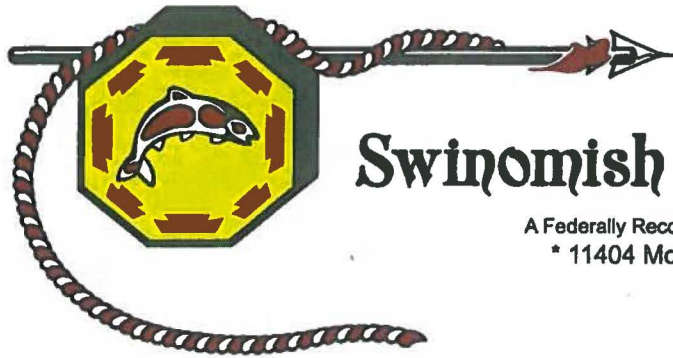




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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

September 24, 2026

Submitted Electronically via CARA and via email

Objection Reviewing Officer, Region 6 Regional Forester
Pacific Northwest Region, USDA Forest Service
Attn: 1570/1950 Objections
1220 SW 3rd Ave
Portland, OR 97204

Re: Objection to 2025 Mt. Baker Geothermal Consent to Lease

Dear Objection Reviewing Officer,

On behalf of the Swinomish Indian Tribal Community ("Swinomish" or "Tribe"), please accept the Tribe's attached formal objection to the proposed 2025 Mt. Baker Geothermal Consent to Lease. As discussed below, the Tribe requests a meeting with the Reviewing Officer, government-to-government consultation, and that the United States Forest Service ("USFS" or "Forest Service") provide the suggested specific remedies.

Per 36 C.F.R. § 218.8(d), I provide the following information:

Name, Address and Phone Number of Objector:

Chairman Steve Edwards
Swinomish Indian Tribal Community
11404 Moorage Way
La Conner, WA 98257
360-466-3163

Name of the proposed project:

2025 Mt. Baker Geothermal Consent to Lease

Name and title of the responsible official:

Erin Uloth, MBS Forest Supervisor

Ranger district on which the proposed project will be implemented:

Mount Baker Ranger District

Description of Specific Concerns, Violations, and Potential Remedies

The Tribe provided detailed background information and concerns in its June 8, 2026 comment and objection letter, and its October 10, 2025 letter and declaration on this Project. Please incorporate all prior submissions into this objection letter by reference. 36 C.F.R. § 218.8(b)(4).

Swinomish is a federally recognized Indian nation organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 5123 with a population of approximately 1,400 enrolled tribal members. The Tribe is a present-day political successor-in-interest to certain tribes and bands that signed the Treaty of Point Elliott, 12 Stat. 927 (1855) (“Treaty of Point Elliott” or “Treaty”) with the United States. and established the Swinomish Indian Reservation. As part of the Treaty, the Tribe reserved other rights including without limitation the “right of taking fish at usual and accustomed grounds and stations.” *United States v. Washington*, 459 F. Supp. 1020, 1039, 1041 (W.D. Wash. 1978). The Tribe’s usual and accustomed fishing areas (U&A) extend throughout “the Skagit River and its tributaries, the Samish River and its tributaries and the marine areas of northern Puget Sound....” *Id.* at 1049, Supplemental Finding of Fact at 6.

The Tribe also has rights under Article 5 of the Treaty of Point Elliott to “the privilege of hunting and gathering roots and berries on open and unclaimed lands.” For millennia, these lands have included what are present-day USFS-managed lands in the Mount Baker-Snoqualmie National Forest. This was thoroughly acknowledged in the 2013 Memorandum of Agreement between the Tribe and the Forest Service.

As set forth in detail below, the Tribe has rights and ongoing cultural uses throughout the Skagit River watershed, which includes many of the areas USFS proposes to open to development in the Consent to Lease (the “Proposed Project”). **As stated in the Tribe’s June 8th objection letter on the Draft EA, these areas are highly vulnerable to geothermal energy development impacts and must be withdrawn from consideration as part of the Project.** Swinomish’s legal rights and interests would be irreversibly harmed by any allowable surface or sub-surface activities under the Proposed Project.

Lack of Analysis of Environmental Effects

The Tribe is deeply troubled that the USFS’s Final Environmental Assessment and Finding of No Significant Impact (“EA”) has concluded the Consent to lease would not cause any

significant environmental effects and is equally troubled by the USFS associated decision to defer environmental review until later phases.

The EA repeatedly claims that “[t]he ‘action’ of consenting to lease has no environmental impact on any resource because it does not include any ground-disturbing activities.” EA at 1. By determining at the outset that the action lacks any environmental impacts, USFS foreclosed any actual environmental review. This unlawfully ignores the direct and indirect effects of the action, which include the reasonably foreseeable consequence of geothermal exploration and development in the nominated parcels.

The National Environmental Policy Act (“NEPA”) requires early analysis such that review allows for meaningful decision making and selection of alternatives. A programmatic approach is favored as an efficient and comprehensive approach necessary to avoid piecemealing and segmentation.

The case *Citizens for Clean Energy v. U.S. Dep't of the Interior*, 384 F. Supp. 3d 1264, 1276 (D. Mont. 2019) is instructive. There, the Northern Cheyenne Tribe, among other plaintiffs, had deep cultural connections to federal lands in Montana that were subject to potential coal leasing. The plaintiffs challenged the Bureau of Land Management’s decision to restart the federal coal leasing program, which would subject lands across the nation to potential coal leasing. The Court rejected the United States’ argument that the decision was merely a procedural first step without environmental effects and held that NEPA review was required.

The Court stopped short of ordering a specific kind of NEPA review. When BLM performed a perfunctory review of a limited set of leases, the Court held “that such a limited analysis fails to consider all direct, indirect, and cumulative impacts of re-starting the federal coal-leasing program.... The EA did not take the ‘hard look’ NEPA requires with respect to restarting the federal coal leasing program.” *Citizens for Clean Energy v. U.S. Dep't of the Interior*, 621 F. Supp. 3d 1165, 1173 (D. Mont. 2022), *vacated and remanded*, No. 22-35789, 2024 WL 702312 (9th Cir. Feb. 21, 2024). Critically, the Court determined that “BLM’s NEPA analysis should have considered the effect of restarting coal leasing from a forward-looking perspective, including connected actions.” *Id.*

While this case was later determined to be moot due to a superseding secretarial order, the substantive analysis remains applicable here. The USFS’ Mt. Baker Consent to Lease is the first step with sweeping, forward-looking impacts from connected actions—lease acquisition, ground-disturbing exploration activities, and ultimately industrial development to construct roads, power plants, transmission lines, geothermal mining and fracking. The USFS’ EA fails to account for any of those likely irreversibly catastrophic effects on the Tribe’s property rights and cultural uses of National Forest Lands on Mt. Baker.

As discussed in our comment letter, USFS and BLM also share administration for oil and gas

development on USFS lands. The BLM proposes areas for lease, and as a preliminary step, USFS must consent to leasing. There, “[b]efore consenting, USFS must verify that the leasing of those specific lands ‘has been adequately addressed in a NEPA document and is consistent with the Forest land and resource management plan.’” *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 444 F. Supp. 3d 832, 842 (S.D. Ohio 2020) (citing 36 C.F.R. § 228.102(e)(1)). “BLM’s decision to lease, and USFS’s consent thereto, *are* decisions to irrevocably commit resources,” and therefore require robust NEPA review. *Id.* at 851.

Likewise, in *California ex rel. Lockyer v. U.S. Dep’t of Agric.*, 575 F.3d 999, 1013 (9th Cir. 2009), the Court considered the rescission of the Roadless Rule, which “USDA characterized the State Petitions Rule as administrative only and without direct, indirect, or cumulative effects on the environment.” The Court soundly rejected that rationale, concluding that “[i]t was unreasonable for the USDA to characterize the permanent repeal of these substantive protections as ‘merely procedural.’” *Id.* at 1018.

While *California ex rel. Lockyer* did not address the scope of the NEPA review required, **the court there confirmed the essential point that federal agencies cannot forego meaningful NEPA analysis based on the contention that initial steps lack ground-disturbing impacts and are only procedural.**

Here, while the USFS did perform an EA, in function the agency still claimed no environmental effects and that the Consent to Lease is merely procedural. This effectively cut short any meaningful NEPA review. The USFS used this justification to avoid any meaningful evaluation of indirect and cumulative effects, and effective mitigation, despite the Tribe’s numerous specific points that the Proposed Project would irreversibly harm its Treaty rights and resources, including numerous sacred sites. This is the same mistake as in *Citizens for Clean Energy, Ctr. for Biological Diversity v. U.S. Forest Serv.*, and *California ex rel. Lockyer*.

The EA claims that “[t]his project tiers to the Final Programmatic Environmental Impact Statement for Geothermal Leasing in the Western United States (PEIS) (December 2008), which facilitates geothermal leasing decisions in the western United States.” EA at 2. This alleged tiering does not rescue the essentially non-existent environmental analysis. The PEIS is nearly 20 years old and does not address decades of new science and a modern understanding of the impacts of geothermal extraction. Importantly, the EA fails to meaningfully integrate and apply programmatic review to a realistic development alternative, the conditions in the Skagit River watershed, or the unique tribal impacts that would inevitably result from the Proposed Project. Finally, as discussed in more detail below, the PEIS (like the EA) is premised on regulatory infrastructure that has since been severely eroded.

The EA did not engage in meaningful environmental review and cannot be relied upon to allow Consent to Lease decisions.

Failure to Take a Hard Look, and Arbitrary and Capricious Reliance on Changing Regulations and Policies

The EA relies upon what was until recently considered well-settled regulatory infrastructure to address future impacts. This reliance is now unlawful and inappropriate because of widespread rescission and reversal of those same regulations and policies. “To take the required ‘hard look’ at a proposed project's effects, an agency may not rely on incorrect assumptions or data.” *Native Ecosystems Council v. U.S. Forest Serv., an agency of U.S. Dep't of Agric.*, 418 F.3d 953, 964 (9th Cir. 2005); *Ctr. for Biological Diversity v. United States Forest Serv.*, No. 23-2882, 2025 WL 586358, at *4 (9th Cir. Feb. 24, 2025).

The EA also heavily relies upon No Surface Occupancy (“NSOs”) disturbance restrictions to provide adequate mitigation. While the Tribe appreciates that the USFS has heard the Tribe’s concerns and provided multiple NSOs, these protections are limited to the ground surface only, are potentially subject to revision and would not prevent some of the most alarming impacts to the Tribe’s cultural areas and sacred sites. Under applicable regulations:

A waiver, exception, or modification may be approved if the record shows that circumstances or relative resource values have changed, or if the lessee can demonstrate that operations can be conducted without causing unacceptable impacts and that less restrictive requirements would meet resource management objectives. A waiver, exception, or modification may not be approved unless: (1) the authorized officer determines that the factors leading to the 2025 Mt. Baker Geothermal Consent to Lease Mt. Baker-Snoqualmie National Forest stipulation’s inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified; or (2) the proposed operations would not cause unacceptable impacts (43 CFR § 3101.11-14). These decisions must be made by the BLM “in conjunction with” the USFS. 43 CFR § 3101.14(d).

The Tribe has two serious concerns related to the administration’s recent regulatory changes with respect to the Mt. Baker Consent to Lease EA:

- 1) Protections assumed and relied upon in the existing NEPA review will no longer exist, rendering that NEPA analysis inadequate and the agency’s decisionmaking based on flawed and incomplete information, in violation of NEPA requirements, and
- 2) A future decision-maker or lessee will argue that the “factors leading” to the NSO stipulations are no longer justified under changed law, and those NSOs are waived or exempted, thereby leading to irreversible impacts to natural and cultural resources the Tribe has depended on since time immemorial.

These concerns are based on the EA's repeated reliance on legal protections which have either been rescinded or substantially reduced, or are in the process of being rescinded or substantially reduced. As set forth above, reliance on inaccurate information in a NEPA document fails to meet the "hard look" requirement. Furthermore, reliance on the NSO's as mitigation violates NEPA and is arbitrary and capricious where those NSOs are based upon legal protections that have materially changed or are in the process of materially changing.

For example, on April 18, 2026, BLM published a new categorical exemption for geothermal exploration with surface disturbance of less than 10 acres. 91 Fed. Reg. 22848.¹ As a result, it appears that nearly all geothermal exploration may not receive any NEPA review. This is much different than the expectations for future environmental review relied upon in the EA and used as justification for not engaging in that necessary review now. The EA assumes that "[a]ccurate predictions for these impacts can only be determined after leases are offered and a lessee submits a plan for exploration and development, at which time a site-specific NEPA analysis of that proposed plan would be conducted." EA at 11. Likewise, for the protection of the Tribe's sacred sites and Treaty rights, the EA promises that "Consenting to Lease the nominated parcels will not impact any treaty rights or treaty resources. Future development will require separate NEPA analysis and Tribal Consultation as there is the potential for any action to impact treaty rights and resources." EA at 14.

In fact, we now know that no NEPA analysis may be required for geothermal exploration activities. By the time exploration is complete and NEPA is potentially triggered, many potentially irreversible impacts will have already occurred and likely incorporated into the environmental baseline from which any actual NEPA would evaluate environmental impacts. This alone is a sufficient basis upon which the USFS should heed the Tribe's call to withdraw the Consent to Lease parcels on the southeastern portion of Mt. Baker.

Similarly, the Advisory Council on Historic Preservation has recently approved a revised definition of historic property under the National Historic Preservation Act.² These changes appear designed to remove process and protections for the vast majority of traditional cultural properties, including but not limited to traditional cultural landscapes. They also provide reduced involvement of tribes. Yet, the EA repeatedly relies upon the NHPA to protect Tribal cultural interests. On page 33, it states: "Exploration or development proposals shall adhere to the National Historic Preservation Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, EO 13007, or other statutes and executive orders. No ground disturbing activities will be approved that may affect such properties or resources until the obligations under these laws, regulations, and authorities are completed."

¹ Federal Register, *National Environmental Policy Act Implementing Procedures for the Bureau of Land Management* (April 28, 2026), <https://www.federalregister.gov/d/2026-08235>.

² ACHP, *ACHP Votes to Move Forward with Notice of Proposed Rulemaking* (July 24, 2026), <https://www.achp.gov/news/achp-votes-move-forward-notice-proposed-rulemaking>.

Page 15 similarly promises that “[f]or lands that are determined to be suitable for leasing and potential development, once an undertaking (activities) is proposed that has the potential to cause effects, the USFS will coordinate with the BLM to comply with Subpart B - The Section 106 Process (CFR 800.3- 800.6 as applicable) to ensure compliance with the NHPA.” Those assurances are likely to be empty promises given the ACHP’s discouraging new direction.

On July 14, 2026, the U.S. Fish and Wildlife Service and National Marine Fisheries Service rescinded the “harm” rule under the Endangered Species Act, and replaced it with an interpretation under which habitat degradation does not violate the “take” prohibitions in ESA Section 9. The EA relies on ESA protections. For example, on page 38 it states: “No Surface Occupancy is recommended in modeled habitat due to the restrictions that would be in place for audio-visual disturbance and habitat disruption.” Under the new interpretation of the “take” prohibition, the agencies are likely not to impose these promised protections.

On August 20, 2026, the U.S. Forest Service has proposed the full rescission of the 2001 Roadless Rule. This dramatically reduces protections that the EA relies upon heavily for tens of thousands of acres of protection and mitigation. For instance, the EA page 41 states: “The USFS manages approximately 24,516 acres of land in the project area that is designated as Inventoried Roadless Areas (IRAs). A non-discretionary CSU stipulation would be placed on any leases within NFS IRAs. Pursuant to the Roadless Rule of 2001, no new road construction, reconstruction or timber removal would be allowed in designated IRAs.”

In April 2026, the U.S. Forest Service has likewise proposed amendments to the Northwest Forest Plan. On August 24, 2026, the Forest Service proposed the full rescission of the 2005 Travel Management Rule. The Forest Service has proposed to reduce old forest and late successional reserve protections and to completely reverse the “closed unless marked open on a map” standard to “open unless marked closed.” These policy reversals would open long-standing sensitive areas and culturally-important protected areas to the destructive incursion of motorized vehicles, logging trucks, including dirt bikes, off-road vehicles, all-terrain vehicles and snow mobiles without limits. The EA expressly relies upon the Northwest Forest Plan and associated policies, but that plan is in process of review and update. EA at 1.

These errors in the EA are all magnified by the newly expedited permitting timeline for geothermal energy development. Executive Order 14154, Unleashing American and Executive Order 14156, Declaring a National Energy Emergency prioritizes geothermal as a favored industry and calls for expedited permitting. Secretarial Order 3417, “Addressing the National Energy Emergency,” directs truncation of environmental review and invoke emergency powers. These directives provide for a permitting process that is limited to 28 days or fewer. Again, the EA’s repeated promise of phasing and later environmental review is empty.

While the Tribe appreciates the NSO protections, these protections may be less protective now that the underlying basis for the proposed protections are removed or are in the process of being

removed. **The EA's reliance on outdated information renders it invalid.** The EA's reliance on NSOs as mitigation, when those NSOs are at real risk of being rolled back along with their underlying bases, also renders the EA invalid. As a result, the Consent to Lease arbitrary and capricious -- it is a shell game that uses empty phasing and evaporating regulatory protections to gamble away the Tribe's natural and cultural resources and sacred inheritance.

Lack of Endangered Species Act Section 7 Review

Under Endangered Species Act Section 7, the USFS must consult with the USFWS and NMFS to ensure that its leasing decision "is not likely to jeopardize the continued existence of" a listed species or destroy or adversely modify a species' critical habitat. 16 U.S.C. § 1536(a)(2). As detailed in the Tribe's comment letters, the proposed geothermal exploration and development may adversely effect numerous listed species, including northern spotted owls, marbled murrelets, and listed bull trout and other fish.

The EA makes the same mistake under the ESA that it makes under NEPA, by artificially segmenting the consent to lease from later phases. *See* EA at 14 ("The USFS has determined that consenting to lease the nominated parcels will have no effect on ESA-listed species or designated critical habitat in the action area.").

This conclusion is simply wrong. "The ESA comes into play whenever USFS determines to make forest lands administratively available for leasing and whenever BLM later designates specific lands from all those administratively available that BLM plans to offer at a lease sale." *Ctr. for Biological Diversity v. U.S. Forest Serv.*, Civ. No. 2:17-CV-372, 2018 WL 7200718, at *4 (S.D. Ohio Sept. 7, 2018); *accord N. Plains Res. Council v. U.S. Army Corps of Eng'rs*, 454 F. Supp. 3d 985, 990 (D. Mont.), *amended*, 460 F. Supp. 3d 1030 (D. Mont. 2020); *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 498 (9th Cir. 2011). Section 7 consultation is required, and the "no effect" determination is invalid.

Lack of NHPA Review

The Proposal is an undertaking for purposes of the NHPA and should be treated as such. The Proposal requires government-to-government consultation and a robust NHPA review under Section 106. *See Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 787 (9th Cir. 2006).

The Tribe and USFS have a long-standing Co-stewardship Agreement in place that further cements the fiduciary relationship and commitments. As with NEPA and the NHPA, the lawful and appropriate means to address NHPA compliance is to enter into a programmatic Memorandum of Agreement ("MOA") that proactively identifies a process to identify, minimize, and mitigate adverse effects to the Tribe, cultural resources, and historic properties. A MOA

would be an approach to ensure that NSO protections are binding and durable in a volatile regulatory environment.

Statement that Demonstrates the Connection between Comments and the Objection

The Tribe submitted two rounds of comments, objections and detailed substantive concerns about impacts to natural and cultural resources on October 10, 2025, and June 8, 2026. We raised all the concerns in this objection letter in these prior submissions.

In the October 10, 2025 letter, the Tribe discusses environmental effects from pages 7-8, NEPA timing from pages 9-10, ESA compliance on 10-11, and NHPA compliance on page 12.

In the June 8, 2026 letter, the Tribe requested that the Forest Service withdraw the lands from Consent to Lease. As support for that request, we discussed reasonably foreseeable impacts and NEPA timing from pages 5-7, and raised concerns about rollbacks of NSO protections on page 22. We raise ESA compliance concerns on page 22-23. Some of the most recent changes identified above postdate the comment letter but address the same themes of concerns about mitigation that is subject to change.

In the declaration of Tino Villaluz, the Tribe identified important impacts to natural and cultural resources, which inform all the objections.

Specific Remedies

The correct legal remedy is to rescind the EA, and prepare a full programmatic EIS, Biological Opinion, and NHPA Section 106 process based on the above information.

Absent that remedy, the Tribe believes that USFS must withdraw lands from development. The EA provides that “MBS will determine if the lands should be leased, leased with stipulations, or withdrawn from further consideration for leasing and subsequent development activities.” EA at 1. USFS should consult with Swinomish and other affected Tribes, and withdraw from further consideration for leasing and subsequent development activities at least the following specific areas:

- T38N R09E, Section 19;
- T38N R09E, Section 20;
- T37 R08 Sections 19 and 20.

In addition, the Forest Service should also remove all areas upland on the western slope of Baker Lake and Lake Shannon and their tributaries to ensure lack of adverse impacts to Baker Lake Sockeye salmon and the Tribe’s Treaty fisheries reliant upon those fish.

Swinomish to Objection Reviewing Officer
September 24, 2026
Page 10

This remedy is appropriate as it is the only way to ensure the protections that the EA relies upon to protect the valuable Tribal and public resources in these areas.

Thank you for your consideration of the Tribe's objections. The Tribe requests an appropriate hearing and ongoing consultation with the Reviewing Officer to address these serious concerns.

Sincerely,

A handwritten signature in black ink that reads "Steve Edwards". The signature is written in a cursive, flowing style.

Steve Edwards, Chairman
Swinomish Indian Tribal Community