



MUCKLESHOOT INDIAN TRIBE Fisheries Division

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October 6, 2015

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

RE: Oregon LNG and Washington Expansion Projects (Docket CP13-507-000) Draft Environmental Impact Statement

Dear Ms. Bose:

The Habitat Program of the Muckleshoot Indian Tribe Fisheries Division has reviewed the Draft Environmental Impact Statement for the proposed Oregon LNG and Washington Expansion Projects. We specifically reviewed the Washington Expansion Project for its potential impacts to the Tribe's fisheries resources (Docket CP13-507-000). We offer the following comments in the interest of protecting and restoring the Muckleshoot Indian Tribe's treaty-protected fisheries resources. These comments are organized by DEIS Section and page numbers as noted below.

Section 4.2.3.2 and Table 4.2.3-8

This table is incorrect for WRIA 9 Duwamish-Green River watershed, which has use designations. They can be found on the Washington Department of Ecology's website at:

http://www.ecy.wa.gov/programs/wq/swqs/desig_uses.html and

<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A-602>.

Please note that the Duwamish-Green river watershed is within the Muckleshoot Indian Tribe's Usual and Accustomed Fishing Area and is an important resource for the Tribe's treaty protected fisheries resources.

This watershed contains two hatcheries that are essential to the Tribe's fisheries and could be affected by the construction of the Washington Expansion project, as well as, any operational spills.

Table 4.2.3-9 Water Quality Impaired Waterbodies

This table is incomplete. The Soos-Creek subbasin, which includes Covington Creek, is listed under CWA Section 303(d) for water temperature, dissolved oxygen, and aquatic habitat impairments. WA Department of Ecology is currently developing a TMDL for this watershed and these parameters. See

<http://www.ecy.wa.gov/programs/wq/tmdl/TMDLsbyWria/tmdl-wria09.html>.

Issaquah Creek is also listed as impaired for fecal coliform and is missing from this table. See <http://www.ecy.wa.gov/programs/wq/tmdl/TMDLsbyWria/tmdl-wria08.html>.

The Puyallup River and the White River (one of its tributaries) are also listed under 303(d) for several impairments. See <http://www.ecy.wa.gov/programs/wq/tmdl/TMDLsbyWria/tmdl-wria10.html>

General Waterbody Crossing Impacts (page 4-476)

It is noted in the DEIS that Northwest may need to work outside of established in-water work windows and FERC is recommending that they obtain WDFW approval for these modifications. Please note that changes to in-water work windows may adversely affect fish resources important for tribal members exercising their treaty rights; tribal fisheries research activities; and hatchery operations that support tribal fisheries. Changes to these work windows cannot solely be a WDFW decision. FERC should require that Northwest also seek approval by affected tribes for changes to these in-water work windows.

Pipeline risk of exposure from stream scour and channel migration (pages 4-477 and 4-478)

This is a problem for many of the pipeline crossings of streams and rivers in the Muckleshoot Indian Tribe's Usual and Accustomed Area. Please note that further evaluation will be reviewed thoroughly by the Tribe's Fisheries Division Habitat Program staff. Northwest should work diligently to avoid these impacts with extensive analyses and good project design. If there is any need for bank or stream protection for the pipelines, this work needs to be coordinated with the Tribe's Fisheries Division, not just WDFW and WDOE.

Water for hydrostatic testing (page 4-482)

The project proposes to take 0.5 million gallons of water from the Green River and discharge it back into the Green River as part of the Sumner North A Loop TS1 project at MP 1356.9. We request that FERC require Northwest to coordinate with us on this withdrawal and discharge to ensure that this activity occurs at time with minimal impacts to the Tribe's fisheries and associated activities including salmon surveys, outplanting, fishing, etc.

4.2.4.3 Compensatory Wetland Mitigation (page 4-490)

Please note that wetland impacts, including the two bogs described on page 4-489, are within the Muckleshoot Indian Tribe's Usual and Accustomed Area. Impacts to these wetlands and proposed mitigation measures need to be coordinated with the Tribe's Fisheries Division in addition to USACE and WA Ecology. FERC's recommendation on this page should be updated accordingly.

Section 4.2.4.4 Alternative Measures to Our Procedures (pages 4-490 through 4-493)

It is premature for FERC to approve expanded construction right-of-way widths in wetlands without consulting with affected Tribes. The areas for the Sumner South and North routes shown in Table 4.2.4-3 and any other potential impacted wetland areas from Table 4.2.4-2 should be discussed with us before FERC's approval for ROW expansion to ensure that potential impacts to the Tribe's treaty fisheries resources have been adequately considered.

Table 4.2.4-4 (page 4-493)

It is premature for FERC to approve ATWS to be placed less than 50 feet from waterbodies listed in this table for the Sumner South and North routes without consultation with us. Many of these areas are within the Tribe's Usual and Accustomed Area. We need consultation to ensure that the proposal adequately considers potential impacts to the Tribe's treaty fisheries resources.

Section 4.2.5.2 Aquatic Resources Impacts and Mitigation

Please see our previous comments regarding omissions for Section 4.2.3.2 water quality and in-water work window coordination requirements. FERC has a duty to ensure that tribal treaty rights are sufficiently protected. There is little consideration of Tribal treaty rights to fisheries resources and the coordination elements described in this section lack any requirement for Northwest to consult and coordinate with Tribes. We request the opportunity to consult and coordinate for each stream crossing in WRIs 8, 9, and 10 to ensure that the proposed construction crossing methods do not adversely affect the Tribe's treaty-protected fisheries resources. For example, open-cut crossing on the streams in the Issaquah Creek subbasin could adversely affect coho salmon and other salmon species important to the Tribe's fisheries. In addition, for each of the FERC recommendations highlighted in bold throughout this section, FERC should also add affected Indian Tribes to the consultation recommendations to ensure adequate consultation occurs for this project (i.e. page 4-498; 4-502, etc.).

Fish Passage (page 4-500)

The fish passage section on page 4-500 only considers the fish passage aspect due to construction. The project needs to ensure that wherever the pipeline crosses existing or potential fish bearing waters, the location and depth of the pipeline does not preclude any future fish passage culvert replacement projects needed at those locations. Future fish passage replacement projects need to have sufficient room to allow for bridges or culverts designed using WDFW's stream simulation design; the location of this pipeline may interfere with these actions if not carefully planned and sited.

Water Withdrawals and Discharges (page 4-503)

This page indicates that water will be withdrawn from Issaquah Creek; however, Table 4.2.3-11 does not list Issaquah Creek (WRIA 8). Please clarify and note that we would have concerns about water withdrawals in this watershed as it, too, is part of the Muckleshoot Indian Tribe's Usual and Accustomed Area. It is important to note that a water withdrawal of up to a maximum of 5.6 cfs could be substantial depending on where it is withdrawn and the current conditions of the waterbody. This summer the Green River and other rivers and streams experienced drought conditions with low levels, high water temperatures and low dissolved oxygen with adult and juvenile salmon mortalities. The proposed water withdrawals and discharges need to be coordinated with us as noted previously to minimize impacts to the Tribe's fisheries resources.

Operational Impacts and Mitigation (page 4-504)

The DEIS fails to note that if and when pipelines are exposed due to scour, they are often re-buried using non-native rip-rap and quarry spalls, which not only degrade habitat but can cause injury to salmon and

create predator habitat. If done under emergency or expedited conditions, these projects rarely mitigate for their impacts.

Section 4.2.5.3 Essential Fish Habitat

Pink salmon can be found in the Green-Duwamish River and the Puyallup-White River, both of which are part of the Washington Expansion Project. Pink salmon migrate through the Puyallup River crossing and may spawn near the Green River withdrawal site.

Section 4.2.6.2 Vegetation Impacts and Mitigation

This section provides no analysis of the removal of vegetation on fish habitat functions, including but not limited to shade and future wood recruitment. As noted, where trees will be removed, this impact will be permanent. Since the DEIS failed to note where there are currently temperature listed waterbodies such as the Green River or Soos Creek basin, where trees could be removed, the potential impacts from tree removal have not been adequately assessed. This section also lacks any discussion about long term vegetation monitoring to ensure that invasive and noxious weeds do not become established in the corridor and provide a seed source for areas outside of the corridor. Invasive and noxious plant species are a significant concern in WRIAs 8 and 9 in particular. Northwest needs to ensure that the corridor does not contain these species.

Finally, the proposed Vegetation Restoration and Monitoring plan described on page 4-510 should be done in consultation with affected Indian Tribes.

The DEIS lacks any consideration of impacts to other non-ESA listed salmon that could be impacted by the project. For example, Puget Sound coho is found throughout the waterbodies that could be impacted by the North and South Sumner loops; however, there is no discussion about impacts to this species in the fish section (4.2.8) of the DEIS. The non-ESA salmon species are also protected by treaty and FERC has trust responsibility to affected tribes to ensure that they are not adversely impacted by the project.

4.2.8.2 State Listed and Other Special Status Species

We found an Olympic Mudminnow in the East Fork of Issaquah Creek in 1996 while doing juvenile salmon electroshocking surveys (page 4-458).

Native American Treaty Fishing

The DEIS notes that the project may temporarily block access to tribal usual and accustomed fishing areas (page 4-678). This blockage is contrary to treaty rights and cannot occur without tribal consent.

Another concern is that the DEIS fails to adequately assess impacts to the Muckleshoot Indian Tribe and their fishing treaty rights in this section or in Section 4.3.1.5, as the project does not consider the extent of usual and accustomed areas; the current condition of fisheries resources in these areas; and the project impacts. If project impacts do not get mitigated in the watersheds where impacts will occur for WRIAs 8, 9, and 10 (as implied on page 5-9), then the project will cause further degradation to the Muckleshoot

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Indian Tribe Fisheries Division Habitat Program provided comments on the scoping notice for this project via FERC's e-comment system on November 7, 2012. We can resend those comments if needed. Appendix B should be updated accordingly.

We appreciate the opportunity to review this DEIS. Please let me know if you have any questions.

Sincerely,



Karen Walter
Watersheds and Land Use Team Leader

Document Content(s)

WA Expansion docket CP13-507-000 DEIS comments.PDF.....1-5