



August 9, 2022

Sage Park
Department of Ecology
Central Region Office
Attn: Goldendale Energy DEIS
1250 W. Alder Street
Union Gap, WA 98903-0009

Submitted electronically via: <https://admin.ecology.commentinput.com/?id=KNBCY>

RE: Comments on the Proposed Goldendale Energy Storage Project, State Environmental Policy Act Draft Environmental Impact Statement, Publication No. 22-06-006

Dear Regional Director Park,

The following comments are submitted on behalf of Columbia Riverkeeper, Washington Chapter of the Sierra Club, Washington Environmental Council, and Friends of the White Salmon (together “Commenters”) on State Environmental Policy Act (“SEPA”) Draft Environmental Impact Statement (“DEIS”), Publication No. 22-06-006, issued by the Washington Department of Ecology (“Ecology”), on June 6, 2022. For reasons described below, before issuing a final Environmental Impact Statement, Ecology must conduct a more thorough analysis of the direct, indirect, and cumulative impacts of the proposed project on the people and environment. In addition, Ecology must identify and analyze the alternative to this project that will have less environmental impact.

Factual Background

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.

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 contaminated site, which includes 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) (Appendix 1). 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 SEPA process.

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.

State Environmental Policy Act

The State Environmental Policy Act ("SEPA") is Washington's core environmental policy and review statute. Like its federal counterpart, the National Environmental Policy Act ("NEPA"), SEPA broadly serves two purposes: first, to ensure that government decision-makers are fully apprised of the environmental consequences of their actions and, second, to encourage public participation in the consideration of environmental impacts. *Norway Hill Preservation*

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).

and Prot. Ass'n v. King Co, 87 Wn.2d 267, 279 (1976). For decades, SEPA has served these purposes effectively, requiring full environmental reviews for projects with significant environmental impacts.

SEPA was enacted to “encourage productive and enjoyable harmony between humankind and the environment” and to “prevent or eliminate damage to the environment and biosphere.” RCW § 43.21C.010. Thus in adopting SEPA, the Washington legislature declared the protection of the environment to be a core state priority, “recognize[ing] 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 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).

SEPA is more than a purely “procedural” statute that encourages informed and politically accountable decision-making. SEPA requires agencies to integrate environmental concerns into their decision making processes by studying and explaining environmental consequences before decisions are made. *See Stempel v. Dep't of Water Resources*, 82 Wn.2d 109, 117–18 (1973). In enacting SEPA, the state legislature gave decision-makers the affirmative authority to deny projects where environmental impacts are significant, cannot be mitigated, and collide with local rules or policies. SEPA provides substantive authority for government agencies to condition or even deny proposed actions—even where they meet all other requirements of the law—based on their environmental impacts. RCW § 43.21C.060. As one treatise points out, when this premise was challenged by project proponents early in SEPA’s history, “the courts consistently and emphatically responded that even if the action previously had been ministerial, it became *environmentally discretionary* with the enactment of SEPA.”²

Discussion

A. Purpose and Objectives

Under SEPA, each EIS must “specify[] the purpose and need to which the proposal is responding. . . .” WAC 197-11-440(4). Because the stated purpose and need for an action determines the range of alternatives, it is essential that the agency articulates the project’s purpose and need from the agency’s perspective rather than simply adopting the project proponent’s objectives for the project as its own. As courts have cautioned, “[o]ne obvious way for an agency to slip past the structures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.)” *Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir. 2002).

According to Rye, the purpose of and need for this project 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

² Richard Settle, *SEPA: A Legal and Policy Analysis*, §18.01[2] (2014) (emphasis added).

3. Commenters agree this laudable goal is the true purpose of this project. As such, 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.

Nonetheless, here, Ecology has identified the objectives of the proposed action as building a pumped-storage hydropower facility along the Columbia River capable of generating 1,200 MW of electricity. Draft EIS at 6. By adopting the proponent’s purpose and need statement for the proposed action, Ecology has unnecessarily limited the range of potential alternatives that could meet the true objective—namely, developing a green energy storage project. Indeed, as discussed below, to date, Ecology has failed to identify any “reasonable alternatives,” WAC 197-11-440(5)(b), to the proposed action. This indicates that the purpose and need is too narrowly defined. The purpose and need, as stated, do not allow the consideration of viable alternatives that could allow this to happen, with less environmental impacts than the proposed action.

B. Reasonable Alternatives

“The Washington Supreme Court has emphasized that the focus of SEPA is environmental impacts, explaining that a reasonable alternative is one that could feasibly attain or approximate a proposal's objectives *at a lower cost to the environment.*” *Pub. Util. Dist. No. 1 of Clark Cty. v. Pollution Control Hearings Bd.*, 137 Wash. App. 150, 161–62, 151 P.3d 1067, 1072 (2007) (citing *King County v. Cent. Puget Sound Bd.*, 138 Wash.2d 161, 184–85, 979 P.2d 374 (1999)). To this end, SEPA requires that an EIS contain a detailed discussion of alternatives to the proposed action. RCW § 43.21C.030(c)(iii). Indeed, “[t]he required discussion of alternatives to a proposed project is of major importance, because it provides a basis for a reasoned decision among alternatives having differing environmental impacts.” *Weyerhaeuser v. Pierce Cty.*, 124 Wash. 2d 26, 38, 873 P.2d 498, 504 (1994). To ensure this analysis is robust, “[t]here must be a reasonably detailed analysis of a reasonable number and range of alternatives” *Id.*, 124 Wash. 2d at 41 (citing *Settle, The Washington State Environmental Policy Act: A Legal and Policy Analysis* § 14(b)(ii) (4th ed. 1993)).

SEPA’s regulations provide that an EIS must consider as alternatives those “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). The discussion of alternatives in an EIS need not be exhaustive, but the EIS must present sufficient information for a reasoned choice among alternatives. *Toandos Peninsula Ass’n v. Jefferson Cy.*, 32 Wash. App. 473, 483 (1982). In this instance, because the proposal is for a private project on a specific site, Ecology must evaluate the “No Action Alternative” and “other reasonable alternatives for achieving the proposal’s objective on the same site.” WAC 197-11-440(5)(d).

Here, Ecology has failed to consider a range of “reasonable” alternatives. Instead, Ecology admits that it identified two alternatives to be evaluated in this EIS, the proposed project and the No Action Alternative. DEIS at 4. As a result, Ecology has failed to comply with SEPA. Indeed, Rye admits that there are other “viable, least-cost energy storage options available,” in addition to its preferred pumped storage technology. FLA at 1. Ecology must 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.

1. Alternatives for Renewable Energy Storage

First, Ecology improperly dismissed from consideration an alternative of installing pumps at existing dams and reservoirs instead of constructing new reservoirs. As Ecology notes, “[t]his could result in a lesser environmental impact compared to the proposed project.” DEIS at 18. Yet, Ecology failed to develop and analyze this alternative because “no specific suggestions were provided for such an alternative’s location, design, or the circumstances of existing water rights.” *Id.* Thus, according to Ecology, “this alternative does not meet the criteria to attain the proposal’s objectives.” Ecology’s failure to fully analyze these potential alternatives violates SEPA. *See* SEPA Handbook at 36. It is Ecology’s duty to determine the reasonableness of an alternative based on whether the alternative in question feasibly attains or approximates the proposal’s objectives; and whether the alternative provides a lower environmental cost or decreased level of environmental degradation than the proposal. *Id.* Ecology cannot shirk this responsibility once a potentially viable alternative is identified simply because it is not handed all of the information needed to analyze the alternative. Instead, Ecology must gather the relevant, necessary sufficient to develop, describe, and study the alternative. RCW § 43.21C.030(e).

Next, Ecology failed to analyze the potential development of other renewable and/or decarbonized energy storage technologies at the site. For example, Ecology notes that the scoping comments discussed stacked blocks, liquid air, underground compressed air, flow battery storage, and solar and lithium-ion battery storage, as potential alternatives. DEIS at 18. Ecology dismissed these alternatives, without explanation, summarily stating only that “[n]one of these alternative energies meet the criteria to attain the proposal’s objectives.” *Id.* This cursory analysis violates SEPA in two ways. First, When an agency eliminates an alternative from its consideration, it must document its reasoning in the DEIS. SEPA Handbook at 36; *cf. Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 870 (If an agency rejects an alternative, it must adequately explain why it has chosen not to analyze an alternative in depth). Here, the public is left to guess what “criteria” these otherwise viable alternatives fail to meet. Ecology’s failure to articulate its reasoning under the criteria outlined by SEPA means the DEIS does not serve as a “means of assessing the environmental impact” of the proposed agency action, but “rather ... jutsif[ies] [a] decision already made.” WAC 197-11-402(10).

Second, given the potential for these alternative to meet the true purpose of this project—namely, the development of an energy storage project that will 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”—Ecology must analyze these alternatives. Failing to do so violates the central tenets of SEPA by failing to ensure the decision-makers are fully apprised of the environmental consequences of their actions and public participation in the consideration of environmental impacts. By purposefully omitting the detailed review and consideration of these viable alternatives, Ecology is in effect rubber stamping the project as proposed. This misses the point of SEPA.

Ecology cannot point to the other alternatives “eliminated from detailed evaluation” to save the DEIS. Although Ecology certainly is permitted to “indicate the main reasons for eliminating alternatives from detailed study,” it must nonetheless, “[p]resent a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative.” WAC197-11-440(5)(c)(v),(vi). Here, by not providing a more detailed analysis of the other alternatives Ecology has failed to include the required analysis of “reasonable alternatives.”

2. On-site Design Alternatives

Ecology’s limited consideration of on-site design alternatives suffer from the same basic flaws.

To begin with, Ecology’s inclusion of larger project designs is inconsistent with SPEA and does not move this analysis forward. In short, as Ecology recognizes, the larger project designs are not viable alternatives by definition because they are not less environmentally harmful, and therefore do not meet the “reasonable alternatives” criteria. WAC 197-11-440(5). SEPA’s regulations provide that an EIS must consider as alternatives those “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) (emphasis added). Ecology cannot point to these alternatives to suggest it has considered a reasonable range of viable alternative designs.

Ecology’s cursory review of the 4,800 Acre-Foot Reservoir Alternative also fails to comply with the law. Ecology concludes that “[t]he size and design of this alternative would create economic and power generation inefficiencies. The cost of energy generation would be excessive due to the spread over four turbines and the 8-hour continuous run time would be less compatible with the anticipated needs of the electrical grid.” DEIS at 19. Again, Ecology fails to provide sufficient explanation of the “economic and power generation inefficiencies,” to help the public understand why this is not a viable alternative. For example, Ecology suggests the cost of generating power under this alternative would be “excessive.” Excessive compared to what and on what scale? Would the lower environmental impact of this design justify the additional costs? Further, Ecology suggests that the shortened run time would be “less compatible” with the energy demands. How much less and what impact would that have on the potential for the project to contribute to the region’s energy goal? And again, would the tradeoff of a less impactful project be sufficient to justify the reduced compatibility. These are the types of questions Ecology must ask and answer in the EIS to ensure a reasoned decision making process and an informed public.

If Ecology truly cannot envision a less environmentally harmful alternative for consideration and analysis, not complying with SEPA is not the correct action. Instead, as discussed above, Ecology likely needs to reevaluate the purpose and object of the proposed action, and broaden the definition to allow the consideration of additional, reasonable measures that could meet the newly defined purpose. Alternatively, Ecology could return the question to the project proponent for them to develop the information necessary for the agency to consider truly reasonable alternatives. Absent taking such a step, Ecology has no choice but to deny the proposed action because it cannot comply with SEPA. RCW § 43.21C.060.

C. Adequacy of the Environmental Review

An EIS must evaluate the likely impacts related to the project. WAC 197-11-060(4). Decision makers must provide a “detailed statement” of environmental impacts. RCW § 43.21C.030(c). SEPA requires full disclosure and “detailed” consideration of all affected environmental values. At its heart, SEPA is an “environmental full disclosure law.” *Norway Hill Preservation and Protection Association v. King Cnty. Council*, 87 Wn.2d 267 (1976). The *Norway Hill* court also highlighted the legislature’s intent that “environmental values be given full consideration in government decision making,” and its decision to implement this policy through the procedural provisions of SEPA which “specify the nature and extent of the information that must be provided, and which require its consideration, before a decision is made.” *Id.* at 277–78.

“A proposal’s effects include direct and indirect impacts caused by the proposal. Impacts include . . . the likelihood that the present proposal will serve as precedent for future actions.” WAC 197-11-060(4)(d). The scope of impacts includes direct, indirect, and cumulative impacts. WAC 197-11-792(2)(c)(i)-(iii). “The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC 197.11.792) may be wider than the impacts for which mitigation measures are required of applicants.” WAC 197-11-060(4)(e). It is implicit in SEPA that an “agency cannot close its eyes to the ultimate probable environmental consequences of its current action.” *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344 (1976).

Environmental reviews under SEPA must identify significant impacts on the natural and built environment. WAC 197-11-440(6)(e). Such reviews must use sufficient information and disclose areas where information is speculative or unknown. WAC 197-11-080(1), (2). Where there is scientific uncertainty, Washington courts have required agencies to disclose responsible opposing views and resolve differences. These requirements feed into the ultimate standard of review for EISs: adequacy is based on a rule of reason. *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344 (1976). Courts require reasonably thorough information disclosure and discussion, good data and analysis to support conclusions, and sufficient information to make a reasoned decision. *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 633 (1993). Sufficiency of the data is also assessed under the “rule of reason,” which requires a “‘reasonably thorough discussion of the significant aspects of the probable environmental consequences’ of the agency’s decision.” *Weyerhaeuser v. Pierce Cnty.*, 124 Wn.2d 26, 38 (1994) (citations omitted).

In making a similar assessment under NEPA, federal courts require agencies to take a “hard look” at environmental impacts. More specifically, for review of the NEPA claims, the Court must “ensure that an agency has taken the requisite hard look at the environmental consequences of its proposed action, carefully reviewing the record to ascertain whether the agency decision is founded on a reasoned evaluation of the relevant factors.” *Te-Moak Tribe v. Interior*, 608 F.3d 592, 599 (9th Cir. 2010) (quoting *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1992) (internal quotation marks and citations omitted)). This review must be “searching and careful.” *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 858 (9th Cir. 2005).

Washington Courts have employed the “hard look” doctrine directly or in other cases have required full disclosure and consideration of environmental values. *See Pub. Util. Dist. No. 1 of Clark Cnty. v. Pollution Control Hearings Bd.*, 137 Wash. App. 150, 158, 151 P.3d 1067, 1070 (2007); *Toward Responsible Dev. v. City of Black Diamond*, 179 Wash. App. 1012 review denied, 180 Wash. 2d 1017, 327 P.3d 54 (2014) (unpublished opinion) (“Courts review an EIS as a whole and examine all of the various components of [the] agency’s environmental analysis ... to determine, on the whole, whether the agency has conducted the required ‘hard look.’”); *see also Coalition for a Sustainable 520 v. U.S. Department of Transportation*, 881 F. Supp. 2d 1243, 1259 (W.D. Wash. 2012) (holding implicitly that “hard look” under NEPA sufficient for SEPA review). Where “hard look” is not discussed or employed directly, courts have required a “reasonably thorough discussion” of environmental impacts. *See Toward Responsible Dev. v. City of Black Diamond*, 179 Wash. App. (2014); *PT Air Watchers v. State, Dep’t of Ecology*, 179 Wash. 2d 919, 927, 319 P.3d 23, 27 (2014) (citing *Norway Hill*, 87 Wn.2d at 275) (requiring “full disclosure and consideration of environmental values”).

1. Water Resources

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). Ecology must analyze the water quality issues identified in Columbia Riverkeeper et al.’s 401 certification comments in the EIS.

2. Aquatic Species and Habitats

Ecology has failed to acknowledge, much less address, the potential impacts to fish species from this project. The Columbia River, near the project, provides habitat for numerous species including, but not limited to, chinook (*Oncorhynchus tshawytscha*), coho (*Oncorhynchus kisutch*), and sockeye salmon (*Oncorhynchus nerka*), steelhead (*Oncorhynchus mykiss*), Pacific lamprey (*Entosphenus tridentata*), river lamprey (*Lampetra ayresi*), American shad (*Alosa sapidissima*), white sturgeon (*Acipenser transmontanus*), bluegill, black crappie (*Pomoxis nigromaculatus*), largemouth bass, smallmouth bass, pumpkinseed (*Lepomis gibbosus*), walleye, white crappie (*Pomoxis annularis*), and yellow perch. Rye intends to purchase the water supply used to initially fill the reservoir, and any necessary make-up water for the project, from Klickitat Public Utility District (KPUD), which collects its water from an existing intake pond on the Columbia River. Rye and KPUD have offered several inconsistent and conflicting descriptions of the current intake and whether KPUD will install a fish screen that meets NMFS’ criteria. As both FWS and WDFW have noted the current intake does not meet NMFS’ criteria and the

design likely is not sufficient to ensure native fish are not entrained or impinged at the facility. *See* U.S. Department of Interior Comment on Federal Energy Regulatory Commission’s Notice of Application Ready for Environmental Analysis for the Goldendale Energy Storage Project, FERC No. 14861-002, Klickitat County, Washington, and Sherman County, Oregon (May 23, 2022) at 6; WDFW, WDFW Preliminary Recommendations For Terms and Conditions For The Goldendale Energy Storage Project, FERC Project No. 14861 (May 18, 2022) at 8-9. Given the direct and indirect significant impacts the initial withdrawal and subsequent makeup withdrawals may have on Columbia River fish species, some of which are critically imperiled, Ecology must study this issue closely in the EIS.

3. Terrestrial Species and Habitats

Ecology’s conclusion that the project will not have significant impacts on terrestrial species and their habitats is flawed for at least two reasons. First, Ecology does not have the information necessary to reach a reasoned decision for most of the species impacted by the project. Second, the available information demonstrates the project will have significant impacts on wildlife.

First, Ecology has identified numerous species that may be impacted by this project. For example, Ecology has identified dozens of bird species that use or likely use the site, including some state and federally protected species, including but not limited to golden eagles, bald eagles, peregrine and prairie falcons, northern harrier, and ferruginous hawk. In addition, mammals large and small, such as elk, mule deer, mice, voles, gophers, skunks, badgers, foxes, and squirrels, including the state protected western gray squirrels may use the site. Bats, including Townsend’s big-eared, big brown bat, pallid bat, California myotis, western small footed myotis, hoary bat, silver-haired bat, and Little brown bat, all are known to, or may use the site.

Yet, as Ecology recognizes, there is very little information on how these species may use the site, and what information is available is dated. For example, on March 10, 2020, in comments to the Commission, 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. Indeed, 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 the Commission, 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 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).

Yet despite this important information, Ecology appears to rely exclusively on survey data from nearly twenty years ago when discussing the potential impacts on bald and golden eagles. *See* DEIS at 123-24. Ecology has failed to explain why it is relying on such stale information, when newer information is both available, and where there are still gaps, reasonably obtainable. WAC 197-11-080(1), (2).

Ecology’s analysis of the potential impacts on other bird species suffers from similar problems. Ecology notes that:

There is a potential for significant indirect adverse impacts on talus and cliff habitat if they can no longer support breeding raptors because of the proximity of human development and reduced prey availability. Such impacts could result in ongoing or repeated disturbance of habitat that is critical to species viability. The impact level would be dependent on the current presence of breeding raptors in this habitat determined during wildlife surveys.

DEIS at 133. Ecology has in effect admitted it has failed to obtain the information necessary to make a reasoned decision on the potential impact of this project on these species.

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. Yet, despite this, Ecology has not required any surveys of bats in the areas, and again is relying on extremely dated information. In addition, Ecology's analysis of the potential impacts on bats and bat populations is insufficient. First, there is no analysis of the potential impact to bat and bat populations from the construction activities. *See* Terrestrial Species and Habitats Resource Analysis Report Proposed Goldendale Energy Storage Project (June 2022), at 23-28 ("Terrestrial Species Report"). Next, Ecology concluded that "[b]ecause most flying species would be able to avoid the study area, there would be no significant adverse impacts." *Id.* at 32. This conclusion wholly ignores the potential that bats will in fact be attracted to the project site, and thus placed at greater risk. In fact, Ecology notes this potential for Little brown bats, a state species of concern, but without addressing the scope of this risk. *Id.* Ecology acknowledges that Rye has not proposed any mitigation measures to prevent attracting bats to the project site. DEIS at 133. Moreover, to the extent that bats currently use the project site, Ecology offers no analysis of the impact displacing them for the area will have on individuals or the populations as a whole.

This lack of meaningful analysis continues with respect to terrestrial mammals. For example, the DEIS fails to address the potential impacts on the western gray squirrel. As Ecology notes, the western gray squirrel, a state threatened species, is potentially present in the project area. Terrestrial Species Report at 21. The proposed project has the potential to increase key identified threats to western gray squirrels in Washington State including habitat destruction and degradation from development and forest management, roadkill mortality, and wildfire risk. For example, western gray squirrels are wary of humans. The planned construction of the project over several years will undoubtedly occur during western gray squirrel breeding seasons and when juveniles are emerging from nests. Such disturbance during these key periods in the squirrels' life cycles could have significant impacts on the squirrel population in the region. And because of the particular significance of the squirrel population in Klickitat and Yakima counties, this could have implications for the species status statewide. Indeed, Ecology appears to recognize the potential significant direct and indirect impacts to the species.

Yet, Ecology ultimately finds that those impacts will not be significant. This conclusion is based on two flawed assumptions. First, Ecology repeatedly qualifies its assessment of the potential impacts to the western gray squirrel by noting the impacts will occur "if" squirrels are present. However, as Ecology acknowledges, "western gray squirrel presence is unknown because of the lack of recent wildlife surveys in the study area." Relying on this lack of information to avoid a meaningful analysis of the impacts of a project is inconsistent with SEPA.

Second, Ecology concludes that "with mitigation, there would be no significant adverse impacts on special status species from operation of the proposed project." Terrestrial Species Report at 33. Yet, there are no mitigation measures specifically designed to mitigate the potential harms to squirrels. The vague and nonspecific measures such as "[s]et[ting] appropriate speed limits for the project area to minimize collisions with wildlife," are not sufficient. First, there is no indication that Rye will set speeds sufficient to protect western gray squirrels, particularly if it proceeds with the implied presumption that squirrels are not present. Second,

simply minimizing, and not eliminating, such collisions is not protective of an already at risk species. Similarly, the proposed mitigation plan does not include measures to protect squirrel habitat or protect individuals during critical life stages, such as breeding and juvenile emergence. As such, Ecology cannot reasonably conclude that the proposed mitigation measures will eliminate the potential significant impacts to western gray squirrels.

4. Aesthetics/Visual Quality

The DEIS concluded, “the proposed project would have no significant and unavoidable adverse impacts related to aesthetics and visual quality.” DEIS at 171. However, the DEIS also mentions that, “[t]here would also be impacts to Tribes from the view changes, which are described in Section 4.9 and the Tribal Resources Analysis Report (Appendix H).” DEIS at 171. It is incredibly problematic that the DEIS chose to relegate any and all impacts to Tribes to Section 4.9 instead of including impacts throughout the analysis. To exclude any aesthetics/visual quality impacts to Tribes and Native people seems to suggest that those impacts do not matter in the analysis.

“Visual quality, or aesthetics, refers to natural and human landscapes and how people see them. Visual quality is the value that people place on observing their surrounding environment.” DEIS at 171. In an interview discussing the Goldendale project and other sacred sites that have been under threat, Jerry Meninick, Yakama Nation’s deputy director of culture, stated “In this place... the slightest noise – voices from nearby hikers, feet crunching up a trail – would disturb the “pristine atmosphere.” (when referring to Laliik or Rattlesnake Mountain). Courtney Flatt, *It’s Irreversible: Goldendale Green Energy Project Highlights a History of Native Dispossession*, NWPB (Apr. 2, 2021).³ If slight noises are enough to disturb the atmosphere of another highly sacred site, construction and operation of the Northwest’s largest pump storage project would significantly impact how Native people see this area.

Meninick went on to compare the sacred site of Laliik to Notre Dame, “The whole world is in pain right now and in sorrow because of a fire (at Notre Dame). How do you think we feel? Because this, too, is like that church to us.” *Id.* No one would think to ignore the aesthetic/visual quality of Notre Dame, so why is it so easy to do so here? The DEIS inaccurately and inappropriately narrowly defines who is eligible to be considered impacted by aesthetic/visual impacts. Tribal Nations and Native people must be included in this evaluation and consideration of impact.

5. Cultural and Tribal Resources

The EIS conducted an analysis of potential Tribal and cultural resources that are within the project area. Ecology states that there are no potentially historic standing structures in the area, and no Cultural Landscapes (“CL”) have been identified. Further, no human remains or cemeteries have been identified in the project area. Therefore, the impact analysis done by Ecology focuses on archeological resources, Traditional Cultural Properties (“TCP”), and other Tribal resources. Commenters are in agreement with the DEIS that there are significant adverse

³<https://www.nwpb.org/2021/04/02/its-irreversible-goldendale-green-energy-project-highlights-a-history-of-native-dispossession> (last visited Aug. 8, 2022).

impacts to tribal cultural resources and that there is no mitigation that could avoid those impacts. Below Commenters have included additional points that must be included and addressed in the Final EIS.

The project area is within ceded Yakama Nation land and the area has historically been used by the Yakama Nation, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Confederated Bands of the Warm Springs Reservation of Oregon (Warm Springs), and the Nez Perce Tribe for hunting, traditional gathering, fishing, camping, and traditional ceremonies. As a result, there is a dense concentration of archaeological sites in the area. The DEIS states that, according to the Department of Archaeology and Historic Preservation, 79% of the study area is within high risk or very high risk areas for the possibility of encountering archaeological sites. (DAHP (Department of Archaeology and Historic Preservation), 2022a. Probability of Encountering Archaeological Resources within the Goldendale Energy Storage Project Area. Map Authors: A. Hsu, M. McLemore. March 22, 2022.)

The Yakama Nation has identified two TCPs in the area; *Pushpum* and *Nch'ima*. Warm Springs supports the Yakama Nation on the significance of these TCPs. *Pushpum* is the location of ongoing harvests of traditional resources and of ceremonies and other traditions. *Nch'ima* is a traditional fishing ground and village site. CTUIR identified two TCPs: one is *Pushpum* and the other is confidential to non-Tribal members. CTUIR has indicated that they have used the other TCP area for traditional activities since time immemorial. The Nez Perce Tribe provided documentation to Ecology demonstrating a similar evaluation of the importance of traditional gathering and ritual activities in the project area. Warm Springs supports the Nez Perce Tribe on the significance of these TCPs.

Beyond the archeological sites and TCPs, First Foods are also present in the project area. Plants and root gathering in the project area is an essential cultural practice. Ecology has documented smooth desert parsley, biscuitroot, and serviceberry as some of the important plant species in the area. Culturally significant animal species are also present in the area. Several aquatic species such as salmon, trout, and lamprey are present in the area, as are deer, elk, porcupines, waterfowl, birds, and other small mammals.

The DEIS concludes that **the proposed project would result in significant and unavoidable adverse impacts related to Tribal and cultural resources, starting during construction and continuing through operation of the project.** The DEIS further states **that they have not received information about mitigation proposed or supported by the Tribes that would reduce the level of impact.** Instead, the Yakama Nation has stated that the proposed action will have significant impacts, many of which cannot be avoided or mitigated. The Yakama Nation specifically said: “The damage to the Yakama Nation’s cultural resources and the local aquatic and terrestrial resources disproportionately injures the heritage and traditional practices of Yakama people because mitigation cannot replace the destruction of ancestral sites that are still used to observe ceremonial and cultural practices.” DEIS at 164-165.

Yakama Nation has opposed the project since its inception. Yakama Nation also opposed earlier iterations of a pumped-storage hydroelectric project 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. 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. Rye’s FEA 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.” FEA Exhibit E at 78.

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, and the DEIS does not address this either.

The DEIS further states that “[p]reservation of land and culture is essential to the identity of the Tribes. It provides the living space, the sacred and cultural sites, and the natural resources that sustain Tribal peoples and cultures. It provides spiritual and physical sustenance, and the means for economic self-sufficiency.” DEIS at 160. However, with this observation, the conclusion that there will be significant impacts to Tribal and cultural resources, and the clear message from the Yakama Nation that no mitigation will address the negative impacts of this project to their cultural resources, the DEIS does not adequately address how this project can go forward without detrimental impacts to these resources. It is clear that this project cannot continue as planned in this location, without severely impacting the Tribes’ cultural practices.

Further, Ecology must analyze how the Project’s construction and cultural resource destruction cumulatively impacts the Yakama Nation, CTUIR, Nez Perce, and Warm Springs. See section C.6., below for a detailed analysis.

Additionally, the DEIS fails to acknowledge the ongoing inadequacy with consultation, at the federal level. Consultation under Yakama Nation’s Tribal Codes and Resolutions must be between the highest ranking government officials/those empowered to make decisions and with the Tribal Council in Toppenish, Washington, the seat of Tribal government. To date this level of consultation has not happened for this project. FERC delegated consultation responsibility to Rye, a private company, and Rye hired an outside private consultant, who has repeatedly asked for information and knowledge that the Tribe cannot and will not share regarding cultural resources and practices. This is unacceptable. The exploitation, destruction, and theft of Tribal cultural and religious resources requires the specific location and details to be shared privately in the consultation process and not made publicly accessible in order to protect these resources. *See generally*, Kathleen Sharp, *An Exclusive Look at the Greatest Haul of Native American Artifacts, Ever*, *Smithsonian Magazine* (Nov. 2015) (Describing the largest artifacts sting operation in 2009 that arrested 32 and recovered hundreds of thousands of Native American artifacts that had been illegally stolen and unearthed, violating the federal Archaeological Resources Protection Act

and the Native American Graves Protection and Repatriation Act, among other laws.).⁴ If FERC cannot consult with the Yakama Nation adequately, they need to provide solutions on how to receive the information they need rather than putting a burden on the Tribe and requiring the Tribe to share this sensitive information publicly.

President Biden’s January 26, 2021 memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, “charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications.” FERC has not complied with this memorandum and needs to engage in meaningful consultation with the Tribe. Handing off the consultation responsibility to an outside private consultant is insulting to tribal sovereignty and threatens sensitive cultural resources. Ecology must acknowledge the ongoing failure of FERC and Rye to meet these important consultation obligations and should assess in the EIS the impact these ongoing failures may have on the tribes and the project.

6. Environmental Justice

The DEIS found that there would be no significant and unavoidable adverse effects related to environmental justice and that there would be no disproportionate impact on communities of color or low-income populations, and therefore no mitigation is required.

Environmental Justice impacts were analyzed by looking at potentially significant adverse direct and indirect impacts from construction and operation of the proposed project and from the no action alternative. If the analyses identified significant adverse impacts to a resource area, those impacts were further assessed for their potential to disproportionately affect communities of color and low-income populations. Looking at construction and operation, Ecology concluded that there will be no direct or indirect significant impacts, and as such, no mitigation measures are proposed.

For the environmental justice analysis, the focus is on communities of color and low-income populations, with Ecology stating that impacts to Tribal communities are discussed in Section 4.9. Therefore, impacts to Tribes and Tribal communities were not considered through the lens of environmental justice specifically, which is a gross oversight.

The Final 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 environmental 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. SEPA requires consideration of cumulative effects. WAC 197-11-0060(4)(e); WAC 197-11-330(3)(c) (“Several marginal impacts when considered together may result in a significant adverse impact.”); *White v. Kitsap Cnty.*, SHB No. 09-019 at 17 (2009) (cumulative impacts of a proposed action together with the impacts of

⁴<https://www.smithsonianmag.com/history/exclusive-greatest-haul-native-american-artifacts-looted-180956959/> (last visited Aug. 8, 2022).

pending and future actions should be considered when making a threshold determination). The DEIS does not adequately consider the cumulative effects of this project, and the cumulative impacts of green energy development on tribes specifically. The Yakama Nation, for example, already had to protect this site from another developer proposing a pumped storage project, and now they are forced to protect their culturally significant land yet again.

On July 27, 2022, Yakama Nation, joined by 17 treaty tribes across Washington state, sent a letter to Governor Inslee urging him to deny this project. The letter stated in part

Our medicines, foods, lands, and waters are sacred to us. For too long, these sacred places where we gather our foods and hold our ceremonies, have been threatened by development without consultation with, or consent from, our sovereign tribes. This is unacceptable.

Our ancestors signed Treaties with the United States, often under threat of violence and death, in exchange for our ancestral lands and sacred places. Through these treaties, we retain the rights to practice and live in our traditional ways in these places. Yet, the promises made by the government have been broken time and time again. Development and industry have threatened our ways of life for hundreds of years and continues to do so today. Our salmon populations are near extinction. Our ancient villages and ceremonial sites have been flooded. Our ways of life are under constant threat from development and climate change. We must protect our sacred places for our future generations. Letter from Yakama Nation to Governor Inslee, RE: Goldendale Pumped Storage Project Violates Yakama Nation's Sovereign Rights (July 27, 2022).

Yakama Nation, CTUIR, Nez Perce, and Warm Springs have had places of cultural and religious significance forcibly taken as locations for the Hanford Nuclear Site, the Bonneville Dam, and many other projects. These projects have caused toxic, chemical, and radioactive pollution, flooded traditional village sites and burial grounds, destroyed fishing sites, displaced Native people, and threatened lifeways. Over a hundred years of detrimental impacts to culturally significant and sacred lands by energy projects cannot be ignored or glossed over, and needs to be addressed fully in the environmental justice section of the DEIS. The DEIS does not attempt to address or analyze these historic wrongs and the impact this current project would have on the Tribes. For the DEIS to conclude that there are no significant adverse impacts to communities of color again ignores the detrimental impacts to Tribes and Native People.

7. Climate Change

The DEIS fails to consider the uncertainty around the viability of this project. In general, Commenters are supportive of good, viable renewable energy projects that are sited in consultation with Tribes, but this project is not that.

First, 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). 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 that this 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.

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 the 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.

Second, 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). The Rocky Mountain Econometrics analysis concludes that a combination of rising construction costs and decreasing open-market energy prices undercut the project purponent's claims that the project is necessary to meet the state's decarbonization goals.

Third, Ecology should evaluate the benefit of an environmental cleanup at the former CGA smelter site by evaluating the incremental *increased* benefit the project brings to the cleanup. Whether the project moves forward or not, state and federal law require CGA site cleanup. In turn, Ecology must evaluate the project's benefit by comparing the baseline cleanup requirements to the "add on" cleanup Rye promises when it builds the lower reservoir. Ecology should only include the "add on" cleanup in the proverbial benefits bucket.

Finally, the project proponent's jobs numbers demonstrate that, while the project will produce construction jobs, the project supports a relatively small number of permanent jobs (20 to 30 jobs per year post-construction in Washington). *See* FLA Exhibit E at 85. Ecology must consider whether the 20 to 30 permanent jobs per year outweighs sweeping and permanent cultural resource and environmental impacts.

Ecology's DEIS section on climate change should include this analysis.

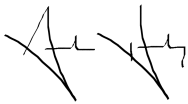
Conclusion

Commenters respectfully reiterate that the Final 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 final 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,



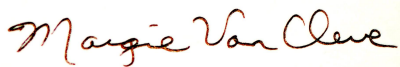
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