



Confederated Tribes and Bands of the Yakama Nation  
Established by the Treaty of June 9, 1855

Post Office Box 151  
Toppenish Washington 98948

TO: Yakama Nation Culture Committee  
FROM: Johnson Meninick, Cultural Resources Program Manager

July 31, 2009

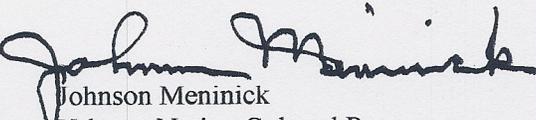
RE: REQUEST FOR REVIEW AND CONCURRANEC  
WITH PETITION TO INERVENE

Dear Members of the Culture Committee,

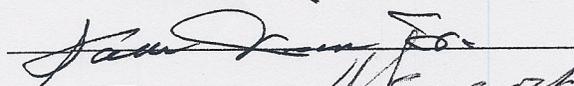
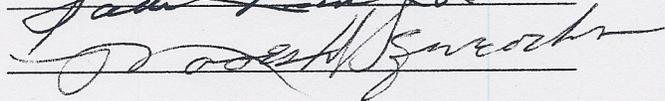
The Yakama Nation Cultural Resources Program deems it necessary to file a Petition to intervene in the Whistling Ridge Energy Project, currently under review with the Energy Facility Site Evaluation Council (EFSEC). EFSEC's acceptance of our Petition is of utmost importance to the protection of the Yakama Nation cultural resources and values. We respectfully request your review and concurrence with the attached Petition.

We additionally request that correspondence regarding this matter be hereafter conducted through the Yakama Nation Culture Committee.

Thank you,

  
Johnson Meninick  
Yakama Nation Cultural Resources  
Program Manager  
509-865-5121 ext. 4737

Those in agreement have signed as indicated below:

Sam Jim, Sr., YN Tribal Council  
Secretary of Culture Committee

Moses Squeochs, YN General Council  
Chairman

RECEIVED

AUG 10 2009

ENERGY FACILITY SITE  
EVALUATION COUNCIL

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of  
Application No. 2009-01

WHISTLING RIDGE ENERGY, LLC

**YAKAMA NATION CULTURAL  
RESOURCES PROGRAM'S PETITION  
TO INTERVENE**

WHISTLING RIDGE ENERGY PROJECT

**RECEIVED**

AUG 10 2009

**I. INTRODUCTION**

**ENERGY FACILITY SITE  
EVALUATION COUNCIL**

The Confederated Tribes and Bands of the Yakama Nation Cultural Resources Program (Yakama Nation CRP) files this Petition to Intervene pursuant to RCW 34.05.443 and WAC 436-30-091, and the notice of the Opportunity to Intervene, dated June 23, 2009. The Yakama Nation CRP's interest pertains to the Petition to Intervene submitted by Wilbur Slockish and Johnny Jackson who claim to be representatives of the Yakama Nation and chiefs of the Klickitat and Cascades Tribes. This claim is problematic in that the Yakama Nation does not recognize individuals as chiefs, but rather, has a Tribal Government system established by the Treaty of 1855 (12 Stat. 951). The Tribal Government system is operated by way of Tribal Council, consisting of 14 officials who are elected by the people as representative of the Fourteen Tribes and Bands of the Yakama Nation. This governmental system has the authority to represent the Yakama Nation as a whole, having the authority to delegate responsibility to Tribal programs created by Tribal Resolution.

Wilbur Slockish and Johnny Jackson have no proof that they have been delegated authority by the Tribal Governing body, with which Tribal consultation is lawful. The Yakama Nation CRP was established as an official department of the Tribal Government through Tribal Resolution T-66-84, and

thereby given the authority to comment on cultural resource concerns on behalf of the Yakama Nation. Therefore, we request that our commentary, a scoping letter response provided in March of 2009, be considered the official stance and authoritative directives of the Confederated Tribes and Bands of the Yakama Nation.

## II. PETITIONER AND STATEMENT OF INTEREST

In accordance with WAC 463-30-091, we hereby identify the petitioner and establish an ~~interest held by the petitioner, for whom the ability to protect such interests may be impaired or~~ impeded.

### A. The Petitioner

The petitioner is the Confederated Tribes and Bands of the Yakama Nation CRP, which was established by way of Yakama Nation Tribal Resolution T-66-84 to protect cultural resources under the American Indian Religious Freedom Act of 1978 (AIRFA) and to uphold the governmental duties of consultation with outside agencies, as required by the National Environmental Protection Act of 1969 (NEPA), the National Historic Preservation Act of 1966 (NHPA) Section 106, the Governor's Executive Order 05-05 (EO 05-05), and the Washington State Environmental Protection Act of 1971 (SEPA). The Yakama Nation CRP conducts consultation on natural and cultural resources as required under Yakama Nation protocol and policies, as established by the Confederated Tribes and Bands of the Yakama Nation Treaty of 1855 (12 Stat. 951), the Supreme Law of the Land recognized by the United States Congress and the Department of Justices.

Contact Information for the Yakama Nation Cultural Resources Program is as follows:

Johnson Meninick  
Cultural Resources Program Manager  
Confederated Tribes and Bands of the Yakama Nation  
P.O. Box 151  
Toppenish, Washington 98948  
509-865-5121 ext. 4737

## B. Statement of Interest

### 1. Yakama Nation CRP Authority and Duties as Directed by Tribal Resolution and the Treaty of 1855

Yakama Nation Tribal Resolution T-66-84 is the resolution from which the Yakama Nation Cultural Resources Program was charged with a duty to protect cultural resources on behalf of the Fourteen Tribes and Bands of the Yakama Nation. The resolution established a Culture Committee, charged with the preservation, protection, and perpetuation of Yakama Nation cultural resources. Tribal Resolution T-66-84 defines the duty of the Culture Committee as follows:

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“The Culture Committee is established for the purposes of locating, preserving, and protecting places, objects, and knowledge of importance to our culture and heritage in particular identification and preservation of places having significant cultural value, including but not limited to the Ceded area and all usual and accustomed places” (T-66-84).

In order to carry out this charge, the Culture Committee was tasked with the establishment, oversight, and guidance of a Cultural Resources Program (CRP). The intent for the CRP was to be a program that “is reflective of our cultural heritage and values,” is integrated with other Tribal and Bureau of Indian Affairs programs, and supports the laws pertaining to cultural resources (T-66-84).

In fulfillment of the CRP’s duties with which it was charged under T-66-84, and on behalf of the Fourteen Tribes and Bands of the Yakama Nation, the CRP is tasked with protection of resources under AIRFA, as well as government-to-government consultation under both state and federal laws, including the consultation under NEPA, NHPA Section 106, SEPA, and EO 05-05 compliance. In this manner, the Yakama Nation CRP is the official Tribal Government department to consult on all matters pertaining to cultural resources as they pertain to compliance with state and federal laws. The program was specifically tasked with this responsibility, under the supervision of the Culture Committee, and the Yakama Nation Tribal Council, who act as the Tribal decision makers, representing the direct interest and elected voice of Fourteen Tribes and Bands of the Yakama Nation.

The Confederated Tribes and Bands of the Yakama Nation Treaty of 1855 formally established the government-to-government relationship between the United States Government and the

Confederated Tribes and Bands of the Yakama Nation. In honor of the sovereignty of the Yakama Nation, and the relationship established in the Treaty of 1855, federal and state law require all consultation be on a government-to-government basis. Failure to conduct consultation in the manner is a direct departure from state and federal law, as well as failure to acknowledge the legal authority of the Yakama Nation as established by the Treaty of 1855.

## **2. The Yakama Nation CRP Interest in the Whistling Ridge Energy Project**

As mandated by Tribal Resolution T-66-84, and in compliance with federal and state laws ~~previously described above, the Yakama Nation CRP has a responsibility to participate in, and provide~~ commentary to the inquiry initiated by the Bonneville Power Administration (BPA) of behalf of Whistling Ridge Energy, LLC. The Whistling Ridge Energy Project is located within the Ceded Lands of the Yakama Nation the legal rights to which were established by the Treaty of 1855, between the Yakama Nation and the United States Government. The Treaty set forth that Yakama Nation shall retain the rights to resources upon these lands and, therefore, it is with the assistance and backing of the United States Federal Government that Yakama Nation claims authority to protect traditional resources.

In March of 2009, the Yakama Nation CRP responded to the scoping inquiry submitted by the BPA on behalf of Whistling Ridge Energy, LLC. The statement issued by the Yakama Nation CRP outlined specific concerns identified by staff specially trained and possessing inherent knowledge concerning the identification and proper treatment of archaeological and cultural resource sites. The CRP has both Cultural Resource Specialist staff, with expertise in the cultural values and lifeways of the Yakama People, and archaeological staff, who meeting the Secretary of the Interiors standards for a professional archaeologist.

Using this combined expertise, the Yakama Nation CRP identified several concerns with the Whistling Ridge Energy Project site and requested that the company conduct the following measures to insure that cultural and natural resources are protected: 1.) archaeological survey, that includes cultural values and Yakama Nation perspective and includes more than eligibility under National

Register of Historic Places (NRHP) Criterion D, 2.) mitigation measures appropriate for the resources and not limited to data recovery, and 3.) a survey by Yakama Nation Cultural Specialists to identify Traditional Cultural Properties. The Yakama Nation CRP has since grown concerned with the effect this project may have on traditional vegetation, aesthetics, big-game animals, bats, and the avian populations of the area, all of which have deep ancestral ties and cultural meaning to the living members of the Yakama Nation.

The Yakama Nation CRP responded with the above stated concerns after inquiry was initiated by the BPA. The response was intended to be the official stance and directives of the Confederated Tribes and Bands of the Yakama Nation CRP, in the manner and authority delegated our agency by the Yakama Nation Tribal Government as well as state and federal law. However, the Yakama Nation CRP has since been informed and reviewed the petition filed by Wilbur Slockish, Jr. and Johnny Jackson, regarding their dismissal of our concerns. Whistling Ridge Energy, LLC and the Energy Facility Site Evaluation Council (EFSEC) must understand that Mr. Slockish and Mr. Jackson are not associated with the Yakama Nation CRP and have no official Tribal Government-sanctioned authority. In no way, do their comments speak for the Tribe, and in no way does consultation with them fulfill the state and federal mandate for government-to-government consultation with the Confederated Tribes and Bands of the Yakama Nation. To accept their commentary as official commentary from the Yakama Nation is a direct departure from state and federal law, as well as failure to acknowledge the authority of the Yakama Nation as established by the Treaty of 1855.

### **C. Yakama Nation Requests Intervention**

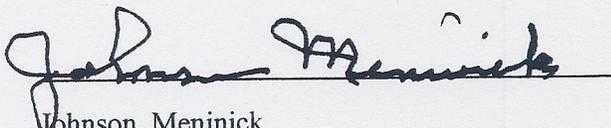
This petition for intervention is necessary to protect the interest and authority of the Yakama Nation CRP, who has been given the authority, as an arm of Tribal Government, to protect the cultural resources of the Yakama Nation. It is imperative that Whistling Ridge Energy, LLC and EFSEC acknowledge the commentary provided by Yakama Nation CRP as the official stance and directives of the Tribe, understanding that through the Tribal Government Process, all of the Fourteen Confederated Tribes and Bands are represented in whole.

While Whistling Ridge Energy, LLC and EFSEC may choose to accept the commentary provided by Mr. Slockish and Mr. Jackson, it must be understood that they are simply interested parties, and not representatives of the Tribe who may issue directives and conduct consultation. We, therefore, request that Whistling Ridge Energy, LLC and EFSEC acknowledge the authority of the Yakama Nation CRP as a government entity by allowing our commentary to supersede and take precedence over that provided by Mr. Slockish and Mr. Jackson. Failure to do so will result in this matter being forward to Yakama Nation legal council and may result in the delay of this project. This ~~matter has also been brought to the attention of Culture Committee members, who will be included in~~ any correspondence hereafter.

### III. CONCLUSION

The Yakama Nation CRP requests that EFSEC grant this Petition to Intervene. EFSEC's acknowledgement and identification of the proper authorities and proper government bodies is crucial to the review process, adherence to law, and identification of resources in need of protection. We hope and pray to the Creator, that our request will be honored.

RESPECTFULLY SUBMITTED, July 30, 2009



Johnson, Meninick  
Cultural Resources Program Manager  
Confederated Tribes and Bands of the Yakama Nation