

FINAL Meeting Notes
Lewis River License Implementation
Aquatic Coordination Committee (ACC) Meeting
July 22, 2013
CONFERENCE CALL

ACC Participants Present (12)

Kim McCune, PacifiCorp Energy
 Frank Shrier, PacifiCorp Energy
 David Hu, US Forest Service
 Adam Haspiel, US Forest Service
 Eric Kinne, WDFW
 Pat Frazier, LCFRB

Topic: Lewis River 2013 Aquatics Fund - Collection Agreement Insurance Requirements

Opening

Frank Shrier (PacifiCorp) called the ACC meeting to order at 9:05 a.m. Shrier and Kim McCune (PacifiCorp) informed attendees that PacifiCorp has called an urgent ACC meeting to seek the approval needed relating to PacifiCorp's increased insurance limits for the 2013 aquatic habitat enhancement projects. The following two project proponents are not able to meet these requirements. PacifiCorp will pay the additional expense but wants these additional monies to come from the Aquatics Fund.

Applicant	Project Title	Approved Funding	Insurance Provision Met	Umbrella Liability Requirement
Mt. Saint Helens Institute (MSHI)	Survey of Bull Trout Stream habitat features to develop future habitat restoration projects	\$59,226	NO	\$5M
Lower Columbia Fish Enhancement Group (LCFEG)	Cedar Creek Reach 1A	\$53,000	NO	\$5M

Applicant	Project Proponent insurance quote to meet PacifiCorp's requested insurance limits	Commercial General Liability Requirement	Umbrella Liability Requirement	Business Automobile Liability Requirement
Mt. Saint Helens Institute (MSHI)	\$4,200/annually	\$4M	\$5M	\$2M
Lower Columbia Fish Enhancement Group (LCFEG)	\$7,200/annually	\$2M	\$5M	\$1M

Shrier informed the attendees that the projects are on hold due to lack of sufficient insurance requirements to cover PacifiCorp adequately. PacifiCorp staff pushed this matter to the Vice President level and hoped the additional funds would not be needed from the Aquatic Fund; the

decision rendered is there would be no relief in the insurance limits and the cost of these increased limits must come from the project proponent via the Aquatic Fund.

McCune stated that the project proponent's insurance carrier too seems to agree with the level of risk evidenced by the cost of the insurance premiums.

David Hu (USFS) indicated that insurance expense is not an appropriate use of aquatic funds regardless of the project proponent.

Pat Frazier (LCFRB) asked if MSHI would have increased their proposal if they had known in advance of the increased insurance limits. Shrier and McCune both said yes, that would be likely had they known. Shrier also expressed that we are headed there in the long term to address these insurance limits prior to the next Aquatic Fund announcement this September. McCune said that the insurance requirement should be stated clearly in the Aquatic Fund Strategic Plan and Administrative Procedures document going forward as well as the Aquatic Fund Announcements.

Adam Haspiel (USFS) communicated that a contractor would normally write the administrative expense(s) into their bids. He further stated that the LCFEG would have included this additional expense in their original 2013 aquatic habitat enhancement proposal if they had known of the increased insurance limits.

Frazier said that if the ACC does not agree to pay for these insurance costs from the ACC funds the 2013 projects will not happen. Haspiel further stated that PacifiCorp will not release funds until MSHI and LCFEG have the required insurance limits which could lead to project failure if we don't agree to pay for the insurance from the ACC funds.

Shrier informed the ACC that Diana MacDonald (Cowlitz PUD) provided her comments via email (excerpt below):

...If the sponsors cannot provide the required insurance at no additional cost to the ACC, they need to withdraw the projects. If they are able to reorganize under another sponsor who can meet the insurance requirement, then they could resubmit the project during a future funding cycle. What I mean is that some potential sponsors already meet the insurance requirement for their own business purposes and would not have to purchase extra insurance"...

.....The appropriate solution is for the sponsors to withdraw the project, re-organize under a different sponsor and re-apply.

PacifiCorp ACC representatives do not like having to use the Aquatic Fund for this purpose but are inclined to use the funds regardless. McCune expressed that she does not believe the intent of the fund was to pay for administrative costs, or to exclude those proponents that cannot afford the level of insurance PacifiCorp required, but to award funds on the merit of the habitat enhancement project. Frazier said he agrees with McCune that we don't want to only award on the basis of ability to buy the required levels of insurance but on the merit of the proposed project.

Haspiel informed the attendees that a similar situation arose when trying to find a contractor that could transport logs but they did not have the needed insurance requirements or the funds to

purchase these requirements. Chilton Logging did have such insurance limits and PacifiCorp paid them directly for the large woody debris transport using the lower Lewis River LWD fund.

Frazier said that the timing of the 2013 projects is impacted if we wait any longer to make a decision on this request.

Hu stated that he disagrees with MacDonald's approach but he wants to make sure that if we approve of this additional funding we do so equally for all project proponents.

Discussion took place regarding the meaning of consent. McCune informed the attendees that the Aquatics Fund – Strategic Plan and Administrative Procedures, January 2009 document states, “*Consent does not necessarily imply that a Party agree completely with a particular decision, just that the Party is willing to go along with the decision rather than block the action*”.

The Settlement Agreement offers the opportunity for the alternative dispute resolution (ADR) process should a Party strongly object to the ACCs decision.

McCune further stated that she reviewed the Aquatics Fund – Strategic Plan and Administrative Procedures document, the Settlement Agreement (7.5) text and Aquatic Fund Proposal Form and did not find any language that prohibits us from using the funds for this insurance expense however; she did not locate specific language that approves of the expense either. The Settlement Agreement states:

7.5.3.2 Resource Project Proposal, Review, and Selection.

(1) By the first anniversary of the Effective Date, the Licensees shall develop, in Consultation with the ACC, (a) a strategic plan consistent with the guidance in Section 7.5.3.1 above to guide Resource Project development, solicitation, and review; and (b) administrative procedures to guide implementation of the Aquatics Fund. Both may be modified periodically with the approval of the ACC.

The ACC has the authority for adaptive management to address issues such as these that were not previously addressed.

Shrier and McCune noted that the funds gain considerable interest throughout the year which more than covers the additional insurance expense for the MSHI and LCFEG 2013 projects (see [Attachment A – Lewis River Aquatic Fund Tracking, as of April 30, 2013](#)).

Discussion took place regarding the additional \$10K per year that PacifiCorp places into a fund ([Attachment A](#)) for LWD projects in the mainstem of the Lewis River below Merwin Dam that benefit anadromous fish, according to Settlement Agreement provision 7.1.1. The ACC agreed that \$10K would be used in 2013 toward the LCFEG project while the remainder (\$43,000), plus insurance expense, will be spent from the Resource Fund to assist with offsetting some of the additional insurance expense providing we reach a consensus on this decision.

The ACC reached the following consensus to use the appropriate Aquatic Fund accounts to fund the 2013 projects (including the additional insurance requirement expense) for an amount not to exceed as follows:

Applicant	Project Title	Approved Funding	Project Proponent insurance quote to meet PacifiCorp's requested insurance limits
Mt. Saint Helens Institute (MSHI)	Survey of Bull Trout Stream habitat features to develop future habitat restoration projects	\$59,226	\$4,200/annually for two years
Lower Columbia Fish Enhancement Group (LCFEG)	Cedar Creek Reach 1A	*\$53,000	\$7,200/annually for two years

The decisions rendered by the ACC is as follows:

ACC Representative	Decision to use Aquatic Fund and LWD Fund for additional insurance related expenses for the above-referenced 2013 Aquatic Fund Projects: Yes or No
Frank Shrier, PacifiCorp Energy	Yes
David Hu, US Forest Service	Yes
Eric Kinne, WDFW	Yes
Pat Frazier, LCFRB	Yes
Diana Gritten-MacDonald, Cowlitz PUD	No – but will not block the decision to move forward (via email)
Jim Malinowski, Fish First	Yes (via email)
Shannon Wills, Cowlitz Indian Tribe	Yes (via email)

***\$10,000 from the LWD fund**

Those ACC representatives not in attendance have seven (7) days to provide a response/decision **on or before Monday, July 29, 2013 by close of business.**

After the 7-day comment period the ACC decisions will be considered final and McCune will proceed with notifying the project proponents.

<9.35 a.m. meeting adjourned >

Attachment A – Lewis River Aquatic Fund Tracking, as of April 30, 2013.

Attachment A

Lewis River License Implementation

Lewis River Aquatics Fund - Resource Projects
Sections 7.5, 7.5.1, 7.5.3, 7.5.3.1 & 7.7

Funding Start Date: 4/30/05

Release Date	Funds Received	Expense	Interest	Balance	Notes
12/31/05	\$ 161,327.11			\$ 161,327.11	Contributions in 2004 dollars, adjusted for inflation
4/30/06	\$ 212,172.03				
9/30/06		\$ 46,000.00			Muddy River Tributary Road Decommission - USDA FS *
12/31/06			\$ 24,305.00	\$ 351,804.14	
4/30/07	\$ 164,776.65	\$ 80,000.00			Fish Passage Culvert Replacement - USDA FS*
8/23/07		\$ 79,000.00			2007 Dispersed Camping & Day Use Road Restoration - USDA FS*
9/6/07		\$ 75,000.00			2007 Aquatic Funding Enhancement Projects - Cowlitz Indian Tribe*
12/31/07			\$ 29,964.05	\$ 312,534.84	
4/30/08	\$ 225,723.71				
7/3/08		\$ 34,000.00			2008 Clear Creek Road Decommission - USDA FS
7/3/08		\$ 117,000.00			2008 Muddy River Habitat Improvement - USDA FS
10/2/08		\$ 43,500.00			2008 Mud Creek Enhancement - Cowlitz Indian Tribe *
12/31/08			\$ 19,538.55	\$ 363,297.10	
4/30/09	\$ 374,275.05				
8/20/09		\$ 190,000.00			2009 NF RM 13.5 Habitat Enhancement - LCFEG*
9/16/09		\$ 106,000.00			2009 Clear Creek Instream - USDA FS*
9/24/09		\$ 33,000.00			2009 Spencer Peak Road Decommission - USDA FS*
9/25/09		\$ 41,000.00			2009 Nutrient Enhancement Pine Creek - USDA FS*
12/31/09			\$ 16,279.44	\$ 383,851.59	
4/30/10	\$ 375,965.20				
12/22/10		\$ 50,000.00			2009 Plas Newydd RM 2.0 Off-Channel Habitat Enhancement - Cowlitz Indian Tribe*
12/31/10			\$ 20,932.67	\$ 730,749.57	
1/11/11		\$ 41,300.00			2010 Pepper-Lewis Side Channel Instream Habitat Restoration - USDA FS*
1/26/11		\$ 32,500.00			2010 Pine Creek Instream and Floodplain Structures for BT & Steelhead - USDA FS*
4/30/11	\$ 382,749.82				
7/21/11		\$ 39,000.00			2011 Muddy River Side Channel Restoration - USDA FS*
8/19/11		\$ 42,000.00			2011 Lewis River Side Channel Near Muddy River Instream Habitat Restoration - USDA FS
9/21/11	\$ 1,695.65				2009 Pine Creek Nutrient Enhancement funds not used - USDA FS
12/31/11			\$ 29,240.92	\$ 989,635.96	
3/23/12	\$ 1,161.06				2007 Dispersed Camping & Day Use Road Restoration funds not used - USDA FS
4/30/12	\$ 391,012.52				
6/15/12	\$ 34,000.00				2008 Clear Creek Road Decommission funds not used - USDA FS
9/4/12		\$ 74,300.00			2010 Eagle Island Site A - Cowlitz Indian Tribe
10/1/12		\$ 85,000.00			2011 Eagle Island Sites B & C - Cowlitz Indian Tribe
12/31/12			\$ 40,430.28	\$ 1,296,939.82	
4/16/13	\$ 13,795.79				2009 Spencer Peak Road Decommission funds not used - USDA FS
4/29/13		\$ 128,000.00			2012 Clearwater Creek Instream Habitat Restoration - USDA FS
4/29/13		\$ 50,000.00			2012 Lewis River Side Channel III Instream Habitat Restoration - USDA FS
4/30/13	\$ 397,908.89				
Total Spent to Date:			\$ 1,550,804.21		
Balance Remaining:			\$ 1,530,644.50		

* Project close out complete

Note: In August 2009, the Bureau of Economic Analysis (BEA) restated the index numbers in Table 1.1.9 (Implicit Price Deflators for Gross Domestic Product). The index numbers are now based on 2005 = 100. This changes the beginning adjustment number for year 2000, quarter 3.

Lewis River License Implementation

Lewis River Aquatics Fund - Bull Trout

Sections 7.5, 7.5.1, 7.5.3, 7.5.3.1 & 7.7

Funding Start Date: 4/30/05

Release Date	Funds Received	Expense	Interest	Balance	Notes
12/31/05	\$ 161,327.11			\$ 161,327.11	Contributions in 2004 dollars, adjusted for inflation
4/30/06	\$ 106,086.01				
11/30/06		\$ 37,889.08			
12/31/06			\$ 19,176.61	\$ 248,700.65	Pine Creek Nutrient Enhancement - USDA FS*
4/30/07	\$ 164,776.65	\$ 25,000.00			Pine Creek Instream & Floodplain Structures for Bull Trout and Steelhead - USDA FS
7/31/07		\$ 20,000.00			Rush Creek Gravel Restoration - USDA FS
8/21/07		\$ 43,150.00			2007 Pine Creek Nutrient Enhancement - USDA FS*
12/31/07			\$ 26,521.44	\$ 351,848.59	
4/30/08	\$ 112,861.86				
7/3/08		\$ 13,578.84			2008 Panamaker Crk. Rd Close & Culvert Removal - PacifiCorp*
12/31/08			\$ 21,406.20	\$ 472,537.81	
3/25/09	\$ 19,269.66				Return of funds: Rush Creek Gravel Restoration - USDA FS
3/31/09	\$ 23,493.72				Return of funds: Pine Creek Instream & Floodplain Structures for Bull Trout and Steelhead - USDA FS
12/31/09			\$ 16,674.20	\$ 531,975.39	
12/31/10			\$ 17,549.06	\$ 549,524.45	
1/26/11		\$ 32,500.00			2010 Pine Creek Instream and Floodplain Structures for Bull Trout & Steelhead*
12/31/11			\$ 17,130.39	\$ 534,154.84	
12/31/12			\$ 17,620.96	\$ 551,775.80	
4/30/13	\$ 122,433.50				
Total Spent to Date:				\$ 172,117.92	
Balance Remaining:				\$ 674,209.30	

Note: In August 2009, the Bureau of Economic Analysis (BEA) restated the index numbers in Table 1.1.9 (Implicit Price Deflators for Gross Domestic Product). The index numbers are now based on 2005 = 100. This changes the beginning adjustment number for year 2000, quarter 3.

Lewis River License Implementation

Lewis River LWD Fund

Section 7.1.1

Funding Start Date: 12/26/08

Release Date	Funds Received	Funds Dispersed	Balance	Notes
				Unspent balance in any year shall be carried forward
11/25/08	\$ 2,000.00		\$ 2,000.00	7.1.1 Large Woody Debris Program, ILR-LWD
12/25/08	\$ 10,000.00		\$ 12,000.00	7.1.1 LWD projects in the mainstem below Merwin Dam
12/3/08		\$ (2,000.00)	\$ 10,000.00	Chilton Logging - move LWD from Swift boat launch to muddy river access road
4/1/09	\$ 2,000.00		\$ 12,000.00	7.1.1 Large Woody Debris Program, ILR-LWD
4/10/09		\$ (2,000.00)	\$ 10,000.00	Chilton Logging - move LWD for delivery to LCFEG
12/25/09	\$ 10,000.00		\$ 20,000.00	7.1.1 LWD projects in the mainstem below Merwin Dam
4/1/10	\$ 2,000.00		\$ 22,000.00	7.1.1 Large Woody Debris Program, ILR-LWD
7/1/10		\$ (2,000.00)	\$ 20,000.00	Chilton Logging - move LWD for delivery to USFS
12/21/10	\$ 10,000.00		\$ 30,000.00	7.1.1 Large Woody Debris Program, ILR-LWD
4/1/11	\$ 2,000.00		\$ 32,000.00	7.1.1 Large Woody Debris Program, ILR-LWD
12/25/11	\$ 10,000.00		\$ 42,000.00	7.1.1 Large Woody Debris Program, ILR-LWD
4/1/12	\$ 2,000.00	\$ (4,000.00)	\$ 40,000.00	7.1.1 LWD projects in the Yale Reservoir
4/1/12		\$ (8,500.00)	\$ 30,000.00	Chilton Logging - move LWD for delivery to Cowlitz Tribe
12/25/12	\$ 10,000.00		\$ 41,500.00	7.1.1 Large Woody Debris Program, ILR-LWD
6/2/13		\$ (2,000.00)		Chilton Logging - move LWD for delivery to USFS
Total Spent to Date: \$		18,500.00		
Balance Remaining: \$		39,500.00		

Within 180 days after Issuance of the New License for the Merwin Project and annually thereafter, PacifiCorp shall make available in a Tracking Account up to \$2,000, which may be disbursed to qualified entities to defray the costs of LWD transportation and placement in the Lewis River Basin (the "LWD Fund").

In addition, within 180 days after Issuance of the New License for the Merwin Project and annually thereafter, PacifiCorp shall contribute \$10,000 to the Aquatics Fund (Section 7.5) that will be earmarked for LWD projects in the mainstem of the Lewis River below Merwin Dam that benefit anadromous fish.