

FRIENDS OF THE COLUMBIA GORGE

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

November 11, 2011

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Olympia, WA 98504-3172

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ENERGY FACILITY SITE
EVALUATION COUNCIL

Re: Environmental Review of the Proposed Whistling Ridge Energy Project

Dear Messrs. Montañó and Wright:

Friends of the Columbia Gorge requests that the Bonneville Power Administration ("BPA") and the Washington Energy Facility Site Evaluation Council ("EFSEC") supplement or revise the Final Environmental Impact Statement ("FEIS") for the Whistling Ridge Energy Project, which was issued on August 12, 2011. The requested action is necessary in light of new information and analysis demonstrating the likely significant impacts of the proposed project on wildlife, aesthetic, heritage, and cultural resources, as discussed below.

The documents discussed herein constitute significant new information under both the National Environmental Policy Act ("NEPA") and the Washington State Environmental Policy Act ("SEPA").¹ Under NEPA, an agency must supplement an EIS when "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii). SEPA likewise requires supplementation when "[t]here is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts." WAC 197-11-405(4)(b).

¹ Under the Council's rules, Mr. Wright is the SEPA Responsible Official for EFSEC. WAC 463-47-051.

1. **The U.S. Fish and Wildlife Service's revised recovery plan for the northern spotted owl**

On June 28, 2011, the United States Fish and Wildlife Service (USFWS) issued its Revised Recovery Plan for the Northern Spotted Owl ("Revised Plan"), attached hereto as Attachment A. The USFWS issued its Revised Plan after the 2008 Final Recovery Plan ("2008 Plan") was challenged in court and after the Department of Interior concluded that the 2008 Plan resulted from inappropriate political influence. Attach. A at I-2.

The FEIS fails to even mention the Revised Plan. Instead, the FEIS relies on the 2008 Plan to analyze the Project's impacts on spotted owls. *See* FEIS at 3-55. For example, the FEIS emphasizes the Managed Owl Conservation Area ("MOCA") system previously found to be "sufficient to achieve the recovery" of northern spotted owls. *Id.* (quoting 73 Fed. Reg. at 47, 328). Under the 2008 Plan, the MOCA system recommended use of federal lands, not state or private lands, for the recovery of the Northern Spotted Owl. In contrast, the Revised Plan "represents the most comprehensive and up-to-date evaluation of spotted owl science, conservation needs and management alternative," and explicitly rejects the 2008 Plan's reliance on the MOCA system. Attach. A at I-3, I-9 ("The 2008 Recovery Plan recommended establishing Managed Owl Conservation Areas (MOCAs) on federal lands to provide the important habitat needed for the species to recover over the long-term. *The Service is not making this recommendation in this Revised Recovery Plan.*") (emphasis added). The Revised Plan places a greater reliance on private lands for the protection and recovery of the spotted owl, such as the lands proposed for the Whistling Ridge Energy Project. *See* Attach. A at III-51, III-56.

It is unclear why the FEIS relies upon the outdated 2008 Recovery Plan, given that the Revised Plan was issued more than a month prior to the FEIS. BPA and EFSEC should review the Revised Plan and incorporate its recommendations into the FEIS through revisions or supplementation.

2. **The EFSEC Council's analysis of aesthetic and cultural heritage impacts of the proposed wind turbines**

On October 6, 2011, the EFSEC Council issued the two attached orders regarding the Whistling Ridge Energy Project. *See* Atts. A and B.² The Council's Orders contain important determinations regarding the aesthetic and cultural heritage impacts of the proposed wind turbines that bear directly on the accuracy and completeness of the visual impact analysis in the FEIS. The Council made its determinations after reviewing substantial testimony (much of which was not part of the NEPA/SEPA process), conducting an independent site tour, and preparing an independent View Site Analysis.

First, the Council determined that the Applicant's consultant miscalculated the Project's visual impacts in the Application. *See* Attach. B at 20; Attach. C at 7. The Council determined

² Attachment B is Council Order No. 868 (Whistling Ridge Order No. 23), the Council's Adjudicative Order Resolving Contested Issues in the Whistling Ridge Adjudication. Attachment C is Council Order No. 869 (Whistling Ridge Order No. 24), the Council's Order and Report to the Governor Recommending Approval of Site Certification in Part, on Condition.

there were serious flaws in the Applicant's visual impact assessment, which found only "moderate" visual impacts from multiple viewpoints.³ The Council's independent review concluded that the consultant "inappropriately discounted" the natural features surrounding the Project, and that visual impacts from several viewpoints would be "high." Attach. B at 37; Attach. C at 14. Thus, the Council's review indicates that the Project will result in significant aesthetic and cultural heritage impacts.⁴

The same conclusions by the Applicant's consultant, now discredited by the Council's Orders, are adopted by and included within the agencies' FEIS. *See* FEIS at 3-182, table 3.9-2. The Council's Orders are new information requiring supplementation or revision of the FEIS to correct the identified deficiencies.

Second, the Council determined that the project depicted in the application would violate state law, including RCW 80.50.010 and WAC 463-14-020 (requiring protection of aesthetic and recreational resources). *See* Attach. C at 13-14; Attach. B at 22. Under NEPA, a project may cause significant impacts if that project "threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment." 40 C.F.R. § 1508.27(b)(10). Similarly, SEPA regulations caution that "[a] proposal may to a significant degree. . . [c]onflict with local, state, or federal laws or requirements for the protection of the environment." WAC 197-11-330(2)(e)(iii). Here, by finding noncompliance with state environmental law, the Council's decisions are significant new information requiring revision or supplementation of the EIS.

Third, the Council determined that fifteen specified turbines must be eliminated from the Project to protect scenic and heritage resources. *See* Attach. C at 13-14.⁵ The FEIS fails to evaluate the Council's determination, nor any other alternative to the proposed fifty-turbine Project. *See* FEIS at 2-21 ("The number of wind turbines in the Project Area has already been minimized to the extent practicable in light of the Applicant's objectives."). The failure of the FEIS to evaluate all reasonable alternatives, including the current proposal to scale the Project back to 35 turbines, violates SEPA and NEPA. *See* WAC 197-11-440(5)(b)(v) (An EIS shall "[d]evote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation.") (emphasis added); *see also* 40 C.F.R. § 1502.14(a). As a result, the FEIS does not "provide policymakers and the public with sufficient information to 'make an informed comparison of the alternatives.'" *See SEACC v. Alaska*, No. 09-35551, ___ F.3d ___, ___ (9th Cir. May 4, 2011) (quoting *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988)). Nor does the FEIS give Governor Gregoire or BPA Administrator Wright sufficient information

³ These viewpoints include Viewpoint 3 (Husum, Highway 141 North); Viewpoint 4 (Ausplund Road, Cook-Underwood Road); Viewpoint 5 (Willard); Viewpoint 12 (Koberg Park); Viewpoint 15 (Frankton Road); and Viewpoint 23 (Ausplund Road End). Other viewpoints from which the FEIS found potential moderate impacts include Viewpoint 1 (State Highway 141/Pucker Huddle); Viewpoint 7 (Mill A); Viewpoint 11 (I-84 Westbound); and Viewpoint 13 (I-84 Eastbound).

⁴ Under SEPA, "Significant" . . . means a reasonable likelihood of more than a moderate adverse impact on environmental quality." WAC 197-11-794(1).

⁵ The fifteen turbines are numbered A1 through A7 and C1 through C8. *See* FEIS at 2-3, fig. 2-1.

to weigh the reasonable alternatives for the Project, such as the Council's Viewing Site Analysis. See Attach. B at 23.⁶

In light of the Council's Orders, conclusions, and View Site Analysis, BPA and EFSEC should supplement or revise section 3.9 of the FEIS to address the points identified by the Council.

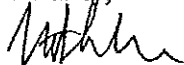
3. Archeological discovery on Chemawa Hill

Attachments D and E are two letters from the Yakama Nation describing an important archeological object recently discovered on Chemawa Hill, the location of turbines A1 through A7 as depicted in the FEIS. The object was discovered on May 2, 2011 and reported to EFSEC on June 8, 2011. See Attach. D at 1. The attached letters correctly point out that the FEIS does not address this recent archeological finding nor attempt to evaluate its significance. *Id.* The recent discovery demonstrates the archaeological importance of Chemawa Hill, where seven wind turbines are proposed in the Application and FEIS. The FEIS is neither current nor accurate for informing the decision makers and the public of the Project's likely impacts on Native American cultural resources. BPA and EFSEC should review the attached letters and supplement or revise the FEIS accordingly.

Conclusion

For the reasons stated above, Friends requests that the BPA and EFSEC supplement or revise the FEIS for the proposed Whistling Ridge Energy Project.

Sincerely,



Nathan Baker
Staff Attorney

Attachments

- A: U.S. Fish & Wildlife Service, Revised Recovery Plan for the Northern Spotted Owl
- B: EFSEC Order No. 868 (Whistling Ridge Adjudicative Order)
- C: EFSEC Order No. 869 (Whistling Ridge Recommendation Order)
- D: September 7, 2011 Letter and Attachments from Yakama Nation to BPA & EFSEC
- E: October 4, 2011 Letter from Yakama Nation to BPA & EFSEC

⁶ The Ninth Circuit has recently held that selection of a new alternative not discussed in the FEIS may necessitate a supplemental EIS even if that alternative reduces environmental impacts. See *Russell County Sportsmen v. U.S. Forest Serv.*, No. 10-35623, ___ F.3d ___, ___ (9th Cir. Oct. 12, 2011); see also 40 C.F.R. § 1502.9(c)(1)(i) (supplementation required when "[t]he agency makes substantial changes in the final proposed action that are relevant to environmental concerns."). For example, supplementation may be required when the new alternative alters the "overall cost-benefit analysis of the proposed action." *Russell County*, ___ F.3d at ___. Here, BPA must take a "hard look" at the new alternative identified by the Council. See *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.3d 1174, 1177 (9th Cir. 1990).



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

1300 S. Evergreen Park Dr. S.W., PO Box 43172 • Olympia, Washington 98504-3172

December 27, 2011

Nathan Baker, Staff Attorney
Friends of the Columbia Gorge
533 Fifth Ave, Suite 720
Portland, Oregon 97204

Dear Mr. Baker:

This letter responds to your letter of November 11, 2011, requesting that the Energy Facility Site Evaluation Council (EFSEC) supplement or revise the Final Environmental Impact Statement (FEIS) for the Whistling Ridge Energy Project, issued on August 12, 2011. Your request is based on the belief that three new pieces of information and analysis, that significantly bear on the proposal's probable adverse environmental impacts, have become available since the FEIS was issued.

The three pieces of information cited are the 1.) U. S. Fish & Wildlife Service (USFWS) revised recovery plan for the Northern Spotted Owl 2.) EFSEC Council's analysis of aesthetic and cultural heritage impacts of proposed turbine siting, and 3.) an "archaeological discovery" on Chemawa Hill.

First, regarding the 2011 revised recovery plan for the Northern Spotted Owl, EFSEC is informed that both the Bonneville Power Administration (BPA) and USFWS have reviewed the 2011 revised plan and have independently found that there is no need to reinitiate consultation. The December 9, 2011 USFWS letter stating their position is attached.

The FEIS is a joint NEPA/SEPA venture between BPA and EFSEC. These two agencies have designated BPA as the lead Northern Spotted Owl agency since it has the federal consultation responsibility with USFWS. Based on the USFWS determination, we do not believe there are any significantly new circumstances to address, relative to the Northern Spotted Owl.

Second, regarding the EFSEC Council's analysis of aesthetic and cultural heritage impacts, you suggest that the FEIS fails to evaluate or capture the Council's determination. This is not correct. During the Whistling Ridge adjudicative process, the Council performed no new analysis and used no new data in its review of the aesthetic and cultural heritage impact of

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turbine placements. Rather, the Council simply duplicated both the turbine viewscape analysis from the photos and simulations provided in the EIS and performed the same site tour as described in the EIS. This process allowed each member the opportunity to individually decide what each level of viewscape change, based on simulations of turbine visibility, occurred at each viewing site.

In so doing, it is important to note, that the Council found no "serious flaws", "discredited" no conclusions, and found no proposal that would "violate" state law, nor NEPA or SEPA Acts. The Council simply duplicated the review process and drew its own collective opinion. This duplication of the viewscape analysis provided no new significant circumstances or information relevant to environmental concerns for the project.

It is also important to note that the type of viewscape analysis provided in the FEIS and duplicated by the EFSEC Council can provide the needed information to make a determination of approval of the 50 proposed turbines, or some other lesser turbine configuration, depending upon the assigned values and judgments of the decision maker(s).

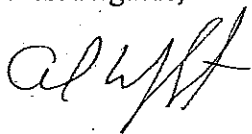
Since the Council's viewscape analysis provides no significant new circumstances or information, there is no need to supplement or revise the FEIS.

Third, regarding the "archeological discovery" of an alleged broken arrowhead on Chemawa Hill during the Council's site tour: Chemawa Hill area was already recognized as a significant cultural and archeological site of interest in the DEIS, prior to the discovery of this object. Both BPA and EFSEC have accepted the area as an important archeological site and consulted with Native Americans. EFSEC has included the need for a specific archeological protection plan in the draft SCA provided as part of the Council's final recommendation. This inclusion of the protection plan would have occurred regardless of this discovery. Therefore, the discovery of the object does not create a significantly new circumstance or information relevant to or bearing on the proposed action.

In conclusion, since none of the three listed issues of concern provide a significantly new circumstance or new information relevant to or bearing on the proposed project, the request for a supplement or revision to the FEIS, performed under SEPA, is denied.

Please feel free to call me at 360-664-1360 to discuss any of these findings if you have the need.

Best Regards,



Al Wright, EFSEC Manager



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office
510 Desmond Dr. SE, Suite 102
Lacey, Washington 98503

In Reply Refer To:
13410-2010-I-0447

DEC - 9 2011

Mr. Shawn Cantrell
8050 35th Ave. NE
Seattle, Washington 98115

Subject: Reinitiation of Section 7 Consultation for the Whistling Ridge Wind Energy Project

Dear Mr. Cantrell;

This is in response to your letter of October 5, 2011, to us and the Bonneville Power Administration (BPA) requesting that we reinitiate section 7 consultation on the Whistling Ridge Energy Project in Skamania and Klickitat Counties. We have carefully reviewed the material you provided us, as well as BPA's letter of November 30, 2011, which addressed the issues that you raised regarding reinitiation of section 7 consultation on the Whistling Ridge project.

We believe that the rationale provided in the Bonneville Power Administration letter dated November 30, 2011, regarding the need to reinitiate consultation is generally sound. We reviewed the additional information you provided regarding the northern spotted owl in the action area, and considered the issues raised regarding the revised recovery plan and the potential revisions to critical habitat. We do not believe that this information would change our concurrence or, in the case of pre-proposal revisions to critical habitat, is relevant to the criteria for reinitiation. Therefore we are not recommending to the BPA that they reinitiate consultation.

We thank you for your interest in the conservation of northern spotted owls. If you have any questions about this letter or our analyses, please contact Jim Michaels of my staff at (360) 753-7767.

Sincerely,

Ken S. Berg, Manager
Washington Fish and Wildlife Office

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