



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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July 17, 2024

FILED ELECTRONICALLY

Debbie-Anne Reese, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
c/o Vince Yearick, Director, Division of Hydropower Licensing

RE: FFP PROJECT 101, FERC NO. P-14861 – ENVIRONMENTAL JUSTICE COUNCIL ACTION  
FOR THE PROTECTION OF TRADITIONAL CULTURAL PROPERTIES

Dear Acting Secretary Reese,

This cover letter on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) transmits the attached action and correspondence of the Washington State Environmental Justice Council (“EJ Council”) regarding the FERC Application docket number 14861 for a proposed pump storage project (“Project”). The EJ Council, acted pursuant to its organic statute, the Washington State Healthy Environment for All Act, to adopt the attached policy and statement. The Federal Energy Regulatory Commission (“FERC”) voting Commissioners are strongly encouraged incorporate the EJ Council statements in review of the Project Application.

The Yakama Nation, with the attached statement of support, urges the FERC Commissioners to deny the Project Application as inconsistent with procedural protections for Traditional Cultural Properties on the basis that the FERC Final Environmental Impact Statement (“FEIS”) does not reflect government-to-government Consultation with the Yakama Nation, even though the proposed Project is located within the Yakama Nation’s express Treaty-territory and ancestral homelands.<sup>1</sup> The FERC FEIS also does not reflect equal consideration of adverse and destructive environmental impacts to underlying and adjacent Traditional Cultural Properties that serve the Yakama Nation’s inherent or Treaty-reserved ceremonial activities, traditional gathering, and sacred practices. Additionally, the FERC FEIS errs in recommending the destruction of six (6) archaeological sites, some of which are eligible for listing on the National Register of Historic Places, without tribally supported avoidance or mitigation.<sup>2</sup>

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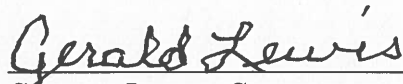
<sup>1</sup> See Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. I, cl. II.

<sup>2</sup> Also refer to objections during the June 17, 2024, FERC meeting with the Washington Department of Archaeology and Historic Preservation (“DAHP”) regarding the impropriety of FERC staff

On July 2, 2024, the EJ Council adopted a policy affirming the rights of Tribal Nations and upholding free, prior, and informed consent. The EJ Council policy demonstrates courageous leadership on behalf of impacted communities. Sadly, FERC's improper FEIS demonstrates a hasty pro-development bias at the expense of non-renewable Yakama resources. This EJ Council policy provides aspirational guidance for the FERC to fully uphold and implement its own policies, "[FERC], in keeping with its trust responsibility, will assure that tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian tribes or Indian trust resources."<sup>3</sup> The FERC recently established a new policy that "the Commission will not issue preliminary permits for projects proposing to use Tribal lands if the Tribe on whose lands the project is to be located opposes the permit."<sup>4</sup>

Here, the FERC Commissioners should rely on the reasoning of its own tribal consent policy and the Washington EJ Council policy to extend mandatory free, prior, and informed consent to inherently sovereign tribal nations for the express protection of inherent or Treaty-reserved off-Reservation rights and privileges. I urge the FERC Commissioners to deny this Project Application pending meaningful and good faith FERC consultation on a government-to-government basis with the Yakama Nation to give effect to all procedural or substantive law and policy in protection, avoidance, or mitigation of tribal resources.

Respectfully,



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GERALD LEWIS, CHAIRMAN  
YAKAMA NATION TRIBAL COUNCIL

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recommendations in the FEIS which fail to include prerequisite consideration for adversely impacted resources through an *ex post facto* Programmatic Agreement with the Washington DAHP.

<sup>3</sup> *Revision To Policy Statement On Consultation With Indian Tribes In Commission Proceedings*, Order No. 863, 169 FERC ¶ 61,036 (2019) (citing 18 CFR 2.1c(e)).

<sup>4</sup> *Order Denying Applications For Preliminary Permit, Project Nos. 15233, 15234, 15235* 186 FERC ¶ 61,117 (Feb. 15, 2024).

Cc:

- Jaime Loichinger, Office of Federal Agency Programs, Advisory Council on Historic Preservation
- John T. Eddins, Office of Federal Agency Programs, Advisory Council on Historic Preservation
- Allyson Brooks, Ph.D., State Historic Preservation Officer, Washington Department of Archaeology and Historic Preservation
- Rob Whitlam, Ph.D., State Archaeologist, Washington State Department of Archaeology & Historic Preservation
- Governor Jay Inslee, Governor of Washington State
- Becky Kelley, Senior Policy Advisor on Climate, Office of Governor Jay Inslee
- Carrie Sessions, Senior Policy Advisor on Environment & Water, Office of Governor Jay Inslee
- Anna Lising, Senior Policy Advisor on Climate, Office of Governor Jay Inslee
- Jerry Rivero, Environmental Justice & HEAL Implementation Coordinator, Office of Governor Jay Inslee

Appointed Environmental Justice Council Members:

- The Honorable Jarred-Michael Erickson, Interim Environmental Justice Council Co-Chair
- Co-Chair Maria Batayola
- Council Member Nichole Banegas
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- The Honorable Misty Napeahi
- AJ Dotzauer, Delegate for the Honorable Misty Napeahi
- Council Member Lua Pritchard
- The Honorable Monica Tonasket
- Council Member Raeshawna Ware
- The Honorable Jeremy Wilbur

Environmental Justice Council Ex Officio Agency Liaisons:

- Ex Officio Liaison for Puget Sound Partnership Lea Anne Burke
- Ex Officio Liaison for Department of Commerce Michael Furze
- Ex Officio Liaison for Department of Agriculture Nicole Johnson
- Ex Officio Liaison for Department of Ecology Millie Piazza
- Ex Officio Liaison for Department of Health Lauren Jenks
- Ex Officio Liaison for Department of Natural Resources Eliseo (EJ) Juárez
- Ex Officio Liaison for Department of Transportation Ahmer Nizam

## EXHIBIT A

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Exhibit Coversheet Only. [Paginated separately.]

1. Letter from the Washington State Environmental Justice Council to the Federal Energy Regulatory Commission (Jul. 12, 2024).

July 12, 2024

Debbie-Anne A. Reese, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Chair Willie L. Phillips and Members of the Federal Energy Regulatory Commission,

The Washington State Environmental Justice Council (EJ Council) was created through the Washington State Healthy Environment for All (HEAL) Act to promote environmental justice and serve as a forum for Tribes and communities ([chapter 70A.02 RCW](#)). The EJ Council is writing to share our opposition to the proposed pump storage project at *Pushpum* (FERC Project No. 14861) that would cause negative and irreparable damage to Traditional Cultural Properties and traditional foods and medicines and inflict an environmental injustice on the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) and its subsidiary Rock Creek Band members. *We call on the Federal Energy Regulatory Commission (FERC) to deny this permit application.*

The EJ Council recognizes the Yakama Nation's inherent sovereignty and rights reserved by the [Treaty of 1855](#) and upholds the Yakama Tribal Council Resolution adopted on May 24, 2021, opposing "the pump storage development at *Pushpum* to protect sacred religious and ceremonial places of inherent importance to Yakama culture." *Pushpum*, also known as Juniper Point, is within the Yakama Nation 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.

On July 2, 2024, the EJ Council adopted a policy affirming the rights of Tribal Nations and upholding free, prior, and informed consent as follows:

The Environmental Justice Council (Council) affirms the rights acknowledged under the [United Nations Declaration of the Rights of Indigenous Peoples](#) and emphasizes the importance of practicing free, prior, and informed consent. The Council also upholds the [Principles of Environmental Justice](#) adopted at the First National People of Color Environmental Leadership Summit in 1991, including the principle that "Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants, [other laws, and executive orders], affirming sovereignty and self-determination." The Council knows the urgency of the climate crisis (particularly for Tribes and other frontline communities) and

supports the need to transition to safer, cleaner, and more sustainable energy production. The Council further upholds that when this transition involves a project of non-Tribal proponents, it must happen only with free, prior, and informed consent from Tribes who have been, and continue to be, the stewards of the land since time immemorial.

Thereafter the EJ Council adopted a statement to stand with the Yakama Nation in opposition to this proposed pump storage project. The EJ Council centers both the letter and the spirit of the HEAL Act in standing with the Yakama Nation and its subsidiary Rock Creek Band members in their opposition to the proposed development at *Pushpum*. The HEAL Act describes environmental justice to include addressing disproportionate impacts of environmental decisions by prioritizing overburdened communities (including Tribes) and eliminating harm to these communities from government decision-making. The HEAL Act defines “environmental harm” to include “loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods.” It is essential that the Washington State and Federal governments work side by side to eliminate environmental harms given that both governments are working to advance environmental justice.

Washington State and the Federal Government run the risk of repeating history by permitting the Goldendale development at the expense of harming Tribal Nations’ sacred lands and waters. The impacts to Celilo Falls, Bradford Island, and Bateman Island at the hands of both the State and Federal Governments are nearby examples of a pattern of harm toward Traditional Cultural Properties and traditional foods. A June 2024 Department of Interior report, [Historic and Ongoing Impacts of Federal Dams on the Columbia River Basin Tribes](#), outlines the unique and disproportionate harms to Tribes (at page 42):

The dams silenced these sites that for thousands of years were filled with the noise of rushing water and people communing, praying, fishing, trading, and celebrating. As Yakama Tribal members and others expressed in consultation, all that remains now are the memories of those who once lived there, stripping future generations of the opportunity to witness and experience some of the most important places for Tribal fishing and culture. Although it is difficult to describe catastrophic loss, one Yakama Tribal member compared the loss of Celilo Falls to what it would be like for the United States to lose New York City because of their similar societal roles as centers of culture, trade, history, and tradition.

Repeating history by approving the Goldendale permit application without free, prior, and informed consent from impacted Tribes is an environmental injustice. It is also out of alignment with Presidential Executive Orders (EO) including [EO 14096](#) which states that:

The Federal Government must also continue to respect Tribal sovereignty and support self-governance by ensuring that Tribal Nations are consulted on Federal policies that have Tribal implications. In doing so, we must recognize, honor, and respect the different cultural practices — including subsistence practices, ways of living, Indigenous Knowledge, and traditions — in communities across America. As our Nation reaffirms our commitment to environmental justice, the Federal Government must continue to be transparent about, and accountable for, its actions.

FERC's lack of government-to-government Consultation with Yakama Nation on this proposed project means that the directives of federal Executive Order 14096 and the Washington State EJ Council's recognized principles of environmental justice have not been met.

In alignment with the principles, policies, and analyses outlined above, FERC should not grant any project license prior to a valid Programmatic Agreement that is negotiated in Consultation and with **consent** from impacted Tribes by the Washington State Department of Archaeology and Historic Preservation. FERC's denial of Yakama Nation Consultation on Tribal resources and substantive consideration for its Traditional Cultural Properties can only lead to the adverse impacts of this proposed project, without any meaningful consideration for avoidance or mitigation.

We look forward to a positive response.

In Solidarity,

Washington State Environmental Justice Council

### **Recipients**

- Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission
- Chair Willie L. Phillips and Members of the Federal Energy Regulatory Commission
- Vince Yearick, Director, Division of Hydropower Licensing, Federal Energy Regulatory Commission
- Michael Tust, Interagency Hydropower Coordinator, Federal Energy Regulatory Commission
- Elizabeth Molloy, Tribal Liaison, Federal Energy Regulatory Commission

## **Copied**

- Jaime Loichinger, Office of Federal Agency Programs, Advisory Council on Historic Preservation
- John T. Eddins, Office of Federal Agency Programs, Advisory Council on Historic Preservation
- Allyson Brooks, State Historic Preservation Officer, Washington Department of Archaeology and Historic Preservation
- Rob Whitlam, Ph.D., State Archaeologist, Washington State Department of Archaeology & Historic Preservation
- Gerald Lewis, Chairman, Yakama Nation Tribal Council
- Governor Jay Inslee, Governor of Washington State
- Becky Kelley, Senior Policy Advisor on Climate, Office of Governor Jay Inslee
- Carrie Sessions, Senior Policy Advisor on Environment & Water, Office of Governor Jay Inslee
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