February 12, 2021

Sage Park
Washington Department of Ecology
1250 West Alder Street
Union Gap, WA 98903-0009
Attn: Goldendale Scoping

Submitted via email to: sage.park@ecy.wa.gov.

RE: SEPA Scoping Comments on the Proposed Goldendale Pumped Storage Project, FERC Docket No. P-14861-002.

Dear Washington Department of Ecology,

On January 14, 2021, the Washington Department of Ecology (Ecology), announced its intent to prepare an Environmental Impact Statement (EIS) on the proposed Goldendale Energy Storage Hydroelectric Project (Project), pursuant to the State Environmental Policy Act (SEPA). *See generally* RCW 43.21C. Columbia Riverkeeper, the Washington Chapter of the Sierra Club, Friends of the White Salmon and Washington Environmental Council (collectively, "Commenters") commend and appreciate Ecology's Determination of Significance for the Project. The following comments are submitted on behalf of Commenters to help Ecology identify issues that must be addressed during the environmental review process. Ecology's EIS must thoroughly document and explain the human health risks and environmental impacts posed by the Project. Ultimately, Ecology may and should deny Rye Developments (Rye) pending applications based on Ecology's substantive SEPA authority. *See* WAC 197-11-660.

I. Statement of Interest and Background on the Goldendale Pumped Storage Project.

Columbia Riverkeeper (Riverkeeper) is a 501(c)(3) non-profit organization whose mission is to protect and restore the water quality of the Columbia River and all life connected to it from the headwaters to the Pacific Ocean. The organization's strategy for protecting the Columbia River and its tributaries includes working in river communities and enforcing laws that protect public health, salmon, and other fish and wildlife. Riverkeeper has been actively engaged

in Rye, dba Free Flow Power 101, LLC's proposed Project since 2017 and closely followed other pumped storage projects proposed in this area, the most recent iteration rejected by FERC in 2016. *See* Public Utility District No.1 of Klickitat County, Washington & Clean Power Development, LLC, 155 F.E.R.C. ¶ 61,056 (2016).

The Washington State Chapter of the Sierra Club is a 501(c)(4) non-profit organization with over 100,000 members and supporters in Washington State and over 3.8 million nationally. Headquartered in Seattle, the Washington State Chapter members and supporters live throughout the state of Washington. The Sierra Club works to protect communities and the planet.

Friends of the White Salmon River is a non-profit 501(c)(3) organization that has worked since 1976 to protect and restore naturally-reproducing anadromous fish populations, and to protect the shorelines, water resources, and habitat areas that affect wild salmonid populations within Klickitat County. Friends of the White Salmon River has an interest in protecting and conserving water resources affecting wild salmonid populations.

Washington Environmental Council (WEC) is a nonprofit, statewide advocacy organization that has been driving positive change to solve Washington's most critical environmental challenges since 1967. WEC's mission is to protect, restore, and sustain Washington's environment for all. Commenters appreciate the opportunity to provide these comments and supporting materials, including the Appendices with this letter.

Rye proposes the Northwest's largest pumped storage hydroelectric project along the Columbia River in Klickitat County, Washington, near the John Day Dam, with transmission facilities extending into Sherman County, Oregon. The project would occupy 18.1 acres of land with a portion of the Project within an existing transmission right-of-way owned by the U.S. Army Corps of Engineers and administered by Bonneville Power Administration. The Project includes an off-stream, pumped-storage complex with: (1) a 61-acre upper reservoir formed by a 175-foot-high, 8,000-foot-long rockfill embankment dam at an elevation of 2,950 feet mean sea level (MSL) with a vertical concrete intake-outlet structure; and (2) a 63-acre lower reservoir formed by a 205-foot-high, 6,100-foot-long embankment at an elevation of 590 feet MSL with a horizontal concrete intake-outlet structure and vertical steel slide gates. *See* Scoping Document at 6. According to Rye, the Project consists of over 2,400 feet of maximum gross head that involve no river or stream impoundments, allowing for relatively small water conveyances. Other features include an underground water conveyance tunnel, underground powerhouse, 115 and 500 kilovolt transmission line(s), a substation/switchyard, and other appurtenant facilities. Goldendale Pumped Storage Project CWA 401 Certification Application at 1 (June 23, 2020).

Rye would site the Project's lower reservoir on lands that previously housed the CGA smelter (also known as Harvey Aluminum, Martin Marietta Aluminum, Commonwealth

Aluminum, or Goldendale Aluminum), now a Resource Conservation and Recovery Act (RCRA) contaminated site, which include contaminated lands and groundwater. *Id*. at 2. The Project is expected to require 9,000 acre feet of Columbia River water for the initial fill and an additional 390 acre feet per year to offset evaporative losses. Goldendale Energy Storage Final FERC License Application, FERC Project No. 14862 (FLA) at 14.[1]

The Project threatens irreplaceable tribal cultural and religious resources, water quality, fish, and wildlife. The Project would permanently destroy large segments of unique waterbodies, including "waters of the United States," in the scenic Columbia Hills and cause downstream impacts to perennial waterbodies. *See* Columbia Riverkeeper et. al, Public Comments on Free Flow Power 101, LLC Goldendale Pumped Storage Project Clean Water Act 401 Water Quality Certification, (Nov. 9, 2020). The Project requires withdrawing millions of gallons of Columbia River water, threatening designated uses and impacting water quality in an already degraded river. *Id.* Tribal, federal, and state fish and wildlife agencies have raised significant concerns about the Project's impacts on water quality, fish, and wildlife. *Id.* All of these issues, discussed in greater detail below, must be addressed in Ecology's EIS.

Like many people in the Pacific Northwest and nationally, Commenters are deeply concerned about a decision that will authorize the construction of a Project with such detrimental and unavoidable environmental justice concerns. At a time when our nation is supposedly reconciling with its deeply ingrained systemic racism, pushing forward an alleged "green-energy" project of this magnitude that will obliterate tribal cultural and religious resources; hinder, if not prohibit, tribal access; and continue the nation's pattern of deep disregard for tribal cultural resources, is unacceptable. As the state of Washington sets de-carbonization goals, projects with such blatant disregard for environmental justice cannot be allowed a fast track through the licensing process. Green energy cannot be built on the backs of tribal nations.

II. Washington's State Environmental Policy Act

In adopting the State Environmental Policy Act, the Washington State Legislature declared the protection of the environment to be a core state priority. RCW 43.21C.010. SEPA declares that "[t]he legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment." RCW 43.21C.020(3). This policy statement, which is stronger than a similar statement in the federal counterpart of NEPA, "indicates in the

[1] The numbers in Rye's FLA are higher than those in FERC's Scoping Document, which read: "The initial fill would require 7,640 acre-feet of water and would be completed in about six months at an average flow rate of approximately 21 cubic feet per second (cfs) (maximum flow rate available is 35 cfs). It is estimated that the project would need 360 acre-feet of water each year to replenish water lost through evaporation." Scoping Document 1 for the Goldendale Pumped Storage Project, FERC Project No. P-14861-002, at 7 (Oct. 29, 2020).

strongest possible terms the basic importance of environmental concerns to the people of the state." *Leschi v. Highway Comm'n,* 84 Wn.2d 271, 279-80 (1974).

At the heart of SEPA is a requirement to fully analyze the environmental impact of projects that have a significant impact on the environment. RCW 43.21C.031(1). An EIS is required for any action that has a significant effect on the quality of the environment. WAC 197-11-330. Significance means a "reasonable likelihood of more than a moderate adverse impact on environmental quality." WAC 197-11-794. The purpose of this analysis is not to generate paperwork. Rather, the EIS allows decision-makers to make judgments based on a fully informed appreciation for the environmental impacts of decisions, the available alternatives, and any mitigation that may be appropriate. To facilitate reasoned decision-making, an EIS must include and evaluate "reasonable alternatives" to the proposed action, including a "no-action" alternative. WAC 197-11-440(5). To fully capture a project's impacts, EISs must examine the direct, indirect, and cumulative impacts of projects. WAC 197-11-792(c); WAC 197-11-060(4)(d).

SEPA regulations also explicitly direct that environmental impacts outside the jurisdiction of the deciding agency should be considered. WAC 197-11-060(c). Crucially, agencies are required to assess both the direct impacts of the proposal as well as the indirect impacts. WAC 197-11-060(4)(d). For example, when considering a government action, a SEPA document must also consider the effects of private growth that may be encouraged by this government action. *Id.*; *Cheney v. City of Mountlake Terrace,* 87 Wn.2d 338, 344 (1976) (SEPA requires that decision makers consider more than the "narrow, limited environmental impact" of the current proposal…agency "cannot close its eyes to the ultimate probable environmental consequences" of its current action).

III. Scope of the Project's EIS

A. The EIS Must Define the Proper Purpose and Need for the Project and Consider an Appropriate Range of Alternatives.

The consideration of alternatives is the heart of the environmental review process. It is through the identification of reasonable alternatives, the examination of the environmental impacts that will result under each alternative, and the comparison of those impacts, that the agency and the public can fully understand the impacts of a proposed project. "SEPA requires that 'alternatives to the proposed action' be included in the EIS." *Citizens for Safe & Legal Trails v. King County*, Wash. App. LEXIS 2092, *20 (2003). RCW 43.21C.030(c)(iii). Additionally, "an EIS must provide sufficient information to allow officials to make a reasoned choice among alternatives." *Citizens for Safe & Legal Trails,* Wash. App. (2003), *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn. App. 439, 442, 832 P.2d 503 (1992); *see also* WAC 197-11-440(5). Courts have gone as far to say that, "SEPA is essentially a procedural statute to ensure that environmental impacts and alternatives are properly considered by the decision makers." *Save Our Rural Env't v. Snohomish Cy.,* 99 Wn.2d 363, 371, 662 P.2d 816 (1983). As such, an agency may not undermine this process by defining a project's purpose so narrowly as to preclude consideration of reasonable alternatives. *Cf. Muckleshoot Indian Tribe v.*

U.S. Forest Service, 177 F.3d 800, 814 n.7 (9th Cir. 1999)(discussing defining a project's purpose under NEPA.).

"SEPA borrows heavily from NEPA" and reference to NEPA analysis is appropriate when construing SEPA's requirements." *Coalition for a Sustainable 520 v. United States DOT*, 881 F. Supp. 2d 1243, 1259 (2012). *See also Eastlake Cmty. v. Roanoke Assocs,* 82 Wn.2d 475, 488 n. 5, 513 P.2d 36 (1973). In explaining the purpose and need and reasonable alternatives that Ecology's EIS must address, Commenter's analysis draws on some NEPA analysis and case law, which are relevant to explaining the SEPA requirements.

1. The Purpose and Need.

The first step in the SEPA process, is for the agency to "make certain that the proposal that is the subject of environmental review is properly defined." WAC 197-11-060(3)(a).

According to Rye, the purpose of and need for this Project, or the Project's objective, is to assist Washington, Oregon, and California in meeting their "carbon reduction and environmental policy goals," and specifically Washington's goal of ensuring that "all of its electricity come from carbon-free sources by midcentury." FLA at 2. Stated differently, Rye's goal, and thus the "underlying purpose and need" for the project, is to "facilitate the transition to Washington's clean energy future." *Id*. at 3. Ecology must assess all reasonable alternatives that will support this goal. To do less would be to artificially restrict the purpose and need for this project to no other end than to prevent the consideration of reasonable alternatives.

Arguably, this project is limited to the development of "utility-scale storage to solve the operational challenges of integration." *Id.* at 2. If Ecology accepts this more limited purpose and need for this project, it must conduct an corresponding alternative analysis. Indeed, Rye admits that there are other "viable, least-cost energy storage options available," in addition to its preferred pumped storage technology. *Id*. "Proposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions." WAC 197-11-060(3)(a)(iii). Ecology is thus obligated to identify these alternatives and explore the relative environmental impacts of implementing these technologies to meet Washington's goal of moving to all renewable electricity generation.

2. Reasonable Alternatives.

Under SEPA, the EIS must contain a detailed discussion of alternatives to the proposed action. RCW 43.21C.030(2)(c)(iii). Alternatives that the EIS must consider are, "actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. WAC 197.11.440(5)(b), *OPAL v. Adams County*,

128 Wn.2d 869, 875 (Sup. Ct. Wa.1996). However, the number of alternatives must be reasonable. *Id*. *See also City of Mukilteo v. Snohomish County*, 2017 Wash. App. LEXIS 129 *1, *24 (2017) (using this definition to describe a reasonable alternative.).

First, as required by the law and to establish the baseline against which any environmental impact of any specific alternative can be compared, Ecology must consider a no action alternative. Next, given Rye's broadly stated project goal, Ecology must consider alternatives that look well beyond the four corners of this specific project, to include alternatives that ensure Washington can meet its energy generation goals and to explore alternatives for utility-scale storage. In any case, Ecology must identify and analyze reasonable alternatives to the specific proposed project. This analysis must examine alternative locations for this project and alternative designs at the chosen site.

i. No Action Alternative.

Ecology must define and explain impacts of not licensing this project, or any project, at this location, this the no action alternative. The no action alternative must be compared to the other alternatives. WAC 197-11-440(5). This description of the impacts of various alternatives, and the comparative analysis allowed by the development of such information, is the true benefit of the SEPA process. To be meaningful the SEPA document must include the information necessary to allow a thorough and objective assessment of the alternatives. To this end, the identification and review of a no action alternative is essential. Indeed, the no action alternative acts as the starting point for the comparison of the impacts, be they beneficial or adverse, of the proposal and reasonable alternatives.

Here, because this is a new project, the no action alternative is not permitting this project to go forward. Thus, Ecology must describe the value of the site as it exists and the ecological, cultural, recreational, and commercial benefits and activities the site does and could support if the project is not developed.

ii. The EIS must consider clean energy alternatives.

Ecology must evaluate alternatives to the Project. Washington's Deep Decarbonization Analysis does not call out the Project as necessary energy infrastructure to meet the state's decarbonization goals. *See* Evolved Energy Research, Washington State Energy Strategy Decarbonization Demand and Supply Side Results (Aug. 2020) (Appendix 1). The state's analysis is still underway and, to date, does not demonstrate a "need" for the Project. Even if large-scale pumped-storage hydroelectric power is called out as necessary to meet the state's deep decarbonization goals, it is not clear Rye's Project is necessary to meet that demand. For example, pumped storage at a different location could meet that need. Furthermore, Governor

Inslee, a national climate leader, has not taken a position in favor of the Project. Rye's FLA includes "Letters of Support"; Rye did not produce a letter of support from the Governor's Office.

In considering alternatives, Ecology must consult with the Governor's Office, the Washington Department of Commerce, Ecology staff, and other experts on the state's deep decarbonization efforts to verify if Rye's alleged "benefits" pencil out.

Even if the Project would provide climate benefits, Ecology must consider: (1) the lengthy permitting and construction timeline for pumped storage in general, (2) the added complexity for Rye's Project due to scale of tribal cultural tribal resources, and (3) the need for the Project a decade or more in the future given the rapidly-changing and dynamic nature of energy markets.

According to a third-party economic analysis, the Project cannot provide renewable energy integration and replacement capacity to support regional decarbonization goals affordably and reliably. Anthony Jones, Critique of the Goldendale Energy Storage Hydroelectric Project, Notification of Intent (December 3, 2019)(Appendix 2). The Rocky Mountain Econometrics analysis concludes that a combination of rising construction costs and decreasing open-market energy prices undercut Rye's claims that the project is necessary to meet the state's decarbonization goals. Overall, Ecology must analyze alternatives to the Project, including alternative site locations, designs, and developments.

iii. FERC must consider alternatives to pumped storage to provide utility-scale storage to solve the operational challenges of integration.

In support of its application Rye claims that "[o]f the viable, least-cost energy storage options available, pumped storage is the best-proven, least-cost energy storage technology at scale." This raises precisely the question Ecology must answer: what other "viable, least-cost energy storage options" are available? The answer to this question must be found in Ecology's analysis of the reasonable alternative to the Project. In the FLA, Rye briefly analyzes wind, solar, and Lithium Ion batteries as potential green energy alternatives to pumped storage. FLA Exhibit C at 7. In comparing pumped storage to wind and solar energy, Rye quickly concludes that "[p]umped hydro storage is the only asset that provides large-scale, cost-effective renewable energy storage capacity and a range of essential grid reliability services, the value of which will increase as penetration of intermittent renewable resources rises." FLA Exhibit C at 8. However, comparing renewable energy generation to storage is like comparing apples to oranges. Thus, Rye's only adequate alternative analyzed is Lithium Ion batteries. That being said, Ecology must include an analysis of Lithium Ion batteries as an alternative to pumped storage. In addition,

there are several other renewable energy storage technologies that Rye's FLA failed to analyze and that Ecology must include in its analysis. These include, but are not limited to:

1. Stacked Blocks, which store energy by "automating a six-armed robotic crane to stack thousands of purpose-built, 35-metric-ton monoliths into a Babel-like tower and drop them down again...to release the power." Julian Spector, GREEN TECH MEDIA, *The 5 Most Promising Long-Duration Storage Technologies Left Standing* (March 31, 2020). This technology adapted pumped hydro's gravity storage in a format with more geographic diversity. *Id.*
2. Liquid Air, a mechanism that "cools down air and stores it in pressurized above-ground tanks," and uses them for grid storage. *Id.*
3. Underground Compressed Air, whereby you "use excess electricity to pump compressed air into a suitable underground formation that acts like a giant storage tank. Releasing the pressurized air allows the plant to re-generate electricity when needed." *Id.*
4. Flow Batteries, particularly Avalon Batteries, which found a way around material cost challenges associated with flow batteries. *Id.*

iv. Ecology must analyze alternative sites for a pumped storage project.

When the purpose of a project is not, but its own terms, tied to specific location, the agency must assess alternative locations for the project. *'Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1098 (9th Cir. 2006)(discussing alternative sites in the NEPA context). The history of tribal opposition to developments in this area and the extensively documented cultural resources should have made this location a non-starter for Rye. Despite this, the location alone does not represent the sole location for siting of this Project. The proliferation of proposed pumped storage projects on the West Coast alone demonstrates this. *See Generally* Courtney Flatt, NORTHWEST PUBLIC BROADCASTING, *New Energy Storage Project on Upper Columbia Brings Jobs — and Concerns from Colville Tribes* (Dec. 23, 2019), Julian Spector, GREEN TECH MEDIA, *Montana Developer Ready to Build Modern-Day Pumped Hydro Storage* (Aug. 13, 2019), Brian Gailey, KLAMATH FALLS NEWS, *CIP Acquires Swan Lake pumped hydro project* (Nov. 11, 2020), Sammy Roth, LA TIMES, *Environmental Disaster or to a Clean Energy Future? A New Twist on Hydropower* (Mar. 5, 2020), Bloomberg News Editors, RENEWABLE ENERGY WORLD, *In quest for bigger batteries, California mulls pumped hydro* (Jun. 10, 2019). Furthermore, studies have undertaken "to develop a series of advanced Geographic Information System algorithms to locate prospective sites for off-river pumped hydro across a large land area such as a state or a country." Bin Lu, et al., *Geographic information system algorithms to locate prospective sites for pumped hydro energy storage*, 222

APPLIED SCIENCE 300, (2018). The Project need not be built at this site and Ecology must look at alternative sites for the Project.

v. Ecology must consider alternative project designs.

Finally, Ecology must explore alternatives to design and proposed operations of the facility as proposed. In its application Rye discusses its efforts to "evaluate the cost-benefit of various reservoir sizes." FLA Exhibit A at 8. This analysis falls well short of what is required under SEPA. For example, Rye claims that it merely changed the size of the reservoirs, but retained "a total generating capacity of 1,200 megawatts (MW), which is considered most appropriate for the site and market conditions." *Id.* Alternative generating capacities, and the resulting impact on the footprint of the Project must also be explored. Further, Ecology must consider the locations of the reservoirs, and the potential alternatives for other locations within the property boundary. Moving the various elements of the facility within the Project site will likely change the on-the-ground impacts. These alternatives must be considered.

The same is true for the other equipment and infrastructure that will be needed to run the facility. Ecology must consider and disclose the impacts for alternative designs and layouts.

In addition, Ecology must consider the impact from alternative operational parameters for the project. According to Rye's application, "The Project is designed to generate for 12 hours a day of full power generation, at a maximum of 1,200 MW and a minimum of 100 MW, and pump water from the lower reservoir to the upper reservoir in about 15 hours." FLA, Exhibit B at 6. In order for the Project to produce the maximum amount of energy (1,200MW), it will need to generate power (run all water from the upper reservoir to the lower) for 12 hours. Ecology must require the development of alternative operational patterns and reveal and discuss the potential resulting impacts to the environment.

Finally, Ecology must explore alternatives that mitigate the known adverse impacts that will result from the Project, as proposed. As discussed in detail below, the Project will have significant impacts on the environment, including but not limited to, direct, indirect, and reasonably foreseeable negative impacts to the people, fish, and wildlife in the vicinity of the proposed facility.

IV. Ecology is Legally Obligated to Evaluate Direct, Indirect, and Cumulative Impacts as part of the EIS.

Under SEPA, an EIS must consider direct effects, indirect effects, and cumulative effects. WAC 197.11.792(2)(c)(i)-(iii). This scoping comment does not attempt to discuss in detail every issue that should be covered in the EIS. Instead, this comment lists some of the most pertinent direct and indirect impacts that the Project's EIS should analyze.

A. The EIS Must Acknowledge that not all Affected Tribal Nations Have Finished Surveying the Area and thus not all Unavoidable Environmental Impacts have been Identified.

Under RCW 43.21C.030(c), the EIS must include a detailed statement on, "(i) the environmental impact of the proposed action; (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented." RCW 43.21C.030(C)(i),(ii). Because numerous archeological and cultural resource surveys of the area have yet to be conducted, finished, and filed with FERC on the Project, it will be impossible for Ecology to include this detailed statement. The EIS must include this uncertainty as part of its summary. *See* WAC 197.11.440(4)(stating, "the summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding, the major conclusions, significant areas of controversy and uncertainty, if any.").

First, the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation), which has been actively involved in Rye's proposal since at least 2017, and were contracted by Rye to conduct archaeological and cultural resource surveys of the area, have yet to conclude and submit the final cultural resource survey. Rye's FLA states that "the APE (Area for Potential Effect) has been surveyed for archaeological and historic architectural resources, as well as TCPs (Traditional Cultural Properties) that are significant to the ***Yakama Nation***. [emphasis added]. FLA Exhibit E at 78. But, the FLA goes on to list numerous cultural resource surveys that have yet to be finished by the Tribe including:

> •Conducting additional survey to correct the boundary of the Push-Pum TCP so that it properly incorporates connected plant resources as documented in 1995 and 2019 (per the recommendation of Yakama Nation);
> • Evaluating the Columbia Hills Multiple Property Documentation (MPD) TCP under NRHP Criterion B, C, and D (per the recommendation of Yakama Nation);
> • Evaluating Sites 45KL566, 45KL567, 45KL570, 45KL744, 45KL746, and LS-3 for the NRHP both individually and for their contribution to the Push-Pum TCP, Columbia Hills MPD TCP, and Columbia Hills Archaeological District assessing Project effects to the Push-Pum TCP, Columbia Hills MPD TCP, the Columbia Hills Archaeological District.

FLA Exhibit E at 78.

Second, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have yet to conduct their cultural and archaeological surveys of the area, despite participating in the FERC process early.[2] Rye's FLA includes the following as surveys yet to conducted, including

> • Identifying historic properties of religious and cultural significant to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR);
> • any identified historic properties of religious and cultural significance to the CTUIR, and any of the archaeological resources that are determined to be eligible for the NRHP.

FLA Exhibit E at 78.

Third, on October 16, 2020, the Nez Perce Tribe requested that Rye conduct an ethnographic study to identify any Nez Perce-specific resources in the Project area that could be affected by construction of the project, stating that because the Tribe did not know about the development they did not have the opportunity to submit study requests to determine detrimental impacts to their Tribe. Letter from Patrick Baird to FERC (Oct. 16, 2020), In FERC Docket No. 14861 & Telephone Memo from Suzanne Novak to FERC (Oct. 7, 2020), In FERC Docket No.14861. On October 29, 2020, FERC directed Rye to conduct that survey.

Lastly, it is unclear if Rye has contacted or been in sufficient contact with representatives from the Confederated Tribes of Warm Springs (Warm Springs) to allow the Tribe time to contribute surveys of the area if appropriate.

At this time, Yakama Nation, CTUIR, Nez Perce, and Warm Springs, the Columbia River Inter-Tribal Fish Commission Tribes, have not been afforded the opportunity to identify tribal cultural and religious resources that risk destruction from the Project. Rye's FLA states, "[o]nly the Yakama Nation can determine what is significant to the tribe," presumptively this suggests that Rye would agree that only CTUIR, Nez Perce, and Warm Springs can determine what is significant to their tribes. Conducting the EIS now may undermine these surveys because without them it is near impossible that Ecology will be able to identify all significant issues that the Yakama Nation, CTUIR, Nez Perce, and Warm Springs will raise and therefore the EIS must identify and discuss this uncertainty.

B. Tribal Archaeological and Cultural Resources.

[2] *See* Letter from Kristen Tiede to FERC (Jan. 21, 2018), In FERC Docket No. 14861. Letters submitted by CTUIR have been filed confidentially to protect tribal cultural resources.

Ecology must fully account for tribal nations' input on Rye's proposal in the EIS. Rye sited the Project in an area of incalculable significance for tribal nations, an area that includes multiple documented Traditional Cultural Properties (TCPs), tribal-access agreements, and TCP's either: 1) eligible for inclusion on the National Historic Register of Historic Places (NHR); or 2) already included. Moreover, Rye has, for years, failed to change the Project's location over the objections of sovereign tribal nations.

Yakama Nation has opposed the Project since its inception. Yakama Nation also opposed earlier iterations of a pumped-storage hydroelectric proposed at the site.

According to the Tribe, Rye's development would destroy archeological, ceremonial, burial, petroglyph, monumental, and ancestral use sites—and cause significant harm to the Yakama way of life. Letter from Yakama Nation to Erik Steimle (Feb. 14, 2018), *In* FERC Docket No. 14861. A Yakama Nation representative explained the Tribe's opposition at a Washington State Senate hearing in early 2020:

> As you're aware, the Columbia River was dammed over the last century. In doing so, that impacted many of our rights, interests and resources. All of these things have been impacted: our fish sites, our villages, our burial sites up and down the river. This is another example of energy development, development in the West, that comes at a cost to the Yakama Nation.

Courtney Flatt, OPB, *Northwest Clean-Energy Advocates Eye Pumped Hydro to Fill Gaps, with Tribes Noting Concerns* (July 27 2020) (Appendix 3).

Rye has repeatedly misstated Yakama Nation's position on the Project, which has confused federal and state agencies, as well as public understanding of the Tribe's position. Yakama Nation in comment letters to FERC, has gone as far as to say that Rye is not operating in good faith. A letter submitted by Yakama Nation in February 2019 states:

> The Yakama Nation does not believe that Rye Development conducted the pre-application in a good faith effort. This is the first time that the Yakama Nation has been afforded the opportunity to read any preliminary studies conducted by Rye Development. Nor were we aware that a draft Historic Properties Management Plan was being drafted as part of this document.

Confederated Tribes and Bands of the Yakama Nation, Comment to FERC, (Feb. 21, 2019), *In* FERC Docket No. 1486.

Yakama Nation's archaeological resource survey, completed in 2019, concluded that multiple sites of cultural and religious importance are located within the Project boundary.[3]

[3] The Yakama Nation is still in the process of completing their 2020 Cultural Resources Survey of the Project area.

According to Rye's FLA, "the proposed Project area is within a NRHP-eligible [National Register Historic Properties] TCP (Traditional Cultural Property) (Push-pum) and a NRHP-eligible Multiple Property Documentation TCP (Columbia Hills) and one Archaeological District (Columbia Hills District)." FLA Appendix G at 12. The FLA states:

> The entire Columbia Hills and the archaeological sites contained within are significant to the understanding of how Yakama people lived and utilized the land. Information yielded from 'archaeological' resources is important to Yakama elders to determine what kinds of activities took place at a specific location. It also lends itself useful in identifying what kinds of resources are present.

FLA Exhibit E at 76. The proposed Project will also have a serious impact on the health and safety of the Yakama people, who use the Push-pum site to gather traditional medicines and foods that underlie ceremonial practices. Rye's FLA states that, "[w]ithin that Project area, there is a stipulation for BPA to create a plan that will allow tribal members to access Push-pum to gather foods and medicine significant to the tribe." FLA Exhibit E at 78. However, there is no discussion of how construction or management of the Project will interfere with this access or interfere with the integrity of the foods and medicines gathered.

The significance of this area to the Yakama Nation cannot be overlooked. While the Yakama Nation has filed tribal cultural resource surveys as "confidential" with FERC, available information, including FLA Appendix G, details the Project area's importance for tribal cultural and religious resources.

The Yakama Nation is not the only affected Tribal Nation. CTUIR has also weighed in on the development. While most letters submitted by CTUIR have been filed confidentially to protect tribal cultural resources,[4] the Tribe has publicly said that "The proposed Project is likely to have substantial, harmful impacts on tribal cultural resources, including sites and artifacts," and are poised to conduct their own cultural resources survey of the area. CTUIR NEPA Scoping Comments (Dec. 28, 2020), *In* FERC Docket No. 14861. On October 16, 2020, the Nez Perce Tribe requested that Rye conduct an ethnographic study to identify any Nez Perce-specific resources in the Project area that could be affected by construction of the project, stating that because the Tribe did not know about the development they did not have the opportunity to submit study requests to determine detrimental impacts to their Tribe. Letter from Patrick Baird to FERC (Oct. 16, 2020), *In* FERC Docket No. 14861 & Telephone Memo from Suzanne Novak to FERC (Oct. 7, 2020), *In* FERC Docket No. 14861. On October 29, 2020, FERC directed Rye to conduct that survey.

[4] *See* Appendix 4 and 5, for historical context surrounding the treatment of Indian remains and cultural property in the United States resulting in the need for tribes to file cultural resource information confidentially.

Both CTUIR and the Nez Perce Tribe have not been afforded the opportunity to identify tribal cultural and religious resources that may be impacted by the Project. *See infra* at Section IV(A).

In addition to the cultural resources impacted within the Project footprint, Project construction and operation would impact off-site, adjacent tribal and non-tribal use of an irreplaceable cultural and historic treasure: an array of over 60 bear-paw petroglyphs on the basalt walls above the Columbia River. Located in the channel of the John Day Dam Lock, the petroglyphs are open to public viewing. Rye's application fails to mention, let alone analyze, how Project construction and operations would impact the experience of tribal and non-tribal members who view and reflect on the renowned petroglyph collection.

When looking at the impacts to tribal cultural and religious resources from this Project the EIS must analyze: the destruction of TCPs unique to this geographic location, the destruction of TCPs eligible for, or already included, on the NRH, the serious impacts to public health and safety of indian people who rely on foods and medicines in the area, the cumulative impacts that the Project will have on archeological and cultural resources of at least four tribes, the future implications that developing this Project will have on this site, including opening the area to more development, and the socio-economic impact to the community, including Indian people. WAC 197-11-44.

The EIS must analyze how the Project's construction and cultural resource destruction, cumulatively impacts the Yakama Nation, CTUIR, Nez Perce, and Warm Springs and must look at these impacts in conjunction with and through the lens of government sanctioned cultural genocide that has impacted these tribes and threatened their life ways. Ecology's EIS analysis must not and cannot take the Project's destruction of archaeological and cultural resources out of the context of history, otherwise the cumulative and future impacts of the Project will evade analysis.

C. Water Quality Issues.

The Project would permanently destroy large segments of unique waterbodies, including "waters of the United States" and "waters of the state" in the scenic Columbia Hills. The Project would also cause downstream impacts to perennial waterbodies. The Project requires withdrawing millions of gallons of Columbia River water, threatening designated uses and impacting water quality in an already degraded river. Columbia Riverkeeper and other commenters submitted detailed technical comments to the Washington Department of Ecology on Rye's 401 water quality certification application, which outline in great detail the water quality issues from the Project and are incorporated herein by reference. *See* Columbia

Riverkeeper et. al, Public Comments on Free Flow Power 101, LLC Goldendale Pumped Storage Project Clean Water Act 401 Water Quality Certification, (Nov. 9, 2020) (Appendix 1). Ecology must analyze the water quality issues identified in Columbia Riverkeeper et al.'s 401 certification comments in the EIS.

D. Avian, Terrestrial, and Aquatic Wildlife Impacts.

The Project will have significant impacts on wildlife. On March 10, 2020, comments to FERC, the Washington Department of Fish and Wildlife (WDFW) noted: "We disagree with the applicant's opinion that the habitat near the upper reservoir is not unique or uncommon. The uniqueness of this habitat is linked to the close proximity to golden eagle and prairie falcon nesting habitat." Comments by WDFW and the U.S. Fish and Wildlife Service (USFWS) detail the Project's impacts to wildlife, including increased mortality of bats and raptors by nearby wind turbines, and wildlife habitat. WDFW Comment to FERC, (Mar. 10, 2020), *In* FERC Docket No. 14861; USFWS Comment to FERC (Mar. 3, 2020), *In* FERC Docket No. 14861. Furthermore, the Oregon Department of Fish and Wildlife (ODFW) and WDFW collectively identified four threatened, endangered, candidate, or proposed species, as well as one critical habitat within the project boundary.[5] *See* Letter from U.S. Dep't of Interior Fish & Wildlife Service to FERC (Oct. 14, 2020), *In* FERC Docket No. 14861. Rye elected to site its Project adjacent to and, in the case of the upper reservoir, within a wind turbine complex. In multiple comments to FERC, USFWS and WDFW describe how building large reservoirs will attract birds—including threatened, sensitive, and candidate species—and, in turn, increase birds killed by the wind turbine complex. USFWS explains:

> As recently as January 2020, a golden eagle wind turbine strike mortality occurred southwest of the proposed Project (Figure 1). Five additional golden eagle mortalities have been documented to the northeast of the proposed Project. Two golden eagle nests also occur within close proximity to the proposed Project. This history of mortalities shows a landscape already compromised by wind power infrastructure. Currently golden eagles appear to have a difficult time navigating the wind currents affected by existing wind power infrastructure near the project area. The potential of the proposed Project to further the remaining laminar wind currents lends credence that resulting impacts to avian species would not be exclusive to wind power production in the area.

USFWS Comment to FERC (Mar. 3, 2020), *In* FERC Docket No. 14861. USFWS also notes that radio telemetry data collected in 2007 for eight months "indicates significant use of the entire project area" by golden eagles. *Id.* at 2. USFWS explains: "Since prey availability is a primary

[5] ODFW and WDFW collectively identified the following species: 1. The Western Distinct Population Segment of Gray Wolf; 2. Gray Wolf; 3. Yellow-Billed Cuckoo; and 4. Bull Trout. WDFW also identified Bull Trout critical habitat as within the project boundary.

factor in governing habitat selection of golden eagles . . . the habit in the area of the proposed upper reservoir is a determining factor in golden eagle nesting preference for the area." *Id.* at 2 - 3 (internal citations omitted). The Project also threatens bats. WDFW notes:

> The construction of a new body of water at the upper reservoir, will likely provide habitat for and attract insects in close proximity to wind turbines. In turn the insect[s] will attract foraging bats to the area, putting them in close proximity to the wind turbines. Bats are also attracted to water features to drink from. Bat fatalities have been found to be caused by wind turbine blade strikes and bats flying close to the turbine blades in an effort to avoid them resulting in barotrauma. There are no available bat survey data specific to the Project upper reservoir site. Bats are known to have a long life span and slow reproductive rate. Loss of large numbers of bats may have significant impacts to local or regional populations.

WDFW, Comment to FERC, (Mar. 10, 2020), *In* FERC Docket No. 14861. USFWS and WDFW comments detail the direct and indirect wildlife-habitat impacts from the Project's infrastructure, and how the Project's location, adjacent to a large wind turbine complex, will harm threatened, sensitive, or candidate species. Both WDFW and USFWS provided detailed recommendations for the Project's Draft License Application compensatory wildlife mitigation plan. To date, Rye has yet to produce a mitigation plan that incorporates key agency recommendations. *See* FLA Appendix D, *Wildlife Mitigation Plan* (June 2020).

Ecology's EIS must address the Project's impacts on wildlife, including the loss of habitat as a result of the new development, the future implications of siting a large scale development here on wildlife, the increase in avian mortality from wind turbines as a result of increased avian activity next to reservoirs, and the impacts to threatened, endangered, candidate, and/or proposed species.

E. Wind Turbines near Proposed Project.

Rye chose to site the upper reservoir within and directly adjacent to an existing wind turbine complex. FLA Exhibit E at 5 (Figure 2.1-1A). The upper reservoir and the 62-wind-turbine complex, are located on land that is leased by the Tuolumne Wind Project Authority (TWPA) and contains TWPA's wind turbines, which TWPA uses to supply energy and capacity to the Turlock Irrigation District (TID). TID is an irrigation district organized under the laws of the State of California (California Water Code §§ 20500-29978) and supplies electric power and energy to the residents and businesses within its service area. *See* Turlock Irrigation District, Comment to FERC, (Mar. 11, 2020), *In* FERC Docket No. 14861. TID raised five concerns regarding the Project. Specifically, TID raised concerns that the Project would: (1) redirect the wind used by the turbines, which would reduce their energy output; (2) increase wind turbidity, which would reduce their energy output and increase wear and tear on the turbines; (3)

saturate and thereby weaken the foundations of some of the turbines; (4) increase the wildlife around the turbines, which will increase animal strikes and interfere with TWPA's operations and output; and (5) interfere with the operations of the turbines' underground power lines when constructing the Project's underground components. *Id.* at 2–3. The concerns raised by TID must be analyzed by Ecology in their environmental review because they involve unique risks on the environment in this geographic location.

Furthermore, Rye has failed to provide adequate information in response to Commission staff's request for more information following Rye's deficient FLA. Specifically, FERC states that,

> In order to assess the compatibility of the proposed project with existing land uses and the potential indirect effects of the proposed project on the golden eagle, staff requested in comments on the draft license application, that you conduct studies (e.g., modeling) to demonstrate how project construction and operation would influence air flow above the upper reservoir and around the wind turbines and how it would affect wind turbine operation and generation and include the modeling results in the final license application.
>
> Without elaboration, in the final license application, you acknowledge the potential influence of the project on wind turbine performance and wind flow, but state that a thorough analysis can only be performed during final project design.

Letter from FERC to Erik Steimle, (Jul. 23, 2020), *In* FERC Docket No. 14861. In a December 17, 2020 letter from FERC, the Commission denied Rye's request to use the Expedited Licensing Process because of the information deficiencies in the FLA, stating that "[b]ased on staff's analysis, FFP's November 20, 2020 and December 4, 2020 filings only partially address staff's July 23, 2020 and October 29, 2020 information requests." *Id.* at 12. One such filing was Rye's wind analysis, which it committed to expand by February 2021. *Id.* The results of this wind analysis must be analyzed by Ecology because the presence of the wind turbines create and involve unique risks if this Project is implemented, including risks that would impact wildlife.

F. Aluminum Smelter Cleanup Site

According to FERC's NEPA Scoping Document,

> Portions of the project's proposed infrastructure (such as the proposed lower reservoir) would be located on the site of the former Columbia River Gorge Aluminum (CGA) Smelter, which is now a Resource Conservation and Recovery Act (RCRA) contaminated site that is currently owned by NSC

> Smelter, LLC, and is subject to ongoing management and clean-up by Washington Department of Ecology (Washington DOE).

Scoping Document at 1. Previously proposed pumped storage projects in the area have been denied licenses by FERC because of the ongoing cleanup activities associated with CGA RCRA cleanup. *See Public Utility District No.1 of Klickitat County, Washington, Clean Power Development, LLC,* 155 F.E.R.C. ¶ 61,056 (2016). Rye's FLA states that,

> The impoundment has tested as having non-hazardous and non-dangerous material; however, this area will be characterized further prior to being excavated as part of the construction of the lower reservoir. Because the material is unsuitable fill, it will be excavated and properly disposed of pursuant to full characterization in collaboration with the Washington Department of Ecology.

It is concerning that Rye has not completed characterization of this area as part of the FLA, nor has the developer created a plan for dealing with the material excavated during construction, if further characterization conflicts with prior testing. If material is excavated during construction and tests as being hazardous or dangerous waste, Rye must have a plan in place for properly disposing of that material in accordance with state and federal law. That being said, Ecology must include an analysis of the status of CGA as part of its environmental review, particularly focusing on any incremental benefits to cleanup that may occur from Project construction and adverse significant effects. 40 C.F.R. § 1508.27(b)(1). Additionally, Ecology must analyze whether or not Project construction activities may threaten a violation of State, Federal, or local law in regards to ongoing cleanup of the CGA RCRA site.

1. Other Issues to Evaluate in the EIS

Ecology must also examine the following issues in the EIS:

- The Project's environmental justice impacts, including the Project's direct, indirect and cumulative impacts to Tribal Nations and Indigenous people, described above, and low-income ratepayers.

- The Project's scenic and other aesthetic impacts, including the aesthetic impacts of additional transmission lines.

- The direct, indirect, and cumulative impacts of additional transmission lines in the Columbia Basin and in the Project vicinity.

- The Project's impacts on the reliability and capacity of the BPA transmission lines and the Northwest grid.

- The Project's construction and operational impacts on air quality and noise.

- The Project's post-operation site restoration plans, including enforceable funding requirements to ensure those plans are completed.

- The Project's impacts on the Columbia River in the event of a reservoir failure.

- The Project's impacts on recreation, including paragliding, fishing, boating, birdwatching, petroglyph viewing, hunting, hiking, windsurfing, kiteboarding, kayaking, and other forms of recreation.

- The Project's construction and post-construction traffic impacts.

- The Project's socioeconomic impacts, including impacts to ratepayers.

G. Conclusion.

Commenters respectfully reiterate that the EIS must examine the full direct, indirect, and cumulative impacts of the proposed Project. This Project will significantly affect the quality of the human environment. Commenters identify pertinent issues that Ecology must address in its environmental review and which emphasize that the intensity of this project, i.e. the severity of the impact, is extremely high, destroying irreplaceable tribal cultural and religious resources and archeological sites, infringing on tribal peoples' access to food and medicine gathered in the area, impeding access to culturally significant areas, and impacting water quality and wildlife.

Sincerely,

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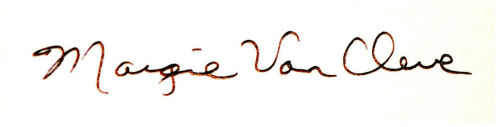

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APPENDIX 1

APPENDIX 2

APPENDIX 3

APPENDIX 4

APPENDIX 5