



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

February 17, 2023

SENT VIA EMAIL

Fawn Sharp, President
National Congress of American Indians
Embassy of Tribal Nations
1516 P. Street NW
Washington, D.C. 20515

RE: PROTECT *PUSHPUM* – SUPPORT OF TRIBAL RIGHTS IN STATE AND FEDERAL
PERMITTING OF DEVELOPMENT THAT THREATENS TRADITIONAL CULTURAL PROPERTY

Dear President Sharp,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) to thank the National Congress of American Indians (“NCAI”) at its Executive Committee for reviewing and considering our proposed resolution “In Protection of Traditional Cultural Properties – *Pushpum* (Juniper Point, Wash.)”. I urge the Executive Committee to convene on an emergency basis at the 2023 Executive Council Winter Session (“ECWS”) and adopt the proposed resolution. NCAI’s support has always been critical step in the advocacy for recognition of tribal rights in the government-to-government relationships between the federal government, states, and tribal sovereigns. And with this proposed resolution, NCAI’s support is critical step in the advocacy for protection of Traditional Cultural Properties (“TCPs”).

Below, I have outlined why the Yakama Nation sponsored the Affiliated Tribes of Northwest Indians (“ATNI”) Resolution No. 2023 – 15, and why the Yakama Nation now advocates for this proposed resolution at the ECWS in opposition to the proposed pumped storage project near Goldendale, Wash. at Columbia River mile 215.6 (“Project”) that, if permitted and constructed, would destroy *Pushpum*.

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 further designated reserved rights for Yakamas to exercise “in common with” citizens of the United States at all usual and accustomed places within the Treaty territory.² A federal treaty is considered the supreme Law of the Land under the U.S.

¹ See 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.

Constitution.³ Pursuant to its status as a 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, which encompasses usual and accustomed fishing sites, cultural areas, and ceremonial locations from the mouth of the Columbia River upstream north of the 49th parallel.

The Yakama Nation's enrolled membership exceeds 11,000 people whose history, culture, and way of life are intertwined with *Nch'i Wa'na*, the Columbia River, and its host of salmon, fish, root plants, natural medicines, and animals. The teachings from our ancestors have been passed from generation to generation through our language *Ichi-skiin sin-wit* to tell the story of the people and the land.⁴ Yakama People lived with the land, practicing our religions in respect for the landforms that have provided for the resources and 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 live our lives to protect these gifts, knowing that we could have made choices to better protect the resources and did not – we will suffer the consequences.

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 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 the legendary aspects of the mountains and their connectivity.

The plants that survive at *Pushpum* uniquely provide Yakama People with important medicines and nourishment, and the culturally significant plants found here are endemic to the region. 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 and combinations of them are used by Yakama People to treat illness in the body and spirit. These 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.

³ See U.S. Const. art. VI, cl. 2.

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 nine archaeological sites, with two Multiple Property Documentations, all a part of the Columbia Hills Archaeological District.

III. Proposed Project And Permits.

a. Project Description

The Project would include the constructing of (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 newly dammed reservoirs would be connected via a 2,200-foot-long, 29-foot-diameter underground concrete-lined high pressure tunnel system housing three 400-megawatt capacity hyrdo-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. In total, the proposed Project development area encompasses approximately 681.6 acres. The proposed reservoirs require an initial water fill of 7,640 acre-feet of water and approximately 260 acre-feet of water each year to replenish evaporation loss and seepage.

b. Federal Permitting Entity

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 comment and opposition to the Project at every single phase of the FERC application review beginning in February 2018.⁶ The Yakama Nation has been disputing with FERC since August 2021 about FERC's failure to consult with the Yakama Nation on a government-to-government basis.⁷

The Yakama Nation has invited and advised FERC to consult on a government-to-government basis to cure its procedural and technical errors in reviewing the Project Application and failing to give equal consideration to the purposes of preservation for the cultural environment. At this time FERC continues to decline consultation with the Yakama Nation and continues to delegate its lead agency duties under the National Historic Preservation Act to the Applicant.⁸

c. State Permitting Entity

On May 23, 2022, the Project Applicant filed with the Washington State Department of Ecology ("Ecology") for a water quality certification, required under the Clean Water Act

⁶ See Letter from the Yakama Nation Deputy Director for Cultural Resources to Rye Development regarding Project Application (Feb. 14, 2018) (on file with author).

⁷ See 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 See Letter from FERC Director of Hydropower Licensing Division to Yakama Nation Chairman Delano Saluskin regarding Ready for Environmental Analysis ("REA") (Jun. 28, 2022) (on file with author).

§ 401(a)(1) and pursuant to FERC regulations, 18 CFR § 4.34(b)(5). Under applicable FERC regulations, Ecology will be deemed to have waived its state certifying agency authority if the Ecology fails to issue or deny the Applicant’s certification request within one year. Under applicable state law, the State Environmental Policy Act (“SEPA”), the Applicant’s certification request triggered an Environmental Impact Statement (“EIS”).⁹

Under SEPA agencies are required to integrate environmental concerns into their decision-making processes by studying and explaining environmental consequences before decisions are made.¹⁰ In enacting SEPA, the state legislature gave Ecology the affirmative authority to deny projects where environmental impacts are significant, cannot be mitigated, and collide with local rules or policies. SEPA provides substantive authority for government agencies to condition or even deny proposed actions – even where they meet all other requirements of the law—based on their environmental impacts.¹¹ On December 21, 2022, Ecology completed its final EIS and published its findings in concurrence with the 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 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).¹²

The Yakama Nation and 17 Treaty-tribal governments have called on Washington State Governor Inslee and Ecology Director Watson uphold Treaty-reserved rights and respect the sovereignty of Native Nations to protect the usual and accustomed areas where first foods are gathered and ceremonies hold sacred importance.¹³ Now, the Governor’s own staff in Ecology have determined through an EIS that denying the Applicant’s certification request is the only way to avoid significant adverse impacts to cultural resources and Treaty-reserved rights at *Pushpum*.

⁹ See RCW § 43.21C.030 (2)(c).

¹⁰ See *Stempel v. Dep’t of Water Resources*, 82 Wn.2d 109, 117–18 (1973).

¹¹ See RCW § 43.21C.060.

¹² See SEPA Final EIS, Department of Ecology, Publication No. 22-06-015, Appendix H Tribal Resources Analysis Report 3.3.5, 18 (Dec. 21, 2022).

¹³ See Letter from Tribal Leaders Call[ing] On Gov. Inslee To Deny Permits For Goldendale Pumped Storage Project (Jul. 28, 2022).

IV. Necessary To Act On An Emergency Basis For National Advocacy.

a. Emergency Basis

Now is the time for NCAI to exercise its advocacy in protection of TCPs because critical documents before the Executive Committee are less than two months old and Washington State's authority to approve or deny the application for water quality certification can and must be exercised between now and May 23, 2023 -- or the Project Application advances towards development.

The Yakama Nation has worked persistently to oppose the Project since 2018. However, due to the complex national permitting scheme for new hydropower facilities under the FERC, it took the Ecology until December 2022 to publish its final EIS. That final EIS is an exhaustive and technical review of the Project that finally concurs and supports what the Yakama Nation has consistently asserted. Even though the final EIS identifies the TCPs that will be destroyed if this Project is permitted, Ecology has the authority to issue a favorable certification and advance the Project Application with FERC. The time is ripe for NCAI to call on Washington State's political leadership to deny this Project now. Prior to May 2023, Washington State may take action on the certification application and NCAI will lose this strong opportunity to advocate for the protection of TCPs.

b. National Scope

Every sovereign that has reviewed the Project agrees that it threatens to destroy significant TCPs, and that loss to the Yakama People cannot be avoided or mitigated. Yet here, the federal permitting entity, FERC, will not consult with the Yakama Nation on a government-to-government basis despite the assertion of Treaty-reserved rights, notions of federal Trust responsibility, statutory lead agency status,¹⁴ and regulatory consultation requirements.¹⁵ This Project Application is evidence of FERC's systematic failure to uphold federal obligations to tribal governments across a national permitting jurisdiction.

The Yakama Nation continues to preserve and pursue every available avenue to hold FERC accountable for the protection of TCPs. NCAI's adoption and concurrence with ATNI Resolution 2023 – 15 would signal its solidarity that all Native Nations can exercise inherent and legal authority in protection of resources from permanent destruction.

V. Conclusion.

No mitigation can replace the harmful impacts of this Project to the Yakama People and it would add to the cumulative sacrifice zone that has burdened indigenous resources in the Pacific Northwest for national hydro and nuclear energy development. This Project would increase restricted access to traditional village and fishing sites, ceremonial gathering places, and Treaty-reserve root and medicine gathering areas. Please consider

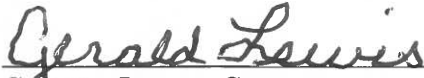
¹⁴ See 16 USC § 797(e).

¹⁵ See 18 CFR § 2.1c and 36 CFR 800.7(c)(4).

and adopt the proposed resolution “In Protection of Traditional Cultural Properties – *Pushpum* (Juniper Point, Wash.)” at this ECWS and stand with the Yakama Nation’s calls to deny this Project now.

For further comments or questions please contact Jerry Meninick, Deputy Director of Cultural Services, jerry_meninick@yakama.com, (509) 865-5121, ext. 6007.

Respectfully,



GERALD LEWIS, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL