



Confederated Tribes and Bands of
the Yakama Nation

Established by the
Treaty of June 9, 1855

March 3, 2026

Chris Wright, Secretary of Energy
U.S. Department of Energy
100 Independence Ave., SW
Washington DC 20024

RE: THE U.S. DEPARTMENT OF ENERGY'S CATEGORICAL EXCLUSION FOR
ADVANCED NUCLEAR REACTORS Docket ID: DOE-HQ-2025-0405

Dear Secretary Wright,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (the "Yakama Nation") in response to THE U.S. DEPARTMENT OF ENERGY'S CATEGORICAL EXCLUSION FOR ADVANCED NUCLEAR REACTORS Docket ID: DOE-HQ-2025-0405. The Yakama Nation is a sovereign federally-recognized Native Nation pursuant to the Treaty with the Yakamas of June 9, 1855 (the "Treaty"). The Yakama Nation reserved the rights to hunt, fish, and gather on these traditional lands including areas being examined for development of Advanced Nuclear Reactors (ANRs). The attached comments detail our concerns with the Categorical Exclusion of ANRs under the National Environmental Policy Act ("NEPA").

We appreciate the opportunity to comment on this action and look forward to discussing how you will address our concerns. Yakama Nation requests a 30 day extension of the comment period to allow for additional identification of impacts of concern.

Sincerely,

Phil Rigdon, DNR Superintendent
YAKAMA NATION

Yakama Nation Standing

Yakama Nation is a sovereign Native Nation possessing Treaty-reserved rights in its historical ancestral domain. Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951 (“Treaty of 1855”). Since time immemorial, the fourteen original, free, and independent Nations that comprise the Yakama Nation thrived both within and beyond the exterior boundaries of what later became the State of Washington. These fourteen tribes and bands joined as one Nation and established the Confederated Tribes and Bands of the Yakama Nation. Together, they entered into the Treaty of 1855 with the United States and established a government-to-government relationship between two sovereign Nations.

Article II of the Treaty of 1855 established the boundaries of the Yakama Reservation, while Article I of the Treaty identified the areas ceded by the Yakama People – their Treaty Territory. While covering an expanse of land roughly one-fourth the size of modern Washington State, the Treaty Territory identified in Article I did not fully encapsulate the Yakama People’s traditional and cultural use territories. From this Article I Treaty Territory, the Yakama People traveled to their traditional and cultural use territories ranging from the northwest coasts of North America and eastward to the plains regions. *See Yakima Indian Nation v. Flores*, 955 F. Supp. 1229, 1238-1239 (E.D. Wash. 1997), *aff’d sub nom. Cree v. Flores*, 157 F.3d 762 (9th Cir. 1998); *see also Wash. State Dep’t of Licensing v. Cougar Den, Inc.*, 139 S. Ct. 1000, 1016 (2019) (affirming the vast size and scope of the Yakama People’s traditional and cultural use territories).

Article III of the Treaty reserved to the Yakama People the right to maintain their traditional way of life within their Treaty Territory and their traditional and cultural use territories for hunting, gathering, fishing, grazing, trading, recreational, political, and kinship purposes. *See United States v. Washington*, 384 F. Supp. 312, 380-81 (W.D. Wash. 1974), *aff’d*, 520 F.2d 676 (9th Cir. 1975) (finding that the United States promised that “the Yak[a]mas would forever be able to continue the same off-reservation food gathering and fishing practices as to time, place, method, species and extent as they had or were exercising”); *see also Cougar Den, Inc.*, 139 S. Ct. at 1012-13. Article III of the Treaty protects rights in these regions, and preserves a culture that relies on access to, and the responsible use of, the Creator’s gifts of water, fish, game, roots, and berries. This reservation of rights safeguards those very lands that make up the Yakama Peoples’ Treaty Territory and traditional and cultural use territories.

NEPA

Consistent with the United States’ trust obligations to Yakama Nation pursuant to the Treaty of 1855, NEPA requires the Department of Energy (“DOE”) to ensure that all potential environmental impacts of ANRs are evaluated before they are approved for construction and operation. NEPA codifies Congress’s intent to “prevent or eliminate damage to the environment.” 42 U.S.C. § 4321. NEPA requires all agencies of the federal government, including DOE, to complete a “detailed statement” (known as an environmental impact statement) regarding all “major federal actions significantly affecting the quality of

the human environment.” 42 U.S.C. § 4322(C). The reason agencies are required to create environmental impact statements is to ensure that the agencies (1) carefully and fully evaluate environmental impacts of proposed actions before approving them, and (2) objectively and transparently advise the public and decision-makers of the potential impacts of those actions - including any alternatives. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5 (2019). This process is critical to ensuring that impacts of agency decisions on Yakama Nation’s Treaty-reserved resources - and continued way of life - are not only identified by DOE when it is responsible for approving a project, but also that a publicly and transparent evaluation process includes Yakama Nation’s meaningful engagement.

Federal agencies can designate categorical exemptions for “categories of actions that normally do not have a significant effect on the human environment,” and therefore do not require environmental impact analysis under NEPA absent extraordinary circumstances. 40 C.F.R. § 1501.4(a). Categorical exclusions under NEPA must meet very specific criteria, which has not happened with DOE-HQ-2025-0405. DOE is required to “substantiate” any “proposed new or revised categorical exclusion with sufficient information to conclude that the category of actions does not have a significant effect, individually or in the aggregate, on the human environment.” 40 C.F.R. § 1507.3(c)(8). DOE has failed to meet NEPA’s statutory requirement to adequately substantiate the newly-proposed categorical exclusion for advanced nuclear reactors.

Cultural Concerns

The entire Columbia basin has areas of cultural importance to the Yakama Nation. We wanted to note that any categorical exclusion from NEPA would not exempt a project from Section 106 of the National Historic Preservation Act and required consultation with the Yakama Nation.

Natural Resource Concerns

The Yakama Nation is aware of one current proposal to construct and operate ANRs at the Columbia Generating Station on the Hanford site. This current proposal has not reached the point of requiring a determination under NEPA for the type of environmental review to conduct. However, this known example raises many concerns with the vague language that has been published by DOE ([U.S. Department of Energy National Environmental Policy Act \(NEPA\) Implementing Procedures](#)) to evaluate if proposed ANR will qualify for a CAT X:

B5.26 Advanced nuclear reactors

Authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors, provided DOE determines that:

(1) the project’s attributes, including potential fission product inventory, fuel type, reactor design, and operational plans, reduce sufficiently the risk of adverse offsite consequences from the release of radioactive or hazardous materials, and

(2) the project demonstrates that any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable requirements. For the purposes of this category, a project may include multiple reactors within a nuclear facility.

The requirements described in part (1) discussion of "reduce sufficiently the risk of adverse consequences from release..." does not define what sufficient is and for who it needs to be sufficient for. There needs to be definitions of what level of risk will be allowed and how that is evaluated. Otherwise it appears it would be arbitrary how the federal agency is deciding if this criteria has been met.

In addition to the specific requirements in Section B5.26, DOE included a section 5.4 Applying one or more categorical exclusions to a proposal. This section includes several important requirements for consideration but lacks clarity of what they mean. Specifically Section 5.4(3) states:

(3) There are no extraordinary circumstances related to the proposal that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant adverse effect. It is not the presence of an extraordinary circumstance that precludes application of a categorical exclusion, but rather application of a categorical exclusion is not possible only when DOE concludes that the extraordinary circumstance is likely to cause a reasonably foreseeable significant adverse effect or that DOE does not know the environmental effect of the extraordinary circumstance. DOE or an applicant may modify the proposal to avoid reasonably foreseeable adverse significant effects such that the categorical exclusion would apply. Extraordinary circumstances are unique situations presented by specific proposals, including, but not limited to, uncertain effects or effects involving unique or unknown risks.

This is very important for any proposals at Hanford, the ANRs being proposed at Hanford would be built within the boundaries of an operating nuclear power plant (Columbia Generating Station) and Superfund Site listed on the NPL ([DOE-RL-2021-01-00](#)). There are currently response actions taking place in this area including institutional controls are in place (no use of groundwater unless for remediation purposes) to address risks at this site. In addition, the main source for surface water in the area is considered over allocated and new withdrawals are not allowed unless approved by the state of Washington Department of Ecology (WAC 173-563-020). Putting these two realities together, finding a legal source of water for an ANR anywhere on the Hanford site is going to be an extremely complicated environmental issue, but without determining a solution to the source of water it appears it would not be possible to "... know the environmental effect of the extraordinary circumstance." A Categorical Exclusion from NEPA on the Hanford site could lead to project proposals and project permits that assume water can be retrieved from on site groundwater (not allowed under CERCLA) or withdrawal from the Columbia River (not allowed without obtaining offsite water rights and approvals). This appears to indicate any sort of ANR proposal at Hanford should be excluded from potential categorical exclusion as is discussed in Section 5.1 of DOE's NEPA implementation guidance.

In addition to specific concerns about the Hanford site, the Yakama Nation's status as Co-manager of Treaty Reserved Resources across the Columbia River Basin need to be considered in any ANR proposal. Currently, the way the DOE NEPA guidance and ANR categorical exclusion is written it does not seem possible for meaningful consideration of protection of our resources to occur. For example, there is not a

place on the mainstem Columbia River that an ANR does not have the potential to cause adverse impacts to our Treaty Reserved Resources.

Conclusions

Thank you for the opportunity to provide comments on this Categorical Exclusion for ANRs under NEPA. As we have discussed above there are numerous reasons why this Categorical Exclusion for ANRs does not work within the homelands of the Yakama Nation and especially at the Hanford site. We look forward to discussing our concerns further.