Anthony Aronica

YAKAMA NATION COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR PROPOSED GOLDENDALE ENERGY STORAGE PROJECT (PUBLICATION NO. 22-06-006/P-14861-002).

August 9, 2022

FILED ELECTRONICALLY

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

RE: YAKAMA NATION COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR PROPOSED GOLDENDALE ENERGY STORAGE PROJECT (PUBLICATION NO. 22-06-006/P-14861-002).

Dear Regional Director Park,

Included herein are comments on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") on State Environmental Policy Act Draft Environmental Impact Statement ("DEIS"), Publication No. 22-06-006, issued by the Washington Department of Ecology ("Ecology"), on June 6, 2022. This letter preserves, incorporates, and reasserts the Yakama Nation's concerns regarding the Project made known to Ecology, the Federal Energy Regulatory Commission ("FERC"), and the Free Flow Power Project 101, LLC ("Project Applicant(s)" or "Rye Development") through previous communications.[1] The Project Applicants propose to construct 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 ("Project"). This letter further agrees with and incorporates corresponding comments submitted by the Columbia Riverkeeper on the DEIS.

I. Background.

The 1855 Treaty between the United States and the Yakamas ("Treaty") reserved a 1.3 million acre Reservation "for the exclusive use and benefit" of the Yakama people.[2] The Treaty further designated reserved rights for Yakamas to exercise "in common with"

[1] *See* Exhibit A - Letter From Yakama Tribal Council Chairman To FERC Secretary (May 23, 2022).

[2] *See* Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. II, cl. 3.

citizens of the United States at all usual and accustomed places within the Treaty Territory.[3] A federal treaty is considered the supreme Law of the Land under the U.S. Constitution.[4] Pursuant to its status as a sovereign Native Nation and its Treaty-reserved authority, Yakama Nation acts as a Co-Manager of the Columbia River fishery, which has also been recognized by federal courts,[5] for the protection of all natural and cultural resources in Yakama Nation's Treaty Territory. The Yakama Nation Treaty Territory encompasses usual and accustomed fishing sites, cultural areas, and ceremonial locations from the mouth of the Columbia River upstream north of the 49th parallel.

The Yakama Nation's enrolled membership exceeds 11,000 people whose history, culture, and way of life are intertwined with Nch'i Wa'na (the Columbia River), and its host of salmon, fish, root plants, natural medicines, and animals. Protecting the land adjacent to and the waters of the Columbia River is critical for ensuring the Yakama Nation's Treaty-reserved resources and rights, and ultimately to the health and welfare of the Yakama people.

The Yakama Nation is alarmed and concerned for the irreversible harmful impacts threatened by the Project. Previously, the Yakama Nation opposed similar project proposals at this location due to the numerous natural and cultural resources that are incompatible with industrial-scale development, including but not limited to: destruction of Traditional Cultural Properties that can never be mitigated or replaced; loss or degradation to streams and aquatic resources; increased deaths within the golden eagle population; and, existing soil and groundwater contamination from the former Columbia Gorge Aluminum smelter site.

II. Project Description.

The Project would include the following new facilities: (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; (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; (3) an underground conveyance tunnel system connecting the two reservoirs consisting of a 2,200-foot-long, 29-foot-diameter concrete-lined vertical shaft, a 3,300-foot-long, 29-foot-diameter concrete-lined high pressure tunnel, a 200-foot-long, 22-foot-diameter high pressure manifold tunnel, three 600-foot-long, 15-foot-diameter steel/concrete penstocks, three 200-foot-long, 20-foot-diameter steel-lined draft tube tunnels with bonneted slide gates, a 200-foot-long, 26-foot-diameter concrete-lined low-pressure tunnel, and a 3,200-foot-long, 30-foot-diameter concrete-lined tailrace tunnel; (4) an underground powerhouse located between the upper and lower reservoir in a 0.83-acre powerhouse cavern containing three, 400-megawatt ("MW") Francis-type pump-turbine units for a total installed capacity of 1,200 MW; (5) a 0.48-acre underground transformer cavern adjacent to

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[3] *See Id.* at art. III, cl. 2.

[4] *See* U.S. Const. art. VI, cl. 2.

[5] *See United States v. Washington*, 384 F. Supp. 312, 382 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975); *see also U.S. v. State of Oregon*, 666 F.Supp. 1461 (D. Or. 1987).

the powerhouse containing intermediate step-up transformers that will step up the voltage from 18 kilovolts (kV) to 115 kV; (6) two 30-foot-diameter tunnels for accessing the powerhouse and transformer caverns; (7) a 0.84-mile-long, 115-kV underground transmission line extending from the transformer gallery through the combined access/transmission tunnel to where it emerges aboveground near the west side of the lower reservoir and extending an additional 0.27 miles to an outdoor 7.3-acre substation/switchyard where the voltage would be stepped up to 500 kV; (8) a 3.13-mile-long, 500-kV transmission line routed from the substation/switchyard south across the Columbia River and connecting to Bonneville Power Administration's existing John Day Substation in Sherman County, Oregon; (9) a buried 30-inch-diameter water fill line leading from a shut-off and throttling valve within a non-project water supply vault owned by Klickitat Public Utility District ("KPUD") to an outlet structure within the lower reservoir to convey water to fill the reservoirs; and (10) appurtenant facilities. The Project would also include an existing 0.7-mile road for accessing the lower reservoir site and an existing 8.6-mile-long road for accessing the upper reservoir site both of which may be modified to provide access for construction vehicles.

The water supply used to initially fill the lower reservoir as well as to provide make-up water would be purchased from KPUD and would be obtained from KPUD's existing intake pond on the Columbia River. The Project water fill line would connect to a new KPUD-owned flanged water supply service connection in a water supply vault located near the lower reservoir. Within the vault, and just downstream of the service connection, there would be a project shut-off and throttling valve to control the initial fill and make-up water flow rate into the lower reservoir. 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 (maximum flow rate available is 35 cubic feet per second). It is estimated that the Project would need 360 acre-feet of water each year to replenish water lost through evaporation and seepage.

III. 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.[6]

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."[7] 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

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[6] *See Norway Hill Preservation and Prot. Ass'n v. King Co*, 87 Wn.2d 267, 279 (1976).

[7] *See* RCW § 43.21C.010.

environment."[8] 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."[9]

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.[10] 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.[11] The Yakama Nation calls on Ecology to exercise its SEPA authority and its responsibility to preserve the natural and cultural environment by only accepting a "No Action Alternative" for this Project as the only reasonable way to ensure the existence of environmental resources.

IV. Direct Project Impacts to Yakama Nation Treaty Resources.

i. Appendix H – Traditional Cultural Properties

Only "No Action Alternative" will preserve and protect the Yakama Nation's Traditional Cultural Properties ("TCP's"), including the documented and National Register of Historic Places-eligible ("NRHP") TCPs. Only the Yakama Nation can determine what is culturally significant to its people – these legendary resources will be destroyed through initial construction and ongoing operation of this proposed Project. The Yakama Nation affirms the Ecology's determination that the Project will cause significant and unavoidable adverse impacts.

Yakama ancestors provide oral teachings that tell stories of our people and this land. Yakama teachings instruct us on the value of the resources that have lived on this land for thousands of years in a state of balance. Yakamas who lived with the land also practiced our religion and respected the landforms that have provided resources for sustenance and livelihood. The encroachment of energy development threatens to destroy this Yakama way of life today.

The Yakama teachings describe the connectivity between all life – the water, land and air, and sun that watches over all things. All living animals show interconnectivity and care by providing food, tools, and clothing. Some animals serve as protectors, providing warnings from danger, or provide guidance through Yakama teachings. Our identity as Yakama People is intrinsically interwoven into the cultural resources in the Treaty

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[8] *See* RCW § 43.21C.020(3).

[9] *See Leschi v. Highway Comm'n*, 84 Wn.2d 271, 279–80 (1974).

[10] *See Stempel v. Dep't of Water Resources*, 82 Wn.2d 109, 117–18 (1973).

[11] *See* RCW § 43.21C.060.

Territory. The plants that survive at *Push-pum* uniquely provide Yakama people with important medicines and nourishment. *Push-pum* is known to the Yakama as "the mother of roots" and the culturally significant plants found here are endemic to this region. This is a resource that cannot be replaced because *Push-pum* is the natural seed bank for these plant resources. These plant resources include buckwheats, balsamroots, lomatiums, yarrow, sumac, lupin, dogbane, rose, onion, thistle, serviceberry, sagebrush, junipers, and many others. These plants and combinations of them are used by Yakama People to treat illness in the body and spirit. These plants have served for thousands of years as poultice, tea, bandages, pacifiers, drums, needles, rope, nets, and food. They are important to traditional ceremonies and religious practices.

All the birds have a purpose and sacredness about them in Yakama beliefs. The birds carry messages to the Creator and the presence of feathers can be seen as interpretations of great spiritual significance. Raptors have unique significance where every bone and feather has a purpose and traditional use. Yakamas use every bone, feather, beak, and talon. Eagle remains are sacred and are ceremonially gifted for both spiritual purposes and as a great honor and achievement in a person's life.

Juniper Point is associated with several Yakama TCPs that each tell stories and provide geophysical references for passing knowledge on to future generations. These teachings pertain to traditional foods and medicine, legendary events, legendary figures, and important teachings. Standing on Juniper Point, the viewshed includes other sacred sites that provide teachings and cultural orientation to the traditional cultural landscape (now Washington and Oregon). This view is expansive and focuses on the legendary aspects of the mountains and their connectivity.

The Project threatens all of these TCPs of legendary cultural importance to the Yakama Nation. The Project would result in visual and aesthetic impacts on the landscape that need to be discussed in section 4.8 in connection with the impacts on TCPs. This Project would permanently damage or destroy nine culturally significant sites. There is no mitigation that can replace the destruction of Yakama ancestral sites still in use today to observe ceremonial and cultural practices.

a. Unacceptable Limits On Cultural Use And Access.

The Project development would impede and disrupt on-going root and plant gathering access by Yakama members.[12] Yakama members regularly access the Project area for root and medicine gathering, and to practice religious and cultural ceremonies. The Programmatic Agreement preserves and recognizes the critical archaeological and cultural resources within the Project site.

b. Potential For Slope Failure.

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[12] *See* Exhibit D – Programmatic Agreement Among The Bonneville Power Administration, The Washington State Historic Preservation Officer, And The Advisory Council On Historic Preservation (May 1997).

Geologic mapping conducted by Phillips and Walsh (1987) shows evidence of a past landslide(s) adjacent to the proposed project.[13] The project occurs within an area further patterned by faulting along the boundary of the proposed project footprint. Please discuss the potential for slope failure through a formal slope susceptibility study that includes the DEIS impacts in sections 4.1, 4.8, and 4.9. Specifically, the are factors involved in the Project construction and implementation phases that should be considered in terms of how they affect slope susceptibility. Activities such as excavation, drilling, boring, and blasting for underground infrastructure along the oversteepened, horizontally bedded, and tilted strata created enhanced risks to environmental and cultural resources.

ii. Appendix F – Aquatic Resources.

Calling the Project, a "closed-loop" system is disingenuous and misleading. Approximately 2.93 million gallons of water will be drawn from Columbia River to fill the Project's two reservoirs. The Columbia River fishery already suffers from the negative impacts of over-allocated water resources. Salmonids and other aquatic species require stable water quantity, quality, and temperature for survival.

Effects of construction of the upper reservoir on waterbodies would result in degradation of ecological function of the aquatic habitat, including native animal and plant diversity in the riparian areas, water temperature regulation, erosion control, water infiltration, and organic inputs to the aquatic food web. Impacts to these waterbodies would reduce wetland functions and aquatic habitat and result in degradation of ecological functions in downstream waters. Please add a discussion of these impacts to section 4.6. Further, the excavation and backfilling in streams, ponds, and wetlands may cause mortality, injury, or disturbance to the normal behavior of amphibians or turtles using these habitats. Please add a discussion of these impacts to section 4.6.

The Project's upper reservoir will permanently destroy several ephemeral waterbodies including approximately 965 linear feet of streams. The loss of these streams negatively impacts the active and contemporary hunting and gathering activities of Yakama Nation members and should be discussed as impacts in section 4.6 in addition to section 4.9.

iii. Appendix G – Plant and Animal Resources

Construction of the reservoirs will result in loss of terrestrial species and habitats, as well as lost habitat for plant species important to the Yakama Nation and hunting and gathering activities. Please add a discussion of these impacts to section 4.7.

Combined, the two proposed reservoirs would result in over 120 acres of surface water body attraction to birds and bats which may result in more interactions with wildlife

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[13] *See* Exhibit E – William M. Phillips and Timothy J. Walsh, Geologic Map of the Northwest Part of the Goldendale Quadrangle, Washington, Washington Division of Geology and Earth Resources, Open File Report 87-13 (Nov. 1987).

and an increase in birds and bats being wounded or killed by wind turbines. Additionally, these water bodies are expected to further alter laminar wind currents which are already influenced by existing wind farms. In its comment on the FERC Ready for Environmental Analysis, the U.S. Department of Interior identified that golden eagles are known to occur within the project boundary and in the project vicinity within the John Day Dam territory, with up to three historic golden eagle nest locations documented by Washington Department of Fish and Wildlife ("WDFW") within the project area west of the proposed lower reservoir on the cliff face between the proposed reservoirs. Additionally, to the three historic golden eagle nest locations, there are four historic nest locations to the east of the project boundary and just below the access road.

Known golden eagle nest locations within the project boundary were surveyed by WDFW in June 2013, where they noted that one hunting adult was present with an unrepaired nest (WDFW 2014); surveys also occurred in 2014 and observations included one adult flying and the nest was unrepaired. Detailed analysis of home range use of a male golden eagle showed use largely within remaining open habitats including the proposed lower reservoir project area (WDFW 2015). The likelihood of increased golden eagle takings impacts Yakama traditional and cultural activities in a way that connects sections 4.7 and 4.9.

The DEIS states that shade balls will be used in the reservoirs to reduce evaporation and deter birds, but there is still a concern that the reservoirs will be an attractive nuisance to congregating birds and bats. The project is close to wind farms located on the Columbia Hills and the turbines present a collision risk. Additional mitigation is needed to prevent bird strikes.

iv. Appendix I - Columbia Gorge Aluminum Smelter Cleanup

a. Water Resources.

Under Table S-1, Water Resources – Summary Description and section 4.2, a portion of the lower reservoir would be located within the West Surface Impoundment ("WSI"), an area associated with the former Columbia Gorge Aluminum ("CGA") smelter. Precipitation infiltration will be reduced due to rainwater intercepted within the footprint of the proposed lower reservoir project area. This will alter the surface water hydrology and negatively impact downgradient wetlands. Please respond to how the DEIS will require a better description of how capture of precipitation will not substantially alter surface water hydrology.

Project plans call for the pumped-water storage system's lower reservoir and conveyance piping to be filled once at the end of construction, and then periodic fills to recharge the system (i.e., make-up water) as needed to offset evaporative and leakage losses from the system. Leakage from the reservoir and conveyance tunnels would impact the existing West Spent Pot Liner ("SPL"), remaining contaminated soils, or contaminated soils/fill material used in embankments. Water contributing to this leakage would likely have degraded water quality and could adversely impact downgradient wetlands. Please respond to how the DEIS will address these impacts in the summary Table S-1 under Water Resources – Summary Description and address in DEIS section 4.2.

Under section 4.2.2.1 Water Resources – Impacts from Construction, the DEIS states that dewatering will be required for construction and there is a potential for surface water to infiltrate into the tunnels as they are being constructed and that this could drain wetlands and streams on the overlying surface. Water loss through infiltration could continue beyond the construction phase into the operations phase of the project and result in loss of wetlands, buffers, habitat, and plants and aquatic species. Please add a discussion of this impact to section 4.2.1. Further under section 4.2.2.2 Water Resources – Impacts from Operation, the DEIS mentions full removal of contaminated materials from the WSI and confirmation groundwater monitoring. However, the DEIS does not present a plan for further characterization and groundwater remediation of the plume in the vicinity of the WSI, SPL, and Drainage Ditch, except that the Smelter Potentially Liable Person ("PLPs") will conduct that work. Please add to section 4.2.2.2 a discussion of how groundwater remediation will occur in conjunction with removal of the WSI and how that work and schedule will be coordinated. Additionally, under section 4.2.1 the DEIS identifies that both reservoirs will intercept precipitation within their footprints that would otherwise contribute to recharge of surface water and groundwater. Alteration of surface water hydrology will negatively impact existing wetlands A, B, C, and D and Spring 6 during times of drier conditions and cause loss of function, habitat loss, and potential mortality to amphibians, turtles, and other wetland species. Please address this impact to section 4.2.1.

Under section 2.3.1.1 Reservoirs, the DEIS states that both reservoirs would be lined with concrete to reduce leakage, seepage, and evaporation, and that the lower reservoir is anticipated to include a double liner system to further minimize the potential for leakage. There is no mention of installing an impermeable synthetic liner in the upper reservoir. There is concern that leakage from both reservoirs as well as from the three tunnels could result in significant changes to the groundwater regime that could mobilize and/or cause the spread of contaminants in soil and groundwater in the vicinity of the WSI, SPL, or other areas at the CGA smelter site. Please confirm that both reservoirs would be lined with an impermeable synthetic liner and if not, how will the system ensure that failure or leakage loss does not impact the existing groundwater regime.

The proposed upper reservoir would capture precipitation and groundwater recharge that would otherwise flow to the Swale Creek watershed. However, the DEIS states that due to underground leakage from the water conveyance infrastructure between the two reservoirs, there would be a net gain in water flow to the Swale Creek watershed. section 4.2.2.2 states that degradation of water quality is anticipated for the proposed project based on the concentration of water quality constituents from evaporation in the proposed reservoirs over time. Given that the amount of leakage cannot be fully understood until after the project is built, and operational water quality will degrade over time, water quality should be addressed through treatment in the reservoir. Please add a discussion of these impacts to section 4.6.

b. Soils and Geology.

Under section 4.1 Soils and Geology, the DEIS states that there is uncertainty related to geologic conditions, but there is a possibility that construction activities could moderately increase geologic and seismic hazards, including the potential for landslides. There is a concern that those landslides could cause damage or a breach of the lower reservoir. Additional soil analysis is needed before design to better understand the distribution of contaminants, how they could move during a seismic event or landslide, and how likely it is that such an event could damage or breach the lower reservoir. Please also address the risk of a breach of the upper reservoir causing a landslide on the slope above the lower reservoir.

The DEIS further states that during Project operations, a local or regional earthquake could cause liquefaction in the vicinity of the lower reservoir, potentially resulting in damage to the reservoir embankment or other project elements. The DEIS does not include mitigation for this potential effect. Please include additional mitigation information that will address this potential effect.

Additionally, the DEIS states that the Project could encounter multiple areas of instability in both the above- and below-ground portions of the study area. Most of those areas are associated with uncertain conditions in the underlying basalt formation layers, particularly in those locations where faults cross the study area and in locations where unconsolidated deposits occur. The DEIS does not discuss mitigation measures to address potential conveyance failures due to uncertain underlying basalt formations. Please include additional mitigation information that will address this potential failure.

c. Climate Change.

Another area of water quality uncertainty is the magnitude of the future effects of climate change and how the changing climate will affect water availability in the Columbia River and supply to the reservoirs. Historic drought conditions and recent rapid declines in water levels are being observed in Lake Mead, Lake Powell, the Great Salt Lake, and other water resources in the Western United States. Current methods of assessing the impacts of climate change are likely no longer sufficient given that the United States has been unable to meet its greenhouse gas emissions reduction goals. Please revise the discussion of climate change to include increased uncertainty.

d. Public Services and Utilities.

Under section 4.5.2.2 Public Services and Utilities – Impacts from Operations, the DEIS states that an emergency action plan will include inundation maps identifying high-water areas downstream of the proposed project in the event of a catastrophic structure failure. However, the DEIS does not explain how a catastrophic failure of either the upper or lower reservoirs would impact contaminants at the CGA smelter site. There is a potential for significant erosion of contaminated materials left behind at the WSI, SPL, Plant Construction Landfill, or other parts of the site (if contaminated material has not been fully excavated and removed offsite) that could transport contamination to the Columbia River. Please add a discussion of this impact to section 4.5.2.2.

e. Environmental Health.

Under section 4.10 – Environmental Health, Breaches of either of the reservoirs' large above-grade embankments (175 feet high for upper reservoir, 205 feet high for lower reservoir) would release water that would be expected to flow down the outer face of the embankment. For low rates of discharge, water would infiltrate to shallow groundwater, and for higher rates of discharges that overwhelm the surrounding soils' infiltration capacity, the runoff would be stormwater. Because the water quality within the reservoirs is expected to degrade gradually as operations proceed per section 4.2, the discharge of water from a breached embankment could adversely impact the quality of groundwater and wetlands downstream of the breach location.

In the area surrounding the upper reservoir, shallow and disconnected groundwater conditions mean that a breach would not result in a significant adverse impact to water quality. However, in the area surrounding the lower reservoir, the existing groundwater is contaminated (Area of Concern 2). Therefore, in the event of a low-volume discharge from a breach of the lower reservoir, the primary impact would be temporarily altered flow direction of the existing contaminated groundwater, potentially toward the Columbia River. A higher-volume discharge from a larger breach of the reservoir embankments would be expected to run off to adjacent intermittent stream channels, eventually flowing into Swale Creek from the upper reservoir area or the Columbia River from the lower reservoir area.

In either location, the degree of impact would depend on the rate of discharge entering a surface waterbody. High rates of breach discharge would scour and erode surface soils adjacent and downstream of the breach, delivering high levels of suspended solids (turbidity) to the receiving waters that, depending on specific conditions, could constitute a significant water quality impact to aquatic species, even if temporary.

Depending on where in the lower reservoir embankment a large breach might occur, the erosion may entrain and transport contaminated surface soils associated with the historical smelter operations, which could result in significant temporary water quality impacts to aquatic species and long-term impacts to Columbia River sediments.

v. Appendix J – Environmental Justice Report.

a. Notice of Insufficient Consultation.

The Yakama Nation clarifies the DEIS assertions regarding government-to-government consultation. The Yakama Nation defines effective consultation to be a process that is agreed upon by Yakama Nation Tribal Council as the governing body of a sovereign tribal entity. Further the regulatory body for the full Project application, FERC, has a federal trust responsibility to the Yakama Nation. These elements of the government-to-government consultative process cannot be delegated to the Project applicant over the Yakama Nation's objections. This comment provides notice to Ecology that the consultation described herein has not occurred and the Yakama Nation maintains an ongoing dispute with the FERC about its obligation to consult.[14]

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[14] *See* Exhibit B – Communication From The Federal Energy Regulatory Commission To The Yakama Tribal Council Chairman.

The Yakama Nation disagrees with the DEIS assertion that mitigation has been proposed by the applicant and the consulting parties or tribes have not yet identified that it is acceptable. To be clear, effective consultation with the FERC has not occurred for this Project. Not only does the Yakama Nation find this to be inappropriate, but it further rejects the Project Applicant's proposed measures for a management plan as a means to mitigate effects on the cultural resources that will surely be destroyed during the Project construction phase.

The Washington Department of Archaeology and Historic Preservation notified the Project Applicant mitigation measures are premature under the sequential process required by Section 106 and 36 CFR 800.[15] As previously mentioned, Yakama Nation finds that this project cannot be mitigated and is opposed to the project due to the irreparable harm that it will cause to its people, culture, and future generations.

The Yakama Nation is opposed to the Project and no mitigation can replace this resource or the impacts of the project. The Project adds to the cumulative sacrifice zone that has burdened the Yakama Nation's resources for nearly a century for the advancement of energy development. Other energy infrastructure, including the hydro-electric dam system, the Hanford Nuclear Site, and many distinct utility-scale wind turbine and solar facilities have flooded, contaminated, or restricted access to traditional fishing sites, villages, burial sites, ceremonial gathering places, root and medicine harvests, and cultural landmarks up and down the Columbia River.

V. Conclusion.

The Yakama Nation's Treaty-reserved cultural and natural resources will be irrevocably damaged or destroyed due to the Project construction and location on top of a culturally and environmentally sensitive area. The Project does not protect Yakama Nation's Treaty resources or the Yakama members who rely these resources.

[15] *See* Exhibit C – Communication From Robert Whitlam, State Archaeologist, To Mike Trust And Erik Steimle.

For further comments or questions please contact Phil Rigdon, Interim Tribal Administrative Director, at phil_rigdon@yakama.com, (509) 865-5121, ext. 4655 and Jerry Meninick, Deputy Director of Cultural Services, jerry_meninick@yakama.com, (509) 865-5121, ext. 6007.

Respectfully,

Virgil Lewis

DELANO SAUUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

cc: Kimberly Bose, Secretary, Federal Energy Regulatory Commission
Rob Whitlam, State Archaeologist, Washington Department of Archaeology & Historical Preservation
Dennis Griffin, State Archaeologist, Oregon State Historic Preservation Office
William Dancing Feather, ACHP Native American Program Analyst

EXHIBIT A

Letter From Yakama Tribal Council Chairman To FERC Secretary (May 23, 2022)

Exhibit Coversheet Only.

[Paginated separately.]

May 23, 2022

FILED ELECTRONICALLY

Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426

RE: YAKAMA NATION COMMENT(S), RECOMMENDATION(S), AND PRESCRIPTION(S) TO NOTICE OF APPLICATION READY FOR ENVIRONMENTAL ANALYSIS FOR THE GOLDENDALE ENERGY STORAGE PROJECT (P-14861-002).

Dear Secretary Bose,

The Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), an inherently sovereign Native Nation that is federally recognized pursuant to the Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951 ("Treaty"), is responding herein to the Federal Energy Regulatory Commission's ("FERC") Notice of Application Ready for Environmental Analysis ("REA"), dated March 22, 2022, regarding Project No. 14861-002 ("Project"). The following comment(s), recommendation(s), and/or prescription(s) to the REA are based on the Yakama Nation's strong objection to the issuance of a license for the Project and the preliminary information provided by the Project Applicant, such that the Yakama Nation reserves the right to amend this response based on the results of additional information and conclusions developed during the FERC's Project Application review.

The Yakama Nation preserves, incorporates, and reasserts its previous written concerns regarding this Project.[1] This letter further agrees with and incorporates corresponding comments submitted by the Columbia Riverkeeper on the Project REA.

I. Yakama Protection Of Resources At *Pushpum*.

The Treaty reserved a 1.3 million acre Reservation "for the exclusive use and benefit" of the Yakama people.[2] The Treaty further designated reserved rights for Yakamas to exercise "in common with" citizens of the United States at all usual and accustomed places within the Treaty Territory.[3] A federal treaty is considered the supreme Law of the

[1] *See* Exhibit A – Letters from the Yakama Nation regarding Project comments and concerns.

[2] *See* Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. II, cl. 3.

[3] *See Id.* at art. III, cl. 2.

Land under the U.S. Constitution.[4] Pursuant to its status as a sovereign Native Nation and its Treaty-reserved authority, Yakama Nation acts as a Co-Manager of the Columbia River fishery, as recognized by federal courts,[5] for the protection of environmental resources in Yakama Nation's Treaty Territory. The Yakama Nation's inherent right has existed since time immemorial and is still a Treaty-reserved right for Yakama members to exercise the root gathering, fishing, practice of ceremony, and passing on cultural tradition at *Pushpum* (Juniper Point), where the Project proposes to permanently destroy legendary Yakama cultural resources. The Yakama Nation opposes the Project "development at *Pushpum* to avoid irreparable damage and destruction to the Yakama Nation's cultural resources and Treaty-reserved root gathering rights."[6]

II. Project Description.

The Project consists of proposed development of: a 61-acre upper reservoir formed by a 175-foot-high, 8,000-foot-long rockfill embankment dam; a 63-acre lower reservoir formed by a 205-foot-high, 6,100-foot-long embankment; and an underground conveyance tunnel system connecting the two reservoirs consisting of a 2,200-foot-long, 29-foot diameter, vertical shaft. Additional tunnels include: a 3,300-foot-long, 29-foot-diameter, tunnel; a 200-foot-long, 22-foot-diameter, manifold tunnel; three 600-footlong,15-foot-diameter, penstocks; three 200-foot-long, 20-foot-diameter, draft tube tunnels; a 200-foot-long, 26-foot-diameter, low-pressure tunnel; and a 3,200-foot-long, 30-foot-diameter tailrace tunnel. Additionally, there is a proposed underground powerhouse and a 0.48-acre underground transformer cavern adjacent to the powerhouse connected to a 0.84-mile-long, 115-kV underground transmission line that emerges to an outdoor 7.3-acre substation/switchyard. The voltage would be stepped up to a 3.13-mile-long, 500-kV transmission line routed from the substation/switchyard south across the Columbia River and connecting to Bonneville Power Administration's existing John Day Substation.

III. Recommend Suspending The REA To Cure Procedural And Technical Deficiencies.

i. Recommendation To Give 'Equal Consideration' To Environmental Concerns

Justification. Under 16 U.S.C. §§ 797(e) and 803(a) the FERC "shall give equal consideration to the purposes of . . . the preservation of other aspects of environmental quality." Equal consideration is provided under those statutes for recommendations from resource agencies to weigh concerns of environmental quality on balance with a Project Application's power and development purpose. To be clear, only the Yakama Nation can determine the significance of its cultural resources. However, consistent with the FERC's deference to the specific expertise of resource agencies, the Washington Department of Archaeology & Historic Preservation ("SHPO") informed the Project Applicant in writing on

[4] *See* U.S. Const. art. VI, cl. 2.

[5] *See United States v. Washington*, 384 F. Supp. 312, 382 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975); *see also U.S. v. State of Oregon*, 666 F.Supp. 1461 (D. Or. 1987).

[6] *See* Yakama Tribal Council Resolution T-089-21 (May 24, 2021).

January 5, 2022 that current Section 106 document(s) are "incomplete and does not provide the federal agency determination of eligibility nor the tribes' concurrence and signature for documentation and release to [the SHPO]."[7] The SHPO further asserts a prior "concur[ance] with an Adverse Effect Determination and the next step should be a collaborative consultation effort to develop a Programmatic Agreement with specific stipulations tailored to the particular historic, cultural, and archaeological properties . . ."[8]

The Yakama Nation has consistently expressed Project concerns that this Project will cause direct and irreversible harm to the environmental quality since the Project Application was filed. The Yakama Nation also expressed consistent public concern for a prior project proposal of a similar nature at this location. The Washington SHPO, a state agency with archaeological expertise, concurs with concerns that sequential steps prescribed in 36 C.F.R. 800 have not been followed by the Project Applicant. The procedural deficiency, as identified, equates to a less-than-equal consideration of environmental qualities at *Pushpum* by skipping conditions precident to the REA and in conflict with 16 U.S.C. §§ 797(e) and 803(a).

ii. Recommendation That FERC Conduct Government-To-Government Consultation

Justification. Under 36 C.F.R. § 800.2(c)(4), the "agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, *but remains legally responsible for all findings and determinations* charged to the agency official . . . [f]ederal agencies that provide authorizations to applicants *remain responsible for their government-to-government relationships with Indian tribes*." (emphasis added). Further under 18 C.F.R. § 2.1c the FERC acknowledges that it has a trust responsibility to tribes on a government-to-government basis. The Yakama Nation asserts that FERC has a government-to-government consultation obligation under express law and the principles of Trust responsibility unique to the federal-tribal relationship. The FERC has failed to accommodate government-to-government consultation, and has improperly attempted to deputize a private archaeological consultant to satisfy federal obligations – the result is that the Yakama Nation is still waiting for government-to-government consultation as a precondition to consideration of the REA.

On September 13, 2021, the Yakama Nation responded to the FERC's August 13, 2021 letter addressed to Cristine Curran with the Oregon Parks and Recreation Department regarding FERC's designation of the Project Applicant as the National Historic Preservation Act ("NHPA") Section 106 consultation lead. The Yakama Nation disputed this designation of the Project Applicant in writing as impermissible under 36 C.F.R. § 800.2(c)(4), Yakama consultation law, and the FERC's Trust responsibility. On December 9, 2021, following a public discussion on November 10, 2021 between FERC staff and Yakama Nation staff, the FERC provided written declination of the Yakama Nation's government-to-government consultation request under Rule 2201 prohibiting off-the-record communications. Following that notice, the FERC has yet to provide the Yakama Nation

[7] *See* Exhibit B – Letter from Robert G. Whitlam to Erik Steimle regarding Goldendale Energy Storage Project (Jan. 5, 2022).

[8] *See Id.*

with a government-to-government consultative platform that protects the privileged and confidential cultural resources raised by the Yakama Nation since the Project's inception. The FERC has not equally considered cultural resource impacts as a result of failing to achieve the prescribed NHPA Section 106 consultation, and furthermore the Project Applicant's submission of a Historic Properties Management Plan cannot be completed for the Project Application.

iii. *Recommendation For Enforcement Of Programmatic Agreement For Access*

Justification. The avian and plant resources that would be negatively impacted by the proposed Project, specifically disturbance of traditional root fields and increased Golden Eagle mortalities, are intertwined and amplified in combination with their cultural significance to Yakama traditional and ceremonial practices. The right to exercise these practices is reserved under the Treaty. That reserved right was further observed by the State of Washington and the Bonneville Power Authority for on-going root and plant gathering access by Yakama members.[9] Yakama members regularly access this site for root and medicing gathering, and to practice religious and cultural ceremonies. The Programmatic Agreement preserves and recognizes the critical archaeological and cultural resources within the Project area of potential effect.

IV. Conclusion.

The Yakama Nation's Treaty-reserved cultural and natural resources will be irrevocably damaged or destroyed due to the Project construction and location. The FERC is subject to a higher standard of consideration for these cultural resources than it has currently undertaken and the land at this proposed Project site is subjugated to higher federal Trust duty by virtue of being the Yakama Nation's Treaty Territory.

For further comments or questions please contact the Interim Tribal Administrative Director, Phil Rigdon, at phil_rigdon@yakama.com or at (509) 865-5121, ext. 4655.

Respectfully,

Delano Saluskin

DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

cc: Erik Steimle, Vice President, Rye Development, FFP Project 101, LLC
Phil Rigdon, Superintendent, Yakama Nation Department of Natural Resources
Rob Whitlam, State Archaeologist, Washington Department of Archaeology & Historical Preservation
Dennis Griffin, State Archaeologist, Oregon State Historic Preservation Office

[9] *See* Programmatic Agreement Among The Bonneville Power Administration, The Washington State Historic Preservation Officer, And The Advisory Council On Historic Preservation (May 1997).

EXHIBIT A

LETTERS FROM THE YAKAMA NATION REGARDING PROJECT CONCERNS

Exhibit Coversheet Only. [Paginated separately.]

1. Letter from the Yakama Nation Tribal Council Chairman to the Advisory Council on Historic Preservation regarding FERC concerns (Feb. 16, 2022).

2. Letter from the Yakama Nation Tribal Council Chairman to the Advisory Council on Historic Preservation regarding Project opposition (Jan. 4, 2022).

3. Letter from the Yakama Cultural Resource Program Manager to FERC regarding Section 106 Consultation (Sep. 13, 2021).

4. Letter from the Yakama Deputy Director for Cultural Resources to Washington Department of Ecology regarding comments for Environmental Impact Statement (Feb. 12, 2021).

5. Letter from the Yakama Nation Tribal Council Chairman to the Washington State Legislature regarding opposition to the Project (Jan. 20, 2021).

6. Letter from the Yakama Nation Superintendent of Natural Resources to FERC Secretary regarding comments on NEPA Scoping Document No. 1 (Dec. 28, 2020).

7. Letter from the Yakama Nation Superintendent of Natural Resources to Breean Zimmerman regarding comments on Application for Section 401 Water Quality Certification (Nov. 6, 2020).

8. Letter from the Yakama Nation Tribal Council Chairman to FERC Secretary regarding comments and recommendations for Additional Study (Mar. 11, 2020).

9. Letter from the Yakama Nation Tribal Council Chairman to FERC Secretary regarding Notification of Intent and Pre-Application (Feb. 21, 2019).

10. Letter from the Yakama Nation Deputy Director for Cultural Resources to Rye Development regarding Project Application (Feb. 14, 2018).

EXHIBIT B

LETTER FROM ROBERT G. WHITLAM TO ERIK STEIMLE REGARDING GOLDENDALE ENERGY STORAGE PROJECT (JAN. 5, 2022)

Exhibit Coversheet Only.

[Paginated separately.]

1. Letter from the Yakama Nation Tribal Council Chairman to the Advisory Council on Historic Preservation regarding FERC concerns (Feb. 16, 2022).

[Coversheet Only. Paginated separately.]

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

February 16, 2022

Sent via U.S.P.S. and Electronic Mail

Reid J. Nelson
Acting Executive Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Alyson Brooks
Washington State Archaeologist
Department of Archaeology and Historic Preservation
PO Box 48343
Olympia, WA 98504-8343

Valerie J. Grussing
Executive Director
National Association of Tribal Historic Preservation Officers
1255 22nd St. NW
No. 19189
Washington, DC 20036

SUBJECT: REGARDING THE YAKAMA NATIONS LIST OF FERC CONCERNS ON THE GOLDENDALE PUMP ENERGY STORAGE PROJECT

Dear Mr. Nelson, Ms. Brooks, and Ms.Grussing:

The Yakama Nation appreciates the time and dedication from the ACHP and DAHP staff to understand the issues Yakama Nation is experiencing in the pursuit to protect our sacred resources. We have been navigating the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), State Environmental Policy Act (SEPA), and Environmental Impact Statement (EIS) processes occurring simultaneously for the Goldendale Pump Energy Storage Project. Yakama Nation is dedicated to protecting this land where our resources have maintained a uniquely sacred connection to

us for thousands upon thousands of years. We do this not only for the future and well-being of our people today, but for those generations yet unborn. It is our understanding that if we do not continue to protect this resource we will face consequences from the Creator.

While a great deal of documentation has been accomplished at this location to show the significance of the archaeological and Traditional Cultural Properties (TCPs), we have additional TCP knowledge that we believe will add to the significance of this property and allow for further explanation of Yakama Nation's concerns. However, we have not been afforded the appropriate mechanism or federal trust responsibility by a lead federal agency to do so. In addition, we have compiled a bullet list of specific concerns with the project, highlighting the misapplication of NHPA by the involved parties who are subject to its procedures for Section 106 compliance. Please see the bullet list of issues below.

- **The Delegation of Consultation to Rye Development (the developer)**

  In a letter dated September 23, 2021 FERC identifies: *"36 § C.F.R. 800.2(c)(4) allows agencies to authorize license applicants to initiate consultation as long as the agency notifies the SHPO or THPO of such authorization"*

  However, 36 § C.F.R. 800.2(c)(4) specifically states: *"Applicants for Federal assistance, permits, licenses, and other approvals. An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO / THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO / THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO / THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes."*

  We believe that FERCs September 23, 2021 letter provides an interpretation that is not accurate and fails to address all of the responsibilities under 36 § C.F.R. 800.2(c)(4) and more specifically 36 § C.F.R. 800.2(2)(ii) and Section 101(d)(6)(B) which pertains to consultation with Indian Tribes and Native Hawaiian Organizations with historic properties of significance. These provisions require: "*...the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property.*"

- **Resolving Adverse Effects**

  The Department of Archaeology provided a letter which concurred with the APE, determinations of eligibility, and determination of Adverse Effect on September 30th 2021. Yakama Nation responded on November 29th 2021 notifying DAHP that no amount of mitigation could ever address the effect of this undertaking. Yakama Nation further identified that an effective mode of consultation had not been identified and indicated the knowledge of additional impacts which have not been understood. However, Historical Research Associates on behalf of Rye Development submitted HPMP plans to Yakama Nation December 15, 2021. The HPMP included an assessment of effects to resources and TCPs that is completely devoid of effective consultation with Yakama Nation and has does not appear to have input from the lead federal agency. In the absence of meaningful consideration to Yakama Nation's outright opposition of this project this was extremely premature. Rye Development and Historical Research Associates have no authority in this process to jump ahead into an HPMP. We do not feel that an HPMP has ever been contemplated nor has a meaningful discussion of the impacts occurred with FERC.

  We feel that it is clear that 36 § C.F.R. 800.2(2)(ii)(a) applies to FERC which details: *"the agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects...."*

- **Issue with FERCs Public Forum for Consultation.**

  FERC has indicated that they recognize 18 § C.F.R. 2.1(c) acknowledges trust responsibility and endeavors to work with Tribes on a gov. to gov. basis to address effects to tribal rights and resources in consultation. However, they indicate that they have limitations on the nature and type of consultation that the Commission may engage in during contested hearings.

  Specifically FERC cites to Rule 2201 of the Commission's Rules and Practice Procedure (18 § C.F.R. 385.2201) to explain why they are *"prohibited from off the record communications by or with staff discussing matters relevant to the merits of a contested proceeding that do not include all parties to the*

proceeding." They further discuss how the filing requirements do not allow a nonpublic file protections. Instead, it is suggested that for sensitive cultural resource information a non-disclosure agreement is established early on in the process or sensitive information is redacted. These options are far from the requirements of NHPA or in line with the trust responsibility that the Federal Agency has to Yakama Nation. It appears that FERC selected and interpreted individual components of federal regulation to infer its obligations which indirectly impact Yakama Nation. For example 18 § C.F.R. 2.1(c) states *" The Commission will endeavor to work with Indian tribes on a government-to-government basis... and will seek to address the effects of proposed projects on tribal rights and resources through consultation pursuant to ...section 106 of the National Historic Preservation Act, and in the Commission's environmental and decisional documents."*

In regards to NHPA 36 § C.F.R. 800.2(2)(ii)(a) states *"...It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties."* It is clear that this was not met by FERC.

- **Protection of Sacred Information**

  FERCs December 9th letter describes a process that does not protect information that is sacred and sensitive from disclosure. The commissions regulations under the Federal Power Act 18 § C.F.R. 388.112 is described to limit the ability for Yakama Nation to submit sacred information. Specifically they state: *"once the request is made, the Secretary of the Commission will place the document in a nonpublic file. If someone requests access to a document in a nonpublic file (for example through a Freedom of Information Act request), the Commission, in deciding whether to release the information, will first notify the person who submitted the document."* This statement does not inspire confidence or represent a reasonable process for Yakama Nation to protect sacred and sensitive information. However, it does not preclude the Commission from a proper process which respects Yakama Nations sacred and sensitive information by denying the release of sacred information (see E.O.13007 and 5 U.S.C. § 552(b)(4)).

We find that the above list expresses a failure for FERC to conduct NHPA consultation. Further, the structure of NHPA consultation being utilized has occurred absent of input

from Yakama Nation and therefore, cannot effectively address adverse effects to our resources. The NHPA process should be halted until such time that FERC and Yakama Nation can satisfy a format, method, and projected timeline for initial consultation. The formation of appropriate steps to consider affects to cultural resources should therefore be conceived with input from Yakama Nation. No further consultation from the developer, contracted archaeologist, or otherwise should occur until this important piece of NHPA is satisfied. We find that contractors and developers do not have a place in our Nations federal consultation. This vital consultation is our opportunity to meaningfully address traditional concerns. In this case, it is our ability to express why this project should not proceed. We need to be meaningfully incorporated in a decision making process with the U.S. Government who has a legal and moral obligation to uphold, including the protection of valuable and sacred information.

We thank you for your valued attention to these concerns and look forward to continued consultation on this important cultural resource matter.

Sincerely,

DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

Cc: Yakama Nation Cultural Committee
Jerry Meninick, Yakama Nation Deputy Director of Culture
Phil Rigdon, Yakama Nation Deputy Director DNR
Noah Oliver, Yakama Nation Cultural Resource Program Archaeologist
Jessica Lally, Yakama Nation Cultural Resource Program
Anthony Aronica, Yakama Nation Office of Legal Counsel
William Dancing Feather, ACHP Native American Program Analyst
Rob Whitlam, Washington State Department of Archaeology and Historic Preservation

2. Letter from the Yakama Nation Tribal Council Chairman to the Advisory Council on Historic Preservation regarding Project opposition (Jan. 4, 2022).

[Coversheet Only. Paginated separately.]

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

January 4th, 2022

Sent via U.S.P.S. and Electronic Mail

Reid J. Nelson
Acting Executive Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Alyson Brooks
Washington State Archaeologist
Department of Archaeology and Historic Preservation
PO Box 48343
Olympia, WA 98504-8343

SUBJECT: REGARDING THE YAKAMA NATION'S OPPOSITION TO THE GOLDENDALE PUMP ENERGY STORAGE PROJECT

Dear Mr. Nelson and Ms. Brooks:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") to inform you of a deeply concerning situation. Yakama Nation is strongly opposed to the Goldendale Energy Storage Project (see attached). This project is occurring in our sacred lands vital to our culture and way of life. No amount of mitigation could ever address the impacts of this project to our culture today or for our future generations.

A great number of resources, archaeological sites, and traditional cultural properties have been identified and documented not only by our staff and tribal elders, but by outside contract archaeological firms over the years. Due to the sacredness of this resource this development would destroy the lives of our tribal members.

We are engaged in a complicated series of state and federal procedural processes that are running in tandem and without proper or meaningful consultation. FERC has delegated

consultation to the developer and in addition consultation has been received from Historical Research Associates (HRA) despite our objection to the delegation of this federal consultation responsibility and our attempts to redirect. We have been forced to participate in a public forum to discuss our concerns with FERC. All of this is occurring during a global pandemic and at a time when the Yakama Nation's Ceded Lands are experiencing record growth and development. We are therefore requesting your attention to this matter and would greatly appreciate a follow up meeting with our Cultural Resource Program to discuss our concerns.

Sincerely,

Delano Saluskin

DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

Cc: Yakama Nation Cultural Committee
Jerry Meninick, Yakama Nation Deputy Director of Culture
Phil Rigdon, Yakama Nation Deputy Director DNR
Noah Oliver, Yakama Nation Cultural Resource Program Archaeologist
Jessica Lally, Yakama Nation Cultural Resource Program
Anthony Aronica, Yakama Nation Office of Legal Counsel
Rob Whitlam, Washington State Department of Archaeology and Historic Preservation

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Yakama Nation Cultural Resource Program
Na-Mi-Ta-Man-Wit Nak-Nu-Wit Owt-Nee At-Tow
Confederated Tribes and Bands of the Yakama Nation
Post Office Box 151
Toppenish, WA 98948

MEMORANDUM

To: Yakama Nation Culture Committee

Through: Jerry Meninick, Deputy Director of Cultural Services

From: Casey Barney, Cultural Resource Program Interim Manager

Date: January 4th, 2022

Letter to ACHP and DAHP on Goldendale Pump Storage Energy Project

A letter was prepared to clearly or bluntly indicate our opposition to the proposed Goldendale project. We hope that through this letter and through discussions with ACHP and DAHP we can gain additional support in our fight against the development. Please review the attached.

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

For immediate release: October 6, 2021

YAKAMA NATION ADVOCATES FOR PROTECTION OF CULTURAL SITES; OPPOSES PROPOSED GOLDENDALE PUMP STORAGE PROJECT

YAKAMA NATION AGENCY, YAKAMA RESERVATION – On Wednesday, October 6, 2021, the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") met with Rye Development company, proponents of the proposed Goldendale Pump Storage Project ("Project") to advocate for the protection of Yakama cultural, ceremonial, and traditional resources at Juniper Point. The Project's proposed construction in the area known as *Pushpum* has exceptional cultural importance to the Yakama Nation, including nine archaeological sites, two of which are National Register of Historic Places-eligible and one multiple property documentation. "*Pushpum* has been a sacred site for Yakama ceremonies, legend, and the gathering of traditional roots and medicines since time immemorial" stated Tribal Council Cultural Committee Chair George Selam. The proposed Project includes two reservoirs exceeding 120 acres in surface area and 14,000 linear feet of rockfill embankment. The industrial-scale Project anticipates a generating capacity of 1,200 megawatts.

Yakama members continue annual gathering practices in the proposed development area for traditional foods and medicines. "For generations, regional utility infrastructure has been developed in the Yakama Nation's Treaty-territory, blasting customary fishing sites, flooding traditional villages, and seeping radioactive pollution into subsistence and medicinal root fields" said Yakama Tribal Councilman Jeremy Takala. The Yakama Nation Treaty of 1855 with the United States reserved a 1.3 million acre Reservation for the exclusive use and benefit of the Yakama people and reserved rights to exercise usual and accustomed fishing, hunting, and gathering across the more than 10 million acre Treaty-territory of the Pacific Northwest region. Councilman Takala further commented, "For thousands of years Yakama culture and religion has balanced human stewardship of the land for generations yet unborn."

Yakama Tribal Council Vice Chairman Virgil Lewis chaired the discussion, further noting "In the next ten years, the Pacific Northwest will be pressured by a multi-billion dollar energy industry for more infrastructure development. This new technology must be developed ethically without destroying the cultural resources and gathering sites that are part of the Yakama way of life." The proposed Project license application was accepted by the Federal Energy Regulatory Commission in June 2020 with anticipated regulatory review until 2023.

For additional information or comment, please contact Yakama Nation Cultural Resources Director Jerry Meninick at (509) 865-5121, or Lead Attorney Ethan Jones at (509) 865-7268.

///

T-089-21

RESOLUTION

WHEREAS, the Confederated Tribes and Bands of the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951); and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation, by the authority delegated by the Resolution of February 1944 and Resolution T-38-56; and

WHEREAS, the Tribal Council has the duty and responsibility according to the Resolution T-38-56 and T-10-61 to protect and preserve the Treaty Rights of the Yakama Nation, and

WHEREAS, centuries of oppression by the United States against Native Nations under the Doctrine of Discovery, affirmed by United States Supreme Court through *Johnson v. M'Intosh*, and implemented through Congressional policies of allotment and termination, have cost Native Nations hundreds of millions of acres of homelands of ancestral, spiritual, and ceremonial significance; and

WHEREAS, *Pushpum*, known as Juniper Point, is within the Yakama Nation's Treaty territory under Article I of the Treaty of 1855 and has been a site of religious, ceremonial, and cultural importance to the Yakama People since time immemorial; and

WHEREAS, *Pushpum* is a place where Yakama People continue to exercise Treaty-reserved rights to gather traditional roots and medicines under Article III of the Treaty of 1855 and has been a site of sovereign food gathering since time immemorial; and

WHEREAS, Rye Development proposes to construct an industrial-scale pump storage project at Juniper Point, including the construction of two reservoirs totaling 124-acres of surface area and more than 14,000 linear feet of rockfill embankments; and

WHEREAS, 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.

NOW, THEREFORE, BE IT RESOLVED, by the Executive Committee of the Yakama Tribal Council, acting under authority delegated by Section III-A of the Rules of Procedures, approved by Yakama Nation Tribal Council Resolution T-10-61, dated July 13, 1960, and meeting at the Governmental Headquarters of the Yakama Nation, that the Yakama Nation opposes pump storage development at *Pushpum* to protect sacred religious and ceremonial places of inherent importance to Yakama culture.

Yakama Nation, Post Office Box 151, Toppenish, WA 98948 (509) 865-5121

BE IT FURTHER RESOLVED, that the Yakama Nation opposes pump storage development at *Pushpum* to avoid irreparable damage and destruction to the Yakama Nation's cultural resources and Treaty-reserved root gathering rights.

BE IT FURTHER RESOLVED, that the Yakama Nation opposes all federal or state actions that authorize, approve, or permit extractive and exploitative energy technology that threatens to, or is likely to, damage or destroy Traditional Cultural Properties in the Yakama Nation's Treaty territory, including, but not limited to, on usual and accustomed lands and open and unclaimed lands where the Yakama Nation reserved and exercises its Treaty-reserved rights.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish our Sovereign Immunity, whether expressed or implied, by virtue of this resolution for any and all administrative or legal action which may arise directly or indirectly from the same; nor does the Yakama Nation waive, alter, or otherwise diminish our rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 24th day of May, 2021, by the undersigned members of the Executive Committee of the Yakama Tribal Council.

Delano Saluskin

Delano Saluskin, Chairman
Yakama Nation Tribal Council

Virgil Lewis

Virgil Lewis, Sr., Vice-Chairman
Yakama Nation Tribal Council

Athena Sanchey

Athena Sanchey, Executive Secretary
Yakama Nation Tribal Council

Cc: File
Cultural Ca#071-2021-10

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

Statement From Councilman Takala: June 22, 2021

YAKAMA NATION OPPOSES PROPOSED GOLDENDALE PUMP STORAGE; APPLAUDS WATER QUALITY CERTIFICATION DENIAL

YAKAMA NATION AGENCY, YAKAMA RESERVATION – "As a member of the Yakama Nation Tribal Council Fish & Wildlife Committee, I applaud the Washington State Department of Ecology's denial of a water quality certification for the Goldendale Pumped Storage Project. While marketed as "green energy," the Goldendale Pumped Storage Project represents large-scale resource exploitation that directly threatens our Yakama Nation Treaty-reserved cultural and archaeological sites, and food and medicine gathering sites. The Yakama Nation Tribal Council passed a Resolution strongly opposing this project, and we will continue to stand against this project through all available avenues to protect our culture and environment for future generations." – Councilman Jeremy Takala

For additional information or comment, please contact Yakama Nation Tribal Councilman Jeremy Takala at (509) 865-5121, or Lead Attorney Ethan Jones at (509) 865-7268.

///

3. Letter from the Yakama Cultural Resource Program Manager to FERC regarding Section 106 Consultation (Sep. 13, 2021).

[Coversheet Only. Paginated separately.]

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

September 13, 2021

Suzanne Novak, Cultural Resources Coordinator
Office of Energy Projects
Division of Hydropower Licensing
Federal Energy Regulatory Commission
Washington D.C. 20426

David Turner, Northwest Branch Chief
Office of Energy Projects
Division of Hydropower Licensing
Federal Energy Regulatory Commission
Washington D.C. 20426

Regarding: Section 106 Consultation Authorization, Goldendale Energy Storage Project (P-14861)

Dear Ms. Novak and Mr. Turner,

We received your letter addressed to Cristine Curran with the Oregon Parks and Recreation Department dated August 13, 2021. The letter attempts to notify consulting parties and the developer of a designation and authorization pertaining to the Goldendale Energy Storage Project (P-14861). The Yakama Nation objects to this Section 106 consultation authorization for the Goldendale Energy Storage Project (P-14861). Consultation regarding a proposed authorization has not occurred with Yakama Nation. The Federal Energy Regulatory Commission (FERC) does not have the authority to authorize the FFP Project 101, LLC as a consultation lead. The FERC has a trust responsibility to Yakama Nation. Under the provisions set forth in the National Historic Preservation Act (NHPA), an agency may not delegate consultation with Indian tribes to an applicant unless the affected tribes have agreed to such an arrangement in advance. Yakama Nation has not and does not agree to this presumed authorization. Appropriate consultation has not occurred.

Under 36CFR800.7(c)(4) of the NHPA regulations require FERC as the lead agency to take comments and information into account in reaching a final decision on the undertaking. As a requirement of Section 110(a)(1) of NHPA, you may not delegate this responsibility.

If you have any questions or concerns please contact Anthony Aronica with the Yakama Nation Office of Legal Counsel by phone at (509) 833-9350 or by e-mail to anthony@yakama-olc.org. Thank you for your time and understanding regarding this important matter.

Sincerely,

Casey Barney

Casey Barney, Manager
Yakama Nation Cultural Resource Program

CC: Delano Saluskin, Yakama Nation Tribal Council Chairman
Yakama Nation Tribal Council Cultural Committee
Jeremy Takala, Yakama Nation Tribal Council Member
Jerry Meninick, Yakama Nation Director of Cultural Services
Ethan Jones, Yakama Nation Office of Legal Council
Allyson Brooks, Department of Archaeology and Historic Preservation
Rob Whitlam, Department of Archaeology and Historic Preservation

4. Letter from the Yakama Deputy Director for Cultural Resources to Washington Department of Ecology regarding comments for Environmental Impact Statement (Feb. 12, 2021).

[Coversheet Only. Paginated separately.]

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

February 12, 2021

SUBMITTED ELECTRONICALLY

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

RE: YAKAMA NATION COMMENTS FOR ENVIRONMENTAL IMPACT STATEMENT ON PROPOSED GOLDENDALE PUMPED STORAGE PROJECT.

Dear Ms. Park,

Included herein are comments on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") in response to the January 14, 2021 State Environmental Policy Act ("SEPA") Determination of Significance ("DS") Request for Commonents on Scope of Environmental Impact Statement ("EIS") in response to the proposed FFP Project 101, LLC pumped storage project under Federal Energy Regulatory Commission ("FERC") License Application No. 14861 ("Project"). The Yakama Nation's comments below demonstrate for the Washington Department of Ecology's ("DOE") Project EIS review that the proposed action will have significant adverse environmental impacts, many of which cannot be avoided or mitigated if Project implementation is permitted. 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 ancestrial sites that are still used to observe ceremonial and cultural practices. This letter preserves, incorporates, and reasserts the Yakama Nation's concerns regarding the Project made known to the FERC and Project Applicants through previous communications.[1] This letter further agrees with and incorporates corresponding EIS comments submitted by the Columbia Riverkeeper.

[1] *See* Exhibit A - Letter From the Yakama Nation Superintendent of Natural Resources to FERC Secretary, Comments on NEPA Scoping Document No. 1 (Dec. 28, 2020) with incorporated concurring comments; Letter From the Yakama Nation Superintendent of Natural Resources to Breean Zimmerman, Comments on Application For Section 401 Water Quality Certification (Nov. 6, 2020) with incorporated concurring comments; and, Letter From Yakama Nation Tribal Council

I. Background.

The 1855 Treaty between the United States and the Yakamas ("Treaty") reserved a 1.3 million acre Reservation "for the exclusive use and benefit" of the Yakama people.[2] The Treaty further designated reserved rights for Yakamas to exercise "in common with" citizens of the United States at all usual and accustomed places within the Treaty Territory.[3] A federal treaty is considered the supreme Law of the Land under the U.S. Constitution.[4] Pursuant to its status as a sovereign Native Nation and its Treaty-reserved authority, Yakama Nation acts as a Co-Manager of the Columbia River fishery, as recognized by federal courts,[5] for the protection of all natural and cultural resources in Yakama Nation's Treaty Territory. The Yakama Nation Treaty Territory encompasses usual and accustomed fishing sites, cultural areas, and ceremonial locations from the mouth of the Columbia River upstream north of the 49th parallel.

The Yakama Nation's enrolled membership exceeds 11,000 people whose history, culture, and way of life are intertwined with Nch'i Wa'na (the Columbia River), and its host of salmon, fish, plants, medicines, and animals. Protecting the land adjacent to and the waters of the Columbia River is critical for ensuring the Yakama Nation's Treaty-reserved resources and rights, and ultimately to the health and welfare of the Yakama people.

The Yakama Nation has expressed strong concerns, even before Project proponents filed a FERC draft license application, that this Project would have significant adverse impact on cultural, terrestrial, and aquatic resources. Reservoir construction over the top of Traditional Cultural Properties ("TCP") and National Register of Historic Places ("NRHP")-eligible sites creates an acute loss to Yakama people that cannot be replaced or off-set. Previously, the Yakama Nation opposed similar project proposals at this location due to the numerous natural and cultural resources that are incompatible with industrial development because it will permanently destroy TCPs and continuing access to ceremonial sites, loss of terrestrial and acquatic resources, and has the potential to exasperate existing soil and groundwater contaimination from the former Columbia Gorge Aluminium ("CGA") smelter site.

II. Project Description.

The Yakama Nation's understanding of the Project is consistent with the description summarized in the DOE Request for Commonents on Scope of EIS, dated January 14, 2021, based on the FERC License Application, dated June 23, 2020.

Chairman to FERC Secretary, Comments and Recommendations for Additional Study (Mar. 11, 2020).

[2] *See* Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. II, cl. 3.

[3] *See Id.* at art. III, cl. 2.

[4] *See* U.S. Const. art. VI, cl. 2.

[5] *See United States v. Washington*, 384 F. Supp. 312, 382 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975); *see also U.S. v. State of Oregon*, 666 F.Supp. 1461 (D. Or. 1987).

III. Direct Adverse Impacts To Yakama Nation Treaty Resources.

i. Cultural Properties

The Project Area of Potential Effect ("APE") is in an area of exceptional cultural importance to the Yakama Nation. The Project cumulatively adds to other energy infrastructure, including hydro-electric dams and utility-scale wind turbine facilities, that devastate and destroy Yakama Nation's traditional fishing sites, villages, burial sites, ceremonial gathering places, root and medicine harvests, and cultural landmarks up and down the Columbia River. This Project development directly damages and alters nine culturally significant sites or TCP's. Two of those sites impacted by the APE are NRHP-eligible TCP sites, including a NRHP-eligible multiple property documentation TCP, and a nationally-designated Archaeological District. Allowing the TCPs to be damaged will materially diminish their NRHP-eligibility by destroying the plants and features associated with Yakama legends. Further, diminishing the multiple property documentation TCP also compromises other documented TCPs nearby because the 'multiple property' aspect is culturally affiliated with, and draws enhanced meaning from, the network of associated sites.

The archaeological and TCP sites are irreplaceable to the Yakama Nation's cultural resource inventory as a source of significant cultural and spiritual meaning for Yakama people. Yakamas exercised ancestral harvest and ceremonial practices at these sites, as they *still* do today. The EIS must recognize the scale of negative impact to these cultural resources, including the insufficiency of proposed mitigation effects. Ultimately the construction of a pump storage facility at this proposed site unavoidably destroys cultural resources through earthworks and reservoir storage. Only the Yakama Nation can determine what is culturally significant to its people.

a. Unacceptable Limits On Cultural Use And Access

The Project development would impede and disrupt an existing Programmatic Agreement between the State of Washington and the Bonneville Power Authority for on-going root and plant gathering access by Yakama members.[6] Yakama members regularly access this site for root and medicing gathering, and to practice religious and cultural ceremonies. The Programmatic Agreement preserves and recognizes the critical archaeological and cultural resources within the Project APE. This Project will also directly and indirectly restrict access and use at the adjacent North Shore Treaty fishing Access Site which is a Treaty-fishing location in the Zone 6 Fishery.

Additionally, a decommissioning plan cannot possible replace or restore TCP's to their ancestrial condition – the cultural resource is forever decimated. The nature and character of the cultural resources within the APE will be significantly harmed or lost

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[6] *See* Exhibit B - Programmatic Agreement Among The Bonneville Power Administration, The Washington State Historic Preservation Officer, And The Advisory Council On Historic Preservation (May 1997).

forever if construction occurs. This irreplaceable loss seriously injures ongoing cultural access for the sites' integril meaning to the Yakama people's religious and ceremonial practices.

ii. Terrestrial and Aquatic Resources.

Calling the Project, a "closed-loop" system is disingenuous and misleading. Approximately 2.93 million gallons of water will be drawn from Columbia River to fill the Project's two reservoirs. These open air reservoirs must be continuously replenished at a rate of approximately 1.2 million gallons of water per year from the Columbia River to offset losses from evaporation and leakage. Emptying of these reservoirs for maintenance and repair will require additional water to replace lost volumes. The Columbia River fishery already suffers from the negative impacts of over-allocated water resources. Salmonids and other aquatic species require stable water quantity, quality, and temperature for survival. This Project, when combined with the impacts from existing dams and their impoundments, and the comorbidities of climate change, may irreversibly tilt the ecological scales long-term survival of the Columiba River fishery.

The Project's upper reservoir will permanently destroy several ephemeral waterbodies including approximately 965 linear feet of streams. These streams are perennial tributaries of the Klickitat River located approximately 2.4 miles north of the survey area. The upper reservoir represents a source of potential contamination to the surrounding streams and wetlands. Additionally, it is unclear what the impacts will be if earthworks at either proposed reservoir gets damaged, breeched, or completely fails.

Combined, the two proposed reservoirs would result in over 120 acres of surface water features to attract birds and bats which may result in more interactions with wildlife and an increase in birds and bats being wounded or killed by wind turbines. Additionally, these water bodies are expected to further alter laminar wind currents which are already influenced by existing wind farms. The Project area is home to bald eagle, golden eagle, and prairie falcon nesting, which combined with foraging and rearing habitat makes this area unique for these species. Eagle nesting, rearing, and foraging habitat would be degraded during both the construction phase and upon completion of the two reservoirs. The area also provides habitat and supports plant species important to Yakama Nation for gathering and food sovereignty practices.

Ephemeral and seasonal waterbodies at the site are important sources of seasonal water for many plant and animal species living in this otherwise dry region. The seasonality of the water supply is necessary for those plants and animals to complete life cycle phases. Ephemeral or seasonal waterbodies also slow surface water and stormwater runoff reducing erosion and flood impacts and allow for water to infiltrate to replenish groundwater. Possible leakage from the reservoirs will contaminate and adversely impact these interconnected terrestrial and aquatic resources.

iii. Columbia Gorge Aluminium Smelter Cleanup

The Project's lower reservoir is proposed over the former Columbia River Gorge Aluminum ("CGA") Smelter, which is now a Resource Conservation and Recovery Act

("RCRA") contaminated site that is subject to ongoing management and clean-up by the DOE under the state Model Toxics Control Act. The Project Applicant has not characterized or developed an actual plan to address the soil contaminants that would be excavated during construction of the lower impoundment. The Applicant must have a plan for properly disposing of that material in accordance with applicable law if hazardous or dangerous material is excavated during construction.

Previously FERC has denied the development of pump storage at this location because of necessary cleanup activities that are still ongoing and imperative for environmental recovery.[7] Additionally, the consequence of a potential leak or breach in the lower reservoir, adjacent to the Columbia bank, compounds concerns over existing soil contaminants.

IV. Conclusion.

The Yakama Nation's Treaty-reserved cultural and natural resources will be irrevocably damaged or destroyed due to the Project construction and location on culturally and environmentally sensitive areas. Project development attacks and threatens Yakama Nation's Treaty resources and the Yakama members who rely these resources. The decades-long industrial development of utility-scale energy facilities have had targeted harm on the Yakama Nation's Treaty resources, far beyond the balance of interests for other non-Yakama entities. SEPA protects of these jeopardized resources and the EIS tool must incorporate the regulatory responsibility to preserve irreplaceable resources.

For further comments or questions please contact phil_rigdon@yakama.com and jerry_meninick@yakama.com or at (509) 865-5121, exts. 4655 and 6323.

Respectfully,

JERRY MENINICK, DEPUTY DIRECTOR
YAKAMA NATION CULTURAL RESOURCES

PHIL RIGDON, SUPERINTENDENT
YAKAMA NATION DEPARTMENT OF NATURAL RESOURCES

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[7] *See Public Utility District No.1 of Klickitat County, Washington, Clean Power Development, LLC,* 155 F.E.R.C. ¶ 61,056 (2016).

cc: Erik Steimle, Vice President, Rye Development, FFP Project 101, LLC
Rob Whitlam, State Archaeologist, Washington Department of Archaeology & Historical Preservation
Dennis Griffin, State Archaeologist, Oregon State Historic Preservation Office

EXHIBIT A

1. **Letter From the Yakama Nation Superintendent of Natural Resources to FERC Secretary, Comments on NEPA Scoping Document No. 1 (Dec. 28, 2020) with incorporated concurring comments.**
2. **Letter From the Yakama Nation Superintendent of Natural Resources to Breean Zimmerman, Comments on Application For Section 401 Water Quality Certification (Nov. 6, 2020) with incorporated concurring comments.**
3. **Letter From Yakama Nation Tribal Council Chairman to FERC Secretary, Comments and Recommendations for Additional Study (Mar. 11, 2020).**

Exhibit Coversheet Only.

[Paginated separately.]

December 28, 2020
Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426

Submitted electronically via: https://ferconline.ferc.gov/FERCOnline.aspx.

RE: NEPA Scoping Comments on the Proposed Goldendale Pumped Storage Project (P-14861-002).

Dear Secretary Bose,

The following comments are submitted on behalf of Columbia Riverkeeper, Friends of the White Salmon River, and Washington Chapter of the Sierra Club (together "Commenters")) in response to the Federal Energy Regulatory Commission's (FERC) request to assist the agency in identifying issues that must be addressed during the environmental review process. On October 29, 2020, FERC issued a Notice Soliciting Scoping Comments for the Goldendale Pumped Storage Project (FERC No. 14861-002) (hereinafter "Scoping Document") pursuant to the National Environmental Policy Act (NEPA). 40 C.F.R. §§ 1500-1508. For reasons described below, this scoping process is premature and FERC must conduct an Environmental Impact Statement (EIS) for this development.

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

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

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

Commenters appreciate the opportunity to provide these comments and supporting materials, including the Appendices with this letter. Our expectation is that the relevant documents, included in with this comment, will also be included in the administrative record for this decision.

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

Rye would site the Project's lower reservoir on lands that previously housed the CGA smelter (also known as Harvey Aluminum, Martin Marietta Aluminum, Commonwealth Aluminum, or Goldendale Aluminum), now a Resource Conservation and Recovery Act (RCRA) contaminated site, which include contaminated lands and groundwater. *Id*. at 2. The Project is expected to require 9,000 acre feet of Columbia River water for the initial fill and an additional 390 acre feet per year to offset evaporative losses. Goldendale Energy Storage Final FERC License Application, FERC Project No. 14862 (FLA) at 14.[1]

[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).

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 FERC's NEPA process.

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

II. FERC's Application of the New CEQ Regulations is Premature.

According to FERC's Scoping Document, FERC intends to apply the Council of Environmental Quality (CEQ) new final rule, issued on July 15, 2020, revising the regulations under 40 C.F.R. §§ 1500-1508 that federal agencies use to implement NEPA (New CEQ Regulations). *See* Scoping Document at FN 3. The use of the new NEPA regulations is premature and not necessary for this project. FERC holds the authority to determine whether or not to apply the new CEQ Regulations to any ongoing activities begun before September 14, 2020, such as the Project. *See Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 43,304 § 1506.13. However, FERC has yet to issue publicly available guidance on how it intends to apply the New CEQ Regulations, making the application of the New CEQ Regulations in this process unnecessarily vague. FERC guidance on the New CEQ Regulations is necessary and extremely helpful in the NEPA review process because it allows stakeholders the opportunity to provide FERC with the information that FERC interprets as necessary and vital to the NEPA process. It also allows stakeholders insight into how FERC will apply the New CEQ Regulations and how that application is different or similar to FERC's application of past CEQ Regulations. Without this new FERC guidance, stakeholders are in the dark when it comes to FERC's application of the

New CEQ Regulations, making this NEPA process unnecessarily vague. The New CEQ Regulations do not automatically apply to the Project, which has been in the FERC docket since 2017. Given the lack of clarity set forth by FERC on how it plans to follow NEPA, application of the New CEQ Regulations is premature.

Furthermore, it is not practicable to begin scoping at this time for three reasons. First, as discussed above, FERC's push to use the New CEQ Regulations during this scoping process is premature. These new rules have not been in effect for more than six months and the current transition of Presidential administrations begs the question of whether these regulations will be in effect for the rest of the year. This Project commenced prior to these regulations and it's NEPA scoping process should not proceed with the New CEQ Regulations. Given that the Project is not sufficiently developed at this time, it is impractical to begin scoping now and even more impractical to begin scoping under New CEQ regulations that are vague at best, and temporary at worst.

Second, the COVID-19 pandemic continues to devastate tribal governments, Indigenous people, and communities with a direct stake in the area where the project is proposed to be built. For example, the Yakama Nation Reservation and surrounding ceded lands have been devastated by the pandemic, with tribal resources and attention directed to relief response. In Yakima County, there have been 19,981 cases of COVID-19 reported and 310 deaths.[2] Under 40 C.F.R. § 1501.9(c), "As part of the scoping process the lead agency may hold a scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the agency may integrate with any other early planning meeting." For this process FERC decided that, "[d]ue to concerns with large gatherings related to COVID-19, we do not intend to conduct a public scoping meeting and site visit in this case." Scoping Document at 2. FERC offers no alternative to this public meeting, such as a virtual meeting for stakeholders. If COVID-19 proves enough of a concern to limit FERC's communications with the public on this Project, it also proves enough to make the scoping process impracticable at this time.

Third, the Project was recently bought by Copenhagen Infrastructure Partners (CIP), with Rye continuing to lead development of the Project until construction begins. Kelly Bork, COPENHAGEN INFRASTRUCTURE PARTNERS, *CIP acquires Swan Lake and Goldendale, 393 MW and 1,200 MW pumped storage hydro projects located in Oregon and Washington, USA*, (Nov. 11, 2020) (Appendix 2). So far this update has not been put into the FERC docket, nor has Rye informed Project stakeholders. It is unclear how this change of ownership will alter the Project or the environmental and energy issues at stake. It is further unclear how an environmental analysis can move forward when the Project's new owner and operator is not

[2] View current Washington statistics here: https://www.google.com/search?q=yakima+county+covid+19+cases&oq=Yakima+County+Covid&aqs=chrome.1.0l8.4503j0j7&sourceid=chrome&ie=UTF-8 (last visited Dec. 28, 2019).

involved in the FERC process. Any commitments made by Rye, at this point or until the start of construction, may not hold CIP accountable in the future. FERC must address how this change of ownership impacts the FERC licensing process and how CIP will be held accountable moving forward with Project construction.

III. Rye's Final License Application is Not Sufficiently Developed for Agency Consideration at This Time.

The Project is not sufficiently developed for agency consideration at this time to allow for a thorough identification of significant and non-significant issues. Under 40 C.F.R. § 1501.9(a), "[s]coping may begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration." Several reasons exist as to why the Project is not sufficiently developed. Numerous archeological and cultural resource surveys of the area have yet to be conducted, finished, and filed with FERC.

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

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

FLA Exhibit E at 78.

Second, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have yet to conduct their cultural and archaeological surveys of the area, despite participating in the FERC process early.[3] Rye's FLA includes the following as surveys yet to conducted, including

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

FLA Exhibit E at 78.

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

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

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

IV. An EIS is Required for the Project.

A. The National Environmental Policy Act.

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

Section 102(2)(C) of the National Environmental Policy Act establishes an "action-forcing" mechanism to ensure "that environmental concerns will be integrated into the very process of agency decisionmaking." *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979). Pursuant to that statutory provision, "all agencies of the Federal Government shall ... include in every recommendation or report on … major Federal actions significantly affecting the quality of the human environment, a detailed statement" known as an environmental impact statement ("EIS") addressing "the environmental impact of the proposed action, any adverse environmental impacts which cannot be avoided ..., alternatives to the proposed action," and other environmental issues. 42 U.S.C. § 4332.

NEPA has two fundamental purposes: (1) to guarantee that agencies take a "hard look" at the consequences of their actions before the actions occur by ensuring that "the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impact," *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 349 (1989); and (2) to ensure that "the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision," *id.* at 349. NEPA "emphasize[s] the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that 'the agency will not act on incomplete information, only to regret its decision after it is too late to correct.'" *Blue Mountains Biodiversity Project v. Blackwood,* 161 F.3d 1208, 1216 (9th Cir. 1998).

B. FERC Must Define the Proper Purpose and Need for the Project and Consider an Appropriate Range of Alternatives.

The consideration of alternatives is the heart of the NEPA review process. It is through the identification of reasonable alternatives, the examination of the environmental impacts that will result under each alternative, and the comparison of those impacts, that the agency and the public can fully understand the impacts of a proposed project. As such, an agency may not undermine this process by defining a project's purpose so narrowly as to preclude consideration of reasonable alternatives. *Cf. Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 814 n.7 (9th Cir. 1999).

1. The Purpose and Need.

"The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms." *Carmel by the Sea v. U.S. Dept. of Trans.*, 123 F.3d 1142, 1155 (9th Cir. 1997). Thus, the first step in the NEPA process is for the agency to "briefly specify the underlying purpose and need for the proposed action." 40 C.F.R. § 1502.13. Here, the purpose and need must be based on the "the goals of the applicant and the agency's authority." *Id*.

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 3. Commenters agree this laudable goal is the true purpose of this project. As such, FERC must assess all reasonable alternatives that will support this goal. To do less would be to artificially restrict the purpose and need for this project to no other end than to prevent the consideration of reasonable alternatives.

Arguably, this project is limited to the development of "utility-scale storage to solve the operational challenges of integration." *Id.* at 2. If FERC accepts this more limited purpose and need for this project, it must conduct an corresponding alternative analysis. Indeed, Rye admits that there are other "viable, least-cost energy storage options available," in addition to its preferred pumped storage technology. *Id*. FERC is obligated to identify these alternatives and explore the relative environmental impacts of implementing these technologies to meet Washington's goal of moving to all renewable electricity generation.

2. Reasonable Alternatives.

NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action." 42 U.S.C. § 4332(2)(E). This provision applies whether an agency is preparing an EIS or an EA. *Native Ecosystems Council v. US. Forest Serv.*, 428 F.3d 1233, 1245 (9th Cir. 2005). Viable alternatives are those that are feasible and either meet the stated goals of the project, or are reasonably related to the purposes of the project. First, as required by the law and to establish the baseline against which any environmental impact of any specific alternative can be compared, FERC must consider a no action alternative. Next, given Rye's broadly stated project goal, FERC must consider alternatives that look well beyond the four corners of this specific project, to include alternatives that ensure Washington can meet its energy generation goals and to explore alternatives for utility-scale storage. In any case, FERC must identify and analyze reasonable alternatives to the specific proposed project. This analysis must examine alternative locations for this project and alternative designs at the chosen site.

i. No Action Alternative.

FERC must define and explain impacts of not licensing this project, or any project, at this location. This the no action alternative. *See* 40 C.F.R. § 1501.7(e)(2) and § 1502.14(c). The NEPA regulations require the agency to "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis

for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.1. This description of the impacts of various alternatives, and the comparative analysis allowed by the development of such information, is the true benefit of the NEPA process. To be meaningful the NEPA document must include the information necessary to allow a thorough and objective assessment of the alternatives. To this end, the identification and review of a no action alternative is essential. Indeed, the no action alternative acts as the starting point for the comparison of the impacts, be they beneficial or adverse, of the proposal and reasonable alternatives.

Here, because this is a new project, the not action alternative is not permitting this project to go forward. Thus, FERC must describe the value of the site as it exists and the ecological, cultural, recreational, and commercial benefits and activities the site does and could support if the project is not developed.

ii. The EIS must consider clean energy alternatives.

FERC must evaluate alternatives to the Project. Washington's Deep Decarbonization Analysis does not call out the Project as necessary energy infrastructure to meet the state's decarbonization goals. *See* Evolved Energy Research, Washington State Energy Strategy Decarbonization Demand and Supply Side Results (Aug. 2020) (Appendix 3). The state's analysis is still underway and, to date, does not demonstrate a "need" for the Project. Even if large-scale pumped-storage hydroelectric power is called out as necessary to meet the state's deep decarbonization goals, it is not clear Rye's Project is necessary to meet that demand. For example, pumped storage at a different location could meet that need. Furthermore, Governor Inslee, a national climate leader, has not taken a position in favor of the Project. Rye's FLA includes "Letters of Support"; Rye did not produce a letter of support from the Governor's Office.

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

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

According to a third-party economic analysis, the Project cannot provide renewable energy integration and replacement capacity to support regional decarbonization goals affordably and reliably. Anthony Jones, Critique of the Goldendale Energy Storage Hydroelectric Project, Notification of Intent (December 3, 2019)(Appendix 4). The Rocky Mountain Econometrics

analysis concludes that a combination of rising construction costs and decreasing open-market energy prices undercut Rye's claims that the project is necessary to meet the state's decarbonization goals. Overall, FERC must analyze alternatives to the Project, including alternative site locations, designs, and developments.

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

In support of its application Rye claims that "[o]f the viable, least-cost energy storage options available, pumped storage is the best-proven, least-cost energy storage technology at scale." This raises precisely the question FERC must answer: what other "viable, least-cost energy storage options" are available? The answer to this question must be found in FERC's analysis of the reasonable alternative to the Project. In the FLA, Rye briefly analyzes wind, solar, and Lithium Ion batteries as potential green energy alternatives to pumped storage. FLA Exhibit C at 7. In comparing pumped storage to wind and solar energy, Rye quickly concludes that "[p]umped hydro storage is the only asset that provides large-scale, cost-effective renewable energy storage capacity and a range of essential grid reliability services, the value of which will increase as penetration of intermittent renewable resources rises." FLA Exhibit C at 8. However, comparing renewable energy generation to storage is like comparing apples to oranges. Thus, Rye's only adequate alternative analyzed is Lithium Ion batteries. That being said, FERC must include an analysis of Lithium Ion batteries as an alternative to pumped storage. In addition, there are several other renewable energy storage technologies that Rye's FLA failed to analyze and that FERC must include in its analysis. These include, but are not limited to:

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

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

When the purpose of a project is not, but its own terms, tied to specific location, the agency must assess alternative locations for the project. *'Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1098 (9th Cir. 2006). The history of tribal opposition to developments in this area and the extensively documented cultural resources should have made this location a non-starter for Rye. Despite this, the location alone does not represent the sole location for siting of this Project. The proliferation of proposed pumped storage projects on the West Coast alone demonstrates this. *See Generally* Courtney Flatt, NORTHWEST PUBLIC BROADCASTING, *New Energy Storage Project on Upper Columbia Brings Jobs — and Concerns from Colville Tribes* (Dec. 23, 2019), Julian Spector, GREEN TECH MEDIA, *Montana Developer Ready to Build Modern-Day Pumped Hydro Storage* (Aug. 13, 2019), Brian Gailey, KLAMATH FALLS NEWS, *CIP Acquires Swan Lake pumped hydro project* (Nov. 11, 2020), Sammy Roth, LA TIMES, *Environmental Disaster or to a Clean Energy Future? A New Twist on Hydropower* (Mar. 5, 2020), Bloomberg News Editors, RENEWABLE ENERGY WORLD, *In quest for bigger batteries, California mulls pumped hydro* (Jun. 10, 2019). Furthermore, studies have undertaken "to develop a series of advanced Geographic Information System algorithms to locate prospective sites for off-river pumped hydro across a large land area such as a state or a country." Bin Lu, et al., *Geographic information system algorithms to locate prospective sites for pumped hydro energy storage*, 222 APPLIED SCIENCE 300, (2018). The Project need not be built at this site and FERC must look at alternative sites for the Project.

v. FERC must consider alternative project designs.

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

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

In addition, FERC must consider the impact from alternative operational parameters for the project. According to Rye's application, "The Project is designed to generate for 12 hours a day of full power generation, at a maximum of 1,200 MW and a minimum of 100 MW, and

pump water from the lower reservoir to the upper reservoir in about 15 hours." FLA, Exhibit B at 6. In order for the Project to produce the maximum amount of energy (1,200MW), it will need to generate power (run all water from the upper reservoir to the lower) for 12 hours. FERC must require the development of alternative operational patterns and reveal and discuss the potential resulting impacts to the environment.

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

C. FERC Must Prepare an EIS for the Project because it will Significantly Affect the Quality of the Human Environment.

FERC must prepare an EIS for the Project. "NEPA requires that agencies "prepare an EIS for federal actions that will 'significantly affect the quality of the human environment.'" *Columbia Riverkeeper v. United States Army Corp of Eng'rs,* 2020 U.S. Dist. LEXIS 219535, *4 (W.D. Wa. Nov. 23, 2020) (*quoting Bark v. United States Forest Serv.*, 958 F.3d 865, 868 (9th Cir. 2020)(*quoting League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 763 (9th Cir. 2014). Under 40 C.F.R § 1501.5(a), an Environmental Assessment (EA) is only appropriate, "for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown." Here, the Project will have significant effects which are known. According to NEPA, "both the context and intensity of the action must be considered when an agency is considering whether a proposed action significantly affects the environment." *Umpqua Watersheds v. United States Forest Serv.,* 725 F. Supp. 2d 1232, 1241 (OR Dist. Ct. 2010), *see* 40 C.F.R. § 1508.27. Context refers to the area of "the affected region, the affected interests and the locality." 40 C.F.R. § 1508.27(a). "In evaluating intensity, the NEPA regulations require that an agency consider ten significance factors." *Umpqua Watersheds,* 725 F.Supp. 2d at 1241. The factors include the following:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

40 C.F.R. §§ 1508.27(b)(1)-(b)(10). Courts have stated that, "**If any** of these factors [are] present, an **EIS is required**,"[emphasis added] and have furthered explained that "Intensity "refers to the severity of the impact" and is evaluated based on a number of "significance" factors." *Umpqua Watersheds,* 725 F.Supp. 2d at 1241, *Or. Natural Dessert Ass'n v. BLM*, 2014 U.S. Dist. LEXIS 143403, *70 (Or. Dist. Ct. Mar. 17, 2014). But that "A court may find a substantial risk of a significant effect based on just one of these factors." *Or. Natural Dessert Ass'n*, U.S. Dist. LEXIS 143403, *70 *citing Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2004). Several of these significance factors are present with this Project and therefore compel an EIS.

The intensity, or severity of the impacts from this Project are high, with several significance factors present. Given the extraordinary cultural and archeological resource issues at stake with the Project, limited and deficient information in the FLA[4], the highly controversial nature of the Project, the Project's obliteration of numerous sites eligible for inclusion in the National Register, and future implications, there is a substantial risk of significant effect on the human environment from this Project. Commenters urge that the Commission conduct an EIS. Section VI , below outlines the pertinent issues that FERC must analyze as part of its

[4] *See* Letter from FERC to Erik Steimle (Dec. 17, 2020), In FERC Docket No. 14861 (stating that the request to use the Expedited Licensing Process is denied due to deficient information in the FLA and failure to provide information in response to FERC request.).

environmental review and support the Commission preparing an EIS for this Project because of the significant effects to the environment.

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

Under NEPA, an EIS must consider direct effects, indirect effects, and cumulative effects. "Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. The direct effects of an action are those effects "which are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). The indirect effects of an action are those effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). For example, "[i]ndirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." *Id.* These types of growth-inducing impacts must be analyzed, even when they are characterized as "secondary." *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975) (requiring EIS to address growth-inducing impacts of freeway interchange planned in agricultural area on the edge of urban development). Section VI, below outlines the direct, indirect, and cumulative impacts that FERC must evaluate as part of the EIS.

VI. Specific and Pertinent Issues to Address in the NEPA Document.

A. Tribal Archaeological and Cultural Resources.

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

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

According to the Tribe, Rye's development would destroy archeological, ceremonial, burial, petroglyph, monumental, and ancestral use sites—and cause significant harm to the Yakama way of life. Letter from Yakama Nation to Erik Steimle (Feb. 14, 2018), *In* FERC

Docket No. 14861. A Yakama Nation representative explained the Tribe's opposition at a Washington State Senate hearing in early 2020:

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

Courtney Flatt, OPB, *Northwest Clean-Energy Advocates Eye Pumped Hydro to Fill Gaps, with Tribes Noting Concerns* (July 27 2020) (Appendix 5).

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

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

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

Yakama Nation's archaeological resource survey, completed in 2019, concluded that multiple sites of cultural and religious importance are located within the Project boundary.[5] According to Rye's FLA, "the proposed Project area is within a NRHP-eligible [National Register Historic Properties] TCP (Traditional Cultural Property) (Push-pum) and a NRHP-eligible Multiple Property Documentation TCP (Columbia Hills) and one Archaeological District (Columbia Hills District)." FLA Appendix G at 12. The FLA states:

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

FLA Exhibit E at 76. The proposed Project will also have a serious impact on the health and safety of the Yakama people, who use the Push-pum site to gather traditional medicines. Rye's

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

FLA states that, "[w]ithin that Project area, there is a stipulation for BPA to create a plan that will allow tribal members to access Push-pum to gather foods and medicine significant to the tribe." FLA Exhibit E at 78. However, there is no discussion of how construction or management of the Project will interfere with this access or interfere with the integrity of the foods and medicines gathered.

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

The Yakama Nation is not the only affected Tribal Nation. CTUIR has also weighed in on the development. While letters submitted by CTUIR have been filed confidentially to protect tribal cultural resources,[6] the Tribe has publicly said that "the proposed undertaking is within a historic property of cultural and religious significance," and are poised to conduct their own cultural resources survey of the area. On October 16, 2020, the Nez Perce Tribe requested that Rye conduct an ethnographic study to identify any Nez Perce-specific resources in the Project area that could be affected by construction of the project, stating that because the Tribe did not know about the development they did not have the opportunity to submit study requests to determine detrimental impacts to their Tribe. Letter from Patrick Baird to FERC (Oct. 16, 2020), *In* FERC Docket No. 14861 & Telephone Memo from Suzanne Novak to FERC (Oct. 7, 2020), *In* FERC Docket No. 14861. On October 29, 2020, FERC directed Rye to conduct that survey.

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

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

When looking at the impacts to tribal cultural and religious resources from this Project the intensity, or severity of the impacts are high, with several significance factors present. Including the destruction of TCPs unique to this geographic location, the destruction of TCPs

[6] *See* Appendix 6 and 7, for historical context surrounding the treatment of Indian remains and cultural property in the United States resulting in the need for tribes to file cultural resource information confidentially.

eligible for, or already included, on the NRH, the serious impacts to public health and safety of indian people who rely on foods and medicines in the area, the cumulative impacts that the Project will have on archeological and cultural resources of at least four tribes, and the future implications that developing this Project will have on this site, including opening the area to more development. 40 C.F.R. § 1508.27(b)(2), (3), (4), (5), (6), (7), (8). The effects of this Project are highly controversial and must be analyzed by FERC in an EIS. *See generally, Umpqua Watersheds,* 725 F.Supp. 2d at 1241.

FERC 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. FERC's EIS analysis must not and cannot take the Project's destruction of archaeological and cultural resources out of the context of history, otherwise the cumulative and future impacts of the Project will evade analysis. *See infra* at Section IV.C.

B. Water Quality Issues.

The Project would permanently destroy large segments of unique waterbodies, including "waters of the United States" and "waters of the state" in the scenic Columbia Hills. The Project would also cause downstream impacts to perennial waterbodies. The Project requires withdrawing millions of gallons of Columbia River water, threatening designated uses and impacting water quality in an already degraded river. Columbia Riverkeeper and other commenters submitted detailed technical comments to the Washington Department of Ecology on Rye's 401 water quality certification application, which outline in great detail the water quality issues from the Project and are incorporated herein by reference. *See* Columbia Riverkeeper et. al, Public Comments on Free Flow Power 101, LLC Goldendale Pumped Storage Project Clean Water Act 401 Water Quality Certification, (Nov. 9, 2020) (Appendix 1). FERC must analyze the water quality issues identified in Columbia Riverkeeper et al.'s 401 certification comments in the EIS.

C. Avian, Terrestrial, and Aquatic Wildlife Impacts.

The Project will have significant impacts on wildlife. On March 10, 2020, comments to FERC, the Washington Department of Fish and Wildlife (WDFW) noted: "We disagree with the applicant's opinion that the habitat near the upper reservoir is not unique or uncommon. The uniqueness of this habitat is linked to the close proximity to golden eagle and prairie falcon nesting habitat." Comments by WDFW and the U.S. Fish and Wildlife Service (USFWS) detail the Project's impacts to wildlife, including increased mortality of bats and raptors by nearby wind turbines, and wildlife habitat. WDFW Comment to FERC, (Mar. 10, 2020), *In* FERC Docket No. 14861; USFWS Comment to FERC (Mar. 3, 2020), *In* FERC Docket No. 14861.

Furthermore, the Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW) collectively identified four threatened, endangered, candidate, or proposed species, as well as one critical habitat within the project boundary.[7] *See* Letter from U.S. Dep't of Interior Fish & Wildlife Service to FERC (Oct. 14, 2020), *In* FERC Docket No. 14861. Rye elected to site its Project adjacent to and, in the case of the upper reservoir, within a wind turbine complex. In multiple comments to FERC, USFWS and WDFW describe how building large reservoirs will attract birds—including threatened, sensitive, and candidate species—and, in turn, increase birds killed by the wind turbine complex. USFWS explains:

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

USFWS Comment to FERC (Mar. 3, 2020), *In* FERC Docket No. 14861. USFWS also notes that radio telemetry data collected in 2007 for eight months "indicates significant use of the entire project area" by golden eagles. *Id.* at 2. USFWS explains: "Since prey availability is a primary factor in governing habitat selection of golden eagles . . . the habit in the area of the proposed upper reservoir is a determining factor in golden eagle nesting preference for the area." *Id.* at 2 - 3 (internal citations omitted). The Project also threatens bats. WDFW notes:

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

WDFW, Comment to FERC, (Mar. 10, 2020), *In* FERC Docket No. 14861. USFWS and WDFW comments detail the direct and indirect wildlife-habitat impacts from the Project's infrastructure,

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

and how the Project's location, adjacent to a large wind turbine complex, will harm threatened, sensitive, or candidate species. Both WDFW and USFWS provided detailed recommendations for the Project's Draft License Application compensatory wildlife mitigation plan. To date, Rye has yet to produce a mitigation plan that incorporates key agency recommendations. *See* FLA Appendix D, *Wildlife Mitigation Plan* (June 2020).

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

D. Wind Turbines near Proposed Project.

Rye chose to site the upper reservoir within and directly adjacent to an existing wind turbine complex. FLA Exhibit E at 5 (Figure 2.1-1A). The upper reservoir and the 62-wind-turbine complex, are located on land that is leased by the Tuolumne Wind Project Authority (TWPA) and contains TWPA's wind turbines, which TWPA uses to supply energy and capacity to the Turlock Irrigation District (TID). TID is an irrigation district organized under the laws of the State of California (California Water Code §§ 20500-29978) and supplies electric power and energy to the residents and businesses within its service area. *See* Turlock Irrigation District, Comment to FERC, (Mar. 11, 2020), *In* FERC Docket No. 14861. TID raised five concerns regarding the Project. Specifically, TID raised concerns that the Project would: (1) redirect the wind used by the turbines, which would reduce their energy output; (2) increase wind turbidity, which would reduce their energy output and increase wear and tear on the turbines; (3) saturate and thereby weaken the foundations of some of the turbines; (4) increase the wildlife around the turbines, which will increase animal strikes and interfere with TWPA's operations and output; and (5) interfere with the operations of the turbines' underground power lines when constructing the Project's underground components. *Id.* at 2–3. The concerns raised by TID must be analyzed by FERC in their environmental review because they involve unique risks on the environment in this geographic location. *See* 40 C.F.R. § 1508.27(b)(5).

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

> In order to assess the compatibility of the proposed project with existing land uses and the potential indirect effects of the proposed project on the golden eagle, staff requested in comments on the draft license application, that you conduct studies (e.g., modeling) to demonstrate how project construction and operation would influence air flow above the upper

> reservoir and around the wind turbines and how it would affect wind turbine operation and generation and include the modeling results in the final license application.
>
> Without elaboration, in the final license application, you acknowledge the potential influence of the project on wind turbine performance and wind flow, but state that a thorough analysis can only be performed during final project design.

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

E. Aluminum Smelter Cleanup Site

According to the Scoping Document,

> Portions of the project's proposed infrastructure (such as the proposed lower reservoir) would be located on the site of the former Columbia River Gorge Aluminum (CGA) Smelter, which is now a Resource Conservation and Recovery Act (RCRA) contaminated site that is currently owned by NSC Smelter, LLC, and is subject to ongoing management and clean-up by Washington Department of Ecology (Washington DOE).

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

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

It is concerning that Rye has not completed characterization of this area as part of the FLA, nor has the developer created a plan for dealing with the material excavated during construction, if further characterization conflicts with prior testing. If material is excavated during construction and tests as being hazardous or dangerous waste, Rye must have a plan in place for properly disposing of that material in accordance with state and federal law. That being said, FERC must include an analysis of the status of CGA as part of its environmental review, particularly focusing on any incremental benefits to cleanup that may occur from Project construction and adverse significant effects. 40 C.F.R. § 1508.27(b)(1). Additionally, FERC must analyze whether or not Project construction activities may threaten a violation of State, Federal, or local law in regards to ongoing cleanup of the CGA RCRA site. 40 C.F.R. § 1508.27(b)(10). Both of these are significant factors that FERC must consider and further support the Commission conducting an EIS for this Project.

F. Other Issues to Evaluate in the EIS

FERC must also examine the following issues in the EIS:

- The Project's environmental justice impacts, including the Project's direct, indirect and cumulative impacts to Tribal Nations and Indigenous people, described above, and low-income ratepayers.
- The Project's scenic and other aesthetic impacts, including the aesthetic impacts of additional transmission lines.
- The direct, indirect, and cumulative impacts of additional transmission lines in the Columbia Basin and in the Project vicinity.
- The Project's impacts on the reliability and capacity of the BPA transmission lines and the Northwest grid.
- The Project's construction and operational impacts on air quality and noise.
- The Project's post-operation site restoration plans, including enforceable funding requirements to ensure those plans are completed.
- The Project's impacts on the Columbia River in the event of a reservoir failure.
- The Project's impacts on recreation, including paragliding, fishing, boating, birdwatching, petroglyph viewing, hunting, hiking, windsurfing, kiteboarding, kayaking, and other forms of recreation.
- The Project's construction and post-construction traffic impacts.
- The Project's socioeconomic impacts, including impacts to ratepayers.

VII. Conclusion.

Commenters respectfully reiterate that, for reasons described above, the scoping process is premature at this time. If FERC proceeds with the NEPA review, FERC must conduct an EIS

for this development because the Project will significantly affect the quality of the human environment. Commenters identify pertinent issues that FERC must address in its environmental review and which emphasize that the intensity of this project, i.e. the severity of the impact, is extremely high, destroying irreplaceable tribal cultural and religious resources and archeological sites, infringing on tribal peoples' access to food and medicine gathered in the area, impeding access to culturally significant areas, and impacting water quality and wildlife. The severity of impacts from this Project necessitate an EIS and Commenters respectfully request that FERC conduct an EIS on this highly controversial Project.

Sincerely,

Simone Anter
Staff Attorney
Columbia Riverkeeper
simone@columbiariverkeeper.org

Lauren Goldberg
Legal and Program Director
Columbia Riverkeeper
lauren@columbiariverkeeper.org

Andrew Hawley
Staff Attorney
Western Environmental Law Center
On behalf of Columbia Riverkeeper

Patricia L. Arnold
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Friends of the White Salmon
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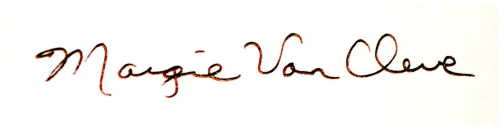

Margie Van Cleve
Sierra Club - Washington State Conservation Chair

EXHIBIT B

Communication From The Federal Energy Regulatory Commission To The Yakama Tribal Council Chairman

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Exhibit Coversheet Only.

Includes:

1. Letter from Vince Yearick, Director Division of Hydropower Licensing, to Yakama Tribal Council Chairman Delano Saluskin. (Dec. 9, 2021)

2. Letter from Vince Yearick, Director Division of Hydropower Licensing, to Yakama Tribal Council Chairman Delano Saluskin. (Jun. 28, 2022)

[Paginated separately.]

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON D.C. 20426
(December 9, 2021)

OFFICE OF ENERGY PROJECTS

Project No. 14861-002 – Washington
and Oregon
Goldendale Energy Storage Project
FFP Project 101, LLC

VIA USPS First Class Mail

Delano Saluskin, Chairman
Confederated Tribes and Bands of
The Yakama Nation
401 Fort Road
P.O. Box 151
Toppenish, Washington 98948

RE: Information About Off-the-Record Communications and Filing Confidential Information

Dear Chairman Saluskin and Councilmembers:

On November 10, 2021, Commission staff met with representatives of the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) regarding the licensing of FFP Project 101, LLC's Goldendale Energy Storage Project No. 14861. During the meeting, we discussed the Commission's rules prohibiting off-the-record, or ex parte, communications and the requirements for filing confidential and sensitive cultural resources information as privileged in the Commission's record for the licensing proceeding. Yakama Nation's legal counsel requested a letter from Commission staff explaining the Commission's ex parte rules and requirements for filing confidential and sensitive cultural resources information.

As provided in the Commission's policy statement on consultation with Tribes (18 C.F.R. § 2.1c), the Commission acknowledges that it has a trust responsibility to Tribes and endeavors to work with Tribes on a government-to-government basis to address the effects of proposed projects on tribal rights and resources through consultation. As discussed below, the Commission's status as an independent regulatory agency places some limitations on the nature and type of consultation that the Commission may engage in during a contested proceeding. Nevertheless, the Commission endeavors, to the extent

authorized by law, to reduce procedural impediments to working directly and effectively with tribal governments.

Off-the-Record Communications

Rule 2201 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2201), which implements section 557(d) of the Administrative Procedure Act, prohibits Commission staff from engaging in off-the-record communications in any contested on-the-record proceeding. Specifically, the rule prohibits communications by or with staff discussing matters relevant to the merits of a contested proceeding that do not include all parties to the proceeding. The rule does not prohibit staff from addressing procedural inquiries. Matters are relevant to the merits of the proceeding if the information discussed could affect the outcome of the proceeding, influence a decision, or provide an opportunity to influence a decision on any issue in the proceeding. The rule defines contested proceeding, in relevant part, as any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue. Where it applies, the prohibition on ex parte communications in licensing proceedings remains in effect until the Commission issues an order acting on a license application and the 30-day period for filing a request for rehearing of that order has passed with no rehearing request being filed, or the Commission has acted on the merits of any rehearing request. Because this licensing proceeding is one in which an intervenor has disputed a material dispute, it is considered contested and the Commission's prohibition on ex parte communications applies.

Basic Filing requirements under the Federal Power Act

Under the Commission's regulations (18 C.F.R. § 388.112), any person, including a Tribe, that submits a document to the Commission may request privileged treatment by claiming that some or all the information in the document should be withheld from public disclosure. The regulations explain the procedures for making a request for privileged treatment. Once the request is made, the Secretary of the Commission will place the document in a nonpublic file. If someone requests access to a document in a nonpublic file (for example through a Freedom of Information Act request), the Commission, in deciding whether to release the information, will first notify the person who submitted the document.

Information involving sensitive cultural resources matters is often treated as confidential and placed in a nonpublic file. If the information concerns cultural resources that are eligible or listed historic properties in the National Register of Historic Places, Section 304 of the National Historic Preservation Act and its implementing regulations require the Commission to keep the information confidential if specified conditions are met. As discussed above, the Commission's ex parte rules forbid the Commission from receiving information regarding the merits of a contested proceeding that is not available

to other parties to the proceeding. Therefore, information in the nonpublic file may need to be shared with persons on a restricted service list established by the Commission for the proceeding or otherwise made available to a limited number of the parties' representatives. In other words, the information will be disclosed only to state and federal agencies with responsibilities for protecting cultural resources and to the applicant and any other entities on a "need to know" basis. Thus, if a person files sensitive cultural resource information that it wants the Commission to consider in reaching a decision, that information must be shared with at least some participants in the proceeding.

Options for Filing Sensitive Cultural Resources Information

If any cultural resources information to be filed with the Commission is deemed sensitive, the filer can request that any person seeking access to the information must first sign a non-disclosure agreement, in which the person will agree to keep the information confidential and to use it only for the purpose of the proceeding. It is preferable that the entities involved in a proceeding negotiate the terms of a non-disclosure agreement early in a proceeding before any sensitive information is likely to be filed.

Another option would be for the filer to redact sensitive information from a filing. Redaction would allow a filer to protect such things as site-specific information but would also mean that the Commission would not be able to consider the more detailed information in reaching a decision.

Finally, an entity could choose to withhold any information it feels is too sensitive to be revealed to any other stakeholders. In such circumstances, the Commission would be unable to take the information into account in reaching its decision.

We look forward to our continued consultations with the Yakama Nation regarding the potential licensing of the Goldendale Energy Storage Project. If you have any further questions regarding the handling of confidential information or any other issue related to the licensing process for the project, please contact Michael Tust at (202) 502-6522 or michael.tust@ferc.gov.

Sincerely,

Vince Yearick
Director
Division of Hydropower Licensing

cc: **VIA Electronic Mail**

Anthony Aronica
Office of Legal Counsel
Yakama Nation
anthony@yakama-olc.org

Carl Merkle
Department of Natural Resources
Confederated Tribes of the Umatilla
Indian Reservation
carlmerkle@ctuir.org

Patrick Baird
Tribal Historic Preservation Officer
Nez Perce Tribe
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Allyson Brooks
State Historic Preservation Officer
Washington Department of Archaeology
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Allyson.Brooks@DAHP.WA.GOV

Christine Curran
Deputy State Historic Preservation Officer
Oregon Parks and Recreation Department
Chrissy.curran@oregon.gov

cc: **VIA FERC Service**

Erik Steimle
Vice President
Rye Development
745 Atlantic Avenue
Boston, Massachusetts 02111

Document Accession #: 20220628-3047 Filed Date: 06/28/2022

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON D.C. 20426
(June 28, 2022)

OFFICE OF ENERGY PROJECTS

Project No. 14861-002 – Washington
and Oregon
Goldendale Energy Storage Project
FFP Project 101, LLC

VIA USPS First Class Mail

Delano Saluskin, Chairman
Confederated Tribes and Bands of
The Yakama Nation
401 Fort Road
P.O. Box 151
Toppenish, Washington 98948

RE: Response to May 23, 2022 Comments

Dear Chairman Saluskin and Councilmembers:

Thank you for your May 23, 2022 letter requesting that the Commission suspend its March 24, 2022 Notice of Acceptance and Ready for Environmental Analysis (REA) for the licensing of FFP Project 101, LLC's proposed Goldendale Energy Storage Project No. 14861-002 (Goldendale Project) to cure procedural and technical deficiencies.

We value your input and appreciate the nature of your concerns and the details expressed in the letter, which we attempt to summarize here. According to your letter, the Yakama Nation states that the project would adversely affect cultural sites important to the Tribe and prevent Tribal members from gathering roots and plants as provided by their treaty rights. The Tribe asserts that by issuing the REA before completing government-to-government consultation with the Yakama Nation, the Commission has not given equal consideration to the preservation of other aspects of environmental quality, including cultural resources, as required by the Federal Power Act.[1] The

[1] 16 U.S.C. §§ 797(e) ("In deciding whether to issue any license under this subchapter for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of

Yakama Nation states it is still waiting for the Commission to offer government-to-government consultation in a manner that protects the privileged and confidential cultural resources information that the Tribe wishes to provide and that should be considered by the Commission in making its decision. Therefore, the Yakama Nation again recommends that the Commission conduct government-to-government consultation with the Yakama Nation and enforce measures outlined in a May 1997 Programmatic Agreement (PA) among the Bonneville Power Administration, the Washington State Historic Preservation Officer, and the Advisory Council on Historic Preservation (1997 PA) for root and plant gathering access by Tribal members. This letter responds to those comments.

Commission staff recognize the Yakama Nation's concerns regarding the potential for the project to impact sensitive archaeological and Traditional Cultural Properties (TCP) important to the Tribe as well as the potential for the project to affect the ability of Tribal members to exercise traditional practices and treaty rights, as we have previously detailed in our September 23 and December 9, 2021 letters and during a November 10, 2021 meeting with Yakama Nation representatives.

In response to your most recent letter, we are providing the following update on where the proceeding stands and next steps. Pursuant to Commission regulations, the next step in the proceeding is for the Commission to issue a draft Environmental Impact Statement, which is scheduled to be completed by January 2023, that will consider comments filed on the REA notice, including any proposed and recommended measures, terms and conditions, and prescriptions. To the extent possible with available information, Commission staff will address the Yakama Nation's concerns in its draft Environmental Impact Statement. That analysis will consider the provisions of BPA's 1997 PA, the applicant's TCP evaluation and assessment reports prepared in consultation with the Yakama Nation and other Tribes, archaeological testing reports, and proposed measures to mitigate impacts to cultural resources. Should Commission staff decide in its analysis that a PA is necessary, Commission staff will draft a PA and invite parties to consult on it. The Commission will then decide whether to issue a new license and, if it does so, which conditions to include in the license. It is in this licensing decision that the Commission will, as required by the Federal Power Act, give equal consideration to the preservation of other aspects of environmental quality, including cultural resources.

Further, Commission staff are aware from our prior conversations that the Yakama Nation has additional knowledge that it wishes to share with only the Commission in a manner that is confidential and does not include the presence of the applicant or other

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energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, *and the preservation of other aspects of environmental quality*." (emphasis added)).

parties to the proceeding. However, as we have discussed, the nature and type of consultation that the Commission is permitted to engage in during an open, contested proceeding is limited by its ex parte rules. While we understand this may be challenging, our ex parte rules ensure an open, transparent decision-making process that protects all parties by ensuring that each party to the proceeding has access to the same information. Because this licensing proceeding is one in which an intervenor has disputed a material issue, under Commission rules, it is considered contested and the Commission's prohibition on ex parte communications[2] applies. The ex parte rules will remain in effect until the Commission issues an order acting on a license application and the 30-day period for filing a request for rehearing of that order has passed with no rehearing request being filed, or the Commission has acted on the merits of any rehearing request.

Despite these limitations, we continue to hold in high regard the Commission's trust responsibility to the Yakama Nation and other Tribes and will endeavor to work together on a government-to-government basis to address the effects of the proposed project on Tribal rights and resources through consultation to the greatest extent we can, consistent with our ex parte limitations. Therefore, we would be happy to meet with representatives of the Yakama Nation again to further discuss these issues; however, we reiterate that Commission staff cannot engage in discussions relevant to the merits of the proceeding unless we invite all parties to the proceeding to attend. We are free to discuss any procedural inquiries without the need to invite other parties.

If the Yakama Nation wishes to submit a document to the Commission with more details regarding the resources of concern to the Yakama Nation, it may do so by requesting that the information be treated as privileged and that some or all the information in the document be withheld from public disclosure. Alternatively, the Yakama Nation could redact sensitive information from a filing. Redaction would protect such things as site-specific information but would also mean that the Commission would not be able to consider the redacted information in reaching a decision. If the Yakama Nation chooses to withhold any information it feels is too sensitive to be revealed to any other stakeholders, the Commission will be unable to take the information into account in reaching its decision.

Therefore, for the reasons explained above, we will not suspend the commenting procedures set forth in Commission staff's March 24, 2022 REA, as requested by the Yakama Nation, as we see no basis for delaying the evaluation of the license application.

Thank you again for your letter and your ongoing willingness to communicate with the Commission. If the Yakama Nation has any further questions regarding the

[2] *See* 18 C.F.R. § 385.2201 (2021) (prohibiting communications by or with staff discussing matters relevant to the merits of a contested proceeding that do not include all parties to the proceeding).

handling of confidential information or any other issue related to the licensing process for the project or would like to meet again with Commission staff, please know that we stand ready to engage – please contact Michael Tust at (202) 502-6522 or michael.tust@ferc.gov. You may also reach out to the Commission's Tribal Liaison, Elizabeth Molloy, at 202-502-8771 or elizabeth.molloy@ferc.gov.

Sincerely,

Vince Yearick
Director
Division of Hydropower Licensing

cc: **VIA Electronic Mail**

Phil Rigdon
Interim Tribal Administrative Director
Confederated Tribes and Bands of the Yakama Nation
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Allyson Brooks
State Historic Preservation Officer
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Christine Curran
Deputy State Historic Preservation Officer
Oregon Parks and Recreation Department
Chrissy.curran@oregon.gov

cc: **VIA FERC Service**

Erik Steimle

EXHIBIT C

Communication From Robert Whitlam, State Archaeologist, To Mike Trust And Erik Steimle.

Exhibit Coversheet Only.

Includes:

1. Letter from Robert Whitlam, State Archaeologist, to Erik Steimle. (Dec. 15, 2021)

2. Letter From Robert Whitlam, State Archaeologist, To Mike Trust And Erik Steimle. (Jan. 5, 2022)

[Paginated separately.]

Allyson Brooks Ph.D., Director
State Historic Preservation Officer

December 15, 2021

Mr. Erik Steimle
Rye Development
220 NW 8th Ave.
Portland, OR 97209

Re: Goldendale Energy Storage Project
Log No. : 2020-08-05202-FERC

Dear Mr. Steimle:

We are in receipt of the draft Historic Properties Management Plan (HPMP) for the proposed Goldendale Energy Storage Project, Klickitat County, Washington.

We are concerned this draft has been created in the absence of any consultations or collaboration between the consulting parties. The Section 106 process details a sequential step wise process in 36 CFR 800 that requires meaningful consultations between the parties and the federal agency.

In this specific case that has not happened. We have previously concurred with an Adverse Effect Determination and the next step should be a collaborative consultation effort to develop a Programmatic Agreement with specific stipulations tailored to the particular historic, cultural, and archaeological properties effected by this undertaking. A Historic Properties Management Plan is an product of that consultations and it is developed from an outline that the consulting craft as part of the ongoing Section 106 process. That has not happened.

We believe it is important for the FERC to establish the consultative and collaborative forum so the legal required Agreement documents may be crafted in the proper sequence. This requires FERC to require and host a meeting for all the parties to participate in an informed consultation.

We would also request receiving any correspondence or comments from concerned tribes or other parties that you receive as you consult under the requirements of 36CFR800.4(a)(4).These comments are based on the information available at the time of this review and on behalf of the State Historic Preservation Officer in compliance with the Section 106 of the National Historic Preservation Act, as amended, and its implementing regulations 36CFR800.4. Should additional information become available, our assessment may be revised. Thank you for the opportunity to comment and we look forward to further consultation.

Sincerely,

Robert G. Whitlam, Ph.D.
State Archaeologist
(360) 890-2615
email: *rob.whitlam@dahp.wa.gov*

Allyson Brooks Ph.D., Director
State Historic Preservation Officer

January 5, 2022

Mr. Erik Steimle
Rye Development
220 NW 8th Ave.
Portland, OR 97209

Mr. Mike Tust
FERC
888 First Street
Washington, DC 20426

Re: Goldendale Energy Storage Project
Log No. : 2020-08-05202-FERC

Dear Mr. Steimle and Mr. Tust:

We are in receipt of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Traditional Use Study for the proposed Goldendale Energy Storage Project, Klickitat County, Washington.

As we stated in our letter to Mr. Steimle of December 15, 2021, the Section 106 process details a clear sequential step wise process stipulated in 36 CFR 800 that requires meaningful consultations between the parties and the federal agency, and the submission of supporting documents and determinations in a specific sequence.

This document, without benefit of a cover letter from the lead federal agency, and missing any official signature from either the federal agency or tribal government, continues an unacceptable and knowing pattern of ignoring federal law and regulations stipulated in 36CFR800.

The current document is incomplete and does not provide the federal agency determination of eligibility nor the tribes' concurrence and signature for documentation and release to our Department. We have worked collaboratively with concerned tribal governments to create a secure and digital Traditional Cultural Places template to assure all legal protocols are followed. The current document drop does not confirm to those requirements.

This current document drop continues a pattern of providing incomplete submissions without a cover letter and any official determination as required by federal law.

We have previously concurred with an Adverse Effect Determination and the next step should be a collaborative consultation effort to develop a Programmatic Agreement with specific stipulations tailored to the particular historic, cultural, and archaeological properties, and now CTUIR traditional cultural properties effected by this undertaking.

This current document clearly has significance information and implications for decision making and a Historic Properties Management Plan that is a product of that consultations and it is

developed from an outline that the consulting craft as part of the ongoing Section 106 process. That has not happened.

We believe it is important for the FERC to establish the consultative and collaborative forum so the legal required Agreement documents may be crafted in the proper sequence. This requires FERC to require and host a meeting for all the parties to participate in an informed consultation.

Also, considering the Executive Order on Sacred Sites recently issued by the current Administration, it is even more imperative that FERC hold government to government meetings with the consulting tribes.

The Federal government has a Trust responsibility to tribal nations and as a federal agency FERC has a paramount obligation to uphold the unique federal-tribal relationship that is distinct and separate from consultation with the general public

We would also request receiving any correspondence or comments from concerned tribes or other parties that you receive as you consult under the requirements of 36CFR800.4(a)(4).These comments are based on the information available at the time of this review and on behalf of the State Historic Preservation Officer in compliance with the Section 106 of the National Historic Preservation Act, as amended, and its implementing regulations 36CFR800.4. Should additional information become available, our assessment may be revised. Thank you for the opportunity to comment and we look forward to further consultation.

Sincerely,

Robert G. Whitlam, Ph.D.
State Archaeologist
(360) 890-2615
email: *rob.whitlam@dahp.wa.gov*

EXHIBIT D

Programmatic Agreement Among The Bonneville Power Administration, The Washington State Historic Preservation Officer, And The Advisory Council On Historic Preservation (May 1997)

Exhibit Coversheet Only.

[Paginated separately.]

PROGRAMMATIC AGREEMENT AMONG THE BONNEVILLE POWER ADMINISTRATION, THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

Regarding the Power Purchase Agreement
before the Bonneville Power Administration
for the Conservation and Renewable Energy System
Columbia Wind Farm #1
located in the Columbia Hills,
Klickitat County, Washington

WHEREAS, the Bonneville Power Administration (BPA) may enter into a Power Purchase Agreement with Conservation and Renewable Energy System (CARES) for the Columbia Wind Farm #1 (the Project);

WHEREAS, BPA, pursuant to 36 CFR 800.4(a) has determined that the Area of Potential Effect (APE) of the Project, as defined in 36 CFR 800.2(c), is that geographic area encompassed by the proposed Project boundary shown on Figure 1 in Appendix A and includes Juniper Point;

WHEREAS, BPA has determined that the Project may affect historic properties, including the Juniper Point traditional cultural property;[1]

WHEREAS, BPA has conducted a historic sites assessment of the APE contained in a report by Archaeological and Historical Services, Eastern Washington University, dated February 1995;[2]

WHEREAS, BPA has afforded the Confederated Tribes and Bands of the Yakama Indian Nation (CYN) opportunities for consultation and has invited the CYN to concur in this Programmatic Agreement;[3]

WHEREAS, BPA has consulted with the Washington State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to the regulations, 36 CFR 800.13, implementing Section 106 of the National Historic Preservation Act, 16 USC 470f (Section 106); and

WHEREAS, Klickitat County has issued a permit to CARES for the Project under Conditional Use Application CU-95-09, which includes Conditions of Approval (CUP) as shown in Appendix B;

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[1] "Traditional" Yakama Peoples consider the term "cultural resources" to include the intermeshed physical, spiritual, and cultural components of the entire landscape--rocks, water, fish, roots, and other resources. The non-Yakama legal use of the term primarily designates prehistoric, historic, and traditional cultural sites and objects. The term "cultural sites" is used herein to indicate archaeological, historical, and traditional cultural properties, the last as defined in National Register Bulletin 38 (produced by the National Park Service, 1990).

[2] Boreson, Keo, Fred Crisson and Craig Holstine. February 1995. *A Cultural Resources Study of the Proposed CARES Columbia Wind Farm #1, Klickatat* [sic] *Washington*. Short Report 444. Archaeological and Historical Services, Eastern Washington University, submitted to Jones and Stokes Associates. Bellevue, Washington.

[3] Indigenous human cosmologies often consider animals and plants to be "Native Americans" or "Peoples". This Programmatic Agreement will use the term "Native Americans" to refer to human beings.

NOW, THEREFORE, the BPA, the SHPO, and the Council agree that the Project will be implemented with the following stipulations in order to take into account the effects of the Project on archaeological, historical, and traditional cultural sites.

STIPULATIONS

BPA will carry out the following measures or ensure through its Power Purchase Agreement with CARES that the following measures are carried out:

1. ADDITIONAL CULTURAL SITES SURVEY

1.1. The Project 115-kV transmission line location has not yet received a cultural sites survey. Following Section 3.1 of the CUP, CARES will conduct a cultural sites survey of the transmission line corridor that follows the survey procedures documented in *A Technical Report: A Cultural Resources Study of the Proposed CARES Columbia Wind Farm #1, Klickatat [sic] County, Washington.*[2]

1.2. The survey will include a preliminary evaluation of the eligibility of any identified cultural sites for listing in the National Register of Historic Places. This preliminary evaluation will eliminate cultural sites that clearly do not appear to be eligible for National Register listing based on information collected during the background research for the Project and during the cultural sites survey. Cultural sites not eliminated will be considered potentially eligible for listing in the National Register.

1.3. Following Section 12.4.3 of the CUP, CARES will attempt to locate construction areas to avoid cultural sites considered potentially eligible for listing in the National Register. If construction cannot avoid effects on these sites, CARES will, following Section 3.2 of the CUP, conduct additional investigations as needed to determine whether the sites are eligible for listing. BPA will conduct the Determination of Eligibility in consultation with the SHPO, following 36 CFR 800.4 (c) (1 through 5).

1.4. These investigations could include historical research, oral interview, archaeological testing, or some combination of these methods. BPA recognizes that the CYN objects to archaeological testing, and BPA will attempt to minimize the use of this method. BPA will also ask the CYN about its views on the National Register eligibility of the sites and include the information it provides in the Determination of Eligibility.

1.5. BPA will submit the Determination of Eligibility to the SHPO for review in accordance with 36 CFR Section 800.4(c) and will obtain SHPO consensus on Determinations of Eligibility for potentially eligible cultural sites where adverse effects cannot be avoided.

2. ASSESSMENT OF PROJECT EFFECTS ON NATIONAL REGISTER-ELIGIBLE CULTURAL SITES

BPA will apply the Criteria of Effect and Adverse Effect in 36 CFR 800.9 to any National Register-eligible cultural sites that have not been previously evaluated for Project effects.

BPA will also ask CYN about its views on Project effects on National Register-eligible cultural sites and include the information it provides in the assessment of effects. BPA will afford the SHPO, CYN, and Council an opportunity to review and comment on the findings of effect.

For any portion(s) of the Project where construction will have no direct effect on any National Register-eligible cultural site, BPA may provide authorization to proceed with construction in such area(s), subject to the conditions of the Monitoring Plan (see Stipulation 4).

3. TREATMENT

3.1. BPA, in consultation with SHPO and CYN, will develop a Treatment Plan for the treatment of historic properties within the Project's Area of Potential Effect. BPA will submit the draft Treatment Plan to the SHPO, CYN, and Council for review and comment on how accurately and completely the substance of the Treatment Plan reflects this stipulation. SHPO, CYN, and Council will have 30 days to review the draft Treatment Plan, after which BPA will produce a final Treatment Plan that takes SHPO, CYN, and Council comments into consideration. BPA will ensure that CARES implements the Treatment Plan.

3.2. The signatories to this Programmatic Agreement recognize that, where feasible, preservation in place is the preferred treatment for cultural sites that are eligible for listing in the National Register, and the Treatment Plan will reflect this perspective.

3.3. The Treatment Plan will be consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716*et seq.*) and the Advisory Council's *Handbook on the Treatment of Archaeological Properties.* The Treatment Plan will provide for a research design and site-specific data recovery plans for data recovery efforts, including analysis and reporting.

3.4. BPA shall ensure that CARES makes a good-faith effort to acquire an access easement on private lands in the APE from the landowner where construction occurs to allow members of the CYN to conduct traditional plant gathering activities and other traditional uses. BPA will inform SHPO, Council, and the CYN of progress made in this regard. Any access agreement developed for this purpose will be submitted to each signatory and attached to this PA upon implementation.

3.5. As required by the CUP, CARES will develop a Decommissioning Plan for the Project. This Plan will provide for the removal of towers and foundations up to 4 to 6 inches below grade level, restoration of the topography, and reseeding with plants. The plants, to be approved by Klickitat County, will include species similar to the dominant native species within the plan communities on the Project site.

3.6. Any disputes that arise regarding preparation and implementation of the Treatment Plan will be resolved in accordance with Stipulation 8 of this Agreement.

4. CONSTRUCTION MONITORING

4.1. As part of its Construction Environmental Protection and Monitoring Plan, required under Section 6 of the CUP, CARES, in consultation with the SHPO and CYN, will prepare a Cultural Sites Monitoring Plan. BPA will submit the draft Monitoring Plan to the SHPO, CYN, and the Council for review and comment on how accurately and completely the substance of the Plan reflects this stipulation. SHPO, CYN, and Council will have 30 days to review the Plan, after which BPA will produce the final Plan that takes the SHPO, CYN, and Council comments into consideration.

4.2. The Monitoring Plan will specify construction areas that will be monitored. The Monitoring Plan will also address actions to be taken if previously unidentified cultural sites or Native American burials are discovered during construction. The Monitoring Plan will set forth the means by which the immediate area of the find will be secured from construction and other disturbance, who is responsible for notifying SHPO and CYN, how much time these parties have to consult, how much time will be made available to treat the find, and when construction can move forward.

4.3. The Monitoring Plan will specify the location of the National Register-eligible cultural sites to be avoided and the means by which they will be marked and avoided. Following Section 2.2 of the CUP, CARES will precisely locate any cultural sites considered eligible for listing in the National Register, which are identified during the work outlined in Stipulation 2 above using property surveys or other means so that the final design of roads along the turbine strings and placement of the turbines can avoid the identified sites and isolates where feasible. Disturbance of identified sites or isolates , or any additional sites or isolates discovered during construction activities, will not occur until Stipulations 2 and 3 have been met.

4.4. Following Section 6.3 of the CUP, CARES will train construction workers on the importance of cultural sites, how to identify cultural sites, the need to avoid damage to cultural sites, and procedures to follow if previously unidentified cultural sites, including Indian graves, are encountered during construction. Trainers will include one or more archaeologists qualified under the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 *et seq.*) and one or more members of the CYN, if it chooses to participate.

4.5. Following Section 6.2 of the CUP, CARES will use Klickitat County and BPA-approved cultural sites specialists and one or more tribal monitors, if appointed by the CYN, as independent cultural sites monitors to ensure that flagged cultural sites are avoided.

4.6. The Monitoring Plan will set forth the methods and interval(s) for long-term monitoring of cultural sites in the APE considered eligible for National Register listing to confirm that Project operation will have no adverse effects on them. If monitoring reveals adverse effects, BPA will ensure that CARES takes any actions that may be needed to confirm that affected sites are eligible for the National Register, to evaluate Project effects on such sites, and to mitigate adverse effects in accordance with the Treatment Plan.

4.7. In the case of inadvertent discovery of Native American burials or Native American human remains during construction, archaeological fieldwork, or laboratory analysis, CARES will halt construction activities in the immediate area of the discovered deposit, take reasonable action to secure such area, and promptly notify the BPA, SHPO, Council, and CYN. BPA will consult with the SHPO, Council, and include the CYN, if such archaeological deposits are related to Native Americans or if the source of the archaeological deposits is unknown, regarding evaluation and treatment of the deposits in accordance with 36 CFR 800.11.

4.8. Any disputes that arise regarding preparation of the Cultural Sites Monitoring Plan will be resolved in accordance with Stipulation 8 of this Agreement.

5. REPORTING

5.1. BPA will produce one or more reports as needed on the additional cultural sites survey, Determination of Eligibility, assessment of Project effects, treatment of cultural sites, and construction monitoring. The report(s) will discuss the methods and results of the work that is the subject of the report. If archaeological testing, data recovery excavations, or salvage excavations are needed at more than three cultural sites, BPA will produce a final synthetic report for the Project for submittal to appropriate repositories for cultural sites professionals and the public.

5.2. The report(s) will follow the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 *et seq.*) and the Advisory Council's *Handbook on the Treatment of Archaeological Properties*. BPA will submit draft reports to the SHPO, CYN, and Council for review and comment on how accurately and completely the substance of the report reflects the Programmatic Agreement stipulation or plan under which the report was prepared. SHPO, CYN, and Council will have 30 days to review each draft report, after which BPA will produce final reports that take SHPO, CYN, and Council comments into consideration. All final reports will be completed within eight months after the completion of the construction monitoring set forth in Stipulation 4.

5.3. Any disputes that arise regarding preparation of the Project reports will be resolved in accordance with Stipulation 8 of this Agreement.

6. CURATION

BPA will ensure that the records and materials resulting from identification and data recovery efforts are curated according to the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 *et seq.*) and the Advisory Council's *Handbook on the Treatment of Archaeological Properties*, taking into consideration 36 CFR Part 79. Human skeletal remains and associated artifacts are to be reburied at the discretion of the CYN after consultation among BPA, SHPO, and CYN regarding the need for any basic forensic analysis. BPA designates the CYN Heritage

Center, as an institution qualified under 36 CFR Part 79, as the repository for curating records and materials on cultural sites for the Project.

7. AMENDMENT OF THE PROGRAMMATIC AGREEMENT

If a signatory to this Programmatic Agreement determines that the terms of the Programmatic Agreement cannot be met or believes a change is necessary, such party may request the signatories to consider an amendment to the Programmatic Agreement in accordance with 36 CFR 800.5(c)(5). Such an amendment will be executed in the same manner as the original Programmatic Agreement; parties invited to concur in the Programmatic Agreement will be invited to concur in any such amendment.

8. DISPUTE RESOLUTION

Should any party to this agreement object within 30 days to any plans provided for review or actions proposed pursuant to this Agreement, the BPA shall consult with the objecting party to resolve the objection. If the BPA determines that the objection cannot be resolved, the BPA shall forward documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

1. provide the BPA with recommendations, which the BPA shall take into account in reaching a final decision regarding the dispute; or

2. notify the BPA that it will comment pursuant to 36 CFR Section 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the BPA in accordance with 36 CFR Section 800.6(c)(2) with reference to the subject of the dispute.

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

4. At any time during implementation of the measures stipulated in this agreement, should an objection to any such measure or its manner of implementation be raised by any member of the public, the BPA will take the objection into account and consult as needed with the objecting party, the SHPO, or the Council to resolve the dispute. In no event shall such objection and consultation provide grounds for postponing or delaying the conduct of the undertaking or the terms of this agreement.

9. TERMINATION

BPA, the SHPO, or the Council may terminate this Programmatic Agreement by providing thirty (30) days' prior written notice to the other signatories; provided, however, that during the thirty-day period, the signatories will consult to seek agreement or amendment or other actions that would avoid termination of the Programmatic Agreement. In the event the parties are unable to avoid termination, BPA will comply with 36 CFR 800.4 through 800.6 with regard to any elements of the Project that have not previously been taken into account by BPA.

CONCLUSION

Execution of this Programmatic Agreement by the BPA, the SHPO, and the Council, and implementation of its terms are evidence that BPA has taken into account the effects on cultural sites of the CARES Columbia Wind Farm #1 in accordance with Section 106 of the National Historic Preservation Act.

Signatory Parties:

BONNEVILLE POWER ADMINISTRATION

By: Alexandra B. Smith Date: 3/13/97

WASHINGTON STATE OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION

By: [illegible] ACTING SHPO Date: 5.12.97

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

Concurring Party:

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA INDIAN NATION

By: _____ Date: _____

EXHIBIT E

William M. Phillips and Timothy J. Walsh, Geologic Map of the Northwest Part of the Goldendale Quadrangle, Washington, Washington Division of Geology and Earth Resources, Open File Report 87-13 (Nov. 1987).

Exhibit Coversheet Only.

[Paginated separately.]

WASHINGTON DIVISION OF GEOLOGY AND EARTH RESOURCES
Raymond Lasmanis, State Geologist

GEOLOGIC MAP OF THE NORTHWEST PART OF THE GOLDENDALE QUADRANGLE, WASHINGTON

Compiled by

WILLIAM M. PHILLIPS and TIMOTHY J. WALSH

WASHINGTON DIVISION OF GEOLOGY AND EARTH RESOURCES

OPEN FILE REPORT 87-13

1987
(Revised Nov. 1987)

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Brian Boyle · Commissioner of Public Lands
Art Stearns · Supervisor

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GEOLOGIC MAP OF THE NORTHWEST PART OF THE GOLDENDALE QUADRANGLE, WASHINGTON

Compiled by
William M. Phillips and Timothy J. Walsh

INTRODUCTION

This map is one of a series of 1:100,000-scale geologic maps compiled by staff geologists of the Division of Geology and Earth Resources. Other maps in the series are available for all 1:100,000-scale quadrangles within the southwest quadrant, that is, south of 47°15' north latitude and west of 120°30' west longitude, except for the Wenatchee and Snoqualmie Quadrangles which are available as U.S. Geological Survey Maps.

The 1:100,000-scale maps in this series that have been released to date are:

Korosec, M. A., compiler, 1987, Geologic map of the Mount Adams quadrangle, Washington: Washington Division of Geology and Earth Resources Open File Report 87-5, 41 p., 1 pl., scale 1:100,000

Korosec, M. A., compiler, 1987, Geologic map of the Hood River quadrangle, Washington and Oregon: Washington Division of Geology and Earth Resources Open File Report 87-6, 42 p., 1 pl., scale 1:100,000

Logan, R. L., compiler, 1987, Geologic map of the Chehalis River and Westport quadrangles, Washington: Washington Division of Geology and Earth Resources Open File Report 87-8, 18 p., 1 pl., scale 1:100,000

Logan, R. L., compiler, 1987, Geologic map of the south half of the Shelton and the south half of the Copalis Beach quadrangles, Washington: Washington Division of Geology and Earth Resources Open File Report 87-9, 17 p., 1 pl., scale 1:100,000

Phillips, W. M., compiler, 1987, Geologic map of the Mount St. Helens quadrangle, Washington and Oregon: Washington Division of Geology and Earth Resources Open File Report 87-4, 63 p., 1 pl., scale 1:100,000

Phillips, W. M., compiler, 1987, Geologic map of the Vancouver quadrangle, Washington and Oregon: Washington Division of Geology and Earth Resources Open File Report 87-10, 32 p., 1 pl., scale 1:100,000

Phillips, W. M.; Walsh, T. J., compilers, 1987, Geologic map of the northwest part of the Goldendale quadrangle, Washington: Washington Division of Geology and Earth Resources Open File Report 87-13, 9 p., 1 pl., scale 1:100,000

Schasse, H. W., compiler, 1987, Geologic map of the Centralia quadrangle, Washington: Washington Division of Geology and Earth Resources Open File Report 87-11, 27 p., 1 pl., scale 1:100,000

Schasse, H. W., compiler, 1987, Geologic map of the Mount Rainier quadrangle, Washington: Washington Division of Geology and Earth Resources Open File Report 87-16, 43 p., 1 pl., scale 1:100,000

Walsh, T. J., compiler, 1986, Geologic map of the west half of the Toppenish quadrangle, Washington: Washington Division of Geology and Earth Resources Open File Report 86-3, 8 p., 1 pl., scale 1:100,000

Walsh, T. J., compiler 1986, Geologic map of the west half of the Yakima quadrangle, Washington: Washington Division of Geology and Earth Resources Open File Report 86-4, 12 p., 1 pl., scale 1:100,000

Walsh, T. J., compiler, 1987, Geologic map of the Astoria and Ilwaco quadrangles, Washington and Oregon: Washington Division of Geology and Earth Resources Open File Report 87-2, 30 p., 1 pl., scale 1:100,000

Walsh, T. J., compiler, 1987, Geologic map of the south half of the Tacoma quadrangle, Washington: Washington Division of Geology and Earth Resources Open File Report 87-3, 12 p., 1 pl., scale 1:100,000

Igneous rocks are classified according to Travis (1955). If geochemical data are available, volcanic rocks are classified according to the current classification of the International Union of Geological Sciences (Zanettin, 1984).

The geologic time scale for this map is basically that used for the "Correlation of Stratigraphic Units of North America (COSUNA)" project of the American Association of Petroleum Geologists (Salvador, 1985). Additions and modifications were made following Armentrout and others (1983), Montanari and others (1985), Prothero and Armentrout (1985), and Aguirre and Pasini (1985). These modifications entailed addition of regional floral and faunal zonations, placing the Eocene-Oligocene boundary at 35.7 m.y.b.p. and within the Refugian foraminiferal stage, and setting the Pliocene-Pleistocene boundary to 1.6 m.y.b.p.

DESCRIPTION OF MAP UNITS OF THE NORTHWEST PART OF THE GOLDENDALE QUADRANGLE, WASHINGTON

Quaternary Unconsolidated Deposits

Qal

Alluvium (Holocene)--River and stream deposits of silt, sand and gravel. Along the Columbia River, composed of mixed lithologies. Along sidestreams, composed almost entirely of basalt with rare to abundant reworked clasts of quartzite (Anderson, 1983, 1986).

Qaf

Alluvial fan deposits (upper Pleistocene to Holocene)--Sand, gravel and boulders, mainly of basaltic composition. Includes layers of reworked loess and debris flows. Mostly younger than flood deposits (unit Qf) (Anderson, 1983, 1986).

Qls

Landslide deposits--Basalt and lesser sedimentary rock blocks in a matrix of finer debris. Blocks up to hundreds of meters long. Top of Grande Ronde Basalt is the most common basal slip surface. Maximum thickness approximately 70 m (Anderson, 1983; 1986). Also includes angular, unconsolidated basaltic talus deposited at the base of cliffs (Anderson, 1986).

Qlo

Loess--Pale orange to brown silt and fine sand. Contains some caliche and ash layers. Thickness highly variable. Includes the Palouse Formation and all younger loess (Anderson, 1986).

Qf

Missoula flood deposits, undifferentiated (upper Pleistocene)--Loosely to semi-consolidated silt, sand, and gravel of diverse composition. Consists of high-energy foreset-bedded gravel and sand deposits, and low energy (slackwater) parallel bedded silt and sand deposits. Includes eolian dune sand derived from these deposits (Anderson, 1986). Deposited by multiple catastrophic floods caused by rapid draining of glacial Lake Missoula.

QTg

Older alluvium (upper Miocene ? to lower Pleistocene)--Light brown to yellowish-gray gravel, sand, silt, clay and tuff. Consists of weakly to moderately indurated fluvial and locally paludal deposits containing basaltic, andesitic, metamorphic, and quartzo-feldspathic clasts. Maximum thickness greater than 60 m (Anderson, 1983).

Simcoe Mountains Volcanics (Pliocene to lower Pleistocene)

QTsr

Rhyolite and associated volcaniclastic deposits--Light to dark gray or light brown, flow banded, porphyritic rhyolite. Includes domes, flows, debris flows, breccia, and tuff. Erupted from vents in the Indian Rock area. Interstratified with olivine basalt (unit QTsb). Maximum exposed thickness greater than 500 m (Anderson, 1983).

QTsd

Dacite--Light to dark gray, flow-banded, glassy, porphyritic dacite. Contains phenocrysts of plagioclase, olivine, clinopyroxene, hypersthene, and oxyhornblende (Sheppard 1960, 1967). Overlies flows of olivine basalt (unit QTsb) and rhyolite deposits (unit QTsr). Erupted from a single dome (Anderson, 1983).

QTsb

Olivine basalt--Medium-gray to medium dark-gray, fine-to medium-grained plagioclase- and olivine-phyric basalt. Occurs in stacked flow sequences or intracanyon flows. Contains minor interstratified volcaniclastic deposits. Age spans the Pliocene (whole rock K/Ar dates of 3.77, 3.87, 4.06, and 4.79 m.y.b.p.) to early Pleistocene (K/Ar age of 0.9 m.y. for Haystack Butte flow)(Anderson, 1986).

QTsv

Vent facies--Red to dark gray, unconsolidated and poorly sorted basaltic cinder and scoria produced by near-vent and vent eruptive processes. Includes bombs, spatter, cowpie pahoehoe, breccia and agglutinate. Occurs in cinder cones as much as 50 m high (Anderson, 1986).

Tertiary Sedimentary Rocks

Tdl

The Dalles Formation (lower to middle Pliocene)--"Thickly bedded gray and buff volcanic-sedimentary and sedimentary deposists of agglomerate, pumiceous tuff, tuff breccia, tuff, volcanic ash, conglomerate, sandstone, siltstone, and shale....Maximum thickness about 660 m" (Newcomb, 1969, plate 1).

Tel

Ellensburg Formation (upper Miocene)--Light brown to yellowish gray, weakly to moderately indurated gravel or conglomerate, sand, silt, and clay. Gravel is most abundant and consists of basaltic, andesitic, and metamorphic clasts including quartzite. Conglomerate contains a sandy matrix that is locally micaceous. Maximum thickness about 15 m. Unit was deposited by ancestral Columbia River and tributary streams. Conformably overlies Columbia River Basalt Group and is unconformably overlain by olivine basalt of the Simcoe Volcanics (Anderson, 1983).

Columbia River Basalt Group

Yakima Basalt Subgroup

Wanapum Basalt (middle Miocene)

Twp

Priest Rapids Member--Gray black, rusty-brown weathering, medium- to coarse-grained basalt. Very sparsely phyric with rare plagioclase glomerocrysts 0.5-1.0 cm long. Typically forms blocky columns or vertical platy joints. Locally pillowed at base. Possesses reversed magnetic polarity. Two flows present locally, including the Rosalia chemical type and Lolo chemical type. Age approximately 13.6 m.y. (Anderson, 1983).

Twr

Roza Member--Medium dark gray, pale brown to yellowish gray weathering, fine- to medium-grained basalt with abundant plagioclase phenocrysts up to 1.0 cm in length. Flow top is locally aphyric. Locally pillowed at base. Typically has well-developed colonnade; locally possesses an entablature near flow margins. Closely resembles the basal Frenchman Springs flow. Possesses transitional magnetic polarity (Anderson, 1983).

Twf

Frenchman Springs Member, undivided--Consists of three flow types distinguishable on the basis of phenocryst distribution and geochemistry. The flow types follow the usage of Beeson and others (1985) and are arranged from stratigraphically highest to lowest below.

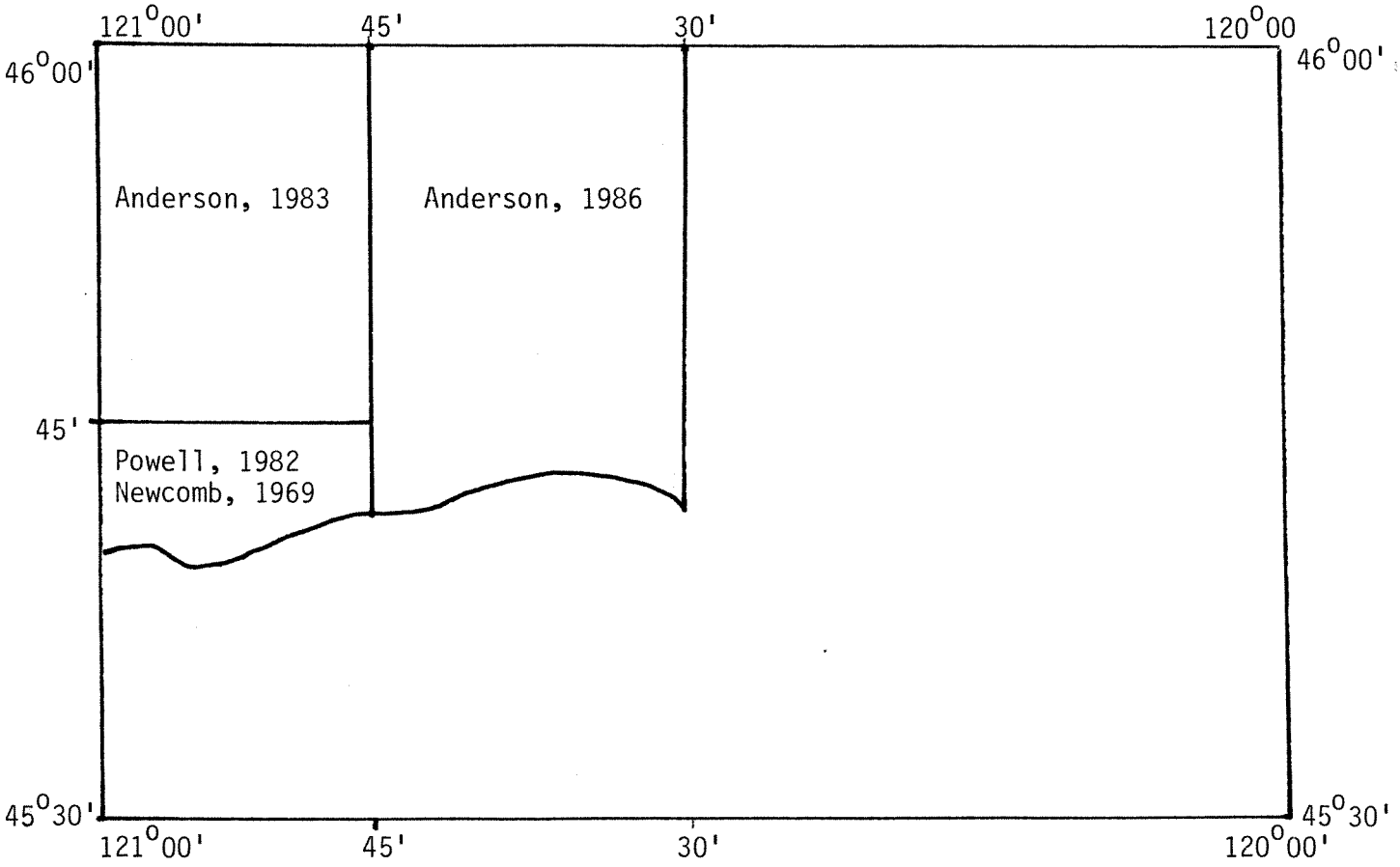
Sentinal Gap flow type is medium dark gray, fine to coarse grained, generally aphryic basalt with irregular columnar to vertical platy jointing. Rare plagioclase phenocrysts up to 1.5 cm in length are present.

Sand Hollow flow type is medium dark gray, medium-grained, aphyric to plagioclase-phyric basalt. Phenocrysts are rare to abundant with individual crystal clusters up to 2.5 cm in diameter. Commonly has well-developed blocky to platy lower colonnade. The center of flows often contain vertical platy jointing. Maximum thickness is about 60 m (Anderson, 1983; 1986).

Gingko flow type is medium dark gray basalt with abundant plagioclase phenocrysts or glomerocrysts 1 to 1.5 cm in diameter. Typically consists of one flow but locally two are present. Thickness of the Ginko flow or flows is about 60 m. In many places overlies sedimentary interbeds of the Vantage Member of the Ellensburg Formation (not mapped separately) and is commonly pillowed at base.

Tgn_2, Tgr_2

Grande Ronde Basalt (middle Miocene)--Dark gray, fine- to very fine grained, aphyric to very sparsely plagioclase-phyric basaltic andesite. Possesses uniform lithologic and petrologic characteristics within the map area. Divisible informally on the basis of MgO content and paleomagnetic polarity. Only high-MgO chemical type Grand Ronde Basalt is present within the map area. Magnetostratigraphic units present are: N_2 magnetostratigraphic unit (Tgn_2) and R_2 magnetostratigraphic unit (Tgr_2).



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WASHINGTON STATE DEPARTMENT OF
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Brian Boyle · Commissioner of Public Lands
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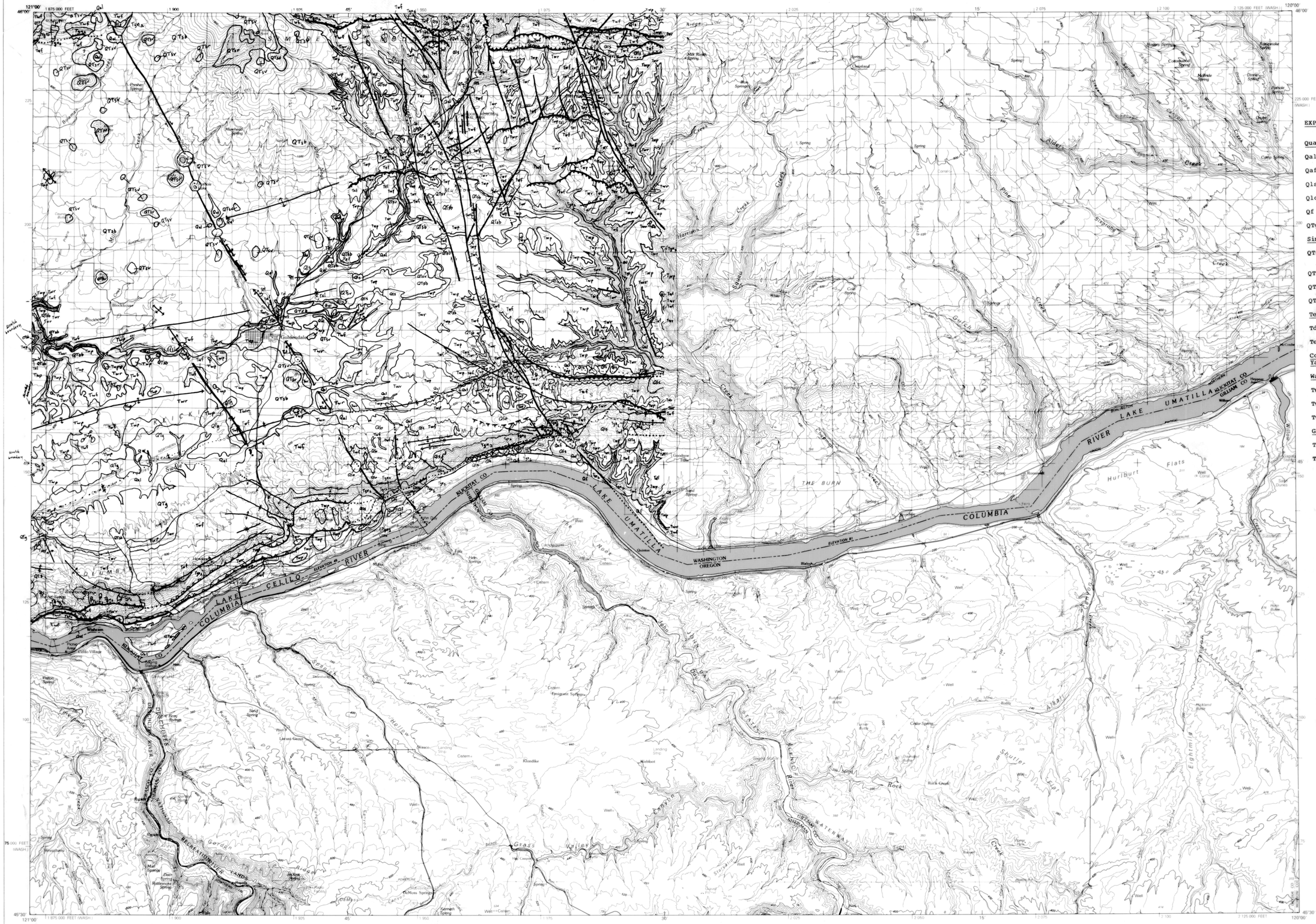
WASHINGTON DIVISION OF GEOLOGY AND EARTH RESOURCES
RAYMOND LASMANIS, STATE GEOLOGIST

OPEN FILE REPORT 87-13

Goldendale

WASHINGTON—OREGON



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EXPLANATION

Quaternary Unconsolidated Deposits

Qal	alluvium
Qaf	alluvial fan deposits
Qls	landslide deposits
Qlo	loess
Qf	Missoula flood deposits
QTg	older alluvium

Simcoe Mountains Volcanics

QTsr	rhyolite and associated volcaniclastic deposits
QTsd	dacite
QTsb	olivine basalt
QTsv	vent facies

Tertiary Sedimentary Rocks

Tdl	Dalles Formation
Tel	Ellensburg Formation

Columbia River Basalt Group
Yakima Basalt Subgroup

Wanapum Basalt

Twp	Priest Rapids Member
Twr	Rosa Member
Twf	Frenchmen Springs Member

Grande Ronde Basalt

Tgn_2	N_2 magnetostratigraphic unit
Tgr_2	R_2 magnetostratigraphic unit

- Horizontal beds
- Strike and dip of beds
- Contact, dotted where uncertain or concealed
- Anticline, showing plunge; dashed where uncertain, dotted where concealed
- Syncline, showing plunge; dashed where uncertain, dotted where concealed
- Fault, showing sense of displacement; dotted where inferred or concealed
- Thrust fault, barbs on upper plate, dotted where inferred or concealed

GEOLOGIC MAP OF THE NORTHWEST PART OF THE GOLDENDALE QUADRANGLE, WASHINGTON

Compiled by

WILLIAM M. PHILLIPS and TIMOTHY J. WALSH

1987