

# United States Department of the Interior Land 1992

Pacific Northwest Region 500 N.E. Multnomah Street, Suite 607 Portland, Oregon 97232

DEC 3 0 1992

FWS.PN.1114

Honorable Lois D. Cashell Secretary Federal Energy Regulatory Commission 825 N. Capitol Street, N.E., Room 3110 Washington, D.C. 20426

Registered Indexed, Dir Indirect FIFT. A 'trd

Project No. 2342 (Condit Hydroelectric Project, Washington)

Dear Ms. Cashell:

On December 9, 1992, we submitted for filing in the above-referenced proceeding the Department of the Interior's Motion to Intervene, My Notice of Entry of Appearance, and the Certificate of in the above-Service for the above-referenced matter. Copies were served on the parties to this proceeding as listed on the then enclosed Service List. Since then we have received an updated Service List from your office. On this date we are filing copies of the above-referenced documents to the parties listed on the enclosed Additional Service List.

Thank you for your assistance in this matter. I may be reached at (503) 231-2139 (telefax 503-231-2146) if you have any questions.

FILES FOR RECORD 31 1 BY Skamania Co.

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GAR: N. O. SON

Sincerely,

For the United States Department of the Interior

Barbara Scott-Brier

Attorney for U.S. Department of the

Interior

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Office of the Regional Solicitor

Pacific Northwest Region

Enclosures

Barbara Scott-Brier
Attorney for U.S. Department of the Interior
Office of the Regional Colicitor
Pacific Northwest Region
U.S. Department of the Interior
500 N.E. Multnomah St., Suite 607
Fortland, Oregon 97232

### UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP ELECTRIC OPERATIONS FOR A MAJOR LICENSE TO OPERATE THE CONDIT HYDROELECTRIC PROJECT IN SKAMANIA AND KLICKITAT CO INTIES, WASHINGTON.

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PROJECT NO. 2348

MOTION TO INTERVENE

## UNITED STATES DEPARTMENT OF THE INTERIOR MOTION TO INTERVENE

For reasons stated below, the United States Department of the Interior (Department) hereby respectfully moves the Commission, pursuant to Commission Rule of Practice and Procedure (Rule) 214, 18 C.F.R. § 385.214, for leave to intervene in these proceedings. PacifiCorp Electric Operations has filed an application for a new license to operate the Condit Hydroelectric Project No. 2348. The proposed hydroelectric project is located on the White Salmon River in Skamania and Klickitat Counties, Washington. The White Salmon River flows into the Columbia River.

The Department represents national public interests which the proposed project would directly affect and which would not otherwise be represented before the Commission. Further, a number of bureaus within the Department have responsibilities related to resources that would be affected by activities to be undertaken pursuant to the proposed license. Of those bureaus, the following

1 - DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE CONDIT PROJECT NO. 2343

have requested that the Department seek intervention: the Fish and Wildlife Service and the Bureau of Indian Affairs.

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The interests and responsibilities of the Department, its anticipated position as intervenor (as known at this time), and the resulting grounds for its intervention are set forth below as a basis for a Commission order granting the Department's motion to intervene.

#### I. SERVICE OF PROCESS

Service of process and other communications concerning this proceeding should be made to:

Barbara Scott-Brier, Attorney
Office of the Regional Solicitor, Pacific NW Region
U.S. Department of the Interior
500 N.E. Multnoman Street, Suite 607
Portland, OR 97232
Telephone: 503-231-2139
Telefax: 503-231-2166

In addition, copies of all documents in this matter should also be served upon the following:

Regional Director, Attn: Don Sundeen (FWE) Fish and Wildlife Service, Region 1 U.S. Department of the Interior 911 N.E. 11th Avenue Fortland, OR 97232-4181

Area Director
Attn: Bernard Burnham
Bureau of Indian Affairs
Portland Area Office
U.S. Department of the Interior
911 N.E. 11th Avenue
Portland, OR 97232

Field Supervisor Attn: Gwill Ging Olympia Field Station Fish and Wildlife Service U.S. Department of the Interior 14 Griffin Lane S.E., Suite 102 Olympia, WA 98501-2192

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#### III. DESCRIPTION OF THE PROJECT

According to materials provided by the Applicant, the Condit hydroelectric project would consist of: (1) 125-foot-high concrete dam, approximately 471 feet long, at crest elevation 297.5 feet; (2) Northwestern Lake, a 665-acre-foot reservoir with a water surface of about 100 acres; (3) a 5,100-foot-long, 13.5-foot-diameter flow line innected to two 650-foot-long, 9-foot-diameter penstocks; and (4) a powerhouse containing two horizontal Francistype turbines, having a combined rating of 9,000 horsepower. Each unit has a nameplate rating of 4.8 megawatts at 179 feet of head.

#### III. GROUNDS FOR INTERVENTION

Commission Rule 214 provides for intervention by a federal agency representing public interests which would be affected directly by the proposed project 18 C.F.R. § 385.214(b)(2)(i), (ii). In accordance with Rule 214, supra, a motion to intervene must state: (a) sufficient factual detail to establish that the movant's participation is in the public interest; and (b) the position taken by the movant and the basis in fact and in law for that position. The following statements provide compliance with these requirements.

## A. PUBLIC INTEREST: INTERESTS AND RESPONSIBILITIES OF THE DEPARTMENT

The Department of the Interior's interests in these proceedings are founded on a variety of statutory obligations and responsibilities and its trust responsibility to Indian tribes.

<sup>3 -</sup> DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE CONDIT PROJECT NO. 2343

First, the potential impacts of the proposed project on and responsibilities for the Department. Coordination Act, 16 U.S.C. §§ 661-666c, authorizes the Secretary of the Interior to assist and cooperate with federal and private The Fish and Wildlife agencies to assure that fish and wildlife conservation measures receive "equal consideration" and are coordinated with other features of water projects, beginning with their initial planning stages. 16 U.S.C. S 661. Similarly, the Fish and Wildlife Act of 1956, 16 U.S.C. §§ 742a-742j-2, as amended, requires the Secretary 10 to determine the policies necessary and desirable to carry out fish 77 and wildlife laws efficiently and in the national public interest. 16 U.S.C. § 742f(a). With the Departmental staff, the Secretary is 13 directed to develop and recommend measures to assure a maximum sustainable production of fish and to "take such steps as may be 15 761 required conservation, and protection fish and wildlife." 16 U.S.C. § 17 742f(a)(1),(4). Acting through the Fish and Wildlife Service and other Departmental officials, the Secretary also has special 19 responsibilities to protect various wildlife species under the Migratory Bird Treaty Act, 16 U.S.C. \$\$ 703-12. Finally, under Section 10(j) of the Electric Consumers Protection Act of 1986, 16 U.S.C. § 803(j), the Commission is required to include license conditions as recommended by the Fish and Wildlife Service to rotect, mitigate, and enhance fish and wildlife resources iversely affected by hydroelectric power projects. DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE

Further, the Secretary of the Interior through the Bureau of Indian Affairs has been delegated the authority to manage "all 2 3 Indian affairs and ... all matters arising out of Indian relations." 25 U.S.C. § 2. Fursuant to that authority and the 4 United States' trust responsibility to Indian tribes, the Secretary 5 6 of the Interior is responsible for fulfilling the United States' 7 fiduciary and statutory duties to protect the fishing rights of Indian tribes as reserved by and secured to the tribes in treaties 8 9 with the United States. A number of Indian Tribes have treaty-10 protected fishing rights that may be affected by the proposed Condit Hydroelectric Project. First, the Confederated Tribes and 11 12 Bands of the Yakima Indian Nation, have treaty-protected fishing 13 rights within the project area. Other Tribes whose treaty fishing 14 rights may be affected by the Project include: Confederated Tribes 15 of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation, and Nez Perce Tribe. The treaties of June 9, 17 1855, 12 Stat. 951; June 9, 1855, 12 Stat. 945; June 25, 1855, 12 18 Stat. 963; and June 11, 1855, 12 Stat. 957 secured to those Tribes, 19 respectively, the right in common with the citizens of the 20 territory to take fish in their respective usual and accustomed 21 See United States v. Washington, 384 F. Supp. 312 (W.D. 22 Wash. 1974), and Sohappy v. Smith, 302 F. Supp. 899 (D. Or. 1969). 23 This includes the right to take fish in the Columbia River and its 24 tributaries. 25

The White Salmon River is within the usual and accustomed fishing area of the Yakima Tribe. The White Salmon River also

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<sup>5 -</sup> DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE CONDIT PROJECT NO. 2343

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provides recruitment stock to the reach of the Columbia River that is subject to the treaty-reserved lishing rights of the Yakima, Umatilla, Warm Springs and Nez Perce Tribes. The fishery and the associated habitat that supports the fishery are, therefore, subject to the trust responsibility of the United States Government.

The Yakima Tribe may also have treaty-protected hunting and gathering rights and cultural resource interests that may require consideration and protection in the licensing process.

The authorities cited above constitute Congressional statements of the national public interest in protection of fish, wildlife, cultural, and other resources. They also indicate Congressional intent that the Department represent those interests which would be affected directly by the activities of the Applicant under any linense issued for its proposed project. The Department is seeking to protect the fish, wildlife, cultural, and other important natural resources in the proposed Condit Project area. No other party or intervenor has such authority to represent those particular national public interests.

Finally, intervention by the Department would assist the in Commission fulfilling efficiently its consultation, coordination, environmental and assessment, related responsibilities. Those responsibilities are set forth in such statutes as the Endangered Species Act, 16 J.S.C. § 1536(a); the Fish and Wildlife Coordination Act, 16 U.S.C. § 662(a); the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C); and the

<sup>6 -</sup> DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE CONDIT PROJECT NO. 2343

Act of 1969, 42 U.S.C. Sections 4332(2).

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#### B. ANTICIPATED POSITION OF THE DEPARTMENT

The Department has reviewed the proposed project in light of its responsibilities and authorities pursuant to the above-cited statutes and other relevant laws and regulations. Based on this review, the position of the Department, as known at this time, is described more fully below.

Pursuant to authority delegated to the Department, the Department has reviewed the proposed action in relation to the fish and wildlife resources in the Condit Hydroelectric Project area. Based on this analysis, it has concluded that the project as proposed could have serious adverse impacts on anadromous and resident fish species, including chinook and coho salmon and steelhead and resident rainbow trout; on wildlife species; on the exercise of Indian treaty rights; and on Indian cultural resources.

The White Salmon River is tributary to the Columbia River. The White Salmon River and its watershed provide high quality habitat for fish and wildlife rescurces. Further, it is the Fish and Wildlife Service's goal to restore anadromous fish runs to their former habitat and their former abundance above Condit Dam, to correct existing physical and operational problems affecting fish and wildlife resources, to restore and rehabilitate degraded spawning and rearing habitat downstream from Condit Dam, and to mitigate the loss of wildlife habitat values resulting from the development and operation of project facilities. The Service's goals are consistent with the Northwest Power Planning Council's

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Columbia River Fish and Wildlife program which calls for dam passage at Condit Dam.

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The Department has reviewed the license application and is concerned about the many project-related impacts to anadromous and resident fish species and wildlife species that have not been adequately addressed by the Applicant. During the course of this proceeding, the Department would seek to assure that project impacts on fish and wildlife resources were identified. The Department would recommend measures which would avoid adverse effects upon fish and wildlife resources and which would mitigate for unavoidable adverse effects.

In addition, the United States has trust responsibilities for the reserved property interests of the Yakima and other Indian Tribes, as described above. The Department is concerned about the many object-related impacts on fish, wildlife, plant, and cultural resources that have not been considered during the term of the past license, a situation that must be resolved during the Condit hydroelectric project relicensing proceeding. During the course of the proceeding, the Department would seek to assure that Indian cultural resources and Indian trust rights and resources, including those associated with treaty-protected fishing, hunting, and gathering rights, are identified, considered, and protected.

#### VI. REQUEST FOR RELIEF

Accordingly, for the reasons stated above, the Department of the Interior moves the Federal nergy Regulatory Commission to issue an order granting the Department's motion to intervene in

<sup>8 -</sup> DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE CONDI PROJECT NO. 2343

this proceeding.

DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE CONDIT PROJECT NO. 2343

RESPECTFULLY SUBMITTED this 94 day of December 1992.

For the United States Department of the Interior  $\rho$ 

Barbara Scott-Brier, Attorney Office of the Regional Solicitor

Pacific Northwest Region
U. S. Department of the Interior
500 N.E. Multnomah St., Suite 507
Portland, Oregon 97232
(503) 231-2139

Telefax: (503) 231-2166

#### UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP ELECTRIC OPERATIONS FOR A MAJOR LICENSE TO OPERATE THE CONDIT 1 'ORO- )
ELECTRIC PROJECT IN SKAMANIA AND KLICKITAT ) NOTICE OF APPEARANCE COUNTIES, WASHINGTON

Project No. 2343

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NOTICE OF APPEARANCE

COMES NOW Barbara Scott-Brier and enters her appearance as attorney for the Department of the Interior (Department) in the above-referenced matter. In order to assist the undersigned, the Commission, and other parties, the attorney for the Department notifies and requests as follows:

Pursuant to Rule 2010(2) the person to receive communications and to be served with documents in this matter on behalf of the Secretary of the Interior is as follows:

> Barbara Scott-Brier, Attorney Office of the Regional Solicitor, Pacific NW Region U.S. Department of the Interior 500 N.E. Multnomah Street, Suite 607 Portland, Oregon 97232 Telephone: 503-231-2139 Telefax: 503-231-2166

In addition, the following Department of Interior persons are to be served with documents in the above-referenced proceeding:

> Regional Pirector, Attn: Don Sundeen (FWE) Fish and Wildlife Service, Region 1 U.S. Department of the Interior 911 N.E. 11th Avenue Portland, Oregon 97232-4181

DEPARTMENT OF THE INTERIOR'S NOTICE OF APPEARANCE AND REQUEST FOR CURRENT SERVICE LIST - CONDIT PROJECT NO. 2343

Area Director Attn: Bernard Burnham Bureau of Indian Affairs U.S. Department of the Interior 911 N.E. 11th Avenue Portland, OR 97232-4169

-Field Supervisor
Attn: Gwill Ging
Olympia Field Station
U.S. Fish and Wildlife Service
U.S. Department of the Interior
3704 Griffin Lane S.E., Suite 102
Olympia, WA 98501-2192

The undersigned also requests a copy of the current Service List in the above -referenced matter to be sent to the undersigned.

RESPECTFULLY SUBMITTED this  $9^{-t/4}$  day of December 1992.

For the United States
Department of the Interior

Barbara Scott-Bries

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

2 - DEPARTMENT OF THE INTERIOR'S NOTICE OF APPEARANCE AND REQUEST FOR CURRENT SERVICE LIST - CONDIT PROJECT NO. 2343

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Barbara Scott-Brier
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     Portland, Oregon
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                            UNITED STATES OF AMERICA
                     FEDERAL ENERGY REGULATORY COMMISSION
  6
  7
     IN THE MATTER OF THE APPLICATION
                                                   PROJECT NO. 2342
     OF PACIFICORP ELECTRIC OPERATIONS
  8
     FOR MAJOR LICENSE TO OPERATE THE
                                                   CERTIFICATE OF SERVICE
     THE CONDIT HYDROELECTRIC PROJECT
  9
     IN SKAMANIA AND KLICKITAT COUNTIES.
     WASHINGTON.
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          I hereby certify that I have this date mailed by regular mail,
     postage prepaid, copies of the Department of the Interior's Motion to Intervene and Notice of Appearance to the parties listed on the
     Additional Service List, as follows:
13
14
                                   SERVICE LIST
15
    Honorable Lois D. Cashell (Original and 14 copies)
16
    Secretary
    Federal Energy Regulatory Commission 825 N. Capitol Street, N.E. Washington, D.C. 20426
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    Washington Trout
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    Duvall, Washington
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                            98019
    The Mayor
    Town of Bingen
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    Bingen, Washington
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    Richard J. BOWERS, Esq.
    American Whitewater Association
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    1609 Northcrest Drive
    Silver Spring, Maryland
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         DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE
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          CONDIT PROJECT NO. 2343
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     Portland, Oregon
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           DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE
           CONDIT PROJECT NO. 2343
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Board of County Commissioners
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National Oceanic & Atmospheric Admin.
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            CONDIT PROJECT NO. 2343
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Thomas H. NELSON, Esq. Stoel, Rives, Boley, Jones & Grey Suite 2300 2 900 S.W. Fifth Avenue Portland, Oregon 97 Doug NORTH, Esq. Northwest Rivers Council 4 1731 Westlake "venue, North, Suite 202 5 98109-3043 Seattle, Washington 6 Katherine P. RANSEL, Esq. American Rivers Northwest Regional Office Suite 312 4518 University Way, N.E., 8 98105 Seattle, Washington 9 Allan, RICHARDSON, Esq. American Public Power Association 10 2301 M Street, N.W. Washington, D.C. 20037 11 Don SCHLUTER, Esq. 12 Trout Unlimited 620 73rd Avenue, N.E. Olympia, Washington 13 14 Barbara SCOTT-BRIER, Esq. Office of the Regional Solicitor 15 Pacific Northwest Region U.S. Department of the Interior 500 N.E. Multnomah, Suite 607 Portland, Oregon 97232 16 17 The County Commissioner County of Skamania Board of County Commissioners P.O. Box 790 1.9 98648 Stevenson, Washington 20 Pete SOVEREL, Esq. Federation of Fly Fisheries 16430-72nd West 22 Edmonds, Washington 23 F. F. STACY, Esq. Oglethorpe Power Corporation 24 2100 East Exchange Place P.O. Box 1349 25 30085-1349 Tucker, Georgia 26 27 DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE CONDIT PROJECT NO. 2343 28

1| Dennis P. STEINBERG, Esq. Asst. V. P. Pacific Power & Light Company 2 920 S.W. 6th Avenue Portland, Oregon 3 4 The Mayor Town of Stevenson 5 Stevenson, Washington 98648 6 Don Sundeen Permits and Licenses 7 U.S. Fish and Wildlife Service 911 N.E. 11th Avenue Portland, Oregon 9 8 97232-4181 9 John THOMAS, Esq. White Salmon River Steelheaders 10 266 Snowden Road White Salmon, Washington 98672 11 Wallace F. TILLMAN, Esq National Rural Electric Cooperative Assn. 1800 Massachusetts Avenue, N.W. 13 Washington, D.C. Merritt E. TUTTLE, Esq. 14 National Marine Fisheries Service 911 N.E. 11th Avenue, Room 620 Portland, Oregon 97232 16 Joe WALICKI, Esq. Washington Wilderness Coalition 17 P.O. Box 45187 18 Seattle, Washington 98145-0187 Dennis WHITE, Esq. Columbia Gorge Audubon Society 19 20 367 Oakridge Road White Salmon, Washington 21 The Mayor Town of White Salmon White Salmon, Washington 22 23 Chuck WILLIAMS, Esq. Columbia Gorge Coalition 24 P.O. Box 155 White Salmon, Washington 98672 26 27 DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE 5 -28 CONDIT' PROJECT NO. 2343

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Jody L. WILLIAMS, Esq. Pacificorp Electric Operations One Utah Center, Suite 600 201 South Main Salt Lake City, Utah 84140-0006 Norm WINN, Esq. The Mountaineers 300 Third Avenue West Seattle, Washington Dated at Portland, Oregon, this 30 th day of December 1992. Virginia R. Webster, Secretary Office of the Regional Solicitor Pacific Northwest Region
U.S. Department of the Interior
500 N.E. Multnoman Street, Suite 607
Portland, OR 97232
(503) 231-2126 DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE CONDIT PROJECT NO. 2343

SKAMANIA COUNTY AUDITOR

GARY M. OLSON

Date: 01/25/1993 14:00

Type: MISCELLANEOUS

Receipt#: 31756

Amount: \$ .00

Input by: PL

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Funds paid: NO CHARGE

From: SKAMANIA COUNTY

Memo: MOTION TO INTERVENE PACIFICORP PROJECT NO. 2342

Auditor file#: 115363 Volume: 133 From page 8 to page 25

Return to: SKAMANIA COUNTY

Grantor: Grantee: Parcel:

US DEPT OF INTERIOR PUBLIC, THE

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