

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of:)	CASE NO. 15-001
Application No. 2013-01)	
TESORO SAVAGE, LLC)	PETITION FOR INTERVENTION OF
)	THE CONFEDERATED TRIBES OF THE
VANCOUVER ENERGY DISTRIBUTION)	UMATILLA INDIAN RESERVATION
TERMINAL)	
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I. INTRODUCTION

Pursuant to RCW 34.05.443, RCW 80.50.090, WAC 463-30-091, and EFSEC’s Order Commencing Agency Adjudication, EFSEC Case No. 15-01 (January 28, 2015), the Confederated Tribes of the Umatilla Indian Reservation (“Umatilla Tribe” or “Tribe”) submits this Petition for Intervention.

In its application for site certification, Tesoro-Savage requests authorization to build and operate a crude oil terminal on the banks of the Columbia River that would ship an estimated 360,000 barrels of oil per day downstream and through the estuary via Panamax ship (the “Project” or “Terminal”). The Terminal would be supplied with crude by multiple unit trains of 100 to 120 oil tank rail cars traveling daily along the Columbia River, through the Columbia River Gorge National Scenic Area where tribal members have fished since time immemorial. The Project and its unprecedented level of transport of volatile fossil fuels (much of the oil would come from Bakken shale and Alberta tar sands) pose grave risks to the exercise of

Constitutionally-protected treaty fishing rights, the safety of tribal fishers, and fish and wildlife ecosystems that the Umatilla Tribe in concert with co-managers throughout the Northwest have worked for generations to protect and restore. The Project and attendant rail traffic also threaten Traditional Cultural Properties and others areas of cultural or religious significance to the Tribes. Accordingly, the Umatilla Tribe seeks leave to intervene to protect their strong interests in these proceedings.

II. IDENTIFICATION OF PETITIONER

A. The Umatilla Tribe

The Tribe is a federally recognized Indian Tribe, 80 FR 1942, located in Eastern Oregon with Treaty-protected rights to natural resources including but not limited to fish and wildlife in the Columbia River and its tributaries, and interests in archaeological, religious and cultural resources throughout the Northwest. The Tribe owns almost 11,000 acres in the State of Washington, encompassing both trust and fee lands. Members of the Tribe regularly exercise Treaty rights to fish, hunt and gather in Washington State, and in areas that would be affected by the Project. The Tribe's mailing address is 46411 Timine Way, Pendleton, Oregon 97801.

B. The Umatilla Tribe's Attorney

The Tribe is represented by Brent H. Hall. His address is:

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III. STATEMENT OF PETITIONERS' INTERESTS IN THIS PROCEEDING

Under its Treaty of June 9, 1855, 12 Stat. 945, the Umatilla Tribe reserved for itself and

its members the right to take fish at all usual and accustomed areas. Pursuant to the Treaty, tribal members have fished on the Columbia River for subsistence, ceremonial and commercial purposes since time immemorial. Tribal culture reveres salmon, which is one of the First Foods, and an integral component of longhouse ceremonies and feasts. The Project threatens the Umatilla Tribes interests through 1) operations at and crude oil shipments from the Terminal; and 2) increased crude oil rail traffic.

A. The Umatilla Tribe's Constitutionally-Protected Treaty Fishing Rights

The Supreme Court of the United States has repeatedly recognized the significance of the treaty right to fish at off-reservation usual and accustomed places, holding that the right is “not much less necessary to the existence of the Indians than the atmosphere they breathed.”

Washington v. Washington State Comm'l Pass. Fishing Vessel, 443 U.S. 658, 680, 99 S. Ct. 3055, 3071-3072 (1978), *quoting United States v. Winans*, 198 U.S. 371, 380 (1905). This treaty right to fish is a property right, protected by the Fifth Amendment to the Constitution of the United States. *See Muckleshoot Indian Tribe v. United States Corps of Engineers*, 698 F.Supp. 1504, 1510 (W.D. Wash. 1988), *citing Menominee Tribe of Indians v. United States*, 391 U.S. 404, 411-412, 88 S.Ct. 1705, 1710-1711 (1968). The right to take fish includes a right to cross private property to access those areas, “imposing a servitude” upon the land. *Winans*, 198 U.S. at 381. Since 1968, the Umatilla Tribe has also protected these treaty rights as a plaintiff in *United States v. Oregon*, CV 68-513-KI, in the U.S. District Court for the District of Oregon.

The treaty fishing right carries with it an inherent right to protect the resource from despoliation from man-made acts. “[A] fundamental prerequisite to exercising the right to take fish is the existence of fish to be taken.” *United States v. Washington*, 506 F.Supp. 187, 203 (W.D. Wash. 1980). *See also, Washington v. Washington State Commercial Passenger Fishing*

Vessel Ass'n, 443 U.S. 658, 679 (1979) (Tribes with Treaty reserved fishing rights are entitled to something more tangible than “merely the chance...occasionally to dip their nets into the territorial waters.”) The ecosystem necessary to sustain the fish cannot be diminished, degraded or contaminated such that either the fish cannot survive, or that consuming the fish threatens human health. *United States v. Washington*, 2013 U.S. Dist. LEXIS 48850, 75 (W.D. Wash. Mar. 29, 2013)(State “impermissibly infringed” tribes’ treaty based fishing right in Washington by constructing culverts that “reduced the quantity of quality salmon habitat, prevented access to spawning ground, reduced salmon production...and diminished the number of salmon available for harvest.”) *See also, e.g., Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, 763 F.2d 1032, 1034-35 (9th Cir. 1985)(Tribe’s fishing right can be protected by enjoining ground water withdrawals that would destroy eggs before they could hatch).

B. The Umatilla Tribes Work to Protect and Restore the Fishery Resource

It is estimated that 11 to 16 million salmonids would historically return to the Columbia River to spawn each year. Anthropogenic changes to the river and exploitation of the resource reduced that number to approximately 900,000 by 1993. Thirteen different Columbia River Basin salmon or steelhead stocks are listed as either threatened or endangered under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* (“ESA”).

The Umatilla Tribe participates in numerous activities relating to the protection and restoration of both anadromous and resident fish stocks in the Columbia River Basin and the ecosystems on which they depend. The fisheries restoration and ecosystem work the Tribe pursues serves both the Tribe’s interest and the public interest. The Tribe’s dedication to these interests is reflected in the following representative sample of its efforts:

- Regular consultation and participation in ESA recovery planning processes and litigation relating to the NOAA Fisheries' administration of the ESA with respect to listed Chinook salmon, sockeye salmon and steelhead stocks;
- Restoration and recovery efforts detailed in the Columbia Basin Fish Accords;
- Implementation of the Federal Columbia River Power System 2008, 2010 and 2014 Biological Opinions ("BiOps") as a member of the Regional Implementation Oversight Group;
- Participation as a fish and wildlife manager in the development, amendment and implementation of the Fish and Wildlife Program under the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. § 839 *et seq.*. See *Northwest Resource Information Center v. Northwest Power Planning Council*, 35 F.3d 1371 (9th Cir. 1994);
- Member of the 15 Columbia Basin Tribes coalition that participated in the Columbia River Treaty Review process, including the Sovereign Review Team and Technical Review Team, that developed the Regional Recommendation to the U.S. Department of State on the future of the Columbia River Treaty and ecosystem function;
- Participation in a variety of committees and organizations dealing with issues related to the protection and rebuilding of salmon, steelhead, sturgeon and lamprey throughout the Columbia River Basin; and
- Development of fishing management regimes and plans, as well as artificial production management actions and plans, as a party since 1968 to *United States v. Oregon*, Civ. No. 68-513-KI (D. Or.).

The public and tribal interests served by the Tribe's efforts may be affected by the Project's impacts to the ecosystem and fishery resources, as discussed further below.

C. The Project will Negatively Impact the Umatilla Tribe's Interests

The Tribe participated in the earlier stages of this Project and related reviews. On December 18, 2013, the Tribe submitted scoping comments to EFSEC. In March, 2014, the Tribe entered into consultation with the U.S. Army Corps of Engineers regarding Tesoro Savage's permit application for dock work at the Port of Vancouver, which is needed for the Project to go forward. On December 1, 2014, the Tribe submitted comments to the Washington Department of Ecology on the Washington State Marine and Rail Oil Transportation Study

Preliminary Findings and Recommendations. The Tribe's concerns in each of these proceedings focus on impacts to the ecosystem and fishery resource from Terminal and shipping operations; and impacts to the ecosystem, fishery resource, fishing areas and access, and tribal member safety from increased crude oil train traffic.

1. Operations at the Terminal and shipping oil through the Columbia River will harm the Tribe's interests.

The proposed terminal will be located on the Columbia River just upstream from the Columbia River estuary ("Estuary") and in the migration corridor for salmon, steelhead, lamprey and other fish species. Routine operations at the terminal would release harmful gases and vapors, noise and light pollution, local increased train and vessel traffic and other harms to the immediate community.

The section of the Columbia River at the proposed terminal location is designated as Critical Habitat for ESA-listed salmon and steelhead populations. It is so designated because every ESA-listed salmon emerging from the gravel upstream migrates through this section as juveniles on the way to the ocean, and as an adult when it returns to spawn. These fish also travel through, and reside in while undergoing the transition from freshwater to ocean environments, the Estuary.

The Estuary is critical to the health, survival and propagation of all Columbia River salmonid species, including those listed under the ESA. Maintaining and enhancing estuary biological functions is a crucial component of NOAA Fisheries' BiOps for the FCRPS. The Estuary is an "Estuary of National Significance" designated under the Clean Water Act's National Estuary Program.¹ The Columbia River—including the Estuary—is also one of seven

¹ U.S. Environmental Protection Agency (EPA), National Estuary Program in Region 10, <http://yosemite.epa.gov/r10/ecocomm.nsf/6da048b9966d22518825662d00729a35/c7a2ab5e252f>

Priority Large Aquatic Ecosystems designated by the U.S. Environmental Protection Agency (EPA).² It is an “ecologically critical area” (40 C.F.R. § 1508.27(b)(3)) essential to the survival of juvenile salmon and steelhead, waterfowl, and many other species.³ Substantial public and private investment over many years is attempting to protect, maintain and restore the Estuary, including numerous wetland and riparian projects. Many studies highlight the Estuary as vitally important for juvenile salmonid rearing and recovery of ESA-listed fish.⁴ Tribal fisheries are based on fish that in turn rely on the health of the Estuary. For the Tribe, protecting and restoring the Estuary is a paramount priority.

The construction and operation of the Terminal pose threats to the ESA-listed and non-listed species that travel through the lower River and Estuary, species that are also Treaty-protected resources. The daily travel of Panamax vessels laden with crude oil through this critical area is certain to increase the incidence of wake-stranding of juvenile salmonids and lamprey in the lower Columbia River adjacent to the shipping channel. Wake action from the Panamax vessels may also degrade low-lying wetlands and other ecologically critical areas in the Estuary. These same Panamax vessels may cause ecological damage through cooling water discharges (thermal pollution). They may also introduce and disperse invasive species into the Columbia River estuary and river either in ballast water, or attached to the ships themselves. The

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² EPA, *Columbia River Basin: State of the River Report for Toxics* (Jan. 2009), http://www2.epa.gov/sites/production/files/documents/columbia_state_of_the_river_report_jan2009.pdf.

³ NMFS, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011); Fresh *et al.*, *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (2005); 78 Fed. Reg. 2,726 (Jan. 14, 2013) (*Proposed Critical Habitat Designation for Lower Columbia Coho Salmon*).

⁴ NMFS, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011); Fresh *et al.*, *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (2005); 78 Fed. Reg. 2,726 (Jan. 14, 2013) (*Proposed Critical Habitat Designation for Lower Columbia Coho Salmon*).

possibility of accidents and releases of crude oil to the water will also increase, especially with increased traffic around the dangerous Columbia River Bar at the mouth of the Columbia River.

All of these impacts have the potential, individually and cumulatively, to reduce the quantity of quality aquatic habitat, reduce the numbers of fish that reach spawning grounds, reduce salmon production and diminish the number of salmon available for tribal harvest. And these are only the potential impacts to tribal interests from operations at the Terminal and downstream to the mouth of the Columbia River.

2. Impacts from increased crude oil-by-rail traffic will harm Tribal interests.

The increased railroad traffic along the Columbia River will impair the Tribe's interests in the following ways: damage to treaty resources and the ecosystems they depend on, eradication of tribal fishing areas, impeded access to tribal fishing areas and increased risks to tribal member safety, and damage and access to cultural resources. These harms are present whether the crude travels in the old DOT-111 cars or newer tank cars.

a. The ecosystem and treaty resources will suffer catastrophic damage from accidents and spills.

The Project would result in a tremendous increase shipment of crude oil cars traveling in the Columbia River Gorge and adjacent to the Columbia River, where many tribal fishing areas are located. There will be up to four unit trains daily, each with 100 or more tank cars. Oil train derailments, shipping spills, and fire and explosions from those derailments are a certainty. This is evident from the cascade of derailments across the United States and Canada reported in the media. For example, on February 17, 2015, a town in West Virginia suffered the derailment of a unit train of more than 100 oil tank cars carrying Bakken crude. Fourteen of the tankers ignited in an explosion, and at least one went into the Kanawha River. Hundreds of families were evacuated, and two downstream water treatment plants were closed. Photos of the explosion and

subsequent tour of the scene as reported by the Boston Globe and Newsweek are below.

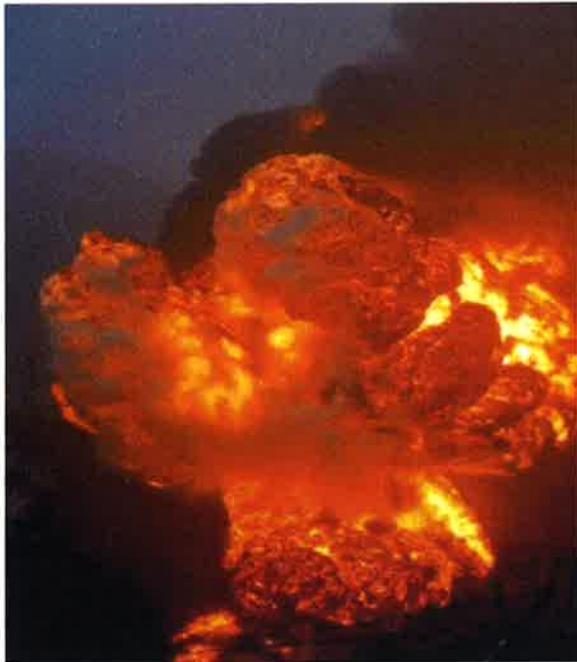


Photo caption: "Steve Keenan/The Register-Herald via Associated Press."

John Raby, *Oil-bearing train derails in West Virginia, setting off explosion*, The Boston Globe, February 17, 2015, at

<http://www.bostonglobe.com/news/nation/2015/02/17/west-virginia-train-derailment-causes-oil-spill-and-fires/opo6XRXLUV0URv8EiDSYQJ/story.html>



Photo caption: West Virginia Governor Earl Ray Tomblin surveyed the wreck site on February 17. "Many of the tanks had gaping holes in the tops where they had exploded," he tells Newsweek. Office of Governor Earl Ray Tomblin.

Max Kutner, *West Virginia Begins Investigating Massive Train Derailment*, Newsweek, February 20, 2015, at <http://www.newsweek.com/west-virginia-begins-investigating-massive-train-derailment-308428>.

The day before, February 16, witnessed the derailment and spill of more than 260,000 gallons of crude oil near Timmons, Ontario. The photograph below, from the Transportation Safety Board of Canada, shows workers fighting the oil spill fire.



Photo caption: “In this Feb. 16, 2015, file photo, provided by the Transportation Safety Board of Canada, workers fight a fire after a crude oil train derailment south of Timmons, Ontario. The train derailment this month suggests new safety requirements for tank cars carrying flammable liquids are inadequate, Canada’s transport safety board (sic) announced Monday, Feb. 23, 2105.”

Rob Gillies, *Canada safety board says latest oil train derailment shows new safety standards are inadequate*, U.S. News, February 23, 2105, at

<http://www.usnews.com/news/world/articles/2015/02/23/canada-oil-train-accident-shows-new->

safety-rules-inadequate.

While the U.S. Department of Transportation is considering new standards for rail cars, newly built tanks cars do not appear to reduce the risk of accidents and spills as “both the West Virginia accident and the oil train derailment and fire in Ontario involved recently built tank cars that were supposed to be an improvement,” but the Canadian Transportation Safety Board said these new cars still “performed similarly” to the older models. *Id.* It is an unfortunate reality that “[t]he number of gallons spilled in the United States in [2013], federal records show, far outpaced the total amount spilled by railroads from 1975 to 2012.” Clifford Kraus and Jad Mouawad, *Accidents Surge as Oil Industry Takes the Train*, N.Y. Times, Jan. 26, 2014, at A1, and <http://www.nytimes.com/2014/01/26/business/energy-environment/accidents-surge-as-oil-industry-takes-the-train.html>. If the Project goes forward, it is only a matter of time before a similar accident brings ecological catastrophe to the Columbia River, devastating the fishery and other resources the Umatilla Tribe depends on and has worked so hard to protect and restore.

A derailment and spill along the Columbia River will not only be tragic for the resource, it will also work immeasurable hardships on the many tribal members that depend on the Columbia River and its riches for their living. It will likely eradicate productive fishing areas in the immediate area of the spill, and the consequences will be along the entire River, as a spill could wipe out stocks of salmon and steelhead that are already listed under the ESA, erasing the many years and billions of dollars of effort that has gone into restoring the resource.

b. Increased rail traffic will inhibit access to fishing areas and endanger tribal members.

On both sides of the Columbia River, tribal members cross train tracks multiple times on a daily basis to exercise their treaty fishing rights. Tribal members use the Treaty Fishing Access

Sites developed pursuant to Public Law 100-581, fifteen of which are accessed by grade level railroad crossings. Tribal members also use the In-Lieu Fishing sites developed pursuant to Public Law 79-14. It is not uncommon for tribal members to need to cross the tracks at other places along the river.

Multiple unit trains that are 100 or more cars long will delay tribal members' ability to access fishing sites at crossings. Such delays become acute during adverse or impending weather, when members must sometimes get to their nets in the water as quickly as possible.

The increase in rail traffic will also increase the incidence of tribal members stuck by rail cars. Tribal members are at risk of rail-strikes when crossing the tracks to access fishing sites, In-Lieu sites, Treaty Fishing Access Sites, homes and markets for the sale of harvested fish. Recently, on February 21, 2015, a man was killed by train strike near Kalama, WA.

<http://www.khq.com/story/28168097/railroad-man-on-track-dies-after-being-struck-by-train>.

According to railroad statistics, more than 30 persons were killed by train strikes across Washington State in 2013 and 2014. *Id.* The likelihood of train-strike fatalities, injuries and property damage will increase from the new mile-long unit crude oil trains that would result from the Project.

c. Increased rail traffic will damage cultural and religious tribal interests.

The crude oil rail traffic will affect properties and items governed and protected by the National Historic Preservation Act, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act and other laws. The transit corridor passes through tribal trust and traditional use areas. There are ancestral human remains, traditional cultural properties, historic properties of religious and cultural significance to Indian Tribes, and archaeological resources and sites in these areas. Any accidents, spills, explosions and related

fires can damage these properties and items, and cause irreversible loss. Similarly, the increased traffic could result in increased risks of earthquake, liquefaction, or landslide, rail caused fires (without derailment), oil leakage onto tracks and sites, all of which could damage cultural and religious resources.

D. The Umatilla Tribe's Preliminary List of Issues for Adjudication No. 15-001

The Umatilla Tribe has an interest in this proceeding based on the legally-protectable interests in fish that travel through the Estuary and the Tribe's fishing places on the Columbia River and their ecosystems, in access to these fish, in safety risks to tribal members, and in risks to cultural and religious resources.

The Umatilla Tribe asks to be allowed to participate with respect to all issues before EFSEC. This is primarily because a State Environmental Policy Act draft environmental impact statement ("DEIS") has not been completed as of the date of this filing. Until the DEIS is released, it is not possible to list all concerns that the Tribe may have. Accordingly, the Tribe submits the following preliminary list of issues:

- Whether public health and safety risk concerns from explosions or fires resulting from the transloading and/or shipment of fossil fuels are adequately addressed;
- Whether toxic water pollution from operations that could harm fish resources, and human health and safety through consumption of contaminated fish are adequately addressed ;
- Whether the impacts of vessel traffic and/or potential spills that may destroy, degrade or otherwise adversely affect significant scientific, cultural, or historical resources in the Columbia River estuary are adequately addressed;
- Whether impacts on plants, fish, wildlife, and their habitat, including any threatened, endangered, and sensitive species, are adequately evaluated and addressed.
- Whether impacts to Pacific lamprey, sturgeon, freshwater mussels and their habitat, all of which are trust resources of the Tribe, are adequately addressed;
- Whether impacts of wake stranding on juvenile salmonids and other fish resources are adequately addressed;

- Whether impacts of wake action on low-lying wetlands and other ecologically critical areas in the Columbia River estuary are adequately addressed;
- Whether impacts of fish entrainment into ship cooling and ballast systems are adequately addressed;
- Whether impacts of cooling water discharges (thermal pollution) from Panamax and other vessels, and from on-shore operations related to fossil fuels shipping and processing are adequately addressed;
- Whether increased transport and dispersal of invasive species into the Columbia River estuary in ballast water and attached to ships are adequately addressed;
- Whether impacts on air quality from diesel and other air emissions from vessels, trains, and on-shore operations related to fossil fuels shipping and processing are adequately addressed;
- Whether the increased risks of crude oil fires and explosions due to increased volume of crude oil proposed to be shipped are adequately addressed;
- Whether the increased risk of spill in the Columbia River and estuary due to the hazardous conditions of the Columbia River Bar are adequately addressed;
- Whether the necessary emergency responder resources in the event of spill, explosion, fire or other damage to the environment are in place and assured has been evaluated and adequately addressed;
- Whether the necessary emergency responder resources in the event of personal injury or fatality or property damage due to train strike are in place and assured has been evaluated and adequately addressed;
- Whether the impacts of global warming and ocean acidification due to burning and extraction of fossil fuels are adequately addressed;
- Whether the project and the EFSEC process are consistent with applicable laws and regulations, including but not limited to the Energy Facilities-Site Locations Act, the Columbia River Gorge National Scenic Area Act, the State Environmental Policy Act, the National Environmental Policy Act, the Clean Water Act, the Clean Air Act, the Endangered Species Act, energy siting laws and regulations, and all local, state, and federal laws and regulations related to water quantity, water quality, air quality, solid and hazardous waste, spills, wetlands, forest practices, and wildlife;
- Whether all of the project's potential impacts to the environment and human health, including direct, indirect, and cumulative impacts, are adequately evaluated and addressed;

- Whether soil impacts (e.g., erosion, stability, productivity), water quality, and air quality impacts are adequately evaluated and addressed;
- Whether geological concerns such as earthquake susceptibility, liquefaction, and landslides are adequately evaluated and addressed;
- Whether noise impacts to surrounding communities and wildlife are adequately evaluated and addressed;
- Any and all issues involving economic impacts and benefits of the project, including impacts to tribal members, agriculture, tourism, and rail freight capacity, and any issues involving the economic viability of the project;
- Whether the types of crude oil shipped and their unique properties for health risks, spill clean-up, and climate impacts are adequately evaluated and addressed;
- Whether all global warming impacts from transportation, refining, and combustion of the oil are adequately evaluated and addressed;
- Whether the impacts from construction, modification, and use of roads and rail lines are adequately evaluated and addressed;
- Whether the impacts from the construction phase of the project are adequately evaluated and addressed, including whether the project has adequately planned for site restoration of the project area;
- Whether the project has adequately planned for decommissioning of the facility in the event of a financial misfortune, natural disaster, and/or the conclusion of the project's life cycle;
- Any and all issues listed in the State Environmental Policy Act Scoping Report, the Draft Environmental Impact Statement, and the Final Environmental Impact Statement.

The Umatilla Tribe also has an interest in all procedural matters that may arise during the adjudicatory process. The Tribe reserves the right to raise and/or address any issue identified by any of the other participants in this matter.

IV. THE UMATILLA TRIBE'S INTERESTS WILL BE IMPAIRED AND IMPEDED IF THIS PETITION FOR INTERVENTION IS NOT GRANTED

The Umatilla Tribe's interests would be impaired if it is not allowed to intervene. In

order to make all of the Umatilla Tribe's necessary arguments to protect the Tribe's interests, a party must be able to know and understand the Umatilla Tribe's history, perception and practice of tribal fishing in the Columbia River over the generations since 1855. No party to this proceeding shares the Umatilla Tribe's unique perspective and knowledge developed from not only exercising, but also defending these rights over the past 160 years. Further, even if a party was able to know all of the Tribe's understandings regarding fishing in the Columbia River, it is less than certain that it has either the capability or the willingness to make all the appropriate and required arguments. This is because the other parties' broader interests in the Columbia River Basin sometimes, understandably, diverge from the interests advanced by the Umatilla Tribe. It is also likely that the Tribe may have different perspectives on some of the facts, facts which may be significant to effectively deliver the legal arguments. The Umatilla Tribe should be permitted to participate as a party to share and convey its unique position as a sovereign in defense of its legally recognized and protected treaty rights and interests.

V. NATURE OF PARTICIPATION REQUESTED

A. Full Participation Requested

The Umatilla Tribe requests to be heard in these proceedings and to be afforded the right to participate in these proceedings to the full extent authorized by EFSEC rules. The Tribe's request includes, but is not limited to, the right to have notice and appear at any and all prehearings, hearings, or proceedings, to participate in discovery, to produce evidence and cross-examine witnesses, to be heard through counsel by written and oral argument, to participate in settlement or alternative dispute resolution, to be served as a party with copies of all pleadings and other materials filed with EFSEC, and to participate in any other way as may be appropriate.

B. No Prejudice or Disruption from Participation

The Umatilla Tribe's participation in these proceedings will not prejudice any party to

these proceedings, nor will it unduly delay or disrupt the Council's ability to conduct this proceeding in an orderly fashion. Instead, the Tribe's participation in the proceeding will provide its sovereign expertise and information about the Project and its potential natural resource, environmental, safety, cultural, religious and health impacts that will assist EFSEC in its evaluation and ultimate recommendation. In accordance with EFSEC's preference that parties present evidence and argument to avoid duplication, counsel for the Tribe will strive to coordinate its evidence and argument with other tribal sovereigns or entities that possess or work to protect treaty rights in the Columbia River that may be granted intervention in this proceeding.

Respectfully submitted this 27th day of February, 2015.



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*Attorneys for Confederated Tribes of the Umatilla
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VERIFICATION

STATE OF OREGON)
)
COUNTY OF MULTNOMAH)

I, N. Kathryn Brigham, being first duly sworn on oath, depose and say:

I am the Chairwoman of the Fish and Wildlife Commission and Secretary of the Board of Trustees of the Petitioner Confederated Tribes of the Umatilla Indian Reservation and am authorized to make this Verification on Petitioner's behalf. I have reviewed the foregoing Petition for Intervention, know the contents thereof, and believe the same to be true.

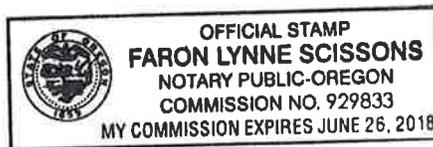
Signed at Portland, Oregon on February 27, 2015.



N. Kathryn Brigham
Chairwoman
Fish and Wildlife Commission

Secretary
Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation

SUSBSCRIBED AND SWORN TO before me this 27th day of February, 2015, by


Notary Public – State of Oregon

CERTIFICATE OF SERVICE

I certify that on Friday, February 27, 2015, I served or caused to be served, by email a true and complete copy of the foregoing PETITION TO INTERVENE on all parties or their counsel of record as follows:

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