

# LEWIS RIVER AQUATIC COORDINATION COMMITTEE

Facilitator: ERIK LESKO  
503-412-8401  
Location: SKYPE MEETING ONLY  
Date: March 12, 2020  
Time: 9:30 AM – 1:00PM

## Agenda Items

- 9:30 a.m. Welcome
- Review Agenda, ACC 2/13/20 Meeting Notes
  - Comment & Accept Agenda, 2/13/20 Meeting Notes
- 9:40 a.m. Public Comment Opportunity
- 9:45 a.m. 2019/2020 Lewis River Aquatics Fund; PROJECT SELECTION
- 10:30am Break**
- 10:45 a.m. 2019/2020 Lewis River Aquatics Fund; PROJECT SELECTION (cont'd)
- 11:30 a.m. ACC Structure and Ground Rules; review edits
- 12:00 p.m. Lunch (Working Lunch)**
- 12:15 p.m. Study/Work Product Updates
- NOR WWSTD Decision
  - In Lieu Update; Discussion re: ACC approval process of In Lieu Plans
  - Flows/Reservoir Conditions Update
  - ATS Update
  - Saddle Dam Seismic Project Update
  - Fish Passage update
- 12:45 p.m. ➤ Next Meeting's Agenda  
➤ Public Comment Opportunity
- Note: all meeting notes and the meeting schedule can be located at:  
<https://www.pacificorp.com/energy/hydro/lewis-river/acc-tcc.html>
- 1:00 p.m. **Meeting adjourn**

## PLEASE BRING YOUR LUNCH

Join by phone

[\(503\) 813-6614](tel:(503)813-6614) (US)

[\(503\) 813-5252](tel:(503)813-5252) [Portland, OR] (US)

[\(855\) 499-5252](tel:(855)499-5252) [Toll-Free] (US)

English (United States)

English (United States)

English (United States)

**Conference ID: 5803472**

**FINAL Meeting Notes  
Lewis River License Implementation  
Aquatic Coordination Committee (ACC) Meeting  
March 12, 2020  
Conference Call Only**

**ACC Representatives Present (15)**

Kim McCune, PacifiCorp  
Chris Karchesky, PacifiCorp  
Erik Lesko, PacifiCorp  
Jeremiah Doyle, PacifiCorp  
Todd Olson, PacifiCorp  
Jim Byrne, Trout Unlimited  
Bryce Glaser, WDFW  
Peggy Miller, WDFW  
Josua Holowatz, WDFW  
Aaron Roberts, WDFW  
Ruth Tracy, USFS  
JD Jones, USFS  
Bill Sharp, Yakama Nation  
Eli Asher, Cowlitz Indian Tribe  
Amanda Froberg, Cowlitz PUD

**Calendar:**

April 9, 2020	ACC Meeting	Merwin HCC
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<b>Assignments from March 12, 2020</b>	<b>Status</b>
McCune - ACC agreed to transporting NOR Wild Winter Steelhead (WWSTD) upstream (after weekly brood stock goals have been met) as part of the Supplementation Program in 2020. Provide additional 7-day review for absentee ACC representatives to confirm if any objections.	<b>Complete – 3/12/20</b>
Byrne – Request input on the Rush Creek project from USFWS. Response is requested by March 19, 2020	<b>Complete- 3/12/20</b>
McCune – Provide the ACC Representatives comments received from LCFRB and NMFS on the LR21 Phase III project. ACC will advise by COB March 19, 2020 if they wish to fund.	<b>Complete- 3/12/20</b>

<b>Assignments from February 13, 2020</b>	<b>Status</b>
Lesko/Froberg - Incorporate ACC requested edits into the Terrestrial and Aquatic Coordination Committees Structure and Ground Rules document	<b>Ongoing and under review</b>
Lesko – Develop decision template using Cowlitz template as an example	<b>Ongoing and under review</b>

<b>Parking Lot Items</b>	<b>Status</b>
Tracy: Stage 0 webinar PowerPoint presentation to ACC. As of 11/14/19 Tracy is asking for an update from USFS staff regarding timeline for presentation in early winter 2020 or spring 2020.	<b>Complete – Sent link to ACC on 4/9/20</b>

## **Opening, Review of Agenda and Meeting Notes**

Erik Lesko (PacifiCorp) called the meeting to order at 9:35am and reviewed the agenda. No additions were requested, however WDFW did want the following clarification around the In Lieu Update topic on the agenda today to read as follows:

- In Lieu Update; Discussion about ACC approval of In Lieu Plans

Lesko also reviewed the February 13, 2020 meeting notes to include the WDFW edits. The ACC approved the February 13, 2020 meeting notes with all WDFW edits at 9:55am.

## **Public Comment**

None

## **2019/2020 Lewis River Aquatics Fund; Project Selection**

The ACC attendees provided comment and ratings as outlined in the attached Project Proposal Ratings Matrix (**Attachment A**). In addition, a copy of each proposal can be viewed on the Lewis River website at the links provided below. Agreement was not possible at today's meeting for Rush Creek and Lewis River 21 Phase III projects so, in accordance with the Ground Rules document the ACC elected to proceed with "other agreed upon approach".

**Decision Making.** *...If agreement is not possible, minority parties may pursue Dispute Resolution (see below), or other agreed upon approach.*

Several ACC representatives were absent today so the ACC attendees agreed that an additional 7-day review period until **close of business, Thursday, March 19, 2020** is appropriate before each decision is finalized.

- *Rush Creek Side Channel Reactivation*

**The ACC has not yet agreed to fund this project**, however, the ACC did express varying opinions on whether to proceed with this project. Jim Byrne (Trout Unlimited) expressed that TU is opposed to funding this proposal and would stand in the way of it going forward. Byrne expressed that because Rush Creek is only one of two bull trout spawning and rearing streams in the basin, USFWS has opposed habitat activities here in the past. The habitat work will improve habitat for bull trout; but more importantly will make it a more attractive stream for coho spawning and juveniles.

Currently, TU believes there are between 300-500 adult bull trout in the entire basin. Since 2013, 4,013 - 9,179 coho adults have been placed in Swift to spawn naturally. This allows potential redd superimposition and juvenile competition between bull trout and coho. Since reintroduction, coho juveniles have been routinely documented in Rush Creek. TU fears that bull trout young will be preyed upon by increasing numbers of coho parr. Recent low numbers of bull trout associated with Rush Creek need protection. Jim Byrne agreed to reach out to Brad Thompson (USFWS) to provide feedback on these concerns. TU agreed to reconsider its position pending a response from USFWS asserting this action will put no additional survival pressure on Rush bull trout. The ACC would like a response from USFWS by close of business March 19, 2020.

[https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/hydro/lewis-river/license-implementation/acc/USFS\\_AQ\\_full\\_proposal\\_Rush\\_Creek\\_FINAL\\_020320.pdf](https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/hydro/lewis-river/license-implementation/acc/USFS_AQ_full_proposal_Rush_Creek_FINAL_020320.pdf)

➤ *Eagle Island Chum Spawning Channel Construction*

**The ACC agreed to fund \$175,000 for this project.**

<https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/hydro/lewis-river/license-implementation/acc/Eagle%20Island%20Chum%20Channel%20Lewis%20ACC%20full%20proposal.pdf>

➤ *Lewis River 21 Phase III*

**The ACC has not yet agreed to fund this project**, however, Eli Asher (Cowlitz Indian Tribe) expressed that this project was poorly planned and under engineered and the wood is likely to be structurally ineffective. Not convinced the project would be successfully implemented. The 12-14” trees are relatively small and will likely decompose prematurely. The modeling provided is a good first step toward detailed design work that has been lacking in previous phases. The conceptual designs, however, and general description of design steps planned, suggest that the applicant does not intend to undertake the level of detailed design warranted by the scope and scale of proposed work.

The ACC agreed it would like to review additional comments from LCFRB and NMFS prior to making a decision by close of business March 19, 2020.

[https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/hydro/lewis-river/license-implementation/acc/USFS\\_AQ\\_Fund\\_full\\_proposal\\_LR\\_21\\_Phase\\_III\\_FINAL\\_02032020.pdf](https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/hydro/lewis-river/license-implementation/acc/USFS_AQ_Fund_full_proposal_LR_21_Phase_III_FINAL_02032020.pdf)

<Break 10:40am>

<Reconvene 10:50am>

➤ *Anderson North Fork Lewis River Restoration*

**The ACC did not approve the funding request of \$254,000.** The overall opinion of the ACC is there are some benefits to fish but not to the extent of the financial investment. In addition, the Old Lewis River Rd Comp Plan amendment is proposed to accommodate a high density residential development within much of the remaining riparian habitat at the project site. This creates high uncertainty regarding project efficacy and longevity.

<https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/hydro/lewis-river/license-implementation/acc/WDFW%20Anderson%20NF%20Lewis%20full%20proposal%20without%20All%20Appendices.pdf>

**ACC Structure and Ground Rules; review edits**

Lesko provided a revised version of the Structure and Ground Rules document and draft decision making documents (**Attachment B**) via Skype for ACC review and comment. Some edits were made to the document during the meeting, per the ACCs request. Lesko further provided a draft decision making document for tracking decisions in Excel format and a Word version for use when a decision is requested by an ACC Representative. The ACC agreed that Lesko will email a revised version of the Ground Rules, and decision making documents to the ACC based on comments received on or before March 30, 2020 so the ACC can review and be ready for finalizing at the next ACC meeting on April 9, 2020.

<Break 12:10pm>

<Reconvene 12:30pm>

## Study/Work Product Updates

### NOR Wild Winter Steelhead (WWSTD) Decision

Chris Karchesky (PacifiCorp) provided the attending ACC members with an update regarding the Aquatic Technical Subgroup (ATS) discussion on what to do with natural origin winter steelhead (NORs) returning to Merwin Trap this spring. This discussion was initiated because of the potential number of adults returning in 2020 was likely higher than what would be need for brood stock collection. Karchesky provided PowerPoint slides showing year to date (YTD) NORs collected at Merwin Trap compared to previous years (see screen shots below). The reason for this increase was due to the high number of out-migrants collected at the Swift FSC in 2018. The ATS discussed this issue earlier this year, and recommend that all NORs not needed for brood stock collection would be transported upstream. The proportion of PIT tagged adults returning to Merwin Trap that originated from the upper basin will be monitored to help confirm that most NORs being taken upstream are adults originating from the upper Lewis River. Karchesky asked for ACC approval to proceed with the following ATS recommendation:

- *Because the potential and year to date actual number of NORs returning this spring from the Swift FSC (2018) is higher than in previous years, the ATS recommends that NORs be transported upstream (after weekly brood stock goals have been met) as part of the Supplementation Program in 2020.*

The ACC agreed to proceed with the ATS recommendation but since several ACC representatives were absent today, the ACC attendees agreed that an additional 7-day review period **by close of business, Thursday, March 19, 2020** is appropriate for those ACC representatives not in attendance.

This decision will be later captured in the ACC decision matrix sheet which is currently under development.

Table 1.

Year	YTD NORs Collected at Merwin Trap	Proportion of the run	Total number of NORs collected for year
2014	0	0.00	27
2015	11	0.16	68
2016	5	0.10	49
2017	14	0.16	90
2018	29	0.25	117
2019	8	0.11	75
2020	97	6-year average 0.13	~ 746 ?

Steelhead Smolts Collected at Swift FSC

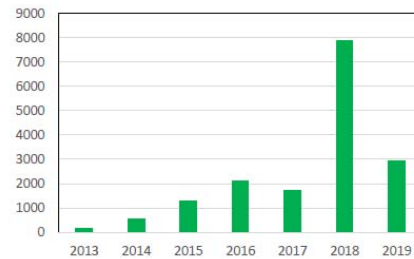


Table 2.

YTD NOR Adults Collected at Merwin Trap (in 2020)	Confirmed Swift FSC Fish (PIT Tagged in 2018)	Proportion of PIT Tagged NORs YTD (in 2020)	Proportion of Steelhead Smolts PIT Tagged in 2018
97	14	0.14	0.14

- The current AOP for NOR winter steelhead collected at Merwin Trap:
  - If NORs already contains a PIT Tag from the upper basin (e.g. Swift FSC or EC Screw Trap), then automatically transported upstream along with Program Fish (BWTs).
  - If no PIT Tag, then adults receives a PIT Tag then:
    - Taken to Merwin Hatchery to be used for brood stock for producing more program fish (BWTs)
    - OR-
    - If weekly brood stock goals have been met, released back into the lower river below Merwin Dam.
- Because the potential number of NORs returning this spring from the FSC (2018) is higher than previous years, the ATS recommends that NORs be taken upstream (*after weekly brood stock goals have been met*) as part of the Supplementation Program in 2020.

### Saddle Dam Seismic Project Update

No new information at this time. Alternatives for dam remediation are under consideration and sharing with the FERC. Yale is down 12.7' today and won't go any higher than 480'.

### In Lieu Update; discussion about ACC Approval of In Lieu Plans

Todd Olson (PacifiCorp) joined the ACC meeting, and asked about an earlier comment made by Bryce Glaser (WDFW). Glaser noted that the Draft Applications for FERC License Amendments were out for review, but the ACC should go through a decision process regarding approval of the action plans as identified by the Services in their April 2019 letters. Olson identified that the Utilities are willing to work towards this end; discussion then proceeded on how a decision process might be completed. Jim Byrne noted that the Services were not in attendance at today's ACC meeting and their absence is an issue. Ruth Tracy thought the decision process should focus on the ACC discussing the plans, and Eli Asher wanted the process to be concluded before the Utilities submitted final applications to FERC. Olson noted that any ACC meeting notes and decision outcome would be provided to FERC per required quarterly reporting. ACC members can also submit written comments/input during the draft application review. Each written comment



received will be placed into a comment matrix and the Utilities will respond to each individual comment. The comment matrix and copies of the received comment letters will be submitted to FERC as part of the final applications for license amendments.

In response to the discussion, the Utilities committed to developing a specific decision process that aligns with today's earlier discussion on ACC Standards and Guidelines. While it was understood that ACC members might not have substantive comments on the draft plans until May, the April ACC meeting should have time on the agenda to review the decision process and discuss the draft plans.

### **H&S/ATS Update**

Lesko informed the ACC attendees that DJ Warren is on schedule to complete their 60-day review of the draft H&S plan. The ATS is currently working on completing the 2020 AOP as soon as possible and start work on the 2021 AOP. Screw trapping began last week to evaluate outmigrating smolts. We currently have three traps operating in the basin: one at Eagle Cliff and two in the lower river downstream of Merwin Dam. Traps are scheduled to continue trapping through the end of June 2020 at all locations.

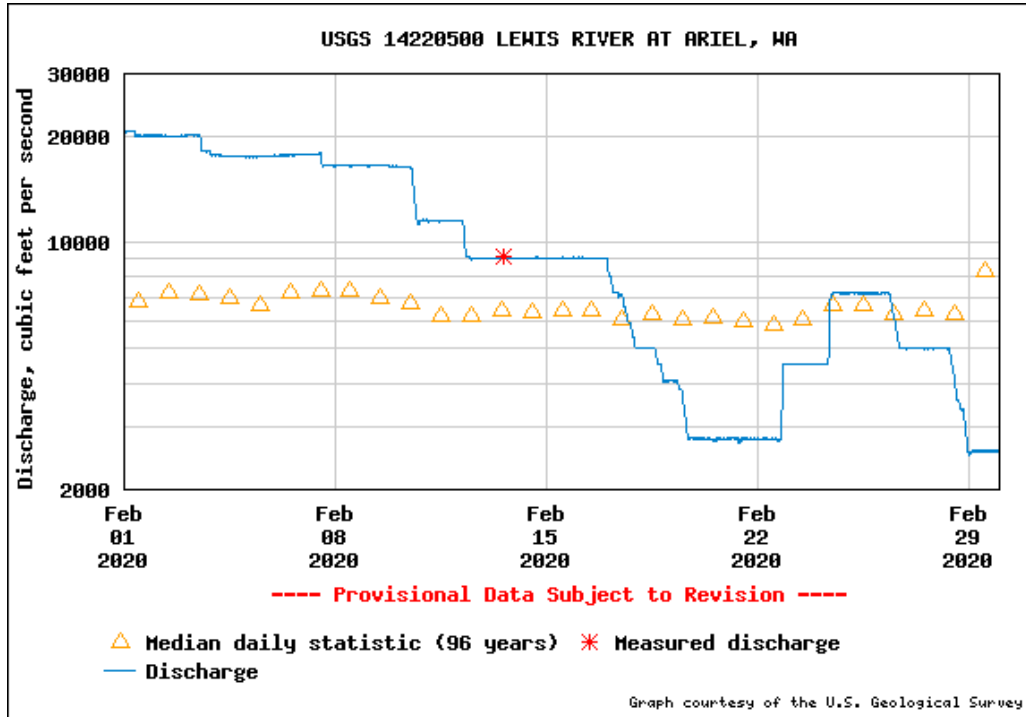
### **Merwin Fish Collection Facility and General Operations ([Attachment C](#))**

During the month of February, a total of 212 fish were captured at the Merwin Dam Adult Fish Collection Facility (MFCF). All but one of these fish were winter steelhead. A substantial proportion of these fish (39.6%) were of natural origin (NOR).

The Merwin Dam Fish Collection Facility was taken out of service from January 27<sup>th</sup> through February 13<sup>th</sup>, due to an extended spill event at Merwin Dam. The MFCF was returned to service the morning of February 13<sup>th</sup>, and ran continuously for the remainder of the month. Flow below Merwin Dam was generally decreasing in February, dropping from approximately 20,500 cfs on February 1<sup>st</sup> to 2,760 cfs on February 19<sup>th</sup>. Flows fluctuated between 2,700 and 7,200 for the remainder of the month (Table 1).



**Table 1. Discharge in cubic feet per second recorded at the USGS Ariel, WA gauge (14220500) located immediately downstream of Merwin Dam.**



**Upstream Transport ([Attachment C](#))**

Three (3) Blank Wire Tag (BWT) winter steelhead were captured by the end of December 2019 and were transported upstream as part of the 2020 run year. An additional fourteen (14) BWT’s were taken upstream in January, and another 54 were taken upstream in February, for a total of 71 BWT winter steelhead transported as part of the 2020 run year. Nineteen (19) steelhead of natural origin (NOR) were transported upstream in February, bringing the yearly NOR total to 21. The majority of these fish were tagged at the Swift FSC as juveniles. A total of 92 steelhead have been transported upstream of Swift Dam through February (Table 2). In addition to the steelhead, eleven coho and four cutthroat have been collected and transported upstream of Swift Dam in 2020.

**Table 2. Total number of adult winter steelhead transported upstream of Swift Dam by run-year.**

Run Year	Male	Female	Total adult winter steelhead taken upstream of Swift Dam
2012	141	48	189
2013	440	301	741
2014	452	581	1,033
2015	746	477	1,223

<b>2016</b>	378	376	<b>754</b>
<b>2017</b>	331	261	<b>592</b>
<b>2018</b>	682	535	<b>1,227</b>
<b>2019</b>	527	486	<b>1,013</b>
<b>2020</b>	55	37	<b>92</b>

**Swift Floating Surface Collector (Attachment C)**

The Swift Reservoir Floating Surface Collector (FSC) did not operate during the month of February. The FSC was turned off on December 19<sup>th</sup>, 2019 so that the trestle stairs could be replaced, and modifications could be made to the starboard side smolt flume. Due to the construction schedule for these projects, the FSC will likely remain out of service until March 2<sup>nd</sup>.

**Agenda items for April 9, 2020**

- Review March 12, 2020 Meeting Notes
- ACC Structure and Ground Rules; Discussion and review edits
- LR Phase III; discussion & decision
- In Lieu Update – Review of proposed ACC approval process
- Study/Work Product Update

*Adjourn 1:50pm*

**Next Scheduled Meeting:**

April 9, 2020
TBD
9:30 a.m. – 12:00 p.m.

**Meeting Handouts & Attachments:**

- Meeting Notes from 2/13/20
- Agenda from 3/12/20
- **Attachment A** – Lewis River Aquatic Fund Project Proposal Ratings Matrix
- **Attachment B** – Draft Structure and Ground Rules document and decision making documents, March 12, 2020
- **Attachment C** – Lewis River Fish Passage Report (February 2020)

PROJECT PROPOSAL RATINGS MATRIX *(Parts B-E)*  
 LEWIS RIVER AQUATIC FUNDS  
 Ratings received prior to March 10, 2020

PROJECT	Applicant	Funding Request	UTILITIES	COWLITZ TRIBE	GPNF	LCFRB	NOAA	TROUT UNLIMITED	WDFW	Mean SCORE
Lewis River 21 Phase III	GPNF	\$ 227,000	33	26	41	37	24	29	40	<b>32</b>
Rush Creek Side Channel Reactivation	GPNF	\$ 130,000	31	36	42	49	43	19	36	<b>36</b>
Eagle Island chum spawning channel construction	WDFW	\$ 175,000	28	36	30	47	45	32		<b>36</b>
Anderson NF Lewis River Restoration	COWLITZ CD.	\$ 254,000	19	24	20	25.5	*	23	35	<b>24</b>

\* red font indicates entity does not support project for funding

# Utilities specific ratings (*parts B – E*)

1-5 (5 being highest)	Utilities							
	Lewis River Phase III		Rush Creek		Chum Channel		Anderson Rest.	
	Rating	Score	Rating	Score	Rating	Score	Rating	Score
B. How does the project benefit priority fish species and stocks?	3	12	3	12	3	12	2	8
C. Scientific validity and technical quality of proposed project	4	16	3	12	3	12	2	8
D. Ability for the project proponent to successfully implement	3	3	3	3	2	2	2	2
E. Cost effectiveness and timeliness	2	2	4	4	2	2	1	1
Total Score	<b>33</b>		<b>31</b>		<b>28</b>		<b>19</b>	

# Initial Review (Part A only)

Initial Review (Part A) Matrix

	Applicant	Funding Request	UTILITIES	LCFRB	WDFW	NOAA	USFS	USFWS	TROUT UNLIMITED	COWLITZ TRIBE	YAKAMA NATION	FISH FIRST	AMERICAN RIVERS
Lewis River 21 Phase III	GPNF	\$ 227,000	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS*	MEETS	MEETS	MEETS	MEETS
Rush Creek Side Channel Reactivation	GPNF	\$ 130,000	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS
Eagle Island chum spawning channel construction	WDFW	\$ 175,000	MEETS	MEETS		MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS
Anderson NF Lewis River Restoration	COW. CONS.	\$ 254,000	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS	MEETS

\* opposed, but will not contest ACC consensus

# Justifications for ratings (Utilities Only)

PROJECT	UTILITIES
Lewis River 21 Phase III	Already a popular spawning area based on redd survey data for coho and Chinook
	Proposal does not appear to adversely effect this potential
Rush Creek Side Channel Reactivation	Unknown risks to altering flows in Rush Creek proper at certain or critical times of the year
	Potential to directly increase spawning and rearing habitat
Eagle Island chum spawning channel construction	Requires landowner approval and easements
	BPA funding commitment is not secured
Anderson NF Lewis River Restoration	Primary benefits to home owners and the golf course, not fish.
	May redirect some flow that would likely benefit established structures on opposite bank.
	LCFRB provided future plan for cottage homes on the golf course property which includes riparian planting where the cottages will be situated.
	Additional partners needed to reduce requested amount from Aquatics Fund

**Terrestrial and Aquatic Coordination Committees**  
**FINAL Structure and Ground Rules**  
**May 19, 2005 and Revised ~~December~~**  
**2017 February 2020**

**Introduction**

This document has been established to facilitate the purposes of the Lewis River Terrestrial Coordination Committee (TCC), the Lewis River Aquatics Committee (ACC) and corresponding subcommittees, collectively known as “Coordination Committees.” This document does not supersede language in the Lewis River Settlement Agreement or Federal Energy Regulatory Commission (Commission) Licenses issued June 26, 2008, which govern this process. Both Coordination Committees reserve the right to amend or modify this document as necessary and upon approval of the other committee.

**Purpose**

The purpose of the Coordination Committees is to coordinate:

- 1.) For the TCC, the implementation of terrestrial protection, mitigation, and enhancement (PM&E) Measures described in Section 10 of the Settlement Agreement (Agreement) (including any exhibits, schedules, and appendices related to that Section).
- 2.) For the ACC, the implementation of aquatics protection, mitigation, and enhancement (PM&E) Measures described in Sections 3 through 9 of the Agreement (including any exhibits, schedules, and appendices related to that Section). In accordance with Section 14.2.1, of the Settlement Agreement (see **Appendix C**), PacifiCorp and Cowlitz Public Utility District (PUD) have designated Coordinators for the Coordination Committees and alternative representatives for membership (see **Appendix A** for a complete list of TCC membership, **Appendix B** for a complete list of ACC membership).

The Committee Coordinator(s) shall, as their primary responsibilities, oversee the coordination and implementation of the terrestrial and aquatic PM&E Measures that are the responsibility of their respective organizations as provided in the Agreement.

**Roles and Responsibilities (Section 14.2.3 of the Agreement, see Appendix C)**

Each Coordination Committee has the following responsibilities:

- a. Coordinates and Consults on development of plans by the Licensees as provided in the Agreement;
- b. Reviews information and oversees, guides, and makes comments and recommendations by the date agreed to by the Coordination Committees on implementation and monitoring of the terrestrial and aquatic PM&E Measures, including plans and reports;
- c. Consults with the Licensees on their respective reports prepared under the Agreement and Licenses regarding implementation of the terrestrial and aquatic



PM&E Measures as referred to in Section 14.2.6 of the Agreement, (see **Appendix C**);

d. Makes decisions, grants approvals, and undertakes any additional duties and responsibilities expressly given to the TCC or ACC with respect to the terrestrial or aquatic PM&E Measures;

e. Establishes, among other things, (i) procedures and protocols for conducting committee meetings and deliberations to ensure efficient participation and decision making; (ii) rules for quorum and decision making in the absence of any member; (iii) alternative meeting formats as desired, including phone or teleconference; and (iv) the methods and procedures for updating committee members on interim progress of development and implementation of the terrestrial and aquatic PM&E Measures;

f. As deemed necessary and appropriate by either Coordination Committee, establishes subcommittees to carry out specified committee functions and responsibilities described in this Section 14.2.3 of the Agreement (see **Appendix C**), and establishes the size -, membership -, and procedures for any such subcommittees; and

g. Discusses the protocols and the content of public information releases; provided that each Party, speaking only for itself and not the Coordination Committees, retains the right to release information to the public at any time without such discussion.

#### **Comments, Decisions and Recommendations (Section 14.2.4 of the Agreement, see Appendix C)**

Each of the Coordination Committees shall make comments, recommendations, and decisions in a timely manner as provided below:

a. Each Party represented on a Coordination Committee will have the authority to participate in all committee discussions relating to, and to provide input and advice on the date agreed to by the Coordination Committees; on decisions regarding implementation of the terrestrial and/or aquatic PM&E Measures. If a Representative requests an extension before the agreed upon due date, Licensees will consider accommodating an extension.

b. The Coordination Committees shall strive to operate by Consensus.

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

Whether or not the TCC or ACC has final authority over decisions on PM&E Measures, the Licensees and other Parties may proceed with actions necessary to implement the Licenses or the Agreement, even though Consensus is not

achieved; provided that in such cases where “Consultation” is required, the responsible Licensee or Licensees shall provide copies of the TCC or ACC comments to the Commission and highlight the areas of disagreement. If this circumstance occurs, and the Licensees do not adopt the recommendations of a TCC or ACC member, then the material filed with the Commission will also include the member’s comments along with Licensee’s reasons for not adopting the recommendations of a TCC or ACC member, based on Project specific (see Recital A of Settlement Agreement) information, as identified in the definition of consult or consultation in the Agreement and as follows:

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

c. Where one or more Parties have approval authority under this Agreement, Licensees shall notify the Commission of any approvals that were not obtained, include the relevant comments of the Parties with approval authority, describe the impact of the lack of approval on the schedule for implementation of PM&E Measures, and describe proposed steps to be taken to gain the approval, including dispute resolution.

d. In no event shall the Coordination Committees increase or decrease the monetary, resource, or other commitments made by PacifiCorp and the PUD in the Agreement; override any other limitations set forth in the Agreement; or otherwise require PacifiCorp to modify its three Projects’ facilities without PacifiCorp’s prior written consent or require Cowlitz PUD to modify its Project’s facilities without Cowlitz PUD’s prior written consent, which consent may be withheld at the applicable Licensee’s discretion.

e. At any juncture where Consultation, discussion or other contact with the either the TCC or ACC is required by the Agreement or Licenses, when requested by the “Services” (National Oceanic and Atmospheric Administration National Marine Fisheries Service and US Fish and Wildlife Service) or as required by the Agreement, the respective Coordination Committee Coordinator shall schedule an

opportunity to discuss the relevant issue with the respective Coordination Committee. This event shall consist of either a conference call, in-person meeting, or other appropriate forum to enable full consideration of the issue.

## Roles of Parties

**Interested Parties.** Interested parties are those people or entities that are interested in TCC and/or ACC activities, but were not Parties to the Agreement (e.g., general public) or are Agreement Parties that have not designated Coordination Committee representatives for membership. To the extent desired by an individual or party, they may receive respective Coordination Committee information and attend meetings; however they will not be included in the Consensus process or during confidential sessions, unless so designated by the respective party. Time will be provided at each meeting for public comment as needed and determined by respective Coordination Committees (e.g., 15 minutes before lunch break and 15 minutes at conclusion of meeting).

**Designated Representatives for Membership.** Designated representatives for membership (Representatives), see **Appendices A and B**, are Parties to the Settlement Agreement that have identified (in writing) Representatives to participate in the TCC and/or ACC. Representatives will have the authority to participate in all respective Coordination Committee discussions and to provide input and advice on decisions regarding implementation of the terrestrial or aquatic PM&E Measures in the Agreement or Licenses. Representatives are included in the Consensus process. At any time a Representative may provide proxy representation to either the TCC or ACC via written or electronic mail notification to the Licensees' Coordinators. It is ~~expected that~~expected that TCC Representatives will request to meet in a confidential manner specific to discussions regarding land acquisition interests. Those Representatives wishing to participate in such meetings will be required to sign a Confidentiality Agreement. Since it is unlikely that the ACC will need to conduct confidential discussions, no Confidentiality Agreement has been prepared for ACC Representatives at this time.

**Licensees' Coordinators.** The Licensees' Coordinator(s) oversee the coordination and implementation of the respective terrestrial and aquatic PM&E Measures that are the responsibility of their respective organizations (PacifiCorp or PUD of Cowlitz County) as provided in the Agreement. The Coordinators may be the Licensees' Representatives if so designated. The Coordinators shall act as full participants in the Coordination Committee process and, as appropriate, will take the lead in developing necessary information and preparing formal documents.

**Chairperson(s).** Generally, the role of the Chairperson is to lead the meetings effectively and ensure the written structure and ground rules are followed. Responsibilities include opening and closing the meetings on time, review and modification of the meeting agenda, introducing the purpose and topics on the agenda, introduce guests, ensure participants are provided equal time when discussing issues, ensure that discussion remains relevant, and call for consensus votes when necessary.

**Consultants.** A Consultant will serve as a source of technical expertise to the appropriate task or assignment. A Consultant will not have the authority to participate as a Coordination Committee Representative on behalf of or bind any Party unless the Party specifically delegates that authority (in writing) on specific issues, and informs the other Representatives about such delegation.

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**Facilitator.** If deemed necessary by the Licensees or the TCC or the ACC, a facilitator may be utilized during a part or all of the committee proceedings. The facilitator is an independent third party. The facilitator's role is to help reach Consensus. The facilitator will help the Representatives to identify goals, identify issues, develop and maintain critical paths, accomplish creative problem solving, reach resolution of issues (facilitate and mediate as necessary). The

facilitator will also help the Parties to stay organized and keep track of issues, committee progress, and assignments. The facilitator may assist the development of agendas (for review and input by Representatives) and focus discussions and efforts. If either the TCC or ACC deems that an outside facilitator is unnecessary at any time, the Licensee(s) Coordinator(s) or any other Representative may assume that role, as determined by the respective committee.

### **Ground Rules**

The Coordination Committee meetings are a process that is subject to the following ground rules. These ground rules are not intended to modify or limit any party's legal rights, authorities, or remedies.

### **Meetings**

The meetings will be open to the public, who may observe and provide comment at the appropriate time. Non-member participants (i.e. interested parties) can-not participate in the determination of Consensus. The Coordination Committees may schedule meetings that are not open to non-ACC or TCC participants; confidential or otherwise. Consultants and legal representatives of the Parties shall not act as advocates during Coordination Committee meetings unless they have been designated as a Representative for a Party.

The Coordination Committees will have the respective meeting times:

- The TCC will meet regularly from 9:00am until 3:00pm on the second Wednesday of each month unless determined otherwise by the TCC.
- The ACC will meet regularly from 9:00am until 3:00pm on the second Thursday of each month unless determined otherwise by the ACC.

In general, Representatives of the Coordination Committees shall be given a minimum of thirty (30) days' notice prior to any meeting, unless otherwise agreed to by the Representatives. This does not preclude the Coordination Committees from conducting meetings with less notice as needed.

**Agendas.** Agenda items for the following TCC or ACC meeting will be determined by Representatives at the close of each meeting. Agendas will identify when decisions are expected to be made. Representatives may contact the Coordinator(s) at any time to suggest additional agenda items. The agenda for each meeting shall be distributed at least one (1) week in advance of the meeting date. At the beginning of each meeting, the agenda will be reviewed, edited, and amended as necessary by the Representatives. A public comment period will be included in each meeting agenda as needed. The Coordinators shall arrange and provide a draft agenda for any additional TCC, ACC or Subcommittee meetings formed by the Coordinator or at the request of any two Representatives on that committee. The request shall be sent simultaneously to all Representatives of the respective committee. (See section 14.2.5 of the Agreement, or **Appendix C**).

**Meeting Notes.** The Coordinators will provide for the preparation, review and distribution of draft meeting notes within seven (7) days following the committee meeting. Representatives -may

provide editorial comments directly to the Coordinators by email within 14 days prior to the next meeting. Edited meeting notes will be distributed to the ACC with the Agenda seven (7) days prior to the next meeting. ~~but substantive~~ Substantive comments should be raised during the review of the notes at the next meeting for discussion and resolution, as necessary. Following that meeting, the Coordinators will finalize the meeting notes and distribute to the Representatives. Any changes to meeting notes that were suggested by a Representative, but not accepted by the TCC or ACC for inclusion, will be appended to meeting notes.

**Coordination Committee Written Record.** When the TCC or ACC has reached Consensus on an action item(s) (See Decision Making below), the decision will be recorded in the notes of the meeting. Meeting notes will be provided to respective committee Representatives for review prior to the following regularly scheduled meeting.

### **Responsibilities of Coordination Committee Representatives**

**Attendance.** Representatives will make a concerted effort to attend meetings and inform the Coordinators in advance of any absence at a TCC, ACC, or Subcommittee meeting or any change in representation. If possible, each Representative will have designated one or more alternates who can represent their organization when needed. A teleconference line will be available at each meeting for Representatives who cannot attend in person. Representatives attending by teleconference, or who have designated a proxy (in writing), are considered present at the meeting, and will be included in the Consensus process.

**Preparation.** Representatives will make a concerted effort to complete action items, come prepared for meetings, and review previously distributed material relating to agenda items. If a Representative is new to the TCC or ACC, the committee should provide a short introduction briefing during the committee meeting. If a Representative would like the TCC or ACC to consider a specific proposal, that Representative will notify the Coordinator(s) to include the item on the agenda, and prepare and provide a completed decision template (Appendix D) form for distribution to the ACC along with meeting notes and agenda ~~whatever written material that may be useful to the Representatives and allow for a at least~~ seven (7) days ~~review period~~ prior to the meeting in which the proposal will be discussed.

**Participation.** Each Representative is expected to be a willing contributor at meetings, to communicate actively, to share all necessary factual information, and to strive for Consensus on a timely basis. Each Representative is expected to be open minded, to listen to others, to respect others' points of view, to be direct and considerate, to show respect for the other Representatives, to suggest solutions, and to be willing to explain their concerns to others. If a Representative has a personal communication device, they will strive to limit its use in a manner that is least disruptive to meeting participants (i.e. turn it off or to meeting mode during meetings).

**Authority.** If a Representative does not have authority to bind its organization, the Representative will keep its organization briefed on an on-going basis about the activities of the respective Coordination Committee, the issues being addressed, and possible solutions to those issues. The Representative will incorporate the input they have received from their internal discussions into their participation at the TCC and/or ACC. As previously stated, at any time a Representative may provide proxy representation to either the TCC or ACC via written notification to the Licensees'

Coordinators.

## Meeting Guidelines

**Response Time.** Representatives will have at least thirty (30) days unless otherwise agreed to by the TCC or ACC Representatives or the period as specified by the Settlement Agreement or Licenses, to review reports, documents, and draft deliverables to be filed with the Commission, so that Representatives can meaningfully participate in the collaborative process. In some instances, additional time will be provided to enable the Representatives' internal review as agreed to by the Coordination Committee Representatives. Specifically, Representatives will have sufficient time for internal review of major policy matters before making decisions on such matters. Future decision points will be noticed in meeting notes.

## Brainstorming

To allow open discussion and collaboration, Representatives will be encouraged to "brainstorm" a variety of solutions to specific issues. When a Representative identifies possible solutions as part of this process it is on behalf of the Coordination Committee, not their individual organizations, and a Representative will not be held to any brainstorming ideas until such time as they have indicated a willingness to agree with a proposed solution.

**Decision Making.** The TCC and ACC will make decisions by Consensus, as defined in the Agreement and Page 2 of this document. With respect to assuring that all Representatives have a voice in the Consensus process, the following method will be applied:

1. Discuss the issue to surface all points of view. Invite everyone to speak.
- ~~2.~~ The group may decide when there has been enough discussion about a topic and they are ready for a decision to be ~~scheduled~~ voted on.
- ~~2.3.~~ Votes are taken by tallying the votes in favor and against for each Representative present, or Representatives identified through written proxy by absentee Representatives prior to the meeting.
- ~~3.4.~~ Those voting in the **minority** get the floor. They're invited to say whatever they want and convince others of the rights of their view by:
  - a. Adding to the body of information already presented.
  - b. Clarifying their position.
  - c. Point out flaws, errors, or deficiencies in the other's point of view.
- ~~4.5.~~ Continue to ask those in the minority:
  - a. Do you think you have now been heard by the others in the group?
  - b. Is there more you want to say?
  - c. Are you ready to have the entire group vote again?
- ~~5.6.~~ Vote again. Those voting in the **minority** again get the floor.
- ~~6.7.~~ Invite them again to voice their argument to try and convince others to agree with their point of view.

This process will continue until those in the minority are able to say: "We are clear about what the majority would like to do. While we personally would not make that choice, we do think the others



understand what our alternative is. We've had sufficient opportunity to sway others to our point of view, and we do think we have been heard."

If agreement is not possible, minority parties may pursue Dispute Resolution (see below), or other agreed upon approach.

If the Settlement Agreement or the Licenses requires "Consultation" or to "Consult" the Agreement definition previously identified will be applied.

To account for the absence of a Representative during a decision making process, decisions will be considered "informal" for a period of seven (7) continuous days, post-decision, unless extended by the Committee. If all committee Representatives are present or have provided a proxy, the informal period is not needed. The Coordinators will notify absent parties of the "informal" decision via email promptly after the TCC or ACC meeting and request a decision response by the end of the 7-day period. If a Representative fails to respond in the seven (7) day period, their silence will be considered as no objection to the decision.

Decisions requiring Representative voting should be documented using the Decision Template provided in Appendix D and attached to the meeting notes.

**Dispute Resolution.** The Coordinators or facilitator will use a variety of dispute resolution techniques, including mediation, to work through difficult issues and reach Consensus. If necessary, the Representatives may follow the Alternative Dispute Resolution Procedures as defined in Section 15.10.2 of the Agreement (see **Appendix C**).

**Caucuses.** Time will be allowed at each meeting for caucuses, as necessary.

**Tracking Issue and Resolutions.** The Coordinators will track the progress of the Coordination Committees by maintaining an annotated list of issues that identifies specific issues, status of the issues, and resolutions. While a Representative will not be precluded from reopening a resolved issue, the Representatives will make a concerted effort to move forward once decisions have been made and to only request that the group revisits decisions if Representatives wish to discuss information or perspectives not previously shared with the committee. A record of decisions shall be maintained to provide a list of decisions made each year by the ACC or TCC. This record shall be included in the Licensees ACC/TCC annual report to the FERC.

**Information.** Representatives will have access to all documents developed during Coordination Committee activities. The Coordinators and all Representatives will distribute or make available via a website (<http://www.pacificorp.com/es/hydro/hl/lr.html#>) or email necessary information on a timely basis to all the Representatives. Some information (most likely from the TCC) will need to be subject to a Confidentiality Agreement. It is the responsibility of a Representative providing confidential information to ask the group to treat it confidentially. All Representatives will honor the Confidentiality Agreement to the limits defined by the law. To the extent that non-confidential data or information is draft, preliminary or otherwise qualified, if Representatives use such data/information outside of the context of meetings or activities, they will appropriately qualify the data/information.

## Annual Reports

The Coordinators for the committees shall prepare and file with the Commission detailed annual reports on the TCC and ACC activities, monitoring and evaluations, and implementation of the terrestrial and aquatic PM&E Measures occurring during the prior year, as well as plans for the coming year as required in the Agreement. The annual reports may also include, but not be limited to, plans and reports required pursuant to Sections 4.9.1, 7.7.1 8.2.3, 8.2.4, 10.5, 10.8.3 of the Agreement (see **Appendix C**), and any other applicable sections. Copies of such reports will be made available to each Party. The annual reports shall be prepared in Consultation with the Coordination Committee Representatives and shall be submitted to the appropriate committee for review each year, commencing after the Effective Date. Committee Representatives shall have a minimum of thirty (30) days to review and provide comment on a draft report before a final report is prepared and filed with the Commission. The Licensees shall submit the final report to the Commission not later than thirty (30) days after the close of the comment period. To the extent that comments are not incorporated into the final report, an explanation will be provided in writing, and such explanation shall be included in the report.

**Appendix A - Representatives and Alternates for Membership on the TCC**

<b>TCC Representative</b>	<b>Organization</b>	<b>Alternate</b>
No representative at this time	American Rivers	To be named
Public Works Director	City of Woodland	To be named
No representative at this time	Clark County	To be named
No representative at this time	Cowlitz County	To be named
Nathan Reynolds	Cowlitz Indian Tribe	Erik White
No representative at this time	Cowlitz-Skamania Fire District No. 7	To be named
No representative at this time	Fish First	To be named
No representative at this time	Lewis River Citizens at-large	To be named
Mariah Stoll-Smith Reese	Lewis River Community Council	To be named
Steve Manlow	Lower Columbia River Fish Recovery Board	Amelia Johnson
Michelle Day	National Marine Fisheries Service	To be named
No representative at this time	National Park Service	To be named
No representative at this time	North County Emergency Medical	To be named
Kendel Emmerson	PacifiCorp (PacifiCorp Co-Chair)	Summer Peterman
Amanda Froberg	PUD of Cowlitz County (PUD Co-Chair)	To be named
Bill Richardson	Rocky Mountain Elk Foundation	Ray Crosswell
No representative at this time	Skamania County	To be named
No representative at this time	The Native Fish Society	To be named
No representative at this time	Trout Unlimited	To be named
No representative at this time	US Bureau of Land Management	To be named
Tim Romanski	US Fish & Wildlife Service	To be named
Neil Chartier	USDA Forest Service	Ruth Tracy
Peggy Miller	Washington <del>Dept</del> <u>Dept.</u> of Fish & Wildlife	Eric Holman
No representative at this time	Washington Interagency Committee	To be named
No representative at this time	Woodland Chamber of Commerce	To be named
Bob Rose	Yakama Nation	Joanna Meninick

**Appendix B - Representatives and Alternates for Membership on the ACC**

<b>ACC Representative</b>	<b>Organization</b>	<b>Alternate</b>
Michael Garrity	American Rivers	To be named
Public Works Director	City of Woodland	To be named
No representative at this time	Clark County	To be named
No representative at this time	Cowlitz County	To be named
Eli Asher	Cowlitz Indian Tribe	Pete Barber
No representative at this time	Cowlitz-Skamania Fire District No. 7	To be named
Jim Malinowski	Fish First	To be named
No representative at this time	Lewis River Citizens at-large	To be named
Mariah Stoll-Smith Reese	Lewis River Community Council	To be named
Steve Manlow	Lower Columbia River Fish Recovery Board	Amelia Johnson
<del>Michelle Day</del> Joshua Ashline	National Marine Fisheries Service	To be named
No representative at this time	National Park Service	To be named
No representative at this time	North County Emergency Medical	To be named
Erik Lesko	PacifiCorp (PacifiCorp Co-Chair)	Chris Karchesky
Amanda Froberg	PUD of Cowlitz County (PUD Co-Chair)	To be named
No representative at this time	Rocky Mountain Elk Foundation	To be named
No representative at this time	Skamania County	To be named
Bill Bakke	The Native Fish Society	To be named
Jim Byrne	Trout Unlimited	Brice Crayne
No representative at this time	US Bureau of Land Management	To be named
Tim Romanski	US Fish & Wildlife Service	To be named
<del>Ruth Tracy</del> Joshua Jones	USDA Forest Service	To be named
<del>Tom Wadsworth</del> Josua Holowatz	Washington Dept of Fish & Wildlife	Aaron Roberts
No representative at this time	Washington Interagency Committee	To be named
No representative at this time	Woodland Chamber of Commerce	To be named

## Appendix C

### Lewis River Hydroelectric Projects Settlement Agreement

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

7.7.1 Review. The Licensees shall provide an annual report regarding Aquatics Fund activities and expenditures under Section 7.5, and PacifiCorp shall provide such annual reports regarding In Lieu Fund activities and expenditures under Section 7.6, both including any monitoring information collected regarding Resource Projects or mitigation measures implemented through the Aquatics and In Lieu Funds. Such annual report may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6. Each Licensee shall make or cause to be made available its underlying records relating to the Aquatics Fund, and PacifiCorp shall make available its underlying records relating to the In Lieu Fund, for review by the Parties.

8.2.3 Annual Operating Plan. The Licensees shall provide for the implementation of the Hatchery and Supplementation Plan through an annual plan (“Annual Operating Plan”). The Annual Operating Plan shall be consistent with the Hatchery and Supplementation Plan. The Licensees, in Consultation with the hatchery managers and with the approval of the Services, shall develop the initial Annual Operating Plan as part of the Hatchery and Supplementation Plan. The Licensees shall develop subsequent Annual Operating Plans in Consultation with the hatchery managers and subject to the approval of the Services. The Annual Operating Plan may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6.

The Annual Operating Plan shall, at a minimum, contain: (1) a production plan, which shall specify the species and broodstock sources; (2) the current Hatchery Target and Juvenile Production Target for each species to be produced at the Hatchery Facilities; (3) a release plan which shall identify by species the rearing schedule and planned distribution of fish and the schedules and locations for releases; (4) a list of facility upgrades to be undertaken that year; and (5) a description of relevant monitoring and evaluation to be undertaken that year.

8.2.4 Reporting Requirements. On an annual basis, the Licensees shall provide to the ACC for review and comment a report compiling all information gathered pursuant to implementation of the Hatchery and Supplementation Plan. The report also will include recommendations for ongoing management of the Hatchery and Supplementation Program. The ACC shall have 60 days to comment on the annual report. Within 60 days of the close of the comment period, the Licensees shall finalize the report after consideration of all comments. The Licensees shall also provide the comprehensive periodic review undertaken pursuant to Section 8.2.6 below to the ACC. The Licensees shall provide final annual reports and the comprehensive periodic review to the Services during the development of any required ESA permit or authorization for hatchery operations, including NOAA Fisheries' HGMP process. The report may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6.

10.5 Management of Funds. Funds provided by PacifiCorp, as described in Sections 10.1, 10.2, and 10.3 above, shall be held by PacifiCorp in a Tracking Account until acquisitions of Interests in Land are executed or habitat enhancement measures under Section 10.3 are implemented. PacifiCorp shall accrue interest on Fund monies held by PacifiCorp from the date the monies are due to be placed into the Fund at the prime interest rate printed in the *Wall Street Journal* for the weekday nearest to April 1 of each year. If such rate ceases to be published in the *Wall Street Journal*, the Parties shall meet and agree upon an alternate source for the prime interest rate. Interest shall be computed, compounded, and added to the Fund once annually as of that date. PacifiCorp shall use monies in the Funds to pay the purchase price for Interests in Land and for covered transaction and implementation costs as they are incurred. Funds not expended in any given year shall be carried over to a subsequent year. PacifiCorp shall provide annual reports to the TCC regarding Fund expenditures under Sections 10.1, 10.2 and 10.3 above. Such annual reports may be included as part of the detailed annual reports of the TCC activities required by Section 14.2.6.

10.8.3 Management of Plan. Subject to the oversight of the TCC, PacifiCorp and Cowlitz PUD shall implement their respective WHMPs. The Licensees shall submit to the TCC annually a written plan (the "Annual Plan") to use the funds available to implement the WHMPs on their respective lands. The Annual Plan may be included as part of the detailed annual reports of the TCC activities required by Section 14.2.6. Once the TCC has approved such Annual Plans, they shall be implemented by the Licensees using the funds made available for that purpose under Section 10.8.2. The funds shall be used to reimburse Licensees for use of their employees and contractors to manage, implement, and monitor actions taken under the WHMPs as provided in the Annual Plan. Further, the WHMPs shall not prevent either of the Licensees from carrying out any other legal requirement with respect to or upon its respective lands in any lawful manner, including, without limitation, in compliance with the conditions of the New Licenses, subject to Section 10.8.5.5 below. If the TCC believes that another party can implement the WHMPs more cost effectively, the respective Licensee shall, at the request of the TCC, seek bids from third party contractors to implement their respective WHMP for some period during the term of the applicable New License(s). If the bidding process identifies third party contractors who can do the work more cost effectively, the respective Licensee shall engage such contractors, provided that they are acceptable to the Licensee, in its reasonable discretion, considering policies, contracting requirements, and procedures and qualifications normally applied by the Licensees when engaging other contractors to work on their respective properties, and subject to dismissal if any contractor's performance violates such policies and requirements. If contractors are retained at the ~~recommendation of~~ recommendation of the TCC, such contractors shall have full responsibility, during the period of their engagement, for implementation of the respective WHMPs as provided under this Section 10.8, including preparation of Annual Plans and any required reporting to the TCC. During the period such third party is retained, the Licensees' obligations for implementation of their respective WHMPs shall be fulfilled in their entirety by providing the funds as required under Section 10.8.2. In no event shall Licensees be required to fund implementation of their respective WHMPs in excess of the amounts provided for in Section 10.8.2.

14.2.1 Committee Coordinators. Within 30 days after the Effective Date, PacifiCorp and Cowlitz PUD each shall designate one Committee Coordinator for the TCC and one Committee Coordinator for the ACC. PacifiCorp and Cowlitz PUD shall make their designations by notice to the Parties in accordance with the notice provisions in Section 16.6. The PacifiCorp Committee Coordinator(s) shall be employed or retained by PacifiCorp and may represent PacifiCorp on the TCC and the ACC. The Cowlitz Committee Coordinator(s) shall be employed or retained by Cowlitz PUD and may represent Cowlitz PUD on the TCC and the ACC. The PacifiCorp Committee Coordinator(s) shall, as their primary responsibilities, oversee the coordination and implementation of the terrestrial and aquatic PM&E Measures that are the responsibility of PacifiCorp as provided in this Agreement. The Cowlitz PUD Committee Coordinator(s) shall oversee the coordination and implementation of the terrestrial and aquatic PM&E Measures that are the responsibility of Cowlitz PUD as provided in this Agreement. PacifiCorp and Cowlitz PUD Committee Coordinators together shall oversee the coordination and implementation of terrestrial and aquatic PM&E Measures for which PacifiCorp and Cowlitz PUD have joint responsibility as provided in this Agreement.

14.2.3 TCC and ACC Functions. The TCC and the ACC will:

- a. Coordinate and Consult on development of plans by the Licensees as provided in this Agreement;
- b. Review information and oversee, guide, and make comments and recommendations on implementation and monitoring of the terrestrial and aquatic PM&E Measures, including plans;
- c. Consult with the Licensees on their respective reports prepared under this Agreement regarding implementation of the terrestrial and aquatic PM&E Measures as referred to in Section 14.2.6 below;
- d. Make decisions, grant approvals, and undertake any additional duties and responsibilities expressly given to the TCC or the ACC with respect to the terrestrial and aquatic PM&E Measures;
- e. Establish, among other things, (i) procedures and protocols for conducting committee meetings and deliberations to ensure efficient participation and decision making; (ii) rules for quorum and decision making in the absence of any member; (iii) alternative meeting formats as desired, including phone or teleconference; and (iv) the methods and procedures for updating committee members on interim progress of development and implementation of the terrestrial and aquatic PM&E Measures;
- f. As deemed necessary and appropriate by the TCC or the ACC, establish subcommittees to carry out specified committee functions and responsibilities described in this Section 14.2.3, and establish the size of, membership of, and procedures for any such subcommittees; and
- g. Discuss the protocols and the content of public information releases; provided that each Party retains the right to release information to the public at any time without such discussion.

14.2.4 TCC and ACC Decision-Making Process and Limitations. The TCC and the ACC shall make comments, recommendations, and decisions in a timely manner as provided below:

- a. Each Party represented on the TCC and the ACC will have the authority to participate in all committee discussions relating to, and to provide input and advice on, decisions regarding implementation of the terrestrial or aquatic PM&E Measures;
- b. The TCC and the ACC shall strive to operate by Consensus. Whether or not the TCC or the ACC has final authority over decisions on terrestrial and aquatic PM&E Measures, the



Licenses and other Parties may proceed with actions necessary to implement the New Licenses or this Agreement, even though Consensus is not achieved; provided that in such cases the responsible Licensee or Licensees shall notify the Commission of the comments of the ACC or TCC members and the areas of disagreement. If the TCC or ACC does not reach Consensus, then any member of the TCC or ACC, respectively, may initiate the ADR Procedures as provided in Section 15 below.

c. Where one or more Parties have approval authority under this Agreement, Licensees shall notify the Commission of any approvals that were not obtained, include the relevant comments of the Parties with approval authority, describe the impact of the lack of approval on the schedule for implementation of PM&E Measures, and describe proposed steps to be taken to gain the approval, including dispute resolution.

d. In no event shall the TCC or the ACC increase or decrease the monetary, resource, or other commitments made by PacifiCorp and Cowlitz PUD in this Agreement; override any other limitations set forth in this Agreement; or otherwise require PacifiCorp to modify its three Projects' facilities without PacifiCorp's prior written consent or require Cowlitz PUD to modify its Project's facilities without Cowlitz PUD's prior written consent, which consent may be withheld in the applicable Licensee's discretion.

e. At any juncture where discussion or other contact with the ACC or TCC is required by this Agreement, when requested by the Services or as required by the Agreement, the ACC or TCC Committee Coordinator, respectively, shall schedule an opportunity to discuss the relevant issue with the ACC or TCC. This event shall consist of either a conference call, in-person meeting, or other appropriate forum to enable full consideration of the issue.

14.2.5 TCC and ACC Meetings. Commencing in the first year after the Effective Date and each year thereafter for the terms of the New Licenses, the TCC and ACC Committee Coordinators shall arrange and provide an agenda for an annual meeting of their respective committees. The TCC and ACC Committee Coordinators also shall arrange and provide an agenda for any additional meetings deemed necessary by either coordinator for a committee or at the request of any two Parties on that committee, which request shall be sent simultaneously to all members of that committee. Members of the TCC and the ACC shall be given a minimum of 30 days' notice prior to any meeting, unless otherwise agreed to by the members of the applicable committee.

14.2.6 TCC and ACC Reports. The Committee Coordinators for the TCC and the Committee Coordinators for the ACC shall prepare and file with the Commission detailed annual reports on the TCC and ACC activities, monitoring and evaluations under the M&E Plan, and implementation of the terrestrial and aquatic PM&E Measures occurring during the prior year, as well as plans for the coming year as required in this Agreement. The annual reports may also include plans and reports required pursuant to Sections 4.9.1, 7.7.1, 8.2.3, 8.2.4, 10.5, and 10.8.3. Copies of such reports will be made available to each Party. The annual reports shall be prepared in Consultation with the TCC and ACC committee members and shall be submitted to the committees for review each year, commencing after the Effective Date. Committee members shall have a minimum of 30 days to review and provide ~~comment~~ comment on a draft report before a final report is prepared and filed with the Commission. The Licensees shall submit the final report to the Commission not later than 30 days after the close of the ACC and TCC comment periods. To the extent that comments are not incorporated into the final report, an explanation will be provided in writing, and such explanation shall be included in the report.

#### 15.10 Alternative Dispute Resolution.

15.10.1 General. The Parties intend that disputes under this Agreement be resolved as expeditiously and informally as possible, and that issues within the scope of the TCC and the ACC be discussed in those committees before being referred to the ADR Procedures. All remaining disputes among the Parties

regarding the obligations of the Parties under this Agreement shall, at the request of any Party, be the subject of nonbinding ADR Procedures among the disputing Parties. Each Party shall cooperate in good faith promptly to schedule, attend, and participate in the ADR Procedures. The Parties agree to devote such time, resources, and attention to the ADR Procedures as are needed to attempt to resolve the dispute at the earliest time possible. Each Party shall implement promptly all final agreements reached through the ADR Procedures, consistent with the Party's applicable statutory and regulatory responsibilities. Nothing in Sections 15.10.1 through 15.10.2 is intended or shall be construed to affect or limit the authority of the Commission, the Agencies, or any other agency with jurisdiction over the Projects to resolve a dispute brought before it in accordance with its own authorities and procedures, or to alter the statute of limitations or other requirements for Appeal of any action.

15.10.2 ADR Procedures. A Party claiming a dispute shall give notice of the dispute within 60 days of the Party's actual knowledge of a dispute, event, or omission that gives rise to the dispute, unless this Agreement provides otherwise. If a Party communicates with another Party informally and believes that the dispute is being resolved, the time for notice will not commence until it has been determined that such informal efforts have failed to resolve the dispute. Notification under Section 16.6 shall constitute actual knowledge. At a minimum, in any dispute subject to the ADR Procedures, the Parties shall hold two informal meetings within 30 days after notice, to attempt to resolve the disputed issue or issues. If, within 15 days after the second meeting or any meeting thereafter, a Party notifies the other Parties that such informal meetings failed to resolve the dispute, the Parties may agree to attempt to resolve the dispute using a neutral mediator. The agreement to use a neutral mediator will address allocation of costs and the scope of the dispute. The neutral mediator will be selected by the Parties participating in the mediation. Upon selection, the mediator will mediate the dispute for 60 days. Any of these time periods may be reasonably extended or shortened by agreement of the Parties, or as necessary to conform to ~~the procedure~~ the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in the ADR Procedures. Pending resolution of any dispute under the ADR procedures, and subject to the authority of the Commission or other agency with jurisdiction to order otherwise, PacifiCorp and Cowlitz PUD may continue operating their respective Projects in the manner of their operation prior to the point at which the dispute arose.

15.10.3 Enforcement of Agreement After ADR Procedures. Any Party may seek specific performance of this Agreement by any other Party at the Commission or in a court of competent jurisdiction after compliance with the ADR Procedures, where required, and, to the extent allowed by applicable law, may seek to recover its costs and fees associated with bringing such action. No Party shall be liable ~~in damages~~ in damages for any breach of this Agreement, except that a Party may seek monetary penalties under applicable law. Nothing in Sections 15.10.1 through 15.10.3 is intended or shall be construed to affect or limit the jurisdiction of any agency or court as established under applicable law.

## RECITAL A

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

**APPENDIX D**

**ACC RECOMMENDATION AND DECISION TEMPLATE**

Request No	Request Date	Representative(s) and Affiliation(s)	Title of Request	Description and Justification of Request (include requested action)	FERC License or Settlement Agreement Requirements	Consensus Decision?	Description and Justification of Decision	Contingencies for Decision	Date of Consensus Action
2020-01	5/1/2020	ATS	Transport of NOR late Winter Steelhead collected at Merwin Trap	The number of adult late winter steelhead trapped at Merwin Dam have increased every year since 2011. A portion of these fish are known to originate from Swift Reservoir (PT tags). To meet the goals of the Settlement Agreement we are requesting that NOR late winter steelhead that volunteer into the trap be transported upstream of Swift Dam	FERC Article 402 (b); SA Section 8.0	Yes (6-3)	The ACC reached consensus on transporting 50 percent of the NOR late winter steelhead upstream of the Swift Dam. The ACC agreed that some unknown portion of the returning adults originated upstream of Swift Dam (based on PT tag recoveries) and that the rate of 50 percent was considered biologically justified and consistent with the goals of the SA	The ACC reached consensus	
2020-02	5/8/2020								
2020-03	8/12/2020								

**Example of proposed decision matrix/template**

# Lewis River Fish Passage Report

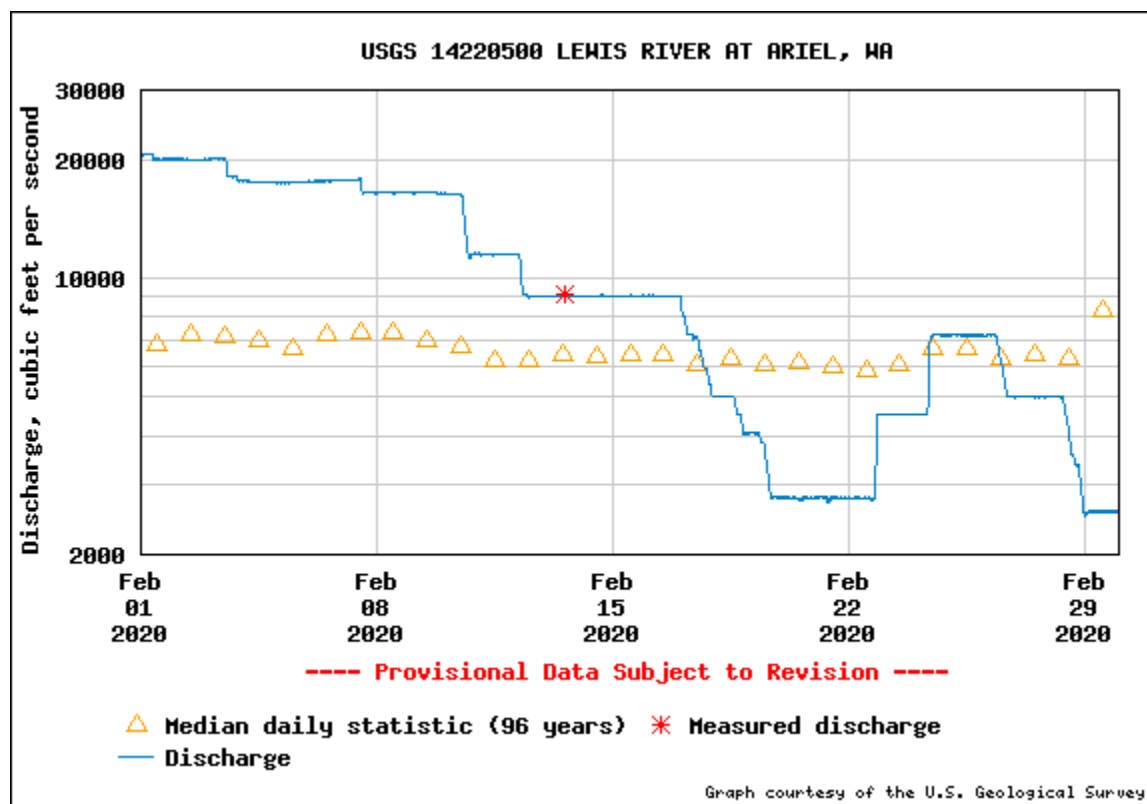
## February 2020

### Merwin Fish Collection Facility and General Operations

During the month of February, a total of 212 fish were captured at the Merwin Dam Adult Fish Collection Facility (MFCF). All but one of these fish were winter steelhead. A substantial proportion of these fish (39.6%) were of natural origin (NOR).

The Merwin Dam Fish Collection Facility was taken out of service from January 27<sup>th</sup> through February 13<sup>th</sup>, due to an extended spill event at Merwin Dam. The MFCF was returned to service the morning of February 13<sup>th</sup>, and ran continuously for the remainder of the month. Flow below Merwin Dam was generally decreasing in February, dropping from approximately 20,500 cfs on February 1<sup>st</sup> to 2,760 cfs on February 19<sup>th</sup>. Flows fluctuated between 2,700 and 7,200 for the remainder of the month (Table 1).

Table 1. Discharge in cubic feet per second recorded at the USGS Ariel, WA gauge (14220500) located immediately downstream of Merwin Dam.



## **Upstream Transport**

Three (3) Blank Wire Tag (BWT) winter steelhead were captured by the end of December 2019 and were transported upstream as part of the 2020 run year. An additional fourteen (14) BWT's were taken upstream in January, and another 54 were taken upstream in February, for a total of 71 BWT winter steelhead transported as part of the 2020 run year. Nineteen (19) steelhead of natural origin (NOR) were transported upstream in February, bringing the yearly NOR total to 21. The majority of these fish were tagged at the Swift FSC as juveniles. A total of 92 steelhead have been transported upstream of Swift Dam through February (Table 2). In addition to the steelhead, eleven coho and four cutthroat have been collected and transported upstream of Swift Dam in 2020.

**Table 2. Total number of adult winter steelhead transported upstream of Swift Dam by run-year.**

<b>Run Year</b>	<b>Male</b>	<b>Female</b>	<b>Total adult winter steelhead taken upstream of Swift Dam</b>
<b>2012</b>	141	48	<b>189</b>
<b>2013</b>	440	301	<b>741</b>
<b>2014</b>	452	581	<b>1,033</b>
<b>2015</b>	746	477	<b>1,223</b>
<b>2016</b>	378	376	<b>754</b>
<b>2017</b>	331	261	<b>592</b>
<b>2018</b>	682	535	<b>1,227</b>
<b>2019</b>	527	486	<b>1,013</b>
<b>2020</b>	55	37	<b>92</b>

## **Floating Surface Collector (FSC)**

The Swift Reservoir Floating Surface Collector (FSC) did not operate during the month of February. The FSC was turned off on December 19<sup>th</sup>, 2019 so that the trestle stairs could be replaced, and modifications could be made to the starboard side smolt flume. Due to the construction schedule for these projects, the FSC will likely remain out of service until March 2<sup>nd</sup>.



