

Snoqualmie Indian Tribe

July 15, 2022 Joshua Grice Rulemaking Lead Department of Ecology Air Quality Program P.O. Box 47600 Olympia, WA 98504-7600

Dear Mr. Grice, As the registered contract lobbyist of the Snoqualmie Indian Tribe and the Senior Adviser to its Tribal Council, please accept this comment letter on the proposed rulemaking process for the Climate Commitment Act. I was a prime policy author of this legislation building off of my experience both in Indian Country and my four years as the Senior Adviser to the Commissioner of Public Lands, and its effective implementation is the highest priority item on the Snoqualmie Indian Tribe's agenda with Washington State. This letter in no way takes the place of formal consultation with the elected Tribal government, nor should it be construed to limit the Tribe's access to other sources of engagement or remedy with the State. The Tribe reserves and retains all rights to pursue every available opportunity to support the efficacy and success of this all-important legislation. The Snoqualmie Tribe also wishes to recognize and support DOE's careful consideration of the comment letters provided by NGO allies and policy authorities at the Nature Conservancy and Global Ocean Health. Comments on Proposed WAC 173-446 Given the Snoqualmie Tribe's sovereign rights and entitlement to separate government-to-government consultation, I will keep our comments in this context general and high-level. We would be happy to engage more fulsomely at a mutually acceptable time.

1) Tribal Consultation and Cultural Resource Sites : The Climate Commitment Act was passed utilizing the power of a coalition of nineteen Tribal Nations across Washington State whom the prime legislative sponsors publicly acknowledged as the decisive influence on the bill's passage. This coalition negotiated explicit consultation language that protected Tribal cultural resource sites, sacred sites, and archeological sites with language that required consent of the impacted Tribal Nation instead of consultation. This was not a request but a nonnegotiable demand that determined Snoqualmie's support for the legislation. Governor Inslee's targeted veto of this provision has created immense distrust within the leadership of the Snoqualmie Indian Tribe for DOE's impartial implementation of this bill. In the aftermath of his veto, Governor Inslee specifically insulted Tribal opponents by saying they were not led by "real Tribal leaders." This discriminatory, prejudiced, and offensive language has called into question whether DOE will implement this legislation impartially and without favoritism to Inslee's preferred "real Tribal leaders." For this reason, the Snoqualmie Indian Tribe demands far clearer rulemaking expectations laying out how DOE will actually consult with Tribes on this legislation, as well as what provisions it will take to ensure the full fairness, impartiality, and transparency of the implementation of this bill. The Tribe will be fully prepared to take any necessary step to ensure this fundamental fairness expectation is fulfilled.

Likewise, the Snoqualmie Indian Tribe has been the subject of targeted discrimination by governments who confuse the universal requirement to consult with sovereign Tribal Nations with the very specific and narrow adjudicated treaty rights around fishing that are held by some Tribes. Treaties did not create a consultation caste system, and the Tribe expects DOE will not take any step that perpetuates this discriminatory narrative. Unless the question pertains to treaty fishing rights, there is absolutely no other legal or policy reason that "treaty rights" should be invoked in the implementation of this legislation. If "treaty rights" language is included inappropriately, it is a calculated insult to all Tribes – who it is inferred receive their right to consultation from any piece of paper issued by the United States federal government. That right is a fundamental aspect of sovereignty, which Tribes have always had and will always have. As with above, the Tribe will be fully prepared to take any necessary step to ensure this fundamental fairness expectation is fulfilled.

Lastly, the Tribe will eagerly await language around sacred sites, archeological sites, and cultural resource sites that will address the considerable concern around these irreplaceable heritage areas.

2) Waiver of Sovereign Immunity : The California system that DOE is apparently appropriating for a large segment of the rulemaking of the CCA has a fatal flaw: the requirement for waivers of sovereign immunity for Tribes to receive resources. This expectation would immediately doom the implementation of the CCA in Washington State – the Snoqualmie Tribe, and the vast majority of WA Tribes, will not accept any requirement to sign a waiver of sovereign immunity in order to receive resources they are entitled to by law. The Snoqualmie Tribe requests explicit acknowledgment that no waiver of sovereign immunity will be included in any and all rules pertaining to the CCA.

3) Environmental Justice Council: RCW 70A.65.040 lays out explicit and specific expectations that Ecology and the Legislature will receive recommendations from the Environmental Justice Council (EJC). It is our understanding that the EJC has not been fully integrated and consulted in this process, and we believe this is inconsistent with the intent of the Legislation and the Tribe's understanding of the language it negotiated and co-authored. At every step of this process the EJC should be an instrumental and indispensable participant, including in formal rulemaking. There are no grounds within the legislation to limit its scope outside of rulemaking, and plenty of evidence that a broad and robust engagement with the EJC was expected by the Legislature.

4) Support for Working Washingtonians Improving Their Vehicle Efficiency: The average working forester, fisher, farmer, trucker, and other long-traveling professions contribute a vanishingly insignificant amount of pollution to the atmosphere compared to large industries, the U.S. military, and the aerospace sector. These average Washingtonians should not bear the brunt of the cost of the CCA during a time of high inflation and gas prices but instead should be made collaborative parts of the solution. The language pertaining to these communities was specifically co-authored and negotiated by myself on behalf of the Snoqualmie Indian Tribe and with House Natural Resources Chairman Mike Chapman. It was undeniably the intent of this language to lead to proactive, substantive, and meaningful actions to support them. The CCA at Sec 29, Subsection 1(j)(i) explicitly authorizes investments that could greatly mitigate unintended price impacts on these vulnerable and protected communities, specifically by allowing investments for "Programs, activities, or projects that directly improve energy affordability and reduce the energy burden of people with lower incomes, as well as the higher transportation fuel burden of rural residents, such as bill assistance, energy efficiency, or weatherization assistance." The Snoqualmie Indian Tribe strongly supports fuel-efficiency investments for working vehicles as a critical requirement to mitigate potential price impacts on the communities and people identified by the statute.

5) Definition of Tribal Lands : In engagement with DOE, it appears that there has not been an adopted definition of what "Tribal Lands" means in the context of this legislation and grant funding from within it. Given that Tribal lands are inherently something defined by the Tribe itself as a fundamental aspect of sovereignty, it is our position that the definition of "Tribal Lands" should be as defined by each independent sovereign Tribe itself. If one Tribe would like to do projects off-reservation and another wishes to limit its projects to specifically Tribal-owned lands, then that should be a recognized expression of their sovereign right to self-governance. No outside party or state agency should be able to assert where or where not Tribal lands are located. It would be legally and morally inappropriate for an outside state agency to define the "lands" of a sovereign nation. In Closing The Snoqualmie Tribe and its elected leadership are incomparably proud of the Tribe's role in authoring and passing this historic legislation. All of us are facing the greatest existential environmental threat in human history together, and DOE has a duty to comply with both the intent of this ambitious legislation and the obvious scientific mandate to take radical steps to

mitigate Washington State's contribution to this crisis. That is literally why the word "Commitment" is in the name of the legislation. The Snoqualmie Indian Tribe intends to continue to collaborate with DOE and Washington State on ensuring that the Commitment is kept.

Sincerely, Matthew Randazzo V Senior Adviser to the Snoqualmie Indian Tribe State Lobbyist for the Snoqualmie Indian Tribe