



September 7, 2011

Al Wright, Manager
Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, WA 98504-3172

Stephen J. Wright, Administrator
Bonneville Power Administration
905 N.E 11th Avenue
Portland, OR 97232

Subject: Final Environmental Impact Statement Whistling Ridge Energy Project

Dear Mr. Al Wright and Mr. Stephen J. Wright:

The Yakama Nation has reviewed the Historical and Cultural Resources section of the Final Environmental Impact Statement (FEIS) for the Whistling Ridge Energy Project (Project). We understand that the FEIS serves as the State Environmental Policy Act (SEPA) document for the Energy Facility Site Evaluation Council (EFSEC) and the National Environmental Policy Act (NEPA) document for Bonneville Power Administration (BPA). The FEIS fails to discuss the [REDACTED] or the lack of compliance with Yakama Nation Tribal Council Resolution T-013-11.

The Historical and Cultural Resources section of the FEIS provides an overview of the proposed project, laws and regulations, the cultural context of the affected environment, identified cultural resources and expected impacts. The FEIS appropriately identifies the Historic Haran Homestead and the [REDACTED] in the project's area of potential effect. However, the FEIS fails to mention the [REDACTED] found on [REDACTED] May 2, 2011. Mr. Stephen Posner, EFSEC, was informed of the discovery of the archaeological object by Gretchen Kaehler, Department of Archaeology and Historic Preservation (DAHP) on June 8, 2011. George Colby, Yakama Nation Attorney, forwarded the archaeological form to Lydia Grimm, BPA attorney, once the Smithsonian number had been assigned by the DAHP.

DAHP advised that due to the discovery of the stone tool [REDACTED], if that portion of the project area is to be developed, further archaeological investigation including subsurface testing needs to be completed [REDACTED] for review by DAHP and affected Tribes prior to any construction. DAHP and the Tribes must receive the final cultural resources survey report documenting the subsurface testing at least 60 days prior to any ground disturbing activity on the project. [REDACTED] should have been addressed in the FEIS. **The Yakama Nation expects EFSEC and BPA to acknowledge and address [REDACTED] in the Record of Decision and comply with DAHP's directions.**

The Yakama Nation has high regard for Chief Wilbur Slockish and Chief Johnny Jackson. They provide essential guidance on the river ensuring that community members have a place on the river to fish. They assist the fishermen in following the laws of the Creator and ancestors. However, the Chiefs do not speak for the Yakama Nation. Only the elected government officials authorize the official positions of the Nation. The Chiefs' share a common mailing address with Whistling Ridge Energy LLC (Service List). The Chiefs' opinions concerning Chemawa Hill are their personal opinions and do not represent the position of the Yakama Nation. Even elected officials of the Yakama Nation do not speak for the Nation when their letters are not supported with approved Committee Actions or Tribal Council Resolutions.

Yakama Nation Tribal Council Resolution T-013-11 passed unanimously on November 3, 2010. T-013-11 designates the Yakama Nation Cultural Resources Program to negotiate the placement of wind turbines on the landform known as Chemawa Hill. No one else will be allowed to represent the Yakama Nation on this issue without the consent of the Yakama Nation Tribal Council. To date, no negotiations have occurred with the Cultural Resources Program. T-013-11 should have been addressed in the FEIS. **The Yakama Nation expects EFSEC and BPA to require compliance with T-013-11 in the Record of Decision.** George Colby, Yakama Nation Attorney, forwarded T-013-11 to Lydia Grimm, BPA attorney.

The BPA may consider the scope of the federal government's involvement with the Project exceedingly narrow and only limited to the new substation. This would be erroneous and would violate NEPA and the National Historic Preservation Act (NHPA) as well as the treaty and trust responsibilities assumed by the federal government regarding the Yakama Nation. The project would not be constructed without the ability to use BPA transmission lines to reach markets. We encourage BPA to consider the full impact of the Project on the environment, thereby honoring federal law.

EFSEC promised to meet with the government of the Yakama Nation prior to issuing their record of decision to inform their selves of our organizational structure. We expect EFSEC to keep their word and arrange a meeting promptly. We encourage BPA to attend this meeting as well. Please contact Phil Rigdon, Deputy Director of Natural Resources, at (509) 865-5121 extension 4655 to set up the meeting and answer any questions you may have about these comments.

Sincerely,


Harry Samskin, Chairman

Yakama Nation Tribal Council

cc: Governor Christine Gregoire, Office of the Governor
Dr. Steven Chu, Secretary of Energy
Stephen Posner, EFSEC Compliance Manager
Andrew Montaña, BPA Environmental Project Manager
Dr. Allyson Brooks, State Historic Preservation Officer
Jason Spadaro, Whistling Ridge Energy LLC

Enclosures: June 8, 2011 DAHP letter to Stephen Posner, EFSEC
Whistling Ridge Energy Project Service List, pages 1 and 5
Tribal Council Resolution T-013-11



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

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June 8, 2011

Mr. Stephen Posner
Energy Facility and Site Evaluation Council
P.O. Box 43172
Olympia, Washington 98504-3172

In future correspondence please refer to:

Log: 012610-17-EFSEC

Property: Whistling Ridge Energy Project, *Cultural Resources Inventory Report for the Whistling Ridge Wind Energy Project, Skamania County*

Re: Archaeology-Concurrences and Comments on Cultural Resources Report for Whistling Ridge

Dear Mr. Posner:

We have reviewed the above report prepared by URS, thank you for providing it. The report identified historic archaeological resources in the APE. URS made eligibility recommendations for all resources. Under RCW 27.53 all precontact sites are protected from disturbance. Please be aware that under RCW 27.53, historic archaeological resources are not protected by law unless they are listed in or eligible for listing in the Washington Heritage Register (WHR) or the National Register of Historic Places (NRHP). DAHP administers the WHR. The NRHP is maintained by the National Park Service, US Department of Interior. Under the National Historic Preservation Act, 1966, it is the State Historic Preservation Officer's (SHPO's) responsibility to identify eligible properties for listing in the National Register. In the State of Washington, the SHPO resides at DAHP and while consultants may make recommendations for NRHP eligibility, it is DAHP's responsibility to make the determination of eligibility through concurrence with the consultant's recommendations.

URS identified or re-identified the following historic resources in the current report:

Resources	Smithsonian Trinomial	URS Eligibility Recommendation	DAHP Concurrence
Historic Homestead-Harran Farmstead	██████████	Not Eligible	Not Eligible
Historic Logging Properties	██████████	Not eligible	Not Eligible

- We agree that the ██████████ is not eligible for listing in the WHR or NRHP because it does not retain integrity and would not provide information important to prehistory or history.
- The remnants of the ██████████ are not eligible for state or national registers.

General Comments:

It is unlikely that the only resources in the project area are historic above-ground and surface visible. It is understandable that pedestrian survey is the chosen methodology since the survey areas are so large and the ground visibility is often good. However, once ground disturbance for the project begins, subsurface cultural resources, whether historic or prehistoric, will become apparent. We agree with URS' recommendation that an Inadvertent Discovery Plan be (IDP) prepared for the project. However, procedures and processes presented in the IDP must comply with applicable state laws for the protection of archaeology and human remains (RCW 27.53, RCW 27.44, RCW 68.50 and RCW 68.60) rather than federal laws such as NAGPRA.

Since this report has been completed, a precontact isolated artifact consisting of a stone projectile point has been identified in portion of the project area that includes "Chemawa Hill." The Yakama have stated that the area is traditionally sensitive for them. The documented presences of precontact resources as well as the Tribe's contention that the area is culturally sensitive indicates that further precontact resources including campsites, traditional sites and burial areas may be present. Therefore, we request that if the Chemawa Hill portion of the project area is to be developed, further archaeological investigation including subsurface survey be completed for review by DAHP and the Tribes prior to any construction.

In addition, since it is early in the project, the current report does not address micrositing or supplemental design changes. DAHP has provided the following guidelines to wind power projects to assist in make the cultural resources portion of the project run smoothly and remain in compliance with state laws including RCW 27.53, RCW 27.44, and RCW 68.60:

All survey must be completed prior to construction including micrositing and any supplemental surveys for design changes. Archaeological survey in tandem with construction work has not proven to be an effective means of protecting cultural resources and has led to violations of RCW 27.53 on other wind projects.

Complete cultural resources survey reports must be sent to DAHP and the affected Tribes prior to any ground disturbing activities commencing, on any part of the project. Archaeological site inventory forms must be submitted to DAHP in advance of the final report, and Smithsonian trinomials (site numbers) must be incorporated into the final report text.

DAHP and the affected Tribes must receive the final cultural resources survey report at least 60 days prior to any ground disturbing activity on the project.

DAHP will review the report(s) and inform the applicant when an excavation permit from this office is required.

Thank you for the opportunity to review and comment. Please feel free to contact me if you have any questions.

Sincerely,



Gretchen Kaehler
Assistant State Archaeologist
(360) 586-3088
gretchen.kaehler@dahp.wa.gov

CC. Katy Chaney, URS Corporation
David Powell, Archaeologist, Yakama Nation
Johnson Meninick, Yakama Nation
Kate Valdez, THPO, Yakama Nation

Service List

Whistling Ridge Energy Project Application No. 2009-01

EFSEC:	
<p>Al Wright EFSEC Manager Energy Facility Site Evaluation Council 905 Plum Street SE P.O. Box 43172 Olympia, WA 98504-3172 Email: Al.Wright@commerce.wa.gov EFSEC@commerce.wa.gov Phone: 360-956-2152 Fax: 360-956-2158</p> <p>C. Robert Wallis Administrative Law Judge P.O. Box 43172 Olympia, WA 98504-3172 Email: Robert.Wallis@commerce.wa.gov Phone: 360-956-2138 Fax: 360-956-2158</p>	<p>Kyle Crews Assistant Attorney General Office of the Attorney General P.O. Box 40108 Olympia, WA 98504-0108 Email: KyleC@atg.wa.gov Phone: 360-664-2510 Fax: 360-586-3593</p>
Whistling Ridge Wind Power, Applicant	
<p>Jason Spadaro Whistling Ridge Energy LLC P.O. Box 266 Bingen, WA 98605 Email: jasons@sds lumber.com Phone: 509-493-6103 Fax: 509-493-2535</p>	<p>Tim McMahan Stoel Rives LLP 805 Broadway Street, Suite 725 Vancouver, WA 98660 Email: tlmcmahan@stoel.com Phone: 503-294-9517 Fax: 503-504-8693</p> <p>Darrel Peoples Attorney 325 Washington Street NE, #440 Olympia, WA 98506 Email: dpeeples@ix.netcom.com 360/943-9528 ph 360/951-1124 fax</p>

Klickitat and Cascades Tribes of the Yakama Nation	
Klickitat and Cascades Tribes of the Yakama Nation c/o Wilbur Slockish, Jr. ¹ Whistling Ridge Energy LLC P.O. Box 266 Bingen, WA 98605 541-993-4779 (cell)	
Confederated Tribes and Bands of the Yakama Nation	
Johnson Meninick Cultural Resources Program Manager Confederated Tribes and Bands of the Yakama Nation P.O. Box 151 Toppenish, WA 98948 509-865-5121 ext. 4737 ph	

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¹ Mr. Slockish requested that his mail be sent c/o Whistling Ridge Energy.



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

RESOLUTION

T-013-11

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation by the authority delegated by Resolution T-38-56, and

WHEREAS, the Tribal Council has the duty and responsibility according to the Resolution T-38-56 and T-10-61 to protect and preserve the Treaty Rights of the Yakama Nation, and

WHEREAS, the Creators principle of law is water, land, air, and natural, cultural and human resources, and

WHEREAS, ancestral Yakamas lived in harmony with the water, land, air and natural, cultural and human resources, and traditional Yakamas continue these practices today, and

WHEREAS, the Yakama Nation is federally recognized as 14 tribes and Bands of the Yakama Nation pursuant to the Treaty of 1855 and ratified in 1859, (12 Stat 951), and

WHEREAS, T-38-56, policy of the Yakama General Council, in lieu of tribal constitution is recognized by the department of interior in 1956, 14 chiefs of Yakama Nation Tribal Council is the governing body of the business of the Yakama Nation, and

WHEREAS, T-10-61 is to complement and to clarify T-38-56, is the Yakama Tribal Council rules and procedures, and

WHEREAS, T-66-84 recognizes and implements the culture resources program, to oversee the Yakama Nation's unwritten laws of the principle of the Creator's Law, and archeological and anthropological practices, to protect and preserve, to perpetuate, natural and cultural resources of the Yakama Nation, and its Tribal members, and

WHEREAS, T-92-87 is the land use policy for the use of the land committee that includes cultural, natural, land, water, air and human resources, and

WHEREAS, T-170-03, provides the line of authority for the Yakama Tribal Council and designated programs to align authority for the purposes of protection of natural and cultural resources as well as the health and welfare of the Yakama tribal members, and

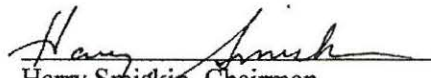
WHEREAS, T-103-92 provides for the Yakama Nation legal standing for the protection of natural resources, environment and the cultures, which authorizes, the legal department position of the Yakama Nation, for legal actions, and

WHEREAS, the Yakama Nation Roads, Irrigation and Land Committee Action of October 7, 2010, directs the Cultural Resources Program to participate in the Washington Energy Site Evaluation Council process for the Whistling Ridge Energy LLC, proposal with legal counsel assistance and directs the Cultural Resources Program to participate in any negotiations concerning the placement of wind turbines on the landform known as Chemawa Hill.

NOW, THEREFORE, BE IT RESOLVED, by the Yakama Nation Tribal Council in a regular session at the Governmental Headquarters of the Confederated Tribes and Bands of the Yakama Nation, with a quorum being present, that the Cultural Resources Program, will participate in the Washington Energy Facility Site Evaluation Council processes for the Whistling Ridge Energy LLC proposal with legal counsel assistance and the Cultural Resources Program will participate in any negotiations concerning the placement of wind turbines on the landform known as Chemawa Hill, and the position of the Yakama Nation will be official, no one else will be allowed to represent the Yakama Nation without consent of the Yakama Nation Tribal Council.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of this resolution for any and all administrative or legal actions which may arise directly or indirectly from the same. Nor does the Yakama Nation waive, alter or otherwise diminish their rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 3rd day of November, 2010 by the Yakama Tribal Council by a vote of 8 for 0 against, 0 abstentions.


Harry Smiskin, Chairman
Yakama Tribal Council

ATTEST:


Athena Sanchey, Secretary
Yakama Tribal Council

Cc: *file*
ril ca# 004-2011-5