



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 3, 2007

PacifiCorp  
Claudia Conder  
1407 W. North Temple #110  
Salt Lake City UT 984116

Dear Ms. Conder:

I am writing you in regard to PacifiCorp Water Right Application No. S2-30414 requesting ten (11) cubic feet per second from the Lake Merwin for fish propagation purposes.

Under the State Environmental Policy Act (SEPA), appropriations of more than one (1) cubic foot per second from surface water for any purpose is required to comply with the SEPA guidelines.

The State Environmental Policy Act (SEPA) requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. If you have already filled out a SEPA checklist, please submit it to this office.

If you have questions regarding the environmental review process, please contact Department of Ecology's Environmental Review Section at (360) 407-6922.

Sincerely,

Sheri Carroll  
Water Resources

SC:th





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

July 9, 2007

PacifiCorp  
Claudia Conder  
1407 W North Temple #110  
Salt Lake City UT 84116

Dear Ms. Conder:

Re: Water Right Application for PacifiCorp

I am writing you in regard to the water right application you submitted on June 25, 2007. We received the application along with \$50.00 filing fee.

A new water right fee structure has been amended by Engrossed Substitute House Bill (ESHB) 2309 and became in effective July 24, 2005. The new fee for filing a new water right application is \$50.00 per application. Additional fees will apply for:

- An amount of water exceeding 0.5 cfs, the examination fee is assessed at the rate of \$1.00 per one hundredth cubic foot per second ( $Q_i \times 100$ ).

You have asked for 11 cubic feet per second from Lake Merwin for the purpose of Fish Propagation. The additional fee for your application is:

\$1100.00  
-50.00

**Amount Due: \$1050.00**

In order to proceed with the processing of your application, please submit the **\$1050.00** to cover the additional filing fee. **Please make your check or money order payable to the Department of Ecology, Cashiering Section, PO Box 5128 Olympia WA 98509-5128.**

If you have any questions regarding this matter, please call me in Olympia at (360) 407-0240.

Sincerely,

*Sheri Carroll*

Sheri Carroll  
Water Resources

SC:th

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52-30414

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

July 26, 2007

Mr. Randy Landolt  
Managing Director, Hydro Resources  
PacifiCorp Energy  
825 NE Multnomah, Suite 1500  
Portland, OR 97232

Re: Merwin Hatchery Water Right

Dear Mr. Landolt:

This letter is in response to your letter of May 30, 2007, in which you contacted the Department of Ecology regarding water right issues for the Merwin Trout Hatchery. We also received an application from PacifiCorp for a new water right to authorize an increased annual quantity of water use by the hatchery, as well as supporting correspondence letter from the Washington Department of Fish and Wildlife (WDFW).

The Merwin Trout Hatchery, located on the North Fork of the Lewis River, downstream from Merwin Dam near Ariel, Washington, was constructed by PacifiCorp to mitigate for losses of resident and anadromous trout habitat resulting from construction and operation of the Merwin Project on the North Fork Lewis River. In a letter to Ecology dated May 30, 2007, WDFW stated that it operates the hatchery under master and annual agreements with PacifiCorp. WDFW noted that continued operation of the hatchery is critical to supporting salmonid conservation objectives and recreational opportunities on the Lewis River.

Based upon our discussions with PacifiCorp representatives and correspondence with WDFW, we understand that WDFW anticipates exceeding the annual maximum authorized volume of the hatchery water right on or about June 24, 2007. This exceedence in volume is due to changes in hatchery operations by WDFW necessary to improve the health and survival of hatchery-reared salmonids. Your recently-filed application intends to ensure that Merwin Trout Hatchery operations comply with applicable water rights.

We are writing to assure you that as long as PacifiCorp is making a good faith effort to voluntarily come into compliance, Ecology intends to exercise its discretion not to take any enforcement action against PacifiCorp or WDFW. We may be required to curtail the

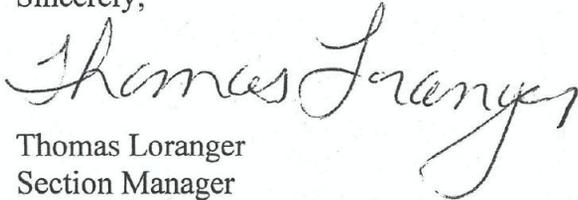
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diversion if it becomes necessary to protect other water users or other public interest factors. Such an enforcement action is unlikely, however, given the largely nonconsumptive nature of hatchery water use and the fact that the bypass reach encompasses only Merwin Dam itself. Moreover, PacifiCorp possesses large storage and diversionary rights that could be called upon to mitigate downstream effects of the hatchery operation.

I appreciate that PacifiCorp has been forthcoming about the water use associated with the hatchery and has chosen to voluntarily come into compliance. We look forward to your continued cooperation as we review and process your application. Please contact Jeff Marti of my staff at (360) 407-0275 if you have any questions. Thank you.

Sincerely,



Thomas Loranger  
Section Manager  
Southwest Region Water Resources

TL:JM:th

Cc: John Kerwin, WDFW  
Jeff Marti, Ecology ✓



State of Washington  
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2200, TDD (360) 902-2207  
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

RECEIVED  
JUL 19 2007  
Washington State  
Department of Ecology

July 11, 2007

Mr. Tom Loranger  
Water Resources Program Manager  
Washington Department of Ecology  
300 Desmond Drive  
Lacey, WA 98503

Re: Merwin Trout Hatchery Water Right; Lewis River Hydropower Project  
(FERC Nos. P-935, P-2071, P-2111)

Dear Mr. Loranger:

This letter supplements and provides additional clarification to our correspondence letter to the Department of Ecology (Ecology) dated May 30, 2007, in support of PacifiCorp's June 20, 2007, application for a new water right to provide water for the operation of the Merwin Trout Hatchery. The purpose of this letter to request that Ecology give priority treatment to the pending application to permit continued operations at the hatchery.

As explained in our May 30, 2007, letter, the Merwin Trout Hatchery, located on the North Fork of the Lewis River, was constructed by PacifiCorp to mitigate for losses of resident and anadromous trout resulting from construction and operation of the Merwin Hydroelectric Project. The Washington Department of Fish and Wildlife (WDFW) operates the hatchery under master and annual agreements with PacifiCorp. Continued operation of this hatchery is critical to supporting salmonid conservation objectives in the Lewis River Basin.

WDFW and PacifiCorp have discussed the need to increase the volume of water used at the hatchery to support continued hatchery operations, and to enable expanded operations to produce 50,000 natural origin (wild) winter steelhead smolts. This additional production is provided for in the Lewis River Hatchery and Supplementation Plan. In response to these discussions, on June 20, 2007, PacifiCorp filed an application for a new water right that would permit the instantaneous diversion of up to 11 cubic feet per second of water from the Lewis River at existing diversion facilities. This application is currently pending before Ecology.

Applicable agency policies and regulations provide that a water right application may be given priority treatment if Ecology determines: (1) the proposed water use is non-consumptive, and (2) the use would substantially enhance or protect the quality of the natural environment.<sup>1</sup> As described below, WDFW believes both of these criteria are met in this case, and is requesting that Ecology give priority treatment to PacifiCorp's June 20, 2007, water right application.

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<sup>1</sup> See Ecology Policy 1021, Priority Processing – Water Budget Neutral Projects (January 21, 2004).

Mr. Tom Loranger  
July 11, 2007  
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As explained in our May 30, 2007, letter, WDFW concludes the hatchery's use of water is non-consumptive, and that the proposed increase in diversion volume will not harm any water right holders. Water that is diverted at the face of Merwin dam for hatchery uses is returned immediately downstream to the Lewis River at the base of Merwin dam, with no intervening bypass reach. All water diverted for hatchery uses is returned to the river. The proposed water diversion and use appears consistent with Ecology's definition of non-consumptive uses contained in Ecology Policy 1020, Consumptive and Non-consumptive Water Uses (May 31, 1991).

The proposed use of water would substantially enhance and protect the quality of the natural environment by supporting production of wild winter steelhead that will be used to reestablish naturally-spawning steelhead populations upstream of Swift Dam. By way of background, in November 2004, WDFW, along with PacifiCorp, federal fishery agencies, and other groups signed a comprehensive settlement agreement to guide operations at the Lewis River Projects for the next 50 years. This settlement agreement was submitted to the Federal Energy Regulatory Commission (FERC) during the relicensing proceeding for the Lewis River Project. Part of this settlement agreement requires PacifiCorp to produce summer and winter steelhead and resident rainbow trout at the hatchery to assist in the reintroduction of steelhead upstream of Swift Dam. Returning steelhead adults (from wild winter broodstock) will be placed upstream of Swift Dam to promote a self-sustaining naturally produced winter steelhead stock and to serve as a source of nutrients for emerging fry and other species. The Merwin Hatchery will thus play a key role in ensuring the success of reintroduction efforts within the Lewis River basin, supporting the conservation and recovery of listed steelhead in this basin.

Aside from expanding the hatchery to facilitate the reintroduction effort, increasing the water volume in the hatchery will improve fish health by improving flow indices under which these wild origin fish are reared at while in the facility. It has been our experience that rearing wild origin fish requires additional water flows to be successful. Using increased flows will result in the production of high quality smolts that have the greatest potential for survival and thus recruitment back to the Lewis River.

Based on the foregoing, WDFW supports Ecology's priority treatment of PacifiCorp's pending application for a new water right at the Merwin Trout Hatchery. Please contact me at (360) 902 2681 if you have any questions regarding this matter.

Sincerely,



John Kerwin  
Hatcheries Division Manager

cc: Patrick Frazier  
Eric Kinne  
Erik Lesko, PacifiCorp  
Jeff Marti, Ecology