



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

May 21, 2021

Sent via Electronic Filing

Laura Watson
Director
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: AMENDMENTS TO CHAPTER 173-201A AND CHANGES TO DESIGNATED USES IN THE
CHELAN RIVER

Dear Director Watson:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) in response to the Department of Ecology’s (“Ecology”) invitation for comments on its proposal to amend Chapter 173-185 WAC, Water Quality Standards for Surface Waters of the State of Washington, and to change the designated use for the Chelan River (“Proposal”).¹ The Yakama Nation opposes the Proposal in whole and urges Ecology to retain salmonid spawning, rearing, and migration as the designated use for Chelan River.

The Yakama Nation is a sovereign and original Native Nation federally-recognized under the Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855 (“Treaty of 1855”).² In Article III of the Treaty of 1855, the Yakama Nation expressly reserved the right to take fish at “usual and accustomed places” outside of the Yakama Reservation.³ The Yakama treaty negotiators knew that securing this right was crucial to guaranteeing the vitality of their people. For the Yakama Nation, the exercise of fishing rights was “not much less necessary...than the atmosphere they breathed.”⁴

The Yakama Nation acts as a steward over the water resources of this region in exchange for the livelihood that they provide, “speaking for the things that cannot speak for themselves.” The Yakama Nation’s Fisheries Resource Management Program and Yakima/Klickitat Fisheries Project have seen considerable success revitalizing fish

¹ The Yakama Nation incorporates by reference the comments filed by the Columbia River Inter-Tribal Fish Commission.

² 12 Stat. 951 (June 9, 1855, ratified March 8, 1859, proclaimed April 18, 1859).

³ *Id.* at 953.

⁴ *U.S. v. Winans*, 198 U.S. 371, 381 (1905).

populations and habitat throughout the Columbia River Basin. Increases in water temperature and pollutant levels caused by climate change and other anthropogenic sources threaten that success. The Yakama Nation therefore has a significant interest in ensuring that water quality regulation in Washington is both consistent with applicable law and adequately protective of aquatic life and habitat.

These comments will focus on specific flaws with the Proposal:

1. Ecology has inappropriately deferred to Public Utility District No. 1 of Chelan County's ("Chelan PUD") interests, analyses, and conclusions;
2. the Proposal is not warranted or proper under Chelan PUD's Section 401 certification and other Clean Water Act requirements;
3. the Proposal is contrary to the policy goals of the Clean Water Act;
4. Ecology has not explained whether the Proposal is consistent with the Total Maximum Daily Load for Temperature in the Columbia and Lower Snake River ("2020 TMDL");
5. the Proposal lacks necessary mitigation measures to facilitate future compliance and offset adverse impacts;
6. Ecology's Determination of Non-Significance ("DNS") for the Proposal is inadequate under the State Environmental Policy Act ("SEPA").

The Yakama Nation considers these aspects of the Proposal to be the most problematic and therefore devotes its comments to them. The fact that the Yakama Nation does not state its opposition to a particular element of the Proposal should not be interpreted as approval of that element; as noted above, the Yakama Nation recommends that Ecology forego the Proposal entirely. Finally, the Yakama Nation reserves the right to provide further input beyond the public comment period and to request government-to-government consultation on the Proposed Rule as Tribal Council deems necessary.

1. Ecology has inappropriately deferred to Chelan PUD's interests, analyses, and conclusions.

Environmental Protection Agency ("EPA") regulations at 40 C.F.R. Part 131, Subpart B prescribe rules for establishing water quality standards.⁵ Section 131.10, which deals with use designations, includes directives specific to use attainability analyses. The references to use attainability analyses in this section consistently provide that the state (or tribe) is the entity that conducts the analysis.⁶ The regulations do not contemplate use attainability analyses by regulated entities or any other non-state actors.

⁵ 40 C.F.R. § 131.10-131.15.

⁶ See 40 C.F.R. § 131.10(a); 40 C.F.R. § 131.10(g); 40 C.F.R. § 131.10(j); 40 C.F.R. § 131.10(k).

The EPA rules reflect sound policy. The government that is establishing water quality standards is the proper entity to evaluate the attainability of uses associated with those standards. Regulated entities, which are subject to water quality standards and therefore have an interest in less stringent requirements, should not be evaluating attainability.

The Washington Administrative Code, on the other hand, prescribes a different role for the state: reviewing and making decisions on use attainability analyses submitted by non-state actors.⁷ Washington's approach invites significant conflicts of interest, wherein dischargers or other regulated entities can submit skewed use attainability analyses to lessen their compliance burden. Ecology can avoid conflicts of interest by meaningfully scrutinizing use attainability analyses such that Ecology is effectively making its own independent analysis.

Unfortunately, with respect to the Proposal, Ecology has not meaningfully scrutinized Chelan PUD's submission or performed its own robust analyses. Instead, Ecology largely defers to Chelan PUD's interests, analyses, and conclusions. For example, the benefits of the Proposal, per Ecology, are limited to avoiding "noncompliance for Chelan PUD" and "ongoing costs to the Chelan PUD and their ratepayers, as well as increased uncertainty about future energy generation and retail prices."⁸ Ecology disregards potential methods to increase river flow and bring Chelan PUD into compliance with current standards because "Chelan PUD... indicated they would be too costly relative to potential beneficial impact."⁹ As discussed below, Ecology accepts without question Chelan PUD's position as to whether spawning, rearing, and migration is an existing or attainable use.¹⁰

These examples illustrate the level of deference that Ecology is improperly affording to Chelan PUD. Rather than benefitting water quality, habitat, or aquatic life, the Proposal will benefit Chelan PUD's bottom line. Potential methods to improve water quality in Chelan River consistent with current standards are not favored because they will come with implementation costs. It is not a surprise that a regulated entity would take these positions. However, Ecology should not be regurgitating them in lieu of performing its own analysis of the benefits and risks of adopting less stringent water quality standards.

Ecology's inappropriate deference to the Chelan PUD permeates throughout the Proposal. Chelan PUD developed the Chelan River Use Attainability Analysis and Site Specific Criteria Development ("UAA"), so the document naturally serves Chelan PUD's

⁷ WAC § 173-201A-440.

⁸ See, e.g., DEP'T OF ECOLOGY, PRELIMINARY REGULATORY ANALYSES, 10 (Mar. 2021) ("Preliminary Regulatory Analyses").

⁹ *Id.*

¹⁰ See DEP'T OF ECOLOGY, TECHNICAL SUPPORT DOCUMENT, 42-43 (Mar. 2021) ("Technical Support Document").

interests and goals. Ecology, an agency whose purpose is to control pollution,¹¹ cannot accept without scrutiny a regulated entity's request to pollute more freely. Instead, Ecology must meaningfully analyze the UAA and reach its own independent conclusions. Ecology has not done so in the Proposal.

2. The Proposal is not warranted or proper under Chelan PUD's Section 401 certification and other Clean Water Act requirements.

A. Ecology has not meaningfully evaluated whether Chelan PUD implemented all "known, reasonable, and feasible measures" to achieve biological objectives in Chelan River.

According to Ecology's Preliminary Regulatory Analyses, Chelan PUD's Section 401 certification ("401 Certification") for the Lake Chelan Dam required it to "implement reasonable and feasible measures to achieve a series of biological objectives over a 10-year period...to determine the potential for the Chelan River to support aquatic life."¹² If, at the end of the 10-year period, "all known, reasonable, and feasible measures have been implemented" and the biological objectives are not met, then Ecology would revise water quality standards for Chelan River as necessary.¹³ Therefore, if Chelan PUD does *not* implement "all known, reasonable, and feasible measures," then, consistent with the 401 Certification, Ecology would not revise the water quality standards.

Ecology has not shown that it evaluated whether Chelan PUD has implemented all "known, reasonable, and feasible measures" to achieve biological objectives in Chelan River.¹⁴ The 401 Certification's directive regarding "known, reasonable, and feasible measures" included monitoring, evaluation, and adaptive management actions.¹⁵ Ecology notes that Chelan PUD "has completed this adaptive management process and determined that no new reasonable and feasible improvements are available to meet the assigned designated uses and that these assigned uses never existed."¹⁶ What is missing, however, is evidence that *Ecology* determined that no new reasonable and feasible improvements are available. Ecology summarizing Chelan PUD's water quality, biological survey, and habitat assessment findings, without more, is insufficient.

¹¹ RCW § 43.21A.020.

¹² Preliminary Regulatory Analyses, 14.

¹³ *Id.*

¹⁴ The supporting documents for the Proposal include a list of measures from the 2003 Chelan River Biological Evaluation and Implementation Plan ("CRBEIP") that were deemed to be "infeasible or inordinately costly for low or uncertain biological benefit." *See, e.g.*, Technical Support Document, 22. It's unclear why Ecology cites the CRBEIP in discussing Chelan PUD's compliance with the 401 Certification because the CRBEIP predates the 401 Certification. Clearly, the 401 Certification's directive regarding "known, reasonable, and feasible measures" did not include those that a previous study had already rejected as being infeasible.

¹⁵ *See, e.g.*, Public Utility District No. 1 of Chelan County, Chelan River Use Attainability Analysis and Site Specific Criteria Development, i (Dec. 2019) ("UAA").

¹⁶ Preliminary Regulatory Analyses, 37.

Chelan PUD's implementation of all "known, reasonable, and feasible measures" is a condition precedent to Ecology revising water quality standards in the Chelan River. As such, Ecology must clearly and adequately determine that Chelan PUD has indeed implemented such measures before the agency can move forward with the Proposal.

B. Ecology has not meaningfully evaluated whether salmonid spawning, rearing, and migration is an existing use.

An existing use is one that was "actually attained in the water body on or after November 28, 1975," regardless of whether it's included in applicable water quality standards.¹⁷ 2004 guidance from Ecology's Water Quality Program notes that existing uses "include uses not optimally supported...but [are] still present in the water body."¹⁸ State antidegradation policies must maintain and protect water quality levels necessary to support existing uses.¹⁹ Consistent with this requirement, states cannot conduct use attainability analyses to remove existing uses.²⁰

Ecology has not meaningfully analyzed whether salmonid spawning, rearing, and migration is an existing use in the Chelan River that is protected under the Clean Water Act. Ecology's supporting materials for the Proposal largely offer conclusory statements regarding the existing use question. For example, the Draft Rule Implementation Plan states, without explanation, that salmonid spawning, rearing, and migration "were not previously existing uses and were applied without review of local conditions."²¹

The closest that Ecology gets to analyzing the existing use question is in the Technical Support Document. Ecology notes that, per Chelan PUD's evaluation, salmonid spawning, rearing, and migration has been observed in Reach 4.²² However, certain water quality conditions prohibit "full attainment" of salmonid spawning, rearing, and migration.²³ In other words, salmonid spawning, rearing, and migration has occurred in at least a segment of the Chelan River since November 28, 1975 but not to the extent that the use was "actually attained."

The standard for actual attainment is unclear. Ecology regulations on fresh water designated uses provide that:

¹⁷ 40 C.F.R. § 131.3(e).

¹⁸ DEP'T OF ECOLOGY, FREQUENTLY ASKED QUESTIONS ABOUT USE ATTAINABILITY ANALYSIS, 2 (Mar. 2004) (<https://apps.ecology.wa.gov/publications/documents/0410021.pdf>).

¹⁹ 40 C.F.R. § 131.12(a)(1). Washington's antidegradation policy requires that existing uses "be maintained and protected. WAC § 173-201A-310(1).

²⁰ 40 CFR § 131.10(g). *See also* WAC § 173-201A-440(1) ("A use can only be removed through a UAA if it is not existing or attainable.").

²¹ DEP'T OF ECOLOGY, DRAFT RULE IMPLEMENTATION PLAN, 5 (Mar. 2021).

²² Technical Support Document, 43.

²³ *Id.*

[t]he key identifying characteristic of [salmonid spawning, rearing, and migration] is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.²⁴

Chelan PUD interprets this language to mean that “salmonid rearing and migration must be supported throughout the year, including the summer season.”²⁵ The regulations, however, do not require the use to be supported year round. Instead, they only provide that a key feature of the use is salmon or trout spawning and emergence occurring outside of the summer season, and that another feature of the use is rearing and migration by salmonids.

If spawning and emergence occurring outside of summer is a “key identifying characteristic” of salmonid spawning, rearing, and migration, then the occurrence of spawning and emergence outside of summer should show actual attainment of the use. Likewise, if rearing and migration is another “common characteristic” of salmonid spawning, rearing, and migration, then the occurrence of rearing and migration should show actual attainment of the use.

Spawning and emergence outside of summer, as well as rearing and migration, *have* occurred in at least some reaches of the Chelan River since 1975. Chelan PUD’s own data appears to support this conclusion.²⁶ A 1987 paper by U.S. Fish & Wildlife Service also indicates that Chinook salmon were spawning in the Chelan River in the 1980s.²⁷ These behaviors occurring in the Chelan River since 1975 means that salmonid spawning, rearing, and migration is an existing use. This conclusion is consistent with Ecology’s 2004 guidance that existing uses include those uses that are not optimally supported but still present in the waterbody. As an existing use, salmonid spawning, rearing, and migration is protected under the Clean Water Act and state law from removal by Ecology.

²⁴ WAC § 173-201A-200(1)(a)(iii).

²⁵ UAA, 76.

²⁶ *See, e.g.*, UAA, v, 76 (“it is reasonable to assume that some of these fish were the progeny of steelhead that had previously spawned in the Reach 4 habitats.”); *See also* BIOANALYSTS, INC. ET AL., MONITORING AND EVALUATION OF THE CHELAN AND GRANT COUNTY PUDS HATCHERY PROGRAMS 441-77 (Sept. 15, 2020).

²⁷ U.S. FISH AND WILDLIFE SERVICE, STATUTE AND PROPAGATION OF CHINOOK SALMON IN THE MID-COLUMBIA THROUGH 1985, 68 (1987).

C. Ecology has not meaningfully evaluated whether salmonid spawning, rearing, and migration is an attainable use.

States and tribes can remove designated uses that are not existing uses after conducting a use attainability analysis.²⁸ However, EPA regulations place two limitations on states and tribes seeking to remove designated uses. First, a state or tribe must demonstrate that attaining the use is infeasible because of one of six enumerated factors.²⁹ Second, a state or tribe cannot remove a designated use if the use can be attained through implementation of effluent limits.³⁰ Under these standards, Ecology has not justified its conclusion that salmonid spawning, rearing, and migration is not an attainable use.

With respect to the first limitation, Chelan PUD asserts, and Ecology agrees, that salmonid spawning, rearing, and migration is not an attainable use because of two factors: “naturally occurring pollutant concentrations prevent the attainment of the use” (“Factor 1”) and “physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses” (“Factor 5”).³¹ According to Chelan PUD and Ecology, Factor 1 is applicable to all four Reaches, with heat being the naturally occurring pollutant, and Factor 5 is applicable to Reaches 1 through 3.³²

Chelan PUD asserts that natural factors contribute to high temperatures in the Chelan River and that the presence of Lake Chelan Dam actually reduces water temperatures.³³ Ecology does not challenge this assertion and instead simply reiterates Chelan PUD’s reasoning.³⁴ The term “naturally occurring pollutant concentrations” is not defined in the Clean Water Act. There are, however, a number of reasons why the concentration of heat in the Chelan River may not be a purely natural occurrence and is instead caused by Lake Chelan Dam.

For example, it’s not clear that the dam elevating Lake Chelan by 21 feet would actually reduce water temperatures because of thermal stratification. At its deepest point, the Wapato Basin is approximately 400 feet deep. Thermal stratification would have always occurred at this depth and elevating the water level by 21 additional feet would have a relatively negligible effect. The additional water would, however, greatly expand the surface area of the lake’s epilimnion. Combined with the increased water

²⁸ 40 C.F.R. § 131.10(g).

²⁹ *Id.*

³⁰ 40 C.F.R. § 131.10(h)(1).

³¹ UAA, 77-79; Technical Support Document, 42-43.

³² *Id.*

³³ UAA, 78-79.

³⁴ Technical Support Document, 43.

retention time caused by the dam, the expansion of the lake's epilimnion could significantly increase temperatures in the Chelan River.

Ecology must carefully evaluate Lake Chelan Dam's impacts to water temperature before it can conclude that excess heat in the Chelan River is "naturally occurring." To better understand these impacts, Ecology might consider analyzing temperature data for the Chelan River at various points in time, such as pre-construction, pre-licensing, and post-licensing. If the excess heat is a by-product of the dam, then Factor 1 is not a legitimate basis for finding that attainment of salmonid spawning, rearing, and migration is infeasible.

Similarly, Ecology has not meaningfully considered whether Factor 5 is a legitimate basis for concluding that attainment of salmonid spawning, rearing, and migration is infeasible for Reaches 1 through 3. As with most other elements of the Proposal, Ecology merely summarizes Chelan PUD's points regarding the physical conditions in Reaches 1 through 3.³⁵ Ecology notes that the "studies conducted by Chelan PUD describes the limitations of salmonids movement upstream and the inability of downstream migrating salmonids to spawn and rear due to insufficient habitat."³⁶ There is no independent analysis of habitat capability or other physical conditions. Ecology must evaluate whether Chelan PUD's conclusions regarding Factor 5 are sound.

With respect to the second limitation, neither Ecology nor Chelan PUD has addressed whether salmonid spawning, rearing, and migration can be attained through implementation of effluent limits. If so, then under 40 C.F.R. § 131.10(h)(1) Ecology cannot remove salmonid spawning, rearing, and migration as a designated use. If not, then Ecology must explain why attainment is not possible even with additional effluent limits.

3. The Proposal is contrary to the policy goals of the Clean Water Act.

The objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."³⁷ The Clean Water Act therefore sets forth a policy of forward momentum with respect to water quality protection. The high bar for removing designated uses and backsliding to less stringent criteria, described in Section 2 of these comments, exemplifies this policy.

The policy of the Clean Water Act does not support loosening water quality standards to relieve financial and compliance pressures on a regulated entity absent any environmental benefits. This is particularly true where the regulated entity's actions

³⁵ *Id.* at 42.

³⁶ *Id.*

³⁷ 33 U.S.C. § 1251.

potentially created the conditions that are frustrating compliance with applicable standards. Governments should not be rewarding dischargers with relaxed requirements where the discharger has contributed to degradation in a waterbody.

As noted above, the stated benefits of the Proposal are to avoid additional costs and noncompliance for Chelan PUD. Ecology has not cited any environmental or conservation benefits that would flow from the Proposal. Accordingly, the Proposal is entirely inconsistent with the policy of the Clean Water Act. Moreover, it is possible that the existence of Lake Chelan Dam has increased water temperature in the Chelan River. Ecology has not meaningfully analyzed this question in the Proposal. If the dam did contribute to heat pollution, then Ecology should not be rewarding Chelan PUD with less restrictive temperature criteria.

The Proposal would set a troubling precedent wherein regulated entities which contribute to water quality degradation can petition Ecology to revise applicable standards in a way that exclusively benefits the regulated entity. Combined with deference from Ecology on questions of existing or attainable uses, this would effectively put regulated entities in control of water quality regulation in the state. Ecology must consider this precedent and its conflict with the policy of the Clean Water Act before moving forward with the Proposal.

4. Ecology has not explained whether the Proposal is consistent with the 2020 TMDL.

The EPA's 2020 TMDL confirmed that significant portions of the Columbia River are impaired for temperature.³⁸ The EPA concluded that tributaries are not major contributors to temperature impairment, but nevertheless assigned a load allocation for tributaries.³⁹

It is not clear that Ecology considered the EPA's recommended tributary load allocations when it developed the Proposal. This is a significant oversight in light of the impairment status of the Columbia River. Ecology must explain whether the Proposal is consistent with the data and recommendations in the 2020 TMDL and, if it isn't, why the agency disregarded the EPA's conclusions in developing the Proposal.

5. The Proposal lacks necessary mitigation measures to facilitate future compliance and offset adverse impacts.

The Proposal has the potential to negatively impact salmon populations in the Chelan River. If Ecology moves forward with the Proposal, the Yakama Nation recommends

³⁸ ENV'TL PROT. AGENCY, TOTAL MAXIMUM DAILY LOAD (TMDL) FOR TEMPERATURE IN THE COLUMBIA AND SNAKE RIVERS ("TMDL"), 2-5 (May 18, 2020).

³⁹ *Id.* at 30, 61.

that Ecology impose additional mitigation measures on Chelan PUD to ensure that fish survival and habitat are protected.

First, Ecology should require an intake pipe connecting the penstock intake to cooler water than what is currently available at the current intake location. Based on the lake temperature data included in the UAA, the intake pipe would likely need to run several miles up-lake. Its intake elevation would need to be significantly lower than the current low-level outlet elevation. The Yakama Nation recommends further lake temperature studies between stations LC-2 and LC-4 to find temperatures consistently under 15° C during the month of August and closest to Lake Chelan Dam.

Second, Ecology should require Chelan PUD to further investigate the use of groundwater to cool Reach 4. Specifically, Chelan PUD should drill a main test well and several observation wells. Next, it should perform a standard well productivity test, pumping water from the test well and observing the cone of depression recharge at the observation wells. Chelan PUD should then produce and distribute a report for review and comment by Ecology and the Yakama Nation.

Lastly, the Yakama Nation understands that there is active bedload aggradation in Reach 4 which, in time, may impact salmonids' ability to successfully spawn in that area. It is critical that the Proposal not contribute to or exacerbate this habitat condition. Ecology should require a monitoring plan to study the bedload aggradation and its impact on spawning area availability. Based on monitoring results, Ecology may need to implement or require implementation of remedial action.

The Proposal is not warranted or justified. However, if Ecology proceeds despite the deficiencies described herein, then the agency should require these additional mitigation measures to lessen the potential for adverse impacts to fish survival and habitat. Implementation of these measures could also increase the likelihood of meeting existing temperature criteria, thereby allowing for the re-designation and attainment of the spawning, rearing, and migration use. The Yakama Nation acknowledges that two of the measures were previously considered and rejected. However, Chelan PUD's substantial request for a revision of water quality standards warrants re-visiting and exploring the potential efficacy of various mitigation options.

6. Ecology's DNS for the Proposal is inadequate under SEPA.

A SEPA responsible agency can only issue a DNS if it determines that "no probable significant adverse environmental impacts" will result from its action.⁴⁰ A DNS is improper if an agency is unable to show that: its decision to issue a DNS was based

⁴⁰ See WAC § 197-11-340(1).

upon information sufficient to evaluate a proposal's environmental impact; and it considered the relevant environmental factors.⁴¹

Ecology's DNS for the Proposal effectively offers no explanation as to how the agency determined that no probable adverse environmental impacts would stem from downgrading water quality standards for the Chelan River. In many instances, Ecology simply answers questions on the SEPA checklist with "N/A."⁴² Ecology's most robust answers are that the Proposal "will validate the environmental benefits gained for the newly created salmonid habitat for the Chelan River with no probable significant adverse impacts" and "will not cause or result in any physical changes to the river that would cause environmental impacts."⁴³

These are conclusory statements that do not demonstrate that Ecology's DNS was based on adequate information or that the agency meaningfully considered relevant environmental factors. Considering the lack of information available in the other materials for the Proposal, Ecology must re-issue a SEPA-compliant DNS that adequately explains the environment impacts of the Proposal.

7. The Yakama Nation urges Ecology to forego the Proposal.

In light of the deficiencies described above, Ecology should abandon the Proposal and retain salmonid spawning, rearing, and migration as the designated use for Chelan River.

This matter is of great importance to the Yakama Nation. If you have any questions or concerns regarding this comment, please contact Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at (509) 865-7269, ext. 6014.⁴⁴

Sincerely,



DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

⁴¹ See WAC § 197-11-330; WAC § 197-11-335.

⁴² DEP'T OF ECOLOGY, DETERMINATION OF NON-SIGNIFICANCE, 7-8 (Mar. 4, 2021).

⁴³ *Id.* at 5,7.

⁴⁴ In submitting these comments, the Yakama Nation does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its sovereign rights, privileges, or remedies guaranteed by the Treaty of 1855. Furthermore, submission of these comments does not substitute for formal government-to-government consultation on this matter.