



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

November 6, 2020

DELIVERED ELECTRONICALLY

Breean Zimmerman  
Department of Ecology  
Central Regional Office  
1250 West Alder St.  
Union Gap, WA 98903-0009  
breean.zimmerman@ecy.wa.gov

RE: COMMENTS ON APPLICATION FOR SECTION 401 WATER QUALITY CERTIFICATION FOR PROPOSED GOLDENDALE PUMPED STORAGE PROJECT BY PROPONENT FFP PROJECT 101, LLC, APPLICATION FERC PROJECT No. 14861.

Dear Ms. Zimmerman,

Included herein are comments on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") Natural Resources Department regarding the Application for a Section 401 Water Quality Certification ("WQC") for the Federal Energy Regulatory Commission ("FERC") review of License Application for Project No. 14861, the proposed Goldendale Energy Storage Project ("Project"), submitted by FFP Project 101, LLC ("Applicant"). These comments discuss Yakama Nation's specific interests and concerns related to the Project, confirm Yakama Nation's opposition to the Project, and encourage Washington to exercise its regulatory authority to safeguard important environmental resources located in the proposed Project area. These comments further adopt and incorporate corresponding comments submitted by the Columbia Riverkeeper on the Project WQC.

**I. Background.**

The 1885 Treaty between the United States and the Yakamas ("Treaty") reserved to the Yakamas fishing rights on the Columbia River and its tributaries, including "the right of taking fish at all usual and accustomed places . . . ."<sup>1</sup> A federal treaty is considered the supreme Law of the Land under the U.S. Constitution.<sup>2</sup> Yakama Nation is a Co-Manager of the Columbia River fishery pursuant to its status as a sovereign Native Nation, authority

---

<sup>1</sup> See Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. III, cl. 2.

<sup>2</sup> See U.S. Const. art. VI, cl. 2.

within the Treaty, and recognition by federal courts.<sup>3</sup> Yakama Nation's Treaty Territory encompasses usual and accustomed fishing sites from the mouth of the Columbia River upstream to beyond the 49<sup>th</sup> parallel. The Yakama Nation's history, culture, and the lives of our People are intertwined with Nch'i-Wa'na (the Columbia River), and the salmon, fish, plants, and animals that rely on its waters.

Protecting the waters of the Columbia River, its tributaries, and Yakama Nation's Treaty Territory is critical to the protection of the Yakama Nation's Treaty-reserved resources and rights, and ultimately to the health and welfare of our communities. For this reason, Yakama Nation has been opposed to this project from the beginning. Previously, Yakama Nation opposed similar project proposals at this location. In 2006, FERC denied a license application under a different applicant, primarily due to existing soil and groundwater contamination at the former Columbia Gorge Aluminum ("CGA") smelter site. FERC concluded then, that the CGA should be completely cleaned-up before securing a license for new development – a determination that has yet to occur.

## **II. Project Description.**

The Project will consist of an off-stream, closed-loop pumped-storage project with an upper and lower reservoir with over 2,400 feet of maximum gross head that involve no river or stream impoundments, allowing for water conveyances. Proposed facilities include: 1) an upper reservoir consisting of a rock fill embankment dam approximately 175 feet high, 8,000 feet long, a surface area of about 61 acres, storage of 7,100 acre-feet, at an elevation of 2,940 feet above mean sea level; 2) a lower reservoir consisting of an embankment approximately 205 feet high, 6,100 feet long, a surface area of about 63 acres, storage of 7,100 acre feet, and an elevation of 590 average mean sea level; and 3) an underground water conveyance tunnel and underground powerhouse and 23-kilovolt transmission line(s).

Given the nature of the Project, it requires large quantities of water, projected to be supplied by the Public Utility District No. 1 of Klickitat County ("KPUD"), which owns an existing water right and conveyance system adjacent to the Project. The proposed lower reservoir area is located on lands that previously housed the CGA smelter. Soil and groundwater contamination resulting from operations at the CGA smelter remain in the Project area.

### **Project Impacts to Yakama Nation Treaty Resources**

#### *i. 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

---

<sup>3</sup> 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).

offset losses from evaporation and leakage. Emptying of these reservoirs for maintenance and repair will require additional water to replace lost volumes. Taking water from the Columbia River has negative impacts to Yakama Nation's Treaty resources, including salmonids and other aquatic species whose survival is dependent on stable water quantity, quality, and temperature. This Project, when combined with the impacts from existing dams and their impoundments, and the comorbidities of climate change, may irreversibly tip the ecological scales in a way proves disastrous to critical Columbia River dependent aquatics, and in turn and diminishing the Yakama Nation's Treaty-reserved rights to these resources.

The WQC application is fundamentally incomplete because the Project's impacts to aquatic resources are not limited to the Columbia River or federal jurisdictional waters, but this Project also negatively impacts waters of the state. The Project area includes six waterbodies, of which two are ephemeral streams, two are ponds, one is an intermittent stream, and one seep. See Final License Application, Appendix B Wetland Delineation, Table 4-7-1 at 348 (June 23, 2020). According to the FERC License Application materials, two of the six waterbodies within the study area, S7 and S8, connect to perennial streams downstream of the Project which creates the threshold criteria for the state to exercise its full regulatory authority over the waters impacted by this Project. Washington law protects the remaining four waterbodies and one wetland, P1, P2, S17, S24, and W6, and the connectivity between those water features and their two corresponding watersheds. The Applicant's failure to address the impact or mitigation for these features constitutes an incomplete WQC application.

Yakama Nation is concerned that construction of the upper proposed reservoir will permanently destroy several ephemeral waterbodies including approximately 965 linear feet of streams (890 linear feet of stream S7 and 75 linear feet of stream S8). These streams, S7 and S8, feed into the Swale Creek, a perennial tributary of the Klickitat River, approximately 2.4 miles north of the survey area. Additionally, construction will temporarily negatively impact an additional 800 linear feet of stream S8. An entire 0.03 acre pond will be removed (pond P2) by construction of the lower proposed reservoir.

It is unclear what actions the Applicant will implement in the event reservoir waters do not meet Washington State water quality standards and result in contamination of surrounding streams and wetlands. Additionally, it is unclear what the impacts will be if one or both of the proposed reservoirs earthen dams are damaged, breeched, or completely fail. It is Yakama Nation's understanding that the Project proponent will need to acquire a reservoir permit and water diversion permit from Ecology and may require a dam safety review. To our knowledge this process has not started.

*ii. Plant and Terrestrial Resources*

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 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. According to United States Fish and Wildlife Service, bald eagle, golden eagle, and prairie falcon nesting occur in the area which combined with

PAGE 3 OF 6 - COMMENTS ON APPLICATION FOR SECTION 401 WATER QUALITY CERTIFICATION FOR PROPOSED GOLDENDALE PUMPED STORAGE PROJECT BY PROPONENT FFP PROJECT 101, LLC, APPLICATION FERC PROJECT NO. 14861.

foraging and rearing habitat makes this area unique to 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.

Further, the above-detailed ephemeral and seasonal waterbodies are important sources of critical 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 history 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. The Applicant is expecting leakage from the reservoirs. Leakage implies that water from the proposed reservoirs may enter surface water bodies or infiltrate to groundwater and can compromise water quality in existing streams, wetlands, and groundwater. It is unclear how the Applicant proposes to maintain water quality in the reservoirs, what actions the Applicant will implement to prevent contamination of surrounding streams and wetlands from leakage, and how the Applicant intends to ensure the protection of affected plant and terrestrial resources. Further, it is unclear how the Applicant plans to address the habitat impacts caused by the Applicant's planned destruction and removal of streams and ponds.

### *iii. Cultural Resources*

The Project Area of Potential Effect ("APE") is in an area of exceptional cultural importance to the Yakama Nation. The proposed Project is yet another energy project, when combined with hydro-electric dams and utility-scale wind turbine facilities, that disproportionately impacts or destroys Yakama Nation's fishing sites, villages, burial sites, ceremonial gathering places, root and medicine gathering fields, and cultural markings up and down the river. The destruction of cultural property for Columbia River energy infrastructure includes at least nine culturally significant sites or Traditional Cultural Properties. The Project is in an area with 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. The Programmatic Agreement preserves and protects the significance of archaeological and cultural resources within the APE. A Project of this size and intensity will also impact Yakama Nation's Treaty fishing rights and the North Shore Treaty fishing Access Site adjacent to the Project in the Zone 6 Fishery. The Applicant has provided no acceptable proposal for how it will mitigate impairment to Yakama Nation's access to, and use of critically significant cultural resources caused by the Project's construction and operation. Nor has the Applicant provided any acceptable plan addressing the consequences of damage, breach, or complete failure of the proposed reservoirs earthen dams and resulting impacts to cultural resources.

### **III. Clean Water Act Section 401 Water Quality Certification Rule.**

As detailed above, Yakama Nation has strong concerns about potential discharges from the Project reservoirs, either through unintended spill or unaccounted seepage into the adjacent Columbia River and the two watersheds that the Project reservoirs would be constructed in. The discharge of pollutants into the Columbia River threatens some of the

most vital Pacific Northwest salmon fisheries and all of the related human activities that occur along the Columbia River.

Due to the ongoing *Coronavirus* public health pandemic, Yakama Nation has struggled to staff the review of the thousands of pages of Project specific background information, and analyze all of the content in the Applicant's final FERC license application. As a result, the Yakama Nation adopt and incorporates corresponding comments submitted by the Columbia Riverkeeper on the Project WQC, the Clean Water Act, section 401 requirements, and State regulatory requirements.

#### **IV. Government-to-Government Consultation.**

Yakama Nation's policy is to preserve, protect, and perpetuate all significant natural and cultural resources within its Treaty territory. The entirety of this Project lies within Yakama Nation homelands. Additionally, Yakama Nation has a sacred right and solemn duty to engage with the State in decisions that are likely to have direct negative impacts to Treaty Resources throughout the Columbia River Basin.

Yakama Nation notes that official consultation has not been conducted with the Department of Ecology for this Project. The Department of Ecology is urged to assign appropriate value to the environmental resources at risk of being damaged or destroyed through the construction and/or operation of this Project. Please be aware that official government-to-government consultation with the Yakama Nation takes place between Yakama Nation Tribal Council and the decision maker from the agency proposing an action. However, before Yakama Nation can assess and consider the key elements of consultation, a staff-level technical briefing is required to discuss the CWA Section 401 certifications, FERC license application, National Environmental Protection Act (NEPA) and Endangered Species Act (ESA) Section 7 consultation actions.

#### **V. Conclusion.**

As detailed above, the Yakama Nation's Treaty-reserved interests in certain cultural and natural resources will be disproportionately affected, damaged, or destroyed due to the Project construction and location on top of a culturally and environmentally sensitive area. Moreover, Yakama Nation is substantially involved in fisheries and natural resource management throughout the Columbia River Basin. The Project does not protect Yakama Nation's Treaty resources or the Yakama members who rely these environmental features from reservoir seepage, leaking, discharge, or unplanned failure. Furthermore, if Washington State is going to have clean energy, then that energy should truly be "clean" and not occur at the detriment of Yakama Nation's significant environmental, cultural, and Treaty resources. The land at this Project site is subject to Federal Trust Responsibility to preserve and protect the irreplaceable resources that Yakama Nation's people. Resources that have been relied upon since time immemorial for traditional and cultural practices.

For further comments or questions please contact me at [phil\\_rigdon@yakama.com](mailto:phil_rigdon@yakama.com), Phil Rigdon or at (509) 865-5121, ext. 4655.

Respectfully,



---

PHIL RIGDON, SUPERINTENDENT  
YAKAMA NATION DEPARTMENT OF NATURAL RESOURCES

cc: Erik Steimle, Vice President, Rye Development, FFP Project 101, LLC  
Phil Rigdon, Superintendent, Yakama Nation Department of Natural Resources  
Elizabeth Sanchey, Manager, Yakama Nation Environmental Program  
Ernest Rasmussen, Tribal Liaison, Washington Department of Commerce  
Rob Whittlam, State Archaeologist, Washington Department of Archaeology &  
Historical Preservation  
Dennis Griffin, State Archaeologist, Oregon State Historic Preservation Office