

*Curt L,*

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HABITAT PROGRAM



January 3, 2005

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Services and Fire District  
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**Subject: Fully executed Agreement Concerning the Charging of Fees at  
PacifiCorp's Lewis River Recreation Facility**

Dear Parties Listed Above:

Please find enclosed a fully executed copy of the above-referenced Agreement for your records.

Thank you once again for your efforts on this agreement.

Sincerely,

Kimberly L. McCune  
Hydro Licensing Coordinator

Enclosure

**ORIGINAL**

AGREEMENT  
AMONG

PACIFICORP  
JOHN CLAPP, CITIZEN-AT-LARGE  
NOEL JOHNSON, CITIZEN-AT-LARGE  
LEWIS RIVER COMMUNITY COUNCIL  
CITY OF WOODLAND  
WOODLAND CHAMBER OF COMMERCE  
EMERGENCY MEDICAL SERVICES AND FIRE DISTRICTS (REPRESENTED BY  
COWLITZ-SKAMANIA FIRE DISTRICT # 7)  
LOCAL COUNTIES (REPRESENTED BY COWLITZ COUNTY)  
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

DATED  
November 22, 2004

CONCERNING THE CHARGING OF FEES  
AT PACIFICORP'S LEWIS RIVER RECREATION FACILITIES

Lewis River Recreation Facility Fee Agreement

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# Lewis River Recreation Facility Fee Agreement

## PARTIES TO THE AGREEMENT

This Agreement ("Agreement") is made by and among PacifiCorp, an Oregon corporation; John Clapp, Citizen-at-Large; Noel Johnson, Citizen-at-Large; Lewis River Community Council; City of Woodland; Woodland Chamber of Commerce; Emergency Medical Services and Fire Districts (represented by Cowlitz-Skamania Fire District # 7); local counties (represented by Cowlitz County); and the Washington Department of Fish and Wildlife, each referred to individually as a "Party" and collectively as the "Parties," as of the day that the last Party executes the Agreement (the "Effective Date").

## RECITALS

A. PacifiCorp operates a number of recreation facilities and makes such facilities available to the public for recreation use during the day. These facilities include the day-use portions only of Merwin Park, Speelyai Bay Park, Cresap Bay Park and Campground, Saddle Dam Park, Yale Park, Cougar Park and Campground, Beaver Bay Campground and the Swift Forest Campground. The relevant day-use portions of these facilities are each referred to individually as a "Recreation Facility" and collectively as the "Recreation Facilities," and are identified in Appendix A to this Agreement.

B. Since May 1, 1999, PacifiCorp has charged fees for use of the Recreation Facilities. Several of the Parties objected to this fee. In order to resolve this issue, the Parties voluntarily participated in a mediation process and were able to resolve their dispute in a manner that satisfactorily accommodates their diverse interests, which include: restoring and sustaining a good relationship between the Lewis River community, recreational users, and PacifiCorp; respecting and protecting the Lewis River community's quality of life; providing local access to the Lewis River; fostering a family atmosphere at Recreation Facilities; providing diverse recreation opportunities on the Lewis River; ensuring safety for people recreating or living on and near the Lewis River; offsetting a portion of PacifiCorp's costs to operate and maintain the Recreation Facilities; creating greater user investment in recreation opportunities and the Recreation Facilities; simplifying the fee program; involving the public in future program decisions; providing flexibility to allow the program to adapt to changes in society and the region; and providing reasonable fee relief for all recreational users, including anglers who utilize the reservoirs' boat launches.

C. PacifiCorp and several of the Parties to this Agreement are currently involved in settlement negotiations to resolve issues related to relicensing the Merwin, Yale and Swift No. 1 Projects (FERC Project Nos. 935, 2071 and 2111) (each a "Project" and collectively the "Projects"). The Parties intend that this Agreement, and not the more comprehensive relicensing settlement negotiations (hereinafter the "Relicensing Settlement Negotiations"), shall govern the Parties as to PacifiCorp's administration of fees at the Recreation Facilities.

NOW, THEREFORE, in consideration of their mutual covenants in this Agreement, the Parties agree as follows:

# Lewis River Recreation Facility Fee Agreement

## DEFINITIONS

“Agreement” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Consultation Meeting” is defined in Section 4.7.3 of this Agreement.

“Effective Date” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Fees” is defined in Section 1.1 of this Agreement.

“New License” and “New Licenses” refer, individually and collectively, to the new licenses issued by the Federal Energy Regulatory Commission for the Projects.

“Non-Peak Season” means the period of time from September 16 through the Thursday immediately preceding Memorial Day.

“PacifiCorp Officer” is defined in Section 4.7.3 of this Agreement.

“Party” and “Parties” are defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Peak Season” means the period of time from the Friday immediately preceding Memorial Day through September 15.

“Preference” is defined in Section 4.7.4 of this Agreement.

“Project” and “Projects” are defined in Recital C of this Agreement.

“Recreation Facility” and “Recreation Facilities” are defined in Recital A and identified in Appendix A of this Agreement.

“Relicensing Settlement Negotiations” is defined in Recital C of this Agreement.

## SECTION 1: PURPOSE AND EFFECT

1.1 Purpose of Agreement. The purpose of this Agreement is to resolve all issues among the Parties related to PacifiCorp’s charging of day-use, parking, or boat launch fees at the Recreation Facilities (“Fees”). Section 3 of this Agreement sets forth the Fees that the Parties agree to as of the Effective Date. All modifications or additions to the Fees agreed to in Section 3 will be performed in accordance with the collaborative process set forth in Section 4 of this Agreement. In addition, Section 2 of this Agreement provides interim Recreation Facility hours of operation, which are not subject to modification pursuant to Section 4.

## Lewis River Recreation Facility Fee Agreement

1.2 Limitations. This Agreement shall be limited to PacifiCorp's charging of Fees at the Recreation Facilities, as those terms are defined in this Agreement. Without limiting the generality of the previous sentence, this Agreement (i) shall not govern or limit the collection of fees for use of any camping facilities, overnight moorage facilities or sale of miscellaneous goods, such as firewood, at the Recreation Facilities; (ii) shall not obligate PacifiCorp to continue to operate the Recreation Facilities through the term of this Agreement; and (iii) except as provided in Section 2, below, shall not govern general Recreation Facility management issues.

1.3 Right to Deny Access. Nothing in this Agreement shall limit PacifiCorp's right to deny any person or vehicle access to Recreation Facilities or associated parking areas for safety or crowd management purposes or for any other purpose.

1.4 Term. Unless terminated earlier by the Parties under Section 6.8, this Agreement shall terminate on the later of (i) December 31, 2027, or (ii) the date that the last of the New Licenses expire.

### SECTION 2: HOURS OF OPERATION UNTIL NEW LICENSES ISSUED

2.1 Operating Hours for PacifiCorp's Recreation Facilities. The following hours of operation shall apply to each Recreation Facility below until FERC issues a New License for the applicable Project, or until a final settlement agreement(s) resulting from the Relicensing Settlement Negotiations requires PacifiCorp to implement different hours of operation, whichever occurs first. Nothing in this Section is intended to restrict the treatment of hours of operation in the Relicensing Settlement Negotiations. In case of any conflict between this Section 2 and the New Licenses or a final settlement agreement(s) resulting from the Relicensing Settlement Negotiations, the New Licenses or final settlement agreement(s) shall control.

#### 2.1.1 Merwin Park.

- (a) April 1<sup>st</sup> through September 30<sup>th</sup>: 5:00 a.m. to 9:00 p.m.;
- (b) October 1<sup>st</sup> through March 31<sup>st</sup>: 7:30 a.m. to 6:00 p.m.

#### 2.1.2 Speelyai Bay Park and Yale Park.

- (a) April 1<sup>st</sup> through the Thursday before Memorial Day: 5:00 a.m. to 9:00 p.m.;
- (b) The Friday before Memorial Day through September 30<sup>th</sup>: 5:00 a.m. to 10:00 p.m.;
- (c) October 1<sup>st</sup> through March 31<sup>st</sup>: 7:00 a.m. to 6:00 p.m.

2.1.3 Saddle Dam Park. The Friday before Memorial Day through Labor Day: 5:00 a.m. to 10:00 p.m.

## Lewis River Recreation Facility Fee Agreement

2.1.4 Cresap Bay. The Friday before Memorial Day through two weeks after Labor Day: 6:00 a.m. to 9:00 p.m.

2.1.5 Day-Use Area at Swift Camp. The last Saturday of April through the end of hunting season in November: 6:00 a.m. to 9:00 p.m.

2.1.6 Beaver Bay. The last Saturday of April through the third Monday of September: 6:00 a.m. to 9:00 p.m.

2.1.7 Cougar Camp and Park. The Friday before Memorial Day through Labor Day: 6:00 a.m. to 9:00 p.m.

### SECTION 3: FEES

3.1 Purpose of this Section. This Section 3 sets forth the Parties' agreement regarding PacifiCorp's charging of Fees (day-use, parking, and boat launch fees) at the Recreation Facilities. The Parties may modify Sections 3.2, 3.3 and 3.4 pursuant to the collaborative process set forth in Section 4 of this Agreement.

3.2 Fees for Day Use. Unless otherwise decided pursuant to Section 4, PacifiCorp shall not charge Fees for day use of Recreation Facilities.

3.3 Fees for Use of Boat Launches. Unless otherwise decided pursuant to Section 4, PacifiCorp shall not charge Fees for the use of boat launches at the Recreation Facilities.

3.4 Fees for Parking.

3.4.1 Non-Peak Season. PacifiCorp shall not collect Fees for parking at Recreation Facilities during the Non-Peak Season.

3.4.2 Peak Season: Monday through Thursday (Except Holidays). During the Peak Season, PacifiCorp shall not collect Fees for parking at Recreation Facilities from Monday through Thursday (except on Memorial Day, Independence Day and Labor Day, as provided below).

3.4.3 Peak Season: Friday, Saturday, Sunday and Holidays. PacifiCorp may collect Fees for parking at Recreation Facilities on Friday, Saturday and Sunday, and on Memorial Day, Independence Day and Labor Day as follows:

3.4.3.1 All Recreation Facilities Except Merwin Park. PacifiCorp may charge a Fee of \$3.00 per vehicle (or vehicle with trailer) for parking at all Recreation Facilities except Merwin Park.

3.4.3.2 Merwin Park. PacifiCorp may charge a Fee of \$1.00 per vehicle (or vehicle with trailer) for parking at Merwin Park.

Lewis River Recreation Facility Fee Agreement

3.4.4 Access to More Than One Recreation Facility on a Single Day.

PacifiCorp shall charge a Fee of no more than \$1.00 for a vehicle (or vehicle with trailer) for parking at a Recreation Facility when presented with a receipt demonstrating that the presenter has already paid a Fee for parking on the same day at any other Recreation Facility except Merwin Park.

3.4.5 Peak Season Parking Passes.

PacifiCorp shall sell annual Peak Season parking passes for \$20. PacifiCorp shall not charge a Fee for parking at the Recreation Facilities to any vehicle (or vehicle with trailer) with a Peak Season parking pass. PacifiCorp shall make Peak Season parking passes available locally (for example, such passes may be for sale at the Recreation Facilities, Merwin Headquarters, or by mail). When, during a single Peak Season, a person has paid a Fee to park at Recreation Facilities sufficient times to have spent an amount equal to the cost of a Peak Season parking pass, upon proof of payment such user will receive a Peak Season parking pass for the remainder of the Peak Season.

3.4.6 Escalation of Fees and Peak Season Parking Pass Prices.

All prices expressed in dollars in Section 3.4, as modified pursuant to Section 4, may be escalated at PacifiCorp's discretion beginning the sixth year after the Effective Date and continuing for the term of this Agreement; such escalation shall not require modification pursuant to Section 4. For purposes of escalation, all prices specified in dollars in this Section 3.4 shall be deemed stated as of the fifth anniversary of the Effective Date (fees will not be escalated to reflect any changes in the IGDP up to the fifth anniversary of the Effective Date). Fees may only be escalated when the formula below supports an increase to the next whole dollar amount. The following formula shall be used for escalation:

$$AD = D \times \frac{(NGDP)}{IGDP}$$

*WHERE: AD = Adjusted dollar amount as of January 1 of the year in which the adjustment is made.*

*D = Dollar amount prior to adjustment.*

*IGDP = GDP-IPD for the third quarter of the year before the previous adjustment date.*

*NGDP = GDP-IPD for the third quarter of the year before the adjustment date.*

*"GDP-IPD" is the value published for the Gross Domestic Product Implicit Price Deflator by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business, Table 7.1 (being on the basis of 1996 = 100), in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted*

## Lewis River Recreation Facility Fee Agreement

*by the Parties. If the base year for GDP-IPD is changed or if publication of the index is discontinued, the Parties shall promptly make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect.*

3.4.7 Parking at Recreation Facilities by School Groups and Certain Non-Profit Organizations. PacifiCorp shall not charge Fees for parking at Recreation Facilities to school groups and, at PacifiCorp's discretion, certain non-profit organizations; *provided, however,* that PacifiCorp may require groups larger than fifty persons to obtain a group-use permit in advance of such use.

3.5 Discontinuance of Fees. PacifiCorp may discontinue charging Fees at any time.

### SECTION 4: COLLABORATIVE REVIEW PROCESS

4.1 Participation and Purpose. The Parties may participate in the annual Collaborative Review Process set forth in this Section 4. The purpose of the Collaborative Review Process is to address consideration and adoption of modifications to Sections 3.2, 3.3 and 3.4 of this Agreement.

4.2 Timing. Months and dates stated in this Section 4 shall be deemed stated as the month and date in the year immediately preceding the Peak Season during which the relevant modification would be implemented. Appendix B sets forth the Collaborative Review Process time table. In the event of a conflict between this Section 4 and Appendix B, this Section 4 shall control.

4.3 Notice for Collaborative Review Process. All notice provisions in this Section 4 must follow the requirements of Section 6.6 of this Agreement.

4.4 Notice Deadlines and Content Requirements Mandatory. The notice and content requirements set forth in this Section 4 are mandatory; a Party that does not comply with applicable notice and content provisions may participate in the review process resulting from other proposals, but shall not be entitled to proceed with the noncompliant proposal, objection or challenge.

4.5 Proposals.

4.5.1 Proposals by PacifiCorp. PacifiCorp may propose a modification to Sections 3.2, 3.3 or 3.4 of this Agreement by notifying all Parties no later than September 20. Such notice shall include a proposal that conforms to the requirements of Section 4.5.3 for content and shall identify the deadline for objection.

4.5.2 Proposals by Parties Other Than PacifiCorp. A Party other than PacifiCorp may propose a modification to Sections 3.2, 3.3 and 3.4 of this Agreement by notifying PacifiCorp no later than September 10. Such notice shall include a proposal that conforms to the requirements of Section 4.5.3 for content. PacifiCorp shall forward

## Lewis River Recreation Facility Fee Agreement

any timely-received proposal to all Parties by September 20, and shall identify the deadline for objection.

4.5.3 Content of Proposal. All proposals under this Section 4.5 shall: (i) state the proposed modification; (ii) identify the changed circumstance that the modification seeks to address; (iii) describe in detail the anticipated benefits of the proposed modification and why such benefits outweigh anticipated impacts; and (iv) discuss the impact of the modification on management of the Recreation Facility or Facilities at issue. In addition, if a modification seeks to increase the Fee price or expand the days of Fee collection, the proposal shall explain why a management tool that does not raise or expand Fees is not a reasonable response to the management issue or changed circumstance.

4.6 No Objection; Implementation of Proposal. If a proposal receives no objection pursuant to Section 4.7, PacifiCorp shall implement the proposed modification at the beginning of the following Peak Season or 90 days after the notice proposing the modification, whichever occurs later. Implementation shall continue for the term of this Agreement unless further modification pursuant to this Section 4 renders the modification no longer valid.

4.7 Objection to Proposal. This Section 4.7 sets forth a process for addressing objections to a proposal. Upon objection (Sections 4.7.1 and/or 4.7.2), the Parties will conduct a meeting and attempt to reach unanimous written agreement (Section 4.7.3). If such agreement is not reached, the Parties will meet with a PacifiCorp representative to facilitate PacifiCorp's identification of its preferred action (Section 4.7.4). The Parties will then have an opportunity to request binding arbitration regarding that preference (Section 4.7.5).

4.7.1 Objection by PacifiCorp. PacifiCorp may object to a proposal in whole or in part by notifying all Parties by October 15. Such notice shall describe the basis for the objection.

4.7.2 Objection by Parties Other Than PacifiCorp. A Party other than PacifiCorp may object to a proposal in whole or in part by notifying PacifiCorp by October 4. Such notice shall describe the basis for the objection. PacifiCorp shall forward any timely-received objection to all Parties by October 15.

4.7.3 Consultation After Objection; Implementation of Decision. If there is objection to a proposal, PacifiCorp shall schedule a meeting of the Parties to occur before November 8, but not on a Saturday, Sunday or federal holiday (the "Consultation Meeting"). PacifiCorp shall notify the Parties of the meeting at least 10 days prior to the Consultation Meeting. The Parties shall be responsible for ensuring their attendance or, after written notice to the Parties, the attendance of a delegate. The Parties may mutually agree to hold additional Consultation Meetings so long as such meetings occur on or before November 15 on a mutually agreeable date. The purpose of the Consultation Meeting(s) shall be to discuss the proposed modification(s) and objection(s) through an

## Lewis River Recreation Facility Fee Agreement

interest-based discussion, with a goal of reaching unanimous written agreement among attending (or delegate-represented) Parties at the last Consultation Meeting. If such agreement is reached, PacifiCorp shall implement the agreed-upon modification to Section 3.2, 3.3. or 3.4 at the beginning of the following Peak Season or 90 days after agreement is reached, whichever occurs later. Such implementation shall continue for the term of this Agreement unless further modification pursuant to Section 4 renders the modification no longer valid.

4.7.4 Meeting with PacifiCorp Officer; Identification of Preference; Implementation. If agreement is not reached pursuant to Section 4.7.3, PacifiCorp shall schedule a meeting of the Parties and a PacifiCorp officer at the vice presidential level or higher ("PacifiCorp Officer") to occur before December 10, but not on a Saturday, Sunday or federal holiday. PacifiCorp shall notify the Parties of the meeting at least 10 days prior to the meeting. The purpose of the meeting shall be for the Parties to brief the PacifiCorp Officer on the proposal(s) and objection(s). After meeting with the Parties pursuant to Section 4.7.4, the PacifiCorp Officer shall consider the proposal(s), objection(s) and availability of alternative management tools, and shall notify the Parties of PacifiCorp's preferred modification to Sections 3.2, 3.3 and 3.4 or its preference to not modify such sections (hereinafter PacifiCorp's "Preference"), and its underlying rationale for its Preference by December 17. PacifiCorp shall implement its Preference at the beginning of the following Peak Season or 90 days after notification, whichever occurs later. Such implementation shall continue for the term of this Agreement unless further modification pursuant to this Section 4 renders the modification no longer valid. Notwithstanding the prior two sentences, PacifiCorp shall not implement any modification to Sections 3.2, 3.3 or 3.4 that is the subject of arbitration under Section 4.7.5 pending the result of such arbitration. Nothing in this Section 4.7.4 shall limit a PacifiCorp Officer from participating in the Collaborative Review Process earlier.

4.7.5 Binding Arbitration. To reach binding arbitration, a Party must object to a proposed modification (Sections 4.7.1 and/or 4.7.2), the Parties must be unable to reach unanimous written agreement (Section 4.7.3), and, after PacifiCorp has identified its Preference (Section 4.7.4), a Party must follow the arbitration request procedures set forth below.

4.7.5.1 Choice of Arbitrators. Within 120 days of the Effective Date, the Parties shall identify a list of mutually acceptable independent, third-party arbitrators. Upon challenging PacifiCorp's Preference, a challenging party shall retain an arbitrator from the list. If no arbitrator on the list is available, the Parties shall mutually agree on an alternative independent, third-party arbitrator.

4.7.5.2 Request for Arbitration. Any Party that attends all Consultation Meetings may request arbitration regarding PacifiCorp's Preference. The requesting Party shall notify PacifiCorp of its request for arbitration by January 5. Such notice shall describe the objection to PacifiCorp's Preference and shall identify the arbitration date(s). PacifiCorp shall forward any timely-received notice and request for arbitration to all Parties by January 15. In

## Lewis River Recreation Facility Fee Agreement

response to such notice, interested Parties may participate in the arbitration process. The requesting Party shall arrange for arbitration to occur before February 9, and shall be responsible for ensuring the availability of an arbitrator identified pursuant to Section 4.7.5.1.

4.7.5.3 Basis for Arbitrator Decision. The arbitrator shall determine whether PacifiCorp's Preference is reasonable within the context of this Agreement based on the facts before the Parties at the time they considered the proposal, including the availability of other management tools to address a management issue or changed circumstance. When applicable, the arbitrator may consider the cost to PacifiCorp of such alternative tools as compared to the cost to the local public of raising or expanding Fees. The arbitrator is free to make alternative recommendations, and PacifiCorp may choose to follow such alternative recommendations, but PacifiCorp shall not be obligated to follow such alternative recommendations.

4.7.5.4 Decision by Arbitrator; Implementation. The Parties shall request that the arbitrator notify the Parties in writing of a decision by February 10. Such notice shall direct PacifiCorp to implement its Preference or not. Upon such notice, arbitration shall be considered complete. If PacifiCorp is directed to implement its Preference and that Preference includes a modification to Sections 3.2, 3.3 or 3.4, PacifiCorp shall implement that modification at the beginning of the following Peak Season or 90 days following the arbitrator's notice, whichever occurs later. Such implementation shall continue for the term of this Agreement unless further modification pursuant to this Section 4 renders the modification no longer valid.

4.7.5.5 Payment for Arbitrator. PacifiCorp shall pay arbitration costs, except that if:

- (i) the proposal was made by a Party other than PacifiCorp pursuant to Section 4.2.1; and
- (ii) a Party requests arbitration regarding PacifiCorp's preferred modification in response to the proposal; and
- (iii) the Party that requested arbitration does not prevail in arbitration,

then the Party referenced in (ii) and (iii) above, shall pay up to the first \$1,000 of such arbitration costs. This dollar amount shall be deemed stated in 2003 dollars, and shall be escalated in accordance with the formula (but not the text) set forth in Section 3.4. All Parties shall be responsible for the cost of their participation in arbitration.

4.8 Withdrawal of Proposal. A Party may withdraw its proposal at any time before the Parties reach unanimous written agreement pursuant to Section 4.7.3, or, if such

## Lewis River Recreation Facility Fee Agreement

unanimous written agreement is not reached, at any time prior to the beginning of the arbitration process, if applicable.

4.9 Significance of Modification. Modifications made to Sections 3.2, 3.3 and 3.4 of this Agreement pursuant to this Section 4 shall be considered amendments of this Agreement, but shall not require any process in addition to that set forth in this Section 4.

4.10 Program Record. PacifiCorp shall keep a record of all modifications made to Sections 3.2, 3.3 and 3.4 of this Agreement pursuant to Section 4, and shall provide a copy of such record to any Party upon request.

### SECTION 5: RELICENSING AGREEMENT; NEW LICENSES

5.1 Reference to Agreement in Any Settlement Resulting from Relicensing Settlement Negotiations. The Parties do not intend for this Agreement to be incorporated into the terms of any settlement agreement(s) resulting from the Relicensing Settlement Negotiations or the New Licenses for the Projects. Notwithstanding the previous sentence, the Parties agree that the following language referencing this Agreement may be included in any such settlement agreement(s):

“The matter of fees and fee collection dates at PacifiCorp’s Lewis River recreation facilities that existed as of August 1, 2002, will be governed by the ‘Agreement Concerning the Charging of Fees at PacifiCorp’s Lewis River Recreation Facilities,’ between PacifiCorp, John Clapp, Noel Johnson, Lewis River Community Council, City of Woodland, Woodland Chamber of Commerce, Emergency Medical Services and Fire Districts (Represented by Cowlitz-Skamania Fire District #7), Cowlitz County, Clark County, Skamania County and Washington Department of Fish and Wildlife, executed on November 22, 2004.”

5.2 Conflict with New Licenses. In the event of a conflict between this Agreement and a New License for a Project, the New License shall control.

### SECTION 6: GENERAL PROVISIONS

6.1 Commitment to Publicly Support Agreement. All of the Parties agree to publicly support this Agreement.

6.2 Amendment of Agreement. This Agreement may be amended at any time during its term with the unanimous written agreement of all Parties still in existence, or their successors and assigns, if applicable.

6.3 No Third-Party Beneficiaries. This Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement, and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

## Lewis River Recreation Facility Fee Agreement

### 6.4 Successors and Assigns.

6.4.1 Generally. This Agreement shall apply to and be binding on the Parties and their successors and approved assigns. No change in ownership of the Project or transfer of the New Licenses shall modify or affect any other Party's interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, PacifiCorp shall provide in any transaction for a change in ownership of the Projects or transfer of the New Licenses that such new owner or owners shall be bound by and shall assume the rights and obligations of this Agreement upon completion of the change of ownership. A transferring or assigning Party shall provide notice to the other Parties at least 60 days prior to completing such transfer or assignment.

6.4.2 Citizen-at-Large Successors. Upon the Effective Date, John Clapp and Noel Johnson are Citizen-at-Large Parties to this Agreement. Citizen-at-Large Parties may nominate an individual person to be their successor by notifying all Parties in such nomination and providing a reasonable description of the nominated individual's interest in the subject of the Agreement. Upon written approval of all Parties, which may be given or not at their discretion, and upon execution of the Agreement by the individual, the nominee shall become a Party to this Agreement as the successor of the nominating Citizen-at-Large (it being understood that no more than two Citizens-at-Large may be Parties to this Agreement at any given time). The nominating Citizen-at-Large shall no longer be a Party to the Agreement.

6.5 No Partnership. Except as otherwise expressly set forth herein, this Agreement does not, and shall not be deemed to, make any Party the agent for or partner of any other Party.

6.6 Notice. Notice required by this Agreement shall be: (i) in writing; (ii) sent by first-class mail, facsimile or comparable method of distribution to the authorized representative of each Party, or a Party's successor or assign, if applicable; (iii) deemed effective on the date it is sent by mail or transmitted by facsimile, as evidenced by a postmark or facsimile confirmation. If a notice deadline expressed in this Agreement falls on a Saturday, Sunday or federal holiday, the deadline shall be considered the next business day following that deadline. The authorized representative of each Party and that representative's address and facsimile number as of the Effective Date is designated in Appendix C to this Agreement. Each Party is responsible for providing notice to the other Parties of any change in its authorized representative and/or representative's contact information.

6.7 Section Titles; Reference to Sections. The titles of the sections in this Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties. Reference to a given section of this Agreement shall be deemed to include all subsections of that section.

## Lewis River Recreation Facility Fee Agreement

6.8 Termination of Agreement. This Agreement may be terminated by unanimous written agreement of the Parties.

6.9 Remedy. The sole remedy for any person or entity claiming to be aggrieved by this Agreement shall be to submit the claim to binding arbitration before a single arbitrator in Cowlitz County, Washington. The Parties shall attempt to select a mutually agreeable arbitrator. If unable to do so, the arbitrator shall be appointed by a Judge of the Superior Court in Cowlitz County, Washington.

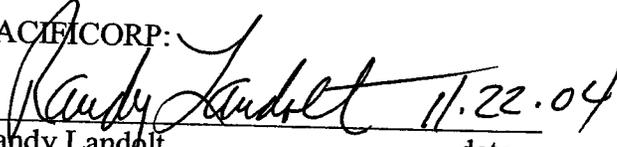
6.10 Severability. If any clause or part of a clause of this Agreement is deemed unconstitutional, unenforceable or invalid, then the remaining clauses or portions of clauses of this Agreement shall survive unaffected.

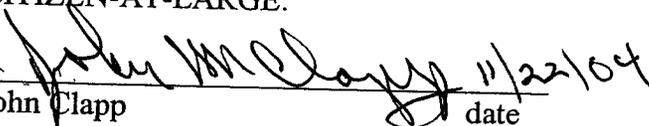
Lewis River Recreation Facility Fee Agreement

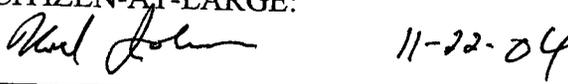
SECTION 7: EXECUTION OF AGREEMENT

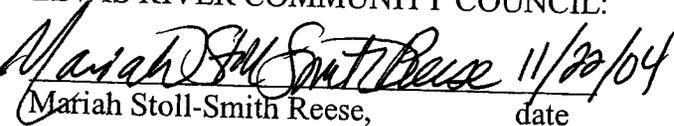
7.1 Signatory Authority. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

7.2 Signing in Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached it to one or more signature pages.

PACIFICORP:  
  
Randy Landolt, date  
Managing Director, Hydro Operations

CITIZEN-AT-LARGE:  
  
John Clapp date

CITIZEN-AT-LARGE:  
  
Noel Johnson date

LEWIS RIVER COMMUNITY COUNCIL:  
  
Mariah Stoll-Smith Reese, date  
President

Lewis River Recreation Facility Fee Agreement

CITY OF WOODLAND:

Douglas A. Monge 11-22-04  
Douglas A. Monge, date  
Mayor

WOODLAND CHAMBER OF COMMERCE:

Darlene G. Johnson 11-22-04  
Darlene G. Johnson, date  
Board Member

EMERGENCY MEDICAL SERVICES AND FIRE DISTRICTS (represented by  
Cowlitz-Skamania Fire District #7)

Ilene L. Black 11-22-04  
Ilene L. Black, date  
Commissioner

EMERGENCY MEDICAL SERVICES AND FIRE DISTRICTS (represented by  
Cowlitz-Skamania Fire District #7)

Don Stuart 11-22-04  
Don Stuart, date  
Commissioner

LOCAL COUNTIES (represented by Cowlitz County)

William Lehning 11-22-04  
William Lehning, date  
Cowlitz County Commissioner

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE:

Bill Brooks date  
Contract Officer

Lewis River Recreation Facility Fee Agreement

CITY OF WOODLAND:

\_\_\_\_\_  
Douglas A. Monge, date  
Mayor

WOODLAND CHAMBER OF COMMERCE:

\_\_\_\_\_  
Darlene G. Johnson, date  
Board Member

EMERGENCY MEDICAL SERVICES AND FIRE DISTRICTS (represented by  
Cowlitz-Skamania Fire District #7)

\_\_\_\_\_  
Ilene L. Black, date  
Commissioner

EMERGENCY MEDICAL SERVICES AND FIRE DISTRICTS (represented by  
Cowlitz-Skamania Fire District #7)

\_\_\_\_\_  
Don Stuart, date  
Commissioner

LOCAL COUNTIES (represented by Cowlitz County)

\_\_\_\_\_  
William Lehning, date  
Cowlitz County Commissioner

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE:

 \_\_\_\_\_  
Bill Brooks, date  
Contract Officer

DEC 15 2004

Lewis River Recreation Facility Fee Agreement

APPENDIX A  
RECREATION FACILITIES

Lewis River Recreation Facility Fee Agreement

**Appendix A. Season and Hours of Operation of Project Recreation Facilities.**

<b>Recreation Site</b>	<b>Season/Hours of Operations</b>
Island River Access	Year Round, 24 hours
Cedar Creek River Access	Year Round, 24 hours
Lewis River Fish Hatchery River Access	Year Round, 24 hours
Johnson Creek Fishing Access	Year Round, 24 hours
Merwin River Access	Year Round, 24 hours
Merwin Park	April 1 <sup>st</sup> – Sept 30 <sup>th</sup> 5 A.M.-9 P.M., Oct 1 <sup>st</sup> – Mar 31 <sup>st</sup> , 7:30 A.M. – 6 P.M.
Speelyai Bay Park and Boat Launch	April 1 <sup>st</sup> – through Thursday before Memorial Day 5 A.M.-9 P.M., Friday before Memorial Day through September 30 <sup>th</sup> , 5 A.M.-10 P.M., Oct 1 <sup>st</sup> – Mar 31 <sup>st</sup> , 7 A.M.-6 P.M.
Cresap Bay Campground and Day-Use/Boat Launch	Friday before Memorial Day through two weeks after Labor Day, 6 A.M. – 9 P.M.
Saddle Dam Park and Boat Launch	Friday before Memorial Day through Labor Day, 5 A.M.-10 P.M.
Yale Park and Boat Launch	April 1 <sup>st</sup> – through Thursday before Memorial Day, 5 A.M.-9 P.M., Friday before Memorial Day through Sept. 30 <sup>th</sup> , 5 A.M.-10 P.M., Oct 1 <sup>st</sup> – Mar 31 <sup>st</sup> , 7 A.M.-6 P.M.
Cougar Campground and Cougar Park	Friday before Memorial Day through Labor Day, 6 A.M. – 9 P.M.
Beaver Bay Campground and Day Use Area/Boat Launch	Last Saturday of April through third Monday of September, 6 A.M. – 9 P.M.
Swift Forest Camp and Day Use Area/Boat Launch	Last Saturday of April through end of hunting season in November (varies), 6 A.M.-9 P.M.
Eagle Cliff Park	Year Round, 24 hours

Lewis River Recreation Facility Fee Agreement

APPENDIX B  
COLLABORATIVE REVIEW PROCESS TIME TABLE

**LEWIS RIVER ALTERNATIVE LICENSING PROCESS SETTLEMENT NEGOTIATIONS  
DAY USE FEES  
COLLABORATIVE REVIEW PROCESS TIME TABLE**

Due Date	Duration (Weeks)	Duration (Business Days)	Task	September	October	November	December	January	February
15-Sep			<i>Proposals Due</i>	•					
22-Sep	1	5	<i>Distribute to Parties</i>	■					
6-Oct	2	10	<i>Review/Comment</i>	■	■				
13-Oct	1	5	<i>Distribute Objections to Parties</i>		■				
23-Oct	1.5	7	<i>Meeting Notice</i>		■				
6-Nov	2	10	<i>Meeting Window</i>			■			
13-Nov	1	5	<i>Resolution of Initial Objection Due</i>			■			
27-Nov	2	10	<i>Notice of Meeting w/ PC VP</i>				■		
11-Dec	2	10	<i>PC VP Meeting Window</i>				■		
18-Dec	1	5	<i>PC VP Decision Due</i>				■		
29-Dec	1.5	7	<i>Challenge of VP Decision Due</i>				■		
5-Jan	1	5	<i>Notice to Proceed to Arbitration</i>					■	
9-Feb	5	25	<i>Arbitration</i>					■	■

Comments:

Additional 1 week added to PC VP Meeting Notice to account for Thanksgiving holiday

Additional 0.5 week added to Challenge of VP decision due date to account for Christmas holiday

Lewis River Recreation Facility Fee Agreement

APPENDIX C  
REPRESENTATIVES OF THE PARTIES

Lewis River Recreation Facility Fee Agreement

**Appendix C: Authorized Representatives**

<b>City of Woodland</b>	Robert VanderZanden	Robert VanderZanden 100 Davidson, Box 9 Woodland, WA 98674 360-225-7999 360-225-7336 (fax) vanderzandenr@ci.woodland.wa.us
<b>Emergency Medical Services and Fire Districts (Represented by Cowlitz-Skamania Fire District No. 7)</b>	Ilene L. Black Board Chairman	Ilene L. Black 227 Frasier Rd. Amboy, WA 98601 360-247-5966 360-247-6966 (fax, call first) wblack@wa-net.com
<b>Lewis River Citizens at-Large</b>	John Clapp  Noel Johnson LewisRiver.com	John Clapp 9315 NE Etna Road Woodland, WA 98674 jmclapp@juno.com  Also: Noel Johnson 6412 NW Amidon Road Woodland, WA 98674 360-225-9807 noel@LewisRiver.com
<b>Lewis River Community Council</b>	Mariah Stoll-Smith Reese President	Mariah Stoll-Smith Reese 14900 Lewis River Rd. Ariel, WA 98603 Mariah_reese@excite.com
<b>Local Counties (represented by Cowlitz County)</b>	Ryan Lopossa Cowlitz County Department of Public Works	Ryan Lopossa 207 4th Ave North Kelso, WA 98626 lopossar@co.cowlitz.wa.us
<b>PacifiCorp</b>	Todd Olson	Todd Olson 825 NE Multnomah, Ste. 1500 Portland, OR 97217 503-813-6657 503-813-6633 (fax) todd.olson@pacificorp.com
<b>WDFW</b>	Curt Leigh	Curt Leigh 600 Capitol Way North Olympia, WA 98501 360-902-2946 360-902-2946 (fax) leighcsl@dfw.wa.gov

Lewis River Recreation Facility Fee Agreement

<b>Woodland Chamber of Commerce</b>	Darlene Johnson	Darlene Johnson PO Box 1808 Woodland, WA 98674 (360) 225-9433 (360) 225-9434 (fax) woot@teleport.com
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JAN 06 2005

HABITAT PROGRAM



January 3, 2005

John Clapp  
Citizen-at-Large  
9315 NE Etna Road  
Woodland, WA 98674

Rob VanderZanden  
City of Woodland  
100 Davidson, Box 9  
Woodland, WA 98674

Don Stuart  
Cowlitz-Skamania Fire District  
No. 7  
11670 Lewis River Road  
Ariel, WA 98603

Noel Johnson  
Citizen-at-Large  
6412 NW Amidon  
Woodland, WA 98674

Darlene G. Johnson  
Woodland Chamber of  
Commerce  
PO Box 1808  
Woodland, WA 98674

Ryan Lopossa  
Cowlitz County Public Works  
207 4<sup>th</sup> Ave North  
Kelso, WA 98626

Mariah Stoll-Smith Reese  
Lewis River Community  
Council  
14900 Lewis River Road  
Ariel, WA 98603

Ilene L. Black  
Cowlitz-Skamania Fire  
District No. 7  
227 Frasier Road  
Amboy, WA 98601

Curt Leigh  
WDFW  
600 Capitol Way North  
Olympia, WA 98501

**Subject: Fully executed Letter Agreement Concerning Charging of Fees at PacifiCorp's Undeveloped Lands Associated with the Merwin, Yale and Swift No. 1 Projects.**

Dear Parties Listed Above:

Please find enclosed a fully executed copy of the above-referenced Letter Agreement for your records.

Thank you once again for your efforts on this agreement.

Sincerely,

A handwritten signature in black ink that reads "Kimberly L. McCune". The signature is written in a cursive style.

Kimberly L. McCune  
Hydro Licensing Coordinator

Enclosure



**COPY ORIGINAL**

As of November 22, 2004

John Clapp  
Citizen-at-Large  
9315 NE Etna Road  
Woodland, WA 98674

Rob VanderZanden  
City of Woodland  
100 Davidson, Box 9  
Woodland, WA 98674

Don Stuart  
Cowlitz-Skamania Fire District  
No. 7  
11670 Lewis River Road  
Ariel, WA 98603

Noel Johnson  
Citizen-at-Large  
6412 NW Amidon Road  
Woodland, WA 98674

Darlene G. Johnson  
Woodland Chamber of  
Commerce  
PO Box 1808  
Woodland, WA 98674

Ryan Lopossa  
Cowlitz County Public Works  
207 4th Ave North  
Kelso, WA 98626

Mariah Stoll-Smith Reese  
Lewis River Community Council  
14900 Lewis River Rd.  
Ariel, WA 98603

Ilene L. Black  
Cowlitz-Skamania Fire  
District No. 7  
227 Frasier Rd.  
Amboy, WA 98601

Curt Leigh  
WDFW  
600 Capitol Way North  
Olympia, WA 98501

**Subject: Letter Agreement Concerning Charging of Fees at PacifiCorp's Undeveloped Lands Associated with the Merwin, Yale and Swift No. 1 Projects.**

Dear Parties Listed Above:

This letter agreement ("Letter Agreement") is entered into as of the date set forth above by and between PacifiCorp, an Oregon Corporation, and John Clapp, Citizen-at-Large; Noel Johnson, Citizen-at-Large; Lewis River Community Council; City of Woodland; Woodland Chamber of Commerce; Emergency Medical Services and Fire Districts (represented by Cowlitz-Skamania Fire District # 7); local counties (represented by Cowlitz County); and the Washington Department of Fish and Wildlife, (together, the "Parties"), with regard to undeveloped lands owned by PacifiCorp and associated with the Merwin, Yale and Swift No. 1 Projects ("Undeveloped Lands").

1.0 Access Fees. Unless otherwise decided pursuant to Section 2 below, PacifiCorp shall not charge fees to members of the public for recreational access to Undeveloped Lands or

modify fees established following the process described in this Letter Agreement (“Access Fees”).

## 2.0 Collaborative Review Process.

2.1 Notice of Proposal to Charge Access Fees or Modify Access Fees. PacifiCorp may propose to charge Access Fees or modify Access Fees being charged by notifying all Parties at least 90 days prior to the date such fees would go into effect (“the Proposal”). Such Proposal shall (i) state the proposed new fee or modification; (ii) identify the changed circumstance that the modification seeks to address; (iii) describe in detail the anticipated benefits of the proposed modification and why such benefits outweigh anticipated impacts; (iv) discuss the impact of the modification on management of the Undeveloped Lands at issue and explain why a management tool that does not raise or expand Access Fees is not a reasonable response to the management issue or changed circumstance; and (v) identify the date the Proposal would be implemented. PacifiCorp’s Proposal shall also identify the deadline for any Party to notify PacifiCorp that they object to the Proposal, which deadline shall not be earlier than 30 days from the date the Proposal was distributed.

2.2 Implementation of Proposal when no Objection. If a Proposal receives no objection pursuant to Section 2.3, PacifiCorp shall implement the proposed Access Fee or modification to the Access Fees as provided in the Proposal. Implementation shall continue for the term of this Letter Agreement unless superseded by a further modification pursuant to this Section 2.

2.3 Objection to Proposal. A Party may object to a Proposal in whole or in part by notifying PacifiCorp by the deadline stated in the Proposal. Such notice shall describe the basis for the objection. PacifiCorp shall forward any timely-received objection to all Parties within 30 days of its receipt.

2.3.1 Consultation After Objection; Implementation of Decision. If there is objection to a Proposal, PacifiCorp shall schedule a meeting of the Parties within 30 days of the close of the objection period set forth in the Proposal, but not on a Saturday, Sunday or federal holiday (the “Consultation Meeting”). PacifiCorp shall notify the Parties of the Consultation Meeting at least 10 days prior to the meeting. The Parties shall be responsible for ensuring their attendance or, after written notice to the Parties, the attendance of a delegate. The Parties may mutually agree to hold additional Consultation Meetings. The purpose of the Consultation Meeting(s) shall be to discuss the proposed Access Fee or modification to the Access Fees and objection(s) through an interest-based discussion, with a goal of reaching unanimous written agreement among attending (or delegate-represented) Parties at the last Consultation Meeting. If such agreement is reached, PacifiCorp shall implement the agreed-upon Access Fee or modification to the Access Fees as specified in the Proposal or if that date has passed, as soon as practicable. Such implementation shall continue for the term of this Letter Agreement unless further modification pursuant to Section 2 renders the modification no longer valid.

2.3.2 Meeting with PacifiCorp Officer; Implementation. If agreement is not reached pursuant to Section 2.3.1 at the last Consultation Meeting, PacifiCorp shall schedule a meeting of the Parties and a PacifiCorp officer at the vice presidential level or higher ("PacifiCorp Officer") to occur within 60 days of the last Consultation meeting, but not on a Saturday, Sunday or federal holiday. PacifiCorp shall notify the Parties of the meeting at least 15 days prior to the meeting. The purpose of the meeting shall be for the Parties to brief the PacifiCorp Officer on the Proposal(s) and objection(s). After meeting with the Parties pursuant to this Section 2.3.2, the PacifiCorp Officer shall consider the proposal(s), objection(s) and availability of alternative management tools, and shall notify the Parties of PacifiCorp's decision and its underlying rationale for its decision within 30 days after the meeting with the PacifiCorp Officer. If the PacifiCorp Officer decides to implement the Proposal, PacifiCorp shall implement the Access Fees or modification to Access Fees as provided in the Proposal, or if that date has passed as soon as practicable. If the PacifiCorp Officer decides to modify the Proposal, PacifiCorp shall implement the modified Proposal as soon as practicable. Such implementation shall continue for the term of this Letter Agreement unless further modification pursuant to this Section 2 renders the modification no longer valid. Nothing in this Section 2.3.2 shall limit a PacifiCorp Officer from participating in the collaborative review process earlier. The determination of the PacifiCorp Officer under this Section 2.3.2 shall be conclusive.

2.4 Withdrawal of Proposal. PacifiCorp may withdraw its proposal at any time before the Parties reach unanimous written agreement pursuant to Section 2.3.1.

2.5 Program Record. PacifiCorp shall keep a record of all modifications made to Access Fees, Consultation Meetings and meetings with PacifiCorp Officer pursuant to Section 2 of this Letter Agreement, and shall provide a copy of such record to any Party upon request.

2.6 Notice for Collaborative Review Process. Notice required by this Letter Agreement shall be: (i) in writing; (ii) sent by first-class mail, facsimile or comparable method of distribution to the authorized representative of each Party, or a Party's successor or assign, if applicable; and (iii) deemed effective on the date it is sent by mail or transmitted by facsimile, as evidenced by a postmark or facsimile confirmation. If a notice deadline expressed in this Letter Agreement falls on a Saturday, Sunday or federal holiday, the deadline shall be considered the next business day following that deadline. The authorized representative of each Party, and that representative's address and facsimile number as of the date of this Letter Agreement, is designated in Appendix A to this Letter Agreement. Each Party is responsible for providing notice to the other Parties of any change in its authorized representative and/or representative's contact information.

3.0 Limitations. This Letter Agreement shall not obligate PacifiCorp to continue to own or manage Undeveloped Lands through the term of this Agreement.

EMERGENCY MEDICAL SERVICES AND FIRE DISTRICTS (represented by Cowlitz-Skamania Fire District #7):

Don Stuart 11-22-04  
Don Stuart, date  
Commissioner

LEWIS RIVER COMMUNITY COUNCIL:

Mariah Stoll-Smith Reese 11/20/04  
Mariah Stoll-Smith Reese, date  
President

LOCAL COUNTIES (represented by Cowlitz County):

William Lehning 11-22-04  
William Lehning, date  
Cowlitz County Commissioner

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE:

\_\_\_\_\_  
Bill Brooks date  
Contract Officer

WOODLAND CHAMBER OF COMMERCE:

Darlene G. Johnson 11-22-04  
Darlene G. Johnson, date  
Board Member

Letter Agreement Concerning Charging of Fees at PacifiCorp's Undeveloped Lands  
Associated with the Merwin, Yale and Swift No. 1 Projects

EMERGENCY MEDICAL SERVICES AND FIRE DISTRICTS (represented by Cowlitz-  
Skamania Fire District #7):

\_\_\_\_\_  
Don Stuart, date  
Commissioner

LEWIS RIVER COMMUNITY COUNCIL:

\_\_\_\_\_  
Mariah Stoll-Smith Reese, date  
President

LOCAL COUNTIES (represented by Cowlitz County):

\_\_\_\_\_  
William Lehning, date  
Cowlitz County Commissioner

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE:

Bill Brooks DEC 15 2004  
Bill Brooks date  
Contract Officer

WOODLAND CHAMBER OF COMMERCE:

\_\_\_\_\_  
Darlene G. Johnson, date  
Board Member

WASHINGTON INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION:

Laura E. Johnson 11/24/04

Laura Johnson,  
Director

date

APPENDIX A  
 AUTHORIZED REPRESENTATIVES OF THE PARTIES

<b>Citizens-at-Large</b>	<p>John Clapp</p>   <p>Noel Johnson LewisRiver.com</p>	<p>John Clapp 9315 NE Etna Road Woodland, WA 98674 jmclapp@juno.com</p> <p>Also: Noel Johnson 6412 NW Amidon Road Woodland, WA 98674 360-225-9807 noel@LewisRiver.com</p>
<b>City of Woodland</b>	Robert VanderZanden	<p>Robert VanderZanden 100 Davidson, Box 9 Woodland, WA 98674 360-225-7999 360-225-7336 (fax) vanderzandenr@ci.woodland.wa.us</p>
<b>Emergency Medical Services and Fire Districts (Represented by Cowlitz-Skamania Fire District No. 7)</b>	<p>Ilene L. Black Board Chairman</p>	<p>Ilene L. Black 227 Frasier Rd. Amboy, WA 98601 360-247-5966 360-247-6966 (fax, call first) wblack@wa-net.com</p>
<b>Lewis River Community Council</b>	<p>Mariah Stoll-Smith Reese, President</p>	<p>Mariah Stoll-Smith Reese 14900 Lewis River Rd. Ariel, WA 98603 Mariah_reese@excite.com</p>
<b>Local Counties (represented by Cowlitz County)</b>	<p>Ryan Lopossa Cowlitz County Department of Public Works</p>	<p>Ryan Lopossa 207 4th Ave North Kelso, WA 98626 lopossar@co.cowlitz.wa.us</p>
<b>PacifiCorp</b>	Todd Olson	<p>Todd Olson 825 NE Multnomah, Ste. 1500 Portland, OR 97217 503-813-6657 503-813-6633 (fax) todd.olson@pacificorp.com</p>
<b>WDFW</b>	Curt Leigh	<p>Curt Leigh 600 Capitol Way North Olympia, WA 98501 360-902-2946 360-902-2946 (fax) leighcsl@dfw.wa.gov</p>

<b>Washington Interagency Committee for Outdoor Recreation</b>	<b>Jim Eychaner</b>	<b>Jim Eychaner Washington Interagency Committee for Outdoor Recreation PO Box 40917 Olympia, WA 98504-0917 (360) 902-3011 jime@iac.wa.gov</b>
<b>Woodland Chamber of Commerce</b>	<b>Darlene Johnson</b>	<b>Darlene Johnson PO Box 1808 Woodland, WA 98674 (360) 225-9433 (360) 225-9434 (fax) woot@teleport.com</b>

COPY  
RECEIVED

**Confidentiality Agreement**  
**for the Lewis River Hydroelectric Project Relicensing Settlement Agreement** SEP 12 2005  
**Terrestrial Coordination Committee**

HABITAT PROGRAM

This Confidentiality Agreement (the “Agreement”) is entered into by and among PacifiCorp, an Oregon corporation; Public Utility District No. 1 of Cowlitz County, Washington (collectively, “the Licensees”); National Marine Fisheries Service; National Park Service; United States Bureau of Land Management; United States Fish and Wildlife Service; USDA Forest Service; Confederated Tribes and Bands of the Yakama Nation; Cowlitz Indian Tribe; Washington Department of Fish and Wildlife; Washington Interagency Committee for Outdoor Recreation; Cowlitz County; Cowlitz-Skamania Fire District No. 7; North Country Emergency Medical Service; the City of Woodland; Woodland Chamber of Commerce; Lewis River Community Council; Lewis River Citizens At-Large; American Rivers; Fish First; Rocky Mountain Elk Foundation, Inc.; Trout Unlimited; Clark County; The Native Fish Society; Skamania County and The Lower Columbia River Fish Recovery Board, each of which are referred to individually as a “Party” and collectively, as the “Parties.”

RECITALS

A. On November 30, 2004, the Parties entered into a comprehensive settlement agreement (“the Relicensing Settlement Agreement”) for the purpose of obtaining new licenses from the Federal Energy Regulatory Commission (“the Commission”) for the following hydroelectric projects on the Lewis River, Washington: Swift No. 1, Swift No. 2, Yale, and Merwin projects and associated facilities and structures (Project Nos. 2111, 2213, 2071, and 935) (collectively, “the Projects”). The Parties anticipate that the Commission will adopt the Relicensing Settlement Agreement in forthcoming licensing orders, and that the Commission will issue new licenses for the Projects consistent with the Relicensing Settlement Agreement.

B. Section 14 of the Relicensing Settlement Agreement provides that the Licensees shall convene a Terrestrial Coordination Committee (“TCC”) to coordinate implementation of the terrestrial protection, mitigation, and enhancement measures (“PM&E”) described in Section 10 of the Relicensing Settlement Agreement. Among other things, the TCC will (i) provide a forum for coordination between the Licensees and the other Parties on terrestrial resources PM&E Measure implementation, and (ii) oversee aspects of the wildlife habitat management plan.

C. Many of the Parties are state, local, or federal agencies and subject to laws regarding the disclosure of public documents. Nothing in this Agreement is intended to limit the express language and spirit of state or federal public records laws. However, and consistent with those laws, the Parties recognize that certain TCC activities and deliberations will likely require discussion of sensitive economic and other information. The Parties intend that sensitive information, and discussions, actions, or deliberations concerning such information, be treated as sensitive to insure the Parties’ collective goals and objectives under the Relicensing Settlement Agreement are attained. The Parties also desire that the TCC process be collaborative and conducted in an atmosphere of trust, and so desire to avoid undue secrecy and confidentiality. Accordingly, this Agreement is limited in scope.

NOW, THEREFORE, in consideration of the Parties' mutual interests to implement the Relicensing Settlement Agreement, the Parties agree as follows:

1. Confidential Information. For purposes of this Agreement, "Confidential Information" means:

a. Information developed prior to a purchase or sale of an interest in real property, and in any way relating to the purchase or sale of an interest in real property, including information regarding real property value, the sale price and the character, location or amount of real property which is or may be the subject of any proposed purchase or sale of an interest in real property related to the subject of the Relicensing Settlement Agreement;

b. Information regarding Native American burial and sacred sites, traditional cultural properties, Indian graves and records, archeological sites and resources, and historic properties on or near the Projects; and

c. Trade secrets and proprietary or privileged commercial or financial information of the Parties marked "CONFIDENTIAL." The inclusion of this category is not expected to result in a large number of documents being labeled "CONFIDENTIAL". Further, notwithstanding this provision, no Party is obligated to disclose to the other Parties any trade secrets or proprietary or privileged commercial or financial information in the course of TCC discussions or activities. Prior to marking information "CONFIDENTIAL" under this paragraph 1(c), the Party proposing to disclose such information shall notify intended recipients of the general nature of the information and, as appropriate, provide its reasons for marking the information "CONFIDENTIAL", allowing opportunity for other Parties to comment. Parties may decline to receive any such information.

2. Treatment of Confidential Information. Except as required by law, each Party will maintain the confidentiality of all Confidential Information directly or indirectly obtained as part of TCC discussions or activities. Except as required by law, or in furtherance of TCC work undertaken pursuant to the Relicensing Settlement Agreement, the Parties will not disclose such Confidential Information to any non-Party, and shall not copy, reproduce or re-state Confidential Information in any form that is or will be disclosed to non-Parties.

3. Legal Disclosure Requirements. If a Party subject to a legal requirement to disclose Confidential Information receives a request for disclosure of Confidential Information, the recipient of the request for disclosure will promptly notify the Party that shared the Confidential Information to give that Party adequate opportunity to object or otherwise respond to the request. To the extent allowed by law, the recipient of the request for disclosure will withhold disclosure of such Confidential Information pending resolution of an objection to disclosure, provided the Party seeking to protect such information promptly seeks judicial relief.



**United States Forest Service:**

\_\_\_\_\_  
[name] date

**Confederated Tribes and Bands  
of the Yakama Nation:**

\_\_\_\_\_  
[name] date

**Washington Dept. of Fish & Wildlife**

*W.C. Brooks* AUG 25 2005  
\_\_\_\_\_  
[name] **William C. Brooks, C.P.M.** date  
Contracts Officer

**Washington Interagency Committee  
for Outdoor Recreation:**

\_\_\_\_\_  
[name] date

**Cowlitz County:**

\_\_\_\_\_  
[name] date

**North Country Emergency Services**

\_\_\_\_\_  
[name] date

**Lewis River Community Council:**

\_\_\_\_\_  
[name] date

**National Park Service:**

\_\_\_\_\_  
[name] date

**Cowlitz Indian Tribe:**

\_\_\_\_\_  
[name] date

**Skamania County:**

\_\_\_\_\_  
[name] date

**Clark County:**

\_\_\_\_\_  
[name] date

**Cowlitz-Skamania Fire District #7:**

\_\_\_\_\_  
[name] date

**City of Woodland:**

\_\_\_\_\_  
[name] date

**Fish First:**

\_\_\_\_\_  
[name] date

**American Rivers:**

\_\_\_\_\_  
[name] date

**Trout Unlimited:**

\_\_\_\_\_  
[name] date

**Lewis River Citizen-At Large:**

\_\_\_\_\_  
[name] date

**Woodland Chamber of Commerce:**

\_\_\_\_\_  
[name] date

**The Lower Columbia River Fish  
Recovery Board:**

\_\_\_\_\_  
[name] date

**Rocky Mountain Elk Foundation:**

\_\_\_\_\_  
[name] date

**The Native Fish Society:**

\_\_\_\_\_  
[name] date

**Lewis River Citizen-At-Large:**

\_\_\_\_\_  
[name] date

**United States Bureau of Land  
Management:**

\_\_\_\_\_  
[name] date