



3537 NE 87th St., Seattle, WA 98115

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September 13th, 2022

Representative Teresa Leger Fernández, Chair  
Subcommittee For Indigenous Peoples Of The United States  
House Natural Resources Committee  
1324 Longworth House Office Building  
Washington, DC 20515

Representative Jay Obernolte, Acting Ranking Member  
Subcommittee For Indigenous Peoples Of The United States  
House Natural Resources Committee  
1329 Longworth House Office Building  
Washington, DC 20515

**Re: Legislative Hearing: H.R. 8286 - To take certain Federal land in the State of Washington into trust for the Lower Elwha Klallam Tribe, and for other purposes**

Dear Chair Leger Fernández and Ranking Member Obernolte:

On behalf of the whitewater paddling community, American Whitewater writes to express our appreciation for holding a hearing on the legislation to take certain Federal land into trust for the Lower Elwha Klallam Tribe (H.R. 8286). This legislation would take certain Federal land located in Washington State into trust for the benefit of the Lower Elwha Klallam Tribe. The land is located in the aboriginal territory of the Lower Elwha Klallam Tribe. Restoring these lands, which were taken from the Tribe for construction of the Elwha Hydroelectric Project, to the stewardship of the Lower Elwha Klallam Tribe is a long overdue moral imperative.

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*Our mission is to protect and restore America's whitewater rivers  
and to enhance opportunities to enjoy them safely.*

### ***About American Whitewater***

American Whitewater is a national non-profit 501(c)(3) river conservation organization founded in 1954 with approximately 50,000 supporters, 6,500 dues-paying members, and 100 local-based affiliate clubs, representing whitewater enthusiasts across the nation. American Whitewater's mission is to protect and restore America's whitewater rivers and to enhance opportunities to enjoy them safely. The organization is the primary advocate for the preservation and protection of whitewater rivers throughout the United States, and connects the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within its mission. Our vision is that our nation's remaining wild and free-flowing rivers stay that way, our developed rivers are restored to function and flourish, that the public has access to rivers for recreation, and that river enthusiasts are active and effective river advocates. Our members recreate in the Elwha River watershed and within the lands and waters included in this bill.

### **Congressional Hearing Examining Tribal Co-Management of Public Lands**

On March 3, 2022, the full House Natural Resources Committee held the first Congressional Hearing examining Tribal Co-Management of Public Lands. The hearing examined broad issues of Tribal land dispossession enacted by the U.S. government and the impact of that dispossession on federal land management practices. The Committee heard from a witness panel comprised of Indigenous voices who provided cultural, historical, and legal perspectives on the importance of tribal co-management. As a follow up to this oversight hearing, we appreciate that the Subcommittee For Indigenous Peoples has scheduled this hearing to act on legislative proposals that address issues raised. This legislation represents an opportunity where the Subcommittee can immediately act to advance legislation demonstrating a commitment to address issues that were raised in the March hearing.

### ***Support for H.R. 8286***

American Whitewater strongly supports the legislation to take certain Federal land into trust for the Lower Elwha Klallam Tribe (H.R. 8286), as introduced by Representative Kilmer. This legislation would transfer administrative jurisdiction of lands along the river, representing 1,083 acres, from the National Park Service to be held in trust for the benefit of the Lower Elwha Klallam Tribe to be used for traditional and customary uses. This would re-establish the Lower Elwha Klallam Tribe as the stewards of these lands following a century of impact from hydropower development that devastated salmon runs and impaired river health.

The whitewater boating community enjoys recreational opportunities on the Elwha River through lands included in this legislation. The Elwha River run from Highway 101 to the ocean passes through the former Elwha Dam site and lands included in this legislation.<sup>1</sup> We understand and respect that when we pass through these lands we come as visitors to a place of cultural significance to the Klallam people. We have an interest in further educating our community on the importance and cultural significance of these lands. We welcome any opportunity to work directly with the Lower Elwha Klallam Tribe to develop appropriate education and outreach materials for our community and the general public.

Regarding specific language in the bill, we strongly support section 1(c) on land management and language to manage lands “in accordance with section 1(b) of the Wild and Scenic Rivers Act (16 U.S.C. 1271).” This section could further be strengthened by including specific language to protect the river under section 7(a) of the Wild and Scenic Rivers Act. While section 1(b) of the Wild and Scenic Rivers Act speaks to general Congressional policy with regard to completing the policy of dam construction with a policy for preservation of rivers in their free-flowing condition, section 7(a) is the section of the Wild and Scenic Rivers Act that provides this protection. Given the past history of hydroelectric development, and more recent proposals to build new dams on lands of cultural significance to Tribes,<sup>2</sup> we recommend adding language that “the provisions of section 1278(a) of this title shall apply to the segment of the Elwha River flowing through the Reservation.”<sup>3</sup> This would more clearly establish the intent of management in accordance with 16 U.S.C. 1271 and be consistent with the National Park Service assessment completed in 2004.<sup>4</sup>

### ***Conclusion***

On behalf of the whitewater paddling community, thank you again for holding this hearing and the opportunity to provide testimony on this legislation. We strongly support this legislation to take certain Federal land into trust for the Lower Elwha Klallam Tribe (H.R. 8286). We ask that you consider strengthening protections for the river consistent with section 7(a) of the Wild and Scenic Rivers Act. We urge you to move this bill through the

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<sup>1</sup> <<https://www.americanwhitewater.org/content/River/view/river-detail/2113/main>>

<sup>2</sup> As recently as 2018, Snohomish PUD proposed a new hydropower project on the Skykomish River that was opposed by the Tulalip Tribe, <<https://www.heraldnet.com/news/snohomish-county-pud-scrap-skykomish-river-hydroelectric-dam/>>.

<sup>3</sup> Protection under Section 7(a) of the Wild and Scenic Rivers Act would recognize the significant investment in river restoration and prevent any future applicant from applying for a preliminary permit or applying for a hydropower license for this section of river. Similar language is found at 16 USC § 1274 (a) (24), 16 USC § 1276 (91), 16 USC § 544k, 16 USC § 460ee (f), 16 U.S.C. § 539g (h), and 16 USC § 460ww-1 (d).

<sup>4</sup> Elwha Wild and Scenic River Eligibility Report, July 2004, National Park Service, <<https://www.americanwhitewater.org/content/Document/view/?id=369>>.

Committee and to the House floor to re-establish the Lower Elwha Klallam Tribe as the steward of their traditional lands.

Sincerely,

A handwritten signature in black ink, appearing to read 'T O'Keefe', with a long horizontal stroke extending to the right.

Thomas O'Keefe  
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cc:

Frances Charles, Chairwoman  
Lower Elwha Klallam Tribe  
2851 Lower Elwha Road  
Port Angeles, WA 98363

Representative Derek Kilmer  
1410 Longworth HOB  
Washington, D.C. 20515