



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

21 October 2024

Maryalice Fischer  
Certification Program Director  
Low Impact Hydropower Institute  
68 Harrison Ave Ste 605 PMB  
Boston, Massachusetts 02111-1929

RE: APPEAL OF WELLS DAM LIHI CERTIFICATION DUE TO EXCLUSION OF THE YAKAMA NATION FROM THE APPLICATION SUBMITTED BY PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY

Dear Ms. Fischer,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), an inherently sovereign Native Nation that is federally recognized pursuant to the Treaty of 1855 (“Treaty”)<sup>1</sup>, to express our serious concerns regarding the recent LIHI certification application submitted by Public Utility District No. 1 of Douglas County (“DCPUD”) for the certification of the Wells Dam Hydropower Project (hereafter “Project”) on May 28, 2024, and which has been preliminarily approved by the Low Impact Hydropower Institute (“LIHI”) on October 3<sup>rd</sup>, 2024.

The Treaty reserved certain rights and resources to allow the Yakama Nation, and our People, to forever maintain our customary way of life. Among those reserved rights is the right to fish at all usual and accustomed places, including along the Columbia River<sup>2</sup>. The Project has had and will continue to have a direct impact to the Yakama Nation’s reserved rights, including access to salmon, steelhead, white sturgeon, Pacific Lamprey, and other resources that are critically important to the Yakama Nation and its People.

It has recently come to our attention that the Yakama Nation, along with the Washington Department of Fish and Wildlife—both agencies with management authority for fisheries resources in the Upper Columbia—were excluded from the contact list provided by DCPUD in their application for certification. We are deeply concerned that the Yakama Nation was not included in the consultation process for the LIHI certification. This omission has prevented us from providing crucial input on potential and unresolved fisheries-related impacts resulting from the Project.

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<sup>1</sup> Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat 951.

<sup>2</sup> Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat 951, Art. 111, cl. 2.

Section B.4 of the LIHI Handbook 2<sup>nd</sup> Edition (July 20 2016) directs the applicant to provide contact information for the ‘current and relevant state, federal, provincial, and tribal resource agencies’. In addition, to our management authority, the Yakama Nation is signatory to the Anadromous Fish Agreement and Habitat Conservation Plan for the Wells Hydroelectric Project (“HCP”; FERC License No. 2014), and actively participates in all committees implementing the provisions of the HCP and Wells Dam FERC License No. 2149, including the HCP Policy Committee, HCP Coordinating Committee, HCP Hatchery Committee, HCP Tributary Committee, and the Aquatic Settlement Work Group.

Given the significance of our management authority and our role in implementing the provisions of these agreements, we find it difficult to understand how such an important omission could have occurred. We believe it is imperative that all “current and relevant” fisheries management agencies be notified and consulted to ensure a comprehensive and transparent assessment of the Wells Hydroproject and its eligibility for LIHI certification.

Had we been provided the opportunity to participate in review of DCPUD’s application, our fisheries related concerns would have been significant and include:

- Lack of adaptive management based on new scientific information to ensure the HCP agreement continues to adequately benefit and protect plan species.
- Lack of monitoring information to adequately inform the run timing of ESA-listed wild spring Chinook into and through the Project area, so the HCP can be adaptively managed to ensure the intended protections to ESA-listed Upper Columbia River Spring Chinook are realized.
- Lack of a downstream surface passage route for overshoot steelhead from downriver populations and Distinct Population Segments (“DPS”; Wenatchee, Entiat, Mid-Columbia DPS, and Snake River DPS).
- Lack of ESA Section 10 coverage for take of ESA listed steelhead from the Mid-Columbia DPS and Snake River DPS which are known to overshoot into the upper Columbia and over Wells Dam.
- Unachieved Pacific Lamprey passage requirements; the most recent measured passage efficiencies for adults was 23.5%.
- Lack of appropriate fishway modifications (e.g., grating and gaps < 0.75”, smooth surface for entrance and fish ladders) to ensure that the Wells Dam Fishways meet the regional standards for upstream passage of adult Pacific Lamprey.
- Unmeasured downstream passage survival of juvenile Pacific Lamprey, even though this is stated as a requirement in the Wells Dam Pacific Lamprey Management Plan and the technology to do so is now available.

This list is non-exhaustive. Additional fisheries and/or cultural resource concerns might have been identified if the Yakama Nation had been notified and afforded the opportunity to comment during the 60-day comment period. The omission of our contact information by the applicant was an overt error.

As LIHI proceeds with renewable energy certification on tribal and ceded territory, it is essential to prioritize environmental justice and the protection of Treaty-reserved resources that are vital to our communities. Safeguarding resources that have supported our communities from time immemorial is paramount; these resources are the

foundation of our identity and culture, and their protection is essential for the well-being of future generations. Engaging with the Yakama Nation to incorporate Indigenous knowledge and perspectives enriches the development process and safeguards cultural and ecological values. Adherence to Low-Impact Hydropower Institute (LIHI) certification standards can ensure that renewable energy initiatives align with both environmental sustainability and the rights of tribal peoples. We strongly encourage LIHI to engage in meaningful dialogue with Yakama tribal leaders to ensure that this project respects our heritage and promotes equitable outcomes for all stakeholders involved.

In conclusion, issuance of a Low Impact Hydropower Certification for Wells Dam (FERC License No. 2149) is an important issue to the Yakama Nation. This Project continues to significantly impact Treaty-reserved rights and resources. The application for certification is lacking in its omission of the relevant fisheries co-managers from the contact list and does not adequately address the fisheries related issues identified above. We need to start making progress not only toward recovery of ESA-listed species but to healthy and harvestable fish populations in the Upper Columbia. We urge LIHI to reconsider Low Impact Certification of the Wells Dam Hydroelectric Project at this time.

Respectfully,

A handwritten signature in cursive script that reads "Gerald Lewis". The signature is written in black ink and is positioned above a horizontal line.

Gerald Lewis, Chairman  
Yakama Nation Tribal Council