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STOEL RIVES LLP  
ATTORNEYS

1275 K STREET, NW, SUITE 810  
WASHINGTON, D.C. 20005-4006  
Phone (202) 347-7744 Fax (202) 347-7750  
Internet: www.stoel.com

FILED OF THE RECORDS  
99 OCT 21 PM 12:39  
FEDERAL ENERGY  
REGULATORY  
COMMISSION

October 21, 1999

Mr. David Boergers, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A  
Washington, D. C. 20426

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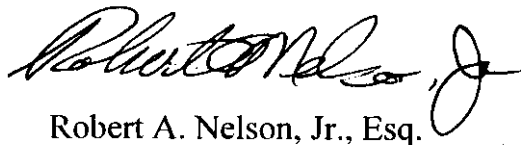
Re: PacifiCorp, Project No. 2342- 011

Dear Mr. Boergers:

Find enclosed for filing the original and 14 copies of an "Application for Amendment of License and for Approval of Offer of Settlement" filed on behalf of PacifiCorp and certain parties in this proceeding. PacifiCorp is the licensee and the relicensing applicant for the Condit Hydroelectric Project No. 2342.

The offer of settlement is Exhibit 1 to the filing. In accordance with Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, PacifiCorp and the sponsors of the settlement hereby notify all parties to this proceeding that initial comments on the settlement are due by November 10, 1999 and reply comments are due by November 22, 1999. PacifiCorp has this day served this letter and a complete copy of the filing on all parties to this proceeding.

Respectfully submitted,

  
Robert A. Nelson, Jr., Esq.

Of Attorneys for PacifiCorp

**FERC DOCKETED**

**OCT 21 1999**

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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

OFFICE OF THE SECRETARY  
99 OCT 21 PM 12:40  
FEDERAL ENERGY  
REGULATORY  
COMMISSION

PacifiCorp )

Project No. 2342- 011

**APPLICATION FOR AMENDMENT OF LICENSE  
AND FOR APPROVAL OF OFFER OF SETTLEMENT**

Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.602, and the Commission's regulations under the Federal Power Act, 18 CFR Parts 4 and 6, PacifiCorp, licensee and relicensing applicant for the Condit Hydroelectric Project No. 2342 ("Project"), hereby requests that the Commission amend the license for the Project and approve the Condit Hydroelectric Project Settlement Agreement ("Settlement") submitted jointly by PacifiCorp and certain parties in this proceeding.<sup>1</sup> The Settlement is the product of extensive negotiations and compromises between PacifiCorp and most parties in this proceeding.<sup>2</sup> In support of this filing, PacifiCorp respectfully states as follows:

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<sup>1</sup> The Settlement, including the Removal Plan Summary, and Explanatory Statement are Exhibits 1 and 2 to this filing, respectively.

<sup>2</sup> The parties to the Settlement in addition to PacifiCorp are the Yakama Indian Nation, the U.S. Forest Service, the U.S. Department of the Interior, the National Marine Fisheries Service, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, American Rivers, American Whitewater Affiliation, Columbia Gorge Audubon Society, Columbia Gorge Coalition, Columbia River United, Federation of Fly Fishers, Friends of the Columbia Gorge, Friends of the Earth, Friends of the White Salmon, The Mountaineers, Rivers Council of Washington, The Sierra Club, Trout Unlimited, Washington Trout, the Washington Wilderness Coalition, and the Columbia River Intertribal Fish Commission.

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I.

PacifiCorp is a corporation organized under the laws of the state of Oregon and is authorized to do business in the state of Washington. PacifiCorp is the licensee for the Project. All correspondence and communications related to this filing should be addressed to the following:

Randy Landolt, Managing Director  
Hydro Resources Group  
PacifiCorp  
825 NE Multnomah Street, Suite 1500  
Portland, OR 97232  
(503) 813-6651

Thomas H. Nelson  
Jeffrey S. Lovinger  
Law Offices of Thomas H.  
Nelson and Associates  
825 NE Multnomah St., Ste. 925  
Portland, OR 97232  
(503) 230-8311

Robert A. Nelson  
Stoel Rives LLP  
1275 K St., Suite 810  
Washington, D.C. 20005-4006  
(202) 408-2102

II.

LICENSE AMENDMENT

PacifiCorp requests an amendment of the Project license to extend the term through October 1, 2006, subject to the terms and conditions of the Settlement. The Commission's predecessor originally issued a license for the Project in 1968. Pacific Power & Light Company, 40 FPC 1485 (1968) (project license issued on December 20, 1968, effective May 1, 1965 with a December 31, 1993 termination date). While the initial term of that license as originally specified has expired, PacifiCorp has continued

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to operate the Project under annual license (an extension of the license) and in accordance with the terms and conditions of the original license as amended.

PacifiCorp has also previously filed a timely and sufficient application to continue operation of the Project under license in compliance with the Commission's applicable rules. In these circumstances, the Commission has authority to amend PacifiCorp's license and to extend the expiration thereof to October 1, 2006 and to make that amendment subject to the terms and conditions of the Settlement. See, Swinomish Tribal Community v. FERC, 627 F.2d 499 (D.C. Cir. 1980); County of Antrim, Michigan, 88 FERC ¶ 62,158 (1999) (approving settlement related to decommissioning and extending license term by 14 years to December 31, 2014 for a project originally licensed in 1981 for a 20 year term expiring on February 28, 2001); Central Nebraska Public Power and Irrigation District, 39 FERC ¶ 61,378 (1987) (issuance of annual license tolls the expiration date of the existing license and that license has not effectively expired). PacifiCorp also requests that the Commission approve the Settlement and amend the license to include the Settlement. East Bay Municipal Utility District, 85 FERC ¶ 61,292 (1998) (approving settlement and amending license).

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### III.

#### OFFER OF SETTLEMENT

Pursuant to Rule 602 of the Commission Rules of Practice and Procedure, 18 CFR § 385.602, PacifiCorp hereby files on behalf of itself and the supporting parties a complete and accurate copy of the Settlement along with an explanatory statement. See, Exhibits 1 and 2, respectively. In addition to Exhibits 1 and 2, PacifiCorp also references the material included in the record in its relicensing proceedings and considers that material relevant to the Settlement, including in particular the R W Beck report filed in June 1998 and the Commission's October 1996 final environmental impact statement.

The Settlement is the product of extensive negotiations and compromises between PacifiCorp and most parties in this proceeding. Specifically, the Settlement is filed by PacifiCorp on behalf of itself and the Yakama Indian Nation, the U.S. Forest Service, the U.S. Department of the Interior, the National Marine Fisheries Service, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, American Rivers, American Whitewater Affiliation, Columbia Gorge Audubon Society, Columbia Gorge Coalition, Columbia River United, Federation of Fly Fishers, Friends of the Columbia Gorge, Friends of the Earth, Friends of the White Salmon, The Mountaineers, Rivers Council of Washington, The Sierra Club, Trout Unlimited, Washington Trout, the Washington Wilderness Coalition, and the Columbia River Intertribal Fish Commission.

#### **4 - APPLICATION FOR AMENDMENT OF LICENSE AND FOR APPROVAL OF SETTLEMENT**

As discussed above, the Settlement establishes terms and conditions for the amended license and procedures for resolving the issues in this proceeding. The Settlement avoids the cost and burdens of litigation and minimizes present and future uncertainties related to the Project. Exhibits 1 and 2 fully describe the Settlement and its provisions.

Voluntary settlements related to hydroelectric applications are favored by the Commission. PacifiCorp and the supporting parties have entered into a Settlement which achieves that objective and fully support its implementation. PacifiCorp requests that the Commission find that the Settlement is fair, reasonable, and consistent with the public interest and approve it without condition or modification.

#### IV.

#### TIMING AND REQUEST FOR EXPEDITIOUS COMMISSION ACTION ON THE SETTLEMENT

The Settlement contemplates that Commission action on the Settlement will occur prior to final action by the Commission on PacifiCorp's application to amend the license. In order to avoid uncertainty and establish the rights and responsibilities of the parties in this proceeding and under the Settlement, and consistent with the Settlement and the procedures for filing comments in Rule 602 of the Commission's Rules of Practice and Procedure, PacifiCorp requests that the Commission immediately notice PacifiCorp's filing, provide for initial comments on the Settlement by November 10,

#### **5 - APPLICATION FOR AMENDMENT OF LICENSE AND FOR APPROVAL OF SETTLEMENT**

1999, with reply comments by November 22, 1999, expeditiously review and evaluate the comments, and take action on PacifiCorp's request that the Commission approve the Settlement before the end of the year.

After Commission action on the Settlement, the Commission could then consider PacifiCorp's application to amend the license, including the need to prepare a supplement to the Commission's October 1996 final environmental impact statement on PacifiCorp's relicensing application (FERC FEIS-0103), engage in any consultation required by Section 7 of the Endangered Species Act on PacifiCorp's application to amend the license in accordance with the Settlement, and any related issues.

PacifiCorp also submits that expeditious Commission review and action on the Settlement is justified, given the comprehensive nature of the Settlement, the parties to the Settlement, and the extensive negotiation and compromise among the parties embodied in the Settlement.

## V.

### CONCLUSION

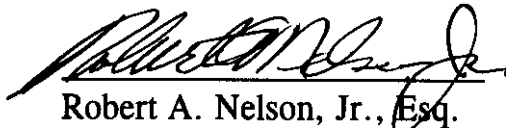
**WHEREFORE**, for the reasons set forth above and the attached Explanatory Statement and supporting documentation, PacifiCorp requests that the Commission approve the Settlement and amend the license to include the Settlement. Specifically, the Commission should:

### **6 - APPLICATION FOR AMENDMENT OF LICENSE AND FOR APPROVAL OF SETTLEMENT**

- Expediently review and approve the Settlement without modification or condition.
- Prepare a supplement to the Commission's October 1996 final environmental impact statement on PacifiCorp's relicensing application, engage in any consultation required by Section 7 of the Endangered Species Act on PacifiCorp's application to amend the license in accordance with the Settlement, and take other actions as necessary.
- Amend the license to provide that it will terminate on October 1, 2006, subject to the terms and conditions of the Settlement, and incorporate the terms and conditions of the Settlement in the license.

DATED: October 21, 1999

Respectfully submitted,



Robert A. Nelson, Jr., Esq.

Of Attorneys for PacifiCorp and  
on behalf of the sponsoring  
parties to the settlement

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OF SETTLEMENT**



**EXHIBIT 1**

## CONDIT HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between PacifiCorp, licensee and relicensing applicant for the Condit Hydroelectric Project, FERC No. 2342 (the "Project"), intervenors American Rivers, American Whitewater Affiliation, Columbia Gorge Audubon Society, Columbia Gorge Coalition, Columbia River United, Federation of Fly Fishers, Friends of the Columbia Gorge, Friends of the Earth, Friends of the White Salmon, The Mountaineers, Rivers Council of Washington, The Sierra Club, Trout Unlimited, Washington Trout, and the Washington Wilderness Coalition (hereinafter "American Rivers, et al."), the Columbia River Intertribal Fish Commission ("CRITFC"), the Yakama Indian Nation ("Nation"), the U.S. Forest Service ("USFS"), U.S. Department of the Interior ("Interior"), the National Marine Fisheries Service ("NMFS"), the Washington Department of Ecology ("Ecology"), and the Washington Department of Fish and Wildlife ("WDFW") (collectively the "Intervenors"), pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission"), 18 C.F.R. § 385.602 (1997). PacifiCorp and the Intervenors constitute the parties to this Agreement (the "Parties," any one of whom may be referred to as a "Party").

### Recitals

- A. PacifiCorp owns and operates the Project, which is located at approximately river mile 3.3 on the White Salmon River in Skamania and Klickitat counties, Washington.
- B. The Project, which was completed in 1913, blocks fish access to habitat above Condit Dam.
- C. In 1963, PacifiCorp's predecessor, Pacific Power & Light Company, applied to the predecessor of the Commission, the Federal Power Commission, for a license to operate the Project, and in 1968 the Commission issued a license containing an effective date of May 1, 1965 and a termination date of December 31, 1993.
- D. In December 1991, pursuant to Part I of the Federal Power Act of 1920, 16 U.S.C. 791a et seq. (the "FPA"), PacifiCorp filed an application with the Commission for a new license for continued operation of the Project (the "Relicensing Proceeding").
- E. PacifiCorp's initial FPA license to operate the Project expired on December 31, 1993. Since that time, PacifiCorp has been operating the Project pursuant to annual licenses issued pursuant to Section 15(a) of the FPA, 16 U.S.C. § 808(a), pending determination by the Commission of PacifiCorp's application for issuance of a new license for the Project.

F. In response to the Commission's request for comments, recommendations, and prescriptions regarding PacifiCorp's application for a new license, various Intervenor filed comments, recommendations, and prescriptions. After review of the comments, recommendations, and prescriptions from the Intervenor, the Commission staff issued a Final Environmental Impact Statement dated October 1996 and recommended a preferred alternative for a new Project license.

G. PacifiCorp has determined that Project operations would be uneconomic if a new Project license were issued by the Commission in accordance with recommendations of the Final Environmental Impact Statement.

H. In lieu of fish passage facilities and other measures recommended for a new Project license in the Final Environmental Impact Statement, the Nation, CRITFC and American Rivers, et al. requested that PacifiCorp remove the Project in order to restore anadromous fish and natural flow conditions in the White Salmon River. Intervenor Ecology, WDFW, Interior, USFS, and NMFS have supported investigation of dam removal.

I. On January 29, 1997, PacifiCorp requested a temporary abeyance of the Relicensing Proceeding in order to investigate the feasibility of various dam removal alternatives in collaboration with the Intervenor and other interested entities and individuals.

J. At the request of the Nation, CRITFC, and PacifiCorp, R.W. Beck, an independent, consulting engineer firm, prepared an initial engineering feasibility and cost study, dated March 1997, of Project removal alternatives.

K. On July 30, 1997, PacifiCorp filed a renewed motion with the Commission to hold the Relicensing Proceeding in abeyance in order to afford the Parties further time to collaborate. This motion was supported by American Rivers et al., Interior, NMFS, USFS, WDFW, Ecology, and the Nation.

M. On March 19, 1998, PacifiCorp filed a renewed motion with the Commission to hold the Relicensing Proceeding in abeyance to afford the Parties additional time to collaborate.

N. In May 1998, R.W. Beck, with assistance from a consulting engineer employed by American Rivers, prepared an additional, more detailed summary report of Project removal alternatives.

O. On August 31, 1998, PacifiCorp and the Intervenor filed a request with the Commission to hold the Relicensing Proceeding in abeyance to afford the Parties additional time to collaborate.

P. As a result of collaboration, the Parties have reached agreement on a dam removal plan for the Project, described as the "Selected Approach" in the Condit Hydroelectric Project Removal Summary Report dated May 1998 as supplemented by the removal costs worksheet attached thereto (collectively the "Removal Plan"), which is set forth in Exhibit A. The Parties believe the Removal Plan is technically, legally, biologically, and economically feasible.

## SECTION 1 PURPOSE AND EFFECT OF OFFER OF SETTLEMENT

1.1 **Purpose of Agreement.** The Parties have entered into this Agreement for the purpose of resolving all issues that were or could have been raised by the Parties in the Relicensing Proceeding, and for the purpose of obtaining a Commission order approving an extension and amendment of PacifiCorp's Project license in accord with Sections 3 and 4 below (the "Amended License"), an application for which will be submitted to the Commission pursuant to Sections 2 and 4 herein and 18 C.F.R. Part 6 (1997).

1.2 **Limitations.** This Agreement is the product of negotiation and cooperation among the Parties in an effort to investigate the economic, technical and environmental feasibility of dam removal as a preferred alternative in the Relicensing Proceeding. This Agreement reflects the Parties' agreement that Project removal, under the terms and conditions set forth in this Agreement, constitutes a fair, reasonable and just resolution to the issues in the Relicensing Proceeding. The Parties believe this Agreement also serves the public interest. By entering this Agreement, no party shall be deemed to have made any admission or waived any contention of fact or law which it did make or could have made in the Relicensing Proceeding. This Agreement shall not be offered in evidence or cited as precedent by any Party to this Agreement in any administrative or judicial litigation, arbitration, or other proceeding, except a proceeding to establish the existence of or to enforce or implement this Agreement. This Section 1.2 shall survive any termination of this Agreement. The Parties acknowledge that PacifiCorp disputes the Commission's authority to issue a decommissioning order as such in this or any further relicensing proceeding. However, PacifiCorp and the Parties agree that the Commission has authority under the FPA to issue an order consistent with this Agreement.

## SECTION 2 ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1 **Commission Filings.** Within thirty (30) days of the date on which this Agreement is signed by all of the Parties (the "Effective Date"), PacifiCorp shall file with the Commission: (a) a petition or application requesting the Commission to issue PacifiCorp an Amended License in accord with this Agreement ("Application"), and (b) a fully executed copy of this Agreement (including a copy of the Removal Plan).

**2.2 Permits.** In accordance with this Agreement, PacifiCorp shall apply for and use its best reasonable efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications, determinations, and other governmental approvals, including but not limited to the Amended License, necessary to commence Project removal in accordance with the Removal Plan and this Agreement ("Permits"). The Parties shall in good faith and with due diligence cooperate during the permitting, environmental review, and implementation of this Agreement for the purpose of avoiding unreasonable delay in Project removal. The Intervenor who are permit issuing agencies will vigorously defend Permit Challenges to their respective permits. PacifiCorp will support any such litigation as a necessary party. Each Party shall bear its own costs of defense. The Parties agree that PacifiCorp shall not be required by this Agreement to cease generating power at the Project or to otherwise implement the Removal Plan or any Permit until any and all applicable Permits are obtained and any and all applicable, prescribed periods for a petition for administrative or judicial review or appeal or any similar proceeding relating to any Permit ("Proceeding") have expired without any such Proceeding having been commenced or, in the event any such Proceeding is commenced, until any such Proceeding is terminated on terms and conditions consistent with the Removal Plan and this Agreement. In the event any Proceeding is commenced, the Parties shall collaborate on the effect of such Proceeding on implementation of this Agreement.

**2.3 Representations Regarding Consistency and Compliance with Statutory Obligations.** By entering into this Agreement, Ecology, Interior, NMFS, USFS and WDFW represent that they believe their statutory and other legal obligations are, or can be, met consistent with this Agreement. Nothing in this Agreement shall be construed to limit any government agency, including Ecology, Interior, NMFS, USFS, and WDFW, with jurisdiction directly related to Project removal in accordance with the Removal Plan and this Agreement from complying with its obligations under applicable laws and regulation or from considering public comments received in any environmental review or regulatory process related to Project removal in accordance with the Removal Plan and this Agreement. This Agreement shall not be interpreted to predetermine the outcome of any National Environmental Policy Act ("NEPA") or State Environmental Policy Act ("SEPA") environmental review process or any Permit process.

**2.4 Environmental Review.** The Parties shall jointly request that the Commission promptly initiate NEPA compliance and coordination with other environmental review processes under federal, state, regional, and local laws which may be necessary for issuance of the Amended License and the issuance of Permits required to implement Project removal in accordance with the Removal Plan and this Agreement. The Parties shall make all reasonable efforts to expedite compliance with NEPA, SEPA, and environmental review required by other federal, state, regional, and local laws for issuance of the Amended License and the Permits to implement Project removal in accordance with the Selected Approach identified in the Removal Plan and this Agreement.

**2.5 Communications with the Commission and other Government Agencies.**

Except as may be authorized for governmental agencies in Section 2.4 of this Agreement, no Party shall (a) propose, support, or otherwise communicate to the Commission or any other government agency any comments, proposals or recommendations relating to the Amended License or Permit terms and conditions or any environmental review process relating to the Project or Project removal (including but not limited to any comments, proposals or recommendations relating to mitigation or fishery enhancements), other than comments, proposals or recommendations which support and are consistent with the terms of this Agreement, or (b) oppose any Amended License or Permit term or condition that PacifiCorp is authorized or directed to carry out in accordance with the Agreement.

**SECTION 3 EXTENSION OF COMMISSION LICENSE; ADDITIONAL CONDITIONS**

PacifiCorp shall apply to the Commission for an order amending PacifiCorp's original Project license, to extend the expiration date thereof to October 1, 2006, and add to the existing terms and conditions the following conditions: (a) that PacifiCorp shall comply with this Agreement, and (b) that PacifiCorp shall notify the Commission of PacifiCorp's decision to do one of the following: (1) cease generation of electricity at the Project and commence Project removal in accordance with the Removal Plan, the terms and conditions of this Agreement, and applicable Permits, or (2) not remove the Project because of the occurrence of one of the conditions set forth in Section 5 of this Agreement, whereupon PacifiCorp shall request the Commission to renew action on PacifiCorp's December 1991 application for a new license.

**SECTION 4 PROJECT REMOVAL**

**4.1 Project Removal and PacifiCorp's Financial Commitment.** PacifiCorp shall implement and finance Project removal in accordance with the schedule set forth in the Removal Plan and in this Section 4 and in accordance with the terms and conditions of this Agreement, subject to the availability of and in accordance with all Permits necessary to implement the Removal Plan, unless otherwise agreed to by the Parties.

**4.1.1 Project Removal Costs and PacifiCorp's Financial Commitment.** Project removal costs include the sum of the following: (a) \$ 13,650,000 for planning, engineering, design, mobilization, demobilization, construction, and deconstruction costs associated with Project removal in accordance with this Agreement ("Construction Costs"), (b) \$2,000,000 collectively for technical, engineering and legal costs incurred by PacifiCorp in obtaining any Permits ("Permitting Costs") and technical, engineering, design, mobilization, demobilization, construction, deconstruction and legal costs associated with implementing and complying with permitting and mitigation measures required by any Permit ("Mitigation Costs"), (c) \$1,000,000 which PacifiCorp shall contribute to the Nation for the enhancement, supplementation, and conservation of

fishery resources in the White Salmon River Basin ("Fishery Enhancement Fund"), and (d) \$500,000 which PacifiCorp shall contribute for the enhancement, maintenance or other use of the Underwood In Lieu Site located near the confluence of the White Salmon and Columbia Rivers or other in lieu sites owned and managed by the United States for the use of the Nation, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Reservation, and the Nez Perce Tribe and the members thereof (collectively the "Tribes") for fishing purposes ("In Lieu Site Enhancement Fund"). The In Lieu Site Enhancement Fund shall be administered by the Tribes for the purposes described in this Section 4.1.1. Expenditures from the In Lieu Site Enhancement Fund and any actions taken concerning the Underwood or other in lieu sites shall be by the concurrence of the four Tribes and the Bureau of Indian Affairs. The items listed in (a) through (d) of this Section 4.1.1 are deemed "Project Removal Costs". Project Removal Costs shall be measured in lawful currency of the United States as of the Effective Date and adjusted using the methodology stated in Section 4.1.2. PacifiCorp's commitment to finance Project Removal Costs shall not exceed \$17,150,000 measured in lawful currency of the United States as of the Effective Date. Project Removal Costs shall begin accruing on the Effective Date of this Agreement. Any costs incurred by PacifiCorp prior to the Effective Date of this Agreement related to Project removal, including but not limited to costs of preparing the Removal Plan and other technical information shared with the Intervenors, shall not be included in nor credited to Project Removal Costs but shall be recognized nonetheless as contributions made by PacifiCorp to Project removal. So long as this Agreement is not terminated by October 1, 2004, PacifiCorp shall make its \$500,000 contribution to the In Lieu Site Enhancement Fund by October 1, 2004 or within thirty (30) days after receiving written notice from the Tribes of the location of the account to which such contribution shall be made, whichever is later.

**4.1.2 Quarterly Adjustment of Project Removal Costs to 1999 Dollars.** Project Removal Costs paid in any given calendar quarter shall be stated in terms of lawful currency of the United States as of the Effective Date ("1999 Dollars"). Project Removal Costs paid in any given calendar quarter shall be converted to and stated in 1999 Dollars by adjusting for the percentage change in the Gross Domestic Product - Implicit Price Deflator Index published by the United States Department of Commerce, Bureau of Economic Analysis (being on the basis of 1992 = 100) ("GDP-IPD Index") from the Effective Date through the end of the calendar quarter in question. To determine the appropriate adjustment, the GDP-IPD Index values used shall be those published in the third month after the end of the calendar quarter in question, which values shall be compared with the GDP-IPD Index published in the third month after the Effective Date. If the GDP-IPD Index or any revision or equivalent of that index ceases to be published by a federal agency, the Parties shall replace it with a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute for the GDP-IPD Index. A sample calculation is set forth in Exhibit B.

**4.2 Determination of Project Removal Costs and Schedule: Bids.** The total Project Removal Costs defined in Section 4.1.1 shall be determined in accordance with the procedure set forth in this Section 4.2. PacifiCorp shall initiate bid procurement procedures in a manner calculated to meet the schedule set forth in Section 4.4 at least ninety (90) days prior to the date construction on Project removal starts. At the time construction bids are received, PacifiCorp shall provide the Intervenors with an itemized estimate and supporting documentation of the total Project Removal Costs and a proposed schedule for Project removal in accordance with Section 4.4. Within twenty (20) days of receipt of PacifiCorp's estimate of Project Removal Costs and proposed schedule, the Parties shall meet for the purpose of reaching agreement on the Project Removal Costs and the final schedule for Project removal. Upon request by one or more of the Intervenors, PacifiCorp shall make available to the Intervenors any additional relevant technical and financial information used by PacifiCorp in arriving at its Project Removal Costs estimate. If the bids PacifiCorp receives indicate that Construction Costs will exceed \$13,650,000, the Intervenors shall have the opportunity to seek alternative funding sources and to make recommendations to PacifiCorp on opportunities for reducing Construction Costs to bring those costs within \$13,650,000. If the Intervenors are unable to obtain financing to make up the difference or to propose cost reductions acceptable to PacifiCorp, PacifiCorp shall have the option to withdraw from this Agreement in accordance with Section 5.1.6.

**4.3 Final Contract for Project Removal.** PacifiCorp shall provide the Intervenors with a copy of the final contract(s) for Project removal.

**4.4 Schedule for Project Removal.** PacifiCorp shall commence implementation of the construction schedule described in the Removal Plan not later than August 1, 2006, cease generating power at the Project not later than October 1, 2006, commence Project removal during October 2006, and finance Project Removal Costs in accordance with Section 4.1.1. The schedule attached hereto as Exhibit C illustrates activities that will be carried out under the schedule for Project removal. The Parties agree to consider commencement of removal in October 2005 or earlier if the Intervenors can identify additional funds which significantly reduce PacifiCorp's financial contribution to Project Removal Costs, provided that no change shall be made to the Project removal schedule described in this Section 4.4 except in writing approved by all Parties to this Agreement.

**4.5 Construction Costs Risk Allocation.** Once PacifiCorp awards one or more contracts to perform work within the scope of matters covered by Construction Costs, if actual Construction Costs exceed \$13,650,000, PacifiCorp may use unobligated funds available from Permitting Costs, Mitigation Costs, and Fishery Enhancement Fund, if any, in that order and to the extent necessary to satisfy Construction Costs which exceed \$13,650,000. PacifiCorp shall not so use the Fishery Enhancement Fund without consultation with and the approval by the Nation. If PacifiCorp reasonably anticipates that Construction Costs will exceed \$13,650,000 and that available unobligated funds from Permitting Costs, Mitigation Costs, In



Lieu Site Enhancement Fund, and the Fishery Enhancement Fund will not be sufficient to cover the difference between \$13,650,000 and actual Construction Costs, PacifiCorp shall give immediate notice to the Intervenor. Thereafter, if alternative funding is not provided by the Intervenor in a timely manner to cover Construction Costs in excess of \$13,650,000 or if Intervenor fails to identify cost reduction strategies acceptable to PacifiCorp, PacifiCorp may stop further work on Project removal and shall not be obligated to finance Project removal beyond the sum of Construction Costs, Permitting Costs, Mitigation Costs, In Lieu Site Enhancement Fund, and Fishery Enhancement Fund available in accordance with this Section 4.5. PacifiCorp shall be deemed, upon contribution of \$17,150,000 toward Project removal, to have fully satisfied its obligations to finance and implement Project removal the same as though Project removal had been completed in accordance with this Agreement.

**4.6 Project Removal Costs and Tax Savings Allocations.** If actual Project Removal Costs are less than \$17,150,000, PacifiCorp shall retain one-half the difference between the actual Project Removal Costs and \$17,150,000 and PacifiCorp shall contribute the remaining one-half of such savings to the In Lieu Site Enhancement Fund. PacifiCorp shall make such contribution to the In Lieu Site Enhancement Fund within thirty (30) days of completion of all mitigation and monitoring requirements of any governmental authority in connection with the removal of the Condit Dam. In addition, PacifiCorp shall contribute to the In Lieu Site Enhancement Fund one-half of any savings which the State of Washington forgoes if the Washington Department of Revenue determines that, due to an exemption, the Washington State Sales Tax on services, RCW 82.08, does not apply to services provided by contractors implementing removal of the Condit Dam in accordance with this Agreement. Any funds contributed by PacifiCorp to the In Lieu Site Enhancement Fund under this Section 4.6 shall be administered by the Tribes for mitigation and enhancement projects and activities benefitting resources of the White Salmon River Basin which are approved by the Intervenor.

## **SECTION 5 MODIFICATION OR WITHDRAWAL AND TERMINATION**

**5.1 Withdrawal.** A Party may withdraw from this Agreement in accordance with this Section 5.1 after complying with Section 5.2.

**5.1.1 Amended License Not Timely Issued by the Commission.** Any Party may withdraw from this Agreement if the Amended License is not issued by the Commission within three (3) years of the Effective Date of this Agreement.

**5.1.2 Amended License Inconsistent With This Agreement.** Any Party may withdraw from this Agreement if the Amended License issued by the Commission contains terms or conditions materially inconsistent with those set forth in this Agreement. In the event the Commission modifies, fails to require compliance with, or changes in the Amended License a term or condition that the Parties have agreed to in this Agreement, and this Agreement is not terminated in accordance with Section 5.3, the term or

condition as set forth in this Agreement shall remain a binding covenant among the non-withdrawing Parties, enforceable in accordance with the law of contracts (except to the extent the Amended License prohibits or precludes the performance of that term or condition). In the event a notice of intent to withdraw is filed, the provisions of Section 5.2 shall come into effect unless the Amended License is revised to conform to the Agreement. All Parties shall request the Commission to stay the rehearing proceeding pending the completion of the activities specified in Section 5.2.

- 5.1.3 **Permit Terms and Conditions Inconsistent with Agreement.** If any Permit includes a term or condition which is materially inconsistent with the terms and conditions of this Agreement, any Party affected by such inconsistency may withdraw from this Agreement.
- 5.1.4 **Inability to Obtain Required Permit.** PacifiCorp may withdraw from this Agreement if it is not able to obtain a Permit in final form on terms and conditions consistent with this Agreement which is necessary to implement the Removal Plan or the Amended License after exercising all good faith efforts and fully exhausting all avenues of appeal.
- 5.1.5 **Inability to Obtain Required Easement, Right-of-Way, Other Interest in Property, or Third-Party Consent.** PacifiCorp may withdraw from this Agreement if it is not able to obtain an easement, right-of-way, other interest in or to property, or the consent of any person or entity which is required by law to implement the Removal Plan or the Amended License after exercising all good faith efforts and fully exhausting all applicable avenues of appeal, if any.
- 5.1.6 **Inability to Obtain Contracts to Perform Removal and Implement Mitigation.** PacifiCorp may withdraw from this Agreement if it is not able after exercising all good faith efforts to obtain a contract with a qualified, responsive bidder to perform Project removal and to implement mitigation required by this Agreement or any Permit in accordance with the limitations on Project Removal Costs and other terms and conditions of this Agreement.
- 5.1.7 **Injunction Prohibiting Project Removal or Implementation of Any Permit or Mitigation.** PacifiCorp may withdraw from this Agreement if an injunction or similar order in any Proceeding prohibits PacifiCorp from implementing Project removal or any Permit or mitigation required by this Agreement after exercising all good faith efforts and fully exhausting all applicable avenues of appeal to have such injunction or other similar order vacated or modified to conform with this Agreement.
- 5.1.8 **Inability to Confirm In Lieu Site Enhancement Agreement.** PacifiCorp may withdraw from this Agreement if it is unable after due diligence to confirm an In Lieu

Site Enhancement Agreement with the Tribes within forty-five (45) days of the Effective Date of this Agreement.

5.1.9 **Inability to Obtain Release of Claims from the United States in Its Capacity as Trustee.** PacifiCorp may withdraw from this Agreement if the United States in its capacity as trustee on behalf of Indian tribes fails to provide, within forty-five (45) days of the Effective Date of this Agreement, a release and discharge to PacifiCorp's satisfaction of any and all claims for legal or equitable relief, causes of action, damages, or liabilities caused by, associated with, or in any way attributable to (a) PacifiCorp's ownership, use, operation or maintenance of the Project or (b) the removal of the Project with respect to Tribal interests in the fishery resources or fishery habitat of the White Salmon River and the Columbia River and in lieu sites, except for PacifiCorp's obligations under this Agreement.

5.2 **Notice of Intent to Withdraw; Duty to Negotiate; Modification of Agreement.** If a Party intends to withdraw from this Agreement, it shall first give the other Parties written notice of its intent to do so. The Parties shall meet within twenty (20) days of such mailing in a good faith attempt to negotiate changes to this Agreement that would resolve the cause of the proposed withdrawal. If the Parties are unable to reach agreement within ninety (90) days of the notice of intent, the objecting party may withdraw from this Agreement by notifying the other Parties in writing within one hundred (100) days of the date on which it gave notice of intent to withdraw to the other Parties. This Section 5.2 shall not preclude a Party from seeking rehearing on or otherwise appealing modification of the Amended License to which an objection is made within the prescribed time periods. The Party shall promptly withdraw the request for rehearing or appeal if the Parties subsequently agree to change this Agreement to reflect the Commission's modifications.

5.3 **Effect of Withdrawal.** If any party except PacifiCorp withdraws from this Agreement, this Agreement shall continue in effect, unless the other Parties affirmatively agree to terminate the Agreement. If PacifiCorp withdraws, this Agreement shall terminate.

5.4 **Effect of Termination.** Section 1.2 of this Agreement shall survive any termination of this Agreement. In the event of termination before the Amended License is issued, the Parties intend that the Relicensing Proceeding be restored to its status prior to the first motion to abey the proceedings, filed by PacifiCorp on January 29, 1997. If this Agreement is terminated after the Commission shall have issued an Amended License but before the Amended License is accepted by PacifiCorp, the Amended License shall be deemed rejected with the understanding that the existing relicensing proceeding will be resumed and that all Parties to this Agreement will be restored to the status quo in the relicensing proceeding prior to the Effective Date of this Agreement. If this Agreement is terminated after the Amended License is accepted by PacifiCorp, PacifiCorp shall promptly surrender the Amended License in accord with Commission rules with the understanding that the existing

relicensing proceeding will be resumed and that all Parties to this Agreement will be restored to the status quo in the relicensing proceeding prior to the Effective Date of this Agreement.

**5.5 Remedy for Unlawful Withdrawal or Termination of Agreement.** If any Party believes another Party has withdrawn from or terminated this Agreement in violation of the terms and conditions of this Agreement, the sole remedy for such alleged violation, after exhausting dispute resolution procedures under Section 10, shall be by a proceeding seeking specific performance of the obligations of the Party seeking to withdraw from or to terminate this Agreement.

## **SECTION 6 MITIGATION; POST-REMOVAL COVENANTS**

**6.1 Mitigation Provided by Project Removal.** The Parties agree that Project removal in accordance with Section 4 of this Agreement is the primary means of protection, mitigation, and enhancement of fish, wildlife, and other resources affected by the Project for the purposes of achieving a fair, reasonable and just resolution of issues in the Relicensing Proceeding and serving the public interest.

6.1.1 The Commission's draft and final environmental impact statements found that "dam removal would optimize anadromous fish access and use of upstream habitat because the river profile would rapidly change to the natural pre-dam slope conditions. A natural channel and slope without obstructions provides the best access and migration route for anadromous fish." In addition, the Secretaries of Commerce and Interior noted that dam removal would be the most fail-safe method to pass anadromous fish through the Project area.

6.1.2 The Commission's final environmental impact statement found additional benefits from dam removal, several of which are listed below:

"Project retirement and dam removal would end facility entrainment and passage of fish over the dam. Juvenile salmonids spawned and reared in the upstream habitat could safely out-migrate from the basin. Long-term anadromous fish restoration success with dam removal would result from a combination of increasing upstream passage effectiveness and eliminating downstream migrant mortality caused by project operations and spillway passage over the dam."

"Condit dam removal would restore natural bed load movement processes in the river . . . . Downstream of the powerhouse, aquatic resources, particularly salmonid productivity, would benefit from the elimination of short-term low flows . . . . An increased gravel supply combined with a stable . . . .flow regime would significantly increase salmonid production potential."

"Dam removal would also benefit water quality by passing cooler water to the downstream habitat during the summer and fall. Beneficial ecosystem processes would result from an increase in large organic debris (LOD) transported to the downstream habitat that was formerly retained behind the dam. Natural flow processes would also distribute the carcasses of post-spawn anadromous fish to the downstream habitat [supporting] an increase in the diversity and abundance of aquatic invertebrates . . . . Carcasses . . . would contribute valuable nutrients to the aquatic system and provide prey and nutrients to wildlife species."

"Dam removal would eliminate the adverse impacts associated with rapid and unrestricted flow fluctuations, including juvenile fish stranding and redd dewatering and reduced primary and secondary productivity."

"Dam removal would restore unobstructed river flows . . . and allow for continuous and unified management of the river."

"[T]he total recreational benefits and expenditures associated with whitewater boating and salmon fishing would exceed the benefits and expenditures generated by the current flatwater boating and fishing activities within the project area."

"[Dam removal] would provide significant traditional cultural resource benefits by restoring to the Yakama Indian Nation access to and fishing from anadromous fish-bearing areas . . . unblocked by Condit dam for the first time in 80 years. . . . The Yakama Indian Nation would once again have access to areas that they cite as important for traditional ceremonial, spiritual, and gathering uses by restoring to near natural conditions the area previously occupied by Condit dam and Northwestern Lake."

"[Dam removal] would allow for continued whitewater recreation, and the connection and enhancement of recreational opportunities between the scenic river area and the Columbia River Gorge. It would also provide long-term recreational opportunities from a natural free-flowing river. This alternative best addresses cumulative recreational impacts by eliminating the impoundment at Northwest Lake and restoring natural river conditions, allowing for full development to the inherent whitewater boating potential of the river reach from BZ Corners to a take-out point near the confluence with the Columbia River."

**6.2 Mitigation Provided To Implement the Removal Plan.** The Parties agree that the mitigation to implement the Removal Plan shall be in accordance with specific mitigation required by the Permits.

**6.3 Post-Removal Requirements.** So long as PacifiCorp implements the Amended License, the Removal Plan, and this Agreement, including mitigation required by any Permit,

(a) no Party shall claim that the Condit Dam constitutes an obstruction of the White Salmon River, (b) PacifiCorp shall not be required to take any further action with respect to the Project or enhancement or restoration of fish and wildlife resources or habitats in the White Salmon River Basin, and (c) the State of Washington shall not impose and no other Party to this Agreement shall request or seek to require the State of Washington to impose additional requirements on the Project or require additional mitigation or removal efforts under RCW 75.08.011, 75.08.012, 75.20.040, 75.20.060, 75.20.061, 75.20.090, 77.16.210, 77.16.220, 77.12.425 or otherwise on account of any matter arising from PacifiCorp's ownership, use, operation, maintenance, or removal of the Project.

**6.4 Contingent Mitigation Fund.** The Parties agree that fishery and other resource enhancements associated with Project removal outweigh mitigation opportunities that will be foregone between the Effective Date and the date of Project removal. The Parties also agree that it is appropriate to provide for a contingent mitigation fund to recapture foregone mitigation opportunities if Project removal does not occur because this Agreement is terminated in accordance with Section 5 above ("Contingent Mitigation Fund"). PacifiCorp shall contribute \$550,000 based upon appropriate mitigation measures to the Contingent Mitigation Fund within sixty (60) days after this Agreement is terminated in accordance with Sections 5.2 and 5.3 above, or fifteen (15) days after PacifiCorp receives written notice from the Intervenors designating with reasonable specificity the location and identification of the account into which PacifiCorp's contribution shall be made, whichever time is longer. The Contingent Mitigation Fund, if established, shall be used only to enhance fishery resources, fishery habitat, and other natural resources of the White Salmon River Basin.

## SECTION 7 IMPLEMENTATION TEAM

**7.1 Purpose and Function.** The Parties agree to cooperate in implementing the letter and spirit of this Agreement. To that end, this Agreement establishes an Implementation Team to facilitate such cooperative efforts. Without limiting the purpose and function of the Implementation Team, the Implementation Team shall meet as necessary to address issues relating to: implementation of this Agreement and the Removal Plan; determining Permits which are necessary to implement this Agreement and the Removal Plan; assisting PacifiCorp with processes for obtaining and complying with Permits; determination and coordination of mitigation requirements; and implementation and monitoring of mitigation. The Parties anticipate that there will be regular meetings of the Implementation Team to address these and other matters arising under this Agreement, as illustrated by the Schedule in Exhibit C.

**7.2 Meetings.** In addition to regularly scheduled meetings, the Implementation Team shall meet whenever requested by a Party. If a Party desires to convene such a meeting, it may do so by advance written notice to the other Parties of at least twenty (20) days, which notice shall also identify the matter or matters to be submitted to the Implementation Team for consideration. Each Party shall make good faith efforts to raise any issues of which that Party

is aware at regularly scheduled meetings or at a meeting convened by written notice given by any other Party in order to reduce the number of meetings. The Implementation Team will be used as the primary means of consultation and coordination among the Parties in connection with the implementation of this Agreement.

## SECTION 8 CERTIFICATION OF PROJECT REMOVAL

**8.1 Certification of Project Removal.** Not more than six (6) months nor less than one hundred (100) days prior to the date that PacifiCorp believes that Project removal will be completed in accordance with this Agreement, the Removal Plan, and Permits, PacifiCorp shall provide pre-certification notice to the Intervenor ("Pre-Certification Notice"). Within forty-five (45) days of the date of PacifiCorp's Pre-Certification Notice, the Parties shall meet to review those actions taken by PacifiCorp to remove the Project and those further actions proposed to be taken by PacifiCorp before the projected completion date ("Proposed Actions"). Upon the request of any Intervenor, PacifiCorp shall provide information in reasonable detail regarding Project removal. Any Intervenor who believes that Project removal will not be completed in accordance with this Agreement, the Removal Plan, and Permits by the date specified by PacifiCorp in its Pre-Certification Notice shall specify in reasonable detail its objection(s) in writing and provide a copy thereof to all other Parties within one hundred (100) days of the date of PacifiCorp's Pre-Certification Notice ("Objection"). No Party shall unreasonably object to PacifiCorp's Pre-Certification Notice. If no timely Objection is submitted by any Intervenor, PacifiCorp shall be deemed to have completed Project removal in accordance with this Agreement, the Removal Plan, and Permits as of the date PacifiCorp provides written certification to the Intervenor that Project removal has been completed in accordance with this Agreement, the Removal Plan, and Permits ("Certification"), so long as PacifiCorp complies with the Proposed Actions.

**8.2 Resolution of Objections to Pre-Certification Notice.** In the event any Intervenor provides a timely written Objection to the Pre-Certification Notice, the Parties shall meet within twenty (20) days of the date of such Objection for the purpose of resolving any dispute over completion of Project removal. If the Parties cannot resolve such dispute within thirty (30) days of the first such meeting date by means of a written acknowledgment of satisfaction, the dispute shall be submitted to informal, non-binding mediation in accordance with Section 10 of this Agreement. No Party shall unreasonably withhold such written acknowledgment of satisfaction. In the event a timely Objection is submitted in accordance with Section 8.1, PacifiCorp shall be deemed to have completed Project removal in accordance with this Agreement, the Removal Plan, and Permits upon receipt of a written acknowledgment of satisfaction from Intervenor that Project removal has been completed in accordance with this Agreement, the Removal Plan, and Permits. Such acknowledgment shall not unreasonably be withheld, conditioned or delayed.

## SECTION 9 ENFORCEABILITY

**9.1 Authority and Enforceability.** Each Party represents that it has full power and authority to execute this Agreement and perform its obligations under this Agreement. Each Party further represents that no further consent or approval is required to allow it to enter into and make this Agreement in accordance with its terms and conditions the valid, legal, binding, and enforceable obligation of such Party, subject to applicable law.

## SECTION 10 DISPUTE RESOLUTION

**10.1 Informal Dispute Resolution.** The Parties shall use their best reasonable efforts to resolve any dispute that may arise under this Agreement in accordance with this Section and without resort to administrative or judicial or other formal dispute resolution procedures. The purpose of this Section is to provide all Parties an opportunity to fully and candidly discuss and resolve disputes without the expense, risk and delay of formal dispute resolution. To these ends, if any dispute arises under or relating to this Agreement, any Party may provide to the other Parties a general statement of its claim(s) and position(s). If the Parties cannot resolve the dispute within thirty (30) days of receipt of any such written statement, any Party may within thirty-seven (37) days after delivery of such written statement commence non-binding mediation by giving written notice to all other Parties. The mediation shall be conducted and the mediator shall be selected in accordance with the then applicable American Arbitration Association Commercial Mediation Rules. The mediator's costs shall be shared equally among the Parties participating in the mediation. If the mediation resolves the dispute, the resolution shall be reduced to writing. Any Party may terminate its participation in the mediation without resolution of the dispute by giving written notice to the other Parties.

**10.2 Formal Dispute Resolution.** The Parties shall endeavor in good faith to resolve any disputes arising under this Agreement in accordance with Section 10.1 before resorting to other dispute resolution procedures. Each Party reserves all rights it may have to resort to administrative, judicial, or other formal dispute resolution procedures.

**10.3 Reliance on Agreement.** Any Party may rely upon and offer this Agreement as evidence in any administrative or judicial litigation, arbitration, mediation, or other proceeding to establish the existence of and to enforce or implement this Agreement. This Section 10.3 shall survive any termination of this Agreement.

## SECTION 11 MUTUAL RELEASE OF CLAIMS BY PACIFICORP AND THE NATION

**11.1 Nation's Release of Past Claims.** For the benefit of PacifiCorp and each of PacifiCorp's directors, officers, employees, and representatives, the Nation does hereby, for itself and any person, entity, agent, successor or assign claiming through or under the Nation, provide a full and complete release and discharge of any and all rights, matters, and interest



giving rise, directly or indirectly, to any kind or nature of claim, loss, harm, cost, damage, expense, or liability caused by, associated with, or otherwise in any way attributable to (a) PacifiCorp's ownership, use, operation or maintenance of the Project or (b) the removal of the Project (collectively, the "Nation's Claims"), including, but not limited to, any and all of the Nation's Claims heretofore alleged or asserted, or that could have been alleged or asserted, against PacifiCorp or the Project, and the Nation shall be deemed to have consented to and ratified PacifiCorp's ownership, use, operation, and maintenance of the Project (collectively, the "Nation's Release"). The Nation's Release is conditioned on and shall become effective on the date when PacifiCorp shall have both ceased generating power at the Project and commenced removal of the Project in accordance with the Removal Plan and this Agreement. Pending the effective date of the Nation's Release and for as long as this Agreement is in effect, the Nation shall not bring any action against PacifiCorp or its directors, officers, employees or representatives with respect to any of the Nation's Claims; *provided, however*, that the Nation may bring an action against PacifiCorp to the extent required to enforce this Agreement.

**11.2 PacifiCorp's Release of Past Claims.** For the benefit of the Nation and each of the Nation's directors, officers, employees, and representatives, PacifiCorp does hereby, for itself and any person, entity, agent, successor or assign claiming through or under the PacifiCorp, provide a full and complete release and discharge of any and all rights, matters, and interest giving rise, directly or indirectly, to any kind or nature of claim, loss, harm, cost, damage, expense, or liability caused by, associated with, or otherwise in any way attributable to the acts or omissions of the Nation affecting (a) PacifiCorp's ownership, operation or maintenance of the Project, or (b) removal of the Project in accordance with this Agreement (collectively "PacifiCorp's Claims"), including, but not limited to, any and all of PacifiCorp's Claims heretofore alleged or asserted by PacifiCorp against the Nation in connection with the Project (collectively, "PacifiCorp's Release"). PacifiCorp's Release is conditioned on and shall become effective on the date when PacifiCorp shall have both ceased generating power at the Project and commenced removal of the Project in accordance with the Removal Plan and this Agreement. Pending the effective date of PacifiCorp's Release and for as long as this Agreement is in effect, PacifiCorp shall not bring any action against the Nation or its officials, employees or representatives with respect to any of PacifiCorp's Claims; *provided, however*, that PacifiCorp may bring an action against the Nation to the extent required to enforce this Agreement.

**11.3 Release of Future Claims.** So long as either PacifiCorp or the Nation is in full compliance with its obligations under this Agreement, this Agreement shall be deemed to fully satisfy and release the complying party's obligations to the other as to any rights, matters, or interests that may give rise to the Nation's Claims or PacifiCorp's Claims (as applicable) arising after the Effective Date of Agreement. As to other rights, matters, or interests, PacifiCorp and the Nation reserve the same.

## SECTION 12 ECOLOGY AND WDFW'S RELEASE

For the benefit of PacifiCorp and each of PacifiCorp's directors, officers, employees and representatives, Ecology and WDFW ("State Agencies") do hereby provide a full and complete release and discharge of any past claims for natural resource or public nuisance damages caused by, associated with, or otherwise in any way attributable to the blockage of the White Salmon River caused by the Project or the absence of fish passage facilities at the Project. The State Agencies' Release is conditioned on and shall become effective on the date when PacifiCorp shall have both ceased generating power at the Project and commenced removal of the Project in accordance with the Removal Plan and this Agreement. Pending the effective date of the State Agencies' Release and for as long as this Agreement is in effect, the State Agencies shall not bring any action against PacifiCorp or its directors, officers, employees or representatives with respect to past claims for natural resource or public nuisance damages as particularly described above.

## SECTION 13 MISCELLANEOUS

**13.1 Support for Implementation.** The Parties shall support this Agreement in good faith and to take all reasonably actions to implement the Agreement without delay.

**13.2 Applicable Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Washington and the United States of America.

**13.3 No Partnership.** Nothing contained in this Agreement shall create or be construed as creating a partnership or joint venture relationship among the Parties.

**13.4 Waiver.** Waiver by any Party of the strict performance of any term or covenant of this Agreement, or of any right under this Agreement, shall not be a continuing waiver, and must be in writing.

**13.5 Notice.** All notices required under this Agreement must be in writing, and shall be addressed to each of the Parties as their respective addresses as set forth in this Section. All notices shall be effective and be deemed given if delivered (a) by personal delivery, on the date of delivery, (b) by certified or registered mail, return receipt requested, three (3) days after the date delivered to the United States Postal Service as shown on the receipt, and (c) by electronic communication on the date confirmation is delivered to the United States Postal Service as shown on the actual receipt. A party may change its address by notice to the other Parties. Notices under this Agreement shall be sent to the following persons:

Randy Landolt, Managing Director  
Hydro Resources Group  
PacifiCorp  
825 NE Multnomah, Suite 1500  
Portland, OR 97232

Katherine Ransel  
American Rivers  
150 Nickerson Street, Suite 311  
Seattle, WA 98109

John Gangemi  
American Whitewater Affiliation  
482 Electric Avenue  
Big Fork, Montana 59911

Dennis White  
Columbia Gorge Audubon Society  
367 Oakridge Road  
White Salmon, WA 98672

Chuck Williams  
Columbia Gorge Coalition  
P.O. Box 155  
White Salmon, WA 98672

Cindy Debruler  
Columbia River United  
P.O. Box 912  
Bingen, WA 98605

Pete Soverel  
Federation of Fly Fishers  
16430 - 72<sup>nd</sup> Avenue W.  
Edmonds, WA 98206

Gary Kahn  
Friends of the Columbia Gorge  
P.O. Box 86100  
Portland, OR 97286

Shawn Cantrell  
Friends of the Earth  
6512 - 23<sup>rd</sup> Avenue NW, Suite 320  
Seattle, WA 98117

Michael Fitzsimons  
Jaques Sharp and Sherrered  
205 Thirs Street  
Hood River, OR 97301

Scott Andrews  
Rivers Council of Washington  
509 - 10<sup>th</sup> Ave E., Suite 200  
Seattle, WA 9898102

Johan Helman  
The Mountaineers  
300 Third Avenue W.  
Seattle, WA 98119

Jeff Curtis  
Trout Unlimited  
231 SW Ash, Suite 208  
Portland, OR 97204

Kurt Beardslee  
Washington Trout  
P.O. Box 402  
Duvall, WA 98019

John Leary  
Washington Wilderness Coalition  
4649 Sunnyside Avenue N., #242  
Seattle, WA 98103

Executive Director  
Columbia River Intertribal Fish Commission  
729 NE Oregon Street, Suite 200  
Portland, OR 97232

Chairman  
Yakama Tribal Council  
P.O. Box 151  
Toppenish, WA 98948

Regional Forester  
Regional Office, R-6  
Forest Service  
U.S. Department of Agriculture  
P.O. Box 3623  
Portland, OR 97208-3623

Bill Arthur  
The Sierra Club  
180 Nickerson Street, Suite 103  
Seattle, WA 98109-1631

Northwest Regional Administrator  
National Marine Fisheries Service  
7600 Sand Point Way NE  
Seattle, WA 98115

Brian Faller  
Assistant Attorney General  
WA State Attorney General's Office  
Attorney for WA Department of Ecology  
P.O. Box 40117  
Olympia, WA 98504-0117

Neil L. Wise  
Assistant Attorney General  
Office of the Attorney General  
Fish & Wildlife Division  
P. O. Box 40100  
Olympia, WA 98504-0100

Tom Luster  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

David Mudd  
Washington Department of Fish and Wildlife  
600 Capitol Way North  
Olympia, WA 98501-1091

Barbara Scott-Brier  
Attorney-Advisor  
Office of the Solicitor, Pacific Northwest  
Region  
U.S. Department of the Interior  
500 N.E. Multnomah Street, Suite 607  
Portland, OR 97232

Area Director  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Street  
Portland, OR 97232

Regional Director  
U.S. Fish & Wildlife Service  
911 N.E. 11<sup>th</sup> Street  
Portland, OR 97732

**13.6 Modifications.** This Agreement may be modified only in a writing signed by all Parties.

**13.7 Captions.** All captions used in this Agreement are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

**13.8 Counterparts.** This Agreement may be executed in counterparts, each of which taken together shall constitute a single agreement. A telecopied or facsimile signature shall have the same effect as an original.

**13.9 Implied Covenants.** The Parties agree that in construing this Agreement no covenants shall be implied between the Parties except the covenants of good faith and fair dealing.

**13.10 Force Majeure.** No Party shall be deemed to have defaulted in the performance of its obligations under this Agreement to the extent such performance is wholly or partially prevented or delayed by Force Majeure. Force Majeure means events or causes that are not reasonably within the control or contemplation of the Party whose ability to perform under this Agreement is delayed by the events or causes, including, without limitation and by way of example only: landslides, lightning, forest fires, storms, floods, freezing, drought, earthquakes, civil disturbances, strikes, or other disturbances associated with labor relations, acts of public enemy, war, public riots, breakage, explosion, accident to machinery or equipment (reasonably related to the delayed performance), government restraint, or other causes outside of the reasonable control or contemplation of a Party. Unless the Force Majeure prevents the performance of obligations under this Agreement, the Force Majeure event may not operate to excuse, but only to delay, the performance of obligations under this Agreement. In the event of such delay, the affected obligations hereunder shall be suspended for the duration of the Force Majeure event, the time for the performance of such obligations shall be extended for as long as is reasonable in light of the Force Majeure, and the schedule set forth in the Removal Plan shall be amended to account for such delay. The Party affected by Force Majeure shall use good faith efforts to attempt, in a commercially reasonable manner, to rectify the conditions brought about by the Force Majeure and to avoid or minimize delay. Upon learning of the existence of or potential for an event that qualifies as Force Majeure, the affected Party shall promptly notify the other Parties of such situation, describing in reasonable detail the nature of the event or events in question.

13.11 **Terms and Conditions Negotiated.** The provisions of this Agreement have been negotiated by the Parties in good faith and with the representation of legal counsel. Consequently, in construing this Agreement, no Party shall be entitled to a presumption against any other Party based on drafting.

13.12 **Third Party Beneficiaries.** The Parties do not intend to create, nor are there any, third party beneficiaries of this Agreement.

13.13 **Entire Agreement.** This Agreement, including attached Exhibits, is the entire and final understanding of the Parties and supersedes all prior agreements and understandings between the Parties related to the subject matter of this Agreement. Each provision of this Agreement is a necessary part of the Agreement, and this Agreement is not severable.

13.14 **Officials Not to Benefit.** No member of, Delegate to, or Resident Commissioner in, Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.

13.15 **Anti-Deficiency Act.** Nothing contained in this Agreement shall be construed as binding Interior, USFS or NMFS to expend in any one fiscal year any sum in excess of appropriations made by Congress, and available for purposes of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

13.16 **Effective Date.** As defined in Section 2.1, the Effective Date is the date on which this Agreement is signed by all of the Parties.

**PACIFICORP**

By [Signature]  
Its Vice President  
Date: 22 September 1999

**AMERICAN RIVERS**

By [Signature]  
Its Northwest Director  
Date: Sept 17, 1999

**AMERICAN WHITEWATER  
AFFILIATION**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**COLUMBIA GORGE AUDUBON  
SOCIETY**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**COLUMBIA GORGE COALITION**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**COLUMBIA RIVER UNITED**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**FEDERATION OF FLY FISHERS**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**FRIENDS OF THE COLUMBIA GORGE**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**FRIENDS OF THE EARTH**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**THE SIERRA CLUB**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**RIVERS COUNCIL OF WASHINGTON**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**THE MOUNTAINEERS**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**TROUT UNLIMITED**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**WASHINGTON TROUT**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**WASHINGTON WILDERNESS COALITION**

By [Signature]  
Its Attorney  
Date: Sept 17, 1999

**COLUMBIA RIVER INTERTRIBAL FISH COMMISSION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**COLUMBIA GORGE COALITION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**COLUMBIA RIVER UNITED**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**FEDERATION OF FLY FISHERS**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**FRIENDS OF THE COLUMBIA GORGE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**FRIENDS OF THE EARTH**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**THE SIERRA CLUB**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**RIVERS COUNCIL OF WASHINGTON**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**THE MOUNTAINEERS**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**TROUT UNLIMITED**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON TROUT**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON WILDERNESS  
COALITION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**COLUMBIA RIVER INTERTRIBAL  
FISH COMMISSION**

By George J. [Signature]  
Its \_\_\_\_\_  
Date: 9-16-94



**FRIENDS OF THE EARTH**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**THE SIERRA CLUB**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**RIVERS COUNCIL OF WASHINGTON**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**THE MOUNTAINEERS**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**TROUT UNLIMITED**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON TROUT**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON WILDERNESS  
COALITION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**COLUMBIA RIVER INTERTRIBAL  
FISH COMMISSION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**YAKAMA INDIAN NATION**

By William Yellow Jr.  
Its Chairman of Yakama Nation  
Date: Sept. 22, 1999

**U.S. FOREST SERVICE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**U.S. DEPARTMENT OF THE  
INTERIOR**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**NATIONAL MARINE FISHERIES  
SERVICE**

By William Spill, Jr.  
Its NW Tribes National Fisheries  
Date: Oct 9, 1999

**YAKAMA INDIAN NATION**

**U.S. FOREST SERVICE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**U.S. DEPARTMENT OF THE INTERIOR**

**NATIONAL MARINE FISHERIES SERVICE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON DEPARTMENT OF ECOLOGY**

**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**FRIENDS OF THE WHITE SALMON *River***

By *Phillip J. Clausen*  
Its *President*  
Date: *September 15, 1999*

**YAKAMA INDIAN NATION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**U.S. FOREST SERVICE**

By Angela D. Gorkman  
Its Deputy Regional Forester  
Date: 9/10/99

**U.S. DEPARTMENT OF THE INTERIOR**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**NATIONAL MARINE FISHERIES SERVICE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON DEPARTMENT OF ECOLOGY**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**FRIENDS OF THE WHITE SALMON**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON WILDERNESS  
COALITION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**COLUMBIA RIVER INTERTRIBAL  
FISH COMMISSION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_


**YAKAMA INDIAN NATION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**U.S. FOREST SERVICE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**U.S. DEPARTMENT OF THE  
INTERIOR**

By   
Its \_\_\_\_\_  
Date: 9/10/99

**NATIONAL MARINE FISHERIES  
SERVICE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON DEPARTMENT OF  
ECOLOGY**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

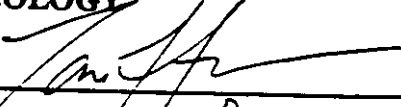
**WASHINGTON DEPARTMENT OF  
FISH AND WILDLIFE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**FRIENDS OF THE WHITE SALMON**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON DEPARTMENT OF  
ECOLOGY**

By   
Its Director  
Date: 9-8-99

**WASHINGTON DEPARTMENT OF  
FISH AND WILDLIFE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**FRIENDS OF THE WHITE SALMON**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON DEPARTMENT OF  
ECOLOGY**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON DEPARTMENT OF  
FISH AND WILDLIFE**

By *J. K. ...*  
Its *Director*  
Date: *Sept. 13<sup>th</sup>, 1999*

**FRIENDS OF THE WHITE SALMON**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**REMOVAL PLAN**

# **CONDIT HYDROELECTRIC PROJECT**

**FERC NO. 2342**

## **REMOVAL PLAN SUMMARY**

### **INTRODUCTION**

Parties to the Condit Hydroelectric Project Settlement Agreement ("Settlement Agreement") reached agreement on a proposed removal plan for Condit Dam and demolition and removal of all Condit Hydroelectric Project ("Project") facilities with the exception of the Project's powerhouse. The proposed removal plan described as the "Selected Approach" in the Condit Hydroelectric Project Removal Summary Report (May 1998) submitted to the Commission in 1998 as supplemented by removal activities and cost modifications listed in the Cost Removal Worksheet, a copy of which is attached hereto, collectively are the "Removal Plan."

This document, the "Removal Plan Summary," describes the basic elements of the proposed Removal Plan and includes a schedule of the removal activities. The demolition and removal of Condit Dam and other Project facilities, except for the Project powerhouse, are estimated to take one (1) year. In accordance with the Settlement Agreement, PacifiCorp's contribution to planning, engineering, design, mobilization, demobilization, construction and demolition costs for Project removal in accordance with the Removal Plan shall not exceed \$13,650,000 (1999 dollars). In the event of any conflict between this Removal Plan Summary and the Settlement Agreement or the Removal Plan, the Settlement Agreement and the Removal Plan shall control.



The method for Project removal agreed upon in the Settlement Agreement was not reviewed in the Commission's October 1996 Final Environmental Impact Statement. The Settlement Agreement contemplates that before the Commission takes final action on PacifiCorp's application for the Amended License that the Commission needs to prepare a supplement to the October 1996 Final Environmental Impact Statement, engage in consultation as appropriate under Section 7 of the Endangered Species Act, and take other actions as appropriate.

## **REMOVAL PLAN ELEMENTS**

### **Dam Removal.**

The removal of Condit Dam would be accomplished by excavating a drain tunnel through the concrete base of the dam to rapidly drain the reservoir and to allow the dam to be removed in quarried blocks of concrete using conventional construction techniques.

The drain tunnel is to be 12 feet high by 18 feet wide and would be excavated using drilling and explosives at the base of the dam, at elevation 174. The tunnel size is capable of passing 10,000 cfs. Concrete excavated from the tunnel would be transported to a spoil area adjacent to the dam by trucks that are loaded by a rough-terrain crane. An access road would be constructed to the existing spillway apron deck. The last 15 feet of the tunnel would be drilled and blasted, allowing the reservoir and impounded sediments to be sluiced through the tunnel, lowering the reservoir to stream level in about 6 hours.

Prior to this final tunnel blast, a barge mounted clamshell crane would be floated in front of the dam to excavate sediment and debris from the area in front of the projected tunnel hole-through. When the area has been sufficiently cleaned out, the crane and barge

would be removed from the reservoir and the final tunnel blast would be detonated to drain the reservoir. Should the tunnel plug with woody reservoir debris, measures will be taken to clear the jam.

To allow anadromous fish to pass the site during the dismantling of the dam, a series of protective fish pockets would be excavated in each of the walls of the tunnel to allow a place for fish to rest during their passage upstream.

Concrete excavation of the dam would proceed in the dry and start at the East End of the dam. Using drilling and explosives, concrete blocks with dimensions of 10 feet high by 4 feet deep by 6 feet wide would be removed with a highline yarder-type system to trucks for transport to the spoil area. The block size was selected to minimize the cost of excavation and hoist capacity, which would require average lifts of about 33,600 lbs.

Construction would proceed across the dam in a series of top slicing cuts at ten-foot vertical intervals. The very top cut and the front and back faces of the dam in each cut would be drilled and blasted into blocks and loaded into trucks with an excavator and hauled off the dam. As the top slice cuts progress downward and the dam widens, the center section would be drilled and blasted into rubble much like a highway rock cut excavation. The concrete rubble would be loaded into trucks with an excavator and hauled off the dam. This procedure would significantly decrease the cost of concrete demolition.

As the top slice cuts across the top of the dam progress downwards below elevation 225, the existing river channel gets narrow and steep. At this point a crane would be set up on the spillway slab to hoist concrete from this lower area. As the excavation reaches the level of the drain tunnel, the center portion of the area adjacent to the tunnel would be

excavated down to bedrock leaving sections of intact concrete along the edge of the tunnel and along the front and back faces of the dam to hold the water out. When the center section is completely excavated to bedrock, the edge sections are blasted into blocks and hoisted out of the river channel. This should put the river down to its original channel. Lastly, the area around the drain tunnel is excavated in a similar method. This work must be scheduled during low river flows in order to perform a good job of removing the concrete from the footprint of the dam in this lower section.

An earlier proposal for Project removal called for a gate to be fitted to the dam drain tunnel to control releases. Based on subsequent studies of sediment removal and with the concurrence of involved parties, it was decided as reflected in the Condit Hydroelectric Project Removal Summary Report that a more rapid removal of the sediments was preferred.

#### **Appurtenant Facilities Removal.**

In addition to removing the concrete gravity dam including its Obermeyer crest spillway gate and other spillway and intake gates, demolition of the Project facilities also would involve removal of the upstream cofferdams, wood stave pipeline, steel surge tank, and the wooden and steel penstocks.

Upstream Cofferdams: Photographs and drawings show that the cofferdams used to divert and control water during the original construction of the dam were flooded when the reservoir was allowed to fill, and would require removal to return the site to pre-construction conditions. To remove these structures, it is envisioned that a road would be constructed from the top of the excavated concrete dam and would ramp down to area of

the cofferdams. The cofferdams are expected to be at least partially exposed by the erosive flushing of the reservoir. Some blasting would probably be necessary to remove one of the cofferdams, since the photographs indicate that fill concrete was probably placed in one cofferdam in lieu of the puddled earthen materials shown on the original construction drawings. The concrete, stones and boulders, and timber members of the cofferdams would be excavated and trucked to the spoil area. The temporary construction road would also allow access to the upstream area where logs and other debris have sunk to the bottom of the reservoir. Some of these logs would be removed, as necessary, to promote reservoir sediment erosion.

Surge Tank: The steel surge tank and its concrete foundations would be removed to eliminate a future public safety hazard. To allow demolition of the concrete foundation of the tank, drilling and blasting techniques would be used. The foundation and tank materials would be loaded into trucks and transported to the spoil area for burial.

Wood Stave Pipeline and Steel & Wood Penstocks: The existing 13.5 foot diameter, 5100 foot long wood stave pipeline and the 650 foot long steel and wood penstocks, would be removed along with their concrete foundations. All of these materials would be transported to the spoil area and buried. At the time of construction it may be economically feasible to re-cycle some of these materials, and transport them to an off site recycling firm. For example, the scrap steel from the penstock, surge tank, and steel bands and fittings of the wood stave pipeline could have value at the time of removal.

### **Site Preparations.**

Because the dam is located in a steep area, room for construction-demolition adjacent to the dam is limited. It is proposed that a ten-acre area be purchased and used for a site setup and staging area, a borrow pit and a spoil area. Site setup facilities would include an office trailer, equipment parts vans, equipment fueling and maintenance station, an equipment parking area and an explosives magazine site.

It is estimated that two to three thousand cubic yards of fill material may be required for the construction of access roads to various areas of the project. This material could be removed from this spoil area and later back filled as the construction site is reclaimed.

A significant volume of waste materials would be generated from the demolition of the dam and associated facilities. Estimated quantities of some of these materials are listed as follows:

- Concrete – over 45,000 cubic yards (broken volume)
- Wood Pipe Staves– over 6,000 cubic yards stacked
- Steel – over 400 tons
- Woody Reservoir Debris – from drained reservoir area (unknown quantity)

Certainly, some of this material could be hauled off and recycled dependant on the market economics of recycling at the time of construction. A fairly large area would be required to store, sort and transport this material for recycling.

### **Access Road Construction.**

One of the first activities of the project would be construction of an access road to the spillway slab below the dam to permit excavation of the reservoir drain tunnel located at the base of the dam. Access roads into the drained reservoir area would be used during

removal of the cofferdams immediately upstream. Other access roads would be required for the removal of the 5100-foot long wood stave flowline.

### **REMOVAL PLAN SCHEDULE**

An aggressive schedule has been developed to complete the dam removal project within one year. The attached schedule, Figure 1, shows the sequence and timing of the major tasks. Certain criteria have been used to develop the schedule and includes the following:

- Work that affects water quality and quantity should be performed after October 1<sup>st</sup>. (US Fish & Wildlife Service, 21 January 1998 memo)
- The diversion dam used in the original construction of the dam should be removed prior to May 1<sup>st</sup> to allow fish passage. (US Fish & Wildlife Service, 21 January 1998 memo)
- Excavation of the 12X18 ft. drain tunnel at the base of the dam and the removal of low level concrete in the old river channel must be performed during low river flows (July through November)

The success of this schedule is dependent upon many factors that are difficult to predict such as actual river flows and weather conditions that would be encountered and the impact of buried wood debris in the reservoir. If significant wood debris is encountered, the speed of sediment erosion could be reduced and additional time may be required to handle the debris and to keep the drain tunnel through the dam open.

### **REMOVAL PLAN CONSTRUCTION COSTS**

Although the structural removal work and the flushing of trapped sediments in the reservoir would consist primarily of demolition, rather than construction, the work has been referred to in the Settlement Agreement as "construction" because construction contractors would perform the work. The Condit Hydroelectric Project Removal Summary Report (May 1998) prepared by an independent consultant identified removal elements and

estimated construction costs of \$10,420,000 (1998 dollars) for the "Selected Approach," including allowances for overhead and contingencies (15%), legal, administration and engineering (10%), and minor building permits (3%). With the assistance of another independent consultant, parties to the Settlement Agreement reviewed and adjusted both removal elements and construction costs. Based on that review, the Removal Costs Worksheet identifies removal elements and construction costs of \$13,650,000 (1999 dollars) for the Selected Approach," including allowances for overhead (15%), legal, administration, and engineering (10%), and minor building permits (3%). The "Removal Cost Elements" total set forth in the Removal Cost Worksheet is the basis of "Construction Costs" set forth in Section 4.1.1 of the Settlement Agreement.

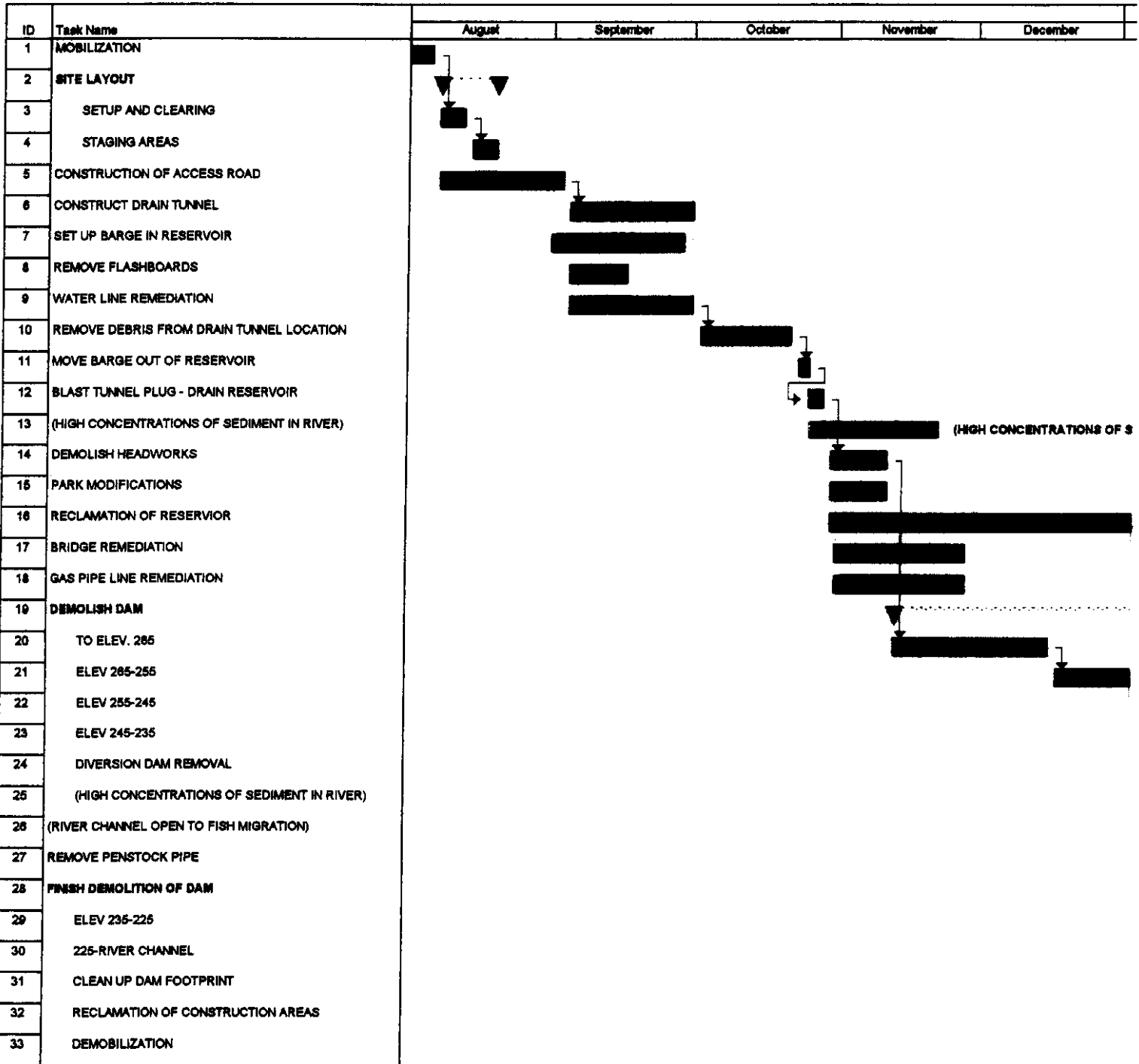
**CONDIT HYDROELECTRIC PROJECT REMOVAL COSTS WORKSHEET**

(Cost estimates are all expressed in 1999\$x1000)





Removal Costs Elements

Bonding & Insurance (Mobilization)	410
Demobilization	38
Site Set up	177
Construction of Tunnel	505
Gate House & Pier removal	104
Blast Tunnel Plug	57
Pressure Grout Dam	100
Blast & Drain Tunnel	57
Dam Demolition - crest	2,006
Dam Demolition - base	1,568
Reclamation at dam	81
Upstream Cofferdam Removal	350
Tunnel Fish protection	12
Spill gate removal	60
Turbine removal dewatering	42
Property Acquisition	400
Sediment Management Activities:	
Canyon Debris Management	100
Additional Contrib. to Sediment Mgmt.	400
Woody Debris Mgmt near Dam	400
Accelerate (Blast) Sediment	
From Reserv. Shoreline Slopes	300
Revegetation of Reservoir Area	300
Revegetation spoil area	75
Log Boom Removal	10
Concrete Disposal	240
Penstock removal	398
Switchyard removal	50
Transmission Line removal	15
Tailrace Infilling	28
Powerhouse Preservation	50
Pwrhse. Parking Lot Protection	50
Mt. Adams Water Supply	38
White Salmon Water Supply	450
Gas Line remediation	10
Northwestern Lake Park	10
Habitat Enhancement	25
Noxious Weed Control	12
Warning Signs	2
Raceway Protections	5
Northwestern Lake Bridge	630
Community Dock Removal	6
Lake Invest. Testing & Boring	93
<b>Subtotal 1) of Above Items =</b>	<b>9,664</b>
Overhead & Contingencies (25% of SubTotal 1)	<b>2,416</b>
<b>Subtotal 2) Contr. Activities =</b>	<b>12,080</b>
Legal, Admin & Engineering (10% of Subtotal 2)	<b>1,208</b>
Minor Bldg. Permits (3% of Subtotal 2)	<b>362</b>
<b>Total of Removal Cost Elements =</b>	<b>\$13,650</b>
Permitting & Mitigation	2,000
YIN Fishery Enhancement	1,000
In Lieu Site Enhancement Fund	500
<b>Total Project Removal Costs</b>	<b>\$17,150</b>





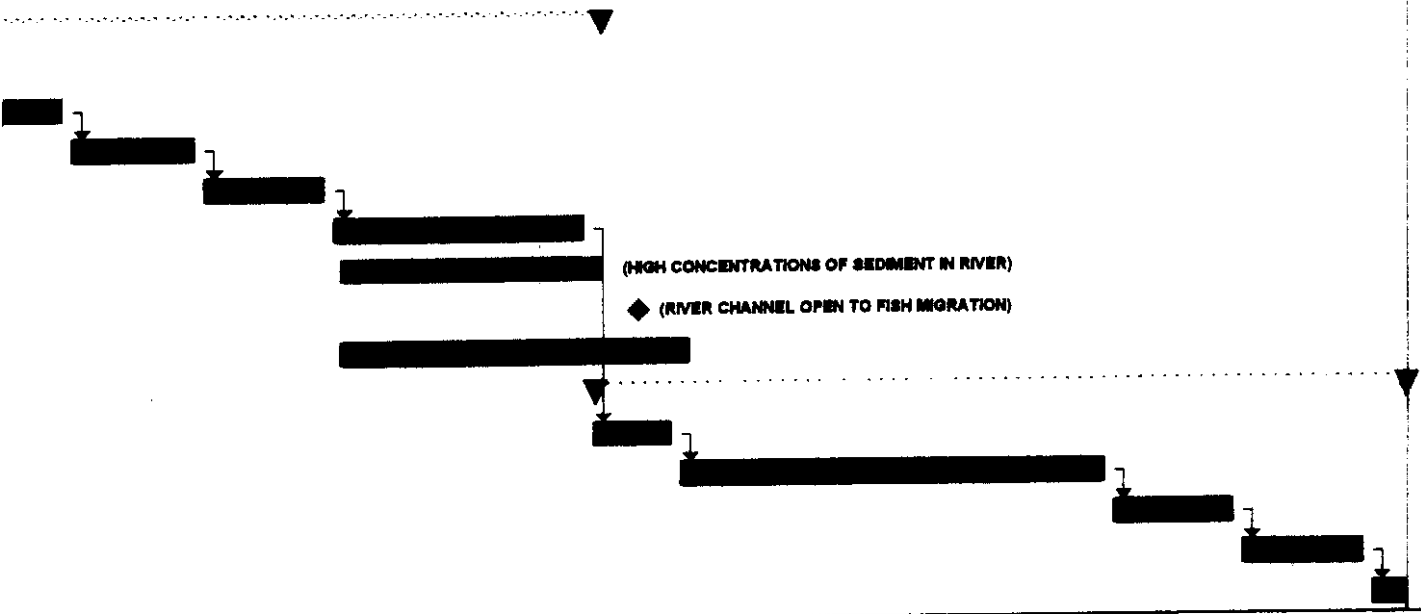
Project: Project1  
Date: Mon 4/8/98

Task  Milestone  Rolled Up Task  Rolled Up Progress   
Progress  Summary  Rolled Up Milestone  Split 

January	February	March	April	May	June	July	August
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SEDIMENT IN RIVER)

[Redacted text bar]



External Tasks [Redacted]

Project Summary [Redacted]

## EXHIBIT B

### GROSS DOMESTIC PRODUCT-IMPLICIT PRICE DEFLATOR INDEX SAMPLE CALCULATION

#### Example 1:

Assume that PacifiCorp has a contractual obligation to pay \$500,000 (1999 Dollars) on October 1, 2004. Assume that the Gross Domestic Product-Implicit Price Deflator Index ("GDP-IDP") on the Effective Date, which is assumed to be September 1, 1999, is 114.0. Finally, assume that the most current GDP-IDP index published as of October 1, 2004 is 119.0 which is the index for the 2nd quarter of 2004. The amount paid in 2004 dollars on October 1, 2004 would be:

$$\begin{aligned} & \text{Obligation Amount} * ((2004 \text{ GDP-IDP}) / (1999 \text{ GDP-IDP})) \\ & \$500,000 * (119.0 / 114.0) = \$521,930 \end{aligned}$$

#### Example 2:

Assume that PacifiCorp pays \$500,000 (2004\$) in Project Removal Costs on October 1, 2004. Assume the GDP-IDP on the Effective Date, which is assumed to be September 1, 1999, is 114.0. Finally, assume that the most current GDP-IDP index published as of October 1, 2004 is 120.0 for the last quarter of 2004. The amount credited (in 1999 Dollars) against PacifiCorp's contribution for Project Removal Costs would be:

$$\begin{aligned} & \text{Obligation Amount} * ((1999 \text{ GDP-IDP}) / (2004 \text{ GDP-IDP})) \\ & \$500,000 * (114 / 120) = \$475,000 \end{aligned}$$

**EXHIBIT C**  
**SCHEDULE**



**EXHIBIT 2**

## EXPLANATORY STATEMENT

PacifiCorp, as licensee and relicensing applicant for the Condit Hydroelectric Project, FERC No. 2342 (the "Project"), submits this explanatory statement regarding the Condit Hydroelectric Settlement Agreement among PacifiCorp, the Yakama Indian Nation ("Nation"), American Rivers, American Whitewater Affiliation, Columbia Gorge Audubon Society, Columbia Gorge Coalition, Columbia River United, Federation of Fly Fishers, Friends of the Columbia Gorge, Friends of the Earth, Friends of the White Salmon River, The Mountaineers, Rivers Council of Washington, The Sierra Club, Trout Unlimited, Washington Trout, the Washington Wilderness Coalition, the Columbia River Intertribal Fish Commission ("CRITFC"), the U.S. Forest Service ("USFS"), U.S. Department of the Interior ("Interior"), the National Marine Fisheries Service ("NMFS"), the Washington Department of Ecology ("Ecology"), and the Washington Department of Fish and Wildlife ("WDFW") (collectively the "Settlement Parties"). The Settlement Agreement became effective among the Settlement Parties on September 22, 1999 (the "Effective Date").<sup>1</sup>

## BACKGROUND

The Project is located in Washington State on the White Salmon River approximately 3.3 river miles above its confluence with the Columbia River. The Project was constructed in 1913. In 1963, PacifiCorp's predecessor, Pacific Power & Light Company, applied to the predecessor of the Commission, the Federal Power Commission, for a license to operate the Project, and in 1968 the Commission issued a license containing an effective date of May 1, 1965 and a termination date of December 31, 1993.

In December 1991, pursuant to Part I of the Federal Power Act of 1920, 16 U.S.C. 791a et seq. (the "FPA"), PacifiCorp filed an application with the Commission for a new license for continued operation of the Project (the "Relicensing Proceeding"). PacifiCorp's initial FPA license to operate the Project expired on December 31, 1993. Since that time, PacifiCorp has been operating the Project pursuant to annual licenses issued pursuant to Section 15(a) of the FPA, 16 U.S.C. § 808(a), pending determination by the Commission of PacifiCorp's application for issuance of a new license for the Project.

In response to the Commission's request for comments, recommendations, and prescriptions regarding PacifiCorp's application for a new license, various intervenors filed comments, recommendations, and prescriptions. After review of the comments, recommendations, and prescriptions, the Commission staff issued a Final Environmental Impact Statement dated October 1996 and recommended a preferred alternative for a new

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<sup>1</sup> In the event of any inconsistency between this Explanatory Statement and the Settlement Agreement, the Settlement Agreement shall control.

Project license. PacifiCorp determined that Project operations would be uneconomic if a new Project license were issued by the Commission in accordance with recommendations of the Final Environmental Impact Statement.

In lieu of fish passage facilities and other measures recommended for a new Project license in the Final Environmental Impact Statement, the Nation, CRITFC and American Rivers for itself and certain other environmental organizations requested that PacifiCorp remove the Project in order to restore anadromous fish and natural flow conditions in the White Salmon River. Ecology, WDFW, Interior, USFS, and NMFS have supported investigation of dam removal.

On January 29, 1997, PacifiCorp requested a temporary abeyance of the Relicensing Proceeding in order to investigate the feasibility of various dam removal alternatives in collaboration with the other Settlement Parties. At the request of the Nation, CRITFC, and PacifiCorp, R.W. Beck, an independent, consulting engineer firm, prepared an initial engineering feasibility and cost study, dated March 1997, of Project removal alternatives. On July 30, 1997 and March 19, 1998, PacifiCorp filed a renewed motions with the Commission to hold the Relicensing Proceeding in abeyance in order to afford the Settlement Parties further time to collaborate.

In May 1998, R.W. Beck prepared an additional, more detailed summary report of Project removal alternatives. On August 31, 1998, PacifiCorp and the the Settlement Parties filed a request with the Commission to hold the Relicensing Proceeding in abeyance to afford the Settlement Parties additional time to collaborate.

As a result of collaboration, the Settlement Parties reached agreement on a dam removal plan for the Project, described as the "Selected Approach" in the Condit Hydroelectric Project Removal Summary Report dated May 1998 as supplemented by the removal costs worksheet (collectively the "Removal Plan") which is set forth in Exhibit A to the Settlement Agreement. Having collaborated in the investigation of various removal options, the Settlement Parties believe the Removal Plan is technically, legally, biologically, and economically feasible and that the Settlement Agreement is supported by substantial evidence.

## **PURPOSE AND EFFECT OF OFFER OF SETTLEMENT**

The Settlement Agreement is the product of negotiation and cooperation among the Settlement Parties. The Settlement Parties entered the Settlement Agreement for the purpose of resolving all issues that were or could have been raised by the Settlement Parties in the Relicensing Proceeding, and for the purpose of obtaining a Commission order approving an extension and amendment of PacifiCorp's Project license in accord with the terms and conditions of the Settlement Agreement (the "Amended License"). The Settlement Agreement



reflects the Settlement Parties' agreement that Project removal, under the terms and conditions set forth in the Settlement Agreement, constitutes a fair, reasonable and just resolution to the issues in the Relicensing Proceeding. The Settlement Parties believe the Settlement Agreement also serves the public interest. PacifiCorp disputes the Commission's authority to issue a decommissioning order as such in this or any further relicensing proceeding. However, PacifiCorp and the Parties agree that the Commission has authority under the FPA to issue an order consistent with the Settlement Agreement.

### **APPLICATION FOR EXTENSION OF COMMISSION LICENSE; COMMISSION ACTION**

PacifiCorp's application requests the Commission to issue an order amending PacifiCorp's original Project license to extend the expiration thereof to October 1, 2006 and to include the Settlement Agreement as a term and condition of the license. The "Selected Approach" for Project removal described in the Settlement Agreement was not reviewed in the Commission's October 1996 Final Environmental Impact Statement. The Settlement Agreement contemplates that before the Commission takes final action on PacifiCorp's application for the Amended License that the Commission needs to prepare a supplement to the October 1996 Final Environmental Impact Statement, engage in consultation as appropriate under Section 7 of the Endangered Species Act, and take other actions as appropriate.

### **PROJECT REMOVAL**

The Settlement Agreement provides that PacifiCorp shall implement and finance Project removal in accordance with the schedule set forth in the Removal Plan and the terms and conditions of the Settlement Agreement, subject to the availability of and in accordance with all permits necessary to implement the Removal Plan, including the Amended License. In the Settlement Agreement, PacifiCorp agrees to contribute the following: (a) \$ 13,650,000 for planning, engineering, design, mobilization, demobilization, construction, and deconstruction costs associated with Project removal in accordance with the Settlement Agreement ("Construction Costs"); (b) \$2,000,000 collectively for technical, engineering and legal costs incurred by PacifiCorp in obtaining any permits other than minor building permits within the scope of Construction Costs ("Permitting Costs") and technical, engineering, design, mobilization, demobilization, construction, deconstruction and legal costs associated with implementing and complying with permitting and mitigation measures required by any permit ("Mitigation Costs"); (c) \$1,000,000 which PacifiCorp shall contribute to the Nation for the enhancement, supplementation, and conservation of fishery resources in the White Salmon River Basin ("Fishery Enhancement Fund"); and (d) \$500,000 which PacifiCorp shall contribute for the enhancement, maintenance or other use of the Underwood In Lieu Site located near the confluence of the White Salmon and Columbia Rivers or other in lieu sites

owned and managed by the United States for the use of the Nation, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe and the members thereof (collectively the "Tribes") for fishing purposes ("In Lieu Site Enhancement Fund"). The items listed in (a) through (d) of this paragraph are deemed "Project Removal Costs" in Section 4.1.1 of the Settlement Agreement. Project Removal Costs are measured in lawful currency of the United States as of the Effective Date, and adjusted using the methodology stated in Section 4.1.2 of the Settlement Agreement. PacifiCorp's commitment to finance Project Removal Costs under the Settlement Agreement shall not exceed \$17,150,000 measured in lawful currency of the United States as of the Effective Date. Project Removal Costs began accruing on the Effective Date of the Settlement Agreement. Any costs incurred by PacifiCorp prior to the Effective Date related to Project removal, including but not limited to costs of preparing the Removal Plan and other technical information shared with the Settlement Parties are not included in nor credited to Project Removal Costs but are recognized nonetheless as contributions made by PacifiCorp to Project removal. So long as the Settlement Agreement is not terminated by October 1, 2004, PacifiCorp shall contribute \$500,000 to the In Lieu Site Enhancement Fund.

The Settlement Agreement provides that PacifiCorp shall commence implementation of the construction schedule described in the Removal Plan not later than August 1, 2006, cease generating power at the Project not later than October 1, 2006, commence Project removal during October 2006, and finance Project Removal Costs in accordance with Section 4.1.1 of the Settlement Agreement. The schedule attached as Exhibit C to the Settlement Agreement illustrates activities that will be carried out under the schedule for Project removal. The Settlement Parties agreed to consider commencement of removal in October 2005 or earlier if the Settlement Parties other than PacifiCorp can identify additional funds which significantly reduce PacifiCorp's financial contribution to Project Removal Costs, provided that no change shall be made to the Project removal schedule except in writing approved by all the Settlement Parties. The Settlement Parties agreed that PacifiCorp shall not be required by the Settlement Agreement to cease generating power at the Project or to otherwise implement the Removal Plan or any permit necessary to implement Project removal until any and all applicable permits necessary to Project removal in accordance with the Settlement Agreement are obtained and any and all applicable, prescribed periods for a petition for administrative or judicial review or appeal or any similar proceeding relating to any such permit ("Proceeding") have expired without any such Proceeding having been commenced or, in the event any such Proceeding is commenced, until any such Proceeding is terminated on terms and conditions consistent with the Removal Plan and the Settlement Agreement.

If actual Project Removal Costs are less than \$17,150,000, the Settlement Agreement provides that PacifiCorp shall retain one-half the difference between the actual Project Removal Costs and \$17,150,000 and that PacifiCorp shall contribute the remaining one-half of such savings to the In Lieu Site Enhancement Fund. In addition, PacifiCorp shall contribute to the In Lieu Site Enhancement Fund one-half of any savings which the State of Washington forgoes if the Washington Department of Revenue determines that, due to an exemption, the

Washington State Sales Tax on services, RCW 82.08, does not apply to services provided by contractors implementing removal of the Condit Dam in accordance with this Agreement.

### **MODIFICATION OR WITHDRAWAL AND TERMINATION OF SETTLEMENT AGREEMENT**

A Settlement Party may withdraw from the Settlement Agreement in accordance with Section 5.1 of the Settlement Agreement. Among other reasons, a Settlement Party may withdraw from the Settlement Agreement if the Amended License is not issued by the Commission within three (3) years of the Effective Date of this Agreement or the Amended License issued by the Commission contains terms or conditions materially inconsistent with those set forth in the Settlement Agreement. In the event the Commission modifies, fails to require compliance with, or changes in the Amended License a term or condition that the Settlement Parties have agreed to in the Settlement Agreement, and the Settlement Agreement is not terminated in accordance with Section 5.3 thereof, the term or condition as set forth in the Settlement Agreement shall remain a binding covenant among the non-withdrawing Settlement Parties, enforceable in accordance with the law of contracts (except to the extent the Amended License prohibits or precludes the performance of that term or condition). In the event a notice of intent to withdraw is filed, Section 5.2 of the Settlement Agreement provides that the Settlement Parties shall negotiate in good faith to attempt to resolve the cause of the proposed withdrawal. If any Settlement Party except PacifiCorp withdraws from the Settlement Agreement, the Settlement Agreement shall continue in effect, unless the other Settlement Parties affirmatively agree to terminate the Settlement Agreement. If PacifiCorp withdraws, the Settlement Agreement terminates.

In the event of termination before the Amended License is issued, the Parties intend that the Relicensing Proceeding be restored to its status prior to the first motion to abey the proceedings, filed by PacifiCorp on January 29, 1997. If the Settlement Agreement is terminated after the Commission shall have issued an Amended License but before the Amended License is accepted by PacifiCorp, the Amended License shall be deemed rejected with the understanding that the existing relicensing proceeding will be resumed and that all Parties to the Settlement Agreement will be restored to the status quo in the relicensing proceeding prior to the Effective Date of the Settlement Agreement. If the Settlement Agreement is terminated after the Amended License is accepted by PacifiCorp, PacifiCorp shall promptly surrender the Amended License in accord with Commission rules with the understanding that the existing relicensing proceeding will be resumed and that all Parties to the Settlement Agreement will be restored to the status quo in the relicensing proceeding prior to the Effective Date of the Settlement Agreement.

## MITIGATION

The Settlement Parties agreed that Project removal in accordance with the Settlement Agreement is the primary means of protection, mitigation, and enhancement of fish, wildlife, and other resources affected by the Project for the purposes of achieving a fair, reasonable and just resolution of issues in the Relicensing Proceeding and serving the public interest. The Settlement Parties also agreed that the mitigation to implement the Removal Plan shall be in accordance with specific mitigation required by any of the permits necessary to implement Project removal. The Commission's draft and final environmental impact statements found that "dam removal would optimize anadromous fish access and use of upstream habitat because the river profile would rapidly change to the natural pre-dam slope conditions. A natural channel and slope without obstructions provides the best access and migration route for anadromous fish." In addition, the Secretaries of Commerce and Interior noted that dam removal would be the most fail-safe method to pass anadromous fish through the Project area. The Commission's final environmental impact statement found additional benefits from dam removal, several of which are listed below:

"Project retirement and dam removal would end facility entrainment and passage of fish over the dam. Juvenile salmonids spawned and reared in the upstream habitat could safely out-migrate from the basin. Long-term anadromous fish restoration success with dam removal would result from a combination of increasing upstream passage effectiveness and eliminating downstream migrant mortality caused by project operations and spillway passage over the dam."

"Condit dam removal would restore natural bed load movement processes in the river . . . . Downstream of the powerhouse, aquatic resources, particularly salmonid productivity, would benefit from the elimination of short-term low flows . . . . An increased gravel supply combined with a stable . . . . flow regime would significantly increase salmonid production potential."

"Dam removal would also benefit water quality by passing cooler water to the downstream habitat during the summer and fall. Beneficial ecosystem processes would result from an increase in large organic debris (LOD) transported to the downstream habitat that was formerly retained behind the dam. Natural flow processes would also distribute the carcasses of post-spawn anadromous fish to the downstream habitat [supporting] an increase in the diversity and abundance of aquatic invertebrates . . . . Carcasses . . . . would contribute valuable nutrients to the aquatic system and provide prey and nutrients to wildlife species."

"Dam removal would eliminate the adverse impacts associated with rapid and unrestricted flow fluctuations, including juvenile fish stranding and redd dewatering and reduced primary and secondary productivity."

"Dam removal would restore unobstructed river flows . . . and allow for continuous and unified management of the river."

"[T]he total recreational benefits and expenditures associated with whitewater boating and salmon fishing would exceed the benefits and expenditures generated by the current flatwater boating and fishing activities within the project area."

"[Dam removal] would provide significant traditional cultural resource benefits by restoring to the Yakama Indian Nation access to and fishing from anadromous fish-bearing areas . . . unblocked by Condit dam for the first time in 80 years. . . . The Yakama Indian Nation would once again have access to areas that they cite as important for traditional ceremonial, spiritual, and gathering uses by restoring to near natural conditions the area previously occupied by Condit dam and Northwestern Lake."

"[Dam removal] would allow for continued whitewater recreation, and the connection and enhancement of recreational opportunities between the scenic river area and the Columbia River Gorge. It would also provide long-term recreational opportunities from a natural free-flowing river. This alternative best addresses cumulative recreational impacts by eliminating the impoundment at Northwest Lake and restoring natural river conditions, allowing for full development to the inherent whitewater boating potential of the river reach from BZ Corners to a take-out point near the confluence with the Columbia River."

The Settlement Parties agreed that fishery and other resource enhancements associated with Project removal outweigh mitigation opportunities that will be foregone between the Effective Date and the date of Project removal. The Settlement Parties also agreed that it is appropriate to provide for a contingent mitigation fund to recapture foregone mitigation opportunities if Project removal does not occur because the Settlement Agreement is terminated in accordance with its terms. Accordingly, the Settlement Agreement provides that PacifiCorp shall contribute \$550,000 to a Contingent Mitigation Fund if the Settlement Agreement is terminated in accordance with Sections 5.2 and 5.3 thereof. The Contingent Mitigation Fund, if established, shall be used only to enhance fishery resources, fishery habitat, and other natural resources of the White Salmon River Basin.

## **IMPLEMENTATION TEAM**

The Settlement Agreement establishes an Implementation Team to facilitate cooperative efforts relating to: implementation of the Settlement Agreement and the Removal Plan; determining permits which are necessary to implement the Settlement Agreement and the Removal Plan; assisting PacifiCorp with processes for obtaining and complying with such permits; determination and coordination of mitigation requirements; and implementation and monitoring of mitigation. The Settlement Parties anticipate that there will be regular meetings

of the Implementation Team to address these and other matters arising under the Settlement Agreement, as illustrated by the Schedule in Exhibit C to the Settlement Agreement.


### **MISCELLANEOUS PROVISIONS**

The Settlement Agreement incorporates a number of other important provisions, including a procedure for determining whether Project removal has been completed in accordance with the Settlement Agreement, the Removal Plan and permits necessary to Project removal; dispute resolution; and mutual releases of claims.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D. C. this 21<sup>st</sup> day of October, 1999.

  
Robert A. Nelson, Jr., Esq.