

Comment 20220408-a5JzG2T

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Yakama Nation

Attachments

[YN Letter re Badger Mt DNS and Scoping \(04.08.22\).pdf](#)

811.76KB

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Attachment Count:

1

Tags:

Responses:

Comment:

Please see the attached comments from the Yakama Nation.



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

April 8, 2022

Submitted Electronically

Sonia Bumpus, EFSEC Manager
ENERGY FACILITY SITE EVALUATION COUNCIL
621 Woodland Square Loop SE
Lacey, WA 98504-3172
<https://comments.efsec.wa.gov/>

RE: DETERMINATION OF SIGNIFICANCE AND REQUEST FOR COMMENTS ON SCOPE
OF EIS FOR BADGER MOUNTAIN SOLAR PROJECT (Docket No. EF-210747)

Dear Ms. Bumpus:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), regarding the Energy Facility Site Evaluation Council’s (“EFSEC”) request for comments on the scope of an environmental impact statement (“Notice”) for the proposed Badger Mountain Solar Project (“Project”), EFSEC Docket No. EF-210747.¹

The Project’s proposed location is located wholly within Yakama Nation’s Treaty Territory. When Yakama Nation ceded this land to the United States, it retained all rights not expressly relinquished in the Treaty of 1855 (12 Stat. 951).² Yakama Nation and its members attach cultural significance to this area and continue to rely on the resources therein. Specifically, the Project’s proposed location includes land managed by the Washington Department of Nature Resources (“DNR”) where Yakama Nation retains fishing, hunting, and gathering rights under the Treaty of 1855.

Yakama Nation has a significant interest in ensuring that the EIS complies with the State Environmental Policy Act (“SEPA”) and other applicable laws in evaluating the Project and its environmental impacts.³ Responsive to the Notice, Yakama Nation submits the following comments regarding the EIS’s scope and the Project generally:

¹ In submitting these comments, Yakama Nation does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its sovereign rights, privileges, or remedies guaranteed by the Treaty with the Yakama of 1855 (12-Stat. 951). Furthermore, submission of this comment does not substitute for formal consultation with Yakama Nation or Yakama Nation Tribal Council.

² *United States v. Winans*, 198 U.S. 371, 381 (1905).

³ These comments are based information presently available to Yakama Nation. Should additional information become available, our assessment and comments may be revised.

Cultural Resource Impacts:

- EFSEC should not move forward in developing the EIS until the Project applicant has provided a cultural resources report that has been properly distributed, consulted upon, and concurred upon by land managers, the Washington State Department of Archaeology and Historic Preservation, and Yakama Nation Cultural Resource Program. Once that process is completed then the EIS analysis should be informed by the approved cultural resource report.
- Badger Mountain itself is a Yakama Nation Traditional Cultural Property. EFSEC must engage with Yakama Nation's Cultural Resource Program to understand and evaluate the Project's impact on Yakama Nation's Traditional Cultural Property.
- The EIS must evaluate and describe the Project's potential impacts to Yakama Nation members' ability to exercise Treaty-reserved rights. Specifically, the EIS must consider how the Project might affect access to Treaty-reserved resources and the health of Treaty-reserved resources. Fencing large acreages will inhibit the ingress and egress of Yakama Nation members to public lands. Yakama Nation members currently practice Treaty-protected gathering activities in and around the Project's proposed location. Pursuant to the Treaty of 1855, Yakama Nation retained the right to gather traditional foods and medicines on all "open and unclaimed lands," such as the lands where the Project is proposed.

Water Resource Impacts:

- The EIS should clearly evaluate the Project's water resource needs for each stage of development. The EIS should evaluate, at a minimum, the water necessary for construction, washing of solar panels, and facility operations. For each of these three categories, the EIS should analyze a) how much water is needed, b) what the proposed water source is, c) how the water use will be permitted, and d) what are the potential impacts of the proposed water use.
- The EIS must evaluate and describe the Project's cumulative water resource impacts.⁴ With regard to water resource impacts, the cumulative impact of groundwater withdrawals this Project as well as nearby green energy development upon ephemeral stream should be evaluated. Many culturally significant plant species are found within ephemeral stream banks and will be impacted by any reduction in stream flow.

Wildlife and Plant Species Impacts:

- The Project area is substantial - 2390 acres total, with 2274 consisting of the solar array micro-siting area. Yakama Nation retains its interest in all talus, shrub

⁴ See WAC 197-11-792(2)(c)(3).

steppe, and dwarf shrub steppe habitat in the project area. Culturally significant species are within these habitat types in the immediate Project area. There is an overall concern with losing these habitat types over the next 1- 20 years with green energy projects such as this Project. 81% of the observed wildlife in the Project's field study were observed on the shrub steppe or the talus habitat, which supports the importance of maintaining the existing shrub steppe and talus habitats.

Based on the application estimates, there will be a total permanent loss of 6 acres of shrub steppe; <1 acre of dwarf shrub steppe; and 0 acres of talus. There will be temporary impacts to 27 acres of shrub steppe; <1 acre of dwarf shrub steppe; and 0 acre of talus. The applicants anticipate 29 acres of altered shrub steppe habitat; 3 dwarf shrub steppe; 0 acres of talus. Shrub steppe, dwarf shrub steppe, and ephemeral channels within the DNR parcel should be omitted from the solar array micro-siting area. These habitats are very fragile, important and precious. Since they make up such a small percentage and are primary along the periphery, the EIS should include an option of excluding them from the Project area. In addition, the EIS needs to analyze the option of implementing buffers around all shrub steppe, dwarf shrub steppe, and ephemeral channels of at least 20-30 meters from proposed fence structures and solar panels.

- Given the effect of solar panels on soil temperature, the EIS should also analyze the potential impact to roots and riparian species that may occur from increased soil temperatures. It is unclear what will be planned underneath the solar panels and whether or not any of the Project site will still be operated as an agricultural area. The EIS must analyze how vegetation and non-native species will be managed to avoid exacerbating previous land degradation practices.
- The EIS should evaluate the impact on wetlands within the Project area that are currently fed by precipitation and possible irrigation. For the wetlands that are already in degraded areas due to agricultural activities, the EIS should address how the Project applicants intend to restore degraded wetland habitat.
- The EIS must evaluate and describe the Project's impacts to wildlife habitat including, but not limited to, shrub steppe and wetlands.⁵ All remnant shrub steppe and dwarf shrub steppe on the DNR parcel within the Project site needs to be preserved and excluded from the Project fence. The EIS should analyze a minimum 30-meter buffer needs to be placed around the shrub steppe habitat and ephemeral streams on the DNR parcel to protect that habitat for wildlife and cultural resources. As discussed above, Yakama Nation members continue to exercise their Treaty-reserved rights within the DNR parcel.
- The Project is sited in close proximity to a greater sage grouse lek, approximately five miles to the east of the Project site. The lek in question is one of the largest known lek

⁵ See WAC 197-11-444(1)(d).

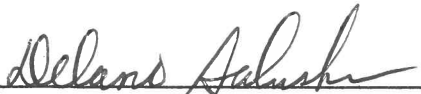
in the state. Although the Project is mostly in converted dry wheat agricultural land, telemetry data from Washington Department of Fish & Wildlife appears to show usage within one mile of the Project area. Disturbance from construction, and temporary and permanent loss of habitat this close to the lek could negatively affect this species.

- The EIS must also evaluate the impact of habitat conversion or fencing upon local wildlife and the habitat they rely upon. As with all solar projects, this issue affects many species from big game to sage grouse. Along with the loss of habitat comes its effect on animal movements. An approximately four-mile long area would be fenced, requiring animals to adjust their movements through the area. While we appreciate that most of the project footprint is within non-native dry cropland, any loss of native habitat is troubling.
- The two human-made structures within the Project area should be surveyed for bat usage, especially a Townsend's big-eared bat maternity colony and hibernacula. Protection measures should be implemented if they are found to be occupied by bats.
- The current documentation is unclear regarding what amount of disturbance and habitat alteration is expected in the generation-tie areas. The EIS should clarify the statement that "not all" of the gen-tie corridor "will be developed" and what special consideration will be taken to avoid disturbing existing habitat.

The EIS must objectively evaluate and describe the Project's impacts on all affected resources.⁶ EFSEC should not defer to the Project proponent to fulfill EFSEC's responsibility to analyze impacts to these resources. The Project proponent has an interest in putting forth studies that minimize the Project's impacts. EFSEC cannot rely solely on such studies to develop the impartial analysis required for anEIS. As the permitting agency, EFSEC should consult directly with Yakama Nation on the Project's concerning potential impacts to the Nation's sacred and Treaty-reserved resources.

To discuss the cultural resource issues identified in this letter, please contact Mr. Casey Barney, Yakama Nation Cultural Resource Program Interim Manager, at (509) 865-5121 x4378 or casey_barney@yakama.com. To discuss the other scoping comments listed above, please contact Mr. Phil Rigdon, Yakama Nation Department of Natural Resources Superintendent, at (509) 865-5121 x4655 or phil_rigdon@yakama.com.

Sincerely,



Delano Saluskin, Chairman
YAKAMA NATION TRIBAL COUNCIL

⁶ WAC § 197-11-400(2) ("An EIS shall provide *impartial* discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality." (emphasis added)).