

**FINAL Meeting Notes**  
**Lewis River License Implementation**  
**Terrestrial Coordination Committee (TCC) Meeting**  
**November 12, 2008**  
**Ariel, WA**

**TCC Participants Present: (12)**

Kendel Emmerson, PacifiCorp Energy  
David Geroux, WDFW  
Diana Gritten-MacDonald, Cowlitz PUD  
Eric Holman, WDFW  
LouEllyn Jones, USFWS  
Kimberly McCune, PacifiCorp Energy  
Todd Olson, PacifiCorp Energy  
Kirk Naylor, PacifiCorp Energy  
Bob Nelson, RMEF (via teleconference)  
Nathan Reynolds, Cowlitz Indian Tribe

Jeff Boyce, Meridian Environmental  
Eileen McClanahan, Meridian Environmental

**Calendar:**

December 10, 2008	TCC Meeting	Lacey, WA
December 11, 2008	ACC Meeting	Merwin Hydro Facility

<b>Assignments from November 12th Meeting:</b>	<b>Status</b>
McCune: Schedule a 4 hour block in the first week of December and email the TCC with the conference call details.	<b>Complete – 11/12/08</b>
McCune: Invite Cherie Kearney (Columbia Land Trust) to the December TCC meeting and ask that she provide a lands update.	<b>Complete – 11/14/08</b>
Emmerson/Naylor: Add a statement in the Forestlands Chapter that speaks to how money is allocated for forestry	<b>Complete – 12/10/08</b>

<b>Assignments from October 8th Meeting:</b>	<b>Status</b>
Emmerson: Add language in the Public Access Management Chapter regarding annual maintenance for those areas discovered as motorized vehicle use trails, closure of those areas and addition to the inventory.	<b>Complete – 11/12/08</b>
Emmerson: Add a definition of “trails” to the Public Access Management Chapter to address the concerns of Jim Eychaner, (Washington Recreation and Conservation Office) in accordance with his email dated October 1, 2008	<b>Complete – 11/12/08</b>

<b>Assignments from September 12, 2007 Meeting:</b>	<b>Status</b>
Naylor/Emmerson: Incorporate the following text into the Forest Management chapter of the WHMP, <i>“Prior to any harvest, the areas will be evaluated (ground truth) to determine whether or not the area qualifies as</i>	<b>Complete – 11/12/08</b>

<i>NSO habitat."</i>	
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<b>Parking lot items from June 11, 2008 Meeting:</b>	<b>Status</b>
Review and discussion of occupancy and productivity of Wood Duck Nest Box and Kestrel Nest Box Program. Should this program be discontinued?	

<b>Parking lot items from February 10, 2006 Meeting:</b>	<b>Status</b>
PacifiCorp Wildlife Habitat Management Plan (WHMP) Budget (annual)	
Conservation Agreement – what is wanted?	<b>Ongoing – 4/28/06</b>

## **Review of Agenda and Finalize Meeting Notes**

Kirk Naylor (PacifiCorp Energy) called the meeting to order at 9:05am. Naylor conducted a review of the agenda for the day and asked if the TCC had any additions to the agenda. LouEllyn Jones (USFWS) requested that the WDFW-RMEF-USFWS memo agenda item be discussed earlier than 12:30pm, if possible. The TCC attendees agreed to the requested change.

Naylor reviewed the TCC Draft October 8, 2008 meeting notes and the meeting assignments with the TCC attendees and asked for any comments and/or additional changes. No additional changes were requested, other than those submitted via email by WDFW. The meeting notes were approved with WDFW changes at 9:15am.

## **Discussion of WDFW-RMEF-USFWS memo on Section 10.8.2.3 of the Settlement Agreement regarding timber management costs**

David Geroux, WDFW communicated to the TCC attendees that he is waiting for a response from Cowlitz PUD to an email dated September 26, 2008 ([Attachment A](#)).

Geroux expressed that WDFW's interest is conducting mitigation on this land to enhance habitat and ensure it's done in a proper manner. Diana Gritten-MacDonald (Cowlitz PUD) agreed that they share the same interests.

The primary topic of this discussion is the parties to the email and Cowlitz PUD's disagreement as to what the Settlement Agreement (SA) language says relating to Wildlife Habitat Management Plan (WHMP) timber management costs. WDFW at first stated they would prefer to resolve this before the Cowlitz PUD WHMP is approved, however, by the end of the discussion; WDFW's final position was unclear.

Gritten-MacDonald stated that the SA is very clear regarding "any funds derived" from managing timber under the WHMP. She further stated that Cowlitz PUD will not renegotiate the Settlement Agreement.

General discussion took place regarding the Settlement Agreement Alternative Dispute Resolution (ADR) procedures, time frame of these procedures, informal vs. formal meetings, enforcement of the Agreement.

Gritten-MacDonald stated that the only subject for discussion is what is contained within the four corners of the Settlement Agreement and that agreement does not require Cowlitz PUD to manage their WHMP lands the way PacifiCorp has managed its lands in the past under the Merwin Plan. Nathan Reynolds (Cowlitz Indian Tribe) suggested that after the Cowlitz PUD submits a written response to the September 26, 2008 email; the PUD, WDFW, RMEF and USFWS could move to dispute resolution in accordance with the Lewis River Settlement Agreement, 15.10.2, ADR Procedures.

Gritten-MacDonald stated that the Cowlitz PUD WHMP could be approved as a separate matter. Gritten-MacDonald recommended that WDFW submit their WHMP comments without reference to the budget because the TCC asked for the budget to be removed from the WHMP

Jones suggested bringing in a facilitator since the harshness of tone between interested parties does not support an element of trust.

Gritten-MacDonald stated that the Settlement Agreement language is very clear and that Cowlitz PUD would not renegotiate the Settlement Agreement.

Todd Olson (PacifiCorp Energy) expressed that a facilitator is an excellent idea, and all involved parties should consider what can resolve this and to get beyond this point.

Geroux requested a written response from Gritten-MacDonald and requested their legal counsel complete their due diligence in a timely manner. The TCC attendees agreed to curtail this discussion at this point until such time the interested parties involved select a facilitator, if necessary, and move forward with informal discussions.

Gritten-MacDonald communicated that once a memo is released by Cowlitz PUD, the parties will review it and decide whether to collectively secure a facilitator.

**AGREED: The interested parties agreed as follows: WDFW, USFW, RMEF and Cowlitz PUD will collectively work toward resolving the matter and work toward a solution in a timely fashion.**

<Break 10:05am>

<Reconvene 10:15am>

## **WHMP Chapter Review & Discussion**

Naylor suggested a placeholder meeting date in addition to the December TCC meeting (12/10/08) to resolve any issues remaining. The TCC attendees suggested a conference call in early December for WHMP chapter review. Kimberly McCune (PacifiCorp Energy) will schedule a 4 hour block in the first week of December and email the TCC with the details.

PacifiCorp's WHMP 30-day review version was sent electronically to the TCC on November 6, 2008 and **comments are due on or before December 8, 2008.**

## **Monitoring Chapter Review**

No comments or requested changes were submitted for the Monitoring Chapter. Comments were due on or before October 20, 2008.

## **Introduction Chapter Review**

<http://www.pacificorp.com/Article/Article84283.html>

No comments or requested changes have been submitted for the Introduction Chapter at this time. Comments are **due on or before November 21, 2008**.

## **Management Area Chapter Review**

No comments or requested changes have been submitted for Management Area Chapter at this time. Comments are **due on or before November 21, 2008**.

## **Administration Chapter Review**

<http://www.pacificorp.com/Article/Article84283.html>

TCC attendees requested the addition of details about inserting the annual budget; land acquisition funding and annual report. No other comments or requested changes have been submitted for the Administration Chapter at this time. Comments are **due on or before November 21, 2008**.

## **Forestlands Chapter Review**

<http://www.pacificorp.com/Article/Article84283.html>

Naylor provided a cursory review of the Forestlands Chapter to include Appendix 12-2, Management Unit Summaries, inspections, Appendix 12-3 Timber Harvest Area Survey Results, forestland best management practices, timber harvest options to include area scheduling, area design, retention trees, debris management, forage seeding & tree seedling planting and pre-commercial pruning & thinning.

The TCC attendees requested the addition of a statement that speaks to how money is allocated for forestry. Additional edits and comments were provided of which PacificCorp will incorporate into the final draft.

Naylor also reviewed forest road general maintenance practices, forest land harvest planning harvest scheduling, forage seeding planting and maintenance. Naylor encouraged the TCC attendees review the forest land harvest planning for Management Units 1 – 32. **Comments are due on or before November 21, 2008**.

## **Cowlitz PUD Final Draft WHMP 30-day Review and Annual Plan Discussion**

The Cowlitz PUD WHMP 30-day review version was sent electronically to the TCC on October 24, 2008 and **comments are due on or before November 23, 2008**.

Gritten-MacDonald provided a cursory review of the Devils Backbone Management Unit. Geroux expressed concern about text not referencing that the TCC will approve changes but rather the authority is given to the Cowlitz PUD. Geroux requested modifications to the text which will return the TCC decision making authority to the TCC. Gritten-MacDonald agreed. Gritten-

MacDonald also informed the TCC attendees that minor edits have been made in the Wetlands Chapter to incorporate TCC requested edits.

Gritten-MacDonald informed the TCC attendees that the following chapters have been added since the last draft:

- |              |                   |              |
|--------------|-------------------|--------------|
| - Forestry   | - Unique Areas    | - Monitoring |
| - Old Growth | - Invasive Plants |              |
| - Riparian   | - Public Access   |              |

General discussion took place regarding creating elk forage, commercial thinning and adding text to address maintaining habitat structure diversity rather than just old growth habitat.

<Lunch 12:10pm>

<Reconvene 12:35pm>

### **License Update**

Olson communicated to the TCC attendees that PacifiCorp received a response back from the Federal Energy Regulatory Commission (FERC) relating to its request for clarification and rehearing. PacifiCorp has determined that it will accept the FERCs order without requesting further changes.

In addition, the FERC has requested the Utilities travel to Washington, DC to meet with appropriate staff who will oversee the implementation of the Lewis River project. Both Utilities will meet with FERC on December 16, 2008; also if Utilities have questions about license articles this will be the time to ask the FERC.

### **New Topics/Issues**

Naylor provided an update of interests in certain lands, however, this discussion is considered confidential and proprietary and not for public viewing. The TCC attendees requested we invite Cherie Kearney (Columbia Land Trust) to the December TCC meeting and ask that she provide a lands update.

### **Next Meeting's Agenda**

- Review of 11/12/08 Meeting Notes
- License Update (Columbia Land Trust)
- PacifiCorp WHMP 30-day version review
- Cowlitz PUD WHMP 30-day version review

### **Public Comment Opportunity**

No public comment was provided.

Meeting adjourned at 1:10pm

### **Next Scheduled Meetings**

<b>December 3, 2008</b>	<b>December 10, 2008</b>	<b>January 14, 2009</b>
Conference Call Only	USFWS	Merwin Hydro Control Center
	Lacey, WA	Ariel, WA
1:00pm – 5:00pm	9:00am – 3:00pm	9:00am – 3:00pm

### **Handouts**

1. Agenda
2. Draft meeting notes from 10/8/08
3. **Attachment A** – Email from WDFW, RMEF, USFWS regarding interpretation of Section 10.8.2.3 of the Lewis River Settlement Agreement, dated September 26, 2008

## McCune, Kimberly

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**From:** David Geroux [geroudcg@DFW.WA.GOV]  
**Sent:** Friday, September 26, 2008 9:52 AM  
**To:** McCune, Kimberly  
**Cc:** Nelson338@aol.com; dmacdonald@cowlitzpud.org; Eric Holman; LouEllyn\_Jones@fws.gov; Naylor, Kirk  
**Subject:** SA 10.8.2.3 email

The intent of this email is to express Washington State Department of Fish and Wildlife (WDFW), Rocky Mountain Elk Foundation (RMEF), and the US Fish and Wildlife Service (USFWS) interpretation of the following statement in Section 10.8.2.3 of the Settlement Agreement:

Any funds derived from management of lands subject to the WHMPs, including compensation for timber removed pursuant to the WHMPs, shall be retained by the Licensees for their respective properties.

The above mentioned signatories interpret "compensation for timber removal" to refer to profits garnered after the expense of the harvest are covered. Profits are defined as "the excess of returns over expenditure in a transaction or series of transactions" (Merriam-Webster Dictionary, 2008). "Compensation for timber removed pursuant to the WHMPS", according to the Settlement Agreement, includes the profit from the timber. We do not agree it includes the cost of removing the timber. Timber is sold based on its value. When bidding for a timber harvest, the purchaser bids on and pays the price on the stump, which is the profit that goes to the utility. We are unaware of any company that inflates profits by adding costs.

Under RCW 84.33.074 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=84.33.074>), the Washington State Department of Revenue defines the taxation of timber profits for small timber harvest owners as: "the tax is based on the actual amount paid for stumpage or the amount received from the sale of logs less the costs of harvesting and delivering to the buyer". The Washington State Department of Revenue uses this as the guideline to tax timber harvests statewide. The statement of "less the costs of harvesting and delivering to the buyer" speaks directly to the intent of the Settlement Agreement, Section 10.8.2.3. The signatories to this email believe that the term "compensation" was referring to the profits of the harvest, as defined in this RCW. Because of this legal definition and industry standard of how timber harvest dollars are assessed; Cowlitz PUD has no reasonable expectation to timber harvest dollars without the associated costs of harvest being deducted.

The Washington State Department of Natural Resources defines stumpage bids as: "The costs of cutting, removing, and hauling that tree is borne by the bidder, so therefore the bidder has accounted for those costs in their stumpage bid. Revenue is recognized when the purchaser pays the stumpage they have bid" (Personal communication via email, Jon J. Tweedale, Assistant Division Manager, Product Sales and Leasing

Division, Washington State Department of Natural Resources).

The purchase of the Devil's Backbone Unit was to offset an impact created by the dam that the PUD uses, and the trees on that land are a part of that mitigation. Mitigation is intended to lessen an impact; it is not a profit-making venture. The purpose of the property is to enhance wildlife habitat including elk. Elk benefit from increased forage production resulting from timber harvest and locally elk forage is a limiting factor. Interpretations that transfer enhancement efforts into profits for the PUD without benefitting wildlife is contrary to the purpose of a wildlife mitigation plan. The Settlement Agreement refers to the purchase and management of the Devil's Backbone Unit and "resource benefits associated with the purchase" and as "partial fulfillment of Cowlitz PUD's mitigation obligations" (Section 10.6.1). The "mitigation obligation" that is referred to is hinged upon the enhancement of habitat on this property. The intended obligation will not be met by using mitigation dollars to offset costs of harvesting timber originally purchased as a part of a mitigation obligation.

We appreciate your time and allowance for us to clarify our position. We look forward to discussing this issue further at TCC meetings and hope that we can come to an agreement in a timely fashion.

David Geroux  
Department of Fish and Wildlife  
Habitat, Major Projects Division  
Habitat Biologist  
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