



# LOWER ELWHA KLALLAM TRIBE

ḷəḷiḷ'ə nəx'səl'ay'əm "Strong People"

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September 9, 2022

Representative Derek Kilmer  
2059 Rayburn House Office Bldg.  
Washington, D.C. 20515

Senator Maria Cantwell  
511 Hart Senate Office Bldg.  
Washington, D.C. 20510

Re: Disclaimer/savings clause language for H.R. 8286

Dear Representative Kilmer:

I have received a copy of the September 8, 2022 letter that Jamestown and Port Gamble S'Klallam Chairmen Ron Allen and Jeromy Sullivan sent to you late last night regarding H.R. 8286, legislation you introduced to take certain Federal land along the Elwha River into trust for the Lower Elwha Klallam Tribe. That letter appears to have been developed in response to my September 8 email to you and Mai Nguyen of your staff proposing a revised disclaimer that states, "Nothing in this Act shall be interpreted as affecting or extinguishing the rights of any Indian Tribe secured by the Treaty of Point No Point." Our proposal was based on the compromise language that you offered on September 6 during the video-conference you held with me and the two S'Klallam Chairmen.

The S'Klallams' September 8 letter proposes language that is even more extensive than that in the draft letter they sent to me last weekend (which I shared with you on September 5 at your request), and is therefore even less likely to be accepted by the Committee.<sup>1</sup> Despite stating

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<sup>1</sup> The language now proposed by the S'Klallam states (yellow highlighting shows what has been added to their initial proposal): *Nothing in this Act shall be interpreted as affecting Treaty rights or access to the historical lands of the Jamestown S'Klallam or Port Gamble S'Klallam Tribes described in the Treaty of Point No Point. 12 Stat. 933. These Treaty Rights of the other bands of S'Klallam requires access to these lands to hunt, gather, and fish in the lands described as 1082.63 acres in the map numbered 149/178020, and are explicitly reserved for the Jamestown S'Klallam and Port Gamble S'Klallam Tribes and are not extinguished or impacted in any way by this legislation.*

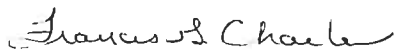
that they are willing to discuss the matter, they unfortunately do not seem willing to discuss actual compromise language with us or with you in the short time left before the Subcommittee hearing on September 14.

In addition, their letter also contains an incorrect legal assertion, that the Lower Elwha or Rep. Kilmer proposals do “not address the legal requirement for explicit recognition in the legislation reserving the right of access for the Port Gamble S’Klallam and Jamestown S’Klallam Tribe.” There is no such legal requirement, and the S’Klallam cite to none. As was discussed at length on September 6, the savings clause that you initially proposed several weeks ago – which Lower Elwha readily accepted and which the S’Klallam initially agreed to at a meeting on August 31 – is more than sufficient to preserve the treaty rights status quo with regard to the lands that the bill will transfer in trust to Lower Elwha. The same is true of the compromise that you proposed on September 6 and of the proposal in my September 8 email, which is quoted in the first paragraph above. Your proposals, and ours, are also consistent with the savings clause in Section 8(b) of the Elwha River Ecosystem and Fisheries Restoration Act of 1992 (EREFRA).

We remain open to further efforts with the S’Klallam Tribes to ensure our collective treaty rights are protected going forward, but at this point we hope you will support us in moving H.R. 8286 forward with the disclaimer language we proposed on September 8. We appreciate your support of our ongoing work to restore the Elwha River through this important piece of legislation, which will return ancestral lands to the Lower Elwha Tribe and implement one of the important goals of EREFRA.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

  
Frances G. Charles, Chairwoman  
Lower Elwha Klallam Tribe