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WHISTLING RIDGE ENERGY LLC  
JASON SPADARO  
PREFILED REBUTTAL TESTIMONY  
EXHIBIT NO. 1.01r

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2009-01: WHISTLING RIDGE ENERGY LLC; WHISTLING RIDGE ENERGY PROJECT	EXHIBIT NO. 1.01r
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**APPLICANT'S PREFILED REBUTTAL TESTIMONY**

**WITNESS #1: JASON SPADARO**

Q Please state your name.

A Jason Spadaro. I have previously submitted testimony in this matter, and I am available to testify before the Siting Council, and will be available for cross examination.

Q What is the purpose of your testimony?

A I am submitting this testimony in rebuttal to testimony offered by Mr. McIvor and Mr. Smallwood, as well as witnesses for the Yakama Nation.

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**Wildlife and Habitat Mitigation**

1  
2 Q Please describe the status of wildlife and habitat mitigation discussions with the  
3 Washington Department of Fish & Wildlife.

4  
5 A Whisting Ridge Energy LLC and the biological consulting team we have retained  
6 have extensively conferred over a span of multiple years with both the US Fish &  
7 Wildlife Service and the Washington Department of Fish & Wildlife (WDFW). In its  
8 final letter submitted to EFSEC and BPA dated September 27, 2010, commenting on  
9 the Draft EIS, WDFW (Mr. Travis Nelson) confirmed that the Project site is not  
10 natural or native coniferous forest habitat, and has been managed as a commercial  
11 forestry site for over 100 years. WDFW further confirmed that the pre-project  
12 biological assessments are “consistent with standard protocols utilized throughout the  
13 U.S. and are consistent with the WDFW Wind Power Guidelines (WDFW 2009).”  
14 Mr. Nelson confirmed that the pre-project evaluations represent “best available  
15 science,” and confirmed that the Applicant had offered a mitigation proposal,  
16 “developed consistent with the WDFW Wind Power Guidelines at a 2:1 replacement  
17 ratio.” (See Exhibit No. 1.02r, attached.)

18 I have been personally involved in extensive discussions with Travis Nelson,  
19 the lead biologist and manager with WDFW’s Renewable Energy Section. Attached  
20 as Exhibit No. 1.03r is my letter to Mr. Nelson dated July 14, 2010, documenting  
21 these discussions, and formally proposing a comprehensive voluntary mitigation  
22 offer. The attached letter includes photographs and background information, and the  
23 proposed mitigation is summarized below.

**Operational Monitoring**

24  
25 WREP has pledged to cooperate with WDFW and EFSEC in establishment of post-  
26 construction operational monitoring surveys and the formation of a Technical

1 Advisory Committee (“TAC”) that includes stakeholders as recommended under the  
2 WDFW Wind Power Guidelines. We anticipate that the TAC would be a condition  
3 of the Cite Certificate Agreement, and would be conducted similarly to the TACs in  
4 other EFSEC-approved wind energy facilities.

### 5 **Habitat Mitigation**

6 WREP has complied with a number of the siting guidance principles recommended in  
7 the voluntary WDFW Wind Power Guidelines, including locating the project on  
8 previously disturbed lands, near existing transmission corridors, and avoidance of  
9 high value habitats. Given the disturbed nature of the Project site, along with the  
10 working commercial/industrial forest status of the privately-owned property, and its  
11 low habitat value, it is not clear to the Applicant that habitat mitigation is required at  
12 all under the Wind Power Guidelines for the 56 acres of forested land that will be  
13 converted as a result of the Project, for the life of the Project. Nonetheless, WREP  
14 proposed to WDFW to comprehensively mitigate potential wildlife impacts as  
15 identified in the DEIS, in addition to habitat loss, and achieve with WDFW a  
16 mutually beneficial, long-term habitat enhancement outcome from the Project.  
17 Section 5.2.B, the Wind Power Guidelines state the following “Criteria for Mitigation  
18 by Acquisition of Replacement Habitat”:

19 “In each of the mitigation categories listed below,<sup>[1]</sup> the criteria indicate that  
20 replacement habitat should be negotiated in consultation with WDFW and the  
21 permitting authority and include the following considerations:

- 22 • Like-kind (e.g., shrub-steppe for shrub-steppe; forested for forested,  
23 grassland for grassland ) and/or of equal or higher habitat value than  
24

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25 <sup>1</sup> For commercial forest land, no mitigation ratios or requirements are proposed, but instead,  
26 “consultation” is anticipated between the applicant and WDFW.

- 1 the impacted areas, noting that an alternative ratio may be negotiated  
2 for replacement habitat that differs from impacted habitat;
- 3 • Given legal protection (through acquisition in fee, a conservation  
4 easement, or other enforceable means);
  - 5 • Protected from degradation, including development, for the life of the  
6 project, to improve habitat function and value over time;
  - 7 • In the same geographic region as the impacted habitat;
  - 8 • At some risk of development or habitat degradation and the mitigation  
9 results in a net habitat benefit.” [Footnote added]

10 To meet the objective of comprehensively mitigating all potential habitat and wildlife  
11 impacts of the Project, WREP proposed to convey a fee simple or conservation  
12 easement interest to WDFW, or a mutually agreeable land trust organization, in  
13 approximately 100 acres of Oak woodland and coniferous forest habitat in Klickitat  
14 County. In our discussions, WDFW expressed concern over its ability to take control  
15 over, and manage the mitigation parcel. We were unable to conclude discussions  
16 with conservation organizations prior to the EFSEC hearing, and aligning the  
17 conservation parcel with other local properties owned or controlled, and managed for  
18 the defined conservation objectives of competent, proven conservation organizations  
19 proved somewhat challenging. Consequently, we have worked with Klickitat County  
20 to act as grantee of a conservation easement. The mitigation parcel meets important  
21 objectives of Klickitat County, discussed below. WDFW supports this approach.

22 The mitigation property is located in a portion of the SE ¼ of Section 10,  
23 Township 3 North, Range 12 East and more fully shown in the regional map and  
24 parcel, and ownership maps attached to Exhibit No. 1.03r.

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We believe that this property is unique and highly valuable to WDFW and the public interest, and more than satisfies the mitigation criteria quoted from the WDFW Wind Power Guidelines above, for the following reasons:

(1) The property is forested habitat in the same geographical region as the Project site (reference attached WREP vicinity map), and is characterized by Oregon white oak woodlands with some areas of mixed Douglas-fir/ Ponderosa pine/Oregon white oak woodlands. The dominant species is Oregon White Oak. This Oak Woodland habitat is a statewide priority habitat under the WDFW’s Priority Habitats and Species (“PHS”) program. Protection of this habitat provides significantly higher value habitat than the habitat on the Whistling Ridge Project site. Exhibit No. 1.03r includes excerpts from WDFW’s Management “Recommendations for Washington’s Priority Habitats: Oregon White Oak Woodlands,” including a description of the values and characteristics of this habitat.

(2) The WDFW Priority Habitats & Species database confirms the presence of several upland priority species in the nearby vicinity of the proposed mitigation parcel. These documented sites along with other upland wildlife species that we have been observed on or near the proposed mitigation parcel include the following:

- Western Gray Squirrel
- Black tail deer
- American Bald Eagle
- Golden Eagle
- Western Bluebird
- California Kingsnake
- Merriam’s Turkey

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Attached to Exhibit No. 1.03r is a map showing documented wildlife sites from the WDFW Priority Habitats and Species database and the proposed mitigation parcel. Also attached is Figure 9.0 of the WDFW Final Western Gray Squirrel Recovery Plan showing results and distribution of western gray squirrel surveys in Klickitat County between 1994-2004, with the approximate location of the SDS proposed mitigation parcel indicated. The proposed mitigation parcel is shown to be in suitable habitat and in one of several areas throughout Klickitat County of concentrated Western Gray Squirrel activity.

(3) The proposed mitigation parcel includes the fish-bearing Silva Creek, a tributary to the Klickitat River whose confluence is a few miles below at the Fisher Hill Bridge and historic Yakama Nation tribal fishing sites. The Klickitat River is habitat for Federally Threatened Lower Columbia River chinook salmon and other salmon species as well as Federally Threatened Lower Columbia River steelhead and bull trout. Silva Creek is habitat for aquatic species and a water quality contributor for these species in the Klickitat and Columbia Rivers.

(4) The proposed mitigation parcel is currently zoned for 5-acre minimum lot size under Klickitat County zoning ordinances. The parcel is at substantial risk of development. Neighboring properties have been subdivided into 5 acre rural home site parcels as the attached parcel viewer and ownership map indicates. By providing this parcel in mitigation, SDS will establish habitat protection in a critical area that, but for the conservation easement, much of the parcel would likely be converted to residential tracts. The conservation easement will prevent additional loss and fragmentation of the Oak woodland priority habitat, including critical habitat for western gray squirrels (although no western gray squirrels reside on the Whistling Ridge Project site). Given

1 the surrounding development activity, the mitigation parcel will result in  
2 substantial net benefit for forested habitat, and ensure the preservation of  
3 significant open space.

4 (5) The proposed mitigation parcel is adjacent to 40 acres of State of Washington  
5 Department of Natural Resources (DNR) property and in the vicinity of other  
6 DNR ownership as depicted in the parcel viewer and ownership map, attached  
7 to Exhibit No. 1.03r. By providing this parcel in mitigation, we hope to  
8 complement existing public land ownership in the area and thereby contribute  
9 further to critical habitat protection.

10  
11 Q Has WDFW agreed to this voluntary mitigation proposal

12  
13 A Yes. Attached as Exhibit No. 1.04r is a letter from Travis Nelson (WDFW) dated  
14 November 24, 2010. Mr. Nelson states:

15  
16 “The intent of the proposed mitigation is to provide for conservation and  
17 protection of habitats and species affected by the proposed project  
18 development, which are found in the proposed [mitigation] parcel. This  
19 parcel will be protected by way of a conservation easement for the life of the  
20 project, to be granted to Klickitat County by SDS Lumber (landowner).

21  
22 Once the conservation easement is executed on the land as described here, the  
23 mitigation will be considered acceptable and complete per the WDFW Wind  
24 Power Guidelines.”

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1 Q Has Klickitat County agreed to accept the conservation parcel, as grantee?

2

3 A Tentatively, yes. In our discussions, the Klickitat County Commissioners expressed  
4 enthusiasm for the proposed conservation parcel, and have acknowledged that the  
5 conservation parcel will be beneficial to the County in protecting species and habitat  
6 in this area of the County, in furtherance of the County’s goals and objectives  
7 pursuant to Growth Management Act requirements to protect critical wildlife habitat.  
8 Attached as Exhibit No. 1.05r is a letter dated November 9, 2010, signed by the  
9 Klickitat County Board of Commissioners, indicating the County’s “non-binding  
10 statement of our intent to enter into discussion with SDS Lumber Company for the  
11 purpose of developing a conservation easement agreement.” We are continuing  
12 discussions with Klickitat County, including refining the conservation purpose  
13 (including resolving whether any grazing should be permitted, along with any active  
14 or passive recreation, including trails). We will continue to collaborate with WDFW  
15 in formulating the conservation provisions of the conservation easement, and  
16 welcome EFSEC’s input as well. SDS will be solely responsible for all ongoing costs  
17 of meeting and enforcing the conservation objectives of the mitigation parcel.  
18

19 **History of Engagement By and Between SDS Lumber (Jason Spadaro on behalf of**  
20 **SDS and Whistling Ridge Energy) and the Yakama Nation**

21 Q Would you please describe the efforts Whistling Ridge has made to work with the  
22 Yakama Nation, as well as tribal members who reside near the Project area?  
23

24 A SDS Lumber Company has long-term, deep relationships with the Confederated  
25 Tribes of the Yakama Nation, including its members who live in the vicinity of the  
26 Whistling Ridge Energy Project site. In our view, it has always been essential to

1 involve both the Tribal Government and the Tribal Council (in Toppenish) as well as  
2 Tribal members who reside near SDS properties, and who are elders of the Yakama  
3 Nation. On other SDS projects the Yakama Nation's tribal government has  
4 conferred with Tribal members who live along the Columbia River (and who are  
5 traditional and hereditary members of Columbia River Tribes) concerning cultural  
6 resource issues. It is, and has been, our company's practice to involve elders from the  
7 River Tribes, along with officials designated by the Tribal Council in Toppenish, in  
8 these matters. While some progress has been made with the Yakama Nation tribal  
9 government concerning the Whistling Ridge Energy Project, it has been frustrating to  
10 us that the Yakama Nation has provided an inconsistent and sometimes confusing  
11 engagement with us in these proceedings, and has departed from its practice of  
12 engaging with local hereditary chiefs and taken issue with the our engagement of  
13 these chiefs who represent the interests of their people and ancestors.

14  
15 Q Would you please provide a general summary of your efforts to reach out to, and  
16 work with representative of the Yakama Nation?

17  
18 A Yes. The summary is as follows:

19  
20 **History of WREP's Communication and Engagement with Yakama Nation**

21  
22 **October 2007:** SDS provides initial project presentation and site tour to local tribal  
23 Chief Johnny Jackson and Chief Wilbur Slockish asking for any concerns regarding  
24 the project.  
25  
26

1 **Nov 2007 – Sept 2008:** SDS continues cooperative efforts with local Columbia River  
2 Chiefs in review of the project and providing further opportunities for evaluation of  
3 site.

4 **October 28, 2008:** Letter sent from SDS to Yakama Nation Cultural Resources staff  
5 asking for concerns of Yakama Nation and offering site tour and cooperative  
6 engagement. We did not receive any response to this offer.

7 **January 29, 2009:** Letters received by SDS from the Columbia River Chiefs  
8 indicating they appreciated the cooperative approach of SDS, have no cultural  
9 resource concerns with the project site and support the project.

10 **April 13, 2009 and May 13, 2009:** Letters sent from Yakama Nation Cultural  
11 Resources Program Manager, Johnson Meninick, to EFSEC and BPA stating that the  
12 Yakama Nation has concerns with cultural resources on the project site and that the  
13 Cultural Resources Program staff needed to examine the site. To our surprise, the  
14 “concerns” related to cultural resources were voiced in these letters, despite the fact  
15 that no one from the Cultural Resources Program had visited the site.

16 **June 25, 2009:** SDS provided copy of letter from Columbia River Chiefs to Johnson  
17 Meninick stating they have been cooperatively approached by SDS and have  
18 personally inspected the site numerous times, finding no significant cultural resources  
19 concerns.

20 **July 13, 2009:** Columbia River Chiefs, Wilbur Slockish and Johnny Jackson, send  
21 letters to EFSEC requesting right to intervene on behalf of the Klickitat and Cascades  
22 Tribes of the Yakama Nation. Request stated that they were representing the  
23 Klickitat and Cascades Tribes not the Yakama Nation.

24 **July 14, 2009:** Yakama Nation Cultural Resources Program sends letter to EFSEC  
25 requesting legal intervention, requesting that its comments supersede those of the  
26 Columbia River Chiefs, stating that Columbia River Chiefs have attempted to

1 represent the Yakama Nation without proper authority and re-asserting that the  
2 Yakama Cultural Resources Program has concerns with the project site.  
3 **July 15, 2009:** Letter from SDS to Johnson Meninick explaining past reviews of the  
4 site with Columbia River Chiefs, expressing SDS interest in working cooperatively  
5 with the Yakama Nation and offering site tour for Cultural Resource Program staff.  
6 **November 6, 2009:** SDS informs Yakama Nation Cultural Resources Program of  
7 additional archaeological surveys that will be performed on the site by URS  
8 Consultants and invites Yakama Nation staff to participate in the survey efforts. The  
9 Cultural Resources Program chose not to accompany URS on the site during this  
10 survey effort.  
11 **November 9, 2009:** SDS meets with Johnson Meninick, Joanna Meninick and  
12 Jessica Lally in Toppenish to discuss cultural resource survey to be performed by  
13 Yakama Nation Cultural Resource Department. SDS enters into contract on  
14 November 10 (amended on November 18 for expanded budget) with Yakama Nation  
15 Cultural Resources Program for an independent cultural resources survey of the site  
16 by Yakama staff. A Scope of Work is provided to SDS explaining how the cultural  
17 resource surveys will be performed, work product to be delivered, etc.  
18 **December 2009:** Draft Archaeological Report by URS Consultants for SDS  
19 provided to Yakama Nation. Report indicated no historic or cultural resources found  
20 except for Haran farmstead which was later determined ineligible for historic listing.  
21 **December 9, 2009:** SDS provides site tour for Yakama Nation Cultural Resources  
22 Program staff members Joanna Meninick, Jessica Lally and Michael Thompson.  
23 **January 4, 2010:** Cultural Resource Review and Consultation Report received from  
24 Yakama Nation stating that cultural resources exist in the project area (a “vision  
25 quest” site). The Cultural Resources Program expressed concern regarding  
26 construction of wind turbines in this area along the southern ridge of the Project.

1 “Personal communication” with Johnson Meninick is listed as sole evidence of vision  
2 quest site. No other corroborating evidence or site characterizes are noted or  
3 analyzed to support this finding.

4 **January 7, 2010:** SDS reviews the site again with Columbia River Chiefs, Wilbur  
5 Slockish and Johnny Jackson to determine if the project area was a vision quest site  
6 or otherwise culturally significant. SDS reviews the Yakama Cultural Resources  
7 Review and Consultation Report with River Chiefs. The Chiefs confirm they have  
8 no knowledge, evidence or history of use of the site as a vision quest location. No  
9 corroborating of confirming physical evidence or historic cultural characteristics of  
10 such use had been found by URS archaeologists or any other archaeologists who have  
11 surveyed the site.

12 **January 13, 2010:** The Columbia River Chiefs provide SDS a copy of a letter sent to  
13 Yakama Nation Cultural Committee stating that they have personally reviewed the  
14 site with SDS and confirm and maintain that the project area does not have culturally  
15 significant resources. Columbia River Chiefs questioned many conclusions of the  
16 Cultural Resource Program Report as unsupportable.

17 **February 2, 2010:** SDS meets with Yakama Nation Tribal Council in Toppenish to  
18 discuss the Program Staff’s report and offer site tour to Tribal Council and Cultural  
19 Committee members. Parties agree on tour for the Tribal Council’s Cultural  
20 Committee members who would report back to the full Tribal Council.

21 **February 4, 2010:** SDS provided with copy of memorandum from the Tribal  
22 Council’s Cultural Committee Chair, Lavina Washines, to DAHP, EFSEC and BPA  
23 stating that the Cultural Resources Staff’s Review and Consultation Report is under  
24 further review by the Yakama Nation and all future correspondence should be  
25 conducted through the Cultural Committee or Tribal Council Chairman. Ms.  
26 Washines, as Tribal Council Chair of the Committee, repudiates the Staff Report and

1 expressly directs government agencies to return the report and not to consider the  
2 Report and to withdraw it from the public record. A copy of this memorandum is  
3 attached hereto as Exhibit No. 1.06r.

4 **May 5, 2010:** SDS sends a letter to Cultural Committee Chair Lavina Washines  
5 offering continued consultation and tour for Cultural Committee members and Tribal  
6 Council Chairman.

7 **May 14, 2010:** SDS provides site tour to Cultural Committee Chair Lavina  
8 Washines. Chair Washines tours and examines project area and confirms that there  
9 are no Tribal cultural resources on site.

10 **August 2, 2010:** SDS provides a site tour for Tribal Council Chairman, Harry  
11 Smiskin. The parties discuss the cooperative consultation efforts of SDS and  
12 Cultural Resources staff of the Yakama Nation. Chairman Smiskin suggests  
13 additional review of site by Yakama Nation TFW Archaeologist David Powell and  
14 Yakama Nation Cultural Resource Specialist Greg Kiona.

15 **August 12, 2010:** SDS provides a site tour of project area to Yakama Nation TFW  
16 Archeologist David Powell and Yakama Nation Cultural Resource Specialist Greg  
17 Kiona. SDS is later provided copy of the report prepared by Mr. Powell. This report  
18 reflects the dispute between various members of the Yakama Nation related to the  
19 site, including the opinions of the ancestral Chiefs.

20 **October 12, 2010:** SDS receives a memorandum from Yakama Nation Cultural  
21 Committee and Land Committee requesting a meeting as soon as possible in regards  
22 to Whistling Ridge Project and consultation.

23 **October 19, 2010:** SDS meets with Yakama Nation Cultural Committee, Lands  
24 Committee and Tribal Council Executive Committee regarding consultation and  
25 cultural resources related to Whistling Ridge Project.

26

1        **November 30, 2010:** SDS sends a letter to Yakama Nation Cultural Resource  
2        Program Director offering a site tour and requesting meeting to discuss any cultural  
3        resource concerns of Yakama Nation related to Whistling Ridge Project.  
4

5        Q        What is the current status of your efforts to resolve matters with the Yakama Nation?  
6

7        A        We greatly appreciate the involvement by Tribal Council Members, and we are  
8        continuing our efforts to reach a resolution with the Yakama Nation. In our view, we  
9        are making progress, and will continue our efforts to the maximum reasonable extent  
10       possible.  
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