4.0 ENVIRONMENTAL CONSULTATION, REVIEW, AND PERMITTING REQUIREMENTS

This chapter addresses federal and Washington state statutes, implementing regulations, and Executive Orders requiring consultation, review, and/or permits or approvals, and discusses the applicability of these requirements to the proposed Project. This EIS is being sent to Tribes, federal agencies, and state and local governments as part of the consultation process for this Project.

Permits and approvals required for the Project construction and operation are listed in Table 4-1 and discussed in more detail in this chapter. Permits and approvals listed in Table 4-1 fall into seven categories: Site Certification Agreement (EFSEC), environmental (NEPA and SEPA), air-related permits, land use approvals, approvals related to the transmission interconnection, consultation, and other required permits. Agencies requiring permits or approvals include EFSEC, Skamania County, BPA, USFWS, National Marine Fisheries Services, Ecology, the Federal Aviation Administration, WSDOT, and WDFW.

4.1 NATIONAL AND STATE ENVIRONMENTAL POLICY ACT

This Draft EIS was prepared jointly by EFSEC and BPA to fulfill the requirements of both Washington's SEPA (43.21C RCW) and NEPA (42 USC 4321 et seq.). Both of these statutes require state and federal agencies, respectively, that are proposing to take action to assess, consider, and disclose the potential impacts of their proposed actions on the environment. Furthermore, the implementing regulations for both SEPA and NEPA both encourage coordination on combined state and federal actions. WAC 463-47-150 states that "[w]hen [EFSEC] is considering an action which also involves federal actions; it shall attempt to coordinate the two governmental processes so that only one environmental impact statement need be prepared for that proposal." In addition, 40 CFR 1506.2 encourages the preparation of joint state and federal environmental impact statements to aid in elimination of duplication with state and local procedures. EFSEC and BPA will consider the Project's potential environmental consequences and comments from agencies, Tribes, and the public when making decisions regarding the proposed Project.

4.2 ENDANGERED SPECIES ACT

The Endangered Species Act of 1973 (16 USC 1536) as amended in 1988, establishes a national program to conserve threatened and endangered species of fish, wildlife and plants, and to preserve the ecosystems on which they depend. The Act is administered by USFWS for wildlife and freshwater species, and by National Oceanic and Atmospheric Administration (NOAA) Fisheries for marine and anadromous species. It defines procedures for listing species, designating critical habitat for listed species, and preparing recovery plans and specifies prohibited actions and exceptions.

Table 4-1
Summary of Whistling Ridge Energy Project Permits and Approvals

Type of Permit/Approval	Permit or Requirement	Lead Agency	Comments
Site Certification Agreement	Site Certification Agreement	EFSEC	• Application filed March 10, 2009. • Amended Application filed October 12, 2009.
Environmental	SEPA Compliance/EIS	EFSEC	• Determination of Significance issued April 6, 2009.
Air-related permits	Temporary air permit for concrete batch plant	EFSEC/Ecology/Southwest Clean Air Agency	• EFSEC will coordinate with Southwest Clean Air Agency and Ecology as appropriate.
	Temporary air permit for rock crushing for roadways	EFSEC/Ecology/Southwest Clean Air Agency	• EFSEC will coordinate with Southwest Clean Air Agency and Ecology as appropriate.
Land use approvals	Certificate of Land Use Compliance	Skamania County	• In a letter to EFSEC dated May 4, 2009, Karen Witherspoon, Skamania County Community Development Department Director, found that the proposed Project is consistent with Skamania County Code Title 21 Zoning Code, 21A Critical Areas, Title 24 Clearing and Grading, the Comprehensive Plan, and resource maps.
Approvals related to the transmission interconnection	Transmission Interconnection Agreement Record of Decision NEPA Compliance/EIS	BPA	• NEPA compliance via joint EFSEC/BPA EIS.
Consultation	Endangered Species Act Concurrence	USFWS/NOAA Fisheries	• Concurrence that the proposed action "may affect, but is not likely to adversely affect" ~~no impact on~~ listed species. • ~~Bald Eagle and Golden Eagle Protection Act~~
	Native American Consultation Traditional Cultural Properties Survey	BPA	• Yakama Indian Nation has prepared a Traditional Cultural Properties Report.
	Aviation Obstruction Zone	Federal Aviation Administration	• Concurrence that Project is not an obstacle to aviation.

Type of Permit/Approval	Permit or Requirement	Lead Agency	Comments
Other required permits	Construction Storm Water Discharge Permit	EFSEC/Ecology	• For construction activity that disturbs one acre or more and may result in a discharge of stormwater to surface waters of the state.
	Building Permits	EFSEC/Skamania County	• Construction of permanent buildings or additions to existing facilities.
	Clearing and Grading Permit	EFSEC/Skamania County	• For vegetation removal and earthwork associated with construction activities.
	Water Availability Verification Evaluation and Group B Public Water System Approval	EFSEC/Skamania County	• Developing new sources of potable water.
	On-site Septic System Site Evaluation and Design Review	EFSEC/Skamania Community Development	• Construction of a septic system for sanitary waste.
	Forest Practices Application	Washington Department of Natural Resources	• For harvesting timber and other activities related to timber harvest operations.
	Approval for Over Height and Over Length Loads on State Highways	WSDOT	• For hauling of turbine equipment.
	Industrial Water Well Approval	EFSEC/Ecology	• Notification of Intent to Construct a Water Well (less than 5,000 gallons per day).
	Electrical Construction Permit	Department of Labor and Industries	• For interior and exterior electrical wiring and power supply connections.
	Road Approach Permit	Skamania County Department of Public Works	• Allows a property owner the authority to access a county road.
	Haul Route Agreement / Right – of-Way Use Permit	Skamania County Department of Public Works	• Use of County roads by oversized or overweight vehicles.
	Negotiated Private Road Agreements	Skamania County Department of Public Works	• To use private roads for temporary or permanent access.

BPA = Bonneville Power Administration
Ecology = Washington State Department of Ecology
EFSEC = Energy Facility Site Evaluation Council
EIS = environmental impact statement
NEPA = National Environmental Policy Act
NOAA = National Oceanic and Atmospheric Administration
SEPA = State Environmental Policy Act
USFWS = US Fish and Wildlife Service
WSDOT = Washington State Department of Transportation

Section 7 of the Endangered Species Act requires federal agencies to ensure that the actions they authorize, fund, and carry out do not jeopardize endangered or threatened species or their critical habitats. A federal agency is required to consult with USFWS and/or NOAA Fisheries if it is proposing an action that may affect listed species or their designated critical habitat. If listed species or designated critical habitat are present and could be affected by the Proposed Action, Section 7 requires that the federal agency prepare a biological assessment to analyze the potential effects of the action on listed species and critical habitat and make an effect determination for each species. BPA prepared and submitted a Biological Assessment (dated June 8, 2010) to USFWS for informal consultation as provided in Appendix E. The Project has received a concurrence letter from USFWS (July 19, 2010) that the Project "may affect, but is not likely to adversely affect" northern spotted owls, and through concurrence from the USFWS has complied with Section 9 of the ESA as also provided in Appendix E. ~~As described in Section 3.4 Biological Resources, no listed species or critical habitat are anticipated to be affected by the project.~~

4.3 FISH AND WILDLIFE CONSERVATION ACT AND FISH AND WILDLIFE COORDINATION ACT

The Fish and Wildlife Conservation Act of 1980 (16 USC 2901 et seq.) encourages federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats. In addition, the Fish and Wildlife Coordination Act (16 USC 661 et seq.) requires federal agencies undertaking projects affecting water resources to consult with USFWS and the state agency responsible for fish and wildlife resources.

As described in Section 4.2, BPA is in the process of consulting with USFWS concerning fish and wildlife resources that could be affected by the proposed Project. In addition, BPA has consulted with WDFW and has incorporated recommendations to avoid and minimize potential impacts to fish and wildlife resources. Mitigation designed to avoid and minimize impacts to fish and wildlife and their habitat is identified in Section 3.4 Biological Resources.

4.4 MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

NOAA Fisheries is responsible for ensuring compliance with the Magnuson-Stevens Fishery Conservation and Management Act of 1976. In the exclusive economic zone, except as provided in Section 102, the US claims, and will exercise, sovereign rights and exclusive fishery management authority over all fish and all continental shelf fishery resources. Beyond the exclusive economic zone, the US claims and will exercise exclusive fishery management authority over all anadromous species throughout the migratory range of each such species, except when in a foreign nation's waters, and all continental shelf fishery resources.

Public Law 104-297, the Sustainable Fisheries Act of 1996, amended the Magnuson-Stevens Act to establish requirements for essential fish habitat descriptions in federal fishery management plans, and to require federal agencies to consult with NOAA Fisheries on activities that may adversely affect essential fish habitat, which can include all streams, lakes, ponds, wetlands, and other viable water bodies and most of the habitat historically accessible to salmon. Activities above impassible barriers are subject to consultation provisions of the Magnuson-Stevens Act.

No species administered under the amended Magnuson-Stevens Act occur in the vicinity of the proposed Project.

4.5 MIGRATORY BIRD TREATY ACT

The Migratory Bird Treaty Act implements various treaties and conventions between the US and other countries, including Canada, Japan, Mexico, and the former Soviet Union, for the protection of migratory birds (16 USC 703-712, July 3, 1918, as amended 1936, 1960, 1968, 1969, 1974, 1978, 1986, and 1989). Under this Act, taking, killing, or possessing migratory birds or the eggs or nests is unlawful. Most species of birds are classified as migratory under the Act, except for upland and nonnative birds such as pheasant, chukar, gray partridge, house sparrow, European starling, and rock dove.

Potential impacts to migratory birds as a result of the proposed Project are discussed in the Section 3.4 Biological Resources. Although the proposed Project would not be expected to result in a take or killing of migratory bird species within the meaning of the Act, impacts to migratory birds could occur through temporary disturbance both during construction and operation of the Project ~~impacts to migratory birds could occur through temporary disturbance during construction.~~ BPA would ensure appropriate mitigating measures are employed to minimize and avoid impacts to migratory birds.

4.6 EXECUTIVE ORDER 13186, RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

Executive Order 13186 was issued on January 17, 2001. It directs each federal agency that is taking actions that may negatively impact migratory bird populations to work with the USFWS to develop an agreement to conserve those birds. The protocols developed by this consultation are intended to guide future agency regulatory actions and policy decisions; renewal of permits, contracts, or other agreements; and the creation of or revisions to land management plans. This order also requires that the environmental analysis process include effects of federal actions on migratory birds. On August 3, 2006, the USFWS and the US Department of Energy signed a Memorandum of Understanding to complement the Executive Order. BPA, as part of the Department of Energy, will work cooperatively in accordance with the protocols of the Memorandum of Understanding.

4.7 BALD AND GOLDEN EAGLE PROTECTION ACT

The Bald Eagle Protection Act of 1940 prohibits the taking or possessing of and commerce in bald and golden eagles, with limited exceptions (16 USC 668–668d, June 8, 1940, as amended 1959, 1962, 1972, and 1978). The Act only covers intentional acts or acts in “wanton disregard” of the safety of bald or golden eagles.

Potential occurrence of bald eagles in the Project vicinity and potential impacts from the proposed Project are discussed in Section 3.4 Biological Resources. Mitigation measures to avoid and minimize impacts to bald eagle also are identified. The Project would not involve intentional acts or acts in wanton disregard of bald or golden eagles. Any accidental injuries or deaths would be subject to Federal law. ~~Because the project would not involve intentional acts or~~

~~acts in wanton disregard of bald or golden eagles, this project is not considered to be subject to compliance with the Act.~~

4.8 HERITAGE CONSERVATION ACTS

Because of the recognized importance of cultural and historic resources, several laws have been passed to protect and provide appropriate treatment for these resources. In addition, American Indian Tribes are afforded special rights under certain laws and treaties. Laws and orders related to cultural and historic resources include:

- Antiquities Act of 1906 (16 USC 431–433)
- Historic Sites Act of 1935 (16 USC 461–467)
- National Historic Preservation Act (NHPA) of 1966 (16 USC 470 et seq.), as amended, inclusive of Section 106
- Archaeological Data Preservation Act of 1974 (16 USC 469 a-c)
- Archaeological Resources Protection Act of 1979 (16 USC 470 et seq.), as amended
- Native American Graves Protection and Repatriation Act (25 USC 3001 et seq.)
- American Indian Religions Freedom Act of 1978 (PL 95-341, 92 Stat. 469, 42 USC 1996, 1996a)
- Executive Order 13007 Indian Sacred Sites
- Interior Secretarial Order 3175 of 1993

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. Historic properties are properties that are included in the Natural Register of Historic Places (NRHP) or that meet the criteria for the Natural Register. If a federal agency plans to undertake a type of activity that could affect historic properties, it must consult with the appropriate State and/or Tribal Historic Preservation Officers to assess adverse effects on identified historic properties. BPA fully respects tribal law and recognizes tribal governments as sovereigns. BPA consults affected tribes about potential cultural and/or other tribal impacts prior to taking project and program actions. As a federal agency, BPA is responsible for conducting NHPA review and Section 106 compliance activities during NEPA environmental review processes. As necessary, BPA's Tribal Policy of 1996 further commits the agency to policy level government-to-government consultation upon request of tribal policy makers and elected officials to better understand the technical and legal issues necessary to make informed decisions. ~~BPA's 1996 government-to-government agreement with 13 federally-recognized Native American Tribes of the Columbia River basin provides guidance for the Section 106 consultation process with the Tribes.~~

The NHPA amendments specify that properties of traditional religious and cultural importance to a Native American Tribe (also known as Traditional Cultural Properties) may be determined to be eligible for inclusion on the NRHP. In carrying out its responsibilities under Section 106, a federal agency is required to consult with any Native American Tribe that attaches religious or cultural significance to any such properties.

The Native American Graves Protection and Repatriation Act requires consultation with appropriate Native American Tribal authorities prior to excavation when human remains or cultural items (including funerary objects, sacred objects, and cultural patrimony) on federal lands or for projects that receive federal funding are found. The Act recognizes Native American ownership interests in some human remains and cultural items found on federal lands and makes illegal the sale or purchase of Native American human remains, whether or not they derive from federal or Indian land. Repatriation, on request, to the culturally affiliated tribe is required for human remains.

Executive Order 13007 addresses "Indian sacred sites" on federal and tribal land. "Sacred site" means any specific, discrete, narrowly delineated location on federal land that is identified by a Tribe, or a Tribal individual determined to be any appropriately authoritative representative of a Native American religion. The site is sacred by virtue of its established religious significance to, or ceremonial use by, a Native American religion, provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. This order calls on agencies to do what they can to avoid physical damage to such sites, accommodate access to and ceremonial use of Tribal sacred sites, facilitate consultation with appropriate Native American Tribes and religious leaders, and expedite resolution of disputes relating to agency action on federal lands.

The American Indian Religious Freedom Act protects and preserves to American Indians their inherent right of freedom to believe, express, and exercise traditional religions. BPA has identified the Yakama Indian Nation as having general concerns about the management of certain areas along the Columbia River Gorge, including the Project vicinity. These concerns include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to practice sacred worship ceremonies.

In addition to these various laws and directives, the federal government has general trust responsibilities to tribes under a government-to-government relationship to ensure that their reserved treaty rights are protected. Ongoing consultation with the Yakama Indian Nation ensures that their rights are protected.

BPA has consulted with the DAHP as well as with The Confederated Tribes of the Umatilla Indian Reservation, The Cowlitz Indian Tribe, The Confederated Tribes of the Warm Springs Reservation of Oregon, The Nez Perce Tribe of Idaho, The Confederated Tribes and Bands of the Yakama Reservation, and The Columbia River Inter-Tribal Fish Commission pursuant to 36 CFR 800.4(a)(4) under Section 106 of NHPA. These correspondences are provided in Appendix E. ~~for the federal undertaking with the Yakama Indian Nation, the Washington State Historic Preservation Officer, and any other interested parties.~~ This consultation process did not identify any effects to historic properties ~~if any, and will provide for resolution of any impacts with the consulting parties~~.

Throughout the EIS process, the Applicant has worked to involve and consult with Yakama Nation, including the Chiefs of the Cascade and Klickitat Tribes. Representatives from both tribes participated in site trips conducted in 2009 to provide advice and perspective in developing project alternatives. Initially, the Yakama Indian Nation did not agree with the definition of BPA's APE. However, the Yakama Nation and BPA have reached an agreement concerning the APE and the Tribe will continue to work with the Applicant when the final micrositing process occurs.

If, during construction, previously unidentified cultural resources that would be adversely affected by the proposed Project are found, the Applicant would be required to follow all required procedures set forth in the NHPA, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, and the American Indian Religious Freedom Act.

4.9 ENVIRONMENTAL JUSTICE

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, states that each federal agency shall identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low income populations. Minority populations are considered members of the following groups: American Indian or Alaska Native, Asian or Pacific Islander, Black not of Hispanic Origin, or Hispanic if the minority population of the affected area exceeds 50 percent, or is meaningfully greater than the minority population in the Project Area. The Order further stipulates that the agencies conduct their programs and activities in a manner that does not exclude persons from participating in or deny persons the benefits of those programs and activities, and that does not subject persons to discrimination because of their race, color, or national origin.

The proposed Project has been evaluated for disproportionately high environmental effects on minority and low-income populations (see Section 3.13, Socioeconomics). The Project would not result in disproportionately high and adverse effects to minority or low income groups.

BPA has considered all input from persons or groups regardless of race, income status, or other social and economic characteristics. Potentially affected minority populations include American Indian tribes with an interest in the federal lands that could be affected. BPA, with EFSEC as a participant, is consulting with Yakama Indian Nation regarding the potential impacts of the Proposed Action. For more information on these consultations, see Section 4.8, Heritage Conservation, as well as Section 3.10, Historical/Cultural Resources.

4.10 STATE, AREA-WIDE, AND LOCAL PLAN AND PROGRAM CONSISTENCY

4.10.1 ENERGY FACILITY SITE EVALUATION COUNCIL

Chapter 80.50 RCW are the laws which the Energy Facility Site Evaluation Council must follow in siting and regulating major energy facilities. WAC Title 463 provides the regulations by which the EFSEC functions under state and federal law. Chapters 80.70 and 80.80 RCW also apply to some energy facilities under EFSEC jurisdiction. For more information on the

consistency of the proposed Project with Skamania County land use regulations, see Section 3.8, Land Use and Recreation.

Chapter 80.50 RCW (Energy Facilities–Site Locations) and Title 463 WAC specify that during the siting of energy facilities such as the Project, EFSEC will specify the conditions of construction and operation. This provision operates to supersede all state and local land use permitting related to energy facility sites that are under EFSEC's jurisdiction. However, a determination of consistency with local land use regulation is required. In the event that a proposed Project is determined to be inconsistent with local land use regulations, the applicant may request that the Project be regulated at the state level by EFSEC, rather than by the local jurisdiction. Because Skamania County has found the Project to be consistent with its Comprehensive Plan and Zoning Ordinance, the Applicant does not anticipate requesting this type of preemption for this Project. However, if EFSEC were to determine that, notwithstanding the County's determination, the Project is inconsistent with any element of local land use plans or ordinances, EFSEC retains preemption authority to resolve such inconsistency.

4.10.2 SKAMANIA COUNTY

Skamania County has provided EFSEC with a letter and Resolution 2009-54 stating that the proposed Project would comply with the land use policies and zoning regulations for the vicinity of the proposed Project. (Appendix D)

4.11 COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT

The Columbia River Gorge National Scenic Area Act (16 U.S.C. 544-544p) established the Columbia River Gorge National Scenic Area (CRGNSA) to: (1) protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Gorge; and (2) protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development. The Act also authorized creation of the Columbia River Gorge Commission, a bi-state regional planning agency that was created by an inter-state Compact between the states of Washington and Oregon.

The Gorge Commission, the U.S. Forest Service, and the six counties with land in the CRGNSA all work together to implement the provisions of the Act. The Gorge Commission has several responsibilities under the Act, including planning for the CRGNSA, implementation of the CRGNSA Management Plan, and monitoring and hearing appeals of land-use decisions. The local counties and the Gorge Commission are responsible for drafting and enforcing land-use ordinances to implement the Management Plan. The Forest Service administers recreation facilities, assists in resource protection programs, provides technical assistance, and manages National Forest lands within the CRGNSA.

The 292,500 acre CRGNSA extends along the Columbia River from approximately the confluence of the Columbia and Sandy rivers on the west to just past the village of Wishram, Washington on the east. The proposed WREP Project Area is located outside of, but immediately adjacent to, the northern boundary of the CRGNSA near White Salmon, Washington (see Figure 1-1). The Scenic Area comprises three land use classifications: GMAs, SMAs, and Urban Areas. SMAs, which contain the most sensitive resources, are managed by USFS. GMAs include a mixture of historic land uses such as farming, logging, residential, and

cattle grazing. Development on GMA lands is administered by five of the six Gorge Counties and the Columbia River Gorge Commission. Both SMAs and GMAs are subject to local Scenic Area codes deemed consistent with the Scenic Area Management Plan by the Columbia River Gorge Commission and the US Secretary of Agriculture prior to adoption. In Skamania County, Scenic Area development regulations are codified in SCC Title 22.13. Urban Areas (including Cascade Locks, Hood River, Mosier, and The Dalles in Oregon, and North Bonneville, Stevenson, Carson, Home Valley, White Salmon, Bingen, Lyle, Dallesport, and Wishram in Washington) are exempt from Title 22 Scenic Area regulations.

Although the proposed Project thus is in close proximity to the CRGNSA, the CRGNSA Act expressly states that:

> *Nothing in [this Act] shall . . . establish protective perimeters or buffer zones around the scenic area or each special management area. The fact that activities or uses inconsistent with the management directives for the scenic area or special management areas can be seen or heard from these areas shall not, of itself, preclude such activities or uses up to the boundaries of the scenic area or special management areas*.

See (16 USC § 544O(a)(10). Accordingly, because the proposed Project is located outside of the CRGNSA, the provisions of the CRGNSA Act do not apply to the proposed Project.

4.12 FARMLAND PROTECTION POLICY ACT

The Farmland Protection Policy Act (7 USC 4201 et seq.) directs federal agencies to identify and quantify adverse impacts of federal programs on farmlands. The Act's purpose is to minimize the number of federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to non-agricultural uses.

The location and extent of prime and other important farmlands is designated by the Natural Resource Conservation Service and can be found in their soil survey information. Prime farmland refers to land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oil seed crops. None of the lands within the Project Area boundary are considered to be prime farmland, and the access road also does not cross or affect other farmlands.

4.13 RECREATION RESOURCES

BPA used the Wild and Scenic River inventory of listed and proposed rivers (16 USC Sec. 1273 [b]) qualifying for Wild, Scenic, or Recreation River status to evaluate recreational resources and impacts. The Project Area area does not contain and will not cross any listed segments. Impacts to the visual quality in the vicinity of the Columbia River Gorge National Scenic Area are discussed in Section 3.9, Visual Resources.

The Northwest Power Planning Council's Protected Area Amendments to the Pacific Northwest Electric Power Planning Council Designation Act of 1980 are not applicable to the Project.

No National Recreation or National Scenic Trails identified in the National Trail System (16 USC Sec. 1242–1245) lie within the Project Area. Two national trails, the Lewis and Clark

National Historical Trail and the Oregon National Historic Trail, are located within 5 miles of the Project Area. These trails roughly follow SR 14 and I-84, respectively. Within 5 miles of the site, the White Salmon River is designated as a Wild and Scenic River, and within 25 miles, the Klickitat River is also so designated.

4.14 CLEAN WATER ACT

The Clean Water Act (933 USC § 1251 et seq.) regulates discharges into waters of the United States:

- ***Section 401.*** A federal permit to conduct an activity that causes discharges into navigable waters is issued only after the affected state certifies that existing water quality standards would not be violated if the permit were issued. No discharges to navigable waters are proposed as part of the Project.

- ***Section 402.*** This section authorizes storm water discharges under NPDES. The State of Washington was delegated the NPDES program under the Clean Water Act in 1974, and has adopted its own NPDES program. The Applicant would file an NOI to obtain coverage under the Washington general permit and would prepare a SWPPP. The SWPPP will address stabilization practices, structural practices, stormwater management, and other controls (see Section 3.1 Geology and Section 3.2 Water Resources).

- ***Section 404.*** Authorization from the US Army Corps of Engineers under Section 404 is required when there is a discharge of dredge or fill material into waters of the US, including wetlands. As discussed in Section 3.4 Biological Resources, the proposed Project would not cause any impact to wetland areas.

4.15 FLOODPLAIN / WETLANDS ASSESSMENT

The U.S. Department of Energy mandates that impacts to floodplains and wetlands be assessed and that alternatives for protecting these resources be evaluated in accordance with Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR 1022.12), and Federal Executive Orders 11988 and 11990.

Section 3.4 Biological Resources evaluates Project impacts on floodplains and wetlands. The Project Area is not within a floodplain as determined from Flood Insurance Rate Maps published by the Federal Emergency Management Agency. Wetlands occur within the Project Area boundary but would not be affected by the construction and operation of the Project. This evaluation serves as the notice of floodplain/wetlands involvement for this Project.

4.16 COASTAL ZONE MANAGEMENT ACT

As an agency of the federal government, BPA follows the guidelines of the Coastal Zone Management Act of 1972 (16 USC Sections 1451–1464) and would ensure that projects would be, to the maximum extent practicable, consistent with the enforceable policies of the state management programs. The proposed Project is not in the coastal zone, nor would it directly affect the coastal zone.

4.17 THE SAFE DRINKING WATER ACT

The Safe Drinking Water Act (42 USC Section 200f et seq.) protects the quality of public drinking water and its source. BPA would comply with state and local public drinking water regulations. The proposed Project would not affect any sole source aquifers or other critical aquifers, or adversely affect any surface water supplies.

4.18 CLEAN AIR ACT

The Clean Air Act, as revised in 1990 (PL 101-542 [42 USC 7401]), requires the EPA and individual states to carry out a wide range of regulatory programs intended to assure attainment of the National Ambient Air Quality Standards.

The proposed the Project lies entirely in Skamania County, Washington. As discussed in Section 3.2 Air, the county is an attainment area within the National Ambient Air Quality Standards for all criteria pollutants. Impacts to air quality would be limited primarily to the construction period and would be minor, and would conform to state and federal CAA regulations. See Section 3.2 Air Quality for a complete analysis and discussion of this issue.

4.19 GLOBAL CLIMATE CHANGE

Global climate change is an increase in the average temperature of the Earth's surface. Since the late 1800s, data shows that the global average temperature has increased about 0.7 to 1.4 degrees F (0.4 to 0.8 degrees C), and some projections estimate that the average temperature will rise an additional 2.5 to 10.4 degrees F (1.4 to 5.8 degrees C) by 2100 (NASA 2009). A majority of scientists who study climate have concluded that human activities are responsible for most of this warming primarily through emission of certain gases that enhance Earth's natural greenhouse effect. Gases that absorb infrared radiation and prevent heat loss to space are called greenhouse gases. These gases include water vapor, carbon dioxide, methane, nitrous oxide, nitrogen oxides, non-methane volatile organic compounds, and stratospheric ozone-depleting substances such as chlorofluorocarbons.

The clearing of large areas of vegetation from the Earth's surface is also believed to contribute to global climate change because trees and other plants remove carbon dioxide from the air during photosynthesis, the process they use to produce food. Removal of vegetation contributes to the buildup of carbon dioxide by reducing the rate at which the gas is removed from the atmosphere and by the decomposition of dead vegetation.

Operation of the proposed Project would not generate emissions of gases (such as carbon dioxide) that contribute to global climate change, other than small amounts of emissions from vehicles used for site access and maintenance activities.

About 26 acres of tall-growing conifer vegetation would be cleared for the Proposed Action. The removal of this vegetation would result in a net reduction in the collectors of carbon in the Project Area. However, because the amount of clearing would be extremely small, and because low-growing vegetation would regrow in cleared areas, the proposed Project's contribution to global climate change would be negligible to nonexistent.

4.20 POLLUTION CONTROL ACTS

Several pollution control acts potentially apply to the proposed Project, depending on the exact quantities and types of hazardous materials that may be stored on site. Regulations would be enforced by EFSEC, and development of a Hazardous Materials Management Plan in accordance with the Uniform Fire Code may be required by local fire districts.

The Resource Conservation and Recovery Act, as amended, is designed to provide a program for managing and controlling hazardous waste by imposing requirements on generators and transporters of this waste, and on owners and operators of treatment, storage, and disposal facilities. Each treatment, storage, and disposal facility owner or operator is required to have a permit issued by EPA or the state. Typical construction and maintenance activities in BPA's experience have generated small amounts of these hazardous wastes: solvents, pesticides, paint products, motor and lubricating oils, and cleaners. Small amounts of hazardous wastes may be generated by the Project. These materials would be disposed of according to state law and the Resource Conservation and Recovery Act.

The proposed Project would not generate large amounts of solid waste.

The Toxic Substances Control Act is intended to protect human health and the environment from toxic chemicals. Section 6 of the Act regulates the use, storage, and disposal of polychlorinated biphenyls (PCBs). BPA adopted guidelines to ensure that PCBs are not introduced into the environment. Equipment used for this Project will not contain PCBs. Any equipment removed that may have PCBs will be handled according to the disposal provisions of the Toxic Substances Control Act.

The SPCC Act is intended to prevent discharge of oil into navigable waters of the US or adjoining shorelines, as opposed to response and cleanup after a spill occurs. Facilities subject to the Act must prepare and implement an SPCC Plan to prevent any discharge of oil into or upon navigable waters or adjoining shorelines. Because the proposed Project does not include the storage of large amounts of oil, the Project is not subject to this Act. However, EFSEC may likely require the preparation of an SPCC Plan for the Project.

The Federal Insecticide, Fungicide and Rodenticide Act registers and regulates pesticides. BPA uses herbicides (a kind of pesticide) only in a limited fashion and under controlled circumstances. Herbicides are used on transmission line rights of way and in substation yards to control vegetation, including noxious weeds. When BPA uses herbicides, the date, dose, and chemical used are recorded and reported to state government officials. Herbicide containers are disposed of according to Resource Conservation and Recovery Act standards.

If a hazardous material, toxic substance, or petroleum product is discovered, and may pose an immediate threat to human health or the environment, BPA requires that the contractor notify the Contracting Officer's Technical Representative immediately. Other conditions such as large dump sites, drums of unknown substances, suspicious odors, stained soil, etc., also must be reported immediately to the Technical Representative, who will coordinate with the appropriate personnel within BPA. In addition, the contractor will not be allowed to disturb such conditions until the Contracting Officer's Technical Representative has given the notice to proceed.

4.21 NOISE CONTROL ACT

The Federal Noise Control Act of 1972 (42 USC 4901) requires that federal entities, such as BPA, comply with state and local noise requirements. The EPA has established a guideline of 55 dBA for the annual average L_{dn} in outdoor areas. In computing this value, a 10 dB correction (penalty) is added to night-time noise between the hours of 10 PM and 7 AM.

WAC 463-62-030 states that energy facilities shall meet the noise standards established in Chapter 70.107 RCW, also known as the Noise Control Act of 1974, as implemented in the requirements of WAC 173-60. SCC Title 8 Chapter 22: Noise Regulations identifies limits and exceptions specific to noise in Skamania County. SCC 8.22 was adopted pursuant to, and is consistent with, WAC 173-60. Depending on the classification of receiving properties, the noise limits range from 50 dBA to 70 dBA.

Traffic on public roads, aircraft, and railroad traffic are exempt from the applicable environmental noise limits. Construction activities also are exempt from the noise regulations during daytime hours.

The Project would operate at or below existing state noise limits. The facilities would be designed to meet the limits for the worst case, that is, at night, at the edge of the right-of-way, a limit of 50 dBA. See Section 3.7 Noise for detailed analysis of this issue.

4.22 NOTICE TO THE FEDERAL AVIATION ADMINISTRATION

The Federal Aviation Administration requires a Project Proponent to submit its designs for approval if a proposed structure is taller than 200 feet from the ground, if a conductor is 200 feet above the ground, or the structures are within the approach path of an airport. Final locations, structures, and structure heights would be required to be submitted to the Federal Aviation Administration for the Project because the proposed turbine heights are over the 200-foot level.

4.23 FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission regulations require that transmission lines be operated so that radio and television reception would not be seriously degraded or repeatedly interrupted. Further, the regulations require that the operators of these devices mitigate such interference. No interference with radio, television, or other reception is expected as a result of the proposed Project (Section 3.6 Public Health and Safety). If any such interference were to occur, BPA would comply with the Federal Communications Commission requirements relating to radio and television interference from the proposed Project.