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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

|  |   |                  |
|--|---|------------------|
| PUYALLUP TRIBE OF INDIANS,               | ) | No. 2:20-CV-1864 |
|  | ) |                  |
| Plaintiff,                               | ) | COMPLAINT        |
|  | ) |                  |
| vs.                                      | ) |                  |
|  | ) |                  |
| ELECTRON HYDRO, LLC; THOM A. FISCHER;    | ) |                  |
| TOLLHOUSE ENERGY COMPANY,                | ) |                  |
|  | ) |                  |
| Defendants.                              | ) |                  |
| <hr style="border: 0.5px solid black;"/> |   |                  |

1. Plaintiff Puyallup Tribe of Indians (“Puyallup Tribe”) files suit against Defendants Electron Hydro LLC, Thom A. Fischer, and Tollhouse Energy Company (“Electron”), to challenge operations of the Electron hydroelectric project (“Project”) on the Puyallup River in Washington. By maintaining, operating, and renovating the Project, Electron has unlawfully taken, and continues to unlawfully take, Chinook salmon, steelhead trout, and bull trout, which are listed as threatened with extinction under the Endangered Species Act (“ESA”).

**JURISDICTION**

1  
2           2.       This Court has jurisdiction pursuant to the citizen suit provision of the ESA, 16  
3 U.S.C. § 1540, and because this case involves a federal question. 28 U.S.C. § 1331. On  
4 October 1, 2020, the Puyallup Tribe gave Electron notice of its intent to sue under the ESA.  
5 More than 60 days have elapsed since Electron received this notice. The Puyallup Tribe seeks  
6 relief authorized by the ESA and the Declaratory Judgment Act. 16 U.S.C. § 1540; 28 U.S.C.  
§§ 2201-02.

7           3.       Venue is proper in this Court pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28  
8 U.S.C. § 1391(e). Seattle is the appropriate division within this district for this suit. LCR 3(d).  
9 Defendants Electron Hydro, LLC, Thom A. Fischer, and Tollhouse Energy Company reside  
10 in Whatcom County. Two active cases exist in this division related to the Project: *American*  
11 *Whitewater v. Electron Hydro, LLC*, No. 2:16-cv-00047-JCC (W.D. Wash.), and *United*  
*States of America v. Electro Hydro, LLC*, No. 2:20-cv-1746-RAJ (W.D. Wash.).

12           4.       A present and actual controversy exists between the parties to this action.

**PARTIES**

13  
14           5.       Plaintiff Puyallup Tribe of Indians is a federally recognized Indian Tribe with  
15 its Reservation located in Tacoma, Washington. The Tribe’s Reservation includes the  
16 Puyallup River, and the Tribe owns the bed and banks of the Puyallup River within its  
17 reservation and downstream of the Electron Facility. The Tribe and its members have, for  
18 time immemorial, fished the waters of the Puyallup River, the Puyallup River Watershed, and  
19 Commencement Bay and the Tribe’s treaty fishing rights are protected under the Medicine  
20 Creek Treaty and confirmed by the Puyallup Tribe of Indians Settlement Act of 1989. These  
21 Treaty Fishing rights, which are essential to the Tribe and its members existence and culture,  
22 have been irreversibly impacted by the Electron Hydro’s actions and violations of the  
23 Endangered Species Act as identified herein.

          6.       Defendant Electron Hydro, LLC is a limited liability corporation registered in  
the State of Washington. Electron Hydro, LLC owns the Project. Electron Hydro, LLC is

1 responsible for operations of the Project. Electron Hydro, LLC is a joint venture owned by  
2 Electron Management, LLC and by Electron Holdings, Inc. Electron Management, LLC is  
3 owned primarily by Thom A. Fischer.

4 7. Defendant Thom A. Fischer formed or helped form Electron Hydro, LLC.  
5 Thom A. Fischer supervises, manages, or directs staff at the Project. Thom A. Fischer  
6 supervises, manages, or directs operations of the Project. Thom A. Fischer has decided or  
7 directed when the control gate on the intake to the flume is shut to prevent water from  
8 entering the flume, or opened to allow it. Thom A. Fischer has decided or directed when the  
9 forebay at the Project is drained. Thom A. Fischer has applied for permits to perform the  
10 Diversion Repair and Spillway Replacement Project. Thom A. Fischer decided or directed  
11 other elements of the Project, such as components of the Diversion Repair and Spillway  
12 Replacement Project.

13 8. Defendant Tollhouse Energy Company is owned by Thom A. Fischer.  
14 Tollhouse Energy Company is developing hydroelectric projects in the states of Washington  
15 and Montana. Tollhouse Energy Company owns part of Valtec Power, LLC. Valtec Power,  
16 LLC owns Black Creek hydroelectric project. Black Creek hydroelectric project is affiliated  
17 with Electron Hydro, LLC. Thom A. Fischer uses or has used a Tollhouse Energy Company  
18 email for work associated with the Project. Thom A. Fischer uses or had used a Tollhouse  
19 Energy Company email to correspond with the Washington Department of Fish and Wildlife  
20 about obtaining a Hydraulic Project Approval permit.

#### 21 **FACTS**

22 9. The Puyallup River originates on Mount Rainier in the Cascade Mountains in  
23 Washington. The Puyallup River flows approximately 65 miles to Commencement Bay in  
Puget Sound. The Puyallup River watershed forms the third largest tributary to Puget Sound.  
The Puyallup River watershed encompasses approximately 665,000 acres (approximately  
1000 square miles).

1           10.     Nine native salmonid species inhabit the Puyallup River watershed. These  
2 species include Chinook salmon, coho salmon, chum salmon, pink salmon, sockeye salmon,  
3 steelhead trout, bull trout, and cutthroat trout. Certain of these salmonids are important prey  
4 for orcas in Puget Sound.

5           11.     Historically, the Puyallup River and its tributaries supported approximately  
6 42,000 Chinook salmon (*Oncorhynchus tshawytscha*). In 1999, the National Marine Fisheries  
7 Service (“NMFS”) listed Chinook salmon in Puget Sound, including in the Puyallup River, as  
8 threatened with extinction under the ESA. In 2007, NMFS adopted a Recovery Plan for  
9 Chinook. As of 2007, escapement of Chinook in the Puyallup River watershed (including  
early/spring returns to the White River) was estimated to be 1,300 fish.

10          12.     Adult Chinook salmon migrate up the Puyallup River generally from June  
11 through October. Adult Chinook salmon in the Puyallup River spawn generally in September.  
12 Adult Chinook salmon in the Puyallup River spawn upstream of the Project. Chinook salmon  
13 in the Puyallup River emerge from redds generally in February. Chinook salmon in the  
14 Puyallup River outmigrate generally in April through June. Chinook salmon are present at the  
Project site at least from April through October.

15          13.     Historically, the Puyallup River and its tributaries supported approximately  
16 6,000 steelhead trout (*Oncorhynchus mykiss*). In 2007, NMFS listed steelhead trout in Puget  
17 Sound, including in the Puyallup River, as threatened with extinction under the ESA. The  
18 current steelhead population in the Puyallup River watershed is approximately 1,500 adults.

19          14.     Anadromous steelhead trout migrate up the Puyallup River generally in March  
20 through May. Steelhead trout in the Puyallup River spawn generally in April through June.  
21 Steelhead trout in the Puyallup River spawn upstream of the Project. Steelhead trout in the  
22 Puyallup River emerge from redds generally in June through August. Steelhead trout in the  
23 Puyallup River rear in the river generally for two years. Steelhead trout in the Puyallup River  
may rear in the river for up to seven years. Steelhead trout are present in the Puyallup River  
throughout the year. Steelhead trout migrate through parts of the Puyallup River throughout

1 the year. Steelhead trout are present at the Project site throughout the year. Anadromous  
2 steelhead trout in the Puyallup River outmigrate throughout the year, with peak out-migration  
3 occurring from March to July.

4 15. Historically, the Puyallup River and its tributaries supported bull trout  
5 (*Salvelinus confluentus*). In 1999, the U.S. Fish and Wildlife Service (“FWS”) listed  
6 populations of bull trout in the Coastal/Puget Sound region in Washington, including in the  
7 Puyallup River, as threatened with extinction under the ESA. In the Coastal/Puget Sound  
8 region, the Puyallup River is one of eight “core areas” for bull trout. Bull trout populations in  
9 the Puyallup River include anadromous, fluvial, and resident populations. Bull trout in the  
10 Puyallup River are the southernmost, anadromous bull trout population in the Coastal  
11 Recovery Unit. Maintaining the bull trout population in the Puyallup is critical to maintaining  
12 the overall distribution of migratory bull trout in the Recovery Unit.

13 16. Bull trout are present at the Project site throughout the year. The Project site  
14 provides foraging, migration, and overwintering habitat for bull trout. Bull trout in the  
15 Puyallup River spawn generally in September. Bull trout in the Puyallup River spawn in  
16 reaches of the river upstream of the Project. Bull trout in the Puyallup River emerge from  
17 redds generally in March through April. In 2004, the Service issued a draft Recovery Plan for  
18 the Coastal/Puget Sound bull trout. The abundance target for bull trout in the Puyallup River  
19 is 1,000 adults. Currently, fewer than 100 adult bull trout spawn annually in the upper  
20 Puyallup River and its tributaries.

21 17. The Project is located on the Puyallup River in the foothills of Mount Rainier,  
22 about 42 miles southeast of Seattle, in Pierce County. Puget Sound Power & Light Company  
23 began building the Project in 1902 and completed it in 1904. On November 14, 2014, Puget  
24 Sound Energy sold the Project to Electron Hydro, LLC.

25 18. The Project includes a headworks facility at river mile 41.7. Historically, the  
26 headworks facility included a timber crib diversion structure that was approximately 200 feet  
27 long and spanned the river. The diversion structure slows water for diversion. The purpose of

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