Check shows that the Reintroduction Outcome Goals have been met, the Licensees shall continue to implement the measures provided in Sections 4 through 9 for the remainder of each New License term, including adjusting and modifying fish passage facilities as needed to meet certain performance standards as provided in Section 4.1.6.

3.5.2 Any Reintroduction Outcome Goal Not Met. If the Phase II Status Check shows that any of the Reintroduction Outcome Goals have not been met, Pacificorp shall perform a limiting factors analysis, in Consultation with the ACC and subject to the final approval and acceptance of the Services.

a. If the limiting factors analysis concludes, for all Reintroduction Outcome Goals not being met, that all significant limiting factors contributing to the failure to meet such goals are unrelated to Project effects, the Licensees shall continue implementation of the measures contained in Sections 4 through 9, including adjusting and modifying fish passage facilities as provided in Section 4.1.6, but shall not be obligated to implement any additional measures. Examples of factors unrelated to Project effects include, but are not limited to, harvest, upstream of Merwin off-Project habitat conditions (e.g., degradations in habitat due to forest management practices and natural catastrophic events), and ocean conditions.

b. If the limiting factors analysis concludes that a Project effect is a significant limiting factor in any Reintroduction Outcome Goal not being met, in addition to continuing implementation of the measures contained in Sections 4 through 9, including Facility Adjustment and Facility Modifications as provided in Section 4.1.6, the Licensees shall consult with the Services to determine what further actions by the Licensees would be necessary to meet Reintroduction Outcome Goals. Such actions may include, without limitation, consideration of structural or operational changes with respect to the generating facilities or Project reservoirs or construction of new or replacement passage facilities. In the event that the Services and the Licensees cannot reach agreement on implementing such further actions, the Services may exercise their applicable authorities to direct what actions should be implemented, subject to the approval of the Commission.

SECTION 4: FISH PASSAGE MEASURES

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4.1 Common Provisions Regarding Fish Collection and Transport Facilities. The provisions of this Section describe the design, construction, and operation of passage facilities at the Projects for upstream and downstream collection and transport of Chinook, coho, steelhead, bull trout, and sea-run cutthroat. For each of the passage facilities, at an early stage in the study and design process, the appropriate Licensee (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall develop an implementation schedule and timeline that identifies each significant step in the process, starting from study selection and extending through completion of the facility. Such implementation schedules and timelines shall be provided to the ACC.

4.1.1 Studies to Inform Design Decisions. PacifiCorp, in Consultation with the ACC and subject to the final approval of the Services, shall develop and implement studies to inform the design of upstream and downstream fish passage facilities described in Sections 4.3 to 4.8 and 4.10 (including the Merwin Upstream Transport Facility) with the goal of improving the likelihood that the passage facilities will be successful as initially constructed. Needed information may include the hydraulic characteristics of the Swift No. 1, Yale, and Merwin forebays and tailrace (e.g., a three-dimensional numerical flow-field analysis) and the movement of adult and juvenile salmonids. PacifiCorp shall complete these studies sufficiently in advance of the design decisions required in Section 4.1.2 so that PacifiCorp, the Services, and the ACC can take the resulting information into account when making final design decisions.

4.1.2 Design Review. The appropriate Licensee (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall design the fish passage facilities to be constructed pursuant to Sections 4.1.8, 4.3 through 4.8, and 4.10, subject to Section 4.1.9, to meet the performance standard targets set out in Section 4.1.4.b, as applicable. The Licensee shall use the best available technology for the type of passage facility being constructed, and design the passage facility to provide flexibility for subsequent expansion or Facility Adjustments, if needed, to meet performance standards. A fish passage facility may include duplication of some components (for example, multiple entrances) and still be considered a single passage facility. The Licensee shall coordinate with and shall provide 30% and 60% completed preliminary designs for review and comment to the Services and WDFW. The Licensee shall notify the ACC when design work has begun, and shall provide the 30% and 60% preliminary designs to any other Party at the Party's request. The Licensee shall provide the Services and WDFW 45 days to provide their comments. The Licensee shall submit the 90% preliminary designs with the relevant engineering, hydraulic, and biological work to the ACC at the times set forth in Sections 4.1.8, 4.3 through 4.8, and 4.10. The Licensee shall provide the ACC 45 days to provide its comments on the 90% preliminary designs and shall finalize the designs in Consultation with the ACC and with the approval of the Services. The Licensee shall consider and address in writing those written comments provided by the members of the ACC when submitting final designs to the Services for approval.

4.1.3 Permits, Time for Construction. Upon approval of passage facility designs by the Commission, the Licensee responsible for constructing any such passage facility (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall diligently and expeditiously acquire all required Permits. The time by which each such passage facility shall be placed in operation is set forth in the Sections below, and shall follow receipt of all required Permits as set out in Section 2.2.

4.1.4 Performance Standards. The Licensees (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall provide for the safe, timely, and effective passage of salmonids being transported past the Projects pursuant to Section 4.1.7 below, as provided in this Section 4. The sole performance standard for kelts and downstream migration of adult sea-run cutthroat shall be safe, timely, and effective passage. Specific life stages described below (not including kelts or downstream migrating sea-run cutthroat) have quantitative standards. The Licensees shall construct and provide for the operation and maintenance of fish passage facilities that (1) collect all life stages of salmonids that are present at the specific facility, and (2) function during all flows and during all seasons; except (i) for a downstream facility at Swift No. 1 when it is infeasible to function during flood events that require spill that could not be reasonably accommodated by the passage facility, or (ii) for upstream passage facilities, to the extent it is infeasible due to flood events that require spill that could not be reasonably accommodated by the passage facility. Table 4.1.4 defines the terms used below.

Table 4.1.4 Defined Terms for Performance Standards

Adult Trap Efficiency ("ATE")	The percentage of adult Chinook, coho, steelhead, bull trout, and sea-run cutthroat that are actively migrating to a location above the trap and that are collected by the trap.
Collection Efficiency ("CE")	The percentage of juvenile anadromous fish of each of the species designated in Section 4.1.7 that is available for collection and that is actually collected.
Collection Survival ("CS")	The percentage of juvenile anadromous fish of each of the species designated in Section 4.1.7 collected that leave Release Ponds alive.
Injury	Visible trauma (including, but not limited to, hemorrhaging, open wounds without fungus growth, gill damage, bruising greater than 0.5 cm in diameter, etc.), loss of equilibrium, or greater than 20% descaling. "Descaling" is defined as the sum of the area on one side of the fish that shows recent scale loss. This does not include areas where scales have regenerated or fungus has grown.

Overall Downstream Survival ("ODS")	The percentage of juvenile anadromous fish of each of the species designated in Section 4.1.7 that enter the reservoirs from natal streams and that survive to enter the Lewis River below Merwin Dam by collection, transport, and release via the juvenile fish passage system, passage via turbines, or some combination thereof, calculated as provided in Schedule 4.1.4.
Upstream Passage Survival ("UPS")	Percentage of adult fish of each of the species designated in Section 4.1.7 that are collected that survive the upstream trapping-and-transport process. For sea-run cutthroat and bull trout, "adult" means fish greater than 13 inches in length.

a. Overall Performance Standards for Salmonids. For each species, the Licensees shall achieve the following overall performance standards for fish passage: ODS of greater than or equal to 80% until such time as the Yale Downstream Facility is built or the In Lieu Fund in lieu of the Yale Downstream Facility becomes available to the Services, after which time ODS shall be greater than or equal to 75%; UPS of greater than or equal to 99.5%; and ATE to be established after the Effective Date pursuant to Section 4.1.4.c below. The Parties acknowledge that ODS of 80% or 75% are aggressive standards and it is likely that they will take some time to achieve. If these performance standards are not achieved, the Licensees (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall take the actions set forth in Section 4.1.6.

b. Passage Facility Design Performance Standards for Salmonids. PacifiCorp shall design and construct downstream fish passage facilities to achieve the following standards for each species (i) a CE of equal to or greater than 95% and (ii) a CS of equal to or greater than 99.5% for smolts and 98% for fry, and (iii) adult bull trout survival of equal to or greater than 99.5%. Design performance objectives for Injury are less than or equal to 2%. The Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall design and construct upstream fish passage facilities to achieve the UPS equal to or greater than 99.5% and the ATE to be established after the Effective Date pursuant to Section 4.1.4.c below.

c. Adult Trap Efficiency for Salmonids. As soon as practicable, the Licensees, together with the Services, WDFW, Yakama Nation, and the CIT, and in Consultation with the ACC, shall develop an ATE performance standard for the terms of each New License to ensure the safe, timely, and effective passage of adult salmonids. Until such time as the standard has been developed, the Licensees shall use NOAA Fisheries' fish passage guidelines [*Anadromous Salmonid Passage Facility Guidelines*

and Criteria, NMFS (Jan. 31, 2004)]. The Parties shall consider without limitation entry rate, fall back, crowding at the entrance, delay, and abandonment of the trap area. When performance standards for ATE have been developed, the Licensees shall submit the standards to the Commission and such standards will be used to judge performance for the facilities (as provided in Section 4.1.6.d below).

4.1.5 Monitoring and Evaluation. Once any passage facility, upstream or downstream, is constructed and placed in operation, and after each Facility Adjustment or Facility Modification, the Licensees (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall evaluate, in Consultation with the ACC and with the approval of the Services, whether performance standards are being met for each of the species designated in Section 4.1.7. This monitoring and evaluation shall be conducted as described in Section 9.

4.1.6 Adjustments or Modifications to Passage Facilities. For purposes of this Agreement, a "Facility Adjustment" shall be a physical passage facility upgrade, improvement, or addition that was part of the original design of the passage facility, or an adjustment to the fish passage facility or its operations. A "Facility Modification" shall be a physical alteration or addition to a physical passage facility that requires a new design. When making Facility Modifications, the Licensees shall follow the design process set out in Section 4.1.2 above, including Consultation with the ACC. Whenever any Facility Adjustment or Facility Modification is completed, the operation of the relevant facility shall be tested for a reasonable time to determine the effectiveness of such adjustment or modification. Throughout the term of each New License, at the direction of the Services, and after Commission approval, if required, and obtaining all required Permits, the Licensee (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall make Facility Adjustments and Facility Modifications to each passage facility to achieve the relevant performance standards for each of the species designated in Section 4.1.7 as soon as practicable as follows

a. If ODS is not being met, then PacifiCorp shall make Facility Adjustments or Facility Modifications to downstream passage facilities as follows:

(1) If the CE is less than 95% and greater than or equal to 75% or the CS for smolts is less than 99.5% and greater than or equal to 98%, or the CS for fry is less than 98% and greater than or equal to 96%, or Injuries to juvenile Transported Anadromous Species caused by downstream collection and transport are greater than 2% but less than 4%, PacifiCorp shall make Facility Adjustments directed by the Services to achieve the performance standard or standards that are not being met, but shall not be required to make Facility Modifications; or

(2) If the CE is less than 75%, or the CS for smolts is less than 98%, or the CS for fry is less than 96%, or Injuries to juvenile Transported Anadromous Species caused by downstream collection and transport are greater than or equal to 4%, PacifiCorp shall make the Facility Modifications directed by the Services to achieve the performance standard or standards that are not being met; provided

that if the Services believe a Facility Adjustment will likely achieve the performance standard or standards that are not being met, then PacifiCorp shall first make Facility Adjustments as directed by the Services.

b. If the ODS is being met but the CE is less than 95%, the CS for smolts is less than 99.5%, the CS for fry is less than 98%, or Injury to juvenile Transported Anadromous Species caused by downstream collection and transport is greater than 2%, PacifiCorp shall make Facility Adjustments directed by the Services to downstream facilities but shall not be required to make Facility Modifications to achieve the performance standard or standards that are not being met.

c. For bull trout, PacifiCorp shall make Facility Adjustments or Facility Modifications to downstream passage facilities as follows:

(1) If the survival of bull trout is less than 99.5% and is greater than or equal to 98%, or Injuries caused by downstream collection and transport are greater than 2% but less than 4%, PacifiCorp shall make Facility Adjustments directed by the Services to achieve the performance standard or standards that are not being met, but shall not be required to make Facility Modifications; or

(2) If the survival of bull trout is less than 98%, or Injuries caused by downstream collection and transport are greater than or equal to 4%, PacifiCorp shall make the Facility Modifications directed by the Services to achieve the performance standard or standards that are not being met; provided that if the Services believe a Facility Adjustment will likely achieve the performance standard or standards that are not being met, then Licensees shall make Facility Adjustments as directed by the Services.

d. For Transported Species, if UPS and or ATE are not being met, then the Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) will make Facility Adjustments or Facility Modifications to upstream passage facilities as directed by the Services.

e. Except as required in a proceeding initiated consistent with Section 15.3.2, or as provided in Section 3.5.2.b, the Licensees (PacifiCorp for the Merwin Upstream Transport Facility, Merwin Downstream Facility, Yale Upstream Facility, Yale Downstream Facility, and Swift Downstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall not be required to (1) make structural or operational changes with respect to their generating facilities or Project reservoirs to achieve standards, (2) replace any fish passage facility with another passage facility, or (3) install additional collection and transport facilities or alternative fish passage facilities beyond those required by this Agreement. This provision is not intended to negate or otherwise alter any PM&E Measure agreed to elsewhere in this Agreement, including, without limitation, Section 4.3 and operational constraints required under Sections 4.2, 4.9.1, and 6.2.

4.1.7 Species Transported. For purposes of fish passage, the Licensees shall only provide for the transport of spring Chinook, winter steelhead, coho, bull trout, and sea-run cutthroat. Notwithstanding the preceding sentence, the Licensees, after Consultation with the ACC, and if directed by the Services, shall also provide for the transport of fall Chinook or summer steelhead that enter the passage facilities. All species to be transported pursuant to this Section 4.1.7 shall be referred to as the "Transported Species." Anadromous species to be transported pursuant to this Section 4.1.7 (spring Chinook, winter steelhead, coho, sea-run cutthroat, and, if appropriate in accordance with this Section, fall Chinook and summer steelhead) shall be referred to as "Transported Anadromous Species."

4.1.8 Mode of Transport and Transport Plans.

a. Upstream Transport Before Full Adult Fish Passage. Unless and until alternative technologies are implemented pursuant to paragraph (b), below, the Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility, and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall provide for the transport by truck of all Transported Species collected at an upstream transport facility. Once the Merwin Upstream Transport Facility is completed, and for so long as trucks are used, the Licensees shall provide for transport according to the Upstream Transport Plan described below.

b. Upstream Transport After Full Adult Fish Passage. On or before the 13th anniversary of the Issuance of all New Licenses, the Licensee responsible for each upstream transport facility (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall evaluate alternative adult fish transport technologies (such as fish trams, cable lifts, or other new technologies) at the facility that allow transportation of the fish with the least practicable amount of handling or other stress-inducing actions, considering the need for sorting fish. Such technologies shall be implemented provided that (1) such alternative technologies are determined, by engineers qualified in fish passage and designated respectively by WDFW, USFWS, NOAA Fisheries, PacifiCorp, and Cowlitz PUD, to be feasible and effective in transporting fish over dam facilities; (2) the Services determine that such technologies are suitable for meeting the Services' fish passage goals and the biological benefits are expected to be equal to or greater than the benefits of trap-and-transport by truck; and (3) the costs of the selected technology (considering both initial capital cost and ongoing operational and maintenance costs) do not significantly exceed the costs of transporting fish by truck. Any Party that disagrees with the engineers' determination under (1), above, may initiate ADR Procedures pursuant to Section 15.10. Implementation of such technologies shall begin after acquisition of all required Permits according to the schedule set forth in Section 4.7 for the Yale Upstream Facility and Section 4.8 for the Swift Upstream Facility, and for the Merwin Upstream Transport Facility after any required time for transition between truck and alternative transport facilities but no earlier than upon operation of both the Yale Upstream Facility and Swift Upstream Facility. The Licensees' selection of such technologies and selection of final designs shall be made with the approval of the Services after Consultation with the ACC, pursuant to Section 4.1.2. The costs for such alternate technologies shall be considered cumulatively for all of the Lewis River Projects, so that a cost savings from alternate technology at one Project could offset a cost increase for such technology at

another Project, compared to trapping and transporting by truck. If costs are determined to significantly exceed the costs of transporting fish by truck, the Parties may make reasonable efforts to find more cost-effective facility designs that will achieve the same or greater biological benefit compared to trap-and-transport by truck. If (i) after due comparison of the costs of initial capital and ongoing operations and maintenance through the remaining term of the New Licenses of trapping and transporting by truck versus such costs of an alternative technology for upstream passage it appears that such alternate technologies would not be implemented because of increased costs; and (ii) any Party (other than the Licensees): (A) identifies alternate sources of funding, (B) provides a guarantee of payment acceptable to the Licensees of the difference in capital and ongoing operations and maintenance costs over the remaining term of the Licenses between trap-and-transport and such alternative technology, and (C) provides such funding without additional conditions unacceptable to the Licensees, express or implied; then the Licensee shall implement such technologies after acquisition of all required Permits according to the schedule set forth in Section 4.7 for the Yale Upstream Facility and Section 4.8 for the Swift Upstream Facility, and for the Merwin Upstream Transport Facility after any required time for transition between truck and alternative transport facilities but no earlier than upon operation of both the Yale Upstream Facility and Swift Upstream Facility. If alternative methods are not used at any facility because they do not meet the standards of this Section 4.1.8, then the Licenses shall continue to implement trap and transport by truck at such facility.

c. Upstream Transport Plan. The Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall develop, in Consultation with the ACC and with the approval of the Services, subject to Section 15.14, a plan that shall describe the frequency and procedures to achieve safe, timely, and effective upstream passage (the "Upstream Transport Plan"). The Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall provide for the transport of fish at a minimum frequency of once daily, or more if necessary, to achieve safe, timely, and effective passage. The Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall submit the Upstream Transport Plan to the Commission before completion of the Merwin Upstream Transport Facility. This version of the Upstream Transport Plan need only address transport from the Merwin Upstream Transport Facility. The Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall modify the Upstream Transport Plan in Consultation with the ACC and with the approval of the Services, subject to Section 15.14, to (i) identify the distribution of adults transported to Yale Lake and Swift Reservoir when the Yale Downstream Facility is completed and prior to completion of the Yale Upstream Facility and Swift Upstream Facility, and (ii) address transport from the Yale Upstream Facility if trucking is to be used for transport from that facility, and shall submit the modified Upstream Transport Plan to the Commission before completion of the Yale Upstream Facility. The Licensees (PacifiCorp for the Merwin Upstream Transport Facility and Yale Upstream Facility; and PacifiCorp and Cowlitz PUD for the Swift Upstream Facility) shall modify the Upstream Transport Plan in Consultation with the ACC and with the approval of the Services, subject to Section

15.14. to address transport from the Swift Upstream Facility if trucking is to be used for transport from that facility, and shall submit the modified Upstream Transport Plan to the Commission before completion of the Swift Upstream Facility.

d. Downstream Transport. PacifiCorp shall provide for the downstream transport of migrating Transported Species collected in the Swift Downstream Facility, Yale Downstream Facility, and Merwin Downstream Facility by truck. The Parties believe there may be benefits from downstream transport of migrating Transported Species via a bypass facility in lieu of trap and transport by truck.

(1) For the Yale Downstream Facility and Swift Downstream Facility, if:

(i) the Yale Downstream Facility and Swift Downstream Facility have been constructed;

(ii) a determination has been made pursuant to (2) or (3), below, that PacifiCorp shall construct and operate a bypass facility at the Merwin Downstream Facility;

(iii) the Services determine that a salmonid bypass passage system would provide equal or greater biological benefit; and

(iv) PacifiCorp does not determine that the capital, operation, and maintenance costs of such bypass would be significantly greater than the capital, operation, and maintenance costs of continued use of trap and transport by truck.

then PacifiCorp shall Consult with the ACC regarding a possible change in methods for downstream passage. Any Party may, but shall not be obligated to, develop additional information regarding methods for downstream passage and submit it to the Services. Studies to develop such information should be developed in coordination with the ACC and with the approval of the Services.

(2) For the Merwin Downstream Facility, if:

(i) PacifiCorp has not yet commenced construction of the Merwin Downstream Facility, and

(ii) the Services determine that a salmonid bypass passage system would provide equal or greater biological benefit, and would not have unacceptable impacts on fish between Merwin Dam and the Release Ponds.

then PacifiCorp shall construct and provide for the operation of such bypass facility in lieu of trapping and transporting by truck. Any Party may, but shall not be obligated to, develop additional information regarding methods for downstream passage and submit it to the Services. Studies to develop such

information should be developed in coordination with the ACC and with the approval of the Services.

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(3) For the Merwin Downstream Facility, if:

(i) PacifiCorp has commenced construction of the Merwin Downstream Facility;

(ii) the Services determine that a salmonid bypass passage system would provide equal or greater biological benefit and would not have unacceptable impacts on fish between Merwin Dam and the Release Ponds; and

(iii) PacifiCorp does not determine that the capital, operation, and maintenance costs of such bypass would be significantly greater than the capital, operation, and maintenance costs of continued use of trap and transport by truck.

then PacifiCorp shall Consult with the ACC regarding a possible change in methods for downstream passage. Any Party may, but shall not be obligated to, develop additional information regarding methods for downstream passage and submit it to the Services. Studies to develop such information should be developed in coordination with the ACC and with the approval of the Services.

c. Downstream Transport Plan. PacifiCorp shall develop, in Consultation with the ACC and with the approval of the Services, subject to Section 15.14, a plan that shall describe the frequency and procedures to achieve safe, timely, and effective downstream transport (the "Downstream Transport Plan"). PacifiCorp shall submit the Downstream Transport Plan to the Commission before completion of the Swift Downstream Facility. This version of the Downstream Transport Plan need only address transport from the Swift Downstream Facility. PacifiCorp shall modify the Downstream Transport Plan in Consultation with the ACC and with the approval of the Services, subject to Section 15.14, to address transport from the Yale Downstream Facility and the Merwin Downstream Facility, and shall submit the modified Downstream Transport Plan to the Commission before completion of the Yale Downstream Facility and the Merwin Downstream Facility, respectively.

4.1.9 Review of New Information Regarding Fish Transport into Lake Merwin and Yale Lake.

a. The Licensees shall construct and provide for the operation and maintenance of both upstream and downstream fish collection and transport facilities at each of Merwin Dam, Yale Dam, and the Swift Projects as provided in the schedule in this Agreement unless otherwise directed by the Services pursuant to this Section. New Information (defined below) relevant to reintroduction and fish passage into Yale Lake or Lake Merwin may be available to the Services that may influence the implementation of fish passage into and out of these reservoirs, or that could result in the Services determining that reintroduction or fish passage for anadromous fish is inappropriate. If

the Services conclude upon review of the New Information that one or more of the passage facilities should not be constructed, in lieu of designing, permitting, constructing, and operating the passage facility, PacifiCorp shall provide additional funds for projects in lieu of fish passage, as set forth in Section 7.6. In this event, the Licensees shall also implement the bull trout passage measures as set forth in Section 4.10. The adult upstream fish passage facility at Merwin and juvenile downstream collector at Swift No. 1 are not subject to this review.

b. Upon receipt and review of New Information relevant to reintroduction and fish passage from any party, the members of the ACC may provide written comments to the Services regarding such New Information. Such comments shall be provided to the Services no later than five years prior to the date that PacifiCorp and or Cowlitz PUD is to begin operating the relevant passage facility. If any New Information and comments are submitted to the Services, then approximately four and a half years prior to the date that PacifiCorp and or Cowlitz PUD is to begin operating the relevant passage facility, the Licensees shall convene a meeting of the ACC for the purpose of discussing the New Information and comments. At such meeting, the Licensees shall solicit and obtain the Services' response to the New Information and related comments, unless the Services have provided the results of their review to the ACC earlier. If the Services have concluded that one or more of the passage facilities should not be constructed, then within 60 days after the meeting of the ACC, the Services shall advise the ACC in writing of such conclusion.

c. For purposes of this section, "New Information" is defined as information relevant to anadromous fish reintroduction and fish passage, including that presented by any Party, and provided to the Services and the Licensees. The Licensees must provide copies of such New Information to all the members of the ACC. This information may include, but is not limited to:

- (1) Experience with upstream fish collection and transport facilities at other sites, including Merwin Dam.
- (2) Experience with downstream fish collection facilities at other sites, including Swift No. 1 Dam.
- (3) Experience with the reintroduction efforts of spring Chinook, coho, and steelhead above Swift No. 1 Dam.
- (4) Consideration of broader contextual information beyond the Lewis River Basin, including regional anadromous fish recovery efforts.

d. The Licensees shall inform the Commission of any determination by the Services that one or more of the fish collection and transport facilities should not be constructed. In this event, PacifiCorp shall provide additional funds for projects in lieu of fish passage, as set forth in Section 7.6.

4.2 Merwin Trap.

a. Fyke Repair. As soon as practicable after the Effective Date, PacifiCorp shall repair the fyke portion of the Merwin Trap or install another fyke to decrease the risk of Injury to fish in the facility.

b. Merwin Trap Flow Restrictions. From and after the Effective Date, PacifiCorp shall, to the extent feasible, limit the discharge from the generation facilities at Merwin Dam for safety purposes to a maximum of 5,250 cubic feet per second ("cfs") or other flow level to be determined by PacifiCorp and WDFW (measured at the Ariel gage) when personnel are working in the existing fish trap (the "Merwin Trap") until such time as upgrades to the Merwin Trap are made pursuant to Section 4.2.3 and PacifiCorp determines, in Consultation with WDFW, that such upgrades are effective in providing a greater margin of safety for such personnel. PacifiCorp shall coordinate with WDFW on scheduling such flows and times when fish collection will occur.

c. Merwin Trap Upgrades. Within one year after the Effective Date, PacifiCorp shall determine what information is required to improve operating conditions for personnel working in the Merwin Trap by providing a greater margin of safety. PacifiCorp shall gather such information promptly to allow design of operating improvements. By the second anniversary of the Issuance of the New License for the Merwin Project, PacifiCorp shall modify the Merwin Trap as needed to improve the human working environment such that flow restrictions under Section 4.2.2 are no longer necessary, without introducing additional risk to fish (the "Merwin Trap Upgrades"). PacifiCorp shall coordinate with and shall provide 30% and 60% completed preliminary designs for review and comment to the Services and WDFW. PacifiCorp shall provide the 90% preliminary designs for the Merwin Trap Upgrades to the ACC within 18 months after the Effective Date. PacifiCorp shall submit final designs to the Commission upon approval by the Services, subject to Section 15.14, but not later than 90 days after the Issuance of the New License for the Merwin Project or August 31, 2006, whichever is later. Once the Merwin Trap Upgrades are completed or beginning upon the second anniversary of the Issuance of the New License for the Merwin Project, whichever is later, PacifiCorp shall provide for fish to be sorted at the Lewis River Hatchery rather than at the Merwin Trap and shall provide up to two additional staffers, if necessary, to clear the Merwin Trap once daily for the benefit of the fish in the facility.

d. Interim Merwin Trap Operations. Until construction of the Merwin Upstream Transport Facility, the upgraded Merwin Trap shall be operated solely for the following purposes: to collect hatchery fish returning from the ocean and to transport any bull trout collected to Yale Lake, and fish other than hatchery fish and bull trout will be returned to the river below Merwin Dam. Until the Merwin Upstream Transport Facility is completed, PacifiCorp, in coordination with WDFW, shall make reasonable efforts to operate the Merwin powerhouse to allow fish trapping operations at the Merwin Trap.

4.3 Merwin Upstream Collection and Transport Facility. By six months after the fourth anniversary of the Issuance of the New License for the Merwin Project, PacifiCorp shall construct and provide for the operation of an adult trap and transport facility that shall collect, sort, and transport hatchery fish and upstream-migrating adult Transported Species (the "Merwin Upstream Transport Facility"). Initially, PacifiCorp shall provide for the transport of adult

Transported Anadromous Species to above Swift No. 1 Dam. When the Yale Downstream Facility is built as provided in Section 4.5, PacifiCorp shall provide for the transport of Transported Anadromous Species collected at Merwin Dam to either Yale Lake or Swift Reservoir, as designated in the Upstream Transport Plan, until upstream adult collection and transport facilities are constructed at all of the Merwin, Yale, and Swift Projects. Once upstream adult collection and transport facilities are constructed at all of the Merwin, Yale, and Swift Projects, then PacifiCorp shall provide for the transport of adult Transported Anadromous Species collected at Merwin Dam to Lake Merwin. PacifiCorp shall provide for the transport of any bull trout collected below Merwin Dam to Yale Lake unless otherwise directed by USFWS. The Merwin Upstream Transport Facility shall be designed by PacifiCorp, to the extent feasible, to be compatible both with truck transport and with alternate modes of transport that may be selected pursuant to Section 4.1.8 above. When designing the Merwin Upstream Transport Facility, PacifiCorp shall consider a wide range of design options for the trap and transport facility, including, without limitation, (a) a complete new facility and (b) incorporation of the Merwin Trap (as upgraded) into the new design. PacifiCorp shall consider designs for the Merwin Upstream Transport Facility such that it would meet applicable performance standards regardless of the operational state of the hydroelectric generation facilities at Merwin Dam. PacifiCorp shall provide for the operation of the passage facility year-round for the remaining term of the New License for the Merwin Project. In Consultation with the Services, PacifiCorp shall provide for safe, timely, and effective handling of all species entering the Merwin Upstream Transport Facility. Species that will not be transported above Merwin Dam or destined for the Hatchery Facilities shall be returned to the Lewis River below Merwin Dam in a manner and frequency that adequately protects them (i.e., fall Chinook that are close to their spawning time may require different considerations than other species). PacifiCorp shall provide the 90% preliminary designs to the ACC by the first anniversary of the Issuance of the New License for the Merwin Project and shall follow the procedures set forth in Section 4.1.2. PacifiCorp shall submit final designs to the Commission upon approval by the Services, subject to Section 15.14, but not later than six months after the first anniversary of Issuance of the New License for the Merwin Project.

4.4 Downstream Transport at Swift No. 1 Dam.

4.4.1 Modular Surface Collector. By six months after the fourth anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later, PacifiCorp shall construct and provide for the operation of a passage facility at the Swift No. 1 Dam, including a modular surface collector, to collect, sort, tag, and transport downstream-migrating Transported Species (the "Swift Downstream Facility"). PacifiCorp shall provide for the downstream transport of migrating Transported Anadromous Species to below Merwin Dam to a Release Pond (Section 4.4.3). Unless otherwise directed by USFWS, bull trout collected in the Swift Downstream Facility shall be transported to Yale Lake, except that bull trout with a smolt-like appearance, as determined by PacifiCorp (using methods devised in Consultation with the ACC), shall be transported to a location determined by USFWS below Merwin Dam. PacifiCorp shall Consult with the ACC concerning the precise location of the passage facility, which PacifiCorp shall incorporate into the design to be approved by the Services as provided in Section 4.1.2.

PacifiCorp shall provide for the tagging of a statistically valid sample of the fish transported as appropriate to accomplish the monitoring and evaluation objectives set forth in the M&E Plan

(Section 9), the methodology of such tagging to be determined by the Licensees in Consultation with the ACC and approved by the Services. PacifiCorp shall provide for the operation of the passage facility for the remaining term of the New License for the Swift No. 1 Project.

PacifiCorp shall provide the 90% preliminary designs to the ACC by the first anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later. PacifiCorp shall submit final designs to the Commission upon approval by the Services, subject to Section 15.14, but not later than six months after the first anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later.

4.4.2 Spring Chinook Satellite Collection Facility. If NOAA Fisheries determines that the Swift Downstream Facility does not adequately collect juvenile spring Chinook, PacifiCorp, in Consultation with the ACC and with the approval of NOAA Fisheries, shall evaluate the behavior of the spring Chinook to determine why they are not being collected by the Swift Downstream Facility. If NOAA Fisheries concludes that the Swift Downstream Facility is not working because of fish behavior and that a different type of satellite passage facility has a reasonable likelihood of collecting spring Chinook, PacifiCorp, in Consultation with the ACC and with the final approval of the Services shall design and install the satellite passage facility. The design would be developed to minimize unacceptable incidental impacts to species other than spring Chinook. PacifiCorp, as part of the monitoring and evaluation plan to be developed pursuant to Section 9.2.1 below, shall develop and implement a plan to monitor the satellite facility effectiveness and its effects on species other than spring Chinook. Should NOAA Fisheries conclude, given the behavior of the spring Chinook, that another passage facility would not likely be successful, PacifiCorp shall continue to attempt to collect spring Chinook at the Swift Downstream Facility and shall make any further Facility Adjustments or Facility Modifications required by Section 4.1.6.

4.4.3 Release Ponds. By six months after the fourth anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later, PacifiCorp, in Consultation with the ACC and with the final approval of NOAA Fisheries, subject to Section 15.14, shall design and construct stress release ponds below Merwin to be used for downstream migrating fish that are collected at the Swift Downstream Facility ("Release Ponds") (the same Release Ponds shall be used subsequently for fish collected at the Yale Downstream Facility or the Merwin Downstream Facility). To the extent practicable, the Release Ponds will be located downstream of Eagle Island to minimize interaction of the transported fish with wild fall Chinook. PacifiCorp shall Consult with the ACC concerning the precise locations of the Release Ponds, which shall become part of the design to be approved by NOAA Fisheries. PacifiCorp shall provide preliminary designs to the ACC by the first anniversary of the Issuance of the New License for the Swift No. 1 Project. PacifiCorp shall submit final designs to the Commission upon approval by NOAA Fisheries, subject to Section 15.14, but not later than six months after the first anniversary of the Issuance of the New License for the Swift No. 1 Project.

4.5 Downstream Passage at Yale Dam. Unless otherwise directed by the Services pursuant to Section 4.1.9, on or before the 13th anniversary of the Issuance of the New License for the Yale Project, PacifiCorp shall complete construction and provide for the operation of a passage facility or facilities at Yale Dam to collect, sort, tag, and transport downstream-migrating Transported Species (the "Yale Downstream Facility"). Specifically, PacifiCorp shall either

construct a modular surface collector or, as directed by the Services, after discussion with the ACC, an alternate passage facility or set of facilities (which may include a scaled-down version of the modular surface collector), provided the detailed engineering estimate of the cost of such alternate facilities does not exceed the sum of the following: (1) the cost estimate for a modular surface collector based upon the detailed engineering designs of the Swift Downstream Facility modified to remove those features that are unique to the Swift facility due to its location, hydraulics, and topography (Adjusted for Inflation from the year on which the cost estimate is based), and (2) the cost estimate for features that are unique to the Yale or Merwin facilities, respectively, including, without limitation, location, hydraulics, and topography, based upon conceptual designs (Adjusted for Inflation from the year on which the cost estimate is based). PacifiCorp shall provide for the downstream transport of migrating Transported Species from Yale Lake to the Release Ponds below Merwin Dam.

Unless otherwise directed by the Services, after discussion with the ACC, PacifiCorp shall provide for the marking of all the juvenile anadromous salmonids collected by the Yale Downstream Facility until such time as the Yale Upstream Facility and the Swift Upstream Facility are completed, and shall provide for the tagging of a statistically valid sample of the fish transported as appropriate to accomplish the monitoring and evaluation objectives set forth in the M&E Plan (Section 9), the methodology of such tagging to be determined by the Licensee in Consultation with the ACC and approved by the Services. Bull trout collected in the Yale Downstream Facility shall be returned to Yale Lake unless otherwise directed by the USFWS, except that bull trout with a smolt-like appearance, as determined by PacifiCorp (using methods devised in Consultation with the ACC), shall be transported in the same manner as Transported Anadromous Species pursuant to Section 4.1.8 and shall be transported to a location determined by USFWS below Merwin Dam. PacifiCorp shall provide for the operation of the passage facility for the remaining term of the Yale New License unless at any time the Services, after discussion with the ACC, determine that operation of the Yale Downstream Facility should no longer be continued. If the Services make such determination after the passage facility has been operating, PacifiCorp shall notify the Commission of such decision. PacifiCorp shall provide 90th preliminary designs to the ACC on or before the ninth anniversary of the Issuance of the New License for the Yale Project. PacifiCorp shall submit final designs to the Commission upon approval by the Services, subject to Section 15.14, but not later than six months after providing preliminary designs to the ACC.

4.6 Downstream Passage at Merwin Dam. Unless otherwise directed by the Services pursuant to Section 4.1.9 above, on or before the 17th anniversary of the Issuance of the New License for the Merwin Project, PacifiCorp shall construct and provide for the operation of a passage facility or facilities at Merwin Dam to collect, sort, tag, and transport downstream-migrating Transported Species (the "Merwin Downstream Facility"). Specifically, PacifiCorp shall construct either a modular surface collector or, as directed by the Services after discussion with the ACC, an alternate passage facility or set of facilities (which may include a scaled-down version of the modular surface collector), provided the detailed engineering estimate of the cost of such alternate facilities does not exceed the sum of the following: (1) the cost estimate for a modular surface collector based upon the detailed engineering designs of the Swift Downstream Facility modified to remove those features that are unique to the Swift facility due to its location, hydraulics, and topography (Adjusted for Inflation from the year on which the cost estimate is based), and (2) the cost estimate for features that are unique to the Yale or Merwin facilities, respectively, including, without limitation, location, hydraulics, and topography, based upon

conceptual designs (Adjusted for Inflation from the year on which the cost estimate is based). PacifiCorp shall provide for the downstream transport of migrating anadromous juvenile and adult salmonids from Lake Merwin to the Release Ponds below Merwin Dam. Bull trout collected in the Merwin Downstream Facility shall be returned to Lake Merwin unless otherwise directed by USFWS; provided that bull trout with a smolt-like appearance, as determined by PacifiCorp (using methods derived in Consultation with the ACC), shall be transported in the same manner as Transported Anadromous Species pursuant to Section 4.1.8 and shall be transported to a location determined by USFWS below Merwin Dam. PacifiCorp shall provide for the tagging of a statistically valid sample of the fish transported as appropriate to accomplish the monitoring and evaluation objectives set forth in the M&E Plan (Section 9), the methodology of such tagging to be determined by the Licensees in Consultation with the ACC and approved by the Services. PacifiCorp shall provide for the operation of the passage facility for the remaining term of the Merwin New License unless the Services determine, after discussion with the ACC, that operation of the Merwin Downstream Facility should not continue. If the Services make such determination after the passage facility is operational, PacifiCorp shall notify the Commission of such decision. PacifiCorp shall provide 90% preliminary designs to the ACC on or before the 13th anniversary of the Issuance of the New License for the Merwin Project. PacifiCorp shall submit final designs to the Commission upon approval by the Services, subject to Section 15.14, but not later than six months after submission of preliminary designs to the ACC.

4.7 Upstream Passage at Yale Dam. Unless otherwise directed by the Services pursuant to Section 4.1.9 above, on or before the 17th anniversary of the Issuance of the New License for the Yale Project, PacifiCorp shall complete construction and provide for the operation of an adult trap and transport facility to collect, sort, and transport upstream-migrating adult Transported Species from Lake Merwin into Yale Lake (the "Yale Upstream Facility"), except that USFWS may direct that bull trout be transported to a different location. PacifiCorp shall provide for the operation of the passage facility for the remaining term of the Yale New License unless the Services later determine, after discussion with the ACC, that operation of the Yale Upstream Facility should not continue. If the Services make such determination after the passage facility is operational, PacifiCorp shall notify the Commission of such decision. PacifiCorp shall provide preliminary designs to the ACC on or before the 14th anniversary of the Issuance of the New License for the Yale Project. PacifiCorp shall submit final designs to the Commission upon approval by the Services, subject to Section 15.14, but not later than six months after providing preliminary designs to the ACC. The final design for the Yale Upstream Facility will address, if necessary based on the results of water quality monitoring pursuant to Section 9.4 below, temperature variations at the upper end of Lake Merwin arising from discontinuous operation of the Yale Project. If these facilities do not function as well to collect bull trout as the interim collection method based on effectiveness monitoring, as determined by USFWS, PacifiCorp shall continue the interim collection method established in Section 4.9.

4.8 Upstream Passage at the Swift Projects. Unless otherwise directed by the Services pursuant to Section 4.1.9 above, on or before the 17th anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later, the Licensees shall complete construction and provide for the operation of an adult trap and transport facility at the single best site above Yale Lake, based on biological and hydrological factors, to collect, sort, and transport upstream-migrating adult Transported Species to above the Swift No. 1 Dam (the "Swift Upstream Facility"), except that USFWS may direct that bull trout be transported to a

different location. The specific location of the Swift Upstream Facility shall be determined by PacifiCorp and Cowlitz PUD in Consultation with the ACC and with the approval of the Services, subject to Section 15.14, on or before the 12th anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later. The Licensees shall provide for the operation of the Swift Upstream Facility for the remaining terms of the New Licenses for the Swift No. 1 and Swift No. 2 Projects unless the Services determine, after discussion with the ACC, that operation of the Swift Upstream Facility should not continue. If the Services make such determination after the Swift Upstream Facility is operational, PacifiCorp and Cowlitz PUD shall notify the Commission of such decision. The Licensee that builds the Swift Upstream Facility shall provide 90% preliminary designs to the ACC on or before the 14th anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later, including any engineering, hydraulic and biological information considered by the design team. The Licensee shall submit final designs to the Commission upon approval by the Services, subject to Section 15.14, but not later than six months after providing preliminary designs to the ACC. If these facilities do not function as well to collect bull trout as the interim collection method based on effectiveness monitoring, as determined by USFWS, PacifiCorp and Cowlitz PUD shall continue the interim collection method for collecting bull trout established in Section 4.9.

4.9 Interim Bull Trout Collection and Transport.

4.9.1 Collect-and-Haul Programs. Until the earlier of (a) operation of the Yale Upstream Facility and the Swift Upstream Facility or (b) alternative measures are implemented as provided under Section 4.9.2 below, and unless otherwise directed by USFWS, PacifiCorp shall implement the collect-and-haul programs at Yale tailrace and Cowlitz PUD and PacifiCorp shall implement the collect-and-haul program below Swift No. 2. A description of the collect-and-haul programs to be implemented below Swift No. 2 and at Yale tailrace is provided on attached Schedule 4.9.1. The operational practices at Yale included on Schedule 4.9.1 are not precluded by Section 4.1.6. PacifiCorp shall provide for the transport of bull trout collected at the Yale tailrace to Yale Lake. The Licensees shall provide for the transport of bull trout collected at Swift No. 2 to above Swift No. 1. Upon the request of and subject to approval by USFWS, the Licensees, in Consultation with the ACC, shall develop criteria, based on the latest research, to determine if, when, and where alternative release locations are needed. Any such alternative locations shall be accessible by transport truck or other mutually acceptable transportation system. At the direction of USFWS, the Licensees (PacifiCorp for the Yale tailrace, and PacifiCorp and Cowlitz PUD for below Swift No. 2) shall provide for the transport of bull trout to such alternative locations. Within 12 months from the Effective Date, and annually thereafter, the Licensees, in Consultation with the ACC and with the approval of USFWS, shall prepare a Bull Trout Collection and Transport Program outlining the manner of and schedule for bull trout collection and passage at Project facilities, incorporating as appropriate either (1) the collection method identified in this Section 4.9.1 and testing of alternative interim collection methods as provided in Section 4.9.2 below; or (2) an alternative collection method developed pursuant to Section 4.9.2. The Licensees may propose minor modifications to the program identified in Schedule 4.9.1 as part of the Bull Trout Collection and Transport Program. The Licensees shall not implement any modifications to the Bull Trout Collection and Transport Program until USFWS has approved those changes.

4.9.2 Investigation of Alternative Collection Methods. PacifiCorp and Cowlitz PUD with respect to the Swift No. 2 collect-and-haul program, and PacifiCorp with respect to the Yale collect-and-haul program, will investigate the use of alternative interim bull trout collection methods in Consultation with the ACC. Such methods may include, but are not limited to, fyke traps, Deml steep passes, seines, fish wheels, and other types of active and passive gear. Annual testing of alternative methods shall begin upon approval of the Bull Trout Collection and Transport Program described in Section 4.9.1, and shall continue until USFWS approves an alternate interim collection method or until operation of the Yale Upstream Facility and the Swift Upstream Facility. Within 90 days after each anniversary of the Effective Date, Licensees shall submit a draft report to the ACC evaluating alternative interim collection methods tested during the prior year. The Licensees shall provide the ACC 90 days to comment on the draft report. The Licensees shall finalize the report, responding to the comments of the ACC as required by Section 14.2.6. The Licensees shall submit a final report to the Commission within 180 days after sending out the report for comments.

If PacifiCorp (with respect to Yale) or PacifiCorp and Cowlitz PUD (with respect to Swift No. 2) identifies, as part of the annual reporting process, an alternative interim collection method that will more safely and effectively collect bull trout than the collection method in use at that time, and if USFWS concurs, then the collection method shall be modified. Cowlitz PUD and PacifiCorp shall, with respect to the Swift No. 2 collect-and-haul program, and PacifiCorp shall, with respect to the Yale collect-and-haul program, (1) within 180 days of submission of the report to the Commission, prepare a plan to implement such method in Consultation with the ACC and with the approval of USFWS, subject to Section 15.14, and the Commission; (2) implement such alternative method as soon as practicable after obtaining USFWS approval; and (3) continue to implement the alternative method until USFWS approves an alternate interim collection method or until operation of the Yale Upstream Facility and the Swift Upstream Facility.

4.9.3 Yale and Merwin Bull Trout Entrainment Reduction. Immediately following the Effective Date, PacifiCorp shall design and implement a study to evaluate bull trout entrainment reduction methods for Yale and Merwin dams in Consultation with the ACC. Potential entrainment reduction methods include installation of exclusion devices, such as strobe lights, and installation of barrier nets with submersible cork lines and designed to accommodate a Mervin-type floating trap. Due to the small numbers of bull trout in Yale and Merwin, any evaluation of strobe lights will be performed in Swift Reservoir. Based upon its study, PacifiCorp shall prepare, in Consultation with the ACC, a draft entrainment reduction plan for the Yale Project. The plan would be developed to minimize unacceptable incidental impacts to bull trout or other species. PacifiCorp shall submit the draft plan to members of the ACC for comment within 16 months after completing the entrainment reduction study. PacifiCorp shall allow at least 45 days for members of the ACC to comment on the draft plan. PacifiCorp shall finalize the plan and obtain the approval of USFWS. PacifiCorp shall submit the final plan to the Commission upon approval by USFWS, subject to Section 15.14, but not later than the third anniversary of the Effective Date. PacifiCorp shall commence the approved entrainment reduction measures at Yale Dam within one year after the Issuance of the New License for the Yale Project, and shall maintain such measures until commencing operation of the Yale Downstream Facility. Upon the request of USFWS, PacifiCorp shall, in Consultation with the ACC and subject to the approval of USFWS, develop criteria to determine when similar entrainment reduction measures should be implemented at Merwin Dam. PacifiCorp shall

submit the criteria to the Commission for approval after obtaining USFWS approval, subject to Section 15.14, within .2 months after the USFWS request for criteria. Once approved by the Commission, if and when such criteria are met PacifiCorp shall commence the same entrainment reduction measures approved for Yale at Merwin Dam, and shall maintain such measures until commencing operation of the Merwin Downstream Facility.

4.10 Bull Trout Passage in the Absence of Anadromous Fish Facilities.

4.10.1 Yale and Merwin Downstream Bull Trout Facilities. If, pursuant to Section 4.1.9, PacifiCorp does not build the Yale Downstream Facility described in Section 4.5, then PacifiCorp, on or before the 13th anniversary of the Issuance of the New License for the Yale Project, shall construct and provide for the operation of a downstream bull trout collection and transport facility in the Yale forebay (the "Yale Downstream Bull Trout Facility").

If, pursuant to Section 4.1.9, PacifiCorp does not build the Merwin Downstream Facility described in Section 4.6, then when USFWS determines that bull trout populations have increased sufficiently in Lake Merwin, but not sooner than the 17th anniversary of the Issuance of the New License for the Merwin Project, PacifiCorp shall construct and provide for the operation of a passage facility similar to the Yale Downstream Bull Trout Facility at Merwin Dam (the "Merwin Downstream Bull Trout Facility").

The Yale and Merwin Downstream Bull Trout Facilities shall be similar in magnitude and scale to modular floating Merwin-type collectors and are not intended to be passage facilities of the same magnitude and expense as the Yale Downstream Facility and the Merwin Downstream Facility described in Sections 4.5 and 4.6 (recognizing that monies shall be contributed to the In Lieu Fund described in Section 7 below in lieu of constructing those passage facilities). PacifiCorp shall provide for monitoring of performance as provided in Section 9, and make necessary and appropriate Facility Adjustments and Facility Modifications to the Yale and Merwin Downstream Bull Trout Facilities, in Consultation with the ACC and with approval of USFWS, to achieve relevant performance standards as provided in Section 4.1.4 above, provided that such modifications shall not require installation of a different type of passage facility. PacifiCorp shall provide preliminary (30%) designs to the ACC for the Yale and Merwin Downstream Bull Trout Facilities within 12 months after the Services' determination under Section 4.1.9. PacifiCorp shall follow the provisions in Sections 4.1.1 through 4.1.3 when developing designs for the facilities. Pursuant to Section 15.14, PacifiCorp shall submit final designs to the Commission upon approval by USFWS, subject to Section 15.14, but not later than 60 days after submission of the final design to USFWS.

4.10.2 Yale and Swift Upstream Bull Trout Facilities. If (1) pursuant to Section 4.1.9, the Licensees do not build the Swift Upstream Facility, and (2) USFWS determines on or before the 13th anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later, that collect-and-haul methods established under Section 4.9.1 or 4.9.2 are not meeting bull trout performance standards provided in Section 4.1.4, then on or before the 17th anniversary of the Issuance of the New License for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later, the Licensees shall complete construction of and provide for the operation of alternate passage facilities (the "Swift Upstream Bull Trout Facility").

If (1) pursuant to Section 4.1.9, PacifiCorp does not build the Yale Upstream Facility, and (2) USFWS determines on or before the 17th anniversary of the Issuance of the New License for the Yale Project that collect-and-haul methods established under Section 4.9.1 or 4.9.2 are not meeting bull trout performance standards provided in Section 4.1.4, then on or before the 17th anniversary of the Issuance of the New License for the Yale Project PacifiCorp shall complete construction of and provide for the operation of alternate passage facilities (the "Yale Upstream Bull Trout Facility").

The Yale and Swift Upstream Bull Trout Facilities are not intended to be passage facilities of the same magnitude and expense as the Yale Upstream Facility and the Swift Upstream Facility described in Sections 4.7 and 4.8 (recognizing that monies shall be contributed to the In Lieu Fund described in Section 7 below in lieu of constructing those passage facilities). PacifiCorp (for Yale) and the Licensees (for Swift No. 2) shall select an alternative passage facility design for the Yale and Swift Upstream Bull Trout Facilities, in Consultation with the ACC and with the approval of USFWS, and PacifiCorp (for Yale) and the Licensees (for Swift No. 2) shall construct and provide for the operation of such passage facilities for the remaining term of the respective New Licenses. The Licensees shall follow the provisions of Sections 4.1 through 4.1.3 as applicable when developing designs for the facilities.

PacifiCorp shall monitor performance of the Yale Upstream Bull Trout Facility as provided in Section 9, and make necessary and appropriate Facility Adjustments and Facility Modifications to the Yale Upstream Bull Trout Facility pursuant to Section 4.1.6. The Licensees shall monitor performance of the Swift Upstream Bull Trout Facility as provided in Section 9 and make Facility Adjustments and Facility Modifications pursuant to Section 4.1.6 to the Swift Upstream Bull Trout Facility.

SECTION 5: ADDITIONAL AQUATIC MEASURES

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5.1 Yale Spillway Modifications. PacifiCorp shall design, permit, and construct improvements to the Yale spillway by six months after the fourth anniversary of the Issuance of the New License for the Yale Project to improve fish survival over the spillway during spill events. PacifiCorp shall design the improvements in Consultation with the ACC and shall provide preliminary designs to the ACC within six months after Issuance of the New License for the Yale Project. PacifiCorp shall provide the ACC with 60 days to review and comment on the preliminary design. Pursuant to Section 15.14, the Licensee shall submit final designs to the Commission upon approval by the Services, but not later than the first anniversary of the Issuance of the New License for the Yale Project.

5.2 Bull Trout Habitat Enhancement Measures. The Licensees have conservation covenants for the protection of bull trout habitat and shall manage such Interests In Land as provided in Section 10.6. PacifiCorp shall manage the Cougar Creek Conservation Covenant (defined in Section 10.6.2) to benefit bull trout conservation by conducting no management actions within the covenant area with the exception of actions taken pursuant to Section 10.6 to protect bull trout. Cowlitz PUD shall manage the Devil's Backbone Conservation Covenant (defined in Section 10.6.1) in perpetuity to benefit bull trout consistent with the Declaration of Conservation Covenant recorded in Skamania County on June 11, 2003 and filed with the Commission on June 16, 2003.

5.3 [RESERVED]

5.4 [RESERVED]

5.5 Bull Trout Limiting Factors Analysis. By the second anniversary of the Effective Date, PacifiCorp shall provide a limiting factors analysis for bull trout occurring in Lake Merwin tributary streams and Swift Reservoir tributary streams and finalize this evaluation in Consultation with the ACC. If the Licensees, in Consultation with the ACC and with the approval of USFWS, determines that one or more locations have the potential to provide long-term, sustainable habitat for critical life stages of bull trout, the ACC may implement enhancement measures through the use of the Aquatics Fund as described in Section 7.5 below.

5.6 Public Information Program to Protect Listed Anadromous Species. PacifiCorp shall consider requests from the Services to create signs and educational materials to inform the public of efforts to reintroduce and protect listed anadromous fish to the Lewis River above Merwin Dam. Such materials, if created, will be included in the I&E Program described under Section 11.2.5 below.

5.7 Public Information Program to Protect Bull Trout. The Licensees shall undertake the following public information actions for each Project within six months after Issuance of the New License for that Project to further public understanding of bull trout:

5.7.1 Signage. PacifiCorp shall, during the term of its New License for each Project, provide informational signs at established angler access areas on land that PacifiCorp owns or leases, describing bull trout and the need to protect this species. Cowlitz PUD shall provide one

informational sign, during the term of the New License for the Swift No. 2 Project, at the Swift No. 2 power canal bank fishing facility described in Section 11.3.1 below, describing bull trout and the need to protect this species.

5.7.2 Flyers. PacifiCorp shall, during the terms of the New Licenses, provide flyers at each of PacifiCorp's park entrance booths describing bull trout and the need to protect the species. The Licensees shall provide such flyers to WDFW and USFWS enforcement personnel to be distributed during public contacts.

SECTION 6: FLOW RELEASES FOR FISH AND OTHER AQUATIC SPECIES

6.1 Flow Releases in the Bypass Reach; Constructed Channel. The Licensees shall provide flow releases to the reach of the Lewis River downstream of Swift No. 1 ending at Yale Lake, which parallels the Swift No. 2 canal (the "Bypass Reach"), for the duration of each New License subject to the terms and limitations in this Section 6.1. The Licensees shall not be required to schedule flow releases in any year that exceeds, in the aggregate for that year, 55,200 acre-feet (55,349 acre-feet in each leap year) (the "Annual Release Quantity"). These amounts are sufficient to supply the flows described in Section 6.1.3(g) below. The Licensees shall release the Annual Release Quantity at the following two release points (the "Release Points"): (a) from and as measured at the outflow from a water delivery structure to be constructed at the upstream end of the Bypass Reach (such water delivery structure being referred to as the "Upper Release Point"); and (b) to a constructed channel described in Section 6.1.3 below (defined in Section 6.1.3(a) as the "Constructed Channel") from and as measured at the existing canal drain (the "Canal Drain") that is located approximately one-third the length of the canal downstream of the Swift No. 1 tailrace. The monthly schedule of flow releases from these two Release Points are together referred to as the "Combined Flow Schedule," which shall be determined as provided in Section 6.1.4 below.

6.1.1 Commencement of Flow Releases from the Canal Drain. The Licensees shall commence flow releases from the Canal Drain at the time that Swift No. 2 reconstruction is complete. Prior to completion of the Upper Release Point, the Licensees shall only be obligated to release the maximum discharge from the Canal Drain, without modification, estimated to be 47 cfs.

6.1.2 Construction of Upper Release Point. The Licensees shall determine the location to construct the Upper Release Point and shall design the necessary Project modifications to deliver water at the upstream end of the Bypass Reach by the first anniversary of the Effective Date. The Licensees shall commence construction of the Upper Release Point within six months after Issuance of the New Licenses for the Swift No. 1 Project or the Swift No. 2 Project, whichever is later, and all required Interests in Land and Permits have been obtained, and shall complete construction as soon as practicable.

6.1.3 Constructed Channel.

a. Swift Bypass Habitat Channel Reconnaissance Study. The Licensees, in Consultation with the Parties, have commissioned a study, conducted by Northwest Hydraulic Consultants, Inc., dated December 9, 2003, entitled "Swift Bypass Habitat Channel Reconnaissance Study" (the "Feasibility Report"), attached as Schedule 6.1.3, concerning the biological and technical feasibility of developing a constructed channel in the Bypass Reach downstream of the Swift No. 2 Canal Drain. The purpose of such a channel is to maximize the biological benefits of Canal Drain flows and to enhance connectivity with Yale Lake (the channel to be built and any measures undertaken in the lower Bypass Reach to connect that channel to Yale Lake shall be referred to collectively in this Agreement as the "Constructed Channel").

b. Funding for the Constructed Channel. The Licensees shall provide funds in a Tracking Account for the construction of the Constructed Channel, including the costs of design, Permitting, construction, and the acquisition of necessary Interests in Land (the "Construction Costs"), subject to the cost limitations provided below. Costs shall be shared by Licensees as follows: Cowlitz PUD shall fund or cause to be funded Construction Costs in an amount not to exceed \$182,000; PacificCorp shall fund Construction Costs in an amount not to exceed \$818,000. In the event total Construction Costs are less than \$1 million: (a) PacificCorp shall make its portion of the remaining funds available (as Adjusted for Inflation until spent) for needed restoration or maintenance of the Constructed Channel beginning in year 19 after the Issuance of the New License for the Swift No. 1 Project; and (b) Cowlitz PUD shall make or cause to be made its portion of the remaining funds available (as Adjusted for Inflation until spent) for needed restoration or maintenance of the Constructed Channel beginning in year 21 after the Issuance of the New License for the Swift No. 2 Project. After PacificCorp and Cowlitz PUD make such funds available, the funds shall be used for purposes of the Constructed Channel prior to the use of the other Aquatics Funds to support the Constructed Channel. The Licensees shall keep the ACC informed as to the progress of construction and shall notify the ACC within four working days after the Licensees determine that costs are likely to exceed \$1 million. If before or after construction begins, the Licensees expect the Construction Costs to exceed \$1 million, the Licensees shall inform the ACC and the ACC must decide whether to proceed, consistent with subsection (c) below, and draw the additional funds required from the Aquatics Fund or from other supplemental funds as may be available. If the ACC decides to proceed, all costs associated with the Constructed Channel in excess of \$1 million, including, but not limited to, construction, operational, and maintenance costs, shall be funded through the use of the Aquatics Fund (Section 7.5). Should the Constructed Channel be built, in no event shall more than \$20,000 per year on average be expended from the Aquatics Fund for maintenance of the Constructed Channel. The Parties other than the Licensees may pay such costs from third party funds that may be available to those Parties in lieu of using monies from the Aquatics Fund.

c. Channel Design and Cost Estimate. The Licensees, in Consultation with the ACC, shall complete a design for the construction and maintenance of the Constructed Channel, including the estimated cost of such construction and maintenance, consistent with the findings of the Feasibility Report as soon as practicable after the Effective Date. The design shall include any modifications to the lower Bypass Reach that are required to connect the channel to Yale Lake. The Licensees shall provide the ACC with a period of 90 days after receipt of the design from the Licensees to either approve the design or provide comments and suggestions for changes to the design. Following receipt of any comments and suggestions, the Licensees shall review and revise the design for the Constructed Channel and provide the revised design to the ACC for approval. Alternatively, the ACC (other than the Licensees), with the concurrence of the CIT and Yakama Nation, may determine at that time that the Constructed Channel should not be built. If the WDOE requires Licensees to build the Constructed Channel as a condition of the 401 Certifications for either or both of the Swift No. 1 and Swift No. 2 Projects, and if the ACC later decides, with the concurrence of the CIT and the Yakama Nation, that the Constructed Channel should not be built, then at the time of such decision by the ACC, any Party may object to such 401 Certification requirement as

being Inconsistent with this Agreement and such Inconsistency shall be resolved in accordance with Section 15 below.

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d. Permitting and Construction. The Licensees shall obtain necessary Permits as soon as practicable following design approval by the ACC. The Licensees shall Consult with the ACC concerning construction contracts and methods to build the Constructed Channel. The Licensees shall commence and complete construction of the Constructed Channel as soon as practicable after the construction of the Upper Release Point is complete and all required Interests in Land and Permits have been obtained.

e. Maintenance of the Constructed Channel. Licensees shall inspect the Constructed Channel at least once annually to determine whether maintenance may be required. After Consultation with the ACC, and using maintenance funds described in subsection b. above, the Licensees shall perform such maintenance as is determined to be necessary.

f. Flow Releases if Constructed Channel Is Not Constructed. If the Constructed Channel is not constructed pursuant to Section 6.1.3.c, the Licensees shall implement the Annual Release Quantity pursuant to the Combined Flow Schedule provided under Section 6.1.4 below; provided that the Licensees, upon the recommendation of the ACC, may allocate all of the Combined Flow Schedule to the upstream end of the Bypass Reach.

g. Flow Releases During Construction of Channel. During the construction of the Constructed Channel, the Licensees shall suspend discharges from the Canal Drain to facilitate construction activities. Licensees shall salvage fish during the dewatering of the channel, and any third-party cost associated with such efforts will be part of the cost of the Constructed Channel. During construction of the Constructed Channel, discharges from the Upper Release Point will conform to the following schedule, consistent with the conditions described in Section 6.1.5:

- (i) July 1 through October 31, 60 cfs.
- (ii) November 1 through January 31, 100 cfs.
- (iii) February 1 through June 30, 75 cfs.

6.1.4 Interim Flow Schedule; Combined Flow Schedule.

a. On or before the date the Constructed Channel and the Upper Release Point are both operational, the Licensees shall, in Consultation with and with the approval of the ACC, design an Interim Combined Flow Schedule that shall (1) allocate the Annual Release Quantity by month for a complete twelve-month period; (2) allocate the monthly quantities between the Upper Release Point and the Canal Drain for a complete twelve-month period, and; (3) provide for flow releases that remain unchanged during any given month, but may vary from month to month subject to the conditions in Section 6.1.5. The Licensees shall implement the Interim Combined Flow Schedule when both the Constructed Channel and the Upper Release Point are operational, continuing until replaced by the Combined Flow Schedule. The Licensees shall, during the following twelve months (the "Adjustment Period"), in Consultation with and with

the approval of the ACC, make periodic adjustments to the Interim Combined Flow Schedule based on observation of discharges in the Constructed Channel and related biological considerations. Any such changes will conform to the conditions described in Section 6.1.5 below.

b. During the final months of the Adjustment Period, the Licensees shall, in Consultation with and with the approval of the ACC, based on the experience and observations during the Adjustment Period, design a Combined Flow Schedule that shall (1) allocate the Annual Release Quantity by month; (2) allocate the monthly quantities between the Upper Release Point and the Canal Drain for a complete twelve month period; and (3) provide for flow releases that remain unchanged during any given month, but may vary from month to month, all subject to the conditions in Section 6.1.5. The Licensees shall implement such Combined Flow Schedule on or before the first anniversary of the date that the Constructed Channel and the Upper Release Point are both operational or approval of the ACC, whichever is later. The Combined Flow Schedule shall remain fixed for the duration of each New License, unless altered as described in Section 6.1.4.c below.

c. The Combined Flow Schedule shall remain substantially unchanged during the New Licenses' terms; provided that, in response to significant physical changes in the channel (e.g., due to major spill events) or changes in biological priorities (e.g., species reintroduction or changes in species status), the Licensees, with the approval of the ACC, shall make changes to the Combined Flow Schedule based on clearly articulated biological or ecological justifications; provided further, however, that any such changes shall comply with the conditions in Section 6.1.5. The Licensees shall not be required to revise the Combined Flow Schedule pursuant to this subsection (c) more frequently than once every five years, except in response to a significant physical alteration of the Constructed Channel due to spill events. The Parties other than the Licensees may not require any change to the Combined Flow Schedule in a manner that necessitates physical modification to the Projects or related facilities, including, but not limited to, modification of the Upper Release Point or the Canal Drain, or require additional Permits. The Licensees shall implement the revised Combined Flow Schedule no later than twelve months after the written approval by the ACC of such change.

6.1.5 Conditions on Combined Flow Schedule.

a. The Annual Release Quantity as scheduled for a given calendar year shall not constrain the Licensees' ability to spill water at Swift No. 1 and at the Swift No. 2 Canal during high flow events, for operational reasons, or during emergency circumstances; however, water spilled during such events shall not be charged against the Annual Release Quantity; provided that such spill may be counted to the extent that it displaces scheduled releases from the Upper Release Point, but shall not be counted toward nor displace scheduled releases from the Canal Drain. During the time that spills displace scheduled releases from the Upper Release Point, the Licensees may in their discretion stop releases through the Upper Release Point;

b. No more than a total of 17,078 acre-feet of the Annual Release Quantity (equivalent to an average of 70 cfs for the four-month period) may be scheduled during

the period July 1st through October 31st, inclusive, and the maximum Combined Flow Schedule for those months shall not exceed 80 cfs in any month during the period July 1st through October 31st;

c. During the period from November 1st through June 30th, the maximum Combined Flow Schedule in each month shall not exceed 100 cfs;

d. The maximum flow that may be scheduled for release from the Canal Drain to the Constructed Channel shall be the maximum discharge capacity of the Canal Drain, without modification, estimated to be 47 cfs; and

e. No portion of the Annual Release Quantity may be credited to a later year or otherwise carried over from year to year. All of the Annual Release Quantity shall be scheduled for release during each year.

6.1.6 Response to Flow Reductions or Interruptions. The Parties intend that the Combined Flow Schedule, once established, shall be implemented throughout the terms of the New Licenses, without interruption. Certain events may cause the flow to be reduced or interrupted at either the Canal Drain or the Upper Release Point. The Licensees shall deal with such reductions or interruptions in flow as follows:

a. If a non-emergency maintenance or replacement of release point facilities is required, and such activities could decrease or interrupt scheduled releases, the Licensees shall notify the Services, WDFW, and the ACC as far in advance as practicable. The Licensees shall utilize temporary replacement facilities (e.g., pumps, siphons) for the period of potential flow reduction or interruption to maintain release of scheduled amounts of water.

b. If emergency maintenance or replacement of release point facilities is required, or if any other event of Force Majeure occurs, and such activities or such event will decrease or interrupt scheduled releases, the Licensees shall notify the Services, WDFW, and the ACC as soon as practicable. The Licensees shall utilize temporary replacement facilities (e.g., pumps, siphons) for the period of potential flow reduction or interruption to maintain release of scheduled amounts of water to the extent practicable under such emergency or Force Majeure conditions. The Licensees shall take action to maintain or replace the release point facilities and to restore their normal operation as soon as is practicable.

c. On or before the date that the Licensees begin delivering flows from the Upper Release Point under this Section 6.1, the Licensees shall prepare and deliver to the Services, WDFW, and the ACC plans for expeditious installation and operation of temporary replacement facilities for delivery of flows from the Canal Drain and Upper Release Point, respectively, to avoid or minimize reductions or interruptions in flow to the extent practicable under the circumstances described in paragraphs (a) and (b) above.

d. If under paragraphs (a) and (b) above, discharge is reduced or interrupted at either release point, the Licensees shall document the duration (in days or hours), rate (in cfs),

and volume (in acre-feet) of flow reduction to the extent practicable, and shall provide such documentation to the Services, WDFW, and the ACC.

6.1.7 Clean Water Act Certification. WDFW shall support the Annual Release Quantity and Combined Flow Schedule described in this Section 6.1 (with or without the Constructed Channel) by filing supporting comments and recommendations with WDOE. WDFW further agrees that the Annual Release Quantity and Combined Flow Schedule are consistent with WDFW's biological and other objectives. The Licensees' applications for Clean Water Act certifications may or may not include reference to the Constructed Channel. A decision by the respective Licensees to not include the Constructed Channel in Licensee applications for 401 Certifications shall not discharge Licensee obligations to construct the Constructed Channel in accordance with Section 6.1.3, including the obligation to obtain necessary Permits. All Parties shall support or not oppose the Licensees' applications for Clean Water Act certifications, or the final certificates, relating to flows in the Bypass Reach that are consistent with this Section 6.1.

6.2 Flow Fluctuations Below Merwin Dam. Commencing upon Issuance of the New License for the Merwin Project, PacifiCorp shall implement the following operational regimes at Merwin Dam for the duration of the New License for the Merwin Project.

6.2.1 Ramping Rates Below Merwin Dam. All flow rates and Ramping rates described in this Section 6.2.1 shall be measured at the Ariel gage. "Ramping" means those Project-induced increases ("up-Ramping") and decreases ("down-Ramping") in river discharge and associated changes in river surface elevation over time below Merwin Dam 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 inches or feet of change in the surface elevation of the river per hour. Restrictions on Ramping shall not apply to (a) changes in flows due to natural increases or decreases in tributary input or surface runoff occurring entirely in the reach between Merwin Dam and the Ariel gage (such as changes caused by snowmelt or rain events), (b) PacifiCorp's operations to comply with high runoff procedures, or (c) PacifiCorp's response to emergency conditions related to an imminent threat to life or property. PacifiCorp shall limit the up-Ramping rate to 1.5 feet per hour below Merwin Dam for all periods when flows below Merwin Dam are at or less than hydraulic capacity of the Merwin Project turbines. PacifiCorp shall limit the down-Ramping rate to 2 inches per hour below Merwin Dam for all periods when flows below Merwin Dam are at or less than 8,000 cfs; except that during the period from February 16 through June 15, no down-Ramping shall occur (1) commencing one hour before sunrise until one hour after sunrise and (2) commencing one hour before sunset until one hour after sunset. PacifiCorp shall perform down-Ramping as gradually as practicable and shall avoid up-Ramping fluctuations during down-Ramping periods, to the extent practicable.

6.2.2 Plateau Operations at Merwin Dam. PacifiCorp shall further restrict daily fluctuation in flows below Merwin during the period of February 16 through August 15 of each year by maintaining flow plateaus (periods of near-steady discharge) as provided in this Section 6.2.2. Once a flow plateau is established, PacifiCorp shall maintain the flow plateau for as long a duration as practicable, but flow plateaus may be altered to a new level as a result of changes in natural flow or operational demands on the Lewis River power system, subject to the limitations of this Section 6.2.2. If any Party questions the duration of flow plateaus, they may

request a meeting with appropriate PacifiCorp staff to review the information PacifiCorp used in determining when Plateau Steps were required. PacifiCorp shall cooperate in providing necessary information about and explanation of the actions taken. PacifiCorp shall limit changes in flow plateaus during the period of February 16 through August 15 as provided in (a) and (b) below:

a. Plateau Steps. For the purposes of this Agreement, a "Plateau Step" shall be defined to be down-Ramping in flow below Merwin that would result in a change in river elevation of more than 0.2 (2/10) foot at the Ariel gage. A single Plateau Step event will begin when the elevation drops by more than 0.2 (2/10) foot and be deemed complete when (i) the elevation rises by more than 0.2 (2/10) foot or (ii) does not change by more than plus or minus 0.2 (2/10) foot for more than 6 hours. Down-Ramping that results in changes in river elevation of less than or equal to 0.2 (2/10) foot shall not be considered a Plateau Step and will not be included in the accumulated total of Plateau Steps, provided that down-Ramping that results in a change of more than 0.2 (2/10) foot in any six-hour period will be considered a Plateau Step. Plateau Steps shall be limited to no more than one change in any 24-hour period, no more than 4 in any seven-day period, and no more than six in any calendar month. If PacifiCorp is required to release flows from Merwin Dam pursuant to the high runoff procedure, then for each such release pursuant to the high runoff procedure, down-Ramping to return to a level maintained for more than 6 hours without decreasing river elevation by more than 0.2 (2/10) feet shall not be counted as a Plateau Step. During flood season, if there is less than 5 feet of storage capacity in addition to the required 17 feet of storage capacity under the high runoff procedure, then the first down-Ramping after each flow release to restore the storage capacity shall not count as a Plateau Step. If PacifiCorp uses more than a single release episode to reach or exceed 22 feet of storage capacity, only the down-Ramping after the first such release shall not count as a Plateau Step; the subsequent down-Rampings shall be counted as Plateau Steps. Finally, if PacifiCorp is asked to lower flows below Merwin Dam for public safety reasons or to facilitate aquatics studies, such changes in river level shall not be counted as Plateau Steps.

b. Plateau Changes. An accumulation of Plateau Steps will result in a "Plateau Change" as further defined in this Section. PacifiCorp shall limit Plateau Changes to no more than 20 during the period February 16 through August 15. When flows are greater than or equal to 3,500 cfs below Merwin Dam, a Plateau Change shall occur when any series of consecutive Plateau Steps totals 1 foot of down-Ramping between February 16 through August 15. Any periods of up-Ramping during such period shall be ignored in such calculations. When flows are less than 3,500 cfs below Merwin Dam, a Plateau Change shall mean a series of consecutive Plateau Steps, during the period February 16 through August 15, totaling 0.5 (5/10) foot. Any periods of up-Ramping during such period shall be ignored in such calculations. If a single Plateau Step in a series would cause the total to exceed one foot (when flows are greater than or equal to 3,500 cfs) or one-half foot (when flows are less than 3,500 cfs), the excess shall be counted toward the next Plateau Changes. If a Plateau Step begins when flows are greater than 3,500 cfs and ends when flows are less than 3,500 cfs, the Plateau Change will be determined by adding the fractions of a Plateau Change occurring before and after the river discharge below Merwin Dam passes 3,500 cfs. For example, if a Plateau Step begins when flows are at 5,000 cfs and has measured 6 inches when flows reach 3,500 cfs (one-half of a

Plateau Change for flows above 3,500 cfs) and continues to decline an additional 3 inches ending at 3,000 cfs (one-half of a Plateau Change for flows below 3,500 cfs), it would count as one full Plateau Change.

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6.2.3 Stranding Study and Habitat Evaluation. By the third anniversary of the Issuance of the New License for the Merwin Project, PacifiCorp shall complete a stranding study and a habitat evaluation study below Merwin Dam to assess the potential effects of Project operations on steelhead, coho salmon, Chinook salmon, and chum salmon, and their habitats. The total cost to complete both the study and evaluation is estimated to be \$300,000. PacifiCorp shall develop the stranding study objectives in Consultation with the ACC, with final approval by NOAA Fisheries and USFWS. The stranding study shall identify measurable factors affecting potential stranding, the relationship of such factors to each other, and the timeframe and season within which stranding may occur. The habitat evaluation study shall evaluate spawning and rearing habitat from Merwin Dam to the downstream end of Eagle Island across a range of minimum flow operational conditions. The design of the study and evaluations shall be limited to the objectives developed above, must be operationally implementable, and any operational changes implemented for the study and evaluation shall not be considered a breach of any other operational restrictions provided in this Agreement, e.g., shall not be considered a Plateau Change under Section 6.2.2. Based upon the results of the study and evaluation, the ACC may recommend to PacifiCorp, subject to the approval of NOAA Fisheries and USFWS, measures to minimize or mitigate stranding of salmonids below Merwin Dam. Such measures may include minor adjustments to instream flow levels, or minor adjustments to Merwin Project operations to address Project impacts below Merwin Dam. PacifiCorp shall consider any suggested adjustments to operations and flows of the Project, and shall make reasonable, good faith efforts to address such recommendations. In so doing, PacifiCorp should consider impacts on operational benefits of the Project, including, but not limited to, flood management, power generation, and recreational uses. If PacifiCorp determines not to implement the recommendations, because there would be significant impact on Project benefits, the ACC may elect to mitigate the impacts shown by the study and evaluation by development of habitat enhancement projects through the use of the Aquatics Fund.

6.2.4 Minimum Flows Below Merwin Dam. PacifiCorp shall provide the following minimum flows below Merwin Dam during the following time periods, subject to the limitations and requirements provided in Section 6.2.5: (1) July 31 through October 15, 1,200 cfs; (2) October 16 through October 31, 2,500 cfs; (3) November 1 through December 15, 4,200 cfs; (4) December 16 through March 1, 2,000 cfs; (5) March 2 through March 15, 2,200 cfs; (6) March 16 through March 30, 2,500 cfs; (7) March 31 through June 30, 2,700 cfs; (8) July 1 through July 10, 2,300 cfs; (9) July 11 through July 20, 1,900 cfs; and (10) July 21 through July 30, 1,500 cfs. The above flows and timing were designed for the purpose of the maintaining and enhancing species downstream of Merwin Dam, including native fall Chinook. The preceding sentence shall not modify or be used to modify the obligations stated in this Section 6.2.4.

6.2.5 Low Flow Procedures. During years when PacifiCorp projects that sufficient water will not be available to appropriately balance the respective needs of fishery resources, recreation, flood management, and power production, PacifiCorp shall convene a Flow Coordination Committee (the "FCC") consisting of representatives from PacifiCorp, NOAA Fisheries, USFWS, WDFW, the CIT, and the Yakama Nation. PacifiCorp shall provide the FCC with relevant information, and the FCC shall independently evaluate available data regarding

water availability during the projected low flow period and decrease or maintain the minimum flows levels provided in Section 6.2.4 as it deems appropriate. PacifiCorp shall maintain minimum flow levels provided in Section 6.2.4 unless such levels are temporarily decreased by Consensus of the FCC members; provided that if there is an impasse, determinations shall be made by a majority of the agency members of the FCC. Changes requested by the FCC shall not require PacifiCorp to violate its agreement with FEMA concerning high runoff management, as described in Section 12. The FCC shall consider the following interests in modifying minimum flow levels (the order of listing is not intended to indicate priority): (1) the needs of fish species, with a priority on ESA-listed species, including, without limitation, consideration for keeping redds watered, providing rearing habitat for wild fall Chinook, and pulse flows to assist in migration of juvenile fish if such pulse flows are shown to be effective; (2) the need to provide flood management benefits for down river areas; and (3) the desire to refill all Project reservoirs to achieve a combined target of 5 feet of available reservoir storage capacity by July 1, and a target of 15 feet of reservoir storage by Labor Day (to provide reasonable recreation uses between Memorial Day and Labor Day). The Counties and cities that are signatories to this Agreement may designate a local government liaison to the FCC. The liaison's purpose is to encourage communication between the FCC and local governments. PacifiCorp shall notify the local governments' liaison (a) when the FCC will be convened and (b) the general content of the agenda. The liaison may provide written comments to the FCC for its consideration.

SECTION 7: AQUATIC HABITAT ENHANCEMENT ACTIONS

7.1 Large Woody Debris Program. From the Effective Date until superseded as set forth below, PacifiCorp shall continue its current large woody debris ("LWD") program pursuant to a Hydraulic Project Approval ("HPA") from the State of Washington, attached as Schedule 7.1.

Within 180 days after the Issuance of the New License for the Swift No. 1 Project, the provisions of the current HPA from the State of Washington that are related to LWD shall be superseded by the provisions of this Section 7.1 and PacifiCorp shall apply for a new HPA consistent with this Section 7.1. The provisions of this Section 7.1 shall constitute the LWD management plan during the term of the New License for the Swift No. 1 Project. After Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall, in Consultation with the ACC, place LWD as such LWD is collected from the Swift Reservoir by PacifiCorp as part of its normal operations, into a fenced and locked storage area within the Lewis River Basin. The ACC may advise PacifiCorp of the type and quantity of LWD that is to be stored, considering anticipated habitat improvement projects in the coming years and anticipated frequency of the salvage efforts that it desires for habitat improvement purposes. PacifiCorp shall maintain the secure storage area for the duration of the New License for the Swift No. 1 Project, and provide reasonable access on business days to members of the ACC. Entities authorized by PacifiCorp (including ACC members) may pick up, transport, and place LWD for the purpose of restoring aquatic habitat in the Lewis River Basin. LWD may not be placed in or near any Project reservoir, forebay, canal, or other facility without the Licensee's approval. This does not preclude placing LWD in the Constructed Channel or elsewhere in the Bypass Reach.

7.1.1 Funding. Within 180 days after Issuance of the New License for the Merwin Project and annually thereafter, PacifiCorp shall make available in a Tracking Account up to \$2,000, which may be disbursed to qualified entities to defray the costs of LWD transportation and placement in the Lewis River Basin (the "LWD Fund"). The unspent balance of the LWD Fund in any year shall be carried forward and made available in subsequent years, in addition to the annual amount of \$2,000. In addition, within 180 days after Issuance of the New License for the Merwin Project and annually thereafter, PacifiCorp shall contribute \$10,000 to the Aquatics Fund (Section 7.5) that will be earmarked for LWD projects in the mainstem of the Lewis River below Merwin Dam that benefit anadromous fish. If there are not sufficient LWD projects, or if the LWD program is suspended as provided in Section 7.1.4 below, PacifiCorp, at the request of the ACC, shall use the funds for other Aquatics Fund projects that benefit anadromous fish in the mainstem of the Lewis River below Merwin Dam and then for other projects in the Lewis River Basin below Merwin Dam. For any LWD project below Merwin Dam, PacifiCorp shall provide for the transportation of LWD at its own expense to a staging area provided by the entity or individual carrying out the project.

7.1.2 LWD Study. PacifiCorp shall contract with a qualified consulting firm, selected in Consultation with the ACC, to develop and implement an LWD study to identify and assess the potential benefits of LWD projects below Merwin Dam. The general scope of the study is described on attached Schedule 7.1.2, and the total cost to complete the study is estimated to be \$60,000. PacifiCorp shall cause the consultant to submit a draft study plan to the ACC for review within 180 days after Issuance of the New License for the Merwin Project. The ACC may comment on the draft study plan within 60 days after receipt. PacifiCorp shall direct the

consultant to finalize the study plan within 90 days after submission of the draft to the ACC, to complete the study, and to deliver the completed study to the ACC. If at any point PacifiCorp provides comments to the consultant during preparation of the LWD study, PacifiCorp shall provide to the ACC copies of the consultant's original drafts and PacifiCorp's comments.

7.1.3 [RESERVED]

7.1.4 Liability for LWD Program; Partial Suspension of LWD Program. Entities picking up, transporting, and placing LWD shall bear all costs (except as otherwise provided in Sections 7.1, 7.1.1, and 7.5), risks, and responsibility for such LWD activities, and shall acquire all Permits necessary for such activities. PacifiCorp may require such entities to provide evidence of adequate liability insurance or self-insurance capability as a condition to providing access to the LWD. The Parties do not intend that PacifiCorp's funding of LWD activities result in PacifiCorp becoming liable for the placing entities' actions or the consequences thereof. In the event, however, that any third party makes a claim against PacifiCorp arising out of such actions and PacifiCorp suffers a loss or losses in the aggregate amount of \$500,000, PacifiCorp shall suspend the placement of LWD until such time as PacifiCorp's liability concerns have been addressed in a way that is mutually acceptable to the Parties (e.g., legislative immunity, indemnification by the placing entities). During any suspension of the LWD program, PacifiCorp shall continue to contribute \$10,000 annually to the Aquatics Fund as provided in Section 7.1.1; however, PacifiCorp shall be relieved of its annual obligation to defray transport and placement expenses up to the amount of \$2,000. PacifiCorp shall not have any obligation to store additional LWD during the period of suspension of the LWD program.

7.1.5 Surplus LWD; Reporting. PacifiCorp may use or dispose of in its sole discretion any LWD collected by PacifiCorp that is not placed in the storage sites under this Section 7.1 or that PacifiCorp, in Consultation with the TCC, determines is not needed for terrestrial habitat improvement projects. PacifiCorp shall include in its annual report under Section 14.2.6 information regarding (a) the quantity of LWD provided to the storage sites, and (b) the quantity of LWD sold by PacifiCorp to offset the cost of the LWD program, both (a) and (b) being described in truckloads, board-feet, or tons.

7.2 Spawning Gravel Study and Gravel Monitoring and Augmentation Plan.

a. Contracting with Consultant. Within six months after the Effective Date, PacifiCorp shall contract with a qualified consulting firm, selected in Consultation with the ACC, to develop and implement a spawning gravel study and, on the basis of the study results, to develop a gravel monitoring and augmentation plan.

b. Draft Study Plan. The general scope of the study is described on attached Schedule 7.2. PacifiCorp shall cause the consultant to submit a draft study plan to the ACC for review upon Issuance of the New License for the Merwin Project. In addition to any review by the ACC, PacifiCorp may provide input to the consultant when it is developing the plan, as long as PacifiCorp provides the ACC, prior to the ACC's 60-day review period, with the consultant's original drafts and PacifiCorp's comments. The ACC may comment on the draft study plan within 60 days after receipt.

c. Finalizing and Completing the Study and Preparing Study Report. PacifiCorp shall direct the consultant to finalize the study plan within 90 days after submission of the draft to the ACC, to complete the study, and to deliver a draft study report to the ACC. Prior to the submission of the draft study report to the ACC, PacifiCorp may provide input to the consultant, so long as PacifiCorp provides the consultant's original drafts of the study report and PacifiCorp's comments to the ACC along with the draft study report. The ACC shall have 60 days to comment on the draft study report. PacifiCorp shall Consult with the ACC on the draft study report. PacifiCorp shall direct the consultant to finalize the study report within 120 days after submission of the draft study report to the ACC. The study report will include the results of the study and a gravel monitoring and augmentation plan that describes gravel monitoring, the mechanism to determine when gravel augmentation will occur, and how gravel augmentation shall occur if the monitoring shows augmentation is necessary, during the term of the New License for the Merwin Project.

d. Implementation of Gravel Monitoring and Augmentation Plan. PacifiCorp shall implement the gravel monitoring and augmentation plan. The monitoring and augmentation plan shall not require any augmentation that would increase the gravel levels beyond those existing on the date of the consultant's study.

7.3 Predator Study. By the 10th anniversary of the Issuance of the New License for the Merwin Project, PacifiCorp shall conduct a one-time study of whether predation in Lake Merwin is likely to be a limiting factor to the success of the anadromous salmonid reintroduction. PacifiCorp shall design the study in Consultation with the ACC, with final approval by the Services. PacifiCorp shall provide the final study report to the ACC. PacifiCorp shall consult with the ACC regarding the findings of the final study report, and if the study determines that predation is likely to be a limiting factor to successful reintroduction of anadromous salmonids, PacifiCorp may identify steps that could be undertaken to control predation.

7.4 Habitat Preparation Plan. Within six months after the Effective Date, PacifiCorp shall develop a plan (the "Habitat Preparation Plan") in Consultation with the ACC to release live adult hatchery anadromous salmonids into Swift Reservoir, Yale Lake, and Lake Merwin for the purpose of preparing the habitat in those locations for the reintroduction of anadromous salmonids. The objective of the Habitat Preparation Plan will be to make possible (1) nutrient enrichment in the waters through decay of the adult hatchery fish and, (2) tilling of the gravel by the released hatchery adults as they attempt to spawn. The number, sex, and species of hatchery adult salmonids shall be determined as part of the Habitat Preparation Plan. PacifiCorp's performance obligation under the Habitat Preparation Plan shall be limited to placing live adult hatchery anadromous salmonids for a period of five years in each of Swift Reservoir, Yale Lake, and Lake Merwin, commencing in each case five years prior to expected completion of the downstream fish passage facility from that reservoir. PacifiCorp shall implement the Habitat Preparation Plan at Swift Reservoir beginning as soon as practicable after the Habitat Preparation Plan is finalized and at the other reservoirs as provided in the Habitat Preparation Plan. PacifiCorp shall implement this program only to the extent there are excess hatchery fish available beyond those required for the Hatchery and Supplementation Plan described in Section 8. PacifiCorp shall not be required to pass or collect the progeny of hatchery adult anadromous salmonids introduced under the Habitat Preparation Plan unless and until collection and transport facilities for such progeny are constructed in accordance with Section 4. For the Merwin and

Yale Projects. PacifiCorp's obligations under this Section 7.4 shall cease if the Yale Downstream Facility or Merwin Downstream Facility, respectively, will not be constructed pursuant to Section 4.1.9.

7.5 Aquatics Fund. PacifiCorp and Cowlitz PUD shall establish the Lewis River Aquatics Fund ("Aquatics Fund") to support resource protection measures ("Resource Projects"). Resource Projects may include, without limitation, projects that enhance and improve wetlands, riparian, and riverine habitats; projects that enhance and improve riparian and aquatic species connectivity that may be affected by the continued operation of the Projects; and projects that increase the probability for a successful reintroduction program. The Aquatics Fund shall be a Tracking Account maintained by the Licensees with all accrued interest being credited to the Aquatics Fund. PacifiCorp shall provide \$5.2 million, in addition to those funds set forth in Section 7.1.1, to enhance, protect, and restore aquatic habitat in the Lewis River Basin as provided below. Cowlitz PUD shall provide or cause to be provided \$520,000 to enhance, protect, and restore aquatic habitat in the Lewis River Basin as provided below; provided that Cowlitz PUD's funds may only be used for Resource Projects upstream of Swift No. 2, including without limitation the Bypass Reach. The Licensees shall provide such funds according to the schedules set forth below.

7.5.1 PacifiCorp's Contributions.

a. PacifiCorp shall make funds available as follows: on each April 30 commencing in 2005, \$300,000 per year until 2009 (a total of \$1.5 million).

b. For each of the Merwin, Yale, and Swift No. 1 Projects, PacifiCorp shall make one-third of the following funds available as follows after the Issuance of the New License for that Project: on each April 30 commencing in 2010, \$300,000 per year through 2014 (a total of \$1.5 million); on each April 30 commencing in 2015, \$100,000 per year through 2018 (a total of \$400,000); and on each April 30 commencing in 2019, \$200,000 per year through 2027 (a total of \$1.8 million); provided that, for any New License that has not been Issued by April 30, 2009, the funding obligation for that Project shall be contributed annually in the same amounts but commencing on April 30 following the first anniversary of Issuance of the New License for that Project.

c. PacifiCorp shall contribute \$10,000 annually to the Aquatics Fund as set forth in Section 7.1.1.

7.5.2 Cowlitz PUD's Contributions. Cowlitz PUD shall make or cause to be made funds available as follows: \$25,000 per year on each April 30 following the first anniversary of the Issuance of the New License for the Swift No. 2 Project through the April 30 following the 20th anniversary of the Issuance of the New License for the Swift No. 2 Project (a total of \$500,000); and a single amount of \$20,000 on the April 30 following the 21st anniversary of the Issuance of the New License for the Swift No. 2 Project.

7.5.3 Use of Funds. Decisions on how to spend the Aquatics Fund, including any accrued interest, shall be made as provided in Section 7.5.3.2 below; provided that (1) at least \$600,000 of such monies shall be designated for projects designed to benefit bull trout according to the following schedule: as of April 30, 2005, \$150,000; as of April 30, 2006, \$100,000; as of

April 30, 2007, \$150,000; as of April 30, 2008, \$100,000; and on or before the April 30 following the fifth anniversary of the Issuance of all New Licenses, \$100,000; and such projects shall be consistent with bull trout recovery objectives as determined by USFWS; (2) fund expenditures for the maintenance of the Constructed Channel (Section 4.1.3) shall not exceed \$20,000 per year on average; (3) if studies indicate that inadequate "Reservoir Survival," defined as the percentage of actively migrating juvenile anadromous fish of each of the species designated in Section 4.1.7 that survive in the reservoir (from reservoir entry points, including tributary mouths to collection points) and are available to be collected, is hindering attainment of the Overall Downstream Survival standard as set forth in Section 3, then at least \$400,000 of such monies shall be used for Resource Projects specifically designed to address reservoir mortality; and (4) \$10,000 annually shall be used for lower river projects as set forth in Section 7.1.1. Projects shall be designed to further the objectives and according to the priorities set forth below in Section 7.5.3.1.

7.5.3.1 Guidance for Resource Project Approval and Aquatics Fund Expenditures.

a. Resource Projects must be consistent with applicable Federal, State, and local laws and, to the extent feasible, shall be consistent with policies and comprehensive plans in effect at the time the project is proposed. These may include, but are not limited to, Washington's Wild Salmonid Policy, the Lower Columbia River Bull Trout Recovery Plan, and the Lower Columbia River Anadromous Fish Recovery Plan.

b. The Aquatics Fund shall not be used to fund Resource Projects that any entity is otherwise required by law to perform (not including obligations under this Agreement or the New Licenses for use of the Aquatics Fund), unless by agreement of the ACC.

c. The Licensees shall evaluate Resource Projects using the following objectives:

- (1) benefit fish recovery throughout the North Fork Lewis River, with priority to federal ESA-listed species;
- (2) support the reintroduction of anadromous fish throughout the Basin; and
- (3) enhance fish habitat in the Lewis River Basin, with priority given to the North Fork Lewis River.

For the purposes of this Section 7.5, the North Fork Lewis River refers to the portion of the Lewis River from its confluence with the Columbia River upstream to the headwaters, including tributaries except the East Fork of the Lewis River.

The Licensees shall also consider the following factors to reflect the feasibility of projects and give priority to Resource Projects that are more practical to implement:

- (i) Whether the activity may be planned and initiated within one year.

- (ii) Whether the activity will provide long-term benefits.
- (iii) Whether the activity will be cost-shared with other funding sources.
- (iv) Probability of success, and
- (v) Anticipated benefits relative to cost.

7.5.3.2 Resource Project Proposal, Review, and Selection.

(1) By the first anniversary of the Effective Date, the Licensees shall develop, in Consultation with the ACC, (a) a strategic plan consistent with the guidance in Section 7.5.3.1 above to guide Resource Project development, solicitation, and review; and (b) administrative procedures to guide implementation of the Aquatics Fund. Both may be modified periodically with the approval of the ACC.

(2) Any person or entity, including the Licensees, may propose a Resource Project. In addition, the Licensees may solicit Resource Projects proposals from any person or entity.

(3) The Licensees shall review all Resource Project proposals, applying the guidance set forth in Section 7.5.3.1. The Licensees shall provide an annual report describing proposed Resource Project recommendations to the ACC. The date for submitting such report shall be determined in the strategic plan defined in subsection 7.5.3.2(1) above. The report will include a description of all proposed Resource Projects, an evaluation of each Resource Project, and the basis for recommending or not recommending a project for funding.

(4) The Licensees shall convene a meeting of the ACC on an annual basis, no sooner than 30 days and no later than 60 days after distribution of the report set forth in Section 7.5.3.2(2), for Consultation regarding Resource Projects described in the report.

(5) Licensees shall modify the report on proposed Resource Projects, based on the above Consultation, and submit the final report to the ACC within 45 days after the above Consultation. Any ACC member may, within 30 days after receiving the final report, initiate the ADR Procedures to resolve disputes relating to Resource Projects. If the ADR Procedures are commenced, the Licensees shall defer submission of the final report on Resource Projects to the Commission, if necessary, until after the ADR Procedures are completed. If the ADR Procedures fail to resolve all disputes, the Licensees shall provide the comments of the ACC to the Commission. If no ACC member initiates the ADR Procedures, the Licensees shall submit the final report to the Commission, if necessary, within 45 days after submission of the final report to the ACC.

7.6 In Lieu Fund. If NOAA Fisheries and USFWS determine, pursuant to Section 4.1.9, that reintroduction of anadromous salmonids into Yale Lake or Lake Merwin is not required, and if as a result of such determination one or more of the Merwin Downstream Facility, Swift Upstream Facility, and the Yale Upstream and Downstream Facilities are not designed, permitted, constructed, and operated, then PacifiCorp shall establish the "In Lieu Fund" to support mitigation measures for anadromous salmonids in lieu of passage. The In Lieu Fund shall be a Tracking Account maintained by the Licensees, with all accrued interest being credited to the In Lieu Fund. PacifiCorp shall provide funds according to the schedule set forth below.

7.6.1 PacifiCorp's Contributions.

a. PacifiCorp shall provide the following sums to the In Lieu Fund: \$10 million in lieu of a juvenile surface collector at Yale Dam; \$10 million in lieu of a juvenile surface collector at Merwin Dam; \$5 million in lieu of an upstream adult fish passage facility at Yale; and \$5 million in lieu of an upstream adult fish passage facility in the vicinity of the Swift Projects.

b. PacifiCorp shall allocate funds in lieu of the Yale Downstream Facility as follows: \$3 million on each of the 11th and 12th anniversaries of the Issuance of the New License for the Yale Project, and \$4 million on the 13th anniversary of the Issuance of the New License for the Yale Project. PacifiCorp shall allocate funds in lieu of the Merwin Downstream Facility as follows: \$2.5 million on each of the 14th through the 17th anniversaries of the Issuance of the New License for the Merwin Project. PacifiCorp shall allocate funds in lieu of the Swift Upstream Facility as follows: \$1.25 million on each of the 14th through the 17th anniversaries of the Issuance of the New License for the Swift No. 1 Project. PacifiCorp shall allocate funds in lieu of the Yale Upstream Facility as follows: \$1.25 million on each of the 14th through the 17th anniversaries of the Issuance of the New License for the Yale Project. Funds shall be available for expenditure as soon as the decisions not to build the respective facilities are final and not subject to further review; provided that if any review delays the expenditure of In Lieu Fund monies for an extended period, the ACC will consult to discuss the delay and whether to propose an alternate course of action. PacifiCorp shall not be obligated to both spend In Lieu Funds and build the respective facilities.

7.6.2 Mitigation Measure Proposal, Review, and Selection.

(1) By the first anniversary of establishment of the In Lieu Fund, PacifiCorp shall develop, in Consultation with the ACC and with the approval of the Services, (a) a strategic plan consistent with the guidance in Section 7.6.3 below to guide mitigation measure development, solicitation, and review; and (b) administrative procedures to guide implementation of the In Lieu Fund. Both may be modified periodically with the approval of the Services.

(2) Any person or entity, including PacifiCorp, may propose a mitigation measure. In addition, PacifiCorp may solicit mitigation measure proposals from any

person or entity. A preliminary list of potential mitigation measures is attached as Schedule 7.6.2.

(3) PacifiCorp shall review all mitigation measure proposals, applying the guidance set forth in Section 7.6.3. PacifiCorp shall provide an annual report describing proposed mitigation measure recommendations to the ACC. The date for submitting such report shall be determined in the strategic plan defined in this Section 7.6.2. The report will include a description of all proposed mitigation measures, an evaluation of each mitigation measure, and the basis for recommending or not recommending a measure for funding.

(4) PacifiCorp shall convene a meeting of the ACC on an annual basis, no sooner than 30 days and no later than 60 days after distribution of the report described in Section 7.6.2(3), for Consultation regarding mitigation measures described in the report. The recommended measures shall be consistent with the guidance set forth in Section 7.6.3, as identified by the Services. If the Services identify one or more proposed measures that are not consistent with such guidance, PacifiCorp shall include a description of such measures in the final report with a notation that they are not consistent with the guidance and shall not be implemented using In Lieu Fund monies. At the conclusion of the Consultation, the Services may submit to PacifiCorp a list identifying the Services' prioritization of proposed mitigation measures (excluding those inconsistent with the guidance set forth in Section 7.6.3).

(5) PacifiCorp shall modify the report on proposed mitigation measures, based on the above Consultation and any Service mitigation measure priority list, and submit the final report to the ACC within 45 days after the above Consultation. Any ACC member may, within 30 days after receiving the final report, initiate the ADR Procedures to resolve disputes relating to mitigation measures. If the ADR Procedures are commenced, then PacifiCorp shall defer submission of the final report on mitigation measures to the Commission, if necessary, until after the ADR Procedures are completed. If the ADR Procedures fail to resolve all disputes, then PacifiCorp shall provide the comments of the ACC to the Commission. If no ACC member initiates the ADR Procedures, then PacifiCorp shall submit the final report to the Commission, if necessary, within 45 days after submission of the final report to the ACC.

7.6.3 Guidance and Criteria for Mitigation Measure Approval and In Lieu Fund Expenditures. In Lieu Fund monies will be spent on mitigation measures that collectively contribute to meeting the objective of achieving benefits to anadromous fish populations equivalent to or greater than benefits that would have occurred if passage through Yale and or Merwin reservoirs had been provided, as determined by the Services based on the best information available at such time. The Services may provide further guidance to PacifiCorp and the ACC from time to time, to guide the spending of In Lieu Fund monies consistent with the previous sentence. If measures to further benefit specifically the North Fork Lewis River populations have been exhausted, then any remaining funds will be used to benefit other anadromous fish populations in the applicable evolutionarily significant units.

The list of projects in Schedule 7.6.2 is provided to illustrate, without limitation as to scope or type, some projects that qualify as mitigation measures under the In Lieu Fund based on current

conditions. These specific projects may or may not be undertaken with the In Lieu Fund. Some measures identified may already have been completed by the time the In Lieu Fund becomes applicable.

7.7 Management of Aquatics Fund and In Lieu Fund. PacifiCorp and Cowlitz PUD shall each hold or cause to be held in a Tracking Account monies that it provides to the Aquatics Fund, and PacifiCorp shall hold monies provided to the In Lieu Fund, until expenditures for Resource Projects or mitigation measures are made. Each Licensee's contributions shall be made in 2004 dollars, Adjusted for Inflation. Each Licensee shall credit interest on its respective Fund monies from the date the monies are due to be placed into the Fund until expended. Interest will be calculated monthly at the prime interest rate, as published on the last day of the month in the *Wall Street Journal*, based on the average monthly balance. If such rate ceases to be published in the *Wall Street Journal*, the Parties shall agree upon an alternate source for the prime interest rate. The Licensees shall notify and Consult with the ACC with respect to the Aquatics Fund if it appears that a given project's costs will be significantly higher than expected, and PacifiCorp shall do the same with respect to the In Lieu Fund. Based on Consultation with the ACC, the Licensees (or PacifiCorp with respect to the In Lieu Fund) may determine not to proceed with or to modify that project. Funds not expended in any given year shall be carried over to the subsequent year.

7.7.1 Review. The Licensees shall provide an annual report regarding Aquatics Fund activities and expenditures under Section 7.5, and PacifiCorp shall provide such annual reports regarding In Lieu Fund activities and expenditures under Section 7.6, both including any monitoring information collected regarding Resource Projects or mitigation measures implemented through the Aquatics and In Lieu Funds. Such annual report may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6. Each Licensee shall make or cause to be made available its underlying records relating to the Aquatics Fund, and PacifiCorp shall make available its underlying records relating to the In Lieu Fund, for review by the Parties.

7.7.2 Administrative, Overhead, and Legal Costs. Each Licensee shall bear its costs for all administrative, legal, and overhead costs associated with the management of the Aquatics and In Lieu Funds as provided in Sections 7.5 through 7.7, including, without limitation, calculation of interest and reports to the ACC and Consultation with the ACC, and shall not assess any such costs against the Aquatics and In Lieu Funds; provided that all costs incurred to implement approved Resource Projects and mitigation measures shall be paid for out of the Aquatics and In Lieu Funds, respectively.

7.7.3 Escalation of Costs. Unless otherwise indicated, all costs or payment amounts specified in dollars in Sections 3, 4, 5, 6, 7, 8 and 9 shall be deemed to be stated as of the year 2004, and shall be Adjusted for Inflation as of April 30 of each year (beginning in April 2005).

7.8 Execution of Projects and Mitigation Measures. The Licensee(s) shall implement or provide funds through a grant or other means to another entity to implement Resource Projects developed under Section 7.5.3.2, in accordance with the approved plan and schedules for such Resource Projects. PacifiCorp shall do the same with respect to mitigation measures under Section 7.6.2.

SECTION 8: HATCHERY AND SUPPLEMENTATION PROGRAM

8.1 Hatchery and Supplementation Program. The Licensees shall undertake a hatchery and supplementation program. The goals of the program are to support (i) self-sustaining, naturally producing, harvestable native anadromous salmonid species throughout their historical range in the North Fork Lewis River Basin, and (ii) the continued harvest of resident and native anadromous fish species (the "Hatchery and Supplementation Program"). The Hatchery and Supplementation Program shall be consistent with the priority objective of recovery of wild stocks in the basin to healthy and harvestable levels. The intention of the foregoing sentence is not necessarily to eliminate the hatchery program but it recognizes the importance of recovering wild stocks and a potential that hatchery production may adversely affect recovery. The Hatchery and Supplementation Program shall be consistent with the ESA, applicable state and federal fisheries policies, and regional recovery plans, and should be consistent with recommendations of the Hatchery Science Review Group and the Northwest Power Planning Council's Hatchery Review (Artificial Production Review & Evaluation) to the extent practicable. The supplementation portion of the program shall be a part of the reintroduction program (in addition to fish passage) and shall be limited to spring Chinook, steelhead and coho as provided in this Section 8.

To ensure that the Hatchery and Supplementation Program is meeting its goals, the Licensees, in Consultation with the ACC and with the approval of the Services, shall develop and implement a hatchery and supplementation plan to adaptively manage the program and guide its management as set out in Section 8.2 below ("Hatchery and Supplementation Plan" or "H&S Plan"). The Licensees shall incorporate best methodologies and practices into the Hatchery and Supplementation Plan. The Hatchery and Supplementation Plan shall be designed to achieve the numeric Hatchery Targets provided for in Section 8.3 below, and those targets shall be calculated in terms of ocean recruits of hatchery origin, taking into account harvest and escapement. For purposes of this Agreement, "Ocean Recruits" shall mean total escapement (fish that naturally spawned above Merwin and hatchery fish) plus harvest (including ocean, Columbia River, and Lewis River harvest). Subject to the ESA, applicable federal and state fisheries policies, regional recovery plans, other applicable laws and policies, and the terms of this Agreement, the Licensees shall provide for the implementation of the Hatchery and Supplementation Program for the terms of the New Licenses.

As of the Effective Date, WDFW owns the existing Lewis River Hatchery facility. Use and operation of the Lewis River Hatchery is subject to agreements between PacifiCorp and WDFW. The Licensees shall ensure the existing Lewis River, Merwin, and Speelyai hatchery facilities (the "Hatchery Facilities") are modified pursuant to Section 8.7 below to meet their obligations under this Section 8. The Licensees shall ensure the Hatchery Facilities, including the relevant or necessary support facilities (e.g., employee housing, shops, hatcheries, and related infrastructure), as modified, are maintained as necessary to consistently deliver a high-quality hatchery product that will meet their obligations. The Licensees' hatchery production obligations as set forth in Section 8.4 below, including both anadromous and resident fish, shall be limited by the combined production capacity of the Hatchery Facilities ("Hatcheries Capacity Limit") as established after implementation of upgrades as set forth in Section 8.7. The Licensees may, after Consultation with the ACC, use different hatcheries than those described above; provided that such different hatcheries (a) have equal or greater capacity than the

Hatchery Facilities if that capacity is still required to meet the Licensees' obligations under this Section 8, (b) are of quality equal to or greater than that of the Hatchery Facilities, and (c) comply with transfer and disease protocols and other requirements of the H&S Plan.

8.2 Hatchery and Supplementation Plan. The Licensees, in Consultation with the ACC and subject to the approval of the Services, shall develop a Hatchery and Supplementation Plan to address hatchery operations, supplementation, and facilities as provided in Section 8.2.1 below. Until implementation of the Hatchery and Supplementation Plan, PacifiCorp shall continue to implement the hatchery program set forth in Articles 50 and 51 of the 1983 Merwin license, as amended.

The Hatchery and Supplementation Plan will address both anadromous and resident fish. The Licensees shall incorporate best methodologies and practices into all components of the H&S Plan, including, but not limited to, the Hatchery Facilities and supplementation facilities. When developing the H&S Plan, the Licensees and the ACC shall be guided, at a minimum, by the Fish Planning and Hatchery Review Documents (submitted as AQU-18 with the Licensees' applications for the Merwin, Swift No. 1, and Swift No. 2 Projects in April 2004), and shall take into consideration the results of ongoing relevant hatchery reviews and the experience of other supplementation programs in the region, such as the Yakama Nation's Cle Elum facility. The Licensees shall transition from the hatchery program set forth in Articles 50 and 51 of the 1983 Merwin license, as amended, to implementing the Hatchery and Supplementation Plan as soon as practicable after Issuance of the New License(s) for the Merwin Project or the Swift Projects, whichever occurs earlier, provided that supplementation will commence as provided in Section 8.5. When finalized, the Licensees shall submit the Hatchery and Supplementation Plan to WDFW and NOAA Fisheries for consideration in their development of applicable hatchery genetic management plans ("HGMPs").

8.2.1 Development of Plan Timing. The Licensees, in Consultation with the ACC, shall produce and distribute a draft Hatchery and Supplementation Plan to the ACC by the first anniversary of the Effective Date. The Yakama Nation may chair a subgroup of interested members of the ACC for purposes of coordinating the ACC's input regarding the supplementation elements of the draft H&S Plan. The members of the ACC shall have 60 days to comment on the draft H&S Plan. The Licensees shall provide a 60-day period for the public to provide written comments. The Licensees shall consider and address in writing the written comments provided by the members of the ACC, including the rationale behind the Licensees' decision to not address a comment in the final H&S Plan. The Licensees shall consider comments and submit a revised H&S Plan to the Services for approval within 120 days of the first anniversary of the Effective Date.

8.2.2 Hatchery and Supplementation Plan Contents. The H&S Plan shall address the means by which the Licensees shall use the Hatchery Facilities to accomplish the goals and requirements of the Hatchery and Supplementation Program, including, without limitation, the Hatchery Targets. It shall also be consistent with the objective of restoring and recovering wild stocks in the basin to healthy and harvestable levels. The H&S Plan shall address, at a minimum, the following topics:

8.2.2.1 A description of the Hatchery Facilities, including the upgrades identified in Schedule 8.7;

8.2.2.2 Identification of species and broodstock sources to be used for the Hatchery and Supplementation Program;

8.2.2.3 The quantity and size of fish to be produced;

8.2.2.4 The allocation of smolts and adults between the hatchery and supplementation programs and a description of how the two programs are to be implemented at the same facility without causing unacceptable adverse impacts on each other;

8.2.2.5 Rearing and release strategies for each stock including, but not limited to, timing, planned distribution, locations for release, procedures to transport smolts to acclimation sites for supplementation purposes, and upward and downward production adjustments to accommodate natural returns;

8.2.2.6 The Ocean Recruits Methodology referenced in Section 8.3.2.2 below;

8.2.2.7 Plans and protocol for supplementation stocks;

8.2.2.8 Broodstock collection and breeding protocols;

8.2.2.9 Policies in effect regarding in-basin and out-of-basin stock transfers;

8.2.2.10 Measures to minimize potential negative impacts of the Hatchery and Supplementation Program on ESA-listed species;

8.2.2.11 Measures to protect production processes from predators, e.g., netting, consideration of evolving hatchery practices to condition fish to avoid predators;

8.2.2.12 A description of how the Hatchery and Supplementation Program monitoring and evaluation requirements will be implemented, including, but not limited to, marking strategies;

8.2.2.13 A description of the methods to prevent unacceptable adverse impacts, if any, of (1) the hatchery program on the reintroduction program, and (2) the supplementation program on native resident species; and

8.2.2.14 Fish health protocols.

8.2.3 Annual Operating Plan. The Licensees shall provide for the implementation of the Hatchery and Supplementation Plan through an annual plan ("Annual Operating Plan"). The Annual Operating Plan shall be consistent with the Hatchery and Supplementation Plan. The Licensees, in Consultation with the hatchery managers and with the approval of the Services, shall develop the initial Annual Operating Plan as part of the Hatchery and Supplementation Plan. The Licensees shall develop subsequent Annual Operating Plans in Consultation with the hatchery managers and subject to the approval of the Services. The Annual Operating Plan may

be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6.

The Annual Operating Plan shall, at a minimum, contain: (1) a production plan, which shall specify the species and broodstock sources; (2) the current Hatchery Target and Juvenile Production Target for each species to be produced at the Hatchery Facilities; (3) a release plan which shall identify by species the rearing schedule and planned distribution of fish and the schedules and locations for releases; (4) a list of facility upgrades to be undertaken that year; and (5) a description of relevant monitoring and evaluation to be undertaken that year.

8.2.4 Reporting Requirements. On an annual basis, the Licensees shall provide to the ACC for review and comment a report compiling all information gathered pursuant to implementation of the Hatchery and Supplementation Plan. The report also will include recommendations for ongoing management of the Hatchery and Supplementation Program. The ACC shall have 60 days to comment on the annual report. Within 60 days of the close of the comment period, the Licensees shall finalize the report after consideration of all comments. The Licensees shall also provide the comprehensive periodic review undertaken pursuant to Section 8.2.6 below to the ACC. The Licensees shall provide final annual reports and the comprehensive periodic review to the Services during the development of any required ESA permit or authorization for hatchery operations, including NOAA Fisheries' HGMP process. The report may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6.

8.2.5 Plan Modifications. The Licensees shall update the Hatchery and Supplementation Plan every five years or earlier if required by the HGMP, in Consultation with the ACC and with the approval of the Services, using the process set out in Section 8.2 above in order to adaptively manage the Hatchery and Supplementation Program. The Licensees shall consider recommendations from members of the ACC and the comprehensive review set forth below, and identify those recommendations that have not been incorporated into the H&S Plan with a brief statement as to why the changes were not made.

8.2.6 Comprehensive Periodic Review. The Licensees shall undertake a comprehensive periodic review within 5 years after reintroduction above Swift No. 1 Dam, within 5 years after reintroduction into Yale Lake, and within 5 years after reintroduction into Lake Merwin, and then every 10 years after that. This schedule is to be followed even in the event that reintroduction into either Yale Lake or Lake Merwin does not occur. The Licensees, in Consultation with the ACC, shall hire an independent consultant to review the Hatchery and Supplementation Program to assess (i) the Program's impact on the reintroduction program and on listed species, (ii) the Program's effectiveness in achieving the goals set out in Section 8.1 above, and (iii) efficiency of hatchery operations. Factors to be considered in the review include current federal and state policies and plans, relevant best practices, and existing information regarding recent scientific advances. The reviewer will provide recommendations regarding ongoing management of the Hatchery and Supplementation Program and, if needed, recommend amendments to the Hatchery and Supplementation Plan. The Licensees shall incorporate recommendations for ongoing management of the Hatchery and Supplementation Program set forth in the review into the Hatchery and Supplementation Plan pursuant to Section 8.2.5 or explain why the recommendation is not being adopted.

8.3 Anadromous Fish Hatchery Adult Ocean Recruit Target by Species. The Licensees shall develop and implement the Hatchery and Supplementation Plan to achieve hatchery adult Chinook, steelhead, and coho ocean recruit targets ("Hatchery Targets") as described below:

8.3.1 Hatchery Targets. The following Hatchery Targets shall be in effect at the commencement of the Hatchery and Supplementation Program:

Table 8.3.1 - Hatchery Targets

	Spring Chinook	Steelhead	Coho	Total
Hatchery Targets (adult Hatchery Ocean Recruits)	12,800	13,200	60,000	86,000

8.3.2 Modifications to Hatchery Targets.

8.3.2.1 Hatchery Targets. The Licensees shall not increase any of the Hatchery Targets above the Hatchery Targets in Table 8.3.1 above during the terms of the New Licenses without the unanimous approval of the ACC.

8.3.2.2 Methods to Document Ocean Recruits. The Licensees, in Consultation with the ACC, shall determine the methods to document the number of Ocean Recruits and to separately identify Hatchery Ocean Recruits and Ocean Recruits from natural spawning in the Hatchery and Supplementation Plan ("Ocean Recruits Methodology"). The Ocean Recruits Methodology shall identify the appropriate assessment time frame over which to measure Hatchery Ocean Recruits and Natural Ocean Recruits.

8.3.2.3 Reductions in Hatchery Targets. When the Licensees determine, in Consultation with the ACC, through application of the Ocean Recruits Methodology that the number of Ocean Recruits from natural spawning grounds of any species exceeds the relevant natural production threshold(s) for that species identified in Table 8.3.2 ("Natural Production Threshold"), the Licensees shall decrease the appropriate Hatchery Target(s) identified in Table 8.3.1 on a fish-for-fish (1:1) basis. The Licensees shall not apply the amount of excess numbers of one species against another species' Hatchery Target. The Licensees shall not decrease the Hatchery Targets below the hatchery target floor ("Hatchery Target Floor") specified in Table 8.3.2.

8.3.2.4 Unacceptable Adverse Impacts on Reintroduction Program or Fisheries Management Objectives. If the Services determine that there are unacceptable impacts from hatchery production on the reintroduction program or fishery management objectives including, but not limited to, the recovery of wild stocks in the basin, then the Licensees, in Consultation with the ACC, shall identify and consider options to mitigate or avoid such unacceptable impacts. In Consultation with the ACC and at the direction of the Services, the Licensees shall implement options necessary to address such unacceptable adverse impacts, including, without limitation, modifying hatchery practices, reducing Hatchery Targets, or implementing other options that are identified pursuant to this Section 8.3.2.4.

8.3.2.5 Increases in Previously Reduced Hatchery Targets. If the Licensees reduce Hatchery Targets based on the number of Natural Ocean Recruits as determined by the Ocean Recruits Methodology, but the number of Ocean Recruits subsequently declines under such methodology, the Licensees, in Consultation with the ACC and at the direction of the Services, shall increase the Hatchery Targets on a fish-for-fish (1:1) basis, provided that the increased Hatchery Targets shall not exceed the initial Hatchery Targets in Table 8.3.1, and available data demonstrates that the hatchery fish are not the cause of decline or a significant limiting factor to self-sustaining, naturally producing, harvestable native anadromous salmonid species.

Table 8.3.2 Numbers Governing Modifications to Hatchery Targets

	Spring Chinook	Steelhead	Coho	Total
Natural Production Threshold for Hatchery Reduction	2,977	3,070	13,953	20,000
Hatchery Target Floor	2,679	2,763	12,558	18,000

8.4 Anadromous Fish Hatchery Juvenile Production. Each year, the Licensees shall provide for the production of spring Chinook salmon smolts, steelhead smolts, and coho salmon smolts at levels specified below ("Juvenile Production"). The Licensees shall use the Juvenile Production to provide (1) juveniles for the supplementation program under Section 8.5, and (2) juveniles for harvest opportunities. To the extent that there are not sufficient juveniles for the Hatchery and Supplementation Program and to ensure that enough adults will return to ensure adequate broodstock for the Hatchery and Supplementation Program in future years, the Licensees shall, in Consultation with the ACC and subject to the approval of the Services, determine how best to allocate juveniles.

8.4.1 Juvenile Production Targets. The Licensees shall provide for the implementation of the following Juvenile Production targets ("Juvenile Production Targets") when the Hatchery and Supplementation Program commences. The following Juvenile Production Targets shall be used unless and until modified by the Licensees pursuant to Section 8.4.2 as part of the Hatchery and Supplementation Plan in accordance with Section 8.2.5:

Table 8.4 – Juvenile Production Targets

Smolt Production	Spring Chinook	Steelhead	Coho
H&S Plan Years 1 – 3	1.35 million	275,000	1.8 million
H&S Plan Years 4 – 5	1.35 million	275,000	1.9 million
H&S Plan Years 6 – 50	1.35 million	275,000	2.0 million

8.4.2 Adjustment of Juvenile Production. The Licensees, in Consultation with the ACC, shall adjust the Juvenile Production as needed to achieve the Hatchery Targets subject to the Hatcheries Capacity Limit, e.g., at some point in the future a smaller number of juveniles may be needed to get the same number of returning adults. When determining whether adjustments should be made, the Licensees, in Consultation with the ACC, shall consider the

hatchery practices component of the Hatchery and Supplementation Plan (e.g., density, best management practices), data from the Monitoring and Evaluation Plan identified in Section 9 (including, but not limited to, fish quality and adult return requirements), the periodic comprehensive review described in Section 8.2.6 above, and the terms of Section 8.1.

8.4.3 Stock Selection. The Licensees shall select stocks for the production of juveniles that are the most appropriate for the basin. The stock selected and the rationale shall be set forth in the Hatchery and Supplementation Plan. The following stocks shall be used unless and until modified by the Licensees as part of the Hatchery and Supplementation Plan in accordance with Section 8.2.5:

Table 8.4.3 Broodstock

	Spring Chinook	Steelhead	Coho
Juveniles for Supplementation (release above Merwin)	Lewis River hatchery stock with Cowlitz River hatchery stock as contingency	Lewis River wild winter stock with Kalama hatchery stock as contingency	Lewis River hatchery early (type S) stock
Juveniles for Harvest (release below Merwin)	Same as for supplementation	Same as for supplementation and existing Lewis River hatchery summer and winter stock	Same as for supplementation and Lewis River hatchery late (type N) stock

8.5 Supplementation Program.

8.5.1 Juvenile Salmonids Above Swift No. 1 Dam. The Licensees shall, for the purpose of supplementation, provide for the transport of juvenile anadromous salmonids to acclimation sites selected pursuant to Section 8.8.1, for the following periods of time:

- (1) Spring Chinook and Steelhead. The Licensees shall provide the means to supplement juvenile spring Chinook and steelhead for a period of 15 years commencing upon completion of the Swift Downstream Facility pursuant to Section 4.4.1; and
- (2) Coho. The Licensees shall provide the means to supplement juvenile coho salmon for a period of 9 years commencing upon completion of the Swift Downstream Facility.

At the end of these time periods, the Licensees shall assess on a year-by-year basis whether to extend the supplementation of juvenile salmonids. Upon ACC agreement and subject to the Services' approval, the Licensees shall continue to supplement juvenile salmonids. In evaluating whether to extend the supplementation of juveniles, the ACC shall consider, among other things, the impact of continuing supplementation on the overall reintroduction program and on ESA-listed species.

8.5.2 Juvenile Salmonids to Yale Lake and Lake Merwin. PacifiCorp shall, for the purposes of supplementation, provide for the transport of juvenile anadromous salmonids to

appropriate release sites in Yale Lake and Lake Merwin, as described in Section 8.8.2 below, for the following periods of time:

- (1) Spring Chinook and Steelhead. PacifiCorp shall provide the means to supplement juvenile spring Chinook and steelhead for a period of 15 years to Yale Lake commencing upon completion of the Yale Downstream Facility as provided in Section 4.5; and for a period of 15 years to Lake Merwin commencing upon completion of the Merwin Downstream Facility as provided in Section 4.6; and
- (2) Coho. PacifiCorp shall provide the means to supplement juvenile coho salmon into Yale Lake for a period of 9 years commencing upon completion of the Yale Downstream Facility and into Lake Merwin for a period of 6 years commencing upon completion of the Merwin Downstream Facility.

At the end of these time periods, PacifiCorp shall assess on a year-by-year basis whether to extend the supplementation of juvenile salmonids. Upon ACC agreement and subject to the Services' approval, the Licensees shall continue to supplement juvenile salmonids. In evaluating whether to extend the supplementation of juveniles, the ACC shall consider, among other things, the impact of continuing supplementation on the overall reintroduction program and on ESA-listed species.

8.5.3 Adult Salmonids. The Licensees shall begin providing for the supplementation of adult fish one year prior to completion of the Swift Downstream Facility. Throughout the terms of the New Licenses, the Licensees shall provide for the transport and release of supplementation stocks of adult spring Chinook, coho, and steelhead above Swift No. 1 as directed by the ACC. Throughout the terms of the New Licenses, PacifiCorp shall provide for the transport and release of supplementation stocks of adult spring Chinook, coho, and steelhead into Yale Lake and Lake Merwin as directed by the ACC. The ACC shall determine the timing for initiating supplementation into Yale Lake and Lake Merwin. The ACC, subject to the approval of the Services, may recommend discontinuing or recommencing the supplementation of such supplementation stocks, provided that any such recommendations are biologically based and not contrary to the goals of the ESA.

8.5.4 Supplemental Juveniles. The Licensees shall not mark supplementation juveniles in the same manner as hatchery fish are marked for harvest.

8.6 Resident Fish Production

8.6.1 Rainbow Trout Production. Each year, for the terms of the New Licenses, subject to Section 8.6.3, the Licensees shall provide for the production of 20,000 pounds of resident rainbow trout. When the New License is Issued for either the Merwin Project or the Swift Projects, whichever is earlier, the Licensees shall fulfill their obligation by providing for the production of 800,000 juveniles with an estimated weight of 40 juvenile fish per pound, or an equivalent number, in pounds, of resident rainbow trout of a different life stage as directed by WDFW, following Consultation with the ACC. The Licensees shall provide for the stocking of such rainbow trout in Swift Reservoir. Resident rainbow trout will be managed separately from steelhead and shall not significantly interfere with the recovery of self-sustaining, naturally producing, harvestable populations of native steelhead.

8.6.2 Resident Kokanee Production. Each year, for the terms of the New Licenses, subject to Section 8.6.3, PacifiCorp shall provide for the production of 12,500 pounds of resident kokanee. When the New License is Issued for either the Merwin Project or the Swift Projects, whichever is earlier, PacifiCorp shall fulfill its obligation by providing for the production of 93,000 juveniles of various sizes which have an estimated weight of 12,500 pounds or an equivalent number, in pounds, of resident kokanee of a different life stage as directed by WDFW, following Consultation with the ACC. Unless otherwise determined by the ACC through the Hatchery and Supplementation Plan, PacifiCorp shall provide for the annual stocking of such resident kokanee in Lake Merwin.

8.6.3 Modifications in Resident Rainbow Trout and Kokanee Production. The Licensees shall modify resident rainbow trout and kokanee production numbers as part of the Hatchery and Supplementation Plan, in Consultation with the ACC and subject to the approval of the Services and WDFW, to address other management goals, including, without limitation, harvest considerations and impacts of the resident fish hatchery program on the reintroduction program; provided that the Licensees shall not increase (i) resident rainbow trout production above a cap of 20,000 pounds and, (ii) resident kokanee production above a cap of 12,500 pounds.

8.7 Hatchery and Supplementation Facilities, Upgrades, and Maintenance. The Licensees shall, in collaboration with the hatchery managers and hatchery engineers and in Consultation with the ACC, undertake or fund facility additions, upgrades, and maintenance actions as provided in Schedule 8.7, consistent with best methodologies and practices. The Licensees, in collaboration with the hatchery managers and hatchery engineers, and in Consultation with the ACC, shall design these facilities, upgrades, and maintenance actions to include elements that ensure usefulness of the facilities for supplementation and production fish culturing practices and to accommodate the facility additions, upgrades, and maintenance actions identified in Schedule 8.7. The Licensees shall complete the upgrades or actions by the deadlines identified in Schedule 8.7, provided that the Licensees shall schedule the updates or actions consistent with (i) the required hatchery production or (ii) the reintroduction program. The Licensees shall not be required to construct new hatchery facilities or to expand the existing Hatchery Facilities except as provided pursuant to this Section 8.7. WDFW retains the right and authority to operate its hatchery and conduct other or additional fish production activities that do not impact the goals set forth in Section 8.1 at the state-owned Lewis River Hatchery at no additional cost to the Licensees.

8.8 Juvenile Acclimation Sites.

8.8.1 Above Swift No. 1 Dam. Beginning upon completion of the Swift Downstream Facility, the Licensees shall place juvenile salmonid acclimation sites in areas reasonably accessible to fish hauling trucks and in practical areas in the upper watershed above Swift No. 1 Dam, as determined by the Licensees in Consultation with the Yakama Nation and the ACC. The acclimation sites shall consist of fish containment areas that allow juvenile fish to acclimate in natural or semi-natural waterways and allow necessary pre-release juvenile fish management; such sites will not consist of or include concrete-lined ponds or waterways, but may include other concrete structures necessary for facility functionality and structural integrity during the supplementation program.

8.8.2 In Yale Lake and Lake Merwin. Beginning upon completion of the Yale Downstream Facility and the Merwin Downstream Facility, respectively, PacifiCorp shall provide in-stream enclosures to confine juvenile salmonids in tributaries to Yale Lake and Lake Merwin after they are transported from rearing facilities for the purpose of allowing juveniles to adjust to the natural environment for a short period of time, to be determined by the Licensees, in Consultation with the ACC and with the approval of the Services, prior to being exposed to natural mortality factors such as predators. These enclosures are intended to provide an opportunity for the juveniles to acclimate to the natural environment prior to being exposed to predators. While it is assumed that there will be sufficient food in the natural stream, if evidence suggests, prior to placing juveniles in the enclosures, that this is not the case, the Licensees will Consult with the ACC to determine if feeding of juveniles in the enclosures should occur. Prior to completion of the Yale Downstream Facility and the Merwin Downstream Facility, respectively, the Licensees shall, in Consultation with the ACC, evaluate whether Hatchery and Supplementation Program goals will be cost-effectively served by establishing and operating acclimation sites for any of the targeted stocks in Yale Lake, Lake Merwin, or their tributaries. In the event that funding becomes available for acclimation facility establishment and operation in Yale Lake, Lake Merwin or their tributaries from Parties other than the Licensees or from third parties, the Licensees shall amend the H&S Plan, subject to the approval of the Services, to provide for placing of juvenile anadromous salmonids in such acclimation facilities for so long as the funding continues to be available and placement does not negatively impact the supplementation program or otherwise alter the obligations of the Licensees.

SECTION 9: AQUATIC MONITORING AND EVALUATION

9.1 Monitoring and Evaluation Plan. By the second anniversary of the Issuance of the first of the New Licenses, the Licensees shall complete a master monitoring and evaluation plan (the "M&E Plan") in Consultation with the ACC to implement the terms of this Section 9 to monitor and evaluate the effectiveness of aquatic PM&E Measures and to assess achievement of the Reintroduction Outcome Goals. The M&E Plan shall address the tasks, and the methods, frequency, and duration of those tasks, necessary to accomplish the monitoring and evaluation items described below. The Licensees shall provide a draft M&E Plan to the ACC by the first anniversary of the Issuance of the first New License. The Licensees shall allow the ACC a period of 90 days to provide comments on the draft M&E Plan as part of such Consultation. The Services shall have final approval authority over elements of the M&E Plan relating to fish passage or species listed under the ESA, subject to Section 15.14 below. The Licensees shall finalize the M&E Plan and submit it to the Commission for approval within 90 days after the close of the ACC comment period. The Licensees shall implement the M&E Plan upon approval by the Commission. For the purposes of this Section 9, Cowlitz PUD shall prepare elements of the M&E Plan to be performed within the boundaries of Swift No. 2 and shall implement such elements. PacifiCorp shall prepare and implement all other elements of the M&E Plan. PacifiCorp and Cowlitz PUD shall cooperate to prepare a single M&E Plan and a single annual report to the Commission, but if that is not successful, each shall submit its own plan and annual report as required under this Section 9.

The Licensees shall provide to the ACC the results of the monitoring and evaluations under the M&E Plan as part of the Licensees' annual report required in Section 14.2.6. The Licensees shall also include in such annual report a description of the monitoring and evaluation tasks to be completed during the following year. The Licensees shall Consult with the ACC as necessary, but no less often than every five years, to determine if modifications to the M&E Plan are warranted. As a result of such Consultation, the Licensees shall propose changes to the M&E Plan to improve the effectiveness of monitoring and evaluation. The Services shall have final approval of changes to the M&E Plan with respect to fish passage or species listed under the ESA. The Licensees shall implement any changes to the M&E Plan as soon as they have been approved by the Commission.

The Licensees shall amend the M&E Plan in Consultation with the ACC, to incorporate newly constructed facilities and other aquatic PM&E Measures to be implemented during the terms of the New Licenses. The Licensees shall provide a draft revised M&E Plan relating to facilities to be constructed in the future, and other aquatic PM&E Measures to be implemented in the future, to the ACC not less than two years before completing construction of such facilities or implementation of such measures. The Licensees shall allow the ACC a period of 90 days to provide comments on the draft revised M&E Plan as part of such Consultation. The Services shall have final approval authority over elements of the revised M&E Plan relating to fish passage or species listed under the ESA, subject to Section 15.14 below. Licensees shall finalize the revised M&E Plan and submit it to the Commission for approval within 90 days after the close of the ACC comment period. The Licensees shall implement any amendments to the M&E Plan as soon as they have been approved by the Commission.

Sections 9.2 through 9.8 below provide guidance regarding elements to be included in the original M&E Plan, and in subsequent amendments to the M&E Plan, relating to specific passage

facilities and other PM&E Measures. The monitoring and evaluation tasks described in Sections 9.2 through 9.8 shall be incorporated into and made part of the M&E Plan. The Licensees may revise and adapt the monitoring and evaluation tasks described in Sections 9.2 through 9.8 below, in Consultation with the ACC and with the approval of the Services. The Licensees shall allow the ACC a period of 90 days to provide comments on revisions to the draft M&E Plan as part of such Consultation. The Services shall have final approval authority for the revisions to the M&E Plan relating to fish passage or species listed under the ESA, subject to Section 15.14 below. The Licensees shall finalize any revisions to the M&E Plan and submit them to the Commission for approval within 90 days after the close of the ACC comment period. The Licensees shall implement the revised M&E Plan upon approval by the Commission.

The Licensees shall include in the M&E Plan elements to determine whether the Reintroduction Outcome Goals have been achieved, provided that for such purposes the Licensees shall be required to monitor and evaluate only elements that are under the control of the Licensees (such as the functioning of fish passage facilities) and that are affected by the Projects. Except as expressly agreed in writing, the Licensees shall not be required to conduct monitoring that is the obligation of a third party under applicable law or permits (including, but not limited to, marine harvest).

9.2 Monitoring and Evaluation Related to Fish Passage.

9.2.1 Monitoring and Evaluation of Upstream and Downstream Passage Facilities. PacifiCorp, with respect to Merwin, Yale, and Swift No. 1, and PacifiCorp and Cowlitz PUD, with respect to Swift No. 2, shall include in the M&E Plan the following monitoring and evaluation elements with respect to each downstream and upstream fish passage facility, for Chinook, steelhead, coho, bull trout, and sea-run cutthroat:

- a. Juvenile migration timing and the estimated number of juveniles entering Swift Reservoir, Yale Lake, and Lake Merwin;
- b. Reservoir Survival of juvenile fish migrating through Swift Reservoir, Yale Lake, and Lake Merwin, determined by monitoring a statistically valid sample of fish entering each reservoir;
- c. Collection Efficiency and Collection Survival for each downstream fish passage facility;
- d. Injury to and mortality of juvenile fish collected at each downstream facility, and mortality measured at Release Ponds;
- e. Survival of, Injury to, and mortality of kelts, bull trout, and adult sea-run cutthroat collected at each downstream facility;
- f. Turbine Entrainment, i.e., the percentage of juvenile anadromous fish of each of the species designated in Section 4.1.7 that are available for collection and that (i) are not collected by the downstream passage facility, and (ii) enter the turbines;
- g. Turbine Survival, i.e., the percentage of juvenile anadromous fish of each of the

species designated in Section 4.1.7 that are entrained in turbines and that survive through the turbines; provided that such monitoring shall only be performed if and when fish passing through Project turbines may contribute materially to ODS; provided further that prior to performing Turbine Survival studies, the Licensees shall assume Turbine Survival equals zero:

- b. UPS;
- i. The ATE at each upstream fish transport facility;
- j. The number, by species, of juvenile and adult fish being collected at the Projects; and
- k. Hydraulic performance, such as attraction flows and water velocities, to verify that each facility is operating according to its approved design.

9.2.2 Adult Migration Spawning Assessment. The Licensees shall identify the spawning timing, distribution, and abundance for Transported Anadromous Species passed upstream by monitoring a statistically valid sample of each stock. The primary purpose is to identify preferred spawning areas in order to (i) inform revisions to the Hatchery and Supplementation Plan and the Upstream Transport Plan and (ii) inform the decisions of the ACC in determining how to expend funds from the Aquatics Fund, but such identification shall not otherwise create or increase obligations of the Licensees except as expressly set forth in this Agreement.

9.2.3 Tagging Program. PacifiCorp shall provide for tagging of a subsample of anadromous fish collected and transported from each downstream passage facility, to assist in the determination of Ocean Recruits under Section 8.1, which in turn assists in evaluation of adult return survival. This tagging program shall continue for the term of each New License.

9.2.4 Response to Fish Passage Monitoring Results. To the extent not set forth specifically in this Section 9.2, the Licensees' obligations based on the results of monitoring related to fish passage facilities are set forth in Section 4 above.

9.2.5 Adjustment in Monitoring Frequency. Once any fish passage standard has been achieved, as set forth in Section 4.1.4 and as determined in Section 4.1.5 above, future monitoring of that standard would be limited to periodic checks to determine continued compliance with the standard.

9.3 Wild Fall Chinook and Chum. PacifiCorp shall include in the M&E Plan monitoring of the wild fall Chinook spawner population and distribution, including juvenile tagging, below Merwin Dam as described generally in Schedule 9.3. PacifiCorp shall also monitor chum spawner population and distribution in a similar manner below Merwin Dam, provided that juvenile tagging shall not be required for chum until technological improvements make such tagging practicable. This information may be used by the ACC to monitor the effects of PM&E Measures on these populations and to prioritize expenditures from the Aquatics Fund, but shall not otherwise create obligations for the Licensees except as expressly set forth in this Agreement.

9.4 Water Quality Monitoring. The Licensees shall include in the M&E Plan elements to assess compliance with water quality and quantity standards as required by their respective 401 Certifications. In addition, the Licensees shall fund water quality monitoring necessary to comply with the National Pollution Discharge Elimination System Permits at the Hatchery Facilities.

9.5 Monitoring of Hatchery and Supplementation Program. The Licensees shall include in the M&E Plan all elements required to monitor the effectiveness of the Hatchery and Supplementation Plan in meeting the goals set out in Section 8.1 above, including, without limitation, the items listed in this Section 9.5. The Licensees shall periodically assess the effectiveness of the anadromous hatchery program by comparing numbers of hatchery releases to numbers of hatchery Ocean Recruits. The Licensees shall also conduct pre-release screening of fish health in the Hatchery Facilities. The Licensees shall determine the contribution of hatchery production and natural production to Ocean Recruits. The Licensees shall monitor the effects of hatchery fish on reintroduced anadromous salmonids.

9.6 Bull Trout Monitoring. Until the M&E Plan is implemented, the Licensees shall monitor and evaluate Cougar Creek and Swift Reservoir bull trout populations following the Threatened and Endangered Species Annual Plan (May 2004) filed with the Commission as of the Effective Date. The M&E Plan shall include monitoring and evaluation measures for bull trout as described in this Section 9.6. Licensees may adaptively modify or supplement the monitoring and evaluation elements listed in this Section 9.6 with the approval of USFWS. The Licensees will conduct the bull trout monitoring elements of the M&E Plan for the duration of the New Licenses. In the event that bull trout are delisted in the Lewis River Basin under the ESA, or in the event bull trout populations are found by USFWS through a recovery plan to no longer warrant protection under the ESA, then the Licensees and USFWS will reevaluate the need to continue the bull trout monitoring program at the same level and the ACC will be informed of the results of the reevaluation. USFWS shall have final approval of all elements of the M&E Plan relating to bull trout, subject to Section 15.14. The information obtained through bull trout monitoring may be used by the ACC to prioritize expenditures from the Aquatics Fund, but shall not otherwise create obligations for the Licensees except as expressly set forth in this Agreement.

9.6.1 Monitoring of Interim Bull Trout Collection. The Licensees shall include monitoring and evaluation elements in the M&E Plan for the interim bull trout collection and testing of alternate passage facilities conducted by PacificCorp and Cowlitz PUD under Section 4.9, and in connection with bull trout passage in the absence of anadromous fish facilities as provided in Section 4.10. The monitoring and evaluation elements shall include (1) survival of adult bull trout collected and transported to an upstream or downstream release site; and (2) effectiveness of bull trout collection methods.

9.6.2 Monitoring of Other Bull Trout PM&E Measures. The Licensees shall include in the M&E Plan elements to monitor and evaluate PM&E Measures relating to bull trout, including specific methods and measures to be used in monitoring bull trout populations, including, but not limited to, tagging and snorkel surveys.

9.7 Resident Fish Assessment. PacificCorp shall include in the M&E Plan elements to monitor the following with respect to resident fish: (1) the interaction between reintroduced

anadromous salmonids and resident fish species; and (2) kokanee spawner population size in Yale Lake in the fall of each year. The results of such monitoring may inform adaptive management of the operation of the passage facilities but shall not require any physical changes to fish passage facilities or Project operations.

9.8 Monitoring of Flows. PacifiCorp shall include in the M&E Plan elements to monitor flows and Ramping rates below Merwin Dam using the Ariel gage. PacifiCorp shall pay the cost of operation, maintenance, and replacement of the Ariel gage for the terms of the New Licenses. PacifiCorp shall also include in the M&E Plan a requirement for PacifiCorp to keep records of flow contributions (in cfs) to the Bypass Reach, based on calibrated flow settings at the Upper Release Point and the Canal Drain. Such records, including records of any Force Majeure or scheduled maintenance event that interrupts flows, shall be included in the Licensees' annual report under Section 14.2.6. PacifiCorp shall periodically confirm the accuracy of calibration of the Upper Release Point and the Canal Drain and shall include the results of calibrations in the annual report. PacifiCorp shall send a notice by electronic mail to the ACC members within 48 hours after each adjustment or change to the flows in the Bypass Reach, unless the Parties agree upon an alternate method of notification. PacifiCorp shall notify the ACC of the occurrence, duration, and magnitude of any spill within 10 business days after a spill from Swift No. 1 or the Swift No. 2 canal.

SECTION 10: TERRESTRIAL

10.1 Yale Land Acquisition and Habitat Protection Fund. PacifiCorp shall establish and maintain a fund in a Tracking Account for acquisition of interests in land to protect wildlife habitat (which may include, without limitation, fee interests and conservation easements) ("Interests in Land") in the vicinity of the Yale Project (the "Yale Fund"). The TCC described in Section 14.2 will select Interests in Land for acquisition and approve the final terms of proposed acquisitions to be made with the Yale Fund. Once Interests in Land are selected for acquisition, PacifiCorp shall execute approved transactions and the Interests in Land acquired will be owned by PacifiCorp, unless otherwise agreed by PacifiCorp and the TCC. PacifiCorp shall contribute a total of \$2.5 million to the Yale Fund. The following goals serve as guidelines for the selection of Interests in Land to be acquired with the Yale Fund:

- a. Provide movement corridors for elk through the Yale Project area between high- and low-elevation winter range;
- b. Protect approximately 660 acres of low-elevation winter range in the vicinity of the Yale Project nearby or adjacent to PacifiCorp-owned lands;
- c. Provide approximately 100 acres of land on which forage for elk may be maintained or cultivated in the vicinity of the Yale Project.

10.1.1 Funding Amount, Timing, and Schedule of Funding. PacifiCorp shall provide \$1.5 million to the Yale Fund by the first day of PacifiCorp's first fiscal year following the Effective Date of this Agreement. PacifiCorp shall contribute an additional \$1 million to the Yale Fund on the first day of PacifiCorp's second fiscal year following the Effective Date of this Agreement. PacifiCorp's contributions shall be made in 2003 dollars, Adjusted for Inflation. PacifiCorp's current fiscal year begins on April 1.

10.1.2 Matching Funds. The TCC may elect, in its discretion, to direct the use of all or part of the Yale Fund to match the cash contributions made by local, state, and federal agencies, and other persons or organizations, for acquisition of Interests in Land in the vicinity of the Yale Project. Any Party may propose a source of matching funds under this subsection.

10.1.3 Use of Funds Beyond the Vicinity of Yale. If suitable Interests in Land are not available or are only available at unreasonable prices in the vicinity of the Yale Project within ten years after the Effective Date, the TCC may direct that such funds be used to accomplish similar goals in other areas of the Lewis River Basin.

10.2 Swift No. 1 and Swift No. 2 Land Acquisition and Habitat Protection Fund. The Licensees shall establish and maintain a fund in a Tracking Account for the purpose of acquiring Interests in Land to protect wildlife habitat, in order to meet the objectives of the Wildlife Habitat Management Plan as described in Section 10.8 below, on lands within five miles of the Swift No. 1 and Swift No. 2 Project Boundaries (laterally and upstream, but not downstream) or lands managed by the Licensees associated with Swift No. 1 and Swift No. 2 (laterally and upstream, but not downstream) (the "Swift Fund"). The TCC will select Interests in Land for acquisition and will approve the final terms of proposed acquisitions to be made using the Swift

Fund. The Licensees have agreed that PacifiCorp shall make all cash contributions to the Swift Fund, shall execute transactions made with such funds, and shall own the Interests in Lands so acquired. However, for the purpose of credit for wildlife habitat protection during the terms of the New Licenses for the Swift No. 1 and Swift No. 2 Projects, Cowlitz PUD shall be credited with the resource benefits accruing from Interests in Land purchased with the Swift Fund as if it had contributed \$1.82 million toward such purchases.

10.2.1 Funding Amount, Timing, and Schedule. PacifiCorp shall contribute a total of \$7.5 million to the Swift Fund according to the following payment schedule: make available \$3.22 million within 9 months after Issuance of the New License for the Swift No. 1 Project; make available \$780,000 within 18 months after Issuance of the New License for the Swift No. 1 Project; and make available \$500,000 six months after each of the 3rd, 4th, 5th, 6th, 7th, 8th, and 9th anniversaries of the Issuance of the New License for the Swift No. 1 Project. PacifiCorp's contributions shall be made in 2003 dollars, Adjusted for Inflation.

10.2.2 Matching Funds. The TCC may elect, in its discretion, to use all or part of the Swift Fund to match the cash contributions made by local, state, and federal agencies, and other persons or organizations, for acquisition of Interests in Land in the vicinity of the Swift Projects. Any Party may propose a source of matching funds under this subsection.

10.3 Lewis River Land Acquisition and Habitat Enhancement Fund. PacifiCorp shall establish and maintain a fund in a Tracking Account to acquire or enhance wildlife habitat anywhere in the Lewis River Basin in the vicinity of the Projects (the "Lewis River Fund") in order to meet the objectives of its Wildlife Habitat Management Plan as described in Section 10.8 below. Enhancement projects may be carried out on lands owned by third parties. The TCC will select Interests in Land for acquisition or enhancement and approve final restoration or enhancement measures implemented with the Lewis River Fund. PacifiCorp shall execute approved transactions and implement approved measures. Interests in Land acquired will be owned by PacifiCorp, unless otherwise agreed by PacifiCorp. PacifiCorp shall contribute a total of \$2.2 million to the Lewis River Fund.

10.3.1 Funding Amount, Timing, and Schedule. PacifiCorp shall initially contribute \$550,000 to the Lewis River Fund by six months after the fourth anniversary of the Issuance of the New License for the Yale Project, and \$550,000 to the Lewis River Fund by six months after the fourth anniversary of the Issuance of the New License for the Swift No. 1 Project. PacifiCorp shall contribute an additional \$550,000 to the Lewis River Fund by six months after the sixth anniversary of the Issuance of the New License for the Yale Project, and \$550,000 to the Lewis River Fund by six months after the sixth anniversary of the Issuance of the New License for the Swift No. 1 Project. PacifiCorp's contributions shall be made in 2003 dollars, Adjusted for Inflation.

10.3.2 Matching Funds. The TCC may elect, in its discretion, to use all or part of the Lewis River Fund to match the cash contributions made by local, state, and federal agencies, and other persons or organizations, for acquisitions of Interests in Land or for implementation of habitat enhancement measures in the Lewis River Basin. Any Party may propose a source of matching funds under this subsection.

10.3.3 Contribution of Additional Matching Funds. In addition to the contributions made under Section 10.3.1, beginning 18 months after Issuance of the New License for the Yale Project or Swift No. 1 Project, whichever is earlier, PacifiCorp shall match the contributions of local, state, and federal agencies, and other persons or organizations, made for the purposes of this Section 10.3, in an amount not to exceed \$100,000 per year, and not to exceed \$500,000 in any ten consecutive years. Any Party may propose a source of matching funds under this subsection. If and only if a commitment of funds is made by a party other than PacifiCorp, for acquisitions of Interests in Land or for implementation of habitat enhancement projects approved by the TCC, PacifiCorp shall provide matching funds within the limits set forth above at closing of the real estate transaction; no fund will be created. The TCC will identify Interests in Land for acquisitions or identify habitat enhancement projects to be funded with matching funds, and PacifiCorp shall execute approved acquisitions and implement approved enhancement measures.

10.4 Transaction Costs. The Parties agree that certain transaction costs associated with acquisitions of Interests in Land under Sections 10.1, 10.2, and 10.3 above and habitat enhancement measures under Section 10.3 will be covered by the funds established in those Sections. Covered transaction costs include, but are not limited to, the costs associated with land acquisition, such as completion of appropriate site assessments for hazardous materials; land surveys, including timber cruise if needed; appraisals; habitat surveys; filing fees; excise taxes; title searches, reports, fees, and insurance; closing costs; preparation of land acquisition agreements; and any required governmental approvals. Transaction costs that are not covered by the funds established under Sections 10.1 through 10.3 include internal personnel and administrative costs of the parties associated with land acquisitions, such as staff salaries and benefits; attorney fees and other legal expenses incurred by PacifiCorp or any other party; and fees paid by PacifiCorp to third parties for administrative costs associated with a third party's acquisition of Interests in Land on behalf of PacifiCorp. During the execution of any transaction, PacifiCorp shall notify the TCC if it appears that transaction costs will be significantly higher than expected, and the TCC may determine not to proceed with that transaction.

10.5 Management of Funds. Funds provided by PacifiCorp, as described in Sections 10.1, 10.2, and 10.3 above, shall be held by PacifiCorp in a Tracking Account until acquisitions of Interests in Land are executed or habitat enhancement measures under Section 10.3 are implemented. PacifiCorp shall accrue interest on Fund monies held by PacifiCorp from the date the monies are due to be placed into the Fund at the prime interest rate printed in the *Wall Street Journal* for the weekday nearest to April 1 of each year. If such rate ceases to be published in the *Wall Street Journal*, the Parties shall meet and agree upon an alternate source for the prime interest rate. Interest shall be computed, compounded, and added to the Fund once annually as of that date. PacifiCorp shall use monies in the Funds to pay the purchase price for Interests in Land and for covered transaction and implementation costs as they are incurred. Funds not expended in any given year shall be carried over to a subsequent year. PacifiCorp shall provide annual reports to the TCC regarding Fund expenditures under Sections 10.1, 10.2 and 10.3 above. Such annual reports may be included as part of the detailed annual reports of the TCC activities required by Section 14.2.6.

10.6 Completed Implementation; Advance Purchases.

10.6.1 Cowlitz PUD. In 2001, Cowlitz PUD purchased, for \$950,000, 283.7 acres of wildlife habitat on the north side of Swift Reservoir, known as the Devil's Backbone. Cowlitz

PUD has since managed those lands for the long-term benefit of a broad range of fish, wildlife, and native plants and shall manage such lands under its Wildlife Habitat Management Plan as described in Section 10.8 below. Those lands include an 87.6-acre conservation covenant which Cowlitz PUD shall manage in perpetuity for the protection of bull trout rearing areas in the Swift Creek Arm of Swift Reservoir, which was dedicated for mitigation of ongoing operations under the existing licenses for the Projects ("Devil's Backbone Conservation Covenant"). The Parties agree and acknowledge that the costs and resource benefits associated with the purchase of Cowlitz PUD's Devil's Backbone property, as well as Cowlitz PUD's commitment to maintain such lands under this Agreement, are included in this Settlement Agreement as partial fulfillment of Cowlitz PUD's mitigation obligations, but the cost of purchasing such lands shall not be credited toward the funding commitments in Section 10.2 above.

10.6.2 PacifiCorp. In 2000, PacifiCorp purchased, for \$450,000, 156 acres of wildlife habitat on the south-facing slope of Swift Reservoir, known as Swift Parcel 2. In 2000, PacifiCorp purchased, for \$1.85 million, 770 acres of wildlife habitat near Cougar and Panamaker Creeks. Those lands include a 213-acre conservation covenant in perpetuity for the protection of bull trout (the "Cougar Creek Conservation Covenant"). In addition, a 34-acre conservation covenant in perpetuity is provided on PacifiCorp land on the Devil's Backbone of Swift Reservoir. Both conservation covenants were dedicated for mitigation of ongoing operations under the existing licenses for the Projects. PacifiCorp has since managed those lands for the long-term benefit of a broad range of fish, wildlife, and native plants and shall manage such lands under its Wildlife Habitat Management Plan as described in Section 10.8 below. The Parties agree and acknowledge that the costs and resource benefits associated with the purchase of such lands, as well as PacifiCorp's commitment to maintain such lands under this Agreement, are included in this Settlement Agreement as partial fulfillment of PacifiCorp's mitigation obligations, but the cost of purchasing such lands shall not be credited toward the funding commitments in Sections 10.1 through 10.3 above.

10.6.3 Advance Purchases. From time to time after the Effective Date, one or more of the Parties may become aware of a short-term opportunity to purchase Interests in Land that may serve the purposes of the Funds created under Sections 10.1 through 10.3 at a favorable price and may communicate that opportunity to PacifiCorp. PacifiCorp may, at its sole risk and expense, but shall not be obligated to, purchase such Interests in Land believing that the TCC may desire the same. Within 30 days of acquiring such Interests in Land, PacifiCorp shall offer such Interests in Land to the TCC to serve the purposes of Sections 10.1 through 10.3 above. The TCC shall have 45 days after receiving such offer in which to determine whether to accept such Interests in Land under one of those Sections at the purchase price paid by PacifiCorp. If accepted, the monies expended by PacifiCorp to acquire such Interests in Land shall be credited toward the next contributions due from PacifiCorp and such lands shall be managed under PacifiCorp's Wildlife Habitat Management Plan. If the Interests in Land are not accepted by the TCC within such 45-day period, PacifiCorp shall be free to use or dispose of such Interests in Land as it sees fit and PacifiCorp shall not be required to manage such Interests in Land under its Wildlife Habitat Management Plan.

10.7 Conservation Easements. The Parties recognize the value of pursuing conservation easements, since it is possible that more acres of land may be protected for wildlife habitat through conservation easements as compared to the fee-simple acquisition of lands. The Parties do not intend to be limited to statutory conservation easements but may pursue other similar

Interests in land. The following are guidelines for the selection and acquisition of conservation easements to be purchased with the Funds described in Sections 10.1 through 10.3:

- a. Easement areas should be selected that will protect wildlife habitat from further development;
- b. Easement areas should be selected that will allow the CIT and Yakama Nation reasonable access for cultural activities on lands acquired under this Section 10.7;
- c. Easement areas should be selected that will allow reasonable public access for recreation, including hunting on lands acquired under this Section 10.7; and
- d. When feasible, easements should be selected in areas where the property owner is agreeable to easement terms providing for the management of the lands encumbered by the easement to provide for enhanced habitat management, such as modified timber harvest practices, that will result in greater protection of habitat areas.

The TCC may select easements that satisfy fewer than all of the above guidelines.

10.8 Wildlife Habitat Management Plans. Beginning on the Effective Date and prior to the Issuance of the New Licenses, PacifiCorp and Cowlitz PUD, in Consultation with the TCC, shall develop Wildlife Habitat Management Plans ("WHMPs") for their respective lands designated in Section 10.8.5 below in order to accomplish the wildlife objectives referenced in the attached Schedule 10.8. The purpose of the WHMPs shall be to benefit a broad range of fish, wildlife, and native plant species, including, but not limited to, large and small game, amphibians, bats, forest raptors, neo-tropical birds, and culturally significant native plants. PacifiCorp and Cowlitz PUD may collaborate to produce a single WHMP.

10.8.1 Development of WHMPs. Beginning on the Effective Date, the Licensees, in Consultation with the TCC, shall develop specific standards and guidelines based upon the objectives identified in Schedule 10.8. PacifiCorp and Cowlitz PUD shall then prepare their respective draft WHMPs that achieve the objectives and the specific standards and guidelines. The WHMPs shall provide for monitoring of the WHMPs' effectiveness and progress toward meeting their objectives. Each WHMP shall identify those WHMP-managed lands for which wildlife habitat is a secondary use, and shall describe how such lands will be managed under the WHMP. After PacifiCorp and Cowlitz PUD have prepared the draft WHMPs, they will submit them to the TCC for review, comment, and approval. After the TCC has approved the WHMPs, PacifiCorp and Cowlitz PUD shall finalize the WHMPs and submit them to the Commission. Any disputes regarding provisions of the final WHMPs shall be resolved under Section 15.10 below. Within six months after Issuance of each New License, the Licensees shall implement their respective WHMPs for lands associated with that Project (as shown in Exhibit A for PacifiCorp and Exhibit B for Cowlitz PUD) up to the limits of the funding provided in Section 10.8.2, except as expressly provided in Section 10.8.3 below. From the Effective Date until six months after Issuance of the New License for the Merwin Project, PacifiCorp shall continue to manage lands associated with the Merwin Project pursuant to Article 48 of the existing Merwin license.

10.8.2 Funding. PacifiCorp and Cowlitz PUD shall provide annual funding for the implementation of the WHMPs on their respective lands identified in Section 10.8.5 as follows:

10.8.2.1 PacifiCorp. PacifiCorp's level of funding will be tied to the Interests in Land that PacifiCorp owns or controls, as follows: (i) PacifiCorp shall fund \$27 (in 2003 dollars, Adjusted for Inflation) per acre for lands it owns in fee simple that are managed under its WHMP as of that date; and (ii) PacifiCorp shall fund \$13.50 (in 2003 dollars, Adjusted for Inflation) per acre for other Interests in Land, including, without limitation, conservation easements and similar Interests in Land that are managed under its WHMP as of that date.

10.8.2.2 Cowlitz PUD. Cowlitz PUD shall fund \$27 per acre (in 2003 dollars, Adjusted for Inflation) for lands it owns in fee simple that are managed under its WHMP as of that date.

10.8.2.3 Management of Funds. Funds provided by Licensees under this Section 10.8.2 shall be made available for lands associated with each Project (as shown in Exhibit A for PacifiCorp and Exhibit B for Cowlitz PUD) six months after the relevant Project's New License is Issued and annually thereafter. Such funds shall be held in a Tracking Account and shall be expended by the Licensees on their respective lands as their WHMPs are implemented under Section 10.8. The Licensees shall accrue interest on Fund monies held by the Licensees from the date the monies are due to be placed into the Fund, at the prime interest rate printed in the *Wall Street Journal* for the weekday nearest to April 1 of each year. If such rate ceases to be published in the *Wall Street Journal*, the Parties shall meet and agree upon an alternate source for the prime interest rate. Interest shall be computed, compounded, and added to the Fund once annually as of that date. PacifiCorp's total funding (but not the amount per acre) will increase as additional acres of Interests in Land are acquired to be managed under its WHMP. However, except as provided in Section 10.8.5 below, the funding provided in this Section 10.8.2 shall completely fulfill and satisfy the Licensees' respective obligations to fund implementation, modification, and monitoring of the Interests in Land subject to their respective WHMPs. No provision of the WHMPs, nor any action of the Parties under this Agreement, shall increase the monetary obligations of the Licensees with respect to their WHMPs without the express written consent of the affected Licensee. Funds that are not spent in a given year will be carried over to be used for future implementation of the respective WHMP. Any funds derived from management of lands subject to the WHMPs, including compensation for timber removed pursuant to the WHMPs, shall be retained by the Licensees for their respective properties.

10.8.3 Management of Plan. Subject to the oversight of the TCC, PacifiCorp and Cowlitz PUD shall implement their respective WHMPs. The Licensees shall submit to the TCC annually a written plan (the "Annual Plan") to use the funds available to implement the WHMPs on their respective lands. The Annual Plan may be included as part of the detailed annual reports of the TCC activities required by Section 14.2.6. Once the TCC has approved such Annual Plans, they shall be implemented by the Licensees using the funds made available for that purpose under Section 10.8.2. The funds shall be used to reimburse Licensees for use of their employees and contractors to manage, implement, and monitor actions taken under the WHMPs as provided in the Annual Plan. Further, the WHMPs shall not prevent either of the Licensees

from carrying out any other legal requirement with respect to or upon its respective lands in any lawful manner, including, without limitation, in compliance with the conditions of the New Licenses, subject to Section 10.8.5.5 below. If the TCC believes that another party can implement the WHMPs more cost effectively, the respective Licensee shall, at the request of the TCC, seek bids from third party contractors to implement their respective WHMP for some period during the term of the applicable New License(s). If the bidding process identifies third party contractors who can do the work more cost effectively, the respective Licensee shall engage such contractors, provided that they are acceptable to the Licensee, in its reasonable discretion, considering policies, contracting requirements, and procedures and qualifications normally applied by the Licensees when engaging other contractors to work on their respective properties, and subject to dismissal if any contractor's performance violates such policies and requirements. If contractors are retained at the recommendation of the TCC, such contractors shall have full responsibility, during the period of their engagement, for implementation of the respective WHMPs as provided under this Section 10.8, including preparation of Annual Plans and any required reporting to the TCC. During the period such third party is retained, the Licensees' obligations for implementation of their respective WHMPs shall be fulfilled in their entirety by providing the funds as required under Section 10.8.2. In no event shall Licensees be required to fund implementation of their respective WHMPs in excess of the amounts provided for in Section 10.8.2.

10.8.4 Habitat Evaluation Procedures. The Licensees shall update and repeat the Habitat Evaluation Procedure (Final Lewis River Technical Report - TER 2 (Cowlitz PUD and PacifiCorp 2004) (the "HEP") as provided in this Section 10.8.4, and the costs of such actions shall be in addition to the funding provided under Section 10.8.2.

10.8.4.1 Updating Existing Information. As PacifiCorp expends Fund assets to acquire lands that will be managed under its WHMP, PacifiCorp shall update the existing HEP data. This will require mapping and cover-typing the newly acquired lands, but assumes that Habitat Suitability Index ("HSI") values from the current HEP are applicable. If new or different habitat types are encountered, new HSI values will be determined.

10.8.4.2 Review of Effectiveness of WHMPs. At year 17 after Issuance of all New Licenses, PacifiCorp shall repeat the HEP for all WHMP lands that it manages, and Cowlitz PUD shall repeat the HEP for all WHMP lands that it manages, using essentially the same sample density that was used to develop the existing HEP, with a focus on measuring any changes in habitat value of these lands compared with the baseline HEP data, and determining whether the original HEP projections regarding habitat values (based on the objectives in the WHMPs) have been met. If the original HEP projections have not been met, each Licensee shall modify its respective WHMP to achieve its WHMP objectives, subject to the review and approval of the TCC, but shall not be obligated to increase in any way its funding obligations under Section 10.8.2. The Licensees shall base any modifications on the results of the HEP, although the Licensees may include species model updates and new management priorities as appropriate. The TCC must approve modifications before they are filed with the Commission and implemented by PacifiCorp and Cowlitz PUD.

10.8.5 WHMP Lands. The following lands shall be managed under the respective WHMPs. The maps and tables attached as Exhibit A for PacifiCorp and Exhibit B for Cowlitz PUD more fully describe lands that shall be managed under the respective WHMPs, as well as those lands that will not be managed under the WHMPs, and identifies which lands are associated with which Projects. Exhibits A and B shall be updated by PacifiCorp and Cowlitz PUD, respectively, as new lands are acquired as provided below.

10.8.5.1 Lands Owned or Controlled by PacifiCorp as of the Effective Date.

10.8.5.1.1 156 acres on the south-facing slope of Swift Reservoir, known as the Swift Parcel 2, purchased by PacifiCorp in 2000;

10.8.5.1.2 770 acres near Cougar and Panamaker Creeks purchased by PacifiCorp in 2000;

10.8.5.1.3 The 129 acres associated with the Yale Project that were acquired by PacifiCorp in 2002;

10.8.5.1.4 The 5,600 acres that are currently managed as part of the existing Merwin Wildlife Habitat Management Plan;

10.8.5.1.5 The lands proposed to be managed under the Yale application filed with the Commission in 1999; and

10.8.5.1.6 All other PacifiCorp-owned lands adjacent to the Projects as of the Effective Date, except as provided in attached Exhibit A.

10.8.5.2 Lands Owned or Controlled by Cowlitz PUD as of the Effective Date.

10.8.5.2.1 283 acres on the south-facing slope of Swift Reservoir, known as the Devil's Backbone, purchased by Cowlitz PUD in 2001; and

10.8.5.2.2 All other Cowlitz PUD-owned lands within the Swift No. 2 Project Boundary and related to the operation of the Swift No. 2 Project as of the Effective Date, except as provided in attached Exhibit B.

10.8.5.3 Interests in Land Acquired with the Yale Fund and the Lewis River Fund. PacifiCorp shall manage Interests in Land acquired by the Yale Fund and the Lewis River Fund under its WHMP, subject to Section 10.8.3, provided that such Interests in Land are within five miles of the Project reservoirs or other lands managed by PacifiCorp under its WHMP. PacifiCorp shall not develop or use lands acquired beyond such five-mile radius in a manner inconsistent with the objectives of its WHMP, and such lands shall not be subject to active management under its WHMP.

10.8.5.4 Interests in Land Acquired with the Swift Fund. PacifiCorp shall manage Interests in Land acquired with the Swift Fund that it owns under its WHMP, subject to Section 10.8.3.

10.8.5.5 Mitigation for Impacts on Wildlife Habitat. If PacificCorp proposes to take action on its Interests in Land that are managed under its WHMP, other than those actions specifically prescribed under this Agreement, and that action makes those lands no longer available for wildlife habitat, PacificCorp shall consult with the TCC to determine if any mitigation is necessary. If Cowlitz PUD proposes to take action on its Interests in Land managed under its WHMP, other than those actions specifically prescribed under this Agreement, and that action makes those lands no longer available for wildlife habitat, Cowlitz PUD shall consult with the TCC to determine if any mitigation is necessary. If the TCC determines that mitigation is necessary, then whichever Licensee is responsible in the specific case shall implement that mitigation. Mitigation shall not be required for land parcels specifically identified in the WHMPs as having wildlife habitat as the secondary use.

SECTION 11: RECREATION

11.1 Recreation Resource Management Plan. PacifiCorp has submitted a draft Recreation Resource Management Plan ("RRMP") to the Commission in its Final Application for New License Volume III of III. The RRMP includes the measures set forth in Section 11.2. PacifiCorp shall finalize the RRMP as directed by the Commission.

11.2 PacifiCorp Recreation Measures. PacifiCorp shall implement the recreation measures set forth in Sections 11.2.1 through 11.2.17. Where the provisions below state that a recreation measure is to begin upon or after Issuance of a New License, PacifiCorp shall implement the measure after all administrative and judicial rehearings, reviews, and appeals relating to that New License have been finally adjudicated or dismissed. Where the provisions below state that a recreation measure is to begin or be completed a stated number of years after Issuance of a New License, PacifiCorp shall implement or complete, as appropriate, the measure the stated number of years after all administrative and judicial rehearings, reviews, and appeals relating to that New License have been finally adjudicated or dismissed. If there is any conflict between the provisions of Sections 11.2.1 through 11.2.17 and the RRMP, the provisions of Sections 11.2.1 through 11.2.17 shall control.

11.2.1 Swift Reservoir.

11.2.1.1 Swift Dispersed Shoreline Use Sites. PacifiCorp shall maintain shoreline camping and day use sites on lands owned by PacifiCorp and on National Forest System lands within the Swift No. 1 Project Boundary in a manner consistent with the Recreation Dispersed Shoreline Use Program ("RDSUP") that is incorporated into the RRMP. For lands other than National Forest System lands and PacifiCorp lands, with the landowner's consent, PacifiCorp shall maintain, at its expense, shoreline sites on such lands in a manner consistent with the RDSUP that is incorporated into the RRMP, provided that PacifiCorp has entered into a maintenance agreement with such landowners containing terms acceptable to PacifiCorp. During the first year of the New License for the Swift No. 1 Project, PacifiCorp shall reassess all existing dispersed shoreline sites to determine suitability for hardened camp sites, day use sites, or closure. During the 2nd and 3rd years of the New License for the Swift No. 1 Project, PacifiCorp shall: (1) conduct a human waste disposal management program assessment as described in the RDSUP; (2) harden, as appropriate, suitable shoreline sites for camping; (3) sign as closed inappropriate sites; and (4) sign appropriate hardened camping and day use sites. Upon completion of the waste disposal management program assessment, PacifiCorp shall either implement an appropriate method identified through the assessment or continue assessing alternative methods for addressing waste disposal management until an appropriate method is identified and implemented.

11.2.1.2 Eagle Cliff Trail. Subject to obtaining acceptable minimal cost easements, PacifiCorp shall develop a trail connection between Eagle Cliff Park and the USDA-FS boundary. Trail facilities shall include the engineered trail, signage, and resource protection as appropriate. PacifiCorp shall conduct a detailed trail routing study in the first year of the New License for the Swift No. 1 Project. Criteria to be used in this study include locating a safe, economical, and buildable trail route and avoiding potential

impacts on bull trout, to the extent practicable, by locating the trail away from sensitive habitat areas. PacifiCorp shall coordinate with and obtain the approval of USFWS on the final designs and location of the trail to ensure that impacts on bull trout are acceptable. PacifiCorp shall engineer, design, and permit the trail as soon as practicable following completion of the trail routing study. Subject to obtaining necessary easements, Permits, and USFWS approval, construction will commence on the 4th anniversary of Issuance of the New License for the Swift No. 1 Project. If necessary easements and Permits are not obtained by the 4th anniversary of Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall make reasonable efforts to obtain such easements and Permits, and shall commence construction after obtaining such easements and Permits.

11.2.1.3 Control of Swift Forest Campground. By the first anniversary of the Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall use best reasonable efforts to either (1) negotiate a management agreement for the Swift Forest Campground with WDNR for the term of the New License for the Swift No. 1 Project, or (2) acquire ownership of the Swift Forest Campground from WDNR. PacifiCorp's obligations under this Agreement with respect to the Swift Forest Campground are contingent on PacifiCorp's either (a) entering into a management agreement with WDNR for the term of the New License for the Swift No. 1 Project, or (b) acquiring ownership of the Swift Forest Campground from WDNR, in either case on terms acceptable to both PacifiCorp and WDNR.

11.2.1.4 Swift ADA Accessibility Improvements. Upon Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall conduct an evaluation of Americans with Disabilities Act ("ADA") accessibility needs at Swift Reservoir using the Americans with Disabilities Act Accessibility Guidelines, as amended ("ADAAG"). PacifiCorp shall renovate existing facilities not otherwise planned for renovation at Swift Reservoir, between the first and seventh anniversaries of the Issuance of the New License for the Swift No. 1 Project, to comply with the ADA and ADAAG.

11.2.1.5 Swift Day Use Facilities.

11.2.1.5.1 Picnic Shelter. By the fifth anniversary of Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall provide a new day-use group picnic shelter in the day use area of the Swift Forest Campground. PacifiCorp shall make this shelter available for reservations.

11.2.1.5.2 Double Vault Toilet. By the eleventh anniversary of Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall: (1) install a double vault toilet at Eagle Cliff Park; (2) create a small picnic area at the north (upstream) end of the Eagle Cliff Park parking area; and (3) abandon and remove facilities in the old Eagle Cliff day-use area south of the roadway.

11.2.1.6 Swift Forest Campground and Group Camp Expansion. After Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall expand camping facility capacity at the Swift Forest Campground, when needed, based on

monitoring trigger thresholds described in Exhibit E of the RRMP. PacifiCorp shall, to the extent practicable, expand the facilities to provide either: (1) 27 new RV tent campsites and 2 group campsites; or (2) 40 new RV tent campsites. Water faucets, gray water sumps, and restrooms will be shared between campsites. Redesign and relocation of the boat launch parking and access may be necessary. PacifiCorp shall provide an adequate buffer distance between facilities.

11.2.1.7 Swift Operations and Maintenance.

11.2.1.7.1 Swift Annual Recreation Facility O&M. Beginning upon Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall maintain its existing recreation facilities within the Swift No. 1 Project Boundary (e.g., Eagle Cliff Park and Swift Forest Campground, boat launch, and day use area) and all new recreation facilities created at Swift Reservoir, as required by this Agreement, pursuant to maintenance standards and frequencies set forth in Exhibit J – Recreation Facility and Site Maintenance Standards Frequency in the RRMP.

11.2.1.7.2 Swift Campground Schedules. PacifiCorp shall continue the current management practice of keeping Swift Forest Campground open through mid-November for hunter camping.

11.2.1.7.3 Swift Shoreline Use Sites O&M. Beginning upon Issuance of the New License for the Swift No. 1 Project, PacifiCorp shall maintain shoreline use sites within the Swift No. 1 Project Boundary pursuant to maintenance standards and frequencies set forth in Exhibit J – Recreation Facility and Site Maintenance Standards Frequency in the RRMP.

11.2.1.8 Swift Boat Launch. If during the term of the New License for the Swift No. 1 Project, any Party obtains funding for and constructs a new boat launch to allow boat launches when the Swift Reservoir is at the lower range of its normal operating levels, and associated parking lot and restrooms, then PacifiCorp shall maintain such boat launch and associated parking lot and restrooms after they are constructed for the remaining term of the New License for the Swift No. 1 Project, provided that if such boat launch, parking lot, or restrooms are destroyed by vandalism or natural processes, PacifiCorp shall not be required to replace such facilities. The Party that constructs the new boat launch shall consult with PacifiCorp regarding the site selection and design of the boat launch.

11.2.2 Yale Lake.

11.2.2.1 Yale Dispersed Shoreline Use Sites. PacifiCorp shall maintain shoreline camping and day use sites on lands owned by PacifiCorp in a manner consistent with the RDSUP. With the landowner's consent, PacifiCorp shall maintain, at its expense, shoreline sites on lands owned by others in a manner consistent with the RDSUP, provided that PacifiCorp has entered into a maintenance agreement with such landowners containing terms acceptable to PacifiCorp. During the first year of the New

License for the Yale Project, PacifiCorp shall reassess all existing dispersed shoreline sites to determine suitability for hardened camp sites, day use sites, or closure. During the 2nd and 3rd years of the New License for the Yale Project, PacifiCorp shall: (1) conduct a human-waste disposal management program assessment as described in the RDSUP; (2) harden, as appropriate, suitable shoreline sites for camping; (3) sign as closed inappropriate sites; and (4) sign appropriate hardened camping and day use sites. Upon completion of the waste disposal management program assessment, PacifiCorp shall either implement an appropriate method identified through the assessment or continue assessing alternative methods for addressing waste disposal management until an appropriate method is identified and implemented.

11.2.2.2 Yale IP Road Phase One. PacifiCorp shall use best reasonable efforts after Issuance of the New License for the Yale Project to secure, at the lowest cost possible, non-motorized multi-use recreational access on the existing Yale IP Road from the bridge over the Lewis River at the eastern terminus to Healy Road to the west. If a continuous trail is not achievable in the near term, PacifiCorp shall pursue an out-and-back trail. PacifiCorp shall secure access, complete bridge safety evaluations, rock-fall hazard assessments, design for bridge safety retrofit, engineering, and permitting by the fourth anniversary of Issuance of the New License for the Yale Project, at a cost not to exceed \$500,000. If efforts to secure access are not achieved by the fourth anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall make reasonable efforts to secure such access. Should these efforts cost less than \$500,000, PacifiCorp shall add the remaining funds to the budget required under Section 11.2.2.3. The measures required by this Section 11.2.2.2 comprise "Phase One" of the Yale IP Road measures.

11.2.2.3 Yale IP Road Phase Two. When Phase One described in Section 11.2.2.2 is complete and all necessary access has been secured, PacifiCorp shall: (1) clean the trail surface and repair potholes; (2) establish 1 trailhead if only an out-and-back trail is possible, or 2 trailheads if the complete trail is possible (each to include 15-20 parking stalls, 1 vault toilet and 2 picnic tables); (3) if the complete trail is possible, develop a mid-point trailhead (to include a single-hole vault toilet and 2 picnic tables); and (4) provide appropriate reservoir access, trail and other signage, necessary gates, and bridge safety railing retrofits ("Phase Two"). PacifiCorp shall provide up to \$596,000 toward the cost of these actions.

11.2.2.4 Yale IP Road Phase Three. PacifiCorp shall resurface 12 miles of 10-foot-wide, 2-inch-thick asphalt paving along the Yale IP Road trail corridor ("Phase Three"). PacifiCorp shall implement this requirement at the later of the two following dates: between the fifteenth and sixteenth anniversaries of the Issuance of New License for the Yale Project, or when Yale IP Road Phases One and Two are complete.

11.2.2.5 Yale Trails. By the fifth anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall complete the following capital improvements at Yale Lake:

- a. PacifiCorp shall promote existing and new non-motorized, multi-use trails in the Yale Project area with signs and brochures.

- b. PacifiCorp shall develop a non-motorized, multi-use, natural-surface trail between Saddle Dam Park parking lot and the existing Saddle Dam Trail at the northern end of Saddle Dam.
- c. PacifiCorp shall improve parking outside of the gate at Saddle Dam Park to accommodate 5 to 10 vehicles with horse trailers and to provide one horse tie-up rail.
- d. PacifiCorp and WDFW shall work cooperatively to develop a mutually agreeable strategy to evaluate the potential impacts of equestrian use on elk during the elk wintering season at Saddle Dam Farm and to minimize any impacts through signage and education, vegetation buffers, or relocating trails. If these methods are not feasible or successful and if equestrian use warrants, PacifiCorp shall, at the direction of WDFW, seasonally close the trail(s) via appropriate signage and gates.
- e. PacifiCorp shall provide a new non-motorized, multi-use, natural-surface trail between Cougar Campground and Beaver Bay Campground, approximately 2 miles long.
- f. PacifiCorp shall provide a 0.5-mile, non-motorized, multi-use, gravel surface trail loop from the public restroom at the town of Cougar to a reservoir overlook area and back.

11.2.2.6 Yale ADA Accessibility Improvements. Upon Issuance of the New License for the Yale Project, PacifiCorp shall conduct an evaluation of ADA accessibility needs using the ADAAG. PacifiCorp shall renovate existing facilities not otherwise planned for renovation at Yale Lake, between the first and seventh anniversaries of Issuance of the New License for the Yale Project, to comply with the ADA and ADAAG.

11.2.2.7 Yale Park Boat Launch. By the fourth anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall complete the following at Yale Park: (1) extend one concrete boat ramp lane approximately 10 to 20 feet horizontally and 1.5 to 3 feet vertically, depending on topography; and (2) replace the existing floating boat docks.

11.2.2.8 Beaver Bay Boat Launch. By the fourth anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall complete the following at Beaver Bay boat launch: (1) replace the floating dock; and (2) repair the eroded side banks next to the boat ramp.

11.2.2.9 Beaver Bay Day Use Parking. By the fourth anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall improve the separation between the boat launch parking area and the adjacent wetland at Beaver Bay boat launch by providing a new earth berm, drainage ditch, and fence. PacifiCorp shall acquire all necessary Permits to implement these actions. The new earth berm shall be located 10 to

15 feet from the existing berm on the reservoir side or other location acceptable to both WDFW and PacifiCorp.

11.2.2.10 Yale Lake Day Use Facilities. By the seventh anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall complete the following at Yale Park: (1) better define and expand the parking lot; and (2) provide a new day use group picnic shelter in the day use picnic area at Yale Park, Cougar Park, or Beaver Bay. The shelter must be placed where users can access the shoreline to beach boats. Upon completion, PacifiCorp shall make the new group picnic shelter available on a reservation system.

11.2.2.11 Cougar Day Use Restroom. By the sixth anniversary of the Issuance of the New License for the Yale Project, PacifiCorp shall replace or renovate the day-use restroom at Cougar Day-Use Park to meet ADAAG standards.

11.2.2.12 Beaver Bay Campground and Group Camps. By the thirteenth anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall redesign the Beaver Bay Campground, including access routes, to: (1) provide for a total of approximately 43 renovated RV tent campsites or 4 group camps (providing approximately 60 campsites), depending on demand; (2) provide for 1 renovated group camp accommodating approximately 15 RVs; (3) remove approximately 20 campsites and the roadway adjacent to the wetland complex; and (4) replace the two older, existing restrooms.

11.2.2.13 Cougar Campground. By the fourteenth anniversary of Issuance of the New License for the Yale Project, PacifiCorp shall renovate the existing tent-only campground sites at Cougar Campground and relocate the shoreline sites farther back from the shoreline while retaining approximately 45 campsites.

11.2.2.14 Cougar Campground and Group Camp Expansion. After Issuance of the New License for the Yale Project, when needed based on monitoring trigger thresholds described in Exhibit E of the RRMP, PacifiCorp shall expand camping capacity at Cougar Campground by developing either approximately 78 new RV tent campsites and a new group site, or 90 new RV tent campsites, based on demand. The new sites shall be located in an undeveloped area between Cougar Campground and Lewis River Road, and potentially in the existing Cougar Campground boat launch area, which may be closed to allow increased campground capacity. PacifiCorp shall provide adequate buffer distance between Cougar Creek and Lewis River Road and the new campground expansion area. PacifiCorp shall coordinate site expansion with USFWS to ensure protection of the Cougar Creek Conservation Covenant.

11.2.2.15 Yale Operations and Maintenance.

11.2.2.15.1 Yale Annual Recreation Facility O&M. Beginning upon Issuance of the New License for the Yale Project, PacifiCorp shall maintain its existing recreation facilities within the Yale Project Boundary, and all new recreation facilities created at Yale Lake, as required by this Agreement, pursuant to maintenance standards and frequencies set forth in

Exhibit J - Recreation Facility and Site Maintenance Standards Frequency in the RRMP.

11.2.2.15.2 Yale Shoreline Use Sites O&M. Beginning upon Issuance of the New License for the Yale Project, PacifiCorp shall maintain its shoreline use sites pursuant to maintenance standards and frequencies set forth in Exhibit J - Recreation Facility and Site Maintenance Standards Frequency in the RRMP.

11.2.3 Lake Merwin.

11.2.3.1 Merwin Dispersed Shoreline Use Sites. PacifiCorp shall maintain shoreline day use sites on lands owned by PacifiCorp in a manner consistent with the RDSUP. With the landowner's consent, PacifiCorp shall maintain, at its expense, shoreline sites on lands owned by others in a manner consistent with the RDSUP, provided that PacifiCorp has entered into a maintenance agreement with such landowners containing terms acceptable to PacifiCorp. By the first anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall inventory existing campsites and day-use sites and identify appropriate sites for continued day-use recreation. By the fourth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall post these sites that are on PacifiCorp-owned land to indicate that "pack it in pack it out" refuse removal is required by site users and that "camping is not allowed."

11.2.3.2 Merwin Trails. By the fifth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall promote existing and new non-motorized, multi-use trails in the Merwin Project area with signs and brochures at Merwin Park and Cresap Bay Campground.

11.2.3.3 Marble Creek Trail. By the fourth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall: (1) improve the existing half-mile Marble Creek non-motorized, multi-use trail to ADAAG standards; (2) remove the existing viewing platform; (3) evaluate the need for safety fencing at the trail terminus; (4) provide a bench or picnic table at the trail end; and (5) provide information about Marble Creek and the falls at the trail end.

11.2.3.4 South Shore Merwin Trail Access. After Issuance of the New License for the Merwin Project, PacifiCorp and Clark County shall evaluate the feasibility of establishing an easement over PacifiCorp's lands to connect a proposed Clark County regional park on the south side of Lake Merwin and the reservoir shoreline, terminating at a naturally appearing, low development shoreline site. The purpose of this easement is to allow pedestrian access to the shoreline, supported by Clark County parking and other facilities farther up the hill on Boncombe Hollow Road on land not owned by PacifiCorp. Under the terms of this Agreement, PacifiCorp would provide the easement and Clark County would develop and operate the site.

11.2.3.5 Merwin ADA Accessibility Improvements. Upon Issuance of the New License for the Merwin Project, PacifiCorp shall conduct an evaluation of ADA accessibility needs using the ADAAG. PacifiCorp shall renovate existing facilities not

otherwise planned for renovation at Lake Merwin, between the first and seventh anniversaries of Issuance of the New License for the Merwin Project to comply with the ADA and ADAAG.

11.2.3.6 Boat Launches. By November 30, 2004, PacifiCorp shall extend the boat launch ramp at Speelyai Bay Park by extending the existing concrete ramp approximately 6 feet vertical and 45 feet horizontal, and shall replace the boarding floats.

11.2.3.7 Yale Bridge (Merwin) Non-Motorized Boating Access. By the sixth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall: (1) provide an improved river access site at the Yale Bridge area for small, non-motorized watercraft launching and take-out; (2) install new steps and railings along the hillside slope from the gravel parking area next to the bridge to the reservoir shoreline; and (3) provide appropriate signage. PacifiCorp shall not be responsible for litter control in this area, which will be designated "pack it in pack it out."

11.2.3.8 Merwin Park Day Use Facilities. By the fourth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall provide 2 new volleyball courts, 1 new children's play structure, and four new horseshoe pits at Merwin Park. The children's play structure shall cost no more than \$150,000.

11.2.3.9 Merwin Park Picnic Shelters. By the fourth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall: (1) provide 2 new day use group picnic shelters at Merwin Park; and (2) remove the existing fixed picnic tables on the hillside at Merwin Park and replace them in the level grass area with a suitable number of portable tables.

11.2.3.10 Speelyai Bay Park Restroom. By the sixth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall upgrade the existing restroom building at Speelyai Bay Park to meet ADAAG standards within the existing building envelope. If this is not possible because of building size limitations and use needs, PacifiCorp shall replace it with a new building that meets ADAAG standards.

11.2.3.11 Day Use Parking. By the twelfth anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall improve parking in the quarry area at Speelyai Bay Park by providing gravel and marking parking spaces and shall evaluate the feasibility of providing additional parking under the nearby Project transmission lines with trail access to the boat launch.

11.2.3.12 Merwin Operations and Maintenance.

11.2.3.12.1 Annual Recreation Facility O&M. Beginning upon Issuance of the New License for the Merwin Project, PacifiCorp shall maintain its existing recreation facilities within the Merwin Project Boundary and all new recreation facilities created at Lake Merwin, as required by this Agreement, pursuant to maintenance standards and frequencies set forth in Exhibit J Recreation Facility and Site Maintenance Standards Frequency in the RRMP.

11.2.3.12.2 Cresap Bay Campground Schedule. Beginning upon Issuance of the New License for the Merwin Project, PacifiCorp shall keep Cresap Bay Campground and Day Use Area open through the month of September, and shall close such areas from October 1 at least through May 1.

11.2.3.12.3 Merwin Shoreline Use Sites O&M. Beginning upon Issuance of the New License for the Merwin Project, PacifiCorp shall maintain shoreline day use sites at Lake Merwin pursuant to maintenance standards and frequencies set forth in Exhibit J Recreation Facility and Site Maintenance Standards Frequency in the RRMP.

11.2.4 Lower Lewis River (Below Merwin Dam).

11.2.4.1 Lower Lewis River Vault Toilets. By the first anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall provide new, ADA-accessible, concrete double vault toilets similar to the type at the Cowlitz River Barrier Dam facility at (1) the Cedar Creek River Access Site; and (2) the Lewis River Hatchery River Access Site. By the same date, PacifiCorp shall provide vault toilets (CXT brand or its equivalent) as follows: (a) one single-vault toilet at the Merwin Hatchery River Access Site; and (b) one single-vault toilet at the Johnson Creek River Access Site.

11.2.4.1.1 Island River Access Toilet. By April 30, 2007, PacifiCorp shall provide one new, ADA-accessible, concrete double-vault toilet similar to the type at the Cowlitz River Barrier Dam facility at the Island River Access Site.

11.2.4.2 Lower Lewis River Day Use Improvements. By the eleventh anniversary of Issuance of the New License for the Merwin Project, PacifiCorp shall provide 2 to 3 picnic tables at each of the Lower Lewis River Access Sites as space and site conditions allow.

11.2.4.3 Lower Lewis River Operations and Maintenance.

11.2.4.3.1 Annual PacifiCorp Recreation Facility O&M. Beginning upon Issuance of the New License for the Merwin Project, PacifiCorp shall maintain its existing developed recreation facilities at the Merwin Hatchery River Access and Johnson Creek River Access sites, and at the new facilities provided for under Sections 11.2.4.1 and 11.2.4.2, pursuant to maintenance standards and frequencies set forth in Exhibit J Recreation Facility and Site Maintenance Standards Frequency in the RRMP.

11.2.4.3.2 Annual WDFW Recreation Facility O&M. Beginning upon the Issuance of the New License for the Merwin Project, PacifiCorp shall maintain the Island River Access, Cedar Creek River Access, and Lewis River Hatchery River Access sites, which are owned by WDFW.

pursuant to maintenance standards and frequencies set forth in Exhibit J Recreation Facility and Site Maintenance Standards Frequency in the RRMP; provided that PacifiCorp and WDFW reach maintenance agreements acceptable to both parties and WDFW does not terminate any of the maintenance agreements prior to expiration of the New License for the Merwin Project. PacifiCorp shall replace such facilities at the end of their useful life or when destroyed or substantially damaged by vandalism or natural processes such as flood or fire, but shall not be required to replace any such facility more frequently than once every 10 years.

11.2.5 Interpretation and Education Program. To the extent feasible, PacifiCorp shall collaborate with Cowlitz PUD to produce a single Interpretation and Education Program ("I&E Program"). PacifiCorp shall develop, in consultation with Cowlitz PUD, a balanced and focused I&E Program for recreation opportunities on the lands within the Project Boundaries of its three Projects and the Lower Lewis River Access Sites by the first anniversary of the Issuance of the first of the New Licenses for its three Projects. In developing the I&E Program, PacifiCorp shall request comments from the Parties. PacifiCorp shall be required to spend no more than \$90,000 on I&E Program development. The I&E Program shall include a watchable wildlife component and may include educational efforts publicizing the locations of good fishing sites and what kinds of fish can be found at them. The I&E Program shall: (1) include sufficient details, specifications, and artwork for follow-on printing, production, constructing, and installation of I&E Program-identified materials (signs, kiosks, etc.) during the implementation phase; (2) focus on recreation resources, hydro power generation, natural resources, and cultural resources; and (3) provide for the continuation and expansion of the weekend campfire programs to roughly double the effort as of the Effective Date to make campfire programs available at all PacifiCorp campgrounds at least one weekend night per week during July and August. Once the I&E Program is developed, PacifiCorp shall implement the I&E Program over a four-year period, starting for each Project on the first anniversary after Issuance of the New License for that Project. PacifiCorp shall not be required to spend more than \$20,000 per year to implement the I&E Program. Thereafter PacifiCorp shall maintain and upgrade signs, brochures, and other media, but shall not be required to spend more than \$7,500 per year on such maintenance and upgrades.

11.2.6 Visitor Management Control. For each Project, beginning upon Issuance of the New License for that Project, PacifiCorp shall implement additional visitor management controls, such as signs, barriers, and enforcement, to provide a high quality recreation experience and to enhance public safety.

11.2.7 Communications on Recreation Facility Availability. For each Project, beginning upon Issuance of the New License for that Project, PacifiCorp shall provide notice to the public when day use facilities and campsites are full or approaching capacity. Such notice shall be provided at the Woodland Visitors Center and, with appropriate approvals from Washington State Department of Transportation ("WSDOT") and USDA-FS, through signage placed in strategic locations on access roads to the facilities. PacifiCorp shall address this issue in the I&E Program when fully developed and implemented.

11.2.8 Recreational Access to Project Lands. For each Project, beginning upon Issuance of the New License for that Project, PacifiCorp shall allow appropriate non-motorized, public

day use access to all existing and future PacifiCorp-owned lands and, when possible, conservation easements, for wildlife viewing, angling, hunting, and other recreational purposes, subject to capacity restrictions, third party property rights, and PacifiCorp's right to charge fees; provided that such access will be consistent with Commission requirements and will be allowed except where unsafe conditions exist. Project security needs require exclusion of the public, or public access may harm protected environmental or cultural resources. PacifiCorp shall address these public access provisions in the I&E Program. Such public access shall not require PacifiCorp to construct or maintain facilities or to provide personnel for supervision of such access, except to the extent expressly provided for in this Agreement. Nothing in this Section 11.2.8 is intended to modify PacifiCorp's commitments under the agreements described in Section 11.2.17.

11.2.9 Land Ownership Retention for Recreation Purposes (Switchback Property). Beginning upon Issuance of the New License for the Merwin Project, PacifiCorp shall maintain ownership of lands along the south shoreline of the Lewis River below Merwin Dam that are owned by PacifiCorp as of the Effective Date. PacifiCorp shall develop this site in a manner similar to the Johnson Creek River Access Site when use at the Lower Lewis River Access Sites managed by PacifiCorp on the Lewis River are at capacity during their peak use seasons (spring and fall).

11.2.10 Overnight Parking and Dispersed Shoreline Use at Yale Lake and Swift Reservoir. For each of the Yale and Swift No. 1 Projects, beginning upon Issuance of the New License for that Project, PacifiCorp shall permit overnight parking at the Project boat launch parking areas at Yale Lake and Swift Reservoir for visitors who are using the shoreline for dispersed camping.

11.2.11 Campground Gate Access and Scheduling. For each Project, beginning upon Issuance of the New License for that Project, PacifiCorp shall close but not lock gates to the entrance of campgrounds at night, but shall continue to lock gates at Project day use sites and boat launches at night.

11.2.12 Dispersed Camping Management Funding to USDA-FS. Beginning upon the Issuance of first of the New Licenses for its three Projects, PacifiCorp shall provide \$5,220 in 2004 dollars annually (Adjusted for Inflation) to USDA-FS to manage Project-related dispersed camping on National Forest System lands.

11.2.13 Vehicular Access and Use Control. For each Project, beginning upon Issuance of the New License for that Project, PacifiCorp shall: (1) discourage dispersed upland (non-shoreline) camping and motorized use, by keeping Project roads gated and maintained as necessary; and (2) continue to work with adjacent private landowners and agency resource managers to restrict access from their non-Project lands onto PacifiCorp-owned lands where undesirable motorized access is gained, such as to the Yale/IP Road corridor.

11.2.14 ADA-Accessible Fishing Sites. Beginning upon the seventh anniversary of Issuance of the first of the New Licenses for its three Projects, PacifiCorp shall conduct a feasibility study to identify the most feasible location for one ADA-accessible bank fishing access site in the following areas: the Lewis River between Merwin Dam and the Island River Access, Swift Reservoir, Yale Lake, and Lake Merwin. By the tenth anniversary of Issuance of

the first of the New Licenses for its three Projects. PacifiCorp shall construct an ADA-accessible bank fishing facility at that site, but shall not be required to spend more than \$250,000 for design, permitting, and construction.

11.2.15 Public Use of Project RV Dump Stations. For each Project, beginning upon Issuance of the New License for that Project, subject to existing capacity, PacifiCorp shall allow the public to use existing RV sanitation dump stations within PacifiCorp-owned campgrounds at Swift Forest Campground, Beaver Bay Campground, Cougar Campground, and Cresap Bay Campground for a fee established and updated annually by PacifiCorp. PacifiCorp shall coordinate with USDA-FS (on FR 90) and WSDOT (on SR 503 and SR 503 Spur) to place signs indicating the universal symbol for an RV holding tank dump station on the advance direction signs leading to PacifiCorp-managed campgrounds.

11.2.16 Communication with the Parties. Upon Issuance of the first of the New Licenses for its three Projects, PacifiCorp shall create a Lewis River Recreation Advisory Committee ("LRC") to provide information to interested Parties from time to time, but at least once per year, concerning implementation of the recreation measures on the lands within the Project Boundaries of PacifiCorp's Projects. The members of the LRC may provide comments to PacifiCorp concerning implementation of the recreation measures; however, the LRC shall not have the authority to alter implementation plans without PacifiCorp's written agreement.

11.2.17 Day Use Facilities and Undeveloped Lands. The matter of fees at PacifiCorp's Lewis River Day Use recreation facilities that existed as of August 1, 2002 will be governed by the "Agreement Concerning the Charging of Fees at PacifiCorp's Lewis River Recreation Facilities" between PacifiCorp, John Clapp, Noel Johnson, Lewis River Community Council, City of Woodland, Woodland Chamber of Commerce, Emergency Medical Services and Fire Districts (Represented by Cowlitz-Skamania Fire District #7), Cowlitz County, Clark County, Skamania County, and WDFW executed as of November 22, 2004 ("Fee Agreement"). The Fee Agreement is not intended to be incorporated in this Agreement or enforceable pursuant to this Agreement. During the term of the Fee Agreement, PacifiCorp shall not be obligated under this Agreement to take actions inconsistent with the terms of the Fee Agreement.

The matter of fees at PacifiCorp's undeveloped lands associated with the Projects as of November 2, 2004 will be governed by the "Letter Agreement Concerning Charging of Fees at PacifiCorp's Undeveloped Lands Associated with the Merwin, Yale and Swift No. 1 Projects" between PacifiCorp, John Clapp, Noel Johnson, Lewis River Community Council, City of Woodland, Woodland Chamber of Commerce, Emergency Medical Services and Fire Districts (Represented by Cowlitz-Skamania Fire District #7), Cowlitz County, Clark County, Skamania County, WDFW and IAC executed as of November 22, 2004 ("Undeveloped Lands Agreement"). The Undeveloped Lands Agreement is not intended to be incorporated in this Agreement or enforceable pursuant to this Agreement. During the term of the Undeveloped Lands Agreement, PacifiCorp shall not be obligated under this Agreement to take actions inconsistent with the terms of the Undeveloped Lands Agreement.

11.3 Cowlitz PUD Recreation Measures. Cowlitz PUD shall implement the Cowlitz PUD-related measures in Sections 11.3.1 through 11.3.5. Where the provisions below state that a recreation measure is to begin upon or after Issuance of the New License for the Swift No. 2 Project, Cowlitz PUD shall implement the measure after all administrative and judicial

rehearings, reviews, and appeals relating to that New License have been finally adjudicated or dismissed.

11.3.1 Swift No. 2 Power Canal Bank Fishing Facility. By September 30, 2005, Cowlitz PUD shall provide an ADA-compliant bank fishing facility at the Swift No. 2 canal bridge, which shall include a parking area to accommodate approximately 13 vehicles and at least one and possibly two (depending on available space and use) portable toilets or their equivalent on the last weekend of April (opening weekend of fishing) and between Memorial Day and Labor Day.

11.3.2 Operations and Maintenance. Commencing upon September 30, 2005, Cowlitz PUD shall be responsible for operations, maintenance, and replacement, as needed, of the facilities discussed in Section 11.3.1.

11.3.3 Interpretation and Education Program. To the extent feasible, Cowlitz PUD shall collaborate with PacifiCorp to produce a single I&E Program. Commencing after Issuance of the New License for the Swift No. 2 Project, Cowlitz PUD shall develop and implement or cause to be developed and implemented, in consultation with PacifiCorp, an I&E Program for recreation opportunities (including, at a minimum, a watchable wildlife component) on the lands within the Swift No. 2 Project Boundary. In developing the I&E Program, Cowlitz PUD shall request comments from the Parties.

11.3.4 Recreational Access to Project Lands. Beginning upon Issuance of the New License for the Swift No. 2 Project, Cowlitz PUD shall allow non-motorized public access to lands within the Swift No. 2 Project Boundary for wildlife viewing, angling, hunting, and other recreational purposes, subject to capacity restrictions, restrictions for security of its Project, restrictions to protect environmental and cultural resources, Cowlitz PUD's right to charge fees (provided that Cowlitz PUD shall not charge fees for use of the Swift No. 2 Power Canal Bank Fishing Facility), and restrictions for public safety, as determined by Cowlitz PUD in its reasonable discretion, subject to third party property rights, and consistent with Commission requirements. Such public access shall not require Cowlitz PUD to construct or maintain facilities or to provide personnel for supervision of such access, except to the extent expressly provided for in this Agreement. Boating, swimming, any other in-water activity, and overnight camping shall not be permitted within the Swift No. 2 Project Boundary.

11.3.5 Dispersed Camping Management Funding to USDA-FS. Beginning upon Issuance of the New License for the Swift No. 2 Project, Cowlitz PUD shall provide, or cause to be provided, \$780 in 2004 dollars annually (Adjusted for Inflation) to the USDA-FS to manage Project-related dispersed camping on National Forest System lands.

SECTION 12: FLOOD MANAGEMENT

12.1 Purpose. The Parties acknowledge that the Projects provide important flood management for the local communities below Merwin Dam. The intent of the parties is to alter PacifiCorp's High Runoff Procedure to improve the level of protection during the time period in which high-flow events are likely to occur, while continuing to provide necessary operating flexibility to PacifiCorp. The Parties also intend to provide assistance to the Agencies that are charged with providing emergency notification of high-flow events on the Lewis River.

12.2 The FEMA Agreement. The Parties recognize that PacifiCorp is subject to an agreement with the Federal Emergency Management Agency ("FEMA") dated August 18, 1983 (the "FEMA Agreement") under which PacifiCorp covenants to follow its existing Standard Operating Procedure Manual (Lewis River Projects - High Runoff Operation) ("Manual") in operating PacifiCorp's Projects, and to include such procedures in any New License application. To the extent that the provisions of this Section 12 conflict with any provisions of the FEMA Agreement, PacifiCorp shall consult with FEMA and seek appropriate amendments to the FEMA Agreement, and shall make corresponding changes to PacifiCorp's existing Manual to reflect the forecast-based high runoff procedures described in this Section 12. If the FEMA Agreement, so amended, remains inconsistent with this Section 12, PacifiCorp shall advise the Parties and such inconsistency shall be resolved in accordance with Section 15.10.

12.3 Future Development of the Lewis River Flood Plain. The Parties do not desire that FEMA make changes in its Flood Insurance Rate Map to reduce the existing base flood elevations. The Parties do not desire that any governmental organization rely on the flood management provided by PacifiCorp as a basis to allow any additional development in the Lewis River's floodplains. The Agencies and the Other Governmental Entities shall not, to the extent of their control over such issues, alter projected flood potential in the Lewis River Basin based on the additional flood management procedures provided for under this Agreement. PacifiCorp shall convey to FEMA the intent of the Parties in this regard.

12.4 Emergency Notification.

12.4.1 Funding. PacifiCorp shall provide the following funding to Clark County and Cowlitz County for the acquisition, installation, and maintenance of a new emergency telephone notification service for those portions of Clark County and Cowlitz County that are subject to inundation from the Lewis River: at the discretion of Clark and Cowlitz counties, either (a) a one-time payment not to exceed \$25,000, plus half of the annual service maintenance cost (not including additional charges such as per-event usage fees) up to \$4,600 annually beginning after the first year of operation and continuing for the terms of the New Licenses, or (b) \$7,500 annually for the terms of the New Licenses. Clark County and Cowlitz County will be responsible for providing or obtaining any additional funding required in support of such a system. PacifiCorp shall be required to submit its contributions only after (1) Clark County and Cowlitz County have contracted for acquisition of such notification service; (2) any required funding for its installation, maintenance, and operation to serve the areas described on Schedule 12.4.1 has been secured; and (3) Clark County and Cowlitz County have agreed among themselves on whether PacifiCorp shall provide funding under (a) or (b) above, and as to the division of payment from PacifiCorp. PacifiCorp, Clark County, and Cowlitz County shall work

out a mutually agreeable payment schedule after the service has been acquired and installed. Lovell/164
PacifiCorp, Clark County, and Cowlitz County intend that identification and acquisition of this emergency telephone notification system or service shall proceed promptly after the Effective Date and that PacifiCorp shall make the above reimbursement whether or not the New Licenses have been Issued.

12.4.2 Purpose. Clark County and Cowlitz County recognize that the goal of the notification system is to reach residents of those areas subject to inundation; however, due to current technological limitations, a wider group of residents may be contacted. The Parties have identified areas that will be contacted by portions of the existing telephone system as described more fully on attached Schedule 12.4.1. If feasible, Clark County and Cowlitz County shall use such system or service to automatically notify citizens with potential inundation affecting their property or ingress and egress to their property when flow levels exceed 15,000 cfs below Merwin.

12.4.3 Responsibilities. Notwithstanding the contributions made under this Agreement, the acquisition, operation, and maintenance of such an emergency telephone notification system shall be and remain the sole responsibility of Clark County and Cowlitz County.

12.5 No Assumption of Liability. PacifiCorp does not intend to assume or incur and, by execution of this Agreement, PacifiCorp does not assume or incur any liability to any Party, or any third party, for flood damages except to the extent that PacifiCorp is liable under the FEMA Agreement. Cowlitz PUD has no obligations for flood management under this Agreement. Cowlitz PUD does not intend to assume or incur and, by execution of this Agreement, Cowlitz PUD does not assume or incur any liability to any Party, or any third party, for flood damage.

12.6 NOAA Communications Transmitter. PacifiCorp has entered into an agreement (effective August 23, 2003) with the National Oceanic and Atmospheric Administration ("NOAA") to reimburse NOAA for the installation and maintenance of a weather radio transmitter at Davis Peak. Annual expenses to be reimbursed by PacifiCorp are not to exceed \$9,500 per year without PacifiCorp's express consent. PacifiCorp has received written confirmation from NOAA that, between October and May of each year, NOAA will broadcast the total vacant storage (to the nearest foot) available in the reservoirs at reasonable intervals, the river flow from the Ariel gage, and a tone alert flood warnings whenever the combined outflow from the power plant and the spillway at the Merwin Project exceeds 60,000 cfs, measured according to the procedures in the Manual, and in the event of a dam break. If NOAA elects to discontinue broadcasting such notices, PacifiCorp may, after consultation with Clark Regional Emergency Services Agency and Cowlitz County Department of Emergency Management, terminate the funding agreement with NOAA for mechanical operation and maintenance of the transmitter. The Parties acknowledge that residents of the Lewis River basin will be responsible for purchasing their own radios capable of receiving the NOAA signal.

12.7 USGS Flow Information and Funding. PacifiCorp has paid for installation of a conduit and phone line to facilitate transmissions from a United States Geological Survey ("USGS") voice-synthesizer modem intended to speak flow numbers in cfs and the river level or stage when called, to provide real-time flow information from the existing Ariel gage. PacifiCorp shall transfer ownership of the phone line to USGS if it has not done so before the Effective Date. PacifiCorp shall not have responsibility for successful operation of the phone line, the

voice modem, or the Ariel gage. PacifiCorp shall, upon request by USGS, reimburse USGS for the monthly operating cost of the phone line during the terms of the New Licenses.

12.8 High Runoff Procedure. By the first anniversary of the Issuance of the New License for the Merwin Project, PacifiCorp shall seek amendment of the FEMA Agreement and the Manual to implement a revised high runoff procedure as follows:

a. The "Flood Management Season" during which time PacifiCorp is required to maintain 17 feet of hole, as defined in the Manual, at the Projects for high runoff management shall be redefined from the current period (November 1 through April 1) to shorten the period by two weeks in years with a below average March runoff forecast, as defined in the Manual, so that the Flood Management Season shall be November 1 through March 15 during those years. PacifiCorp may, in its sole discretion, waive this requirement to shorten the Flood Management Season by two weeks.

b. The term "Pre-Releases" shall mean water discharged at Merwin in excess of turbine capacity and in anticipation of high runoff when the existing "hole" for high runoff management exceeds 17 feet, as defined in the Manual. In no event shall the total discharge from Merwin during Pre-Releases greater than 25,000 cfs exceed the lesser of the natural inflow or 40,000 cfs.

c. PacifiCorp shall obtain 3-day river flow forecasts from a reputable third party forecasting organization (which may include the National Weather Service's River Forecasting Center) for the Lewis River Watershed. This 3-day river flow forecast shall be used by PacifiCorp in its forecast-based high runoff procedure as described below. PacifiCorp shall periodically evaluate the forecasts being used against other commonly available forecasts, with the goal of improving forecasting accuracy for flood management through the use of evolving technology, to the extent practicable.

d. During the Flood Management Season, PacifiCorp shall calculate the "Forecasted Flow" for the Lewis River from the 3-day forecast by determining the forecasted flow that has an 85% probability of occurring. In the event that it appears that the Forecasted Flow will result in inflows significant enough to utilize a portion of the 17 feet of hole, as defined in the Manual, reserved for flood management purposes, PacifiCorp shall make a Pre-Release to provide additional capacity to store inflows into the reservoirs during the high-runoff event. Once the total hole is reduced to 17 feet, PacifiCorp shall continue to follow the flow release procedures contained in the Manual as of the Effective Date.

e. If and when FEMA has approved the changes described in Section 12.8.a through d, and six months after Issuance of the New License for Merwin, then PacifiCorp shall modify its Manual to reflect the forecast-based high runoff procedure and begin implementing the procedure upon Commission approval. Nothing in this Agreement shall prevent PacifiCorp from updating or refining the forecast-based high runoff procedure in the future, subject to the FEMA Agreement. PacifiCorp shall propose any substantive update to the Parties. If there is no objection and if FEMA agrees to the update, PacifiCorp shall implement the update. If a Party objects to a substantive update, PacifiCorp and interested Parties will meet to discuss any concerns and attempt to reach

agreement. If the Parties cannot reach agreement, the issue will be resolved pursuant to Section 15.10.

12.9 Coordination Among the Parties. PacifiCorp shall convene an annual coordination meeting involving the emergency management officials from the cities and agencies within Clark and Cowlitz counties, including police agencies, fire officials, emergency medical services, and any other parties entitled to notice in connection with the high runoff procedure pursuant to the Manual. PacifiCorp shall provide at least thirty days' advance notice of such meetings. The purpose of the meeting will be to review results of the high runoff procedure for the preceding Flood Management Season, discuss the results of dam safety inspections, coordinate emergency action plans, and public outreach regarding flood management and safety issues. Following the meeting of the above agencies, the participants will schedule a subsequent public workshop in September or October of each year to discuss the same issues as appropriate, subject to homeland security rules or other legal requirements. PacifiCorp shall provide at least thirty days' advance public notice of such workshops.

PacifiCorp shall identify one of PacifiCorp's employees to work with Clark and Cowlitz counties both during emergencies and on an ongoing basis and will provide mail, telephone, fax, and e-mail contact information for such employee. In addition, PacifiCorp shall provide Clark and Cowlitz counties with a telephone number that will be manned 24 hours per day, seven days per week, that can be used in an emergency for Clark and Cowlitz counties to contact a designated employee who will have responsibility for coordinating with Clark and Cowlitz counties during an emergency. Clark and Cowlitz counties shall maintain up-to-date information on their respective contacts, who shall be on duty during emergencies and on an ongoing basis. PacifiCorp shall provide any updated versions of the Manual to Clark County, Cowlitz County, and the City of Woodland.

12.10 Disclaimer. By execution or performance of this Agreement, no Party assumes or incurs any liability to any Party, nor intends to create any liability to any third party, for flood damage.

SECTION 13: CULTURAL RESOURCES AND SOCIO-ECONOMICS

13.1 Cultural Resources.

13.1.1 PacifiCorp Obligations as to Cultural Resources. PacifiCorp shall finalize the Historic Properties Management Plan ("HPMP") based on the Draft Historic Properties Management Plan submitted to the Commission in PacifiCorp's Final Application for New License for Major Project, Volume III of III, April 2004. Upon approval by the Commission, PacifiCorp shall implement the HPMP for each of the Merwin, Yale, and Swift No. 1 Projects as the New License for each Project is Issued. The HPMP will guide the treatment of known and yet to be discovered cultural and historic resources through the New License terms and will outline the consultation requirements with the CIT, Yakama Nation, and oversight agencies. Additionally, PacifiCorp has agreed to the following specific protections of cultural resources:

- (1) Archeological artifacts recovered from the Project area and associated documentation will be curated at the visitor information facility described in Section 13.2.4 or at another Project facility created by PacifiCorp in one of its existing buildings that meets the applicable federal curation guidelines;
- (2) Changes contemplated to National Register of Historic Places-eligible facilities within the Swift No. 1 Historic District or the Ariel (Merwin) Historic District will be planned in a manner that is compatible with preservation of the districts' historic value;
- (3) Access by the CIT and Yakama Nation to Project lands for traditional cultural practices will be provided by PacifiCorp except where unsafe conditions exist;
- (4) A program of monitoring and protection of cultural resources in the draw-down zones;
- (5) Designation of a cultural resource coordinator for PacifiCorp's Lewis River Projects; and
- (6) A program for annual training and education of PacifiCorp employees whose work may affect cultural resources in the Project areas.

13.1.2 Cowlitz PUD Obligations as to Cultural Resources.

13.1.2.1 Unanticipated Discovery Plan. Investigations for Swift No. 2 revealed that no historic properties were present within the Project Boundary and no HPMP was needed for relicensing. The Licensee shall follow the Cultural Resources Unanticipated Discovery Plan filed with the Commission as Volume 2 Appendix 3 in the Application for New License for Swift No. 2 in April 2004. During the term of the New License, the Licensee shall evaluate the potential for development actions to affect previously undiscovered archeological sites or traditional cultural properties that could be eligible for listing in the National Register of Historic Places. The Licensee shall consult with the State Historic Preservation Officer, the CIT, and the Yakama Nation about development

actions, land acquisitions, or emergency response activities that would disturb soils in areas exceeding 0.1 acre. If cultural resources are identified, the Licensee shall evaluate their eligibility for National Register listing and will file a plan for mitigation and management of such resources with the Commission, after consultation with the Office of Archeology and Historic Preservation, CIT, and Yakama Nation. The Licensee shall evaluate the National Register eligibility of buildings and structures that could be affected by Project operation and development actions at the time such structures attain 50 years of age.

13.1.2.2 Access. Cowlitz PUD shall allow tribal access to land within the Swift No. 2 Project Boundary for traditional cultural practices except where unsafe conditions exist.

13.2 Socio-Economics.

13.2.1 Law Enforcement.

13.2.1.1 Funding. Within 6 months after the Issuance of the first of the New Licenses for the Merwin, Yale, and Swift No. 1 Projects, PacifiCorp shall provide funding for the direct cost of two full-time-equivalent law enforcement officers, including a reasonable cost for vehicle and equipment related to their duties under the contract. This funding will be allocated between the Clark, Cowlitz and Skamania counties at their discretion. PacifiCorp shall also provide funding for the direct cost of one full-time-equivalent law enforcement officer, including a reasonable cost for vehicle and equipment related to his or her duties under the contract, to WDFW. WDFW and the Clark, Cowlitz and Skamania counties will coordinate their activities to provide the most effective law enforcement possible with the available resources.

13.2.1.2 Contracts. Within 6 months after the Issuance of the first of the New Licenses for the Merwin, Yale, and Swift No. 1 Projects, PacifiCorp shall enter into a contract or contracts with the appropriate law enforcement agencies to allocate the funding described in Section 13.2.1.1. Such contracts will be to augment land- and marine-based traditional law enforcement activities and patrols in the North Fork Lewis River Basin, provided by state and local government, as part of their responsibilities to protect public health, safety, welfare, and natural resources. Such enforcement activities will be limited to the Project vicinity in the North Fork, provided that some WDFW patrols may be necessary to protect reintroduced species during their migration in the mainstem of the Lewis River. The contracts will be modeled after the contract included in Exhibit C and may be renewed every three years, as necessary. Upon renewal, allocation of funding among the Clark, Cowlitz and Skamania counties for the two full-time-equivalent law enforcement officers (and reasonable costs as discussed in Section 13.2.1.1) may be altered at the discretion of the Clark, Cowlitz and Skamania counties.

13.2.1.3 Need for Additional Coverage. PacifiCorp shall, in consultation with local and state law enforcement as part of the contracting process, consider the need for additional law enforcement coverage related to land- and water-based recreation activities reasonably related to PacifiCorp Projects.

13.2.1.4 Annual Coordination Meeting. PacifiCorp shall convene an annual coordination meeting involving the Counties' law enforcement agencies and WDFW to discuss ongoing issues related to the subject of law enforcement within the North Fork Lewis River Basin.

13.2.2 Forest Road 90.

13.2.2.1 Maintenance. The Licensees agree to make the following payments to USDA-FS for the maintenance of the section of road between the Skamania-Cowlitz County line and milepost 16.2 near the Northwoods Community ("Forest Road 90"). These payments will terminate at the earlier of the following circumstances: (1) another party accepts ownership and or maintenance responsibility for Forest Road 90 or (2) the New Licenses and any annual licenses for Swift No.1 and Swift No. 2 expire. Payment will be accomplished through the use of collection agreements or other appropriate means which will clearly restrict the use of funds to Forest Road 90 maintenance and repair activities. Information on the annual expenditures of these funds will be available for review by the Parties at the USDA-FS Gifford Pinchot National Forest Headquarters.

- a. PacifiCorp shall pay \$7,474, and Cowlitz PUD shall pay or cause to be paid \$2,626, to USDA-FS within 120 days of the Effective Date, for a portion of the estimated repair costs of the Canal Bridge on Forest Road 90.
- b. PacifiCorp shall pay \$19,980 per year beginning in April 2005 to USDA-FS specifically for the maintenance of Forest Road 90. Cowlitz PUD shall pay or cause to be paid \$7,020 to USDA-FS specifically for the maintenance of Forest Road 90 beginning in April 2005. These amounts are in 2003 dollars Adjusted for Inflation according to the Engineering News Record Construction Cost Index.
- c. Each Licensee shall pay appropriate use fees to USDA-FS on a case-by-case basis for its respective use of Forest Road 90 to haul heavy loads.

The payments included in (a) through (c) above are intended to cover the Licensees' share of all costs associated with maintaining Forest Road 90, including annual maintenance, periodic maintenance, and unforeseen/catastrophic damage. Annual maintenance includes, but is not limited to, roadway surface maintenance; controlling brush along the road's shoulders; keeping drainage systems free of debris; maintaining traffic signs, striping, and control (investigating and surveying accidents); and maintaining such structures as guardrails and bridges. Periodic maintenance includes, but is not limited to, such items as inspecting, repairing, and painting bridges; paving the road; and replacing major culverts. Unforeseen catastrophic damages are the result of an act of God or force of nature that makes the road impassable. Heavy hauling consists of occasional hauling of heavy loads, such as logs, heavy equipment, and power plant components by commercial haulers.

13.2.2.2 Access. USDA-FS will make all reasonable efforts to provide access to PacifiCorp and Cowlitz PUD facilities over Forest Road 90 but cannot guarantee access in the event of unforeseen circumstances such as catastrophic damage or weather-related closures, including blockage by snow.

13.2.2.3 Annual Meeting. The Licensees and USDA-FS shall meet at least once annually to review the past year's maintenance activities and identify planned activities for the coming year. By mutual agreement of USDA-FS, PacifiCorp, and Cowlitz PUD, these meetings may be held less frequently, on an as-needed basis. At any such time that PacifiCorp or Cowlitz PUD determines that USDA-FS is not making all reasonable efforts to provide access to the Licensee's facilities over Forest Road 90, or if the New Licenses have not been Issued by the end of calendar year 2006, then USDA-FS, PacifiCorp, and Cowlitz PUD shall meet immediately to discuss a course of action.

13.2.3 Pine Creek Work Center Communication Link. PacifiCorp shall provide the existing level of support for the USDA-FS radio-telephone link between Swift Dam and the Pine Creek Work Center for the terms of the New Licenses, unless USDA-FS notifies PacifiCorp in writing that it no longer needs the Pine Creek Work Center or the system. This support includes the following:

- a. PacifiCorp shall continue to provide, at no charge, use of the older concrete block communication building at Swift Dam for the housing of USDA-FS-owned and -maintained radio and telephone interface equipment. USDA-FS will continue to provide for the security of the building.
- b. PacifiCorp shall continue to provide a wood pole adjacent to the building for the installation of the USDA-FS-owned and -maintained radio antenna.
- c. PacifiCorp shall continue to provide unmetered (without charge) power for the USDA-FS equipment in the building, and continued backup power to the communications equipment from the Swift spill-gate emergency generator.
- d. PacifiCorp shall continue to provide twisted-pair, audio-grade copper connectivity to the telephone company point of presence near the old Swift Village site.
- e. PacifiCorp shall provide keys to the lock on the access road gate allowing access to the site by USDA-FS communication technicians. USDA-FS will call the Hydro Control Center at the Merwin Headquarters to gain clearance before entering the gate at the Swift No. 1 Project.
- f. USDA-FS will continue to maintain the concrete block building. In the event of loss of the building, PacifiCorp is not obligated to replace the structure but will continue to make the site available to USDA-FS for reconstruction at USDA-FS expense.

13.2.4 Visitor Information Facility.

13.2.4.1 Construction. PacifiCorp shall allow the non-Licensee Parties or their agents to construct a 1,000- to 1,200-square-foot visitor information facility on its property in Cougar, Washington, subject to the approval of the current lessee, the Port of Woodland, and if the non-Licensee Parties can demonstrate that sufficient partnerships

are available for staffing, daily maintenance, providing and maintaining displays, and payment for water and electricity of the visitor information facility. The construction location would be outside of PacificCorp's Project Boundaries. Construction of the visitor information facility is dependent on the non-Licensee Parties' securing construction funds and commitments from the non-Licensee Parties or other partners for adequate and stable staffing and maintenance of the visitor information facility. The design and use of the structure must be flexible in term of its services and exhibits. The visitor information facility would not include a restroom, instead relying on the adjacent existing facilities. The facility and components must be designed and constructed with a minimum life cycle of forty years.

13.2.4.2 Purpose. The purpose of the visitor information facility, if constructed, will be to provide visitor information with a small component of interpretation and education on basin resources and history. A secondary purpose of the building may be to meet the Projects' curation requirements for prehistoric artifacts and provide periodic displays highlighting the culture of local tribes.

13.2.4.3 Licensee Contribution. The Licensees shall provide one of the following two options to respond to the uncertain availability of construction funds or participation of partners in the maintenance of the visitor information facility:

- a. A one-time contribution of \$75,000 (not Adjusted for Inflation) as matching funds for potential grants to design and construct a visitor information facility in Cougar, Washington. PacificCorp's portion of such contribution would be \$65,250, and Cowlitz PUD's portion would be \$9,750. The non-Licensee Parties may use these matching funds to seek grants and partnerships, and the Licensees shall make this funding available or cause this funding to be available after Issuance of all New Licenses and only at such time as the required grants, partnerships, and management-maintenance responsibilities are secured; or
- b. Periodic maintenance (painting, exterior window washing, power washing, building repair, etc.) of the 1,000- to 1,200-square-foot visitor information facility for the terms of the New Licenses. The value of the maintenance commitment may be used by non-Licensee Parties as the match for potential grants for design and construction of the visitor information facility. If, during scoping and design, the purpose, size, or use of the building expands, the Licensees and non-Licensee Parties will each be responsible for a share of the maintenance costs of the building corresponding to their respective percentage of the size, purpose, or use. For example, if the building increases in size, purpose, or use by 30%, the Licensees would be responsible for 70% of the maintenance costs and the non-Licensee Parties would be responsible for 30% of the maintenance costs. The mechanism for sharing maintenance costs, if necessary, will be determined at such time as the changes in size, use, or purpose become known. If this option (b) is selected, Cowlitz PUD shall pay or cause to be paid 13% and PacificCorp shall pay 87% of the Licensees' share of the cost of such maintenance.

13.2.4.4 Ownership. PacifiCorp shall own the visitor information facility structure upon its completion.

13.2.4.5 Facility Use. PacifiCorp shall allow reasonable public use of the visitor information facility throughout the terms of its New Licenses. The Parties anticipate that the visitor information facility, if constructed, will be staffed approximately five months of the year (from late spring through early fall).

13.2.4.6 Initial Meeting. USDA-FS will convene and facilitate an initial meeting of all interested stakeholders to solicit ideas about the purpose, design, and use of the visitor information facility, and what kinds of displays and rotating exhibits could be featured. One of the objectives for this meeting will be to identify potential partnerships for the construction, operation, and maintenance of the visitor information facility.

SECTION 14: COORDINATION AND DECISION MAKING

14.1 Coordination and Decision Making. The provisions of this Section 14 describe the processes for coordination and decision making among the Parties for the implementation of the terrestrial and aquatic PM&E Measures provided for in this Agreement. As provided for in Section 14.2 below, the Licensees shall convene a Terrestrial Coordination Committee ("TCC") to coordinate implementation of the terrestrial PM&E Measures described in Section 10 (including any exhibits, schedules, and appendices related to Section 10), and shall accomplish the purposes set forth in Section 14.1.1 below. The Licensees shall convene an Aquatics Coordination Committee ("ACC") to coordinate implementation of the aquatics PM&E Measures described in Sections 3 through 9 (including any exhibits, schedules, and appendices related to those Sections), referred to below as terrestrial and aquatic PM&E Measures.

14.1.1 Purposes of the TCC. The TCC is intended to accomplish the purposes set forth below:

- a. Provide a forum for coordination between the Licensees and the other Parties on terrestrial resources PM&E Measure implementation.
- b. Oversee the development by the Licensees of an objective-oriented WHMP prior to the Issuance of the New Licenses.
- c. Monitor implementation of that WHMP.
- d. Oversee the HEP study in the 17th year after Issuance of the New Licenses, and modify the WHMP if necessary based on the HEP's results.
- e. Oversee and make decisions regarding the: (1) Yale Fund; (2) the Swift Fund; and (3) the Lewis River Fund.
- f. Oversee the annual budget for the WHMP.

14.2 Coordination Committees. Within 60 days after the Effective Date, PacifiCorp and Cowlitz PUD shall convene the TCC and the ACC.

14.2.1 Committee Coordinators. Within 30 days after the Effective Date, PacifiCorp and Cowlitz PUD each shall designate one Committee Coordinator for the TCC and one Committee Coordinator for the ACC. PacifiCorp and Cowlitz PUD shall make their designations by notice to the Parties in accordance with the notice provisions in Section 16.6. The PacifiCorp Committee Coordinator(s) shall be employed or retained by PacifiCorp and may represent PacifiCorp on the TCC and the ACC. The Cowlitz Committee Coordinator(s) shall be employed or retained by Cowlitz PUD and may represent Cowlitz PUD on the TCC and the ACC. The PacifiCorp Committee Coordinator(s) shall, as their primary responsibilities, oversee the coordination and implementation of the terrestrial and aquatics PM&E Measures that are the responsibility of PacifiCorp as provided in this Agreement. The Cowlitz PUD Committee Coordinator(s) shall oversee the coordination and implementation of the terrestrial and aquatics PM&E Measures that are the responsibility of Cowlitz PUD as provided in this Agreement.

PacificCorp and Cowlitz PUD Committee Coordinators together shall oversee the coordination and implementation of terrestrial and aquatic PM&E Measures for which PacificCorp and Cowlitz PUD have joint responsibility as provided in this Agreement.

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14.2.2 TCC and ACC Membership. Within 30 days after the Effective Date, or at any time thereafter with 30 days' notice to the Licensees, each Party, at its own discretion and cost, may designate one representative for membership on the TCC and may designate one representative for membership on the ACC and may designate one or more alternates. The Party shall make its designation(s) by notice to the Parties in accordance with Section 16.6. A Party not participating on the TCC, the ACC, or both may request, by notice to the Parties in accordance with Section 16.6, to be placed on a contact list to receive notices of committee meetings and releases of information, including annual reports and other interim reports, that the TCC or the ACC may issue.

14.2.3 TCC and ACC Functions. The TCC and the ACC will:

- a. Coordinate and Consult on development of plans by the Licensees as provided in this Agreement;
- b. Review information and oversee, guide, and make comments and recommendations on implementation and monitoring of the terrestrial and aquatic PM&E Measures, including plans;
- c. Consult with the Licensees on their respective reports prepared under this Agreement regarding implementation of the terrestrial and aquatic PM&E Measures as referred to in Section 14.2.6 below;
- d. Make decisions, grant approvals, and undertake any additional duties and responsibilities expressly given to the TCC or the ACC with respect to the terrestrial and aquatic PM&E Measures;
- e. Establish, among other things, (i) procedures and protocols for conducting committee meetings and deliberations to ensure efficient participation and decision making; (ii) rules for quorum and decision making in the absence of any member; (iii) alternative meeting formats as desired, including phone or teleconference; and (iv) the methods and procedures for updating committee members on interim progress of development and implementation of the terrestrial and aquatic PM&E Measures;
- f. As deemed necessary and appropriate by the TCC or the ACC, establish subcommittees to carry out specified committee functions and responsibilities described in this Section 14.2.3, and establish the size of, membership of, and procedures for any such subcommittees; and
- g. Discuss the protocols and the content of public information releases; provided that each Party retains the right to release information to the public at any time without such discussion.

14.2.4 TCC and ACC Decision-Making Process and Limitations. The TCC and the ACC shall make comments, recommendations, and decisions in a timely manner as provided below:

- a. Each Party represented on the TCC and the ACC will have the authority to participate in all committee discussions relating to, and to provide input and advice on, decisions regarding implementation of the terrestrial or aquatic PM&E Measures:
- b. The TCC and the ACC shall strive to operate by Consensus. Whether or not the TCC or the ACC has final authority over decisions on terrestrial and aquatic PM&E Measures, the Licensees and other Parties may proceed with actions necessary to implement the New Licenses or this Agreement, even though Consensus is not achieved; provided that in such cases the responsible Licensee or Licensees shall notify the Commission of the comments of the ACC or TCC members and the areas of disagreement. If the TCC or ACC does not reach Consensus, then any member of the TCC or ACC, respectively, may initiate the ADR Procedures as provided in Section 15 below.
- c. Where one or more Parties have approval authority under this Agreement, Licensees shall notify the Commission of any approvals that were not obtained, include the relevant comments of the Parties with approval authority, describe the impact of the lack of approval on the schedule for implementation of PM&E Measures, and describe proposed steps to be taken to gain the approval, including dispute resolution.
- d. In no event shall the TCC or the ACC increase or decrease the monetary, resource, or other commitments made by PacifiCorp and Cowlitz PUD in this Agreement; override any other limitations set forth in this Agreement; or otherwise require PacifiCorp to modify its three Projects' facilities without PacifiCorp's prior written consent or require Cowlitz PUD to modify its Project's facilities without Cowlitz PUD's prior written consent, which consent may be withheld in the applicable Licensee's discretion.
- e. At any juncture where discussion or other contact with the ACC or TCC is required by this Agreement, when requested by the Services or as required by the Agreement, the ACC or TCC Committee Coordinator, respectively, shall schedule an opportunity to discuss the relevant issue with the ACC or TCC. This event shall consist of either a conference call, in-person meeting, or other appropriate forum to enable full consideration of the issue.

14.2.5 TCC and ACC Meetings. Commencing in the first year after the Effective Date and each year thereafter for the terms of the New Licenses, the TCC and ACC Committee Coordinators shall arrange and provide an agenda for an annual meeting of their respective committees. The TCC and ACC Committee Coordinators also shall arrange and provide an agenda for any additional meetings deemed necessary by either coordinator for a committee or at the request of any two Parties on that committee, which request shall be sent simultaneously to all members of that committee. Members of the TCC and the ACC shall be given a minimum of

30 days' notice prior to any meeting, unless otherwise agreed to by the members of the applicable committee.

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14.2.6 TCC and ACC Reports. The Committee Coordinators for the TCC and the Committee Coordinators for the ACC shall prepare and file with the Commission detailed annual reports on the TCC and ACC activities, monitoring and evaluations under the M&E Plan, and implementation of the terrestrial and aquatic PM&E Measures occurring during the prior year, as well as plans for the coming year as required in this Agreement. The annual reports may also include plans and reports required pursuant to Sections 4.9.1, 7.7.1, 8.2.3, 8.2.4, 10.5, and 10.8.3. Copies of such reports will be made available to each Party. The annual reports shall be prepared in Consultation with the TCC and ACC committee members and shall be submitted to the committees for review each year, commencing after the Effective Date. Committee members shall have a minimum of 30 days to review and provide comment on a draft report before a final report is prepared and filed with the Commission. The Licensees shall submit the final report to the Commission not later than 30 days after the close of the ACC and TCC comment periods. To the extent that comments are not incorporated into the final report, an explanation will be provided in writing, and such explanation shall be included in the report.

SECTION 15: IMPLEMENTATION OF THIS AGREEMENT

15.1 Parties Bound. The Parties shall be bound by this Agreement, unless this Agreement is terminated as provided in Section 15.12, except that if a Party withdraws as allowed by Section 15.11, that Party shall not be bound following such withdrawal, nor shall any other Party be bound by its covenants with respect to the withdrawing Party. Section 1.2 shall survive any such termination or withdrawal. Except as provided in Section 15.3.2, if any Party proposes Inconsistent terms, conditions, or articles to the New Licenses or seeks to have Inconsistent terms and conditions imposed on the Licensees with respect to the Projects in any other governmental or judicial forum, then any other Party may initiate the ADR Procedures under Section 15.10. If dispute resolution is unsuccessful, the Party opposed to such Inconsistent terms, conditions, or articles may withdraw from this Agreement.

15.2 Resolution of Disputes Before New License Issuance. If, following the Effective Date and prior to the Commission's issuance of a New License, any 401 Certification, final ESA biological opinion and incidental take statement, or other Permit is denied or is issued with terms or conditions Inconsistent with this Agreement, then any Party may initiate the ADR Procedures under Section 15.10. If dispute resolution is unsuccessful, the Party opposed to such Inconsistent terms, conditions, or articles may withdraw from this Agreement.

If no Party initiates ADR Procedures within 30 days after it has actual knowledge of the final, non-appealable denial or issuance of an Inconsistent 401 Certification, final ESA biological opinion and incidental take statement, or other Permit, this Agreement shall be deemed modified to include such terms and conditions.

15.3 Resolution of Disputes After New Licenses Issue.

15.3.1 New Licenses Inconsistent with This Agreement. If a New License, either as initially issued by the Commission or following conclusion of any Appeal, is Inconsistent with the measures set forth in this Agreement, this Agreement shall be deemed modified to conform to the Inconsistency, unless a Party provides notice to the other Parties that it objects to the Inconsistency and initiates the ADR Procedures within 30 days after the date of Commission issuance of the New License or the conclusion of all Appeals, as appropriate. The disputing Party or Parties may, in addition, initiate the rehearing procedure described in Section 15.3.5, and such Party's rehearing request shall constitute notice to the other Parties of the dispute. If the New License, as initially approved by the Commission and after any Appeals or after the Parties abandon or withdraw further Appeals, remains Inconsistent with this Agreement, then a Party who objected to the Inconsistency may withdraw from this Agreement.

15.3.2 Reopeners and Modification. During the terms of the New Licenses, except as provided in the Final Terms and Conditions and this Agreement (including, without limitation, Section 3.5.2.b), the Parties may not seek to modify or add to the PM&E Measures, the commitments under this Agreement, or other obligations of PacifiCorp or Cowlitz PUD, or seek to amend the New Licenses pursuant to standard Commission reopener provisions, except: (a) as provided pursuant to Sections 1.1.5 and 1.1.6; (b) as required by statutes enacted or amended after Issuance of the New Licenses; or (c) if significant new information not reasonably known or understood as of the Effective Date reasonably demonstrates that the Agreement does not

continue to satisfy PacifiCorp's and Cowlitz PUD's obligations under the laws addressed in Section 1, or any subsequently enacted or amended statute. If a Party seeks to modify, amend, or add to the New Licenses or any other Permit pursuant to this Section 15.3.2, the acting Party shall provide PacifiCorp and Cowlitz PUD with at least 90 days' notice to consider the Party's position. An Agency shall not be required to comply with this 90-day-notice provision if it reasonably believes an emergency situation exists, or if providing such notice would prevent it from meeting its responsibilities under statutes or regulations enacted or amended after the Issuance of the New Licenses. If a Party modifies or adds to the PM&E Measures or other obligations or commitments under this Agreement, or other obligations of PacifiCorp or Cowlitz PUD, or succeeds in amending the New Licenses in a manner Inconsistent with this Agreement, the other Parties may object and respond in accordance with Section 15.3.3.

15.3.3 Changes in Measures Caused by Non-Parties After New Licenses Issue. If, after the Commission issues New Licenses, any non-Party action, including action by the Commission, another agency, or a court, results in the imposition of any measure that any Party believes is Inconsistent with this Agreement, then that Party may give notice and may initiate the ADR Procedures and, if applicable, may seek Appeal of such action as provided in Section 15.3.5. If, after conclusion of the ADR Procedures and after completion or abandonment of any Appeal, the measure complained of remains imposed, or as modified remains Inconsistent with this Agreement, and the Parties cannot reach agreement on a resolution to the Inconsistency, the Party providing notice may withdraw from this Agreement.

15.3.4 Review of Commission Actions. Any Party may initiate an Appeal of any Commission act or omission, on or after the Issuance of the New Licenses, that is Inconsistent with this Agreement. The ADR Procedures do not preclude any Party from timely filing for and pursuing rehearing under 18 C.F.R. § 385.713, or judicial review, of the Inconsistent action. However, the Parties shall follow the ADR Procedures to the extent reasonably practicable while such Appeal of an Inconsistency is pursued. If a Party initiates an Appeal of any Inconsistent action and the Parties participating in the Appeal withdraw the Appeal, then this Agreement shall be deemed modified to conform to the Inconsistent action or omission.

15.3.5 Review of Other Agency Actions. To the extent provided by applicable law, any Party may pursue an Appeal of any action by any agency that is Inconsistent with this Agreement. The ADR Procedures do not preclude any Party from timely filing and pursuing an Appeal under the respective agencies' applicable statutes and rules, or from seeking judicial review, of any such action that is Inconsistent with this Agreement. However, the Parties shall follow ADR Procedures to the extent reasonably practicable while any such Appeal of an Inconsistency is pursued. If a Party has initiated an Appeal of any Inconsistent action and the Parties participating in the Appeal withdraw the Appeal, then this Agreement shall be deemed modified to conform to the Inconsistent action or omission.

15.3.6 PacifiCorp or Cowlitz PUD Fails to Perform License Terms. If PacifiCorp fails to perform any of the provisions of this Agreement relating to its three Projects and included in the New Licenses for its Projects and is not otherwise excused from such performance as provided in Section 16.3, or if Cowlitz PUD fails to perform any of the provisions of this Agreement relating to its Project, and included in the New License for its Project and is not otherwise excused from such performance as provided in Section 16.3, a Party may give the Party that failed to perform notice and an opportunity to cure within 90 days of such notice. If the Party that failed to

perform fails to cure the problem within that period, or if such failure is not curable within 90 days and the Party that failed to perform has not commenced a cure within that period and diligently completed such cure, any Party who objects to such failure to perform may (a) give notice to the other Parties and commence the ADR Procedures and, (b) whether or not the ADR Procedures are commenced, may petition the Commission to enforce such provision and, if unsuccessful, initiate an Appeal or, if and as appropriate, seek the remedies of mandamus or specific performance. The Parties reserve any remedies under applicable law to enforce the PM&E Measures contained in this Agreement but not enforced by the Commission. If, after all Appeals regarding Commission action or after the Parties have abandoned or withdrawn such Appeals, the Commission does not enforce the provision and PacifiCorp or Cowlitz PUD fails to perform the provision, the Party that sought performance may withdraw from this Agreement. A failure to perform by one Licensee shall not give the other Licensee the right to withdraw from this Agreement.

15.3.7 PacifiCorp or Cowlitz PUD Fails to Perform Obligations in This Agreement Not Included in the New Licenses. If PacifiCorp fails to perform any of its obligations under this Agreement relating to its three Projects that are not included in the New Licenses for its Projects and is not otherwise excused under Section 16.3 from such performance, or if Cowlitz PUD fails to perform any of its obligations under this Agreement relating to its Project that is not included in the New License for its Project and is not otherwise excused under Section 16.3 from such performance, any Party may give the Party that failed to perform notice of the failure and an opportunity to cure within 90 days of such notice. If the Party that failed to perform fails to cure the problem within that period, or if such failure is not curable within 90 days and the Party that failed to perform has not commenced a cure within that period and diligently completed such cure, the Party seeking performance may (a) give notice to the other Parties and commence the ADR Procedures and, (b) whether or not the ADR Procedures are commenced, may seek specific performance of this Agreement. If PacifiCorp's or Cowlitz PUD's performance of the obligation is not obtained and if PacifiCorp's or Cowlitz PUD's failure is Inconsistent with the terms of this Agreement, the Party that provided notice may withdraw from this Agreement. The Parties reserve any remedies under applicable law to enforce the PM&E Measures and any other commitments contained in this Agreement. A failure to perform by one Licensee shall not give the other Licensee the right to withdraw from this Agreement.

15.3.8 New ESA Listings or Critical Habitat Designations. If any species or critical habitat that may be affected by operation of the Projects under the New Licenses is listed or designated during the terms of the New Licenses, and if consultation under ESA section 7 is required and results in the imposition of measures which are Inconsistent with the terms of this Agreement, any Party that objects to such Inconsistent measures may (a) initiate the ADR Procedures and, (b) whether or not the ADR Procedures are initiated, may initiate an Appeal or judicial review of the Inconsistent measures. If the Parties complete the ADR Procedures and complete, abandon, or withdraw any Appeal, and one or more of the additional measures remains Inconsistent with this Agreement, the Party or Parties that objected to the imposition of the Inconsistent measures may, within 60 days after completion of the ADR Procedures and completion, abandonment, or withdrawal of any Appeal, withdraw from this Agreement.

15.4 Cooperation Among Parties. The Parties shall cooperate in the performance of this Agreement. Among other things, the Parties shall cooperate in implementing the PM&E Measures and any other commitments contained in this Agreement, and in conducting all other

activities related to the implementation of this Agreement.

15.5 Responsibility for Costs. Except as may be required by section 10(e) of the FPA, by this Agreement, or by agreements between PacifiCorp and Cowlitz PUD, PacifiCorp and Cowlitz PUD shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Agreement.

15.6 Responsibility for Operation of Projects. By entering into this Agreement, none of the Parties, except for PacifiCorp and Cowlitz PUD, has accepted any legal liability or responsibility for operating the Projects.

15.7 Responsibility for PM&E Measures and Other Commitments. PacifiCorp is not responsible for implementing or funding PM&E Measures or other commitments under this Agreement that Cowlitz PUD is required to fund and to implement under its New License or this Agreement, and Cowlitz PUD is not responsible for implementing or funding PM&E Measures or other commitments under this Agreement that PacifiCorp is required to fund and to implement under its New Licenses or this Agreement. Where this Agreement provides that the Licensees promise to complete a PM&E Measure, the other Parties may enforce such provision against either Licensee or both Licensees. This Section 15.7 is not intended to supersede the "Settlement Cost Memorandum of Understanding Between PacifiCorp and Public Utility District No. 1 of Cowlitz County, Washington for Allocating Settlement Costs for Merwin, Yale, Swift No. 1 and Swift No. 2 Hydroelectric Projects on the Lewis River" between Cowlitz PUD and PacifiCorp effective August 25, 2004.

15.8 Availability of Funds. Implementation of this Agreement by a Party that is a federal agency is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, and 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 U.S. Treasury. The Parties acknowledge that the Agencies that are federal agencies shall not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing.

Implementation of this Agreement by Agencies that are state agencies 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 Washington. The Parties acknowledge that the Agencies that are state agencies shall not be required under this Agreement to expend any appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing.

15.9 Amendment of Agreement. This Agreement may be amended at any time with the agreement of all Parties still in existence. Any amendment of this Agreement shall be in writing and executed by all Parties still in existence, or their successors and assigns, if applicable. As appropriate, the Parties will submit the amendment, together with a statement in support of the amendment, to the Commission. The statement in support of the amendment shall include a record of efforts made to contact all Parties. In connection with proposed amendments to this Agreement, the Licensees shall provide written notice to the other Parties, by certified mail.

return receipt requested, describing the proposed amendment and setting a date, not less than 90 days after the date of the notice, for a meeting of the Parties to discuss the proposed amendment. If the return receipt indicates that any Party did not receive the mailed notice, the Licensees shall attempt to deliver notice by telephone, facsimile, or electronic mail. If any Party other than the Agencies, CTT, Yakama Nation, or Licensees fails to (a) attend the meeting, (b) provide a written notice objecting to the amendment, or (c) give a proxy to another Party that does attend the meeting, the Agreement may be amended by written agreement among all of the remaining Parties.

15.10 Alternative Dispute Resolution.

15.10.1 General. The Parties intend that disputes under this Agreement be resolved as expeditiously and informally as possible, and that issues within the scope of the TCC and the ACC be discussed in those committees before being referred to the ADR Procedures. All remaining disputes among the Parties regarding the obligations of the Parties under this Agreement shall, at the request of any Party, be the subject of nonbinding ADR Procedures among the disputing Parties. Each Party shall cooperate in good faith promptly to schedule, attend, and participate in the ADR Procedures. The Parties agree to devote such time, resources, and attention to the ADR Procedures as are needed to attempt to resolve the dispute at the earliest time possible. Each Party shall implement promptly all final agreements reached through the ADR Procedures, consistent with the Party's applicable statutory and regulatory responsibilities. Nothing in Sections 15.10.1 through 15.10.2 is intended or shall be construed to affect or limit the authority of the Commission, the Agencies, or any other agency with jurisdiction over the Projects to resolve a dispute brought before it in accordance with its own authorities and procedures, or to alter the statute of limitations or other requirements for Appeal of any action.

15.10.2 ADR Procedures. A Party claiming a dispute shall give notice of the dispute within 60 days of the Party's actual knowledge of a dispute, event, or omission that gives rise to the dispute, unless this Agreement provides otherwise. If a Party communicates with another Party informally and believes that the dispute is being resolved, the time for notice will not commence until it has been determined that such informal efforts have failed to resolve the dispute. Notification under Section 16.6 shall constitute actual knowledge. At a minimum, in any dispute subject to the ADR Procedures, the Parties shall hold two informal meetings within 30 days after notice, to attempt to resolve the disputed issue or issues. If, within 15 days after the second meeting or any meeting thereafter, a Party notifies the other Parties that such informal meetings failed to resolve the dispute, the Parties may agree to attempt to resolve the dispute using a neutral mediator. The agreement to use a neutral mediator will address allocation of costs and the scope of the dispute. The neutral mediator will be selected by the Parties participating in the mediation. Upon selection, the mediator will mediate the dispute for 60 days. Any of these time periods may be reasonably extended or shortened by agreement of the Parties, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in the ADR Procedures. Pending resolution of any dispute under the ADR procedures, and subject to the authority of the Commission or other agency with jurisdiction to order otherwise, PacifiCorp and Cowlitz PUD may continue operating their respective Projects in the manner of their operation prior to the point at which the dispute arose.

15.10.3 Enforcement of Agreement After ADR Procedures. Any Party may seek specific performance of this Agreement by any other Party at the Commission or in a court of competent jurisdiction after compliance with the ADR Procedures, where required, and, to the extent allowed by applicable law, may seek to recover its costs and fees associated with bringing such action. No Party shall be liable in damages for any breach of this Agreement, except that a Party may seek monetary penalties under applicable law. Nothing in Sections 15.10.1 through 15.10.3 is intended or shall be construed to affect or limit the jurisdiction of any agency or court as established under applicable law.

15.11 Withdrawal from Agreement.

15.11.1 Withdrawal of a Party from Agreement. A Party may withdraw from this Agreement only as expressly provided in this Agreement and after providing 60 days' advance notice to all other Parties. In addition, when a Party ceases to exist and has no successors or assigns, it will be deemed to have withdrawn from this Agreement, but such withdrawal shall not give any other Party the right to withdraw.

15.11.2 Continuity After Withdrawal. The withdrawal of a Party other than PacifiCorp, Cowlitz PUD, or one of the Agencies having authority under FPA sections 4(e), 10(j), or 18 does not terminate this Agreement for the remaining Parties or give any other Party the right to withdraw. If either PacifiCorp or Cowlitz PUD withdraws, this Agreement will continue as to the remaining Licensee and its obligations for PM&E Measures relating to its own Project(s). However, if any Agency having authority under FPA sections 4(e), 10(j), or 18 withdraws from this Agreement, any other Party may elect to withdraw without further ADR Procedures, after providing notice within 60 days of the withdrawal of the Agency. If a Party withdraws from this Agreement, the withdrawing Party shall not be bound by any term contained in this Agreement except as provided in Section 1.2, and shall no longer be a member of the ACC or the TCC.

15.12 Termination of Agreement. This Agreement may be terminated by unanimous written agreement of the Parties, or by withdrawal of all Parties as set forth in Section 15.11. In addition, the withdrawal of both PacifiCorp and Cowlitz PUD pursuant to Section 15.11 will terminate this Agreement. Upon termination of this Agreement, the TCC and ACC shall cease to exist.

15.13 Consultation After Withdrawal or Termination. The Licensees shall not have an obligation to Consult with Parties that have withdrawn from this Agreement, or with any Party if this Agreement is terminated, provided that where this Agreement requires the Licensees to Consult with the Services, WDFW, or the ACC with respect to performance of an aquatic PM&E Measure, the Licensees shall consult with Parties having authority under FPA sections 4(e), 10(j), or 18 with respect to such performance; and provided further that where this Agreement requires the Licensees to Consult with USFWS, WDFW, or the TCC with respect to performance of a terrestrial PM&E Measure, the Licensees shall consult with Parties having authority under FPA sections 4(e) or 10(j) with respect to such performance. Any Party that has withdrawn from this Agreement, or any Party after termination of this Agreement, may petition the Commission for an order requiring that the Licensees consult with such Party on one or more issues.

15.14 Submissions to the Commission. Any provision of this Agreement which requires a Licensee to obtain the approval of a Service or the Services by a date certain and prior to submitting information to the Commission shall be interpreted to mean that the appropriate Licensee(s) and Service(s) shall make all reasonable efforts to achieve such approval prior to making the required submission to the Commission. However, if the appropriate Licensee(s) and Service(s) are unable to achieve such approval prior to the date when the Licensee is required to make a submission to the Commission, the Licensee shall proceed with submitting information to the Commission as required, along with an explanation as to why approval was not achieved. In such instance, the Service whose approval was required may submit its own explanation as to why approval was not achieved, along with any other appropriate information. Once the matter has been submitted to the Commission, the Commission shall resolve such matter unless the appropriate Licensee(s) and Service(s) mutually agree otherwise and such agreement is accepted by the Commission.

15.15 Reservation of Authority. The Services may reserve their authority pursuant to section 18 of the FPA. In the event that a Service includes a reservation of authority under section 18 of the FPA in its modified or final conditions and prescriptions that it submits to the Commission, and the reservation of authority is included as a condition of a New License or New Licenses, the inclusion of such reservation shall not be considered Inconsistent with this Agreement; provided that a Service shall not exercise such reserved section 18 authority while a Party to this Agreement, except as allowed by Section 15.3.2.

To the extent that any other governmental Party has the right to reserve authority, and the reservation of authority is included as a condition of a New License or New Licenses, the inclusion of such reservation shall not be considered Inconsistent with this Agreement; provided that the Party shall not exercise such reserved authority except as allowed by Section 15.3.2.

15.16 Requests for Stay or Extension of Implementation. The Parties support this Agreement and acknowledge that the operations of the Projects as provided for in this Agreement are important to the Licensees' ability to fund the implementation of the PM&E Measures to ensure the resource benefits provided for in this Agreement. The Parties recognize there may be challenges to the New Licenses. As a result of such challenge, either Licensee may at its discretion request from the Commission or a court a stay or extension of implementation of any measure, action, or activity for so long as any New License is subject to administrative or judicial review. The other Parties will endeavor to support the Licensees' request to the Commission for a stay or extension. If a Party cannot support the request for a stay or extension, that Party may oppose the request for a stay or extension only if:

(1) The challenge, if successful, (a) would not result in an Inconsistency between this Agreement and the conditions of any New License with respect to any material provision of such New License or; (b) would not add material requirements to any New License; or

(2) The scope of the request for stay or extension is not reasonably justified by the nature of the challenge. The scope of the request would be deemed reasonably justified if the magnitude of the request for stay or extension were comparable to the magnitude of the risk posed by the challenge, and either (a) the stay or extension relates to the challenge or to measures physically or biologically linked to the challenge, or (b) the requested stay or extension of time

relates to measures that would result in material capital cost to the Licensees or that would materially affect Project generation, operations, or economics; or

(3) The stay or extension is inconsistent with that Party's responsibility under law or regulation.

If either Licensee intends to seek a stay or extension, that Licensee shall contact the other Parties and make reasonable efforts to meet with the other Parties to explain and discuss the scope and extent of any such request for stay or extension. If any Party opposes a request for a stay or extension, that Party shall contact the other Parties and make reasonable efforts to meet with the other Parties to explain and discuss the scope and extent of any opposition. The Parties agree to discuss ways to preserve this Agreement with one another in good faith, and to make reasonable efforts to have such discussions prior to any stay or extension being requested or opposed.

SECTION 16: GENERAL PROVISIONS

16.1 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 in equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

16.2 Successors and Assigns. This Agreement shall apply to and be binding on the Parties and their successors and assigns. Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Agreement, but shall remain bound by the terms of this Agreement and be secondarily liable for the performance of its successor or assignee. No change in ownership of the Projects or transfer of the existing or New Licenses by PacifiCorp or Cowlitz PUD shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, PacifiCorp or Cowlitz PUD (as the case may be) shall provide, in any transaction for a change in ownership of a Project or transfer of an existing or New License, that such new owner or owners shall be bound by and shall assume the rights and obligations of this Agreement upon completion of the change of ownership and approval by the Commission of the transfer or transfers. Upon completion of the transfer, PacifiCorp or Cowlitz (as the case may be) will be released from this Agreement only upon written agreement of all of the Parties then in existence. A transferring or assigning Party shall provide notice to the other Parties at least 60 days prior to completing such transfer or assignment. Signatories other than the Licensees, the Agencies, the Other Governmental Entities, the Conservation Groups, CIT, and Yakama Nation shall not have the right to assign, delegate, or otherwise transfer their rights of participation to any other person or entity.

16.3 Failure to Perform Due to Force Majeure. No Party shall be liable to any other Party for breach of this Agreement as a result of a failure to perform or for a delay in performance of any provision of this Agreement if such performance is prevented or delayed 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. Increased cost for the performance of any PM&E Measure or a change in market conditions for the sale of electricity shall not be deemed to constitute Force Majeure. The Party whose performance is affected by Force Majeure shall notify the other Parties in writing within seven days after becoming aware of any event that such affected Party contends constitutes Force Majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the actions taken or to be taken to minimize the delay, and estimate the timetable for implementation of the actions. The affected Party shall make best reasonable efforts to resume performance of this Agreement promptly and, when able, to resume performance of its obligations and give the other Parties written notice to that effect. If an event of Force Majeure prevents performance of one or more PM&E Measures for a prolonged period, the Parties recognize that reinitiation of consultation under the ESA may be required. In addition, if such delay in performance of one or more PM&E Measures materially reduces the benefit of this Agreement, a Party may initiate the ADR Procedures and, if unsuccessful in

agreeing upon alternative actions or courses of performance, then such Party may withdraw from this Agreement.

16.4 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.

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

16.6 Notice. Except as otherwise provided in this Section 16.6, any notice required by this Agreement shall be written. It shall be sent by first-class mail or comparable method of distribution to all Parties still in existence and shall be filed with the Commission. For the purposes of this Agreement, a notice shall be effective seven days after the date on which it is mailed or otherwise distributed. When this Agreement requires notice in less than seven days, notice shall be provided by telephone, facsimile, or electronic mail to all Parties and shall be effective when provided, so long as such alternative notice is followed within 7 days by written notice sent by first-class mail or comparable distribution. For the purpose of notice, the list of authorized representatives of the Parties as of the Effective Date and their respective contact information is attached as Appendix A. The Parties shall provide notice of any change in the authorized representatives designated in Appendix A, including changes in contact information, and the Licensees shall maintain the current distribution list of and contact information for such representatives.

16.7 Paragraph Titles for Convenience Only. The titles for the paragraphs of 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.

16.8 Entire Agreement. Subject to Section 1.1.4 above, this Agreement sets forth the entire agreement of the Parties relating to the relicensing of the Projects, with the exception of agreements between the Licensees. To the extent that prior agreements that either Licensee or both Licensees have entered into with any other Party relating to the Projects, whether written or oral, are inconsistent with this Agreement, this Agreement shall control.

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SECTION 17: EXECUTION OF THIS AGREEMENT

17.1 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.

17.2 Signing in Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

17.3 Additional Parties. One or more of the following entities may become signatories to this Agreement and be considered Parties as of the Effective Date, provided (a) any such entity has executed a signature page on or before December 31, 2004, and (b) such entity has not taken any action inconsistent with this Agreement between the Effective Date and the date of execution:

Clark County
Clark Skamania Fishers
Cowlitz Indian Tribe
Federation of Fly Fishers

The Lower Columbia River Fish Recovery Board
Skamania County
Washington State Department of Natural Resources

If CIF has not executed this Agreement on or before December 31, 2004, then all references to CIT shall be of no effect and shall be stricken from the offer of settlement presented to the Commission.

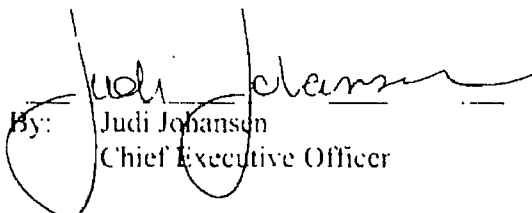
The Parties agree that the Licensees may prepare and submit a version of this Agreement to the Commission after December 31, 2004, restated to show the final inclusion or exclusion of various provisions as provided in this Section 17.3, with a copy to all Parties.

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

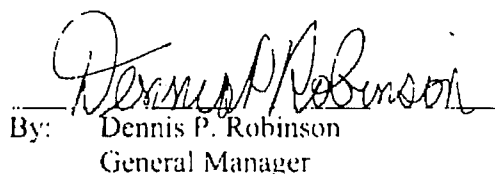
TU/104
Lovell/188

The Parties execute this Agreement as of November 30, 2004.

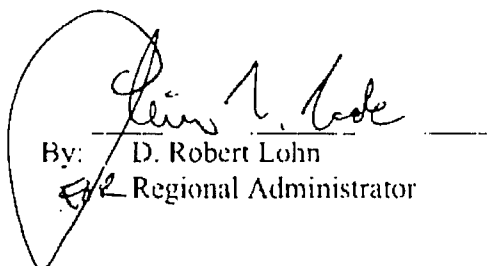
PacificCorp


By: Judi Johansen
Chief Executive Officer

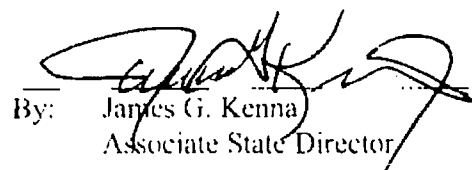
Public Utility District No. 1 of Cowlitz County, Washington


By: Dennis P. Robinson
General Manager

National Marine Fisheries Service


By: D. Robert Lohn
Regional Administrator

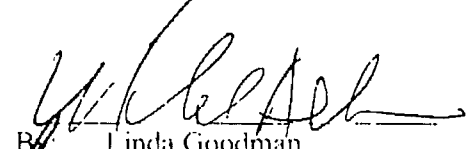
United States Bureau of Land Management


By: James G. Kenna
Associate State Director

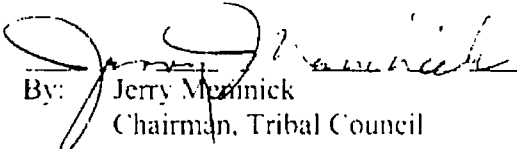
Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Lovell/189

USDA Forest Service


By: Linda Goodman
Regional Forester, Pacific Northwest Region

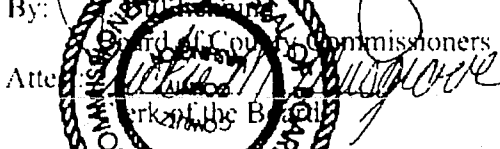
Confederated Tribes and Bands of the Yakama Nation

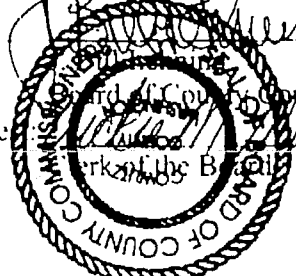

By: Jerry Meznick
Chairman, Tribal Council

Washington Department of Fish and Wildlife


By: Jeff Koenings
Executive Director

Cowlitz County

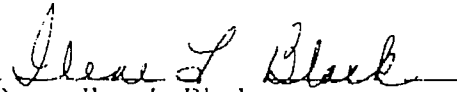

By: Board of Commissioners
Attest: 
Clerk of the Board



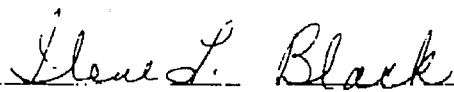
Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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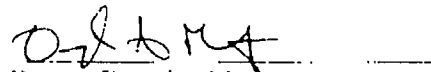
Cowlitz-Skamania Fire District No. 7


By: Ilene L. Black
Commissioner

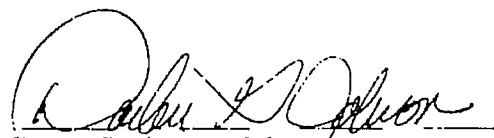
North Country Emergency Medical Service


By: Ilene L. Black
Board Chairman

City of Woodland


By: Douglas Morge
Mayor

Woodland Chamber of Commerce


By: Darlene G. Johnson

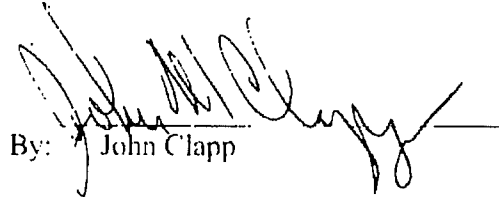
Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

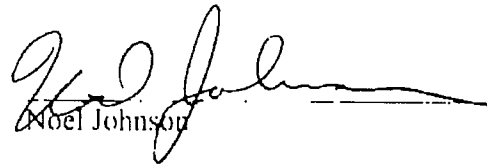
TU/104
Lovell/191

Lewis River Community Council

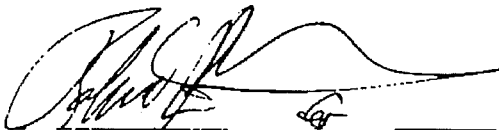

By: Mariah Stoll-Smith Reese
President

Lewis River Citizens at-Large

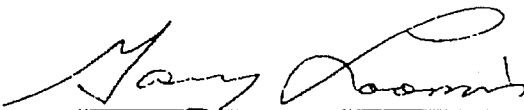

By: John Clapp


Noel Johnson

American Rivers


By: Rebecca R. Wodder
President

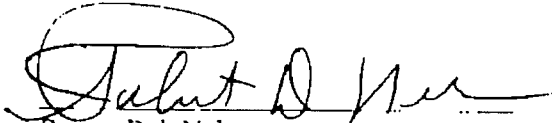
Fish First


By: Gary Loomis
President

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Rocky Mountain Elk Foundation, Inc.



By: Bob Nelson
Hydropower Coordinator

The Native Fish Society

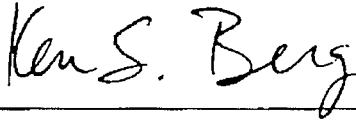


By: Bill Bakke
Executive Director

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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United States Fish and Wildlife Service



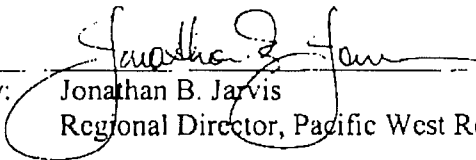
Ken S. Berg

By: David B. Allen
For Regional Director

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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National Park Service


By: Jonathan B. Jarvis
Regional Director, Pacific West Region

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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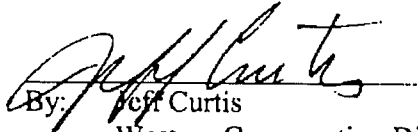
Washington Interagency Committee for Outdoor Recreation

Laura E. Johnson
By: Laura Johnson
Director

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Trout Unlimited


By: Jeff Curtis
Western Conservation Director

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Washington State Department of Natural Resources

By: _____
Doug Sutherland
Commissioner of Public Lands

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Clark County

By: Betty Sue Morris
Chair, Board of County Commissioners

Attest: Clerk of the Board

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Lovell/200

Skamania County

By: _____
Al McKee
Chairman of Board of County Commissioners
Attest: _____
Clerk of the Board

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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The Lower Columbia River Fish Recovery Board

By: _____
Bill Dygert
Acting Chairman

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Lovell/202

Clark Skamania Fishers

By: _____

Lewis River Hydroelectric Projects Settlement Agreement
November 30, 2004

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Federation of Fly Fishers

By: _____

Lewis River Hydroelectric Projects Settlement Agreement

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Lovell/204

APPENDIX A: AUTHORIZED REPRESENTATIVES

Party	Authorized Representatives	Contact Information
American Rivers	Brett Swift Deputy Regional Director	320 SW Stark Street, Suite 418 Portland, OR 97204-2634 Telephone: 503-827-8648 Fax: 503-327-8654 E-Mail: bswift@amrivers.org
City of Woodland	Robert VanderZanden	100 Davidson, Box 9 Woodland, WA 98674 Telephone: 360-225-7999 Fax: 360-225-7336 E-Mail: vanderzandenr@a.ci.woodland.wa.us
Confederated Tribes and Bands of the Yakama Nation	Clifford Casseseka	P.O. Box 151 Toppenish, WA 98948 Telephone: 509-865-5121 Fax: 509-865-4664 E-Mail: cwashines@yakama.com
Cowlitz County	Ryan Lopossa Cowlitz County Department of Public Works	207 4th Ave North Kelso, WA 98626 Telephone: 360-577-3030 Fax: 360-636-0845 E-Mail: lopossar@co.cowlitz.wa.us
Cowlitz-Skamania Fire District No. 7	Ilene L. Black Commissioner	227 Frasier Rd. Amboy, WA 98601 Telephone: 360-247-5966 Fax: 360-247-6966 (call first) E-Mail: wblack@wa-net.com
Fish First	James Malinowski	P.O. Box 127 Amboy, WA 98601 Telephone: 360-247-6404 (home) Telephone: 360-992-2974 (work) Fax: 360-247-6405 E-Mail: j.malinowski@ieee.org
Lewis River Citizens at-Large	John Clapp	9315 NE Etna Road Woodland, WA 98674 Telephone: 360-225-8479 Fax: E-Mail: jmcclapp@juno.com

Lewis River Hydroelectric Projects Settlement Agreement

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Party	Authorized Representatives	Contact Information
Lewis River Community Council	Mariah Stoll-Smith Reese President	14900 Lewis River Rd. Ariel, WA 98603 Telephone: 360-225-7416 Fax: 360-231-4437 E-Mail: Mariah_reese@a_excite.com
National Marine Fisheries Service	Michelle Day	525 NW Oregon Street, Suite 500 Portland, OR 97232 Telephone: 503-736-4734 Fax: 503-231-2318 E-Mail: michelle.day@noaa.gov
National Park Service	Susan Rosebrough	909 First Avenue Seattle, WA 98104-1060 Telephone: 206-220-4121 Fax: 206-220-4161 E-Mail: Susan_Rosebrough@nps.gov
North Country Emergency Medical Service	Ilene L. Black Board Chairman	227 Frasier Rd. Amboy, WA 98601 Telephone: 360-247-5966 Fax: 360-247-6966 (call first) E-Mail: wblack@wa-net.com
PacifiCorp	Todd Olson	825 NE Multnomah, Ste. 1500 Portland, OR 97217 Telephone: 503-813-6657 Fax: 503-813-6633 E-Mail: todd.olson@pacificorp.com
Public Utility District No. 1 of Cowlitz County, Washington	Diana M. Gritten-MacDonald Relicensing Project Manager	P.O. Box 5007 Longview, WA 98632-0307 Telephone: 360-577-7585 Fax: 360-577-7559 E-Mail: dmaedonald@cowlitzpud.org
Rocky Mountain Elk Foundation, Inc.	Bob Nelson Hydropower Coordinator	24320 122 nd Ave. East Graham, WA 98338 Telephone: 360-893-1275 Fax: 360-893-8747 E-Mail: nelson338@aol.com
The Native Fish Society	Bill M. Bakke Executive Director	P.O. Box 19570 Portland, OR 97280 Telephone: 503-977-0287 Fax: 503-977-0026 E-Mail: bmbakke@nativefishsociety.org

Lewis River Hydroelectric Projects Settlement Agreement

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Trout Unlimited	Kaitlin Lovell	213 SW Ash, Suite 205 Portland, OR 97204 Telephone: 503-827-5700 Fax: 503-827-5672 E-Mail: klovell@tu.org
USDA Forest Service	Claire Lavendel Forest Supervisor Gifford Pinchot National Forest	10600 NE 51st Circle Vancouver, WA 98682 Telephone: 360-891-5100 Fax: 360-891-5145 E-Mail: clavendel@fs.fed.us
United States Bureau of Land Management	Jim Fisher	915 Walla Walla Ave Wenatchee, WA 98801 Telephone: 509-665-2100 Fax: 509-665-2121 E-Mail: jim_fisher@or.blm.gov
United States Fish and Wildlife Service	Ken S. Berg Manager, USFWS Western Washington Fish and Wildlife Offices	510 Desmond Drive SE, Ste. 102 Lacey, WA 98503-1263 Telephone: 360-753-6039 Fax: 360-753-9405 E-Mail: ken.berg@fws.gov
Washington Department of Fish and Wildlife	Curt Leigh	600 Capitol Way North Olympia, WA 98501 Telephone: 360-902-2946 Fax: 360-902-2946 E-Mail: leighesl@dfw.wa.gov
Washington Interagency Committee for Outdoor Recreation	Jim Eychaner	P.O. Box 40917 Olympia, WA 98504-0917 Telephone: 360-902-3011 Fax: 360-902-3026 E-Mail: jime@iac.wa.gov
Woodland Chamber of Commerce	Darlene G. Johnson	P.O. Box 1808 Woodland, WA 98674 Telephone: 360-225-9433 Fax: 360-225-9434 E-Mail: woot@teleport.com

LARGE-FORMAT IMAGES

One or more large-format images (over 8½" X 11") go here. These images are available in E-Library at:

For Large-Format(s):

Accession No.: 200412030126

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File Date: Dec 2, 04 Docket No.: P 935

Parent Accession No.: 20041203-0125

Set No.: 1 of 1

Number of page(s) in set: 11

Lewis River Hydroelectric Projects Settlement Agreement

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EXHIBIT A: PACIFICORP'S WILDLIFE HABITAT MANAGEMENT PLAN LANDS

Lewis River Hydroelectric Projects Settlement Agreement

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EXHIBIT B: COWLITZ PUD'S WILDLIFE HABITAT MANAGEMENT PLAN LANDS

**EXHIBIT B: COWLITZ PUD'S WILDLIFE HABITAT
MANAGEMENT PLAN LANDS**

Cowlitz PUD shall manage all of the property listed in Table B-1, as illustrated on aerial photographs included herein as Figures B-1 and B-5, and as shown on the tax lot maps included herein as Figures B-2 through B-4 and B-6 through B-7, under its Wildlife Habitat Management Plan (WHMP) except those portions of the properties covered by the project works and related structures listed in Table B-2 and illustrated as polygon on Figure B-1.

Table B-1. Cowlitz PUD-owned property related to Swift No. 2

Township-Range-Section	County	Acres	Parcel Number	Description	
T7, R5E, Section 21	Skamania	189.31	070521000100	Devil's Backbone Wildlife Lands	
			070521000101		
T7, R5E, Section 27	Skamania	6.64	070527000200		
	Subtotal	195.95			
T7, R5E, Section 21	Skamania	81.60	070521000101	Devil's Backbone Conservation Covenant	
T7, R5E, Section 21	Skamania	6.19	070521000100		
	Subtotal	87.79			
T7, R5E, Section 28	Skamania	1.36	Taxed under Parcel 070529000300	Swift No. 2 Project Lands	Within the Swift No. 2 Project Boundary
T7, R5E, Section 29	Skamania	45.64	070529000300		
T7, R5E, Section 30	Skamania	182.75	070530000400		
T7, R4E, Section 25	Cowlitz	69.30	ES2503001		
T7, R4E, Section 25	Cowlitz	80.41	ES2504001		
	Subtotal	379.46			
Total Acres Owned		663.20			
Total Acres Occupied by Project Works Table B-2		-138.00			
Total Acres Managed under the WHMP		525.20			

Table B-2. Swift No. 2 Project Works

Powerhouse, tailrace and associated works	138 Acres
Substation and associated works	
Canal including, intake structure and associated works, embankments, maintenance roads, drainage systems	
Check-structure and wasteway	
Bank fishing facility and parking lot	

As of the Effective Date, Cowlitz PUD is currently re-surveying the Swift No. 2 Project Boundary. To the extent that any portion of the parcels listed in Table B-1 fall outside the re-surveyed Project Boundary and are not occupied by project works listed in Table B-2, Cowlitz PUD shall manage those lands under its Wildlife Habitat Management Plan. Geo-references relating to Cowlitz PUD's existing Project Boundary are available upon request. When the new Project Boundary survey is complete, geo-reference data related to that survey will be available upon request.

Lewis River Hydroelectric Projects Settlement Agreement

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SWIFT NO. 2 PROJECT WORKS

LARGE-FORMAT IMAGES

One or more large-format images (over 8½" X 11") go here. These images are available in E-Library at:

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Security/Availability:

PUBLIC

NIP

CEII

NON-PUBLIC/PRIVILEGED

File Date: DEC 2, 04 Docket No.: P 935

Parent Accession No.: 20041203-0125

Set No.: 1 of 1

Number of page(s) in set: 3

825 N.E. Multnomah, Suite 1500
Portland, Oregon 97232
(503) 813-5000

ORIGINAL

OFFICE OF THE SECRETARY
03 JUN 16 AM 10:41
FEDERAL ENERGY
REGULATORY COMMISSION

TU/105
Lovell/1



June 13, 2003

Part 1 of 2

Ms. Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: PacifiCorp's Offer of Settlement for the Powerdale Hydroelectric Project,
FERC Project No. 2659**

Dear Ms. Salas:

On June 6, 2003, PacifiCorp, licensee for the Powerdale Hydroelectric Project (FERC No. 2659), and 9 other parties, including five state and federal agencies, one tribal nation, one local agency and two non-governmental organizations, signed a settlement agreement that provides for interim operations and decommissioning of the Powerdale Project. Enclosed please find an original and fourteen copies of PacifiCorp's Offer of Settlement for the Powerdale Hydroelectric Project, FERC Project No. 2659 ("Offer of Settlement"). The Offer of Settlement includes the following documents:

- (1) the Offer of Settlement and Application for Non-Capacity Amendment of License and for Authorization to Decommission Project;
- (2) the Settlement Agreement Concerning the Interim Operation and Decommissioning of the Powerdale Hydroelectric Project, FERC Project No. 2659, Hood River County, Oregon (June 6, 2003); including:
 - Appendix A: Implementation Schedule;
 - Appendix B: Powerdale Hydroelectric Project Decommissioning Plan;
 - Appendix C: Representatives of the Parties;
 - Appendix D: Subject Lands;
 - Appendix E: Allowable Interim Period Actions and Encumbrances;
 - Exhibit 1: Proposed Section 401 Certification Conditions for Interim Operations;

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Lovell/2

Exhibit 2: Geomorphology Survey Scope of Work;
Exhibit 3: First Amendment of Permit (Hydro Lands);
Exhibit 4: Conservation Easement for Subject Lands;
Exhibit 5: Applicable NMFS Draft Anadromous Salmonid
Passage Facility Guidelines and Criteria

- (3) the Joint Explanatory Statement;
- (4) the Draft Environmental Assessment; and
- (5) the Biological Evaluation.

The Settlement Agreement provides for the immediate implementation of some interim operation mitigation measures, and implementation of the remaining mitigation measures after issuance of the new FERC order. Therefore, on behalf of the parties to the Settlement Agreement, PacifiCorp respectfully requests that the Commission approve the Settlement Agreement and accompanying documents in a timely manner.

Sincerely,



David Leonhardt
Project Manager
Hydro Licensing
(503) 813-6658

cc: Bob Easton, FERC
Service List

ORIGINAL

OFFICE OF THE SECRETARY
03 JUN 16 AM 10:40
FEDERAL ENERGY
REGULATORY COMMISSION

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RE: PacifiCorp)	Project: POWERDALE HYDROELECTRIC
)	PROJECT, FERC PROJECT NO. 2659
POWERDALE HYDROELECTRIC)	
PROJECT, FERC PROJECT NO. 2659)	CERTIFICATE OF SERVICE
)	
Hood River County, Oregon)	
)	

TU/105
Lovell/3

I hereby certify that I have this day served PacifiCorp's Offer of Settlement for the Powerdale Hydroelectric Project, FERC Project No. 2659 ("Offer of Settlement") to each designee shown on the official service list for the Project, compiled by the Secretary in this proceeding. Following are the documents being served:

- (1) the letter of transmittal;
- (2) the Certificate of Service;
- (3) the Offer of Settlement and Application for Non-Capacity Amendment of License and for Authorization to Decommission Project;
- (4) the Settlement Agreement Concerning the Interim Operation and Decommissioning of the Powerdale Hydroelectric Project, FERC Project No. 2659, Hood River County, Oregon (June 6, 2003);
- (5) the Joint Explanatory Statement;
- (6) the Draft Environmental Assessment; and
- (7) the Biological Evaluation.

Dated at Seattle, Washington, this 12th day of June, 2003.

Sharon Stanley
 Sharon Stanley, Assistant to Cherise M. Gaffney
 Stoel Rives LLP
 600 University Street, Suite 3600
 Seattle, Washington 98101-3197
 (206) 386-7571

Service List for P-2659

TU/105
Lovell/4

PacifiCorp

Principal/Party Name/Address

Representative Name/Address

ROBERT J. MASSONIS
American Rivers, Inc.
NORTHWEST REGIONAL OFFICE
150 Nickerson St Ste 311
Seattle , WA 98109-1634

FRANK FRISK
GREAT LAKES ELECTRIC CONSUMERS ASSOC
2ND FLOOR
1054 31st St NW
Washington , DC 20007-4403

THOMAS P. GRAVES EXECUTIVE DIRECTOR
MID-WEST ELECTRIC CONSUMERS ASSN.
SUITE 330
4350 Wadsworth Blvd
Wheat Ridge , CO 80033-4641

GARWIN YIP
National Marine Fisheries Service
ENVIRONMENTAL & TECHNICAL SERVICES DIV.
525 NE Oregon St Ste 500
Portland , OR 97232-2778

ELIZABETH R. MITCHELL
National Oceanic & Atmospheric Admin.
BIN C15700
7600 Sand Point Way NE
Seattle , WA 98115-6349

Margaret Delp
National Oceanic & Atmospheric Admin.
BIN C15700
7600 Sand Point Way NE
Seattle , WA 98115-6349

Wallace F. Tillman General Counsel
National Rural Electric Cooperative Assn
4301 Wilson Blvd
Arlington , VA 22203-1867

NRECA APPA

Robert C McDiarmid Esquire
Spiegel & McDiarmid
1333 New Hampshire Ave NW
Washington, DC 20036-1511

PRESIDENT
Oglethorpe Power Corporation
PO Box 1349
Tucker , GA 30085-1349

Amy Stuart

Oregon Department of Fish & Wildlife
Ochoco District Office
2042 SE Paulina Hwy
Prineville, OR 97754-9727

TU/105
Lovell/5

Kurt Burkholder
Oregon Department of Justice
1515 SW 5th Ave Ste 410
Portland, OR 97201-5451

Lynne Kennedy
Oregon Dept. of Environmental Quality
811 SW 6th Ave
Portland, OR 97204-1334

Kristen Richert
Oregon Water Resources Department
158 12th St NE
Salem, OR 97301-4172

PacifiCorp

Michael A Swiger
Van Ness Feldman, P.C.
1050 Thomas Jefferson St NW Fl 7
Washington, DC 20007-3837

Randy A. Landolt Managing Director
PacifiCorp
Hydro Resources Department
825 NE Multnomah St Ste 1500
Portland, OR 97232-2135

Thomas H. Nelson
Thomas H. Nelson & Associates
825 NE Multnomah St Ste 925
Portland, OR 97232-2150

TED COOMBES EX. DIRECTOR
SOUTHWESTERN POWER RESOURCES ASSN
3840 S 103rd East Ave
Suite 117
Tulsa, OK 74146-2438

Scott Yates Dir, Wstn Native Trout Prog.
Trout Unlimited
321 E Main St Ste 411
Bozeman, MT 59715-4797

Leon F. Szeptycki Environmental Counsel
Trout Unlimited
1500 Wilson Blvd Ste 310
Arlington, VA 22209-2404

US Department of Agriculture

Walt Dortch Coordinator
Mount Baker-Snoqualmine National Forest
21905 64th Ave W
Mountlake Terrace, WA 98043-2278

Jocelyn B Somers
US Department of Agriculture
1734 Federal Building
1220 SW 3rd Ave
Portland, OR 97204-2825

ARTHUR CARROLL
Columbia River Gorge Nat'l Scenic Area
SUITE 200
902 Wasco St
Hood River, OR 97031-3103

US Department of the Interior

DAN HAAS
U.S. National Park Service
U.S. DEPARTMENT OF THE INTERIOR
909 1st Ave
Seattle, WA 98104-1055

US Department of the Interior

RUSSELL D. PETERSON SUPERVISOR
OREGON STATE OFFICE OF FISH & WILDLIFE
REGION 1
2600 SE 98th Ave Ste 100
Portland, OR 97266-1325

TU/105
Lovell/6

US Department of the Interior

Stanley Speaks Regional Director
US Bureau of Indian Affairs
U.S. Department of the Interior
911 NE 11th Ave
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ORIGINAL

United States of America

Before the

Federal Energy Regulatory Commission

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FEDERAL ENERGY
REGULATORY COMMISSION

PacifiCorp

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Project No. 2659 (Powerdale)

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**Offer of Settlement and
Application for Non-Capacity Amendment of License
and for Authorization to Decommission Project**

I. Introduction

1. PacifiCorp, licensee of the Powerdale Hydroelectric Project, FERC Project No. 2659 ("Project"), hereby applies for a Federal Energy Regulatory Commission ("Commission" or "FERC") order accepting the attached settlement agreement, amending the existing Project license, and authorizing Project decommissioning. Specifically, PacifiCorp seeks a FERC order: (i) accepting as an Offer of Settlement the attached *Settlement Agreement Concerning the Interim Operation and Decommissioning of the Powerdale Hydroelectric Project, FERC Project No. 2659, Hood River County, Oregon* ("Settlement Agreement"); (ii) amending the existing Project license by (a) extending the term of the license through February 29, 2012, (b) authorizing continued generation until decommissioning, and (c) incorporating, without material modification, as license articles in the extended license, all of the measures set forth in Section 3 of the Settlement Agreement; and (iii) approving and authorizing, without material modification, the decommissioning measures and associated protection, mitigation and enhancement measures ("PM&E measures") set forth in Sections 4.1, 4.2 and 5 and Appendix B of the Settlement Agreement. This application is made expressly conditional upon PacifiCorp's reservation of right to review any resulting FERC order ("FERC Order") and to reject any such FERC Order and return to relicensing of the Project if such FERC Order alters, modifies, or is otherwise inconsistent with the terms and conditions of the Settlement Agreement. By referring to "any resulting FERC Order" PacifiCorp intends to reserve its right to reject any inconsistent FERC Order issued in response to this application regardless of whether such order is an initial order or an order issued in response to rehearing or appeal. If PacifiCorp accepts the resulting FERC Order as consistent with the terms and conditions of the Settlement Agreement, PacifiCorp shall withdraw its pending application for a new license for the Project.

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2. The exact name, business address, and telephone number of the applicant are:

PacifiCorp
825 N.E. Multnomah, Suite 1500
Portland, Oregon 97232
Tel: (503) 813-6658
Fax: (503) 813-6633
Attn: David Leonhardt

3. The applicant is a domestic corporation, licensee for the water power project designated as Project No. 2659 in the records of the Federal Energy Regulatory Commission issued on March 14, 1980. See Pacific Power & Light Company, 10 FERC ¶ 62,216 (1980) (Order issuing license).

II. Background

4. PacifiCorp's existing license for the Project expired by its terms on March 1, 2000. On February 23, 1998, PacifiCorp timely filed with the Commission an application seeking a new license for the Project. PacifiCorp presently operates the Project pursuant to annual license.

5. On December 26, 2001, FERC Staff issued an Environmental Assessment indicating its preferred set of license-related PM&E measures and indicating that inclusion of such measure in a new Project license would result in a license with a net annual economic benefit of - \$207,576 (-5.1 mills/kWh). On February 1, 2002, in consideration of these findings, PacifiCorp requested that FERC abey the license proceeding to allow PacifiCorp time to develop a decommissioning plan for the Project. PacifiCorp developed a decommissioning plan for the Project under which it would permanently seal the intake opening, remove all but two segments of wood stave pipeline, remove means of access to the concrete canal and steel flume, remove the steel surge tank, secure the powerhouse, fill the tailrace with aggregate, and pass all flows over the dam. PacifiCorp's draft decommissioning plan did not include dam removal.

6. Shortly after preparing and submitting the draft decommissioning plan to licensing stakeholders for review, PacifiCorp entered into discussions with federal, state, tribal and non-governmental stakeholders to determine the feasibility of identifying a mutually acceptable approach to decommissioning. On September 26, 2002, several parties executed an Agreement in Principle on the interim operation and decommissioning of the Project which would culminate in dam and facility removal. Subsequently, on September 30, 2002, the same parties submitted to FERC a Joint Motion to Abey Licensing Proceedings to allow the Parties to continue negotiating toward a settlement on such issues.

7. After lengthy negotiations, a Settlement Agreement was executed on June 6, 2003 (the "Effective Date"). The Settlement Agreement represents the Parties'¹ preferred resolution of PacifiCorp's 1998 license application. The Parties submit that the Settlement Agreement is fair and reasonable and in the public interest within the meaning of Rule 602, 18 C.F.R. § 385.602(g)(3), for the reasons described in this application and in the Joint Explanatory Statement submitted herewith.

8. The Settlement Agreement provides for the interim operation of the Project through 2010, followed by Project decommissioning by 2012. The Settlement Agreement envisions the continue operation of the Project through April 2010 in order to facilitate critical fisheries studies being conducted by state and federal resources agencies on the Hood River which studies are dependant on the continued operation of the Project for their successful completion. The Settlement Agreement further envisions continued generation during the interim period in order to maximize the value of the resource. Under the Settlement Agreement, interim operations are subject to enumerated PM&E measures intended to protect environmental and recreational values in the Project area during the interim period. The Settlement Agreement also provides for decommissioning of the Project and removal of the Project dam between 2010 and 2012.² Under the Settlement Agreement, decommissioning is subject to a number of PM&E measures intended to safeguard environmental and recreational values in the Project area. Finally, after Project decommissioning is complete, the Settlement Agreement provides that PacifiCorp shall transfer all Project lands to a nonprofit organization for use as public space and that PacifiCorp shall transfer the Project-related water rights to the State of Oregon to be dedicated to instream use.

9. A copy of the Settlement Agreement, which includes the Decommissioning Plan, has been filed with the Commission today.

III. Scope of the Order Sought by PacifiCorp

10. By this application, PacifiCorp does not seek a FERC Order implementing each and every aspect of the Settlement Agreement. For example, PacifiCorp does not seek a Commission order implementing Sections 4.3 and 4.4 of the Settlement Agreement.³ Rather, PacifiCorp seeks a FERC Order: (1) accepting the Settlement Agreement as an Offer of Settlement; (2) amending the existing Project license by (a) extending the term of the license through February 29, 2012, (b) authorizing continued

¹ The Parties to the Settlement Agreement are: the National Marine Fisheries Service, the United States Fish and Wildlife Service, the Oregon Department of Fish and Wildlife, the Oregon Water Resources Department, the Oregon Department of Environmental Quality, the Confederate Tribes of the Warm Springs Reservation of Oregon, American Rivers, the Hood River Watershed Group, and PacifiCorp.

² Under certain circumstances enumerated in Section 5 of the Settlement Agreement, decommissioning may occur sooner than 2010.

³ Sections 4.3 and 4.4 of the Settlement Agreement establish the Parties' rights and obligations related to post-decommissioning transfer of property and water rights. The Parties do not request that Sections 4.3 and 4.4 be included as terms of any FERC Order.

generation until decommissioning, and (c) incorporating, without material modification, as license articles in the extended license, all of the measures set forth in Section 3 of the Settlement Agreement; and (3) approving and authorizing, without material modification, the decommissioning measures and associated PM&E measures set forth in Sections 4.1, 4.2 and 5 and Appendix B of the Settlement Agreement.

IV. Reservation of Right

11. The actions requested of the Commission under the Settlement Agreement are inextricably related and implementation of the precise terms and conditions of the Settlement Agreement is essential if the shared goals and objectives of the Parties to the Settlement Agreement are to be realized. For this reason, PacifiCorp respectfully requests that, to the maximum extent possible, the Commission adopt language identical to or consistent with that of Sections 3, 4.1, 4.2 and 5 of the Settlement Agreement and the language of the attached Exhibit B (the Decommissioning Plan). Indeed, the Settlement Agreement provides that should any FERC Order resulting from this application be inconsistent with the Settlement Agreement or the application documents submitted therewith, the Parties may withdraw from the Agreement, thus threatening the Agreement's continued validity. Under the Settlement Agreement, if the Commission issues a FERC Order that is consistent with the terms and conditions of the Settlement Agreement, PacifiCorp is obligated to accept the FERC Order and to withdraw its pending application for a new Project license. If the Commission adds to or otherwise alters the terms and conditions of the Settlement Agreement, PacifiCorp may initiate dispute resolution with other Parties and, if necessary, withdraw from and thereby terminate the Agreement. Under such circumstances, the Parties intend that PacifiCorp may reject the inconsistent FERC Order on license amendment and decommissioning and that PacifiCorp shall not be required to withdraw its license application of February 23, 1998. Further, under such circumstances, PacifiCorp expects and intends that the Commission shall return to consideration of PacifiCorp's pending application for a new Project license.

12. Consistent with the above, PacifiCorp submits this application subject to PacifiCorp's express reservation of right to review any resulting FERC Order, to reject any such FERC Order if it is inconsistent with the Settlement Agreement, and, in the event PacifiCorp does reject any resulting FERC Order as inconsistent with the Settlement Agreement, to return to the pending Project relicensing proceeding as it stood prior to PacifiCorp's request to abey relicensing. By referring to "any resulting FERC Order" PacifiCorp intends to reserve its right to reject any FERC Order that is inconsistent with the Settlement Agreement regardless of whether such FERC Order is an initial order in response to this application or a subsequent order resulting from rehearing or appeal.

V. Offer of Settlement

13. Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, PacifiCorp hereby requests that the Commission accept

the Settlement Agreement as an Offer of Settlement intended to resolve PacifiCorp's pending application for a new Project license.

VI. Non-Capacity Amendment of License

14. As discussed in additional detail in the Joint Explanatory Statement, Biological Evaluation and Draft Environmental Assessment accompanying this application, the amendment of license proposed, and the reasons why the proposed changes are necessary and in the public interest are as follows:

(i) Extending License Term to February 29, 2012. The current license for the Project was issued on March 14, 1980, with a 38-year term, effective in 1962 and expiring in 2000. PacifiCorp proposes to extend the term of the license to 2012 to facilitate critical state and federal fish studies on the Hood River through their completion in 2010, to provide protection for aquatic, terrestrial, aesthetic, recreational, and other resources in the Project area until the Project is decommissioned and the Project dam is removed, and to provide for a sure and effective means of enforcing Sections 3, 4.1, 4.2 and 5 of the Settlement Agreement that will govern interim operations and subsequent Project decommissioning and dam removal through 2012.

(ii) Authorizing Continued Generation through 2010. All Parties to the Settlement Agreement have agreed that since the entire Project must remain in place until 2010 in order to allow state and federal resources agencies to complete fisheries studies of critical importance to the region, it is appropriate that generation continue at the Project until the Project is decommissioned.⁴

(iii) Incorporate Section 3 of the Settlement Agreement as License Articles. In order to minimize potential impacts on aquatic habitat during the period between the Effective Date of the Agreement and 2010 (interim operating period), the Agreement proposes water quality monitoring, increased minimum instream flows, ramping rate restrictions, Project shutdown during the juvenile salmonid outmigration period, and limitations on flushing of the Project's sand settling basin. The interim operating measures also provide for continued maintenance of the recreation facilities, as well as the development of new facilities to meet expected demand over this period. Consistent with the Settlement Agreement, PacifiCorp requests that the Commission amend the existing project license to include these interim operating measures as articles of the amended license. Specifically, PacifiCorp requests that the Commission incorporate all of the terms and conditions contained in Section 3 of the Settlement Agreement as articles to the amended license. The proposed amendment will serve the public interest by assuring that aquatic and recreational resources are protected during the interim period.

⁴ It should be noted that under the circumstances outlined in Section 5 of the Settlement Agreement, decommissioning *may* occur sooner than 2010; if this occurs, generation would obviously cease earlier as well.

15. The statutory or regulatory requirements of the State in which the Project is located and that affect the Project as proposed, with respect to beds and banks and to the appropriation, diversion, and use of water for power purposes, and with respect to the right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act are:

Chapters 757 *et. seq.*, Oregon Revised Statutes, defines public utilities and regulates the business of retail distribution of electricity by the Public Utility Commission of Oregon.

Chapters 273 and 274, Oregon Revised Statutes governs the use and occupancy of State lands, including the bed and banks of streams determined to be navigable waters. It is presently unclear whether the Hood River is navigable for purposes of Chapters 273 and 274, Oregon Revised Statutes, and it is therefore unclear whether these chapters are applicable to the amendment requested in this application.

Chapter 486B, Oregon Revised Statutes, governs the issuance by the Oregon Department of Environmental Quality of the water quality certification required for federally-licensed hydroelectric projects under Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341 (§ 401).

Chapter 539, Oregon Revised Statutes, governs appropriation, diversion and use of waters of, *inter alia*, the Hood River.

Chapter 509, Oregon Revised Statutes, governs general protective regulations applicable to commercial fishing and fisheries including fish passage required for artificial obstructions. *See Specifically* Oregon Revised Statute 509.585.

Chapter 498, Oregon Revised Statutes, governs miscellaneous wildlife protective measures including screening and by-pass devices for water diversions or obstructions. *See Specifically* Oregon Revised Statute 498.311.

16. The steps which PacifiCorp has taken or plans to take to comply with each of the laws cited above are:

PacifiCorp is an electric utility organized under the laws of the State of Oregon in good standing with the Oregon Secretary of State's Office.

In 1978, OWRD issued a certificate of water right (Certificate No. 46965) to PacifiCorp for the Powerdale Project, which authorizes a total diversion of 500 cubic feet per second (cfs), with a priority date of 1901 for 140 cfs and a priority date of 1911 for the remaining 360 cfs.

As required by the Settlement Agreement, PacifiCorp has submitted, with the Oregon Department of Environmental Quality, an application for Section 401

Water Quality Certification of interim operation and decommissioning of the Project.

PacifiCorp has obtained state fish passage approval under Oregon Revised Statute 509.585 from the Oregon Department of Fish and Wildlife.

As necessary, PacifiCorp intends to apply for permit from the United States Army corps of Engineers under Section 404 of the Clean Water Act.

VII. Authorization to Decommission Project

17. The Settlement Agreement proposes the decommissioning of the Project to occur from 2010 through 2012. Decommissioning under the Settlement Agreement is governed by Sections 4.1, 4.2, 5 and Appendix B of the Settlement Agreement. Appendix B to the Settlement Agreement contains the Decommissioning Plan. The Decommissioning Plan describes the detailed methodologies and the construction timeframes by which the Project facilities will be removed. It also describes PacifiCorp's pre- and post-removal monitoring responsibilities and the measures that will be implemented to reduce the potential for adverse effects associated with Project decommissioning.

18. Decommissioning of the Project will involve removal of the diversion dam and associated structures, removal of sections of the water conveyance system, removal of the fish ladder and the sorting and collection facility, and securing the Project powerhouse, which will be left in place. Specifics regarding the treatment of Project facilities during decommissioning are contained in Section 4.1 of the Agreement and are discussed in greater detail in the Joint Explanatory Statement submitted with the Settlement Agreement. Following decommissioning, all disturbed lands will be contoured to the surrounding landscape and revegetated with native species. Impacts of Project removal will be monitored to ensure that aquatic habitat connectivity is maintained.

19. The Parties to the Settlement Agreement believe that the activities specified in the Decommissioning Plan will result in the successful removal of the Project while protecting the environment. Actual decommissioning activities are scheduled to begin in the first quarter of 2010. Decommissioning activities are schedule to occur during periods that will minimize impacts to aquatic, terrestrial, and recreation activities. PacifiCorp will remove the diversion dam; contour the riverbed between cofferdams, remove most of the Project intake structures; break up or remove most of the power canal, steel flume, and sand-settling basin; remove portions of the flowline; leave in place the flowline bridge; remove the surge tank; secure the powerhouse; and modify the switchyard to remove components associated with the Project. PacifiCorp will provide for fish passage during decommissioning as detailed in the Settlement Agreement and the Decommissioning Plan. Prior to commencing in-water decommissioning, PacifiCorp will develop and implement an Erosion and Sediment Control Plan in consultation with NMFS, USFWS, ODEQ, ODFW and the Confederated Tribes of the Warm Springs Reservation of Oregon. PacifiCorp will take specified actions to protect terrestrial

resources. PacifiCorp, in consultation with the Parties, will prepare and implement a Revegetation and Mitigation Plan. PacifiCorp will take specified actions to protect cultural resources. PacifiCorp may restrict or prohibit public access to the two existing day-use sites and the bypass reach while portions of decommissioning activities take place.

20. Prior to decommissioning, PacifiCorp will provide a final fluvial geomorphology report to the Parties; upon decommissioning, PacifiCorp will develop and implement a fish passage monitoring and mitigation plan, in consultation with resource agencies; and, in the event of fish passage obstruction caused or exacerbated by dam removal, PacifiCorp will restore adequate fish passage.

21. PacifiCorp and the Parties to the Settlement Agreement agree that the decommissioning proposal contained in the Settlement Agreement and the Decommissioning Plan serves the public interest. PacifiCorp respectfully requests that the Commission authorize PacifiCorp to decommission the Project pursuant to the terms of Sections 4.1, 4.2, and 5 and Appendix B of the Settlement Agreement and that the Commission do so without materially modifying those terms.

VIII. Public Interest

22. All Parties to the Settlement agree that interim operation and subsequent decommissioning of the Project will serve the public interest. All Parties to the Settlement further recognize that it is in the public interest to delay decommissioning activities and to continue to operate the Powerdale Project until 2010. Finally, the Parties to the Settlement Agreement anticipated a five to six year delay between receipt of Commission authorization to decommission in 2004 or 2005 and commencement of decommissioning in 2010; all Parties to the Settlement believe that a five to six year delay is unlikely to alter the public interest factors supporting approval of interim operation and subsequent decommissioning. A detailed discussion of the factors supporting these public interest conclusions has been provided as part of the Joint Explanatory Statement submitted with the Settlement Agreement and such factors are incorporated herein by this reference.

IX. Conclusion

23. For the reasons discussed above and detailed in the Settlement Agreement, the Decommissioning Plan, the Joint Explanatory Statement, the Biological Evaluation, and the Draft Environmental Assessment, all of which have been submitted herewith on this day, PacifiCorp submits that the Settlement Agreement and this Application are in the public interest and PacifiCorp respectfully requests that the Commission issue an order: (1) accepting the Settlement Agreement as an Offer of Settlement; (2) amending the existing Project license by (a) extending the term of the license through February 29, 2012, (b) authorizing continued generation until decommissioning, and (c) incorporating, without material modification, as license articles in the extended license, all of the measures set forth in Section 3 of the Settlement Agreement; and (3) approving and authorizing, without material modification, the decommissioning measures and

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associated PM&E measures set forth in Sections 4.1, 4.2 and 5 and Appendix B of the Settlement Agreement. PacifiCorp expressly reserves the right to review any FERC Order issued in response to this application and to reject such FERC Order and return to relicensing of the Project in the event such FERC Order adds to, alters, or is otherwise inconsistent with the terms and conditions of the Settlement Agreement. If, in response to this application, the Commission issues a FERC Order that is consistent with the terms and conditions of the Settlement Agreement, PacifiCorp shall accept such FERC Order and shall withdraw its pending application for a new Project license.

SUBSCRIPTION AND VERIFICATION

This Offer of Settlement and Application for Non-Capacity License Amendment and Authorization to Decommission Project is executed in the

STATE OF OREGON
COUNTY OF MULTNOMAH

By William Eaquinto, Vice President for Hydro Licensing of PacifiCorp, 825 N.E. Multnomah, Suite 1500, Portland, Oregon 97232, being truly 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 this application on this 11 day of June, 2003.

PACIFICORP

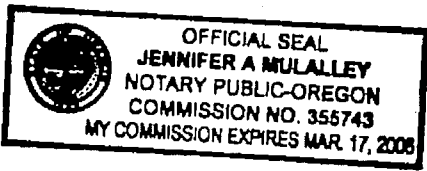
By: William Eaquinto

William Eaquinto
Vice President, Hydro Licensing

SUBSCRIBED AND SWORN TO before me, a Notary Public of the State of Oregon, this 11 day of June, 2003.

J. A. Mulalley
NOTARY PUBLIC
My Commission Expires:

3/17/06



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OFFICE OF THE SECRETARY
03 JUN 2003



SETTLEMENT AGREEMENT

**CONCERNING THE INTERIM OPERATION
AND DECOMMISSIONING OF THE POWERDALE
HYDROELECTRIC PROJECT, FERC PROJECT NO. 2659**

DATED

JUNE 6, 2003

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Lovell/17

SETTLEMENT AGREEMENT

**AMONG
PACIFICORP
NATIONAL MARINE FISHERIES SERVICE
UNITED STATES FISH AND WILDLIFE SERVICE
OREGON DEPARTMENT OF FISH AND WILDLIFE
OREGON WATER RESOURCES DEPARTMENT
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
AMERICAN RIVERS
HOOD RIVER WATERSHED GROUP**

**DATED
JUNE 6, 2003**

**CONCERNING THE INTERIM OPERATION AND DECOMMISSIONING OF
THE POWERDALE HYDROELECTRIC PROJECT, FERC PROJECT NO. 2659
HOOD RIVER COUNTY, OREGON**

Powerdale 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 among PacifiCorp, an Oregon corporation; National Marine Fisheries Service ("NMFS"); United States Fish and Wildlife Service ("USFWS"); Oregon Department of Fish and Wildlife ("ODFW"); Oregon Water Resources Department ("OWRD"); Oregon Department of Environmental Quality ("ODEQ"); Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWS"); American Rivers ("AR"); and Hood River Watershed Group ("HRWG"), each referred to individually as a "Party" and collectively as the "Parties." The NMFS, USFWS, CTWS, ODFW, OWRD and ODEQ are also each a "Governmental Party" and are referred to collectively as the "Governmental Parties." The "Effective Date" is the day that the last of the Parties executes the Agreement.

RECITALS

A. PacifiCorp is the licensee for the Powerdale Hydroelectric Project (FERC No. 2659) (the "Project"). The Project is located on the Hood River in Hood River County, Oregon. The Project is operated as a run-of-river project, and consists of a concrete diversion dam 206 feet long and 10 feet high, a water conveyance system approximately 16,000 feet long, a powerhouse, a turbine generator with a nameplate rating of 6,000 kW, and appurtenant facilities.

B. The initial 38-year term of the FERC license for the Project expired on March 1, 2000. PacifiCorp submitted an application for a new license to continue operating the Project to FERC on February 23, 1998. On June 9, 2000, ODEQ issued a Clean Water Act ("CWA") Section 401 Certification for the Project based on a relicensing proposal that did not contemplate temporary suspension of generation from April 15 to June 30 each year or decommissioning of the Project ("June 2000 Certification"). In December 2001, ODEQ issued the Western Hood River Subbasin Total Maximum Daily Load ("TMDL") for temperature, which then was approved by the U.S. Environmental Protection Agency on January 30, 2002. On March 28, 2002, PacifiCorp submitted an Operational Plan to address Project-related warming of the Hood River ("TMDL Operational Plan"); this TMDL Operational Plan was approved by ODEQ on January 16, 2003.

C. In its December 26, 2001 Environmental Assessment, FERC determined that relicensing (protection, mitigation and enhancement) measures proposed by PacifiCorp and recommended by FERC staff and state and federal resource agencies would reduce the Project's net annual benefit to -\$207,576. On February 1, 2002, in consideration of this finding, PacifiCorp requested that FERC abey the license proceedings to allow PacifiCorp to develop a decommissioning plan for the Project. PacifiCorp and federal, state, tribal and non-governmental stakeholders entered into discussions to determine the feasibility of identifying a mutually-acceptable approach to decommissioning. On September 26, 2002, several Parties executed an Agreement in Principle on the interim operation and decommissioning of the Project. Subsequently, on September 30, 2002, several of the Parties to this Agreement submitted to

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FERC a Joint Motion to Abey Licensing Proceedings to allow the Parties to continue negotiating toward settlement on such issues. FERC has yet to take final action on PacifiCorp's license application, and PacifiCorp continues to operate the Project under an annual license.

D. In addition to other aquatic and terrestrial species, the following fish species occur in the Project area during some portion of their life cycle: spring and fall chinook salmon, coho salmon, winter and summer steelhead, rainbow trout, bull trout, cutthroat trout, mountain whitefish, largescale sucker and Pacific lamprey. Of these, the Lower Columbia River chinook salmon, Lower Columbia River steelhead, and bull trout have been listed as threatened pursuant to the Endangered Species Act ("ESA").

E. ODFW and CTWS are currently undertaking fish studies in the Hood River basin as part of an effort to rebuild anadromous fish populations in the Hood River. These efforts, which began in 1988, rely on the ability to sort and collect fish at a collection facility located adjacent to the existing fish ladder at the Project dam. One of the objectives of the studies is to collect life history and production information for hatchery and wild fish to allow fish managers to determine the success of various techniques to rebuild native fish stocks. The federal and state fisheries agencies and CTWS anticipate that the results of these studies will not only affect fish management in the Hood River basin, but will also provide critical information for anadromous fish managers throughout the Northwest region. The continued use of the Project until approximately June 2010 is necessary to complete these studies. Thereafter, Project decommissioning and dam removal will allow the free migration of aquatic species referred to in Recital D.

F. In 1978, OWRD issued a certificate of water right (Certificate No. 46965) to PacifiCorp for the Powerdale Project, which authorizes a total diversion of 500 cubic feet per second (cfs), with a priority date of 1901 for 140 cfs and a priority date of 1911 for the remaining 360 cfs (hereinafter referred to as the "PacifiCorp Hydroelectric Water Right").

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

DEFINITIONS

"Alternative Dispute Resolution Procedures" or "ADR Procedures" refers to the dispute resolution process set forth in Section 6.14.

"American Rivers" or "AR" is a District of Columbia corporation and is listed as a Party in the first paragraph of this Agreement, entitled "Parties to the Agreement."

"Decommission," as used in this Agreement, refers to the commitments made by PacifiCorp in Section 4.1 and Appendices A and B of this Agreement to leave, modify or remove Project facilities and structures.

"FERC Order" is defined in Section 1.1 of this Agreement.

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“Final FERC Order” means that FERC has issued the FERC Order and that all administrative and judicial appeals relating to the FERC Order have been finally adjudicated or dismissed.

“Hood River Watershed Group” or “HRWG” is a voluntary watershed council organization recognized under Hood River County Board of Commissioners’ Ordinance No. 204, and is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Inflow” means the flow in the Hood River immediately upstream of the Project, and does not include water diverted or otherwise used or lost upstream of the Project.

“Protection, Mitigation and Enhancement measures,” or “PM&E measures,” refers to the measures set forth in Sections 3.2 through 3.14 and 4.2.1 through 4.4 and 5.2.2.

“Ramping” means those Project-induced increases (“up-ramping”) and decreases (“down-ramping”) in river discharge and associated changes in water surface elevation over time resulting from generation of electricity by Project facilities, Project maintenance activities (i.e., planned outages) and unplanned (forced) outages. Ramping does not include changes in flows and change in river stage resulting from increases or decreases in stream flow unrelated to the Project. Ramping rates in this Agreement are stated in inches of change per hour. Ramping is measured as the distance between the maximum and minimum water level measured at a specified location over the applicable period of time; variation in water level within the maximum and minimum water level during that period are not considered for purposes of measuring ramping. For example, if the relevant ramping limitation is one inch per hour, and the river gage is at four feet at noon, then during the next hour the water elevation may vary no more than between three feet eleven inches and four feet, between four feet and four feet one inch, et cetera. In each example, the amount of change between the maximum and minimum gage readings in a one-hour time period is not more than one inch, but could vary within that range more than once during the hour.

SECTION 1: PURPOSE AND EFFECT OF THIS AGREEMENT

1.1 Purpose of Agreement. The Parties have entered into this Agreement to resolve all issues regarding the interim operation and decommissioning of the Project, and for the purpose of obtaining a Final FERC Order that approves the interim operation and decommissioning of the Project in a manner that does not conflict with, add to or omit measures required by this Agreement. For this purpose, 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. 18C.F.R. § 385.602(g)(3). For purposes of implementing this Agreement, the Parties agree to support PacifiCorp’s request that FERC:

- (i) retroactively extend the previous Project license, which expired on March 1, 2000, to February 29, 2012, giving the license an effective term of fifty years; and

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- (ii) incorporate, without material modification, as license articles in the extended license, all of the measures set forth in Section 3; and
- (iii) approve and authorize, without material modification, the decommissioning measures and associated PM&E measures set forth in Sections 4.1, 4.2 and 5 and Appendix B to this Agreement; and
- (iv) allow PacifiCorp the opportunity, after all appeals of the FERC Order, to accept or reject the Final FERC Order as provided in Section 6.3 of this Agreement.

FERC's actions extending and amending the Project license and approving Project decommissioning as described above in (i) through (iii) are hereinafter referred to collectively as the "FERC Order."

The Parties shall request that FERC include in the FERC Order articles that are consistent with and that do not conflict with, add to or omit measures required by this Agreement, except as may be necessary to enable FERC to ascertain and monitor PacifiCorp's compliance with the FERC Order and its rules and regulations under the Federal Power Act ("FPA") and other federal and state laws. Each of the Parties agree, except as provided below, that PacifiCorp's performance of its obligations under this Agreement will be consistent with and will fulfill PacifiCorp's existing statutory and regulatory obligations as to each Party relating to the interim operation and decommissioning of the Project. The Parties further agree, except as provided below, that if any Party submits comments, recommendations, terms, conditions, or prescriptions that conflict with or add to the measures required by this Agreement, or takes other action in this proceeding inconsistent with this Agreement, such inconsistency shall be resolved in accordance with Section 6 of this Agreement. Without limiting the generality of the preceding sentence, the Parties agree that PacifiCorp's performance of its covenants in this Agreement will be consistent with and will fulfill all obligations under the following statutory provisions, except as specifically provided:

1.1.1 Federal Power Act Sections 10(a), 10(j) and 18. The provisions of this Agreement are intended to satisfy the Governmental Parties' exercise of authority under the FPA Sections 10(a), 10(j) and 18. 16 U.S.C. §§ 703(a), (j) and 811. The Parties intend, subject to Section 1.4 of this Agreement, that any future comments, recommendations, terms, conditions or prescriptions, to the extent applicable to this proceeding, will not add to or conflict with the measures required by this Agreement and that any inconsistency shall be resolved in accordance with Section 6 of this Agreement. Each Governmental Party reserves the right to exercise any authority it may otherwise have under the FPA in the event such Governmental Party withdraws in accordance with Section 6.16 of this Agreement.

1.1.2 Clean Water Act. Section 401 of the CWA, 33 U.S.C. § 1341, requires that any applicant for a federal license or permit to conduct any activity that may result in a discharge into navigable waters provide the licensing or permitting agency with a certification from the state that the discharge will comply with the applicable provisions of CWA sections 301, 302, 303,

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306, and 307, including applicable state water quality standards ("Section 401 Certification"). ODEQ anticipates that interim operation and decommissioning activities required by this Agreement, including Appendix B, will comply with the applicable provisions of CWA sections 301, 302, 303, 306, and 307, as well as with "any other appropriate requirement of State law" referenced in CWA subsection 401(d), 33 U.S.C. § 1341(d), including, as applicable, water quality standards, TMDLs, and requirements to protect designated beneficial uses. However, ODEQ does not intend to predetermine the outcome of its evaluation of the interim operation and decommissioning activities under the CWA and state law, and, consistent with Section 1.4 of this Agreement, reserves its right to take all actions necessary to comply with the CWA and state law. The Parties' agreement with regard to the process for obtaining a Section 401 Certification is described in Section 2.5, below. If ODEQ issues a Section 401 Certification that requires measures that conflict with, add to or are otherwise inconsistent with those water-quality-related measures required by this Agreement, as set forth in Exhibit 1, the Parties shall address any such inconsistency in accordance with Section 6 of this Agreement.

1.1.3 Endangered Species Act Section 7(a)(2) and Magnuson-Stevens Fishery Conservation and Management Act Section 305(b). Section 7(a)(2) of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally-listed threatened and endangered species or to result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. § 1536(a)(2). The Parties acknowledge that FERC may not issue the FERC Order until it has completed consultation with NMFS and USFWS with respect to threatened and endangered species affected by the Project. The Parties reserve the right to request rehearing in the event that the FERC Order is issued prior to completion of Section 7(a)(2) consultation. If FERC approves interim operation and decommissioning of the Project in a manner that does not conflict with, add to, or omit measures required by this Agreement, the proposed action for purposes of ESA section 7(a)(2) consultation would be the operation of the Project for an interim period with the PM&E measures set forth in Section 3, and the subsequent decommissioning of the Project and implementation of associated PM&E measures in accordance with Section 4. NMFS and USFWS anticipate that the measures contained in this Agreement will be adequate to minimize any incidental take occurring as a result of interim Project operations, decommissioning, and related PM&E measures; however, NMFS and USFWS do not intend to predetermine the outcome of any consultation under the ESA and reserve their right to take all actions required to comply with the ESA. Additionally, Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act requires federal agencies to consult with NMFS regarding actions that may adversely affect essential fish habitat ("EFH"). NMFS will combine its EFH consultation with its ESA consultation. If, as an outcome of ESA or EFH consultation, NMFS or USFWS require measures that conflict with, add to or are otherwise inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement, the Parties shall address any such inconsistency in accordance with Section 6 of this Agreement.

1.1.4 Treaty and Other Authorities. CTWS holds and exercises off-reservation treaty rights, including fishing, hunting and gathering rights, in the Hood River basin pursuant to the Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963 (the "Treaty"). In addition, the Project is located within lands ceded to the United States in the Treaty. CTWS agrees that

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the measures contained in this Agreement will fulfill any obligations that PacifiCorp may have in regard to the interim operation and decommissioning of the Project pursuant to the Treaty and other federal and tribal laws and regulations. The Project is not located within tribal reservations for purposes of Section 4(e) of the FPA.

1.1.5 Oregon Fish Passage and Screening Statute. Interim operation PM&E measures and decommissioning measures to be performed under this Agreement serve as fish passage under Oregon Revised Statutes ("ORS") 509.585. In addition, this Agreement is intended to satisfy the requirements of ORS 498.311 regarding game fish, to the extent applicable.

1.2 NEPA Analysis. In connection with a FERC Order, the Parties anticipate that FERC will complete an environmental analysis pursuant to the National Environmental Policy Act ("NEPA"). The Parties shall request that FERC incorporate interim operation and decommissioning measures described in this Agreement into the proposed action described and evaluated in its NEPA environmental analysis.

1.3 Limitations. This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement or with regard to any Party's participation in any other pending or future licensing or decommissioning proceeding. Further, no 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, no 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 any Party to this Agreement in any administrative or judicial litigation, arbitration, or other adjudicative 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, the Governmental Parties believe their statutory and other legal obligations are, or can be, met through implementation of this Agreement; provided, nothing in this Agreement may be construed to limit any Governmental Party 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 in accordance with this Agreement. This Agreement may not be interpreted to predetermine the outcome of any environmental or administrative review or appeal process.

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 6 below.

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SECTION 2: ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1 FERC Filings. Following the Effective Date, but no later than May 15, 2003, PacifiCorp shall file with FERC a fully executed copy of this Agreement and its appendices and exhibits in accordance with FERC regulations at 18 C.F.R. § 385.602. Concurrent with that filing, PacifiCorp shall file a request to extend and amend the Project license and decommission the Project in accordance with this Agreement.

2.2 Permits. In accordance with this Agreement, PacifiCorp shall apply for and use 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"). PacifiCorp shall likewise use reasonable best efforts to obtain a FERC Order in a timely manner. The Parties shall cooperate during the permitting, environmental review, and implementation of this Agreement. Each Party, upon PacifiCorp's request, shall use its best reasonable efforts to support PacifiCorp's applications for Permits, provided that this sentence shall not apply to a Party that is the agency issuing the requested Permit. 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 does not conflict with or add to measures required by 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 do not conflict with or add to measures required by 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 FERC Order.

2.3 Communications with FERC and Other Government Agencies. Except as required to comply with applicable law, the Parties shall (i) make comments and respond to comments or responses to comments filed by them in the context of a FERC Order, Permit or TMDL proceeding only in a manner that is consistent with and that does not recommend conflicting or additional measures from those required by this Agreement; and (ii) to the extent they participate in relevant regulatory proceedings, actively support this Agreement and the incorporation of terms that are consistent with and that do not conflict with or add to measures required by this Agreement into Permits and TMDLs. If any Party advocates, after the Effective Date, to FERC or in any other forum, conditions that conflict with, add to or are otherwise inconsistent with this Agreement, the matter shall be addressed in accordance with Section 6 of this Agreement.

2.4 Timing of Obligations. The implementation schedule attached to and incorporated by reference into this Agreement as Appendix A specifies the schedule for implementation of Protection, Mitigation and Enhancement ("PM&E") measures during the interim operating period (Table A), and implementation of decommissioning and related PM&E measures

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(Table B). If there is a specific provision of this Agreement relating to the schedule for implementation of a particular measure and that provision conflicts with Appendix A, the specific provision in this Agreement controls. If there is no specific provision in this Agreement relating to the schedule for implementation of a particular measure, the schedule for implementation set forth in Appendix A controls. The schedule may be modified only with the written consent of all Parties, which modification shall constitute an amendment of this Agreement.

2.5 Section 401 Certification Procedures.

2.5.1 Section 401 Certification Upon Application to FERC. Concurrent with PacifiCorp's request for a FERC Order, PacifiCorp shall file with ODEQ an application for Section 401 Certification of interim operation and decommissioning of the Project that is consistent with this Agreement. The Section 401 Certification application shall consist of applicable information required under Oregon Administrative Rule 340-048-0020(2), this Agreement (with Appendices and Exhibits), and any other appropriate information. PacifiCorp shall pay ODEQ an application fee in accordance with ORS 468.065(3) upon invoice from ODEQ or other mutual arrangement. In evaluating PacifiCorp's Section 401 Certification application, ODEQ shall incorporate and rely on the ODEQ "Evaluation and Findings Report" dated May 26, 2000, to the extent applicable to interim operation and decommissioning activities, as well as consider any other relevant information, including but not limited to data generated in connection with the TMDL Operational Plan. ODEQ shall provide public notice and an opportunity to comment on a proposed Section 401 Certification decision that is consistent with the proposed Section 401 Certification conditions set forth in Exhibit 1 to this Agreement. If, as a result of consideration of public comment and any new information, ODEQ issues a Section 401 Certification that requires measures that conflict with, add to, or are otherwise inconsistent with those water-quality-related measures required by this Agreement, as set forth in Exhibit 1, the Parties shall address any such inconsistency in accordance with Section 6 of this Agreement. ODEQ shall endeavor to issue this Section 401 Certification within four months of receiving the application.

2.5.2 Effect on June 2000 Certification. For purposes of the interim operation and decommissioning for which PacifiCorp shall request FERC approval pursuant to this Agreement, the Section 401 Certification issued by ODEQ under Section 2.5.1 above shall supersede the June 2000 Certification. The June 2000 Certification shall be effective only in the event (i) FERC issues a new license for the Project as requested by PacifiCorp in June 1999, and (ii) PacifiCorp accepts the new license. ODEQ and PacifiCorp agree that the agreement between ODEQ and PacifiCorp dated June 9, 2000 for implementation of the June 2000 Certification shall terminate upon PacifiCorp's acceptance of a Final FERC Order.

2.5.3 Section 401 Certification for Federal Permits for Decommissioning Activities. Upon applying for a federal permit or permits for decommissioning activities required by this Agreement, including a dredge and fill permit from the U.S. Army Corps of Engineers ("Corps") pursuant to CWA Section 404 ("Section 404 Permit"), PacifiCorp shall provide written notice of such application and of any proposed changes in decommissioning activities since the date of

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issuance of ODEQ's Section 401 Certification under Section 2.5.1 above. Within 60 days of ODEQ's receipt of notice from the Corps or other federal permitting agency that it is processing PacifiCorp's application, ODEQ, consistently with 33 U.S.C. § 1341(a)(3), shall notify the federal agency and PacifiCorp either (i) that the Section 401 Certification issued by ODEQ under Section 2.5.1 above is sufficient for purposes of the federal permit and permit conditions, or (ii) that, in light of new information related to the water quality impacts of decommissioning activities since issuance of the Section 401 Certification under Section 2.5.1, there is no longer reasonable assurance of compliance with state water quality standards. In the latter event, ODEQ shall consider the new information, solicit and consider public and agency comment as required by law, and issue a Section 401 Certification determination for purposes of the federal permit and decommissioning activities. If, as a result of consideration of public comment and any new information, ODEQ issues a Section 401 Certification that requires measures that conflict with, add to, or are otherwise inconsistent with those water-quality-related measures required by this Agreement, as set forth in Exhibit 1, the Parties shall address any such inconsistency in accordance with Section 6 of this Agreement.

2.5.4 Application for Delegated State Section 404 Permit for Decommissioning Activities. In the event the Oregon Division of State Lands ("ODSL") assumes authority to administer a dredge and fill permit program under CWA Section 404 by the time a Section 404 Permit is required for Project decommissioning activities, PacifiCorp shall apply for such a Section 404 Permit from ODSL. ODEQ, ODFW and OWRD shall provide comments to ODSL in accordance with ORS 196.825 or successor statutes in effect at that time. Subject to consideration of any new information at the time of the application for the Section 404 Permit and consideration of any public comment as may be required by law, ODEQ, ODFW and OWRD shall provide ODSL with comments or proposed conditions that are consistent with and that do not conflict with or add to measures required by this Agreement. If ODEQ, ODFW or OWRD provide comments or proposed conditions that would require PacifiCorp to undertake measures that conflict with, add to, or are otherwise inconsistent with those measures required by this Agreement or Exhibit 1, the Parties shall address any such inconsistency in accordance with Section 6 of this Agreement.

SECTION 3: INTERIM OPERATING PERIOD

3.1 Interim Operating PM&E Measures. PacifiCorp shall implement the PM&E measures set forth in Sections 3.2 through 3.14, beginning at the time designated for each measure in this Section and Appendix A, Table A, and continuing until decommissioning begins in accordance with the schedule in Appendix A, Table B, or until notification pursuant to Section 5.1, whichever happens first.

3.2 Ramping Rate. The following ramping rates apply to all ramping at the Project but do not apply to forced outages, except that they shall apply to Project start-up after such an outage.

3.2.1 Requirements After Effective Date. Upon the Effective Date, PacifiCorp shall commence development, in consultation with NMFS, USFWS, ODFW, ODEQ and CTWS, of standard operating procedures for meeting the ramping requirements described in this Section

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3.2.1 and Section 3.2.2. In addition, upon the Effective Date, PacifiCorp shall commence development of a monitoring plan in consultation with NMFS, USFWS, ODEQ, ODFW and CTWS to document the rate of change in water level or stage in the river. Beginning 30 days after the Effective Date and continuing through commencement of ramping requirements under Section 3.2.2, PacifiCorp shall make reasonable efforts, using existing equipment, to limit the ramping rates in the bypass reach to three inches per hour, with a preferred target of two inches per hour. PacifiCorp shall make a reasonable effort to complete the standard operating procedures and monitoring plan prior to the FERC Order.

3.2.2 Requirements After FERC Order and Final FERC Order. Upon the FERC Order, if not already completed, PacifiCorp shall complete the standard operating procedures and monitoring plan referred to in Section 3.2.1. Beginning 30 days after the Final FERC Order, PacifiCorp shall make reasonable efforts to limit the ramping rates in the bypass reach to no more than two inches per hour, and in any event such rates shall not exceed three inches per hour, in accordance with the standard operating procedures and monitoring plan.

3.2.3 Response to Monitoring. Should development or implementation of the monitoring plan referred to in Sections 3.2.1 and 3.2.2, or the resulting data, show that a different ramping rate will result in the same protections for aquatic species (for example, when Inflows are already high), PacifiCorp may propose such a different ramping requirement. Upon the written approval of NMFS, USFWS, ODFW, ODEQ and CTWS, the approved variation shall be substituted for the above ramping requirements, without requiring amendment of this Agreement.

3.2.4 Unplanned Outages. Following an unplanned outage, PacifiCorp shall observe conditions directly downstream of the Project dam and powerhouse. Should PacifiCorp or another Party identify a fish stranding problem, PacifiCorp shall use its best reasonable efforts to minimize the impacts of such stranding by relocating such fish to the river in consultation with ODFW, CTWS, NMFS and USFWS.

3.3 Instream Flows and Temperature. The minimum instream flow requirements set forth in this Section 3.3 shall be met using a combination of flows from the fish ladder, fish screen bypass flow, trash sluice, and spillway gates.

3.3.1 Requirements After Effective Date. Upon the Effective Date and continuing through commencement of minimum instream flow requirements under Section 3.3.2, PacifiCorp shall make reasonable efforts, using existing equipment, to implement in the bypass reach either the following minimum instream flows, or Inflow (less the amount required to compensate for flowline leakage up to a maximum of 25 cfs), whichever is less:

- (i) February 1 to April 14: 220 cubic feet per second ("cfs");
- (ii) April 15 to June 30: manage flows as set forth in Section 3.4 below;
- (iii) July 1 to October 31: 250 cfs;
- (iv) November 1 to November 30: 220 cfs;
- (v) December 1 to January 31: 140 cfs.

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Upon the Effective Date, PacifiCorp shall commence development of standard operating procedures in consultation with ODFW, ODEQ, NMFS, USFWS and CTWS, to determine the accuracy of the existing Programmable Logic Control or alternative method for monitoring compliance with minimum instream flows. PacifiCorp shall make a reasonable effort to complete the standard operating procedures prior to the FERC Order.

3.3.2 Requirements After FERC Order and Final FERC Order. Upon the FERC Order, if it is not already completed, PacifiCorp shall complete the standard operating procedures referred to in Section 3.3.1. Beginning 30 days after the Final FERC Order, PacifiCorp shall implement in the bypass reach either the minimum instream flows set forth in Section 3.3.1(i)-(v), or Inflow (less the amount required to compensate for flowline leakage up to a maximum of 25 cfs), whichever is less. Instream flows shall be measured by a Programmable Logic Control or alternative method for monitoring compliance with minimum instream flows, consistent with the standard operating procedures developed pursuant to Section 3.3.1. Instream flows shall be maintained on an average hourly basis. Once the standard operating procedures are implemented, PacifiCorp shall publicly post hourly flow data on the Internet. The Internet posting shall clearly display the total average hourly river flow being released into the bypass reach directly downstream of the diversion dam. The Internet posting shall also display the average hourly flow being diverted to the flow conveyance system. Flows shall be reported in cfs. PacifiCorp shall post hourly flow measurements as timely as possible but no more than 24 hours after such measurements are taken.

3.3.3 Temperature Monitoring. After the Effective Date, PacifiCorp shall monitor stream temperatures hourly from July 1 through October 15 each year at sites PDBUP (upstream end of the bypass reach, approximately 50 meters downstream of the dam) and PDBDN (downstream end of the bypass reach, approximately 250 meters upstream of the powerhouse). The accuracy of temperature recorders shall be tested before and after field deployment to ensure that they are operating within their designated range of accuracy. In addition to pre- and post-deployment checks, the temperature recorders shall be audited monthly during the field measurement period. The pre- and post-deployment and monthly field audit checks shall be made using a National Institute of Standards and Technology ("NIST") traceable (calibrated and maintained) thermometer accurate to $\pm 0.2^{\circ}\text{C}$ or better, which has been checked against an NIST traceable thermometer. In addition, for the period July 1 through October 15, PacifiCorp, upon the Effective Date, shall record existing data on flows released into the bypass reach, and upon the Final FERC Order, shall record average hourly flows released into the bypass reach. These flows shall be measured in accordance with Section 3.3.1 or Section 3.3.2, whichever is applicable. ODEQ may make reasonable and feasible modifications to the temperature and monitoring requirements of this Section 3.3.3, and, in consultation with ODFW, OWRD, NMFS, USFWS and CTWS, may make reasonable and feasible modifications to the flow monitoring requirements of this Section 3.3.3 if (i) the monitoring requirements prove to be insufficient to provide the necessary data or (ii) modifications to minimum instream flow requirements require modifications to monitoring requirements.

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3.3.4 Response to TMDL Temperature Monitoring. In order to meet its TMDL load allocation from September 15 to October 15, PacifiCorp shall undertake the following measures:

3.3.4.1 Annual Temperature and Flow Monitoring Report. After the Effective Date, PacifiCorp shall provide ODEQ with an annual temperature and flow monitoring report by December 31 of each year. The annual monitoring report shall include flow data and hourly temperature data, pre- and post-deployment data, and monthly field audit data required by Section 3.3.3 for that calendar year. The annual report shall identify any instances in which the seven-day moving average of daily maximum temperatures measured at the downstream end of the bypass reach exceeded 55°F during the period from September 15 through October 15. If any such instances are identified in the first three years of monitoring, PacifiCorp shall submit in the third annual temperature and flow monitoring report to ODEQ an evaluation of whether the temperature increase in the bypass reach was 0.25°F (as a seven-day moving average) more than the increase that would have occurred had the Project not diverted water from the bypass reach. In lieu of conducting this evaluation, PacifiCorp may assume that any temperature increase between the upstream and downstream ends of the bypass reach is due to Project diversions.

3.3.4.2 Measures to Reduce Stream Warming from September 15 through October 15. If, based on the evaluation or assumed Project impact described in Section 3.3.4.1, ODEQ determines that the stream warming that occurred in the bypass reach was 0.25°F more than would have occurred had there been no Project diversions, PacifiCorp shall, within 90 days after written notification from ODEQ, submit to ODEQ a written proposal for measures that PacifiCorp will take to ensure that the Project-related warming in the bypass reach is not more than 0.25°F (as a seven-day moving average) when the seven-day moving average of daily maximum temperatures exceeds 55°F at the downstream end of the bypass reach between September 15 and October 15. The proposal shall include a proposed schedule for implementing the measures. The measures may include, but are not limited to, the following:

(i) Temperature modeling for the period September 15 through October 15 to determine what minimum instream flows would be necessary to reduce Project-related warming to 0.25°F or less (as a seven-day moving average) when the seven-day moving average of daily maximum temperatures at the downstream end of the bypass reach exceeds 55°F. If increased minimum flows are necessary and feasible, PacifiCorp shall provide the increased flows for the necessary period, subject to the limits set forth in Section 3.3.4.3.

(ii) In the alternative, PacifiCorp may elect not to divert water (except for amounts required to compensate for flowline leakage up to 25 cfs) whenever and so long as the river temperature exceeds 55°F at the downstream end of the bypass reach between September 15 and October 15.

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3.3.4.3 Limits on Minimum Instream Flow Modifications. The following limitations apply to modifications of minimum instream flows under this Section 3.3:

(i) ODEQ shall not require modification of flows beyond those reasonably necessary to prevent a Project-related instream temperature increase of 0.25°F or more. This limitation shall only apply upon ODEQ's determination that PacifiCorp has satisfactorily demonstrated under prevailing conditions that any such modification would result in a Project-related temperature increase of less than 0.25°F.

(ii) Modification of minimum instream flows shall be limited to no more than a 50 cfs increase in any two-year period.

(iii) PacifiCorp's responsibility to fulfill minimum instream flow requirements shall be limited to reducing Project diversions from the bypass reach.

(iv) No increase in minimum instream flows shall be required before September 15, 2006.

3.3.5 Powerhouse Cooling Water Discharge. Heat discharged to the Hood River through powerhouse cooling water shall not exceed 19.31 million kilocalories per day.

3.3.6 TMDL Reservation. In the event that the Project continues to divert water for power generation or Project maintenance during and after 2012, ODEQ reserves the right to modify the Section 401 Certification for the Project, in accordance with OAR Chapter 340, Division 48, as needed to ensure implementation of TMDLs for any applicable period.

3.4 Temporary Reduction in Diversion Flow.

3.4.1 General. From April 15 to June 30 each year, PacifiCorp shall reduce diversion flow to a maximum of 25 cfs. All flows in excess of the amount required to compensate for flowline leakage up to 25 cfs shall be passed by the dam.

3.4.2 Resuming Power Generation. PacifiCorp may resume power generation on July 1 of each year. For the 96 hours prior to the start-up of the turbine unit, PacifiCorp shall use multiparameter continuous monitoring devices approved by ODEQ to sample water quality at two sites in the river agreed upon by ODEQ. One site shall be approximately 250 meters upstream of the powerhouse tailrace in the river along the east bank; the other shall be approximately 30 meters downstream of the powerhouse tailrace's confluence with the river along the east bank. The continuous sampling devices shall sample and record hourly stream temperature, dissolved oxygen, pH, and turbidity. At least 72 hours prior to the start-up of the turbine unit, but not less than 24 hours after commencing the continuous monitoring, PacifiCorp shall open a 10-inch drain valve in the powerhouse near the tailrace to provide a slow exchange of flowline water. Upon beginning generation on July 1, PacifiCorp shall set the turbine generator unit on the minimum wicket gate setting required to synchronize the turbine generator.

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PacifiCorp shall then ramp the turbine generator load in sufficiently small increments to the extent feasible to maintain the ramping requirements set forth in Section 3.2. Monitoring under this Section 3.4.2 at the two sampling sites may cease 24 hours after beginning generation. The multiparameter devices shall be calibrated for each parameter according to the manufacturer's specifications prior to deployment. At the time the instruments are placed in the water and when they are retrieved at each site, PacifiCorp shall measure stream temperature with a certified NIST thermometer and collect a sample for a Winkler titration for dissolved oxygen at each site. Within 30 days after the instruments are retrieved, PacifiCorp shall forward ODEQ the electronic files of the continuous sampling and calibration data.

3.4.3 Alternative Measures. The procedure outlined in Section 3.4.2 may provide dilution of flowline water in excess of that necessary to comply with water quality standards. PacifiCorp may reduce or cease its monitoring effort under Section 3.4.2 following three consecutive years of monitoring data, of quality considered accurate and reliable to ODEQ, demonstrating that the flowline water does not contribute to an exceedance of a water quality standard at the downstream monitoring site described in that Section. In the absence of three years of such data, PacifiCorp may reduce or cease its monitoring effort under Section 3.4.2 if ODEQ provides written approval based upon an ODEQ determination that there is no reasonable potential for the flowline water to contribute to exceedance of one or more water quality standards at the downstream monitoring site. If, notwithstanding use of the procedure described in Section 3.4.2, the flowline water causes an exceedance of water quality standards at the downstream monitoring site, ODEQ may direct PacifiCorp to develop and propose, within a reasonable time specified by ODEQ, alternative measures for ensuring that the flowline water does not cause an exceedance of water quality standards at the downstream monitoring site upon beginning generation. Upon approval by ODEQ, PacifiCorp shall implement the alternative measures, which may include increased diversion flow during the period April 15 through June 30.

3.5 Planned Outages. Beginning 30 days after the Effective Date, PacifiCorp shall, to the extent feasible, limit planned outages to coincide with the temporary reduction of diversion flow provided in Section 3.4 or with the summer, and shall limit planned non-summer outages to 24 hours to the extent reasonably feasible. PacifiCorp shall notify ODFW, NMFS, USFWS, and CTWS of planned outages and subsequent start-up periods to allow for monitoring of those areas with the greatest possibility for fish stranding.

3.6 Flushing. Beginning 30 days after the Effective Date, PacifiCorp shall restrict flushing of the sand settling basin to periods when bypass reach instream flows are at least 500 cfs, and preferably greater than 1,000 cfs.

3.7 Intake Screens. Upon the Effective Date, PacifiCorp shall continue to operate and maintain existing intake screens in working order. This work shall include regular inspections and the repair, rehabilitation or replacement, as needed, of seals and moving components such as chain drives, sprockets, screen baskets, motors and screen wash equipment. If a screen is damaged beyond repair, PacifiCorp shall replace it with a screen of similar design; however,

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PacifiCorp shall not be required to design or install an upgraded fish screen or otherwise make technological or other major improvements.

3.8 Fishway Auxiliary Water Intake. On or before the FERC Order, PacifiCorp shall identify and obtain NMFS, USFWS, ODFW and CTWS written approval of a method for maintaining the fish ladder auxiliary attraction water bar rack within the ladder sufficiently free of debris to allow adequate attraction flows. Alternatives to be considered shall be limited to the following unless the Parties agree otherwise: frequent manual cleaning, modification of the bar spacing on the existing intake trash rack, installation of an intake device incorporating v-bar screen technology, or changing the spacing of the bars on the rack within the ladder. Recommendations and supporting documentation shall be shared with NMFS, USFWS, ODFW and CTWS. No later than the first in-water work opportunity following the Final FERC Order, PacifiCorp shall implement the approved method for maintaining the fish ladder auxiliary attraction water bar rack sufficiently free of debris.

3.9 Ground-Disturbing Activities. Unless emergency conditions exist that require immediate actions, beginning 30 days after the Effective Date PacifiCorp shall limit impacts to terrestrial and wetland habitat from any ground-disturbing activities by (i) minimizing the area of disturbance; (ii) adhering to conditions in any applicable U.S. Army Corps of Engineers or Oregon Division of State Lands wetlands permit(s); (iii) consulting with state and federal wildlife agencies, CTWS, and, when necessary, the Columbia River Gorge Commission prior to carrying out the work to determine appropriate protection measures; (iv) limiting construction to the summer and fall; (v) revegetating disturbed areas with native vegetation to the extent feasible; and (vi) controlling sedimentation of aquatic habitat through the erosion control measures contained in the applicable permit(s). PacifiCorp shall conduct a survey before the initial ground-breaking activity for rare, threatened and endangered species in areas planned for significant construction activities, and shall coordinate with the USFWS, ODFW, Oregon Department of Agriculture and Oregon Natural Heritage Program to ensure that the target species list is current.

3.10 Rare, Threatened and Endangered Terrestrial Species. Beginning 30 days after the Effective Date, PacifiCorp, if requested by USFWS or ODFW, shall cooperate with such agencies in their continuing efforts to monitor bald eagles, harlequin ducks and other federal- or state-listed rare, threatened or endangered terrestrial species documented within the Project boundary by (i) providing access to the Project, and (ii) providing data collected by PacifiCorp personnel regarding such species.

3.11 Cultural Resources Management Plan. Beginning 30 days after the Effective Date, PacifiCorp shall consult with the Oregon State Historic Preservation Office ("SHPO") and FERC staff to begin revising its draft Cultural Resources Management Plan ("CRMP") to reflect the actions proposed in this Agreement. It is anticipated that FERC will issue a new Programmatic Agreement between itself and the SHPO to reflect the terms of this Agreement and the revised CRMP. PacifiCorp shall make a reasonable effort to complete the revised CRMP prior to the FERC Order; however, the Parties recognize that the timing of the FERC Order may result in later completion. Upon the FERC Order, if it is not already completed, PacifiCorp shall complete and begin implementing the revised CRMP as soon as practicable.

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3.12 Recreation Facilities. Upon the Effective Date, PacifiCorp shall continue to maintain existing recreation facilities on an as-needed basis through PacifiCorp's existing operations and maintenance program. In addition, PacifiCorp shall perform the following at Powerdale Park: (i) when the existing toilet needs replacing, provide and maintain a portable, ADA-accessible toilet; (ii) within one year after the Effective Date, provide one additional picnic table; (iii) within two years after the Effective Date, provide a second additional picnic table; and (iv) within 30 days after the Final FERC Order, install trail directional signs and a Project interpretive sign. PacifiCorp shall also perform the following at the Powerhouse day-use site: (a) within 30 days after the Final FERC Order, install and maintain a portable, ADA-accessible toilet at the Powerhouse day-use site and construct a pathway to that toilet; and (b) within 30 days after the Final FERC Order, install warning signs regarding fluctuating water levels, trail directional signs, and a salmon interpretive sign.

3.13 Information Sharing. In addition to any water quality information sharing required pursuant to the Section 401 Certification, the following information shall be shared with the Parties to assist in compliance monitoring and general decisionmaking.

3.13.1 Requirements After Effective Date. Beginning 30 days after the Effective Date and continuing through commencement of records maintenance and sharing requirements under Section 3.13.2, PacifiCorp shall provide the Parties with reasonable access to data related to PacifiCorp's implementation of this Agreement and created with existing equipment, such as records at the powerhouse and data regarding planned and unplanned outages, but not including PacifiCorp financial data. In addition, PacifiCorp shall convene an annual meeting with NMFS, USFWS, ODFW and CTWS to discuss any fish and wildlife mitigation and monitoring activities. Except as required by applicable law, the Parties shall keep confidential all records marked "confidential" or "proprietary" and not disseminate all or part of, or otherwise share the contents of, such records.

3.13.2 Requirements After Final FERC Order. Beginning 30 days after the Final FERC Order, PacifiCorp shall maintain records of Project operations, including instream flow releases, ramping conditions, and temperature monitoring reports, and shall make such records available to the Parties upon request. In addition, PacifiCorp shall convene an annual meeting with NMFS, USFWS, ODFW and CTWS and shall provide an annual report to such agencies summarizing fish and wildlife mitigation and monitoring activities. On reasonable notice, PacifiCorp shall provide the Governmental Parties with access to Project facilities and records related to implementation of the Agreement, but not including PacifiCorp financial information. Except as required by applicable law, the Parties shall keep confidential all records marked "confidential" or "proprietary" and not disseminate all or part of, or otherwise share the contents of, such records.

3.14 Maintenance of Lands During Interim Period. Beginning upon the Effective Date and continuing through March 29, 2012, PacifiCorp shall continue to own the lands identified in Appendix D (the "Subject Lands") and shall not dispose of, encumber, or initiate changes in the character of such lands, except (i) as provided in Section 4.4; (ii) for those actions specified in

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Appendix E; and (iii) after providing the Lands Stakeholders reasonable advance notice and an opportunity to comment, as reasonably necessary or desirable for the prudent ownership and management of the Subject Lands (e.g., granting easements or quitclaims for utilities, road widening, repairs and maintenance, stormwater facilities, and distribution lines).

SECTION 4: DECOMMISSIONING

4.1 Decommissioning Actions. PacifiCorp shall perform the decommissioning actions set forth in this Section 4.1 and the decommissioning plan attached to and incorporated by reference into this Agreement as Appendix B. If any provision in Section 4.1 and Appendix B conflict, the provision in this Section 4.1 shall control. Subject to Sections 2.2 and 7.3, PacifiCorp shall complete the decommissioning actions within the time specified for each action in Appendix A, Table B, but in no event shall PacifiCorp be required to begin such actions prior to the Final FERC Order. Such times may only be modified with the written consent of all Parties, or by amending this Agreement in accordance with Section 6.13.

4.1.1 Diversion Dam. PacifiCorp shall remove the diversion dam including the roller gates, hoists and bridge, piers, walls, spillway, un-gated overflow section, fishway, embankment sections, and intake to the level of the original riverbed.

4.1.2 Intake. PacifiCorp shall perform the following actions regarding the intake: (i) remove all concrete portions of the structure above original river bed; (ii) remove the 6-foot-wide gated trash sluice, trashracks, traveling basket fish screens, and all related structural, mechanical and electrical equipment associated with the intake; (iii) remove the intake headgate that regulates flow from the intake into the power canal; (iv) remove the trash gate located between the intake structure and the trash sluice; and (v) remove several miscellaneous structures, including the control gatehouse, operator's house, and non-essential fencing. The operator's house may be left in place with the consent of a Grantee identified pursuant to Section 4.4.

4.1.3 Power Canal, Steel Flume and Sand-Settling Basin. PacifiCorp shall perform the following actions regarding the power canal, steel flume, and sand-settling basin: (i) break up and fill the 604-foot-long, trapezoidal concrete power canal with materials from the cofferdams and earth embankments, and blend it with the adjoining river bank; and (ii) remove the 550-foot-long steel flume, 142-foot-long concrete sand-settling basin, 254-foot-long steel flume, and 33-foot-long concrete structure.

4.1.4 Flowline Pipe. PacifiCorp shall perform the following actions regarding the approximately 14,500-foot-long flowline: (i) remove three sections of 10-foot-diameter wood stave pipe (a 480-foot-long section, a 1,564-foot-long section, and a 488-foot-long section) located in the first 4,692 feet of flowline and totaling 2,532 feet of wood stave, and identified in Appendix B, Figure 5.2, attached to and incorporated by reference into this Agreement; (ii) remove the concrete saddles associated with these three sections of wood stave; (iii) leave in place all remaining components of the flowline, including steel pipe located between and adjacent to the removed wood stave pipe; and (iv) create a wildlife access path beneath each of

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the two remaining upstream sections of steel flowline (commonly referred to as the "Flat Top" and "Hog Ranch" sections) at approximately the center of each section by excavating below the flowline to create an approximately six-foot-high passage.

4.1.5 Flowline Bridge. PacifiCorp shall leave the flowline bridge and associated access to the steel catwalk in place.

4.1.6 Surge Tank. PacifiCorp shall use a shaped charge to topple the surge tank. PacifiCorp shall then cut the surge tank into pieces to be salvaged as scrap material.

4.1.7 Powerhouse. PacifiCorp shall perform the following actions regarding the powerhouse: (i) leave the concrete powerhouse structure in place; (ii) remove all internal non-structural features; (iii) replace window glass with security-oriented architectural treatments; (iv) remove the metal-sided maintenance garage located immediately adjacent to the south side of the powerhouse; (v) use the outdoor traveling gantry crane which spans the powerhouse to remove equipment from the interior of the powerhouse, then dismantle and remove the operable components of the crane, leaving the structural members of the crane in place; (vi) drain all oil and hydraulic fluids from equipment located inside the powerhouse; (vii) remove any loose equipment, parts and materials; (viii) remove the internal rotating generator and turbine components; (ix) seal the turbine pit with concrete; (x) maintain power to the switch room for as long as is necessary to support remaining facilities; (xi) re-grade the areas surrounding the surge tank and maintenance garage to match surrounding contours; and (xii) secure the powerhouse building, all remaining equipment, and adjacent remaining facilities.

4.1.8 Switchyard. PacifiCorp shall perform the following actions regarding the switchyard: (i) remove all components related to the transmission of power generated by the Project; (ii) leave in service all equipment required to supply or control power to the distribution switch/control panels in the powerhouse and equipment associated with the operation of PacifiCorp's transmission/distribution system; and (iii) modify the existing fencing around the switchyard and powerhouse as necessary to provide additional security.

4.1.9 Fish Sorting and Trapping Facility. PacifiCorp will ensure that the Powerdale Dam Fish Trapping Facility ("Fish Trapping Facility") is removed by February 29, 2012, unless otherwise agreed in writing by the Parties, pursuant to the First Amended Permit (Hydro Lands) executed by BPA and PacifiCorp on May 15, 2003 and attached hereto as Exhibit 3.

4.2 Decommissioning PM&E Measures. In association with the decommissioning actions set forth in Section 4.1, PacifiCorp shall perform the following PM&E measures. If any provision in Section 4.2 and Appendices A (decommissioning schedule) or B (decommissioning plan) conflict, the provision in this Section 4.2 shall control.

4.2.1 Erosion and Sediment Control Plan. Prior to taking any in-water decommissioning actions pursuant to Section 4.1, PacifiCorp shall develop and implement an Erosion and Sediment Control Plan ("ESCP"), in consultation with and with the approval of NMFS, USFWS, ODEQ, ODFW and CTWS, that identifies specific methods that shall be

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implemented at each work area to protect water quality. The ESCP shall address: (i) protection of the Hood River from unplanned releases of sediment and debris during decommissioning activities; (ii) disposition of sediment and decommissioning debris in accordance with applicable law, PacifiCorp's Spill Prevention Control and Countermeasure Plan, and public health and safety; (iii) implementation of permanent revegetation measures consistent with best management practices; and (iv) dam removal, which shall be conducted in dry conditions using a coffer dam and artificial channel to divert flows from work areas. In addition, the ESCP shall specify measures such as berms, ditches, sediment retention basins, silt fencing, and site restoration to be undertaken by PacifiCorp.

4.2.2 Aquatic Resources.

4.2.2.1 Timing and Notification of In-Water Work. For all in-water work required by Section 4.1 of this Agreement, PacifiCorp shall conduct such work between July 15 and August 31, or outside of that time period with the approval of ODFW, NMFS and USFWS. Actions that are likely to occur outside of the July 15 to August 31 period include the following decommissioning actions:

- (i) Construction and removal of upstream and downstream cofferdams, cofferdam materials and culverts;
- (ii) Removal of the artificial upstream fish passage channel and bypass flume;
- (iii) Placement of materials (relocated cofferdam materials and available streambed materials) along the river to create access for removal of remaining portions of dam and fish ladder;
- (iv) Placement of materials to regrade and armor the east and west banks of the river to harden the disturbed areas; and
- (v) Regrading of the streambed above and below the dam as necessary to assist with removal of any barriers to fish passage created as a result of decommissioning activities.

PacifiCorp shall provide NMFS, USFWS, ODFW and CTWS reasonable notice before initiating any in-water work, regardless of when it occurs, to enable such Parties to view the work and recommend fish salvage or other immediate measures to avoid fish stranding or delay. PacifiCorp shall undertake such measures with the assistance of ODFW and CTWS. For purposes of this Section, "in-water work" does not include dam removal or other decommissioning actions performed in areas that have been dewatered for purposes of decommissioning actions.

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4.2.2.2 Fish Passage During Dam Removal.

4.2.2.2.1 Manner of Fish Passage. During construction of the cofferdams associated with dam removal activities, PacifiCorp shall extend the existing fish ladder return channel upstream of the dam to above the upstream cofferdam work, and shall install culverts through the downstream cofferdam to provide continued access to the existing fish ladder entrance; provided that PacifiCorp shall not provide such fish passage through the cofferdam culvert if NMFS, USFWS, ODFW and CTWS agree that such passage is not necessary. Coincidental to the construction of the cofferdams, PacifiCorp shall construct an artificial channel extending from a mid-point on the existing fish ladder to a location immediately downstream of the downstream cofferdam. Upon completion of this channel and the bypass channel (described below), PacifiCorp shall close the fish access through the downstream cofferdam, allowing upstream migrants to enter the existing fish ladder structure through a newly constructed access. PacifiCorp shall place rock between the upstream return channel and water bypass intake to minimize upstream migrant entrainment into the downstream bypass flume. During dam removal, PacifiCorp shall divert river flow past the work zone using portions of the existing water conveyance system's steel flume by installing removed sections of the steel flume from above the upstream cofferdam to below the downstream cofferdam, passing over the overflow section and existing fish ladder. This will provide downstream fish passage. PacifiCorp shall position the bypass flume to discharge directly into a pool constructed at the entrance of the upstream passage channel to attract upstream migrants to the channel. The discharge area shall be designed with adequate pool area and depth to minimize impingement of downstream migrants on the bottom or sides of the pool. The requirements of this Section 4.2.2.2.1 may be modified with the written agreement of PacifiCorp, NMFS, USFWS, ODFW and CTWS.

4.2.2.2.2 Final Fish Passage Design and Construction Plans. Prior to changing any of the existing fish passage facilities or constructing any new fish passage facilities associated with dam removal, PacifiCorp shall prepare final fish passage design and construction plans in consultation with NMFS, USFWS, ODFW and CTWS. The final design and construction plans shall be consistent with Section 4.2.2.2.1 and the following criteria, which may be modified with the written agreement of PacifiCorp, NMFS, USFWS, ODFW and CTWS.

(i) The outfall from the flume shall be designed in accordance with, as appropriate, sections 7.4.1, 7.4.2, 7.4.3, 13.10.4, 13.10.5 and 13.10.6 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date (attached as Exhibit 5). In addition, the pool volume and depth will be designed to minimize pool bottom surface velocities and injury to fish. For purposes of section 13.10.5, the design will minimize, but may not completely avoid, creation of false attraction

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flows. The outfall shall have a 10-foot minimum drop to the pool below (to prevent adults from entering the pipe), and shall be designed to provide smooth, rounded edges and surfaces, using materials similar to the flume, to minimize injury to fish exiting the pipe and to jumping adults;

(ii) The pipe/flume shall be designed in accordance with, as appropriate, sections 13.9.3.1, 13.9.3.4, 13.9.3.5, 13.9.3.6, 13.9.3.9, 13.9.3.11, 13.9.3.13 and 13.9.3.14 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date (attached as Exhibit 5). Weathered steel surfaces presently existing on the steel flume sections, or alternatively the galvanized surfaces of standard culvert material, shall be considered acceptable for this application, provided that, if the interior surfaces of the existing steel flume are considered to be too rough to meet NMFS' Passage Facility Guidelines and Criteria, PacifiCorp shall install a liner or conduct sand blasting of the interior surfaces;

(iii) The temporary approach to the fishway channel entrance shall be constructed with "field placed" structure materials to optimize local hydraulic conditions. PacifiCorp shall provide NMFS, USFWS, ODFW and CTWS a minimum of seven days notice prior to the placement of these materials to allow their on-site participation in field direction of this placement work on-site;

(iv) The control structures within the temporary approach channel to the fishway entrance shall be placed at least one channel width apart. These structures shall have less than one foot of head differential (measured from upstream of the boulder control structures to the downstream water surface elevation), and shall not span the entire width of the approach channel (unless the depth provided over the channel-spanning structure is at least one foot);

(v) If fish will be passing through the temporary culvert(s) installed in the downstream coffer dam, such culverts shall meet, as appropriate, sections 9.7.5, 9.7.8 and 9.7.9 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date (attached as Exhibit 5). In addition, the bypass shall be designed in accordance with, as appropriate, sections 9.3.2 and 9.3.3 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date;

(vi) The design shall provide supplemental flow to the fishway discharge to allow optimal operation of the fish ladder and temporary approach channel; and

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(vii) The design shall be developed such that flow conveyed in the bypass flume is delivered below the temporary approach channel in a manner that will maximize both upstream and downstream passage. The design shall be developed such that the bypass flume and the upstream temporary approach channel work together to both attract adult fish to the temporary approach channel, minimize delay of both upstream and downstream migrants, and minimize injury to fish passing downstream.

4.2.2.2.3 ESA Agency Approval. For ESA purposes, PacifiCorp shall submit fish passage design and construction plans for the bypass flume, plunge pool, culvert, temporary approach channel, and fish ladder for NMFS and USFWS approval. If required to minimize the effect of any incidental take of listed species, NMFS and USFWS may require as a condition of their approval additions or changes to such design plans; provided, however, that if NMFS or USFWS requires as a condition of approval more than a minor change to such design or construction plans, or alters the basic design, location, scope, duration or timing of such plans, the condition shall be considered inconsistent under Sections 6.2 and 6.5 of this Agreement.

4.2.2.2.4 Fish Passage Monitoring and Contingency Plan. PacifiCorp shall conduct a geomorphology survey consistent with the scope of work attached as Exhibit 2. Within 18 months of the Effective Date, PacifiCorp shall provide a final geomorphology report to the Parties. The report shall describe: (i) current geomorphic conditions beginning 2,200 feet below the dam (near the stream gage) to 1,000 feet upstream of the dam, or above the vegetated island (whichever is farther); and (ii) the anticipated impact of sediment released from dam removal on fish passage and aquatic habitat downstream of the dam removal site. PacifiCorp shall develop and implement a fish passage monitoring and mitigation plan, in consultation with NMFS, USFWS, ODFW, ODEQ and CTWS, and approved by NMFS, USFWS and ODFW. In the event a fish passage obstruction, as defined by the plan, is caused or exacerbated by dam removal, PacifiCorp shall restore adequate fish passage by implementing mitigation measures set forth in the plan. PacifiCorp shall have no obligation to monitor or mitigate under this Section 4.2.2.2.4 for more than one cycle of seasons beyond the return of the river to natural conditions, as determined by a team composed of representatives of NMFS, USFWS, ODFW, CTWS and PacifiCorp, in accordance with the geomorphology report.

4.2.3 Terrestrial Resources.

4.2.3.1 Minimizing Impacts. PacifiCorp shall complete surveys for federal- or state-listed rare, threatened and endangered species in areas planned for construction and shall plan and design removal activities to minimize direct impacts on wildlife species and minimize habitat impacts.

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4.2.3.2 Revegetation and Mitigation. PacifiCorp, in consultation with the Parties, shall prepare and implement a Revegetation and Mitigation Plan ("RMP"). The RMP shall address the manner in which PacifiCorp, in conducting decommissioning activities, shall (i) minimize the area of disturbance to the extent feasible; (ii) adhere to conditions of any applicable U.S. Army Corps of Engineers or Oregon Division of State Lands wetlands permit; (iii) consult with state and federal wildlife agencies, CTWS, and, when necessary, the Columbia River Gorge Commission prior to carrying out the work to determine appropriate protection measures; (iv) limit construction to summer through fall months; (v) revegetate disturbed areas with native vegetation to the extent feasible, based on existing vegetation cover type mapping and potential wetland delineations; and (vi) control sedimentation of aquatic habitat as set forth in the ESCP. The Parties recognize that decommissioning may result in some unavoidable wetland alteration due to elimination of leaks from the existing wood stave flowline, and agree that PacifiCorp is not obligated to compensate for the removal of this artificial water source.

4.2.4 Cultural Resources. PacifiCorp shall reach a draft Memorandum of Agreement with the SHPO for submission to FERC prior to decommissioning. PacifiCorp shall photographically document eligible properties for pictorial preservation by the National Register. In addition, PacifiCorp shall consider mitigation measures for eligible properties such as recordation to the Historic American Buildings Survey/Historic American Engineering Record standards, and architectural salvage. Prior to modifying any structures, PacifiCorp shall consult with the SHPO, the National Park Service, the U.S. Army Corps of Engineers, CTWS, the Oregon Historical Society, the Hood River County Historical Society, and the County of Hood River, as appropriate. If ownership of the property and remaining eligible facilities are transferred to another entity, PacifiCorp shall provide documentation acknowledging that the facilities are eligible for listing in the National Register of Historic Properties and require treatment in a manner consistent with that National Historic Preservation Act.

4.2.5 Recreation Resources. PacifiCorp may restrict or prohibit public access to the two existing day-use sites and the bypass reach while portions of decommissioning activities take place. Where full or restricted access is provided, PacifiCorp shall: (i) provide appropriate signing and public notification prior to demolition and restoration activities to inform the public of planned activities and temporarily restricted public access to the bypass and day-use sites; (ii) minimize impacts to the fishing experience by implementing a demolition program that minimizes the length of time that the river is affected; and (iii) where feasible, restore river trails, access roads and parking areas to pre-construction conditions following decommissioning activities.

4.2.6 Land Use and Management and Aesthetics/Visual Resources. Except as otherwise provided in this Agreement, the Parties agree that PacifiCorp shall not be obligated to perform additional measures addressing impacts to land use, land management, aesthetics or visual resources during or after decommissioning.

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4.3 Disposition of Water Rights.

4.3.1 Assignment. Within 90 days of permanent cessation of power at the Project, PacifiCorp shall assign its PacifiCorp Hydroelectric Water Right for the Powerdale Project (Certificate No. 46965) to OWRD for conversion to an instream water right pursuant to ORS 543A.305. OWRD shall accept the PacifiCorp Hydroelectric Water Right "AS IS"; PacifiCorp expressly disclaims any representation or warranty concerning the PacifiCorp Hydroelectric Water Right or its convertibility to an instream water right. Prior to the initiation of the conversion process, PacifiCorp shall use reasonable efforts to avoid allowing the PacifiCorp Hydroelectric Water Right to be forfeited for non-use, and shall not otherwise intentionally jeopardize the validity of the PacifiCorp Hydroelectric Water Right, except to the extent that the licensing authority requires flow regimes inconsistent with the PacifiCorp Hydroelectric Water Right, and in times of water shortage PacifiCorp and OWRD may agree with other existing water users to prorate water shortages notwithstanding relative priority dates. Instream flows required under this Agreement (Section 3.3) or by a FERC Order or license shall be considered part of PacifiCorp's use of water under its PacifiCorp Hydroelectric Water Right, but only to the extent that water available to PacifiCorp under its PacifiCorp Hydroelectric Water Right is needed to satisfy the instream flows. Nevertheless, if PacifiCorp's use of water under the PacifiCorp Hydroelectric Water Right becomes an issue, PacifiCorp shall cooperate with OWRD in defending the validity of the PacifiCorp Hydroelectric Water Right by providing documentation regarding the history of the use of water pursuant to the PacifiCorp Hydroelectric Water Right at the Powerdale facility as OWRD deems necessary.

4.3.2 Protest Withdrawal. Within 60 days following the Final FERC Order, PacifiCorp shall withdraw its protest currently pending before OWRD of ODFW's instream water right application IS 83969.

4.3.3 Side Agreement. Several Parties are currently working toward a separate side agreement that would address how the conversion of the PacifiCorp Hydroelectric Water Right to an instream water right would occur. If no side agreement is reached, these issues shall be addressed in the normal course of events, as directed by ORS 543A.305.

4.4 Disposition of Lands.

4.4.1 Designation of Grantee; Conveyance of Lands. PacifiCorp shall convey its interest in the Subject Lands, specifically described in Appendix D to this Agreement, to a creditworthy entity or entities (the "Grantee") mutually agreeable to NMFS, USFWS, ODFW, CTWS, AR, and HRWG (collectively, the "Lands Stakeholders"), in consultation with Hood River Valley Parks and Recreation District and Hood River County Parks and Buildings Department, and identified in a written notice to PacifiCorp signed by an authorized representative of each of the Lands Stakeholders; provided, however, that the notice identifying the Grantee must be received by PacifiCorp, if at all, on or before February 29, 2012; and provided further that PacifiCorp shall have the right to reserve from the Subject Lands an exclusive, perpetual easement, in form satisfactory to PacifiCorp, to enable PacifiCorp and its successors and assigns to access, operate, maintain, upgrade, enclose with fencing or other

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materials, and/or remove, as PacifiCorp deems appropriate: the switch room, powerhouse, associated electrical assets and other transmission and distribution facilities. If the identification is timely made, PacifiCorp shall convey the Subject Lands at a closing (the "Closing") that will occur on or before the later to occur of March 1, 2012 (the day after the Project license expires) or 30 days after the identification is made. If PacifiCorp does not receive the notice designating the Grantee on or before February 29, 2012, then beginning March 1, 2012, PacifiCorp shall be free, at its sole discretion, to retain or dispose of the Subject Lands as it sees fit. The boundaries of the Subject lands may be modified before Closing, upon unanimous written agreement among PacifiCorp and the Lands Stakeholders in consultation with Hood River Valley Parks and Recreation District and Hood River County Parks and Buildings Department, to reflect and incorporate any transfer to Jenny Copper of a portion of parcel PPNo. ORHR-0019 and any acquisition by PacifiCorp of Jenny Copper's property at Tax Lot # 300, as further described in Appendix E.

4.4.2 Responsibilities and Liabilities. Any conveyance of lands pursuant to Section 4.4.1 shall be "AS IS"; and the Grantee shall be responsible and liable for the Subject Lands and any structures remaining on the Subject Lands. The Grantee shall countersign and acknowledge the deed or deeds by which the Subject Lands are conveyed, and shall in such deed or deeds expressly agree to defend, indemnify and hold PacifiCorp harmless for any liability arising from the Subject Lands or any structures remaining on the Subject Lands, whether such liability arises before or after the conveyance date. In addition, the deed or deeds shall be a bargain and sale deed or deeds without any representation or warranty concerning the condition of title to the Subject Lands (it being understood that the Grantee shall look exclusively to title insurance, which shall be obtained at Grantee's expense, for satisfaction concerning title to the Subject Lands). Although PacifiCorp shall not otherwise be required to cure any title condition affecting the Subject Lands, it shall cause the Subject Lands to be released from PacifiCorp's blanket mortgage before the Subject Lands are conveyed to the Grantee. The Closing will take place in escrow at the offices of a title company selected by Grantee and identified to PacifiCorp at least 20 days before the Closing is to occur.

4.4.3 Purpose of Conveyance. The Parties intend that one or more Lands Stakeholders shall be responsible for causing the Grantee to execute, acknowledge and deliver a perpetual conservation easement in the form attached as Exhibit 4 (the "Conservation Easement") into escrow at the Closing. The form and terms of the Conservation Easement may be modified before Closing, upon unanimous written agreement by the parties to the Conservation Easement, in consultation with the Lands Stakeholders; provided, that the purpose of the Conservation Easement shall be to achieve the following: (i) Protection of existing fish and wildlife habitat while allowing for habitat restoration and enhancement; (ii) Retention of existing recreational uses while allowing improvements commensurate with those uses, provided such uses and improvements are consistent with protection, restoration and enhancement of fish and wildlife habitat; (iii) Expanded recreational and educational opportunities, provided such uses are consistent with protection, restoration and enhancement of fish and wildlife habitat; and (iv) Acknowledgement and preservation of the right of CTWS tribal members to exercise their Treaty-secured off-reservation fishing rights on the Subject Lands by utilizing the Subject Lands to access usual and accustomed fishing sites; and provided further, that the terms of the

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Conservation Easement shall allow the continuation and renewal of those existing uses and encumbrances listed in Appendix E. To facilitate this process, PacifiCorp shall submit escrow instructions at Closing that will instruct the title company to deliver the deed conveying the Subject Lands to the Grantee only when the Grantee has executed, acknowledged and unconditionally delivered the Conservation Easement into escrow. In no event shall PacifiCorp be responsible for addressing the Grantee's failure or refusal to execute, acknowledge and deliver the Conservation Easement. If the conveyance of the Subject Lands cannot be closed on or before March 31, 2012 because of the Grantee's failure or refusal to execute, acknowledge and deliver the Conservation Easement or to otherwise close the transaction, then beginning April 1, 2012, PacifiCorp shall be free, at its sole discretion, to retain or dispose of the Subject Lands as it sees fit.

4.4.4 Establishment of Maintenance Fund.

4.4.4.1 Establishment of Trust Fund. Upon PacifiCorp's conveyance of the Subject Lands in accordance with Section 4.4.1, PacifiCorp shall place \$154,500 (escalated as provided below) in trust, the interest of which shall be used by the Grantee for maintenance of the Subject Lands (the "Maintenance Fund"). The contribution to the Maintenance Fund shall be escalated by a percentage equal to any increase in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor. Comparisons shall be made using the index entitled US City Average – All Items and Major Group Figures for all Urban Consumers, (1982 – 1984 = 100), or the nearest comparable data on changes in the cost of living if such index is no longer published. The change shall be determined by comparison of the figure for March of 2003, with that announced most recently before the date of the contribution. In no event, however, shall the amount of the maintenance fund be reduced below \$154,500. PacifiCorp and the Grantee shall use commercially reasonable efforts to create and fund the trust and distribute interest from the trust in a manner that will maximize any deductions and other tax benefits available to PacifiCorp under applicable law. At the Closing of the conveyance, PacifiCorp and the Grantee shall execute and deliver such instruments as may be reasonably required to enable Grantee to use only the interest and not the principal of the sum placed in trust, and to make sure that funds in the trust are invested in an appropriate manner to facilitate the ongoing maintenance of the Subject Lands.

4.4.4.2 Alternative Funding. The Parties recognize that the Grantee identified may be a 26 U.S.C. § 501(c)(3) non-profit entity whose stated purpose is land conservation. In that event, PacifiCorp shall transfer the principal amount of the Maintenance Fund, calculated in accordance with Section 4.4.4.1, to Grantee to be placed in a dedicated account for maintenance of the Subject Lands in lieu of establishing a trust fund for that purpose. PacifiCorp and the Grantee shall use commercially reasonable efforts to transfer the funds in a manner that will maximize any deductions and other tax benefits available to PacifiCorp under applicable law.

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SECTION 5: EARLY CESSATION OF GENERATION; EARLY DECOMMISSIONING

5.1 Early Cessation of Generation. If PacifiCorp determines at its sole discretion at any time prior to decommissioning that, due to a catastrophic event that affects the Project, continued operation of the Project would be uneconomic, PacifiCorp may cease generating power at the Project. Upon cessation of generation, if PacifiCorp decides to pass all water less the amount required to compensate for leakage, PacifiCorp shall not be required to implement the PM&E measures set forth in Sections 3.2 through 3.9, except for 3.6. In addition, PacifiCorp shall continue to share information generated prior to and after ceasing power generation pursuant to Section 3.13, but Section 3.13 shall not be interpreted as requiring the continued creation of data or other information pursuant to measures no longer being implemented. PacifiCorp shall notify the Parties within 30 days after a decision to cease power generation pursuant to this Section 5.1. PacifiCorp's decision to cease power generation and associated PM&E measures is subject only to any necessary FERC approval. The Parties shall not object to PacifiCorp's decision to cease power generation.

5.2 Actions After Ceasing Generation.

5.2.1 Remaining Operation and Maintenance Issues. After ceasing generation pursuant to this Section, PacifiCorp shall maintain remaining Project facilities as necessary to avoid the creation of environmental and human health and safety hazards until such facilities are removed. In addition, within 15 days of providing notice to the Parties of a decision to cease power generation, PacifiCorp shall consult with NMFS, USFWS, ODFW, ODEQ and CTWS regarding its continued operation of the Project consistently with Sections 5.1, 5.2.2 and 5.3.

5.2.2 Provision of Flows to Support Fish Sorting and Trapping Facility. During the first year after providing notice pursuant to Section 5.1, PacifiCorp shall continue to operate the dam in a manner that maintains sufficient water surface elevation upstream of the dam to allow operation of the Fish Trapping Facility. After the first year, PacifiCorp shall continue to operate the dam in such a manner provided that PacifiCorp is reimbursed for the costs of such operations. If at any time after the first year PacifiCorp is not reimbursed for such operations, PacifiCorp shall, at its sole discretion but after consultation with the Parties, either: (a) continue to operate the dam as described in the first sentence of this Section 5.2.2 until decommissioning begins in accordance with Section 4.1 and Appendix A, Table B; or (b) continue to operate the dam as described in the first sentence of this Section 5.2.2 until the beginning of the next season during which PacifiCorp can commence early decommissioning of the Project in accordance with Section 5.3 below. A decision to continue to operate the dam pursuant to subsection (a) of this Section shall not restrict PacifiCorp from choosing to decommission early in accordance with subsection (b) of this Section at some later time.

5.3 Early Decommissioning. Upon ceasing generation in accordance with Section 5.1, PacifiCorp may, at its discretion, perform the decommissioning actions and their associated PM&E measures set forth in Section 4.1 and Appendix B prior to the time designated for such actions in Appendix A, Table B. Notwithstanding the previous sentence, PacifiCorp shall not remove the dam or other structures necessary to facilitate operation of the Fish Trapping Facility

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until such operation is no longer required pursuant to Section 5.2.2. In addition, should PacifiCorp cease generation pursuant to Section 5.1 and should operation of the Fish Trapping Facility permanently discontinue for any reason, PacifiCorp shall use its reasonable best efforts to pursue early decommissioning of the Project. PacifiCorp shall notify the Parties at least 60 days prior to any early decommissioning action. PacifiCorp shall consult with the Parties regarding implementation of the early decommissioning action and any associated PM&E measures, prior to their implementation.

SECTION 6: IMPLEMENTATION OF AGREEMENT

6.1 Parties Bound. Except as provided in Section 6.16, the Parties shall be bound by this Agreement until the Agreement is terminated in accordance with Section 6.15, unless this Agreement is sooner terminated as provided in Section 6.17. Sections 1.3, 6.18 and 7.4 of this Agreement shall survive any such termination.

6.2 Inconsistent Actions Before FERC Order. If, following the Effective Date and prior to the FERC Order: (i) any Section 401 Certification, TMDL, final ESA biological opinion, final order pursuant to ORS 509.585, or other necessary authorization is denied or issued with conditions that conflict with, add to, omit or are otherwise inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement; or (ii) any Party advocates to FERC or in any other forum the imposition of measures that conflict with, add to, omit or are otherwise inconsistent with the measures required by Sections 3, 4 or 5 or Exhibit 1 of this Agreement; then this Agreement shall be deemed modified to include such conditions or recommended measures, as finally imposed by FERC or other agency, unless any Party (a) provides notice to the other Parties that it objects to the imposition of such measures within 30 days after the Party has actual knowledge of the occurrence of the imposition of such measures; and (b) initiates the Alternative Dispute Resolution Procedures set forth in Section 6.14 of this Agreement ("ADR Procedures"). Any Party may also seek rehearing or appeal as provided in Section 6.6 of this Agreement, and such request for rehearing or appeal shall constitute notice to the other Parties of the dispute. If, after completion of ADR Procedures one or more of the imposed measures continues to conflict with, add to, omit or otherwise remain inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement, the Party or Parties that objected to an event listed above may, within 60 days after completion of ADR Procedures, withdraw from this Agreement.

6.3 FERC Order.

6.3.1 FERC Order Inconsistent with This Agreement. If any interim operation or decommissioning activity or PM&E measure, either as initially approved by FERC or following conclusion of any rehearing or appeals, contains any measure that conflicts with, adds to, or omits the measures set forth in Sections 3, 4.1, 4.2 or 5 or Exhibit 1 of this Agreement, or is otherwise inconsistent with this Agreement, this Agreement shall be deemed modified to conform to the inconsistency, unless a Party provides notice to the other Parties that it objects to the inconsistency and initiates ADR Procedures within 30 days after the date of the FERC Order or the conclusion of any rehearing or appeals, as appropriate. If the disputing Party or Parties

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seek rehearing or appeal as provided in Section 6.6, such Party's request for rehearing or appeal shall constitute notice to the other Parties of the dispute. If, after completion of ADR Procedures, any interim operation or decommissioning activity or PM&E measure continues to conflict with, add to, or omit measures required by Sections 3, 4.1, 4.2 or 5 or Exhibit 1 of this Agreement, or is otherwise inconsistent with this Agreement, the Party or Parties that objected to the inconsistency 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 after appeals), if disputed under this Section.

6.3.2 Rejection of Inconsistent FERC Order or Inconsistent Final FERC Order. If PacifiCorp withdraws from this Agreement in accordance with Section 6.3.1 as the result of an inconsistent FERC Order or inconsistent Final FERC Order and this Agreement is therefore terminated pursuant to Section 6.17, the Parties intend that PacifiCorp shall be allowed to reject the inconsistent FERC Order or inconsistent Final FERC Order and that PacifiCorp shall not be required to withdraw its pending license application.

6.3.3 Acceptance of Consistent Final FERC Order. If the Final FERC Order is consistent with this Agreement, PacifiCorp shall accept the Final FERC Order. Upon receipt and acceptance by PacifiCorp of the Final FERC Order, PacifiCorp shall file a withdrawal of its pending license application.

6.4 Reopeners and Modification. After the FERC Order, the Parties may not seek measures that conflict with, add to, omit or are otherwise inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement pursuant to standard FERC reopener provisions or other authorities except: (i) as provided pursuant to Sections 1.1.2, 1.1.3, 2.5.3 and 6.8; (ii) as required by statutes or regulations enacted or amended after the date of the FERC Order; or (iii) in the event of materially-changed factual circumstances or material facts not known or understood at the time of the FERC Order. If a Party seeks inconsistent measures in accordance with (i), (ii), or (iii) above, the acting Party shall provide the other Parties at least 60 days' notice to consider the acting Party's position. 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 the date of the FERC Order. If a Party imposes or otherwise succeeds in requiring measures that conflict with, add to, omit or are otherwise inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement pursuant to subsections (i), (ii) or (iii) above or by any other means, any Party or Parties may object and respond in accordance with Section 6.5 below.

6.5 Response to Modifications. If, after the FERC Order, any Party or non-Party action, including FERC action, ODEQ 401 Certification action, or other agency action, results in a change to interim operation or decommissioning of the Project that conflicts with, adds to, omits or is otherwise inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement, this Agreement shall be deemed modified to conform to the inconsistency, unless a Party gives notice that it objects to the inconsistency and

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initiates ADR Procedures. A Party may also seek rehearing or appeal of such action as provided in Section 6.6 below, and any such request for rehearing or appeal shall constitute notice to the other Parties of the dispute. If, after conclusion of ADR Procedures, any interim operation or decommissioning activity or PM&E measure continues to conflict with, add to, omit or otherwise remain inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement, the Party or Parties that objected to the inconsistency 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 modified, if disputed under this Section.

6.6 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, a Governmental Party, or a governmental agency which is not a Party, and which act or omission conflicts with, adds to, or omits measures required by this Agreement, or is otherwise inconsistent with this Agreement. The ADR Procedures and the timelines established by Section 6 shall neither preclude PacifiCorp from timely rejecting a FERC Order or Final FERC Order that is inconsistent with this Agreement nor preclude any Party from timely filing for and pursuing rehearing under 18 C.F.R. § 385.713 or other agency's applicable rules, or judicial review, of the inconsistent action. However, the Parties shall follow ADR Procedures to the extent reasonably practicable prior to rejection of the FERC Order or Final FERC Order by PacifiCorp or while any rehearing or appeal of an inconsistent FERC Order is being pursued. If a Party has filed for administrative rehearing or judicial review of any action that conflicts with, adds to, omits or is otherwise inconsistent with the measures required by 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.

6.7 PacifiCorp Fails to Perform. If PacifiCorp fails to perform any provision of this Agreement, whether or not the provision is included in the FERC Order, and such failure is not excused by force majeure, a Party 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, any Party who objects to such failure to perform may give notice to the other Parties and commence ADR Procedures. In addition, the aggrieved Party or Parties may petition FERC to enforce such provision, if appropriate, or may pursue the remedies of mandamus or specific performance, if applicable. If, after any applicable remedies at FERC are exhausted, FERC (i) does not enforce the provision; (ii) does not construe the disputed portion of the Agreement against the complaining Party; and (iii) PacifiCorp fails to perform the provision, then any Party other than PacifiCorp may withdraw from this Agreement. In addition, the Parties reserve any remedies under applicable law to enforce the measures contained in this Agreement but not performed by PacifiCorp. If a Party has exhausted remedies at FERC and then seeks judicial review of the same dispute, then that Party may still withdraw from the Agreement at any time in accordance with subsections (i) through (iii) above, except that the complaining Party may not withdraw if the reviewing court determines that PacifiCorp is in compliance with the disputed portion of the Agreement.

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6.8 Reinitiation of ESA Consultation. Should any species that may be affected by the Project become listed as threatened or endangered or other event requiring reinitiation of ESA Section 7(a)(2) consultation pursuant to 50 C.F.R. § 402.16 occur after the FERC Order and before termination of this Agreement pursuant to Section 6.17, USFWS or NMFS may, if necessary to comply with their mandates under the ESA, seek reinitiation of consultation with FERC. Should consultation under ESA section 7(a)(2) result in the imposition of measures that conflict with, add to, omit or are otherwise inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement, this Agreement shall be deemed modified to conform to the inconsistency unless a Party gives notice that it objects to the inconsistency and initiates ADR Procedures. If, after conclusion of ADR Procedures, any interim operation or decommissioning activity or PM&E measure continues to conflict with, add to, omit or otherwise remain inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement, the Party or Parties that objected to the inconsistency may, within 60 days after completion of ADR Procedures, withdraw from this Agreement.

6.9 Responsibility for Costs. PacifiCorp shall pay for the cost of actions required of PacifiCorp by this Agreement and the Final FERC Order. PacifiCorp shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Agreement, except as required by law.

6.10 State Ratemaking Proceedings. The Parties agree that the Agreement is fair and reasonable and in the public interest, and will support this Agreement for purposes of PacifiCorp's planned decommissioning cost recovery application before each state regulatory commission that has ratemaking authority. Upon request of PacifiCorp at least 30 days prior to the deadline for such comments, each Party shall use its reasonable best efforts to submit appropriate general letters of support of this Agreement within their areas of expertise.

6.11 PacifiCorp Solely Responsible for Operations of Project. By entering into this Agreement, none of the Parties, except for PacifiCorp, have accepted any legal liability or responsibility for the operation and decommissioning of the Project.

6.12 Availability of Funds. Implementation of this Agreement by a Party that is a federal agency is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, and 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 U.S. Treasury. The Parties acknowledge that the Governmental Parties that are federal agencies shall not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing. Implementation of this Agreement by Governmental Parties that are state agencies 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 the Governmental Parties that are state agencies shall not be required under this Agreement to expend any appropriated funds unless and until an authorized official of each such agency

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affirmatively acts to commit such expenditures, as evidenced in writing. Implementation of this Agreement by CTWS 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 CTWS.

6.13 Amendment of Agreement.

6.13.1 General. This Agreement may be amended at any time during the extended license term or implementation of the decommissioning measures set forth in Section 4 and Appendix B of this Agreement, with the unanimous agreement of all Parties. This Agreement may also be amended before the FERC Order, upon the Parties' unanimous written agreement, provided the Parties first consult regarding the effect of any such amendment on the pending FERC Order. Any amendment of this Agreement shall be in writing and executed by all Parties still in existence, or their successors and assigns, if applicable. As appropriate, the Parties shall submit a statement to FERC in support of the amendment.

6.13.2 Alternate Measures. The Parties agree that, should a change in circumstances so warrant, the Parties will consult to determine whether alternate measures would meet the intent of this Agreement and could be substituted for measures in this Agreement. At the Parties' discretion, and subject to necessary approvals, such alternate measures may be adopted pursuant to Section 6.13.1.

6.14 Alternative Dispute Resolution.

6.14.1 General. Except to the extent that FERC or another agency with jurisdiction over the Project has a procedure that precludes implementation of Section 6.14.1 through 6.14.3, all disputes among the Parties regarding the obligations of the Parties under this Agreement shall, at the request of any Party, be the subject of nonbinding ADR Procedures among the disputing Parties. Each Party 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. Each Party shall implement promptly all final agreements reached, consistent with its applicable statutory and regulatory responsibilities. Nothing in Sections 6.14.1 through 6.14.3 is intended or shall be construed to affect or limit the authority of FERC, the Governmental Parties, 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 FERC Order or Final FERC Order that is inconsistent with the Agreement nor prevent any Party from timely filing for and pursuing rehearing under 18 C.F.R. § 385.713 or other agency's applicable rules, or judicial review, of an action that is inconsistent with the Agreement. However, the Parties shall follow ADR Procedures to the extent reasonably practicable prior to rejection of the FERC Order or FERC Final Order by PacifiCorp or while any rehearing or appeal of an inconsistent FERC Order is pursued.

Powerdale Hydroelectric Project Settlement Agreement**6.14.2 ADR Procedures.**

6.14.2.1 **General.** Unless otherwise agreed among 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 or decommissioning the Project in accordance with this Agreement and any FERC Order, except to the extent that such operations or decommissioning actions may be directly affected by the results of such ADR Procedures and ceasing such actions will not violate the FERC Order, a Permit, or any other law or regulation.

6.14.2.2 **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 7.9 of this Agreement, when effective, shall constitute actual knowledge. Service of process on a Party's registered agent shall also constitute actual knowledge.

6.14.2.3 **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. Within 15 days after the second meeting or any scheduled meeting thereafter, any Party still disputing the issue or issues shall notify the other Parties 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.

6.14.2.4 **Mediation.** Upon receiving 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, all disputing Parties have not agreed to mediate the dispute, ADR Procedures shall be considered complete.

6.14.3 **Enforcement of Agreement After ADR Procedures.** Any Party may seek specific performance of this Agreement by any other Party, before FERC or in a court of competent jurisdiction, after compliance with ADR Procedures. No 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 law. Nothing in Sections 6.14.1 through 6.14.3 is intended or shall be construed to affect or limit the jurisdiction of any agency or court as established under applicable law.

6.15 **Completion of Decommissioning Measures.** Upon completion of the decommissioning and associated PM&E measures set forth in Sections 4.1 and 4.2 and Appendix B, PacifiCorp shall notify the Parties that it has completed decommissioning. Upon request, PacifiCorp shall provide reasonable supporting documentation and/or site access as may be necessary for the Parties to verify completion of such actions. Should any Party dispute PacifiCorp's completion of actions required by Sections 4.1 and 4.2 and Appendix B, the Party shall consult with

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PacifiCorp and attempt to resolve the dispute, and may initiate ADR Procedures set forth at Section 6.14. After completion of any ADR Procedures, any Party who reasonably believes that decommissioning and/or associated PM&E measures have not been completed in accordance with this Agreement may petition FERC to enforce the Final FERC Order and/or the Agreement, if appropriate, or may pursue remedies under applicable law or the remedies of mandamus or specific performance, if applicable. If no Party initiates ADR Procedures within 30 days of PacifiCorp's notification of completion pursuant to this Section, this Agreement shall be considered unanimously terminated by the Parties. Nothing in this Section is intended or shall be construed to prevent PacifiCorp from notifying and requesting any necessary approval from FERC that all measures required by the Final FERC Order have been completed. PacifiCorp shall notify the Parties at least 30 days prior to seeking any such FERC approval if the Agreement has not yet been terminated.

6.16 Withdrawal from Agreement.

6.16.1 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 treated as having withdrawn.

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

6.16.3 Continuity After Withdrawal. The withdrawal of a Party does not terminate this Agreement for the remaining Parties. However, if any Party withdraws, any other Party may elect to withdraw without further ADR Procedures, after providing notice within 60 days of the withdrawal of the other Party. If a Party withdraws from this Agreement, the withdrawing Party shall not be bound by any term contained in this Agreement, except as provided in Sections 1.3, 6.18 and 7.4 or except as might be established through action for specific performance or mandamus.

6.17 Termination of Agreement. This Agreement may be terminated by unanimous written agreement of the Parties, by withdrawal of all Parties, or by unanimous termination as set forth in Section 6.15 of this Agreement. In addition, without affecting actions for specific performance or mandamus, if applicable, the withdrawal of PacifiCorp pursuant to Section 6.16.1 shall terminate this Agreement.

6.18 Survival of Interim PM&E Measures. If this Agreement terminates pursuant to Section 6.17 because of the withdrawal of PacifiCorp pursuant to Section 6.3, then PacifiCorp's obligation to perform the following PM&E measures, and provisions regarding implementation of PM&E measures, shall survive termination, up to and through the time of resolution of the pending FERC relicensing of the Project in FERC Docket No. P-2659-011, including the rehearing and appeal, if any, of a FERC order on relicensing: Sections 3.2.1, 3.2.3, 3.2.4, 3.3.1, 3.3.3, 3.3.4, 3.3.5, 3.3.6, 3.4, 3.5, 3.6, 3.7, 3.9, 3.10, 3.11, 3.12 (except 3.12(iv), (a), and (b)),

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3.13.1, 6.11, 6.12, 7.3, and 7.4. In addition, PacifiCorp shall not be required to make capital improvements but shall continue to maintain the fish ladder auxiliary attraction water bar rack within the ladder sufficiently free of debris to allow adequate attraction flows.

SECTION 7: GENERAL PROVISIONS

7.1 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 third parties shall remain as imposed under applicable law.

7.2 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 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 any other Party'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 FERC Order upon completion of the change of ownership and any requisite FERC approval. A transferring or assigning Party shall provide notice to the other Parties at least 60 days prior to completing such transfer or assignment.

7.3 Failure to Perform Due to Force Majeure.

7.3.1 Declaration of Force Majeure. No Party shall be liable to any 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 the FERC Order, or delay in issuance of any required permit. Increased cost for the performance of any interim operation or decommissioning measure, 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 Parties 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

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obligations and give the other Parties written notice to that effect. NMFS and USFWS do not intend to analyze or authorize the "take" of any ESA-listed species under its jurisdiction caused by the Project due to a force majeure event.

7.3.2 Emergency Consultation with NMFS and USFWS. If PacifiCorp is unable to perform any obligation pursuant to any provision of this Agreement as a result of force majeure, and NMFS or USFWS requests reinitiation of consultation consistently with 50 C.F.R. § 402.16, PacifiCorp shall cooperate in such reinitiation of consultation in order to minimize the effect of any incidental take associated with the inability to perform due to the force majeure event. USFWS or NMFS may, if necessary to comply with their mandates under the ESA with respect to a newly-listed species, petition FERC to reopen the Project license. Should reinitiation of consultation under ESA section 7 be required and result in the imposition of measures that conflict with, add to, omit or are otherwise inconsistent with the measures required by this Agreement and specifically Sections 3, 4 or 5 or Exhibit 1 of this Agreement, the effect of such inconsistency on this Agreement shall be addressed in accordance with Section 6.14.

7.3.3 Duration of Force Majeure. 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, any Party other than PacifiCorp may withdraw from this Agreement, and any Party that withdraws from this Agreement may pursue any other remedy available under applicable law. If any Party withdraws from this Agreement pursuant to this Section 7.3.3, PacifiCorp may oppose the assertion of such other remedy or authority that Party seeks to assert under any applicable law or notify FERC that PacifiCorp has withdrawn from this Agreement and may seek such further FERC action as PacifiCorp in its sole discretion deems appropriate.

7.4 Indemnification and Hold Harmless. PacifiCorp shall indemnify and hold harmless each of the Parties to this Agreement and their respective boards, commissions, officers, employees, and agents regarding any claims or liabilities for property damage or personal injury arising from interim operation or decommissioning activities undertaken prior to the completion of decommissioning by PacifiCorp or its employees, officers, agents or contractors.

7.5 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.

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

7.7 Preservation of Treaty Rights. Nothing in this Agreement shall be construed to impair, limit or in any way modify the off-reservation treaty rights, including fishing, hunting and gathering rights, reserved to the CTWS pursuant to the Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963.

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7.8 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.

7.9 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 shall be effective three days after the date on which it is mailed or otherwise distributed. The authorized representative of each Party as of the Effective Date is designated in Appendix C, attached to and incorporated by reference into this Agreement. Each Party is responsible for providing notice to the other Parties of any change in its authorized representative designated in Appendix C. When sending notice pursuant to this Section, each Party shall also send a copy of the notice to the person or persons designated under "with copy to" in Appendix C.

7.10 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.

7.11 Entire Agreement. This Agreement sets forth the entire agreement and processes to be followed by Parties with regard to the environmental, historical, cultural, public recreation, fishery, wildlife, water quality, land management, operational, and related measures, including all PM&E measures, relating to the interim operation and decommissioning of the Project.

SECTION 8: EXECUTION OF AGREEMENT

8.1 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.

8.2 Signing in Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached it to one or more signature pages.

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PacifiCorp:

J.A. Johansen 6/6/03
Judi Johansen date
Chief Executive Officer

National Marine Fisheries Service:

Brian Bunn 6/6/03
D. Robert Lohry date
Regional Administrator

United States Fish and Wildlife Service:

For: David Wesley 6/6/03
David B. Allen date
Regional Director

Oregon Department of Fish and Wildlife:

Lindsay A. Ball 06-06-03
Lindsay A. Ball date
Director

Oregon Department of Environmental Quality:

Michael T. Lewelyn 6/6/03
Michael T. Lewelyn date
Administrator, Water Quality Division

Oregon Water Resources Department:

Paul R. Cleary 6/6-03
Paul R. Cleary date
Director

Confederated Tribes of the Warm Springs Reservation of Oregon:

Garland Brunoe 6/6/03
Garland Brunoe date
Tribal Council Chairman

American Rivers:

Ann C. Mills 6/6/03
Ann C. Mills date
Executive Vice President

Hood River Watershed Group:

Chuck Gehling 6/6/03
Chuck Gehling date
Chairman


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SUPPORTING NON-PARTY

The following entity supports the purpose and effect of the Settlement Agreement Concerning the Interim Operation and Decommissioning of the Powerdale Hydroelectric Project (FERC No. 2659). This entity is not a Party to or third-party beneficiary under the Settlement Agreement.

Hood River Valley Parks and Recreation District:



Scott Baker 6/5/03
Program Coordinator date

**APPENDIX A
IMPLEMENTATION SCHEDULE**

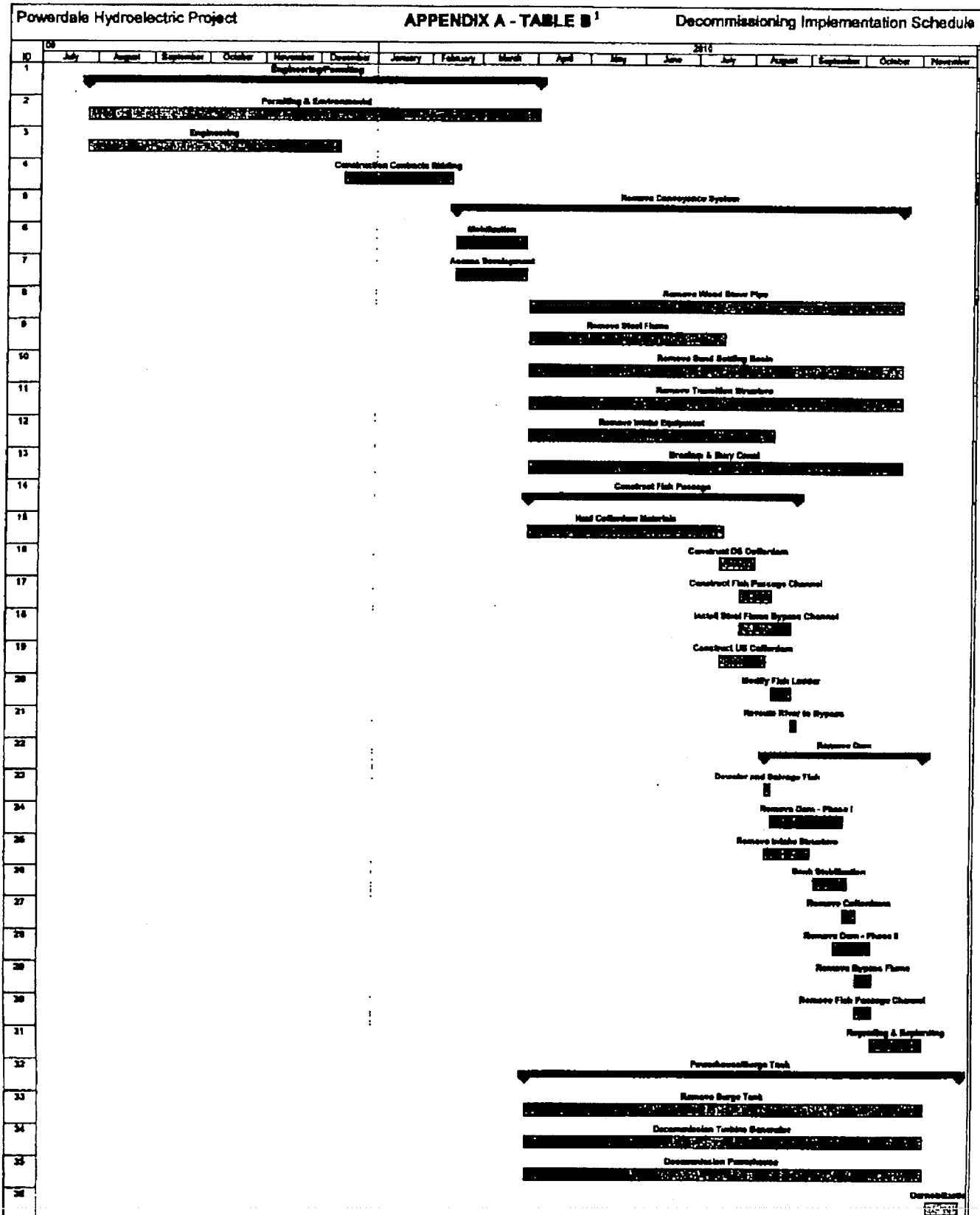
Table A: Implementation of Interim Operation PM&E Measures

Sec.	PM&E Measure (see appropriate section number in Agreement for specific wording of measures)	Upon Effective Date	15 Days After Effective Date	30 Days After Effective Date	Upon FERC Order	Upon Final FERC Order	30 Days After Final FERC Order	Other Timing
3.2.1	Ramping: make reasonable efforts to limit ramping to 3 inches/hour, with preferred target of 2 inches/hour, using existing equipment		X					
3.2.2	Ramping: make reasonable efforts to limit ramping to 2 inches/hour; ramping not to exceed 3 inches/hour						X	
3.3.1	Instream Flows: make reasonable efforts to implement minimum instream flows in the bypass reach using existing equipment	X						
3.3.2	Instream Flows: meet instream flow limits						X	
3.4	Temporary Reduction in Canal Flow: reduce diversion flow to maximum of 25 cfs from April 15 to June 30 each year	X						
3.5	Planned Outages: to extent feasible, limit planned outages to coincide with temporary reduction in canal flow or summer, and non-summer outages to 24 hours			X				
3.6	Flushing: restrict flushing of sand settling basin to periods when bypass flows are > 500 cfs, and preferably > than 1,000 cfs			X				
3.7	Intake Screens: operate and maintain in working order	X						

Sec.	PM&E Measure (see appropriate section number in Agreement for specific wording of measures)	Upon Effective Date	15 Days After Effective Date	30 Days After Effective Date	Upon FERC Order	Upon Final FERC Order	30 Days After Final FERC Order	Other Timing
3.8	Fishway Auxiliary Water Intake: implement method to keep fish ladder auxiliary attraction water bar rack sufficiently free of debris							no later than first in-water work opportunity after the Final FERC Order
3.9	Ground-Disturbing Activities: implement requirements to limit impacts to terrestrial and wetland habitat from ground-disturbing activities			X				
3.10	Rare, Threatened and Endangered Terrestrial Species: provide access and data			X				
3.11	Cultural Resources Management Plan: consult with SHPO			X				
3.11	Cultural Resources Management Plan: implement revised CRMP as soon as practicable					X		
3.12	Recreation Facilities: maintain existing recreation facilities	X						
3.12	Recreation Facilities: replace existing toilet with portable, ADA-accessible toilet, when necessary							when existing toilet needs replacing
3.12	Recreation Facilities: provide one additional picnic table at Powerdale Park							within 1 year of Effective Date
3.12	Recreation Facilities: provide second additional picnic table at Powerdale Park w/in two years of Effective Date							within 2 years of Effective Date

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Sec.	PM&E Measure (see appropriate section number in Agreement for specific wording of measures)	Upon Effective Date	15 Days After Effective Date	30 Days After Effective Date	Upon FERC Order	Upon Final FERC Order	30 Days After Final FERC Order	Other Timing
3.12	Recreation Facilities: install trail directional signs and a Project interpretive sign						X	
3.12	Recreation Facilities: at powerhouse day-use site, install portable, ADA-accessible toilet and construct pathway; install warning signs						X	
3.13	Information Sharing: provide reasonable access to data created with existing equipment			X				
3.13	Information Sharing: maintain records and make records available to Parties; convene annual meeting						X	
3.14	Maintenance of Lands During Interim Period: continue to own Subject Lands; do not dispose, encumber or initiate changes in character of lands	X						



¹ Times designated in this schedule are subject to early decommissioning pursuant to Section 5 of the Settlement Agreement.

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Hood River, Oregon**

APPENDIX B TO SETTLEMENT AGREEMENT

POWERDALE HYDROELECTRIC PROJECT DECOMMISSIONING PLAN

May 2003

**PacifiCorp
Portland, OR**

PacifiCorp
Powerdale Hydroelectric Project
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DECOMMISSIONING PLAN FOR PACIFICORP'S POWERDALE HYDROELECTRIC PROJECT, HOOD RIVER, OREGON

This Decommissioning Plan is part of and governed by the Settlement Agreement among PacifiCorp, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), Oregon Department of Fish and Wildlife (ODFW), Oregon Water Resources Department (OWRD), Oregon Department of Environmental Quality (ODEQ), Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS), American Rivers (AR), and the Hood River Watershed Group (HRWG).

Permitting for the proposed project decommissioning is scheduled to begin mid-year in 2009, with initiation of on-the-ground decommissioning activities in the first quarter of 2010, as reflected in Appendix A, Table B of the Settlement Agreement. Prior to applying for the permits necessary to decommission the Powerdale Project, PacifiCorp will develop detailed engineering plans. These plans will be of a detail required to obtain the necessary permits and include the best management practices (BMPs) and environmental protection guidelines in effect at that time. Where feasible, decommissioning activities are scheduled to occur during periods that will minimize the impact on fish and terrestrial resources (Section 2). A tabular summary of elements to be removed or retained is presented in Table 1.0-1. Project drawings depicting the decommissioning scenario presented below can be found in Section 5.0.

1.0 DECOMMISSIONING SCENARIO

1.1 DIVERSION DAM

PacifiCorp will completely remove the existing diversion dam including the roller gates, hoists and bridge, piers, walls, spillway, un-gated overflow section, fishway, embankment sections, and intake to the level of the original riverbed. The method of accomplishing this portion of the decommissioning activities while maintaining upstream and downstream fish passage and protecting the resource is described below. Operation of the Farmer's Irrigation District (FID) powerhouse, directly upstream from the Powerdale dam, will not be impacted by this action.

1.1.1 Cofferdams

In order to perform the demolition and removal of the concrete portions of the dam and intake in the dry, upstream and downstream cofferdams will be placed across the river. It is expected that natural sediments obtained from the river and surrounding areas (sands, gravels and cobbles) will be used to construct as much of the cofferdams as possible, with the remaining materials imported from another source.

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Table 1.0-1. Disposition of project components at decommissioning.

Project Element	Sub-Element	Removed	Left in Place
Dam	Roller Gates & Hoists	X	
	Bridge	X	
	Piers	X	
	Walls & Misc.	X	
	Spillway	X	
	Fish Ladder	X	
	Intake	Trashracks	X
Traveling Screens		X	
Supporting Equipment		X	
Control Gate & Trash Gate		X	
Control Gate House		X	
Concrete Intake Structure		X	
Power Canal		X (rock-filled and cover/blend)	
Steel Flume		X	
Sand Settling Basin		X	
Transition Structure		X	
Flowline	Wood Stave - 480 feet	X	
	Steel - 1,090 feet		X
	Wood Stave - 1,564 feet	X	
	Steel - 1,070 feet		X
	Wood Stave - 488 feet	X	
	Steel - 2,368 feet		X
	Wood Stave - 493 feet		X
	Steel - 1,849 feet		X
	Wood Stave - 480 feet		X
	Steel - 4,536 feet		X
Bridge			X
Surge Tank		X	
Powerhouse	Superstructure		X
	Substructure		X
	Generator Rotating Parts	X	
	Turbine Rotating Parts	X	
	Mechanical & Electrical Equipment	X	
	Maintenance Garage	X	
	Gantry Crane	X	
Tailrace			X
Switchyard			X

The western end of the upstream cofferdam will be located on the natural riverbank that lies between the Powerdale intake structure and the FID powerhouse. The eastern end will be

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positioned at the right abutment of Powerdale dam near the transition between the overflow and right embankment sections (Figure 1.1-1).

The downstream cofferdam will be constructed approximately 200 feet downstream of the dam's spillway crest. This location will allow an access road to be aligned and constructed across both the intake canal and the cofferdam; the road is necessary to access the construction area and connect the east and west sides of the site (Figure 1.1-1). Both the upstream and downstream cofferdams will remain in place until the concrete portions of the intake and spillway sections of the dam are removed.

1.1.2 Fish Passage

Prior to changing any of the existing fish passage facilities, or constructing any new fish passage facilities associated with dam removal, PacifiCorp will prepare final fish passage design and construction plans in consultation with NMFS, USFWS, ODFW and CTWS. The final design and construction plans will be consistent with Section 1.1.2.2 below and the following criteria, which may be modified with the written agreement of PacifiCorp, NMFS, USFWS, ODFW and CTWS.

(i) The outfall from the flume shall be designed in accordance with, as appropriate, sections 7.4.1, 7.4.2, 7.4.3, 13.10.4, 13.10.5 and 13.10.6 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date of the Settlement Agreement. In addition, the pool volume and depth will be designed to minimize pool bottom surface velocities and injury to fish. For purposes of section 13.10.5, the design will minimize, but may not completely avoid, creation of false attraction flows. The outfall shall have a 10-foot minimum drop to the pool below (to prevent adults from entering the pipe), and shall be designed to provide smooth, rounded edges and surfaces, using materials similar to the flume, to minimize injury to fish exiting the pipe and to jumping adults;

(ii) The pipe/flume shall be designed in accordance with, as appropriate, sections 13.9.3.1, 13.9.3.4, 13.9.3.5, 13.9.3.6, 13.9.3.9, 13.9.3.11, 13.9.3.13 and 13.9.3.14 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date of the Settlement Agreement. Weathered steel surfaces presently existing on the steel flume sections, or alternatively the galvanized surfaces of standard culvert material, shall be considered acceptable for this application, provided that, if the interior surfaces of the existing steel flume are considered to be too rough to meet NMFS' Passage Facility Guidelines and Criteria, PacifiCorp shall install a liner or conduct sand blasting of the interior surfaces;

(iii) The temporary approach to the fishway channel entrance will be constructed with "field-placed" structure materials to optimize local hydraulic conditions. PacifiCorp will provide NMFS, USFWS, ODFW and CTWS a minimum of seven days notice prior to the placement of these materials to allow their on site participation in field direction of this placement work;

(iv) The control structures within the temporary approach channel to the fishway entrance will be placed at least one channel width apart. These structures will have less than one foot of head differential (measured from upstream of the boulder control structures to the downstream water surface elevation), and will not span the entire width of the approach channel (unless the depth provided over the channel-spanning structure is at least one foot);

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(v) If fish will be passing through the temporary culvert(s) installed in the downstream coffer dam, such culverts shall meet, as appropriate, sections 9.7.5, 9.7.8 and 9.7.9 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date of the Settlement Agreement. In addition, the bypass shall be designed in accordance with, as appropriate, sections 9.3.2 and 9.3.3 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date;

(vi) The design will provide supplemental flow to the fishway discharge to allow optimal operation of the fish ladder and temporary approach channel; and

(vii) The design will be developed such that flow conveyed in the bypass flume is delivered below the temporary approach channel in a manner that will maximize both upstream and downstream passage. The design will be developed such that the bypass flume and the upstream temporary approach channel work together to both attract adult fish to the temporary approach channel, minimize delay of both upstream and downstream migrants, and minimize injury to fish passing downstream.

1.1.2.1 ESA Agency Approval

For ESA purposes, PacifiCorp will submit fish passage design and construction plans for the bypass flume, plunge pool, culvert, temporary approach channel, and fish ladder for NMFS and USFWS approval. If required to minimize the effect of any incidental take of listed species, NMFS and USFWS may require, as a condition of their approval, additions or changes to such design plans, provided that if NMFS or USFWS requires as a condition of approval more than a minor change to such design or construction plans, or alters the basic design, location, scope, duration or timing of such plans, the condition will be considered inconsistent with the Settlement Agreement.

1.1.2.2 Upstream Passage during Dam Removal

Unless NMFS, USFWS, ODFW and CTWS agree that upstream fish passage is not necessary, such passage will be maintained initially by placing culverts in the downstream cofferdam as it is constructed, thereby allowing continued access through the existing stream channel to the fish ladder until the construction of the bypass flume (Section 1.1.2.2) and an artificial upstream fish passage channel are completed and operating.

An artificial upstream fish passage channel will be constructed coincidental to the construction of the cofferdams and will be located between the existing fish ladder structure and the right riverbank. This channel will extend from a mid-point on the existing fish ladder to a location immediately downstream of the downstream cofferdam (Figure 1.1-1). Upon completion of the channel, culvert access through the downstream cofferdam will be closed and upstream migrants will be directed to the fish ladder structure through this newly constructed fish passage channel.

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Figure 1.1-1. Water bypass and fish passage plan.



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PacifiCorp will continue to maintain the existing fish ladder during dam removal to ensure continued upstream fish passage into the ODFW and CTWS trapping and sorting facility. The return channel exiting the sorting facility will be extended upstream, beyond the upstream cofferdam, to allow the return of fish to the river channel (Figure 1.1-1).

1.1.2.2 Downstream Passage/Bypass Flume

River flow will be diverted past the work zone during removal of the dam using recycled portions of the existing water conveyance system's steel flume materials, which will be removed as described in Section 1.3. This bypass flume will provide downstream fish passage and will extend from above the upstream cofferdam to just below the downstream cofferdam, passing over the overflow section and existing fish ladder. The inside surface of the bypass flume will be smooth, with steady gradient and gradual bends. NMFS, USFWS, and ODFW will be given the opportunity to inspect the bypass flume prior to installation.

The upstream fish return channel from the ODFW and CTWS sorting facility and the intake for the water bypass flume will be separated by the placement of rock between them to avoid the entrainment of upstream migrants into the downstream flume.

To provide attraction of upstream migrants to the new artificial upstream passage channel, discharge from the bypass flume will be positioned to fall directly into the entrance of the newly constructed upstream passage channel. This discharge will be designed to act as both a barrier to upstream migrants attempting to enter the bypass flume, while at the same time attracting them to the upstream passage channel and fish ladder.

This water bypass flume will also serve as the passage route for downstream migrating fish including adult bull trout and steelhead kelts. The discharge pool will be excavated to ensure adequate area and depth prior to diverting flow to prevent injury to the downstream migrants.

1.1.3 Diversion Dam

Upon closure of the upstream and downstream cofferdams, the area between them will be dewatered by pumping and access will be constructed to allow removal of the concrete portions of the dam and intake structure.

It is expected the concrete will be broken up with mechanical equipment and controlled blasting. Reinforcing steel will be separated and the concrete materials from the dam will be reduced to a manageable size and hauled to a location on site for burial. Steel materials will be hauled off site for proper disposal or salvage.

After removal of the concrete structures, the riverbed between the upstream and downstream cofferdams will be contoured to match upstream and downstream invert elevations using on site materials.

After completion of the removal work and riverbed grading within the confines of the cofferdams, the river will be returned to the natural channel by breaching the upstream and downstream cofferdams. As flows are not expected to be of sufficient quantity to effectively wash the cofferdam materials downstream, a majority of these materials will be removed using

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mechanical excavation equipment and reclaimed for use in riverbank grading and armoring. The remaining, unrecoverable portions of the cofferdams are expected to fill in and adjust the streambed to natural contours. With the river returned to a natural course the remaining concrete structures, including the fishway and un-gated overflow section, will be removed. Access for this work will be gained directly from the riverbank utilizing remaining portions of the cofferdams, or by developing access points using removed cofferdam materials, as needed. Dam removal work will be concluded with the placement of materials along the riverbank to harden the disturbed bank areas and prevent erosion during the upcoming winter period.

Earthen materials from the two dam embankments will be spread on site or relocated for use in covering buried concrete materials from the dam and flowline removal. These earth materials will be contoured and revegetated to blend with the surrounding area and to prevent erosion into waterways. Likewise, areas disturbed by dam removal will be revegetated and invasive or exotic plants will be controlled pursuant to a Revegetation and Mitigation Plan described in Section 3.4. Erosion and sediment control measures will be implemented as determined in the Erosion and Sediment Control Plan (ESCP), described in Section 3.1, to protect the environment and will remain in place until new vegetation is established.

The volume of sediment stored in the 5-acre-foot reservoir behind Powerdale dam is minimal. It is expected that high flows experienced in the Hood River during the first winter after dam removal will remove any sediments that remain in the reservoir area. No specific treatment is planned for removing the sediments as part of the dam removal work. Any remaining accumulations of sediments are expected to be flushed downstream with the natural flows in the river.

1.2 INTAKE

The concrete intake structure, located on the left bank adjacent to and just upstream from the dam, will be removed to original riverbed. The 6-foot-wide gated trash sluice, trashracks, traveling basket fish screens, and all related structural, mechanical and electrical equipment associated with the intake will be removed. The intake headgate that regulates flow from the intake into the power canal and the trash gate located between the intake structure and the trash sluice will be removed. Several miscellaneous structures including the operator's house and the control gatehouse will be removed, as well as some non-essential fencing. The operator's house may be left in place, at the discretion of a designated grantee as defined in Section 4.4 of the Settlement Agreement.

1.3 POWER CANAL, STEEL FLUME AND SAND-SETTLING BASIN

The 604-foot-long trapezoidal concrete power canal will be broken up and filled with available materials from the cofferdams and earth embankments, and the area will be graded to blend with the adjoining river bank. The 550-foot-long steel flume, 142-foot-long concrete sand-settling basin, 254-foot-long steel flume, and 33-foot-long concrete structure transitioning into the flowline will be removed. Concrete debris from the removal of these facilities will be broken into a manageable size and buried on site. Miscellaneous metals and wood materials will be hauled to an off site disposal location.

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1.4 FLOWLINE (PIPE)

The flowline is approximately 14,500 feet in length and extends from the concrete transition structure (steel flume to flowline) to the surge tank. With the exception of several short segments of riveted steel pipe, it was originally constructed of wood stave pipe for its entire length. The flowline is supported on concrete saddles along most of its length. Each saddle is 9 feet wide at its base, 12 feet, 8 inches wide at the top, and approximately 1-foot thick.

In 1965 approximately 3,600 feet of the original wood stave pipe was replaced in kind. Since 1978, remaining portions of the original wood stave pipe flowline have been replaced with steel pipe on an as-needed basis. The flowline presently consists of the remaining approximately 3,600 feet of vintage 1965 wood stave pipe, 2,000 feet of the original riveted steel plate pipe, and 9,000 feet of newer spiral-welded steel pipe.

Beginning at the transition structure, the first 4,692 feet of flowline includes 2,532 feet of 10-foot-diameter wood stave pipe. This wood stave pipe is positioned along this portion of the flowline in 3 distinct sections. The first is a 480-foot-long section that starts at the transition structure to the first section of spiral weld steel pipe. The steel pipe runs for a length of 1,090 feet before transitioning back into a 1,564-foot-long section of wood stave pipe. The flowline changes back into a 1,070-foot-long section of steel at this location, leading to a 488-foot-long section of wood stave pipe. All 3 of these sections of wood stave pipe and the associated concrete saddles will be removed. The steel pipe sections in this area will remain in place. Wildlife access will be created beneath each of the two upstream sections of steel flowline (commonly referred to as the "Flat Top" and "Hog Ranch" sections) along this 4,692 stretch by excavating an approximately 5 to 6 foot-high passage below the pipe at approximately the center of each section.

The flowline sections to be removed will be accessed from the diversion dam area along a maintenance road. The steel reinforcing hoops around the wood stave pipe will be cut and the pipe will be crushed with a hydraulic excavator. The metal bands will be separated from the wood stave debris, and both will be loaded into dump trucks and hauled away via the existing access road. The concrete saddles will be broken into small pieces, each no larger than 1 cubic yard. A trench will be dug near the vicinity of the flowline alignment and the concrete pieces buried on location. The trench will be back-filled and the area will be graded to match the natural contours and will be revegetated. Remaining openings into the transition structure and at the ends of the remaining sections of the steel pipe will be secured to prevent ingress.

The portion of the flowline downstream of the lower 488-foot length of wood stave pipe to be removed will remain in place. This includes two relatively short sections of wood stave pipe (493 feet long and 480 feet long respectively) located approximately 7,000 feet and 9,400 feet downstream of the transition structure, along with the remaining portions of the steel flowline.

The steel walkway providing recreation access to the river along the top of the flowline, for a distance of approximately 4,000 feet upstream from the flowline bridge, will be left in place.

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1.5 FLOWLINE BRIDGE

A 130-foot-long riveted steel truss bridge supports the flowline pipe across the Hood River approximately 4,000 feet upstream of the powerhouse. Two large concrete pedestals support this bridge on each bank of the river. The bridge will remain in place to provide a river crossing point for fishermen and recreationists. Access will remain available to the steel catwalk that extends along the flowline for another 4,000 feet upstream from the bridge.

1.6 SURGE TANK

A 28-foot-diameter riveted steel plate surge tank stands 207 feet high on 4 support legs. It has a 7-foot 9-inch-diameter riser pipe and a 3-foot-diameter overflow pipe that extends from the tank to the tailrace. A shaped charge will be used to topple the surge tank. Once it is down, it will be cut into pieces and salvaged as steel scrap.

1.7 POWERHOUSE

The 86-foot-wide by 51-foot-long concrete powerhouse structure will remain in place. All internal non-structural features of the building will be removed. Window glass will be replaced with steel plates or other architectural treatments to secure the facility. The metal-sided maintenance garage located immediately adjacent to the south side of the powerhouse will be removed. The outdoor traveling gantry crane that spans the powerhouse will be used to decommission and remove equipment from the interior of the powerhouse, and then the operable components of the crane will be dismantled and removed.

All oil and hydraulic fluids will be drained from the equipment located inside the powerhouse, and any loose equipment, parts and materials will be removed. Internal rotating generator and turbine components will be removed. The turbine pit will be sealed with concrete. A switch room, located on the west side of the operating floor level in the powerhouse contains distribution system switches and controls associated with the switchyard/substation located west of the powerhouse. Power will be maintained to this room and the switch/control panels will remain functional for as long as is necessary to support remaining facilities. These facilities may be relocated outside of the powerhouse in the future; however, they must remain in service until that time to facilitate operation of the local power distribution system.

The areas surrounding the surge tank and maintenance garage will be re-graded to match the surrounding contours. The powerhouse building, all remaining equipment, and adjacent remaining facilities will be secured for safety and to prevent unauthorized ingress.

1.8 SWITCHYARD

The switchyard and transmission lines serve as part of PacifiCorp's local and regional transmission/distribution system and are independent of the Powerdale Project. All components related to the generation of power by the Powerdale Project will be removed from the switchyard. Equipment required to supply or control power to the distribution switch/control panels in the powerhouse and equipment associated with the operation of PacifiCorp's

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transmission/distribution system will remain in service. The existing fencing around the switchyard and powerhouse will be modified as necessary to provide additional security once the powerhouse is no longer staffed.

2.0 DECOMMISSIONING SCHEDULE

PacifiCorp will accomplish the decommissioning of the Powerdale Project according to Section 4 and Appendix A of the Settlement Agreement. It is intended that the decommissioning activities can be completed in one construction season; April 1 through November 15. Required permits will be obtained prior to the construction season. Timing restrictions will be in effect for any in-water work in to protect sensitive life stages of aquatic species, and to minimize effects to terrestrial resources. For all in-water decommissioning work, PacifiCorp will conduct such work between July 15 and August 31, or outside of that time period with the approval of NMFS, USFWS and ODFW. For purposes of this decommissioning action, "in-water work" does not include dam removal or other decommissioning actions performed in areas that have been dewatered for purposes of decommissioning actions. Actions that are likely to occur outside of the July 15 to August 31 period include the following decommissioning actions:

- (i) Construction and removal of the upstream and downstream cofferdams, cofferdam materials, and culverts (Section 1.1.3).
- (ii) Removal of the artificial upstream fish passage channel and bypass flume (Section 1.1.2.1).
- (iii) Placement of materials (relocated cofferdam materials and available streambed materials) along the river to create access for removal of remaining portions of the dam and fish ladder (Section 1.1.3).
- (iv) Placement of materials to regrade and armor the east and west banks of the river to harden the disturbed areas (Section 1.1.3).
- (v) Regrading of the streambed above and below the dam as necessary to assist with removal of any barriers to fish passage created as a result of decommissioning activities (Section 1.1.3).

These activities are scheduled to occur outside of the July 15 through August 31 time period, as shown in Appendix A, Table B to the Settlement Agreement and, as such, are exempt from prior approval by NMFS, USFWS and ODFW. Preparatory work will be performed from April through June, and post-decommissioning work may be completed in November and December, after a return of the river to the natural channel.

PacifiCorp will provide NMFS, USFWS, ODFW and CTWS with reasonable notice prior to initiating in-water work to allow them to view the work and recommend fish salvage or other immediate measures to avoid fish stranding or delay.

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3.0 DECOMMISSIONING PROTECTION, MITIGATION AND ENHANCEMENT MEASURES

3.1 EROSION AND SEDIMENT CONTROL PLAN

PacifiCorp will develop and implement an Erosion and Sediment Control Plan (ESCP), in consultation with and with the approval of NMFS, USFWS, ODEQ, ODFW and CTWS, prior to any in-water decommissioning actions. The ESCP will identify specific methods to be implemented at each work area to protect water quality and aquatic habitat. The objectives of the ESCP will be to (i) protect the Hood River from unplanned releases of sediment and debris during decommissioning activities; (ii) appropriately dispose of sediment and decommissioning debris in accordance with applicable laws, the Spill Prevention Control and Countermeasure Plan, and public health and safety; (iii) implement permanent revegetation measures consistent with BMPs; and (iv) ensure that dam removal will be conducted in dry conditions using a cofferdam and artificial channel to divert flows from work areas.

The ESCP will also specify measures such as berms, ditches, sediment retention basins, silt fencing, and site restoration to be used for protecting natural resources during the decommissioning activities.

3.2 SEDIMENT AND FISH PASSAGE MONITORING; CONTINGENCY PLAN

PacifiCorp will perform a geomorphology study of the river channel shortly after the effective date of the Settlement Agreement for the purpose of describing current geomorphic conditions in the Hood River from 2,200 feet downstream of the dam to 1,000 feet upstream of the dam, or above the vegetated island, whichever is farther. This information will be used to predict potential impacts of sediment released from dam removal activities on fish passage and aquatic habitat downstream of the dam location.

PacifiCorp will develop a fish passage monitoring and mitigation plan in consultation with NMFS, USFWS, ODFW, ODEQ and CTWS. The plan will be approved by NMFS, USFWS and ODFW and implemented following removal of the cofferdams and the return of the river to its natural channel. In the event a fish passage obstruction, as defined by the plan, is cause or exacerbated by dam removal, PacifiCorp will restore adequate fish passage by implementing the mitigation measures set forth in the plan.

PacifiCorp will have no obligation to monitor or mitigate for obstruction to fish passage created by dam removal for more than one cycle of seasons beyond the return of the river to natural conditions, in accordance with the above mentioned geomorphology report, and as determined by a team composed of representatives of NMFS, USFWS, ODFW, CTWS and PacifiCorp.

3.3 RARE, THREATENED AND ENDANGERED SPECIES PLAN

PacifiCorp will complete surveys for federal- or state-listed rare, threatened and endangered species in areas planned for construction. All decommissioning activities will be planned and designed to minimize direct impacts on wildlife species and their habitat.

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3.4 REVEGETATION AND MITIGATION PLAN

PacifiCorp will consult with the Settlement Parties to develop a Revegetation and Mitigation Plan (RMP) that will address how PacifiCorp, in conducting decommissioning activities, will (i) minimize the area of disturbance to the extent possible; (ii) adhere to conditions in any applicable Army Corps of Engineers or Oregon Division of State Lands wetlands permit; (iii) consult with state and federal wildlife agencies, CTWS and, when necessary, the Columbia River Gorge Commission (CRGC) prior to determining appropriate protection measures; (iv) limit construction to the summer through fall time period; (v) revegetate disturbed areas with native vegetation to the extent possible based on existing vegetation cover type mapping and potential wetland delineations; and (vi) control sedimentation of aquatic habitat as set forth in the ESCP.

PacifiCorp will have no obligation to compensate for unavoidable wetland alteration following the removal of portions of the wood stave flowline and the associated artificial water source.

3.5 CULTURAL AND HISTORIC MEMORANDUM OF AGREEMENT

PacifiCorp will draft a Memorandum of Agreement with the State Historic Preservation Officer (SHPO) prior to initiating any decommissioning activities. PacifiCorp will photographically document eligible properties for pictorial preservation by the National Register. Additionally, PacifiCorp will consider recordation of eligible properties to the Historic American Buildings Survey/Historic American Engineering Record standards, and architectural salvage. PacifiCorp will consult with the SHPO, the National Park Service, the U.S. Army Corps of Engineers, CTWS, the Oregon Historical Society, the Hood River County Historical Society, and the County of Hood River, as appropriate, prior to modifying any project structures.

In the event that ownership of the property and the remaining eligible facilities are transferred to another entity, PacifiCorp will provide documentation acknowledging that the facilities are eligible for listing in the National Register and require treatment in a manner consistent with the National Historic Preservation Act.

3.6 RECREATION PLAN

PacifiCorp may restrict or prohibit public access to the day-use sites and the bypass reach while portions of the decommissioning activities take place. PacifiCorp will provide appropriate signage and public notification prior to demolition and restoration activities to inform the public of planned activities and temporary restrictions. PacifiCorp will implement a demolition program that minimizes the length of time that the river is affected to minimize impacts to the fishing experience and, where feasible, will restore river trails, access roads and parking areas to pre-construction conditions following decommissioning.

PacifiCorp will not be required to perform additional measures to address impacts to land use, land management, aesthetics or visual resources during or after decommissioning.

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4.0 DECOMMISSIONING COSTS

Table 4.0-1 presents the estimated costs of decommissioning the Powerdale Project as described in this Decommissioning Plan.

Table 4.0-1. Decommissioning costs.

Project Element	Decommissioning Price
Survey	\$27,000
River Diversion	\$400,000
River Bypass	\$317,000
Sediment and Erosion Control	\$148,000
Dam	\$1,280,000
Intake	\$378,000
Misc. Structures	\$30,000
Canal	\$37,000
Steel Flume	\$146,000
Sand Settling Basin	\$266,000
Transition Structure	\$58,000
Flowline	\$618,000
Surge Tank	\$157,000
Powerhouse	\$765,000
Substation	\$78,000
Restoration	\$58,000
Project Total	\$4,763,000

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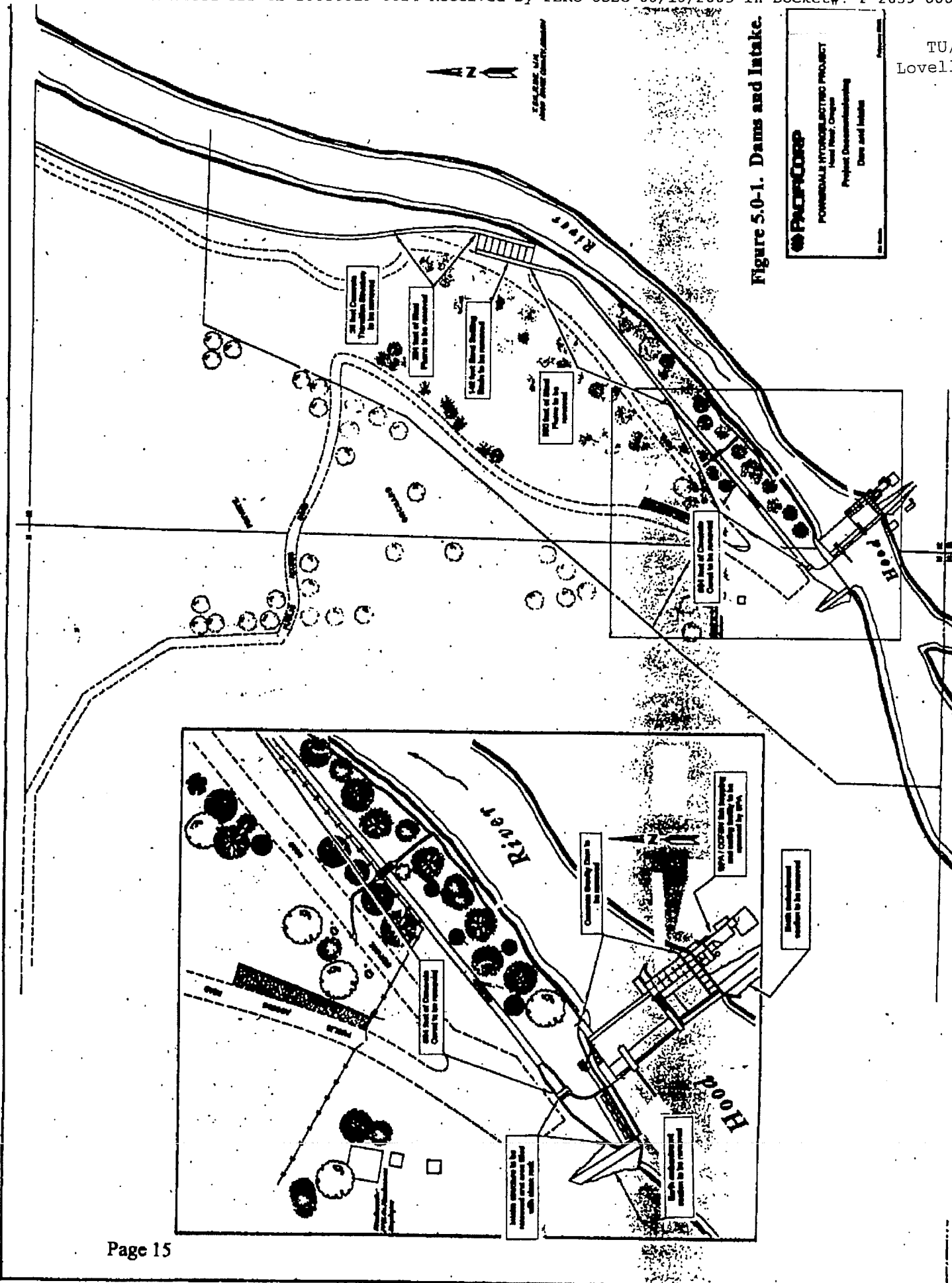
5.0 DECOMMISSIONING DRAWINGS

The following general design drawings, showing the principal project works, graphically depict the Powerdale Project components and features proposed for decommissioning.

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PACIFICORP
 POWERFUL HYDROELECTRIC PROJECT
 Lovell River, Oregon
 Project Description
 Dam and Intake

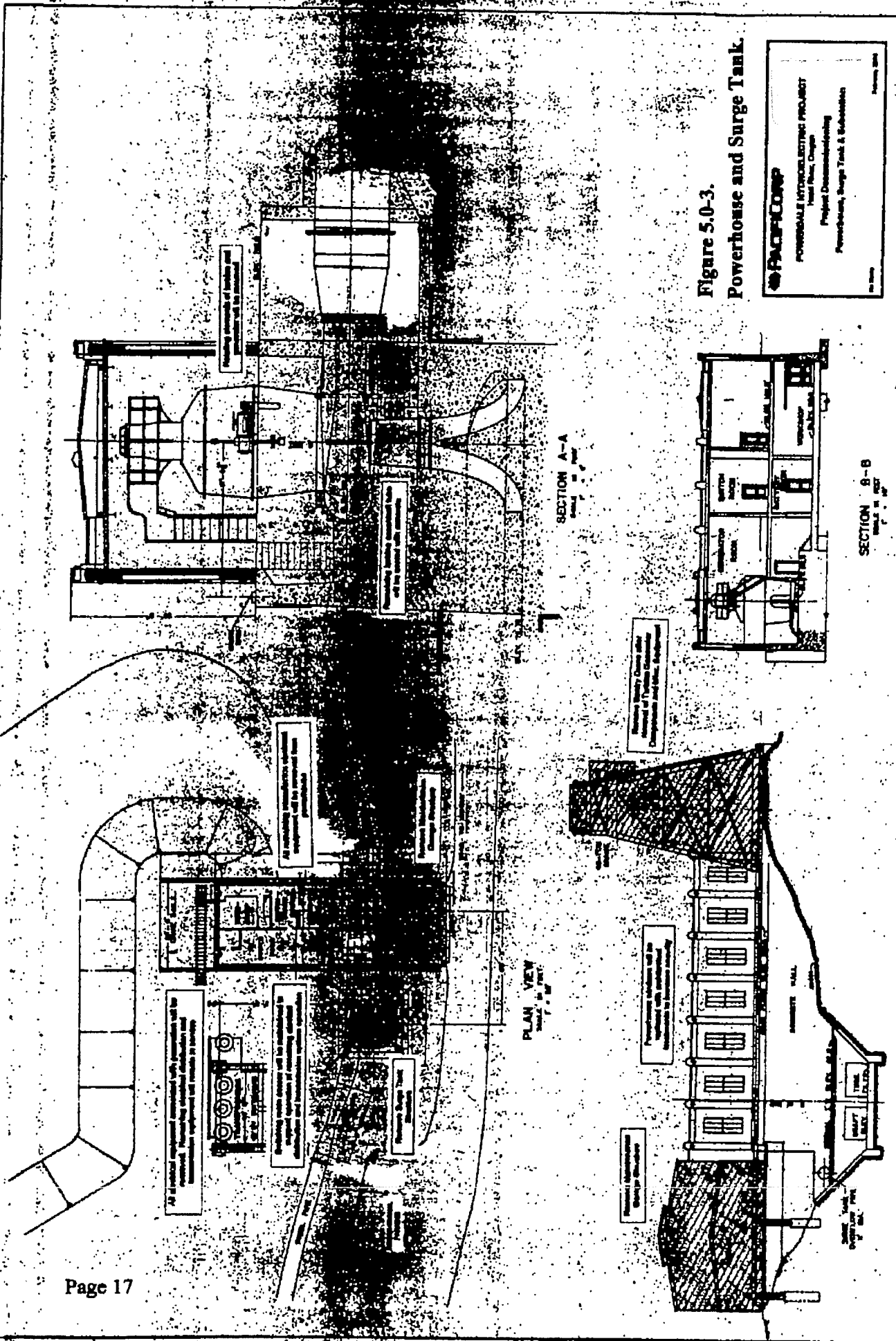
Figure 5.0-1. Dams and Intake.



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Figure 5.0-3.
Powerhouse and Surge Tank.

PACIFICORP
 POWERSALE HYDROELECTRIC PROJECT
 West River, Oregon
 Project Documentation
 Powerhouse, Surge Tank & Substation
 Revision 001



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APPENDIX C
REPRESENTATIVES OF THE PARTIES

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American Rivers
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Washington, DC 20005
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Hood River Watershed Group:

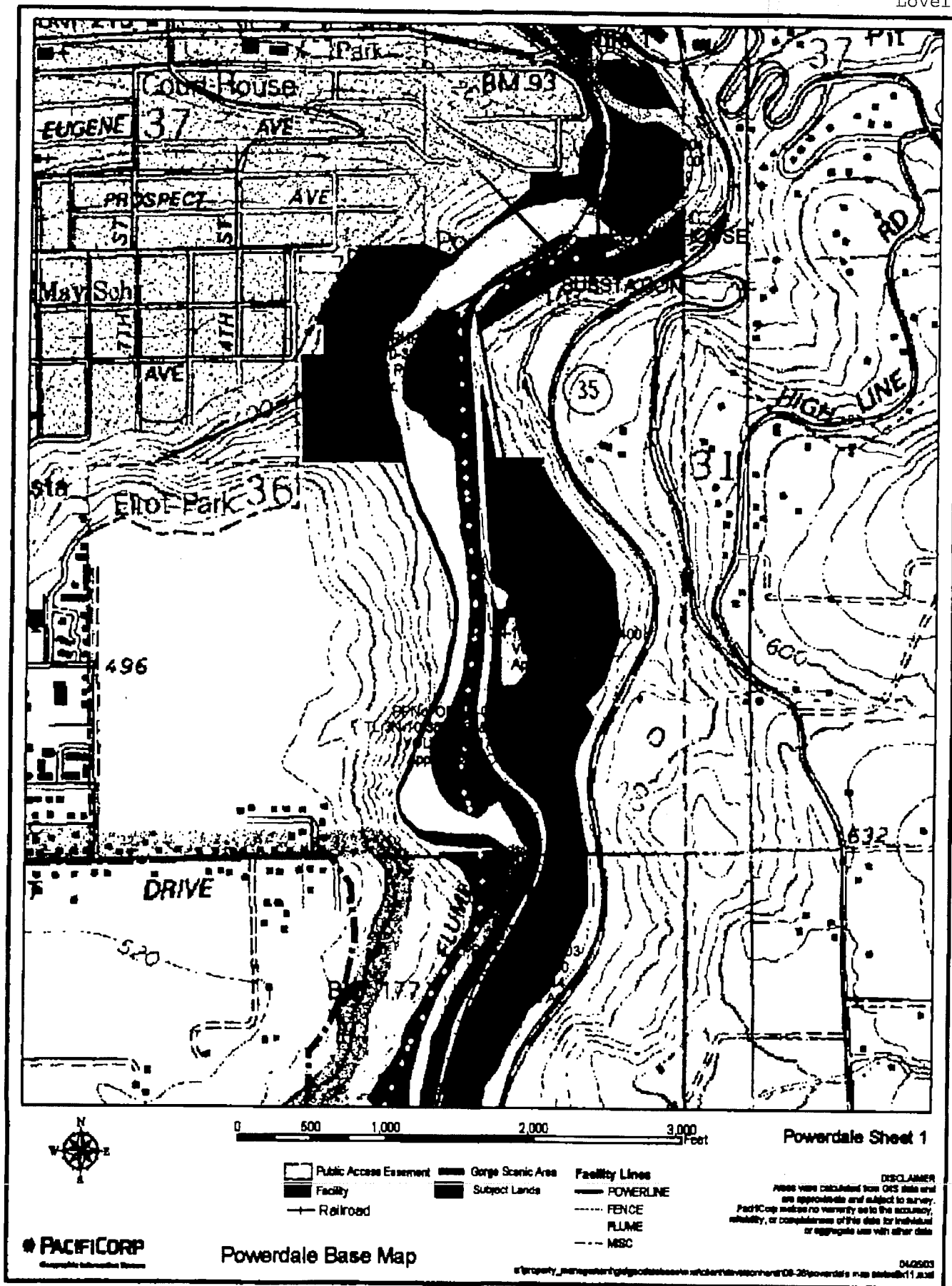
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Chairman
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Hood River Watershed Group
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Hood River, OR 97031
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Fax: (541) 352-7924

Holly Coccoli
Coordinator
Hood River Watershed Group
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Hood River, OR 97031
Phone: (541) 386-2275
Fax: (541) 386-2985 c/o Discover Mortgage

APPENDIX D - SUBJECT LANDS*

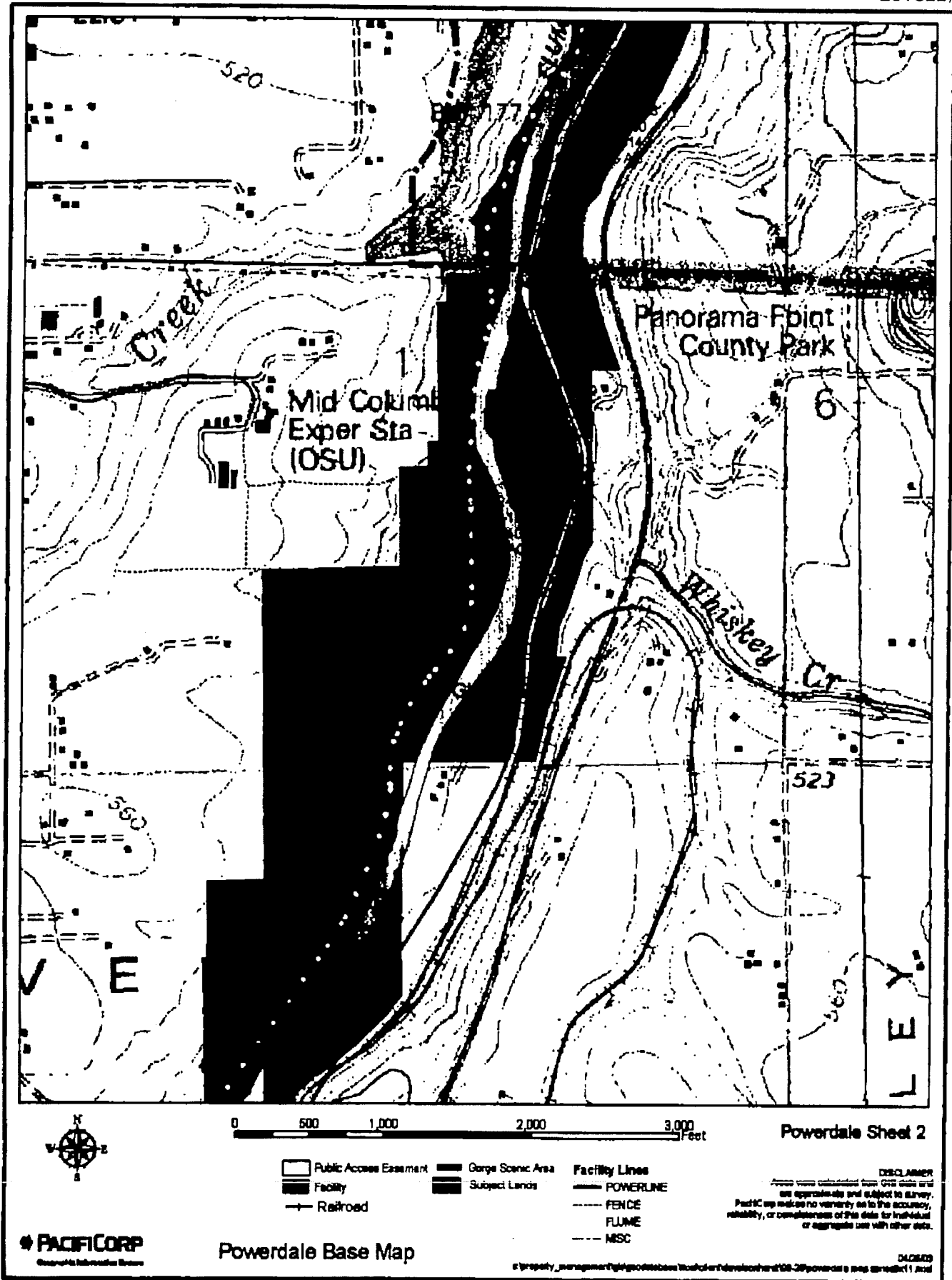
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* The boundaries of these Subject Lands may be amended pursuant to Section 4.4.1 of the Settlement Agreement.

APPENDIX D - SUBJECT LANDS *

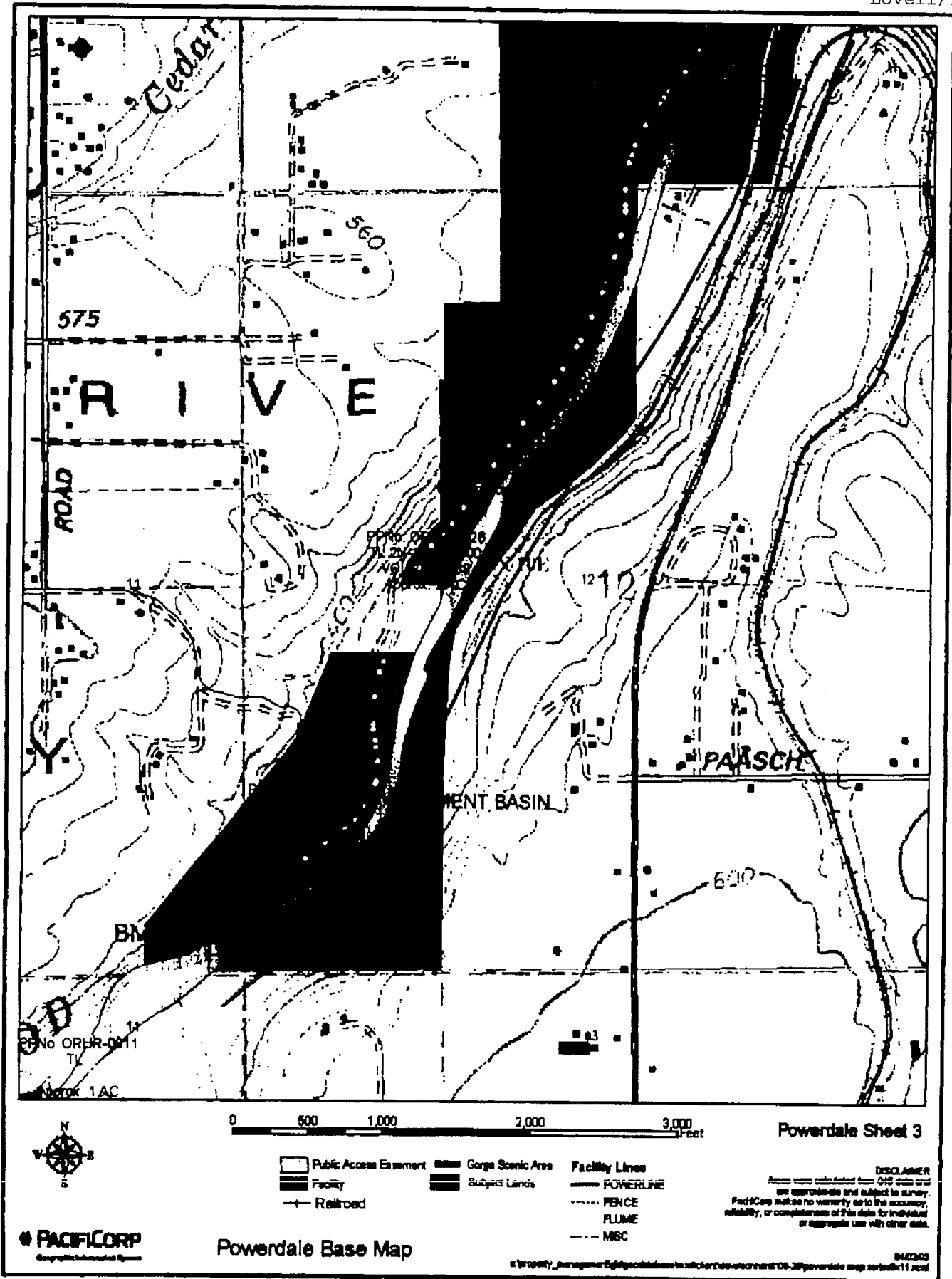
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* The boundaries of these Subject Lands may be amended pursuant to Section 4.4.1 of the Settlement Agreement.

APPENDIX D - SUBJECT LANDS*

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Lovell/90



* The boundaries of these Subject Lands may be amended pursuant to Section 4.4.1 of the Settlement Agreement.

APPENDIX E ALLOWABLE INTERIM PERIOD ACTIONS AND ENCUMBRANCES

- Project Name:** *Oregon State University (OSU) Agricultural Lease Agreement for the Mid-Columbia Agricultural Research and Extension Center in Hood River (File Number OR-HR-0019C).*
- Action:** PacifiCorp may enter into an Agricultural Lease Agreement with OSU on parcel PPNo. ORHR-0019; TL 2N-10-1-100; Vol. 12 PG 187. The lease term may be for one year, beginning November 1, 2002 and ending October 31, 2003, with the option to renew in one year increments until PacifiCorp disposes of the property.
- History:** For the past 35 years, PacifiCorp has permitted OSU to use for agricultural purposes the Northwest corner of land in parcel PPNo. ORHR-0019; TL 2N-10-1-100; Vol. 12 PG 187. Of the total 28 acres, 5.75 acres have been used for growing pear trees. The last lease agreement was signed August 6, 1996 and terminated March 1, 2000. Since that time, PacifiCorp has allowed OSU to continue use of the land with the intent to sign a new agreement. On Feb 25, 2000 PacifiCorp notified OSU of its expired lease agreement and presented OSU with PacifiCorp's new policy, which requires collection of rent for the use of company lands.
- Project Name:** *Hood River Valley Parks & Recreation District (HRVPRD) trail easement request (File Number: OR-HR-0001).*
- Action:** PacifiCorp may grant to HRVPRD a perpetual public trail right-of-way easement across PacifiCorp parcels 100 Sec. 36 Y 3N R10E in Hood River over the existing easement provided for a Sanitary Sewer (Ref P.S. 1709)..
- History:** HRVPRD requested a public trail right-of-way easement across PacifiCorp parcels 100 Sec. 36 Y 3N R10E in Hood River. The Indian Creek trail currently exists on PacifiCorp land and has been open for public use for the past 15-20 years. The proposed location of the new easement would be granted over an existing 10' permanent easement granted to the City of Hood River for Sanitary Sewer granted Dec 2, 1970, Ref P.S. 1709. HRVPRD presented a written trail easement proposal on Feb 27, 2001. On June 20, 2001, PacifiCorp responded with a letter expressing the company's willingness to support the trail easement as long as it did not jeopardize PacifiCorp's service commitment to the community. On June 10, 2002, a land survey of the Indian Creek Trail Segment #1 was completed. The survey provided a legal description for the easement as requested by PacifiCorp. The City and PacifiCorp are prepared to finalize the easement.
- Project Name:** *Jenny Copper request to sell or trade property (file not yet created).*
- Action:** PacifiCorp, after consultation with the Lands Stakeholders, may trade up to 5.7 acres of parcel PPNo. ORHR-0019 land with or grant an easement to Jenny Copper in exchange for fee simple ownership of or an access easement over Jenny Copper's property, Tax Lot # 300.
- Description:** Copper's land currently divides PacifiCorp's property TL 2N-10-12-1300. An original access easement across Jenny Coppers land was signed on Sep 28, 1950. The road currently provides access to the west side of the Powerdale Dam. The easement or right of way is twenty feet in width for private road purposes over and across the described property in Hood River County, otherwise known as Jenny Copper's property, Tax Lot # 300. By its terms, the easement ceases in the event that PacifiCorp's properties in Hood River are acquired by any governmental agency or corporation, or if PacifiCorp's use of the pipeline over the property discontinues for one year or more. If Copper's land is acquired or an access easement created, there would then be contiguous access along the west side of Hood River. Copper expressed interest in trading property with PacifiCorp on March 23, 2000. The land has not yet been acquired because the Copper has not completed a survey. The land could be acquired through a trade or purchase, or access granted by easement.

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Project Name: *Ekker Land use Permit (File Number: OR-HR-0022A).*

Action: PacifiCorp may renew a land use permit to Jerry Ekker and Jannine Ekker, giving the Ekkers permission to occupy and use real property located in Hood River County until PacifiCorp disposes of the property.

History: The most recent permit to occupy real property was granted to the Ekkers on July 21, 1997. This permit ends on June 30, 2007. The purpose of renewing this permit would likely be to obviate the need for PacifiCorp to cut weeds and otherwise maintain the property.

Project Name: *Evans Land use Permit (File Number: OR-HR-0019B).*

Action: PacifiCorp may renew a permit to Helen C. Evans, giving Evans permission to occupy and use 3.5 acres of real property located in Hood River County until PacifiCorp disposes of the property.

History: The initial permit was granted on October 19, 1970. The purpose of renewing this permit would likely be to obviate the need for PacifiCorp to cut weeds and otherwise maintain the property.

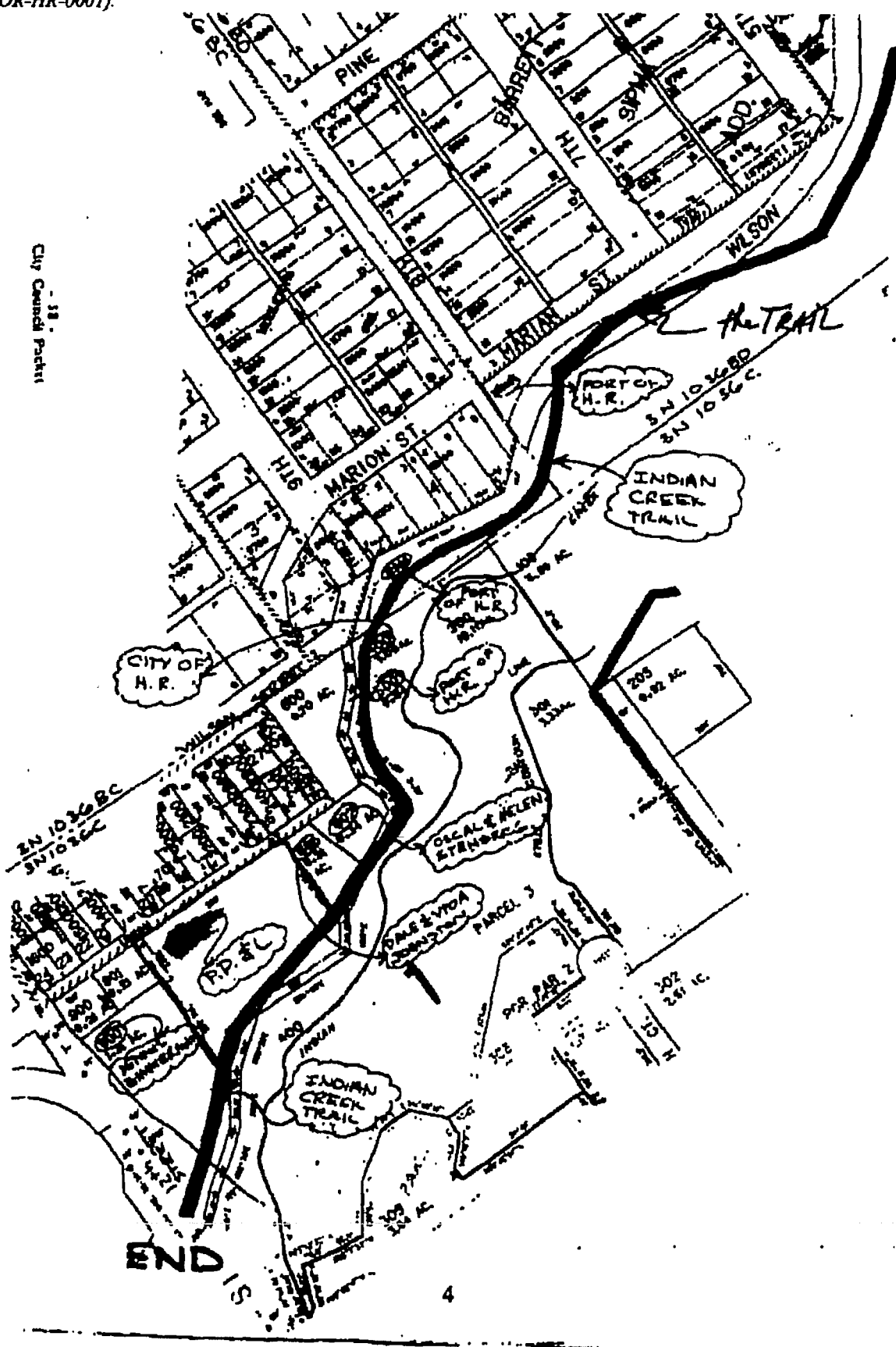
Project Name: *Benton Land use Permit (File Number: OR-HR-0019A).*

Action: PacifiCorp may renew a permit to John M. Benton and Julie Benton, giving the Bentons permission to occupy and use 3.5 acres of real property located in Hood River County until PacifiCorp disposes of the property. The property is 700' in length and 15' in width. TL 2N-10-1-100; Vol. 12 PG 187.

History: The initial permit was granted on July 6, 1982. The most recent permit was granted on June 16, 1995 and ends May 31, 2005. The purpose of renewing this permit would likely be to obviate the need for PacifiCorp to cut weeds and otherwise maintain the property.

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Hood River Valley Parks & Recreation District (HRVPRD) trail easement request (File Number: OR-HR-0001).



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Jenny Copper request to sell or trade property (file not yet created).

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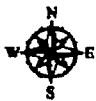
JENNY COPPER
REQUEST TO SELL
OR TRADE PROPERTY.

PPNo. OR 26
TL 2N-1000
VOL 68
AP 100 AC

SUBJECT
PROPERTY

MENT BASIN

DAM



- | | | |
|------------------------|----------------------|----------------|
| Public Access Easement | Gorge Scenic Area | Facility Lines |
| Facility | PacifiCorp Ownership | POWERLINE |
| Railroad | | FENCE |
| | | FLUME |
| | | MISC |

DISCLAIMER
Areas were calculated from GIS data and are approximate and subject to survey. PacifiCorp makes no warranty as to the accuracy, reliability, or completeness of this data for individual or aggregate use with other data.

PACIFICORP
Geographic Information Systems

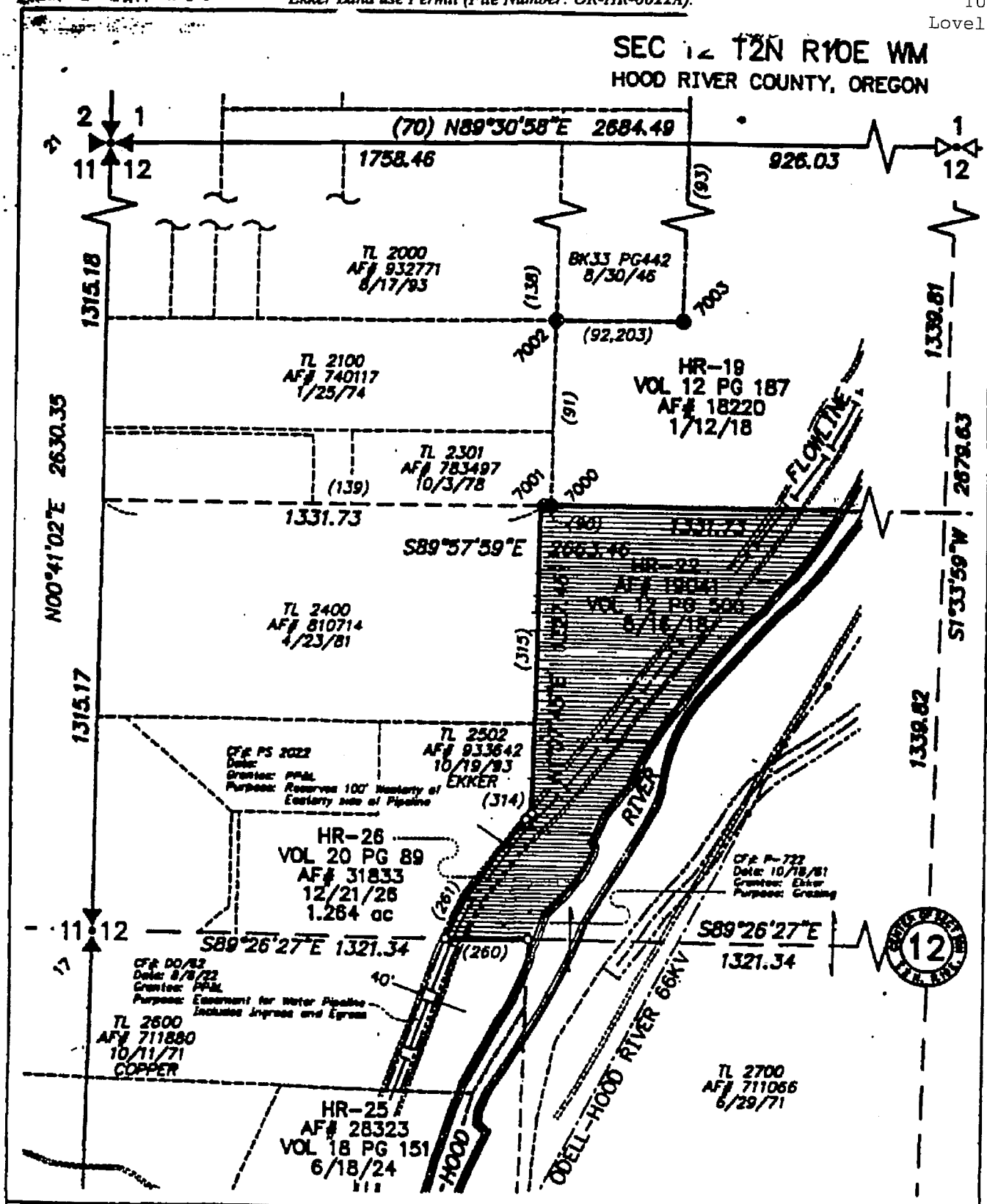
Powerdale Base Map

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Ekker Land use Permit (File Number: OR-HR-0022A).

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SEC 12 T2N R10E WM
HOOD RIVER COUNTY, OREGON



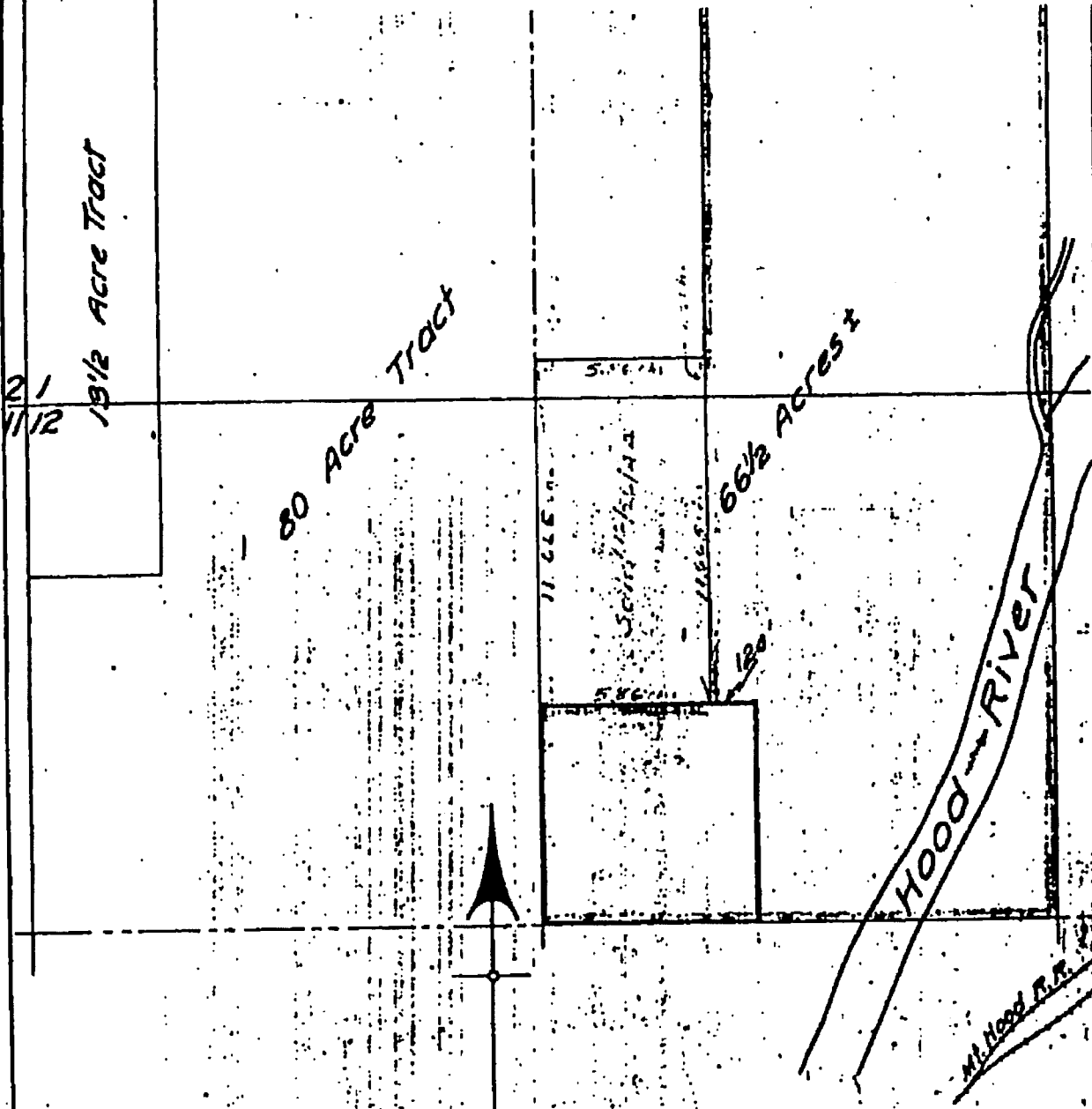
REV	DATE	DESC.	BY	CHK	APP
DR/PR					
DATE	7/19/95				
ENG		DES			
DR	JMG	CH	MRH		
APP					

POWERDALE HYDRO PROJECT HR-26		
6		

SCALE 1" = 400'
REV. 0

Evans Land use Permit (File Number: OR-HR-0019B).

TU/105
Lovell/97



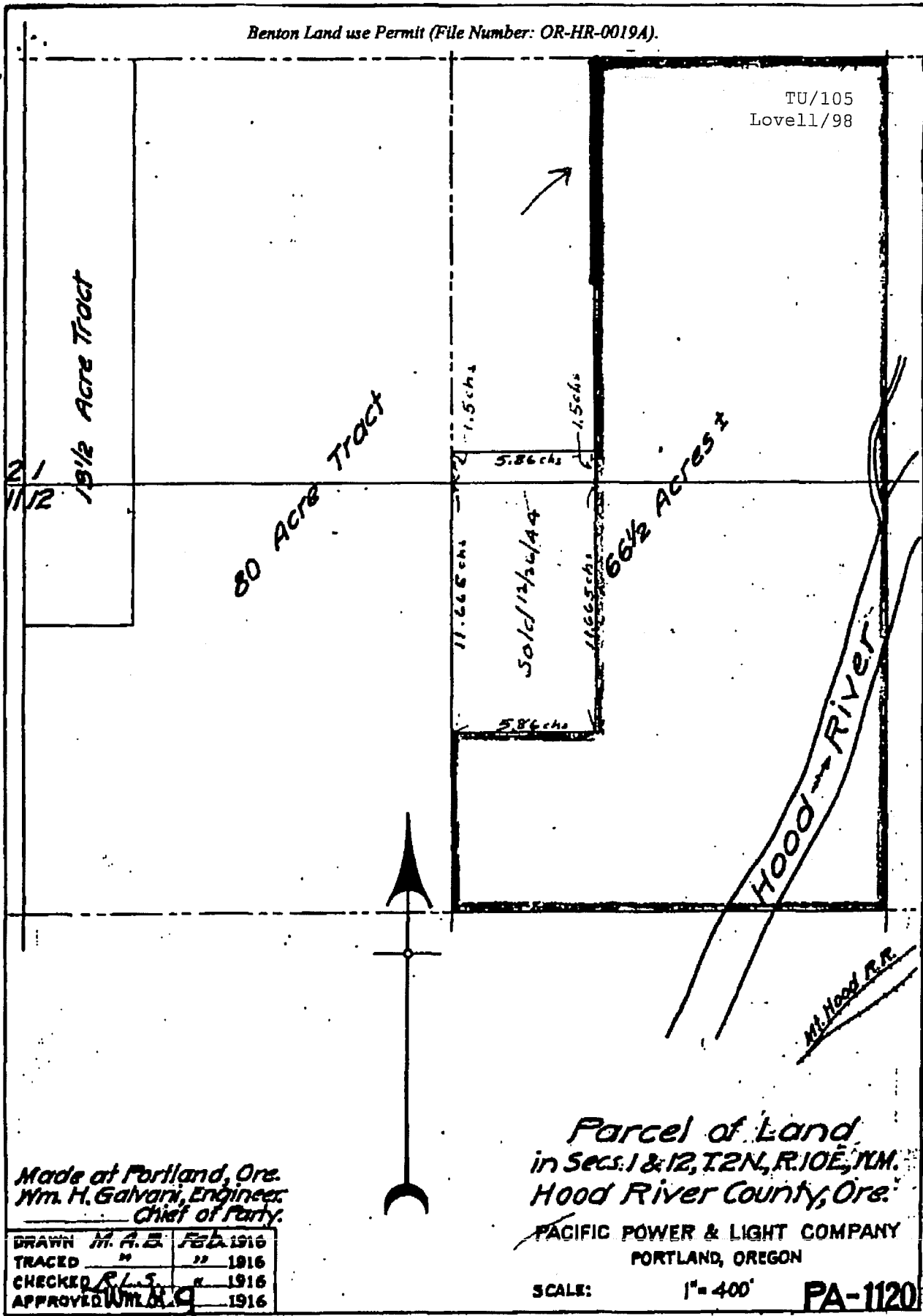
Made at Portland, Ore.
Wm. H. Galvani, Engineer,
Chief of Party.

DRAWN	M. A. E.	FEB	1916
TRACED	"	"	1916
CHECKED	R. L. S.	"	1916
APPROVED	W. H. G.	"	1916

Parcel of Land
in Secs. 1 & 12, T. 2N., R. 10E., 11M.
Hood River County, Ore.

PACIFIC POWER & LIGHT COMPANY
PORTLAND, OREGON

SCALE: 1" = 400' PA-1120



**EXHIBIT 1
PROPOSED SECTION 401 CERTIFICATION CONDITIONS
FOR INTERIM OPERATION AND DECOMMISSIONING
OF THE POWERDALE HYDROELECTRIC PROJECT**

Unless otherwise specifically provided, the following certification conditions are effective 30 days after incorporation into a FERC license or order or other federal license or permit for interim operation and decommissioning of the Powerdale Hydroelectric Project. The conditions are in addition to certain rights and obligations of PacifiCorp and other parties set forth in the Settlement Agreement Concerning the Interim Operation and Decommissioning of the Powerdale Hydroelectric Project (Settlement Agreement), specifically PacifiCorp's obligations under the Settlement Agreement to implement certain measures at an earlier date, or to continue measures commenced at an earlier date, and including other parties' review and approval of certain activities under the Settlement Agreement.

1. Interim Operation: Conditions for Compliance with the Temperature Water Quality Standard and Total Maximum Daily Loads (TMDLs).

- a. *Temperature Management Plan.* In accordance with OAR 340-041-0026(3)(a)(D), PacifiCorp shall implement the Surface Water Temperature Management Plan approved by the Oregon Department of Environmental Quality (ODEQ) in conjunction with this certification and set forth in Conditions 1.b, 1.c, 1.d., 1.f., 1.g., 1.h., 1.i, 1.j., and 2.b.
- b. *Flows.* Subject to Condition 1.d., PacifiCorp shall implement in the bypass reach on an average hourly basis either the Hood River flow immediately upstream of the Project (less the amount required to compensate for flowline leakage up to a maximum of 25 cfs), or the minimum instream flows set forth in the following table, whichever is less. Minimum instream flow requirements may be met using a combination of flows from the fish ladder, fish screen bypass flow, trash sluice, and spillway gates.

January	140 cfs
February	220 cfs
March	220 cfs
April*	220 cfs
May*	250 cfs
June*	250 cfs
July	250 cfs
August	250 cfs
September	250 cfs
October	250 cfs
November	220 cfs
December	140 cfs

* Minimum instream flows for temperature specified in this table for April 15 through June 30 are superseded by higher minimum instream flows provided in accordance with Conditions 2.a. and 2.b. for the same period.

- c. *Powerhouse Discharge.* Heat discharged to the Hood River through powerhouse cooling water may not exceed 19.31 million kilocalories per day.
- d. *TMDLs September 15-October 15.* To meet its load allocation (LA) under the TMDL from September 15 through October 15, PacifiCorp shall undertake the following measures:
- (1) PacifiCorp shall provide ODEQ with an annual temperature and flow monitoring report by December 31 of each year. The annual monitoring report shall include the required hourly temperature and flow data, pre- and post-deployment data, and monthly field audit data required by Condition 1.g. for that calendar year. The annual report shall identify any instances in which the seven-day moving average of daily maximum temperatures measured at the downstream end of the bypass reach exceeded 55°F during the period from September 15 through October 15. If any such instances are identified in the first three years of monitoring, PacifiCorp shall conduct and submit in the third annual temperature and flow monitoring report to ODEQ an evaluation of whether the temperature increase in the bypass reach was 0.25°F (as a seven-day moving average) more than the increase that would have occurred had the Project not diverted water from the bypass reach. In lieu of conducting this evaluation, PacifiCorp may assume that any temperature increase between the upstream and downstream ends of the bypass reach is due to Project diversions.
 - (2) If, based on the evaluation or assumed Project impact described in the preceding paragraph, ODEQ determines that the stream warming that occurred in the bypass reach was 0.25°F more than would have occurred had there been no Project diversions, PacifiCorp shall, within 90 days from written notification from ODEQ, submit to ODEQ a written proposal for measures that PacifiCorp will take to ensure that the Project-related warming in the bypass reach is not more than 0.25°F (as a seven-day moving average) when the seven-day moving average of daily maximum temperatures exceeds 55°F at the downstream end of the bypass reach between September 15 and October 15. The proposal shall include a proposed schedule for implementing the measures. The measures may include, but are not limited to, the following:
 - (a) Temperature modeling for the period September 15 through October 15 to determine what minimum instream flows would be necessary to reduce Project-related warming to 0.25°F or less (as a seven-day moving average) when the seven-day moving average of daily maximum temperatures at the downstream end of the bypass reach exceeds 55°F. If increased minimum flows are necessary and feasible, PacifiCorp shall provide the increased flows for the necessary period, subject to the limits set forth in Condition 1.d.(3).
 - (b) In the alternative, PacifiCorp may elect not to divert water (except for amounts required to compensate for flowline leakage up to 25 cfs) whenever and so long as the river temperature exceeds 55°F at the downstream end of the bypass reach between September 15 and October 15.

- (3) The following limitations apply to modifications of minimum instream flows under this Condition 1.d:
- (a) ODEQ will not require modification of flows beyond those reasonably necessary to prevent a Project-related instream temperature increase of 0.25°F or more. This limitation will only apply upon ODEQ's determination that PacifiCorp has satisfactorily demonstrated under prevailing conditions that any such modification would result in a Project-related temperature increase of less than 0.25°F.
 - (b) Modification of minimum instream flows shall be limited to no more than a 50 cfs increase in any two-year period.
 - (c) PacifiCorp's responsibility to fulfill minimum instream flow requirements shall be limited to reducing Project diversions from the bypass reach.
 - (d) No increase in minimum instream flows shall be required before September 15, 2006.
- e. *TMDLs Reservation.* In the event the Project continues to divert water for power generation or Project maintenance during and after 2012, ODEQ reserves the right to modify these certification conditions, in accordance with OAR Chapter 340, Division 48, as necessary to ensure implementation of TMDLs for any applicable period.
- f. *Resumption of Power Generation.* Following the period of temporary reduction of flow in the flowline (April 15 to June 30), PacifiCorp shall resume power generation in accordance with Condition 2.b.
- g. *Temperature Monitoring.* PacifiCorp shall monitor stream temperatures hourly from July 1 through October 15 each year at the sites PDBUP (upstream end of the bypass reach, approximately 50 meters downstream of the dam) and PDBDN (downstream end of the bypass reach, approximately 250 meters upstream of the powerhouse). The accuracy of temperature recorders shall be tested before and after field deployment to ensure that they are operating within their designated range of accuracy. In addition to pre- and post-deployment checks, the temperature recorders shall be audited monthly during the field measurement period. The pre- and post-deployment and monthly field audit checks shall be made using a National Institute of Standards and Technology (NIST) traceable (calibrated and maintained) thermometer accurate to $\pm 0.2^{\circ}\text{C}$ or better, which has been checked against an NIST traceable thermometer. PacifiCorp shall also record average hourly flows released from the diversion dam into the bypass reach for the period July 1 through October 15. These flows shall be measured in accordance with Condition 1.h.

h. Flow Monitoring.

- (1) PacifiCorp shall measure instream flows by a Programmable Logic Control or alternative method for monitoring compliance with minimum instream flows, consistent with standard operating procedures developed by PacifiCorp in consultation with ODEQ, the Oregon Department of Fish and Wildlife (ODFW), the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS).
 - (2) PacifiCorp shall publicly post hourly flow data on the Internet. The Internet posting shall clearly display the total average hourly river flow being released into the bypass reach directly downstream of the diversion dam. The Internet posting shall also display the average hourly flow being diverted to the flow conveyance system. Flows shall be reported in cfs. PacifiCorp shall post hourly flow measurements as timely as possible but no more than 24 hours after such measurements are taken.
 - (3) Unless otherwise agreed upon in writing by ODEQ and PacifiCorp in consultation with ODFW, OWRD, NMFS, USFWS, and CTWS, the following flow verification requirements shall apply: For the first two years, rating tables, including any discharge coefficients used to calculate the gaged flows being tracked by the PLC system, shall be verified at least once every six weeks during the periods when flows at the Tucker Bridge Gage are less than the sum of the minimum instream flow plus the power claim flow (generally about July through November); Rating tables shall be set-up to cover a range of operation settings; If after the initial two-year period a control structure rating table demonstrates stability, then verification measurements shall be conducted at least once per year; If after the initial two-year period a control structure demonstrates instability, or when maintenance changes flow conditions through a control structure, then more frequent than once-per-year verification measurements shall be conducted on an as-needed basis to re-establish a stable rating table for the particular control structure.
- i. **Measurable Increase.** Any Project-related instream temperature increase of 0.25°F or less above the relevant criterion shall not be deemed to contribute to an exceedance of the temperature criterion or to a violation of the temperature water quality standard.
- j. **Monitoring Modifications.** ODEQ may make modifications to temperature monitoring required under Condition 1.g. that ODEQ considers to be reasonable and feasible, or, after consultation with ODFW, OWRD, NMFS, USFWS, and CTWS, make reasonable and feasible modifications to flow monitoring required under Condition 1.h, if:
- (1) The monitoring requirements prove to be insufficient to provide the necessary data; or,
 - (2) Modifications to minimum instream flow requirements require modifications to monitoring requirements.

- k. *Temperature Flow Modifications.* With the approval of ODEQ, PacifiCorp may cease implementing or may implement modified flows under the Temperature Management Plan. ODEQ may approve cessation or modification if ODEQ determines that it will not impair the achievement of any TMDL or LA for the Project for temperature and will not contribute to the exceedance of the relevant temperature criterion in waters affected by the Project.
- l. *Duration of Conditions.* The above conditions in this section will cease to be effective upon commencement of removal of the dam structure.
2. Interim Operation: Conditions for Compliance with the Biological Criteria, pH, Dissolved Oxygen, and Turbidity Water Quality Standards, Protection of Beneficial Uses, and Compliance with Other Appropriate State Laws.
- a. *Flows.* Subject to Condition 1.d, PacifiCorp shall implement in the bypass reach either the Hood River flow immediately upstream of the Project (less the amount required to compensate for flowline leakage up to a maximum of 25 cfs), or the following minimum instream flows, whichever is less:
- February 1 to April 14: 220 cfs
 - April 15 to June 30: manage flows as set forth in Condition 2.b
 - July 1 to October 31: 250 cfs
 - November 1 to November 30: 220 cfs
 - December 1 to January 31: 140 cfs
- Minimum instream flow requirements may be met using a combination of flows from the fish ladder, fish screen bypass flow, trash sluice, and spillway gates.
- b. *Temporary Reduction in Diversion Flow.*
- (1) From April 15 to June 30 each year, PacifiCorp shall reduce diversion flow to a maximum of 25 cfs. All flows in excess of the amount required to compensate for flowline leakage up to the maximum of 25 cfs shall be passed by the dam.
 - (2) PacifiCorp may resume power generation on July 1 of each year. For the 96 hours prior to the start-up of the turbine unit, PacifiCorp shall use multiparameter continuous monitoring devices approved by ODEQ to sample water quality at two sites in the river agreed upon by ODEQ. One site shall be just upstream of the powerhouse tailrace at site PDBDN as defined in Condition 1.g; the other shall be approximately 30 meters downstream of the powerhouse tailrace confluence with the river along the east bank. The continuous sampling devices shall sample and record hourly stream temperature, dissolved oxygen, pH, and turbidity. At least 72 hours prior to the start-up of the turbine unit, but not less than 24 hours after commencing the continuous monitoring, PacifiCorp shall open a 10-inch drain valve in the powerhouse near the tailrace to provide a slow exchange of flowline water. Upon

beginning generation on July 1, PacifiCorp shall set the turbine generator unit on the minimum wicket gate setting required to synchronize the turbine generator. PacifiCorp shall then ramp the turbine generator load in sufficiently small increments to the extent feasible to maintain the ramping requirements set forth in Condition 2.c. Monitoring under this Condition 2.b.(2) at the two sampling sites may cease 24 hours after beginning generation. The multiparameter devices shall be calibrated for each parameter according to the manufacturer's specifications prior to deployment. At the time the instruments are deployed in the water and when they are retrieved at each site, PacifiCorp shall audit the multiparameter devices by measuring stream temperature with an NIST traceable thermometer accurate to $\pm 0.2^{\circ}\text{C}$ and measure stream dissolved oxygen via Winkler titration. Within 30 days after the instruments are retrieved, PacifiCorp shall forward ODEQ the electronic files of the continuous sampling, audit, and calibration data.

- (3) The procedure set forth in Condition 2.b.(2) might provide dilution of flowline water in excess of that necessary to comply with water quality standards. PacifiCorp may reduce or cease its monitoring effort under Condition 2.b.(2) following three consecutive years of monitoring data, of quality considered accurate and reliable by ODEQ, demonstrating that the flowline water does not contribute to an exceedance of a water quality standard at the downstream monitoring site described in that condition. In the absence of three years of such data, PacifiCorp may reduce or cease its monitoring effort under Condition 2.b.(2) if ODEQ provides written approval based upon an ODEQ determination that there is no reasonable potential for the flowline water to contribute to an exceedance of one or more water quality standards at the downstream monitoring site. If, notwithstanding use of the procedure described in Condition 2.b.(2), the flowline water causes an exceedance of water quality standards at the downstream monitoring site, ODEQ may direct PacifiCorp to develop and propose, within a reasonable time specified by ODEQ, alternative measures for ensuring that the flowline water does not cause an exceedance of water quality standards at the downstream monitoring site upon beginning generation. Upon approval by ODEQ, PacifiCorp shall implement the alternative measures, which may include increased diversion flow during the period April 15 through June 30.

c. *Ramping.*

- (1) PacifiCorp shall make reasonable efforts to limit the ramping rates in the bypass reach to no more than two inches per hour, and in any event such rates shall not exceed three inches per hour. In addition, PacifiCorp shall complete and implement standard operating procedures and a monitoring plan, developed in consultation with ODEQ, ODFW, NMFS, USFWS, and CTWS, for meeting and documenting compliance with the ramping limits. Should development or implementation of the monitoring plan, or the resulting data, show that a different ramping rate will result in the same protections for aquatic species (for example, when river flows into the Project are already high), PacifiCorp may propose such a different ramping requirement. Upon the approval of ODEQ in consultation with ODFW, NMFS,

USFWS, and CTWS, the approved variation shall be substituted for the ramping requirements set forth in this condition.

- (2) "Ramping" means those Project-induced increases (up-ramping) and decreases (down-ramping) in river discharge and associated changes in water surface elevation over time resulting from generation of electricity by Project facilities, Project maintenance activities (i.e., planned outages) and unplanned (forced) outages. Ramping does not include changes in flows and change in river stage resulting from increases or decreases in stream flow unrelated to the Project. Ramping rates in this certification are stated in inches of change per hour. Ramping is measured as the distance between the maximum and minimum water level measured at a specified location over the applicable period of time; variation in water levels within the maximum and minimum water level during that period are not considered for purposes of measuring ramping. For example, if the relevant ramping limitation is one inch per hour, and the river gage is at four feet at noon, then during the next hour the water elevation may vary no more than between three feet eleven inches and four feet; between four feet and four feet one inch; et cetera. In each example, the amount of change between the minimum and maximum gage readings in a one-hour time period is not more than one inch, but could vary within that range more than once during the hour.
- (3) Following an unplanned outage, PacifiCorp shall observe conditions directly downstream of the Project dam and powerhouse. Should PacifiCorp, ODFW, CTWS, NMFS, or USFWS identify a fish stranding problem, PacifiCorp shall use its best reasonable efforts to minimize the impacts of such stranding by relocating such fish to the river in consultation with ODFW, CTWS, NMFS and USFWS.
- d. *Flow Monitoring.* PacifiCorp shall measure and report flows in accordance with Condition 1.h.
- e. *Planned Outages.* PacifiCorp shall, to the extent feasible, limit planned outages to April 15 to June 30 to coincide with the temporary reduction of diversion flow required under Condition 2.b., or with the summer, and shall limit planned non-summer outages to 24 hours to the extent reasonably feasible. PacifiCorp shall notify ODFW, NMFS, USFWS, and CTWS of planned outages and subsequent start up periods to allow for monitoring of those areas with the greatest possibility for fish stranding.
- f. *Flushing.* PacifiCorp shall restrict flushing of the sand settling basin to periods when bypass reach instream flows are at least 500 cfs, and preferably greater than 1,000 cfs.
- g. *Intake Screens.* PacifiCorp shall continue to operate and maintain existing intake screens in working order. The maintenance shall include regular inspections and the repair, rehabilitation, or replacement, as needed, of seals and moving components such as chain drives, sprockets, screen baskets, motors, and screen wash equipment. If a screen is damaged beyond repair, PacifiCorp shall replace it with a screen of similar design;

however, PacifiCorp shall not be required to design or install an upgraded fish screen or otherwise make technological or other major improvements.

- h. *Fishway Auxiliary Water Intake.*** PacifiCorp shall identify and obtain NMFS, USFWS, ODFW and CTWS written approval of a method for maintaining the fish ladder auxiliary attraction water bar rack within the ladder sufficiently free of debris to allow adequate attraction flows. Alternatives to be considered shall be limited to the following unless PacifiCorp and the aforementioned agencies agree otherwise: frequent manual cleaning, modification of the bar spacing on the existing intake trash rack, installation of an intake device incorporating v-bar screen technology, or changing the spacing of the bars on the rack within the ladder. Recommendations and supporting documentation shall be shared with NMFS, USFWS, ODFW and CTWS. No later than the first in-water work opportunity, PacifiCorp shall obtain approval and implement the approved method identified in this condition.
 - i. *Ground-Disturbing Activities.*** Unless emergency conditions exist that require immediate action, PacifiCorp shall limit adverse effects on stream and wetland habitat from any ground-disturbing activities by (i) minimizing the area of disturbance; (ii) adhering to conditions in any applicable U.S. Army Corps of Engineers and Oregon Division of State Lands wetlands permits; (iii) consulting with state and federal wildlife agencies, CTWS, and, when necessary, the Columbia River Gorge Commission prior to carrying out the work to determine appropriate protection measures; (iv) limiting construction to the summer and fall; (v) revegetating disturbed areas with native vegetation to the extent feasible; and (vi) controlling sedimentation of aquatic habitat through erosion control measures contained in the applicable permits. PacifiCorp shall conduct a survey before the initial ground-breaking activity for rare, threatened and endangered species in areas planned for significant construction activities, and shall coordinate with the USFWS, ODFW, the Oregon Department of Agriculture, and the Oregon Natural Heritage Program to ensure that the target species list is current.
 - j. *Duration of Conditions.*** The above conditions in this section will cease to be effective upon commencement of removal of the dam structure.
- 3. Decommissioning: Conditions for Compliance with Water Quality Standards, Protection of Beneficial Uses, and Compliance with Other Appropriate State Laws.**
- a.** Upon applying for a federal permit or permits for decommissioning activities, including a dredge and fill permit from the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the Clean Water Act (§ 404 permit), PacifiCorp shall provide written notice to ODEQ of such application and of any proposed changes in decommissioning activities since the date of issuance of this certification. Within 60 days of ODEQ's receipt of notice from the Corps or other federal permitting agency that it is processing PacifiCorp's application, ODEQ will notify the federal agency and PacifiCorp either (i) that this certification is sufficient for purposes of the federal permit and permit conditions, or (ii) that, in light of new information related to the water quality impacts of decommissioning activities since issuance of this certification, there is no longer

reasonable assurance of compliance with state water quality standards. In the latter event, ODEQ will consider the new information, solicit and consider public and agency comment as required by law, and issue a Section 401 certification determination for purposes of the federal permit and decommissioning activities.

b. In the event ODEQ determines that this certification is sufficient for purposes of a federal permit or permits for decommissioning activities, PacifiCorp shall comply with the following conditions:

(1) *Decommissioning.* Unless otherwise approved by ODEQ in consultation with ODFW, NMFS, USFWS, and CTWS, PacifiCorp shall perform decommissioning in accordance with the Settlement Agreement and the Decommissioning Plan attached to and incorporated by reference into the Settlement Agreement.

(2) *Erosion and Sediment Control Plan.* Before commencement of any in-water decommissioning activities, PacifiCorp shall develop and submit to ODEQ for approval, in consultation with ODFW, NMFS, USFWS, and CTWS, an Erosion and Sediment Control Plan (ESCP) that identifies specific methods that will be implemented at each work area to protect water quality and aquatic habitat. The ESCP shall address (i) protection of the Hood River from unplanned releases of sediment and debris during decommissioning activities; (ii) disposition of sediment and decommissioning debris in accordance with applicable law, PacifiCorp's Spill Prevention, Control and Countermeasure Plan (SPCC Plan), and public health and safety; (iii) implementation of permanent revegetation measures consistent with best management practices; and (iv) dam removal, which shall be conducted in dry conditions using a coffer dam and artificial channel to divert flows from work areas. In addition, the ESCP shall specify measures such as berms, ditches, sediment retention basins, silt fencing, and site restoration to be undertaken by PacifiCorp. Upon ODEQ approval of the ESCP in consultation with ODFW, NMFS, USFWS, and CTWS, PacifiCorp shall implement the ESCP during decommissioning activities.

(3) *Timing and Notification of In-Water Work.* For all in-water decommissioning work, PacifiCorp shall conduct such work between July 15 and August 31, or outside of that time period with the approval of ODFW, NMFS, and USFWS. Actions that are likely to occur outside of the July 15 to August 31 period include the following decommissioning actions:

(a) Construction and removal of upstream and downstream cofferdams, cofferdam materials and culverts;

(b) Removal of the artificial upstream fish passage channel and bypass flume;

(c) Placement of materials (relocated cofferdam materials and available streambed materials) along the river to create access for removal of remaining portions of dam and fish ladder;

(d) Placement of materials to regrade and armor the east and west banks of the river to harden the disturbed areas; and

(e) Regrading of the streambed above and below the dam as necessary to assist with removal of any barriers to fish passage created as a result of decommissioning activities.

PacifiCorp shall provide NMFS, USFWS, ODFW, and CTWS reasonable notice before initiating any in-water work, regardless of when it occurs, to enable them to view the work and recommend fish salvage or other immediate measures to avoid fish stranding or delay. PacifiCorp shall undertake such measures with the assistance of ODFW and CTWS. For purposes of this requirement, "in-water work" does not include dam removal or other decommissioning actions performed in areas that have been dewatered for purposes of decommissioning actions.

(4) Fish Passage During Dam Removal.

(a) *Manner of Fish Passage.* During construction of the cofferdams associated with dam removal activities, PacifiCorp shall extend the existing fish ladder return channel upstream of the dam to above the upstream cofferdam work, and shall install culverts through the downstream cofferdam to provide continued access to the existing fish ladder entrance; provided that PacifiCorp shall not provide such fish passage through the cofferdam culvert if NMFS, USFWS, ODFW and CTWS agree that such passage is not necessary. Coincidental to the construction of the cofferdams, PacifiCorp shall construct an artificial channel extending from a mid-point on the existing fish ladder to a location immediately downstream of the downstream cofferdam. Upon completion of this channel and the bypass channel (described below), PacifiCorp shall close the fish access through the downstream cofferdam, allowing upstream migrants to enter the existing fish ladder structure through a newly constructed access. PacifiCorp shall place rock between the upstream return channel and water bypass intake to minimize upstream migrant entrainment into the downstream bypass flume. During dam removal, PacifiCorp shall divert river flow past the work zone using portions of the existing water conveyance system's steel flume by installing removed sections of the steel flume from above the upstream cofferdam to below the downstream cofferdam, passing over the overflow section and existing fish ladder. This will provide downstream fish passage. PacifiCorp shall position the bypass flume to discharge directly into a pool constructed at the entrance of the upstream passage channel to attract upstream migrants to the channel. The discharge area shall be designed with adequate pool area and depth to minimize impingement of downstream migrants on the bottom or sides of the pool. The requirements of this condition may be modified with the written agreement of PacifiCorp, NMFS, USFWS, ODFW and CTWS.

(b) *Final Fish Passage Design and Construction Plans.* Prior to changing any of the existing fish passage facilities or constructing any new fish passage facilities associated with dam removal, PacifiCorp shall prepare final fish passage design and

construction plans in consultation with NMFS, USFWS, ODFW and CTWS. The final design and construction plans shall be consistent with Condition 3.b.(4)(a) and the following criteria, which may be modified with the written agreement of PacifiCorp, NMFS, USFWS, ODFW and CTWS.

(i) The outfall from the flume shall be designed in accordance with, as appropriate, sections 7.4.1, 7.4.2, 7.4.3, 13.10.4, 13.10.5 and 13.10.6 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date of the Settlement Agreement. In addition, the pool volume and depth will be designed to minimize pool bottom surface velocities and injury to fish. For purposes of section 13.10.5, the design will minimize, but may not completely avoid, creation of false attraction flows. The outfall shall have a 10-foot minimum drop to the pool below (to prevent adults from entering the pipe), and shall be designed to provide smooth, rounded edges and surfaces, using materials similar to the flume, to minimize injury to fish exiting the pipe and to jumping adults;

(ii) The pipe/flume shall be designed in accordance with, as appropriate, sections 13.9.3.1, 13.9.3.4, 13.9.3.5, 13.9.3.6, 13.9.3.9, 13.9.3.11, 13.9.3.13 and 13.9.3.14 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date of the Settlement Agreement. Weathered steel surfaces presently existing on the steel flume sections, or alternatively the galvanized surfaces of standard culvert material, shall be considered acceptable for this application, provided that, if the interior surfaces of the existing steel flume are considered to be too rough to meet NMFS' Passage Facility Guidelines and Criteria, PacifiCorp shall install a liner or conduct sand blasting of the interior surfaces;

(iii) The temporary approach to the fishway channel entrance shall be constructed with "field placed" structure materials to optimize local hydraulic conditions. PacifiCorp shall provide NMFS, USFWS, ODFW and CTWS a minimum of seven days notice prior to the placement of these materials to allow their on-site participation in field direction of this placement work on-site;

(iv) The control structures within the temporary approach channel to the fishway entrance shall be placed at least one channel width apart. These structures shall have less than one foot of head differential (measured from upstream of the boulder control structures to the downstream water surface elevation), and shall not span the entire width of the approach channel (unless the depth provided over the channel-spanning structure is at least one foot);

(v) If fish will be passing through the temporary culvert(s) installed in the downstream coffer dam, such culverts shall meet, as appropriate, sections 9.7.5, 9.7.8 and 9.7.9 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date of the Settlement Agreement. In addition, the bypass shall be designed in accordance with, as appropriate, sections

9.3.2 and 9.3.3 of NMFS' Draft Anadromous Salmonid Passage Facility Guidelines and Criteria as of the Effective Date of the Settlement Agreement;

(vi) The design shall provide supplemental flow to the fishway discharge to allow optimal operation of the fish ladder and temporary approach channel; and

(vii) The design shall be developed such that flow conveyed in the bypass flume is delivered below the temporary approach channel in a manner that will maximize both upstream and downstream passage. The design shall be developed such that the bypass flume and the upstream temporary approach channel work together to both attract adult fish to the temporary approach channel, minimize delay of both upstream and downstream migrants, and minimize injury to fish passing downstream.

(c) *Fish Passage Monitoring and Contingency Plan.* By October 1, 2004, PacifiCorp shall conduct a geomorphology survey consistent with the scope of work attached as Exhibit 2 to the Settlement Agreement. PacifiCorp shall provide a final geomorphology report to NMFS, USFWS, ODFW, ODEQ and CTWS. The report shall describe: (i) current geomorphic conditions beginning 2200 feet below the dam (near the stream gage) to 1,000 feet upstream of the dam, or above the vegetated island (whichever is farther); and (ii) the anticipated impact of sediment released from dam removal on fish passage and aquatic habitat downstream of the dam removal site. PacifiCorp shall develop and implement a fish passage monitoring and mitigation plan, in consultation with NMFS, USFWS, ODFW, ODEQ and CTWS, and approved by NMFS, USFWS and ODFW. In the event a fish passage obstruction, as defined by the plan, is caused or exacerbated by dam removal, PacifiCorp shall restore adequate fish passage by implementing mitigation measures set forth in the plan. PacifiCorp shall have no obligation to monitor or mitigate under this condition for more than one cycle of seasons beyond the return of the river to natural conditions, as determined by a team composed of representatives of NMFS, USFWS, ODFW, CTWS and PacifiCorp, in accordance with the geomorphology report.

4. General Conditions for Compliance with Water Quality Standards and Certification.

- a. *Fees.* PacifiCorp shall pay a fee for ODEQ's costs of overseeing implementation of this certification. The fee shall be \$____ (2003 dollars) annually, made payable to "State of Oregon, Department of Environmental Quality," and due on July 1 of each year after FERC approval of interim operation and decommissioning. The fee shall expire six years after the first July 1 following FERC approval of interim operation and decommissioning, unless terminated earlier by ODEQ because oversight of this certification is no longer necessary. One year before the sixth-anniversary expiration of the fee, ODEQ and PacifiCorp will review the need, if any, to modify, extend, or terminate the fee. PacifiCorp shall continue to pay any fee required after such review.
- b. *Spill and Waste Management.* PacifiCorp shall implement its SPCC Plan and Waste Management Guidelines. The SPCC Plan and Waste Management Guidelines must be

kept current. In the event of a spill or release or threatened spill or release of oil or waste to state waters, PacifiCorp shall immediately implement the site's SPCC Plan, modified SPCC Plan, or other applicable contingency plan and notify the Oregon Emergency Response System at 1-800-452-0311.

- c. *Certification Modification.* Subject to the provisions of OAR Chapter 340 Division 48, and, as applicable, 33 USC § 1341, ODEQ may reconsider, and add, delete, or alter, conditions to this certification as necessary to address changes in resource conditions or knowledge or to address any failure of certification conditions to protect water quality and beneficial uses. In accordance with 33 USC § 1341, any modification to conditions shall, so long as it is in effect, become a condition of any federal license or permit subsequently issued for the Project. With respect to a federal license or permit for the Project existing at the time of the modification to certification conditions, ODEQ may petition the federal agency to incorporate the modification into the federal license or permit.
- d. *Project Changes.* PacifiCorp shall obtain ODEQ review and approval before undertaking any change to the Project that might significantly affect water quality and that was not evaluated in connection with this certification, including changes to Project operation and flows.
- e. *Project Repair or Maintenance.* PacifiCorp shall obtain ODEQ review and approval before undertaking any Project repair or maintenance activity that might significantly affect water quality and that was not evaluated in connection with this certification.
- f. *Access.* PacifiCorp shall allow ODEQ reasonable access to Project records and the Project area as necessary to monitor compliance with certification conditions.
- g. *Posting of Certification.* PacifiCorp shall post a copy of this certification at a prominent location at the Project powerhouse.

EXHIBIT 2 GEOMORPHOLOGY SURVEY SCOPE OF WORK

Background

PacifiCorp has commissioned a geomorphology study for a portion of the Hood River, in close proximity to the location of the present Powerdale diversion dam. The overall objective of this study is to evaluate potential changes to the profile and cross section of the Hood River in this general location, and determine the potential for the creation of barriers to fish passage or other potential aquatic habitat impacts. The work is being conducted in two phases. The first phase, which was completed in December 2002, was comprised of a limited field reconnaissance and preliminary discussions with members of the Powerdale Hydro Project Decommissioning Settlement Team. The second phase will consist of the hydraulic and geomorphic evaluations, an assessment of potential impacts and development of mitigation and monitoring strategies if the investigations determine they are necessary. More specific details of the Scope of Work are presented below.

Scope of Services – Phase 1

1. **Site Visit** - A geomorphologist and habitat biologist will visit the project site to collect necessary field data for this evaluation from a geomorphic perspective. The following tasks will be conducted.
 - 1.1. Characterize the channel that might be affected by decommissioning upstream and downstream of the dam.
 - 1.2. Determine the nature of bed and bank materials, and identify potential erosion and sedimentation issues.
 - 1.3. Determine the project survey needs and communicate these to the PacifiCorp Project Manager.
2. **Technical Memorandum** - Prepare a brief technical memorandum documenting the findings of the site visit, addressing initial feedback from the Settlement Team.

Scope of Services – Phase 2

1. **Review Scope and Approach** - Coordinate with the PacifiCorp Project Manager and key Settlement Team members to review the proposed scope and schedule for Phase 2. Obtain background information related to the project including drawings of the existing facility and decommissioning plans or other project features, reports on fisheries or habitat usage, and other information.
2. **Topographic Survey** - Conduct a topographical survey of the Hood River in the vicinity of Powerdale dam extending 2,200 feet below the dam (near the existing staff gauge) to 1,000 feet upstream of the dam or above the vegetated island (whichever is further). This survey shall include the following specific work.

- 2.1. Longitudinal profile of the thalweg, edge of water, and floodplain edge (banks), with data collected approximately every 25 feet horizontal, or at all elevation changes of 1 foot or more.
 - 2.2. Cross-sections every 300 feet, which include the active channel, banks and floodplain areas, from the upstream end of the survey area to at least 1.000 feet downstream of the dam.
 - 2.3. More closely spaced cross-sections near the dam (four above and two below, on channel width apart as measured downstream of the dam (50 to 100 feet apart).
3. **Bed Material Sampling - Bed material sampling at four locations shall be conducted using the Wolman pebble count method for characterization of the surface particle size distribution. All sampling shall be conducted in riffles or runs.**
 - 3.1. Upstream end of the topographic survey area (upstream of the island).
 - 3.2. Within the existing diversion dam pool area.
 - 3.3. Downstream of the diversion dam within 200 feet.
 - 3.4. At the downstream end of the topographic survey area.
4. **Preliminary Hydraulic Analysis - Based on river surveys and aerial photos prepare a backwater model and complete a preliminary analysis of water levels, velocities and the extent of the backwater from the existing dam. Estimate changes in water levels and velocities to be expected following decommissioning.**

The level of hydraulic analysis necessary for this project will be determined after the topographic survey and bed material data are collected. The technical team determining the need and intensity of a hydraulic analysis will include technical specialists from PacifiCorp, USFWS and NOAA Fisheries.
5. **Additional Site Visit (optional) - If necessary an additional site visit will be conducted to collect additional field data for this evaluation.**
6. **Detailed Hydraulic Analysis - Based on the surveyed profile and cross sections and site observations, evaluate the stability of bed material and predict the short and long term channel bed profiles that might be expected to develop along the Hood River, its side channels and tributaries following the removal of the Powerdale diversion dam.**
7. **Assessment of Passage Issues - Based on site observations and the predicted bed profiles evaluate the potential for short-term or long-term upstream fish passage issues which may occur after removal of the Powerdale diversion dam.**
8. **Site Habitat Impacts - Based on site observations, predicted bed profiles and cross sections evaluate potential physical changes to in-stream habitat, such as pool areas, or riparian vegetation that might occur following removal of the Powerdale diversion dam.**

9. **Mitigation or Compensation - Identify potential mitigation and monitoring strategies to address any issues regarding upstream passage or loss of habitat at the site. Review these potential strategies with the PacifiCorp project manager and the Powerdale Settlement Team.**

10. **Recommendations - Develop recommendations for:**
 - 10.1. **Modifications to the dam removal strategy to minimize the potential for fish passage problems.**
 - 10.2. **Provide a strategy for mitigation of other potential habitat impacts.**
 - 10.3. **Recommend a monitoring plan for the area covered by the topographic survey.**

11. **Present Findings / Deliverables**
 - 11.1. **Prepare a Draft Report summarizing the results of the investigations and study work.**
 - 11.2. **Collect comments from PacifiCorp and the Powerdale Settlement Team.**
 - 11.3. **Prepare a Final Report Incorporating review comments, all study data, documentation of model data and results, all associated figures and tables, and recommendations.**

EXHIBIT 3

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**FIRST AMENDMENT
OF
PERMIT (HYDRO LANDS)**

THIS FIRST AMENDMENT is entered into on this 15 day of May, 2003, between PacifiCorp, an Oregon corporation ("PacifiCorp") and the Bonneville Power Administration ("Permittee").

Recitals

A. PacifiCorp and the Permittee entered into a "Permit (Hydro Lands)" dated June 21, 1995 (the "Permit") concerning, among other matters set forth in the Permit, the Powerdale Dam Fish Trapping Facility (the "Facility").

B. The Permit allows Permittee to occupy and use the real property located in Hood River, Oregon, and described on attached Exhibit A (the "Premises"), in accordance with the terms and conditions of the Permit.

C. PacifiCorp and Permittee wish to amend the Permit as set forth in this First Amendment.

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

1. **Defined Terms.** Except as otherwise noted, defined terms used in this First Amendment (as indicated by initial capitalization) shall have the meaning given to those terms in the Permit.

2. **Term.** Paragraph 1 of the Permit is hereby deleted and replaced with the following:

"1. **Term:** This permit shall be in effect for a term commencing on June 21, 1995 and ending on February 29, 2012."

3. **Removal of Facility Assets.** The following is hereby added to the Permit as Paragraph 32:

"32. **Removal of Facility Assets.**

(a) Permittee acknowledges that PacifiCorp intends to remove the diversion dam at PacifiCorp's Powerdale Hydroelectric Project (the "Dam") pursuant to a Settlement Agreement executed in May, 2003 between PacifiCorp and the National Marine Fisheries Service, *et al.* (the "Agreement"). To facilitate removal of the Dam, Permittee authorizes PacifiCorp (i) to remove and

dispose of from the Premises the Facility and all associated buildings, structures, improvements, equipment, material, property and other assets of any nature whatsoever, including but not limited to the Water Line contemplated by Paragraph 15 and, at PacifiCorp's sole discretion, the portion of the access road contemplated by Paragraph 17 that is on PacifiCorp property (collectively, the "Facillty Assets"), (ii) to restore the soil surface, subsurface, and vegetation on the Premises and the lands affected by the Water Line and, if applicable, the access road to a condition that will support native plant communities similar to those that occupied the site immediately before Permittee began its use and occupancy thereof (although PacifiCorp may use non-native grasses to control erosion if it is reasonable to do so), and (iii) to undertake all necessary and desirable design, permitting, engineering, project management, restoration and mitigation services in connection with such removal and restoration ((i) through (iii) are hereinafter collectively referred to as the "Removal Work"). PacifiCorp shall not, however, remove the portion or portions of the Facility required to pass fish during Dam removal until such fish passage is no longer necessary pursuant to the Agreement.

(b) On or before the tenth (10th) day of each month, PacifiCorp will submit an invoice to Permittee for any reasonable out-of-pocket and overhead costs paid or incurred by PacifiCorp in performing or causing the performance of Removal Work in the prior calendar month. The invoice shall have sufficient detail to allow Permittee to determine the appropriateness of each cost. Permittee shall reimburse PacifiCorp's costs within thirty (30) days of receipt of an invoice. Late payments shall bear interest at the rate of 10% per annum from the date due until paid; *provided, however,* that the interest rate shall not exceed the maximum rate allowed by law. If Permittee questions the reasonableness of any costs submitted on an invoice, Permittee shall pay any undisputed amount and shall notify PacifiCorp of the dispute as promptly as possible and in any case before payment is due. If subsequent efforts by the parties do not resolve the question, Permittee may audit PacifiCorp's costs paid or incurred in performing or causing the performance of Removal Work. Permittee shall complete any such audit no later than sixty (60) days after receiving PacifiCorp's invoice. If Permittee is determined to owe the disputed amount or any portion thereof, it shall pay the amount due plus interest at the rate set forth above. To the extent that PacifiCorp wishes to engage a third party to perform all or any part of the Removal Work, it shall consult with Permittee concerning the selection of the third party.

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(c) Upon commencement of the Removal Work all right and title to Permittee's Facility Assets shall vest in PacifiCorp, and PacifiCorp shall have no liability to Permittee for damage to the Fish Trapping Facility Assets and associated improvements, equipment and property incurred in connection with removal by PacifiCorp."

4. Effect of First Amendment. The Permit, as modified by this First Amendment, remains in full force and effect in accordance with its terms. If there is a conflict between the Permit and this First Amendment, the First Amendment shall control.

IN WITNESS WHEREOF, the Parties have entered into this First Amendment as of the date set forth above.

PACIFICORP

By: Randy Landst
Printed Name: Randy Landst
Title: Managing Director, Hyda Resources

BONNEVILLE POWER ADMINISTRATION

By: John R Cowger
Printed Name: JOHN R COWGER
Title: Mgr, Real Property

EXHIBIT A

Legal Description

Tract PDFF-FF-1, a tract of land for the Powerdale Dam Fish Trapping Facility site, as described in Exhibit A attached hereto and by this reference made a part hereof.

Tract PDFF-FF-2: a strip of land 10-feet wide, for the construction, operation and maintenance of a waterline, being 5 feet on each side of and parallel with the centerline, with an extension thereof over and across Hood River, attached to the Pacificorp Powerdale Dam, in part of the SE1/4SE1/4 of Section 11 and part of the SW1/4SW1/4 of Section 12, Township 2 North, Range 10 East, Willamette Meridian, Hood River county, Oregon. Said waterline centerline is shown on the drawing attached hereto as Exhibit B and by this reference made a part hereof.

Tract PDFF-FF-AR-1,P1: a right-of-way of variable width for a road to be constructed over and across part of the W1/2SW1/4 and part of the NE1/4SW1/4 of Section 12, Township 2 North, Range 10 East of the Willamette Meridian, Hood River County, Oregon, as shown on the drawing attached hereto as Exhibit C and by this reference made a part hereof. This right-of-way is permitted to cross under Pacific's 69kV powerline as described in tracts PDFF-AR-1, 1A; PDFF-AR-1, 1B; PDFF-AR-1, 3A; PDFF-AR-1, 3B as described in Exhibit D attached hereto and by this reference made a part hereof.

Use of existing access road referred to as Copper Dam Road, across Pacific's property located in part of the W1/2SW1/4 of Section 12, and part of the SE1/4SE1/4 of Section 11, in Township 2 North, Range 10 East, lying northwesterly of the Hood River in Hood River County, Oregon. Copper Dam Road is shown on the drawing attached hereto as Exhibit B and by this reference made a part hereof.

Temporary use of staging area as shown on the drawing attached hereto as Exhibit E and by this reference made a part hereof. Temporary use of Pacific's powerline access road easement which crosses Neal Creek. Temporary use of staging area and access road easement will terminate upon completion of construction of the Powerdale Dam Fish Trapping Facility, or on December 31, 1997, whichever comes first.

EXHIBIT 4
CONSERVATION EASEMENT FOR SUBJECT LANDS

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**DEED OF CONSERVATION EASEMENT
FOR POWERDALE PROJECT LANDS**

THIS GRANT DEED OF CONSERVATION EASEMENT ("Conservation Easement") is made this ____ day of _____, 20__, by _____ ("Grantor") in favor of Oregon Department of Fish and Wildlife ("ODFW"); Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWS"); Hood River Watershed Group ("HRWG"), Hood River County Parks and Buildings ("HRCPB"); and Hood River Valley Parks and Recreation District ("HRVPRD"), referred to collectively as "Grantees."

I. RECITALS

A. Grantor is the fee simple owner of the real property commonly known as the Powerdale Project Lands (the "Project Lands") in Hood River County, Oregon, described in Exhibit A, attached to this deed and incorporated by reference.

B. Some or all Grantees are parties to the Settlement Agreement Concerning the Interim Operation and Decommissioning of the Powerdale Hydroelectric Project dated _____, 2003 (the "Settlement Agreement"). The Settlement Agreement provides for the conveyance of the Project Lands subject to a Conservation Easement for certain stated purposes to an entity to be identified by Grantees.

C. Grantees have identified Grantor as the party to take conveyance of the Project Lands in accordance with the terms of the Settlement Agreement.

D. Grantor intends to convey to Grantees the right to preserve and protect the wildlife habitat, recreation and other values of the Project Lands, in accordance with the Goals listed in Section III below, in perpetuity.

E. The parties to this Conservation Easement ("Parties") intend that this Conservation Easement comply with the requirements of, and be construed in accordance with, ORS 271.715 to 271.795, as amended.

II. CONVEYANCE AND CONSIDERATION

For and in consideration of the conveyance of the Project Lands to Grantor in accordance with the Settlement Agreement, Grantor hereby voluntarily grants and conveys to Grantees a Conservation Easement of the nature and character and to the extent hereinafter set forth over the Project Lands in perpetuity. This Conservation Easement shall be an easement in gross and shall run with the land as an incorporeal interest in the Project Lands. Grantor shall record this Conservation Easement in the records of deeds of real property in the county where the Project Lands are located, as authorized by ORS 271.725 and ORS 93.710.

III. PURPOSE

It is the purpose of this Conservation Easement to achieve the following Goals:

Goal 1: Protect the existing fish and wildlife habitat while allowing for habitat restoration and enhancement;

Goal 2: Retain existing recreational uses and allow improvements commensurate with those uses, provided such uses and improvements are consistent with Goal 1;

Goal 3: Allow for expanded recreational and educational opportunities, provided those are consistent with Goal 1; and

Goal 4: Acknowledge and preserve the right of CTWS tribal members to exercise their Treaty secured off-reservation fishing rights on the Subject Lands by utilizing the Subject Lands to access usual and accustomed fishing sites.

Grantor intends that this Conservation Easement will confine the use of the Project Lands to such activities as are consistent with this purpose. Grantees shall have the right, but not the obligation, to enforce any and all terms of this Conservation Easement.

IV. PROHIBITED USES

Grantor will ensure that Project Lands will be managed in accordance with the Goals listed in Section III, above. The Parties intend that any activity that violates the Goals is prohibited. Prohibited uses of Project Lands include, but are not limited to, those specifically listed below:

1. Timber harvesting, or the removal of other shrubbery or vegetation, except harvesting conducted for the purpose of improving fish or wildlife habitat, or as is necessary for proper fire management, for disease protection, or as is necessary for protection of person or property;
2. All commercial or industrial uses of Project Lands, except that the existing fruit orchard and electrical generation uses may be continued pursuant to the terms of the applicable agreements and permits in existence as of the current date, including any subsequent amendments or renewals thereof;
3. Depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material, except as allowed under applicable federal, state, and local laws at approved locations;
4. Diking, draining, filling, dredging or removal of any wetland or wetlands;
5. Excavating, dredging or removing of loam, gravel, soil, rock, minerals, sand, hydrocarbons or other materials, except as needed to achieve the Goals listed in Section III;

6. Otherwise altering the general topography of the Property, including but not limited to building of roads and flood control work, except for work related to the accomplishment of the Goals listed in Section III; and

7. Granting any easement, lien, or other property interest that might affect the purpose of this Conservation Easement without the written consent of all existing Grantees.

8. Any other use that, overall, the Grantor or Grantees determine has a material negative impact on those Goals listed in Section III.

V. PERMITTED USES

Grantor reserves, for itself and its heirs, successors, and assigns, the right to pursue activities on or use of the Project Lands which are consistent with the purpose of this Conservation Easement and which are not otherwise prohibited under Section IV.

VI. RIGHTS CONVEYED TO GRANTEES

To accomplish the purpose of this Conservation Easement, Grantor conveys the following rights to Grantees:

1. The right to enter the Project Lands at reasonable times to monitor compliance with, and to enforce or otherwise exercise their rights under, this Conservation Easement;

2. The right to prevent any activity on, or use of, the Project Lands that is inconsistent with the purpose of this Conservation Easement or Prohibited Uses; and

3. The right to require Grantor to restore any areas or features of the Project Lands that are damaged by any activity prohibited by, or inconsistent with, this Conservation Easement.

VII. ENFORCEMENT AND REMEDIES

A. Remedies. Upon any violation of the terms of this Conservation Easement by Grantor, and after providing notice of such breach and opportunity to cure as provided below, Grantees, jointly or severally, may exercise any or all of the following remedies:

1. Institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction, either prohibitive or mandatory; and

2. Require that the Project Lands be restored promptly to their condition prior to the violation.

Grantees' remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantees at law or equity. If Grantors are found to have breached any of the Terms under this Conservation Easement, Grantors shall reimburse Grantees for any costs or expenses incurred by Grantees in enforcing this Conservation Easement, including court costs and reasonable attorney's fees.

B. Notice and Opportunity to Cure. At least thirty (30) days before filing any legal action to enforce this Conservation Easement, Grantee or Grantees shall provide Grantor with written notice identifying the violation and demanding corrective action to cure the violation and, if applicable, to restore the Project Lands; provided, however, that if at any time Grantee or Grantees determine that the violation constitutes immediate and irreparable harm, no written notice is required and Grantee or Grantees may immediately pursue legal remedies to prevent or limit such harm. If Grantor fails to cure any such violation within thirty (30) days of its receipt of such notice, Grantee or Grantees may institute suit as described above.

C. Effect of Failure to Enforce. No failure or delay on the part of Grantees to enforce this Conservation Easement or any of its terms shall discharge or invalidate this Conservation Easement or any of its terms; nor shall such failure or delay affect the right of Grantees to enforce the same at a later date, or in the event of a subsequent violation or breach.

D. Effect of Multiple Grantees. Each Grantee has independent authority to enforce this Conservation Easement. In the event that Grantees do not agree as to whether the Grantor is in compliance with this Conservation Easement, each Grantee may independently proceed with enforcement actions with the written consent of a majority of existing Grantees.

VIII. MISCELLANEOUS

A. Modification. This Conservation Easement may not be modified except by a written instrument signed and dated by Grantor (or its successor) and each existing Grantee (or its successor).

B. Assignment. No Grantee may assign any of its rights, interests, or obligations under this Conservation Easement without the prior written consent of each existing Grantee.

C. Binding Effect. This Conservation Easement shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and permitted assigns.

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IX. SIGNATURE AND ACKNOWLEDGMENTS

To have and to hold the easement herein granted unto GRANTEES and its successors and assigns, forever, IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____ day of _____, 20__.

NAME:
TITLE:

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____.

Notary Public for Oregon

**EXHIBIT 5
APPLICABLE NMFS DRAFT ANADROMOUS SALMONID
PASSAGE FACILITY GUIDELINES AND CRITERIA***

7.4 Vertical Drop Structures - Description: A vertical drop structure can function as an exclusion barrier by providing total project head in excess of the leaping ability of the target fish species. These can be a concrete monolith, rubber dam, or approved alternative. Vertical drop structure criteria include the following:

7.4.1 The minimum height for vertical drop structure shall be 10 feet relative to the tailrace high design flow elevation.

7.4.2 To minimize the potential for leaping injuries, a minimum of 2 feet cantilevered ledge shall be provided.

7.4.3 Provision shall be made to ensure that fish jumping at the drop structure flow will land in a minimum 5 foot deep pool, without contacting any solid surface.

9.3.2 Culvert Slope - The culvert shall be placed level (0% slope).

9.3.3 Embedment - The bottom of the culvert shall be buried into the streambed not less than 20% of the culvert height at the outlet and not more than 40% of the culvert height at the inlet.

9.7.5 Temporary crossings, placed in salmonid streams for water diversion during construction activities, shall meet all of the guidelines in this document. However, if it can be shown that the location of a temporary crossing in the stream network is not a fish passage concern at the time of the project, then the construction activity only needs to minimize erosion, sediment delivery, and impact to surrounding riparian vegetation.

9.7.8 Construction disturbance to the area shall be minimized and the activity shall not adversely impact fish migration or spawning.

9.7.9 If salmon are likely to be present, fish clearing or salvage operations shall be conducted by qualified personnel prior to construction. If these fish are listed as threatened or endangered

* NMFS draft as of the Effective Date of the Settlement Agreement. The draft criteria listed in this Exhibit 5 are the agreed-upon criteria for this Settlement Agreement.

under the federal or state Endangered Species Act, consult directly with NOAA Fisheries biologists to gain authorization for these activities. Care shall be taken to ensure fish are not chased up under banks or logs that will be removed or dislocated by construction. Return any stranded fish to a suitable location in a nearby live stream by a method that does not require handling of the fish.

13.9.3.1 Bypass pipes and joints shall have smooth surfaces to provide conditions that minimize turbulence, risk of catching debris and the potential for fish injury. Pipe joints may be subject to inspection and approval by NOAA Fisheries prior to implementation of the bypass.

13.9.3.4 In general, bypass flows should be open channel. If required by site conditions, pressures in the bypass pipe shall be equal to or above atmospheric pressures. In no instance shall there be pressurized to non-pressurized (or vice-versa) transitions within the pipe. Bypass pipes shall be designed to allow trapped air to escape.

13.9.3.5 Bends should be avoided in the layout of bypass pipes due to the potential for debris clogging and turbulence. The ratio of bypass pipe center-line radius of curvature to pipe diameter (R/D) shall be greater than or equal to 5. Greater R/D may be required for super-critical velocities.

13.9.3.6 Bypass pipes or open channels shall be designed to minimize debris clogging and sediment deposition and to facilitate inspection and cleaning as necessary. Access ports shall be provided to allow for detection and removal of debris.

13.9.3.9 The design pipe velocity should be between 6 and 12 fps for the entire operational range. If higher velocities are approved, special attention to pipe and joint smoothness is required. In no instance shall pipe velocity be less than 2 fps

13.9.3.11 Closure valves of any type are not allowed within the bypass pipe unless specifically approved based on demonstrated fish safety.

13.9.3.13. There should not be a hydraulic jump within the pipe, unless a weak jump is specifically approved by NOAA Fisheries.

13.9.3.14 The bypass pipe design shall facilitate the detection and removal of debris that may lodge in the pipe.

13.10.4 Maximum bypass outfall impact velocity (i.e. the velocity of bypass flow entering the river) including vertical and horizontal velocity components shall be less than 25.0 ft/s.

13.10.5 The bypass outfall discharge into the receiving water shall be designed to avoid attraction of adult fish thereby reducing the potential for jumping injuries.

13.10.6 The bypass outfall design must allow for the potential attraction of adult fish, by provision of a safe landing zone if attraction to the outfall flow can potentially occur.

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OFFICE OF THE SECRETARY
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REGULATORY COMMISSION

**JOINT EXPLANATORY STATEMENT
FOR THE SETTLEMENT AGREEMENT
AMONG
PACIFICORP
NATIONAL MARINE FISHERIES SERVICE
UNITED STATES FISH AND WILDLIFE SERVICE
OREGON DEPARTMENT OF FISH AND WILDLIFE
OREGON WATER RESOURCES DEPARTMENT
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
AMERICAN RIVERS
HOOD RIVER WATERSHED GROUP**

**DATED
JUNE 6, 2003**

**CONCERNING THE INTERIM OPERATION AND DECOMMISSIONING OF
THE POWERDALE HYDROELECTRIC PROJECT, FERC PROJECT NO. 2659
HOOD RIVER COUNTY, OREGON**

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PacifiCorp
Powerdale Hydroelectric Project
FERC Project No. 2659

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I. INTRODUCTION

PacifiCorp is licensee of the Powerdale Hydroelectric Project, FERC Project No. 2659 ("Project"), a 6,000 kW project located on the Hood River in Hood River County, Oregon. PacifiCorp is seeking Commission approval to extend and amend the Project license and to decommission the Project. PacifiCorp and nine other parties have entered into a Settlement Agreement ("Agreement") providing for the removal of the dam and specified Project facilities. The Agreement, and the supporting documents that make up PacifiCorp's application for an order approving settlement, amending license, and authorizing decommissioning, are the products of an intense and lengthy negotiation among the major stakeholders with interests in the resources affected by the Project. The Agreement embodies a delicate balancing of the stakeholders' interests. As discussed below, it represents the accord of six governmental and three non-governmental parties. All parties have concurred that the Agreement is fair and reasonable and in the public interest.

The parties hereby request that the Commission accept without material modification the Agreement, including the Decommissioning Plan, which will allow for implementation of measures to return the Hood River to a free flowing condition.

This Joint Explanatory Statement ("Statement") presents the history of the settlement process and explains the rationale behind the elements of the Agreement. It demonstrates that these elements form a unified package that serves the public interest, and provides reasons for the Commission to promptly accept the application.

Nothing in this Statement is intended to modify the terms of the Agreement. Any conflict between the language in the Agreement and this Statement should be resolved in favor of the Agreement. This Statement should not be used to interpret Agreement terms.

II. PARTIES TO THE SETTLEMENT

There are, in addition to PacifiCorp, six governmental and two non-governmental parties to the Agreement. The governmental parties are: the National Marine Fisheries Service ("NMFS"), the U.S. Fish and Wildlife Service ("USFWS"), Oregon Department of Fish and Wildlife ("ODFW"), Oregon Water Resources Department ("OWRD"), Oregon Department of Environmental Quality ("ODEQ"), and the Confederate Tribes of the Warm Springs Reservation of Oregon ("CTWS"). The non-governmental parties, other than PacifiCorp, are: American Rivers ("AR"), and the Hood River Watershed Group ("HRWG"). These entities are referred to individually as a "Party" and collectively as the "Parties." Together, these Parties represent the major stakeholders with interests affected by the interim operation and decommissioning of the Project.

In addition to these signatory Parties, the Agreement has been endorsed by the Hood River County Parks and Building Department as a supporting non-party. This endorsement demonstrates significant local support for the Agreement's terms and objectives.

PacifiCorp
Powerdale Hydroelectric Project
FERC Project No. 2659

TU/105
Lovell/130

III. PROJECT AND BASIN DESCRIPTION

The Project is located in north-central Oregon on the Hood River, south of its confluence with the Columbia River, in Hood River County. The Hood River basin provides multiple public benefits, including highly valued natural resources and recreation opportunities. The northern half of the Project is located within the boundary of the Columbia River Gorge National Scenic Area, which protects the scenic, natural, cultural and recreation resources of the Columbia River Gorge. There are numerous fish and wildlife species present in the basin, including the following species listed under the federal Endangered Species Act ("ESA"): chinook salmon, steelhead, bull trout, and bald eagle. The Hood River valley is also used for recreation including angling, swimming, hiking, mountain biking, and non-motorized boating.

The Project was constructed in 1922 and 1923 by Pacific Power and Light Company (now PacifiCorp). The primary Project facilities include a concrete diversion dam 206 feet long and 10 feet high, a flowline approximately 14,500 feet long, a powerhouse, and a turbine generator with a nameplate rating of 6,000 kW. The powerhouse is located 1.5 miles upstream from the confluence of the Hood and Columbia rivers, with the diversion dam located approximately 3 miles upstream of the powerhouse at river mile 4.5.

At the Project diversion dam, adult fish pass upstream through a 19-pool fish ladder and fish trapping facility located at the east abutment of the dam. In the early 1990s, PacifiCorp made modifications to the fish ladder to improve fish passage and attraction conditions. At the same time, Bonneville Power Administration ("BPA") funded installation of an adult fish trapping and sorting facility as part of the Hood River Production Program, which serves as part of BPA's program of mitigation for Columbia River hydrosystem impacts on anadromous fish. This program is administered jointly by ODFW and CTWS and consists of supplementation, monitoring and evaluation, and aquatic habitat improvements.

The Project's intake structures contain 10-foot-wide traveling screens to prevent fish from becoming entrained in the power canal. Fish that are diverted by the screen are bypassed to below the dam through a 2-foot-diameter pipe.

The Project is operated as a run-of-river project. The reservoir has no useable storage capacity and cannot support operation as a peaking project. The Project diverts water to generate electricity as water is available after meeting instream flow requirements and ramping rates.

Approximately 313 MWh of the Project's generation is used on site annually as station service power. The entire net output of the Project is used to meet customer demand on the PacifiCorp system in and around the City of Hood River, Oregon. Approximately half of the customers within the City of Hood River are residential, while the other half are commercial. The Project has a total estimated hydraulic capacity of 500 cfs at a rated head of 180 feet; and is limited to 500 cfs based on the existing water right.

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IV. BACKGROUND OF THE SETTLEMENT

The Project's initial 38-year license expired on March 1, 2000. On February 23, 1998, PacifiCorp submitted an application for a new license to FERC (PacifiCorp 1998). The application contained a suite of PacifiCorp's proposed measures that had been negotiated with state and federal agencies during the relicensing process to protect, mitigate and enhance the Project-area affected resources over the term of a new license.

In late September, 2000, nearly 8 inches of rain fell on Mt. Hood in less than 24 hours. This rainfall triggered a debris flow that deposited a large amount of sediment and debris at the Project, causing a nearly six-month Project shutdown. Upon investigation, PacifiCorp determined that a similar event could occur in the future.

In December 2001, FERC issued its Environmental Assessment ("EA") for PacifiCorp's license application. The EA found that the protection, mitigation and enhancement measures noted above, along with additional measures recommended by FERC staff, would reduce the Project's net annual benefit to -\$207,576 (-5.1 mills/kWh) (FERC 2001).

Based on an economic analysis of these measures, in conjunction with projected capital expenses necessary to keep the Project operating for the next 30-plus years and the uncertainty surrounding the possibility of additional debris flows, it was determined by PacifiCorp that it would be in the best interest of their ratepayers to decommission the Project rather than accept a new license.

The above circumstances led to PacifiCorp's request that FERC abey the license proceedings to allow PacifiCorp time to develop a Decommissioning Plan for the Project. Subsequently, PacifiCorp developed a draft Decommissioning Plan under which it would permanently seal the intake opening, remove all but two segments of wood stave pipeline, remove means of access to the concrete canal and steel flume, remove the steel surge tank, secure the powerhouse, fill the tailrace with aggregate, and pass all flows over the dam. PacifiCorp's draft Decommissioning Plan did not include dam removal.

Shortly after preparing and submitting the draft Decommissioning Plan to licensing stakeholders for review, PacifiCorp entered into discussions with the federal, state, tribal and non-governmental stakeholders to determine the feasibility of identifying a mutually acceptable approach to decommissioning. On September 26, 2002, several Parties executed an Agreement in Principle on the interim operation and decommissioning of the Project, which would culminate in dam and facility removal. Subsequently, on September 30, 2002, the same Parties submitted to FERC a Joint Motion to Abey Licensing Proceedings to allow the Parties to continue negotiating toward a settlement on such issues.

The Parties have met frequently over the past seven months in order to develop an acceptable Agreement and Decommissioning Plan, as well as the additional documents that the Commission requires in support of such a filing. After lengthy negotiations, a Settlement Agreement was executed on June 6, 2003 (the "Effective Date") among the Parties. The Agreement represents the Parties' preferred resolution of PacifiCorp's 1998 license application.

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The Parties submit that the Agreement is fair and reasonable and in the public interest within the meaning of Rule 602, 18 C.F.R. § 385.602(g)(3), for the reasons described in this Statement.

V. ELEMENTS OF THE APPLICATION PACKAGE

A. Settlement Agreement

The Settlement Agreement describes the legal and regulatory obligations of each of the signatory Parties. It specifically states that PacifiCorp and the Parties request that FERC retroactively extend the Project license to February 29, 2012, amend the license to include specified interim operating measures, and approve decommissioning in accordance with prescribed measures. The Agreement explicitly describes the interim operating conditions, decommissioning measures, and post-decommissioning activities. The Agreement is the key component of PacifiCorp's application to extend and amend its license and to decommission the Project and embodies the agreement of the Parties that the proposal to decommission the Project, on the schedule and in the manner proposed in the Agreement and Decommissioning Plan, is in the public interest.

B. Application to Extend and Amend License and to Decommission Project

The Agreement proposes that the Project will continue to operate, with certain interim operating measures, until 2010 in order to provide for completion of ongoing fisheries studies (see Section VII.A.1) and to provide for a logical sequencing of Project removal activities. Thereafter, the Agreement provides for the decommissioning of the Project and for dam removal between 2010 and 2012. Since the current Project license expired on March 1, 2000, the Parties believe that the most effective way to accomplish Project decommissioning is:

- (i) to amend the current license by extending its term until 2012 and by incorporating specified terms of the Agreement into the license as new license articles; and
- (ii) to authorize PacifiCorp to decommission the Project between 2010 and 2012¹ as provided in the Agreement.

This will eliminate the need for annual licenses and ensure that all elements of the Agreement that are within the Commission's jurisdiction are enforceable by the Commission.

C. Implementation Schedule

Appendix A of the Agreement provides a detailed Implementation Schedule for the execution of the measures agreed upon by the Parties. The Agreement and Implementation Schedule describe the time periods when interim operating measures must be initiated, and outline the timing of all decommissioning activities.

¹ Decommissioning may be conducted earlier if (1) a catastrophic event renders the Project uneconomic, and (2) after one year, PacifiCorp is not reimbursed for operation of the dam to maintain flows necessary to operate the fish sorting and trapping facility.

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D. Decommissioning Plan

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The Decommissioning Plan describes the detailed methodology and the construction timeframes by which certain Project facilities will be removed. It also describes PacifiCorp's pre- and post-removal monitoring responsibilities and the measures that will be implemented to reduce the potential for adverse effects associated with Project decommissioning. The Decommissioning Plan is included as Appendix B to the Settlement Agreement.

E. Joint Explanatory Statement

This Statement presents the history of the Agreement and explains the rationale behind the elements of the Agreement. It demonstrates that the Agreement serves the public interest, explains why the Parties believe that the key Agreement components represent the best attainable balance of cost and environmental protection, and why the Agreement should be approved by the Commission.

F. Proposed Section 401 Certification Conditions

Section 401 of the Clean Water Act ("CWA") requires that any applicant for a federal license or permit to conduct any activity that may result in a discharge into navigable waters provide the licensing or permitting agency with a certification from the state that the discharge will comply with the applicable provisions of CWA sections 301, 302, 303, 306, and 307, including applicable state water quality standards. Without predetermining the outcome of its evaluation under the CWA and state law, ODEQ anticipates that interim operation and decommissioning activities required by the Agreement will comply with the CWA and state law, including water quality standards, total maximum daily loads ("TMDLs"), and requirements to protect designated beneficial uses. The Proposed 401 Certification Conditions, included as Exhibit 1 to the Agreement, are consistent with Agreement terms.

G. Draft Environmental Assessment

The Draft Environmental Assessment ("DEA") will serve as the draft document for the Commission's National Environmental Policy Act evaluation. The DEA examines the direct, indirect and cumulative effects on the human environment, including the natural and physical environment, and including economic and social effects, of the proposed action and its alternatives. The "Proposed Action" for purposes of the DEA evaluation is the continued operation of the Project until decommissioning, performance of interim PM&E measures, and decommissioning with dam removal, consistent with the Agreement. Alternatives to the proposed action that are evaluated in the DEA are the No Action Alternative (continuing to operate the Project under the annual licenses); New License Alternative (operating the Project under the FERC license proposal); and Decommissioning and Partial Project Removal Alternative (decommissioning the Project and leaving the dam in place).

H. Biological Evaluation

The biological evaluation ("BE") will serve as the draft document for the Commission's initiation of formal consultation with NMFS and USFWS, as required by section 7 of the

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Endangered Species Act ("ESA"). The BE evaluates the potential impacts of the Agreement on chinook salmon, steelhead trout, bull trout, and bald eagle, which are all listed as threatened species under ESA. The BE concludes that the proposed action (operation of the Project for an interim period with the PM&E measures set forth in Section 3 of the Agreement, and the subsequent decommissioning of the Project and implementation of associated PM&E measures in accordance with Section 4 of the Agreement) would not jeopardize the continued existence or recovery of any of these species. In addition, the proposed action is not likely to adversely affect Columbia River chum salmon or bald eagle. The BE includes an analysis of the potential effects of the proposed action on essential fish habitat for chinook and coho salmon under the Magnuson-Stevens Fishery Conservation and Management Act.

VI. ACTION SOUGHT FROM THE COMMISSION

The actions requested of the Commission and outlined below and in the Agreement are inextricably related; implementation of all of the measures is essential if the shared goals and objectives of the Parties are to be realized. For this reason, the Parties respectfully request that, to the maximum extent possible, the Commission adopt language identical to or consistent with those measures in the Agreement and Decommissioning Plan over which FERC has jurisdiction. If the Final Commission Order in this proceeding is inconsistent with the application documents, the Parties may withdraw from the Agreement, thus threatening the Agreement's continued validity.

Implementation of the Settlement Agreement depends upon the Commission:

- (i) retroactively extending the previous Project license, that expired on March 1, 2000, to February 29, 2012, giving the license an effective term of fifty years;
- (ii) incorporating, without material modification, as license articles in the extended license, all of the measures set forth in Section 3 of the Agreement;
- (iii) approving and authorizing, without material modification, the decommissioning measures and associated PM&E measures set forth in Sections 4.1, 4.2 and 5 and Appendix B of the Agreement; and
- (iv) allowing PacifiCorp the opportunity, after all appeals of the FERC Order, to accept or reject the Final FERC Order as provided in Section 6.3 of the Agreement.

The Agreement is offered in settlement of PacifiCorp's pending application for a new Project license. If the Commission issues an order that is consistent with the terms and conditions of the Agreement, PacifiCorp is obligated to accept the Commission's order and to withdraw its pending application for a new Project license. If the Commission adds to or otherwise alters the terms and conditions of the Agreement over which it has jurisdiction, PacifiCorp may initiate dispute resolution with other Parties and, if necessary, withdraw from and thereby terminate the Agreement. Under such circumstances, the Parties intend that PacifiCorp may reject the inconsistent Commission order on license amendment and

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decommissioning and that PacifiCorp shall not be required to withdraw its license application of February 23, 1998.

VII. SATISFACTION OF STATUTES AND TREATY

Federal Power Act. The provisions of the Agreement are intended to address the governmental Parties' exercise of authority under the FPA. The Parties intend that any future comments, recommendations, terms, conditions or prescriptions, to the extent applicable to this proceeding, will not add to or conflict with the measures required by the Agreement.

Clean Water Act. While not predetermining the outcome of Section 401 review and public comment, ODEQ anticipates that interim operation and decommissioning activities required by the Agreement, including Appendix B to the Agreement, will comply with the applicable provisions of CWA sections 301, 302, 303, 306, and 307, state water quality standards and TMDLs, and "any other appropriate requirement of state law" referenced in CWA subsection 401(d), 33 U.S.C. § 1341(d).

Endangered Species Act. If FERC approves interim operation and decommissioning of the Project in a manner that is consistent with the Agreement, the proposed action for purposes of ESA section 7(a)(2) consultation will be the operation of the Project for an interim period with the PM&E measures set forth in Section 3 of the Agreement, and the subsequent decommissioning of the Project and implementation of associated PM&E measures in accordance with Section 4 of the Agreement. NMFS and USFWS anticipate that the measures contained in the Agreement will be adequate to minimize any incidental take occurring as a result of interim Project operations, decommissioning, and related PM&E measures; however, NMFS and USFWS do not intend to predetermine the outcome of any consultation under the ESA and reserve their right to take all actions required to comply with the ESA.

Treaty and Other Authorities. CTWS holds and exercises off-reservation treaty rights, including fishing, hunting and gathering rights, in the Hood River basin pursuant to the Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963 (the "Treaty"). In addition, the Project is located within lands ceded to the United States in the Treaty. CTWS agrees that the measures contained in this Agreement will fulfill any obligations that PacifiCorp may have in regard to the interim operation and decommissioning of the Project pursuant to the Treaty and other federal and tribal laws and regulations. The Project is not located within tribal reservations for purposes of section 4(e) of the FPA.

Oregon Fish Passage and Screening Statute. Interim operation PM&E measures and decommissioning measures to be performed under the Agreement have been approved by the Oregon Fish and Wildlife Commission as fish passage under Oregon Revised Statutes ("ORS") 509.585. In addition, the Agreement is intended to satisfy the requirements of ORS 498.311 regarding game fish, to the extent applicable.

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VIII. KEY ELEMENTS OF INTERIM PROJECT OPERATIONS AND DECOMMISSIONING

The Agreement and supporting documents commit the Parties to implementation of a comprehensive package of measures that include operating the Project until 2010 in a manner that protects aquatic resources; removing specified Project facilities and restoring the river reach to an unobstructed state by 2012; and providing for protection and conservation of natural resources in the area following Project decommissioning.

Specifically, the Agreement states that PacifiCorp will begin to remove the Project facilities in 2010, allowing for the completion of fisheries studies conducted by CTWS and ODFW that require the use of the Bonneville Power Administration's fish sorting and trapping facilities, located adjacent to the Project. In order to minimize potential impacts on fish resources and aquatic habitat during the period between the Effective Date of the Agreement and 2010 (the "interim operating period"), the Agreement proposes water quality monitoring, maintenance of the existing fish screens, increased minimum instream flows, ramping rate restrictions, Project shutdown during the juvenile salmonid outmigration period, and limitations on flushing of the Project's sand settling basin. The interim operating measures also provide for continued maintenance of the recreation facilities, as well as the development of new facilities to meet expected demand over this period.

Between 2010 and 2012, decommissioning of the Project will involve removal of the diversion dam and associated structures, removal of sections of the water conveyance system, removal of the fish ladder and the sorting and collection facility, and securing the Project powerhouse, which will be left in place. Specifics regarding the treatment of Project facilities during decommissioning are contained in Section 4.1 of the Agreement. Following decommissioning, all disturbed lands will be contoured to the surrounding landscape and revegetated with native species. Impacts of Project removal will be monitored to ensure that aquatic habitat connectivity is maintained. The rationale, in general terms, for the interim operation and decommissioning measures set forth in the Agreement is discussed below.

PacifiCorp will transfer the Project water rights to the State of Oregon, and the lands owned by PacifiCorp in association with the Project will be conveyed to an entity timely identified by several of the Parties for the purposes of natural resource conservation and recreation use. These actions do not fall within the jurisdiction of the Commission, but are briefly described within this Statement (Section VII.C) for clarity. Additional details may be found in the Agreement.

A. Interim Project Operations

1. Rationale

The Hood River is inhabited by a number of fish species including spring and fall chinook, summer and winter steelhead, coho, sea-run cutthroat, rainbow, and bull trout, as well as lamprey and other species. Of these, chinook, steelhead, and bull trout are listed under the ESA as threatened species. The Hood River supports an active sports fishery, which due to the

listed status of the basin's wild salmonids must focus on hatchery fish. The fish ladder and sorting facilities at the Project's dam have provided valuable assistance in the management of hatchery and wild stocks in the basin.

In 1988, ODFW and CTWS implemented the Hood River Production Program ("HRPP") to increase Hood River subbasin steelhead production and reintroduce spring chinook salmon into the basin. The HRPP uses hatchery fish to supplement the naturally spawning population of steelhead and chinook, and to boost natural production without adversely impacting the wild population. The ODFW and CTWS trapping and sorting facility located at the Project provides for the collection of native steelhead and chinook broodstock for the supplementation program, which minimizes the potential adverse genetic effects of introducing non-native fish. These facilities are also used to conduct studies pertaining to supplementation and production in the Hood River basin. These studies are scheduled for completion in June 2010. There are four primary aspects of this research, including:

- (i) **Monitoring and Evaluation:** The monitoring and evaluation program provides fishery managers with the best opportunity in the Pacific Northwest to answer critical questions about the contribution of hatchery fish spawning in the wild, and whether or not hatchery fish can be used as a tool to effectively supplement wild fish populations. Results of this study will be utilized regionally in anadromous fish management. Due to the complex life history of steelhead, ODFW believes that operation of the trapping and sorting facility until 2010 is required to complete cohort analysis for several generations to evaluate the effectiveness of hatchery supplementation. A large amount of time, money, and effort has been expended to date in order to obtain scientifically sound results. Curtailing the studies prematurely would compromise ODFW and CTWS' ability to supply meaningful results.
- (ii) **Delisting Criteria:** Results of the monitoring and evaluation study provide one of the most comprehensive steelhead data sets available anywhere. Collection and analysis of additional data will provide managers with information needed to make informed decisions in recovery planning and developing delisting criteria for the ESA.
- (iii) **Fishery Genetics:** Results of the genetics portion of the study will have important regional implications for all levels of fish management. Anticipated study results will be important in current and future implementation of the Native Fish Conservation Policy and other planning and recovery efforts.
- (iv) **Acclimation:** Results will help to determine whether acclimation provides cost-effective improvements in hatchery survival rates.

ODFW staff cites the following reasons as justification for extending the fish studies until 2010:

- (i) Additional time is necessary to draw statistically sound conclusions regarding the success of supplementing wild populations with hatchery fish. Additional returning cohorts are needed for the genetics portion of the study to determine if hatchery supplementation can be used as a tool to increase natural production. A minimum of five data points or generations is necessary to draw meaningful conclusions. To date, research has developed between two data points for winter steelhead and zero data points for summer steelhead.
- (ii) Additional time is necessary to provide enough information to genetically fingerprint the entire population and to track lineages for multiple generations. The Powerdale trap enables researchers to collect genetic samples from the entire population of steelhead returning to the Hood River. This will result in a pedigree that will be one of the largest in the world, and the only fish pedigree of this magnitude.
- (iii) Conversion of hatchery stock to local brood has occurred recently. Additional time is necessary to accurately compare traditional hatchery practices with conservation hatchery practices, and to compare post-release survival rates for both practices to survival of naturally produced fish. Second generation offspring will be returning to provide additional data about production and survival of naturally spawning hatchery fish.

Therefore, all Parties to the Agreement have concurred that it is in the public interest that the Project remain in place until 2010 to provide for the completion of these valuable fisheries studies. Thereafter, Project decommissioning and dam removal will allow the free migration of aquatic species. The Parties have also agreed that since the Project facilities will remain until 2010, it is appropriate that power generation continue until decommissioning activities commence.

The Agreement defines specific resource protection measures intended to be in effect during the period of interim operation, with some measures beginning after the Agreement's Effective Date, and the remainder beginning after the Final FERC Order.² These measures will be in effect, except as otherwise stated in the Agreement, until Project decommissioning in 2010. The interim operating measures are identified below. A full description of these measures is included in Section 3 of the Agreement.

2. Measures

a. Instream Flows

Upon the Effective Date and continuing for 30 days beyond the issuance of the Final FERC Order, PacifiCorp will make reasonable efforts, using existing equipment, to implement in

² The Final FERC Order is defined in the Agreement as FERC's extension and amendment of the existing license and approval of decommissioning, after acceptance by PacifiCorp and the resolution of all appeals.

the bypass reach either the following minimum instream flows, or inflow (less the amount required to compensate for flowline leakage up to a maximum of 25 cfs), whichever is less:

- (i) February 1 to April 14: 220 cubic feet per second ("cfs");
- (ii) April 15 to June 30: Inflow, less a maximum of 25 cfs to compensate for flowline leakage;
- (iii) July 1 to October 31: 250 cfs;
- (iv) November 1 to November 30: 220 cfs;
- (v) December 1 to January 31: 140 cfs.

PacifiCorp will commence development of standard operating procedures upon the Effective Date, in consultation with ODFW, ODEQ, NMFS, USFWS and CTWS to determine the accuracy of the existing Programmable Logic Control or alternative method for monitoring compliance with minimum instream flows.

Beginning 30 days after the Final FERC Order, PacifiCorp will implement in the bypass reach the above-stated minimum instream flows. Upon the Final FERC Order, if it is not already completed, PacifiCorp will complete and implement the standard operating procedures. Instream flows will be maintained on an average hourly basis. Once the standard operating procedures are implemented, PacifiCorp will publicly post real-time hourly flow data on the Internet.

Reduced streamflows associated with water diversions can alter stream channels, affect water temperature and water quality, reduce fish spawning and rearing habitat, and interfere with fish migration. Using instream flow/habitat models, the agencies and PacifiCorp designed the proposed interim minimum instream flows to enhance adult upstream migration, spawning habitat, and juvenile rearing habitat. Flows were optimized by month for the lifestage that would require the most streamflow during a given month. Flows for most months (mid-May to mid-October) were optimized for adult upstream passage, which was considered to be the most critical lifestage. Salmonid spawning and rearing lifestages were optimized for the remaining months. During relicensing studies, PacifiCorp utilized a modified Oregon Method to evaluate flow and fish habitat relationships. Based on these study results, PacifiCorp, the fisheries agencies and tribes agreed on minimum instream flows that would adequately protect aquatic resources. These flows are the basis for the proposed instream flow regime.

The proposed interim flow regime and associated monitoring measures will minimize the impacts of continued operation through the interim period, maximize the amount of habitat for critical lifestages of ESA-listed salmonids and other aquatic species, and provide adequate water for passage through shallow riffles. The proposed flows will also minimize any occurrence of water temperature exceedances. Based on temperature modeling during the relicensing studies, flow in the bypass reach from 100 to 250 cfs during the summer months is expected to provide adequate water temperatures for aquatic species. As described below, monitoring will be conducted to ensure that the flow regime provides the expected water temperature benefits.

b. Ramping Rates

Beginning 30 days after the Effective Date and continuing through to 30 days past the issuance of FERC's Final Order, PacifiCorp will make reasonable efforts, using existing equipment, to limit the ramping rates in the bypass reach to three inches per hour, with a preferred target of two inches per hour. Beginning 30 days after the Final FERC Order, PacifiCorp will make reasonable efforts to limit the ramping rates in the bypass reach to no more than two inches per hour, and in any event, such rates will not exceed three inches per hour. In addition, upon the Effective Date, PacifiCorp will commence development, in consultation with NMFS, USFWS, ODFW, ODEQ and CTWS, of standard operating procedures for meeting the interim ramping requirements, as well as a monitoring plan to document the rate of change in water level or stage in the river. Following an unplanned outage, PacifiCorp will observe conditions directly downstream of the Project dam and powerhouse. Should PacifiCorp or another Party identify a fish stranding problem, PacifiCorp will use its best reasonable efforts to minimize the impacts of such stranding by relocating such fish to the river in consultation with ODFW, CTWS, NMFS and USFWS.

Implementation of ramping restrictions is intended to protect aquatic resources from relatively rapid fluctuations in stream flow due to project operations. Relatively rapid changes in stream flow (faster than what would occur naturally), can adversely affect aquatic resources. Impacts can include fish stranding in shallow, low-gradient areas and off-channel habitat (resulting in immediate or delayed mortality); temporary loss of habitat or loss of habitat access; dewatering of fish redds, amphibian habitat, and aquatic insects; and modified fish behavior that could reduce survival or growth. In most cases, the faster the reduction in water surface elevation (or stage), the more likely fish and other aquatic organisms are to be stranded or adversely affected. Ramping rates in the 2 to 3 inch per hour range are believed to be similar to those that would occur under natural conditions, and would most likely protect aquatic resources from ramping-related impacts until natural flow conditions are restored.

c. Temperature Monitoring

After the Effective Date and throughout the interim operation period, PacifiCorp will monitor stream temperatures hourly from July 1 through October 15 (period of warmest stream temperatures) each year at two identified sites; the upstream end of the bypass reach approximately 50 meters downstream of the dam, and the downstream end of the bypass reach approximately 250 meters upstream of the powerhouse. For the period July 1 through October 15, PacifiCorp will also record average hourly flows released into the bypass reach.

In order to meet its Western Hood Subbasin TMDL allocation from September 15 to October 15, PacifiCorp will provide ODEQ with an annual temperature and flow monitoring report by December 31 of each year. The annual monitoring report will include the hourly temperature and flow data, pre- and post-deployment data, and monthly field audit data. Any instances in which the seven-day moving average of daily maximum temperatures measured at the downstream end of the bypass reach exceeded 55°F during the period from September 15 through October 15 will be reported.

The TMDL determination that the U.S. Environmental Protection Agency approved on January 30, 2002, allocated thermal loads to the Project. The TMDL determination concluded that, from July 1 through September 14, the load allocation to the Project will ensure that the instream temperature criterion is met at the proposed minimum bypass reach flow of 250 cfs. From September 15 through October 15, when a more stringent water quality criterion applies, the TMDL determination concludes that the proposed minimum bypass reach flow of 250 cfs may not be sufficient to ensure that the criterion is met when the river temperature immediately upstream of the Project exceeds 55° F. Accordingly, the Agreement includes provisions for further evaluating the Project's contribution to river warming during this latter period and for requiring higher minimum bypass reach flows, as necessary, to ensure that the Project does not cause or contribute to exceedances of the applicable temperature criterion. Monitoring and meeting the ODEQ water temperature criteria will benefit aquatic resources in the Hood River basin.

d. Temporary Reduction in Diversion Flows

From April 15 to June 30 each year, PacifiCorp will reduce diversion flow to a maximum of 25 cfs. All flows in excess of the amount required to compensate for flowline leakage, up to 25 cfs, will be passed by the dam.

ODFW has operated a downstream migrant fish trap in the Hood River at the upstream end of the dam forebay from early spring through early fall since 1994. The downstream trapping is a component of the monitoring and evaluation associated with the implementation of the HRPP, which was designed to restore chinook salmon and rebuild steelhead trout populations in the Hood River. The primary goals of the downstream trapping effort have been to:

- (i) obtain significant life history information such as length, weight, age, and temporal distribution of migrants;
- (ii) estimate survival of hatchery outmigrants; and
- (iii) estimate natural smolt production.

In order to protect downstream migrants from being entrained in the penstocks, the Parties propose a Project shutdown period during the peak of the outmigration period for anadromous fish. Analysis of ODFW downstream migrant fish data from 1994 through 2001 suggests that 89.98 percent of the 7 year mean number of total migrants passed the downstream trap during the period from April 16 through July 1. Additionally, with a Project shutdown during this period, most streamflow will pass over the dam, thereby significantly minimizing the exposure of downstream migrants to the fish screens. PacifiCorp recognizes the potential benefit of this measure and voluntarily initiated the first Project shutdown period on April 15, 2003, rather than wait for finalization of the Agreement.

PacifiCorp may resume power generation on July 1 of each year. For the 96 hours prior to the start-up of the turbine unit, PacifiCorp will use multi-parameter continuous monitoring devices approved by ODEQ to sample water quality at two sites in the river agreed upon by ODEQ. The continuous sampling devices will sample and record hourly stream temperature, dissolved oxygen, pH, and turbidity. At least 72 hours prior to the start-up of the turbine unit,

but not less than 24 hours after commencing the continuous monitoring, PacifiCorp will open a 10-inch drain valve in the powerhouse near the tailrace to provide a slow exchange of flowline water. Beginning 30 days after the Effective Date, PacifiCorp will, to the extent feasible, limit planned outages to coincide with the temporary reduction of diversion flow or with the summer, and will limit planned non-summer outages to 24 hours to the extent reasonably feasible.

The exchange of water held in the Project flowline during the non-generating period (April 15 through June 30) with fresh water will ensure that resumption of generation will maintain the water quality parameters downstream of the Project. Meeting and maintaining the ODEQ water quality criteria will benefit aquatic resources downstream from the Project powerhouse.

e. Sand Settling Basin Flushing

Beginning 30 days after the Effective Date, PacifiCorp will restrict flushing of the sand settling basin to periods when bypass reach instream flows are at least 500 cfs, and preferably greater than 1,000 cfs. Flushing sediments at these high flows will rapidly transport sediments downstream, preventing their accumulation in the bypass reach and protecting aquatic resources and habitat.

f. Fish Screen and Fishway Water Intake Maintenance

Upon the Effective Date, PacifiCorp will continue to operate and maintain existing intake screens in working order. If a screen is damaged beyond repair, PacifiCorp will replace it with a screen of similar design; however, PacifiCorp will not be required to design or install an upgraded fish screen or otherwise make technological or other major improvements.

The existing intake screens at the Project will continue to operate during the interim period. Their continued operation will offer adequate protection to the fishery, that when combined with the 10-week Project shutdown in the spring, satisfies federal ESA and state fish protection concerns. The water intake at the fishway will be kept free of debris to ensure a consistent, sufficient attraction flow to the fish facilities. Maintaining the fishway water intake will ensure beneficial passage conditions for upstream migrants.

g. Rare, Threatened and Endangered Terrestrial Species

Beginning 30 days after the Effective Date, PacifiCorp, if requested by USFWS or ODFW, will cooperate with such agencies in their continuing efforts to monitor bald eagles, harlequin ducks and other federal- or state-listed rare, threatened or endangered terrestrial species documented within the Project boundary by:

- (i) providing access to the Project; and
- (ii) providing data collected by PacifiCorp personnel regarding such species.

Coordination with the USFWS and ODFW to provide continued access to Project lands and to share information or observations of PacifiCorp personnel will contribute to the knowledge base for these species and could be useful in recovery efforts.

h. Cultural Resources Management Plan

Beginning 30 days after the Effective Date, PacifiCorp will consult with the Oregon State Historic Preservation Office and FERC staff to begin revising its draft Cultural Resources Management Plan ("CRMP") to reflect the actions proposed in the Agreement. Upon the Final FERC Order, if it is not already completed, PacifiCorp will complete and begin implementing the revised CRMP as soon as practicable.

The CRMP will ensure compliance with Section 106 responsibilities and other relevant federal and state laws and regulations pertaining to the protection and management of archaeological, historic, and other cultural resources located within the Project area during the interim operation of the Project.

i. Recreation Resources

Upon the Effective Date, PacifiCorp will continue to maintain existing recreation facilities on an as-needed basis through PacifiCorp's existing operations and maintenance program. In addition, PacifiCorp will perform the following at Powerdale Park:

- (i) when the existing toilet needs replacing, provide and maintain a portable, Americans With Disabilities Act (ADA) accessible toilet;
- (ii) within one year after the Effective Date, provide one additional picnic table;
- (iii) within two years after the Effective Date, provide a second additional picnic table; and
- (iv) within 30 days after the Final FERC Order, install trail directional signs and a Project interpretive sign.

PacifiCorp will also perform the following at the Powerhouse day-use site:

- (i) within 30 days after the Final FERC Order, install and maintain a portable, ADA-accessible toilet at the Powerhouse day-use site and construct a pathway to that toilet; and
- (ii) within 30 days after the Final FERC Order, install warning signs regarding fluctuating water levels, trail directional signs, and a salmon interpretive sign.

These recreation improvements will comply with the ADA and provide additional formalized facilities to accommodate increasing recreation demand and enhance the recreation experience throughout the interim operating period.

B. Decommissioning Actions

The Decommissioning Plan, included as Appendix B to the Agreement, includes a description of the construction, and mitigation activities associated with the removal of the Project. These activities are briefly described below. The Parties to the Agreement believe these activities will result in the successful removal of the Project while protecting the environment. Permitting for the decommissioning activities is scheduled to begin mid-year in 2009, with initiation of on-the-ground decommissioning activities in the first quarter of 2010. Decommissioning activities are schedule to occur during periods that will minimize impacts to aquatic, terrestrial, and recreation activities.

1. Method of Dam Removal

PacifiCorp will remove the diversion dam including the roller gates, hoists and bridge, piers, walls, spillway, un-gated overflow section, fishway, embankment sections, and intake to the level of the original riverbed. Following removal of the concrete structures, the riverbed extending between the upstream and downstream cofferdams will be contoured to match upstream and downstream elevations. Contouring of the riverbed is intended to expedite riverbed stability once water is restored to the disturbed reach. Disturbed areas will be revegetated using native plants to further encourage bank stability and to control the intrusion of invasive or exotic plant species.

PacifiCorp will perform the following actions regarding the intake:

- (i) remove all concrete portions of the structure above original river bed;
- (ii) remove the 6-foot-wide gated trash sluice, trashracks, traveling basket fish screens, and all related structural, mechanical and electrical equipment associated with the intake;
- (iii) remove the intake headgate that regulates flow from the intake into the power canal; and
- (iv) remove several miscellaneous structures, including the control gatehouse, operator's house, and non-essential fencing.

These structures will be removed for reasons of public safety and to return the site to a more natural character.

PacifiCorp will perform the following actions regarding the power canal, steel flume, and sand-settling basin:

- (i) break up and fill the 604-foot-long, trapezoidal concrete power canal with materials from the cofferdams and earth embankments, and blend it with the adjoining river bank; and
- (ii) remove the 550-foot-long steel flume, 142-foot-long concrete sand-settling basin, 254-foot-long steel flume, and 33-foot-long concrete structure.

PacifiCorp will perform the following actions regarding the approximately 14,500-foot-long flowline:

- (i) remove three sections of 10-foot-diameter wood stave pipe (a 480-foot-long section, a 1,564-foot-long section, and a 488-foot-long section) located in the first 4,692 feet of flowline and totaling 2,532 feet of wood stave;
- (ii) remove the concrete saddles associated with these three sections of wood stave;
- (iii) leave in place components of the flowline, including steel pipe located between and adjacent to the removed wood stave pipe; and
- (iv) create a wildlife access point beneath each of the two remaining upstream sections of steel flowline (commonly referred to as the "Flat Top" and "Hog Ranch" sections) at approximately the center of each section by excavating below the flowline to create an approximate six-foot-high passage.

PacifiCorp will leave the flowline bridge and associated access to the steel catwalk in place. The flowline bridge provides a crossing point over the river for fishermen and recreationists. The steel catwalk extends along the top of the steel pipe for 4,000 feet above the flowline bridge and also provides access for recreational users of Hood River.

PacifiCorp will use a shaped charge to topple the surge tank. This structure will be removed for public safety and to aid in restoring a more natural character to the area.

PacifiCorp will perform the following actions regarding the powerhouse:

- (i) leave the concrete powerhouse structure in place;
- (ii) remove all internal non-structural features;
- (iii) replace window glass with security-oriented architectural treatments;
- (iv) remove the metal-sided maintenance garage located immediately adjacent to the east side of the powerhouse;
- (v) use the outdoor traveling gantry crane which spans the powerhouse to remove equipment from the interior of the powerhouse, then dismantle and remove the operable components of the crane, leaving the structural members of the crane in place;
- (vi) drain all oil and hydraulic fluids from equipment located inside the powerhouse;
- (vii) remove any loose equipment, parts and materials;
- (viii) remove the internal rotating generator and turbine components;
- (ix) seal the turbine pit with concrete;
- (x) maintain power to the switch room for as long as is necessary to support remaining electrical distribution system facilities;
- (xi) re-grade the areas surrounding the surge tank and maintenance garage to match surrounding contours; and
- (xii) secure the powerhouse building, all remaining equipment, and adjacent remaining facilities.

These actions will be taken to ensure public safety after Project decommissioning. As the powerhouse is a historic building, and the switch and control panels that are housed inside the building are necessary for PacifiCorp's local and regional power transmission/distribution system, the structure will remain in place.

PacifiCorp will perform the following actions regarding the switchyard:

- (i) remove all components related to the transmission of power generated by the Project;
- (ii) leave in service all equipment required to supply or control power to the distribution switch/control panels in the powerhouse and equipment associated with the operation of PacifiCorp's transmission/distribution system; and
- (iii) modify the existing fencing around the switchyard and powerhouse as necessary to provide additional security.

2. Measures

a. Timing of In-Water Work

For all in-water work required by the Agreement, PacifiCorp will conduct such work between July 15 and August 31, or outside of that time period with the approval of ODFW, NMFS and USFWS. Actions that are likely to occur outside of the July 15 to August 31 period include the following decommissioning actions:

- (i) construction and removal of upstream and downstream cofferdams, cofferdam materials and culverts;
- (ii) removal of the artificial upstream fish passage channel and bypass flume;
- (iii) placement of materials (relocated cofferdam materials and available streambed materials) along the river to create access for removal of remaining portions of dam and fish ladder;
- (iv) placement of materials to regrade and armor the east and west banks of the river to harden the disturbed areas; and
- (v) regrading of the streambed above and below the dam as necessary to assist with removal of any barriers to fish passage created as a result of decommissioning activities.

b. Fish Passage

During construction of the cofferdams associated with dam removal activities, PacifiCorp will extend the existing fish ladder return channel upstream of the dam to above the upstream cofferdam work, and install culverts through the downstream cofferdam to provide continued access to the existing fish ladder entrance. Coincidental to the construction of the cofferdams, PacifiCorp will construct an artificial channel extending from a mid-point on the existing fish ladder to a location immediately downstream of the downstream cofferdam. Upon completion of this channel and the bypass channel (described below), PacifiCorp will close the fish access

through the downstream cofferdam, allowing upstream migrants to enter the existing fish ladder structure through a newly constructed access. PacifiCorp will place rock between the upstream return channel and water bypass intake to minimize upstream migrant entrainment into the downstream bypass flume.

During dam removal, PacifiCorp will divert river flow past the work zone by installing removed sections of the existing steel flume from above the upstream cofferdam to below the downstream cofferdam, passing over the overflow section and existing fish ladder. This will also provide downstream fish passage.

Prior to changing any of the existing fish passage facilities or constructing any new fish passage facilities associated with dam removal, PacifiCorp will prepare final fish passage design and construction plans in consultation with NMFS, USFWS, ODFW and CTWS.

These fish passage strategies will maintain fish migration opportunities during decommissioning and minimize impacts of decommissioning on aquatic resources. Following decommissioning, the Hood River channel will be free of migration barriers. The Parties have agreed that the prescribed fish passage strategies will be the most efficient and effective methods for maintaining fish migration during Project decommissioning.

c. Erosion and Sediment Control Plan

Prior to taking any in-water decommissioning actions, PacifiCorp will develop and implement an Erosion and Sediment Control Plan ("ESCP") in consultation with and with the approval of NMFS, USFWS, ODEQ, ODFW and CTWS, that identifies specific methods that will be implemented at each work area to protect water quality. The ESCP will address:

- (i) protection of the Hood River from unplanned releases of sediment and debris during decommissioning activities;
- (ii) disposition of sediment and decommissioning debris in accordance with applicable law, PacifiCorp's Spill Prevention Control and Countermeasure Plan, and public health and safety;
- (iii) implementation of permanent revegetation measures consistent with best management practices; and
- (iv) dam removal, which will be conducted in dry conditions.

In addition, the ESCP will specify measures such as berms, ditches, sediment retention basins, silt fencing, and site restoration to be undertaken by PacifiCorp.

d. Protection of Terrestrial Resources

PacifiCorp will complete surveys for federal- or state-listed rare, threatened and endangered species in areas planned for construction and will plan and design removal activities to minimize direct impacts on wildlife species and minimize habitat impacts.

e. Revegetation

PacifiCorp, in consultation with the Parties, will prepare and implement a Revegetation and Mitigation Plan ("RMP"). The RMP will address the manner in which PacifiCorp, in conducting decommissioning activities, will:

- (i) minimize the area of disturbance to the extent feasible;
- (ii) adhere to conditions of any applicable U.S. Army Corps of Engineers or Oregon Division of State Lands wetlands permit;
- (iii) consult with state and federal wildlife agencies, CTWS, and, when necessary, the Columbia River Gorge Commission prior to carrying out the work to determine appropriate protection measures;
- (iv) limit construction to summer through fall months;
- (v) revegetate disturbed areas with native vegetation to the extent feasible, based on existing vegetation cover type mapping and potential wetland delineations; and
- (vi) control sedimentation of aquatic habitat as set forth in the ESCP.

The Parties recognize that decommissioning may result in some unavoidable artificial wetland alteration due to elimination of leaks from the existing wood stave flowline, and agree that PacifiCorp is not obligated to compensate for the removal of this artificial water source.

f. Cultural Resources

PacifiCorp will reach a draft Memorandum of Agreement with the State Historic Preservation Office ("SHPO") for submission to FERC prior to decommissioning. PacifiCorp will photographically document eligible properties for pictorial preservation by the National Register. In addition, PacifiCorp will consider mitigation measures for eligible properties such as recordation to the Historic American Buildings Survey/Historic American Engineering Record standards, and architectural salvage.

Prior to modifying any structures, PacifiCorp will consult with the SHPO, the National Park Service, the U.S. Army Corps of Engineers, CTWS, the Oregon Historical Society, the Hood River County Historical Society, and the County of Hood River, as appropriate. If ownership of the property and remaining eligible facilities are transferred to another entity, PacifiCorp will provide documentation acknowledging that the facilities are eligible for listing in the National Register of Historic Properties and require treatment in a manner consistent with that National Historic Preservation Act.

g. Recreation

PacifiCorp may restrict or prohibit public access to the two existing day-use sites and the bypass reach while portions of decommissioning activities take place. Where full or restricted access is provided, PacifiCorp will:

- (i) provide appropriate signing and public notification prior to demolition and restoration activities to inform the public of planned activities and temporarily restricted public access to the bypass and day-use sites;
- (ii) minimize impacts to the fishing experience by implementing a demolition program that minimizes the length of time that the river is affected; and
- (iii) where feasible, restore river trails, access roads and parking areas to pre-construction conditions following decommissioning activities.

C. Post-Decommissioning Actions

The Parties have identified three primary actions associated with the post-decommissioning period. These actions are designed to maintain the conservation and recreation goals of the Agreement and ensure aquatic habitat connectivity following Project facility removal. Although the Parties are not seeking approval from, or asking for Commission determination on the disposition of Project lands or PacifiCorp's water right, their treatment following decommission is described for clarity.

1. Fish Passage Monitoring and Contingency Plan

Project decommissioning will eliminate the effects of the Project on fish passage and fish habitat. Wild steelhead will no longer have to negotiate the fishway at Powerdale dam. Removal of the Project will restore a natural flow regime to the river below the dam. Juvenile fish entrainment at the intake screens will be eliminated.

Nonetheless, Project decommissioning also has the potential to cause a number of short-term negative impacts. The primary concerns are impacts on fish passage, impacts of channel change in the area immediately upstream and downstream of the dam, impacts of downstream sediment deposition, and impacts of downstream suspended sediment increases. These impacts, which are described in detail in the Draft Biological Evaluation, led to the development of a post-decommissioning fish passage monitoring and contingency plan.

This plan will be based on a final geomorphology report to be provided to the Parties by PacifiCorp within 18 months of the Effective Date. The report will describe:

- (i) current geomorphic conditions beginning 2,200 feet below the dam (near the stream gage) to 1,000 feet upstream of the dam, or above the vegetated island (whichever is farther); and
- (ii) the anticipated impact of sediment released from dam removal on fish passage and aquatic habitat downstream of the dam removal site.

PacifiCorp will develop and implement a fish passage monitoring and mitigation plan, in consultation with NMFS, USFWS, ODFW, ODEQ and CTWS, and approved by NMFS, USFWS and ODFW. In the event a fish passage obstruction, as defined by the plan, is caused or exacerbated by dam removal, PacifiCorp will restore adequate fish passage by implementing mitigation measures set forth in the plan. PacifiCorp's obligations under this plan will end one

cycle of seasons after the river has returned to its natural conditions, as determined by NMFS, USFWS, ODFW, CTWS and PacifiCorp in accordance with the geomorphology report.

2. Disposition of Project Lands

PacifiCorp owns approximately 454 acres of land in the Project vicinity of the Hood River basin. Approximately 125 acres are associated with the Project. The non-Project lands are on or near the Hood River, or in forested uplands removed from the river. PacifiCorp's lands are generally undeveloped (except those lands used for Project purposes) and are virtually unchanged since their original purchase in the early 1900s.

PacifiCorp has agreed to convey these lands to a creditworthy entity or entities timely identified by NMFS, USFWS, ODFW, CTWS, AR, and HRWG (collectively, the "Lands Stakeholders"), in consultation with Hood River Valley Parks and Recreation District and Hood River County Parks and Buildings Department. Upon conveyance, the land will be managed under a conservation easement executed by the new landowner (Exhibit 4 to the Agreement). The goals of the conservation easement are fourfold:

- (i) protect existing fish and wildlife habitat while allowing for habitat restoration and enhancement;
- (ii) retain existing recreational uses of the land while allowing improvements that are consistent with the current uses, as well as consistent with protection, restoration and enhancement of fish and wildlife habitat;
- (iii) expand recreational and educational opportunities, so long as they are consistent with protection, restoration and enhancement of fish and wildlife habitat; and
- (iv) acknowledge and preserve of the right of CTWS tribal members to exercise their Treaty-secured off-reservation fishing rights on the Project-related lands.

All of the lands to be conveyed and managed through the conservation easement are within several miles of downtown Hood River and the surrounding community. The easement will be managed not only to protect and enhance the aquatic and terrestrial habitat which, when combined with dam removal and flow restoration, will increase the prospect for aquatic species recovery in the Hood River; but also to foster the more general goals of ecosystem health and continued community access to river-based recreation opportunities.

3. Water Rights

Within 90 days of permanent cessation of power at the Project, PacifiCorp will assign its PacifiCorp Hydroelectric Water Right for the Powerdale Project (Certificate No. 46965) to OWRD for conversion to an instream water right pursuant to ORS 543A.305. OWRD shall accept the PacifiCorp Hydroelectric Water Right "AS IS." This provision is included in the Agreement, as it is consistent with the goals of the Parties for the post-decommissioning period.

IX. LICENSE AMENDMENT AND DECOMMISSIONING ARE IN THE PUBLIC INTEREST

PacifiCorp and the Parties have expended a great deal of time and effort in considering the fate of the Powerdale Project. The two driving goals throughout the negotiation process have been PacifiCorp's responsibility to its ratepayers to provide economical and reliable power, coupled with the local and national interest to protect and enhance our natural resources, with specific emphasis on salmon recovery efforts.

All Parties agree that interim operation and subsequent decommissioning of the Project will serve the public interest in the following ways:

- (i) Interim operation pursuant to the measures articulated in Section 3 of the Agreement will serve the public interest by mitigating resource impacts during Project operations prior to decommissioning.
- (ii) Decommissioning will serve the public interest by eliminating a source of electric generation that promises to become uneconomic if retained and operated under a new long-term license.
- (iii) Decommissioning will serve the public interest by restoring connectivity on the Hood River and thereby facilitating free upstream and downstream fish passage.
- (iv) Decommissioning will serve the public interest by improving water quality in the Hood River via flow restoration within the bypass reach and the elimination of maintenance activities on the Project sand-settling basin.
- (v) Decommissioning will serve the public interest by allowing the geomorphic processes and the riverine ecosystem of the Hood River to revert to a natural state with the return of full streamflow.
- (vi) Decommissioning will serve the public interest by facilitating a transfer of former Project and non-Project lands from PacifiCorp to a timely-identified entity or entities that will manage such lands for conservation and recreation purposes.
- (vii) Decommissioning will serve the public interest by facilitating transfer of former Project water rights to the State of Oregon for conversion to permanent instream water rights.

All Parties to the Agreement recognize that it is in the public interest to delay decommissioning activities and to continue generation at the Powerdale Project until 2010. Some of the reasons that delay and continued generation serve the public interest are described below:

- (i) Delaying decommissioning until 2010 serves the public interest because it allows ODFW and CTWS to complete their on-going fish studies and obtain statistically significant results that will have region-wide value to fisheries managers. These studies evaluate alternative means to rebuild native fish populations using hatchery fish in a time when significant efforts and funds are being expended to restore anadromous fish populations.
- (ii) Delaying decommissioning until 2010 serves the public interest by providing PacifiCorp with sufficient time to acquire all federal, state, and local permits required prior to initiation of decommissioning.
- (iii) Continued generation until 2010 serves the public interest by maximizing the use of the Project during the period that the Project should remain in operation in order to facilitate fisheries studies and provide PacifiCorp with adequate time to obtain the permits needed to begin decommissioning.

As discussed above, the Parties anticipated a five to six-year delay between receipt of Commission authorization to decommission in 2004 or 2005 and commencement of decommissioning in 2010. For the following reasons, the Parties submit that a five to six-year delay is unlikely to alter the public interest factors supporting approval of interim operation and subsequent decommissioning:

- (i) The net benefit of Project operations is not expected to improve over the five to six years of interim operation, and the costs of annual and unexpected Project maintenance may actually increase, thereby continuing to decrease the Project benefit to the ratepayers and the regional energy grid.
- (ii) Any impacts associated with the continued operation of the Project for an additional five to six years are limited and will be mitigated by the interim operating measures described in the Agreement and the subsequent decommissioning of the Project and return of the river to natural flow conditions.
- (iii) The Parties agree that it is unlikely that the public interest in protection and enhancement of the environment will change during five to six years of interim operation.

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For all of the reasons stated above, the interim operation and eventual decommissioning of the Powerdale Project serves the interests of the public, the resource agencies and tribes, and PacifiCorp.

X. CONCLUSION

For the reasons set forth in this Statement and in the Agreement, the Parties believe that the Agreement is fair, reasonable, and in the public interest. The Parties therefore recommend that FERC extend and amend the Project license and approve decommissioning consistent with the Agreement.

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Powerdale Hydroelectric Project Lovell/154
FERC Project No. 2659

XI. LITERATURE CITED

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- PacifiCorp. 1998. Application for new license for major project-existing dam: Powerdale Hydroelectric Project (FERC Project No. 2659), Hood River County, Oregon. Volumes 1-4. Portland, Oregon.