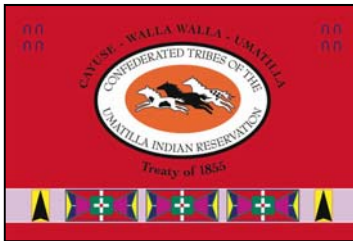


Carl Merkle

Attached are the comments of the Confederated Tribes of the Umatilla Indian Reservation
Department of Natural Resources. Thank you.

**Confederated Tribes *of the*
Umatilla Indian Reservation**

Department of Natural Resources



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Phone: 541-276-3165 Fax: 541-276-3095

October 9, 2020

Breean Zimmerman
Hydropower Projects Manager
Department of Ecology
Central Regional Office
1250 West Alder Street
Union Gap, WA 98903-0009
breean.zimmerman@ecy.wa.gov

RE: CTUIR DNR Comments on Goldendale Pumped Storage Project Clean Water Act
Section 401 Certification

Dear Ms. Zimmerman:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) submits the following comments on the proposed Goldendale Pumped Storage Project Clean Water Act (CWA) Section 401 Certification for the proposed project in Klickitat County, Washington,¹ from the applicant Rye Development/Free Flow Power (FFP) 101, LLC. The CTUIR DNR requests that you deny the Certification at this time.

Introduction

The CTUIR is a federally-recognized Indian tribe, with a reservation in Northeast Oregon and ceded, aboriginal, and traditional use areas in Oregon, Washington, Idaho, and other Northwest states. These areas include the site this project would occupy. In 1855, predecessors to the CTUIR—ancestors with the Cayuse, Umatilla, and Walla Walla Tribes—negotiated and signed the Treaty of 1855 with the United States. The Treaty is a contract between sovereigns and is, “the supreme Law of the Land” under the United States Constitution. In the Treaty the CTUIR ceded millions of acres of land to the federal government, and in exchange received assurances that pre-existing tribal rights would be protected, and our interests would be respected, in perpetuity. A paramount objective in the Treaty was protecting and maintaining our tribal culture, traditions, and way of life. To do so requires protection and maintenance of our essential cultural resources—which include not merely specific sites and locations, and any artifacts found there, but also the First Foods (water, fish, big game, roots, berries, and other plants) that have been and continue to be woven into the fabric of our lives. This objective—protecting and maintaining our culture—remains paramount for the CTUIR.

¹ While the project is primarily in Klickitat County, it includes a portion in Sherman County, Oregon, where transmission lines spanning the Columbia River would be located.

Goldendale Pumped Storage Project

First, the CTUIR DNR is of the position that no certification for this project should be issued allowing in-water work on the Columbia River that would result in the violation of any water quality standards or impairment of beneficial uses. Project construction and operation cannot cause the discharge of any toxic substances or contaminants into the Columbia River, either directly or indirectly.² In addition, no in-water work should be allowed if it would detrimentally affect tribal cultural resources. It is not clear whether the proposed work that would be covered by the Certification has been fully assessed and analyzed, in consultation with the CTUIR, in terms of its potential impacts on tribal cultural resources (see below). For this reason issuance of a Certification is premature and therefore inappropriate.

Further, issuing a Certification is premature because further studies that would better inform the 401 Certification process have yet to be conducted and/or finalized. Reportedly the project will undergo federal National Environmental Policy Act and Endangered Species Act reviews. The project proposes to use large amounts of water from the Columbia River, which is critical habitat for multiple salmonid populations listed as threatened or endangered under the federal Endangered Species Act. These species require sufficient quantities of water of suitable temperature, and these requirements are regularly unmet now under the current river management regime. We are concerned that potential effects of the project's additional demands on water and fish are not adequately analyzed. Review pursuant to National Historic Preservation Act is also required. The applicant estimates that FERC will release a draft Environmental Assessment or Environmental Impact Statement in the summer of 2021. The results of all these efforts will be beneficial to the 401 process, and in further identifying and factoring in the implications of the project on tribal cultural resources.

In the larger context, however, the proposal (to develop an off-stream closed-loop pumped-storage project with an upper and lower reservoir and also involving an underground water conveyance tunnel, underground powerhouse, 115-kV and 500-kV transmission lines, a substation and a switchyard) likely would have substantial, harmful impacts on tribal cultural resources, including sites and artifacts—not merely those located in-water, or below the ordinary-high-water-line, but those above and beyond the shoreline. Extensive potential tribal cultural resources impacts have been documented in materials developed by the Yakama Nation (including archeological, ceremonial, burial petroglyph, monumental and ancestral use sites).

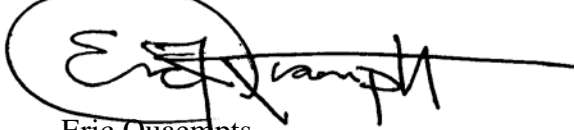
In earlier correspondence from the CTUIR, our Cultural Resources Protection Program (CRPP) indicated that the project area was within a historic property of religious and cultural significance to the CTUIR. The CRPP has not been consulted regarding the project and its potential adverse effects to the historic property of religious and cultural significance to the CTUIR, or how the adverse effects can be resolved. It would be inappropriate to issue a CWA 401 Certification for work on any portion of this property without first performing all necessary study and evaluation of tribal cultural resources and potential effects on them. Prior to construction all potential effects to historic properties must be taken into account.

² Toxic contamination in the soil and groundwater at the former industrial site the project would occupy in part—a problem identified earlier—would need to be completely cleaned up and remediated to assure CWA compliance.

Conclusion

For the foregoing reasons, the CTUIR DNR requests that you deny at this time the Clean Water Act Section 401 Certification for the proposed Goldendale Pumped Storage Project. It is premature, and there are significant, serious questions about potential impacts on tribal rights and resources that remain outstanding. If you have any questions about our comments or concerns, please feel free to contact Carl Merkle, Salmon Recovery Policy Analyst, at 541-429-7235. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Quaempts", is written over a circular stamp. The signature is stylized and somewhat illegible.

Eric Quaempts
Director, Department of Natural Resources
Confederated Tribes of the Umatilla Indian Reservation

Cc: Fish and Wildlife Commission
Tribal Water Commission
Angela Fritz, Washington Department of Ecology, anfr461@ECY.WA.GOV