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United States Department of the Interior t.

OFFICE OF THE SOLICITOR

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

DEC 3 0 1992

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Honorable Lois D. Cashell Secretary Federal Energy Regulatory Commission 825 N. Capitol Street, N.E., Room 3110 Washington, D.C. 20426 Indexed, Dir ()
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Re: 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 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 503-231-2166) if you have any questions.

FULL FOR RECORD

BY SKAMANIA CO.

Jan 25 2 60 11 53

GAR: JUSON

Sincerely,

For the United States
Department of the Interior

Barbara Scott-Brier

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Attorney for U.S. Department of the

Office of the Regional Solicitor Pacific Northwest Region

Enclosures

Barbara Scott-Brier
Attorney for U.S. Department of the Interior
Office of the Regional Solicitor
Pucific Northwest Region
U.S. Department of the Interior
500 N.E. Multnomah St., Suite 607
Portland, 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 COUNTIES, WASHINGTON.

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PROJECT NO. 2346.

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. 234d. 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.

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 basi's 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. Multnomah 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 Portland, 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
3704 Griffin Lane S.E., Suite 102
Olympia, WA 98501-2192

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II. 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 connected 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.

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

First, the potential impacts of the proposed project on fish wildlife resources trigger a host of statutory 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. § 661. Similarly, the Fish and Wildlife Act of 1956, 16 U.S.C. §§ 742a-742j-2, as amended, requires the Secretary to determine the policies necessary and desirable to carry out fish and wildlife laws efficiently and in the national public interest. 12 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 16/ required conservation, and protection of fish and wildlife." 16 U.S.C. § 742f(a)(1),(4). Acting through the Fish and Wildlife Service and other Departmental Officials, the Secretary also has special management, responsibilities to protect various wildlife species under the Migratory Bird Treaty Act, 16 U.S.C. §\$ 703-12. 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 Finally, under Iversely affected by hydroelectric power projects. DEPARTMENT OF THE INTERIOR'S MOTION wildlife resources

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

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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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provides recruitment stock to the reach of the Columbia River that is subject to the treaty-reserved fishing 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 license 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.

Commission in fulfilling efficiently its consultation, coordination, environmental assessment, and related responsibilities. Those responsibilities are set forth in such statutes as the Endangered Species Act, 16 U.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

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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 resources. 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.

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 project-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 Energy Regulatory Commission to issue an order granting the Department's motion to intervene in

^{8 -} DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE CONDIT PROJECT NO. 2343

this proceeding.

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RESPECTFULLY SUBMITTED this 24 day of December 1992.

For the United States Department of the Interior p

Barbara Scott-Brier Attorn

Barbara Scott-Brier, Attorney
Office of the Regional Solicitor
Pacific Northwest Region
U. S. Department of the Interior
500 N.E. Multnomah St., Suite 607
Portland, Oregon 97232
(503) 231-2139

Telefax: (503) 231-2166

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

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 HYDRO-ELECTRIC PROJECT IN SKAMANIA AND KLICKITAT) NOTICE OF APPEARANCE CCUNTIES, WASHINGTON.

) Project No. 234&

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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 Director, 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

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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 94 day of December 1992.

For the United States
Department of the Interior

Barbara Sistt-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

Barbara Scott-Brier Attorney for U.S. Department of the Interior Office of the Regional Solicitor Pacific NW Region U.S. Department of the Interior 3 500 N.E. Multnomah, Suite 607 Portland, Oregon 4 97232 5 UNITED STATES OF AMERICA 6 FEDERAL ENERGY REGULATORY COMMISSION 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 IN SKAMANIA AND KLICKITAT COUNTIES 9 WASHINGTON. 10 11 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 12 Additional Service List, as follows: 13 **14** SERVICE LIST 15 Honorable Lois D. Cashell (Original and 14 copies) Secretary 16 Federal Energy Regulatory Commission 825 N. Capitol Street, N.E. 17 Washington, D.C. 18 Kurt BEARDSLEE, Esq. 19 Washington Trout P.O. Box 402 20 Duvall, Washington 98019 21 The Mayor Town of Bingen 22 Bingen, Washington 98605 Richard J. BOWERS, Esq. 23 American Whitewater Association 24 1609 Northcrest Drive Silver Spring, Maryland 25 26

DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE

CONDIT PROJECT NO. 2343

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Bernie BURNHAM Regional Aviation Officer Bureau of Indian Affairs 2 911 N.E. 11th Avenue 97232-4169 Portland, Oregon 3|| Shawn CANTRELL, Esq. 4 Friends of the Earth 4512 University Way, N.E. 5 Seattle, Washington 98105 6 Daniel DANCER, Esq. Columbia River United P.C. Box 912 98605 Bingen, Washington Stanley A. deSOUSA, Director 9 Pacific Power & Light Company 920 S.W. 6th Avenue 10 Portland, Oregon 11 Kenneth O. EIKENBERRY, Esq. Washington Department of Fisheries & Wildlife 12 Highways-Licenses Building 98504 Olympia, Washington 13 Jack W. FIANDER, Esq. 14 Confederated Tribes and Bands of the Yakima Indian Nation 15 P.O. Box 151 Toppenish, Washington 98948 16 17 Frank FRISK, Esq Great Lakes Electric Consumers Assoc. 2nd Floor 18 1054 31st Street, N.W. 20037 Washington, D.C. 19 Gwill GING, Federal Projects/FERC 20 Olympia Field Office U.S. Fish and Wildlife Service 3704 Griffin Lane S.E., Suite 102 98501-2192 Olympia, Washington Thomas P. GRAVES, Esq. 23 Mid-West Electric Consumers Assoc., Inc. 999 18th Street, Suite 1635 24 Denver, Colorado 80202 25 26

CONDIT PROJECT NO. 2343

DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE

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Elizabeth F.M. HAMILTON, Esq. Confederated Tribes and Bands of the Yakima Indian Nation P.O. Box 151 98948 Toppenish, Washington 3 4 The Mayor County of Hood River 5 County Court 97031 Hood River, Oregon 6 Gary KAHN, Esq Friends of Columbia Gorge 7 910 Oregon National Building 8 Portland, Oregon 97205 The County Commissioner County of Klickitat 10 Board of County Commissioners Goldendale, Washington 98620 11 Andy LEWIS, Esq. Sierra Club - Seattle, WA 12 Northwest Office 13 1516 Melrose Seattle, Washington 98122 14 Jay J. MANNING, Esq. Washington Department of Ecology 15 Office of the Attorney General MS OA-44 4407 Woodview Drive S.E. 16 Olympia, Washington 98504-8077 17 Robert C. McDIARMID, Esq. Spiegel & McDiarmid 18 Suite 1100 1350 New York Avenue, N.W. 19 Washington, D.C. 20005-4798 20 Michael McDOWELL, Esq. Southwestern Power Resources Association 21 P.O. Box 1360 Edmond, Oklahoma 73083 22 Neil B. MOELLER, Esq. 23 National Oceanic & Atmospheric Admin. 7600 Sand Point Way, N.E. BIN C15700 **98115** 25 Seattle, Washington

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DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE CONDIT PROJECT NO. 2343

Thomas H., NELSON, Esq. Stoel, Rives, Boley, Jones & Grey Suite 2300 2 900 S.W. Fifth Avenue Portland, Oregon 97204 3 Doug NORTH, Esq. Northwest Rivers Council 1731 Westlake Avenue, North, Suite 202 98109-3043 Seattle, Washington Katherine P. RANSEL, Esq. American Rivers 7 Northwest Regional Office 4518 University Way, N.E., Suite 312 98105 Seattle, Washington 9 Allan, RICHARDSON, Esq. American Public Power Association 10 2301 M Street, N.W. Washington, D.C. 11 Don SCHLUTER, Esq. 12 Trout Unlimited 620 73rd Avenue, N.E. 13 Olympia, Washington 98506 14 Barbara SCOTT-BRIER, Esq. Office of the Regional Solicitor 15 Pacific Northwest Region U.S. Department of the Interior 16 500 N.E. Multnomah, Suite 607 97232 Portland, Oregon 17 The County Commissioner County of Skamania Board of County Commissioners P.O. Box 790 Stevenson, Washington 98648 20 Pete SOVEREL, Esq. Federation of Fly Fisheries 16430-72nd West 22 Edmonds, Washington 98206 23 F. F. STACY, Esq. Oglethorpe Power Corporation 24 2100 East Exchange Place P.O. Box 1349 25 30085-1349 Tucker, Georgia

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- DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE CONDIT PROJECT NO. 2343

1 Dennis P. STEINBERG, Esq. Asst. V. P. Pacific Power & Light Company 2 920 S.W. 6th Avenue 3 Portland, Oregon 97204 4 The Mayor Town of Stevenson 5 Stevenson Washington 98648 6 Don Sundeen Permits and Licenses U.S. Fish and Wildlife Service 911 N.E. 11th Avenue 8 Portland, Oregon 97232-4181 John THOMAS, Esq. White Salmon River Steelheaders 10 266 Sńowden Road White Salmon, Washington 98672 11 Wallace F. TILLMAN, Esq National Rural Electric Cooperative Assn. 12 1800 Massachusetts Avenue, N.W. 13 Washington, D.C. 20036 Merritt E. TUTTLE, Esq. 14 National Marine Fisheries Service 911 N.E. 11th Avenue, Room 620 15 Portland, Oregon 97232 16 Joe WALICKI, Esq. 17 Washington Wilderness Coalition P.O. Box 45187 18 Seattle, Washington 98145-0187 19 Dennis WHITE, Esq. Columbia Gorge Audubon Society 20 367 Oakridge Road White Salmon, Washington 98672 21 The Mayor 22 Town of White Salmon White Salmon, Washington 98672 23 Chuck WILLIAMS, Esq. 24 Columbia Gorge Coalition P.O. Box 155 25 White Salmon, Washington 26

CONDIT PROJECT NO. 2343

DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE

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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 3 Norm WINN, Esq. The Mountaineers 300 Third Avenue West Seattle, Washington Dated at Portland, Oregon, this 30 to day of December 1992. 8 9 Virginia R. Webster, Secretary
Office of the Regional Solicitor 10 11 Pacific Northwest Region
U.S. Department of the Interior
500 N.E. Multnomah Street, Suite 607
Portland, OR 97232 12 13 (503) 231-2126 14 15 16 17 18 19 20 21 22 23

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 DEPARTMENT OF THE INTERIOR'S CERTIFICATE OF SERVICE CONDET PROJECT NO. 2343 80

GARY M. OLSON

Date: 01/25/1993 14:00

Type: MISCELLANEOUS

Rédeipt#: 31756

Amount: \$.00

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Funds paid: NO CHARGE

From: SKAMANIA COUNTY

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 1381