

LEWIS RIVER TERRESTRIAL COORDINATION COMMITTEE

Facilitator: KENDEL EMMERSON
503-813-6040; CELL 503-720-9157

Location: Merwin Hydro Control Center & Field Tour
105 Merwin Village Court Ariel, WA 98603

Date: Wednesday August 9, 2023

Time: 9:00 AM –3:00 PM

Agenda Items

9:00 a.m.	Welcome, <ul style="list-style-type: none">➤ Review and Accept Agenda➤ Review and Accept 6/14/2023 Meeting Notes
9:10 a.m.	Public Comment Period
9:15 a.m.	Moss Cave Land Acquisition – Isaac Hansen with The Nature Conservancy will join the meeting
9:45 a.m.	Project Updates <ul style="list-style-type: none">➤ Cresap Campground Park➤ Speelyai Parking Expansion➤ Saddle Mountain Trail Expansion and trail camera results
10:15 a.m.	Cougar Covenant and Cougar Seed Mix
10:30 a.m.	Safety orientation for Field Tour and Depart for Field Tour
11:00 a.m.	Mu 6 2022 Timber Harvest Areas (Jesse James 220646CT, DB Cooper 220687CC, Doc Holliday 220636CT, Wild Bill Hickok 220633CT, Butch Cassidy 220621CT, Billy the Kid 2206662CT)
12:30 p.m.	MU 5 Oak Site 5-1 and 5-2 (Lunch at Site).
1:30 p.m.	MU 3 2022 Timber Harvest Area (Annie Oakley 220309CT)
2:30 p.m.	Next Meeting's Agenda Note: all meeting notes and the meeting schedule can be located at: https://www.pacificorp.com/energy/hydro/lewis-river/acc-tcc.html
3:00 p.m.	Return to Merwin Hydro Control Center and Meeting Adjourn.

Please bring lunch, rain gear, and sturdy shoes. PacifiCorp will have 2 vehicles for transportation of up to 4 additional passengers per vehicle.

Microsoft Teams meeting

Join on your computer, mobile app or room device [Click here to join the meeting](#)

Meeting ID: 246 011 674 732

Passcode: QeCZoX

Or call in (audio only)

[+1 563-275-5003,,3376467#](#) United States, Davenport

Phone Conference ID: 337 646 7#

Meeting Notes
Lewis River License Implementation
Terrestrial Coordination Committee (TCC) Meeting
August 9, 2023
Conference Call/In Person

TCC Representatives Present: (8)

Kendel Emmerson, PacifiCorp
 Summer Peterman, PacifiCorp
 Amanda Farrar, Cowlitz PUD (virtual only)
 Peggy Miller, WDFW
 Eric Holman, WDFW
 Adam Rich, USFS
 Bill Richardson, RMEF (virtual only)

Guests: (2)

Molly Van Dam, Anchor QEA (note-taker for PacifiCorp)
 Isaac Hansen, The Nature Conservancy (virtual only)
 Ray Crosswell, Public

Calendar:

August 9, 2023	TCC Meeting	In Person/Teams Call
----------------	-------------	----------------------

Assignments for August 9, 2023	Status
Emmerson: Discuss Moss Cave funding possibilities with PacifiCorp management.	In Progress
Emmerson: Discuss Cougar Creek logging possibilities with Joe Berry if logging were to become approved there.	In Progress

Assignments for June 14, 2023	Status
Peterman: Research the Cougar and Panamaker Creek conservation covenant	Complete
Peterman: Research the easement rights to the Porky Pig timber harvest area in Unit 20 to see if Scotch broom under the powerlines can be treated before the scheduled thinning in July.	Complete
Peterman: Research the seed mix for Cougar Meadow within Unit 20	Complete
Emmerson: Find out how logs are hauled from the shoreline of Swift Reservoir to see if that is contributing to erosion	Complete

Assignments for February 8, 2023	Status
Peterman: Conduct additional public trail use observations near proposed Saddle Dam (MU10) trail location before and after parks open in 2023 for comparison with early 2023 data.	In Progress

Assignments for January 13, 2021	Status
Emmerson: Provide a list of past timber harvest areas that have been within the WHMP buffer, associated TCC meeting notes, and reference to the WHMP language.	In Progress

Kendel Emmerson (PacifiCorp) called the meeting to order at 9:02 am. All attendees introduced themselves and their positions. Emmerson reviewed the June 14, 2023 meeting notes, and no further comments were received. There was one change to today’s agenda: Summer Peterman said that the Saddle Mountain trail camera results are not yet available, but she will email the results to the TCC.

Emmerson provided the following updates from last month’s discussions. All four assignments for June have been completed. Peterman researched the Cougar and Panamaker Creek conservation covenant and it has been included in today’s handout. Peterman also researched the road easement rights to the Porky Pig timber harvest area in Unit 20, and the landowner agreed to the treatment of Scotch broom within the area. Peterman researched what seed mix was used in Cougar Meadow in Unit 20, and the results were also included in the materials provided to the TCC today.

Additional updates from the June meeting included that the slash pile burn restoration site in MU 35 has been completed, except for re-seeding the area this fall. Emmerson hopes to go see the site during the September field tour.

Progress continues to be made on the TCC/ACC annual report. It was filed on June 30th, and PacifiCorp will meet in October to determine any redundancies, and what should be changed to become more streamlined and readable.

The TCC approved the June 14, 2023 meeting notes at 9:11 am.

Public Comment Period

None.

Moss Cave Land Acquisition

Isaac Hansen of The Nature Conservancy (TNC) joined the meeting virtually to discuss any questions the TCC may have on the current the land acquisition deal. Emmerson provided the TCC with her email exchange with Hansen concerning the property valuation and available funding.

Emmerson said there are multiple funding sources for this project, including the 10.3 Lewis River Fund and 10.2 Swift Land fund, and to help make up the difference, 10.8.5.5 mitigation funds from Cresap, Speelyai, and Saddle Dam would have been used. Further analysis is needed for the Saddle Dam project, which has resulted in a project delay and potentially modification. PacifiCorp will not know the final Saddle Dam project plan and how it may be scaled down or scaled up until 2024, so until then PacifiCorp is not willing to fund the acquisition using those funds. The email exchange with Hansen outlines what is needed in 2023 in order to make this acquisition happen.

TNC has governing regulations that prevent them from taking a reduction to the face value of the property. Hansen said the rule disallowing benefits to private companies can stop deals from going through that are conservation wins, and he hopes that doesn’t happen in this case. The email

exchange spells out some of the details. He said TNC must be paid fair market value or have detailed documentation on why they did not, or they could lose their nonprofit status. This rule is dictated by the IRS. Emmerson said she can't speak for TNC because she has never worked for a nonprofit, which is why Hansen is on the call; this is an opportunity for the TCC to ask him questions. Eric Holman asked what the difference in funding is, and Emmerson replied that it is \$30,000. Bill Richardson said that he works in the world of land acquisitions, and to him it seems like there's an opportunity for forward movement. Richardson said he fully understands and supports the clause restricting private benefit, but he thinks that there's a potential for new information from the existing appraisal on this project. The appraisal assumes recreational access, which would support a higher valuation as opposed to access only for timber use. Richardson said there is new information indicating that recreational access does not exist, and he thinks the appraiser should revisit the evaluation based on that information. Currently the only legal access to the property is for logging, which is included in the cost. This new information should support a diminution in value from the previous appraisal.

Hansen said that is a fair point and he thinks timber is the largest value component, and it is necessary to ensure there is adequate and legal vehicle access to haul out timber. He has been researching current timber access for legal haul-out, and two of those sections are relevant access easements that run with the land at Moss Cave, and any open market buyer can utilize those. For the remaining two segments, it can be assumed that a road use permit is needed. The site isn't particularly accessible for timber. Hansen summarized that TNC's estimate of the cost to obtain permission to haul timber over 0.7 miles where there is no easement for access is approximately \$2,500. Hansen agrees that a segment of the road needs to be repaired and that big potholes need to be filled before it can be used. He said he can ask the appraiser about the lack of recreational usage, but he doesn't think the difference would add up to the needed \$29,000. Hansen summarized that the current appraisal expires in the first week of November, and the research necessary to acquire the reduced value would take more time than we have between now and the expiration date. Hansen said that if the appraisal expiration date is passed, he does not think TNC management would want to proceed with the project.

Holman said another aspect of hauling timber through the property is that the road must meet DNR management rules. Holman said that it is frustrating to have \$30,000 stand in the way of this conservation project, and that if the appraisal expires in November, and the TNC leadership has grown tired of the project, what does that mean going forward if TNC is no longer interested? Hansen said TNC would continue to manage it for conservation, but he isn't sure what else would happen long term. Hansen is still very interested in making the project happen, and he wants to know if there are other concerns that he can bring to his management at TNC. He said he has been talking to the appraiser regarding the valuation, and also talking to TNC foresters to understand what is possible. He welcomes all creative approaches, questions and rebuttals. Ray Crosswell requested to discuss the project with the TCC, separate from TNC participation. Hansen left the meeting.

Due to confidential information details of this portion of the meeting have been omitted from these meeting notes.

Hansen did not return to the call, so Emmerson will reach out to him separately.

Project Updates

Cresap Campground Parking Lot

PacifiCorp is currently irrigating the seed mix within the parking lot at Cresap Campground, and Emmerson noted that hopefully they will have some growth soon.

Speelyai Parking Expansion

All permits for the project have been acquired and they are working on getting a contractor in place for work to start likely at the end of August or beginning of September. Holman asked if the boat ramps at Speelyai were open, Emmerson confirmed that they are. Miller mentioned that she will let Josua know this information, since WDFW will likely get calls from the public regarding construction. Holman clarified that the existing parking is not impacted, and that more parking will be added.

Saddle Mountain Trail Expansion and Trail Camera Results

Peterman said that she noticed an illegal access point on Highway 503 for what looked like ATVs. This location is near MU 2, and it used to be entirely overgrown with no access, though at one point in the past it used to be a spur road. Emmerson projected photos: multiple trees were cut down, wrapped in burlap, and dragged away. The road was cleared with piles of tools and supplies sitting under tarps on the ground. She theorized that this person was potentially trying to build a cabin, or potentially clearing out a garage of supplies. Peterman documented the location and sent photos to Brandon Chamberlain (WDFW Law Enforcement), who is going to leave a sign notifying the interloper that they need to vacate. PacifiCorp will then have to replant and block the area to keep out other trespassers. Peterman noted that a dump truck would be needed to remove everything, if the trespasser does not do so themselves. Emmerson said there is zero tolerance for camps outside of designated camping areas. Though the site is not within old growth forest, it is surrounded by old growth forest. Peterman said that the old spur road was not visible because it was so overgrown, so the trespasser may have had a map to know that it was there. Adam Rich asked if there was the potential for a similar occurrence on National Forest lands, and everyone replied in the affirmative. Holman recommended that Rich reach out to local law enforcement to see if they have similar encounters. Emmerson said that it is a big cost to the landowner to tow out RVs and complete cleanups, but that it is necessary so that more trespassers are not attracted to the site. Miller asked if the costs would be taken from the WHMP budget; Emmerson thought that costs would be a mix of WHMP and Forestry budget.

Cougar Covenant

Emmerson provided a copy of the original Conservation Covenant at Cougar Creek from 2003, along with associated maps of buffers and boundaries, to the TCC. The land had been purchased by PacifiCorp prior to the licensure. The agreed upon conservation measures are detailed in Exhibit C on page 9 of the Cougar Creek covenant. Two of the included measures are that a vegetation plan must be in place to remove nonnative and invasive plants and that the lands must be managed in order to conserve and protect spawning and rearing habitat for bull trout. Emmerson thinks that USFWS and Jeremiah Doyle, PacifiCorp Fish Biologist, who has been monitoring the fish populations in the area for years, should be brought into the conversation to see if logging can be allowed to occur nearby the creek. Bull trout don't enter Cougar Creek until July,

so if the land is logged and scarified potentially in May, then that seems potentially possible. Holman asked if Doyle could assess the site soon, before USFWS is engaged. Emmerson said she would discuss with Joe Berry at Chilton Logging to identify the area we would like to commercially thin.

Emmerson suggested that we use the similar approach with USFWS to when the transmission line was cleared in the Cougar Creek channel, PacifiCorp submitted a No Effect memo to USFWS and Emmerson monitored and reported while the trees were being removed. There was no point in revegetating that particular location because it was a gravel island within the creek that could get flooded by the creek. Holman said that would set a precedent for tree removal in the area.

Miller said WSDOT work in Cougar Creek is complete. She noted that there was someone camping within the area and question if WSDOT was going to restore the campsite as proposed in a past meeting. Emmerson said that the campers were asked to leave. Peterman said that it is a highly desired space for camping. There were signs posted stating that camping is not allowed, but they had all been removed, and without any signs it cannot be enforced. Peterman said anglers use the area so there will always be paths within the site, but it's dark and not much can grow. Emmerson said that perhaps they could place wood debris to prevent camping in the area. On a side note there was no debris collection from Swift Reservoir, so there is no available large wood debris.

Cougar Seed Mix

On the June field tour, the TCC looked at Cougar Meadow and was happy with the vegetation that had grown in there. Peterman researched what seed mix was used in that location. It had been harvested in 2013 for timber. They had not used a meadow seed mix to revegetate the area; instead a seed-legume mix was used in all harvest areas. That mix included annual ryegrass, perennial ryegrass, orchardgrass, white clover, small burnet, and birdsfoot trefoil. This mix isn't used by PacifiCorp anymore, but per pound, the mix skewed toward legumes. This mix was used in Units 4, 20, and 33. When Peterman looked at the results in Unit 4, she noted that the site does not look as well vegetated as the site in Unit 20 does. The site within Unit 4 has higher growth of bracken fern, which she thinks may have hindered the growth of the seed mix. It also didn't appear to be the best mix for the site in Unit 33. Emmerson asked if Unit 20 has more sun. Peterman said that there is more sun within Unit 20, and way more moisture because the meadow is surrounded by trees to hold in that moisture. In comparison, Unit 4 is very dry. Emmerson noted that birdsfoot trefoil is no longer used by PacifiCorp, and asked what it should be replaced with in a future seed mix. Peterman said that they have had good luck with yarrow and vetch. Holman noted that yarrow would grow better in dryer sites. Miller wondered if elk liked the pollinator species that had been planted. Holman said that deer do, and that they like the burst of growth in forbs.

Field Tour

MU 6, 2022 Timber Harvest Areas:

Billy the Kid 2206662CT

This location is now scarified after timber harvest in 2022. Holman asked if the bigger trees seen up front were the leave trees from the previous round of harvest, and Emmerson replied in the affirmative. Rich asked how old the plantation was, and Emmerson responded that it was planted

in the 1980s and was 13 acres, but in total they have logged 40 acres along the road. Holman clarified that it had been pre-commercially thinned, planted, and managed under the Merwin Habitat Plan, and Emmerson mentioned that they are leaving shrubs, but cutting down vine maple and allowing it to resprout. Holman asked if there was a requirement for leave trees within the Merwin plan, and Emmerson said it referenced a certain amount of snags over an eight year period. They try to accomplish all of this between July and October. This site began its harvest last year, and is being finished this year. Emmerson noted that they were not allowed to process the timber underneath the powerlines, so they had to move farther into the forest, creating a bigger opening than she had wanted. Miller asked if they scarify between trees, and Emmerson said that no, that would damage existing roots. Miller asked if there was any fire danger, and Emmerson said that it is currently at a level 1, which is pretty normal for this time of year. There are campfires allowed in campsites, but not in dispersed camping locations. Rich asked if there was variable density, and how they determine the specs, and Emmerson said that is determined by diameter and spacing of the trees. Miller mentioned that any cedar is left as a leave tree, because it is considered to be a significant ethnocultural resource.

Wild Bill Hickock 220633CT

Emmerson said that this site has also been scarified and seeded. This timber harvest site is another mid 1980s plantation. Rich asked if the Oregon grape sprouting within the site was desirable for elk, and Holman responded that there are three “SOS” species considered undesirable for forage: salal, Oregon grape, and sword fern. These plants have low nutrition for forage species. Emmerson noted that they don’t target foxglove as a noxious weed because they don’t persist, and they are attractive for pollinators. Fireweed would be desirable as a native species, but it is difficult to broadcast the seeds to get them to stick and grow. Holman said maybe that can be tried again in a different site. Peterman noted that she just found birdsfoot trefoil, though it hasn’t been seeded on sites in six years, showing it reseeds itself. Miller also pointed out the natural regeneration of small fir trees. Peterman said this site was commercially harvested and will not be replanted. Emmerson said it was cut last year, and then seeded last fall.

DB Cooper 220687CC

This is a clearcut site, where root rot was infesting trees. Their goal was to break up the disease so that it wouldn’t keep moving uphill. They found a young Douglas fir with root rot, which is rare, and concerning. Because there was root rot found on site, it was replanted with western red cedar and western white pine, a combination not found in nature, but done because these species are more resistant to the root rot fungus. The young, planted trees were protected by photodegradable tubes. Emmerson noted that getting the required amount of leave trees was tricky due to the spacing within the site, but it was managed. Peterman said that she would add the treatment of pokeweed to the maintenance list for this site.

Jesse James 220646CT

This site still needs scarification. Emmerson explained to Rich that the soil will be fluffed up by a small excavator, then seeded. Miller asked if the steep excavator road leading up the slope will cause erosion and become a problem once it starts to regularly rain, and Emmerson said that come October that road will no longer exist and will be smoothed out.

Doc Holliday 220636CT

This site was on the agenda, but not visited due to its small size.

Butch Cassidy 220621CT

This site was on the agenda, but not visited due to its small size.

MU 5 Oak Site 5-2

Emmerson mentioned that this site is about the extent of the native habitat for Oregon white oak trees. Peterman said that they are trying to give the existing oaks more sun, and they want more natural recruitment of the oaks. In 2017 PacifiCorp designated five small oak seedlings on site that are being treated with Plantskydd twice a year, and then measured to determine height. They are trying to have this done at the same time of the year during the browse seasons, when leaves are still on the trees and the weather forecast is projected to be dry, so that the Plantskydd doesn't wash off the leaves. Holman asked what the pink flags signified, and Peterman clarified that those denoted the treated oaks. Peterman also said that the older, bigger trees generally have low acorn production, but this has been a very productive year. There were several brown oaks that last year she had thought to be dead, but are now green and healthy. Peterman said that a question for the TCC is that should they keep opening up oak sites to allow in more sun? Should they continue treating seedlings with Plantskydd? Miller said it would be interesting to have comparison data on the heights of seedlings treated with Plantskydd and those that were untreated. Peterman said she wished she'd done that originally on this site, but that can be done on a future oak site. Emmerson mentioned that oak trees hold onto their leaves longer than other deciduous trees, so maybe they should only be treated with Plantskydd in the fall because that is when they are the most vulnerable to browse. Peterman said that the oaks in this site generally drop their leaves by October but have new growth beginning in November, so they could potentially be treated in November. She also noticed that the shrubs in this site have grown in quite a bit, and was wondering if the shrubs are taking resources from a landscape that already has less resources, since it is quite rocky. Holman said that the shrubs in this site (oceanspray, and snowberry) already favor drier sites, so it is unlikely they are taking away resources from the oaks. Peterman clarified that they had no intention of completely cutting back or removing any of the shrubs on site. Miller said she observed that young oaks did not do well in the direct sun light. The sun likely burned their leaves. Peterman mentioned that there has been a higher moisture count in the mornings this year, which has potentially been part of the reason the oaks have been particularly productive this year.

MU 3 2022 Timber Harvest Area (Annie Oakley 220309CT)

Emmerson noted that the site looks good. Peterman mentioned that there is shrubland adjacent, which acts beneficially for wildlife trails. Emmerson said that Joe Berry marks any trees with structures such as forked tops, so that they are not touched by operators.

Administrative

The September 13 meeting will occur at the Merwin Hydro Control building and a full day of site visits, including MU 35 timber harvest areas and a high country tour.

Agenda items for September 13, 2023

- Review August 9, 2023 Meeting Notes
- Project updates
- High Country tour (MU 35 2022 timber harvest)

Next Scheduled Meeting

September 13, 2023
Merwin Hydro Control/Teams

Attachments:

- Cougar Creek Covenant and Map
- MU 3 2022 Timber Harvest Maps
- MU 6 2022 Timber Harvest Map.

Field Tour Adjourned at Merwin Hydro Control at 2:30 pm



June 11, 2003

Magalie R. Salas, Secretary
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Subject: Merwin Hydroelectric Project, FERC No. 935
Yale Hydroelectric Project, FERC No. 2071
Swift Hydroelectric Project, FERC No. 2111
Response to Order Amending License**

Dear Ms. Salas:

In accordance with the Commission's Order Amending Licenses for the Lewis River Projects (Merwin, Yale and Swift No. 1), PacifiCorp hereby submits information required by the new Yale License Article 33 and the new Swift No. 1 License Article 44. Article 33 and Article 44 were added to the Yale and Swift Licenses to comply with stipulations required by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) within the Biological Opinion and its incidental take statement filed on June 28, 2002.

The new license articles require PacifiCorp to provide documentation that it has acquired interests in conservation easements sufficient to carry out the appropriate protection measures for threatened and endangered species associated with these projects. Enclosed are Conservation Covenants for the management of lands that the USFWS has indicated (personal communication, Mr. Gene Stagner, June 9, 2003 with PacifiCorp staff) will meet the requirements directed in the Biological Opinion and the Order Amending Licenses. The enclosed documentation includes the Declaration of Conservation Covenant (Cougar Creek) and the Declaration of Conservation Covenant (Swift Creek). Note: the two covenants will be signed, notarized and filed with the appropriate counties within four weeks.

Magalie R. Salas, Secretary
June 11, 2003
Page 2

The original and seven copies of this letter and eight copies of its attachments are enclosed. If you have any questions please contact Ms. Mildred Thompson at (503) 813-6664.

Sincerely,

R.A.L. by M.T.

R. A. Landolt
Managing Director, Hydro Resources

RAL:MT:hb
Attachments
(With Attachments*)

C: Mr. Gene Stagner*, USFWS
Mr. Steve Fransen*, NMFS
Mr. Harry T. Hall*, FERC PRO

Bc: Bornemeier, Bricker – Stoel Rives, Fields – Merwin, Garrett*, Lesko*, Naylor, Roppe, Shrier*, Smith – 600 LCT, Snyder, Thompson*/FERCEASE, File: Swift, Yale, FERC, Compliance, Environmental, License Article, Amendment, Operation, Stream Flow, Ramp Rate

After recording return to:

Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Attention: Jennie L. Bricker

**DECLARATION OF CONSERVATION COVENANT
(COUGAR CREEK)**

Documents released or assigned: None

Grantor/Declarant:

PACIFICORP, an Oregon corporation

Grantee:

PACIFICORP, an Oregon corporation

Legal Description:

1. Abbreviated Legal Description:

Burdened Land: Portions of Sections 15, 22, 26, and 27, Township 7 North, Range 4 East, W.M., Cowlitz County, Washington.

Benefited Land: Portions of Sections _____, Township __ North, Range __ East, W.M., Skamania, Cowlitz, and Lewis Counties, Washington.

2. Additional legal descriptions are on Exhibit A and Exhibit B of the document.

Assessor's Property Tax Parcel Account Numbers: _____

After recording return to:

Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Attention: Jennie L. Bricker

**DECLARATION OF CONSERVATION COVENANT
(COUGAR CREEK)**

THIS DECLARATION OF CONSERVATION COVENANT (COUGAR CREEK) (this “**Declaration**”) is made as of June 10, 2003 (the “**Effective Date**”) by **PACIFICORP**, an Oregon corporation.

RECITALS

A. PacifiCorp is the owner of real property situated in Cowlitz County, Washington, consisting of riparian lands along Cougar Creek and Panamaker Creek, more particularly described on the attached Exhibit A (the “**Cougar Creek Lands**”).

B. PacifiCorp owns and operates hydroelectric generation facilities and appurtenances located on the North Fork Lewis River in Cowlitz, Lewis, and Skamania Counties, State of Washington (the “**Lewis River Project Lands**”). The Lewis River Project Lands are more particularly described on the attached Exhibit B. PacifiCorp operates its facilities on the Lewis River Project Lands pursuant to licenses from the Federal Energy Regulatory Commission (“**FERC**”), including licenses for the Merwin facilities, Project No. 935, the Yale facilities, Project No. 2071, and the Swift No. 1 facilities, Project No. 2111 (the “**Lewis River Projects**”).

C. On June 28, 2002, the United States National Marine Fisheries Service (“**NMFS**”) and the United States Fish and Wildlife Service (“**FWS**”) filed a biological opinion and issued an incidental take statement (the “**ITS**”) setting forth terms and conditions under which PacifiCorp must operate the Lewis River Projects to minimize impacts to fish species protected under the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a) (the “**ESA**”). On May 12, 2003, FERC issued an order amending PacifiCorp’s licenses for the Lewis River Projects. The license amendments incorporate conservation measures for the protection of bull trout habitat in compliance with the ESA, and consistent with the ITS. The conservation measures that are specific to the use and management of the Cougar Creek Lands are summarized on the attached Exhibit C and are more particularly described and defined in **Section 3** below (the

“**Conservation Measures**”). In order to implement the Conservation Measures, PacifiCorp makes the covenants and agreements set forth below.

AGREEMENT

1. DECLARATION OF CONSERVATION COVENANT.

1.1 **Conservation Covenant.** PacifiCorp, its successors and assigns, covenants and agrees that it will not use the Cougar Creek Lands for any purpose or use inconsistent with the Conservation Measures (the “**Conservation Covenant**”).

1.2 **Burden and Benefit.** The Conservation Covenant established in this **Section 1** shall run with the Cougar Creek Lands and shall be binding upon PacifiCorp and PacifiCorp’s successors and assigns in the ownership and use of said Lands. The Conservation Covenant shall be appurtenant to the Lewis River Project Lands and shall run with the land for the benefit of the Lewis River Project Lands.

1.3 **Third-Party Beneficiaries.** FWS, as administrator of the terms and conditions of the ITS, is a third-party beneficiary of this Declaration. The Conservation Covenant shall inure to the benefit of FWS. Other than FWS, there are no third-party beneficiaries to this Declaration.

1.4 **No Public Dedication.** This Declaration may not be construed as a gift or dedication of the Cougar Creek Lands to the general public, nor as a right of use or access by the general public upon such Lands.

2. ENFORCEMENT OF CONSERVATION COVENANT. In the event PacifiCorp breaches the provisions of **Section 1**, FWS shall be entitled to exercise any remedies permitted by law or in equity, including the remedies of injunction and specific performance.

3. CONSERVATION MEASURES. The Conservation Measures, attached as Exhibit C, are for the conservation and protection of the ecological value of the Cougar Creek Lands. PacifiCorp shall implement the Conservation Measures, as provided in this Declaration, and may use such implementation to fulfill the requirements of the ITS, its FERC license to operate the Lewis River Projects, or any habitat management plan associated with the Lewis River Projects. PacifiCorp may amend the Conservation Measures at any time and from time to time to account for changes in any such requirements, to comply with directives from FERC, or to comply with applicable law; provided, however, that FWS must give its prior consent to any such amendment. Each such amendment shall be filed in the real estate records of Lewis, Cowlitz, and Skamania Counties and, effective with such filing, shall be binding on PacifiCorp with the same force and effect as if included in this Declaration on the Effective Date.

4. TERM. The term of this Declaration shall commence on the Effective Date and continue in perpetuity. Any attempt by PacifiCorp to terminate this Declaration during the term, without prior written consent from FWS, shall constitute a breach of the Conservation Covenant.

5. **EFFECT OF THIS DECLARATION**. The Conservation Covenant shall run with the Cougar Creek Lands, and each and every portion of them, and shall be binding upon all parties having or acquiring any right, title, or interest in said Lands. The rights and obligations in this Declaration shall bind, burden, and benefit PacifiCorp, FWS, and the successors and permitted assigns of each of them.

6. **ASSIGNMENT**. FWS may not assign the third-party beneficiary rights established in **Section 1.3**, except to another federal governmental agency.

7. **NONWAIVER**. No breach of the terms of this Declaration by PacifiCorp nor any failure to enforce such terms by FWS will terminate this Declaration or be construed as a waiver of any such terms or a relinquishment of any right of enforcement for the same or future breaches.

8. **SEVERABILITY**. If any provision of this Declaration is or becomes illegal or unenforceable for any reason, the remaining provisions will remain in full force and effect.

IN WITNESS WHEREOF, PacifiCorp has executed this Declaration as of the Effective Date.

PACIFICORP, an Oregon corporation

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

On this 10th day of June, 2003, before me, personally appeared _____, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the written instrument, as _____ of PACIFICORP, an Oregon corporation, and he/she acknowledged said instrument to be the voluntary act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Oregon

EXHIBIT A

Cougar Creek Lands:

Lands in Cowlitz County, State of Washington, located in Sections 15, 22, 26, and 27 of Township 7 North, Range 4 East, W.M., being more particularly described as follows:

Beginning at an existing brass cap survey monument marking the southeast corner of the Southeast Quarter (SE1/4) of Section 27 of said Township and Range; thence North 88°41'56" West, along the south line of said Southeast Quarter (SE1/4), a distance of 1340.3 feet more or less to an intersection with the thread of an existing stream identified as Cougar Creek; thence North 11°33'30" West, along the thread of Cougar Creek, a distance of 63.5 feet more or less to an intersection with the north face (upstream edge) of an existing PacifiCorp bridge between Cougar Campground and Day-Use Park, said intersection being the **True Point of Beginning** of the hereinafter described conservation covenant lands:

Thence Northerly, along the centerline of the conservation covenant lands, one-thousand (1,000) feet in width and lying five-hundred (500) feet on each side of said centerline, and following the thread of Cougar Creek, to the confluence of Cougar Creek with Panamaker Creek, said confluence further identified as "**Point A**" and bearing North 07°27'49" West a distance of 1650.5 feet more or less from the True Point of Beginning, the sidelines of said easement to be lengthened or shortened to terminate on the north face (upstream side) of said PacifiCorp bridge; thence Northerly, Northeasterly, and Easterly, continuing along said centerline and following the thread of Cougar Creek, to a point on the northerly line of the Northwest Quarter (NW1/4) of Section 26, Township 7 North, Range 4 East, W.M., and the terminus of said conservation covenant lands, said terminus point being distant North 89°05'59" West a distance of 133.4 feet: more or less from a brass cap surveyor's monument marking the northeast corner of the Northwest Quarter (NW1/4) of said Section 26, the sidelines of said lands to be lengthened or shortened to terminate on the north line of the Northwest Quarter (NW1/4) of said Section 26.

Together With conservation covenant lands, four-hundred (400) feet in width, lying two-hundred (200) feet on each side of the following described centerline and thread of Panamaker Creek:

Beginning at said "**Point A**" at the confluence of Panamaker Creek and Cougar Creek; thence Northerly in a general direction along said centerline and following the thread of Panamaker Creek to a point on the north line of the Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4) of Section 15 of said Township and Range, and the terminus of said conservation covenant lands, said terminus point being distant North 89°22'14" West a distance of 803.0 feet more or less from a surveyor's iron rod monument marking the northeast corner of the Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4) of said Section 15, the sidelines of said lands to be lengthened or shortened to terminate on the north line of the Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4) of said Section 15;

Excepting Therefrom: any portion of said four-hundred (400) feet wide conservation covenant lands lying within the aforesaid one-thousand (1,000) feet wide conservation covenant lands limits located within the East Half (E1/2) of Section 27, said Township and Range.

Subject To: all easements, right-of-ways, restrictions, and conditions of record; and those common and apparent on said described easement.

EXHIBIT B

Lewis River Project Lands:

Lands in Cowlitz, Lewis, and Skamania Counties, State of Washington, within the project boundaries of the following hydroelectric facilities licensed by the Federal Energy Regulatory Commission: Merwin Project No. 935, Yale Project No. 2071, and Swift No. 1 Project No. 2111, as set forth in Exhibit G of each of said licenses, and as more particularly described on the following attached maps:

EXHIBIT C

Conservation Measures

1. Conservation. PacifiCorp will manage the Cougar Creek Lands to conserve and protect spawning and rearing habitat for bull trout. PacifiCorp will not permit construction or development on such Lands, except to the extent consistent with these Conservation Measures.
2. Monitoring. PacifiCorp will monitor the Cougar Creek Lands to assure that no detrimental changes have occurred to bull trout habitat due to upland management activities, winter storm damage, or other causes.
3. Vegetation Management. As part of the Wildlife Habitat Management Plan included in the operating license issued by FERC, PacifiCorp will develop and implement vegetation management practices to include (by way of example and not limitation) removal of nonnative or invasive plant species.
4. Boundaries. PacifiCorp will install boundary markers as reasonably necessary to maintain the Cougar Creek Lands for conservation.
5. Road Maintenance. PacifiCorp will develop and implement a road maintenance plan within the Cougar Creek Lands, to include provisions for the repair and/or closure of roads, and specifically including provisions for the closure of the road on the southeast boundary of the Cougar Creek Lands to all vehicular access except maintenance equipment.

After recording return to:

Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Attention: Jennie L. Bricker

**DECLARATION OF CONSERVATION COVENANT
(SWIFT CREEK)**

Documents released or assigned: None

Grantor/Declarant:

PACIFICORP, an Oregon corporation

Grantee:

PACIFICORP, an Oregon corporation

Legal Description:

1. Abbreviated Legal Description:

Burdened Land: Portions of Section 21, Township 7 North, Range 5 East, W.M., Skamania County, Washington.

Benefited Land: Portions of Sections _____, Township __ North, Range __ East, W.M., Skamania, Cowlitz, and Lewis Counties, Washington.

2. Additional legal descriptions are on Exhibit A and Exhibit B of the document.

Assessor's Property Tax Parcel Account Numbers: _____

After recording return to:

Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Attention: Jennie L. Bricker

**DECLARATION OF CONSERVATION COVENANT
(SWIFT CREEK)**

THIS DECLARATION OF CONSERVATION COVENANT (SWIFT CREEK) (this “**Declaration**”) is made as of June 10, 2003 (the “**Effective Date**”) by **PACIFICORP**, an Oregon corporation.

RECITALS

A. PacifiCorp is the owner of real property situated in Skamania County, Washington, consisting of riparian lands along the Swift Reservoir, more particularly described on the attached Exhibit A (the “**Swift Creek Lands**”).

B. PacifiCorp owns and operates hydroelectric generation facilities and appurtenances located on the North Fork Lewis River in Cowlitz, Lewis, and Skamania Counties, State of Washington (the “**Lewis River Project Lands**”). The Lewis River Project Lands are more particularly described on the attached Exhibit B. PacifiCorp operates its facilities on the Lewis River Project Lands pursuant to licenses from the Federal Energy Regulatory Commission (“**FERC**”), including licenses for the Merwin facilities, Project No. 935, the Yale facilities, Project No. 2071, and the Swift No. 1 facilities, Project No. 2111 (the “**Lewis River Projects**”).

C. On June 28, 2002, the United States National Marine Fisheries Service (“**NMFS**”) and the United States Fish and Wildlife Service (“**FWS**”) filed a biological opinion and issued an incidental take statement (the “**ITS**”) setting forth terms and conditions under which PacifiCorp must operate the Lewis River Projects to minimize impacts to fish species protected under the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a) (the “**ESA**”). On May 12, 2003, FERC issued an order amending PacifiCorp’s licenses for the Lewis River Projects. The license amendments incorporate conservation measures for the protection of bull trout habitat in compliance with the ESA, and consistent with the ITS. The conservation measures that are specific to the use and management of the Swift Creek Lands are summarized on the attached Exhibit C and are more particularly described and defined in **Section 3** below (the

“**Conservation Measures**”). In order to implement the Conservation Measures, PacifiCorp makes the covenants and agreements set forth below.

AGREEMENT

1. DECLARATION OF CONSERVATION COVENANT.

1.1 **Conservation Covenant.** PacifiCorp, its successors and assigns, covenants and agrees that it will not use the the Swift Creek Lands for any purpose or use inconsistent with the Conservation Measures (the “**Conservation Covenant**”).

1.2 **Burden and Benefit.** The Conservation Covenant established in this **Section 1** shall run with the Swift Creek Lands and shall be binding upon PacifiCorp and PacifiCorp’s successors and assigns in the ownership and use of said Lands. The Conservation Covenant shall be appurtenant to the Lewis River Project Lands and shall run with the land for the benefit of the Lewis River Project Lands.

1.3 **Third-Party Beneficiaries.** FWS, as administrator of the terms and conditions of the ITS, is a third-party beneficiary of this Declaration. The Conservation Covenant shall inure to the benefit of FWS. Other than FWS, there are no third-party beneficiaries to this Declaration.

1.4 **No Public Dedication.** This Declaration may not be construed as a gift or dedication of the Swift Creek Lands to the general public, nor as a right of use or access by the general public upon such Lands.

2. ENFORCEMENT OF CONSERVATION COVENANT. In the event PacifiCorp breaches the provisions of **Section 1**, FWS shall be entitled to exercise any remedies permitted by law or in equity, including the remedies of injunction and specific performance.

3. CONSERVATION MEASURES. The Conservation Measures, attached as Exhibit C, are for the conservation and protection of the ecological value of the Swift Creek Lands. PacifiCorp shall implement the Conservation Measures, as provided in this Declaration, and may use such implementation to fulfill the requirements of the ITS, its FERC license to operate the Lewis River Projects, or any habitat management plan associated with the Lewis River Projects. PacifiCorp may amend the Conservation Measures at any time and from time to time to account for changes in any such requirements, to comply with directives from FERC, or to comply with applicable law; provided, however, that FWS must give its prior consent to any such amendment. Each such amendment shall be filed in the real estate records of Lewis, Cowlitz, and Skamania Counties and, effective with such filing, shall be binding on PacifiCorp with the same force and effect as if included in this Declaration on the Effective Date.

4. TERM. The term of this Declaration shall commence on the Effective Date and continue in perpetuity. Any attempt by PacifiCorp to terminate this Declaration during the term, without prior written consent from FWS, shall constitute a breach of the Conservation Covenant.

5. **EFFECT OF THIS DECLARATION**. The Conservation Covenant shall run with the Swift Creek Lands, and each and every portion of them, and shall be binding upon all parties having or acquiring any right, title, or interest in said Lands. The rights and obligations in this Declaration shall bind, burden, and benefit PacifiCorp, FWS, and the successors and permitted assigns of each of them.

6. **ASSIGNMENT**. FWS may not assign the third-party beneficiary rights established in **Section 1.3**, except to another federal governmental agency.

7. **NONWAIVER**. No breach of the terms of this Declaration by PacifiCorp nor any failure to enforce such terms by FWS will terminate this Declaration or be construed as a waiver of any such terms or a relinquishment of any right of enforcement for the same or future breaches.

8. **SEVERABILITY**. If any provision of this Declaration is or becomes illegal or unenforceable for any reason, the remaining provisions will remain in full force and effect.

IN WITNESS WHEREOF, PacifiCorp has executed this Declaration as of the Effective Date.

PACIFICORP, an Oregon corporation

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

On this 10th day of June, 2003, before me, personally appeared _____, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the written instrument, as _____ of PACIFICORP, an Oregon corporation, and he/she acknowledged said instrument to be the voluntary act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Oregon

EXHIBIT A

Swift Creek Lands:

Lands in Skamania County, State of Washington, located in Section 21 of Township 7 North, Range 5 East, W.M., being more particularly described as follows:

Commencing at the northwest corner of said Section 21;
Thence South 89° 44' 33" East along said section line 1538.85 feet to the Point of Beginning;
Thence South 25° 19' 18" East 425.02 feet;
Thence South 34° 11' 56" West 642.49 feet;
Thence South 68° 03' 04" East 592.31 feet;
Thence South 44° 36' 05" East 865.47 feet;
Thence South 05° 15' 44" East 450.41 feet;
Thence South 74° 12' 25" East 304.94 feet;
Thence South 17° 37' 49" East 1780.69 feet to the North 1/16 line of the Southwest 1/4 of the Southeast 1/4 of said section;
Thence East along said 1/16 line 472.70 feet to the Northeast corner of the Southwest 1/4 of the Southeast 1/4 of said section;
Thence South 350.18 feet along the east 1/16th line of the Southwest 1/4 of the Southeast 1/4 of said section;
Thence South 58° 45' 57" East 427.59 feet;
Thence South 47° 19' 46" East 522.66 feet;
Thence South 14° 44' 22" East 426.85 feet to the South line of said section;
Thence North 88° 50' 35" West 290 feet, more or less, along the South line of said section to the 1000' elevation, referred to mean sea level;
Thence Northwesterly along the said 1000' elevation to the North line of said section;
Thence South 89° 44' 33" East 250 feet, more or less, along the North line of said section to the Point of Beginning.

EXHIBIT B

Lewis River Project Lands:

Lands in Cowlitz, Lewis, and Skamania Counties, State of Washington, within the project boundaries of the following hydroelectric facilities licensed by the Federal Energy Regulatory Commission: Merwin Project No. 935, Yale Project No. 2071, and Swift No. 1 Project No. 2111, as set forth in Exhibit G of each of said licenses, and as more particularly described on the following attached maps:

EXHIBIT C

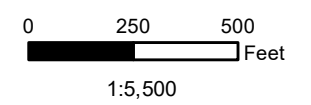
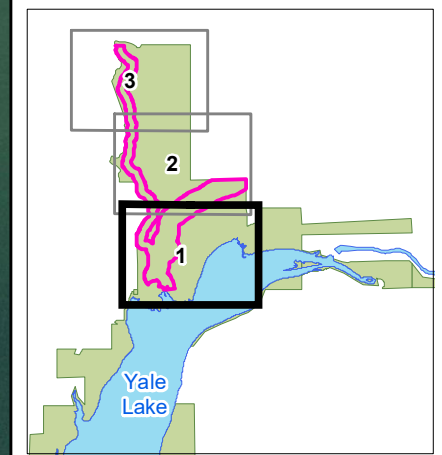
Conservation Measures

1. **Conservation.** PacifiCorp will manage the Swift Creek Lands to conserve and protect habitat for bull trout, cutthroat trout, and other aquatic species. PacifiCorp will not permit construction or development on such Lands, except to the extent consistent with these Conservation Measures.
2. **Monitoring.** PacifiCorp will monitor the Swift Creek Lands to minimize sedimentation due to human disturbance upon such Lands.
3. **Vegetation Management.** As part of the Wildlife Habitat Management Plan included in the operating license issued by FERC, PacifiCorp will develop and implement vegetation management practices to include (by way of example and not limitation) removal of nonnative or invasive plant species.
4. **Boundaries.** PacifiCorp will install boundary markers as reasonably necessary to maintain the Swift Creek Lands for conservation.

Cougar Creek and Panamaker Creek Conservation Covenant

Page 1 of 3
South

- Conservation Covenant
- Transmission Pole
- Transmission Line
- Highway
- Road
- Abandon/Orphan Road
- Fish Stream
- Non-fish Perennial
- Non-fish Seasonal
- Other Stream
- Stream Buffer
- Water Body
- PacifiCorp Land
- Recreation Area



PACIFICORP















Projection: UTM Zone 10, meters

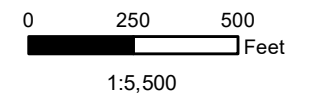
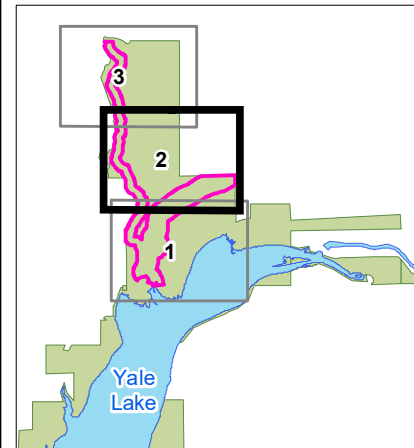
03/19/2020 p30089
U:\Projects\Hydro\Lewis\WHMP\Cougar Panamaker Conserv Covenant Map.mxd



Cougar Creek and Panamaker Creek Conservation Covenant

Page 2 of 3
Central

-  Conservation Covenant
-  Transmission Pole
-  Transmission Line
-  Highway
-  Road
-  Abandon/Orphan Road
-  Fish Stream
-  Non-fish Perennial
-  Non-fish Seasonal
-  Other Stream
-  Stream Buffer
-  Water Body
-  PacifiCorp Land
-  Recreation Area

















Projection: UTM Zone 10, meters

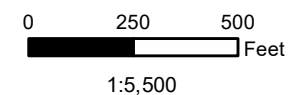
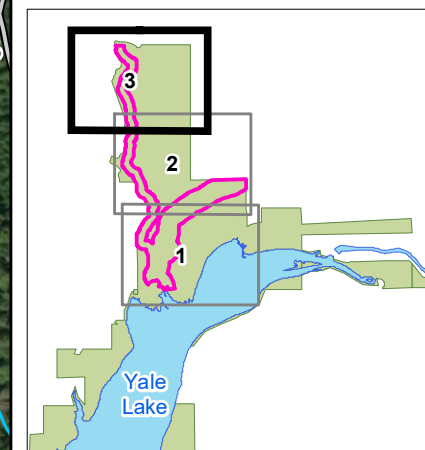
03/19/2020 p30089
U:\Projects\Hydro\Lewis\WHMP\Cougar Panamaker Conserv Covenant Map.mxd



Cougar Creek and Panamaker Creek Conservation Covenant

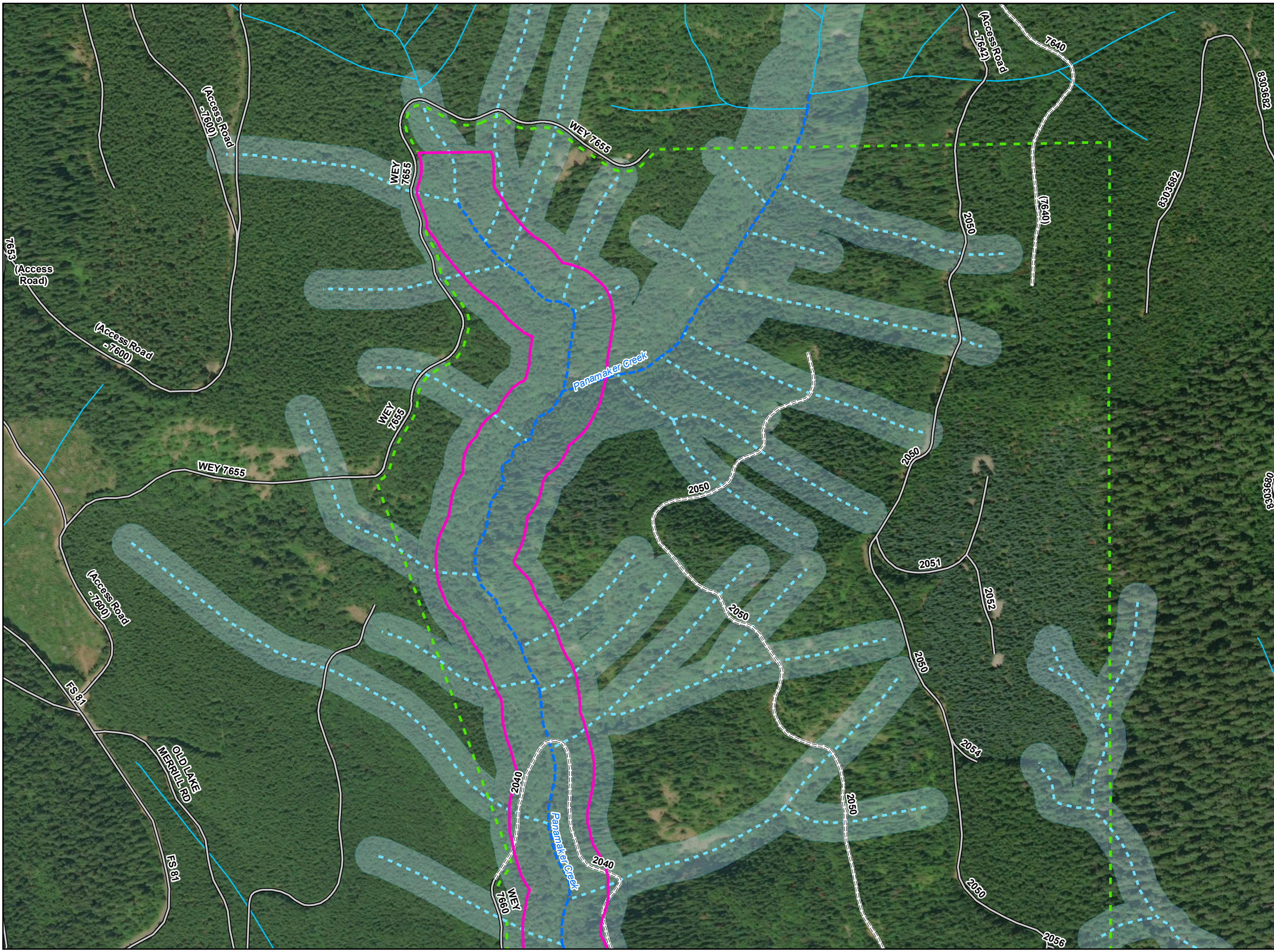
Page 3 of 3
North

-  Conservation Covenant
-  Transmission Pole
-  Transmission Line
-  Highway
-  Road
-  Abandon/Orphan Road
-  Fish Stream
-  Non-fish Perennial
-  Non-fish Seasonal
-  Other Stream
-  Stream Buffer
-  Water Body
-  PacifiCorp Land
-  Recreation Area



Projection: UTM Zone 10, meters

03/19/2020 p30089
U:\Projects\Hydro\Lewis\WHMP\Cougar
Panamaker Conserv Covenant Map.mxd





WHMP - Unit 3

2023 Harvest













- | | | |
|---------------------|--------------------|-----------------------------|
| Planned Thin | Management Unit | Raptor Nest, Active |
| Past Harvest (2022) | Fish Stream | Raptor Nest Buffer (660 ft) |
| Landing | Non-fish Perennial | Raptor Nest Buffer (330 ft) |
| Road | Non-fish Seasonal | Wetland |
| Abandon/Orphan Road | Shoreline | Wetland Buffer |
| Vegetation Cover | Riparian Buffer | |





WHMP - Unit 6

Harvests

- | | | | | | |
|---|---------------------|---|--------------------|---|-----------------------------|
|  | 2022 Thin |  | Fish Stream |  | Raptor Nest, Active |
|  | 2022 CC |  | Non-fish Perennial |  | Raptor Nest Buffer (660 ft) |
|  | Road |  | Non-fish Seasonal |  | Raptor Nest Buffer (330 ft) |
|  | Abandon/Orphan Road |  | Shoreline |  | Wetland |
|  | Vegetation Cover |  | Riparian Buffer |  | Wetland Buffer |

