Nez Perce

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

March 31, 2023

Submitted via portal at: https://cara.fs2c.usda.gov/Public//CommentInput?Project=58961

Mr. Brian Anderson
Wallowa Valley District Ranger
Wallowa-Whitman National Forest
P.O. Box 905
Joseph, OR 97846

Re: Nez Perce Tribe's Scoping Comments on the Morgan Nesbit Forest Resiliency Project

Dear District Ranger Anderson:

The Wallowa-Whitman National Forest ("Forest") introduced the proposed Morgan Nesbit Forest Resiliency Project ("Project") to the Nez Perce Tribe ("Tribe") on November 11, 2018, at a quarterly staff coordination meeting. Since introduction, the Tribe has submitted pre-scoping comments[1] and discussed the Project at quarterly staff meetings with the Forest. On behalf of the Tribe, thank you for the opportunity to now provide scoping comments on the proposed Project.

The proposed Project is large and located entirely within the homeland of the Nez Perce people, the *Nimíipuu*,[2] and covers culturally significant areas of the Tribe's homeland. On June 11, 1855, the Tribe reserved and the United States secured to the Tribe through treaty ("1855 Treaty") sovereign rights that the *Nimíipuu* have exercised since time immemorial, including the right to take fish at all usual and accustomed places, and the rights to hunt, gather, pasture, and travel.[3] These rights do not simply impose responsibilities on the United States. For the *Nimíipuu*, these rights were and are inextricably linked to, and a guarantee of, our ability to preserve our culture and identity. It is, therefore, vital that the Forest continue to meaningfully consult with the Tribe as this Project moves forward to avoid impacts to, and intrusions on, places, features, and resources important for the protection and continuation of Nez Perce traditional spiritual practices, beliefs, and culture. The Tribe very much appreciates the excellent job Forest staff has done thus far informally consulting with Tribal staff.

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[1] Nez Perce Tribe Pre-Scoping Comments, Morgan Nesbit Forest Resiliency Project, Jan. 26, 2021.
[2] *Nez Perce Tribe v. United States*, Docket # 175, 18 Ind. Cl. Comm. 1.
[3] Treaty with the Nez Perces, June 11, 1855, 12 Stat. 957.

The proposed Project's stated purpose is to move forest conditions, including structure, density, and species composition toward the historic range of variability and desired conditions. The Forest's proposed actions are intended to reduce tree density; maintain and promote fire and drought tolerant tree species; protect and promote land and old structure forest stands; reduce fuel loads; reintroduce fire on the landscape; protect adjacent private lands and infrastructure from fire; restore riparian areas, wet meadows, and aspen stands; and provide commercial wood fiber and forest products. The proposed Project spans 86,500 acres of National Forest System Lands in the upper Big Sheep Creek and upper and middle Imnaha River 10th field watersheds. Approximately 48,500 acres of the proposed Project are within the Wallowa Valley Ranger District of the Forest and approximately 38,000 acres are within the Hells Canyon National Recreation Area.

The Tribe supports the proposed Project's purpose and need to improve resource conditions but encourages the Forest to revise the proposed Project to preserve landscape connectivity, avoid impacts to treaty-reserved resources and rights in coordination with the Tribe, and reduce overall road density. Given the large scope and scale of the proposed Project and implications for the Tribe's treaty-reserved rights and resources, the Tribe also asks that the Forest evaluate the proposed Project's impacts in an Environmental Impact Statement.

Although the Tribe appreciates the Forest providing it with a preview of the proposed action in advance of the public comment and benefits from early notification and discussion, such notification and discussion does not make a 30-day review timeline much easier for the Tribe. This is because of the Tribe's internal approval process, which frequently takes three weeks, after comments are prepared. The Tribe, therefore, requests that the Forest honor a minimum 120-day tribal consultation period going forward. A 120-day review period both enables the Tribe to generate substantive comments and suggestions as well as easily comply with its internal approval processes and procedures.[4] The Tribe also requests a field trip this summer. The field trips the Forest led in 2020 and 2021 to introduce this Project were helpful to staff but the Tribe is ready to better understand the Project so it can discuss treaty right protection with the Forest as the proposed Project is further developed.

Thank you again for the opportunity to provide comments on the proposed Project. The Tribe's comments reflect the policy views and technical concerns of the Tribe. Tribal staff would like to follow up these comments at the next Tribe/Forest quarterly coordination meeting on May 3, 2023, in Joseph, Oregon. You are welcome to contact Mike Lopez, Senior Staff Attorney, at 208.843.7355 or mlopez@nezperce.org, with any questions or concerns.

Sincerely,

Samuel N. Penney

Samuel N. Penney
Chairman

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[4] U.S. Department of Agriculture Forest Service, *Strengthening Tribal Consultations and Nation-to-Nation Relationships, A USDA Forest Service Action Plan* (2023), https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/Strengthening-Tribal-Relations.pdf.

NEZ PERCE TRIBE'S SCOPING COMMENTS ON
MORGAN NESBIT FOREST RESILIENCY PROJECT
MARCH 31, 2023

I. GENERAL COMMENTS

Treaty tribes, such as the Nez Perce, have been recognized as co-managers of their treaty-reserved resources.[1] As a co-manager, the Nez Perce Tribe ("Tribe") has devoted substantial time, effort, and resources to the recovery and co-management of treaty-reserved resources on National Forest System Lands. The lands and waters of the Wallowa-Whitman National Forest ("Forest") specifically provide irreplaceable habitat and gathering places for resources upon which the Tribe depends, including Chinook salmon, steelhead, bull trout, big game, firewood, huckleberries, mushrooms, and other traditional foods. The proposed Morgan Nesbit Forest Resiliency Project ("Project") area is home to many of these critical resources and places used by the Tribe.

The Tribe signed its treaty with the U.S. Government. Thus, the Forest has an obligation as a party to the Tribe's treaty to ensure that the United States honors its commitments to the Tribe in its treaty in all aspects of its work. As fiduciary, the United States and all its agencies must protect the Tribe's rights and resources.[2] This trust relationship has been described as "one of the primary cornerstones of Indian law,"[3] 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.[4] 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.[5]

Forest Service Manual ("FSM") 1563.8b specifically states that the Forest Service "shall administer lands subject to off-reservation treaty rights in a manner that protects Indian tribes' rights and interests in the resources reserved under treaty." Further, FSM 1563.03 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 responsibility with Indian Tribes."

The Forest has treaty and trust responsibilities to ensure that its actions, including implementation of this proposed Project, are fully consistent with the 1855 Treaty, executive orders, departmental regulations, and other federal laws implicating the United States' unique relationship with the Tribe. The Tribe considers the protection of its treaty-reserved rights, and other rights and interests, to be a paramount obligation of the Forest.

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[1] *United States v. Washington*, 384 F. Supp. 312, 339-40, 403 (W.D. Wash. 1974).
[2] *See, United States v. Cherokee Nation of Oklahoma*, 480 U.S. 700, 707 (1987)*; United States v. Mitchell*, 463 U.S. 206, 225 (1983); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).
[3] Felix Cohen, Handbook of Federal Indian Law 221 (1982).
[4] *See, e.g., Mitchell*, 463 U.S. at 225.
[5] *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

II. TECHNICAL COMMENTS

a. Purpose and Need

The Project proposes to implement a variety of forest treatments such as variable density thinning and prescribed fire to address ecological conditions that have departed from their natural range of variation. The purpose of the Project is to move forest conditions, including structure, density, and species composition towards the historic range of variability ("HRV") and desired conditions in order to create a more resilient landscape.

b. Vegetation Treatments

The Tribe appreciates inclusion of the HRV analysis in the scoping document. The level of detail is helpful for understanding the Project and proposed actions. As the Forest refines the vegetation treatments, especially the location of units and roads and intensity of thinning (low, medium, and high), please share those details with the Tribe. Many of the proposed treatments are in the cold/cool dry to moist vegetation groups, which provide unique habitats for wildlife and aquatic species and act as climate refugia and landscape corridors in the Blue Mountains. The Forest must match the proposed treatments with the inherent nature of the forest stands on the landscape (i.e., HRV).

The scoping document explains that the Forest will be incorporating the recently approved "Large Tree Eastside Screens Amendment" ("Eastside Amendment"). The Tribe supports management of late and old structure forest and recognizes that in some very limited circumstances removal of specific large trees is justified and desirable to achieve management objectives. As the Tribe expressed in its October 13, 2020 comments to Ochoco National Forest Supervisor Shane Jeffries and in government-to-government consultation, the Tribe does not support the Forest Service's Amendment to Scenario A of the Eastside Screens wildlife standard. For this Project, the Tribe requests that the Forest Service develop an alternative that maximizes protection and enhancement of the Tribe's treaty-reserved resources by avoiding those Project treatments that will result in removal of large and old trees, as defined in the Eastside Amendment. The Tribe requests that the Forest identify specific locations/scenarios where it plans to apply the Eastside Amendment and communicate this information to the Tribe as it becomes available. The Tribe further requests that the Forest conduct a snag analysis using the best available science and carry out all the elements of the adaptive management framework of the Eastside Amendment. The Forest also needs to clarify in its analysis and treatment prescriptions that the Eastside Amendment only applies to areas outside of late and old structure; it does not apply to forest within or above historic levels of late and old structure.

Treatments should promote the retention of Legacy Trees because they have survived stand replacing disturbances and represent some of the best genetics for future seed sources. Legacy Trees provide important habitat and ecological elements in forests. The Forest, therefore, should protect existing Legacy Trees and maximize retention of the next cohort. The Tribe also suggests that the Forest implement vegetation treatments in such a way as to protect Legacy Trees and retained trees from risk of wind throw.

In general, the Tribe has concerns about logging on slopes because of increased potential of erosion, soil disturbance, and sediment delivery into streams. In discussions with Tribal staff, the Forest has proposed the use of tethered logging instead of skyline operations. This is a technique that has not been analyzed or tested on the Forest. The Tribe strongly recommends that the Forest take a hard look at tethered logging operations before accepting it as a viable logging option. Minimizing ground disturbance and leaving trees on steep slopes is important to reduce the likelihood of mass wasting events.

c. Impacts to Wildlife and Plants

The Tribe requests that the Forest evaluate the Project's actions on cavity-nesting wildlife, snag retention and recruitment, old-growth habitat, migratory birds, sensitive and rare plant species (including recently Endangered Species Act-listed whitebark pine), invertebrates (insects and mollusks), and landscape-level connectivity. What is the Forest's plan to ensure landscape level connectivity for terrestrial and aquatic species while implementing this Project? Population trends and distribution of wildlife and plant species that occur in the Project area should be disclosed and included in the analysis. Information gathered from the analysis should be used to further refine the proposed actions and/or develop project design features to minimize or avoid potential adverse impacts. What is the current presence, distribution, and viability of wildlife and plants within the Project area?

The Tribe requests that the Forest comprehensively evaluate the Project's impacts to big game habitat use, including, but not limited to security, nutritional capacity, and human disturbance from access routes (all roads and trails and road density). This evaluation should include an analysis of both beneficial and adverse impacts based on the best available scientific information. The Tribe asks that the Forest consider the management and biological implications described in Ranglack et al. (2017), Rowland et al. (2018), and Wisdom et al. (2018),[6] and the references therein, when describing the affected environment and predicting the environmental consequences of the proposed action and alternatives on big game.

The Project overlaps the Grouse-Lick Creeks travel management area. The Tribe requests that the Forest include an assessment of this area, including current effectiveness at minimizing motorized impacts to wildlife during the hunting season and considering the proposed actions of the Project (e.g., pace, scale, and timing of vegetation treatments). The Project also overlaps two "Wildlife Areas of Concern" (Shadow Canyon and Salt Creek Summit) identified in the Forest's Travel Analysis Report.[7] The Tribe suggests that the Forest take a hard look at these areas and include actions in the Project to help alleviate some of the issues identified in the Travel Analysis Report, such as high road densities and disturbance from motorized activities which push elk onto private lands and/or poor habitats.

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[6] Dustin H. Ranglack et al., *Security areas for elk during archery and rifle hunting seasons,* The Journal of Wildlife Management, 81(5): 778-91 (2017). Mary M. Rowland et al., *Modeling elk nutrition and habitat use in Western Oregon and Washington*, Wildlife Monographs 199: 1-69 (2018). Michael J. Wisdom et al., *Elk responses to trail-based recreation on public forests*, Forest Ecology and Management, 411: 223-233 (2018).

[7] United States Department of Agriculture Forest Service, *Travel Analysis Report Wallowa-Whitman National Forest* (2015) at 83.

d. Livestock Grazing

The proposal lacks information about livestock grazing within the Project area, which contains portions of the Marr Flat and Mud Duck allotments. What are the current livestock grazing operations within and adjacent to the Project area, and are there any resource concerns that need attention? If grazing operations exist or are anticipated to exist in the near future, the Tribe recommends that the Forest defer livestock grazing on lands treated with fire and targeted for aspen and meadow restoration until desired vegetative conditions have been met; at a minimum, surviving perennial grasses must have regained productivity and be producing viable seed at levels equal to grasses and forbs in unburned areas before the Forest should permit grazing. Prior to the resumption of grazing, site-specific monitoring should demonstrate that the plant community and overall site conditions, including but not limited to soil and hydrological conditions have recovered and are trending toward desired conditions.

The Tribe requests that the Forest evaluate and report current range conditions for the allotments in the Project area. Are resource conditions meeting Forest Plan guidance? The Tribe asks that the analysis incorporate design or mitigation measures to limit possible concurrent activities (e.g., vegetation treatments, prescribed fire, and livestock grazing) that may: 1) spread noxious weeds, 2) damage planted seedlings, and/or 3) degrade resource conditions such as plant composition, soil stability, and sensitive species viability. The Tribe asks that the Forest critically evaluate alternative management strategies such as a change in seasonal timing or stocking levels to reduce and minimize further impact from livestock grazing within the Project area.

e. Fisheries Concerns

The Tribe has an extensive fisheries restoration program in the Imnaha River drainage, investing approximately $1,304,000 there annually. The Tribe is thus concerned that ground disturbance from this Project will cause sediment delivery to streams, thereby worsening watershed conditions and harming aquatic habitat. Stream temperatures in the Project area are currently an issue since they commonly exceed optimal temperatures for Chinook salmon and steelhead and can reach the lethal range during the summer. The Tribe's data collected on steelhead and Chinook salmon escapement and redd counts in Big Sheep Creek document Chinook redds in the largest spawning gravel concentration at the Grossman riparian stand.

Both Chinook salmon and steelhead use Big Sheep Creek for reproduction and rearing. Adult returns from both spawning aggregates have steadily declined recently. Redd numbers in Big Sheep Creek dramatically declined in the late 1960s and 1970s, compared to the 1950s, during and after the construction of the four lower Snake River dams. Redd counts have remained low since 1980 with a slight increase after the Oregon Department of Fish and Wildlife and the Tribe began outplanting Chinook salmon from the Imnaha mainstem in Big Sheep Creek and Lick Creek in 1997. Between 1989 and 1997, few if any Chinook salmon redds were documented in either stream. Chinook salmon redds are consistently found in the Big Sheep-Grossman riparian stand in Big Sheep Creek every year. The largest concentration of spawning gravels in Big Sheep Creek

are found from the mouth of Lick Creek to the mouth of Griffith Creek;[8] the Big Sheep-Grossman riparian stand is within this area.

Grouse Creek is the most important major spawning (and therefore early rearing) tributary for steelhead, especially wild steelhead. The Project's scoping letter shows spawning but not steelhead distribution or utilization. Tribal research staff have noted that Rich Creek, a tributary to Grouse Creek, is heavily utilized by steelhead. Gumboot Creek, which runs alongside Forest Service Road 39, is considered the second most important stream habitat in the Imnaha subwatershed from a spawning and rearing standpoint. Crazyman Creek also has steelhead utilization. The Tribe has a PIT (passive integrated transponder) array and a weir on Forest lands to monitor this important steelhead population. Big Sheep Creek, Carrol Creek, and Owl Creek all have steelhead utilization and are within the Project area.

f. Watershed Condition

The Tribe would like to see the Forest further develop the proposed action to improve subwatershed conditions and move toward Forest Plan desired conditions in the Project area. The Tribe is particularly concerned that the Crazyman Creek—Imnaha River subwatersheds in the Project area currently have a Watershed Condition Framework Rating of "Functioning at Risk" with poor water quality and quantity, a road/trail condition rated as "poor" and a "fair" riparian/wetland vegetation and aquatic habitat condition.[9] The road and trail condition of the Gumboot Creek subwatershed is "poor." Salt Creek, in the Big Sheep Creek watershed, has a "poor" water quantity and "fair" road/trail condition rating. The Terrestrial Invasive Species Condition rating is "fair" in Tyee Creek in the Big Sheep Creek watershed.

Stream temperatures in the Project area also appear to be an issue in that they currently commonly exceed optimal temperatures for Chinook salmon and steelhead and can reach lethal range during the summer. The Tribe has temperature data from the PIT array located below the Big Sheep Grossman riparian stand.

g. Reducing Overall Road Density

The Tribe recommends the Forest complete a thorough roads analysis to identify any road projects (non-system road decommissioning, storm damage reduction, road improvements, road relocation, etc.) that would reduce Project-area road impacts to the aquatic ecosystem. High road densities have been documented to have deleterious effects on watershed ecosystem health. There is high road density in the most of the Project's subwatersheds with fair to poor road/trail condition ratings. Please determine which roads are not needed for this Project for future use and consider using this Project to fully decommission them to restore watershed functions. This Project offers an opportunity to reduce the road density in highly-roaded areas, thus lowering the sediment

[8] Robert N. Thompson et al., *Environmental survey report pertaining to salmon and steelhead in certain rivers of eastern Oregon and the Willamette River and its tributaries: Part I. Survey report of eastern Oregon rivers*, Fish Commission of Oregon, Research Division, 14-17-001-178 (1960).

[9] USDA Forest Service Watershed Classification Interactive Map Viewer, https://usfs.maps.arcgis.com/apps/MapSeries/index.html?appid=f4332e5b80c44874952b57e1db0b4407.

delivery to live water. Please consider improving watershed condition to a road density of less than 1 mile/mile.[2] Thorough road surveys may identify more stream crossings in need of improvement to enhance fish passage, increase habitat connectivity, and promote hydrologic function. Numerous years could pass before the Forest has additional opportunities for the restoration work critical to the protection of aquatic and fish species found in the Project's subwatersheds.

The Tribe encourages the Forest to minimize construction of temporary roads to the greatest extent possible and to keep them on the landscape for the shortest period of time possible. The Forest has not stated how long this Project's temporary roads will be in place. The Tribe requests that the Forest maintain any temporary roads associated with this Project for the shortest amount of time possible, ideally for fewer than three years. Please specify how long these temporary roads will be left in place in future Project documents. Several of the temporary road placements are close to Riparian Habitat Conservation Areas ("RHCAs"), such as in the headwaters of East waqímataw Creek and off Forest Service Road 3925 Road in Section 12 near the RHCA of an unnamed tributary of Mud Spring Creek. The Tribe asks the Forest to please consider moving these proposed roads 300 feet from RHCAs.

The Forest has produced a 116-page list of roads (and segments) likely not needed for future management or access from their Infra database.[10] Has the Forest consulted this list for the road analysis portion of this Project yet?

h. Riparian Habitat Conservation Areas ("RHCAs")

The protection of all riparian habitats, including those in the upper reaches of our watersheds, is critical to maintaining healthy fish and wildlife habitats in a changing climate. Large wood recruitment is essential to a healthy riparian ecosystem for channel and habitat complexity, floodplain connectivity, and a natural sediment distribution regime. Reducing vegetation in a riparian zone affects microclimates such as humidity and ambient air temperatures, which can result in changes in sensitive aquatic biota. The Tribe has fewer concerns with letting prescribed burns back into RHCAs than with the use of commercial treatments in the outer portions of the Category 1 and 2 perennial streams RHCAs.

Riparian areas within and adjacent to the Project area must be fully analyzed, and Riparian Management Objectives for this Project need to be clearly defined and specifically linked to improving riparian function. Designated critical habitat for Chinook salmon includes the adjacent riparian zone, which is defined as those areas within 300 feet of the ordinary high-water mark. As defined in the Federal Register, critical habitat for all listed Snake River salmon includes the bottom and water of the waterways and the adjacent riparian zone.[11] The riparian zone includes those areas within 300 feet (91.4 m) of the normal line of high water of a stream channel or from the shoreline of a standing body of water.[12]

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[10] United States Department of Agriculture Forest Service Wallowa-Whitman National Forests, *Roads (and Segments) Likely Not Needed for Future Management or Access* (2015), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd486220.pdf.
[11] Designated Critical Habitat; Snake River Sockeye Salmon, Snake River Spring/Summer Chinook Salmon, and Snake River Fall Chinook Salmon, 58 Fed. Reg. 68,543, 68,548 (Dec. 28, 1993).
[12] *Id*.

Riparian areas should only be treated if the treatment will clearly and positively meet Riparian Management Objectives and create positive biological effects. When RHCA treatments are needed, they should be light in nature, non-mechanical, non-commercial, and small in terms of acreage. Please explain further the commercial treatments in Category 1 Big Sheep-Grossman stand, adjacent to Big Sheep Creek, within 25-150 feet of streams in the RHCA, and please explain how removing trees within this buffer will positively benefit the stream and associated riparian zone.

The Forest seems to have added 885 acres of non-commercial treatments since the pre-scoping document was released. The Tribe agrees with the proposed use of hand felling to move vegetation conditions towards desired conditions. The Tribe recommends keeping machinery strictly on roadways and leaving trees on the ground to help add large woody debris to the stream for habitat complexity. These non-commercial thinning prescriptions in the RHCA need clarification and analysis to show benefit to the stream and riparian zone. Variable density upland thinning within 150-300 feet from Big Sheep Creek should not use the same prescription as the adjacent upland stand.

The Forest has noted in the Big Sheep-Grossman stand Chinook salmon spawning, bull trout migratory and foraging use, and high intrinsic potential for steelhead, Chinook salmon, and Pacific lamprey. Beaver presence in this reach of Big Sheep Creek adds to the habitat complexity potential. Are beaver actively building dams and side channels?

The steelhead redd maps below show the amount of spawning in the Project area. Note the concentration around Carrol Creek and Big Sheep Creek, just downstream from the Big Sheep Creek-Grossman stand in which the Forest is proposing riparian treatments. Many of the red symbols representing redd presence are on top of symbols representing redds in previous years, since steelhead spawn in the same areas every year. Thus, the total number of redds is not apparent.

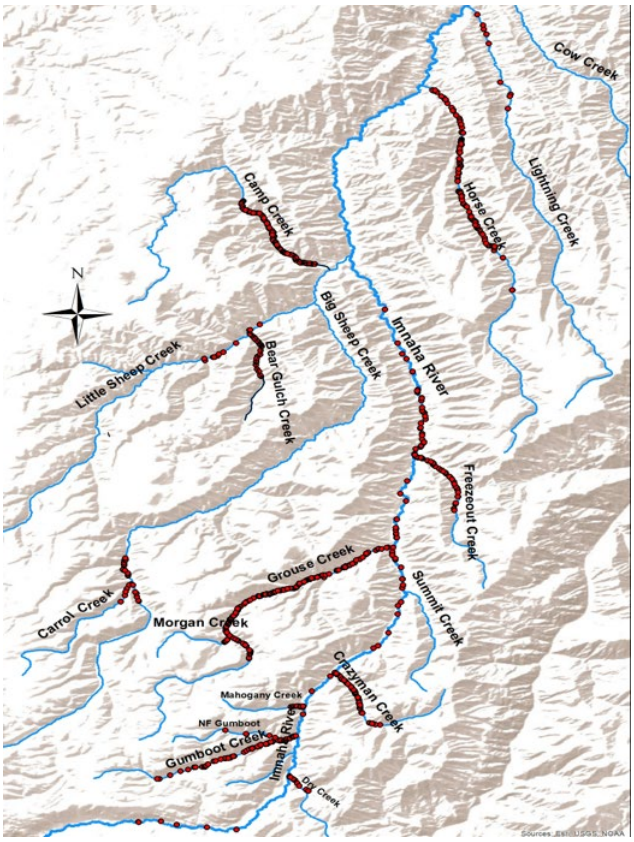

Figure 1. Imnaha watershed steelhead redds, 2008-2020

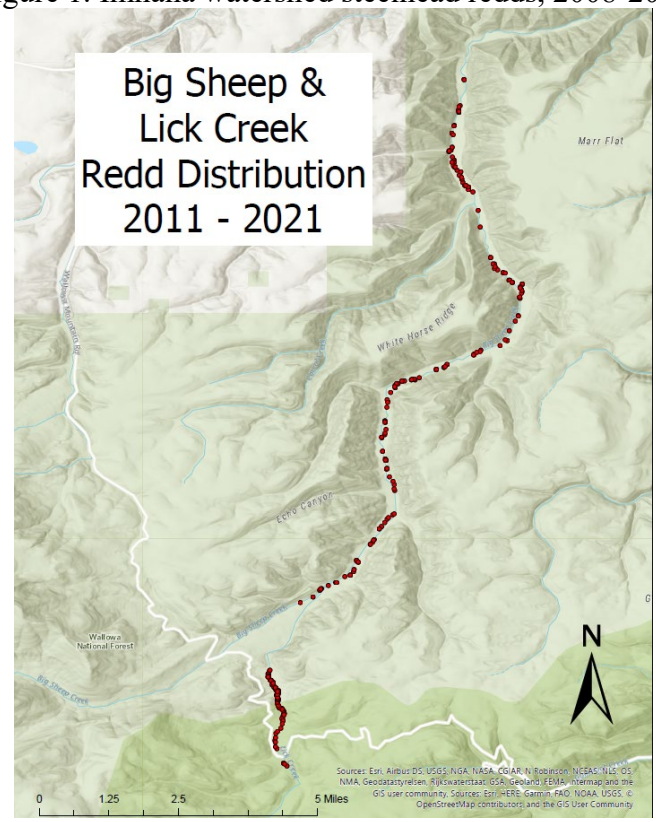

Figure 2. Big Sheep and Lick Creek Redd Distribution, 2011 – 2021

i. Invasive and Noxious Plants

Please conduct an inventory of noxious species in the Project area and release a plan to prevent spread and new introductions with this Project in an Environmental Impact Statement. Please require in the timber sale contracts that contractors thoroughly wash heavy equipment used for Project work prior to beginning the job and again upon leaving the site. Disturbed areas should be seeded with an appropriate mix of desirable, native plant species to limit weed establishment. Annual weed control is also recommended until desired vegetation has been re-established.

j. Freshwater Mussels

Tribal research staff have observed freshwater mussels when snorkeling in the upper Imnaha. This photo of a floater mussel was taken in the area; floater mussels are difficult to identify to species level.[13]

Figure 3. Floater mussel *Anodonta*

[13] Confederated Tribes of the Umatilla Indian Reservation and The Xerces Society for Invertebrate Conservation, *Quick Reference Guide to Western Freshwater Mussels, How to identify live and shell specimens*, https://pnwmussels.org/wp-content/uploads/2016/07/QuickMusselGuide_CTUIR.pdf.

Figure 4. Western Pearlshell *Margaritifera falcata*

Freshwater mussels are one of the most endangered groups of animals in North America. River mussels are important to healthy river ecosystems. As active filter feeders, river mussels decrease particles in the water column and increase water clarity. Mussel beds can also stabilize river reaches and slow erosional processes. Freshwater mussels (Bivalvia: *Unionoida*) are distinct from their marine counterparts because they require a host fish to complete their lifecycle and fertilization occurs internally. Floaters can use redside shiners, longnose and speckled dace, Chinook salmon, steelhead/rainbow trout, and sculpin as host fish.[14]

Tribal staff documented 153 mussels, probably Western Pearlshell mussels but also floaters, in the Imnaha watershed in 2020 and 2021. The Forest should coordinate with Tribal staff to survey selected reaches in the Project area for mussels and aquatic and terrestrial snails.

k. Restoring and Improving Fish Passage and Habitat Connectivity

The Tribe is encouraged by the Forest's 11 culvert replacements and supports other possible improvements to passage barriers in the Project area. Tribal Watershed staff is very interested in minimizing sediment delivery from roads, upgrading culverts, and decommissioning roads on the landscape, especially near streams in the Project areas.

The Tribe urges the Forest to consider appropriate Aquatic Organism Passage structures to restore fish passage and improve hydrologic connectivity. The Tribe recommends bridges and bottomless culverts at all road/stream crossings, rather than hardening them for off-highway vehicle and cattle use. Cattle and off-highway vehicle use tends to widen hardened crossings over time, disturbing ground, and destabilizing streambanks.

As mentioned earlier, Gumboot Creek is considered an important stream habitat from a spawning and rearing standpoint. The Forest map labeled MN_WetMeadowAspenCulvert_PA_20230223

[14] Confederated Tribes of the Umatilla Indian Reservation, *Šáxu Siwáala Seewíʔs: River Mussels Through Time 2nd Edition* (2020).

shows four culverts needing replacement on Forest Service Road 39. This map also shows 15 culverts needing replacement and 17 culverts needing removal, yet the scoping notice only identifies 11 culverts for replacement. The Tribe recommends more improvements for fish passage in the noted locations: upper Big Sheep Creek near Lick Creek and Gumboot and Skookum creeks.

Mahogany Creek has a culvert that the Tribal Watershed staff restored in 2007; it now has frequent steelhead utilization.

l. Restoring Meadows, Riparian Vegetation, and Floodplain Connectivity and Function

The Tribe supports restoration and maintenance of meadows, grasslands, and aspen stands and is pleased that the Project includes treatments that target aspen and wet meadows. These habitat areas are a priority for restoration for the Tribe because they are biodiversity hotspots and provide critical habitat to terrestrial and aquatic species. As the Project is refined, the Tribe requests that the Forest consider actions in addition to conifer reduction in wet meadows. Conifers encroach on meadows for a variety of reasons (e.g., change in hydrologic function, fire suppression, legacy management actions such as drainage tiles, barriers such as roads or trails, etc.), and the Tribe is concerned that simply removing conifer in these areas does not address the root of the problem and, therefore, will not restore function and structure necessary for sustainment over time. Actions other than removal of conifers should be considered, as well as protective measures to prevent resource damage during the restoration process (e.g., fencing or other barriers). The Tribe recommends that the Forest assess browsing impacts, shading, and understory vegetation conditions to help refine management actions in wet meadows. The Tribe also asks the Forest to implement effectiveness monitoring for all wet meadow restoration treatments.[15]

m. Connected Actions and Cumulative Effects

Cumulative impacts on the environment are those that result from incremental impacts of the action when added to all other past, present, and reasonably-foreseeable future actions, regardless of what agency or person undertakes such other actions.[16]

The Puderbaugh Vegetation Management Project borders this proposed Project on the eastern side of the Imnaha River. Has the Puderbaugh Vegetation Management Project been completed? Have road closures, decommissioning, and seasonal road restrictions, soil protection measures, less intensive management in the wildlife corridors, and thinning of small trees and pheromone attractants to address beetle management for protection of Tribal treaty resources (including elk and salmonids) been completed? What is the status of the older ponderosa pines along the Imnaha River? There is overlap between the Puderbaugh Vegetation Management Project and this proposed Project at Beaverdam, Blackhorse, and Crazyman creeks with 276 acres of noncommercial thinning plus commercial thinning, and Skookum Creek; please explain how the treatments overlap or relate.

[15] John Bates et al., *Land Manager's Guide to Aspen Management in Oregon* (2010), https://catalog.extension.oregonstate.edu/sites/catalog/files/project/pdf/em9005.pdf.
[16] 40 C.F.R § 1508.7.

The recent Cold Canal Project has some active non-commercial thinning just to the west of the Project area in the Big Sheep Creek subwatershed. The Tyee Creek area has had some fuel reduction work done by yarding, as well as some commercial thinning in the past. Has the Forest considered this in the planning of this Project?

The Big Sheep, Carrol, Nebo, Canal, Twin Lakes, and Indian Crossing wildfires burned 5,439 acres in the Project area. Will that change the proposed treatments in those affected areas? Will there be salvage in the Nebo perimeter within the Project area?

III. CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS

Consistent with the Forest's obligations to protect the Tribe's treaty-reserved rights and resources, the Tribe requests that the Forest conduct climate change analyses in National Environmental Policy Act ("NEPA") reviews and consider: (1) the potential effects of the proposed action on the Tribe's treaty-reserved rights and resources caused by climate change, including by assessing both greenhouse gas emissions and reductions from the proposed action; and (2) the effects of climate change on a proposed action and its environmental impacts. NEPA requires more than the statement provided by the Forest that the emissions from the proposed Project, including its alternatives represent only a small fraction of global or domestic emissions. Such a statement merely notes the nature of the climate change challenge and is not a useful basis for deciding whether or to what extent to consider climate change effects under NEPA.[17]

[17] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1,196, 1,197 (Jan. 9, 2023).