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08 August 2022

Sage Park
Regional Director
SEPA Responsible Official
Washington Department of Ecology
Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903-0009

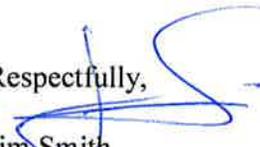
RE: Comments on the Draft Environmental Impact Statement for the
Proposed Goldendale Energy Storage Project

Dear Ms. Park,

Thank you for the opportunity to submit comments regarding the proposed Goldendale Energy Storage Project June 6, 2022 Draft Environmental Impact Statement prepared by the Washington State Department of Ecology.

In addition to the comments filed, we are also asking that Ecology more fully inform this environmental impact statement with a fully developed analysis of the environmental benefits associated with this project. This should include the site cleanup that would be completed on the old aluminum smelter site. Given our experience in renewable energy development and as the local electric service provider, our opinion is that these aspects add to the societal benefit of this project in a meaningful way and should be accounted for.

Respectfully,


Jim Smith
General Manager
PUD#1 of Klickitat County

I. INTRODUCTION

Public Utility District No. 1 of Klickitat County (KPUD) hereby submits the following written comments in response to the June 2022 Draft Environmental Impact Statement (DEIS) prepared by the Department of Ecology (DOE) for the proposed Goldendale Energy Storage project. This submittal supplements the oral testimony provided by KPUD General Manager Jim Smith at the June 28, 2022 public hearing on the proposal. In sum, KPUD strongly supports the Goldendale Energy Storage project, which if ultimately developed would result in substantial economic and environmental benefits to the Klickitat County area for which KPUD is the primary utility service provider.

On balance, the June 2022 DEIS contains a thorough, objective and accurate description of the Goldendale Energy Storage project and its anticipated environmental impacts. Subject to a few minor clarifications and corrections in the *Surface and Groundwater Hydrology Resource Analysis Report* (Appendix B) and the *Energy Resource Analysis Report* (Appendix E) that are addressed below, KPUD is generally supportive of the methodology and conclusions of the DEIS.

The critical exception, however, is the DEIS's analysis of Cultural and Tribal Resources (Section 4.9 and Appendix H). This document states—without apparent objective analysis or empirical evidence—that the Goldendale Energy Storage project would result in significant and unavoidable adverse impacts to Cultural and Tribal Resources that cannot be adequately mitigated.

KPUD is respectful of the Tribe's beliefs as stated, but it strongly disagrees with the DEIS's conclusion and the analysis underlying it. In KPUD's view, no basis has been presented by DOE for this determination other than the Tribes' own objections. Based upon KPUD's review of the DEIS, its understanding of the project, and its deep familiarity with the surrounding environment, KPUD firmly believes that measures are available which would effectively mitigate any impacts of the project to Cultural and Tribal Resources.

II. IDENTITY AND INTEREST OF KPUD

KPUD is a public utility district organized pursuant to Chapter 54.04 RCW. Per KPUD's mission statement, "Public Utility District No. 1 of Klickitat County provides safe, reliable, cost-based utility services at the lowest possible cost consistent with sound business principles." In furtherance of this mission, KPUD furnishes water, wastewater and electrical utility service to thousands of customers within its designated service area in Klickitat County. The proposed Goldendale Energy Storage project is located within KPUD's service area, and it is anticipated that KPUD would supply the water needed for the initial fill of the facility's upper reservoir as well as the electricity for the facility's day-to-day "station service" electric loads.

As a public power leader in facilitating renewable energy development, KPUD also believes that the Goldendale Energy Storage project is vitally important to meeting the State of Washington's renewable energy and carbon reduction goals while simultaneously helping to ensure power system reliability and power price affordability as Washington transitions to the lower-carbon energy system of the future. In this regard, the Goldendale Energy Storage project offers substantial safety and environmental benefits that should factor meaningfully in the SEPA analysis for this proposal. As the DEIS itself acknowledges, increasing electricity storage positively affects climate change by reducing carbon emissions. In order to ensure the reliability of the local electric grid and the affordability of electrical energy service to consumers, it is KPUD's position that integrating renewable resources will require long-duration pumped

hydro-storage in addition to other technologies and strategies. Particularly during extreme weather events, the supply of electricity is critically important to the safety of KPUD's residential customers for heating, air conditioning, potable water supply, and other life-sustaining uses.

For these reasons, KPUD strongly supports the Goldendale Energy Storage project. The local investment implicated by this proposal would provide significant economic and tax benefits to Klickitat County. These revenues will flow to hospitals and emergency response organizations (for example, Rural 7 Fire & Rescue and other tax revenue-dependent local agencies), thus providing significant benefits to the local environment and the community's well-being. The proposed facility has been recognized as a *Project of Statewide Significance* in light of these considerations.

III. SUBSTANTIVE COMMENTS ON DEIS

KPUD's comments regarding the June 2022 DEIS are grouped into two categories: First, minor factual clarifications to the Water and Energy Resources provisions of the DEIS, and second, more fundamental concerns regarding the conclusions and supporting methodology set forth in the DEIS's evaluation of Cultural and Tribal Resources.

3.1 Water and Energy Resources

Through its organizational mission and expertise in public utility matters, KPUD has a particular interest in those components of the DEIS that address water and energy issues. This general interest is underscored by KPUD's role as a utility service provider for the proposed Goldendale Energy Storage project. While KPUD generally concurs in the analysis and conclusions of the DEIS related to these subjects, a few references in the *Surface and Groundwater Hydrology Resource Analysis Report* (Appendix B) and the *Energy Resource Analysis Report* (Appendix E) warrant correction and/or clarification as set forth below.

Surface and Groundwater Hydrology Resource Analysis Report (Appendix B)

- DEIS statement:

The proposed project would operate as an energy storage project. After the facility is constructed, the initial fill of the pumped-water energy storage system (lower reservoir plus conveyance piping) would be completed through an estimated one-time withdrawal of 7,640 acre-feet of water, at an estimated rate of 21 cfs for approximately 6.5 months. Water for the initial fill would be purchased from KPUD using a KPUD-owned conveyance system and existing water right. This water supply would be sources from KPUD's exiting intake and pump station, off-stream of the Columbia River. . . .¹

KPUD Response: The above statement is accurate. The KPUD has a municipal water right to provide the water for the initial fill subject to maximum annual quantities per year which will require the fill to be over a two-year period.

² DEIS, Appendix B, §3.3 (p. 26).

- DEIS statement:

The Applicant plans to purchase water for construction and operation of the proposed project from KPUD. KPUD owns an existing pump station east of the proposed project and a subsurface water conveyance system from the pump station to the project footprint.²

KPUD Response: KPUD does not currently own the referenced pump station. Instead, KPUD holds easements from the U.S. Army Corp of Engineers and has an agreement already in place to purchase the pump station and associated infrastructure.

- DEIS statement:

The proposed project's water supply needs include an estimated one-time withdrawal of 7,640 acre-feet of water, at an estimated rate of 21 cfs for approximately 6.5 months, to complete the initial fill of the pumped storage system (HDR 2020).³

KPUD Response: Again, the above statement is accurate provided that the water is utilized over a two-year period and does not exceed quantities permitted by [KPUD's] water right as later stated in the DEIS.

- DEIS statement:

KPUD's Cliffs Water System would provide all water supply for project construction under its existing municipal water right (certificate S3-00845C) with a priority date of March 19, 1969. That water right authorizes a maximum instantaneous rate of 35.3 cfs and annual total withdrawal quantity of 13,911 AFY, which includes a maximum consumptive use of 4,861 AFY. This includes the very large initial fill of the system that would occur near the end of the construction period (likely between October to March). The Cliffs water right predates and is senior to the adoption of the Columbia River instream flow rule in 1980. Therefore, water supply for project construction would not result in any new impacts on the Columbia River or other surface waters within the southern study area. This assumes that the initial fill of the proposed project system occurs across a 2-year period to comply with the annual maximum consumptive use quantity of the underlying water right as discussed above.⁴

KPUD Response: Again, the above statement is accurate provided that the water is utilized over a two-year period and does not exceed quantities permitted by [KPUD's] water right as later stated in the DEIS. Further, it should be clarified that water used under the Cliffs water right is solely

² DEIS, Appendix B, §3.3 (p. 26).

³ DEIS, Appendix B, §3.3 (p. 26).

⁴ DEIS, Appendix B, §3.3 (p. 28-29).

from the Columbia River, and, based on the priority date, there will be no impairment to other water rights on the Columbia River, including the instream flow requirements in the state regulations.

- DEIS statement:

Ecology has approved multiple changes requested by KPUD to the original certificate, including a 2002 change expanding the place of use (CS3-00845C@1) and a 2006 change from industrial to municipal purpose, both of which were processed by the Klickitat County Water Conservancy Board. In addition, following placement of the right into the State of Washington's Trust Water Right Program by KPUD, Ecology approved its use for mitigation of impacts to the Columbia River associated with new water budget-neutral water rights. These included S4-35068 issued to the City of White Salmon in 2010, G433184 issued to 101 Bar Ranch LLC in 2016, and G4-35220 issued to Klickitat PUD (Roosevelt groundwater right) in 2015. However, use of the Cliffs municipal water right for mitigation purposes in each of these cases has been cancelled, such that the full quantity of the Cliffs water right is available to meet water supply needs of the proposed project.⁵

KPUD Response: This is not completely accurate. There remains a commitment of 625 ac-ft/year under Water Right Permit G4-33184, under G4-33184(B). Therefore, the full quantity of the KPUD's municipal water right is not currently available. At this time, approximately 4200 ac-ft/year of the total 4,861 ac-ft/year of consumptive water is available. However, if the Applicant ultimately pumps the water over a defined period of time consistent with the terms of the water right in the ac-ft authorized per calendar year, it is unlikely that any additional water rights would be needed for the project. As the DEIS later clarifies, "[t]he Applicant would need to coordinate with KPUD to ensure that, during the year that the initial fill begin, the total quantity of water supplies to the project for project construction plus the initial fill does not exceed quantities permitted by [KPUD's] water right."⁶ KPUD concurs in this important qualifier.

Energy Resource Analysis Report (Appendix E)

- DEIS statement (paraphrased):

The Roosevelt Biogas 1 facility operated by KPUD as a biogas fired generation facility with a generating capacity of 36.5 MW.⁷

- KPUD Response: KPUD continues to utilize the methane from the landfill, but it now produces Renewable Natural Gas rather than electrical energy.

- DEIS statement:

⁵ DEIS, Appendix B, §3.3.1.1.1 (p. 29).

⁶ DEIS, Appendix B, §3.3.1.1.3 (p. 31).

⁷ DEIS, Appendix E, §3.2.1, Table 3 (p.5).

Public Utility District No. 1 of Klickitat County (KPUD) uses the following energy generating facilities for power resources (KPUD 2021):

- *The White Creek Wind Farm and the Roosevelt Biogas 1 facilities (see Table 3).*
- *The McNary Fishway Hydro Project, owned jointly by KPUD and Northern Wasco Public Utility District. This facility is located on the Columbia River about 180 miles east of Portland, Oregon, and consists of a 10 MW turbine.*
- *A 230 kilovolt (kV) substation and associated transmission lines to connect to regional power grids.⁸*

- KPUD Response: The above is not an exhaustive or complete list of KPUD's sources for acquiring energy. KPUD also purchases power from the Bonneville Power Administration and from various regional energy markets.

3.2 Cultural and Tribal Resources

The comments above regarding the water and energy resources impacts of the Goldendale Energy Storage project are intended to correct a few minor reference errors in the DEIS. KPUD generally concurs in DOE's analysis concerning these matters, as well as its treatment of the various other elements of the environment that are addressed in the document. On balance the DEIS contains an objective, neutral, and fact-based evaluation of the project's anticipated impacts, and, where appropriate, it identifies potential mitigation measures that would serve to effectively eliminate those impacts or meaningfully reduce them to acceptable levels. In determining that the Goldendale Energy Storage project would not result in unavoidable, significant adverse impacts to most elements of the environment, the DEIS reflects precisely the type of empirical analysis contemplated by SEPA.

KPUD, however, respectfully disagrees with DOE's analytical approach for evaluating the project's impacts upon Cultural and Tribal Resources. In a sharp departure from the objective, evidence-based methodology used by DOE to analyze the other elements of the environment, the Cultural and Tribal Resources framework set forth in Section 4.9 of DEIS defers almost entirely to the subjective opinions of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Bands of the Warm Springs Reservation of Oregon, and the Nez Pierce Tribe (collectively, "Tribes"). KPUD is respectful of the thoughts, opinions and beliefs of these Tribes as referenced in the DEIS. But KPUD does not accept the premise that the Tribe's own opinions regarding the effectiveness of potential mitigation measures should be afforded dispositive weight by DOE without further objective analysis.

Emblematic of DOE's approach in this regard is the "Key Findings" summary of the DEIS's Tribal and Cultural Resources Analysis:

The analysis found the proposed project would result in significant and unavoidable adverse impacts related to Tribal and cultural resources.

It is important to acknowledge the Tribes' perspectives on the impacts of the proposed project. Some mitigation options for Tribal and cultural

⁸ DEIS, Appendix E, §3.2.1 (p.5).

resources have been proposed by the Applicant. However, to date, there is no information available about mitigation proposed by or supported by the Tribes that would reduce the level of impact to less than significant.⁹

The import of this using methodology is that DOE will apparently not recognize a particular mitigation measure as adequate in this context unless it has been “proposed by or supported by the Tribes” themselves. DOE’s approach thus defers wholesale to the Tribes’ subjective opinions as to whether the alleged impacts to tribal and cultural resources from the Goldendale Energy Storage project can be effectively mitigated. This is a marked deviation from DOE’s standard analytical method. As the DEIS itself openly acknowledges, “[t]he analysis of impacts to Tribal resources differs in its approach when compared to the impact analysis for other natural resources.”¹⁰ Numerous references in the DEIS’s Tribal and Cultural Resources Analysis follow this methodology, accepting—without objective, empirical supporting evidence—the Tribes’ assertions regarding the significance of project impacts and the adequacy of potential mitigation options.¹¹

This is an extraordinary proposition that is inconsistent with the purpose and framework of SEPA. In light of the extreme deference DOE has afforded to the Tribes, it is not coincidental that Cultural and Tribal Resources are the only elements of environment affected by the Goldendale Energy Storage project that the DEIS determines cannot be adequately protected through mitigation. For the reasons set forth below, KPUD respectfully disagrees with this conclusion and the reasoning underlying it.

A. Applicable SEPA Standards

As a preface to KPUD’s specific responses to the Cultural and Tribal Resources Analysis of the DEIS, KPUD would first reiterate the following benchmark concepts of SEPA review under Washington law:

(1) SEPA review is intended to be an empirical, informational exercise based on *objective, evidence-based* analysis. “SEPA establishes a process for evaluating the reasonably foreseeable environmental consequences of proposed projects.”¹² In furtherance of this mandate, “[a]gencies shall to the fullest extent possible. . . . [p]repare environmental documents that are concise, clear, and to the point, and are supported by evidence that the necessary environmental analyses have been made.”¹³

SEPA is a procedural statute designed to ensure that local governments consider the environmental and ecological effects of major actions to the fullest extent. SEPA’s purpose is to provide decision-makers with all relevant information about the potential environmental consequences of their actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed project against its potential adverse effects. An EIS is not to be a compendium of every conceivable effect or alternative to a proposed project, but it must include a reasonably

⁹ DEIS, §4.9 (p.157) (emphasis added).

¹⁰ DEIS, §4.9.1 (p.160).

¹¹ DEIS, §4.9 (p.157-165).

¹² *PT Air Watchers v. State, Dept. of Ecology*, 179 Wn.2d 919, 926, 319 P.3d 23 (2014).

¹³ WAC 197-11-030(2)(c) (emphasis added).

thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision.¹⁴

This fundamental pillar of the SEPA framework extends fully to the evaluation of measures that are necessary in order to mitigate the anticipated environmental consequences of a proposal. To this effect, "SEPA mandates that action is to be conditioned or denied only on the basis of specific, proven significant environmental impacts."¹⁵

(2) SEPA contains clear standards for determining whether a particular environmental impact is "probable" or "significant". In the context of environmental review and evaluation, "probable" means "likely or reasonably likely to occur."¹⁶ While the standard for probability is not a strict statistical test, SEPA differentiates "likely" impacts from "those that merely have a possibility of occurring, but are remote or speculative."¹⁷

An impact is "significant" for purposes of SEPA review only if it implicates "a reasonable likelihood of more than a moderate adverse impact on environmental quality."¹⁸ Like the "probable" standard discussed above, the test for significance is not strictly formulaic or quantifiable, but instead is context-dependent and varies with the proposal's physical setting.¹⁹ Under this fluid standard, "[t]he severity of an impact should be weighed along with the likelihood of its occurrence."²⁰

(3) A SEPA lead agency cannot wholly defer its mitigation analysis to another party. The determination of a proposal's impacts, and the extent to which particular impacts can be adequately mitigated, is reserved to the professional judgment of the lead agency itself using the evidence-based framework above.²¹ SEPA does not allow, much less require, the lead agency to defer its own objective evaluation to interested third-parties. This is true not only with respect to "consulted agencies", "other agencies", and members of the public, but also any "affected tribes" that are specifically requested to provide comment during the SEPA review process.²²

SEPA contemplates that the input of such third-parties, including affected tribes, will be actively solicited, meaningfully considered, and ultimately responded to by the lead agency.²³ But no such third-parties, including the Tribes, are intended by SEPA to wield subjective decisional authority over the determination of impact mitigation for a particular proposal. Nothing in the SEPA statute (Chapter 43.21C RCW), the

¹⁴ *City of Des Moines v. Puget Sound Regional Council*, 108 Wn. App. 836, 849, 988 P.2d 27 (1999) (emphasis added) (citation and internal punctuation omitted).

¹⁵ *Nagatani Bros., Inc. v. Skagit County Bd. of Comm'rs*, 108 Wn.2d 477, 482, 739 P.2d 696 (1987) (emphasis added).

¹⁶ WAC 197-11-782.

¹⁷ *Id.*

¹⁸ WAC 197-11-794(1).

¹⁹ WAC 197-11-794(2).

²⁰ *Id.*

²¹ *See, e.g.*, WAC 197-11-420.

²² *See e.g.*, WAC 197-11-360; WAC 197-11-405; WAC 197-11-408; WAC 197-11-455; WAC 197-11-502; WAC 197-11-545; WAC 197-11-550; WAC 197-11-710; WAC 197-11-960.

²³ *See e.g.*, WAC 197-11-360; WAC 197-11-405; WAC 197-11-408; WAC 197-11-455; WAC 197-11-502; WAC 197-11-545; WAC 197-11-550; WAC 197-11-710; WAC 197-11-960. *Cf.* Chapter 43.376 RCW (establishing a government-to-government collaboration framework for tribal relations).

SEPA Rules (Chapter 197-11 WAC), or any other Washington law purports to recognize tribal authority to such an extreme extent. Instead, the SEPA framework consistently affords affected tribes the same or similar rights as other public agencies to receive notice of, be consulted about, and to submit comments concerning, actions that are subject to agency review under SEPA. In sum, SEPA does not excuse or otherwise alter the standard analytic approach for evaluating impacts of a particular proposal merely because the commenting party is an affected tribe.²⁴

In the specific context of EIS preparation, SEPA emphasizes that the lead agency's analysis must be objective and neutral:

An EIS shall provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.²⁵

This requirement is also reflective of the fundamental, longstanding principle that the subjective displeasure of and/or opposition by a particular party cannot itself form the basis for denial of a land use proposal.²⁶ Indeed, as Washington courts have long recognized, "SEPA should not be used to block construction of unpopular projects."²⁷

(4) SEPA provides a broad range of potential approaches to mitigate the impacts of a proposal. Finally, it is critical to acknowledge the intended role of the project mitigation analysis under SEPA as a deliberately broad, fluid, and flexible concept:

"Mitigation" means:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- (6) Monitoring the impact and taking appropriate corrective measures.²⁸

²⁴ KPUD acknowledges the unique status of recognized Tribes under Washington law. *See, e.g.*, Chapter 43.376 RCW (establishing government-to-government collaboration mandate in various aspects of agency decision-making); Chapter 70A.65 RCW (providing for Tribal input regarding climate change impacts). However, while this type of separate "legislative preference. . . is a legitimate reference point for a lead agency's consideration, see WAC 197-11-315(6), . . . [it] cannot be read as determinative of any particular project's impact on the environment." *PT Air Watchers*, 179 Wn.2d at 929.

²⁵ WAC 197-11-400(2) (emphasis added).

²⁶ *See, e.g., Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804-05, 801 P.2d 985 (1990).

²⁷ *Cougar Mountain Assoc. v. King County*, 111 Wn.2d 742, 749, 765 P.2d 264 (1988).

²⁸ WAC 197-11-768 (emphasis added).

Consistent with this flexibility, “[t]he law does not require that all adverse impacts be eliminated; if it did, no change in land use would ever be possible.”²⁹ Instead, “SEPA seeks to achieve balance, restraint and control rather than preclude all development whatsoever.”³⁰ In light of this intended balance, and the wide range of potential mitigation options recognized under SEPA, it is exceptionally rare for a lead agency to conclude that the significant adverse impacts of particular site-specific project cannot be mitigated to acceptable levels, and even more unusual for a proposal to be denied on this basis.

B. Specific Comments Regarding Potential Impacts to Cultural and Tribal Resources

With the SEPA principles above in mind, KPUD offers the following specific comments concerning the Cultural and Tribal Resources Analysis of the DEIS:

(1) The determination of whether impacts to Cultural and Tribal Resources from the project can be effectively mitigated should be based upon objective, evidence-based evaluation.

KPUD’s most fundamental concern with the DEIS is its conclusion that impacts to Cultural and Tribal Resources from the Goldendale Energy Storage project could not be adequately mitigated.³¹ KPUD respectfully disputes this conclusion and its underlying reasoning.

As the DEIS acknowledges, mitigation specific to Cultural and Tribal Resources could include, without limitation: (i) measures included in the project Applicant’s Draft Historic Properties Management Plan; (ii) measures prepared in accordance with the Section 106 National Historic Preservation Act process; (iii) an inadvertent discovery plan; and (iv) other measures proposed by the Applicant.³² This in turn is not, and does not purport to be, an exhaustive list of potential mitigation options for the project. The numerous regulatory approvals required for the Goldendale Energy Storage project³³ will provide ample opportunities to impose any appropriate conditions needed to ensure that the proposal’s impacts will be adequately addressed.

The DEIS, however, does not meaningfully attempt to evaluate the efficacy of these measures or to identify other potential methods to mitigate the impacts of the Goldendale Energy Storage project upon Cultural and Tribal Resources. Instead, the DEIS simply parrots the subjective assertions of the Tribes to the effect that no amount of mitigation would suffice in this context:

- *“Through scoping comments to Ecology, conversations during technical meetings, media releases, and a Yakama Nation Tribal council resolution, Tribes have repeatedly indicated that mitigation would not reduce project impacts to the Tribes. The Yakama Nation stated in their scoping comment letter that “the proposed action will have significant adverse environmental impacts, many of which cannot be avoided or mitigated if Project implementation is permitted”.”³⁴*

²⁹ *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).

³⁰ *Cougar Mountain*, 111 Wn.2d at 753.

³¹ DEIS, §4.9 (p.157, 164-165).

³² DEIS, §4.9.2.3 (p.164). Mitigation measures are also referenced in the Applicant’s DEIS comment letter.

³³ DEIS, Chapter 3 (p.20-23).

³⁴ DEIS, §4.9.2.3 (p.164) (emphasis added).

- *“Yakama Nation scoping comments also included this statement about mitigation: “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.””³⁵*
- *“In addition, the Yakama Nation 2021 Tribal Council Resolution T-089-21 includes a statement of opposition to the project: ‘the proposed pump storage development violates the Yakama Nation’s inherent sovereignty and Treaty-reserved rights through direct, permanent, and adverse destruction of nine Traditional Cultural Properties of religious and ceremonial significance, and the reduction and elimination of access to gather food and medicine roots, which results in an irreplaceable loss of cultural resources and negative environmental degradation to several ephemeral waterbodies, and aquatic and terrestrial resources.’”³⁶*
- *“Furthermore, Yakama Nation has stated that ‘no amount of mitigation could address the impacts of this project to our culture today, or for our future generations...Due to the sacredness of this resource, this development would destroy the lives of our Tribal members’.”³⁷*
- *“The Confederated Tribes of the Umatilla Indian Reservation scoping comments included similar language: “There may be impacts for which no mitigation is possible...” Comments on this document from the Confederated Bands of the Warm Springs Reservation of Oregon also noted that “you propose to permanently destroy unique and irreplaceable resources.””³⁸*

Based entirely upon these statements of tribal opposition, the DEIS asserts that “there is no information available about mitigation proposed by or supported by the Tribes”.³⁹ This in turn is the foundation for the DEIS’s ultimate conclusion that the identified impacts to Cultural and Tribal Resources “would be considered unavoidable.”⁴⁰

KPUD does not question the sincerity of the Tribes’ beliefs or the Tribes’ right to comment and provide input on the Goldendale Energy Storage project. However, the analytical approach above is tantamount to abdicating DOE’s role as lead agency and delegating it to the Tribes in contravention of the applicable SEPA standards. SEPA review is premised upon the function of the lead agency as an impartial, objective evaluator of the underlying proposal, its anticipated impacts, and the viability of potential mitigation measures. Simply deferring to the subjective assertions of the Tribes regarding the mitigation analysis is inconsistent with this framework.⁴¹

³⁵ DEIS, §4.9.2.3 (p.164-165) (emphasis added).

³⁶ DEIS, §4.9.2.3 (p.165) (emphasis added).

³⁷ DEIS, §4.9.2.3 (p.165) (emphasis added).

³⁸ DEIS, §4.9.2.3 (p.165) (emphasis added).

³⁹ DEIS, §4.9.2.3 (p.165) (emphasis added).

⁴⁰ DEIS, §4.9.2.3 (p.165).

⁴¹ It is also concerning to KPUD that some of the content of the Tribal Resources Analysis Report has been redacted and is accordingly not subject to public scrutiny or objective evaluation. See DEIS, Appendix H (p.7-8).

As noted above, SEPA contemplates a wide range of potential mitigation measures by which to ameliorate the impacts of a proposal. "Avoiding" such impacts altogether is merely one of many alternatives in this regard.⁴² The DEIS does not seriously attempt to identify, much less objectively evaluate, whether and to what extent some combination of "minimizing", "rectifying", "reducing", "compensating" for, and/or "monitoring" with respect to the project could effectively address the Cultural and Tribal Resources impacts at issue.⁴³ The FEIS should thoroughly evaluate this issue with the flexibility contemplated by SEPA. Tribal input should certainly be considered as part of this process, but it should not replace DOE's own objective analysis.

(2) Probable significant adverse impacts to Cultural and Tribal Resources should not include impacts with only a marginal likelihood of occurrence.

In identifying the potential impacts to Cultural and Tribal Resources from the Goldendale Energy Storage project, the DEIS repeatedly characterizes the probability of occurrence for various impacts in noncommittal terms. E.g.,

- *"Regarding Tribal resources, research and consultation have identified a number of natural and cultural resources of importance to Tribes that could be impacted by the proposed project."*⁴⁴
- *Activities that could impact Tribal and cultural resources include ground disturbance, restrictions to access, degradation of visual quality, noise, and interruption of the landscape and habitat. The Tribes' spiritual practices could be interrupted by construction impacts to land areas and cultural or sacred sites.*⁴⁵
- *There is also a potential for significant adverse impacts on unrecorded archaeological sites that are associated with the TCPs.*⁴⁶
- *The change in the natural state of the landscape could interrupt Tribal cultural practices and impact the expression of Tribal spirituality.*⁴⁷
- *Breeding and pre-fledged birds are more likely to be directly affected by vegetation clearing, noise, and other construction activities, which could result in elimination of nesting and perching sites. These persistent disruptions would impact normal behavior of birds that are unable to leave the disturbance areas. If breeding and nesting sites are less than 0.5 mile from blasting activities, they could experience a significant adverse impact, which may impact species viability.*⁴⁸

⁴² WAC 197-11-768(1).

⁴³ WAC 197-11-768(2)-(6).

⁴⁴ DEIS, §4.9.1 (p.160) (emphasis added).

⁴⁵ DEIS, §4.9.2.1 (p.161) (emphasis added).

⁴⁶ DEIS, §4.9.2.1 (p.161) (emphasis added).

⁴⁷ DEIS, §4.9.2.1 (p.162) (emphasis added).

⁴⁸ DEIS, §4.9.2.1 (p.162) (emphasis added).

- *Archaeological sites in the study area, and the Columbia Hills Archaeological District, could be impacted by the increase in activity in the study area during operation of the project.⁴⁹*
- *There is also a potential to impact unrecorded archaeological sites that are associated with the TCPs. Ongoing ground disturbance could occur in areas where no archaeological sites have been identified during recent surveys, but there is still a potential for previously unrecorded sites to be identified during operation.⁵⁰*
- *Significant adverse impacts could occur on talus and cliff habitat if it can no longer support breeding raptors because of the proximity of human development and reduced prey availability.⁵¹*

Expressing the likelihood of the above-referenced impacts in such uncertain phraseology undermines the conclusion that these impacts are in fact “probable” within the meaning of SEPA.

(3) The project will not create significant and unavoidable adverse impacts to legally-protected Tribal access rights.

One of the key conclusions of the DEIS posits that construction of the Goldendale Energy Storage project could restrict access to areas deemed important to the Tribes.

Construction of the proposed project will occur in Pushpum and Nch’ima, which are areas used for resource gathering and other ritual and cultural activities. Construction will prevent those activities from occurring at reservoir and construction staging areas. Construction of the proposed project will limit, if not eliminate, use of these areas, which is a significant adverse impact. There is also a potential for significant adverse impacts on unrecorded archaeological sites that are associated with the TCPs.

Tribes have stated during consultation that impacts to Tribal members’ ability to participate in, teach, learn, and share cultural practices affects the mental, spiritual, and physical health of Tribal members. Restrictions to access and removal of areas used for cultural practices will indirectly affect entire Tribal communities and multiple generations.⁵²

The DEIS also identifies alleged impacts from the future operation of the proposed facility:

Operation of the project will restrict access to activities associated with Pushpum and Nch’ima. As noted above, operation of the proposed project would also impact the associated archaeological sites due to the increased human activity and ongoing interruption of culturally significant activities. This constitutes a significant adverse impact. . . .

⁴⁹ DEIS, §4.9.2.2 (p.163) (emphasis added).

⁵⁰ DEIS, §4.9.2.2 (p.163) (emphasis added).

⁵¹ DEIS, §4.9.2.2 (p.164) (emphasis added).

⁵² DEIS, §4.9.2.1 (p.161).

Operation of the proposed project would restrict access to resource gathering and other ritual and cultural activities, especially in the reservoir areas. Per Yakama Nation Tribal Council Resolution T-089-21, there would be “direct, permanent and adverse destruction of nine TCPs of religious and ceremonial significance and the reduction and elimination of access to gather food and medicine roots, which results in an irreplaceable loss of cultural resources...” Any permanent restrictions to these areas would be a significant impact to the Tribes.⁵³

The conclusions above are unsupported by the relevant evidence. Viewed objectively, the anticipated impacts of the proposal on Tribal access are greatly overstated in the first instance. For example, the Goldendale Energy Storage project does not impact access to the waterfront for fishing, gathering or ceremonial functions in any manner.⁵⁴ And although safety fencing will ultimately be installed on the project site in order to secure the new reservoirs from human and animal entry, these barriers will be physically limited to the immediate perimeter of each separate reservoir itself.⁵⁵ The construction footprint of the connection between the upper and lower reservoirs of the project is located entirely underground.⁵⁶

With respect to the future operation of the facility, any permanent loss of access will be limited to the two sites immediately surrounding the proposed reservoirs and the substation.⁵⁷ Here, it is critical to acknowledge that the total project site is comprised of only 681 acres—by any measure, a *de minimus* area in relation to the greater Columbia Gorge region—and the vast majority of the site is, and has historically been, in private ownership.⁵⁸ The evidence does not support the current DEIS determination that any adverse access impacts to the Tribes in relation to such a geographically limited, private area would be “significant” under the applicable SEPA standard above.

(4) The project will not create significant and unavoidable adverse impacts to legally protected access to Tribal fishing areas.

While the DEIS does not expressly conclude that the Goldendale Energy Project would cause significant, adverse and unavoidable impacts to Tribal fishing rights, the document nevertheless implies that “there may be impacts to the Tribes if they are unable to access established and culturally significant fishing areas”⁵⁹, and that the “Tribes have expressed concerns about how the proposed project may impact access to fishing sites.”⁶⁰ In fact, there is no evidence whatsoever indicating that impacts either from construction or operations would limit Tribal access to the Columbia River in any manner. The point of water withdrawal for the proposed facility from the river is not part of the DEIS. And the point of withdrawal for the water system is an existing concrete vault separated from the river impoundment with

⁵³ DEIS, §4.9.2.2 (p.163).

⁵⁴ See June 2020 FERC Final License Application, Exhibits F & G.

⁵⁵ Understanding based upon KUPD’s communications with the Applicant.

⁵⁶ See June 2020 FERC Final License Application, Exhibits A, F, & G.

⁵⁷ See June 2020 FERC Final License Application, Exhibits A, F, & G.

⁵⁸ DEIS, §2.2 (p.6).

⁵⁹ DEIS, §4.9.2.2 (p.164).

⁶⁰ DEIS, §4.9.2.1 (p.163).

rock and gravel; if required by FERC, additional fish screening will be installed as required. As a closed loop system, there is no interaction with the river other than the permitted withdrawal of water rights.

(5) The project will not create significant and unavoidable adverse impacts to plants and animals.

From a “non-Tribal perspective⁶¹, the DEIS did not find any unavoidable significant adverse impacts to terrestrial species.⁶² This conclusion was effectively reversed in the Cultural and Tribal Resources analysis with respect to various plants and animals in relation to Tribal considerations.⁶³ The evidence does not support this dichotomy. The referenced species are all indigenous and would continue to be accessible to the Tribes outside the construction and future operational footprint of the Goldendale Energy Storage facility. Again, there is an extremely limited geographic area that would be impacted by construction, and even less during the future operation, of the proposed facility. Under the objective SEPA review standard, the resulting impacts on species are not significant or otherwise incapable of mitigation.

IV. CONCLUSION

KPUD appreciates DOE’s thorough environmental review for the Goldendale Energy Storage project as reflected throughout the majority of the June 2022 Draft Environmental Impact Statement, and is grateful for the opportunity to provide these comments. Apart from the minor corrections to the Water and Energy Resources provisions identified in this submittal, KPUD generally concurs in the analysis and conclusions of the DEIS.

However, for the reasons explained above, KPUD disagrees that the Goldendale Energy Storage project will necessarily result in significant adverse impacts to Cultural and Tribal Resources that are unavoidable. The very limited physical footprint of the proposed project underscores that any adverse impacts should be mitigatable through appropriate project conditions. If evaluated using the same evidence-based, empirical methodology that the DEIS uses for the various other elements of the environment analyzed in the DEIS, KPUD is confident that some thoughtful combination of mitigation measures will be deemed adequate to address the proposal’s potential impacts upon Cultural and Tribal Resources.

In preparing the FEIS that will ultimately be issued for this important public project, KPUD would respectfully request that DOE revisit its Cultural and Tribal Resources analysis. DOE’s evaluation should appropriately consider input from the Tribes, but—consistent with the governing SEPA framework—it should not defer entirely to the Tribes in determining the effectiveness of potential mitigation efforts.

Thank you for your consideration.

Sincerely,



Jim Smith, General Manager
Public Utility District No. 1 of Klickitat County

⁶¹ DEIS, §4.9.1 (p.160).

⁶² DEIS, §4.7.

⁶³ DEIS, §4.9.1 (p.160); DEIS, §4.9.2.1 (p.162).

