

133 FERC ¶ 61,232  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

PacifiCorp

Project Nos. 2342-005  
and 2342-011

ORDER ACCEPTING SURRENDER OF LICENSE,  
AUTHORIZING REMOVAL OF PROJECT FACILITIES, AND  
DISMISSING APPLICATION FOR NEW LICENSE

(Issued December 16, 2010)

**INTRODUCTION**

1. On December 23, 1991, PacifiCorp<sup>1</sup> filed, pursuant to section 15 of the Federal Power Act (FPA),<sup>2</sup> an application for a new license authorizing the continued operation and maintenance of the 14.7-megawatt (MW) Condit Hydroelectric Project,<sup>3</sup> located on the White Salmon River in Klickitat and Skamania Counties, Washington.<sup>4</sup>
2. On October 21, 1999, PacifiCorp filed an application for amendment of license and approval of offer of settlement. In this filing, PacifiCorp proposed to extend the project's current license term until October 2006 and remove the project thereafter. In a

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<sup>1</sup> PacifiCorp, previously named PacifiCorp Electric Operations, is a public utility, organized under Washington State law, that generates, trades, and delivers electricity to over 1.7 million customers.

<sup>2</sup> 16 U.S.C. § 808 (2006).

<sup>3</sup> PacifiCorp proposed to increase the capacity of the project to 15.8 MW.

<sup>4</sup> The Condit Project is located on a segment of the White Salmon River, which has been determined to be a navigable waterway of the United States. *See PacifiCorp*, 76 FERC ¶ 62,268 (1996), *reh'g denied*, 78 FERC ¶ 61,170 (1997). The project does not occupy federal lands.

declaratory order issued December 21, 2001,<sup>5</sup> and a clarification order issued March 15, 2002,<sup>6</sup> the Commission determined that the filing was, in effect, an application to surrender PacifiCorp's existing license with a future effectiveness date. We will refer to the filing (October 1999 filing) as a surrender application except where it is necessary to refer to the settlement or the amendment request itself.

3. PacifiCorp subsequently requested extensions of the dates by which it proposed to cease operations under its license and begin project removal. Owing to the passage of time since the surrender proposal was filed, it would serve no purpose to amend the license to extend the license term. Rather, for the reasons discussed below, we accept the surrender of PacifiCorp's license with the terms and conditions discussed below, authorize the removal of certain project facilities, and dismiss PacifiCorp's prior application for a new license.

## BACKGROUND

4. The Condit Project, constructed in 1913, consists of one development that diverts flows from 1.1 miles of the White Salmon River and returns it directly to that river. The project works include: (1) a 471-foot-long, 125-foot-high dam; (2) a 92-acre reservoir (Northwestern Lake) with 615 acre-feet of usable storage at an elevation of 295 feet mean sea level; (3) a water conveyance system comprising an above-ground 13.5-foot-diameter, 5,100-foot-long wood stave pipeline and two 9-foot-diameter, 650-foot-long steel and wood stave penstocks; (4) a 150-foot-long, 75-foot-wide, concrete powerhouse containing two Francis-type dual-runner horizontal turbine/generator units with a total installed capacity of 14.7 MW; (5) a 350-foot-long tailrace; and (6) a 69-kilovolt, 230-foot-long transmission line. The project operates in neither strict run-of-river nor peaking mode, but changes operational mode depending on inflow rates, seasonal recreational use, and the need for peaking power. The White Salmon River flows into the Columbia River 3.3 miles below Condit dam. Northwestern Lake extends three miles upstream of the dam.

5. An original license for the Condit Project was issued on December 20, 1968,<sup>7</sup> with an effective date of May 1, 1965, and a termination date of December 31, 1993,<sup>8</sup> for a

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<sup>5</sup> *PacifiCorp*, 97 FERC ¶ 61,348 (2001).

<sup>6</sup> *PacifiCorp*, 98 FERC ¶ 61,301 (2002).

<sup>7</sup> *Pacific Power & Light Company*, 40 F.P.C. 1485 (1968).

<sup>8</sup> The license term was set under the then-applicable license term policy for unlicensed, operating projects that the owners knew or should have known were required to be licensed. See *City of Danville, Va.*, 58 FERC ¶ 61,318 (1992).

license term of 28 years and eight months. PacifiCorp filed an application for new license on December 27, 1991. No competing applications were filed. Since expiration of the original license, project operations have continued pursuant to annual licenses, pending disposition of PacifiCorp's application for a new license and the proposal before us here.<sup>9</sup>

6. Commission staff issued a Draft Environmental Impact Statement (Draft EIS) in November 1995 and a Final Environmental Impact Statement (Final EIS) in October 1996 addressing PacifiCorp's relicensing proposal. Staff recommended PacifiCorp's licensing proposal, with additional staff-recommended measures, but it also analyzed total and partial dam removal alternatives.

7. In January 1997, PacifiCorp informed the Commission that, because it considered the costs of the Final EIS's environmental measures, including a mandatory prescription for an expensive fishway, to be economically unacceptable, it had entered into discussions with other interested entities concerning retiring the project and removing the project dam. Over the next two years, PacifiCorp and various parties to the relicense proceeding conducted settlement negotiations, which culminated in PacifiCorp's October 1999 filing.<sup>10</sup>

8. As noted, the October 1999 filing was tendered as an application for amendment of license and for approval of an offer of settlement. PacifiCorp requested that the Commission: approve the settlement without condition or modification; prepare a supplement to the 1996 Final EIS and engage in any necessary consultation under the Endangered Species Act on its application to amend the license in accordance with the terms of the settlement; amend PacifiCorp's license to extend the license term to October 1, 2006 (for a total term of about 42 years); and incorporate the terms and conditions of the settlement in the extended license.

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<sup>9</sup> Pursuant to section 15(a)(1) of the Federal Power Act (FPA), 16 U.S.C. § 808(a)(1) (2006), the terms of an annual license are the terms of the prior license.

<sup>10</sup> The settlement agreement was signed by PacifiCorp, 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, The Sierra Club, Rivers Council of Washington, The Mountaineers, Trout Unlimited, Washington Trout, Washington Wilderness Coalition, Columbia River Intertribal Fish Commission, Yakama Nation, U.S. Forest Service, U.S. Department of the Interior, National Marine Fisheries Service, Washington Department of Ecology, Washington Department of Fish and Wildlife, and Friends of the White Salmon River, all parties to the relicense proceeding.

9. The settlement was included as Exhibit 1 to the October 1999 filing. In it, the settlement parties agreed that PacifiCorp would begin implementation of the dam removal schedule not later than August 1, 2006, cease generating power not later than October 1, 2006, and commence project removal during October 2006.<sup>11</sup> PacifiCorp would contribute project removal costs, in 1999 dollars, of up to \$17,150,000, of which \$13,650,000 would be for planning, engineering, design, construction, removal, and related costs; \$2,000,000 for technical, engineering, and legal costs incurred in obtaining permits and compliance with permit requirements; and \$1,500,000 in contributions to funds, discussed later in this order.<sup>12</sup> The settlement also required PacifiCorp to apply for an amendment of its existing license to extend the expiration date to October 1, 2006, and to add as license conditions that PacifiCorp (a) shall comply with the terms of the settlement and (b) shall notify the Commission of its decision either to (1) cease generation and commence project removal in accordance with the removal plan or (2) not remove the project because of the occurrence of one of the conditions set forth in section 5 of the agreement, whereupon PacifiCorp shall request that the Commission renew action on its relicense application.<sup>13</sup>

10. The settlement parties state that, in May 1998, R.W. Beck, an independent consulting engineer firm, had prepared a detailed summary report (Beck Report) of project removal alternatives, and that the settlement parties had reached agreement on a dam removal plan for the project.<sup>14</sup> This plan is described as the “Selected Approach” in the Beck Report and, as supplemented by a removal costs worksheet, is set out in Exhibit A (Removal Plan Summary) to the settlement.<sup>15</sup>

11. Under the proposed project removal approach, PacifiCorp would demolish and remove Condit dam and all other project facilities except the powerhouse, which has historical significance. The demolition and removal activities would be expected to take about one year. Dam removal would be accomplished by excavating a 12-foot-high by 18-foot-wide, low-level drain tunnel through the concrete base of the dam from the downstream side. Concrete excavated from the tunnel would be transported to a spoil area, and an access road would be constructed to the existing spillway apron deck. The

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<sup>11</sup> Settlement at section 4.4.

<sup>12</sup> *Id.* at section 4.1.1. The settlement provides for the adjustment of 1999 dollars.

<sup>13</sup> *Id.* at section 3. Section 5 lists a number of reasons for which any party may withdraw from the settlement. These will be set out later in this order.

<sup>14</sup> PacifiCorp had already filed the Beck Report with the Commission on June 19, 1998.

<sup>15</sup> Settlement at 2-3.

last 15 feet of the tunnel would be drilled and blasted, allowing the reservoir and impounded sediments to be sluiced through the tunnel, and lowering the reservoir to stream level in about 6 hours. Prior to this final tunnel blast, a barge-mounted 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 had 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. 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, giving fish a place to rest during their passage upstream.<sup>16</sup>

12. Concrete excavation of the dam would start at the east end. Using drilling and explosives, concrete blocks would be removed to trucks for transport to the spoil area. Removal of materials would proceed across the dam in a series of top-slicing cuts; as the cuts progressed downward and the dam thickens, the center section would be drilled and blasted into rubble. When the cuts across the top of the dam progressed below elevation 225, where the river channel becomes narrow and steep, a crane would be set up on the spillway to hoist concrete from this lower area. As the excavation reached 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 was completely excavated to bedrock, the edge sections would be blasted into blocks and hoisted out of the river channel. Finally, the area around the drain tunnel would be excavated using a similar method. The settlement parties stipulate that this final work must be scheduled during low river flows in order to facilitate removing the concrete from the footprint of the dam in this lower section.<sup>17</sup>

13. PacifiCorp would also remove cofferdams that were used to divert and control water during the original construction of the dam and that were left in place and flooded when the reservoir was allowed to fill. A road would be constructed from the top of the excavated concrete dam down to the area of the cofferdams, which should be at least partially exposed by the erosive flushing of the reservoir. Some blasting would probably be necessary to remove one of the cofferdams. PacifiCorp would also remove the surge

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<sup>16</sup> Removal Plan Summary at 2-3.

<sup>17</sup> *Id.* at 3-4.

tank<sup>18</sup> and its concrete foundations, using drilling and blasting techniques, and the wood stave pipeline and steel and wood penstocks. Materials would be trucked to the spoil area.<sup>19</sup>

14. The Removal Plan Summary includes a removal plan schedule that reflects certain timing considerations.<sup>20</sup> Work that affects water quality and quantity would not be performed until after October 1.<sup>21</sup> Therefore, work done before that date would be confined to such measures as site layout, construction of an access road and the drain tunnel, setting up a barge in the reservoir, and removing flashboards.<sup>22</sup> The cofferdams used in the original construction of the dam would be removed by the following May 1 to allow fish passage.<sup>23</sup> Finally, excavation of the drain tunnel at the base of the dam and the removal of low level concrete in the original river channel would have to be performed during low river flows, i.e., during the following July through November.<sup>24</sup>

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<sup>18</sup> The 40-foot-diameter, 40-foot-high surge tank is located between the wood stave pipeline and the penstocks. It includes an ungated overflow vent and spillway that discharges overflow back into the river just upstream of the powerhouse. Its purpose is to relieve excess pressure.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *See* Removal Plan Summary at 7.

<sup>21</sup> The Removal Plan Summary cites a January 21, 1998, U.S. Fish and Wildlife Service memo as the basis for this constraint. The Beck Report, at section 6, Project Schedule, explains that this date must be observed to ensure that the run of tule fall Chinook salmon can return to the Spring Creek National Fish Hatchery, located on the Columbia River approximately 1.2 miles downstream of the confluence with the White Salmon River, without encountering high turbidity levels resulting from release of trapped sediment. It adds that the initial release and flushing of sediment would be scheduled for the end of October.

<sup>22</sup> *See* the construction schedule included with the Removal Plan Summary. This schedule is a reproduction the Beck Report, Figure 6-1, Construction Schedule.

<sup>23</sup> The Removal Plan Summary again cites the January 21, 1998, U.S. Fish and Wildlife Service memo. The Beck Report, at section 6, explains that observing this deadline would avoid impacts to the next year class of spring Chinook salmon and to allow passage of spring Chinook salmon during demolition.

<sup>24</sup> A schedule attached as Exhibit C to the settlement shows removal of the dam and other project structures as occurring from October 2006 through December 2007.

15. PacifiCorp would undertake several measures related to mitigating the effects of removing the dam and draining the reservoir. PacifiCorp would address woody debris management and would protect the U.S. Fish and Wildlife (FWS) raceways<sup>25</sup> located at the Big White Salmon Ponds facility about 1.4 miles downstream of Condit dam during project removal.<sup>26</sup> It would also implement sediment management activities.<sup>27</sup> After dam removal, PacifiCorp would revegetate the formerly inundated reservoir shoreline and areas used for spoil disposal and would take measures to prevent the spread of noxious weeds.<sup>28</sup> Draining the reservoir would result in the separation of existing recreation facilities along the present shoreline from the river's edge. To address this, PacifiCorp would remove four community boat docks on the west shore of the reservoir; remove the boat dock and extend the boat launch at Northwestern Lake Park, a project recreational facility, to the new river channel; remove boat launch facilities located on the east side of the reservoir just upstream of Condit dam; and install an interpretive display at Northwestern Lake Park.<sup>29</sup>

16. Northwestern Lake Bridge, which crosses the reservoir about 1.8 miles upstream of Condit dam, is supported by two in-river piers founded on pilings and a pile cap that would be exposed to erosion when the dam was removed and the river flowed freely. PacifiCorp would protect the piling beneath the pile cap with reinforced concrete and place protective riprap around the piers. Two pipelines crossing the reservoir near the Northwestern Lake Bridge would need protection from scouring when the dam was removed and the river cut through sediment currently covering them. PacifiCorp would bury the 14-inch-diameter water supply pipeline for the City of White Salmon deeper in the river channel or provide protective armoring over the pipeline, while it would armor the 26-inch-diameter Ignacio-to-Sumas gas pipeline with concrete in the river channel. Mount Adams Orchard, located on the east side of Condit dam and the bypassed reach, uses a pumping system to withdraw reservoir water for its operations. PacifiCorp would relocate and supply a new intake structure and pump and would connect the new pipeline to the orchard water supply under an agreement with the orchard.<sup>30</sup>

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<sup>25</sup> A raceway is a rectangular channel or tank with a continuous flow of water constructed for high-density fish production.

<sup>26</sup> See Beck Report, Table 5-1, Condit Dam Removal Construction Cost Estimate.

<sup>27</sup> See Removal Plan Summary, Condit Hydroelectric Project Removal Costs Worksheet at 9.

<sup>28</sup> See Beck Report, Table 5-1.

<sup>29</sup> See Beck Report at 6 and Table 5-1.

<sup>30</sup> See Beck Report at 5.

17. On February 2, 2000, the Commission issued public notice of the October 1999 filing and solicited comments, protests, and motions to intervene.<sup>31</sup> Timely motions to intervene were filed by the U.S. Department of the Interior (Interior); U.S. Department of Agriculture (Agriculture); Washington State Department of Ecology (Washington DOE); Washington Department of Fish and Wildlife (Washington DFW); National Marine Fisheries Service (NMFS); Columbia River Gorge Commission (Gorge Commission); Yakama Nation; Columbia River Inter-Tribal Fish Commission (Inter-Tribal Fish Commission); SDS Lumber Company and SDS Co., LLC (SDS Lumber); Central Cascades Alliance; and jointly by 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, Sierra Club, Trout Unlimited, Washington Trout, and Washington Wilderness Coalition (collectively, American Rivers). A late motion to intervene was filed by Northwest Sportfishing Industry Association and was granted by notice issued May 18, 2010.

18. Timely motions to intervene and protests to the October 1999 filing were filed by Forest J. Hofer; Klickitat and Skamania Counties, Washington (Counties); and jointly by White Salmon Conservation League and White Salmon River Steelheaders (White Salmon League).<sup>32</sup> In addition, protests were filed by William G. Paulsen and T.E. Garred, and comment letters were filed by owners and lessees of land and cabins in the project area and others.<sup>33</sup>

19. The Final EIS from the relicense proceeding has been incorporated into the surrender proceeding by reference, and Draft and Final Supplemental Final EISs (referred

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<sup>31</sup> By notice issued March 9, 2000, the Commission clarified that the due date for these filings would be March 27, 2000.

<sup>32</sup> PacifiCorp, Washington DFW, Inter-Tribal Fish Commission, and Yakama Nation filed answers in opposition to the interventions of these entities and of SDS Lumber, Central Cascades Alliance, and the Gorge Commission. By notice issued May 3, 2000, all of the opposed motions to intervene except that of the Gorge Commission were granted. By notice issued May 23, 2000, the Gorge Commission's motion was granted.

<sup>33</sup> A list of those who filed timely comments is found at staff's June 2002 Final Supplemental EIS prepared for the surrender proposal at 6. Replies to comments were filed by Interior and NMFS (jointly), American Rivers, Inter-Tribal Fish Commission, Washington DOE, and Washington Trout. Various parties also filed answers to answers, which, though generally not permitted (*see* 18 C.F.R. § 385.213 (2010)), have been accepted and considered in the interest of a more complete record.

to here as Draft and Final Supplemental EISs) addressing the surrender proposal in detail were issued in January and June 2002, respectively. Numerous comments were filed in response to the Draft Supplemental EIS,<sup>34</sup> and PacifiCorp and the Counties filed comments on the Final Supplemental EIS.

20. In the Final Supplemental EIS, Commission staff recommended surrender of the license with removal of Condit dam in accordance with the settlement proposal, with additional staff recommendations, on the basis that removal of the dam would provide numerous fishery, wildlife, recreational, and aesthetic benefits expeditiously and in a cost-effective manner. Staff concluded that those benefits would outweigh the costs associated with the loss of the dam and Northwestern Lake.<sup>35</sup> To protect environmental resources and public safety during the dam removal process, staff recommended the development of plans for: petroleum and hazardous substances control; a post-reservoir-dewatering assessment; wetland creation and riparian revegetation and monitoring; woody debris management; sediment and erosion control during dam removal activities, including the construction of access roads and staging areas and remediation or replacement work associated with the reservoir water and natural gas pipelines, Northwestern Lake Bridge, and the Mount Adams Orchard water supply intake; protection of FWS raceways; noxious weed control; recreational facility removal and improvements; posting of warning signs and interpretive displays; mitigating adverse effects on private wells due to lowered groundwater; capture of Chinook and coho salmon and steelhead adults prior to dam removal for spawning in a hatchery and later release of progeny upstream of the reservoir; protection of western pond turtles; and public safety and protection.<sup>36</sup>

21. On February 28, 2005, PacifiCorp filed an amendment to its surrender application, reflecting a modification of the settlement that had been agreed to by all of the settlement parties. The amendment extended the proposed date for ceasing project generation to October 1, 2008, and the date for commencing project removal to October 2008, and it increased the limitation on PacifiCorp's commitment to fund total project removal costs from \$17,150,000 to \$20,450,000.<sup>37</sup> The Commission issued notice of this modification of the settlement on March 10, 2005. Comments were filed by the Counties and PacifiCorp, which also filed replies to each other's comments.

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<sup>34</sup> These are listed in the Final Supplemental EIS at Appendix B.

<sup>35</sup> Final Supplemental EIS at xxx-xxxii and 183.

<sup>36</sup> *Id.* at 188-189.

<sup>37</sup> The new amount is attributable to increasing the limitation on permitting and mitigation costs from \$2,000,000 to \$5,300,000, in 1999 dollars.

22. By letter filed May 30, 2008, PacifiCorp notified the Commission that, because it had not yet received all of the permits necessary to allow project removal to commence by October 2008, it expected to continue project operations after that date.<sup>38</sup> In a letter filed May 20, 2009, citing the same reason, PacifiCorp extended the date for continuation of operations beyond October 2009 and expressed the hope that it could begin dam removal in October 2010. In a status report filed March 3, 2010, PacifiCorp notified the Commission that it estimated it would need nine months after all permits become final and unappealable to complete necessary procurement, contracting, and mobilization of a demolition contractor before it could begin project removal. By letter filed May 21, 2010, PacifiCorp notified the Commission that, because it had not yet received the authorizations noted above, it did not expect to commence project removal before October 2011. In a status report filed September 16, 2010, PacifiCorp stated that it still expects to begin project removal in October 2011, as long as all required permits and a Commission surrender order are obtained on terms consistent with the settlement and in final form by December 31, 2010.

23. On November 26, 2010, PacifiCorp filed a settlement agreement (November 2010 settlement) executed by it and the Counties. PacifiCorp stated that this settlement, for which it is not seeking Commission approval, resolves all disputes between it and the Counties regarding the surrender proposal. PacifiCorp stated that the Counties would be filing recommended conditions for a Commission surrender order and a request to withdraw any pending motions filed in opposition to the surrender proposal. According to PacifiCorp, the November 2010 settlement includes a comprehensive release by the Counties of all claims against PacifiCorp arising out of the operation or removal of the Condit Project, with the exception of claims by Klickitat County for destabilization of the Northwestern Lake Bridge. Provisions for addressing this issue are included in a section of the November 2010 settlement and will be discussed in a later section of this order. Among other issues, the November 2010 settlement also addresses the use of the project flowline alignment and a landfill as materials disposal sites and continued operation by PacifiCorp of Northwestern Lake Park. Pertinent aspects of the November 2010 settlement will be discussed later in this order.

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<sup>38</sup> PacifiCorp stated that continued project operation was contemplated by section 2.2 of the settlement, which provides that it is not required to cease generation or to begin removal of the project until it receives all applicable permits in final form. Specifically, PacifiCorp noted that it had not yet received water quality certification from Washington DOE, a dredge and fill permit from the U.S. Army Corps of Engineers, and authorization from this Commission to surrender the license and remove the project facilities.

24. On November 29, 2010, the Counties filed their comments and recommendations. These will also be discussed in a later portion of this order.<sup>39</sup> By letter filed December 3, 2010, the Counties withdrew all “current motions or other filings by the Counties with the Commission in this and any related matters, except as otherwise provided in the [November 2010] Settlement Agreement.” Because it is not completely clear what filings the Counties are not withdrawing, we will address several of the issues raised by the Counties in this proceeding.

## **PRELIMINARY MATTERS**

### **A. Competition**

25. Some parties have argued that the Condit Project should be relicensed and that PacifiCorp should be required to continue to operate it, or else that the Commission should solicit applications from other potential license applicants.<sup>40</sup> However, a licensee cannot be required to retain or renew its license if it wishes to surrender it, nor is there any statutory requirement for renewed competition if the incumbent licensee/relicense applicant decides, after the application deadline, to surrender its current license instead.<sup>41</sup> Third parties had the chance to file competing applications. Therefore, if the licensee enters into a settlement agreement with other parties to the relicensing proceeding with respect to the future of the project, that agreement should be considered before any competing applications are entertained.<sup>42</sup>

26. A number of intervenors in this surrender proceeding<sup>43</sup> have argued that the process by which the surrender proposal was developed was improper because: (1) the counties in which the project is situated and the local community were improperly excluded from participation; (2) a Commission attorney acted as an adviser in the proposal’s development; and (3) the signing of the settlement agreement by state and federal agencies constituted an improper prejudgment of determinations to be made in

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<sup>39</sup> An unsigned copy of these comments and recommendations was included as Exhibit A to the November 2010 settlement.

<sup>40</sup> Some parties to the surrender proceeding have suggested that they may wish to file a license application, were competition reopened without the participation of PacifiCorp as a competitor.

<sup>41</sup> *See Arizona Public Service Company*, 97 FERC ¶ 61,315 (2001).

<sup>42</sup> *PacifiCorp*, 97 FERC ¶ 61,348 at 62,627.

<sup>43</sup> Jerry Smith, on behalf of the Husum/BZ Community Council; Jim Rhoads; Douglas M. Crow; and Klickitat and Skamania Counties.

their National Environmental Policy Act (NEPA) comments and ignored state and local law on processes for management of state water resources.

27. The surrender proposal was the product of negotiations to settle issues in the relicense proceeding. PacifiCorp was not required by law to provide for participation by the general public in the formulation of such an agreement before filing it with the Commission. Interested entities were afforded an opportunity to become parties and participate in a proceeding concerning the surrender application by our notice, issued February 2, 2000, providing opportunity for intervention and comment on the surrender application.

28. The attorney assigned to advise parties concerning the development of the surrender proposal did so in accordance with Rule 2202 of the Commission's Rules of Practice and Procedure.<sup>44</sup> This rule provides that no employee assigned to participate or advise parties in a proceeding shall participate in or advise the Commission as to the findings, conclusion, or decision in that proceeding. The attorney who advised the settlement parties has not participated in any capacity in the Commission's decision-making function.

29. Finally, the manner in which other agencies carry out their responsibilities under NEPA is beyond our jurisdiction. To the degree that entities feel that other agencies have ignored state procedures and improperly prejudged their positions, the appropriate remedy lies in appeal before those agencies and/or in court.

### **B. The Effectiveness and Finality of the Surrender**

30. PacifiCorp applied to surrender its license but delay the effectiveness of the surrender, with power generation permitted in the interim. In our December 21, 2001 declaratory order, which we issued in response to a petition filed by PacifiCorp, we concluded that the settlement proposal to extend generation of power until October 2006, with project removal to be completed by the end of 2007, did not appear to be an unreasonable delay in the effectiveness of a surrender.<sup>45</sup> However, as a result primarily

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<sup>44</sup> 18 C.F.R. § 385.2202 (2010).

<sup>45</sup> *PacifiCorp*, 97 FERC ¶ 61,348 at 62,628-29. In this context, the effective date of the surrender refers to the date that PacifiCorp intends to cease generation and start removing project works. However, a surrender is actually not effective until the Commission issues an order finding that the licensee has satisfactorily fulfilled all the conditions of the surrender order, at which time the Commission's jurisdiction over the project ceases.

of delays in obtaining water quality certification from Washington DOE for removal of the dam, as discussed in more detail below, the additional generation period contemplated in the original surrender proposal has already expired. PacifiCorp has been able to generate electricity beyond the period contemplated in the settlement proposal through the issuance of annual licenses for the project, which will continue to authorize project operations until removal of the facilities can begin. Therefore, the proposal to amend the license to extend the license term is moot.

31. Under the settlement, the amended license would also include a condition requiring PacifiCorp to notify us of its decision either to cease generation and commence project removal or to refrain from pursuing project removal because of the occurrence of one of the conditions set forth in section 5 of the agreement. In the latter case, PacifiCorp would request us to renew action on the relicense application. As we are not amending the license to extend its expiration date, we will also not amend it to include this settlement condition. Nevertheless, we must still address the issue of when PacifiCorp would lose the right to have its relicense application reinstated.

32. Section 5 of the settlement provides that any party may withdraw from the settlement if: (1) the Commission does not issue an amended license within three years of the settlement's effective date; (2) the Commission materially amends the settlement's terms or conditions; (3) required permits are inconsistent with the settlement's terms and conditions; (4) PacifiCorp cannot obtain a permit on terms and conditions consistent with the settlement; (5) PacifiCorp cannot obtain a required easement, right-of-way, or other interest in property, or third party consent necessary to implement the removal plan; (6) PacifiCorp cannot obtain a contract to perform project removal and implement mitigation required by the settlement; (7) an injunction is issued prohibiting project removal or implementation of any permit or mitigation required by the settlement; (8) PacifiCorp cannot confirm an in-lieu site enhancement agreement with the Tribes; or (9) PacifiCorp cannot obtain release of claims from the United States in its capacity as trustee on behalf of Indian Tribes.

33. In our declaratory order, we concluded that we may defer the processing of a timely filed relicense application while we consider an alternative proposal for surrender reached through settlement negotiations. However, we stated that, once the proceeding is completed, there is a public interest in the finality of the decision reached. We questioned the reasonableness of a settlement term that, based on the outcome of a future contingency, would allow reinstatement of a relicense application after an order approving the settlement's other terms (providing for license surrender and project removal) is accepted and final. We also expressed concern that, having determined that the settlement's proposal to remove the project is in the public interest, we would then be

asked to find that, instead, relicensing the project is in the public interest only because one of the contingencies in section 5 of the settlement had occurred.<sup>46</sup>

34. In response to our declaratory order, PacifiCorp, by motion filed January 22, 2002 (motion for clarification), sought clarification of how long we would hold its relicense application in reserve in respect to certain matters that would likely not be resolved at the time we would be issuing a surrender order. Specifically, PacifiCorp requested clarification that we would reinstate the relicensing status quo if: (1) PacifiCorp could not obtain, by December 31, 2005, all permits necessary to commence project removal in October 2006 and to complete it in accordance with the settlement, the removal plan, and our surrender order; (2) a court or administrative order prevents PacifiCorp from implementing project removal in accordance with the settlement, the removal plan, or the surrender order; or (3) PacifiCorp has been unable, by December 31, 2005, to obtain a binding, enforceable contract for project removal in accordance with section 4.1.1 of the settlement, the removal plan, and the surrender order. In our March 15, 2002 order on clarification, we declined to address these issues, stating that they were among the very questions to be decided in the surrender proceeding and that we would not pre-judge them.<sup>47</sup>

35. In an attempt to address our concerns, PacifiCorp, after consulting the other settlement parties, filed comments on July 26, 2002 (July 2002 comments). PacifiCorp argued that there is no reason we could not approve the terms of the settlement proposal, because a finding that project removal is in the public interest does not preclude a later finding that some other outcome is in the public interest. However, assuming we continued to have reservations about approving its surrender proposal subject to the settlement's section 5 contingencies, PacifiCorp suggested that we could, instead, simply permit the continued operation of the project under annual licenses until October 1, 2006, and defer action on both the proposal to remove the project and the relicense application until it notified us, pursuant to section 3 of the settlement, whether it decided to proceed with project removal or to pursue relicensing because one of the section 5 contingencies had occurred. Under this alternative, PacifiCorp would be able to continue project operations in order to fund removal costs and continue working with the settlement parties and others to obtain necessary approvals and permits and eliminate contingencies and uncertainties before notifying us of its decision.<sup>48</sup>

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<sup>46</sup> *PacifiCorp*, 97 FERC ¶ 61,348 at 62,627-28.

<sup>47</sup> *PacifiCorp*, 98 FERC ¶ 61,301 at P 10.

<sup>48</sup> PacifiCorp stated that, under this scenario, it would notify us of its decision no later than December 31, 2005, to give us sufficient opportunity to take appropriate action

(continued...)

36. Both the settlement and our prior orders contemplated our issuance of an order extending the license term by several years and approving the settlement, with the possibility that PacifiCorp might seek to abandon the surrender alternative and pursue relicensing during that extended license period if one of the section 5 contingencies occurred. As it has turned out, no action has been taken on the surrender proposal until this order, and PacifiCorp has in fact continued to operate the project under annual licenses, as it proposed in its July 2002 comments. As a result, the period of uncertainty between our grant of the surrender application and the commencement of project removal should be far shorter than had been anticipated. Moreover, the additional years of operation under annual license have given PacifiCorp considerable time to fund removal costs through continued generation and otherwise to resolve many of the permitting and cost contingencies on which implementation of the surrender proposal might depend.

37. PacifiCorp asserts that allowing reinstatement of the relicense application upon the occurrence of one of the section 5 contingencies is consistent with our stated position that an incumbent licensee should not be required to abandon relicensing for the purpose of implementing a settlement until such time as the incumbent can be sure that its settlement proposing project removal will be approved.<sup>49</sup> But PacifiCorp is not asking us to entertain the relicensing reinstatement option only until we approve the settlement but rather even after the issuance of a final surrender order.<sup>50</sup> In fact, in the very order PacifiCorp cites, we stated:<sup>51</sup>

We would be willing to reinstate the relicense application if we failed to approve the settlement, including the license surrender and project removal proposals. However, once those orders become final, we would not anticipate that future issues concerning project removal could trigger reinstatement of the relicense application.

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by October 1, 2006, the date specified in the settlement for commencement of project removal. In its February 28, 2005 amendment request, discussed *supra* at P 18, PacifiCorp, reiterating its support for this alternative approach, substituted December 31, 2007, as the date by which it would notify us of its decision, to give us sufficient opportunity to take appropriate action by August 1, 2008, the date specified in the amended settlement for commencement of pre-dam removal activities. PacifiCorp has not notified us of any such decision.

<sup>49</sup> Motion for clarification at 3, citing the declaratory order in this proceeding and the declaratory order in *Arizona Public Service Company*, 97 FERC ¶ 61,315, at 62,449 (2001).

<sup>50</sup> *See, e.g.*, PacifiCorp January 22, 2002 comments at 4.

<sup>51</sup> *Arizona Public Service Company*, 97 FERC ¶ 61,315, at 62,454.

Our reluctance to allow reinstatement of the relicense application after the surrender order has been issued and accepted is thus wholly consistent with our stated policy.

38. Some of the section 5 contingencies should no longer present an obstacle to implementing the surrender proposal.<sup>52</sup> Whether others will prove problematic will be apparent only upon PacifiCorp's reaction to this surrender order. For example, PacifiCorp will have to decide whether it thinks that we have materially amended the settlement's terms to an extent that is unacceptable to it.<sup>53</sup> However, PacifiCorp will have 30 days from the issuance date of this order to consider such issues and to decline to accept the surrender on the order's terms. The issuance of necessary permits and the obtaining of necessary property interests and contracts for project removal are normal requirements of any Commission order authorizing surrender of a license and project removal. While some of these may still have to be obtained after the issuance of this order, operation of the project for several additional years under annual licenses should have given PacifiCorp considerably more time to obtain them than it would have originally anticipated, as PacifiCorp itself, in its July 2002 comments, assumed would be the case.<sup>54</sup>

39. PacifiCorp will have 30 days from the issuance of this order to accept or reject it.<sup>55</sup> If PacifiCorp chooses to reject it, we will reinstate the application for a new license. However, for the reasons we have discussed, we will not reinstate the relicense application (which is now almost 20 years old) based on contingencies that may occur after PacifiCorp has accepted the surrender on the terms of this order and the order has become final and unappealable.

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<sup>52</sup> For example, PacifiCorp has reached an in-lieu site enhancement agreement with the Tribes.

<sup>53</sup> Similarly, PacifiCorp, in its July 2002 comments, stated that, as long as our action was consistent with one of the approaches it was suggesting, it would not terminate the settlement solely on account of our failure to approve the surrender proposal within three years of the settlement's effective date. PacifiCorp will have to determine whether it thinks that our action is consistent with its suggested approaches.

<sup>54</sup> Moreover, in proposing the alternative of only issuing annual licenses until it informed us of its decision, PacifiCorp was envisioning a scenario in which it informed us of its decision *before* we issued an order approving the settlement and granting the surrender application.

<sup>55</sup> A failure to request rehearing of the surrender order within 30 days of issuance of the surrender order constitutes acceptance and renders the Commission's order final.

## WATER QUALITY CERTIFICATION

40. Under Section 401(a)(1) of the Clean Water Act (CWA),<sup>56</sup> any applicant for a federal license or permit for an activity that may result in a discharge into United States waters must obtain from the state in which the discharge originates certification that any such discharge will comply with applicable water quality standards. Removal of the Condit dam will result in such a discharge. The Commission may therefore not approve the surrender unless and until the state certifying agency has either issued water quality certification for the action or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year.

41. PacifiCorp initially filed a request for water quality certification with Washington DOE on June 15, 2001.<sup>57</sup> Since then it has annually withdrawn and refiled its certification request before the one-year deadline for action by the state. In 2009, PacifiCorp again filed its request, which Washington DOE received on May 12, 2009.

42. By letter of May 20, 2010, Commission staff requested PacifiCorp to provide either a copy of Washington DOE's water quality certification, if one had been issued, a copy of the letter by which Washington DOE waived or denied certification, or a dated copy of a letter by which PacifiCorp had withdrawn its previous request and submitted a subsequent application, including proof of the date Washington DOE received that application. By letter filed May 21, 2010, PacifiCorp stated that it withdrew its previous request and filed a new one on May 10, 2010. PacifiCorp enclosed a copy of the letter it submitted to Washington DOE. However, this copy bears a date stamp of May 13, 2010.

43. On October 12, 2010, Washington DOE issued certification for the surrender proposal.<sup>58</sup> The certification states that PacifiCorp requested certification on May 10, 2010.

44. Section 401(a)(1) of the CWA provides that the state certifying agency must act on a request for water quality certification within one year "after receipt of such request"

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<sup>56</sup> 33 U.S.C. § 1341(a)(1) (2006).

<sup>57</sup> On July 6, 2005, the Oregon Department of Environmental Quality (Oregon DEQ) filed with the Commission a letter stating that, although section 401(a)(2) of the CWA, 33 U.S.C. § 1341(a)(2) (2006), authorizes a state whose waters may be affected by a discharge to request a hearing before the federal licensing agency, and although the proposed project removal might affect water quality in the Oregon portion of the Columbia River, it did not intend to request such a hearing.

<sup>58</sup> The certification was filed with the Commission on October 25, 2010.

or it is deemed waived. PacifiCorp's previous request for certification was received by Washington DOE on May 12, 2009. Therefore, to avoid certification being deemed waived, Washington DOE had to act on the May 12, 2009 certification request by May 12, 2010, unless PacifiCorp withdrew that certification request and filed a new one before the one-year period expired. Despite Washington DOE's statement that PacifiCorp filed its new certification request on May 10, 2010, the copy of the letter requested by Commission staff as proof of its receipt indicates that Washington DOE actually received that request on May 13, 2010.

45. Washington DOE did not act on the May 12, 2009 request for certification within one year of receiving it. Therefore, with the expiration of the one-year period from the filing of the May 12, 2009 request, certification was waived, and the document issued October 12, 2010, is not a valid issuance of certification. Nevertheless, we will consider Washington DOE's document, which was issued as Order No. 8049, as recommendations by the state, and, as discussed below, we are including in this order a number of measures designed to address Washington DOE's concerns.

46. In Order No. 8049, Washington DOE finds that dam removal will directly meet the objectives of the CWA "to restore and maintain the chemical, physical, and biological integrity" of the nation's waters.<sup>59</sup> Washington DOE notes, in particular, that the reservoir would be replaced by a free-flowing river with benefits accruing to the fish and aquatic organisms that would use it; that with removal of the dam and old cofferdams, Lower Columbia River Chinook salmon and steelhead would regain free and unrestricted access to historic habitat; that dam removal would improve spawning and rearing habitat within the river downstream of the dam and would facilitate movement of gravel and large woody debris from the upper watershed; that the potential for fish stranding and redd dewatering<sup>60</sup> would be eliminated; and that elevated concentrations of mercury in the fish caught in the area of the reservoir would decrease as the natural sediment transport in the system is restored. While Washington DOE acknowledges that approximately 2.8 acres of lake fringe wetlands would be affected by the dam removal, it expects those effects to be mitigated by the establishment of riverine and slope wetlands within one to five years of dam removal.<sup>61</sup>

47. In light of those findings, Washington DOE certifies that there is reasonable assurance that the surrender proposal will comply with applicable provisions of the CWA and appropriate requirements of state law, provided that conditions set out in the order

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<sup>59</sup> CWA section 101(a), 33 U.S.C. § 1251 *et seq.* (1972).

<sup>60</sup> A redd is a spawning nest constructed by a trout or salmon.

<sup>61</sup> Order No. 8049 at 1-2.

are met.<sup>62</sup> The conditions that Washington DOE would impose are quite extensive, occupying 24 pages of Order No. 8049. In addition to general conditions,<sup>63</sup> the order includes conditions relating to upland activities including equipment and staging areas, general in-water activities, Northwestern Lake Bridge, dam removal, sediment management and monitoring, woody debris management and monitoring, wetland impacts and compensatory mitigation, environmental monitoring, water quality monitoring, sediment quality monitoring, timing requirements, and emergency/contingency measures.

48. As a preface to the conditions, Washington DOE explains that it is requiring the use of an adaptive management process. Washington DOE has concluded that the proposed action will cause brief exceedances of water quality criteria in the White Salmon and Columbia Rivers and that longer duration exceedances of the turbidity criterion in the White Salmon and Columbia Rivers will also occur. It explains that, in the White Salmon River, within and downstream of the former reservoir, sustained exceedances of the turbidity criterion and possibly other adverse water quality effects will occur for up to several months after the dam is breached. Brief, intermittent effects may occur thereafter with diminishing frequency for a period that cannot be precisely determined because the effects are dependent on the size and frequency of future flood events. Washington DOE expects that the total duration of exceedances that will occur more than two years after the dam is breached is unlikely to exceed more than a few days or weeks.<sup>64</sup>

49. Therefore, Order No. 8049 provides a 10-year schedule for PacifiCorp to attain compliance with water quality standards. Washington DOE states that the compliance

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<sup>62</sup> *Id.* at 3.

<sup>63</sup> Many of these general conditions are actually reservations of authority for Washington DOE to take certain actions, such as determining whether to issue a new certification if there are changes to the proposed project, to issue additional orders if it determines that further actions are needed to implement the state's water quality laws, and to issue administrative orders in the event of changes to state water quality, ground water quality, or sediment standards. Others place administrative obligations on PacifiCorp, such as notifying Washington DOE prior to certain steps in the project removal process, obtaining Washington DOE review and approval before undertaking any changes to the proposed project, keeping copies of Order No. 8049 and other permits and approvals at the project site, providing access to the site to Washington DOE, and ensuring that its workers and contractors have read and understood relevant conditions of Order No. 8049.

<sup>64</sup> *Id.* at 3.

schedule consists of interim limits, in the form of requirements to minimize impacts and of monitoring and reporting requirements, and a final limit, requiring full compliance with all applicable water quality standards that shall be met by the end of the 10-year compliance schedule. The interim limits include use of an adaptive management approach that will allow adjustments of monitoring and actions as needed during the 10-year compliance schedule and that will help ensure that effects on water quality are minimized and the final limit is set.<sup>65</sup>

50. In the Final Supplemental FEIS, staff concluded that dam removal would result in increased sediment concentrations and associated environmental effects (fluctuating and potentially elevated pH levels and decreased dissolved oxygen concentrations).<sup>66</sup> However, staff also concluded that suspended sediment concentrations would generally return to background concentrations within one year after the draining of the reservoir, although there would be the potential for additional spikes during the second year, depending on the success of reservoir bed revegetation and stabilization efforts. Over the long term, staff concluded dam removal would lead to improved water quality within the White Salmon River, both upstream and downstream of the existing dam, and as a result, staff did not recommend any water quality monitoring during or after dam removal.

51. Once surrender of a license is approved, a project ceases generation, and a project dam and other works are removed, there is no public interest in keeping that project under the Commission's jurisdiction for an extended time. However, a surrender is not effective until all of the conditions of a surrender order are met, and we retain jurisdiction over a project until that time. Requiring PacifiCorp, as a condition of this surrender, to implement a 10-year adaptive management water quality monitoring program would prolong our oversight long after the project would have ceased to exist, which would represent an inefficient and unnecessary use of our resources. Therefore, we will not require PacifiCorp to adopt the water quality monitoring requirements of Order No. 8049. We note, however, with respect to this and other aspects of Order No. 8049, that our decision not to include certain measures in this order does not mean that PacifiCorp and Washington DOE cannot agree to these measures as between themselves.

52. Washington DOE notes that PacifiCorp has incorporated an adaptive management approach into its management plans and states that the additional conditions for the proposed action must be included in PacifiCorp's final plans and actions during the course of the proposed action.<sup>67</sup> Order No. 8049 lists a number of such management

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<sup>65</sup> *Id.* at 3-4.

<sup>66</sup> Final Supplemental FEIS at 158-59.

<sup>67</sup> *Id.* at 3.

plans that PacifiCorp has submitted to Washington DOE.<sup>68</sup> With the exception of a historic properties management plan, none of these plans has been submitted to the Commission.<sup>69</sup> In this order, we are requiring PacifiCorp to submit a number of plans for Commission approval, and we expect that some of them will overlap with the plans that PacifiCorp filed with Washington DOE. We will include Washington DOE as a consulting entity in respect to the plans we are requiring. To the extent that the conditions in Order No. 8049 are pertinent to plans that we are requiring here, Washington DOE can advance its interests and recommendations through its role as a consulting entity.<sup>70</sup>

53. We will discuss each category of Washington DOE's conditions in respect to how they may be addressed by the conditions we are including in this order based on staff's own recommendations.

54. Washington DOE specifies several conditions relating to upland activities, including equipment and staging areas. It directs PacifiCorp to submit a final erosion control plan to Washington DOE's Federal Project Coordinator for review and approval at least 90 days prior to "initial project mobilization." All environmentally sensitive areas, including but not limited to wetlands, wetland buffers, and "mitigation areas that

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<sup>68</sup> *Id.* at 5. These are, specifically, plans for aquatic resource protection; dust control; environmental monitoring; erosion control; historic properties; public safety and traffic control; quality control and inspection; recreational facility removal and improvement; revegetation and wetlands management; sediment assessment, stabilization, and management; spill prevention, control, and countermeasure; and woody debris management.

<sup>69</sup> PacifiCorp submitted the revegetation and wetlands management plan as Exhibit B to its November 2010 settlement. As ordering paragraph (U) requires the filing of a wetland creation and upland and riparian revegetation plan, PacifiCorp may incorporate its Exhibit B revegetation and wetlands management plan in the plan we are requiring, but it will first have to undergo consultation with the entities listed in ordering paragraph (U).

<sup>70</sup> Order No. 8049 provides that the work it is authorizing is limited to work described in these plans, in a Joint Aquatic Resources Permit Application (JARPA) submitted to Washington DOE on July 14, 2009, and in a Project Removal and Design Report dated January 15, 2010. Neither the JARPA nor the project removal and design report was submitted to the Commission. We emphasize that the project removal proposal we are approving here is the proposal that was submitted to the Commission, and that we are not authorizing (or necessarily precluding) the implementation of any actions or measures that have not been submitted for our review.

are not to be disturbed” are to be clearly marked before construction or demolition activities begin and are to be protected throughout project removal. Washington DOE directs PacifiCorp to take “extreme care” to ensure that no petroleum products, hydraulic fluid, and other specified toxic or deleterious materials are allowed to enter or leach into the river. All temporary roads and staging areas related to construction or demolition work are to be removed within one year of the dam breach. All construction or demolition debris and materials temporarily stored on site are to be placed in a manner that does not adversely affect waters and wetlands of the state. Staging areas, storage areas, and stockpile sites are to be located at least 50 feet, and 200 feet where practicable, from waters and wetlands of the state. Equipment and vehicle fueling shall not occur within 50 feet of the waters and wetlands of the state, and fuel hoses, oil drums, and oil fuel transfer valves and fittings shall be maintained on upland areas in order to prevent contamination of surface waters. Wash water containing oils, grease, or other pollutants shall not be discharged into state waters, and cleaning solvents or chemicals for tool or equipment cleaning shall not be discharged to the ground waters or wetlands of the state.

55. Ordering paragraph (K) of this surrender order requires PacifiCorp to file a detailed erosion and sediment control plan based on the final selection and design of construction staging areas, access locations, and debris and spoil disposal areas. The plan must also address practices to prevent sedimentation and erosion associated with access roads, stream crossings, construction sites, borrow pit operations, haul roads, equipment and material storage sites, fueling operations, and equipment staging areas. Ordering paragraph (E) requires the filing of a project removal plan, and ordering paragraph (R) requires PacifiCorp to file a petroleum and hazardous substances control plan. The concerns Washington DOE expresses regarding these issues should be addressed through these Commission-required plans, for which Washington DOE will be a consulting entity.

56. For all in-water activities, Washington DOE directs PacifiCorp to ensure that equipment authorized to work in flowing waters be free of any external petroleum products and all drive mechanisms be pressure-washed. PacifiCorp is to use biodegradable hydraulic fluid for all equipment used below the ordinary high water line and is to use best management practices during all in-water activities. These concerns should be addressed through the petroleum and hazardous substances control plan we require in ordering paragraph (R).

57. Order No. 8049 directs PacifiCorp to submit final design plans and drawings to Washington DOE 60 days before implementing either alternative 2 (sheet pile alternative) or alternative 3 (drilled shaft piers alternative) for work to be done on Northwestern Lake Bridge, as these alternatives were identified in a PacifiCorp August 27, 2010 letter. Order No. 8049 sets out various conditions that must be met under these alternatives regarding minimization of disturbance of vegetation, use of concrete, controlling discharge of materials or water used in the work into state waters,

backfilling cofferdam and crib structures, redirecting drainage culverts, and other related measures. While PacifiCorp proposed to set aside \$630,000 for remediation of the Northwestern Lake Bridge,<sup>71</sup> it did not file a copy of the August 27, 2010 letter with the Commission, so we have not been presented with, and have had no opportunity to review, any specific plans that it has formulated for work on this bridge. However, as noted earlier, the November 2010 settlement contains provisions regarding protection of this bridge, to be discussed later. The project removal plan required by ordering paragraph (E) is to include provisions for protection of Northwestern Lake Bridge from the effects of dam removal and the resulting changed river conditions, while the erosion and sediment control plan of ordering paragraph (K) covers any work that would be associated with mitigating the effects of dam removal on the bridge piers. PacifiCorp can present its proposal, including any alternatives, for work to be done on the bridge in connection with the filing of these plans, and Washington DOE can propose the above conditions through consultation in the development of these plans.

58. Washington DOE directs PacifiCorp to conduct dam removal as described in the Project Removal and Design Report prepared by Mead & Hunt and Kleinfelder dated January 15, 2010. PacifiCorp is directed to provide Washington DOE an updated list of downstream water users and a blasting plan at least 90 days before beginning dam removal. Containment measures are to be in place to minimize the amount of concrete that inadvertently enters any surface waters during activities to remove concrete. Order No. 8049 also specifies conditions regarding the shape of the drain tunnel, collection and removal of drill water, prevention of tunnel clogging, and management and disposal of demolition debris and other waste material. In respect to the disposition of concrete rubble within the flowline area, PacifiCorp is to submit to Washington DOE a design report and plans, daily records of the concrete rubble disposed of, notification before completing final grade and stabilization, and as-built plans. After completing the final cover, PacifiCorp is to record maps and a statement of fact concerning the location of concrete rubble as part of the deed with the county auditor.

59. The January 15, 2010 Project Removal and Design Report has not been filed with the Commission and will not control the specifics of project removal unless and until it has been filed with and approved by the Commission. As noted, ordering paragraphs (E) and (K) require the filing of a project removal plan and an erosion and sediment control plan, respectively. As a consulting entity, Washington DOE can express its project removal concerns through participating in the development of these plans.

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<sup>71</sup> See Removal Plan Summary, Exhibit A (removal costs worksheet).

60. Order No. 8049 directs PacifiCorp to manage and monitor sediments as described in the Sediment Assessment, Stabilization, and Management Plan prepared by Inter-fluve and Kleinfelder dated January 8, 2010. PacifiCorp is to conduct a post-reservoir-dewatering assessment after Northwestern Lake is drained: the assessment is to map sediment remaining in the reservoir and tributary mouths; estimate the quantity of sediment remaining in the reservoir; evaluate the stability of remaining slopes and banks in the reservoir and determine any necessary corrective actions; and evaluate fish passage conditions through the former reservoir. Order No. 8049 directs PacifiCorp to submit to Washington DOE an assessment progress report and a blasting plan if blasting is found to be necessary to collapse unstable slopes in the former reservoir area. After the reservoir is drained, PacifiCorp is to conduct routine field inspections initially after 1-2 year recurrence interval floods or rainfall events until stabilization efforts have become successfully established. After stabilization efforts are functioning successfully, inspections are to occur after 5-year recurrence, or greater, interval floods, and PacifiCorp is to submit an inspection report and corrective action plan as needed.

61. Order No. 8049 also directs PacifiCorp to prepare and submit to Washington DOE a report that compares sediment transport dynamics and geomorphic response to assumptions and modeling results in a 2004 Sediment Behavior Analysis. PacifiCorp is to submit results of LiDAR<sup>72</sup> surveys to Washington DOE in annual progress and monitoring reports by September 30 of each year. The data collected as part of the sediment monitoring program would be used to determine when the reservoir has attained a stable condition, specifically, when remaining slopes and banks are stable and do not present a public safety risk, when the river within the former reservoir area has attained a stable course and channel width, and when the amount of sediment released from the reservoir is no longer significant as determined from water quality measurements and from LiDAR sediment mapping and sediment quantity calculations. When Washington DOE determines that these criteria have been met, PacifiCorp may cease monitoring the project area for purposes of sediment management.

62. Ordering paragraph (M) requires PacifiCorp to file a plan to assess the quantity, condition, and stabilization of remaining reservoir sediments, and ordering paragraph (U) requires sediments within the former reservoir bed to be revegetated to minimize erosion. The January 8, 2010 Sediment Assessment, Stabilization, and Management Plan has not been filed with the Commission and will not control PacifiCorp's treatment of these issues unless and until it is filed with and approved by the Commission. The plan required by ordering paragraph (M) would be the appropriate vehicle for Washington

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<sup>72</sup> This acronym appears to stand for Light Detection And Ranging, a laser profiling system that produces location and elevation data for mapping.

DOE, as a consulting entity, to pursue its sediment management and monitoring measures. However, Washington DOE clearly anticipates a multi-year monitoring and management program.

63. In the Final Supplemental EIS, staff states that the Beck Report concludes that 65 percent of all sediment will erode from the lake bed and that the remaining sediments can be vegetatively stabilized in the first year following dam removal.<sup>73</sup> However, staff noted that some sediments would continue to erode during the second year following dam removal, depending upon the success of revegetation and stabilization measures. Because the success of sediment stabilization efforts within the reservoir bed would be largely dependent upon the success of revegetation efforts, monitoring the stability of reservoir sediments should occur for the duration of any monitoring related to revegetation efforts. Therefore, concurrent with the monitoring schedule required by the wetland creation and upland and riparian revegetation plan required by ordering paragraph (U), ordering paragraph (M) requires PacifiCorp to monitor the effectiveness of sediment stabilization efforts within the reservoir for a period of three years after reservoir dewatering, and includes performance standards, success criteria, and procedures to be implemented if monitoring reveals that sediment stabilization measures are not successful. We do not consider Washington DOE's extensive monitoring and management program necessary to address the effects of the proposed action. As we noted above, we do not contemplate keeping this project under Commission jurisdiction for many years after it has ceased generating and its reservoir has been drained.

64. Order No. 8049 directs PacifiCorp to manage and monitor woody debris as described in the Woody Debris Management Plan prepared by Inter-fluve and Kleinfelder and dated May 29, 2009. Monitoring reports are to be submitted to Washington DOE by the end of the calendar year, beginning with the calendar year after dam breaching. Excavated large woody debris is to be removed from the reservoir for offsite disposal or used for approved habitat enhancement projects. PacifiCorp is to conduct surveys in the White Salmon River below the dam to identify and dislodge woody debris that may be hindering fish passage or present a threat to public safety. The May 29, 2009 Woody Debris Management Plan has not been filed with the Commission and will not govern the treatment of woody debris unless and until it is filed with and approved by the Commission. Ordering paragraph (L) requires PacifiCorp to file a woody debris management plan describing measures to be taken before, during, and after initial reservoir dewatering to minimize any adverse effects from woody debris washed out of the reservoir or dislodged from the valley downstream of the dam. As a consulting

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<sup>73</sup> Final Supplemental EIS at 66 and 70.

entity, Washington DOE can participate in the formulation of this plan, which can address its concerns.

65. Order No. 8049 directs PacifiCorp to mitigate wetland impacts as described in the Revegetation and Wetland Management Plan – Condit Hydroelectric Project Decommissioning (FERC Project No. 2342) prepared by Greenworks and Kleinfelder and dated January 4, 2010. PacifiCorp is to submit for Washington DOE’s approval any changes to this mitigation plan due to project changes or adjustments made through the adaptive management process. Order No. 8049 provides for wetland mitigation inspections and specifies the use and prohibition of certain materials as a temporary erosion control. Upon completion of site-grading and prior to planting, PacifiCorp is to submit to Washington DOE written confirmation that the finished grades are consistent with the mitigation plan. Order No. 8049 directs PacifiCorp to monitor the mitigation wetland establishment for a minimum of five years, using monitoring methods described in the mitigation plan, and to submit monitoring reports to Washington DOE by September 30 of each year for years 1, 3, and 5. If, by year 3 after dam breaching, at least 4.8 acres of wetland have not naturally established at the location of the former reservoir and downstream, PacifiCorp is to implement a contingency plan to identify an additional site suitable for wetlands, implement actions to develop a wetland on such site, and monitor wetlands to verify its establishment for five consecutive years.

66. Ordering paragraph (U) requires PacifiCorp to file for Commission approval a final wetland creation and upland and riparian revegetation plan. This plan must include site preparation and design details, provisions for site stabilization, a description of the plant species to be used, planting methods and fertilization and irrigation requirements, methods to control noxious weed, a monitoring program including success criteria and the time period for monitoring, and procedures to be implemented if monitoring reveals that establishment of vegetation is not successful. PacifiCorp included its January 4, 2010 Revegetation and Wetland Management Plan in its November 26, 2010 filing with the Commission. However, it was prepared without consulting with the entities specified in ordering paragraph (U), and it therefore will not control the wetland creation and monitoring requirements of this surrender order unless and until it complies with ordering paragraph (U) and is refiled with and approved by the Commission. In the Final Supplemental EIS, staff concluded that implementation of the revegetation plan is expected to take approximately one year.<sup>74</sup> However, staff acknowledged that restoration of the riparian ecosystem would be a long-term process, consisting of both passive and active revegetation. Ordering paragraph (U) requires a three-year monitoring program. Although we will not require that monitoring extend to the five- or ten-year period

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<sup>74</sup> Final Supplemental EIS at 101.

contemplated by Washington DOE, ordering paragraph (U) does require that performance standards and success criteria be incorporated into the monitoring plan. If monitoring reveals that establishment of vegetation is not successful within the three-year period, ordering paragraph (U) requires the licensee to develop and implement measures to address these areas of concern and provides for additional monitoring, if needed.

67. Order No. 8049 directs PacifiCorp to conduct all environmental monitoring as described in the Environmental Monitoring Plan - Condit Hydroelectric Project Decommissioning (FERC Project No. 2342), prepared by Kleinfelder and dated September 22, 2010, and to submit a final environmental monitoring plan for Washington DOE's approval at least 90 days before beginning to implement dam removal. This plan was not filed with the Commission. We are not requiring any specific environmental monitoring plan, because we believe that the measures we are imposing in the various individual ordering paragraphs are sufficient to protect the environmental resources at this project site. Again, we do not anticipate the need for long-term monitoring after the dam and other project works are removed, the reservoir is drained, and PacifiCorp has implemented the required mitigation measures.

68. Order No. 8049 directs PacifiCorp to conduct water quality monitoring pursuant to a table set out in the order. As provided by this table, PacifiCorp would monitor: (1) pH, turbidity, and stream flow at the confluence of Buck Creek and the White Salmon River and at the powerhouse, beginning in April (six months before dam breaching) and continuing until long-term criteria are met; (2) pH at the powerhouse beginning in September (one month before the breach) and continuing for nine months until the following May; (3) total suspended solids at the confluence of Buck Creek and the White Salmon River and at the powerhouse, beginning in September (one month before the breach) and continuing until bank stabilization performance criteria are met; and (4) turbidity at Columbia River Bonneville Pool (the mouths of the White Salmon, Little White Salmon, and Wind Rivers, and at Cascade Locks) beginning two days before dredging for the drain tunnel in October and continuing until dredging is complete, and beginning one day prior to the dam breach and continuing for four weeks after the breach. Water quality results are to be submitted to the Washington DOE Federal Project Coordinator weekly from 30 days prior to the dam breach, within 24 hours of the dam breach, daily for the week following the breach, weekly for the first month following the breach, monthly for six months following the breach, and by September 30 of each year for 10 years beginning one year after the breach.

69. As discussed above, in the Final Supplemental EIS, staff concluded dam removal would result in short-term negative water quality effects to the White Salmon River and Columbia River, including high suspended sediment concentrations, increased turbidity

levels, and fluctuating and potentially elevated pH levels and decreased dissolved oxygen concentrations.<sup>75</sup> Staff concluded that these impacts to water quality would mostly be associated with construction and demolition activities, and that overall water quality would be improved in the White Salmon River as the river bed stabilizes after dam removal. To prevent or minimize erosion and sedimentation, and minimize other short-term effects of dam removal on water quality, in the Final Supplemental EIS, staff recommended an erosion and sediment control plan, a post-reservoir-dewatering sediment assessment and management plan, and a fuel and hazardous substances plan, all of which are being required by ordering paragraphs (K), (M), and (R).<sup>76</sup>

70. The monitoring provisions of Washington DOE's condition amount to requirements only for the collection of data. We would not include in this order a requirement for water quality monitoring simply to collect data unless we anticipated that consideration of the data could cause us to direct PacifiCorp to take further action to improve water quality after the dam is breached, the reservoir is drained, and required measures are implemented. We anticipate that the measures we require here will be sufficient, without the need for extended monitoring. And, as we have noted, we do not intend to retain jurisdiction over this project to require and enforce such additional measures for years after the project has virtually ceased to exist.

71. In respect to sediment quality monitoring, Order No. 8049 directs PacifiCorp to prepare final sampling and analytical plans to be submitted for review and approval to a Project Review Group of the Regional Sediment Evaluation Team at least two months before sampling. The plans are to encompass sediment testing (methyl mercury and total mercury) and bioaccumulation testing (total mercury). After the plans are approved, PacifiCorp is to implement them by monitoring sediments in the Columbia River to evaluate sediment quality and mercury content by collecting samples from sites at four specified locations, ensuring that fine-grained materials are collected from these locations, and conducting sediment sampling events prior to the dam removal, one month after dam removal, and one year after the initial post-dam removal sampling. Order No. 8049 directs PacifiCorp to run bioaccumulation tests from a single site in the Columbia River to evaluate mercury bioavailability, by collecting sediments from the mouth of the White Salmon River, ensuring that fine-grained materials are collected from the sampling locations, and conducting sediment sampling events prior to the dam removal, one month after dam removal, and one year after the initial post-dam removal sampling.

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<sup>75</sup> Final Supplemental EIS at 159.

<sup>76</sup> Final Supplemental EIS at 115-17.

72. In the Final Supplemental EIS, Commission staff analyzed the effects of various organic and inorganic compounds on aquatic resources as a result of dam removal, including mercury, which was common in the reservoir sediments at concentrations at or slightly above expected background concentrations.<sup>77</sup> Staff noted that some of the reservoir sediments had mercury concentrations that exceed Ontario's Provincial Sediment Quality Guidelines (PSQG) "lowest level of effect," but that none of the samples exceed the PSQG "severest effect level," where concentrations could potentially be lethal to most benthic organisms.<sup>78</sup> Staff concluded that because these compounds were near expected background concentrations and in most cases below the Washington Marine Sediment Quality Standards and at or only slightly above the PSQG "lowest level of effect," flushing the reservoir sediments and deposition downstream would likely not increase already existing mercury sediment concentrations in the lower White Salmon River and the Columbia River. In light of staff's conclusions, we will not include in this order a requirement for sediment quality monitoring or bioaccumulation testing, since we are not convinced that these measures are necessary.

73. Order No. 8049 provides timing conditions for various stages of the project removal process. It directs that excavation of the drain tunnel shall occur only during July through November, that the tunnel shall be breached only between October 1 and November 30, and that excavation of sediment and large woody debris from the upstream face of the tunnel shall occur prior to breaching the tunnel, but not before September 15.<sup>79</sup> It also directs that the cofferdam used during construction of the dam shall be removed by May 1 of the year following the breaching of the dam. All in-water work associated with the installation of temporary and permanent replacements for the municipal water line that crosses the reservoir, the structural improvements to Northwestern Lake Bridge, and the relocation of the Mt. Adams Orchard water intake are to be completed by August 31 following the breaching of the dam. By August 31 following breaching of the dam, PacifiCorp is to extend the boat launch at Northwestern Lake Park to the river channel and post additional signs and an interpretive display at the park.

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<sup>77</sup> Final Supplemental EIS at 72-73.

<sup>78</sup> In the Final Supplemental EIS, results of the sediment testing were compared to the Ontario Ministry of the Environment's "Provincial Sediment Quality Guidelines," which were established to be used as a guideline in Ontario for determining the need for remedial action on contaminated sediments.

<sup>79</sup> Although Washington DOE refers to breaching the tunnel, we assume it means breaching the dam through construction of the tunnel.

74. Most of these timing conditions conform to PacifiCorp's proposal for completion of the various stages of project removal and associated activities. Ordering paragraph (C) requires that dam removal begin on October 1, 2011. Ordering paragraph (D) requires that all in-water work, including excavation of the drain tunnel and removal of the lowest portions of the dam, be conducted only in October and November 2011 and July and August 2012, and be completed by August 31, 2012. Ordering paragraph (O) requires PacifiCorp to file a plan to remove cofferdams in the reservoir by no later than May 1, 2012. Washington DOE can recommend inclusion of other timing requirements through its participation as a consulting entity in the development of plans required by this order. The timing of excavation of sediment and woody debris from the upstream face of the tunnel can be incorporated into the project removal plan and the woody debris management plan required by ordering paragraphs (E) and (L), respectively. The deadline for completion of the boat launch facility can be incorporated into the plan required by ordering paragraph (W), which requires the removal of four existing boat docks at the reservoir, the removal of a boat dock and extension of an existing boat launch at Northwestern Lake Park, and the posting of informational and interpretive signage at Northwestern Lake Park.

75. Order No. 8049 provides that ten years from its date the "project" shall comply with all applicable water quality standards. As we have stated, we will have no jurisdiction over this project after surrender of the license, removal of the project facilities, draining of the reservoir, and completion of the other measures required by this order to address the effects of project removal. Therefore, we will not include this provision, because we would not have the authority to enforce it throughout the entire ten-year period.

76. Order No. 8049 directs PacifiCorp to implement actions described in the Spill Prevention, Control and Countermeasure Plan (SPCC Plan) – Condit Hydroelectric Project Decommissioning (FERC Project No. 2342) prepared by PacifiCorp and dated June 8, 2009, and to file a final SPCC Plan that includes any changes required by Order No. 8049 at least 90 days before beginning removal operations. PacifiCorp is to provide training to on-site crew, report any spills immediately to Washington DOE, and notify Washington DOE if chemical containers or any unusual conditions indicating disposal of chemicals are discovered on site. If PacifiCorp is unable to comply with any of the conditions of Order No. 8049, it is to cease operations at the location of non-compliance, take appropriate measures to correct the problem, and submit a report to Washington DOE describing the violation, corrective action taken, and steps taken to prevent a recurrence. Washington DOE can ensure that these concerns are addressed through its participation as a consulting entity in the development of the petroleum and hazardous substances control plan required by ordering paragraph (R).

## **COASTAL ZONE MANAGEMENT ACT**

77. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),<sup>80</sup> the Commission cannot authorize an activity within or affecting a state's coastal zone unless the state CZMA agency concurs with the applicant's certification of consistency with the state's CZMA program or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification. Pursuant to the regulations implementing the CZMA, 15 C.F.R. § 930.53 (2010), if a state chooses to review activities outside of the coastal zone and for which it has not generally described the geographic location for review, the state must follow the procedures established in 15 C.F.R. § 930.54 (2010). That section requires the state to notify the federal agency, the applicant, and the National Oceanic and Atmospheric Administration of unlisted activities affecting the coastal zone that it wishes to review within 30 days from notice of the application.

78. By letter filed February 11, 2002, Washington DOE informed the Commission that the Condit Project "is outside of the state's coastal zone, and the state has not generally described locations of review outside of the coastal zone." In the same letter, Washington DOE acknowledged that it had not notified the Commission whether it would nevertheless want to review the surrender and dam removal proposal. Therefore, no certification is required.

## **THREATENED AND ENDANGERED SPECIES**

79. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)<sup>81</sup> requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat. Staff addressed the effects on threatened and endangered species in the October 1996 Final EIS for the relicensing proceeding and again in the January 2002 Draft Supplemental EIS for the surrender proceeding. In the Draft Supplemental EIS, staff analyzed both the proposed surrender with project removal, including with staff modifications, and relicensing of the project but did not recommend an alternative. These documents constituted staff's biological assessment.

80. Staff concluded that the following species may or do occur in the White Salmon River: endangered Snake River sockeye salmon Evolutionary Significant Unit (ESU), threatened Snake River spring/summer-run Chinook salmon ESU, threatened Snake River fall-run Chinook salmon ESU, endangered Upper Columbia River spring-run

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<sup>80</sup> 16 U.S.C. § 1456(c)(3)(A) (2006).

<sup>81</sup> 16 U.S.C. § 1536(a)(2) (2006).

Chinook salmon ESU, threatened Lower Columbia River Chinook salmon ESU and its critical habitat, threatened Columbia River chum salmon ESU, threatened Snake River Basin steelhead ESU, endangered Upper Columbia River steelhead ESU, threatened Middle Columbia River steelhead ESU and its critical habitat, threatened bull trout, proposed threatened Southwest Washington/Columbia River cutthroat trout ESU, candidate Lower Columbia River/Southwest Washington coho salmon ESU, threatened bald eagle, and threatened spotted owl.<sup>82</sup>

81. For the period that the project continues operations until the project was to be removed beginning in October 2006, staff concluded that continued operation of the project would be likely to adversely affect the threatened Lower Columbia River Chinook salmon ESU and its critical habitat, threatened Middle Columbia River steelhead ESU and its critical habitat, threatened bull trout, proposed threatened Southwest Washington/Columbia River cutthroat trout ESU, and candidate Lower Columbia River/Southwest Washington coho salmon ESU. Staff found that these adverse effects would occur due to fluctuating flows, tailrace injury and delay, potential bull trout entrainment or impingement at the intake, and juvenile stranding and redd dewatering.<sup>83</sup> Staff also concluded that the continuation of existing conditions until October 2006 would not be likely to adversely affect the endangered Snake River sockeye salmon ESU, threatened Snake River spring/summer-run Chinook salmon ESU, threatened Snake River fall-run Chinook salmon ESU, endangered Upper Columbia River spring-run Chinook salmon ESU, threatened Columbia River chum salmon ESU, threatened Snake River Basin steelhead ESU, endangered Upper Columbia River steelhead ESU, threatened northern spotted owl, or threatened bald eagle.<sup>84</sup>

82. Staff concluded that the demolition and project removal activities, deposition of reservoir sediments in the large pool at the mouth of the White Salmon River, and/or elevated turbidity associated with the flushing of reservoir sediments resulting from the dam removal will likely adversely affect the endangered Snake River sockeye salmon ESU and its critical habitat, threatened Snake River spring/summer-run Chinook salmon ESU and its critical habitat, threatened Snake River fall-run Chinook salmon ESU and its critical habitat, endangered Upper Columbia River spring-run Chinook salmon ESU and

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<sup>82</sup> Final EIS at 3-26 through 28 and 3-39 through 41; Draft Supplemental EIS at 34 and 43-44. The threatened Middle Columbia River steelhead, threatened Snake River Basin steelhead, and endangered Upper Columbia River steelhead are properly designated as distinct population segments (DPS), although staff designated them as ESUs in the Final EIS and Draft Supplemental EIS.

<sup>83</sup> Draft Supplemental EIS at 135-36.

<sup>84</sup> *Id.* at 136.

its critical habitat, threatened Lower Columbia River Chinook salmon ESU and its critical habitat, threatened Columbia River chum salmon ESU, threatened Snake River Basin steelhead ESU and its critical habitat, endangered Upper Columbia River steelhead ESU and its critical habitat, threatened Middle Columbia River steelhead ESU and its critical habitat, threatened bull trout, proposed threatened Southwest Washington/Columbia River cutthroat trout ESU, and candidate Lower Columbia River/Southwest Washington coho salmon ESU.<sup>85</sup>

83. On February 14, 2002, pursuant to section 7 of the ESA, Commission staff submitted the 1996 Final EIS and the Draft Supplemental EIS to FWS and NMFS as its biological assessment and requested formal consultation with those agencies. Commission staff asked NMFS and FWS to provide their biological opinions by July 3, 2002. Staff did not receive biological opinions from these agencies at that time, and staff issued its Final Supplemental EIS on June 27, 2002.<sup>86</sup> In letters issued on July 26, 2002, staff requested FWS and NMFS to provide their final biological opinions by August 30, 2002.

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<sup>85</sup> *Id.* at 135. Staff also found that the threatened bald eagle would likely be adversely affected by the dam removal alternatives in the settlement agreement due to disturbance during construction activities. By letter of June 3, 2002, FWS indicated that it did not think that removal of the project or project operation during an interim period would result in a significant impact to bald eagles, and, in a letter to FWS dated July 3, 2002, staff indicated that, upon reevaluation of the record concerning effects of the proposal on the bald eagle, it agreed that the surrender proposal, with staff's modifications, would not be likely to adversely affect the bald eagle. By letter filed July 26, 2002, FWS concurred with staff's revised determination, thus concluding consultation on the bald eagle. Subsequently, the bald eagle was delisted. *See Endangered and Threatened Wildlife and Plants: Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife*, Final Rule 72 Fed. Reg., 37,346 (July 9, 2007). Further, staff concluded that the project does not provide suitable habitat for the northern spotted owl. *See* Final EIS at 3-40. In the February 14, 2002 letter initiating consultation with FWS, staff concluded that the project would have no effect on the owl. By letter dated September 6, 2002, FWS concurred with staff's determination.

<sup>86</sup> In the Final Supplemental EIS, staff recommended project removal as proposed in the surrender application with staff's modifications.

**A. FWS's biological opinions: bull trout**

84. On September 9, 2002, FWS filed its biological opinion, in which it determined that project operation until October 2006 and subsequent removal of the project dam and related facilities were not likely to jeopardize the continued existence of bull trout in either the Lower Columbia River Recovery Unit or the Columbia River distinct population segment (DPS).<sup>87</sup> Subsequently, in a letter issued November 4, 2004, Commission staff requested clarification from FWS regarding the need to reinstate formal consultation on critical habitat for the Columbia River bull trout DPS, which was designated on October 6, 2004. On November 29, 2004, FWS filed a response stating formal consultation would need to be reinstated as a result of this critical habitat designation. On December 1, 2004, Commission staff issued a letter reinstating formal consultation with FWS and concluding that the proposed action would be likely to adversely affect critical habitat of the Columbia River bull trout DPS.

85. On January 23, 2006, FWS filed a revised biological opinion on the Columbia River bull trout DPS with its determination that the proposed action is not likely to jeopardize the continued existence of the bull trout in the Lower Columbia Recovery Unit or in the listed Columbia River DPS and is not likely to destroy or adversely modify designated critical habitat. The revised biological opinion analyzes effects on the threatened Columbia River bull trout DPS as a result of the proposed two-year time extension (2006 to 2008) before the commencement of project removal. The revised biological opinion also analyzes sediment effects on the Columbia River bull trout DPS, as well as effects on the critical habitat designation.

86. FWS states that the revised biological opinion supplements the 2002 biological opinion and that all analysis and authorization of incidental take from the 2002 biological opinion are still valid, except to the extent explicitly modified in the revised biological opinion. FWS concludes in the revised biological opinion that incidental take associated

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<sup>87</sup> In its biological opinion, at 14-15, FWS reported that the Columbia River DPS is divided into four geographical areas within the Columbia River basin: (1) Lower Columbia River (all tributaries in Oregon and Washington downstream of the Snake River confluence); (2) Mid-Columbia River (Snake River confluence to Chief Joseph dam); (3) Upper Columbia River (upstream from Chief Joseph dam); and (4) Snake River and its tributaries (including Lost River drainage). The project is located in the Lower Columbia River Geographical Area. In its biological opinion, FWS does not define the "Lower Columbia River Recovery Unit;" but appears to use the designation interchangeably with "Lower Columbia River Geographical Area." See FWS's 2002 biological opinion at 33.

with project operation and removal activities will be difficult to detect or quantify.<sup>88</sup> FWS further concludes that, due to the incorporation of all necessary conservation measures into the project design, no reasonable and prudent measures or the implementation of terms and conditions are required for the Condit dam removal or for continued project operations for an additional two years. However, FWS recommends certain reporting requirements upon locating a dead, injured, or sick threatened or endangered species specimen. We include these requirements in ordering paragraph (Y).

87. In its revised biological opinion, FWS includes a conservation recommendation that PacifiCorp develop an analysis of sediment transport dynamics as they actually occur, after dam removal, to verify that the assumptions and modeling of the sediment transport analysis are valid and to enable better predictions at other locations of future dam removal impacts on bull trout and other salmonids. This recommendation does not concern measures to minimize or avoid impacts of PacifiCorp's proposed action on listed species or critical habitat in the project area. Moreover, after PacifiCorp removes the project facilities and fulfills all of the other conditions of this surrender order, the project will no longer be under Commission jurisdiction and PacifiCorp will have no further responsibilities to the Commission. Therefore, we will not adopt this recommendation.

88. Following issuance of the revised biological opinion, PacifiCorp informed FWS that delays in the permitting process would prevent it from commencing dam removal when it had anticipated doing so. In response, FWS confirmed that the analysis contained in the revised biological opinion remains accurate despite this delay, that the take contemplated in the revised biological opinion remains authorized, and that reinitiation of formal consultation was not required.<sup>89</sup>

89. On September 30, 2010, Interior designated 211.5 river miles of new critical habitat for the bull trout in the mainstem of the Lower Columbia River.<sup>90</sup> This new designation includes the confluence of the White Salmon River with the Lower Columbia River at river mile 167 and habitat within the Lower Columbia River downstream of this confluence. By letter issued October 27, 2010, to FWS, Commission staff requested reinitiation of formal consultation regarding this newly designated critical habitat. Staff concluded that project removal as proposed in the settlement with staff modifications is likely to adversely affect critical habitat of the Columbia River DPS of bull trout in the

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<sup>88</sup> See FWS's revised biological opinion at 59.

<sup>89</sup> See FWS letters filed March 18, 2009, and January 13, 2010.

<sup>90</sup> See *Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous U.S.*, Final Rule, 75 Fed. Reg. 63,898 (October 18, 2010).

Lower Columbia River. By letter filed November 30, 2010, FWS responded, concluding that the analysis it had previously provided in its revised biological opinion regarding sediment impacts to bull trout and their habitat in the Lower Columbia River adequately addresses impacts to the newly designated critical habitat.

### **B. NMFS's biological opinion**

90. In its February 14, 2002 letter to NMFS, Commission staff included a request for formal consultation on the candidate Lower Columbia River/Southwest Washington coho salmon ESU. On June 14, 2004, NMFS separated the Lower Columbia River/Southwest Washington ESU into two separate ESUs and proposed listing one of them, the Lower Columbia River coho salmon ESU, as threatened under the ESA. On June 28, 2005, NMFS listed the Lower Columbia River coho salmon ESU as threatened. In a letter filed July 12, 2005, Commission staff concluded that the proposed action would likely adversely affect the Lower Columbia River coho salmon ESU and requested formal consultation with NMFS.<sup>91</sup>

91. On October 12, 2006, NMFS filed a biological opinion with its determination that the proposed action is not likely to jeopardize the continued existence of 13 listed species or adversely modify the critical habitat designated for 12 of these species.<sup>92</sup> In order to minimize the impact of incidental take to species considered in the biological opinion, NMFS believes that the following reasonable and prudent measures are necessary:

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<sup>91</sup> In its February 14, 2002 letter to NMFS, Commission staff also included a request for formal consultation on the Southwest Washington/Columbia River cutthroat trout, then proposed as threatened. However, FWS assumed sole regulatory jurisdiction over Southwest Washington/Columbia River cutthroat trout and, on February 25, 2010, FWS withdrew its proposal to list this species as threatened under the ESA.

<sup>92</sup> In its biological opinion, NMFS reports that the 13 listed species include: threatened Lower Columbia River Chinook salmon, threatened Upper Willamette River Chinook salmon, endangered Upper Columbia River spring Chinook salmon, threatened Snake River spring/summer Chinook salmon, threatened Snake River fall Chinook salmon, threatened Lower Columbia River coho salmon, endangered Snake River sockeye salmon, threatened Columbia River chum salmon, threatened Lower Columbia River steelhead, threatened Upper Willamette River steelhead, threatened Middle Columbia River steelhead, threatened Snake River Basin steelhead, and threatened Upper Columbia River steelhead. Critical habitat is designated for all of these listed species, except for threatened Lower Columbia River coho. The Upper Columbia River steelhead DPS, listed as endangered at the time of staff's biological assessment, was upgraded to threatened on January 5, 2006.

(1) minimize incidental take from general construction by applying conditions to the proposed action that avoid or minimize adverse effects to water quality, riparian, and aquatic systems; (2) minimize direct take of listed species during adult salvage operations by following standard hatchery protocols for collecting, holding, and spawning brood stock; and (3) report all observations of dead or injured salmon or steelhead or juveniles coincident with removal and restoration activities (noting whenever possible the species of these individuals) to NMFS within two days of their observance, and include a concise description of the causative event (if known), and a description of any resultant corrective actions taken (if any) to reduce the likelihood of future mortalities or injuries.

92. NMFS states that the surrender order must include the following incidental terms and conditions to implement the reasonable and prudent measures: (1) confine construction impacts to the minimum area necessary to complete the project; (2) prepare and implement a pollution and erosion control plan to prevent pollution related to construction operations, with provisions to: inspect all erosion controls during construction on a daily basis during the rainy season and weekly during the dry season to ensure effectiveness; treat all discharge water created by construction; implement measures to minimize erosion prior to significant alterations of the individual construction sites; restrict heavy equipment use by limiting vehicle staging, cleaning, maintaining, refueling, and fuel storage at least 150 feet from any body of water and following certain procedures for vehicles and equipment operated within 150 feet of any water body; remove all temporary access roads and work bridges (if constructed) upon project completion, stabilize any disturbed soil, and revegetate the site; and stabilize and revegetate newly exposed slopes and work areas as soon as possible; (3) develop a plan for collecting, holding, and spawning adult Lower Columbia River Chinook salmon in consultation with FWS, the Spring Creek National Fish Hatchery, and NMFS; and (4) report dead or injured salmon or steelhead to the specified NMFS address. Items (1) and (2) are included as provisions of the erosion and sediment control plan of ordering paragraph (K), the petroleum and hazardous substances control plan of ordering paragraph (R), and the final wetland creation and upland and riparian revegetation plan of ordering paragraph (U). Ordering paragraph (S) requires the development and implementation of a plan to collect, hold, and potentially spawn adult Lower Columbia River fall Chinook salmon consistent with item (3). Item (4) is required by ordering paragraph (Y).<sup>93</sup>

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<sup>93</sup> SDS Lumber argues that the reintroduction of anadromous fish currently listed as threatened constitutes a reintroduction of an "experimental population" under the ESA, and that NMFS is therefore required to consult with affected private landowners to develop and implement experimental population rules. It states that NMFS has not done so. Pursuant to section 10(j) of the ESA, 16 U.S.C. § 1539(1)(j) (2006), NMFS has

(continued...)

93. Following issuance of the biological opinion, PacifiCorp informed NMFS that delays in the permitting process would prevent it from commencing dam removal when it had anticipated doing so. In response, NMFS stated that reinitiation of consultation was not needed because the previously allowed level of take would not be exceeded.<sup>94</sup>

### C. Salvaging anadromous fish

94. Blasting of the drain tunnel in late October would cause spawning adult spring and fall Chinook salmon mortality associated with sediments released from the reservoir. Because elimination of one year-class of Chinook salmon could significantly reduce the size of the White Salmon River population, PacifiCorp proposed to install a removable weir at river mile 1.4 (approximately 0.8 miles downstream of the Condit powerhouse) in the late summer and early fall immediately prior to dam removal to direct the migrating adult salmonids into FWS raceways, where they would be gathered and transported to the Spring Creek National Fish Hatchery for spawning and rearing of the hatched fry. The juveniles would then be released to the White Salmon River the following spring.<sup>95</sup> We are implementing this proposal in ordering paragraph (S), substituting 2011 for 2006.

95. In the Final Supplemental EIS, Commission staff recommended that PacifiCorp develop and implement a plan, using the removable weir and FWS raceways, to capture and spawn adults not only of Lower Columbia River Chinook salmon, as proposed by PacifiCorp, but of Middle Columbia River steelhead and Lower Columbia River coho salmon as well, prior to dam removal and to release their progeny in the White Salmon River upstream of the reservoir. Staff concluded that implementing this measure would ensure that some portion of the year-classes for these species would survive dam removal. Otherwise, incubating eggs, rearing juveniles, and adults residing downstream of the Condit dam would likely be lost due to high flows, bedload movements, and increased levels of sedimentation as a result of dam removal.<sup>96</sup>

96. Since the completion of the Final Supplemental EIS, additional information has been filed with regard to the status of these three species within the White Salmon River

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authority over identification of experimental populations and rules related thereto. NMFS did not designate an experimental population. Any concerns SDS Lumber has about the matter must be addressed to NMFS.

<sup>94</sup> See NMFS letter filed September 10, 2008.

<sup>95</sup> This proposal was not part of PacifiCorp's original settlement proposal; it was included in a draft biological assessment, filed by PacifiCorp on December 17, 2001. See Final Supplemental EIS at 87.

<sup>96</sup> Final Supplemental EIS at 80.

and efforts undertaken by PacifiCorp to salvage Lower Columbia River fall-run Chinook salmon. This information warrants reconsideration of staff's recommendation to salvage adults of Middle Columbia River steelhead and Lower Columbia River coho salmon.

97. In its biological opinion, NMFS states that, although Lower Columbia River coho salmon have been historically present, it is unknown if they now use the White Salmon River. NMFS also states that it does not believe existing habitat supports a viable population of Lower Columbia River coho salmon in the White Salmon River and that very few, if any, individuals of listed species returning to interior Columbia Basin streams will be present in the White Salmon River when the dam is breached.<sup>97</sup>

98. NMFS also states in its biological opinion that the Interior Columbia Technical Recovery Team considers the native demographically independent population of Middle Columbia River steelhead to have been extirpated from the White Salmon River.<sup>98</sup> NMFS further states that any remaining spawners are probably strays from the Skamania Stock Summer Steelhead Program, which NMFS did not include in the Middle Columbia River steelhead DPS, or stray individuals from other natural-spawning populations. As such, NMFS concludes that it is unlikely that the origin of returning adult steelhead could be determined and those steelhead properly collected. Therefore, NMFS concludes that capturing and spawning Middle Columbia River steelhead is not likely to advance the viability of the species.<sup>99</sup> As a result, the terms and conditions contained in NMFS's biological opinion only address the development of a plan for the collection and spawning of Lower Columbia River Chinook salmon.

99. Given the low population numbers of Lower Columbia River coho salmon in the White Salmon River and the information presented by NMFS that steelhead present in the river are likely strays from other populations and not a distinct stock associated with the White Salmon River, it is likely that salvaging and propagating these species would be difficult and would not contribute to the restoration of listed populations within the

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<sup>97</sup> See NMFS's biological opinion at 50.

<sup>98</sup> The Interior Columbia Technical Recovery Team is composed of representatives from NMFS, FWS, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, Idaho Department of Fish and Game, U.S. Forest Service, Columbia River Inter-tribal Fish Commission, Southern Utah University, and the University of Washington.

<sup>99</sup> See NMFS's biological opinion at 46.

White Salmon River. Accordingly, there is no longer a basis for adopting staff's capture and spawning recommendations for these two species.<sup>100</sup>

100. In an August 8, 2008 letter to NMFS, PacifiCorp submitted a proposed pilot salvage plan for Lower Columbia River fall-run Chinook salmon. In its September 10, 2008 letter in response, NMFS stated that a proposed pilot salvage plan for fall-run Chinook salmon had been developed by PacifiCorp in consultation with FWS, NMFS, Washington DFW, and the Yakama Nation (collectively, Condit Work Group). NMFS stated that the Condit Work Group had come to the consensus that the best approach to initially restoring anadromous fish in the White Salmon River above the project would be through natural colonization, whereby fish would reestablish on their own, without propagation at a hatchery facility. NMFS stated that a pilot operation to refine salvage methods and to determine if fall-run Chinook transported upstream of the dam would successfully spawn would occur in September and October of 2008. PacifiCorp also states this pilot salvage plan would help to determine the most appropriate and effective means of collecting anadromous fish for future use just prior to dam removal.<sup>101</sup>

101. In a letter filed March 17, 2009, PacifiCorp stated that fall-run Chinook salmon were salvaged and transported upstream of Condit dam in September and October 2008 in accordance with the pilot salvage plan and that a final report would be available in March 2009. Additionally, in a letter filed September 2, 2009, PacifiCorp stated that it had completed development of an alternative fish collection method on the White Salmon River. PacifiCorp stated that a resistance board weir was built to collect adult fall-run Chinook salmon returning to the White Salmon River. The weir was installed in late August with formal study collection beginning September 1, 2009. PacifiCorp stated that, if the weir is successful at collecting adults, this would be the preferred collection method.

102. To date, no fish salvage reports or plans addressing the salvage and transportation of fall-run Chinook salmon have been filed with the Commission. However, the capture

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<sup>100</sup> The Counties have requested that we extend the capture and spawning provisions to the federally listed bull trout. As noted by staff in the Final Supplemental EIS, very few bull trout have been sighted in the White Salmon River downstream of the dam, and it is unlikely that reproduction occurs in the lower reaches of the river. Since there is a scarcity of bull trout in the river, it is doubtful that the collection of bull trout would be sufficient to make the endeavor worthwhile. *See* Final Supplemental EIS, section 3.4.5.

<sup>101</sup> *See* PacifiCorp's Annual Decommissioning Progress Report filed on January 5, 2009.

and transportation of Lower Columbia River Chinook salmon above Condit dam prior to dam removal is consistent with staff's recommendations, the terms and conditions of NMFS's biological opinion, and previous efforts conducted to date by the Condit Work Group. Therefore, ordering paragraph (S) requires PacifiCorp to develop and implement a plan to salvage and transport federally listed fall-run Lower Columbia River Chinook salmon upstream of Condit dam to promote natural spawning. Because the terms and conditions of NMFS's biological opinion also require PacifiCorp to address artificial spawning in its plans to restore Chinook salmon upstream of Condit dam, ordering paragraph (S) also contains a provision for hatchery spawning of Lower Columbia River fall-run Chinook salmon to supplement natural spawning efforts if this is deemed necessary and is agreed upon by the stakeholders identified in ordering paragraph (S).

### **MAGNUSON-STEVENSON ACT**

103. Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act<sup>102</sup> requires federal agencies to consult with the Secretary of Commerce regarding any action or proposed action authorized, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH) identified under the Act. Under section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH Conservation Recommendations for actions that would adversely affect EFH.<sup>103</sup> Under section 305(b)(4)(B) of the Act, an agency must, within 30 days after receiving recommended conservation measures from NMFS or a Regional Fishery Management Council, describe the measures proposed by the agency for avoiding, mitigating, or offsetting the effects of the agency's activity on the EFH.<sup>104</sup>

104. The Pacific Fisheries Management Council has designated EFH for the following federally managed Pacific salmon: Chinook, coho, and Puget Sound pink salmon. Freshwater EFH for these Pacific salmon includes all streams, lakes, ponds, wetlands, and other water bodies currently or historically accessible to salmon in Washington, Oregon, Idaho, and California, except areas upstream of certain impassable artificial (human-made) barriers, and longstanding naturally impassable barriers. EFH for Chinook and coho extends above and below Condit dam on the White Salmon River.

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<sup>102</sup> 16 U.S.C. § 1855(b)(2) (2006).

<sup>103</sup> 16 U.S.C. § 1855(b)(4)(A) (2006).

<sup>104</sup> 16 U.S.C. § 1855(b)(4)(B) (2006). The measures recommended by the Secretary of Commerce are advisory, not prescriptive. However, if the federal agency does not agree with the recommendations of the Secretary of Commerce, the agency must explain its reasons for not following the recommendations.

105. Commission staff initiated EFH consultation in a February 14, 2002 letter to NMFS. Commission staff determined that, because of elevated turbidity during construction and demolition activities and the deposit of flushed reservoir sediments in the large pool at the mouth of the White Salmon River, surrender with dam removal would be likely to adversely affect Chinook and coho salmon EFH, including associated prey. Staff therefore requested that NMFS provide EFH conservation recommendations.

106. NMFS provided these recommendations in section 11 of its biological opinion.<sup>105</sup> NMFS concluded that the proposed action would adversely affect designated EFH for Chinook salmon and coho salmon in the lower White Salmon River for up to five years after breaching the dam, at which time effects due to the removal of the project are expected to be so small as to be negligible. NMFS also concluded that, after this date, the proposed action will positively affect EFH by providing access to EFH upstream of Condit dam. NMFS adopted the terms and conditions of the biological opinion's incidental take statement (discussed above) as conservation measures to minimize effects on EFH. As noted above, this order includes these terms and conditions.

### **COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT**

107. The Columbia River Gorge National Scenic Area Act (Gorge Act), 16 U.S.C. § 544 (2006), has, as one of its purposes, the establishment of a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge.<sup>106</sup> Section 4 of the Gorge Act established the Columbia River Gorge National Scenic Area (scenic area), set its boundaries, and designated four special management areas within the scenic area.<sup>107</sup> Section 5 provided for the establishment of the Gorge Commission by Oregon and Washington to achieve the purposes of the Gorge Act.<sup>108</sup> Section 6 charged the Gorge Commission to complete studies for a scenic area management plan in cooperation with the Secretary of

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<sup>105</sup> By letter filed March 27, 2002, NMFS had stated that it would provide conservation recommendations with its biological opinion. In a letter issued October 19, 2006, Commission staff acknowledged the receipt of NMFS' EFH conservation recommendations and stated full consideration of the recommendations would be given in any order issued.

<sup>106</sup> Gorge Act, section 3, 16 U.S.C. § 544a (2006).

<sup>107</sup> 16 U.S.C. § 544b (2006). The special management areas are: Gates of the Columbia River Gorge, Wind Mountain, Burdoin Mountain, and Rowena, as well as all islands within the scenic area. The Act refers to maps setting out specific boundaries for each. *See* section 4(b)(2), 16 U.S.C. § 544b(b)(2) (2006).

<sup>108</sup> 16 U.S.C. § 544c (2006).

Agriculture, develop land use designations for the use of non-federal lands within the scenic area, and adopt a management plan that includes specified provisions to protect resources and prohibit or restrict development.<sup>109</sup> Pursuant to section 7, non-federal lands within the scenic area are to be administered by the Gorge Commission in accordance with the management plan and the Gorge Act.<sup>110</sup> Pursuant to section 8, federal lands within the special management areas are to be administered by the Secretary of Agriculture (Forest Service) in accordance with the Gorge Act and other laws, rules, and regulations applicable to the national forest system.<sup>111</sup> Section 14(d) provides that federal agencies having responsibilities within the scenic area shall exercise such responsibilities consistent with the provisions of the Gorge Act as determined by the Secretary.<sup>112</sup>

108. In its March 27, 2000 motion to intervene in the surrender proceeding, the Gorge Commission stated that it and the Forest Service had adopted the management plan required by section 6, that Condit dam is located within the scenic area, and that it is the agency charged with ensuring the consistency of resource protection throughout the scenic area. However, in a filing of March 12, 2002, the Gorge Commission noted that determinations of the consistency with the Gorge Act of federal agencies' exercise of their responsibilities within the scenic area is left to the Secretary of Agriculture under section 14(d), and that this authority has been delegated to the Area Manager of the Forest Service.

109. In filings addressing the relicensing proposal, the Forest Service, also citing section 14(d) for its authority, stated that parts of the Condit Project, including Condit dam, are located within the general management area of the scenic area. The Forest Service analyzed all of the alternatives considered in the Draft and Final EIS, including dam removal, and it specified conditions that would have to be met for each alternative to be consistent with the management plan, which had been published in September 1992.<sup>113</sup>

110. Subsequently, in a filing of March 19, 2002, the Forest Service provided its analysis of the consistency of the surrender proposal, as analyzed in the Draft

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<sup>109</sup> 16 U.S.C. § 544d (2006).

<sup>110</sup> 16 U.S.C. § 544e (2006).

<sup>111</sup> 16 U.S.C. § 544f (2006).

<sup>112</sup> 16 U.S.C. § 544l (2006).

<sup>113</sup> See Forest Service filings of October 18, 1994, March 4, 1996, and December 20, 1996.

Supplemental EIS, with the Gorge Act and the management plan. The Forest Service found that the surrender proposal would be consistent with the Gorge Act and the management plan provided that ten specified conditions were met. It indicated that it would make a final consistency determination when staff issued its Final Supplemental EIS.

111. The Forest Service filed that final consistency determination on September 4, 2002. It determined that essentially all of the previous ten conditions had been incorporated into the Final Supplemental EIS.<sup>114</sup> The Forest Service now determined that the surrender proposal would be consistent with the Gorge Act and the management plan provided certain additional conditions were adopted. Those conditions are: (1) all actions related to the Condit Project shall proceed as described in the Final Supplemental EIS; (2) the final Cultural Resources Management Plan shall include measures for protecting cultural resources discovered during construction or facility removal activities; (3) PacifiCorp shall continue consultation with Washington DFW to minimize impacts to fish and wildlife habitat; and (4) the surrender proposal shall meet all federal, state, and local laws relating to protection of the scenic area's scenic, cultural, natural, and recreational resources.<sup>115</sup> We have included, as terms of the surrender, requirements generally in accordance with the environmental conditions proposed by the Forest Service, as well as requirements for consultation with the Forest Service.<sup>116</sup>

112. The White Salmon League argues<sup>117</sup> that the Forest Service made a determination pursuant to the Gorge Act that Northwestern Lake is a significant potential sensitive wildlife area for western pond turtles and that removal of the dam would eliminate this potential habitat. White Salmon League also notes that the western pond turtle is classified as endangered under state law, and it argues that a survey should be done to determine whether there is a viable population of western pond turtles, and that such a population, if found, cannot be relocated but must be preserved in its natural habitat.

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<sup>114</sup> The exception was part of condition 9, which provided that trapping and removal of anadromous and nonanadromous fish from Northwestern Lake within the scenic area and the White Salmon River below the dam had to take place before dam removal and sediment flushing. The Forest Service noted that the Final Supplemental EIS did not recommend the trapping and removal of nonanadromous fish, but the Forest Service withdrew its recommendation for this trapping and removal because it concurred with staff's reasoning for not including such a provision.

<sup>115</sup> The Forest Service stated that these more recent consistency reviews supplement the 1996 consistency determinations.

<sup>116</sup> See ordering paragraphs (K-M), (O), (Q), and (U-V).

<sup>117</sup> Filings of March 24 and 25, 2002.

113. PacifiCorp biologist's surveys in 1991, 1992, 1996, and 1997 located no western pond turtles. Although a PacifiCorp biologist reported a single western pond turtle in the upper area of the reservoir in 1993, Washington DFW speculates that this may have been placed there by an unknown private party. Washington DFW notes that the White Salmon River historically has not been suitable for the western pond turtle because of its cold temperature and fast flowing waters of a glacial/spring origin. (River temperatures upstream of the lake rarely exceed 12 degrees Celsius and the reservoir temperatures closely coincide with those of the river.) Furthermore, nesting habitat for the species (open short grass meadows) is limited by residential development and the forested nature of the uplands.<sup>118</sup> However, Washington DFW did recommend that turtle traps be placed in the reservoir the two summers before the scheduled dam removal in order to trap and relocate any individuals that may stray into the reservoir. If the dam were to be removed in October 2011, only one year of trapping would be available. Given the low likelihood of use by the turtle, one season of trapping should provide a sufficient opportunity to trap and relocate any turtle that inhabit the reservoir. Ordering paragraph (T) requires PacifiCorp to develop and file for Commission approval a plan to protect any western pond turtles that may be found in the project area, including mapping, trapping, and relocation.

114. The White Salmon League also notes a Forest Service finding that dam removal will occur within 1,000 feet of sensitive plants, and therefore be subject to the Gorge Act management plan's buffer zone requirements for sensitive plants. The management plan calls for a 200-foot buffer zone, and the Forest Service determined that draining the lake would not disturb the sensitive plant buffer zone. But White Salmon League argues that sensitive plants are dependent on palustrine wetlands, provided only by the lake.

115. The White Salmon League does not specify the sensitive plant species about which it is concerned. PacifiCorp's application for relicense states that four plant species designated by the Washington Natural Heritage Program as sensitive were identified on project lands, of which only two species, green-fruited sedge and yellow sedge, were found in palustrine wetlands along Northwestern Lake. The green-fruited sedge is no longer considered to be a sensitive species. The current range of the yellow sedge does not include the project vicinity, and it is possible that it was misidentified by PacifiCorp's biologist.<sup>119</sup> The species addressed by the Forest Service in its consistency determination

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<sup>118</sup> Final Supplemental EIS at 102; letter from Carl Duger, Assistant Regional Habitat Program Manager, Washington Department of Fish and Wildlife, Vancouver, Washington, March 2002.

<sup>119</sup> The yellow sedge is distributed throughout the boreal regions of the Northern Hemisphere. In Washington, according to the Washington Natural Heritage Program, the yellow sedge is only found in northeastern Washington in Stevens, Ferry, and Pend

(continued...)

are the Oregon bolandra and the diffuse stickweed, which are found between the dam and the powerhouse and below the powerhouse. These species, which are the other two species identified in PacifiCorp's relicensing application, are found on the steep slopes above the river and would not be affected by the dam removal activities.<sup>120</sup> Therefore, we need require no measures regarding the buffer zone.

## WILD AND SCENIC RIVERS ACT

116. Section 7(a) of the Wild and Scenic Rivers Act<sup>121</sup> provides that the Commission "shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works . . . on or directly affecting any river which is designated" as a component of the wild and scenic rivers system. A portion of the White Salmon River generally upstream of the Condit Project, but including some lands within the extreme northern limit of the project boundary, has been designated as scenic and therefore subject to the requirements of the Wild and Scenic Rivers Act.<sup>122</sup> However, because PacifiCorp is proposing to remove an existing project, we would not be licensing the construction of any project works. Consequently, section 7 of the Wild and Scenic Rivers Act does not apply.

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Oreille Counties (<http://www1.dnr.wa.gov/nhp/refdesk/fguide/pdf/cafl.pdf>, accessed on September 2, 2010). In addition, the Washington Natural Heritage Program currently classifies the green-fruited sedge as a watch list species, a species that is more abundant or less threatened than previously assumed (<http://www1.dnr.wa.gov/nhp/refdesk/lists/watch.html>, accessed on September 2, 2010).

<sup>120</sup> In a letter filed April 1, 2010, the Counties argue that PacifiCorp will have to comply with any requirements they might impose because the Forest Service, as indicated above, conditioned its approval under the Gorge Act on the proposal meeting "all . . . local laws." The Forest Service's condition is more restrictive than that, as it applies only to laws "relating to protection of the Scenic Area's scenic, cultural, natural, and recreational resources." In any event, we do not read this condition as giving *carte blanche* to the Counties to impose virtually any permit requirements they wish if those requirements were to conflict with the Commission's authority over license surrenders.

<sup>121</sup> 16 U.S.C. § 1278(a) (2006).

<sup>122</sup> Specifically, section 13(c) of the Gorge Act, 16 U.S.C. § 544k(c), amended section 3(a) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1274, in 1986 to designate a segment of the White Salmon River (the Buck Creek-Gilmer Creek river segment), which begins about 1.7 miles upstream of the Condit dam, as a scenic river (designated river segment) subject to the requirements of the Wild and Scenic Rivers Act. As noted earlier, Northwestern Lake extends about three miles upstream of the dam.

117. In any event, the Forest Service, in comments submitted March 5, 1996, concluded that none of the relicensing proposal alternatives (which included partial and total dam removal) would affect the designated river segment or a Congressionally authorized study river upstream of that segment.<sup>123</sup> It also determined that any displacement by reintroduced steelhead and other anadromous fish of trout that reside in the segment and have been designated as outstanding remarkable value (ORV) fish would not be unreasonable as long as the reintroduction complies with Forest Service adaptive management strategies. In comments filed March 19, 2002, on the Draft Supplemental EIS, the Forest Service affirmed its prior conclusion that dam removal would not unreasonably diminish the fisheries value, including resident rainbow trout.<sup>124</sup>

### **NATIONAL HISTORIC PRESERVATION ACT**

118. Pursuant to section 106 of the National Historic Preservation Act (NHPA)<sup>125</sup> and its implementing regulations,<sup>126</sup> the Commission, as an agency with authority to license hydroelectric projects, must take into account the effects of its actions on properties included in or eligible for the National Register of Historic Places and, before taking

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<sup>123</sup> Section 13(d) of the Gorge Act amended section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276, to add, as a river designated for potential addition (study segment) to the national wild and scenic rivers system, a segment of the White Salmon River located just upstream of the designated Buck Creek-Gilmore Creek river segment. *See* 16 U.S.C. § 544k. As a result of that study, Public Law No. 109-44 (August 2, 2005) further amended section 3(a) of the Wild and Scenic Rivers Act to designate the White Salmon River as a wild river from its headwaters downstream to the Mount Adams Wilderness boundary and as a scenic river from the Mount Adams Wilderness boundary downstream to the Gifford Pinchot National Forest boundary. However, this designation is not contiguous with the 1986 Buck Creek-Gilmer Creek designation further downstream.

<sup>124</sup> The White Salmon League argues that the Forest Service's Adaptive Management Strategy provides only for the study of the various fish populations before and after dam removal, and not for action to prevent diminishment of the resident trout fishery. This is not the case. The strategies also include allowing for natural colonization by steelhead instead of relying on hatchery stocking; restricting angling pressure if necessary to protect resident trout; and restoring degraded habitat within the basin. Furthermore, as both the Forest Service and Washington DOE have noted, native resident trout in the White Salmon River coexisted with steelhead long before the Condit Project was built, and it is likely that reintroduction will again lead to a state of coexistence.

<sup>125</sup> 16 U.S.C. § 470 *et seq.* (2006).

<sup>126</sup> 36 C.F.R. Part 800 (2010).

action on a proposed undertaking,<sup>127</sup> afford the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment.<sup>128</sup>

119. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) who administers the state historic preservation program, and additional consulting parties,<sup>129</sup> including the applicant, affected Indian tribes,<sup>130</sup> local governments, and members of the public. The purpose of the consultation is to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects. If an adverse effect is found, the Commission must notify the Advisory Council and determine whether the Advisory Council will participate. The Advisory Council may choose to participate at its option or in response to a request from the Commission or a consulting party.<sup>131</sup>

120. On March 20, 1991, the Washington SHPO certified that the Condit Project's headworks (dam and intake), water conveyance system (woodstave pipe, surge tank/forebay, and penstocks), powerhouse, and equipment are eligible for listing on the National Register of Historic Places.<sup>132</sup> In addition, based on consultation between PacifiCorp and the Washington SHPO, it was determined that five prehistoric archeological sites and three historical archeological sites located in the lower White Salmon River portion of the project's area of potential effect are eligible for inclusion in

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<sup>127</sup> An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those requiring a Federal permit, license, or approval. 36 C.F.R. § 800.16(y) (2010). In this instance, the license surrender with dam removal is the activity requiring Commission approval.

<sup>128</sup> See Advisory Council on Historic Preservation regulations, 36 C.F.R. § 800.1(a) (2010).

<sup>129</sup> "Additional consulting parties" refers to individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties. 36 C.F.R. § 800.2(c)(5) (2010).

<sup>130</sup> The Yakama Nation has intervened, expressing support for the removal of Condit dam in order to restore salmon and steelhead trout to the river.

<sup>131</sup> See 36 C.F.R. § 800.6(a) and (b) (2010).

<sup>132</sup> At the request of the applicant, the listing was not recorded. However, eligible properties and properties actually listed are both considered historic properties and are treated in the same manner for purposes of section 106 of the NHPA. See 36 C.F.R. § 800.16(l)(1) (2010).

the National Register, that project removal would modify this area, and that the sites could be adversely affected by removal activities.<sup>133</sup>

121. To resolve these adverse effects, the Commission and the SHPO developed a Memorandum of Agreement (MOA) and sent a draft to the Advisory Council, which concluded that its participation in the consultation was not needed.<sup>134</sup> The Commission and the Washington SHPO executed the MOA in June 2002, and PacifiCorp concurred.<sup>135</sup> In accordance with the regulations,<sup>136</sup> the Commission submitted a copy of the executed MOA and documentation to the Advisory Council on September 6, 2002.<sup>137</sup>

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<sup>133</sup> See Final Supplemental EIS, section 4.9.9.1.

<sup>134</sup> See letter dated April 25, 2002, attached to final MOA.

<sup>135</sup> In its May 16, 2002 comments on the draft MOA and again in the cover letter to its signed copy of the final MOA filed August 14, 2002, PacifiCorp asks that we clarify certain of the MOA's provisions. Section I (C)(3) of the MOA provides that the Cultural Resources Management Plan (CRMP) will include as a task "[c]onsideration and, where appropriate, adoption of prudent and feasible project removal alternatives that would avoid adverse effects on historic properties." PacifiCorp requests that this language be revised to read "[c]onsideration and, where appropriate, adoption of prudent and feasible alternatives to the methods used for project removal and the location of access roads and spoils sites that would avoid adverse effects on historic properties," on the grounds that it would not be appropriate at this time to evaluate alternatives to the removal of project facilities, since those options were thoroughly considered in the EIS. We agree that the language of the executed final MOA was not meant to invite consideration of alternatives to project removal but rather alternative means of achieving it, as PacifiCorp's proposed language suggests. Section III (B) of the MOA provides that the licensee will consult with the SHPO on individual actions during the period after the surrender order has been issued but before the CRMP has been approved by the Commission. PacifiCorp seeks clarification that the provisions of the CRMP would be effective immediately if the Commission approved the CRMP as part of the surrender order. Because the final CRMP has not yet been filed with the Commission, the circumstance PacifiCorp envisions will not occur.

<sup>136</sup> 36 C.F.R. § 800.6(b)(1)(iv).

<sup>137</sup> The Yakama Nation has not signed the MOA. However, its signature is not required. See 36 C.F.R. § 800.6(c)(1)(i) (2010).

122. In January 2001, PacifiCorp submitted a draft Cultural Resources Management Plan (CRMP) based on its request to surrender its license and remove the dam.<sup>138</sup> PacifiCorp updated the CRMP, which the Commission now refers to as a Historic Properties Management Plan (HPMP), and filed a courtesy copy of the draft HPMP with the Commission on October 11, 2010. The draft HPMP is currently being reviewed by the Washington SHPO and several other entities and tribes. The MOA requires PacifiCorp to complete a final CRMP and file it for the Commission's approval within six months of issuance of an order accepting surrender of the project license. It also stipulates terms for the interim treatment of historic and traditional cultural properties (TCPs) prior to the implementation of the CRMP. Ordering paragraph (X) of this surrender order requires PacifiCorp to complete a final HPMP and file it for the Commission's approval within six months of the issuance of this order.

123. Although the dam and associated spillway and intake gates, cofferdams, wood stave pipes, steel surge tank, and the wooden and steel penstocks will be removed, their history will be recorded and photographed in accordance with the documentation standards of the Historic American Building Survey and Historic American Engineering Record. In addition, measures will be taken to avoid effects on the eligible, or potentially eligible, archeological sites, including any others that may be discovered prior to license surrender, or prior to and during dam removal.<sup>139</sup> The final treatment of these sites, along with any recommendations and comments from the Washington SHPO, will be incorporated into the final HPMP. Execution and implementation of the MOA and HPMP demonstrate the Commission's compliance with section 106 of the NHPA.

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<sup>138</sup> This was a revision of the draft CRMP PacifiCorp had prepared in 1991 in relation to its proposal for a new license. The 2001 draft organizes PacifiCorp's recommended measures within three periods: operation of the project until 2006, dam/project facility removal, and property transfer.

<sup>139</sup> If any archeological sites are located during the pre-project or post-project removal stages, PacifiCorp will evaluate them, in consultation with the Washington SHPO, for National Register eligibility, which may involve additional archeological testing to be completed prior to the effective date of the license surrender. PacifiCorp will also conduct post-project removal archeological inventories in all areas within the Area of Potential Effect that are disturbed or affected by erosion, including reconnaissance archeological surface surveys of exposed sediments resulting from the permanent drawdown of Northwestern Lake, as well as exposed areas along the riverbank downstream from Condit dam. PacifiCorp will also work with the Yakama Nation to resolve any indirect adverse effects to the TCPs.

## DISCUSSION

124. As Commission staff noted in the Final Supplemental EIS, Condit dam blocks anadromous fish from reaching nearly 13 miles of the mainstem White Salmon River, as well as about five miles of tributaries to the river. Federal and state fish and wildlife agencies have the management goal of restoring anadromous fish in the White Salmon River basin and protecting federally listed salmonid species. These agencies and the tribes take the position that the best means of restoring anadromous fish is to remove Condit dam and restore natural flow conditions.<sup>140</sup>

125. Proponents of dam removal, which include all the settlement signatories and many commenting entities, also argue that the licensee's dam removal proposal is cost-effective; provides for the protection of environmental resources during demolition; is supported by federal and state fish and wildlife agencies and tribal fisheries experts; helps to restore fish which are subject to Native American treaty fishing rights at traditional sites on the river; will create economic opportunities for surrounding communities; will add additional recreational fishing and whitewater boating opportunities; will create jobs directly related to dam removal and on-going restoration efforts; and will be funded by PacifiCorp.<sup>141</sup>

126. Opponents, primarily White Salmon League and some area residents, argue that dam removal will result in the loss of Northwestern Lake as a source of recreation. Opponents also argue that restoring anadromous fish upstream of the lake will adversely affect the upstream, Forest Service-designated "outstanding remarkable value" trout fishery. Finally, they maintain that PacifiCorp's proposed method of dam removal will adversely affect water quality and supply, fish and wildlife and associated habitats, and noise levels.<sup>142</sup>

127. We agree with staff's conclusion that surrender of the Condit Project license and removal of the dam would produce environmental benefits that would outweigh any costs associated with loss of the dam and Northwestern Lake. As staff noted, removal of the dam would provide anadromous salmonids access to up to 18 miles of White Salmon River mainstem and tributary habitats that have long been inaccessible. This restoration would be consistent with the fishery management goals of federal and state fisheries agencies. Dam removal would also increase the potential for full utilization of anadromous fish habitat, benefit wildlife dependent on anadromous fish in the area of the

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<sup>140</sup> Final Supplemental EIS at 182.

<sup>141</sup> *Id.* at 182-83.

<sup>142</sup> Final Supplemental EIS at 182.

river reach upstream of river mile 3.3, and provide increased whitewater recreation opportunities.<sup>143</sup>

128. The primary environmental cost associated with removal of Condit dam would be the loss of Northwestern Lake, which provides benefits in the form of flatwater boating and fishing and associated recreation income for the local area, lake and wetland habitat for fish, wildlife, and plants, water supply, local history and culture, and property value to nearby homes and associated property tax revenue. The dam removal's effects on water quality and supply, fish and wildlife and associated habitats, recreation, cultural resources, noise levels, and property values can and will be mitigated, to varying degrees, by the measures proposed by PacifiCorp and the additional requirements we adopt herein.<sup>144</sup> On the other hand, the numerous fishery, wildlife, recreational, and aesthetic benefits that would result from dam removal cannot be achieved if the dam is left in place.

129. Our grant of this application to surrender the license and remove project works is conditioned on PacifiCorp implementing a number of measures, which reflect PacifiCorp's proposal and the recommendations of Commission staff. A number of these measures have already been mentioned in our previous discussion. We are requiring PacifiCorp to file for Commission approval plans for: (1) project removal, including provisions for preservation of the powerhouse, protection or replacement of the existing water and gas line crossings of Northwestern Lake, construction of a new pump intake and installation of a pump for the Mount Adams Orchard water supply, protection of the Northwestern Lake bridge from the effects of dam removal and the resulting change from reservoir to riverine conditions, and a road impact assessment for roads to be used during project removal, as well as a detailed description of the sequencing of all construction activities, a disposal plan, and a public safety plan for the period during removal activities (ordering paragraph (E)); (2) a quality control and inspection program (ordering paragraph (F)); (3) a temporary emergency action plan (ordering paragraph (H)); (4) an erosion and sediment control plan, including provisions relating to work associated with mitigating effects of dam removal on the existing water supply and natural gas pipeline crossing at Northwestern Lake, Northwestern Lake Bridge piers, and the Mount Adams Orchard water supply system, as well as provisions addressing practices to prevent sedimentation and erosion associated with access roads, stream crossings, construction sites, borrow pit operations, haul roads, equipment and material storage sites, fueling operations, and equipment staging areas (ordering paragraph (K)); (5) woody debris management (ordering paragraph (L)); (6) assessing the quantity and condition of the

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<sup>143</sup> *Id.* at 183-84.

<sup>144</sup> *See* discussion, *infra*.

remaining reservoir sediments exposed by reservoir dewatering following the initial dewatering of Northwestern Lake, including a schedule for proposed measures to manage residual sediments and a blasting plan if the measures include blasting of the sediments and associated woody debris piles (ordering paragraph (M)); (7) excavating a series of fish-protective pockets in the walls of the drain tunnel to allow fish to rest during upstream passage (ordering paragraph (N)); (8) removing cofferdams by May 1, 2012 (ordering paragraph (O)); (9) protecting the FWS raceways located about 1.4 miles downstream of the project (ordering paragraph (Q)); (10) controlling petroleum and hazardous substances during all dam removal activities (ordering paragraph (R)); (11) salvaging, transporting, and potentially spawning Lower Columbia River fall Chinook salmon in the late summer/early winter of 2011 (ordering paragraph (S)); (12) surveying, and, if present, protecting western pond turtles (ordering paragraph (T)); (13) creating wetlands and revegetating upland and riparian areas, including controlling noxious weeds, after draining the reservoir (ordering paragraph (U)); (14) revegetating areas used for the disposal of spoil materials and equipment staging, including control of noxious weeds (ordering paragraph (V)); and (15) removing four community boat docks on the project reservoir, removing an additional existing boat dock located at Northwestern Lake Park and extending the boat launch to the river channel, and posting additional signs and an interpretive display at Northwestern Lake Park (ordering paragraph (W)).

130. Certain provisions of the surrender proposal, concerning cost limitations and fund contributions, warrant specific discussion.

131. PacifiCorp proposed that, upon contribution of \$17,150,000 in 1999 dollars toward project removal, it would be deemed "to have fully satisfied its obligations to finance and implement project removal as if project removal had been completed . . . ." <sup>145</sup> As noted earlier, PacifiCorp's February 28, 2005 amendment request raised this amount to \$20,450,000 in 1999 dollars. Opponents of project removal object, stating that this limitation would permit PacifiCorp to walk away from the project with the removal only half-done.

132. In a filing of January 26, 2007, PacifiCorp argues that the caps should be approved, because the settlement agreement was directed to achieving a dam removal alternative that would be less expensive than relicensing. Therefore, the settlement agreement provides for a return to relicensing should the cost of project removal be more expensive than projected. Moreover, PacifiCorp states, imposition of the cost caps would not allow it to escape obligations; rather, if the dam removal costs prove too high, PacifiCorp would shift from license surrender to relicensing the project, thus incurring

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<sup>145</sup> See settlement agreement, section 4.5.

other obligations, in connection with relicensing, that it would fulfill. Finally, PacifiCorp notes that, in comments submitted on July 26, 2002, it had suggested that, if the Commission were to reject the cost caps, it should provide PacifiCorp with sufficient time to understand the scope and cost of all final permits before requiring PacifiCorp to accept or reject a surrender order.

133. If a measure is required, we expect a licensee to perform it even if the cost exceeds agreed-upon cost caps.<sup>146</sup> It would not be in the public interest for PacifiCorp to cease dam removal activities at any point short of completion on the grounds that a cap for construction and removal costs had been reached, and we would not allow PacifiCorp to do so.<sup>147</sup> PacifiCorp's additional arguments in favor of the caps are not persuasive. The time period that has elapsed between the filing of the surrender proposal and the issuance of this order should have been sufficient for PacifiCorp to determine the cost of permit approvals with some accuracy. Moreover, as we have already explained, once PacifiCorp has accepted this surrender order it will be precluded from subsequently replacing its license surrender proposal with its relicense application as a response to unexpectedly high project removal costs. For these reasons, we will not include any financial limitations on project removal costs in this order.

134. The settlement agreement provides for PacifiCorp to contribute \$1,000,000 (1999 dollars) to the Yakama Nation for the enhancement, supplementation, and conservation of fishery resources in the White Salmon River Basin (Fishery Enhancement Fund).<sup>148</sup> The settlement agreement also provides for PacifiCorp to contribute \$500,000 (1999 dollars) for the enhancement, maintenance, or other use of the Underwood in-lieu site

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<sup>146</sup> See, e.g., *Public Utility District No. 1 of Cowlitz County*, 125 FERC ¶ 61,047, at P 15-17 (2008).

<sup>147</sup> A provision to the settlement agreement states that other parties to the agreement may provide the remaining funding. However, the provision is not mandatory and in any event involves entities not under our jurisdiction.

<sup>148</sup> The Yakama Nation is a federally-recognized tribe that entered into a treaty with the United States. See, the Treaty with the Yakama, Treaty of June 9, 1855, at Fort Stevens, 12 Stat. 951. While the project is not located on tribal land, the treaty provides for fishing by tribal members at usual and customary places, which include the project area. The Commission recognizes the unique relationship between the United States and Indian tribes as defined by treaties, statutes, and judicial decisions. We carry out our responsibilities towards Indian tribes in the context of the FPA and other statutes that establish Commission responsibilities. We recognize the cultural and economic significance to the tribes of the aquatic species and habitat involved in this proceeding and carry out our responsibilities under the FPA with those considerations in mind.

located near the confluence of the White Salmon and Columbia Rivers or other in-lieu sites owned and managed by the United States for use by the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe (the Tribes) and their members for fishing purposes (In Lieu Site Enhancement Fund). As noted, these fund contribution amounts are included in the total project removal costs to which PacifiCorp promised to contribute. In the Final Supplemental EIS, staff noted these fund provisions as part of the settlement proposal but did not comment on them specifically.<sup>149</sup>

135. Neither the settlement agreement itself nor the explanatory statement submitted with it elaborates on the description of the Fishery Enhancement Fund that is set out above. In its response to comments on the settlement agreement, filed April 11, 2000, the Yakama Nation states that the Fishery Enhancement Fund “will be dedicated to creative methods of restoring and enhancing anadromous fish in the White Salmon Basin.”<sup>150</sup> This indicates that the fund does not purport to be mitigating effects of the proposed action of dam removal, that it is not intended to address conditions limited to the project area, and that PacifiCorp would have no influence over how the funds were actually spent to achieve its purposes. Therefore, we will not include the provision to contribute to this fund as a condition of the surrender. The signatories to the settlement agreement are, of course, free to pursue satisfaction of this condition as a matter of private contract.

136. The In Lieu Site Enhancement Fund has a more specific purpose. The White Salmon River flows into the Columbia River 3.3 miles below Condit Dam.<sup>151</sup> Staff concluded that, upon the opening of the drain tunnel in the dam, a very large pool located at the mouth of White Salmon River would be filled in with between 370,000 and 616,000 cubic yards of sediment. The Underwood in-lieu site is located at the mouth of the White Salmon River near this confluence.<sup>152</sup>

137. PacifiCorp’s contribution under the In Lieu Site Enhancement Fund is intended as mitigation for the effects of this sedimentation. Maintenance activities at the Underwood

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<sup>149</sup> Final Supplemental EIS at 187.

<sup>150</sup> Response to comments on settlement agreement at 8.

<sup>151</sup> Final EIS at 2-1, which states that the dam is at river mile 3.3.

<sup>152</sup> Final Supplemental EIS at 81. Although staff refers to the in-lieu site as a fishing site, Yakama Nation, citing comments of the Columbia River Inter-Tribal Fish Commission in the relicensing proceeding, has explained that the site itself is used not for fishing but to launch tribal vessels that then travel into the Bonneville Pool, in the Columbia River below the confluence, to a tribal zone fishery there. Response to comments on settlement agreement at 4.

in-lieu site would likely include minor dredging in and around the boat ramp area, but dredging may also occur throughout the site to maintain navigation through the site as sediments would be transported throughout the White Salmon River watershed and be deposited at the river mouth after dam removal.<sup>153</sup> While the settlement agreement provides that the fund may instead be used for “other in lieu sites owned and managed by the United States” for the Tribes, the fund is nevertheless directed to mitigating the effects of dam removal at that particular site. Moreover, the settlement agreement provides that the fund will be administered by the Tribes and the Bureau of Indian Affairs (entities in the best position to determine specific measures that would be needed) for the purposes described.<sup>154</sup> Therefore, we will include the provision for this contribution in the surrender conditions (ordering paragraph (P)).

138. The settlement agreement provides for PacifiCorp to contribute \$550,000 (1999 dollars) to a Contingent Mitigation Fund to be used to enhance fishery resources, fishery habitat and other natural resources in the White Salmon River Basin. This fund is intended to recapture foregone mitigation opportunities if project removal does not occur because the agreement is terminated.<sup>155</sup> We will not require PacifiCorp to contribute to this fund, since this contribution does not address effects of the surrender proposal itself and PacifiCorp would have no control over the fund expenditures. If, pursuant to the terms of the settlement agreement, the agreement is terminated because a party withdraws,<sup>156</sup> it would be up to the signatories to determine the requirements of the agreement as a private contract. PacifiCorp also proposed to contribute \$25,000 (1999 dollars) for unspecified habitat enhancements.<sup>157</sup> We will not include this contribution as a condition of the surrender because it is too vague and not clearly tied to effects of the proposed action, although, again, PacifiCorp is free to contribute to this fund pursuant to the terms of the settlement agreement.

139. In their comments filed pursuant to the November 2010 settlement, the Counties made a number of recommendations. The Counties recommend that continuous monitoring equipment and mobile equipment taken to and brought back from the field be calibrated. The Counties also recommend that PacifiCorp be required to identify any errors inherent in the different turbidity and continuous pH probes that PacifiCorp will

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<sup>153</sup> Final Supplemental EIS at 96.

<sup>154</sup> Settlement agreement at section 4.1.1.

<sup>155</sup> Settlement agreement at section 6.4.

<sup>156</sup> Settlement agreement at section 5.

<sup>157</sup> See Condit Hydroelectric Project Removal Summary Report – Engineering Considerations (dated May 1998) at table 5-1 (filed on June 19, 1998).

use. As previously discussed, this order does not require any water quality monitoring that would necessitate the calibration of field equipment or turbidity or pH probes. Therefore, we will not require PacifiCorp to implement these recommendations. The Counties recommend that PacifiCorp specify how unanticipated alkaline runoff and seepage from the concrete disposal trench along the White Salmon River will be redirected, controlled, or treated. Such measures would be covered by the petroleum and hazardous substances control plan required by ordering paragraph (R). The Counties recommend that PacifiCorp notify the Counties before conducting foot or air surveys of woody debris jams pursuant to a woody debris management plan, and that PacifiCorp consult with the Counties regarding the results of such surveys and before taking any planned management actions in response to such surveys (unless not practicable due to emergency situations). Ordering paragraph (L) includes the Counties as consulting entities in respect to this plan.

140. The Counties recommend that PacifiCorp observe Klickitat County noise ordinance provisions regarding non-emergency temporary construction sites and building codes and nuisance abatement ordinances relating to any PacifiCorp construction of housing for temporary workers. These recommendations need not be included as conditions in this order, because PacifiCorp will have to comply with any local ordinances that are not preempted by our jurisdiction over the project removal activity.

141. The Counties recommend that, prior to dam removal, PacifiCorp have a third party assessment completed regarding possible adverse impacts to county roads used for haul routes in connection with project removal activities, and that PacifiCorp commit to mitigation for any such adverse impacts. To address this recommendation, we are requiring, and including the Counties as consulting entities on, a road impact assessment mitigation plan required by ordering paragraph (E).

142. The Counties recommend that PacifiCorp allow the Counties to conduct field inspections to monitor public health and safety and PacifiCorp's compliance with the Commission's environmental conditions. The Counties' inclusion as consulting entities on the public safety plan should address part of this recommendation. The recommendation as to county inspections to ensure compliance with the Commission's environmental conditions is not included as a condition in this order, since compliance with such conditions is a matter solely within the Commission's jurisdiction.

143. The Counties assert that PacifiCorp's wetlands management plan does not go far enough in documenting whether specific off-site wetland mitigation opportunities exist. They recommend that, as soon as it is evident that wetlands will not be established as expected within the project area, PacifiCorp should provide to the Commission and Washington DOE more specific details concerning wetland contingency plans. The plan to which the Counties refer has not yet been filed with the Commission. There is no basis at this time to assume that wetlands will not be successfully established within the project

area or that wetlands would need to be created off site as mitigation. In any event, any such issues may be addressed in consultation between PacifiCorp, Washington DOE, and other consulting entities in developing the reservoir wetland creation and upland and riparian revegetation plan to be filed for Commission approval under ordering paragraph (U).

## **OTHER ISSUES**

### **A. Loss of Revenue**

144. The Counties also argue that removal of the dam, valued at nearly two million dollars, will be a significant loss to the tax base, and that the decrease in property values due to loss of the lake may result in a loss to the tax base of more than one million dollars annually. They maintain that the loss of income from flatwater recreation will not be made up in income from new whitewater recreation, arguing that dam removal may provide whitewater recreationists with longer trips but will not bring in additional whitewater recreationists. While it is clear that any revenues related to the presence of the project will be lost, we have stated that the termination of any business venture reduces tax revenues to governments, but this is not a reason to deny a surrender application.<sup>158</sup> The effect on recreation revenues is less clear. Whitewater boating and salmon fishing may well draw more non-local recreationists to the area than do the current flatwater boating and fishing, and therefore could increase recreational spending and employment in the area. Furthermore, the value of local property will depend upon how prospective home and landowners value river-front as opposed to lake-front property.<sup>159</sup>

### **B. Effects of Sediment Removal**

145. PacifiCorp proposes to remove the Condit dam by excavating a 12-foot-high by 18-foot-wide, low-level, drain tunnel through the concrete base of the dam from the downstream side. When the final 15 feet has been drilled and blasted, the tunnel would discharge at a rate of 10,000 cfs, allowing the reservoir and impounded sediments to rapidly sluice downstream, lowering the reservoir to stream level in about six hours.

146. SDS Lumber argues<sup>160</sup> that the impoundment of the White Salmon River over the past 85 years has raised the water levels and saturated a large zone of soil quite some

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<sup>158</sup> *Niagara Mohawk Power Corporation*, 83 FERC ¶ 61,226, at n.12 (1998); *FPL Energy Maine Hydro, LLC*, 106 FERC ¶ 61,038 (2004).

<sup>159</sup> Final Supplemental EIS, sections 4.9.7.3 and 5.1.7.

<sup>160</sup> March 28, 2002 comments on Draft Supplemental EIS.

distance beyond Northwestern Lake, and that if the dam is removed and the water level drops, the erosion triggered by the saturation will cause the banks of the lake to collapse, making portions of SDS Lumber land unusable and reducing the value of other adjacent lands.

147. Based on staff's analysis, we conclude that assessing the condition of reservoir sediments soon after the initial dewatering period, and preparing a plan for managing residual sediments by means of removal, regrading and stabilization (vegetatively or structurally) would provide for the design and implementation of measures to restore the reservoir area to a stable, free-flowing condition. Because of the uncertainty of the conditions of the reservoir bed after initial reservoir draining, ordering paragraph (M) requires PacifiCorp to prepare a plan to assess the quantity, condition, and stabilization of remaining reservoir sediments exposed by reservoir dewatering. Additionally, ordering paragraph (K) requires PacifiCorp to prepare a sediment and erosion control plan prior to the start of any land disturbing activity and to include in the plan measures to protect against and mitigate any erosion damage to the exposed lake banks or to adjoining upland areas caused by slope failure following lake dewatering.

148. The Counties argue<sup>161</sup> that the proposed surrender terms do not provide that the environmental impacts associated with potential sediment removal and stabilization activities be adequately disclosed before blasting of the tunnel. They argue that standards of practice for evaluation of slope stability published by the American Society of Civil Engineers<sup>162</sup> are available for use, and therefore there is no technical reason to delay data collection and disclosure of expected impacts.

149. The Counties argue that erosion in the upper reservoir, where most of the coarse grained sediment is concentrated, could take several years, and that if blasting does not completely remove all of the fine-grained sediment from the reservoir and revegetation stabilization does not immediately prevent erosion, then high concentrations of suspended sediment loading could be expected at irregular intervals for many more years than the one to two year period which Commission staff has predicted.<sup>163</sup>

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<sup>161</sup> March 25, 2002 comments on Draft Supplemental EIS; July 20, 2002 comments on Final Supplemental EIS.

<sup>162</sup> See Geotechnical Special Publication No. 31 on Stability and Performance of Slopes and Embankments-II published by the American Society of Civil Engineers, 1992.

<sup>163</sup> Mr. Hofer argues that the failure of PacifiCorp's dam removal plan to deal with the permanent accumulation of sediment in the lowest mile of the White Salmon River violates Article 20 of the current Condit license, which requires the licensee to take reasonable measures to prevent stream sedimentation resulting from construction,

(continued...)

150. Based on staff's analysis, we have concluded that blasting and revegetation will prevent erosion and that sedimentation related to dam removal will not substantially affect the river more than two years after the commencement of dam removal.<sup>164</sup> The Counties' contentions concerning the failure of blasting and revegetation to prevent erosion are speculative. Furthermore, even apart from blasting and revegetation, the timing of dam removal takes advantage of higher average flows occurring in winter to erode sediments from the reservoir.

151. The Counties argue<sup>165</sup> that the large woody debris which the Final Supplemental EIS recommends and the surrender requires be removed from the river is a benefit to fish habitat, helping to trap and stabilize coarse gravel deposits, creating scour for pool development, and providing overhead and stream velocity cover for fish, as well as influencing stream bank characteristics. The Counties maintain that removal of large woody debris from the White Salmon River will have detrimental effects on salmonids and should be avoided. The Counties appear to misunderstand the purpose and timing of the woody debris management plan. The plan's purpose is to provide for the removal of woody debris just prior to reservoir draining to facilitate flow and sediment transport through the reach when the reservoir is drained. After the dam is removed, woody debris would be relocated and utilized for habitat restoration purposes within the former lakebed and downstream reach. Ordering paragraph (L) requires PacifiCorp to file a woody debris management plan.

152. The Counties also are concerned that dam removal could expose chemical contaminants harbored by the river's sedimentation. The U.S. Army Corps of Engineers (Corps) expresses concern that portions of the sediment containing DDE, a breakdown of DDT, will be discharged rather than removed, and that debris discharge could accumulate in the Bonneville Second Powerhouse auxiliary water system. It suggests that if the breaching of Condit dam takes place within one year rather than the 3.5 years proposed under the 1996 Final EIS dam-breaching alternative, it will affect the rate at which sediment moves downstream without altering the amount of chemicals present in the sediment or their availability. It argues that the presence of DDT/DDE, in parts per billion, is above concern levels and should be evaluated with further sediment sampling

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operation, or maintenance of the project. Article 20 only governs construction, operation and maintenance of the project under the license. When the license is surrendered, the articles of the license are no longer effective. However, in relation to the surrender, we have adopted requirements that mitigate for losses caused by sediment deposits in the lower reach of the White Salmon River. See ordering paragraphs, *infra*.

<sup>164</sup> Final Supplemental EIS at 159.

<sup>165</sup> July 20, 2002 comments on Final Supplemental EIS.

and testing. The Corps also argues that impacts from sedimentation, including sediments with DDE/DDT and loss of fishing and boating opportunities provided by facilities constructed by or related to Corps operations, in the lower portion of the river, would not be short-term impacts.

153. Pesticides and herbicides are not widespread in the reservoir sediments, though it is true that, where found, they are at high concentrations.<sup>166</sup> However, many are currently located well below the surface of the reservoir bottom. If these pesticides and herbicides are mobilized by the flushing of the reservoir, they could be deposited in the lower White Salmon River and Columbia River; however, they would most likely mix with other sediments, diluting their concentration. Those that remain in suspension with suspended sediments when the drain tunnel opens would be likely to disperse with the sediments into the Columbia River and become even more diluted by the higher Columbia River flow and sediment load. Thus, modeling demonstrates that movement of sediments downstream will not have adverse effects on aquatic resources or human health.<sup>167</sup>

154. The effects of sediment on fishing and boating opportunities provided by facilities located in or along the river are expected to be minor and short-term, and difficult, if not impossible, to trace to the removal of Condit dam.

155. Other opposing parties argue that the sediment flushing will destroy migrating coho salmon, steelhead, and fall Chinook listed as threatened under the ESA, and that dam removal will destroy spawning grounds below the dam. However, as noted in the discussion, *supra*, the timing of breach and removal of the dam for late October and early November will minimize any impacts on migrating, rearing, and spawning salmonids.<sup>168</sup> Furthermore, as discussed earlier, we are including a surrender condition requiring PacifiCorp to develop and file for Commission approval a plan to capture Lower Columbia River fall Chinook salmon adults prior to dam removal for release upstream, and we have explained why efforts to salvage coho salmon and steelhead adults are not warranted.

### C. Choice of Spoils Site

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<sup>166</sup> Final Supplemental EIS at 73 and 159.

<sup>167</sup> See Final Supplemental EIS, section 4.9.2.1.

<sup>168</sup> See *supra* P 33.

156. PacifiCorp had proposed three alternative spoils sites. Initially, in its Removal Plan Summary, PacifiCorp proposed to use a ten-acre area located on private property<sup>169</sup> immediately east of the lower end of Northwestern Lake and north of a road accessing the dam as a setup and staging area, a borrow pit for material needed for construction of access roads, and a spoil area for burial of non-recyclable material resulting from dam removal. In its response to a November 30, 2000 additional information request (AIR), filed January 29, 2001, PacifiCorp added two other possible alternative sites: (1) an orchard, also on private land, located south of the access road; and (2) eight acres<sup>170</sup> of PacifiCorp-owned land located just north of the ten-acre site noted above (for a staging area and spoils site) and a borrow pit located east of Highway 141 (for disposal of crushed concrete from dam demolition). Other material would be hauled off-site for recycling. PacifiCorp stated that use of the PacifiCorp-owned land and the borrow pit was its preference.

157. In the November 2010 settlement, PacifiCorp proposes that clean fill material<sup>171</sup> generated by dam removal and related activities, including, without limitation, concrete rubble, would be disposed of in the former flowline of the project site. The Counties agree not to object to PacifiCorp's plans to dispose of clean fill material in and along the former flowline alignment. Under the November 2010 settlement, PacifiCorp agrees to dispose of debris that cannot be recycled and that does not qualify as clean fill material at the Roosevelt Landfill in Klickitat County.

158. Any environmental effects of this new spoils site proposal can be mitigated by conditions we are including in this order. The flowline alignment was disturbed during the original construction of the project and would be disturbed again by project removal. Environmental effects resulting from the use of this site as a spoil area would be addressed by ordering paragraph (V), which requires PacifiCorp to file a spoil disposal area revegetation plan that must include, among other things, information on the plant species and planting densities to be used, control of noxious weeds, monitoring of the success of revegetation, and stabilization and revegetation of exposed slopes. Use of the

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<sup>169</sup> PacifiCorp states that this includes property owned by Mr. Forest Hofer and possibly property owned by SDS Lumber.

<sup>170</sup> See PacifiCorp's R. W. Beck Report (May 1988) referenced in the surrender application. While PacifiCorp has also referred to this as a six-acre site, as has staff in its Draft and Final Supplemental EIS, the record indicates that it is more accurately described as eight acres.

<sup>171</sup> The November 2010 settlement, at section 3.5, defines "clean fill material" as debris and other material resulting from project removal provided such material does not contain lead-based paint, petroleum, or hazardous materials.

Roosevelt Landfill as a disposal site would not require implementing revegetation and related measures, and it would avoid any adverse environmental effects or other issues that could result from using the alternate, private sites that PacifiCorp previously proposed. While use of the landfill would entail transporting spoil materials over public roads, the project removal plan required by ordering paragraph (E) includes a provision for a road impact assessment for Klickitat County roads used during project removal to ascertain the extent of damage to any such roads due to project removal activities and to mitigate those impacts.

159. Because the use of the flowline alignment and landfill as spoils sites would be acceptable, we will not discuss any issues that have previously been raised as to the sites that were originally proposed.

#### **D. Effect on Wells and Water Supply**

160. Draining Northwestern Lake may lower the local underground water table and could lower water levels in nearby wells.<sup>172</sup> Opponents of dam removal argue that this change could impose a significant financial burden on local residents, who would have to deepen their wells if the water table is significantly altered. The Northwestern Lake Development Homeowners Association (Homeowners Association) argue that the water level could drop 75 feet. The Counties argue that many cabin owners along the river will lose their domestic water supply, which is obtained directly from Northwestern Lake. White Salmon League states that the majority of residences on the west side of the lake depend on wells that tap the local water table, and it notes that the City of White Salmon is in the process of developing a well field 1,000 feet east of Northwestern Lake, which is intended to completely displace the city's current water supply.

161. PacifiCorp maintains that the City of White Salmon's wells will be drilled far below the level of the lake into an aquifer which is not tied to the lake, and therefore dam removal will have no effect on the City of White Salmon's water supply or its proposed well field. PacifiCorp also argues that it has no responsibility to mitigate the effects of water losses. It maintains that, under Washington law, senior water rights may be exercised to their full extent without regard to impacts on junior water rights, that is, without being compelled to exercise that right in a manner that mitigates effects on junior water rights holders. It further maintains that most, if not all, rights related to private wells in the project area are junior to PacifiCorp's water right, and therefore that requiring it to mitigate adverse effects on private wells due to lowered groundwater elevations resulting from the draining of the project reservoir would conflict with Washington state's water rights law. PacifiCorp points to section 27 of the FPA, which expressly limits the

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<sup>172</sup> Final Supplemental EIS at 75.

Commission's jurisdiction to interfere with state laws establishing priority of rights relating to "the control, appropriation, use, or distribution of water used in irrigation, or for municipal or other uses, or any vested right acquired therein."<sup>173</sup>

162. Using well log data supplied by the Homeowners Association, staff concluded that a hydraulic connection between Northwestern Lake and the wells is a strong possibility but that the primary aquifer recharge area is probably towards the north, away from the lake. From this analysis, staff concluded that the removal of Condit dam would likely have some effect on wells located within about 2,500 feet of the lake and that the effect on local wells would be much less than suggested by estimates submitted by the Homeowners Association.<sup>174</sup> Staff concluded that any adverse effects on these wells could be eliminated or greatly reduced through a well mitigation plan.<sup>175</sup> Staff recommended the development and implementation of such a plan, with provisions to: (a) make an inventory of wells located within at least 2,500 feet (about 0.5 mile) of Northwestern Lake; (b) contact the owners of wells identified as being potentially affected by dam removal and determine whether their wells would be affected by reservoir draining; (c) assess the effects of dam removal on the individual wells after the reservoir would be drained; and (d) file a report of the findings, including any proposals to mitigate adverse effects on the wells.

163. We will not include a requirement for a plan to address effects of dam removal on local wells. Staff's recommended plan would lead to the collection of data and an assessment of the effects of dam removal on wells, but any requirement to implement mitigation measures based on those results could conflict with state law as to the priority of water rights. We think it prudent to defer to state law with respect to water rights issues regarding well owners whose wells are found to be adversely affected by the removal of Northwestern Lake.<sup>176</sup> Moreover, pursuant to section 10(c) of the FPA,<sup>177</sup> PacifiCorp will be liable for any damages caused by its actions.

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<sup>173</sup> 16 U.S.C. § 821 (2006). Section 27 states:

That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation, or for municipal or other uses, or any vested right acquired therein.

<sup>174</sup> Final Supplemental EIS at 75-76.

<sup>175</sup> *Id.* at 116.

<sup>176</sup> *Cf. Portland General Electric Company*, 107 FERC ¶ 61,158, at P 27-33

(continued...)

### **E. Northwestern Lake Bridge**

164. The Northwestern Lake Bridge, which is owned by Klickitat County, crosses the White Salmon River in Northwestern Lake about 1.8 miles upstream of the Condit dam. It is a three-span concrete bridge supported by two steel-pile foundation piers. The Counties explain that these piers are designed for a slack water environment and would not be able to withstand the course of a free-flowing river. The bridge is the only road providing access to residences on the west side of Northwestern Lake, and its failure would create risks to health and safety. As noted earlier in this order, in the surrender application PacifiCorp originally proposed to protect the piling with reinforced concrete and to place protective riprap around the piers.

165. Under the November 2010 settlement with the Counties, PacifiCorp has agreed to address the potential destabilization of the bridge through construction of drilled shaft piers at the bridge (Bridge Stabilization Project) and has committed to seek Commission approval, "if necessary," to implement the Bridge Stabilization Project as part of project removal. The Counties have agreed to support such Commission authorization and not to require that PacifiCorp obtain any permits from them to conduct the Bridge Stabilization Project. The November 2010 settlement provides for a process under which PacifiCorp would provide Klickitat County with detailed engineering and specifications for its review and agreement. PacifiCorp has agreed to complete the Bridge Stabilization Project prior to breaching the dam. The November 2010 settlement contains other provisions regarding the bridge that are principally a matter of private agreement and need not be detailed here. In a letter filed December 7, 2010, PacifiCorp urges the Commission to adopt surrender conditions that are consistent with the November 2010 settlement's approach to bridge stabilization.

166. Because the removal of Condit dam and the draining of the reservoir could have an adverse impact on the stability of Northwestern Lake Bridge, we are conditioning the surrender on PacifiCorp's implementation of measures to protect Northwestern Lake Bridge from the effects of dam removal and the resulting changed river conditions. A provision to that effect is included in the requirement for a project removal plan under ordering paragraph (E). PacifiCorp may submit the Bridge Stabilization Project for approval as part of that filing. Although we have not yet been presented with the entire, detailed proposal for the Bridge Stabilization Project, because the bridge is owned by

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(2004). In recommending the well mitigation plan in the present proceeding, staff noted that such a plan might entail legal issues, which staff deferred to this order for disposition. *See* Final Supplemental EIS at 189, n.57.

<sup>177</sup> 16 U.S.C. § 803(c) (2006).

Klickitat County, it would be sufficient, for purposes of our review and approval of this portion of the project removal plan, that PacifiCorp's stabilization measures meet the specifications of the Klickitat County Department of Public Works, Office of the County Engineer.<sup>178</sup> In addition, as we have previously noted, the erosion and sediment control plan required by ordering paragraph (K) is to include provisions relating to work associated with mitigating the effects of dam removal on the Northwestern Lake Bridge piers.

## CONCLUSION

167. We find that surrender with the removal of the dam and other project property except for the powerhouse is appropriate.<sup>179</sup> We conclude, based on the record of this case, that the benefits of dam removal to anadromous fish, wildlife, and whitewater recreation outweigh the costs associated with the loss of Condit dam and Northwestern Lake. As discussed above, to accommodate necessary pre-removal arrangements, dam removal activities now could not begin before October 2011. Therefore, we will modify the schedule and require that PacifiCorp commence facility removal after October 1, 2011, and complete all in-water work by August 31, 2012.<sup>180</sup> Ordering paragraph (O) requires PacifiCorp to remove the old, submerged cofferdams by May 1, 2012.

### The Commission orders:

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<sup>178</sup> In section 5.1.10 of the November 2010 settlement, PacifiCorp and the Counties acknowledge that the City of White Salmon and PacifiCorp are working on plans to relocate the water line that now crosses the bottom of Northwestern Lake. The plans would relocate the line across Northwestern Lake Bridge, a proposal to which Klickitat County agrees. The project removal required by ordering paragraph (E) includes a provision for the protection or replacement of this water line.

<sup>179</sup> Some parties argue that the surrender should adopt the dam removal alternative stated in the 1996 Final EIS for the relicense proposal. That alternative was re-examined in the 2002 Final Supplemental EIS, where staff concluded that the effects of sediment and duration of dam and facility removal (with its noise, vehicular traffic, equipment exhaust, and emission of fine particulates and dust) would be more chronic in nature under the 1996 Final EIS alternative than under the 2002 Supplemental Final EIS alternative. Staff also concluded that the 1996 Final EIS spoils disposal site would be much larger, with consequently greater disturbance of upland plant and wildlife habitat; and that the average annual cost of the 1996 Final EIS removal alternative would be far greater than that of either the agreement removal proposal (\$6,932,000 more) or the agreement removal proposal with our modifications (\$6,926,400 more).

<sup>180</sup> See ordering paragraph (C).

(A) PacifiCorp's application for a new license for the Condit Project No. 2342, filed December 27, 1991, is dismissed.

(B) Surrender of the license for the Condit Project No. 2342 is accepted, subject to the conditions set forth in ordering paragraphs (C) through (Y). The surrender shall not be effective until PacifiCorp has fulfilled these conditions and the Commission's Regional Engineer, Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO), has issued a letter stating that all conditions of the surrender order have been satisfied.

(C) The licensee shall cease project operations no later than October 1, 2011, and shall commence dam and facility removal in October 2011.

(D) The licensee shall conduct all in-water work only in the months of October and November 2011 and July and August 2012. All in-water work, including excavation of the drain tunnel and removal of the lowest portions of the dam, shall be completed by August 31, 2012.

(E) *Project Removal Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a project removal plan. The plan shall include: (1) final contract plans and specifications and supporting design report for removal of the project dam and appurtenant facilities, (2) a blasting plan for all proposed blasting activities; (3) a detailed description of the sequencing of all construction activities; (4) a disposal plan; (5) a public safety plan for the period during removal activities; (6) a plan to protect or replace the existing water and gas line crossings of Northwestern Lake, construct a new pump intake and install a pump for the Mount Adams Orchard water supply, and stabilize (before the reservoir is drained) Northwestern Lake Bridge to the specifications of the Klickitat County Department of Public Works, Office of the County Engineer, to mitigate the effects of dam removal and the resulting change from reservoir to riverine conditions; and (7) a road impact assessment for Klickitat County roads used during project removal to ascertain the extent of road design issues and probable damage to the roads, and to mitigate those impacts, due to project removal activities.

A proposed drainage tunnel is to be constructed through the base of the dam to evacuate the reservoir. The drainage tunnel design shall ensure that the structural integrity of the dam is maintained following removal of the final 15 feet of the tunnel by drilling and blasting. The project removal plan should also address the possibility of the drainage tunnel being plugged with sediment during evacuation of the reservoir.

The licensee shall prepare items (2), (3), (4), and (6) of the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington

Department of Fish and Wildlife, Washington Department of Ecology, U.S. Army Corps of Engineers, and Klickitat and Skamania Counties. The licensee shall prepare item (5) of the plan in consultation with Klickitat and Skamania Counties and item (7) of the plan in consultation with Klickitat County. The licensee shall include with the items documentation of consultation, copies of consulted entities' comments and recommendations on the items, and specific descriptions of how the entities' comments are accommodated. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission may require changes to the project removal plan. Project removal may not commence until authorized by the D2SI-PRO Regional Engineer. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and to the Director, Division of Dam Safety and Inspections.

(F) *Quality Control Inspection Program.* At least 90 days before starting removal activities, the licensee shall submit one copy to the Commission's D2SI-PRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI) of the Quality Control and Inspection Program (QCIP) for the Commission's review and approval. The QCIP shall include an erosion and sediment control plan as specified in ordering paragraph (K).

(G) *Cofferdam Construction Drawings and Specifications.* Before starting removal activities, the licensee shall review and approve the design of any new contractor-designed cofferdams and deep excavations. At least 30 days before starting construction of the cofferdams, the licensee shall submit one copy to the Commission's D2SI-PRO Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI) of the approved cofferdam construction drawings and specifications and the letters of approval.

(H) *Temporary Emergency Action Plan.* At least 90 days before starting removal activities, the licensee shall submit one copy to the Commission's D2SI-PRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI) of the Temporary Emergency Action Plan (TEAP) for the Commission's review and approval. The TEAP shall describe emergency procedures in the case of failure of the dam during construction of the drainage tunnel and draining of the reservoir, any large sediment control structure, or any other water retaining structure that could endanger construction workers or the public. The TEAP shall include a

notification list of emergency response agencies; a plan drawing of the proposed cofferdam arrangement; the location of safety devices, escape routes, and informational and warning signage; a brief description of testing procedures; and measures for managing traffic in the project area to ensure public safety during dam removal.

(I) *Monthly Progress Report.* During the entire period of removal and post-removal activities, the licensee shall submit one copy to the Commission's D2SI-PRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI) of a monthly progress report.

(J) *Final Report.* Within 90 days after completion of the activities required by this surrender order, the licensee shall submit one copy to the Commission's D2SI-PRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI) of a final report that demonstrates all the conditions of the surrender have been fulfilled.

(K) *Erosion and Sediment Control Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a detailed erosion and sediment control plan based on the final selection and design of construction staging areas, access locations, and debris and spoil disposal areas. The plan shall cover all phases of dam removal and related construction activities, including work associated with mitigating the effects of dam removal on the existing water supply and natural gas pipeline crossings of Northwestern Lake, Northwestern Lake bridge piers, and the Mount Adams Orchard water supply. The plan shall also address practices to prevent sedimentation and erosion associated with access roads, stream crossings, construction sites, borrow pit operations, haul roads, equipment and material storage sites, fueling operations, and equipment staging areas.

Except for activities that are associated with promoting the downstream transport of Northwestern Lake sediments in accordance with a Commission-approved project removal plan and drawings as required by ordering paragraph (E), the plan shall, at a minimum, include provisions:

- (1) to stabilize any disturbed areas (including valley sidewalls exposed by dewatering of Northwestern Lake and adjoining upland areas) by grading to a geomorphologically appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into surrounding water bodies;
- (2) to confine construction impacts to the minimum area necessary to complete the project;
- (3) to minimize soil disturbance and provide appropriate grading and

- temporary revegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential;
- (4) to flag the boundaries of clearing limits at construction sites to prevent the disturbance of critical riparian vegetation and wetlands;
  - (5) to ensure sediment control materials are present on-site, as well as an oil-absorbing, floating boom whenever surface water is present;
  - (6) to utilize existing roadways or travel paths whenever possible and to minimize ground disturbance and compaction by clearing vegetation to ground level and placing clean gravel over geotextile fabric when a new temporary road is necessary within 150 feet of a water body;
  - (7) to ensure complete removal of all dredged and excavated materials, as well as debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site;
  - (8) to ensure that all temporary fill and other materials placed in the waters of the river are completely removed immediately upon completion of construction activities;
  - (9) for an implementation schedule, to include daily inspections of erosion control measures during the rainy season and weekly inspections during the dry season to ensure that erosion control measures during removal activities are effective;
  - (10) to immediately repair ineffective erosion control measures, install replacements, or install additional controls as necessary; and
  - (11) to remove and properly dispose of captured sediment on the upslope side of the erosion control measure once it has reached one-third of the designed height of the control.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, Yakama Nation, and U.S. Army Corps of Engineers. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan

with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and Director, Division of Dam Safety and Inspections.

(L) *Woody Debris Management Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a woody debris management plan describing measures to be taken before, during, and after initial reservoir dewatering to minimize any adverse effects from woody debris washed out of the reservoir or dislodged from the canyon downstream of the dam.

The plan shall, at a minimum, include:

- (1) a provision to remove woody debris and fallen timber from the reservoir and the canyon downstream of the dam only to the extent necessary for public safety and sediment management during project removal;
- (2) a provision to relocate and utilize woody debris for habitat restoration within the former lakebed and downstream reach after removal is complete; and
- (3) an implementation schedule.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, U.S. Army Corps of Engineers, and Klickitat and Skamania Counties. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations by consulted entities on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is

approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and Director, Division of Dam Safety and Inspections.

(M) *Reservoir Sediment Assessment and Stabilization Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a plan to assess the quantity and condition of remaining reservoir sediments, including those exposed immediately following the initial dewatering of Northwestern Lake, and to stabilize the dewatered reservoir bed and provide fish passage through the former reservoir area.

The plan shall, at a minimum, include:

- (1) an analysis to determine the impact of lowering the reservoir to stream level over a six-hour period on the stability of the banks of Northwestern Lake;
- (2) a description of geotechnical testing and analysis methods of the remaining sediments, including sediments at the reservoir tributary mouths;
- (3) a provision to prepare maps showing the location, thickness, and geotechnical characteristics of remaining sediments in the reservoir, including at the reservoir tributary mouths;
- (4) a description of the methods of managing residual sediments and restoring the White Salmon River valley in the former reservoir area to a stable, free-flowing condition;
- (5) a provision to assess whether accumulated reservoir sediments affect anadromous fish passage into Northwestern Lake tributaries, including Mill and Buck creeks, and, if so, a description of measures to mitigate these effects;
- (6) a schedule for consultation with the entities identified below concerning the results of geotechnical testing and analysis of the remaining sediments;
- (7) a provision for filing with the Commission, within 90 days of the commencement of reservoir dewatering: (a) the results of the analysis, (b) comments of consulted entities, (c) licensee's response to entities' comments, and (d) any measures proposed by the licensee to manage residual sediments and restore the White Salmon River valley in the

reservoir area to a stable, free-flowing condition. If these measures include blasting of the remaining exposed reservoir sediments, then the filing shall include a blasting plan that includes a description of the type of blasting to be performed, expected explosive strength, proposed blast locations and timing, and mitigation measures to protect the valley from environmental damage related to blasting;

- (8) a three-year monitoring program, including performance standards and success criteria;
- (9) procedures to be implemented if monitoring demonstrates that sediment stabilization measures are not successful or areas of unstable sediment are identified, including the need for additional monitoring; and
- (10) a reporting and implementation schedule.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, Yakama Nation, and U.S. Army Corps of Engineers. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and Director, Division of Dam Safety and Inspections.

If the results of the geotechnical testing and analysis indicate that management, removal, or stabilization (vegetative or structural) of the residual sediments would be necessary in order to protect fish and wildlife resources or maintain public safety, the Commission may direct the licensee to implement such measures.

(N) *Drain Tunnel Protective Pockets Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a plan to allow

anadromous fish to safely pass the site of the dam during removal by excavating a series of fish protective pockets in each of the walls of the drain tunnel to allow fish to rest during upstream passage. The plan, at a minimum, shall include detailed design drawings of the drain tunnel and fish protective pockets, together with a schedule to construct the pockets.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, and Washington Department of Ecology. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and Director, Division of Dam Safety and Inspections.

(O) *Reservoir Cofferdams Removal Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a plan to remove cofferdams in the reservoir by no later than May 1, 2012. The plan shall include a detailed description of how the licensee will remove the cofferdams, including measures to control sedimentation and erosion, and an implementation schedule.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, and Washington Department of Ecology. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations of consulted entities on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is

approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and Director, Division of Dam Safety and Inspections.

(P) *Underwood In Lieu Site Mitigation.* The licensee shall provide a one-time payment of \$500,000 (in 1999 dollars, as adjusted pursuant to the settlement agreement filed October 21, 1999) to an account established by, collectively, the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Reservation, and the Nez Perce Tribe (collectively the Tribes) for the enhancement or maintenance 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 Tribes for fishing purposes, as provided for in the October 1999 settlement agreement. The licensee shall make the payment within 30 days of receiving written notice from the Tribes of the location of the account, but no later than the completion of project removal activities. Within 30 days after providing the contribution, the licensee shall file with the Commission documentation of the payment.

(Q) *Raceways Protection Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a plan to protect the U.S. Fish and Wildlife Service's raceways, located at about river mile 1.4 on the White Salmon River, during dam removal activities. The plan shall include a detailed description of the proposed protection measures and an implementation schedule.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, and Washington Department of Ecology. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

(R) *Petroleum and Hazardous Substances Control Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a

petroleum and hazardous substances control plan to protect all waters during dam removal activities from the contamination of deleterious materials such as wet concrete, gasoline, solvents, epoxy resins, or other materials. The plan shall include, at a minimum:

- (1) a description of any hazardous products or materials that will be used, including procedures for inventory, storage, handling, and monitoring;
- (2) provisions for spill containment and control with notification procedures, specific clean-up and disposal instructions for different products, quick response containment and clean-up measures to be available on site, methods for disposal of spilled materials, and employee training;
- (3) a provision to design, build, and maintain facilities to collect and treat all construction and drilling discharge water, using the best available technology applicable to site conditions, to remove any pollutants present;
- (4) a provision that if any construction discharge water is released via an outfall or diffuser port, velocities may not exceed 4 feet per second, and the maximum size of any aperture may not exceed 1 inch;
- (5) a provision to not allow pollutants such as green concrete, contaminated water, sediment, welding slag, sandblasting abrasive, or grout cured less than 24 hours to contact any water body, wetland, or stream channel below ordinary high water;
- (6) practices to prevent construction debris from dropping into any body of water, and a provision to remove any material that does drop with a minimum disturbance to the streambed and water quality;
- (7) a provision that vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place 150 feet or more from any stream, waterbody, or wetland, or have suitable spill prevention measures at the refueling site if it must be closer;
- (8) a provision for all vehicles operated within 150 feet of any stream, waterbody, or wetland to be inspected daily for fluid leaks before leaving the vehicle staging area, leaks to be repaired prior to subsequent operations, and an inspection report to be available for agency review;
- (9) a provision that all equipment operated instream be cleaned before beginning operations below the bank full elevation to remove all external oil, and grease; and

- (10) a provision for all stationary power equipment operated within 150 feet of any stream, waterbody, or wetland to be diapered to contain leaks.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, and Washington Department of Ecology. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No dam removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

(S) *Adult Lower Columbia River Fall Chinook Salmon Salvage Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a plan to salvage adult Lower Columbia River fall Chinook salmon in the late summer/early fall of 2011 downstream of Condit dam, to transport individuals collected to areas upstream of Condit dam, and, if necessary, to spawn adults in a hatchery with progeny to be released upstream of Condit dam to supplement natural spawning.

The plan shall include, at a minimum:

- (1) a description of proposed methods that will be used to collect Lower Columbia River fall Chinook salmon adults in the White Salmon River, including the results of any previous pilot fish salvage studies used to evaluate the effectiveness of potential salvage methods such as use of a removable weir at river mile 1.4 of the White Salmon River to direct adults to the U.S. Fish and Wildlife Service raceways or a resistant board weir;
- (2) a provision to identify and utilize contingency capture methods and/or locations should flow conditions not allow the use of proposed collection methods identified in (1) above;
- (3) a provision to transport and release adult Lower Columbia River fall Chinook salmon upstream of Condit dam, including a description of the proposed release locations;

- (4) a provision to artificially spawn captured adult Lower Columbia River fall Chinook salmon, raise the progeny in a hatchery, and release the juveniles upstream of Condit dam in the spring of 2012 to supplement natural spawning if agreed upon and deemed necessary by the stakeholders identified below;
- (5) a provision to use standard hatchery protocols for the collection, holding, transport, and spawning of adult Lower Columbia River fall Chinook salmon; and
- (6) an implementation schedule.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, Spring Creek National Fish Hatchery, and Yakama Nation. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

(T) *Western Pond Turtle Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a plan to protect any western pond turtles that may be present at Northwestern Lake.

The plan shall, at a minimum:

- (1) describe the methods used to survey for and, if present, trap pond turtles;
- (2) identify suitable habitat for relocating any turtles trapped;
- (3) describe the methods for transporting any turtles found; and
- (4) include an implementation schedule.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, Washington Department of Ecology, and Washington Department of Fish and Wildlife. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

(U) *Reservoir Wetland Creation and Upland and Riparian Revegetation Plan.* At least 90 days before starting removal activities, the licensee shall file a final reservoir wetland creation and upland and riparian revegetation plan for Commission approval. The plan shall provide for natural and managed revegetation of upland, wetland, and riparian habitat affected by removal of the project facilities, including mitigation for the loss of 4.8 acres of emergent wetland vegetation.

The plan, at a minimum, shall include:

- (1) site preparation and design details;
- (2) provisions for site stabilization;
- (3) a description of plant species to be used, source of plant materials, densities, planting methods, and fertilization and irrigation requirements;
- (4) a description of methods to control noxious weeds for 3 years after dam removal;
- (5) a description of a 3-year monitoring program, including performance standards and success criteria;
- (6) procedures to be implemented if monitoring reveals that establishment of vegetation is not successful or areas of erosion are identified, including the need for additional monitoring; and
- (7) an implementation schedule.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, and Yakama Nation. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and Director, Division of Dam Safety and Inspections.

(V) *Spoil Disposal Area Revegetation Plan.* At least 90 days before starting removal activities, the licensee shall file, for Commission approval, a plan to revegetate areas used for the disposal of spoil materials and equipment staging.

The plan, at a minimum, shall include:

- (1) a description of plant species used and planting densities;
- (2) fertilization and irrigation requirements;
- (3) methods to control noxious weeds for 3 years after revegetation;
- (4) a 3-year monitoring program, including procedures to implement if monitoring reveals that establishment of vegetation is not successful;
- (5) a provision to stabilize and revegetate all newly exposed slopes and work areas as soon as possible;
- (6) a provision to remove all temporary access roads and work bridges (if constructed) when the project is complete, stabilize the soil, and revegetate the site; and
- (7) an implementation schedule.

The licensee shall prepare the plan after consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, and Yakama Nation. The licensee shall include with the plan documentation of consultation, copies of consulted entities' comments and recommendations on the completed plan, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

A courtesy copy of the filed plan shall be sent to the Commission's Division of Dam Safety and Inspections-Portland Regional Office (D2SI-PRO) Regional Engineer and Director, Division of Dam Safety and Inspections.

(W) *Recreation Facilities Plan.* At least 90 days before starting dam removal activities, the licensee shall file, for Commission approval, a plan to: (1) remove four existing community boat docks from the project reservoir; (2) remove the boat dock and extend an existing boat launch at Northwestern Lake Park to the river channel; and (3) post informational and interpretive signage at Northwestern Lake Park. The plan shall include a detailed description of how the licensee will remove any existing facilities and shall include drawings or schematics of any new features, including signage.

The licensee shall prepare the plan and include an implementation schedule after consultation with the Washington Department of Ecology and the Washington Department of Fish and Wildlife. The licensee shall include with the plan documentation of consultation, copies of the agencies' comments and recommendations, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No removal activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

(X) *Historic Preservation.* The licensee shall implement the "Memorandum of Agreement Among the Federal Energy Regulatory Commission and the Washington State Historic Preservation Officer for Managing Historic Properties that May be Affected by PacifiCorp's Surrender for the Condit Hydroelectric Project in Klickitat and Skamania Counties, Washington (FERC Project No. 2342)," filed with the Commission on February 27, 2003, including but not limited to the Historic Properties Management Plan (HPMP) for the project. In the event that the Memorandum of Agreement (MOA) is terminated, the licensee shall implement the provisions of its approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license. If the MOA is terminated prior to Commission approval of the HPMP, the licensee shall obtain approval from the Commission and the Washington State Historic Preservation Officer before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the project's area of potential effect.

(Y) *Notification Regarding Threatened or Endangered Species.* The licensee shall notify the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) within two days upon locating a dead, injured, or sick endangered or threatened species while operating the project until October 2011, during project removal activities, and during restoration activities. Initial notification must be made to the nearest FWS and NMFS Law Enforcement Offices and to the Commission. Notification must include the species, date, time, precise location of the injured animal or carcass, a description of the causative event (if known), a description of any resultant corrective actions taken (if any) to reduce the likelihood of future mortalities and injuries, and any other pertinent information. Care should be taken in handling sick or injured specimens to preserve biological materials in the best possible state for later analysis of cause of death. In conjunction with the care of the sick or injured endangered or threatened species or preservation of biological materials from a dead animal, the licensee has the responsibility to ensure that evidence associated with the specimen is not unnecessarily disturbed.

(Z) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2010). The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.