



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

January 10, 2020

Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Road
Missoula, MT 59804

Submitted via webform to: appeals-northern-regional-office@usda.gov

Re: *Nez Perce Tribe's objection to Hungry Ridge Restoration Project Final Environmental Impact Statement and Draft Record of Decision*

Dear Objection Reviewing Officer:

On behalf of the Nez Perce Tribe ("Tribe"), and in accordance with 36 CFR §§ 218.8 and 218.9, I submit the attached objection to the Hungry Ridge Restoration Project ("Hungry Ridge" or "Project") Final Environmental Impact Statement and Draft Record of Decision. Nez Perce-Clearwater National Forests ("Forest") Supervisor Cheryl Probert is the Responsible Official for the Project which is located in the Forest's Salmon River Ranger District. The Project is in north-central Idaho, approximately 17 miles southeast of Grangeville, Idaho. The approximately 30,000-acre project area, extends from the South Fork Clearwater River along Highway 14 to the south approximately 13 miles. The Project area is bounded by Mill Creek and Johns Creek, with a portion of the Project area adjacent to the Gospel Hump Wilderness Area.

The objections outlined in the attachment are based on the Tribe's previously submitted comments. The Tribe held staff-to-staff coordination meetings with the Forest in 2012, submitted scoping comments on March 31, 2014 and comments on the Draft Environmental Impact Statement on April 23, 2018.

The Forest is proposing to implement Alternative 2, Modified. The decision includes commercial timber harvest (173 MMBF) on 7,164 acres using intermediate and regeneration prescriptions. The alternative would conduct mechanical treatment on approximately 59 acres in old growth habit in Management Area 20. Prescribed burning to treat natural fuels and activity residual fuels from harvest operation would be conducted on 9,161 acres. Associated road activities include approximately 9 miles of new road construction, 23 miles of temporary road construction, 2 miles of road reconstruction, 34 miles of road reconditioning and 31 miles of road maintenance. Other road management actions include placing approximately 4 miles of road in long term storage and

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25 miles of road decommissioning. To reduce sediment delivery and improve watershed health, the Forest also proposes to include replacing 18 culverts, improve 2 trail stream crossings, plan riparian hardwoods on 87 acres, restore soils on 75 acres and restore meadow on 108 acres.

As the Forest is aware, this Project is located entirely within the Tribe's aboriginal territory and is subject to the rights the Tribe reserved, and the United States secured, in its Treaty of 1855.¹ The Project is also located within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission², and encompasses areas of cultural and spiritual significance to the Tribe.

The Tribe considers the protection of its treaty-reserved rights and resources to be a paramount obligation of the Forest when implementing this Project. The Forest has a trust responsibility to ensure that its actions, including implementation of this Project, are fully consistent with the Treaty, executive orders, departmental regulations, and other federal laws implicating the United States' unique relationship with the Tribe.

The Tribe recognizes the Forest's stated goals to restore natural disturbance patterns, improve watershed conditions and forest resiliency, and improve habitat conditions. The Tribe has carefully reviewed the Project and assessed, however, that the sediment analysis is flawed, resulting in erroneous outputs that likely significantly underestimates the sediment projections in the Project area. The Forest's determination that the sediment produced by project will comply with applicable forest standards is therefore not supported by valid scientific data and accordingly fails to accurately and fully disclose the impacts of the Project, including sediment impacts on the treaty-reserved fishery resource.

The Tribe requests a meeting with you and the Forest to discuss and resolve its objections to the Project. Please contact Mike Lopez, Senior Staff Attorney, at (208) 843-7355 or mlopez@nezperce.org, to schedule a meeting.

Sincerely,


For: Shannon F. Wheeler
Chairman

¹ Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957.

² Nez Perce Tribe v. United States, Docket# 175, 18 Ind. Cl. Comm. I

**NEZ PERCE TRIBE'S OBJECTION TO THE HUNGRY RIDGE RESTORATION
FINAL ENVIRONMENTAL IMPACT STATEMENT and
DRAFT RECORD OF DECISION**

January 10, 2020

I. GENERAL COMMENTS

a. The Nez Perce Tribe's Interest in the Hungry Ridge Restoration Project

Since time immemorial, the Tribe has occupied and used over 13 million acres of land now comprising north-central Idaho, southeast Washington, northeast Oregon, and parts of Montana. Tribal members have engaged in fishing, hunting, gathering, and pasturing across their vast aboriginal territory. These activities will play – and will continue to play in the future – a major role in the subsistence, culture, religion, and economy of the Tribe.

Treaty tribes, such as the Tribe, have been recognized as managers of their treaty-reserved resources. As manager, the Tribe has devoted substantial time, effort, and resources to the recovery and co-management of Treaty-reserved resources within its treaty territory.

As fiduciary, the United States and all its agencies owe a trust duty to federally recognized tribes to protect their resources. This trust relationship has been described as "one of the primary cornerstones of Indian law," and has been compared to the relationship existing under the common law of trusts, with the United States as trustee, the tribes as beneficiaries, and the property and natural resources managed by the United States as the trust corpus.

All executive agencies of the United States are subject to the federal trust responsibility to recognize and uphold treaty-reserved rights. Executive agencies must also protect the habitats and resources on which those rights rest, as the right to take fish and other resources reserved by the Tribe presumes the continued existence of the biological conditions necessary to support the Treaty-reserved resources.

Forest Service Manual 1563.8b ("FSM") specifically states that the Forest Service "shall administer lands subject to off-reservation treaty rights in a manner that protects Tribes' rights and interests in the resources reserved under treaty." FSM 1563 further directs the Forest Service, among other responsibilities, to "[i]mplement Forest Service programs and activities consistent with and respecting Indian treaty and other reserved rights and fulfilling the Federal Government's legally mandated trust responsibilities with Indian Tribes."

II. SPECIFIC OBJECTIONS

a. **Erroneous Identification and Analysis of New, Temporary, and Permanent Road Construction.**

The Tribe has observed a discrepancy between Alternative 2 new specified road construction tables in the FEIS (Summary and Appendix B), the Water Resources Specialist Report, and the NEZSED spreadsheet. In the FEIS Summary and Appendix B, there are 9.2 miles of new specified road construction shown. These miles include Road #9498, #9408A and an un-numbered road. In the Water Resource Report and NEZSED spreadsheet, however, there are only 2.7 miles of new specified road construction shown. The Alternative 2 project map suggests that the figures in the FEIS are correct.

The Tribe attempted to track the new specified road construction in the final NEZSED spreadsheet. Under Alternative 2, the only records under the column labeled "Alt_Rx" with the field "new" were for 2.68 miles of road construction. These were for Road #9874, #9852A and #9851A, located in the American, Deer, Merton, Lower Mill and Big Canyon prescription watersheds. These do not match the road numbers presented for new specified road construction in the FEIS (see above). It appears the NEZSED sediment yield values were calculated using 2.68 miles of new road miles while the FEIS states 9.0 miles of new road will be added to the landscape. With the unclear exact mileage of new roads added to the landscape, the Tribe questions the veracity of the NEZSED modeling produced that ultimately reaches the conclusion in the FEIS that the sediment yield Percent Above Base (POB) falls within Forest Standards.

Additionally, new, temporary, and temporary/decommission roads proposed in the vicinity of units 12, 13B, 37, and road 1864 seem redundant to each other and should be consolidated or dropped from consideration. The rationale for these roads is to facilitate timber harvest and long-term storage, but there is no clear justification for why they will become permanent system roads on the landscape and included in the Forest's transportation system. The addition of more permanent system roads is a concern for the Tribe.

Remedy: The Tribe requests that the Forest perform a full and accurate identification of roads that will be added to the landscape as a result of the Project, and appropriately model the results and impacts of those roads in a supplemental FEIS.

b. **Erroneous sediment analysis.**

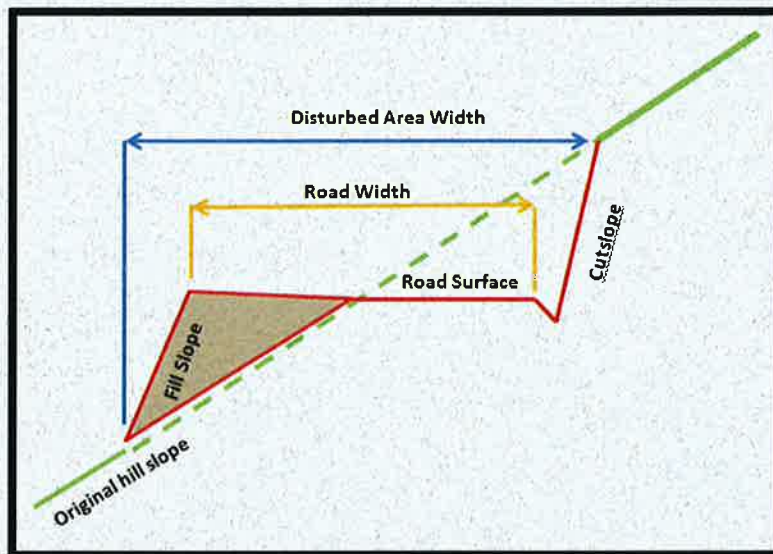
The Tribe has serious and immediate concerns about the NEZSED results that were generated and the results that have been presented in the FEIS, which ultimately have been used heavily in the decision to move forward with Alternative 2, are incomplete and/ or inaccurate.

1. **Modeling Project-related Sediment: Road Modeling**

Errors contained in the tabs of the NEZSED spreadsheet show the Forest used incorrect and incomplete data to generate the NEZSED model calculations in the FEIS. "RoadsCumulative", "RoadCumulative8.13", and "RoadAlt2" appear to have subgrade widths that are substantially and

unrealistically low (in many instances a default width of 10 feet is used), resulting in disturbed road widths that are too low, based on the *Nez Perce National Forest Watershed Data Base Horizontal Width of Disturbance for Roads* document (U.S. Forest Service 1987) and previous NEZSED completed on other projects, namely the most recent Clear Creek Integrated Restoration Project. In addition, in the “RoadAlt2” table, the sideslope field is left unpopulated, which appears to compound the error resulting in disturbed road widths that are far too low. These fields are used in the calculations that ultimately result in acceptable POB values in the FEIS. It is of concern to the Tribe that the erroneous and missing values in the NEZSED spreadsheet appear to be presumably correct in the DEIS when the sediment yields calculated far exceeded the Forest Plan guidelines but no longer represent realistic disturbed road width values in the FEIS calculations when the sediment yields calculated fall within acceptable Forest Plan guidelines.

To model the total amount of sediment that a road will produce, one must take into account the total area disturbed by the road’s construction. This area includes the cut and fill slopes, ditch lines, and the travel way and is measured by the horizontal distance from the top of the cut slope to the bottom of the fill slope (Appendix C to Forest Service’s Watershed Database).



Width of disturbed area includes: subgrade, cut and fill slopes, ditches, berms, turnouts, and any other constructed features when present (Cline et al 1981). Using the tables of geometry in Megahan 1976 as recommended in R1R4 guide, and assuming a road width of 16’ with no ditch or pull outs and adjacent slope of 60%, for example, the horizontal disturbed width would be 48’. Since many of the roads have turnouts and or ditches, this would be a conservative estimate of actual width of disturbed area. Tripling the width of disturbed area equates to a 350% increase in sediment.

Had the Forest accounted for the entire disturbed area, as required by the NEZSED model, the Tribe believes sediment production from roads will likely increase significantly. Comparing the DEIS and the FEIS values, aside from the other sediment-routing corrections that were made, would suggest the sediment delivery should be estimated much higher than shown in the FEIS using correct and complete data.

2. Fish Effects

Lower Johns and Mill creek's HUC 12 watersheds are population strongholds for Snake River steelhead, therefore the Likely to Adversely Affect ("LAA") determination for steelhead and Columbia River bull trout are concerning. These determinations are based on short-term impacts resulting from this project, but the rationale is lacking. The reduction in winter carrying capacity coupled with the assumed increase in sediment yields (when the appropriate NEZSED values are calculated) leads the Tribe to conclude there will likely be greater impacts to fish than are being disclosed in the FEIS.

Remedy: The Tribe requests that the Forest correct its sediment analysis by performing full and accurate NEZSED modeling for the Project and document those results and environmental impacts, including to the Tribe's treaty-reserved fish resource, in a supplemental FEIS.

III. CONCLUSION

The Tribe recognizes the management need to restore natural disturbance patterns, improve watershed conditions and forest resiliency and improve habitat conditions but is concerned this Project has not been adequately and accurately analyzed for significant effects to the resource, particularly with respect to sediment yields.

The Tribe believes the Forest Service failed to take a "hard look" and use best available science when assessing estimated sediment yields in the Project area, making significant miscalculations regarding the amount of sediment the Project will produce and incorrectly determining the Project's likely impacts. These errors have the potential to result in a gross underestimation of Project-related sediment production during Project implementation. Because of these underestimations and miscalculations regarding sediment, the Forest's mitigation measures for the Project are fundamentally suspect and may represent significant changes in the calculated output.

The Tribe is also concerned that NOAA Fisheries relies on the Forest Service's erroneous modeling outputs in the Biological Assessment for the Project during ESA consultations. As such, NOAA's Biological Opinion, Incidental Take Statement, and Letter of Confirmation for the Project will all be based on the Forest's misinformation. For these reasons, the Tribe requests that the NEZSED model data be input correctly, accurately, and completely with the true calculations presented in a supplemental FEIS, delaying the final decision on the project.

IV. REFERENCES

U.S. Forest Service. 1987. Nez Perce National Forest Watershed Data Base. Horizontal Width of Disturbance for Roads. Grangeville, ID: U.S. Department of Agriculture Forest Service, Nez Perce National Forest.