



Confederated Tribes of Warm Springs, Oregon  
PO Box C  
Warm Springs, OR 97761  
Phone: 541-553-1161  
Fax: 541-553-1924

January 31, 2024

VIA WEBPLATFORM: [HTTPS://CARA.FS2C.USDA.GOV/  
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Jacqueline Buchanan  
Regional Forester  
United States Forest Service  
1220 SW 3rd Avenue  
Portland, Oregon 97204

Re: TRIBAL COMMENT LETTER - Notice of Intent to Prepare an Environmental Impact Statement For Proposed Amendments to 1994 Northwest Forest Plan, 88 Fed. Reg. 87393

Dear: Regional Forester Buchanan

I am writing on behalf of the Confederated Tribes of the Warm Springs Reservation of Oregon (“Confederated Tribes of Warm Springs” or “Tribe”) in response to the Notice of Intent to Prepare an Environmental Impact State for Proposed Amendments to the 1994 Northwest Forest Plan (“NWFP”). Any proposed amendment to the NWFP will affect our sovereignty and the health and safety of our members associated with (a) our treaty-protected rights on National Forest System lands subject to the NWFP and (b) the physical and ecological integrity of the Warm Spring Reservation, which lies adjacent to National Forest System Lands. The Forest Service must fashion a scoping process that provides for timely and meaningful consultation with the Tribe in accordance with applicable law, including, but not limited to, Executive Order 13175. On behalf of the Tribe, I ask that the Forest Service initiate a government-to-government consultation with us as soon as possible. In the meantime, we submit the following comments on the Notice of Intent.

## I. Background

The Confederated Tribes of Warm Springs is the legal successor in interest to the Indian signatories of the Treaty with the Tribes of Middle Oregon, dated June 25, 1855, 12 Stat. 963 (“1855 Treaty”). The 1855 Treaty reserves legally-enforceable rights to take fish at our “usual and accustomed stations, in common with citizens of the United States.” 1855 Treaty, Art 1. We also secured the privilege of hunting game and wildlife and gathering roots and berries outside our reservation on “unclaimed lands.” *Id.* Such unclaimed lands include National Forest System lands. *See, e.g., Confederated Tribes of Umatilla Reservation v. Maison*, 262 F.Supp 871, 873 (D. Or 1966). The geographic scope of treaty-reserved fishing, hunting, and gathering rights are not limited to the lands ceded to the United States in the 1855 Treaty. With respect to treaty-reserved fishing rights, the United States Supreme Court has expressly rejected the notion that those rights are limited to our ceded area but instead extend to areas where our people have habitually fished before and since the 1855 Treaty. *See Seufert Bros. Co. v. U.S.*, 249 U.S. 194 (1919) (recognizing right of Yakama Nation tribal members to fish as usual and accustomed locations in Oregon outside the Yakama ceded area). The Oregon Court of Appeals has also recently recognized that the treaty-reserved right to hunt extends to unclaimed lands beyond the treaty-ceded area. *See State*



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*v. Begay*, 312 Or. App. 647, 495 P.3d 732 (2021) (recognizing treaty-reserved right of Yakama Nation tribal member to hunt on unclaimed lands in Oregon).

Before and since the 1855 Treaty, our people have habitually fished, hunted, and gathered traditional foods outside of the Warm Springs Reservation throughout our ceded area and aboriginal and traditional use lands, which extend beyond the ceded area. We continue to exercise our treaty fishing, hunting, and gathering rights on National Forest System lands in Oregon and Washington, including in the Mount Hood, Deschutes, Willamette, Ochoco, and Gifford Pinchot National Forests.

## **II. Process**

The Confederated Tribes of Warm Springs appreciates the intent of creating of a federal advisory committee to produce recommendations for improving the Northwest Forest Plan, particularly with respect to tribal perspectives and priorities. The Tribe’s Secretary-Treasurer/CEO Robert A. Brunoe is a member of that committee.

Unfortunately, the timeline for the committee’s work has effectively been cut in half. We are concerned about the rushed nature of that process, which is compounded by this particular NEPA process which appears to be progressing without any input whatsoever by the federal advisory committee. The advisory committee should be allowed to reach consensus results before the Forest Service begins proposing and analyzing amendments to the NWFP.

## **III. Coordination with Tribal Land Management**

The Federal Land Policy and Management Act requires the Secretary of Agriculture to “coordinate” land use plans in the National Forest System with those “of and for Indian tribes” by considering approved tribal land resource management programs. This goes beyond simple consultation with tribes and requires active consideration of tribal forest management approaches. We repeat our request to initiate government-to-government consultation with the Tribe as soon as possible.

## **IV. Treaty Rights**

Any amendment to the Northwest Forest Plan must consider the effects on the Tribe’s rights treaty-protected rights on National Forest System lands. The 1990 Mount Hood National Forest management plan provides the following recognition:





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Likewise, the lack of post-fire fuels reduction on federal land is leaving massive amounts of standing dead wood that will eventually reburn at even higher intensities and with limited suppression options. NWFP reserve designations have and will continue to limit options for post-fire fuels management.

The rigidity and complexity of NWFP directives have also prevented major stewardship partnerships with the Tribe. The Tribe was forced to cancel major plans for biomass utilization from nearby National Forests because of threats of litigation from environmental groups. Similarly, threats of litigation thwarted discussions of Tribal Forest Protection Act projects on Mount Hood National Forest.

As the largest neighbor of several National Forests, we suffer the greatest consequences of cross-boundary fire disasters. Any amendment to the NWFP must address this risk, which is increasing due persistent drought associated with climate change.

## **VI. Need for Management Flexibility**

The 2020 Bioregional Assessment of Northwest Forests (citing Marcot et al, 2018) recognizes the limitation of the current reserve system in meeting fire resilience and multi-species sustainment goals in a changing climate:

“[T]he needs of some species associated with old forests that experience dynamic disturbance events are not being met by the static boundaries of late-successional reserves. (Marcot et al. 2018) Managing large reserves as dynamic mosaics of vegetative conditions that meet the needs of various wildlife species as well as goals for resilience to climate change and fire might better align with current goals.”<sup>1</sup>

In scoping potential changes to the NWFP, we urge the Forest Service to reconsider the whole notion of rigid reserves that work well on paper but not on the ground. It would be useful for the Forest Service to learn more about tribal forest management, particularly the management flexibility we allow even in “reserved” areas. This provides flexibility to adaptively manage the landscape in pre- and post-fire circumstances.

## **VII. Focus on Ecosystem Function and Biodiversity**

We are pleased that the Notice of Intent announces that the Forest Service intends to focus on ecosystem function and related biodiversity. From our perspective a fundamental flaw of the original NWFP is its species-driven approach, rather than a more holistic focus on ecosystem function and biodiversity. The process to amend the NWFP must honestly assess the original plan, acknowledge its limitations, and not repeat its mistakes. Any proposed amendments should be premised on a broad set of inputs, including advances in scientific knowledge since 1994 and, equally important, traditional indigenous knowledge that our people have been developing since time immemorial.

<sup>1</sup> USDA Forest Service (2020). Bioregional Assessment of Northwest Forests (“Recommendation 2”), p 25.



