



KATE BROWN
Governor

February 18, 2021

Chairman Richard Glick
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *Request that FERC provide for meaningful consultation with Oregon's federally recognized Tribes regarding the Jordan Cove Energy Project.*

Dear Chairman Glick,

I write regarding the Jordan Cove Energy Project (the Project), which the Federal Energy Regulatory Commission (FERC) is currently engaged with in the State of Oregon. In particular, I write to urge FERC to provide more formal and meaningful opportunities for Oregon's federally-recognized Tribes to participate in the process for this Project under the National Historic Preservation Act (NHPA), by inviting any federally-recognized Tribe in Oregon that attaches religious and cultural significance to historic properties located off Tribal lands to be an invited signatory to the section 106 programmatic agreement.

Oregon is privileged to have strong working relationships with the federally-recognized Tribes within its boundaries. These strong, government-to-government relationships are due in no small part to the unique, formal channels created by Oregon state law. In 1996, the Governor signed Executive Order 96-30 on State/Tribal Government-to-Government Relations. The purpose of the order was to "establish a process which can assist in resolving potential conflict, maximize key intergovernmental relations and enhance an exchange of ideas and resources for the greater good of all Oregon's citizens, whether Tribal or not." In 2001, building on the success of that Executive Order, Oregon became the first state to pass state-tribal government-to-government relations statutes. Those laws, codified at ORS 182.162-.168, establish a framework for communication between state agencies and tribes. Formalized relationships and processes for bringing issues forward have greatly improved our ability to work together. Effective government-to-government communication increases our understanding of tribal and agency structures, policies, programs, and history. State and Tribe relations inform decision makers in both governments and provide an opportunity to advance shared interests. During this most recent, difficult year, for example, these established and formalized government-to-government working relationships greatly aided our governments in working together to respond to the COVID-19 pandemic. Similarly, our strong, formal, government-to-government relationships help improve our ability to cooperate as co-managers of natural resources within Oregon.

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FERC, too, has opportunities for formal consultation with the Tribes of Oregon. The code of federal regulations specifically allows a federal agency, including FERC, to “invite an Indian tribe . . . that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory. . .” to an agreement under section 106 of the NHPA. 36 CFR § 800.6(c)(2). With respect to the Project, FERC has entered into a section 106 programmatic agreement. However, despite a request from at least one Oregon Tribe, FERC has declined to invite any Oregon Tribe to be a signatory. Instead, FERC has offered Tribes only the lesser opportunity to sign on as concurring parties. The regulations give concurring parties fewer opportunities for meaningful input. Given the unique Oregon context here, where the State has long prioritized formal and meaningful government-to-government relationships with the Tribes of Oregon, I urge FERC to reconsider how it is approaching tribal involvement in the section 106 programmatic agreement for the Project. Specifically, I urge FERC to invite any Oregon Tribe “that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory” to the programmatic agreement for the Project.

In the alternative, if FERC determines that it wishes to continue to decline signatory status to qualifying Oregon Tribes, I would request that FERC develop and publish a policy describing when it would, in fact, consider inviting qualifying Tribes to participate as invited signatories. If Oregon Tribes are not to benefit from signatory status, they should be afforded an explanation why the federal regulations do not extend to them in these circumstances, which also would provide guidance to similarly situated Tribes.

Lastly, I have been heartened to hear of the new Administration’s efforts to respect Tribal sovereignty and self-governance, and to engage in regular, meaningful, and robust consultation with Tribal Nations, as well as a commitment to actions to advance environmental justice. It is my belief that all of these priorities of the Biden-Harris Administration would be furthered by FERC reexamining and changing its approach with respect to formal Tribal involvement with the Project.

Our government-to-government consultation responsibilities in Oregon are an iterative, learning process. We do not always get it right the first time. But over the past decades one important lesson has emerged: when in doubt, more consultation is generally beneficial, and if we do not get it right the first time, it is important to be willing to listen and try again. I hope that FERC will seriously consider adjusting its approach to Tribal consultation with respect to the Project.

Sincerely,



Governor Kate Brown

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