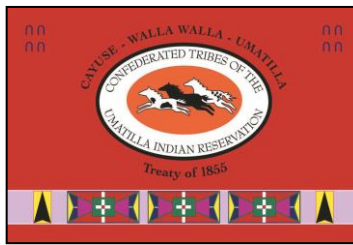


**Confederated Tribes of the  
Umatilla Indian Reservation**

Department of Natural Resources  
First Foods Policy Program



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December 28, 2020

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

RE: CTUIR DNR FFPP Comments on Goldendale Pumped Storage Project Scoping  
Document 1, Docket No. P-14861-002

Dear Secretary Bose:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) First Foods Policy Program (FFPP) submits the following comments on Scoping Document 1 for the Goldendale Pumped Storage Project proposed in Klickitat County, Washington,<sup>1</sup> by the applicant Rye Development on behalf of FFP Project 101, LLC (FFP).<sup>2</sup> The CTUIR DNR FFPP requests that the Federal Energy Regulatory Commission (FERC) prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), to inform potential further decisions and actions regarding the Project. FERC must also consult with the CTUIR and other affected Indian tribes about the Project before any decisions are made, actions are taken, or resources are committed. The CTUIR DNR FFPP also requests that this Project not be subject to the expedited license application review process pursuant to section 35 of the Federal Power Act for certain closed-loop pumped storage projects.

We appreciate that FERC has expressed its intent to conduct an adequate and thorough review of the Project. This should include identification and assessment of the full range of potential impacts (direct and indirect, near- and longer-term) and implications for tribal rights and resources in the immediate area and all those that would otherwise be affected beyond it. While we are generally supportive of renewable energy, efforts to reduce fossil fuel use, and measures to decrease harmful in-river hydropower impacts on fisheries and water quality, the unique

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<sup>1</sup> The Project would be located adjacent to the Columbia River, off-stream, on the north side at River Mile 215.6 in Klickitat County, Washington, with transmission lines crossing the River and extending into Sherman County, Oregon. The Project would be located approximately 8 miles southeast of the City of Goldendale, Washington. It would occupy 18.1 acres of land within an existing transmission right-of-way owned by the U.S. Army Corps of Engineers and administered by the Bonneville Power Administration.

<sup>2</sup> In a recent development, we note that ownership of the Project has changed. See “CIP acquires Swan Lake and Goldendale, 393 MW and 1,200 MW pumped storage hydro projects located in Oregon and Washington, USA,” <https://cippartners.dk/2020/11/11/cip-acquires-swam-lake-and-goldendale-393-mw-and-1200-mw-pumped-storage-hydro-projects-located-in-oregon-and-washington-usa/> (Nov. 11, 2020);

“Danish firm acquires pumped-hydro energy projects in Washington and Oregon,”

<https://columbiainsight.org/danish-firm-acquires-pumped-hydro-energy-projects-in-washington-oregon/> (Nov. 12, 2020); “CIP acquires 393-MW Swan Lake, 1,200-MW Goldendale pumped storage hydro projects in U.S.,” <https://www.hydroreview.com/2020/11/13/cip-acquires-393-mw-swam-lake-1200-mw-goldendale-pumped-storage-hydro-projects-in-u-s/> (Nov. 13, 2020).

location and other circumstances associated with this particular proposed Project suggest that it is singularly problematic, and mandate that, at a minimum, it receive very close and careful scrutiny.

### *Introduction*

The CTUIR is a federally-recognized Indian tribe, with a reservation in Northeast Oregon and ceded, aboriginal, and traditional use areas in Oregon, Washington, Idaho, and other Northwest states. These areas include the site the Project would occupy. In 1855, predecessors to the CTUIR—ancestors with the Cayuse, Umatilla, and Walla Walla Tribes—negotiated and signed the Treaty of 1855 with the United States. The Treaty is a contract between sovereigns and is “the supreme Law of the Land” under the United States Constitution. In the Treaty the CTUIR ceded millions of acres of land to the federal government, and in exchange received assurances that pre-existing tribal rights would be protected, and our interests would be respected, in perpetuity. A paramount objective in the Treaty was protecting and maintaining our tribal culture, traditions, and way of life. To do so requires protection and maintenance of our essential cultural resources, which include both specific sites and locations (and any artifacts found there) and the tribal First Foods (water, fish, big game, roots, berries, and other plants) that have been and continue to be woven into the fabric of our lives. This objective—protecting and maintaining the essential features of our history and our very existence—remains paramount for the CTUIR.

FERC has a duty to honor and uphold the Treaty of 1855 and all Indian treaties and to act as a steward and trustee to ensure that the terms and commitments of such treaties are fulfilled. In implementing the Federal Power Act and rules and regulations under it, the agency can and should always remain attentive to how the law and its rules and regulations, and its concurrent treaty-based obligations and tribal Trust Responsibility, can and should be read in tandem to be mutually supportive and reinforcing.

### *Goldendale Project: Issues Requiring Identification, Discussion, Analyses*

Given the limited amount of time to respond to the solicitation for comments, and the complicating factor of dealing with the enormous difficulties presented by the Covid-19 pandemic and its toll on tribal communities, we will simply highlight some (but not necessarily all) of the issues we believe merit attention in reviewing the proposed Project. We agree that the list of “Resource Issues” in section 4 of the document is a good start. We offer the following additional suggestions:

The effects of “periodic maintenance fills” must be comprehensively examined. This extractive use of water must be considered in regard to water quantity and quality, and also to Endangered Species Act (ESA)-listed Threatened and Endangered salmonid populations in the mainstem Columbia River and its tributaries. In fact, all Project construction, operation, and maintenance activities should be examined in terms of potential impacts for those species, not just the species listed under the “4.1.4 Threatened and Endangered Species” section on page 17.

Portions of the Project would be located on or within a hazardous waste site containing toxic contaminants in the soil. NEPA documentation must fully assess this situation and how the Project will address it, providing information on such questions as whether the applicant will have the necessary expertise and resources to safely and effectively alleviate all the associated risks and dangers. This seems of particular interest since the “contaminated site . . . is subject to ongoing management and clean-up by Washington Department of Ecology (Washington DOE)”; i.e., clean-up has not been completed, and evidently even the **plans** for clean-up have not been completed.<sup>3</sup>

The CTUIR DNR FFP supports the proposal to “[d]evelop and implement a Historic Properties Management Plan in consultation with the Washington and Oregon State Historic Preservation Officers and affected Native-American tribes to protect and manage cultural resources” (page 15). Similarly, we support, under section 4.1.7 on Cultural Resources (page 18), careful assessment and analysis of the “[e]ffects of project construction and operation activities on historic and archaeological resources, traditional cultural properties, and access to exercise traditional practices and treaty rights.” This must be done in close coordination and consultation with affected Indian tribes. In addition, NEPA documentation—and this entire licensing process—must be done consistent with and in compliance with the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act and their implementing regulations, where applicable.

The proposed Project is likely to have substantial, harmful impacts on tribal cultural resources, including sites and artifacts—potentially both those located in-water, or below the ordinary-high-water-line, and those above and beyond the shoreline. Extensive potential tribal cultural resources impacts have been documented in materials developed by the Yakama Nation (including archeological, ceremonial, burial petroglyph, monumental and ancestral use sites). The CTUIR has also determined that the Project could have significant implications for historic properties of religious and cultural significance to the CTUIR.

Under 4.1.8 Socioeconomics, the CTUIR DNR FFPP also encourages analysis of the “[e]ffects of project construction and operation activities on local roads (including traffic), housing, businesses, employment opportunities, and government services.” Socioeconomic aspects of the project should be considered for both non-Indian **and Indian communities**.

Finally, NEPA documentation should examine to what extent, if any, the representations, obligations, and commitments that the applicant has made thus far may be affected in the future in the event of changed ownership such as occurred recently. In other words, to what extent, if any, would ownership by a foreign investment group versus a domestic entity, for example, have any bearing on Project construction, operations, or maintenance (see footnote 2, above).

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<sup>3</sup> See Scoping Document 1, footnote 7, page 8: “The Washington DOE is currently working with the potentially liable persons . . . to investigate and cleanup the site. . . . Once Washington DOE finalizes the Cleanup Action Plan, it would work with the responsible parties to implement the plan to clean up and remove sources of contamination and eventually de-list the smelter site from the Hazardous Sites List after it meets cleanup standards and requirements. . . . As of the date of this SD1, the Remedial Feasibility Study to identify cleanup alternatives and Draft Cleanup Plan has yet to be completed.”

Thank you for your consideration of the CTUIR DNR FFPP's comments on the Scoping Document 1 for the Goldendale Pumped Storage Project. We look forward to further engagement with you on this matter, and consultation in the proper government-to-government context when appropriate.

Sincerely,



Carl Merkle  
Policy Analyst  
First Foods Policy Program  
Department of Natural Resources  
Confederated Tribes of the Umatilla Indian Reservation

Cc: Fish and Wildlife Commission  
Tribal Water Commission  
Michael Tust, FERC, [michael.tust@ferc.gov](mailto:michael.tust@ferc.gov)