



United States  
Department of  
Agriculture

Forest  
Service

Nez Perce  
National  
Forest

Rt. 2, Box 475  
Grangeville, ID 83530

Reply To: 1920

Date: 23 MAY 1989

Allen V. Pinkham, Chairman  
Nez Perce Tribal Executive Committee  
P.O. Box 365  
Lapwai, ID 83540

Dear Allen:

Enclosed is the settlement agreement my staff worked out with your staff for the Nez Perce Tribe's appeal of the Nez Perce Forest Plan.

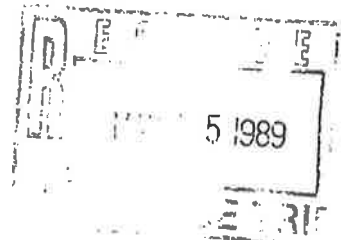
We appreciate the cooperative management atmosphere which developed in producing this agreement.

Sincerely,

TOM KOVALICKY  
Forest Supervisor

cc: G. Kellogg, w/encl.  
K. Nelson, w/encl. RO  
T. Rhode, w/encl. CNF SO

Heather Noble, w/encl.  
Idaho Legal Aid Services  
417 Weisgerber Bldg.  
Lewiston, ID 83501



PROPOSED  
SETTLEMENT FOR THE ISSUES  
IN NEZ PERCE TRIBE'S APPEAL OF  
NEZ PERCE NATIONAL FOREST MANAGEMENT PLAN

This agreement between the United States Department of Agriculture Forest Service (hereinafter "Forest Service") and the Nez Perce Indian Tribe (hereinafter "Tribe") is intended to resolve all issues raised by the Tribe in its appeal of the Ten Year Management Plan for the Nez Perce National Forest. The following issues, are resolved without need for further appeal:

- I. Inadequate analysis in EIS of plan's impact to elk.
- II. Inadequate monitoring of plan's impacts to elk and other species.
- III. Unrealistic promises to deliver mitigation for elk.
- IV. Lack of a reasonable range of alternatives to analyze impacts of grazing on elk.
- V. Protection for cultural sites, including archeological sites, burial sites, religious sites, and gathering sites.
- VI. Provision for tribal treaty grazing rights.
- VII. Impacts of budget adjustments.
- VIII. Management of East Meadow Creek.
- IX. Increasing the Second Decade ASQ.

The terms of the settlement of each issue are discussed in turn below:

I. Inadequate analysis in EIS of plan's impact to elk.

This issue has been resolved by better understanding of and improvements in the analysis of impacts to elk in the cumulative effects analysis process.

## II. Inadequate monitoring for elk and other species.

The Forest Service agrees to undertake the following program of monitoring:

### A. Implementation monitoring.

In the annual monitoring report, the Forest will display for each Timber Sale Decision Notice signed during the reporting fiscal year, the following information in tabular form for each elk evaluation area affected by the sale: the summer elk objectives; preharvest level of elk habitat effectiveness; and the level of elk habitat effectiveness under the preferred alternative. A general description of how well the other wildlife habitat protection standards have been met will be included. Specific sales where the interdisciplinary process has failed to address or meet any of the other wildlife habitat protection standards in the integrated management planning process will be identified along with the failed standard.

### B. Effectiveness monitoring.

The Forest Service shall develop in collaboration with the Tribe, a methodology for randomly selecting half of the Forest Service's land disturbing activities for evaluation of elk habitat effectiveness. The Forest Service will inspect the land disturbing activities selected in this random process to determine whether the elk habitat effectiveness projected in the environmental analysis has been achieved. The results of this level of monitoring will be reported annually.

### C. Validation monitoring.

The Nez Perce National Forest will invite the Idaho Department of Fish and Game, University of Idaho, and the National Forest Research Station to participate, along with the Nez Perce Tribe, in developing a study plan to validate and, if needed, refine the Nez Perce elk effectiveness model. This study plan will review applicable, ongoing elk research in northern Idaho. Model changes and refinements will be incorporated into the Nez Perce Forest version of the elk effectiveness model, and the amended version of the model will be used in future forest planning. It is intended that this study will be completed before the next Forest Land and Resource Management Plan.

## III. Unrealistic promises to deliver mitigation for elk.

The plan states that the Forest Service will burn 50,000 acres of elk winter range in the next ten years, or 5,000 acres a year, to improve forage on this range. The Forest Service will count wildfire acreage against this total when wildfires occur in areas which the Forest Service had active plans to burn or harvest timber for winter range improvement. These areas are identified in management areas 11, 15, 16, and 18 of the Forest Plan (see Appendix J, Page J-7, Table J-4).

Should the Forest fall more than 8,000 acres behind on planned winter range burn acreage for any reason other than complying with Regional Forester cease burn orders for regionwide fire emergencies, the Tribe and Forest will collaborate on a monitoring and Forest Plan amendment process. The process will explore, evaluate and recommend alternate ways to achieve compensatory winter range forage improvement. If both parties agree that no achievable alternatives are satisfactory, they will review previous burn accomplishment records and amend the Forest Plan objective of 5,000 acre proportionately downward.

#### IV. Lack of a reasonable range of alternatives to analyze impacts of grazing on elk.

The Forest Plan's Forestwide Management Direction for Range are adequate to meet the Tribe's concerns on this issue with the following clarifying language. At page II-20, Range Management Direction #6 shall read:

"6. Provide forage for elk needs in allotment management plans on all allotments that include elk winter range. The assumption is made that available forage is not a limiting factor on summer habitat."

#### V. Protection for cultural sites, including archeological sites, burial sites, religious sites and gathering sites.

The Forest Service and the Tribe will undertake a process of consultation to protect cultural sites of prehistoric or present use. The Forest Service will notify the Tribe of all land disturbing activities. This notification will occur at a stage when the Forest Service's plans are sufficiently definite that the Tribe will be able to judge the possible location and extent of impacts to cultural sites. Notification will also include information of sufficient detail to allow the Tribe to determine if there may be potential adverse impacts to cultural sites. Notification will also be timed early enough in the decisionmaking process so that the Forest Service will be able to alter its plans based on the Tribe's comments and suggestions.

The Forest Service will take into consideration the Tribe's comments in designing and locating land disturbing activities. The Forest Service will not necessarily follow the Tribe's suggestions for protection of cultural sites in every case, but the consultation process will involve an accommodation between the interests of the Forest Service and the Tribe. In cases where the Forest Service is unable to adopt the Tribe's suggestions, the Forest Service will notify the Tribe of its reasons for failing to do so.

The Tribe may also propose that the Forest Service undertake certain rehabilitative measures for cultural sites of prehistoric or present use which are currently suffering degradation. The Forest Service will consider such suggestions in light of the treaty and appropriate laws.

#### VI. Provision for tribal treaty grazing rights.

The Forest Service acknowledges that the Nez Perce have a treaty grazing right on public lands throughout the Nez Perce National Forest based on treaties signed by the Nez Perce in 1855 and 1863. This right encompasses cattle and horses owned by tribal members or by the Nez Perce Indian Tribe. The Forest Service will negotiate the terms and conditions of any tribal grazing with the Tribe. The Bureau of Indian Affairs may also have a role in setting terms of tribal grazing.

#### VII. Impacts of Budget Adjustments.

The plan states that certain mitigation measures and certain monitoring programs will be undertaken by the Forest Service. The environmental impact statement prepared for the Forest's ten year management plan was written based on the assumption that these measures and programs will occur, and the Forest outputs projected in the EIS are based on such assumptions. Changes to the budget in any given year, may require projects scheduled for that year to be rescheduled. If the budget is significantly different from the Plan over a period of several years that objectives and monitoring requirements cannot be met, the Plan itself may have to be amended. Such an amendment would meet NEPA requirements.


#### VIII. Management of East Meadow Creek.

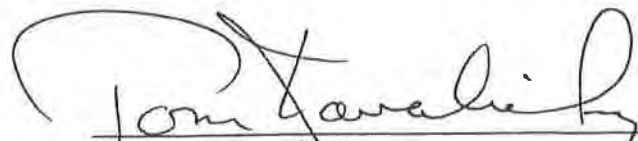
The East Meadow Creek Roadless Area is currently not in the suitable timber base. The Forest Plan calls for no capital improvements in this Roadless Area. Monitoring and evaluation will precede any consideration or decision to proceed with the development of East Meadow Creek. Before the East Meadow Creek Roadless Area could be put into the suitable timber base, the Forest Supervisor would have to make a decision, which would entail a plan amendment. Any such plan amendment would trigger full public participation and appeal rights.

IX. Increasing the Second Decade ASQ.

The Forest did not make any promise to increase the Forest ASQ in the second decade. The National Forest Management Act of 1976 requires the Forest Service to determine the Forest ASQ in each National Forest Plan based on the best available information. Information and analysis developed in the NEPA process for the current Forest plan indicates that an increase in the ASQ may be possible in the second decade while meeting other multiple use goals and standards. The Forest Service is undertaking a monitoring program over the next ten years to verify or identify changes in that information and analysis. Whether or not the Regional Forester makes a decision to implement any increase in the ASQ in the second decade will depend on further analysis or knowledge gained through monitoring, changed conditions, new issues, etc.

SIGNED this 23 day of May, 1989

  
Chairman  
Nez Perce Tribal Executive Committee

  
Forest Supervisor  
Nez Perce National Forest  
USDA, Forest Service  
Northern Region

APR 27 1986

NP 86-168

NORTHERN IDAHO AGENCY

## RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, Pilot Knob Mountain and Adjacent Area in the Nez Perce National Forest are central to the practice of the Nez Perce religion and, in particular, to the conduct of important tribal religious rites which can be conducted in no other place; and

WHEREAS, the conduct of the aforementioned religious rites requires absolute and undisturbed peace and quiet in the Pilot Knob area preserved in its pristine and natural state; and

WHEREAS, federal law forcefully protects American Indian sites of religious significance, which laws include the Free Exercise Clause of the First Amendment to the United States Constitution and the American Indian Religious Freedom Act, Pub. L. No. 95-341, 47 U.S.C. § §1996, et seq., as interpreted in, inter alia, Decision Denying Hydroelectric Construction License at Kootenai Falls, Federal Energy Regulatory Commission, April 23, 1984; and

WHEREAS, the Nez Perce Tribal Executive Committee desires to ensure the Pilot Knob/Pilot Rock Area is maintained in such a manner as to permit the conduct of the tribal religious rites.

NOW, THEREFORE, BE IT RESOLVED, that the Nez Perce Tribal Executive Committee hereby requests that the National Forest Service take whatever steps are necessary to protect the Pilot Knob/Pilot Rock Area from any disturbance, including timber cutting, that would alter its pristine and natural state or disturb the conduct of Nez Perce religious rites.

BE IT FURTHER RESOLVED, that the Nez Perce Tribal Executive Committee urges the National Forest Service to maintain in the above-discussed manner an area surrounding Pilot Knob Mountain as follows:

TRANSMITTED  
TO P/O

MAY - 7 1986

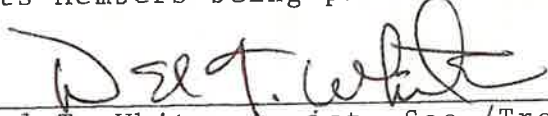
Description: Begin at the top of Silver Dome, thence northerly along the divide between Peasley/Silver Creeks to the Elk City Wagon Road #464, thence easterly along the road #464 to the east boundary of section 15 (south of Little Baldy Mtn.), thence southerly along the section line to the southeast corner of section 34, thence west to the northeast corner of section 3, thence south to the southeast corner of section 3, thence west to the Peasley/Silver Creek divide, continue north along the divide to the point of beginning consisting of a total of 12,805 acres.

as such area is th minimum which will guatantee that the tribal religious rites can be conducted undisturbed.

C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee meeting in Special Session, March 25, 26, 27, 1986, in the Richard A. Halfmoon Coouncil Chambers, Lapwai, Idaho, a quorum of its Members being present and voting.

BY:

  
Del T. White, Assist. Sec./Treas.

ATTEST:

  
J. Herman Reuben, Chairman





Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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

August 13, 2014

Rick Brazell, Supervisor  
Nez Perce-Clearwater National Forests  
United States Forest Service  
903 3<sup>rd</sup> Street  
Kamiah, ID 83536

**By Electronic Mail ([rbrazell@fs.fed.us](mailto:rbrazell@fs.fed.us))**

Dear Mr. Brazell:

Thank you for your letter of July 1, 2014 inviting the Nez Perce Tribe to be a cooperating agency on the Nez Perce-Clearwater National Forests plan revision effort. The Tribe appreciates your ongoing commitment to strengthening our government-to-government relationship and in particular to ensuring the Tribe has a full opportunity to meaningfully engage on this important plan revision effort implicating National Forest lands that are within the Tribe's exclusive aboriginal territory and subject to rights the Tribe reserved, and the United States secured, in the 1855 Treaty.

By this letter the Tribe will accept the Forest Service's invitation to be a cooperator, provided the Tribe and Forest Service execute an agreement establishing our respective roles and responsibilities, timelines, resource and travel requirements, and other duties and expectations of the cooperator role. The Tribe suggests that we discuss the details of this agreement during your tentatively scheduled meeting with the Nez Perce Tribal Executive Committee on August 26 as part of the initiation of formal government-to-government consultation on the next phase of forest plan revision.

In addition, the Tribe is aware that scoping is formally underway for the plan revision and that the proposed action has comments due by September 15, 2014. Given the need to discuss and coordinate our cooperator role through formal consultation and to provide timely and meaningful scoping comments to the Forest Service, and to allow the tribal membership a full opportunity to comment, the Tribe requests that the Forest Service extend the scoping comment period 60 days.

Thank you in advance for your consideration of the Tribe's request and we look forward to your August 26 visit with the Nez Perce Tribal Executive Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read "Silas C. Whitman", with a long horizontal flourish extending to the right.

Silas C. Whitman  
Chairman

Cc: Christine Bradbury



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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

October 30, 2015

Cheryl Probert  
Forest Supervisor, Nez Perce-Clearwater National Forests  
U.S. Forest Service  
903 3<sup>rd</sup> Street  
Kamiah, ID 83536

*Sent via email to [cprobert@fs.fed.us](mailto:cprobert@fs.fed.us) and U.S. Mail*

*RE: Request for Consultation Regarding the Forest Plan Revision Process*

Dear Ms. Probert:

I am writing to request that the Forest Leadership Team (FLT) meet with the Nez Perce Tribe Executive Committee to consult regarding the Forest Plan Revision process and the Tribe's December 2014 comments on the Forest Plan Proposed Action (PA). The Tribe believes that periodic and timely consultations between the FLT and Tribal leadership are an important part of our government-to-government relationship and of the Forest planning effort.

Since the Tribe submitted comments in December of 2014, there have been some changes to the original PA; the Tribe expects that these changes will be carried forward into the development of Forest Plan (Plan) alternatives. It is important that the FLT meet with Tribal leadership prior to the finalization of alternatives so that Tribal leadership understands your direction and so that the FLT understands the Tribe's concerns and wishes.

Broadly, the Tribe would like to discuss how best to develop a Forest Plan that protects trust resources, treaty rights, and tribal interests while managing for both forest and watershed health. The Tribe would also like to discuss how the Forest is going to monitor forest and watershed health, in the short- and long-term, so that both the FLT and the Tribe can evaluate the efficacy of the Plan going forward. With that in mind, I propose the following specific topics for our meeting:

1. Trust Responsibility: The Forest Service inappropriately ceded fish and wildlife management responsibility to the Idaho Department of Fish and Game (IDFG) during the public collaborative process for the Plan. The Forest Service's trust responsibility extends to fish and wildlife populations on the Forest, and the Nez Perce Tribe is a recognized co-manager of the Forest's treaty resources, including fish and wildlife.

What procedures is the Forest putting in place to ensure consultation with the Nez Perce Tribe on fish and wildlife issues during the Forest planning process and during implementation of the Plan?

At the previous consultation on the Plan, the Forest verbally agreed to add trust language to the Plan. Despite this, trust language was not included in the PA. In order to ensure that the Trust responsibility to the Tribe is honored, the Tribe requests that the agency confirm that the draft EIS will include the following two standards from the 1987 Clearwater National Forest Plan: (1) “Ensure that Forest actions are not detrimental to the protection and preservation of Indian Tribes’ religious and cultural sites, and practices and Treaty Rights” (Standards-3. Cultural Resources page II-23, 3g.); and (2) “Ensure proposed practices and management activities are coordinated with other governmental agencies and Indian tribes to insure requirements of all laws and regulations are met and terms of Indian Treaties are upheld” (Page II-21, E(1)(d)).

2. Cultural Resources: The Forest’s current heritage program reviews fail to identify or consider present cultural uses and potential future uses of the Forest and its resources by the Nez Perce people. How will the revised Forest Plan address the Tribe’s full range of cultural resource concerns including archeological sites, Traditional Cultural Properties, sacred sites, and historic properties?
3. Shift from Standards to Guidelines: The Tribe understands that the Forest is emphasizing guidelines over standards in the new Plan to ensure management flexibility. In reviewing the 2012 planning rules and other recent USFS policies, the Tribe does not see administrative direction for such a shift and thus seek clarification regarding it. The Tribe also reiterates our PA recommendation that the Forest retain robust standards and generate flexibility by listing specific exceptions, based on historic evidence justifying those exceptions. This will enable the Forest to attain the flexibility it seeks while also preserving accountability. The Tribe requests specific feedback on our PA recommendation and an explanation from the Forest if it is pursuing a shift toward guidelines. The Tribe would also like to hear how the Forest intends to build accountability into a Plan where guidelines, rather than standards, predominate.
4. Interior Columbia Basin Strategy Framework: How will the Forest Plan implement the 2014 “Updated Interior Columbia Basin Strategy: A Strategy For Applying the Knowledge Gained by the Interior Columbia Basin Ecosystem Management Project to the Revision of Land Use Plans and Project Implementation”? This document, referred to as *The Interior Columbia Basin Strategy and Framework*, serves as guidance for replacing the prior temporary Columbia Basin Strategy (2003) and Aquatic and Riparian Aquatic Habitat Framework (2008). This framework directs the Forest to develop a more permanent set of fish and watershed protections, within the new Forest

- Plan, based on best available science. The Tribe requests that the Forest work with Region 1, the Tribe's technical staff, and other fish and wildlife managers to develop an Aquatic Conservation Strategy, which will replace the interim PACFISH/INFISH Framework, for incorporation into the revised Forest Plan.
5. Restoration Action Strategy (RAS): Associated with our interest in the interim PACFISH/INFISH framework, the Tribe has a number of questions regarding the Restoration Action Strategy recently presented to the Clearwater Basin Collaborative. The Tribe asks that you make the same presentation to the Tribe so that it can better understand this strategy, its relationship to the Forest Plan Revision process, *The Interior Columbia Basin Strategy and Framework*, and recent legislative initiatives.
  6. Resource Management Area Boundaries: Are there new boundaries and, if so, what are they? How has an ecosystem services approach influenced the development of management boundaries and associated resource priorities? How are intrinsic and other non-economic resource values being considered in management prioritizations?
  7. Biophysical Settings, Forestland Categorizations (PA 16-pg) Changed to Habitat Types: What are these new habitat groupings and how are they organized? How will the new groupings impact timber, watershed, and wildlife habitat management analyses and the development of alternatives?
  8. Issue Statements: The Forest Service has developed four main issue statements regarding wilderness, recreation, forest management, and timber. The Tribe believes that the Forest should also develop issue statements for watershed restoration/management and wildlife habitat management, as they constitute central issues in the Forest planning effort. The Tribe would like to discuss the development of those statements with the Forest.
  9. Updated Objectives: The PA lacked measurable objectives for most resource topics. Now that alternatives development is underway, the Tribe assumes that measurable objectives are being developed across all resource topics. Accordingly, the Tribe requests that those objectives be shared with the Tribe and that the Tribe have the opportunity to provide input.
  10. Integrated Projects: The Forest recently began emphasizing the development of geographically large, multidisciplinary projects under a single NEPA analysis. The Tribe would like to know more about the intent behind these large-scale projects, whether they will be institutionalized within the Forest Plan, and how the Tribe can best provide input on them while they are still in early development.

Cheryl Probert  
October 30, 2015  
Page 4

Forest and watershed health are mutually achievable goals. They are also compatible with timber harvests, so long as those timber harvests are thoughtfully executed. Consequently, the Forest has an exceptional opportunity to develop a Plan that will serve as a model in the Pacific Northwest for how to best manage for both forest and watershed health.

In order to ensure that the Forest fully realizes this opportunity, the Tribe strongly recommends that the Forest ID team work closely with our technical staff, throughout its planning effort. The Tribe also recommends, and expects, that any disagreements that occur on a technical level will be quickly elevated and resolved through government-to-government consultation.

Please contact Amanda Rogerson, Nez Perce Tribe Staff Attorney, to schedule a time to discuss the Plan with the Nez Perce Tribe Executive Committee. I also respectfully request that you send Ms. Rogerson a written response to our agenda items prior to consultation, for the Executive Committee's review. Ms. Rogerson can be reached at 208.843.7355 or [amandar@nezperce.org](mailto:amandar@nezperce.org).

The Tribe looks forward to an update regarding the Forest's efforts to integrate watershed and upland vegetation restoration priorities, especially for the Forest's roaded front country.

Thank you for your time.

Sincerely,

  
Anthony D. Johnson

Cc Leanne Martin, USDA Forest Service, Region 1 Forester  
David Mabe, NOAA Division Chief, Snake River Basin



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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

November 17, 2016

Cheryl Probert  
Forest Supervisor, Nez Perce-Clearwater National Forests  
U.S. Forest Service  
903 3<sup>rd</sup> Street  
Kamiah, ID 83536

*Sent via email: [cprobert@fs.fed.us](mailto:cprobert@fs.fed.us)*

RE: Request for Consultation Regarding the Nez Perce-Clearwater National Forests' Plan Revision

Dear Ms. Probert:

It is the Nez Perce Tribe's (Tribe) understanding that the Nez Perce-Clearwater National Forests (NPCNF) has restarted its Forest Plan revision process. This process is of significant interest to the Tribe. Hence, Tribal leadership and staff believe now is a good time for the Tribe and the NPCNF to re-engage on the subject.

Specifically, the Tribe would like to see its technical staff and the NPCNF's Interdisciplinary Team (ID) begin meeting again. The Tribe's technical staff had previously developed a good working relationship with the NPCNF's ID team members and would like to begin developing a similarly good relationship with the new ID team members. The Tribe's technical staff would also like to begin familiarizing itself with the latest iteration of NPCNF's desired future conditions, measurable objectives, species of conservation concern, and monitoring elements.

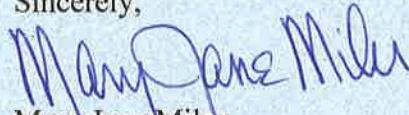
Additionally, the Tribe requests a written response to the concerns it outlined in its October 30, 2015 letter, which is attached. The Tribe recognizes that, subsequent to sending this letter, the NPCNF provided Tribal staff with some perspective on the Restoration Action Strategy and how it may be used in the planning process. In light of this, the Tribe would appreciate any new information about the NPCNF's use of the Restoration Action Strategy in the planning process.

After the NPCNF has responded to the Tribe's 2015 letter in writing, the Tribe requests government-to-government consultation with the NPCNF. The Tribe also requests that this consultation occur before the NPCNF has fully developed its alternatives and proposed action.

Lastly, the Tribe would like to finalize its “cooperating agency” status on the Forest Plan revision. This status will serve as an acknowledgment of the Tribe’s cultural expertise and will enable better two-way communication regarding resources important to the Tribe. Please contact Amanda Rogerson, Nez Perce Tribe Staff Attorney, at 208.843.7355 or [amandar@nezperce.org](mailto:amandar@nezperce.org), to work out the remaining details.

The Tribe believes that the NPCNF has an exceptional opportunity to develop a Forest Plan that will serve as a model in the Pacific Northwest. The Tribe would like to be a part of its development.

Sincerely,



Mary Jane Miles  
Chairman



Nez Perce

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

October 30, 2015

Cheryl Probert  
Forest Supervisor, Nez Perce-Clearwater National Forests  
U.S. Forest Service  
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Cheryl Probert  
October 30, 2015  
Page 4

Forest and watershed health are mutually achievable goals. They are also compatible with timber harvests, so long as those timber harvests are thoughtfully executed. Consequently, the Forest has an exceptional opportunity to develop a Plan that will serve as a model in the Pacific Northwest for how to best manage for both forest and watershed health.

In order to ensure that the Forest fully realizes this opportunity, the Tribe strongly recommends that the Forest ID team work closely with our technical staff, throughout its planning effort. The Tribe also recommends, and expects, that any disagreements that occur on a technical level will be quickly elevated and resolved through government-to-government consultation.

Please contact Amanda Rogerson, Nez Perce Tribe Staff Attorney, to schedule a time to discuss the Plan with the Nez Perce Tribe Executive Committee. I also respectfully request that you send Ms. Rogerson a written response to our agenda items prior to consultation, for the Executive Committee's review. Ms. Rogerson can be reached at 208.843.7355 or [amandar@nezperce.org](mailto:amandar@nezperce.org).

The Tribe looks forward to an update regarding the Forest's efforts to integrate watershed and upland vegetation restoration priorities, especially for the Forest's roaded front country.

Thank you for your time.

Sincerely,

  
Anthony D. Johnson

Cc Leanne Martin, USDA Forest Service, Region 1 Forester  
David Mabe, NOAA Division Chief, Snake River Basin



*Nez Perce*

**TRIBAL EXECUTIVE COMMITTEE**

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November 16, 2017

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RE: Consideration and status review of bighorn sheep during forest planning

Dear Regional Foresters,

The U.S. Forest Service ("Forest Service") and Nez Perce Tribe ("Tribe") share an interest in ensuring the persistence of wild sheep on Forest Service lands. The Tribe is thus eager to work with the Forest Service to evaluate, and in some cases re-evaluate, the status of and risks to bighorn sheep populations on Forest Service lands. The Tribe hopes to complete this cooperative work as the Forest Service develops and revises the next generation of forest plans under its 2012 planning rule.

Historically, bighorn sheep were well distributed across the western United States, numbering up to two million animals. Habitat loss, unregulated market hunting, and disease has resulted in the extirpation of most of these populations. Efforts to reestablish these populations have been ongoing since the early 1900s. Despite these efforts, die-offs continue and the status of the species remains tenuous, with only about 75,000 animals spread across the west, often occurring in small, isolated

herds. Despite population losses throughout our homeland, bighorn sheep remain a species of great cultural value to the Tribe.

It has been well established in the scientific literature that bacteria transmitted from domestic sheep results in pneumonia-related mortalities within bighorn populations, followed by long-term suppression of lamb recruitment. These events are not uncommon. All of the 14 public land grazing states with bighorn sheep have experienced at least one bighorn sheep respiratory disease die-off in the last 14 years; most have had numerous events. According to data collected by the Western Association of Fish and Wildlife Agencies, Wild Sheep Working Group (“WAFWA WSWG”), a total of 13,391 animals have been lost to these events since 1980. In addition, WAFWA WSWG estimates that, as a result of these respiratory disease events, nearly 11,000 lambs born to surviving ewes died of pneumonia within a few months. The initial loss of adult animals is significant in and of itself, but the subsequent collapse of lamb recruitment in the years following respiratory disease die-offs impedes herd recovery and threatens persistence.

Lands managed by the Forest Service provide the ecological conditions essential to the persistence of native bighorn sheep in the American West. However, the scientific evidence shows that the presence of domestic sheep on and adjacent to bighorn sheep habitat impairs ecological conditions required by bighorn sheep on Forest Service lands. Thus, there is substantial concern regarding the persistence of these remaining bighorn sheep populations over the long term.

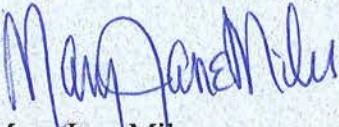
Since time immemorial, the Tribe has occupied and used over 13 million acres of land now comprising north-central Idaho, southeast Washington, northeast Oregon, and parts of Montana. Tribal members engaged in fishing, hunting, gathering, and pasturing across their aboriginal territory, and these activities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

The Tribe is nationally recognized for its leadership in the conservation of bighorn sheep. Collaborative research led by the Tribe over a decade ago on Forest Service lands, and the Tribe’s ongoing advocacy for bighorn sheep, was instrumental in the reduction of disease risk on 70,000 acres of bighorn habitat on the Payette National Forest. Unfortunately, substantial areas of unoccupied habitat remain throughout the Tribe’s aboriginal homeland and beyond. Risk assessments and threat-reducing management actions represent vital and urgently-need steps toward the recovery of bighorn sheep on Forest Service lands.

The Forest Service’s 2012 planning rule calls for extensive public engagement by the Forest Service when developing and revising forest plans (FSH 1009.12, chapter 40, sec. 42), including when evaluating and selecting species of conservation concern (“SCC”). Moreover, both the Forest Service’s 2012 planning rule direction and congressional appropriations language require that the Forests work with federally-recognized tribes on plan revisions. The Tribe thus asks that the Forest Service reach out to the Tribe as it develops forest plans within the historic range for bighorn sheep so that Tribal staff can assist in appropriately evaluating, and in some cases re-evaluating, the best available scientific information with regard to the viability of and risks to bighorn sheep populations. The Tribe further requests a thorough analysis of whether bighorn sheep should be listed as a SCC.

In summary, the Tribe encourages development of plan components that will contribute to the viability of native bighorn sheep on Forest Service lands across the American West. The Tribe also requests that the Forest Service provide the Tribe with an up-to-date revision schedule for forest plans that are within the historic range of the bighorn sheep. The Tribe additionally asks that those Forests that are actively revising their plans, or will soon do so, including those Forests developing SCC lists in advance of revision, contact the Tribe to seek the Tribe's input and involvement.

Sincerely,



Mary Jane Miles  
Chairman





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
1201 NE Lloyd Blvd., Suite 1100  
PORTLAND, OREGON 97232-1274

February 23, 2018

Cheryl Probert  
Forest Supervisor  
Nez Perce-Clearwater National Forests  
903 Third Street  
Kamiah, Idaho 83536

Re: Comments on the Proposed Components for Developing Alternatives for the Revised Nez Perce-Clearwater National Forests Plan

Dear Ms. Probert:

Thank you for the opportunity to provide comments on your December 18, 2017, document describing unresolved issues and proposed components under consideration for revising the Land and Resource Management Plan (Forest Plan) for the Nez Perce-Clearwater National Forests (NPCNF). The December 18, 2017, document describes various Forest Plan components that may be incorporated into one or more alternatives for the revised Forest Plan. Your letter introducing the proposed components describes them as a response to issue statements developed from comments on the proposed action for the revised NPCNF Forest Plan that was published in the Federal Register in July 2014. The December 18, 2017, letter from the NPCNF soliciting comments on the proposed components identifies four issues that were unresolved in the 2014 Proposed Action. In the 2014 Proposed Action, the adequacy of protective measures for salmon and steelhead listed under the Endangered Species Act (ESA) was not identified as an issue. The 2014 Proposed Action included a suite of aquatic conservation measures intended to carry forward a similar level of protection of aquatic resources as provided by the existing Forest Plan with PACFISH amendments. The National Marine Fisheries Service (NMFS) and other partners worked collaboratively with the NPCNF to develop the 2014 proposed action using as guidance the April 18, 2014, Interior Columbia Basin Strategy Interagency Memorandum and its accompanying framework document (ICB Strategy) signed by Forest Service Regions 1, 4, and 6; NMFS; and other agencies.

The proposed plan components are substantially different from the 2014 Proposed Action, raising issues that did not previously exist. The proposed plan components lack key provisions for the protection of listed fish that are included in the 2014 Proposed Action and the existing Forest Plan with PACFISH amendments. The proposed plan components also have critical inconsistencies with the aquatic conservation components and measures identified in the 2014 ICB Strategy for applying scientific principles to the revision of Forest Plans.





Nothing has changed in forest management issues or the status of listed salmon and steelhead since 2014 that would warrant diminished protection of listed fish. Listed Snake River salmon and steelhead continue to struggle with cycles of unfavorable ocean conditions, excessive mainstem water temperatures during the migration period, increased exposure to predators, and habitat degradation. In 2017, adult returns of listed Snake River spring/summer Chinook salmon and steelhead have dropped by more than half from their recent 10-year averages. The NPCNF hosts a significant portion of the remaining habitat for Snake River steelhead and both listed and unlisted Chinook salmon. The restoration and protection of steelhead critical habitat in the NPCNF is an essential element of the 2017 ESA Recovery Plan for Snake River Spring/Summer Chinook Salmon and Snake River Basin Steelhead. A suitable suite of measures for protection and recovery of listed salmon and steelhead is a critical omission from the list of issues that should be addressed in the Draft Environmental Impact Statement (DEIS).

Originally designed as an interim strategy, PACFISH has been in place for more than 22 years in the Interior Columbia River basin. It has proven to be a successful strategy in terms of both conserving fish habitat and guiding and facilitating the many activities Forests conduct and permit. In anticipation that Forest Plan revisions would replace or continue PACFISH in some form, the interagency ICB Strategy was developed to guide those efforts and ensure continuity and coordination of conservation for ESA listed anadromous fish species. We believe that the NPCNF Forest Plan should adhere to the concepts and guidance identified in the 2014 ICB Strategy for applying scientific principles to the revision of Forest Plans. The proposed Forest Plan components recognize the importance of Riparian Management Zones to aquatic functions, and recognize the importance of creating a network of watersheds to ensure that anadromous fish populations are able to persist into the future; however, the proposed management direction pertaining to these components does not reflect their importance.

The proposed plan components raise important issues for listed salmon and steelhead that should be resolved in the DEIS. Major issues identified in the proposed plan components include the following:

- The proposed management direction for Riparian Management Zones (RMZs) has three issues that nearly defeat the purpose of designating RMZs: standards and guidelines for RMZs lack provisions that prevent degradation of fish habitat; the RMZs are divided into inner and outer zones, with inner zone widths that do not reflect the full contributing areas to aquatic functions; and the proposed management direction in the outer zone promotes activities with significant potential to degrade habitat for listed fish, particularly when floodplains extend beyond the width of the inner zone. The science related to the influence of riparian areas on stream processes and physical characteristics clearly shows the vital contributions of the area within a distance of at least one site-potential tree height from the edge of the stream and extending to the edge of the floodplain or inner gorge. Site-potential tree heights for most forest types within the NPCNF are closer to 150 feet than 100 feet; which makes the proposed 50- and 100-foot inner zones distances inadequate for fully providing aquatic functions within most forest types. As noted above, proposed management direction for the defined outer zone (area beyond 50 or 100 feet from stream) does not reflect the contribution of that area to aquatic functions. In addition, landslide-prone areas or unstable areas (treated as a component of riparian and

aquatic function under PACFISH and under the ICB Strategy) are not provided sufficient consideration with respect to their role in aquatic functions.


- Key desired conditions and guidelines for aquatic resources rely largely on the concept of natural variation in stream characteristics related to geoclimatic influences and disturbance history. An understanding of this concept is crucial to managing a forest environment, but applying this concept in general form as a management trigger is problematic. The “range” of natural variation includes highly degraded systems that occur from extreme events that rarely occur. Consideration of the range, alone, would seemingly allow management activities to degrade every stream on the forest as long as the degradation was not worse than the most extreme conditions found in nature. Managing streams to reflect the patterns of variation in nature requires consideration of indicators at multiple spatial scales, with enough specificity to allow progress toward achievement of desired conditions to be determined. Indicators of physical attributes essential for managing fish habitat include: large woody debris, fine sediment, water yield, bank stability, water temperature, floodplain function, and channel form. The spatial variability of these indicators would need to be assessed at multiple scales to determine if the pattern of variability in managed watersheds is different from “natural” pattern of variability. The plan components do not include all of the specific indicators needed to assess habitat conditions, or a mechanism to assess those indicators at multiple spatial scales.
- We understand that a monitoring plan will be developed, but at present, the proposed components lack a monitoring program. Without sufficient monitoring there is no mechanism to determine if management actions are making progress toward achieving desired conditions, nor is there any basis for adaptive management that seems to be a driving force in many of the plan components.
- Conflicts exist between some plan components, without a clear basis for resolving them. Plan components for aquatic resources will not be effective if management activities with adverse effects to listed fish are allowed as long as those activities are intended to meet desired conditions for some other resource concern. Recovery of listed salmon and steelhead requires increased abundance and productivity in every population within the NPCNF, which is unlikely to be achieved without an overall improvement in the condition of critical habitat.
- The population strongholds are an important plan component, and the stronghold direction appears to be well-intended. For instance, stronghold areas not meeting desired conditions would be limited to activities that support or contribute to achieving those conditions (FW-STD-CWN-01). However, as presently worded, the standard does not prevent short-term, and perhaps longer-term degradation of strongholds. Actions in the Conservation Watersheds seemingly would be allowed to delay the attainment of desired aquatic conditions as long as they do not entirely halt their attainment.
- The plan components lack consideration of climate change effects on listed fish. In the Clearwater River Basin, climate models predict some of the greatest air temperature

increases within the Snake River basin over the next 50 years. The basin already has many streams temperatures that exceed the thermal tolerance of salmon or steelhead. Long-term survival of listed fish will increasingly rely on thermal refugia, which are closely tied to channel complexity and recruitment of large wood in the channel and on the floodplain.

Our main concern is that the current Nez Perce-Clearwater Forest Planning process has not recognized ESA listed fish or critical habitat as an unresolved issue. Also fundamentally, the plan components do not specifically identify how actions would be informed by NMFS' recovery plans for Snake River salmon and steelhead. We encourage the NPCNF to develop alternatives that promote recovery of listed fish and provide adequate measures to ensure management activities do not result in degradation of critical habitat, impairment of natural stream recovery processes, or negative impacts to listed fish populations. The proposed plan components incorporate some components for protection of listed fish, but they also allow or even promote activities in the riparian management zones that could degrade habitat for listed fish. We believe that issues identified above would continue to be issues at the project level if they are not resolved in the Forest Plan. To be sufficient for plan-level consultation and to create efficiency for future project consultations, the Forest Plan should provide sufficient direction to ensure that projects produced under the plan consistently avoid destruction or adverse modification of critical habitat and avoid jeopardizing listed salmon and steelhead. We recommend that the Forest consider including management direction that provides clear protective measures and direction on how the Forest would manage areas that contain listed anadromous fish populations and their designated critical habitat.

We look forward to further discussion on the plan components. We have included an enclosure with further elaboration on the issues described above. Our comments in the letter and in the enclosure are not a comprehensive review of all aspects of the plan components. The comments are intended to point out and exemplify the main issues we see with the draft planning document at this stage, and to encourage U.S. Forest Service to involve us in the alternative development with respect to aquatic conservation and related plan components. We would like to be involved in the plan revision process and encourage the Forest to work closely with our agency and others such as the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency. Coordination between these agencies will be vital to a successful consultation on the preferred alternative for the revised plan. We are available any time to discuss our comments in more detail, and feel free to contact Bob Ries, NMFS' lead for the Forest Plan consultation, at (208) 882-6148 or [bob.ries@noaa.gov](mailto:bob.ries@noaa.gov).

Sincerely,

  
For Michael Tehan  
Assistant Regional Administrator

Enclosure

cc: R. Holder – USFWS  
K. Fitzgerald – USFWS  
J. Hansen – IDFG  
D. Johnson – NPT  
D. Schmid – USFS  
C. Thomas – USFS



## NMFS Comments on the Nez Perce Clearwater Forests' December 18, 2017, Proposed Forest Plan Components

February 23, 2018

On the whole, while there are several aspects of aquatic conservation incorporated to some degree, the proposed plan components lack sufficient direction to conserve and promote recovery of Endangered Species Act (ESA) listed salmon and steelhead and their critical habitat. The plan components do not provide assurance that activities implemented under the plan would not result in degradation of critical habitat and negative impacts to listed fish populations. Proposed plan components allow for activities that could degrade desired conditions for Riparian Management Zones (RMZs) and critical habitat for listed fish. Management direction in some of the draft components is inconsistent with scientific-based concepts, and some key provisions for managing aquatic resources are missing entirely.

The provisions for management of aquatic resources in the December 18, 2017, proposed forest plan components for the revised Nez Perce-Clearwater National Forest (NPCNF) Land and Resource Management Plan (LRMP) (plan components) differ substantially from existing forest plan direction, forest plan direction in neighboring National Forests, and the April 18, 2014, Interior Columbia Basin Strategy Interagency Memorandum and its accompanying Framework document (ICB Strategy) issued by Forest Service Regions 1, 4, and 6, NMFS, and other Federal agencies. The ICB Strategy describes a framework for developing and incorporating the Columbia Basin science into the aquatic and riparian habitat components of land use plans and it includes fundamental elements of riparian and aquatic conservation that are based on established scientific principles and conservation strategies such as PACFISH and INFISH.

Our comments in this document are organized below by the seven components described in the ICB Strategy and its accompanying Aquatic Framework document. These comments are not an exhaustive review of the proposed plan components; instead they highlight instances where the proposed components diverge from the ICB Strategy, or where the components are structured in a manner where the direction is unclear. Specific examples are provided.

The sections of the ICB Strategy that are of greatest importance for forest plan revision with respect to ESA listed salmon and steelhead are *Section C. Aquatic/Riparian Species and Habitat Management* and *Appendix 1. A Framework for Incorporating the Aquatic and Riparian Habitat Component of the Interior Columbia Basin Strategy into BLM and Forest Service Plan Revisions* (Aquatic Framework). Those sections identify land and resource management plan components that are fundamental to aquatic conservation for salmon and steelhead. Such components are lacking or are not fully developed in the planning document proposed for the NPCNF plan revision. The components of the ICB Strategy Aquatic Framework are as follows:

1. Designation and Conservation of Riparian Areas to Maintain and Improve Riparian Function
2. Designation and Protection of Population Strongholds for Listed or Proposed Species and Narrow Endemics

3. Multiscale Analysis
4. Restoration Priorities and Guidance
5. Management Direction (e.g., desired conditions, objectives, management actions)
6. Monitoring and Adaptive Management
7. Consideration of Climate Change

## **1. Riparian Management Zones**

The central purpose of RMZs (aka riparian habitat conservation areas and riparian management areas [RMAs]) as used in PACFISH and described in the ICB Strategy is to manage riparian areas “for the benefit of riparian dependent and aquatic species,” and “In all cases... maintain riparian and aquatic functions where those have been achieved, and assist in or not hinder attainment of those functions where they have not yet been achieved.” Two questions arise in considering NPCNF’s proposed management direction for RMZs: (1) Are the widths of inner and outer zones of the RMZ based on a scientifically valid principles; and (2) does the management direction for RMZs achieve the purposes described above?

The science related to the influence of riparian areas on stream processes and physical characteristics supports a distance of one site-potential tree height from the edge of the stream and extending to the edge of the floodplain or inner gorge. A RMZ width based on one site-potential tree height includes the majority but not necessarily all of the area contributing to riparian and aquatic functions. Site-potential tree heights for most forest types within the NPCNF are closer to 150 feet than 100 feet; which makes the proposed 50- and 100-foot inner zones not fully inclusive of the area contributing the majority of riparian and aquatic functions. A 150-foot distance or actual site-potential tree height for the default inner width represents the distance where trees have a significant influence on streams. For floodplain function, the entire floodplain width is influenced by both standing and fallen trees.

Not only are the RMZ widths an issue, but also the proposed direction that would apply to these important areas is unlikely to preserve or restore their function. For instance, while the standards for RMZs in the inner zone prohibit salvage harvest (RMZ-04), the standards for vegetation management in RMZs (RMZ-01 and 02) limit vegetation management to actions that “maintain, restore or enhance aquatic, soil, and riparian-associated resources long term.” The standard is not worded in a manner that explicitly prohibits activities that degrade critical habitat for listed fish or that hinder the natural restoration processes of such habitat. Instead, maintaining “riparian-associated resources long term,” is a vaguely defined purpose and timeframe that leaves room for activities detrimental to listed fish and critical habitat. Further, the management direction for the outer zone of the RMZ provides no protection of riparian functions, and therefore, does not meet the intended purpose of an RMZ.

The RMZ distances needed to support aquatic functions beyond one site-potential tree height from the edge of the stream and extending to the edge of the floodplain or inner gorge vary with

site conditions such as land forms, climate, and vegetative communities. The only apparent restrictions on management of the outer zone in the draft components document are related to road building, fuel storage, and shade provisions of the Idaho Forest Practices Act. Many unconfined valleys have floodplains that extend well-beyond 300 feet. Managing only the first 50 or 100 feet of the RMZ with aquatic species in mind can expose the remainder of the RMZ to management activities detrimental to recruitment of large woody debris, water temperature, floodplain inundation, and channel migration. Both standing and downed riparian trees affect floodplain inundation, water temperatures, and summer stream flows, which are all significant factors limiting listed salmon and steelhead in the NPCNF. Protection and management of RMZs for the benefit of riparian and stream functions is discussed further in comments on Aquatic Framework component #5 (Management Direction), below.

Unstable lands (aka landslide prone) have also been part of the Riparian Habitat Conservation Areas under PACFISH and should continue to be included in revised LRMPs as RMZs or a similar designation as noted in the ICB Strategy Aquatic Framework. These unstable areas are sources of future gravel and large wood for streams. However, the proposed management direction does not include any provisions for protecting landslide-prone areas as part of the RMZs or other designation. The lack of special provisions for landslide-prone areas allows for increased risks from management activity in these areas without consideration of the large wood, etc. they provide to streams.

## **2. Population Strongholds**

The proposed plan components delineate population strongholds that appear to encompass the majority of critical habitat in the NPCNF. We have not had sufficient time to compare maps of the strongholds with critical habitat; therefore, some watersheds essential to the recovery of Chinook salmon or steelhead could be missing from the network. The management direction for the population strongholds includes a single standard (FW-STD-CWN-01) that in theory could provide protection of watersheds within the network; provided that conflicting management direction for other resources must comply with the stronghold standard; and that there is a meaningful way to determine if goals and desired conditions are being met. Without specifying how desired conditions for population strongholds would be assessed, the standard has unknown practical value.

While the stronghold management direction appears well intended, it lacks sufficient provisions to ensure actions will avoid and minimize adverse effects on riparian areas and critical habitat. As the direction is presently worded, even in the Conservation Watersheds, actions could be allowed to hinder/retard the attainment of aquatic desired conditions as long as they do not entirely halt such attainment. The standard could be interpreted that actions supporting an improving trend need only not interfere with that trend so much that conditions stop improving entirely.

The guideline for roads in the Conservation Network (reducing crossings and road miles within riparian areas) seems well intended and could result in actions that improve habitat conditions for salmon and steelhead. However, the caveat “unless necessary to improve ecological function in aquatic ecosystems” is not further defined, and may allow for new road/harvest impacts on



streams in the name of improving watershed health generally, even if degrading substrate/fish habitat conditions specifically. This issue is of special concern when joined with the stated desire of the proposed plan components to place a strong emphasis on managing for ecological restoration in Management Area 2; which includes roadless and lightly roaded areas—areas that tend to be strongholds for listed salmon and steelhead, and that would likely require construction of new road networks. A more appropriate fundamental standard or guideline for roads on the Forests (including within the Conservation Network) would be that roads (new and existing) maintain desired aquatic conditions where they have been achieved and not hinder the attainment of desired aquatic conditions where they have not yet been achieved.

### **3. Multiscale Analysis**

Multiscale Analysis or a related analytical approach is not included in the NPCNF plan components, but it was stated that more information would be provided at a later date. Information developed through analysis at multiple scales would provide additional context that is beneficial in understanding how land use plans and projects can be developed that meet multiple management objectives, including reducing risks to sensitive or unique resources such as listed species. As discussed above for framework component # 2, multiscale analysis is needed to determine if conceptual goals and desired conditions based on ecological concepts are being met. Multiscale analysis is also important for project development, for instance, because the scales of evolutionarily significant units, major population group, population, and major/minor spawning area are key to understanding effects on individual fish and the species, and thus key to section 7 consultations on projects. The Recovery Plans contain information on anthropogenic factors at those different scales that limit fish production, and associated opportunities for reducing existing effects and actively restoring habitat for salmon and steelhead. NMFS is ready to and welcomes any opportunity to assist NPCNF in developing a practical and effective approach to multiscale analysis that requires some basic inventory but does not require a great deal of time and expense to access and make use of in project planning.

### **4. Restoration Priorities and Guidance**

The desired conditions in several plan components mention restoration, and the conservation watershed network includes a standard to plan activities to meet desired conditions. However, the plan components lack direction that specifies how restoration needs or opportunities would be identified, and the direction that exists seems to consider aquatic restoration actions as stand-alone projects rather than an integral part of forest management. In the past, the NPCNF has been highly proficient in developing integrated management projects that included aquatic restoration using monies from timber sales to fund or augment funding for aquatic restoration. A large weakness throughout the plan is a lack of integration among the various resource concerns. Nearly all of the plan components, and aquatic restoration in particular, would benefit from guidance that promotes integrated projects that do not create conflicting goals. The plan components are also vague on how actions would be designed and implemented to ensure that they assist in achieving recovery plan goals. As NPCNF develops its alternatives, the near-final 2018 Region 6 Blue Mountains Forests Plan provides a good example of useful, specific guidance on restoration priorities designed for the forest plan level and based on NMFS recovery plans and related local efforts.

## 5. Management Direction

As noted in the ICB Strategy Framework Component #5, forest plans should have measurable aquatic objectives and activity-specific direction that supports achievement of those objectives. In NPCNF's plan component document, it appears that the desired conditions have not been well enough defined to be reliably measurable, and could result in confusing, ineffective implementation. Key management direction for aquatic resources is described in broad ecological concepts such as seeking that conditions fall within the "range of natural variability." While this type of direction is intended to apply scientific principles to forest management, there are practical difficulties with using general concepts in a meaningful way as a desired condition. The range of natural conditions will be very broad when it includes naturally disturbed conditions (e.g., post fire), will overlap substantially with the range of conditions seen in chronically impacted systems, and can vary depending on what spatial scale is used for analysis. It is unlikely that a stream severely altered by management activities would fall outside the range of conditions that might occur from an extreme natural event. For instance, if substrate sediment falls somewhere within the full range of natural conditions, this alone will not effectively distinguish between heavily managed chronically disturbed systems and natural conditions reflecting pulse disturbances. Without additional, measureable definition of the riparian and aquatic objectives, and if only relying on using the broad natural range, it is possible to argue that a system with substantial chronic substrate impairment is actually meeting desired conditions. And similarly it would be possible to argue that even proposed activities that increase sediment delivery to the impaired system, conditions still remain somewhere in the broad range seen in naturally disturbed systems.

The plan components do not include management direction for all of the physical attributes of stream channels or channel-forming processes that are essential for managing fish habitat. Physical attributes essential for management include: large woody debris, fine sediment, water yield, bank stability, water temperature, floodplain function, and channel form/complexity. Not only are many of these attributes overlooked, even where they are included in the plan components, there are no specific indicators identified that would be used to assess the attainment of desired conditions. The effectiveness of plan components for aquatic management is uncertain without knowing exactly what indicators will be measured and how they will be used. Even if the aquatic objectives/desired conditions become better defined, there also should be fundamental direction to not degrade the desired aquatic conditions and not retard their attainment, as noted in the ICB Strategy (under Framework component #1). Not only is such overarching direction absent in the NPCNF document, but what new, potentially effective direction is offered (e.g., FW-STD-RMZ-02) seemingly may be overridden by the central limiting construct for plan implementation described on pages 10 and 11 of the NPCNF plan components document:

*Desired conditions: Because of the many types of projects and activities that can occur over the life of the plan, it is not likely that a project or activity can maintain or contribute to the attainment of all desired conditions, nor are all desired conditions relevant to every activity (i.e., recreation desired conditions may not be relevant to a fuels treatment project). Most projects and activities are developed specifically to maintain or move conditions toward one or more of the*

*desired conditions of the plan. It should not be expected that each project or activity will contribute to all desired conditions in a plan, but usually to one or a subset.*

*To be consistent with desired conditions of the Forest Plan, a project or activity must be designed to meet one or more of the following conditions:*

- 1. Maintain or make progress toward attaining one or more of the plan desired conditions or objectives without adversely affecting progress toward maintenance of other desired conditions or objectives*
- 2. Be neutral with regard to progress toward attaining the plan's desired conditions or objectives*
- 3. Maintain or make progress toward attaining one or more of the desired conditions or objectives over the long term, even if the project or activity would have an adverse but short-term effect on progress toward attaining, or maintenance of, one or more desired conditions or objectives*
- 4. Maintain or make progress toward attaining one or more of the plan's desired conditions or objectives, even if the project or activity would have an adverse but negligible long-term effect on progress toward attaining, or maintenance of, other desired conditions or objectives*

Item #4 in particular appears to allow actions that appreciably reduce stream function in the short- and mid-term periods as long as the effects can in some way be projected to eventually become negligible over some undefined long term period.

Along with that fundamental construct, specific standards are worded in a way that would allow degradation of riparian and stream functions. This seemingly well intended standard provides an example:

*FW-STD-RMZ-02. Vegetation management shall only occur in the inner riparian management zone in order to maintain, restore or enhance aquatic, soil, and riparian-associated resources long-term. Treatments that do not create soil disturbance or compact soils may be authorized with site-specific analysis as long as aquatic and riparian-associated resources are maintained.*

In the first sentence, maintaining “riparian associated resources long term” is not clarified or linked to aquatic objectives; therefore, this standard could be met even with substantial short- and mid-term reductions to aquatic function. And the second sentence would allow, for instance, removal of near-stream trees vital for large wood and shade as long as yarding methods are low impact on soils and rationale is developed to support the vague idea that “aquatic and riparian-associated resources are maintained.”

Other LRMP revisions (Blue Mountains and Southwest Idaho) have had direction that ensures actions would not retard or degrade the attainment of desired future condition unless specific conditions were in place. Language in the Blue Mountains LRMP Revision (Suitability for Riparian Management Areas), for instance, states that:

*Silvicultural treatments shall occur in riparian management areas only as necessary to maintain, enhance or restore conditions for aquatic and riparian resources. When conducted, these activities shall avoid or minimize adverse effects to aquatic and riparian resources and not degrade or retard attainment of aquatic and riparian-dependent resources.*

In addition there is a Standard for actions in Riparian Management Areas:

*Standard RMA-1S. Riparian Management Areas include portions of watersheds where aquatic and riparian-dependent resources receive primary management emphasis. When riparian management area desired conditions are functioning properly, projects shall protect or maintain those conditions. When riparian management area desired conditions are not yet achieved or riparian management areas have impaired function or are functioning-at-risk and to the degree that project activities would contribute to those conditions, projects or permitted activities shall restore or not retard attainment of desired conditions. Short-term adverse effects from project activities may occur when they support long-term recovery of riparian management area desired conditions.*

Both the Blue Mountain and Southwest Idaho Ecogroup LRMP revision efforts adhere to the ICB Strategy and Framework by establishing the key premise of not degrading or hindering attainment of riparian functions, and the requirement also applies broadly to the riparian areas, not just to the inner one third of a riparian area. For the Blue Mountains and the Southwest Idaho Ecogroup, and in the existing Nez Perce and Clearwater National Forest LRMPs, the direction uses a modified Matrix of Pathways and Indicators to ensure that actions would not retard the attainment of desired conditions in both aquatic and riparian resources. The proposed NPCNF plan components do not identify how the Forest would determine compliance with management direction or attainment of desired conditions.

## **6. Monitoring and Adaptive Management**

Defining and measuring progress toward desired conditions that are identified as part of the proposed management direction necessitates developing a monitoring program, which is not included in the plan components. Key considerations for the monitoring program are the scale at which it would occur and how reference ranges and other characteristics used to define desired conditions would be determined. As previously mentioned, many of the desired conditions are descriptions of factors involved in desired ecological states but they rely on adequate monitoring and may be challenging to evaluate in a meaningful way. Monitoring should (1) determine if a plan is being implemented correctly and is achieving desired results, (2) provide a mechanism for accountability and oversight, (3) evaluate the effectiveness of recovery and restoration

efforts, and (4) provide a feedback loop so that management direction may be evaluated and modified. We understand that a monitoring plan is under development and we are ready to help NPCNF identify key questions and design for monitoring desired aquatic conditions and associated fish habitat matrix parameters.

## **7. Climate Change**

The plan components lacks consideration of climate change effects on listed fish. In the Clearwater River basin, climate models predict some of the greatest air temperature increases within the Snake River basin over the next 50 years. The basin already has many streams temperatures that exceed the thermal tolerance of salmon or steelhead. With the last Forest Plan having been in place for more than 30 years, it will be important that the Aquatic Strategy of this new plan anticipates the likely reductions and changes in distribution of stronghold habitat and timing of habitat use by salmon and steelhead. Long-term survival of listed fish will increasingly rely on thermal refugia, which are closely tied to channel complexity and recruitment of large wood in the channel and on the floodplain. The ESA listed spring/summer Chinook salmon will be more affected by these changes over the next two decades than steelhead will be. The vital Lower Clearwater population of steelhead, however, will be substantially challenged by the effects of climate change. NMFS is ready to help offer suggestions to NPCNF for how the new Plan can address this situation via reduction of existing Forest impacts, minimization of new impacts, and prioritizing certain types of aquatic restoration.



# Nez Perce Tribe



## Department of Fisheries Resource Management

Administration • Enforcement • Habitat/Watershed • Harvest • Production • Research • Resident Fish

### ADMINISTRATION DIVISION

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Zach Peterson  
Nez Perce-Clearwater National Forests  
903 3<sup>rd</sup> Street  
Kamiah, ID 83536

Email to: [zacharypeterson@fs.fed.us](mailto:zacharypeterson@fs.fed.us)

March 19, 2018

Re: Comments to Nez Perce Clearwater Forest Plan Revision Framework for Alternative Development

Dear Mr. Peterson,

On behalf of the Nez Perce Tribe's Department of Fisheries Resources Management (DFRM), I would like to take this opportunity to comment on topics pertaining to aquatics within the Nez Perce Clearwater National Forest Plan Revision Framework for Alternative Development (Framework) document dated December 18, 2017.

The DFRM worked collaboratively with several partners to develop the 2014 Proposed Action that used the Updated Interior Columbia Basin Strategy (ICB Strategy) as guidance. The Framework seems to be significantly different than the 2014 Proposed Action. The new Framework is inconsistent with the aquatic conservation components, yet the status of listed salmon and steelhead populations have not changed. PACFISH, although initially meant to be used as an interim strategy, has been in place for over 20 years and has proven to be successful in terms of protecting fish habitat and shaping of Forest activities. The 2014 ICB Strategy was developed in anticipation of replacing PACFISH as new Forest Plans were developed. We believe that the Forest should modify their strategy lined out in the Framework and closely follow the guidance in the 2014 ICB Strategy.

### Monitoring Component

Monitoring and evaluation comprise the management control system for the Forest Plan (NPNF 1987). The Alternative Framework needs a strong monitoring section to implement the Forest Plan so that there is a mechanism for measuring progress toward achieving desired conditions. The Framework includes a desired condition (FW-DC\_WTR-04) that alludes to the desire to attain aquatic habitats to some level within reference ranges, as defined by agency monitoring. This monitoring must be defined at a reach or project scale so that impacts will be identified in a timely manner. Monitoring at the stated Forest, basin, or sub-basin scale should not be the only scale at which monitoring occurs; it should occur in addition to reach and project scale

monitoring. A multi-level monitoring effort will allow the Forest to measure progress toward achievement of desired conditions. A monitoring plan must be defined with specific numbers for parameters, especially for sediment and temperature, so as to define the natural range of variability across multiple spatial scales. The 1998 Matrix of Pathways and Indicators of Watershed Condition adapted for the Clearwater Basin and Lower Salmon (Central Idaho Matrix) would be an appropriate tool to define these parameters.

#### Riparian Management Zones (RMZs)

The DFRM disagrees with the use of inner and outer areas within RMZs. The Forest has shown that PACFISH buffers are a successful strategy and should not stray from that approach. The best available science does not point to shrinking the established 300/150 foot buffers. The proposed inner zone areas do not encompass the riparian zone that protects aquatic functions. Proposed management in the outer zones will have significant negative effects to aquatic habitat and listed fish. Only treatments that benefit stream or riparian management should be allowed in RMZs. We suggest using standards from the 2014 Proposed Action FW-STD-TBR-13 & 14 and FW-STD-FIRE-01.

#### Conflicting Desired Conditions

The DFRM is concerned about meeting desired conditions for one or more resources at the expense of others. The discussion starting on page 10 of the Framework allows for short-term adverse effects and negligible long term adverse effects. We view it as problematic that activities are allowed for other resource concerns that negatively impact ESA-listed fish. The Tribe suggests using the above mentioned Central Idaho Matrix (1998) and Watershed Condition Framework indicators (2010) to help determine qualitative and quantitative diagnostic criteria to define sideboards, rather than pitting resources against one another.

#### Water Yield Components

The DFRM suggest that MA3-GDL-WTR-07 become a standard. Increase in peak flow is a complex topic and not as transparent as the previously used Equivalent Clearcut Area (ECA). We suggest that the Forest continue using the parameters in the Central Idaho Matrix as it provides well documented thresholds and is assessed at three scales – HUC 10, HUC 12, and headwaters. DFRM suggest that a desired condition with specific range of numbers that define a natural range of variability for ECA at HUC 10, HUC 12, and headwater scales.

#### Population Strongholds

The Framework acknowledges the importance of population strongholds and a desire toward meeting recovery goals for listed fish. The FW-STD-CWN-01 is a starting point toward those goals, but stops short of any specific guidance or direction that prevents long term reductions in stream habitat, such as the limitations set forth in PACFISH. The DFRM suggests the Forest include parameters of the Central Idaho Matrix as sideboards to assist in limiting adverse effects to listed fish.

#### Management Areas/Climate Change

Management Areas are not logical from a fish perspective, especially in a changing climate. The larger streams in MA3 need to provide the same level of quality stream habitat and properly functioning watershed conditions as MA1 and MA2. Climate models in the Clearwater River basin predict increases in temperature in the next 20 years. Temperatures already exceed the

thermal tolerance of listed fish in some streams and watersheds within the basin. In low flow water years, fish leave the smaller 0-3 order streams and move downstream to the larger 4/5 order streams to find thermal refugia. Additionally, streams/rivers in MA3 are important for anadromous fish and have designated critical habitat in many watersheds.

Soil Disturbance

The DFRM suggests an alternative that includes limited Detrimental Soil Disturbance (DSD) similar to the Forest's current practice of following Region 1 guidance of 15% DSD. We would also like to see an alternative where MA2 and MA3-GDL-SOIL-01 avoids areas of high mass wasting. We also suggest that components better protect or limit disturbance on Mazama ash cap soils.

The Forest should follow the *Updated Interior Columbia Basin Strategy: A Strategy for Applying the Knowledge Gained by the Interior Columbia Basin Ecosystem Management Project to the Revision of Land Use Plans and Project Implementation* ("Interior Columbia Basin Strategy," developed 2003, revised 2014). This interagency memorandum applies to Forest Service Regions 1, 4, and 6. The memorandum identifies fundamental elements for revised Forest Plans to include when replacing PACFISH and INFISH. These elements are intended to promote and achieve conservation of aquatic and riparian resources. The DFRM is curious whether an Aquatic and Riparian Conservation Strategy (ARCS) that is specific to the Nez Perce Clearwater National Forests will be developed.

Thank you for the opportunity to present these recommendations and comments. These comments represent our main points of concern, but are not all inclusive, not do they represent any department of the Tribe other than Fisheries. We look forward to continued discussion as the alternatives are developed.

Sincerely,



David Johnson

Cc: NPTEC  
Cheryl Probert, Nez Perce Clearwater National Forest  
Kenneth Troyer, NOAA Fisheries





Nez Perce

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

October 23, 2019

**Via Electronic Mail: [cheryl.probert@usda.gov](mailto:cheryl.probert@usda.gov)**

Ms. Cheryl F. Probert, Forest Supervisor  
Nez Perce-Clearwater National Forests  
903 3rd Street  
Kamiah, ID 83536

***Re: Nez Perce Tribe's Cooperating Agency Comments on the Nez Perce-Clearwater National Forests Draft Revised Forest Plan and Draft Environmental Impact Statement***

Dear Supervisor Probert:

The Nez Perce Tribe ("Tribe") appreciates the opportunity to review the Nez Perce-Clearwater National Forests' ("Forest") Draft Revised Forest Plan ("Plan") and Draft Environmental Impact Statement ("DEIS").

Of critical importance to the Tribe is that the Plan protect and advance Nez Perce treaty-reserved resources, treaty rights, and tribal interests. The Forest is located within the Tribe's ancestral homeland subject to the rights the Nez Perce Tribe reserved, and the United States secured, in the Treaty of 1855. The Forest is also located within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission and encompasses areas of cultural and spiritual significance to the Tribe. As a result, the Forest has a trust responsibility to protect the Tribe's treaty-reserved resources and associated habitats. The Tribe considers the protection of our treaty-reserved rights and other rights and interests in the Plan a paramount obligation of the Forest.

As you are aware, the Forest allowed the Tribe a brief extension of time to review additional information in the Plan and DEIS that the Forest provided after commencement of the requested 30-day review period. Even with the extension, the Tribe was unable to fully evaluate the Plan and DEIS because the Forest did not provide additional important information that the Tribe requested—the monitoring section, which is critical to informing how the Forest will validate and adjust resource management to ensure short- and long-term compliance with the Plan in accordance with the Treaty of 1855, the National Forest Management Act, the 2012 Planning Rule, and other applicable federal laws. The Tribe also requested but did not receive timber volume and treatment acres data referenced in the Plan and DEIS. The additional information is necessary to the Tribe's evaluation of the Forest's proposed timber management strategies as outlined in the Plan and DEIS.

Ms. Cheryl F. Probert, Forest Supervisor  
Nez Perce-Clearwater National Forests  
October 23, 2019  
Page 2

Following a careful review of the existing information, the Tribe has concluded that none of the Plan alternatives satisfy what the Tribe views as the minimum approach necessary to meet the Forest's treaty and trust responsibilities. The Tribe therefore requests that the Forest work with us during the cooperating agency process to develop a new alternative that fulfills these critical obligations. In the meantime, the Tribe reserves the right to modify, supplement, or replace the attached comments regarding the Plan and DEIS.

The Tribe appreciates the opportunity for ongoing collaboration with the Forest and looks forward to the release of the fully developed Plan and DEIS. Please contact Jonathan Matthews, Environmental Specialist, at [jonathanm@nezperce.org](mailto:jonathanm@nezperce.org), or Mike Lopez, Senior Staff Attorney for the Nez Perce Tribe Office of Legal Counsel, at [mlopez@nezperce.org](mailto:mlopez@nezperce.org), with any questions.

Sincerely,



Shannon F. Wheeler  
Chairman

cc: Zach Peterson at: [zachary.peterson@usda.gov](mailto:zachary.peterson@usda.gov)  
Christine Bradbury at: [christine.bradbury@usda.gov](mailto:christine.bradbury@usda.gov)

**NEZ PERCE TRIBE’S COOPERATING AGENCY COMMENTS ON THE  
NEZ PERCE-CLEARWATER NATIONAL FORESTS DRAFT REVISED FOREST  
PLAN AND DRAFT ENVIRONMENTAL IMPACT STATEMENT**

October 23, 2019

**I. GENERAL COMMENTS**

**a. Nez Perce Tribe’s Interest in the Forest’s Draft Revised Forest Plan**

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 engaged in fishing, hunting, gathering, and pasturing across their vast aboriginal territory. These activities still play—and will continue to play into the future—a major role in the subsistence, culture, religion, and economy of the Tribe.

The Forest is located entirely within the Tribe’s aboriginal territory subject to the rights the Tribe reserved, and the United States secured, in the Treaty of 1855.<sup>1</sup> The Forest is also located within the Tribe’s area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission,<sup>2</sup> and encompasses areas of cultural and spiritual significance to the Tribe. As a result, the Tribe considers the protection of its treaty-reserved rights, and other rights and interests, to be a paramount obligation of the Forest when implementing projects within the Nez Perce-Clearwater National Forests. The Forest has a trust responsibility to ensure that its actions are fully consistent with the 1855 Treaty, executive orders, departmental regulations, and other federal laws implicating the United States’ unique relationship with the Tribe.

Treaty tribes, such as the Nez Perce, have been recognized as managers of their treaty-reserved resources.<sup>3</sup> As a manager, the Tribe has devoted substantial time, effort, and resources to the recovery and co-management of treaty-reserved resources.

As a fiduciary, the United States and all its agencies owe a trust duty to federally recognized tribes to protect their resources.<sup>4</sup> This trust relationship has been described as “one of the primary cornerstones of Indian law”<sup>5</sup> 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.<sup>6</sup>

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

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<sup>1</sup> Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957.

<sup>2</sup> *Nez Perce Tribe v. United States*, Docket #175, 18 Ind. Cl. Comm. 1.

<sup>3</sup> *United States v. Washington*, 384 F. Supp. 312, 339-40, 403 (W.D. Wash. 1974).

<sup>4</sup> 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).

<sup>5</sup> Felix Cohen, *Handbook of Federal Indian Law* 221 (1982).

<sup>6</sup> See, e.g., *Mitchell*, 463 U.S. at 225.

Tribe presumes the continued existence of the biological conditions necessary to support the treaty-reserved resources.<sup>7</sup>

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.”<sup>8</sup> 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.”<sup>9</sup>

### **b. National Forest Management Act: The Importance of Standards**

Beginning in 2014, the Tribe, in our Plan-related comments, has consistently and repeatedly expressed our view that Forests not move away from standards toward guidelines. In reviewing the 2012 Planning Rule for National Forest System Land Management Planning (“2012 Planning Rule”) and other recent Forest policies, the Tribe does not see administrative direction for such a shift. Despite the Tribe’s prior comments, the Plan appears to contain a significant increase in aspirational guidelines at the expense of legally enforceable standards, which the Tribe views as a serious concern for agency transparency and accountability. The Tribe therefore reiterates our request that the Forest abandon this approach and instead retain robust standards. If the Forest is concerned about management flexibility, the Agency may list specific exceptions based on historic evidence justifying those exceptions. This approach will enable the Forest to attain the flexibility it seeks while also preserving accountability.

### **c. 2012 Planning Rule for National Forest System Land Management Planning**

The 2012 Planning Rule suggests an adaptive approach to forest planning, instructing managers to assess forest conditions, revise or amend plans if the assessment indicates a need for change, and monitor plan implementation; the process is cyclical, with monitoring data feeding back into the assessment of conditions in the management unit.<sup>10</sup> While some components of the Plan are clear and concise, many are written to maximize discretion and flexibility. At present, some of that discretion and flexibility has led to various desired conditions being too vague, lacking measurable objectives, and with no monitoring plan. As a result, these vague or ambiguous elements of components will increase difficulty in implementing, enforcing, measuring, and monitoring respective progress, thus impeding the 2012 Planning Rule’s objective of adaptive planning. Over time, this lack of Plan accountability could lead to degradation of culturally important resources.

#### Best Available Scientific Information

A key aspect of the 2012 Planning Rule is the requirement that the planning process draw on best available scientific information in the assessment, plan revision documents, and monitoring program. A summary of how the best available scientific information was used in developing the Plan and DEIS should be addressed in Chapter 1 of the Plan. The addition of this information is a

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<sup>7</sup> See *Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, 763 F.2d 1032 (9th Cir. 1985), cert. denied, *Sunnyside Valley Irrigation District v. United States*, 474 U.S. 1032 (1985).

<sup>8</sup> FSM Ch. 1560 at 67.

<sup>9</sup> *Id.* at 30.

<sup>10</sup> USDA Forest Service, *Final Programmatic Environmental Impact Statement National Forest System Land Management Planning* (2012).

vital component of the Plan and should not be treated as an afterthought (i.e., addressed in an appendix to the Plan). Assessments must, “identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.”<sup>11</sup>

### Monitoring

Monitoring should be the first aspect of forest planning. For the adaptive management cycle to work as intended by the 2012 Planning Rule, monitoring must be developed and revised throughout the planning process. The Forest must include the Tribe in the development of plan monitoring questions and associated indicators;<sup>12</sup> however, tribal consultation on the development of the Plan monitoring program has not occurred.

“The responsible official shall develop a monitoring program for the plan area and include it in the plan.”<sup>13</sup> Currently, the Plan has a placeholder for the monitoring component to be included as an appendix. The monitoring program is too important to be just an appendix to the Plan and should be treated as a stand-alone chapter. The monitoring program also needs to be thoroughly cross-referenced to representative sections where monitoring answers fundamental questions of adaptive management.

The Tribe is aware of the fiscal and technical constraints of monitoring; however, these constraints should not prevent the Forest from developing a robust, feasible, and meaningful monitoring program that will not short change the 2012 Planning Rule,<sup>14</sup> specifically, progress toward meeting the desired conditions and objectives for social, economic, and cultural sustainability<sup>15</sup> (i.e., meeting the Forest’s federal trust responsibilities to the Tribe and for the continued persistence of the Tribe’s treaty-reserved resources).

“The plan monitoring program sets out the plan monitoring questions and associated indicators. Monitoring questions and associated indicators must be designed to inform the management of resources on the plan area, *including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the plan's desired conditions or objectives*” (emphasis added).<sup>16</sup> The Tribe expects the Forest to follow the 2012 Planning Rule. Monitoring is an opportunity to address uncertainty—uncertainty about management effectiveness, relevant assumptions, or meeting desired conditions. The Forest cannot limit themselves to output-based performance measures alone.

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<sup>11</sup> 36 CFR § 219.3.

<sup>12</sup> 36 CFR § 219.4 and Forest Service Handbook 1909.12, Ch. 40, § 44.

<sup>13</sup> 36 CFR § 219.12(a)(1).

<sup>14</sup> 36 CFR § 219.12(a)(5).

<sup>15</sup> Forest Service Handbook 1909.12, Ch. 30, § 32.13(f).

<sup>16</sup> 36 CFR § 219.12(a)(2); Forest Service Handbook 1909.12, Ch. 30, § 32.

#### **d. National Environmental Policy Act**

##### Range of Alternatives

The DEIS provides an inadequate range of alternatives as required by the National Environmental Policy Act (“NEPA”) based on the present pairings of components. There are incompatible levels of action of key Plan components in each new alternative. Last Year, early in alternatives development, the Tribe expressed this perceived incompatibility of key components and lack of any monitoring to these issues of conflict. Tribal staff expressed this concern on September 25, 2018, when reviewing the early drafts of alternatives’ descriptions. Tribal staff were informed that the draft alternatives intentionally set high and low levels of individual components to help determine thresholds for each with the understanding that more balanced or moderate levels of components would be presented when the DEIS was released. The DEIS alternatives do not indicate any reasonable adjustments resulting from the September 25 meeting nor does the DEIS provide a moderated or more balanced alternative as a result of our comments about conflicting components. Neither the Plan nor the DEIS provide any monitoring of these competing Plan components putting at risk culturally important natural resources. The Tribe cannot support a DEIS until more moderate and more balanced alternatives are included.

Most of the individual component analyses throughout the DEIS are not compared to the existing condition (No Action) but are presented as comparative changes to each other. Without the Plan fundamentally comparing each component under consideration to the No Action, the Tribe cannot properly evaluate or support any one component level of action over another. The DEIS needs to show the comparative changes of the present condition represented by the No Action.

The “Affected Environment and Environmental Consequences” section in Chapter 3 of the DEIS does not appear to separately analyze the different alternatives. The “Fisheries” section in this chapter treats all the alternatives as action alternatives. There are huge differences in the restoration aspects, annual timber output quantities, and recommended wilderness management. Chapter 3 of the DEIS does not discuss the environmental consequences with enough specifics for each of the action alternatives.

## **II. SPECIFIC COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT**

### **Chapter 1. Purpose and Need for Action**

What is the purpose and need for action? The purpose and need for action must be clear and well-justified.

The alternatives do not appear to include landscape and fuels management issues related to scope and scale of prescribed burning and wildfire management (e.g. to maximize fire on the landscape or to maximize resource use and the variation of alternatives in between). Among the distinctive

roles and contributions of the Forest are Outdoor Recreation,<sup>17</sup> Social and Economic Sustainability,<sup>18</sup> and Cultural and Heritage Values.<sup>19</sup> The Plan’s goal is to:

[D]escribe desired ecological, social, and economic conditions of the Nez Perce-Clearwater and provide plan component direction that will focus management activities towards maintaining or achieving those conditions over time. The proposed plan components are designed to provide for the maintenance and restoration, where needed, of the ecological integrity of terrestrial and aquatic ecosystems and watersheds; to guide the Nez Perce-Clearwater’s contribution to social and economic sustainability; and to meet the Forest Service’s responsibility to American Indian tribes in relation to trust responsibilities and treaty resources.

...

Current forest plan monitoring, the 2014 Assessment, the 2014 Climate Change Vulnerability Assessment, and the 2011 Watershed Condition Assessment identify integrated restoration needs across the Nez Perce-Clearwater to address forest health, including resiliency to stressors such as insects and disease, drought, and climate change; wildfire risk; aquatic and terrestrial wildlife habitat; invasive species; soil productivity and function; and road management.<sup>20</sup>

Evaluating the scope and scale of the use of fire on the Forest landscape would, therefore, be a key issue in the evaluation of alternatives in the DEIS.

The “Planning Area” section in Chapter 1 of the DEIS, needs to include the Nez Perce Tribe and the 1863 Nez Perce Reservation in narrative and also include the Nez Perce Reservation boundary on the Vicinity Map.

## **Chapter 2. Alternatives**

The word “annual” needs to be added under potential timber sale quantity for each alternative. Also, there is no analysis of air quality considered or included in Section 2.6.

## **Chapter 3. Affected Environment and Environmental Consequences**

### General Comments

The Forest needs to provide a “use of best available scientific information” summary in this chapter detailing what information was determined to be the best available scientific information, the basis for that determination, and how the information was applied to the resources considered. Further, the Forest should disclose how new best available scientific information was considered to develop Plan components and inform the DEIS taking into consideration the 2014 assessment<sup>21</sup> by resource

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<sup>17</sup> DEIS, at 11.

<sup>18</sup> *Id.* at 12

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 17-18.

<sup>21</sup> Nez Perce-Clearwater National Forests Forest Plan Assessment (June 2014).

specialists. Determination of best available scientific information should be disclosed in all draft and final Plan documents, not just in the Record of Decision.

The Forest also needs to include a list of cited references in the DEIS prior to the document's release to the public. Although citations appear in the text, references are not included in the "Fisheries," "At-Risk Plant Species," and "Multiple Uses Wildlife Resource" chapters. Many statements made throughout the DEIS are not supported by references or citations. The origin of professional judgement is vital in reviewing the DEIS.

There is a critical upland habitat condition that needs to be evaluated in the DEIS to correlate upland forest vegetative condition in the roaded front (MA3) to downstream hydrologic function. Short-term stand replacing events—wildfire and clearcutting—can cumulatively cause long-term negative impacts to downstream hydrologic function. This disturbance can be presented as a percent of watershed area having received stand-replacing disturbances from wildfire and/or timber harvesting, which can be presented as a ratio of upland forest disturbance for each watershed—HUC scale will need to be determined. A potential remedy includes creating a new desired condition, standard, or guideline that establishes upland condition relative to downstream properly functioning hydrologic condition. The Forest needs to monitor this attribute over time to correctly determine the appropriate short-term upland disturbance thresholds for watersheds across the Forest. The Tribe's technical staff would like to meet with the Forest to discuss how best to address this deficiency in evaluating the proper rates of man-caused upland disturbances while maintaining or restoring proper downstream hydrologic functions.

The Plan needs to address management areas administered by another Forest such as the Hells Canyon Reach.

All Forest-wide maps in the Plan and DEIS need to include the Nez Perce Reservation boundary.

#### Section 3.2.1.2 "At-Risk Plant Species"

There are several issues with the "At-Risk Plant Species" section in Chapter 3 of the DEIS including the following:

- "At-risk" and "rare" plant species need to be defined.
- An explanation of how the Forest approaches coarse filter/fine filter effects needs to be incorporated.
- The science-based methodology used in the effects analysis needs to be incorporated.
- A section on methodology and analysis processes, information sources, and incomplete/unavailable information needs to be incorporated.
- The best available scientific information used to inform the effects analysis needs to be incorporated (for example, see Flathead National Forest PFEIS at p. 312).



- Effects to federally-listed species and Species of Conservation Concern (“SCC”) need to be separately described and interpreted.
- Habitat guilds need to be linked to the potential vegetation type (“PVT”) and/or Habitat Type Groups.
- SCC need to be clearly identified by common and Latin names within each guild. Simply stating that the “habitat grouping contains eleven species evaluated”<sup>22</sup> is insufficient.
- A list of citations for habitat guild descriptions needs to be incorporated.
- The methodology used to analyze effects needs to be clarified.
- Key elements in an effects analysis are to be site specific, measure and report change, and interpret effects across alternatives. The At-Risk Plant Species section analysis lacks these key elements, as well as supporting evidence (i.e. citations), to support statements. The content of several paragraphs is so broad and general that the information in those paragraphs could be referring to any Forest in the western United States. After reviewing other revised forest plans for Region 1, it appears that some content was recycled from one forest plan to another, thus explaining some generalities. Several paragraphs under “Effects Common to All Alternatives” appear to have been taken verbatim from the Custer Gallatin National Forest’s Revised Forest Plan DEIS, which may be valid if discussing large-scale stressors like climate change across the region. Even so, the language and effects need to be site specific.
- Conclusive statements in the effects analysis need to be site specific, provide a measure of change, and interpret the effects. A statement such as “[t]he threats are similar for all alternatives in regards to proposed lands suitable for timber production due to approximately consistent proposed acres and overarching policies and at-risk plant components protecting these species during project activities”<sup>23</sup> is insufficient. Similar threats need to be explained. “These species”<sup>24</sup> needs to be defined.

#### Section 3.2.1.4 “Fire Management”

The number of fire acres and their relative severity needs to be presented for the time period from when wildfire data began to be gathered, or at least since 1987 (start of last planning cycle). The number of wildfire acres needs to be summarized by the three management areas (MA1, MA2, and MA3). Fire history information within each management area should include the total number of acres considered restoration treatment acres (BAER severity rating), standard deviation, and 90 percent confidence intervals. The purpose for this historic information in this analytical context is to extrapolate future treatment acres for the potential life of this Plan, especially for MA3. Based on some preliminary numbers from the 2012 and 2015 wildfires, a large majority of MA3 will

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<sup>22</sup> DEIS, Sec. 3.2.1.2 at 16.

<sup>23</sup> *Id.* at 39.

<sup>24</sup> *Id.*

burn within the next 30 years. The natural fire restoration treatment projections for the next 30 years need to be presented in correlation with the Forests' proposed timber treatment acres across alternatives. Timber treatment acres added to wildfire treatment acres could potentially be 100 percent of MA3 in 30 years. This is an extremely excessive rate of forest restoration treatment. The Forest needs to provide a cumulative analysis of wildfire and timber treatment for MA-3.

The Tribe's staff looks forward to reviewing the timber volumes analyses and treatment acres analyses for MA3 that is to be provided in associated appendices.

#### Section 3.2.1.6 "Soil Quality and Productivity"

The "Affected Environment" section is well-written and educational. Monitoring summaries with respect to detrimental soil disturbance and coarse wood material indicates skyline harvest had much less soil disturbance, and the Forest only met wood requirements 33 percent of the time. Also relevant is the overall soil condition rating showing that "[o]ut of the 220 HUC12 subwatersheds, fifty-five percent are Functioning Properly, forty-three percent are Functioning at Risk, and two percent have Impaired Function."<sup>25</sup>

There is no analysis by action alternatives. The effects, indirect effects, consequences, and cumulative effects are combined into "Common to Action Alternatives"<sup>26</sup> discussions. The differences in soils effects between Alternatives W, X, Y, and Z need to be discussed.

#### Section 3.2.2.2 "Fisheries"

In this section's "Riparian Management Zones" key (priority) watersheds are mentioned in Category 4.<sup>27</sup> Please define key watersheds in the DEIS. The Plan mentions priority watersheds under FW-OBJ-WTR-01<sup>28</sup> and the Conservation Watershed Network.<sup>29</sup> If watersheds included in the Conservation Watershed Network are intended to replace those previously identified as key or priority, then they should not be referred to as key or priority in the DEIS.

Overall, the Tribe appreciates the description of stream conditions and trends in stream habitat using PACFISH/INFISH Biological Opinion Monitoring Program ("PIBO") data; however, the Tribe suggests explaining the time value for first year and last year within frame of reference columns in Table 3.<sup>30</sup> What can be done about the lack of improvement and overall index, such as in Lolo, Eldorado, and Pete King creeks? Please define "periodic re-examinations of bio-physical conditions" with respect to the 26 permanent monitoring reaches across the Forest.<sup>31</sup>

The Tribe agrees with the language, "[I]andslides and landslide-prone areas remain a Category 4 riparian management zone"<sup>32</sup> and "[f]urther clarification is provided for Category 1 riparian

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<sup>25</sup> DEIS, Sec. 3.2.1.6 at 21.

<sup>26</sup> *Id.* at 30.

<sup>27</sup> *Id.* at 12.

<sup>28</sup> Plan at 43.

<sup>29</sup> *Id.* at 45.

<sup>30</sup> DEIS, Sec. 3.2.2.2 at 19.

<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 35.

management zones. The area around any stream, whether perennial or not, is considered a Category 1 riparian management zone if it contains fish at any time of the year and is 300-feet on either side.”<sup>33</sup>

Appendix A of the Nez Perce National Forest Plan and the Clearwater National Forest Plan contain direction from a court settlement to proceed with a project only if there is no measurable increase in sediment drainages not meeting Forest Plan standards. What will replace the requirements of initiating an upward trend in habitat carrying capacity in degraded watersheds? Since the Appendix A stipulations were effective in improving habitat, what is proposed to replace or upgrade this goal of trending towards better habitat conditions? The standard FW-STD-WTR-04 is a good start to compare to the upward trend and no measurable increase of sediment requirement by minimizing project effects and not retarding attainment of desired conditions for watersheds, but this standard is not quantifiable. FW-STD-CWN-01 address Conservation Network Watersheds not meeting aquatic and riparian “Conservation Survey” desired results,<sup>34</sup> but how will this be measured? These two standards are not enough to replace the watershed specific goals of the past plans.

The Conservation Network Watersheds identified is not an acceptable replacement for the logging limitations of the 1998 Land and Resource Management Plan (Forest Plan/PACFISH) Consultation – Special Management Considerations for the Selway River, incorporated into the action to avoid a Jeopardy determination for Snake River steelhead trout.

If the Forest’s Aquatic and Riparian Conservation Strategy (“ARCS”) is replacing the past Forest plans’ direction, the settlement agreement on the Clearwater Forest Plan lawsuit, PIBO, and provisions in the 1995 and 1998 Biological Opinions, then the ARCS should be included as an appendix to the Plan. Tables 6 and 7<sup>35</sup> help crosswalk these documents, but the new proposed language is weaker in protecting aquatic resources than the management direction in the past plans.

As this section is being finalized, please keep the unit of measure consistent by using feet. There are several studies that are cited using meters.<sup>36</sup> Where meters are used, please also state the conversion in feet. Please only use studies from coastal watersheds where it would be applicable to the Inland Northwest, as the climatic and elevation differences could render these comparisons moot.

Please define and clarify the use of the term “multi-scale analysis” for the reader.

Similar to the “Soil Quality and Productivity” section in Chapter 3 of the DEIS, there is a need to describe the differences in direct, indirect, and cumulative effects for Alternatives W, X, Y, and Z in the “Aquatic Resources” section rather combining them into “common to action alternatives” discussions.

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<sup>33</sup> *Id.*

<sup>34</sup> Plan, at 52.

<sup>35</sup> *Id.* at 40-43.

<sup>36</sup> DEIS, Sec. 3.2.2.2 at 31-32, 44-45.

### Section 3.2.3.3 “Species of Conservation Concern”

The SCC section is not available to review therefore, the Tribe cannot comment.

### Section 3.2.4 “Air Quality”

Please include a map of the Montana/Idaho Airshed Group airsheds that also includes the Forest boundary and the reservation boundaries layer for the Indian reservations located in what is now the state of Idaho.

As defined in the Montana/Idaho Airshed Group Operating Guide, an impact zone is any area of Montana or Idaho that the Airshed Group, or a local program, identifies as smoke sensitive or has an existing air quality problem. The Clearwater River valley corridor along U.S. Highway 12 from Lenore to Kooskia includes the towns of Peck, Ahsahka, Orofino, Greer, Kamiah, and Stites. The corridor, with residences, outdoor recreationists, schools-in-session, daycares, retirement facilities, and medical clinics, should be considered a smoke sensitive area and the Forest must seek to minimize smoke impacts to this area from prescribed burning. As a result of coordination that now exists among cooperating smoke management agencies—the Forest Service, Idaho Department of Environmental Quality, and the Tribe—for prescribed burning in the Clearwater Airshed (including Montana/Idaho Airshed Group units 12A, 12B, and 13), recent years’ smoke incursions in this corridor have been minimal. In the past, smoke from prescribed burning in the Forest had significant impacts on this corridor which brought about the increased cooperation and coordination among the smoke management agencies.

The Montana/Idaho Airshed Group Memorandum of Understanding, Appendix 2 to the Montana/Idaho Airshed Group Operating Guide, is missing from the Guide. Perhaps the correct reference is the Guide’s Appendix 5, Airshed and Impact Zone Maps and Airshed Descriptions. Also there does not appear to be a description for Airshed Unit 13 in Appendix 5.

As the Tribe has observed in recent extreme wildfire event years, the Forest is also subject to long-distance transport of wildfire emissions from California, Canada, and Montana.

Figure 2<sup>37</sup> is illegible. Wind roses are too small relative to the key and do not have clear location identification. The relationship of the background map to the wind roses is unclear.

### Section 3.3 “Tribal Trust Responsibilities”

This section describes and explains the treaty-reserved rights of the Nez Perce Tribe. Much of the language about tribal boundaries should be incorporated into Section 3.4.1, as the language in that section is ambiguous.

Under “Methods and Assumptions,” the Plan states, “Since desired future conditions were carefully drafted to protect tribal rights and resource [sic], it is assumed all alternatives for achieving those desired future conditions protect tribal rights and resources.”<sup>38</sup> The Tribe does not

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<sup>37</sup> DEIS, Sec. 3.2.4 at 6.

<sup>38</sup> DEIS, Sec. 3.3 at 9.

agree that the Forest has “carefully drafted” to achieve these goals. This opinion of the author needs to be removed.

The second sentence of paragraph three currently reads: “At that time, Nez Perce leaders reserved hunting, fishing, gathering and pasturing rights on ‘open and unclaimed land,’ which courts later determined include lands now managed by the Nez Perce-Clearwater.”<sup>39</sup> This is an inaccurate characterization of Article 3 of the Treaty of 1855 and should be corrected to state: “At that time, Nez Perce leaders reserved fishing rights at all usual and accustomed fishing places, as well as hunting, gathering, and pasturing rights on ‘open and unclaimed land’ which courts later determined include lands now managed by the Forest.”

In the third sentence of paragraph five, please replace “increases” to “reinforces.”

There is no analysis of air quality considered.

The Forest needs to include a map(s) showing the Forest area with current Indian reservation boundaries, historical Indian reservation boundaries, and Indian Claims Commission territory.

#### Section 3.4.1 “Cultural Resources”

The “Cultural Resource” section notes that “The assumption made... is that these federal laws and executive orders will continue to exist during the life of the new forest plan.”<sup>40</sup> The Tribe questions why the author believes this statement is necessary, as one would assume that any Plan would be written to comply with current law. Calling this out suggests that the author advocates for some future change.

The Forest also repeats that the 1987 Forest Plan does not advocate for the enhancement of historic properties but merely for the Forest to locate and protect historic properties. Enhancement of historic properties is an admirable goal, but the Tribe wonders what proposals the Forest may have to make this possible. The only mechanism for “enhancement” described is that Forest activities will provide the opportunity to revisit unevaluated cultural resources and remove those that do not meet the National Register of Historic Places criteria for management consideration. The Forest asserts that this winnowing will “better help allocate scarce resources to those properties worthy of investment,”<sup>41</sup> though the Plan does not propose any specific actions or policies that will distribute resources where the Forest finds the most need. Significantly, outside of the summaries of existing laws and agency policies, the Plan language also does not discuss identification or survey of historic properties.

This section’s “Past, Present, and Future Activities used in the Analysis” is awkward and should be formatted for better clarity. The negative effects of placer mining are discussed in the opening paragraph, but other activities are listed in a bulleted table with no further discussion. This may lead to placer mining being overlooked in the document, as it is not included on the list. Also, the Tribe believes that this list should include “Dispossession and Removal of Tribal Members from the Landscape” as an adverse effect to cultural resources.

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<sup>39</sup> *Id.* at 1.

<sup>40</sup> DEIS, Sec. 3.4.1 at 1.

<sup>41</sup> *Id.* at 15.

Under “Affected Environment,” the discussion of the Tribe and its ancestral territory should borrow the language used in Section 3.3, Tribal Trust Responsibilities. The current language used in 3.4 is ambiguous and does not properly acknowledge the territorial claims of the Tribe to the Forest.

“Table 1. Historic themes and general cultural resource site types of the Nez Perce-Clearwater” includes the Historic Theme, “American Indian Use.” This theme is problematic because it suggests that the remaining themes, which all occur post 1805, have no connection to the Tribe or the Tribe’s use of the Forest. In fact, the Nez Perce have been, and remain, involved in Aviation, Chinese settlement and mining, the CCC, Conflict - Wester Frontier, and most of the other themes included in the table.

The discussion of the Lolo Trail National Historic Landmark is very awkward. This section should state explicitly that the Lolo Trail, the Nez Perce National Historic Trail, and the Lewis and Clark Trail are the same trail system through the Forest, with different temporal and cultural significance, and each was designated by Congress. A brief description of each of these trails and why they are each significant would be helpful to the reader. The Forest should remove the expressed opinions about the relative importance of the Lewis and Clark Trail segment that coincides with the Lolo Trail. The statement that Trails are in the United States or North America is unnecessary.

Under “Effects Common to Action Alternatives,” the Plan language also appears to assert that the Forest needs laws other than National Historic Preservation Act (“NHPA”), such as the Wild and Scenic Rivers Act, to protect cultural resources. This assertion unfortunately appears to reflect current Forest management priorities rather than actual federal law or agency policy. The NHPA does not require resource protection, but it does direct agencies to protect them. The NHPA regulations provide a process to be followed if the agency chooses not to protect those resources.

Under the discussion of “Motorized Travel,” the Tribe recommends adding the following bullet point:

- Indirect and direct effects on the viewshed and soundscape. This is especially significant for Tribal sacred sites and traditional cultural properties, where a sense of solitude and quiet are important for their continuing use by traditional practitioners.

#### Section 3.4.2 “Recreation Settings and Opportunities” – “Access”

Management areas MA1, MA2, and MA3 have different levels of active management and therefore different amounts of access and type of access. The DEIS must present how Recreation Opportunity Spectrum (“ROS”) classes provide recreation opportunities within the three management areas because of their respective differences in access. The Plan and DEIS must present ROS classes of the No Action, their relative distribution across management areas, and must provide comparisons to the proposed changes under each new alternative.

These changes can be added to Table 4 by providing acres and percentage of ROS class for summer and winter within management areas MA1, MA-2, and MA3. The narrative needs to articulate that

present condition is the No Action. This section, or an Appendix, needs to provide corresponding map(s) identifying the existing ROS distributions across management areas.

Table 5 is inserted twice; one needs to be removed.

#### Section 3.4.2 “Developed and Dispersed Recreation”

Table 4 information needs to be associated with the information presented in Tables 10 and 11. There is a need to show the acres and percent of present condition of the No Action and compare that information to the acres and percent of change by ROS categories proposed within each alternative. Similarly, maps of each new alternative needs to be provided that spatially represents the areas changing from the present condition—Table 4 information. The tables and the maps need to show management area boundaries of MA1, MA2, and MA3 and show polygons reflecting proposed ROS class changes from the present condition.

Tables 12 and 13 that represent summer and winter motorized and non-motorized recreation needs to include information of the present condition (No Action) and be broken down by management areas MA1, MA2, and MA3. The narrative in this section needs to emphasize the acres and percent of change relative to present conditions of the No Action alternative. Also needed are maps that provide spatial representation of the areas being proposed for change within each new alternative based on the present condition of the No Action.

In summary, the Tribe’s recommendations on proposed changes to ROS will be difficult when the DEIS is released unless the Forest provides a better summary of the present ROS conditions by management areas and then provide comparisons of each new alternative based on changes within those management areas. The Forest also needs to include a summary of ROS as a whole for the entire Forest. The Tribe needs to know the location of ROS change proposed within the three management areas and how those changes relate to changes in over access within each.

The second paragraph on page 18 refers to “[d]eveloped campground capacity maxes out during summer weekend peak time periods.”<sup>42</sup> Beyond peak time periods, assuming these refer to Memorial Day and Labor Day holiday weekends, please provide a more robust evaluation of seasonal campground use versus capacity. As presented, the Forest is managing for peak weekend periods only based on growth of recreation. The current analysis does not discuss if non-peak summer weekends are adequate to handle present and future growth. There is a need for further analysis of typical “use versus capacity” for varied times of the year. The Tribe suggests the following:

Please provide vacancy rates for broader time periods and compare to peak weekend summer times to see if developed sites are adequate for a majority of the varying seasonal use periods. Heavy use summer weekends mentioned in the narrative should be balanced against the occupancy rates of week, month, or seasonal occupancy. To support this argument, the “Visitor Use” section on page 6 states “three quarters of visitors indicat[e] that there [sic] visit included use of an undeveloped or general forest area. Just one-third of visitors did visit a developed day-use site while only about one-tenth of visitors indicated using a developed overnight facility.”<sup>43</sup> This trend shows that a

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<sup>42</sup> DEIS, Sec. 3.4.2 at 18.

<sup>43</sup> *Id.* at 6.

majority of users are not using developed sites, and those who are might only be on those few high-volume summer weekends. Based on the limited information presented, the Tribe cannot discern what one-third or one-tenth of visitors means relative to weekly, monthly, or seasonal capacity.

The Tribe assumes these percentages could be turned into visitor numbers and then used to generate campground occupancy rates, if the Forest does not have them for generating average use rates over various time frames. Present narrative does not answer the fundamental question whether present campground use and trends (on average) are way below capacity or near capacity.

Emphasis on peak summer weekend use rates without comparison to daily, weekly, monthly, or seasonal use rates seems an inadequate analysis to propose more campgrounds. These comparisons should also look at use rates by management area. Likely the high summer weekend occupancy is in MA3 but much less so in MA1 and MA2. Comparison data would also be useful in justifying where future developed campgrounds are needed.

The Forest needs to provide an overall presentation of how the different facility types are meeting present and future recreation demand. Recreation is a very consistent and growing economic value of the Forest. Dispersed recreation is the larger and faster growing component of recreation. A need may exist for more dispersed sites, but the information in this section does not currently provide the necessary justification. The Forest needs to breakdown developed and dispersed by the three management areas and then compare occupancy/vacancy through weekly, monthly, or seasonal averages. This information is needed to make the argument of what types, and more importantly, where these expansions need to meet growing demand.

For Alternative W on page 20, please better articulate where and how there would be an increase in motorized access in Idaho Roadless Areas (MA2). Is this Alternative referring to un-motorized trails becoming motorized trails? What is meant by backcountry restoration theme?

The Trails section on page 21 needs to include a discussion of seasonal conflicts with elk and provide supporting references (please see the below comments relative to “Wildlife Management.”)

As stated earlier, there are no maps indicating the proposed changes to ROS classifications by alternative. Please provide a map of each alternative’s proposed ROS changes to the No Action. The Plan and DEIS need to show the amount of proposed change and the location relative to present conditions. The Tribe needs to understand where these changes in recreation use will occur during the life of the Plan.

The “Wildlife Management” section states, “However, if many miles of roads were placed into closed status for wildlife purposes, recreationist would have fewer areas to legally enter, which could lead to crowding and other undesirable ecological impacts on the remaining open routes in the area.”<sup>44</sup> The Forest provides no supporting data for this statement. Research has well documented that motorized recreation displaces elk from important calving areas in spring and

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<sup>44</sup> *Id.* at 24.



hiding/escape cover during elk season (please see the comments on the “Elk Management” section). Road and trail closures lead to more elk survival.

Elk are culturally important to the Tribe. The Forest has a trust responsibility to protect elk and elk habitat. The Tribe’s Wildlife Department staff can work with the Forest’s and Idaho Department of Fish and Game’s biologists to determine where seasonal road and trail closures are necessary to the biological management of elk.

Why does Alternative Z, an environmentally passive management-themed alternative, have the greatest increase in over-snow use? Increased snowmobile use in Alternative Z is in direct conflict with its passive management intent. This component is in conflict with too many other ecologically based components.

#### Section 3.4.1 “Timber”

The Tribe needs access to the Appendix data that represented how each alternative’s timber volume and treatment acres were generated. Without having the ability to review this information during the current comment window, the Tribe will need to address our concerns with this component at a later date. This information is critical to our overall review of the Plan and DEIS and is necessary to provide adequate response to minimizing potential timber conflicts with other Plan components.

Even without access to the timber data Appendix, the Tribe’s preliminary review of timber harvest levels (“MMBF”) in Alternative W and X are at and above maximum sustainable harvest levels with a large majority of this volume coming from MA3. Alternative W is 220-241 MMBF while Alternative X is 241-261 MMBF. These are nearly the same. The next nearest alternative, Alternative Y, has harvest levels at 120-140 MMBF, a difference of roughly 80-100 MMBF. There needs to be another alternative harvest level between 140 and 220 MMBF. This same comment was made to the Forest’s planning team during the Tribe’s preliminary review of alternatives on September 25, 2018. The Tribe’s concern then and now is that such high rates of timber harvest in Alternatives W and X could risk important ecological function of culturally important fish and wildlife species listed under the Endangered Species Act or SCC. Please see our related comments on the “Terrestrial Ecosystems” section of Chapter 2.

#### Section 3.4.3 “Scenery”

In this section, the Forest needs to add a discussion/analysis of the visibility/air quality aspect of scenic quality and a discussion/analysis of prescribed burning and smoke management on visibility and scenic quality, especially for the Class I area(s). The Forest needs to include the Environmental Protection Agency’s (“EPA”) Clean Air Act and Regional Haze Rule under this section’s “Relevant Laws, Regulations, and Policy.” Also, in this section, the Forest needs to include “visibility” under “Measurement Indicators” and the “Air Quality” discussion.

#### Section 3.5.2 “Energy and Minerals”

Under this section’s “Relevant Laws, Regulations, and Policy,” the Forest needs to include EPA’s Clean Air Act and Regional Haze Rule and the Idaho Department of Environmental Quality’s air quality rules relating to fugitive dust emissions. The Forest also needs to include “visibility

impairment” under “Common effects of mineral development” (p.13) and "visibility and consideration of potential impacts” under the “Air Quality” (p.19) and “Scenery” (p.20) sections.

### Section 3.5.3 “Livestock Grazing”

Several conclusive statements in the “Livestock Grazing” section lack citations and/or are not backed by supporting data, such as “[i]mpacts resulting from livestock grazing in the past are thought to be more significant than impacts resulting from present livestock grazing practices.”<sup>45</sup> What supporting evidence does the Forest have to back this statement, and how are the impacts significant? Other conclusive statements of concern are in reference to conflicts with wildlife habitat and recreation. The statements, “[n]o conflicts between big game forage requirements and livestock grazing have been documented on the Nez Perce-Clearwater National Forests in the past ten years”<sup>46</sup> and “[n]o significant conflicts between livestock grazing and recreation use have been documented on the forest to date”<sup>47</sup> need to be substantiated using the Forest’s data. The Forest stated that data on rangeland conditions are generally lacking or limited,<sup>48</sup> so how can the Forest make the aforementioned statements? The DEIS needs to disclose supporting information to back any judgements and conclusions.

Effects from Wildlife Management (coarse filter/fine filter approach, SCCs, habitat connectivity, key linkage areas, forage utilization, maintaining ecological integrity, etc.), Recreation (e.g., changes in recreation over time), and Access Management (changes in traffic, routes, trails, etc.) need a much more in-depth analysis than what is currently presented in the DEIS for livestock grazing.

### Section 3.7 “Life Safety and Risk Management”

The draft Life Safety and Risk Management Report needs to include a discussion and analysis of the risk of smoke exposure to health and safety as it relates to land management scenarios among the Alternatives. “Smoke” needs to be included to the list of exposures in the fourth paragraph of the draft Report. The Nez Perce Tribe Natural Hazard Mitigation Plan 2019 needs to be included as well as the Nez Perce Reservation boundary on the map.

### Section 3.8.1 “Economic Sustainability”

Please include the Nez Perce Reservation in the narrative and include the Nez Perce Reservation boundary on the map (Figure 1). Air quality and visibility impacts on tourism and recreation economy and overall quality of life (in the context of scope/scale of vegetative management and prescribed burning, as well as wildfire management in the Forest) are critically important for social and economic sustainability and contribute to total economic value.

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<sup>45</sup> DEIS, Sec. 3.5.3 at 4.

<sup>46</sup> *Id.* at 18.

<sup>47</sup> *Id.* at 19.

<sup>48</sup> *Id.* at 10.

### Section 3.8.2 “Social Sustainability”

Please include the Nez Perce Reservation in the narrative and include the Nez Perce Reservation boundary on the maps (Figure 1 and Figure 2).

The Tribe recommends parsing out wildfire smoke from the third paragraph of this section. The Tribe’s recent PM2.5 monitoring data from the region’s extreme wildfire events show that the communities within the primary social analysis area are highly vulnerable to air quality negatively impacted by wildfire smoke. This area has suffered multiple days in the unhealthy, very unhealthy, and hazardous Air Quality Index levels. Smoke from wildland fire can linger for days during the summer months and can have an impact on recreational activities. Prescribed fire and agriculture burning smoke rarely linger for days, especially in light of improved smoke management by the Forest over the past ten years.

Contrary to the Forest’s discussion, wildfire smoke from increased fires due to climate change could reduce wildlife viewing and hunting.

When completed, the Tribe looks forward to reviewing the “Environmental Consequences” section including a discussion of the impacts of landscape management and prescribed burning alternatives as well as wildfire smoke on hunting and wildlife viewing, inspiration and health, aesthetics, and recreation.

## **I. SPECIFIC COMMENTS ON THE DRAFT REVISED FOREST PLAN**

### Section 1.1 “Forest Plan Revision”

Section 1.1.2.4.1 is overly-detailed and narrowly-focused for this portion of the document. Consider reframing 1.1.2.4.1 as a more general, holistic narrative of species groups of priority interest or subsume that information directly within 1.1.2.4.

Please include a section in Chapter 1 summarizing the use of best available scientific information. For example, see the Flathead National Forest Land Management Plan<sup>49</sup> and Draft Revised Forest Plans for Custer Gallatin<sup>50</sup> and Helena-Lewis and Clark National Forests.<sup>51</sup> In addition, include a statement about how the Forest will maintain the Plan and adapt to new information such as how will the Forest implement an adaptive management. These are critical pieces of information that are missing from the Plan.

#### Section 1.1.1 “Planning Area: The Nez Perce-Clearwater”

Please identify tribal and treaty reservations on the Plan’s Vicinity Map and include the Tribe and the 1863 Nez Perce Reservation narrative in the first paragraph of this section.

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<sup>49</sup> USFS. 2018. Flathead National Forest Land Management Plan. USDA, Forest Service, Northern Region. pp. 6-7.

<sup>50</sup> USFS. 2019. Custer Gallatin National Forest. USDA, Forest Service, Northern Region. p 13.

<sup>51</sup> USFS. 2018. Helena-Lewis and Clark National Forest. USDA, Forest Service, Northern Region. pp. 11-12.

## Section 1.2 “Plan Elements”

The Forest needs to include a reader’s index that cross-references Plan components related to resource topics that are commonly of interest or those that are found in many sections.

## Section 1.6 “Consistency with Plan Components”

Direction regarding guidelines should be elaborated to describe the basis against which project documentation will be evaluated. What constitutes adequate explanation in the project record for deviating from the exact wording of a guideline? This needs to be described explicitly, relying on past monitoring outcomes and use of the best available science.

## Section 2.1 “Terrestrial Ecosystems”

FW-GDL-TE-01 is inappropriately specific. This guideline should be generalized to encompass all species associated with habitats described in FW-DC-TE-02 or mirror language from FW-GDL-BIOPHY-04.

### Section 2.1.3 “Forestlands”

Throughout, the emphasis on resiliency to stand-replacing disturbance within MA3 and to a lesser extent MA2 inappropriately minimizes the natural role of severe disturbance within some habitat types, particularly the Warm Moist and Cool Moist groups. Stand-replacing events are intrinsic to these systems, and management should not be aimed at hindering natural ecosystem processes at a programmatic level such as across such broad habitat type groupings. Desired conditions with respect to species composition, stand densities, size class distribution, landscape pattern, and patch size should be revised to better reflect natural ecosystem processes within MA3 and MA2.

As stated in the Tribe’s general comments, the Forest needs to determine an acceptable “percent of short-term upland disturbance” per watershed in order to prevent stand replacing events like wildfire and timber treatments causing cumulative negative effects to downslope instream sedimentation and temperature by altering normal seasonal flows. Once more than 20 percent of a watershed’s area had been clearcut, measurable increases occur in flow and sediment in the winter times and similar rates of decrease in summer base flows and increased summer water temperatures. As incremental increases over 20 percent removal saw a proportional increase in peak winter runoff and decreases in summer flows.<sup>52</sup>

The more spatially dispersed and smaller the individual harvest areas were within a watershed the lower the impact to seasonal flows and associated sediment and temperature. The same results were also shown when thinning or selective harvest methods were used instead of clearcutting. When the extent of harvest area was proportionately higher, the suspended sediment levels remained elevated for many years. One to two decades of revegetation time are required to counter these negative effects on downstream hydrologic function. Anticipated short-term impacts of timber harvest can become longer-term impacts if the scale and pace of stand-replacing harvest

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<sup>52</sup> National Research Council. 2008. *Hydrologic Effects of a Changing Forest Landscape*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/12223>, pp. 61-70.

and fires disrupt too much area without adequate time for vegetation regrowth within any single watershed.

The ARCS, as a replacement for PIBO, provides good protection and restoration measures within Riparian Management Zones (“RMZ”). However, the ARCS does not address the potential negative hydrologic disturbance to sediment and temperature from altered seasonal flows if the pace and scale of stand-replacing disturbance in the upland forested areas are too great.

All the referenced studies do not consider stand replacing events of wildfire. The Tribe recommends that a cumulative forest vegetation disturbance ratio be developed and tracked during the life of this Plan for each watershed in MA3.

The Tribe’s watershed and timber staff would like to work with the Forest Planning team to better define the “percent forest disturbance per watershed” and set appropriate language in the Plan. The Forest could address this issue with the creation of a desired condition or with a standard or guideline.

There may be stand replacing fires and timber treatments at a scale and frequency that could cumulatively alter the hydrologic function of an individual watershed’s ability of retaining and releasing moisture over time. Without some kind of ongoing analysis of upland vegetation disturbance, any watershed within MA3 could be vulnerable to long-term shifts in downslope seasonal flows that could increase instream sedimentation and temperatures.

As an exercise to represent this point, the average burn areas of MA3 and the 5-year measurable objectives of each PVT group for Alternative W (pages 31-32) in MA3 were extrapolated for 30 years and ended with over 100 percent of the MA-3 being treated. These alternatives do not include the potential treatment acres of wildfire that could alter thousands of acres of upland vegetation in MA3. The Tribe is asking for a comparative evaluation of Forest restoration actions against watershed health restoration/protection actions, especially for MA3. The DEIS and the Plan present forest restoration primarily as a timber treatment solution under Alternatives W and Z without considering their impact in conjunction with the impact of wildfires. The cumulative effect of wildfire and the pace and scale of harvest needs to be evaluated as a measurable watershed attribute and needs to be monitored over time.

Each watershed across MA3 needs to be evaluated to determine the ongoing overstory disturbance ratio based on recent fire severity and timber treatments. The pace and scale of timber prescriptions also should be evaluated as post-fire evaluations (BAER) are completed over time. RAS could generate this recommended watershed disturbance ratio and also be used to provide pre- and post-project analyses when implementing the Plan.

The largest size class bin in Tables 4, 6, 8, and 10 (20”+ DBH) is inappropriately broad in comparison to the other bins and precludes the evaluation and management of truly large, mature trees of many key species (e.g. ponderosa pine, Douglas-fir, and western red cedar).

Desired conditions regarding landscape pattern and patch size for MA3 should more closely mirror those described for MA1/MA2 with respect to historic fire regimes, topography, and land type changes. The MA3 language appears to be overly-prescriptive in ways that may force

inappropriate departure from natural range of variation (“NRV”). Why are landscape pattern and patch size important? Please explain the connection to ecological integrity, wildlife habitat, etc. Desired conditions for landscape pattern and patch size should not read the same for each PVT. Does the Forest have data to show desired patch size distribution for each PVT? Please describe and quantify landscape pattern and patch size in each PVT across the alternatives for each desired condition.

In general, desired conditions specific to size classes do not vary by MA, which is appropriate. However, desired species compositions vary by MA without justification. MA3 provides critical habitat for a wide array of wildlife species dependent upon structural diversity afforded by tree species compositions within NRV.

MA3-DC-FOR-07 references habitat for cavity-nesting wildlife that should be mirrored across all DCs, MAs, and PVT Groups.

Root rot and other pathogens should be added to the list of areas with highest snag densities under MA3-DC-FOR-11.

MA3-DC-FOR-12 is ecologically inappropriate and likely impossible to achieve. Timber harvest is an inappropriate tool to manage understory vegetation particularly in a fuels reduction context, Understory vegetation constitutes a large proportion of the “vegetation” within MA3. Wildland fire can still be expected to more “dominantly” affect the composition, structure, and pattern of vegetation within MA3 than even the most aggressive timber harvesting program. A reversal of that trend by either a major reduction in wildfire extent/severity or major increase in timber harvest activity would result in a massive departure from historic fire regimes, which is an inappropriate desired condition in MA3.

MA3 restoration objectives should incorporate prescribed fire and wildland fire as well as timber harvest. Timber harvest alone is unlikely to constitute “restoration” in many fire-prone habitat types, particularly when viewed holistically (e.g. soil restoration, understory vegetation community restoration, wildlife habitat restoration, etc.).

The Tribe appreciates the whitebark pine being identified as a priority restoration objective in key PVT groups (MA2-OBJ-FOR-07).

Although perhaps uncommon, old growth grand fir stands were historically present within MA3 and provide important habitat conditions for fisher and other wildlife species. Protection of those stands is important to the long-term persistence and legal status of fisher in the Forest. MA3-STD-FOR-01 and MA3-GDL-FOR-02 through -04 should be revised to afford some protection to ecologically appropriate stands where site conditions promote longer-than-normal fire return intervals.

MA3-GDL-FOR-05 and MA3-GDL-FOR-06 should be expanded to also include MA2.

MA3-GDL-FOR-05 inappropriately references snag densities across the Plan area, the boundary of which often appears to be arbitrary and encompassing large untreated areas. This language could easily be met through retention of snags outside of harvest units alone, resulting in no residual

habitat structure for cavity-dependent species within harvest units. MA3-GDL-FOR-05 should be revised to measure snag densities per 100 acres across all treatment units.

MA3-GDL-FOR-06 confusingly references live tree densities across both harvest units and timber sale units.

The minimum snag densities identified in Tables Y-12 and Z-13 are inappropriately low and in some cases, based upon the data presented in Bollenbacher et al. 2009, particularly in the case of the Warm Dry PVT (see Table 11 [Nez Perce National Forest] within Bollenbacher et al. 2009). In addition, minimum snag densities for the Cold PVT Group should be designated separately from Cool Moist, as numbers for the former area differ substantially from the latter. Densities should be based on ecological reference data (Roadless/Wilderness) to provide levels consistent with restorative forest management and wildlife habitat recovery desired conditions rather than “status quo” levels measured within historically managed stands. Literature regarding historic snag densities in Inland Northwest forests should be evaluated and used alongside data from Bollenbacher et al. 2009 as well.

#### Section 2.1.5 “Meadows, Grasslands, and Shrublands”

The common names for *Lomatium triternatum* and *Eriogonum heracleoides* are switched.

Desired conditions for meadows, grasslands, and shrublands are ambiguous and thus provide tremendous management flexibility and discretion with respect to the amount and degree of plant composition and cover, biological soil crusts, bare ground, litter, and tree presence.

The Forest needs to avoid the following terms because they lack clear meaning: low, dominant, moderate, more, rarely, persists, largely free, generally, greatly, common, present, and little. For example, “[b]are ground is present” (see FW-DC-GS-03) is an insufficient management target and not specific enough. To what degree is bare ground present for the Xeric Shrubland Habitat Type Group? The same critique applies to plant species dominance. The desired conditions need to include some qualitative or quantitative ranges for, at least, percent cover of biotic and abiotic characteristics. The Forest needs to refer back to the Habitat Type Groups and describe them more thoroughly in the Plan and/or in the management approach. Otherwise, without targeted monitoring, the Forest will not be able to assess meeting the desired conditions or justify future activities for these habitat types.

Please report current and desired conditions including percent distribution, number of acres Forest-wide, and by management area for meadows, grasslands, and shrublands.

#### Section 2.1.6 “Fire”

FW-GDL-FIRE-04 references the Wildland Urban Interface/Intermix, but these areas are not defined. The Forest should develop and adopt a consistent metric Forest-wide rather than rely on local counties to define these areas.

### Section 2.1.7 “Invasive Species”

FW-DC-INV-01 references plant species composition, which is an inappropriate basis to evaluate the dominance of invasive weeds (e.g. one or two species can dominate many thousands of acres of native communities). The Forest should consider referencing percent cover. Without intensive monitoring, achieving FW-DC-INV-01 will be challenging.

The Forest needs to define the term “significant” in FW-GDL-INV-01.

Language from FW-GDL-INV-02 should be used to establish a new guideline requiring the inspection and cleaning of all equipment moving into, out of, or within upland/terrestrial areas, especially if the Forest wants to achieve FW-DC-INV-01.

FW-GDL-FIRE-03 needs to clarify “measures should address...” What does “measures should address” mean?

### Section 2.1.8 “Soil Quality and Productivity”

The Tribe agrees with the objective FW-STD-SOIL-01 that all land management activities shall be designed and implemented in a manner that conserves soil physical, chemical, and biological function, and improves these functions where impaired. However, the standard should not be written to allow or deem acceptable limited short-term or site-scale effects from activities even if they support long-term benefits to soil resources. This may undermine the NEPA process, especially at the project-level.

A definition of “activity area” and “local ecological type” in FW-GDL-SOIL-02 needs to be included containing spatial scale and context.

MA2 & MA3-GDL-SOIL-01 sets a 45 percent slope guideline for ground-based equipment, then states tractor skidding of logs should only occur on slopes less than 35 percent to limit detrimental soil disturbance.

The Plan proposes restoration of impaired soils on 900 to 4,500 acres annually but does not define or describe “restore.” Please write a description of FW-OBJ-SOIL-01 for each alternative. These values should be an absolute minimum acres restored, and the Forest needs ambitious but realistic objectives set to preserve the long-term resilience of ecosystems.

What are “post wildland fire vegetation management activities” in MA2 and MA3-GDL-SOIL-04? What does the Forest consider “permanent soil impairment?”

What indicator(s) will the Forest use to evaluate “soil function” in MA2 and MA3-GDL-SOIL-05?

### Section 2.2 “Aquatic Ecosystems”

The results of past cobble embeddedness monitoring showed the 1987 Nez Perce Forest Plan, as amended by PACFISH, was effective in reducing fine sediment in that Forest’s streams. The Tribe is pleased to find much of PACFISH retained in the draft plan and all of the alternatives.



Implicit in the PACFISH amendments is the concept of “do not retard.” In other words, the amendments are intended to hold the line on aquatic conditions until such time as site-specific direction are developed through forest planning.

The Conservation Watershed Network (“CWN”) components are intended to provide a pattern of protection across the landscape in which the habitat of migratory salmonids receives special attention and treatment.<sup>53</sup> This CWN is intended to replace key or priority watersheds in the Plan, but the words key and priority are still used in the Plan. Please clarify this issue.

Standards FW-STD-CWN-01 and -02<sup>54</sup> are supported by the Tribe and should only be strengthened, not weakened, for the protection of aquatic and riparian desired conditions and federally listed species.

The Tribe supports the level of restoration proposed in the objective tables within the Soil, Water and Aquatic Resource section. Comparing these numbers to existing conditions would be valuable. Baseline numbers would be helpful in evaluating the realistic attainment of these objectives.

The Tribe strongly supports FW-STD-WTR-04, which states that projects need to maintain aquatic and riparian desired condition. Where these desired conditions are not yet achieved, the project needs to restore and in no way retard attainment of the desired conditions. This standard is important and should only be strengthened, not diluted in any way.

FW-STD-WTR-04 should be edited to make clear that the sentence beginning with “Short term adverse effects...” represents a specific exception to the standard itself. This sentence should not be construed as a basis for circumventing other Plan language or federal law regarding adverse effects to wildlife or plant species or their habitats.

“Ignition will occur no closer than 150 feet to category 1 RMZs, 100 feet to category 2 and 3 RMZs, and 50 feet to category 4 RMZs.”<sup>55</sup> This sentence should be worded that ignition should be outside of the RMZ, such as 300 feet for Category 1. If there are exceptions, they need to be specific, such as in FW-STD-RMZ-01.

The Stream Condition Table referred to in the Plan (pages 55, 56) is unavailable. This table, along with completed numeric values, needs to be included in the Plan in order to be reviewed along with associated text.

The Tribe commends the Forest on defining the RMZs consistent with PACFISH, especially the landslide prone buffers which are so important to stability of landforms.<sup>56</sup>

The stated purpose of Section 2.2 is described in terms of listed fish species, aquatic species of conservation concern, and compliance with the Clean Water Act. However, riparian areas support disproportionately diverse communities and populations of wildlife and plant species as well. The conservation and restoration of riparian-associated wildlife and plant species should be explicitly

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<sup>53</sup> Plan at 45.

<sup>54</sup> *Id.* at 52.

<sup>55</sup> *Id.* at 56.

<sup>56</sup> *Id.* at 53 and 54.

identified as among the purposes and within the scope of this section. This purpose should be used to amend language throughout Section 2.2 that explicitly describes wildlife- and plant-specific habitat desired conditions, goals, objectives, standards, and guidelines applicable within riparian areas.

FW-DC-WTR-09 should be edited to condition this language on the life history and behavior of beavers and the natural range of variation of beaver distribution and habitat conditions.

FW-DC-RMZ-01 should be edited to reference biological processes as well as conditions.

The second sentence within FW-GDL-ARE&M-01 should be edited to provide direction to the Forest Service rather than operators. In addition, sentences 4 and 5 should be dropped as Plan components are only ever applicable when the Forest Service has jurisdiction. This existing language simply duplicates Plan language elsewhere.

FW-STD-ARE&M-01 and -03 need to be amended to include terrestrial wildlife and plants.

### Section 2.3 “Wildlife”

A list of designated SCCs and fine-filter Plan components to protect them are not yet included in the Plan. Standards and guidelines need to be developed to ensure the protection of all such species as well as other species or guilds of conservation or cultural concern. Reliance on desired conditions alone to provide “coarse-filter” protection for SCCs is inappropriate and should be coupled with species-specific standards and guidelines to function as backstop protections for SCCs.

FW-GL-WL-01 should be expanded to include SCCs and at-risk endemic species.

FW-GL-WL-02 should be expanded to read “...over the long term, consistent with their natural range of variation, with sufficient distribution...”

FW-DC-WL-04 and -05 are overly-specific. This level of detail should either be applied to all other species of concern on the Forest or dropped. FW-DC-WL-02 provides programmatic direction for fisher, bighorn sheep, and other species of concern.

The following new desired conditions should be established specific to wildlife:

- A diversity of wildlife species is present on the Forest, each contributing to ecological processes such as predator-prey relationships, nutrient cycling, hydrologic function, and vegetation composition and structure within their natural range of variation, as well as cultural, social, and economic benefits such as wildlife viewing, photography, and hunting.
- Biotic and abiotic conditions exist within their natural range of variation, thereby providing resources needed for feeding, breeding, and sheltering by all native species, particularly during periods of high energy demands, such as reproductive seasons and winter.

- Human-related food and attractants are unavailable to most wildlife species. Natural wildlife foraging patterns are the norm, while food conditioning and/or human habituation of wildlife and associated human-wildlife conflicts do not occur.
- Landscape patterns provide habitat connectivity for native species, particularly wide-ranging species such as medium to large carnivores and wild ungulates. Resulting habitat connectivity facilitates daily, seasonal, and dispersal movement of animals to maintain genetic diversity.
- There is a low risk of disease transmission between domestic animals and wildlife.

A new objective should be established to complete at least one project per year with the purpose of restoring habitat and/or populations of listed species, SCCs, or at-risk wildlife species.

To provide thematic protection for all federally listed species, SCCs, and other sensitive and rare species, a new standard should be added as follows: “Management activities shall be designed and implemented such that progress toward recovery of populations of federally-listed threatened, endangered, and candidate species as well as SCC species is not adversely affected or hindered over the short- or long-term.”

The 16-mile buffer between wild and domestic sheep is outdated science. FW-STD-WL-03 should be replaced with the following standards:

- Domestic sheep or goats used for weed control purposes shall not be authorized or allowed on lands where effective separation from bighorn sheep, as defined by a quantitative risk assessment, cannot be reasonably maintained.
- An effective monitoring program shall be in place to detect the presence of bighorn sheep and stray domestic sheep in identified high-risk areas, based on a quantitative risk assessment, when authorized domestic sheep or goats are present on adjacent or nearby allotments.
- Trailing of domestic sheep or goats shall not be authorized or allowed on lands where effective separation from bighorn sheep, as defined by a quantitative risk assessment, cannot be reasonably maintained.
- Permitted domestic sheep and goats shall be counted going on and off allotments by Forest Service personnel using an automated, reliable system which produces a verifiable record of the count. A full accounting of any missing sheep shall be made.
- Implement emergency actions when bighorn sheep presence is detected within a certain distance in miles derived from a quantitative risk assessment of active domestic sheep or goat grazing or trailing. Actions to be taken shall ensure separation between bighorn sheep and domestic sheep or goats and be consistent with the emergency response plan.
- To maintain separation, when bighorn sheep are found within a certain distance derived from a quantitative risk assessment of an active domestic sheep and goat allotment,

implementation of the emergency response plan shall occur, and the appropriate state agency shall be informed on the location of the bighorn sheep.

- Domestic sheep or goat grazing shall not be authorized or allowed in the absence of an emergency response plan designed to maintain and rapidly reestablish separation of at least a certain number of miles derived from a quantitative risk assessment from bighorn sheep.
- Stocking of allotments not currently authorized for domestic sheep and goats shall only be permitted after a complete quantitative risk assessment has been completed.

FW-GDL-WL-01 should be generalized to ensure habitat connectivity and landscape patterns consistent with their natural ranges of variation.

FW-GDL-WL-02 should be edited to reference a broader array of infrastructure: roads, bridges, culverts, administrative sites, recreational sites, etc.

FW-GDL-WL-05 should be expanded to apply to domestic sheep grazing as well as goat packing.

#### Section 2.3.1 “Multiple Uses – Wildlife”

The introductory narrative provides a non-exclusive list of primarily game species. If retained, the sentence should be edited with an “*e.g.*” preceding the list. The introductory narrative should include a brief sentence acknowledging the need to balance multiple use wildlife species with ecological constraints, holistic ecosystem health, and the recovery of species of conservation concern. This would provide important context for some of the qualifiers already and properly embedded in the desired conditions.

Reference to “Federally Recognized Tribes” should be changed to “Nez Perce Tribe.”

FW-GL-WLMU-01 should be edited to read: “Habitat contributes to the persistence and resiliency of populations of priority species as identified by the Nez Perce Tribe, Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, and other regulatory entities.”

The second sentence of FW-DC-WLMU-01 is inappropriately vague and should be edited to read: “Wildlife are well-distributed within their respective seasonal ranges, consistent with their natural ranges of demographic and spatial variation.”

FW-GDL-WLMU-01 should be edited to read: “When designing and implementing projects, . . .”.

The first sentence of MA2-DC-ELK-02 should be edited to protect areas 5,000 acres in size from diminishment. This desired condition should also be split, with the second sentence elevated to be a standalone desired condition.

Adjacency needs to be defined for MA2-GDL-ELK-01.

MA2-GDL-ELK-02 should be edited to read: “. . . habitat for elk, vegetation management projects should be designed . . .”

A new elk guideline should be established to limit the creation of road-adjacent sight lines greater than 500 yards within openings created pursuant to FW-STD-TBR-05.

#### Section 2.3.5 “Management and Geographic Areas”

The Tribe appreciates the Forest designation of Pilot Knob as a Special Management Area because of its religious and cultural significance to the Tribe. However, the Tribe does not believe that NEPA requires the Forest to explain in detail in the DEIS why Pilot Knob is important to the Tribe or what spiritual activities occur there. The Tribe requests that the Forest revise this section to note that the area is culturally significant to the Tribe and state that the Tribe believes that the existing communication facilities negatively impact the values that make it significant.

#### Section 2.4 “Air Quality”

This section is not complete. The Forest needs to include goals to minimize emissions of fugitive dust due to mining, road building, logging, and other such landscape disturbances. FW-GL-AIR-01 needs a revised goal for the Forest to: “Coordinate with local and regional partners prior to planned ignition activities to minimize cumulative air quality impacts from smoke.” Additionally, FW-DC-AIR-01 should have a revised goal for the Forest to: “Good air quality supports human and ecosystem health, safety, and quality of life over the long term. It enhances visibility, scenic quality, and the visual aesthetics of the planning area over the long term. It supports economic and social sustainability of the planning area over the long term.”

The Clean Air Act is a legal mandate designed to protect the public *and the environment* from air pollution. The language “and the environment” is missing from the Plan. The National Ambient Air Quality Standards establish: (1) primary standards provide public health protection, including protecting the health of “sensitive” populations such as asthmatics, children, and the elderly; and (2) *secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings*. The secondary standards are missing from the Plan.

#### Section 2.6 “Alternatives Considered in Detail”

The Tribe appreciates the Forest’s inclusion of a variation in Alternative Y not to renew the communication site in the Pilot Knob Geographic Area. This language should be included in all alternatives.

### **Chapter 3. Tribal Trust Responsibilities**

FW-DC-TT-04 is written at too broad a spatial scale, such that gathering opportunities may be relegated to roadless or wilderness areas. This desired condition should be edited to read: “Culturally important botanical species are present and vigorous within their natural or historic range of spatial variability.”

FW-GDL-TT-01 should be edited to apply to the production of forest products generally (i.e. timber harvest), not simply special forest products. What makes one forest product more worth damaging cultural resources than another?

### Section 4.3 “Sustainable Recreation Management”

Tables 15 and 17 on page 71 need to show the percent change and acres in comparison to the No Action within MA1, MA2, and MA-3. The Tribe assumes that not all proposed ROS changes for the eventual preferred alternative will be in the roaded front (MA3). The Tribe wants to see where most of the changes will occur and the extent of change (acres/percent) of the different classifications.

There is no Table 16. Was table 17 supposed to be labeled 16, or is a separate table missing?

There is a need for maps that show the spatial change within MA1, MA2, and MA3 of the eventual preferred alternative when compared to the No Action. Without reviewing the spatial representations of the ROS changes by alternatives presented in the DEIS, the Tribe has difficulty supporting a preferred alternative to similarly be presented here. The Tribe cannot provide adequate recommendations when the DEIS provides inadequate comparisons to the present condition of the No Action alternative.

Once a preferred alternative is selected, this section needs to provide a simple narrative of the amount of change and location of the most significant/obvious changes in ROS classes when compared to the No Action and also be shown on a map. The Tribe assumes the greatest change will be from summer non-motorized to motorized due to expanded timber harvest in MA3 plus the desire of providing long loop routes connecting motorized trails across MA2 and MA3.

Expanded motorized snowmobile riding should not be in Alternative Z, but some portion of expanded winter use is expected to be part of the preferred alternative. Alternative Z has the greatest increase in winter motorized expansion which is in direct conflict with the theme as a passive management alternative. This component of recreation seems at odds with Z and should be removed. Alternative Z numbers are not provided in Table 17. Either remove this component from Alternative Z or show the numbers in the table.

### Section 4.7 “Suitability”

The Forest needs to report suitability of lands in number of acres per activity for each alternative and explain the difference between timber production and timber harvest.

### Section 5.1 “Timber”

FW-STD-TBR-11 inappropriately exempts salvage and sanitation harvest from being counted against the annual sustained yield and sale quantity limits. These actions result in project activities on the Forest, generate a flow of timber to local economies, and represent a change in several conditions consistent with many of the stated desired conditions specific to forestlands on the Forest. A harvest schedule divorced from wildfire losses would result in an inappropriate level of total harvest and disturbance in many areas.

Are FW-GDL-TBR-01 and -02 really guidelines? They do not appear to be “constraints on project or activity decisions” as defined under 1.2.4.

Please report number of acres suitable for timber production for each alternative.

Are the SYL, PWSQ, and PTSQ management targets? If so, are they based on reasonable expectations about the fiscal capability and organization capacity to achieve the desired conditions and objectives in the Plan?

Tables 24 and 26 need to be completed.

#### Section 5.2 “Energy and Minerals”

This section needs an introduction of the types of minerals and energy that exist on the Forest and needs components for abandoned mines, caves, and CERCLA sites, if necessary.

Why does the Forest fail to propose no “constraint[s] on project or activity decision making” (1.2.3, 1.2.4) specific to energy and mineral development activities? Are there no industry BMPs that would be appropriate to institutionalize as standards or guidelines?

#### Section 5.3 “Livestock Grazing”

The Forest needs to provide a concise, informative introduction of livestock grazing across the Forest.

FW-DC-GRZ-01 is not, as written, a desired condition. Salting should be excluded from all threatened, endangered, and candidate terrestrial and aquatic species’ habitats, as well as SCC, at-risk, and culturally important plant and animal species’ habitats.

FW-GDL-GRZ-02 should be edited to read “...occupied habitat as needed,” rather than restricted to the active growth period as damage can occur during non-growth periods as well. Furthermore, as written, the guideline would do little to encourage the recovery of species in unoccupied, but suitable, habitat. FW-GDL-GRZ-02 should capture all threatened, endangered, and candidate terrestrial and aquatic species, as well as SCC, at-risk, and culturally important plant and animal species.

The Tribe has great concern that the Forest will not be able to adapt forage utilization values over time to meet FW-GDL-GRZ-03 because the Forest has a limited record of long-term monitoring and evaluation of rangeland ecological conditions across the Forest to date. The Forest is already behind on updating rangeland allotment management plans. How will this guideline also meet the habitat needs of wildlife and plant species at both the coarse and fine filter scales over time?

#### Section 5.4 “Special Forest and Botanical Products”

The section needs an introduction that defines and describes special forest and botanical products.

#### Section 6.2 “Recommended Areas and Roadless Areas”

MA2-DC-IRA-04 should be edited to read: “...increase elk herds consistent with desired conditions and the natural range of variation of habitats within MA2.”

### Section 6.3 “Geographic Areas”

GA-DC-SR-01 should be edited to read: “...is available consistent with its natural range of variation.”

### Appendices

Appendices were not available for review. Tribal reservation boundaries should be included on all regional maps. The monitoring plan needs to be a chapter of the Plan, not an appendix. How best available scientific information was used to inform the assessment, plan, and monitoring plan needs to be summarized in Chapter 1, not in an appendix.



**From:** [Anjee Toothaker](#)  
**To:** ["cheryl.probert@usda.gov"](mailto:cheryl.probert@usda.gov)  
**Subject:** Nez Perce Tribe's Cooperating Agency Comments on the Nez Perce-Clearwater National Forests Draft Revised Forest Plan and Draft Environmental Impact Statement  
**Date:** Thursday, October 24, 2019 2:50:00 PM  
**Attachments:** [2019-10-23 Forest Supervisor Cheryl Probert Nez Perce-Clearwater National Forests - Cooperating Agency Comments - Draft Revised Forest Plan and Draft Environmental Impact Statement.pdf](#)

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Dear Ms. Probert:

Attached are the Nez Perce Tribe's cooperating agency comments on the Forest's draft Revised Forest Plan and draft Environmental Impact Statement. Please contact me if you encounter problems opening the 32-page file or if you do not receive it in its entirety. Thank you.

Anjee Toothaker  
Legal Assistant  
Nez Perce Tribe  
Office of Legal Counsel  
P. O. Box 305  
Lapwai, ID 83540  
(208) 843-7355



Nez Perce

**TRIBAL EXECUTIVE COMMITTEE**

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

January 16, 2020

**Sent via email only to: [cheryl.probert@usda.gov](mailto:cheryl.probert@usda.gov)**

Ms. Cheryl Probert, Supervisor  
Nez Perce-Clearwater National Forests  
903 3<sup>rd</sup> Street  
Kamiah, ID 83536

**Re: Nez Perce-Clearwater National Forests Draft Forest Plan and Draft Environmental Impact Statement**

Dear Supervisor Probert:

The Nez Perce Tribe (Tribe) is in receipt of your December 20, 2019, letter announcing the Nez Perce-Clearwater National Forests' (Forest) release of the Draft Forest Plan (Forest Plan) and Draft Environmental Impact Statement (DEIS). The letter also states that a public comment period is open for 90 days from the date of the notice of availability in the Federal Register.

We appreciate the intergovernmental coordination to date on the Forest Plan and DEIS and are pleased with your acknowledgement that the Tribe is a critical partner with the Forest through the revision process. The Forest is located entirely within the Tribe's aboriginal territory and is subject to the rights the Tribe reserved, and the United States secured, in the Treaty of 1855. The Forest is also located with the area of exclusive use and occupancy as adjudicated by the Indian Claims Commission.

Given the paramount importance of the Tribe's treaty rights and cultural resources in the forest planning process, however, the Tribe is concerned with the Forest's decision allocating just 90 days for public comment on the Forest Plan and DEIS. This period represents the bare minimum amount of time required for comment under the agency's forest planning regulations. The Forest Plan revision process, as you are aware, has been under development for many years. It stands to significantly affect for decades to come management of lands and waters to which the Tribe maintains a deep and irreplaceable connection and has treaty rights guaranteed by the United States Constitution and other rights and interests protected under federal law. The Forest

Ms. Cheryl Probert  
January 16, 2020  
Page 2

accordingly has an obligation to ensure that the Tribe and its members are provided with a full and meaningful opportunity to review the Forest Plan and DEIS. By limiting the comment period to just 90 days, the Forest is sending the wrong message to the Tribe and its citizens that it wishes to do no more than the bare minimum in seeking crucial feedback from Tribal members whose families have occupied and used the Forest for subsistence, ceremonial, spiritual, and economic purposes since time immemorial.

The Tribe accordingly requests that the Forest extend the 90-day comment period on the Forest Plan and DEIS to allow maximum participation and input by the Tribe and its membership.

Sincerely,



Shannon F. Wheeler  
Chairman



*Nez Perce*

**TRIBAL EXECUTIVE COMMITTEE**

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

September 29, 2022

**Sent Via Email Only To: [Homer.Wilkes@usda.gov](mailto:Homer.Wilkes@usda.gov)**

Honorable Homer Wilkes  
Undersecretary for Natural Resources and Environment  
United States Department of Agriculture  
1400 Independence Ave., SW  
Washington D.C. 20250

***Re: Protection of Nez Perce Tribe's Treaty Rights and Resources in the Nez Perce-Clearwater National Forests' Draft Forest Plan***

Dear Dr. Wilkes:

Thank you for meeting on June 22, 2022, to discuss the Nez Perce Tribe's ("Tribe") concerns with the Nez Perce-Clearwater National Forests' ("Forest") Draft Forest Plan ("Draft Plan"). The United States has a legal obligation to ensure that its actions taken under the National Forest Management Act<sup>1</sup> ("NFMA") and its implementing regulations do not weaken, abrogate, or degrade tribal treaty-reserved rights and resources. We believe the Biden Administration shares this commitment to protecting and honoring treaty rights and tribal sovereignty as demonstrated by several recent executive actions.<sup>2</sup> Unfortunately, the Forest's current Draft Plan—which will guide management on millions of acres of National Forest System Land within the heart of Nez Perce country for decades to come—does not fulfill the Biden Administration's commitment to

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<sup>1</sup> 16 U.S.C. §§ 1600 et seq.

<sup>2</sup> See Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7,491 (Jan. 26, 2021); White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities, 86 Fed. Reg. 57,313 (Oct. 11, 2021); Strengthening the Nation's Forests, Communities, and Local Economies, 87 Fed. Reg. 24,851 (Apr. 22, 2022); Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7,619 (Jan. 27, 2021); Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights, <https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf>; Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, Order No. 3403, <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>.

uphold the United States' legal treaty and trust obligations to the Tribe. We, therefore, write to reiterate the Tribe's request that the U.S. Department of Agriculture ("USDA") work with Forest Service headquarters to ensure that the Forest has the direction and support it needs to, in close coordination with the Tribe, conduct a fresh review of the Draft Plan and make the changes necessary to fulfill the United States' legal obligations to the Tribe. We very much hope that USDA will fully support this critical and time-sensitive effort between the Forest and Tribe.

The Forest's four million acres are located entirely within the homeland of the Nez Perce people, the *Nimiipuu*. On June 11, 1855, the Tribe reserved by treaty, and the United States secured to the Tribe, rights that the *Nimiipuu* have exercised since time immemorial, including the right to take fish at all usual and accustomed places, the right to travel, and the rights to hunt, gather, and pasture on open and unclaimed land.<sup>3</sup> The rights the Tribe reserved do not merely impose responsibilities on the United States. For the Nez Perce, these reserved rights were and are a guarantee of our ability to preserve our culture, identity, and way of life. The *Nimiipuu* continue to exercise the Tribe's treaty-reserved rights today, both on and off-reservation, including on millions of acres of their ancestral lands that are now managed as National Forest System lands.

During our recent meetings in Washington D.C., I took the opportunity to acknowledge the Tribe's long-standing relationship with the Forest and reiterated the Tribe's commitment to working collaboratively with the Forest and USDA to protect and advance our treaty-reserved rights and resources and other unique interests across the Forest. To highlight this commitment, I pointed to recent efforts between the Tribe and Forest, including the execution of a Good Neighbor Authority agreement, modifying the Clear Creek Integrated Restoration Project, and taking action to protect the Tribe's rights and cultural resources from threats posed by ongoing cattle trespass at Musselshell Meadow.

I also took the opportunity during our meetings, however, to emphasize that despite this productive collaboration, the Tribe remains very concerned about the current Draft Plan, a critically-important document to the Tribe. The Tribe, throughout its multi-year engagement in the Forest's land management planning process, has emphasized the need for a new Forest Plan that requires the restoration, advancement, and protection of the Tribe's treaty-reserved rights, resources, and interests for decades to come. The Tribe has also emphasized that such a plan must necessarily include enforceable and effective fisheries, wildlife, air, and plant standards that incorporate co-management, best available science, project-level and Forest-wide monitoring, and traditional ecological knowledge.<sup>4</sup> The current Draft Plan fails to include these essential elements.

Decades of hard experience evaluating and witnessing thousands of Forest Service projects on National Forest System lands within the Tribe's treaty territory have taught the Tribe that Forest Plans that rely on guidelines over standards can and do result in real harm to treaty rights and

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<sup>3</sup> Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957.

<sup>4</sup> The Tribe has submitted numerous written comments to the Forest regarding the development of the Draft Plan and engaged in staff-to-staff meetings and formal government-to-government consultation. The Tribe also participated as a Cooperating Agency in review of the Draft Forest Plan and Draft Environmental Impact Statement prior to its public release on December 20, 2019.

resources. This is because Forest Service practice is to treat guidelines as flexible, vesting considerable discretion in Forest Service managers to unilaterally determine how and on what timeline to comply with guidelines and when to deviate. This discretion subjects project development and decision-making to political pressure, differing management philosophies, agency turnover, staff member inexperience or unfamiliarity with the United States' legal obligations to tribes and treaty rights, and shifting agency management policies. And, fundamentally, guidelines allow Forest Service personnel to degrade treaty-reserved resources, which can prevent or hinder the exercise of treaty-reserved rights as well as the intergenerational transmission of traditional knowledge.<sup>5</sup> The Tribe has, therefore, become convinced that treaty-reserved rights and resources are only effectively and predictably protected with Forest Plan standards—standards that both protect the exercise of treaty-reserved rights on the Forest and that explicitly protect the resources on which those rights rely.<sup>6</sup>

One example of the inadequacy of Forest Plan guidelines dates back to the inception of the Forest's current Plans. In 1989, just before Forest Service approval of the Forest Plan for the Nez Perce Forest, the Tribe used the administrative appeal process to highlight the deficiencies of the Forest Plan's outdated elk habitat model, the Leege guidelines.<sup>7</sup> As a result of the Tribe's appeal, the Tribe and Forest entered into a settlement agreement to remedy, in part, the Leege guidelines' lack of an elk vulnerability component. The result was Forest Plan Amendment No. 7 and the eventual development of the Servheen guidelines<sup>8</sup> by the Forest, Tribe, and state of Idaho. Unfortunately, despite the almost decade-worth of work that the Tribe put into the development and adoption of the Servheen guidelines, the Forest has inconsistently applied and frequently declined to use the Servheen guidelines' elk vulnerability model when analyzing project impacts on elk. The Tribe, to little effect, has repeatedly noted these misapplications and omissions and repeatedly urged the Forest over the years to consistently use the Servheen guidelines' elk vulnerability model as well as more current elk habitat and management science, including science developed by the Forest Service's own Starkey Experimental Forest and Range facility.<sup>9</sup>

The Tribe expected that the Forest's failure to consistently use an elk vulnerability model to assess potential project-related impacts to elk would finally be remedied through standards in the new

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<sup>5</sup> Although NFMA's implementing regulations expressly state that they are not intended to affect treaty rights and although the 2012 National Planning Rule does not modify pre-existing tribal rights, both allow for—and in the 2012 Rule's case, endorse—the use of guidelines in Forest Plans. 36 C.F.R. § 219.1(d); National Forest System Land Management Planning, 77 Fed. Reg. 21,162, 21,190 (Apr. 9, 2012) (“Whether the plan expressly states it or not, a land management plan cannot affect treaty rights or valid existing rights established by state or legal instruments.”).

<sup>6</sup> On April 15, 2022, the Tribe provided oral comments at the USDA Tribal Consultation on Barriers/Equity: Annual Progress Report & Feedback For Next Steps (Forests and Land Management). Those remarks focused on the need for strong and enforceable Forest Plans with standards that protect treaty rights and resources on National Forest System lands. On May 4, 2022, the Tribe also provided written comments.

<sup>7</sup> Leege, T. A. 1984. Guidelines for evaluating and managing summer elk habitat in northern Idaho. Wildlife Bulletin No. 11. Idaho Department of Fish and Game. 37 p.

<sup>8</sup> Servheen, G., Blair, S., Davis, D., Gratson, M., Leidenfrost, K., Stotts, B., White, J., Bell, J. 1997. Interagency guidelines for managing elk habitats and populations on U.S. Forest Service lands in central Idaho. U.S. Forest Service Intermountain Research Station.

<sup>9</sup> The Tribe litigated this issue in 2016 with regard to the Clear Creek Integrated Restoration Project. *Nez Perce Tribe v. Probert et al.*, Civ. No. 3:16-cv-00299 (D. Idaho).

Forest Plan, but based on the updated Draft Plan's wildlife components received by the Tribe on July 29, 2022, this has not come to pass. The Forest has also rejected the Tribe's request that the Forest develop standards, in coordination with the Tribe, to protect the Tribe's treaty-reserved fishery resources and to require the use of best available science for project-level actions that could affect treaty-reserved resources and habitat. The Tribe also remains deeply concerned that the Forest has opposed adopting the Forest-wide treaty standards that have been in place under the Forest's current Clearwater Forest Plan for over 35 years.

The current Clearwater Forest Plan standards require the Forest to:

Ensure that Forest actions are not detrimental to the protection and preservation of Indian Tribes' religious and cultural sites and practices and treaty rights.<sup>10</sup>

[E]nsure proposed practices and management activities are coordinated with other governmental agencies and Indian tribes to [e]nsure requirements of all laws and regulations are met and terms of Indian Treaties are upheld.<sup>11</sup>

In its written comments to the Forest, the Tribe repeatedly requested that the Forest retain these longstanding standards in the new Forest Plan. The Forest, however, has declined to incorporate them and has instead suggested that the Tribe consider an alternative standard to protect treaty-reserved rights for the new Forest Plan. The Tribe told the Forest that it did not understand why the agency was unwilling to support the current standard that clearly and accurately reflects its superseding treaty and trust responsibilities under the United States Constitution and long-standing legal precedent. The Tribe asked for additional discussion with the Forest, including legal staff for the Forest. In a letter dated October 26, 2021, Forest Supervisor Cheryl Probert stated her intent to schedule such a meeting in November 2021. This coordination still needs to occur. Meanwhile, the Tribe has repeatedly expressed to the Forest its full support for the current Clearwater Forest Plan standards provided above. The alternative language thus far suggested by the Forest is far weaker, authorizing the Forest to approve projects that harm treaty rights and resources in the short term if the Forest determines, in its sole discretion, that those activities will result in long-term benefits to the Tribe's treaty-reserved rights and resources. The Forest's suggested approach conflicts with well-established legal precedent and is unacceptable to the Tribe.

The Forest last provided the Tribe with a complete copy of its Draft Plan in June 2021. The Tribe recently requested the latest version of the Draft Forest Plan and Final Environmental Impact Statement for review. Supervisor Probert responded that she was unable to provide a copy, noting that Forest Service headquarters is currently reviewing the latest Draft Plan, which she anticipates may likely be internally approved this fall. The Tribe anticipates that it will have substantial objections to the current document.

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<sup>10</sup> 1987 Clearwater National Forest Plan, pg. II-23.

<sup>11</sup> 1987 Clearwater National Forest Plan, pg. II-21.

Honorable Homer Wilkes  
September 29, 2022  
Page 5

In summary, the Tribe renews its request that USDA take urgent action and commit to working with the Forest Service and Tribe to uphold the Biden Administration's direction and provide the additional time and coordination necessary for a full and comprehensive review of the Draft Plan before proceeding with tribal consultation and final, internal agency review. The Tribe reiterates its specific request that USDA, Tribe, and Forest jointly and comprehensively review the Draft Plan to ensure it includes the standards necessary to fulfill the United States' treaty and trust responsibilities.

Sincerely,



Samuel N. Penney  
Chairman

cc (via email only):

Ms. Meryl Harrel ([Meryl.Harrel@usda.gov](mailto:Meryl.Harrel@usda.gov))

Ms. Heather Dawn Thompson ([HeatherDawn.Thompson@usda.gov](mailto:HeatherDawn.Thompson@usda.gov))



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**File Code:** 1920; 1560  
**Date:** February 23, 2023

Honorable Samuel N. Penney  
Chairman  
Nez Perce Tribal Executive Committee (NPTEC)  
P.O. Box 305  
Lapwai, ID 83540

Dear Chairman Penney,

Thank you for your response to my message about continuing consultation and coordination on the Nez Perce-Clearwater Revised Forest Plan. As we prepare to enter the final phases of revision of our Land Management Plans, I would like to thank you and the Nez Perce Tribe's leadership, staff, and members for your significant contributions to date. Nearly every section of the plan has been shaped by the tremendous amount of time your staff have spent working through details and concerns with our staff. We could not have gotten to the place we are without the Tribe's input and expertise.

And yet we both acknowledge we have still work to do. As we continue formal government to government consultation with the Nez Perce Tribal Executive Committee, I would like to collectively develop a consultation process to ensure we can exceed our required obligations and truly craft a plan that embodies co-stewardship of the land and resources. In order to manage the Forest using modern science to address climate change and changing social values, we are striving to release our Final Environmental Impact Statement and start the Objection Period by July 2023. Given this timeframe, we are eager to re-engage at both government to government and staff to staff levels.

My staff has been working to develop a schedule for this stage of our consultation process that involves multiple steps to reinitiate conversations. I would like to begin with a NPTEC meeting to highlight to you and your directors the overall intent of the plan, how we have incorporated our tribal trust responsibilities and protection of treaty reserved rights into the plan at a broad level, and outline what work remains. As you requested in your message, I can provide a broad overview to you prior to this meeting. Following this initial meeting, I would ask that we direct our staffs to continue the conversation in focused meetings to discuss how their input has been incorporated and identify any remaining work left to do. We could then reconvene as leadership group to highlight the progress made, identify unresolved issues, and develop next steps and a timeline associated with resolution of those items.

If you are agreeable to this general framework for moving forward, I would further ask that we begin scheduling this series of meetings. It might be most helpful and efficient for us and our staffs if we consolidated this series of meetings and workdays in a solid block of time perhaps in April. If you have a different process you would like to use, I welcome that discussion.



As we prepare for consultation on the final plan, I am transmitting to you and your staff for review the following documents associated with my proposed decision:

- Revised 2023 Land Management Plan (my proposed decision)
- Appendix 1- Land Management Plan maps
- Appendix 2-Glossary
- Appendix 3-Monitoring Plan
- Appendix 4- Management Approaches
- Appendix 5-Northern Rockies Lynx Management Direction (NRLMD)
- Appendix 6-Washer and Fish Appendix
- Appendix 7- Scenic Character
- Final Biological Assessment transmitted to the Fish and Wildlife Service and National Marine Fisheries Service for Section 7 ESA consultation on November 23, 2022

Thank you for welcoming follow-up with Mike Lopez, Nakia Williamson-Cloud, Aaron Miles Sr., Dave Johnson, and other staff ahead of the initial meeting with NPTEC to continue our work on tasks previously identified by the Nez Perce Tribe and Forest Service including:

- Draft language as a replacement to the Tribal Trust Responsibilities Standard FW-STD-TT-01.
- Drafting text with your Cultural Director conveying the importance of a wide variety of resources to the Nez Perce Tribe to be included as introductions in the revised plan.
- Using the conversations we have had in the All-Forest Meeting, Good Neighbor Authority Workshop, and other discussions to collaboratively develop the verbiage that promulgates co-stewardship as a foundational concept into the revised plan.
- Develop language better reflecting our shared vision for the future of Musselshell Meadows for incorporation in the plan as well as better describe the vision we've heard from Tribal gatherer groups for botanical resources and first foods and will share draft language with you at our first meeting.

We are entering a very exciting time. We will have unprecedented levels of funding and support to meaningfully move towards our desired conditions for both terrestrial and aquatic ecosystems. Development and implementation of co-stewardship as a new way of working together, using our Good Neighbor Authority agreement as a funding mechanism, I am confident we can continue to build a relationship that shows our desire to exceed our statutory and treaty requirements and work with the Tribe as equal partners. A revised Land Management Plan is essential to our future success. The 1987 plans have outlived their useful life and our ability to meet the Administration's and Congress's expectations of us is waning, along with our ability to develop new processes to implement co-stewardship. We look forward to crossing the finish line on forest plan revision with you.

Please reach out to me at [cheryl.probert@usda.gov](mailto:cheryl.probert@usda.gov) with any ideas, concerns or questions on the process. Technical questions and scheduling on our end will be routed to Forest Planner, Zach Peterson at [zachary.peterson@usda.gov](mailto:zachary.peterson@usda.gov).

Sincerely,



CHERYL F. PROBERT  
Forest Supervisor

Attachments: USB drive with attachments sent via US Postal Service

cc: Mike Lopez, OLC; Aaron Miles, Sr., Director, DNRM; Dave Johnson, Director, DFRM;  
Christine Bradbury, Tribal Relations



Office of the Secretary  
Washington, D.C. 20250

April 13, 2023

MR. SAMUEL N. PENNEY  
*Chairman*  
*Nez Perce Tribal Executive Committee*  
*P.O. Box 305*  
*Lapwai, ID 83540*

Dear Chairman Penney:

Thank you for your letter of September 29, 2022, regarding protection of Nez Perce Tribe's treaty-reserved rights and resources in the Nez Perce-Clearwater National Forests' Draft Forest Plan (Plan). I apologize for the delayed response.

I am grateful for the time you spent with me and other United States Department of Agriculture (USDA) staff on February 21, 2023. I appreciated having an opportunity to learn about your long-standing relationship with the Nez Perce-Clearwater National Forest subject to your Treaty of 1855.

Through Joint Secretarial Order No. 3403, the Sacred Sites Memorandum of Understanding (MOU), and the Tribal Treaty Rights MOU, the USDA reaffirmed our commitment to fulfilling the United States' trust responsibility to federally recognized Indian Tribes.

The Department appreciates the countless hours the Nez Perce Tribe and USDA Forest Service employees have devoted to the Forest Plan revision process. As a result of your cooperative efforts, the Nez Perce-Clearwater National Forests' Plan includes important information on tribal trust responsibilities, treaty rights, and sustainable management of resources. and integrated plan content guiding sustainable management of treaty rights and trust resources. Forest leadership has requested your staff help craft co-stewardship desired conditions to better describe our mutual desires for these landscapes. Your staffs' participation in the Aquatics and Riparian Conservation Strategy working group, elk working group, and the support of tribal gatherers have contributed to a substantial portion of the plan text. The Forest is also working with your Director of Cultural Resources to develop introductory text for a variety of resources, explaining to future readers the importance to, and relationship with, the Nez Perce people for each resource.

The Forest Service acknowledges your concern that some treaty-reserved rights and resources may not be protected in the same manner as in the 1987 Forest Plans given there are fewer plan standards in the draft you have reviewed. Some of the previous standards are now described as desired conditions and/or goals. Updated inventory and analysis have necessitated changes of other standards.

Under the new Planning Rule, standards and guidelines are used to provide certainty for constraining management activities to address a resource risk or stressor that could prevent attainment of the desired conditions. Desired conditions are used to describe the characteristics of the resources that future management should be directed toward. Thus, including language to describe tribal treaty rights and trust responsibilities as desired conditions and goals ensures that all projects developed under the Plan meet, move toward, and/or do not preclude attainment of those conditions. The Agency and Forest hope these desired conditions provide a forum for developing projects with mutually beneficial outcomes. The Forest Service is committed to developing a plan in coordination with you that protects and enhances treaty resources and shows our unwavering commitment to honor our treaty obligations.

I acknowledge your request to work with the Nez Perce Tribe to uphold the Administration's direction in Secretary's Order 3404 and provide additional time to allow the Tribe to review the draft plan before the initiation of tribal consultation.

The USDA and the Forest Service are committed to honoring your treaty-reserved rights and ensuring the Nez Perce Tribe has meaningful and robust input into all plan components that together will be implemented under the final Forest Plan to protect treaty resources. Supervisor Probert provided you with an updated Plan and other documents in advance of Government-to-Government consultation and will reschedule dates to meet and discuss in more depth how the Forest has incorporated the Tribe's comments into the Plan and analysis and to jointly improve the Desired Condition language. We value the relationship we have with the Nez Perce Tribe and want to encourage continued tribal dialogue and engagement in the plan revision process and in other land management decisions.

Again, thank you for writing and sharing your concerns. If you have any further questions, please contact Cheryl Probert, Forest Supervisor for the Nez Perce-Clearwater National Forests at [cheryl.probert@usda.gov](mailto:cheryl.probert@usda.gov).

Sincerely,

HOMER WILKES  
*Undersecretary for Natural Resources and  
Environment*

**From:** [Mike Lopez](#)  
**To:** [Amanda Rogerson](#)  
**Cc:** [Lisa Anderson](#)  
**Subject:** FW: Nez Perce-Clearwater Forest's Draft Forest Plan  
**Date:** Monday, April 17, 2023 8:51:05 AM  
**Attachments:** [8868504\\_Response\\_Penney\\_NRE\\_cleared\\_04.13.2023.pdf](#)

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**From:** "Delgado, Andrea - OSEC, DC" <Andrea.Delgado@usda.gov>  
**Date:** Thursday, April 13, 2023 at 11:56 AM  
**To:** Samuel Penney <SamuelP@nezperce.org>  
**Cc:** "Wilkes, Homer - OSEC, DC" <Homer.Wilkes2@usda.gov>, "Bradbury, Christine - FS, ID" <christine.bradbury@usda.gov>, "Aaron Miles Sr." <2moon@nezperce.org>, Dave Johnson <davej@nezperce.org>, Mike Lopez <mlopez@nezperce.org>, "Probert, Cheryl - FS, ID" <cheryl.probert@usda.gov>, "Thompson, HeatherDawn - OSEC, DC" <HeatherDawn.Thompson@usda.gov>  
**Subject:** RE: Nez Perce-Clearwater Forest's Draft Forest Plan

Chairman Penney,

Our sincere apologies for the delay.

The Under Secretary and the Forest Service value the relationship with the Nez Perce Tribe and we seek to be responsible and responsive.

While on travel, the Under Secretary received your email and he has urged me to ensure his response reaches you as soon as possible. To that end, please see attached for a response.

Don't hesitate to let us know if you have any questions.

**Andrea Delgado**

*She/ella/her/hers*

Chief of Staff

Office of the Under Secretary

Natural Resources and Environment

U.S. Department of Agriculture (USDA)

202-989-5832

[Andrea.Delgado@usda.gov](mailto:Andrea.Delgado@usda.gov)

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**From:** Samuel Penney <SamuelP@nezperce.org>  
**Sent:** Tuesday, April 11, 2023 7:31 PM  
**To:** Probert, Cheryl - FS, ID <cheryl.probert@usda.gov>; Delgado, Andrea - OSEC, DC <Andrea.Delgado@usda.gov>; Thompson, HeatherDawn - OSEC, DC <HeatherDawn.Thompson@usda.gov>

**Cc:** Bradbury, Christine - FS, ID <christine.bradbury@usda.gov>; 2moon@nezperce.org; Dave Johnson <davej@nezperce.org>; Mike Lopez <mlopez@nezperce.org>  
**Subject:** FW: Nez Perce-Clearwater Forest's Draft Forest Plan

I sent this to Dr. Wilkes yesterday but I overlooked copying all of you. My apologies.

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**From:** Samuel Penney  
**Sent:** Monday, April 10, 2023 5:10 PM  
**To:** [Homer.Wilkes@usda.gov](mailto:Homer.Wilkes@usda.gov)  
**Subject:** Nez Perce-Clearwater Forest's Draft Forest Plan

Good afternoon Dr. Wilkes,

I hope my email finds you well.

I am contacting you about the status of the letter you are preparing in response to the Nez Perce Tribal Executive Committee's ("NPTEC") September 29, 2022, letter (attached) regarding protection of the Nez Perce Tribe's treaty rights and resources in the Nez Perce-Clearwater National Forests' Draft Forest Plan. As you are aware from our in-person meetings with Secretary Vilsack and Forest Service leadership over the last several months, this is a very important issue for the Tribe. The Tribe has raised several concerns about the lack of needed management standards in the Forest Plan to safeguard our rights and interests on National Forest System lands in the heart of our ancestral homeland.

Nez Perce-Clearwater National Forests Supervisor sent the Tribe a letter in February 2023 (attached) inviting the Tribe to engage in continued consultation and coordination on the Forest Plan for which she indicated the Washington Office has requested a signed decision by end of this year. My understanding is that Ms. Probert and her staff have scheduled a meeting this week with our Natural Resources and Fisheries Department managers and Office of Legal Counsel to discuss an intergovernmental framework for moving forward to address the Tribe's outstanding issues.

While I welcome and appreciate Ms. Probert's letter and efforts to schedule a staff-to-staff meeting this week, I had anticipated a response to NPTEC's September 29, 2022, letter by now. My understanding from our February meeting in Washington D.C. was that your office had prepared and was reviewing a letter addressing the Tribe's concerns regarding protection of the Tribe's treaty-reserved rights. I understood that the letter included specific measures and processes that USDA and the Forest Service would commit to for the Forest Plan, consistent with President Biden's numerous directives on the protection of tribal rights.

Since NPTEC has not received that letter yet responding to the Tribe's concerns, I believe a meeting between our staff and Ms. Probert this week is premature. Before we commit our staff to engaging with Ms. Probert on further coordination regarding the Forest Plan, NPTEC requires a clear understanding of USDA's and the Forest Service's position on our concerns so that we can review that information with our staff.

I trust you understand and can appreciate my view on the status of this important matter. I look forward to receiving a response to NPTEC's September 29, 2022 letter. In the meantime, I will ask our staff to postpone this week's meeting with Ms. Probert regarding the Forest Plan.

Thanks and please feel free to contact me with any questions or to discuss further.

Kind regards,

Sam

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**File Code:** 1560  
**Date:** June 9, 2023

Honorable Shannon F. Wheeler  
Chairman, Nez Perce Tribal Executive Committee  
PO Box 305  
Lapwai, ID 83540

Dear Chairman Wheeler,

The Forest Service recognizes that the Nez Perce people have been connected to and have been continually utilizing the Clearwater, Salmon, and Snake Rivers since time immemorial. As you are aware, a Nez Perce Tribal member has organized a new business that, among many things, offers interpretive tours on land and rivers to share the cultural heritage of the Nimiipuu with visitors. You are also aware that there are those who contend that a permit should be required for this activity and assert not doing so creates an economic advantage. The business owner strongly believes this is a cultural activity reserved under the Treaty of 1855, as do I. I write to you today to share and clarify my understanding of Forest Service regulated activities within the Nez Perce Tribe's ancestral homeland on the Nez Perce-Clearwater National Forests.

I recognize that members of the Nez Perce Tribe have been living, utilizing, and intimately connected to the Snake River in the Hells Canyon Area, and other river basins, since time immemorial. The history of the Nez Perce people trading and wayfinding along the Snake, Salmon, Clearwater River systems has been continuous throughout time.

The United States Government signed Treaties with the Nez Perce Tribe in 1855 and another in 1863. These Treaties outlined explicit agreements, understandings, and expectations of both the Nez Perce People and the US Government. The treaties did not explicitly address mechanized watercraft, special use permits or tourism implications, but they did outline tribal treaty responsibilities. Courts have developed canons of construction that clarify that treaties must be interpreted as the tribes would have understood them; viewed liberally in favor of native peoples; and ambiguous expressions should be resolved in favor of the tribes. Thus, the conveyance method is immaterial, it is clear that the Nez Perce Tribe reserved the right to navigate and guide people through their homelands and that per Article 3 of the 1855 Treaty, this right cannot be regulated.

The Forest Service also has the responsibility to manage the many river systems within the Nez Perce ancestral homelands, recognizing tribal treaty rights and trust responsibilities and insuring long-term sustainability. The desire by the public to experience the Snake, Salmon and Clearwater River systems has grown exponentially in recent years. For the public, we utilize special use permits and Outfitter and Guide permits to allow the Forest Service to manage public and outfitted recreation use at levels commensurate with the management designations of these rivers. That public use is very different than the tribal treaty rights that the Nez Perce have reserved.

In addition, recently, the NATIVE Act was passed by the US Congress in 2016 with the goal of empowering Indian tribes, tribal organizations, tribal business owners and entrepreneurs and tribal members to benefit from participation in the tourism industry in whatever way works best for each tribe. The following is an excerpt from the Native Act:



Sec. 5) Federal agencies must (1) support Indian tribes, tribal organizations, and Native Hawaiian organizations in showcasing their history, culture, and continuing vitality, enhancing or maintaining their distinctive cultural features, and providing authentic and respectful visitor experiences; (2) assist in interpreting the connections between Native Americans and the national identity of the United States; (3) enhance efforts to promote understanding and respect for diverse cultures in the United States and the relevance of those cultures; and (4) ensure that travelers at airports and ports of entry are welcomed in a manner that both showcases and respects the diversity of Native American communities.

Based on the above, as the Forest Supervisor of the Nez Perce-Clearwater National Forests, I recognize:

- The Nez Perce Tribe's rights to usual and accustomed access to the Nez Perce-Clearwater National Forest.
- The Nez Perce Tribe's rights to interpret and showcase their heritage and deep cultural connections to their ancestral homelands.
- The Nez Perce Tribe and their rights to facilitate their heritage and culture through many venues including mechanized watercraft.
- The Nez Perce Tribe and tribal business(es)' right to conduct these activities outside of the regulatory mechanisms that the Agency uses to manage public use and occupancy of National Forest System lands.

The Forest would like to consult with the Nez Perce Tribe to recognize the special relationship between the Nez Perce Tribe and the US Forest Service and ensure that my understanding is in alignment with that of the Nez Perce Tribe. Until we formally consult, we will continue to recognize the activities of Nez Perce Tourism as reserved rights under the Treaties.

The US Forest Service acknowledges, appreciates, and honors the long and important relationship with the Nez Perce Tribe especially as it relates to the ancestral ceded territory on the Nez Perce-Clearwater National Forests. We are interested in continuing to co-steward these lands and improving the access of tribal members to practice traditional activities. Transferring traditional knowledge to our contemporary world and promoting small business opportunities with indigenous cultures are central tenets to the USDA Forest Service's goal to become an equity-centered Agency. I further believe that endeavors that bring cultures together, are vital to managing these lands for future generations. I look forward to more dialogue with you and jointly expressing our intent for the future.

Sincerely,



CHERYL F. PROBERT  
Forest Supervisor