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BOOK 246 PAGE 486

After recording return to:

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

FILE  
SK  
BY *Stoel Rives LLP*

JUL 18 3 22 PM '03

*Q. L. L. R.*

J. MICHAEL J. JON

### DECLARATION OF CONSERVATION COVENANT

Documents released or assigned: None

Grantor/Declarant: PACIFICORP, an Oregon corporation

Grantee: PACIFICORP, an Oregon corporation

Legal Description:

1. Abbreviated Legal Description:

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

Benefited Land: Portions of Sections 21, 22, 23, 25, 26, 27, 28, 29, 34, and 36, Township 7 North, Range 5 East; Sections 26, 28, 29, 30, 32, 33, 34, and 35, Township 7 North, Range 6 East; and Sections 4, 5, 6, and 8, Township 6 North, Range 6 East, W.M., Skamania County, State of Washington.

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

Assessor's Property Tax Parcel Account Numbers:

7/18/03  
*JS*

- |                        |                        |
|------------------------|------------------------|
| • 07 05 21 0 0 0300 00 | • 07 05 28 0 0 0400 00 |
| • 07 05 21 0 0 0301 00 | • 07 05 29 0 0 0100 00 |
| • 07 05 21 0 0 0400 00 | • 07 05 29 0 0 0101 00 |
| • 07 05 21 0 0 0500 00 | • 07 05 29 0 0 0102 00 |
| • 07 05 22 0 0 0300 00 | • 07 05 29 0 0 0103 00 |
| • 07 05 25 0 0 0200 00 | • 07 05 29 0 0 0104 00 |
| • 07 05 27 0 0 0100 00 | • 07 05 26 0 0 0100 00 |
| • 07 05 28 0 0 0200 00 | • 07 06 00 0 0 3900 00 |
| • 07 05 28 0 0 0201 00 | • 07 06 00 0 0 3800 00 |
| • 07 05 28 0 0 0300 00 |                        |



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

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

**RECITALS**

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

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

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

**AGREEMENT**

**1. DECLARATION OF CONSERVATION COVENANT.**

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



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

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

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

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

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

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

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



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

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

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

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

PACIFICORP, an Oregon Corporation

By:

Randy Landolt  
Randy Landolt

Title

Managing Director, Hydro Resources

STATE OF OREGON                    )  
  ) ss.  
County of Multnomah            )

On this 18 day of June, 2003, before me, personally appeared Randy Landolt, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the written instrument, as Manager in Charge of PACIFICORP, an Oregon corporation, and he/she acknowledged said instrument to be the voluntary act and deed of such corporation.

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

Heather Barnard  
Notary Public in and for the State of Oregon





EXHIBIT A

Swift Creek Lands:

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

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



**EXHIBIT B****Lewis River Project Lands:**

Lands in Cowlitz, Clark, and Skamania Counties, State of Washington, within the project boundaries of the following hydroelectric facilities licensed by the Federal Energy Regulatory Commission. Merwin Project No. 935, Yale Project No. 2071, and Swift No. 1 Project No. 2111, as set forth in Exhibit G of each of said licenses. Said lands are more particularly described as those portions of Sections 4 and 3, Township 5 North, Range 2 East; Sections 23, 24, 25, 26, 27, 33, and 34, Township 6 North, Range 2 East; Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 34, 35, and 36, Township 6 North, Range 3 East; Sections 3, 4, 8, 9, 10, 16, 17, 20, 21, 22, 26, 27, 28, 29, 31, 32, and 33, Township 6 North, Range 4 East; Sections 25, 26, 27, 33, 34, and 35, Township 7 North, Range 4 East; Sections 21, 22, 23, 25, 26, 27, 28, 29, 34, and 36, Township 7 North, Range 5 East; Sections 26, 28, 29, 30, 32, 33, 34, and 35, Township 7 North, Range 6 East; and Sections 4, 5, 6, and 8, Township 6 North, Range 6 East, W.M., Cowlitz, Clark, and Skamania Counties, State of Washington, which PacifiCorp, an Oregon corporation, owns or in which PacifiCorp otherwise holds a property interest.

EXHIBIT C

Conservation Measures

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