

# Lewis River Hydroelectric Projects

**FERC Nos. 935, 2071, 2111, 2213**

Annual Summary of Settlement Agreement Implementation:  
Aquatic and Terrestrial Resources



**Final 2005 ACC/TCC  
Annual Report**



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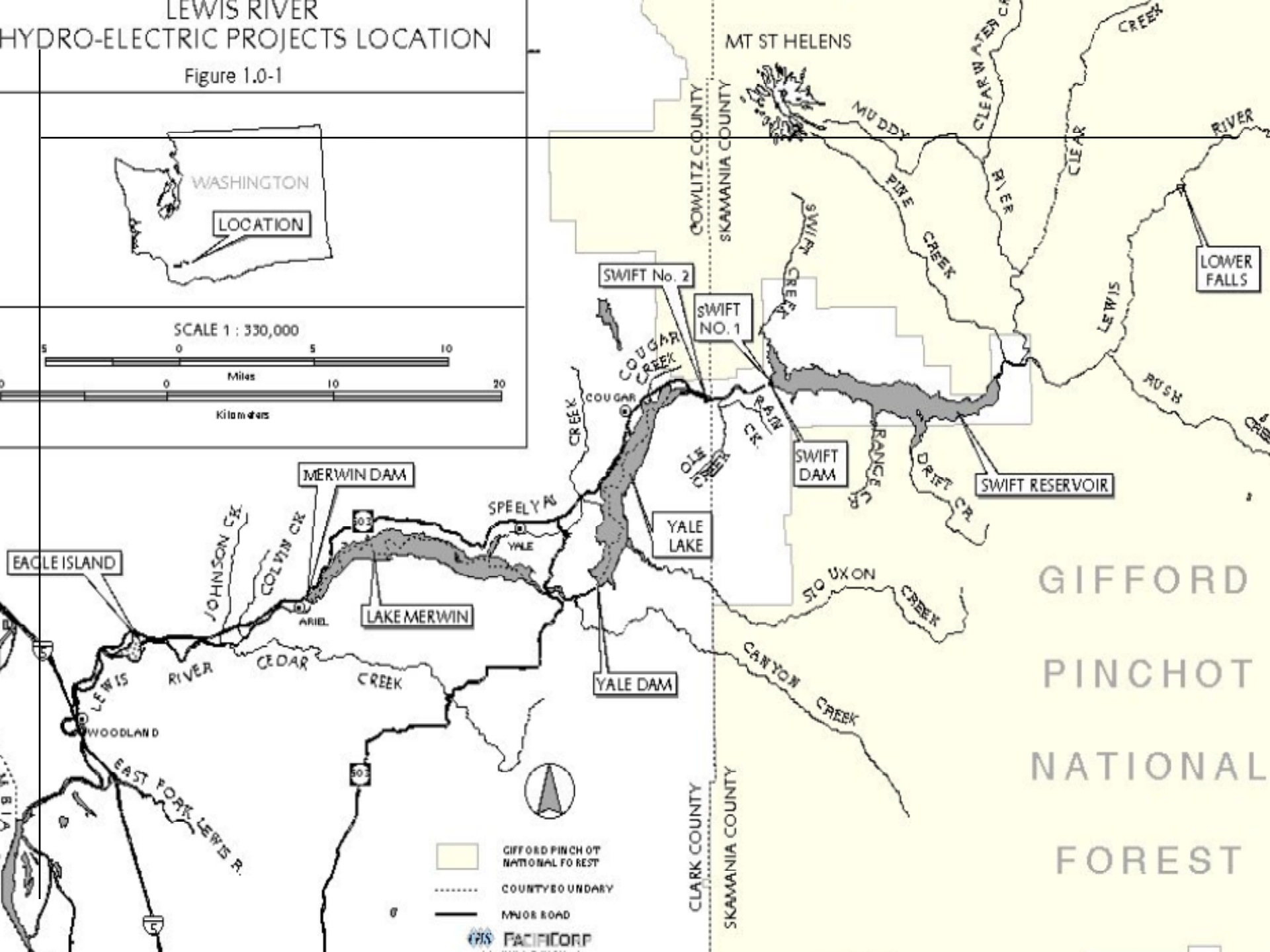
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## **FINAL 2005 ACC/TCC** **Annual Report**



# LEWIS RIVER HYDRO-ELECTRIC PROJECTS LOCATION

Figure 1.0-1



# Table of Contents

Section	Page
<b>1.0 INTRODUCTION</b> .....	4
1.1 BACKGROUND .....	4
1.2 ANNUAL REPORT ORGANIZATION .....	7
<b>2.0 AQUATICS AND TERRESTRIAL COORDINATION COMMITTEES</b> .....	9
2.1 ACC and TCC MEMBERSHIP.....	10
<b>3.0 AQUATICS RESOURCES</b> .....	13
3.1 ACC MEETINGS .....	13
3.1.1 ACC Meetings and Conference Calls: Overview.....	13
3.1.2 ACC Meeting Notes .....	18
3.2 ENGINEERING SUBGROUP MEETINGS .....	18
3.2.1 Engineering Subgroup Meetings: Overview.....	18
3.2.2 Engineering Subgroup Meetings Notes .....	20
3.3 Aquatic Measures Implemented in 2005.....	21
3.3.1 SA Section 4.1 Common Provisions Regarding Fish Collection and Transport Facilities .....	22
3.3.2 SA Section 4.2 Merwin Trap .....	22
3.3.3 SA Section 4.3 Merwin Upstream Collection and Transport Facility .....	24
3.3.4 SA Section 4.4 Downstream Transport at Swift No. 1 Dam .....	24
3.3.5 SA Section 4.5 Downstream Passage at Yale Dam .....	24
3.3.6 SA Section 4.6 Downstream Passage at Merwin Dam .....	24
3.3.7 SA Section 4.7 Upstream Passage at Yale Dam .....	24
3.3.8 SA Section 4.8 Upstream Passage at Swift Projects .....	24
3.3.9 SA Section 4.9 Interim Bull Trout Collection and Transport Collection and Haul Programs (SA 4.9.1) .....	24
3.3.10 SA Section 4.10 Bull Trout Passage in the Absence of Anadromous Fish Facilities .....	26
3.3.11 SA Section 5.1 Yale Spillway Modifications .....	26
3.3.12 SA Section 5.2 Bull Trout Habitat Enhancement Measures .....	26
3.3.13 SA Section 5.3 Reserved.....	26
3.3.14 SA Section 5.4 Reserved.....	26
3.3.15 SA Section 5.5 Bull Trout Limiting Factors Analysis.....	26
3.3.16 SA Section 5.6 Public Information Program to Protect Listed Anadromous Species .....	26
3.3.17 SA Section 5.7 Public Information Program to Protect Bull Trout.....	26
3.3.18 SA Section 6.1 Flow Releases in the Bypass Reach: Constructed Channel Construction of Upper Release Point (SA 6.1.2).....	26
3.3.20 SA Section 7.1 Large Woody Debris Program .....	27
3.3.21 SA Section 7.2 Spawning Gravel Study and Gravel Monitoring and Augmentation Plan .....	27
3.3.22 SA Section 7.3 Predator Study.....	27
3.3.23 SA Section 7.4 Habitat Preparation Plan.....	27
3.3.24 SA Section 7.5 Aquatics Fund .....	28
3.3.25 SA Section 7.6 In Lieu Fund .....	28
3.3.26 SA Section 7.7 Management of Aquatics Fund and In Lieu Fund.....	28

3.3.27 SA Section 7.8 Execution of Projects and Mitigation Measures .....	28
3.3.28 SA Section 8.1 Hatchery and Supplementation Program .....	28
3.3.29 SA Section 8.2 Hatchery and Supplementation Plan .....	29
3.3.30 SA Section 8.3 Anadromous Fish Hatchery Adult Ocean Recruit Target by Species .....	29
3.3.31 SA Section 8.4 Anadromous Fish Hatchery Juvenile Production .....	29
3.3.32 SA Section 8.5 Supplementation Program .....	29
3.3.33 SA Section 8.6 Resident Fish Production .....	29
3.3.34 SA Section 8.7 Hatchery and Supplementation Facilities, Upgrades, and Maintenance .....	29
3.3.35 SA Section 8.8 Juvenile Acclimation Sites .....	29
3.3.36 SA Section 9.1 Monitoring and Evaluation Plan .....	29
3.3.37 SA Section 9.2 Monitoring and Evaluation Related to Fish Passage .....	30
3.3.38 SA Section 9.3 Wild Fall Chinook and Chum .....	30
3.3.39 SA Section 9.4 Water Quality Monitoring .....	30
3.3.40 SA Section 9.5 Monitoring of Hatchery and Supplementation Program .....	30
3.3.41 SA Section 9.6 Bull Trout Monitoring .....	30
3.3.42 SA Section 9.7 Resident Fish Assessment .....	30
3.3.43 SA Section 9.8 Monitoring of Flows .....	30
3.4 Aquatic 2006 Annual Plan .....	30
3.4.1 SA Section 4.1 Common Provisions Regarding Fish Collection and Transport Facilities .....	30
3.4.2 SA Section 4.2 Merwin Trap .....	30
3.4.3 SA Section 4.3 Merwin Upstream Collection and Transport Facility .....	31
3.4.4 SA Section 4.4 Downstream Transport at Swift No. 1 Dam .....	31
3.4.5 SA Section 4.9 Interim Bull Trout Collection and Transport .....	31
3.4.6 SA Section 5.2 Bull Trout Habitat Enhancement Measures .....	31
3.4.7 SA Section 5.5 Bull Trout Limiting Factors Analysis .....	31
3.4.8 SA Section 5.7 Public Information Program to Protect Bull Trout .....	31
3.4.9 SA Section 6.1 Flow Releases in the Bypass Reach; Constructed Channel .....	31
3.4.10 SA Section 6.2 Flow Fluctuations Below Merwin Dam .....	32
3.4.11 SA Section 7.1 Large Woody Debris Project .....	32
3.4.12 SA Section 7.2 Spawning Gravel Study and Gravel Monitoring and Augmentation Plan .....	32
3.4.13 SA Section 7.4 Habitat Preparation Plan .....	32
3.4.14 SA Section 7.5 Aquatics Fund .....	32
3.4.15 SA Section 8.2 Hatchery and Supplementation Plan .....	32
<b>4.0 WATER QUALITY .....</b>	<b>33</b>
4.1 PACIFICORP WATER QUALITY MEASURES IMPLEMENTED IN 2005 .....	33
4.1.1 PacifiCorp Application for 401 Water Quality Certificate for Swift No. 1, Yale, and Merwin Hydroelectric Projects .....	33
4.1.2 SA Section 9.4 Water Quality Monitoring .....	33
4.2 PACIFICORP WATER QUALITY 2006 ANNUAL PLAN .....	33
4.2.1 PacifiCorp Application for 401 Water Quality Certificate for Swift No. 1, Yale, and Merwin Hydroelectric Projects .....	33
4.2.2 401 Certification Water Quality Measures .....	33
4.3 COWLITZ PUD WATER QUALITY MEASURES IMPLEMENTED IN 2005 .....	33
4.3.1 Cowlitz PUD Application for 401 Water Quality Certificate for Swift No. 2 Hydroelectric Project .....	33

4.3.2 SA Section 9.4 Water Quality Monitoring.....	34
4.4 COWLITZ PUD WATER QUALITY 2006 ANNUAL PLAN .....	34
4.4.1 Cowlitz PUD Application for 401 Water Quality Certificate for Swift No. 2 ...	34
4.4.2 401 Certification Water Quality Measures.....	34
<b>5.0 TERRESTRIAL RESOURCES.....</b>	<b>35</b>
5.1 TCC MEETINGS .....	35
5.1.1 Meetings and Conference Calls: Overview .....	35
5.1.2 Meeting Notes.....	41
5.2 Joint Terrestrial Measures.....	41
5.3 PacifiCorp Terrestrial Measures Implemented in 2005 .....	43
5.3.3 SA Section 10.3 Lewis River Land Acquisition & Habitat Protection Fund .....	44
5.3.4 SA Section 10.4 Transaction Costs .....	44
5.3.5 SA Section 10.5 Management of Funds.....	44
5.3.6 SA Section 10.6 Completed Implementation Advanced Purchases.....	44
5.4 PacifiCorp Terrestrial 2006 Annual Plan.....	45
5.4.1 SA Section 10.1 Yale Land Acquisition and Habitat Protection Fund.....	45
5.4.2 SA Section 10.2 Swift No. 1 & Swift No. 2 Land Acquisition & Habitat Protection Fund.....	45
5.4.3 SA Section 10.3 Lewis River Land Acquisition & Habitat Protection Fund .....	45
5.4.4 SA Section 10.4 Transaction Costs .....	45
5.4.5 SA Section 10.5 Management of Funds .....	45
5.4.6 SA Section 10.6 Completed Implementation Advanced Purchases.....	45
5.4.7 SA Section 10.7 Conservation Easements .....	46
5.4.8 SA Section 10.8 Wildlife Habitat Management Plans.....	46
5.5 Cowlitz PUD Terrestrial Measures Implemented in 2005 .....	46
5.5.1 SA Section 10.6 Completed Implementation: Advance Purchases [Devil's Backbone Conservation Covenant] .....	46
5.5.2 SA Section 10.8.1 Development of the Wildlife Habitat Management Plan (WHMP) .....	47
5.5.3 SA Section 10.8.2 WHMP Fund .....	47
5.5.4 SA Section 10.8.3 Management of the Plan [Annual Plan] .....	47
5.5.5 SA Section 10.8.4 Habitat Evaluation Procedures .....	47
5.5.6 SA Section 10.8.4.2 Review of Effectiveness of WHMP .....	47
5.5.7 SA Section 10.8.3 Cowlitz PUD 2006 Annual Plan .....	47
5.6 Cowlitz PUD Terrestrial 2006 Annual Plan.....	47
5.6.1 SA Section 10.6 Cowlitz PUD Completed Implementation: Advance Purchases [Devil's Backbone Conservation Covenant] .....	47
5.6.2 SA Section 10.8.1 Cowlitz PUD Development of the Wildlife Habitat Management Plan (WHMP).....	47
5.6.3 SA Section 10.8.2 Cowlitz PUD WHMP Fund.....	48
5.6.4 SA Section 10.8.3 Management of the Plan [Annual Plan] .....	48
<b>6.0 FUNDING.....</b>	<b>49</b>
<b>7.0 LITERATURE CITATIONS.....</b>	<b>50</b>
Appendix A – ACC and TCC Members and Alternates .....	52
Appendix B – ACC and TCC Ground Rules .....	55
Appendix C – Land Acquisition Decision Making Process.....	73
Appendix D – Section 14 of the Settlement Agreement.....	77

## **1.0 INTRODUCTION**

This 2005 annual report prepared by PacifiCorp and the Public Utility District No. 1 of Cowlitz County, Washington (“Cowlitz PUD”) is provided to the FERC and the Lewis River Settlement Parties to fulfill the reporting requirements in Article 14.2.6 of the Settlement Agreement (SA). It has been prepared in consultation with Terrestrial Coordination Committee (TCC) and Aquatic Coordination Committee (ACC) committee members. Period of record for this report is from December 1, 2004 to December 31, 2005. This period was defined to cover the period from the SA Effective Date through calendar year 2005.

To reflect the settlement Parties’ interest in continuing coordination and communication of the implementation of SA and new FERC licenses, Article 14.2.6 of the SA requires PacifiCorp and Cowlitz PUD to prepare annual reports be prepared describing the activities of the TCC and the ACC. This SA Article stipulates that the Committee Coordinators for the TCC and ACC shall prepare and file with the FERC detailed annual reports on the fish and wildlife Protection, Mitigation, and Enhancement (PM&E) measures occurring during the prior year as well as plans for the coming year. The reports are to be prepared in consultation with committee members.

Per the Article language, any comments that were not incorporated into this final report are presented in an appendix to the report.

This 2005 report is available to the Public on PacifiCorp’s website at <http://www.pacificorp.com/Article/Article49195.html>. Copies of this report are available from PacifiCorp.

### **1.1 BACKGROUND**

Located on the North Fork of the Lewis River in southwestern Washington, the Lewis River Hydroelectric System consists of 4 coordinated projects. PacifiCorp owns Swift No. 1 (FERC No. 2111), Yale (FERC No. 2071), and Merwin (FERC No. 935) which together generate 510 MW of electricity at full capacity. Public Utility District No. 1 of Cowlitz County, Washington (Cowlitz PUD) owns the 70 MW Swift No. 2 Project (FERC No. 2213) which lies between Swift No. 1 and Yale. Currently, PacifiCorp operates Swift No. 2 for Cowlitz PUD under contract.

The Lewis Hydroelectric System was developed over a period of approximately 30 years. The first development, the Merwin project, was completed in 1931. The Yale project was completed next in 1953. The Swift No. 1 and Swift No. 2 projects were both completed in 1958.

#### 1.1.1 Yale Application

PacifiCorp initiated the federal licensing process for Yale in 1995 and filed the Application for New License in 1999 (PacifiCorp 1999a). Since May of 2001 when the license expired, Yale has operated under annual FERC licenses.

#### 1.1.2 Merwin, Swift No.1 and Swift No. 2 Applications.

In January 1999, PacifiCorp and Cowlitz PUD asked the Federal Energy Regulatory Commission (FERC) to approve the Alternative Licensing Procedures (ALP) for the simultaneous and coordinated processing of the license applications for Merwin, Yale, Swift No. 1 and Swift No. 2 (PacifiCorp and Cowlitz PUD 1999). In that request, PacifiCorp asked the FERC to accelerate the license expiration date for Merwin from 2009 to 2006 to coincide with the expiration dates for the Swift No. 2 and Swift No. 1 licenses. On April 1, 1999, the FERC approved the ALP for the Lewis River projects and issued an order accelerating the expiration of the Merwin license to May 1, 2006 (FERC 1999). PacifiCorp and Cowlitz PUD initiated the collaborative ALP in April 1999 and held many public meetings to develop and reach consensus on relicensing studies and the Protection, Mitigation and Enhancement measures (PM&Es) in the new licenses. Cowlitz PUD filed an Application for New License for Swift No. 2 Project in April 2004 (Cowlitz PUD 2004). In the same month, PacifiCorp filed Applications for New License for Swift No. 1 and Merwin (PacifiCorp 2004a, PacifiCorp 2004b).

#### 1.1.3 Settlement Agreement

As a result of the collaborative process, on November 30, 2004, (Effective Date) 27 Signatories (including 2 Licensees, 5 federal agencies, 2 state agencies, 8 local/county agencies, 2 tribes, 2 citizens-at-large, and 5 non-governmental organizations) signed the Lewis River Settlement Agreement (SA) (PacifiCorp et al 2004). In December 2004, the Licensees filed with the FERC the SA along with a Joint Explanatory Statement and Supplemental Preliminary Draft Environmental Assessment (PacifiCorp and Cowlitz PUD 2004). The SA reflects the interests of all Parties; provides significant investments in fish and aquatic resources, wildlife and recreation; includes monitoring and evaluation and adaptive management; and includes ongoing coordination with the Parties through the Aquatics and Terrestrial Coordination Committees (ACC, TCC). Under the SA, the Licensees requested 50-year licenses for their respective projects to allow the projects to continue to provide benefits to their customers. The Lewis River system allows PacifiCorp to maximize the value of its generation assets and power purchases to provide customer benefits. Cowlitz PUD uses its Swift No. 2 power to serve primarily its residential load.

#### 1.1.4 Environmental Impact Statement

In September 2005 the FERC released the Draft Environmental Impact Statement for the Lewis River Hydroelectric Projects (DEIS) (FERC 2005) for public comment. The DEIS was generally consistent with the SA in that it included most of the SA terms. In November 2005, the Parties filed comments on the DEIS. The FERC expects to release the Final Environmental Impact Statement for the Lewis River Hydroelectric Projects in March 2006.

#### 1.1.5 Draft License Articles

The Licensees, with the support of the Parties to the SA, filed consensus Draft License Articles in November and December 2005 (Cowlitz PUD 2005a, PacifiCorp 2005, Cowlitz PUD 2005b).

#### 1.1.6 Agency Terms and Conditions

The USDA-Forest Service (USFS) submitted modified Terms and Conditions in November 2005 (USDA-FS 2005) and the US Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration - Fisheries (NOAA-Fisheries) are expected to file fishway prescriptions in February 2006.

#### 1.1.7 Endangered Species Act Consultations

In January 2005, Cowlitz PUD and PacifiCorp filed with the FERC Biological Evaluations (BEs) covering listed fish and wildlife in the Lewis River basin (PacifiCorp and Cowlitz PUD 2005a, PacifiCorp and Cowlitz PUD 2005b). The FERC then modified the BEs into Biological Assessments and submitted the documents to the Services. The Proposed Action in the BAs is the SA. In May 2006 the USFWS and NOAA-Fisheries are expected to issue Biological Opinions covering their respective listed species.

#### 1.1.8 Water Quality Certifications

Both Licensees applied to the Washington State Department of Ecology (Ecology) for Clean Water Act 401 Certification for their respective projects in February 2005. At Ecology's request, both Licensees withdrew and resubmitted those applications in December 2005. Ecology plans to issue a Draft Certification Order for each of the Lewis River project in February 2006.

#### 1.1.9 New FERC Licenses

Although the licenses for Merwin, Swift No. 2 and Swift No. 1 expire in April 30, 2006 and Yale is currently operating on annual licenses, it is not known when the FERC will issue new licenses for these projects. Nevertheless, the Licensees are implementing the terms of the Settlement Agreement, as they relate to the Effective Date.

#### 1.1.10 2005 Annual Report and Consultation

PacifiCorp and Cowlitz PUD prepared this 2005 Lewis River Hydroelectric Projects Annual Report (Annual Report) in consultation with the ACC and TCC. A draft report was provided to the ACC and TCC on April 5, 2006 for review and comment. Following a 30-day comment period ending on May 5, 2006, the Licensees reviewed the ACC/TCC comments and prepared this final Annual Report. This report was provided to the FERC and the Settlement Agreement Parties on May 15, 2006 to fulfill the requirements of Section 14.2.6 of the Settlement Agreement.

The period of record for the 2005 Annual Report is December 1, 2004 (Effective Date of the Settlement Agreement) through December 31, 2005.

The following Plans and Reports were completed in 2005:

- *Terrestrial and Aquatic Coordination Committees Structure and Ground Rules*
- *Merwin Tailrace Fish Behavior Study Plan*
- *Habitat Preparation Plan*
- *Draft Lewis River Hatchery & Supplementation Plan*
- *Lewis River Spawning Gravel Evaluation*
- *Merwin Upstream Collection Facility Design Criteria*
- *Yale Project Entrainment Evaluation Study Plan*
- *Aquatic Fund Strategic Plan and Administrative Procedures*
- *Terrestrial and Aquatic Coordination Committees Structure and Ground Rules*

In the future, the water quality section of the Annual Reports will be prepared in cooperation with, and will be provided to, Ecology.

## **1.2 ANNUAL REPORT ORGANIZATION**

The 2005 Lewis River Annual Report provides the following information as required under Section 14.2.6 of the SA and the 401 Water Quality Certifications:

### **Section 2.0 Aquatics and Terrestrial Coordination Committees (ACC, TCC)**

#### Section 2.1 ACC and TCC Membership

### **Section 3.0 Aquatic Resources**

- Section 3.1 ACC Meetings
- Section 3.2 Engineering Subgroup Meetings
- Section 3.3 Aquatic Measures Implemented in 2005
- Section 3.4 Aquatics 2006 Annual Plan

### **Section 4.0 Water Quality**

- Section 4.1 PacifiCorp Water Quality Measures Implemented in 2005
- Section 4.2 PacifiCorp Water Quality 2006 Annual Plan
- Section 4.3 Cowlitz PUD Water Quality Measures Implemented in 2005
- Section 4.4 Cowlitz PUD Water Quality 2006 Annual Plan

### **Section 5.0 Terrestrial Resources**

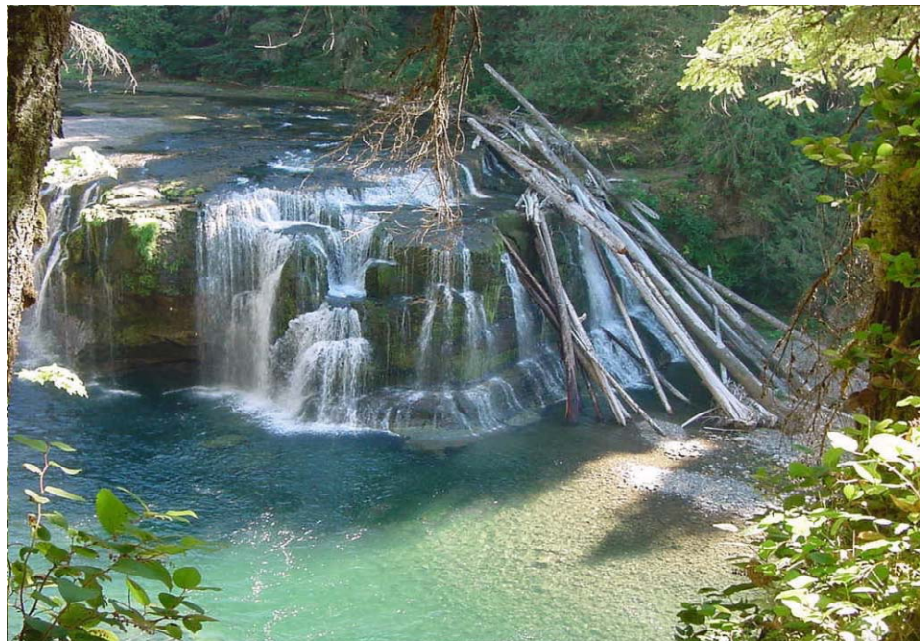
- Section 5.1 TCC Meetings
- Section 5.2 Joint Terrestrial Measures
- Section 5.3 PacifiCorp Terrestrial Measures Implemented in 2005

Section 5.4 PacifiCorp Terrestrial 2006 Annual Plan

Section 5.5 Cowlitz PUD Terrestrial Measures Implemented in 2005

Section 5.6 Cowlitz PUD Terrestrial 2006 Annual Plan

**Section 6.0 Funding Tables**



## **2.0 AQUATICS AND TERRESTRIAL COORDINATION COMMITTEES**

Section 14 of the Settlement Agreement includes several measures that define the Parties' roles and obligations. The full text of Section 14 of the Settlement Agreement is provided in Appendix D. The structure and process of the ACC and TCC is intended to provide a forum to address time-sensitive matters, early warning of problems, and coordination of member organization actions, schedule, and decisions to save time and expense. The ACC and TCC make decisions based on consensus, while implementing the Settlement Agreement.

More specifically, Section 14:

- Establishes the Aquatics Coordination Committee (ACC) and Terrestrial Coordination Committee (TCC).
- Establishes the Licensees' ACC and TCC Coordinators (Coordinators).
- Describes the coordination and decision making roles of the ACC and TCC.
- Requires the ACC and TCC to coordinate and Consult on development of plans by the Licensees.
- Requires the ACC and TCC to review information and oversee, guide, and make comments and recommendations on implementation and monitoring of the terrestrial and aquatic Protection, Mitigation and Enhancement (PM&E) Measures, including plans.
- Requires the ACC and TCC to 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.
- Requires the ACC and TCC to establish subcommittees to carry out specified committee functions and responsibilities and establish the size of, membership of, and procedures for any such subcommittees.
- Requires the Licensees' Coordinators to prepare and file with the FERC detailed annual reports on the TCC and ACC activities; monitoring and evaluations under the Monitoring and Evaluation Plan (M&E Plan) described in SA Section 9;

implementation of the terrestrial and aquatic PM&E Measures occurring during the prior year; and plans for the coming year.

- Requires the Licensees to consult with the ACC and TCC when preparing the Annual Report.

## 2.1 ACC and TCC MEMBERSHIP

In December 2004 the Licensees appointed their respective ACC and TCC Coordinators<sup>1</sup> as indicated in Tables 2.1-1 and 2.1-2 below. At the same time, the Licensees established the ACC and TCC and invited the Parties to designate representatives (and alternates) for membership on these committees. As shown in the Tables 2.1-1 and 2.1-2, 16 Parties designated representatives to the ACC and 11 Parties designated representatives to the TCC.

Both committees met for the first time in January 2005 (Table 2.1-3). During the year, the ACC (including its subcommittees) met (including conference calls) a total of 16 times. The TCC also met 16 times. The formal *Terrestrial and Aquatic Coordination Committees Structure and Ground Rules* was established and adopted by the ACC and TCC (Appendix B) and provides the functional framework for these collaborative committee meetings.

The purposes of the Coordination Committee meetings were to:

- Develop study and monitoring plans.
- Discuss implementation strategies for PM&E measures.
- Oversee implementation of the PM&E measures.

Sections 3.1, 3.2, and 5.1 summarize the ACC, ACC Engineering Subgroup, and TCC meetings and actions.



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<sup>1</sup> PacifiCorp initially appointed Monte Garrett as its TCC Coordinator and in January 2006, appointed Kirk Naylor to replace Monte Garrett.

**Table 2.1-1**  
**ACC Members and Alternates**

<b>ACC Member</b>	<b>Organization</b>	<b>Alternate</b>
Tammy Mackey	American Rivers	Brett Swift
No representative at this time	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
Janne Kaje	Cowlitz Indian Tribe	Shannon Wills
No representative at this time	Cowlitz-Skamania Fire District No. 7	To be named
Jim Malinowski	Fish First	To be named
John Clapp	Lewis River Citizens at-large	To be named
Mariah Stoll-Smith Reese	Lewis River Community Council	To be named
Jeff Breckel	Lower Columbia River Fish Recovery	Steve Manlow
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
Frank Shrier	PacifiCorp	Erik Lesko
Diana M. Gritten-MacDonald	PUD of Cowlitz County	To be named
No representative at this time	Rocky Mountain Elk Foundation	To be named
Paul Pearce	Skamania County	To be named
Brett Swift	The Native Fish Society	To be named
Tammy Mackey	Trout Unlimited	Brett Swift
No representative at this time	US Bureau of Land Mgmt	To be named
LouEllyn Jones	US Fish & Wildlife	To be named
Karen Thompson	USDA Forest Service	Adam Haspiel
Curt Leigh	Washington Dept of Fish & Wildlife	John Weinheimer
No representative at this time	Washington Interagency Committee	To be named
No representative at this time	Woodland Chamber of Commerce	To be named
George Lee	Yakama Nation	To be named

**Table 2.1-2**  
**TCC Members and Alternates**

<b>TCC Member</b>	<b>Organization</b>	<b>Alternate</b>
No representative at this time	American Rivers	To be named
No representative at this time	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
Mike Iyall	Cowlitz Indian Tribe	Shannon Wills
No representative at this time	Cowlitz-Skamania Fire District No. 7	To be named
No representative at this time	Fish First	To be named
John Clapp	Lewis River Citizens at-large	To be named
Mariah Stoll-Smith Reese	Lewis River Community Council	To be named
No representative at this time	Lower Columbia River Fish Recovery	To be named
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
Kirk Naylor	PacifiCorp	To be named
Diana M. Gritten-MacDonald	PUD of Cowlitz County	To be named
Bob Nelson	Rocky Mountain Elk Foundation	Tom Macy
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 Mgmt	To be named
LouEllyn Jones	US Fish & Wildlife	To be named
Mitch Wainwright	USDA Forest Service	Karen Thompson
Curt Leigh	Washington Dept of Fish & Wildlife	John Weinheimer and Brock Applegate
No representative at this time	Washington Interagency Committee	To be named
No representative at this time	Woodland Chamber of Commerce	To be named
Clifford Casseseka	Yakama Nation	Joanna Meninick

**Table 2.1-3**

Coordination Activity Status during the 2005 Reporting Period

SA Article	Coordination Activity	Status
<b>14.2</b>	<b>Coordination Committees</b> <ul style="list-style-type: none"><li>• Convene ACC and TCC</li><li>• Identify Committee Representatives</li><li>• Conduct meetings as necessary; minimum of at least 1 annual meeting</li><li>• Prepare and file Annual Report</li></ul>	Convened first meeting with ACC and TCC on January 24, 2005 and identified committee coordinators. Early in the process stakeholders identified their representatives. Committees collaborated to prepare Final Structure and Ground Rules to facilitate the purposes of the Committees. In combination, the committees conducted over 32 meetings and 2 conference calls. The 2005 Annual Report to be finalized by the Committees in 2006.

## 3.0 AQUATICS RESOURCES

### 3.1 ACC MEETINGS

The purpose and role of the ACC, as defined in Section 14.1 of the SA is to facilitate coordination and implementation of the aquatic PM&E measures.

The structure and process of the ACC is intended to provide a forum to address time-sensitive matters, early warning of problems, and coordination of member organization actions, schedule, and decisions to save time and expense. The ACC makes decisions based on consensus, while implementing the Settlement Agreement.

#### 3.1.1 ACC Meetings and Conference Calls: Overview

This section summarizes the topics discussed and actions taken during ACC meetings and conference call(s) over the 12-month period.

##### **ACC Meeting No. 1 January 24, 2005**

- Scheduled monthly ACC meetings on the second Thursday of each month through December 2005.
- Identified all Parties who have been officially designated as ACC representatives.
- Provided update of PacifiCorp and Cowlitz PUD accomplishments to date.
- Asked attendees to send all contact information updates to PacifiCorp and Cowlitz PUD.

##### **ACC Meeting No. 2 February 9, 2005**

- Reviewed and commented on “draft” *Lewis River ACC Structure and Ground Rules*.
- Reviewed, commented and updated *Lewis River Implementation Schedule* (Work Plan).
- Reported activities relating to biological evaluations, stress release ponds, acclimations ponds, and the 401 process.
- Discussed and developed the *Aquatic Fund Strategic Plan and Administrative Procedures*.

- Reported on the schedule for the *Lewis River Spawning Gravel Evaluation and Habitat Preparation Plan*.
- Provided representatives for the Fish Passage Engineering Subgroup.
- Discussed the FERC technical conference and tour of the Lewis River projects for early March 2005.
- Discussed *Lewis River Hatchery & Supplementation Plan* coordination and draft Plan due October 30, 2005.

**ACC Meeting No. 3**  
**March 10, 2005**

- Reviewed draft *Habitat Preparation Plan*.
- Reviewed PowerPoint presentation and provided comments on the Swift Bypass reach implementation projects.
- ACC agreed to prepare a single ACC/TCC *Structure and Ground Rules* document.
- Continued review, comment and revision of ground rules document and discussion of confidentiality language.
- Provided update on the *Yale Project Entrainment Evaluation*.
- Continued development of *Aquatic Fund Strategic Plan and Administrative Procedures* document.
- Discussed low flow operations and current hydrologic status.

**ACC Meeting No. 4**  
**April 21, 2005**

- Agreed that 2005 Aquatic Funds should not be distributed this year prior to finalization of the *Aquatic Fund Strategic Plan and Administrative Procedures* document.
- Reviewed the combined ACC/TCC version of the ground rules document with intent to finalize at the May meeting.
- Updated, reviewed and discussed the Fish Passage Engineering subgroup activities based on meeting notes taken at the March 22, 2005 subgroup meeting in Olympia, WA.

- Notified ACC that PacifiCorp is seeking proposals to complete the *Lewis River Hatchery and Supplementation Plan*.
- Reviewed and discussed a map illustrating the locations of two potential stress release pond sites and the criteria required by the Settlement Agreement.
- Participated in site visit of Swift Upper Release Point.

**ACC Meeting No. 5**  
**May 19, 2005**

- Approved *Terrestrial and Aquatic Coordination Committees Structure and Ground Rules* document.
- Discussed housing developments that are planned or approved in Skamania County.
- Reported on *Merwin Tailrace Fish Behavior Study*, specific details provided by R2 Resource Consultants.
- Reported on *Reservoir Bathymetry Study*, *Yale Project Entrainment Evaluation*, *NOAA Fisheries Genetics Study*, and potential stress release pond locations.
- Selected consultant for *Lewis River Spawning Gravel Evaluation*.
- Continued discussion of the *Aquatic Fund Strategic Plan and Administrative Procedures* document.
- Discussed opportunity to further address potential acclimation pond sites in response to the FERC's DEIS.

**ACC Meeting No. 6**  
**June 9, 2005**

- Reviewed and discussed the *Aquatic Fund Strategic Plan and Administrative Procedures* document.
- Reviewed and discussed aerial site maps of potential acclimation pond Sites.
- Review and commented on Lower Columbia River Fish Recovery Board *Draft Upper North Fork Lewis Project List (Preliminary)* (LCRFRB 2005) and USDA Forest Service *Lewis River Draft Aquatic Restoration Plan* (USDA-FS 2005).
- Reported on *Merwin Tailrace Fish Behavior Study*, *Reservoir Bathymetry Study* and *Lewis River Spawning Gravel Evaluation*.

**ACC Meeting No. 7**  
**July 14, 2005**

- Discussed acclimation pond sites relative to the DEIS and activities toward completing acclimation pond commitments.
- Reviewed *Aquatic Fund Strategic Plan and Administrative Procedures* document.
- Discussed Skamania County private development concerns and its impact on County Fish and Wildlife Ordinances.
- Reported on status of *Lewis River Spawning Gravel Evaluation*, federal listing of Coho (threatened species), *Lewis River Hatchery & Supplementation Plan*, *Reservoir Bathymetry Study*, *Merwin Tailrace Fish Behavior Study*, and *Yale Project Entrainment Evaluation*.
- Presentation on fish egg planting by Alaska Resources and Economic Development, Inc. (ARED).

**ACC Meeting No. 8**  
**August 11, 2005**

- Reviewed potential acclimation pond sites.
- Completed the *Aquatic Fund Strategic Plan and Administrative Procedures* document, ready for 30-day review.
- Reported on riparian zones, buffers and management activities in buffers, *Wildlife Habitat Management Plan Standards & Guidelines* document, *Merwin Tailrace Fish Behavior Study*, *Lewis River Spawning Gravel Evaluation*, *Lewis River Hatchery & Supplementation Plan*, *Yale Project Entrainment Evaluation*, hatchery upgrades, stress release pond sites, Merwin and Swift trap design process and *NOAA rainbow trout genetics research*.

**ACC Meeting No. 9**  
**September 8, 2005**

- Reported on reconstruction of Swift No. 2 Canal.
- Reported on 30-day review of the *Aquatics Fund Strategic Plan and Administrative Procedures* document, which ends September 15, 2005.
- Reported on *Lewis River Spawning Gravel Evaluation*, *Lewis River Hatchery & Supplementation Plan*, hatchery upgrades, *Yale Project Entrainment Evaluation* and

*Merwin Tailrace Fish Behavior Study* and update on progress to purchase land for stress release pond site.

- Reported that WDFW began hauling adult Coho under to the Habitat Preparation Plan.

**ACC Meeting No. 10**  
**October 6, 2005**

- Toured Lewis River crossing with FR 90 – near Lower Falls on the Lewis River, Muddy River crossing with FR 25, Clear Creek crossing with Forest Road (FR) 93, fish passage culvert replacement – USDA-FS RAC funded on private timber lands, housing development off FR 25 and Lewis River crossing with FR 90 – Eagle Cliff.

**ACC Meeting No. 11**  
**November 10, 2005**

- Agreed to continue the 2006 meeting on the second Thursday of each month, canceling a meeting or replacing with a conference call if necessary.
- Notified ACC of the Aquatic Fund Pre-Proposals received by the Licensees; discussed next steps.
- Discussed the draft acclimation site language for DEIS.
- Reported on TCC discussion of stream buffers.
- Reported on adult trap efficiency performance standards, defining standards, methods of data collection, tag and track study, trap efficiency, timing for collecting data and monitoring future efficiency.

**ACC Meeting No. 12**  
**December 8, 2005**

- Reported on *Coho Tagging Study*, *Lewis River Spawning Gravel Evaluation*, 401 Certification, Merwin trap upgrades, *Limiting Factory Study* relating to Bull Trout, stress release pond sites, and construction of Upper Release Point.
- Discussed Skamania County land planning (zoning, permitting, etc) in the Project area.
- Discussed Draft *Lewis River Hatchery & Supplementation Plan*.
- Reported on USFWS land grant opportunity.

- Agreed to proceed with request for full-proposal for aquatic funding for following projects:
  - Little Pine Creek Bridge Removal
  - Nutrient Enhancement on Muddy River
  - Pine Creek Instream and Floodplain Structures for Bull Trout and Steelhead
  - Rush Creek Instream Structures for bull Trout and Steelhead
  - Fish Passage Culvert Replacement
  - Muddy River Tributary Road Decommission

### 3.1.2 ACC Meeting Notes

The Licensees prepared draft notes for ACC meetings and conference calls. These notes were distributed to ACC members for review and comment approximately one week after the subject meeting. After review, revision and approval by the ACC, the final notes were entered in the public record maintained by both Licensees and posted on the PacifiCorp web site (<http://www.pacificorp.com/Article/Article49201.html>).

## 3.2 ENGINEERING SUBGROUP MEETINGS

### 3.2.1 Engineering Subgroup Meetings: Overview

This section summarizes the topics discussed and actions taken during the ACC Engineering Subgroup meetings over the 12-month period.

#### **Subgroup Meeting No. 1 March 22, 2005**

- Identified all Parties who have been officially designated as ACC Engineering Subgroup representatives.
- Reviewed existing project drawings, *Engineering Feasibility Study for Fish Passage Facilities – Phase 2* and pertinent Settlement Agreement language.
- Discussed Merwin historical overview including aerial photos of hydro facilities, fish gallery, penstocks, existing fyke, and existing fish lift.
- Discussed fishway entrance, trap/life improvements, addition of new sorting facility, facility configurations, and layouts currently being reviewed by PacifiCorp.
- Reviewed engineering schematic options for Merwin sorting transport facilities and design criteria.
- Reviewed and discussed the Spring Chinook adult fish handling process design and flow exceedance curves for Merwin and fish trap entrance conditions.

- Reviewed and discussed the *Facility Design Criteria* including but not limited to trap and sorting facility water supply, transport channel, fish ladder, fish trap, fish hopper, and conveyance flume.
- Reviewed Upper Release into Swift bypass reach and discussed preferred alternatives to an electric barrier, such as physical barrier, velocity barrier, flow pipe and depth barrier methods.

**Subgroup Meeting No. 2**  
**May 4, 2005**

- Presented and reviewed the April 2005 draft of the *Facility Design Criteria*.
- Discussed the electro-anesthetic system and the system at Bonneville hatchery.
- Presented an overview of the *Merwin Tailrace Fish Behavior Study* based on hydroacoustic technology.
- Discussed the Upper Release Point project including review of the Swift No. 1 Powerhouse aerial photo with bathymetry, and the upper release pipe layout figure.
- Toured the Merwin tailrace, Swift Dam and intake area, the Swift No. 1 release point and the Swift No. 2 canal check structure.

**Subgroup Meeting No. 3**  
**August 30, 2005**

- Summarized updates to the *Facility Design Criteria* document and recommended tank numbers and sizes.
- Discussed details and configuration needs for the fish surplus station and a needed facility program for each project feature prior to creating conceptual design layout.
- Reported on status of *Merwin Tailrace Fish Behavior Study*, *Sorting Facility Siting Study*, and the Upper Release Point.
- Discussed next steps including development of the facility programming and layout for the sorting facility, the hydraulic analysis to define improvements for the three trap entrances and should a fourth entrance be recommended following the biological studies.

#### **Subgroup Meeting No. 4 November 15, 2005**

- Discussed the site visit on 10/10/05 to Bonneville Fish Hatchery to view the new Smith-Root Electro-Anesthesia (EA) system in operation.
- Viewed photographs and short video clips of the EA system.
- Introduced concepts for the downstream fish collector at Swift No. 1.
- Reported on Upper Release Point preliminary design drawings including review of the release structure site location, velocity barrier and excavation of the existing bypass channel.
- Discussed the goals for the bypass reach and observations of fish in the bypass reach/constructed channel.
- Updated and discussed the *Facility Design Criteria* and the desire to finalize this document for recommendation and approval by the ACC.
- Reviewed work performed to date on the fish trap safety improvements and a letter describing the recommended changes.
- Reported on *Merwin Tailrace Fish Behavior Study* including data collection via hydroacoustic equipment and radio tags.
- Reported on the progress of the *Sorting Facility Siting Study* and review of the *Siting Study Summary* report.
- Discussed the fish trap entrance design work including proceeding with laying out improvements with the 3-trap openings as originally planned.
- Discussed about the need for a visual sorting flume as a key component to the sorting facility.

#### **3.2.2 Engineering Subgroup Meetings Notes**

The Licensees prepared draft notes for Engineering Subgroup meetings and distributed the notes to Engineering Subgroup members for review and comment approximately one week after the subject meeting. After review, revision and approval by the Engineering Subgroup, the final notes were entered in the public record maintained by both Licensees and posted on the PacifiCorp web site (<http://www.pacificorp.com/Article/Article49201.html>).

### **3.3 Aquatic Measures Implemented in 2005**

This section presents the actions taken during December 2004 through December 2005 toward Aquatic requirements in the Lewis River Settlement Agreement.

A discussion of the activities associated with each of the PM&E measures is presented below by SA Article for the report period (Table 3.3-1). A description of funding amounts deposited and disbursed during 2005 is provided in Section 6.0 – Funding.



**Table 3.3-1**

Aquatics Activity Status during the 2005 Reporting Period

<b>SA Article</b>	<b>Aquatics Activity</b>	<b>Status</b>
<b>4.1.1</b>	<b>Fish Passage Measures</b> <ul style="list-style-type: none"> <li>• Studies to Inform Design Decisions</li> </ul>	Merwin Tailrace Fish Behavior Study to inform design of the Merwin upstream trap is underway with a draft report scheduled for July 20, 2006.
<b>4.1.4.c</b>	<b>Fish Passage Measures - Adult Trap Efficiency for Salmonids</b> <ul style="list-style-type: none"> <li>• Develop an ATE performance standard</li> </ul>	This effort is dependent on the 4.1.1. study and is ongoing.
<b>4.2.a</b>	<b>Merwin Trap - Fyke Repair</b> <ul style="list-style-type: none"> <li>• Repair fyke portion of the Merwin Trap</li> </ul>	Fyke was repaired as of April 29, 2005.
<b>4.2.b</b>	<b>Merwin Trap - Flow Restrictions</b> <ul style="list-style-type: none"> <li>• Limit river discharge at Merwin to 5,250 or less while personnel are in the fish trap</li> </ul>	PacifiCorp coordinated with WDFW to assure that river flows were lowered during work in the Merwin Trap.
<b>4.2.c</b>	<b>Merwin Trap - Merwin Trap Upgrades</b> <ul style="list-style-type: none"> <li>• Identify information needed to improve operating conditions</li> <li>• Coordinate design upgrades with Services and WDFW, final designs with ACC</li> </ul>	Preliminary design work is ongoing. Letter providing 30% design drawings distributed to ACC on February 21, 2006.
<b>4.2.d.</b>	<b>Merwin Trap</b> <ul style="list-style-type: none"> <li>• Interim trap data available</li> </ul>	Collection and reporting of interim data is ongoing during the preliminary design phase of the Merwin upstream trap.
<b>4.3</b>	<b>Merwin Upstream Collection and Transport Facility</b> <ul style="list-style-type: none"> <li>• Design Merwin Upstream Transport Facility</li> </ul>	Preliminary design work is ongoing. PacifiCorp is working with the ACC Engineering subgroup on early design prior to development of the 30% design draft.
<b>4.4.3</b>	<b>Release Ponds</b> <ul style="list-style-type: none"> <li>• Consult with ACC to site the precise location of the release ponds</li> </ul>	PacifiCorp consulted with the ACC on several occasions (see attached notes), site has been selected and PacifiCorp is in negotiations to acquire property.
<b>4.9.1</b>	<b>Interim Bull Trout Collection and Transport - Collect and Haul Program</b> <ul style="list-style-type: none"> <li>• Collect bull trout from the Yale tailrace and below Swift No. 2 and transport upstream of project</li> </ul>	PacifiCorp and Cowlitz PUD submitted a Collection and Transport plan to USFW and WDFW, agencies approved plan, and 6 attempts were made to collect bull trout. Activity is annual and will be conducted again in 2006.
<b>4.9.2</b>	<b>Interim Bull Trout Collection and Transport - Investigation of Alternative Collection Methods</b> <ul style="list-style-type: none"> <li>• Identify and attempt agency approved collection methods for bull trout</li> </ul>	Researchers used beach seine as alternative method; with net modifications, this method might be viable. Will propose modifications to agencies for use in 2006.
<b>4.9.3</b>	<b>Yale and Merwin Bull Trout Entrainment Reduction</b> <ul style="list-style-type: none"> <li>• Design study to evaluate bull trout entrainment reduction methods</li> </ul>	The study is underway and expected to be completed by Fall 2006.

**Table 3.3-1**

Aquatics Activity Status during the 2005 Reporting Period

SA Article	Aquatics Activity	Status
<b>5.2</b>	<b>Bull Trout Habitat Enhancement Measures</b> <ul style="list-style-type: none"> <li>• Manage Cougar Creek Conservation Covenant and the Devil's Backbone Conservation Covenant to benefit of bull trout</li> </ul>	PacifiCorp managed the Cougar Creek CC for bull trout and took actions to address illegal ATV activities. Cowlitz PUD managed the Devil's Backbone CC for bull trout. Management of these areas is ongoing.
<b>5.5</b>	<b>Bull Trout Limiting Factors Analysis</b> <ul style="list-style-type: none"> <li>• Initiate scoping of Analysis work</li> </ul>	PacifiCorp initiated scoping of work; contractor selection and development of a study plan will occur in early 2006.
<b>6.1.2</b>	<b>Construction of Upper Release Point</b> <ul style="list-style-type: none"> <li>• Provide the ACC the location of the Upper Release Point</li> </ul>	The Upper Release Point site has been selected and provided to the ACC along with conceptual designs for the release structure. In 2006 PacifiCorp and Cowlitz PUD will be acquiring necessary permits so that construction may occur within 6 months of license issuance.
<b>6.1.3b</b>	<b>Constructed Channel - Channel Design and Cost Estimate</b> <ul style="list-style-type: none"> <li>• Complete a design for construction and maintenance of the Channel</li> </ul>	Design has yet to be completed; will work with ACC to complete related activities.
<b>7.2</b>	<b>Spawning Gravel Study and Gravel Monitoring and Augmentation Plan</b> <ul style="list-style-type: none"> <li>• Contract Consultant</li> <li>• Direct the consultant to submit a draft study plan to the ACC</li> </ul>	A spawning gravel consultant was selected on March 25, 2005, and a draft study plan was submitted to the ACC on December 14, 2005.
<b>7.4</b>	<b>Habitat Preparation Plan</b> <ul style="list-style-type: none"> <li>• Prepare HPP in consultation with ACC</li> <li>• Complete HPP actions</li> </ul>	The HPP was finalized by the ACC in spring of 2005. Activities were carried out in the fall with the transport of roughly 2,000 adult salmon to above Swift Dam. The HPP will again be implemented in 2006.
<b>7.5</b>	<b>Aquatics Fund</b> <ul style="list-style-type: none"> <li>• Make \$300,000 available to the Fund</li> <li>• Develop strategy and administrative procedures</li> <li>• Initiate strategy and procedures</li> </ul>	\$300,000 was made available and the ACC worked together to develop the document "Aquatics Fund - Strategic Plan and Administrative Procedures". Activities related to the Plan were initiated in 2005; in 2006 resource projects will be selected for funding and the process will start again.
<b>8.2.1</b>	<b>Hatchery and Supplementation Plan</b> <ul style="list-style-type: none"> <li>• Produce and distribute a draft Hatchery and Supplementation Plan to the ACC</li> </ul>	Draft hatchery and supplementation plan issued to ACC on November 28, 2005. Comments due on February 10, 2006.

### 3.3.1 SA Section 4.1 Common Provisions Regarding Fish Collection and Transport Facilities

#### Studies to Inform Design Decisions (SA 4.1.1)

PacifiCorp initiated the Merwin Tailrace Fish Behavior study to provide information that could assist the planning and design of the Merwin Upstream Collection and Transport Facility. The study plan was developed in coordination with the ACC and was finalized as a revised document on June 30, 2005 and posted on the Lewis River website at <http://www.pacificorp.com/Article/Article49203.html>. Originally the study was to include a hydroacoustic component; however, after 4 months of collecting data, it became apparent that the equipment was not collecting accurate information. This inaccuracy was due to a large number of fish that either passed back and forth through the acoustic field, or were fish that held in the field for long periods. This resulted in false passage counts and population estimates that indicated a negative number of fish entering the tailrace area. Compared to the actual number of fish caught in the trap, this could not be possible so this part of the study was eliminated. In 2005, 100 adult coho were tagged and tracked, as well as 100 summer and 100 winter steelhead. Spring Chinook will be tagged and tracked in Spring 2006. Study is ongoing.

In addition to the Behavior study, PacifiCorp completed bathymetry field work on each of the 3 mainstem reservoirs. One of the purposes of the work was to obtain more accurate data on the land and water elevations within the sites of potential fish collection facilities. Such information will be of value as engineers consider alternatives for facility location and designs. Final data analysis and reporting is ongoing.

#### Adult Trap Efficiency for Salmonids (SA 4.1.4c)

Per discussions with stakeholders, ATE discussions will be conducted once results from the Merwin Tailrace Fish Behavior study are available.

### 3.3.2 SA Section 4.2 Merwin Trap

#### Fyke Repair (SA 4.2a)

On March 8, 2005 Lewis River Hydroelectric Project personnel removed the steel Fyke net from the Merwin Trap. Timing of fyke removal from service was based in part on knowledge that adult fish returns in early March are virtually nonexistent. Conducting repairs at this time would minimize impacts to collection of fish for the hatchery and would repair the trap prior to later heavy fish use.

Once removed from the trap, the fyke was inspected in the dry and several repairs were made to the structural steel. Repairs included spot welding to strengthen joints and worn locations, and grinding of areas to smooth the metal in order to minimize potential abrasions to fish. Following the repairs, contractors sandblasted and coated the entire fyke with epoxy. The

coating material was a 2-part epoxy (“DEVOE” Bar Rust #235) and was applied at 6 mils per coat. A total of three coats were applied. The intent of the epoxy application was to minimize abrasions that might occur to fish entering and holding in the Merwin trap. Following a curing process for the epoxy and a PacifiCorp inspection, the fyke was placed back into service on March 14, 2004.

#### Merwin Trap Flow Restrictions (SA 4.2b)

To provide a margin of safety for personnel working in the Merwin fish trap, PacifiCorp limited the river discharge at Merwin dam/powerhouse to 5,250 cfs or less as river flow conditions warranted. Flow limitations were coordinated with WDFW.

#### Merwin Trap Upgrades (SA 4.2c)

On November 29, 2005 PacifiCorp provided the Services (USFWS and NOAA Fisheries) and WDFW a letter requesting a meeting to discuss potential upgrades and operational procedures to improved operating conditions for personnel working in the Merwin Trap by providing a greater margin of safety. Attached to the letter was a memo that identified company proposed measures and a supporting Engineering Study (Report No. RES 3000028924) and posted on the Lewis River website which can be located at <http://www.pacificorp.com/Article/Article49203.html>.

In summary, the memo noted that providing workers with emergency alarms and assistance in vacating the trap, in tandem with restricting inflows into the fishway, will mitigate the key operational safety problem and improve conditions for workers in the trap. The following safety and operational improvements were proposed;

- Installation of improved lighting in the fishway and near the bottom of the fish lift;
- Installation of audible and visible alarms such as sirens and strobe lights to alert workers to vacate the fish trap in the event of a pump failure;
- Installation of hand rails above the anticipated high water level to assist workers when vacating the fish trap;
- Bypassing Merwin Hatchery water at the bridge bypass valve when workers are in the trap; and
- Limiting plant discharge flows to maintain tailrace at a level providing minimum headspace in the fish trap after pump failure.
  - Current maximum discharge is 5,500 cfs
  - Future max discharge may be 5,500+ to 9,000 cfs pending upcoming flow tests

Interim Merwin Trap Operations (SA 4.2d) - For CY 2005 the Merwin Trap was operated in coordination with WDFW to collect hatchery fish returning from the ocean and to transport any bull trout collected to Yale Lake. Fish other than hatchery fish and bull trout were returned to the river below Merwin Dam. PacifiCorp coordinated with WDFW and made reasonable efforts to operate the Merwin powerhouse to allow fish trapping operations at the trap.

### 3.3.3 SA Section 4.3 Merwin Upstream Collection and Transport Facility

PacifiCorp completed initial activities related to developing preliminary alternatives and facility design. In the Spring of 2005 PacifiCorp worked with the Fish Passage Engineering Subgroup to prepare a Facility Design Criteria document, which was posted on the PacifiCorp website at <http://www.pacificorp.com/Article/Article61496.html>. Using the Criteria document for guidance, the PacifiCorp team worked on identifying and scoping conceptual designs for the facility. Key considerations for design include a completely new facility, and incorporation of the current Merwin Trap as upgraded. Designs should meet applicable performance standards regardless of the operational state of the Merwin powerhouse and dam. The Engineering Subgroup reviewed several draft documents and worksheets that analyzed the potential numbers of fish and suggested the facilities needed to accommodate those numbers. The Subgroup met on March 22, 2005, May 4, 2005, August 30, 2005 and November 15, 2005 to discuss these documents and to make suggested changes. Recommendations on sorting facilities will be sent to the ACC in early 2006.

### 3.3.4 SA Section 4.4 Downstream Transport at Swift No. 1 Dam

#### Release Ponds (SA 4.4.3)

At the February ACC meeting PacifiCorp notified the representatives that the company was working to identify potential sites for the Release Ponds. In April, PacifiCorp provided a map showing two potential sites to the ACC. Following discussion and a site visit with interested ACC representatives, the ACC agreed to seek acquisition of a site just downstream of Woodland, Washington. The site meets the criteria established in the SA and the land is available for acquisition. PacifiCorp has entered into negotiations with WDFW (property owners) to acquire the parcel.

### 3.3.5 SA Section 4.5 Downstream Passage at Yale Dam

Implementation scheduled prior to 13<sup>th</sup> anniversary of Yale Project License.

### 3.3.6 SA Section 4.6 Downstream Passage at Merwin Dam

Implementation scheduled prior to 17<sup>th</sup> anniversary of Merwin Project License.

### 3.3.7 SA Section 4.7 Upstream Passage at Yale Dam

Implementation scheduled prior to 17<sup>th</sup> anniversary of Yale Project License.

### 3.3.8 SA Section 4.8 Upstream Passage at Swift Projects

Implementation scheduled prior to 17<sup>th</sup> anniversary of Swift No.1 Project License.

### 3.3.9 SA Section 4.9 Interim Bull Trout Collection and Transport Collection and Haul Programs (SA 4.9.1)

PacifiCorp (on behalf of both Licensees) in cooperation with the WDFW and USFWS, annually net and transport bull trout from Yale tailrace to the mouth of Cougar Creek (Yale reservoir tributary). A total of 98 bull trout have been captured at the Yale tailrace since the program began in 1995. In 1999, PacifiCorp and the WDFW began netting the Swift No. 2

tailrace as part of requirements contained in amendments to Article 51 of the Merwin license. However, due to construction activities at Swift No. 2 and difficult flow regimes, no capture activities have been conducted at Swift No. 2 from 2001 to 2005. Instead, monitoring efforts have focused on the Swift bypass reach as flows from the Swift No. 1 project have been shunted into the bypass reach during this time.

To capture bull trout from the Yale tailwaters, monofilament or multi-filament mesh gill nets are used (typically 2.5 to 3 inch stretch). Netting occurs on a weekly basis beginning in July and ending in early September. Netting usually occurs between the hours of 0900 and 1200. During this time, the powerhouse generators are taken off-line to facilitate deployment and handling of the nets. Larger nets, in both area and mesh size, have been deployed in the past; however, they were less effective at capturing bull trout. Nets are tied to the powerhouse wall and then stretched across the tailrace area using powerboats. The nets are then allowed to sink to the bottom. Depending on conditions or capture rate, the nets are held by hand on one end or allowed to fish unattended. The maximum time nets are allowed to fish before being pulled is less than 10 minutes. Upon capture of a bull trout, fish are immediately freed of the net (usually by cutting) and placed in a live well. Once biological information is gathered and a floy and PIT tag is inserted, the bull trout is placed in a 6-inch diameter PVC or rubber tube partially filled with water. A rope is tied to the PVC tube, which allows hatchery crews on the “catwalk” to hoist the bull trout out of the tailrace area and into hatchery trucks. The entire process, from capture to hatchery truck, takes only a few minutes and no direct mortality has ever been observed.

As part of this program, PacifiCorp and Cowlitz PUD annually submit a plan to the USFWS and WDFW for approval. The plan contains this program along with other bull trout monitoring programs, which PacifiCorp and Cowlitz PUD complete annually as part of their current FERC operating licenses and Biological Opinion for bull trout.

#### Investigation of Alternative Collection Methods (SA 4.9.2)

On June 24, 2005, a large (225' X 28') beach seine was used in an attempt to actively collect bull trout from the Yale tailrace. Mesh size ranged from 2 to 4 inch square. The net was deployed from shore and a jet sled fed the net out in a circular pattern and then dragged it back to the shore.

The net was extremely effective in capturing all types of larger fish present in the tailrace. However it snagged on large boulders close to shore, allowing most, and in some instances all of the fish to escape. Because this snagging occurred in all sets it was not used for the remaining 5 sampling days.

Due to the initial effectiveness of the net in capturing large fish, the net will be modified in 2006 to allow pursing of the net in the middle of the tailrace, thus eliminating the need to bring the net to shore and avoiding the large boulders present there. PacifiCorp and Cowlitz PUD expect this technique to capture large numbers of fish less intrusively than the variable

mesh gill nets used currently. Proposed modifications to the net will be described in detail in the 2006 Annual Plan to be submitted to the Agencies in spring of 2006.

3.3.10 SA Section 4.10 Bull Trout Passage in the Absence of Anadromous Fish Facilities

If Yale Downstream Facility is not built, implement prior to 13<sup>th</sup> anniversary of Yale Project License.

3.3.11 SA Section 5.1 Yale Spillway Modifications

Implementation scheduled prior to six months after the 4<sup>th</sup> anniversary of Yale Project License.

3.3.12 SA Section 5.2 Bull Trout Habitat Enhancement Measures

PacifiCorp continued to manage the Cougar Creek Conservation Covenant to the benefit of bull trout. To address new illegal ATV access and use near the town of Cougar, excavation equipment was brought in to place boulders in strategic locations as a barrier to eliminate access. Roads and culverts in the Panamaker and Cougar drainages were surveyed and maintained to ensure there were no erosion issues. Noxious weeds (scotch broom and Himalayan blackberry) were identified and treated along the transmission ROW and in previously harvested lands along Panamaker Creek.

Per the SA, Cowlitz PUD managed the Devil's Backbone Conservation Covenant to benefit bull trout.

3.3.13 SA Section 5.3 Reserved

3.3.14 SA Section 5.4 Reserved

3.3.15 SA Section 5.5 Bull Trout Limiting Factors Analysis

The ACC was notified in December that PacifiCorp had initiated scoping of Analysis work. A contractor and study plan will be developed in early 2006.

3.3.16 SA Section 5.6 Public Information Program to Protect Listed Anadromous Species

No action as Information and Education Program will be developed by 1<sup>st</sup> anniversary of Project Licenses.

3.3.17 SA Section 5.7 Public Information Program to Protect Bull Trout

Implementation scheduled prior to 6 months after Licenses issuance.

3.3.18 SA Section 6.1 Flow Releases in the Bypass Reach: Constructed Channel  
Construction of Upper Release Point (SA 6.1.2)

PacifiCorp notified the ACC in November of the location for the Upper Release Point off the Swift canal. In the notification PacifiCorp also presented conceptual designs for the release structure which took into account the ability to monitor and control flows, energy dissipation at the outlet, and prevention of fish access into the release outlet near the bypass channel.

Several ACC members participated in a site visit to the upper release site on April 24, 2005. There were no objections voiced as to the proposed location.

Channel Design and Cost Estimate (SA 6.1.3b)

No action was taken under this Article.

3.3.19 SA Section 6.2 Flow Fluctuations Below Merwin Dam

Implementation scheduled upon issuance of Merwin Project License.

3.3.20 SA Section 7.1 Large Woody Debris Program

PacifiCorp continued the Large Woody Debris (LWD) program per its current Hydraulic Project Approval (HPA). Merwin Reservoir was cleared of floating woody debris during May and June of 2005. A total of 131 logs were removed from the reservoir along with many tons of smaller debris. The logs were offered to Fish First and the USFS for utilization in stream rehabilitation work but were determined to be the wrong size for their current projects. PacifiCorp hauled 121 of the logs to forest management sites on the Merwin WMP area for LWD and stockpiled the remaining 10 logs. The logs averaged 20–23 inches in diameter and 22 to 28 feet long.

3.3.21 SA Section 7.2 Spawning Gravel Study and Gravel Monitoring and Augmentation Plan

In the spring of 2005 PacifiCorp provided the ACC with proposals from three potential consultants. At the May 19, 2005 ACC meeting, the committee selected Stillwater Sciences to prepare the Study and Monitoring Plan. Stillwater Sciences conducted the first phase of the study plan and issued a draft to the ACC for comment on December 13, 2005 and posted on the PacifiCorp website at <http://www.pacificorp.com/Article/Article49202.html>.

3.3.22 SA Section 7.3 Predator Study

Implementation scheduled prior to 13<sup>th</sup> anniversary of Merwin Project License.

3.3.23 SA Section 7.4 Habitat Preparation Plan

On March 10, 2005, PacifiCorp provided the ACC a draft *Habitat Preparation Plan (HPP)* that outlined the action of releasing live adult hatchery anadromous salmonids into Swift Reservoir for the purpose of preparing the spawning gravels and providing nutrients to the upper basin. After receiving comments, The HPP was approved by the ACC on April 21, 2005.

Transportation of Coho began on September 14, 2005. In total, 2,006 adult coho salmon were transported from the Merwin Trap and Lewis River Hatchery Ladder to the Swift reservoir boat ramp. Of these, 882 were males and 1,124 were females. Transportation activities ended on October 11, 2005. Transportation activities are summarized as follows:

Date	Males	Females
9/14/2005	172	228
9/20/2005	90	110
9/22/2005	91	112
9/26/2005	90	110
9/28/2005	90	110
10/4/2005	180	220
10/11/2005	169	234
<b>TOTAL</b>	<b>882</b>	<b>1,124</b>

### 3.3.24 SA Section 7.5 Aquatics Fund

Per the SA, PacifiCorp made \$300,000 available for Aquatic resource projects; however no funds were distributed to projects. To ensure fairness for project proponents, the ACC decided not to fund any projects until they completed the *Aquatics Fund – Strategic Plan and Administrative Procedures*. In September, 2005, the ACC finalized the plan and the Licensees administered it according to the established schedule as summarized below.

September 9, 2005	Invited SA Parties and interested parties to submit Pre-proposal forms for resource project(s)
October 7, 2005	Received 8 Pre-proposals from 3 different project sponsors
November 10, 2005	Licensees distributed the Pre-proposals and Licensees' evaluation of projects to the ACC. Licensees proposed 7 projects for additional consideration in the Full-proposal process.
December 8, 2005	ACC elected to request Full-proposals for 6 projects. Project sponsors were notified that Full-proposals were due January 27, 2006.

The \$300,000 that was not spent in 2005 (along with interest acquired) will remain in the account for use in 2006 or future years. The Licensees will provide additional money to the Aquatic Fund on an annual basis as stipulated in the SA.

### 3.3.25 SA Section 7.6 In Lieu Fund

Implementation to be determined by NOAA Fisheries and USFWS

### 3.3.26 SA Section 7.7 Management of Aquatics Fund and In Lieu Fund

In April 2005, PacifiCorp placed \$300,000 into the Aquatics Fund. No withdrawals were made from the Aquatic Fund in 2005 (see above). Fund account information is provided in Section 6.0.

### 3.3.27 SA Section 7.8 Execution of Projects and Mitigation Measures

No funds were distributed in 2005 (see above).

### 3.3.28 SA Section 8.1 Hatchery and Supplementation Program

See activities related to development of Draft Hatchery and Supplementation Plan.

3.3.29 SA Section 8.2 Hatchery and Supplementation Plan

PacifiCorp and Cowlitz PUD provided a *Draft Hatchery and Supplementation Plan* to the ACC on November 28, 2005. On December 8, 2005, Mobrand and Meridian Environmental (consultants to the Licensees) presented and discussed the draft plan with the ACC. Consistent with the SA, the ACC and the public were provided a 60-day review period. The plan is expected to be finalized in Spring 2006.

3.3.30 SA Section 8.3 Anadromous Fish Hatchery Adult Ocean Recruit Target by Species

PacifiCorp and Cowlitz PUD provided a *Draft Hatchery and Supplementation Plan* to the ACC on November 28, 2005. On December 8, 2005, Mobrand and Meridian Environmental (consultants to the Licensees) presented and discussed the draft plan with the ACC. Consistent with the SA, the ACC and the public were provided a 60-day review period. The plan is expected to be finalized in Spring 2006.

3.3.31 SA Section 8.4 Anadromous Fish Hatchery Juvenile Production

PacifiCorp funded the operation of the Lewis River Hatchery Complex to meet current the FERC license obligations for anadromous fish production.

3.3.32 SA Section 8.5 Supplementation Program

The Hatchery and Supplementation Plan is to be implemented as soon as practicable after issuance of new licenses for Merwin or Swift Projects.

3.3.33 SA Section 8.6 Resident Fish Production

PacifiCorp funded the operation of the Lewis River Hatchery Complex to meet current the FERC license obligations for resident fish production.

3.3.34 SA Section 8.7 Hatchery and Supplementation Facilities, Upgrades, and Maintenance

PacifiCorp has obtained the services of R2 resources to complete conceptual and final designs of upgrades defined in Schedule 8.7. A draft criteria document was produced and submitted to WDFW for review and comment. PacifiCorp staff and R2 resources continue to meet regularly with WDFW staff to refine and agree on the criteria document. Permitting activities have begun for each facility.

3.3.35 SA Section 8.8 Juvenile Acclimation Sites

On October 6<sup>th</sup>, several ACC members toured potential acclimation sites including: the Lewis River crossing with FR 90 – near Lower Falls on the Lewis River, Muddy River crossing with FR 25, Clear Creek crossing with Forest Road (FR) 93, and Lewis River crossing with FR 90 – Eagle Cliff. No decisions were made as to the proposed locations or as to the number of acclimation sites.

3.3.36 SA Section 9.1 Monitoring and Evaluation Plan

Implementation scheduled prior to 2<sup>nd</sup> anniversary of Project Licenses.

3.3.37 SA Section 9.2 Monitoring and Evaluation Related to Fish Passage  
Implementation scheduled prior to 2<sup>nd</sup> anniversary of Project Licenses.

3.3.38 SA Section 9.3 Wild Fall Chinook and Chum  
Implementation scheduled prior to 2<sup>nd</sup> anniversary of Project Licenses.

3.3.39 SA Section 9.4 Water Quality Monitoring  
Until issuance of the 401 water quality certificates and completion of the water quality management plan, no monitoring is scheduled to occur.

3.3.40 SA Section 9.5 Monitoring of Hatchery and Supplementation Program  
Implementation scheduled prior to 2<sup>nd</sup> anniversary of Project Licenses.

3.3.41 SA Section 9.6 Bull Trout Monitoring  
PacifiCorp, on behalf of PacifiCorp and Cowlitz PUD, completed actions according to the Threatened and Endangered Species Annual Plan. An Annual report and plan will be submitted to the FERC by March 31, 2006. See SA Section 4.9 for activity details.

3.3.42 SA Section 9.7 Resident Fish Assessment  
Implementation scheduled prior to 2<sup>nd</sup> anniversary of Project Licenses.

3.3.43 SA Section 9.8 Monitoring of Flows  
Implementation scheduled prior to 2<sup>nd</sup> anniversary of Project Licenses.

### **3.4 Aquatic 2006 Annual Plan**

3.4.1 SA Section 4.1 Common Provisions Regarding Fish Collection and Transport Facilities

PacifiCorp will continue the Merwin Tailrace Fish Behavior study and provide the ACC results in a timely manner to assist discussions on Merwin Upstream Collection Facility design and the development of an ATE performance standard for the Merwin Trap. Likewise, complete reservoir bathymetry analysis and reporting (SA 4.1.1 and 4.1.4c)

3.4.2 SA Section 4.2 Merwin Trap

PacifiCorp will continue, to the extent feasible, to limit the discharge from the Merwin Powerhouse for safety purposes to a maximum of 5,250 cfs when personnel are working in the Merwin Trap (SA 4.2b)

Merwin Trap Upgrade 30% and 60% design drawings for Services and WDFW review and comment will be prepared and submitted by PacifiCorp. Provide 90% design drawings to ACC for review/comment and final designs to the FERC (SA 4.2c)

PacifiCorp will continue to coordinate with WDFW and make reasonable efforts to operate the Merwin powerhouse to allow fish trap operations (SA 4.2d)

3.4.3 SA Section 4.3 Merwin Upstream Collection and Transport Facility

Once a Merwin Upstream Collection and Transport Facility alternative has been selected PacifiCorp will notify the ACC that company has initiated design work. Provide 30% and 60% design drawings for Services and WDFW review and comment (SA 4.3 and 4.1.2)

3.4.4 SA Section 4.4 Downstream Transport at Swift No. 1 Dam

PacifiCorp will consult with the ACC concerning the precise location of the Swift Downstream fish passage facility. Prepare facility 30% and 60% design drawings for Services and WDFW review and comment (SA 4.4.1)

PacifiCorp will continue activities related to the acquisition of land on which to site the downstream release ponds. Upon acquisition, initiate facility design (SA 4.4.3).

3.4.5 SA Section 4.9 Interim Bull Trout Collection and Transport

In consultation with the ACC and with the approval of USFWS, PacifiCorp and Cowlitz PUD will prepare an annual Bull Trout Collection and Transport Program. Implement Program activities (SA 4.9.1)

PacifiCorp and Cowlitz PUD are to investigate alternative Bull Trout collection methods in consultation with ACC (SA 4.9.2)

Continue PacifiCorp's *Yale Project Entrainment Evaluation* and in Consultation with the ACC, initiate preparation of a draft entrainment reduction plan (SA 4.9.3)

3.4.6 SA Section 5.2 Bull Trout Habitat Enhancement Measures

PacifiCorp will manage the Cougar Creek Conservation Covenant and Cowlitz PUD will manage the Devil's Backbone Conservation Covenant to benefit bull trout.

3.4.7 SA Section 5.5 Bull Trout Limiting Factors Analysis

PacifiCorp will complete Bull Trout Limiting Factors Analysis Study Plan and initiate study work. Analysis is to be finalized in consultation with the ACC by November 30, 2006.

3.4.8 SA Section 5.7 Public Information Program to Protect Bull Trout

After issuance of new licenses, PacifiCorp will provide informational signs at established angular access areas describing bull trout and the need to protect the species; Cowlitz PUD will do the same at the Swift No. 2 power canal bank fishing facility. PacifiCorp is to provide flyers with same information at park entrance booths. The Utilities are to provide such flyers to enforcement personnel for distribution.

3.4.9 SA Section 6.1 Flow Releases in the Bypass Reach; Constructed Channel

Licensees shall acquire necessary permits and initiate construction of the Upper Release Point within 6 months of license issuance (SA 6.1.2)

At appropriate time following the CWA 401 permitting process, Licensees are to complete a design for the construction and maintenance of the Constructed Channel and obtain ACC approval. Licensees are also to provide \$1 million into a Tracking Account to be used in construction of Constructed Channel (SA 6.1.3)

In consultation with ACC, Licensees are to design a combined flow schedule for flow releases into the Swift bypass (SA 6.1.4)

#### 3.4.10 SA Section 6.2 Flow Fluctuations Below Merwin Dam

Upon issuance of a new license for the Merwin Project, PacifiCorp is to implement the operational regimes as identified in the SA.

#### 3.4.11 SA Section 7.1 Large Woody Debris Project

Within 180 days of a new license for the Swift No. 1 Project, PacifiCorp is make available funds in a Tracking Account per the SA to help defray the costs of LWD transport. PacifiCorp is to also submit a draft study plan to the ACC which identifies and assesses the potential benefits of LWD projects below Merwin dam (SA 7.1.2)

#### 3.4.12 SA Section 7.2 Spawning Gravel Study and Gravel Monitoring and Augmentation Plan

PacifiCorp will submit a draft Spawning Gravel Study Plan to ACC, finalize Study Plan, and then complete plan actions.

#### 3.4.13 SA Section 7.4 Habitat Preparation Plan

PacifiCorp will complete actions of the Habitat Preparation Plan. If PacifiCorp proposes any modifications to the plan in 2006, they will obtain ACC approval prior to implementing Plan activities.

#### 3.4.14 SA Section 7.5 Aquatics Fund

PacifiCorp and Cowlitz PUD shall make funds available to the Aquatics Fund per the SA. Implement actions per the *Aquatic Fund Strategic Plan and Administrative Procedures*.

#### 3.4.15 SA Section 8.2 Hatchery and Supplementation Plan

Licensees shall collect ACC and public comments on the Draft Hatchery and Supplementation Plan. The Licensees will consider and address in writing the written comments provided, and include the rationale if the Licensees' decide to not address a comment in the final Plan. PacifiCorp shall submit a revised Plan to the Services by April 11, 2006 (SA 8.2.1).

## **4.0 WATER QUALITY**

### **4.1 PACIFICORP WATER QUALITY MEASURES IMPLEMENTED IN 2005**

#### **4.1.1 PacifiCorp Application for 401 Water Quality Certificate for Swift No. 1, Yale, and Merwin Hydroelectric Projects**

On February 3, 2005, PacifiCorp applied to Ecology for Clean Water Act 401 Certifications for Merwin, Yale and Swift No. 1. At Ecology's request, on December 2, 2005, PacifiCorp withdrew those applications and reapplied. During 2005, PacifiCorp worked with Ecology, and the Settlement Parties on the Draft 401 Certifications for Merwin, Yale and Swift No. 1. Those discussions clarified the requirements of the SA and the relationship between the SA and the 401 Certification.

#### **4.1.2 SA Section 9.4 Water Quality Monitoring** Placeholder.

### **4.2 PACIFICORP WATER QUALITY 2006 ANNUAL PLAN**

#### **4.2.1 PacifiCorp Application for 401 Water Quality Certificate for Swift No. 1, Yale, and Merwin Hydroelectric Projects**

PacifiCorp will provide comments to Ecology on the Draft 401 Certifications.

#### **4.2.2 401 Certification Water Quality Measures**

PacifiCorp will implement the applicable water quality measures in 2006 after the 401 Certifications and licenses are issued.

### **4.3 COWLITZ PUD WATER QUALITY MEASURES IMPLEMENTED IN 2005**

#### **4.3.1 Cowlitz PUD Application for 401 Water Quality Certificate for Swift No. 2 Hydroelectric Project**

On February 3, 2005, Cowlitz PUD applied to Ecology for a Clean Water Act 401 Certification for Swift No. 2. At Ecology's request, on December 2, 2005, Cowlitz PUD withdrew that application and reapplied. During 2005, Cowlitz PUD worked with Ecology and the Settlement Parties on the Draft 401 Certification for Swift No. 2. Those discussions clarified the requirements of the SA and the relationship between the SA and the 401 Certification. In addition, Cowlitz PUD, Ecology and others toured Swift No. 2 on November 4, 2005 and December 7, 2005.

4.3.2 SA Section 9.4 Water Quality Monitoring  
Placeholder.

## **4.4 COWLITZ PUD WATER QUALITY 2006 ANNUAL PLAN**

4.4.1 Cowlitz PUD Application for 401 Water Quality Certificate for Swift No. 2  
Cowlitz PUD will provide comments to Ecology on the Draft Swift No. 2 401 Certification.

4.4.2 401 Certification Water Quality Measures  
Cowlitz PUD will implement the applicable water quality measures in 2006 after the 401 Certification and license are issued.



## 5.0 TERRESTRIAL RESOURCES

### 5.1 TCC MEETINGS

The purpose and role of the TCC, as defined in Section 14.1 is to facilitate coordination and implementation of the Terrestrial PM&E measures.

The structure and process of the TCC is intended to provide a forum to address time-sensitive matters, early warning of problems, and coordination of member organization actions, schedule, and decisions to save time and expense. The TCC makes decisions based on consensus, while implementing the Settlement Agreement.

#### 5.1.1 Meetings and Conference Calls: Overview

This section summarizes the issues covered and areas of consensus reached during TCC meetings and conference call(s) over the 12-month report period.

#### **TCC Meeting #1 January 24, 2005**

- Scheduled monthly TCC meetings on the second Wednesday of each month through December 2005.
- Identified all parties who have been officially designated as TCC representatives.
- Requested attendees send all contact information updates to PacifiCorp and Cowlitz PUD.
- Clarified that the TCC has been formed as a decision-making body for development of the WHMP and to determine the use of designated Settlement Agreement funds.
- Agreed that the decision-making process for acquisition of interests in lands is a critical agenda item for the February meeting.
- Discussed PacifiCorp hiring a facilitator for the initial TCC meetings relating to the development of the *Wildlife Habitat Management Plan (WHMP) Standards and Guidelines* document.

**TCC Meeting #2**  
**February 18, 2005**

- Attendees reported their organization's expectations of the TCC, i.e., to benefit elk and other species on PacifiCorp land, blending of aquatic and terrestrial and to do as much as possible with available funding, and opportunity to affect regional wildlife habitat.
- Agreed that the TCC is a public process, but that decision-making is limited to signatory Parties of the Settlement Agreement.
- Agreed that information will be provided to TCC well in advance of decisions.
- Agreed that accounting of funds and tracking the available balances is important part of the TCC process.
- Reviewed and took comments on "draft" *Lewis River TCC Structure and Ground Rules*.
- Discussed need for confidentiality agreement to properly handle sensitive information.
- Agreed that Lewis River website is very useful and an easily locatable source of information, however, confidential information should be password protected.
- Agreed to create a *WHMP Standards & Guidelines* document and incorporate it into the WHMP.
- Agreed that the first 3 months of each year is the time period for completing the Annual Report as well as the Annual Plan.
- Agreed that the tracking of WHMP funds be included in the Annual Report for TCC review.
- Discussed acquisition of interests in lands and recreation - shoreline issues.
- Agreed that PacifiCorp will bear the cost of a facilitator for the next TCC meeting to help the group identify and develop "desired future conditions" for the *WHMP Standards & Guidelines*.
- Agreed to participate in a field visit in March which is in addition to a regular TCC meeting.

**TCC Meeting #3**  
**March 9, 2005**

- Reviewed *Terrestrial Coordination Committees Structure and Ground Rules*, but did not come to a conclusion or acceptance of the Rules.
- Agreed to revised Ground Rules and work with PacifiCorp to prepare a single *Terrestrial and Aquatic Coordination Committees Structure and Ground Rules* document.
- Agreed that the relicensing Confidentiality Agreement (CA) was not appropriate for TCC or no longer in effect. TCC recommended drafting a CA to address confidentiality around land acquisition.
- Agreed to participate in a field visit in April, 2005 to discuss Merwin Wildlife Management Program and generate ideas for *WHMP Standards & Guidelines* for Lewis River WHMP.
- Discussed coordination with recreation issues that identifies how PacifiCorp will address dispersed camping around the reservoirs.
- Worked with facilitator to outline *WHMP Standards & Guidelines* process and provided suggestions such as starting with broad objectives and narrow down to strategies.
- Discussed a land acquisition process relating to Yale Land Acquisitions Planning; purpose was to begin thinking of how the TCC would select wildlife lands for acquisition.
- PacifiCorp conduct a field tour of the Merwin Wildlife Habitat Management Area with members of the TCC. Site visits included shrub-lands, orchards, transmission ROW forage management areas, wetlands and Saddle Dam Farm. Additionally, the TCC visited the lower portion of the Cougar-Panamaker Conservation Covenant to look at efforts to remove noxious weeds, and stop unauthorized motor vehicle access.

**TCC Meeting #4**  
**April 13, 2005**

- Continued review, discussion, and editing of WHMP Standards & Guidelines (WHMP S&G) document.
- PacifiCorp prepared a series of Secondary Use Areas maps which illustrated Secondary Use Areas to be identified in the WHMP and reviewed them with the TCC.

- Agreed that *WHMP Standards & Guidelines* document will describe Exclusion, Secondary Use and important wildlife habitat areas (e.g., Cresap Bay Campground).
- Reviewed *Land Acquisition Decision-making Process* and introduced the purpose for the decision making process to make sure the TCC does not forget an issue and track how purchase recommendations were made.
- Agreed to revise the existing *Settlement Agreement Confidentiality Agreement* to reflect language specific to TCC discussions relating to land acquisition.
- Agreed that if a TCC representative's proposed change to the meeting notes is not agreed to by the TCC, the proposed change will be appended to the end of the final meeting notes .
- Distributed *PacifiCorp's Forestry Management Policy* to the TCC for review and future reference.

**TCC Meeting #5**  
**May 11, 2005**

- Approved the *Terrestrial and Aquatic Coordination Committees Structure and Ground Rules*.
- Worked to finalize draft *Confidentiality Agreement*. Agreed to make requested changes to *CA* and then email to TCC for review and approval.
- Reviewed and discussed the *Nisqually National Wildlife Refuge Goals & Objectives* (USFWS 2004) for purpose of format and structure example of *WHMP Standards & Guidelines*.
- Reviewed, discussed, and edited *WHMP Standards & Guidelines* document.
- Reported on site visit status, Secondary Use Lands and summary of conference call discussion with Rocky Mountain Elk Foundation.
- Discussed and revised the *Land Acquisition Decision-making Process* document.

**TCC Meeting #6**  
**June 8, 2005**

- Completed revisions to the *Confidentiality Agreement*.
- Discussed confidential subjects related to implementing the Settlement Agreement.
- Continued review and discussion of *WHMP Standards & Guidelines* document.

- Agreed to participate in site visit on June 23, 2005.
- PacifiCorp conducted its second field tour with TCC participants to look at forest management areas and elk forage production, old-growth management, shrub-lands and wetlands.

**TCC Meeting #7**  
**July 13, 2005**

- Agreed to post the *Merwin Raptor Management Plan* and the *PacifiCorp Bird Management Program* on the Lewis River website.
- Posted *Land Acquisition Decision-making Process* update on the Lewis River website as a final document.
- Continued review and discussion of *WHMP Standards & Guidelines* document and editing process.
- Selected August 15, 2005 and August 22, 2005 as additional meeting dates to continue *WHMP Standards & Guidelines* discussion.
- Distributed final version of the *TCC Confidentiality Agreement* for appropriate signatures from each organization in order to participate in confidential TCC discussions.
- Reported on Land Acquisition Strategy and Land Acquisition Decision-making Process.

**TCC Meeting #8**  
**August 10, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.

**TCC Meeting #9**  
**August 15, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.

**TCC Meeting #10**  
**August 22, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.

**TCC Meeting #11**  
**September 16, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.

**TCC Meeting #12**  
**October 3, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.
- Discussed confidential subjects related to implementing the Settlement Agreement.

**TCC Meeting #13**  
**October 21, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.
- Discussed confidential subjects related to implementing the Settlement Agreement.

**TCC Meeting #14**  
**November 9, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.
- Discussed confidential subjects related to implementing the Settlement Agreement.

**TCC Meeting #15**  
**December 2, 2005**

- Continued review and discussion of *WHMP Standards & Guidelines* document.
- Discussed confidential subjects related to implementing the Settlement Agreement.
- Reported on WDFW questions regarding Cowlitz PUD reconstruction of the Swift No. 2 canal.
- Agreed to meet the second Wednesday of every month in 2006.

**TCC Meeting #16**  
**December 12, 2005**

- Reviewed a map which illustrates the location of fences relating to the New Power Canal concerns (Swift No. 2).
- Continued review and discussion of *WHMP Standards & Guidelines* document.

- Reported on Skamania County Land Planning (Zoning, Permitting, etc.) in the upper Project area.
- Discussed SA language relating to the Cowlitz PUD Distribution Line.
- Agreed to final review of *WHMP Standards & Guidelines* document and submission of draft to TCC in January 2006 for 30-day review.

#### 5.1.2 Meeting Notes

Meeting notes are drafted for TCC meetings and conference calls. These drafts are distributed to TCC members for review and comment approximately one week after the subject meeting. After any needed corrections are made, the notes are approved by consensus of the TCC. The notes are then made part of the public record and posted on the PacifiCorp web site (<http://www.pacifiCorp.com/Article/Article49217.html>).

## 5.2 Joint Terrestrial Measures

Under Section 10.8 of the SA, PacifiCorp and Cowlitz PUD agreed to develop Wildlife Habitat Management Plans (WHMPs) for their respective lands in Consultation with the TCC. The purpose of the WHMPs is to benefit a broad range of fish, wildlife, and native plant species, including, but not limited to, large and small game, amphibians, bats, forest raptors, neo-tropical birds, and culturally significant native plants. Although the SA allows PacifiCorp and Cowlitz PUD to collaborate to produce a single WHMP, the Licensees have agreed to develop separate plans.

As the first step towards preparation of WHMPs, Section 10.8.1 of the SA directs the PacifiCorp and Cowlitz PUD to Consult with the TCC and develop specific standards and guidelines based upon on the broad objectives identified in Schedule 10.8 of the SA. PacifiCorp, Cowlitz PUD, and the TCC met to discuss the standards and guidelines for the WHMPs for the first time on March 9, 2005. At that meeting the TCC decided that the standards and guidelines should be a refinement of the broad objectives included in the SA and should consist of the following:

- Goals for the WHMPs that address what the plans are intended to achieve and form the basis for the programs needed to effectively guide wildlife habitat management; and
- Measurable objectives for each goal that define habitat management actions, schedule, and/or desired outcomes within a specific time period

The goals and objectives developed for this Standards and Guidelines document will be incorporated into the WHMPs for both utilities, as applicable. The WHMPs will include the strategies that will be used to meet each of the objectives, as well as a detailed schedule.

Nine of the goals that will be included in the WHMPs are programs that address specific habitat types, which are:

- Old-growth Coniferous Forest (SA Schedule 10.8 Sec. 2.1);
- Wetlands (SA Schedule 10.8 Sec. 2.6);
- Riparian Areas (SA Schedule 10.8 Sec. 2.12);
- Shrublands (SA Schedule 10.8 Sec. 2.3);
- Farmland/Old Field/Meadow (SA Schedule 10.8 Sec. 2.4);
- Orchards (SA Schedule 10.8 Sec. 2.7);
- Transmission Line Rights-of Way (ROW) (SA Schedule 10.8 Sec. 2.7);
- Unique Areas (SA Schedule 10.8 Sec. 2.10; Oaks); and
- Forestlands (SA Schedule 10.8 Sec. 2.9).

The SA also included objectives for snags and coarse woody debris (SA Schedule 10.8 Sec. 2.2). Rather than having snags and woody debris be a stand-alone program, the TCC decided that it is more appropriate to incorporate these objectives into the habitat programs.

An additional four goals define programs that apply to all lands included in the WHMPs. These programs address the following:

- Invasive plant species (SA Schedule 10.8 Sec. 2.11);
- Raptors (SA Schedule 10.8 Sec. 2.8);
- Public access (SA Schedule 10.8 Sec. 2.13); and
- Monitoring (SA Schedule 10.8 Sec. 3.1).

For important wildlife habitat areas such as the Cougar/Panamaker, Swift Creek Arm, and Devils Backbone conservation covenants, terrestrial management objectives will include noxious plant management, road maintenance and closures or as yet undefined actions to protect bull trout habitat (SA Schedule 10.8 Sec. 2.14). The Standards and Guidelines document is expected to be finalized in spring of 2006. The utilities respective WHMPs will be completed and implemented within 6 months of the issuance of the licenses.

The SA Section 10.8.1 required that the WHMPs identify lands for which wildlife habitat is a secondary use. PacifiCorp prepared a series of maps identifying those areas and reviewed them with the TCC. PacifiCorp used a similar set of maps used in the SA that also identified areas excluded from the WHMP. These final maps will be an appendix to the Standards and Guidelines document. The WHMPs will describe how these lands will be managed.

## **5.3 PacifiCorp Terrestrial Measures Implemented in 2005**

This section presents the actions taken during December 2004 through December 2005 toward PacifiCorp terrestrial requirements in the Lewis River Settlement Agreement.

A discussion of the activities associated with each of the PM&E measures is presented below by SA Article for the report period (Table 5.3-1). A description of funding amounts deposited and disbursed during 2005 is provided in Section 6.0 – Funding.



**Table 5.3-1**

Terrestrial Activity Status during the 2005 Reporting Period

SA Article	Terrestrial Activity	Status
<b>10.1</b>	<b>Yale Land Acquisition and Habitat Protection Fund</b> <ul style="list-style-type: none"> <li>• Seek and acquire Interests in Land to benefit wildlife</li> </ul>	The TCC agreed to decision criteria that would be used to guide and reach consensus in evaluating land parcels for purchase. Consideration of properties is ongoing.
<b>10.1.1</b>	<b>Funding Amount, Timing, and Schedule of Funding</b> <ul style="list-style-type: none"> <li>• Make \$1,500,000 available for purchasing Interests in Land</li> </ul>	PacifiCorp made \$1,500,000 available for wildlife land or easement purchases. Additional monies available in 2006. To date, no land has been selected for purchase.
<b>10.1.2</b>	<b>Matching Funds</b> <ul style="list-style-type: none"> <li>• TCC may elect to direct Funds to match other contributions for acquisition of Interests in Land</li> </ul>	Worked with TCC & ACC for developing a proposal to acquire matching USFWS Section 6 funds.
<b>10.1.3</b>	<b>Use of Funds Beyond the Vicinity of Yale</b> <ul style="list-style-type: none"> <li>• If suitable parcels are not available in Yale area, may use Yale Fund in other Lewis areas</li> </ul>	Discussed and reached agreement with TCC for temporarily using Yale funds as necessary for opportunities in the Swift area.
<b>10.2</b>	<b>Swift No. 1 and Swift No. 2 Land Acquisition and Habitat Protection Fund</b> <ul style="list-style-type: none"> <li>• Seek and acquire Interests in Land to benefit wildlife</li> </ul>	Discussed land acquisition and Conservation easement opportunities in the Swift area.
<b>10.2.2</b>	<b>Swift No. 1 and Swift No. 2 Land Acquisition and Habitat Protection Fund - Matching Funds</b> <ul style="list-style-type: none"> <li>• TCC may elect to direct Funds to match other contributions for acquisition of Interests in Land</li> </ul>	Worked with TCC & ACC for developing a proposal to acquire matching USFWS Section 6 funds.
<b>10.5</b>	<b>Management of Funds</b> <ul style="list-style-type: none"> <li>• Funds provided are to be held in a tracking account and shall accrue interests until use</li> </ul>	Tracking account has been established (see Section 7 of this report).
<b>10.8</b>	<b>Wildlife Habitat Management Plans</b> <ul style="list-style-type: none"> <li>• Licensees, in consultation with TCC, shall develop WHMPs for Project lands</li> </ul>	<ul style="list-style-type: none"> <li>• TCC consulted and worked on preparing the WHMP Standards &amp; Guidelines document; expected to be completed in March 2006.</li> <li>• Secondary Use lands identified and completed (WHMP Exhibit B)</li> <li>• 16 meetings over fifteen months.</li> <li>• Continued implementation of Merwin WHMP per Article 48.</li> </ul>
<b>10.8.5</b>	<b>WHMP Lands</b> <ul style="list-style-type: none"> <li>• Update Exhibits to reflect lands owned and controlled by PacifiCorp and Cowlitz PUD</li> </ul>	WHMP Exhibit B prepared to identify lands under WHMP and quantify acres.

#### 5.3.1 SA Section 10.1 Yale Land Acquisition and Habitat Protection Fund

Acquisition of Interests in Land is one of the primary purposes of the TCC and the ability to reach consensus is critical in making decisions to acquire lands. Criteria identified in the SA provide the primary drivers in selecting parcels for acquisition. In the Spring of 2005, the TCC developed the document, *Land Acquisition Decision Making Process* (Appendix C) to ensure that properties under consideration and ultimately selected are consistent with the goals of the TCC. Use of the document will also assist recording a decision-making process.

PacifiCorp, ACC and TCC Coordinators met with a limited number of other members of the TCC and ACC to discuss the Pine Creek tributary of the Lewis River and bull trout habitat protection. This sub-committee reported back to the rest of the ACC and TCC members regarding an opportunity to acquire matching funds (USFWS Section 6 Grants) to be used with TCC funds for acquisition of lands that would benefit both fish and wildlife resources. A severely limited time frame prevented the groups from being able to finalize a specific proposal and get agreement from land owners. Nevertheless, the efforts of the ACC and TCC exemplified the willingness to work together but identified further work necessary (expansion of conservation easement criteria) to ensure timely responses to opportunities.

Because of confidentiality in acquiring lands, specific discussion is not included in this annual report other than to indicate that several opportunities were identified in 2005 and continue to be discussed.

#### 5.3.2 SA Section 10.2 Swift No. 1 and Swift No. 2 Land Acquisition and Habitat Protection Fund

Implementation scheduled for License Year 1

#### 5.3.3 SA Section 10.3 Lewis River Land Acquisition and Habitat Protection Fund

Implementation scheduled for License Year 4

#### 5.3.4 SA Section 10.4 Transaction Costs

No transactions costs were incurred in 2005 as no Interests in Lands were acquired using the Yale Fund.

#### 5.3.5 SA Section 10.5 Management of Funds

PacifiCorp made Yale Land funds (\$1,500,000) available in 2005 per the SA. A Tracking Account has been established and is inclusive of accrued interest pending any transactions (see Section 6.0).

#### 5.3.6 SA Section 10.6 Completed Implementation Advanced Purchases

As identified in the Settlement Agreement (10.6.2), PacifiCorp acquired 770 acres (in 2000) of wildlife habitat near Cougar and Panamaker Creeks and established a 213 acre conservation covenant on those lands for the protection of bull trout. Routine maintenance of culverts, road closures and noxious weeds continued in 2005. PacifiCorp identified trespass by ATV's on trails that had previously been closed in the conservation area. A boulder

barrier was reestablished at the site to further prevent ATV access along the transmission corridor and across Cougar Creek. PacifiCorp additionally met with a representative of the WDFW law enforcement and the Columbian Newspaper to use this opportunity to publish information on the sensitivity of fish and wildlife resources and the company's policy for restricting off-road vehicles on its lands.

**5.3.7 SA Section 10.7 Conservation Easements**

See section 5.3.1 above.

**5.3.8 SA Section 10.8 Wildlife Habitat Management Plans**

See section 5.2 Joint Terrestrial Measures

## **5.4 PacifiCorp Terrestrial 2006 Annual Plan**

This section presents PacifiCorp's Terrestrial Resources Annual plan which identifies planned 2006 activities as organized by the SA measures.

**5.4.1 SA Section 10.1 Yale Land Acquisition and Habitat Protection Fund**

PacifiCorp will continue to coordinate with the TCC regarding the acquisition of Interests in Land. PacifiCorp will contribute an additional \$1 million to the Yale Fund.

**5.4.2 SA Section 10.2 Swift No. 1 and Swift No. 2 Land Acquisition and Habitat Protection Fund**

The new Swift FERC licenses are expected in July, 2006. The first installment of payment to the Fund is to be completed within 9 months of license issuance.

**5.4.3 SA Section 10.3 Lewis River Land Acquisition and Habitat Protection Fund**

Initial contributions to the Fund shall be completed by six months after the fourth year of the new FERC license for the Yale and Swift No. 1 Projects.

**5.4.4 SA Section 10.4 Transaction Costs**

Any transaction costs incurred in 2006 will be identified and appropriately paid per Fund or by PacifiCorp per SA language.

**5.4.5 SA Section 10.5 Management of Funds**

Funds provided by PacifiCorp will be managed in a tracking account and in accordance with SA language (see Section 6). Contribution amounts, interest gained, and fund withdrawals will be identified in Annual Report.

**5.4.6 SA Section 10.6 Completed Implementation Advanced Purchases**

PacifiCorp will continue to manage the Cougar Creek Conservation Covenant lands and the company lands on the Swift Creek Arm for the long-term benefit of fish, wildlife, and native plants. These lands will be managed under the new license WHMP as described in SA 10.8.

#### 5.4.7 SA Section 10.7 Conservation Easements

Guidelines for the selection and acquisition of conservation easements will be considered in the acquisition of Interests in Lands to be purchased with Funds described in SA 10.1 through 10.3.

#### 5.4.8 SA Section 10.8 Wildlife Habitat Management Plans

- PacifiCorp will prepare and submit an Annual Report for the Merwin Wildlife Habitat Management Plan (MWHMP) that will report on 2004 and 2005 together and a 2006 Annual Plan describing MWHMP activities for the year.
- PacifiCorp will develop Draft Wildlife Habitat Management Plans for review with the TCC and finalize within 6 months of the issuance of the Swift No. 1, Yale, and Merwin FERC licenses. At this time it is assumed the licenses will be issued in July 2006, triggering implementation of the WHMP by January 2007.
- PacifiCorp will develop a schedule for conducting habitat assessments in old-growth stands, mature forest stands, shrublands, meadows, transmission ROW's and riparian mixed stands as described in their respective objectives within the standards and guidelines document (part of WHMP).
- PacifiCorp will make available \$27 per acre of WHMP lands and \$13.50 per acre for other interests in land within 6 months of the issuance of the Licenses for implementation of the WHMP.
- PacifiCorp will develop habitat assessment criteria (with TCC review) for old-growth, mature forests, shrublands, meadows, transmission ROW's or riparian mixed stands.
- PacifiCorp will begin habitat assessments for selected vegetation types (as above) based on previously developed 5-year schedules and criteria (part of WHMP).
- PacifiCorp will identify infestations of weeds and other undesirable or invasive plant species and prioritize for treatment (part of WHMP).
- PacifiCorp will conduct aerial bald eagle and osprey nesting surveys (part of WHMP).
- PacifiCorp will continue to update GIS maps and review with TCC to ensure they are current with land management activities conducted since the relicensing studies, to incorporate changes to Department of Natural Resources (DNR) water typing system, and include WDFW Priority Habitats and Species (PHS) data as necessary.

## **5.5 Cowlitz PUD Terrestrial Measures Implemented in 2005**

#### 5.5.1 SA Section 10.6 Completed Implementation: Advance Purchases [Devil's Backbone Conservation Covenant]

Cowlitz PUD managed the Devil's Backbone Conservation Covenant to benefit bull trout.

**5.5.2 SA Section 10.8.1 Development of the Wildlife Habitat Management Plan (WHMP)**

On June 10, 2005, Cowlitz PUD sent a Request for Proposal to two well qualified consultants to prepare Cowlitz PUD's WHMP and First Year Annual Plan. Cowlitz PUD hired a consultant in August 2005. Under the original schedule, the consultant was to lead a TCC site tour in the fall of 2005 to familiarize the TCC with Cowlitz PUD's WHMP lands and to provide an opportunity for the TCC to discuss and suggest management strategies based on a nearly complete *Standards and Guidelines Document*. The consultant was to incorporate the TCC's field discussion into the WHMP and provide a report to the TCC for review by the end of January 2006. However, the TCC took much longer than expected to complete the *Standards and Guidelines Document* and did not visit Cowlitz PUD's wildlife lands in 2005. As a result, the WHMP and First Year Annual Plan are not complete.

**5.5.3 SA Section 10.8.2 WHMP Fund**

Cowlitz PUD did not establish the Tracking Account in 2005 because the FERC did not issue the Swift No. 2 license in 2005.

**5.5.4 SA Section 10.8.3 Management of the Plan [Annual Plan]**

This measure covers the Annual Plan described above in Section 5.5.3 and below in Section 5.6.4.

**5.5.5 SA Section 10.8.4 Habitat Evaluation Procedures**

Implementation scheduled for Year 17 of the Swift No. 2 license.

**5.5.6 SA Section 10.8.4.2 Review of Effectiveness of WHMP**

At year 17 after Issuance of all New Licenses, PacifiCorp shall repeat the HEP for all WHMP lands of the Swift No. 2 license.

**5.5.7 SA Section 10.8.3 Cowlitz PUD 2006 Annual Plan**

This section presents Cowlitz PUD's Terrestrial Resources Annual plan, organized by the SA measures described above in Section 5.5.1 through 5.5.7.

## **5.6 Cowlitz PUD Terrestrial 2006 Annual Plan**

**5.6.1 SA Section 10.6 Cowlitz PUD Completed Implementation: Advance Purchases [Devil's Backbone Conservation Covenant]**

These lands will be managed under the WHMP.

**5.6.2 SA Section 10.8.1 Cowlitz PUD Development of the Wildlife Habitat Management Plan (WHMP)**

The WHMP will be completed and implemented within 6 months of the issuance of the Swift No. 2 license. At this time, Cowlitz PUD assumes the license will be issued in June or July 2006, triggering implementation of the WHMP by December 2006 or January 2007.

#### 5.6.3 SA Section 10.8.2 Cowlitz PUD WHMP Fund

Cowlitz PUD will make available \$27 per acre of WHMP lands within 6 months of the issuance of the Swift No. 2 license. At this time, Cowlitz PUD assumes the license will be issued in June or July 2006, triggering the first entry in the Tracking Account by December 2006 or January 2007. Once the Cowlitz PUD WHMP Tracking Account has been established, it will be included as a separate table in this Annual Report under Section 6.0.

#### 5.6.4 SA Section 10.8.3 Management of the Plan [Annual Plan]

The First Year Annual Plan will be completed and implemented within 6 months of the issuance of the Swift No. 2 license. At this time, Cowlitz PUD assumes the license will be issued in June or July 2006, triggering implementation of the First Year Annual Plan by December 2006 or January 2007.



## **6.0 FUNDING**

This section presents an accounting to date of the funding obligations for the Lewis River Settlement Agreement.

**Lewis River License Implementation**

Lewis River Aquatics Fund

Sections 7.5, 7.5.1, 7.5.3, 7.5.3.1 &amp; 7.7

Funding Start Date: 4/30/05

Release Date	Expense	Interest	Balance	Notes
<b>FY05</b>				
04/01/05			\$ 308,734.00	Contributions in 2004 dollars, adjusted for inflation.
12/31/05		\$ 13,981.00	\$ 322,714.68	
<b>Total Spent to Date:</b>		<b>\$0.00</b>		
<b>Running Total:</b>		<b>\$322,722.00</b>		

**Lewis River License Implementation**

Lewis River Yale Land Fund

Section 10.1 - 10.1.1

Funding Start Date: 4/1/05

Release Date	Expense	Interest	Balance	Notes
FY05				
4/1/05			\$ 1,574,124.00	Contributions in 2003 dollars, adjusted for inflation Interest will be added in April 2006 per Settlement Agreement
Total Spent to Date:		\$0.00		
Running Total:		\$1,574,124.00		

## **7.0 LITERATURE CITATIONS**

Cowlitz PUD. 2004. License Application for new license for Swift No. 2 Hydroelectric Project, FERC Project No. 2213.

Cowlitz PUD. 2005a. Cowlitz PUD comments. Federal Energy Regulatory Commission Draft Environmental Impact Statement Lewis River Hydroelectric Projects, Washington Swift No. 1 (Project No. 2111), Swift No. 2 (Project No. 2213), Yale (Project 2071), Merwin (Project 935). November 22, 2005.

Cowlitz PUD. 2005b. Revised Draft License Articles for Swift No. 2 (Project No. 2213). Submitted as Supplemental Comments on the Federal Energy Regulatory Commission Draft Environmental Impact Statement. Lewis River Hydroelectric Projects, Washington Swift No. 1 (Project No. 2111), Swift No. 2 (Project No. 2213), Yale (Project 2071), Merwin (Project 935). December 19, 2005.

FERC. 1999. Letter to PacifiCorp and Cowlitz PUD approving use of Alternative Licensing Procedures in accordance with the Commission's Regulations for Licensing Hydroelectric Projects. April 1, 1999.

FERC. 2005. Draft Environmental Impact Statement – Lewis River Hydroelectric Projects Washington, Swift No. 1 (Project No. 2111), Swift No. 2 (Project No. 2213), Yale (Project No. 2071), and Merwin (Project No. 935). September 2005.

LCFRB. 2005. Draft Upper North Fork Lewis Project List (Preliminary) 5/16/05.

PacifiCorp. 1999a. License Application for new license for Yale Hydroelectric Project, FERC Project No. 2071.

PacifiCorp. 2004. License Application for new license for Swift No. 1 Hydroelectric Project, FERC Project No. 2111.

PacifiCorp. 2004. License Application for new license for Merwin Hydroelectric Project, FERC Project No. 935.

PacifiCorp. 2005. Letter to FERC re: comments on Draft Environmental Impact Statement for PacifiCorp's Merwin Project (FERC No. 935), Yale Project (FERC No. 2071), and Swift No. 1 Project (FERC No. 2111), and Cowlitz PUD's Swift No. 2 Project (FERC No. 2213). November 23, 2005.

PacifiCorp. 2005. Letter to State of Washington DOE. Re: Withdrawal and re-submittal of 401 Water Quality Applications for PacifiCorp's Merwin Hydroelectric Project

- (FERC No. 935), Yale Hydroelectric Project (FERC No. 2071), and Swift No. 1 Hydroelectric Project (FERC No. 2111). December 2, 2005.
- PacifiCorp and Cowlitz PUD. 1999. Letter to FERC requesting approval to use the Alternative Licensing Process (ALP) for simultaneous and coordinated processing of Lewis River Hydroelectric projects. January 21, 1999.
- PacifiCorp and Cowlitz PUD. 2005a. Biological Evaluation of USFWS Listed, Proposed, and Candidate species As Related to PacifiCorp and Cowlitz PUD's Lewis River Hydroelectric Projects. January 15, 2005.
- PacifiCorp and Cowlitz PUD. 2005b. Biological Evaluation of Listed, Proposed, and Candidate Salmon and Steelhead Species As Related to PacifiCorp and Cowlitz PUD's Lewis River Hydroelectric Projects. January 15, 2005.
- PacifiCorp and Cowlitz PUD, et al. 2004. Lewis River Hydroelectric Projects Settlement Agreement. November 30, 2004.
- U.S. Department of Agriculture – Forest Service. 2005a. Preliminary Terms and Conditions for Lewis River Hydroelectric Projects – FERC Numbers 2071, 2111, 935 and 2213. February 3, 2005.
- U.S. Department of Agriculture – Forest Service. 2005b. Draft Lewis River Aquatic Restoration Plan. Mt. St. Helens National Volcanic Monument.
- U.S. Fish and Wildlife Service. 2004. Nisqually National Wildlife Refuge Final Comprehensive Conservation Plan and Environmental Impact Statement. USFW, Region 1, Portland, OR.

## **Appendix A**

### **ACC and TCC Members and Alternates**

**Table A-1**  
**ACC Members and Alternates**

<b>ACC Member</b>	<b>Organization</b>	<b>Alternate</b>
Tammy Mackey	American Rivers	Brett Swift
No representative at this time	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
Janne Kaje	Cowlitz Indian Tribe	Shannon Wills
No representative at this time	Cowlitz-Skamania Fire District No. 7	To be named
Jim Malinowski	Fish First	To be named
John Clapp	Lewis River Citizens at-large	To be named
Mariah Stoll-Smith Reese	Lewis River Community Council	To be named
Jeff Breckel	Lower Columbia River Fish Recovery	Steve Manlow
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
Frank Shrier	PacifiCorp	Erik Lesko
Diana M. Gritten-MacDonald	PUD of Cowlitz County	To be named
No representative at this time	Rocky Mountain Elk Foundation	To be named
Paul Pearce	Skamania County	To be named
Brett Swift	The Native Fish Society	To be named
Tammy Mackey	Trout Unlimited	Brett Swift
No representative at this time	US Bureau of Land Mgmt	To be named
LouEllyn Jones	US Fish & Wildlife	To be named
Karen Thompson	USDA Forest Service	Adam Haspiel
Curt Leigh	Washington Dept of Fish & Wildlife	John Weinheimer
No representative at this time	Washington Interagency Committee	To be named
No representative at this time	Woodland Chamber of Commerce	To be named
George Lee	Yakama Nation	To be named

**Table A-2**  
**TCC Members and Alternates**

<b>TCC Member</b>	<b>Organization</b>	<b>Alternate</b>
No representative at this time	American Rivers	To be named
No representative at this time	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
Taylor Aalvik	Cowlitz Indian Tribe	Shannon Wills
No representative at this time	Cowlitz-Skamania Fire District No. 7	To be named
No representative at this time	Fish First	To be named
John Clapp	Lewis River Citizens at-large	To be named
Mariah Stoll-Smith Reese	Lewis River Community Council	To be named
No representative at this time	Lower Columbia River Fish Recovery	To be named
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
Kirk Naylor	PacifiCorp	To be named
Diana M. Gritten-MacDonald	PUD of Cowlitz County	To be named
Bob Nelson	Rocky Mountain Elk Foundation	Tom Macy
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 Mgmt	To be named
LouEllyn Jones	US Fish & Wildlife	To be named
Mitch Wainwright	USDA Forest Service	Karen Thompson
Curt Leigh	Washington Dept of Fish & Wildlife	John Weinheimer and Brock Applegate
No representative at this time	Washington Interagency Committee	To be named
No representative at this time	Woodland Chamber of Commerce	To be named
Clifford Casseseka	Yakama Nation	Joanna Meninick

## **Appendix B**

### **Aquatic Coordination Committee and Terrestrial Coordination Committee Ground Rules**

## **Terrestrial and Aquatic Coordination Committees FINAL Structure and Ground Rules**

### **Introduction**

This document has been established to facilitate the purposes of the Lewis River Terrestrial Coordination Committee (TCC) and the Lewis River Aquatics Committee (ACC) collectively known as “Coordination Committees”. This document does not supersede language in the Lewis River Settlement Agreement or any future Federal Energy Regulatory Commission (Commission) licenses 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 have designated Coordinators for the Coordination Committees and alternative representatives (see Appendix A for a complete list of ACC and TCC 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 on implementation and monitoring of the terrestrial and aquatic PM&E Measures, including plans;
- c. Consults with the Licensees on their respective reports prepared under

the Agreement and New 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 of, membership of, 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, decisions regarding implementation of the terrestrial and/or aquatic PM&E Measures;

b. The Coordination Committees shall strive to operate by Consensus. 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 New 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, based on project specific 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 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, 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 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 Cowlitz 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 New Licenses, when requested by the Services 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. 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.** Designated representatives (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 committee discussions relating to, and to provide input and advice on, decisions regarding implementation of the terrestrial or aquatic PM&E Measures in the Agreement or new 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 notification to the Licensees' Coordinators this includes electronic mail notification. It is expected that TCC Representatives will want to meet in a confidential manner specific to discussion of 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 membership at this time.

**Licensees' Coordinators.** The Licensees' Coordinators (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.

**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.

**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 TCC and ACC 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 TCC may schedule meetings that are not open to non-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, Members of the TCC and ACC shall be given a minimum of 30 days' notice prior to any meeting, unless otherwise agreed to by the Representatives. This does not preclude the 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 the TCC or ACC meetings or for subgroups formed at the request of any two Representatives, which 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 7 days following the committee meeting. Representatives may provide editorial comments directly to the Coordinators by email, but 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 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 members for review prior to the following regularly scheduled meeting.

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

**Attendance.** Representatives will make a reasonable effort to attend meetings and inform the Coordinators in advance of any absence at a TCC or ACC 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 reasonable 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 whatever written material that may be useful to the Representatives and allow for a 7-day 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 30 days unless otherwise agreed to by the TCC or ACC members or the period as specified by the Settlement Agreement or New Licenses, to review reports, documents, and draft deliverables to be filed with the Commission, so that members can meaningfully participate in the collaborative process. In some instances, additional time will be provided to enable the Representatives' internal review. 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 live with a proposed solution.

**Decision Making.** The TCC and ACC will make decisions by Consensus, as defined in the Agreement. 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.
3. 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, deficiencies. . . in the other's point of view.
4. 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. Vote again. Those voting in the **minority** again get the floor.
6. Invite them again to say whatever they want 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 new Licenses requires "Consultation" or to "Consult" the Agreement definition previously identified will be applied unless the new Licenses have a differing definition.

To account for the absence of a Representative during a decision making process, decisions will be considered "informal" for a period of 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 7-day period, their silence will be considered as no objection to the decision.

**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 reasonable effort to move forward once decisions have been made and to only request that the group revisit decisions in limited situations.

**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 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 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 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

### Terrestrial Coordination Committee Membership

<b>Party</b>	<b>Designated Representative</b>	<b>Alternate Representative</b>
American Rivers	No representative at this time	
City of Woodland	No representative at this time	
Clark County	No representative at this time	
Cowlitz County	No representative at this time	
City of Woodland	No representative at this time	
Cowlitz Indian Tribe	Taylor Aalvik	Mike Iyall
Cowlitz-Skamania Fire District No. 7	No representative at this time	
Fish First	Jim Malinowski	
Lewis River Citizens at-large	John Clapp	
Lewis River Community Council	Mariah Stoll-Smith Reese	
Lower Columbia River Fish Recovery	No representative at this time	
National Marine Fisheries Service	Michelle Day	
National Park Service	No representative at this time	
North County Emergency Medical	No representative at this time	
PacifiCorp	Monte Garrett	Kirk Naylor
PUD of Cowlitz County	Diana M. Gritten-MacDonald	
Rocky Mountain Elk Foundation	Bob Nelson	
Skamania County	No representative at this time	
The Native Fish Society	No representative at this time	
Trout Unlimited	No representative at this time	
US Bureau of Land Mgmt	No representative at this time	
US Fish & Wildlife	Gene Stagner	
USDA Forest Service	Ruth Tracy	Mitch Wainwright
Washington Dept of Fish & Wildlife	Curt Leigh	John Weinheimer Brock Applegate
Washington Interagency Committee	No representative at this time	
Woodland Chamber of Commerce	No representative at this time	
Yakama Nation	Clifford Casseseka	

Diana M. Gritten-MacDonald (PUD of Cowlitz County) and Monte Garrett (PacifiCorp) are the Licensees' Coordinators for the TCC.

Appendix B  
Aquatic Coordination Committee Membership

<b>Party</b>	<b>Designated Representative</b>	<b>Alternate Representative</b>
American Rivers	Brett Swift	
City of Woodland	No representative at this time	
Clark County	No representative at this time	
Cowlitz County	No representative at this time	
City of Woodland	No representative at this time	
Cowlitz Indian Tribe	Janne Kaje	Mike Iyall & Taylor Aalvik
Cowlitz-Skamania Fire District No. 7	No representative at this time	
Fish First	Jim Malinowski	
Lewis River Citizens at-large	John Clapp	
Lewis River Community Council	Mariah Stoll-Smith Reese	
Lower Columbia River Fish Recovery	Jeff Breckel	
National Marine Fisheries Service	Michelle Day	
National Park Service	No representative at this time	
North County Emergency Medical	No representative at this time	
PacifiCorp	Frank Shrier	
PUD of Cowlitz County	Diana M. Gritten-MacDonald	
Rocky Mountain Elk Foundation	No representative at this time	
Skamania County	No representative at this time	
The Native Fish Society	Brett Swift	
Trout Unlimited	Brett Swift	
US Bureau of Land Mgmt	No representative at this time	
US Fish & Wildlife	Gene Stagner	
USDA Forest Service	Ruth Tracy	
Washington Dept of Fish & Wildlife	Curt Leigh	Craig Burley John Weinheimer
Washington Interagency Committee	No representative at this time	
Woodland Chamber of Commerce	No representative at this time	
Yakama Nation	George Lee	

Diana M. Gritten-MacDonald (PUD of Cowlitz County) and Frank Shrier (PacifiCorp) are the Licensees' Coordinators for the ACC.

## 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 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 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 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 Licensees 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 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 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 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.

## **Appendix C**

### **Land Acquisition Decision-Making Process**

## **Land Acquisition Decision-making Process**

### **FINAL VERSION**

Prepared by PacifiCorp

July 2005

Acquisition of Interests in Land is one of the primary purposes of the Terrestrial Coordination Committee (TCC), and the ability to reach consensus is critical in making decisions to acquire lands. The Lewis River Settlement Agreement identifies three funds for the purpose of land acquisition: The Yale Fund, the Swift Fund, and the Lewis River Fund.

The purpose of the Yale Fund is to acquire Interests in Land to protect wildlife habitat in the vicinity of the Yale Project. This fund provides \$1.5 million by the first day of the first fiscal year following the Effective Date of the Agreement, and \$1.0 million the following year, for a total of \$2.5 million. Criteria upon which to base acquisitions were described in the Settlement Agreement:

- a. Provide movement corridors for elk through the Yale Project area between high- and low-elevation winter range;*
- b. Protect approximately 660 acres of low-elevation winter range in the vicinity of the Yale Project nearby or adjacent to PacifiCorp-owned lands;*
- c. Provide approximately 100 acres of land on which forage for elk may be maintained or cultivated in the vicinity of the Yale Project.*

The purpose of the Swift Fund is to acquire Interests in Land to protect wildlife habitat on lands within five miles of the Swift No. 1 and Swift No. 2 Project boundaries or lands managed by the Licensees associated with those projects. This fund provides \$3.22 million within 9 months after Issuance of the New License, \$780,000 within 18 months after Issuance of the new License, and \$500,000 six months after each of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> anniversaries of the Issuance of the New License, for a total of \$7.5 million.

The purpose of the Lewis River Fund is to acquire or enhance wildlife habitat anywhere in the Lewis River basin in the vicinity of the projects to meet objectives of the Wildlife Habitat Management Plan. This fund provides \$1.1 million by six months after the fourth anniversary of the Issuance of the New Licenses for the Swift No. 1 and Yale Projects, and \$1.1 million by six months after the sixth anniversary of the Issuance of those New Licenses, for a total of \$2.2 million. The Lewis River Fund also provides up to \$500,000 of additional matching funds in any consecutive 10-year period during the term of the New Licenses, beginning 18 months after Issuance of the New Licenses.

Criteria identified in the Settlement Agreement will be the primary drivers in selecting appropriate parcels for acquisition, in conjunction with whether an acquisition is cost-

effective. Other considerations described below will promote the timely review and completion of land acquisition, promote the cost-effective use of the Funds, ensure obtaining properties consistent with the goals of the TCC, and provide a record of the decision-making process.

## **Considerations**

- **CONSISTENCY WITH GOALS AND OBJECTIVES OF WHMP**  
Parcels which exhibit characteristics that are consistent with the objectives of the WHMP, or may require less management to provide that consistency, are preferable. Look for lands that complement existing WHMP programs.
- **PROXIMITY TO EXISTING COMPANY-OWNED LANDS**  
Acquisition of lands that are contiguous with land managed under the WHMP, or other lands managed under similar objectives to avoid isolated parcels and improve management capabilities (e.g., allows for buffers, better access management, more options for management). Managing larger (contiguous) blocks of lands is cost effective and may ensure better protection of resources.
- **ACCESS / ROADS**  
Parcels with existing roads reduce road development costs if access will be required for managing under the WHMP. Stable roads with adequate culverts and minimal potential for erosion are preferable. Conservation easements should include road closures/obliterations consistent with habitat objectives. Existing roads are unnecessary if active management or lack of management/access is not required to improve wildlife habitat/protection. Reduced road densities and human activity can increase the quality of habitat for elk and many other species.
- **PROXIMITY TO OTHER STATE, FEDERAL AND CONSERVATION LANDS**  
Seek opportunities to coordinate management efforts by providing connectivity and adjacency to state, federal, and other conservation lands, looking for wildlife travel corridors that connect undeveloped habitats or increase the size of “habitat patches.” Evaluate desirable habitat characteristics and opportunities as not all state and federal lands are created equal. This improves cost efficiencies in management.
- **CLEARCUTS VS. MATURE TIMBER LANDS**  
Evaluate site potential and consider inherent management costs (clearcuts may represent least-cost lands but may require additional costs of pre-commercial thinning). Evaluate ability to cost-effectively provide forage and cover for big game and habitat for all other species. Mature and old-growth forest stands supports many state and federally listed threatened, rare, and endangered species. The WDFW has listed old-growth and mature forests as a priority habitat with special recommendations.

- **ASPECT \ SLOPE \ ELEVATION**

Southerly aspects provide better winter range for big game species and often require less control of unwanted vegetation that may compete with desired vegetation types. Slopes in excess of 35-40% have greater erosion potential and may require additional costs for access management, or logging systems. Elevations less than 1000' are considered to provide primary winter range habitat for big game. In Southwest Washington, elevations of 2000 feet or higher can provide secondary winter range on southerly exposures due to less snow accumulation.

- **PHS (PRIORITY HABITATS AND SPECIES) HABITATS**

Identify and protect PHS habitats (riparian, wetlands, old growth, caves, snags, talus) and PHS species. Identify and implement restoration/enhancement projects for PHS habitats (e.g., streamside restoration, large organic debris in streams, buffers or screens to ROW). Consider the quality and existing level of protection for stream and riparian habitats, and look for opportunities to acquire or manage rare habitats and areas with rare species in the watershed. Consider objectives based on HEP models developed in relicensing and on updated PHS species maps.

- **UNDEVELOPED LANDS IDENTIFIED BY COUNTY FOR GROWTH**

Identify lands threatened by degradation or development in specific areas, especially along roads and riparian zones between Yale and Merwin that have been tagged as high priority by stakeholders. Evaluate the immediacy of the threat. Refer to Integrated Land Management Plan document and county development maps in addition to lands identified by WDFW and other stakeholders for potential land acquisition.

- **OTHER FACTORS**

1. Sites where the greatest number of criteria or objectives are met.
2. Trade opportunities.
3. Protection of cultural resources.
4. Presence of endangered or other listed species habitats.
5. Opportunities for education and research
6. Public use potential – non-motorized low impact dispersed recreation
7. Community support

**Appendix D**  
**Section 14 of the Settlement Agreement**

## **SECTION 14: COORDINATION AND DECISION MAKING**

14.1 Coordination and Decision Making. The provisions of this Section 14 describe the processes for coordination and decision making among the Parties for the implementation of the terrestrial and aquatic PM&E Measures provided for in this Agreement. As provided for in Section 14.2 below, the Licensees shall convene a Terrestrial Coordination Committee (“TCC”) to coordinate implementation of the terrestrial PM&E Measures described in Section 10 (including any exhibits, schedules, and appendices related to Section 10), and shall accomplish the purposes set forth in Section 14.1.1 below. The Licensees shall convene an Aquatics Coordination Committee (“ACC”) to coordinate implementation of the aquatics PM&E Measures described in Sections 3 through 9 (including any exhibits, schedules, and appendices related to those Sections), referred to below as terrestrial and aquatic PM&E Measures.

14.1.1 Purposes of the TCC. The TCC is intended to accomplish the purposes set forth below:

- a. Provide a forum for coordination between the Licensees and the other Parties on terrestrial resources PM&E Measure implementation.
- b. Oversee the development by the Licensees of an objective-oriented WHMP prior to the Issuance of the New Licenses.
- c. Monitor implementation of that WHMP.
- d. Oversee the HEP study in the 17<sup>th</sup> year after Issuance of the New Licenses, and modify the WHMP if necessary based on the HEP’s results.
- e. Oversee and make decisions regarding the: (1) Yale Fund; (2) the Swift Fund; and (3) the Lewis River Fund.
- f. Oversee the annual budget for the WHMP.

14.2 Coordination Committees. Within 60 days after the Effective Date, PacifiCorp and Cowlitz PUD shall convene the TCC and the ACC.

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.

14.2.2 TCC and ACC Membership. Within 30 days after the Effective Date, or at any time thereafter with 30 days' notice to the Licensees, each Party, at its own discretion and cost, may designate one representative for membership on the TCC and may designate one representative for membership on the ACC and may designate one or more alternates. The Party shall make its designation(s) by notice to the Parties in accordance with Section 16.6. A Party not participating on the TCC, the ACC, or both may request, by notice to the Parties in accordance with Section 16.6, to be placed on a contact list to receive notices of committee meetings and releases of information, including annual reports and other interim reports that the TCC or the ACC may issue.

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 Licensees 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 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.