

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

ConditHydroelectricProject

ProjectNo. 2342-012

**STATE OF WASHINGTON  
DEPARTMENT OF FISH & WILDLIFE AND ECOLOGY'S  
MOTION TO INTERVENE  
AND  
REQUEST FOR EXPEDITED HEARING OF THE PETITION FOR DECLARATORY  
ORDER**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, .214, the State of Washington Departments of Fish and Wildlife (WDFW) and Ecology (Ecology), hereby move to intervene in the above-captioned proceeding and requests that the Commission expedite its consideration of the petition for declaratory order.

**MOTION TO INTERVENE**

**I.**

The names and addresses of the legal counsel for WDFW and Ecology and the main staff contacts are below. Copies of all orders, notices, pleadings, and correspondence related to this proceeding should be directed to:

Neil L. Wise, AAG  
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Fish & Wildlife Division  
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and:

David Mudd  
Department of Fish & Wildlife  
600 Capitol Way N  
Olympia WA 98501 -1091

Jeff Marti  
Department of Ecology  
P.O. Box 47600  
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## II.

WDFW is an agency of the State of Washington with jurisdiction over state fish, shellfish, and wildlife resources and charged with the duty of protecting, conserving, managing, and enhancing those resources. Wash. Rev. Code, Title 77. Pursuant to these statutory obligations, WDFW brings this motion to intervene on behalf of the citizens of the State of Washington, who, by the law of that state, own the fish and wildlife resources.

## III.

WDFW is a state fish and wildlife agency which is required to be consulted in determining losses to the fish, shellfish, and wildlife resources caused by construction and operation of hydroelectric projects, and to be consulted in identifying the appropriate measures to preserve and enhance those resources. Fish and Wildlife Coordination Act, 16 U.S.C. § 662(a), (b). WDFW is authorized to provide recommended terms and conditions to the Commission that shall be included in any new license unless the Commission publishes written findings that WDFW's recommendations are inconsistent with applicable law. Federal Power Act, 16 U.S.C. § 803(j); 18 C.F.R. § 4.34.

## IV.

The Department of Ecology is the agency created to administer the State of Washington's Water Management Program, including its comprehensive water quality and water rights programs, and to present the views and recommendations of the state regarding any federal license or permit relating thereto at any proceeding, negotiation, or hearing in such regard conducted by the federal government. RCW 43.21A.020, RCW 43.27A.090, RCW 90.03.010, RCW 90.54.010, and RCW 90.58.010. 16 U.S.C. § 803(a); 16 U.S.C. § 821. Ecology has the responsibility to issue section 401 certifications under the Clean Water Act. RCW 90.48.260. Ecology also has the responsibility of issuing NPDES permits and certifying compliance with the CZMA. Ecology also has statutory responsibilities in setting minimum instream flows (RCW 90.22), and in the matters of flood control, shoreline management, coordination and permit

issuance pursuant to the Federal Water Pollution Control Act amendments, and environmental review and coordination, pursuant to the state's environmental policy statute. RCW 86.16.010, *et seq.*, RCW 90.48.260, RCW 90.48.010 *et seq.*, RCW 90.58.020, *et seq.*, and RCW 43.21C.010 *et seq.* In addition, Ecology is specifically authorized to review all existing and proposed dams to ensure safety to life and property. RCW 43.21A.064.

## V.

The Condit Hydroelectric Project is located in Washington State on the White Salmon River, approximately three miles above its confluence with the Columbia River. The project was constructed in 1913. In 1968, the Commission issued a license effective May 1, 1965, with a termination date of December 31, 1993.

In December 1991, Pacifi Corp filed an application with the Commission for a new license for continued operation of the project. Since December 31, 1993, Pacifi Corp has been operating the project pursuant to an annual license issued by the Commission.

Both WDFW and Ecology are intervenors in the Condit relicensing proceeding, and have been active participants in the proceeding.

On October 21, 1999, the parties to the relicensing filed an Offer of Settlement with the Commission. WDFW and Ecology's Directors were signatories of that agreement, and WDFW and Ecology continue to support the terms of the settlement agreement.

## VI.

For the above reasons, WDFW and Ecology have significant interests which may be directly affected by the outcome of this proceeding, and these interests are not adequately represented by existing parties. WDFW and Ecology's participation in this proceeding is in the public interest.

## VII.

THEREFORE, in order that this proceeding be fully developed in accordance with the applicable law, and that the Commission have before it all the material facts relating to these projects, the Commission should grant WDFW and Ecology intervenor status.

As parties in the above -entitled proceedings, WDFW and Ecology request the right to have notice of and appear at any and all hearings or proceedings, to produce evidence and cross-examine witnesses, to be heard through counsel in written and oral argument, to be served with copies of all pleadings, applications, and notices, and for any other such participation and relief as may be appropriate.

### **REQUEST FOR EXPEDITED REVIEW**

On May 31, 2001, PacifiCorp filed a Petition for Declaratory Ruling, seeking a declaration that the Commission has the authority to extend the term of its license through 2006 and to incorporate into the license terms and conditions relating to the Condit Hydroelectric Project decommissioning and removal of project facilities upon expiration of the extended license.

WDFW and Ecology support PacifiCorp's Petition and request expedited review of the matter. The Commission received PacifiCorp's motion to approve the settlement agreement over a year ago, and has only recently raised the authority issue that gave rise to the Petition. A delay in a ruling by the Commission could trigger the "off-ramp" deadlines in the settlement agreement and nullify the extraordinary efforts of numerous parties who have spent years negotiating this agreement. Expedited review of the Petition is necessary to allow the Commission to move forward in a timely and responsible fashion to address the issues raised by the settlement agreement.

DATED this 3<sup>rd</sup> day of July, 2001.

Respectfully submitted:

CHRISTINE O. GREGOIRE  
Attorney General

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NEILL.WISE  
AssistantAttorneyGeneral  
Fish&WildlifeDivision

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BRIANFALLER  
AssistantAttorneyGeneral  
EcologyDivision

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by depositing in the United States mail, the foregoing document on all parties of record to these proceedings in accordance with the Rules of Practice and Procedure.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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TAMMY L. TEETER, Legal Assistant

SERVICELIST

Honorable Lois Cashell, Secretary Federal Energy Regulatory Commission 825 North Capitol Street, N.E. Washington, DC 20426	Mr. Marvin L. Plener Regional Director U.S. Fish and Wildlife Service 911 N.E. 11th Avenue Portland, OR 97232-4181
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Mr. D. Dean Bibbes, State Director Bureau of Land Management 1300 N.E. 44th Avenue P.O. Box 2965 Portland, OR 97208	Mr. Stanley Speaks, Area Director Bureau of Indian Affairs 911 N.E. 11th Avenue Portland, OR 97232 -4169
Environmental Impact Review Officer EPA 1200 Sixth Avenue Seattle, WA 98101	Washington Parks & Recreation Comm. 7150 Clearwater Lane Olympia, WA 98504
Mr. Rod Sakrison Water Resources Division Washington Department of Ecology Mail Stop PV -11 Olympia, WA 98504 -8711	Mr. Brad Caldwell Washington Department of Ecology Mail Stop PV -11 Olympia WA 98504 -8711
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