

**BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of  
Application No. 2009-1

WHISTLING RIDGE ENERGY LLC

WHISTLING RIDGE ENERGY  
PROJECT

**EXHIBIT NO. 1-37.00**

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION PREFILED TESTIMONY

WITNESS #1: JESSICA LALLY

Q Please state your name and address.

A My name is Jessica Lally, and my address is P.O. Box 151, Toppenish, Washington 98948.

Q What is your present occupation, and what are your responsibilities?

A I am an archaeologist for the Yakama Nation's Cultural Resources Program, an arm of the Tribal Government established by Tribal Resolution. The Cultural Resources Program reviews and provides initial consultation on projects within the Ceded Lands as well as the Usual and Accustomed Areas of the Yakama Nation. The Cultural Resources Program, under contract, conducts archaeological and cultural surveys of proposed developments. Staff completes such surveys in teams of two or more, consisting of both an Archaeologist and a Cultural Specialist.

Q Under what authority does the Cultural Resources Program operate?

A The Cultural Resources Program is an arm of the Tribal Government, established by Tribal Resolution T-66-84. We receive our directives regarding the treatment of cultural sites by way of tribal polices set out in Tribal Resolutions including T-92-87. These policies dictate a preference toward protection in place and avoidance of cultural sites.

Q Could you briefly describe your work history and qualifications?

A I have been working as an archaeologist for the Yakama Nation Cultural Resources Program since 2008. I have a Bachelor of Science in law, with a minor in anthropology and a master's

degree in Cultural Resources Management from Central Washington University. My education qualifies me to work as an archaeologist in the state of Washington under the Secretary of the Interior's Standards for a professional archaeologist. My time with the Yakama Nation has supplemented my academic education by providing insight into the sensitive issues surrounding resource management for a federally recognized Tribe. Prior to my obtaining my master's degree I worked in public safety.

Q What was the purpose of the cultural survey conducted within the project area and what were your responsibilities within the scope of the project?

A The purpose of the cultural survey was to provide the applicant information regarding the presence of culturally important resources and sites within the project area. My duties on this project were to document a cultural survey of the project area, utilizing the testimony of Cultural Resources Program Cultural Specialist Jo Anna Meninick and Cultural Resources Program Manager, Johnson Meninick to compile my report. In addition to the survey, I provided comment when invited by EFSEC and the BPA during this process.

Q Prior to the submission of your final report, did the applicant express a desire to work with Yakama Nation regarding any cultural concerns?

A Yes.

Q Did the applicant enter into a contract with the Yakama Nation Cultural Resources Program for the completion of the survey and associated report?

A Yes.

Q Can you briefly summarize the results of the Cultural Resources Program's cultural survey?

A Cultural Resources Program staff conducted a site visit in December 2009. As a result of that site visit, and based upon the information provided by our Cultural Specialists, Chemawa Hill was identified as a culturally important place. Interviews with Cultural Resources Program Program Manager, and Yakama Nation elder, Johnson Meninick also identified the hill as an important place, specifically a Traditional Cultural Property (TCP), as indicated in my original report. Yakama Nation Cultural Resources Program's recommended avoidance of this hill and/or the establishment of buffered areas on the hill to protect the integrity of the site.

Q Has your report been submitted to EFSEC, the BPA, or the applicant?

A My report was submitted to EFSEC, the BPA, and the Applicant. It was not made part of the public record due to the sensitive information contained therein.

Q Has your report been submitted to the Department of Archaeology and Historic Preservation (DAHP), and if so, what was their response?

A Yes, we shared our report with DAHP and they provided comments to EFSEC on February 2, 2010. DAHPs statements included information regarding proper consultation with the affected tribes as well as a directive for EFSEC to take into consideration the project's impacts to Chemawa Hill, the cultural resource identified by the Cultural Resources Program.

Q Was the applicant responsive to the recommendations and directives issued in the December 2009 report?

A No. Prior to the issuance of the DEIS the applicant did not contact the Cultural Resources Program to discuss the recommended buffered areas that would both protect the cultural site, and allow his project to move forward. Since Yakama Nation's involvement in this intervention, however, the applicant has contacted and met with members of the Yakama Nation Tribal Council. He has recently offered to meet with Johnson Meninick as well. At the time he offered a meeting with Mr. Meninick we could not meet with him as we needed direction from our policy and decision makers.

It is my understanding from statements the applicant has made in my presence that he will not consider reaching a compromise regarding the Chemawa Hill turbines. However, there seems to be a potential agreement over the placement of the Chemawa Hill turbines. Yakama Nation is hoping that by the commencement of the hearings in January, an understanding can be met.

Q Has the Cultural Resources Program been paid according to the contract between SDS lumber and Cultural Resources Program?

A No, to my knowledge we have not been paid as agreed.

Q Where your concerns addressed in the DEIS?

A No.

Q Is it at all unusual for the Yakama Nation Cultural Resources Program, an arm of the Tribal Government, to contract directly with a developer?

A No. Yakama Nation contracts with developers and provides information to those developers who are willing to work with Yakama Nation in avoiding culturally important places. However, while working with the developer, the Yakama Nation Cultural Resources Program pursues consultation with government agencies. We never cede our right to government-to-government consultation pursuant to the Treaty of 1855.

Q What is the stance of the Yakama Nation Tribal Government regarding placement of turbines on Chemawa Hill?

A The Yakama Nation Cultural Resources Program has an official directive from the Tribal Council Roads, Irrigation, and Lands Committee to participate in negotiation of the placement of turbines on Chemawa Hill.

Q Is this directive in accordance with the Cultural Resources Program's original directives, or does it represent a break from your original stance reported in the December 2009 document?

A This directive is in accordance with our original report, which preferred avoidance, but also recommended the negotiation of buffered areas if full avoidance was impossible.

Q What measures would be required to protect the TCP identified at Chemawa Hill?

A If full avoidance of the site is an impossibility, negotiations regarding turbine placement and/or the placement of buffers needs to occur to ensure that the culturally sensitive features of the sites are avoided.

Q Does the Yakama Nation Cultural Resources Program have other concerns with the implementation of this project?

A Yes. The Yakama Nation Cultural Resources Program has concerns regarding the impacts to resources such as wildlife and habitat, both of which contain cultural value. The Yakama Nation Cultural Resources Program is also concerned that Tribal consultation be conducted in a correct manner, in accordance with law and a manner respectful of the sovereign status of the Yakama Nation. We are further concerned with the BPAs determined area of potential effect and submitted comment to them explaining our reasons. We have not heard back from the BPA regarding our concerns.

Q Was consultation regarding the Project correctly conducted?

A The Yakama Nation Cultural Resources Program was contacted by both EFSEC and the BPA, who requested comment. Early correspondence from EFSEC however, incorrectly listed the testimony of Wilbur Slockish and Johnny Jackson as tribal consultation. While Mr. Slockish and Mr. Jackson's comments are welcome, they are not representative of the Tribal Government. EFSEC was incorrect to consider their comments consultation under the law. While the Yakama Nation Cultural Resources Program was granted a petition to intervene, we had to go to great lengths to justify our position as that of the Tribal Government.