

FINAL Meeting Notes
Lewis River License Implementation
Terrestrial Coordination Committee (TCC) Meeting
November 8, 2006
Ariel, WA

TCC Participants Present: (12)

Brock Applegate, WDFW
 LouEllyn Jones, USFWS (via teleconference)
 Curt Leigh, WDFW (via teleconference)
 Diana Gritten-MacDonald, Cowlitz PUD (via teleconference)
 Joe Hiss, USFWS
 Cherie Kearney, Columbia Land Trust
 Jeff Foisy, Columbia Land Trust
 Tom Macy, RMEF (via teleconference) 9:00am – 9:40am
 Kimberly McCune, PacifiCorp Energy
 Kirk Naylor, PacifiCorp Energy
 Bob Nelson, Rocky Mountain Elk Foundation
 Todd Olson, PacifiCorp Energy

Calendar:

November 9, 2006	ACC Meeting	Merwin Hydro
December 13, 2006	TCC Meeting	Merwin Hydro
December 14, 2006	ACC Meeting	Merwin Hydro

Assignments from November 8th Meeting:		
Naylor/McCune: Email a list of subject parcels to the TCC participants who have signed a confidentiality agreement.		Complete – 11/13/06

Assignments from October 11th Meeting:		
McShane/Naylor: Develop a list of new assumptions and implications relating to the revision of the HEP Baseline and provide a copy to the TCC for their review and comment as a comparison to the previous assessment.		Complete – 11/8/06
Macy: Create a map illustrating properties of interest and provide a copy to the TCC for their review.		Pending
Wainwright: Obtain contact information of broker relating to property of interest to the TCC and email information to Naylor.		Complete – 10/16/06 and forwarded to RMEF

Assignments from September 13th Meeting:		
McCune: Email those TCC participants who have signed a Confidentiality Agreement a copy of the Real Estate Purchase Option Agreement relating to acquisition of a certain parcel of land.		Complete – 9/13/06
McCune: Email the TCC and Columbia Land Trust with potential dates for a tour of certain lands of interest.		Pending

Naylor: Create a WHMP timeline as a handout for the next TCC meeting for their review. <i>(provided verbal timeline and noted in 10/11/06 minutes)</i>	Complete – 10/11/06
McCune: Email the Skamania County Vision Report link to the TCC for their review and comment.	Complete – 9/13/06

Parking lot items from February 10th Meeting:	
PacifiCorp WHMP Budget (annual)	
Conservation Agreement – what is wanted?	Ongoing – 4/28/06

Opening, Review of Agenda, Finalize Meeting Notes

Kirk Naylor (PacifiCorp Energy) called the meeting to order at 9:05 am. Naylor reviewed the Agenda with the TCC and asked if there were any additions or changes to the Agenda. Todd Olson (PacifiCorp Energy) asked that we add a discussion and update on when we expect to receive the new License, and what we are going to do on the Merwin WHMP between now and inception of the new WHMP in approximately July 2007. Tom Macy (RMEF) asked to provide the lands update early in the meeting.

Naylor reviewed the Draft TCC 10/11/06 meeting notes and assignments from the previous meetings. The TCC participants present approved the meeting notes with no changes at 9:20am.

Lands Update Discussion

Macy informed the TCC that the land acquisition representatives are meeting this Friday, November 10th to further discuss on-going activities.

Further detailed discussion relating to interests in certain lands took place, however, this discussion is considered confidential and proprietary and not for public viewing.

Naylor will forward a list of parcels to the TCC participants who have signed a confidentiality agreement.

Joe Hiss (USFWS) offered his technical expertise to the land representatives, if needed, to assist in the conservation easement efforts of the TCC. Hiss expressed that the TCC wants to make sure we get what is most important for the resources we are concerned about.

Naylor read an excerpt from an article in The Columbian, dated 11/3/06 regarding Initiative 933, which failed strongly (**Attachment A**). McCune will email the article to the TCC and attach to these meeting notes.

<Break 9:50am>

<Reconvene 10:02am>

Discussion Regarding HEP Baseline

Naylor reviewed and summarized a memorandum dated 11/3/06 (**Attachment B**), as provided by EDAW, Inc. with the TCC participants present. The general conclusion is that it is premature to conduct the HEP at this time. PacifiCorp Energy is not going to re-run the HEP as it was not the original intention of the HEP Team in accordance with meeting notes from 2001.

Naylor requested participants to contact him or Colleen McShane (EDAW) with any comments or questions in reference to the HEP memorandum.

Review WHMP Schedule

Naylor informed the TCC that PacifiCorp is still on track for submittal of three (3) draft chapters to the TCC for a 30-day review period, which can be adjusted slightly for the upcoming holidays.

The table below represents the approximate WHMP timeline based on receiving the License from the FERC in December 2006:

Nov. 2006	Dec. 2006	Jan. 2007	Feb. 2007	Mar. 2007	April 2007	May 2007	June 2007
PE sends 3 draft chapters to TCC for 30-day review	PE sends 2 additional draft chapters to TCC for 30-day review	PE sends 2 additional draft chapters to TCC for 30-day review	PE sends final 4 chapters to TCC for 30-day review	TCC review of entire LRWHMP (30 days)	PE edits of Draft LRWHMP	Final TCC edits.	PE Finalize LRWHMP and send to FERC

Other Topics

Olson expressed that he wanted to confirm the expectations of the TCC regarding the Merwin WHMP presently and during the time between receipt of the Licenses and the implementation of the new WHMP (6 months after receipt of new License).

Curt Leigh (WDFW) communicated that the FERC policies are very clear that the old License is in full effect until the new License is issued, even if the License expires. Naylor acknowledged that this was also identified in the Settlement Agreement and the Merwin Wildlife Habitat Management Plan Annual Report (July 2006) identified that PacifiCorp Energy was continuing its implementation of that plan. The only exception to implementation that was noted in the annual report was that no timber harvest would occur in 2006. This was due to development of the new Standards and Guidelines and the fact that forest management was changing significantly enough under the new plans that it was appropriate to await the final goals and objectives. PacifiCorp Energy also stated that it has not substituted the new goals and objectives into other current management, pending final development and acceptance of plans by the TCC.

PacifiCorp will continue to implement the Merwin WHMP during the transition, but offered that some forestry could be proposed for 2007 on Yale or Swift lands if the TCC so desired. Naylor indicated that although the forest management section of the WHMP is not completed, there are areas such as alder stands that would present few constraints to implementation that may be worth consideration of the TCC for 2007. Bob Nelson (RMEF) liked the idea of some forest management occurring in 2007 and suggested scheduling a field trip to a site if possible. Naylor indicated he could identify some areas for consideration by the TCC and schedule a field trip.

Next Meeting's Agenda

- Lands Update & Discussion
- Review of WHMP Draft Chapters
- Skamania County Guest Speaker (Karen Witherspoon)

Meeting adjourned at 10:45 am

Next Scheduled Meetings

December 13, 2006

Merwin Hydro Facility
Ariel, WA

January 10, 2007

Merwin Hydro Facility
Ariel, WA

Handouts (via email)

1. Draft meeting notes from 10/11/06
2. Lewis River HEP Study Memorandum dated 11/3/06, as provided by EDAW, Inc.

Skamania landowners might sue over zoning

Friday, November 3, 2006

KATHIE DURBIN Columbian staff writer

Landowners who bought property in north Skamania County for future residential development have threatened to sue the county for illegal "taking" if it adopts a land-use plan for the remote, unzoned area north of Swift Reservoir.

The threat carries additional weight in light of the property rights initiative on Tuesday's statewide ballot. Initiative 933 would allow property owners to bring claims for compensation if government rules adopted since 1996 limit the use or value of their land.

Under I-933, governments could opt to pay the claims or waive the rules, though it's not clear that state and local governments have the authority to actually do that.

A new poll conducted for the Washington Farm Bureau, I-933's sponsor, shows voters virtually split, with 41 percent of likely voters supporting the measure, 43 percent opposed and 16 percent undecided.

County officials are so concerned about the implications of I-933 that they have delayed holding hearings on the proposed Swift Subarea Plan until January.

"It's going to put all of our planning efforts on the shelf," said County Commissioner Paul Pearce, whose district includes the Swift area. "On the face of it, it looks as if you literally have to roll back to 1996, whatever that means."

Planning director Karen Witherspoon said most zoning and land-use ordinances in Skamania County have been adopted since 1996 and thus would likely fall under the initiative's provisions. Those include zoning ordinances for the town of Carson and the Northwestern Lake area above Condit Dam.

I-933 would require governments considering new rules to conduct what amounts to an economic impact review of how the rules would affect landowners and consider alternatives to regulation.

The county is in the process of adopting land-use plans for the Swift area and the county's west end. It had hoped to complete those by year's end.

Also in the works is a state-mandated revision of the county's critical areas ordinance, which requires protective buffers along streams, wetlands and other sensitive areas.

In a Sept. 28 letter to county commissioners, Vancouver attorney Steve C. Morasch of the law firm Schwabe, Williamson & Wyatt made it clear that his clients will sue if

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an existing development moratorium or a new land-use plan limits their ability to develop their property and recoup their investment.

"Our clients have spent well in excess of \$5.5 million acquiring and improving property in the Swift Subarea in reliance on rules that were in effect prior to the county's moratorium on land divisions," Morasch wrote. "The purchase price that our client(s) paid for this property was based upon the property being buildable under the existing rules that have been in place for many years prior to the moratorium."

Morasch said the proposed plan would "dramatically alter the landscape our clients have been working under without adequate warning."

He said its adoption would clearly meet the definition of a "regulatory taking" under both the Washington and U.S. constitutions.

The letter does not specifically mention Initiative 933. But Pearce said it clearly attempts to lay the groundwork for a claim.

Both Morasch and his associate Bradley Andersen, a former Skamania County prosecuting attorney who is also representing the landowners, were on vacation and unavailable for comment. Among their clients are developers Dave Creagan, Jerry Sauer and Marble Creek LLC, all key players in the Swift area.

Development pressures in the Swift area have intensified in the past five years as developers have bought logged-over timberland and divided it into "recreational residential" lots ranging in size from 20 acres to less than one acre.

Until recently, the only limit on land divisions in the area was imposed by the State Department of Health, which restricts development in areas served by septic tanks. The area is off the electrical grid and has no public water or sewer systems.

Commissioners imposed a moratorium on new land divisions in the Swift area in February, saying it would approve no new lots smaller than 20 acres until the land-use plan becomes final. It extended the moratorium for another six months in August, but modified it to allow new lots 10 acres or larger.

The draft plan would allow a tripling of the number of houses in the area to more than 1,000. Most development would be restricted to lots of 10 acres or more.

In his letter, Morasch argued that county officials tacitly approved his clients' plans to develop 500 one-acre lots on parcels totaling 700 acres when it approved a wildlife habitat plan for the area in 2005.

"Our clients understood that they would need to go through a land division process, but they understood that all roadblocks to that process other than water (supply) had been cleared," he wrote.

Pearce said the county offered no such assurance.

"They know that you can't have urban density in an area that's as remote as that is," he said. "We would be back to zoning by the health department."

Pearce said he would try to push ahead with adopting a land-use plan for the Swift area regardless of whether I-933 passes.

"Not doing that is going to put us in a situation a year and a half from now, when I-

933 is found to be unconstitutional, where we could find ourselves with another thousand lots," Pearce said.

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Attachment B

Memorandum

Date: November 3, 2006
To: The Lewis River TCC
From: Colleen McShane
Subject: Lewis River HEP Study

At the TCC meeting in October PacifiCorp introduced the idea of having EDAW rerun the Habitat Evaluation Procedure (HEP) to show what might be expected in terms of habitat quality and quantity for the evaluation species under the Wildlife Habitat Management Plan (WHMP). There were a number of questions at the meeting related to the timing and intent of rerunning the HEP, and TCC requested that I prepare a memo providing the rationale for conducting a new HEP analysis.

Over the past few weeks I have had several conversations with both the WDFW (Curt Leigh) and PacifiCorp (Kirk Naylor) regarding how the results of a new HEP would be used and the intent of the Settlement Agreement discussions related to this topic. The general conclusion is that it is premature to conduct the HEP at this time. So, the purpose of this memo is to explain why this is the case and to provide some documentation and background information that might be useful when the HEP is rerun in the future.

Background

When the HEP was conducted in 2001, it was based on cover type mapping completed in 1995 for the Yale Project and 2000 for the rest of the developments. The study area for the HEP included utility property and other lands within 0.5-mile of the reservoirs (including private and USFS lands). The habitat quality values (HSIs) were based on field data collected in 2000 and 2001. The HEP was run for a "base case", and 2 alternatives.

- Base Case - assumed that Merwin lands would continue to be managed under the Merwin Wildlife Habitat Management Plan; other utility-owned lands would not be managed in any way.
- With Harvest Management Alternative – assumed that some level of harvest (thinning and clearcutting) would be used as a management tool;

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- Without Harvest Management Alternative – assumed that harvest would not be used as a habitat management tool, but that there would be other management activities (i.e. shrub planting, snag creation, etc.)

The HEP analysis included a set of rules to move acres between cover types based on succession and expected harvest rates for utility, private, and USFS lands. The results of the HEP showed what could be expected for the base case and each alternative in terms of Average Annual Habitat Units (AAHUs) over the license period. The assumptions and the HEP results were described in a technical report which was an appendix to the Preliminary Draft License Application (2004).

PacifiCorp was considering redoing the HEP at this point in time for 4 reasons:

- The cover type mapping for the Project has been recently revised and updated;
- There was a desire to run the analysis on utility-owned lands only (as opposed to the larger study area used for the original HEP);
- Revised assumptions affecting the Base Case, including new stream/riparian buffers under the Forest Practice Regulations, as well as restrictions related to bald eagle (roosts and nests) and spotted owl considerations (circles and the SOSEA);
- Revised assumptions affecting the management alternatives, including larger wetland and stream buffers (compared to Forest Practices), the potential for harvest in mid-successional stands, limitations on harvest within 2-miles of the SOSEA.

PacifiCorp's overall intent was to try to get a more accurate picture of the anticipated gains in Habitat Units (HUs) with management, given the updated mapping and WHMP goals and objectives, compared to the base case.

The purpose of the 2001 HEP was to determine habitat quantity and quality and identify some management actions that could result in improvements; it provided the essential guidance for developing the WHMP goals and objectives. However, it is now recognized that the 2001 HEP results are moot as a predictive tool for the WHMP. There is no base case nor are there management alternatives.

Rational for Not Rerunning the HEP at this Time

In our conversation, Curt Leigh pointed out that, although a comparison between base case and alternative scenarios is traditionally how HEP results are used to evaluate a project or management plan, this is not how it is to be applied to the Lewis River projects. For the Lewis River, it was decided during the Settlement Agreement process that the HEP would not be used to quantify project impacts and mitigation benefits which would normally provide for a comparison between wildlife habitat losses and mitigation replacements. Instead the HEP would be used simply to monitor the success of the WHMP as applied to all utility-owned lands, including those that would be acquired. The HEP would be rerun when the WHMPs were complete and all the lands were acquired, resulting in predicted HUs for each species in TY17. These HUs would be the benchmark or target against which the success of WHMP will be evaluated. Seventeen years later (in TY17) the HEP would be run again using new field

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data and cover type mapping to compare with the predicted TY17 HUs. If the actual TY17 HUs are lower than the predicted HUs, it may be necessary to revise the WHMP goals, objectives, and/or management actions.

Section 10.8.4.1 of the Settlement Agreement, Updating Existing Information, states:

“As PacifiCorp expends Fund assets to acquire lands that will be managed under its WHMP, PacifiCorp shall update the existing HEP data. This will require mapping and cover-typing the newly acquired lands, but assumes that Habitat Suitability Index (“HSI”) values from the current HEP are applicable. If new or different habitat types are encountered, new HSI values will be determined.”

This assumes that “current” means the HSI values from 2001 for the cover types included in the 2001 HEP.

In summary, it is premature rerun the HEP at this time because it is stipulated in the Settlement Agreement and:

- The land acquisition is not complete;
- The evaluation process that will occur on WHMP lands over the next few years will most likely result in additional changes to the cover type acreages;
- The various harvest plans that are part of the WHMP have not yet been developed;
- It is not necessary to use the HEP to show how the WHMPs will or will not benefit certain species on current utility-owned lands and use this information to tweak the goals and objectives to produce results that match a 2001 or 2006 HEP.
- There is no need to worry about determining if there is a change in HUs over the next 17 yrs with the WHMP compared what was expected under the 2001 HEP or even a 2006 HEP. The HEP that is conducted when the land acquisition process complete and the WHNP is begin implemented will set the management targets.

An Example

For me, an example is always useful. Assume that the land acquisition process is complete in 2011. Then, the HEP would be run in 2011 using the following:

TY0=2006 → HSI values from 2001; cover type acreages from 2006 (current ≈10,000 acres of utility land). TY0 is typically set as the year prior to implementing any management action. For hydroelectric projects it is often the year prior to the license, which would be 2006 for the Lewis River projects.

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TY1=2007 → HSI values from 2001; cover type acreages from 2006 (current ≈10,000 acres of utility land). TY1 is usually the first year of management; for the Lewis River projects it would be the year that the WHMPs are implemented.

TY5=2011 → HSI values from 2001; cover type acreages from 2011 (current ≈10,000 acres of utility land, revised to reflect 2011 conditions based on management actions implemented over the past 5 years + cover type acreages of newly acquired lands). This target year would change depending on exactly when the land acquisition is complete and the HEP is rerun. If all the lands are acquired by 2009, then instead of a TY5, there would be a TY3.

TY17=2023 → HSIs from 2001, revised, where needed to reflect effects of WHMP management actions affecting habitat quality (snag creation, shrub planting); acreages from 2011 redistributed to reflect a new set of assumptions based for succession and WHMP management actions (thinning, clearcuts). It may be necessary to develop a different set of assumptions for lands that are under a Conservation Easement and not owned outright by the utilities.

In TY17 (2023), all WHMP lands would be re-cover typed and field sampled, thus creating a new set of HSI values, acreages, and HUs. The results (HUs) of this new 2023 HEP would then be compared to the TY17 HUs from the HEP run in 2011 to see if there needs to be a change in management direction or objectives under the WHMPs for the remainder of the license period. The 2023 HEP would be run out through the end of the license period (TY50), with 1 or 2 target years between 2023 and 2057.

I hope that this memo provides some clarity to the HEP as it was and will be applied to the Lewis River projects. Please let me know if you have any questions.