

March 17, 2009

Via Electronic Filing

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: Condit Hydroelectric Project, FERC Project 2342-011  
Six-Month Update

Dear Secretary Bose:

This document provides the Federal Energy Regulatory Commission (“the Commission”) a six-month status report describing PacifiCorp’s and the settlement parties’ progress with respect to the implementation of the Condit Settlement Agreement. This letter provides an update on activities from September 1, 2008, through February 28, 2009.

**Washington State Department of Ecology**

State Environmental Impact Statement / 401 Water Quality Certificate

PacifiCorp has conducted additional sediment sampling at Northwestern Lake at the request of the Regional Sediment Evaluation Team (RSET) consisting of the U.S. Army Corps of Engineers (Corps), the Washington Department of Ecology (Ecology), the Environmental Protection Agency (EPA), NOAA Fisheries, and the U.S. Fish and Wildlife Service.

The following are a list of the completed sediment reports:

- *Sediment Sampling & Analysis Report*, March 29, 2007: Transmitted via U.S. Mail to State of Washington Department of Ecology (Ecology) and the U.S. Army Corps of Engineers on March 29, 2007.
- *Supplemental Evaluation for Mercury in Sediments Report*, December 10, 2007. (included bioassay and bioaccumulation evaluations): Transmitted via email to the RSET group on December 10, 2007.
- *Elevation of Tributary Samples*, January 23, 2008: Transmitted via U.S. Mail to Ecology and cc’d to U.S. Army Corp of Engineers.
- *Updated Evaluation of Mercury Bioaccumulation Underwood In Lieu Fishing Access Site*: Transmitted via email to the RSET group on January 7, 2009.

In light of the mercury evaluation required by RSET, and as part of its ongoing effort to review and certify the decommissioning proposal under Section 401 of the Clean Water Act, Ecology has contracted with URS Corporation to prepare an addendum to the SEIS. The final SEIS is expected by May 2009.

## **U.S. Army Corps of Engineers**

### 404 Dredge and Fill Permit/Section 10 Permit for In-Water Work

PacifiCorp has applied to the United States Army Corps of Engineers (Corps) for a permit under Section 404 of the Clean Water Act authorizing dredge and fill associated with the decommissioning proposal and for a permit under Section 10 of the River and Harbors Act authorizing in-water work associated with dam removal. The Corps is awaiting completion of Ecology's SEPA and 401 processes before issuing the 404 Permit and the Section 10 Permit.

## **United States Fish and Wildlife Service / NOAA Fisheries**

### Biological Opinions

Letters to NOAA Fisheries and the U.S. Fish and Wildlife Service were sent on August 8, 2008, and August 13, 2008 respectively. These letters requested concurrence from the services on clarifications concerning the scope and content of the Biological Opinions (BiOp) (NOAA BiOp 2006; USFWS BiOp 2005). Additionally the letters requested that confirmation of concurrence be given in a letter to FERC and PacifiCorp. On September 1, 2008, NOAA Fisheries sent an addendum to the 2006 biological opinion to FERC. On September 24, 2008, USFWS sent a letter to FERC stating the take authorized in the 2005 biological opinion remains authorized.

The White Salmon River Technical Working Group consisting of representatives from the U.S. Fish and Wildlife Service, NOAA Fisheries, the Yakama Nation, the Washington Department of Fish and Wildlife, the U.S. Geological Service, American Rivers and PacifiCorp completed development of a pilot fish salvage plan. Per the plan, researchers collected adult Fall Chinook Salmon returning to the White Salmon River in September and October of 2008, and transported them upstream of Condit Dam. The main purpose was to evaluate collection methods, and then select the most appropriate and effective means of collecting fish for future use just prior to dam removal. A final study report should be available in March.

## **Federal Power Act Preemption/County Permitting**

On June 15, 2007, PacifiCorp sent applications to Klickitat and Skamania Counties for a number of local permits (including a Substantial Development Permit, a Conditional Use Permit, and a Floodplain Development Permit). PacifiCorp understands from the Commission's May 18, 2006 declaratory order that the Federal Power Act preempts state and local regulation of the proposal to decommission the Condit Hydroelectric Project. The declaratory order also clarified that the Commission may include state and local requirements as terms of the Commission's surrender order if the Commission concludes that such state and local requirements do not conflict with the other terms of the Commission's order. PacifiCorp applied for county permits not because such permits are required but rather as a method of determining what, if any, local requirements the Counties would like to see imposed by the Commission as part of its surrender order.

On September 28, 2007, the Klickitat County Planning Department sent a letter requesting a reimbursement agreement to facilitate evaluation and processing of

PacifiCorp's permit application. PacifiCorp requested an estimate of the scope and cost of Klickitat County's evaluation efforts to review the permit application in a letter dated November 27, 2007. PacifiCorp received no response to this request and so sent Klickitat County another letter on June 26, 2008 reiterating its request for an estimate of the scope and cost of county review. In response, counsel for Klickitat and Skamania Counties sent PacifiCorp a letter in which the counties disputed PacifiCorp's characterization of the Commission's May 2006 declaratory order and asserted that PacifiCorp has acted in bad faith in maintaining that the Federal Power Act preempts state and local regulation of the decommissioning of Condit Dam. By letter dated August 15, 2008, PacifiCorp responded by denying the Counties' assertions of bad faith and by stating that, notwithstanding the apparent disagreement between PacifiCorp and the counties regarding the preemptive impact of the Federal Power Act, the company desires to work collaboratively with the counties to determine what, if any, requirements the counties would like to see imposed by the Commission as part of its surrender order regarding the decommissioning of the Condit project. To that end, PacifiCorp requested a meeting with Klickitat County. PacifiCorp remains willing to negotiate a reimbursement agreement to defray county costs associated with county review.

On August 27, 2008, Klickitat County requested a meeting with PacifiCorp to discuss issues related to the decommissioning. PacifiCorp and the county met on September 19, 2008. On November 10, 2008, PacifiCorp received a proposed form of reimbursement agreement from Klickitat County's attorneys. By letter to Klickitat County's attorneys dated February 6, 2009, PacifiCorp requested certain clarifications and modifications to the proposed reimbursement agreement. PacifiCorp is presently awaiting the county's response.

### **Decommissioning**

#### Owner's Engineer

PacifiCorp has completed a 90 percent draft decommissioning plan as well as drafts of detailed management plans to monitor and mitigate the effects of project removal. The 90 percent drafts have been submitted to Ecology for consideration in the State Environmental Impact Statement and 401 Water Quality Certification processes.

#### City of White Salmon Water Supply Line

PacifiCorp has initiated conceptual design of a new water supply line to replace the City of White Salmon's existing line that crosses the bottom of Northwestern Lake. This conceptual design work included geotechnical borings within the reservoir and at the north and south shores of the reservoir along the alignment of the existing waterline. PacifiCorp has had ongoing discussions on water line replacement options with the City of White Salmon and the two parties will meet when conceptual design work is completed to ascertain the City's interests in how the replacement project should proceed.

#### Mt. Adams Orchard Water Supply

PacifiCorp continues discussions with Mt. Adams Orchard regarding relocation of their agricultural water intake currently located on the shore of Northwestern Lake. The two

parties are in the process of developing a memorandum of agreement regarding how to proceed with relocation of the orchard's water supply intake following removal of Condit dam.

**Project Schedule**

On May 30, 2008, PacifiCorp notified the Commission that all necessary permits that would allow for project removal by October 2008 had not been received. Given the delay in permit issuance, parties to the settlement agreement have discussed whether a modification to the settlement agreement is needed. Discussions with interested parties at several meetings have led to the tentative conclusion that no modification of the settlement agreement is necessary at this time. As part of these discussions, the participating settlement parties noted that PacifiCorp will require some reasonable period of time after all permits become final and all appeals, if any, have run their course, within which to complete the necessary procurement, contracting, and mobilization of a demolition contractor before PacifiCorp can begin decommissioning. PacifiCorp currently estimates nine months is needed for such activities after final permits are received. As noted above, Ecology is expect to release an addendum to the SEPA document this spring, the 401 certificate is expected a short time thereafter.

**Parties to the Settlement Agreement**

PacifiCorp conducted quarterly meetings with the parties to the settlement agreement, on October 15, 2008, and January 14, 2009. The next meeting is scheduled for April 13, 2009.

Please call me at (503)-813-6657 if you have any questions.

Sincerely,



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