



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

July 1, 2024

SENT VIA EMAIL

Hon. Jarred-Michael Erickson, Co-Chair
Maria Batayola, Co-Chair
Washington State Environmental Justice Council
EnvJustice@ejc.wa.gov | (360) 584-4398

RE: PROTECTING TRADITIONAL CULTURAL PROPERTIES – SUPPORTING TRIBAL FPIC IN
STATE AND FEDERAL PERMITTING

Dear Environmental Justice Councilmembers,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) to thank the Environmental Justice Council (“EJC”) for convening a Special Meeting to review and consider the Yakama Nation’s request for support in protection of the Traditional Cultural Properties at *Pushpum* (Juniper Point, Washington). I urge the EJC to adopt the recommended motion to support the Yakama Nation and other impacted tribes to preserve their Traditional Cultural Properties (“TCP’s”). The EJC’s advocacy for the Free, Prior, and Informed Consent of Indigenous Peoples is a critical principle of tribal rights protected under government-to-government relationships with federal, state, and tribal governments.

I. Treaty of 1855.

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.¹ The Treaty expressly reserved rights for Yakamas to exercise “in common with” citizens of the United States throughout the Yakama’s ancestral Treaty territory.² A federal treaty is considered the supreme Law of the Land under the U.S. Constitution.³ Pursuant to its status as an inherently sovereign Native Nation and its Treaty-reserved authority, Yakama Nation acts for the protection of all natural and cultural resources in Yakama Nation’s Treaty territory.

The Yakama Nation protects its resources on behalf of more than 11,000 enrolled members, whose history, culture, and way of life are intertwined with *Nch’i Wa’na*, the Columbia River, and its host of salmon, fish, roots and plants, natural medicines, and

¹ Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. II, cl. 3.

² See *Id.* at art. III, cl. 2.

³ U.S. Const. art. VI, cl. 2.

animals. Yakama ancestors have passed teachings from generation to generation through our language *Ichi-skiin sin-wit* to tell the story of the People on this land.⁴ Yakama People lived with the land, practicing our religion in concert with the natural seasons and landforms that have provided for our existence. These teachings describe the connectivity between all life – the water, land and air, with the sun watching over all things. The birds, fish, and animals show this interconnectivity between creatures that provide food, tools, and clothing for the survival of us all. All life has an order which we understand as the Creator’s Law. By protecting the sacred resources, we will be rewarded; if we do not, knowing that we could have made better choices – then these resources will be lost for future generations of Yakama People.

II. *Pushpum*.

Known to gatherers as the ‘mother of roots’, *Pushpum*, is associated with several Yakama TCPs of legendary cultural importance.⁵ Each TCP speaks of a story, including *Spilyay’s* Journey, and also provides land-based references for passing knowledge on to future generations. These teachings pertain to traditional foods and medicine, legendary events, legendary and historical figures, and important lessons. Standing at *Pushpum*, one can view 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 aspects of the mountains and this region’s geographic connectivity.

The plants that survive at *Pushpum* provide Yakama People with uniquely important medicines and nourishment. This is a resource that cannot be replaced because *Pushpum* is the natural seed bank for these plant resources, which include buckwheats, balsamroots, lomatiums, yarrow, sumac, lupin, dogbane, rose, onion, thistle, serviceberry, sagebrush, junipers, and many others. These plants or plant combinations are used by Yakama People to treat illness in the body and spirit. The 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.

III. Proposed Project & Permits.

a. *Project Description*

The Project proposal includes constructing: (i) a 61-acre upper reservoir, created with a 175-foot-high, 8,000-foot-long rockfill embankment dam; and (ii) a 63-acre lower reservoir, created with a 205-foot-high, 6,100-foot-long embankment. The 124 acres of new reservoir ponds would be connected via a 2,200-foot-long, 29-foot-diameter underground concrete-lined high pressure tunnel system housing three 400-megawatt capacity hydro-turbines. The powerhouse and transformers are proposed to connect to the Bonneville Power Administration’s existing John Day Dam 500-kV Transmission Line(s) and Substation. The total proposed Project development area encompasses approximately 681.6

⁴ *Ichi-skiin sin-wit* means the language that belongs to the land.

⁵ Western-trained archaeologists describe the development proposal area as two National Register of Historic Places (“NRHP”)-eligible listings and six archaeological sites, with two Multiple Property Documentations, all a part of the Columbia Hills Archaeological District.

acres and requires 7,640 acre-feet of Columbia River water for the initial fill, plus approximately 360 acre-feet additional each year to replenish evaporation loss and seepage.

b. Environmental Review

The Project Applicant, FFP Project 101, LLC (“Applicant” originally dba Rye Development) filed with the Federal Energy Regulatory Commission (“FERC”) pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a) – 825(r), and was accepted under FERC docket number 14861 beginning in December 2017. The Yakama Nation has consistently submitted written comments in opposition to the Project at every single phase of the FERC application review beginning in February 2018. Under federal law, a lead federal agency is directed to consult with impacted tribal governments to resolve adverse effects to avoid, minimize, and/or mitigate Project impacts to historic properties.⁶ Since August of 2021, the Yakama Nation has disputed the FERC’s failure to consult on a government-to-government basis for the purpose of considering the Project’s harmful impacts to the TCP’s.⁷

In February 2024, the FERC published its Final Environmental Impact Statement (“FEIS”) recommending approval for the Project, including removal of all the Traditional Cultural Properties within the Project area and “changes to the natural landscape [that] would further alter or degrade Tribal spiritual and teaching practices” The FERC staff claim that the Project “adequately” protects environmental resources at the proposed site and that the overall benefits of this new hydroelectric Project “would be worth the cost” of the proposed environmental impacts.⁸

The FERC only consulted with one tribal government (“CTUIR”) less than two months before publishing the FEIS recommendations in favor of the Project. The FERC staff adopted the Applicant’s Historic Properties Management Plan as mitigation for the unavoidable destruction to Yakama TCP’s and FERC hopes to avoid further tribal consultation duties through a Programmatic Agreement with the federal Advisory Council on Historic Preservation (“ACHP”) and the Washington State Department of Archaeology and Historic Preservation.

The Washington State Department of Ecology (“Ecology”) prepared a separate FEIS, published December 2022, for a water quality certification required under the Clean Water Act. Ecology’s FEIS published TCP findings that affirmed Yakama Nation’s concerns at *Pushpum*:

“To date, there is no information available about mitigation proposed by or supported by the Tribes. . . . Current understanding of the construction and operation of the proposed project indicates significant and unavoidable adverse impacts on Tribal and cultural resources. These impacts include hunting and traditional gathering of wildlife and

⁶ 36 CFR § 800.2(c)(4).

⁷ Letter from the Yakama Nation Cultural Resource Program Manager to FERC Northwest Branch Chief regarding objection to Section 106 Delegated Consultation (Sep. 13, 2021) (on file with author).

⁸ FERC Project No. 14861-002, Final Environmental Impact Statement, Executive Summary for Cultural Resources at xxii – xxiv (Feb. 8, 2024).

vegetation, as well as archaeological sites and TCPs used for camping, and traditional rituals, such as ceremonies and vision quests. Without effective mitigation that would reduce significant impacts to Tribal and cultural resources, those impacts would be considered unavoidable. ***Therefore, there would be significant and unavoidable adverse impacts to cultural resources, as well as the Tribes' ability to use TCPs and gather culturally important plants.***" (emphasis added).⁹

Both state and federal environmental reviews of this Project acknowledge the Yakama Nation's well-established claims that the proposal would destroy TCPs. However, no regulatory entity with direct oversight is poised to exercise its authority in protection of those Yakama TCPs.

c. Ongoing Environmental Review Concerns

In 2022, the Yakama Nation and 17 Treaty-tribal governments wrote to Ecology to uphold Treaty-reserved rights and respect the sovereignty of Native Nations in protection of TCPs and areas where first foods are gathered.¹⁰ In January 2023, Affiliated Tribes of Northwest Indians' ("ATNI") supported the Yakama Nation against the proposed Project on the basis that sacred and religious TCPs should be protected.¹¹ In February 2023, the National Congress of American Indians' ("NCAI") passed an emergency resolution supporting the Yakama Nation and other impacted tribal governments facing the loss of TCP's as a result of national energy development.¹² Despite these and other comments, in the February 2024 FEIS, the FERC staff steadfastly recommend the Project be approved without Yakama Nation consultation and without fully considering the underlying TCPs.

In March 2024, the Environmental Protection Agency wrote to FERC identifying concerns for the disproportionate impacts to tribes and indigenous populations as inconsistent with federal policy on Environmental Justice.¹³ Even though the FERC environmental study costed more than \$500,000, the FERC only evaluated Environmental Justice impacts within a 5-mile radius of the Project boundary – dismissing tribal rights of Indigenous People living more than five miles away from the Project to justify the cost of destroying sacred food gathering sites.

In April 2024, the National Marine Fisheries Service wrote to FERC that at least one species of *threatened or endangered* Columbia River salmon is likely to be adversely affected by the Project.¹⁴ Additionally, the U.S. Fish & Wildlife Service wrote to FERC out

⁹ SEPA Final EIS, Department of Ecology, Publication No. 22-06-015, Appendix H Tribal Resources Analysis Report 3.3.5, 18 (Dec. 21, 2022).

¹⁰ Letter from Tribal Leaders Call[ing] On Gov. Inslee To Deny Permits For Goldendale Pumped Storage Project (Jul. 28, 2022).

¹¹ ATNI Resolution #2023-15 In Protection of Traditional Cultural Properties – *Pushpum* (Juniper Point, WA) (Jan. 26, 2023).

¹² NCAI Resolution ECWS-23-002 (Feb. 23, 2023).

¹³ Letter from Rebecca Chu, Policy and Envir. Review Branch Mgr., to FERC Secretary (Mar. 15, 2024).

¹⁴ Letter from Ritchie Graves, Columbia Hydropower Branch Chief, to FERC Secretary (Apr. 4, 2024).

of concern for adverse effects to threatened bull trout and critical habitat – because the FERC’s environmental review did not include enough information to review all areas affected by the Project.¹⁵ A biological opinion is currently being developed due to these ongoing FEIS concerns for actual adverse impacts to Columbia River salmon, steelhead, and bull trout.


Throughout the FERC FEIS review, the DAHP wrote to FERC that the state agency was “extremely concerned with the apparent failure by the FERC” to follow the §106 tribal consultation framework.¹⁶ The State Archaeologist expressed concerns that the FERC’s consideration of TCPs fell short of national standards. Today, FERC continues to ignore tribal consultation on the destruction of cultural and natural resources.

IV. Conclusion.

This Project add to the cumulative sacrifice zone that has burdened indigenous resources in the Pacific Northwest for national benefit of the federal hydro-system development. Project construction and operation is likely to harm fish species in the Columbia River, destroy a culturally significant root and medicine gathering site, and reduce access to traditional village and fishing sites. Please support the motion before the EJC and direct your staff to work with Washington State agencies for the purpose of giving effect to state laws for environmental justice.

For further comments or questions please contact Anthony Aronica at the Yakama Nation Office of Legal Counsel at Anthony@YakamaNation-OLC.org or (509) 833-9350.

Respectfully,



GERALD LEWIS, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

¹⁵ Letter from Tara Callaway, Asst. Field Supervisor, to FERC Acting Secretary (Apr. 5, 2024).

¹⁶ Letter from Robert Whitlam, State Archaeologist, to FERC Office of Energy Projects (Apr. 25, 2023).