

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D C 20426

Project Nos. ~~2643-001-OR~~  
Bend Hydroelectric Project  
PacifiCorp Electrical Operations

MAR 22 1995

Claudia Nissley, Director  
Advisory Council on Historic Preservation  
730 Simms St., #401  
Golden, CO 80401  
Attn. Carol Gleichman

Dr. Leland Gilson  
State Historic Preservation Office  
Oregon State Parks and Recreation Dept.  
525 Trade Street, S.E., Suite 301  
Salem, OR 97310

S. A. deSousa  
Director, Hydro Resources  
PacifiCorp  
920 S.W. Sixth Avenue  
Portland, OR 97204-1256

Ernie Drapela  
Director, Bend Metropolitan Park and  
Recreation District  
200 N.W. Pacific Park Lane  
Bend, OR 97701

John Hossick  
City of Bend  
710 N.E. Wall Street  
P.O. Box 431  
Bend, OR 97701

Richard L. Isham  
Deschutes County  
County Court  
Bend, OR 97701

Dear Ms. Nissley, Dr. Gilson, Mr. deSousa, Mr. Drapela,  
Mr. Hossick, and Mr. Isham:

PacifiCorp Electrical Operations (PacifiCorp) has applied  
for a new license for the continued operation of the Bend  
Hydroelectric Project located in the City of Bend, Deschutes  
County, Oregon. PacifiCorp is the current licensee.

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The project facilities are eligible for inclusion in the National Register of Historic Places. No other historic or archeological sites are located in the project area.

Proposed modifications to project facilities, and installation of fishways required by the U. S. Department of the Interior (Interior), would have an effect on the historical integrity of the project facilities. Maintenance and future repair work may have an effect as well.

PacifiCorp prepared a Cultural Resources Management Plan (Plan) to avoid or minimize the effects. The Plan has been reviewed and accepted by the Oregon State Historic Preservation Officer (SHPO), the National Park Service (Western Region, San Francisco) (NPS), and my cultural resources staff.

My cultural resources staff has prepared a memorandum of agreement (MOA) for implementation of the Plan, pursuant to the Advisory Council on Historic Preservation's regulations 36 CFR 800 for the National Historic Preservation Act. The MOA would be a condition of any license issued for the project. The MOA basically says concerned parties agree the Plan should be implemented to avoid or mitigate effects of issuing a new license on the historic project facilities. The MOA also says the parties agree on procedures outlined in the MOA for resolving disputes and amending and terminating the MOA, and the Commission has complied with the requirements of the National Historic Preservation Act and the regulations of the the Advisory Council. The MOA follows a format recommended by the Advisory Council for relicensing hydroelectric projects.

Enclosed for your review are: (1) the MOA; (2) the Plan (Attachment A of the MOA); (3) National Register documentation for the project facilities; (4) a cultural resources survey report for the project (MOA Attachment A: Appendix A); (5) copies of letters from the SHPO and the NPS accepting the Plan; (6) the cultural resources report contained in the exhibit E of PacifiCorp's application for license; and (7) the draft EA issued for the Project, where the project is described, effects are evaluated, and alternatives considered.

The draft EA recommends licensing the proposed project without installing downstream fishway passage and deferring installation of upstream fishways. Interior, however, has declined to withdraw the mandatory fishway prescription. Therefore, any new license for the project would consist of the proposed project (as described in the draft EA) (pp. 3-5) with installation of upstream and downstream fishway facilities.

Cultural resources are evaluated and recommendations made on pp. 49-51 and 70 of the draft EA, including the effects of fishways. The draft EA was circulated for public comment. No

comments on cultural resources were received. No changes to the cultural resources text for the final EA are planned based on comments received on the draft EA.

I am requesting you sign the signature page of the MOA with your name on it and return the original signature page (not a copy) to me within 30 days from the date of this letter. Also by copy of this letter, I am formally requesting the Advisory Council to comment on the effect of the project on the project facilities pursuant to their regulations 36 CFR 800.

Please send the signed signature page directly to the following staff person:

Dr. Edwin D. Slatter, Archeologist  
Federal Energy Regulatory Commission  
Room 1069, 810 UCP  
825 North Capitol Street, NE  
Washington, DC 20426

I need to collate the original signature pages and send them to the Advisory Council for their file. Do not send this page to the Commission Secretary, because the page will be placed permanently in our files, and cannot be removed and sent to the Advisory Council. Make another original signed copy for your files, in case the page is lost in the mail and I need another copy.

The Advisory Council may not sign the MOA until it receives original signatures pages for the other parties to the MOA from me.

If you have any questions, please contact Dr. Slatter at 202-219-2835, or fax 202-219-0125.

Sincerely,

*Edward A. Abrams for*

John H. Clements  
Director, Division of  
Project Review

Enclosures (7)

MEMORANDUM OF AGREEMENT  
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
PURSUANT TO 36 CFR § 800.6(a)

WHEREAS, the Federal Energy Regulatory Commission or its staff, on delegated authority, (hereinafter Commission) has determined that issuing a subsequent license for the Bend Hydroelectric Project, FERC No. 2643 (Project), may have an effect on the Project facilities, which are eligible for inclusion in the National Register of Historic Places, and has consulted with the Oregon State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the PacifiCorp Electrical Operations (PacifiCorp), the existing licensee and applicant for a new license for the Project, the City of Bend (City), Deschutes County (County), and the Bend Metropolitan Park and Recreation District (District) participated in the consultation and have been invited to concur in this Memorandum of Agreement (MOA);

NOW, THEREFORE, the Commission and the SHPO agree that, if a subsequent license is issued, the Project will be licensed in accordance with the following stipulations to take into account the effect of this licensing on the Project facilities.

STIPULATIONS

The Commission will ensure that PacifiCorp carries out the following measures as a condition of licensing the Project:

1. PacifiCorp will implement its Cultural Resources Management Plan (Plan) to avoid or mitigate any effects of continued Project operation on the historical integrity of the Project facilities (Attachment A).
2. PacifiCorp will file, for Commission approval, a detailed plan on procedures for avoiding and mitigating modifications to the Project facilities authorized in the Project license, within 1 year after the date of the license. PacifiCorp will afford the SHPO, the City, the County, the District, and the Advisory Council on Historic Preservation (Council) an opportunity to comment on the detailed plan, and will file any letters received from these parties with the Commission together with the detailed plan.

The Commission will review filings made by PacifiCorp pursuant to the MOA within 45 days after receipt of the information. Unless PacifiCorp is notified that the filings must be revised or that additional work is required to satisfy the

requirements of the MOA, the Commission will take action to approve the filing. Upon notification that the Commission has approved the filing, PacifiCorp will proceed with its undertaking.

#### DISPUTE RESOLUTION

Should any party to this MOA object to any actions undertaken pursuant to the MOA, the dispute will be resolved as follows:

1. PacifiCorp shall first consult with the SHPO, the Commission, and other parties as necessary to resolve the objection. If any party determines that the objection cannot be adequately resolved, PacifiCorp will forward all documentation relevant to the dispute to the Commission.
2. Upon receipt of documentation regarding the dispute, the Commission will review the dispute, discuss the issue with PacifiCorp and the SHPO, and at the discretion of the Commission, with the Council and other parties to the MOA, and will within 45 days after receiving the complaint forward its recommendations for resolving the dispute to PacifiCorp, the SHPO, the City, the County, the District, and the Council.
3. If any party to the dispute notifies the Commission within 30 days that the resolution proposed by the Commission is not acceptable, the Commission will forward all documents relevant to the dispute to the Council. Within 45 days after receipt of all pertinent documentation, the Council will either:
  - a. Provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
  - b. Notify the Commission that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the Commission in accordance with 36 CFR 800.6(c)(2) with reference to the subject of dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the Commission's responsibility to carry out all actions under this MOA that are not the subject of the dispute will remain unchanged.

## AMENDMENTS

The Commission, the SHPO, PacificCorp, the Council, or other parties may request that this MOA be amended, whereupon the parties will consult in accordance with 36 CFR 800.6 to consider such amendment.

## TERMINATION

Either the Commission, the SHPO, PacificCorp, or the Council may terminate this MOA by providing 30 days notice, in writing, to the other parties, provided that the parties will consult during the period prior to termination to seek agreement or amendments or other actions that would avoid termination. In the event of a termination, the Commission will comply with 36 CFR 800.4 through 800.6 with regard to this undertaking.

Execution of this MOA by the Director, Office of Hydropower Licensing, is anticipatory, and has no independent legal effect unless and until a license is issued for the Project that incorporates this MOA by reference. Execution and implementation of this MOA evidence that the Commission has satisfied its responsibilities pursuant to Section 106 of the National Historic Preservation Act, as amended, for issuing a subsequent license for the Project.

Federal Energy Regulatory Commission

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Oregon State Historic Preservation Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Concur:

PacifiCorp Electrical Operations

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

City of Bend

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Deschutes County

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Bend Metropolitan Park and Recreation District

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted for the Advisory Council on Historic Preservation

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_