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VIA E-Mail

September 30<sup>th</sup>, 2021

United States Environmental Protection Agency  
Jennifer Brundage  
[Brundage.jennifer@epa.gov](mailto:Brundage.jennifer@epa.gov)

Re: Snoqualmie Indian Tribe Comments on Revising the Federal Water Quality Standards Regulations to Protect Tribal Reserved Rights

Ms. Brundage,

The Snoqualmie Indian Tribe (“Snoqualmie” or “Tribe”), a federally recognized sovereign Indian tribe and signatory to the Treaty of Point Elliott of 1855, with reserved rights thereunder, submits these comments in response to the United States Environmental Protection Agency (USEPA)’s request for comment concerning the plan to revise the federal water quality standards regulations to protect Tribal reserved rights. The Tribe supports USEPA’s desire to change the water quality standards (WQS) regulations at 40 CFR Part 131 to explicitly and sustainably protect Tribal reserved rights in state waters, consistent with existing legal obligations. However, the protection of Tribal reserved rights must be based on tribal inherent sovereignty, as all tribes have fished, hunted and gathered in and near waters subject to the WQS since time immemorial and not just on treaty status.

### **Snoqualmie Is A Treaty Signatory**

The Tribe is a treaty tribe entitled to exemption from state taxation associated with its exercise of treaty-protected, indigenous activities because the Tribe reserved its fishing, hunting and gathering rights when it signed the Treaty of Point Elliott of 1855 (“Treaty”).<sup>1</sup> The Tribe has engaged in the fishing, hunting and gathering activities it reserved under the Treaty throughout its aboriginal homelands in Washington since time immemorial.

By its ancestors’ signature to the Treaty and cession of its extensive ancestral homelands, the Tribe—sduk<sup>w</sup>albix<sup>w</sup> in its Native language—reserved the right to continue fishing, hunting and gathering as it has done since time immemorial. At the time it signed the Treaty, the Tribe consisted of eighteen or more winter villages under the leadership of Chief Pat-ka-nam. On January 22, 1855, Chief Pat-ka-nam and fourteen other Snoqualmie representatives signed the Treaty, expressly reserving in the Treaty the “right of taking fish at usual and accustomed grounds and stations” and the “privilege of hunting and gathering

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<sup>1</sup> 12 Stat. 927 (1855).



roots and berries on open and unclaimed lands” off-reservation. Congress ratified the Treaty in 1859, and Congress has never abrogated the rights Snoqualmie reserved under the Treaty.

Numerous courts have recognized Snoqualmie as a Treaty signatory.<sup>2</sup> The United States has likewise unequivocally confirmed Snoqualmie’s status as a Treaty signatory. In 1997, the United States issued a decision that re-recognized the Tribe, concluding that “[t]he Snoqualmie Tribe was acknowledged by the Treaty of Point Elliott in 1855[.]”<sup>3</sup> More recently, in March of 2020, the United States confirmed that it could take land into trust on behalf of the Tribe.<sup>4</sup> In support of this fee-to-trust opinion, the United States found that it “entered into the Treaty of Point Elliott with the Snoqualmie and other western Washington tribes in 1855,” and “[t]he Snoqualmie were a party to the Treaty of Point Elliott.”<sup>5</sup> The United States ultimately affirmed that “that the Snoqualmie Tribe was clearly identified as derived from the treaty-signatory Snoqualmie.”<sup>6</sup>

### **USEPA Should Extend the WQS Protections to All Tribes, Not Just Treaty Signatories**

Although Snoqualmie would benefit from the proposed change to the WQS regulations as a treaty signatory and irrespective of its position as a Treaty signatory, the Tribe recommends the USEPA not limit the proposed changes to the WQS regulations to only those rights reserved by a tribe in a treaty or equivalent document. This is unfair to those tribes who, by virtue of the failure of Congress to act or other historical anomaly, do not have a ratified treaty with the United States. Rather, all federally-recognized tribes, based on their inherent sovereignty, should have the protections contemplated by USEPA. This broader rule would recognize that tribes have fished, hunted and gathered in and around waters since time immemorial. This policy would be clear and fair.

All federally-recognized tribes, and their members, should enjoy the same WQS protections for reserved rights. After all, treaties between the United States and Indian tribes *reserved* rights that those tribes already possessed—in other words, treaties are not a grant of rights from the United States to tribes.<sup>7</sup>

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<sup>2</sup> *United States v. Washington*, 641 F.2d 1368, 1370, n. 1 (9th Cir. 1981) (“The Duwamish, Samish, Snohomish, and Snoqualmie Tribes were parties to the Treaty of Point Elliott[.]”); *Snoqualmie Indian Tribe v. United States*, 15 Ind. Cl. Comm. 267, 310, 314 (May 7, 1965) (finding that “Governor Stevens concluded the Treaty at Point Elliott on January 222, 1855 with... Snoqualmie”); *Upper Skagit Tribe of Indians v. United States*, 13 Ind. Cl. Comm. 583, 585-86, 588 (Aug. 13, 1964) (finding that “Snoqualmie” were among the signatories to the Treaty of Point Elliott, and awarding Snoqualmie monetary compensation).

<sup>3</sup> Final Determination to Acknowledge the Snoqualmie Tribal Organization, 62 Fed. Reg. 45864-02 (Aug. 29, 1997).

<sup>4</sup> Memorandum from Jessie D. Young, Attorney-Advisor, Pacific N.W. Regional Solicitor’s Office, to Tara Sweeny, Assistant Secretary – Indian Affairs (Mar. 18, 2020), available at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ots/pdf/Snoqualmie.pdf>.

<sup>5</sup> *Id.* at pp. 2-3.

<sup>6</sup> *Id.* at p. 31.

<sup>7</sup> See *United States v. Winans*, 198 U.S. 371 (1905) (a treaty “is not a grant of rights to the Indians, but a grant of rights from them.”)



The Snoqualmie people have fished, hunted and gathered on their traditional lands in the Puget Sound region since time immemorial. The Snoqualmie people were well-known “land hunters” who “were rated as one of the better hunting tribes” that “wandered and roamed through the Cascade Mountains on hunting expeditions,” and the Snoqualmie “relied on hunting for a large part of their subsistence.”<sup>8</sup> Thus, when the Snoqualmie signed the Treaty, they reserved fishing, hunting and gathering rights they already possessed for themselves and all of their descendants—the same hunting and gathering rights other Washington tribes had likewise exercised in their tribal homelands since time immemorial prior to the 1853 arrival of Governor Isaac Stevens in the Washington Territory. USEPA should therefore recognize the inherent fishing, hunting and gathering rights that all tribes have exercised since time immemorial.

USEPA should not punish tribes whose ancestors did not have the opportunity to sign a treaty, refused to sign unfair treaties or whose treaties were not ratified by failing to protect those tribes’ inherent rights in regulatory changes to WQS.

In conclusion, the Tribe welcomes the USEPA’s proposal to change the WQS regulations to explicitly and sustainably protect Tribal reserved rights in state waters. The Tribe urges the USEPA to take a more holistic approach, extending WQS protections to the fishing, hunting and gathering activities of all federally recognized tribes, regardless of treaty or executive order status. The Tribe appreciates the opportunity to submit comments on this important issue.

Sincerely,

Snoqualmie Tribal Council

A handwritten signature in blue ink that reads "Robert M. de los Angeles".

Robert M. de los Angeles  
Chairman

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<sup>8</sup> *Snoqualmie Tribe of Indians ex rel. v. United States*, 372 F.2d 951, 962-63 (Ct. Cl. 1967).