

# Tribe seeks to intervene in PGE effort to condemn Willamette Falls property

By Dean Rhodes

Smoke Signals editor

The Confederated Tribes of Grand Ronde moved on Thursday, May 19, to intervene as a defendant in Portland General Electric's legal effort against the Oregon Department of State Lands to condemn a contested five-acre strip at Willamette Falls upon which the Tribe constructed a temporary ceremonial fishing platform in October 2018.

"Grand Ronde moves for intervention in order to ensure its interests are not undermined through improper condemnation or a settlement of this action," states the motion authored by Assistant Tribal Attorney Kim D'Aquila. "This action should be barred because it was brought in bad faith, for improper purposes, and is arbitrary and capricious.

"Although Grand Ronde seeks to intervene on the same side of this proceeding at DSL, the Tribe's sovereign interests are different and narrower ... and therefore may not be adequately represented. Grand Ronde seeks to protect a narrow interest not shared by the public at large – namely, the Registration and the Tribe's cultural fishery, as well as its property interests at Willamette Falls."

The Confederated Tribes of Grand Ronde is fighting a move started in early April by Portland General Electric to condemn property in and around the company's Federal Energy Regulatory Commission boundary at Willamette Falls.

The company's lawsuit, which was filed in U.S. District Court in Portland, seeks to use PGE's condemnation authority under the Federal Power Act to acquire the Oregon Department of State Land's



Photo by Timothy J. Gonzalez

**Grand Ronde Tribal members and employees fish off the rocks at Willamette Falls in Oregon City on Wednesday, May 25, for the first time this fishing season. The initial attempts to erect the Tribe's temporary ceremonial fishing platform on state land and catch 15 ceremonial salmon were thwarted in early May due to dangerous water conditions at the falls.**

interest in the property.

PGE is seeking to condemn the land "to safely and securely operate our hydroelectric project consistent with our FERC license obligations." PGE has operated a hydroelectric facility at the falls for more than 100 years.

"Ownership and control of the property, including the inherent right through ownership to control persons seeking to access the property, are required for PGE to meet its obligations of the FERC license," the lawsuit says.

The Federal Energy Regulatory Commission is an independent agency that regulates the interstate transmission of natural gas, oil and electricity, as well as hydropower projects like the one at Willamette Falls.

The condemnation move brings back the contentious events that occurred four years ago when the

Tribe sought a temporary ceremonial fishing platform at Willamette Falls and competing claims by PGE and the Oregon Division of State Lands were made concerning ownership of the property.

In April 2016, the Oregon Department of Fish and Wildlife granted the Grand Ronde Tribe a permit to catch 15 salmon annually at Willamette Falls for ceremonial purposes.

In May 2018, PGE allowed the Tribe access to the falls from the West Linn side of the river for ceremonies and to scout out possible fishing platform locations, but revoked that access on Sept. 21 after the state granted the Tribe a permit to erect a fishing platform on the contested property.

The Tribe was then forced to ferry materials to construct the platform across the Willamette River from the Oregon City side. The platform was completed on Oct. 23, 2018.

PGE then filed an appeal with the state Land Use Board regarding the Tribe's fishing platform site because the city of West Linn did not regulate the structure, but the Land Use Board dismissed the appeal in April 2019.

On July 28, 2021, PGE's Board of Directors approved a resolution that the company would pursue acquiring all of the state's rights, title and interest in the contested property.

According to the lawsuit, PGE offered the Department of State Lands \$150,000 for the state's claimed right to the property in January, but the offer was not accepted.

Previously, Grand Ronde Tribal Attorney Rob Greene said that an extensive study was conducted by a Department of State Lands consultant who found that the area on which the Tribe installed platform footings belonged to the state of Oregon.

Although the Tribe's ceremonial fishing was interrupted by the COVID-19 pandemic, the original plans were to install the platform annually at the start of the fishing season in May and remove it at the

end of the season in late July.

Dave Robertson, a PGE public affairs vice president, said in a statement posted on the company's website that PGE tried the administrative law process and judicially assisted mediation to resolve the dispute and that a recent inconclusive ruling from an administrative law judge "made clear the long road ahead to final resolution."

That ruling, issued on April 1 by Office of Administrative Hearings Senior Administrative Law Judge Joe Allen, stated that PGE, the Division of State Lands and Grand Ronde Tribe all demonstrated disputes to genuine issues of material fact relevant to resolution of all the issues in the contested case, so therefore all requests for summary determination were denied.

"That's why we are moving forward with condemnation as the best legal tool available to expediently resolve issues essential to our operations," Robertson said.

In the motion to intervene, the Grand Ronde Tribe contends that PGE's action is a substantial overreach and is using the Federal Power Act "as a lever to invalidate Grand Ronde's state-issued registration to operate a fishing platform on state lands at the base of Willamette Falls."

"PGE's lawsuit is a massive overreach based on false and misguided concerns," Tribal Council Chairwoman Cheryle A. Kennedy said. "If PGE succeeds, not only will it threaten the Tribe's ceremonial fishery, it will transfer ownership of Oregon's iconic Willamette Falls from the state of Oregon, and all of Oregon's citizens, to a private, for-profit corporation.

"Their attack on the Tribe's ceremonial fishery comes despite the fact that CTGR never crosses into PGE's property when fishing and harvesting at Willamette Falls and PGE's past approval of our safety plan. There are more appropriate channels to resolve these issues."

Kennedy said that PGE Chief Executive Officer Maria Pope told her that the company's initial support of the Tribe's efforts to build a ceremonial fishing platform at Willamette Falls ended because of claims raised by other Oregon Tribes that have a business relationship with the company.

Kennedy has said that the Grand Ronde Tribe has supremacy as gatekeepers of the falls over other Oregon Tribes because the Clowewalla band of Tumwaters were year-round residents at the fishery.

The Tribe's motion to intervene includes statements from Kennedy and General Manager David Fullerton and adds that the Oregon Department of State Lands does not oppose the motion while PGE objects.

It ultimately is asking for a judgment dismissing PGE's eminent domain request and awarding of legal costs for the Tribe. ■

**WIC  
IN GRAND RONDE**

**Friday June 3 10:00 – 2:00**  
at Grand Ronde Head Start Preschool

Welcoming pregnant & postpartum people  
Infants & toddlers  
Children up to age 5

**Walk in appointments welcome!**

**Please bring:**  
Oregon Health Plan card (if you have one)  
A form of ID (driver's license, tribal ID, birth certificate, vaccination record, WIC ID, etc.)  
Proof you reside in Oregon (a piece of mail with your name and address on it)  
Paystubs for the last 30 days (if you have them)