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May 15, 2025

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RE: CTUIR DNR Comments on Draft Programmatic Environmental Impact Statement for High-Voltage Transmission Facilities

Dear Director Bumpas:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) submits the following initial comments on the Draft Programmatic Environmental Impact Statement for High-Voltage Electrical Transmission Facilities (PEIS) issued by the Washington Energy Facility Site Evaluation Council (EFSEC or Council).[1] The CTUIR has some questions and concerns about the PEIS. Our submission incorporates by reference the comments of the Columbia River Inter-Tribal Fish Commission (CRITFC).

The CTUIR and its members retain rights and interests in the Columbia River and its tributaries, in the fish that inhabit them, in the waters that support those fish, and in other associated natural and cultural resources (including habitats and environmental conditions) pursuant to our Treaty of 1855, 12 Stat. 945, with the United States and various other statutes and sources, explained more fully below. These rights, interests, and resources could be affected if the PEIS, as currently written, is finalized, adopted, and implemented.

[1] Prepared pursuant to the Washington State Environmental Policy Act (SEPA) under Chapter 43.21C.405 of the Revised Code of Washington (RCW) and Chapters 197-11 of the Washington Administrative Code (WAC); https://www.efsec.wa.gov/energy-facilities/transmission-programmatic-eis.

Introduction and Background

The CTUIR is a federally recognized Indian tribe, with a reservation in Northeast Oregon and ceded, aboriginal, usual and accustomed, and traditional use areas in Oregon, Washington, Idaho, and other Northwest states. One hundred and seventy years ago, 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 law—"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 our sovereignty would be recognized and respected, our various pre-existing tribal rights would be honored, and our interests would always be considered and safeguarded, in perpetuity.[2] The federal government has a duty to honor and uphold the Treaty of 1855 and all Indian treaties and to act as stewards and trustees to ensure that the terms and commitments of those treaties are fulfilled—the Trust Responsibility. The subordinate states, including Washington, similarly have an obligation not to infringe on or otherwise erode tribal Treaty Rights.[3]

A paramount goal in the Treaty of 1855 was protecting and maintaining our tribal First Foods—water, fish, mussels, big game, roots, berries, and other plants—and the habitats and environmental conditions that support and sustain them, then, now, and forever. This remains an overriding objective of the CTUIR. Protecting and maintaining our tribal First Foods is essential to safeguarding our Treaty Rights and the traditions, culture, and way of life those rights were and are meant to uphold and perpetuate. Vital to our

[2] While our rights were and are recognized by the United States in the Treaty of 1855, they existed before the Treaty was signed—since time immemorial—and are based on our inherent rights and inherent sovereignty and were later secured and guaranteed by the Treaty that followed.

[3] Pursuant to the Constitution's Supremacy Clause, treaties and statutes also bind states. *Antoine v. Washington*, 420 U.S. 194, 205 (1975) (like a treaty, when Congress by statute ratifies an agreement that reserves Tribal rights, "State qualification of the rights is precluded by force of the Supremacy Clause, and neither an express provision precluding state qualification nor the consent of the State [is] required"); *U.S. v. Washington*, 853 F.3d 946, 966 (9th Cir. 2017) (Holding that "in building and maintaining barrier culverts within the Case Area, Washington has violated, and is continuing to violate, its obligation to the Tribes under the Treaties.") aff'd, 138 S.Ct. 1832 (per curiam); *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 512 (9th Cir. 2005) (Treaties "constitute the 'supreme law of the land"' and have "been found to provide rights of action for equitable relief against non-contracting parties," and such equitable relief "ensures compliance with a treaty; that is, it forces state governmental entities and their officers to conform their conduct to federal law."); *see also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204 (1999) (noting that "[a]lthough States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers, such as treaty making," and accordingly, the treaty in that case gave the Chippewa Tribe "the right to hunt, fish, and gather in the ceded territory free of . . . state, regulation.").

authority to protect and maintain the First Foods are our legally recognized rights as resource co-managers in coordination with our state and federal counterparts.[4] We are co-managers of the resources that could or would be impacted by transmission and related facilities that are the subject of the PEIS.

Since the arrival of non-Indian people in ever-larger numbers beginning in the mid-1800s, many of the Columbia Basin's First Foods—in particular anadromous fish such as salmon and other species—have been subject to enormous harm. In some cases, this has meant outright eradication—*extinction*—and in others significant decreases in abundance, diversity, and distribution. A major source of this harm has been ill-conceived energy development.

The CTUIR DNR understands that energy development and transmission are vital elements of modern society and stable functioning economies, and that they must be reconsidered and reconfigured if we are to effectively confront our climate crisis. A wide array of human impacts has already reduced access to Treaty-reserved resources and reduced Tribal harvest. First Foods and many other tribal resources are undeniably at risk from climate change. However, we must avoid expanding or exacerbating the range of threats to them in our zeal to feed the energy demands of data centers or other similar endeavors that are or may become just the latest in a long line of resource-exploiting projects that have so radically and often detrimentally altered our world.

Process Concerns; Failure to Consult

The CTUIR DNR appreciates state and federal government initiatives to confront the many complex issues associated with climate change and the extraordinary threats it poses to us, now and in the future. We support reducing fossil fuel generation and use and increasing generation from and use of renewable energy sources. As you proceed with your efforts and consider the daunting web of factors that should be weighed in navigating the decisions and actions that must occur to address these threats, we encourage you to work collaboratively with tribal governments.

Thus, as an initial matter, we must note that consultation with the CTUIR on the PEIS has been inadequate. Meaningful tribal review and consultation has yet to occur. The CTUIR received an e-mail from EFSEC on March 31, 2025, regarding the availability of the PEIS for transmission infrastructure in Washington State. The document is over 1,000 pages long and EFSEC provided only 30 days to review it (comments initially due

[4] Our ancestors were sole resource managers since time immemorial, but beginning less than two centuries ago we began to share this responsibility with federal and state managers. Tribal management is now jointly based on traditional knowledge, expertise, and experience combined with the latest, most reputable, state-of-the-art scientific knowledge, practices, techniques, and data.

April 30). The CTUIR requested an additional six weeks to review the PEIS in a letter dated March 18, 2025. On March 28, 2025, two days before the comments were due, the CTUIR was notified that the comment period would be extended an additional 15 days, until May 15, 2025.

The CTUIR DNR does not believe that EFSEC, in the PEIS process thus far, has met its tribal consultation requirements under RCW 43.21C.405(5), the law directing EFSEC to develop this PEIS:

> The energy facility site evaluation council must offer *early* and *meaningful* consultation with any affected federally recognized Indian tribe on the nonproject review . . . for the purpose of understanding potential impacts to tribal rights and resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which an Indian tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order. The consultation is independent of, and in addition to, any public participation process required by state law, or by a state agency. The goal of the consultation process is to support the nonproject review by *early* identification of tribal rights, interests, or resources, including tribal cultural resources, potentially affected by the project type and identifying solutions, when possible, to avoid, minimize, or mitigate any adverse effects on tribal rights, interests, or resources, including tribal cultural resources, based on environmental or permit review.[5]

The circumstances of this process, noted above, do not appear to satisfy the requirements of the applicable RCW provisions. There has been no early and meaningful consultation. Many transmission projects in Washington significantly impact tribal resources, so it is particularly concerning that the CTUIR, with recognized rights and interests within the State, was not engaged or consulted during development of the PEIS.

As far as we have been able to determine, the first notification we received from EFSEC regarding the PEIS was via e-mail on March 31, 2025. So far we have been unable to find any other communications, electronic or otherwise, with key CTUIR staff. If EFSEC did contact staff or tribal leadership, it did not find its way to the appropriate staff, staff with which EFSEC routinely communicates.

As we stated in our March 18 letter, energy generation and transmission have had significant impacts on Treaty-reserved rights and resources, including fish, wildlife, and historic properties, as well as many cultural areas. The CTUIR DNR is concerned that

[5] https://app.leg.wa.gov/RCW/default.aspx?cite=43.21C.405 (emphasis added).

the PEIS would establish a framework for environmental review of energy transmission projects on lands and in waters where CTUIR Treaty Rights apply that would not sufficiently protect those rights and the resources on which they are based. CTUIR rights and interests and the obligations to safeguard them often raise issues that typically cannot be addressed with a broad, generalized review such as that contemplated in the PEIS, usually requiring a more detailed, thorough case-by-case analysis of a project and its potential effects on tribally-associated features.

PEIS Purpose, Scope, etc.

Due to the process flaws and deficiencies described above, the CTUIR DNR is only able to offer limited input and comments at this time. The opportunity to provide more extensive and in-depth comments has been hampered by the short time frame afforded by EFSEC in which to review and analyze such a lengthy and complex document. Nevertheless, we have identified some immediate questions and concerns as follows.

The PEIS "analyzes potential direct, indirect, and cumulative impacts of the construction, operation and maintenance, and upgrade or modification of transmission facilities in the State of Washington. It includes an analysis of potential impacts on the elements of the natural and built environment specified under RCW 43.21C.405(3), WAC 197-11-444, and WAC 463-60-535."[6] The Draft PEIS is intended to: provide a broad environmental impact assessment; facilitate streamlined planning; support informed decision-making; identify mitigation strategies; and initiate public and stakeholder engagement.[7] According to EFSEC, programmatic EIS documents address broad, overarching policies, plans, or programs rather than specific projects.[8]

The CTUIR DNR is unclear on what is meant by the statement that,

> . . .[W]hen the recommendations (mitigation measures) identified in this Programmatic EIS are implemented for site-specific proposals, those proposals "are considered to have mitigated the probable significant adverse project-specific environmental impacts under this chapter for which recommendations were specifically developed."[9]

Does this mean that the mitigation measures contained in the "broad environmental impact assessment" (PEIS), and only those measures, are to apply to a later, specific, individual project, even if that specific project requires additional or different measures,

[6] https://www.efsec.wa.gov/energy-facilities/transmission-programmatic-eis.
[7] *Id.*
[8] PEIS ES-6, footnote 5.
[9] https://www.efsec.wa.gov/energy-facilities/transmission-programmatic-eis.

other than just those identified in the PEIS, to achieve adequate mitigation? In other words, are PEIS mitigation measures all that will be required for specific individual projects? If only PEIS mitigation measures are required, will a project's mitigation obligations be deemed to have been met?

The CTUIR DNR also seeks and would appreciate greater clarity regarding the scope of the PEIS. EFSEC states that:

> The Geographic Scope, or Study Area, of this Draft Programmatic EIS includes areas throughout the State of Washington where transmission facilities are likely to be developed. For the purpose of this Draft Programmatic EIS, Tribal lands and undersea cables are not included in the Study Area.[10]

Are "undersea cables" literally just those under the *sea*, or on or in the seabed? Are under-*river* cables also excluded—those under a river or on or in the bed of a river? Or *do in-river or under-river cables fall within the scope of the PEIS*? We believe that *in- or under-river cables should be excluded*. Including submerged in-river power transmission cables is inappropriate.

We understand that the PEIS "analyzes the adverse environmental impacts of large electrical transmission facilities but does not analyze any specific transmission proposal[,]" and that "[a]ny specific transmission facility proposal would require additional SEPA environmental review."[11] Nevertheless, an in-river submerged power transmission cable—the Cascade Renewable Transmission Project—has already been proposed. We (and others) have communicated our thoughts, questions, and concerns on that proposal, and while some of them are relatively specific to that project, many are appropriate and applicable to any similar type of project—a submerged cable in fresh or estuarine (non-"sea") waters. A copy of our letter on the Cascade Renewable Transmission Project is attached and incorporated herein by reference.[12]

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[10] https://www.efsec.wa.gov/energy-facilities/transmission-programmatic-eis.
[11] *Id.*
[12] The PEIS list of Reasonably Foreseeable Actions identifies Cascade Renewable Proposed ID 1: "The Cascade Renewable Transmission Project proposes to transport 1,100 MW of renewable energy approximately 79 miles east of the Cascades to customers west of the Cascades via a high-voltage direct current transmission line . . .." The Project Location is described as "Multi-County: Clark, Skamania, and Klickitat" and having a length of 79 miles. First of all, there is no requirement or assurance that the power transmitted by Cascade Renewable will be from renewable sources. Second, the listing of this project as merely a transmission project ignores the significant and singular impacts of it being located underwater for a significant portion of its route. Third, the project will be in both Oregon and Washington, in the bed of the Columbia River and would follow a route that would traverse state boundaries multiple times.

Fundamentally, a power transmission cable buried in the bed of a river—already water-quality-limited (polluted) because of various toxic contaminants and home (essential, critical habitat) to many ESA-listed migratory fish species that are also the subject of multiple treaties with regional Indian Tribal Nations—is wholly unprecedented--*sui generis*, in a class by itself.[13] Such projects cannot and should not be casually folded under the general, broader, more generic umbrella of a programmatic EIS for electricity transmission.

Riverine submerged cables are far more similar to undersea cables or long-distance underground powerlines in most respects; they bear little resemblance to overhead transmission lines. It makes little sense to aggregate long-distance underwater cables (ocean or river) with overhead transmission lines. The PEIS acknowledges the substantial differences between overhead and underground/underwater transmission lines. For instance, the PEIS acknowledges "[u]nderground transmission facilities can take up to six times longer to construct than overhead lines, which extends the duration of risk exposure and increases overall potential construction hazards (Xcel Energy 2021)." PEIS 3-418. Further, the PEIS states "[w]hile underground transmission has the benefit of increased resilience to severe weather conditions and reduced risks of power outages, it can cost 5 to 15 times more than overhead transmission facilities to install (EIA 2012; Xcel Energy 2024), require over 14 times as much soil excavation (DOE 2023a), and have approximately half as long of a life expectancy (PRPA 2024)"). PEIS 3-422. Finally, the PEIS acknowledges that "undersea cables, especially those that cross international water or state boundaries, may fall under different regulatory frameworks or jurisdictions, requiring separate, more specific environmental reviews. Lastly, the environmental impacts and technical considerations of siting undersea cables for transmission facilities can be significantly different from those of landbased transmission facilities. These differences might necessitate a distinct, focused environmental review to adequately address the unique challenges and impacts." PEIS 1-7. The proposed Cascade Renewable underwater cable project would align with or cross the boundary between Oregon and Washington at least twice implicating multiple regulatory jurisdictions and authorities, involving separate environmental reviews.

The CTUIR DNR is unclear what experience, if any, EFSEC has in dealing with long-distance submerged cables in freshwaters including those exhibiting the additional factors identified here (containing Treaty- and ESA-listed resources, polluted, etc.). While undersea cables have been in existence for some time, freshwater cables running the length of rivers (not just crossing them) are newer and the technology is still under development and uncertain (as are its effects). To the best of our knowledge, EFSEC has not licensed a long-distance underground or underwater cable. The PEIS acknowledges this:

[13] https://www.merriam-webster.com/dictionary/sui%20generis ("constituting a class alone: unique, peculiar").

> As of 2009, an estimated 0.5 percent of all transmission lines of at least 200 kV or higher in the United States were underground (EIA 2012). There are instances where 230 kV facilities or above have been placed underground, typically for very short segments or in specific urban areas where overhead transmission facilities are not feasible.[14]

Given the limited experience EFSEC and the CTUIR have with underground and long distance underwater cables, the CTUIR requests such transmission lines be considered outside the scope of the PEIS. While underground and underwater transmission lines do transmit power, their similarity to above-ground transmission lines ends there. The types of impacts from these lines are different in character and in resources affected from those with above-ground transmission lines. For instance, while the potential effects of electromagnetic interference on wildlife have been studied in terrestrial wildlife populations, research has been limited in underground and underwater environments. Furthermore, while temperature of powerlines is a focus in terms of potentially causing fires, underground and underwater temperature impacts can be substantial, with limited research by entities without vested interests in licensing such facilities. Finally, failure of above-ground powerlines can have significant environmental effects; failure of powerlines underwater can potentially have catastrophic impacts on aquatic ecosystems.

Conclusion

As we strive to protect our First Foods—and our planet, and our future—from further damage and degradation, we must do so deliberately and wisely. Unlike in the past, we must seek and obtain adequate knowledge and understanding of the potential repercussions of our choices. We must rely on sound, reasonable assumptions and adequate, accurate data and analyses to anchor those assumptions. We cannot afford to compound existing environmental problems or add new and/or possibly unanticipated ones to our already dismally long list.

Specifically in terms of salmon, at a moment when so much time, effort, energy, and expense is being devoted to their protection and recovery through such initiatives as the landmark Columbia Basin Restoration Initiative (CBRI), it would be imprudent to proceed hastily, with inadequate knowledge, with electrical transmission and other energy projects that could potentially pose new and unforeseen risks to them.

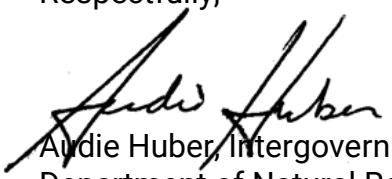
We thank you for your consideration of our input and comments. We encourage you to exercise care and caution when planning for and undertaking further energy development in a region where past and present development has exacted such an

[14] PEIS 2-6.

enormous toll on tribal resources such as salmon and water quality. The PEIS should not serve as a means or mechanism that would in any way allow this to continue to occur.

The CTUIR DNR looks forward to continuing to work cooperatively and collaboratively with the State of Washington to forge a future where regional energy development, transmission, and use coexist, on an equal footing, with protecting, maintaining, and restoring our shared natural and environmental resources for the benefit of all our citizens. Please contact me at AudieHuber@ctuir.org or 541-429-7400 to meet and discuss these comments in furtherance of completing this PEIS.

Respectfully,



Audie Huber, Intergovernmental Affairs Coordinator
Department of Natural Resources
Confederated Tribes of the Umatilla Indian Reservation

Cc: CTUIR Fish and Wildlife Commission
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Attachment: CTUIR DNR Letter on Cascade Renewable Transmission Project, Sept. 27, 2024

Confederated Tribes *of the*
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September 27, 2024

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RE: CTUIR DNR Comments on US Army Corps of Engineers' NWP-2022-126-2, Cascade Renewable Transmission LLC, Columbia River from The Dalles to Portland Oregon, and Oregon Department of Environmental Quality Water Quality 401 Certification

Dear Ms. Cummings, Ms. Teach, and Ms. Tattam:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) provides the following comments in response to the Public Notice regarding an "Application for Permit" issued July 30, 2024, by the U.S. Army Corps of Engineers, Portland, No. NWP-2022-126-2. The application is for "a Department of the Army permit for certain work in waters of the United States." The Corps characterizes the Notice as "an initial project notification." This letter also responds to the July 30, 2024, Public Notice from the Oregon Department of Environmental Quality (DEQ) for "Water Quality 401 Certification" for the proposed work.

The CTUIR and its members retain rights and interests in the Columbia River and its tributaries, in the fish that inhabit them, in the waters that support those fish, and in other associated resources (including habitats and environmental conditions) pursuant to our Treaty of 1855 with

the United States and various other statutes and sources, as described and explained more fully below. These rights, interests, and resources would be affected by the proposed work.

The CTUIR Department of Natural Resources (DNR) offers the following ***initial*** input, including questions, comments, and other information, in response to the Corps' and DEQ's solicitation for comments on the work in the Corps' Public Notice for the proposal by "Cascade Renewable Transmission LLC, Columbia River from The Dalles to Portland Oregon" (Project) and in DEQ's Public Notice for Water Quality 401 Certification for the work. Our input incorporates by reference the comments of the Columbia River Inter-Tribal Fish Commission (CRITFC).

This letter constitutes a submission pursuant to the federal and state agency authorization and permitting processes for "work in waters of the United States" under various statutes (e.g., National Environmental Policy Act, Rivers and Harbors Act, Clean Water Act, etc.). Our input in this format does not replace, substitute for, or diminish the duties and obligations of the federal and state sovereigns to consult with the CTUIR on a government-to-government basis, on mutually agreeable terms, in adherence to existing law, policies, and relevant commitments made by those sovereigns.

Presidential Executive Order 13175[1] requires federal departments and agencies to consult with tribal governments when considering policies that would impact tribal communities. Serious, respectful government-to-government tribal consultation requires "free, prior, and informed" consent. Tribal communities must be given time and opportunity to fully understand the implications and consequences of proposals set before them. Proper government-to-government consultation should seek to achieve an understanding of a proposal's impacts and strategies for how to address them. It should include meetings among decision-makers from the sovereigns where there are opportunities to discuss the implications of a proposal for the CTUIR, our people, and the resources on which we depend. And, as the Public Notice states, "We may also notify you for consultation under Section 106 of the NHPA, as applicable." We believe it is applicable in this instance.

Initial Requests

The CTUIR DNR has numerous concerns and questions about the Project. To begin with (and discussed in greater detail below), we request the following:

1. Preparation of an Environmental Impact Statement (EIS);
2. Government-to-Government Consultation; and
3. Public Hearing(s).

[1] https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments. *See also* "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships," Jan. 26, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/; "Memorandum on Uniform Standards for Tribal Consultation," Nov. 30, 2022, https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/.

The proposed Project is new and potentially precedent-setting, for the first time exploiting the Columbia River itself as a utility or power transmission corridor. It may have many far-reaching effects and ramifications well into the future in a myriad of contexts. It is not simple or uncomplicated; it is substantial in size, scope, and duration (the applicant reportedly envisions 40 years). The Project is extensive geographically—approximately eighty miles of the bed of the Columbia River,[2] at the epicenter of the exercise of tribal Treaty Rights to fish—with effects (upstream and downstream) potentially occurring beyond its already-large footprint. Yet the combined Corps/DEQ Public Notices consist of a mere nine (9) pages, constituting a preliminary "initial project notification," in the Corps' words.[3] Much more information, data, study, and analyses are needed for the Project to be properly evaluated, and for the CTUIR (and no doubt others) to provide meaningful and informed input; more time to develop that input for a project of this nature and magnitude would also be helpful.

While the Corps acknowledges, among other things, that the Project would adversely affect ESA-listed endangered species, ESA-designated critical habitat, and MSA[4]-designated Essential Fish Habitat,[5] it states that "[t]he applicant did not propose compensatory mitigation in the permit application[,]" and that the Corps "[would] determine the type and amount of compensatory mitigation necessary to offset environmental losses from the proposed project[,]"[6] without specifying when or how it would do so. This is insufficient, unsatisfactory, and unacceptable. For this Project, a thorough, comprehensive Environmental Impact Statement (EIS) is warranted. The issues that the Corps' Public Notice indicates it intends to address include some the agency has already noted as problematic. Thus, an EIS is necessary to identify, understand, and mitigate (if possible) potential significant impacts to the environment and to tribal rights, interests, and resources which may be particularly and uniquely affected.[7]

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[2] "The proposed alignment within the Columbia River is from approximate river mile 190 near The Dalles to approximate river mile 106 [84 miles] near Portland, Oregon." Corps Public Notice, July 30, 2024, P. 1. Elsewhere the Corps states that the Project would entail "78.3 miles of a 12-inch HVDC cable bundle buried in the bed of the Columbia River via "hydroplow" methods." *Id.*, P. 2.

[3] The application does include "Sixty-Seven (67) project drawings submitted by the applicant" (with the attached drawings, maps, and diagrams consisting of 71 pages total), but with little in the way of details or explanatory materials.

[4] Magnuson-Stevens Fishery Conservation and Management Act.

[5] Corps Public Notice, P. 5.

[6] Corps Public Notice, P. 3.

[7] *See* Aug. 23, 2024, Letter to Colonel Larry Dale Caswell, Jr., United States Army Corps of Engineers, Portland District, from the Chairmen of the Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe:

> "The Tribes have many concerns regarding this project specific to the effects of the placement of a transmission line within the Columbia River. The Notice provides very little information for the Tribes to develop substantive comments, identifies no proposed mitigation despite the obvious impacts a project of this size, scope, and location is likely to have, and forces the Tribes to comply with a compressed timeline for submitting comments prior to the Corps engaging in government-to-government consultation. In order to properly discharge its duties under federal law, the Corps will need to complete government-to-government consultation with the Tribes. Therefore, the Tribes request the deadline for public comments be extended until the Corps fulfills its obligations to consult with the Tribes. Further, the Tribes believe an Environmental Impact Statement will be necessary to address the direct, indirect, and cumulative effects of the proposed project. Each of the Tribes intends on consulting with the Corps on a government-to-government basis individually regarding this project."

The CTUIR requests government-to-government consultation, consistent with the separate, singular, historic federal-tribal relationship.[8] The fact that neither government-to-government consultation or NHPA Section 106 consultation between the sovereigns have occurred also reinforces the necessity of additional study and examination that could allow for more informed review and input, such as would occur with the preparation of an EIS to more thoroughly and effectively evaluate the Project. Finally, the CTUIR requests a public hearing. Both the Corps' and DEQ's Public Notices identify that as an available step in their respective processes, and we believe it to be appropriate under the circumstances.[9]

The CTUIR DNR believes that issuance of any permit or certification at this time is premature, inappropriate, and ill-advised. We oppose and object to such issuance until all concerns—specifically, tribal concerns—are fully addressed through government-to-government consultation. Certain harmful impacts have already been identified, yet "[t]he applicant did not propose compensatory mitigation in the permit application."[10] There are additional risks, some evident now and some yet unknown, that are unquantified, not fully understood, and/or may be substantial. Tribal rights, interests, and resources are at stake. At the very least, further information, study, investigation, and evaluation—at minimum by means of preparing an Environmental Impact Statement—is needed before proceeding any further with this proposed work or any regulatory authorizations for it.

Introduction and Background

The CTUIR is a federally recognized Indian tribe, with a reservation in Northeast Oregon and ceded, aboriginal, usual and accustomed, and traditional use areas in Oregon, Washington, Idaho, and other Northwest states. 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, 12 Stat. 945. The Treaty is a contract between sovereigns, and ***law***—indeed, "the supreme Law of the Land" under Article VI of 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 our sovereignty would be recognized and respected, our various pre-existing tribal rights would be honored, and our interests would always be considered

[8] *See* Tribal Letter to Colonel Caswell, Footnote 7, above.
[9] The Corps states that "[a]ny person may request in writing within the comment period specified in this notice that a public hearing be held to consider this application[,]" and that "[r]equests for public hearings shall state with particularity the reasons for holding a public hearing." As noted above (and throughout this letter), the project would be "new and potentially precedent-setting . . . [;] [i]t may have many far-reaching effects and ramifications well into the future . . ."—particularly in terms of Indian Treaty Rights, resources on which they are based, and the ability of tribal members to exercise them. It is complex and characterized by many substantial unknowns that may lead to significant harmful consequences. According to DEQ, "Oregon Administrative Rule (OAR) 340-48-0032 (2) states that 'The Corps provides public notice of and opportunity to comment on the applications, including the application for certification, provided that the department (DEQ), in its discretion, may provide additional opportunity for public comment, including public hearing.'"
[10] Corps Public Notice, P. 3; *see also* Footnotes 5 and 6, above, and further discussion, below.

and safeguarded, in perpetuity.[11] The federal government and all its constituent departments and agencies, including the U.S. Army Corps of Engineers,[12] have a duty to honor and uphold the Treaty of 1855 and all Indian treaties and to act as stewards and trustees to ensure that the terms and commitments of those treaties are fulfilled—the Trust Responsibility.[13] The subordinate

[11] While our rights were and are recognized by the United States in the Treaty of 1855, they existed before the Treaty was signed—since time immemorial—and are based on our inherent rights and inherent sovereignty and were later secured and guaranteed by the Treaty that followed.

[12] *See* U.S. Army Corps of Engineers – Civil Works Tribal Consultation Policy:

> 6(b). Trust Responsibility.
> i. The trust responsibility will be honored and fulfilled.
> ii. The federal government has a unique legal and political relationship with Tribal governments that recognizes self-government and self-determination.
> iii. USACE shall work to meet its trust responsibilities, protect trust resources, and obtain Tribal views of trust and treaty responsibilities for actions related to USACE, in accordance with provisions of treaties, laws and Executive Orders as well as principles lodged in the Constitution of the United States. Integrating consideration of tribal treaty and reserved rights into agency decision-making and regulatory processes is consistent with the federal government's trust responsibility to federally recognized Tribes and to fundamental principles of good government.
> iv. As a matter of Federal law, only Congress has the authority to abrogate or interfere with tribal treaty rights, which has not been delegated to USACE. USACE cannot authorize, approve, or carry out any activities which would result in a violation of a Tribal treaty right. See Appendix A for Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making for USACE use.

[13] The U.S. Supreme Court has assisted Congress and federal agencies with interpreting Indian treaties and defining the contours of the Trust Responsibility through development of the Indian "Canons of Construction" (Cohen, Handbook of Federal Indian Law, at 221-222 (1982)). The Canons of Construction are based on the principle that the United States, in entering into Indian treaties, has assumed the obligations of a trustee and has a Trust Responsibility to tribes, and, when acting through Congress and executive agencies, the federal government is to act in a manner that favors the protection of Indian rights and resources as much as possible (*Id.* at 221). There are three major Canons of Construction that the Courts have developed to interpret Indian treaties, as well as statutes affecting Indian tribes and their rights: (1) Treaties must be liberally construed in favor of the tribes (*Id.* at 222; *e.g.*, *Choctaw Nation v. United States*, 318 U.S. 423, 431-432 (1943); *Choate v. Trapp*, 224 U.S. 665, 675 (1912); *United States v. Walker River Irrig. Dist.*, 104 F.2d 334, 337 (9th Cir. 1939)); (2) Ambiguous treaty language must be construed in favor of the tribe (*e.g.*, *McClanahan v. Arizona State Tax Comm.*, 411 U.S. 164, 174 (1973); *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930); *Winters v. United States*, 207 U.S. 564, 576-577 (1908)); and (3) Treaties should be interpreted as the Indian people would have understood them at the time they were agreed to (*e.g.*, *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970); *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938); *Jones v. Meehan*, 175 U.S. 1, 11 (1899); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 552-554, 582 (1832)). The CTUIR expects the Corps, as a federal trustee, to adhere to its trust duties and apply the Canons of Construction in decision-making regarding activities and projects in the Columbia River such as the Cascade Project. The minutes of the negotiations during the Treaty Council at Walla Walla in 1855 have preserved our understanding of the reserved rights to natural resources that the CTUIR retained through the treaty-making process. Washington Territorial Governor Isaac I. Stevens, the lead Treaty negotiator for the United States, himself recognized the importance that the perpetuation of natural resource access and use rights had to the Indians (*see* Stevens, Isaac Ingalls, "A True Copy of the Record of the Official Proceedings at the Council in the Walla Walla Valley 1855, at 102 (Ye Galleon Press 1996) (statement of Issac I. Stevens that "Looking Glass knows . . . that he can catch fish at any of the fishing stations, that he can kill game and go to buffalo when he pleases, that he can get roots and berries on any of the lands not occupied by white settlers.")). The negotiations reflect that the land cessions reserved and secured the CTUIR's pre-existing use of our usual and accustomed and traditional use areas that are located (among other places) in and adjacent to the Columbia River where the Project would be sited.

states, including Oregon and Washington, similarly have an obligation not to infringe on or otherwise erode tribal Treaty Rights.[14]

A paramount objective in the Treaty of 1855 was protecting and maintaining our tribal First Foods—water, fish, mussels, big game, roots, berries, and other plants—and the habitats and environmental conditions that support and sustain them, then, now, and forever. This remains an overriding objective of the CTUIR. Protecting and maintaining our tribal First Foods is essential to safeguarding our Treaty Rights and the traditions, culture, and way of life those Rights were and are meant to uphold and perpetuate. Vital to our authority to protect and maintain the First Foods are our legally recognized rights as resource co-managers in coordination with our state and federal counterparts[15]; we are co-managers of the resources that could or would be impacted by the Project. In addition to many other CTUIR regulations, policies, and plans, the CTUIR has developed a First Foods management mission, a *River Vision*,[16] an *Upland Vision*,[17] and an Energy Policy to guide restoration and management of our First Foods and address relevant energy issues and matters.[18] Most recently, in 2022, recognizing the escalating climate change crisis, the CTUIR adopted its *Climate Adaptation Plan*.[19]

Among other things, the Treaty of 1855 explicitly guarantees to the CTUIR and its members the right of "taking fish." With that right is the implicit, concurrent assurance that there will be fish

[14] Pursuant to the Constitution's Supremacy Clause, treaties and statutes also bind states. *Antoine v. Washington*, 420 U.S. 194, 205 (1975) (like a treaty, when Congress by statute ratifies an agreement that reserves Tribal rights, ''State qualification of the rights is precluded by force of the Supremacy Clause, and neither an express provision precluding state qualification nor the consent of the State [is] required''); *U.S. v. Washington*, 853 F.3d 946, 966 (9th Cir. 2017) (Holding that ''in building and maintaining barrier culverts within the Case Area, Washington has violated, and is continuing to violate, its obligation to the Tribes under the Treaties.'') aff'd, 138 S.Ct. 1832 (per curiam); *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 512 (9th Cir. 2005) (Treaties ''constitute the 'supreme law of the land''' and have ''been found to provide rights of action for equitable relief against non-contracting parties,'' and such equitable relief ''ensures compliance with a treaty; that is, it forces state governmental entities and their officers to conform their conduct to federal law.''); *see also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204 (1999) (noting that ''[a]lthough States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers, such as treaty making,'' and accordingly, the treaty in that case gave the Chippewa Tribe ''the right to hunt, fish, and gather in the ceded territory free of . . . state, regulation.'').

[15] Our ancestors were sole resource managers since time immemorial, but beginning less than two centuries ago we began to share this responsibility with federal and state managers. Tribal management is now jointly based on traditional knowledge, expertise, and experience combined with the latest, most reputable, state-of-the-art scientific knowledge, practices, techniques, and data.

[16] https://ctuir.org/media/25chgmwn/ctuir-dnr-umatilla-river-vision-v2-051811.pdf.

[17] https://ctuir.org/media/ez1g3wp1/ctuir-dnr-upland-vision-april-2019.pdf.

[18] These guidance documents are based on the ecology between and among First Foods, the ecology of the CTUIR and our Foods, and our relationship to the landscapes and waters that provide the Foods—in other words, our relationship to our environment. The priorities in our management visions are backed by peer-reviewed science publications, and our guidance should be recognized as expressions of applied "Traditional Ecological Knowledge" and given equal weight to other government agency management guidance. Where our management goals or priorities differ, we can consult to address those differences. Where our goals and priorities align, we can collaborate to our mutual betterment.

[19] https://ctuir.org/departments/natural-resources/climate-adaptation/ctuir-climate-adaptation-plan-final/; https://ctuir.org/media/vlepiubg/ctuir-cap-final-2022-lo-res.pdf.

to take—that they will exist.[20] Population levels will be healthy, sustainable, and high enough to support tribal harvest.[21] Nevertheless, this guarantee has been sadly, seriously eroded, to say the least. The evidence is overwhelming, such as the extinction of multiple salmonid populations and listings of many others under the Endangered Species Act (ESA), our myriad polluted rivers and streams[22] (with some even completely de-watered or otherwise rendered virtually uninhabitable), and substantial loss of or damage to the number, health, and extent of many other fish and game species and plant and root resources.[23] Impacts from climate change can now be added to this destructive litany, and by some measures they are likely to dwarf many of these earlier harms.

Across the Pacific Northwest, many factors have played a part in causing fish extinctions and diminished populations, degraded water quality, and overall damage to and diminishment of tribal natural and cultural resources. These include ill-considered energy development, such as widespread dam construction, that has often been based on the perspective that, among other things, the Columbia and other rivers were nothing more than a mechanical engine that could be exploited to fuel "progress" and vast economic gains and rewards for non-Indian enterprise.[24]

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[20] *See United States. v. Washington*, 853 F.3d 946 (2017), aff'd 138 S.Ct. 1832 (2018).

[21] *See* Footnote 13, above, on tribal understanding of treaty meanings and terms.

[22] Many regional waterways are listed under Clean Water Act Section 303(d); see Toxic-Impaired Waterbodies on 303(d) Lists in the Columbia River Basin, EPA Region 10, May 2020, https://www.epa.gov/sites/default/files/2020-05/documents/columbia-river-toxic-impaired-waterbodies-list-may2020.pdf.

[23] As the CTUIR stated in its *Columbia Basin Salmon Policy* in 1995: "For thousands of years, we managed our resources with respect. This land was rich in natural resources when the first non-Indians arrived. The wasteful and disrespectful practices of the last 150 years have used up nearly all of these resources, creating ugly conflicts between those people now dependent on them. These resources would be healthy if the Treaty of 1855 had been honored, and if the United States Government had honored its own laws." If the Treaty had been honored, no salmon would have gone extinct. If the Treaty was honored, no salmon would be listed under the ESA. No waterways would be listed under the CWA. In addition to the infringement on Treaty Rights, substantial environmental injustices have occurred in the Pacific Northwest—to tribes and tribal people, and others. A limited, narrow snapshot and analysis of one aspect of the profound, unjust losses and vast wealth transfer away from tribes resulting from non-Indian development across the Columbia River Basin (focused on the four federal Lower Snake River dams) can be found in the "Tribal Perspectives Report" (https://www.critfc.org/wp-content/uploads/2021/03/2019-06-10-CRTT-Trib-Perspect.pdf) and in the earlier "Tribal Circumstances Report" (https://www.critfc.org/wp-content/uploads/2014/11/circum_exec.pdf) which it incorporates.

[24] *See, e.g.*, *The Organic Machine*, Richard White, 1995, https://us.macmillan.com/books/9780809015832/theorganicmachine:

> "[T]he state of the Columbia River is quintessential in climate change discourse because it offers a case where a region has collapsed systemically. Beginning with unsustainable corporate [i.e., non-Indian] overfishing, the construction of dams, and the human pollution of the river, the scarcity of its famous salmon increased, depriving the Native communities on its banks of a vital resource. Further, the United States Government systematically marginalized the voices of these local communities to further its politicized imperatives for the region[,]" all ultimately leading to questions about "the unflagging 'progress' of advanced civilizations and technologies with regard to environmental change. . . . [N]atural history and human history are entangled in a perpetual, co-dependent relationship. These ties have been made virtually irreversible by human societies' logic of commodification and overconsumption pursued under the umbrellas of capitalism writ large, and more recently, of neoliberalism." . . . [The] Columbia River [can be conceived of] "as an 'organic machine[,]'" with a "natural, inalienable purpose [that] can exist freely, in an abstract way, from human intervention. . . . [T]he river, or any other organic machine, aspires in its very nature to move energy in an optimal, life-affirming way through the world[, yet] human involvement taxes its machinations, polluting it in ways other than the strictly chemical, which scientists do

The list of factors is long and has expanded over many decades,[25] yet all too often suggests a prevailing mindset that regards significant parts of Oregon and Washington as "sacrifice zones" where protecting people and the environment was not prioritized or considered minor, secondary issues. In summary, our fish, our water, our other natural and cultural resources have borne the brunt of non-Indian development throughout the region—incurring most of the costs and reaping few of the benefits.

General Comments

Many lands and waters—such as the Columbia River—over which the federal and state governments have authority and jurisdiction (sometimes sole, sometimes shared) are essential components in maintaining and sustaining tribal First Foods on which our rights depend. Management of healthy terrestrial and riverine ecosystems can profoundly affect CTUIR Treaty Rights and the ability of our members to exercise them. The proposed work, and whatever actions regulatory agencies may take regarding it, will impact, both directly and indirectly, in the short and long term, the rights, interests, and resources of the CTUIR. While this Project may (theoretically) have some benefits in addressing climate change, the Corps and the States should be wary of adding new costs to the list of those already incurred.

Historically, various non-Indian governments (federal, state, local) have frequently adopted policies and engaged in energy development, generation, and transmission practices with little to no regard to tribal rights, interests, or resources. This has often resulted in catastrophic loss of or damage to those resources. Now, as we seek to promote "green," renewable, non-fossil-fueled energy development necessary to combat the real, growing, formidable threat of climate change,[26] the CTUIR encourages you to be careful not to repeat prior errors and oversights, where Indian rights, interests, and resources were often ignored or disregarded. Great, long-lasting environmental harm has frequently been the consequence—harm inflicted not just on tribes but on all American citizens. Federal and state agencies should act in a manner that promotes remedies to past and continuing environmental abuses and ***in***justices. As all of us,

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not yet grasp. . . . [It is] a literal and metaphorical system and store of energy. . . . [T]he imposition of dams has interrupted the natural, continuous flow of kinetic energy and displaced it into stores of potential energy for human use. . . . [N]ot only this river, but also most major water systems in the northern and western regions of the United States, are already being utilized for human energy. . . . [S]iphoning of energy from these systems has contributed to a number of fraught human relationships, starting more than 150 years ago. Many of these originated with early white colonists who traveled west and began feuds with Native peoples. . . . As the river was further populated and developed, it became reimagined, not as a precious natural resource, but as a boundless source of energy in the capitalist philosophical vein." https://www.supersummary.com/the-organic-machine/summary/.

[25] For example, we are still living with the Hanford Nuclear Reservation, with its ongoing legacy as one of the most polluted sites on earth, various military bombing ranges, multiple (and growing) Confined Animal Feeding Operations (CAFOs), energy- and water-devouring data centers, gas-fired energy projects, hazardous waste landfills (e.g., Arlington, Oregon), concrete plants, etc.; thankfully, a nerve gas storage depot has ceased operations.

[26] There is no doubt that climate change is an existential threat—now one of the most immediate and prominent of the many threats and challenges to tribal member health and our First Foods. One example occurred in 2015 when one salmon sub-population (Snake River sockeye migrating in the Columbia and Snake Rivers) was decimated by high water temperatures, with a mortality rate in the range of 90 to 100%. Recent occurrences of extensive drought, wildfires, and extreme summer air temperatures in the Pacific Northwest are well known and have been widely reported.

collectively, face the undeniable challenges of human-induced climate change, we must avoid repeating past mistakes and miscalculations.

The Project Could Profoundly Impact Tribal Rights, Interests, and Resources

Generally, the CTUIR supports investing in renewable energy, reducing consumption of energy (particularly that from fossil fuels), and seeking to reduce incessant growth and its associated resource demands.[27] Notwithstanding the potential benefits associated with facilitating transmission of renewable[28] energy and thereby helping to ameliorate climate change, CTUIR rights, interests, and resources (and those of other tribes as well) could be negatively affected by the Project. Impacts could occur in a variety of forms and contexts, some of which can already be ascertained even from the limited Project information available thus far.

Some of the Project impacts could be substantial and of particular and unique significance to the CTUIR (and other tribes). The location[29] of the proposed work in and adjacent to the Columbia River is within the usual and accustomed and traditional use areas of the CTUIR. The Project could potentially affect the Umatilla Indian Reservation and the ceded territories of the CTUIR by impacting the resources located or migrating to and from there (including the First Foods), and the lands, waters, habitats, and conditions essential to their survival, health, maintenance, and sustainability. Thus, it could potentially affect the legally recognized rights of the CTUIR and its individual members' ability to exercise those rights, both by impacting the resources on which the rights are based and the ability and means of tribal members to access those resources and thereby exercise their rights (see below).

Fish and Fish-Related Impacts and Issues

In many respects potential fish impacts and issues and those for water and water quality often overlap and are inter-related. There are a host of issues related to fish and fishing that must be considered, and about which the CTUIR DNR has numerous concerns. There is a lack of

[27] *See generally* CTUIR *Climate Adaptation Plan*, Footnote 19, above.

[28] "The applicant's stated purpose is to develop a controllable high-voltage direct current (HVDC) underground transmission facility that will facilitate the reliable and cost-effective transfer of up to 1,100 megawatts (MW) of renewable energy from east of the Cascade Mountain Range to energy load centers located west of the Cascade Mountain Range in Oregon and Washington." Corps Public Notice, P. 2. It is unclear how and to what extent, if any, the Project will promote or facilitate ***renewable*** energy generation ***exclusively***, or whether it could or would be used to transmit energy from fossil fuel or otherwise non-renewable sources as well.

[29] "The proposal is a linear transmission line from The Dalles to Portland, Oregon. The proposed alignment within the Columbia River is from approximate river mile 190 near The Dalles to approximate river mile 106 near Portland, Oregon. The alignment would exit the river near Stevenson, Washington and reenter near North Bonneville, Washington to avoid Bonneville Lock and Dam. The proposed transmission line would interconnect with the existing Bonneville Power Administration (BPA) Big Eddy 500-kV alternating current (AC) substation, located in The Dalles, Oregon (Latitude/Longitude: 45.603972°, -121.106306°), and the existing Portland General Electric (PGE) Harborton 230-kV substation in Portland, Oregon (Latitude/Longitude: 45.613694°, -122.797917°). The proposed alignment runs through Wasco, Hood River, and Multnomah counties in Oregon, and Klickitat, Skamania, and Clark counties in Washington." The "Waterway" at issue is home to and critical habitat for the anadromous and other fish on which our Treaty Rights are based ("The proposed project is located within the Columbia River and one wetland."). Corps Public Notice, Pp. 1, 2.

information about these issues, and what little has been made available already raises serious doubts and questions.

To begin with, we recognize and appreciate the Corps' interest in "assessing potential impacts to usual and accustomed fishing practices, tribal fisheries, and fisheries habitat ***in the project area***"[30] [emphasis added]. As an initial matter, we suggest that you should look beyond just "the project area." Impacts may occur in both the immediate project area and beyond it, such as to water quality and to fish resources that may be present above and/or below "the project area" or that may migrate through "the project area." The geographic scope for further assessment of the proposed work should include areas where there may be adverse environmental impacts to Indian Treaty-secured resources, such as salmonid species, and the waters in which they migrate and spend their various life cycle stages, which may be some distance from the immediate Project area itself.

Salmon Impacts

There are thirteen (13) salmon species or subspecies (ESUs, or "Evolutionary Significant Units") that are or may be located within the Project area or may be affected by it, by either (or both) short-term construction activity and/or long-term operations. As the Corps states: "Section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1536) requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) on all actions that may affect a species listed (or proposed for listing) under the ESA as threatened or endangered or that may adversely modify designated critical habitat."[31] Importantly, the Notice states: ***"The Corps' preliminary review indicates the described activity may affect an endangered or threatened species or designated critical habitat."***[32]

This is worrisome and further substantiates the need for an EIS for the Project (see below). The Corps commits to "complet[ing] the required [ESA] consultation prior to finalizing a permit decision"[33]; the CTUIR is unclear as to the status of either NMFS or USFWS consultation, and certainly would agree that, at a minimum, no permit can or should be finalized (if at all) until ESA Section 7 consultation with both Services is complete. In addition to longer term operational impacts, there may be shorter-term impacts from cable installation on migratory fishes such as salmon (and lamprey and sturgeon; see below) that may be present in the Project area and beyond (upstream and downstream from it). The importance to the CTUIR and our members of salmon, lamprey, other fish, their habitats, and the health and well-being of them all cannot be understated.

ESA Critical Habitat

As noted above, according to the Corps, "Section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1536) requires federal agencies to consult with the National Marine Fisheries Service

[30] E-mail from Brielle Cummings, Corps, to multiple tribal recipients, July 15, 2024.
[31] Corps Public Notice, P. 5.
[32] *Id.*; emphasis added.
[33] *Id.*

(NMFS) and/or U.S. Fish and Wildlife Service (USFWS) on all actions that may affect a species listed (or proposed for listing) under the ESA as threatened or endangered or that may adversely modify designated critical habitat[,]" and that "***The Corps' preliminary review indicates the described activity . . . may adversely modify designated critical habitat.*** "[34] This is also cause for concern, justifies an EIS, and illustrates again the need for great care and caution in considering this proposal.

The Columbia River is designated as critical habitat under the federal Endangered Species Act for several salmon species. They include: Chinook salmon (Lower Columbia River ESU, Upper Columbia River spring-run ESU, and others)[35]; Chum salmon (Columbia River ESU)[36]; and Coho salmon (Lower Columbia River ESU).[37] These designations help protect the habitats essential for the conservation and recovery of these salmon populations. Critical habitat designation is a crucial conservation tool.

Critical habitats contain features essential for the conservation of a threatened or endangered species and may require special management and protection. New industrial activity in an already-beleaguered environment may be inconsistent with the designation—whose goal is to protect and restore habitats that are vital for the survival and recovery of the species. It may in fact violate the requirements that may apply when an area is so designated. Critical habitat designation aims to ensure that these areas are free from activities that could harm the species or degrade their habitat. For the Columbia River, critical habitat designation should help protect the river's ecosystem that is essential for species' survival, by (among other things) maintaining water quality and preserving spawning, rearing, and migrating areas. The Project needs to be studied and evaluated as to whether, and to what extent, it would either promote or undermine these goals and objectives (which likely necessitates an EIS).

Electromagnetic Fields

Among the potential Project impacts on migratory fish such as salmon that concern the CTUIR DNR are the electromagnetic fields (EMFs) commonly generated by power transmission cables. Migratory fish, like salmonids and sturgeon, use electroreceptors to navigate using magnetic fields as a guide. There are significant uncertainties about EMF effects on them, particularly under the circumstances of this Project. While it has been asserted that modern cable designs often include sheathing to contain electric fields, magnetic fields can still extend into the surrounding environment. There have been some studies of EMFs for migratory fish, but many of them are for ocean cables, a few of them may be for freshwater waterbodies such as lakes, and fewer still may be for narrower, more linear freshwater rivers. We are not aware of any studies of power transmission cable EMF effects on fish or other biota in the Columbia River.[38] The

[34] Corps Public Notice, P. 5; emphasis added.
[35] https://www.fisheries.noaa.gov/resource/map/critical-habitat-maps-and-gis-data-west-coast-region.
[36] https://www.fisheries.noaa.gov/inport/item/72803.
[37] https://www.federalregister.gov/documents/2016/02/24/2016-03409/endangered-and-threatened-species-designation-of-critical-habitat-for-lower-columbia-river-coho.
[38] *See generally* "How strengthening the PNW's electrical grid could end up doing harm," InvestigateWest, July 22, 2021, https://www.cascadepbs.org/environment/2021/07/how-strengthening-pnws-electrical-grid-could-end-doing-harm. "The study found that the cables had some effects on migratory fish like salmon, which navigate partly by

CTUIR DNR believes that further work and analysis of EMFs and their potential impacts on migratory and other fish and biota is needed before any permits, approvals, or authorizations are issued. We encourage you to refer to and carefully consider the comments of the U.S. Fish and Wildlife Service to the Corps on this subject.[39]

Impacts to Lamprey, Sturgeon, Other Fish

Other fish species in addition to salmon could be affected by the Project. Pacific lamprey (*Entosphenus tridentatus*) are among the CTUIR's First Foods; they are of significant cultural importance to our members. Unfortunately, populations have experienced severe declines over the decades—caused not by tribal actions, but by many of the same factors that have so greatly imperiled salmonids. The Project is likely to impact lamprey, through short-term construction/ installation activity and possibly through longer-term operations and habitat modifications.[40] CRITFC's comments on lamprey merit particular attention.

ESA-listed Green Sturgeon (*Acipenser medirostris*) and Eulachon (*Thaleichthys pacificus*) are also present in the Project area, usually close to the riverbed where they feed and thus particularly vulnerable during the construction/installation stage when dredging and hydroplow

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sensing Earth's magnetic fields. For example, the cables ***increased the chance that salmon smolts would take a wrong turn, lengthening their journey to the ocean***" [emphasis added]. The article characterized the study as "detect[ing] no evidence that fish were harmed [sic][,]" notwithstanding the apparent fact that their migratory ability ***was*** altered, possibly resulting in longer travel time ("lengthening their journey to the ocean") and thereby increasing their exposure to predators, at a minimum. While the article asserted that "[f]ish appeared to be just as successful at migrating through the ***bay*** [emphasis added] after the cables were turned on[,]" it is not clear how long ago the study was done, its duration, or to what extent it examined longer-term effects.

[39] *See* Letter from United States Department of the Interior, Fish and Wildlife Service, Oregon Fish and Wildlife Office, to the Corps, "Fish and Wildlife Service Comments on Public Notice NWP 2022-126-2," August 23, 2024, under "POTENTIAL IMPACTS TO MIGRATORY FISH":

> . . . [T]here may . . . be unintended effects to migratory fishes, such as bull trout, lamprey, sturgeon and salmon. Many of these species are anadromous and must migrate through the lower Columbia River to complete their life cycle. . . . [F]ish migrations may also be negatively affected over the life of the Project by electro-magnetic fields (EMF) produced from the cables that will be present for ~78 miles of the Columbia River. While [the applicant] has cited CSA Ocean Sciences Inc. and Exponent (2019) that concluded EMF produced by undersea AC power cables would be too low [in] intensity to affect fish behavior, this study did not look at the effects to fish species in the Columbia River. Further, this study only looked at transmission lines carrying AC, and it is not clear if the proposed transmission carrying DC would have the same or more effects on migratory fish. At this time, it is our understanding that [the applicant] does not plan to evaluate potential effects to migratory fish prior to installation. Given there is potential for negative effects on multiple fish species of economic importance, including some listed under the ESA, it seems that the potential effects should be fully analyzed prior to installation of the cable, which has an expected life of 50 or more years. The Service recommends such a study be required as part of this permit. The study should evaluate the effects of DC current on West Coast fish species in the Columbia River."

The CTUIR DNR believes that such a study needs to be conducted and completed ***before*** the Corps or DEQ issue any permits.

[40] It is our understanding that within the Project area, the following lamprey and freshwater mussel species may be present: Pacific Lamprey, Western River Lamprey, Western Brook Lamprey, Western Pearlshell, Western Ridged Mussel, and Floater species; both Pacific and Western Brook lamprey have been document in Portland Harbor (citation omitted).

use would occur. Sturgeon spawn near Bonneville Dam in the Project area; their small eggs and larvae remain close to the substrate. Because of their limited swimming ability, larvae may not be able to avoid disruptive in-water work, and thus may suffer similar injuries and mortalities as larval lamprey. Needed data and information on lamprey, sturgeon, and other fish, and potential Project impacts on them, is lacking; more study and analysis is required.

Mussels and Other Benthic Organisms

The Project will disrupt benthic organisms, including river mussels, and their habitat in the Columbia River. Mussels are essential to food webs, water quality, and nutrient cycling. Hydroplow use, dredging, and in-water spoils disposal could all detrimentally affect the benthic environment and biota (including mussels, lamprey, and sturgeon). Disruption will occur in the short term, with construction and cable installation. It is unclear, at best, to what degree or extent longer-term ongoing operations and/or periodic maintenance may cause further harm to benthic communities. Again, data and information on benthic impacts is lacking; more study and analysis is needed.

Impacts to Tribal Fishing Activity, Access

A substantial portion of the immediate Project area includes "Zone 6" of the Columbia River, which is the primary locale for mainstem tribal Treaty fishing activity and the exclusive location for the tribal commercial fishery. Tribal members from the four Columbia River Treaty Tribes[41] will commonly fish with nets, from boats in the river and from platforms or other individual and shared sites along the shoreline. Additional tribal fishing also occurs at In-Lieu or Treaty Fishing Access Sites; ten (10) of these are located in the Project area in the Columbia River corridor between The Dalles and Bonneville Dams.[42]

The Project is likely to negatively impact the ability of tribal members to exercise their Treaty Rights to fish. Impacts to Treaty fishing may occur during construction/installation, and potentially during operations. It could interfere with actual fishing activity. Access may be impaired or infringed upon for fishers in boats, on platforms along the shoreline, from the shoreline itself, and from In-Lieu or Treaty Fishing Access Sites.[43] Before further action can be taken on either a Corps permit or DEQ certification, this issue must be assessed and analyzed. Data and information on tribal fishing activity, including locations and access, and potential Project impacts on them, are lacking; more study and analysis is required.

[41] Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Nez Perce Tribe, and Yakama Nation.
[42] *See* https://critfc.org/for-tribal-fishers/in-lieutreaty-fishing-access-sites/.
[43] It has been reported that the applicant plans to bypass Bonneville Dam, re-enter the River at North Bonneville, and cut a trench or horizontally directional drill (HDD) through Hamilton Island, and that this is the location for the lower Bonneville Fishery, an important fishery for tribal elders.

Essential Fish Habitat (EFH)

Among the laws aimed at supporting and encouraging sound conservation and management of the nation's fisheries and applicable to the Project, the Corps notes "Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as amended (16 U.S.C. 1855) [that] requires Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH)." It states that ***"The Corps' preliminary review indicates the described activity would adversely affect EFH at the project location or in the vicinity***[,]**"**[44] and says further that it "will initiate consultation under Section 305(b)(2) of the MSA. The Corps will complete the required consultation prior to finalizing a permit decision."[45]

As with ESA Critical Habitat consultation, noted above, the CTUIR DNR is uncertain as to the status of MSA consultation. We also agree that, at a minimum, no permit can or should be finalized (if at all) until MSA consultation is complete. Preserving fishing opportunities and the essential habitats that make them possible are vital to the CTUIR and its members and should be an important consideration in weighing the proposed work.

Water Quality Impacts and Issues

Much of the proposed work and operations, as we noted, may have overlapping and inter-related impacts to both fish and other biota and to water quality in the mainstem Columbia River. The Columbia River is already beset by pollution and toxic contaminants, of varying types, extent, and location. It is unclear to what degree or extent the Project will add to or exacerbate this problem, further degrade water quality, and potentially result in non-compliance with the federal Clean Water Act and standards established under it.

Heat; Water Temperature

Excessive heat is a pollutant that degrades water quality, causing high water temperatures that threaten fish. High summer water temperatures in the Columbia River are a periodic problem that risks becoming dangerously routine.[46] In response to thermal pollution, EPA developed a Columbia and Lower Snake River Temperature Total Maximum Daily Load (TMDL) with necessary load allocations.[47] The TMDL identifies the stretch of the Columbia River where the submerged power cable will be located as listed by both Washington and Oregon under Clean Water Act Section 303(d) as an impaired waterbody or waterway due to temperature—failing to meet applicable water quality standards. The Project needs to be evaluated to understand how it would (or would not) be consistent with applicable Columbia River TMDLs.

[44] Corps Public Notice, P. 5; emphasis added.
[45] *Id.*
[46] *See* Footnote 26, above.
[47] https://www.epa.gov/system/files/documents/2022-06/tmdl-columbia-snake-temperature-errata-update-05102022.pdf.

Powerlines generate heat from resistance as power is transmitted by cable. The heat generated by power cables is primarily dissipated into the environment surrounding the transmission cable, be that soil, air, or water. Heat is conducted from the cable's core through its insulation and outer layers. By way of convection, when heat reaches the outer surface of the cable, it is transferred to the surrounding water, soil, or air which carries the heat away through natural convection currents. The efficiency of heat dissipation can be influenced by factors such as temperature of the surrounding environment, including air or water temperature, depth, and the presence of currents. Heat dissipation is crucial to prevent the cables from overheating and to ensure their efficient operation.

Studies have been done on the thermal impacts of submarine and underground cables that should be available to the Corps, its staff and technical experts, and the applicant.[48] Placement of the cable in the riverbed, even ten feet below the bed surface, may not completely dissipate the heat into the soil. In water-saturated soils, heat is transmitted by the water and warmer water will rise because it is less dense than colder water. While cables in the ocean may effectively dissipate heat, the Columbia River between Bonneville Dam and The Dalles Dam more like a narrow "lake," which even the Corps identifies as "Lake Bonneville." Heat will not dissipate the same way it would in a more naturally or actively flowing river and may build up in the soil and in the water column.[49] Finally, even in the riverbed heat must be dissipated, or else it may lead to thermal breakdown of the cable itself. This heat will invariably end up in the water column impacting aquatic habitats of endangered species and other biota and organisms. The submerged powerline, even buried in the riverbed, is going to generate heat that could warm the river and the substrate.

Significant uncertainties exist about this issue. Needed data and information on possible additional thermal loading from the Project and its potential impacts on the riverine ecosystem is lacking; more study and analysis is required. In addition, it is critical that the Corps consult with and rely on experts and reports that are neither prepared by nor paid for by the energy transmission companies that are supporting and profiting from submerged cables, but are instead prepared by scientists that do not have a vested financial interest in the outcome of the research.

Toxics; Resuspension

The Columbia River is polluted; it is water-quality-limited; it contains toxic contaminants. Besides temperature pollution, harmful substances such as mercury, PCBs, and many others are present.[50] They can be found both in both the water column and in the riverbed and its

[48] *See, e.g.*, "The thermal regime around buried submarine high-voltage cables," https://ieeexplore.ieee.org/document/8189072, where the Abstract states that ". . . [t]hese findings are important for the surrounding near-surface environments experiencing such high temperatures and may have significant implications for chemical and physical processes operating at the grain and subgrain scale; biological activity at both microfaunal and macrofaunal levels; and indeed the operational performance of the cables themselves, as convective heat transport would increase cable current ratings, something neglected in existing standards."
[49] If this section of the Columbia River flowed more freely and quickly, concerns about additional heat input might be mitigated somewhat, but this section is effectively a reservoir that is more likely to store heat in its stored water.
[50] It is reported that the Columbia River Basin has over 50 toxic contaminants listed, including mercury, PCBs, and dioxins; *see* https://www.epa.gov/columbiariver/toxic-impaired-waterbodies-303d-lists-columbia-river-basin,

sediments. This Project, certainly during its construction/installation phase and possibly during its future operational/maintenance phase, could add to this burden through activities such as hydroplowing the cable trench, dredging and dredge spoil disposal, etc. Potential water quality impacts could occur from disbursement/redistribution/resuspension of existing contaminants. Fish, benthic organisms, and other biota could also be directly harmed in addition to water quality. It is not effective, and no basis to issue permits or certifications, to claim that sediments and dredged materials will be examined for pollutants and toxic substances after-the-fact, after the work (and the damage) is done.

The Corps states that "[p]roposed work within or below waters of the United States would include: Dredging of up to 4,500 cy material over a length of 1,650 linear feet and 24 feet wide to facilitate required depths for cable installation in the navigation channel prism. The applicant proposes disposal of dredged material outside the navigation channel prism within an area measuring 2.3 acres below the OHWM of the Columbia River."[51] The CTUIR DNR would like to know more precisely where this would occur.

Water Quality 401 Certification Should Be Denied

Under present circumstances, based on currently available information, and in light of the issues raised in this letter, the CTUIR DNR believes that DEQ should deny Water Quality 401 Certification for the Project at this time; Certification would be premature and inappropriate. Neither the applicant nor DEQ have provided reasonable assurance that the Project—both its construction and its operations—will be able to comply with applicable water quality standards, and that compliance with the CWA will be achieved. Nor is there sufficient evidence that beneficial uses of the waterway will continue unimpeded.

It appears that a CWA 401 Certification is also needed from the State of Washington. Reportedly an application has not yet been filed; at the very least we are not aware of any such filing. In addition, the applicant may be submitting materials to the Washington EFSEC, which—again reportedly—may be closer to the end of the year (but that may be subject to change). It appears that the overall situation can be summarized as: other necessary processes are ongoing, their outcomes are uncertain, available information is incomplete, and more information may be forthcoming—and thus no CWA 401 Certification from DEQ (or CWA 404 Permit from the Corps) should be issued at this time.

Cultural Resources Impacts and Issues

The lower Columbia River was a series of village sites prior to the construction of the mainstem federal dams, which started with Bonneville Dam. Hundreds of village sites were inundated, sites that still hold both archaeological and cultural significance to the tribes (including the CTUIR) whose ancestors occupied the sites and whose members today rely on the River for both their economic and cultural subsistence. Studies will need to be conducted into the impacts of

https://www.epa.gov/sites/default/files/2020-05/documents/columbia-river-toxic-impaired-waterbodies-list-may2020.pdf.

[51] Corps Public Notice.

the Project on known archeological and cultural sites in, along, and adjacent to the path of the powerline, along with all potential impacts to historic properties of religious and cultural significance to Indian tribes (HPRCSITs) including the CTUIR and other tribes. Specifically, HPRCSITs are identified by the National Historic Preservation Act as being significant not exclusively for their material archaeological components, but for their cultural significance as well. These sites are also recognized in the Corps' "Tribal Consultation Policy," which states that "[t]o the extent allowed by law, USACE will protect the location of historic properties of religious and cultural significance, and archaeological resources, in consultation with and when requested by the affected Tribes(s)."

The Corps says that its "preliminary review indicates the permit area is likely to yield resources eligible for inclusion in the National Register of Historic Places. An investigation for the presence of potentially eligible historic properties is justified and would be required prior to the Corps' final permit decision."[52] It also states that its "Regulatory Archaeologist is assessing potential impacts to archeological, historic, and cultural resources in the project area." This process may be underway; and it certainly has not been completed. No permit should be issued unless and until the CTUIR has provided comments, appropriate reviews have been conducted, consultation has occurred, and the entire process is finalized. Further, on February 9, 2024, the Corps of Engineers issued a proposed rule, 89 Fed. Reg. 9079-87, to rescind 33 CFR Part 325, Appendix C to bring the Corps Regulatory program into consistency with the 36 CFR § 800 process under the National Historic Preservation Act (NHPA), 54 USC § 300101 et seq. This permit should be reviewed under the 36 CFR § 800 NHPA regulations in consultation with the tribes, states and other consulting parties, including the CTUIR. Finally, the CTUIR requests to be a consulting party under the NHPA for this permit application.

The Project Requires an EIS

This Project is subject to the National Environmental Policy Act (NEPA) and requires an Environmental Impact Statement (EIS). We refer you to the informative comments of Columbia Riverkeeper on this topic. The Project is likely to have significant environmental impacts. It will have both direct and indirect effects. There will be cumulative impacts, particularly when combined with other past, present, and reasonably foreseeable future actions. There will be impacts to endangered species and already-polluted waters. There will be impacts to tribes, tribal people, and our rights, interest, and resources. It would set a significant precedent, in both general terms (a submerged power cable in freshwater ESA critical habitat and a water-quality-limited waterway) and in the Columbia River specifically. More such projects or systems could possibly follow, in our region and elsewhere, if it is allowed.[53] Given all of the above, and the Project's many other risks, unknowns, and uncertainties, an EIS is needed, appropriate, and should be developed.

[52] Corps Public Notice, P. 5.
[53] *See generally*, https://www.nps.gov/subjects/nepa/upload/SupplementalGuidance_Impact-Analysis_Final_9-2015_accessible.pdf, https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-DOE-greenbook.pdf, https://www.yalelawjournal.org/article/nepa-eiss-and-substantive-regulatory-regimes, https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-DOE-greenbook.pdf.

An EIS is needed to identify alternatives. A "no action" alternative should be considered, along with using existing transmission corridors and technologies and expanding their capacity (such as Dynamic line rating (DLR) or upgraded lines) and developing a new terrestrial transmission corridor. DLR as an option should be explored and employed, if feasible, to maximize load, when environmental conditions allow it, without compromising safety. An alternatives analysis would be helpful in verifying demand estimates and forecasts for west and east of the Cascades, and ensuring that the Project properly accounts for the significantly increasing energy demands from the growing number of data centers on the "eastside."[54]

An EIS would also need to consider the ultimate fate of the Project's structures when its lifetime is over. Reportedly the applicant may have indicated a desire to leave the Project structures in place even after the Project is no longer being used. This may be problematic. It may also regulatory requirements to retire a project in a manner "that protects public health, safety and the environment," "restore[s] the site to a useful, non-hazardous condition," and minimizes "impacts to fish, wildlife and the environment."[55]

Consultation

The CTUIR DNR appreciates federal and state government initiatives to confront the many complex issues associated with climate change and the extraordinary threats it poses to us, now and in the future. We support reducing fossil fuel generation and use and increasing generation from and use of renewable energy sources. As you proceed with your efforts and consider the daunting web of factors that should be weighed in navigating the decisions and actions that must occur to address these threats, we encourage you to work collaboratively with tribal governments.[56] We reiterate our request for consultation on this Project.[57] and will be in communication with your staff scheduling those consultations.

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[54] It has been reported that the applicant (apparently) has "requested studies of the project's necessity from Portland General Electric, as well as Northern Grid, an alliance of Northwest utilities that coordinates regional transmission planning." "How strengthening the PNW's electrical grid could end up doing harm," https://www.cascadepbs.org/environment/2021/07/how-strengthening-pnws-electrical-grid-could-end-doing-harm. If this is the case, are there any results from such studies?

[55] OAR 345-027-0110(5)(a), (5)(b).

[56] In considering the implications of the Project and its impacts on tribes and their rights, it may be helpful and informative for the Corps to refer to "EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights." An "Overview" can be found here: https://www.epa.gov/tribal/overview-epas-guidance-discussing-tribal-treaty-rights. The full document is here: https://www.epa.gov/sites/production/files/2016-02/documents/tribal_treaty_rights_guidance_for_discussing_tribal_treaty_rights.pdf.

[57] As one possible aid in tribal consultation, we would refer you to the document, "Guidance and Responsibilities for Effective Tribal Consultation, Communication, and Engagement: A Guide for Agencies Working with West Coast Tribes on Ocean & Coastal Issues" (July 2020). It includes principles for consultation and best practices for consultation that address early and frequent communication, appropriate representation, understanding and respecting tribal decision-making processes, consensus-seeking approaches, and agency transparency and accountability. It was developed by the Tribal Caucus of the West Coast Ocean Alliance, and is available here: https://static1.squarespace.com/static/5bc79df3a9ab953d587032ca/t/5f0cdc876f40e375a32305af/1594678422449/WestCoastTribalEngagmentGuidance_July2020.pdf. The Alliance is a state-established regional ocean partnership, whose predecessors include the West Coast Ocean Partnership, West Coast Governors Alliance on Ocean Health, and West Coast Governors Agreement on Ocean Health.

Public Hearing Request

The CTUIR also reiterates its request for a public hearing. The Corps states that "[a]ny person may request in writing within the comment period specified in this notice that a public hearing be held to consider this application. Requests for public hearings shall state with particularity the reasons for holding a public hearing."[58] In its subsequent Public Notice granting an extension for filing comments, the Corps adds additional language and says that "[p]er Corps' regulations, the Corps holds a public hearing when there is a valid public interest to be served by a hearing, such as when substantive project issues cannot be addressed by any other means and a hearing would provide additional information that is necessary for a thorough evaluation of the issues. We will work with the applicant directly to address issues raised through public comment to determine if a public hearing is necessary."[59]

By whatever language used or criteria applied, the CTUIR DNR believes that a public hearing is warranted, and the need for, and appropriateness of, a hearing is amply demonstrated throughout these comments and those of others. Furthermore, we believe that the decision to hold a public hearing should not rest entirely on just the Corps "work[ing] with the applicant directly to address issues raised through public comment to determine if a public hearing is necessary."

Conclusion

Since the arrival of non-Indian people in ever-larger numbers beginning in the mid-1800s, many of the Columbia Basin's First Foods—in particular anadromous fish such as salmon and others—have been subject to enormous harm. In some cases this has meant outright eradication—extinction—and in others significant decreases in abundance, diversity, and distribution. Now one of the greatest threats comes from human-caused climate change, the parameters of which have only been more fully recognized relatively recently. All these impacts have reduced access to these Treaty-reserved resources and reduced Tribal harvest. First Foods and many other tribal resources are undeniably at risk from climate change; in confronting it we must not add new or expand other risks.[60]

As we seek to protect our First Foods, our ecosystems and our future from the harmful changes to our climate that we have caused, we must do so quickly but wisely. Unlike the past, we must seek and obtain adequate knowledge and understanding of the potential repercussions of our choices. We must rely on sound, reasonable assumptions and adequate, accurate data and analysis to anchor those assumptions. We cannot afford to compound existing environmental problems or add new and/or possibly unanticipated ones to our already dismally long list. We must be careful not to try to "engineer" our way out of our present climate dilemma. Specifically

[58] Corps Public Notice, July 30, 2024, P. 6.
[59] Corps Public Notice, August 28, 2024.
[60] We understand and appreciate the dilemma. *See, e.g.*, "How strengthening the PNW's electrical grid could end up doing harm," https://www.cascadepbs.org/environment/2021/07/how-strengthening-pnws-electrical-grid-could-end-doing-harm ("Regulators and environmentalists are likely to find themselves caught in the middle—wanting environmental justice for tribal nations, as well as limits to the impacts of energy projects on ecosystems, yet also eagerly seeking rapid action on projects designed to slow climate change.").

in terms of salmon, at a moment when so much time, effort, energy, and expense is being devoted to their protection and recovery through such initiatives as the landmark Columbia Basin Restoration Initiative (CBRI), it seems unwise to proceed too hastily, with inadequate knowledge, with a Project that potentially could pose new and unforeseen risks to them.[61]

The CTUIR DNR thanks you for your consideration of our input and comments. Ultimately, we believe that we must be careful and cautious about potentially trading one form of salmon harm and mortality for another newer, different variant. We must make sure that this will not be the case, with the Cascade Project or any other. At this time, based on the information currently available and appreciation for the multiple unknowns and uncertainties about the Project, the CTUIR DNR requests that the Corps deny the permit and that DEQ deny Certification. Overall, for a commitment of this magnitude, we believe that there is inadequate information about effects, short- and long-term, of a submerged/underwater power transmission cable generating heat and EMFs (even in small amounts) on anadromous, resident, and other fish and organisms

[61] *See generally*, materials on the 2023 Columbia Basin Restoration Initiative (CBRI), at https://critfc.org/cbri/, "A proposal to the Biden Administration from the 'Six Sovereigns.'" The CBRI "represents the collaborative effort of the Six Sovereigns to develop a comprehensive solution to our shared and complex challenges":

> The past 150 years has brought enormous change to the Columbia River Basin: free-flowing, cool rivers once provided between 10-18 million salmon to the basin. Those salmon nurtured Tribal people's religion, culture, economies and physical health and the health of Columbia Basin ecosystems for thousands of years. For a time, those salmon populations provided significant economic benefits for early non-tribal settlers in the Pacific Northwest. But rapid population growth and development; prior overharvest in non-tribal fisheries; development of millions of acres of land for industrial, commercial, and agricultural uses; construction, and operation of 14 federal dams on the Columbia and Snake Rivers; and installation of hundreds of small private dams and weirs on the tributaries drastically reduced Columbia Basin salmon populations and the many benefits they once provided to the region, its inhabitants, and ecosystems.
>
> While these transformational changes brought economic growth and new uses of the Basin's waters, these changes also brought devastating adverse impacts to the original peoples of the Northwest, the environment, and salmon. When Tribes in good faith signed treaties with the US Government that provided for settlement of millions of acres of aboriginal lands, the Tribes expected that in return their Treaty rights to fish would be honored, and that the right to fish meant there would be fish in the rivers. The settlement occurred, but honoring the Treaty right to fish is long past due. It is time to rebalance the allocation of the natural resources of the Columbia River Basin.
>
> Plummeting wild salmon and steelhead runs resulted in the extinction/extirpation of many stocks while putting others on the brink of extinction. Critical habitats have been lost or rendered inaccessible. Today, this crisis is further exacerbated by climate change, which threatens local and regional ecological, cultural, and economic resilience. Elevated air and water temperature, increased drought, reduced snowpack and poor ocean conditions accelerate the decline of imperiled fish stocks and amplify regulatory constraints, water scarcity, fire risk, invasive species, and pathogens that impact numerous economic sectors.
>
> Wild salmon and steelhead from the Snake River Basin are in dire straits, in spite of the fact that the Snake River Basin contains the largest accessible amount of pristine, protected habitat remaining in the Columbia Basin. As the National Oceanic and Atmospheric Administration (NOAA) has recognized, restoring these stocks to healthy, harvestable populations and reducing the currently high likelihood of further extirpation and allowing them to fully utilize high elevation, climate resilient habitat will require breaching the four Lower Snake River dams. Consistent with the Inslee-Murray recommendations, we must act now to invest in replacing the dams' benefits in order to make breaching a viable policy action. These investments can best ensure a future that includes healthy and abundant salmon and steelhead, reliable and affordable energy systems, a robust economy, and valuable ecosystem services throughout the Columbia River Basin.

in a relatively narrow migratory corridor (compared to the open ocean), and in freshwaters that are water-quality-limited (i.e., polluted in various ways and degrees), contain contaminated toxic waste sites (including some on the National Priorities List), and are designated as both ESA Critical Habitat and Essential Fish Habitat. The CTUIR DNR believes that the Project requires more thorough and detailed study and analysis. Absent this, without further information and assessment, we believe that the Corps' determination should be that "authorizing the work would be contrary to the public interest."

The CTUIR DNR looks forward to continuing to work cooperatively and collaboratively with the U.S. Army Corps of Engineers and the State of Oregon to effectively address the challenges posed by climate change, to develop and maintain adequate, safe energy sources and supplies at minimal environmental cost, and to protect, recover, and restore our shared natural and environmental resources for the benefit of all people.

Respectfully,

Eric J. Quaempts, Director
Department of Natural Resources
Confederated Tribes of the Umatilla Indian Reservation

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