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December 28, 2005

Ms. Debra Mignogno
Supervisor, Eastern Washington Field Office
U.S. Fish and Wildlife Service
4425 Burley Drive, Suite A
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OFFICE OF THE
SECRETARY
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FEDERAL ENERGY
REGULATORY COMMISSION

**Re: Request for Initiation of Informal Endangered Species Act Section 7 Consultation;
Bear River Hydropower Project (FERC No. 20)**

Dear Ms. Mignogno:

On August 16, 2005, PacifiCorp, on behalf of itself and other settlement parties ("the Parties"),¹ submitted to the Federal Energy Regulatory Commission ("Commission") a proposed agreement to remove the Cove development ("the Decommissioning Agreement" or "the Agreement"), part of PacifiCorp's Bear River Hydroelectric Project ("the Project"). In submitting the Decommissioning Agreement, PacifiCorp likewise requested that the Commission amend the Project license consistent with the terms of the Decommissioning Agreement.

On October 18, 2005, PacifiCorp requested that the Commission designate the Company as its non-federal representative for the purpose of conducting informal Endangered Species Act (ESA) Section 7 consultation concerning the Commission's proposed issuance of the requested license amendment. See 50 C.F.R. § 402.08. On December 1, 2005, the Commission granted this request and notified the U.S. Fish and Wildlife Service ("FWS") of this designation.

The purpose of this letter is to request FWS' concurrence with a finding that the Commission's proposed action, and the U.S. Army Corps of Engineer's issuance of a Clean Water Act § 404 Permit consistent with this proposed action, May Affect, But Is Not Likely to Adversely Affect listed species that may occur in the action area. See 50 C.F.R. § 402.13.

I. Background of Proceeding

On August 28, 2002, PacifiCorp executed a comprehensive settlement agreement ("the Relicensing Settlement Agreement") with sixteen state and federal resource agencies, Indian

¹ Parties to the Decommissioning Agreement include PacifiCorp, FWS, U.S. Bureau of Land Management, U.S. Park National Park Service, USDA-Forest Service, Shoshone-Bannock Tribes, Idaho Department of Environmental Quality, Idaho Department of Fish and Game, Idaho Department of Parks and Recreation, Trout Unlimited, Idaho Rivers United, Greater Yellowstone Coalition, and American Whitewater.

Tribes, and non-governmental organizations to resolve all issues regarding relicensing of the Project and for the purpose of obtaining a new Project license ("New License") from the Commission.² On September 26, 2002, PacifiCorp filed the Relicensing Settlement Agreement with the Commission, along with an Explanatory Statement and proposed license articles. On December 22, 2003, the Commission issued a New License adopting in large part the Relicensing Settlement Agreement and incorporating its terms into license articles.

Section 3.1.2.6 of the Relicensing Settlement Agreement requires PacifiCorp to conduct a feasibility study to evaluate methods to improve fish passage at Cove dam, with alternatives ranging from modification of existing facilities, to decommissioning of the Cove development. PacifiCorp complied with this requirement by providing the Parties with the Cove Feasibility Study (Black and Veatch 2004) on June 14, 2004. The Cove Feasibility Study assesses (1) the technical and economic feasibility of decommissioning and removing the Cove development; (2) interconnecting the Grace tailrace and Cove flume, and removing Cove dam; and (3) constructing a range of fish passage facilities to reduce the barrier effect of the current infrastructure.

On December 10, 2004, PacifiCorp, on behalf of the Environmental Coordinating Committee ("ECC"),³ submitted a letter to the Commission selecting Cove development decommissioning as the recommended alternative under Section 3.1.2.6 of the Relicensing Settlement Agreement. The Parties determined that Cove development decommissioning was consistent with the Parties' objectives for restoring river processes and improving water quality, while at the same time providing increased operational and economic certainty for PacifiCorp.

The Parties have now developed a comprehensive settlement agreement to decommission the Cove development. The Decommissioning Agreement modifies certain provisions of the Relicensing Settlement Agreement and New License as described below. In reaching an agreement to decommission the Cove development, the Parties recognized the importance of clearly defining PacifiCorp's obligations to remove the Cove development. Such obligations are explained in the Cove Development Removal Plan ("the Removal Plan"), attached as Appendix B to the Decommissioning Agreement. In addition to defining the removal action, PacifiCorp likewise analyzed in detail the environmental impacts of the proposed action on the environment. This analysis is contained in the Environmental Report, attached as Appendix C to the Decommissioning Agreement.

² The history of the Bear River Hydroelectric Project licensing proceeding is discussed in the Explanatory Statement accompanying the August 28, 2002, Relicensing Settlement Agreement, and the Commission's December 22, 2003, Order Approving Settlement Agreement and Issuing New License. See 105 FERC ¶ 62,207.

³ The ECC, organized under Section 4.1 of the Relicensing Settlement Agreement, consists of representatives from the Parties. Among other things, the ECC facilitates coordination and consultation between PacifiCorp and the other Parties on plan development and PM&E implementation.

II. Summary of the Proposed Action

Below we briefly summarize the proposed action, and its potential affects on the environment. A more detailed analysis and discussion of the action and its affects is presented in the Environmental Report attached to this letter.

A. Minimum Flow Requirements (Sections 5 and 6.4 of the Agreement)

Sections 5 and 6.4 of the Agreement provide for changes to Section 3.2 of the Relicensing Settlement Agreement and Article 408(b) of the New License by (1) eliminating minimum flow requirements at the Cove development in view of facility decommissioning; and (2) reducing minimum flow levels in the Grace bypass to the lower of 63 cfs or inflow, in addition to current leakage from Grace Dam. Reducing minimum flow requirements in the Grace bypassed reach (about 6.6 miles of the Bear River channel) from 80 cfs to 63 cfs, plus leakage from the dam of about 2 cfs, would provide PacifiCorp with 17 cfs of additional flow for power generation at the Grace powerhouse that would partially offset the loss of Cove development generation.

As discussed in Section 6.4.1 of the Decommissioning Agreement, on December 10, 2004, PacifiCorp filed an application with the Commission to temporarily amend Article 408(b) of the Bear River Project license consistent with the terms of the Agreement to permit the Parties to begin conducting baseline aquatic habitat surveys in Bear River in accordance with Section 3.1.6 of the Relicensing Settlement Agreement (Black Canyon Monitoring Plan). On March 3, 2005, the Commission approved PacifiCorp's application, requiring PacifiCorp to implement the new minimum flow release upon the date of PacifiCorp's filing of an application to decommission the Cove development. Section 6.4.1 of the Decommissioning Agreement also provides that upon the Commission's acceptance of the Decommissioning Agreement and issuance of a license amendment consistent with its terms, PacifiCorp shall permanently implement the new minimum flow requirements for the duration of the New License.

Section 6.4.2 of the Decommissioning Agreement provides a process whereby PacifiCorp will refund the economic benefit of minimum flow reductions to a mitigation account in the event PacifiCorp abandons Cove development decommissioning. This provision is intended to help ensure the Parties recoup the environmental benefits of the foregone minimum flows in the Grace bypassed reach in the event PacifiCorp is unable to complete Cove development decommissioning.

While substrate and spawning beds may be affected by decreased minimum flows in the Grace bypassed reach, the Parties agree that a reduction in flows from 80 cfs to 63 cfs in this reach would not significantly impact aquatic resources (ECC 2005). As discussed in the Environmental Report, physical data collected from Black Canyon further suggests that there should be an increase in good habitat in the Cove reach due to full flow conditions.

As discussed in the Cove Feasibility Study and the Decommissioning Agreement, the economic impact of Cove development decommissioning remains an important consideration in selection and implementation of this alternative. PacifiCorp has indicated its willingness to decommission the Cove development as described in the Removal Plan – the most desirable option in terms of

fish passage and habitat values -- but believes the cost of such a measure would, on its own, be prohibitive. In view of these considerations, the Parties agree that the minimum flows in the Grace bypassed reach established in the new license (Article 408(b)) should be reduced from 80 cfs to 63 cfs in the event PacifiCorp decommissions the Cove development.

B. Facility Deconstruction and Removal (Sections 6, 6.1, 6.2, 6.3, and Appendix B of the Agreement)

Section 6 of the Agreement provides that PacifiCorp shall remove the Cove development consistent with the terms and schedule contained in the Removal Plan. The Parties agree that in the event conflicts arise between the Agreement and the Removal Plan, the Removal Plan shall control.

Sections 6.1, 6.2, and 6.3 of the Agreement provide that if PacifiCorp is required to undertake additional or alternative measures beyond those contained in the Removal Plan prior to, during, or after Cove facility removal, then PacifiCorp may, in its sole discretion, suspend or abandon facility removal and seek to implement the terms of its original Project License. Section 6.5.1 further provides that if PacifiCorp is unable to obtain acceptable contractor bids to conduct decommissioning measures, PacifiCorp may also cease decommissioning and resume implementation of the Project License and the Relicensing Settlement Agreement. The purpose of these procedural requirements is to ensure the Parties are able to remove the Cove development consistent with intent and requirements of the Removal Plan.

Section 6.3 of the Agreement establishes a process whereby PacifiCorp will provide an accounting of costs incurred after December 1, 2004, that are attributable to Cove development decommissioning ("Decommissioning Costs"). Such Decommissioning Costs include those costs associated with PacifiCorp's internal administrative process undertaken in connection with the implementation of Cove Development Decommissioning, preparation of the Environmental Report and license amendment submittals, and costs associated with permitting, 401 Certification conditions, mitigation, design, deconstruction, construction, demolition, removal, contractor materials required to undertake this work, and implementation of Decommissioning Measures identified in the Removal Plan. Proposed license Article No. 2, attached as Appendix A to the Agreement, provides that if actual Decommissioning Costs are less than \$2.5 million NPV, then PacifiCorp will refund the difference to the ECC for use in mitigation projects.

The principle effect of Cove dam removal would be related to the biotic response to the restoration of connectivity. Removing the Cove development will result in the restoration of run-of-river flows in the Cove bypassed reach (about 1.7 miles of the Bear River channel below the dam site). Once the dam is removed, migratory fauna may colonize both the previously impounded area and upstream reaches. This movement would allow nutrient transport and increase the potential for genetic changes. The restoration of connectivity could also lead to the reduction of fauna that formerly occurred upstream from the impoundment. Geomorphic processes should be dominated by the evolution of the channel as it incises into the sediments trapped in the impoundment. In addition, the removal of the dam would eliminate the need for a fish passage structure, thus precluding the potential of fish mortality or injury in passage mechanisms (i.e., fish ladders).

A concern associated with Cove development decommissioning is the potential suspension and transport of sediments accumulated in the Cove dam forebay when the dam is removed. Black and Veatch, the engineering firm that completed the Cove Feasibility Study, assessed a number of removal options in consultation with PacifiCorp and the ECC. The final result was documented in the Removal Plan, attached as Appendix B to the Agreement. The Removal Plan is intended to minimize the potential for sediment transport by: (1) slowly draining of the forebay, decanting the water off the top of the impoundment while leaving a majority of sediments as undisturbed as possible; (2) regrading remaining sediments "in the dry" using conventional equipment; (3) establishing a streambed and channel banks; and (4) stabilizing and revegetating disturbed areas as soon as possible after work is complete.

The process of removing the Cove dam and associated facilities is scheduled to commence in July, 2006, and continue through November, 2006. Cove development decommissioning involves two types of actions - facility changes and operational changes. Each of these actions is described below. Further, the Removal Plan includes a sequence of steps to accomplish the work. Figure 2 of the Environmental Report depicts the main elements of the Removal Plan.

All facility changes would take place within the 66-acre zone of potential disturbance shown in Figure 1 of the Environmental Report. While the following phases of decommissioning are currently scheduled for the period of July to November, 2006, demolition work in the Cove forebay area would be performed during October and November when river flows are typically low in order to minimize sediment transport potential.

The initial phase of decommissioning would be dewatering the forebay. The forebay would be decanted or incrementally emptied via the existing intake structure. Flows would be spilled into the river channel immediately below the dam rather than continuing through the flume to the Cove Powerhouse. Power generation flows to the intake structure have maintained a channel through the forebay to the intake, and this channel would contain most of the flow during initial dewatering. Controlling the river flow in staged releases is intended to minimize sedimentation.

The second phase of work would be demolition of the Cove dam and relocation of sediment to form the new river channel. Once the forebay reached equilibrium (i.e., all free water had been drained), a cofferdam would be installed below the dam to divert the spilled flow away from the work area and provide a dry area for demolition activities. Initially, the dam's concrete wall would be "softened" using explosives to facilitate the removal process. Heavy mobile hydraulic equipment such as tracked excavators, bulldozers, dump trucks, and hydraulic hammers and shears would be used to break up concrete into smaller sizes suitable for handling. The concrete material would be either removed or buried on site. Any remaining concrete rubble would be excavated, and the area graded.

The third phase of decommissioning would be demolition and removal of the Cove intake steel superstructure, flume, and pressure box. Heavy equipment similar to that used in dam removal would be utilized to complete this phase. All concrete and rubble associated with demolition of the structures would be buried in designated locations on site, where it would facilitate grading. The flume's remaining concrete, wood, and liner material would be buried in place within the

flume footprint. All protruding metal would be cut-off flush with the ground's surface and removed from the site. Wetlands and drainages around the flume would be protected from damage and kept free from demolition and soil fill.

Decommissioning the Cove powerhouse would conclude facility modifications. The powerhouse building would remain intact. All safety precautions including securing windows, interior hatches and passageways as well as removal of all petroleum products would be taken to ensure public safety.

The final phase of decommissioning would be revegetation of all disturbed areas, through hydro-seeding with an ECC approved seed mix and willow slips. Temporary sediment control measures (e.g., silt fencing, membrane, and straw bales) installed before and during construction would be left in place until these areas were considered stable and vegetation established (Black and Veatch 2005).

C. Wetlands (404 Permitting Requirements)

Sections 6 and 8 of the Decommissioning Agreement contemplate that PacifiCorp will obtain a Permit from the U.S. Army Corp of Engineers ("USACE") under Clean Water Act ("CWA") Section 404. PacifiCorp intends to seek coverage for the Cove decommissioning under a USACE CWA Section 404 Nationwide Permit. Any final water quality certification conditions and any regional conditions imposed by the USACE will be included in the Section 404 Permit and be implemented by PacifiCorp during the Cove Decommissioning consistent with the terms of the Settlement Agreement. If the USACE determines that Nationwide Permit coverage is not available, PacifiCorp will seek coverage under a individual Section 404 Permit. PacifiCorp intends to obtain a Section 404 Permit from the USACE which authorizes any discharge during the Cove decommissioning well before July, 2006. Prior to commencing any efforts to remove or repair the Cove flume, jurisdictional wetlands along the flume corridor will be delineated with pin flags. No dredge or fill material will be discharged into the delineated areas. Where appropriate, silt fencing will be erected to prevent upland soil and debris from falling into delineated wetlands.

III. Occurrence of Listed Species within the Action Area

As discussed in Section 4.1.3.2. of the Environmental Report, FWS has documented the presence of listed bald eagles (*Haliaeetus leucocephalus*), the possible occurrence of gray wolf (*Canis lupis*; an experimental, nonessential population) and one listed plant species, Ute ladies' tresses (*Spiranthes diluvialis*) in Caribou County, Idaho. Surveys documented in the Bear River environmental impact statement ("EIS") concluded that the wildlife species are generally transient individuals in the project area, and that the plant does not occur in the project area (FERC 2003a).

Surveys for bald eagles were conducted in February 1997 by PacifiCorp to document use of the entire Bear River Hydroelectric Project area during the winter migratory season. Two bald eagles were documented in the Soda Project area: one adult bald eagle was observed on May 22, 1997, and a single juvenile eagle was observed multiple times during spring surveys. PacifiCorp also conducted a search of the bald eagle database through the USGS Biological Resources

Division. The query revealed records of bald eagles for the Soda dam from 1980 to 1995. Population numbers ranged from 46 in 1991 to 1 in 1980 and 1984. There have been observations of two pairs of nesting bald eagles near the Soda dam (PacifiCorp 2005). There are no dense populations of bald eagles in the project area. There are occasional sightings during the winter months, but the area is not considered significant nesting habitat (FWS 2005b).

It has been determined that the gray wolf may travel through and around the project area but that no established packs or known den or rendezvous sites are presently documented in the lower Bear River sub-basin (FERC 2003a), specifically the Cove Development project area. Field surveys for the Ute ladies' were conducted in 1997 (FERC 2003a), but no populations were located and this species is not considered to be present within the Bear River watershed (Pers. Comm., Deb Mignogno, USFWS).

IV. Analysis of the Effects of the Proposed Action on Listed Species

The Bear River Project EIS concluded that current and proposed Project operations would not affect any Federally-listed or candidate species given the transitory nature of species occurrence within the action area (FERC 2003a). Analyses contained in the EIS, and more recent correspondence and communications between FWS and PacifiCorp concerning the current proposed action, indicate that the current proposed action is not likely to adversely affect listed species within the action area (Environmental Report; Sec. 4.2.3.1).

As described above, bald eagles and gray wolf that may occur in the action area would be transitory individuals, and would not occur with any frequency in and around the Cove development where removal actions will occur. As a result, these species would be unlikely to be affected by temporary noise or ground disturbances associated with the proposed action.

Removing the Cove facility may result in significant positive environmental benefits for the listed species. Removing the Cove development will result in the restoration of run-of-river flows in the Cove bypassed reach (about 1.7 miles of the Bear River channel below the dam site). Once the dam is removed, migratory fauna may colonize both the previously impounded area and upstream reaches. This movement would allow nutrient transport and increase the potential for genetic changes. The restoration of connectivity could also lead to the reduction of fauna that formerly occurred upstream from the impoundment.

Removal of the dam would eliminate the need for a fish passage structure, thus precluding the potential of fish mortality or injury in passage mechanisms (i.e., fish ladders). While substrate and spawning beds may be affected by decreased minimum flows in the Grace bypassed reach, the Parties agree that a reduction in flows from 80 cfs to 63 cfs in this reach would not significantly impact aquatic resources (ECC 2005). As discussed in the Environmental Report, physical data collected from Black Canyon further suggests that there should be an increase in good habitat in the Cove reach due to full flow conditions.

The likely environmental benefits associated with the proposed action may enhance the prey base and refugia for listed species that may migrate through the action area. Restoration of

environmental processes could further benefit the food web in the area, thus preventing or reducing risks to other sensitive species.

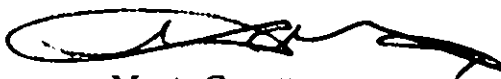
Given the transitory nature of species occurrence in the action area, and the beneficial nature of the propose action, PacifiCorp concludes the proposed action May Affect, but is Not Likely to Adversely Affect the bald eagle or gray wolf.⁴

V. Summary

Pursuant to section 402.13 of the ESA implementing regulations, PacifiCorp hereby requests FWS' written concurrence with a finding that proposed action, and any related Clean Water Act 404 permit consistent with the proposed action issued by the USACE, May Affect, but is Not Likely to Adversely Affect listed species in the action area. See 50 C.F.R. § 402.13. PacifiCorp requests that FWS provide its written concurrence with this finding to the Commission, USACE, and PacifiCorp within 30 days from date of this request. See 50 C.F.R. § 402.12(j).

Thank you in advance for your assistance in this matter. Please feel free to call Monte Garrett, PacifiCorp, at (503) 813-6629, if you have any questions regarding this request, or if you require additional information.

Sincerely,



Monte Garrett
PacifiCorp Program Manager

CC: Rob Brochu, USACE (w/ Environmental Report)
Diane Shannon, FERC
Service List

⁴ See FWS and NMFS, ESA Section 7 Consultation Handbook at Page xv (defining "Is Not Likely to Adversely Affect"), 1998.

Literature Cited

Black and Veatch. 2004. Cove Feasibility Study. June, 2004.

ECC. 2005. Environmental Coordination Committee Meeting Notes. February 16, 2005.

FERC. 2003a. Final Environmental Impact State – Bear River. FERC. April, 2003.

FWS. 2005a. Letter from Debra Mignogno, FWS, to Cirrus Ecological Solutions. March 3, 2005.

FWS. 2005b. Personal communication between Troy Smith, FWS, and Cirrus Ecological Solutions. March 23, 2005.

PacifiCorp. 2005. Personal communication between Eve Davies, PacifiCorp, and Cirrus Ecological Solutions. April, 2005.