

## BEFORE THE INDIAN CLAIMS COMMISSION

THE NEZ PERCE TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 175
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 21, 1967

FINDINGS OF FACTPreliminary Statement

Four claims have been filed on behalf of the Nez Perce Tribe of Indians, arising out of several treaties and agreements, and from the alleged trespass upon the property of the tribe. Although three were originally filed in one suit, they have been separated into individual petitions.

Two of the claims, Docket Nos. 175-A and 180-A, have already been determined. Docket 175-A was a claim alleging unconscionable consideration for lands ceded under the Treaty of June 9, 1863 (4 Stat. 647) from the reservation which was retained by the Nez Perce under the Treaty of 1855 (12 Stat. 957). Judgment in the amount of \$4,157,605.06 was awarded petitioner (8 Ind. Cl. Comm. 220, Order of June 17, 1960). In this matter the Commission established important facts concerning the inside boundaries of the 1855 cession (see Tr. 6-7). The southern and eastern boundaries of the reservation established by the 1855 Treaty were set out in Finding 13 (3 Ind. Cl. Comm. 571, at p. 578; 8 Ind. Cl. Comm. at p. 275). The northern and western boundaries were set out in Findings 10 and 11 (8 Ind. Cl. Comm. 220, at pp. 229-231; see also the Opinion of the Commission, 8 Ind. Cl. Comm. 275).

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The second claim to be determined, Docket 180-A, was for gold removed from the 1855 Treaty reservation and for trespass thereon by white settlers. A judgment in the amount of \$3,000,000 was awarded petitioner (8 Ind. Cl. Comm. 300, Order of July 5, 1960).

The third claim was presented in Docket No. 175-B. This was for payment for value of the reduced reservation which was ceded to defendant in the Agreement of May 1, 1893 (28 Stat. 326). The petitioner alleged payment of unconscionable consideration for the lands in this area. That claim has been tried on the issues of value and consideration. We dismissed this claim. An appeal was taken to the Court of Claims. That Court reversed our decision and the matter is now pending before the U. S. Supreme Court on the petition filed by the Nez Perce on February 8, 1967 for Certiorari.

The area involved in the claim herein lies in the present States of Idaho, Washington and Oregon, generally between the Blue Mountains and the Bitterroot Mountains. The United States acquired undisputed sovereignty over this area by the Treaty of June 15, 1846, with Great Britain. The area was in part included within the Territory of Oregon (Act of August 14, 1848, 9 Stat. 323) and the Territory of Washington (Act of March 2, 1853, 10 Stat. 172). Both Territorial Acts prohibited any impairment of Indians' rights in land so long as they remained unextinguished by treaty between the federal government and the Indians.

The present claim arises out of the Treaty of 1855 (12 Stat. 957). In 1853 Isaac I. Stevens, Superintendent of Indian Affairs for the

Washington Territory, recommended to the Commissioner of Indian Affairs that Indian title to land east of the Cascade Mountains be extinguished by treaty with the occupying tribes. In 1854 representations were made to the Indians that Stevens had recommended that the United States purchase their lands so that the white men coming into the west could settle peaceably in the land, and that the Indians could be assured that they would be justly compensated for the lands so ceded.

By the Act of July 31, 1854 (1 Stat. 315) the sum of \$45,000 was appropriated to cover the expense of negotiating treaties with the Indian tribes within the Washington Territory. Isaac I. Stevens was appointed to negotiate the purchase, and to remove the Indians to a limited number of reservations.

A council was held at Walla Walla, Washington Territory, commencing on May 28, 1855, with Supt. Isaac Stevens of the Washington Territory and Supt. Palmer of the Oregon Territory representing the United States. The tribes represented included the Nez Perce, Yakima, Walla Walla, Umatilla and Cayuse Indians.

The result of that council meeting was the Treaty of 1855, ratified March 8, 1859 (12 Stat. 957; 2 Kapp. 702) by virtue of which the Nez Perce Indians ceded to the United States a large area lying in Idaho, Washington, and Oregon. Article 1 of the said treaty describes the area ceded as follows:

Article 1. The said Nez Perce tribe of Indians hereby cede, relinquish and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit: Commencing at the source of the Wo-na-ne-she or southern tributary of the Palouse River; thence down that river to the main Palouse; thence in a southerly direction to the Snake River, at the mouth of the Tucanon River; thence up the Tucanon to its source in the Blue Mountains; thence southerly along the ridge of the Blue Mountains; thence to a point on Grand Ronde River, midway between Grand Ronde and the mouth of the Woll-low-how River; thence along the divide between the waters of the Woll-low-how and Powder River; thence to the crossing of Snake River, at the mouth of Powder River; thence to the Salmon River, fifty miles above the place known as the "crossing of the Salmon River;" thence due north to the summit of the Bitter Root Mountains; thence along the crest of the Bitter Root Mountains to the place of beginning.

From this tract there was reserved a smaller area for use and occupancy by the Nez Perce as their home and as a general reservation for other friendly Indians. This tract is described as follows in Article 2 of the Treaty:

Article 2. There is, however, reserved from the lands above ceded for the use and occupation of the said tribe, and as a general reservation for other friendly tribes and bands of Indians in Washington Territory, not to exceed the present numbers of the Spokane, Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians, the tract of land included within the following boundaries, to wit: Commencing where the Moh ha-na-she or southern tributary of the Palouse River flows from the spurs of the Bitter Root Mountains; thence down said tributary to the mouth of the Ti-nat-pan-up Creek; thence southerly to the crossing of the Snake River ten miles below the mouth of the Al-po-wa-wi River; thence to the source of the Al-po-wa-wi River in the Blue Mountains; thence along the crest of the Blue Mountains; thence to the crossing of the Grande Ronde River, midway between the Grande Ronde and the mouth of the Woll-low-how River; thence along the divide between the waters of the Woll-low-how and Powder Rivers; thence to the crossing of the Snake River fifteen miles below the mouth of the Powder River; thence to the Salmon River above the crossing, thence by the spurs of the Bitter Root Mountains to the place of beginning.

\* \* \*

In consideration of this cession, the United States agreed to pay to the Nez Perce, in addition to certain goods and provisions distributed to them at the time of signing of the treaty, the sum of \$200,000 to be paid in a manner prescribed in the treaty over a period of 20 years after ratification of the treaty. Further, schools were to be constructed, maintained, and conducted by the government; blacksmith shops, a sawmill, a flour mill, a hospital, and other necessary buildings were to be constructed, maintained, and kept in service for 20 years. The government also agreed to pay the head chief \$500 each year for 20 years, and to provide him with a suitable house, adequately furnished, on ten acres of land.

The petitioner herein alleges that "upon and prior to June 11, 1855, from time immemorial, petitioner and the members of petitioner tribe continuously held, occupied, possessed and owned, by right of aboriginal use and occupancy that certain land and territory" described according to geographic landmarks and more particularly described in Paragraph 5 of the amended petition as follows:

Commencing on Palouse River approximately two miles above present-day Yale Station and four miles below present-day Avon, Idaho; thence running generally westerly with the crest of the Thatuna Range to a point on the boundary of Washington and Idaho approximately five miles north of Moscow, Idaho;

Thence going southerly to Bald Butte and Colton, Washington, and following the ridge bounding Steptoe Canyon on the east, crossing the Snake River and proceeding westerly along the divide bounding the waters of Pataha on the north to its junction with the Tucannon River;

Thence turning southeasterly and following the Tucannon River to its source; thence to Mount Horrible and following Driveway Ridge to a point where the waters of Crooked Creek enter the Wenaha River approximately six miles westerly of Troy, Oregon; thence southwesterly along the route separating the waters of Grande Ronde from those of the Wenaha River to Lookout Mountain and by way of Jarboe Meadows to a point above the juncture of the Grande Ronde and the Wallowa;

Thence southerly and somewhat easterly along the divide separating the waters of the Grande Ronde and the Wallowa to Bald Mountain, Cartwheel Ridge, Squaw Butte, China Cap, Burger Butte, Granite Butte, Eagle Cap, Jackson Peak, Krag Peak and generally along the divide bounding on the east the waters of the Powder River to the mouth of the Powder River on the Snake;

Thence south following the Snake River to a point approximately five miles north of Payette, Idaho;

Thence easterly between Cherry Gulch and Sand Hollow to cross Little Willow Creek about one mile below a modern reservoir and continuing east along the drainage of Little Willow Creek, Willow Creek, crossing Squaw Creek and meeting the North Fork of Payette River about three miles above its mouth and following the North Fork to its junction with the Payette, thence ascending the South Fork of the Payette to its juncture with the Middle Fork;

Thence easterly and northerly on the divide bounding on the east the drainage of the Middle Fork of the Payette River, the South and East Forks of the Salmon River to Chilcoat Mountain; easterly along the divide marking the northern limits of the drainage of Pistol Creek, crossing Indian Creek and Marble Creek to the divide bounding the drainage of Marble Creek on the east, and northerly with the divide to Shell Rock Peak, northeasterly with the divide bounding on the south the drainage of Big Creek, crossing the Middle Fork of the Salmon River some five miles above the mouth of Big Creek and proceeding to Wilson Mountain, Mount McGuire, following the divide bounding on the west the drainage of Garden Creek to a point on Salmon River about a half mile below the mouth of Panther Creek;

Thence north on the divide between Owl Creek and Boulder Creek to the crest of the Bitterroot Mountains, and north along the crest of the Bitterroot Mountains to the divide bounding on the north the waters of the North Fork of the Clearwater River in T. 14N., R. 11E., Boise Meridian, and

following that divide to Pot Mountain Ridge, and along the divide between Quartz Creek and Skull Creek to Bald Knob, crossing the North Fork of the Clearwater River and following the divide between Washington Creek and Beaver Creek, then that between both Adler and Reed Creeks and Silver Creek, crossing the North Fork of the Clearwater River at approximately the northwest corner of Section 31, T. 11 N., R. 4 E., Boise Meridian, and proceeding along the divide opposite it and bounding on the north the waters of Swamp Creek, northwesterly to Little Green Mountain, crossing Elk Creek and continuing northwesterly to the crest of the ridge including Jackson Mountain, crossing the Potlatch River a quarter mile south of modern Bovill, Idaho, and continuing with the divide to Mica Mountain, thence southwesterly to the place of beginning.

This described area is depicted on a map prepared by petitioner's expert witness, Dr. Verne Ray, which is Petitioner's Exhibit 2-G. The area claimed is outlined on the map by a red border line. The topographic features of this area are shown on Petitioner's Exhibit 138-A.

Defendant contends that the maximum area shown to have been held by the Nez Perce Indians as their aboriginal lands is that area shown on Defendant's Exhibit 24-A, which is a map prepared by the defendant's expert witness, Ethnologist Stuart A. Chalfont. This area is depicted on said exhibit by a red border line.

Petitioner further alleges that at the time of the ratification of the Treaty of 1855 the tract of land aboriginally owned by petitioner was in excess of that described in the treaty, and of far greater value than the amounts the defendant agreed to pay.

The Commission makes the following findings of fact in relation to the area of aboriginal title of the Nez Perce Tribe of Indians as of March 8, 1859.

FINDINGS OF FACT

1. The petitioner timely filed the claim herein pursuant to authority of the Indian Claims Commission Act of August 13, 1946, c. 949, 60 Stat. 1049, 25 U.S.C. § 70(a), et seq. Petitioner is an Indian tribe residing within the territorial limits of the United States and has a tribal organization recognized by the Secretary of the Interior as having authority to represent such tribe. Members of the tribe reside principally upon the Nez Perce Indian Reservation in the State of Idaho. Some reside on the Colville Indian Reservation in the State of Washington.

2. Hearings were held on this phase of this matter in the Courtroom of the Commission in Washington, D. C. before the three present members of the Commission. Expert testimony with supporting documentary evidence was received. Dr. Verne F. Ray, Professor of Anthropology at the University of Washington, Seattle, Washington, testified for the plaintiff. Mr. Stuart A. Chalfant, who, at the time of the hearings, was employed as Director of the System Development Corporation, Santa Monica, California, a company engaged in system training programs for the United States Air Force, testified for the defendant. After direct and voir dire questioning by counsel both witnesses were deemed qualified to testify on the merits of this matter. The documentary evidence offered by respective counsel and received for the record was, in large part, secured and supplied by these witnesses and formed, in part, the basis for their testimony.



Thus, the record herein, which forms the basis of our decision as to the extent and location of the area of land aboriginally owned by the Nez Perce Indians, consists of the testimony of expert witnesses in hearings before the Commission in this matter; annual reports of the Bureau of Indian Affairs; official and private reports and maps of explorers in the area; studies and reports of anthropological and other experts from official and private sources; official correspondence and other documents, departmental and legislative in nature; and official accounts and reports of relevant treaty procedures and negotiations.

3. The area involved in the issues of this matter relating to the aboriginal territory of the Nez Perce at the critical date herein was described and mapped numerous times prior to the passage of the Indian Claims Commission Act. Most of the maps, reports and other documents presented for consideration herein were prepared prior to 1900. Most of the anthropological and ethnographic work has been done since 1900. These latter are chiefly the products of early scholarly studies conducted in efforts to determine aboriginal tribal distribution of the "Plateau Indians."

4. In 1936, Dr. Leslie Spier, Professor in the Department of Anthropology, University of Washington, submitted a study entitled Tribal Distribution in Washington. As a part of the study Spier included a map which covered the general area involved in the issues presented herein. On this map he has drawn a boundary line which gives his conception of the Nez Perce area. In Washington State the area depicted included an area north of the Snake River from its point

on the Washington-Idaho border to its confluence with the Tucannon River and the area lying generally to the south and southeast in the southeast corner of Washington.

5. Dr. Verne F. Ray received his Bachelor of Arts and Master of Arts degrees at that institution where he was a student of Dr. Leslie Spier; and later received his Ph. D. degree from Yale University. He is Past President of the American Ethnological Society; member of the Board of the Human Relations File (an organization of American Universities for research in anthropology); member of several professional associations in his field; Committee Chairman for the Association of American Universities in connection with the field of anthropology; recipient of a number of grants for research in this field, including those from the Carnegie Corporation, American Council of Learned Societies, National Institute of Mental Health and the National Science Foundation. Ray has been engaged from time to time in original anthropological investigation and field work with American Indians, particularly in the western part of the United States, since 1928. He has also done such original work in Alaska and in Mexico. As a result of this work he has written and had published many books, papers and book reviews in this field. Relevant maps have also been prepared and published.

Dr. Ray has testified in a number of matters before the Indian Claims Commission as an expert witness. These appearances have been for the plaintiffs involved.

Dr. Ray first became interested in the Nez Perce Indians in the late 1920's. He was particularly interested in the matter of tribal distribution and the southern boundary of the Nez Perce territory. In pursuing his interest he visited all of the tribes of the plateau and spent considerable time among the Nez Perce seeking informants and engaging in extensive field research. He also delved into all historic and scientific material bearing on the subject. Finally, Dr. Ray spent some time in the field with the southern neighbors of the Nez Perce, the Shoshone, to verify the information related to him by his Nez Perce informants.

6. In 1936, Dr. Ray wrote an article which was published in the Pacific Northwest Quarterly, a publication of the University of Washington (Vol. 27). The article, entitled Native Villages and Groupings of the Columbia Basin, was accomplished through the sponsorship of the Department of Anthropology of the University. The article is chiefly based on the results of a field survey of Indian informants from the various tribes of the region east of the Cascade Mountains. He stated in part:

Detailed and reliable information regarding the locations of Indian villages and territorial distribution of native groups holds a wide range of interest and value for the historian, geographer, archaeologist, and ethnologist. Unfortunately this type of information will be all but impossible to obtain from the Pacific Northwest within the space of a few years. It has been in the hope of saving as much of this important data as possible that the work leading to the presentation of this paper has been pursued.

All of the material here recorded has been gathered directly from native informants with the exception of supplementary data quoted from the work of other ethnologists who have been engaged in the same field. Informants were selected so that the information was furnished from direct experience or from knowledge gained from parents or others of the same generation. Many of the villages here named and located were birth-places or residences of informants themselves or were visited by them during youth. A few villages in the area had been abandoned as the result of white encroachment as early as 1880 but major displacements did not occur until after the turn of the century. Indeed, it was not until 1858 that the region was open to settlement by whites, and the railroad did not appear until 1883.

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Thus the Indian villages, which for the most part were off the routes used by the migrating whites, remained largely unmolested until well into the lifetimes of many living natives.

The picture drawn here, then, will refer strictly to aboriginal conditions as they existed around 1850. Where information furnished referred to a somewhat later period it may safely be assumed that little movement had occurred during the intervening period.

It is of especial importance that this date be emphasized with regard to the data here presented for the territorial distribution may have been very different a hundred years earlier, due to native movements uninfluenced by direct contact with whites.

\* \* \*

(Pet. Ex. 2-b, pp. 99-101  
Footnotes omitted)

Ray included a map with this article (Fig. 1, p. 103) which he designated as "Native territorial distribution of the northern Plateau about 1850." This map covered a portion of Washington, northern Oregon and western Idaho. The territory which Dr. Ray ascribed to the Nez Perce Indians in Washington covered an area south of the Snake River

from its entrance at the Washington border to its juncture with the Tucannon River, a somewhat lesser area than that depicted by Dr. Spier, supra. In Idaho, Dr. Ray included an area extending as far south as the region where the Weiser and Payette rivers joined the Snake River. In Oregon he included generally the areas drained by the lower Grande Ronde and the Wallowa, Minam and Imnaha rivers. This does not include the upper portion of the Grande Ronde, generally known as the Grande Ronde Valley.

7. Dr. Ray wrote another article on this general subject in 1938 entitled, "Tribal Distribution in Eastern Oregon and Adjacent Regions." (American Anthropologist, Vol. 40, No. 3, pp. 384-395, Pet. Ex. 2-c) This article also included his conception of Indian tribal distribution as depicted in a map (p. 386), which differs from his 1936 map in some respects.

On this map he places the Nez Perce northwest corner boundary more distinctly but brings it in such a way as to show the Palus-Nez Perce boundaries cutting north and south approximately twenty miles west of the Washington-Idaho line from a point slightly north and west of the present city of Moscow, Idaho; thence crossing south of the Snake and turning west in almost a straight line to the juncture of the Snake and the Tucannon rivers; thence approximately the same as on the 1936 map to the south and southeast in the southeast corner of Oregon; and south to the vicinity of the Payette River in Idaho; and with an east-west line on the north from the point in Washington northwest of Moscow, Idaho, running east through that state, representing

roughly the area of the drainage of the Clearwater River to the southern border of the Coeur d'Alene Indians.

This was a continuation of Ray's former study. He contends that his field investigations and studies support the thesis that at the start of the nineteenth century the Sahaptin speaking Indians, which include the Nez Perce, were sufficiently strong and aggressive to expand their homelands to the south by displacing their southern enemies, the Shoshone, Bannock and Paiute; that this was characterized by continual hunting, gathering, fishing and related subsistence activities by the Nez Perce in the southern area abandoned by the said southern tribes for the period from early in the 19th century to and through the date of U. S. sovereignty and therefrom to the date of cession; that this use and occupation by the Nez Perce was exclusive; and that this exclusive use and occupation extended as far south as the Payette River area.

8. After the date of the claim herein, Dr. Ray was engaged as an expert witness for the petitioner. He had continued to be and is presently on the faculty of the University of Washington. In his preparation for this case Dr. Ray drew upon his extensive past investigation, studies and reports in this field, with especial reference to those which related to the Nez Perce and the surrounding Indian tribes. He also studied, considered, analyzed and testified on the basis of the available historical and anthropological documents in the field.

9. As a part of Ray's preparation for this matter he prepared a number of maps which have been made a part of this record. Petitioner's

Exhibits 2-G and 138-A are those on which Dr. Ray has drawn boundary lines which depict his expert opinion of the lands aboriginally used and occupied by the Nez Perce as of the date of ratification of the Treaty of Cession, March 8, 1859. On Petitioner's Exhibit 2-G he has included appropriate markings and lines to show what in his opinion the background evidence justifies the location of the Nez Perce villages and trails used in their hunting, fishing and gathering throughout the area claimed in an annual cycle of their subsistence activities. Petitioner's Exhibit 138-A consists of six topographic maps from the Army Map Service on which are drawn the same boundary lines as shown on Petitioner's Exhibit G. At the request of the Commission, counsel for the petitioner furnished six Transverse Mercator Projection Maps, which depict the topography of the area in miniature duplication of contour topography, and on which are the same proposed boundaries of the Nez Perce as shown on Petitioner's Exhibit 2-G and 138-A. These maps were prepared and printed by the U. S. Army Map Service. They appear in the record as Commission's Exhibit No. 1. Thus, the Commission has had for consideration a more than usual realistic picturization of the relative height of mountains, depth of valleys, location of streams, lakes, valleys, and open country, all so important in relationship to the determination of probable location of villages, hunting trails, fishing and gathering areas, etc., of these Indians.

A small reproduction of Petitioner's Exhibit 138-A was made for handy reference by Dr. Ray (Pet. Ex. B). Ray used this reproduction as a part of his "Excerpts, Notes and Maps" prepared as digest and ready

reference work to his source materials (Pet. Ex. 2-F). This reproduction appears therein (pp. 129-149) to show Ray's opinion and consideration of these sources in relation to his proposed aboriginal boundary lines as follows:

- (1) Portion of "Map of the Columbia" by Alexander Ross; drawn in 1821; annotated 1849; Pet. Ex. No. 24;
- (2) "Map Showing Locations of the Indian Tribes" by Albert Gallatin (1836); Pet. Ex. No. 125;
- (3) "Bonneville's Maps" from the Rocky Mountains by Washington Irving (1837); Pet. Ex. No. 6-B;
- (4) "Narrative of the United States Exploring Expedition...1838-1842" by Commander Charles Wilkes, U.S.N. (publication date); Pet. Ex. No. 16-C;
- (5) Map by P. J. DeSmet, S.J. (1851); Pet. Ex. No. 46;
- (6) Portion of "Map of Washington Territory, Showing the Indian Nations and Tribes (Indian names and boundaries by G. Gibbs, 1853-54)" by Gov. I. I. Stevens and Dr. George Gibbs; Pet. Ex. No. 63;
- (7) Map by Brevt. Major G. O. Haller, accompanying report by Agent R. R. Thompson to Supt. Joel Palmer; Pet. Ex. No. 58;
- (8) Portion of a "Map of the Territory of the United States ... Explorations for a Railroad Route ..." compiled by Lieut. G. K. Warren 1854-57; Pet. Ex. No. 131;
- (9) Portion of "Sketch Map of the Oregon Territory" (ca. 1854); Pet. Ex. No. 59;
- (10) Annual Report, Commissioner of Indian Affairs, 1857 (Agent William Craig): "The Nez Perce country is bounded on the west by the Palouse River, which lies north of the Snake River, and the Tucannon, which lies south of the Snake River; on the north by the range of mountains between Clear Water and the Coeur d'Alene; east by the Bitter Root Mountains; on the south they are bounded near the line dividing the two territories". The south boundary so described has been omitted by Ray for uncertainty of the meaning of the word "near". Pet. Ex. 87, p. 353;



- (11) "Map of Indian Nations and Tribes" by Isaac I. Stevens, Governor and Superintendent of Indian Affairs (March 1857); Pet. Ex. 88;
- (12) "Map of the Nez Perce Reservation in Washington Territory in 1862" showing Indian villages as of that date in triangles; records of the Bureau of Indian Affairs, Map No. CA 426 I (RG 75) National Archives;
- (13) "Distribution of Tribes of the Upper Columbia Region" by James Mooney, in "The Ghost Dance Religion" (Map date: 1894); Pet. Ex. No. 7-A;
- (14) Nez Perce Cession of 1855 "Indian Land Cessions of the United States" by Charles C. Royce (1900); Pet. Ex. No. 100;
- (15) "The Nez Perce Indians" by Herbert J. Spinden (1907), pp. 172-3; Pet. Ex. No. 101;
- (16) "The Territory of the Nez Percés . . ."; "The Nez Percés" in "The North American Indian" by Edward S. Curtis (1911), p. 3; Pet. Ex. No. 4;
- (17) "Tribal Distribution in Washington" by Leslie Spier (1936); Pet. Ex. No. 126;
- (18) "Tribal Distribution in Northeastern Oregon and Adjacent Regions" by Verne F. Ray (1938); Pet. Ex. No. 2-C;
- (19) Language affiliations and cultural element distributions (various maps, on the same base, plotting cultural distributions) from "Cultural Relations in the Plateau of Northwestern America" by Verne F. Ray (1939); the southern boundary purports to represent conditions prior to 1800. Ray states "During the nineteenth century this boundary was situated somewhat further south"; Pet. Ex.. 2-D, p. 3;
- (20) Oregon Historical Society Map (1958), on which the boundary line is open at the northwest corner because the Oregon Historical Society map does not present a boundary between the Nez Perce and the Palus; and
- (21) "Aboriginal Tribal Territory of the Nez Perce Indians" by Dr. Verne F. Ray (1962) on which black line purports

to show Ray's conception of the Nez Perce aboriginal territory; Pet. Ex. No. 138.

Ray also used this reduced sized map to show his findings of (1) "Principal Aboriginal Hunting Areas of the Nez Perce Indians", on which the names of the game hunted were placed in specialized areas, omitting deer because, in Ray's opinion, they were hunted intensively throughout the tribal territory (Pet. Ex. No. 2-K); and (2) "Principal Aboriginal Fishing Sites and Root-digging Grounds of Nez Perce Indians" by Verne F. Ray, on which the arrows indicate principal fishing sites, and the word "roots" designates the centers of major root-digging areas (Pet. Ex. 2-L).

10. In summary, Dr. Ray testified on the basis of his studies and investigations in part as follows: (1) that the terms "Chopunnish" and "Nez Perce" are the same identifiable group of Indians as they appear in the relevant documents of record; (2) that in some instances explorers who came upon the Nez Perce Indians west of the Bitterroot Mountains mistakenly referred to Nez Perce Indians as Flatheads. For example, Sgt. John Ordway of the Lewis and Clark party, in his journal describing his travels through Nez Perce territory (see Pet. Ex. 121, p. 289, fn. 2); (3) that the exploration and accounts thereof of Lewis and Clark in the early 1800's, and that of Bonneville, are of paramount importance in any study of the Nez Perce use and occupancy of the area involved; (4) that other explorers and writers who traveled through the area involved have not written any accounts relevant to the Nez Perce Indians which contradict the descriptions made by Lewis and Clark. For example,

Governor Isaac Stevens of Washington Territory, in his description of the survey to locate a route for a railroad to the Pacific and who took Nez Perce Indians along for protection and interpretation during his work; (5) that Lewis and Clark's mappings were very close to those made by Ray himself, and that these closely conform to the information gleaned from Bonneville's statements as to the area west of the Snake River; (6) that there were numerous important well-worn trails throughout the area, the usage of which is well documented. For example, the Lolo Trail and the Oregon Trail; (7) that the Nez Perce gained the use of the horse in the early 1700's from southern sources and were extensively dependent upon the use of the horse in their economy, using it as they did mainly for hunting and, as reported by Governor Stevens, having an estimated 20,000 horses among them; (8) that Lieut. Ordway of the Lewis and Clark Expedition extended the exploration of that party into the Salmon River area which extends through the middle portion of the area involved east of the Snake River; (9) that there were no buffalo in the claimed area and that the Nez Perce Indians annually traveled east of the Bitterroot Mountains in Flathead country to hunt these animals, using the various trails over the Bitterroot Mountains and skirting around the south portion of the range thereof into that country; (10) that the Nez Perce horses wintered at the lower altitudes and that these Indians developed a distinctive type of horse known as the Appaloosa; (11) that deer were hunted throughout the area but that they were relatively small in number; (12) that Captain Bonneville made explorations through a portion of the area

involved in 1832 and reported his findings in his journals in which he identified the Nez Perce west of the Snake River and which exploration was the only one made through this area prior to the treaty date in 1859, and that Bonneville's maps and descriptions which include specific locations of Nez Perce villages, etc., correspond with those which Ray has prepared; (13) that the master map which Ray prepared (Pet. Ex. 2-G) reflects the result of his studies and his investigations, giving village sites, trails, etc.; (14) that the Nez Perce Indians in aboriginal times engaged in an annual cycle of subsistence activities which are well portrayed in the works of Spinden, an archeologist (see Pet. Ex. 101), and which cycle consists of specific times of the year for fishing for salmon, digging camas and other roots, hunting the game, etc.; (15) that the economic cycle of these Indians is well stated in Spinden (1907) and David Thompson (1911); (16) that the economic cycle can generally be summarized as ten months salmon fishing and two months berry picking, with hunting most of the year; (17) that the principal items of food in the diet of the Nez Perce were roots, salmon and other fish, and game; (18) that the Nez Perce were strong in their insistence that they had a minimum of root lands for their subsistence, as shown. For example, in their reluctance to sell roots to Lewis and Clark and by the importance Governor Stevens gave to the time lost by the Nez Perce for root gathering and hunting in order to attend the 1855 Walla Walla council for six weeks, for which the Governor recommended that the Federal Government try to make restitution; (19) that the root grounds were worked by women during

the same time that the men were engaged in a period of hunting;

(20) that the area has well-defined root digging sites for the camas and the kous situated in portions of the area which are referred to as camas digging grounds (see Pet. Ex. 2-L), which are more particularly designated as being in the general vicinity of Moscow, Idaho, southwest and southeast of Lewiston, Idaho, and in the southern portion of the territory claimed in the State of Idaho north and south of the Weiser River and in the lower Payette region; (21) that roots of the camas and kous were dried and stored for winter subsistence since meat and fish could not be so successfully preserved; (22) that with women working steadily they could harvest only one-half bushel of roots per day because of the difficulty of extracting them from the ground with the primitive utensils available; (23) that the most important fishing period occurred in the early spring after the winter supply of dried roots was exhausted; (24) that salmon fishing was one of the major sources of subsistence since the main rivers through the area, which include the Snake, the Clearwater, the Salmon, and their branches, were well supplied with this fish in aboriginal times (see Pet. Ex. 2-L); (25) that certain locations within the area involved contained salt licks which were used by the game which was hunted, the location of which has been ascertained through informant interviews (see Pet. Ex. 2-K); (26) that the entire area was used for hunting and that there were particular locations in which certain game was looked for - for example, the elk appeared pretty well throughout the area; bear was found in the southern part; antelope were found in the area west

of Lewiston, Idaho, in the State of Washington and in the area between the Payette and Weiser Rivers in the southern portion of the claimed area in the State of Idaho, as well as in the lower region of the Salmon River; moose were found in the eastern portion of the area, and mountain sheep were found in the area between Joseph Creek and Imnaha River, as well as in the area immediately east of the Snake River in the central portion of the claimed area; (27) that the principal hunting until the 1880's was done with the bow and arrow but that firearms were also in their possession as early as the 1850's; (28) that the Nez Perce were conscious of their boundaries and that when other tribes came into the areas of their boundaries they came either to fight, as in the case of the Snakes and the Shoshones from the south, or with permission, as in the case of the peaceful neighbors of the Cayuse, Umatilla, Walla Walla, Palouse, Couer d'Alene and Flat-head; (29) that the horse which was acquired in 1730 by the Indians made it possible for the Snake Indians and the Nez Perce to cover great distances and that the Nez Perce were superior in the number of horses and their ability to engage in warfare which occurred repeatedly during the 1700's and the first quarter of the 1800's when the Snakes invaded the southern portion of the claimed territory; (30) that up until approximately 1820 to 1830 the Snakes continued to invade the southern portion of the area claimed herein but were never able to do more than to hit and run; (31) that by some time in the period from 1820 to 1830 the Nez Perce had so successfully repelled the repeated invasion attempts by the Snakes because of their superiority in horses and fighting

power that they were able to firmly establish themselves in exclusive use and occupation thereafter in the southern portion of the area under claim up until the critical date involved herein; (32) that during the long period of warfare through the 18th century and the early portion of the 19th century the Snakes had come as far north as the main Salmon River, but that they never stayed overnight if they encountered the Nez Perce; (33) that the above information concerning Snake-Nez Perce warfare was gathered during Dr. Ray's interviews for family tradition from Old Nez Perce and Snake Indians, but principally with the Nez Perce because he depended, so far as the Snakes were concerned, chiefly upon the works of other anthropologists; (34) that as of 1855 there were approximately 6,000 Nez Perce, which represents approximately 2,000 less than estimated by Lewis and Clark in 1805; (35) that there are many varying estimates of population, several of which refer to the number of warriors of which he believes a conservative estimate would be on a ratio of one warrior to five other Nez Perces; and (36) that the reduction of 2,000 from Lewis and Clark's estimate in 1805 of 8,000 Nez Perce to his estimate of 6,000 in 1855 can, in some degree, be accounted for by reason of intervening epidemics of the white man's disease, although in the case of the Nez Perce there was less white contact than with other tribes and this was not as serious as in the case of other Indians.

In addition, Dr. Ray covered all facets of information bearing on the question of title.

11. Mr. Stuart A. Chalfant testified as an expert in the field of anthropology for the defendant.

Mr. Chalfant has appeared and testified on behalf of the defendant in a number of prior cases involving claims of Indian tribes which are in the same general geographical region involved in the instant claim, including the Coeur d'Alene, Spokane, etc.

Mr. Chalfant received his A.B. degree from Dartmouth College in 1949; and received the M.A. degree from Columbia University in 1951. He has partially completed the requirements for the Ph.D. degree in work which he has performed at Columbia.

Shortly after he received his Master's degree, Mr. Chalfant entered into a contract with the defendant in 1952, to prepare himself for testimony as an expert in anthropology, and to conduct the necessary field investigation and to make such studies and collect such source materials as relate to the issues concerning the location, extent and character of Nez Perce aboriginal title in the area claimed in this matter before this Commission.

Chalfant conducted an intensive field investigation from June to December, 1952. The Council of the Nez Perce Tribe cooperated with Chalfant. A list of 82 of the oldest members was submitted. Of these, approximately one-third were contacted; and, of these, nine proved to be capable of assistance as informers of family tradition.

As to the source materials, i.e., maps, historical materials such as explorers' accounts, reports and correspondence of U. S. Officials, and other relevant material, Mr. Chalfant used the New York Historical



Society Library, the Public Library of New York City and the National Archives. He made an intensive study using the facilities of the American Museum of Natural History.

Mr. Chalfant prepared a map on which he drew the geographic boundary lines which reflect the opinions and conclusions to which he came as a result of his investigations and studies (Def. Exs. 24, 24-A).

12. The boundaries drawn by Chalfant (Def. Ex. 24-A) differ from those drawn by Dr. Ray in the following principal ways: On the north Chalfant's line runs much closer to the southern line found by the Commission in the Coeur d'Alene case (Docket 81); on the northwest, the Chalfant line follows the course of the Snake River to its confluence with the Pataha River, whereas the Ray line is to the south thereof, running through the middle of that area south of the Snake to the mouth of the Tucannon River; on the west Chalfant has drawn his line to much of the east of the Wallowa Mountain range in the area south of the confluence of the Grande Ronde and Willowa Rivers, whereas Ray's line generally follows the crest of the western spur of that range, Chalfant's western line runs only as far south as a few miles north of the 45th parallel, whereas Ray's line runs to a point on the Snake River several miles south of the town of Weiser, Idaho, thus affecting the entire southern boundary lines; Chalfant's southern line runs east and slightly south to the location of present McCall, Idaho, whereas Ray's line runs east from a few miles south of Weiser, Idaho, to a point between the 115 and 116 degrees of longitude; on the east Chalfant's line runs gradually north and east to just south of the 30th parallel, thence to the north

and west to his north line, and generally runs along the lower mountainous elevations on the western side of the Bitterroot Range, whereas Ray's east line runs, after a north-east directional line thereto from the southern line, along the crest of the said range to join his northern line.

Thus it is seen that the line claimed by the defendant is more generous to the Nez Perce on the north and northwest except for the area of the camas plain in the general Moscow, Idaho, area; and that the petitioner's lines on the west, south and east embrace more area than those drawn for the defendant.

13. Mr. Chalfant's report is documented. It includes his analysis of the source material and of the information received from his aged Nez Perce informants. His opinions and conclusions on the various aspects of Nez Perce aboriginal title are set out in detail. These cover the various aspects of socio-political groups and organizations, the aboriginal subsistence economy, and a delineation of Nez Perce aboriginal territory.

In many of the basic points which are relative to these segments of the problem before us which were the subject of presentation by Mr. Chalfant, his conclusions are much the same as those of Dr. Ray.

14. In summary, Mr. Chalfant, based on his studies and investigations, testified in part as follows: (1) that the Nez Perce Tribe was the furthest northeast located of the Sahaptin-speaking Indians; (2) that they were the largest and most powerful of the Indians west of the Bitterroot Range and east of the Cascades; (3) that they originally before the coming of the horse in 1720 tended to live apart in village groups but were related by ethnic, cultural and blood ties; (4) that

with the coming of the horse they tended to become more cohesive in settlement, political and social patterns, tending to larger political groupings and clustering and the emergence of tribalism; (5) that they are a well-knit, closely related group of bands of Indians which form an identified tribe of American Indians - in other words, a single people with a cultural and linguistic commonalty, with well recognized subdivisions (bands); (6) that with the coming of the horse the Nez Perce gradually acquired some of the plains culture and extended the area in which they sought subsistence into the plains and to the east of the Bitterroot Range for the buffalo; (7) that their original settlement pattern was principally along the streams and in the valleys and nearby plateaus supplemented by hunting in the mountains and as a predominant village economy; (8) that with the coming of the horse this remained the core of their economy pattern, but that their hunting activities expanded beyond what he believes was their aboriginal area without creating additional exclusive aboriginal territory; (9) that their annual cycle of living -- social, political and economic, tended to become quite stable; (10) that their villages along the rivers and in the valleys were permanent in the sense that they spent their winters there and returned there when not engaged in their seasonal hunting, fishing and gathering activities; (11) that they had had temporary camping sites throughout the area to which they tended to return each season in connection with their subsistence activities; (12) that most families returned each winter to the same village location, but that some traveled back and forth even in winter for visiting and relocation, with some

bands having several locations to which they alternated; (13) that the family patterns were such that they were not necessarily bound to live at a fixed spot, but that in general the basic settlement pattern was very stable; (14) that, although their language was Sahaptin, their dialect was slightly different than other Sahaptin-speaking Indians, and closest to that of their neighbors, the Palus; (15) that the Nez Perce subsistence was primarily fish and meat supplemented by the camas and kous roots and berries which they gathered; (16) that their subsistence economy pattern was a well established annual cycle in which the men hunted for the bear, elk, mountain sheep and deer within the claimed area, and for the buffalo to the east in Flathead country, and in which fish, principally salmon, were taken from the many streams throughout the area, which were the Salmon, Clearwater, and Snake Rivers and their tributaries, and in which they gathered roots and berries on the prairies in this area; (17) that the Nez Perce did not trade extensively in furs as was the case of other Indian tribes who were in closer contact with the whites, but that some fur traders passed through a portion of the area and recorded the location of certain Nez Perce villages along certain streams; (18) that they served as intermediaries in trade between the Flatheads to their east and the plateau Indians to their west; (19) that a number of explorers traversed portions of the area and noted relevant information in their journals; (20) that they were friendly with all neighboring tribes except the Snakes, Bannock, Paiutes and Shoshonees to the south and the Blackfeet to the east; (21) that the population in 1805 given by Lewis and Clark after deducting

for tribes included in their overall figure of 8000 who were not Nez Perce was 6000; (22) that the effect of the white man's disease in the intervening time between 1805 and 1859 was to decrease this population, although not as much as with other tribes since there was less contact; (23) that the available estimates of population in the various intervening years tend to be too low because not all Nez Perce contacted at one counting period by any one person or group doing the work; (24) that in his opinion at treaty time there were several thousand or between three and four thousand Nez Perce; (25) that the Nez Perce and their aforementioned southern Indian enemies continually fought over the use of the area in the southern portion of the claim herein up until the end of the first quarter of the 19th century; (26) that after the first quarter of the 19th century a reasonable peace was effected between the Nez Perce and their traditional southern enemies and thereafter they used the southern portion of this claimed area peaceably and jointly; (27) that no Flathead Indians were found in the northeast portion of the claimed area but that based on statements of explorers that certain locations there, specifically at Chamberlain Meadows and also close to the Lolo Trail and Lolo Pass through the Bitterroots through which this trail runs, there were indications of fishing camps and other temporary camps which were thought to be Flathead and that it is believed these were locations where Flatheads came to trade with the Nez Perce; (28) that the eastern line should run, instead of along the crest of the Bitterroot Range, in a north-south line some distance to the west throughout the mountainous area;

(29) that he depended in large degree upon the Swindell and Suphan reports in establishing village and trail locations and boundaries which he has marked on Defendant's Exhibit 24-A, a map of the area, but that he also relied on the other sources; (30) that the southern line should run from a point approximately twelve miles west of 117 degrees longitude and six miles north of 45 degrees latitude in the State of Idaho running east and southeast to the location of present day McCall, Idaho, picking up a line there running northeasterly to the Salmon River crossing and thence along the aforesaid eastern line; (31) that the western line should start at the mouth of the Pataha River, thence to the mouth of the Tucannon River, thence south along the red line on Defendant's Exhibit 24-A which crosses the Grand Ronde River and follows thereafter the Wallowa River to Wallowa Lake and thence south to the point described above as the beginning of the southern line; (32) that the northwestern line should follow the Snake River from the mouth of the Pataha River, departing therefrom to include certain areas north of that river as shown by the red line on Defendant's Exhibit 24-A; and (33) that the northern line is the red line on Defendant's Exhibit 24-A and excludes certain of the Camas and Kous areas south of Moscow, Idaho, on the basis of reports by Governor Stevens and others.

15. Lewis and Clark, who were commissioned by the U. S. government to explore routes for travel and for other purposes, were the first white men to meet the Nez Perce Indians. In the fall of 1805 their party left the Flathead Indians on the eastern side of the Bitterroot Mountains and crossed that range by the Lolo Pass, following the Lolo Trail.

The party almost immediately came upon deserted Indian camps and within a short time met some Nez Perce and were taken to a Nez Perce camp. These were at first mistaken as being Flathead (Pet. Ex. 121, p. 289, fn. 2). After spending some time with the Nez Perce, they went down the Clearwater River to the mouth of the North Fork of the Clearwater and, leaving their horses with the Indians, continued by canoe to the Snake River and thence to the Columbia River and thence to the Pacific Ocean and return.

Lewis and Clark mapped the area and listed the "Choppunish" Indians as possessing 8000 souls and in their journals designated seven geographical groups of "Choppunish" bands. These were listed as follows:

1. Chopunnish Nation residing on Kooskooske (Clearwater) River below the forks and on Colters Creek--2,000 souls. (Pet. Ex. 144, p. 114)
2. Pel-loat-pel-lah Band of Chopunnish residing on the Kooskooske River above the forks, on the small streams which fall into that river west of the Rocky Mountains and the Chopunnish River--1600 souls. Ibid.
3. Ki-moo-e-nim Band of Chopunnish, residing on Lewis River (Snake) above the entrance of the Kooskooske, as far up as the forks--800 souls. Ibid., p. 115
4. Y-e-let-po Band of Chopunnish, residing on a small river which falls into Lewis River above the entrance of the Kooskooske--250 souls. Ibid
5. Wil-le-wah Band of Chopunnish, residing on a river of the same name which discharges itself into Lewis River below the forks, on the southwest side--500 souls. (Ibid)
6. So-Yen-now Band of Chopunnish, residing on the north side of the east fork of Lewis River, from its junction to the Rocky Mountains and on La-mal-ter Creek--400 souls. (Ibid)
7. Chopunnish of Lewis River, residing below the Kooskooske, on either side, to its junction with the Columbia--2300 souls. (Pet. Ex. 144, pp. 114-115, Ibid)

The first map by Lewis and Clark (Pet. Ex. 17) of the area, taken from their journal report (Map #30, part 3 from Vol. 8) is entitled "From Jeffersons River to the Forks of Kooskooske over the Rocky Mountains from the 25th of August to the 9th of October, 1805." "Kooskooske" was the name then used for the presently named Clearwater River. This map is of especial importance because it is quite specific as to the route taken by the party through the Lolo Pass and along the Lolo Trail after the party had left the Flathead Indian country to the east of the Bitterroot Range. It is of interest for the identification of the Nez Perce who were then designated by Lewis and Clark as "Choppunish" that the present North Fork Clearwater River was designated as the "Choppunish River" on this map. Other valuable information is included, as, for example the designation along the river "Pierced Nose villages in a small prairie," "Handsom Country", "Pine", "Encamped 17th September, 1805." This lends credibility to the map and entitles it to great weight.

The next map (Pet. Ex. 18) is No. 44 entitled "Indian sketch - map of the Lewis River system, showing trails and Indian villages." The map, of course, purporting to cover a vast geographical area, but obviously without the benefit of the necessary overall geographic perspective, is limited and distorted. It does, however, serve as a portrayal of the area as best Lewis and Clark were able to visualize it at the time. The map suffers from lack of adequate or accurate geographic direction. For example, to what would appear from our present knowledge of the directions the map depicts a location to the east designated "Shoshone Nation" where we know the Flathead were located. However, it is of



value because it gives a generalized location of part of the area used and occupied by the Nez Perce at that time.

William Clark of the Lewis and Clark Expedition drew a manuscript map (Pet. Ex. 19). This map is quite detailed. It represents the Nez Perce Nation as having a population of 8000. Adjacent tribes are designated. On the south the Shoshone are limited to the west side of Snake River, above the Burnt River.

In the west the Wil-le-wah band of Nez Perce are placed in the Grande Ronde River area and designated a population of 1000. In the north the Nez Perce are placed in the area on either side of the Clearwater River to the Snake River and on the Snake River as far as the area designated for the Palouse. The presently named Snake River was then known as the Lewis River.

A map designated #31 in part 1, Vol. 8 of the "Original Journals of the Lewis and Clark Expedition, 1804-1806" (Pet. Ex. 20) is a sketch of portions of the Clearwater, Snake and Columbia rivers. Nez Perce villages along these rivers are shown. Some of these are located west of the Snake River far below its confluence with the Kooskooske (Clearwater) River. The notation "Part of the Chopunish Nation" appears in two locations of this map. The Willowa area to the west of the Snake River is noted. The detailed notations of the village locations along the rivers, including such descriptions as "cabins of Indians", "3 Lodges of Indians", "Huts of Wood", etc., and the other notations such as "rapids" in the rivers, "encamped 10th October 1805", all

lend great weight to the authority of this map. The Willowa are shown as a separate tribe of 1000 souls.

William Clark also drew a map entitled "A Map of Lewis and Clark's Track, across the Western Portion of North America" (see Pet. Ex. 116). This map likewise places the Chopunish with 8000 souls in the general location of the Snake, Clearwater and Salmon rivers and west of the Bitterroot Mountains. The Shoshone are shown with 4000 souls on several of the western and southwestern branches of the Snake River then known as the Walsh-le-mo, She-com-shenk and Tim-mo-a-men rivers and on the eastern branch named Nemo. No southern boundary is drawn for the Nez Perce. The Snake Indians are shown in the southeast near "Wiser's River." The Shoshone are also shown due east of the present day Payette Lake, at the headwaters of the Salmon River in an area not included in petitioner's claim. The "Wil-le-wah" band of Nez Perce with 1000 souls are placed in an area corresponding to the Imnaha, Wallowa and lower Grande Ronde River basins. On the north the Nez Perce villages are located on the North Fork of the Clearwater, the Clearwater and Snake rivers as far west as the Palouse River.

The Lewis and Clark documents in the record are replete with helpful statements and notations bearing on the issues before us, viz: identifiability as a tribe; use and occupancy; population; relations with the whites; and physical relationship with surrounding tribes (see Def. Exs. 15, 16; Pet. Exs. 17-20, 116, 118-121).

They identified the Nez Perce as "Choppenish or Pierced Noses," and the principal tribe of the "Sahaptian family." Tribal branches,

chiefs, villages, topographical features of the country, the dress, appearance, customs, economic patterns of life, relations between tribes, chieftain leaders, government, etc., were dealt with.

They secured separately from leading Nez Perce who came in from various areas, maps of the area showing the location of these Indians and their villages. These varied only slightly from each other. Notations were received of fishing camps on the Snake, Imnaha, Grande Ronde and other rivers in the area. They noted that the Nez Perce went to the southwest and the south to make war or to repel war with the Shoshone or Snake Indians. Cut Nose and Broken Arm, together with their men, went on a war excursion to the "Snakes" on the south branch of Lewis' (Snake) River in the autumn of 1805 (Plf. Ex. 120, p. 6). In the autumn of 1805 the Nez Perce sent a peace mission to the Shoshone on the south side of the Snake in the plains of the Columbia River drainage. The three messengers were killed and the Nez Perce sent a war party to retaliate. (Ibid, p. 24)

Lewis and Clark dealt with the principal chiefs, and learned of the relations between those chiefs and bands involved. For example, the hierarchy of tribal chiefs were present at the village of Chief Broken Arm who met Lewis and Clark. Their village locations were specified, as, for example, that of Chief Yoomparktim on the south side of the Salmon River. Lewis and Clark couniled with these chiefs on ways and means of achieving peace with the Shoshone. The day following this council the ranking chief, Broken Arm, and the Indians held another council among themselves concerning the subjects

they had discussed with Lewis and Clark which dealt mainly with intertribal peace. Chief Borken Arm ended the council in a ritual manner and emphasized the agreement which had been reached among the various chiefs without dissent. Thus it is apparent there existed a simplified system of government capable of dealing with important matters affecting the life and welfare of the Nez Perce Indians through action taken in concert by various geographically distributed bands.

Lewis and Clark noted specifically that the Shoshones resided beyond the mountains to the southwest of the Nez Perce Indians. (Pet. Ex. 119, p. 94)

16. Alexander Ross was a trapper and trader. He spent several years in the northwest, principally along the Columbia River. He was in the employ of a number of fur trading companies. He kept a journal of his travels (see Pet. Exs. 15 and 23; Def. Ex. 15). He also made a map of the area (Pet. Ex. 24).

In 1824 Ross traveled near Nez Perce territory in present-day southeastern Idaho and along the Snake River.

Ross placed the Nez Perce east of the Snake River between the Palouse River on the north and the Salmon River on the south, with the Bitterroot Mountains forming a natural boundary to the east. He placed the Cayuse Indians in an area opposite the mouth of the Palouse River in the west and northwest (Pet. Exs. 15 and 23).

Ross never entered the southeastern portion of the present claim, although he traveled near there in southeastern Idaho where he encountered the traditional Indian enemies of the Nez Perce. He did meet Nez Perce earlier at Ross Hole in Montana, east of the Bitterroot Mountains.

Ross gave two written descriptions, one of the Shoshone lands and one of the Nez Perce. Petitioner contends neither was nearly accurate, and that the first is unintelligible in terms of landmarks. This landmark placed the northern boundary of the Shoshone on a line running due east from a spur of the Blue Mountains near Fort Walla Walla, crossing the Snake River at the Dalles, to the Rocky Mountains 200 miles north of the Three Pilot Knobs. Petitioner correctly notes that the Dalles is west, not east of Walla Walla and Utes (Def. Ex. 24, p. 12).

The second description follows Ross' crossing of the Bitterroot Mountains at Gibbon's Pass as follows:

\* \* \* This high land is a horn of the Rocky Mountains. It is the dividing ridge between the Nez Perce and Snake Nations and terminates near the Columbia \* \* \* (Pet. Ex. 15, p. 378)

Defendant objects to the petitioner's position on the ground that petitioner agrees to only the portion of the Ross account which agrees with the expert witness, Ray, and notes that Ross places the Nez Perce further east than the expert Chalfont.

We find that the Ross map made in 1821 and annotated in 1849 (Pet. Ex. 24) and his journal (Pet. Ex. 15) of great assistance in determining the aboriginal location of the Nez Perce Indians; but that since Ross did not cover all of the area, and under all of the existing limited means at his disposal for observation and accurate mapping and reporting, his descriptions and depictions are reliable evidence only of the general Nez Perce area which we consider herein with all of the other evidence to form the necessary mosaic for our finished determination.

17. Captain B. L. E. Bonneville, U. S. Army, an adventurer and explorer, entered the claimed area west of the Snake River in 1832. He was the first and only white man to have explored the Nez Perce area west of the Snake River until after the Treaty of 1855 was signed. He remained until at least 1860. Ross, discussed in our Finding No. 16, did not enter this Nez Perce area west of the Snake.

Bonneville found and recorded the occupation of the Nez Perce in the Imnaha, Grande Ronde and Wallowa River basins, including the Minam River area. His observations are found in Petitioner's Exhibit 6-A. His map of the northwestern territory is Petitioner's Exhibit 6-B.

Bonneville started from Snake Indian territory across from the Boise River, intending to travel to Fort Walla Walla by way of present-day Burnt River (flowing into the Snake River north of the town of Weiser, Idaho). He changed his course and headed north along the Snake River. After several false starts Bonneville was able to cross to the Imnaha River and here found his first Nez Perce villages. Earlier he had become acquainted with the Nez Perce and their language and recognized them as such. He continued and crossed to the Wallowa-Grande Ronde River and encountered more Nez Perce villages. He followed the Grande Ronde to the Snake and proceeded to Fort Walla Walla. During this journey he followed Indian trails and visited eight Nez Perce villages.

Bonneville's maps were the first to correctly represent the hydrography of the regions west of the Rocky Mountains. The map of

this area locates the Shoshones south of "Gun Creek", which is the same as modern-named Burnt River (Pet. Ex. 6-A, p. 631), a tributary flowing from the west into the Snake, and south of the Payette River areas. He placed the Nez Perce west of the Snake River in the Blue Mountain area, along the Clearwater (Kookoskee) River on the north and as far east as the headwaters of the Salmon River to the east of the area claimed by the petitioner.

Bonneville's travels are extensively described in his journal which was edited and narrated in The Complete Works of Washington Irving (Pet. Ex. 26).

There are strong indications of economic, governmental and social relationships between the Nez Perce in different geographic locations of the claimed area. They were referred to generally by Bonneville as the upper and lower Nez Perce. (See Pet. Ex. 26, pp. 188, 192, 199, 200).

18. The Reverend Samuel Parker visited parts of the plateau of this area from 1835 to 1837 (Def. Ex. 24). He met the Nez Perce in Wyoming on the Green River and in eastern Idaho on a branch of the Salmon River. From this point he was accompanied by a number of Nez Perce in his travels to the Clearwater and Snake rivers. Parker recorded his travels and experiences in a journal and prepared a map of the area on which he gave his conception of geographical locations. He described the Shoshone country as lying southwest of the southeast branch (Snake River) of the Columbia River.

19. Albert Gallatin traveled a portion of this area in 1836 and prepared a map showing the general location of several of the resident tribes. (Pet. Ex. 125; and see Pet. Ex. 2-F, p. 130) His map placed the Nez Perce, or Sahaptins, as he referred to them, in a territory between the tributaries of the Lewis River and the Salmon River, also designated by him as Lewis River.

Gallatin delineates his conception of the areas occupied by surrounding tribes and places the Shoshone in the region of the Snake River after it turns east far above the Owyhee River.

We find the map inaccurate in respect to its placement of several rivers; but that, as in the case of the other contemporary maps, it is worthy of consideration as to its general location of the Nez Perce Indians.

20. Commander Charles Wilkes, U.S.N., commanded an exploring expedition during 1838-1842 and recorded his travels in a narrative. Included in his narrative was a description of travels among Nez Perce and a map of their territory (Pet. Exs. 16-A, B and C).

Wilkes placed the "Nez Perce or Saptin" on either side of the Snake River, commencing just above the mouth of the Palouse River and extending south on the west side to a point between the Grande Ronde and Powder rivers and on the east side to a point above the Weiser River.

Wilkes' northern and partially his western boundaries include territory not within petitioner's claim and his eastern boundary



partially runs along the crest of the Bitterroot Mountains, and partially extends beyond the Bitterroots, outside of the petitioner's claim.

Wilkes' mapping to the south does not ascribe to the Nez Perce the area around the Weiser and Payette rivers, although he includes the Salmon River as far east as the mountains within Nez Perce territory.

21. Father Pierre Jean DeSmet traveled through and mapped the areas along the Snake River in 1845-1850 (Pet. Exs. 30 and 46). A map dated 1845 identified the area south and west of the Snake River and west of the Wallowa River (identified by him as the Walla Walla River) as "grande Plaine Nez-Perce." A copy of this map by a professional draftsman for the War Department, bore the legend "map showing the relative position of the different tribes of Indians and Missions in the Territory of the United States between the Cascade and Rocky Mountains . . ." This places Nez Perce Indian villages north of the Snake River below its confluence with the Clearwater River (Pet. Ex. 31).

DeSmet did not draw the southern boundary of the Nez Perce. He placed the Shoshone village nearest to the Nez Perce above Salmon Falls on the Snake River outside of petitioner's claim herein.

Another map (Pet. Ex. 46) was drawn by DeSmet six years later in 1851 on which he located the Nez Perce as far east as the crest of the Bitterroot Mountains. The southern portion adds various rivers and mountain ranges. It locates Fort Boise. The location of the Shoshone above the Weiser and Payette rivers is relatively unchanged

on this map from that on the earlier map. The Walla Walla and Cayuse are located west of the Blue Mountain range of mountains.

22. In 1853-54 a survey was made under the direction of the Governor of the Territory of Washington, I. I. Stevens, who was accompanied and assisted by one Lambert, topographer of the expedition (Pet. Ex. 63; and see Pet. Ex. 2-F, p. 134). Dr. George Gibbs supplied the Indian names and boundaries on the map which was prepared as a result of this survey. The Sa-hap-tin-eh or Nez Perces were depicted on this map as occupying an area with a northern boundary at about the 47th parallel, an indefinite southern boundary, the Snake River as its western boundary and the Bitterroot or St. Mary's River as its eastern boundary. No reference was made to the Bitterroot Mountains. The "Western Limit of the Rocky Mountains" (approximately) running through the center of the territory from north-northwest in a south-southeasterly direction. There is nothing on the map to indicate the presence of the Nez Perce west of the Snake River except for a narrow strip including the headwaters of the Alpowa and Asotin creeks. In contrast the map clearly indicates the location of the Cayuse in that general area.

23. Brev. Major G. O. Haller, U. S. Army, prepared a map entitled "Map Exhibiting the Location of the Indians in the Uvilla District and the Oregon Indians South" (Pet. Ex. 58; and see Pet. Ex. 2-F, p. 135). The Haller map accompanied a report of R. R. Thompson, Indian Agent for Middle Oregon, to the Superintendent of

Indians for that region. The Nez Perce Indians were shown on the Haller map between the Clearwater of Kooskoosky River to the north and the Salmon River to the south. Their western boundary is placed thereon as west of the Snake River including portions of the Grande Ronde area and the Wallowa valley area, including the Minam River tributary, with the Cayuse occupying the south of the "Walla Walla River." On the east between the Bitterroot Mountains and the designated Nez Perce area, there appeared to be an area occupied by "1st Class North Eastern Indians." This latter designation is without explanation and of no assistance to the Commission in its consideration of this map.

To the southwest the designation "3rd class Southern Indians" covered an area from slightly below the 44th parallel to the south and west of the Snake River, the Salmon River Mountains on the northeast and the Blue Mountains on the north and northwest. This designation is undefined and, therefore, of no value to the Commission.

The Bannock Indians are shown above Fort Boise on the Snake River and south of the claimed area.

The designation "Root Diggers" are located in an area to the south and west of the claimed area.

24. During explorations for a railroad route in 1854-1857 a Lieutenant Warren compiled a map of the territory of the United States (Pet. Ex. 131) which was based upon authorized explorations and other reliable data, and adopted the maps of Lewis and Clark (1804-1806), C. Wilkes (1841), and Governor I. I. Stevens (1853-4).

On the Warren map the Nez Perce are placed on both sides of the Snake River, but with no delineation of the southern boundary. The word "Unexplored" is placed on the map in the area extending from just above the 46th parallel southeasterly in an arc ending at about the 45th parallel, crossing the territory through which flow the tributaries of the Salmon River.

Warren placed the closest southern neighbor to the Nez Perce, the Shoshone, on the Snake River above Fort Boise. No alien tribes were placed near the southern portion of the claimed area in the Weiser and Payette rivers area and in the southeast near the headwaters of the Salmon River.

The Palouse are placed to the northwest of the claimed area; and the Cayuse and Walla Walla to the west. The "Warrarrees" and "Root Digger Indians" are located to the southwest of the claimed area.

25. A sketch map of the Oregon Territory, which carried no notation as to the person responsible for its preparation but dated circa 1854 by the United States National Archives, indicated the area occupied by the Nez Perce to be bounded on the north by the Clearwater or Kooskoskee River, on the west by the Shoshone or Snake River as far as the confluence of the Salmon River with the Snake, then along what was designated as the Salmon River Mountains, running east and west and dividing the waters of the Salmon and Payette rivers, then in a southeasterly direction to near Fort Hall (Pet. Ex. 59).

The only indication of the eastern boundary was the insertion of "1st Class North East Indians" in an area directly south of the southernmost bend of the Clearwater in a southeasterly direction to Three Teton. This undefined description is of little or no value. To the south of Godan's River running north and south there appears "Mountain Snake Indians" with no indication as to the limits of their area.

The Bannock Indians are placed south of the Boise River.

26. Isaac I. Stevens, U. S. Governor of the Territory of Washington, was entrusted the negotiation of the Treaty of 1855. He was responsible for the preparation of three maps covering the territory of the Nez Perce and adjoining tribes with whom he negotiated the treaty. The maps are contemporaneous with the treaty involved.

The 1855 map was entitled, "A Sketch Showing Cayuse, Walla Walla, Yakima and Nez Perce Purchases and Reservations" (Pet. Ex. 76). This map placed a southern boundary for the Nez Perce somewhat north of the 44th parallel; an eastern boundary along and near the crest of the Bitterroot Mountains; a northern boundary along the Clearwater River Divide, to the Palouse River; thence southwesterly to the confluence of the Tucannon and the Snake rivers, and a western boundary along the headwaters of the Alpowa and Asotin rivers, crossing the Grande Ronde, thence following the Minam River to the confluence of the Powder River and the Snake River.

Another map bore no title but was dated 1856 (Pet. Ex. 86). It was signed by Isaac I. Stevens as Governor of the Territory of Washington.

On this map the eastern boundary was placed along and near the crest of Bitterroot Mountain; the northern boundary followed the Main Palouse River to its confluence with the Snake; the western boundary followed the Tucannon River, thence along a portion of the crest of the Blue Mountains, thence southeasterly to a point on the Snake River at about the 45th parallel, thence easterly crossing the Salmon River, thence northeasterly to the Bitterroot Mountains, thence easterly to the west side of the Bitterroot Mountains and along those mountains to the Palouse River.

The 1857 Stevens map is entitled, "Map of the Indian Nations and Tribes of the Territory of Washington and the Territory of Nebraska, West of the Mouth of the Yellowstone." (Pet. Ex. 88; and see Pet. Ex. 2-F, p. 139). This differs from the other maps in that the eastern boundary of the Nez Perce was placed along the crest of the Bitterroot Mountains; the northern boundary followed the Palouse River but did not extend to the confluence of the Palouse and the Snake but rather turned sharply south in a line from the confluence of Rebel Flat Creek and the Palouse River to the approximate confluence of the Snake and Tucannon rivers. It also indicated Nez Perce occupation west of the Snake River along the Blue Mountains, the Minam River and the Wallowa River to the confluence of the Snake and Powder rivers.

A line drawn by Stevens within this area roughly indicates the area reserved by the Treaty of 1855 to the Nez Perce, which we have defined in our decision in one of the prior Nez Perce cases (Docket

175-A, 8 Ind. Cl. Comm. 220). This map also includes an area in the northwest not claimed herein. A portion of this area has been awarded the Palouse Indians by this Commission in The Yakima Tribe v. United States, 12 Ind. Cl. Comm. 301. However, the map includes the Camas Prairie area in the vicinity of Moscow, Idaho, east of the Palouse area which is claimed herein, and is not within the area we awarded the Palouse Indians in the above cited matter. The eastern boundary of the Palouse award lies approximately fifteen miles west of the petitioner's Camas Prairie claim herein.

In addition to Stevens' duties in connection with the relations with the various Indian tribes in the northwestern area, he was entrusted with the overall study of the feasibility of railroad routes from the Mississippi River to the Pacific. His final report to the Secretary of War was made on February 7, 1859, covering explorations in the years 1853, 1854 and 1855 (House Ex. Doc. 56, 36th Cong. 1st Sess.). Portions of the report are in the record (Def. Ex. 20; Pet. Ex. 132). The Commission herewith takes judicial notice of the relevant portions of the report which were not placed in the record.

Stevens' routes throughout the area are detailed on a map which is a part of his aforesaid report. After due notice and service on the parties in this matter a photo copy of this map has been included as a part of the record in this matter as Commission Ex. 2. The map also includes the markings of trips made by other members of Governor Stevens' staff throughout the area.

27. On June 16, 1855, after the treaty council at Fort Walla Walla with the Nez Perce, Yakima, Walla Walla, and other neighboring tribes, Stevens left for the Bitterroot valley in Montana and thence to a council with the Blackfeet. His journey took him east through that part of Washington State which lies west of the present city of Lewiston, Idaho. Enroute he crossed the Touchet and Tucannon rivers which flow through the area south of the lower Snake River. He made detailed notes of the character of this country -- topography, soil, vegetation, streams, etc. This area was especially noted by him for its fertile soil, luxurious vegetal cover and beauty.

Stevens had made arrangements with the Nez Perce at the conclusion of the Walla Walla council for a meeting with the leaders of those Indians at the confluence of the Snake and Alpowa rivers to complete arrangements for a delegation of Nez Perce to attend the forthcoming Blackfoot treaty council. He states in part as follows (Pet. Ex. 132, pp. 198, 199):

\* \* \*

Tuesday, June 19.--We made to-day fifteen miles; crossed the Snake at the Red Wolf's ground, near the mouth of the Alpawaha creek, and camped on its north bank, the grass being entirely adequate to the sustenance of our animals, though not so luxuriant and abundant as at our previous camps. I will call attention to the following points of the day's journey. We continued up the creek, on which we camped, for two miles, at which point we left it, there being higher up the creek, directly in view, abundance of fine timber. Continuing on, in four and a half miles we reached the divide separating the waters of this tributary from the Alpawah creek. This divide is, strictly speaking, scarcely a divide, for the whole country is tableland; but as far as we could judge, there not being water near to it, it was



the highest point of our trail. Here we had a most excellent view of Pyramid Butte lying some distance north of Snake river, of which we took the bearings. To the southeast the great gap of Snake river was in view. Three miles further on, gradually descending, we struck a branch of the Alphawah, the water, however, being only in pools. In one mile we struck the main Alphawah, which comes in from our right, and in four miles we reached its confluence with Snake river. Here, according to previous appointment, we met Lawyer, (the head chief of the Nez Perces,) Red Wolf, and Timber Tail; and here I completed my arrangements in regard to the delegation which this powerful and friendly tribe were to send to the Blackfoot council. At the Red Wolf's ground was a fine field of corn, which promises a most luxuriant crop. I estimated the amount under cultivation at twenty acres. It was irrigated by the waters of the Alphawah, and was tolerably well set out with fruit trees; while I observed with great pleasure that men as well as women and children were at work in this field, ploughing and taking care of their crops. The corn planted only seven weeks since was about to silk out. From the appearance of the valley of the Alphawah, I am satisfied that grapes would be a very profitable crop. The whole country is exceedingly well adapted to grazing, and especially to wool growing. I will refer the reader, who is anxious to understand this country, to the narrative of Lewis and Clark, both in regard to the character of the country and of the Indians. I have sometimes thought, while traveling, as I have to-day, over the route of Lewis and Clark, that it was a work of suberrogation to do anything more than simply to quote their narrative. They speak of the soil of the country on this day's route as fertile. The Indians, too, are about as avaricious, with all their other good qualities, as they were in their day, as we had abundant reason to know from the difficulty with which we made a bargain to ferry our animals over Snake river.

We had for supper this evening a salmon--few, however, are taken in this portion of Snake river. The water is deep, and the Indians never resort to seines or weirs. They take salmon in the night by floating down the river in a canoe and using a dip-net or a spear. Higher up the Snake river, and especially on the Koos-koos-kia tributary, salmon are taken in great quantities, particularly at certain points on the road to the Flathead country.

At our camp we were visited by Lawyer, who gave us much additional information about his tribe and the character of the country. The Nez Perces country is exceedingly well adapted to grazing, and is for the most part a remarkably

fine, arable country. There are very extensive fields of the kamas, and the Indians lay up large stores of that nutritious and delightful root.

Wednesday, June 20.--We moved twenty miles to-day and camped at a delightful spring, with abundant dry wood near by. The first two miles and a half we went down Snake river. An Indian camp was in sight, on the right bank of the river, one mile below, and another on the left bank of the river, two miles and a half below our camp. The Indians were collecting their horses to go out to the kamas fields northward of Snake river. We then moved up a small tributary of the Snake--the water, at the present time, at the lower portion of it, being simply in pools, or running short distances--and in four miles reached the table-land; water, wood, and grass being abundant the last two miles. And here I was astonished, not simply at the luxuriance of the grass, but the richness of the soil; and I will again remind the reader that it does not follow because the grass is luxuriant that the country is not arable. In a mile and a half we reached the divide separating the waters of the Snake from those of the Peluse, which divide, so far as the eye could reach, is nearly parallel to the Snake, and about four miles from it. In two miles and a half we came to a long and narrow lake; fields of kamas being in view for a long distance. There is running water in the lake, which, however, from time to time, sinks into the ground and rises again. Three miles and a half further we came again to running water, with luxuriant cotton-wood. This connects with the lake before referred to, and here is a most excellent camping place. In a mile and a half, again, wood and water. In two miles and a half we came to a low divide, and in two miles more reached our camp. On our left we saw bands of Indians digging kamas, some three miles distant, who were afterward ascertained to be twelve lodges of Peluses, under their chief Quillatose. I will again say, we have been astonished to-day at the luxuriance of the grass and the richness of the soil. The whole view presents to the eye a vast bed of flowers in all their varied beauty. The country is a rolling table-land, and the soil like that of the prairies of Illinois.

Thursday, June 21.--We moved to-day seventeen miles, and camped at the right bank of the main Peluse river. At our last night's camp the pines of the spurs of the Bitter Root were in view, extending to within a mile or a mile and a half of us. We skirted along or passed through these pines during this day's journey. The whole country to the westward, as far as the eye could reach, was an open plain, the skies clear and the atmosphere transparent; I say again, the whole country

was, apparently, exceedingly rich and luxuriant. I interrogated very closely my pack-master, Mr. Higgins, in reference to the character of the country westward, for he had crossed it on two different lines between our present trail and that from the mouth of the Peluse; and he assured me that the country which my own eye saw to-day, and had seen yesterday, was precisely the same country as that found on the westward lines. Pyramid Butte was also in view to-day, as it had been yesterday. We took its bearings with a view of laying it down upon our map.

But to resume: in 3½ miles we reached the extensive kamas grounds of the Nez Perces. Here were six hundred Nez Perces--men, women and children--with at least two thousand horses--gathering the kamas. So abundant is this valuable and nutritious root, that it requires simply four days' labor for them to gather sufficient for their year's use. In 2¼ miles further on we struck the great Nez Perces trail, coming from Lapwai, a much larger and more used trail than the one we had followed from Red Wolf's ground. \* \* \* (Emphasis supplied)

Stevens then proceeded through the Coeur d'Alene Indian area to the north, and after conferences there with the Indians he crossed over into Flathead and Blackfoot territory east of the Bitterroot range of mountains.

The map (Commission Ex. 2) of the explorations reveals that Lieutenant Mullan and Mr. A. W. Tinkham, who were a part of Governor Stevens' organization, made exploratory trips through the Nez Perce area in 1853 and 1854.

The Stevens' organization had, in view of these explorations prior to and after the negotiation of the 1855 treaty (ratified in 1859), a helpful degree of familiarity and knowledge of a portion of the area involved herein.

28. A map, without designation of the name of the cartographer, dated 1862, was located in the National Archives (Pet. Ex. 97). The map was clearly intended to depict reservation boundaries. It is

entitled "An Approximate Map of the Nez Perce Reservation in Washington Territory 1862." Although the map is inaccurate in respect to the placement of certain rivers, it is important in certain respects that are relevant to the issue of aboriginal title. (See Pet. Ex. 2-F, p. 140) The location of Nez Perce villages is shown in the Clearwater River area as well as some of the area to the west thereof and on the Salmon River to the south.

29. In 1894 James Mooney published a map purporting to show "Distribution of Tribes of the Upper Columbia Region in Washington, Oregon and Idaho . . ." (Pet. Ex. 7-B; and see Pet. Ex. 2-F, p. 141) The eastern boundary of the Nez Perce was shown to be the crest of the Bitterroot Mountains although they were not identified as such on the map. The southern boundary ran in a straight line from the headwaters of the Clearwater River in the Bitterroot Mountains to a point on the Snake River somewhat south of the 45th parallel at approximately the mouth of Powder Creek, then in a northwesterly direction to a point near the headwaters of the Grande Ronde River. The western boundary consisted of the eastern boundary of the Waiilatpm or Cayuse ending just north of the 46th parallel, but no boundary between the Walla Walla and the Nez Perce was shown. The western boundary encompasses the basins of the Minam, Wallowa and Lower Grande Ronde rivers. No definite boundary is shown between the Palouse Indians and the Nez Perce. The northern boundary ran along the headwaters of the north fork of the Clearwater River and the Palouse but had no point of

termination, instead running on as the northern boundary of the Palouse until it reached the Wanapum boundary.

30. In 1900 Charles Royce prepared a map (Pet. Ex. 100; and see Pet. Ex. 2-F, p. 142) representing his concept of the Nez Perce territory as described in the treaty calls of cession in the 1855 treaty, and the boundaries of the reservations under the 1855 and 1863 treaties.

The eastern boundary runs along the crest of the Bitterroot Mountains. The northern boundary runs from the Bitterroot Mountains to just east of Moscow, Idaho; thence southwesterly to some distance north of Lewiston, Idaho; thence northwesterly along Union Flat Creek to the main Palouse River; thence to the confluence of the Tucannon and Snake rivers. The western boundary includes, as claimed, the basins of the Minam, Wallowa, Grande Ronde, and Imnaha rivers.

The southern boundary follows a line almost due east from the junction of the Powder and Snake rivers to a point on the crest of the Bitterroot Mountains. This encompasses within the Nez Perce territory an area including and south of Payette Lake and portions of land east beyond the juncture of the Middle Fork Salmon and Salmon rivers.

31. In 1958 Dr. Claude Schaeffer of the Oregon Historical, issued a map entitled "Indian Tribes and Languages of the Old Oregon Country" (Pet. Ex. 3). On this map Indians of the same language groups are indicated by various color shadings. Although the map cannot be considered as accurate for definitive boundaries of the various Indian tribes, it tends to confirm general locations which are set out on the ancient maps of record for the Nez Perce Tribe.

32. Peter Skene Ogden, a fur trapper and explorer, reported his travels in 1827-1828 in this general area in a daily diary. Excerpts of these are in the record (Pet. Ex. 142). He reported the presence of Nez Perce Indians in the area; and, in particular, in the southern portion. The intimate details lend credence to the value of the journal to our study. On October 22nd his party camped opposite the Weiser River located in the southern portion of this claim.

Ogden left Fort Vancouver for the Snake River country on August 24th. His party reached Fort Nez Perces or Walla Walla at the mouth of the Walla Walla River on September 1st. They left this point on September 5th, and proceeded over the Blue Mountains. On September 14th the party reached the Grande Ronde River, thence they proceeded southeasterly and across to the Powder River where they encamped. From here they proceeded southeasterly to the Burnt River and encamped on September 18th. On September 22nd the party encamped opposite the Weiser River, a tributary flowing west into the Snake River in the southwest portion of the claim. On Wednesday, September 25th, he reported: (id.)

Trappers report traps of strangers set along this river. Shortly after an American by name Johnson appeared and informed us he and 5 others were on this stream. Their party consists of 40 men with a band of Nez Perces working in the direction Mr. McKay has taken. My sanguine hopes of beaver here are blasted. I shall send Sylvaile with 5 men to Payette's River; and proceed to Burnt and Day's River. Encamped in company with the Americans. The trappers were in every direction in quest of beaver. The Americans will not part with one.

33. Petitioners introduced a book written by Edward S. Curtis in 1911 entitled The North American Indian, and contend the study contributes

to the evidence of the aboriginal boundaries of the Nez Perce; their use and occupancy of the area involved; and their identifiability as a tribe (Pet. Ex. 4). The volume was edited by Frederick Webb Hodge, with a foreword by Theodore Roosevelt. The field research was under the patronage of J. Pierpont Morgan.

Although this work was done many years after the treaty date involved herein, it was the result of field research and is documented. Indian informants were used to corroborate and supplement documentary sources. Since this work was done at a much earlier date than that of Ray or Chalfont, supra, its value in this regard is enhanced. It is not entitled to the same weight as contemporaneous writings, but is worthy of our consideration as a contribution to the whole of the evidence. It tends to confirm the general location of the Nez Perce indicated by the contemporaneous maps, journals and other writings which we have discussed ante.

Curtis states as follows: (id., p. 3)

The territory of the Nez Percés was bounded on the east by the Bitterroot mountains of Idaho and Montana; on the south by the divide between Salmon river and Snake river, and, in Oregon, by the Powder River mountains; on the west by the Blue mountains in Oregon, and, in Washington, by Tucanon creek from its source in the Blue Mountains to its confluence with Snake river; on the north by the low divide between Snake river and the Palouse in Washington, and, in Idaho, by the range separating the headwaters of the Palouse from the tributaries of the Clearwater. This embraced, in Idaho, the whole watershed of the Clearwater, the valley of salmon river as far eastward as the one hundred and fifteenth meridian, and that of Snake river to a point above the mouth of the Salmon. It included in the northeastern portion of Oregon the valley of the Snake, and of its tributaries, the Imnaha, the Wallowa, and the Grande Ronde to a point not far above the mouth of the Wallowa. In Washington their domain extended westward

along both sides of Snake river as far as the mouth of Tucanon creek, about at the one hundred and eighteenth meridian.

\* \* \*

The villages and settlements of the Nez Perce Indians which Curtis listed in the Appendix of his book were gathered in his field research data furnished by a number of their oldest and best informed representatives. In each case the name of the village-site is followed by that of the inhabitants. This is as follows (id., pp. 158-160 -- footnotes omitted):

\* \* \*

Political and Social Organization -- There was no tribal organization of the bands known to us as Nez Perces, and to themselves as Numipu, but simply a loose association of a large number of local and practically independent bands. These fell into four divisions, but the basis was largely geographical, and only to a limited degree political: that is, the weaker component bands looked up to the most powerful one as a leader which experience had proved it to be wisdom to follow; but in every event their course was individually optional. Here follows a list of the former settlements of the Nez Perces, carefully compiled from data furnished by a number of their oldest and best-informed representatives. In each case the name of the village-site is followed by that of the inhabitants.

Snake river from Tucanon creek to the Clearwater

Tukalatuī, Tukalatuīnu, on Snake river at Texas rapids, about the mouth of Tucanon.

(Tukanun) creek, Washington. The inhabitants moved to Alpoowih when the first reservation was established, and later, when the boundaries were contracted, they went to Lapwai.

Wetswewih, Wetswewipu, six or eight miles above Riparia, on a small creek flowing northward into Snake River.

Pinawawih, Pinawawipu, at the site of Penawawa, Washington.

Mahmahsh, Mahmahshepu, north side of Snake river and five or six miles above Pinawawih.

Mahsh is the abbreviation of mahshem, a mountain.



- Alamotin, Alamotinnapu, about three miles above Mahmahsh, at the site of Almota, Washington.
- Atahsus, Atahsuspu, north side of Snake river, four or five miles above Alamotin.
- Wawawih, Wawawipu, site of Wawawai, Washington.
- Sahatp, Sahatpu, north side of Snake river, about three-quarters of a mile above Wawawih.
- Palotp, Palotpu, north side of Snake river, two or three miles above Sahatp. The abundance of a rock slime used in making emerald-green paint called palot gave the place its name.
- Nuhsuema, Nuhsuemapu, south side of Snake river, just opposite Palotp.
- Iyakuewih, Iyakuewipu, north side of Snake river, two miles above Nuhsuema.
- Toko hp, Toko hpu, north side of Snake river, one-half mile above Iyakuewih.
- Withkisp, Withkispu, north side of Snake river, about three miles above Toko hp. The word is related to with, alder.
- Kelaishun, Kelaishunmu, south side of Snake river, just opposite Withkisp.
- Alpoowih, Alpowaima, mouth of Alpowa creek, Washington. Alpoowih included the creek valley to a point about five miles from the river, from which point to the source the creek and the valley were called Alpaha. This band was the most powerful of the Nez Perces of lower Snake river.
- Tukaiyutp, Tukaiyutpu, south side of Snake river, about three miles above Alpoowih.
- Tsokolaikin, Tsokolaikinma, south side of Snake river, about five miles above Alpoowih.

The Clearwater and its branches

- Shiminekem, Shiminekempu, south side of the Clearwater, at its junction with Snake river; site of Lewiston, Idaho.
- Mulmim, Mulmimpu, north side of the Clearwater, almost opposite Porter station of the Northern Pacific railroad.
- Hatwe, Hatwema, two miles above Mulmim, on a creek flowing from the north into the Clearwater.
- Tsiwikte, Tsiwiktepu, north side of the Clearwater, opposite North Lapwai, Idaho.
- Lipwe, Lipwema, the mouth of Lapwai creek, Idaho.
- Wilalamkat sp, Wilalamkat sp u, north side of the Clearwater, about one mile above Lapwe.
- Pishhnishu, Pishhnishapu, north side of the Clearwater, about one-quarter mile above Wilalamkat sp.
- Yahtoin, Yahtoinnu, north side of the Clearwater, at the mouth of Potlatch river.
- Tunehe, Tunehepu, west side of Potlatch river, at the site of Juliaetta, Idaho.

- Iwatoin, Iwatoinnu, west side of Potlatch river, at the site of Kendrick, Idaho. Yakama is the collective name applied to the Iwatoinnu, Tunehepu, and Yahatinnu. Yaka being the name of Potlatch river above its mouth.
- Maka, Makapu, on the Clearwater, at the site of Basalt station of the Northern Pacific railroad.
- Yatoin, Yatoinnu, north side of the Clearwater, three or four miles above Maka.
- Tuhshehe, Tuhshehepu, north side of the Clearwater, four or five miles above Yatoin.
- Tukailiklikas, Tukailiklikaspu, south side of the Clearwater, about a mile and a half above Tuhshehe, at a place now known locally as Big Eddy.
- Himkilip, Himkilipu, south side of the Clearwater, at the site of Lenore, Idaho.
- Painima, Painimapu, south side of the Clearwater, a little above the site of Agatha, Idaho.
- Pipuinima, Pipuinimapu, on a stream flowing from the south into the Clearwater, at the site of Peck, Idaho.
- Atskaaiwawih, Atskaaiwawipu, north side of the Clearwater, at the site of Asahka, Idaho.
- Teweyiwawih, Tewepu, at the mouth of Oro Fino river, site of Oro Fino, Idaho.
- Misha, Mishapu, four miles above Oro Fino, at the mouth of Jim Ford creek.
- Kamiahp, Kamiahpu, south side of the Clearwater, at the mouth of Lawyer creek. This was the most important band of the Clearwater group. The Kamiahpu and several small adjacent bands were collectively called Uyama. Kamiah, Idaho, preserves the Indian name.
- Tukupe, Tukpema, mouth of the south fork of the Clearwater, including the site of Kooskia, Idaho, and the opposite (north) side of the main stream.
- Tsainashp, Tsainashpu, west side of the south fork, about three-quarters of a mile below Stites, Idaho.
- Pitayiwawih, Pitayiwawipu, the mouth of Cottonwood (Kapkapin) creek, site of Stites, Idaho.
- Taketasp, Taketaspu, south bank of the middle fork, about one-half mile below the mouth of Selway fork.
- Nukuhmaush, Nukuhmaushpu, at the junction of Selway with the middle fork. Selway fork is called Shelwe, while the main stream of the Clearwater, from Kooskia to Snake river, is Kaihkaih-kus (clear water). Lewis and Clark, and many since, called it Kooskooskie.
- Kamnaka, Kamnakapu, south of Nukuhmaush, near the head of Clear creek. This and the preceding were the most easterly of the Clearwater bands.

## Snake river from the Clearwater to the Imnaha

Hasotoin, Hasotoinnu, mouth of Asotin creek, Washington. Some informants connect the word with hasu, lamprey; others deny positively that there is any true connection. The suffix toin, which is not uncommon in place names, refers to the shining of the sun over the top of a ridge above the village-site. Hasotoin is the name also of a spring on the east side of Snake river, opposite the village.

Anatoin, Anatoinnu, at the junction of Mill creek with Snake river. A part of the Hasotoinnu. Anatone, Washington, near the head of Mill creek preserves the Indian name.

Hasweiwawih, Hasweiwawipu, in Idaho, opposite Asotin, at the mouth of a creek whose headwaters were called Hasiwe.

A part of the Hasotoinnu.

Wawahitsp, Wawahitspu, east side of Snake river, in an open flat about two and one-half miles south of Asotin.

Ilakapatp, Ilakapatpu, east side of Snake river, about three-quarters of a mile below the mouth of Captain Johns creek.

Hatauishimma, Ilakapatpu, mouth of Captain Johns creek, Idaho.

Wewih, Wewima, a small creek in Idaho, emptying into the Snake, about a mile and a half above Captain Johns creek.

Imahaip, Imahaipu, an open flat in Washington, opposite Wewih.

Inantoin, Walwama, at the mouth of Waliwa (Grande Ronde) river in Washington. This was the principal band of a group called Kamuinnu, a name originally applied to a small creek just below the Grande Ronde, and then extended in meaning to apply to Snake river from Captain Johns creek to the Grande Ronde. The word is derived from kamu, hemp, a tough-fibred variety of which grew in this region. The Walwama controlled not only the lower course of the Grande Ronde, where their more permanent villages stood, but also the valley of its principal tributary, the Walowa (Wallowa); and as the most important of the Kamuinnu, they were the principal band of the upper Snake river Nez Perces.

Sakan, Sakanna, on both sides of Snake river, from the Grande Ronde to Salmon river. The word indicates a region where the cliffs come close to the edge of the water. Several small communities composed this group.

Imnaha, Imnama, in the valley of Imnaha river, Oregon. The Imnama also comprised a number of small communities.

## Salmon river and its tributaries

Tamanma, Tamammu, about the mouth of Salmon river, in Idaho.

Nipehe, Nipehema, on lower Salmon river as far up as Whitebird creek, Idaho.

Lamata, Lamtama, on Whitebird (Lamata) creek. This was the leading band of the group, and it included a number of small bands on the tributaries of Salmon river, the farthest removed being the Iyasnima, on Slate creek, who occupied the outpost of the Nez Perce territory in that quarter.

After a review of the Lewis and Clark findings of Nez Perce divisions and locations, Curtis pointed out that the Lewis and Clark "Pel-loat-pel-lah" divisions were in reality the Palouse; and that the "Y-e-let-po" were the alien Cayuse. He then divided the Nez Perce as in a more recent historical period to be divided into the four above delineated groups.

Curtis emphasized the large number of horses owned by the Nez Perce. One chief had so many he was unable to count them. He stated so numerous were the herds that their acquisition must have been several decades before the beginning of the nineteenth century. He stated (id., p. 6):

\*\*\* on account of their numerous horses they were constantly harassed by war-parties of Shoshoni and Bannock, their neighbors on the south. Desultory raids were made by the Apsaroke, the Piegan, the Coeur d'Alenes or Skitwish, and the Spokane. Even the little Salish bands of the Columbia valley above Snake river once organized an attacking party, but they were so effectually punished by a retaliatory expedition into their own country that they were thereafter content with peace. Hostilities with the Flatheads were of rare occurrence. The two tribes were frequent allies in their annual excursions into the buffalo country, and indeed hunters of the Spokane, Coeur-d'Alenes, and smaller Salish tribes, as well as of the Shahaptian bands north and west of the Columbia, were glad to join themselves to the powerful and courageous Nez Perces. The arch-enemy was the Shoshoni. And it was because of their exposure to this common danger, as well as of affinity and proximity, that the Nez Perces, Umatilla, and Wallawalla became such close friends. This alliance also included the alien Cayuse. \*\*\*

Curtis gave a rather detailed account of the 1855 treaty council (id., pp. 7-9). He stated in part (id., pp. 8, 9):

\*\*\* The treaty confirmed to them practically all the land to which they laid claim, excepting only the greater part of that comparatively small portion lying within the borders of the present state of Washington; \*\*\*

\*\*\* The Lower Nez Perces in their addresses only reiterated that as the earth had born them, the earth was their mother, and they could not sell their mother. But the reservation lines did not, as they understood, exclude any of the lower Nez Perce lands, and as they were not unwilling to agree that other tribes should be settled in their country, and had no objection to the cession of Upper Nez Perce territory, they saw no harm in signing the treaty. In reality a small area was cut off at the south, but the wording of the treaty was such that the Indians could easily have misunderstood it. In fact, very careful reading is required, if one is to note any difference between the description of the land ceded by the Nez Perces and that of the country restored to them as a reservation, except as to that portion of the agreement dealing with the northwestern boundary of the tract. (Emphasis supplied.)

Curtis noted in particular the lively debates and differences between the upper and the lower Nez Perce and the reluctance of important chiefs to sign the treaty.

Curtis noted (id, pp. 15, 16):

\*\*\* The Nez Perce were but semi-nomadic. Their habitat through traditional and mythic times included the same valleys which we took from them \*\*\*. By the fact that they had always dwelt in these beautiful valleys, securing their sustenance as a very gift of nature, and also by reason of their earth-mother religion, they were attached to the land to a greater degree than were the average tribe. \*\*\* This prejudice against parting with land and tilling the soil was not a mere whim, but was based on a deep-rooted religious doctrine. Holahholah-tamaluit (invisible law) is the name applied by the Nez Perces to the supreme law of nature. This law or power placed them on earth, and it was this belief that made them so strongly oppose the Government's demand that they give up their native valleys and concentrate the bands on one reservation. \*\*\*

Curtis gave the following general description (id, pp. 40, 41):

\*\*\*

The Nez Perces were primarily a fish-eating people living in established villages, but they also depended largely on the many varieties of roots which were so abundant in their intermontane region. It is likely that they went to the buffalo country little, if at all, previous

to their acquisition of horses, and even after that event but a small part of the tribe engaged in these hunting expeditions. At such times they dropped quite out of the regular habit of the Nez Perce life, and during the period of their absence -- from one to three years -- they were truly nomads. Buffalo-hunting was so much of an innovation that the tribe had not yet adjusted itself to it, and those who did not participate in these expeditions proceeded in the fixed order of their existence.

In May all the bands would congregate at Tipahliwam (Camas prairie) to dig kouse. To this common harvest ground flocked the people from Wallowa, Salmon river, Snake river, and the Clearwater. Often in the old times the Cayuse, Palus, Umatilla, and all the bands of the Nez Percés met at Tathinma (a prairie a mile south of Moscow, Idaho) in the spring, for horse-racing, gambling, and war-dancing. The announcement of the time for this meeting, and the invitations to the different bands of Nez Percés and to other tribes were always sent out by the people of Alpoowih. During these festivities the women spent much time digging roots. These great gatherings were continued for a couple of weeks, when the people would return to their homes with collected and prepared roots, and in a short time they would start out on another root-digging expedition for a further supply. In July they would assemble at Oyaip (Weippe prairie) for the harvest of camas, which they gathered in great quantities, as it formed an important item of food with them. In preparing this bulb for eating, they first cooked it in pits similar to those used by Indians all over North America for the cooking of large quantities of food, either vegetables, meat, or fish. In this instance the excavation had a depth of a couple of feet and a diameter of perhaps ten feet. In it they placed a quantity of dry fuel, and on that a layer of small stones. The fuel was then lighted and allowed to burn out until no fragment of the wood was left to make a smoke. They then spread over the hot stones a layer of grass, and on this place the roots, which were then covered with another layer of grass and a final coating of earth. When taken from this cooking pit the camas was crushed in mortars, and the gummy mass was pressed into slabs; or the roots were eaten at once.

The camas gathering was the work of the women, and in this camp the men engaged in all manner of festivity. At the close of the camas harvest they all journeyed to the Wallowa lake and river, or some other favorite place for fishing. Here at the fishing grounds they remained until September or October, and then, before returning to their homes, they went on a hunting trip into the mountains. The winter was given over largely to the performance of the medicine ceremony.

\* \* \*

The field study by Curtis also covered the aspects of the Nez Perce, which are dealt with in other findings herein, including personal appearance, population, dwellings, hunting, dress, arts and industries, government, games, marriage, religion and ceremonies, diet, warfare, mythology, etc. His findings are in general agreement with the findings we have made on these subjects.

34. In 1907 the Smithsonian Institution published its Bulletin No. 30, edited by Frederick Webb Hodge, entitled Handbook of North American Indians North of Mexico (House Doc. 926, Part 1, 59th Cong., 1st Sess.; Pet. Ex. 5A). This contains a biographical sketch of Joseph, a prominent chief of the Nez Perce Tribe. The efforts of Joseph to retain the areas of the Wallowa Valley in the hostilities are recalled. It is stated that this area has been the "ancient home of Joseph's band in N. E. Oregon".

In 1912 the Smithsonian published Part 2 of this handbook, which was also edited by Hodge, which is extensively documented (Pet. Ex. 5B). This contains a condensed sketch dealing with the Nez Perce. This deals with various aspects of Nez Perce life, habits, customs, personal appearance, habitat, etc. The following statement is made:

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The Nez Percés, or Sahaptin of later writers, the Chopunnish (corrupted from Tsutpeli) of Lewis and Clark, their discoverers, were found in 1805 occupying a large area in what is now W. Idaho, N. E. Oregon, and S. E. Washington, on lower Snake r. and its tributaries. They roamed between the Blue mts. in Oregon and the Bitter Root mts. in Idaho, and according to Lewis and Clark

sometimes crossed the range to the headwaters of the Missouri. By certain writers they have been classed under two geographic divisions, Upper Nez Perces and Lower Nez Perces. The latter were found by Bonneville in 1834 to the N. and W. of the Blue mts. on several of the branches of Snake r., where they were neighbors of the Cayuse and Wallawalla. The Upper Nez Perces held the Salmon r. country in Idaho in 1834, and probably also at the same time the Grande Ronde valley in N. Oregon, but by treaty of 1855 they ceded a large part of this territory to the United States.

\*\*\*

35. Mr. A. J. Splawn wrote a book published at Yakima, Washington, in 1938 (Pet. Ex. 9) entitled Ka-mi-akin, Last Hero of the Yakimas, which was offered by the petitioner for the purpose of furnishing evidence of the aboriginal occupancy of the Nez Perce, and their identifiability as a group.

Splawn is not identified as to background or qualifications. We have, however, studied his book and find he is in general agreement as to these aspects of the Nez Perce with the old maps and works which we have found were made earlier than the date of the treaty, contemporaneous with the data and at dates a few years later.

Splawn, in referring to the territory relinquished by the 1855 treaty, states:

\*\*\*

The Nez Perces relinquished territory out of which was formed a large part of Whitman, Garfield, Columbia and Asotin counties in Washington, Union and Wallowa counties in Oregon \*\*\*. (id, p. 35)

\*\*\*

Nez Perces (Sha-hap-tan) (pierced noses) occupied a large territory in eastern Oregon and the western portion of northern Idaho, along the Snake, Salmon and Clearwater



rivers, bounded on the east by the main divide of the Bitterroot Range, including the lower Grande Ronde and all of the Wallowa valley in Oregon, \*\*\* (id, p. 395)

Splawn dealt extensively with the council proceedings leading to the 1855 treaty and contemporary events prior to and shortly thereafter. He states in part, referring to the proceedings (id, p. 25):

\*\*\*

Sal-tes, for the Coeur d'Alenes, claimed that part known as the eastern portion of the Palouse country south of Garry's and Po-lat-kin's holdings, with the Snake River at Pen-e-wa-wa for the southern boundary.

Three Eagles asked for his band of Nez Perces the land south and east of Sal-tes' claim to the summit of the Bitterroot Range and the north side of the Clearwater.

Looking Glass' and Lawyer's following of the same tribe claimed all lying south of Three Eagles' land, including Kah-i-ah, Craig Mountain and Kamas prairie.

Joseph, for the Samon River Nez Perces, spoke for the main Salmon and Little Salmon rivers and the headwaters of the Weiser, Payette and Wallowa valleys.

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36. In 1952 the Smithsonian Institution published an article entitled "The Indian Tribes of North America," by John R. Swanton (Bulletin 145, Pet. Ex. 10A).

Although this is not the result of field research, we find it worthy of consideration since it is a scholarly research of available primary sources of information prepared as an official government publication. In this work Swanton deals with various aspects of the Nez Perce, including the various names under which they were known, their connections, location, history, population, and connections in which they have been noted. His findings are generally those of the

early and contemporaneous explorers, writers, and of other scholars on the subject.

Included in the volume is a map indicating the locations of the various Indian tribes in the western area (Pet. Ex. 10B). The Nez Perce are shown in the general area of the Snake and Clearwater rivers area.

37. Brig. Gen. O. O. Howard, who was extensively involved in the Nez Perce rebellion which occurred in the 1870's later wrote a book (1881 published date) entitled Nez Perce Joseph (Pet. Ex. 12).

We find that, although this is not written at the time of the 1855 treaty, it is entitled to consideration as bearing upon the question of aboriginal title of the Nez Perce Indians since an important phase of the rebellion involved the forceful evacuation of the southern band of Nez Perce Indians from an area which they claimed at the time of the 1855 treaty had been their ancestral home, a part of which was reserved to them in the 1855 treaty and later ceded in the 1863 treaty when their reservation was reduced in size. Joseph was the chief of this band of the Nez Perce and had held out for the area during the 1855 council and resisted efforts to have it excluded in the 1863 treaty. This involves the southern and southwestern area of the claim herein, including the lower Grande Ronde, the Imnaha, Minam and Wallowa river areas and south thereof. Howard included a map indicating Joseph's claim entitled "Map of the Grande Ronde, Wallowa and Imnaha Country."

In addition to his own personal knowledge, gained during the conflict, General Howard relies upon the adventures of Captain Bonneville as related by Washington Irving (supra, Finding No. 17). He recalled the meeting of Bonneville with the Nez Perce on the "Upper waters of the Salmon River." He notes this as an indefinite description. However, following the narrative of the encounter and the general area he states (id, p. 5):

\*\*\*

This indicates the region over which the Nez Perces roamed and hunted game. The Salmon River and its tributaries furnished an immense territory for them. The paths made by them in their expeditions after Buffalo, antelope, and other game, are even now clear and well defined,--five or six, and sometimes as many as ten or twelve, distinct horse trails, parallel and as near to each other as horses can walk with ease. These trails constitute some of the peculiar signs of these Indian tribes. They often make a side hill look as if terraced, and are as graceful in their windings as if made by a skilful engineer. These, sometimes called "The great Nez Perces trails," extend, as we have seen, for hundreds of miles; for the more permanent home of the Nez Perces was then, as now, nearer where the Salmon, the Clearwater, and the Grande Ronde, flow into that almost endless and peculiar river, so well named, "The Snake." \*\*\*

Howard then follows Bonneville's travels up through the Nez Perce area to the north and west via the Powder River valley, the Grande Ronde River "thence over the mountain ridge northward to Immaha and Wallowa" \*\*\*. And he stated (id, p. 5):

\*\*\*

\*\*\* One may, to-day, stand in mid-summer on a spur of the Blue Mountains and behold at a glance fifty square miles of rounded hills and graceful valleys, covered with waving grain. It is this country--a strip fifty miles broad, following the windings of the Snake from the Powder River to the Columbia Valley--that was occupied in early times by the Nez Perces; or, more accurately, by that portion of them usually designated as "the lower Nez Perces." It was mainly the controversy concerning this rough region that caused the recent outbreak.

In the early years the lower Nez Perces were much more numerous than now. They lived along the Snake River, above and below the mouth of the Grande Ronde, \*\*\* (emphasis supplied)

He further stated (id, p. 7):

\*\*\*

The main tribe, "the Upper Nez Perces," occupied the Lapwai, from which we have seen that Old Joseph was driven in 1847. With these the government has had most to do in times past. With these Governor Stevens made his celebrated treaty of 1855, to which Old Joseph gave his assent; and well he might assent to this the first treaty, for it embraced in its established boundaries all his lands, and allowed him and his people to live in the same place, and in the same manner, as the Lower Nez Perces had lived for generations. \*\*\* (Emphasis supplied)

And further (id, p. 18):

\*\*\*

The principal "non-treaty" chief, who often disputed with Joseph the command of the united forces was White Bird. He and his band roamed over the rough, mountainous territory, along the Salmon River, and its tributaries. They had no permanent abiding place. One deep valley, now well-known from the terrible battle fought there, is named the White-Bird Canyon. The small stream that flows through it, and empties into the foaming Salmon, is also named White Bird.

There was, also, a band which roamed between the Salmon and the Snake, over that wild country that became Joseph's hiding-place during the war. It is a fastness resembling those of the Scottish Highlands, where the mountain clans held out so often against all efforts of English troops to dislodge them. \*\*\*

Again, south of the Snake, not far above the mouth of the Grande Ronde, is the Ashotin creek. Here, too, was a small band, which always acted in concert with Joseph's people.

\*\*\*

38. An article appears in "The Oregon Historical Quarterly", Vol. XXXIX, March 1938-December 1938, entitled "Joseph L. Meek A Conspicuous Personality, Part 1, 1829-1834." Meek was a Virginian, born

in 1810. He emigrated west. In the fall 1828, while in St. Louis he was attracted by the romantic tales of fur trappers in the far west. As a result, he joined the Sublette Fur Company. In this employment he traveled through the west, including a portion of the area involved here.

The following passage is relevant (Pet. Ex. 13, p. 135):

\*\*\*

According to Meek's account the Sublette party was forced to turn north on account of lack of food and fodder, suffering considerably en route, passing up Payette River and camping at Payette Lake. Meek with Antoine Godin, "Leaugar" (Legarde?) and Small proceeded farther, to the head of a tributary of the Salmon River. Somewhere here in the Nez Perce country, the other men of the party caught up with them, and they again headed south. \*\*\*. (Emphasis supplied)

Meek also visited the Nez Perce, and married Virginia, a Nez Perce girl at the Nez Perce village on the forks of the Salmon.

39. Robert Stuart, an early explorer, visited the Nez Perce in 1812 (Pet. Ex. 22). He mistakenly termed them as Flatheads. He gave their population as 6000. The account states (id, p. 348):

\*\*\*

The Nez Perce, a brave and powerful people, inhabited the lower watershed of the Snake River, were essentially equestrian, and were physically well-developed. Their subsistence was both salmon and bison; and, for the purpose of obtaining the latter, they annually made excursions eastward to the Judith Basin of present-day Montana.

Deeply spiritual, the Nez Perces, as soon as they learned of the existence of Christianity, eagerly sought instruction in that religion, \*\*\*

40. A topographical map prepared by Charles Preuss in 1846 by order of the U. S. Senate from the field notes and journal of Captain

J. C. Fremont, U.S.A., who traveled through this area has been made a part of this record (Pet. Ex. 28). This map places the Nez Perce Indians in the area east of the big bend of the Columbia River and south of the Snake River and thence to include the area to the east and the south. The Snake Indians are indicated as inhabiting the area south and west of the Snake River and south of the western tributary of the Snake known as the Burnt River.

41. For a number of years prior to the treaty council in 1855, the government officials were engaged in problems with the Nez Perce Indians, along with all of the other neighboring tribes. Official correspondence, reports, and other documents relevant to the issues herein have been included in the record.

42. Elijah White, sub-agent for Indian Affairs of the Office of Indian Affairs, was assigned to this general area. On April 1, 1843, he submitted a lengthy report to the Commissioner of Indian Affairs. (Pet. Ex. 27)

He stated the only tribes in the area "from which much is to be hoped, or anything to be feared, in this part of Oregon" were the "Wallawallas, Keyuses, and Nez Percés, inhabiting a district of country on the Columbia and its tributaries, commencing 240 miles from its mouth, and stretching to 480 into the interior." (id, p. 450)

He located the Nez Perce generally in the claim area. He characterized the Nez Perce as superior in a number of ways. He stated that "Of late these three tribes have become strongly united by reason of much inter-marriage." (id, p. 451)

White and others of his party visited the Nez Perce and held council with their chiefs and headmen and the missionaries stationed in the Nez Perce area. They were well received, and were anxious to learn and adopt suggestions of the white men for whom they exhibited great respect.

White described their government organization as follows (id, p. 457):

\*\*\*

The Nez Percés have one governor or principal chief; twelve subordinate chiefs of equal power, being the heads of the different villages or clans, with their five officers to execute all their lawful orders; which laws they have printed in their own language, and read understandingly. The chiefs are held responsible to the whites for the good behavior of the tribe. They are a happy and orderly people, forming an honorable exception to the general Indian character, being more industrious, cleanly, sensible, dignified, and virtuous.

\*\*\*

The Rev. H. H. Spalding, the missionary stationed in the Clearwater River area had reported to White as to conditions in that area. He estimated the population there to be as high as 4000. He gave a very illuminating report on the various aspects of the life, habits and work of these Indians.

White maintained the contacts and good relations with later trips into the Nez Perce country (Pet. Ex. 29). He was successful in persuading a large group of Nez Perce to accompany him to the Walla Walla and Cayuse area to the west as an assistance in straightening out certain difficulties between those Indians and the white missionaries.

43. On August 2, 1848, the President submitted a message to the Congress setting forth certain statistical population figures for

northwest Indian tribes. These varied for the Nez Perce. One table listed several in the Sahaptin including the Nez Perce for a combined 2200. Another table gave 700 for the Wallawalla, Nez Perce and Flatheads combined. Another table by Joseph Meek listed the Nez Perce on the Salmon River with 5000 (Pet. Ex. 34).

44. In 1850, Governor Lane estimated the Nez Perce population to be 1500 (Pet. Ex. 40).

45. The Commissioner of Indian Affairs in 1850 stated (Pet. Ex. 41, p. 159):

\*\*\*

The Necpercil Indians inhabit a large portion of the country on the Snake, Clearwater, and Salmon rivers. They are an intelligent and good people, and have very numerous herds of horses and cattle. \*\*\* The total number of this tribe is estimated at about 1500; some 400 of whom are warriors, more or less under the influence of the Hudson's Bay Company.

\*\*\*

46. Anson Dart, Superintendent of Indian Affairs for Oregon in a letter dated July 21, 1851 (Pet. Ex. 45) called attention to the traditional differences between the Snake or Shoshone Indians and the Nez Perce; to the fact that a treaty had been made between "these two powerful nations"; that it would be wise to set up a conference between the two at the Grand Ronde within the next six months in order to "have a settlement of all of their difficulties without their going to war"; that the Nez Perce were a numerous and proud people; and that in view of the natural enmity between these two it would be necessary to the safety of white emigrants coming overland to Oregon that there be a maintenance of peaceful relations.



Dart also called attention to provisions in a late treaty providing that missionaries should go into Cayuse or Nez Perce countries without their consent.

47. In the report of the Commissioner of Indian Affairs dated November 27, 1851, the Nez Perce were listed as with a population of 1880 and the Palouse 181; the Walla Walla 130; the Cayuse 126. (Pet. Ex. 47)

The Commissioner referred to the Snake Indians as a large tribe in southwestern Oregon and extending into Utah.

The Cayuse Indians were described as a proud, haughty race; that they were once a numerous and powerful nation; and that nearly all of their land was in open prairie.

A trip into the Nez Perce country eastward from Walla Walla was described. The area is described as at the Elpha entrance of the south branch of the Columbia, or the Snake River. The large number of horses, the excellence of the land, etc., was described.

48. In 1854 William Craig of the Indian Service estimated the population of the Nez Perce at 2000. These, he stated, were divided into about ten bands "which inhabit the country of the Snake River, Salmon River and Clear Water" (Pet. Ex. 57).

Craig's letter was in general about conditions relevant to a possible treaty with the Nez Perce and the setting aside of a reservation. Their large numbers of horses and cattle and the nature of the country was stated. His opinion was that the country of the Snake River would be best for a future reservation.

49. In the annual report of the Commissioner of Indian Affairs for 1854 (Pet. Ex. 60) the Nez Perce population in Washington Territory is estimated at 1700.

In this report the various Indian tribes are discussed. It is pointed out that "all these northeastern Indians go to the east side of the Rocky Mountains in quest of Buffalo." It is also stated (id, p. 282):

\*\*\*

A few bands of the Nez Perces Indians occupy the Salmon river and the Clearwater, within this district. The principal portion lie in Washington Territory, and therefore need no special description.

\*\*\*

And further (id, p. 217):

\*\*\*

The Nez perces, or La-ap-tin, lie to the south of the Selish, or Flatheads, on both sides of the Kooskooskie and north fork of the Snake river. Their country, like that of the Wallah-Wallahs, extends into both Oregon and Washington Territories. They are among the most numerous of all these tribes, amounting, according to the census of 1851, to 1,880 souls. Since 1851 there has probably been less decrease than among some of the other tribes. They are much intermarried with the Wallah-Wallahs, and also with the Cayuse. \*\*\*

\*\*\* They are on excellent terms with the Flatheads, Coeur d'Alenes, Spokanes, Pend d'Oreilles, and other Indians of the Territory, travel and hunt with them, and are more or less intermarried with them.

\*\*\*

It also stated that (id, p. 282):

\*\*\*

The Cayuses live on the west side of the Blue mountains and south of the Columbia river. These, with the Nez Perces, are believed to be the most intelligent Indians west of the Rocky mountains. \*\*\*

R. R. Thompson, the Indian Agent for Middle Oregon had submitted a report to Washington headquarters which is included in the 1854

annual report. He estimated the population of the Nez Perce at 2000, with 500 of these in the middle Oregon district.

50. George Gibbs, who assisted Governor Stevens in his explorations in this area, made a report dated March 4, 1854 (Pet. Ex. 61). He stated in part (p. 415):

\*\*\*

The high plain, which extends from the Spokane river to Lewis's fork of the Columbia, and which belongs chiefly to them and the Nez Percés, though bleak and exposed to violent winds, affords grazing for their stock and an abundance of the roots used by themselves for food, while their river supplies them with salmon. They obtain buffalo hides for their lodges, and skins of elk, carraboo, and deer, for their own clothing, in their semi-annual hunts to the eastward. (Emphasis supplied)

\*\*\*

Gibbs included Captain Wilkes' estimate of the Nez Perce as 2000; Anson Dart's estimate of 1880; and an 1853 estimate of 1700 (id, pp. 417, 418).

51-(a) Documents relevant to the 1855 treaty council proceedings have been included in the record (Pet. Exs. 69-81).

(b) The 1855 treaty council was held at Fort Walla Walla, Washington Territory in May and June. The Nez Perce was there in large numbers. In fact, it was reported that 500 Nez Perce attended the council. Gold had been discovered and the nature of their lands were becoming known by the whites whose forthcoming settlement in the northwest was in the offing. The Indians were apprehensive lest they be taken to live away from their villages and home areas to other less favorable areas to live.

(c) The official proceedings started on May 28, 1855, and was concluded on June 11, 1855. The council was exceedingly well attended with the Nez Perce in the majority. Provision was made to feed them. A detailed record of the official proceedings is in the record (Pet. Ex. 75). This details the arrangements, the participants by tribe, etc. The Nez Perce, Cayuse, Walla Wallas, Yakima, Palouse, Spokanes, Pisuose, Methows, and the Oak-km-a-kanes were listed as represented. Interpreters under oath were used and the remarks recorded. Extreme caution was taken for clear understanding by the Indians.

The representatives of the government carefully explained the objectives of the council and proposed treaty -- to maintain peaceful relations; to provide definite reservations for the Indians' use and occupation on which the whites could not settle; and to provide schools, churches, clothing, tools, blacksmiths, millwrights, etc., for the civilization, welfare and advancement of these Indians. The Indians were told they need not give up their gathering or hunting habits.

Lawyer, the head chief of the Nez Perce had drawn a map of his conception of the Nez Perce country. At the June 4th session he referred to it as follows (id, p. 22):

\*\*\*

It was not for nothing I have been listening to you. My country is poor, it is a trifling country, you see the map, the marks of our country, one stream runs one way another runs another way, it is all rock, my Chief, but the Big Chief from the light (the East) said to you to go and talk to these people and you have done it. \*\*\*

Stevens, on June 4, 1855, stated (id, pp. 25, 26):

\*\*\*

\*\*\* You want to know where your Reservations are to be, what is the ground we have in view for you. I will explain this matter freely.

Here are Nes Perces, Cayuses, Walla Wallas, Yakamas and Umatillas and Bands on both sides the Great river to below the Dalles. Tribes northwards, Colvilles, O-kin-a-kanes, Palouse.

For the principal tribes here present we have thought of two Reservations. One Reservation in the Nes Perces country and one in the Yakama country. The Reservation in the Nes Perces country to extend from the Blue Mountains to the spurs of the Bitter Root, and from the Palouse river to part way up the Grande Ronde \*\*\*

We want you to think about this and see if you like it. You may think the Reservations are not good. If not you will say so. \*\*\* (Emphasis supplied)

Stevens then gave the reasons for wanting to put several tribes of Indians in one Reservation location viz: protection, better organization and care, etc. He expressed the opinion that the government could do more for these Indians under such arrangements.

The Indians were then asked to think the matter over and to be in a position the next day to state their opinions and decisions.

(d) On the next day, June 6, 1855, General Palmer advised it was the government's desire to place the Spokanes, Nez Perces, Walla Wallas, Cayuses, and the Umatillas on one reservation "in the Nes Perces country".

There (showing a draft on a large scale) is a map of the Reservation, there is the Snake river, there is the Clear Water river, here is the Salmon river, here is the Grande Ronde river, there is the Palouse river, there is the El-pow-wow-wee.

We commence where this river the Palouse comes from the mountains, and down the river to the mouth of the Ti-noh-pan-up,

then to the Snake river 10 miles below the mouth of the El-pow-wow-wee, then to the source of the El-pow-wow-wee, thence along the crest of the Blue Mountains to the Grande River below the Grande Ronde, thence along the ridge between the Wal-low-how river, crossing the Snake river 15 miles below the mouth of Powder river, thence to the Salmon river a little above the crossing, thence by the spurs of the mountains to the source of the Palouse river at the place of beginning.

This is a large Reservation, the best fisheries on the Snake river are on it; there are the fisheries on the Grande Ronde river, there are fisheries on the Os-ka-wa-wee, and other streams, there are camash grounds here at this place (pointing to the large camash grounds of the Nes Perses). We feel if we put you on this Reservation, one agent can visit you all and take care of you all.

Each tribe will have its own place on this Reservation. The Spokanes will have their place and their home, the Nes Perses their place and their home, the Walla Walla their place and their home, the Cayuse and the Umatillas their place and their home. The Spokanes will have a blacksmith, a school, and a farmer, the Walla Walla will have a blacksmith, a school, and a farmer, the Cayuse and Umatillas will have a blacksmith, a school, and a farmer. The Nes Perses are more numerous, they will have two blacksmiths, two schools, and two farmers.

\*\*\*

(e) Through their spokesmen the Nez Perce indicated assent that afternoon. The Cayuse, Walla Walla, and others professed not to understand what they would receive. They all expressed their affinity to the mother-earth and their homelands and indicated a reluctance to move to the proposed reservation in the Nez Perce country. One of the chiefs stated (id, p. 37):

\*\*\*

The Nez Perces have already given you their land. You want us to go there. What can we think of that? That is the reason I cannot think of leaving this land to go there. Your words since you came here have been crooked. That is all I have to say.

\*\*\*

It was agreed the tribes would think the matter over and come back at the next session for further discussions.

At the next session Stevens proposed a different arrangement for the Walla Walla, Cayuse and the Umatilla to the west of the proposed Nez Perce Reservation.

After much discussion, Joseph, the leader of the Wallowa valley area Nez Perce, stated in part (id, p. 41):

\*\*\* it is not anything bad that I am thinking that I am going without speaking - no, it is not anything bad - it is a place to live, a place for our good to live there. Think for year after year for a far way ahead - I wonder what you think if I could see your thoughts. \*\*\* I hear you speaking to my children and they have many hearts. I am going without talking, and you dont know my talk. At the Grand Ronde I saw my children on both sides; we have been talking and finished your talk; this is all I have to say. (Emphasis supplied)

\*\*\*

On Saturday, June 9th, Governor Stevens announced the amended proposal for three instead of two reservations. The Nez Perce were to be alone; the Walla Walla, Cayuse and Umatilla together to the west of the Nez Perce Reservation; and the Yakima group to the north.

Stevens stated in part (id, pp. 42, 43):

\*\*\*

The Nez Perces have their reservation as was shown them in Council \*\*\*. They all know what was said.

\*\*\*

It is stated first in all the papers the Indians who signed the papers, then your lands are described. We have got the descriptions from yourselves. Then your reservations are pointed out, those you all know.

\*\*\*

\*\*\* There is secured to you your right to fish, to get roots and berries, and to kill game. \*\*\*

(Emphasis supplied)

Looking Glass, one of the principal chiefs of the Nez Perce, came to the council late. He wanted to be assured that the whites would be kept off the reservation and that the Nez Perce would have ample room for their pursuits. On this he was assured by Stevens who pointed out that the Nez Perce Reservation was carved out of their own country; that the Nez Perce would be able to hunt, fish, gather and graze horses and cattle even beyond the reservation boundaries until such time as such should be occupied by the whites.

Looking Glass drew a line he felt should be used for the Nez Perce Reservation boundary. To this Stevens and General Palmer could not agree. Palmer stated (*id.*, pp. 46, 47):

\*\*\*

I would say to the Looking Glass what use is it to purchase his country and give it all back again. We did not come here to talk like boys, We don't wish to part with a misunderstanding.

The Nez Perces, \*\*\* agree to the boundaries as we have marked.

\*\*\*

If we were to say yes to his line our Chiefs would say No!

\*\*\*

(Emphasis supplied)

The council then adjourned until June 11, 1855. At this meeting the Nez Perce signed the treaty.

Governor Stevens' map of 1855, which was the result of this council, is described above in our Finding No. 26. Stevens' 1856 and 1857 maps are also described in that Finding.

52. The census of these various tribes of Indians, in view of newer information gathered at the 1855 council, was revised (Pet. Ex. 79).



In this census the Nez Perce are given a population of 3300, almost half of the listed population of the other attendant tribes. The Palouse were listed as 500; the Yakima group at 2000; and the bands of the Columbia River 750. The total was 6500.

53. In 1901 Stevens' son, Hazard, wrote a biography of his father (Pet. Ex. 81). This is detailed. This included many details concerning the Nez Perce from Stevens' records. Speaking of the Nez Perce he said (id, pp. 16, 17):

\*\*\*

Of all these tribes, the Nez Perces or Sahaptin were the most numerous and progressive. They numbered 3300, and occupied the country along the western base of the Bitter Root Mountains for over two hundred miles, and a hundred miles in width, including both banks of the Snake and its tributaries, the Kooskooskia or Clearwater, Salmon, Grande Ronde, Tucanon, etc. \*\*\*

Of the Palouse, he stated in part (id, p. 22):

\*\*\*

\*\*\* One band, the Palouses, lived on the Palouse River, on the north side of the Snake and east of the Columbia, next to the Nez Perce \*\*\*

54 (a) In the 1859 report of the Commissioner of Indian Affairs (Pet. Ex. 90) it was pointed out that the various chiefs with their people still lived "in different parts of the country originally claimed by them, where they have their separate gardens and farms. Most of the tribe are now living upon the reservation (p. 783). He further stated

\*\*\*

The Nez Perces tribe is not only the largest, but most influential and important tribe in Washington Territory. They hold the balance of power; and as long as they remain friendly, the smaller tribes can effect no formidable combination to make war. \*\*\* (p. 784 -- and also see Pet. Ex. 91)

The census of the Nez Perce was placed at 3700 (Pet. Ex. 90, p. 50).

(b) The report included the proceedings held on the Nez Perce Reservation at the "Weipe" root grounds in Idaho of a council on July 22, 1859, between Indian agents and chiefs of the Nez Perce in connection with the ratification by the Congress of the treaty signed in 1855. It appears there had, in the meantime, been a division of feeling among these Indians as to the wisdom of the treaty.

During the council, Joseph, the chief of the Wallowa, Oregon, section stated (id, p. 788):

\* \* \*

I want to tell you my heart. I am a red man. I have my own opinion about this country; we should make up our minds before we talk. When we made a treaty with Governor Stevens, the line was drawn; I know where it is; you told us right yesterday; it is as you said. When Governor Stevens made the line, he wanted a certain chain of mountains. I said no, I wanted it to hunt in, not for myself but for my children; but my word was doubted.

The line was made as I wanted it; not for me, but my children that will follow me; there is where I live, and there is where I want to leave my body. The land on the other side of the line is what we gave to the great father.  
(Emphasis supplied)

55. On September 27, 1860, Agent Cain reported a population for the Nez Perce of 4000 with 10,000 horses and 2000 cattle (Pet. Ex. 92). The Palouse were listed as 400 persons, 300 horses and 50 cattle; and the Cayuse with 400 persons, 1000 horses and 300 cattle.

56. Herbert Joseph Spinden, an anthropologist, made an exhaustive study of the Nez Perce. This was published in the Memoirs of the American Anthropological Association, 1908 (Pet. Ex. 101; Def. Ex. 1).

As to the area occupied by the Nez Perce he states (Def. Ex. 1, pp. 172-175):

Area Occupied. --The range of the Nez Perces extended from the Bitterroot mountains on the east to the Blue mountains on the west, between latitude  $45^{\circ}$  and  $47^{\circ}$ . Thus, while mostly in Idaho, they extended a considerable distance into Oregon and Washington.

The exact boundaries are in many places difficult to determine, since the area actually inhabited was only a small part of the territory under Nez Perce control. The permanent settlements were situated only along the rivers. In the south the villages extended a considerable distance up Salmon river, at least as far as Slate creek and in all probability as far as the western line of Lemhi county. On Snake river the mouth of the Imnaha seems to have marked the southern limits. Above this point the Snake flows through a deep canon between the Powder mountains and the Seven Devils. On the southwest the boundary line of the Nez Perce area circled the drainage basins of the Imnaha and Willowa rivers, and crossing Grande Ronde river above the mouth of the Willowa, ran north along the crest of the Blue mountains to a point on Snake river near the mouth of Tukanon creek. On the north it followed the divide at the heads of the short streams flowing into Snake and Clearwater rivers till it reached the Bitterroot mountains. Thence southward these high ridges formed an effective barrier boundary on the east.

There seems to have been a considerable strip of neutral ground between the Nez Perces and their traditional enemies, the Shoshoni on the south and the Spokane and Coeur d'Alenes on the north. On the other hand, the tribes friendly to the Nez Perces lived in close conjunction with them. The Umatilla tribe of the Wailatpuan stock divided with them the Grande Ronde valley. The Paloos shared with them the rich camas meadows near the present town of Moscow.

There are no traditions of migration, and, so far as can be determined, the tribe has dwelt within these boundaries from time beyond memory. The meanings of most of the place names have been forgotten.

Names for a number of the bands, or geographical divisions, of the Nez Perces have been obtained, but the list is incomplete, especially as regards the bands on the lower course of Snake river. These names are derived mostly from the names of

streams. Each group contained at least one important permanent village and a number of temporary fishing camps. These permanent villages seem to have been the real basis of tribal division, since each had at least one chief. The great chiefs were war chiefs and apparently had no real control outside of their own communities.

Following is a list of the most important divisions:

- Esnime -- Slate Creek band, the upper Salmon River Indians.
- Lamtama -- Whitebird band on Salmon river. Whitebird creek is called Lamata.
- Tamanmu -- Band at mouth of Salmon river, the name for Salmon river being Tamana.
- Imnama -- Imnaha River band.
- Walwama -- Wallowa Valley band.
- Wewi'me -- Band at mouth of Grande Ronde, or Williwewix.
- Isawisnemepu -- Band near Zindels, on the Grande Ronde.
- Inantoinu -- Band at the mouth of Joseph creek.
- Toiknimapu -- Band above Joseph creek on the north side of the Grande Ronde.
- Hinsepu -- Band at Hansens Ferry on the Grande Ronde.
- Sakanma -- Band between the mouth of Salmon river and the mouth of Grande Ronde. The name comes from that of a canon at Cruger Bar.
- Saxsano -- Band about four miles above Asotin City, Washington, on the east side of Snake river.
- Hasotino -- Band at Hasutin, opposite Asotin City, Washington. The name means literally "the great eel fishery."
- Hesweiwewipu -- Band at the mouth of Asotin creek, which is called Hesi'we.
- Salwepu -- Band on the Middle fork of Clearwater river, about five miles above Kooskia, Idaho.
- Tukpame -- Band on the lower portion of the South fork of Clearwater river, which is called Tukupe, tukupt meaning "burnt."
- Saiksaikinpu -- Band on the upper portion of the South fork of Clearwater river. Saiksaik is the word for "fireweed."
- Kamiaxpu -- Band at Kamiah, at the mouth of Lawyer's creek. This band is also called Uyame.
- Tewepu -- Band at mouth of Oro Fino creek.
- Atskaaiwawixpu -- Band at the mouth of the North fork of Clearwater river.
- Pipu'inimu -- Band on Big Canon creek, which is called Pipuinime.
- Painima -- Band near Peck, on Clearwater river.
- Tukelikukespu -- Band at Big Eddy.

- Takschepu -- Band at Agatha on Clearwater river.
- Makapu -- Band on Cottonwood or Maka creek.
- Yatoinu -- Pine Creek band.
- Yaktoinu -- Band at mouth of Potlatch creek, which is called Yaka.
- Tunehepu -- Band at Juliaetta on Potlatch creek.
- Iwatoinu -- Band at Kendrick on Potlatch creek.
- Lapweme -- Band on Lapwai and Sweetwater creeks.
- Hatweme -- Band on Hatweh creek.
- Siminekempu -- Band at Lewiston, Idaho.
- Tsokolaikinma -- Band between Lewiston and Alpowa creek. The name comes from the high-cut banks of the river, tsoko meaning "high-cut bank."
- Alpowe'ma -- Band on Alpaha (Alpowa) creek.
- Witkispu -- Band about three miles below Alpowa creek on the east side of Snake river. The name comes from witx, "Alders."

Other bands, extending about eighty miles down Snake river from Lewiston, were: Nuksiwepu, Sahatpu, Wawawipu, Almotipu, Pinewewewixpu, Tokalatoinu, etc.

The names of villages would make a still longer list. The estimate of Lewis and Clark that the Nez Perces numbered more than 6000 could not have been far wrong.

57. Spinden stated the most important vegetal food was the camas.

This was gathered in enormous quantities in the west upland meadows of Weippe prairie located north of the Clearwater River in Idaho and approximately seventy miles east of the present city of Lewiston, Idaho; the famous camas prairie, in the open country south and near the present city of Moscow, Idaho; and in the Grande Ronde valley.

Spinden's work is so detailed and thorough on all of the aspects of Nez Perce life as to lend credence to its accuracy. He discusses in detail the environment, archeology, minerals, weaving, basketry, housing, furniture and utensils, food and its procurement and preparation (including gathering, hunting and fishing), travel and transportation warfare and weapons, the Nez Perce calendar (linked to economic activity),

physical and mental characteristics, population, sociology, government, etc. It is a veritable encyclopedia of the Nez Perces.

In his review of population he cites the various estimates and stated in part (Pet. Ex. 101, p. 240):

\* \* \*

The fact that the reservation embraced a large extent of territory, many parts of which were difficult of access, may account for the prevailing low estimates of the population. Moreover, it must be remembered that the agents were concerned only with the Indians living on the reservation. Until thirty or forty years ago many bands roamed at will. Father Cataldo, who as a missionary has dwelt among these Indians for the last fifty years, estimates that in 1860 the population was about 5000. (Emphasis supplied)

Spinden prepared this work in 1907 and 1908 on detail by the Peabody Museum of Harvard University to study the archeology and ethnology of the Nez Perce Indians. For this purpose Spinden and Mr. R. R. Hellmann, a student of the Harvard Medical School, went into the Nez Perce country where they conducted an investigation. This was supplemented by further researches by Spinden under the auspices of the American Museum of Natural History. Spinden received substantial assistance from individuals and organizations in the Nez Perce area in the conduct of his investigation there. (id, p. 171)

58. In 1864 the Nez Perce population was officially estimated variously at from three to six thousand. It was pointed out by the Indian Superintendent, however, that "their nomadic life and the wide range of their hunting grounds make it difficult to determine without a precise enumeration" (Pet. Ex. 102).

59. Later when trouble arose about the settlement of whites in the Wallowa area in Oregon, inhabited by Joseph's band, there was considerable official correspondence which confirms the ante-treaty use and occupation of the Nez Perce in the region. The disputes between these Indians and the government led to the Nez Perce war in 1877 (Pet. Exs. 103-110, 113, 115, 123, 124).

60. On April 4, 1873, the Superintendent of Indian Affairs at Salem, Oregon, reviewed the pertinent facts concerning the Wallowa area (Pet. Ex. 105). It was acknowledged that this area had been held aboriginally by these Indians. These Indians had continued to live there since this area was included in the original reservation. On his deathbed Joseph claimed he had, with these people, lived there a lifetime. Young Joseph and his people then manifested their determination to continue to hold it despite the recarving of the size of the Nez Perce Reservation boundaries to exclude it and thus to open it to white settlement.

The Superintendent stated in part:

\* \* \*

There is an abundance of fish in the river and game in the adjacent mountains, and the grass is excellent; \*\*\*

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#### BASIC FINDINGS

The record contains a number of other studies, reports, letters and other documents worthy of consideration. However, in our opinion, the relevant facts to be gained from these are cumulative with the

facts which emanate from the above evidentiary findings. Based on these evidentiary findings, we make the following basic findings of fact:

61. At the time the facts of the claim asserted herein arose, and from time immemorial, the petitioner has been a separate, identifiable tribe or band of Indians, capable of owning and occupying land. The petitioner was culturally identifiable and had a definite political structure reflecting tribal nationality at all times material to the claims. This tribal nationality was recognized by the tribal members and contemporary aboriginals, as well as the agents of the defendant and the first white people to meet the Nez Perce. The petitioner's tribal identity is also evidenced through its tribal use of possessions and its national functions, including its relations with others.

62. The unique language spoken by the Nez Perce identifies them as a tribe or nation.

The earliest recorded contact with the Nez Perce was made by Lewis and Clark in 1805. When they crossed the Bitterroot Mountains via the Lolo Pass, Lewis and Clark met the Nez Perce and called them "Chopunnish", "Pierced Noses", "Nez Perce", or "Saptin", because of their imperfect understanding of the Nez Perce language--Sahaptin--which they were the first whites to hear.

The Sahaptin spoken by the Nez Perce was unintelligible to all adjacent tribes, even to those speaking a Sahaptin dialect, and communications between the Nez Perce and neighbors were carried on either by bilingual natives or sign language.



63. The Nez Perce Indians bore a physical resemblance to the Flatheads, who lived east of the Bitterroot range. Physical differences appeared between the Nez Perce and their western neighbors and greater differences between the Nez Perce and the Snakes to the south. There was some evidence that a few Nez Perce wore nasal ornaments, but the practice appears not to have been an established custom.

64. Prior to the arrival of missionaries and the subsequent influences of Christianity, the Nez Perce practiced a religion known as the Guardian Spirit religion, which was related to their lands.

65. Prior to the Treaty of 1855, under the direction of Agent Elijah White, the Nez Perce elected Ellis as head chief and subscribed to a code of laws drawn by White to promote friendly relations between the Nez Perce and the settlers.

66. The first missionary to the Nez Perce, in addition to offering religious instruction, prepared a dictionary of Nez Perce words and printed books in their language. At the treaty council of 1855 the Nez Perce recorded the proceedings in their own language.

67. The political structure of the Nez Perce was one of tribal nationality, functioning through elective chiefs and councils, which operated at the time of the treaty negotiations with the defendant.

Prior to the acquisition of the horse in 1730 by the Nez Perce Indians there was some evidence that the social and political organizations of the tribe developed along village lines, each village comprising a group of related families acting as the political unit or body politic. After 1730 the Nez Perce moved towards larger political groupings, evolving into a true tribal organization.

The villages exercised control over local and peacetime affairs, but the tribal organization and not these political subdivisions operated in times of war, when the groups were together in council, or when there was a common economic problem to be faced.

The tribe acted through councils composed of the various headmen and chiefs, and the decisions of the council were made under a rule of unanimity.

68. Chieftainship was by election based on achievement. This was also true for the war chiefs who held their position whether a war was in progress or not. The recorded history of the Nez Perce is replete with references to the various chiefs and the relative powers they exercised, from the village and band chiefs to the tribal chiefs. Prior to and at the time of the treaty negotiations of 1855, Lawyer was head chief of the Nez Perce and represented the nation in its dealings with defendant. Lawyer's position was thus recognized by defendant at the time the treaty was signed and this recognition continued, the defendant again treating with the Nez Perce through Lawyer as head chief in 1863.

69. The Nez Perce Indians' name for themselves and the names for the Nez Perce in common ascribed to them by contemporary aboriginals, early explorers, travelers, and agents of the defendant are evidence of the continued existence of a tribal nationality from recorded time.

The Nez Perce called themselves "Numipu", which has a tribal inclusive definition of "we the people".

Contemporary aboriginals had names for the Nez Perce and there is evidence that the term "Sahaptin" was the original Salish designation

of the tribe. Lewis and Clark called the Nez Perce by several names, but "Chopunnish" was the most frequently used term. When employing "Chopunnish", they were referring to the whole tribe and when referring to the Nez Perce in a certain locality, another name was given.

Other early travelers used various names of tribal designation to describe the Nez Perce, as did the agents of defendant.

70. The Nez Perce Indians, as far as their history can be traced, conducted the affairs of their nation through councils. Many of these councils were held with agents of the defendant, and the most important in terms of this claim was the council of 1855 held at Walla Walla. The Nez Perce continued to treat with the defendant through councils after that date, as well as conduct their national business in other councils.

71. The Nez Perce Indians were traditional enemies of the Shoshone, the Bannock and the Blackfeet. They waged war with these Indians as a united group acting as a nation and not on the basis of individual action. As a result of these traditional hostilities with the Shoshone there was an area of disputed territory more fully discussed in connection with our findings as to the southern aboriginal boundary of the Nez Perce, infra.

72. As shown above in our evidentiary findings, the population of the Nez Perce Indians has been variously estimated through the many years starting with their first contact with the whites in 1805 when Lewis and Clark were in their country. Lewis and Clark estimated the population then to be 8000. However, this included 2000 who have been recognized as from neighboring tribes to the west and the northwest. It did not include, however, their estimate of 1000 for Joseph's Wallowa band of Nez Perce as shown on their maps. During the eighteen-forties

and through the eighteen-fifties, government figures varied from 1500 to 3700. In 1860 the estimate was 4000. Father Cataldo, who lived with these Indians fifty years as a missionary, estimated the 1860 population at 5000. In 1864 Governor Lyons made an estimate of between 3000-6000 with a notation that because of the nomadic life and wide hunting range of these Indians it was difficult to make an accurate figure.

The government agents who made the relatively low estimates in the eighteen-forties and eighteen-fifties were chiefly interested in those who were in the village areas at the time of estimates; they were without full knowledge for the same reasons given by Governor Lyons--lack of access at any one census time -- roving and nomadic habits -- wide hunting, gathering and fishing range, etc.

We find that an exact estimate of the Nez Perce population in 1859 is impossible, but that an approximate estimate of 5000 is reasonable. The Nez Perce were the largest, most powerful and influential nation of Indians in the northwest area west of the Rocky Mountains. As of 1860 they had, relatively speaking, been the least exposed to the white man's diseases which was the prime cause of depopulation of many Indian tribes during these years.

73. The Nez Perce followed a well established annual cyclical pattern of activities for subsistence.

Their winters were generally spent at their village locations along the rivers and in the valleys. For this they had stored food from their activities during the rest of the year. The following calendar indicates

generally the type of activity followed in the different months of the year (Pet. Ex. 101, pp. 237, 238):

CALENDAR.--According to the ancient calendar there were twelve months in the year. It is uncertain which of these months began the year, so they are here given from the starting point of our own calendar.

- 1st January. -- Wilupup, meaning uncertain, said to be, "the middle of cold weather."  
 2nd February. -- Alatamal, "the month of swelling buds."  
 3d March. -- Lafital, "the month of flowers," latis meaning "flowers."  
 4th April. -- Kakital, "the month of kakit"; kakit was a favorite food root much like kouse.  
 5th May. -- Apaal, "the month of kouse bread"; kouse bread was made from the fresh roots gathered at this time.  
 6th June. -- Hillal, "the month of the first run of the salmon."  
 7th July. -- Hasoal, "the month of eels," or Qoitktsal, "the month of blue-backed salmon."  
 8th August. -- Taiyaal, meaning uncertain, possibly "the month of hot weather"; taiyam means "summer."  
 9th September. -- Wauwama aiakal, "the month of salmon spawning at the heads of creeks."  
 10th October. -- Aiakal Pikunme, "the month of spawning salmon on Snake River."  
 11th November. -- Hoplal, "the month when tamarack (larch) trees lose their needles."  
 12th December. -- Saxliwali, "the beginning of cold weather," or "time of the fall deer hunt."

This does not take into account their annual visits east of the Bitterroot Mountains for buffalo hunts.

74. The camas and kouse were the main root foods. Others gathered were the bitterroot, carum, gairdneri gray, wild carrot, tobacco root, etc.

There were five principal root digging locations in the claimed area: (1) in the general area south of present-day Moscow, Idaho; (2) in the Weippe, Idaho, area east of Lewiston, Idaho; (3) in the Asotin River area north of the Grande Ronde in the present State of Washington;

(4) in the area between the Snake River and the headwaters of the Little Salmon River; and (5) in the area north and east of Weiser, Idaho. However, there were several other root digging areas, including the areas in the Lolo Trail location (see Def. Ex. 24-A; Pet. Exs. 2-L, 101, pp. 201-204).

The gathering of the camas and kouse in the prairies south of Moscow were generally in the spring of the year. At that time the Palouse, Cayuse, Umatilla, and all of the bands of the Nez Perce met in this famous camas area. Curtis states (Pet. Ex. 4, p. 41):

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In May all the bands would congregate at Tipahliwam (Camas prairie) to dig kouse. To this common harvest ground flocked the people from Wallowa, Salmon river, Snake river, and the Clearwater. Often in the old times the Cayuse, Palus, Umatilla, and all the bands of the Nez Perces met at Tathinma (a prairie a mile south of Moscow, Idaho) in the spring, for horse-racing, gambling, and war-dancing. The announcement of the time for this meeting, and the invitations to the different bands of Nez Perces and to other tribes were always sent out by the people of Alpoowih. During these festivities the women spent much time digging roots. These great gatherings were continued for a couple of weeks, when the people would return to their homes with collected and prepared roots, and in a short time they would start out on another root-digging expedition for a further supply. In July they would assemble at Oyaip (Weippe prairie) for the harvest of camas, which they gathered in great quantities, as it formed an important item of food with them.

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(Emphasis supplied)

Spinden stated that "The Paloos shared with them the rich camas meadows near the present town of Moscow." (Pet. Ex. 101, p. 173)

Stevens noted twelve bands of Palouse in one location and 600 Nez Perce with 2000 horses about 2-1/2 miles north of said location as he

traveled in June of 1855 through this general camas ground area south of Moscow, Idaho, which he characterized as the great Nez Perce camas grounds (Pet. Ex. 132).

We find the Nez Perce used and occupied the camas grounds in the area between Lewiston and Moscow, Idaho. Neighboring Indians met with them in this area each spring of the year for games, ceremonies, etc. This was much the same as the relationship which existed between the Flatheads and the Nez Perces and other Indians west of the Bitterroots who traveled annually to the east of those mountains into Flathead country to hunt the buffalo.

75. The Nez Perce gathered various berries and seeds from throughout the area. These were extensively used for food.

Of the berries, the most important was the serviceberry. During favorable years they were collected in large quantities and made into small disc-shaped cakes that were sun-dried upon mats and kept for winter use. When the harvest of serviceberries was light their place was taken by the inferior hard-seeded berries of the hawthorn. Blackberries were also dried. Chokecherries and huckleberries were commonly boiled. Most other berries, including strawberries, salmonberries, currants and gooseberries were eaten fresh. Roseberries served as a valuable food in distressed times, since they remained upon the bushes throughout the winter. Serviceberries, chokeberries, hawthorn, currants, and gooseberries flourished along the water courses and near the villages. Huckleberries were commonly gathered in the highlands, especially on Craig Mountain.

Sunflower seeds were much used for food. They were valuable on account of their oil. The grinding of sunflower seeds is mentioned in one of the Nez Perce myths.

76. The principal fish was the salmon. This was a very important food item. The red fish, or blueback salmon, varying from three to eight pounds in weight was the favorite fish for drying and storing for later consumption. It was caught about the first of July on the Clearwater River, but was taken much earlier at Walla Lake and at the headwaters of the Salmon River. Only the last of the run spawned on the lower reach of the rivers in the area.

Quinnat, Chinook, or Tye salmon, averaging more than twenty pounds in weight, were caught somewhat later than the Blueback salmon.

The steelhead salmon, averaging about six pounds, was caught during the fall and winter.

The salmon were taken by the Nez Perce in the Snake River, the Clearwater River and the Salmon River and their tributaries throughout the claimed area.

In addition, the Nez Perce caught the cutthroat trout, Waha Lake trout (only on Waha Lake on Craig Mountain), the sturgeon, suckers, and the Lamphrey eel. The eels ran about the same as red fish or blueback salmon, but were caught on the lower branches of the rivers.

These fish were caught by the Nez Perce on the Minam, Wallowa, Grande Ronde, Imaha, Snake, Clearwater, Weiser, Salmon, Selway, Tucannon, Lochsa, South, Middle and North Forks of the Clearwater, the Little Salmon River, and the North Fork of the Snake River; also Joseph's Creek, and the various lakes throughout the area.



77. An important part of the Nez Perce economy was related to their far-flung hunting trips throughout the claimed area, and supplemented by their buffalo hunts with the Flathead Indians east of the Bitterroot range.

Relatively speaking game was scarce throughout the area and hence it was necessary for them to travel great distances in such pursuits and to thus utilize vast areas.

The game was hunted not only for food, but for clothing. The Nez Perce clothing was, for the most part, made from the skins of the deer, mountain sheep, moose, bear, beaver, antelope, buffalo and others. Since it was necessary for five thousand Nez Perce to clothe themselves in this way, this was in itself a compelling reason for the wide range of the hunt.

Practically all parts of the animals were eaten, the fat on the entrails being considered a delicacy. Fawns were boiled whole. All meat was either boiled or roasted before eating.

Deer, elk and buffalo meat were dried into "jerky" for winter use. Pemican was made only of buffalo meat; marrow from the long-bones was the source of the oil used. Berries were not used in the pemican. The amount of buffalo meat packed back was relatively small, even after the introduction of horses in 1730. The large number of Nez Perce who annually made the buffalo pilgrimage to the Flathead country east of the Bitterroot Range for buffalo went for the express purpose of getting their fill while there rather than for the intention of bringing back a substantial supply. Most of the stock had constituted and were, horses, etc., which they had with them

the intention of bringing back a substantial supply. Most of the backpack consisted of robes, horns, etc., which formed valuable articles of trade.

Otter and beaver found along the upper reaches of the many streams were considered great delicacies.

The game was hunted with bow and arrow. The finest bows were made from a single piece of mountain sheep horn. Arrow shafts were made from branches of the serviceberry.

Spears were also used.

The bow and arrow were used in hunting elk, deer, bear, ducks, brant, muskrats, squirrel, moose, etc.

The spear was used in hunting the buffalo.

Buffalo, deer, antelope and elk were hunted on horseback when the surface of the country permitted. A favorite method was to run down the deer into open prairie. Game drives for deer were constructed in the hunting grounds. More often such drives consisted of lines of hunters strung out about sixty yards apart. Decoys were used in hunting deer, wolves and mountain sheep.

Prairie chickens, magpies, rabbits, coyotes and wolves were also hunted for food.

Eagles were caught live and raised for their feathers.

78. Over the many years the Nez Perce, with their knowledge of the best game locations established traditional hunting shelters throughout the area to which they would return periodically. Thus, a substantial part of the year they were away from their permanent

villages on the streams and in the valleys, and had established definite methods of temporary subsistence (shelter, food, etc.) while in the camas prairies, the mountain fastnesses, the high plateaus, the deep canyons, the distant meadows, streams, etc.

79. The Nez Perce utilization of the claimed area for the hunt has been set out in this record through the aforesaid described sources.

The antelope were generally found in the plateau areas. The two principal areas where they were hunted by the Nez Perce were (1) in the southern portion east and northeast of the present town of Weiser, Idaho; and (2) in the area south of the Snake River in the State of Washington east of Lewiston, Idaho.

The bear was hunted in the following areas:

- (1) ~~Between~~ the Salmon and the South Fork of the Clearwater;
- (2) In the Lochsa River area in the Bitterroot Mountains;
- (3) Throughout the Nez Perce National Forest area;
- (4) Throughout the Payette National Forest area.

The beaver and the otter were caught in the upper reaches of the streams in the area, and particularly in the eastern Clearwater River area.

The deer were found throughout the area, but principally in the following locations:

- (1) In the area near Bovill, Idaho;
- (2) In the Lochsa River-Lolo trail area in the Bitterroot Mountains;
- (3) In the area south of Wallowa Lake.

Eagles were found in the mountains. They were generally caught by the Nez Perce in those mountains in which the upper reaches of the Clearwater River flow.

Elk were found as follows:

- (1) In the Wallowa Mountains;
- (2) In the Lochsa River-Lolo trail area;
- (3) In the Huckleberry Butte area east of Clarkia, Idaho;
- (4) In the area east of Whitebird and Freedom, Idaho;
- (5) In the upper Salmon River tributary areas; and
- (6) In the area south and east of Lewiston, Idaho.

Moose was found as follows:

- (1) In the Clearwater National Forest area;
- (2) Between the South and Middle Forks of the Clearwater River; and
- (3) Between the Lochsa and Selway Rivers.

Mountain sheep were found throughout the various mountains of the area, but were generally hunted by the Nez Perce in the following areas:

- (1) Clearwater National Forest area;
- (2) Riggers, Idaho, area;
- (3) The mountain area stretching for many miles along the Snake River south of the Clearwater;
- (4) The Lochsa River area in the Bitterroots; and
- (5) The upper Salmon River tributaries area.

80. In times of distress the Nez Perce resorted to consumption of the bark of trees. This they did rather than to eat their horses.

81. The Nez Perce owned many horses and in later years many cattle. In 1860 they were officially reported as having 10,000 horses and 2000 cattle (Pet. Ex. 92).

We find that in addition to the necessity of covering large and far-flung areas for their own subsistence (5000 Nez Perce), it was also necessary to have large areas for the grazing of their large number of horses and cattle. Thus, there was an intensive use for this purpose of the prairies, the semi-desert areas, and the high mountain meadows. In the winter intensified resort to the valley areas was necessary.

We also find that their ownership of a large number of horses enabled them to travel great distances within and beyond the claimed area for subsistence and defense and territorial expansion purposes as well as to visit with their friendly neighbors to the west, north and east.

and 82. The claimed area was intensively marked by historic and well-worn trails and trail patterns. These linked their permanent village sites along the rivers and in the valleys with well-established game, fishing and gathering areas. These trails were in constant use by the Nez Perce in their application of their annual cycle of subsistence.

Because of their dependence on these trails for their economic subsistence the Nez Perce made a special effort to maintain them -- although elementary from a relative standpoint -- much the same, at least in principle as we today maintain our highways. A part of the problem encountered was the clearing of deadfalls and the tearing out of new growth.

The principal hunting trails of the Nez Perce have been depicted on Defendant's Map Ex. 24-A and Petitioner's Map Ex. 2-G.

The famous Lolo trail enters the area in the northeast section from one of the passes used by the Nez Perce to go to the Flathead buffalo country. This is the trail used by Lewis and Clark.

Two other main trans-mountain trails to the east of the Bitterroot Mountains were the Nez Perce and the South trails. The Nez Perce trail crossed several miles north of the Salmon River. There were two main south trails which skirted around south of those mountains into the Buffalo country.

The trails throughout the eastern part of the claim through the west slopes of the Bitterroots fan out through what are now the Clearwater, Selway, Nez Perce and Idaho National Forests.

The trails into and throughout the central portion and the southern portion of the claim fan out through the western part of the Nez Perce National Forest, the Adams National Forest and down through the Weiser, Idaho, and thence east and north through a portion of the Payette National Forest.

In the northern area these trails fan out to the north from the Clearwater River area.

In the west the trails run through the Wallowa valley and mountain area and to the west through that area west of Lewiston and south of the Snake River in the State of Washington.

83. The Nez Perce had two general types of housing. They had their homes in the permanent villages along the rivers and in the valleys. They also had hunting, fishing and gathering sites where they used the temporary and less substantial provision for shelter. Nevertheless these latter sites were permanent in the sense that the Nez Perce annually or often returned to them at different times of the year depending upon which activity was usual for the particular time. For example, certain times of the year were more favorable for the catching of the salmon -- others more favorable for the gathering of the roots, etc.

84. The subject of village locations of the Nez Perce was one which received special study by Curtis, Spinden, Ray and Chalfant.

Lewis and Clark also set out village locations on their map and indicated geographic divisions of the Nez Perce. These are the locations of the permanent housing as distinguished from the temporary hunting shelters throughout the area.

On the lower Snake River between Tucanon Creek and the Clearwater River there were a number of Nez Perce permanent villages. Several of these were on the north side and several on the south side. In view, however, of the nature of the presence of the Palouse Indians on the north side of the Snake River as far east as Wawawai, Washington, we have found there was exclusive use by the Palouse Indians in that area. (12 Ind. Cl. Comm. 301) On the south side of the river, however, there were also Nez Perce villages, viz: at the confluence of the Tucanon and the Snake; at Watsweh, which was from six to eight miles

above Riparia, on a small creek flowing northward into the Snake River; at Nuhsuema, Nuhsuemapu, just opposite Palotp; at Kelaishum, Kelaishummu, just opposite Withkisp; at Alpoowih, Alpowaima, at the mouth of Alpowa Creek, Washington (this included the creek valley to a point about five miles from the river, from which point to the source of the creek and the valley were called Alpoha); at Tukaiyutp, about three miles above Alpoowih; and at Tsokolaikim, about five miles above Alpoowih above Wawawai on the northeast side of the Snake; as that river flows to the north and the west from a point west of Lewiston, Idaho, there were a number of permanent Nez Perce villages; at Sahatp about three-quarters of a mile above Wawawih; at Palotp, two or three miles above Sahotp (the abundance of a rock slime used in making emerald-green paint called palot gave the place its name); at Iyakuewih, two miles above Nuhsuema; and at Tokohp, one-half mile above Iyakuewith; Withkisp, about three miles above Tokohp.

There were at least twenty-seven permanent villages on the Clearwater River and its branches. There were at least eleven permanent villages on the Snake River between the mouth of the Clearwater River and the mouth of the Imaha River. There were at least three permanent villages on the Salmon River and its tributaries. There were at least six permanent villages in the area south of the Grande Ronde River and west of the Snake River which includes the Wallowa Mountain and valley area. There were three permanent villages between the Grande Ronde River and the lower Snake River west of the Washington-Idaho boundary. One of these was at Asotin, Washington,



the second at present-day Silcott, Washington, and the third on the upper reaches of Page Creek in Washington.

85. Temporary hunting and fishing sites were located throughout the area and have been placed on maps which are in evidence (Pet. Ex. 2-G; Def. Ex. 24-A; and see Pet. Exs. 2-K and 2-L). In the southern portion of the claim the following locations are noted: At a location of the present town of Weiser, Idaho, on the east side of the Snake River opposite the mouth of the Burnt River; near the town of Cambridge, Idaho, on the Weiser River; at the west end of the present Crane Creek Reservoir on the Crane River in Idaho; on Bull Creek, a tributary of the Middle Fork, a tributary running north from the Payette River; at Warm Lake which is located in the upper south fork of the Salmon River; at Riordan Lake on a branch of Johnson Creek, another tributary of the Salmon River; at the mouth of Big Creek, a tributary of the middle fork of the Salmon River; at the mouth of Middle Fork on the Salmon River; at the north end of Payette Lake at a location approximately 15 miles west of Payette Lake in the Tamarock Meadows; and at the mouth of Wild Horse Creek on the east side of the Snake River.

In the central portion of the claim east of the Snake River these were located as follows: At Pollock, Idaho; at Riggins, Idaho; at about 20 miles east of Riggins, Idaho, on the Salmon River; and at the site of the present town of Lucile, Idaho.

On the west side of the Snake River in the Wallowa area these were located as follows: About 10 miles west of the present town of Homestead, Oregon, on North Pine Creek; about 8 miles south of the

present town of Fruita, Oregon, on the Imnaha River; at the present site of Joseph, Oregon, which is at the northern end of Wallowa Lake, just east of the present town of Enterprise, Oregon; and about 10 or 15 miles south and east of the present town of Wallowa, Oregon.

In the northeastern area they were located as follows: At Weippe, Idaho; at about eight miles east of Woodland, Idaho, on Lolo Creek; at about two miles north of Lowell, Idaho, on the Middle Fork of the Clearwater River; seven sites throughout the Selway National Forest area; and at the Lolo Trail south of Cayuse Creek.

In the north on Long Meadow Creek north of Crescent, Idaho.

There were many other temporary sites which were used as branches of the above locations. The fishing sites where the Nez Perce also housed themselves temporarily when in quest of fish were located throughout the area on the many streams and lakes (Pet. Ex. 2-L).

86. The boundaries of the claim are set out in Petitioner's Map Ex. 2-G. The boundaries conceded by the defendant to which the Nez Perce had Indian title are set out on Defendant's Map Ex. 24-A.

87. We find the defendant's exclusion of the claimed area east of defendant's northern line of the Chamberlain Meadows area and the area adjacent to that to the east and northeast not supported by substantial evidence. The presence at the Chamberlain Meadows of the Flatheads was for the purpose of trade with the Nez Perce Indians. The presence there by the Flatheads was brief. These two tribes of Indians were traditionally friendly. Annually the Nez Perce went into the Flathead country to hunt buffalo and bring back articles of trade.

The use of this northeast area (Chamberlain Meadows, etc.) by the Nez Perce is well established in the record and prior findings herein. Here they hunted the moose, mountain sheep, deer and bear, gathered roots, picked berries, and fished. This area also contained a salt lick used by the Nez Perce for their horses. This was the area of the presently named Clearwater National Forest.

88. The area north and west of the Chamberlain Meadows as far north as approximately ten miles north of the 47th parallel midway between 115° and 116° longitude and thence southwesterly to a point approximately seven miles northwest of Avon, Idaho, on the Palouse River represents another one of the differences between the parties as to a portion of the northern Nez Perce boundary. This area is just south of Huckleberry Butte and White Rock. The findings of the defendant would permit this area as Nez Perce. The plaintiff's claim line would not.

The Coeur d'Alene Tribe of Indians had their country to the north of the Nez Perce country. In Docket No. 81 we found that the southern boundary of the Coeur d'Alene aboriginal area extended from "the divide separating the watersheds of the North Fork of the Clearwater River and the St. Joe River; thence westerly along said divide to a point separating the headwaters of the St. Marias River from the Potlatch River; thence in a direct westerly line to the place of beginning" (4 Ind. Cl. Comm. 11, 12). The beginning was Steptoe Butte in the State of Washington.

The Nez Perce and the Coeur d'Alene jointly used an area south

of the line thus found by the Commission as the southern boundary of the Coeur d'Alene country. It is, of course, impossible to define with exact accuracy the line of termination of that joint use and the beginning of the Nez Perce reservation boundary line. We find that the aforesaid more generous line depicted on Defendant's Ex. 24-A which is in the Huckleberry Butte and White Rock area is an area which was jointly used by these tribes. Deer and elk were hunted in this area.

89. The next area of difference between petitioner's claim and the boundary contended for by the defendant involves the area around and south of the present city of Moscow, Idaho, which includes the famous camas gathering grounds.

This was the subject of our Finding No. 74, ante, herein.

For the reasons stated there we find this area was included within the Nez Perce country. Governor Stevens, who passed through the area characterized it as the great camas prairie grounds of the Nez Perce. He had noted a group of Palouse as he passed through; and close by he came upon 600 Nez Perces with 2000 horses.

Annually, every spring, their neighbors to the west, including the Palouse, gathered here for games, ceremonials, and Indian dances, incident to which these Indians gathered the camas root.

Petitioner's claim line in this segment, as shown on Petitioner's Map Ex. 2-G, runs north and south approximately fifteen miles east of the north-south boundary we awarded the Palouse (12 Ind. Cl. Comm. 360). This leaves a rather large area of jointly used land between the petitioner's claim herein and the area awarded the Palouse.

90. Petitioner and the defendant differ as to the Nez Perce boundary south of the lower Snake River in the State of Washington. Here again, the defendant's line on Defendant's Map Ex. 24-A is more generous to the Nez Perce than that of the petitioner's claim as shown on Petitioner's Map Ex. 2-G.

In the original petition this area of difference was included in the claim herein. On March 1, 1963, the petitioner herein in a severed and amended petition revised its claim to show this difference.

We dealt with this area of difference in our Docket No. 161, involving the claim of the Palouse Indians thereto. We eliminated this area from our award to the Palouse whose boundaries were found to be north of the Snake River and west from a line drawn north from the town of Wawawai, Washington (12 Ind. Cl. Comm. 341-346, 355, 360).

Here again, it is impossible to exactly define the line of demarcation between the jointly used area and the boundary line of the Nez Perce. However, in view of the relative sizes of the tribes and the number of Nez Perce permanent villages along the south bank of the Snake River, we find the Nez Perce country extended in this segment of the claim as far north as the line drawn on Petitioner's Map Exhibit 2-G.

91. The petitioner's claim line on the west as shown on Pet. Map Ex. 2-G differs from the line drawn by Chalfant, the defendant's expert, on Def's. Map Ex. 24-A. The main difference lies in the area east of the crest of the Wallowa Mountain range which runs just west of the Minam River.

As we have found, the only white explorer who went through this general area prior to the time of the 1855 Treaty was Captain Bonneville

(see Finding No. 17, ante). He traveled through these mountains and the Wallowa valley. He reported no other Indians than the St. Joseph's Band of Nez Perce.

Mr. Chalfant, for the defendant, reported joint use of this area based on the Swindell report and from the work of Dr. Suphan, neither of which is in evidence in the record of this matter. The Swindell report was made in 1941. Dr. Suphan testified, not in this matter, but in the matter involving the Umatilla case (Docket No. 264). Both of these, Swindell and Suphan, are still alive but did not testify herein. Over the objection of petitioner's counsel, Chalfant was permitted, however, to testify, with the understanding this testimony would be weighed.

Chalfant stated in his report (Def. Ex. 24, p. 114) in part as follows:

\*\*\* The Umatilla, Cayuse and Yakima used to fish along the Wallowa River in summer, by permission of the Nez Perce. They were usually assigned specific fishing locations. The Cayuse, more than other western tribes, had considerable freedom of access and use of Nez Perce country, both for fishing and hunting. In the latter pursuit, they made extensive use of the Blue mountains and the Wallowa valley.\*\*\*  
(emphasis supplied)

At the 1855 treaty council (see Findings 51(a) and 51(e), ante, and Petitioner's Exhibit 75), Governor Stevens and his staff requested each of the tribes to describe either by map or otherwise their country. Based on this, the first proposal for reservations were for two. One was to be in "Nez Perces country" which included the area we are considering in this finding. On this it was proposed that the Umatilla, Walla Walla and Cayuse Indians be placed along with the Nez Perce.

However, as we found in Finding 51(e), ante, the Nez Perce were willing that these three tribes come on over to their reservation; but these three tribes protested and requested a reservation in their own country. One of the chiefs said:

\*\*\*

The Nez Perces have already given you their land. You want us to go there. What can we think of that? That is the reason I cannot think of leaving this land to go there. Your words since you came here have been crooked. That is all I have to say. (Emphasis supplied)

\*\*\*

As a result, the Walla Walla, Umatilla, and the Cayuse were confederated on a reservation to the east of the claimed area here.

The Nez Perce were clearly the dominant tribe. Their population was much larger than any of these three tribes to the west. But they were friendly and there was much intermarriage.

The Nez Perce had a definite sense of territorial ownership of the lands used and occupied by them.

In fact, the aboriginal use of the Nez Perce in this general area was substantially confirmed by statements of the Superintendent of Indian Affairs in 1873 (see our Finding 60, ante) who also attested to the fact that the area abounded in "an abundance of fish in the river and game in the adjacent mountains." So strong did the Nez Perce feel their ownership of this part of the country that they fought a long and bitter war in 1877 with the U. S. Army because of the diminished size of their reservation which excluded the area here in question.

92. On the east the petitioner's claim line follows the crest of the Bitterroot range (see Pet. Map Ex. 2-G). Chalfant, the defendant's expert witness, has drawn the eastern line to the west along the spurs of these mountains (see Def. Map Ex. 24-A).

At one point near the Lolo Pass and along the Lolo Trail, Chalfant has shaded an area as joint occupation. Lewis and Clark, on entering the area through the Lolo Pass and in and around, came upon some fishing and hunting sites which they mistakenly referred to as Flathead sites. They met no Flathead Indians in the area, however, but having just left the Flathead country mistakenly so designated these sites as Flathead (see Pet. Ex. 121, p. 289, fn. 2). In fact, Lewis and Clark inadvertently referred to the Nez Perce as Flathead in some instances. Ordway, who was one of the Lewis and Clark party, in referring to one of the villages on the upper Lolo Trail (on Lolo Park, Clearwater River), said

\*\*\*we came to a large Indian village of the flathead \*\*\*  
("They call themselves Choppunnish or Pierced noses"/Nez  
Perce/Clark, Sept. 20, ed) (Pet. Ex. 121, p. 289)

He also said that at the mouth of Alpowa Creek, on the lower Snake River, they

\*\*\* met one of the chiefs of the flat head or Chopenish  
(Nez Perce) tribe who we left our horses with \*\*\* (ibid)

Other writers also mistakenly referred to the Nez Perce as Flathead.

Stuart stated

\*\*\* the Flatheads \*\*\* inhabit that tract of country  
situate between Lewis (Snake) River and the northwest  
branch, or main Columbia, bounded in the rear by the  
Rocky Mountains, \*\*\* (Pet. Ex. 22, p. 82)

Obviously he was referring to the Nez Perce.

The Nez Perce to a certain extent, prior to the arrival of the whites, practiced the flattening of their children's foreheads. Because of this practice certain early writers confused the Nez Perce with the Flatheads proper (Pet. Ex. 22, p. 348).



We have found above (Findings 74 through 80, ante) that the Nez Perce utilized this eastern area for subsistence.

The crest of the Bitterroot Range forms a natural barrier between the Flathead country to the east.

93. A major difference between petitioner's amended claim line (Pet. Map Ex. 2-G) and the line established by Chalfant, the defendant's expert witness (Def. Map Ex. 24-A) involves the southern boundary of Nez Perce country.

Dr. Ray, for the petitioner, and Mr. Chalfant, for the defendant, are in agreement that up until the date range of 1825-1830 there was continuous warfare over the use of this area between the Nez Perce and the Indian tribes to the south which included the Snakes, Paiutes, Shoshones and the Bannock; that the Nez Perce were superior in the art of war and repeatedly repelled the northward drives of their southern enemies; and that after this date range there was relative peace between them insofar as this area is concerned.

Ray and Chalfant differ, however, as to other important facets of the problem before us in this finding in regard to the period after this time range and up to the date of the treaty. Ray contends the southern tribes, having been defeated, and with peace established, did not re-enter; that the Nez Perce continued to use the area for hunting, fishing, and gathering, and that this use and occupation was exclusive. Chalfant, however, contends the Nez Perce, during the

period in question, shared the use of the area in peace with these southern tribes.

Both Ray and Chalfant base their testimony on information they gathered from aged Nez Perce Indians. Ray's investigation was conducted in the 1920's and the 1930's prior to the formation of the Indian Claims Commission Act. Chalfant's investigation was made in the 1950's after he had been engaged by the defendant to gather evidence, make a study and a report and to testify on matters relevant to the issues herein. Thus we have a conflict.

We find that after the time range indicated above there was a portion in the northern part of the area excluded by Chalfant on Def. Map Ex. 24-A which the Nez Perce thereafter used exclusively and a portion south of that in which the said southern tribes continued to penetrate and which was thus jointly used.

At the 1855 treaty council, the Nez Perce were requested to outline the extent of their country by map. This they did. The treaty boundary description resulted. Out of this boundary a smaller area was carved for the original Nez Perce reservation. This reservation area approximates the extent and outline of the aforesaid Chalfant boundary (Def. Map Ex. 24-A).

We have related the salient portions of the aforesaid council above (Findings 51(a) - 51(e)).

Governor Stevens stated (Pet. Ex. 75, pp. 42, 43):

\*\*\*

The Nez Perces have their reservation as was shown them in Council \*\*\*. They all know what was said.

\*\*\*

It is stated first in all the papers the Indians who signed the papers, then your lands are described. We have got the descriptions from yourselves. Then your reservations are pointed out, those you all know.

\*\*\*

\*\*\* There is secured to you your right to fish, to get roots and berries, and to kill game. \*\*\*

(Emphasis supplied)

Looking Glass, a Nez Perce chief, who arrived late at the council protested the proposed reservation boundary. He drew a map for a larger reservation boundary. The reaction of the representatives of the defendant was (id, pp. 46, 47):

\*\*\*

I would say to the Looking Glass what use is it to purchase his country and give it all back again. We did not come here to talk like boys. We don't wish to part with a misunderstanding.

The Nez Perces, \*\*\* agree to the boundaries as we have marked \*\*\*

If we were to say yes to his line our Chief would say No!

\*\*\*

(Emphasis supplied)

We find the proposed southern boundary of Chalfant not supported by substantial evidence; and that there was a portion of the claimed area to the south thereof which was Nez Perce country at the critical date herein. We have found above (Finding 73-82, ante) that the Nez Perce used the southern portion of the claimed area for fishing, hunting and gathering, etc.

However, we have also found that in the 1850's the Office of Indian Affairs was deeply concerned and made it it's business to

enlist assistance to maintain peace between the Nez Perce and the Shoshone Indians in order that white emigration might safely proceed into Oregon and Washington via the area south, southwest and west of the claimed area herein (see Finding No. 46, ante).

Petitioners contend the Nez Perce did not understand that Governor Stevens and his staff had asked for the full extent of their lands, and, therefore, the treaty calls taken from their description were not in fact the full extent of their area.

It was, of course, impossible for these Indians at that time to portray the extent of their country with exact accuracy. However, in view of the protest of Looking Glass at the council, the reply of the government, the resulting acquiescence of Looking Glass to the treaty reservation boundaries, and indications from the Office of Indian Affairs that the Nez Perce and the southern tribes were not as peaceful as desired, we find the area south of the boundary of the said reservation which was included within the treaty calls to approximate the limits of the Nez Perce as they themselves understood it and represented it at the time. We have found the Nez Perce knew their area, a point which counsel for the petitioner contends for (Proposed Finding No. 54). We further find that this includes the approximate portion of the southern area which the Nez Perce continued to use after 1830 but thereafter to the exclusion of the aforesaid southern tribes.

We also find that the area south of the treaty call descriptions,

a portion of which we have considered and excluded as joint use area in another matter involving the claim of the Northern Paiute Tribe of Indians (7 Ind. Cl. Comm. 374) were not used exclusively by the Nez Perce.

94. The Commission finds that as of March 8, 1859, the Nez Perce Tribe of Indians had exclusively used and occupied continuously in Indian fashion for a long time the following described area in the present States of Oregon, Washington and Idaho:

Commencing on Palouse River approximately two miles above present-day Yale Station and four miles below present-day Avon, Idaho; thence running generally westerly with the crest of the Thatuna Range to a point on the boundary of Washington and Idaho approximately five miles north of Moscow, Idaho; thence going southerly to Bald Butte and Colton, Washington, and following the ridge bounding Steptoe Canyon on the east, crossing Snake River and proceeding westerly along the divide bounding the waters of the Pataha on the north to its junction with the Tucannon River; thence turning southeasterly and following the Tucannon River to its source; thence to Mount Horrible and following Driveway Ridge to a point where the waters of Crooked Creek enter the Wenaha River approximately six miles westerly of Troy, Oregon; thence southwesterly along the ridge separating the waters of Grande Ronde from those of the Wenaha River to Lookout Mountain and by way of Jarboe Meadows to a point above the juncture of the Grande Ronde and the Wallowa; thence southerly and somewhat easterly along the divide separating the waters of the Grande Ronde and the Wallowa to Bald Mountain, Cartwheel Ridge, Squaw Butte, China Cap, Burger Butte, Granite Butte, Eagle Cap, Jackson Peak, Krag Peak and generally along the divide bounding on the east the waters of the Powder River to the mouth of the Powder River on the Snake; thence southeasterly along the divide between Cottonwood Creek and the Snake River to  $44^{\circ} 40'$  latitude; thence due east along  $44^{\circ} 40'$  latitude to the county line between Valley County and Adams County in the State of Idaho; thence in a straight line east by northeast to the summit of Chilcoot Mountain; thence easterly along

the divide marking the northern limits of the drainage of Pistol Creek, crossing Indian Creek and Marble Creek to the divide bounding the drainage of Marble Creek on the east, and northerly with the divide to Shell Rock Peak, north-easterly with the divide bounding on the south of the drainage of Big Creek, crossing the Middle Fork of the Salmon River some five miles above the mouth of Big Creek and proceeding to Wilson Mountain, Mount McGuire, following the divide bounding on the west the drainage of Garden Creek to a point on the Salmon River about a half mile below the mouth of Panther Creek; thence north on the divide between Owl Creek and Boulder Creek to the crest of the Bitterroot Mountains, and north along the crest of the Bitter Root Mountains to the divide bounding on the north the waters of the North Fork of the Clearwater River in T.14N., R.11E., Boise Meridian, and following that divide to Pot Mountain Ridge, and along the divide between Quartz Creek and Skull Creek to Bald Knob, crossing the North Fork of the Clearwater River and following the divide between Washington Creek and Beaver Creek, then that between both Adler and Reed Creeks and Silver Creek, crossing the North Fork of the Clearwater River at approximately the northwest corner of Section 31, T.11N., R.4E., Boise Meridian, and proceeding along the divide opposite it and bounding on the north the waters of Swamp Creek, northwesterly to Little Green Mountain, crossing Elk Creek and continuing northwesterly to the crest of the ridge including Jackson Mountain, crossing the Potlatch River a quarter mile south of modern Bovill, Idaho, and continuing with the divide to Mica Mountain, thence southwesterly to the place of beginning.

The area described is a portion of the claimed area as shown on  
Petitioner's Map Exhibit 2-G.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE NEZ PERCE TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 175
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 21, 1967

Appearances:

John W. Cragun of the law firm  
of Wilkinson, Cragun and Barker,  
Attorney for Petitioner

Richard A. Baenen  
Angelo A. Iadarola  
Of Counsel

John D. Sullivan, with whom was  
Mr. Assistant Attorney General  
Edwin L. Weisl, Jr.,  
Attorneys for Defendant

OPINION OF THE COMMISSION

Scott, Associate Commissioner, delivered the opinion of the  
Commission.

The Nez Perce Tribe of Indians is a recognized tribe of American  
Indians and is authorized to bring this claim which was timely filed  
on July 30, 1951. In this and in Docket 180 the Nez Perce Indians  
filed claims which resulted in the trial of several claims (Dockets  
175, 175-A, 175-B, and 180-A).

We have set out in some detail the pertinent details of the  
related claims in a statement preliminary to our Findings of Fact.

In summary, the present status is as follows: Two of the claims  
have been finally determined. These involved a claim (Docket 175-A)

for unconscionable consideration for lands ceded under the Treaty of June 9, 1863 (4 Stat. 647) from the reservation which was retained by the Nez Perce under the Treaty of 1855 which was ratified on March 8, 1859 (12 Stat. 957). Judgment in the amount of \$4,157,605.06 was awarded the Nez Perce (8 Ind. Cl. Comm. 220). Therein we established important facts concerning the inside boundaries of the cession involved herein. In the second claim (Docket 180-A) judgment was awarded in the amount of \$3,000,000 for gold removed from the original reservation and for trespass by white settlers (8 Ind. Cl. Comm. 300). In a third claim (Docket 175-B) the Nez Perce alleged unconscionable consideration in their cession of the reduced reservation as of May 1, 1893 (28 Stat. 326). We dismissed this claim. An appeal was taken to the Court of Claims. That Court reversed our decision and the matter is now pending before the U. S. Supreme Court on the petition filed by the Nez Perce on February 8, 1967 for Certiorari.

The petition herein was severed and amended from the original, but carries the parent docket number, and, as such, was filed on March 1, 1963.

The claim herein is principally for payment of unconscionable consideration of lands ceded by the treaty which was confirmed on March 8, 1859 (12 Stat. 957; 2 Kapp. 702). It is also alleged that the defendant dealt unfairly and dishonorably as to the value of the said lands by withholding information; that the cession was procured by duress; that there was unilateral mistake by petitioner as to the value of said lands; and that there was mutual mistake as to the extent of the lands.



The area involved lies in the present States of Oregon, Washington and Idaho, and generally between the Blue Mountains on the west and the Bitter Root Mountains on the east. The United States acquired undisputed sovereignty over the area in 1846. Thereafter until the establishment of Statehood it lay in part in the Territory of Oregon and in part in the Territory of Washington.

This claim is based upon the cession by the Nez Perce of their lands to the defendant by the aforesaid treaty which was ratified in 1859. The treaty had been negotiated and signed by the parties in 1855.

The evidence in the matter was the subject of research, investigation and testimony by the experts for the parties. These experts are anthropologists.

Dr. Verne F. Ray, who testified for the petitioners, has appeared before the Commission in a number of other cases involving claims of other Indian tribes in the States of Oregon, Washington and Idaho. This is also true of Mr. Stuart Chalfant, who appeared for the defendant. We have fully set out their respective qualifications in our Findings numbered 5 and 11.

Both of the experts studied and gathered related documentary sources which consisted of reports of explorers, government officials, historians, etc., maps, official government correspondence, and other papers. The great preponderance of these sources were gathered by Dr. Ray.

Dr. Ray had made his studies a number of years prior to the passage of our organic act in 1946. Mr. Chalfant did his work after he was engaged as an expert by the defendant.

Both of these experts relied on information which is familiarly characterized in these cases as "family tradition". This is information which they gained from aged Nez Perce Indians.

We have set out the details of their methods, sources, and their testimony in our Findings numbered 6-10 and 12-14.

To supplement the evidence gathered by the parties the Commission has entered Commission's Exhibit No. 2, which is a map of Governor Stevens' routes through this general area. The petitioner, at the request of the Commission, submitted six Transverse Mercator Projection Maps which have been marked Commission's Exhibit No. 1. These have marked on them the outline of petitioner's claim. They depict the topography of the area in miniature duplication of contour topography. Thus, the Commission has had for consideration a more than usual realistic reproduction of the relative height of mountains, depth of valleys, location of streams, lakes, valleys and open country, all so important in relationship to the determination of the probable location of villages, hunting trails, fishing and gathering areas, etc., of these Indians.

A review of the testimony of the two experts (see Findings 10 for Ray and 14 for Chalfant) discloses their agreement as to many of the details of use and occupancy.

We have chosen to include evidentiary findings which are numbered 2 through 60 rather than to include in this opinion the details of background for the necessary basic findings which we have made as our numbers 61 through 94.

The statements and findings from many of the sources in the record relied upon by these experts have been condensed and are the subject of our evidentiary findings numbered 15 through 60. These include those of Lewis and Clark, Alexander Ross, Captain Bonneville, Rev. Samuel Parker, Gallatin, Wilkes, Father deSmet, Gibbs, William Haller, Warren, Stevens, Mooney, Ogden, Curtis, Spinden, Splawn, Swanton, Howard, Meek, Stuart, Fremont, government officials, the treaty council journal, census reports, etc.

Although many wrote of these Indians, very few actually traveled through their country prior to the critical date herein. Lewis and Clark were the first known whites to meet the Nez Perces. Their journals and maps are of great assistance in this matter. Captain Bonneville was the only known white explorer to traverse the western area.

Many of the sources, however, are contemporary or within a relatively short time after the date of the treaty and based on information given by the Indians. Hence many of these documents are worthy of weight in our consideration of this case.

In The Sac and Fox Tribe of Indians of Oklahoma v. The United States, 161 C. Cls. 189 at page 201, the Court of Claims stated:

\*\*\*Post-treaty materials can often shed light on the state of affairs prior to the treaty. Their weight may depend upon their closeness in time to the critical date or upon the nearness of the events they describe, but there is and can be no general rule warranting the fact-finder in disregarding en masse all such evidence. They must be considered and cannot be discarded out of hand. We know that in other cases the Commission has correctly taken post-treaty evidence into account in

deciding a treaty or a pre-treaty issue. See, e.g., The Sac and Fox Tribe v. United States, 159 Ct. Cl. 247, 252-53 (1962) involving another Sac and Fox claim.)\*\*\*

\*\*\*

The Nez Perce Indians were the most prominent, powerful and influential of any of the Indians in the area between the Cascades and the Bitter Root Mountains.

Originally these Indians were principally confined to the valleys and the stream areas with use of mountains adjacent to their permanent villages. Even so they covered a wide range. With their acquisition of the horse in 1730 they expanded their area substantially and traveled into the lands of other Indian nations.

The Nez Perce Indian Nation was made up of a number of bands known by and named in part for their geographical location. However, in the later years prior to the treaty council of 1855 they had achieved a relatively close-knit cohesion among the bands on general matters of government. As compared to modern forms of government as we know and practice, we would today term the Nez Perce as a loosely-knit confederation of bands of the same people (culture, identity, etc.). As they dealt with the government of this country and in their warfare with other Indians they presented a united front.

They had a well-established annual cycle of subsistence activity (Finding No. 73). In this they had developed an expert knowledge of the best times of the year to catch salmon, to hunt the deer, to gather the berries, to dig the roots, etc.

As a supplement to this well-established annual cycle, the Nez Perce traveled every year to the east of the Bitter Root Mountains into the Flathead and Blackfoot country to hunt the buffalo.

Their area for the hunt, for fishing, gathering and digging are well established in the record and set out in our Findings numbered 74-79.

The Nez Perce had many horses. The 1860 census estimates the number to have been 10,000. This enabled them to travel great distances from their permanent villages in quest for subsistence and to defend their country.

Their permanent villages were principally found along the rivers and in the valleys. The hunting sites and the less substantial shelters were well established. To these they returned at certain times of each year according to the annual cycle (Findings 83-85).

The Nez Perce trails honeycombed the area. There were a number of well-known and named trails, such as the famous Lolo Trail which Lewis and Clark used in entering their country. From these, supplemental trails fanned out throughout this area (Finding No. 82).

The clothing of these Indians was made up of the skins of the various animals of the hunt -- the deer, mountain sheep, etc. The bows and arrows, etc., were also made in part from the same general sources. The horses of these Indians had to be fed through grazing in the open prairies, upland plateaus, and mountain meadows.

The game was relatively scarce in the area between the Snake River and the Bitter Root Mountains. Thus it is seen, with 5000

Nez Perce with 10,000 horses, it was necessary that they travel great distances in carrying out these subsistence activities.

This tribe of Indians was friendly with its neighbors to the west and the north. They were friendly with the Flatheads to the east. They were traditional enemies of the Blackfoot to the east and of the Snake, Paiute, Shoshone and Bannock Indians to the south.

One of the principal differences in the testimony of the experts and the contentions of the parties herein relates to the southern portion of the claim. Both agree that up until the time range 1825-1830 there was bitter warfare between the Nez Perce and the aforesaid southern tribes, and that after this there were relatively peaceful relations insofar as the area under study here is concerned.

Ray and Chalfant differ, however, as to the situation which prevailed in the period between this time lag and the treaty date. Ray, for the petitioner, contends the southern tribes did not re-enter and the Nez Perce continued to use and occupy the area, but that in this period the use and occupancy was exclusively with the Nez Perce. Chalfant contends the evidence is that these southern tribes continued to use the area in peace with the Nez Perce.

We have found that the Nez Perce knew the area of their country and that, at the request of Governor Stevens at the 1855 treaty council, they drew a map upon which the treaty calls in the treaty of cession were based (Findings 51(a)-(e), 93).

Based on this map Stevens prepared another map for a proposed reservation within the bounds of the treaty calls. Looking Glass,

one of the Nez Perce chiefs, came into the council late. He, at first, protested the proposed boundary and drew his conception of the boundary for a reservation. The government then replied that if the Nez Perce gave the area depicted by Looking Glass it would receive none of the Nez Perce country outside of the reservation. Looking Glass then agreed.

A comparison of the boundary of the reservation set up in the treaty here under consideration and of the cession calls therein reveals a substantial area south of the reservation area.

Therefore, if we agree with petitioner's proposed Finding Number 54 that the Nez Perce had a definite sense of territorial ownership of the lands used and occupied by them, by reference to the care taken by Stevens at the said treaty council in securing maps from the Nez Perce, we can reasonably assume that the treaty call to the south is a reasonable interpretation of their boundary. Concept of ownership, however, alone is not sufficient. We have used this evidence only in confirmation of record proof of exclusive use and occupancy for subsistence purposes. It is, of course, impossible because of the passage of so many years to define these boundary limits with complete accuracy. The sovereignty of this country over the area was established in 1846. After sovereignty, white emigration into the great Pacific northwest ensued. One of the great concerns of the government officials in this period prior to the treaty was the safety of the emigrating whites whose main passageway was through this southern area and to the southwest and the west of the area. In this connection the maintenance of peaceful relations between the Nez Perce and these tribes to the south was of great concern (Finding

No. 46). The traditional differences and the natural enmity was referred to (Pet. Ex. 45).

A portion of the disputed area in the south was the subject of our decision in Northern Paiute v. United States, 7 Ind. Cl. Comm. 322, 367 (1959). We excluded a portion of the area here involved on the ground of joint use.

Other areas of the claim in the east, northeast, northwestern, and western portions of the claim have been challenged by the defendant as areas of joint use. Therefore, defendant has contended the lands were not exclusively used and occupied by the Nez Perce.

Since this is a claim based on aboriginal title, several elements must be present. To be accepted under the Indian Claims Commission Act, aboriginal title must rest on actual exclusive and continuous use and occupancy "for a long time" prior to the cession, transfer, or loss of the property. (See The Snake or Piute Indians v. United States, 125 C. Cls. 241, 254; 112 F. Supp. 543 (1953); The Quapaw Tribe of Indians v. United States, 128 C. Cls. 45, 49; 120 F. Supp. 283, 285 (1954); Alcea Band of Tillamooks v. United States, 103 C. Cls. 494, 557; 59 F. Supp. 934, 965 (1945), affirmed 329 U. S. 40 (1946); The Sac and Fox Tribe of Indians of Oklahoma, et al v. The United States, 161 C. Cls. 189, 201, 202).

The areas under contention include the "Chamberlain Meadows" in the northeast; the camas prairie south of present-day Moscow, Idaho, and areas in the western portion of the claim. We have carefully examined the evidence respecting the Indians' land use in these areas.



We have found that the evidence clearly establishes the Nez Perce use and occupation of these areas. We have found that petitioner has documented its use of these areas and established that the areas were within the ancestral homelands of the Nez Perce Tribe. Accordingly, we find these areas to have been exclusively used and occupied for a long time prior to the Treaty of March 8, 1859, and the areas are included in the lands to which we have concluded the Nez Perce held aboriginal Indian title.

We are, of course, aware that there is evidence relating to the presence of other Indians within the areas under consideration from time to time. Such presence was infrequent, temporary, and for such limited purposes as trading, ceremonial games, dances, and other social gatherings. The Commission does not believe that the presence of visiting Indians for the purpose of attending such ceremonies acted to in any way lessen the validity of the Nez Perce claim of Indian title to the areas. The visits under such circumstances would not diminish the exclusive use and occupation which the Nez Perce maintained over these areas.

The defendant contends the area in and around the Lolo Trail was jointly used by the Nez Perce and the Flathead Indians. We cannot agree.

Defendant's contention is based upon statements made by members of the Lewis and Clark party. The evidence is that as this party entered the Nez Perce country through the Lolo Pass from the Flathead country and proceeded along the Lolo Trail they came upon fishing and hunting

sites which they referred to as Flathead sites. No Indians were seen by the party at these sites. As we have found the reference by the party to these sites as being Flathead was in error (see Finding No. 92). The evidence also is that there was confusion by others as between the Flatheads and the Nez Perce. (Ibid)

In at least two locations Chalfant's proposed boundary lines are more generous than those representing the petitioner's claims (compare Pet. Maps Ex. 2-G and Def. Map Ex. 24-A). It is, of course, impossible to draw these lines with complete accuracy. We have found in these areas of difference, one south of the Lower Snake and the second in the northern area, to be areas of joint usage (see Findings 88 and 90).

The defendant's proposed boundary on Defendant's Ex. 24-A approximates the area of the original Nez Perce Reservation. Thus, in addition to the exclusion of the southern area described in the treaty calls, Chalfant excludes the eastern area to and along the crest of the Bitter Root Mountains. We have found that the Nez Perce used this area for subsistence; and we have included it within the bounds of their aboriginal country (see Findings 73-80, 92, 94). The Bitter Root Mountains were natural barriers along the east of their country. This finding is also strengthened by the facts we have heretofore set out from the exchange between Looking Glass and the government officials at the 1855 treaty council (see Findings 51(e) and 92).

In our determination of the southern and eastern areas described in the Nez Perce aboriginal country (Finding No. 94) outside the

Chalfant line, we have indicated the importance of the 1855 treaty considerations and the methods used in arriving at the treaty calls. We have not, however, used these facts as more than confirmation of other materials in the record from which it is clear that the Nez Perce actually used these areas in quest of their subsistence. The concept by the Indians of ownership alone is insufficient to establish Indian title. (Shoshone Tribe, et al v. United States, 11 Ind. Cl. Comm. 387, 442)

In view of all of the evidence of record we have found that the Nez Perce Tribe of Indians aboriginally owned the area of land described in our Finding No. 94.

This matter will now proceed to a determination of the acreage of land found to have been exclusively used and occupied by the Nez Perce Tribe of Indians as of March 8, 1859 (Finding No. 94); the market value thereof as of March 8, 1859, the effective date of the treaty; the amount of consideration paid where applicable; the amount of offsets, if any, which may be allowable under the provisions of the Indian Claims Commission Act; and other relevant issues raised by the pleadings.

T. Harold Scott  
Associate Commissioner

We concur:

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

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*Attorneys for Nez Perce Tribe and Idaho Conservation League*

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF IDAHO**

IN THE MATTER OF AIR QUALITY )  
PERMIT TO CONSTRUCT P-2019.0047 )

Agency Case No. 0101-2201

OAH Case No. 23-245-01

\_\_\_\_\_  
NEZ PERCE TRIBE, IDAHO )  
CONSERVATION LEAGUE, and SAVE )  
THE SOUTH FORK SALMON, )

**DECLARATION OF EMMIT  
TAYLOR JR.**

*Petitioners,*

v.

IDAHO DEPARTMENT OF )  
ENVIORNMENTAL QUALITY, )

*Respondent,*

and

PERPETUA RESOURCES IDAHO, )  
INC. )

*Intervenor.*

\_\_\_\_\_ )

I, EMMIT TAYLOR, JR., state and declare as follows:

1. My name is Emmit Taylor, Jr. I am a resident of Lapwai, Idaho, and am over 18 years of age. The following statements are based on my personal knowledge, and if called as a witness, I would and could testify thereto.

2. I am an enrolled member of the Nez Perce Tribe (“Tribe”), a federally recognized tribe, and am the Director of the Tribe’s Department of Fisheries Resources Management (“DFRM”), Watershed Division. I hold a Bachelor of Science Degree in Civil Engineering from Colorado State University and a Master of Natural Resources Degree from the University of Idaho.

3. I grew up on my family’s land on the Nez Perce Reservation in north-central Idaho.

4. Since time immemorial, members of the Nez Perce Tribe have used and enjoyed their aboriginal lands, which include portions of the present-day states of Idaho, Oregon, Washington, and Montana and the Columbia and Snake River basins.

5. My family continuously engaged in Nez Perce culture and the exercise of Nez Perce treaty-reserved hunting, gathering, and fishing rights throughout our aboriginal homeland, including in the South Fork Salmon River (“SFSR”) watershed.

6. I have direct oral knowledge of my family’s history in the SFSR watershed—a history that traces back to time immemorial. My family has countless stories, passed down through enumerable generations, of using the SFSR watershed to gather, hunt, and, mostly, fish. My late uncle, Elmer Crow, described to me how our family annually traveled throughout our aboriginal territory for a three- to five-month fishing and gathering journey. Each year’s journey

ended on the SFSR. My grandpa, Ron Oatman, taught me the Nez Perce names for rivers and locations in the SFSR watershed and their place and use in traditional Nez Perce culture. My dad, Emmitt Taylor, Sr., and my uncle, Dave Penney, have also shared with me countless stories of my family fishing in the SFSR watersheds streams, including the East Fork SFSR (among others), as well as fishing in Big Creek, which is accessed via the East Fork SFSR.

7. This heritage is who I am and its importance to me and my family cannot be overstated. I continue to take my family to the SFSR area on an annual basis. We hunt, gather, and, most importantly, fish in order to express our culture and identity and connect to our history, ancestors, and the land and rivers themselves. These practices are the heart of who we are as Nez Perce people and are vital to our health and well-being.

8. Today, my family and other Nez Perce Tribal members typically fish in the SFSR and its tributaries from mid-June through August. The SFSR tributaries my family and other Nez Perce Tribal members seasonally fish include the Secesh River, Lick Creek, Johnson Creek, and East Fork SFSR. While there, we also gather our traditional food and medicine.

9. I have personally engaged in treaty fishing within the boundaries of the proposed Stibnite Gold Project (“SGP”). I have fished for steelhead and bull trout which are culturally significant species to the Tribe. My family and I also plan to engage in treaty fishing, hunting, and gathering within and adjacent to the proposed SGP area in the future. I am very concerned about the adverse effects resulting from Idaho Department of Environmental Quality’s issuance of the air permit for the proposed SGP on my family’s ability to safely exercise our treaty rights in, and use and enjoy, the area. My understanding is that the SGP would generate air pollutants, including dust with arsenic, that are unhealthy to breathe. This air pollution also reduces

visibility which impairs my cultural and ceremonial practices and reduced my enjoyment of these special places. I am also deeply concerned that the arsenic can enter waterways and soil in the area and adversely affect culturally-significant fish and wildlife and the habitat on which those treaty resources depend. Dust with arsenic can also collect on, and can adversely affect, culturally-significant plants and medicines that my family and I gather in the area and use for cultural, subsistence, ceremonial, and spiritual purposes.

10. In addition to personally exercising treaty rights and using and enjoying the area, I also honor my heritage through my professional work as Director of the Tribe's Fisheries Department, Watershed Division.

11. The Tribe established DFRM in the early 1980s after the federal courts acknowledged the Tribe's role as a co-manager of its fisheries. Since then, DFRM has devoted substantial time, effort, and resources to recovering and sustaining the Tribe's fishery. Today, the Tribe's Fisheries Department is one of the largest and most successful tribal fisheries programs in the United States with six divisions (Administration, Conservation Enforcement, Harvest, Production, Research, and Watershed), 180 employees, and an annual budget in excess of \$24 million. The Fisheries Department works throughout north-central Idaho, northeastern Oregon, and southeastern Washington, with funding primarily provided by the Bonneville Power Administration, to mitigate for the harm caused to anadromous fish by the Columbia River Basin hydropower system.

12. DFRM established an office in McCall, Idaho, in the mid-1990s to maintain the Nez Perce Tribal fishery in the SFSR watershed due to its cultural and biological significance to the Tribe and to Chinook salmon recovery in Idaho. DFRM currently expends \$2.79 million

annually in the SFSR watershed on hatchery supplementation, fishery research, and habitat restoration.

13. Among other production and research projects, DFRM biologists in McCall have conducted a unique, long-running study that provides information on the effects of using a hatchery supplementation program to increase a naturally spawning population of fish listed under the ESA. DFRM staff trap and spawn natural/wild-returning salmon in Johnson Creek, a tributary of the East Fork SFSR, to provide the eggs, which are reared to smolts at the McCall Fish Hatchery. DFRM biologists then release approximately 130,000 smolts back into Johnson Creek each year. DFRM monitors these juvenile releases to determine their survival through various stages of their journey out to the ocean and back to spawn. Returns are compared with non-supplemented fish to determine genetic, behavior, and morphological differences in an effort to evaluate how the use of a hatchery affects, and whether a hatchery can be a benefit to, a natural spawning population.

14. Each year, DFRM staff also collect Pacific lamprey from downriver dams, hold them at the Tribe's hatchery on the Clearwater River until the spring, and then release them to spawn in various tributaries within the Tribe's aboriginal territory, including the SFSR, to ensure their continuing presence in these streams. DFRM also moves some Chinook salmon above the fish passage blockage created by the legacy mine pit, known as the Glory Hole, at the historical Stibnite mine site to spawn. The resulting juvenile production from above the Glory Hole helps boost overall returns to the SFSR.

15. I have worked for DFRM, Watershed Division since 1996 and have been the Director for the last twelve years. As Director, I am responsible for developing and



implementing a regional aquatic ecosystem restoration and protection program for anadromous and resident fish habitat. As part of this work, I direct the Tribe's efforts to protect and restore aquatic ecosystems within the SFSR watershed.

16. DFRM Watershed Division first began working out of the McCall Fisheries Department office in 2007, when it applied for, and received, a grant for the specific purpose of reestablishing fish passage in the East Fork SFSR above the Glory Hole and of rehabilitating one mile of spawning habitat above the Glory Hole, in the headwaters of the East Fork SFSR.

17. Unfortunately, the McCall Fisheries Watershed Division was unable to complete this work. Before the Tribe could begin restoring fish passage, the private land owner of the Glory Hole reach of the East Fork SFSR entered into a lease-to-purchase option with Perpetua Resources' predecessor corporations. The Tribe was then told that it could not move forward with the project because of the possibility of re-opening a mine. Consequently, the McCall Fisheries Watershed Division moved its restoration efforts to other parts of the SFSR watershed.

18. Since 2007, DFRM Watershed Division has been able to complete numerous aquatic ecosystem restoration and protection projects in conjunction with the U.S. Forest Service, Idaho Department of Fish and Game, and private landowners. The Watershed Division has planted over 8,000 plants, removed nine fish passage barriers (opening 46 miles of blocked salmon habitat), decommissioned 214 miles of road, and improved 26.7 miles of road to reduce sediment in the SFSR that is detrimental to fish species listed under the federal Endangered Species Act.

19. In addition to this on-the-ground restoration and protection work, DFRM Watershed Division also critically evaluates and comments on other activities proposed within

the Tribe's aboriginal territory that may negatively affect the health of the aquatic ecosystem, undermine DFRM's work in the SFSR watershed, and/or harm the Tribe's treaty-reserved rights and resources and its members.

20. The proposed SGP is currently the biggest ecological threat to the SFSR watershed. The proposed mining activities under the SGP could undermine the Tribe's fisheries and fishery restoration work by degrading or polluting the East Fork SFSR and SFSR, as well as upland terrestrial habitat. Consequently, DFRM Watershed Division, along with Tribe's Cultural Resources Program, Wildlife Department, Water Resources Department, and Air Quality Program have been deeply engaged in review of the SGP. Throughout the process, the Tribe has submitted numerous written comments to federal and state permitting agencies, including written comments to Idaho Department of Environmental Quality on October 12 and November 10, 2020, March 8, 2021, and March 14, 2022. The Tribe has also engaged extensively in staff-to-staff meetings, many of which I participated in personally, and convened government-to-government consultations with federal permitting agencies.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of June 2023, at Lapwai, Idaho.

/s/ Emmit Taylor, Jr.  
Emmit Taylor, Jr.

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*Attorneys for Nez Perce Tribe and Idaho Conservation League*

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF IDAHO**

IN THE MATTER OF AIR QUALITY )  
PERMIT TO CONSTRUCT P-2019.0047 )  
\_\_\_\_\_ )

NEZ PERCE TRIBE, IDAHO )  
CONSERVATION LEAGUE, and SAVE )  
THE SOUTH FORK SALMON, )

*Petitioners,* )

v. )

IDAHO DEPARTMENT OF )  
ENVIORNMENTAL QUALITY, )

*Respondent,* )

and )

PERPETUA RESOURCES IDAHO, )  
INC. )

*Intervenor.* )  
\_\_\_\_\_ )

Agency Case No. 0101-2201

OAH Case No. 23-245-01

**DECLARATION OF JOSEPH  
OATMAN**

I, JOSEPH OATMAN state and declare as follows:

1. My name is Joseph Oatman. I am a resident of Pendleton, Oregon, and am over 18 years of age. The following statements are based on my personal knowledge, and if called as a witness, I would and could testify thereto.

2. I am an enrolled member of the Nez Perce Tribe (“Tribe”), a federally recognized tribe. I am a descendent of Chief Looking Glass, a principal chief who signed the Treaty of 1855 with the United States. I have a Bachelor of Science in Fishery Resources from the University of Idaho and a Masters of Natural Resources from the University of Idaho. From 2001 to 2004 I worked for the Nez Perce Tribe’s Department of Fisheries Resource Management (“DFRM”) as a harvest biologist. Since 2007, I have served as DFRM’s Deputy Program Manager. My responsibilities include overseeing the Harvest Division and assisting the program manager in administering DFRM’s many anadromous and resident fish restoration projects and activities.

3. I grew up on the Nez Perce Reservation in north-central Idaho.

4. Since time immemorial, the Nez Perce people, the Nimiipuu, exclusively occupied over 13 million acres encompassing a large part of what is today Idaho, Washington, and Oregon—stretching from the Bitterroot Mountains to the Blue Mountains. Nez Perce also traveled far beyond this homeland to fish, hunt, gather and pasture—frequently going east to buffalo country, in what is today Montana, and west along the Snake and Columbia Rivers. In 1855, to preserve its way of life and the foods we depend upon, the Tribe entered into a treaty with the United States reserving to itself, among other guarantees, “the right of taking fish at all usual and accustomed places in common with the citizens of the Territory.” Treaty with the Nez Perces, June 11, 1855 (12 Stat. 957). Since that time, the Tribe has continued to exercise its treaty-reserved fishing, hunting, gathering, and pasturing rights. It is essential for tribal members to maintain connection with the rivers, lands, and fish that are critical to supporting

our culture and livelihoods. Nez Perce Tribal members, pursuant to the Tribe's Treaty-reserved rights, continue to fish, hunt, gather and pasture across the Tribe's vast aboriginal homeland at traditional places, including areas within and surrounding the proposed Stibnite Gold Project ("SGP") area and in waters directly downstream.

5. My family has strong ties to and has used the resources in the Snake River basin, including the South Fork Salmon River ("SFSR") for hundreds of years. I, like my family, have maintained those same strong ties to that area and the culturally-significant resources within it my whole life. Since childhood, I have fished with my family for salmon, steelhead, and bull trout in the SFSR watershed. We go to these same locations when fish are available to harvest them for subsistence, cultural, and other needs. In addition to engaging in treaty fishing, my family and I also engage in other cultural activities in the SFSR. This place is so important to us that when we lose loved ones, we leave rocks with their names inscribed on them to remember the camping, fishing, and enjoyment this area brought to us and those who have passed on. As we carry on our activities and use of this area, we can look up on the hillside where those rocks are placed to remember those who are no longer with us.

6. The South Fork Salmon River watershed is one part of the four major areas of the Snake Basin where we catch most of our spring/summer Chinook on an annual basis. As such, this is a critical area where tribal members can catch fish to meet their ceremonial, subsistence, and commercial needs. Tribal members and their families who use this area, such as my family, often do so as a multi-generational family unit. It is common to see two to four generations within a family traveling, camping, fishing, and using the area. There can be infants/toddlers up to the eldest member of a family that are present and involved in the daily life and activities in the SFSR. The ability to maintain our connection and relationship to each other and to the land, rivers, and fish, can be impacted by conditions or activities occurring in the area that could lead to unsafe or dangerous conditions that could limit, impede

or interfere with our ability to exercise our treaty-rights and gather our foods. Our responsibility is to ensure that all members of our family—from our youngest to our oldest—are safe and protected from anything or activity that could possibly bring harm to them.

7. I have personally engaged in treaty fishing for steelhead and bull trout within the boundaries of the proposed Stibnite Gold Project (“SGP”). My family and I plan to engage in treaty fishing and gathering within and adjacent to the proposed SGP area in the future. I am deeply concerned, however, that Idaho Department of Environmental Quality’s (“DEQ”) issuance of the air permit for the proposed SGP will injure my family and me by adversely affecting our ability safely exercise our treaty rights in and use and enjoy the area. My understanding from written comments provided by the Tribe to DEQ is that the SGP would create air pollutants, including dust with arsenic, in and adjacent to the SGP area. This air pollution is unhealthy to breathe and could impact our ability to fish which is a physically-demanding and strenuous activity. Air pollution also diminishes visibility that can affect our ability to see fish in the waterways, and may harm waterways, fish, wildlife, and flora, in the area. Injury to our health or to any of these resources caused by DEQ’s air permit would adversely affect my ability to safely exercise our treaty rights and to use and enjoy the area within and adjacent to the SGP for subsistence, cultural, spiritual, and economic purposes.

8. In addition to my personal and familial connections to and use of the area, I also have the honor and privilege of serving my Tribe and the Nez Perce people through my professional work as the Tribe’s DFRM Deputy Program Manager. The Tribe has one of the largest fisheries program of any tribe in the United States. The goal of DFRM is to recover and restore all populations and all species of anadromous and resident fish that are important to the exercise of the Tribe’s treaty-reserved rights and way of life. DFRM headquarters is in Lapwai on the Nez Perce Reservation in Idaho, and DFRM has offices in Powell, Red River, Grangeville, Orofino, McCall, and Sweetwater, Idaho, and Joseph,

Oregon. The program has over 180 employees and operates on a budget of \$24 million annually. DFRM has six divisions, which collectively provide administrative, technical, research, and enforcement services related to native resident and anadromous fish management activities in the Columbia and Snake River basins.

9. DFRM works extensively throughout the SFSR watershed, expending approximately \$2.79 million annually on fisheries supplementation, harvest management, research, and watershed restoration work, as part of the broader Columbia River Basin salmon restoration efforts. This work includes moving some Chinook salmon above the “Glory Hole”—a legacy mine pit at the proposed SGP that blocks salmon from migrating up to the East Fork SFSR to their spawning grounds.

10. Due to the Tribe’s Treaty-reserved rights and resources within and around the proposed SGP, and the Tribe’s substantial fishery restoration work in the SFSR watershed, the Tribe has invested substantial time and resources in reviewing the proposed SGP. The Tribe has submitted numerous written comments, including comments to DEQ on the air permit. The Tribe has also participated in staff-to-staff meetings with federal and state permitting agencies, and government-to-government consultations with federal permitting agencies.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of June 2023, at Lapwai, Idaho.

/s/ Joseph Oatman  
Joseph Oatman



NEZ PERCE TRIBE DEPARTMENT OF FISHERIES RESOURCES MANAGEMENT

# Management Plan

2013-2028





**Nez Perce Tribe Department of Fisheries Resources Management  
Department Management Plan · 2013-2028**

prepared by the Department of Fisheries Resources Management Strategic Plan Ad Hoc Team  
design and layout by Jeremy FiveCrows  
completed July 17, 2013

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# Dedication

*The Department of Fisheries Resources Management expresses its gratitude and respect to the Nimiipúu, to the original treaty signers, to the tribal leaders, and to the individual tribal members and their families for the stand they have taken and take today, to exercise the treaty right to harvest fish, and to the Nez Perce Tribe, as a nation, for its leadership and co-management responsibility for the resources upon which the rights depend. From time immemorial, to the treaty council at Walla Walla, to the confrontation at Rapid River, to today, it is the strength and perseverance of the belief in the aboriginal right and way of life of the Nimiipúu to forever exist with, and be sustained by, earth's other inhabitants that drives this program.*



# Introduction

The Nez Perce Tribe and this Department in particular, can be a very rewarding place to work. The cause—protecting the resource, protecting the treaty and helping to restore an environment in which the resources put here by the Creator can thrive—is a good one. And the Nez Perce, more than other resource managers, are willing to go “all in” to ensure that occurs. Persons interested in a natural resource field, because of the outdoors nature of the work, or the ethic and appreciation for this natural world, will find a good and strong ally in the Nez Perce Tribe. This is a good thing; this is good work. It is the hope of the Department for employees to grow and enjoy their time here.

## Introduction



# Plan Purpose and Organization

## Purpose

This Management Plan is designed to provide direction to the Department of Fisheries Resources Management (Department or DFRM) employees to implement a program consistent with Nez Perce treaty-reserved rights that will: restore a balance with nature, bring fish populations and their habitats to healthy conditions, and provide harvest opportunities for tribal members.

The Plan is intended to formally establish and describe the desired fishery resource conditions and the management framework that will be applied by the Department to achieve those conditions. We believe that communicating the fundamental mission and approach of the Department is important internally - within the Department and within the Nez Perce Tribe—and externally, to other fishery resource co-managers and the public-at-large.

The Plan will be applied to management of the resource in the following ways:

- It will guide the Department in the development and implementation of management recommendations and actions;
- It will provide a balanced, multidisciplinary approach for making sound management decisions based on analyses of the full range of options conducted by a staff having diverse expertise and experience;
- It will provide benchmarks to maintain management continuity over time; and
- It will function as an assessment tool for tribal policy to evaluate the performance of our Department.



## Organization

The Plan is organized as three major chapters:

- Background on the Nez Perce Tribe
- Overarching Philosophy
- Management Framework<sup>1</sup>

The **Background** provides a brief description of some concepts of the Nimiipúu (meaning “the People,” or contemporaneously, the Nez Perce), including oral traditions, cultural ethics relative to restoring and caring for fish, and Nimiipúu timpt (Nez Perce language) focusing on words for common fish species. A section of this chapter provides information on tribal fishing and treaty fishing rights. Because the treaty-reserved fishing rights of the Nez Perce form much of the foundation for how and why this Department exists, a common understanding of this topic is essential. A description and depiction of geographic areas specific to the Nez Perce Tribe and a brief sketch of the tribal government are also provided.

The **Overarching Philosophy** chapter provides a broad brush description of desired conditions, Department operational guidance, and expectations. Four subject areas addressed are the Department’s:

- Mission Statement
- Vision
- Guiding Principles
- Management Goals

The **Management Framework** chapter addresses operations and functions of the Department. It discusses *Management Objectives*, focusing on management areas, focal species, and several objectives unique to and adopted by the Department that are important for employees to know. These include fish abundance objectives and thresholds, hatchery objectives, habitat conditions objectives, harvest objectives, and the Nez Perce views with respect to the Federal Columbia River Power System (dams).

*Management Processes* are also included in this chapter, describing how principle components of the Department operate. Discussion is provided on the Department, the Department’s management team, decision framework and co-management forums pertinent to restoring salmon and other fishes to the Columbia Basin. And finally, this chapter focuses on the human dimension of employment with the Department and the Nez Perce Tribe.

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<sup>1</sup> A fourth component, “implementation actions,” which would detail specific on-the-ground activities, will be the primary focus of an Implementation Plan.





# Background

The land and its waters define the Nez Perce way. Over the course of thousands of years, nature has taught us how to live with her. This intimate and sacred relationship unifies us, stabilizes us, humbles us. It is what makes us a distinct people and what gives us our identity. We cannot be separated from the land or our rights without losing what makes us Nez Perce. We defend our rights to preserve who we are and what we hold sacred.





## Fisheries Management with a Nez Perce Point of View

The Nimiipúu fished, hunted, gathered, pastured livestock and traded over an enormously broad area that includes what is today, Idaho, Washington, Oregon, Montana and Wyoming. This land of rolling hills, towering peaks, prairies, clear mountain streams, and deep canyons has been the Nimiipúu's homeland since time immemorial. Relative to this extensive area in which they have always lived, the Nimiipúu have accumulated a deep repository of ecological knowledge and wisdom concerning the land, water, and other natural resources. Spirituality and proper respect (in the form of prayer) were incorporated into every aspect of traditional Nimiipúu life: digging roots, hunting and fishing, weaving, teaching children, or taking sweat baths. All activities were conducted according to the Nimiipúu belief system (or Indian way of life). The love and respect for the gifts of the Creator and the Creation guided Nimiipúu activities to avoid acts of greed

or selfishness such that the natural resources were not depleted. These traditional guidelines have been learned and passed down over the millennia through Nimiipúu oral traditions (myths and stories), songs, prayers, dances, rituals, and ceremonies.

### Oral Traditions

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Oral traditions are stories that teach many of the central concepts used in contemporary natural resource management. These oral traditions remind us that we have a responsibility to the animals, just as they have a responsibility to us. (Carla HighEagle, from *Salmon and His People*. Landeen and Pinkham, 1999). And they are stories about change; some things are always changing and we must then deal with or react to the change.

We set the tone of this document with the oral tradition: "A Meeting between Creator and the Ani-

mals” and “Coyote Breaks the Fish Dam at Celilo<sup>1</sup>”. These stories provide two central themes. First, is the idea that animals and humans are fully integrat-

<sup>1</sup> The stories provided here are illustrations of traditional teaching methods. Flexibility in how a story is told is common and these stories are never ending, allowing specific points to be shared and taught. We acknowledge that many variations of oral traditions exist. As such, the oral traditions included in this document may differ slightly from versions known by some individuals.

ed and connected within the ecosystem; humans do not exist independent of the world and animals around them. Second, Coyote is a focal character in many oral traditions and can be viewed in a sense as analogous to humans; always messing things up and having to fix problems created by himself or others. Our role in caring for animals is demonstrated in many ways by Coyote.

## A Meeting Between Creator and the Animals

*On the Clearwater River near Lewiston, Idaho are rocks of all different sizes and forms, but mostly all round and large. The Nez Perce referred to them as “large animals”. These were the remains of the large animals before there were human beings. The Nez Perce have always known about the large animals that inhabited this country as many large bones were found in the ground between Clarkston and Pasco, Washington.*

*The Creator called everyone together to notify them of the great change which many of them wouldn’t survive. The animals that were late to the meeting were turned into stone. The animals that were there had to qualify themselves to be useful to the human beings as they were going to be naked, and would have a hard time making a living. Thus, the animals came to be qualified by the Creator. [The storyteller would describe all animals, including the birds, fish and insects. It was a teaching story to tell how these different species help each other, and people, to survive.]*

*One by one the different species came forward. The Salmon and Steelhead came forward and stated that “we can help the human beings with our flesh.” The great Salmon said, “When we come up the river we will die, so the human beings will have to catch us before that happens.” “We will come up only certain times of the year to be caught.” Steelhead said, “I want to come in the winter time with something special. That will be the glue from my skin. This glue can be used to make bows and spears. I’ll be in the water all winter long.” So, Creator qualified both the Salmon and Steelhead. Sockeye salmon said, “I don’t want to be big like the other salmon and I want to be red because I will eat different foods.” Trout said, “I am going to look like steelhead but I am not going to the ocean. I’ll stay here all year around in the water.” Finally, Eel said, “I want to be long, and be able to put my mouth on the rocks. I will come up the river every year, and they can use my flesh for food.” That is how all the fish qualified.*

*Coyote was last to come out and was not qualified. When you hear Coyote going ‘yip, yip, yip,’ you knew that he could not even talk. The Creator pitied him and gave Coyote special powers. Creator said “You will have all the faults and traits that the new human beings have. You will be able to transform and change yourself and you will be able to get out of bad situations to save yourself.” So Coyote was qualified but had to be a grey color.*

—Modified from Allen Pinkham from *Salmon and His People* (Landeem and Pinkham, 1999).





## Coyote Breaks the Fish Dam at Celilo

Once Coyote was walking up the river on a hot day and decided to cool himself in the water. He swam down the swift river until he came to the waterfall where the Wasco people lived. Five maidens had dwelt there from ancient times. This was the place where the great dam kept the fish from going up river.

While he was looking at the great waterfall, Coyote saw a Maiden. Quickly he went back upstream a ways and said, "I am going to look like a little baby, floating down the river on a raft in a cradle board, all laced up." As Coyote was drifting down the river, he cried "Aaaaa, aaaaa." The Maidens, hearing this, quickly swam over, thinking that a baby might be drowning.

The eldest Maiden caught it first and said, "Oh, what a cute baby."

But the youngest maiden said, "That is no baby. That is Coyote."

The others answered. "Stop saying that, you will hurt the baby's feelings."

Coyote put out his bottom lip as if he were about to cry.

The Maidens took the baby home and cared for it and fed it. He grew very fast. When he was crawling around one day, he spilled some water on purpose. "Oh, Mothers," he said, "Will you get me some more water?"

The youngest sister said, "Why don't you make him go and get it himself? The river is nearby". So the Maidens told Coyote to get the water himself. He began to crawl toward the river, but when he was out of sight, he jumped up and began to run. The oldest sister turned and said "He is out of sight already. He certainly can move fast." "That is because he is Coyote," the youngest said.

When the Coyote reached the river, he swam to the fish dam and tore it down, pulling out the stones so that all the water rushed free. Then he crawled up on the rocks and shouted gleefully, "Mothers, your fish dam has been broken!" The sisters ran down and saw that it was true. The youngest Maiden just said, "I told you he was Coyote."

Coyote said, "You have kept all the people from having salmon for a long time by stopping them from going upstream. Now the people will be happy because they will get salmon. The salmon will now be able to go upriver and spawn.

This is how Celilo Falls, came to be, where the Wasco people are today. As a result of Coyote tearing down the fish dam, salmon are now able to come up river to spawn on the upper reaches of the Great Columbia River and its tributaries.

—Allen Slickpoo, Sr. quote from *Salmon and His People* (Landeem and Pinkham, 1999).

## Cultural Ethic to Restore and Care for Fish – Duty and Obligation

*“Fish provide us with both physical and spiritual sustenance. Other cultures seem unable to recognize how those two concepts go hand in hand. Instead, they see them as separate, traditional beliefs on one side, science on the other. For Indian people those concepts have never been separate. Our fate and the fate of the fish are linked.”*

—Jaime Pinkham quote from *Salmon and His People* (Landeem and Pinkham, 1999).

The Creator placed the Nimiipúu here in this land and instructed them on how to use, honor, respect, and be humbled by it. Because the earth and its natural resources have always provided for the Nimiipúu well-being with physical and spiritual sustenance, the Nimiipúu owe an obligation to the earth and its resources to protect and preserve them forever. Future generations will only be able to enjoy the land and resources if the decisions and actions that the present-day people, both Indian and non-Indian, are made with sustainability and stewardship in mind.

To use the land and its resources wisely, one must know of the important intrinsic values that emanate from them. If people recognize and understand the interconnectedness of the land, its resources, and themselves as human users, then it is possible that a respect and humbleness may transcend from this ecological wisdom. Our role is to not just use and maintain this land and its resources, but to ensure that the ecological cycles are self-perpetuating.

The concept that it is our commitment to care for the Creator’s gifts so that they are ‘usable’ for the present and more importantly, for future generations, is captured in the following statement:

*“We did not inherit this earth or its natural resources from our ancestors, we are only borrowing them from our children’s children; therefore, we are duty bound and obligated to protect them and use them wisely until such time that they get here, and then they will have the same obligations.”*

—Eugene Greene, Sr. quote from Columbia River Inter-Tribal Fish Commission (1995).

This underlying ethical philosophy provides a foundation for all fishery managers to shape comprehensive salmon restoration programs in the Co-

lumbia River Basin.

Consistent with this stewardship theme, the Nez Perce Tribe has voluntarily reduced fishing on salmon and steelhead that were in decline; it has supported the breaching of the dams so that fish may migrate up and down the river unimpeded; and it has instituted scientifically and biologically sound recovery actions for fish. These actions are all taken to benefit the fishery resources and the surrounding ecosystem into the future.



A theme central to the Department’s programs will be the inclusion of a salmon restoration ethic that encompasses the following elements:

- An appreciation of the earth and its natural resources;
- The duties and obligations in fisheries management;
- The concept of future generations; and
- Guidance on how to use the land and resources wisely.

All are basic ethical elements that should be shared by any fishery manager to help protect and restore fishery resources for broader social and ecological benefits.

## Use of Nimiipúu timpt

It is important for this Department that oral and written communication utilizing Nimiipúu timpt (Nez Perce language) will become familiar for internal staff use. Routine use of Nimiipúu timpt will help teach and preserve this unique cultural aspect of the Nimiipúu. Nimiipúu timpt for the most frequently used fisheries words, are provided in Table 1.

Table 1. Nimiipúu timpt (Nez Perce spelling) and pronunciation guide to common words used in Nez Perce Tribe fisheries management.

English	Nez Perce	Phonetic
fish (in general)	cú·yem	<i>tsu yem</i>
Chinook salmon	nacóʔx	<i>nah tsoak</i>
Steelhead	hé·yey	<i>hey yay</i>
Brook trout	pí·ckatyo	<i>peets cut yo</i>
Coho salmon	kállay	<i>ka lie</i>
Bull trout	?i·słam	<i>ees lamm</i>
Westslope cutthroat trout	wawá·łam	<i>wah wah thlamm</i>
Lamprey (eel)	hé·su	<i>haa' sue</i>
Sturgeon	qí·lex	<i>kee lahx</i>
Sucker	múquc	<i>mook ootz</i>
Northern Pike Minnow	qí·yex	<i>key yehx'</i>
Water	kú·s	<i>koos</i>
Dry creek bed	wé·le	<i>waah lah</i>
River	pí·kun	<i>pee quoon</i>



## Background



# Tribal Fishing and Treaty Fishing Rights

## Tribal Fishing

Nimiipúu culture revolved around fish and water, and many of the calendar months are named after fish species and fishing times (see Figure 1). Deward Walker's (1967) research noted that "...the Nez Percés were impressively dependent on aquatic foods in the aboriginal period. For example the Nez Percés regularly took the following types of fish: Chinook, silver, dog, and blueback [sockeye] varieties of salmon; Dolly Varden, cut throat, brooks, lake, rainbow, and steelhead varieties of trout; several kinds of suckers and white fish, sturgeon, squaw fish, lampreys, and an unidentified but numerous minnow."

Research has been conducted by a number of people in an effort to determine how many fish were historically harvested by the Nimiipúu. Two relevant estimates originate from research conducted by Walker in 1967 and elaboration by Alan Marshall in 1977. Both used similar methods in determining number of fish caught and used in 1800's. These val-

ues are represented as "pounds per capita" at a tribal population size of 5,000, and while these are rough figures, they do illustrate the general magnitude of harvest that occurred.

Example of pounds of salmon used by Nez Perce using Walker's (1967) method.

300 fish/day
×50 fishing sites
<b>15,000</b> fish/day
×10 peak days
<b>150,000</b> annual salmon catch
×10 lbs. average weight
<b>1.5Mil</b> pounds of fish
÷5,000 tribal members
<b>300 lbs. of fish/tribal member</b>



Figure 1. Calendar of natural resource use by Nimiipúu.

Marshall's (1977) research adjusted the fish consumption value determined by Walker (1967). In Marshall's (1977) view, the 300 pounds per person per year is a minimum estimate because more fishing stations were used by the Nimiipúu. Marshall (1977) estimated annual Nimiipúu consumption at 564 lbs. of fish/tribal member.

The Nimiipúu developed ways to harvest large amounts of fish (Table 2). These were documented

as proven methods to catch the substantial numbers of salmon and steelhead (as well as other species of fish) that were indicated above.

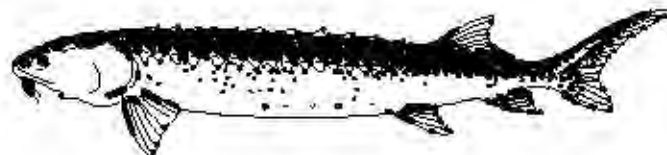
Table 2. Traditional Nez Perce fishing practices.

Season	Species	Environment	Equipment
Spring	Steelhead	Headwaters of rivers	Traps and weirs
Summer	Chinook Sockeye	Lower stretches of rivers, lake outfalls, and lakes	Natural or constructed platforms above eddies, with spears, harpoons, dip nets, and thrown nets; weirs and seines; drift nets; canoes with spears; stone walls used to create eddies
Fall	Chinook Sockeye Steelhead	Upriver tributaries, lake outfalls, and lakes	Weirs  Conical fish traps used with rock or earth dams
Winter	Salmon Steelhead	Lower stretches of rivers	Harpoons
Season Unidentified	Sturgeon	Lower stretches of rivers	Large gorge hooks baited with lamprey eel

With such a reliance on fish, it is easy to understand that the Nimiipúu believe that one of "...the greatest tragedies of this century are the loss of traditional fishing sites and Chinook salmon runs on the Columbia River and its tributaries..." (Landeon and Pinkham, 1999).

The Nimiipúu practiced sound fishery resource decision-making that resembles contemporary concepts or practices commonly associated with conservation and sustainability of a natural resource. The Nimiipúu governed where fishing occurred, how many fish were to be harvested, who could participate, how to use the resource, and ways to honor and perpetuate the resource. Fishing "regulations" occurred at the local scale (tribal band/clan) according to traditional laws put in place to ensure that vital needs of the people were met and still allow fish to complete their life cycle. This stewardship of the resource and underlying obligation was upheld so that future generations would have the same opportunity to enjoy the natural resources and continue with the Nimiipúu way of life.

For the Columbia River, where use was shared, the Nimiipúu relied on a combination of tribal diplomacy, trade and commerce, family relationships, and intertribal wars to maintain the aboriginal right to fish. Many of these same factors contribute to the present-day exercise of the treaty fishing rights held by the Nez Perce and other tribal peoples.





## Treaty Fishing Rights

The federal government entered into an agreement with the Nimiipúu in the Nez Perce Treaty of 1855. The treaty making was a result of increased conflict between Indians and non-Indians entering Nimiipúu and other tribal territories in the Pacific Northwest. In order to protect their people and their way of life, the Nez Perce retained a homeland of approximately 7.5 million acres and reserved rights they had exercised since time immemorial, while ceding approximately 5.5 million acres of land to the federal government.

The Nimiipúu way of life and survival depended greatly on the ability of individuals to fish, hunt, gather, and pasture animals as they had always done. With this in mind, these rights were expressly reserved in Article III of the Treaty of 1855:

*“The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privileges of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land”*

— Treaty of 1855, 12 Stat, 957



The Nez Perce would not have signed this treaty without first receiving assurances that these rights, including the right to fish would be protected into the future. Additional treaties between the two sovereigns have been made, but the reserved fishing right has remained unchanged since 1855. Tribal

*Arrival of the Nez Perce Indians at Walla Walla Treaty May 1855*



Arrival of the Nez Perce Indians at Walla Walla Treaty May 1855. Gustav Sohen.

members will exercise this treaty-secured fishing right at usual and accustomed (U&A) fishing areas.

During the time that the treaty was negotiated (and subsequently authorized by the Nez Perce and United States), the salmon resource reserved by the Nez Perce came from “...river systems that were biologically functional and fully productive...” (Meyers Resources, Inc. 1999). The decline of salmon productivity since the mid-1800’s to present, does not alter, change, or abrogate the Nez Perce treaty right to take fish. This right to take fish represents an inherent right that the Nimiipúu have held since time immemorial. The fishing right is as important to the Nimiipúu today as it was before contact with non-Indians.

## Background



# Tribal Management Area

## Area of Use and Influence and Usual and Accustomed Fishing Areas

The Nimiipúu fished, hunted, gathered and traded over an enormously broad area. This includes, for example, hunting bison in what is now eastern Montana and Wyoming (areas referred to as “Buffalo Country”), and trading with peoples on the Pacific coast. As a whole, this extensive geographic area has been referred to as the Nez Perce Tribe’s “area of use and zone of influence” and is set forth in Figure 2.

Nez Perce usual and accustomed (U&A) fishing places are best understood as encompassing stretches of the river (i.e. not just specific locations). Usual and accustomed fishing places may be documented by a variety of sources such as archaeology, anthropology, ethnography, oral histories, and written histories. Nez Perce U&A fishing places are located throughout the present-day States of Idaho, Oregon, Washington, Montana and Wyoming.

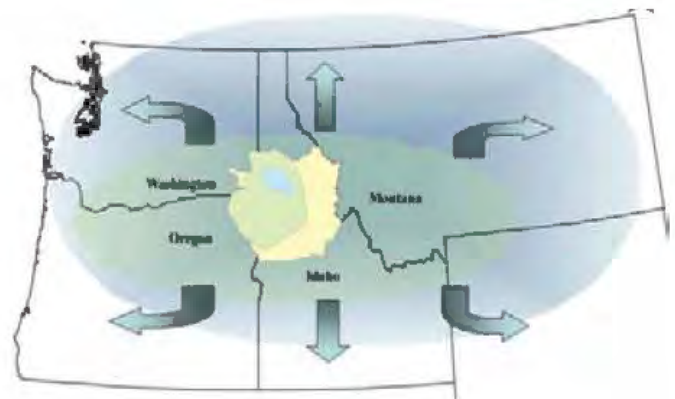


Figure 2. Nez Perce Tribe area of use and zone of influence including the 1855 Treaty boundary (light green), 1863 Treaty area (light blue), and Indian Claims Commission boundaries (light yellow).

## History and Geography of the Nimiipúu

The Nez Perce Tribe's area of use, zone of influence, and treaty-reserved right to take fish at all U&A places are best understood by understanding the history surrounding the Nimiipúu, their lands, and the resources on which they relied and continue to rely. This history is extremely relevant to many issues that arise today. While a complete portrayal of the traditional power of the Nimiipúu and the history of the relationship between the Nimiipúu and the United States is beyond the scope of this document, it is important to appreciate the strength and perseverance of the Nimiipúu to protect and preserve their aboriginal rights and way of life.

By the early 1850's the Nimiipúu lived in a vast aboriginal domain (more than 13 million acres) encompassing most of present-day central Idaho as well as parts of southeast Washington and northeast Oregon, including the Wallowa Valley—while



also travelling extensively to places such as Buffalo Country in present-day Montana and Wyoming and to fisheries on the mainstem Columbia River in present-day Oregon and Washington (as just two examples). The Nez Perce were “the largest, most powerful and influential nation of Indians in the northwest area of the Rocky Mountains.” 18 Indian Claims Commission 1, 92 (1967).

The United States had cleared title to the Pacific Northwest as against all foreign nations in its 1846 treaty with Great Britain; however, the United States shared title with the tribes, who in the words of the U.S. Supreme Court were “rightful occupants of the soil, with a legal as well as just claim to possession of

it, and to use it according to their own discretion.” Thus, as a matter of American real property law, the Nimiipúu had an aboriginal ownership interest in the land.

### The Treaty of 1855

The 1855 Treaty Council at Walla Walla and the Treaty negotiations reflect the Nimiipuu's inherent tribal sovereignty and its rightful “aboriginal title” to land. At the Treaty Council, the United States sought to clear title to lands; the Nimiipuu sought to reserve and maintain a homeland (“Reservation”) and reserve its aboriginal rights and way of life. Many tribes, in the Treaty-making process, reserved only 10-20% of their aboriginal land (ceding 80% to 90% to the United States). In contrast, in the 1855 Treaty, the Nez Perce reserved 60% of their aboriginal land (about 8 million acres). And, this Nez Perce homeland contained, as the United States recognized, many of the best fisheries. This is reflected in the treaty negotiation minutes:

*Gov. Stevens said: “Here (showing a draft on a large scale) is a map of the Reservation. There is the Snake River. There is the Clear Water river. Here is the Salmon river. Here is the Grande Ronde river. There is the Palouse river. There is the El-pow-wow-wee. This is a large Reservation. The best fisheries on the Snake River are on it...”*

Moreover, in addition to this homeland, Nez Perce leaders insisted on reserving expansive off-reservation hunting, fishing, gathering, and pasturing rights. The minutes of the treaty negotiations reflect Governor Stevens' repeated assurances, on behalf of the United States, that the treaty would reserve these expansive off-reservation rights to the Nez Perce Tribe:

*“You will be allowed to pasture your animals on land not claimed or occupied by settlers, white men. You will be allowed to go on the roads, to take your things to market, your horses and cattle. You will be allowed to go to the usual and accustomed fishing places and fish in common with the whites, and to get roots and berries and to kill game on land not occupied by the whites; all this outside the Reservation:*

Gov. Stevens said: "I will ask of Looking Glass whether he has been told of our council. Looking Glass knows that in this reservation settlers cannot go, that he can graze his cattle outside of the reservation on lands not claimed by settlers, that he can catch fish at any of the fishing stations, that he can kill game and can go to Buffalo when he pleases, that he can get roots and berries on any of the lands not occupied by settlers....

*This Reservation is in his own country."*

After gold was discovered on the North Fork of the Clearwater River in 1860 within the Nez Perce Reservation, the reservation rapidly became overrun with trespassing miners and entire towns (such as Orofino, Pierce, and Lewiston) established in trespass.

### The Treaty of 1863

The United States response to this invasion of the 1855 Reservation was a failure to eject the trespassers and an effort to "divide and conquer" the Nez Perce people through a new treaty negotiation that would take 90% of the 1855 Reservation and create a new 1863 Reservation surrounding only the Clearwater River and its forks and comprising 770,000 acres. The 1863 Treaty represents a historical injustice (and is often referred to as the "steal treaty"). However, it is important to understand that the 1863 Treaty, by its express terms, did not abrogate the Nez Perce Tribe's off-reservation rights reserved in the 1855 Treaty; that is, the 1863 Treaty was "supplementary and amendatory" to the 1855 Treaty and preserved "all of the provisions" not "specifically changed," including the 1855 Treaty's Article III fishing and other off-reservation rights.

The 1863 Treaty purported to relieve Nez Perce bands of their lands, even though they were not represented in the 1863 Treaty and were not signatories to it. This was particularly egregious with respect to the Nez Perce who lived in the heartland of Nez Perce Country—the Wallowa country—and were led by Old Chief Joseph. In 1873 President Grant issued an executive order setting aside a portion of the Wallowa Valley as a reservation for the Nez Perce; two years later it was rescinded. The ordered removal of Nez Percés from Wallowa country, and the



combat with local settlers that broke out as Young Chief Joseph and his band were removing to the Lapwai Reservation when young Nez Perce warriors in Young Joseph's party exacted revenge for past killings and violence, led to the War of 1877. After an epic war spanning four months and 1,300 miles, including a final battle that took the lives of Looking Glass and twenty four others in the Bear Paw mountains, a depleted band of Nez Perce, three quarters of them women and children, surrendered just a short distance from the Canadian border. Some Nez Perce had made it to Canada; Joseph and the remaining survivors were imprisoned for eight years at Fort Leavenworth and in the Indian Country of Oklahoma and were then sent to the Colville Reservation in Northeastern Washington and Lapwai, Idaho. While these Nez Perce were never to return to the Wallowa, the importance of the Wallowa country to the Nez Perce has continued.



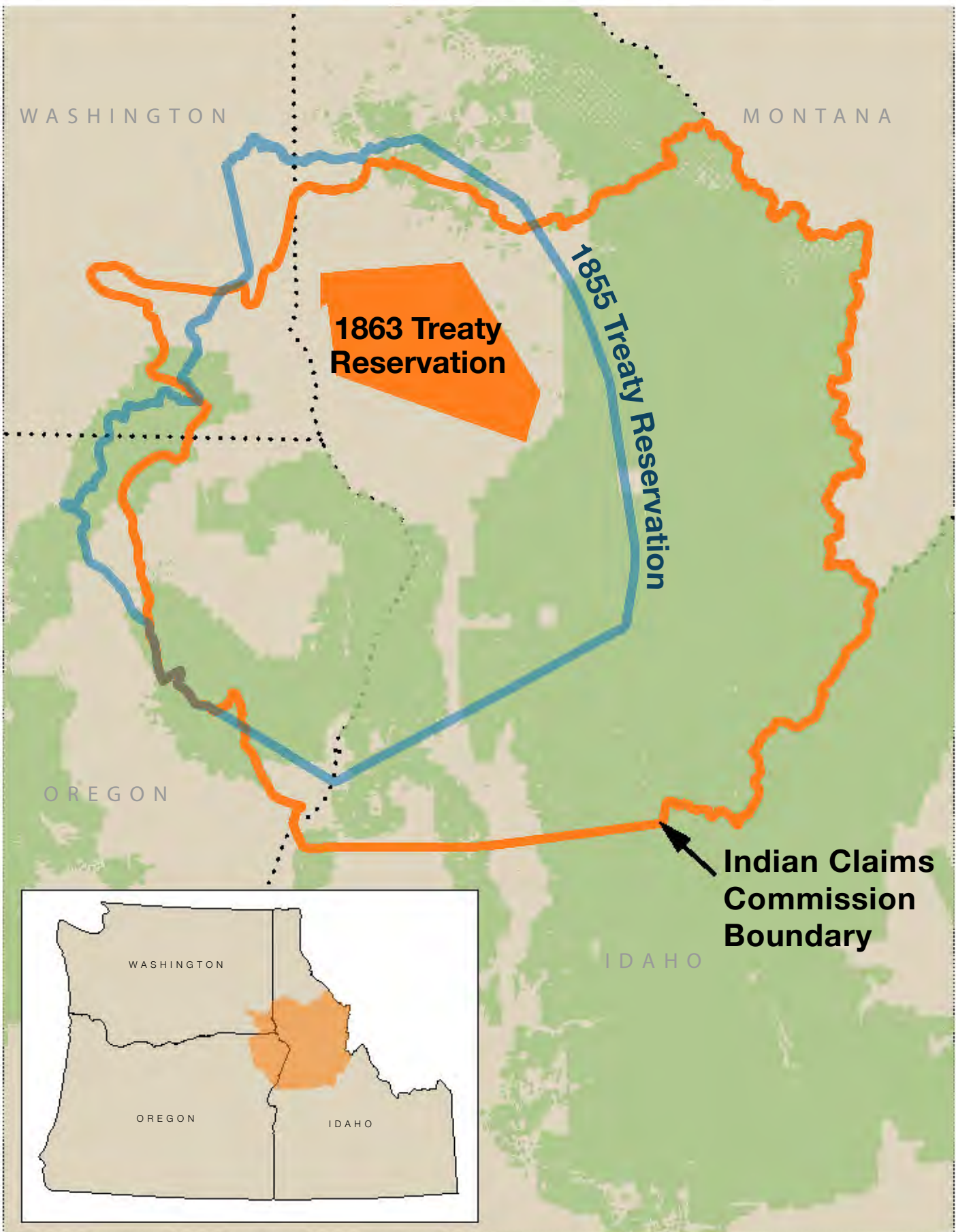


Figure 3. Important Nez Perce boundary areas: Treaty of 1855 reservation, Treaty of 1863 reservation, and Indian Claims Commission boundary. Green areas are federal lands.

## The General Allotment (Dawes) Act

In 1887, Congress passed the General Allotment Act, designed to make Indians into farmers and providing every tribal member with a plot of land, usually 160 acres, carved out of the reservation. Land that was not allotted was declared “surplus” and opened for settlement by non-Indians.

The land ownership changes within the 1863 Reservation occurring as a result of the Allotment era did not affect the Nez Perce Tribe’s jurisdiction within the 1863 Reservation. That is, all lands within the exterior boundaries of the 1863 Nez Perce Reservation are Indian Country with respect to the United States and the Nez Perce Tribe’s jurisdiction.

Within the 1863 Nez Perce Reservation, there are three general categories of tribal lands:

- Individual Indian Trust Allotments – lands held by the U.S. for the benefit of descendants of the original owners of the tribal allotments.
- Tribal Trust Lands – lands held by the U.S. for the benefit of the Nez Perce Tribe.
- Tribal Fee Lands – non-allotment lands purchased and held by the Nez Perce Tribe and located both within and outside the reservation boundaries.

The Allotment Act and era did not alter the off-Reservation rights the Nez Perce Tribe reserved in Article III of the 1855 Nez Perce Treaty.

## Indian Claims Commission

The Indian Claims Commission (ICC) was created by Congress in 1946 to hear claims by Indian tribes for, among other things, compensation for the

taking of aboriginal lands by the United States without fair payment. Compensable aboriginal title was required to be based on “actual and exclusive use and occupancy ‘for a long time’ prior to the cession, transfer, or loss of the property.” In its Nez Perce decision in 1967, the ICC made comprehensive findings based on detailed anthropological evidence from both the United States and the Nez Perce Tribe, of the area of “exclusive use and occupancy” and “aboriginal ownership” – as against any other Indian tribes<sup>2</sup>. The ICC determined that the Nez Perce had “exclusive use” and occupancy of 13,204,000 acres of land (Figure 3).

As Figure 3 depicts, much of the ICC Nez Perce aboriginal area is today owned by the United States and managed by different federal agencies. The fact that the lands are federally owned is important to treaty reserved rights in several ways. First, they are considered to be “open and unclaimed” relative to exercise of hunting, gathering, and pasturing rights reserved in Article III. Secondly, the land managers, as representatives of the United States, have a trust responsibility to the Nez Perce Tribe; their actions must recognize the treaties as federal commitments and their actions must be taken in support of a tribe’s ability to exercise rights guaranteed in the treaties. And finally, the lands contain some of the best and most productive habitat remaining for steelhead and salmon in the Columbia River Basin.

<sup>2</sup> In a 1994 dispute in northeast Oregon filed in the *U.S. v. Oregon* district court proceeding, the Ninth Circuit Court of Appeals used the 1967 ICC Nez Perce decision as precedent in ruling that the Nez Perce Tribe has “continually” been recognized as the entity reflected in the 1855 Treaty and in which the fishing rights were vested.





# Nez Perce Tribal Government Organization

## Tribal Government

The Nez Perce Tribe presently operates under a constitution and bylaws originally adopted in 1948 and which subsequently have been amended several times. The Nez Perce Constitution delegates most governmental function to the Nez Perce Tribal Executive Committee (NPTEC), which is comprised of nine tribal members elected for three-year terms. Three positions on the Executive Committee are elected each year by the General Council, which consists of all enrolled Nez Perce tribal members over the age of 18. Executive Committee members can run for reelection and serve several terms. The General Council meets twice a year, in May and September, for the purpose of hearing reports from the Executive Committee. Internal Executive Committee elections, for the position of Chairman, Vice-Chair, and other offices are held during the Committee's May meetings (Nez Perce Tribe, 2003).

As shown in the organization chart (Figure 4), the Nez Perce tribal governance structure is large and consists of different entities, boards, and commissions. The four main entities shown on the organization chart are Law and Justice, Legal Counsel, Enterprise System, and Executive Direction. In addition, Nez Perce Tribal Housing and Nimiipúu Health are two other entities associated with the Tribe that have a considerable number of employees. Their oversight is provided by the Housing Board, and Tribal Chairman, respectively. The Fisheries Department is within Executive Direction.

The organization chart for just the Tribal Government (Executive Direction) is depicted in Figure 5. The Fisheries Department reports to the Executive Director (E.D.); the E.D. reports to the Nez Perce Tribal Executive Committee (NPTEC) Chairman, who reports to the full NPTEC, and who, in turn, reports to the General Council.

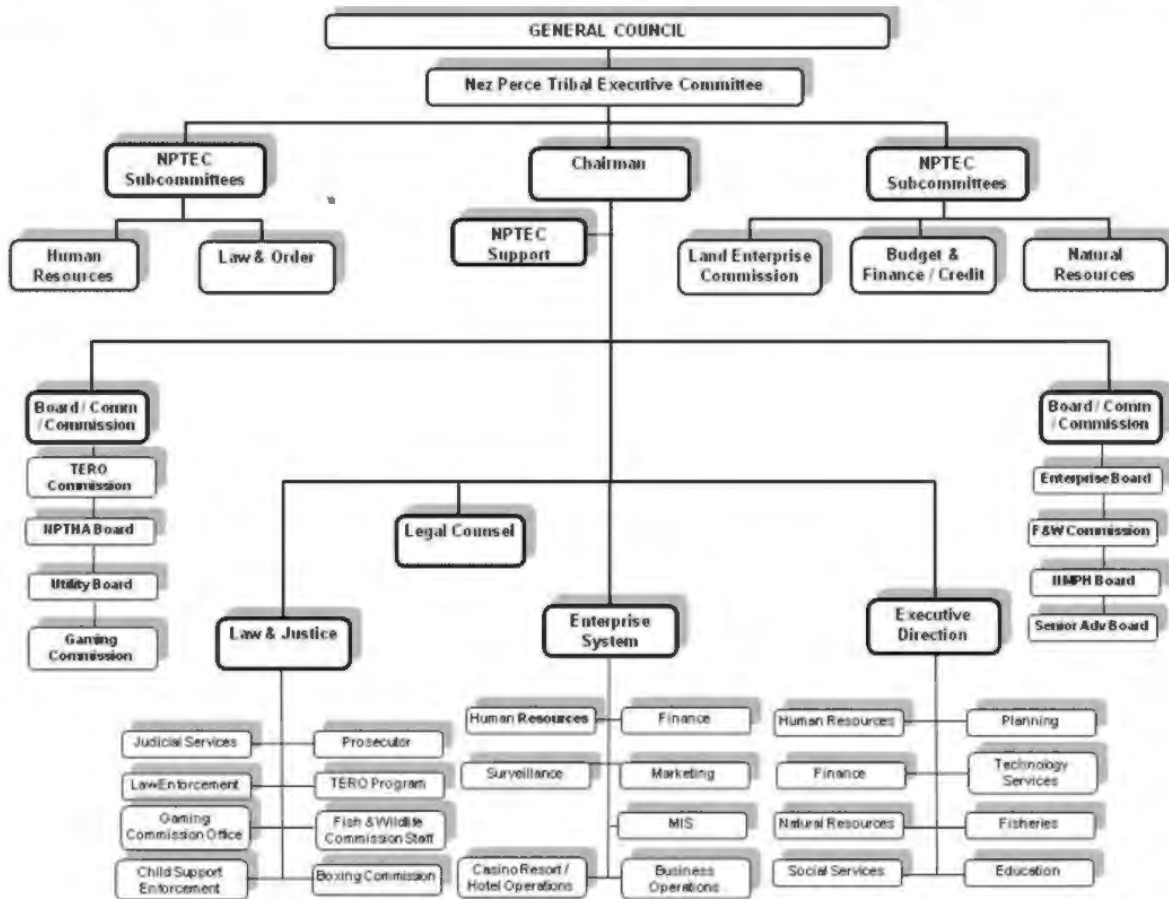


Figure 4. Organization chart for the Nez Perce Tribe.

## Nez Perce Tribal Executive Committee

NPTEC has responsibility for deliberating and taking action on matters that determine tribal policy. All Department actions involving contracts between the Nez Perce Tribe and other entities and actions establishing tribal policy must be submitted to NPTEC for review and approval. The process for doing so is through the NPTEC Natural Resources (NR) Subcommittee.

The NR Subcommittee consists of eight of the NPTEC members (minus the NPTEC Chairman). They meet on the first and third Tuesday of each month. They consider natural resources related actions, including those brought to them by the Department, the Department of Natural Resources, the Fish and Wildlife Commission, and the Office of Legal Counsel. Decisions made at the subcommittee table are then deliberated at the full NPTEC meeting, which occurs on the second and fourth Tuesday of the month.

Internally, those actions requiring NPTEC review and approval are submitted from the Depart-

ment Divisions through the Department Manager to the NR Subcommittee chairman. Due to the number of actions the Department brings forth, the amount of review involved, and the fact that two policy meetings are required for a final decision (NR Subcommittee and full NPTEC), any action requiring NPTEC approval requires at least a three-week lead time.

In addition to adopting actions requiring approval, informational items or presentations by guests can also be brought forth for NR Subcommittee attention. These are submitted as “FYI” items as part of the Department’s agenda. Briefing materials for FYI items must be submitted following the same schedule as action items.

Occasionally, with issues requiring specific policy attention and focus, special meetings outside of the subcommittee dates or regular NPTEC dates can be called at the request of the subcommittee or NPTEC chairman.



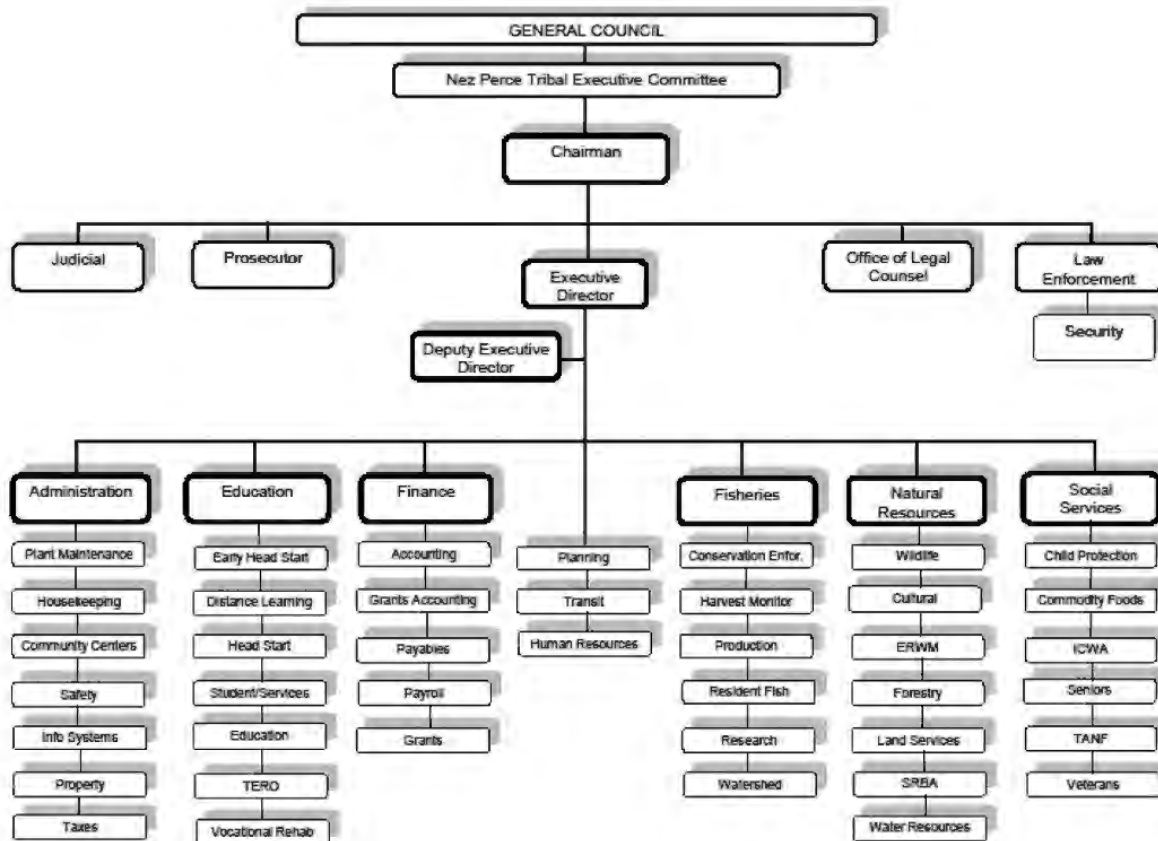


Figure 5. Organization chart for the Nez Perce Tribal governmental services.

## The Fish and Wildlife Commission

The Fish and Wildlife Commission (Commission or FWC) is elected by the General Council during the September General Council meeting and appointed by NPTEC. There are five members and one alternate on the Commission. They meet typically in the evening on the second and fourth Monday of the month, but can also meet at the request of a Commission member.

In summary, relative to the operations of the Department, the FWC has several important functions (subject to the authority of NPTEC to reject or modify any action of the Commission). Below are select subsections paraphrased from the Fish and Wildlife section of the Law and Order Code – Section 3.1.11:

- To promulgate season fishing regulations and areas and prescribe the manner and methods which may be used to fish
- To establish regulations for the issuance and use of fishing permits or other related privileges within Nez Perce territorial jurisdiction
- To meet periodically with the Fisheries Department staff to review department programs and make recommendations for needed improvements to the department and/or NPTEC.
- To recommend to NPTEC broad policies and long-range programs for the management, preservation and harvest of fish.
- To provide for the assembly and distribution of information to the public relating to activities of the Department.
- To provide for the conservation, enhancement, and management of Nez Perce fish resources.

Department staff meets pre-season and in-season with the FWC to discuss actions and appropriate updates involving harvest, potential run sizes, and harvest rates. Briefings to the FWC are also provided

on technical items involving internal activities, intertribal activities (e.g. Columbia River Inter-Tribal Fish Commission), and interagency interactions (e.g. Idaho Department of Fish and Game).

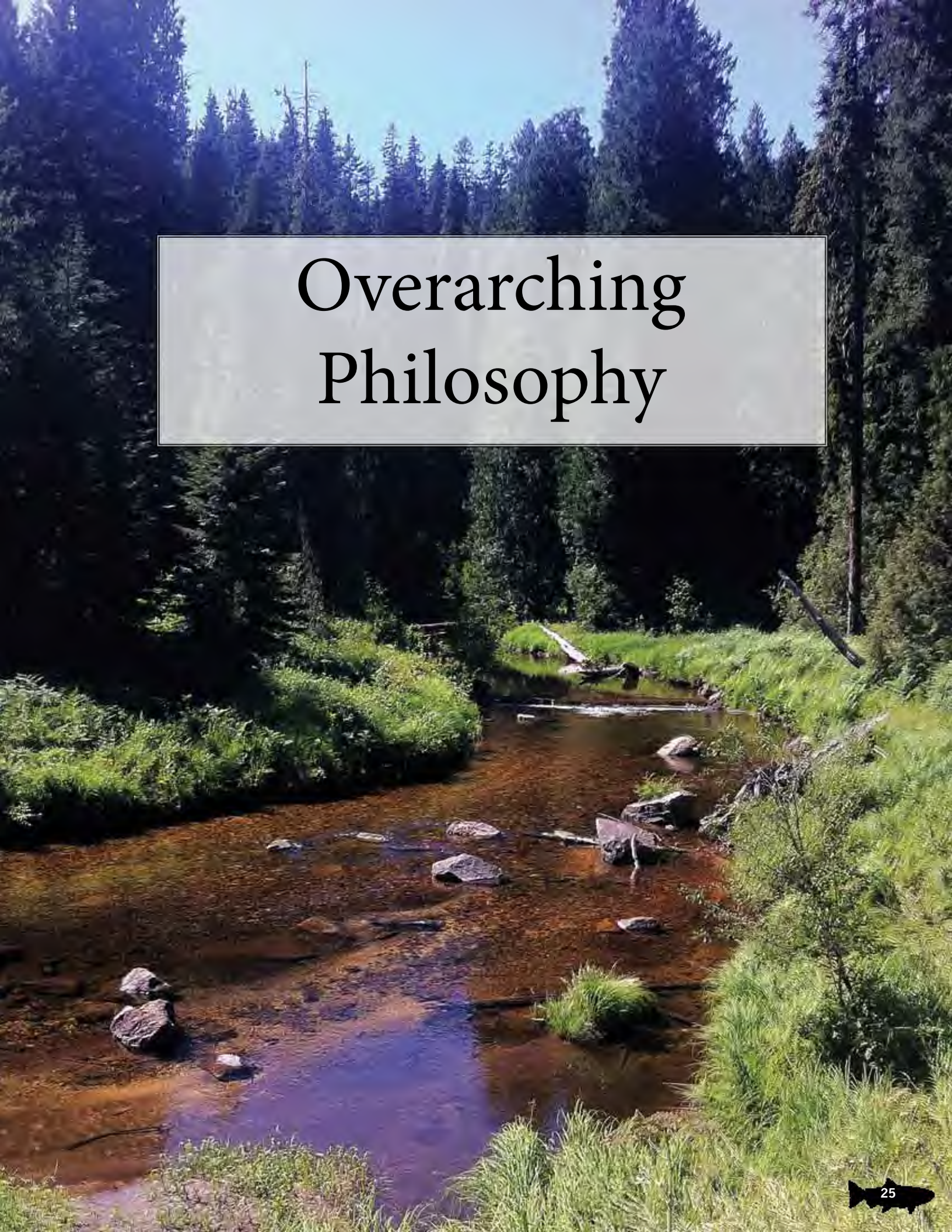
## **The Nez Perce Tribal Code**

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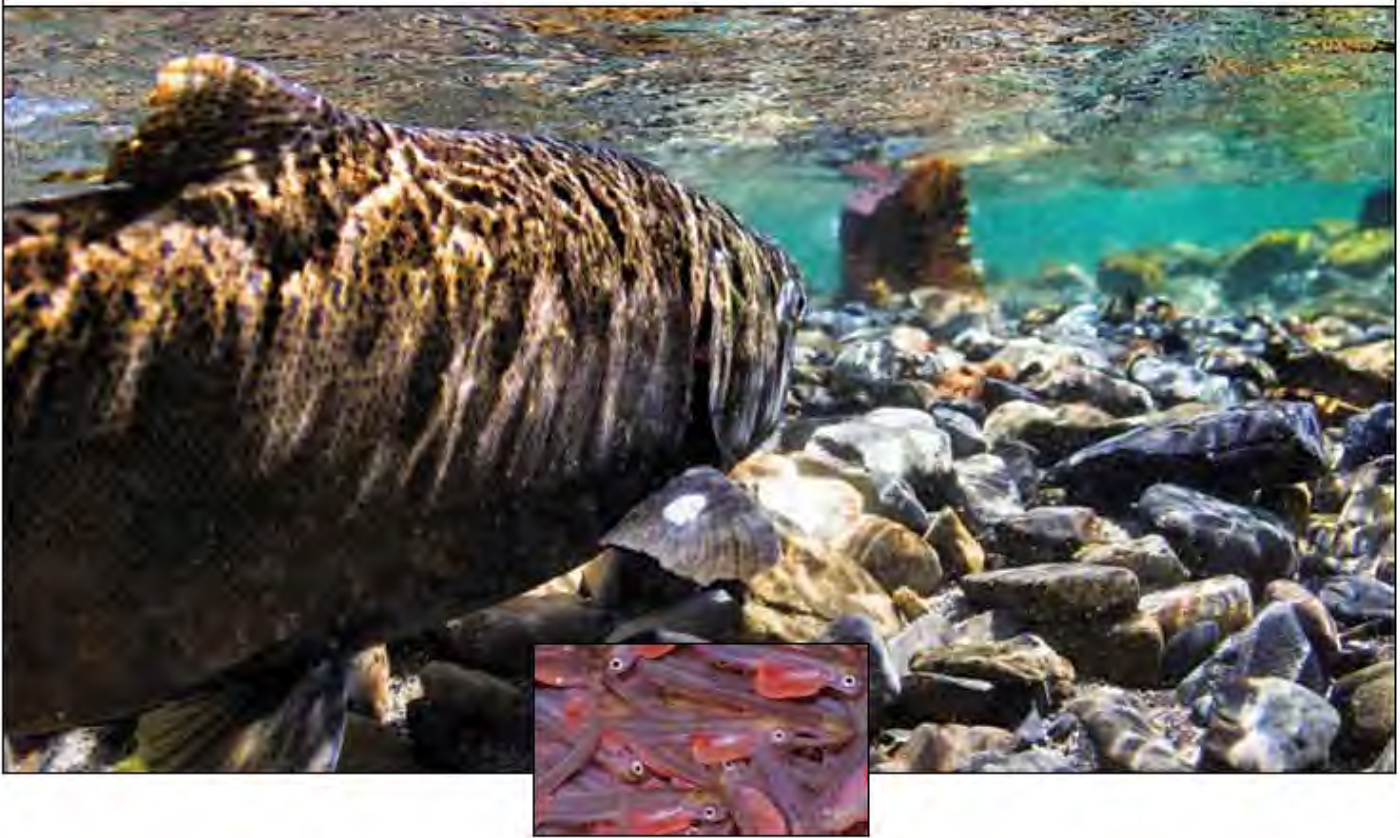
Chapter 3.1 of the Nez Perce Tribe Law and Order Code (Code) relates specifically to the regulation of fishing and hunting by the Nez Perce Tribe and its members. The Code has enforceable legal status, with adjudication occurring at Tribal Court. The Code is available on the Nez Perce Tribe's website ([www.nezperce.org](http://www.nezperce.org)).





A scenic view of a forest stream with a title box. The stream flows through a lush green forest, surrounded by tall evergreen trees and dense undergrowth. The water is clear and reflects the surrounding greenery. The title box is a white rectangle with a black border, containing the text "Overarching Philosophy" in a black serif font.

# Overarching Philosophy



## Mission

The Nez Perce Tribe Department of Fisheries Resources Management will protect and restore aquatic resources and habitats. Our mission will be accomplished consistent with the Nimiipúu way of life and beliefs, which have the utmost respect for the Creator, for all species, and for the past, present, and future generations to come. Our mission will be consistent with the reserved rights stated within the Nez Perce Tribe's 1855 Treaty.

## Vision

- All species and populations of anadromous and resident fish and their habitats will be healthy and harvestable within Nez Perce Usual and Accustomed areas.
- Sound fisheries and habitat management actions will be implemented to improve survival, production, recovery and restoration of all populations of native anadromous and resident fish species and their habitats within Nez Perce Usual and Accustomed areas.
- The Nez Perce Tribe's leadership in fisheries and resource management will be recognized in professional and public forums.
- The Department shall be proactive in an ever-changing ecological and management environment.
- Tribal member use of and access to all treaty rights and resources guaranteed under the Treaty of 1855 will be respected and promoted by the Department, our co-

managers, and the public at large.

- Educational outreach will be provided that ensures comprehensive knowledge of aquat-

ic resource values and the future state of the resource for the Nez Perce tribal members and the non-tribal public.

## Guiding Principles

Guiding Principles represent core concepts or expectations that must be maintained and achieved via management actions. These are “what we keep an eye on” while engaging in our management actions. Guiding principles are organized under four categories: Cultural, Biological, Social, and Legal.

### Cultural

#### *Cultural Significance*

- The traditional way of life for the Nimiipúu (e.g. gathering, harvesting, ceremonies, and traditions) depends on continuance of the circle of life for all native species (plants and animals).
- The rights reserved under the Treaty of 1855 must be protected such that the enjoyment of these rights resembles that envisioned by the treaty signers and Nimiipúu leaders.
- All native anadromous fish and resident fish have had long-standing cultural significance to the Nimiipúu, including: subsistence value, ceremonial and spiritual value, medicinal value, economic or commercial value, and intrinsic value.
- Minimizing intrusive marking and handling of fish supports cultural and spiritual beliefs, respect for the fish, and maximum survival.

#### *Community*

- The intrinsic connection between fishing activities and the perpetuation of associated customs, traditions, and family history are essential for maintaining the unique Nimiipúu identity and should be passed on to future generations.

### Biological

#### *Sustainable Harvest*

- Treaty fisheries must achieve a balance between conservation needs and perpetuating the run with providing meaningful, desired annual harvest by the Nez Perce Tribe at all U&A fishing places.
- Tribal harvest recommendations will be guided by Treaty of 1855 reserved fishing rights, biological principles, cultural ethics, and conservation necessity principles.
- Apply abundance-based harvest schedules for fish stocks (hatchery and natural) consistent with the tribal ethic.

#### *Ecosystem Approach to Management (“Ridge-top to ridge-top management”)*

- Native fish populations thrive best under natural or normative conditions to which they are best adapted.
- Contributions of all individual components within the ecosystem (endogenous and exogenous) are necessary for the overall productivity, functioning, and health of the ecological system.
- The biological, chemical, and physical interactions within natural productive ecosystems are complex.
- Natural ecosystems and populations are inherently variable and dynamic.
- Natural ecosystems have been and will continue to be increasingly stressed and altered by human activities and population levels.
- When historic natural conditions are not achievable, altered ecosystems should func-

tion adequately enough to maintain harvest opportunities.

### *Species Life History Approach to Management ("Gravel-to-gravel management")*

- The entire life cycle of a species must be successfully carried out (from egg through adulthood) for that species or population to persist.
- Failure to serve a species' needs, at any life history stage, can lead to extirpation of populations.

### *Adaptive Management*

- Complete fisheries resource information is often not available to inform management and foster policy decisions. In the absence of complete information, actions shall be implemented that are most protective of treaty resources.
- Adaptive management generally consists of monitoring the results of actions, evaluating their effectiveness, adjusting plans if necessary, and applying new or modified strategies from knowledge gained.
- Individual areas and populations have unique attributes that vary the effectiveness



of management actions. As a result, site specific management actions, consideration, and evaluation are often required.

## **Social**

### *Employment*

- All employees of the Department are valued for the skills, attitudes and experience they bring to management of the resource for the benefit of Nez Perce tribal members, the non-tribal public, and the resource itself.
- Tribal preference in hiring supports tribal participation in self-government, encourages tribal members to pursue higher education, and provides a pathway for members to administer matters that affect tribal life. The preference granted to tribal members is not as a racial group but as members of a sovereign tribal (i.e. political) entity.
- Indian preference in hiring within other natural resources management organizations supports the U.S. Government's trust obligations to tribes.
- A positive work environment for employees at all levels of the organization fashions a culture that values its employees and increases the productivity and quality of employment (NPT Human Resource Manual).

### *Education*

- Early and continual education (from Head Start through college and including social, cultural, and work experience) that encompasses and expands traditional knowl-

edge as well as provides environmental and scientific knowledge will improve the recruitment of tribal members into natural resource jobs and careers.

## Legal

### *Treaty-Reserved Rights*

- Treaty-reserved fishing seasons are considered open until closed.
- The Nez Perce Tribe's Treaty of 1855 reserves the "exclusive right of taking fish in all the streams running through or bordering said reservation... as also the right of taking fish at all usual and accustomed places in common with citizens of the territory..."
- The right to fish in common has been determined, legally, to mean the right to 50% of the harvestable surplus.
- The right to fish at usual and accustomed fishing places includes an easement over private and federal lands to reach these places.
- Tribes have inherent sovereign authority to regulate members hunting and fishing on and off-reservation.
- Full and equal natural resource co-management responsibility is required to support treaty-reserved fishing rights.
- Federal governmental agencies have treaty trust responsibilities; their actions must recognize the treaties as federal commitments and their actions must be taken in support of a tribe's ability to exercise rights guaranteed in the treaties.

## Management Goals

The following goals seek to secure the integrity of populations and habitat features essential to recruitment.

### *Biological*

- Achieve and maintain diverse and productive ecosystems with species composition and productivity consistent with historical conditions.
- The importance of natural reproduction cannot be replaced but where it is compromised, it may be enhanced with measures of artificial production.
- Achieve and maintain fish abundance in tributary-specific areas at levels sufficient





to support: 1) population persistence, 2) harvest, and 3) ecological processes.

- Achieve and maintain fish abundance in mainstem migration corridors at levels sufficient to support meaningful harvest.
- Achieve and maintain adult spawner distribution consistent with historically utilized tributaries (includes within and across tributary spatial scales).
- Achieve and maintain fish population genetic diversity at levels adequate for population persistence and consistent with historic conditions.

#### *Physical*

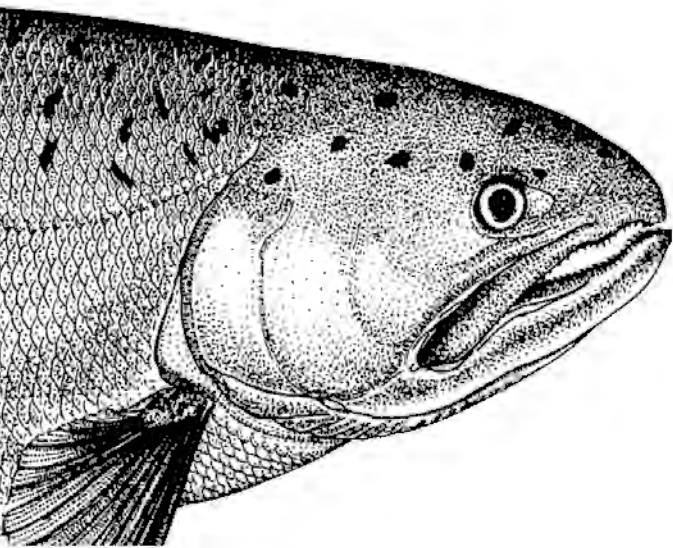
- Achieve and maintain in-stream physical habitat structure and function to support populations self-sustained by natural reproduction and consistent with historic conditions.
- Ensure passage/access for all life stages of aquatic species in all streams and rivers.
- Achieve and maintain ridge-top to ridge-top physical structure and function to support populations self-sustained by natural reproduction and consistent with historic

conditions.

- Achieve and maintain historic ridge-top to ridge-top terrestrial vegetation community and function that supports all life, such as water, plants, and animals.

#### *Harvest*

- Achieve harvest of 50% share of harvestable fish (including 50% of harvestable hatchery fish and annual harvest level of natural-origin fish considered acceptable and sustainable).
- Achieve tribal harvest in all population areas using traditional gear types and fishing methods and practices.
- Harvest opportunities currently available will be protected and enhanced.
- Mitigation goals must be met.





# Management Framework

This chapter addresses operations and functions of the Department. The Management Objectives section discusses species of interest and management areas and several objectives unique to and/or adopted by the Department that are important for employees to know. These include fish abundance objectives and thresholds, hatchery objectives, habitat conditions objectives, harvest objectives, and the Nez Perce Tribe's views with respect to the Federal Columbia River Power System (dams).

Management Processes are also included in this chapter, describing how principle components of the Department operate. Discussion is provided on the Department and its management team, decision framework, and the co-management forums pertinent to restoring salmon and other fishes to the Columbia Basin. And finally, this chapter focuses on the human dimension of employment with the Department and the Nez Perce Tribe

# Management Objectives

## Species of Interest

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Management actions and resource utilization commonly target a single or select number of species. The intent of this Plan is to structure management decisions in a manner that considers implications on the full spectrum of animals and plant species. For management purposes, three categories of species of interest are defined:

- **Full** - All species of animals and plants currently present or historically occurring within the management area. No species is considered to be above another in terms of importance or value. Interactions between species and the environment occur in dynamic balance. It is important to consider those species present today, as well as historical species that have been eliminated or are close to extinction. Missing species have an effect on the balance and function of the ecosystem as a whole. Likewise, current physical habitat conditions affect which species are able to exist today.
- **Focal Species** – Focal species represent a subset of animals and plants that are of high interest, and/or are in need of management consideration and/or are valuable indicator species. They represent a starting point for implementing management actions and securing necessary resources. They do not represent species which are more important or of higher priority than others. We restrict focal species designation to fish species within the context of Department of Fisheries Resources Management actions.
- **Exotic Species** - Exotic species are invasive non-native species that pose a threat to the delicate balance of the full and stable ecosystem processes. As such, the removal of existing and preclusion of further exotic species is desirable. Native species that have been extirpated and then reintroduced are not considered exotic. Native species that have increased dramatically in abundance and distribution due to recent habitat changes are still considered a native species, but may be aggressively managed as necessary. As climate change manifests, our definition and management philosophy may require revision.

## Management Areas Within the U&A Area

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The identification of management areas is important for communicating goals and focusing work (although it is important to acknowledge the inherent limitations of such designations)<sup>1</sup>. As such, watershed boundaries, at the subbasin level, are useful for delineating management units and management

goals within the U&A area. These areas serve as the core management units for fish and their habitats; they provide a geographic focus for near-term treaty fisheries and for preserving genetic and ecosystem integrity. The Department's strategy will be to continue to focus on these core management areas and ramp-up activities for other identified populations (within watersheds or among watersheds) as available resources permit. Ultimately, recovery and restoration of fully functioning ecosystems is important for all constituent populations across the entire U&A area.

1 "The definition of the conservation unit for Pacific salmon [and other species], as for any such classification, is necessarily arbitrary. Although tribal perspectives and biological principles can provide some guidance, ultimately there is not an acceptable minimum group of animals on which to target conservation efforts because extirpation of even the smallest spawning aggregate is unacceptable" (Mundy et al. 1995).

## Abundance Objectives and Thresholds for Salmon and Steelhead

Healthy salmon populations require adequate abundance, survival (productivity), distribution, and diversity. But in the end, robust adult returns are central to maintaining ecological processes and a focal point for tribal member and policy level expectations. Although we may focus on abundance for the management context, we also recognize the importance of productivity, distribution, and diversity.

Abundance-based reference points (thresholds) are delineated for salmon populations in order to develop long-term management strategies and to guide the implementation of short-term management actions necessary to achieve broad and population-specific salmon rebuilding goals. Adult salmon abundance (or escapement) objectives are our primary measure for quantifying goals. Escapement is defined as the number of adults and jacks in each population that return to their river of origin.

Table 3 provides a reference of escapement and harvest objectives for several focal fish species by subbasin. These escapement and harvest objectives

were derived from the Northwest Power and Conservation Council's subbasin planning process. The Nez Perce Tribe was the lead or co-lead for all subbasin plans that fell within the Nez Perce ICC boundaries. The escapement and harvest objectives that the Department used for the subbasin plans were originally described in the Tribal Restoration Plan, *Wy-Kan-Ush-Mi Wa-Kish-Wit* (Columbia River Inter-tribal Fish Commission, 1996).

In addition to these established subbasin abundance objectives, the Department will consider and utilize other goals or abundance thresholds as well. Predetermined thresholds serve as useful decision criteria that trigger specific actions (e.g. harvest rates or initiation and management of supplementation programs). Populations depressed to critically low levels require more aggressive actions and demand a more rapid population response than populations fluctuating at higher, less risky levels of abundance. Reference abundances or population designations specified in this section include the designated

Table 3. Summary of subbasin abundance objectives from Northwest Power and Conservation Council's Fish and Wildlife Program subbasin plans.

	Species	Escapement Goals	Harvest Goal
Clearwater	Spring/Summer Chinook	60,000	45,000
	Fall Chinook	50,000	35,000
	Coho	14,000	Undefined
	B-run Steelhead	42,000-91,000	25,000-74,000
	A-run Steelhead	5,900-10,000	1,000
	Pacific Lamprey	10,000-20,000	Undefined
	Sturgeon	Undefined	Undefined
Grande Ronde	Spring/Summer Chinook	5,000-16,000	500-4,000
	Fall Chinook	10,000	2,500
	Wild Summer Steelhead	5,000-27,500	1,000-9,050
	Hatchery Summer Steelhead	1,000-10,000 (existing)	200-7,000 (existing)
	Sockeye	2,500	625
	Coho	3,500	300
Imnaha	Spring Chinook	5,740	>700
	Fall Chinook	3,000	Undefined
	A-run Steelhead	4,315	2,000
	Bull Trout	5,000	Undefined
	Pacific Lamprey	Undefined	Undefined

Table 3 (continued). Summary of subbasin abundance objectives from Northwest Power and Conservation Council's Fish and Wildlife Program subbasin plans.

	Species	Escapement Goals	Harvest Goal
Salmon	Spring Chinook	119,000-128,000	94,000
	Summer Chinook	60,200-126,000	112,000
	Fall Chinook	5,000	Undefined
	Sockeye	8,000-44,500	2,000
	Steelhead	145,000-192,900	126,000
	Coho	20,000	Undefined
	Pacific Lamprey	Undefined	Undefined
	Sturgeon	Undefined	Undefined
	Bull Trout	Undefined	Undefined
	Asotin	Spring Chinook	>500
A-run Steelhead		2,000	500
Bull Trout		Undefined	Undefined
Pacific Lamprey			
Tucannon	Spring Chinook	2,400-3,400	1,200
	Fall Chinook	2,000	1,000
	Coho	Undefined	Undefined
	A-run Steelhead	2,200-3,400	700-1,900
	Pacific Lamprey	Undefined	Undefined

stronghold, viable threshold, the sustainable escapement objective, and the ecological escapement objective for four focal species, spring/summer Chinook, steelhead, and fall Chinook. (Tables 4, 5 and 6.)

*Designated strongholds* represent areas with historic high production, they are focal areas for recent tribal harvest, and are viewed as essential for long term population persistence.

*Viable abundance thresholds* are considered the minimum size at which a population maintains essential genetic diversity, and at which there is negligible risk of long-term extinction given contemporary levels of environmental variability. Viable threshold abundances are 500, 750, 1,000, and 2,000 for spring/summer and fall Chinook salmon populations, and 500, 1,000, 1,500, and 2,250 for selected steelhead populations.<sup>2</sup> The different sizes reflect the different intrinsic potentials<sup>3</sup> of spawning and rearing habitat for the populations.

2 See Hatchery Objectives (p. 38) and Sliding Scales (p.39) for further discussion.

3 **Intrinsic potential** – The estimated relative suitability of a habitat for spawning and rearing of anadromous salmonid species under historical conditions inferred from stream characteristics including channel size, gradient and valley width.

*Sustainable Escapement Objectives* describe the numbers of returning adults that would annually sustain substantial spawning as well as harvest for tribal and non-tribal fisheries. It is assumed that escapement sizes reflecting these values would also encompass healthy tribal and non-tribal fisheries downriver. Sustainable Escapement Objectives were derived from the aggregate adult return objectives expressed in Snake River subbasin plans (shown in Table 3) which are broken out into the tributary populations themselves. Their abundance also reflects the relative intrinsic potentials for the given populations.

*Ecological Escapement Objectives* refer to the escapement level at which sustainable spawning abundance is maximized within a population, the full utilization of available spawning and rearing habitat is promoted, and the ecosystem-level processes (e.g., nutrient redistribution) for multiple species are fostered. Historical salmon and steelhead escapement to the Columbia and Snake river basins was 8-16 million and 500,000 - 2 million, respectively (NPPC 1986; CBFWA 1990; Chapman 1986; Fulton 1968). According to tribal knowledge, escapement at those historic

levels to tributary-specific areas resulted in “fish so thick you could walk across their backs” and resulted in the smell of fish carcasses filling valleys and precluding camping near streams. Ecological objectives for populations were derived from the aggregate spawner objectives expressed in Snake River subbasin plans (Table 3) which were grouped by the relative intrinsic productivity potentials of spawning and rearing habitats for the populations in each subbasin and then raised by an order of magnitude<sup>4</sup>. Objectives

4 For example, the Tucannon River has a subbasin plan escape-

ment objective of 2,400 to 3,400 and a harvest objective of 1,200 fish. We applied the upper end of the subbasin plan objective (3,400) as the sustainable escapement objective, which includes 2,200 fish for natural spawning and 1,200 fish for harvest. The natural spawner objective of 2,200 fish is then raised by an order of magnitude to establish the Ecological Escapement objective of 22,000 fish.

Table 4. Designated stronghold populations, viable abundance thresholds, sustainable escapement objectives, and ecological escapement objectives for populations of spring/summer Chinook in the Snake River Basin.

Subbasin	Population	Designated Stronghold <sup>a</sup>	Viable Abundance Threshold	Sustainable Escapement Objective	Ecological Escapement Objective
Lower Snake R.	Tucannon River	X	750	3,400	22,000
	Asotin River		500	2,000	10,000
Grande Ronde River	Wenaha River	X	750	1,800	13,000
	Lostine/Wallowa River	X	1,000	4,800	36,000
	Minam River		750	1,900	14,000
	Catherine Creek		1,000	3,000	22,000
	Upper Grande Ronde River		1,000	4,100	31,000
	Lookingglass Creek		500	1,000	3,000
Imnaha R.	Imnaha River	X	1,000	5,700	38,000
South Fork Salmon River	Little Salmon River	X	750	5,100	14,000
	South Fork Salmon Mainstem	X	2,000	8,600	24,000
	Secesh River	X	750	5,400	15,000
	East Fork Salmon/Johnson Creek	X	1,000	6,900	19,000
Middle Fork Salmon River	Chamberlain Creek		750	3,900	11,000
	Lower Mainstem Mid-Fork		500	2,100	6,000
	Big Creek	X	1,000	6,900	19,000
	Camas Creek		500	3,000	8,000
	Loon Creek		500	3,200	9,000
	Upper Mainstem Mid-Fork		750	6,100	17,000
	Sulphur Creek		500	1,400	4,000
	Bear Valley	X	750	5,700	16,000
Marsh Creek		500	2,600	7,000	

Table 4 (continued). Designated stronghold populations, viable abundance thresholds, sustainable escapement objectives, and ecological escapement objectives for populations of spring/summer Chinook in the Snake River Basin.

Subbasin	Population	Designated Stronghold <sup>a</sup>	Viable Abundance Threshold	Sustainable Escapement Objective	Ecological Escapement Objective
Upper Salmon River	North Fork Salmon		500	2,200	6,000
	Lemhi River	X	2,000	15,500	43,000
	Lower Mainstem Salmon		1,000	16,500	46,000
	Pahsimeroi	X	1,000	12,800	35,000
	East Fork Upper Salmon		1,000	6,600	18,000
	Yankee Fork		500	2,400	7,000
	Valley Creek		500	3,200	9,000
	Upper Salmon Mainstem	X	1,000	8,000	22,000
	Panther Creek			extirpated	
Clearwater River	Lapwai/Big Canyon Creeks		750	6,600	15,000
	Potlatch River		500	5,700	13,000
	Lawyer Creek		500	5,500	13,000
	Upper S. Fork Clearwater	X	1,000	9,600	22,000
	Lolo Creek	X	500	6,600	15,000
	Lochsa River	X	1,000	10,200	24,000
	Meadow Creek	X	500	3,300	8,000
	Moose Creek	X	750	5,000	12,000
	Upper Selway River	X	1,000	7,600	18,000
	North Fork Clearwater			extirpated	
Snake R. above Hells Canyon			extirpated		

a Restoration of all populations, including non-stronghold populations, remains the Nez Perce Tribe's goal for maintaining healthy and harvestable escapement levels.

Table 5. Designated strongholds, viable abundance thresholds, sustainable escapement objectives, and ecological escapement objectives for populations of steelhead the Snake River Basin.

Subbasin	Population	Designated Stronghold <sup>a</sup>	Viable Abundance Threshold	Sustainable Escapement Objective	Ecological Escapement Objective
Lower Snake R.	Tucannon River	X	1,000	3,400	15,000
	Asotin River	X	1,000	2,000	15,000
Grande Ronde River	Upper Grande Ronde River		1,500	12,100	81,000
	Wallowa River	X	1,500	6,200	41,000
	Lower Grande Ronde River		1,000	5,700	38,000
	Joseph Creek	X	1,000	3,600	24,000

Table 5 (continued). Designated strongholds, viable abundance thresholds, sustainable escapement objectives, and ecological escapement objectives for populations of steelhead the Snake River Basin

Subbasin	Population	Designated Stronghold <sup>a</sup>	Viable Abundance Threshold	Sustainable Escapement Objective	Ecological Escapement Objective	
Imnaha R.	Imnaha River	X	1,000	4,300	21,000	
Clearwater River	Lower Mainstem Clearwater	X	1,500	26,400	45,000	
	Selway River	X	1,500	32,700	55,000	
	Lochsa River	X	1,500	21,900	37,000	
	South Fork Clearwater	X	1,000	14,800	25,000	
	Lolo Creek	X	500	4,200	7,000	
	North Fork Clearwater	X				
Salmon River	Lemhi		1,000	19,400	22,000	
	Upper Salmon East Fork		1,000	16,900	19,000	
	Upper Salmon Mainstem		1,000	21,200	24,000	
	Upper Middle Fork		1,500	25,000	28,000	
	Lower Middle Fork		1,500	28,000	31,000	
	Chamberlain Creek		1,000	11,300	13,000	
	Pahsimeroi River		1,000	16,300	18,000	
	Panther Creek		1,000	12,000	13,000	
	Little Salmon River	X	1,000	14,400	16,000	
	South Fork Salmon	X	1,000	17,700	2,000	
	Secesh River	X	500	5,500	6,000	
	North Fork Salmon River			500	5,200	6,000
	Hells Canyon	Hells Canyon			extirpated	
Powder River				extirpated		
Burnt River				extirpated		
Weiser				extirpated		

a Great uncertainty exists on the historic and current status, structure, and biological importance of steelhead within the Snake River basin. All populations, including non-priority populations remain the Nez Perce Tribe's goal for restoring and maintaining healthy and harvestable escapement levels.

Table 6. Designated stronghold, viable abundance threshold, sustainable escapement objective, and ecological escapement objective for the population of fall Chinook salmon in the Snake River Basin.

Subbasin	Population	Designated Stronghold <sup>a</sup>	Viable Abundance Threshold	Sustainable Escapement Objective	Ecological Escapement Objective
Snake River	Snake Basin Population	X	3,000	39,110	120,000
	Marsing Reach			extirpated	
	Salmon Falls			extirpated	

a All populations, including non-priority populations remain the Nez Perce Tribe's goal for restoring and maintaining healthy and harvestable escapement levels.



## Hatchery Objectives

The Nimiipúu have always cared for and ensured that the fish were abundant enough to reproduce for successive generations. Today, the Nez Perce Tribe continues to protect and enhance abundance of fish through natural production and artificial production in the form of hatcheries. Hatcheries for salmon and steelhead in the Columbia Basin were developed as a necessary mitigation tool to compensate for the fishery losses that resulted from the impacts of increased human settlement that began soon after ratification of the Treaty of 1855. Accordingly, hatcheries represent a promise to those who have always depended on the salmon for culture, sustenance, and livelihood to replace the fish that are and were diminished as a result of human development of salmon habitats. As long as the dams are here, the mitigation responsibility remains.

In the Snake River Basin, all but one of the hatcheries (Kooskia), were built specifically to mitigate for the impacts of the development and operation of hydroelectric dams (Dworshak, Brownlee, Hells Canyon, Oxbow, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, and Bonneville dams). These hatchery programs play a very important role in meeting congressionally mandated mitigation obligations and treaty trust responsibility to protect and maintain tribal treaty reserved fisheries. The mitigation obligations associated with the hydrosystem are substantial and are not contingent upon the Endangered Species Act (ESA).

There has recently been much debate about the effects of hatchery-origin fish on the productivity of naturally reproducing salmon and steelhead. It is important to remember, however, that hatcheries were built and operated to mitigate for the destruction of habitat which, in turn, drastically affected productivity. In other words, we don't have low productivity because of hatcheries, we have hatcheries because of low productivity.

The Department perspective with regard to hatcheries is:

- Hatchery production (including numbers, release locations, and marking of fish) in the Snake and Columbia basins is legally mandated through the court-approved *U.S. vs. Oregon* 2008-2017 Management Agreement and is inextricably linked to providing treaty harvest.
  - Not all hatchery programs are the same. Most hatchery production in the Columbia Basin occurs for harvest augmentation. Only a minor amount of that production (approximately 13%) is specifically intended for supplementation or recovery of species.
  - The Department has been a leader in implementing supplementation programs and hatchery reform. Our goals for supplementation programs are:
    - ♥ Increased abundance (both total and natural-origin) and spatial structure,
    - ♥ Maintenance of culturally and economically important tribal salmon fisheries,
    - ♥ Contribution to non-Indian fisheries in the region, and
    - ♥ Restored ecosystem processes and health.
- Hatchery production, including supplementation, is a key tool for maintaining treaty-based harvest opportunities. Without hatchery production in the Snake River Basin there would currently be no meaningful tribal harvest.



- We acknowledge there are risks associated with the hatchery tool. However, we are managing those risks through developing management strategies such as the “sliding scale” and a rigorous research, monitoring, and evaluation program.

### Sliding Scales

The “sliding scale” concept is a tool the Nez Perce Tribe developed in collaboration with other fisheries managers and is currently used in the Snake River Basin for harvest and hatchery management. It is based on managing hatchery and natural origin fish to provide for conservation and rebuilding of a local population through 1) meeting natural spawning escapement thresholds; 2) attaining broodstock needs; and 3) allowing for harvest regimes.

Several populations of Snake River fish are supplemented with hatchery fish from native origin broodstock. The supplementation effort is intended to specifically increase the numbers of spawners on the spawning ground (and not just produce fish for harvest). Because hatcheries typically produce and hence return more fish than natural runs, the sliding scale was developed to balance the goals of rebuilding the runs of natural fish while controlling or minimizing any potential detrimental effects that may be caused by hatchery-origin returns.

The basic premise of the sliding scale is that at low abundance levels, all fish (hatchery and wild) are equal and needed to maintain the population – whether in the hatchery or on the spawning grounds. At higher abundances, the influence of hatchery origin fish on the spawning grounds and in the hatchery can be reduced in order to allow the wild origin fish to have a greater influence on the population. The management strategy for hatchery- and wild-origin fish relative to acquiring broodstock, composition on the spawning grounds and in the harvest, is dependent on the number of hatchery- and wild-origin fish predicted to return in any given year.

In addition, taken by itself as a harvest management tool, the sliding scale can call for relative levels of harvest based on the size of the returns. In other words, harvest rates would not be a flat percentage harvest across all levels of return, but would fluctuate depending on the ability of the return to sustain a harvest. It is important to remember that fish en-

counter significant mortality throughout their lives; commonly occurring from development in meeting human needs – electricity, timber, agriculture production, etc. For a fishing-based people, it is the fish as food that are required to sustain life and thus the importance of allowing a harvest rate that is tied to the variability in the runs – whether they are all wild or supplemented runs. As such, it is conceivable to have a sliding scale framework that can be tailored to each major population group, or designated population(s).



## Habitat Condition Objectives

Native fish within the Nez Perce Country depend on healthy habitats, healthy watersheds, and healthy ecosystems. At the most fundamental level, both resident and anadromous species require: clean, cold and oxygen-rich flows; adequate stream depths to avoid predation and allow seasonal movement; physical habitat of sufficient complexity to meet feeding, resting and hiding requirements for all life stages; unimpeded access throughout the stream; nutrient levels adequate to support primary production and prey species; and spawning substrate sufficiently clear of silt and sand to provide for spawning, egg and alevin survival, and over-wintering habitat.

Water quality is critical. Because fish are cold-blooded and rely on their environment for temperature regulation, elevated temperatures can negatively affect growth, immunity, swimming ability, and reproduction. Sufficient levels of dissolved oxygen are also essential for fish survival. Excess nutrients and sediment in streams can reduce oxygen levels and detrimentally impact native fish populations. Conversely, the lack of marine derived nutrient input (e.g., from salmon and Pacific lamprey) to inherently infertile streams can hamper and limit biotic productivity important for food production.

Fish rely on adequate flow and unblocked access within streams to allow for seasonal migration as well as daily use of varied habitats. Diverse physical habitat may include boulders, large woody debris, root-wads, and stable stream-banks. Healthy riparian areas (the vegetation that borders a body of water such as a stream) and fallen trees (large woody debris) help provide pools, shade, cover from predators, and habitat for insects and other invertebrates upon which fish feed. The synergistic effect of key habitat features such as these are critical to the survival and rebuilding of our native resident and anadromous fish populations.

The health of entire watersheds, from ridge-top to ridge-top, is important for fish survival because watersheds contain an interconnected web of life. Water that falls as rain or snow flows down slope across the landscape and through the ground before it eventually enters a common stream or other body of water. This defines the spatial extent of a watershed. The watershed's "web of life" is comprised of

many elements and impairment of any one element can destabilize the whole system affecting stream quality and fish habitat. For example, poorly maintained or densely packed roads within the upper portion of a watershed can be prone to mass failure, they can interrupt and channelize runoff, and the exposed roadbeds (and failures) can contribute elevated levels of sediment to streams, thereby degrading spawning and over-wintering habitat. As another example, anthropogenic activities (residential development, roads, logging, farming, and grazing) near streams can reduce riparian areas and the wetlands, diminishing shade, large woody debris, bank stability, flood attenuation, and runoff filtration.



Distributed across more than 20,000 square miles at elevations ranging from just over 500' to just under 10,000', fisheries habitat in Nez Perce country is located within a wide range of topographic, geologic and climatic regimes. Much of the land within Nez Perce Country is managed by the federal government. As noted in the section on ICC boundaries, this federal land nexus is critically important to implementation of treaty rights and to the resource itself. As a result, the Department has engaged in a significant body of work on federal lands throughout the U&A areas – implementing more restoration actions within the Snake River basin than perhaps any other single entity or agency.

Given the synergistic effect of watershed health on aquatic habitat quality, the Department employs a "ridge-top to-ridge-top" approach to restoration. A number of different measures can be used

to guide restoration and determine if an ecosystem is properly functioning. The following matrix (Table 7) depicts general standards that can be used to assess whether habitat condition goals are being met in most watersheds. Optimally, habitat conditions in individual watersheds would match natural conditions that existed prior to human impacts, but this goal is sometimes unattainable due to development and management activities beyond our control. Given this, and the diversity of landscapes

throughout Nez Perce territory, individual habitat condition targets may vary from one watershed to the next. Regardless, our overarching habitat condition objective remains consistent: we are striving to re-establish properly-functioning, self-sustaining, healthy streams, watersheds and ecosystems that are so essential to rebuilding our runs.

Table 7. Matrix of pathways and indicators of properly functioning watershed conditions.

Pathway	Indicator	Properly Functioning
Watershed Conditions	Road Density	<1 mi of roads/sq mi within each watershed (Cottonwood BLM, Clearwater NF, and Nez Perce NF, 1997)
	Floodplain Connectivity	Off-channel areas are hydrologically linked to main channel; overbank flows occur regularly and maintain wetland functions, riparian vegetation and succession. (Cottonwood BLM, Clearwater NF, and Nez Perce NF 1997)
	Riparian Areas	Percent similarity of riparian vegetation to the potential natural community composition is >75% (Cottonwood BLM, Clearwater NF, and Nez Perce NF, 1997). Extent of the riparian area is at or near natural conditions as determined by comparison with historic information, oral histories and/or best judgment based on soil types (Neil et al 2006).
Flow/ Hydrology	Peak/ Base Flows	Watershed hydrograph indicates peak flow, base flow, and flow timing characteristics comparable to a watershed with similar hydrologic characteristics functioning within its natural disturbance regime.  Daily flow is not subject to extreme variation (e.g. power peaking).
Channel Conditions	Streambank Condition	Bank stability is >95% for A and B type streams, >90% for C type streams, and 100% for E type streams (Cottonwood BLM, Clearwater NF, and Nez Perce NF, 1997)
	Channel Geometry	Near natural conditions as determined by comparison to an undisturbed reference reach with similar geomorphology, vegetation and climatic characteristics.
	Width/Depth Ratio	A channel types <10 B channel types <20 C channel types <40 E channel types <7 F channel types <35 G channel types <9 (Cottonwood BLM, Clearwater NF, and Nez Perce NF, 1997)
In-stream Habitat	Substrate	Cobble embeddedness <20% in salmonid spawning habitat and <30% in salmonid rearing habitat (CRITFC, 1996) or at natural levels as determined by comparison to an undisturbed reference reach with similar stream characteristics and bedrock geology.
	Surface Fines (<6 mm)	Pool tailouts and riffles with gradients <4 % are comprised of <10% surface fines in A and B channel types and <20% surface fines in C and E channel types (Cottonwood BLM, Clearwater NF, and Nez Perce NF, 1997).

Table 7 (cont.). Matrix of pathways and indicators of properly functioning watershed conditions.

Pathway	Indicator	Properly Functioning
In-stream Habitat (continued)	Large Woody Debris	Near natural conditions as determined by comparison to an undisturbed reference reach with similar stream characteristics and natural vegetation community.
	Pools (quality and frequency)	Near natural conditions as determined by comparison to an undisturbed reference reach with similar stream characteristics.
	Macro-invertebrates (species richness and diversity)	Near natural conditions as determined by comparison to an undisturbed reference reach with similar natural habitat conditions.
Habitat Connectivity	Barriers	100% habitat connectivity. Culverts and all other man made barriers will simulate natural stream conditions, and provide for passage of all life history stages for all aquatic species and at least 100-year flow events.
		The Lower Snake River dams are removed for the purposes of allowing the rebuilding and recovery of anadromous fish runs in the Clearwater, Snake and Salmon Rivers (NPTEC Resolution NP 99-140).
Water Quality	Temperature	<b>Summer Maximum Temperature:</b> 7 day average of the daily maximum values is <12°C (55°F) in streams which historically supported bull trout and <16°C (64°F) in streams which historically supported salmon and/or trout (US EPA, 2003)
		<b>Spawning Season Maximum Temperatures:</b> 7 day average of the daily maximum values is <9°C (48°F) in streams which historically supported bull trout, <13°C (55°F) in streams which historically supported salmon, and <14°C in streams which historically supported steelhead and/or trout (US EPA, 2003)
	Suspended Sediment	≤ 10 days ≥ 25 mg/l and ≤ 5 days ≥ 80 mg/l in a one year period (Cottonwood BLM, Clearwater NF, and Nez Perce NF, 1997)
	Dissolved Oxygen Salmon/Steelhead Spawning Period	Seven day mean minimum DO >11 mg/l. However, if the minimum intergravel DO (measured as a spatial median), is ≥8.0 mg/l, then DO criteria is >9.0 mg/l.  Where conditions of barometric pressure, altitude, and temperature preclude attainment of the 11.0 mg/l or 9.0 mg/l criteria, DO levels shall be ≥95% of saturation.  Intergravel DO shall not be ≤ 8 mg/l.
	Dissolved Oxygen Bull Trout	<b>Rivers and Streams:</b> DO ≥11 mg/L in the water column at all times.  <b>Lakes:</b> DO ≥6 mg/L in the water column at all times.
	Dissolved Oxygen Cold Water Aquatic Life	<b>Rivers and Streams:</b> DO ≥8 mg/L in the water column at all times.  <b>Lakes:</b> DO ≥6 mg/L in the water column at all times.
	Total Dissolved Gas	Maintain chronic exposure <103%  Maintain acute exposure <115%
	pH	6.5 to 9.0

Pathway	Indicator	Properly Functioning
Water Quality (continued)	<i>Escherichia. coli</i>	<p>The Nez Perce Tribe has designated all water bodies as Primary Contact Recreation (Resolution #NP03-136).</p> <p><b>Geometric Mean Criterion.</b> Waters designated for primary contact recreation are not to contain <i>E. coli</i> bacteria in concentrations exceeding a geometric mean of 126 colony forming units per 100 m/L based on a minimum of five samples taken every three to seven days over a 30-day period.</p> <p>A single water sample exceeding the 406 colonies per 100 m/L indicates a likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds 406, then additional samples must be taken</p> <p>For waters designated as Religious and Ceremonial, the criterion is a single sample maximum of 100 <i>E. coli</i> organisms per 100 m/L.</p>
	Nitrogen-Ammonia	<p>The following criteria are not to be exceeded dependent on the temperature (in °C) and pH of the water body.</p> <p><b>Acute Criterion Maximum Concentration (CMC).</b> The one-hour average concentration of total ammonia nitrogen (mg/L) is not to exceed, more than once every three years, the value calculated using the following equation:</p> $CMC = \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}$ <p><b>Chronic Criterion (Criterion Continuous Concentration) (CCC).</b> The 30-day average concentration of total ammonia nitrogen (mg/L) is not to exceed, more than one every three years, the value calculated using the following equations:</p> <p>When fish early life stages are likely present:</p> $CCC = \left( \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \cdot \min(2.85, 1.45 \cdot 10^{0.028 \cdot (25 - T)})$ <p>When fish early life stages are likely absent:</p> $CCC = \left( \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \cdot (1.45 \cdot 10^{0.028 \cdot (25 - T)})$ <p>The highest four-day average within the 30-day period should not exceed 2.5x the CCC.</p>
	Total Phosphorous	<0.03 mg/L (US EPA 2000)
	Other Pollutants including Pesticides, Herbicides, and Metals	Meets state water quality standards (refer to Idaho DEQ, 2005)

## Harvest Policy, Harvest Management, and Harvest Sharing

The Nimiipúu have always co-existed with and harvested fish. Use of fishery resources depended upon the season, species, and tributary location specific to a tribal band. This dependence on fish to meet dietary, spiritual, and basic subsistence needs is still a prevailing necessity of Nez Perce life.

To this day, a “fair share” of the salmon harvest by the Nez Perce Tribe does not occur because of the “takings” of fish by non-Indian activities and development in the Columbia Basin. The environment and water that support fish has been altered due to human development and enterprise over the past century and a half. This human progress has come at a cost to the fish species and “salmon people.” Current productivity of salmon-producing streams is much lower than it was historically. Many of the fish species either face extinction or are in seriously depressed conditions. As a result, tribal harvest in the present day is only a very small fraction of what the Nez Perce harvested in the mid-1800’s. Although hard to quantify, it is probable that current harvest is less than 1% of historical harvest levels prior to the Treaty of 1855.

Now, of course, Snake River Chinook salmon (fall and spring/summer), steelhead, and sockeye are all listed under the ESA. The Nez Perce Tribe’s ability to implement meaningful treaty fisheries does not exist and tribal culture and members have had to adapt to this forced circumstance. These circumstances have forced tribal fisheries to be concentrated on those specific tributaries with runs strongly influenced by hatchery programs.

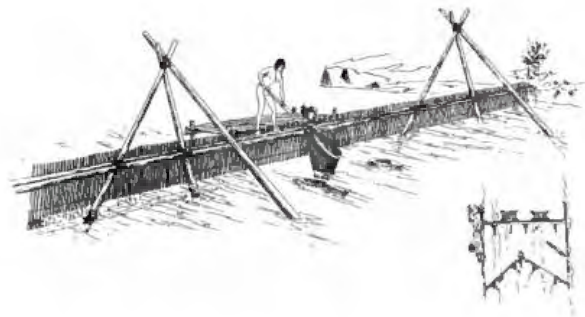
### Harvest Policy

While carefully managed harvest is considered critical to salmon rebuilding, the Nez Perce Tribe maintains that some level of tribal harvest should always occur and that treaty fishing is governed by the conservation necessity principles resulting from the treaty rights case law, including *U.S. v. Oregon* and



*U.S. v. Washington*. These principles find that treaty fishing can **only** be regulated if the following conservation necessity principles are met:

1. That they are reasonable and necessary for species preservation,
2. They are the least restrictive available to achieve the required conservation purpose,
3. They do not discriminate against Indian activities, either on their face or as applied,
4. Their purpose cannot be achieved solely through the regulation of non-Indian activity, and
5. Voluntary tribal conservation measures are not adequate to achieve the conservation purpose.





The Nez Perce Tribe believes that the conservation burden, and ultimately the contribution to improving survival and rebuilding the Snake River salmon and steelhead runs, be broadly and proportionally shared across the human-caused mortalities affecting salmon. Further, tribal harvest is not to be viewed as a “new” action that incrementally increases the survival gap of diminished Columbia and Snake River runs, but rather as a baseline that the fish runs have always encountered and that the United States secured by treaty.

With respect to treaties, it must be understood and embraced by others in the Pacific Northwest that treaty harvest is a first priority to achieve. The agreement to guarantee the Nez Perce Tribe the “right to take” fish was made in 1855. Any later federal action – including the Homestead Act, the establishment of National Forests, the development of the Columbia River for a power and transportation system, and the ESA, are pre-dated by the United States agreement that the Nimiipúu would have the right to take fish at all U&A fishing places.

## Harvest Management<sup>5</sup>

The Nez Perce Tribe intends to increase and expand the level of harvest or fishing areas for salmon and steelhead at all Nez Perce U&A areas in the Snake Basin in a way that balances conservation needs of the fish with the right to take fish. This can be achieved through a biologically-sound harvest management philosophy and harvest rate schedules keyed to the status and trends in abundance and productivity of the fishery resource. Generally, abundance-based tribal harvest strategies can be designed to account for annual variation in total fish run size and run composition so that treaty fishery harvest will not appreciably reduce the ability to collect adequate hatchery broodstock or progress towards natural spawning targets for particular tributaries. This is illustrated in Figure 6.

As returns increase, the Nez Perce Tribe expects to increase the relative magnitude of tribal harvest and fishing effort. When there is a low fish abundance or productivity, there will be a “minimal” tribal fishery. Conversely, when adult runs begin to meet “sustainable abundance” and “ecological abundance” objectives, tribal fishery seasons will be adjusted upwards to “moderate” or “high” levels of harvest and fishing effort. Within each broad adult escapement range and corresponding harvest category, the Nez Perce Tribe will determine how many hatchery and wild fish will be targeted for harvest. These harvest actions will ensure long-term allocation of adult returns between tribal and state sport harvest, hatchery broodstock, and natural spawning escapement requirements.

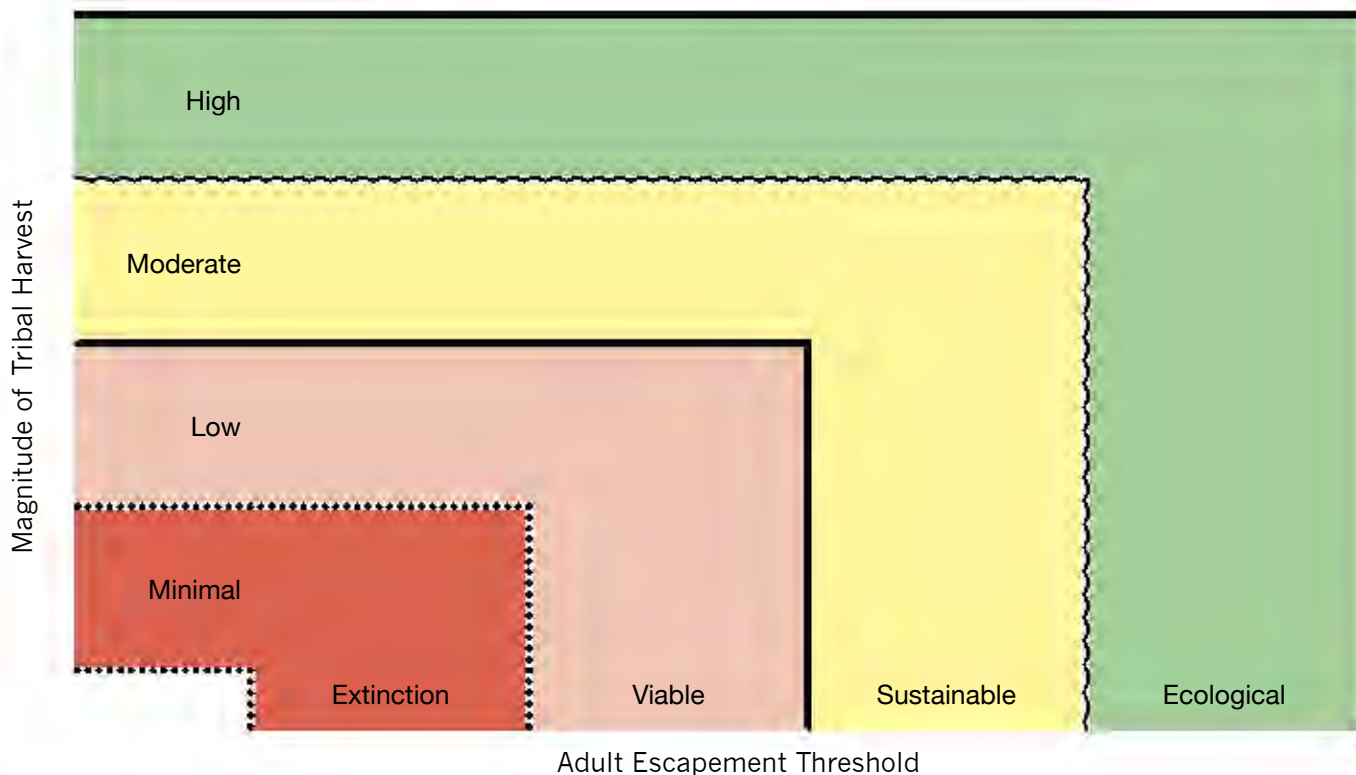
It is important to note that the graph does not depict that an increase in adult fish will translate into an equal increase in harvest (i.e., it is not a linear relationship; the axis values are not the same). The graph however does portray the tribal philosophy for structuring treaty fisheries based on the relative health of the fishery resource.

Because Snake River fish are listed under the ESA, the Nez Perce Tribe currently operates treaty fisheries at very low adult escapement thresholds

<sup>5</sup> This section and the Harvest Sharing section focus on Snake River basin harvest, not on Nez Perce treaty harvest implemented in the Columbia River mainstem. Harvest management and sharing for those fisheries are described in the *US v Oregon* court-approved Columbia River Fish Management Plan.



Figure 6. Magnitude of tribal harvest related to abundance thresholds and objectives.



and fishing effort and take levels are thus “minimal” to “low.” Treaty harvest is still expected to occur even at these adult escapement thresholds.

Ultimately rebuilding efforts will need to be successful to move Snake River fish populations into the “sustainable abundance” and “ecological abundance” levels of adult escapement. Eventually, the goal would be to achieve a harvest consistent with pre-Treaty harvest levels.

### Harvest Sharing

It is well-established that the 1855 Treaty provides Nez Perce fishers the opportunity to take a fair share (or up to 50 percent of the harvestable surplus) of the fish passing through or destined to reach its U&A fishing places. A fundamental element of harvest planning for fisheries that are jointly shared and managed by the Nez Perce Tribe and the States of Oregon, Idaho and Washington is to determine and agree to share the harvest. This section describes how the harvest share will be allocated for supplemented and hatchery returns.

### Supplemented Populations Harvest

Tribal fishery managers will first use the abundance-based harvest sliding scales (tiered to the hatchery sliding scales) to determine broodstock and escapement needs and the total tribal catch in each subbasin. Determining the overall Nez Perce treaty allocation of total harvestable fish in these subbasins will then be evaluated against the appropriate level of ESA impacts for these subbasins.

A general principle of the allocation framework is that natural fish harvest impacts are shared between the tribally regulated treaty fishery and state-regulated sport fishery and that the Nez Perce will always have the prerogative to have some level of treaty harvest. For purposes of harvest allocation (between Nez Perce and non-Indian fishers), the Nez Perce Tribe expects that at all return sizes, the tribal harvest on natural origin fish will be greater than that set forth in the state’s fishing regime<sup>6</sup>. This, in turn, results in the non-Indian fishers having a

6 The Nez Perce Tribe generally expects that total allowable wild fish impacts for fishery harvest be determined using an 85:15 harvest sharing framework (or some similar arrangement) to allocate wild fish impacts between treaty and state-regulated sport fisheries that occur in Snake Basin tributaries to achieve an equitable harvest share between treaty and non-treaty fisheries.

higher allocation of the hatchery returning fish (see Figure 7 as an example of how the Nez Perce Tribe and Oregon Department of Fish and Wildlife dealt with allocation relative to preseason and in-season management in the Imnaha River in 2010). The difference in allocation is due to differing fishing methods used by non-Indian and Nez Perce fishers. Non-Indian fishers are allowed to use only hook-and-line gear with barbless hooks; while Nez Perce fishers use an assortment of gear types, from hook-and-line to dipnets, spears, gaffs, and other traditional gears.








		
 wild	33	11
 hatchery	370	403
 total	<b>403</b>	<b>403</b>

Figure 7. Example of harvest allocation between Oregon and the Nez Perce Tribe on the Imnaha River fishery in 2010.

#### Hatchery Populations Harvest

The Nez Perce Tribe and the other tribal, state and federal fishery managers develop annual return estimates of Snake River salmon and steelhead. Most harvest will target hatchery-origin returns, and those return estimates are the drivers – although incidental harvest rates on natural-origin returns are also determined for fish returning to ESA-listed populations in particular. In the simplest situation, with a fishery on an all-hatchery run, the broodstock needs for the hatchery of interest are accounted for which leaves the “harvestable share” of the return. That harvestable share is then split 50:50 between the non-Indian fishery and the Nez Perce Tribe. When the share is reached and updated return information does not indicate a change from the prediction, harvest by the party reaching its share is closed. Harvest can continue by the party not reaching its share.

## Dams

The Nez Perce Tribe has taken a strong policy stance opposing construction and operation of hydroelectric dams because of their effect on salmon runs. With respect to the four lower Snake River Dams, NPTEC adopted resolution NP 99-140 which states the following:



### NPTEC Resolution NP99-140

*Whereas, the Nez Perce Tribe has relied upon the salmon resources of the Columbia River system since time immemorial as evidenced by Nez Perce history and legends; and*

*Whereas, salmon have a vital and primary role [to] the cultural, religious, economic and physical well-being of the Nez Perce people; and*

*Whereas, the Nez Perce Tribe reserved an exclusive right to take fish within the Nez Perce Reservation and at all usual and accustomed places outside the Nez Perce Reservation in the Treaty of June 11, 1855, with the United States and those rights continue in full force and effect today; and*

*Whereas, the runs of salmon and steelhead that once filled the rivers and streams of the Clearwater, Snake and Salmon Rivers have declined drastically and that decline has had a serious and adverse impact upon the people of the Nez Perce Tribe; and*

*Whereas, it is recognized that dams have been a major cause for the decline in salmon and steelhead runs; and*

*Whereas, it is further recognized that the four dams on the lower Snake River have a particularly significant adverse impact on migrating anadromous fish runs; and*

*Whereas, scientific evidence and research indicates that the breaching of the four lower Snake River dams is the only viable alternative that will allow recovery and rebuilding of anadromous fish runs in the upper Columbia River Basin; and*

*Whereas, economic analysis reflects that the adverse economic impacts of breaching the four lower Snake River dams will largely be offset by restored salmon runs and that increased costs to individual electrical users will be minimal; and*

*Whereas, it must be recognized that the status quo also has a significant cost – the unavailability of salmon – one which has been a heavy burden upon the people of the Nez Perce Tribe for many years; and*

*Whereas, the Nez Perce Tribe views the salmon as an invaluable resource that must be saved from extinction and restored;*

*Now therefore, be it resolved, that the Nez Perce Tribal Executive Committee hereby states its support for breaching the four lower Snake River Dams for the purpose of allowing the rebuilding and recovery of anadromous fish runs in the Clearwater, Snake and Salmon Rivers.*

—February 23, 1999

The dams on the lower Snake River and the mainstem Columbia have had an enormous impact on salmon and steelhead, and, in turn, on the Nez Perce Tribe. The Nez Perce Reservation, and many of the Nez Perce U&A fishing places, in addition to those on the mainstem Columbia, are above the eight federal dams on the lower Snake and Columbia Rivers.

The Nez Perce Tribe's commitment to addressing the impacts of the federal Columbia and lower Snake River dams on salmon and steelhead is evident in its participation in the efforts to bring these Federal Columbia River Power System (FCRPS) dams into compliance with the ESA. This has included the Nez Perce Tribe's active participation in decades-long litigation concerning the impacts of these dams on ESA-listed salmon and steelhead.

The federal court for the District of Oregon, like the Nez Perce Tribe, has stated that "rebuilding salmon to healthy, harvestable levels will come in large part from addressing the impacts of the down-river dam operations that do the most harm to salmon." In the Nez Perce Tribe's view, the Bonneville Power Administration, the Corps of Engineers, and the Bureau of Reclamation (and NOAA Fisheries in their ESA consultation) have put the demands of river users first and the survival and recovery needs of endangered and threatened salmon and steelhead last when it comes to the FCRPS dams. The Nez Perce Tribe has participated in each round of the litigation involving the operation of the FCRPS dams and NOAA's ESA consultations, advancing the tribal perspective and supporting additional protective actions for salmon and steelhead.

In 2008, the Nez Perce Tribe decided not to enter into an "accord" with BPA, the Corps, and Reclamation, which promised to secure funding to enti-

ties implementing offsite mitigation projects over a 10-year period, because—among other things—the Nez Perce Tribe was unable to conclude that FCRPS hydro operations were adequate given the survival and recovery needs of salmon and steelhead, that aggressive actions were being taken to address the status of Pacific lamprey, and that requested silencing of the Nez Perce Tribe's prior scientific views and its advocacy for breaching the four lower Snake River dams was in the best interests of salmon and steelhead. In 2011, as in 1994, 2000, and 2004, the federal court invalidated NOAA's 2008/2010 BiOp for the FCRPS. The Nez Perce Tribe will continue to play a significant role in future decisions regarding the operation of these federal dams.





# Management Process (Operations)

## Fisheries Department

This section describes some basic functions or statistics underlying the Department. It is essentially a “snapshot” in time, reflecting our status in 2013. The Department’s website provides more detailed information about our various programs ([www.nptfisheries.org](http://www.nptfisheries.org)).

The Nez Perce Tribe’s fisheries program began in 1981 with initiation of stream survey work conducted on the reservation and funded through the Pacific Northwest Electric Power Planning and Conservation Act. Prior to this time, the Nez Perce Tribe’s fisheries resource support was minimal and provided by the Bureau of Indian Affairs, The U.S. Fish and Wildlife Service, and the newly formed Columbia River Inter-Tribal Fish Commission.

Currently, the Nez Perce Tribe has one of the largest tribal fisheries programs in the United States. The Department employs 135 to 185 people and the demographics of the workforce are about 50% Nez

Perce tribal members, 5% members of other tribes, and 45% non-Indians. The Department consists of seven principal divisions: Administration, Conservation Enforcement, Harvest, Production, Research, Resident Fish, and Watershed. The office location, principal division using the location, and number of staff at the location is shown in Map 1.

The program has approximately 60 biologists or other class descriptions requiring a professional degree; the majority of the Department’s positions do not require a degree. A quarter of the jobs are seasonal, occurring only during the field season, and most of them require extended multiple-day camping in the field where the activities occur.

The pay rate for tribal fisheries jobs is better than what an individual would make doing the same type of work with state agencies and comparable to what they would make for the Federal government (e.g. U.S. Fish and Wildlife Service or U.S. Forest Service).



Map 1: Location and number of division staff in the Department of Fisheries Resources Management.

Because of this, and because of the attractive nature of the work, the Nez Perce Tribe has developed a highly skilled workforce engaged in several different disciplines of fisheries and watershed management. In addition, turn-over in the Department is not a significant issue; many employees have worked multiple years and multiple seasons for the program.

The Fisheries Department relies on a host of funding sources, with most funding derived from contracts to implement hydrosystem mitigation actions associated with with Bonneville Power Administration's Fish and Wildlife Program. (Table 8).

Contracts are developed to address certain limiting factors in the aquatic community. For example, in response to the loss of runs caused by the main-stem dams, the Nez Perce Tribe employs hatcheries to produce fish that will return to the basin for the

purposes of harvest and natural reproduction. The Nez Perce Tribe and the funding entity (in this case Bonneville Power Administration) determine the species and number of fish that will be produced. The responsibilities of the parties (Nez Perce Tribe and BPA) in producing and releasing the fish are then articulated in formal contracts.

To extend this example, both parties are also interested in determining whether a hatchery is returning fish and whether those fish are compatible with their naturally produced counterparts. Accordingly, a separate contract would be developed to monitor and evaluate whether the hatchery program is functioning as intended. Such a contract may require extended periods of field work to trap and evaluate juveniles migrating downstream (both hatchery and wild fish), as well as the returning adults.

In another example, because a dam is a blockage in the river, there may only be so much modification feasible to the dam's structure and its operations to improve fish passage conditions. Recognizing that fish passage through mainstem dams and reservoirs cannot realistically duplicate free-flowing river conditions, the fisheries management entities in the Columbia River Basin have developed a strategy to mitigate for the dams and reservoirs by improving off-site, tributary habitat. In this case, various problems would be identified within the tributary watersheds in the basin that, when fixed, could benefit the fish rearing and returning to spawn there. The Nez Perce Tribe and funding entity would then enter into a contract stipulating the problems (e.g. road derived sediment or a culvert passage barrier) to be addressed, the time frame involved, and the intended results.

Thus, the Fisheries Department "implements" actions. We are not an academic or administrative agency (as is a university or NOAA Fisheries, for example), but an entity focused on taking actions: to improve habitat, to aid fish passage, to produce fish for harvest and natural spawning, and to monitor status of the fisheries to determine the level of progress being made. It is important to recognize that the funding contracts are awarded through a competitive solicitation process; no one "gives" funding to the Department because it is a tribal program.

The contract funding received is generally allocated similarly among the three largest divisions: Watershed, Production, and Research. Each has fairly similar levels of funding and staffing.

Table 8. Funding sources for the Nez Perce Tribe Department of Fisheries Resources Management (FY 2012).

<b>Contracting Agency</b>	<b># of Contracts</b>	<b>Contract Amount</b>	<b>% of Program Budget</b>
Bonneville Power Administration	32	\$16,885,890	81.5%
U.S. Fish and Wildlife Service	5	\$1,241,636	6.0%
Other	10	\$792,169	3.8%
Bureau of Indian Affairs	2	\$599,328	2.9%
Nez Perce Tribe	1	\$512,268	2.5%
Columbia River Inter-Tribal Fish Commission	3	\$497,938	2.4%
U.S. Forest Service	3	\$187,884	0.9%
<b>Total</b>	<b>56</b>	<b>\$20,717,113</b>	

There are two programs within the Department that are essential to the exercise of treaty fishing rights, but are not wholly funded as mitigation. These are the Conservation Enforcement and Harvest programs. The Enforcement program enforces the Nez Perce tribal regulations regarding the fish and wildlife portion of the Law and Order Code. As a sovereign, the Nez Perce Tribe has the ability and responsibility to regulate the activities of its membership and, in general, the activities occurring on its lands. Especially with regards to the resource conservation issues surrounding the exercise of fishing rights, the Nez Perce Tribe must have the ability to set and enforce its seasons in order to fish without state interference. So it is not only for purposes of resource protection, but also for the conducting of its activities as a sovereign that the Enforcement program and its staff serve a key role.

With the harvest program, there is again a critical touchstone with the legal interpretations of the exercise of a shared treaty right as a sovereign. Treaty harvest is shared (as described earlier) with the non-Indian fishers. The Nez Perce Tribe sets regulations and seasons for harvest based on run sizes that are agreed upon by tribal, state, and federal fishery managers. Commonly, when one of the parties (tribal or non-Indian) reaches its target harvest share, that party closes down its fisheries, and affords the other party a chance to complete its harvest share. The determination of the number of fish the tribal fishers have harvested relative to the target share is made based on data collected by the Harvest program. Consequently, the active implementation of

the treaty language "...in common with..." is facilitated via data and data analyses derived from the Harvest program. In addition, tribal fishing is not always conducted in the same manner as non-tribal fishing (different gear types, periods and locations of fishing, etc). As a result, the Harvest program has, by necessity, developed its own statistically reliable sampling methods that go beyond "textbook" examples for non-Indian fisheries commonly taught in undergraduate or graduate school.

## General Approaches of the Department (tools in the fisheries management toolbox)

The Nez Perce Tribe is recognized for its contributions in helping conserve and restore important fish species using a “gravel-to-gravel” approach that designs actions specific to each life stage of the fish. Generally, fish management actions occur across four main elements that affect fish at all life stages: hydrosystem, habitat, hatcheries, and harvest. Because a one size fits all application of management tools is not applicable, a varied approach to management action is required. The following section provides a description of the primary tools used to address certain conditions

a) **Prevention of future impacts** to fisheries resources is just as important as improving existing conditions. Review of fisheries resource management actions or impacts from others occurs through program administration by:

- Providing support for, objecting to, or modifying other agency proposed management actions.
- Suggesting modification of on-the-ground human activities (logging, mining, development, road construction etc.).
- Recommending or participating in the Nez Perce Tribe’s litigation as technical support.

b) **Modification of human behavior** also contributes to the well being of the environment and its inhabitants. The Department can target three aspects of the human dimension:

- Societal (individual) education
- Recommending regulations and enforcement
- Access protection

c) The Nez Perce Tribe is actively involved in **implementing hatchery production programs** for mitigation, reintroduction, and restoration of depressed salmon, steelhead, and lamprey populations, while still providing for sustainable treaty fisheries. Not all hatchery programs are the same; the hatchery tool can be shaped to serve a number of purposes, including:

- Harvest augmentation (most fisheries in the Columbia Basin today are supported by hatchery runs of this type)
- Supplementation for integrated natural production and harvest (participation in evaluating several types of supplementation programs will help guide decisions or approaches in using the hatchery tool basin-wide)
- Conservation via captive broodstocks
- Germplasm repositories (genebank)
- Reintroductions/fish translocation

d) **Habitat protection and restoration** can be achieved in numerous ways. The Nez Perce Tribe is actively involved in restoring and rehabilitating degraded watersheds by application of the following measures that apply “ridgetop-to-ridgetop” management:

- Road obliteration
- Culvert replacement
- Riparian re-vegetation
- Riparian fencing
- Flow restoration
- Channel restoration
- Weed control
- Conservation easements
- Ensure passage for all life stages of aquatic species
- Irrigation screening

e) **Harvest management** tools include:

- Developing run/population-based harvest targets
- Recommend harvest regulations
- Recommend harvest closures
- Assisting in providing fish for subsistence distributions
- Resident fish substitution (trout ponds)



## Fisheries Department Management Team

The management team under the direction of the Department Manager guides department operations and management decisions. This team consists of division and deputy directors from the Enforcement, Harvest, Production, Research, Resident Fish, and Watershed divisions and the field office supervisors. The management team will also seek and utilize the expertise of all levels of Department staff. In addition, the management team commonly represents the Department in collaborative discussions or interactions with representatives of other fisheries management entities or agencies such as BPA, NOAA, and the Northwest Power and Conservation Council.

### Management Processes

Tribal management processes, including those affected by the Department, can be depicted as a three-category hierarchy that includes policy, management, and technical decisions/issues. Decisions occur at all levels, but the nature of the decisions differs at each level. These three categories of decisional processes and their components (briefings, recommendations, and decisions) are portrayed in Table 9. Those specific to the management team are shown as providing recommendations and advisory roles to decisions by the Department Manager.



Table 9. Description of roles and responsibility associated with decisions, recommendations, and briefings associated with policy, management, and technical level actions. **X** = Primary role and responsibility. **a** = Delegated or acting authority.

	Policy			Management			Technical		
	Decision	Recommendation	Briefing	Decision	Recommendation	Briefing	Decision	Recommendation	Briefing
NPTEC	<b>X</b>								
NPTEC Subcommittee	<b>X</b>	<b>X</b>							
FWC		<b>X</b>	<b>X</b>	<b>X</b>					
Executive Director	<b>X</b>	<b>X</b>	<b>X</b>						
Manager		<b>X</b>	<b>X</b>	<b>X</b>					
Deputy Manager		<b>a</b>	<b>X</b>	<b>a</b>	<b>X</b>				
Division Director		<b>a</b>	<b>a</b>	<b>a</b>	<b>X</b>	<b>X</b>	<b>X</b>		
Management Team				<b>a</b>	<b>X</b>				
Deputy Director					<b>a</b>	<b>X</b>	<b>X</b>	<b>X</b>	
Professional							<b>X</b>	<b>X</b>	<b>X</b>
Technician							<b>a</b>	<b>a</b>	<b>X</b>

## Fisheries Department Decision Framework

Exercising adaptive management for fisheries resources is inherently a dynamic process. Implementing a decision framework relies on defining management objectives and selecting management option(s) that are most likely to achieve the objectives. The Department intends to follow eight core steps in decision making, targeting a balance of program content, management process, and relationships (between co-managers, resources users, and policy). The steps to follow are:

1. Define the desired resource condition
2. Determine the resource status
3. Identify limiting factor(s) and critical uncertainties
4. Develop management options
5. Select and apply management action(s)
6. Monitor and evaluate results
7. Modify/adjust management action or goals
8. Re-evaluate results

An example of application of these steps is provided in Table 10.

Table 10. Decision framework example for Lolo Creek spring Chinook salmon.

Manage Framework Step	Example: Lolo Creek Spring Chinook Salmon
1) Define desired resource condition	Adult escapement goals: 15,000 (ecological escapement), 6,600 (sustainable escapement), 500 (viable abundance threshold). Numbers consistent with Tribal Recovery Plan and Clearwater Subbasin Plan.
2) Describe current status of resource	Indigenous Chinook salmon in the Clearwater River subbasin were eliminated by Lewiston Dam. Spring Chinook salmon reintroduced after removal of the Lewiston Dam in 1973. Spring Chinook adult abundance in early 1990's was less than 100 fish annually, and were mostly hatchery-origin returns.
3) Identify limiting factors and uncertainties	<ul style="list-style-type: none"> <li>• Low adult abundance (limited seeding)</li> <li>• High out-of-basin mortality (e.g. dams)</li> <li>• Watershed disturbances (mining, timber harvest, and roads)</li> <li>• Passage/connectivity</li> <li>• In-stream cover</li> </ul>
4) Develop management options	<ul style="list-style-type: none"> <li>• Hatchery supplementation (parr, presmolt, smolt, and/or adult; local or aggregate broodstock; acclimated or direct release); harvest management (take levels in tributary; no adipose fin clipping of hatchery releases)</li> <li>• Mainstem passage improvements (dam removal; transportation; and/or flow management); harvest management (take levels in ocean and mainstem; no adipose fin clipping of hatchery releases)</li> <li>• Road decommissioning; reduce suction mining; reduced timber harvest; livestock ex-closures or reduction</li> <li>• Culvert replacement/removal; Road decommissioning</li> <li>• Stream bank stabilization; restricted timber harvest in riparian zone</li> </ul>
5) Apply selected management option(s)	<ul style="list-style-type: none"> <li>• Hatchery supplementation (smolt and adult; aggregate broodstock; direct release)</li> <li>• <i>US v. Oregon</i> harvest management agreement</li> <li>• Road decommissioning; tribal action regarding support for reduced suction mining; constructed fence for livestock ex-closures</li> <li>• Culvert replacement/removal</li> <li>• Mainstem passage improvements</li> </ul>
6) Monitor and evaluate results	<ul style="list-style-type: none"> <li>• Limited ability to access primary spawning areas for smolt releases.</li> <li>• High prespawn mortality on adult outplants.</li> <li>• Unable to collect adequate local broodstock from early portion of run</li> <li>• Successful reestablishment of natural vegetation via livestock exclusions and stream bank stabilization.</li> <li>• Successful passage of fish through redesigned culverts.</li> </ul>

Table 10 (cont.). Decision framework example for Lolo Creek spring Chinook salmon.

Manage Framework Step	Example: Lolo Creek Spring Chinook Salmon
7) Modify/adjust management action or goals	<ul style="list-style-type: none"> <li>• Change from opportunistic release of smolts from aggregate stock to annual acclimated release of presmolts from local broodstock</li> <li>• Marked hatchery releases with CWT only (no adipose fin clip)</li> <li>• Continue and maintain livestock exclusions</li> </ul>
8) Monitor and evaluate results (repeating loop with step 7).	<ul style="list-style-type: none"> <li>• Disease (Ick) issues with summer acclimation of presmolts</li> <li>• Low survival to Lower Granite Dam of presmolts</li> <li>• Increased spawner abundance</li> <li>• CHaMP habitat monitoring</li> </ul>

The application of this decision framework is often an informal and implied process, but at times, there is value in labeling and explicitly identifying the decision points and steps. For instance, explicit documentation would be similar to what would occur in the Structured Decision Making process recommended regionally by the Independent Scientific Review Panel (ISRP 2008-4; 2011-25). In addition, instituting such a deliberate, explicit process would be helpful in forums involving inclusive participation by scientists, managers, and other stakeholders. The decision framework aids collaboration in deci-

sion making by providing informed and transparent choices which, in turn, can reduce contention and promote proactive management over perpetuation of entrenched ideologies (Irwin et al 2011).

The following list describes some decisions considered annually by the Department and tribal policy makers. Upon reflection of the decision framework example presented above, the deciding entities may choose to apply an explicit decision framework to help make those decisions more transparent and documented.

- Harvest limits/closures (annual decision with in-season updates; three spatial scales – Columbia, Snake, tributary)
- Commercial sale regulations
- Prioritization of barrier removal
- Prioritization of roads to decommission
- Hydrosystem recommendations—flow and spill, configuration modifications
- Transportation (barging) schedule recommendations
- Decision to litigate against or for a specific management activity
- Adult Pacific lamprey numbers to collect for translocation and their disposition
- Hatchery program—release date, size at release, release sites, release numbers
- Percent hatchery-origin in natural escapement (annual application of multi-year sliding scale, or set percentage for 10-year period)
- Pass/keep and trapping rates
- Determine which types of studies are conducted and how they are implemented and coordinated
- Decide what type and intensity of management action and effectiveness monitoring to be done.

## Fisheries Department Co-management Forums

The Nez Perce Tribe works with other tribes, states, and federal entities with co-management responsibilities and obligations to rebuild the Snake River salmon, steelhead, Pacific lamprey, and resident fish to harvestable levels. This restoration and rebuilding effort operates in a number of management forums and occurs at various levels, including local, regional, national, and international.

The following Table 11 is provided as a point of reference for some of the forums related to fisher-

ies resources management in which the Nez Perce Tribe may interact. This list provides a sketch of the purpose in the “Function” column and it will change in time. In some cases, the Nez Perce Tribe may take issue with the appropriateness of a particular forum for addressing tribal issues, but this list illustrates that the breadth of co-management issues concerning the Department is vast. The Department is continuing to explore opportunities for increased involvement and effectiveness in advocating the Nez Perce Tribe’s interests.

Table 11. Entities, forums, and functions of forums in which Department staff may interact.

Entity	Forum	Function
Nez Perce Tribe	NPT Executive Committee (NPTEC)	Policy decisions on DFRM action items.
	Natural Resources Subcommittee	Brief policy decision-makers, obtain policy guidance, secure approval for action items to proceed to NPTEC for final decision.
	Fish and Wildlife Commission	Fishery management policy decisions.
	Managers Meetings	Guidance and updates from Executive Director, interdepartmental coordination.
	DFRM staff meetings	Interdivisional coordination and updates.
	Integrated Resources Management Plan	Department of Natural Resources and DFRM plan for resources management on the Nez Perce reservation.
	Snake River Basin Adjudication Funding	Funds proposals related to fish and fish habitat on an annual basis.
Columbia River Inter-Tribal Fish Commission (CRITFC)	Commission meetings	Joint policy decisions by the four Lower Columbia River Tribes (Umatilla, Warm Springs, Yakama and Nez Perce).
	Technical Meetings	Technical coordination, background, and support for management and policy deliberations.
	Umatilla, Yakama, Warm Springs tribal fisheries programs	Technical coordination on tribal programs and fisheries issues in common.
Federal Court	<i>US v. Oregon</i> (Policy)	Implementation of the court supervised Columbia River Fisheries Management Plan (CRFMP).
	<i>US v. Oregon</i> <ul style="list-style-type: none"> <li>• Technical Advisory Committee (TAC), Production Advisory Committee (PAC), Policy Committee, Regulatory Coordinating Committee (RCC)</li> <li>• Snake Basin Harvest Forum</li> </ul>	Joint technical assistance to the <i>US v Oregon</i> parties for the Implementation of the court-supervised Columbia River Fisheries Management Plan. (Description of functions provided in the CRFMP.)  Technical coordination body for Snake River runs specifically.
US representatives Canada representatives	US - Canada Treaty <ul style="list-style-type: none"> <li>• Pacific Salmon Commission (PSC), Southern Panel (PAC), technical committees</li> </ul>	Ocean fishery and stock management policy.

Table 11 (cont.). Entities, forums, and function of forums in which Department staff may interact.

Entity	Forum	Function
US Congress	Government-to-government meetings	Funding initiatives, federal/tribal issue resolution.
US Fish & Wildlife Service	Government-to-government meetings	Consultation between policy-level federal representatives and NPTEC relative to treaty trust responsibilities.
	Lower Snake River Compensation Program (LSRCP), Boise, ID	Implementation and evaluation of the hatchery program to compensate for fish resource losses caused by the construction and operation of the four lower Snake River hydroelectric dams.
	Region 1, Portland Office	Habitat improvement projects.
		Joint-management of Dworshak National Fish Hatchery and operation and management of Kooskia National Fish Hatchery. (Snake River Water Act 2004)
		Planning and implementation of Pacific lamprey conservation actions (Pacific Lamprey Conservation Initiative)
	Dworshak Fish Hatchery	Joint-management of Dworshak National Fish Hatchery (Snake River Water Act 2004).
	Recovery plans	Developed for resident fish federally listed as threatened or endangered.
Biological Opinion	Consultation on the effects of activities (e.g. Federal Columbia River Power System, harvest, habitat actions, etc.) on federally listed resident fish species.	
National Oceanographic and Atmospheric Administration (NOAA Fisheries)	Government-to-government meetings	Consultation between policy level federal representatives and NPTEC relative to treaty-trust responsibilities.
	Regional Executive Committee <ul style="list-style-type: none"> <li>• Regional Implementation Oversight Group (RIOG)</li> <li>• Technical Management Team</li> <li>• System Configuration Team</li> <li>• Fish Passage Operations and Maintenance (FPOM)</li> </ul>	Federal Columbia River Power System operations – includes NOAA, BPA, BOR and Corps of Engineers.
		Various subgroups (including representatives from the above as well as regional “sovereigns”) convened for purpose related to FCRPS operations, studies and review.
	Recovery plans	Developed for anadromous fish federally listed as threatened or endangered.
	Biological Opinion	Consultation on the effects of activities (e.g. Federal Columbia River Power System, harvest, habitat actions, etc.) on federally listed anadromous fish species.
	Mitchell Act Program 1938	Produce fish for harvest and restoration. Mitigation for Bonneville Dam.

Table 11 (cont.). Entities, forums, and function of forums in which Department staff may interact.

Entity	Forum	Function
Bonneville Power Administration	Government-to-government meetings	Consultation between policy-level federal representatives and NPTEC relative to treaty trust responsibilities.
	Fish and Wildlife Program	Hydrosystem mitigation program developed under the Northwest Power Act. Principal interaction is related to contract administration and implementation project management on Fish and Wildlife Program actions.
U.S. Army Corps of Engineers	Government-to-government meetings	Consultation between policy-level federal representatives and NPTEC relative to treaty trust responsibilities.
	Columbia River Fish Management	Anadromous Fish Evaluation Program— Research impacts on anadromous fish from hydrosystem.
	Dworshak Dam operations	Make recommendations relative to Dworshak operations for cooling water temperatures in the Snake River, also flows reserved to the NPT under SRBA.
	Dworshak Fish Hatchery Section 203	Corps funds operations of Dworshak Fish Hatchery. Tribal partnership program under Water Resources Development Act.
U.S. Bureau of Indian Affairs	Government-to-government meetings	Consultation between policy-level federal representatives and NPTEC relative to treaty trust responsibilities.
	Fish and wildlife program (Portland Area Office and Central Office)	Funding relative to implementation of Self-Determination Act, Rights Protection Initiative and Tribal Management and Development programs.
U.S. Forest Service	Government-to-government meetings	Consultation between policy-level federal representatives and NPTEC relative to treaty trust responsibilities.
	Regions 1 and 6 and 4	Co-management of federal lands and cooperation on an extensive body of work—restoration projects, fish and habitat monitoring, operation of acclimation sites, facility use, harvest access, and effects of forest management actions—on the 11 National Forests that the NPT shares a working relationship.
U.S. Bureau of Land Management	Government-to-government meetings	Consultation between policy-level federal representatives and NPTEC relative to treaty trust responsibilities.
	Various Field Offices	Co-management of federal lands and cooperation on fisheries and habitat restoration work.

Table 11 (cont.). Entities, forums, and function of forums in which Department staff may interact.

Entity	Forum	Function
U.S. Natural Resource Conservation Service	County or Regional Organizations	Co-management interactions on non-Indian, non-Federal owned lands to enhance Fishery related resources.
U.S. Bureau of Reclamation	Government-to-government meetings	Consultation between policy-level federal representatives and NPTEC relative to treaty trust responsibilities.
	Pacific Northwest Region	Involvement in irrigation projects – importantly, the Lewiston Orchards Irrigation District on the Nez Perce Reservation. Also involved with habitat restoration activities in NE Oregon.
State of Idaho	Governor/representatives meetings	Provide technical support for NPT policy representatives on fishery issues.
	Idaho Fish and Game Commission	Formal semi-annual Policy coordination meetings with NPTEC.
	Idaho Department of Fish and Game (IDFG)	Co-manager relationship in management of fishery resources; e.g. hatcheries and harvest.
	Idaho Office of Species Conservation	Administers state share of habitat fund associated with Snake River Basin Adjudication  Administers state share of Pacific Coastal Salmon Recovery Fund
State of Oregon	Governor/representatives meetings	Provide technical support for NPT policy representatives on fishery issues.
	Oregon Department of Fish and Wildlife (ODFW)	Co-manager relationship in management of fishery resources; e.g. hatcheries and harvest.
	Oregon Watershed Enhancement Board	Funds watershed improvement projects.
	Grande Ronde Model Watershed	BPA funded watershed board that reviews and funds watershed improvement projects.
State of Washington	Governor/representatives meetings	Provide technical support for NPT policy representatives on fishery issues.
	Washington Department of Fish and Wildlife (WDFW)	Co-manager relationship in management of fishery resources; e.g. hatcheries and harvest.
	Snake River Recovery Board	BPA and Washington funded watershed board that reviews and funds watershed improvement projects.
Northwest Power and Conservation Council (NPCC)	Fish and Wildlife Committee 1980 Northwest Power Act	Fish and Wildlife Program Amendments, Subbasin Planning, project solicitation and prioritization, funding recommendations, briefings, updates and approval of items for the full Council for formal decision.



# Fisheries Department Human Dimension

The culture and traditions of the Nez Perce Tribe are deeply embedded within the management of the Department. As such, employment by the Nez Perce Tribe and within the Department carries the responsibility to help preserve and promote tribal and community values.

The Department values and promotes diversity, teamwork and efficient decision-making for a shared vision. Our goal is to develop a highly trained, diverse, professional, and effective work force, taking advantage of new and current learning models with a commitment to educational excellence within the Department. We promote tribal member employment as well as career advancement, continuing education, and training for all employees. All employees have the opportunity to voice concerns and recommendations for advancing fisheries management on behalf of the Nez Perce and all other resource users.

## **Employee Interactions**

Effective communications and positive working relationship between Department staff will benefit from the following commitments:

- Being open and honest in our communications.
- Treating each other the way we want to be treated.
- Talking to each other; not about each other.
- Honoring confidentiality.
- Providing a climate where we all have an opportunity for input. All ideas are equal. We take individual responsibility for participating.
- Addressing issues, not personalities.
- Respecting and tolerating differences of opinion, and supporting the Department once decisions are made.
- Accepting responsibility and accountability for our own actions and inactions, and for the ac-





tions and inactions of the Department.

- Striving to hear what others really mean, not just the words they use.
- Avoiding surprises that catch each other off-guard. We address issues before they reach crisis stage.
- Respecting each other's time and commitments. We're prompt and prepared.
- Conducting ourselves as the professionals we are.
- Using collaboration to reach informed decisions. At the same time, we recognize decision authorities.
- Respecting and recognizing each other's expertise and differences.

## Policy and Procedures

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Employees of the Nez Perce Tribe follow the Policies and Procedures stated in the Nez Perce Tribe's Human Resource Manual (HRM) as a condition of employment. Employees are given an HRM upon hiring; additional copies can be obtained from the Nez Perce Tribe Human Resources Department. The HRM should serve as a tool to help employees work more efficiently, guide supervisors, and answer

questions toward better serving the Nez Perce Tribe as a whole.

In addition to the HRM governing general employee conduct, project leaders may also develop procedures that are specific to the safe and orderly operations of a project. These procedures can be related to operations and maintenance of living quarters (e.g. trailers), operations of four-wheelers or other all-terrain vehicles, and procedures for safely working on fish traps. In general, project leaders should try to make these types of operational procedures as consistent as possible (between and within divisions as appropriate), such that there is a common familiarity by Department employees about what is expected while being stationed out in the field. It is expected that division directors will review and approve operational procedures for the field.

And finally, directions for how policies in the HRM should be implemented or directions for how tribal employees should conduct themselves are sometimes issued by the Executive Director or Tribal Chairman. Those directions are to be understood in the parlance of the HRM as "valid work requests made by one's authorized supervisor." Directions to Department employees are also provided by the Department Manager occasionally. Those directions are concurred with or shared with the Executive Director, and again should be understood to be valid work requests made by one's authorized supervisor.



## Public Relations

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The Department interacts with the public in many important ways. Our education and outreach program involves community members of all ages including students, elders, landowners, and other agencies. Through education we can change attitudes and practices, get community members actively involved in our program, and get more accomplished on the ground. News stories are also widely read or seen and can be an effective media to get the message out. Our program will:

- Focus on the interconnectedness between all watershed resources and the cultural importance of fish and other natural resources to the Nez Perce Tribe;
- Educate community members on Nez Perce history, treaty rights, and fisheries and watershed issues;
- Keep tribal members informed on how the Department is advancing fisheries and watershed issues;
- Keep tribal members informed on predicted returns and expected harvest during fishing seasons;
- Coordinate with other entities to provide workshops to educators, interested public, and partner agencies;
- Work directly with schools and/or educators to determine student/teacher needs and develop appropriate curriculum and activities;
- Provide hands-on learning opportunities;
- Provide opportunities to high school and college students through internships and permanent work with the Nez Perce Tribe; and
- Recruit Nez Perce tribal members currently enrolled in college through personalized advertisement of employment opportunities.



### A Closing Note on the Human Dimension

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*Nez Perce elder Charles Axtell has his own way of deciding the success of his tribe's work to bring coho salmon back to Idaho waters. And by his measure, there is no doubt that the work is paying off.*

*Axtell: "You see a lot of happy faces, they are getting their humor back you know, that's the way the Nez Perce has got good humor. You hear laughing especially when they eat, you hear that laughter continuously and that's really good to me and good to hear."*

—from "Working for Idaho's Extinct Coho Salmon" by Aaron Kunz. December 7, 2012. Northwest Public Radio.



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**SRBA: SUBCASE #03-10022**

**UNITED STATES' AND NEZ PERCE TRIBE'S JOINT MEMORANDUM  
IN OPPOSITION TO OBJECTORS' MOTIONS FOR  
SUMMARY JUDGMENT  
FILED 9/17/98**

**NOTEBOOK 4 OF 5**

**UNITED STATES' AND NEZ PERCE TRIBE'S JOINT MEMORANDUM  
IN OPPOSITION TO OBJECTORS' MOTIONS FOR SUMMARY JUDGMENT**

**INDEX OF NOTEBOOK #4**

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Attachments 2-9 to Affidavit of Alan G. Marshall

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Affidavit of Dudley Reiser

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Affidavit of Dennis Colson

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# Memo

**To:** Interested Parties

**From:** Marlene Trumbo, Administrative/Legal Assistant *mt*  
OLC

**Subject:** Nez Perce Tribal Code

**Date:** August 15, 2001

The Nez Perce Tribal Code has been reprinted. The reprint includes all the current updates. *Please place this memo in the front of your code so you will know when this code was reprinted.*

Future code amendments and additions will be sent as supplemental inserts. Please store any future amendments with your code.

CURRICULUM VITAE

**Alan G. Marshall**  
Professor of Anthropology  
Lewis-Clark State College  
500 8<sup>th</sup> Avenue  
Lewiston, Idaho 83501

September 1998

PROFESSIONAL INTERESTS

Cultural Ecology ("Environment as Text"); Theory of Practice ("Material Dimensions of Social Organization"); Ethnography of Northwestern North America and Japan ("The Natural Order"); Ethnicity ("Nature and Identity").

EDUCATION

Washington State University, Ph.D., 1977 (Anthropology)  
Dissertation: "Nez Perce Social Groups: An Ecological Interpretation"

Washington State University, M.A., 1971 (Anthropology)  
Thesis: "An Alluvial Chronology of the Lower Palouse River Valley and Its Relation to Local Archaeological Sites"

University of Minnesota, B.A., 1967 (Anthropology)

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Present (since 1986). Professor, Division of Social Sciences, Lewis-Clark State College, Lewiston, ID 83501. Teaching, advising, and committee responsibilities; research and community service.

Present (since 1984). Affiliate Professor, Department of Anthropology, Washington State University, Pullman, WA 99164-4910. Graduate committee responsibilities.

1994-1995. Consultant: Snake River Independent Review, Vancouver, B.C. Nez Perce Tribe-Idaho Power Company Fisheries Mediation.

1984-1989 Key Consultant, Center for Northwest Anthropology, Washington State University, Pullman, WA 99164-3112.

1988 Research Associate; Department of Oriental Languages, University of California, Berkeley, Berkeley, CA 94720. Sabbatical leave during Spring semester.

1981-1986 Associate Professor, Division of Social Sciences, Lewis-Clark State College, Lewiston, ID 83501. Teaching, advising, and committee responsibilities; research and community service.



- 1978-1981 Assistant Professor, Division of Social Sciences, Lewis-Clark State College, Lewiston, ID 83501. Teaching, advising, and committee responsibilities; research and community service.
- 1977-1978 Assistant Professor, Department of Sociology and Anthropology, North Dakota State University, Fargo, ND 58102. Teaching, advising, and committee responsibilities; research.
- 1976-1977 Visiting Professor, Department of Societal and Urban Studies, Boise State University, Boise, ID 83725. Teaching and advising responsibilities; research.
- 1975-1976 Instructor, Department of Sociology and Anthropology, North Dakota State University, Fargo, ND 58102. Teaching, advising, and committee responsibilities; research.
- 1974-1975 Independent Research: Kinship and social organization, Boulder, CO.
- 1972-1974 Doctoral Research: In residence on Nez Perce Indian Reservation, Lapwai, ID.
- 1972-1973 Ford Foundation Fellow in Anthropology, Department of Anthropology, Washington State University, Pullman, WA 99164-4910.
- 1969-1972 Teaching Assistant, Department of Anthropology, Washington State University, Pullman, WA 99164-4910.
- 1970 Field Foreman, Archaeological Field School, Department of Anthropology, Washington State University, Pullman, WA 99164-4910.
- 1967-1969 Research Assistant, Department of Anthropology, Washington State University, Pullman, WA 99164-4910.

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- 1995 "Plato Among the Nez Perc es." 48th Annual Northwest Anthropological Conference, Portland, OR.

- 1991 "Wild Horticulture: The Nez Perce Subsistence Base." 90th Annual Meeting, American Anthropological Association, Chicago, IL.
- "Enchanted World: The Natural Organization of Nez Perce Society." 24th Annual Chacmool Conference, University of Calgary, Calgary, Alberta.
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- 1989 "Resource Management Conflicts in North Central Idaho." 88th Annual Meeting, American Anthropological Association, Washington, D.C.
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- 1977 "Values in the Nez Perce Adaptation to Resource Distribution." 30th Annual Northwest Anthropological Conference, Victoria, BC, Canada.
- "Social Organization as Niche Structure." 30th Annual Northwest Anthropological Conference, Victoria, BC, Canada.

"What Archaeologists Don't Find: Proto-Historic Nez Perce Settlement Patterns in the Lower Snake River Region of Southeastern Washington and Northern Idaho." 4th Annual Meeting, Idaho Archaeological Society, Boise, ID.

- 1971 "Post-Glacial Precipitation Changes: New Evidence from Marmes Rockshelter, southeastern Washington." 24th Annual Northwest Anthropological Conference, Moscow, ID.
- "An Alluvial Chronology of the Lower Palouse River Canyon." 37th Annual Meeting, Northwest Scientific Association (Geological Section), Moscow, ID.

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- 1996 Contract. Nez Perce National Historical Park, Spalding, ID. Nez Perce Geography: maps and stories.
- Participating Humanist/Evaluator. Idaho Humanities Commission grant to Idaho Public Television/Montana Public Television to produce "In the Tracks of Chief Joseph."
- 1995 Contract. Snake River Independent Review, Vancouver, B.C. Study of Nez Perce Fisheries in Hell's Canyon.
- 1994 Contract. U.S. Forest Service, Hells Canyon National Recreation Area, Enterprise, OR. Kirkwood Bar Archaeological Project.
- 1994 Contract. U.S. Forest Service, Clearwater National Forest, Grangeville, ID. Lolo/Nez Perce Trail Project.
- 1993 Expert Witness. Traditional Nez Perce use of Wallowa Lake, Wallowa Co., OR.
- 1992-93 Contract. Expert Witness. Nez Perce Fisheries. Nez Perce Tribe of Idaho.
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- 1984 Investigator, National Park Service Study of "Nez Perce Oral History." Dr. Ken Reid, Principal Investigator, Center for Northwest Anthropology, Washington State University, Pullman, WA 99164-3112. Development of bibliography relevant to Nez Perce oral history.
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- Grant Co-Director, "Science and Native American Education," Grant from Northwest Area Foundation to Lewis-Clark State College, Lewiston, ID 83501 for developing and applying a culturally relevant natural science curriculum in Nez Perce Tribal School, Lapwai, ID 83540.

- 1979 Grant, Participating Humanist, "A Calendar of the Jane Gay Photographic Collection." Grant from Idaho Humanities Council to catalog collections in Idaho State Archives. Mr. Jim Davis, Director, Idaho State Library, Boise, ID 83725.
- 1972 Fellowship, "Ford Foundation Dissertation Fellowship in Ethnic Studies" for study of historical Nez Perce environmental relations.
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- 1989-1995 Development of Nez Perce Language curriculum.
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- 1986-1988 Analysis of Nez Perce fishing rights controversy.
- 1984-1986 An annotated bibliography of Nez Perce sources; religious expression of Nez Perce ethnicity.
- 1984-1985 Development of natural science curriculum for Nez Perce Tribal School based on Nez Perce concepts of nature and learning. 1972-1978 Cultural ecological analysis of aboriginal Nez Perce subsistence, land tenure, and social organization.
- 1970-1971 Correlation of archaeological strata with alluvial and aeolian stratigraphic units, southeastern Washington.
- 1968-1970 Correlation of archaeological strata with alluvial and aeolian stratigraphic units, southeastern Washington.

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- Present (since 1993) Editorial Board for "Occasional Papers and Monographs in Cultural Anthropology and Linguistics," Boise State University, Boise, ID.
- Present (since 1993) Nez Perce Tribal Foundation (Board Member).
- 1987-1995 Editorial Board for journal "Northwest Folklore."
- 1987-1992 Reviewer for journal "American Indian Quarterly."

- 1989 National Endowment for the Humanities Grant Reviewer. Reviewed biennial grant applications from the State Humanities council of Alaska.
- 1987 Arts and Humanities Committee, Idaho Centennial Commission (Committee Member). Reviewed grant applications.
- 1983 Nez Perce Tribal Foundation (Board Member).
- 1982-1985 Association for the Humanities in Idaho (Board Member). Reviewed grant applications; made policy recommendations; personnel management.
- 1987-1989 Book Reviewer for journal "Academic Library Review." Over ten reviews published.
- 1987 National Endowment for the Humanities Grant Reviewer. Reviewed biennial grant applications from the State Humanities Councils of Nebraska, Washington, and Oregon.

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- 1997 Panel Organizer: "Indian Treaties and State Law." Seventeenth Annual International Exchange Conference, October 29, Lewis-Clark State College, Lewiston, ID.
- 1996 Panel Organizer: "Remote Sensing and Native Cultural Preservation." Sixteenth Annual International Exchange Conference, October 25, Lewis-Clark State College, Lewiston, ID.
- 1993 Panel Organizer: "Lost Environments, Disappearing Civilizations." Thirteenth International Exchange Conference, Lewis-Clark State College, Lewiston, ID.
- 1989 Session Co-organizer: "The Political Economy of Space and Place." 88th Annual Meeting, American Anthropological Association, Washington, DC.
- Panel Organizer: "Minorities in the USSR." Ninth International Exchange Conference, Lewis-Clark State College, Lewiston, ID.
- Executive Director, Second Annual Native American Awareness Week, Lewis-Clark State College, Lewiston, ID.
- 1988 Panel Organizer: "Native Policy in Comparative Perspective: I & II." Eighth International Exchange Conference, Lewis-Clark State College, Lewiston, ID.
- 1987 Panel Moderator: "U.S.-Philippine Relations." Sixth International Exchange Conference, Lewis-Clark State College, Lewiston, ID.
- 1986 Panel Organizer: "The Effects of Industrialization on the Traditional Cultures of Korea, Japan, and Taiwan." Fifth International Exchange Conference, Lewis-Clark State College, Lewiston, ID.
- 1985 Panel Organizer: "U.S.-Japan Relations: Emerging Stereotypes." Fourth International Exchange Conference, Lewis-Clark State College, Lewiston, ID.
- 1984 Invited Address: "The Cultural Significance of the New Nez Perce Tribal Code." 8 November, Moscow, ID. Sponsors: Idaho Legal Foundation, Clearwater Bar Association, University of Idaho School of Law.

- 1982 Keynote Address: "People and Wildlife in Idaho: Before Settlement." Public Symposium on Man, Wildlife, and the Public Lands. 16-18 September. Boise, ID. Sponsors: Idaho Chapter of the Wildlife Society, Boise State University, Association for the Humanities in Idaho.
- 1982 Co-chairman, First International Exchange Conference, Lewis-Clark State College, Lewiston, ID.
- Panelist: "Euroamerican Attitudes and the Native American Experience." Conference on "Interpreting Local Culture and History." 5-6 November, Coeur d'Alene, ID. Sponsor: Idaho State Historical Society and the Association for the Humanities in Idaho.
- 1981 Public Lecture: "The Allotment of the Nez Perce Reservation: 1890-1895." 18 January. Sponsor: Boise Public Library.
- Public Lecture: "Nez Perce Reservation Life at the Turn of the Century." 20 January. Sponsor: Nez Perce County Historical Society, Lewiston, ID.
- 1980 Presenter: "Native American Health Practitioners in the Northwest." 25 April. Bureau of Indian Affairs, Portland Area Office, Public Health Unit.
- Independence Day Speaker: "The Meaning of Native Americans to America." Talmaks Association, Nez Perce Nation, Lapwai, ID.
- 1979 Public Lecture: "Nez Perce Contributions to Regional Settlement by Euroamericans." 10 April. Clarkston Kiwanis Club, Clarkston, WA.
- 1977 Seminar Panelist: "Drug Abuse: An Individual's Problem or a Community Concern?" 1-8 June. Boise, ID. Sponsor: Idaho Department of Health and Welfare Substance Abuse Program.
- 1976 Conference Chairman: Tri-College Sociology and Anthropology conference, 4th Annual Meeting, North Dakota State University, Fargo, ND.

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- 1984-1986 Faculty Representative, National Association of Intercollegiate Athletics, Lewis-Clark State College, Lewiston, ID 83501.
- 1982-1984 President, Faculty Association, Lewis-Clark State College, Lewiston, ID 83501.
- 1982-1984 Chairman, Faculty Senate, Lewis-Clark State College, Lewiston, ID 83501.
- 1981-1982 Vice-Chairman, Faculty Senate, Lewis-Clark State College, Lewiston, ID 83501.
- 1980-1981 Secretary, Faculty Association, Lewis-Clark State College, Lewiston, ID 83501.

**Fish Used by Nez Perces**  
(based on Aoki 1970, 1994; Marshall 1977)

“fish without scales”; anadromous fish		/léewliks/
1. Eel, lamprey	<i>Entosphenus tridentatus</i>	/héesu/
2. Salmon, chinook	<i>Onchorhyncus tshawytscha</i>	/nácoo`x/
3. Salmon, “kokanee”		/táytay/
4. Salmon, silver	<i>Onchorhyncus kisutch</i>	/kállay/
5. Salmon, sockeye	<i>Onchorhyncus nerka</i>	/q`oyxc/
6. Salmon, steelhead	<i>Onchorhyncus mykiss</i>	/héeyey/
7. Sturgeon	<i>Acipenser transmontanus</i>	/qílex/
8. Trout, bull	<i>Salvelinus malma</i>	/`íslam/
9. Trout, cutthroat	<i>Salmo clarki</i>	/wawátlim/
10. Trout, “brook”		/píickatyo/

“Fish with scales”; native resident fish		/cúuyem/
1. Chiselmouth	<i>Achrocheilus alutaceus</i>	/titéwxc/
2. ‘mudfish’		/`kuusis/
3. Northern Pikeminnow	<i>Ptychocheilus oregonensis</i>	/qíiyex/
4. ‘sea-run sucker’		/muu`kuc/
5. squawfish	see “Northern Pikeminnow”	
6. Sucker	<i>Catostomus</i> spp.	/qíyex/
7. Whitefish	<i>Prosopium</i> sp.	/címey/

8. “Fish with scales”; non-native fish /lixliksín/

### Myths Whose Central Characters Live in Water

How Eel Lost His Bones in the Bone Game	Aoki and Walker 1988 Slickpoo 1973
Sucker and Whitefish	Aoki and Walker 1988 Slickpoo 1973
Water Buffalo and Deer-child	Aoki and Walker 1988
Frog at Hatway	Aoki and Walker 1988
Turtle and Squawfish	Aoki and Walker 1988 Slickpoo 1973
Frog and Squawfish Dance	Aoki and Walker 1988 Walker 1994
How the Salmon Found Out That They Shouldn't Go Up Potlatch Creek	Aoki and Walker 1988 Slickpoo 1973 Walker 1994
Mussel-Shell Killers	Aoki and Walker 1988 Slickpoo 1973 Walker 1994
Sea Monster	Phinney 1969
Turtle with Bull Raced	Phinney 1969
The Maiden and Salmon	Phinney 1969
The Beaver Brothers and the Modest Maiden	Phinney 1969
Sun, Moon, and Frog-Girl	Slickpoo 1973
Sucker and Mosquito	Slickpoo 1973
How Water Animals and Land Animals Had a War	Slickpoo 1973
Coyote Meets Killer Baby and the Musselshell Girls	Slickpoo 1973
Coyote Breaks the Fish Dam at Celilo	Slickpoo 1973
How Coyote Roasted Salmon	Slickpoo 1973



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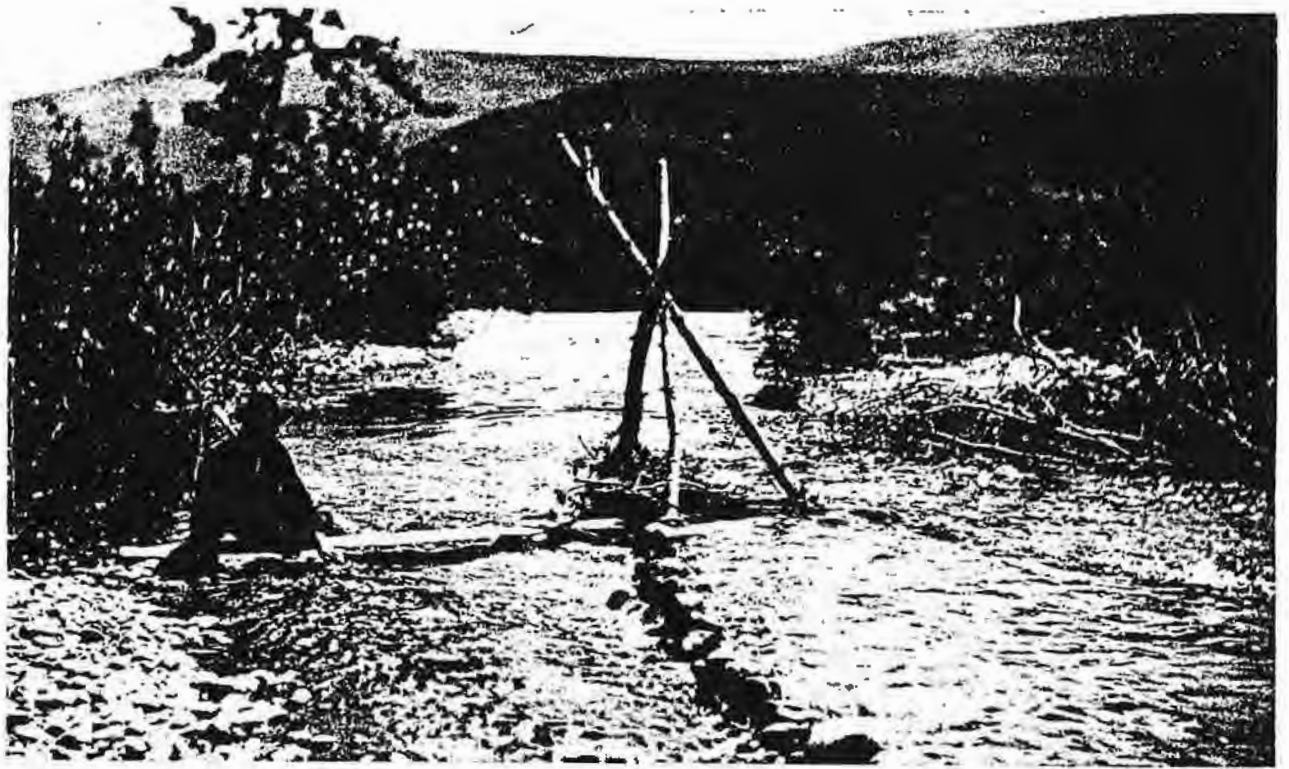
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Man Tending a Fall Trap on Lapwai Creek (Haines 1955)

MUTUAL  
CROSS-UTILIZATION OF ECONOMIC  
RESOURCES IN THE PLATEAU:  
AN EXAMPLE FROM ABORIGINAL  
NEZ PERCE FISHING  
PRACTICES

by

Deward E. Walker, Jr.

Washington State University  
Laboratory of Anthropology  
Report of Investigations No. 41

1967

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## PREFACE

Appreciation is due the Nez Perce tribe of Idaho and the National Science Foundation, Grants G-13754 and GS-930, for financial support of this study. It is devoted to an ethnohistorical and ethnographic investigation of patterns of mutual cross-exploitation of economic resources in the aboriginal Plateau. Approximately one year has been required for its completion. The author has directed the research in its entirety and is solely responsible for any statements contained herein. However, he has been assisted directly by a number of research assistants. They are Richard Blandau, Linda Brew, Joan Brodhead, Naomi Campbell, June Ross, and Jerri Sandberg. Indirect anthropological assistance has come from Richard Daugherty, Bruce Rigsby, John Ross, Allan Smith, and Theodore Stern. Roald Fryxell provided many useful substantive as well as editorial suggestions.

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Particularly valuable assistance has been provided by numerous members of the Nez Perce tribe. Of the Nez Perce Tribal Executive Committee, Chairman Angus Wilson, Secretary Jesse Greene and Harrison Lott deserve special commendation for their efforts in behalf of the study. Others who have contributed importantly to this study are Daniel Arthur, Sophia Broncheau, Caleb Carter, Rachel Frank, David Jackson, Alice Jackson, Corbett Lawyer, Mabel Lowry, James Miles, Joseph Pinkham, Mollie Reynolds, Mollie Seven, Samuel Slickpoo, Simon Smith, Saul Webb, and Johnny Woods. Particular appreciation is due Samuel Watters and Elizabeth Wilson without whose assistance much of this study could not have been completed.

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## INTRODUCTION

Until the 1850's portions of the present states of Idaho, Oregon and Washington were occupied by the Nez Perce Indians. They possessed a home territory estimated at 27,000 square miles (see Fig. 1), an area considerably larger than the one they were assigned in the treaty of 1855. However, they customarily exploited a much larger territory conservatively set at 230,000 square miles (see Fig. 1). They ranged from Kettle Falls in the north to Burnt River and American Falls in the south and from Willamette Falls in the west well out into the Plains, certainly as far as the territory of the Crow, but probably much farther (see Fig. 2). Although some trips were made outside this larger area deep into the adjacent Northwest Coast, Great Basin and Plains culture areas (see Fig. 1), they were not frequent enough to be called customary.

This ancient pattern of wide travel was typical of most peoples of the aboriginal Plateau and stemmed primarily from reliance on anadromous types of fish. However, geographical variation in other valued materials such as sea shells, furs of various kinds and lithic materials also encouraged travel and trade. With the arrival of Euroamericans and the subsequent introduction of the reservation system and a new economy, this system was transformed drastically. Mutual exploitation of resources during the late nineteenth and twentieth centuries was very different from the well developed and apparently very ancient aboriginal Plateau patterns which have been clouded by recent litigation. A case in point is the limited financial settlement granted the Nez Percés when the Celilo fisheries were inundated by The Dalles dam. Their claim was sharply contested by the other tribes involved as well as by the Army Corps of Engineers. Recently proposed legislation and acts of state game commissions indicate that substantial doubt continues to exist with respect to Nez Perce fishing rights on the Columbia River and its tributaries outside their aboriginal territory. The sometimes mutually conflicting claims of those opposing the Nez Percés can be summarized as follows:

1. The Nez Percés have no rights at Celilo or other points on the Columbia and its tributaries.
2. The Nez Percés did not come to Celilo or other places on the Columbia and its tributaries until very recently, following the construction of railroads and highways.
3. The Nez Percés may have come down to Celilo and other places on the Columbia and its tributaries in aboriginal times, but they did not fish. Any fish they obtained came from trading with the people who owned the fishing sites. Nez Percés customarily restricted their fishing to the Snake and Clearwater rivers.
4. The primary reason Nez Percés visited the Columbia and its tributaries was to trade. Fish was only one of several items they obtained in this manner. Others were sea shells, seal and otter pelts, and other items not present in Nez Perce territory.

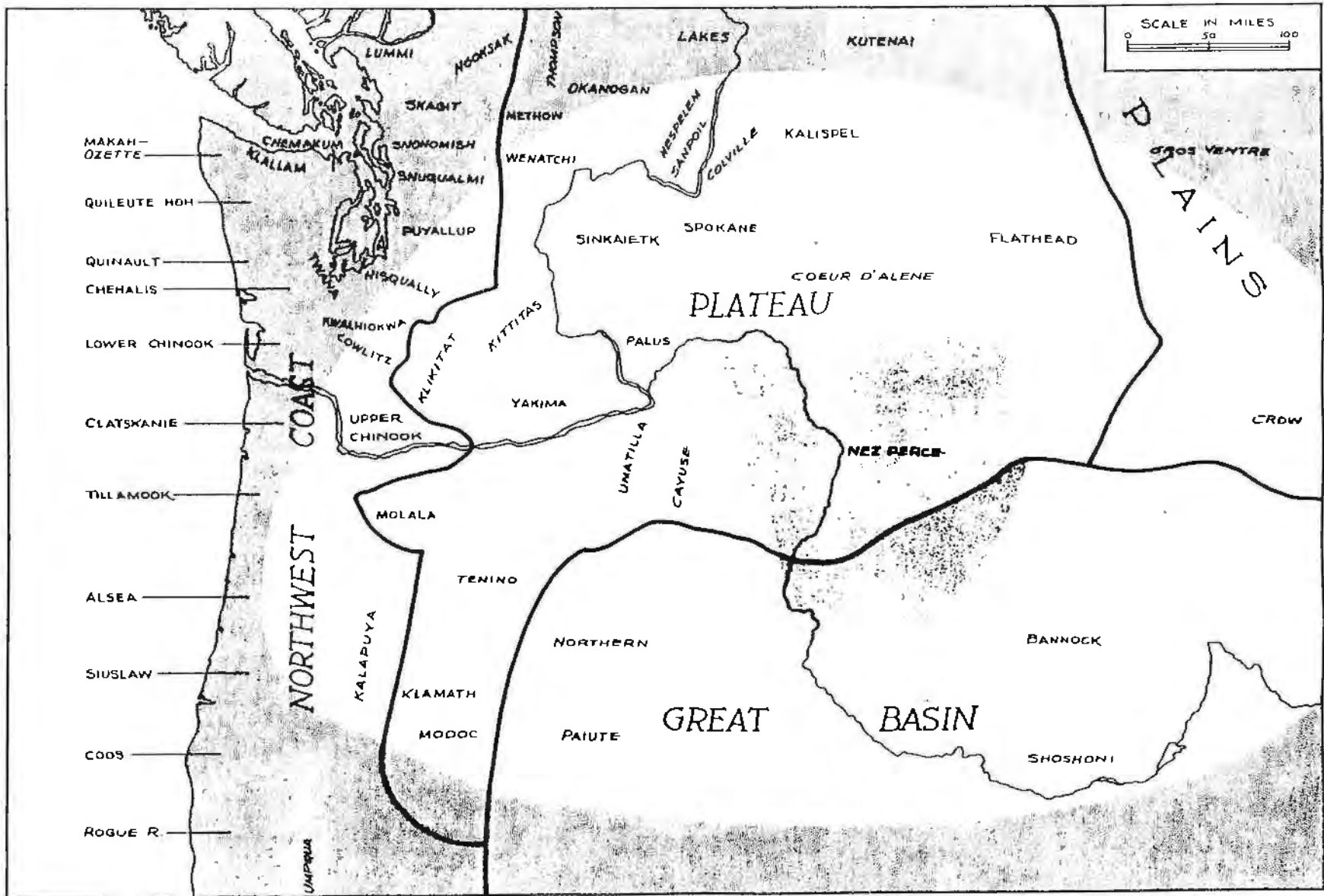


Fig. 1. Culture Areas and Ethnic Groups of the Northwest with Nez Perce Territory and Area of Effective Resource Exploitation.

Fig. 1. Culture Areas and Ethnic Groups of the Northwest with Nez Perce Territory and Area of Effect of Resource Exploitation.

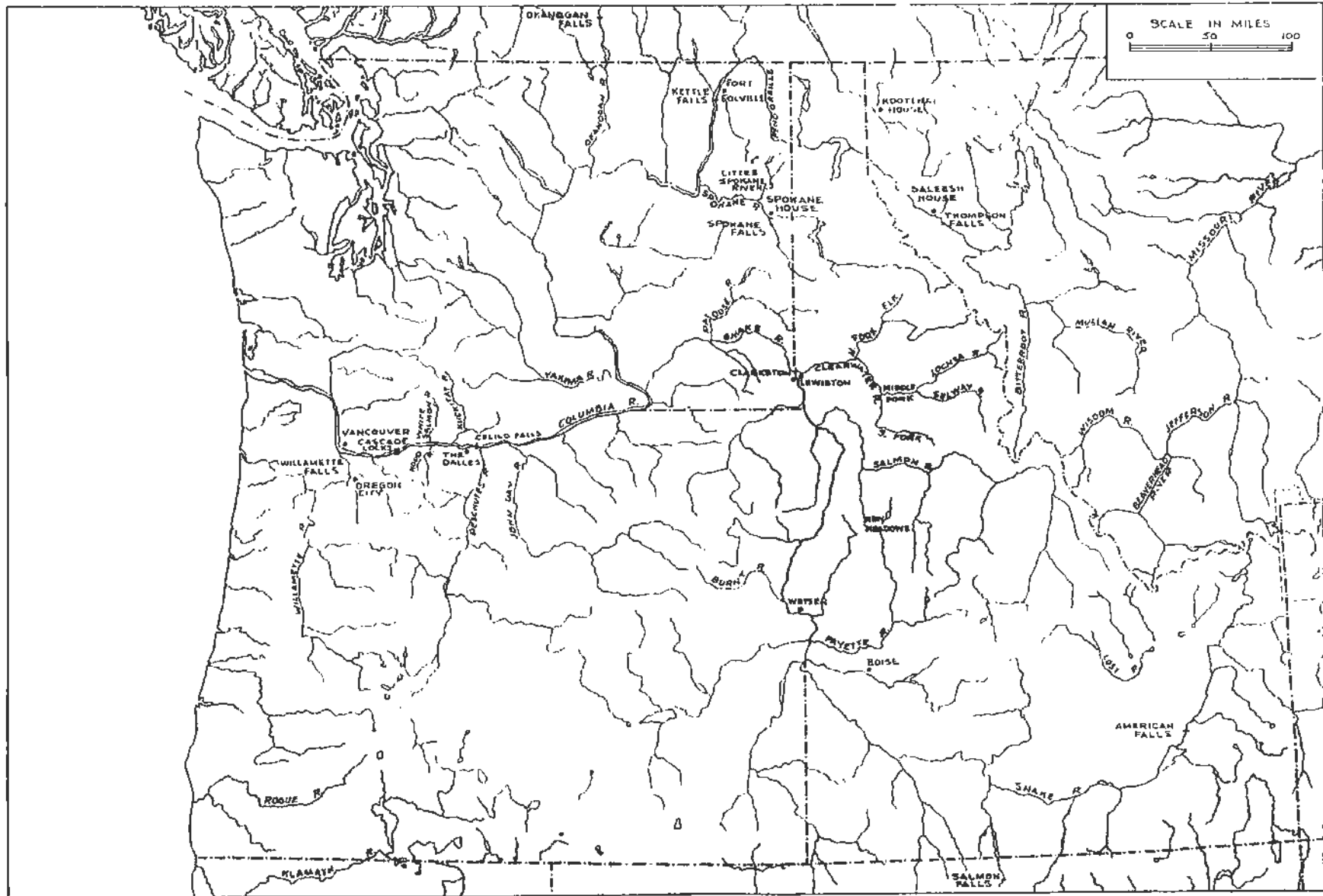


Fig. 2. Northwestern Water Courses and Sites of Ethnographic and Ethnohistoric Importance.

5. Rights to fish at Celilo and other sites on the Columbia and its tributaries are tribal rights and have never belonged to particular individuals, families, or villages. Thus, even though a Nez Perce might have possessed a relative in another tribe and customarily fished at his site, this fact is irrelevant as far as tribal rights and compensations are concerned.

On the other hand, the claims of those favoring the Nez Percés can be summarized as follows:

1. The Nez Percés together with other neighboring tribes such as the Cayuse, Umatilla, Palouse, Yakima, and Spokane regularly fished in common on the Columbia and its various tributaries.
2. The Nez Percés regularly fished at sites outside their territory such as those found at Spokane Falls, Celilo Falls, Willamette Falls, those found at the confluences of the Snake and Columbia, and Little Spokane and Spokane, the Okanogan and Columbia, and the mouths of the Yakima, the John Day, the Deschutes, and the Klickitat rivers.
3. Downriver fishing outside Nez Perce territory was customary because: (a) the salmon arrived much earlier downriver and were in better condition than when they got to Nez Perce territory, (b) the salmon runs were not always equally productive in Nez Perce territory, because of extended high water in some years, and in others because of spawning problems, and (c) the salmon runs (while variable) were always substantial at fisheries such as Celilo Falls, Willamette Falls, Spokane Falls, and Kettle Falls.
4. Fishing at places like Celilo Falls always was preferred because of the concentrated nature of the salmon run. Whereas the salmon in Nez Perce streams often were relatively dispersed so that lengthy effort was required to catch them, the salmon at fisheries such as Celilo were concentrated and large supplies could be caught quickly.
5. The Nez Percés traded at practically all places they visited outside their territory. Trading was conducted among the Plains groups, the Flathead, the Pend d'Oreille, Spokane, Coeur d'Alene, Umatilla, Cayuse, Tenino, Wasco, Wishram, Yakima, and even among the coast tribes whom the Nez Percés visited occasionally. They traded for a variety of articles not present in their home territory, or which they did not make such as the fish pemmican manufactured among the groups on the Columbia. Very little, if any, trading was conducted for the purpose of obtaining fish. The Nez Percés regularly fished for themselves when engaged in trading ventures on the Columbia and its tributaries and thus rarely were required to trade for fish other than for specially prepared fish products such as pemmican.
6. Relatively large numbers of Nez Percés, often in conjunction with neighboring groups such as the Cayuse, Umatilla, and Palouse regularly wintered in the Pasco-Wallula area, at The Dalles, and at Celilo Falls, subsisting on fish obtained there, at least partially through their own fishing activities.



7. When fishing at Celilo Falls and other places on the Columbia and its tributaries, the Nez Perces did so primarily at the fishing sites of their relatives and trading partners. However, any site not being used by its owner could be used by visiting groups.

As used here, aboriginal refers to that system of Plateau cultural patterns which cannot be traced to direct Euroamerican influence. Although explorers arrived in the region shortly after 1800, few changes in subsistence patterns took place until after the establishment of reservations in 1855. The aboriginal patterns which were in existence before entrance of non-Indian groups to the Plateau culture area will be described under two headings, Plateau patterns and Nez Perce patterns. Because the questions considered here involve, by their very nature, more than one group, it is impossible to proceed by focusing only on the Nez Perces. Nez Perce fishing can be understood only in terms of that greater social and economic system centering in what anthropologists call the Plateau culture area (see Fig. 1).

This study requires the combined use of the ethnographic and the ethno-historical methods. Employing these two approaches to the same questions ensures great accuracy, because they provide mutual checks on the data gathered. Briefly, the ethnographic method is a means of describing a culture from direct observation and the statements of native informants. In this study and most other ethnographic studies of American Indians, direct observation of the patterns in question is impossible, and reconstruction is based primarily on descriptions of the dwindling group of elderly, native informants who still are knowledgeable regarding the former culture. Among the specialized techniques developed by anthropologists employing this method are repeated cross-checking of informants, comparison of findings with known patterns among neighboring cultures, and various tests of logical consistency in both informant accounts as well as the reconstructed patterns themselves.

Anthropologists use the ethnohistorical method primarily to gain clues concerning the form of past cultural patterns, and where possible, to verify their ethnographic inferences. Of great importance to them are the recorded observations of the first explorers among cultures they are studying. Important aspects of this method are primary reliance on first hand observations (sometimes called "primary sources" as contrasted with later interpretation or repetition of first hand observations), evaluation of such observations in terms of the training and ability of those recording them, cross-checking the accounts for consistency and conflicts, and overall interpretation of the observations in light of logical consistency and anthropological fact and theory. Taken together the ethnographic and ethnohistorical methods comprise the most powerful research approach anthropology has to the topics under investigation here.



EVIDENCE OF MUTUAL CROSS-UTILIZATION OF  
ECONOMIC RESOURCES

Until recent years the Plateau was largely an ethnographic unknown. Aside from the work of Dr. Verne F. Ray, still at the University of Washington, Seattle, few anthropologists had major research commitments in the area. Ray's numerous works need not be listed here, but it is important to note that very few of his pioneering observations are open to question. More recent research has expanded and refined his early insights rather than contradicted them. An illustrative example of recent contributions to the ethnography of the Plateau is the work of Anastasio (1955). Although Ray (1939) has repeatedly emphasized the substantial ethnic interaction typical of Plateau peoples, Anastasio has added substantially to our knowledge of its forms and extent. Perhaps the most important conclusion he reaches is that the many ethnic groups of the aboriginal Plateau can be regarded as a single social system (1955:92). He says,

Therefore, we would say that the norms of intergroup relations and the relevant ceremonies, ritual beliefs, and values form part of an intergroup culture. The component groups were bound together by their acceptance of this culture, which made it possible for them to perform a number of tasks jointly and which permitted the peaceful solution of disputes and other common problems. On this basis we would say that the area was a society, in the general sense of the term, and more specifically a political entity.

The mechanisms of intergroup relations regulating interethnic relations in the aboriginal Plateau according to Anastasio (1955:91) were norms permitting peaceful settlement of disputes, co-utilization of resource sites, peaceful congregation of large multiethnic groups, group responsibility guaranteeing welfare of persons and property of visiting members of other groups, formalized trading and gift exchange between ethnic groups, and finally the extension of kinship relations between ethnic groups. Although it is neither desirable nor necessary that each of these mechanisms be described or illustrated in detail, it is essential that those concerned with aboriginal rights to resources among ethnic groups of the Plateau be apprised of several major findings of this and other recent studies verified and amplified in our own research.

Plateau Patterns of Mutual Exploitation

1. Aboriginally, the Plateau was an area marked by great cultural similarity, substantial interethnic movement, and marked ambiguity of territorial boundaries. Both direct and indirect evidence for this finding comes from the following sources:

Chalfant (n. d. a: 2, 3, 7, 16, 24, 26, 36; n. d. c: 5, 7, 8, 66-7, 75, 112; n. d. d: 248, 250-51; n. d. e: 37-8), Curtis (1907-30, 8:49), DeSmet (1906: 282), Douglas (1914: 127), Drury (1958: 121; 1963, I: 97, 123, II: 158, 170, III: 120, 187), Elliot (1909, 10: 305), Gibbs (1855: 403, 416, 423-25; 1877: 169-70, 197), Hulbert & Hulbert (1935: 159), Indian Claims Commission 1959b: 8, 42-43, 48), Johansen & Gates (1957: 16, 18), Lewis (1906: 193, 196), Merk (1931: 42, 53, 55), Ordway (1916: 254, 290), Parker (1838: 127-34, 275-96), Ray (1955b: 6; 1962: 60),

Spier and Sapir (1930: 197-227), Stevens (1855: 150, 416), Suphan (n. d.: 12, 22-23, 35, 54), Swindell (1942: 17-18, 34, 163), Thwaites (1959, 3: 81, 4: 289), U. S. Office of Indian Affairs (1869: 126), Walker (1965-67).

2. It has been argued by some anthropologists that in the aboriginal Plateau the territory occupied or exploited by a given ethnic grouping belonged to it in a general sense; but substantial research shows overwhelmingly that such rights did not carry the right to exclude others from the use of fish, game or other resources located in the territory. Both direct and indirect evidence for this finding comes from the following sources:

Anonymous (n. d.: 21), Baenen (1965: 17), Chalfant (n. d. a: 2, 7, 16, 18, 24, 26, 35-36, 44; n. d. c: 75-77, 80, 113-115), Gibbs (1855: 423; 1877: 186), Indian Claims Commission (1959b: 31), Lewis (1906: 157), Relander (1955: 42, 48), Smith (1940: 26), Suphan (n. d.: 22-23, 35, 54), Swindell (1942: 164), Walker (1965-67).

3. Cross-utilization of resources among ethnic groups in the aboriginal Plateau was the rule, not the exception; such resources included game, fish, roots, berries, furs, skins, stone, and other materials not distributed evenly throughout the area. Both direct and indirect evidence for this finding comes from the following sources:

Baenen (1965: 17), Bashford (1918: 149-50), Brosnan (1929: 176), Chalfant (n. d. a: 7, 16-18, 24-25, 35-36; n. d. c: 75-77, 80, 113-115; n. d. d: 248, 251), Davidson (1953: 13-14), Douglas (1914: 127), Drury (1958: 134; 1963, I: 97, II: 170, III: 187), Elliot (1909-10, 10: 339, 343), Fletcher (n. d.: 27-28), Gibbs (1855: 423), Indian Claims Commission (1959b: 31), Lewis (1842: 654-655), Parker (1838: 127), Ray (1954: 3, 8; 1955b: 4-6), Relander (1955: 44, 48), Ross (1855, I: 19, 125), Schafer (1909: 45), Skeels (1949: 271), Suphan (n. d.: 22-23, 35, 54, 56), Swindell (1942: 34), U. S. Office of Indian Affairs (1869: 126), Walker (1965-67), Washington State University Archives (1858-78, Packets 11B & 15B).

4. The ethnic groups of the Columbia River and most of its tributaries lacked tribal organization in the political sense of the word. Thus, there can be no question of aboriginal "tribal" ownership of resources in most cases; this came later when treaties established reservations, head chiefs, etc. Instead, families, villages, and occasionally, bands may be said to have possessed stewardship over certain resources such as fishing sites. Rights to membership in such groups were determined importantly by birth, and cross-utilization of resources between different families, villages, bands, or ethnic groups was mediated primarily through the kinship ties knitting together the peoples of the aboriginal Plateau. Both direct and indirect evidence for this finding comes from the following sources:

Anastasio (1955: 92), Baenen (1965: 17), Chalfant (n. d. e: 38), Davidson (1953: 11), Gibbs (1855: 425; 1877: 197), Jacobs (1937: 70), Ray (1939: 4-24), Suphan (n. d.: 16-19, 20, 22-23, 25, 35), U. S. Office of Indian Affairs (1877: 179), Walker 1965-67, Washington State University Archives (1858-78, Packet 4A).

5. Annual as well as geographic variation in the quality and quantity of resources in the Plateau was substantial in the aboriginal period. Thus, subsistence activities required regular, extensive travel throughout the Plateau. This is evidenced by the presence in most Plateau languages of names for the fisheries and associated geological features. Further, eastern groups such as the Nez Perces, Cayuse, Spokane, and Flathead regularly journeyed into the Plains to hunt buffalo, to trade and to raid. This exploitation of the buffalo in the Plains was similar to their exploitation of the salmon and other resources of the Columbia and its tributaries in the central and western Plateau. Both direct and indirect evidence for this finding comes from the following sources:

Anastasio (1955: 16-33), Chalfant (n. d. c: 66-67, 77, 80; n. d. d: 248), Drury (1958: 103, 121, 134; 1963, I: 82, 123, II: 170, 206, 279, III: 104, 187), Fee (1936: 19), Gibbs (1877: 197), Griswold (1954: 27-28, 45), Hewes (1947: 30-31, 35, 40-41), Indian Claims Commission (1959b: 16), Kip (1897: 11), Merk (1931: 42, 94), Ordway (1916: 254, 290, 334), Ray (1954: 4-5), Relander (1955: 48), Ross (1849: 314-16; 1855, I: 19), Stevens (1855: 130, 198-199), Swindell (1942: 34), Thornton (1849: 385), Thwaites (1959, 3: 105), Walker (1965-67), White (1950: 209), Wilkes (1845: 108).

6. Most Plateau ethnic groups relied on salmon for at least fifty per cent of their diet. Thus, any decrease in this resource was critical and was compensated for by (1) movement to other salmon fishing areas, (2) increased reliance on roots and/or game, or (3) some combination of 1 and 2. Similarly, the severe winters, so destructive of game, which occur regularly in the Plateau, often forced groups such as the Nez Perces and the Yakima to go down the Columbia in the early spring at least as far as Willamette Falls to intercept the earliest part of the salmon run. Both direct and indirect evidence for this finding comes from the following sources:

Brosnan (1929: 176); Chalfant (n. d. c: 7, 41, 77, 80), Drury (1936: 167, 1958: 134-135, 270-272, 291; 1963, I: 200, II: 158, 299, 309, III: 120), French (1961: 345), Gibbs (1855: 403, 413, 1877: 169-170), Haines (1955: 12), Hewes (1947: 30-31, 212-229), Ordway (1916: 301, 302, 306, 334), Ray (1954: 4; 1962: 56, 80-81, 84, 86, 89, 90-91, 98), Relander (1955: 43-44, 48), Stevens (1855: 198-199; 1900: 20), Walker (1965-67).

#### Nez Perce Patterns of Mutual Exploitation

1. Aboriginally, the Nez Perces regularly visited many areas in the Great Basin, Northwest Coast, Plateau, and Plains for purposes of fishing, hunting, raiding, recreation, and trade. Early explorers observed them repeatedly in places such as southern Idaho and Oregon, the Willamette Valley, the western Plains, at the confluences of the Spokane and Little Spokane, the Snake and Columbia, the Deschutes and Columbia, the John Day and Columbia, the Yakima and Columbia rivers, and at principal fisheries such as those found at Celilo, Kettle, Willamette, and Spokane falls.
2. The Nez Perces were one of the most mobile tribes of the Northwest and with their neighbors the Cayuse were the military masters of the Plateau and strong contenders for dominance in the western Plains and northern

Great Basin. Both direct and indirect evidence for the first and second Nez Perce findings comes from the following sources:

Adams (1930: 15), Anastasio (1955: 37, 44-54), Baenen (1965: 17), Bagley (1920: 33), Bakeless (1947: 269, 309), Bancroft (1875: 316), Bashford (1918: 44, 149-150), Brewer (1929: 114), Brosnan (1929: 2), Burns (1966: 13), Canse (1930: 83, 160, 215), Chalfant (n.d.b: 3, 23, 59; n.d.c: 2, 5, 7-9, 66-67, 77, 80, 112, 115), Coues (1897: 853, 879), Curtis (1907-30, 8:49), Drury (1958: 135, 205, 292, 329; 1963, I: 54, 67, II: 107-109, III: 187), Dryden (1949: 236, 239), Dunbar and Phillips (1927: 117-118), Elliot (1909, 10: 305, 339, 343), Farnham (1843: 291), Ferris (1940: 73, 96), Fletcher (n.d.: 27-28), French (1961: 348, 357, 378), Griswold (1954: 40, 44, 112), Gunther (1950: 178), Haines (1939: 52, 82; 1955: 37), Hulbert and Hulbert (1935: 159), Indian Claims Commission (1959b: 42), Johansen and Gates (1957: 16), Judson (1916: 223), Kerns (1917: 181), Kip (1897: 11), Lewis (1906: 193), Lewis (1842: 654-655, 787), Lewis and Phillips (1923: 76), Merk (1931: 53, 55, 95), Parker (1838: 275-280, 296), Payette (1962: 124), Pollard (1946: 55), Ray (1954: 6; 1955b: 4-6; 1962: 60), Relander (1955: 44), Ross (1849: 126; 1855, I: 19, 52, 232, 241, II: 24, 132), Simpson (1931: 44, 53, 55, 127), Skeels (1949: 271), Spier and Sapir (1930: 227), Stevens (1855: 130, 150), Stevens (1900: 20), Suphan (n.d.: 35, 54, 56), Swindell (1942: 34), Thwaites (1959: 289, 297, 355), Walker (1965-67), White (1950: 209).

3. By the time of contact the Nez Percés had been influenced superficially by Plains cultural patterns, but they remained basically Plateau in their cultural orientation. Principal Plateau elements in their culture were:

Riverine settlement patterns.

Reliance on aquatic foods as a major element in their diet.

A complex fishing technology.

Mutual cross-utilization of subsistence resources with other ethnic groups of the Plateau.

Extension of kinship ties into other ethnic groups of the Plateau through systematic intermarriage.

Extension of trade links throughout the Plateau by institutionalized trading partnerships.

Relatively simple political organization.

4. From a long range point of view the aquatic foods available in Nez Perce territory may have been adequate for their needs, but seasonal and annual fluctuations required regular exploitation of fisheries throughout the Plateau. Factors frequently affecting the availability of aquatic resources in Nez Perce territory (summarized by Hewes 1947), and in the Plateau generally, are water depth, temperature, bottom deposits, water movement, length and severity of winter, and extended high water in the spring. Despite substantial variations in the upper reaches of the Columbian tributaries, fish runs rarely, if ever, failed at the major fisheries on the Columbia proper. Nez Percés also were drawn to the downriver fisheries because of the ease with which large catches could be taken there and

because of the opportunities they provided for trade. The third and fourth findings favoring the Nez Perce view, as listed above, draw on the ethnographic research of Anastasio (1955), Chalfant (n. d. b; n. d. c), Griswold (1954), Hewes (1947), Ray (1939; 1954; 1962), and Suphan (n. d.), but are based primarily on previous research by Walker (1965-67).

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INTERPRETATIONS

Plateau Patterns of Mutual Exploitation

In his excellent analysis of fishing in northwestern North America, Hewes (1947: 29) states that aquatic environments may cut across many distinct land ecological systems and unite into a single economic system people who occupy seemingly diverse territories; he cites the Columbia River as an example. His analysis suggests that the Plateau can be regarded not only as a single political system as Anastasio has shown, but also as a single economic system. Although archaeologists long have recognized the overwhelming technological similarities of the region (e.g., Daugherty 1962), a recent study by Griswold (1954) has added much to our understanding of the reasons for this. In agreement with Hewes, he has approached this subject through an analysis of Plateau fishing practices. He concludes that a primary stimulus to extensive Plateau travel and trade was the variable food quality of salmon at different points on the Columbia. Although their flesh is rich and oily in the lower reaches of the river, it becomes less and less so as they ascend the river. Most Indian informants contacted are well aware of this phenomenon and have special words describing the quality of the salmon at various stages in their ascent of the river. On the other hand, while the fish are in their best condition in the Columbian estuary, the wet climate of the region makes their preservation difficult. Gibbs (1855: 423-25) early noted the substantial dried fish traffic between the coast peoples and those of The Dalles-Celilo region. Thus, although the fish are in their best condition at the mouth of the Columbia, they can be cured more easily somewhat further inland where the warm, dry winds of the interior dry them quickly. Both factors contributed to the substantial upriver and downriver travel and trade in salmon products.

Whereas peoples of the interior, such as the Nez Perces, sometimes journeyed to the coastal regions for the high quality salmon found there, they also went in order to intercept the runs early. Griswold (1954: 27-28) regards this as another important stimulus to travel and trade in the Northwest. Also contributing to this were the differential abundance of runs in the upper and lower regions of the Columbia and the variable distribution of aquatic foods throughout the region. Not only were there substantial variations in salmon spawning areas, but natural obstacles, primarily high falls, also prevented anadromous fish from entering several parts of the Plateau (cf. Hewes 1947). Ethnic groups residing in such areas, e.g., the Flathead and Coeur d'Alene, customarily fished in areas outside their own territories such as the Clearwater drainage in Nez Perce territory (Hewes 1947: 111-114). In fact, among such interior peoples there seems to have been a regular, seasonal pattern of travel down and back up the Columbia and its tributaries not only to intercept the runs early, but also to exploit them at the various fisheries along the way as they ascended the rivers. Our research (Walker 1965-67) shows clearly that the Nez Perces and other eastern groups also made regular autumn trips to Columbia River fisheries in order to obtain winter stores from the fall runs. Dried fish and fish products were a basic part of their diet throughout the year.

Hewes (1947: 31) has corrected an early misrepresentation of the residential patterns of Plateau peoples in this regard. Wissler (1938: 10) erroneously spoke of "instability of residence" in the region when in fact, Hewes notes that, ". . . nothing could be more stable than the repetition, year after year, of the same shifts of residence from winter village to a round



of summer fishing camps, invariably at the same sites, and in the same sequence." There are numerous historically documented examples of regular movement across the Plateau for subsistence purposes in the aboriginal period. For example, Rigsby (1965: 90-91) has recorded the regular movement of the Klamath into The Dalles-Celilo area for purposes of fishing. Chalfant (n. d. d: 248-51) has recorded the customary presence of Spokane in Coeur d'Alene, Colville, and Kalispel territories for subsistence purposes. The large, multiethnic congregation taking at least 600,000 lbs. annually at Kettle Falls (Hewes 1947: 109, Chalfant n. d. d: 80-86) is a particularly clear example of this practice. One chief from Kettle Falls described this falls as supporting eight tribes (Washington State University Archives, Packet 11B).

It should be recognized that this cross-exploitation was not limited to fish, but also included game and particularly roots. The customary presence of Umatilla and Cayuse in Nez Perce territory for fishing and hunting purposes is well documented (Gibbs 1855: 425; Indian Claims Commission 1959b: 31). In fact it seems safe to conclude that among Plateau peoples generally there were no bars whatsoever to cross-exploitation of resources. The term "steward" used by Drucker when referring to fish control on the Northwest Coast and applied by Suphan in The Dalles-Celilo area (Suphan n. d. : 22) is a very accurate appraisal for the entire Plateau. Of course, it was customary for visitors to request a pro forma approval before exploiting resources in their host's territory, but this does not imply exclusiveness of ownership. Clearly, the evidence lends little if any support to the exclusiveness of ownership so characteristic of Euro-American culture and increasingly so of contemporary Indian cultures of the area. It has been suggested also by some anthropologists that the territory occupied by Plateau ethnic groupings belonged to them in a general sense, but there has been no conclusive evidence that this carried with it the right to exclude others from the use of any basic resources located therein. The recent ethnographic research in the region has been rather explicit in denying the existence of exclusive rights to resources in the aboriginal period, e.g., Suphan (n. d. : 25), Fried (n. d. : II-6-7, III-1), and Chalfant (n. d. a: 26, 44). However, evidence for this conclusion is not lacking in the ethnohistorical literature. For example, Gibbs (1877: 186) noted for the Puget Sound groups in the last century that

As regards the fisheries, they are held in common, and no tribe pretends to claim from another, or from individuals, seignorage for the right of taking. In fact, such a claim would be inconvenient to all parties, as the Indians move about, on the Sound particularly, from one to another locality, according to the season.

This first-hand observation by Gibbs gains considerable meaning when considered in light of the well-known ethnographic fact that Plateau peoples were much less property-minded than Northwest Coast peoples.

Although probably given in good faith in most instances, the affidavits concerning exclusive ownership of fish resources collected by Swindell (1942: 180) and others in recent litigation do not reflect aboriginal cultural patterns. Instead, they reflect late 19th century developments that stem primarily from competitive commercial exploitation of Columbia River and Northwest Coast fisheries. By 1850 salmon were being exported from the Northwest Coast to places as distant as Chile (Hewes 1947: 199) and by 1896, the commercial catch had come to equal that of the aboriginal catch at its height. This was facilitated by innovations such as canning and the fish wheel technique (now banned) formerly used at The Dalles-Celilo fishery (Hewes 1947: 199-209).

Increasing pressure on fish resources, brought by commercial exploitation, resulted in several attempts by Euroamericans to preempt control of important fisheries. Further, the subtle transformation of the Indian from a primarily subsistence fisherman to a commercial fisherman in the employ of fish corporations had much to do with the growth of exclusive attitudes among Plateau peoples. Hewes (1947: 197) has outlined this widespread transformation for the Northwest as a whole.

By 1900, a large number of fish were being sold by Indians to provide the cash they needed to participate in the money economy that was replacing the older, largely subsistence economy. Of course, subsistence fishing continued to be an important aspect of the native economy in certain areas and remains so today. However, the widespread BIA policy of retaining Indians on reservations during the 19th century caused those Plateau groups not situated close to commercially exploited fisheries to be largely unaffected by these developments. Further, the BIA and associated missionary agencies frequently exerted strong pressure on their charges to become farmers and abandon traditional subsistence pursuits. It is common anthropological knowledge that these two policies served to severely restrict interethnic movement throughout the Plateau in the nineteenth and early twentieth centuries. Primary dependence on fishing was restricted to a relatively few groups immediately adjacent to the commercially important fisheries. The exclusiveness of land ownership attitudes that also developed during this period encouraged groups such as the Yakima to claim exclusive ownership and control of the fisheries in The Dalles-Celilo area which border their reservation. This is quite understandable when one considers how financially important they had become to them with development of commercial exploitation. Several Wayam informants have recounted the numerous fights among Indians occurring around Celilo in the early 1900's. Whereas these fishing sites had been open to visitors in the aboriginal period, they quickly became closely guarded property. Those who had once been welcome, in some cases, were now forcibly ejected. Although such adjacent groups as the Yakima dominated the situation largely because of proximity and superior numbers, it should be remembered that both the Yakima and Klikitat proper are said to have traded for at least some of their fish there aboriginally (Hewes 1947: 107). The strong Yakima claim to Celilo fisheries derives partially from the fact that a few Wishram and Wasco settled on what became the Yakima reservation through the treaties of 1855. Of course, this is not the place to evaluate the strength of the Yakima Reservation's claim to fishing rights at Columbia River fisheries. However, it is appropriate here to point out that the twentieth century patterns of ownership and fish exploitation among Indians on the Columbia River probably bear little resemblance to aboriginal patterns. The testimony contained in the Celilo hearings clearly reveals the fallacy of attempting to determine aboriginal from contemporary patterns. In fact, several anthropologists have noted informally that the proposed Corps of Engineers financial settlement probably increased the already strong notions of exclusive ownership among parties to the settlement. Not only were many statements of the supposedly elderly and knowledgeable informants highly contradictory, they contain entirely indefensible statements such as the assertion that Nez Perces never came to The Dalles-Celilo region until construction of railroads and highways in the twentieth century, and then only to trade. Such statements are common even today. Another expression of this distortion of historical and ethnographic fact is seen in the Celilo hearings, where the Corps of Engineers uses the absence of Nez Perces on the intertribal fish commission as evidence that they had no rights, or at best, limited fishing rights in the area.

As we have seen, major anthropological treatises have demonstrated that the aboriginal Plateau comprised a single social and economic system. Physical and biological scientists have noted that from the point of view of different types of land environments it is one of the most varied in North America (Figs. 43a, 43b, 44a and pp. 85-89 in Fryxell et. al. 1965). This ecological variation also produced a great deal of aboriginal interareal movement, particularly clear in the lengthy trade networks. Two main trade routes crossed the Plateau, one from north to south and another from east to west, with many feeder routes connecting various groups with each of the main trunks. The north-south route ran from Okanogan and Kettle Falls southward, connecting ultimately with the northern Great Basin of southern Oregon and Idaho (see Fig. 2). Griswold (1954: 42) believes this to be a very old route, and his interpretation is in agreement with the closely similar cultural records which archaeologists have detected between portions of British Columbia and The Dalles-Celilo region. The east-west route actually extends from the mouth of the Columbia, where it was dominated by the lower Chinook, east through The Dalles-Celilo area on past the junction of the Snake and Columbia rivers, and eventually through Nez Perce and Flathead territory into the Northern Plains where it connected with another trade network centering on the upper Missouri River (see Fig. 2).

Not unexpectedly the materials traded along these routes were varied. The Plateau tribes carried eastward coastal commodities such as the shells of Dentalium, Haliotis, and Olivella (all of which were used widely for ornamentation), and Plateau products such as salmon pemmican, salmon oil, woven bags, horn bows, wooden bows, greenstone pipes, lodgepoles, wild hemp, berries, meats, moose skins, spoons and bowls of mountain sheep horn, and basketry. In return the Plains tribes traded buffalo robes, feather bonnets, catlinite pipes, obsidian, buffalo horn, buffalo bone beads, paints, buckskin clothing, and horse equipment (Griswold 1954: 41-42). Direct archaeological evidence, consisting of hundreds of Olivella shells and obsidian fragments recovered from the Marmes Rockshelter site on the western edge of aboriginal Nez Perce territory, demonstrates that similar exchange of materials had begun at least 7,000 years ago (Fryxell and Daugherty 1962: 25).

The Nez Percés were the only direct link between The Dalles-Celilo region and the northern Plains. Their importance in introducing Plains influences to the Plateau is common anthropological knowledge (cf. Ray 1939). The Nez Percés and other Plateau groups employed a number of mechanisms to facilitate this trade. Important among them were the annual trade fairs held in places like The Dalles-Celilo area, the Yakima Valley and the junction of the Snake and Columbia rivers. In 1814 Alexander Ross (cf. Griswold 1954: 115-116) visited one such fair in the Yakima Valley which he described in the following statement:

We had scarcely advanced three miles when a camp of the true Mameluke style presented itself; a camp of which we could see the beginning but not the end! It could not have contained less than 3,000 men, exclusive of women and children, and treble that number of horses. It was a grand and imposing sight in the wilderness, covering more than six miles in every direction. Councils, root gathering, hunting, horse-racing, foot-racing, gambling, singing, dancing, drumming, yelling, and a thousand other things which I cannot mention, were going on around us.

It is important for our purposes here to note that this and other trade fairs such as those in The Dalles-Celilo region and at the junction of the Snake and Columbia rivers were held during the season when fish and roots were abundant. Congregations of this size were not feasible during other seasons because of the relative paucity of food. People attending dug roots, fished, and hunted as a matter of course, even though they might also trade specially prepared foodstuffs they brought from home. In any event, it is clear that the trade in foodstuffs was a relatively minor part of the trading.

During these fairs, Nez Perces and other peoples of the Plateau regularly employed the trading partner relationship. This arrangement consisted of a virtually permanent agreement between two individuals from different ethnic groups to trade only with one another when their two groups met at such affairs. At the death of one partner, the relationship would be reestablished with another member of the same group, usually a close relative of the deceased. Sometimes this relationship was reinforced by intermarriage between families of trading partners. As we shall see, this practice is of singular importance in understanding the rules governing cross-utilization of resources among Plateau peoples.

Ray (1939: 8-9) has noted for the Plateau in general a tendency towards what has been rightly called political "atomism." He asks,

Why, in the light of these facts pertaining to village or band autonomy, are names such as Sekani, Sanpoil, and Tenino used? If the people themselves had no such common names and no common organization, why are they introduced into the discussion, apparently in self-contradiction? The answer is partly historical, partly theoretical. Early settlers, traders, missionaries, and government officials carried with them from the east the notion that all Indian groups were of necessity organized along tribal lines. Upon learning a village name from a native, the Whites immediately and indiscriminately applied it to all the Indians of the vicinity.

Ray concludes with the observation that the names are justified as labels for carriers of similar cultures, i. e., ethnic groups, but not as labels for political units. Such group names as Tenino, therefore, do not refer to political entities but to ethnic groups. After acknowledging the accuracy of Ray's observations, Suphan, a government ethnologist, concludes from more recent research that in The Dalles-Celilo area, fishing stations were held in the family and not by the village or ethnic grouping (n. d.: 21). Partially echoing Suphan in this respect is Griswold (1954: 109), who cites Spier (1930: 175) and Swindell (1942: 151) to provide evidence of very weakly developed patterns of village political organization, and adds that this political simplicity may be linked with the property concepts of The Dalles Indians. Each family group possessed fishing rights to a particular station on the river, and the fish caught by each family were theirs to distribute in any manner they chose, regardless of the opinions of headmen or other village authorities.

Trading partnerships, systematic interethnic marriage and rudimentary political organization relate to cross exploitation of resources in several ways. For example, it is quite clear from numerous sources that interethnic, economic exchanges in the aboriginal Plateau were essentially individual affairs. The trading partnerships are an example. Another is the deliberate intermarriage of social advantage, a practice which was common in the Plateau

until quite recently. Swindell (1942: 150), among others, has noted that when members of tribes related through intermarriage came to a fishery with nothing to exchange, i. e., not interested in trade, they were permitted to fish for themselves at some of the stations. Nez Perces have stated uniformly that one fished with his relatives when he went to Celilo Falls and other fisheries on the Columbia. Regulation of cross-utilization of resources through kin ties among the ethnic groups of the Plateau clearly was the rule during the aboriginal period. It was not a matter decided at the "tribal" or "band" level in most of the Plateau, because as anthropologists have shown, few such political entities existed. Neither was it a matter regulated by the village headman in most instances. Instead, it was a matter to be settled among relatives. The Nez Perces in particular were much given to intermarriage with other Plateau groups because of their position as a primary link in the Plateau and Plains trade network. In fact, Nez Perce was a lingua franca from the Bitterroots in the east to The Dalles-Celilo region in the west. As the politically preeminent ethnic grouping of the interior Northwest, they occupied a position similar to the Chinookan masters of the lower Columbia. Expressive of their freedom of movement and resource exploitation in the region was Ogden's (cf. Suphan n. d.: 56) observation that the Nez Perces trapped beaver near the Deschutes (see Fig. 2). In fact, they were credited with eliminating this resource along the Deschutes before 1850. Other early observers also reported them fishing in this area just below The Dalles (cf. Suphan n. d.: 35) and on the Deschutes (cf. Suphan n. d.: 54). Yet another pre-1850 observer reports them to have been fishing regularly at the mouth of the Little Spokane River (Bagley 1920: 33).

Of substantial importance to this study is the degree of dependence on aquatic resources typical of aboriginal Plateau peoples. Hewes (1947: 212-29) has developed an interesting set of techniques for estimating fish consumption in the aboriginal Northwest. One is based on normal human calorie requirements. He suggests a figure of 2000 calories per day, per capita for the region. Using the total estimated population, 337,150, he obtains a crude annual calorie demand estimate of 246,199,500,000 calories. Converting this into pounds of food required annually, he obtains 122,084 short tons of food. He assumes further that this demand must have been met largely by fishing and sea mammal hunting in northwestern North America, since other natural foods available in the region are notoriously low in food value, particularly the local tubers such as camas and bitterroot. Of course, in some areas the contribution of game to the diet was substantial. Taking a deliberately conservative stance, however, Hewes estimates that only one-half of the food requirements in the aboriginal Northwest were met by fish. This yields an annual, per capita figure of 365 pounds and is based on the fact that salmon flesh yields nearly 1000 calories per pound. Taking the analysis further, he obtains an annual catch of 123,367,500 lbs. for the region, or about 15% of the modern commercial catch of 800,000,000 lbs. Using a second method based on minimal protein requirements, he obtains an annual catch figure of 103,135,750 lbs. Thus, he concludes that in view of the data limitations, the average annual catch was somewhere between 100,000,000 and 130,000,000 lbs. per year.

Taking this figure, he then checks its validity through comparisons with on-the-spot observations of native fish consumption in the early period of Euroamerican penetration of the region. There is unusually close agreement when one considers that the exceptional areas of unusually high consumption, up to 1000 lbs. per capita, per year was caused not only by the high calorie demands typical of colder climates, but also by the use of fish for dog food or for fuel (Thwaites 1959, 3: 123). Interestingly, his average, annual, per

capita figure for the entire region, 365 lbs. is the same given by Craig and Hacker (1940) for the Columbia River region. Of possible interest here also is the fact that the modern Indian catch at Celilo, a 307 lbs. per capita figure based on an estimated population of 13,000, falls somewhat below the aboriginal figure (Hewes 1947: 221).

Table I contains Hewes' estimates of fish consumption for all northwestern groups considered in his study. This table is based on Mooney's aboriginal population estimate for North America and thus is subject to revision (Hewes 1947: 8) as better population estimates become available. However, it should also be noted that other estimates for the Columbia River catch exceed those of Hewes and Craig and Hacker. For example, Griswold (1954: 36-37), agreeing with Hewes' conclusion (1947: 103) that the Lewis and Clark estimate was too low, calculates an average, annual, per capita consumption for The Dalles-Celilo region of 800 lbs. His estimate suggests a total catch bordering on 4 million lbs. It might be noted that Swindell's estimated 18 million lb. figure for the Columbia River drainage (1942: 13) based as it is on an average, annual, per capita consumption of 365 lbs. would be low if Griswold's estimates are correct. A little known use of fish typical of the Columbia from Celilo at least up to the junction of the Snake and Columbia rivers reinforces the impression that Hewes' estimates are low. This use is for fuel. Observed by Lewis and Clark (Thwaites 1959, 3: 123), and confirmed in my own past research (Walker 1965-67), this use was prompted by the absence of wood fuels along this stretch of river. When one considers the high per capita consumption of fish typical of Alaskan groups who feed fish to their dogs, an 800 lb. average, annual, per capita consumption in the Middle Columbia region of the Plateau seems a most reasonable estimate.

Thus in light of the known annual dietary dependence on fish among aboriginal societies of the Plateau, it seems safe to conclude that the range was between 365 and 800 lbs. per capita with the average probably close to the median, i. e., 583 lbs. (cf. Fig. 3). However, as will be seen in the instance of evaluating Nez Perce use of salmon, determination of this figure for particular groups in most of the Plateau will require substantial, additional research.

#### Nez Perce Patterns of Mutual Exploitation

With the arrival of the horse in the first half of the 18th century, the Nez Percés and their neighbors such as the Cayuse, Umatilla, Yakima, Palouse, Spokane, and Coeur d'Alene came under extensive Plains influence. Although undoubtedly in contact with the Plains before this time, Plains influence became sufficiently pronounced after the introduction of the horse to make some of the groups, particularly the Nez Percés, resemble Plains rather than Plateau societies in certain aspects of their material culture. That this was a thin veneer which overlay, but did not greatly change, basic Plateau patterns has been made clear by Ray (1939) and several more recent researchers (e. g., Anastasio 1955 and Lundsgaarde 1963).

Perhaps the most fundamental cultural patterns the Nez Percés shared with other Plateau societies were in the area of subsistence. For example, Nez Perce settlement patterns remained primarily riverine in orientation. Like other societies of the Plateau, the Nez Percés spent winters in the river valleys in seasonally permanent settlements; during the summers, the Nez Percés engaged in travel throughout the Northwest on well-established routes

TABLE I

Hewes Estimates for Aboriginal Fish Consumption  
in the Northwest<sup>1</sup>  
(in pounds of fresh fish per year)

<u>Native Groups</u>	<u>Est. Pop.</u>	<u>Estimated Consumption:</u>	
		<u>Per Capita</u>	<u>Total by Groups</u>
<u>Western Alaska</u>			
Nuwuk, Kopak, Nunatak	3,000	100	300,000
Malemiut	1,600	200	320,000
Kinugumiut, Kaviagmiut	2,800	300	840,000
Unaligmiut	1,600	200	320,000
Ikogmiut	400	800	320,000
Magemiut, Kaialigmiut	5,000	365	1,825,000
Nuniwagmiut	1,500	100	150,000
Kuskokwagmiut	7,200	1,000	7,200,000
Togiagmiut, Chingig- miut, Nushagak	1,300	500	650,000
Okulmiut	3,700	500	1,850,000
sub-total	28,100	av. 407	13,775,000
<u>South-Central Alaska and Aleutians</u>			
Aleut	16,000	280	4,480,000
Koniag	8,800	500	4,400,000
Tanaina	1,200	500	600,000
Chugachmiut	1,700	500	850,000
Eyak	800	300	240,000
sub-total	28,500	av. 416	10,570,000
<u>Northern Interior</u>			
Alaska Kutchin	1,600	475	760,000
Yukon Terr. Kutchin	2,200	200	440,000
Ahtena	500	600	300,000
Khotana, Kalchana (except Tanaina)	3,200	690	2,208,000
Tahitan, Taku-tine	2,500	260	650,000
sub-total	10,000	av. 445	4,358,000

<sup>1</sup> Table slightly modified in form; totals verified by mechanical calculator.

TABLE I (Continued)

<u>Native Groups</u>	<u>Est. Pop.</u>	<u>Per Capita</u>	<u>Total By Groups</u>
<u>Northwest Coast</u>			
Northern Tlingit	2, 000	500	1, 000, 000
Southern Tlingit	7, 500	500	3, 750, 000
Haida	9, 800	400	3, 920, 000
Tsimshian proper	3, 500	400	1, 400, 000
Niska, Gitksan	3, 500	500	1, 750, 000
Haisla	1, 300	500	650, 000
Heiltsuk	1, 400	500	700, 000
Bella Coola	1, 400	500	700, 000
Kwakiutl	4, 500	365	1, 642, 500
Nutka	6, 000	300	1, 800, 000
Makah, Quilleute, Quinault	4, 000	365	1, 460, 000
S. E. Vancouver Is.	9, 200	500	4, 600, 000
North of Fraser R.	7, 400	600	4, 440, 000
Fraser Delta	3, 900	1, 000	3, 900, 000
Nuksak, Lummi	800	600	480, 000
Clallam, Chimakum	2, 400	365	876, 000
Skokomish, Nisqualli, Twana, Puyallup, Snoqualmi, Sno- homish, Skagit	6, 000	350	2, 100, 000
sub-total	74, 600	av. 485	35, 168, 500
<u>Columbia-Fraser Plateau</u>			
Tlatskanai	1, 600	365	584, 000
Lower and Upper Chehalis, Owilapsh, Cowlitz	1, 200	365	438, 000
Klikitat, Yakima, Wana- pum, Palus	11, 200	400	4, 480, 000
Nez Perce	4, 000	300	1, 200, 000
Tenino, Umatilla, Walla- walla	2, 900	500	1, 450, 000
Wailatpu (Cayuse)	500	365	182, 500
Wenatchi, Sinkiuse, Spo- kan (part)	3, 500	500	1, 750, 000
Wenatchi-Spokane (part)	2, 400	500	1, 200, 000
Kalispel, Coeur d'Alene, Pend d'Oreille, Flathead	2, 800	100	280, 000
Okanogan, Lakes	2, 200	500	1, 100, 000
Kutenai	1, 200	300	360, 000
Chilcotin	2, 500	600	1, 500, 000
Lillooet	4, 000	600	2, 400, 000
Thompson, Nicola	5, 150	900	4, 635, 000
Shuswap	5, 300	500	2, 650, 000
Carrier, Babine	8, 500	600	5, 100, 000
Bannock, N. Paiute, N. Shoshone	3, 000	50	150, 000
sub-total	61, 950	av. 438	29, 459, 500

a) Gulf of Georgia  
b) Puget Sound



TABLE I (Continued)

<u>Native Groups</u>	<u>Est. Pop.</u>	<u>Per Capita</u>	<u>Total by Groups</u>
<u>Oregon Coast to NW California</u>			
Chinook	22,000	400	8,800,000
Tillamook	1,500	320	480,000
Yaquina, Alsea, Siuslaw	6,000	320	1,920,000
Kus	2,000	300	600,000
S. W. Ore. Athabaskans	8,800	300	2,640,000
Tolowa	1,000	365	365,000
Hupa, Chilula	1,500	365	547,500
Yurok	2,500	365	912,000
Karok	1,500	450	675,000
Wiyot	1,000	300	300,000
Nongatl, Mattole	4,000	200	800,000
Lassik, Wailaki, Sinkyone			
sub-total	51,800	av. 335	18,039,500
<u>Willamette Valley- Klamath Lakes</u>			
Kalapuya	3,000	100	300,000
Takelma	500	300	150,000
Shasta, Chimariko	3,000	300	900,000
Klamath, Modoc	1,200	20	24,000
Achomawi, Atsugewi	3,000	100	300,000
Mountain Maidu	1,000	77	77,000
sub-total	11,700	av. 149	1,751,000
<u>California</u>			
Kato	500	247	123,500
Yuki, Coast Yuki	3,000	100	300,000
Wintu (Sac'to drainage)	2,000	300	600,000
Wintu (Trinity)	1,500	300	450,000
Wintun	2,500	365	912,500
Yana	1,500	300	450,000
F'thill, Maidu, Nisenan	4,000	200	800,000
Plains, F'thill Miwok	9,000	200	1,800,000
Costanoan,	7,500	10	75,000
Valley Yokuts	11,000	50	550,000
F'thill Yokuts	7,000	50	350,000
Western Mono	2,000	5	10,000
Pomo (Except Lake)	6,000	100	600,000
Wappo, Coast Miwok	3,000	75	225,000
Patwin	6,000	300	1,800,000
Valley Maidu	4,000	300	1,200,000
sub-total	70,500	av. 181	10,246,000
Grand total	337,150	av. 357	123,367,500



exploiting various resources. Their summer travel took them the length and breadth of the Plateau. Of course, they also went deep into the Plains to exploit the buffalo, to trade and to raid other groups. A number of Nez Perces even spoke Flathead and Crow (see Fig. 1) until very recent times. As we have seen, early Euroamerican pioneers in the Northwest regularly observed the Nez Perces in such widely divorced places as The Dalles-Celilo region, Kettle Falls, Willamette Falls, the junctions of the Columbia and Snake, the Columbia and John Day, the Columbia and Deschutes, and the Spokane and Little Spokane, most areas of western Montana, and the northern Great Basin in present southern Idaho and Oregon (see Fig. 2). Furthermore, it is a matter of historical record that Nez Perces traveled as far as St. Louis in the 1830's, and my own research has shown that Nez Perces also visited the Salt Lake area occasionally. A Walla Walla and Nez Perce party reputedly journeyed to the Sacramento area in the 1840's. There are numerous Nez Perce myths which describe the Pacific Coast in great detail, partially confirming reports that they knew the region well. Finally, the names of Columbia River fisheries, the various peoples along the way, and prominent natural features are known by most elderly Nez Perces. Thus their widespread, seasonal movements throughout the Plateau and adjacent regions served to link them closely with other Plateau groups and Plateau culture in general.

Although Nez Perce intermarriage with other ethnic groups of the Plateau is substantial at the present time, it was even more prevalent in the past according to elderly informants. This was particularly true with chiefly families as Ray has noted, but it permeated all levels of society. For example, the Nez Perces, Cayuse and Palouse were so intermarried at the time of first contact that it was virtually impossible to distinguish them. A number of early observers have commented on this, particularly for the Nez Perces and Cayuse. However, Nez Perces also frequently intermarried with the Yakima, Wishram, Coeur d'Alene, Spokane, and Flathead. Some Nez Perce families today even speak of having had relatives around Oregon City (presumably among the now disintegrated Kalapuya) whom their grandparents regularly visited.

Nez Perces regularly visited their relatives when travelling throughout the Plateau. Relatives were their primary links with other areas for purposes of resource exploitation. As late as the 1950's Nez Perces were fishing with their relatives among the Yakima and Wayam in The Dalles-Celilo region. Such relatives in turn regularly came to the Nez Perce reservation for hunting. Kin ties were augmented by numerous trading partnerships among other Plateau groups. This custom too was preserved by Nez Perces into the twentieth century, particularly among Sahaptin-speaking groups like the Umatilla, Yakima, Palouse, Wayam, and Klikitat. As with relatives, such trading partners provided lodging, food and access to local resources such as roots, special types of stone, game, furs, and fish.

Even though possessing the horse and a superficial resemblance to the bison-dependent societies of the Plains, the Nez Perces were impressively dependent on aquatic foods in the aboriginal period. In this they also closely resemble other Plateau societies. For example the Nez Perces regularly took the following types of fish: chinook, silver, dog, and blueback varieties of salmon; Dolly Varden, cut throat, brook, lake, rainbow, and steelhead varieties of trout; several kinds of suckers and white fish, sturgeon, squaw fish, lampreys, and an unidentified but numerous minnow. In recent years they also have begun to take the nonindigenous carp, bass, and catfish. The four types of salmon mentioned were the most important and best liked fish.

Eels, sturgeon and the unidentified minnow were delicacies, whereas the several forms of trout, suckers, whitefish, and squawfish were of secondary importance.

The extent of the annual Nez Perce harvest of aquatic foods can be best appreciated by quotes from on-the-spot observers such as the missionary Spalding. For example, during his first years among the Nez Percés, Spalding (Drury 1936: 167) noted that on one day when he visited a fishery, they caught

. . . 202 large salmon weighing from 10 to 25 lbs. . . There were probably as many taken at 50 other stations [that day] in the Nez Perce country. . . . These fisheries will always be of great importance to this mission [Lapwai].

Mrs. Smith (Drury 1963, III: 120), wife of the missionary Asa Bowen Smith, who resided at Kamiah in Nez Perce territory (see Fig. 2) during the late 1830's, observed that, "Here also is their salmon fishery. With their fish weir they may catch hundreds every night." While on an outing with the Nez Percés in the Wallowa Valley, Spalding recorded 300 salmon taken on July 25, 1839 and another 600 to 700 on July 27, 1839 (Drury 1958: 270-72).

That such daily catches were typical of the region is clear from Mrs. Elkanah Walker's description of fishing among the neighboring Spokane (see Fig. 1) in June of 1839 (Drury 1963, II: 158). She says:

At first a barrier [weir] was constructed near some falls, ten miles from this place. . . . At that place salmon were taken only during high water, and then not in great quantities as the barrier extended only a part of the way across the river. . . . As the water fell another barrier was built farther down, and extended across the entire river; and when completed men, women, and children made a general move to the place. If I judged correctly I saw there at one time near one thousand persons and the number rapidly increasing. From four to eight hundred salmon were taken in a day, weighing variously from ten to forty pounds apiece.

On other occasions the Nez Perce daily catch was given as several hundred, which is the regular figure obtained from elderly informants. During the runs, therefore, it is safe to conclude that the daily Nez Perce catch ranged some 300 to 700 salmon weighing from 10 to 40 lbs. My own research (Walker 1965-67), elaborated by Schwede (1966), indicates that Spalding's estimate of fifty fishing stations for Nez Perce territory also is a minimal figure. Taking the minimal 300 fish per day times the fifty fishing sites, one obtains a figure of 15,000 fish caught per day during the height of the season. Informants estimate that between June and October, there would be from 10 to 20 peak days when the catch would range from 300 to 700 salmon. Again taking the minimum figure of 10 such days, the average annual salmon catch in Nez Perce territory would be approximately 150,000 fish. Also taking their average weight as the minimal 10 lbs., the annual Nez Perce catch of salmon would be 1,500,000 lbs., or 300 lbs. per capita, precisely the figure given by Hewes for the Nez Percés (cf. Table I and Fig. 3). This is derived from a population of 5000, however, and not Mooney's figure of 4000 used by Hewes, since recent research shows this to be a more accurate estimate (Walker and Leonhardy n.d.). Therefore, the Hewes estimate of the average, annual Nez Perce salmon harvest must be taken as an absolute minimum. It was probably

a good deal larger (cf. Fig. 3). Given the size of this catch and its consequent importance in the Nez Perce diet, it is not difficult to understand why downward fluctuations in the size of runs were critical. As we have seen for the Plateau generally, such fluctuations were one of the primary reasons for Nez Perce fishing in other parts of the Plateau as well as for other Plateau groups fishing in Nez Perce streams. As we have seen, also, such normal fluctuations were one of the primary stimulants of trade and travel in the aboriginal Plateau. Accumulating evidence suggests that this is a very ancient pattern, long antedating the appearance of the horse.

My ethnographic research (Walker 1965-67) also shows that Nez Perce fishing techniques were typical of the Plateau. Construction of weirs and traps (see Figs. 3 and 4) involved large-scale undertakings, and required cooperation among whole villages. Occasionally several villages would join together to construct a weir as in the case of the major weirs on the Middle and North forks of the Clearwater. Of course, these varied according to stream size, the weirs being located on somewhat larger streams than the traps. Weirs and traps rarely survived the high water and had to be rebuilt annually. A large percentage of villages (cf. Schwede 1966) were located in direct association with either a weir, a trap, or at least a good dipping platform.

Dipping platforms were of two types as may be seen in Figs. 6a and 6b. They were either natural projections of the bank or a prepared platform extending out over the water. It was essential that they be over an eddy, for the bag of the dip nets had to flare out upstream in order to net the salmon successfully. In many instances, artificial eddies were produced by sinking logs into the stream as in Fig. 6b. Another dipping platform, still visible in many places on the banks of the Clearwater and Snake rivers may be seen in Fig. 7. These we call fish walls and they were described first by Lewis and Clark (Thwaites 1959, 7: 107) who say,

We proceeded on passed a great number of fishing camps where the Natives fish in the Spring. The stone piled up in roes so that in high water the Sammon lay along the side of the line of rocks while they would gig them.

Fish walls were built at different elevations on the bank in order to adjust to variations in water heights. Spears, leisters and dip nets were used with these platforms as with those seen in Figs. 6a and 6b. Another type of platform, a floating one, may be seen in the canoes abreast technique illustrated in Fig. 8. This was employed where construction of weirs was unfeasible because of the extreme width of the water course. Consequently, Nez Perces living on the lower reaches of the Clearwater and Snake rivers were those most familiar with it. The man standing either dipped or speared, while the man in the rear steered the canoe and bludgeoned the salmon taken by his partner. Yet another use of the canoe in this manner is seen in Fig. 9 where the canoe floated downstream crossways of the stream. This was restricted to single canoe parties not exploiting a heavy run, unlike the use of canoes seen in Fig. 8. Further, this single canoe technique was used at night with spears and torchlight.

Aboriginal Nez Perce fishing implements also closely resembled fishing implements of other groups in the Plateau. Most of them may be grouped under nets, spears, and hooks. As may be seen in Figs. 10 and 11, Nez Perce dip nets were both single and double handled, the latter form being by far the most common. A dip net's length depended primarily on the height of the

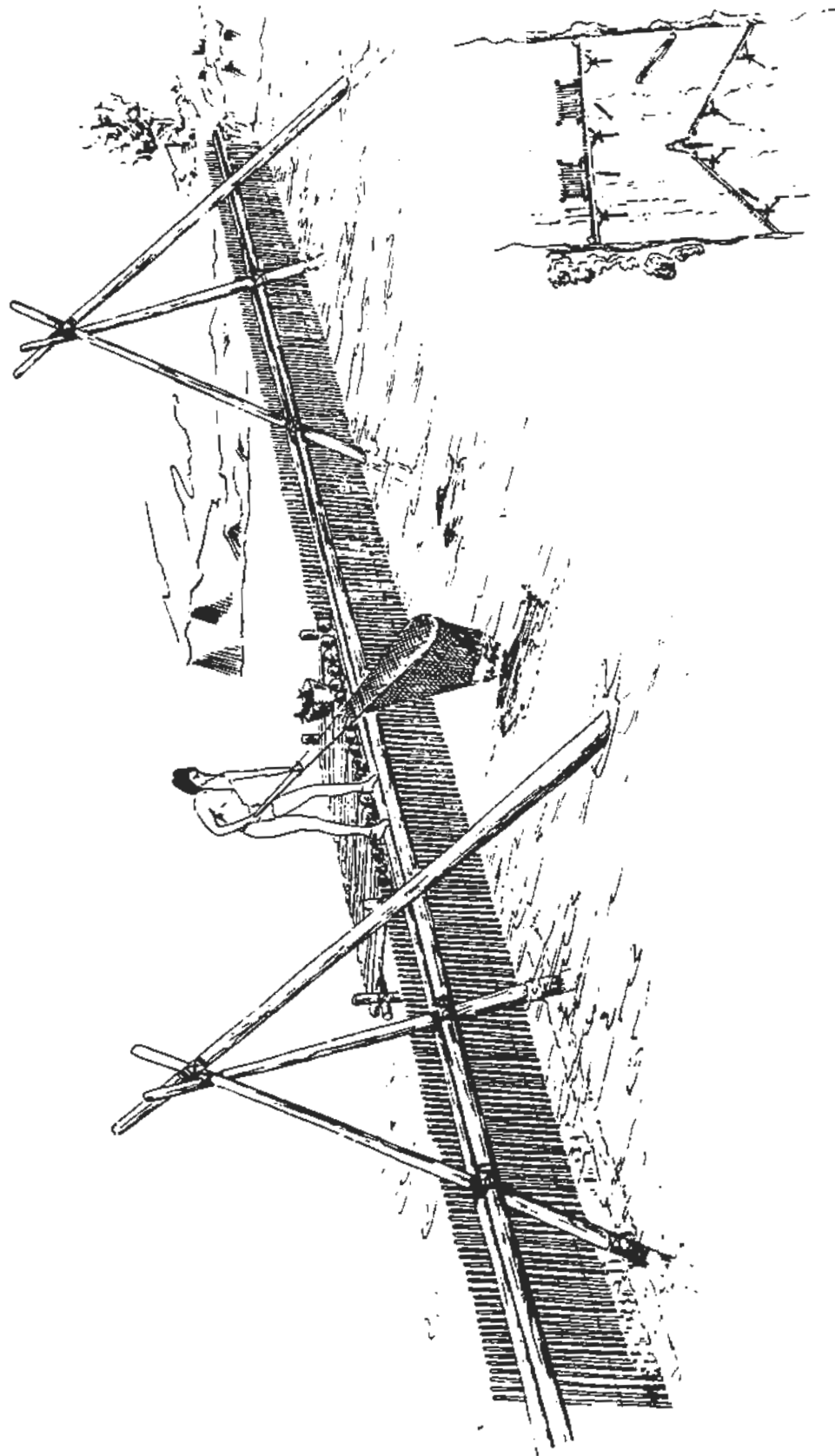


Fig. 4. Nez Perce Double Weir

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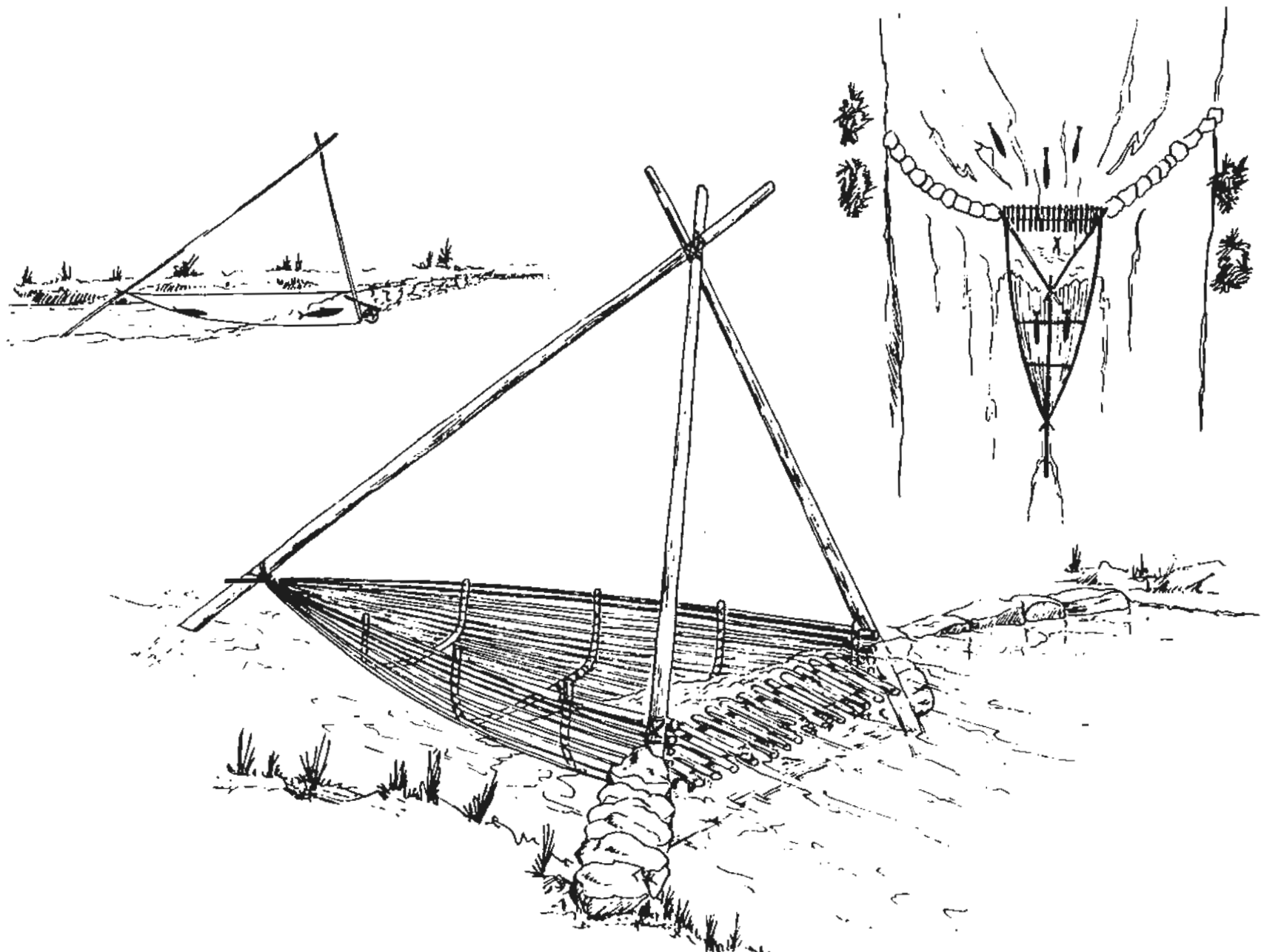
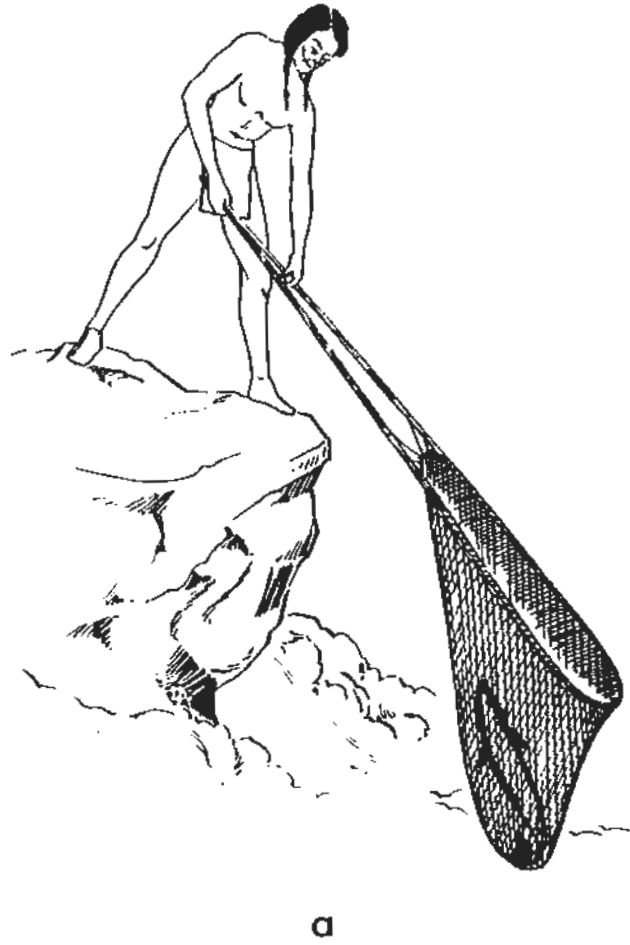
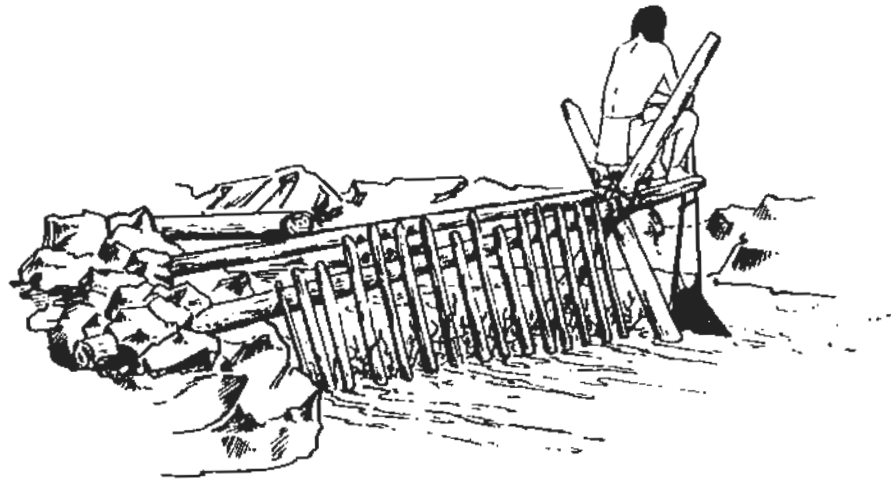


Fig. 5. Nez Perce Fall Trap

Fig. 5. Nez Perce Fall Trap



a



b

Fig. 6. Nez Perce Dipping Platforms



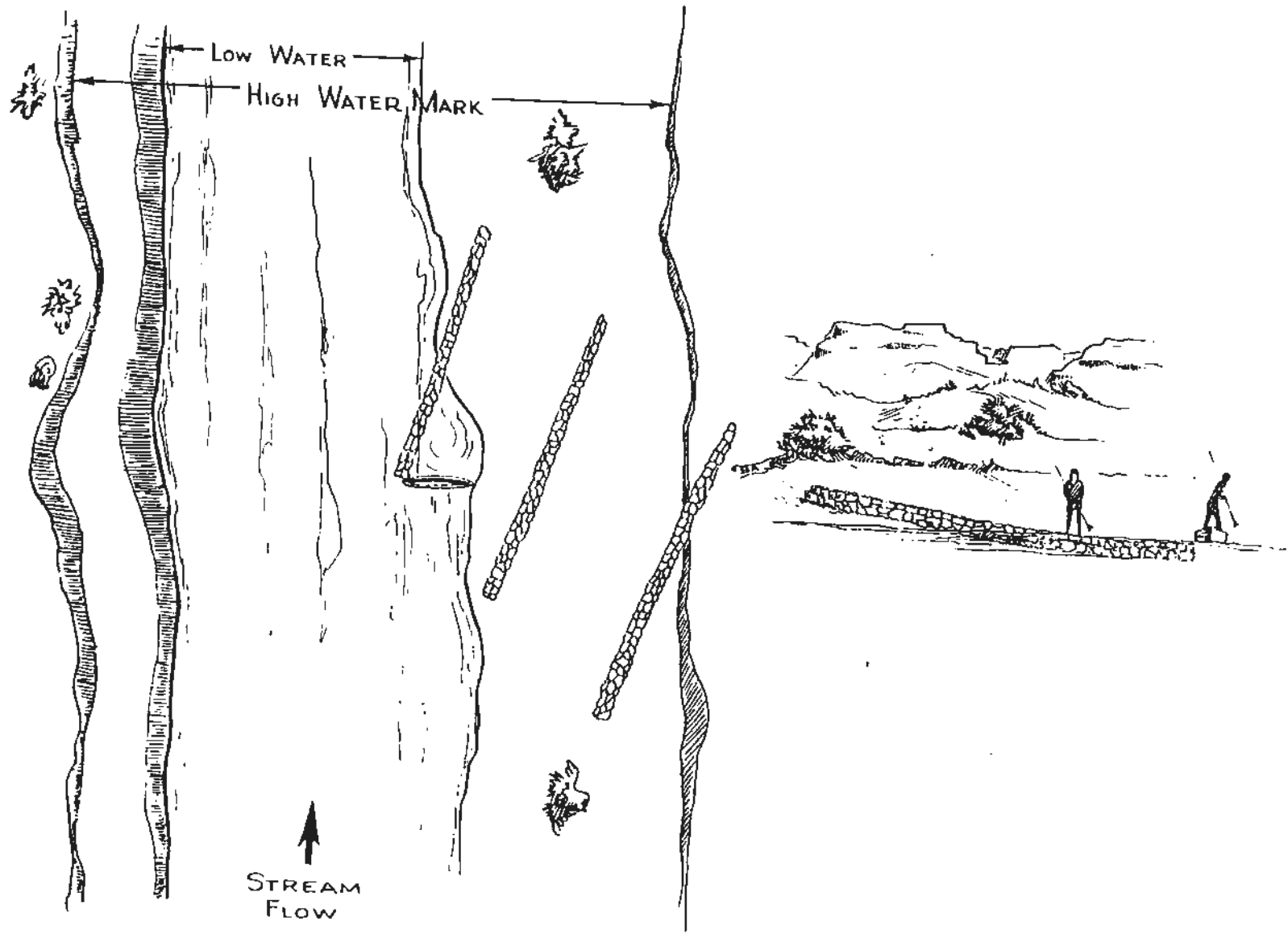


Fig. 7. Nez Perce Fish Walls

Fig. 7. Nez Perce Fish Walls

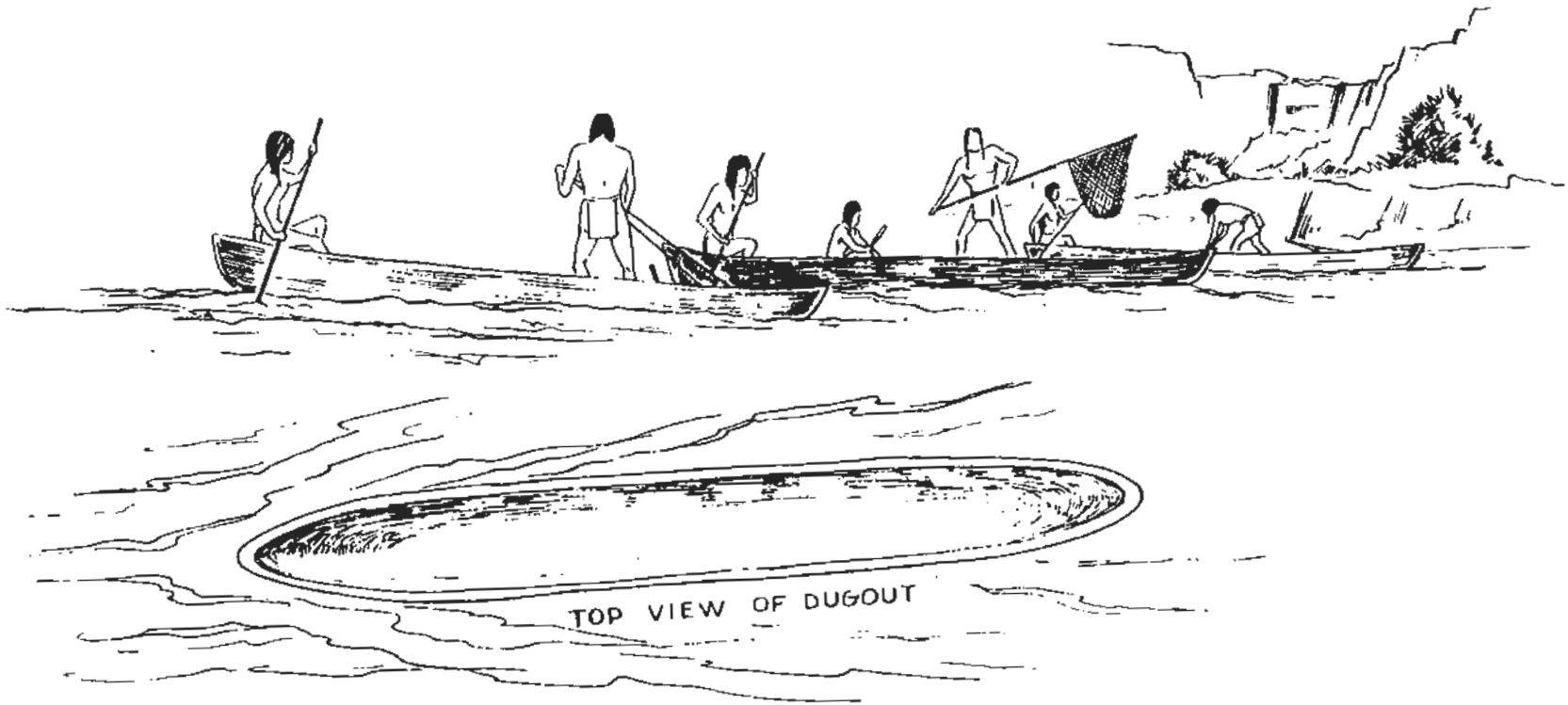


Fig. 8. Nez Perce Multiple Canoe Fishing During Fish Runs

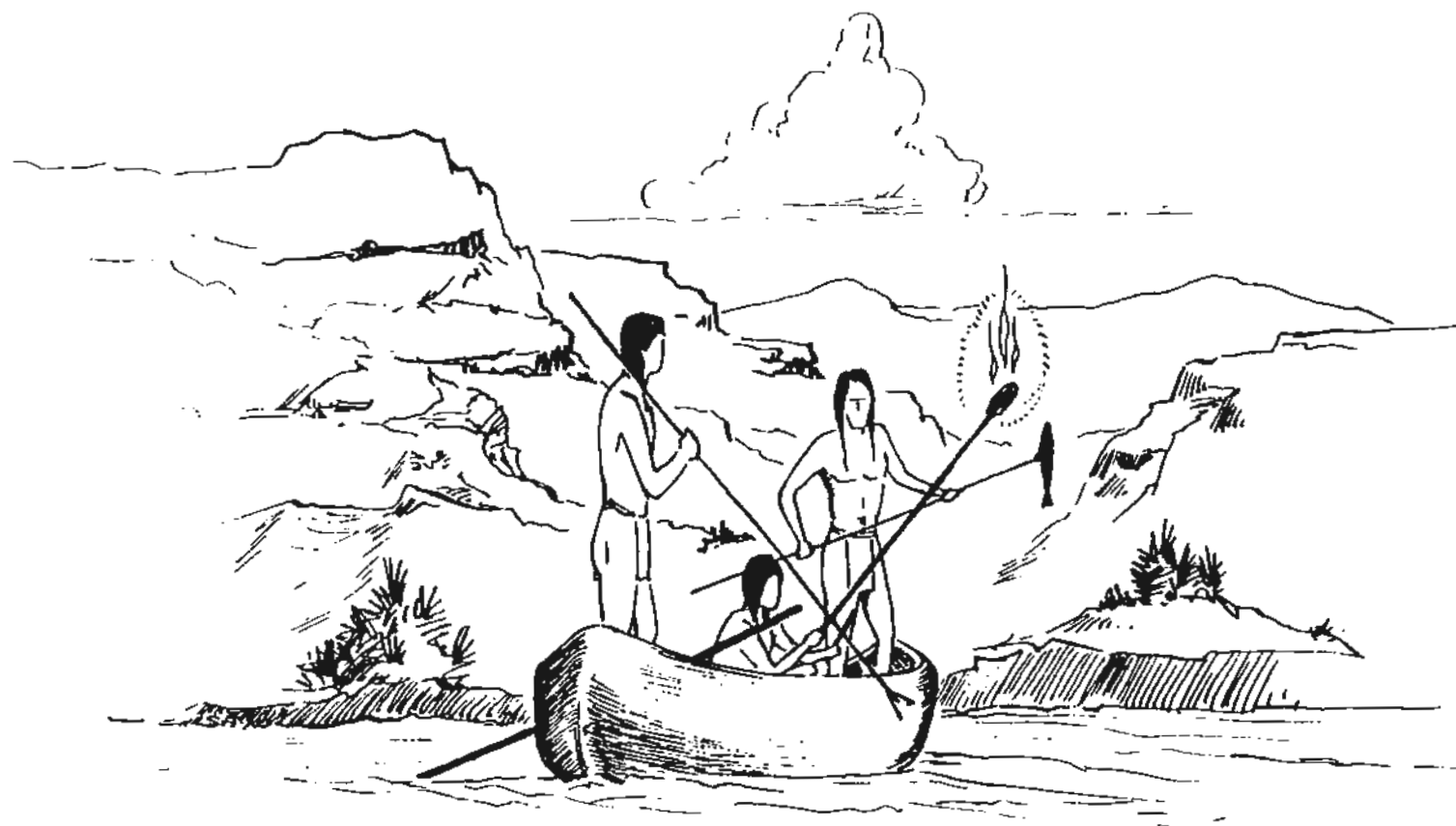


Fig. 9. Nez Perce Torchlight Fishing by Canoe

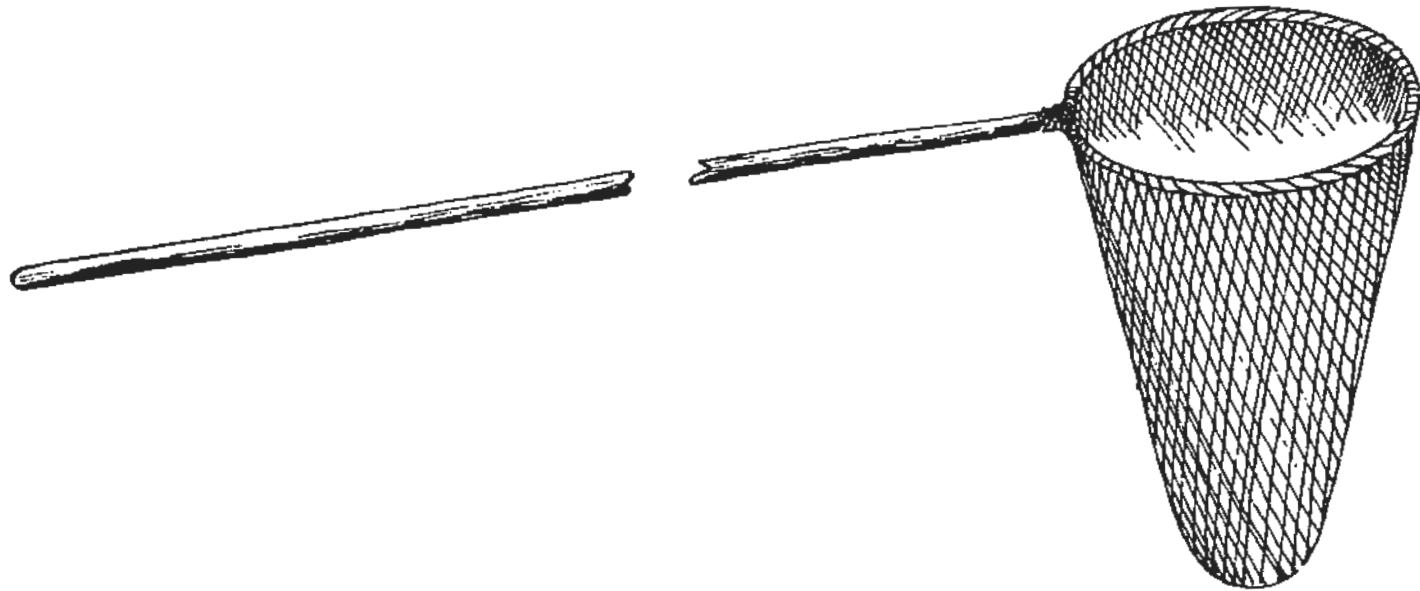


Fig. 10. Nez Perce Single Handled Dip Net

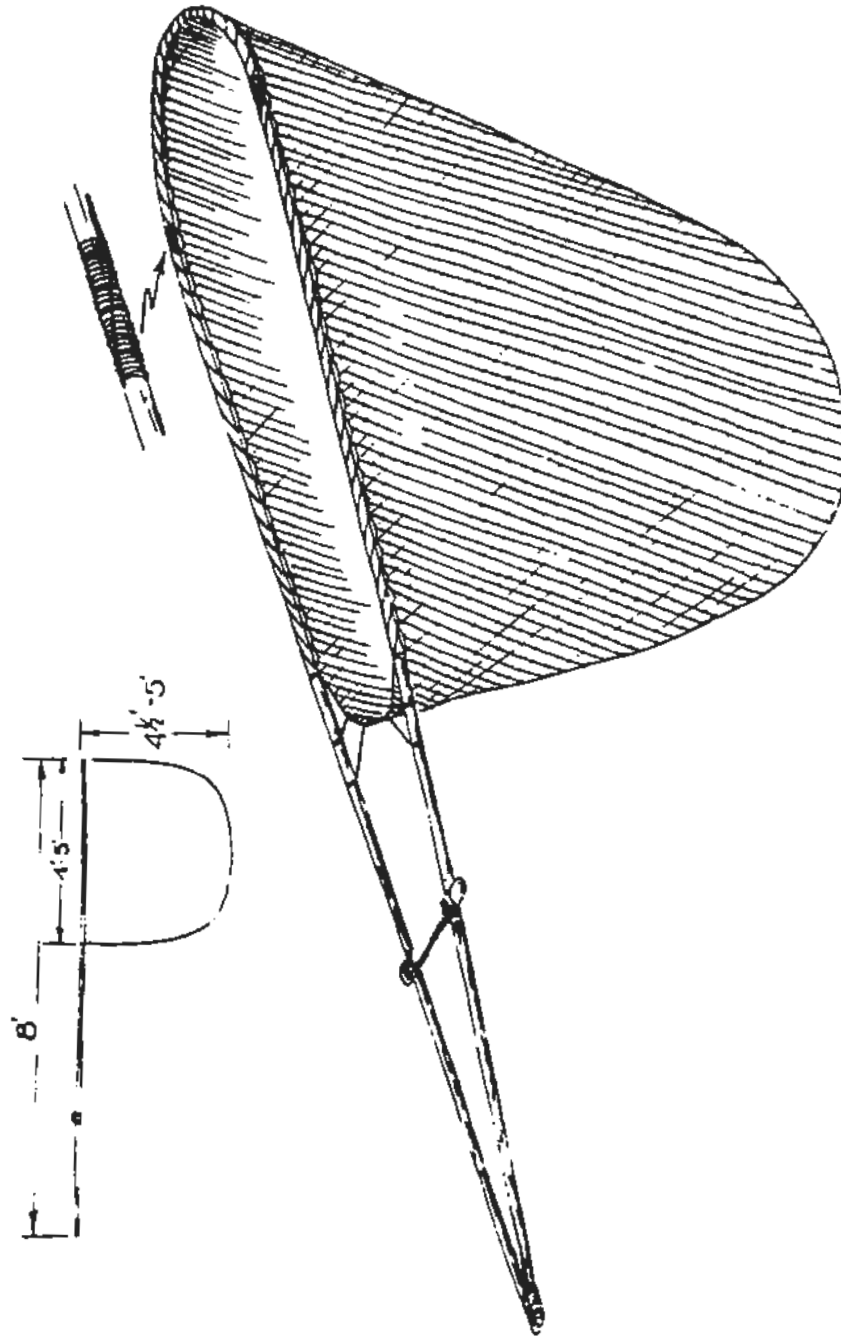


Fig. 11. Nez Perce Double Handled Dip Net

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dipping platform above the water's surface. The size of the hoop as well as the net mesh were determined by the type of fish to be taken. For example, chinook required a large hoop and net gauge, whereas eels took a smaller hoop with very small gauged net. Manufacture of dip nets took much time and required great skill.

The Nez Perces also employed a seine in the manner depicted in Fig. 12. This was used at the mouths of tributary streams as well as in pools. However, it is not clear at present if the Nez Perces employed the gill net principle in any of their fishing apparatus, but they certainly had ample opportunity to know of the principle from downriver peoples who employed it aboriginally.

Nez Perce fish spears were of two principal types, a single toggle harpoon device and a leister. The harpoon seen in Fig. 13 was used to pierce the salmon after which the harpoon head became detached, remaining in the flesh. The harpooned salmon then was hauled in by the attached line. A detachable head largely eliminates the possibility of the salmon twisting free. Were it to remain attached to the shaft, it would be sufficiently resistant for the salmon to twist free. The three-pointed leister seen in Fig. 14b was a particularly popular device for taking salmon and other fish. As may be seen, the construction permits its use along rocky bottoms with little danger of breaking the point or barbs. In some instances spearing sites would be improved by lining the stream bottom with light-colored stones to enhance visibility. Unlike the single toggle harpoon, however, this implement was not thrown, and informants say that they measured up to 15 feet or more where dipping platforms were well above the water line. The more fragile implement seen in Fig. 14e was for smaller fish like trout, and often was used by persons standing in the water.

The Nez Perces also developed a long-handled gaff, the hook end of which may be seen in Fig. 13a. During aboriginal times, the hook was made of antler, but was replaced by iron in the first third of the 19th century. Antler was preferred over bone for its superior flexibility. Informants suggest that bone is brittle and breaks easily under the pressure of gaffing a large fish. Like the harpoon toggle, this hook was detachable and used with a line in order to avoid having the fish twist free. It was used most frequently around the mouths of smaller streams and required a deft touch to locate and successfully gaff the fish resting in secluded nooks and crannies.

Although all of the foregoing fishing implements were used by males, women and boys used the remaining two Nez Perce fishing implements, the horse hair sniggle and the gorge. The sniggle seen in Fig. 14d was made of horse hair and stuffed with bait. When fish bit it, their teeth became ensnared in the hair, and the fish could then be jerked quickly from the water. The bone, or in rare instances, stone gorge seen in Fig. 14c varied considerably in size and use. A smaller version was used by women and boys to take fish like trout, whereas a larger version with eel as bait was employed for sturgeon. So far as is known this was the only way Nez Perces caught sturgeon, though they regarded it as a delicacy.

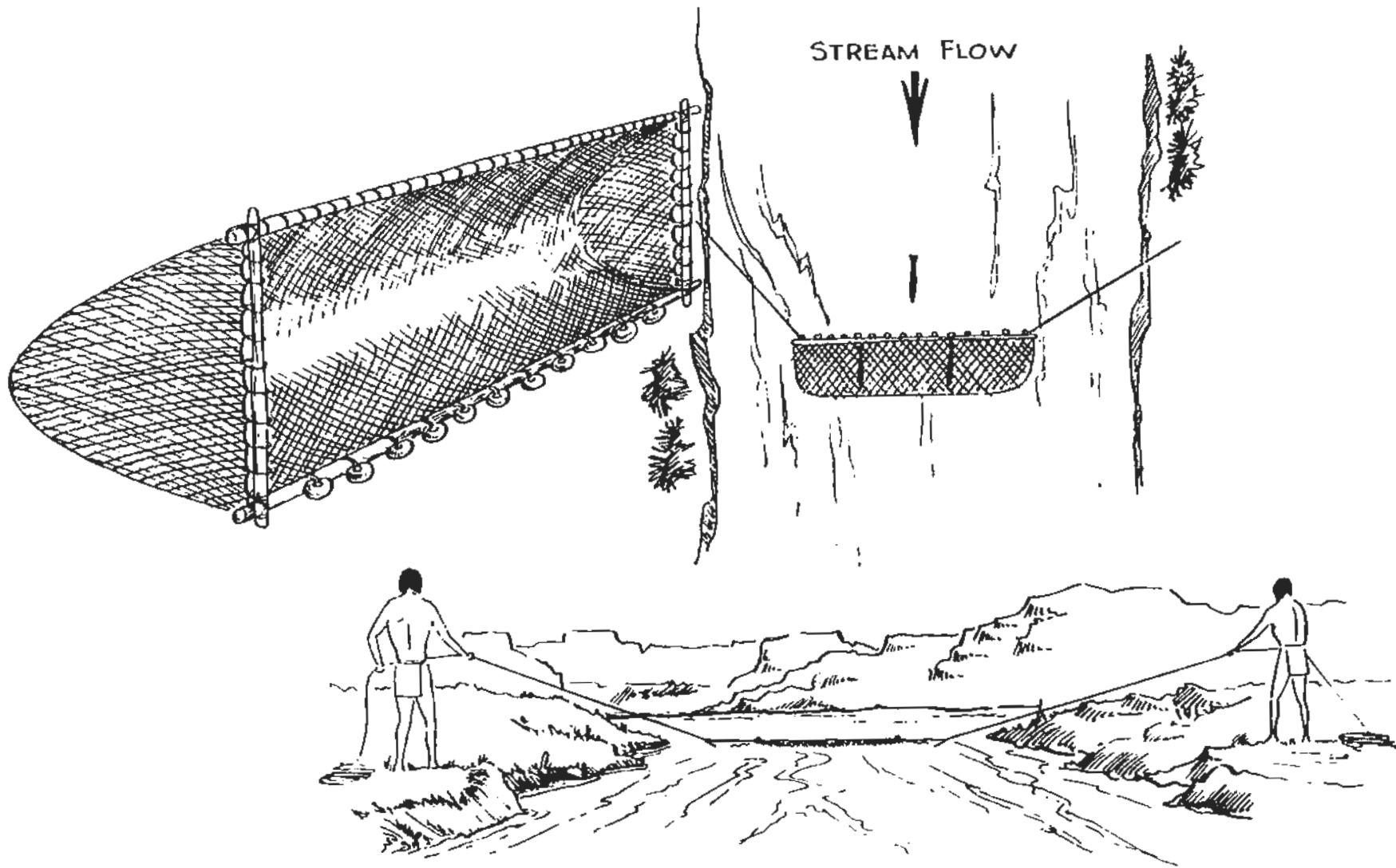


Fig. 12. Nez Perce Seine

Fig. 12. Nez-Perce Seine



Fig. 13. Nez Perce Single Toggle Harpoon



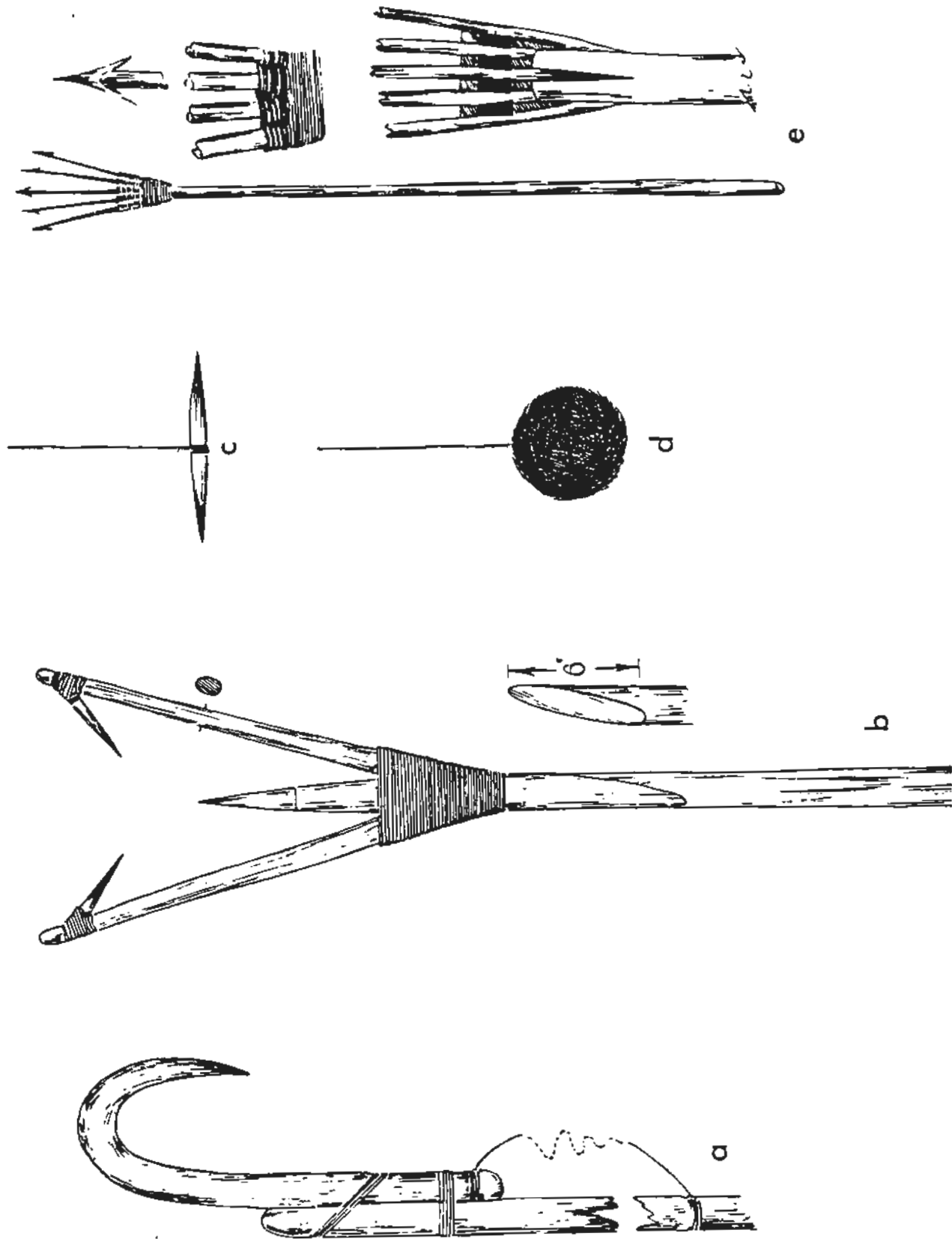


Fig. 14. Nez Perce Fishing Implements

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## SUMMARY AND CONCLUSIONS

In conclusion, it is clear that the aboriginal Plateau may be viewed as a single social and economic system. The ethnic groups of the region were unified by common exploitation of aquatic foods concentrated in a single, major river system. Second, the peoples of the Plateau were unusually dependent on aquatic foods primarily because of their great abundance. Both published and unpublished data indicate that at least a fifty per cent dependence was characteristic for aboriginal groups in most of the region. Third, because of the seasonally fluctuating nature of this basic resource, substantial--though highly patterned--population movement was typical of the region. Variations in time of arrival of the salmon runs, in degree of physical concentration of the fish, and in overall abundance of the runs (particularly in the upper reaches of the Columbian tributaries) were the principal stimulants of this movement by aboriginal groups. However, travel and trade in the region also were encouraged by great ecological diversity. A substantial number of items customarily were traded over the length and breadth of the Plateau, and the main trade routes extended out even into adjacent culture areas such as the Northwest Coast, Plains and Great Basin.

Specific cultural patterns facilitating this movement and exchange throughout the region have been described. For example, cross-utilization of resources among the various ethnic groups of the Plateau was facilitated by the institution of "stewardship." As described by Drucker for the Northwest Coast and applied by Suphan in the central Plateau, this resembles Ray's idea of the host-guest relationship (1939: 15-17). A pro forma permission to use resources usually was secured under this arrangement, but it clearly did not involve any notions of exclusive ownership. Further, any resource areas not being exploited at a particular time were open to all friendly groups on what can well be called a usufruct basis, i. e., they belonged to those using them only so long as they were actively exploiting them. Two other cultural patterns, which greatly aided the wide ranging cross-utilization of resources typical of the aboriginal Plateau, were trading partnerships and interethnic marriages. Both were practiced systematically and were of primary importance in implementing general exchange. Possibly as a result of the mutual need for cross-utilization of resource areas, notions of territoriality and trespass were only weakly developed. Thus, the lack of strong feelings of territoriality, combined with the rudimentary political organization of most Plateau people, clearly encouraged interethnic movement, trade and mutual cross-exploitation of resources.

Prior to Euroamerican penetration of their aboriginal territory, the Nez Percés possessed overwhelming Plateau affinities. They were integrally tied to most ethnic groups in the region through trading partnerships, established trade dependencies of various kinds, and systematic intermarriage. Further, they were the military masters of the region and regularly encountered by early explorers engaged in trading, fishing, trapping, raiding, and sundry other activities throughout the area. Particularly expressive of their Plateau cultural affinity was their complex fishing technology. This in turn was related to a heavy reliance on aquatic foods indicated clearly in the journals of the early explorers, missionaries, and government agents as well as in our own ethnographic research; at least a fifty per cent reliance seems justified from the evidence. Further, their annual cycle of movement within their home territory and throughout the Plateau culture area as a whole was closely adjusted to the cycle of fish abundance. When moving down the Columbia in

the early spring and back up to their territory as the season progressed, the Nez Perces also engaged in substantial trading. Their full knowledge of down-river peoples, fisheries, and geographic features reflects the intensity of mutual cross-exploitation of resources that was typical of the aboriginal Plateau.

DOCUM

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1958

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1930

AINSLIE, GE  
1876

ALLEN, A.  
1850

ALVORD, B  
1855-  
1860

AMERICAN  
1966

ANASTASIC  
1955

ANONYMOU  
1900

ANONYMOU  
1907

ANONYMOU  
1911

ANONYMO  
1916

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NORTHWEST ANTHROPOLOGICAL RESEARCH NOTES

VOLUME 4

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THE RELATIONSHIP OF ABORIGINAL NEZ PERCE SETTLEMENT PATTERNS TO  
PHYSICAL ENVIRONMENT AND TO GENERALIZED DISTRIBUTION OF FOOD RESOURCES

MADGE L. SCHWEDE

Introduction

Aboriginal Nez Perce settlement patterns developed in a region of great ecological diversity. The area extends eastward from the semi-arid steppe lands of Washington and Oregon, across the grassland-forest ecotone, to the alpine meadows of the Bitterroot Mountain Range in Idaho. In this paper, my goal is to determine the relationships between aboriginal Nez Perce settlements and several environmental variables: elevation; size of related streams; and immediate availability of fish, game, and root resources.

Aboriginal Nez Perce settlements fall into two broad types: village, tew?yeni-kes; and camp, wi-se-s. Walker (n.d.) defines the Nez Perce village as a group of people living perennially in a named geographical area they are thought to own through a vested interest in the area, regardless of temporary absence by village members. A camp is a group of people living on a seasonal basis in a named geographical area they are thought to own by usufruct. Ownership here consists not of vested rights but rather of use-rights, applicable only when a particular group is occupying an area. Except for a few large summer gatherings traditionally held at camps in the uplands, the average camp population probably was at most one-half the average village population which was 30-40 individuals (Walker n.d.; Walker and Leonhardy n.d.).

The master list of villages and camps used in this study (Schwede 1966) has been compiled from the following sources: Chalfant (n.d.), Curtis (1911), Fletcher (n.d.), Ray (1962), Spinden (1908), Thwaites (1904-05), and Walker (n.d.). The environmental data are drawn from a variety of sources. The U. S. Corps of Engineers, U. S. Geological Survey, and Jepson Work Map Relief Series maps comprise the cartographic resources for the study. A modified version of the Horton (1945) system was used to order streams according to size. The geographic locations of the customarily exploited food resources were drawn from Chalfant (n.d.), Ray (1962), Walker (n.d.), and informants. Wherever possible ethnohistorical research is combined with corroborating ethnographic field work.

The ethnographic sources used here rarely agree entirely with respect to village and camp locations. Parallel research by Walker (n.d.) indicates that in the Nez Perce case, early ethnographers relied unduly on informants who were unfamiliar with many settlement locations. To avoid such problems, it was determined which geographical areas were known best by particular informants who were then used only in such areas and not for the entirety of Nez Perce territory. By cross-checking one informant against another, it was possible to eliminate many conflicts in the construction of the master list of 295 settlements (Schwede 1966). This device also helped clarify the

locations of several resource areas. Finally, it should be cautioned that although the total number of villages recorded is probably close to the aboriginal number, the original number of camps cannot be ascertained. Villages, being located in river valleys where the contemporary Nez Perce population is concentrated, are much more likely to be remembered by present informants than are the many upland camps, most of which are unused at the present time. Furthermore, some earlier ethnographers in the region concentrated on recording villages and ignored the camps. Thus it has been possible to use these earlier listings as memory aids for informants primarily when dealing with villages. Nevertheless, it may be assumed that the master list contains a representative sample of camps in use prior to the historical period.

Substantial ethnographic and ethnohistorical information was gathered on factors affecting settlement location. When questioned concerning reasons for village location, informants stated that temperatures were warmer in the lowlands during the winter than in the cold and snowy uplands. Some informants gave additional reasons such as the ready availability of driftwood, fish, and game; the last being driven down from the uplands by cold temperatures and snow. A few informants made the observation that villages were often located at important points on main travel routes, either where trails crossed or where important streams met. When canoe travel was more prevalent, confluences were important as intersections in main travel routes. The use of canoes and more recently horses to transport food resources long distances permitted selection of village locations more in terms of such criteria as availability of driftwood, protection from winds, and proximity to stream confluences. Camp site locations, however, relate more closely to resource availability. Good fishing and ready accessibility to rich root fields and summer hunting areas are the principal reasons given by informants for the specific locations of camps in the uplands.

Informants also provided vital interpretive information on the aboriginal annual cycle of economic activities. Fish were taken the year round, but the majority were caught during the spring and fall runs. On the other hand, roots were taken during the late spring, summer, and early fall primarily in the upland areas. Winter was a time of hunting, particularly when big game was forced down from the uplands by cooler temperatures and heavy snows. Other less important food resources exploited seasonally were berries, nuts, birds, a few seeds, and Plains bison. Some informants believed that accessibility to main routes of travel influenced the location of certain camps, especially camps where large, intertribal gatherings took place during the summer.

### Analysis

Three hypotheses are proposed:

1. Village settlements tend to be established at lower elevations, whereas camp settlements may be established at higher elevations.
2. Villages tend to be established near large tributaries, whereas camps tend to be more evenly distributed among the spectrum of stream sizes.
3. The frequency of village and camp settlements in a given region is

positively correlated with the number and type of food resources in that region.

In testing the first hypothesis the elevation given for each settlement is an average of the elevations of the two contour intervals between which the settlement is located. Elevations are determined for 114 villages and 134 camps or 84% of all known settlements. The remaining 16% cannot be located or cannot be classified as to type of settlement. The elevation encompassed by Nez Perce territory ranges from 300 feet, the lowest point, to about 10,000 feet, the highest point. In Table 1 it is seen that of the 114 villages over half (64%) are below 1,000 feet, 98% are below 2,500 feet, and all are located below 4,000 feet. Of the camps for which elevation has been determined, less than one-third (30%) are below 1,000 feet, less than one-half (46%) are below 2,500 feet, and the majority (54%) are located between 2,500 and 6,500 feet. Thus, village settlements are found at relatively lower elevations, while most camps occur at relatively higher elevations; camp clusters appear at two widely separated points -- between 500 feet and 2,000 feet and between 2,500 feet and 3,500 feet elevation.

TABLE 1

## RELATIONSHIP BETWEEN VILLAGE AND CAMP SETTLEMENTS AND ELEVATION

Elevation	Villages		Camps	
	Number	Per Cent	Number	Per cent
0-500	4	3	1	1
500-1000	70	61	10	7
1000-1500	33	29	30	22
1500-2000	4	3	14	10
2000-2500	2	2	8	6
2500-3000	0	0	20	15
3000-3500	0	0	22	16
3500-4000	1	1	6	4
4000-4500	0	0	8	6
4500-5000	0	0	5	4
5000-5500	0	0	5	4
5500-6000	0	0	2	1
6000-6500	0	0	3	2

Total settlements used in this hypothesis were 114 villages and 134 camps.

Settlements considered to be in association with river size are within a one mile radius of the mouth of a tributary. Because 111 settlements are not so related, only 184 of the 259 settlements are used in testing the second hypothesis, that villages tend to be established at confluences of large and middle-sized tributaries, whereas camps tend to be established at the confluences of large and small-sized tributaries. As may be seen in Table 2,

97 villages and 87 camps are used in testing the second hypothesis. Beginning with the smallest streams as the first order, all water courses in Nez Perce territory are classified according to their sizes which range up to the ninth order, i.e., the Snake River.

It is apparent from Table 2 that camps are more widely dispersed throughout the spectrum of different sized streams than are villages. Whereas 82% of the villages are concentrated near 7th and 8th order tributaries, only 49% of the camps are so located. A large portion of the remaining camps, 37%, cluster about 4th and 5th order tributaries. The remaining 14% of the camps are associated with 2nd, 3rd, 6th and 9th order streams. The 17% of villages not located on 7th and 8th order streams are distributed through 3rd, 4th, 5th, and 6th order streams. Thus, it seems safe to conclude that villages are associated with relatively larger tributaries and camps with both large and medium-sized ones.

TABLE 2

## RELATIONSHIP BETWEEN VILLAGE AND CAMP LOCATIONS AND SIZE OF TRIBUTARY

River Size	Villages		Camps	
	Number	Per Cent	Number	Per Cent
1	0	0	0	0
2	0	0	3	3
3	4	4	6	6
4	4	4	9	10
5	8	8	21	27
6	1	1	3	3
7	38	39	33	37
8	42	43	11	12
9	0	0	1	1
TOTAL	97		87	

The final hypothesis tested, that the frequency of village and camp settlements in a given region is positively correlated with the number and type of food resources in that region requires preliminary comment. Eighty-seven per cent of the total aboriginal area (containing 500 of the 590 six-mile square units used in the comparison) is employed in the test. This reduction was necessitated by the absence of reliable data on resource exploitation in that part of aboriginal Nez Perce territory contained in the present states of Washington and Oregon. The area used contains 165 settlements whose precise location and type are known, or slightly more than half of all known Nez Perce settlements. The relationship of resource availability to selection of a settlement location cannot be a simple one. That they are related, however, emerges clearly when one views the results contained in Table 3.

TABLE 3

## RESOURCE AVAILABILITY BY SIX-MILE SQUARES

Six-Mile Squares	Villages		Camps	
	Number	Per Cent	Number	Per Cent
With an Ethnographic Record of Food Exploitation (46)	74	87	67	82
Type of Food Exploitation Not Ethnographically Recorded (464)	11	13	13	18
TOTAL	85	100	80	100

Of the 85 villages contained in the area surveyed, 74 are in the 46 squares containing ethnographically reported exploitation of fish, game, or roots. Likewise, 67 of the 80 camps contained in the area surveyed are located in the 46 squares containing known exploitation of fish, game, or roots. Second, it is clear from Table 3 that aboriginal Nez Perce were highly selective in the fish, game, and roots they exploited in their territory; only 46 (or 9%) of the 500 squares investigated contained ethnographically verified, regular, annual exploitation of food resources.

There is, moreover, a relationship between the number of food resources in an area and the type of settlement or settlements there. It is clear from Table 4 that villages tend to be found most often in association with fishing sites rather than root gathering areas, and at least often with traditional hunting areas. On the other hand, while still strongly associated with fishing sites, camps tend more frequently to be found in association with root gathering and hunting areas, again reflecting their highland location. Fishing, therefore, tends to be most determinative of settlement locations, root fields less so, and game areas least of all despite the fact that camps are associated more often with roots and game than are villages.

The relationship between number of resources and number of settlements is obvious but also complex. Table 4 suggests that the number of villages tends to increase when one-resource areas are compared with two-resource areas. The number of camps actually decreases when one-resource areas are compared with two-resource areas, but dramatically increases in areas with three food resources. Furthermore, no villages are found in areas containing three food resources.

#### Conclusion

Briefly restated, the findings are as follows:

1. Nez Perce settlements do cluster at certain elevations -- villages

primarily between 500 and 1,500 feet, and camps in two principal clusters; one group between 500 and 2,000 and another between 2,500 and 3,500 feet elevation. Furthermore, camps tend to be more dispersed throughout the total range of elevation than are villages.

TABLE 4  
RELATIONSHIP BETWEEN VILLAGE AND CAMP SETTLEMENTS  
AND TYPES OF RESOURCE AVAILABILITY

Squares	Villages		Camps	
	Number	Per Cent	Number	Per Cent
<u>With one food resource</u>				
fish	25	75	19	52
roots	8	25	13	36
game	0	--	4	12
Sub-total <u>19</u>	<u>33</u>	<u>100</u>	<u>36</u>	<u>100</u>
<u>With two food resources</u>				
fish/roots	29	70	7	46
fish/game	12	30	7	46
roots/game	0	--	1	8
Sub-total <u>19</u>	<u>41</u>	<u>100</u>	<u>15</u>	<u>100</u>
<u>With three food resources</u>				
fish/game/roots	0	--	16	100
Sub-total <u>8</u>	<u>0</u>	<u>--</u>	<u>16</u>	<u>100</u>
TOTAL	74		67	

2. A majority of all aboriginal Nez Perce settlements cluster about certain types of stream confluences. A large number are associated with confluences with 7th and 8th order tributaries. However, even though half of all camps considered are in association with confluences with 7th and 8th order tributaries, a substantial number of camps are associated with 4th and 5th order tributaries. Furthermore, camps are more dispersed throughout the range of different sized confluences than are villages.

3. Nez Perce settlements cluster in areas containing customarily exploited resources, but they correlate with different resources in complex ways. Both villages and camps are most often associated with fishing sites, less often with root gathering areas, and least often with hunting areas; but villages tend to be more often associated with fishing sites. Villages are found more frequently in those areas containing two resources but never in areas with three resources.

It is clear that the Nez Perce were extremely selective in using their



environment if their choice of village and camp sites is any indication. In fact, they used only 9% of the total area considered in this study on a regular, annual basis. This suggests the Nez Perce were not using all the resources available to them in their environment. More comparative study of Plateau settlement patterns is needed to clarify the intricate ecological and cultural relationships which must have ordered the lives of the Nez Perce.

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women settled on the streams. These Canadian French were Roman Catholics, and their half-breed descendants who still adhere to that faith are spoken of by the Nez Perce as *Ah-ly-ma*, though the name is not applied to Roman Catholics who are full-bloods.

21. *Is-kin-'ne-wa-'wee*. From *is-kit*, a trail, [and] *ne-wa'wee*, following the creek [Couse Creek]. The village stood where the trail leading to the Blue Mountains followed the creek. This was formerly a large village, but its inhabitants were destroyed through the action of one of its prominent men. The story of the event is current through the tribe, and is used to point a moral. *Is-kin'ne-wy'ma* was an ambitious man, who desired to make himself great. He boasted of his strength and valor, and sought to lead war parties. He rallied his village by crying: "The *Pe-ku'-nin-mo* are not fierce, but I am fierce!" He sent messengers to the villages of his own group, and even to other villages and tribes, bidding the warriors join him in a great expedition against the southern Indians. At last he set forth with more than six hundred warriors, among whom were men from the friendly Walla-walla [Wallawalla], Palouse [Palus], and other tribes. They took the trail to the west and then turned south, where they met the Bannocks in battle. In the face of danger *Is-kin-ne-wy-'ma* showed neither valor nor leadership and suffered a terrible defeat. Not one of the great company which went forth with him was ever heard of again. The name of this would-be warrior became a tribal synonym for boasting and deception. Parents would check a braggart youth with the admonition: "Don't be like *Is-kin-ne-wy-'ma*!" [Several sources have documented the existence of this village. Schwede confirmed the name but stated that it referred to many trails; she was unable to locate it (1966:No. 194) and placed a different village in the vicinity of Couse Creek (1966:No. 181). Shawley placed a trail along Couse Creek and an unnamed camp at its mouth (1984:Map 10). Paul also placed a site at the mouth of Couse Creek (1987:No. 192)].

### Group 5

The name of this group has been lost. So also [has] its independent organization, as it had no "leader" village. The people subsisted almost wholly on fish; but if they desired to go and hunt to secure meat, they were obliged to ask permission of No. 18, the "leader" village of Group 4. The people of Group 5 were not numerous, nor were their villages important. They were situated in rather a barren region. The group comprised Nos. 22, 22a, 23, [and] 24 -- all located on the Snake River. The reservation established by the Treaty of 1863 did not cover these villages, and consequently they had to be abandoned. The people removed to the reservation, and there changed their mode of life.

22, 22a. *Il-lar-kart-'part-poo*. Both villages bore the one name, and were in fact one village. No. 22 was occupied in winter, as there were woods near by; No. 22a was occupied in summer. High cliffs rose on both sides of the villages, and the heat caused by the reflection of the sun on the rocks gave rise to the name of the place; *il-lar-kai'-wit* meaning the bright light that accompanies summer heat. The region hereabouts was barren. The Indians said: "The white people do not like this place, as nothing will grow here." Consequently the natives were not intruded upon. To this village those who were not in sympathy with the Christian element in the tribe resorted in the winter to hold their old-time practices, as they were here out of reach of the progressive Indians, the missionaries, and the teachers [Schwede confirmed that this village was located on both sides of the river and stated that its name referred to the sunny side (Schwede 1966:No. 182). Paul placed this village more generally at Buffalo Eddy (Paul 1987:No. 47).

Buffalo Eddy is well known for its rock art and is administered by the National Park Service as part of the Spalding unit of Nez Perce National Historical Park].

23. *Te-lee'-wah-we*. *Te-lee*, from *te-lil*, a large immovable rock; *wah-we*, from *e-you-wah-we*, mouth. Such a rock stood where the creek on which this village was situated emptied into the Snake River. The settlement was large on account of the fine salmon fishing at this place [Schwede stated that the name referred to a galloping place for horses but she was unable to locate it (Schwede 1966:No. 193)].

24. *Hah-wah-nah'-heesph-po*. From *Ha-wah-nah*, mosquito. The swarms of this pest infesting the bottomland where this village stood on the Snake River, gave name to the place [Paul confirmed that the name was associated with an abundance of mosquitoes and placed this village above the mouth of Ten Mile Creek on the Washington side above Asotin (Paul 1987:No. 187)].

### Group 6

The name of this group has been lost. The people were warlike and numerous, and claimed to form a distinct group; yet in the quest for food they were under the direction of No. 18, of Group 4. They hunted in the Blue Mountains which lay to the west, when they had obtained permission to do so from No. 18. In all other matters they were under the leadership of No. 28, in their own group. All of Group 6, and five men from No. 29, took part in the Treaty of 1855; and when the Treaty of 1863 was made, the reservation then established did not cover the territory occupied by this group. The villages had, therefore, to be abandoned. This was accomplished peaceably with all except No. 28, which took part in the Joseph War of 1877. This group comprised Nos. 25, 26, 27, 28, [and] 29. No. 28 was the "leader" village in everything except the hunt [The villages in Group 6 extended from the lower part of Hells Canyon past the confluence with the Clearwater River and into the lower Snake River region. This area includes the modern communities of Asotin and Clarkston].

25. *Sahk'som-mo*. This village was situated on a fine lot of bottom-land. [No description of the meaning of the Nez Perce name for this village was provided by Fletcher but it may refer to an osprey or fish hawk (Schwede 1966:No. 177). It was located in the vicinity of Tenmile Rapids on the Snake River on either the west side in Washington (Schwede 1966:No. 177; Shawley 1984:No. 143) or the east side in Idaho (Paul 1987:No. 189)].

26. *Wah-yie'-wa-we*. *Wah-ha*, the name of a creek; *yie-wa-we*, a euphonious adjustment of *eym-wa-we*, mouth. This village lay at the mouth of the creek *Wa-ha* [Ten Mile Creek], in the west bank of the Snake [(Schwede 1966:No. 180)].

27. *Ah'-na-toe-eno*. Situated at the mouth of the *Ah-nah* [Ten Mile Creek], a creek noted for its delightful water. Early in the 19th century this village was composed mainly of women, who were remarkable for their gentleness. Nearly all the men had been killed in battle [Fletcher did not provide a translation for the name of this village. According to other sources, its name may refer to down river (Schwede 1966:No. 178) or to a canyon mouth suddenly encountered (Paul 1987:No. 190)].

28. *Ah-so'-toe-e-no*. In this village lived a noted chief whose family for three generations had been prominent as leaders in the religious mysteries, and also in war and hunting. These chiefs had borne the name *Ah-pos-wah-hyte*. The last of their number was the famous Looking Glass, one of Chief Joseph's most important officers in the war of 1877 [this

village was located in the vicinity of Asotin Creek and extended on both sides of the Snake River (Schwede 1966:No. 173; Paul 1987:No. 141). Archaeologists have documented sites (45-AS-9 and 45-AS-86) in Washington (Sprague 1959) and Idaho (10-NP-151, Sappington 1985). For a summary of the meaning of the village name see Sprague (1959). This village has been severely affected by developments in Asotin, Washington, and Hells Gate State Park in Idaho and has been partly inundated by Lower Granite Reservoir (Gurcke with others 1979)].

29. *Al-pow-nah*. This village, on the west side of the Snake at the mouth of the *Al-pah-hah* [Alpowa Creek], is the last Nez Perce village on that side of the Snake. Here the people were mixed with the Palouse [Palus] Indians, and more than one language was spoken in this village [The name for this well known village refers to a hot or sunny place (Schwede 1966:No. 142). Archaeological excavations were conducted here (45-AS-82) in the early 1970s and these investigations were among the most extensive ever undertaken in the southern Columbia Plateau (Brauner 1976). Block excavations uncovered late prehistoric and protohistoric houses. This site is now almost completely inundated by Lower Granite Reservoir (Gurcke with others 1979:36)].

### Group 7

The name of this group has been lost. The villages lay down the Snake River, and joined those of the friendly Palouse [Palus Indians]. The people lived mainly by fishing, although they hunted to some extent. They were not considered as warlike as the *Pe-ku'-nin-moo* or the *Will-lu-wo*. No. 69 was the "leader" village. When the time arrived for digging camas on the grounds claimed by this group (69a on the map), near the present town of Moscow, Idaho [this village has been well documented (Schwede 1966:No. 110; Shawley 1984:No. 211; Paul 1987:No. 133], messengers were sent by the chief from the "leader" village to all the villages of this group. In three days all the people came and camped together near village No. 69, and then all moved out to the camas ground. When the ground was reached each village camped by itself; there was no camp in common. All the group seems at this time to have been directly under the control of the chief who was of the "leader" village, who kept order, so that there was no confusion or disorderly behavior. *Ky-ky-mas* was the name of their last chief. This group comprised Nos. 66, 67, 68, 69, 70, 71, [and] 72. When the Nez Perce reservation was established, in 1863, the region occupied by these villages was not included, and all were sooner or later abandoned [These were the westernmost Nez Perce villages. These sites were located on the lower Snake River so that all have been affected by Lower Granite and Little Goose reservoirs].

66. *Wit-kee-'sp*. This village took its name from the stream on which it stood, and which here emptied into the Snake River [The name for this village refers to the alder tree (*Alnus* sp.) (Schwede 1966:No. 147; Paul 1987:No. 163). It was located about three miles down river from Alpowa, probably in the vicinity of Steptoe Canyon (Paul 1987:No. 163) although Schwede places it farther downstream (Schwede 1966:No. 147). All recorded sites in this vicinity were inundated by Lower Granite Reservoir (Gurcke with other 1979)].

67. *Toe-ko'h-pe*. From *toe-ko'h*, a sort of cave, or hole, formed by many stones. A number of such places were in the vicinity of this village site. The village had disappeared before the beginning of the last century [Reid and Gallison (1995:262) suggest the caves or holes

may refer to three shallow rockshelters reported by Nelson (1965:6) opposite Wild Goose Island, or to talus pit clusters near Ridpath or opposite Swift Bar].

68. *Yak-e-you-wa-we*. A large village stood, as its name implies, at the mouth of the creek named *Yak*, which here empties into the Snake River [at the mouth of Yakawawa Canyon; the name refers to something wide, possibly the stream (Schwede 1966:No. 150). An archaeological site at this location (45-WT-52) was inundated by Lower Granite Reservoir (Gurcke with others 1979:61)].

69. *Pa-lote-pe*. *Pa-lote*, muddy; *pa-lote-pe*, muddy and slow river. This was the "leader" village of the group. From here orders were issued in reference to the quest for food [This village was located just below Truax, Washington, between Yakawawa and Wawawai canyons; the name has also been interpreted as referring to a light green color (Schwede 1966:No. 152). All sites in this area were inundated by Lower Granite Reservoir (Gurcke with others 1979)].

70. *Wah-nah-we*. The multitudes of mosquitoes that were in this region gave name to this village. These people became possessed of large herds of horses, and about the middle of the last century they moved in a body to the Yakama tribe in Washington on account of the horse-stealing habits of the white men in their vicinity [the name may possibly be associated with the harvesting of sunflower seeds (Schwede 1966:No. 154). This area is now known as Wawawai; a late prehistoric to protohistoric archaeological site was recorded at this location (45-WT-39). It was examined by archaeologists from 1968 to 1971 (Adams 1972; Yent 1976) and then inundated by Lower Granite Reservoir (Gurcke with others 1979:61). A Whitman County park is located here today].

71. *Ah-tok-sos*. From *tok-ses*, a fording place. *Ah-tok-sos* literally means, where the people came out of the stream. The native name has been corrupted to Texas. Texas ferry is now a white settlement [This village was first reported by Lewis and Clark in 1805 (Moulton 1988:265) and a historic settlement was later located at Texas Rapids known as Riparia. The location on Billy Williams' map should be much farther west and nearly opposite the mouth of the Tucannon River. Schwede discussed a village with a similar name and attributed it to Fletcher but this is nowhere near Riparia which she properly located (Schwede 1966:No. 155). Apparently she looked at the place name without looking into the history of the site. Another interpretation of the Nez Perce name is that it referred to an exclamation (Schwede 1966:No. 155). This site (45-WT-1) has been investigated archaeologically and dates from ca. 8000 BP to the historic period (Miss and Cochran 1982; Carley and Sappington 1984; Reid 1991). Most of this site has been inundated by Lower Monumental Reservoir].

72. *Ah-la-mo'-tan*. The Nez Perce name of this village was *Ah-mo-toe-in*, but the people were much mixed with the Palouse and the name became changed. In this village two languages were spoken—Nez Perce and Palouse. Beyond this village there was no Nez Perce settlement [This site is associated with Almota, Washington (Schwede 1966:No. 156; Paul 1987:No. 247) and the area is still known by this variant of its Nez Perce name. The name may refer to heaped up fire (Schwede 1966:No. 156) but its meaning is uncertain (Paul 1987:No. 247). Almota is actually considerably east of Riparia so again there is some confusion in the location of this village. This site was partially inundated by Lower Monumental Reservoir].

## Group 8

The name of this group has been lost. The "leader" village was No. 31. The villages lay along the Snake River near its junction with the Clearwater, and extended up the latter river some twenty-five miles. Beside its descriptive name, the "leader" village was known as *Tah-mal-win-wes*, from *tah-mal-wit*, law or command, and *wes*, from *wetes*, land. From this village were issued the commands respecting the hunt. Under orders from this village the people could hunt toward the Blue Mountains, and toward the north, and on the west side of Craig Mountain. Its control in reference to hunting could reach to Groups 5, 6, and 7, though its power was not as well recognized by 5 and 6 as [it was] by 7. It had no power to permit hunting in the territory of the *Nak-ki'-ma* division, or for crossing the mountains into the buffalo country. When the hunting seasons approached, messages were sent from the "leader" village No. 31 to the "leader" villages Nos. 53 and 54, to ask if the people of Group 8 would be allowed to hunt to the east, in the buffalo country. If the request was refused, the messengers were instructed to ask when the hunting would be allowed. If the reply fixed a time, the message was graciously received and obeyed by the group. The group comprised Nos. 30, 31, 32, 33, 34, 35, 36, 37, [and] 38. The sites of the last five villages of this group were included in the reservation set apart for the tribe by the Treaty of 1863. The remaining villages were abandoned not long after the treaty, the people removing to the land reserved for the tribe [All the villages in this group were located along the lower Snake and lower Clearwater rivers. This is the most densely populated area within traditional Nez Perce territory and many of these sites have been impacted by Lower Granite Reservoir and by the construction of railroads, highways, and other developments].

30. *Tu-ka-yute'-po*. From *tu-ka*, a reed. This was a small village. The inhabitants were much mixed with the Spokane Indians [Another interpretation of the name of this village is that it referred to a cliff or rock going into the water; it was located on the south side of the Snake River about three miles above the mouth of Alpowa Creek (Schwede 1966:No. 141). All sites in this area have been inundated by Lower Granite Reservoir (Gurcke with others 1979)].

31. *Suck-ko'-ly-e-kin-ma*. From *suck-ka*, heaps of sand, and *ly-e-kin*, shore or bank. The name is descriptive of the site where the village stood. This was the "leader" village, and was spoken of as *Tah-mal-win-wes*, the place of command over the land. While this village controlled the movements of the people in the quest for food, it does not seem to have had any special authority over warlike undertakings [Schwede provided a similar interpretation of this village name (1966:No. 139). North Lewiston is located here today].

32. *Pah-ah'nup*, or *Pa-mah-po*. The name indicates a point or island where two rivers come together. Here the Snake and Clearwater join. On the site of this ancient village Lewiston, Idaho, now stands [Schwede agreed with this interpretation but applied the name to other side of the Snake River where Clarkston, Washington, is now located (1966:No. 138). Although partially inundated by Lower Granite Reservoir, archaeological reconnaissance has confirmed the location of this site (45-AS-99; Gurcke with others 1979:37, 65) and test excavations indicate that it dates back to ca. 5000 BP (Sappington 1991)].

33. *Hat-way-ma*. From *Hat*, part of *Hat-ta*, the name of a stream [Hatwai Creek] coming down from the uplands to the Clearwater; and *way*, from *e-you-wah-we*, mouth. This village was at the mouth of the *Hat-ta*. Villages 32 and 33 were near kindred; individuals lived sometimes in one village and sometimes in the other. The people could not intermarry—"it would have been the same as if a man had married in his own village." [This village was first reported by Lewis

and Clark in October 1805 (Moulton 1988:253). Another interpretation of the site name is that it referred to an old woman (Schwede 1966:No. 131); this may be a reference to the name of a particular woman, *Ott-way*, who once lived here (Shawley 1984:Nos. 10, 37) but the meaning remains uncertain (Paul 1987:No. 42). This village has been the subject of extensive archaeological investigations and is the oldest radiocarbon dated site (10-NP-143) in the Clearwater River region with one age of over 10,000 BP; at least ten housepits dating from ca. 6000 to 3000 BP have also been investigated (Ames and others 1981; Sappington 1994). Much of the site is now covered by U.S. Highway 12, Corps of Engineers facilities, and Nez Perce tribally owned businesses].

34. *Yah-toe-e-no*. This village stood at the mouth of the *Yah-ka*, or Bear Creek, now called the Potlatch [River]. Through this valley, which leads up from the Clearwater River to the uplands, passed the trail to the trading post on the Upper Columbia at what is now Fort Colville [Fort Colville]. This village, although not large or important in the days before the advent of the white men, became so after the establishment of the trading posts, as here dwelt one of the chiefs empowered by "King George" to give wives to aspiring hunters. This was the village where Billy's father "took a new wife." [This village has been well documented ethnographically (Shawley 1984:No. 245; Paul 1987:No. 38). A variation on the interpretation of this site name is that it referred to where the river joined another stream (Schwede 1966:No. 102; Paul 1987:No. 38). This village was important in the history of the Lewis and Clark expedition as the party stayed here on both trips across the Plateau. Among other details, they reported a large Nez Perce mat lodge, the presence of Coeur d'Alene visitors, Lewis became involved in an altercation with a Nez Perce man over the party's eating of dogs, and a Lewis and Clark medal was found in a burial at this site in 1899 (Moulton 1991:209-219). The site (10-NP-102) was tested by archaeologists from 1967 to 1971 and the occupation dated from ca. 3000 BP into the historic period; it has been heavily disturbed by railroad and highway construction (Toups 1969; Sappington 1994:26)].

34a. *Yak-kam'-ma*. This village was situated upon a tributary flowing from the west [either Little Potlatch Creek or the Middle Fork of Potlatch River] to the *Yak-ka* [Potlatch River]. Here [in the vicinity of Juliaetta, Idaho] occurred a fierce battle with the Spokanes [Spokan] at the end of a long warfare. During these hostilities the inhabitants of *Yak-kam'-ma* built a breastwork of stone filled in with earth across the valley, or gulch, as a wall of defence [defense]. The origin of the feud between the Spokanes and the Nez Perce is one of the folk-tales of the people, which runs as follows:

In the latter part of the 18th century a feud arose between the Nez Perce and the Spokane [Spokan] Indians, growing out of the following incident: There was a man who lived at *Hat'-way-wa* (No. 33). He was fond of birds, and particularly of two eagles that had their nest near by. He used to listen to their calling to each other, and they gave him much pleasure. One day two brothers who were hunting came along, and the cries of these birds annoyed them. One said: "O, bother the birds!" He strung his bow and shot one bird, which fell by the stream pierced by the arrow. The next day the man said: "Why is it so still? Why do I not hear the cry of the eagles?" And he started to ascertain the cause. As he went he came across the eagle, with the arrow through its body. He pulled out the arrow, noted its mark, and started to find its owner. He discovered the young man and killed him, because he had killed the eagle that the man loved. This young man was married to a woman who was part Spokane. A son was born to her soon after. The mother went to her Spokane relatives, and brought up her son to believe it was his



duty to avenge his father's death. When he was grown he gathered a band of Spokanes, and they went to the *Hat'-way-ma* village and killed nearly all the people. The young man sought and found the man who was his father's slayer. When he found him he cried: "What did you do to my father? Why did you make widows?" And, waxing angry, he thrust his knife into the old man, shouting: "Go to sleep!" For years after there was war between the Nez Perce and the Spokanes, but before Billy was born the two tribes had smoked the pipe of peace and become friends again [This village has been well documented ethnographically (Shawley 1984:No. 246; Paul 1987:No. 172). Another interpretation of the name of this village is that it refers to something being scattered out on a hillside (Schwede 1966:No. 104). In support of Fletcher's translation, the upper tributaries of the Potlatch River are known today as Big Bear Creek and Little Bear Creek].

35. *Lap'-way-ma*. The name *Lap-way* comes from *lapit*, meaning two. Two streams, one from the south and one from the east, unite from where the *Lap-way* [Lapwai Creek] enters the Clearwater. It was on this village site that the mission of Mr. Spalding was started. Here the first mill was built and printing press set up, and the school and church was founded in 1836. After the Treaty of 1863 the government placed the agency for the tribe at this place. [This well documented village was first reported by members of the Lewis and Clark Expedition in October 1805 (Moulton 1988:255). Another interpretation of the name include a reference to butterfly or place of butterflies (Schwede 1966:35; Shawley 1984:93) but this meaning remains uncertain (Paul 1987:123). The area is now known as Spalding and is administered by the National Park Service as part of Nez Perce National Historical Park. Archaeological investigations have documented a long span of human occupation at this site (10-NP-108) dating from ca. 10,000 BP to the present (Chance and others 1985)].

36. *Yah'toe-en-moo*. *Yah-ta* is the name of a creek. The village name signifies to come over the *Yah-ta* [This village was located at the mouth of Pine Creek and its name may be derived from over-ripe *ye't yet* or *cous* (Schwede 1966:No. 100) although Paul (1987:No. 44) stated it had an unknown meaning].

37. *Tah'-sa-hah'po*. *Sa-hah-pi*, between. At this place on the Clearwater there is a great eddy [Big Eddy] a which seems to divide the stream, hence the name. There was a large settlement at this point [This village has been documented ethnographically although several authors have provided conflicting interpretations. Schwede discussed a village at Big Eddy but she provided a different name and then applied this name to a site at the mouth of Bedrock Creek (Schwede 1966:Nos. 98, 99); Shawley discussed a place name at Big Eddy but he also located the village slightly downstream (Shawley 1984:No. 214); and Paul (1987) has an unlabeled dot at this location on his map but there is no mention of the site in the text. A prehistoric site (10-NP-105) was investigated here archaeologically from 1967 to 1971 prior to the development of a rest-stop by the Idaho Transportation Department. Numerous late prehistoric housepits were investigated and the occupation at this site dated from ca. 8000 BP to the historic period (Toups 1969; Sappington 1994)].

38. *Mah'toe-en-no*. *Mah-kah*, snow, is the name of a canyon which here opens into the Clearwater River. Patches of bottomland are found along the banks of the small creek which finds its way through the deep canyon to the river. Indian homes with gardens and little fields flourish on these patches today, but formerly the only inhabitants were in the village at the mouth of the canyon. This village was the last to the east that acknowledged the leadership of No. 31 [This well documented village (Schwede 1966:No. 101; Shawley 1984:No. 88; Paul 1987:No.

39) was located between the mouth of Cottonwood Creek and the community of Myrtle, Idaho. An alternate interpretation of its name is that it refers to something sweet smelling (Schwede 1966:34); Paul stated that the meaning of this name was unknown (Paul 1987:123)].

### Group 9

The name of this group has been lost. The villages were upon the [lower and main stem of the] Clearwater River, and commanded that stream from the "Big Canyon" [near Peck, Idaho] to a creek [Jim Ford Creek] some six or eight miles beyond the North Fork of the Clearwater. The "leader" village was No. 40. From this village permission to hunt on Craig Mountain was given, as also to fish in the Clearwater. Group 8 sometimes applied for permission to hunt, while, on the other hand, Group 9 sometimes asked the same permission from No. 31, of Group 8. Groups 7, 8, and 9 early came under the influence of the traders and fur companies, and on the whole have shown less sturdiness in resisting the evils arising from contact with the white men than have other portions of the tribe, although there are many individual exceptions to this general statement. The group comprises Nos. 39, 40, 41, [and] 42. All of these were included in the reservation of 1863.

39. *My-'ik-sone-no*. *My-'ik*, sand. This village was noted for its feasts [Schwede could add nothing to this entry (1966:No. 91); there are no other known references to this village].

40. *Lock-ka-yah-'ma*. *Lock-ka*, pine trees. This was the "leader" village of the group. From it issued permission to fish and to build dams [walls or weirs to obtain fish] in the Clearwater, and also to hunt on Craig Mountain. This village, also, was noted for its feasts [This village was located on the west side of the mouth of Big Canyon Creek and its name was reported by a recent Nez Perce informant as referring to an open space (Schwede 1966:No. 92)].

41. *Ta-wah-'poo*. This village stood at the mouth of the *Ta-wah* (now called the Orafina creek) [Orofino Creek]. *Ta-wah* is derived from *ta-wis*, meaning antlers, this creek being a noted hunting ground for deer. Many people lived here [The location has been confirmed by more recent Nez Perce informants (Paul 1987:No. 81) but this name actually refers to the group of people who lived on Orofino Creek (Shawley 1984:No. 169). A much different interpretation of the name of this village associated it with the negative effects of a place cursed by a shaman (Schwede 1966:No. 82)].

42. *Mis-sah'e-you-wa-we*. From *mis-sah*, what for?, and *e-you-wa-we*, mouth. This was a small settlement [at the mouth of Jim Ford Creek (Schwede 1966:No. 37; Shawley 1984:Nos. 89, 182). The name was also interpreted as referring to lying or to a liar (Schwede 1966:32)].

### Group 10

This group belongs to the *Nak-ki-ma* division of the tribe, and was called *We-am-mo*. The villages of this group covered the region now known as Kamiah valley, a stretch of bottom-land from three and a half to four miles long, spreading in the middle to nearly a mile and a half in width, through which the Clearwater flows. Judging from the depressions of the long communal houses, the villages must have been quite close together. The people of this group were not so warlike as those of Group 11. They were protected by the latter, as, owing to the character of the valley, no enemies could reach it except through the territory claimed by Group 11. No. 49 was the "leader" village, but authority for hunting came from Nos. 53 and 54 of

Group 11. Group 10 comprised Nos. 43, 44, 45, 46, 47, 48, 49, 50, [and] 51. All these villages were included in the treaties of 1855 and 1863, so there was no removal of the people when the reservation was established. They were among the most progressive of the tribe. [By progressive, Alice Fletcher meant receptive to missionary influences. By all accounts there were numerous sites in the Kamiah valley but there is no means of delineating them all. It appears that there were multiple names for the same sites and that different studies have reported various numbers and locations of sites].

43. *Ho-li-'e-poo*. *Ho-li*, elbow. The village lay in the bend of the river—a small village, and very old, on the west bank of the Clearwater [This village is not well documented. The origin of its name could possibly be a Salish word (Schwede 1966:No. 68)].

44. *Ny-ouse-so'*. The name characterized the ground, which was damp. A mist was sometimes seen rising from the spot. Here was quite a good-sized settlement. Today the site is covered with fields and Indian homes [This village location was confirmed by one recent Nez Perce informant. Another possible interpretation of the name is that it referred to a slope (Schwede 1966:No. 67)].

45. *Ko-lo'*. From *ko-lah*, a slight elevation. A small village was here. The people of *Ko-lo'* and also of Nos. 43 and 44 were, at the beginning of the 19th century, very much afraid of horses, and hunted the deer a-foot [No one has been able to provide additional information concerning this site (Schwede 1966:No. 69)].

46. *Ty-yi'nap-po*. From *ty-yime*, summer. A warm spring bubbled up at this place and many people lived here [Another interpretation of this name is that it referred to middle or mid (Schwede 1966:No. 70). This site may also correspond to the location of the Heart of the Monster at East Kamiah (Schwede 1966:No. 49; Paul 1987:No. 195) which is now owned by the National Park Service and administered as site No. 15 within Nez Perce National Historical Park. The Heart of the Monster is significant in Nez Perce mythology and the story was first recorded by Fletcher (Sappington and Carley 1995)].

47. *Will-lu-'e-mal*. The word signifies "great hospitality." The people of this village were noted for their honesty and kindness and the absence of *tewats*, or men of the sorcerer class [see Fletcher's discussion of *tewats* (Sappington and Carley 1995) and Walker (1989) for additional information]. They gave feasts of deer, fish, cous, and camas. The village was quite a populous one [Without stating a source, Schwede said that this name referred to running (Schwede 1966:No. 71)].

48. *Kamiah-wa-ta-ly-'e-poo*. The name means, the people living on the lower part of the Kamiah creek [Lawyer Creek]. This was a large village [The root word for Kamiah is spelled variously but refers to Indian hemp (*Apocynum cannabinum*) (Harbinger 1964:57; Shawley 1984:No. 52; Paul 1987:No. 70). This village was placed on upper Lawyer Creek by a recent Nez Perce informant (Schwede 1966:No. 51)].

49. *We-am-'ma*. From *we-am*, many springs. At the beginning of the 19th century this was a large village of 500 people or more, but before the middle of the century it had been almost depopulated by the black measles, introduced by the Walla Walla or Cayuse Indians. As many as thirty or forty persons died in a day. Many hundreds of the Nez Perce tribe perished. About the same time smallpox was brought by Spanish blankets from the southwest. For a time the region was almost deserted, as the people fled to the buffalo country, by way of Spokane. It was this scourge of measles that led to the Whitman massacre by the Walla Walla [Wallawalla and Cayuse] Indians [in November 1847] [Without stating why, Schwede said that the name refers to

traveling and coming into an area (Schwede 1966:No. 72). Another version of this name equates it with the Kamiah area and the people who lived there (Shawley 1984:Nos. 102, 239).

50. *Kip-la-loo*. This name is derived from the word *kip-kip*, which indicates the movements of a person hitching himself along by his hands. During the 18th century (some Indians say longer ago) a man lived here who was a cripple. He was a skill[ful] maker of nets, and the village took its name from him. It was a very small village on a small bottom, on the west side of the Clearwater [According to a recent Nez Perce informant, the name refers to being bunched up together like snakes in a ball (Schwede 1966:No. 61)].

51. *Te-sy'yak-poo*. The name designated the white rocks that rise at this point. This was a large village on the east side of the Clearwater. It was the village of "Billy", the maker of the map [A similar translation is that the name refers to "rocks sticking out" (Paul 1987:No. 72)]. This site may possibly have an association with the Nez Perce word for skunk; if this is the same place, it was also an important fishing site (Schwede 1966:No. 52; Shawley 1984:No. 185)].

### Group 11

This group was known by the name *Tsy-was-'poo*. All of its villages were on the South Fork of the Clearwater River except No. 52, which lay on the main stream a little east of where the river forks. This appears to have been the leading group not only of the *Nak-ki'-ma* division, but of the entire tribe. The positions of the villages had certain strategic advantages. They commanded the approaches from the east and the south—the two points from which incursive enemies came. Moreover, they also commanded direct access to Camas Prairie, an important upland stretch well known to surrounding tribes, and which was a meeting ground for trade. It was the custom for all the villages on the Clearwater to camp on this prairie in the month of May and there dig camas roots, near where the town of Grangeville, Idaho, now stands. A kind of market was also held at this place. The Spokanes brought bear, beaver, mink, and martin [marten] skins from the Columbia River mountains; the Umatillas, woven bags and, later, horses; the Walla Walla, embroidered bags, called *ka-kah-pah*; the Palouse, salmon and, later, horses; the Flatheads, buffalo robes; while the Nez Perce traded camas and deer and elk skins. A later market was held in early summer (June) on an upland lying east of Group 10, now called Weippe Prairie. Here belated exchanges were finally made. The people of Group 11 were in frequent conflict with the Snakes on the south and the Blackfeet on the east, and stood as a barrier or guard to the groups lower down the Clearwater, and even to those west of Craig Mountain. It is said that they always met danger with this cry: "Although I die, although I die, it is good! It is not a common death!" The "leader" was No. 53 and 54. They were spoken of as "brothers." The two were really one village; they could not intermarry, as they were one band. Only this "leader" could give permission to enter the buffalo country or hunt in the mountains to the east or south. They also controlled war excursions. Not only were they "leader" in this group, but their voice was potent in the councils of Group 10 and of all the *Nak-ki'-ma* people. As the Indians said: "Their words were heard and respected by the *Pu-nin'-moo* and all the intermediate groups." In fact, this seems to have been the controlling group of the entire tribe. When Lewis and Clark entered the Nez Perce Country they first met the people of Group 10, but their presence was at once made known to Group 11, and their peaceful passage down the Clearwater to the Snake [River] was made possible by the willingness of this group to allow them to go unmolested. It was because of the influence of this powerful group that these explorers were not

irectly attacked by the warriors of the *Pu-nin'-moo*. Speaking Eagle, the leader of the party that went to St Louis in 1832 [1831], came from a village of Group 10, but all of his companions were from villages in this group. When, in 1834, Dr. Whitman and Mr. Spalding crossed the Rocky Mountains, they were met far to the southward by a delegation sent by the leading villages of this group, and were safely escorted by it through the Nez Perce Country. All the villages of this group except Nos. 64, 65, and 77 were included in the reservation established by the Treaty of 1863. This group comprised villages 52, 53, 54, 55, 56, 57, 58, 64, 65, and 77. The "leadership" was with the twin villages 53 and 54.

52. *Ah-kakh-tse'ween*. From *Ah-kakh*, (magpie) and *tse'ween*, promontory. This was a populous village on the east side of the Clearwater River, not far from the mouth of the South Fork. Many depressions marking the sites of the long houses were perceptible at the time this map was drawn. [Alice Fletcher was photographed standing in house pits at this site (Sappington and Carley 1995:Fig. 3). The name and general location of this site has been well documented by more recent ethnographic information but there are conflicting interpretations about the meaning of the name. Schwede provided the most comparable match stating that it referred to magpie point (Schwede 1966:No. 44). However, Shawley associated the name with a rock formation on the hill resembling a "Buffalo hat" and placed the village nearby (Shawley 1984:No. 2) while Paul assigned the location to the ridge and translated the name to an association with "buffalo hump" based on a narrows in the river (Paul 1987:No. 210). Extensive archaeological testing here in the 1980s confirmed the presence of prehistoric and protohistoric housepits at this site (10-IH-1395) and dating indicates that it was occupied from ca. 2500 BP into the historic period (Sappington and Carley 1987)].

53. *Took-poo'-e-ma*. This village took its name from the South Fork of the Clearwater, *Took-coo-pa*, from *took-coop*, straight, as the river here runs directly south for quite a distance. The village was near the point where the South Fork empties into the Clearwater River itself. This was one of the twin "leader" villages of Group 11 [The location of this band and village has been confirmed by other accounts (Schwede 1966:No. 14; Shawley 1984:No. 193; Paul 1987:Nos. 62, 63). Another interpretation for the name of the South Fork is that it refers to "where something has been burned" (Shawley 1984:No. 193). Limited archaeological testing suggests that the site (10-IH-1310) has been disturbed and possibly destroyed by the operation of a log mill (Sappington and Carley 1983:8-14). The town of Kooskia is located here today].

54. *Pe'toe-e-no*. This was the "brother" village to No. 53, and shared with it in leadership, the twin villages being one band. Their commands were obeyed throughout the entire tribe. *Pe'toe-e-no* was on the bottomland on the west side of the South Fork not far from the mouth of *Pe'tat* canyon (now called Cottonwood canyon). On the map, Nos. 53 and 54 should have been placed a little nearer together, and closer to the South Fork branch of the Clearwater [The meaning of this name remains uncertain (Paul 1987:No. 308). Schwede placed several villages in this vicinity but she did not attribute any of them to Fletcher (1966:26). The town of Stites is located in this vicinity today].

55. *Pe-tat-e-you-wah-we*. *Pe-tat*, the name of Cottonwood canyon; *e-you-wah-we*, mouth. This was a small village at the mouth of this canyon where it opens into the South Fork. It was not far from No. 54 [The location of this village was confirmed by information from Curtis, Chalfant, and Nez Perce informants (Schwede 1966:No. 8; Shawley 1984:No. 115; Paul 1987:No. 58). The name appears to be a reference to cottonwood (Shawley 1984:No. 115)].

56. *La-we-kas'-po*. *We-kas*, a cache. Near the site of this village was a cave [near a place in the river] where fish could be easily caught, and where they could be stored for a time without spoiling. The soil was favorable for the building of caches, and there were many at this place. There was quite a large village here on the east side of the South Fork. The people subsisted mainly on fish [The location of this village was confirmed by Nez Perce informants (Schwede 1966:No. 15; Paul 1987:No. 218). Another interpretation of this name is that it refers to a basalt shelf in the river which was a major fording place in low water (Shawley 1984:No. 71). The site is now covered by the community of East Kooskia].

57. *Kee-kits-see-'weesph-poo*. *Kits-see-we*, crooked. At this place grew many trees which were queerly twisted and very crooked. It is said that these trees grew from the twigs which were used by mystery men [*tewats*] when, after the sweat-bath, they thrust the twigs down their throats. After using them in this manner they planted them, and they grew into gnarled and crooked trees. The village here was a large one. After the agents of the fur companies had penetrated into this region, "King George" made one of the hunters of this village a "chief", and authorized him to "give new wives" [This village was probably located at the mouth of Rabbit Creek on the east side of the South Fork of the Clearwater (Schwede 1966:No. 6; Paul 1987:No. 309 in text, but omitted from his map)].

58. *Took-pa'-ma*. This was a large village. Where it lay, the [South Fork of the Clearwater] river ran straight, without bends. It took its name from *took-coopa*, straight [Other sources place additional sites along the South Fork but none correspond with this name and Fletcher's description is too vague to correlate with contemporary geography].

64. *Lum-ta'ma-po*. *Lum-ti*, the end. This was the furthest village up the Salmon River, and was at the mouth of Whitebird Creek, *Sa-ma-ta*. The people of this village refused to enter into the treaties of 1855 and 1863. They joined with Chief Joseph in the war of 1877 [A Nez Perce band was associated with Whitebird Creek (Shawley 1984:No. 69; Paul 1987:No. 5) and their village is well known based on its role in the war of 1877 (McDermott 1978; Wilfong 1990). Another interpretation of the name of this site is that it referred to being permanently dissatisfied (Schwede 1966:No. 254). This site is now owned by the National Park Service and administered as Site 13 of Nez Perce National Historical Park].

65. *Nee-pa'-ha-ma*. From *nee-pa*, a cave. This village stood on the stream *Te-pah-he* [Rock Creek] where it entered the Salmon River. The stream is said to take its rise in a cave where there is ice nearly all the year round, and the village took its name from the cave [Several ice caves have been reported at the head of Rock Creek in the breaks just below Tolo Lake. Confirmation of this village has been provided by several Nez Perce informants. Another interpretation of the name is that it refers to the term of address used by an older sister for her younger brother (Schwede 1966:No. 252; Paul 1987:No. 14). Archaeological investigations were conducted at several sites along lower Rock Creek in the 1960s, including Weis Rockshelter (10-IH-66) and the Cooper's Ferry site (10-IH-73) at the mouth of the creek which may correspond to *Nee-pa'-ha-ma*; prehistoric occupation in this areas dates from ca. 10,000 BP into the late prehistoric period (Butler 1962)].

77. *Hoo-koo*. The word means, at the foot of the mountain. After this village was deserted the site became a favorite stopping place for hunters and travelers, and received the name *Pa-yak-'sa-wit*, tent, because of a close grove of trees that grew there. Their branches were so closely interwoven that they afforded a shelter from the storm as effective as a tent. A portion of this grove remained in 1891, and formed the picturesque entrance to the town of Mt. Idaho,

which occupied the place where the ancient village, *Hoo-koo*, stood [Other interpretations of *Pa-yak-'sa-wit* stated that this name referred to a raw hide house or a buffalo hide tipi (Schwede 1966:No. 2; Shawley 1984:No. 117; Paul 1987:No. 16)].

### Group 12

The name of this group was *Sal-wah'-poo*, meaning the people of the *Sal-wah*, as the Middle Fork of the Clearwater was called [According to contemporary geography, the segment designated the Middle Fork begins at the confluence of the Lochsa and Selway rivers at Lowell, Idaho and extends to the mouth of the South Fork at Kooskia where the two forks form the main Clearwater. Most early accounts did not distinguish between the Middle Fork and the Selway]. Whatever may have been the power and position of this group, it had lost its prestige before the beginning of the 19th century. Only one village survived at that time. The sites of the villages of this group are spoken of as the oldest villages of the tribe. It comprised Nos. 59, 60, 61, 62, [and] 63. It is not known which was the "leader" village. The one village that survived until the beginning of the last century took its commands from the "leader" of Group 11 (Nos. 53 and 54). The lines of the reservation established by the Treaty of 1863 did not include the sites of villages 61, 62, and 63; the others were deserted by the middle of the last century.

59. *Tuk-ae-tack'poo*. In the vicinity of the small village at this point were found many stones suitable for use as the pounding stones of the bottom of the baskets in which the Indians pulverized the camas into flour. This site was said to be a good place to throw nets [Fletcher did not provide a translation for the name of this village and Paul said the meaning was unknown (Paul 1987:No. 310). However, two interpretations have been provided: this name referred to something going uphill which probably indicated that there was a trail here (Schwede 1966:No. 16) or it referred to "anyplace where you come out of a fording place" (Shawley 1984:No. 209). This site (10-IH-1009) was tested in the early 1990s as part of the development of a picnic area by the Clearwater National Forest; the occupation was radiocarbon dated from ca. 4000 BP to the historic period. In support of the description by *Kew-kew'-lu-yah*, net weights were among the artifacts recovered (Sappington 1994)].

60. *Kam'-nak-ka*. The name is derived from *kam-ma*, which furnished the fiber out of which fish nets were made [this is the same plant, Indian hemp, for which Kamiah was named]. A large village was once at this place. [Other sources provide similar data (Schwede 1966:No. 17; Shawley 1984:No. 59; Paul 1987:No. 153). Looking Glass' village was located here in 1877 (Wilfong 1990:121). The site (10-IH-820) is now part of Kooskia National Fish Hatchery. Recent archaeological investigations indicate that it dates from ca. 4500 years BP into the historic period (Sappington and others 1997)].

61. *Sits-ah'-lu-poo*. The word denotes a stony place. Here was the only surviving village of this group at the beginning of the 19th century [Despite providing different names, the meaning of this name was tentatively confirmed by Nez Perce informants. However, their understanding of the location of this site makes it seem questionable. Schwede correlated this village to a camp with a different name (Schwede 1966:No. 25) while Paul placed it on the Selway River in his text but omitted it from his map (Paul 1987:No. 312)].

62. *Sotes'poo*. The word means, a bend in the river. This village disappeared before the beginning of the last century, and the sites of the long houses are now covered with forest trees [This name was reported to be based on *so'c*, which is Salish (Schwede 1966:No. 20)].

63. *Ne'hu-lat-poe*. This is said to be the oldest village site known to the Nez Perce. It lies near a pass through the Bitterroot Mountains, more than sixty miles up the Middle Fork of the Clearwater River [actually the Selway River], and about seventy miles from the "buffalo country." There is a tradition that from this village all the villages of the tribe came. At the present time the site is covered by forest trees, and here grow some of the largest of the trees known in this region. There is no tradition by which to fix the time of its occupation or desertion [*Kew-kew'-lu-yah's* map clearly places this site on the Selway River. Traditional Nez Perce trails followed a braided system and there were alternate routes for the main route over the Bitterroots (Shawley 1984; Broncheau-McFarland 1992). Based on Chalfant, Schwede erroneously placed this site about a mile above the mouth of Brushy Fork on the Lochsa near Lolo Pass (Schwede 1966:No. 37) but this location is well north of the site indicated by *Kew-kew'-lu-yah*. Examination of his map indicated that this village was located at Bear Creek. Recent investigations by Nez Perce National Forest archaeologists have resulted in the discovery of a site here with a radiocarbon assay of ca. 3000 BP].

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### Endnotes

<sup>1</sup> The General Allotment (also known as the Dawes Act and the Severalty Act) of 1887 was intended by Congress to assimilate American Indians into mainstream American society. It was designed to break up the tradition of tribally held land on reservations and to transform individual Native Americans into land-owning farmers and ranchers. Each head of a family was to receive one-quarter section (160 acres), each single person over eighteen as well as each orphan was to receive one-eighth section (80 acres), and all other single persons under eighteen born prior to an allotment order were to be assigned one-sixteenth section (40 acres). Individuals were allowed to select their holdings and the process took four long seasons for Fletcher to complete. The act benefited Euroamerican settlers by allowing them to purchase all unallotted lands with the proceeds intended to be used for the education and advancement of each tribe as determined by the government. Prior to the Allotment Act, the Nez Perce Reservation included over 750,000



acres; after approximately 2000 allotments were made to members of 250 families, the remaining 542,000 acres was declared surplus and opened for settlement in 1895.

<sup>2</sup> James Stuart was employed by Fletcher in June 1889 for a salary of sixty dollars per month. Needing a "competent and trusty man who understands both languages" as her driver, she considered James Stuart to be "well educated, having attended the Chimawe School at Salem, Oregon. . . He reads and writes and bears a good reputation as to his character" (Fletcher 1889-92b:5 June 1889). She reports his excellent and loyal service, in spite of having his life threatened for working with her on allotment (Fletcher 1889-92b:26 December 1889). During the second year of allotment, Fletcher requests that Stuart's salary be raised to seventy dollars per month for "the expense of living in the wilderness" and because "he is the only man I know on the reservation with sufficient education, general intelligence and honesty of act and speech to serve in the capacity of interpreter in allotting lands . . ." (Fletcher 1889-92b:4 January 1890). James Stuart was the grandson of Fletcher's informant Nancy Corbett (Fletcher 1889-92c:9). Throughout her 1889 correspondence Stuart is spelled "Stewart." From 1890 through the completion of allotment and in the Allotment Book (Fletcher 1889-92c), it is spelled "Stuart."

<sup>3</sup> Frederic Ward Putnam was a major anthropological figure in the late nineteenth century. He was curator of the Peabody Museum at Harvard University from 1875 to 1909 and Peabody Professor of American Archaeology and Ethnology from 1887 to 1909. He was responsible for the education of many early anthropologists and for establishing a number of academic and museum programs in the United States (Willey and Sabloff 1993:48-52).

<sup>4</sup> Sisters Sue and Kate McBeth were Presbyterian missionaries who worked among the Nez Perce from 1873 to 1915. They provided considerable support for Alice Fletcher and facilitated her allotment and research. "I am lingering here a day longer to get a little more out of Miss McBeth's *ms.* so that I can do more intelligent work among the Indians" (Fletcher 1889-92a:20 August 1890). Kate McBeth also published a history of the Nez Perce (McBeth 1908). After leaving Idaho Fletcher wrote to Kate McBeth for linguistic assistance. Sending a list of 220 names taken from her registry of the tribe and arranged alphabetically, Fletcher asks McBeth for their translation. Fletcher relied on McBeth's expertise of the language and requested answers to a number of questions (Fletcher n.d: Fletcher to McBeth, 9 and 30 January 1895):

. . . I want to get a few facts for each name if possible. I want to get a translation of the name and I would like to know how it is composed . . . I shall be glad to have you correct the spelling if you will, making it agree with your form of spelling the language . . . I notice that a very large number of female names end in "my." Can you explain that! . . . I notice that the syllable "roe" occurs often in female names. Can you explain this. You can write the translations of the name in the vacant line.

Filled lines and two different styles of handwriting suggest that McBeth translated the names and returned the list to Fletcher.

<sup>5</sup> Francis La Flesche was an Omaha Indian who became a noted anthropologist. He co-authored several articles and books with Alice Fletcher including *The Omaha Tribe* (1911).

<sup>6</sup> Lewis and Clark arrived in Nez Perce Country in September 1805 and remained among the Nez Perce for two weeks before departing in canoes for the Pacific Ocean. On their return the expedition stayed among the Nez Perce from May to July 1806. The expedition spent more time among the Nez Perce than with any other Plateau tribe and they clearly thought highly of their hosts. The journals of the expedition provided detailed information on many aspects of Nez Perce life as it existed at this time (Sappington 1989).

<sup>7</sup> The North West Company was established in the Pacific Northwest in 1807 and it controlled the fur trade in this area from 1814 to 1821. In 1818 the North West Company built Ft. Nez Percés near Walla Walla in southeastern Washington to serve as a trading center for the Nez Perce and other Plateau Indians. The North West Company merged with the Hudson's Bay Company in 1821.

<sup>8</sup> Ft. Colville (correctly spelled Colvile in reference to the Hudson's Bay Company) was built at the confluence of the Kettle and Columbia rivers in northeastern Washington by the Hudson's Bay Company in 1825 to serve as its Colvile District headquarters. From that date until 1860 Fort Colville was the main supplier of trade goods between the Cascade and Rocky mountains (Chance 1973).

<sup>9</sup> They actually departed in late summer and arrived in early fall 1831. George Catlin was a noted painter of American Indians in the 1830s and he is discussed by Fletcher below. His book has been reprinted (Catlin 1973).

<sup>10</sup> Speaking Eagle was also known as *Tipyahlanah* and *Kipkip Pahlekin*. He was a warrior about 44 years old who came from the village of the Kamiah leader called *Tunnachemootoolt* by Lewis and Clark in 1806 (Josephy 1965:96).

<sup>11</sup> More correctly, *Ka-ou-pu* was the son of a Nez Perce man from the Kooskia/Stites area and of a Flathead woman (Josephy 1965:96).

<sup>12</sup> *He-yonts-to-han* was also known as *Hi-yuts-to-henin*, he was about 20 years old and was related to *Tipyahlahah* (Josephy 1965:96). His portrait was painted by Catlin (Catlin 1973:Plate 207).

<sup>13</sup> His name has also been spelled *Tawis Geejumnin* and translated as "No Horns on his Head," or "Horns Worn Down Like Those on an Old Buffalo"; he was also about 20 years old (Josephy 1965:96). His portrait was painted by Catlin (Catlin 1973:Plate 208).

<sup>14</sup> The Lolo Trail was the main route from Nez Perce Country to the buffalo country in western Montana (Broncheau-McFarland 1992).

<sup>15</sup> Henry Harmon Spalding, a Protestant missionary, arrived among the Nez Perce in 1836. His mission was on Lapwai Creek in the Clearwater River valley at present day Spalding, Idaho.

<sup>16</sup> Marcus Whitman was a medical doctor and missionary among the Cayuse Indians from 1836 to 1847. His mission was near Walla Walla, Washington.

<sup>17</sup> Nez Perce mission at Lapwai.

<sup>18</sup> There is an error here since Boise was not founded until the early 1860s and it is located in southwestern Idaho well away from Cayuse territory.

<sup>19</sup> Lieutenant Colonel Edward Steptoe was the leader of a U. S. Army expedition from Fort Walla Walla against a confederation of Plateau Indians including members of the Spokane, Yakama, Coeur d'Alene, and Palus tribes. The force was defeated near Rosalia, Washington, in 1856.

<sup>20</sup> Isaac I Stevens was the first governor and Indian agent for Washington Territory from 1853 to 1857. In 1857 he became Washington's delegate to Congress and later became a major general for the Union during the Civil War. He was killed at the Battle of Chantilly in northern Virginia in 1862.

<sup>21</sup> The first treaty with the Plateau Indians was made by Isaac Stevens near Walla Walla, Washington, in 1855.

<sup>22</sup> After the discovery of gold on the Nez Perce Reservation in 1860, a second treaty was conducted at Lapwai, Idaho, in 1863. This treaty reduced the 1855 reservation of ca. 7.7 million acres to its present size of ca. 750,000 acres.

<sup>23</sup> There are various spellings of this name. Haruo Aoki (1975) derives the Nez Perce *nimipu* from Numic *nimi* meaning "person, Indian."

<sup>24</sup> Numerous references occur in the accounts of early travelers, and in the oral histories of both Nez Perce and Euroamerican settlers in northeastern Oregon, to chronic and longstanding hostilities between the resident Nez Perce and intrusive Numic-speaking peoples from the south. The invaders are variously referred to as "Snakes," Shoshokoes," "Diggers," Shoshones," "Bannocks," and "Pokatellas."

Nez Perce warrior Yellow Wolf, born in the Wallowa Valley in 1855, told his biographer of a maternal great grandfather "killed in battle with the Pokatellas, fighting for possession of Wallowa Valley" (McWhorter 1983:24). In the winter of 1834, Captain Benjamin Bonneville encountered an assembly of at least 100 families of "Diggers" living in "crescent shaped brush windbreaks" near the mouth of Powder River (Irving 1986:224-225). Not long afterward, a burial mound marking the grave of a Nez Perce killed by "Shoshokoes" was pointed out to Bonneville in the Grand Ronde valley (Irving 1986:245-246). The missionary Henry Spalding referred to a "large number of Snakes lurking around to steal" in the mountains above Wallowa Lake in July 1839 (Drury 1958:271). In one entry Spalding attributes two set fires to the Shoshone while in another he records "several horse tracks seen, four snake arrow points found." The Horner manuscript includes several explicit but undated references to conflict between the Nez Percés and "Snakes," "Shoshones," or "Sheepeaters." As secondhand as these accounts may be, they paint a picture compatible with those given by natives and eyewitnesses. Thus, Battle Creek, a first order tributary of the Snake River in Hells Canyon (river mile 242.3), functioned as a base camp for Shoshone raiders until the Nez Perce drove them out (Horner 1940s:23-24). Cemetery Ridge, at the head of Tully Creek where Bonneville exited the Imnaha in February 1834, was named after a fight between the Nez Perce and "renegade Snake Indians." The Snakes

were defeated and their bodies were buried beneath cairns on the ridge (Horner 1940s:63). At Corral Creek and at Fence Creek, both tributary to the Imnaha just east of the Chesnimnus country, fights are reported between Nez Perces and Snakes (Horner 1940s:73-74). At Hurricane Creek on the north slope of the Wallawas, "roaming Snakes" wiped out a Nez Perce family fish camp (Horner 1940s:144). The most northerly fight mentioned occurred on the north side of the Grande Ronde River near the mouth of Rattlesnake Creek where a "hard battle" between Nez Perce and Shoshone groups left 17 dead (Horner 1940s:155).

<sup>25</sup> By contemporary geography, the Selway River is distinct from the Middle Fork of the Clearwater. The Lochsa and Selway rivers merge at Powell, Idaho, where they form the Middle Fork. The Middle Fork then flows west until it meets the South Fork at Kooskia, Idaho and these streams form the main stem of the Clearwater.

<sup>26</sup> The attack on the Nez Perce village at White Bird Creek on 17 June 1877 was a major defeat for the U. S. Army. For more information see McDermott (1978) or Wilfong (1990).

<sup>27</sup> More detailed descriptions by Fletcher describing these structures have been published elsewhere (Sappington and Carley 1995).

<sup>28</sup> More detailed descriptions by Fletcher describing the whippers has been published elsewhere (Sappington and Carley 1995).

<sup>29</sup> The southern boundary of Nez Perce Country defined by the Treaty of 1855 also accords with this interpretation. In Article 1, the 58 Nez Perce signatories claimed land to "the crossing of Snake River, at the mouth of Powder River." In Article 2, they were ceded land "to the crossing of the Snake River fifteen miles below the mouth of the Powder River" (Kappler 1904:702-703). By comparison, Schwede's placement of village Group 1 is much closer to the southern border defined by the "steal" Treaty of 1863.

<sup>30</sup> Horner's toponomy for Wallowa County place names says of Imnaha: "In the very early days the Im-na-ma-ha Indians were very nearly wiped out of existence by the Snake Indians as it was territory claimed by both sides—by the Snakes and by Joseph and his father's father. The latter was chief of Bekoonan, a country south of the Salmon River" (Horner 1940s:146). "Bekoonan" corresponds in name, position, and contested situation with Billy's village Group 2 *Pe-ku'nin-moo*.

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## Alice Cunningham Fletcher's "THE NEZ PERCE COUNTRY"

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### Abstract

Alice Cunningham Fletcher was the first anthropologist to study the Nez Perce Indians. She spent four field seasons, from 1889 to 1892, working among the Nez Perce as a Special Agent of the United States government allotting land. At her request, a Nez Perce elder prepared a map of Nez Perce territory that included the locations and descriptions of 78 traditional villages as they existed in the early nineteenth century. This 1891 map and her accompanying manuscript are published here for the first time.

### Editors' Introduction

Alice Cunningham Fletcher (1838-1923) was a well known anthropologist in the late nineteenth and early twentieth centuries (Mark 1988). She was sent to the Nez Perce Reservation as a Special Agent of the United States government in order to implement the allotment program mandated by the Dawes or Severalty Act of 1887.<sup>1</sup> She spent each summer and fall from 1889 to 1892 working among the Nez Perce in north central Idaho. In addition to her allotment work, she attempted to acquire ethnographic data whenever possible. As the first anthropologist to work among the Nez Perce, she was in a unique position to record data that would be unavailable to later anthropologists and historians. Fletcher prepared two manuscripts concerning Nez Perce culture but neither of these was published during her lifetime. The first was recently published in *Northwest Anthropological Research Notes* (Sappington and Carley 1995). This article represents the publication of the second manuscript, which Fletcher entitled "The Nez Perce Country."

Fletcher worked with a number of Nez Perce people but one of her principal informants was *Kew-kew'-lu-yah* (whose English name was Jonathan Williams although he was usually called Billy Williams), a Nez Perce elder who was born ca. 1815. At her request, *Kew-kew'-lu-yah* prepared a map of Nez Perce territory that included the locations and descriptions of 78 traditional villages as they existed in the early nineteenth century. The basic data for "The Nez Perce Country" was collected on 10 and 11 June 1891. Fletcher provided a biographical sketch of Billy and discussed her methods as indicated below. Because she could not speak the Nez Perce language and Billy could not speak English, it is likely that translation was provided by

James Stuart, a man of Nez Perce and Euroamerican ancestry who served as Fletcher's interpreter<sup>2</sup> during her allotment work (Sappington and Carley 1995).

Fletcher was obviously excited about this project. Shortly after collecting the data, on 22 June 1891, she wrote to her mentor Frederic W. Putnam,<sup>3</sup> a leading anthropologist and curator of the Peabody Museum:

I've secured from one of the oldest and most remarkable men of the Nez Perce tribe a map on which he has drawn all the Nez Perce Country and created all the villages of the tribe, 77 or 78 of them... I've the names of these villages and many curious items.... I want the map to go to the Museum eventually. I shall send a photograph of the old Indian who drew the map. I have tested its accuracy with several old Indians. This is the first time the villages etc. of this tribe have been gained and I've also the inside history of the four men who went to St Louis for teachers in 1832, those whom Catlin painted. I can make a very interesting article when I can get at Catlin's work and contract or supplement [sic] his story.

I thought I would like to send something to the Ass.[American Association for the Advancement of Science] and this map is both interesting and valuable. Later I will place beside it one of our maps and show the same rivers etc. ...I've all the Nez Perce names of the rivers on the map... I don't want any one but the Museum to get it to keep [Fletcher 1889-92a].

Another letter to Putnam on 6 August concerns her presentation of the map and a biographical sketch of Billy Williams at the August 1891 meeting of the American Association for the Advancement of Science in Washington, D.C. From Ft. Lapwai, Idaho, Fletcher reiterated how important she considered this project to be:

I mail with this a paper for the Ass[ociation]. It is in two parts. The first is the paper, the second the legend of the map... I've made a tracing of the important portion of it for my future work here. I hope the paper will please you. It is all new, no one I think has ever gained this information. I have here a field to myself. You will see I have learned some thing of this tribe and I have much more I could add, but I do not wish to be too lengthy. I send my only copy. I have no time to make another, I am sorry to send a ms that is not clean and clear, but I am so closely occupied that I can't do any writing except at catch moments and it would take me days to copy and delay too long. I should like the paper published so as to hold my material...[Fletcher 1889-92a].

The abstract was published in the Proceedings of the American Association for the Advancement of Science in 1891 (Fletcher 1891). Fletcher continued to work on the "The Nez Perce Country," for some time after she left Idaho. In a letter to missionary Kate McBeth<sup>4</sup> on 30 January 1895 Fletcher wrote from Washington, D.C. and asked a question about Billy's map. One of her introductory comments in the manuscript indicates that she was still working on it in the twentieth century. However, she never completed this project. Shortly after her death, Francis La Flesche,<sup>5</sup> her adopted son and collaborator on numerous projects, submitted this manuscript to the Bureau of American Ethnology for publication. The manuscript was rejected by J. Walter Fewkes, Chief, Bureau of American Ethnology. In a brief letter to La Flesche dated 4 October 1926, Fewkes responded that "we find, however, that it is not feasible to bring the paper before the committee for publication either by the Bureau or the Smithsonian, and I therefore return it with many thanks" (Fewkes 1926).

Fletcher's research on the Nez Perce was overlooked during her lifetime. Neither of the two principal early ethnographies (Spinden 1908; Curtis 1911) mention her work although they do refer to some of the sites that had already been reported by Fletcher. Subsequently, this manuscript was forgotten until the 1960s when it was located by Deward E. Walker, Jr. One of his students employed it to compose a composite study of Nez Perce settlement patterns (Schwede 1966). Schwede's thesis included nearly 300 sites and incorporated information ranging from Lewis and Clark in 1805-1806 to data acquired from Nez Perce informants. Schwede combined Fletcher's manuscript with other reports and located 75 of those sites based in part on Fletcher's research. Despite this, later researchers did not examine Fletcher's original work and most scholars have relied on Schwede, although some of the information is inaccurate, as indicated by others and discussed below. The published version of Schwede's thesis (1970) intentionally did not include specific site location data.

At some point, probably in the 1970s or early 1980s, a Forest Service employee retyped "The Nez Perce Country" and redrew the map. This appeared to have been done quickly and some obvious errors are evident. Copies of this version were circulated among some scholars, including the first two authors, who obtained a photocopy in 1982. Stephen Shawley may have examined this version of "The Nez Perce Country" because in one of his 251 listings he added in parentheses "Refer to Fletcher notes" (Shawley 1984:101) but he did not cite this manuscript specifically nor did he include it among his references cited. Elmer Paul, a Nez Perce elder, also consulted this version of "The Nez Perce Country" for his own compilation of over 300 Nez Perce place names (Paul 1987). However, most of *Kew-kew'-lu-yah's* locations are omitted and only a few site specific citations are provided, making it difficult to correlate the two studies. In contrast to *Kew-kew'-lu-yah* who drew his map freehand from memory, Paul's locations were placed on modern maps which makes his work easier to use.

As an incomplete work involving mutually unintelligible speakers of two distinct languages that was initiated over a century ago, there are obviously occasional problems with this manuscript. It was typed on a manual typewriter but many comments and additions were added by hand. Inconsistencies have been standardized but, as much as possible, the original spelling and organization have been left intact. All Nez Perce words appear as spelled by Fletcher but we have italicized them; in the original some are in regular characters while others were underlined. In most cases, place names, spellings, and punctuation have been brought up to contemporary standards. Examples include "Clearwater river" to Clearwater River, "Bitter-root mountains" to Bitterroot Mountains, and "Mr" to "Mr." Fletcher made numerous comments and these are indicated by parentheses ( ) while ours are enclosed in brackets [ ].

The original typed and hand corrected manuscript, Fletcher's copy of the map, and the rejection letter from Fewkes are on file at the National Anthropological Archives at the Smithsonian Institution (Box 18, Ms. 4558 [No. 59]). The map measures approximately 45 x 47 in. and at some point it was cut in half in order to laminate it. It has a compass orientation but no scale. The markings were done originally in pencil; subsequently, some pencil lines were erased and redrawn while others were inked over. The villages were indicated as open circles in red pencil. Due to the original limitations of paper size, rivers, landmarks, and trails often bend away near the edges of the map. Because of its size, condition, various modifications, and its unfinished status the original map would be indecipherable if reproduced as it appears. Therefore, photocopies of the original were traced and re-lettered in order to make it more visible

to readers and future scholars. Spelling and labeling mirror the original but some modern place names have been added for clarification and these have been indicated in brackets.

The map exhibits several conventions typical of native cartography (Gallison and Reid 1996). For example, asymmetrical or irregular linear features such as streams and trails have been rendered symmetrical or smoothed and straightened, with changes in line tending to occur at nodes such as stream confluences. Rivers may appear anastomosed, a condition that rarely occurs in nature. This reflects the use of a continuous line to show streams, trails, and crossings as parts of a single route. Exaggeration and compression are apparent in the size and shape of river basins, and the scale varies internally. In some places, variability of scale probably reflects travel time rather than actual distance.

During the past decade the authors have used Fletcher's manuscript and map to augment various archaeological investigations at sites along the Clearwater and Snake rivers. When appropriate, sites which have been examined archaeologically are noted below. The purpose of this paper is to bring Fletcher and Williams' work the recognition it deserves and to make the data available to other researchers interested in Nez Perce ethnography and settlement, and in Native American cartography in general.

### The Nez Perce Country

The accompanying map of that portion of the State of Idaho formerly occupied by the Nez Perce Tribe of Indians was drawn in June, 1891 by *Kew-kew'-lu-yah*, whose English name was Jonathan Williams. He was familiarly called "Billy," and because of his promptitude in attending to all matters committed to his care he received the nickname of "Business Billy." He was one of the most trusted and respected members of the tribe, and retained until his death, a few years after the date mentioned, unimpaired faculties. His memory was remarkable, and his character for truthfulness made his reminiscent statements of peculiar value. The photograph here reproduced [Fig. 1] was taken at the time he made the map [Figs. 2, 3].

Billy's father, *Me-yau'h*, was born during the last decade of the eighteenth century, in the village called *Te-sy'-yak* (No. 51 on the map). His mother, *Is-to'-kop* was a native of *Hoo-koo* (No. 77 on the map). Billy was born at *Te-sy'-yak* about 1815, when recollections of the advent of Lewis and Clark [in 1805-1806]<sup>6</sup> were still a frequent theme about winter camp fires. Although many white men had come across the mountains, and trappers from the Northwest Fur Company<sup>7</sup> had found their way to the tribe, still the memory was fresh of the first white men who came and went, and then came again, telling of an ocean to the west, and then disappeared over the eastern mountains. Their conduct was in marked contrast to that of many of the followers, and this difference made them stand out distinctively in the memory of the people.

In 1813, a few years before Billy's birth, the Northwest Fur Company established a trading post on the Upper Columbia River where Fort Colville<sup>8</sup> now stands and the Nez Perce Indians soon learned the trail that led to this place and took their pelts to exchange for wares from the "King George" people, as the Canadians are still called. The dealings of the Fur Company open an unpleasant but important chapter on the contact between the white and native races. As a means to increase business, the Company devised a plan which should act as an incentive to the hunters to acquire tribal position. The plan was to urge the men to take more wives, and so become a chief—the more wives, the more workers there would be to prepare the





Fig. 1. *Kew-kew'-lu-yah* or Billy Williams. Photograph by E. Jane Gay in 1891. Courtesy of the Idaho State Historical Society (ISHS 63.221.101).



Fig. 2. The Nez Perce Country as drawn by *Kew-kew'-lu-yah* or Billy Williams and recorded by Alice Fletcher in 1891.

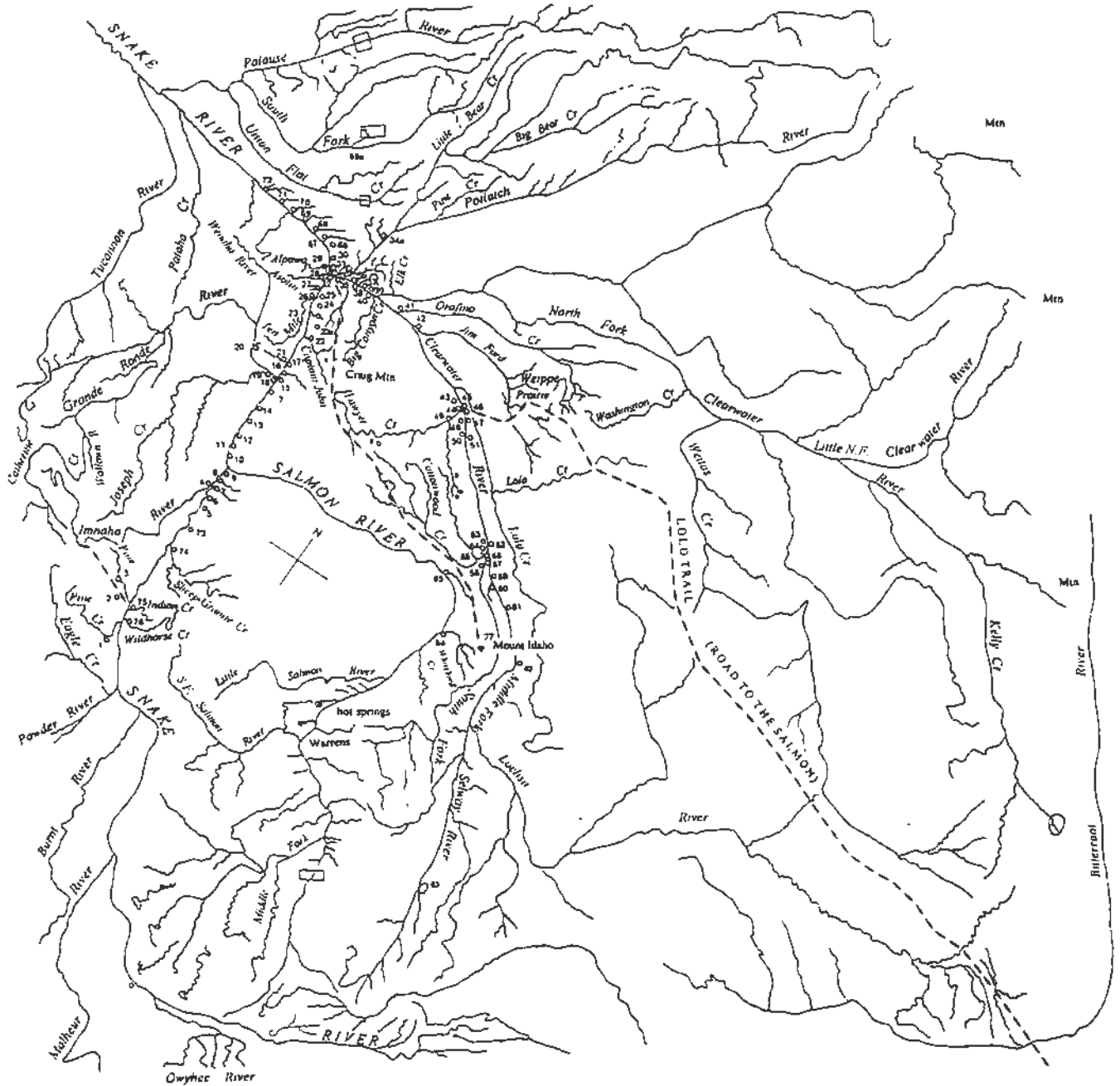


Fig 3. The Nez Perce Country as drawn by *Kew-kew'-lu-yah* or Billy Williams and recorded by Alice Fletcher in 1891. Modern landmarks have been added.

pelts, and the more business of buying and selling. It was on the occasion of a journey to Fort Colville [sic] that an event took place which had a lasting effect on Billy's life. After his father had disposed of his pelts at the trading post, the family party turned homeward, the three children securely tied to their ponies. As they journeyed Billy heard his father say to his mother that "King George had told him to take another wife, that he might become a chief." The mother rode on, and said nothing. Even when they camped she still kept silence. After a time they reached the village *Yak-toe-e-no* (No. 34 on the map). To quote Billy: "To this village came many words from King George down the trail. Here lived one of the chiefs he had created. This was how it happened: 'How many wives have you?,' asked King George. 'One.' 'I give you one and a half foot [sic] of tobacco; get another wife, and next year I will give you more,' said King George. The man obeyed, and the next year when he appeared at the trading post he received a larger gift of tobacco and King George put a wide tin band about his hat—a sign that he was a chief." This was the chief who, when the family came to the village *Yak-toe-e-no* said to Billy's father that it was his office, under King George, to furnish new wives. So Billy's father "put a red feather in his hat and went to the chief with gifts, and indicated the woman he would take as a new wife." Two men were sent to get the woman. If any woman thus approached dared to resist, she was flogged into obedience. While the men were gone, Billy's mother started with the three children across the country, taking the direct trail to *Te-sy'-yak*. Here she helped herself to her husband's horses and supplies, and departed, with Billy and his two sisters, for the buffalo country east of the Bitterroot Mountains. Billy was quite a man before he saw his father again. When the father with his new wife looked for his former wife and children, he found them gone. He returned to his village, lived there quietly, and did not try again to take more wives or become a chief. In his old age he was ministered to by the children of his first wife.

Billy's mother devoted herself to the care of her children. The burden of her counsel to them was, "Never listen to King George's teachings!" To her son she was always saying: "I pity the women! I pity the women! My son, never be like your father; never have more than one wife!" Billy heeded her advice, and all his long life lived with his first and only wife.

Billy witnessed the departure of the four men who went to St. Louis in 1832, and there met George Catlin,<sup>9</sup> and became the means of drawing to the Pacific coast the American missionaries who were instrumental in saving Oregon to the United States. The names of the four Indians, whose journey has left a permanent trail in the history of our country were:

(1) *Tip-ye-lak-na-jek-nim* ('Speaking Eagle'). He was from the group of villages known as the *We-am'-mo*, and probably from either *Ho-li-e-po* (No. 43) or *Ny-ouse-so* (No. 44). He was a man well beyond middle life, a chief, and one who entertained Lewis and Clark on their return trip. This man was grandfather to *Kipka-palikan*, a former chief, and now a leading man in Kamiah. Old Speaking Eagle seems to have been of a philosophical turn of mind, and the question as to whether the sun was father and the earth mother of the human race was one that occupied his mind and he discussed it with his companions. The King George men told him that this was the case, but he doubted, and asked: How could the sun make a boy? Moreover, this teaching contradicted some things that Lewis and Clark had said. It was the discussion of such questions as these that led the four men, of whom Speaking Eagle was the leader, to determine to find the trail of Lewis and Clark, and ask them as to the fact concerning the sun and the earth. (Strange as these speculations may seem to us, they were not uncommon in Indian tribes. The story told by Billy, and repeated here was later confirmed by several old and trustworthy men and

women. It reveals the incentive of this memorable journey, and is probably as true as it seems strange.)<sup>10</sup>

(2) *Ka-ou-pu* ('man of the morning, or daylight'). This man was a Flathead [Indian] and lived in the village *Took-pa-mah* (No. 58). *Ka-ou-pu* was nearly as old as Speaking Eagle, yet he, too, determined to join in this quest for knowledge.<sup>11</sup>

(3) *He-yonts-to-han* ('rabbit-skin leggings'). This young man was a nephew of Speaking Eagle. His mother was a Palouse [Palus Indian, a group located downstream on the Snake River and closely related to the Nez Perce], and he lived in *Lum-ta'-ma-pa* (No. 64).<sup>12</sup>

(4) *Ta-wis-sis-sim-nin* ('old or worn-down horns of the buffalo'). This young man was the son of Billy's father's eldest sister. He was therefore Billy's cousin. He came from *Te-sy-yak-poo* (No. 51).<sup>13</sup>

Billy's mother went with her children to bid these men good-bye as they were starting on their long journey. Billy remembered this circumstance well, and the interest that was aroused by the journey of the four men. Billy was about sixteen years old.

"The four men took the Lo-lo trail.<sup>14</sup> It was early summer and the trail was only just open when they started. They reached the Salish (Flathead) country, where they were joined by two of that tribe. One of them remained with the party two days, and then decided he was too old for the journey, and returned to his tribe. The other, *Kam-kam-pose-ma*, kept on for three or four days; but he, too, was old, and by the advice of the others he turned back. The four then went on as fast as they could - they hardly stopped to hunt for sufficient food. They talked much of the teaching about the sun and the earth, and decided it must be a lie. They traveled for months. The leaves were falling when they reached St. Louis. Their faces looked strange to one another, for they had suffered from hunger and cold. They had no weapons—they had thrown them away. So as to avoid trouble with the strange tribes they met."

"Of course," said Billy, "none of us knew about the journey and what happened until afterward, but I remember what was told very clearly. My mother used to say, after the men were gone: 'You will never see them again.' At St. Louis the white people looked hard at them, as if to say, 'Who are these people?' The sign language was not known to them and they could not speak, nor could they understand. They knew the name St. Louis, and so they knew they were in that place. If they walked anywhere they became lost, so they stayed in one place, sitting down. They could not find Lewis and Clark. They were frightened, and afraid to search. They made a sign by putting their hands over their eyes as if blind, and pointed to the west, making slowly the movement of the sun to the west; then they tried to show, by drawing the hand, that they had come from the west."

"The white people circled about them, looking them over, and felt their heads. They found out that there were two languages, that three of the men spoke one language."

"The leader, Speaking Eagle, cried all the time, and sickened, and died. He said: 'I am not crying about my body, but about my people who must still sit in the darkness'." He died with his hands over his eyes. The Flathead never spoke after the death of Speaking Eagle, and died soon after.

"The two younger men began to pick up signs, and in a month or so they could talk a kind of sign language."

"After this the white people gathered to learn the cause of this visit, and someone wrote down the story told by the young men. They wanted it known that four had come and two had died, and that they did not know if they would ever get back to their own country. A man came

and took their pictures and said they would be known by these pictures. (This was George Catlin and was probably in 1838. For his account of these Indians see *Letters and Notes, etc., on the American Indians* by Geo. Catlin. Vol. II. p. 108-9 London. 1841). A promise was made that a man would be sent to them. The young men stayed in one place, and many came to see them. Those who came were not bad men. The white people called them Nez Perces. This was the first time they had heard that name."

"On the way back they ate berries. When over the mountains and near the headwaters of the Clearwater [River], *Ta-wis-sis-sim-nin* died, and was buried in the mountains in a hole gullied out by the snow. The survivor brought the riderless horse back, and was met by his kindred in the buffalo country; but he was unwilling to return to his people. He was afterwards known to be living with white trappers, to have cut his hair, and to have put on white men's clothes." His father and mother went to live in village No. 54, and were always on the lookout for white men. It was this group that met Mr. [Henry Harmon] Spalding,<sup>15</sup> the missionary, when he and Dr. [Marcus] Whitman<sup>16</sup> made their memorable journey across the Rocky Mountains [in 1835].

It will be remembered that this journey was the result of a missionary enterprise awakened by an impassioned address delivered by someone who had heard the story of the four men from an unknown country to the west who had come to get light, and who sat with shaded eyes. The speaker used this story to arouse missionary zeal. The address found its way to New England, and resulted in the departure of Dr. Whitman and Mr. Spalding. Their journey proved that the Rocky Mountains were not an impassable barrier, and that the region to the west could become a part of the United States. All this is well known history, and is also the setting up by Mr. Spalding, at the Nez Perce mission at Lapwai,<sup>17</sup> of the first printing press west of the Rockies, the press having been shipped from the Hawaiian Islands by American missionaries, across the Pacific Ocean and up the Columbia and Snake rivers. On it was printed in the Nez Perce language texts and hymns, and rules for government among the people.

Billy's youthful days were spent in hunting and in sharing in warfare against intruding tribes. Mr. Spalding arrived about 1836, and opened a mission and school at Lapwai. Billy heard of this, and wished to respond to Mr. Spalding's call for scholars, but his mother objected. He said she wanted him to grow to be a strong man. He acceded to her request and lived a year or two longer engaged in hunting and fighting; but he continued to receive reports of Mr. Spalding's school, and at last started to Lapwai to look into the matter for himself. He found a large school, the boys studying and working with the men, the girls weaving. Here he tasted his first potatoes and wheat bread. He at once determined to have some seeds and start a garden at his home on the Clearwater River.

At Lapwai Billy saw a girl toward whom he was attracted. He was poor, he had nothing to offer her, and she refused to listen to him. He went home, started his garden, profiting by the instructions of the missionary, and soon had a fine garden. The fame of his industry traveled to Lapwai and reached the ears of the maiden he had spoken to. She, meanwhile, had refused other young men, not liking their conduct. She was told that he had no father, that his mother was a good woman, that he had horses, buffalo skins, and garden. "I do not know what I shall do," she cried to her mother. "I do not like these men who think they have a right to whip their wives. Billy has a good face," she admitted. At last she consented to go with Billy. As she was leaving, her mother asked her: "Are you going to Kamiah for a little time?" "No," she replied, "I go to be always with him until I die." And off they started on the long journey over Craig Mountain to

their home in the beautiful valley of Kamiah where they lived and brought up their ten children. Billy's garden furnished the best vegetables to the mining camps that came nearer and nearer to the Nez Perce Country as the years went on.

"After the murder [or justified killing (Sprague 1987)] of Dr. Whitman [by the Cayuse Indians in November 1847], a letter came from The Dalles to one of the chiefs, asking for fifty or a hundred men to act as scouts. A council was held at which a white soldier was present, who told them that the scouts would be paid \$30 per month; none need go unless they were willing, but if they did not go they must be friendly and not kill the United States soldiers. The man then called for volunteers." Billy was the first to rise. He asked: "How many months do you want me to be a soldier?" "Nine." "Do you want me to be a soldier in winter?" "Yes." "What shall I do with my wife and three children?" Before the white soldier could answer the chief told Billy to stop talking, but Billy went on: "Can I stop being a soldier whenever I like?" "No," said the white soldier. "Good!" said Billy. Then, turning to the assembled Indians, he said: "I am a soldier now—how many of you will follow me?" First one and then another volunteered, until forty-one declared they were ready to start. Nine of the men, including Billy, went to Boise City,<sup>18</sup> whither the Cayuse had fled after killing Dr. Whitman. There they met four regiments of soldiers and one of cavalry. There was snow on the ground. The Cayuse and Snake Indians had fled. The volunteer Indians were told to go to The Dalles, but eight of the nine took their money and returned home. Billy said: "I will stay." He went to Walla Walla, [and] there he met "Colonel Steptoe"<sup>19</sup> who told him of Christmas and the Fourth of July, and was a friend." He was also under General Isaac Stevens,<sup>20</sup> for whom Billy expressed much affection. During the wars with the Yakama, Palouse [Palus], and Spokane [Spokan] Indians, the Nez Perce remained quiet and friendly. Billy served as express carrier during hostilities. As he traveled under orders he "heard the guns of battle" and "saw grain fields on fire." He was present when the first treaty was made in 1854-55.<sup>21</sup> A second treaty, in 1863,<sup>22</sup> brought about many contentions, as the reservation it established did not cover all the Nez Perce Country, and involved the abandonment of villages and regions to which the people tenaciously clung, and finally led to the Joseph War of 1877.

After his service in the army Billy returned to his garden and farm in Kamiah valley. His eldest son became an ordained minister of the Presbyterian denomination, and was pastor over the church at Kamiah until his death at the close of the last century. Billy had been an elder in the church for more than twenty years. His children all became leading men and women in the tribe, and set an example of industry, frugality, and good morals. When, under the Severalty Act [of 1887], the tribal lands of the Nez Perce were divided into individual holdings, Billy was the first man in the tribe to take his allotment, and the prompt and efficient manner in which he marked his boundary lines showed him true to his character as "Business Billy."

More than two days [10 and 11 June 1891] were occupied in drawing the map. At times Billy would sit as if lost in thought, then he would suddenly resume his pencil and proceed rapidly to trace rivers and streams and to mark village sites. He grew very weary, but persevered in his work even when urged to stop, as I feared he would fall ill. The morning after the completion of his task he met me with his usual bright smile, and exclaimed: "I feel good—I sleep last night, not all time talk with old people!" Evidently his nights and days had been haunted by scenes and stories belonging to another age.

Although the map is not drawn to scale and was Billy's first attempt, yet the relative position of the rivers is fairly correct.

Billy had never been to school. He could neither read nor write, nor could he speak English. It is possible he may have been shown by the missionaries maps relating to Bible history; but, so far as I could learn, he had not studied a map of Idaho or of the adjacent states. This fact makes his map of unusual interest. It covers a territory roughly estimated at about 250 miles north and south, and 180 east and west. His knowledge of the country represented was gained by traveling over it, mostly by foot. On the map the rivers, trails, and canyons are all drawn alike, these to Billy were practically passage-ways in getting about the country.

Some errors would have been avoided if the paper when first handed him had been of its present size. The sheet was added to after the map was well started, as it was evident that Billy needed more space. The Nez Perce Indians had no difficulty in recognizing the streams and localities on the map.

During the four years that I was among the Nez Perce I found comparatively few who could orient themselves—a marked difference from the prairie tribes. The people traveled by topography, and this map proves they had the power of making a general picture from detached details, as there was no vantage point from which a bird's-eye view of the country could be obtained.

The Nez Perce call themselves *Nim-me-poo* (*nim-me* = our own; *poo* = people).<sup>23</sup> The Flatheads [in western Montana] call the Nez Perces *Sa-hap'-tin*, and the Nez Perce speak of the Flatheads as *Sa'-lish*. The custom of piercing the nose, so common among the Columbia River Indians, seems not to have obtained [occurred] during the past century, as the old people said they could not remember seeing any of the *Nim-me-poo* with pierced noses.

The country occupied by the *Nim-me-poo* at the beginning of the last century and for a considerable time prior, may be roughly described as a basin between a hundred and a hundred and fifty miles in diameter; hedged on the east by the Bitterroot Mountains, on the west by the Blue Mountains; on the north by the divide between the streams flowing to the Columbia and those finding their way to the Snake and Clearwater rivers, and on the south by the divide between the waters of the upper Snake River and the branches of the Salmon. The basin is broken by rivers and deep canyons, and traversed from the northeast to the southwest by a ridge some 3000 feet above sea level known as Craig Mountain. The rivers and streams were formerly well stocked with fish. The salmon ran far up into the mountains. Elk, deer, and bear were numerous. Upon the level uplands or prairies coues [*Lomatium cou*] and camas [*Camassia quamash*] grew plentifully. These roots after being differently treated were powdered into flour to make a species of bread. Maize, pumpkins, and melons were unknown, though these and also potatoes were later introduced by the missionaries.

The Shoshone, or Snake, Indians to the south lived in a less favored region, and were continually pressing upon the Nez Perce. Their inroads kept the people in constant dread. These southern Indians seem to have been their only incursive enemies.<sup>24</sup> Occasional feuds broke out between the Nez Perces and other tribes to the north and west, but in the main the relations were peaceable and friendly. On the east the buffalo herds beyond the mountains greatly attracted the people. The Blackfeet claimed the country where the buffalo ranged, and as the Nez Perce made frequent excursions after meat and pelts, there was constant warfare between them and the Blackfeet. Beyond the latter lived the Crow, who were friendly; and if the Nez Perce could escape the Blackfeet and pass on to the Crow country, they were able to hunt the buffalo in safety.



The Blue Mountains were called *Wall-wall-mah-sam*, and probably took their name from the Walla Walla [Wallawalla] Indians who came there from the west to hunt. The name *Wall-wall-mah-sam* was applied to the entire range.

The Bitterroot Mountains had no general name, but each peak had its special appellation. One of the highest was called *Tom-loo-yats mah-sam*.

*See-sak-kae mah-sam* was the general name of the Salmon River mountains, "because of the circling around the river"—a curious reversal of our idea of rivers and mountains! The buttes that rose here and there all had names. One shapely cone to the west of Camas Prairie was regarded as a weather gauge—a cloud cap was sure to foretell a storm. Its name was *Kits-yu-weep-pa*, the butte where the morning is seen.

The Snake River was called *Pe-ku-nin*. It had another name, *Na-ka-la-ka-kinneki*, meaning, coming from the muddy side—evidently in contrast to the Clearwater River, *Ky-ky'h kinneki*, coming from the clear or white side.

Each fork of the Clearwater had its name. The North Fork, *Ah-sok'-ka*, runs far up into the mountains. One of its upper branches was called *Yuke-sam*. A small lake from which one of the tributaries of the *Ah-sok'-ka* takes its rise was called *E-wa-tan*. The Middle Fork was called *Sol-wah*.<sup>25</sup> The South Fork was known as *Took-coop-a*, meaning straight, as the river here runs nearly due south. The creek running into the Salmon [River] called *La-wa-ta*, on which village No. 64 stood, is the Whitebird, where, in the Joseph war of 1877, the U.S. Army met with disaster.<sup>26</sup>

The *Lok-ka-mah-sam* (*Lok-ka*, pine tree, *mah-sam*, mountain), or Craig Mountain, seems to have divided the people into two grand divisions. Those living west of the mountain were called *Pu-nim'-moo*, meaning people of the Snake River, from *Pe-ku-nin*, the name of that river. Those living east of the mountain were known as *Na-ki-ma*, from *nak-ki*, the other side. These divisions were subdivided into groups, each group composed of a number of villages, and each village being the home of a band or clan.

The map gives the names and locations of seventy-eight villages. All of these were either in existence or their sites known at the beginning of the last century.

The advent of Lewis and Clark marked a period in Nez Perce history, and whether a village or a custom existed before that event or afterward could generally be ascertained.

These seventy-eight villages were divided into twelve groups. Each group had its distinctive name, seven of which are known. Six of the groups belonged to the *Pu-nim-moo* division. Three groups, each with its own name, belonged to the *Nak-ki'-ma* division. Between these two divisions were three groups the distinctive names of which have been lost. These three groups were intermediate in many ways, being dependent upon the groups to the east and the west of them, and yet in a measure independent of both.

At the opening of the last century one group of seven villages had been totally destroyed through wars with the Shoshone Indians. Four other villages had also been depopulated from the same cause.

One or two new settlements have been made since the Treaty of 1855; but as they were due to white influence they are not mentioned, having had no place in the old order as shown on the map.

As a rule the villages were situated on the banks of a stream, and the inhabitants considered themselves as kindred. Marriage between the people of a village did not take place. Each village is said to have been governed by hereditary chiefs, and in every group of villages

one village was the acknowledged "leader," regulating the time for quest of food (hunting, fishing, and digging of roots). All the villages of a group hunted together, generally in a specific locality. They also fought together. If one village was attacked, the others of the group hastened to its defense. In aggressive warfare, also, they acted together. War leadership does not seem to have been an hereditary right, although chiefs sometimes led.

The villages were occupied only during the winter months. In April and May the kaus was ready to dig. The roots were brought to the villages for preparation. June was occupied in fishing. Camas was gathered in July, and hunting began in August and continued "until the snow flies." The storms drove the people to the shelter of their longhouses. In building these the earth was excavated two feet or more, and long lines of poles formed the framework, on which mats made of reeds and rushes were bound. The principal poles were in groups of three, and each group marked a family section, or apartment. The fires were in the center, and between every two fires an entrance-way projected from the lodge. A mat hung at each end of this hallway as protection from the cold. Outside each section was a sort of shed for the storage of wood and other belongings. From fifteen to twenty families lived in one of these houses, some of which were as much as two hundred feet in length. All the marriageable women dwelt together in a half-subterranean structure roofed over with heavy timbers. Through a narrow entrance in the dome-like roof one descended to the floor below by means of a sort of ladder made from a small tree, the lopped off branches forming steps. This ladder was never in position except when in use by the inmates. This house was called *Al-we'-tas*, meaning the abode of those without husbands. The young women and widows living in the *Al-we'-tas* went every morning to the long house and assisted their respective families in the preparation of the food; they helped to bring the wood and water, and when these tasks were done they took their own supplies and returned to the *Al-we'-tas*, where they wove mats, made garments, and were otherwise busily employed. Every village had its *Al-we'-tas*, which was always respected by all the men, old and young. The last of these structures disappeared a little after the middle of the last century.<sup>27</sup>

The discipline of the children of a village was delegated to certain men appointed for the purpose by the chiefs. They were called "whippers." There was one or more to each long house.<sup>28</sup>

### Group 1

The name of this group has been lost. All of its villages were in the vicinity of the Snake River and became extinct prior to the beginning of the 19th century. Their names and locations, however, are given on the map. They are numbered 1, 2, 3, 73, 74, 75, [and] 76.

Their hunting grounds were to the westward toward the Blue Mountains, and overlapped those of the *Walla-walla-poo* or Cayuse Indians. The people were considered as mixed with other tribes and not of pure Nez Perce blood. They were the most southern group in the tribe [The Group 1 villages mark the southern frontier of Nez Perce winter settlement. Accurate location of these villages is important for understanding aboriginal land tenure, the timing and extent of Numic expansion in the lower Snake River basin, and other questions. However, quite variable accounts of the position of Group 1 have appeared in the literature during the past thirty years. For example, Schwede (1966:No. 280) places Village No. 1, *Kaus-pa-ah-loo*, in the lower reach of Hells Canyon near Somers Creek at river mile 210 on the west side of the Snake River. This location implies that the remainder of Group 1 and all of Group 2 occur downstream of Somers Creek. Thompson (1992) accepted Schwede's interpretation of *Kaus-pa-ah-loo* and

concluded the archaeological site on Tryon Creek (35-WA-288) marked the location of Village No. 2, *Tak-in-pa-loo*. Another interpretation proposed by Rice and others (1981) places villages 2, 3, and 76 of Group 1 about 25 miles upriver, between Rush Creek (river mile 231) and Bernard Creek (river mile 235)].

[However, all three accounts fail to accommodate Billy's statement that village No. 5 of Group 2 was located 50 miles above the mouth of the Salmon River. This would place the southernmost settlement in Group 2 somewhere in the reach between Saddle Creek and Granite Creek, at about river mile 238. All of the villages in Group 1 must therefore be located above this reach].

[Our interpretation of Group 1 places village Nos. 1, 2, and 3 in the basin of Pine Creek on the west side of the Snake River. Village No. 75 is at the mouth of Indian Creek and Village No. 76 is at the mouth of Wildhorse Creek so that both are on the east or Idaho side of the Snake. This places Group 1 about 44 river miles above the location favored by Rice and others, and about 70 miles upstream of Schwede's location].

[This interpretation has several advantages. Most importantly, it accommodates the location of Village No. 5 in Group 2 by placing all of Group 1 upstream of Granite Creek. Second, it accounts for apparent errors in cartography in the vicinity of the Imnaha River and Pine Creek, by placing a trail leading from the Imnaha south between North Pine and Pine creeks, and by recognizing that the internal drainage of lower Pine Creek was drawn incorrectly by Billy Williams. The branches of Pine Creek converge to form a single channel about six miles west of the Snake River. Third, Pine Creek was a significant salmon spawning stream as late as 1924, when cyanide spills from the Cornucopia Mine finally destroyed the fishery (Reid and Gallison 1993). However, none of the short, steep, first and second order streams mentioned by Schwede (1966) and Rice and others (1981) as locations for *Tak-in-pa-loo* and *How-pa-loo* had significant salmon runs. Finally, local historical accounts refer to Nez Perce and Umatilla villages and cemeteries on East Pine Creek near Langrell between the late 1870s and early 1900s (Pine Valley Community Museum 1978:32, 1979:31, 1984:27, 1991:24). The impression given by these accounts is one of resumption of a temporarily interrupted land use pattern.<sup>29</sup> In summary, our interpretation places the extinct villages of Group 1 along both sides of the Snake River between Pine Creek and Granite Creek].

1. *Kaus-pa-ah-loo*. This village was on the creek *Kaus-pa-al* [Pine Creek], which emptied into the Snake River from the west. It led up to a bench, or prairie, where cous grew plentifully (*Kaus*, an edible root). The village was said to have been large, but from continual battling with the Shoshone, who coveted the cous grounds, all the people had been killed and the place deserted before the beginning of the last century [Schwede said that the name of this village referred to any kind of dry root and she placed it in the area of Somers Creek (Schwede 1966:No. 280)].

2. *Tak-in-pal-loo*. Situated on the creek *Tak-in-pa-al* [also in the Pine Creek basin]. Where the village stood there was a deep, quiet place in the stream where the salmon came in abundance. *Tak-in* is the name of such a deep place—"almost like a harbor." Deer abounded on this creek, and because of the plentifulness of game and fish the village suffered from constant inroads from the Shoshone, and became extinct. It is said that at the opening of the last century there was living one old man who belonged to this village [Schwede stated that the name of this village referred to a meadow and placed it "somewhere on a line from Wolf Creek to (the) confluence of Horse Creek and Imnaha River" based on her understanding of Fletcher's work

(Schwede 1966:No. 276). Thompson (1992) correlated *Tak-in-pal-loo* with a site on Tryon Creek while Rice and others situated this village on Sluice Creek (1981:19-20)].

3. *How-pa-loo*. The name comes from the stream [Pine Creek] on which the village stood, *How-pa'-al*: *how*, from *hown*, a hole; *pa-al*, leading to. The stream was full of rapids and holes where fish hid. This was the "leader" village of this group. It is said to have been the largest and most important. It directed the time of hunting. It was entirely destroyed prior to the last century [Schwede stated that the name of this village referred to a swift stream and she placed it in the same general location as village No. 2 (Schwede 1966:No. 277) while Rice and others (1981:19-20) placed it on Rush Creek].

73. *Ky-yah-pos-poo*. From *ky-yah-pos*, a bush, the wood of which was used for making baskets. This village had been so long extinct that only its site was known at the time of the advent of Lewis and Clark [Schwede (1966:No. 274) thought this village may have been located between Birch and Wolf creeks; however, we place it below Pine Creek and probably above Granite Creek].

74. *Ko-sik'h'-poo*. Near this village [on Sheep Creek or Granite Creek?] a soft, workable, stone was available. The village has long been destroyed [Schwede also placed this village between Birch and Wolf creeks (1966:No. 275). We place it below Pine Creek and above Granite Creek].

75. *Ko-sik'h'-poo*. This village [on Indian Creek] bore the same name as the preceding, but both ceased to exist so long ago that it is not known whether or not they were inhabited by the same band or clan. Tradition says they were a very brave people [Schwede thought this village may have been in the vicinity of Wolf or Jones creeks (Schwede 1966:No. 278). We place it below Pine Creek but above Granite Creek].

76. *Ko-lat'-pa-loo*. Nothing is known of this village [on Wildhorse Creek] save the tradition of its site and that it belonged to the same group as the foregoing [Rice and others placed this village on Bernard Creek (1981:19-20)].

## Group 2

The name of this group was *Pe-ku'-nin-moo*—literally, people of the Snake River. The people of this group were hunters rather than fishers. Their hunting grounds were to the southeast on the *See-sak'-kae-mah-sam*, the mountains about the Salmon River.<sup>10</sup> After the destruction of Group 1 the *Pe-ku'-nin-moo* became the southern outpost of the tribe. They were warlike in character, and after the destruction of one of their villages (No. 5), they looked upon all strange men as enemies. They fought in large war parties, seldom less than a hundred warriors and often three or four hundred. When war was decided upon at the leading village (No. 9), two messengers were sent to the other villages to call for volunteers. These people were very excitable, and when Lewis and Clark arrived they were with great difficulty restrained from attacking them by the authority of the *Nak-ki-ma* division (dwelling east of Craig Mountain). All of the villages of this group except No. 4 lay on the east side of the Snake River. The Treaty of 1863, which established the [present boundaries of the] Nez Perce reservation, did not include any of the villages of this group. This group comprised Nos. 4, 5, 6, 7, 8, [and] 9 [Villages in Group 2 were located on the Snake River downstream of Granite Creek and above the mouth of the Salmon River. According to Tucker (1993:93), the Nez Perce of *Tu-hool-hool-sute's* band wintered in this reach as late as the 1870s. The main village was located at Pittsburg Landing;

others extended from Dug Bar up to Kirkwood Bar. Some groups wintered still further upstream at Salt, Temperance, Sluice, and Saddle creeks. Hearths excavated at Pittsburg Landing have radiocarbon ages dating to the eighteenth century in association with tubular copper beads and Desert series arrow points of southern sources (William 1991)].

4. *Im-na'-ma*. The creek, *Im-na-ha* [Imnaha River], upon which the village stood, ran in sharp bends like knees; *im* signifies knee. This was a large village even at the time of the Treaty of 1855, but it was abandoned after the Treaty of 1863 [Schwede placed this village at the mouth of the Imnaha River and confirmed its location with several ethnographic sources (Schwede 1966:No. 267)].

5. *Ky-ya-pus'k-poo*. From *ky-ya-pus'k*, a berry-bearing bush. This populous village was about fifty miles south of the mouth of the Salmon River, on the Snake. All the people were killed in wars, and the place was uninhabited at the beginning of the 19th century [Schwede stated that the name of this village referred to an early service berry. She placed two villages with the same name in the area between White Horse Rapids and Wolf Creek and attributed both locations to Fletcher (Schwede 1966:Nos. 273, 274)].

6. *Toe-e-ko'-poo*. From *toe-e-ko*, a reed. This village lay near a swampy place where the reeds used in making mats grew abundantly. Although it had suffered from wars, there remained a sufficient number of inhabitants to take part in the Treaty of 1855. The village was abandoned after the Treaty of 1863 [Schwede confirmed that the name of this village was associated with reeds or tules. She thought that it was located between Divide Creek and White Horse Rapids although her basis for this information is unknown (Schwede 1966:No. 272)].

7. *Till-tee-ta'-ma*. From *till-tee'-ta*, a bad-smelling bush, unfit for food, that grew along the banks of the small creek [Wolf or Getta creeks ?] which here entered the Snake River. This was a large village, but was abandoned after the Treaty of 1863 [Schwede provided confirmation of the name of this village by stating that it was based on a red leafed plant but was unable to confirm its location through ethnographic sources (Schwede 1966:No. 266)].

8. *Tu-na-ham'-mo*. A large village on a small creek [Divide Creek ?]; abandoned after the Treaty of 1863 [The name of this village may have referred to mountain sheep and it was reported to be located in the area of Mountain Sheep Rapids and Mountain Sheep Creek (Schwede 1966:No. 265)].

9. *Te-ka'k-pa-sam'-ma*. This village took its name from the deep, barren gullies that seam the high bluffs of the Snake River—a marked feature in the landscape of this region. These gullies were called by the Nez Perces *ta'k-pa-sam*. This was the "leader" village of its group [Schwede stated that the name of this village refers to a fishing net although she did not attribute this to any Nez Perce informants (Schwede 1966:No. 250)].

### Group 3

The name of this group was *Sah-kon'-ma*, from *sah-kon'*, a canyon, or shady place. The Snake River here runs through deep canyons, and the bottom lands on which the village stood were limited in area. The fishing was good. The people were not given to the hunting owing to the difficulty of getting out of the canyons. This inaccessibility of the country left them in comparative peace. After the introduction of horses the people occasionally hunted, but they remained fishers until the abandonment of all the villages of this group after the Treaty of 1863 when they moved onto the reservation then established, and gradually took to farming. This

group comprised Nos. 10, 11, 12, 13, [and] 14. No. 10 was the "leader" village [all villages in Group 3 were located below the mouth of the Salmon River in Idaho and above the mouth of the Grande Ronde in Oregon].

10. *E-pa-lute'-poo*. *E-pa-lute* signifies throwing nets over great rocks which lie in the river, into holes where the water whirls, and scooping out the fish which hide there. There was excellent fishing at this place, and the village was a large one. It was the "leader" village [Schwede stated that the name referred to something sticking into the water although she did not state the basis for this translation (Schwede 1966:46). This is the same name as for the Palus village at the confluence of the Palouse and Snake rivers, meaning something sticking into or out of the water (Sprague 1968). This village may have been located at the mouth of Cherry Creek on the opposite site of the Snake from *Kew-kew'-lu-yah's* map (Schwede 1966:No. 249)].

11. *See-wy'-yah*. The name indicates a sudden turn or bend in the river around a promontory. This village had many inhabitants. The people were spoken of as *E-pa-lute'-poo*. Villages 10 and 11 were closely bound together, but the people were counted as distinct clans between whom marriage was permitted [Schwede provided a similar translation although she did not confirm it with any Nez Perce informants. She placed this village in the vicinity of Garden Creek (Schwede 1966:No. 248)].

12. *Sy-yo'h-po*. The word expresses the peculiar sound of the river at this point, where two currents meet and flow over the stones. Here stood a large village of over thirty long houses, the people subsisting almost wholly by fishing [The name of this village may refer to granite and it was reported to be located in the vicinity of Garden and Cache creeks on both sides of the Snake (Schwede 1966:No. 247). Test excavations at Cache Creek (on the Oregon side) found numerous fish remains and net weights associated with glass trade beads (Reid and Gallison 1994). The name Cache Creek is derived from storage pits where fish and meat were cached by Indians in 1876 (Horner 1940s:52-53)].

13. *E-wisp'-po*. This name is the only one in all the Nez Perce list which has a mythical origin. The story goes that the Coyote, a hero in Nez Perce folk-tales, who was always going up the river and never passing down-stream, came to this place where springs issued from some great rocks, and being thirsty he drank of the water, found it cold and good, and called the place *e-wisp'-po*, meaning a whirlpool. This was a small village, but many Nez Perce traced their descent from it [Schwede said that the name referred to urine and thought this village was located in the area of China Garden Creek on the east side of the Snake (Schwede 1966:No. 246). Paul confirmed the presence of the springs and the association with Coyote; he also thought the name meant "Coyote urinated" (Paul 1987:No. 208)].

14. *O-le'k-o-lee-poo*. The word *ole'k-olik* means twisting like a snake. At this point the river is very tortuous, the water whirling as it runs. The fishing here was good [A site with a different name but with a similar translation was thought to be located in the general vicinity of Birch and Shovel creeks on the west side of the Snake River (Schwede 1966:No. 245). The village may have been the fishing site visited by Sergeant Ordway's party in May 1806 (Moulton 1995:316-317). Stratton and Lindeman (1979:11) place the site of Ordway's visit at Wild Goose Rapids, but on the east side of the river, immediately downstream of Birch Creek].

## Group 4

The name of this group was *Will-lu-wo*. Its villages were on the Snake [River] and [its] western tributaries. The people were hunters, and went west to the Blue Mountains for game. As warriors they were rivals of the *Pe-ku-nin-moo*. Several large streams traversed their country, and the prairies were rich grazing grounds after the acquisition of horses. The *Will-lu'-wo* group refused to enter into the treaties of 1855 and 1863. This region has become historically famous because of the brilliant fight Chief Joseph made in 1877 for the Willowa [Wallowa] country, the ancient home of his people. Group 4 comprised Nos. 15, 16, 17, 18, 19, 20, [and] 21. No. 18 was the "leader" village. [All villages in Group 4 were located along a narrow section of the Snake River from just above the mouth of Joseph Creek to just below the mouth of Couse Creek].

15. *Nuse-no'-pe-poo*. From *nuse-nu*, a nose. The promontory around which the river lay was like a nose. This was a good-sized village [A similar translation is that the name referred to snorting. This village was located opposite the mouth of the Grande Ronde River (Schwede 1966:No. 243)].

16. *E-mah-hy'poo*. From *e-mah-hy*, a root much liked by the old Indians. The young folks have forgotten its taste. It was plentiful along the [Captain John?] creek on which the village stood, and was gathered in the early spring [This name may have referred to wide bladed bunch grass growing in creeks (Schwede 1966:No. 189)].

17. *Sis-nim-'poo*. From *sis-nim*, the thorn bush. This was quite a large village [Schwede provided the same translation and confirmed it with several Nez Perce informants. This village was on Thorn Creek (Schwede 1966:No. 268)].

18. *Well-'eyou-wah we*. *Well* is an abbreviation of *Wa-lu-la*, the name of that part of the stream now known as the Grand Ronde between its branches and its debouchment into the Snake; *eyou-wah-we* means mouth. A branch of this stream, the Wallowa, gave its name to the country for the possession of which Chief Joseph fought in 1877. No. 18 was a large village and the "leader" of this group [This may be the same village placed on the north side of the mouth of the Grande Ronde by Schwede (1966:No. 195)].

19. *In-nan-toe-e-in*. The final *in* signifies that the location was surrounded by the river *In-nan-mah* [Grand Ronde River]. To this point a fish closely allied to the salmon came in great numbers [probably the sockeye or bluebacked salmon (*Onchorhynchus nerka*)]. This populous village was the home of Chief Joseph [This village was located at the mouth of Joseph Creek. Schwede states that the name referred to the north side and confirmed its existence with a number of Nez Perce informants (Schwede 1966:No. 199). Paul differed on the spelling and its meaning but he also placed a village in the vicinity of the mouth of Joseph Creek (Paul 1987:No. 134)].

20. *Well-wo'wah-ah-ly-ma*. *Well-wo*, derived from *Wal-lo-wa*, the name of a stream; *wah*, up the river; *ah-ly*, on the river bank; *ma*, people. The name thus signified that the people lived up the *Wal-lo-wa*, on its banks [Nez Perce informants confirmed that a village was located up the Grande Ronde but Schwede was unable to locate it (Schwede 1966:No. 209; Paul 1987:No. 112?)].

The term *Ah-ly-ma* is applied to any people living on the borders of a river. The fragments of tribes from the Columbia River are spoken of as *Ah-ly-ma*. The name has acquired another meaning, however. The French came down the rivers, and those who lived with Indian

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## THE NEZ PERCE INDIANS

16794  
BY HERBERT JOSEPH SPINDEN

**AUTHOR'S NOTE.** — In the summer of 1907 the Peabody Museum of Harvard University detailed the present writer, together with Mr R. R. Hellmann, a student of the Harvard Medical School, to study the archeology and ethnology of the Nez Percé region. The information gathered on that expedition, supplemented to some extent by further researches of the author in 1908 under the auspices of the American Museum of Natural History, has been embodied in the following paper.

The writer desires to express his thanks to Mr O. H. Lipps, Indian agent, and Dr J. N. Alley, physician, at Lapwai, Mr Henry Fair and Mr W. F. Smith of Spokane, Mr G. W. Bailey of Asotin, Mr A. E. Söffel of Lewiston, Mr John Owre of the Government dredging steamer *Wallerua*, and many others for courtesies in the field, and to Dr R. B. Dixon and Mr C. C. Willoughby for advice and help in the preparation of this paper. — H. J. S.

### HABITAT AND HISTORY

**NAME.** — The large and important tribe commonly known as the Nez Percés call themselves Numijou, but this name seems never to have acquired a hold in the usage of outsiders. They apply this term to the tribe as a whole, having other names for the geographical divisions. The name, however, is in no sense a stock name and does not include the neighboring tribes which speak a related language. There is apparently no native term that embraces the whole stock. The word Shahaptin, which now supplies this need, is of Salish origin and was used by the earliest fur-traders as the name for both the Nez Percé nation and Snake river. It is the name given the Nez Percés by the Spokane Indians. The word takes different forms, such as Saptin, Sapetens, Shawpatins, Chohoptins, Shawhaptins, etc. The word Chopunnish, much used by Lewis and Clark, may have been obtained from the eastern Salish or corrupted from the Indian word Tsupnitpelun. The word Chopunnish seems not to have been used after Lewis and Clark except on their

authority. The name Nez Percé is a translation into French of a Siouan (?) designation said to be Tsupnitpelun.<sup>1</sup> This referred to an early custom of wearing a dentalium shell through the septum of the nose. Lewis and Clark sometimes call the tribe Pierced Noses, and mention explicitly the occasional wearing of the shell. Ross<sup>2</sup> says the people are called Pierced Noses from the custom "of having their noses bored to hold a certain white shell like the fluke of an anchor."

Linguistically the Nez Percés are connected with several important tribes living west of them. The best known of these related tribes are the Palooos, Wallawalla, Yakima, Klíkitat, and Tenaino. The relationship is clear, and is seen in social intercourse and similarity in culture as well as in language. Linguistic relationship has been suspected between the Lutuamian stock and the Shahaptian.

AREA OCCUPIED. — The range of the Nez Percés extended from the Bitterroot mountains on the east to the Blue mountains on the west, between latitude 45° and 47°. Thus, while mostly in Idaho, they extended a considerable distance into Oregon and Washington.

<sup>1</sup>The following list, taken from the synonymy in the *Handbook of American Indians*, gives the names of other Indian tribes for the Nez Percés:

Caddo,	Tchaxsúkuush.	Osage,	Pejasamse ("plaited hair over the forehead").
Crow,	Apúpé ("to paddle"; "paddles").		
Dakota,	Pógehdoke.	Paiute,	Saiduka.
Gros Ventre,	Apaopa.	Pawnee,	Tshárukals.
Kalapuya,	Ani'pórsipi; Asaháptin (?).	(Zuapaw, Shoshoni,	I'naepe. Thoigarikkah ("kouse-eaters"); Tsoigah; Tsoohgabrah.
Kansa,	Pe'gázande.		
Kiowa,	Á'dalk'ato'igo ("people with hair cut across the forehead").	Siksika, Tenaino,	Konun'itup'io. Shi'wantsh ("strangers from up the river").
Kiowa Apache,	Mikadeshiichishi.		
Okinagan,	Saáptin.		

Other tribes have given the Nez Percés' own name, as follows:

Caddo,	Tchítpelít.
Pawnee,	Tsútpéli.

These terms evidently correspond with Tsupnitpelun, the Nez Percé version of the name given them by the Sioux. The word "Chopunnish" of Lewis and Clark may be a corruption of this term.

<sup>2</sup>Ross (*ib.*), 1, p. 185. See the Bibliography at the close of the paper.

The exact boundaries are in many places difficult to determine, since the area actually inhabited was only a small part of the territory under Nez Percé control. The permanent settlements were situated only along the rivers. In the south the villages extended a considerable distance up Salmon river, at least as far as Slate creek and in all probability as far as the western line of Lemhi county. On Snake river the mouth of the Innaha seems to have marked the southern limits. Above this point the Snake flows through a deep cañon between the Powder mountains and the Seven Devils. On the southwest the boundary line of the Nez Percé area circled the drainage basins of the Innaha and Willowa rivers, and crossing Grande Ronde river above the mouth of the Willowa, ran north along the crest of the Blue mountains to a point on Snake river near the mouth of Tukanon creek. On the north it followed the divide at the heads of the short streams flowing into Snake and Clearwater rivers till it reached the Bitterroot mountains. Thence southward these high ridges formed an effective barrier boundary on the east.

There seems to have been a considerable strip of neutral ground between the Nez Percés and their traditional enemies, the Shoshoni on the south and the Spokane and Coeur d'Alènes on the north. On the other hand, the tribes friendly to the Nez Percés lived in close conjunction with them. The Umatilla tribe of the Waiilatpuan stock divided with them the Grande Ronde valley. The Palooos shared with them the rich camas meadows near the present town of Moscow.

There are no traditions of migration, and, so far as can be determined, the tribe has dwelt within these boundaries from time beyond memory. The meanings of most of the place names have been forgotten.

Names for a number of the bands, or geographical divisions, of the Nez Percés have been obtained, but the list is incomplete, especially as regards the bands on the lower course of Snake river. These names are derived mostly from the names of streams. Each group contained at least one important permanent village and a number of temporary fishing camps. These

permanent villages seem to have been the real basis of tribal division, since each had at least one chief. The great chiefs were war chiefs and apparently had no real control outside of their own communities.

Following is a list of the most important divisions:<sup>1</sup>

- Ésnime* — Slate Creek band, the upper Salmon River Indians.  
*Lamtáma* — Whitebird band on Salmon river. Whitebird creek is called Lamata.  
*Tamanmu* — Band at mouth of Salmon river, the name for Salmon river being Tamana.  
*Inmáma* — Innaha River band.  
*Wakwáma* — Wallowa Valley band.  
*Wéwíme* — Band at mouth of Grande Ronde, or Williwewix.  
*-Isáwísnemepu* — Band near Zindels, on the Grande Ronde.  
*Inantóinu* — Band at the mouth of Joseph creek.  
*Toiknimapu* — Band above Joseph creek on the north side of the Grande Ronde.  
*Hínsepu* — Band at Hansens Ferry on the Grande Ronde.  
*Sakánma* — Band between the mouth of Salmon river and the mouth of Grande Ronde. The name comes from that of a cañon at Cruger Bar.  
*Saxsano* — Band about four miles above Asotin City, Washington, on the east side of Snake river.  
*Hasotino* — Band at Hasntin, opposite Asotin City, Washington. The name means literally "the great eel fishery."  
*Heswéiwéwípu* — Band at the mouth of Asotin creek, which is called Hesi'we.  
*Sáiwépu* — Band on the Middle fork of Clearwater river, about five miles above Kooskia, Idaho.  
*Tukpáme* — Band on the lower portion of the South fork of Clearwater river, which is called Tukupe, *tukupt* meaning "burnt."  
*Saiksaikinpu* — Band on the upper portion of the South fork of Clearwater river. *Saiksaik* is the word for "fireweed."  
*Kamiápu* — Band at Kamiah, at the mouth of Lawyer's creek. This band is also called *Uyame*.  
*Tewepu* — Band at mouth of Oro Fino creek.  
*Atskaítwáwípu* — Band at the mouth of the North fork of Clearwater river.

<sup>1</sup>In the spelling of native terms in this paper, vowels have their continental sounds; x is equivalent to German *ch*.

- Pípá'inimu* — Band on Big Cañon creek, which is called Pípaínime.  
*Painima* — Band near Peck, on Clearwater river.  
*Tuké'likhespu* — Band at Big Eddy.  
*Takséhepu* — Band at Agatha on Clearwater river.  
*Makapu* — Band on Cottonwood or *Maka* creek.  
*Yatóinu* — Pine Creek band.  
*Yakló'ínu* — Band at mouth of Potlatch creek, which is called Yaka.  
*Tunchepu* — Band at Juliaetta on Potlatch creek.  
*Iwatóinu* — Band at Kendrick on Potlatch creek.  
*Lapwéme* — Band on Lapwai and Sweetwater creeks.  
*Hatwéme* — Band on Hatwch creek.  
*Simínekempu* — Band at Lewiston, Idaho.  
*Tsokolaikinma* — Band between Lewiston and Alpowa creek. The name comes from the high-cut banks of the river, *tsoko* meaning "high-cut bank."  
*Alpowé'ma* — Band on Alpaha (Alpowa) creek.  
*Wíkispu* — Band about three miles below Alpowa creek on the east side of Snake river. The name comes from *wéix*, "alders."

Other bands, extending about eighty miles down Snake river from Lewiston, were: *Nuksíwépu*, *Sahatpu*, *Wawáwípu*, *Almotípu*, *Pínwéwéwípu*, *Tokalatóinu*, etc.

The names of villages would make a still longer list. The estimate of Lewis and Clark that the Nez Percés numbered more than 6000 could not have been far wrong.

ENVIRONMENT. — The area occupied by the Nez Percés is one of great topographical relief. It consists of a plateau, built up of successive lava flows, and rising from 3000 to 6000 feet above the sea, through which Snake river and its tributaries have cut deep narrow valleys with characteristically terraced sides. The eastern rim of the plateau culminates in the sharp jagged ridges of the Bitterroot mountains, an effective barrier with few passes. In the southern part of the area long stretches of the Snake and Salmon rivers exhibit the most pronounced type of cañon dissection. The Blue mountains, in the west, have domical summits that run out toward Snake river into broad sandy benches. The most favorable parts of the area are the Willow and Clearwater valleys. The villages were situated usually upon the alluvial fans, or "bars," at the mouths of lateral streams, or

upon the occasional islands in the rivers themselves. Permanent villages were never established on the uplands. In a few cases the lateral streams have partly aggraded valley floors, thus furnishing a limited amount of level ground for village sites and large festival gatherings; Lapwai and Asotin creeks are cases in point.

Part of the region is forested and part is prairie. The forests on the western slope of the Bitterroot mountains extend down the northern side of Clearwater river till within forty miles of its confluence with the Snake. The valley of Potlatch creek, the principal tributary of the lower Clearwater, was heavily forested for most of its length, but lumbering operations have almost denuded it. Craig mountain and the Blue mountains are also forested. The timber consists mainly of pine, cedar, fir, and tamarack. The nonforested portion contains broad upland meadows which formerly furnished large supplies of camas, kouse, and other edible roots, but which are now given over to wheat farms. The ravines and valleys abound in shrubs such as syringa, haw, hackberry, serviceberry, etc. Willow and cottonwood grow near the larger streams.

The climate of the valleys is hot in summer, but mild and almost free from snow in winter. On the uplands the winters are much more severe, and in the mountains the snowfall is often heavy. The precipitation is largely limited to the winter months, with the result that the steep valley sides dry up and in the spring acquire a browned and almost desert aspect.

On the whole the region is one that offered little inducement to the development of primitive agriculture. There were natural gardens of edible roots, game was fairly abundant, and at certain seasons of the year fish were plentiful.

HISTORY. — The first white men to visit the Nez Percés were Lewis and Clark. They spent some time with these Indians, whom they praise very highly for honesty and hospitality. The explorers found them already in possession of horses which had been acquired from tribes to the south, and a few articles of European manufacture that had been obtained in trade. White men were known by report from both the Indians of the plains

and of the lower Columbia. Fur-traders early established posts at Wallawalla and on Cœur d'Alène lake. In 1837 a missionary named Spaulding founded a mission at the mouth of Lapwai creek. Here he set up the first printing press in the Northwest and printed the Gospel of Matthew in the Nez Percé language. Soon afterward Catholic missions were established. In 1869 came the discovery of gold-bearing gravels on Snake and Salmon rivers, and thousands of miners poured into the region. From this date the history of the Nez Percés, especially in regard to treaties, which, when broken by the Government, resulted in the famous Nez Percé war of 1877, forms too important a chapter to be adequately discussed here.

Little has been written respecting the customs and arts of these Indians. The journals of Lewis and Clark, and of the early fur-traders, notably Alexander Ross and Alexander Henry, furnish nearly all the reliable material. This purely literary material has been carefully worked over by Dr A. B. Lewis. The account presented in the present paper is made up largely of information drawn from the Indians themselves, but is supplemented by the old accounts when these give additional evidence. In the study of the archeology of this region the present writer depends on personal investigations made during the railroad activities of 1897 to 1900 and again in the summer of 1907, also to some extent on accounts drawn from private individuals. Several private collections were examined through the courtesy of the collectors, notably those of Mr John Owrie, of the Government dredging steamer *Wallawa*, Mr G. W. Bailey of Asotin City, and Mr W. F. Smith of Spokane.

#### ARCHEOLOGY

The archeological remains of the Nez Percé region may be considered under three heads: (1) village and house sites; (2) burials; (3) occasional finds on river bars, etc.

SHELL-HEAPS AND HEARTHES. — No shell-heaps, except of very small size, are in evidence. Occasionally heaps of a cubic foot or more in size are found in the loamy banks of the rivers. A few of these were noted near the junction of the South and

Middle forks of Clearwater river and also near the confluence of the North fork with the same stream. They seem to be the remains of a single meal that had been buried or cast into a hole.

Two types of old fireplaces are also often found in the wash banks. One type, near the surface, shows the remains of sweat-house fires. The sweat-houses were built usually along the banks of the streams; some of them were slightly sunken and covered with sod. Stones were heated over a fire near the sweat-house and carried into it. So these shallow platforms of burnt stones and charcoal may be remains either of the sweat-house itself or of the fireplace near by. The second type of fireplace remains is buried from two to four feet below the surface. It is commonly from six to ten feet in diameter and slightly sunken in the center. Such fireplace remains mark the old ovens in which camas and other roots were steamed. The process of steaming will be described when we consider the preparation of food.

Bits of charcoal and a sprinkling of animal bones, mostly broken, are often found several feet below the surface. These however can offer no trustworthy evidence of extreme age because of the impermanent and unstratified character of the soil in which they are found. This soil overlies river beaches of rounded boulders. It is light, and easily crumbles under the action of water. A large mass of such soil could be shifted or built up in a short time with the river in flood. Even deeply sunken hearths could be easily explained as the remains of the underground menstrual lodges of the women.

VILLAGE SITES. — Almost all traces of ancient village sites along Clearwater and Snake rivers have been destroyed by the tilling of the soil. Many are said to be still visible in the lower part of the Grand Ronde cañon. As remarked before, they were situated on the banks of streams or on islands in the streams. A favorite location was near a riffle where salmon could be caught. Some villages were occupied continuously, although the number of inhabitants might fluctuate. In the uplands the Nez Percés never built permanent villages, though

in a few places, where camas and kouse were abundant, they constructed temporary summer camps. It was at such a camp on Weippe prairie that Lewis and Clark first encountered members of this tribe. Some fishing camps were also impermanent.

Two village sites, the only ones that could be located by actual remains, were examined. The first of these, situated near the mouth of Tammany creek, on the east bank of Snake river a few miles above Lewiston, has been partly washed away by placer mining. This site may be identified with Hasutin. The name means "the great eel fishery." It was used as a camp until thirty years ago, especially during the season of lamprey eel fishing. Here there are still several house-rings in two or more groups. The rims of these circles are elevated a foot or more above the general level of the ground, and the central portions are from three to five feet below the rims. Their size is remarkable, since they measure from sixty to seventy-five feet in diameter. The caving away of the bank has in one place made a perfect cross-section of a house-ring. On brief examination a few bits of charcoal, some *Unio* shells, and flint chips were found. In several house-rings pits have been dug by relic-hunters. A digging-stick with a bone handle, and a cache of shell and glass beads are reported to have been plowed up in a house-ring in an adjacent field. Many fragments of flint and obsidian are strewn along the river beach, and three pestles, either broken or unfinished, were picked up near by. The only one of interest is shown in plate VIII, 5.

Another and much better preserved village site is situated on the south bank of the Middle fork of Clearwater river, just outside the limits of the town of Kooskia. It is on a gravel flat, unsuitable for agriculture, that is now partly covered with a growth of young pine trees. As may be seen by the plan (fig. 2), the house-rings are of two distinct but intermingled types. The circular house-ring is found here, as at Hasutin, but it is noticeably smaller, being seldom more than twenty-five feet in diameter. The second type is long and narrow. The width is usually about eighteen feet, while the length covers from sixty to eighty-five feet. These house-rings are all

sunken from one to three feet, and have well-marked, elevated rims. As a rule the circular rings are deeper and more clearly marked than the elongate ones. The latter invariably have the axis parallel with the river bank, but no orderly arrangement with courts or streets is evident.

This village site has not been occupied for many years. The ground is well sodded, while trees, some of which are eighteen

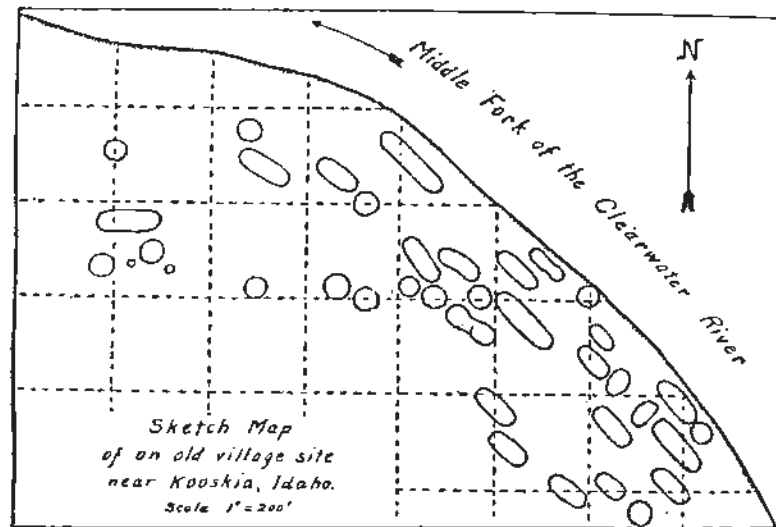


FIG. 2.

inches in diameter, grow around or directly out of the house-rings. In one ring a glass bead was found beneath the sod, showing that the site was probably occupied after the arrival of articles of European manufacture.

Permission for extended investigation could not be obtained. Brief examination and slight excavation revealed fireplaces about twelve feet apart along the central axes of the long house-rings. No implements were obtained here. Remains of sweat-houses and sweat-house fireplaces were seen along the river bank, but these were of much more recent origin than the house-rings.

Lewis and Clark<sup>1</sup> describe a circular house-ring at Kamiah

<sup>1</sup>Lewis and Clark, *Original Journals*, vol. v, p. 33.

that bore signs of age when they saw it. They mention both the sunken center and the raised rim. This seems to show that the circular house had a considerable antiquity and that circular house-rings cannot be ascribed to the recent introduction of the tipi lodge.

It is clear, even from this scanty material, that the archeological remains furnish evidence of both of the main house types—the circular lodge and the long communal lodge. These types will be discussed in a later section.

**CEMETERIES.**—Cemeteries are found near the traditional village sites, usually on the first bench above the river bottom, where the ground was easy to dig and where the graves could be seen from the village. The rock-slides under basalt cliffs were also sometimes used. Cemeteries are readily located by the heaps of river-worn or rock-slide boulders piled over the graves. But so completely have most of the cemeteries been filled by relic-hunters that it is now difficult to find any undisturbed graves except in the regions at present occupied by the Indians.

At Kamiah an old cemetery occupied, in 1897, a rocky flat near the mouth of Lawyer's creek. This was partly destroyed by the railroad grade. The ground had the appearance of being "hilled" like an old hop field. There were few, if any, osseous remains in the graves, although along the river banks, where high water had washed out some of the graves, human teeth were to be found, and flint implements occurred in caches. In one case twenty finely finished and several crude spear-heads were found together. They are all triangular and without barbs, but they are made from a considerable variety of material. The present Indians claim that this stony field shows the remains of winter cache pits and not of graves.

Another group of graves was situated on the east bank of Snake river, nearly opposite the mouth of the Grande Ronde. These graves showed large piles of stone in which pieces of cedar were placed upright. At the mouth of Potlatch creek a group of graves in a rock-slide was uncovered in making a railroad cut. In one of them a Lewis-and-Clark medal was found.

Mr John Owre excavated some graves near Alnota, on Snake river, the majority of which had the skeleton of a horse over that of the man, while cedar stakes, often partly burned, were placed upright on the top. In some of the graves a large amount of property in the form of beads, knives, etc., was found. In a single grave were found five flint-lock guns, seven iron tomahawks, several long iron rods, and two long iron knives. In other graves a quart or more of shell beads (plate ix, 12-14) and several pounds of copper beads (plate ix, 16-18) were unearthed. In one grave a flint knife fourteen inches long was found. In this cemetery the bodies were buried both flexed and at length, about five feet below the surface.

A group of four graves on the second bench of Asotin creek, about a mile above Asotin City, was opened. In two of them a few children's bones were found, along with three or four crumbling dentalia beads (plate ix, 15), while in the third the badly decomposed skeleton of a young man was uncovered. The fourth was apparently empty. The skeleton of the young man rested in a flexed position upon the right side, facing the southwest. Nothing was found buried with it. A few pieces of charcoal and the brown remains of several small sticks that had been placed erect were also taken from the graves. The graves were shallow, measuring about three feet in depth by four feet in diameter. The boulders that had been heaped over the grave were elevated about a foot above the surrounding surface and extended a like distance below it.

In general the burials are characterized by the invariable capping of boulders, and by the presence of cedar stakes placed either upright around the body or horizontally over it. The position of the body itself varies widely. With the bodies are found ornaments and utensils, but no remains of food.

Most of the objects found in the graves and along the river bars are similar to those made or used until recently by the Nez Percés and so will be treated under Material Culture. A few are unusual. Plate ix, 1 and 2, show two narrow, polished celts of jadeite (?), one found at the mouth of Captain John creek and the other at the mouth of Kouse creek on Snake river above

Lewiston. These were evidently acquired in trade from the Indians of the Northwest coast. They have been cut by grooves, and the fractured portion between the grooves shows clearly in the illustration (side view). Neither this method nor this material was employed by the Nez Percés. These implements are said to have served as wedges, taking the place of the native elk-horn wedges.

Plate ix, 3, represents a flat stone found near Asotin, and now in the collection of Mr G. W. Bailey. It is probably a hunting record. In the same collection is a curious stone, shown in plate ix, 19. The body of this object is cylindrical, and at one end is a crudely sculptured head with wide open mouth. The object probably represents a rattlesnake, once the patron spirit of some shaman.

#### MATERIAL CULTURE

The culture of the Nez Percés will be taken up in the following pages, not in its present debased form, but as nearly as possible in its form at the time of the first contact of these Indians with the whites. The introduction of horses and of articles of Spanish manufacture occurred before this time and doubtless exerted considerable influence. Any attempt to go back too far, however, would involve the risk of misinterpretation. On the other hand the influence of the Plains has been very much on the ascendancy during the last seventy-five years, and it is well to lay as much stress as possible on features that are known to be old and that seem to be of autochthonous development. Unfortunately in the matter of art and design there is little old material, and much that is modern must be studied and analyzed in the hope of isolating the strictly native elements.

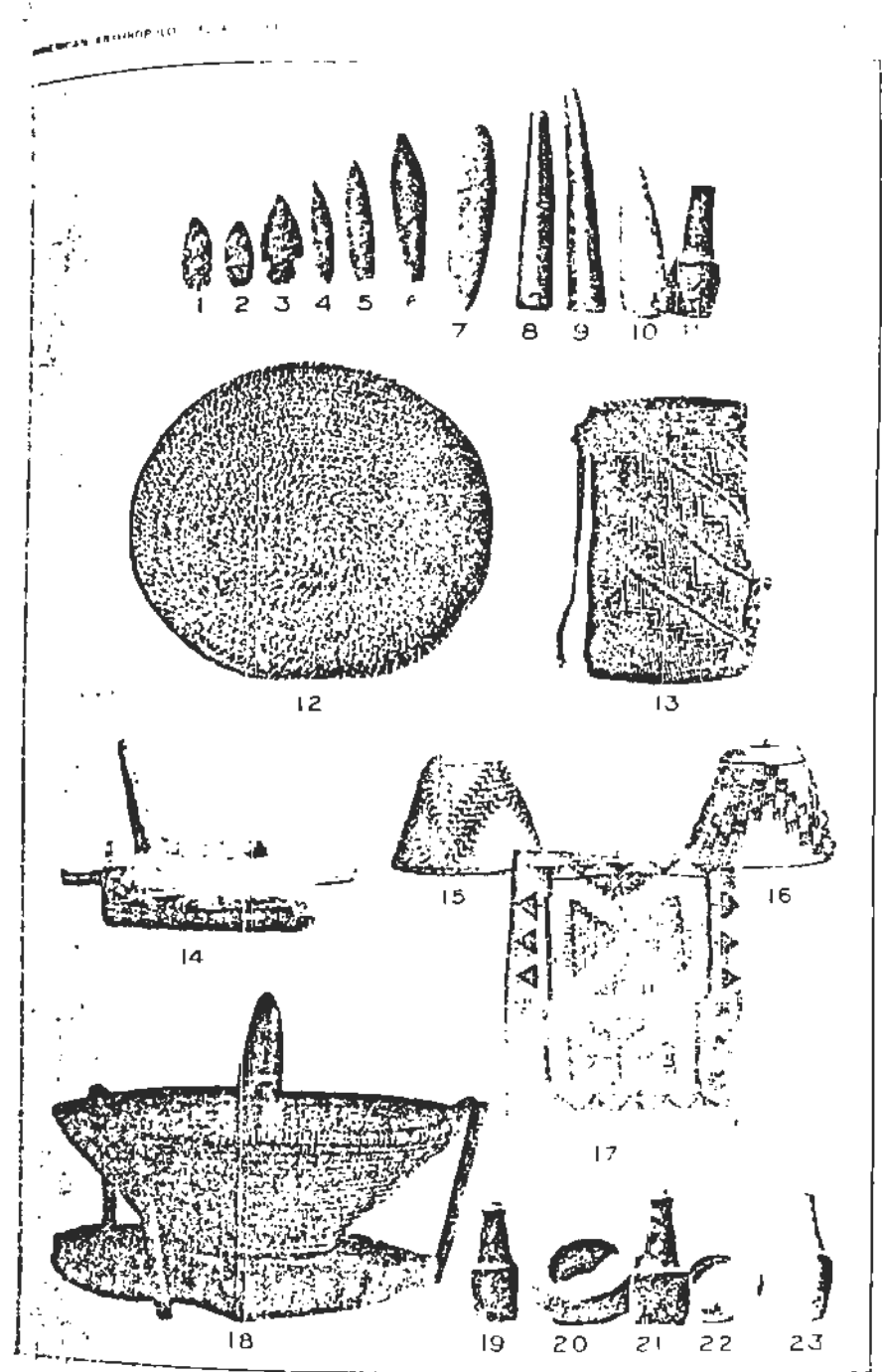
#### STONE

The Nez Percés worked skillfully in stone, shaping their implements by the two common methods, chipping and pecking. By the chipping method they made knives, arrow and spear heads, scrapers, and perforators. By the pecking process they fashioned pestles, mortars, mauls, and a few smaller objects.



**MATERIALS.** — The materials to be had were excellent and occurred in considerable variety. For chipped implements the material most prized was obsidian, which was obtained on John Day river, the name of this stream meaning "obsidian river," and in the mountains to the east, possibly in the vicinity of Yellowstone National Park. Parties were sent out to collect it, but no evidence that the implements were roughly shaped at the quarries could be obtained. Many kinds of flint, as well as jasper and basalt, were also used. The latter is the prevailing stone of the country. Pecked implements were made from river boulders of granite, diorite, and other hard stones. Boulders were generally chosen whose shape and size approximated that of the implement desired, so that labor could be minimized. Unfinished implements are found in considerable quantities. In rare cases these show rough preliminary chipping. The best implements present a refinement of shape and a smoothness of finish that are truly remarkable.

**CHIPPED IMPLEMENTS.** — Knives of several shapes are shown in plate vi, 1-6, and in plate vii, 1-6. The former group, from the fine collection of Mr W. F. Smith of Spokane, shows blades that vary from five and a half to eleven inches in length. The longest blades attain a length of fourteen or fifteen inches, but all exceeding four inches are rare. These blades were either simply wrapped at one end with deerskin or were set in short handles of wood. The end of the handle was notched and the blade set in with pitch, the gum of chokecherry, or sturgeon-blood glue. The hunting and scalping knife received a great deal of attention. It was carried in a deerskin bag or sheath which was suspended on the chest from a cord which passed around the neck. The flaking of knives and other flint implements was accomplished by pressing upon the stone with a bone point and then giving the latter a sudden sidewise twist. A flaker of bone with a notch in the end was also used. The stone to be chipped was held in the palm of the left hand. The flaking is usually very even, and the lines of the finished implement almost invariably symmetrical and pleasing. The secondary chipping of the best implements from this region is exceedingly minute and regular.



OBJECTS OF THE NEZ PERCÉS

1-6, Seven Chipped Implements; 7-11, Pecked and Moulded; 12, Wallowing Basket; 13, Cylindrical Basket of  
Bark; 14-16, Basket Hats; 17, Hat Woven Willow; 18, 19, Mortars, Pestles and Moulds.

Spear and lance heads are barbed and non-barbed. The largest measure about four inches in length, but the majority do not exceed two inches. It is difficult to discriminate between spearheads, knives, and arrowheads; the working rule of classification depends mainly on the size. Any point more than an inch and a quarter in length may safely be called a spearpoint if it is barbed; if not barbed the chances are that points exceeding three inches long were intended for use as knives, and those under that size for spearheads. The shapes of the spearheads vary, the principal ones being shown in plate VII, 1, and 5-11. These heads were used on war spears, but rarely on fishing spears.

Arrowheads are figured in plate VII, 10-22. Judging from the variety of the bases the arrowheads must have been attached to the shafts in several distinct ways. The extreme minuteness of some of these arrowheads is worthy of note. The arrowhead with serrated edges is an unusual type (plate VII, 16), while arrowheads with two or more sets of barbs have been found. The straight-topped arrowhead (14) is very common in the Nez Percé area, while the arrowhead with a shaft (21) predominates in the Yakima region.

Perforators are shown in plate VII, 23-25. The usual form has a wide top to serve as a finger-hold. Scrapers are usually irregular in shape; many are flat on one side and somewhat domed on the other, with a straight scraping edge. Such a scraper was used in the tool for graining skins, shown in fig. 5<sup>4</sup>. For another stage of skin-dressing a rough scraper was made by simply striking off a disk-shaped fragment from a river boulder.

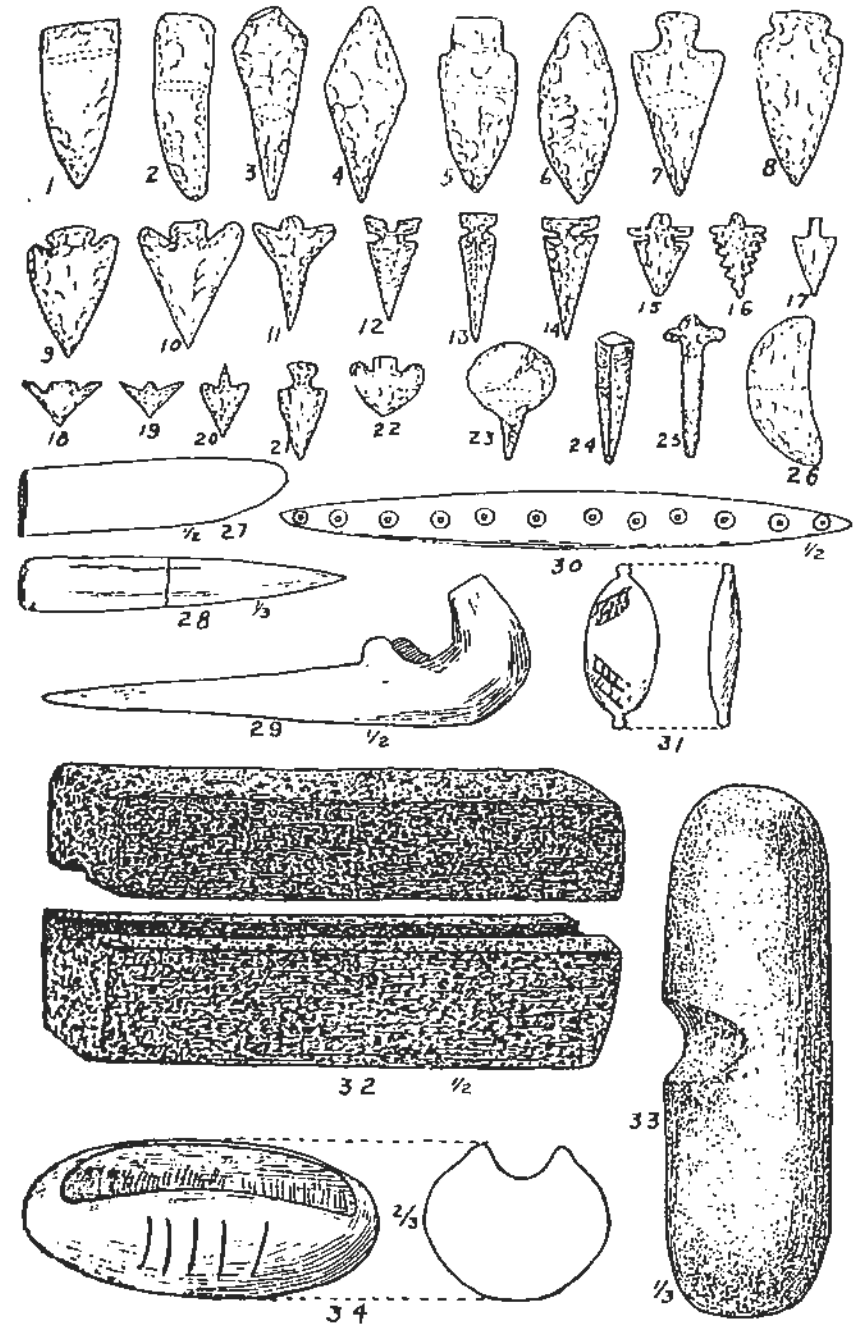
All the chipped implements described above were made by the men; pecked implements were made by the women.

PECKED IMPLEMENTS. — Pestles were made by laboriously pecking the surface of selected river boulders with the sharp edge of another stone. The time and labor required to make good pestles rendered them valuable family property, and they were handed down for generations. A number of pestles, some crude and some finely finished, are shown in plate VIII. The process of manufacture is indicated pretty clearly by the specimens figured.

Fig. 1 of plate VIII shows a smooth, oblong river boulder that has been neatly broken by an encircling series of well-directed blows. It evidently did not give satisfaction, for it was thrown aside without further change, and was not used, even temporarily, as a pestle. Fig. 2 shows a pestle entirely natural except for the abrasion of its lower surface, caused by pounding. In fig. 3 a water-worn stone has had its rougher angles smoothed off by pecking and its base flattened to give a better pounding surface. Fig. 4 shows an old broken pestle made over into a new one. Fig. 5 pictures a remarkable specimen. At first glance it might seem that here is an old celt form remodeled into a new implement, so true are its surfaces. As a matter of fact these are entirely water-worn, and this object offers an example of the rare preliminary chipping in the manufacture of pestles. Chipped roughly from a disk-shaped boulder, it had already been somewhat smoothed by pecking before it was finally rejected.

Figs. 6 to 11 of the same plate illustrate the principal types of finished pestles. Perhaps the most common type is the long conical pestle with slightly flaring sides like the entasis of a column (figs. 6-8). These vary from six to eighteen inches in length, and from two inches to two and one-half inches in diameter. Fig. 7 represents a pestle of this sort which is slightly modified. A natural protuberance at the upper end is marked with a groove to give a phallic significance. Another pestle, recently presented by Mr Henry Fair to the American Museum of Natural History, shows a cord-like enlargement running lengthwise. No other decorative or symbolic modifications were observed.

The second main type of pestle has an enlarged pounding surface, with the upper two-thirds of the implement contracted to offer a more convenient hand-hold. Three varieties of this type are shown in figs. 9-11. In the first example (fig. 9) the handle is round and domed at the top, while the lower portion is somewhat angular and contracts toward the base. This kind of pestle has either three or four rounded corners to the base. Fig. 10 represents the "hat-shaped" top, while fig. 11 shows a simple rim enlargement at the top. These last two



STONE AND BONE IMPLEMENTS OF THE NEZ PERCÉS

1-4, Chipped Stone Implements; 27-31, Bone Objects; 32, Arrow-shaft Rasp; 33, Stone Handle for Digging-stick; 34, Polisher of Fine-grained Stone.

varieties were used both as pestles and as mauls. The enlargement at the tops of the handles prevented them from slipping from the hand when used for driving wedges.

The distribution of the types of stone pestles west of the Rocky mountains presents an interesting field of study. Close analogies to the types described above, if not identical forms, are found over a considerable area. The hat-shaped top is found on the long slender pestles of California. Combined with a base more like that of the Nez Percé pestles, it is found on the lower stretches of Fraser river, British Columbia. The simple conoid type prevails throughout southern Washington. East of the Nez Percé country the use of stone pestles disappears until the region of the Great Lakes is reached. Although thus on the frontier of the area of stone pestles, yet the workmanship shown by the Nez Percés in making these implements is perhaps the best seen anywhere. Plate vi, 8-11 and 19, 21, 23, illustrate some of the beautiful pestles in Mr W. F. Smith's collection.

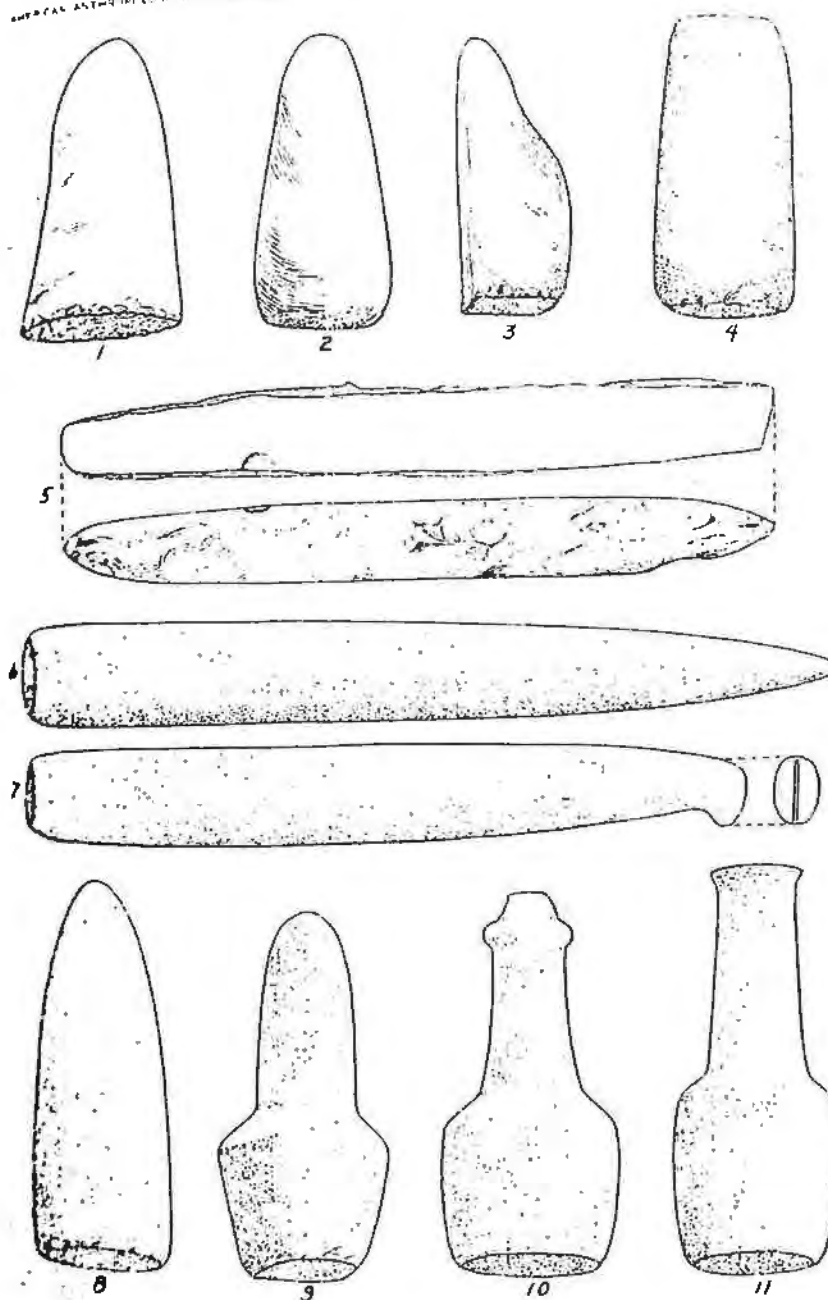
Stone mortars, hollowed out of thick, disk-shaped river boulders, are rarely found. They are rather shallow and may have been used as paint mortars or for some other specialized use. If they served as ordinary mortars they must have been furnished with basketwork sides. Wooden mortars and basket mortars placed over flat stones were more commonly used. Two beautiful stone mortars are shown in plate vi, 20, 22.

Cylindrical stones with a polished groove on one side, such as is illustrated in plate vii, 33, were used as handles for digging-sticks, the stone being lashed across the top of the stick. This custom presents an interesting analogy to the use of stone disks on the digging-sticks of California Indians. Such stones as these have been called arrowshaft straighteners, but there is no evidence of such use among the Nez Percés. Arrowshafts were polished with a pair of rasps such as are shown in plate vii, 32. The two oblong pieces of light tufa, each with a semicircular groove, were placed together with the shaft within the groove. This implement was as effective as sand-paper. Possibly a still higher polish was given by the grooved object of soapstone shown in plate vii, 34.

It has already been pointed out in discussing pestles that those having a protuberance at the top of the handle, to prevent the hand from slipping, were also used as mauls. When speaking of Indians near the Grande Ronde river, Irving<sup>1</sup> says: "They generally made use of a stone mallet wrought in the shape of a bottle, and wedges of elk-horn, in splitting their wood." The usual type of grooved maul with an attached handle was not used by the Nez Percés, although many specimens are found at no greater distance than Umatilla river in northeastern Oregon. River boulders of various sizes were, however, crudely grooved to serve as net-sinkers. Hammer-stones for fracturing, etc., seem to have been merely such unmodified stones as were conveniently at hand. The heads of war-clubs (fig. 5<sup>b</sup>) were also made of unworked river boulders.

PIPES. — Pipes were made of soft stone, the two varieties most in use being a bluish or yellowish soapstone and a light spongy tufa. Catlinite seems occasionally to have been acquired from the Plains tribes. The earliest form of pipe was doubtless the straight tubular pipe that may once have prevailed over the western half of North America. Plate ix, 4 and 5, illustrate two pipes of this character, taken from old graves. The larger one, in the collection of Mr G. W. Bailey, has a small smoke-hole through the stem, and a disk-shaped mouth-piece. This disk is pierced by a hole near the rim, evidently to admit a cord by which the pipe might be suspended from the neck. The stem was formerly decorated with an incised design of which only few traces remain. The second pipe, belonging to Mr John Owre, is shorter, and the bore of the stem is greater. The bowl in both cases is conical. Possibly a wooden mouth-piece was used with the second pipe. Plate ix, 7, 8, show two examples of the right-angle pipe bowls. The material of the pipe shown in fig. 7 of the same plate is reddish tufa. The drawing of a tomahawk on the bottom of the pipe shows that it is fairly modern. On the sides of the bowl is a crisscross design, and on the front a crude drawing of an Indian head with feather

<sup>1</sup> Irving (*b*), p. 64.



TYPES OF STONE PESTLES

1-4, 6, 7, and 8, Unfinished Pestles; 5, 9, 10, Finished Pestles. (All about one-fourth natural size.)

head-dress. Fig. 8 shows a smaller, better made pipe of soapstone, decorated with lines and dots in a pleasing arrangement. Both of these pipes are in the collection of Mr Bailey. Fig. 6 presents a disk-shaped pipe bowl of yellow soapstone. The aperture is a right-angle one. The bowl has no decoration. This pipe, found near Asotin City, is now in the Peabody Museum at Cambridge. All of these pipes with right-angle bowls were provided with wooden stems. Many very minute pipes have been obtained in the Nez Percé region.

The smoking of the pipe formed an important part of the burial and other sacred ceremonies of the Nez Percés. The calumet, or peace-pipe, ceremony seems also to have been practised among them or to have been introduced at a very early date. Hines<sup>1</sup> describes a Nez Percé peace-pipe as having had a stem one inch in diameter and three feet long, and a bowl four inches long and two inches in diameter, made of a dark smooth-grained stone. When smoked it was passed in regular order as among the Plains tribes.

#### BONE AND HORN

Many small implements were made of bone and horn. Elk-horn wedges, which completely supplanted celts in this region, were of prime importance. An elk-horn wedge is illustrated in fig. 5<sup>7</sup>. Such wedges were used not only for splitting wood, but also for felling trees, hollowing out canoes, etc. They were held in position, and then pounded with the stone mallets already described. The horn bow is referred to later. Awls of various sizes and for various uses were made of bone (plate VII, 27-29). The last one shows an awl used in braiding rope. In weaving basketry a small awl was employed. Bone was also extensively used as material for arrow-flakers, for heads of fish-spears, gouges, and many other small implements. Whistles were made of the long-bones of the sand-hill crane, and beads of the bones of other birds. Dice and gaming pieces were commonly made of bone. Before being fashioned into the various objects, bones were usually boiled to remove the animal fats. Most of the objects here mentioned are described in later sections.

<sup>1</sup>Hines, p. 184.

## METAL

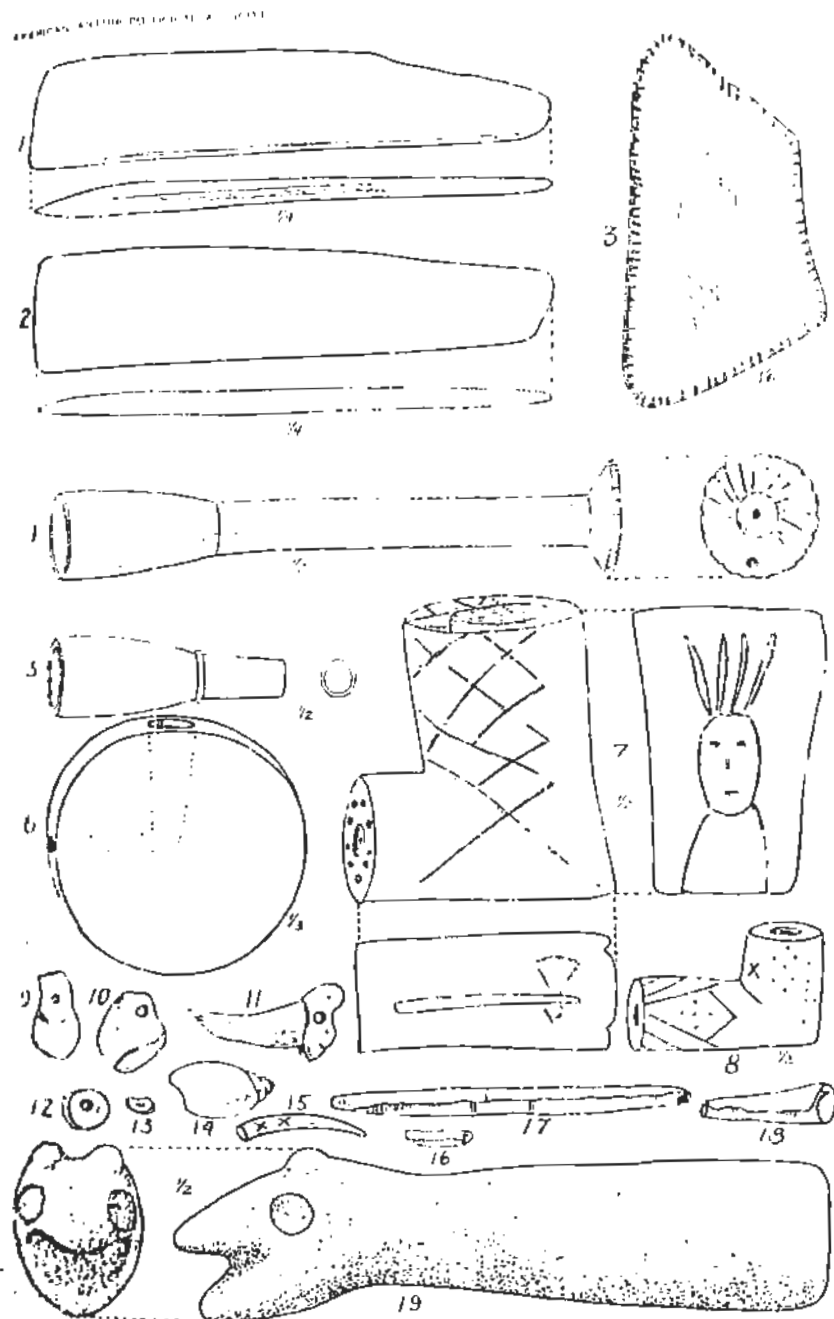
Copper was probably not known before the arrival of the whites, or at least until articles of civilization had reached this region. The Nez Percé language has no separate term for copper; it is simply called *moksmoks*, "yellow." Such large quantities of copper have been taken from graves, some of which appear to date from early times, that it seems reasonable that copper was acquired in trade from the Plains or the Northwest coast. An examination of the tubular beads, such as are figured in plate ix, 16-18, shows uneven, undulating edges, such as would be more apt to result from a pounded nugget than from a cut sheet.

Lewis and Clark found the Indians of this region, who had never seen whites, in possession of a number of Mexican silver dollars. Iron at an early date supplanted flint and obsidian for the manufacture of arrowheads and knives.

## WEAVING

The art of weaving was practised to a considerable extent by the Nez Percés, in contrast to its very slight development in the Plains area. In this, as in the making of stone pestles, the Nez Percés occupy the frontier of a typically Pacific Coast art. The most conspicuous product was the flat wallet, or carrying bag, which indeed is still made and used by the Indians. Flexible cylindrical pack-baskets, water-tight cooking baskets, cups and food bowls, winnowing baskets, basket-work tops for mortars, fez-shaped women's hats, as well as mats for floor and house coverings were also made.

It seems fairly certain that these people never wove blankets. On inquiry, they denied all knowledge of such, and insisted that blankets of elk and buffalo hides were the only kinds used before the coming of the whites. The beautiful blankets brought back by Wilkes, several examples of which are in the National Museum, are more likely to belong to the Puget Sound area, where the weaving of blankets from the hair of the dog and the mountain goat, sometimes mixed with the down of wild geese, was a common practice. The designs on these blankets are



OBJECTS OF THE NEZ PERCÉS

1, 2, Stone Wedges; 3, Notched Stone; 4, Pipe; 5, 6, Beads; 7, Sculpture (Stone).

entirely geometrical and undoubtedly show certain general similarities with those found on the twined wallets of the Nez Percés. But the elements are so simple, consisting of triangles, squares, zigzags, etc., and the combinations so varied, that such similarities may, after all, have little significance. The blankets, moreover, show more colors than are found in early Nez Percé textiles. The colors in these blankets appear to be vegetal, while, except for a root which produced a brown dye, and rock slime which produced green, the Nez Percés depended upon minerals for paints. The Nez Percés are not known to have made even the simple blankets woven of strips of rabbit-skin; nor are they known to have used the hair of the dog or the mountain goat in any kind of textiles. They did not make woven tumplines, but used a strip of deerskin for this purpose.

The bast of Indian hemp (*Apocynum cannabinum* L.), called *kamo*, originally formed the foundation for all the lighter and more flexible baskets. The hemp was first made into cordage. Of late years this native material has been adulterated with cotton cordage. Grass, especially beargrass (*Xerophyllum tenax* Nutt.), was much used as a secondary material to carry the design. Beargrass was gathered in the mountains; it was plentiful along the Lolo trail. Corn-husk has largely replaced the native material in modern times, and worsted yarns in gay colors have also been substituted for the grass overlay.

WALLETS. — The flat wallet (plate vi, 17) shows a technique of simple twined weaving with the ornament applied by the process of false embroidery. When this process is used the designs do not appear on the inside, but only the loose ends of the colored elements. In these wallets the embroidery element takes only one twist around each loop of the foundation, and that toward the right. Fig. 3 shows a somewhat diagrammatic representation of this method of weave and ornamentation. Both the vertical and horizontal members of the textile proper are cords of hemp. The false embroidery element may be beargrass, corn-husk, or yarn. The margin shows a simple turning down of the wool, which is then bound down by the warp. Often the margin of the wallet was protected by a lining



of deerskin. The wallets were made in many sizes. Many were two or even three feet in length and fifteen or twenty inches in width, but smaller ones were more common. The wallets were carried by double handles made by passing a single thong twice through each side of the top. The handle thus

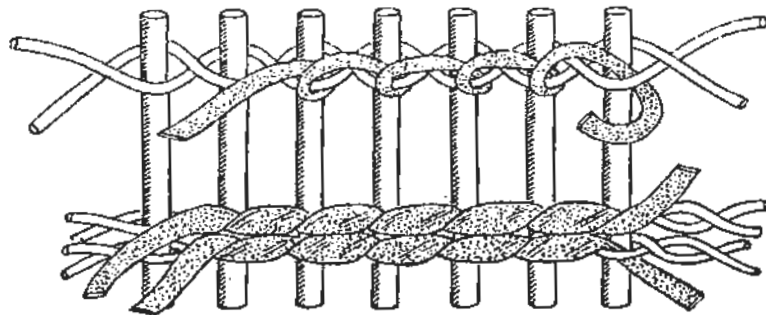


FIG. 3.—Technique of "false embroidery" of the flat wallets.

closed the bag. The wallets were gaily decorated. The designs will be considered later. A pattern was applied to each side of the bag; as a rule these two patterns were entirely different.

CARRYING BASKETS.—The cylindrical carrying baskets (plate vi, 13) and the basket hats (15 and 16) show a different kind

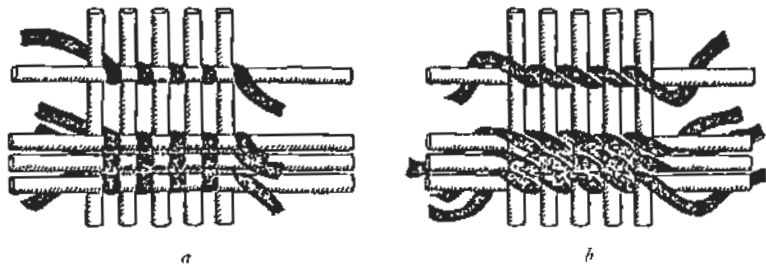


FIG. 4.—Technique of "lattice weave" of the cylindrical baskets and basket hats.

of weave, although at first glance it seems the same as that of the wallets. The materials are the same, but the cord of the carrying baskets is generally coarser than that used in the wallets and the women's hats. The technique of the weaving is shown in fig. 4, *a* representing the aspect of the inside of the

basket, while *b* exhibits that of the outside. It is seen from these diagrams that the foundation is simply a lattice-work of vertical and horizontal cords. The colored element which appears on the outside passes over and under the horizontal element of the foundation, and across the vertical one. The color shows as a solid mass on the outside of the basket, while on the inside it appears in vertical lines alternating with the hemp. This sort of weave seems to have been effected from the inside of the basket, because the twist on the outside runs toward the left and not toward the right as in the case of false embroidery.

The cylindrical baskets were sometimes a foot and a half in diameter and two feet deep. The bottom was flat. The rim was usually covered with a strip of deerskin. A handle or a tumpline of deerskin or elk-hide was fastened to one side of the basket near the top. Plate vi, 13, illustrates a good example of this type of basket.

BASKET HATS.—The basket hats of the women exhibit the same method of weaving, but with finer elements and more careful workmanship. Plate vi, 15, 16, show two examples of the women's hats. The material on the outside is beargrass, which was used either in its natural cream color or stained dark brown or yellow. Many modern basket hats show the use of yarns rather than grass. The top of the basket hat was made with a sort of radial weave similar to the bottom of the carrying baskets. The hats were all fez-shaped, with a double thong at the crown to which pendants were sometimes hung. In these hats the textile art of the Nez Percés reached its highest development. Almost identical hats were used by the Yakima, the Umatilla, and other neighboring tribes on the west. The designs were almost entirely arranged in zigzags, with three points at the top and three at the bottom.

COILED BASKETS.—Water-tight bowl-shaped baskets to serve as cooking vessels, food bowls, and cups were made of strips of willow after the coil method with imbricated decoration. The process of construction is identical with that of the Yakima and Klikitat baskets, after which it may have been patterned. Some close-coil baskets without imbrication were also made. Although

imbricated baskets have not been made for many years, some of the older natives remember women who could make them. The material used to carry the design in the imbrication was xerophyllum, commonly dyed black or orange. The four-cornered baskets so typical of the Salish and the northern portion of the Basin area, were not made by the Nez Percés. The coil seems to have been one of rods and splints. The sewing thread was quite uniformly split. A sharp awl was the only implement used in weaving. Coil baskets were regularly used as cooking vessels by the Indians of this section. The skin and paunch pails of the Plains area seem never to have been used.

Plate vi, 18, illustrates a mortar with basket-work sides. The bottom was a common flat stone. This funnel-shaped basket, with the opening at the bottom about six inches in diameter, was pegged down tightly upon the stone. The weave is a coiled one, rather crude and with no attempt at ornamentation; the number of rods in the coil varies; the margin is finished off with a braid. Old mortar baskets are said to have been decorated with diamond patterns applied not by imbrication but by simply using a colored sewing thread as in the southern Basin area. This sort of mortar strongly recalls the mortar of California. It was not, however, fastened to the stone with pitch as in the latter area.

Winnowing baskets were used in cleaning kouse and other roots. The material for such baskets was the shredded roots of birch (*Betula microphylla* Bunge) trees, that grow along water courses. The method was a loose double-rod coil, open enough to allow the dirt to be sifted out. In shape the baskets resembled a gold pan, having a flat bottom and flaring sides. They were not decorated and were rather crude in workmanship. Plate vi, 12, illustrates a Nez Percé winnowing basket in the Peabody Museum. The margin was finished off by dropping alternate stitches of the last coil and simply turning the sewing thread around the rod itself.

MATS. — Mats were used for house and floor coverings, and as sheets upon which berries could be spread and dried. They were made by two methods, according to whether the material

was cattail (*Typha latifolia* L.) or tule (*Scirpus lacustris* L.). Mats made of cattail were simpler in construction and less effective in keeping out rain than those made of tule. They were similar in color, size, and the complete absence of decoration. The width averaged about four feet and the length nine feet.

In the cattail mat the elements of the wool were bound together by the simple turning of two cords, over and under the doubled blades, at intervals of from three to six inches. These warp-cords were not severed, but were passed continuously back and forth, making loops now at one end of the mat, now at the other. The ends of the mat were left unprotected and the raw edges were simply trimmed down evenly or turned under the warp. The tule mat was sewn rather than woven. The sewing threads were about three inches apart. The wool element consisted of two stems of tule which were twisted lengthwise, and pierced by the sewing thread at every half turn when one stem was directly over the other. The sewing threads were continuous and formed loops at the ends of the mat, as did the warp-cords in the cattail mats, but they were reinforced along the ends of the mat with a two-strand rope, with which they were intertwined. This rope served to strengthen the end of the mat. The side edges, also, were strengthened with a twined cord.

#### HOUSES

The Nez Percés constructed at least four distinct types of houses: first, a long communal house; second, a circular tipi lodge; third, an underground menstrual lodge for the women; fourth, a sudatory for the unmarried men. A fifth type, hardly deserving mention, was a rude brush shelter thrown up when on hunting expeditions. There seems to have been some variety of construction in the first two types. The floors of the houses were all more or less depressed by excavation, the summer ones slightly and the winter ones to a depth of two or three feet. The earth removed was heaped about the sides, thus raising the wall of the house.

THE LONG HOUSE. — The long communal dwelling was the

most important, as a single structure housed many families. According to Indian informants this house was shaped like an A-tent. It had two ridge-poles which the upright supports separated by a few inches. The poles were tied with rope. The aperture between these ridge poles extended the whole length of the house and served as a smoke flue. Against these ridge poles side poles were laid, and to the latter long mats were tied, shingle-fashion. The mats were of two kinds; their technique has already been described. Poles were often laid up against the mats as a safeguard against wind. The earth thrown out of the excavation for the interior was piled up on the outside to bank the bottom of the mats. Dry grass was first laid against the mats to prevent decay.

Instead of mats a very coarse heavy grass, commonly called rye-grass (*Elymus* sp.), was sometimes laid over the side poles or rafters to the depth of several inches and then covered with earth.

The fires were arranged in a row down the middle of the house, about ten or twelve feet apart. There were two families for each fire. As a rule the house was open, but occasionally small partitions were put up which divided the house into a double row of stalls. There was always an open space down the center. There were two or more small entrances in one side of the house; in the winter these were closed with heavy skins which hung from the tops of the openings. Also in the winter time there was often an inner skin lining for the house, but this was probably true only of the smaller houses. The beds were laid nearest the walls upon built-up mattresses of dry grass and the inner bark of cottonwood trees.

Lewis and Clark make frequent mention of these long houses and for some of them give measurements. One of the longest was situated near Lawyer's creek, and is thus described:<sup>1</sup>

"The village . . . consists of one house only which is 150 feet in length, built in the usual form of sticks, mats and dry grass. It contains 24 fires and about double that number of families."

Cox<sup>2</sup> thus describes the houses of the Nez Percés:

<sup>1</sup> Lewis and Clark, vol. V, p. 16.

<sup>2</sup> Ross Cox, p. 84.

"Their habitations are covered with large mats fixed on poles; some are square, others oblong, and some conical; they are of various sizes, from 20 to 70 feet long and 10 to 15 feet broad. There are no interior divisions, and an opening at the top serves the double purpose of a window and a chimney. These dwellings are pretty free from vermin and are easily changed when occasion requires."

The old village site at Kooskia (see fig. 2), already described, shows oblong house-rings that agree with these descriptions. The longest house-ring there is about eighty feet, and the average about fifty feet in length. The average width is about eighteen feet.

Long houses with flat roofs are mentioned by Lewis and Clark,<sup>1</sup> but no account of any such could be obtained from the Indians. It is possible that scaffolds for drying fish were mistaken for the frames of houses.

There were no strictly ceremonial structures.

**TIPÍ LODGES.**—The circular conical tipi, covered with either mats or skins, was also a native type. Lewis and Clark speak of a chief, residing near Kamiah, who had "a large conical lodge of leather." Certainly at a later date lodges of buffalo skin were very common. It is probable, however, that until horses were procured buffalo robes were too valuable as blankets to be used for house coverings. Plate x, 6, presents a tipi lodge covered with mats, the upper ones of cattail and the lower ones of tule. According to Townsend<sup>2</sup> the tipi lodge covered with buffalo skins was the usual form when traveling.

The tipi lodge was ordinarily formed of ten or twelve poles. Of these, three were first tied near the upper end and spread to form a tripod; then the other poles were laid against the three. This lodge was usually sunken about two feet, especially in winter. Lewis and Clark<sup>3</sup> mention an ancient circular house-ring near Kamiah, which was about 30 feet in diameter, with the rim exceeding three feet in height and the center sunken four feet in the ground. Circular rings are also to be seen at the old village sites already described.

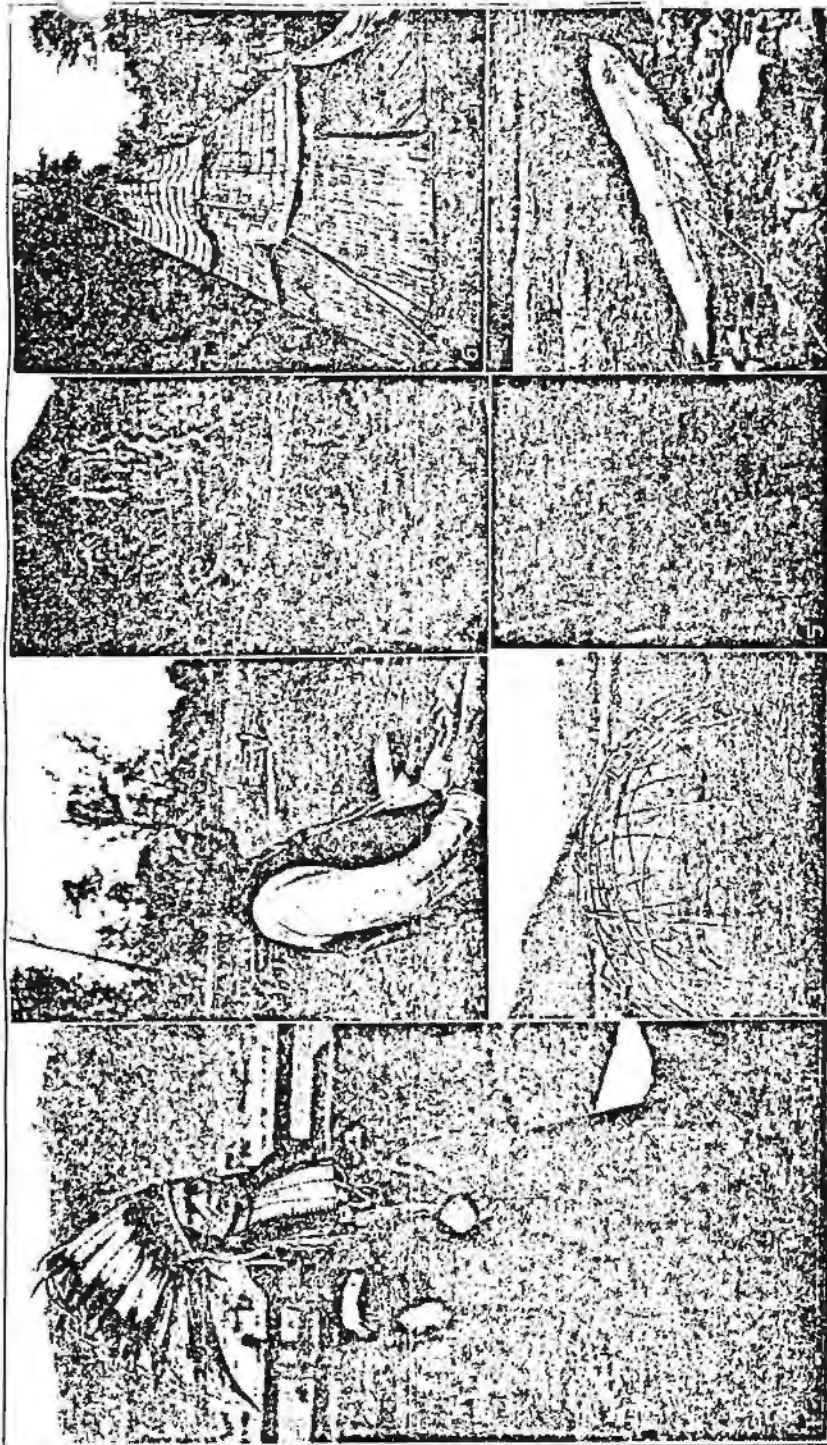
<sup>1</sup>Op. cit., vol. v, p. 100, and Gass, p. 212.

<sup>2</sup>Townsend, Thwaites ed., p. 225.

<sup>3</sup>Vol. v, p. 33.

THE NEZ PERCÉ INDIANS

Fig. 1. Type of Nez Percé houses. 2. Framework of temporary sweat-house. 3. 4. 5. Pounding pits on Buffalo River. 6. Mat lodge. 7. Cabin.



**MENSTRUAL LODGE.**—The menstrual lodge was circular, about twenty feet in diameter and five or six feet deep. Poles were laid across the excavation on a level with the ground, and upon these grass and then earth were spread. A circular opening was left near one side, from which a ladder, made of a forked stick with rope steps, descended to the floor. The floor was covered with mats; there was a fire near the middle, and beds around the sides. This house was used by the women during the menstrual period, and before and after childbirth. Its use seems to have been limited to the winter months, for during the summer, and when on the trail, an old tipi set up at a distance from the main camp served the purpose. The men were not allowed to come near these lodges; the occupants had to cook their own food and were not allowed to touch anything that others used. There was one or more of these lodges to each village, and sometimes ten or more women occupied the lodge at one time. Lewis and Clark mention several times these lodges and the restriction of the women. They remark on the presence of this place of seclusion, even in the smallest communities, in the following words:

“Even at this small habitation there was the usual appendage of the solitary lodge, the retreat of the tawny damsels when nature causes them to be driven into coventry.”<sup>1</sup>

**SUDATORY LODGE.**—During winter the boys above fourteen years of age and the unmarried men usually slept in a low subterranean sudatory lodge. A circular excavation, about three feet deep and ten or twelve feet in diameter, was covered with poles which were laid across on a level with the ground. These poles were covered with rye grass and then earth to the depth of several inches. The sudatory was entered by a sloping passage. The interior was thickly bedded with grass. A pile of stones was in the center. A fireplace outside served to heat stones in the morning, and these were brought into the lodge and water poured over them; thus all who wished could take a sweat-bath before getting up. These sudatory sleeping quarters were always on the bank of a stream, where the men could

<sup>1</sup> Vol. v, p. 11.

take a plunge bath after the sweat. Often as many as fifteen men and boys were crowded into these close quarters. Only a robe was necessary for covering.

Small sweat-houses were constructed on the banks of streams for the use of both men and women. Temporary ones were quickly constructed of a framework of willows forming a dome, covered with the blanket of the bather. More permanent ones were made on the same sort of framework, but covered with grass and sod. Plate x, 3, shows a willow framework for a temporary sweat-house.

#### FURNITURE AND UTENSILS

The furniture for the houses was very simple. There were no stools or benches, and the bed was used during the day for lounging. The beds were not built above the ground or covered, but consisted merely of a heap of dry grass or a sort of mattress made from the inner bark of cottonwood trees. Blankets were of elk-hides dressed without removing the hair. Pillows were folded deer or bear skins. In the long houses the beds were arranged against the walls with the feet toward the center. In the round tipi lodges the beds were arranged as sectors of the circular area, the fireplace being in the center. The floors were covered with mats. Storage baskets were piled at the heads of the beds. The more valuable articles of clothing were hung up.

A number of the common household utensils have already been described, especially the basketry and the pestles. All boiling was done in coiled willow baskets. Besides these cooking baskets there were no important cooking utensils, for all food not boiled was either steamed in pits or roasted in the ashes.

Baskets mortars were much used for pounding roots, but wooden mortars also were used. These latter were of several sorts. Sometimes a portion of log was hacked and burned into a hollow vessel without much regard to form. The form with a handle at each end (plate vi, 14) may have been recently acquired from the Plains tribes, but there is no doubt that wooden mortars of the more indeterminate shapes were made in the old times.

Food was eaten out of wooden bowls and bowl-shaped baskets. Spoons and ladles of buffalo and mountain-sheep horn were in common use. Some had short and some long handles. All showed careful workmanship and good finish, but almost nothing that could be called ornamentation.

The digging-stick was one of the most necessary and characteristic implements of the Nez Percés. It was about two and a half feet long, with a fire-hardened point bent slightly forward. The handle consisted of a piece of bone, horn, or stone, from five to eight inches in length. This handle was usually perforated in the middle and lashed firmly at right angles to the stick. The stick was operated with both hands, one being placed on each end of the handle. When the weight was applied to the handle, the point penetrated the ground to a depth of about six inches, and then the curved end was directed forward, thus breaking the sod. A stone handle is shown in plate VII, 33.

Pack-baskets and winnowing baskets have already been described. The latter were used in cleaning roots.

FIRE-MAKING. — Fire was made by means of the hand-turned fire-drill. The bow-drill was unknown. The hearth-stick was either of the root of the light-leaved willow (*Salix lasiandra* Benth.) or of the stem of "smoke-wood" (*Clematis ligusticifolia* Nutt.). A slight hollow was made in this hearth-stick and a groove was cut from one edge into the hollow. The whirling stick was made of the dead tips of red fir (*Pseudotsuga mucronata* Sudw.). Finely broken brush or dry grass was used for tinder. As in many other areas the upright piece was called "man" and the horizontal one "woman." This method of fire-making is said to have been introduced by Coyote, the culture-hero. Although fire could be made in a short time by this method, as a rule fires were not allowed to go out in the permanent camps.

#### FOOD AND ITS PREPARATION

In common with other tribes of the arid Basin area, the Nez Percés depended for food largely upon vegetal products. They were not, however, as restricted in this respect as the tribes to the south, since salmon was plentiful during certain

periods of the year and game was fairly abundant. Agriculture was entirely unknown.

CAMAS. — The most important of all vegetal foods was camas (*Camassia esculenta* Lindl.). This liliaceous bulb was gathered in enormous quantities in the wet upland meadows of Weippe prairie, Camas prairie, in the open country near the present town of Moscow, and in the Grande Ronde valley. It grows in the glades of pine woods, and in partly inundated prairie land. The bulbs lie very closely together, so that when the camas is in bloom, the flats from a short distance resemble lakes of fine, clear water.

Camas was dug to a slight extent early in the spring before the growth of the stem had exhausted the stored-up energy of the bulb. The great harvest came during June and July, after the plant had nearly finished blooming. At this time the soil dried rapidly and the bulbs matured. Another great harvest occurred in the fall. It will be remembered that Lewis and Clark first encountered the Nez Percés, September 20, 1805, on Weippe prairie, when the Indian women were laying in a winter food supply of this root. Camas, as well as the other food roots, was gathered entirely by the women, the men at this time being busied with fishing, hunting, and war-parties. A digging-stick with a fire-hardened point and a bone crosspiece at the top was the only implement used. Cylindrical pack-baskets were used in carrying the roots to camp, and goldpan-shaped sifting trays in cleaning them.

Agreeable to the taste, sweet and nutritious, camas was eaten either raw or cooked. When cooked, the usual preliminary process was as follows: A pit from six to ten feet in diameter and about three feet deep was lined with split dry wood to the depth of almost a foot. Upon this wood was placed a layer of smooth stones averaging about five inches in diameter. The wood was set on fire and the stones allowed to become red hot. When the fire had burned down the stones were leveled and some earth and a layer of coarse grass were spread over them. Then twenty or thirty bushels of camas bulbs, which had been previously cleaned and the black outer layers of the bulbs re-

moved with the fingers, were thrown into the pits and arranged in a conical heap. The white bulbs were then covered with a layer of grass, some two or three inches thick. After this, water was poured on till the steam began to rise, and then the entire heap was covered with several inches of dry earth. Sometimes a fire was kindled around the base of the heap. The bulbs were allowed to steam for from twelve hours to three days. If cooked for the shorter period the grass was removed and the roots permitted to steam themselves dry, like boiled potatoes, and were then commonly placed on scaffolds and further dried in the sun. After having been cooked, the roots were no longer white, but brown or black, and had a much sweeter taste than when in the natural state. They were fit for use immediately after being taken from the pit, but soon spoiled if not subjected to further treatment. This further treatment usually consisted in pounding up the soft roots into a sort of dough and forming them into loaves which were rolled in grass and again subjected to steaming. Fresh bulbs were placed in the pit along with these loaves to permit the free passage of the steam. When taken out a second time, the loaves were made over into smaller cakes and dried in the sun or over the camp fire. These cakes were irregular in shape and from one-half to three-quarters of an inch in thickness. When kept out of the moisture they remained fresh for a long time. They resembled plug-tobacco in color and pliancy. When the initial steaming extended over a period of two or three days, the roots when uncovered were found to be converted into a dark-brown glue-like mass. From this gruel was made for immediate consumption and sun-dried loaves for future use.

Camas was also sometimes simply boiled in water and in this condition resembled mealy potatoes. It was occasionally reduced by boiling to a sort of syrup or molasses.<sup>1</sup>

KOUSE. — Kouse was another vegetal food, scarcely less important than camas. Under this name were grouped a number of closely related plants of the *Lomatium* family, the

<sup>1</sup>The processes of cooking camas have been often described. See Lewis and Clark, III, pp. 78-79; V, pp. 124-127; Townsend, pp. 247-248; E. Palmer, pp. 408-409.

commonest being *Lomatium kaus* Wats. These plants, unlike the camas, flourish in dry rocky soil and were commonly gathered by the Indian women along the brows of steep hills. The harvest season was very early, most of the digging occurring during April and May. The roots, corn-like or tuberous in character, were eaten either raw or cooked. The usual preparation was to dry the roots, scrape off the brown outer skin, and then reduce them to powder in mortars. This meal was made into gruel for immediate use or into bricks for future consumption. The method of making the bricks was as follows: The meal was moistened with water and formed into flat, oblong, square-cornered cakes that were suspended on a swinging framework of flat sticks and partly baked over a slow fire. The bricks were pierced with one or more holes in order that they could be strung on a thong, like Chinese money, and hung from the saddle. They bore the imprint of the sticks upon which they had rested, and were sometimes embellished with scratched parallel or crossed lines. In size these bricks vary. Lewis and Clark<sup>1</sup> give the dimensions as an inch and a quarter thick, six inches wide, and eighteen inches long. Palmer<sup>2</sup> says the cakes were one foot wide, three feet long, and only from a quarter to half an inch thick. Several cakes in the Peabody Museum at Cambridge are three or four inches wide, about a foot long, and an inch thick. When fresh the flavor of kouse root is said to resemble that of parsnips, but after being dried it tastes more like stale biscuit, and in fact was often called "biscuit root" by the early explorers. Both the meal and the cakes remained edible a long time. The cakes were either eaten without further preparation or were broken up in water and made into a mucilaginous sort of soup. This root was especially valued as being the first vegetal food to be gathered in the spring.

OTHER ROOTS. — Bitterroot (*Lewisia rediviva* Pursh) was a favorite food root when it could be procured. It was gathered in the Bitterroot mountains and on the mountains near Imnaha.

<sup>1</sup>Vol. V, p. 12.

<sup>2</sup>E. Palmer, p. 407.

It was prepared by merely drying, when it resembled dentalia shells in shape and size. According to Palmer,<sup>1</sup> this root contains so much concentrated nutriment that a single ounce in the dried state is sufficient for a meal.

Another favorite root was that of the *Carrum Gairdneri* Gray. This tuberous root, usually about the size of a man's finger, has, when cooked, a very agreeable taste, with a cream-like flavor. Piper calls it the finest food plant of the Northwest Indians.

Wild carrot (*Daucus pusillus* Michx.) was boiled, steamed, or eaten raw. Wild onions (*Alium Geyeri* and others) were steamed in a pit, like camas and kouse. Some species from this area have a very mild flavor. *Scorzonella nutans* Geyer is reported to have been eaten raw. It is a small root, almost transparent, and filled with a bitter milky juice. *Wapato* (*Sagittaria latifolia* Willd.), the great source of vegetal food for the Indians of the lower Columbia, was secured only in trade. Many less commonly known roots were also occasionally used as food; in particular, tobacco root (*Valeriana edulis* Nutt.), *Enanthe sarmentosa* Prestl., *Balsamorhiza Hookeri* Nutt., *B. sagittata* Nutt., *Claytonia megarrhiza* Parry, *C. lanceolata* Pursh, etc.

BERRIES. — Various berries and seeds were extensively used for food by the Nez Percés. Of the former, serviceberries (*Amelanchier* sp.) were the most important. During favorable years they were collected in large quantities and made into small disk-shaped cakes which were sun-dried upon mats and kept for winter use. When the harvest of serviceberries was light, their place was taken by the inferior hard-seeded berries of the hawthorn (*Crataegus* sp.). Blackberries (*Rubus macropetalus* Dougl.) were also dried. Chokecherries (*Prunus dimissa* Nutt.) and huckleberries (*Vaccinium membranaceum* Dougl.) were commonly boiled. Most other berries, including strawberries (*Fragaria* sp.), salmonberries (*Rubus spectabilis* Pursh), currants (*Ribes aureum* Pursh), gooseberries (*R. oxycanthoides saxosum* (Hook.) Coville) were eaten fresh. Roseberries (*Rosa* sp.) served as a valuable food in times of famine, since they remained

<sup>1</sup>E. Palmer, p. 407.

upon the bushes throughout the winter. Serviceberries, chokecherries, hawthorn, currants, and gooseberries flourished along the water courses and near the villages. Huckleberries were commonly gathered in the highlands, especially on Craig mountain. Often the branches were broken off and the berries raked into a basket with a coarse comb.

Sunflower (*Helianthus* sp.) seeds were much used for food, being valuable on account of their oil. They were eaten either raw or pounded into meal and fried in small round cakes. The grinding of sunflower seeds is mentioned in one of the Nez Percé myths.<sup>1</sup> The seeds of *Chenopodium* sp. and probably some grass seeds were also eaten.

FAMINE FOODS. — During severe winters the Indians of this region often suffered from famine, during which they were glad to eat lichens and the inner bark of trees. Lewis and Clark<sup>2</sup> give instances of the use of a lichen (*Alectoria* sp.) that grows on pine trees and which was boiled and eaten, and mention that long-leaved pine trees (*Pinus ponderosa* Dougl.) were cut down in order that the natives could gather the nuts and strip off the bark. The nuts were boiled or roasted.

FISH. — It has already been stated that a considerable part of the food supply of the Nez Percés was derived from fishing and the chase. The most important food fishes of these Indians were as follow:

1. Red fish, or blue-backed salmon (*Oncorhynchus nerka* Walb.). This fish, varying from three to eight pounds in weight, was the favorite fish for drying. It was first caught about the first of July on Clearwater river, but was taken much earlier at Wallowa lake and at the headwaters of Salmon river. Only the last of the run spawned on the lower stretches of the rivers.
2. Quinnot, Chinook, or tyee salmon (*O. tshawytscha* Walb.). This salmon, averaging more than twenty pounds in weight, was caught somewhat later than the blue-backed salmon.
3. Steel-head salmon, "salmon trout" (*Salmo Gairdneri*

<sup>1</sup>Spinden, p. 21.

<sup>2</sup>Vol. v, p. 4.



Richardson). This salmon was caught during fall and winter; it weighs usually about six pounds.

4. Cut-throat trout (*S. mykiss Gibbsii* Suckley).

5. Waha lake trout (*S. mykiss Bouvieri* Bendire). These trout occur only in Waha lake on Craig mountain.

6. Lamprey eel (*Entosphenus tridentatus* Gairdner, or *Lampreta cibaria* Girard). Eels ran about the same time as redfish or blue-backed salmon, but were caught on the lower stretches of the rivers.

7. Suckers (*Pantosteus Jordani* Evermann; *Catostomus macrochilus* Girard, etc.).

8. Sturgeon (*Acipenser transmontanus* Richardson).

Salmon formed by far the largest item. Fresh salmon were broiled, baked, or boiled. For broiling they were never cut crosswise but always lengthwise in three slabs, one slab from each side and a middle one containing the spine. They were baked in the ashes and boiled in water-tight baskets. No superstition seems to have been attached to the disposal of the bones. Salmon were also dried on scaffolds and smoked for winter use. The Nez Percés never made the dried salmon meal which formed so important an article of trade at the Dalles. Eels were eaten fresh or were dried. Smaller fish, such as trout, suckers, etc., were of lesser importance in the food supply. The Unio also played a minor part in furnishing food. It has already been mentioned that small quantities of Unio shells have been found on the old village sites. These shell-fish are rather rare on the Clearwater, but fairly common on the Snake. They were also obtained from the Cœur d'Alène region. They were steamed in a small pit and after this operation were often dried in the sun and kept for some time.

GAME. — Of game, elk (*Cervus Canadensis* Erxleben), deer *Odontocoeilus Americanus macrourus* Raf. and *O. hemionus* Raf.), and mountain sheep (*Ovis ceruina* Desmarest) were fairly common, while buffalo (*Bison Americanus* Griff.) were hunted on the great plains by parties that crossed the mountains for that purpose. Practically all parts of the animals were eaten, the fat on the entrails being considered a delicacy. In the case of small

fawns Lewis and Clark mention that they were boiled entire.<sup>1</sup> Meat was either boiled in baskets or roasted; it was never partaken without some preparation. Lewis and Clark thus describe<sup>2</sup> a bear barbecue of the Indians:

"We gave the Indians, who were about fifteen in number, half the female bear, with the shoulder, head and neck of the other. This was a great treat to those poor wretches who scarcely taste meat once a month. They immediately prepared a brisk fire of dry wood on which they threw a parcel of smooth stones from the river, when the fire had burnt down and heated the stones they placed them level and laid on a parcel of pine boughs. On these they laid the flesh of the bear in slices, placing boughs between each course of meat, and then covering it thickly with pine boughs; after this they poured on a small quantity of water and covered the whole over with earth to the depth of four inches. In this situation they suffered it to remain about three hours when they took it out. I tasted of this meat and found it much more tender than that which we had roasted or boiled, but the strong flavor of the pine destroyed it for my palate."

This seems to have been the favorite method of cooking bear meat. The description given by Lewis and Clark corresponds exactly with that given by the old Indians of today.

Deer, elk, and buffalo meat were dried into "jerky" for winter use. Pemican was made only of buffalo meat; marrow from the long-bones was the source of the oil used. Berries were not used in the pemican. The amount of buffalo meat brought back from the plains must have been small, even after the introduction of horses. It seems that the large band of men, women, and children went for the express purpose of getting their fill of meat while there rather than with the intention of bringing back a supply. Most of the back-pack consisted of robes, horns, etc., which formed valuable articles of trade.

Otter and beaver were considered great delicacies; but dogs were never eaten, and horse meat was consumed only under stress of famine. The men under Lewis and Clark aroused great derision and contempt by eating the flesh of dogs and horses.

<sup>1</sup> Vol. v, p. 4.

<sup>2</sup> Ibid., p. 34.

## FISHING AND HUNTING

Fish were speared, hooked, netted, or trapped. Fishing apparatus was fairly well developed and shows similarities with the technology of the Pacific coast.

**FISH SPEARS.**—There were two kinds of fish spears. One kind was the three-pointed gig and the other was a spear with detachable point. The gig had a long shaft of red fir which was jointed to the trident head by a wrapped joint that permitted the spear being taken down when carried. The side arms of the trident were of flexible wood, usually hackberry (*Celtis Douglasii* Planch), but had bone points driven in holes bored at the lower ends. These points projected inward and upward. The center arm was of wood tipped with bone and somewhat shorter than the side arms. The spread of the trident was about five inches and the length of the spear about eight feet. This spear was used at night in fishing from a canoe by the light of pitch torches. It was not thrown from the hand. The spear with detachable point was intended to be thrown; for this reason the spearhead was attached to the shaft, and the shaft held by a long braided cord. The shaft of the spear was about five feet long. It was not a plain shaft, like that of the gig-spear, but had its largest diameter near the middle, measuring about two inches, and from this point tapered toward both ends. The spearhead consisted of three pieces of bone and a socket of elderberry wood in which the end of the shaft was fitted. The three bone pieces were cut from the thickest portion of the leg-bone of an elk after this had been boiled. The center piece ended in the point. Against the straight flat edges of this center piece were fitted the side pieces which formed the barbs. The three pieces of bone and the short cylinder of elderberry wood were securely bound together with wrappings. A cord with one end buried in these wrappings was tied to the shaft about a foot from the head, with enough slack to allow the spearhead to be readily loosened from the shaft. Figure 5<sup>10, 11</sup> illustrate the features of these two kinds of fish spears.

With this spear large numbers of salmon were caught from platforms built out over the water or from jutting ledges of

rock. The platforms were usually just above brush dams that almost closed the channel at the head of a riffle and which left only a small passage for the fish. Sometimes the fish were speared on riffles without the aid of the platform, and the brush dam. Suckers were speared from the bank as they nosed about the roots of willow and cottonwood trees that overhung the stream.

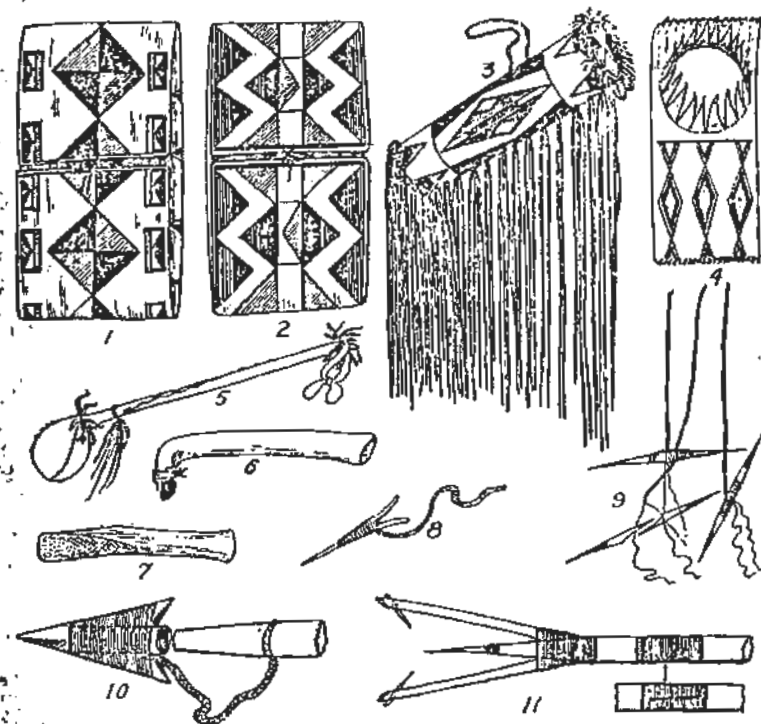


FIG. 5.—1-2, Parilèche bags. 3, "Medicine" bag. 4, Elk-hide hat. 5, War-club. 6, Grainer. 7, Elk-horn wedge. 8-11, Fishing tackle.

**HOOKS.**—The gaff-hook was entirely unknown before the coming of the whites, but was then promptly adopted. Even curved fish-hooks were unknown, the gorge-hook taking their place. Small gorge-hooks used in catching trout are shown in fig. 5<sup>9</sup>. The gorge-hooks were made of two hardened

thorns of the red or black haw, placed base to base and bound together. The line was of Indian hemp, and was fastened to the middle of the gorge-hook, while two smaller threads hung below to wrap round the bait. No floaters or sinkers were used. Large gorge-hooks, six or eight inches in length and made of two bone points bound in the same manner as the thorns, were used to catch the sturgeon of Snake river. A piece of lamprey eel was used as bait. Ross<sup>1</sup> mentions a still simpler method employed when fishing with a line: a bit of deerskin was tied as bait to the end of a horse-hair line. Small fish snapped at the skin and were jerked out of the water before they could let go.

— NETS. — Nets of several kinds, made from cord of Indian hemp, were manufactured by the Nez Percés and used in fishing for salmon and eel. The cord was wrapped on bobbins made from two bent sticks placed back to back and bound round the middle. The process of net-making was about the same for the different kinds of nets. The mesh was commenced along the string of a small bow placed over the feet of the net-maker. The size of the mesh was determined by a smooth flat stick over which the cord was turned and knotted.

Dip-nets were stretched upon a frame made of two branches of red fir tied together at the base and joined at the tips by a flexible piece of willow. A cross-piece, to hold the spread and serve as a handle in dipping, was securely tied to the two side-pieces near the base. A forked branch was never used as a frame. The length of the dip-net frame was about seven feet and its greatest width about two and a half feet. The net extended well back toward the handle. These dip-nets were used in catching both eel and salmon. The eel nets had a deeper pocket at the lower end than did the salmon nets. Lewis and Clark<sup>2</sup> give descriptions and small drawings of a somewhat different type of dip-net. According to these drawings the sack was deep and almost round at the opening, while the side-pieces did not meet at the handle but were held apart

<sup>1</sup> Ross (*a*), Thwaites ed., p. 142.

<sup>2</sup> Vol. v, pp. 22, 47.

by two cross-pieces, the handle being fastened to the middle of the latter. Dip-nets were manipulated from the platforms which have already been mentioned in connection with spearing. A long-handled dip-net with a small sack was sometimes used to catch salmon in the deep holes of small streams.

Seines were often used. They were about fifty feet long by fifteen feet deep. One or more small logs served as floaters and roughly grooved river bowlders were employed as sinkers.

TRAPS. — Fish weirs and traps were constructed of willow brush and stones. The weirs were used in connection with platforms to compel the fish to keep to a narrow passage. Fish traps were used in the smaller streams. A sort of screen trap is described by Clark substantially as follows:<sup>1</sup> A dam was formed with stones across a small stream so as to collect the water in a channel not exceeding three feet in width. The water was forced with great speed out across a mat or screen of willows closely tied with bark. This mat was about four feet wide by six feet long, and lay in a horizontal position with its extremities fastened. The water passed through, but fish running down stream were thrown out on the screen and lay there till removed. Several trout from three to seven inches in length were on the trap when Clark saw it. According to natives, the mat basket or screen of this trap was more or less boat-shaped. The withes were all gathered together at the lower end of the trap.

Another form of trap consisted of two vertical walls of willow built across the stream. In the lower wall was a trap-door of slanting sticks that could be opened only by fish ascending the stream.

Game was hunted with bow and arrow and with spears. Decoys, game drives, and traps were also used.

Bows. — The making of the bow reached a remarkable stage of development among the Nez Percés and the tribes along the middle course of Columbia river. There were three kinds of bows, one simple and two sinew-backed. The finest bows were made from a single piece of mountain-sheep horn. A large

<sup>1</sup> Lewis and Clark, vol. v, p. 8.

horn was split and a slip taken out. This strip of horn retained its spiral coil and had to be steamed, stretched, and straightened by a long tedious process. After the horn had been shaped, a backing of deer sinew was added. The glue used in attaching the sinew was obtained by scraping the skin of the winter steelhead salmon (*Salmo Gairdneri*) or from the blood of the rarely-caught sturgeon (*Acipenser transmontanus*). For this purpose the blood lying next to the backbone was thoroughly boiled, spread out on a rock and dried, and then cut up into blocks or strips, in which condition it kept for years. It was ready for use at any time after being moistened with saliva. The bow-string was made of fine twisted deer sinew. There were no wrappings on the bow. These bows were highly valued.

So far as the writer knows there are no examples of this type of bow extant. It seems to be quite distinct from the compound bow of horn which was common in the southern Basin area. The nearest approach to this bow is seen in an old specimen in the Peabody Museum at Cambridge, which shows a single-piece foundation, evidently of elk antler. This bow is accredited to the Mandan.

The above description is corroborated and amplified by the observant Alexander Henry,<sup>1</sup> who also describes the other types of bows used by the Indians west of the mountains, including the Nez Percés. He says:

"The bows . . . are neatly made, and of three kinds—the horn, the red cedar, and the plain wooden bow. The horn bow is made of a slip of ram's horn. The outside is left undressed, but overlaid with several successive layers of sinew glued to the thickness of one third of an inch, and then covered with rattlesnake skin. The inside is smoothly polished, and displays the several ridges of the horn. These neat bows are about three feet long, and throw an arrow an amazing distance. The red cedar bow is made of a slip of that wood, overlaid with sinew and glue like the horn bow, and also well polished inside; it is nearly four feet long, and throws an arrow a great distance. The plain wooden bow is of cedar, willow, or ash; the outside is untouched, except that the back is removed. It is well smoothed, but not so much esteemed by the natives as either kind of

<sup>1</sup>Henry-Thompson, pp. 713-714.

sinew bows. These people make the handsomest bows I have ever seen—always preferred by other Indians. I have known a Piegan to give a gun or a horse for one of those made of sinew. Their preservation demands great care and attention, as in hot weather the sinew becomes too much braced, and in moist weather too much relaxed, being seldom so justly proportioned to the strength of the horn or wood as to prevent warping; but the simple bow requires no particular care, and is always ready for use."

ARROWS. — Arrow-shafts were made from branches of service-berry (*Amelanchier* sp.), straightened by hand after being heated and polished with rasps of tufa (plate VII, 32). The arrowheads of many shapes have already been described and figured (plate VII). They were usually of obsidian or flint, and were bound to the shaft with fine sinew threads. The arrow was fitted with three eagle or hawk feathers, likewise tied down with fine sinew wrappings. The shaft was frequently decorated with painted bands at the base of the feathering. Henry<sup>1</sup> thus describes the arrows:

"The arrows are much longer than those of our Indians E. of the mountains, being nearly three feet, very neatly made, slim-pointed, and well-feathered; they are usually tipped with flint, but of late years iron has been secured for that purpose."

In shooting, the bow and two or three extra arrows were held in the left hand. The arrow was held by the thumb and first finger of the right hand and shot over the top of the left hand.

QUIVERS. — In ancient times only the single quiver was made and used by the Nez Percés. The double quiver, with one compartment for the bow and another for the arrows, was acquired from the Crow Indians. This single quiver was about three feet long and was made from the entire skin of an otter, coyote, or cougar.

METHODS OF HUNTING. — The bow and arrow were used in hunting elk, deer, bear, ducks, brant, muskrats, etc.

The spear, which was used largely in hunting buffalo, had a barbed stone point and a long straight shaft of red fir. Buffalo were hunted on horseback, as were deer and elk when the sur-

<sup>1</sup>Ibid., p. 714.

face of the country permitted. A favorite method was to run down deer in the open prairie. Game drives, for deer, were constructed in the hunting grounds. They had long converging wings, with a narrow opening near which hunters were concealed. More often such drives consisted of lines of hunters strung out about sixty yards apart. Decoys were used in hunting deer, wolves, and mountain sheep. The decoy consisted of the stuffed head of the animal and the cape. This head was put over the head of the hunter, who was partly hidden and who imitated the actions of the animal. Elk whistles were made of elderberry wood, while the calls of wolves were imitated directly.

Prairie chicken and other small game were snared with the simple running noose. Magpies were caught in a brush house with the noose at the doorway. Rabbits were rounded up in great drives, especially on the hills near Snake river. Lines of men and boys were stretched out in a long line leading to a net like a seine which was set up on poles and which ended in a corral. Horsemen or footmen beat up the rabbits, many of which were caught in the net and the remainder in the corral.

Coyotes and wolves were caught in deadfalls. A pit was dug and over this a tilted platform, laden with stones and with a heavy log at the end, was supported at the upper end by an unstable prop which was readily displaced when the bait was touched. The figure-4 trap was evidently introduced by the whites, but the T-trap was native. The bait was suspended from the inner arm of the T.

In the case of game, all the animal except the entrails was saved for food. Deer were unjointed, the legs removed, and the back cut into one or two pieces. The head was always left attached to the skin.

There seems to have been very little ceremony in hunting. Offerings were sometimes deposited in certain well-known shrines or in trees to ensure good luck. The horns of deer were sometimes hung upon a branch. When the guardian spirit of the hunter was one that brought skill in hunting, the song was sometimes sung on the hunt. Women who had such guar-

dian spirits would sing while their husbands were on the hunt. The wolf-faith was the one believed to be most beneficial to hunters.

Eagles were seldom shot. They were taken from the nest while young and raised in camp. The first set of feathers was plucked, and a part of the second set; then the birds were set free. Eagles were also caught by concealed hunters. A pit was dug in which the hunter crouched. Over this a false ground was prepared, with three or four small openings. A coyote or some other animal was used as bait. The feet of the eagle were seized by the concealed hunter, while another rushed out and killed the bird.

SKIN-DRESSING. — Deer and most other animals were skinned from a cut made down the belly and down the inside of each leg. The hides were dressed immediately, while green, if it was convenient; if not, they were cleaned, dried in the shade, and rolled up for future dressing. The first thing done to green hides was to remove the hair. A short smooth pole was leaned against a tree, the hide caught over the top, and stretched down over the pole with the knees. The hair was removed with a sort of draw-knife made from an elk-rib with little modification. After the outside had been grained the inner side was treated with the same instrument. The skin was then dried without stretching.

The brain of the animal was placed in a deerskin bag and allowed to dry in the sun; it was then kept till needed. When required for use the dried brain was mixed in water in a willow basket and the hide was soaked over night in the mixture. Next morning the hide was tied to a tree and twisted with a cross-stick until it was as nearly dry as possible. It was then scraped and worked with a disk-shaped spall struck from a bowlder. During this operation the skin was held down with one foot at the edge and stretched toward the body. After two or three hours of scraping the skin was rendered soft and pliable. Finally it was smoked. A small hole was dug in the ground in which a fire was built of dry willow or pieces of rotten wood. The method of building the fire in a hole prevented too

great heat. Then the skin was hung over the fire and smoked for about an hour, when it was ready for use.

If the hide was dried before being worked it was soaked for about three days in the creek and the hair was removed with an elk-horn grainer such as is shown in fig. 5<sup>b</sup>. The implement was fitted with a stone blade, and was not used in working green hides. Except for this preliminary stage the process of dressing dry hides was the same as for green ones. If the hair was to be left on, only the inner side was scraped, but in other respects there was no change. The dressing of skins was the work of the women.

#### CLOTHING AND ORNAMENTS

The dress of the Nez Percés was of the general Plains type. This type, indeed, prevailed among the Shahaptin, Salish, and Waiilatpu tribes inhabiting the middle course of the Columbia, and gave way to the Chinook type only at the Dalles.

The men's dress consisted of moccasins, leggings, breech-clout, shirt, and blanket. In warm weather the leggings and shirt were often discarded. The material was deer, elk, and buffalo skins, which were skilfully prepared. This leather clothing was kept very neat, being frequently cleaned with white clay. It was decorated in different ways, with fringes along the seams, with beads, porcupine quills, and paint.

The dress of the women consisted of moccasins, a long loose gown, and a fez-shaped cap. Occasionally the women wore leggings. In general the costume of the women was not so highly decorated as that of the men. The ornamentation consisted of fringes, bead- and quill-work, shells, elk-teeth, bits of copper, etc.

**MOCCASINS.**—The moccasins of both the men and the women were of deerskin, soft and close-fitting, and provided with flaps that were folded around the ankles and tied with a double thong. The flaps were made of a single piece, and the moccasin proper of another. The piece that formed the moccasin proper cut and sewn. The main seam extended around the outside of the sole, beginning at the inner side of the great toe and termi-

nating an inch or so beyond the center of the heel. At the base of the heel two small strips of additional material were allowed to project in order to facilitate pulling off the moccasin. This long main seam, together with a vertical seam at the back of the heel and a horizontal seam along the middle of the outer side to counteract fulness, were sufficient to make that single piece of deerskin assume exactly the shape of the foot. A tongue was left, which could be bound under the flaps. The moccasins were decorated with bead- and quill-work. The beadwork patterns were mostly floral and fanciful; some, however, were geometric. The quillwork was mostly of the wrapped type laid on in transverse stripes. The moccasins of the men were generally more highly decorated than those of the women.

**LEGGINGS.**—The deerskin leggings extended from the ankles well up the thighs and were supported by the belt. Leggings were commonly decorated with heavy fringes along the outer seam and by bead- and quill-work near the bottom. After cloth was introduced and heavy flannel replaced deerskin, the style of ornamentation was changed in that the former fringe was superseded by stiff side-flaps which bore the larger part of the beadwork. The beadwork patterns on leggings consisted usually of an oblong area cut up into triangles of contrasting colors. It is not known how the women's leggings differed from those of the men.

**MEN'S SHIRTS.**—The man's shirt was provided with long sleeves. It was loose, with a simple opening at the neck, and with an uneven lower edge bearing long fringes. Fringes also decorated the shoulders and the sleeves. Applied decoration consisted of woven quillwork geometric patterns across the shoulders and down the sleeves. The entire front of the shirt was often decorated with small punctuations, usually round and not arranged to bring out any design or figure. Over the shirt was often worn a collar consisting of an entire otter (*Lutra Canadensis* Schreber) skin, the tail hanging down in front. Elaborate breastplates made of beads were also worn over the shirt. The breastplate of large bone beads, illustrated in plate x, 1, was undoubtedly introduced from the Plains. The more common

type of breast ornament consisted of several strings of small disk-shaped beads. These strings were arranged one above the other, the top string being stretched fairly tight and each succeeding string being looser until the lowermost hung nearly to the waist. Often side-pieces of leather, decorated with an outer fringe of scalp-locks or with pieces of otter or mink (*Putorius vison* Schreber) fur, formed a sort of framework for the strings of beads.

**BLANKETS.**—The blanket was perhaps the most important and valued article of clothing for the men. It was in almost constant use, as a covering for the body, as a lounging robe, as a saddle cushion, etc. The blanket was prepared from an entire elk or buffalo hide, tanned with the hair on. It was elaborately ornamented with painted pictures, and with geometric patterns of bead- and quill-work. Strips of beadwork upon deerskin were often attached to the robes. The art of preparing buffalo robes was one in which the Nez Percés became very proficient. They obtained supplies of the hides during the yearly hunting trips to the Great Plains and traded the finished product with the tribes farther west.

The Nez Percés never wove blankets. Even the simple blanket made of strips of rabbit-skin woven in and out seems to have been unknown. The beautiful woven blankets in the National Museum, collected in early days by Captain Wilkes and George Catlin, are probably to be ascribed to the area at the lower end of Puget sound. The only basis for attributing them to the Nez Percés is the use of geometric designs similar to those on Nez Percé wallets; but this similarity is not striking enough to overcome the negative testimony of all the early explorers and the direct assertions of the Indians themselves.

**HEAD-GEAR.**—The man's hat of elk-hide seems to have been a sort of helmet, and is described under armor. A sort of hat, or eye-shade, was made of a strip of hide from the neck of the buffalo where the hair was long and thick. This strip was about an inch wide and was bent to form a circlet. The hair stuck straight out and shaded the eyes.

**MEN'S ORNAMENTS.**—Ceremonial and war regalia will be

considered in another place. Such simple ornaments as were used for everyday wear deserve mention at this place. Necklaces of bear-claws, wolf-teeth, deer-hoofs, etc., were very much worn by the men. Some of these may have been in the nature of fetishes and charms. Plate IX, 9, 10, show elk-teeth perforated for use as pendants, and 11 shows a bear-claw treated in the same way. Arm- and leg-bands were also worn.

**WOMEN'S GOWNS.**—A considerable number of specimens of the woman's gown of the Nez Percés are preserved in our museums. Two fine old specimens in the National Museum, one in the Peabody Museum, and several, perhaps not so old, in the Field Museum of Natural History agree exactly in the technique of construction. Judging from these, the ancient dress was a very simple affair, with cape sleeves. It hung straight from the shoulders to the ankles, and was made of two deer-skins, almost entire, from which the hair had been removed. One skin formed the front and the other the back of the dress. The side of the skins which had formerly carried the hair were worn next to the body. To form the upper portion of the dress, the tail part of the hide was folded over on the outside, thus making a straight line across the shoulders. When this extra fold was sewed down it gave the appearance of a yoke. The triangular tail-piece, which still retained the hair, was clipped in horizontal lines and kept as a sort of ornament. The sides of the garment were sewed down in a straight seam at each side. A fringe was made along these seams, either from the original material or from a sewed-on strip. The sleeves were capes rather than real sleeves in the greater number of instances. The side seam was continued upward until there was only enough room for the arm. Occasionally the lower part of the cape was really sewed into a short sleeve. The edge of the sleeve was irregular and cut into fringe. Four semicircular pieces were added at the bottom of the dress, in part to fill out the natural inequalities of the deerskins and in part to increase the flare of the skirt. There was no girdle attached to the gown, and no gathering at the waist.

The ornamentation consisted principally of fringes at the bot-

tom of the skirt, at the ends of the sleeves, and along the side seams. Below the waist there extended around the skirt three rows of a sort of supernumerary fringe made by passing narrow strips of deerskin through double slits and knotting them on the outside. These double ribbons did not form close fringes, but were two or three inches apart, resembling the reefing ribbons of a sail. In addition to the fringes, variously colored bands of beaded decoration extended along the undulating seam where the false yoke was sewed down upon the body of the dress. The patterns used in the beadwork were very simple, usually consisting merely of oblong areas alternating in color. Elk-teeth, dentalia, small pieces of copper, and various trinkets were also attached to the dresses according to the fancy of the wearer and with no studied designs.

This type of dress, made, perhaps, with less elegance, was worn by the Paiute women. It was also used by the tribes adjoining the Nez Percés on the west, according to the collections in the Field Museum. It differed but slightly from the women's dress of the Plains area. It was, however, quite distinct from the dress of the Chinook women on the lower Columbia.

**WOMEN'S HATS.** — The hat of the Nez Percé women was the gayest portion of their dress. It was fez-shaped and ornamented with woven designs which will be described later. Pendants and tassels were often fastened to the double deerskin ribbons on the crown. Curiously enough scant mention is made of this article of attire by early travelers. Several fine specimens are preserved in museums and show that the same form of hat was used by the Yakima, the Uinatilla, and other neighbors of the Nez Percés.

The women wore fewer ornaments than the men. They sometimes wore ear pendants in the form of disks made from haliotis shell. Strings of dentalia were also hung from the ears or fastened to the braids of hair.

**HAIR DRESSING.** — The hair of both the men and the women was worn long, parted in the middle, and braided in two braids, one on each side of the head. The hair of the men was cut

across the forehead, forming bangs. The Kiowa name for the Nez Percés, *Adalk'atōigo*, means "the people with hair cut across the forehead." The women did not wear bangs, and the hair of the men was in general more elaborately dressed than that of the women. Shells, narrow strips of fur, especially otter and ermine, and other ornaments, were often woven into the side-braids of the men. The parting was very carefully made by a special instrument, a hair-parter, made of a smoothly-pointed stick, from six to ten inches long, with a flat handle usually ornamented with carved profiles.

Depilation was commonly practised. All the beard and mustaches of the men were carefully pulled out. Lewis and Clark<sup>1</sup> point out that depilation with the men extended no further than the beard and mustache, while with the women there was an eradication of the pubic hair.

**COMBS.** — Combs were fan-shaped and made of narrow strips of wood. Sometimes strips, about six inches in length, were simply laid side by side and tightly wrapped at a point about two inches from one end. The strips were then spread out fan-wise on both sides of the wrapping. The shorter portion served as the handle and was often wrapped with deerskin and decorated. The spread of the longer portion was maintained by lacing strips of deerskin. The points of the strips were rounded and smoothed. Sometimes strips, about twice the length of the upper ones, were bent double and wrapped below the bend. The points were then spread as in the simpler form, while the looped portion made a neat handle.

**FACE AND BODY PAINTING.** — The painting of the face was a common practice of both the men and the women. In general it had no particular significance. At certain times the face and body paintings had connection with the animal which was the guardian spirit of the man or woman concerned. Examples of this will be given later. Red paint was also used on the eyelids and cheeks to prevent snowblindness. Red and orange were the favorite colors. With these the forehead was painted brilliantly and in solid masses. The scalp exposed by the parting

<sup>1</sup> Vol. 7, p. 29.



of the hair was painted red. Often the hair itself was painted red on the crown of the head, particularly in the case of women. Sometimes the colors were applied in lines and dots, but there were apparently no symbolic designs.

Tattoo was not practised. Scarification was of no particular significance, since the torture ceremonies of the Sun dance were entirely unknown.

PAINTS AND DYES. — White, red, blue, and yellow earth paints were obtained from the vicinity of the Grand Ronde valley. The colors occurred in masses of variegated clay and each one had to be carefully separated. It is perhaps significant that the names of these earth paints are quite distinct from the generic color terms. Green paint was made from a slime gathered from creek bottoms, and the name for this paint is the same as the generic name for green. Red and yellow were much used in face and body painting. Pieces of the white clay paint were mixed with saliva in the mouth and rubbed into the hair by warriors about to take the war-path. A white clay was also used in cleaning the deerskin clothing. Shields, parfleches, and other articles of dressed skin were often painted. The paints were mixed in water and applied with a brush made from green willow, or were boiled with a little glue and dried in disks and lumps which were used as colored pencils.

A dye used in staining squaw-grass for basket designs was obtained from Oregon grape-root (*Berberis nervosa* Pursh). The dye ranged in color from light yellow through orange to dark brown, the shades depending on the strength of the decoction. The same term was applied to all the different colors obtained from this root. No information regarding other vegetal dyes could be obtained.

#### TRAVEL AND TRANSPORTATION

Before the introduction of horses the life of the Nez Percés must have been very different from what it afterward became. According to old natives the custom of going to the Plains after buffalo each year was instituted only after the advent of horses. Before that time war parties only had made the trip. The Nez

Percés first procured horses about 1770, a decade or more before the Indians of the Plains. Since the later trade of the Nez Percés with the Indians of the lower Columbia was mostly in buffalo robes, mountain-sheep horns, and other articles secured in or near the Plains area, the early trade, before the use of horses, must have been light. The absence of horses necessarily made canoes, as well as snowshoes, carrying baskets, etc., more important.

CANOES. — Canoes were of the simple dug-out type (plate x, 7), made from a single log, usually of red fir (*Pseudotsuga mucronata* Sudw.). The bottom was flat, the sides vertical, and there was only a slight tapering toward the ends, which were of the common "shovel-nose" model. The width was about two feet and the length from fifteen feet to more than forty. They were made chiefly from drift-wood carried down the large rivers by spring freshets. Native informants claim that trees were not felled to make canoes. They were hollowed out by fire. For propelling these craft both poles and crude paddles were used. Travel by water must have been heavy before the introduction of horses, but at the time of Lewis and Clark canoes were rather scarce, some large villages being entirely without them. This scarcity may have applied only to the upper Clearwater, which has some very treacherous rapids. Snake river below the mouth of the Grande Ronde could have been readily navigated. According to Hayden the Crow name for the Nez Percés is *A-pu-pe'*, which means "to paddle." This nickname may indicate the former importance of water travel to the Nez Percés.

SNOWSHOES. — Snowshoes were oval in shape, with a framework of vine maple (*Acer circinatum* Pursh) or hackberry (*Celtis Douglasii* Planch), and meshes made with strips of raw elk-hide. They varied somewhat in size according to the nature of the snow, being commonly about eleven inches wide and eighteen inches long. The framework was bent when green and dried before being strung. The mesh was not a cross-woven mesh, such as is used in eastern and northern snowshoes, but was a loop mesh made somewhat after the manner of the sewing thread in coil basketry. A single strip was woven in

loops from the outside to the center. A second and a third strip followed till the mesh became small enough. The snowshoes were strapped tightly to the foot and were lifted bodily in walking, not dragged. This was more or less necessary owing to the mountainous nature of the country to be traversed. One strap passed over the toe, another vertically over the instep, a third from the heel over the instep, and a fourth over the upper part of the heel. The second and fourth straps were tied together. Snowshoes were commonly worn in hunting deer in winter.

**HORSE ACCOUTERMENTS.**—Saddles were of two kinds, the low ones for the men and the high pommeled ones for the women. Cox<sup>1</sup> says the man's saddle was of dressed deerskin stuffed with hair, and Franchère<sup>2</sup> says it was a cushion of stuffed deerskin, easy on horse and man. More modern specimens resemble the common pack-saddle, the arches at front and back, made from forked branches, and the boards on the side covered with rawhide. Over this a blanket was spread.

Stirrups were well made and resembled strikingly the European stirrup—the bottom was broad and flat and the upper part was covered with green skin which became very stiff.

The bridle consisted simply of a braided horsehair rope which was tied round the under jaw.

The women's saddle had high pommels of elk antler, each pommel ending in a horizontal disk several inches broad. The depth of the saddle ranged from twelve to fifteen inches. This saddle bore a superficial resemblance to the Spanish saddle, which may well have been the original model. The saddles were usually decorated with fringes, and the saddle skirts were often heavily beaded.

Dogs apparently were never used to carry packs, and the travois was unknown. For horses pack-bags of several kinds were used. The wallets and cylindrical carrying bags, already described, were likewise employed, also "medicine-bags" and *parflèches*.

<sup>1</sup> Cox, p. 84.

<sup>2</sup> Franchère, Thwaites ed., pp. 341-342.

**BAGS.**—Both medicine-bags and *parflèches* were doubtless introduced from the Plains Indians, but were found at an early date among the Nez Percés as well as among the Cayuse and the western Shalaptin tribes. Old *parflèches* are said to have been not decorated. Several old *parflèches* in the Field Museum have an incised decoration, chiefly in diamond patterns. The designs on Nez Percé *parflèches* show much similarity with those on Shoshonean specimens. This may indicate the route by which they were introduced, although it seems more probable that the Crows were the transmitters. Typical designs are shown in fig. 5<sup>1, 2</sup>.

A cylindrical rawhide bag, commonly called the "medicine-bag," is represented in fig. 5<sup>3</sup>. It was not restricted in its uses, but was used mostly by the women. As a true medicine-bag it formed part of the outfit of the men when on the war-path. The bag illustrated is preserved in the Peabody Museum and is decorated with long elkskin fringes and a painted diamond-shaped design.

**CRADLES.**—The very young child spent a great part of the time in a cradle which could be carried upon the mother's back, fastened to the pommel of the saddle, suspended from a branch, or leaned against a support. Nothing can be added to Mason's technical description,<sup>1</sup> which follows:

"The basis of the cradle is a rough board, generally hewn out, 3 feet high, 15 inches wide at the top, and not more than an inch thick. It is shaped somewhat like a tailor's sleeveboard, but is more tapering. The board is covered with buckskin, drawn perfectly tight upon the back and across the broad part of the front as far down as the hood, or about one third of the length. Below that the two edges of the buckskin form flaps, which meet nearly over the child. Along the edges of these flaps strings are looped, into which loops a lashing cord passes backward and forward to enclose the child tightly in its capsule. On the top of the back a fringe of buckskin strings is formed, either by slitting the buckskin covering itself or by a separate strip sewed on at this point. A little above the center is sewed the head strap of buckskin, to enable the mother to transport her child or to suspend it when at rest. The hood of the cradle is based upon the

<sup>1</sup> Mason (α), pp. 186-187.

flaps of buckskin, but these are entirely concealed by the covering of flannel or other substance. The most ornamented portion of the cradle is the part above the hood; a piece of flannel or buckskin is covered with beadwork, solid, or has figures wrought upon it in various patterns. To the hood are attached medicine-bags, bits of shell, haliotis perhaps, and the whole artistic genius of the mother is in play to adorn her offspring. After the child is lashed in the cradle, a triangular flap of buckskin, also adorned with beadwork, is tied over the child to the buckskin flaps on either side."

The cradles of the Nez Percés exhibit striking similarities with those of the tribes to the north and west, especially the Spokane and Yakima. The cradles sometimes produced occipital flattening. Many old graves have furnished skeletons showing frontal deformation. Although the Nez Percés say they never followed the custom so common on the lower Columbia of binding a board across the forehead, it nevertheless may have been an ancient or an occasional practice.

#### WARFARE

War was a very important thing to the tribes of the Shahaptian stock. Of these tribes the Nez Percés were practically dictators in questions of war and peace. The valleys of the Clearwater and Wallowa rivers provided the most favorable conditions of life of any part of the Great Basin area, for they furnished game, fish, and vegetal foods in great abundance. War with the Shoshonean tribes to the south was an unceasing one in which the Nez Percés were aided by the Wallawalla, Yakima, and Cayuse. Hostility seems to have been more intermittent with the Flathead tribes to the north, and there were periods of peace and friendly intercourse. War parties from the Nez Percés invaded the Plains to contend with the Blackfeet and the Crows, but just how extensive were these operations before the acquisition of horses it is impossible to say. The Nez Percés procured horses before the more easterly tribes, and the latter made raiding and horse-stealing expeditions which by the time of the appearance of the early traders amounted to a continual state of war and rendered the lot of the Nez Percés anything but a

pleasant one. In this hostility against the eastern Indians the Flathead tribes, particularly the Spokane and Cœur d'Alènes, made common cause with the Nez Percés. In the annual excursions into the buffalo country, the Nez Percés and the Flatheads joined forces. These excursions started every spring and returned after one year, two parties, one going and one returning, usually meeting on the way. There were three trails: one, through the territory of the Cœur d'Alène Indians, passed the southern end of the lake of that name and crossed the mountains near the head of St Joseph river; a second trail was the famous Lolo trail, the crossing being made near the head of the North fork of Clearwater river; a third trail, less used, crossed the Bitterroot mountains at Nez Percé pass near the most northeasterly bend of Salmon river. These trails were marked by blazings made with elk-horn wedges. On these great excursions, men, women, and children went, and many fierce battles resulted.

WEAPONS. — Bows and arrows have already been described. The arrowheads used in warfare were frequently poisoned by being dipped in rattlesnake virus. The war-spear had a point either of bone or of stone, usually lance-shaped but sometimes barbed. The handles were about eight feet long. The war-club was of two kinds: One, having a worked stone head with a point at each end and a groove in the middle to which a handle was lashed with rawhide, is said to have been used exclusively in war. The other was constructed with a common unworked boulder about the size of the fist, which was sewed in skin and bound more or less loosely to a wrapped handle usually about eighteen inches in length, fig. 5<sup>5</sup>. It was employed not only in war but also for everyday uses, such as dispatching game.

ARMOR. — For armor, the shield, the helmet, and a sort of tunic were used.

The shield was circular, measuring about fourteen inches in diameter. The material was elk-hide which was stretched green over a hoop frame and dried. As in the Plains area, the shield was commonly mounted on a tripod when not in use. It is uncertain whether the ceremony of turning the shield toward the

suh was observed or not. The shields were ornamented with paintings, scalp-locks, bunches of feathers, etc. It seems probable that, as in the Plains area, the painted decorations were upon the shield-cover of softer hide.

A helmet, or hat, is said to have been made of stiff elk-hide. The character of this helmet is uncertain. A specimen in the Peabody Museum, shown in fig. 5<sup>1</sup>, represents an article of headgear ascribed to the Nez Percés. Similar specimens are common among the Cheyenne, from whom this piece may, indeed, have been obtained in trade. An oblong piece of stiff hide, measuring about ten by eighteen inches and provided with a circular opening for the head, much resembles a paper crown. This opening was made by cutting the hide along several radii of a circle marked off near one end of the board-like piece of elk-hide. The points thus made were turned up, as was the front flap. The long flap at the back hung down as an admirable protection to the neck. The decoration consists of painted triangle and diamond patterns and stiff fringes.

The body armor was not much worn after the acquisition of horses, although it was probably important before that time. It consisted of a sleeveless tunic of elk-hide which hung almost to the knees. It was very stiff and clumsy, but an effectual protection against arrows. Slat armor was apparently unknown to the Nez Percés although it was commonly used by the tribes of the lower Columbia.

WAR DRESS.—The principal article of war regalia was the war-bonnet. Except for this the warriors wore often only the breech-cloth. Eagle feathers were the only kind used in the war-bonnet. There is no doubt that this article has been in use among the Nez Percés for a long time, although it may originally have been derived from the Plains Indians. Plate x, 1, shows a modern example of the war-bonnet without streamers; the streamers were also used, however. It is clear that the war-bonnet of early times differed much from that used to-day, but exact information on this point is difficult to obtain.

The full war dress is thus described by Ross:<sup>1</sup>

<sup>1</sup> Ross (*ib.*), vol. 1, p. 306.

"It consists of the entire skin of a wolf's head, with the ears standing erect, fantastically adorned with bear's claws, bird's feathers, trinkets and bells. The next item is a wreath of curiously studded feathers, resembling a ruff or peacock's tail, which is entwined around the cranium, and hangs down the back to the ground like a banner; when the chief is on horseback, it floats six or seven feet in the air. The loss of this is the loss of honor. The price of a first-rate war head-dress is two horses.

"The body is clothed with a shirt, or garment of thin dressed leather, cut and chequered into small holes, and painted or tattooed with a variety of devices. A black leather girdle strapped tightly around the waist confines the garment, and holds the mystical medicine-bag and decorated calumet."

A head-dress based on the scalp of an animal was among the oldest forms in this region. At a later date the scalp of a young buffalo, the horns not removed, was made into a head-dress. This type, however, was very widely used by other tribes.

Little information could be elicited respecting the regulations in regard to war paint. The hair was painted white with a clay paint mixed with saliva and rubbed on with the hands. Red and orange seem to have been the favorite colors for face and body painting. The war-knife, and the bone-whistle which was blown only in battle, were hung about the neck.

WAR HORSE.—After commenting on their great value, Ross<sup>1</sup> gives a detailed description of the decorations of the war horse by the Nez Percés.

"Those entirely white are preferred; next to white, the speckled, or white and black, are most in demand. Generally all horses of these fancy colors are claimed by the chiefs, in preference to any other, and are, therefore, double or treble the value of others. As much pains is bestowed to adorn, paint, and caparison a war-horse as a warrior himself.

"On one occasion I am now describing, the horse was a pure white. After painting the animal's body all over, and drawing a variety of hieroglyphic devices, the head and neck were dappled with streaks of red and yellow; the mane dyed black, the tail red, clubbed up in a knot and tied short; to this knot was appended two long streamers

<sup>1</sup> Ross (*ib.*), 1, p. 307.

of feathers, sewed to a leather thong by means of sinews; the feathers, which reached the ground, forming as it were two artificial tails, which, in addition to ornament, served the rider to lay hold of while in the act of crossing rivers. A bunch of feathers as big as a broom, standing some twenty inches above the ears, ornamented the horse's head; and the rider as well as the horse was so besmeared with red, blue and yellow ochre, that no one could tell what the natural color of either was."

#### MUSICAL INSTRUMENTS

The musical instruments of this region were of the types common to most of North America.

Rattles, as usual, were an important part of the paraphernalia of the dancer and the shaman. A common form, represented by a specimen in the Field Museum, has a slender handle wrapped with deerskin, and at the end of the handle a tassel made of the tips of deer-hoofs. Another kind of rattle consisted of a bag of dried rawhide that contained a few small stones. This bag had a thong handle.

The drum is said to have been unknown before the nineteenth century, its place having been taken by a notched stick bound to an oblong piece of dried rawhide which served as a sounding board. One end of the instrument was placed on the ground and the other was held by the performer in a slanting position. The rasping sound was produced with a stick rubbed up and down over the notches.

The drum was common enough at the time of the first fur-traders. An old specimen in the Peabody Museum is apparently made of elk-hide over a cheesebox-like frame about four inches in height and twenty inches in diameter. The wooden frame is made of a single strip of wood lashed together at the ends. A row of burned holes extends down the center of the strip. The hide is stretched over the frame and fastened with thongs passing through the row of holes in the frame and a corresponding set of holes in the hide itself, and are looped over a thong that encircles the drum on the outside. To this outside cord are likewise attached two sets of cords that cross at right angles on the underside of the drum. On this particular drum

there is no decoration. Others, in the Field Museum, are ornamented with drawings of animals.

The drum-sticks, which were about fifteen inches long, were commonly painted red, and had the head wrapped with deerskin. Each drummer used only a single stick. From two to six drummers played on the drum at the dances.

Flageolets were made from elderberry wood. The hollow cylinders were from fifteen inches to two feet in length and about an inch in diameter. About six inches from one end was the wind passage—a slot about a quarter of an inch in length, with a wrapping of deerskin at each end. Just before this passage the tube was almost stopped with a lump of pitch. Six finger-holes were bored in the middle portion of the instrument, and another hole was near the lower end. This last hole is said to have rendered the tone much sweeter than otherwise. These flutes, as they are commonly called, were used only at night, the young men serenading the girls with them. They were not used in any of the dances.

Bone whistles, similar to the above except that there were no finger-holes, were made of the leg-bones of the sandhill crane (*Grus Canadensis* Temm.). They were about eight inches in length and were carried about the neck. They were used only in battle.

#### ART

PICTOGRAPHS. — Petroglyphs have been found at several points within the territory of the Nez Percés, and there is no reason to doubt that these Indians were the makers of them. The petroglyphs occur on cliffs and bowlders, especially where there is a granite outcrop. They were inscribed by several methods: (1) by painting with red and yellow ochre; (2) by pecking; (3) by a combination of these two processes in which a large surface was first painted over and then the figures brought out in tone relief by pecking away the paint.

Perhaps the most famous site of petroglyphs is Buffalo Rock, about eighteen miles above Lewiston, on the east bank of Snake river. This granite rock stands by itself on a small flat at the

mouth of a lateral cañon. A considerable village, named Hokotbatpi, was formerly situated around it. The rock takes its name from crude but unmistakable figures of buffalo painted with red paint, on the up-river side. Some of these figures have been removed and others destroyed by archeologically inclined vandals, so that only two are now in good condition. Near these buffalo figures are two signs, each with one vertical line and seven horizontal lines on the left side, like the teeth of a rake. These figures are painted in black and yellow paint.

The most interesting group of figures is on the down-river side of the rock. A considerable area of the rock is still covered with a varnish-like brown paint. This covering was removed by pecking and figures formed which stand out in gray against the brown background (plate x, 5). Most of these figures appear to represent men who in some cases have horns on the head, possibly meant for buffalo-horn head-dresses. The arms are long, with the elbows bent and the hands on a level with the broad shoulders. In one or two cases the hands carry wands or bows. The bodies, from the shoulder down, resemble the tail of a fish, the hips being very narrow and the legs short. A mountain goat with greatly elongated horns is represented above one of the man-like figures. In general style these petroglyphs closely resemble those found elsewhere in the Basin area.

On a weather-worn boulder close by the group just described occur other figures which appear to have been simply pecked (plate x, 4). The mountain goat, the snake (?), and various geometric signs or symbols occur here.

A mile or two above Kamiah, on Clearwater river, a small group of paintings existed until destroyed by railroad grading. The animals represented were men and deer or elk. Paintings and pecked figures are said to occur also at Almota, on Snake river below Lewiston, and on basalt cliffs near the mouth of Imnaha river, in northeastern Oregon.

Pictographs which served the double purpose of decoration and as an aid to memory were commonly painted in colors upon the buffalo and elk-hide blankets and upon the skin tipis. These pictographs show considerable similarity to those of the Sioux.

A painted blanket in the Field Museum of Natural History represents the retreat of Chief Joseph.

Realistic paintings of eagles, deer, etc., were used to embellish the shields and drums. These however were not applied with any order or design. Plate ix, 7, shows the use of realistic art, of a rather low order, to decorate a tufa pipe.

Little is known about wood-carving, but it is doubtful if it was much used. The carved wooden figure found at Tampico, Washington,<sup>1</sup> suggests that wood-carving may once have reached a fairly high development in the plains of the Columbia. Plate ix, 19, shows the curious carved stone figure already discussed.

DECORATIVE ART.—The decorative art of the Nez Percés offers the same complex of ideas of the Plains and Coast tribes that marks the other phases of their culture. The painted decoration on parfleches and medicine-bags partakes strongly of that of the Plains. The decoration came in when the article itself was introduced, or soon afterward. Quillwork and beadwork show some Plains features and some which may be indigenous. Basketry decoration shows strong affiliations with the designs prevalent on the Pacific coast and Columbia river.

Unfortunately the present study of the decorative art of the Nez Percés must be entirely objective. No interpretations of geometrical figures could be obtained. It seems fairly certain, however, that in early times the Nez Percés were very poor in decorative ideas, and that the richness and variety of modern times may be ascribed to absorbed ideas and not to the native culture.

The basket hats of the women were, according to existing specimens, all decorated in some zigzag design having three points at the top and three at the bottom. Plate vi, 15, 16, show two basket hats, one with a checkerwork zigzag and the other the motive shown in fig. 6<sup>3</sup>. This motive was common to the basketry of northern California and of Columbia river. No interpretation of this design could be procured. Variants of this design were used on cylindrical carrying baskets. Other basket hats were decorated with step-zigzag

<sup>1</sup> See H. I. Smith (6).

designs. In style of designs there seems to have been little difference between the women's hats of the Yakima, Umatilla, etc., and those of the Nez Percés.

While it is still somewhat uncertain whether the Nez Percés made imbricated basketry, a number of specimens of this art

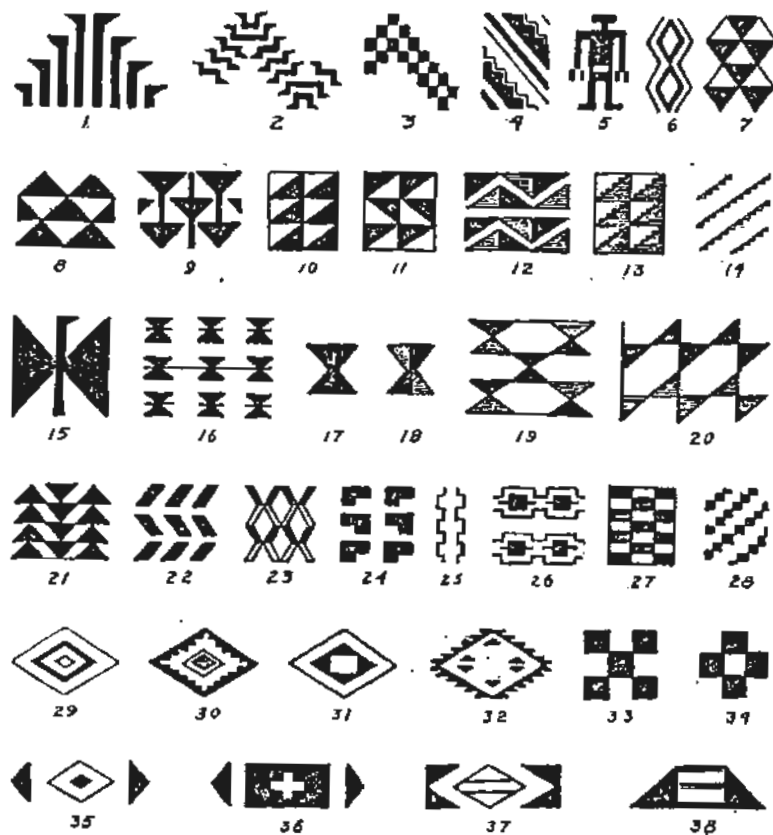


FIG. 6. — Decorative motives used in textiles.

have been obtained from them. One example shows the human figure, fig. 6<sup>5</sup>, and another a design with diamonds and triangles, fig. 6<sup>6,7</sup>.

Cylindrical carrying baskets exhibit a variety of simple band decorations, some vertical, some horizontal, and some diagonal.

A stepped design, neatly worked out so that the uncolored background was the duplicate of the colored area, is illustrated in fig. 6<sup>4</sup>. The designs on these baskets are much the same as those of the Yakima, Wasco, and other tribes of the lower Columbia, except that they are more uniformly geometric among the Nez Percés. There seems to be a steady increase in the proportion of realistic motives in going toward the Chinook area, where birds, fish, and human faces were clearly though conventionally pictured.

In the designs of the woven wallets there was seemingly endless variety. Most of the designs are of the simple geometric figures similar to those shown in fig. 6<sup>8-24</sup>. These were arranged in "all-over" patterns, in bands, and in combinations of various sorts. Both sides of the wallets were decorated, and there was no relation between the designs on the two sides. One was often simple and the other complex. It seems probable that these simple geometric elements were taken and deliberately worked out in all possible combinations until pleasing effects were produced. In no other way does it seem possible to explain the limitless variety.

Realistic figures are rare, and probably of recent origin. The double-triangle figure, shown in fig. 6<sup>15-20</sup>, probably was derived from the common bird design of the lower Columbia. Arrowhead designs are met with. Even where it is possible to trace a realistic origin, the great development of the figure as an element of pure design renders such an explanation inadequate. In some of the more elaborate figures there are striking similarities to the beadwork and painted rawhide designs of the Plains. Fig. 6<sup>35-38</sup> illustrate some figures possibly derived from the Plains tribes.

The decorative designs of Shahaptin parfleches (Yakima, Umatilla, and Nez Percé) have been described by Dr Kroeber<sup>1</sup> and compared with those of the Plains tribes. His description follows:

"In their rawhide painting the Sahaptin show a somewhat greater tendency to use designs of the square and triangular type than do the

<sup>1</sup>Kroeber, pp. 175-176.

Kootenay, although such designs are neither very frequent nor very prominent among them. It is probable that the occurrence of this type of design among the Sahaptin is due to direct contact with the Shoshoneans, principally of Idaho. It is interesting to observe that the wide border-stripe consisting of triangles with squares at the ends, which is so typical of the Shoshone, is found among the Sahaptin as frequently in the form of a transverse end-stripe as it is as a longitudinal border. Central squares of no great size occur several times in combination with adjacent acute isosceles triangles. Wide stripes, sometimes longitudinal and sometimes transverse, are not uncommon. When longitudinal, they occur also in the middle of the decorative field. In this case the two resulting halves of the decorative area are usually occupied mainly by diamonds or hour-glass figures. There is very little tendency toward a distinct enclosing frame, as among the Sioux and Blackfeet. There are also very few cases of a repetition, along the longitudinal borders, of the designs in the middle, such as is so characteristic of the Arapaho; but there are cases even of this. Altogether there is hardly any characteristic tribal type which has not some representation among the Sahaptin. The figures are generally large. They are, however, so placed that the white background is comparatively prominent; and the close effect found, for instance, in most Bannock parfleches, where large design elements are also favorites, is wanting. The outlines of the figures are usually marked quite heavily in black or dark blue, much as among the Shoshone and Bannock. Almost half the parfleches have paintings on the side, similar to those of the Blackfeet and Kootenay. The typical form of these side-paintings seems to be a row of angles or V's with the apices directed upward; that is to say, more or less inward as the flattened parfleche is viewed from above. Usually each angle or V contains one or two smaller parallel ones. In a few cases among the Sahaptin, the V-shaped angles are replaced by square U-shaped figures or by diagonal stripes."

Two examples of parfleches are shown in fig. 5<sup>1,2</sup>. The designs of these illustrate the simple geometric quality of most Nez Percé parfleches, and show the use of the square and zigzag.

Beadwork decorations on old deerskin garments usually take the form of bands of checkerwork flanking solid masses of color. Blue was evidently the favorite color; it was usually combined with white. The beadwork decoration of belts, quivers, etc.,

was largely geometric and composed of squares, triangles, and such simple figures. The beadwork decoration of moccasins was on the other hand predominantly floral, but the characteristics of no particular flowers were emphasized. Leaves branched from a stem, and at the end of the stem colored beads massed out what might be taken for petals. If this style of ornamentation was introduced, it would be interesting to know the origin. These floral designs of the moccasins existed in as great variety as the geometric designs of the wallets.

It seems evident that the Nez Percés derived their decorative ideas from a number of sources, but the nature of the original decorative art is very uncertain.

#### MISCELLANEOUS

CALENDAR. — According to the ancient calendar there were twelve months in the year. It is uncertain which of these months began the year, so they are here given from the starting point of our own calendar:

- 1st January. — *Witū'pup*, meaning uncertain, said to be, "the middle of cold weather."
- 2d February. — *Ālūtāmā'l*, "the month of swelling buds."
- 3d March. — *Lati'tal*, "the month of flowers," *latis* meaning "flowers."
- 4th April. — *Kakital'*, "the month of *kakit*"; *kakit* was a favorite food root much like kouse.
- 5th May. — *Āpāāl'*, "the month of kouse bread"; kouse bread was made from the fresh roots gathered at this time.
- 6th June. — *Ili'lal*, "the month of the first run of the salmon."
- 7th July. — *Hasoal'*, "the month of eels," or *Qoiktal*, "the month of blue-backed salmon."
- 8th August. — *Taiyaal*, meaning uncertain, possibly "the month of hot weather"; *taiyam* means "summer."
- 9th September. — *Waurwama aiakal*, "the month of salmon spawning at the heads of creeks."
- 10th October. — *Aiakal Pikūn'me*, "the month of spawning salmon on Snake river."
- 11th November. — *Iloplal*, "the month when tamarack (larch) trees lose their needles."



12th December. — *Saxliwãh*, "the beginning of cold weather," or "time of the fall deer hunt."

The four seasons of the year were named as follows:

Spring, *etaiyam*.  
 Summer, *taiyam*.  
 Fall, *saxnim'*.  
 Winter, *enim*.

In the Field Museum of Natural History a calendar tally accredited to the Nez Percés is exhibited. It consists of a group of five small sticks, each with a square cross-section. Upon the sides are lines and dots. Usually six parallel lines are followed by a dot, suggesting the week count. A tally similar to this is said to have been used to register the births, deaths, etc. On one side of a stick the days were shown, on another the years, while the important events were marked in the proper places by circles, etc. The whole idea seems to have been fairly modern. There were no "winter counts" such as are found among the Sioux. Important battles were often depicted on blankets, but there was no orderly graphic record of historical events.

Distance was measured by "bends" of the river or by the number of days required to travel from one point to another.

**SIGN LANGUAGE.** — The sign language of the Plains was used by the Nez Percés, but was probably acquired after the introduction of horses. The Chinook jargon was similarly introduced by the early fur-traders, most of whom were from posts on the lower Columbia.

**PHYSICAL AND MENTAL CHARACTERISTICS.** — Little information has been gathered concerning the physical type of the Nez Percés. Boas<sup>1</sup> gives head-measurements of 267 individuals of the Shahaptian stock and finds the cephalic index to average 84.7. Fourteen skulls from the same stock show an average index of 83.2. This puts the Nez Percés in the brachycephalic Basin type, which embraces also the Navaho, Comanche, the Indians of southern Oregon, etc. With the round head goes tall stature. The Nez Percés were not so tall as some of the west-

<sup>1</sup> Boas, p. 391.

ernmost Plains tribes, but they were well above the average height. The average height of 71 men of Shahaptian stock was, according to Boas,<sup>1</sup> 169.7 cm.

Their features are clean-cut and of the finest Indian type. Plate x, 1, 2, pictures two Nez Percé Indians.

In temperament, they were brave, hospitable, and trustworthy. Lewis and Clark and many after them praise their hospitality. The tortures which were inflicted upon prisoners by the Plains Indians were not employed by the Nez Percés. They were more inclined to missionary teaching than most Indian tribes, and at an early date many became devout Christians.

#### POPULATION

Lewis and Clark's estimate of the population of the Nez Percé nation, excluding the "Yeletpo" which clearly did not belong in the list of bands, was substantially as follows:<sup>2</sup>

1. All those residing along the Clearwater river below the confluence of the North fork, and on Potlatch creek.....	2,000
2. The Pelloatpallah band residing on the upper Clearwater river and its tributaries.....	1,600
3. The Kimooenim band on Snake river from the mouth of the Clearwater to the mouth of the Salmon.....	800
4. The Willewah band on Grand Ronde river and its tributaries.....	500
5. The Soyenow band on the north side of Salmon river from its mouth to the Rocky mountains and on "Iamaltar" (Whitebird) creek.....	400
6. The Chopunnish of Snake river from the mouth of the Clearwater to the Columbia.....	2,300
Total.....	7,600

The second, or "Pelloatpallah," band could not possibly have been the Paloos Indians, because the habitat is clearly stated as the upper Clearwater, where Lewis and Clark spent several weeks. They speak<sup>3</sup> of this band as "the band with which we

<sup>1</sup> Ibid., p. 371.

<sup>2</sup> Lewis and Clark, vi, pp. 114-115.

<sup>3</sup> Ibid., v, p. 117.

have been most conversant." Only the last band in their list can be divided. The Nez Percés did not extend as far down Snake river as the junction with the Columbia, but only to the mouth of Tukanon creek, somewhat more than half the distance. This latter band may, then, have included the Paloos tribe which inhabited the valley of Palouse river and controlled the lower portion of Snake river. Deducting 1,000 for this possible inclusion of the Paloos tribe there is left a total of 6,600. It is to be noted that Lewis and Clark based by far the larger portion of their estimate on the bands which they actually visited. They allowed only 400 for a long stretch of the Salmon river.

While this estimate corresponds with the traditions of the Indians and seems conservative enough when we consider the large number of geographical bands, it exceeds the rough estimates made after the coming of settlers. Wilkes in 1841 placed the number at 2000. Governor Stevens reported 1880 (adults?) in 1851, and Gibbs more than 1700 in 1853. The Indian agent in 1862 mentioned that 2,800 persons were eligible to draw supplies from the Government. The first real census was not compiled until 1893, on the occasion of making land allotments. The number on the Nez Percé reservation was ascertained to be 1895, while about 140 more were reported from the Colville reservation. The latter were the remnant of Joseph's band, which, when captured, had numbered 450. Thus the total in 1893 exceeded 2,000. In the last fifteen years this total has decreased one fourth, and the Indians now number about 1,500.

The fact that the reservation embraced a large extent of territory, many parts of which were difficult of access, may account for the prevailing low estimates of the population. Moreover, it must be remembered that the agents were concerned only with the Indians living on the reservation. Until thirty or forty years ago many bands roamed at will. Father Cataldo, who as a missionary has dwelt among these Indians for the last fifty years, estimates that in 1860 the population was about 5,000.

The causes of a falling population are not far to seek. Ross and other fur-traders comment often upon the fierce wars between the Nez Percés and the horse-stealing raiders of the Blackfoot,

Crow, and Shoshoni tribes. Firearms made these wars more than ordinarily deadly. Diseases, new to the Indians, claimed many victims. Just before the Whitman massacre, in fact the prime cause of it, a smallpox pestilence swept over the Nez Percé and Wallawalla area, resulting in great loss of life. A second pestilence, less severe, occurred in the late '60's. Since 1870 the death-rate from tuberculosis, owing to the substitution of unclean and ill-ventilated wooden houses for the native mat lodges, has been steadily increasing. Dr J. N. Alley, the physician in charge at Lapwai, reports that fully ninety per cent. of the deaths result from tuberculosis and that any disease of an eruptive nature so weakens their power of resistance that the natives are carried off by tuberculosis within two months of their recovery from the primary ailment. Hardly one person in ten at the present time is free from tuberculosis or does not bear witness of its ravages in scars on the neck or jaw. Unless something can be done to stop the progress of this ever-present plague one of the finest tribes of American aborigines will soon be only a name.

#### SOCIOLOGY

THE TRIBE. — The social organization of the Shahaptian stock seems to offer an excellent field in which to study the simple development of the tribe. The stock was geographically a unit. Intertribal festivals and ceremonials were common. Offensive and defensive alliances were made against the Salish tribes on the north, the Crows and Blackfeet on the east, and the Shoshoni Indians on the south. Linguistic unlikeness between neighboring bands was slight, although the extremes of east and west showed marked differences. It seems, then, that the tribes arose from the natural division of the stock according to the geographical areas. This view is supported by the lack of anything like a gens grouping, by the absence of all evidence of migration or conquest, and by a study of the internal structure of the Nez Percé tribe, itself divided into geographic bands.

The Nez Percé tribe was the largest and strongest member of the Shahaptian stock, and was the leader and dictator in affairs of peace and war. It occupied the most important position,

since it had to guard the frontier against the Shoshoni, the Crows, and the Blackfeet. Much of its later dominance may have been due to the early possession of horses, and its consequent superiority in war and advantage in trade. Before this, however, the Snake and Columbia rivers formed a highway through the length of the Shahaptian territory, and their natural advantage at the head of navigation must have been marked.

The Nez Percé tribe was divided into bands upon the village or geographical basis. Each village had its chief, its fishing place, and its strip of territory along the river. Several village groups often came together to make up a war-party, but there is little evidence of close relationship in village groups in time of peace.

CHIEFS. — The position of chief was obtained by election. Although fathers were often succeeded by their sons, this was only because the latter had a strong following and not because the chiefship was regarded as hereditary. There were peace chiefs and war chiefs. Each village had at least one peace chief who held the position as long as he was able to please and control his people. The war chiefs were elected in council and controlled a much greater number of men than did the ordinary village chiefs. There were no female chiefs, nor did women take part in the election of chiefs. Rarely a chief rose to the position of war chief for the whole tribe, and then only after he had saved the tribe in some important war.

The strength of a chief depended on the size of his following. All who desired to reach the position of chief had to be able to gain the favor of the mass. Frequently a young brave would give feasts to accomplish this purpose. After he had thus enlisted a following he would organize a small war-party and have himself chosen as leader. If successful in this initial undertaking his rise might be rapid, according to his skill in diplomacy and debate, his bravery, and his deeds.

The power of the peace chief was considerable in his own village, or over his own people on the march, but he had no power when in the territory of another chief. He was, however, treated with honor. The power of the war chief was supreme on the war-path, but it was only honorary in time of peace.

The council consisted of the chiefs and the old men. There was a village council which helped the chief in administering justice, and a tribal council which met to discuss intervillage matters and affairs of peace and war. These tribal councils might be large or small, comprising a group of villages or the whole tribe. There were also intertribal councils. At these the chiefs met and argued while the pipe was passed around and the listeners sat in a circle. Such intertribal councils were common between the Nez Percés and the Cayuse, Wallawalla, and Yakima, formed to discuss war against the common enemies. Treaties between enemies were also ratified at such councils. Whenever two or more large bands met, such councils might be formed to discuss affairs of moment. The rule for a decision was perfect agreement, so the councils were often long drawn out.

ORATORY. — Oratory was a highly developed art among the Nez Percés, for on this depended much of the power and prestige of the chiefs. The rule of the council was unanimity, and this could be effected only by calm reasoning where facts were to be considered, and by impassioned appeal when the decision depended on sentiment. There was considerable use of gesticulation and a great display of dignity. Statements were concise and concrete. Often a public speaker, or herald, repeated word for word the orations of the chiefs in order that the assembled multitude might hear.

Even when translated out of the soft and pleasing Nez Percé language the surrender speech of Chief Joseph has a great deal of power and pathos:

"I am tired of fighting. Our chiefs are killed. Looking Glass is dead. Toohulhulsote is dead. The old men are all dead. It is the young men who say yes or no. He who led the young men is dead. It is cold and we have no blankets. The little children are freezing to death. My people, some of them, have run away to the hills and have no blankets, no food. No one knows where they are — perhaps freezing to death. I want to have time to look for my children and see how many of them I can find. Maybe I shall find them among the dead. Hear me, my chiefs, I am tired. My heart is sick and sad. From where the sun now stands I will fight no more forever."

DISCIPLINE.—Whatever power there was for discipline was vested in the heads of families, in the chiefs, and in the council. There was no regular police force either in camp or on the hunt. The matters of the household were in the hands of the husband and father. Chiefs had considerable influence, each in his own village, but not outside of it except over his own people. On the war-path a single chief was elected to supreme control, and he could appoint subordinates as he saw fit. Disputes between two villages or important questions of punishment were decided in the council. The council consisted of the old men and the chiefs. It varied in size according to the importance of the matters under discussion and the breadth of the territory affected.

There was, in general, a great deal of freedom of action. The power of the chiefs did not extend to dictation in purely personal matters. Such orders as were given were seldom combated. In sham battles and in dances, the leaders were able to enforce the most perfect order.

In regard to crimes, the procedure and punishment were pretty well established. Murder of a member of the tribe usually entailed blood revenge by the family of the murdered man. The payment of blood-money was sometimes sufficient, especially if the dead man was of a quarrelsome and unruly disposition. Murder of a man not of the tribe was not a crime, except where it was a breach of hospitality. Theft from a tribal member or from a guest was seriously frowned upon, and punishment for the offense consisted of compelling the surrender of the article, or others of equal value, and the infliction of public disgrace, which seems to have been keenly felt by the culprit. For adultery a death penalty was sometimes inflicted upon the man and the woman by the husband, and sometimes the matter was adjusted by the payment of horses, etc. Rape was punishable by death or by enforced marriage. Lying was regarded as almost the worst infringement of ethics, and the epithet "liar" the last insult that could be offered. Public contempt was the punishment meted out to one caught in a lie.

Throughout the Basin area each tribe was held responsible

for outrages committed in its own territory, even if by members of another tribe. A war-party in the territory of an enemy would often offer violence to strangers simply as a back-hand blow at their enemies, when the strangers would have been perfectly safe if they had been encountered in the territory of the aggressors.

PROPERTY.—Property was both individual and communal. To the individual belonged all the implements he had made and used in his work. The men made and owned the nets, spears, hunting apparatus, and weapons of war. The women made and owned the pestles, baskets, etc. Each sex could trade away its belongings, but in case husband and wife separated, all the property belonged to the husband. The horses usually belonged to the men.

In early times the Nez Percés owned a few slaves. They did not buy slaves, merely using as such the male prisoners of war. The women taken in war became the wives of their masters. In any case the children of slaves were free, and the slaves themselves were frequently taken into the tribe. Slaves were the personal property of their captors and could be traded or even killed at will. As a matter of fact they were treated with kindness. It is said that women could gamble away their freedom, but that men were not allowed to do this.

The food supply was a family matter, although there was usually a pooling of supplies to make common store for winter use. Except in the case of large hunts all fresh meat belonged to the hunter who had killed the game. It was considered part of the duty of the chief of a village to see that all the families under his control provided themselves with an ample food supply, since otherwise they might become a public burden.

The long-house was constructed by communal labor and was considered the communal possession of all who lived in it. There was no private ownership in land. Each village owned its special fishing place, and disputes and fights frequently arose when one village infringed the rights of another. There were, however, a number of important fishing places that were considered the common property of the whole tribe. Wallowa lake

and the headwaters of Little Salmon river were perhaps the most important. The large camas meadows near Moscow, Grangeville, and in the Wallowa valley, were also tribal property; indeed these may even be called intertribal property, since the former was frequently visited by the Palooos and the latter by the Cayuse Indians.

<sup>PATRILINEAL</sup>  
 X Inheritance was through the male line. Much property was given away after the funeral feast, and the remainder was usually distributed according to the previously expressed wishes of the owner. In addition to material property, songs and names were also inherited in the male line.

DIVISION OF LABOR.—A great deal of the ordinary routine work was relegated to the women. They had to dig roots, gather berries, make clothing, baskets, mats, pestles, etc., dress skins, and attend to the culinary affairs—in short, all the domestic work was theirs. The men did the hunting and fishing, herded and took care of the horses, and made nets, weapons, knives, etc. Undoubtedly the necessities of war consumed a large part of their time. The men helped in all the heavy work, such as setting up house-poles, cutting wood, etc.

#### THE LIFE OF THE INDIVIDUAL

BIRTH.—For two or three months before the birth of a child and for about two weeks after, the woman was confined to the subterranean menstrual lodge, or to its summer substitute. She was not allowed to speak to men or to receive anything from them. All women who were secluded during either pregnancy or the menstrual periods dwelt together and cooked their own meals. They were not allowed to eat food that others had touched. No diet restrictions were placed upon them.

Old women acted as midwives at the birth of children, and were well paid for their services. There seems to have been no birth ceremony, and only the simplest of medical practices. Twins were considered as lucky both to the family and to themselves. The grandmothers of the children devoted much time to their care. The cradle in which the children spent a great portion of their time for the first two years has already been described.

Children were trained to be quiet and obedient, but were kindly treated and seldom had to be punished. After they had reached a sufficient age to understand, stories, myths, and didactic accounts of arts and technology were told them on winter evenings by the men.

NAMES.—Names were obtained in several ways. The child was named from a stock of names which had long run in the family and which were held in reserve. These were probably mostly vigil names of ancestors and deceased relatives. The same name could be applied only to one living person. Occasionally the right to use a name not belonging to the family could be purchased from the family owning it. Such names with marketable value were those that had belonged to some famous chief or warrior, and the right to use the name was usually purchased soon after the former owner had died and before the luster of his renown had faded.

Nicknames were frequent, and, as usual, reflected some physical or mental peculiarity. Some nicknames had a more dignified origin in a feat in battle or skill in hunting, etc. Such names were sometimes made permanent by public notice and a gift to the tribe. The gift was sold and the proceeds used to defray a portion of the expense of a public ceremony.

The most important name was that secured at the Sacred Vigil. Only those who succeeded in obtaining a guardian spirit had one of these names. At about ten years of age the child, whether boy or girl, was sent out on the mountains to fast and keep vigil. If, as a result of this vigil an animal or some other thing appeared to him in a dream, the name or description of this visionary object was taken as the sacred name. Sometimes the dream animal was seen bearing some trophy of the hunt, and in that case the sacred name signalized this. Such a name was *Siltwehakt*, which means "Eyes-around-the-neck." The warrior with this name was commonly called "Eye Necktie." Another name, *Wisaskesit*, means "The-clouds-shade-the-sun." Other names were more simple, as *Himn-ilpilp*, "Red Wolf."

ACQUISITION OF GUARDIAN SPIRITS.—The sacred vigil was important in more ways than in the securing of a name. The

VISION QUEST.

animal or object which appeared in the dream became the guardian spirit of the child and was intimately associated with the future life. It was supposed to protect the man or woman from danger, often conferring a restricted invulnerability. It was also supposed to endow him with certain physical or mental qualities and pronounced skill in certain things. These extraordinary faculties were such as were especially developed in the animal or object itself. A deer, for instance, would imbue its protégé with swiftness of foot; a coyote or a wolf with skill in hunting; the sun in wisdom and mystical insight. In the case of women, some of the powers conferred on her by the guardian spirit could be delegated to her husband. For instance, if a woman had the Wolf Faith, she would sing her sacred song when her husband was hunting and thus augment his chances of success. Those who were unsuccessful in obtaining a guardian spirit were regarded as unfortunate, and seldom rose to posts of honor and influence.

The method of keeping the sacred vigil was as follows: The child (boy or girl) went up into the mountains, usually ascending to one of the highest peaks. Here he built up a heap of stones and then sat down beside it with his mind steadfastly fixed on the purpose of his vigil. He took no food or drink, and kept awake as long as possible. After three or four days of fasting and vigil he fell into a troubled sleep, during which the animal or object appeared, gave him a name, and taught him a sacred song. There was no way of determining beforehand what the guardian spirit would be, although it seems probable that if the watcher was very desirous of having a certain one he could induce that spirit to enter his dream by keeping his mind fixed upon it. Suggestion and hypnotism evidently played an important part.

Many watchers failed in obtaining a guardian spirit; this was because they allowed their minds to wander, because they became homesick, or tried to while the time away by noticing unimportant objects. It was considered very sacrilegious for a child to deliberately make up a sacred song or pretend that a certain animal was his guardian spirit. Such a proceeding

would arouse the enmity rather than the protection of the animal concerned. One of the myths describes the Beaver and the Muskrat killing a boy who used their names in his song without their permission.

The child kept up the vigil till the animal appeared in the dream or, at most, until five days had elapsed. He then went home, but told no person of the result of his mission. The first occasion that the public had to guess the nature of the guardian spirit was when the boy sang a new song at the Guardian Spirit dance. There was no regular time for the occurrence of this dance, however. There was a close feeling of friendship and intimacy between those who had the same guardian spirit, and a certain amount of coöperation in the Guardian Spirit dance; but there was no organization that partook of the nature of a secret society.

There were restrictions about killing the animal that served as guardian spirit. Sometimes it could be killed only in a certain way and sometimes only at a certain time. Killing was done only when necessary. For example, a boy who had dreamed of the deer could kill deer only during the fall hunt.

The names and the sacred songs obtained by vigil descended through the family. Some had a right to sing ten or fifteen songs in the Guardian Spirit dance, having inherited them from previous owners. There seems to have been a certain amount of protection and aid derived from this second-hand interest.

In the case of shamans, men and women, the guardian spirits were regarded as of a somewhat higher order, and were drawn from the heavens. The Sun, the Moon, the Clouds, the Eagle, and the Fishhawk seem to have been the protectors necessary before shamanistic power could be inherited, and the Crane before it could be entered into by a person not in the line of such inheritance. Although of *one* faith, the shaman was allied as closely as possible with all the powers of nature.

This ceremony of the sacred vigil was the most important event in the life of the individual. For the boys there were no puberty or other initiatory ceremonies. In the case of the girls, the period of puberty was passed in the menstrual lodge, and

during this time they received instruction and advice from the older women and were not allowed to see men or to touch any object that men had touched. There were sweat-baths for cleansing during this period.

**MARRIAGE.**—Marriage by purchase seems to have been the prevailing form among the Nez Percés. In this case the marriage was arranged by the parents and a price paid in blankets or horses to the father of the girl. Sometimes the purchase-money was not demanded when the boy was capable and of great promise. In this case the consent of the girl and the approval of the parents had to be gained by the boy without the help of his relatives. Such a marriage was considered more honorable and more to be desired, aside from all financial considerations, than the ordinary marriage by purchase.

Boys sometimes married at the age of fourteen and girls at an even earlier age. There were no restrictions in marriage except in the case of relatives. Even second or third cousins were not allowed to marry. Marriage was usually, but not necessarily, outside the village group. Even marriages outside of the tribe were fairly common, and women captured in war became the regular wives of their captors. The number of wives ranged from one to four, with polygamy far more prevalent than monogamy. The chiefs, however, far from using their position to increase the number of their wives, usually limited themselves to one or two. The number of wives a man might have depended on his wealth, his attractiveness, and his deeds.

Very little ceremony was observed in making the marriage contract, and this little was practically limited to the acquisition of the first wife. As a rule some old man of the boy's family was sent as mediator to the girl's family to arrange the details of time and price. When these points had been discussed and settled, and the appointed time had drawn near, the women of the bridegroom's family went to the home of the bride. The girl was dressed in her gayest attire and escorted by her people to the home of the bridegroom. There was usually a feast, at which presents were given to everybody. About a month after

the marriage the bride's family gave a feast in return, at which presents were given to the guests. To the bride was commonly given the horn-spoons used at the feast. The presents given on one side about equaled those given on the other, although the feast provided by the girl's family after the marriage was of greater importance than that given by the bridegroom. The husband usually took his wife to live with his family, but occasionally lived with hers. There was no trace of payment of the marriage price by personal service rendered by the bridegroom to his father-in-law.

What wooing there was, was conducted in the evening. The maiden was serenaded by her lover, who played softly upon a wooden flageolet outside the tent where she slept. A pretty close watch was kept on the girls, and they seldom made imprudent attachments.

There was no formal divorce, and in case of separation all the property went to the husband. Separation was not very common, however. Instead of divorce or simple separation, the usual method was elopement. In this case the aggrieved husband would sometimes kill both the offending parties, without redress for the family of either. Elopement was common only when the husband was a weakling, unable to assert his rights, or upon the buffalo hunts, when it was easy for the runaway couple to put a considerable distance between themselves and the deluded husband. In case of adultery, death could be inflicted upon both the man and the woman. Taken all in all, the standard of morality, both before and after marriage, seems to have been conspicuously high. The crime of rape was not, however, unknown. Sometimes a delinquent girl of whom her accepted lover tired was turned over by him to a party of his friends. Abortion was uncommon. A child born out of marriage was considered a disgrace to the girl's family, and if the offending man was known it was considered to constitute marriage.

**BURIAL.**—Soon after death the body of the dead person was dressed in fine clothing, and the favorite necklaces and ornaments were used for adornment. The face was painted. In

this condition the body was kept in state, sometimes for two or three days. The body was finally sewed up in a sheet of deer-skin. The opening down the front, where the two flaps of the sheet came together, was closed with a lashing cord sewed back and forth.

The grave was a circular excavation, from three to five feet deep, dug with digging sticks and with the hands. It was usually within sight of the village. If, however, a person died away from home the body was buried there and not transported. In the grave the body was placed in a variety of positions, either flexed or at length. Poles were laid across the grave, and upon these stones were piled to protect the body from wolves and coyotes. Often a considerable amount of property was buried with the dead, including the favorite implements and ornaments of the deceased. Necklaces of dentalia, elk-teeth and bears' claws, pieces of copper, fine scalping knives, and even pestles, have been found in old graves. In later graves quantities of goods derived from the whites, such as guns, medals, hatchets, etc., are common. The killing of horses over the graves of their owners became the usual practice after horses became plentiful. Sometimes the horses were buried over the body, sometimes they were merely killed over the grave, and on other occasions they were skinned, stuffed, and set up as grave monuments. Although the ghost of the dead man was regarded as wearing the ornaments and riding the horses sacrificed at his grave, food was never placed in the grave. Plain cedar stakes were often set upright in the stone heaps over the graves. In time of war the dead were buried under the corral at night, and the horses driven over the graves to obliterate them, so as to prevent mutilation of the bodies by the enemy.

The funeral ceremonies were simple, and are but little known. At the side of the grave the shaman made a brief speech, commenting on the achievements of the deceased and expressing the general grief. There were no chants or funeral songs. The chief duty of the shaman, who was remunerated for the service, was to "lay the ghost." A large part of this ceremony had to be conducted at the new house. Some slight ceremony

at the grave side was probably connected with the cedar sticks that were set up in the stone heap.

The house in which the dead person had lived was torn down. Sometimes it was destroyed entirely, but more often it was merely moved to another spot. Even in winter time the long communal houses were taken down and moved after a death. The expedient of blocking up the part of the house where the person had died was not taken advantage of. The final act of pacifying and laying the ghost was carried out at the new house before it was occupied. The shaman, with much formality, blew smoke from a pipe into all the corners. This ceremony was called *Pasapukitse*, "his blowing the ghost away." The object of the ceremony was to prevent the ghost from moving into the new house when the other people took possession, and if it were not carried out the Indians believed that all who lived in the house would become crazy. Madness was always caused by the ghosts of the dead.

Ghosts were held responsible also for the death of children. It was believed that the ghost would hold his hand over the child's face and thus smother it to death. In order to resuscitate the child it was necessary for two or more medicine-men to determine which ghost was responsible, and then go to the grave of that ghost and try to recover the child's breath. They would blow this breath again into the child and it would recover. Often, however, the shamans could not determine which ghost was responsible, in which event the child remained lifeless. Adults were supposed to die from "bad blood," not from ghostly influence.

All who had touched the body of the dead person had to go through a prescribed sweat-bath cleansing, lasting about a week. This treatment applied to both men and women.

**MOURNING.** — The mourning practices consisted in wailing, in cutting the hair short, and in wearing poor, soiled clothes. Widows cut the hair off on a line with the neck, and could not marry till it had grown again to the bottom of the shoulder-blades. Men also cut off their hair and wore poor clothes after the death of a wife. The hair thus clipped was burned in a fire.



The tails of the horses belonging to the dead man were docked, and the animals were not ridden for two or three years. There seem to have been no food prohibitions. After the death of children the mourning was much less severe, the wailing of the mother being the most noteworthy demonstration of grief.

A month or two after death the family of the deceased gave a feast to which all the friends were invited. Much of the property of the dead person was distributed among the guests at the close of the feast.

#### GAMES

Accounts of a number of games and amusements have been obtained. In these the Nez Percés do not differ materially from their western neighbors. Wyeth<sup>1</sup> describes a number of games that he witnessed while traveling with a band of Nez Percé and Cœur d'Alène Indians, especially archery, hoop-and-pole, and the hand game. Other early explorers comment on the horse-racing and sham battles that furnished much excitement.

The hand game (*lopmix*) was played in much the same manner by all the tribes of the Northwest. It was the most popular gambling game. The players were seated in two rows, facing each other, with a fire between when the game was played at night. A log was placed before each row, and each player had a stick with which he kept time to the song by striking the log. There were usually two sets of pieces, each set consisting of two cylindrical sections of the leg-bone of a deer, one being plain and the other having about the center a black ring of deer-skin. Each side was provided with ten counting sticks. As a prelude the leader on one side manipulated the bone pieces—now hiding them beneath his blanket, now passing them from one hand to the other—the other men on that side beating the log and singing a mocking song. Then the leader passed out the two sets of bones to two of his fellow players. These further manipulated the pieces and then held out their closed hands for the leader on the other side to guess which hands held the plain bones. The side that was guessing silently watched the

<sup>1</sup> N. J. Wyeth, pp. 191-192.

dealers. When both sets of bones had been properly guessed the deal changed sides. Losses were paid out of the ten original counters until these were exhausted.

Dice (*tséxstem*) was another popular gambling game, especially among the women. For this game there were four pieces, two of which were marked with circles and two with zigzag lines. Plate VII, 30, shows one of the pieces used in this game, made from the outside portion of an elk bone. The pieces marked with circles were called *hama*, "men"; and those marked with zigzags, *aiat*, "women"—similar to our "kings" and "queens." A blanket was spread, and two or more players took places at each side. All four dice were thrown at the same time by each player in turn. The number of points in the game was decided before the game was commenced. The scoring was: All four up or down, two points; one pair up and one down, one point. Sometimes the best throw of the four counted one if none of these combinations was made. Culin<sup>1</sup> describes this game among the Yakima and other Columbia River tribes.

Another game consisted in rolling a hoop along a prepared piece of ground and casting shafts so that they would stop where the ring did. No details of this game could be obtained, but it was evidently the common hoop-and-pole game.

A game of ball with bats having curved ends like hockey sticks was very popular. It was played on a large piece of level ground. Goals were formed with two heaps of stones about fifteen feet apart. The ball was stuffed with deer hair. Men played on one side and women on the other. The ball could be advanced in any way but by carrying or throwing.

Another game was played between the men from two neighboring villages, from fifty to a hundred on the side. The contestants formed in two lines and made fun of each other. Then the lines came together with a rush. The feet and shoulders, but not the hands, could be used. The game consisted in kicking, and the line which gave way first, lost. This game was supposed to breed hardiness and courage. It was abandoned soon after the introduction of shoes.

<sup>1</sup> Culin, p. 158.

Coasting down steep snow or grass slopes was accomplished on a deerskin with the hair side next the ground and the front part held up, thus forming a flexible toboggan.

The popularity of horse-racing has been already mentioned. Sport on horseback often took the form of sham battles. Sometimes a famous battle with another tribe would be reenacted with a great deal of realism.

Children had many games, but little information has been collected about them. Tops were spun by the children either with the hands or with a string. The common form of top was a disk of bark through the middle of which was inserted a peg pointed at the lower end and extending about four inches above the disk.

Cat's-cradles and other string games were also common. These were made by the old people to amuse the children, and with each figure went a story.

#### MEDICINE AND MEDICINE-MEN

**SHAMANS.**—The position of the shaman was one of much influence, as is always the case when the governmental organization is weak. There were both men and women shamans, and there was no difference in their functions.

The position of shaman seems to have been partly a matter of heredity and partly of guardian spirit. The guardian spirits of shamans were such as lived in the heavens. The Sun, the Cloud, the Eagle, and the Fish-hawk were the patrons of shamans. Not everyone who secured one of these for a guardian spirit became a shaman, although he was pretty surely marked for great success. A vacancy was necessary, through the death of some close relative, before a boy or a girl, already favored by one of these powerful spirit guardians, could become a full-fledged shaman. As a rule the old shaman chose his successor from the candidates, and taught him the songs and formulæ of his faith. It is not clear whether it was necessary for the boy to have the same guardian spirit as his predecessor.

In addition to his (or her) own song obtained at the sacred vigil the shaman inherited songs that had miraculous power to

bring good weather or to cure disease. He also "dreamed" new songs from time to time. Many of the shamans seem to have had genuine hypnotic power over dancers in the Guardian Spirit dance, while others fell into trances of their own accord.

The duties of shamans were the "laying" and exorcizing of ghosts, curing of the sick, the bringing of warm weather, etc. They also had power to spread "bad medicine" or to inflict disease and misfortune upon those who fell into their disfavor. The shamans also took a leading part in many of the ceremonies, although there was no organization of the shamans.

The manner of "laying the ghost" has already been described. It was largely a smoking ceremony. The cure of the sick was accomplished by singing a sacred song when the cause of the illness was hard to find. Certain herb medicines were also prescribed at times. The efficacy of the shaman's song was largely in the mind of the patient.

**MEDICINES.**—The most common treatment for almost all ailments was the vapor bath. Kip<sup>1</sup> says: "Their prescriptions, however, are always the same, whatever may be the disease, whether ague or fever or small-pox. The patient is shut up in a small close lodge called a 'sweating house,' where he is subjected, until almost stifled, to a vapor bath produced by water slowly poured on red hot stones." To this description it may be added that the sweat-bath was usually followed by a cold plunge. Sometimes warm-water baths were taken, the water being heated with hot stones thrown into a bathing pit. The latter was the common treatment for itch or for other skin diseases. Serious cases of rheumatism or loss of use of the limbs was treated by a sort of sweating roast, similar to the process of cooking camas. The part affected was placed over the roasting pit, packed in rye grass and earth, and thus subjected to almost unbearable heat for as long as possible.

Herb medicines were also much used. A poultice of a certain root, pounded fine, was used on bad cuts or sprains. Bleeding from a wound is said to have been stopped by the application of spider-web. Fractured bones were held in splints made

<sup>1</sup> Kip (a), p. 307

of a number of rods tied together at the ends and covered on both sides with deerskin. Sore eyes were treated with a wash consisting of an infusion of a certain root. Various herb remedies, some having real medicinal value, were resorted to in cases of fever, diarrhea, and other common ailments. Unfortunately most of their materia medica has not yet been identified.

## RELIGION AND CEREMONIES

### RELIGION

The religious ideas of the Nez Percés were marked by simplicity, rationality, and freedom from ceremonial restraint. They seemed to realize the paucity of their religious traditions and from the first eagerly seconded the efforts of the missionaries to instruct them in the Christian faith. Other native religions with which they came in contact must also have profoundly affected their ideas. The ascendant influence of the Plains culture over the Nez Percés during the last century may be explained largely by the superior ceremonial organization of the Plains tribes.

There were no cosmogonic myths. They took the creation of the world for granted, and considered the mountains, valleys, and such geographical features as having always existed. They had no notions of the shape of the earth. Their conception of the world was animistic, according to which there were spirits in trees, in hills, in rivers, and in other natural objects. These spirits had no special names, and were intimately associated with the objects in which they dwelt. When named they took the names of those objects. The spirits were both good and evil. Those residing in trees and streams were benevolent. There were a few trees that rose almost to the dignity of shrines and which were said to hold conversation sometimes with shamans and chiefs, giving them advice on important questions.

One very famous tree on the main trail to the buffalo country received many offerings from hunters who desired good fortune. This tree is mentioned in the mythology of the Cœur d'Alêne Indians as well as by several early travelers. Ross gives a detailed account of this tree, which was situated near Darby, Montana:

"Out of one of the pines I have just mentioned, and about five feet from the ground, is growing up with the tree a ram's head, with the horns still attached to it; and so fixed and imbedded is it in the tree, that it must have grown up with it; almost the whole of one of the horns, and more than half of the head, is buried in the tree; but most of the other horn, and part of the head protrudes out at least a foot. We examined both, and found the tree scarcely two feet in diameter."<sup>1</sup>

After relating the Flathead myth, which explained the origin of the horns in the tree, Ross adds.

"All Indians reverence the celebrated tree, which they say by the circumstances related, conferred on them the power of mastering and killing all animals; hundreds, therefore, in passing this way sacrifice something as a tribute to the ram's head."<sup>2</sup>

There seems to have been a vague sun worship. The sun was regarded as the seat of wisdom and the benefactor of shamans and chiefs. The sun as guardian spirit was familiar in the case of shamans. It was believed sometimes to actually address the shaman. In one case the sun is reported to have said to a famous shaman: "Your knowledge will be exactly like my light." There was, however, no important influence of this sun worship upon art, as the customary sun symbols were seldom, if ever, employed.

Monsters, giants, dwarfs, etc., are mentioned in the mythology but were not regarded as exercising their malevolent influence in the territory occupied by the Nez Percés. Tales of cannibal giants were brought back by buffalo hunters. Such monsters as had formerly lived in the region of the Nez Percés were believed to have been exterminated by Coyote, the culture-hero. Sometimes in the mountains there were little men, not more than two feet high, who answered when any one became lost and called for help. They used to keep their victims traveling round and round for no purpose, but they did no real harm. They were few in number and seldom seen.

Various minor superstitions prevailed. Lewis and Clark

<sup>1</sup> Ross (*ib.*), vol. II, p. 19.

<sup>2</sup> For a version of this myth, see McDermott, p. 245.

mention the setting fire to trees to bring good weather, and the belief that the moaning of doves presaged the coming of the salmon. A sweat-bath was taken before going on the hunt in order to bring good luck, and sometimes deer horns and hoofs were hung up in trees for the same purpose. There seems to have been no petty ceremonies, however, in the cutting of fish, in the disposal of bones, and similar culinary operations. Ghosts were never called upon for help of any kind. They were feared to some extent, and many people were afraid to go around graveyards after dark. There was no special fear of the ghosts of drowned people or of suicides.

Fetishes were much worn; they were frequently small stones with some freak of shape or color. Stones with holes in them were especially powerful in bringing good luck. Often a boy picked up a curious stone and carried it all his life. Rarely these fetish stones were carved or modified. Shamans often had a fetish which was sometimes carved, as is the curious stone head shown in plate IX, 19. Bear claws, wolf teeth, etc., were also often worn about the neck with the idea of bringing good luck. A spear-head made of gypsum and suspended about the neck is known to have been worn as a charm by one of the older Indians.

All the deeper qualities of the Nez Percé religion seem to have been based on the dream, which was a means of communication between the material world and the spiritual world. It was not, however, the common dream of ordinary slumber. To be sure such dreams, if vivid, might mean much in the way of prophesy or omen, but the greater importance lay in the dream superinduced by reverie, fasting, and vigil. In such ecstatic conditions their songs were composed and often sung. In addition to the subjection of the will by the individual himself, there is hardly a shadow of doubt that hypnotism was exercised by the shamans and others, especially in their most sacred and mystical ceremony, the Guardian Spirit dance.

The "Dreamer Religion," which was built up by the great preacher Smohalla, was a natural outgrowth of the primitive religious ideas of the Indians of the Shahaptian stock. Although

his doctrines contributed to the Ghost-dance religion<sup>1</sup> which spread like a conflagration among the Indians to the south and east, yet the Ghost dance itself was not found at all among the Nez Percés. The factors of Smohalla's doctrine which go back to the primitive faith are as follows: First, the animistic conception of the world especially developed into the Earth Mother aspect. Second, the importance of dreams as a method of holding communication with these forces or "wills" in nature. The entire absence of agriculture before the coming of the whites, the presence of great natural supplies of camas and other roots, gave a practical basis for declaring against the operations of civilization. Smohalla said:

"My young men shall never work. Men who work cannot dream, and wisdom comes in dreams. . . . You ask me to plow the ground. Shall I take a knife and tear my mother's bosom? You ask me to dig for stone. Shall I dig under her skin for her bones? You ask me to cut grass and make hay and sell it and be rich like white men. But how dare I cut off my mother's hair?"

This doctrine shows a primitive philosophical scheme of an impressive character. While it was developed after contact with the whites, its purpose was to maintain the ancient ideas and the ancient form of culture.

Several ceremonies having an important bearing on the religion will be described presently.

#### CEREMONIES

The dances and public ceremonies were largely intertribal. The Nez Percés, Yakima, Wallawalla, Umatilla, and other friendly tribes usually held dances whenever two or more large bands came together, on which haphazard occasions the dancing was varied with horse-racing and gambling. There was, however, a regular round of intertribal dances, now in the territory of one tribe, now in that of another. Certain localities were the traditional dancing places. Early explorers, especially Ross,<sup>2</sup> mention the junction of the Snake and Columbia rivers as a

<sup>1</sup>See Mooney, pp. 708-715.

<sup>2</sup>Ross (σ), Thwaites ed., pp. 19-20.

favorite rendezvous where thousands gathered to hold their councils and settle the affairs of peace for the year. Such a meeting he describes as "a vast concourse of mixed tribes" where there were "councils, root-gathering, hunting, horse-racing, gambling, singing, dancing, drumming, and yelling." Another communal camp was in the Yakima valley. In the Nez Percé territory there were often intertribal ceremonies held at the mouth of Asotin creek, at the mouth and at the forks of Lapwai creek, and at Kamiah. The dances were usually held in the open, on level ground such as might be found at the mouth of a small stream. Occasionally they were held under cover. A tent, much like the ordinary long-house but partly open around the bottom, was then set up. This dance tent was about fifteen feet wide by sixty or seventy feet long; it was higher than the ordinary house, to permit the open sides, measuring as much as thirty feet at the ridge-pole. In winter two or three fires were kept up. The spectators were arranged around the outside, the women and children being seated in front and the men squatting or standing behind them.

**GUARDIAN SPIRIT DANCE.**—Perhaps the most important ceremony was the *Wz' kwetset*, or Guardian Spirit dance. The name means "Dance of the Dream Faith." Although commonly called "Ghost dance" by the Indians of to-day, this dance must not be confused with the modern Ghost-dance religion, which never acquired a hold on the Nez Percés. The dance seems to have been to a slight degree intertribal, but it did not attract such vast multitudes as the Scalp dance, because it was held during the winter, and in many places. The dance was the most essentially religious of any performed by these Indians. It was a concrete expression of their deepest religious ideas.

Both men and women participated. The songs sung were those obtained during the sacred vigil or those inherited. Each man or woman was leader when his or her song was sung. The singer started the song and the dance alone, and the other dancers then took up the words and joined in the singing. There was very decided mimicry of the animal mentioned in the

song, both in contortions of the body and in yelps and cries. There were also some stage devices, such as bladders filled with blood which were broken so as to suggest wounds. Many of the dancers cooperated to make the presentation of the particular animal more striking. Wolves and coyotes would hunt in bands, for instance. The fervor of the dancer who led was often such that he would fall into a stupor and to all appearances be dead. No musical instruments were employed in this dance.

Those persons who had not been successful in obtaining a guardian spirit and a vigil name could not sing an individual song, but they could join in the chorus.

The songs were more or less cryptic, and often only the owner of the song knew what it was about. The animals were not referred to by their everyday names, but by special names. Sometimes there were several such names for a single animal. Following is a song to a wolf, which repeats, in slightly varying ways, "the wolf comes":

*Waila yawixne* (three times)

*Wine nisu*

*Wax metu wwinche*

*Awitsnatsaka*

*Hila yawixne*

*Waila yawixne*

*Ēha yawixne*

*Waila yawixne.*

Body painting and some modifications in the dress were employed to heighten the likeness of the dancer to the sacred animal represented. A dancer representing Coyote, for example, painted his forehead red, and his hair white and red in streaks running from his forehead backward. The sides of his body were also painted red, and the back of a coyote hide was worn as a belt. Another dancer, representing a mad coyote, painted his forehead red, his hair white, and his underjaw and his hands red. The red on the jaw meant the blood of the mad coyote, while that on the hands was supposed to represent the blood of game killed. In most cases, however, only the forehead of the dancers was painted, and this usually in red.

The purposes of this dance were many. Some songs, sung by shamans, were supposed to bring warm weather; other songs were supposed to make game more plentiful or the hunts more successful. Animal calls, such as were used in this dance, were employed in the hunt to entice the animals to come nearer. Many hunters sang their sacred song when they were on the hunt. In fact the dance was supposed to bring the people and the animals and other natural objects into close friendly relations.

A dance called *Isxep'it* seems to have been somewhat like the Guardian Spirit dance, but was more restricted. It was danced in summer and winter by both men and women. Apparently this dance was owned by a company of persons, and admission was by inheritance or by obtaining a certain dream faith called *Isxep*. This *Isxep* was thought to have been a man, and he may have originated the dance. All those who belonged are said to have been much opposed to any form of disorder or quarreling, but there is no evidence that they had any restraining influence over others or that they were a police force in any sense of the word. The dances were not secret. The songs were of the same cryptic mystical nature as those in the Guardian Spirit dance, and were obtained by dreaming. Each dancer had an individual song. From one to three dancers danced with the owner of the song and joined in the singing. This ceremony terminated in a great feast.

WAR DANCE.—In the *Paxam*, or War dance, only the men performed. This ceremony was often an intertribal affair and was held before going to war. It was performed also just before the buffalo hunters left for the plains, usually in the camas grounds of Weippe prairie or near Moscow. Little could be learned about the ancient War dance of the Nez Percés. In the early part of the eighteenth century it was abandoned and the War dance of the Crow Indians substituted. The warriors of the Nez Percé tribe crawled up to the Crow camps under cover of darkness and learned the songs of their War dance. The first War dance obtained from the Crows was later replaced by another. In this later dance, syllables, not words, were used.

In the ancient War dance there were two lines of dancers and

a leader. Time was kept by rubbing a round stick up and down over a notched stick sewed to a stiff piece of hide. The songs were individual, as were those of the Scalp dance and the Guardian Spirit dance, and apparently were much like them. Two of the songs recorded were those sung by some member of the Bear Faith. It is evident that the warriors sang songs according to the nature of their guardian spirits.

An example of one of these Bear songs of the War dance, which has no meaning, is as follows:

*A-we-ya-ha-a wel-e-ye-hi.*

These syllables were repeated seven times three, or twenty-one times.

A portion of the ancient War dance which was not discarded was the Farewell song of the warriors before every lodge on the night before going on the war-path. The men went from lodge to lodge and paused before each, singing a song and beating time on a buffalo-hide blanket. There were many different songs employed. The women followed behind and joined in the chorus.

Before the War dance there was often a display of trophies and the narration of the history of their capture. There seems to have been no regular ceremony of the "coups," however.

SCALP DANCE.—The *Jwel'wetset* dance was the most important intertribal ceremony among the tribes of the plains of the Columbia. Its English names, the Meeting dance and the Scalp dance, suggest both its intertribal and its vengeful nature. In reality this dance was a triumphal celebration over trophies of war taken from the common enemies of the several associated tribes. Scalps of Blackfeet and Shoshoni Indians were especially desired, and at all times; those of the interior Salish only during the intermittent wars. Efforts were made to get a new supply of war prisoners, scalps, and other trophies for each dance. Hence these dances were usually preceded by war expeditions of greater or lesser degree; some under the leadership of renowned war chiefs with a backing of several hundred warriors, others under the initiative of a young brave eager for personal glory and able to command only a handful of comrades.

Scalp dances were held about four times a year at recognized

rendezvous, now in the territory of one tribe, now in that of another. The most important dance places were at the forks of Lapwai creek, at the junction of the Columbia and Snake rivers, and at a spot on the north bank of the Columbia just above the Dalles.

This *Iwell'wetset*, or Scalp dance, was performed to the accompaniment of songs with words that referred usually to female captives who were to become the wives of the captors, or to the taking of scalps. When there was a pause in the singing some one would interpolate a prose speech, keeping time to the dance. The step seems to have been a simple jumping up and down.

In one of the myths a Scalp-dance song is given which has no special words but only syllables. The song runs as follows :

*Hi-yē-ye-a-hē, hi-yē-ye-a-hē.*

In this myth Coyote has lost his eyes and the people dance over them. Coyote, disguised as an old woman, is given his own eyes to dance with, and escapes through the crowd.

The general ceremony of the Scalp dance occupied five or six days, the dancing proper beginning at about four o'clock and continuing till sunset. The rest of the time was devoted to the usual feasting, gambling, and horse-racing. The dancing was held in the open, and both men and women took part. The trophies were usually fastened to poles in order that they could be raised in plain sight of the assembled crowd. If any prisoners of war had recently been taken, they were forced to take part in the dance, keep time to the music, and echo the shouts of their captors. Although cruelly tortured during the progress of the dance, these prisoners at all other times were kindly treated and properly cared for. Their wounds were washed after each dance. When the five or six days of the ceremony had elapsed, the prisoners became each the personal property of his captor, and henceforth were well treated. It is important to note that prisoners were never killed at the end of the torturing.

An intertribal Scalp dance of the early years of the last century, which took place at the junction of the Snake and Columbia rivers, is thus graphically described by Alexander Ross :<sup>1</sup>

<sup>1</sup> Ross (6), vol. 1, pp. 310-311.

"For this dance, two rows of men, a hundred yards long or more, arrange themselves face to face, and about fifteen feet apart. Inside these, are likewise two rows of women, facing each other, leaving a space of about five feet broad in the middle for the slaves; who arranged in a line, occupy the center in a row by themselves. Here the unfortunate victims, male and female, are stationed with long poles in their hands and naked above the waist, while on the ends of these poles are exhibited the scalps of their murdered relations. The dancing and chorus then commence; the whole assemblage keeping time to the beat of a loud and discordant sort of a drum. The parties all move sideways to the right and left alternately, according to the Indian fashion; the slaves, at the same time, moving and keeping time with the others. Every now and then a general halt takes place, when the air resounds with loud shouts of joy, and yell upon yell proclaim afar their triumph.

"All this is but a prelude to the scenes that follow. The women, placed in the order we have stated, on each side of the slaves, and armed with instruments of torture, continue jeering them with the most distorted grimaces, cutting them with knives, piercing them with awls, pulling them by the hair, and thumping them with fist, stick, or stone, in every possible way that can torment without killing them. . . . The men, however, take no part in these cruelties, but are mere silent spectators; they never interfere, nor does one of them during the dancing menace or touch a slave; all the barbarities are perpetrated by the women."

A night-time variety of the Scalp dance was invented by a man named Tukliks and was called *Tsu'huikt*. He was the only dancer, but others formed a circle about him and served as chorus. One of the songs was ---

*Hiyōwīnime hiotsasamka wak twix'neme wak ewi'neme axawiyai,*  
which means: "The scalps of people came to my mountains long ago."

Several other dances have been introduced during the last century. The "Squaw" dance of the Crow Indians, called by the Nez Percés *Kopipt*, has been performed during only about twenty years. The Sun dance and the Ghost dance were never in vogue among the Nez Percés; nor were there any torture dances except the *Isx'pit*, already described.

## MYTHOLOGY

Only a few myths of the Nez Percés have been published. These, however, are enough to give a general idea of the mythology and to furnish some evidence on the question of its affiliations with the mythologies of other tribes. Unfortunately little has been published concerning the myths of the Shoshoni, the interior Salish, and the tribes of eastern Oregon and Washington, where affiliations would be most likely to occur. Consequently no definite conclusions can be attempted.

Coyote is by far the most important figure in the myths, for he is principal in fully half of them. He plays the unequal rôle of culture-hero, trickster, and dupe. His cunning, his magical powers, and his supernatural helpers enable him now to deliver the people from monsters, now to deceive or play even with other animals, but they do not prevent him from occasionally overreaching himself, and falling a victim to his own or to others' wiles.

In the mythology there is no real creation of the world. The world is regarded as having always existed. Coyote is chief of the animals, to whom he announces that the tribes of men are coming up from the underworld, and what he says becomes true. The general scheme of an age of animals preceding the age of human beings prevails here, as among most American Indian mythologies, but is not strictly observed.

One of the deeds of Coyote as culture-hero is the killing of the Kamiah monster, *Itswewitsix*. This favorite myth shows close similarities with one of the Crow Indian myths, but, if borrowed, is at least given a "local habitation and a name." This monster sucked everything into himself with his breath. Coyote comes across from the Umatilla country and engages in a test of strength with the monster, after concealing himself under a grass bonnet and tying himself down with "Coyote rope" (*Clematis ligusticifolia* Nutt.). He nevertheless is drawn into the monster whom he kills by cutting off the heart. The parts of this monster are still identified with certain peculiar

<sup>1</sup> See Grinnell, McBeth, Packard, and Spinden.

topographical features. Another culture-hero myth tells how Coyote broke the dam across the Columbia at the Great Falls in order that salmon could ascend. In several of its details the myth is identical with the salmon myth of the Thompson River Indians as given by Teit. Coyote also had a contest of endurance with Winter. He built a large house, supplied himself with plenty of food, and then challenged Winter. Winter could hold out only for four or five months. Coyote also killed Log-worm, Grizzly Bear, and others who waylaid and killed travelers by special devices; he schemed to have animals who were winning too many races, where life was the stake, defeated by strategem.

No animal other than Coyote appears as culture-hero except possibly Beaver, who, in the Fire myth given by Packard,<sup>1</sup> plays the principal part in stealing the fire. This myth shows the common device of the relay of animals to escape the wrath of the Pines and the Cedars who had previously owned all the fire. Fox appears in many myths as the close companion of Coyote. He has to bear the brunt of Coyote's jests, and usually gets the worst of trade and division of spoils. Occasionally the cupidity of Coyote overreaches itself and Fox comes out ahead as the result of an apparently bad bargain. When Coyote is killed for interfering, he is resuscitated by Fox who merely straddles the body. A similar device is common in the myths of the Cœur d'Alènes. Coyote is helped in his predicaments by supernatural creatures of his own making. He also has the power of changing himself into some other form.

As a mere trickster Coyote wins wives by disguising himself. He steals food for himself and Fox. When Coyote has fallen victim to the wiles of some other animal he frequently wins out and turns the tables upon the other one.

As a dupe he frequently tries to imitate the tricks of others. In the "eye juggling" trick he loses his eyes but finally regains them. He visits his sons-in-law and they obtain food in a variety of magical ways which Coyote tries in vain to imitate, nearly killing himself in the process.

<sup>1</sup> Packard, pp. 327-329.



Other animal tales, in which Coyote does not appear, are of the same trivial sort as these trickster myths.

Tales in which human beings appear are not very common. One Boy-Hero myth has been obtained which shows a pursuit with obstacles thrown in front of the pursuer, which become mountain ranges, etc. One myth tells how a boy ran away with one of Cloud's wives and then frightened off his pursuer with an arm dressed up into a warclub.

Although many incidents common to the mythology of the Plains area occur also in the mythology of the Nez Percés, there is strong probability of their recent introduction, whereas in some of its more fundamental features the mythology shows strong similarities with that of the Pacific coast. For instance, five is in all cases the sacred number, and the youngest of the five is always able to recognize Coyote under any disguise. It seems fairly clear that there is no type of mythology peculiar to the Great Basin area, although the point of origin is much in doubt.

#### CONCLUSION

From the foregoing account, incomplete as it is, one important fact stands out clearly. The culture of the Basin area, as shown by one of its representative tribes, was purely a transitional culture. Its elements were drawn in nearly equal proportion from the Plains and from the Pacific coast. Only a small residuum of autochthonous ideas are found when the borrowed ones are excluded. Moreover this division into the matter of the east and the matter of the west was a balanced distribution in almost all phases of the culture. The material culture, the decorative art, the social organization, and the mythology all show a complex of Plains and Pacific Coast types.

Thus, in the dress, the deerskin garments of both men and women were of the Plains type. The basket hats of the women came from the Pacific coast. Among the objects of the material culture, the war regalia and the parfleche and medicine bags came from the Plains, while the stone pestles, the technical processes of basketry, and the fishing gear were derived from the coast tribes. In the matter of houses, the round lodge suggests

the common tipi of the nomadic Sioux, and the long-house the great plank village-houses of the tribes about the mouth of Columbia river. Among the Nez Percés, owing to the demands of environment, the houses of both these types were made usually of mats instead of skins and planks. The social structure of the tribe was marked by the simple geographical or village type, without totemic clans, and with a village chief who divided with the shaman whatever autocratic power there was. This type prevailed along the Pacific coast from California to the Straits of Juan de Fuca. Overlying this village-community form of social organization among the Nez Percés was the tremendous importance of war and the nationalizing office of the war-chief. The necessity of united defence against invading war-parties from the Plains probably brought about the tribal integrity of the sixty or more independent villages. Similarly, the motives used in decorative art may be traced now to the Plains, now to the coast, but in each case apparently suffering a loss in meaning and symbolism. The incidents in mythology show affiliations both with the Plains and Coast types and fail to show a large amount of purely native ideas.

That the Nez Percés were quick at adopting new ideas is shown by their present progress in the arts of civilization. It is a famous story how they even sent a delegation of chiefs to hasten the coming of the wonderful Book of the white man. Their admission that they deliberately abandoned their ancient War dance to take up that of the Crows, after they had surreptitiously learned the music and step of the latter at the risk of their lives, strongly emphasizes the receptiveness of their character.

As to the nature of the native culture before the acquisition of horses, it is necessary to fall back on mere conjecture. It would seem that this early culture must have been more in accord with that of northern California and southern Oregon than with the Plains. The Rocky mountains must have formed a pretty effective barrier against extended expeditions. The entire absence of migration myths seems to argue against the Nez Percés ever having been a Plains people.

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HARVARD UNIVERSITY,  
CAMBRIDGE, MASSACHUSETTS.

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LANCASTER, PA.

Exhibit 9

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

<b>IN RE:       SRBA</b>	)	<b>Subcase Nos. 03-10022 et al. (Consolidated)</b>
	)	<b>(Nez Perce Tribe Instream Flow Claims)</b>
	)	
	)	
<b>CASE NO. 39576.</b>	)	
	)	<b>AFFIDAVIT OF DUDLEY W. REISER, PH.D.</b>
	)	
_____	)	

My name is Dudley W. Reiser and I am a senior fish biologist with the company R2 Resource Consultants, Inc. (R2) of Redmond, Washington. I am also the President of R2 which specializes in environmental and engineering consulting with a special focus on fisheries and aquatic ecology (both in rivers and lakes), instream flow assessments, habitat assessments and restoration.

**Qualifications and Experience:** I have been actively working in the areas of fisheries and instream flow needs assessments for over 22 years, during which time, I have directed and/or participated in such studies in 15 states and in the province of Alberta, Canada. I received my Ph.D. degree in Forestry, Wildlife and Range Sciences (major in fishery resources) from the University of Idaho in 1981, a Masters of Science degree from the University of Wyoming in Water Resources in 1976, and a Bachelor of Arts degree in Zoology from Miami University in Oxford, Ohio in 1971. Both my doctorate and masters research were focused on evaluating the relationship of streamflows on certain life history stages of salmonids. My Master's work

involved determining physical and hydraulic characteristics of brown and brook trout spawning areas. My doctorate work focused on assessing the effects of streamflow reductions, flow fluctuations and dewatering, and sedimentation on chinook salmon and steelhead trout egg incubation and fry survival. From 1981 to the present I have been involved in environmental consulting. Over my career, I have been employed as a fisheries scientist by a number of large consulting and engineering firms including Camp Dresser and McKee (Denver, Colorado) (1980-1982); Bechtel Corporation (San Francisco, California) (1982-1987); EA Engineering, Science and Technology (Lafayette, California/Redmond, Washington) (1987-1992; Vice President); and R2 Resource Consultants, Inc. (Redmond, Washington) (1992-present; President). During this period, I have worked on a variety of projects that have involved stream and lake systems. The types of projects have been diverse and have included instream flow studies, fish passage investigations (to evaluate fish passage options at hydroelectric projects), fish population studies (to monitor long-term trends in fish abundance and distribution within a given stream), aquatic ecology studies (to evaluate overall habitat and ecosystem conditions (including food production) within streams to establish baseline conditions), habitat surveys (to assess habitat type, condition and quantity within streams), and habitat enhancement and restoration projects (to enhance existing or create new habitats within a given river or stream). As noted, I have worked on many projects that have had a direct focus on defining the instream flow and water needs for fish, including most recently, the Snake River Basin Adjudication (SRBA) in Idaho, the upper Klamath Basin Adjudication in Oregon, instream flow studies for the Duck Valley Indian Reservation in southern Idaho and northern Nevada, an instream flow study on the Lostine River in Oregon, and instream flow

studies on the Madison and Missouri rivers in Montana (as part of Federal Energy Regulatory Commission relicensing).

I have published numerous articles and reports pertaining to fish ecology and habitat requirements, and presented many papers at technical symposia. I have served for over seven years on the Editorial Board of the journal "Rivers: Studies in the Science, Environmental Policy, and Law of Instream Flow." In addition, I have been an active member of the American Fisheries Society (AFS) for over 18 years and have been certified as a Fisheries Scientist since 1981 (certification number 1447). A copy of my vitae can be found as an attachment to this affidavit.

Since 1989, I have been under contract as the Principal Investigator for the United States for the purposes of quantifying instream flows necessary to restore and sustain fish populations in certain hydrologic basins at issue in the SRBA in Idaho. This culminated in the development and submittal of instream flow claims for 1,133 basins in Idaho in March 1993, and submittal of (subsequent to the completion of further studies) an amended set of claims in April of 1998. I have prepared two previous affidavits (June 22, 1995 and April 24, 1998) that describe in more detail the overall process and work completed to support the development of both the original and amended instream flow claims.


**ANALYSIS OF FISH LIFE HISTORY STRATEGIES AND FLOW DEPENDENT  
HABITAT REQUIREMENTS**

Most recently, I was asked to provide my expert opinion regarding the life history strategies and habitat requirements of salmonids within the overall study area, in the context of their streamflow dependencies. I was further asked to define the geographic range of habitats I believe are needed to sustain viable fish populations within streams and tributaries historically and presently used by the Nez Perce Tribe for fishing. The results of my analysis including my opinions and conclusions are presented in the attached report that is hereby incorporated by reference as part of this affidavit.<sup>1</sup>

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Further Affiant Sayeth Not.

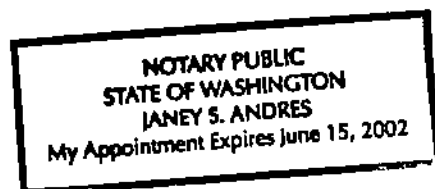
Dated this ~~10<sup>th</sup>~~ day of September, 1998

  
Dudley W. Reiser, Ph.D.

Subscribed and sworn before me this 10<sup>th</sup> day of September, 1998

\_\_\_\_\_  
Notary Public

My Commission Expires 15 June 2002



<sup>1</sup>See attached report of Dr. Dudley W. Reiser entitled Why Fish Need Water: Life History Strategies and Habitat Requirements of Salmonid Populations in the Snake, Salmon, and Clearwater River Basins of Idaho. Report prepared for the Department of Justice and Bureau of Indian Affairs, September 10, 1998.



---

**DUDLEY W. REISER, Ph.D. - PRESIDENT**  
**Senior Fisheries Scientist**

Dr. Reiser is a fisheries scientist with more than 20 years experience designing, implementing, and managing fisheries and aquatic ecology projects, surface water studies, and instream flow assessments. His particular areas of expertise include fish ecology (anadromous and resident species), habitat assessments and criteria development, endangered species evaluations, assessments of flow regulation on salmonid populations and habitats, fisheries habitat enhancement, fisheries engineering, instream flow studies, flushing flow studies (related to sediment deposition), and hydraulic modeling.

**EDUCATION**

Ph.D. (Fishery resources) University of Idaho, 1981  
M.S. (Water resources) University of Wyoming, 1976  
B.A. (Zoology) Miami University, Ohio, 1972

**PROFESSIONAL AFFILIATIONS AND CERTIFICATIONS**

Certified SCUBA DIVER - PADI and YMCA  
Certified USFWS IFIM Course - Computer Modeling (201), IFIM:IFG210,SNTEMP (310)  
Certified USFWS Course - Expert Witness Seminar  
American Fisheries Society (AFS), Certified Fisheries Scientist  
Society of Environmental Toxicology and Chemistry  
Co-Chairman, AFS Water Development and Streamflow Committee (1986-89)  
Secretary-Treasurer, Western Division, American Fisheries Society, 1987-88.  
Member, Editorial Board, "Rivers: Studies in the Science, Environmental Policy, and Law of Flowing Waters"  
Co-editor, Sustainable Fisheries Symposium Proceedings, Victoria, B.C., Book to be published in 1998.

**EXPERIENCE**

**Endangered Species Issues:** Direct experience in working on endangered species issues related to resource developments. Project Manager of technical studies on bull trout for Seattle Water Department; assisted in coordination of studies for integration into SWD Habitat Conservation Plan (HCP); represented SWD on ESA task force focused on listing status of species of special concern related to SWD facility operations. Project Manager for development of restoration plans for reintroducing the federally listed endangered Snake River chinook salmon into the Panther Creek drainage in Idaho; worked with federal and state agencies in developing plan compatible with mandates of ESA and state and federal directives relative to reintroduction strategies. Project Manager for bull trout evaluation for the Seattle City Light in connection with the Boundary Hydroelectric Project and Ross Lake Project. Assessed Snake River salmon recovery plan options and mandates in the context of instream flow recommendations formulated on behalf of the Nez Perce Tribe, as part of the Snake River Basin Adjudication.

**Habitat Modeling, Instream Flow and Flushing Flow Determinations:** Extensive experience in the area of habitat and instream flow assessments in Alaska, California, Colorado, Idaho, Montana, New York, Vermont, Oregon, Washington, and Wyoming. Has applied a variety of IF methods including the USFWS IFIM/PHABSIM, Tennant (Montana) Method, Wetted Perimeter (WP), Trout Cover Rating (TCR), R-2 Cross Method, and the New England Method. Served as the Project Manager and Principal-in-charge of the largest instream flow study conducted in North America; the study was conducted for the BIA and included over 1100 basins within the Salmon and Clearwater basins of Idaho. Other recent instream flow projects directed by Dr. Reiser include, an assessment of instream flow requirements below Madison Dam, Montana (conducted for the Montana Power Company), determination of flow recommendations for the Duck Valley Indian Reservation (Nevada and Idaho)(for the BIA), and instream flow recommendations related to the Klamath River Basin. Recently completed a comprehensive survey of North America to obtain information on instream flow methodology use and research needs on a State or Province basis. Completed four studies related to flushing flows, including the development of guidelines for recommending flushing flows, and formulation of specific flow recommendations for two California streams and two major river systems in Montana.

**Habitat Assessments and Habitat Suitability Curve Development:** Principal investigator of a comparative habitat study evaluating limiting factors within a large Rocky Mountain river system. Applied a variety of habitat quantification methods including IFIM, Habitat Quality Index (HQI), Habitat Suitability Index system (HSI), and Trout Cover Rating (TCR). Collected, analyzed and developed habitat suitability (Category II) curves for brown and brook trout, bull trout, chinook salmon, pink salmon, chum salmon, and steelhead trout. Invited participant in bull trout experts meeting to develop Habitat Suitability Curves (Category I) for bull trout spawning, juvenile rearing, adult holding, and fry. Organized and conducted two habitat suitability curve workshops for the Bureau of Indian Affairs (BIA) designed to review and develop Category I curves for anadromous and resident salmonid species for drainages in Oregon and Idaho. Principal investigator of a microhabitat study to define habitat utilization of coho and chinook salmon, and steelhead trout in the White River, Washington; data were collected by direct observation using snorkeling techniques.

**Fisheries Habitat Enhancement:** Project manager for a mine reclamation fishery habitat enhancement project for the Bonneville Power Administration (BPA) for Panther Creek, Idaho; a fisheries engineering habitat enhancement project on the Yankee Fork of the Salmon River, Idaho, for the Shoshone- Bannock Indian Tribes; a habitat enhancement project on the East Fork Salmon River Idaho for the Shoshone Bannock Tribes, a tributary improvement study for Pacific Gas and Electric Company (PG&E) in California, a feasibility study for developing an artificial spawning channel in Montana, a gravel supplementation study to evaluate options for increasing brown and rainbow trout spawning success within the Madison River below Madison Dam (for MPC), and most recently, development of habitat restoration options designed to restore runs of chinook salmon back to Panther Creek (conducted for NMFS). Enhancement measures included instream structures, bank stabilization, spawning channel development, spawning gravel supplementation, rearing pond development (low-technology and natural), and barrier removal, mine tailings pond stabilization, and dam removal.

**Fish Passage:** Awarded Outstanding Technical Paper award (Bechtel) for work involving the development of a procedure for assessing fish passage problems at low head hydro projects. Evaluated passage problems and barrier potential (chinook salmon and steelhead) of Lake Redding project in California. Developed conceptual designs of fish passage facilities for salmon (Atlantic salmon) at two

hydro projects in Connecticut. Assessed barrier potential (chinook salmon and steelhead) of falls in two Idaho streams and formulated plans for removal of an abandoned power dam in the East Fork Salmon River drainage in Idaho. Involved in the development of concepts for upstream and downstream fish passage (steelhead trout) on the Carmel River in California. Reviewed and assessed suitability of upstream and downstream passage facilities for the Milford Dam on the Penobscot River.

**Book and Manuscript Reviews:** Technical manuscript reviewer for Fisheries, Rivers, Transactions of the American Fisheries Society, and the North American Journal of Fisheries Management. Has reviewed technical reports for the U.S. Fish and Wildlife Service, the U.S. Forest Service, and various State resource agencies. Member of the Editorial Board for "Rivers," a journal focused on addressing instream flow issues. Published several formal reviews of books in "Rivers" and "Fisheries."

### SELECTED PUBLICATIONS AND PRESENTATIONS

- Reiser, D.W., A. Olson, and K. Binkley. 1998. Sediment deposition in fry emergence traps, a confounding factor in estimating survival to emergence. *North American Journal of Fisheries Management*. (accepted for publication).
- Reiser, D.W. 1998. Sediment in gravel bed rivers: ecological and biological considerations. Invited paper presented for Gravel Bed Rivers IV Workshop, 1996; *In Proceedings of* (in press).
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#### PRESENTATIONS/SEMINARS/WORKSHOPS

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- DeVries, D.W. Reiser, and M. Loftus. 1997. Evaluating carrying capacity and habitat limitations with data envelopes. Paper presented at 127th Annual meeting of the American Fisheries Society, Monterey, California.
- Reiser, D.W., P. DeVries, and M. Loftus. 1997. Defining scientifically defensible and rational baselines for quantifying injury in freshwater ecosystems for NRD assessments. Invited paper presented at 18th Annual Meeting of the Society of Environmental Toxicology and Chemistry, San Francisco, California.
- Reiser, D.W. 1997. Application of PHABSIM in evaluating the effects of spawning gravel supplementation in the Madison River, Montana Paper Presented at the Annual Meeting of the North Pacific Division of the American Fisheries Society. Everett, Washington.
- Reiser, D.W. 1996. Presentation on "instream flows"; technical session presented to a group of Japanese engineers and hydrologists; hosted by Washington Department of Fish and Wildlife; December 6, 1996.
- Reiser, D.W. 1996. Characteristics of bull trout spawning habitat in the upper Cedar Watershed. Invited Paper presented at the Salvelinus confluentus Curiosity Society meeting. October 17, 1996. Eugene, Oregon.
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- Reiser, D.W. 1996. Presentation to Trout Unlimited (Montana Chapter) regarding factors influencing trout populations in the Clark Fork River, Montana.
- Reiser, D.W. 1995. Hazardous substance impacts on fish resources: problems in quantifying injuries on fisheries. Session chair and presenter at Law Seminars International, Natural Resource Damages Conference, Bellevue, Washington, September 21-22, 1995.
- Reiser, D.W. 1995. Presentation on flushing flow requirements in the Madison River, Montana; presentation to agencies and stakeholders; work conducted in support of the relicensing of the Madison - Missouri Hydroelectric Project, Montana Power Company.
- Reiser, D.W. 1994. Provided testimony to California State Water Resources Control Board regarding "other factors" influencing aquatic ecosystem of San Francisco Bay - Delta system. Testimony prepared on behalf of California Urban Water Agencies.
- Reiser, D.W. 1994. Served as technical representative of California Urban Water Agencies on interagency committee to review technical basis of proposed EPA salinity standard for the San Francisco Bay - Delta system.

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**EMPLOYMENT HISTORY**

R2 Resource Consultants, Inc., President, Senior Fisheries Scientist, 1992-Present  
EA Engineering, Science, and Technology, Vice President, Senior Fisheries Scientist, 1987-1992  
Bechtel, Corporation, Senior Fisheries Scientist, 1982-1987  
Camp Dresser and McKee Inc., Senior Fisheries Scientist, 1980-1982  
Idaho Cooperative Fishery Research Unit, 1977-1980  
Wyoming Water Resources Research Institute, 1974-1977





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***Why Fish Need Water:***  
**Life History Strategies and**  
**Habitat Requirements of Salmonid**  
**Populations in the Snake, Salmon, and**  
**Clearwater River Basins of Idaho**

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## EXECUTIVE SUMMARY

In January of 1993, the United States, through the Bureau of Indian Affairs (BIA) and acting on behalf of the Nez Perce Tribe (Tribe) filed an application for instream flow claims with the State of Idaho for 1,133 stream reaches within the Salmon, Clearwater, and portions of the Snake, Weiser and Payette river basins (Project Area). These claims were directed at preserving and restoring necessary streamflows to those systems, which would protect the Nez Perce Tribe's treaty guaranteed reserved rights (Treaty of 1855) of taking fish, hunting, and gathering. The claims were developed to protect all components of the ecosystem necessary to provide for the rights guaranteed under the 1855 Treaty between the United States and the Tribe, and were thus focused on providing for and preserving both in-channel and out-of-channel processes that collectively function to create and shape habitats suitable for the long term propagation of fish populations. In simple terms, fish need water in order to propagate and flourish and the tribal right to fishing presupposes that all of the necessary ingredients to produce fish are present and protected within the respective streams and tributaries historically and presently used by the Tribe for fishing. It has been reported to me that the Nez Perce Tribe historically relied upon fish in streams within the Project Area for both subsistence and ceremonial purposes and that there were certain segments of streams that were specifically used for fishing, termed Usual and Accustomed (U&A) fishing places. In most cases, the U&As comprise entire reaches of streams and rivers which would be directly protected by the instream flow claims for those specific locations/reaches. However, there are many, primarily smaller streams within the Project Area which are located above the U&As. However, because of the connectivity of different streams and rivers from upper headwater systems downstream to larger, mainstem rivers, the instream flow claims that we developed for those upper sites are as biologically important and necessary as the claims directly attached to the U&A. Fish populations that have evolved within these systems, including both resident and anadromous species, have developed around and are dependent upon a variety of life history strategies unconstrained by arbitrary boundaries within the stream. Thus, I have concluded that fulfillment of the Nez Perce Tribe's treaty rights to harvest fish from U&A fishing places requires more than just suitable habitat conditions within the immediate areas of the U&A places. Indeed, because of the differing life history strategies and species-life stage reliance on a variety of habitat types, the need exists to protect all habitats that factor prominently into the species life cycle. This includes habitats that may be located upstream from specific U&A places, including streams within the upper segments of a given watershed. The provision of flows that will spatially and temporally protect the full range of habitats needed to protect all life history stages of important fish populations was the primary reason we developed the instream flow claims for streams in the Project Area.

## 1. INTRODUCTION AND PURPOSE

In January of 1993, the United States, through the Bureau of Indian Affairs (BIA) and acting on behalf of the Nez Perce Tribe (Tribe) filed an application for instream flow claims with the State of Idaho for 1,133 stream reaches within the Salmon, Clearwater, and portions of the Snake, Weiser and Payette river basins (hereinafter referred to as the Project Area) (Figure 1-1). These claims were directed at preserving and restoring necessary streamflows to those systems, which would protect the Nez Perce Tribe's treaty guaranteed reserved rights (Treaty of 1855) of taking fish, hunting, and gathering.

### 1.1 OBJECTIVES OF THE INSTREAM FLOW CLAIMS

The claims were developed to protect all components of the ecosystem necessary to provide for the rights guaranteed under the 1855 Treaty between the United States and the Tribe. Thus, as mentioned in my affidavit of June 22, 1995<sup>1</sup> and April 24, 1998<sup>2</sup> the instream flow claims were focused on providing for and preserving both in-channel and out-of-channel processes that collectively function to create and shape habitats suitable for the long term propagation of fish populations. In simple terms, fish need water in order to propagate and flourish. The tribal right to fishing presupposes that all of the necessary ingredients to produce fish are present and protected within the respective streams and tributaries historically and presently used by the Tribe for fishing. Thus, it is possible to evaluate and define the quantity of streamflow (temporal) that should remain in the channel in order to protect and preserve the diversity and complexity of habitats to which fish populations have evolved.

Evaluating and defining such flows has been the primary objective of the work I directed on behalf of the United States from 1989 to 1998. That work resulted in the development and submittal (in March 1993) of instream flow claims for the United States and the Nez Perce Tribe, for 1,133 different stream reaches within the Project Area. The claims were subsequently amended in April 1998 following the completion of additional technical studies and analyses.

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<sup>1</sup> Affidavit of Dudley W. Reiser, dated June 22, 1995; Submitted on behalf of the United States to the District Court of the Fifth Judicial District of the State of Idaho, Case No. 39576.

<sup>2</sup> Affidavit of Dudley W. Reiser, dated April 24, 1998; Submitted on behalf of the United States to the District Court of the Fifth Judicial District of the State of Idaho, Case No. 39576.

# Drainage Network within Project Area

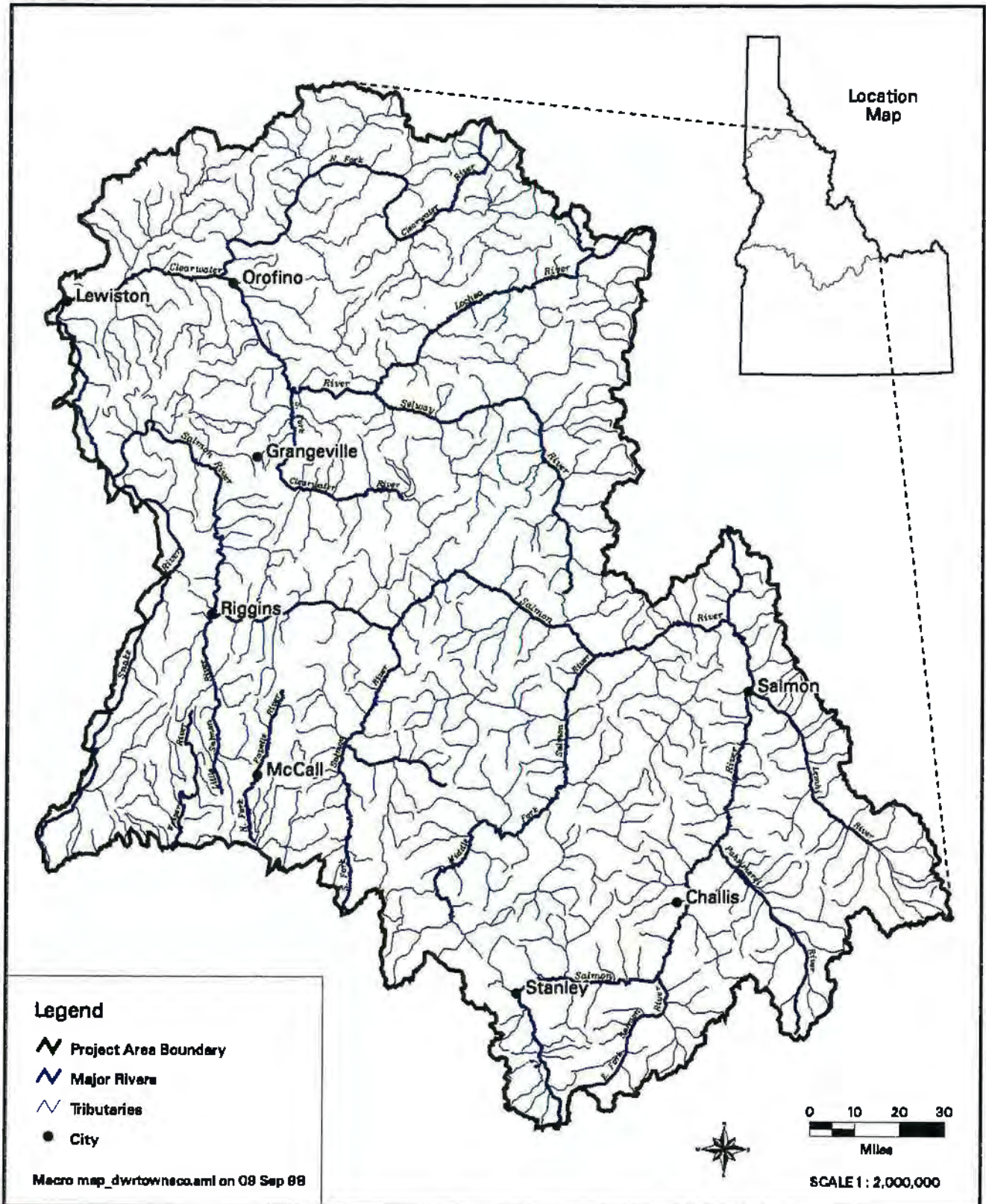


Figure 1-1. Location map depicting drainage network within the Project Area of central Idaho.

## **1.2 METHODOLOGICAL APPROACH UTILIZED IN DEVELOPING INSTREAM FLOW CLAIMS**

The methods used in developing the instream flow claims are best described as a series of steps that progress generally from those related to planning and data compilation and review, to field data collection and analysis, to the actual development of instream flow claims for a given site. In my affidavit of June 22, 1995, I described 11 separate steps that occurred in the development of the claims. These included:

- Step 1 - Basin Delineation and Stratification
- Step 2 - Selection of Study Reaches and Study Sites
- Step 3 - Field Data Collection and Modeling
- Step 4 - Development of Species Habitat Suitability Index Curves
- Step 5 - Determine Species Distribution and Periodicity
- Step 6 - Basis of Instream Flow Requirements – Species and Life Stage Prioritization
- Step 7 - Determination of Instream Flow Requirements for In-Channel Habitat (measured sites)
- Step 8 - Determination of Downstream Passage Flows for Fish
- Step 9 - Determination of Instream Flow Claims for In-channel Habitat (unmeasured sites)
- Step 10 - Determination of Fish Habitat Forming and Maintenance Flow Claims
- Step 11 - Determination of Riparian Maintenance Flow Requirements.

Specific details of each of these steps and the methods used in developing the claims are contained in my 1995 and 1998 affidavits.

It should be noted that the development of the instream flow claims was a major effort and required the commitment of resources and technical personnel from a number of government agencies and institutions, universities, and private industry. These included, among others, the U.S. Geological Survey (USGS), U.S. Forest Service (USFS), U.S. Fish and Wildlife Service



(USFWS), and the Bureau of Indian Affairs (BIA). Information and data were likewise obtained from a number of state agencies and institutions including the Idaho Department of Fish and Game (IDFG), Idaho Department of Natural Resources (IDNR), Idaho Department of Health and Welfare – Division of Environment (IDHW-DOE), Idaho Department of Environmental Quality (IDEQ), University of Idaho, and Idaho State University. In developing the claims, I directed a multi-disciplinary team of experts recognized in the fields of fish ecology (habitat requirements, population biology, fish distributions, life history patterns and requirements), hydrology and hydraulic modeling, geomorphology, sediment transport, riparian and wetlands ecology, and in the application of instream flow methodologies. In addition, outside experts were also brought in to the project to provide special expertise and peer review relative to certain aspects of the claims; e.g., downstream fish passage, habitat suitability curve development, and habitat maintenance flow claim development.

### 1.3 USUAL AND ACCUSTOMED (U&A) FISHING PLACES

It has been reported to me that the Nez Perce Tribe historically relied upon fish in streams within the Project Area for both subsistence and ceremonial purposes. Species of fish reportedly used by the Tribe as discussed in the affidavit of T. Weber Greiser<sup>3</sup> included both anadromous and resident fish. Anadromous fish species included; chinook salmon (*O. tshawytscha*), coho salmon (*O. kisutch*), sockeye salmon (*Oncorhynchus nerka*), steelhead trout (*O. mykiss*) (the migratory form of rainbow trout), Pacific lamprey (*Entosphenus tridentatus*) and white sturgeon (*Acipenser transmontanus*); resident species included rainbow trout (*O. mykiss*), cutthroat trout (*O. clarki*), bull char (*Salvelinus confluentus*), and various sucker species (*Catostomus sp.*). Fulton (1970) provided an excellent overview of the historical and present-day (circa 1970s) distribution of many of the above species. Murphy and Metsker (1962) described the distribution of salmon and steelhead in the Clearwater drainage of Idaho, with a focus on assessing available spawning areas, while Mallet (1974) provided a more detailed summary of fish species presence and relative abundance for Idaho's anadromous fish bearing streams. One of the most comprehensive sources of present-day fish species distribution information is contained in the IDFG Idaho Rivers Information System (IRIS) (IDFG 1989), an electronic database that we used, in part, to identify stream-specific fish species composition.

Today, several of the above species (chinook salmon, sockeye salmon, and most recently steelhead) are listed as either being threatened or endangered under the federal Endangered

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<sup>3</sup>See affidavit of T. Weber Greiser, dated September 8, 1998

Species Act (ESA)<sup>4</sup> due to declines in population abundance. One of the species, coho salmon, has become extinct within its native streams in Idaho, including the Clearwater River and Snake River drainages (Nehlsen et al. 1991). The major causes associated with the declines of salmon and steelhead include the degradation and loss of extensive areas of spawning and rearing habitat (due to dams, and agriculture (e.g., irrigation), forestry, and urbanization practices), construction and operation of downstream dams on the Columbia and Snake rivers, and ocean and terminal fisheries (NMFS 1995). The Committee on Protection and Management of Pacific Northwest Anadromous Salmonids (CPMPNAS 1996) included hatchery operations, along with the causes noted above as having adverse impacts on native salmon and steelhead populations. The listings of Snake River salmon and steelhead under the ESA have prompted the development of a Snake River salmon recovery plan which is directed toward the restoration of the health of the Columbia and Snake River ecosystem and the recovery of listed Snake River salmon stocks (NMFS 1995). The listings have also prompted the curtailment of harvest by the Tribe of any chinook and sockeye salmon within the basins; steelhead harvest is directed toward hatchery stocks only.

As noted above, instream flow claims were made for each of 1,133 stream reaches. Many of these reaches encompassed or were proximal to specific sections of or sites on rivers and streams which were historically used by the Tribe for fishing. Such areas or sites are defined by Greiser (1998) as usual and accustomed places (U&A's) within Idaho, and are depicted on Figure 1-2.

In most cases, the U&As comprise entire reaches of streams and rivers which, according to Greiser (1998) and based on historical accounts of a number of tribal elders were used by the Nez Perce Tribe for fishing. In these cases, the instream flow claims we developed for those streams would serve to protect important fish habitats directly within those U&A places. However, as noted in Figure 1-2, there are many, primarily smaller streams within the Project Area which are above the U&As. For example, the upper segments of the East Fork Salmon River are about 10-15 miles above the nearest U&A for that system. Likewise, many of the tributaries to the Middle Fork Salmon River, the upper Salmon River, the Lemhi River, and the Pahsimeroi River are upstream from the U&A places inclusive of the respective mainstem systems. Nevertheless, the instream flow claims that we developed for those sites are as biologically important and necessary as the claims directly attached to the U&A. This is because of the connectivity of different streams and rivers from upper headwater systems downstream to larger, mainstem

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<sup>4</sup>The Endangered Species Act of 1973 established a mechanism whereby species which have become so depleted in numbers they are in danger of extinction can be designated as either threatened or endangered by the Secretary of Interior or the Secretary of Commerce. Species present within the Project Area which have been classified under the ESA include: sockeye salmon – endangered, spring/summer and fall chinook salmon – endangered; steelhead trout – threatened; bull trout – threatened.

# Nez Perce Tribe Usual and Accustomed Fishing Places

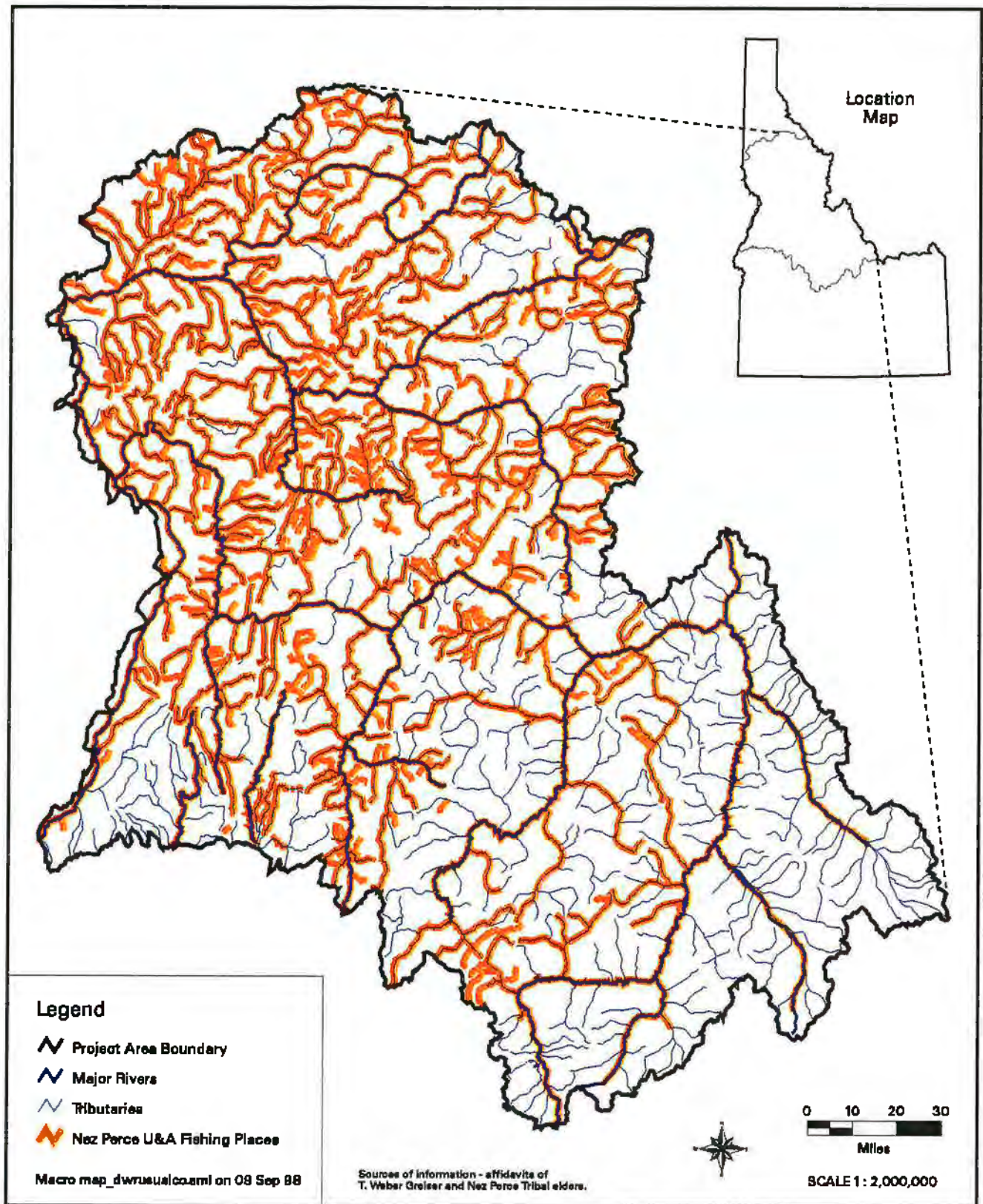


Figure 1-2. Location map depicting Nez Perce Tribe usual and accustomed (U&A) fishing places.

rivers. Fish populations that have evolved within these systems, including both resident and anadromous species, have developed around and are dependent upon a variety of life history strategies unconstrained by arbitrary boundaries within the stream. Within a given fish population, certain life history stages may utilize widely different habitat types and locations from others. For example, it is not uncommon for cutthroat trout adults who reside in larger, mainstem rivers during the majority of the year, to migrate, sometimes long distances (greater than 50-75 miles) into smaller tributaries to spawn. The resulting fry and juveniles may in turn reside in the same tributaries for several years, at which time they mature and then migrate downstream to the mainstem river to reside. This type of life history strategy is defined as "fluvial," and is typical of many of the populations of westslope cutthroat and bull trout found in drainages within the Project Area. These and other life history strategies are more fully described in Section 2 of this report. The point of their mention here is to illustrate that in order for there to be fish present at a specific U&A fishing place requires the provision of suitable habitat conditions that meet certain life history functions of the population that may be distal to the actual U&A location (Figure 1-3). The instream flow claims that were developed on behalf of the Tribe and that are described in my 1995 and 1998 affidavits provide for such habitats.

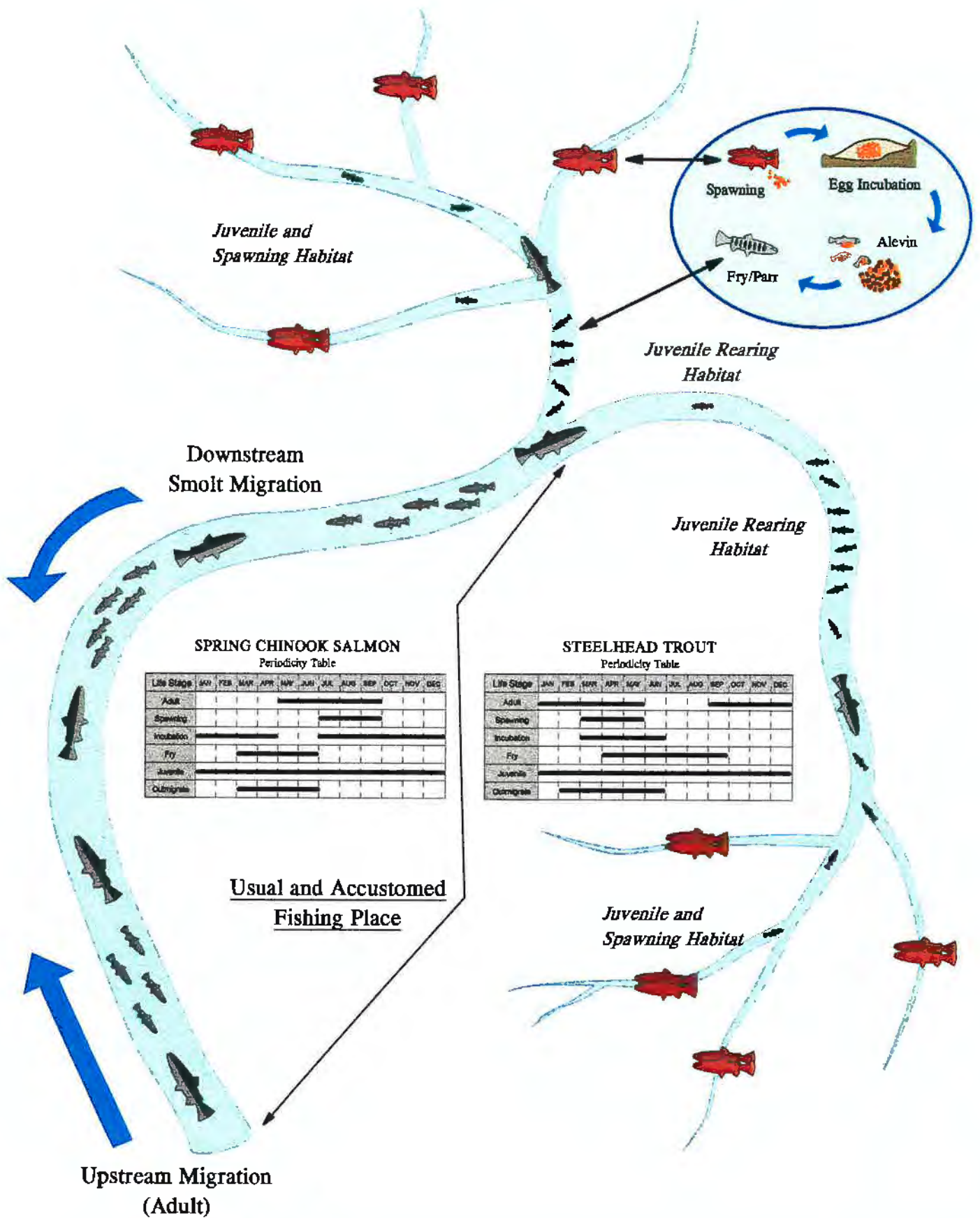


Figure 1-3. Schematic depicting typical migration pathways (upstream and downstream) for adult spawning (upstream) and juvenile/smolt outmigrations (downstream) from upper watershed habitats.

## 2. LIFE HISTORY STRATEGIES OF SALMONIDS WITHIN STREAMS OF THE PROJECT AREA

All of the instream flow claims developed on behalf of the Tribe were based on various salmonid fish species, including chinook salmon, coho salmon, steelhead trout, sockeye salmon, westslope cutthroat trout, redband/rainbow trout, and bull char. The historical distributions of chinook salmon and steelhead trout within the Project Area streams are depicted in Figures 2-1 and 2-2; distributions of sockeye salmon, coho salmon, westslope cutthroat and redband/rainbow trout, and bull char are contained in Appendix A and depicted in Figures A-1 through A-5. Data on fish distributions within the Project Area were compiled from a number of sources including the Idaho Rivers Information System (IRIS) (IDFG 1997), Mallet (1974), Fulton (1970), and Evermann (1896), as well as personal contacts and observations provided by biologists with the USFS, IDFG, and the Tribe. Historical information and data were compiled from the recorded accounts of Nez Perce tribal elders and members who were able to recall specific streams that were fished by the Tribe.

### 2.1 ANADROMOUS STOCKS

Of the salmonids historically or currently present within the Project Area, the salmon and steelhead are what are termed diadromous species meaning they are migratory between the ocean and freshwater (McDowall 1987). Salmon and steelhead exhibit a certain type of diadromy termed anadromous, based on their reproductive strategy. Anadromous fish spend the majority of their life cycle in the ocean, and then migrate into freshwater to spawn (McDowall 1987, Meehan and Bjornn 1991) (Figure 2-3). This contrasts with catadromous species (e.g., eels; Anguillidae) which spend most of their life cycle in freshwater, and then migrate to the ocean to spawn. The length of time that the progeny of anadromous salmonids spend in freshwater can be quite variable (depending on stock type) ranging literally from a few weeks to several years (Randall et al. 1987; Healy 1991). During the period of freshwater existence, the young fish are dependent upon the physical, hydraulic and chemical conditions that exist within rivers and in the case of sockeye salmon, lakes, for necessary food and shelter. During this freshwater rearing period, the young fish continue to grow until a point at which physiological changes occur that trigger a directed outmigratory response in the fish (Mills 1971; Hoar 1953; McCormick and Saunders 1987). This change marks the period of smoltification in which the fish begin their transition to an ocean existence. The period of outmigration typically overlaps with portions of the normal runoff period from Idaho's mountains, the high flows of which serve to minimize the necessary energy expenditure of the smolts in reaching the downstream Columbia River estuary

# Fish Species Distribution - Chinook Salmon (*Oncorhynchus tshawytscha*)

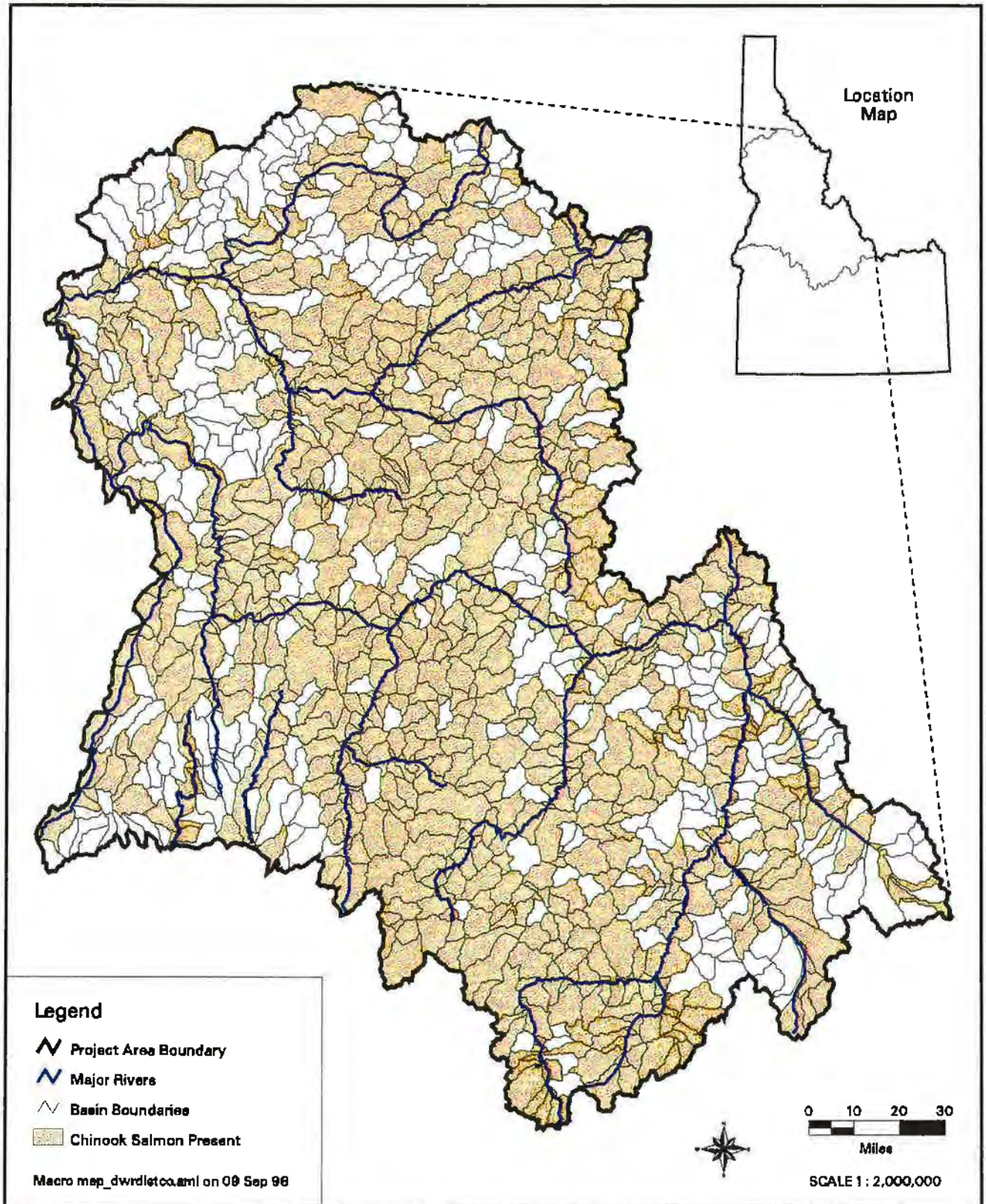


Figure 2-1. Distribution of chinook salmon in the Snake, Salmon, and Clearwater river basins, Idaho.

# Fish Species Distribution - Steelhead Trout (*Oncorhynchus mykiss*)

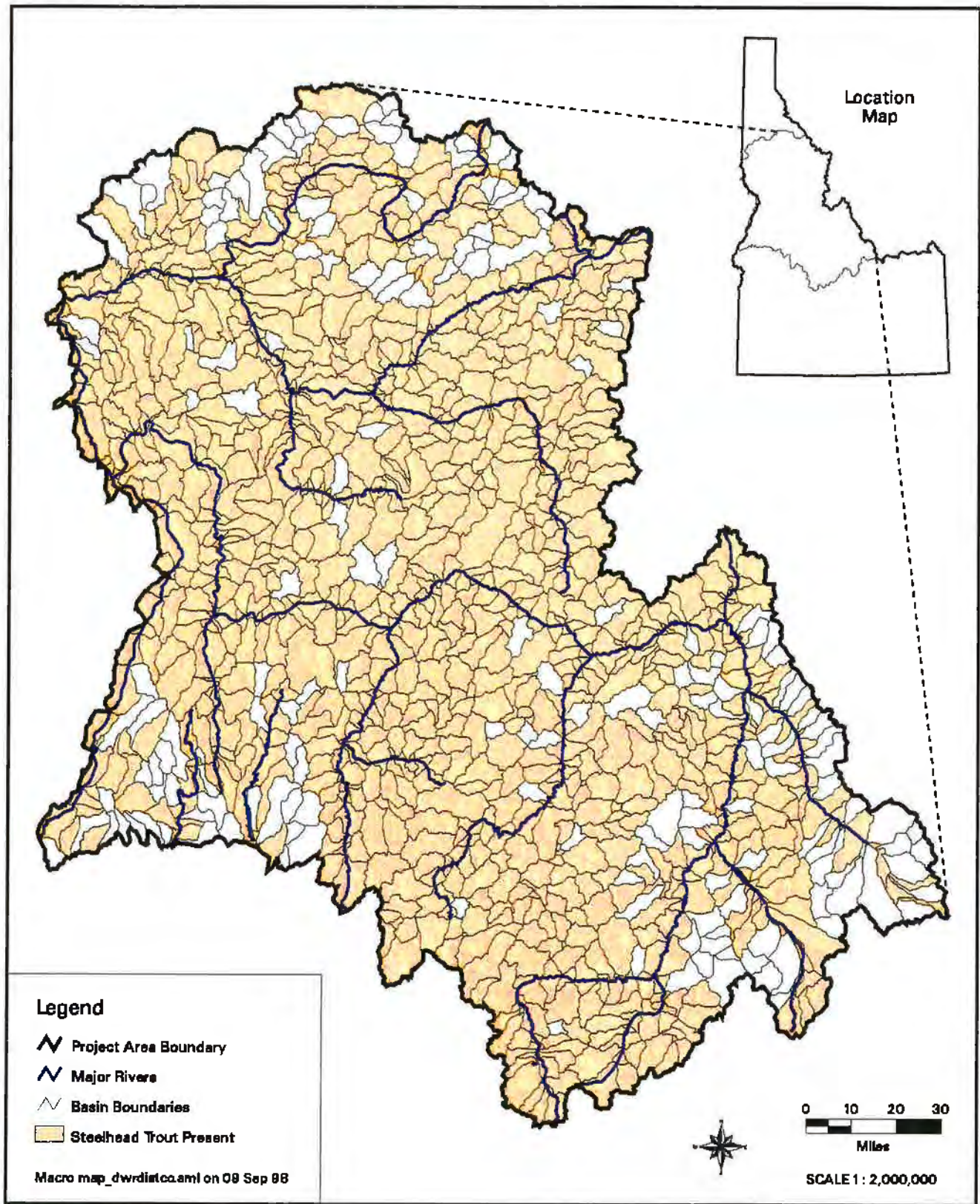


Figure 2-2. Distribution of steelhead trout in the Snake, Salmon, and Clearwater river basins, Idaho.



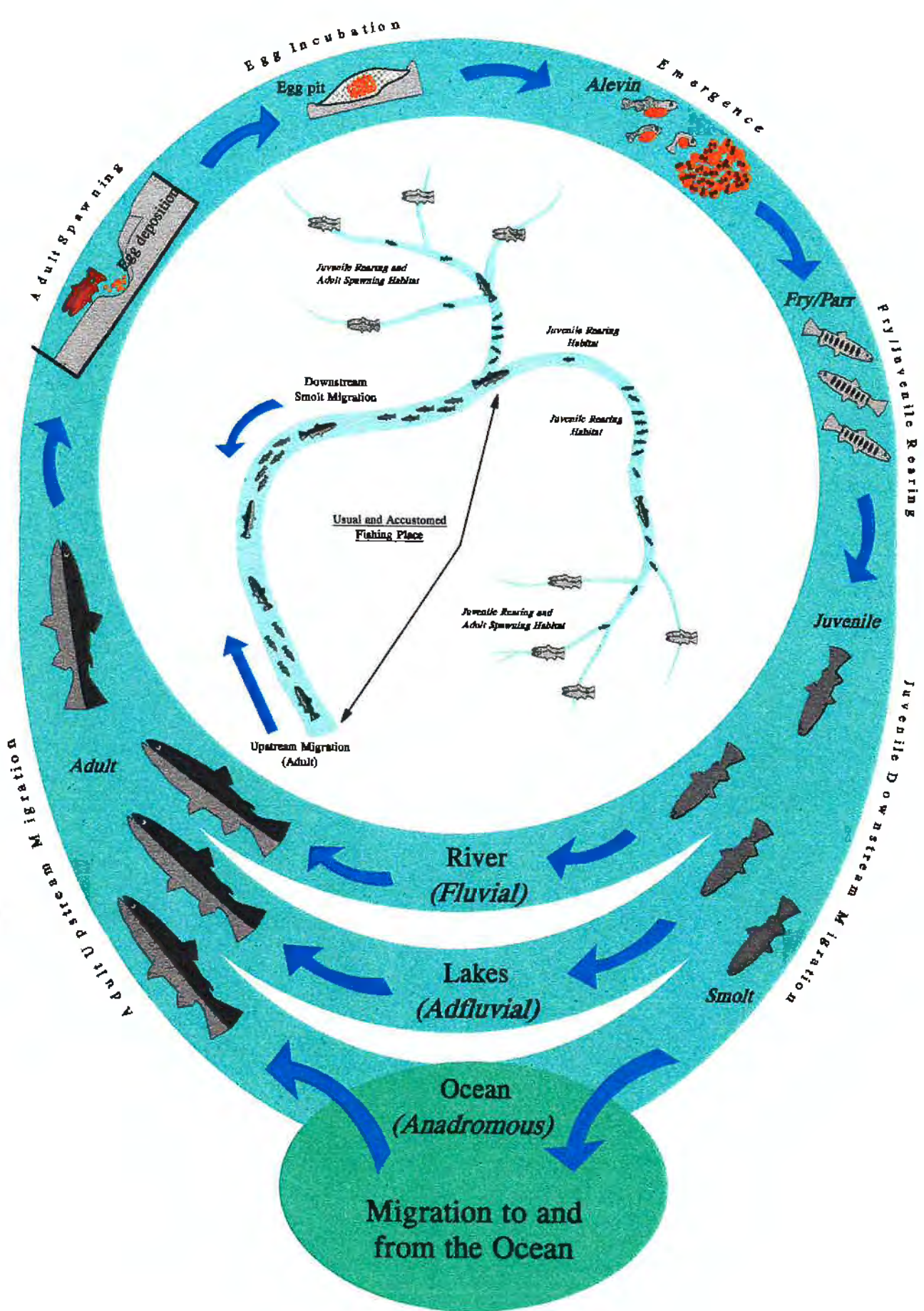


Figure 2-3. Generalized life history strategies of salmonid species, illustrating upstream and downstream migration patterns and life stage linkages to various habitats.

Figure 2-3. Generalized life history strategies of salmonid species, illustrating upstream and downstream migration patterns and life stage linkages to various habitats within a watershed.

and ocean. Mundy and Watson (1997) hypothesized that this behavior was energy conservation related and that the emigrants moving during high flows were placed into bioenergetic refugia where the kinetic energy of the water was substituted for the chemical energy of their bodies.

A general description of the life history strategies of individual fish species found with streams of the Project Area is provided below. The description for chinook salmon is presented first, since that species is geographically widespread within the Project Area, and is significant to the Tribe for ceremonial and subsistence purposes. Additionally, chinook historically provided important non-Indian commercial and sport fisheries (IDFG 1992). Moreover, the life cycle strategy presented for chinook is similar in many respects to that used by coho and sockeye salmon, and steelhead trout, and therefore will serve as the basis from which only differences from that strategy will be noted for those specific species.

### 2.1.1 Chinook Salmon

There are three races of chinook salmon (spring, summer, and fall) that utilize various streams and rivers within the Project Area, with differences in nomenclature being a reflection of when the adults first enter freshwater. That is, spring chinook enter the Columbia River in the spring, summer chinook enter slightly later during the summer, and fall chinook enter freshwater in the fall. These life history strategies have resulted in the development of at least two different behavioral forms, distinguished by the length of time spent in freshwater. Healey (1991) credited the original definitions to Gilbert (1913) who designated the forms as "stream-type" and "ocean-type." The "stream-type" chinook, which is characteristic of both spring and summer chinook salmon in the Salmon and Clearwater drainages, spend one or more years as fry and parr in freshwater before migrating to the ocean. In contrast, the period of time "ocean type" chinook spend in freshwater is relatively low, with the outmigration of fry generally occurring within three or four months following emergence. "Ocean-type" chinook are representative of the Snake River fall chinook salmon. In general, the "stream-type" chinook tend to migrate to open ocean waters for rearing and maturation, while "ocean-type" chinook are more closely associated with coastal areas (CPMPNAS 1996).

Like all of the Pacific salmon species, chinook are what are termed semelparous, meaning they spawn only once and die shortly thereafter. This type of reproductive strategy provides secondary benefits to the often pristine and pure waters in which spawning occurs, in the form of added nutrients via the decomposition of post-spawned carcasses (Cederholm and Peterson 1985; Bilby et al. 1996). Thus, although salmon do not provide direct parental care to their progeny, a type of indirect care is provided posthumously via the addition of nutrients from the dead adults. Such nutrients contribute to the development of aquatic invertebrate communities that serve as

important food bases for fry and parr. The fact that reproduction occurs only once (for a given year class) increases the overall importance of prevailing habitat conditions during spawning and all subsequent freshwater rearing phases. Factors which result in the reduction in habitat quality or quantity during any of the freshwater phases can result in lowered survival and/or growth of a given life stage and contribute to an overall reduction in number of returning adults.

Such factors in combination are often termed "limiting factors" or "bottlenecks" to the population. Murphy and Meehan (1991) defined "bottlenecks" as the most restrictive phase of the life cycle of the salmon. Bottlenecks therefore limit production and must be removed before the carrying capacity of the stream can increase. Murphy et al. (1986), Koski et al. (1984) and Bisson et al. (1987) provide excellent examples of how "bottlenecks" can occur due to different land use activities. For chinook salmon and indeed for many salmonid species, such bottlenecks can occur seasonally and spatially. For example, streamflows that are insufficient to provide suitable depths and velocities over spawning gravels within important spawning habitats would create a "bottleneck" in the production of a given year class. Likewise, increased water temperatures during the summer resulting from decreased streamflows or loss of riparian vegetation may provide a bottleneck to juvenile production. "Bottlenecks" can also occur during the winter months when fish are less active and they tend to utilize the crevices and interstitial spaces of large substrates for cover (Reiser 1997; Morrill and Bjornn 1972). In that case, if substrates are filled-in with sediments (due to land use practices or reductions in streamflow), then overwintering habitat may become the "bottleneck." The important point is that because salmon only reproduce once in their lifetime, the prevailing habitat quality and quantity during each of the life history stages should be allowed to achieve levels that are regulated only by what is provided under natural conditions.

According to Mallet (1974) as cited in IDFG (1992), the Snake River basin (inclusive of the Salmon, Clearwater and upper Snake River drainages) historically produced about 39% of the total spring chinook salmon, 45% of the total summer chinook, and 5% of the fall chinook salmon in the entire Columbia River Basin. Using Chapman's (1986) estimates of spring and summer chinook for the entire Columbia Basin (2.5-3 million fish), Bevan et al. (1994) estimated that the total annual production of spring and summer chinook in the Snake River drainage exceeded 1.5 million fish annually in the late 1800s. The current contributions of these different stocks is far below these estimates; recent estimates of returning natural fish were 3,410 in 1991, 3,493 in 1992, and 7,901 in 1993.

### **2.1.1.1 Spring and Summer Chinook**

In general, the earlier spring chinook are slightly smaller in size than the summer and fall chinook, and therefore are capable of migrating further upstream into smaller headwater systems for spawning. Spring chinook salmon typically enter the Columbia River and begin their upstream migrations from March to May, with spawning occurring from late July through September (Figure 2-4; IDFG 1985). Spring chinook are found throughout the Salmon and Clearwater drainages.

Summer chinook enter the Columbia River and migrate into Idaho's rivers and streams from May through July; spawning occurs generally in August and September (IDFG 1985). Summer chinook are found primarily in the Salmon River drainage, with the South Fork Salmon River being the main producer (IDFG 1985); a few summer chinook are mixed within Clearwater River spring chinook.

The eggs of spring and summer chinook salmon incubate and hatch during the winter months (October - February). At that time, the newly hatched salmon are considered as alevins (Hubbs 1943) and possess characteristic yolk sacs which serve as the only source of nutrition until the fry emerge, become free swimming, and actively feed. Upon yolk sac absorption, the timing of which is closely linked to water temperatures, the fish emerge from the gravels and are then considered fry. Fry emergence of spring and summer chinook typically occurs in early spring (March - May) (Figure 2-4). The exact periods of egg incubation and timing of emergence is stream specific and highly dependent on its water temperature regime. Upon emergence, the fry take up territories, reside and grow within riverine habitats in the general proximity of the spawning areas. As "stream-type" fish, the period of juvenile rearing in streams occurs for about one year. Thus, progeny resulting from eggs deposited in the gravels in August of one year, would rear in freshwater during the entire next year (upon emergence), and smolt and outmigrate to the ocean during the spring of the following year. Some early (pre-smolt) downstream movement of juveniles from small, headwater streams to larger rivers has been observed during the late fall and winter, and is thought to be responsive to decreasing water temperatures and the fish seeking cover among and within large substrates in which to overwinter (Morrill and Bjornn 1972).

### **2.1.1.2 Fall Chinook**

Fall chinook salmon enter the Columbia River and begin migrating toward Idaho from August through October, with spawning occurring in late October and into November. Fall chinook were historically widespread throughout the mainstem Snake River, but are currently limited to

# SPRING CHINOOK SALMON

Periodicity Table

Life Stage	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
Adult					—————								
Spawning							—————						
Incubation	—————								—————				
Fry			—————										
Juvenile	—————												
Outmigrate			—————										

# STEELHEAD TROUT

Periodicity Table

Life Stage	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
Adult	—————									—————			
Spawning			—————										
Incubation			—————										
Fry				—————									
Juvenile	—————												
Outmigrate		—————											

Figure 2-4. Periodicity tables depicting the timing of various life history stages of spring chinook salmon (upper figure), and steelhead trout (lower figure) in portions of Salmon River drainage.

sections of the river below Hells Canyon Dam and a small reach of the lower Clearwater River (IDFG 1985). Fall chinook are generally the largest of the three races of chinook, and hence are morphologically adapted to spawning in mainstem rivers. Within the remaining free flowing segments of the Snake River below Hells Canyon Dam, spawning has been documented between the upper end of Lower Granite Reservoir and Hells Canyon Dam, within the tailwaters of Lower Monumental Dam and in the lower segment of the Clearwater River (Garcia et al. 1995). Reiser and White (1981) observed fall chinook redds in the Snake River at river mile 196 and river mile 222 located 52 and 25 miles below Hells Canyon Dam.

Fall chinook are considered an "ocean type" fish, and hence, begin outmigrating to the ocean shortly after emergence. Connor et al. (1995) reported peak emergence times extending from late April to late May. Nearshore rearing has been reported by Connor et al. (1995) to occur from mid-March through mid-July. As water temperatures increase and flows decline, the sub-yearling fish begin migrating downstream. This process may take several months during which time the fish are actively feeding on available food resources. The construction of four lower Snake River dams has prolonged the outmigration times (Raymond 1979) and also changed much of the mainstem habitats from riverine (river habitat, flowing water) to essentially lacustrine (lake type habitat, imperceptible water movement).

### **2.1.2 Coho Salmon**

Coho salmon were once found within certain drainages of both the Salmon and Clearwater rivers (Appendix A), although little historical information exists. Today, coho are considered extinct in Idaho's waters (IDFG 1992), although the Nez Perce Tribe is actively pursuing a program of reintroduction and restoration.

In general, the life history strategy described for the "stream type" chinook salmon (spring and summer chinook) would likely be representative of that for coho. A comprehensive review of coho salmon life history characteristics is provided in Sandercock (1991).

### **2.1.3 Sockeye Salmon**

According to Bevan et al. (1994), the Snake River sockeye represent the southernmost remaining population of sockeye in the world. Historically, runs of Snake River sockeye were found within five lakes in the Stanley Basin of the upper Salmon River drainage, and in Big Payette Lake located on the North Fork Payette River (Bjornn et al. 1968, Evermann 1896, Fulton 1970, Simpson and Wallace 1978). The lakes of the Stanley Basin that contained sockeye salmon included Redfish Lake, Alturas Lake, Pettit Lake, Stanley Lake, and Yellow Belly Lake

(Chapman et al. 1990). Today, the sockeye salmon is listed as endangered under the ESA, with declines in abundance being attributed primarily to dam construction. In the case of sockeye destined for the Stanley Basin lakes (Redfish, Alturas, etc.), the construction and operation of Sunbeam Dam from 1911 to 1934 has been considered the major factor leading to the loss of those runs. The Sunbeam Dam had no functioning fish passage facilities and, according to Chapman et al. (1990) would have blocked the river for enough years to eliminate any wholly anadromous population units of sockeye. An irrigation diversion on Alturas Creek would at times result in the complete dewatering of the channel, and thereby completely block sockeye salmon from reaching Alturas Lake (Chapman et al. 1990).

The freshwater life history strategy employed by sockeye salmon is unique to that species. Of particular distinction is the reliance of sockeye fry and juveniles upon a lake system as a nursery and rearing area, prior to smoltification and outmigration (Burgner 1991). Bevan et al. (1994) described two common forms of sockeye, including an anadromous form called sockeye, and a non-anadromous (resident) form referred to as kokanee. A third form termed "residual" was also described by Bevan et al. (1994) as being comprised of progeny from sockeye but being non-anadromous. In general, the major distinguishing characteristic between sockeye and kokanee is the difference in size; sockeye are larger.

Three patterns of spawning (used by both sockeye and kokanee) have been reported in conjunction with the lacustrine system; spawning in an inlet tributary to the lake, spawning in outlet tributary of the lake, and spawning within shoal/shorelines areas within the lake. In the case of the first and second strategies, the resulting fry have little difficulty in reaching the lake system; inlet spawned fry can simply migrate with the current downstream to the lake system. However, the fry resulting from outlet spawning must be able to migrate upstream from the spawning areas to reach the lake. This process can be prolonged and is usually accomplished by the fry moving upstream along the stream banks (Brannon 1972). Snake River sockeye are fall spawners with spawning occurring from late September through November (Simpson and Wallace 1978; Bevan et al. 1994). The cycle from egg incubation to fry emergence is similar to that described for chinook salmon (see Section 2.1.1).

Sockeye fry and juveniles typically rear in the lake environment from one to two years prior to smoltification and outmigration. Bjornn et al. (1968) reported variability in outmigration timing from Redfish Lake extending from early April through mid-May. The sizes of age I and II migrants ranged from 70-113 mm for age I fish, and 96-163 mm for age II fish (Bjornn et al. 1968). Chapman et al. (1990) considered the sizes of these outmigrants to be relatively small giving them a survival disadvantage associated with predation and downstream dam passage.



#### 2.1.4 Steelhead Trout

Steelhead trout, like chinook salmon were historically widely distributed within waters of the Project Area (Figure 2-2). Today, their distribution remains widespread but the abundance of wild/natural fish has decreased to levels that have recently caused its listing as threatened under the ESA (August 18, 1997 [67 FR 43937]). Idaho steelhead are considered summer steelhead based on the time at which they enter freshwater (Figure 2-4). According to the IDFG (1985), the majority of steelhead migrate upstream into Idaho's rivers and streams during the fall, with some remaining in the Columbia and Snake rivers overwinter before migrating upstream in the spring to spawn. The fish that arrived in Idaho's streams in the fall subsequently overwinter in those waters, and then migrate further upstream to spawn.

There are two distinct groups of summer steelhead in Idaho, "A-run" and "B-run," with the distinction based on the timing of passing of Bonneville Dam. Steelhead crossing Bonneville Dam prior to August 25 are designated as "A run" steelhead, those passing from August 26 to October 31 are classified as "B run" fish (IDFG 1985, 1992). The A-run fish are generally smaller (since they typically spend only one year in the ocean and migrate into freshwater earlier than B-run fish), and are found predominantly within the Salmon and Snake River drainages. The B-run steelhead generally spend two years in the ocean and originate primarily in the Clearwater drainage.

Unlike Pacific salmon, adult steelhead trout do not always die after spawning; post spawned adults are termed kelts. However, post-spawning mortality is reportedly quite high (Robertson et al. 1961), with data on successful repeat spawning generally lacking. Spawning occurs in rivers and streams in areas containing suitably sized spawning gravels. The life cycle for steelhead closely follows that described for chinook, the major difference being one of timing. Steelhead are spring spawners with spawning occurring during the months of March-May. Eggs incubate in the gravels from April to early June, with fry emerging in May - early July. Juvenile steelhead rear in the streams and rivers in which they were produced for upwards of 3-4 years prior to smoltification (Meehan and Bjornn 1991). Habitats vary with fish size but invariably involve the presence of cobble and coarse gravels, substrates that have been shown to be used by steelhead for cover and overwintering habitat (Hartman 1965; Chapman and Bjornn 1969). Steelhead, like chinook salmon, exhibit a tendency during the fall and early winter months to migrate downstream into larger river systems where they utilize large substrates in which to hide and overwinter. Chapman and Bjornn (1969) concluded that such patterns of movement were controlled largely by decreasing water temperatures and influenced by substrate size (winter cover).

### 2.1.5 White Sturgeon (non-salmonid)

Although a non-salmonid, white sturgeon is an anadromous species (when given the opportunity), and do represent an important species to the Nez Perce Tribe. In Idaho, it is native to the Snake River upstream to Shoshone Falls, the lower Salmon River, and the Kootenai River in the extreme northern end of the state (Simpson and Wallace 1978). There are also reports of white sturgeon having used sections of the Clearwater River upstream as far as Lowell.<sup>5</sup> Historically, white sturgeon entering Idaho's waters were able to freely migrate to and from the ocean, thereby maintaining their anadromous life history pattern. However, with the construction of the mainstem and Columbia dams, the white sturgeon populations in the Snake, Salmon and Clearwater rivers are relegated to an entirely freshwater existence.

According to Simpson and Wallace, sexual maturity in white sturgeon is probably not reached until the fish are 10-15 years old. The white sturgeon can be long-lived; Scott and Crossman (1975) suggest that some of the larger specimens (e.g., greater than 150-200 lbs) are over 100 years old. White sturgeon typically spawn in May and June, with spawning occurring over gravels in swift waters (Simpson and Wallace 1978). According to Nancy Hoefs (personal communication with Paul DeVries, May 12, 1997) water temperatures appear to be an important determinant of white sturgeon spawning; spawning is successful up to about 16°C, with mortality to embryos occurring at temperatures above about 18°C.

## 2.2 POTAMODROMOUS STOCKS

The trout and char species that reside within streams in the Project Area are what are termed potamodromous species, with their life cycle being completed entirely within freshwater systems (Lagler et al. 1962). The exception to this is the steelhead trout noted above, which is the anadromous form of rainbow trout.

Among the three species of salmonids that are discussed below, each is capable of exhibiting three different life history strategies/forms. These are classified as resident, fluvial, and adfluvial and I have defined them as follows:

- Resident-populations which typically reside in smaller tributaries in which they are able to complete their entire life cycle, including spawning and rearing.

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<sup>5</sup>Personal Communication by Paul DeVries of R2 Resource Consultants with Nancy Hoefs, Nez Perce Tribe, May 12, 1997.

- Fluvial-migratory populations that utilize different habitats and sections of rivers in order to complete their life cycle; typically, the adult component of the population resides in larger river systems – adults migrate upstream into smaller tributaries in which to spawn – fry and juveniles may rear within the smaller tributaries for 2-3 years prior to maturation at which time they migrate downstream and assume residency in the larger rivers.
- Adfluvial-migratory populations that utilize different habitats in order to complete their life cycle; typically, the adult component of the population resides in a lake or reservoir system – adults migrate upstream (and in some cases downstream) into rivers and tributaries in which to spawn – fry and juveniles may rear within the tributaries for several years prior to maturation, at which time they migrate downstream and assume residency in the lake; alternatively or in combination, the fry and/or juveniles may outmigrate directly to the lake and rear within.

Examples of these life history forms are illustrated in Figure 2-3. All three of these life history forms likely occur within some drainages of the Project Area.

A commonality within the two migratory forms (fluvial, adfluvial) involves directed movement of adults to spawning areas. In many cases, there is a high degree of fidelity associated with these migrations with adults essentially “homing” to their natal streams and spawning areas (Thurrow and Guzevich 1997). McKeown (1984) suggested that such migrations may be in response to the general lack of spawning-type habitat in the areas inhabited by adults, with the tributaries providing the proper combinations of suitable substrates for egg deposition and fry emergence, proper water temperature regimes, and dissolved oxygen concentrations. An additional factor could relate to the conditions that exist after eggs have hatched and fry emerged; smaller, upstream tributaries may provide better nursery habitat due to an absence of large predators and availability of food suitable for young fish (McKeown 1984). Another common feature relates to the directed downstream migration of adults post-spawning, which could be in response to changing conditions that render the habitats less suitable for adults; e.g., decreasing streamflows, lack of food for large fish, changing water temperatures, etc.

McKeown (1984) further suggests that upstream spawning migrations may occur due to differential energy costs between adult and juvenile fish. From an energy expenditure perspective, there is less of a cost associated with upstream migrations completed by adults, versus juveniles. Thus, directed movement of juvenile fish to feeding areas is most efficiently accomplished via a downstream movement with the current.

Even with the variations noted above, there is a strong connection between the populations and a diversity of habitats, both temporally and spatially. In the case of fluvial populations, although the adult phase may reside in large river systems, there is a connection to smaller tributaries during migrations and spawning, and subsequent rearing of fry and juveniles. This connection transcends any specific location that may be defined by a U&A, since the latter has no biological significance other than fish were historically captured at that location.

Rieman and McIntyre (1993) noted that in the case of bull trout and also for other freshwater salmonids, both resident and migratory forms can coexist and give rise to one another. They cited the work of Berg (1985), Foote et al. (1992), and Schmitz (1992) who have demonstrated that resident-type populations of salmonids can retain migratory phenotypes that can express themselves under differing conditions. Rieman and McIntyre (1993) indicated that a diversity of life history strategies is important for ensuring population stability and persistence, especially given the year to year variability in climatic conditions which may favor/dis-favor various species and life stages. Moreover, Rieman and McIntyre (1993) introduced the concept of metapopulation as defined by Hanski and Gilpin (1991) as an important mechanism which influences non-anadromous salmonid population stability. Metapopulations are subpopulations or local populations within larger or regional populations which tend to spread the risk of population loss due to varying environmental conditions. By having local populations spread over a range of habitats and environmental conditions, the loss of all populations due to a single event or climatological condition is reduced.

In a sense, the differing life history strategies exhibited by potamodromous species described above are similar to the diversity of habitats and life history strategies exhibited by anadromous species. The cause of such diversity is likely the same, genetic adaptation and diversification in part in response to widely varying environmental and climatic conditions, with the intent of increasing population survival and decreasing population risk. Species interactions and niche partitioning have also likely influenced such diversification. The results are exhibited in temporal and spatial variability in life history function and location that occurs within a given population of fish. As an example, the period of spawning within a fluvial population of bull trout (or westslope cutthroat trout) may be prolonged over a 2-3 month period, with a portion of the population spawning in the upper watershed, and a later segment spawning much lower down. Thus, resulting fry are distributed over a much longer extent of the stream which increases the overall chances for the population to survive localized perturbations.

### 2.2.1 Redband/Rainbow Trout

Genetically, Behnke (1992) classifies the form of rainbow trout in Idaho as redband trout (*O. mykiss gairdneri*) which is included within the Columbia River basin, reserving the use of rainbow trout to those populations of coastal origin. In this report I designate the species as redband/rainbow trout to acknowledge the most current taxonomic designation, while preserving the more commonly applied nomenclature of rainbow trout. According to Simpson and Wallace (1978) redband/rainbow trout are the most important gamefish species in Idaho, having a broad geographic distribution and being easily cultured (Appendix A). Redband/rainbow trout have been successfully raised in hatcheries for many years with outplantings of hatchery fish to many streams and lakes in Idaho to supplement sportfishing opportunities. Genetically, the resident redband/rainbow trout is essentially identical to the anadromous steelhead trout, and it is not uncommon for streams to harbor both forms in the same waters. In these cases, it is generally visually impossible to distinguish between the two, until such time that the steelhead undergo smoltification and assume a distinct "silvery" appearance.

With the exception of the upstream migration of adults and downstream migration of smolts, portions of the freshwater life history strategy of redband/rainbow trout are similar to that of the steelhead, although variations do exist. These can range from populations that reside entirely within a localized section of a stream (hereinafter termed – resident populations), to populations that spend the majority of time within a lake and migrate into inlet or outlet tributaries to spawn (referred to as – adfluvial populations), to populations that generally reside within relatively large river systems but migrate upstream into smaller tributaries to spawn (referred to as – fluvial populations). Lindsey et al. (1959) described the adfluvial behavior of redband/rainbow trout in a lake system in British Columbia, in which adult fish utilized both inlet and outlet streams for spawning. These same type of life history strategies are utilized by other potamodromous species in Idaho, including cutthroat trout and bull char, which are described below.

Redband/rainbow trout spawn in tributaries and rivers that range widely in size and morphology. These can include some of the larger streams and rivers in the state such as the upper Salmon and Clearwater rivers, to relatively small, steep headwater streams found in upper forested watersheds and wilderness areas. Like cutthroat and bull char, it is not uncommon to find resident populations of redband/rainbow trout in tributaries that at first glance would appear to be too small and too steep to contain viable fish populations. Such populations have evolved around and adapted to the local conditions and their continuance will require protection of their habitats and the resources (e.g., streamflows, riparian vegetation, etc.) that combine to create such.

Like steelhead, redband/rainbow trout are spring spawners with spawning occurring from March-June, egg incubation extending from April to early July, and fry emerging from May to early August. Young redband/rainbow trout utilize a variety of habitat conditions and locations in streams which will vary by the age of the fish, time of year, time of day, and functional mandate. Thus, shifts in habitat use likely occur relative to day-night cycles (diel variation), seasonal cycles, periods of feeding, periods of rest, and in response to sympatric species segregation (i.e., occurrence of two species in a stream that possess similar habitat requirements). Chapman and Bjornn (1969) discussed many of these changes in habitat use and behaviors among different species, including steelhead/redband/rainbow trout.

### 2.2.2 Westslope Cutthroat Trout

The cutthroat trout found in the lower Snake River basin and particularly in the Clearwater and Salmon River drainages are classified as westslope cutthroat (*O. clarki lewisi*) (Behnke 1992). Other cutthroat trout sub-species exist in Idaho, but are generally located in different drainage systems (e.g., Snake River cutthroat, Bonneville cutthroat, Bear Lake cutthroat).

Cutthroat are spring spawners, with spawning occurring from April to July, egg incubation from April to September, and fry emergence occurring from June to October. Because there is overlap in spawning times, cutthroat trout have been at least exposed to hybridization with sympatric<sup>6</sup> populations of redband/rainbow trout. However, according to Behnke (1992), the westslope cutthroat trout populations in many of the tributaries to the Salmon and Clearwater river drainages show little or no outward sign of hybridization. Behnke (1992) suggested that because the two species, westslope cutthroat and redband/rainbow have co-evolved in sympatry for thousands of years, there has likely developed ecological distinctions that favor reproductive isolation. Thus, there may be slight differences in the habitat characteristics or temperature/flow conditions sought between the two species during the spawning period that ensures asynchronous reproduction and reduces the potential for hybridization.

The life history strategies of westslope cutthroat have been described by Liknes and Graham (1988) for Montana streams, which parallel those occurring in Idaho's waters. These correspond to those described above; i.e., resident - non-migratory populations which complete their entire life cycle within a given tributary; fluvial-migratory populations that reside in larger river systems and migrate to tributaries to spawn and for juvenile rearing; and adfluvial-migratory

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<sup>6</sup>Sympatric populations are those that coexist with another population of fish of a different species; e.g., redband/rainbow populations are often sympatric with cutthroat trout populations.

populations that reside in lakes and migrate to tributaries to spawn and for fry and juvenile rearing.

Westslope cutthroat trout have been observed to migrate a substantial distance to spawn. Bjornn and Mallett (1964) reported that adult cutthroat trout in the Middle Fork Salmon River migrated an average of about 20 miles to reach spawning habitats; the maximum distance recorded was 80 miles. In studies conducted in the upper Flathead River in Montana, Shepard et al. (1984) observed cutthroat trout migrating an average of about 28 miles to reach spawning habitats; maximum migration distance was 188 miles. Larkin<sup>7</sup> observed cutthroat trout moving from the upper Lemhi River valley to the mainstem Salmon River, a distance of 46 miles.

### 2.2.3 Bull Trout

Bull trout are char and members of the genus *Salvelinus*, which is shared with several other common salmonid species, including the brook trout (*Salvelinus fontinalis*) and the lake trout (*Salvelinus namayacush*). Bull trout have recently received a tremendous amount of attention from resource agencies and research institutions, primarily because both the Columbia River basin and Klamath River basin stocks have been listed as threatened under the federal ESA by the U.S. Fish and Wildlife Service (50 CFR Part 17, Volume 63, No. 111).

Bull trout within the streams of the Project Area likely exhibit all three of the aforementioned life history strategies/forms - "resident," "fluvial," and "adfluvial." Indeed, overlap of these forms may occur within a given segment of river, either representing distinct or separate populations (Jakober 1992, as cited in Rieman and McIntyre 1993).

Bull trout are fall spawners with the majority of spawning activity occurring from September to early November (Appendix B). Studies have shown that bull trout can migrate long distances to reach spawning areas. Bjornn and Mallett (1964) reported an average migration distance of about 22 miles for bull trout migrating within the Middle Fork Salmon River; maximum distance noted was over 190 miles. Shepard et al. (1984) and Fraley and Shepard (1989) reported migration distances averaging 93 miles (maximum migration distance observed was 188 miles) for adfluvial bull trout populations in the upper Flathead River, Montana. Elle<sup>8</sup> observed bull trout moving into Rapid River (from the Little Salmon River) in late May through July, with spawning

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<sup>7</sup>Personal communication by Michael Gagner of R2 Resource Consultants with Mike Larkin of the Idaho Department of Fish and Game, Salmon, Idaho, October 1, 1997.

<sup>8</sup>Personal communication by Michael Gagner of R2 Resource Consultants with Steve Elle of the Idaho Department of Fish and Game, Nampa, Idaho, October 20, 1997.

occurring throughout September. Movement of bull trout during this period ranged from 25-75 miles. Thurow and Guzevich (1997) reported on the results of radiotagging studies of bull trout in Rapid River and noted a "home" range that exceeded 60 miles. Clearly, bull trout are a species that can and reportedly does migrate long distances in which to spawn.

The pattern in which juvenile bull trout emigrate from upstream nursery and rearing habitats is likewise variable. Shepard et al. (1984) reported several age classes of bull trout emigrating from tributaries to the upper Flathead River. Reiser et al. (1997) observed newly emerged bull trout fry outmigrating from the upper Cedar River in Washington to Lake Chester Morse. Studies conducted by McPhail and Murray (1979) suggested bull trout emigration encompasses two outmigration periods, a spring migration consisting of newly emerged fry and fall migration comprised of one and two year old (1+ and 2+) juveniles. Pratt's (1992) studies and review of bull trout ecology indicated three seasons of outmigration including spring, summer, and fall. The variability in timing of bull trout fry and juvenile outmigrations is likely another adaptation to environmental conditions which are continually changing. An extended outmigration period (several months) is more likely to ensure the survival of the population than if all outmigration was completed within a relatively narrow time frame (several days/a couple of weeks). In the latter condition, a single climatological event such as a flooding, could essentially eliminate an entire year class from the population.

The life history strategies that bull trout and other freshwater salmonids have developed are necessarily complex and were manifest in direct response to the inherently variable environmental conditions that have occurred over the tens to hundreds of thousands, indeed millions of years to which the species have evolved. As noted above, this has created several, oftentimes overlapping life history strategies which are collectively designed to reduce population risk and increase population survival. The strategies require that populations utilize a mosaic of habitat forms and types in order to achieve the greatest chances for survival. Clearly, measures that will ensure the long term sustainment and maintenance of the different species should be directed at protecting the full range of habitat conditions and types to which the species have evolved. The instream flow claims developed for streams and rivers in the SRBA were formulated to provide for such conditions and protect the variability in conditions to which the species have evolved.



### 3. SUMMARY OF HABITAT REQUIREMENTS OF SALMON AND TROUT WITH EMPHASIS ON FLOW DEPENDENCIES

The life history strategies described above serve to illustrate the importance of connectivity between different habitat types and their occurrence in different locations within the watershed to the propagation of healthy, abundant populations of salmon and trout. Taken in the context of the established U&A locations (as noted in Figure 1-2), it is apparent that the production of harvestable fish populations at a given location, requires that suitable conditions exist within all sections of the watershed, in which the fish available for harvest at that location rely, for adult passage, spawning and egg incubation, fry and juvenile rearing, and juvenile/smolt downstream passage. In this section, I briefly summarize important habitat components that relate to each and illustrate their relationship to flow.

#### 3.1 UPSTREAM MIGRATION

Populations of both salmon and trout exhibit long migrations in streams and rivers to reach their natal spawning streams. In the case of salmon and steelhead, (and many stocks of fluvial and adfluvial trout) a strong "homing" instinct results in the adults seeking and finding the same streams and in many cases the same locations (spawning areas) within those streams in which they were produced. This homing capability has been shown to be linked to olfactory imprinting<sup>9</sup> that occurs around the time of smoltification and downstream movement of juveniles.

As noted by Bjornn and Reiser (1991), adult salmonids returning to streams to spawn must do so at the proper time and with sufficient energy to complete their life cycle. Although salmon and trout stocks have evolved such that successful migrations can usually occur under a variety of conditions (owing to differences in migration timing), man-induced and in some cases natural events can result in sufficient delays in migration to impact at least a portion of the spawning population and hence reduced egg and fry production.

Successful upstream migration is dependent on a variety of factors, all of which are related to streamflow. These include streamflow, water temperature, dissolved oxygen, turbidity, and physical barriers (Bjornn and Reiser 1991), which are briefly described below.

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<sup>9</sup> Olfactory imprinting is associated with stream specific odors imparted to the waters that result from watershed characteristics such as soils, flora and fauna.

### **3.1.1 Streamflow – Water Depth and Water Velocity**

Without sufficient streamflow in a stream or river, adult fish can not successfully migrate upstream to spawning areas. The quantity of such flows necessary for passage has been evaluated by a number of investigators who have assessed passage requirements on the basis of the percentage of the average annual flow (Baxter 1961) and on specific water depths and water velocities adult fish are capable of migrating through (Thompson 1972). For trout and salmon, these were defined in terms of minimum water depths and maximum water velocities and ranged from 0.4 to 0.8 ft, and 4.0 to 8.0 ft/sec respectively (Thompson 1972). These represent minimum depth and maximum velocity criteria and must be evaluated in the context of applying such to stream reaches that pose as potential migration barriers, such as shallow riffles.

In general, the degree to which streamflow conditions may become problematic to upstream migrating adults relates directly to their migration period. Thus, stocks that migrate during the spring under high streamflow conditions (e.g., steelhead) would be less likely to encounter flow related impediments, than stocks that migrate later in the year, such as chinook salmon. Low flow conditions (resulting from a combination of drought and irrigation withdrawals) have already reportedly occurred in the upper Salmon River drainage within the Lemhi River basin that have on occasion, rendered adult upstream migrations impossible. In these cases, the IDFG has resorted to capturing and transporting adults around dewatered sections of the stream. This has prompted several studies that evaluated more efficient irrigation practices (Ott Water Engineers 1986), as well as the formation of watershed associations whose objective is to more effectively manage irrigation practices, with consideration for the needs of anadromous fish (Idaho Soil Conservation Commission 1996).

### **3.1.2 Water Temperature**

Because salmon and trout are poikilotherms (cold blooded), their metabolism and life history functions are closely linked to water temperatures. In the case of upstream migrations, water temperatures that are too warm or too cold have been reported to influence migration timing and may result in delays (Hallock et al. 1970; Bjornn and Reiser 1991).

Factors that can lead to altered thermal regimes in streams include removal of riparian vegetation and forest canopy, irrigation withdrawals, irrigation return flows, releases of water from deep reservoirs (e.g., Dworshak Reservoir on the N. Fork Clearwater River), and in some instances, release of cooling water from processing and/or power plants. In general, the effect of the first three alterations is to increase water temperatures, while deepwater reservoir releases tend to decrease downstream temperatures. Such effects of course vary seasonally.

### 3.1.3 Dissolved Oxygen

Adult migrating fish have been shown to be adversely affected by reductions in dissolved oxygen (Davis et al. 1963). Dissolved oxygen concentrations in water are directly influenced by the temperature of water (warmer water can hold less DO than coldwater), so that the alterations noted above (section 3.1.2.) that result in elevated water temperatures can have a double effect relative to reduced DO concentrations.

Dissolved oxygen in streams and rivers is a product of atmospheric exchange with the water surface. The concentrations of DO in river waters are influenced by surface agitation and resulting reoxygenation that typically occurs in riffles and cascades. Streamflow can increase or decrease the degree of reoxygenation associated in these areas.

### 3.1.4 Turbidity

According to Bjornn and Reiser (1991), high turbidity in rivers may delay migrations (as reported by Bell [1986] and Cordone and Kelly [1961]), but turbidity alone does not seem to affect the homing ability of adults (as noted by Whitman et al. 1982). In general, the highest turbidities associated with a stream or river occur in conjunction with high streamflows, which, in the case of the Salmon and Clearwater basins are temporally related to run-off patterns in the spring (April-early June). High turbidities can occur at other times and are generally related to man-induced activities such as timbering, road construction, and agricultural practices.

### 3.1.5 Physical Barriers

Physical barriers such as waterfalls, debris jams, and artificial structures (e.g., dams, irrigation flow deflectors) can delay or prevent upstream migration of adults. Salmon and trout have certain swimming and jumping capabilities that vary by species (Bell 1986; Reiser and Peacock 1985). Darting speeds (maximum speeds attainable over a short period of time [secs]) reportedly range from about 6 ft/sec for certain trout species to over 26 ft/sec for steelhead trout (Bell 1986). Calculated jumping capabilities range from about 2.5 ft for brown trout to over 11 ft for steelhead (Reiser and Peacock 1985).

Streamflow can directly influence the passage conditions at potential barriers. For example, under conditions of low flow, a particular falls may have a total height that creates conditions greater than the combined jumping and swimming capabilities of salmon and trout, and hence, serves as a barrier to upstream migration. Under higher flow conditions, the height of the falls can be reduced (because of increased water surface elevations in the plunge pool) to levels in

which adult passage can occur. I have personally observed such conditions at a set of falls on the Yankee Fork of the Salmon River; i.e., the falls would likely pose a complete barrier under low flow conditions but would be passable under high flow conditions. In that case, there was direct evidence that adults were passing the falls, since I observed numerous redds in the section of river upstream from the debris jams/falls. The important point here is that what appears to be a barrier under one set of conditions, may be passable under different flows.

### 3.2 SPAWNING AND EGG INCUBATION

The habitat conditions that meet the reproductive requirements of salmon and trout can arguably be considered as one if not the most important relative to sustainment of fish populations. The conditions that exist during the period in which eggs are deposited in the gravels, embryos incubate and hatch, and fry subsequently emerge are primary determinants of what is termed "year-class-strength" and the ultimate numbers of fish that may be recruited into the population and return as adults. This year-class-strength can vary widely interannually due to specific combinations of physical and hydraulic characteristics determined largely by stochastic variation in natural climatic conditions. However, anthropogenic impacts (i.e., those caused or influenced by man) related to land-use and water development projects (e.g., flow depletion due to irrigation withdrawals, water quality changes, flow regulation below dams, road construction, timbering, etc.) can likewise impact spawning and egg incubation success regardless of climatic variation. Many of these impacts are associated with changes in streamflow and a review of important flow dependent components that influence spawning and egg incubation success is provided below.

#### 3.2.1 Streamflow

The influence of streamflow on spawning habitat occurs in both a quantitative and qualitative manner. Quantitatively, streamflow plays a direct role in determining the areal extent of habitats that can be used by adult fish for spawning. The magnitude of streamflow also has an influence on the quality of the spawning gravels and on maintaining suitable conditions for incubating eggs within such gravels.

As noted above, streamflow regulates the amount of spawning habitat/area within a stream by determining the extent to which spawning gravels are wetted with the proper combinations of water depth and water velocity. Several methods have been developed to determine the relationship of flow to spawning habitat, including those of Thompson (1972), Collings (1972, 1974), and the Physical Habitat Simulation (PHABSIM) method developed by Bovee and Milhous (1978) and described in detail in Bovee (1982, 1986), and Trihey and Wegner (1981). This latter method is the most widely applied of all instream flow methods (Reiser et al. 1989)

and was the method utilized in developing the United States/Nez Perce Tribe instream flow claims for streams in the Project Area. These methods rely on an understanding of the water depths, water velocities and substrate sizes that are typically utilized by salmon and trout for spawning. Thus, researchers have collected these type of data directly over spawning areas or nests, which are termed redds. I have personally collected hundreds of such measurements over redds of salmon and steelhead in a variety of streams within the Project Area (Reiser and White 1981). These data are then linked with specific hydraulic and habitat models from which habitat:flow relationships can then be determined. In general, there is a consistent three stage pattern that is represented in such relationships; 1) an initial increase in habitat with increasing flows as more spawning area is wetted and combinations of water depth and velocity remain suitable; 2) a leveling off of habitat as flows continue to increase and ultimately; 3) a decrease in spawning habitat as flows continue to increase as water depths and velocities begin to exceed those utilized by salmon and trout.

Discharge also plays an important role in providing and maintaining the quality of the spawning gravels. This typically occurs as part of the runoff cycle in association with high flows resulting from snowmelt. These flows typically serve, among other things to mobilize and transport fine sediments from spawning gravels which is important for increasing gravel permeability and facilitating the interchange of surface and intragravel flows. This interchange is critical for the successful incubation of deposited eggs since the flows result in the transport of oxygen to and removal of metabolic wastes from the embryos. The significance of the interchange of surface with intragravel flows has been demonstrated by Sheridan (1962) and Wells and McNeil (1970). Reiser and White (1981), Wickett (1954) and Chapman et al. (1982) noted relationships between surface flows and intragravel water velocities suggesting that reductions in the former could reduce the latter (Figure 3-1). The flushing of fine sediments that occurs in conjunction with high runoff in the spring, thus serves to increase the quality of the spawning gravels and enhances potential survival to emergence of fry. However, such flows and the benefits related to sediment transport are not limited to spawning alone; benefits are also accrued to rearing habitat, including areas of invertebrate production. Reiser (1997) and Waters (1996) summarized the overall impacts of sedimentation on aquatic biota, including fish and invertebrate habitats. Natural runoff processes that annually and seasonally provide high flows within a stream are extremely important for transporting sediments (from riffles and pools), maintaining channel conveyance, creating and maintaining physical habitat structure in the channel, and providing connectivity with the riparian zone and vegetation thereof.

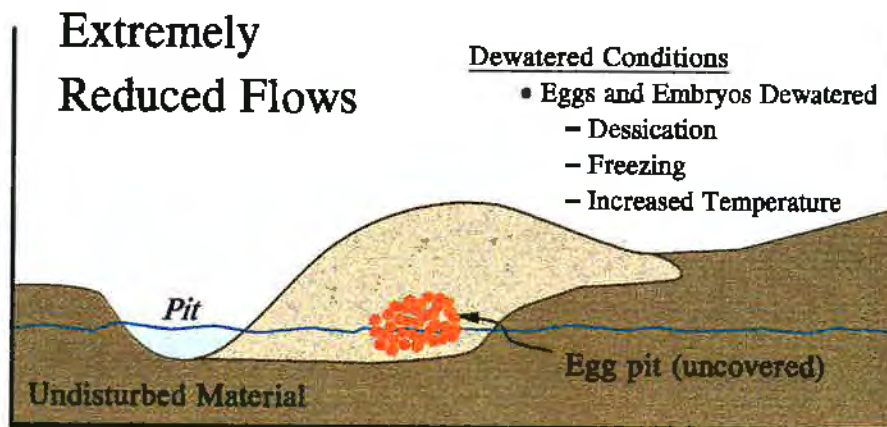
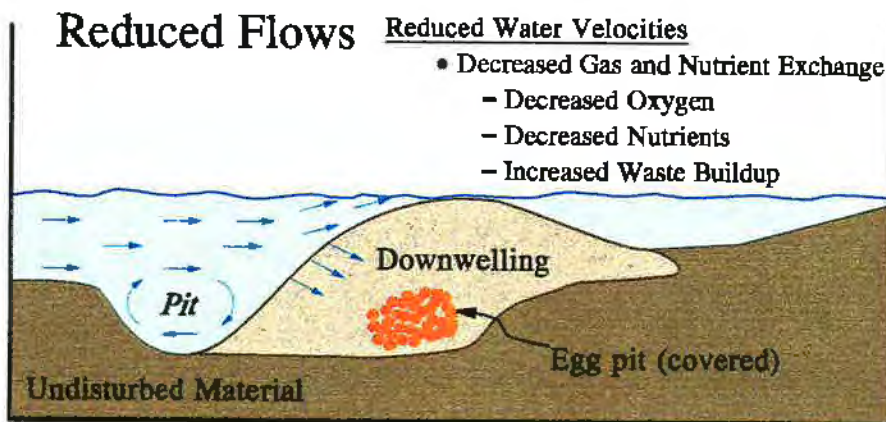
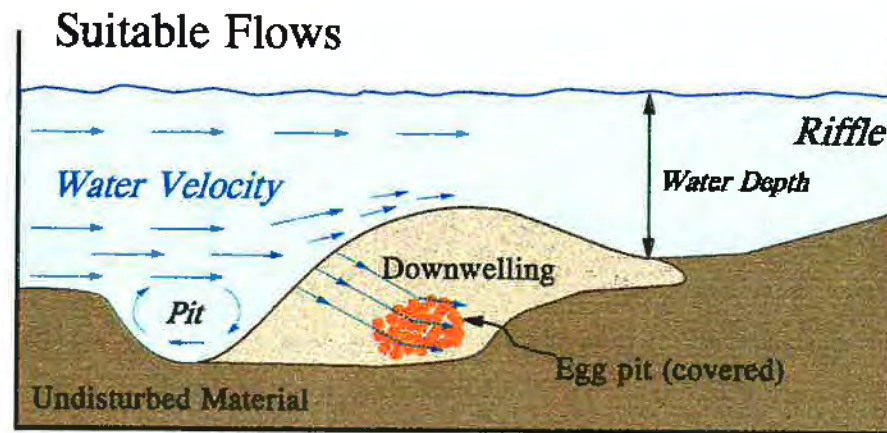


Figure 3-1. Conceptual diagram of salmonid spawning nests illustrating generalized effects of streamflow reductions on the intragravel environment.

### 3.2.2 Water Temperature

The timing of spawning of salmon and trout in streams is closely linked to water temperatures (Bjornn and Reiser 1991). In the streams within the Project Area of Idaho, water temperatures are likely primary determinants of when fish spawn, how long the eggs incubate (development is directly related to water temperature), and when fry emerge. Factors that may alter such temperatures and therefore affect spawning and incubation have been described earlier and include; flow regulation, flow depletions/diversion, loss of riparian vegetation and thermal alteration due to cooling water discharge.

### 3.2.3 Cover

Adult fish utilize or are associated with cover both during their upstream migrations and during spawning. Cover may be in the form of deep pools, surface turbulence, and undercut banks and overhanging vegetation (Bjornn and Reiser 1991). Such cover can protect the fish from disturbance, predation, high water velocities, and also provide shade for holding fish. All of these cover components are influenced by streamflow.

## 3.3 FRY AND JUVENILE REARING HABITAT

As noted in section 2, both anadromous and non-anadromous salmonids spend a portion of their early lives rearing in freshwater. The habitats that constitute rearing areas are diverse and perhaps more complex than any other life history stage. For some stocks of salmon and trout, the upper drainages represent spawning and initial rearing areas, where fry and juveniles can grow in relatively protected areas that are generally free from large predators, and that contain excellent water quality characteristics.

The conditions afforded to fry and juvenile fish in many instances establish the overall carrying capacity of the stream and therefore factor directly into defining numbers of returning adults. Several studies have shown that the abundance of fry or juveniles within a stream can and does regulate the abundance of older fish. Bjornn's (1978) study of Big Springs Creek in the upper Lemhi Drainage of Idaho illustrated that there was an upper threshold/carrying capacity of the stream; seeding of steelhead fry into the drainage above a particular rate did not result in any further increases in the density of juvenile steelhead, indicating the streams' carrying capacity had been reached. Not surprisingly, one of the primary determinants of carrying capacity in streams is the quantity and quality of streamflow. That, along with several other components of rearing habitat that factor into its creation and maintenance are discussed below.

### **3.3.1 Streamflow**

As in spawning, streamflow is the primary determinant of a number of specific factors that contribute to defining suitable rearing habitat. These factors include but are not limited to water depth, water velocity, pool volume, water temperature, dissolved oxygen, substrate quality, and in many instances, physical structure and habitat such as large woody debris (LWD). These factors can be divided similarly to those for spawning into those imparting a quantitative effect and those that are qualitative.

The amount of flow in a river has a direct influence on the distribution and quantity of water depths and associated velocities that are most often utilized by fry and juvenile salmonids. Chapman (1966) considered velocity to be perhaps the most important of the two factors, noting that without suitable velocities, no fish will be present. Studies have shown that fry of salmon and trout typically utilize velocities less than 0.3 ft/sec (Chapman and Bjornn 1969; Everest and Chapman 1972; Griffith 1972). As fish grow, they become stronger and are often associated with higher water velocities (Smith and Li 1983). Shifts in velocity usage by fish have been observed seasonally, presumably in response to water temperature changes. The shifts are generally from higher velocities in the summer feeding periods to lower velocities during the winter holding periods (Chisholm et al. 1987; Tschaplinski and Hartman 1983).

Water depths used by fry and juveniles can be quite variable depending on the factors associated with such depths, e.g., substrates, cover, food, velocity, predator density. Newly hatched fry often utilize the extreme edge habitats of a stream where velocities are low and there are few predators. As fish grow they are capable of using deeper waters with limits of use generally related to some other interrelated parameter such as water velocity. Bjornn and Reiser (1991) noted that some salmonids are found in higher densities in pools than other habitat types as a result of space availability. Again, there are probably other factors acting to regulate such densities, for example the presence of LWD or overhanging vegetation can have a direct, positive benefit on increasing the carrying capacity of a given pool. Conceptually, streamflow can and does regulate the carrying capacity of rearing habitats as illustrated in Figure 3-2. Under suitable/normal conditions, the rearing areas encompassing pool:run:riffle habitats will afford living space for a certain density of fish as set by the limits of food availability, space, cover, and water quality characteristics. Reductions in flow concomitantly can translate into reductions in certain of those parameters which result in a reduced carrying capacity, as has been demonstrated experimentally by White et al. (1981).

Qualitatively, the amount of discharge in a stream has similar effects on rearing habitat as for spawning habitats. When high flows occur during the normal runoff cycle, they transport



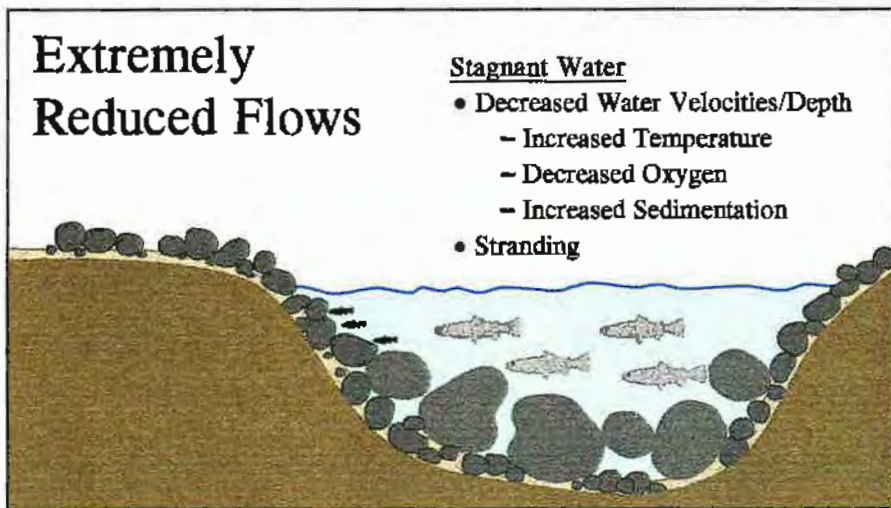
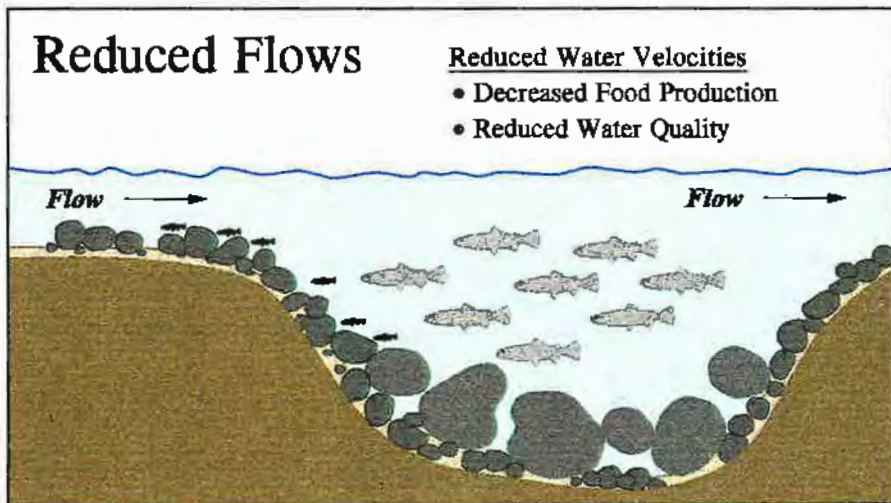
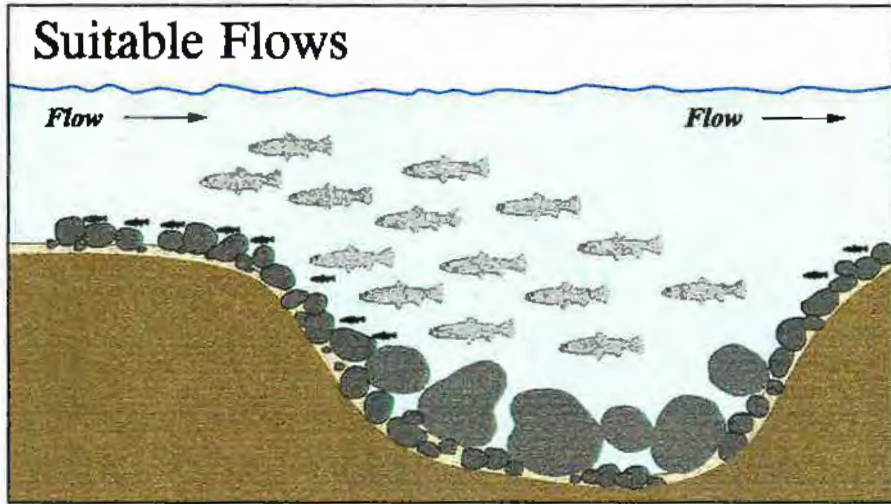


Figure 3-2. Conceptual diagram of salmonid rearing habitat illustrating concept of carrying capacity as it relates to streamflow quantity.

sediments from pools (maintain rearing space) and riffle habitats (maintain food production areas), move and recruit new structure into the channel (e.g., LWD, boulders), and inundate important riparian and floodplain vegetation that serve to increase bank stability, provide shade and contribute allochthonous (out of stream) materials/nutrients to the stream. Additionally, as discussed below, the high flows provide an avenue for the downstream migration of smolts and sub-yearling fish.

### 3.3.2 Water Temperature

Water temperature has a direct influence on the survival and growth of fry and juvenile salmon and trout. Temperatures in rearing habitats can vary daily, seasonally, annually, and spatially, with the degree of variation often associated with an anthropogenic impact such as logging (removal of forest canopy) or irrigation withdrawals (flow depletion). Bjornn and Reiser (1991) reviewed the literature on temperature effects on juvenile salmonids and compiled data that describe lower lethal, upper lethal, and preferred temperatures of various trout and salmon species. In general, the upper lethal temperatures for species of fish found in streams in the Project Area ranged from about 23°C for cutthroat trout to about 26°C for chinook salmon. Water temperatures influence the behavior of salmonids, most notably in the fall and winter months. During these periods, juvenile salmon and steelhead have been observed moving into large substrate materials for cover and overwintering habitat. Bjornn (1971) observed young steelhead and chinook moving out of summer rearing areas downstream into the larger Salmon River to overwinter. Bjornn (1971) observed some of the chinook salmon moving downstream into the Snake River to overwinter prior to continuing their outmigration to the ocean during the following spring.

Water temperatures are influenced by the quantity of discharge in streams and rivers. Thus, water withdrawals that remove a substantial amount of flow can impart large changes (increase temperatures) to the downstream thermal regime of a river. Based on my review of information and my familiarity with the streams in the Project Area, I would expect such changes to have already been imparted to rivers in regions having extensive irrigation diversions, such as the Lemhi and Pahsimeroi rivers in the Salmon River drainage, and the Weiser River.

### 3.3.3 Cover – Riparian Vegetation

There are a broad range of physical features that individually and collectively can afford cover to fry and juvenile salmon and trout. These include such things as substrate (e.g., boulders and cobbles), water depth, water turbulence, turbidity, and the more tangible items such as fallen logs (i.e., LWD) and branches, overhanging vegetation, and undercut banks. In Idaho's forested

streams and rivers, there is a strong linkage between the availability of cover in the form of LWD and the surrounding riparian vegetation. The importance of LWD as cover has been demonstrated in a number of studies which have shown reductions in salmon production in a given stream in response to reductions in LWD (Dollof 1983; Bisson et al. 1987). Hicks et al. (1991) noted that the abundance of salmonids is often closely linked to the abundance of woody debris, especially in the winter, as reported by Tschaplinski and Hartman (1983) and Murphy et al. (1986).

Vegetative communities that border streams and rivers are typically referred to as riparian vegetation. These communities provide a variety of important elements that contribute to a healthy ecosystem that can sustain salmon and trout production. Obvious benefits include shading from solar input (thereby keeping water temperatures cool), cover for salmon and trout in the form of overhanging vegetation, recruitment of both LWD and smaller debris which serves as cover, input of what is termed "leaf litter" (i.e., deciduous leaf fall, conifer needles) and other organic materials that provide nutrient input (for invertebrate production) to the stream, bank stability and therefore decreased erosion, and sources of terrestrial insect input which serves as a food supply (Murphy and Meehan 1991; Platts 1991). There are many land-use activities that can directly destroy or reduce the effectiveness of riparian vegetation. These include livestock grazing, agricultural land development, logging (buffer zones are generally required in all commercially logged forests), road construction, mining, and regulation of streamflows.

The regulation and reduction of streamflows can alter the vegetative communities (density, diversity, species composition) within the riparian zone, in some cases resulting in the complete collapse of the native riparian plant communities (Rood et al. 1995; Scott et al. 1997, Stromberg and Patten 1991). The long-term health of native riparian plant communities depends on flood flows to recharge alluvial aquifers, provide sites for seedling establishment, transport and deposit seeds on the floodplain, and replenish nutrients in floodplain soils. Sufficient in-channel flows are often also important for maintaining the alluvial aquifer within or near the rooting zone of riparian plants through the growing season. Riparian species are typically hydrophytic plants (i.e., occur in soils saturated or inundated for extended periods during the growing season), and require relatively high levels of soil moisture throughout the growing season, in contrast to adjacent upland plant communities. As a result of the various flow needs of the riparian zone, reduction in the frequency and magnitude of flood flows or reduced in-channel flows can cause the riparian zone to become smaller (both in width and in stature), less diverse, or even eliminated. All of these effects on the riparian zone in turn have negative consequences for fish habitat due to increases in water temperature, reductions in cover, and lower or altered trophic inputs. This is illustrated in Figure 3-3.

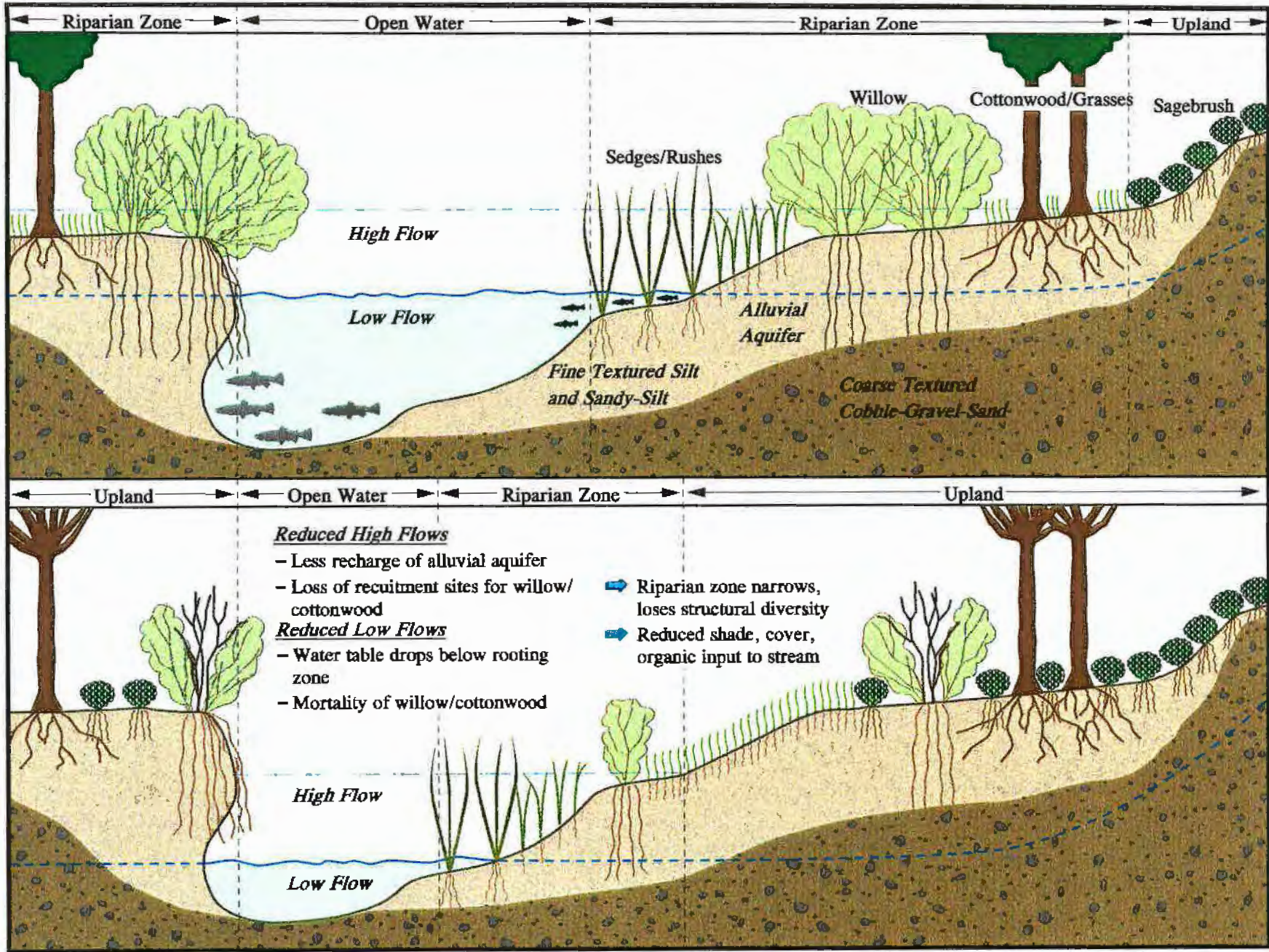


Figure 3-3. Relationship of high and low flows to riparian plants and soils under natural flow regime (above) and reduced flow regime (below) showing potential effects of reduced flows.

### 3.3.4 Food Production

Food production is of course critical to the rearing phase of salmonids, inasmuch as this stage represents the period of initial growth that will determine the fitness of the fish for surviving the downstream migration to the ocean or locations in the mainstem river. Food production is really an oversimplification of the overall energy supply and processing cycle that occurs in all streams and rivers. Two sources of energy are provided to streams, those that occur internal to the stream (termed autochthonous), and those that occur from outside the stream (allochthonous) (Hynes 1970; Murphy and Meehan 1991). Examples of the former include the macrophytes, periphyton (e.g., algae) and phytoplankton that rely on photosynthesis; examples of the latter include leaf litter and other organic materials entering from the riparian zones, soil erosion, and to some extent materials entering from the groundwater (Murphy and Meehan 1991). Collectively, these sources of materials when in sufficient quantity provide the necessary ingredients for the production of a complex community of benthic (bottom dwelling) organisms that include aquatic invertebrates such as mollusks, worms, crustaceans, and perhaps most importantly, aquatic insects. The invertebrate communities in streams are comprised of a diverse assemblage of organisms that vary in size, shape, color, feeding habits, and method of motility. Fry and juvenile salmon and trout actively feed and rely on these organisms for necessary growth. Factors that influence either or both autochthonous and allochthonous production will also affect food production and the quality of rearing habitats available to young fish.

### 3.4 JUVENILE AND SMOLT DOWNSTREAM PASSAGE

Characteristic of salmon and steelhead and stocks of fluvial and adfluvial trout and char is a period during which juvenile fish begin a directed movement downstream. In the case of salmon and steelhead, this process is preceded and triggered by physiological changes occurring in the fish that are known as smoltification, a process that is essentially readying the fish for transition to salt water. For non-anadromous fish, physiological changes may not be evident, but there is nevertheless a directed movement downstream.

In unregulated streams in Idaho, the timing of the seaward migration of salmon and steelhead has apparently evolved in concert with the cycle of runoff from adjoining mountains and hills, and has done so as a means to increase the survival rates of the fish. The outmigration typically occurs during the spring and for most stocks of fish in Idaho, in the months of March-May (see Appendix B – species periodicities). As noted earlier, the high flows that occur during this period likely benefit the survival of smolts in both a direct and indirect manner. The high flows allow the smolts to conserve energy since most of the “work” is done by the stream in the form of kinetic energy. This can have a direct influence on the smolt travel time and its ultimate

condition when it reaches the ocean and its ability to survive the transition to saltwater. The increased turbidities that are generally associated with high flows also afford the smolts protection from predators during downstream passage. These and other benefits associated with high flows during passage can affect the travel time of smolt passage, as has been demonstrated by the IDFG (Buettner 1991; Buettner and Brimmer 1993; Kiefer and Forster 1991) for selected Idaho streams.

In streams whose flows have been regulated (e.g., dam construction-creation of reservoirs; transbasin diversions of water; large irrigation withdrawals, etc.), the downstream passage of smolts and juveniles can be adversely affected. In cases where a dam has been constructed and a large reservoir formed (such as the dams on the Snake and Columbia rivers), the smolts have a difficult time locating velocity cues to guide them down through the reservoir. This increases their passage time and renders them more susceptible to predation. In addition, too long of a delay can reduce or eliminate their instinct to migrate and the fish may simply cease migration and take up residency (i.e., residualize) in one of the reservoirs. Clearly, the problems associated with dam construction and operation and smolt outmigration survival will continue to be investigated at the mainstem Snake and Columbia river dams with the goal of making a recommendation as to the continued operation of the mainstem dams by 1999, as a part of the recovery process mandated by the ESA.

That mainstem river flows during the emigration period of smolts can influence subsequent adult returns was demonstrated by Petrosky (1993) for the Snake River. In that study, Petrosky (1993) detected a trend suggesting better smolt-to-adult returns occurred when river flows were high. The efficacy of short-term pulse flows as stimulators for downstream movement of juvenile salmon, has been receiving increasing evaluation. Cramer and Demko (1993) conducted short-term pulse flow tests in the Stanislaus River in California and concluded that such flows did stimulate the outmigration of some juvenile chinook salmon, but not on a sustained basis. They further concluded that the stimulus for outmigration is at least in part controlled by the size of the fish and its physiological readiness to outmigrate. Two of the major factors that have been cited as influencing this physiological readiness of juveniles to commence outmigrations are photoperiod (the duration of daylight hours; Bjornn 1971), and water temperature (Jonsson and Ruud-Hansen [1985] as cited in Bjornn and Reiser [1991]). Recent tests conducted on the Green River, Washington below Howard Hanson Dam indicated that the release of artificial freshets had a positive influence on the outmigration of juvenile chinook salmon (Unpublished data from R2 Resource Consultants, Inc.; P. Hilgert and E. Jeanes, 1998). Such tests further illustrate the importance of streamflow to the outmigration of salmonid juveniles and smolts.

The ISG (1996) conducted a critical review of the literature and data pertaining to juvenile outmigration survival for the Columbia River ecosystem. Their analysis indicated that the relationship between flow and survival of juvenile salmonids is exceedingly complex, and can be influenced by a variety of factors, including water temperatures, predation responses to flows, biotic relationships associated with riparian and reservoir ecosystems, turbidity, and gas supersaturation. As a means to integrate all of these components into a healthy ecosystem, the ISG (1996) promoted the concept of a "normative" river system, which fundamentally suggests that regulated rivers such as the Snake and Columbia should be managed in a fashion as close as possible to that of unregulated systems. As noted by the ISG (1996),

"The many interrelated features of a river system that lead to high salmonid production occur normally in a river basin unaffected by human alterations." "By restoring key features of the system such as seasonal high flows and recognizing key migration attributes of juvenile salmon (such as surface orientation, need for feeding habitats and appropriate food, and tendency to follow flows), aspects of the river basin can be managed or reengineered to accommodate the key functional features."

An integral component of the normative river concept is variability. The ISG (1996) suggests that

"The most favorable flow strategy for a diverse assemblage of salmonids would be one that varies, favoring some stocks at one time and other stocks another time. In the normative river concept, this variability should mimic natural variability, although replacing a climate-driven variability with a planned one....."

Under this construct, the flow regime in regulated systems should be managed in a fashion that promotes and closely approximates key functions of natural river ecosystems, while the goal of managing unregulated systems should be focused on preservation of the key functions of the natural regime.

#### **4. IMPORTANCE OF HABITAT LINKAGES TO U&A FISHING PLACES FOR PROVIDING SUSTAINABLE FISHERIES**

The life history strategies that I have reviewed and summarized in this report include those of both anadromous and non-anadromous forms. The strategies and habitat requirements are necessarily complex and were manifest in direct response to the inherently variable environmental conditions that have occurred over the tens to hundreds of thousands, indeed millions of years, during which the different species and stocks of fish have evolved. As noted above, this has created several, oftentimes overlapping life history strategies which are collectively designed to reduce population risk and increase population survival. The strategies require that populations utilize a mosaic of habitat forms and types in order to achieve the greatest chances for survival. Clearly, measures that will ensure the long term sustainment and maintenance of the different species should be directed at protecting the full range of habitat conditions and types to which the species have evolved. The instream flow claims developed for streams and rivers in the SRBA were formulated to provide for such conditions as well as protect the variability of those conditions to which the species have evolved.

From this review, I have concluded that fulfillment of the Nez Perce Tribe's treaty rights to harvest fish from U&A fishing places requires more than just suitable habitat conditions within the immediate areas of the U&A. Indeed, because of the differing life history strategies and species-life stage reliance on a variety of habitat types, the need exists to protect all habitats that factor prominently into the species life cycle. This includes habitats that may be located upstream from specific U&A places, including streams within the upper segments of a given watershed. The provision of flows that will spatially and temporally protect the full range of habitats needed to protect all life history stages of important fish populations was the primary reason we developed the instream flow claims for streams in the Project Area. It is my opinion that if the instream flow claims are adjudicated and implemented, such habitats will be protected in perpetuity.



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**APPENDIX A**

**FISH DISTRIBUTIONS MAPS**

**Coho Salmon  
Sockeye Salmon  
Redband/Rainbow Trout  
Westslope Cutthroat Trout  
Bull Trout**

# Fish Species Distribution - Sockeye Salmon (*Oncorhynchus nerka*)

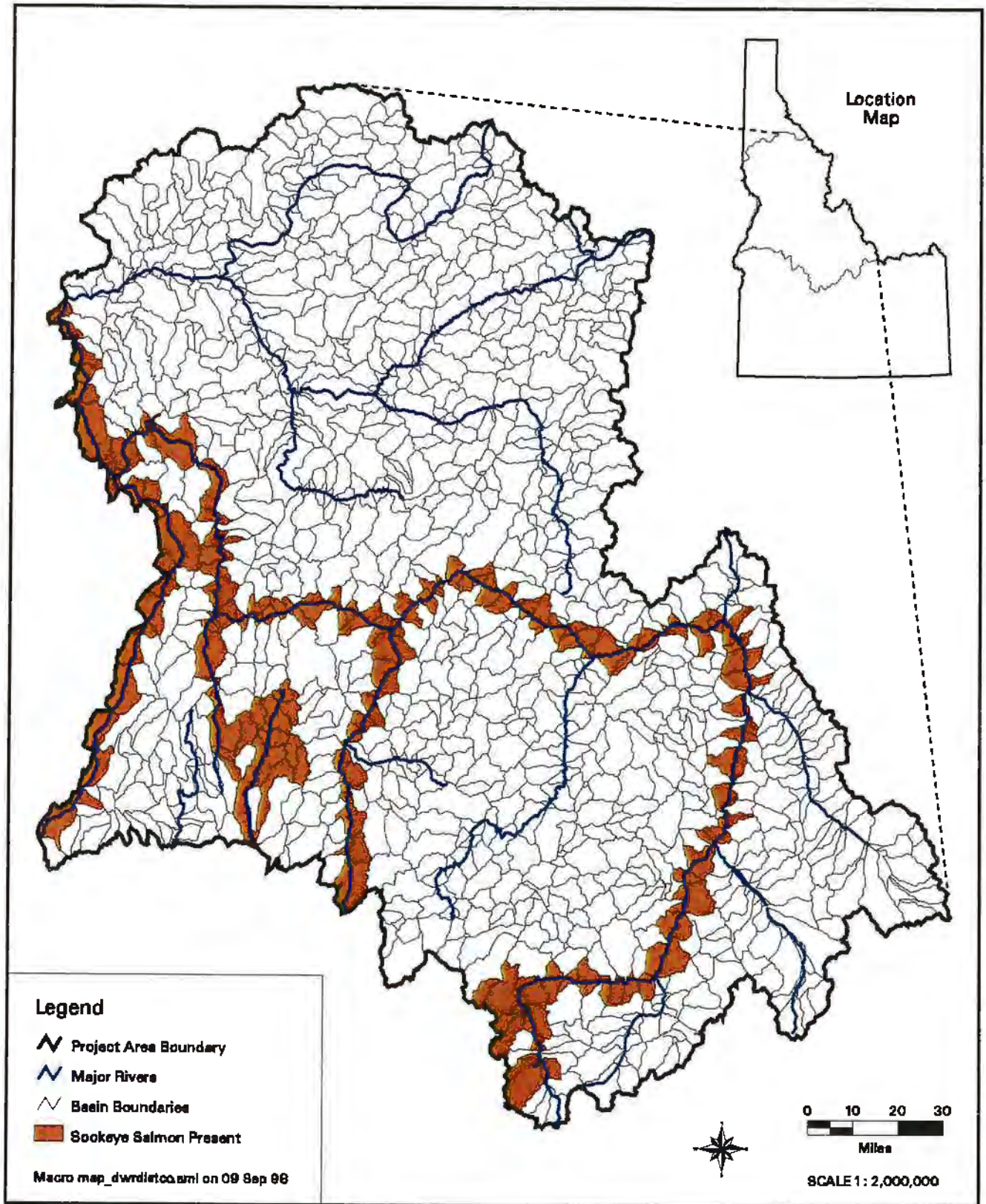


Figure A-1. Distribution of sockeye salmon in the Snake, Salmon, and Clearwater river basins, Idaho.

# Fish Species Distribution - Coho Salmon (*Oncorhynchus kisutch*)

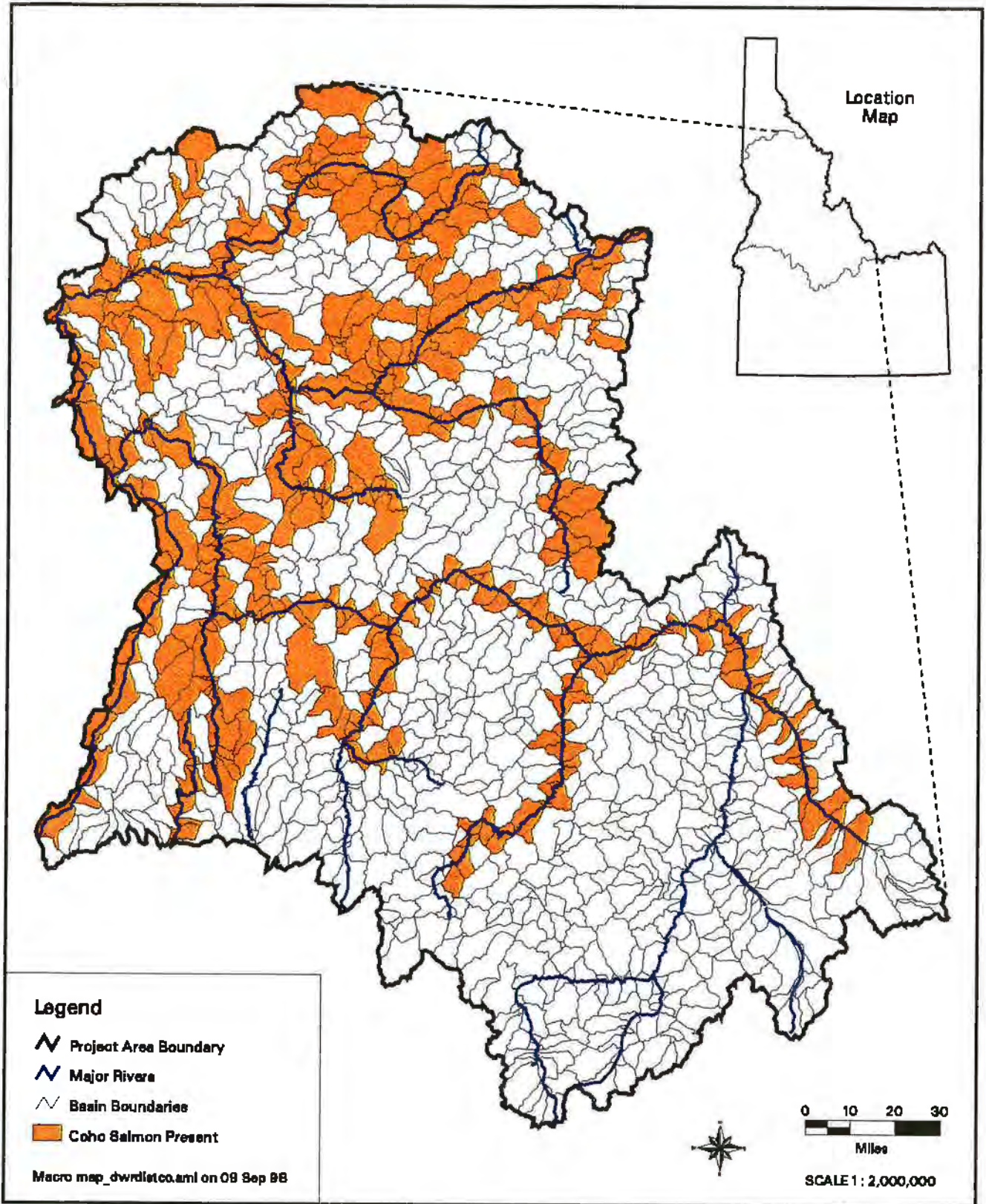


Figure A-2. Distribution of coho salmon in the Snake, Salmon, and Clearwater river basins, Idaho.

# Fish Species Distribution - Redband/Rainbow Trout (*Oncorhynchus mykiss*)

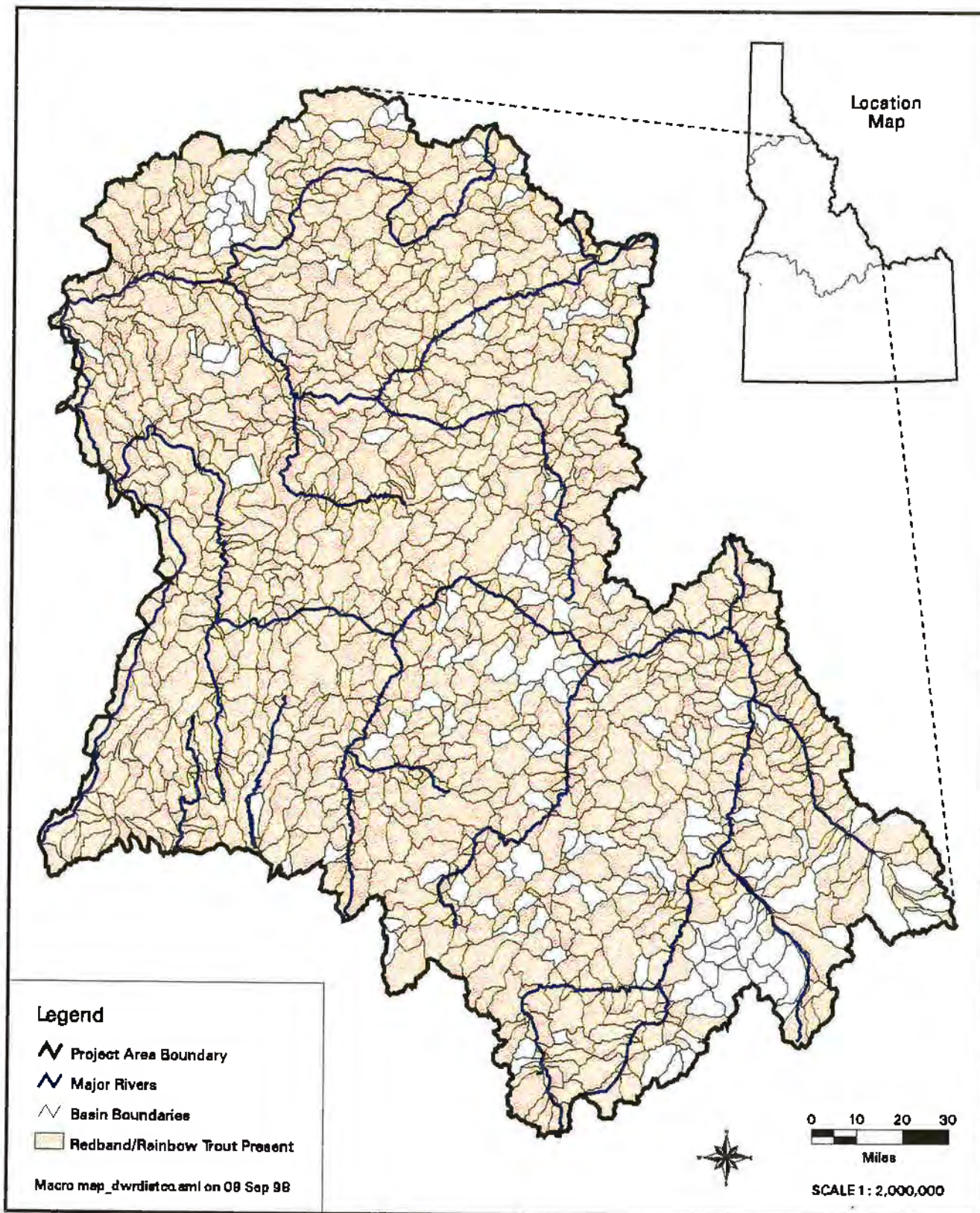


Figure A-3. Distribution of redband/rainbow trout in the Snake, Salmon, and Clearwater river basins, Idaho.



# Fish Species Distribution - Cutthroat Trout (*Oncorhynchus clarki*)

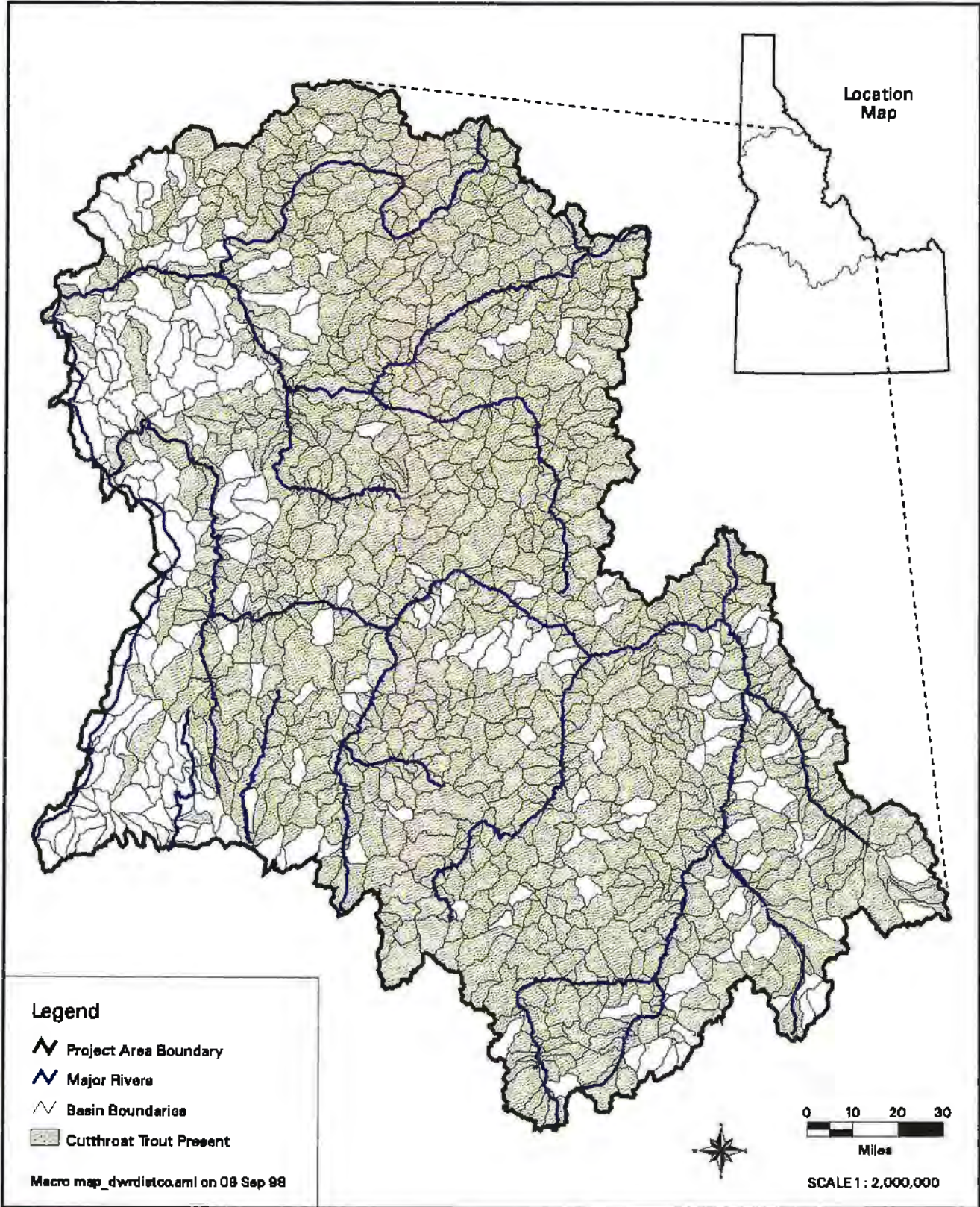


Figure A-4. Distribution of cutthroat trout in the Snake, Salmon, and Clearwater river basins, Idaho.

# Fish Species Distribution - Bull Trout (*Salvelinus confluentus*)

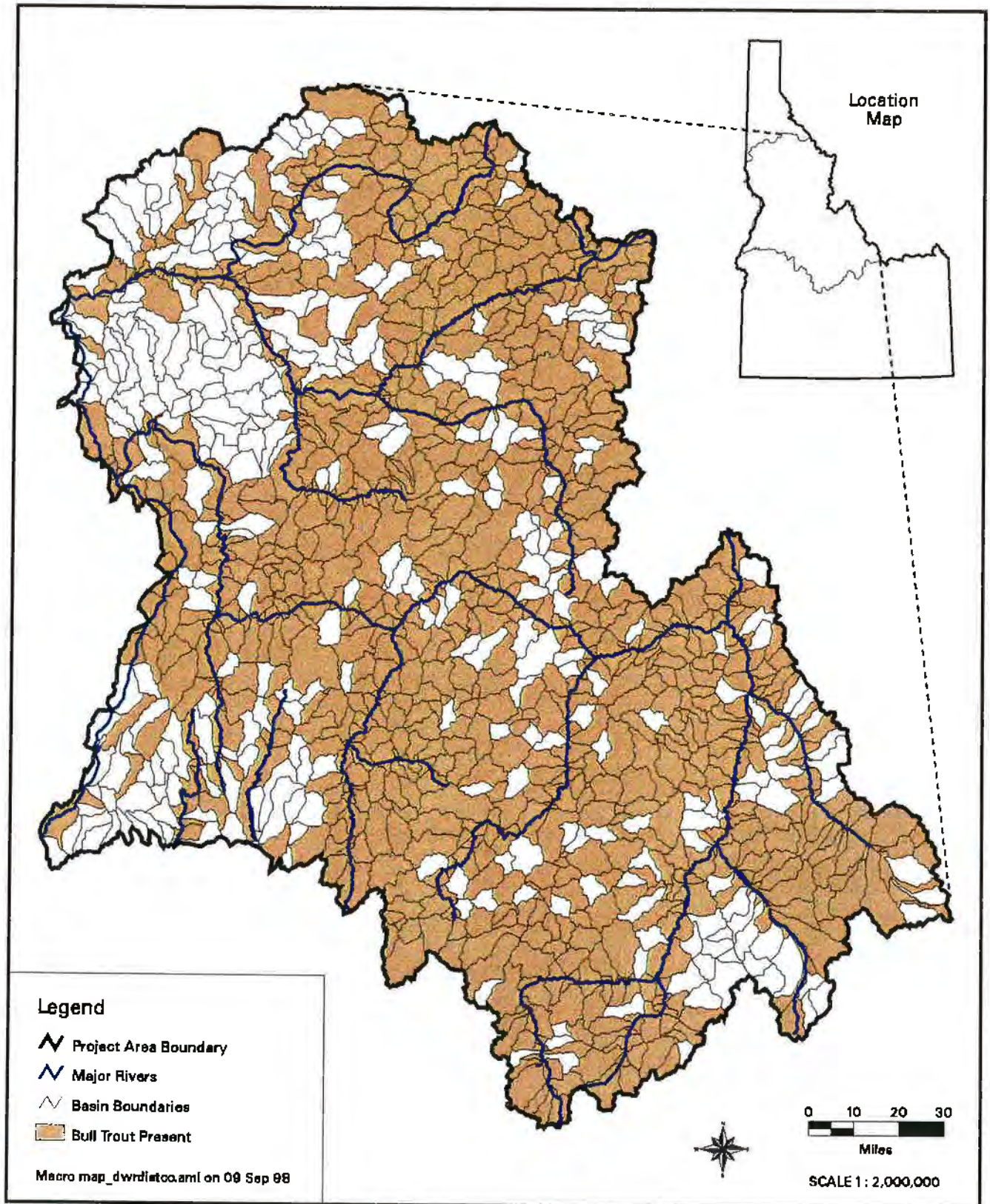


Figure A-5. Distribution of bull trout in the Snake, Salmon, and Clearwater river basins, Idaho.

**APPENDIX B  
FISH PERIODICITIES**

**List of Species**

# BULL TROUT

ALL BASINS

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning									TR3	TR3		
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Found only in 1st to 3th order tributary streams.

MSH: At altitudes above 3,000 ft., adults found only in 2nd order and larger streams.

## CHINOOK SALMON BY RACE CLEARWATER RIVER SUB-BASIN

**Spring Chinook Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult					TR3							
Spawning							TR4*	TR4*	TR4*			
Incubation												
Fry												
Juvenile												
Outmigrate												

**Summer Chinook Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning							TR5	TR5	TR5			
Incubation												
Fry												
Juvenile												
Outmigrate												

**Fall Chinook Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning												
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Found in 3rd order or greater streams only  
 TR4\*: Spawn in 1st to 4th order basins, plus some 5th order basins.  
 TR5: Spawn in 1st to 5th order basins.

**CHINOOK SALMON BY RACE**  
**SNAKE, LOWER AND SOUTH FORK SALMON RIVER, LITTLE SALMON**  
**WEISER, and PAYETTE RIVER SUB-BASINS**

**Spring Chinook Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning							TR4	TR4	TR4			
Incubation												
Fry												
Juvenile												
Outmigrate												

**Summer Chinook Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning							TR4	TR4	TR4			
Incubation												
Fry												
Juvenile												
Outmigrate												

## CHINOOK SALMON BY RACE

### UPPER AND MIDDLE FORK SALMON RIVER SUB-BASINS

Spring Chinook Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning							TR4	TR4	TR4			
Incubation												
Fry												
Juvenile												
Outmigrate												

Summer Chinook Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning							TR4	TR4	TR4			
Incubation												
Fry												
Juvenile												
Outmigrate												

TR4: Spawn only in 1st to 4th order tributary streams.

# FALL CHINOOK SALMON

## SNAKE RIVER SUB-BASIN

Fall Chinook Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult									■	■	■	■
Spawning										■	■	■
Incubation	■	■	■	■	■					■	■	■
Fry				■	■	■	■					
Juvenile							■	■				
Outmigrate					■	■	■	■				

## LOWER SALMON RIVER SUB-BASIN

(NOT PRESENT IN LITTLE SALMON, MF SALMON, UPPER SALMON, WEISER, PAYETTE)

Fall Chinook Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult									■	■	■	
Spawning										■	■	
Incubation	■	■	■	■	■					■	■	■
Fry						■						
Juvenile							■	■				
Outmigrate					■	■	■	■				

TR4\*: Spawn in 1st to 4th order basins.



# COHO SALMON ALL BASINS

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning										TR3	TR3	
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Spawn only in 1st to 3rd order tributary streams.

## CUTTHROAT TROUT CLEARWATER RIVER SUB-BASINS

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning				TR3	TR3	TR3						
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Spawn only in 1st to 3rd order tributary streams.

MSH: At altitudes above 3,000 ft., adults found only in 2nd order and larger streams.

**CUTTHROAT TROUT**  
**UPPER, MIDDLE, AND SOUTH FORK SALMON RIVER,**  
**LITTLE SALMON, WEISER and PAYETTE SUB-BASINS**

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning					TR3	TR3	TR3					
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Found only in 1st to 3rd order tributary streams.

MSH: At altitudes above 3,000 ft., adults found only in 4th order and larger mainstem rivers.

**CUTTHROAT TROUT**  
**SNAKE AND LOWER SALMON RIVER SUB-BASINS**

**Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning			TR3	TR3	TR3	TR3						
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Spawn only in 1st to 3rd order tributary streams.

MSH: At altitudes above 3,000 ft., adults found only in 2nd order and larger streams.

**REDBAND/RAINBOW TROUT**  
**UPPER, SOUTH FORK, AND MIDDLE FORK SALMON RIVER SUB-BASINS**  
 (Plus French Creek and Little French Creek)

**Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning				TR3	TR3	TR3						
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Found only in 1st to 3rd order tributary streams.

MSH: At altitudes above 3,000 ft., adults found only in 2nd order and larger mainstem streams.

**REDBAND/RAINBOW TROUT**  
**SNAKE AND LOWER SALMON RIVER SUB-BASINS**

(d/s of S. Fk. Salmon River)

**Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning			TR3	TR3	TR3							
Incubation												
Fry												
Juvenile												
Outmigrate												

MSH: At altitudes above 3,000 ft., adults found only in 2nd order and larger streams.

TR3: Spawn only in 1st to 3th order streams.

**REDBAND/RAINBOW TROUT**  
**UPPER CLEARWATER RIVER SUB-BASINS**  
(u/s of Lawyer Cr.)

**Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning				TR3	TR3	TR3						
Incubation												
Fry												
Juvenile												
Outmigrate												

MSH At altitudes above 3,000 ft., adults found only in 2nd order and larger streams.

TR3: Spawn only in 1st to 3th order streams.

\* Exclusions to this group include certain Cottonwood Cr., Threemile Cr., and Butcher Cr. drainage basins.

\*Includes certain N. Fk. Clearwater River and Lolo Cr. drainage basins.

**REDBAND/RAINBOW TROUT**  
**LOWER CLEARWATER RIVER SUB-BASINS\***

(d/s of Lawyer Cr.)

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MSH	MSH									MSH	MSH
Spawning			TR3	TR3	TR3							
Incubation												
Fry												
Juvenile												
Outmigrate												

MSH: At altitudes above 3,000 ft., adults found only in 2nd order and larger streams.

TR3: Spawn only in 1st to 4th order streams.

\* Exclusions to this group include certain N. Fk. Clearwater River and Lolo Cr. drainage basins.

\* Includes certain Cottonwood Cr., Threemile Cr., and Butcher Cr. drainage basins.



## SOCKEYE SALMON UPPER SALMON RIVER SUB-BASINS

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning									TR3	TR3	TR3	
Incubation												
Fry												
Juvenile												
Outmigrate												

TR3: Found only in 1st to 3rd order tributary streams.

Note: No adult or fry S.I. curves are available for sockeye.

\*Spawning, Incubation and Fry only in selected basins.

**STEELHEAD TROUT**  
**UPPER CLEARWATER RIVER SUB-BASINS**  
 (u/s of Lawyer Cr.)

**Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning				TR4	TR4	TR4						
Incubation												
Fry												
Juvenile												
Outmigrate												

MS: Found only in 4th order and larger mainstem rivers.

TR4: Spawn only in 1st to 4th order streams. (Plus portions of mainstem M.F. Clearwater River reaches)

\* Exclusions to this group include Cottonwood Cr., Threemile Cr., and Butcher Cr. drainage basins.

\*Includes the N. Fk. Clearwater River and Lolo Cr. drainage basins.

**STEELHEAD TROUT**  
**MIDDLE, SOUTH FORK, LITTLE SALMON RIVER,**  
**WEISER RIVER AND N.F. PAYETTE RIVER SUB-BASINS**

(Plus French Creek & Little French Creek )

**Periodicity Table**

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MS	MS							MS	MS	MS	MS
Spawning				TR4	TR4	TR4						
Incubation												
Fry												
Juvenile												
Outmigrate												

MS: Found only in 4th order and larger mainstem rivers.

TR4: Spawn only in 1st to 4th order streams.

# STEELHEAD TROUT

## UPPER SALMON RIVER

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult												
Spawning				TR4	TR4	TR4						
Incubation												
Fry												
Juvenile												
Outmigrate												

TR4: Spawn only in 1st to 4th order streams.

## STEELHEAD TROUT SNAKE RIVER & LOWER SALMON RIVER SUB-BASINS

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MS	MS							MS	MS	MS	M6
Spawning			TR4	TR4	TR4							
Incubation												
Fry												
Juvenile												
Outmigrate												

MS: Found only in 4th order and larger mainstem rivers.  
 TR4: Spawn only in 1st to 4th order streams.

**STEELHEAD TROUT**  
**LOWER CLEARWATER RIVER SUB-BASINS\***  
(d/s of Lawyer Cr.)

Periodicity Table

Life Stage	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Adult	MS	MS							MS	MS	MS	MS
Spawning			TR4	TR4	TR4							
Incubation												
Fry												
Juvenile												
Outmigrate												

MS: Found only in 4th order and larger mainstem rivers.

TR4: Spawn only in 1st to 4th order streams.

\* Exclusions to this group include certain N. Fk. Clearwater River and Lolo Cr. drainage basins.

\* Includes some Cottonwood Cr., Threemile Cr., and Butcher Cr. drainage basins.

Nez Perce Tribe

**Attorney Name & Address:**

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1506 Broadway  
Boulder, CO 80302-6926  
(303) 440-9801

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA                                )  
  )  
  )  
  )  
**Case No. 39576**                            )

Subcase Nos. 03-10022 (Consolidated)  
(Nez Perce Tribe Instream Flow Claims)

**AFFIDAVIT OF DENNIS C. COLSON**

STATE OF IDAHO )  
  )ss.  
County of Latah )

DENNIS C. COLSON, BEING first duly sworn upon oath hereby  
states as follows:

1. My name is Dennis C. Colson, and I have prepared the  
report attached hereto titled THE LEGAL HISTORY OF NEZ PERCE  
TREATY FISHING. See Exhibit 1.

2. I am presently employed as a Professor of Law at the  
University Of Idaho College of Law. I was appointed Associate  
Professor in 1975 and promoted to Professor in 1978. Before the

appointment at the University of Idaho I was awarded the Juris Doctorate (*summa cum laude*) from the University of Denver College of Law, admitted to the bar and practiced in California and Colorado and a member of the University of Toledo School of Law Faculty. See Exhibit 2.

3. Since arriving at the University of Idaho my teaching and scholarship have concentrated upon the legal history of the region. Oliver Wendell Holmes, Jr. noted in *The Common Law* that "The life of the law has not been logic: it has been experience. . . . The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics." My work has taken a cue from Holmes' wisdom and emphasizes the experience or history of the law. This has meant researching and interpreting legal subjects using materials and methods that are often ignored in the discussion about the logic of the law. The legal history of the Nez Perce Tribe and the Nez Perce Treaties are subjects that I have worked on frequently and extensively for over twenty years. See Exhibit 2.

4. I am presently completing a book titled *The Nez Perce Treaties* which is to be published by Confluence Press of Lewis-Clark State College. "A Secure Right to Fish and Hunt" is one section of the manuscript. Steven Moore from The Native American Rights Fund and Heidi Gudgell from the Office of Legal Counsel for the Nez Perce Tribal Executive Committee requested me to prepare a report on the legal history of Nez Perce treaty



fishing, using work done to date on the manuscript and doing any additional research that was necessary. Exhibit 1 is a draft of that report.

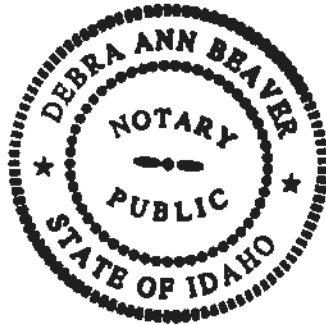
5. I have testified as an expert on the legal history of the Nez Perce Treaties on one prior instance, at the request of the United States in *United States v. Scott*, Case No. CR98-01-N-EJL, at a hearing on June 11, 1998.

Dennis C. Colson  
Dennis C. Colson

August 9, 1998  
August 9, 1998

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public for the State of Idaho, the day and year last above written.

SEAL



Debra Ann Beaver  
Notary Public, State of Idaho  
COMMISSION EXPIRES 7/15/2003

**THE LEGAL HISTORY**  
**OF**  
**NEZ PERCE TREATY FISHING**

A REPORT PREPARED BY  
DENNIS C. COLSON

INTERIM DRAFT  
SEPTEMBER 8, 1998

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## § 1. THE TREATY CLAUSES

### ARTICLE III, 1855 WALLA WALLA TREATY

12 Stat. 957

¶ 1. And provided that, if necessary for the public convenience, roads may be run through the said reservation, and, on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them, as also the right, in common with citizens of the United States, to travel upon all public highways. The use of the Clear Water and other streams flowing through the reservation is also secured to citizens of the United States for rafting purposes, and as public highways.

¶ 2. *The exclusive right of taking fish in all streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands.*

### ARTICLE VIII, 1863 LAPWAI TREATY

14 Stat. 647

~~¶ 3.~~ It is also understood that the aforesaid tribe do hereby renew their acknowledgments of dependence upon the Government of the United States, their promises of friendship, and other pledges, as set forth in the eighth article of the treaty of June 11, 1855; and further, that all the provisions of said treaty which are not abrogated or specifically changed by any article herein contained, shall remain the same to all intents and purposes as formerly, - the same obligations resting upon the United States, the same privileges continued to the Indian outside of the reservation, and the same rights secured to citizens of the U.S. as to right of way upon the streams and over the roads which may run through said reservation, as are therein set forth.

### ARTICLE XI, 1893 AGREEMENT

28 Stat. 327

¶ 4. *The existing provisions of all former treaties with said Nez Perce Indian not inconsistent with the provisions of this agreement are hereby continued in full force and effect.*

## § 2. SUMMARY OF REPORT

¶ 5. Article III of the 1855 Walla Walla Treaty is not a giving or granting of fishing rights, it is a securing or guaranteeing of the Nez Perce aboriginal title. In the years between 1787 and 1855 Indian title to their homelands had become firmly recognized in the jurisprudence of the United States.<sup>1</sup> The most well-known statement of this recognition was written by Chief Justice John Marshall in *Johnson v. McIntosh* (1823):

[The original inhabitants] were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion . . .

This right of occupancy included the right to fish.

¶ 6. From the earliest days of the Union treaties were used as the principal legal instrument by which the United States could purchase or acquire from Indian tribes their right to possess and use their lands. Pursuant to the United States Constitution these treaties were negotiated by the President with the advice and consent of the Senate, provided that two-thirds of the senators concurred. These treaties were the supreme law of the land, and binding upon the judges of every state notwithstanding anything in the Constitution or laws of any state to the contrary.

¶ 7. Congress first exercised jurisdiction over the Nez Perce homelands when it created Oregon Territory in 1848. At the same time it created Oregon Territory, Congress recognized the legal and just claim of the Nez Perce to occupy their lands. This was accomplished by extending the Northwest Ordinance to Oregon Territory and by expressly providing that

[N]othing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians.

The Washington Territory Organic Act passed in 1853 and other statutes also recognized Nez Perce title.

¶ 8. The first treaties in Oregon Territory were negotiated in 1851 and 1852.<sup>2</sup> The United States proposed to purchase the property of those tribes in western Oregon (especially the

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<sup>1</sup> See NEZ PERCE TITLE below at pp. 4-9.

<sup>2</sup> See THE OREGON TREATIES below at pp. 9-14.

Willamette Valley) and to remove the tribes to lands east of the Cascades. Those sent to negotiate the treaties discovered that the tribes would not remove from their homelands, and would not sign treaties unless their fisheries were guaranteed to them. Soon after creation of Washington Territory in 1853, Governor Isaac I. Stevens proposed to purchase by treaty lands from all the tribes in the Territory. Stevens and the Commissioners appointed to negotiate drafted a programme of treaty to be used in the various negotiations.<sup>3</sup> This model or template included a provision to protect tribal fisheries.

¶ 9. Governor Stevens and Governor Joel Palmer of Oregon Territory called for a council with many tribes to be held in the Walla Walla Valley in the spring of 1855.<sup>4</sup> Stevens proposed at the council that reservations be created in Nez Perce and Yakima country, and that the Cayuse, Walla Walla, Umatilla and other tribes remove from their homelands to those reservations. The Yakima had little enthusiasm for the proposal and the Cayuse and other tribes opposed it. Because the Nez Perce were the largest and most powerful tribe present, the outcome of the Council depended upon whether they would treaty with the United States or ally with their traditional allies. After Stevens proposed a third reservation for the Cayuse, Walla Walla and Umatilla and the Nez Perce declared in favor of the treaty, the various tribes agreed.

¶ 10. Fishing was one of the principal ways in which the Nez Perce used their lands and the waters that flowed through them.<sup>5</sup> Fish were an important source of food for the Nez Perce, and in addition had important religious, cultural and social significance. Just as with the other tribes in the Territory, Stevens had concluded that there would be no agreement without protection of the fisheries. As a result Stevens included the fishing clause in the treaty from the outset. Stevens and Palmer argued often during the Council that because protection for their fisheries was secured the tribes should be willing to cede lands.

¶ 11. Even though the Walla Walla Treaty was not ratified until 1859, the Nez Perce were faithful from the outset to their promise to remain friendly to the United States. When fighting between the Yakima and their allies and the United States flared in 1856, the Nez Perce provided essential protection and support to the United States. However, when gold was discovered on the Reservation in 1860 the United States reneged on its promise to protect the exclusive use of the Nez Perce. Instead it proposed to amend the Walla Walla Treaty by purchasing ninety percent of

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<sup>3</sup> See THE STEVENS PROGRAMME below at pp. 14-23.

<sup>4</sup> See WALLA WALLA COUNCIL below at pp. 23-39.

<sup>5</sup> See THE FISHING CLAUSE below at pp. 39-44.

the Reservation.<sup>6</sup> The Nez Perce refused to sell but were told if they persisted they would be declared enemies of the United States. In the face of this threat most of the Nez Perce leaders who lived within the reduced Reservation being proposed signed. Most of those who lived outside refused to sign, but were driven onto the Reservation anyway by the Nez Perce War of 1877. Even though the coercive policy of the United States prevented detailed bargaining with respect to the many provisions of the 1855 Treaty, the 1863 Treaty stated that all earlier provisions "not abrogated or specifically changed . . . shall remain the same to all intents and purposes as formerly."

¶ 12. Pursuant to the 1855 Treaty, the 1863 Treaty and the General Allotment Act, the Nez Perce Reservation was allotted between 1889 and 1893. A Commission was sent to purchase from the Nez Perce the unallotted lands within the Reservation.<sup>7</sup> Many tribal members were forced to sign the agreement in order to keep their homes. Many signed because they thought that if they refused the United States would open the Reservation and pay nothing. While reluctantly signing the Agreement, the Nez Perce insisted that the rights guaranteed by former treaties be retained.<sup>8</sup> As a result of this demand, Article 11 was added:

The existing provisions of all former treaties with said Nez Perce Indians not inconsistent with the provisions of this agreement are hereby continued in full force and effect.

When the Nez Perce proposed a specific clause to protect their fishing and hunting, the United States Commissioners stated that pursuant to Article 11,

[T]he right to hunt and fish will be just the same after this agreement is signed and ratified by Congress as it is now.

### § 3. NEZ PERCE TITLE

¶ 13. As viewed by the representatives of the United States and the Nez Perce Tribe who negotiated it, the 1855 Nez Perce Treaty was first and foremost a deed or settlement of property interests between the two. The ten substantive articles of the Treaty reflect this fact.<sup>9</sup> Eight of the ten are devoted to property matters: I is a cession by the Nez Perce; II is a reservation from the cession; III secures easements to the United States and fishing and other rights to the Nez Perce; VI provides

<sup>6</sup> See THE 1863 TREATY below at pp. 44-59.

<sup>7</sup> See COUNCILS below at pp. 59-64.

<sup>8</sup> See SAVING THE FISHING CLAUSE below at pp. 64-66.

<sup>9</sup> The last Article, 11, establishes the effective date of the Treaty.

for individual allotments; X secures property to William Craig; and IV, V and VII govern payments to the Nez Perce to compensate for their cessions. Only two articles relate to other subjects. Article VIII establishes friendly relations between the Nez Perce and the United States and other tribes; Article IX excludes from the Reservation ardent spirits.

¶ 14. The Treaty was written in this manner because by 1855 Nez Perce title to their aboriginal lands was recognized under the discovery principle which was deeply embedded in the jurisprudence of the United States.<sup>10</sup> From 1787 forward Congress<sup>11</sup> and the President pursued a course of recognizing Indian title and acquiring it by treaty. Chief Justice John Marshall stated the discovery principle in *Johnson v. McIntosh* (1824),<sup>12</sup> the first Indian law case decided by the United States Supreme Court. Marshall wrote:

[T]he rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle that discovery gave exclusive title to those who made it.

While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy.<sup>13</sup>

¶ 15. Chief Justice Marshall relied upon the same principle

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<sup>10</sup> The landmark essay on Indian title is Felix S. Cohen, *Original Indian Title*, 32 Minn L Rev 28 (1947).

<sup>11</sup> Congress established national policy in its first great act, the Northwest Ordinance of July 13, 1787:

Art. 3. . . . The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

<sup>12</sup> 21 U.S. (Wheat.) 542.

<sup>13</sup> *Id.* at 574.

again in *Worcester v. Georgia* (1932).<sup>14</sup> In the course of holding that the state of Georgia had to respect Cherokee title as secured by treaties with the United States, Marshall wrote:

1832 (corrected in 2/15)

This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements on it. It was an exclusive principle which shut out the right of competition among those [Europeans] who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell.<sup>15</sup>

¶ 16. The Supreme Court wrote this summary of the principles recognizing Indian title in *Mitchel v. United States* (1835)<sup>16</sup>:

One uniform rule seems to have prevailed from their first settlement, as appears by their laws; that friendly Indians were protected in the possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them as their common property from generation to generation, not as the right of the individuals located on particular spots.

Subject to this right of possession, the ultimate fee was in the crown and its grantees, which could be granted by the crown or colonial legislatures while the lands remained in possession of the Indians, though possession could not be taken without their consent.

Individuals could not purchase Indian lands without permission or license from the crown, colonial governors, or according to the rules prescribed by colonial laws; but such purchases were valid with such license, or in conformity with the local laws; and by this union of the perpetual right of occupancy with the ultimate fee, which passed from the crown by the license, the title of the purchaser became complete.

Indian possession or occupation was considered with

<sup>14</sup> 31 U.S. (6 Pet.) 515.

<sup>15</sup> *Id.* at 544.

<sup>16</sup> 34 U.S. (9 Pet.) 711.



reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way and for their own purposes were as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals. In either case their right became extinct, the lands could be granted disencumbered of the right of occupancy, or enjoyed in full domain by the purchasers from the Indians. Such was the tenure of Indian lands by the laws . . .<sup>17</sup>

The question of Indian title was before the Supreme Court again on the eve of the 1855 Nez Perce Treaty in *Choteau v. Molony* (1855).<sup>18</sup>

¶ 17. Pursuant to the principle of discovery, the United States acquired legal title to Nez Perce Country in 1792 when Captain Robert Gray "discovered" the mouth of the Columbia River. Great Britain immediately tried to establish a claim of discovery, and the contest for legal title began. Both nations tried to secure their claim by exploration and occupation with the help of explorers and fur trading. The region was governed jointly pursuant to treaty from 1824-1846. A provisional government operated for several years until Congress created Oregon Territory.<sup>19</sup>

¶ 18. The recognition of Indian (Nez Perce) title was written into the Oregon Territorial Organic Act passed August 14, 1848, in the second clause of the first section:

*Provided*, that nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed . . .<sup>20</sup>

Section 14 of the Act extended the 1787 Northwest Ordinance to the Territory. While all laws of the provisional government which were not inconsistent were made valid and operative, all laws respecting title to land were voided:

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<sup>17</sup> *Id.* at 746.

<sup>18</sup> 57 U.S. (16 How.) 203.

<sup>19</sup> Gordon B. Dodds, *Oregon* (Norton & Co., 1977) pp. 91-98.

<sup>20</sup> 9 Stat. 323.

. . . but all laws heretofore passed in said Territory making grants of land, or otherwise affecting or incumbering the title to lands, shall be, and are hereby declared to be, null and void . . .<sup>21</sup>

¶ 19. In addition to recognizing and protecting Indian title, the Oregon Territorial Act protected salmon in Oregon streams. Section 12 of the Act stated:

*And be it further enacted, That the rivers and streams of water in said Territory of Oregon in which salmon are found, or to which they resort, shall not be obstructed by dams or otherwise, unless such dams or obstructions are so constructed as to allow salmon to pass freely up and down such rivers and streams.*<sup>22</sup>

¶ 20. Two years later, on September 27, 1850, Congress passed the Oregon Donation Act<sup>23</sup> which granted to each white settler (American half-breed Indians included) 320 acres if that person had "resided upon and cultivated the same for four consecutive years" prior to December 1, 1850. If married the settler was to receive 640 acres. According to the principles of *Mitchel v. United States*,<sup>24</sup> these grants could not become effective until Indian title was extinguished.

¶ 21. On March 2, 1853 Congress passed the Washington Territory Organic Act. Just as the Oregon Act had done, the Washington Act protected Indian title and the power of the federal government to extinguish it:

*Provided, That nothing in this act contained shall be construed to affect the authority of the government of the United States to make any regulation respecting the Indians of said Territory, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed.*<sup>25</sup>

Section 6 denied to the territorial legislature any power to pass a law "interfering with the primary disposal of the soil."<sup>26</sup> Section 12 extended the federal and Oregon territorial laws to Washington Territory.

¶ 22. By the time Governors Stevens and Palmer wrote the

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<sup>21</sup> *Id.* at 329.

<sup>22</sup> *Id.* at 328.

<sup>23</sup> 9 Stat. 496.

<sup>24</sup> 34 U.S. (9 Pet.) 711 (1835).

<sup>25</sup> 10 Stat. 173.

<sup>26</sup> *Id.* at 175.

first draft of the 1855 Nez Perce Treaty, the United States had 65 years of experience dealing with Indian tribes. Recognition of Indian title was a fundamental principle in the executive, legislative and judicial branches of government. The following statements reflect this recognition. Palmer wrote to Commissioner Manypenny on October 8, 1853:

Experience moreover has taught us that settlement of a country, prior to the extinction of the native title to the soil is, in most cases attended with serious difficulties .

. . .<sup>27</sup>

Stevens wrote to Commissioner Manypenny on December 29, 1853:

The Indian title to lands east of the Cascade mountains should at once be extinguished . . . two measures I regard as of paramount importance -- the appointment of a surveyor-general . . . and the extinguishment of the Indian title.<sup>28</sup>

Commissioner Manypenny explained the need for the treaties to Congress:

With many of the tribes in Oregon and Washington Territories, it appears to be absolutely necessary to speedily conclude treaties for the extinguishment of their claim to the lands now or recently occupied by them.<sup>29</sup>

Acting Commissioner of Indian Affairs Charles E. Mix informed Isaac Stevens on August 30, 1854, that he had been delegated "to conduct the treaties of amity and acquisition."<sup>30</sup>

## § 4. THE ORIGIN OF THE 1855 FISHING CLAUSE

### THE OREGON TREATIES

¶ 23. The origins of the fishing and hunting clause of the 1855 Nez Perce Treaty can be traced back to a series of 19 treaties negotiated in western Oregon in 1851. John Lane, the first Oregon Territorial Governor, and Samuel Thurston, the first Oregon Territorial delegate to Congress, recommended that these treaties be negotiated for the purpose of removing those tribes west of the Cascades from their homelands to the eastern portion of the Territory. John Gaines, Chairman of the Treaty

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<sup>27</sup> Joel Palmer to George W. Manypenny, October 8, 1853.

<sup>28</sup> Isaac I. Stevens to George W. Manypenny, December 29, 1853.

<sup>29</sup> Communications from the Secretary of the Interior and the Commissioner of Indian Affairs to the Chairman of the Committee on Indian Affairs of the Senate, February 21, 1854.

<sup>30</sup> Charles E. Mix to Isaac I. Stevens, August 30, 1854.

Commission, and Anson Dart, the territorial Superintendent of Indian Affairs, attempted to negotiate the treaties but found that the tribes refused to cede any of their title unless they were able to remain in their homeland with protection for their fishing and hunting. Even though the Gaines-Dart treaties were never ratified by the United States, their negotiation created the framework and conditions for the Nez Perce Treaty negotiated at Walla Walla in 1855.

¶ 24. When the Oregon Territorial government was organized in March of 1849, John Lane was appointed Governor and ex-officio Superintendent of Indian Affairs. During his brief term Lane reported the complaints of those tribes living in the Willamette Valley, stating that in his view the tribes should be removed from the valley.<sup>31</sup> In July Lane recommended that the legislative assembly in Oregon memorialize Congress to removed the tribes from the Willamette Valley.<sup>32</sup> The assembly promptly passed the memorial.<sup>33</sup>

¶ 25. In 1849 Oregon Territory also elected Samuel R. Thurston to be the first territorial delegate to Congress.<sup>34</sup> Thurston was anxious to extinguish Indian title in the Territory. On February 1, 1850, Congress approved Thurston's resolution calling for the "extinguishment of the Indian title to all that part of Oregon Territory lying west of the summit of the Cascade Mountains."<sup>35</sup> These resolutions became statutes on June 5 when Congress authorized the appointment of treaty commissioners and made other changes in Oregon Indian matters.<sup>36</sup>

¶ 26. Anson Dart was appointed superintendent of Indian Affairs for Oregon and issued instructions by Commissioner of Indian Affairs Luke Lea.<sup>37</sup> John P. Gaines (the Territorial Governor), Alonso A. Skinner and Beverly S. Allen were appointed as Treaty Commissioners on October 25.<sup>38</sup> The Commissioners were instructed to extinguish Indian title west of the Cascades at a price of less than ten cents per acre and to remove the tribes east of the Cascades if possible. Treaties with the eastern tribes were authorized if necessary for the removal.

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<sup>31</sup> John Lane to the Secretary of War, April 9, 1849.

<sup>32</sup> Message of Governor Lane, July 17, 1849.

<sup>33</sup> *Memorial of the legislature of Oregon praying for the extinguishment of the Indian title* . . . July 20, 1849.

<sup>34</sup> For a description of the first round of Oregon Territory treaties see Alan W. Hoopes, *INDIAN AFFAIRS AND THEIR ADMINISTRATION (with reference to the Far West) 1849-1860 (University of Pennsylvania Press 1932)* pp. 75-86 and C.F. Coan, "The First Stage of Federal Indian Policy in the Pacific Northwest, 1849-1852," *Oregon Historical Society Quarterly*, Vol. XXII, pp. 46-65.

<sup>35</sup> *Congressional Globe*, 31 Cong. 1 sess., 272.

<sup>36</sup> 9 Stat. 437.

<sup>37</sup> 33 Cong. 2 sess. vol. 1, (ser. 595), *H. Ex. Doc. 1*, 148-151.

<sup>38</sup> Instructions to the commissioners is printed in full at 31 Cong. 2 sess. vol. 1, (ser. 595), *H. Ex. Doc. 1*, 145-147.

¶ 27. The Commissioners began their work in February, 1851, writing to Commissioner Lea on February 8 stating that removal of the tribes was neither possible nor wise. The Commissioners wrote:

that it will be impossible to remove the Indians of Willamette and lower Columbia valleys, without a resort to force, nor do we think it very desirable to do so. As before stated they are friendly and well disposed, they live almost entirely by fishing, and the wages they receive from the whites for their labor. They possess little or no skill as hunters or warriors. And to remove them from their fisheries and means of procuring labor from the whites would in our opinion insure their annihilation in a short time wither from want or by the hands of their more warlike neighbors. General satisfaction we believe would be felt by the Indians and the citizens to allow them small reservations of a few sections and a portion of their fishing grounds.<sup>39</sup>

¶ 28. The Commissioners adopted the policy recommended in their February 8 letter and entered into treaties with the Santiam and Tualatin bands of the Calapooya Tribe on April 16.<sup>40</sup> Four additional treaties were negotiated in May, two with the Yamhill and Luckamiute bands of the Calapooyas and one each with the Upper and Lower Molallas.<sup>41</sup> Instead of removal, each of these treaties created a small reservation for the tribes in their homelands.<sup>42</sup> Congress abruptly ended the work of the Commissioners by statute on February 27, 1851.<sup>43</sup> None of these treaties were ratified.

¶ 29. After dismissal of the Treaty Commissioners, Superintendent Anson Dart took up the task of negotiating treaties. During the summer ten treaties were negotiated with different bands of the Chinook Tribe. During September two treaties were made with the tribes between the Coquille River and the southern Oregon border and another with the Clackama Tribe. Even though Dart carried these treaties to Congress in November, none were ratified.

¶ 30. Many of these early Oregon treaties have been lost. Following are the fishing clauses from those treaties which can be found:

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<sup>39</sup> Commissioners to Luke Lea, Oregon City, February 8, 1851.

<sup>40</sup> Commissioners to Luke Lea, Champoeg, April 19, 1851.

<sup>41</sup> Commissioners to Luke Lea, May 14, 1851.

<sup>42</sup> The text of these six treaties has disappeared. While some information about their content can be extracted from the reports of the Commissioners, it is not possible to reconstruct the treaty fishing language.

<sup>43</sup> 9 Stat. 586.

Treaty at Tansey Point - Lower Band of the Chinook Indians -  
August 9, 1851:

The said Lower Band of Chinook Indians, reserve the privilege of occupying the grounds they now occupy for the purpose of building, fishing and grazing their stock, with the right to cut timber for their own building purposes and for fuel. Also the right to pick Cranberries on the marshes, and the right to cultivate as much land as they wish for their own purposes. No white man shall be allowed to interfere with their rights, and it is hereby agreed, that a white man by the name of Washington Hall, shall be removed from the land above ceded. The reservations in this article, shall continue during the lives of the Indians who sign the treaty.<sup>44</sup>

Treaty at Tansey Point - Waukikum Band of the Chinook Indians -  
August 8, 1851:

The said Waukikum Band reserve to themselves the privilege of occupying their present place of residence, and also of fishing upon the Columbia river, and the two other streams mentioned in Article 1st., also the privilege of cutting timber for their own building purposes and for fuel, on the above described land, and of hunting on said lands where they are not enclosed.<sup>45</sup>

Treaty at Tansey Point - Kon-naack Band of the Chinook Tribe -  
August 8, 1851:

The said Konnaack Band reserve the privilege of occupying their present place of residence on Oak Point, and the privilege of hunting on the lands described above.<sup>46</sup>

¶ 31. Anson Dart sent the treaties to the Commissioner of Indian Affairs accompanied by a Report describing their negotiation. The following excerpts from his Report show the unwillingness of the tribes to remove to east of the Cascades and the importance of preserving their fishing rights:

The Clatsops, who were the first treated with; interposed many objections to parting with their country upon any terms; they made many long and loud complaints, at the injustice done them by the Government; who they said had taken possession of their lands without paying them . . .

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<sup>44</sup> C.F. Coan, "The First Stage of Federal Indian Policy in the Pacific Northwest, 1849-1852", *Oregon Historical Society Quarterly*, Vol. XXII, p. 76.

<sup>45</sup> *Id.* at 82.

<sup>46</sup> *Id.* at 85.

As this tract had three claimants or settlers upon it, large offers were made the Indians to place the title to all in the United States, this they steadily declined; leaving no alternative, but to allow this Reservation or not treat with them for the balance of their lands, being about five hundred thousand acres.

In relation to the Conditions of the Treaties made, it is necessary to inform you, that the habits and customs of these fishing Indians are unlike those of any other part of our domain.

Let me here remark that the Treaty Commissioners, appointed under this act, used their best exertions to persuade all, or either of the bands in the Valley of the Willamette; to remove east of the Mountains; but without success.

They are fully sensible of the power of the government, admit that they can be killed and exterminated, but say that they cannot be driven far from the homes and graves of their Fathers.

Believing as I do, that the food used by these Indians (being almost entirely fish) tends much towards shortening their lives, I cannot but admit that there is great probability that only a few years will pass e're they will all lie side by side with their Fathers and Braves,--the tribe or tribes extinct. When an Indian is sick, his only food is Salmon, which he must eat, or nothing, and I have observed that few--very few, ever recover from Sickness.

But in my opinion, there is not the least prospect that a single band will leave their present homes . . .<sup>47</sup>

¶ 32. Dart resigned his post on December 14, 1852, to become effective on June 30, 1853.<sup>48</sup> Joel Palmer was appointed to replace Dart on March 18,<sup>49</sup> and accepted on May 4.<sup>50</sup>

### **THE STEVENS PROGRAMME**

¶ 33. On March 2, 1853, President Millard Fillmore signed the act creating Washington Territory. Two days later Democrat Franklin Pierce gave his inaugural speech, and within two weeks appointed Isaac I. Stevens as Territorial Governor, which also

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<sup>47</sup> Anson Dart to Commissioner of Indian Affairs, November 7, 1851.

<sup>48</sup> Anson Dart to Lea, December 14, 1852.

<sup>49</sup> Lea to Palmer, March 18, 1853.

<sup>50</sup> Palmer to Lea, May 4.

made him the Superintendent of Indian Affairs for the Territory.<sup>51</sup> Stevens' appointment was the political prize he had earned by vigorously campaigning for Pierce during the election, in particular defending Pierce's reputation as a commander in the Mexican War. Stevens also was soon able to secure appointment as leader of a transcontinental railway survey to be made between the 47th and 49th parallels.

¶ 34. Superintendent Stevens' first instructions from Commissioner of Indian Affairs G. W. Manypenny are dated May 9, 1853. The Commissioner explained that the information within his office about Indian affairs within Stevens' jurisdiction was of a "very unsatisfactory and vague character."<sup>52</sup> He promised to send to Stevens the Annual Reports from his office, and copies of four treaties which had been negotiated with Washington Territory Indians, even though these treaties had been rejected by the Senate. The Commissioner gave Stevens two directions. First, to "devote your earliest attention and efforts to the collection of information" about a list of fourteen questions concerning the tribes and the relations between them and the white inhabitants. Second, to prevent the Hudson Bay Company from operating within the Territory and "to embrace every opportunity to impress on the Indians that it is the American government, and not the British, that confers upon them these benefits."

¶ 35. By November of 1853, Commissioner Manypenny had learned enough about Indian affairs in Oregon Territory to fear that war was imminent. His Annual Report described the situation, and advised that treaties would be a more economical solution than war:

[O]ur relations with the Indians in Utah and Oregon remain in a very unsettled and precarious condition, arising out of the constant and unaboidable encroachments upon their territories by the whites, and no provision being made for indemnifying and placing them beyond the reach of the injuries thus inflicted. Already have difficulties of a serious character, resulting in bloodshed and loss of the lives of valuable citizens, taken place. Indeed, hostilities with the Indians in all these sections of country may be said to be constantly impending, and occurence of which in either would, in all probablility, involve an amount of expense far exceeding the cost of arrangements that would secure peace and tranquility with the various tribes, and at the same time tend to promote

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<sup>51</sup> For a description of Stevens' appointment see Kent D. Richards, *Isaac I. Stevens: Young Man in a Hurry* (Washington State University Press, 1993) pp. 94-98. [Hereinafter cited as *Isaac I. Stevens.*]

<sup>52</sup> G.W. Manypenny to Isaac I. Stevens, May 9, 1853.



their domestication and permanent welfare.<sup>53</sup>

¶ 36. Stevens conducted the railroad survey on the way to his new post as Territorial Governor.<sup>54</sup> He arrived in Olympia on November 25, 1853, and immediately tackled the three problems facing him: completion of the survey, treaties with the various Indian tribes, and settlement of border disputes between the United States and Canada.<sup>55</sup> Within a month of his arrival in Olympia, Governor Stevens was recommending to Commissioner Manypenny that treaties with the tribes west of the Cascades be negotiated. On December 26 Stevens stated the need for treaties, and sought the necessary budget:

There is urgent necessity existing for treaties being immediately made with the Indian west of the cascade mountains, in this Territory. For years they have been promised payment for their lands by the whites; and they have waited with an abiding faith that the whites would redeem their many promises. For the last two years, however, the great numbers of settlers, who have located in this Territory, has made them suspicious and uneasy; and they upbraid the whites for the want of faith. . . . These things make it imperative upon government to act in this matter, and apply the proper remedy for these fast growing evils. . . . I cannot urge this matter too strongly in your attention.<sup>56</sup>

¶ 37. Stevens had learned that the tribes expected to sell some of their land, and to live on smaller plots within their homelands:

They have all, however, singled out a few spots in their domains, which they wish to reserve, and contemplate the sale of the rest of their lands to the whites. These spots are not only permanent places of residence, but are hereditary. Near them are the graves of their relatives and friends, and they cherish an affection for them which I have scarcely ever seen equalled. These are their homes, and from them they roam about the sound in every direction, going where the fish, roots and berries abound most at the different seasons of the year.<sup>57</sup>

¶ 38. Just as the Oregon Commissioners and Anson Dart had done in earlier years, Stevens considered a policy of removing the tribes from their homelands and fisheries, and rejected it:

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<sup>53</sup> Report of The Commissioner of Indian Affairs, November 26, 1853.  
<sup>54</sup> *Isaac I. Stevens* described the survey at 99-152.  
<sup>55</sup> *Id.* at 162.  
<sup>56</sup> *Isaac I. Stevens* to George W. Manypenny, December 26, 1853.  
<sup>57</sup> *Id.*

What had better be done with these Indians, when treaties are made with them, has much occupied my mind since my arrival in the Territory. The only two locations they could be removed to is the country east of the Cascade or west of the Olympic range, on the coast of the Pacific. It is my opinion, as well as the opinion of all with whom I have conversed upon the subject, many of them the oldest settlers in the country and best acquainted with the Indians, that it would not only be injudicious, but almost impossible, to make the Indians remove east of the Cascade mountains. Injudicious for the reason that there is not a sufficiency of the food they have been accustomed to for their subsistence, and the consequent expense to government in having to support them until they could be taught to cultivate the soil, and depend upon its products for food. Almost impossible for reason of their strong attachment to their present locations in preference; and the difficulty of keeping them in a place from which to their old haunts there would be easy access.<sup>58</sup>

¶ 39. Stevens cautiously recommended reservations instead of removal:

[T]he measure of making reservations for the different tribes, in their own territory, joining as many of the tribes as possible under one head, ought to be thoroughly considered. Indeed, I am not prepared to say that this would not be the best thing that could be done with them; it would be the least expensive, and, with the Indians, by far the most satisfactory.<sup>59</sup>

¶ 40. Three days later, on December 29, 1853,<sup>60</sup> Stevens wrote Commissioner Manypenny to urgently recommend that his recommendations for west of the Cascades be extended to the east as well:

The Indian title to lands east of the Cascade mountains should at once be extinguished. . . . The tribes east of the Cascade mountains have much better organization than the tribes west of the mountains. All of these have chiefs who are well disposed towards the whites, and some of whom have great authority, not only with their own people, but with the surrounding tribes. All the tribes have made some progress in agriculture, and own horses and cattle.

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<sup>58</sup> *Id.* at 7.

<sup>59</sup> *Id.* at 7-8.

<sup>60</sup> Stevens wrote a separate letter this same date requesting a budget to carry out his recommendations. He sought "an appropriation of \$15,000 west of the Cascade mountains, and the same amount east of these mountains, for extinguishing the Indian title." Isaac Stevens to G. W. Manypenny, December 29, 1853.

¶ 41. Stevens considered speedy settlement east of the Cascades so important that every impediment should be removed:

To the end, two measures I regard as of paramount importance -- the appointment of a surveyor-general for the Territory of Washington, and the extension of the surveys over the whole territory wherever, by the settlement of portions of it, it is required; and the extinguishment of the Indian title.

¶ 42. Stevens was anxious to proceed with his recommendations and announced that he was of the opinion that the 1850 Donation Act applied both west and east of the Cascades. Pursuant to that statute he would direct his "exertions to establishing friendly relations between the white settlers and the Indians."<sup>61</sup> Stevens also intended to send his first agent to talk with the Nez Perce:

It is my intention soon to send Lieutenant Arnold into the Nez Perces country, to continue our geographical and railroad explorations, and shall direct him to collect information in relation to that interesting tribe, and the arrangements as to reservations which can finally be made with them.<sup>62</sup>

¶ 43. Shortly before Stevens made his recommendations, Oregon Superintendent Joel Palmer had made similar proposals to Commissioner Manypenny regarding the Oregon tribes. Palmer, like Stevens, thought the problem stemmed from the conflict between Indian title and the Oregon Donation Act:

Experience moreover has taught us that the settlement of a country, prior to the extinction of the native title to the soil is, in most cases attended with serious difficulties and embarrassments to the Government, with annoyance and danger to the settler; and proves fatal to the best interests, and the improvement and civilization, of the natives.<sup>63</sup>

¶ 44. Also like Stevens, Palmer thought war would be the price to be paid for a failure to act:

The importance of entering, at an early period, into

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<sup>61</sup> *Id.* at 14.

<sup>62</sup> *Id.*

<sup>63</sup> Joel Palmer to G. W. Manypenny, Oct. 8, 1853. Reprinted at C.F. Coan, "The Adoption of the Reservation Policy in Pacific Northwest, 1853-1855, THE QUARTERLY OF THE OREGON HISTORICAL SOCIETY, Vol. XXIII, pp. 28-38; 30. Coan considers the Palmer report to be the seminal document creating the reservation system in the Northwest: "The importance of the document is, that the recommendations made in it became the basis for the reservation Indian policy for the Pacific Northwest." *Id.* at 5.

treaties to extinguish the indian title to the lands belonging to the tribes residing along the Columbia River and the Northern Oregon road, or so much of said country as is within the Territory of Oregon, has been repeatedly presented to the attention of the Department. My convictions of the propriety and necessity of this course are daily deepened, and I am satisfied that unless early steps be taken to effect such treaties, serious difficulties, if not a general indian war with some of the tribes will be the consequence.<sup>64</sup>

¶ 45. Superintendent Palmer offered extensive opinions about the manner in which the treaties should be negotiated. He specifically recommended that tribal fisheries receive separate attention:

In the selection of a district of country for the colonization of the various bands and tribes of Indians who inhabit the country contiguous to the coast attention is required to their mode of subsistence. They may properly be termed fisheaters, and to assign them a country destitute of this is to them indispensable article of food, would be disastrous to their existence as a people.<sup>65</sup>

¶ 46. On February 6, 1854, Commissioner Manypenny endorsed the recommendations of Stevens and Palmer and sent a request for appropriations to the Secretary of the Interior, who immediately sent it to Congress. Manypenny explained the need for the appropriation:

With many of the tribes in Oregon and Washington Territories, it appears to be absolutely necessary to speedily conclude treaties for the extinguishment of their claim to the lands now or recently occupied by them.

The policy of the government has favored emigration to, and settlement within those territories, by citizens of the States; and, in consequence, they have been and are rapidly filling up with white settlers; yet the Indian tribes still claim title to the lands on which the whites have located, and which they are now cultivating. The jealousy which has resulted from this state of things has naturally led to repeated hostilities, resulting in the severe suffering, and, in some instances, the murder of the white settlers, and in hindering the general growth and prosperity of the civil communities of these Territories.

Unless something more effectual and definite be done

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<sup>64</sup> *Id.* at 29.

<sup>65</sup> *Id.* at 32.

speedily, it is probable that hostilities will be resumed by the Indians in Oregon on a more extended scale, and engaging a larger and better organized body of Indians than the settlers there have ever heretofore contended with.<sup>66</sup>

¶ 47. Stevens gave his first address to the Territorial Legislature on February 28 of 1854.<sup>67</sup> He analyzed problems Congress created by passing the Oregon Donation Act without having extinguished Indian title to the lands and proposed treaties with the tribes as the solution. The Legislature accepted the suggestion of Stevens and memorialized Congress urging that treaties be negotiated.<sup>68</sup>

¶ 48. Convinced that he needed both money and authority, Stevens departed Olympia for Washington D.C. in March of 1854.<sup>69</sup> During the summer of 1854 Stevens worked a great deal on the survey report and lobbied Congress for money and other needs in Washington Territory. Stevens and Manypenny found support in Congress for their proposed treaties and an appropriation was approved.<sup>70</sup>

¶ 49. On August 30, 1854, Acting Commissioner of Indian Affairs Charles E. Mix issued treaty instructions to Governor Stevens. Mix informed Stevens: "You have been designated by the President as the Officer of the Indian Department to conduct the negotiations and conclude the treaties of amity and acquisition that are thus provided for."<sup>71</sup> Stevens was to "endeavor to unite the numerous bands and fragments of tribes into tribes and provide for the concentration of one or more of such tribes upon the reservations which may be set apart for their future homes."<sup>72</sup> The reservations were to be "apart from the settlements of the whites."<sup>73</sup> Mix instructed Stevens that if all the tribes in the Territory could not be organized into six or eight tribes, he should turn his attention to those districts where "animosities prevail, or disturbances of the peace are reasonably apprehended."<sup>74</sup>

¶ 50. Acting Commissioner Mix did not deem it necessary to

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<sup>66</sup> Communications from the Secretary of the Interior and The Commissioner of Indian Affairs to the Chairman of the Committee on Indian Affairs of the Senate, February 21, 1854.

<sup>67</sup> Gates, *Messages of the Governors*, pp. 3-9.

<sup>68</sup> "Memorial of the Legislature of Washington Territory relative to the extinction of Indian titles to lands in the Territory of Washington," April 12, 1854.

<sup>69</sup> *Isaac I. Stevens* at 172-179.

<sup>70</sup> Manypenny to Secretary of the Interior Robert McClelland, February 6, 1854; *Isaac I. Stevens* at 196-197.

<sup>71</sup> Charles E. Mix to Isaac I. Stevens, August 30, 1854.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

give "specific instructions as to the details of the treaties." However, Mix did include copies of the Treaty with the Rogue River,<sup>75</sup> the Treaty with the Umpqua - Cow Creek Band,<sup>76</sup> the Treaty with the Oto and Missouri,<sup>77</sup> and the Treaty with the Omaha.<sup>78</sup> None of these treaties contained a fishing clause. Mix thought the Rogue River and Cow Creek treaties would provide valuable suggestions because they exhibited "provisions proper on the part of the Government and advantageous to the Indians." The Oto and Omaha treaties indicated "the policy of the Government in regard to the ultimate civilization of the Indian tribes."<sup>79</sup>

¶ 51. Mix closed the instructions by emphasizing the discretion and authority Stevens had regarding the treaty negotiations:

With these general views, you will nevertheless exercise a sound discretion where the circumstances are such as to require a departure from them. And you will take care in all treaties made to leave no question open out of which difficulties may hereafter arise or by means of which the Treasury of the United State may be approached.<sup>80</sup>

¶ 52. Governor Stevens filed a written report with the Commissioner of Indian Affairs on September 16, 1854, describing the Indians "on my route of exploration from the head of navigation of the Mississippi river to the Pacific ocean."<sup>81</sup> In a brief section at the end of the Report Stevens discussed the pending treaties. The reservations were "especially required in consequence of the operation of the donation act, in which, contrary to usage and natural right, the United States assumed to grant, absolutely, the lands of the Indian without previous purchase from them."<sup>82</sup> "The location and extent of these reservations should be adapted to the peculiar wants and habits of the different tribes."<sup>83</sup>

¶ 53. Stevens specifically commented upon the importance of tribal fisheries within Washington Territory, and the need to make legal provisions to protect them:

The subject of the right of fisheries is one upon which legislation is demanded. It never could have been the intention of Congress that Indians should be excluded from

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<sup>75</sup> II Kappler 603-605.

<sup>76</sup> *Id.* at 606-607.

<sup>77</sup> *Id.* at 608-611.

<sup>78</sup> *Id.* at 611-614.

<sup>79</sup> Charles E. Mix to Isaac I. Stevens, August 30, 1854.

<sup>80</sup> *Id.*

<sup>81</sup> Isaac I. Stevens to George W. Manypenny, September 16, 1854.

<sup>82</sup> *Id.* at 456.

<sup>83</sup> *Id.* at 455.

their ancient fisheries; but, as no condition to this effect was inserted in the donation act, the question has been raised whether persons taking claims, including such fisheries, do not possess the right of monopolizing. It is therefore desirable that this question should be set at rest by law.<sup>84</sup>

¶ 54. Stevens had returned to Olympia to open the second territorial legislative session on December 4, 1854, stating that the Indian treaties were his highest priority.<sup>85</sup> Within days he selected the Commissioners who were to assist him during the treaty negotiations. These included Michael Simmons, who had been appointed Indian Agent for the Puget Sound region; James Doty as secretary, Benjamin F. Shaw<sup>86</sup> as interpreter, George Gibbs<sup>87</sup> as surveyor and Hugh A. Goldsborough as commissary. The Commissioners met on December 7 and 10, 1854, to prepare a model treaty to be used at the various councils.<sup>88</sup> It was during these meetings that George Gibbs wrote the section which became Article III of the Walla Walla Treaty.<sup>89</sup>

¶ 55. In the years before 1855 George Gibbs had served on the commissions negotiating treaties in Western Oregon and Northern California.<sup>90</sup> Gibbs had also worked on Stevens' railroad survey, and at the request of Stevens wrote a report on the Indian tribes of Washington Territory.<sup>91</sup> In the Report Gibbs stated that Indians in the eastern region of the Territory "require the liberty of motion for the purpose of seeking, in their proper season, roots berries, and fish, where those articles can be found, and of grazing their horses and cattle at large, but they do not need the exclusive use of any considerable districts . . . the use of customary fisheries, and free pasturage for their stock on unenclosed lands, should be

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<sup>84</sup> *Id.*

<sup>85</sup> Journal of the Council of the Territory of Washington, 2d sess. (Olympia, 1855), pp. 149-55.

<sup>86</sup> Shaw later argued that the Indians did not have the land and that it was a mistake to treat with them. Colonel B.F. Shaw, "Medicine Creek Treaty," *Proceedings of the Oregon Historical Society, 1903* (Salem, 1906), pp. 27-29.

<sup>87</sup> Stephen Dow Beckham, *George Gibbs, 1815-1873, Historian and Ethnologist* (Ph.D.diss., University of California, Los Angeles, 1969); Kent D. Richards, "Historical Antecedents to the Boldt Decision," 4 *Western Legal History* pp. 76-79. [Hereinafter cited as "Historical Antecedents."]

<sup>88</sup> Records of the Proceedings of the Commission to Hold Treaties with the Indian Tribes in Washington territory and the Blackfoot Country, December 7, 10, 1854.

<sup>89</sup> *Isaac I. Stevens* at 198-199. Richards reports that the commissioners adopted a nine-point program, one point of which was to "allow the Indians to hunt, fish, and gather berries until the civilizing process was complete."

<sup>90</sup> "Historical Antecedents" at 69.

<sup>91</sup> George Gibbs, Report of Mr. George Gibbs to Captain McClellan on the Indian Tribes of the Territory of Washington, March 4, 1854, reprinted as *Indian Tribes of Washington Territory* (Ye Galleon Press, 1978).

secured."<sup>92</sup>

¶ 56. At the December 7 meeting of the Treaty Commissioners the Oto-Missouri and Omaha treaties were first read<sup>93</sup> and discussed. "[A]fter considerable discussion upon Reservations, Fishing Stations, Farms, Schools, etc., the Commissioners directed Mr. Geo. Gibbs to prepare a programme of a Treaty in accordance with the views of the Commission." Article II of the draft presented by Gibbs to the Commissioners on December 10 contained the fishing clause.<sup>94</sup> With very little revision the draft was adopted for use in negotiating the Puget Sound treaties.

¶ 57. A number of authors have described the importance of the fishing and hunting clauses in the Stevens Treaties:

During a number of negotiating sessions the tribes made clear that protection of their fishing rights was a prerequisite to signing the treaties.<sup>95</sup>

The right provided for in the Pacific Northwest treaties whereby the Indians were to be permitted to resort to their ancient tribal fishing grounds or stations for the purpose of taking fish and erecting temporary curing houses, was at the time of the treaties probably the most important consideration in the minds of the Indian chiefs and head men.<sup>96</sup>

The importance of the fish to the Indians seems to have impressed Stevens. He did not intentionally reserve to the Indians any more rights than he thought necessary, but he understood that the one indispensable requirement for securing agreement of any kind from Pacific Northwest Indians was to assure their continued right to fish. That

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<sup>92</sup> *Id.* at 29.

<sup>93</sup> The specific mention of these treaties suggests that the Rogue River and Cow Creek Band treaties were not read.

<sup>94</sup> [T]he right of taking fish at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the territory and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries and pasturing their horses upon open and unclaimed lands. Provided however that they shall not take shellfish from any beds stacked or cultivated by citizens.

<sup>95</sup> Michael C. Blumm and Brett M. Swift, "The Indian Treaty Piscary Profit and Habitat Protection in the Pacific Northwest: A Property Rights Approach," 69 U. Colo. L. Rev. 407, 429 (1998).

<sup>96</sup> Edward G. Swindell, Jr., *Report on Source, Nature and Extent of the Fishing, Hunting and Miscellaneous Related Rights of Certain Indian Tribes in Washington and Oregon* (United States Department of Interior, 1942) p. 58. [Hereinafter cited as *Swindell Report*.]



right was as valuable to them as their lives . . .<sup>97</sup>

## § 5. THE 1855 TREATY

### WALLA WALLA COUNCIL

¶ 58. Stevens convened the first treaty council on Christmas eve, 1854, and in two days had negotiated the Medicine Creek Treaty. The Point Elliot Treaty was negotiated January 22 and the Point No Point Treaty between January 25 and 28. Troubles were encountered in negotiating the treaties in southwestern Washington, but Stevens was anxious to move east of the Cascades.

¶ 59. In January, 1855, Governor Stevens dispatched James Doty to organize a treaty council with the tribes living between the Cascades and the Bitterroots. In consultation with the tribes, it was decided that a treaty council would convene on May 20 and be held in Walla Walla country, on Mill Creek within six miles the Whitman Mission site. Because some of these tribes occupied lands in Oregon as well as Washington Territory, Joel Palmer, the Indian Agent for Oregon, and Stevens met in April to plan the council.<sup>98</sup>

¶ 60. Because of rain and other delays, Stevens and Palmer did not arrive at the council grounds until May 21. The Nez Perce arrived on May 23, the Cayuse on the 25th and the Yakimas on the 27th. The Nez Perce arrived with a great show of force,

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<sup>97</sup> American Friends Service Committee, *Uncommon Controversy* (University of Washington, 1970) p. 21.

<sup>98</sup> A True Copy of the record of the Official Proceedings at the Council in the Walla Walla Valley. These minutes were kept by James Doty and W.m McKay, secretaries for Washington and Oregon Territories. The original handwritten minutes have been transcribed into a typed format by Swindell. *Swindell Report*. Page references are to the Swindell transcription.

The Nez Perce kept two records of the council proceedings. The official minutes were kept by Timothy: "Timothy, a Nez Perces Chief acted as crier for his nation and he will also record in their language the full proceedings each day of the council and this will be preserved among the archives of the nation and handed down to future generations" *Id.* at 18. Lawyer revealed that he too had kept an account: "I have got your talk here (pointing to his notebook) and although a poor man I can look at it from time to time." *Id.* at 54. No trace of these two records can be found today.

Other contemporary accounts of the council are: George Gibbs' journal, found in Record Group 76, "Records of Boundary and Claims Commissions and Arbitrations (T 606), Records Relating to the Northwest Boundary, 1853-1901"; James Swan, *The Northwest Coast* (Ye Galleon Press 1966); Benjamin F. Shaw Papers, Oregon Historical Society, Portland; George B. McClellan Papers, Library of Congress; F.G. Young, ed., "The Indian Council at Walla Walla, May and June, 1855, by Col. Lawrence Kip, U.S.A., A Journal," *Sources of the History of Oregon*, vol. 1, pt 2 (University of Oregon 1897); and Richard Lansdale, *Personal Diary*, Bieneke Library, Yale University.

but with a friendly attitude. The other tribes, however, arrived in more somber moods and refused tobacco and provisions offered by Stevens as a gesture of friendship. The Salmon River band of the Nez Perce also joined in refusing the gifts. Immediately upon arriving, Stevens and Palmer began consulting informally with their agents, about 50 settlers who had gathered, and the various tribes.<sup>99</sup>

¶ 61. Finally, on Tuesday, May 29, the council convened.<sup>100</sup> Introductions were made and tobacco was smoked. Many Nez Perce leaders were present<sup>101</sup>, but few from the other tribes. In addition to the Nez Perce the other principal tribes at the council which each signed a treaty were the Cayuses (The Young Chief, Steachus, Camapilo, and others), the Walla Wallas (Pee-o-pee-mox-a-mox), and the Yakamas (Cam-i-ah-kun, Ow-hi, Kloom, Kow-was-say-ic, Si-ry-was, Skin-pah). The Palouses (Kah-lat-toose), Spokanes (Gerry), Pisuose, Metows, and Oak-kin-a-kanes were listed as present on the first day even though no separate treaty was negotiated with them during the council. The Umatillas were not listed as present even though they eventually signed.<sup>102</sup>

¶ 62. At this first meeting, interpreters were selected and sworn for the Nez Perce: William Craig, McDauphin and Delaware Jim. The council then adjourned, hoping for clear skies and dry ground the next day.<sup>103</sup> During the two weeks which followed, the council re-convened for deliberation ten times. For most days, Stevens would set 9:00 a.m. as the time to begin. However, the various tribes would not gather until noon or after. Discussions would then last about four hours.

¶ 63. Stevens and Palmer approached the negotiations by first trying to sell the tribes on the general concept of reservation policy. The reservation concept meant selling to the United States lands outside the reservation, prohibiting whites from coming onto the reservation, and allotting tracts within the reservation to individuals in the tribe who were to create farms. In their opinion, the history of United States Indian relations showed reservations were a wise policy.<sup>104</sup>

¶ 64. Stevens said, "Let us go back to old times across the mountains and see what was there done." He divided the old time into two parts: the earlier days when red and white lived

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> "Lawyer, Joseph, U-u-sune-mal-e-can, James, Timothy, Red Wolfe, Spotted Eagle, Three Feathers, Jason, Jacob, Cow-pook, Is-coh-tim, Kay-kay-map, Tu-per-lan-its-a-kum, Billy, Toh-ton-mol-e-wot, The Snipe, Bold Eagle, and others." *Id.* at 15.

<sup>102</sup> *Id.* at 15.

<sup>103</sup> *Id.* at 16.

<sup>104</sup> *Id.* at 18.

together and the recent days when they lived apart. First, "the red man received the white man gladly; but after a while difficulties arose."<sup>105</sup> To solve these difficulties, "Wm Penn and the Indians came together . . . they made a Treaty: there was peace." While this treaty "worked well when there were few whites, it did not work well when there were many." "When the white man and the red man lived together on the same ground, the white man got the advantages and the red man passed away."<sup>106</sup>

¶ 65. In order to help the red man, the Great Father Andrew Jackson decided the Cherokee and their leader John Ross should live on land separate from the whites. Jackson said, "I will take the red man across a great river into a fine country where I can take care of them." The United States, "gave John Ross and his people a tract of land into which no white man could go without their consent; they sent them an agent, they had schools, they had mills, they had shops, they had teachers, they had farmers, they had doctors."<sup>107</sup>

¶ 66. Stevens began the Thursday, May 31st, Council by summarizing what he was after: "[W]e want you to agree to live on tracts of land, which shall be your own and your childrens; and we want you to sell the land you do not need to your Great Father."<sup>108</sup> He then spent a couple of hours generally describing what the Great Father was willing to pay for the land. Clothing, tools, mills, houses, farms, teachers, craftsmen. Rights to hunt, fish, gather and pasture would to be protected as before. Peace would be negotiated with the Blackfeet in Buffalo Country. And, an agent would be appointed to carry out the treaty.<sup>109</sup>

¶ 67. It was then Joel Palmer's turn to sell the reservation plan. He began, "over Three hundred and sixty years ago . . . came a chief with several of his brethren in three ships."<sup>110</sup> Like Stevens, Palmer thought whites and Indians could not live together. "There were many causes for this; a portion of the Indians whose hearts were not good, stole the property belonging to these people; the whites retaliated by whipping and ill treating them. That was the first offense on the part of the Indians; the whites had long been without women and they often took forcibly the women of the Indians; this induces them on their part to retaliate; these difficulties continued from bad to worse until finally there was war."<sup>111</sup>

¶ 68. In what the tribes assembled could have easily

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<sup>105</sup> *Id.* at 20.

<sup>106</sup> *Id.* at 21.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 24.

<sup>109</sup> *Id.* at 24-27.

<sup>110</sup> *Id.* at 27.

<sup>111</sup> *Id.* at 28.

interpreted as a threat, Palmer described the outcome of the war, "a few white men were killed and many Indians were killed; there were more Indians killed than white men because we had better arms and know how to make them."<sup>112</sup>

¶ 69. To prevent these wars, the President "proposed to have a district of country set aside for the Indians to live in that no white man should live there."<sup>113</sup> Those Indians which agreed to the proposition "have since been learning and continued to learn and prosper, and are now a great happy and good people."<sup>114</sup> Those who refused to agree suffered a terrible fate: "What is the condition of that people? Those who thought themselves very wise and refused to take the advice of the white people those who continued to make war upon our people? Their game was all killed, they had nothing to eat, they fled to the mountains then they continued to live but a few years of miserable existence, until they were finally overtaken by more powerful tribes and all killed."<sup>115</sup>

¶ 70. Palmer summarized his message: "all experience we have had with Indians these three hundred and sixty years shows us that the white man and the red man cannot live happily together; although we may live near together there should be a line of distinction drawn so that the Indians may know where their land is and the white man where his land is."<sup>116</sup>

¶ 71. At the request of Young Chief (Cayuse) the council adjourned for a day of feasting. When the parties reconvened on Saturday, June 2, Palmer picked up from where he left off. He wanted to make certain the tribes knew whites would overrun them, and that they had no choice. "You may ask, why do they come? Can you stop the waters of the Columbia river from flowing on its course? Can you prevent the wind from blowing? Can you prevent the rain from falling? . . . Like the grasshoppers on the plains: some years there will be more come than others, you cannot stop them."<sup>117</sup>

¶ 72. Palmer argued it was urgent to act, "[I]f we enter into a treaty now we can select a good country for you; but if we wait till the country is filled up with whites, where will we find such a place?"<sup>118</sup> He advised, "My heart is that it is better for you to enter into a treaty now with us."<sup>119</sup>

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<sup>112</sup> *Id.*  
<sup>113</sup> *Id.* at 29.  
<sup>114</sup> *Id.* at 30.  
<sup>115</sup> *Id.* at 30.  
<sup>116</sup> *Id.*  
<sup>117</sup> *Id.* at 33.  
<sup>118</sup> *Id.* at 34.  
<sup>119</sup> *Id.*

¶ 73. After Palmer's speech, Stevens called upon the tribal leaders to speak. None were anxious. Five Crows was tired, but did question, "Do you speak true that you call me brother?"<sup>120</sup> He reminded Palmer and Stevens that the commandments said "you shall not take any thing without payment" and that the thief would be sent to hell.<sup>121</sup>

¶ 74. Pee-o-pee-mox-a-mox demanded that "you should listen when any Indians speak" and complained that "the whole has been prearranged in the hearts of the Indians" by Stevens.<sup>122</sup> He said he knew the value of treaties from his experience in California. But most of all, he complained Stevens and Palmer had been dishonest and insincere. "We have not seen in a true light the object of your speeches; as if there was a post set between us." "You have spoken in a round about way; speak straight." "You have spoken in a manner partly tending to Evil. Speak plain to us."<sup>123</sup>

¶ 75. Stevens announced, "our Great Chief does not want us to do business" on Sunday, and the council was adjourned until Monday. Upon reconvening, Stevens invited the Indians "to open your hearts and speak freely." After a long pause, Lawyer advised Stevens, "If you will designate some one to speak first he will speak. If you do not they will sit here all day without speaking."<sup>124</sup>

¶ 76. Lawyer then asked specifically whether Stevens spoke on behalf of God or the President: "Is it from the man that made us, My Chief, or is it from your own people?" He thought he knew the answer. "I think it is from the white people; from where the white people is they have been dying and dying, and are yet dying . . . and here you see these many of us yet and still living."<sup>125</sup>

¶ 77. Nevertheless, Lawyer then made a dramatic announcement to the council. He and the Nez Perce were willing to sign a treaty, willing to make a law and create a reservation. Lawyer explained: "It was not for nothing I have been listening to you. My country is poor it is a trifling country. You see the map the marks of our country, one stream runs one way and another runs another way, it is all rock. My Chief, but the big Chief from the light (the East) said to you go and talk to these people and you have done it, he says go there to take care of your white people and your red people and you have done it. As long as the Earth stands take care of the people; he said to the

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<sup>120</sup> *Id.* at 35.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 37.

<sup>125</sup> *Id.*

white people and the red people all as one let us listen to the laws, and when the earth is done away with there is the end of the law, and that is the reason you see us good and we see you good."<sup>126</sup>

¶ 78. Pe-at-tan-at-tee-miner then said his mind was the same as Lawyer, and added, "[M]y land it is for you and for me. I shall do you no wrong and you do me none, both our rights shall be protected forever; it is not for ourselves here that we are talking, it is for those that come that we are speaking."<sup>127</sup> U-u-Sin-mull-e-cun (Nez Perce) agreed, "What the Lawyer has said is my heart."<sup>128</sup> Fah-hah-tsil-pilp, or the Red Bear, said "I like your talk very much as I have heard it."<sup>129</sup>

¶ 79. Tip-pee-il-lan-ah-cow-pook, or the Eagle from the Light (Nez Perce), taking a cue from Stevens and Palmer, reviewed the history from the Nez Perce point of view. It was the story of a Nez Perce quest for truth ending in death. "I like the President's talk; I am glad of it when I hear it here and for that reason I am going to tell you a tale. The time the first white men ever passed through this country, although the people of this country were blind, it was their heart to be friendly to them. . . A long time ago they hung my brother for no offence, and this I say to my brother here that he may think of it. Afterwards came Spalding and Whitman. They advised us well and taught us well, very well. . . And Spalding sent my Father to the East . . . His body was never returned."<sup>130</sup>

¶ 80. After explaining that his people had been friendly to the Whites, and helped them at the time of the Whitman killings, Eagle from the Light continued, "At the time the Indians held a grand Council at Fort Laramie. I was with the Flatheads and I heard there would be a council this side, next year. We were asked to go and find counsel, friendship and good advice. Many of my people started and died in the country. Died hunting what was right. There was a good many started there on Green River, the small-pox killed all but one. They were going to find good counsel in the East; and here I am looking still for counsel, and to be taught what is best to be done."<sup>131</sup>

¶ 81. Eagle from the Light concluded, "And now look at my peoples' bodies scattered everywhere hunting for knowledge, hunting for someone to teach them to go straight. . . Look at that, it is the tale I had to tell you, and now I am going to

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<sup>126</sup> *Id.* at 38.  
<sup>127</sup> *Id.*  
<sup>128</sup> *Id.* at 39.  
<sup>129</sup> *Id.* at 40.  
<sup>130</sup> *Id.* at 41.  
<sup>131</sup> *Id.*

hunt friendship and good advice."<sup>132</sup>

¶ 82. Leaders from other tribes were not so anxious to agree, and challenged Stevens and Palmer. Staachas (Cayuse) demanded, "Who is it that is going to speak straight for all of us. Now I want the whites and the Indians to show all their hearts."<sup>133</sup> Pee-o-pee-mox-a-mox (Walla Walla) said he was very uncertain, "My heart was heavy, my heart has to separate so, that was my heart. . . I like you Americans; and I like the Hudson Bay Co. people by which means I am lead this way and that way."<sup>134</sup> He could not decide because there had been no mention of the particular lands which were to make up the reservation. "If they had mentioned the lands they had spoken of then I should have understood them . . . when they mention the lands then I shall know."<sup>135</sup>

¶ 83. Stevens drew his own conclusions from the comments of the various leaders. "We think we know your hearts. You are willing to make a bargain. You want to know exactly the terms."<sup>136</sup>

¶ 84. Of course the most important term to everybody at the council was the lands to be designated for the tribes. Stevens and Palmer had been speaking of reservations abstractly to avoid this very question, to avoid angering the various tribes. Finally, Stevens faced the problem. He proposed two reservations. One would be in the Nez Perce Country for the Nez Perce, Cayuses, Walla Wallas, Umatillas and Spokanes. The other would be in Yakama Country for the Yakamas, Colvilles, O-kin-a-kunes, Palouse, Pesquouse, Klit-a-tats, and other bands lower on the river.<sup>137</sup>

¶ 85. Stevens spoke quickly to explain his proposal, "I will give briefly the reason for selecting these two Reservations. We think they are large enough to furnish each man and each family with a farm, and grazing for all your animals. There is especially in winter grazing on each Reservation. There is plenty of Salmon on these Reservations, there are roots and berries. There is also some game. You will be near the Great Road and can take your horses and your cattle down the river and to the Sound to market. . . . We can better protect you from bad white men there. We can better prevent the trader and the preacher all in one man going there."<sup>138</sup>

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<sup>132</sup> *Id.* at 41-42.  
<sup>133</sup> *Id.* at 39.  
<sup>134</sup> *Id.* at 39-40.  
<sup>135</sup> *Id.* at 40.  
<sup>136</sup> *Id.* at 42.  
<sup>137</sup> *Id.* at 43-44.  
<sup>138</sup> *Id.* at 43.

¶ 86. Stevens invited the tribes to make their own proposal. "We want you to think about this and see if you like it. You may think the Reservations are not good. If not you will say so. The Cayuses, the Walla Walla, the Umatillas, may prefer the Yakama to the Nes Perce Reservations, and they may not like either."<sup>139</sup> Palmer then adjourned for the day, assuring the tribes, "[W]e want you to hear the whole, and when you hear all I think you will say it is good."<sup>140</sup>

¶ 87. When the council convened the next day, Tuesday, June 5, Stevens began by explaining the boundaries of the Nes Perce Reservation using a large scale map. Each tribe on the reservation was to be on equal footing and have its own district, with a blacksmith, a school and a farmer. Each would have its own Head Chief who would be provided a salary and farm. There would be an agent, an agricultural and industrial school and a tin shop located centrally and available to all the tribes. There would also be a right to pasture, hunt, fish and gather outside the reservation. In addition, the tribes would be paid for their lands. One hundred thousand would be spent in the first year in settling the tribes on the reservation. An additional \$250,000 would be paid to the tribes over the following 20 years.<sup>141</sup>

¶ 88. After Stevens gave a similar explanation of the Yakama Reservation, Palmer rose to endorse the proposal and to encourage the tribes to agree. He said, "You may not understand all the advantages of the propositions that have been made to you; but they are for your benefit and those who come after you; as a chief desiring to promote your interest, I say it is good; that I would not deceive you; the Great Spirit who knows the heart of all men knows that I desire to promote your good."<sup>142</sup>

¶ 89. Stevens and Palmer spent all day describing in detail their proposal. Palmer adjourned the council by pressing the Indians for a decision, "If any of you wish to speak now we will listen to you. Or if you can make up your minds so as to give us an answer this evening come and do so and we will be ready to receive it."<sup>143</sup>

¶ 90. Stachas (Cayuse) accepted the invitation to speak and stated his refusal to agree, "If your mothers were here in this country who gave you birth, and suckled you, and while you were sucking some person came and took away your mother and left you

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 44.

<sup>141</sup> *Id.* at 44-49.

<sup>142</sup> *Id.* at 49.

<sup>143</sup> *Id.* at 51.



alone and sold your mother, how would you feel then?"<sup>144</sup> Stevens had proposed the Cayuse surrender all their land. Stachas made his counter-proposal, "I name three places for myself, the Grande Ronde, the Touchet towards the mountains and the Tucannon."<sup>145</sup>

¶ 91. The long silence which followed expressed the unwillingness to agree of all tribes except the Nez Perce. Still, Stevens pushed for a decision the next day and closed by saying, "We will tomorrow after you have spoken state what we think. Come early in the morning and let us see if we cannot agree before night."<sup>146</sup>

¶ 92. Not only was no decision reached the next day, for reasons that are not explained in the *Official Proceedings* no council was held. When deliberations resumed on Thursday, June 7th, Stevens invited, "My brothers, we expect to have your hearts today, let us have your heart straight out."<sup>147</sup>

¶ 93. Lawyer (Nez Perce) spoke a second time for his people. He started with the arrival of whites by ship, "We also know the white people pass about on the waters as they wish to. I do not know what they find in travelling about on these waters or what they are hunting, whether it is timber, leaves, grass or what."<sup>148</sup> From this beginning the Nez Perce had always been friendly with the whites, and sought knowledge of their laws. "From the time of Columbus and from the time of Lewis & Clark we have known our friends: we poor people have known you as brothers . . . some [Nez Perce] started in that direction (east) . . . and returned after they could see a little and told us about the Great Spirit; they told us the laws for the poor people." The Nez Perce were willing to agree. "My Chief [Ellis] said our old laws are poor, the new laws we are getting are good laws, are straight."<sup>149</sup>

¶ 94. Stevens then called upon others, hoping they would agree. But Young Chief (Cayuse) explained that he remained blind, even though "Lawyer sees and he takes hold."<sup>150</sup> He said, "I do not see the offer you have made us yet. If I had the money in my hand then I would see."<sup>151</sup>

¶ 95. Young Chief went on to explain other reasons why he could not agree, "I wonder if this ground has anything to say . . . The Earth says, that God tells me to take care of the Indians

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<sup>144</sup> *Id.*  
<sup>145</sup> *Id.*  
<sup>146</sup> *Id.* at 52.  
<sup>147</sup> *Id.*  
<sup>148</sup> *Id.* at 52-53.  
<sup>149</sup> *Id.* at 54.  
<sup>150</sup> *Id.* at 55.  
<sup>151</sup> *Id.*

on this earth: the Earth says to the Indians that stop on the Earth feed them right. . . . God has given our names and we are told those names: neither the Indians or the Whites have a right to change those names. . . . You Indians who take care of a certain portion of the country should not trade it off unless you get a fair price."<sup>152</sup>

¶ 96. Five Crows (Cayuse) agreed with Young Chief. So did Pe-pe-mux-mux (Walla Walla) who said, "I do not see the offer you have made to the Indians. I never saw these things with my father. My heart cried very hard when you first spoke to me, the same as if I was a feather."<sup>153</sup> He was only willing to agree to a right to pass through his country, "The whites may travel in all directions through my country we shall have nothing to say to them providing they do not build house on our land."<sup>154</sup>

¶ 97. Owhi (Yakama) explained that he, like Young Chief, could not agree because he feared punishment from God: "God named this land to us that is the reason I am afraid to say anything about this land. I am afraid of the laws of the Almighty . . . Shall I steal this land and sell it? . . . Shall I give the lands that are a part of my body and leave myself poor and destitute? . . . I love my life is the reason why I do not give my lands away. I am afraid I would be sent to hell."<sup>155</sup>

¶ 98. The Cayuse, Walla Walla and Yakama leaders criticized Lawyer and the Nez Perce for not joining with them in the council. Pe-pe-mux-mux said, "I thought these Indians were all the same as one, all alike . . . Now I will speak about Lawyer. I think my friend has given his lands, that is what I think from his words."<sup>156</sup> Five Crows said, "We have been as one people with the Nez Perces heretofore; this day we are divided."<sup>157</sup> Eagle from the Light explained his position, "These people have been talking among themselves as though there was two and when I heard what they had to say I said very well; let us go as two."<sup>158</sup>

¶ 99. The decision of the Nez Perce to chart their own course had apparently been made even before the council began. On the day before the first session, Stevens visited Lawyer at his lodge. An old wound suffered at the battle of Pierres Hole made it difficult for Lawyer to get about. While at the lodge, several Nez Perce chiefs came to tell Lawyer that the Cayuse and Walla Walla wanted to hold a council. Lawyer adamantly refused, "What have we to say to the Cayuses or Pee-pee-mox-a-mox? What

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<sup>152</sup> *Id.*  
<sup>153</sup> *Id.* at 56.  
<sup>154</sup> *Id.*  
<sup>155</sup> *Id.* at 57-58.  
<sup>156</sup> *Id.* at 56.  
<sup>157</sup> *Id.* at 63.  
<sup>158</sup> *Id.* at 75.

are their hearts to us? Did we propose to hold a council with them or ask them for advise? Our hearts are Nes Perses hearts and we know them. We came here to hold a great council with the Great Chief of the Americans, we know the straight forward truth to pursue and are alone responsible for our actions. . . . We have our own people to take care of, they give us enough trouble, and we will not have the Cayuse troubles on our hands."<sup>159</sup>

¶ 100. To explain the Nez Perce decision, Lawyer took out a book in the Nez Perce language which contained the advice of Chief Ellis, a former leader. Ellis had given this advice, "Whenever the Great Chief of the Americans shall come into your country to give you laws, accept them!"<sup>160</sup>

¶ 101. Joel Palmer responded to the Cayuse, Walla Walla and Yakama with a haughty series of rhetorical questions, "The Young Chief says he does not see what we propose to give them. . . . Can we bring these saw mills and these grist mills here on our backs to show these people? Can we bring the blacksmith shops, the wagons & tools on our backs to show them at this time? . . . How long will these people remain blind. We came to try to open their eyes they refuse the light."<sup>161</sup>

¶ 102. Palmer explained their lands were "partched up plain" and worth not one half of what he had offered to pay for it. Palmer also warned, "Gold has been found in the country above yours. Our people are very fond of it. When our people hear this they will come here by hundreds, among these who come there will be some bad people, those bad people will steal your horses and cattle. There are but few of you, you cannot prevent it when you are scattered over a great extent of country, you cannot prevent it."<sup>162</sup>

¶ 103. Palmer closed by pleading his sincerity, "We do not come among you as traders we come bearing the words of our Great Chief. If you refuse to receive it our hearts will be sad. Our hearts will be sorry for these chiefs for we like them. Our hearts will be sorry and bleed for all these old men. Our hearts will be sorry and bleed for these young men. Our hearts will be sorry and bleed for these women and children."<sup>163</sup>

¶ 104. Despite Palmer's exhortations, tribal leaders were unwilling to agree. Cam an pellow (Cayuse) said "How do you show your pity by sending me and my children to a land where there is nothing to eat but wood? . . . The laws of God are not alone for

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<sup>159</sup> *Id.* at 11-12.  
<sup>160</sup> *Id.* at 12.  
<sup>161</sup> *Id.* at 58.  
<sup>162</sup> *Id.* at 59.  
<sup>163</sup> *Id.* at 60.

you, they are for me as well."<sup>164</sup> Woa-lish-wam-pum said, "Your words since you came here have been crooked. That is all I have to say."<sup>165</sup>

¶ 105. In the face of these refusals, Stevens adjourned until the next day while still trying to bring the council to a close. He said, "we have to get through the business of the Nez Perces so that they may get home, they have a long journey before them. . . . We want every person to come early."<sup>166</sup>

¶ 106. Young Chief opened the council on Friday, June 8, by explaining why he was unable to agree to the proposal made. "We have so many horses and cattle in this country is the reason we were troubled. Your marking out the country is the reason it troubles me so and has made me sit here without saying anything. You Americans, your forefathers are dying in your own country, as many of your people are wealthy in stock it requires a large tract to keep them. . . . I cannot take the whole country and throw it to you. . . . You embraced all my country, where was I to go, was I to be a wanderer like a wolf. Without a home, without a house I would be compelled to steal, consequently I would die."<sup>167</sup>

¶ 107. Stevens and Palmer finally came to realize they would not get agreement on their proposal for two reservations. So, Palmer proposed a third reservation for the Walla Walla, Umatillas and Cayuse. Palmer described the mills and schools and shops that would be built there, and the money that would be paid to these tribes.

¶ 108. It is clear from the minutes that this proposal had been discussed before the session began, and that the Walla Walla, Cayuse and Umatilla leaders had agreed. Pee--Pee-Mox-Mox (Walla Walla) confirmed the agreement he had reached with Palmer, and said that he would now accept the gifts and provisions that had been earlier offered. Joseph (Nez Perce) and Red Wolf (Nez Perce) spoke briefly to signify their agreement.

¶ 109. Only the Yakamas continued to refuse to agree. Kam-i-ah-kan said, "I wish the Americans to settle on the wagon route; we do not confine them to the road; they may settle about the road so that the Indians may go and see them."<sup>168</sup> Scloom said, "[W]hen you give me what is just for my land you shall have it."<sup>169</sup>

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<sup>164</sup> *Id.* at 61.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 63.

<sup>167</sup> *Id.* at 64.

<sup>168</sup> *Id.* at 69.

<sup>169</sup> *Id.*

¶ 110. Then, while the parties were on the verge of reaching an agreement, a powerful and disruptive force rode into the council from the east. It was announced that the influential Nez Perce leader Looking Glass had arrived from Buffalo Country. Stevens tried to make the best of the announcement, "I am glad Looking Glass one of your chiefs is coming, he is a friend of Kamiakun . . . let his first glance be upon you sitting here."<sup>170</sup>

¶ 111. Just as Stevens hoped, Looking Glass rode onto the council grounds to see the negotiations under way. But, he was outraged. Looking Glass said, "My people what have you done? While I was gone you sold my country."<sup>171</sup> The council adjourned.

¶ 112. The parties did not reconvene until 2 o'clock the next day, Saturday, June 9th. But in the interim, in private talks Stevens and Palmer had managed to gain the agreement of all the principal leaders present. Stevens opened by saying, "My friends, Today we are all I trust of one mind. Today we shall finish the business which brought us together."<sup>172</sup> The three treaties had been drafted, and Stevens briefly reviewed the provisions of each of them.

¶ 113. Stevens then invited Looking Glass to speak, and must have been surprised to learn the agreement was not as secure as he had thought. Looking Glass insisted that the Nez Perce and United States should leave each other alone. He said, "A long time ago the Great Spirit spoke to my children. I am from the body of my parents and I set on a good place. . . . Why do you want to separate my children and scatter them all over the country? I do not go into your country and scatter your children in every direction."<sup>173</sup>

¶ 114. Looking Glass wanted assurance that if he agreed, whites would be kept out of his country. Three times he asked, and three times Stevens and Palmer promised:

I want to know if an Agent will stay up in my country?  
Stevens promised, As long as there are people.

Will the Agent be there that long to keep the whites from pushing into our country?  
Palmer promised, "Certainly."

Will you mark the piece of country that I have marked and say the Agent shall keep the whites out?

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<sup>170</sup> *Id.* at 67-68.

<sup>171</sup> *Isaac I. Stevens* at 220-221.

<sup>172</sup> *A True Copy of the record of the Official Proceedings at the Council in the Walla Walla Valley* at 70.

<sup>173</sup> *Id.* at 71-73.

Palmer promised, None will be permitted to go there but the agent and the persons employed, without your consent.<sup>174</sup>

Looking Glass indicated the line he wanted, and explained, "The reason why that shall be the line is that they want more room for their horses and cattle."<sup>175</sup>

¶ 115. Cayuse leaders were encouraged by the strong talk of Looking Glass. Young Chief said, "That is the reason I told the Governor to let it be till another time . . . I heard that Looking Glass was coming."<sup>176</sup> A short while later he said, "The President is your Chief and you do what he tells you. That is the reason the Looking Glass marked out the line he wanted: he is the head Chief."<sup>177</sup> Three Feathers said, "Looking Glass is speaking, we look upon him as a Chief."<sup>178</sup>

¶ 116. Looking Glass claimed a broad authority to speak, "You see my body it is not divided, it is one body as these are all my children (pointing about)."<sup>179</sup> "It was my children that spoke yesterday and now I come and hear them speak. I asked my children what was their hurry? They knew that I was coming. Why did they run and speak till I came: that is the reason I marked it bigger. I wanted to talk with you and have you talk with me."<sup>180</sup>

¶ 117. Stevens argued that the Nez Perce, the Walla Walla and the Cayuse had all already agreed, and that should be the end of it. Palmer added, "Do you wish to throw all we have said to you behind you. Shall we like boys say yes today and no tomorrow?"<sup>181</sup>

¶ 118. Billy from the Nez Perce complained about Looking Glass, "This is just putting it off further and making us more tired. You have no pity on us. . . . I thought we had appointed Lawyer our head Chief and he was to do our talking, that is the reason why I have spoken."<sup>182</sup>

¶ 119. Not only did Looking Glass propose a different reservation line, he proposed to change the treaty process: "You said you would send this talk to the President and if he says yes . . . then we will talk."<sup>183</sup> Stevens demanded that the tribes

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<sup>174</sup> *Id.* at 73.  
<sup>175</sup> *Id.* at 74.  
<sup>176</sup> *Id.*  
<sup>177</sup> *Id.* at 77.  
<sup>178</sup> *Id.* at 74.  
<sup>179</sup> *Id.* at 76.  
<sup>180</sup> *Id.* at 77-78.  
<sup>181</sup> *Id.* at 77.  
<sup>182</sup> *Id.* at 74.  
<sup>183</sup> *Id.*

agree first, "The Prest. has sent me and my brother to make this very agreement. We must agree upon something then it goes to the President and if he thinks it is good then he approves it."<sup>184</sup>

¶ 120. Seeing that Looking Glass was not going to agree, Stevens decided to adjourn until Monday. Palmer pressured the tribes, "If the Looking Glass is a Chief I hope he will act as a Chief acts for the good of his people. If we were to say yes to his line our Chief would say No! but if we shall say the line we have marked we believe our Chief will say Yes. Which will you do, take that line or have it all thrown away? Let us act like wise men and not part without doing good for each other."<sup>185</sup>

¶ 121. The Council convened for its last session on Monday, June 11. Somehow, over the Sabbath Stevens and Palmer had overcome the opposition of Looking Glass. Stevens' opened the session by declaring, "My children, we have met today for the last time. Every man here present has agreed to a treaty in council."<sup>186</sup> Before presenting the treaties to be signed, Stevens emphasized to the tribal leaders the importance of keeping the promises embodied in the treaties: "We all expect that you all will do what you promised to do. We don't believe you will break your word and make us ashamed of you. I don't believe we shall have to say to the President, 'you have promised, and then broke your promise.' No! We know that you will keep your word."<sup>187</sup> There was far less emphasis upon the obligation of the United States to keep the promises being made.<sup>188</sup> The treaties were then signed.

¶ 122. After the signing, various delegates to the Council made closing speeches. Stevens confined himself to rather immediate concerns. The treaties would be submitted to the President. Presents would be distributed as people left the Council grounds. The various tribes were encouraged to travel to Buffalo Country to treaty with the Blackfeet. Rather arrogantly, Stevens concluded: "Thenceforth you will have me for your Great Chief."<sup>189</sup>

¶ 123. Joel Palmer addressed these matters also, but spoke more generally about the treaties. He began: "We have shown you our hearts and you have shown us yours. We commenced a long way apart but now we are together. We are one. I hope we shall

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<sup>184</sup> *Id.* at 75.

<sup>185</sup> *Id.* at 78.

<sup>186</sup> *Id.* at 79.

<sup>187</sup> *Id.*

<sup>188</sup> Joel Palmer commented later in passing: "We have not got a great many goods but when this paper goes to the President and he says it is good then we will supply you with other goods, and we shall do all things that we have agreed upon." *Id.* at 82.

<sup>189</sup> *Id.* at 80.

always remain as one and have but one heart."<sup>190</sup> Palmer exhorted all present to live in peace, and emphasized the importance of living according to the treaties:

If your people are foolish and do wrong it is your duty as chiefs to punish them for it. We shall try and prevent the whites from doing wrong to the Indians, and you must prevent your people from doing wrong to the whites. The Treaty provides that if an Indian steals the property of the whites it may be paid for from the annuities. It also provides that if your people steal from other tribes it will be paid for in the same way. We also provide that if the whites take the property of an Indian it must be paid for. The Agent who is the proper person to apply to in case an injury is done you.<sup>191</sup>

¶ 124. After Stevens and Palmer finished several tribal leaders made their own closing speeches. They too emphasized the importance of abiding by the treaties. However, in contrast with Stevens and Palmer, the tribal leaders emphasized the importance of the whites living up to the treaty. Tin-tin-meet-see said:

We are never the beginners in doing wrong to the whites. All Indians here understood well what has been said. When your white children come into this country they do things at random. (to the Indians) You have heard all that has been said and now let us go home and do right.<sup>192</sup>

¶ 125. Eagle of the Light agreed: "I do not want our hearts to come together wrong, but right, and remain so as long as we are a people, and we will stop the bad people on both sides."<sup>193</sup> Red Grizzly expressed his concern: "[W]hen Red Owl said your chief wished to say that he wanted you to stop the whites from taking their horses or cattle and if my horses go across the line of the reservation which is a small one I do not want these horses and cattle to be taken off because they are over the line."<sup>194</sup>

¶ 126. In the very last words spoken at the Council, Looking Glass was inviting Governor Stevens to another Council: "As so many are now working, some other time you and I will have a heart. I have a good head and a good heart, by and by we will

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<sup>190</sup> *Id.* at 81.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 83.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*



have a talk."<sup>195</sup>

### **THE FISHING CLAUSE**

¶ 127. Just as with the treaties west of the Cascades, Governor Stevens knew that a fishing clause was a pre-requisite to any agreement of the Nez Perce. Accordingly he included Article III paragraph 2 in the first draft of the treaty. Stevens and Palmer<sup>196</sup> tried to turn the concession to their advantage by using the clause during the Walla Walla Council as a rhetorical device to persuade the tribes to agree. Stevens explained why the Nez Perce and Yakima Reservations originally proposed were selected:

I will give briefly the reason for selecting these two Reservations. We think they are large enough to furnish each man and each family with a farm, and grazing for all your animals. There is especially in winter grazing on each Reservation. There is plenty of Salmon on these reservations, there are roots and berries. There is also some game. You will be near the Great Road and can take your horses and your cattle down the river and to the Sound to market.<sup>197</sup>

¶ 128. On June 5, Stevens pointed out the rivers and the fisheries being secured to the Nez Perce:

Here (showing a draft on a large scale) is a map of the reservation. There is the Snake River. There is the Clear Water river, Here is the Salmon River. Here is the Grande Ronde river. There is the Palouse river. There is the El-po-wow-wee.<sup>198</sup>

This is a large Reservation. The best fisheries on the Snake River are on it; there are the fisheries on the Grande Ronde river. There are fisheries on the Os-ker-ma-wee, and the other streams. There are cumash grounds here at this place (pointing to the large cumash grounds of the Nez Perses). We feel if we put you on this Reservation our agent can visit you all and take care of you all.<sup>199</sup>

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<sup>195</sup> *Id.* at 84.

<sup>196</sup> Palmer was not as inclined to use the clause as Stevens, but he did argue: "You will be allowed to go and catch fish and dig roots the same as the whites; and if any of our people do wrong to you you are not to shoot them, but to go to the Agent." *Id.* at 38. Palmer also took a cue from Stevens and included a fishing clause in a treaty with the Confederated Tribes of Middle Oregon negotiated shortly after the Walla Walla Council. 12 Stat. 963.

<sup>197</sup> *Id.* at 23.

<sup>198</sup> *Id.* at 24.

<sup>199</sup> *Id.*

You will be allowed to pasture your animals on land not claimed or occupied by settlers, white men. You will be allowed to go on the roads, to take your things to market, your horses and cattle. You will be allowed to go to the usual fishing places and fish in common with the whites, and to get roots and berries and to kill game on land not occupied by the whites; all this outside the Reservation.<sup>200</sup>

¶ 129. Later, at the critical moment when Governor Stevens was trying to persuade the reluctant Looking Glass, he said:

Looking Glass knows that in this reservation settlers cannot go, that he can graze his cattle outside of the reservation on lands not claimed by settlers, that he can catch fish at any of the fishing stations, that he can kill game and can go to buffalo when he pleases, that he can get roots and berries on any of the lands not occupied by settlers.<sup>201</sup>

¶ 130. Governor Stevens reported to the Commissioner of Indian Affairs that the Walla Walla Treaties had reserved to the tribes a "nearly inexhaustible Salmon"<sup>202</sup> fishery.

¶ 131. The legal history of the fishing clause has been rendered thus far entirely from the written accounts recorded by United States officials and citizens. There are important Nez Perce accounts of the Nez Perce Treaties. These accounts make the essential role of the fishing clause in the Nez Perce Walla Walla Treaty even more apparent than those previously cited.

¶ 132. Henry E-nah-la-lamkt recounted the importance of fishing and hunting rights in the Walla Walla Treaty to the Nez Perce:

While the treaty did not provide to pay us for the game or fish lost by reason of the large cession made, it did provide that we should still have access to the same . . . [The treaty of 1863 provided] that we still have the right to hunt and fish on any of the lands formerly owned by the Nez Perces. . . . *The thing of the greatest interest to us at that time was the right and possession of the game and fish, and the fact that these were reserved to our people was considered as the greatest compensation for the cessions.*<sup>203</sup> (Emphasis added.)

¶ 133. Yellow Bull was present at the Walla Walla Council

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<sup>200</sup> Id. at 25.

<sup>201</sup> Id. at 43.

<sup>202</sup> Isaac Stevens to CIA Manypenny, June 14, 1855.

<sup>203</sup> MEMORIAL OF THE NEZ PERCE INDIANS, 62d Congress, 1st Session, Sen. Doc. No. 97. [Hereinafter cited as MEMORIAL OF THE NEZ PERCE INDIANS.]

but not the 1863 Lapwai Council, and played a prominent part in the Joseph War.

In 1855 our people were scattered over vast areas of country, some of them lived in Montana, a great many in Idaho, some in Washington, some of them lived in Oregon and Wyoming, but they claimed all the territory as far as the villages extend and all the territory in between. The treaty of 1855 was through the efforts of Gov. Stevens and the officials of the United States using their influence on lawyer and the counselors from Idaho Territory. Many of the leading men from the remote parts of the Territory, such as those in Montana and Wyoming, and especially those of Wallowa. We were not consulted as to this treaty, and this is principally the cause of much of the dissatisfaction.<sup>204</sup>

*We also contended that we had the right to the game and fish in this vast territory, whether it was included in the ceded portion or the part that was reserved to ourselves. We were often molested and interrupted in our hunting trips by white people and our rights disputed by white settlers. This, too, brought about trouble and dissatisfaction. Many of our people were killed in the Joseph War and many more died from the hardships they suffered from the removal to the Indian Territory and their return to the north.<sup>205</sup> (Emphasis added.)*

¶ 134. John Reubens witnessed the 1855 and 1863 Treaties and the 1893 Agreement, and recounted:

*At the making of the treaty of 1855 the officers of the Government flattered our people very much, telling them they were glad to meet a treaty-making people; that a treaty was more as a proof of friendship than a sale of land; that they made presents to the Indians of rations. Gov. Stevens told us that even though we made a sale of our land to them we still would have the right to go from place to place and hunt and fish any place on the territory the same as we always did. This same assurance was given us in the treaty of 1863. Now we are denied those privileges. We believe that we should be paid a much larger sum of money for our rights--the fish and game, the streams and springs, roads and highways across this country. We believe that if the Government had protected us in these rights that we would not have had the trouble known as the Joseph War.<sup>206</sup> (Emphasis added.)*

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<sup>204</sup> *Id.* at 44.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 58-59.

¶ 135. Philip McFarland, who was 19 years old at the time the 63 Treaty was negotiated, stated:

After the treaty of 1863 and when our reservation was reduced to a small area we did for many years have access to the game and fish on the ceded lands and the right to roam over the ceded lands at will. Some time about a year after, we received our first per capita payment in 1895. I remember of James Reubens telling our people that we would soon lose our hunting and fishing privileges as the State would pass laws or had passed laws to protect the game. I do not remember, however, of any of our people having been arrested for hunting and fishing until about 11 years ago. Our people always contend and every one understood that we had reserved the fish and game in the treaty of 1855, the treaty of 1863, and even in the agreement of 1893. We have never been paid anything to relinquish these rights and we never did relinquish these rights; on the contrary, we were always assured that we had them until the last few years.<sup>207</sup>

¶ 136. George Amos gives this account of the Walla Walla Treaty:

In 1855 I was in Montana, and I returned to my people, signed the treaty with the United States. When I returned I learned that the Nez Perces residing in the vicinity of Kamiah had invited all the tribe from all over the country, mountains, streams, and gulches to come to Kamiah for the purpose of electing a head chief. After everyone had collected at Kamiah and they had held council for about one month they selected Lawyer as the head chief of the tribe. After the election the head chief, Lawyer, he told his people that they were requested to come to Walla Walla to meet some officers of the United States Government, but that he did not know for what purpose, so most of the people that were camped at Kamiah went there. When I arrived there I saw the officer of the United States Government and Gov. Stevens, of Oregon, and heard him and others address the people, and he told the people he was going to establish their boundary lines so that they would know where their lands laid. They counceled for many days without coming to an agreement, until some one of the people told the head chief that they would leave the matter to him to determine and they would agree to whatever he did. They could not come to an understanding as to the boundary lines. Gov. Stevens told them that he did not want to take their good lands from them but only the rocky places, the mountains. Chief Lawyer told the people that while we were giving up the rocky mountain lands we were retaining the good lands.

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<sup>207</sup> *Id.* at 47.

They would put up sawmills for us, cut lumber for us, put up blacksmith shops and supplies, and furnish us with farmers, schools, give us cows, domestic animals, and help us to live a more healthful life. Gov. Stevens told the people that even though they ceded to the Government the hills, mountains surrounding them, they would still have access to hunt and fish on the ceded land and the right to the streams, springs, and fountains, the use of the roads, highways, and passes, and the use of the timber for camping purposes. These privileges would belong to them no matter what conditions came over the country or what laws were passed.<sup>208</sup> (Emphasis added.)

¶ 137. While he was not there to witness the execution of the treaties, tribal member Owen Gould offered this interpretation of the "in common with" language:

"In common with the citizens of the territory," was a phrase wisely inserted mainly to protect the few whites who at times had to take fish for sustenance so that their actions would not rile the Indians.<sup>209</sup>

¶ 138. It is clear from the historical record that the fisheries clause was of paramount importance to both the Nez Perce and the United States at the Walla Walla Council. The thing of greatest interest to the Nez Perce at the Council was the right and possession of the game and fish.<sup>210</sup> The thing that finally reconciled the Nez Perce and made them inclined to sign the treaty was the reservation of the game and fish rights.<sup>211</sup> Anson Dart had learned as early as 1851 that the Indians of Oregon Territory refused to cede their homelands without reservations of the fisheries.<sup>212</sup> Joel Palmer, who replaced Dart, understood that without protection of the fisheries there would be no treaties.<sup>213</sup> Isaac Stevens was told the same thing when he arrived in Washington Territory in December, 1853, by the oldest settlers in the country and those best acquainted with the Indians.<sup>214</sup> The fishing clause was as important to the interests of the United States as it was to the interests of the Nez Perce. In his Annual Report for 1853 Commissioner Manypenny pointed out that hostilities with the tribes would involve an amount of expense far exceeding that of purchasing the lands.<sup>215</sup> As Governor

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<sup>200</sup> *Id.* at 48-49.

<sup>209</sup> Gould, MEMORANDUM OF HUNTING AND FISHING RIGHTS, attached to letter from Fort Lapwai Indian Agent E.W. Jenmark to Commissioner of Indian Affairs, January 13, 1933.

<sup>210</sup> Affidavit of Henry E-nah-la-lamkt, MEMORIAL OF THE NEZ PERCE INDIANS.

<sup>211</sup> Affidavit of Kol-Kol-Chaw-hin, *Id.*

<sup>212</sup> Dart to Commissioner of Indian Affairs, November 7, 1851.

<sup>213</sup> Joel Palmer to G.W. Manypenny, October 8, 1855.

<sup>214</sup> Isaac I. Stevens to George W. Manypenny, December 26, 1863.

<sup>215</sup> Report of the Commissioner of Indian Affairs, November 26, 1853.

Stevens recognized, any other policy would be injudicious, almost impossible and contrary to customary use and natural right.<sup>216</sup>

## § 6. THE 1863 TREATY

¶ 139. Within a year the terms of the Walla Walla Nez Perce Treaty were tested when hostilities between the United States and the Yakamas and their allies broke out. True to their pledge of amity, the Nez Perce refused to join the Yakama and rendered aid to the United States. Colonel George Wright negotiated a treaty of "peace and friendship" with the Nez Perce on July 4, 1858. There was to be "perpetual peace between the United States and the Nez-Perces tribe."<sup>217</sup> In the event of war, the Nez Perce agreed to aid the United States with men to the extent of their ability, with arms and provisions to be provided by the United States. The United States promised to aid the Nez-Perces with troops, expenses to be paid by the United States. Any disagreements were to be "settled by their respective chiefs in friendly council."<sup>218</sup>

¶ 140. In 1864, Chief Lawyer recounted the aid rendered by the Nez Perce:

We have always been with the whites. We fought with Major Haller, with Col. Wright and Col. Steptoe, and with the latter our blood was mingled with yours, and when defeated, had not Timothy and Levi conducted them out of the country, they would have all be killed.<sup>219</sup>

¶ 141. The Lapwai Treaty Council was precipitated by E.D. Pierce and the Clearwater gold rush which followed him. The policy of breaching that clause of the 1855 Treaty which guaranteed to the Nez Perce "exclusive use" of their Reservation, and pursuing a council to amend the treaty, was apparently created in Pierce's camp on the Clearwater in the Fall of 1860. It was Pierce's third clandestine visit to the Reservation. Agent Cain who was responsible for the Nez Perce Reservation traveled to the camp from his post in Walla Walla, ostensibly to order Pierce and his comrades off the Reservation. In a report filed after this meeting, Cain recommended that a council be called to amend the treaty, and that the military be used in the

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<sup>216</sup> Isaac I. Stevens to George W. Manypenny, December 26, 1853. S.Doc. 34, pp. 6-7.

<sup>217</sup> H. Clay Wood, *The Status of Young Joseph and His Band of Nez Perce Indians under the Treaties between the United States and the Nez-Perce Tribe of Indians and the Indian Title to Land* (Assistant Adjutant General's Office, 1876) p. 23.

<sup>218</sup> *Id.* at 24.

<sup>219</sup> "Lawyer's Comments," attached to a letter from Caleb Lyon of Lyonsdale to Commissiomer of Indian Affairs Wm. Dole, August 22, 1864.

meantime to intimidate and appease the Nez Perce, thereby avoiding war.

¶ 142. Cain's recommendation went to Superintendent of Indian Affairs for Washington Territory Geary, and then to the Commissioner of Indian Affairs, and in the spring of 1861 the Senate considered the idea but failed to act. Geary and Cain were not to be deterred by a lack of Congressional authority; in April of 1861 they called a council and negotiated the "articles of agreement" they wanted. There were four articles. One granted permission to whites to mine that portion of the Reservation north of the Clearwater River. Two promised the Nez Perce that no whites would be allowed in that portion of the Reservation south of the Clearwater. Three promised that U.S. laws regulating trade with Indians would be enforced. And, four promised that the United States would maintain a military force sufficient to protect the Indians in the rights secured to them. Cain, of course, had no authority to make his promises, and no power to perform them.

¶ 143. Having bought a little time, Geary and Cain, through the Commissioner, continued to seek Congressional approval and budget for a treaty council. The Indian Appropriation Act passed in June of 1862 provided \$40,000 and authorized a new council. The Commissioners appointed to conduct the council found it convenient to postpone the meeting until the Spring of 1863. The council was scheduled to open on May 10.

¶ 144. The Commissioners were delayed at The Dalles for a couple of days waiting for a steamship to take them on up the Columbia, and didn't arrive in Lapwai until May 11. They immediately convened the Council to discover that only Head Chief Lawyer, who resided near the Agency, was present. The Commissioners were told that the other tribal leaders had been delayed by the wet weather, which had prevented them from putting in their crops as early as usual.

¶ 145. Superintendent Hale reported to the Commissioner that "evil disposed persons" had been telling the Nez Perce that the soldiers were stationed at Ft. Lapwai for the purpose of driving them from their homeland by force. Hale at once assured the Nez Perce that the troops were not there to drive them away, and that the purpose of the Council was to "council with them as to what was best to be done under the peculiar circumstance in which they found themselves by reason of the discovery of gold in their country."<sup>220</sup> Hale also reported that "Many of them had heavy hearts in looking forward to the Council, knowing that its

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<sup>220</sup> Report of C.H. Hale, Superintendent of Indian Affairs, W.T., to Wm. P. Dole, Commissioner of Indian Affairs, June 30, 1863. [Hereafter cited as *Hale Report*.]

object was to induce them to consent to relinquishing a part of their lands to which the great body of the tribe were manifestly very averse."<sup>221</sup>

¶ 146. At Chief Lawyer's request, the Council was reconvened on Wednesday, May 13. Lawyer requested that Perrin Whitman be brought to the Council to interpret for the Nez Perce. They considered Whitman more familiar with their language than the other interpreters present. Further, they thought that both parties might have "some hard things to say," and wanted the discussions to be "plainly or sharply interpreted." They particularly did not want Rev. Spaulding to have to do this job because "he was their Teacher, and they did not wish to put harsh words on his lips." In addition, they thought the disaffected or disloyal bands would object if the interpreters were chosen from amongst those who lived there. The Commissioners immediately assented, and sent Agent Anderson to Salem for Whitman.<sup>222</sup>

¶ 147. Superintendent Hale requested that Lawyer send messengers to the various bands urging them to come to the Council, and decided to explore the interior of the Reservation, particularly, the Clearwater River and the Nez Perce village at Kamiah. He was impressed by what he saw. At all the spots adaptable for agriculture, which were numerous but not very extensive, he found villages with wheat, corn, peas and potatoes growing luxuriantly. The largest village was at Kamiah, "situated on the bank of the South Fork of the Clearwater and "extending along the stream for a distance of about ten miles." With Lawyer's Creek the Nez Perce were "able to irrigate the entire plain, which [was] dotted with numerous Indian farms, exhibiting encouraging signs of thrift." Numerous and extensive bands of horses and quite a number of fine cattle were grazing on the border of the plain, on the lofty hills. The party returned to Lapwai over a rolling upland, "clothed with a most luxuriant growth of bunch grass, exactly suited for purposes of grazing."<sup>223</sup>

¶ 148. The weather continued wet and rainy, and the Nez Perce continued to be delayed. However, by the 19th, a thousand had gathered at the Council ground. An influenza epidemic raced through the Nez Perce camp; "scarcely a lodge was free from it, and in some of the lodges there were as many as four and five down at once." Three or four persons suddenly died. Finally, on the 22d, Dr. Baker from Lewiston was brought to the Council Ground to attend to those stricken. While several more died, the

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<sup>221</sup> *Id.*

<sup>222</sup> *Synopsis of the preliminary and official proceedings of a council held in the valley of the Lapwai, Washinton Territory* p. 19. [Hereinafter cited as *Synopsis of Proceedings.*]

<sup>223</sup> *Hale Report* at 12-13.



epidemic eventually abated.<sup>224</sup>

¶ 149. Then, on May 25th, while the epidemic still raged and before Perrin Whitman arrived to interpret, Superintendent Hale became impatient and opened the Council. He began by trying to dispel Nez Perce anxiety about the presence of so many troops:

We intend to act with perfect justice towards you in the sight of God. The Govt. of the U.S. desires to act justly towards you, and to preserve you against the injustice of men who would harm you and do you harm. It is for this that your Great Father the President of the United States has placed troops here. They will protect you, to see that justice is done to you, and not to drive you away from your homes as some bad men have told you.<sup>225</sup>

¶ 150. Apparently this assurance was disingenuous. Hale used the troops to have the Palouse Indians driven away from the Council.<sup>226</sup> They were also important as a threat to the Nez Perce. Hale reported to the Commissioner: "[I]f it had not been for the force, which General Alvord had very considerately placed at Fort Lapwai with orders to remain until the Council should be dissolved, it is highly probable that we should have had serious difficulty before the close."<sup>227</sup>

¶ 151. Hale then moved right to the point of what he wanted:

We do not propose that you should leave your own country, we do not wish it, we only desire that you would relinquish such portions of your reservation as you do not really need.<sup>228</sup>

¶ 152. Despite what he said, Hale did in fact want the Nez Perce removed entirely from their homeland. From the time Agent Cain visited E.D. Pierce's gold camp in the fall of 1860, the United States sought to remove the Nez Perce entirely if possible. That was the Commissioner's proposal to Congress. However, the Nez Perce refused to move, and apparently Superintendent Hale did not think the United States could forcibly remove them. During the winter prior to the Council, Hale had instructed the local agent to ascertain the views of the Nez Perce:

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<sup>224</sup> *Id.* at 13.  
<sup>225</sup> *Synopsis of Report* at 21.  
<sup>226</sup> *Hale Report* at 14.  
<sup>227</sup> *Id.* at 15.  
<sup>228</sup> *Synopsis of Proceedings* at 21.

It was soon ascertained that it would be impossible to find outside of their own reservation a region of country suited to this people, upon which there could be any reliance for a permanent abode. Besides, if there were, it would have been of no avail, for they would have refused to enter into any arrangement whatever that would have required them to leave their own country.<sup>229</sup>

¶ 153. Hale then described the boundaries of the smaller reservation he was proposing. Why should the Nez Perce consent to sell the remainder? Hale offered them protection from the whites: "[W]e wish to bring you nearer together, so that your rights, your lives, and your property can be better protected."<sup>230</sup> And, Hale offered them an allotment, a farm forever:

This land in the valley shall also be surveyed into lots, so that each of you can have a farm in his own right, and have it secured to him by a paper just as the whites do, then nobody can disturb you. The land thus given by the paper will be yours while you live, then your childrens, and when they die, it will belong to their children.<sup>231</sup>

Hale closed the session by stating that more about the proposal would be discussed the next day, and urging the Nez Perce: "Think about what has been said, and see if it is not best for you to settle down as we propose, and become a farming people."<sup>232</sup>

¶ 154. Commissioner Hutchins spent the Council session on May 26 explaining the payments and other advantages the Nez Perce would receive under the amended treaty. The payments promised under the Stevens Treaty would be made. Each family would have an allotment, fenced and ploughed. The reduced Reservation would belong entirely to the Nez Perce. The United States would pay debts owing to the Nez Perce which arose out of the war of 1856. In addition to all these things, Commissioner Hutchins promised that \$81,200 would be spent during the first year after the treaty to provide mills and blacksmith shops to Kamiah, and to provide hospitals, schools and other services.<sup>233</sup>

¶ 155. At the completion of Hutchins' speech, the Nez Perce were ready to speak. Ute se mil e cum understood the proposal, but challenged its authority:

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<sup>229</sup> Hale Report at 12.  
<sup>230</sup> Synopsis of Proceedings at 21.  
<sup>231</sup> Id. at 22.  
<sup>232</sup> Id.  
<sup>233</sup> Id. at 22-23.

When did the order for this proposition you have made come from your government. I feel responsible to the Government and wish to know, if this comes from it, when it came, whether in the fall, in the winter or this spring? State it distinctly for we wish to know.<sup>234</sup>

¶ 156. Hale answered by explaining the events leading up to the Council. Then Head Chief Lawyer declared the allegiance of the Nez Perce to law and the Stevens Treaty, and questioned why the United States had not performed its promises:

As for me and my Chiefs, we are governed by law, we are here today to adhere to the treaty that has been made, and which we on our side have kept. . . . "[M]y people believe the law of God is binding on us and on you, for the law is sacred. . . . You have broken the treaty, not we. . . . We have been looking and we have been waiting, many articles in that treaty have not been fulfilled by the Government."<sup>235</sup>

Hale answered by saying that the Stevens treaty would be read tomorrow, for "perhaps we do not understand it."<sup>236</sup>

¶ 157. The Wednesday, May 27th session began with a reading of the Stevens Treaty, and ended with Superintendent Hale trying to explain away the many breaches by the United States: "We do not claim that in all respects the treaty has been carried out, but we claim that the President, the Government of the United States have endeavored to fulfill it."<sup>237</sup> Hale claimed money had been appropriated by Congress, but acknowledged the mills, schools, houses and other things were not completed. He pleaded that he could not be held responsible for things that happened before he became Superintendent, and finished with more promises: "We are not here to break it, but to uphold it, to make it firm."<sup>238</sup>

¶ 158. Because Perrin Whitman and various Nez Perce still had not arrived at the Council, no meeting was scheduled for Thursday, May 28. However, when word that whites had seized and taken possession of Nez Perce homes near Lewiston reached the Council, the Nez Perce wanted an emergency session. Hale sent Col. Steinberger and a detachment early in the morning to remove the trespassers. When the session convened, Hale asked any Nez Perce who wanted to speak.

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<sup>234</sup> *Id.* at 23.  
<sup>235</sup> *Id.* at 24.  
<sup>236</sup> *Id.* at 25.  
<sup>237</sup> *Id.*  
<sup>238</sup> *Id.* at 26.

¶ 159. Head Chief Lawyer took the opportunity to respond to Hale's proposal. He began humbly, "[W]e do not profess to know it all. We understand much of it but no doubt come short of a perfect knowledge."<sup>239</sup> Then Lawyer gave a long speech recounting the history of Nez Perce-white relations as "proofs of our adherence to the Law and our attachment to the whites."<sup>240</sup> In contrast to the Nez Perce, Lawyer then listed the violations of the treaty by the whites. He finished by giving the Nez Perce answer to Hale's proposal: "I will now give you the great answers. Dig the gold, and look at the country, but we cannot give you the country you ask for."<sup>241</sup>

¶ 160. Other Nez Perce leaders supported Lawyer. Ute-si-mil-a-kin said, "We cannot give up our country. You but trifle with us, we cannot give you the country, we cannot sell it to you."<sup>242</sup> La-haich-tuisla (Billy) said, "Yet you profess to speak according to law. It does not look good. It looks crooked. My people say, it is not good. . . . We have answered you, we cannot sell our country."<sup>243</sup> Es-cot-nur agreed, "It is eight years since the treaty was made, and we have been waiting and listening since."<sup>244</sup> And, so did Timothy: "The country is still ours and our children's. What Lawyer has said is the heart of all of the people."<sup>245</sup>

¶ 161. Hale's first response was to argue that the Stevens Treaty was not permanent. He argued that Article 6 of the Treaty which provided for allotments to be made by the President contemplated an amended treaty:

[The government] did expect, however, in virtue of your agreement, that, if the time should come, when that which you could not use might be needed, and the President should believe it more for your advantage to settle upon lots after the manner of the whites, and would send word to you, that such was his opinion, and that it was his wish to purchase from you, you would be willing to sell.<sup>246</sup>

¶ 162. Hale's second response was to rebuff the Nez Perce:

But if you have made up your minds, that is the end. We are sorry that you have so hastily decided this matter. All that we say to you, and that you say to us

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<sup>239</sup> *Id.* at 27.  
<sup>240</sup> *Id.* at 29.  
<sup>241</sup> *Id.* at 30.  
<sup>242</sup> *Id.*  
<sup>243</sup> *Id.* at 31.  
<sup>244</sup> *Id.* at 32.  
<sup>245</sup> *Id.*  
<sup>246</sup> *Id.* at 31.

will be reported to the President. . . . As I said before, we were sent here to benefit this people, but if you do not recognize our authority, it is useless for us to talk any further to you."<sup>247</sup>

¶ 163. In his Report to the Commissioner, Superintendent Hale attributed the refusal of the Nez Perce to sell to the occupation of their homes while they were at the Council:

The movement of certain parties in going on to the lands of some of the Indians, at one of their villages near Lewiston, it being understood to be outside of the proposed new reservation, had much to do in inducing the first refusal to be made, so early and so decidedly.<sup>248</sup>

If he had not ordered Col. Steinberger to remove them, "the Council would have been speedily broken up and the Indians have returned in haste to their respective homes."<sup>249</sup> The Colonel saved the Council:

The promptness with which the Col. acted in ordering the necessary force to execute the request, and their execution of the same, gave satisfaction to the Indians, quieted their fears, and soon restored their confidence.<sup>250</sup>

¶ 164. A week passed while everybody at the Council waited for the arrival of Whitman and the remaining, or disaffected, Nez Perce. When the Council re-convened on Wednesday, June 3, Commissioner Howe took his turn at trying to persuade the Nez Perce. The grievances complained of by Lawyer were not committed by the government. The problem was that the reservation was so large it could not be protected:

We are well satisfied that it is impossible to protect you properly in any other way than by reducing the size of your reservation, and each one taking his own farm and receiving a paper for it. This is the way the whites do it. It will then be secured to you and be your childrens, so that neither white men or Indians can take it from you.<sup>251</sup>

¶ 165. Commissioner Howe concluded by renewing the offer that had been made the previous week. The Nez Perce retired from

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<sup>247</sup> *Id.* at 32.

<sup>248</sup> *Hale Report* at 15.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Synopsis of Proceedings* at 33.

the Council and deliberated amongst themselves. They returned with a counter-offer. They were willing to sell the land where the gold had been discovered, and the place where Lewiston was situated along with the country around it for ten or twelve miles. The Commissioners summarily rejected the counter-offer:

The commissioners at once informed them that they could not entertain such a proposition. They did not believe that such an arrangement would be satisfactory to the government, and were well satisfied that it would be an injury, instead of a benefit, to the Indians themselves.<sup>252</sup>

The council was adjourned.

¶ 166. In the face of the continued refusals by the Nez Perce, the Commissioners decided to try a different approach. They began meeting in private with individual Nez Perce leaders. Hale explained his decision to pursue private meetings in his report to the Commissioner:

I became satisfied that the Chiefs were, to some extent at least, copying after the style of a certain class of politicians, they were making speeches in the Council for buncombe, out of which nothing would be likely to result. Instead of declaring their own views and opinions, as to what would conduce most to the interests and welfare of the tribe, they were doing no more than stating the opinions of the greater part of their people, who did not consider their future, or that of their children, and who, Indian like, were averse to any change that looked to the circumscribing of their boundaries. I therefore concluded to try private conferences with the Chiefs, where, by direct questions and answers, there would be better opportunity of ascertaining their true feelings, meeting their objections, removing their doubts, and explaining to them such matters as they were liable to misunderstand.<sup>253</sup>

¶ 167. When the Council re-convened the next morning, Thursday, June 4, Commissioner Hutchins took another turn at attempting to persuade the Nez Perce "with arguments similar to those already employed."<sup>254</sup> For the first time, Big Thunder and Eagle of the Light, leaders of the disaffected bands, spoke. The Commissioners were not receptive as evidenced by this entry in the minutes:

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<sup>252</sup> *Id.*

<sup>253</sup> *Hale Report* at 15.

<sup>254</sup> *Synopsis of Proceedings* at 33.

Two or three of the disaffected chiefs said a few words, but in such a haughty and incoherent manner as to be unable to understand the half of what was said.<sup>255</sup>

The private meetings continued after the public council session.

¶ 168. The Friday, June 5 council session was spent sending a sharp and threatening message to those Nez Perce unwilling to agree. Commissioner Hutchins was the messenger:

What you said convinces us, that you are not good men to the law and that you are bad counselors to your young men. . . But you shall not poison the hearts of the other Nes Perces. The Government will protect them against your bad designs, and will assist them as its good children, and it will punish you terribly if you persist in your evil counsel . . . Do you think that because you have refused the annuities, the beef and the flour, that the treaty was less binding on you? We tell you that the Treaty is binding on you, whether you accept these things or not. Your refusal makes no difference. You must obey the Law, and if you break it, you will be punished. . . . Now is the time for you to decide, for your future welfare. If you want to be honest, wise and true men, we will take you by the hand, and be your friends, but if you persist in your disloyalty, we shall not regard you as Nes Perces . . . Shall we regard you as friends, or enemies?<sup>256</sup>

¶ 169. The Council adjourned for several days while the private conversations had their effect, and then met again. Commissioners Hale and Hutchins repeated their proposal. Big Thunder protested:

I am not ashamed or afraid to talk to you. . . . I have never thought of living onto smaller piece of land as these you have worked out for me, I can hardly get about on it. . . . let us have time to think about it. Mind! I don't say, No! to your proposition, I want to think about it slowly.<sup>257</sup>

Moments later, Big Thunder left the Council: "I am very sick and spitting blood, excuse me."<sup>258</sup>

¶ 170. Cool-Cool-selma also left the Council, but not before saying:

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<sup>255</sup> *Id.* at 34.  
<sup>256</sup> *Id.* at 35-36.  
<sup>257</sup> *Id.* at 36.  
<sup>258</sup> *Id.* at 37.

The maker of the Universe caused both men and women to be placed on this earth. Ever since then Christianity has been looked on rightfully both by the whites and Indians. For that reason I do not wish to override the laws or disobey them.<sup>259</sup>

¶ 171. Then Lawyer and his supporters declared their support for the treaty, and pleaded for justice and a little larger reservation. Lawyer said:

You who have brought this order for this treaty. . . . Our Father in Heaven caused it, because for fear that we Indians would be blinded to our own interests. . . . The Indians did not do right in former times. When the Indians did not do right, it caused them to be scattered off in all directions. It was for the good of the Indians that the law was sent to us. . . . I am poor, the Lawyer is poor. The Government, and the President all hear to what I say, you see me here. You see the whites all around me, and those at Lewiston too. You see the many travelers that are going to the mines and those that are there already. . . . You speak of causing my people and children to settle down permanently; you know the size of the proposed reservation; please add a little more to it and make it a little larger. . . . As long as these mountains exist, so long you must have pity on my children, till the end of the earth. Year after year when I am dead and gone, you will remember what I have said. I talk now of things that are to remain from now till the last day.<sup>260</sup>

¶ 172. Uute-semeli-can said:

I did not talk right when we first commenced this Council. What I said first, I now abandon. From the first time that I heard of the white man's law, I came under its protection. I came under the protective care of the Government. I have always heard that was the right way to do, and for that reason I tell you, that as I did not exactly understand you at first, I did not talk right. . . . I am poor, weak and feeble, both in body and mind. I throw myself on the protection of the law and the Government.<sup>261</sup>

¶ 173. Spotted Eagle said:

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<sup>259</sup> *Id.*

<sup>260</sup> *Id.* at 37-38.

<sup>261</sup> *Id.* at 38.



The whites are our friends as of from the same family, and therefore let's not do anything that would harm each other. I was always friendly with the whites. . . . I will not deviate from what Lawyer has said.<sup>262</sup>

¶ 174. Billy said:

It is not for us to turn from what you have told us, but for us to follow your advise and your counsel. We will settle down permanently . . . . Our hearts are truly glad at what you say. My Chiefs have already spoken, I have shown you my heart.<sup>263</sup>

¶ 175. Jason spoke briefly, "I hope you will make the boundaries of the reservation a little larger, that's all I have to say."<sup>264</sup> And, Timothy agreed:

It is a small place to raise all our children on that you propose; talk to us plainly, show us the right way. Chiefs! we have no houses to live in. As the Lawyer says, be merciful to our children and see that they are attended to as long as the mountains stand. It will be well for us to receive goods from year to year. We hunger and thirst after the right way to do good. Attend to us rightly and do justice to us, and it will be like meat and drink to our children.<sup>265</sup>

¶ 176. After Levi and Spotted Eagle spoke briefly, Superintendent Hale declared his proposal accepted: "Then I understand you accept our propositions. I am satisfied you will never regret it."<sup>266</sup>

¶ 177. Hale quickly proposed that Chiefs who understood the proposal should be chosen by the Nez Perce to help draft the treaty. The Council convened for one last time on June 9 for the purpose of signing the new treaty.

¶ 178. Hale was happy with the deal struck with the Nez Perce. He reported to the Commissioner, "The amount relinquished is very nearly six millions of acres, and is obtained at a cost not exceeding eight cents per acre, when all the expenses present and prospective on the satisfaction of the treaty, shall have been met."<sup>267</sup> Not only were the lands acquired cheaply, they were valuable: "In the tract of country relinquished is much that is

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<sup>262</sup> *Id.*  
<sup>263</sup> *Id.* at 39.  
<sup>264</sup> *Id.*  
<sup>265</sup> *Id.*  
<sup>266</sup> *Id.* at 40.  
<sup>267</sup> *Hale Report* at 18.

exceedingly valuable, by reason of its gold and silver mines, whilst many of its valleys and much of its uplands will be found desirable and necessary for agricultural and grazing purposes."<sup>268</sup>

¶ 179. Hale reported to the Commissioner that the friendly faction of the Nez Perce agreed to accept the proposition made "with some slight alterations, as to boundary, and a few changes in the way of further consideration." By agreeing, "they said they would cast themselves upon the generosity and justice of the U.S. Government."<sup>269</sup>

¶ 180. Hale also reported that the unfriendly or disaffected bands of the Nez Perce also agreed to the proposal:

On the part of the disaffected bands, their chiefs gave an unequivocal assent to the main features of the Treaty, so far as they were concerned, only that their pride would not permit them to come in with the Lawyer party and sign the Treaty.<sup>270</sup>

¶ 181. Hale named three chiefs, Quil-quil-se-ne-na, Eagle of the Light and Hin-ma-lute-ka-kike or Big Thunder, who came to explain why they did not sign. They first explained that their refusal was not out of disrespect for the United States Government:

[E]ach came of their own accord, in private conference, and asked that it might be reported to their great Father at Washington, that they did not refuse to sign the Treaty, out of any disrespect or want of friendly feeling towards him, to the Commissioners, or the people of the United States, but that their refusal was solely on account of difficulties amongst themselves.<sup>271</sup>

¶ 182. The Nez Perce leaders were of the opinion that it was not necessary for them to sign:

Besides, they alleged that it was not necessary for them to sign it, as they were not called upon by conditions of the treaty to surrender anything to the Government, as their lands were almost entirely included in the proposed new Reservation.<sup>272</sup>

Finally, they explained that they did not sign because they did not need what the United States was offering: "They did not need

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<sup>268</sup> *Id.*  
<sup>269</sup> *Id.* at 16.  
<sup>270</sup> *Id.*  
<sup>271</sup> *Id.*  
<sup>272</sup> *Id.*

provisions or presents, they were not poor, they were rich."<sup>273</sup>

¶ 183. Superintendent Hale lamented the division between the friendly and disaffected factions in the Nez Perce Nation. He did not acknowledge that the Lapwai Council had greatly deepened the division. However, he did recognize that the Lapwai Treaty was at the heart of the division, and that experience under the Treaty would determine the future of the Nez Perce:

Their future depends much, very much, upon the faithfulness with which the United States Government shall fulfil the treaty made, if the same be ratified. Should its provisions be fully and promptly carried out, as intended, it will doubtless operate more efficiently than anything else, to heal their divisions, and make them a united and prosperous people. Failing to do this will widen the breach, and, in the end, be productive of more serious consequences.<sup>274</sup>

¶ 184. Despite the forceful insistence by the United States that the Nez Perce consent, the 1863 Treaty was not an abrogation of the 1855 Treaty. It was an amendment to the the treaty which already existed. The 1863 Preamble stated that the various articles were "supplementary and amendatory to the treaty made between the United States and said tribe on the 11th day of June, 1855."<sup>275</sup> In addition, Article VIII re-affirmed the 1855 Treaty provisions not specifically changed:

[A]ll provisions of said treaty which are not abrogated or specifically changed by any article herein contained, shall remain the same to all intents and purposes as formerly, - the same obligations resting upon the United States, the same privileges continued to the Indians outside of the reservation, and the same rights secured to citizens of the U.S. as to right of way upon the streams and over the roads which may run through said reservation, as are therein set forth.<sup>276</sup>

¶ 185. There was, in the years following the Lapwai Council, great dispute about whether the dissenting Nez Perce leaders had signed the treaty and whether the treaty extinguished their title. In 1876 Assistant Adjutant General H. Clay Wood investigated these questions and reported to Brigadier-General O.O. Howard, Commanding Officer, Department of the Columbia. After an extensive analysis, Wood stated his conclusions of fact.

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<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> 12 Stat. 647.

<sup>276</sup> *Id.* at 651.

The first confirmed Nez Perce title:

Originally the Nez-Perce Indians occupied a large extent of territory west of the Bitter Roots Mountains, in Idaho, Washington Territory, and Oregon, their title to which, running back before the memory of man, is undisputed and clear.<sup>277</sup>

¶ 186. Wood concluded that the dissident chiefs were not parties to the treaty:

Joseph, Eagle-from-the-Light, Big-Thunder and several less prominent chiefs, and headmen, -- with their followers, -- were not parties to the treaty of '63; have never acknowledged its binding force, or accepted any of its privileges or benefits. To the treaty they have objected the want of authority in the Indian who spoke for the tribe. They have uniformly haughtily and utterly repudiated it.<sup>278</sup>

¶ 187. Wood went on to state his conclusions of law, which were that the 1863 Treaty had not lawfully extinguished Joseph's title:

*Thirteenth* - It is from the fundamental laws (the laws and customs, Indian) of each state (tribe) that we must learn where resides the authority that is capable of contracting with validity in the name of the state (tribe.)

*Fourteenth* - In the formation of every treaty, the contracting parties must be vested with sufficient powers for the purpose.

*Fifteenth* - The non-treaty Nez-Perces cannot in law be regarded as bound by the treaty of 1863; and in so far as it attempts to deprive them of a right in occupancy of an land its provisions are null and void. The extinguishment of their title of occupancy contemplated by the treaty is imperfect and incomplete.<sup>279</sup>

¶ 188. Notwithstanding this opinion, General Howard ordered the non-treaty bands to remove from their homelands to the 1863 Reservation. When Toohoolhoolzote defied the order, General Howard threatened: "If you do not mind me, I will take my

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<sup>277</sup> H. Clay Wood, *The Status of Young Joseph and His Band of Nez-Perce Indians under the Treaties between the United States and the Nez-Perce Tribe of Indians, and the Indian Title to Land* (Assistant Adjutant General's Office, 1876) p. 42.

<sup>278</sup> *Id.* at 42-43.

<sup>279</sup> *Id.* at 45.

soldiers and drive you on the reservation."<sup>280</sup> Band members understood the order to be a "show of the rifle," and the 1877 Nez Perce War was the result.<sup>281</sup>

## § 7. THE 1893 AGREEMENT

### COUNCILS

¶ 189. When the General Allotment Act was passed in 1887,<sup>282</sup> the Nez Perce Reservation was placed high on the list to be allotted and opened. Alice Fletcher was appointed the Allotting Agent for the Nez Perce and spent the summers from 1889 through 1892 on the Reservation making the allotments.<sup>283</sup>

¶ 190. As soon as Special Agent Fletcher had departed from the Reservation, but before any patents had been issued for the allotments, negotiations for cession of the unallotted lands were set in motion. On October 31, 1892, President Benjamin Harrison issued an executive order creating the Nez Perce Surplus Lands Commission and authorizing negotiations for purchase of the surplus lands. Robert Schleicher from Lewiston, Idaho, was appointed Chairman of the Commission. James F. Allen, Washington, D.C, and Cyrus Beede, Oskaloosa, Iowa, were appointed to serve as the other commissioners. On November 17, Indian Commissioner T.J. Morgan issued instructions and a sample agreement to the Commission.<sup>284</sup>

¶ 191. The Commissioners assembled in Lewiston, Idaho, on December 1 and on the following day made their first trip to Lapwai to meet with the Nez Perce. Upon their arrival on the Reservation, they found that the Nez Perce had already assembled for the Council, and that they had chosen delegates to represent them during the Council. Rev. A.B. Lawyer from Kamiah was the Chief Councillor and Chairman. The Assistant Counsellors had been chosen to represent various regions of the Reservation and included from Kamiah: James Lawyer, Harrison Kip Kop pa lih kin and U tsin ma lih kin; from Lapwai: George Moses, Jonah Hays and James Reuben; from North Fork: Rev. William Wheeler and Rev. James Hines; Bartholomew from Meadow Creek; Eddie Conner from

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<sup>280</sup> L.V. McWhorter, *Yellow Wolf: His Own Story* (Caxton Printers, 1986) p. 41.

<sup>281</sup> Much has been written about the 1877 War. See Alvin Josephy, *The Nez Perce and the Opening of the Northwest* (Yale Univeristy Press, 1965) pp. 445-634.

<sup>282</sup> 28 Stat. 326. D. Otis, *The Dawes Act and the Allotment of Indian Lands* (1973).

<sup>283</sup> See E. Jane Gay, *With the Nez Perces: Alice Fletcher in the Field, 1889-1892* (University of Nebraska Press, 1981) for an informative and interesting account of the Nez Perce allotment.

<sup>284</sup> Commissioner John Morgan to Robert Schleicher, November 17, 1892.

Cottonwood Creek; Peo peo Mox Mox from Potlatch Creek; and Thomas Es ka win from Mission Creek.<sup>285</sup>

¶ 192. A first round of negotiations convened in the Lapwai Presbyterian Church on December 5 and lasted until December 15.<sup>286</sup> The Commissioners at first insisted that the Nez Perce decide whether they would sell the unallotted lands, putting off the discussion of price and other terms until later. The various Nez Perce Counsellors respectfully explained that they had decided they did not want to sell. They favored the existing treaties and were fond of their country and thought it should be saved for their children. They complained about trespassers on the Reservation and about the manner in which Special Agent Fletcher had allotted the Reservation and that they had not yet received their patents.

¶ 193. By the fourth day of Council on December 8 the Commissioners decided to pursue a different strategy. They offered to pay \$2.50 per acre for all 59,734 acres of unallotted lands - a total of \$1,474,785. The Nez Perce leaders held steadfast (except for James Reuben and Eddie Conner), refusing to cede. The Commissioners intensified the pressure, first by threatening that the Reservation would be opened whether they agreed or not,<sup>287</sup> leaving the question of compensation undecided.

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<sup>285</sup> Sen. Exec. Doc. No. 31, p. 26. The Nez Perce Agreement was referred by the Secretary of the Interior to the Senate on January 27, 1894. The referral is Ex. Doc. No. 31 of the second session of the fifty-third Congress. Ex. Doc. No. 31 includes the following documents:

1) Secretary of Interior referral letter.	1
2) General Land Office letter.	1
3) Commissioner of Indian Affairs referral letter.	4
4) Nez Perce Commission Report of May 1.	10
5) Nez Perce Commission Report of February 13.	12
6) Nez Perce Commission Report of November 25.	16
7) Idaho Land Board letter.	18
8) 1893 Agreement.	19
9) Council Minutes.	26
10) A Bill to Ratify the Agreement.	61

[Hereafter cited as *Sen. Exec. Doc. No. 31*.]

<sup>286</sup> *Id.* at 26-60.

<sup>287</sup> Apparently the Commissioners told the Nez Perce they could sell for the amount offered or the Reservation would be opened without any payment. Commissioner Cyrus Beede had made the statement to the local newspapers and tried to explain it away when asked by Assistant Counselor George Moses during the Council. *Id.* at 38-39. Later, during the fraud and undue influence investigation by Special Agent John Lane, Counselor Moses asked Nez Perce Agent Warren D. Robbins:

Is it a fact that you said that if you don't accept it this time, that Congress will take it in its hands and decide what would be done.

Agent Robbins did not deny the statement, but rather said:

I told George Moses and James Grant that I believed that they were getting a better price for their land than perhaps they would ever get again, and I feared if they didn't sell now that it would be detrimental to them. . . . Report of Agent John Lane in Case No. 147, *In re Charges vs. W.D. Robbins*, November 25, 1893. [Hereinafter cited as *Lane*

The Commissioners reminded the Nez Perce of the horrors of war.<sup>288</sup> The Nez Perce wanted to adjourn; the Commissioners insisted the negotiations continue until some agreement was reached.

¶ 194. The Commissioners continued to press for an agreement. They added clauses to the Agreement that addressed particular Nez Perce concerns. One clause protected the homes of thirty families along Lapwai Creek, on lands formerly claimed by Reverend Spaulding. One clause promised the reservation would not be opened until the allotments were received and another that a surveyor would be provided for several years to help determine the allotment boundaries. A clause re-affirming the provisions of prior treaties was promised as well as payment to Nez Perce scouts who had served General Howard during the 1877 Nez Perce War.

¶ 195. The Commissioners also proposed that a committee with three Nez Perce representatives be convened to draft a final version of the agreement. The Nez Perce declined to join the committee, so the Commissioners prepared a final draft and presented it for Nez Perce signatures. Assistant Councillor James Reuben responded with a long list of proposed clauses. The Commissioners rejected Reuben's proposals, and to a person the Nez Perce rejected the Commissioner's proposed Agreement. The Council adjourned on December 15, the Commissioners having failed to gain the signature of a single Nez Perce.

¶ 196. A second phase of negotiations was held between December 29 and January 21.<sup>289</sup> The Commissioners were joined by Inspector Junkin. The negotiations were convened in Lapwai, but few were in attendance. Meetings were held with small groups and individuals for several days, and the payment terms of the treaty were discussed. The Commissioners report that on January 4, Eddie Connor and others gave them their first signatures. While the Commissioners traveled around the western region of the Reservation slowly gathering signatures, there was still strong opposition in Kamiah.

¶ 197. The Commissioners traveled to Kamiah for public and

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Report.]

<sup>290</sup> "You have seen other changes among you. Ten years ago the Government kept soldiers at Lapwai. Soldiers are an emblem of war. War brings suffering - it brings hunger, thirst, and it brings poverty to women and children . . . It is the hope of this commission, as it is the hope of the President of the United States, that this Nation of Nez Percés, who were always among the first in the Arts of War, should, now that the time has come, be one of the first in the Arts of Peace." *Id.* at 44.

<sup>291</sup> There is far less information in the public record about this phase of the negotiations. No typewritten summary was made. The official record consists of: (1) very brief descriptions made by Chairman Schleicher after each session; (2) the February 13 Report; and (3) the May 1 Report. *Id.* at 10-16; 60-61.

private meetings during the middle of January. Even though they were able to secure the signature of Chief Counsellor Archie Lawyer, other Kamiah leaders and their followers refused to sign. The Commissioners departed Kamiah for Lewiston on January 22, far short of the number of signatures needed. They had been instructed they needed the signatures of a majority of the male members of the Tribe, which the Nez Perce Agent certified totalled 407 persons. At this point the Commissioners had only 117 signatures, 17 of them represented by a Power of Attorney.

¶ 198. In his February 13 Report to the Secretary of the Interior, Chairman Schliecher offered his analysis of why the negotiations had not yet succeeded. The first reason was that the Nez Perce had a better offer. A group of capitalists and railroad men had offered to rent 250,000 acres for a ten year period for a sum that would far exceed the amount offered for the United States for an outright purchase.<sup>290</sup>

¶ 199. The second reason given by Chairman Schleicher was that while a majority of the tribal men favored the agreement, they were being prevented from signing it by the leaders. In the Chairman's estimation a dozen men owned 90 per cent of the stock owned by the Tribe. Many of these men had been elected Councilors and were opposed to the sale because they would lose the benefit of half a million acres of land while the sale proceeds would be divided amongst all the members.

¶ 200. A third and final phase of negotiations was held between March 15 and May 1, 1893. No record of these proceedings was kept,<sup>291</sup> so it is not possible to determine why so many of the Nez Perce who were opposed to the Agreement were suddenly willing to sign it. Chairman Schleicher reports only that "quite a number of those who had formerly most strenuously opposed the agreement most anxious for its speedy completion."<sup>292</sup> Forty signatures were obtained in two days (March 15 and 16), and by May 1, 236 had signed.

¶ 201. Chairman Schleicher submitted the proposed Agreement to the Secretary of the Interior on May 1, 1893, and recommended its approval.<sup>293</sup> Several problems had to be taken care of before the Secretary could recommend to the Senate that the Agreement be ratified. Perhaps the most serious of these was a delegation of Nez Perce who traveled to Washington to protest to the Department that the Agreement had been gained by the use of undue influence

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<sup>290</sup> *Id.* at 15.

<sup>291</sup> Chairman Schleicher did not bother to keep even the brief summaries that he had kept during phase 2 of the negotiations. The only official record of phase 3 of the proceedings is the May 1 Report from Chairman Schleicher to the Secretary of the Interior. *Id.* at 10-12.

<sup>292</sup> *Id.* at 10.

<sup>293</sup> Chairman Schleicher to Commissioner, May 1, 1893.



and pressure.

¶ 202. On September 21, the Commissioner of Indian Affairs instructed Special Agent John Lane to make an investigation. Agent Lane conducted hearings in Lapwai on October 22 and 23. Testimony was taken from fifteen witnesses who were alleging undue influence and from numerous witnesses who supported the Agreement, including Chairman Schleicher. Agent Lane was persuaded by those who favored the Agreement, and reported to the Commissioner on November 25 that "there was no fraud, undue pressure or improper methods used in procuring the signatures to said agreement."<sup>294</sup>

¶ 203. Secretary Smith forwarded the proposed Agreement to the Senate on January 27. He showed little enthusiasm for it, making no recommendation with respect to its ratification. Four days later, the Agreement was referred to the Committee on Indian Affairs and ordered to be printed.<sup>295</sup> The Committee on Indian Affairs reported the proposed Agreement to the House on June 8, 1894. Soon thereafter the House approved an Indian Appropriations Bill and sent it to the Senate. The Senate amended the Appropriations Bill by approving the Nez Perce Agreement. The Agreement was vigorously debated when the Bill returned to the House, but was eventually approved on August 7, 1894.

¶ 204. The terms of the Agreement required that the Nez Perce patents be issued before the government opened the Reservation.<sup>296</sup> As soon as this was completed President Grover

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<sup>294</sup> Lane Report at 21.

<sup>295</sup> The history before Congress involves three separate bills. See the Index Volume to Volume 26 of the Congressional Record: subject matter Index pp. 226-229; House Bills Index pp. 130, 151 and 166. H.R. 6253 proposing to ratify the Nez Perce Agreement was introduced by Willis Sweet. 26 Cong. Rec. 2926. H.R. 7387 was introduced by the House Indian Affairs Committee as a substitute for H.R. 6253. See House Report No. 1050. *Id.* at 5994. Neither of these bills was discussed on the floor of Congress. H.R. 6913 was the Indian Appropriations Bill. This bill was debated extensively the first time through the House, but the debates are not particularly relevant to Nez Perce diminishment because the Nez Perce Agreement was not at this point a part of the bill. *Id.* at 4275, 4786, 5892-5893, 5925-5947, 5997-6013, 6064-6082, 6181-6193, 6233-6253, 6292-6315, 6356-6361, 6363-6374, 6419-6435. H.R. 6913 was sent to the Senate, where the Appropriations Committee recommended 120 amendments, including ratification of the Nez Perce Agreement. See Senate Report No. 510. *Id.* at 6439 and 7230. The Senate debated the various amendments and passed the bill. *Id.* at 7592, 7616-7641, 7678-7708. The Nez Perce Agreement was approved without debate. *Id.* at 7629-7630. The House and Senate then appointed a Conference Committee to work on the differences. *Id.* at 783-7784, 7800, 8015, 8056-8058, 8135-813. The House Conferrees persisted in their opposition to the Nez Perce Agreement and the issue is debated on the floor and eventually passed. *Id.* at 8251-8271, 8280, 8286-8287, 8296, 8360, 8362, 8592. That part of the debate most relevant to the Nez Perce Agreement can be found at pp. 8255-8258 and 8263-8271.

<sup>296</sup> Article V.

Cleveland issued a Proclamation setting November 18, 1895 as the date the Reservation would be opened.<sup>297</sup>

### **SAVING THE FISHING CLAUSE**

¶ 205. Article 11 of the 1893 Agreement is a general savings clause:

The existing provisions of all former treaties with said Nez Perce Indians not inconsistent with the provisions of this agreement are hereby continued in full force and effect.<sup>298</sup>

¶ 206. This clause was not included in the model agreement provided to the Nez Perce Commission by the Commissioner, but was added during the council at the insistence of the Nez Perce. Throughout the council the Nez Perce insisted upon affirming their earlier treaties. In his opening address to the Council, Chief Counsellor and Chairman of the Nez Perce Archie Lawyer said:

Here we are visible from head to foot. I show to you that we have lived up to that treaty of 1855. We favor that treaty and the treaty laws of the United States. What ever is done is to be done in accordance with that treaty and treaty principles and in accordance with law . . . We hold fast to law and treaty stipulations and think not that we propose to abandon the treaty or treaty stipulations.<sup>299</sup>

In another of the many examples Jonah Hayes said:

We have great respect for the law of our Seniors (meaning the Government). We do not wish to do or say anything that will impair what has been said in this book (meaning the Treaty). . . . I came on when I was quite a young man and I do not feel like breaking the treaty by making another.<sup>300</sup>

¶ 207. During the early part of the negotiations the Commissioners tried to convince the Nez Perce they should sell without stating the price to be paid or the terms of the treaty. When this tactic proved unsuccessful, the Commissioners proposed a price and a draft agreement. Assistant Counsellor James Reuben wanted to know the affect of the proposed agreement on the existing treaties:

In case this treaty made now is signed and becomes law does

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<sup>297</sup> Proclamation of November 8, 1895, 29 Stat. 873.

<sup>298</sup> *Id.* at 22.

<sup>299</sup> *Sen. Exec. Doc. No. 31* at 28.

<sup>300</sup> *Id.* at 34-35.

it do away with or annul all previous treaties? I do not wish any deception used, but wish to know if you succeed in making this treaty does it or not annul all previous treaties that have been made.<sup>301</sup>

¶ 208. Commissioner James Allen assured Assistant Counsellor Reuben that the proposed agreement would not change any term of the previous treaties unless "modified" or "directly changed." To further assure Reuben, Allen promised to add Article 11 to the Agreement:

The effect of this agreement would not be to alter or change any of the provisions of former treaties except so far as they are modified by the new agreement. All other provisions will stand as they are now, and we will add a clause to that effect in this agreement that is being made. I believe it as well to state in this agreement, that we are now trying to obtain your signature to, shall not alter or change any provisions of existing treaties except so far as directly changed by this treaty.<sup>302</sup>

¶ 209. The broad effect intended by the savings clause is indicated by a later discussion at the council of Nez Perce fishing and hunting rights. Assistant Counsellor James Reuben gave to the Commission a written proposal to add a number of clauses to the draft, including a clause which stated that the Nez Perce "shall enjoy the same rights and privileges as to hunting and fishing as they now enjoy according to Government treaties."<sup>303</sup> Reuben was referring to Article 3 of the 1855 Treaty which guaranteed:

The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.<sup>304</sup>

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<sup>301</sup> *Id.* at 52-53.

<sup>302</sup> *Id.* at 53. Commissioner Allen again emphasized that the treaty provisions would be preserved: "I do not want any misunderstanding, but that everything should be fully understood now. Everything that your treaties provide for will be continued just the same as if this agreement never was made." *Id.* However, Commissioner Allen noted that the Nez Perce were not entitled to any remaining payments under the existing treaties, and that the \$6,000 which had been annually appropriated for the benefit of the Nez Perce in recent years were gratuities and would not be protected by the clause.

<sup>303</sup> *Id.* at 57.

<sup>304</sup> 12 Stat. 957.

¶ 210. Commissioner Allen told Reuben that his proposed clause was unnecessary, in part because:

[W]e have already provided in the agreement that the provisions in former treaties now in force and not modified by the provisions of this agreement shall be continued in full force and effect; so that the right to hunt and fish will be just the same after this agreement is signed and ratified by Congress as it is now.<sup>305</sup>

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<sup>305</sup> Sen. Exec. Doc. No. 31 at 57.

## DENNIS C. COLSON

Professor of Law  
College of Law  
University of Idaho  
Moscow, Idaho 83872  
(208) 885-7056

### EMPLOYMENT

1978-present: Professor of Law, College of Law, University of Idaho.

Current Courses: Indian Law; Idaho Constitutional Law, Contracts I, Contracts II, and assist with the Indian Law Clinic and Appellate Clinic.

1982-1983: Visiting Professor of Law, School of Law, University of San Diego.

1975-1978: Associate Professor of Law, College of Law, University of Idaho.

1972-1975: Assistant Professor of Law, College of Law, University of Toledo.

1971-1972: Partner, Jordan, Colson, Goss & Gelt, Denver, Colorado.

1970-1971: Associate, Lillick, McHose, Wheat, Adams & Charles, Los Angeles, California.

### EDUCATION

December, 1970, Juris Doctorate, summa cum laude, University of Denver College of Law, Denver, Colorado.

June, 1968: Bachelor of Science (Education: Mathematics, Physical Education, Psychology), honors, University of Northern Colorado, Greeley, Colorado.

Grades 1-12: Elsie Consolidated Public Schools, Elsie, Nebraska.

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### BOOKS AND ARTICLES

The Nez Perce Treaties (Confluence Press, forthcoming).

"Court Rules and Divided Powers in the Idaho Constitution," 31 Idaho L. Rev. 461 (1995).

Idaho's Constitution: The Tie That Binds (University of Idaho Press, 1991).

"Idaho Debates the United States Constitution," in A. Minskoff, ed, The Constitution at Two Hundred: an Idaho Perspective (Boise State University Press, 1988).

"Guarantees Idaho Farmers and Ranchers Get on the Goods They Buy," 18 Idaho L. Rev. 177 (1982).

"A Tax View of the Price Clause in Contracts for Sale of Farm Property," 14 Idaho L. Rev. 297 (1979).

"Would a Lay Justice be Just?," 13 Idaho L. Rev. 351 (1977).

### SELECTED INDIAN LAW PRESENTATIONS

"History of Federal-Tribal Relations," given on the following dates: September, 1993, FmHA and Intertribal Agriculture Council Conference, Billings; June, 1993, Soil Conservation Workshop, Uintah and Ouray Indian Reservation; June, 1992, Soil Conservation Workshop, Sun Valley.

"The Rehnquist Indian Vision," a slide-lecture, University of Idaho Roundtable Series, October, 1993.

"The Nez Perce Treaties," a slide lecture given on the following dates: October, 1993, Public Teacher Workshop, Nez Perce National Park; April, 1992, Public Teacher Workshop, Nez Perce National Park.

"Law and How It Works On The Reservation" and "Government to Government In Indian Policy," University of Idaho Northwest Indian Summer Symposia, June, 1992.

"Indian Law Clinics," Mid-Continent Law Schools Association, Sun Valley, July, 1992.

"Taxation of Indian Property In Idaho," Idaho Association of Counties, Moscow, September, 1992.

"Idaho Indian Treaties In The Courts," All Idaho Indian Expo, Boise, July, 1990.

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"Indian Law in the 1990's," given on the following dates: January, 1990, Idaho Prosecutor's Association, Boise; December, 1990, Nez Perce Tribal Executive Committee, Moscow.

"Brendale vs. Yakima Nation: County Jurisdiction in Indian Country," July, 1989, Idaho Association of Counties, Moscow.

"Tribal Sovereignty and Jurisdiction in Indian Country," Understanding Columbia River Treaty Rights Conference, Nez Perce Tribal Executive Committee, Clarkston, April, 1989.

"The Lacey Act In Indian Country," Washington State University Wildlife Management Class, Pullman, February, 1989.

"Cooperation in Idaho Indian Country," Idaho Trial Lawyers Association, Lewiston, October, 1988.

"Indian Citizenship in 1890," American Association of Law Libraries Western Legal History Conference, Couer d'Alene, November, 1988.

"The Burger Court Indian Vision," Pacific Northwest Sociological Association, Albuquerque, November, 1985.

#### SELECTED IDAHO CONSTITUTIONAL LAW PROJECTS

"The Idaho Constitutional Symposium Edition, 31 Idaho Law Review 387 (1995).

"Idaho Statehood," Idaho State Historical Society Workshop, Boise, July, 1993.

"Sagebrush Statesmen: The Lawyers Who Drafted Idaho's Constitution," Idaho State Bar Association, Idaho Falls, January, 1990.

"Idaho's Founders and Their Legislature," given on the following dates: February, 1990, Know Your Government Conference, 4-H of Idaho, Boise; November, 1992 the Idaho Legislature, Moscow.

"Idaho's Founders and Their University, given frequently for University of Idaho audiences.

"Mormons and the Idaho Constitution," Special Convocations Program, Ricks College, Rexburg, October, 1990, and several other occasions.

"Bible Reading In The Public Schools," Boise State University Teaching Religion in the Schools Workshop, August, 1989.

Principal Humanist, "Two Constitutions In Idaho," an exemplary

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grant from the National Endowment for the Humanities to the Idaho Humanities Council to conduct public programming during Idaho's Centennial, 1989-1990.

"William H. Clagett: the Silver-Tongued Orator of the West," American Association of Law Libraries Western Legal History Conference, Coeur d'Alene, November, 1988.

Principal Humanist, "Old Alturas County," Idaho Humanities Council, Hailey, 1988.

#### TEACHING MATERIALS

The Rehnquist Indian Vision, University of Idaho College of Law, Indian Law Course, 1991 and later editions.

Idaho Indian Law, University of Idaho College of Law, Indian Law Course, 1986-1991.

Public Lands Litigation: A Case Study of Challis, Idaho, University of Idaho College of Law, Natural Resource Litigation Course, 1983.

The Idaho Constitution, University of Idaho College of Law, Idaho Constitutional Law Course, 1987 and later editions.

Bible Reading in the Public Schools and Water in the Idaho Constitution, The Old Alturas Project, Idaho Humanities Council, 1988 (workbooks and classroom units for Idaho secondary students).

Agricultural Law, University of Idaho College of Law, Agricultural Law Course, 1978 and later editions.

#### CONSULTING

Consultant to the Nez Perce Tribe, Office of General Counsel, on litigation that to this date is confidential, 1995-96.

Consultant to the Idaho Department of Water Resources in In Re Snake River Basin Adjudication, Basin-Wide Issue No. 3., 1995.

Consultant to the Idaho State Court/Tribal Court Forum, 1994-1995.

Consultant to the Quinault Indian Nation, Tribal Court and Law Enforcement Assessment, 1994.

Consultant to the Nez Perce Tribe, Tribal Court Assessment, 1992-1993.

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Consultant to Kootenai County, Tribal Regulation Assessment, 1990.

Consultant to Counsel in Nez Perce Tribe v. Cenarrusa, 1993 W.L. 390410; Sweeney v. Otter, 119 Idaho 135, 804 P.2d 308 (1990); United States v. Williams, 898 F.2d 727 (9th Cir. 1990); State of Idaho v. McCormack, 117 Idaho 1009, 793 P.2d 682 (1990); and other cases.

#### SERVICE AND HONORS

Idaho Humanities Council, 1996 Award for Outstanding Achievement in the Humanities.

Peter E. Heiser Teaching Award, Class of 1995.

University of Idaho "Burlington Northern Faculty Achievement Award," 1992.

Delta Theta Phi "Outstanding Professor Award," 1991.

Idaho State Bar "Outstanding Service Award," 1990.

Idaho Centennial Commission "Take Pride in Idaho Award," 1988.

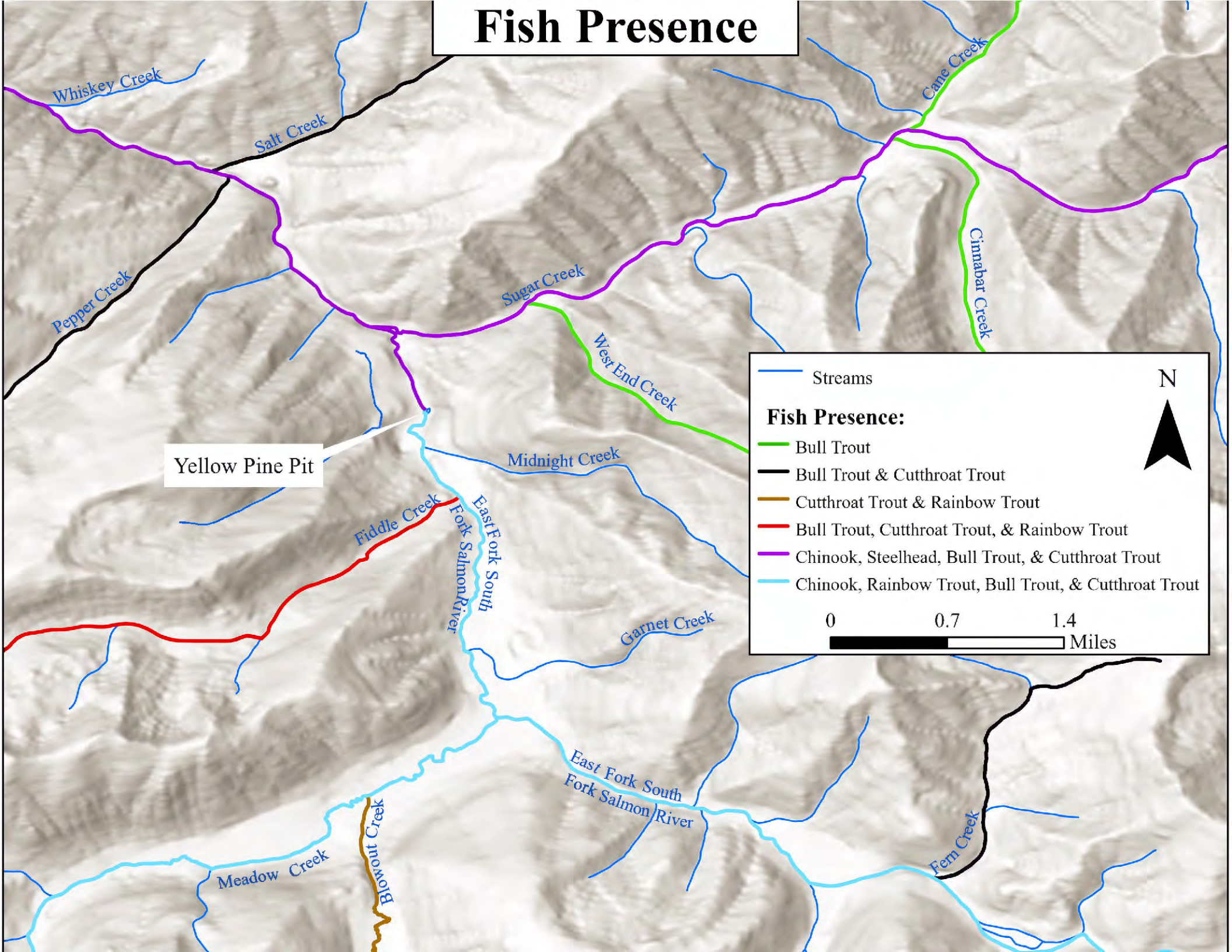
University of Idaho College of Law Class of 1986 "Outstanding Teacher" Award.

Idaho Humanities Council, 1984-1988; Executive Committee, 1986-1988.

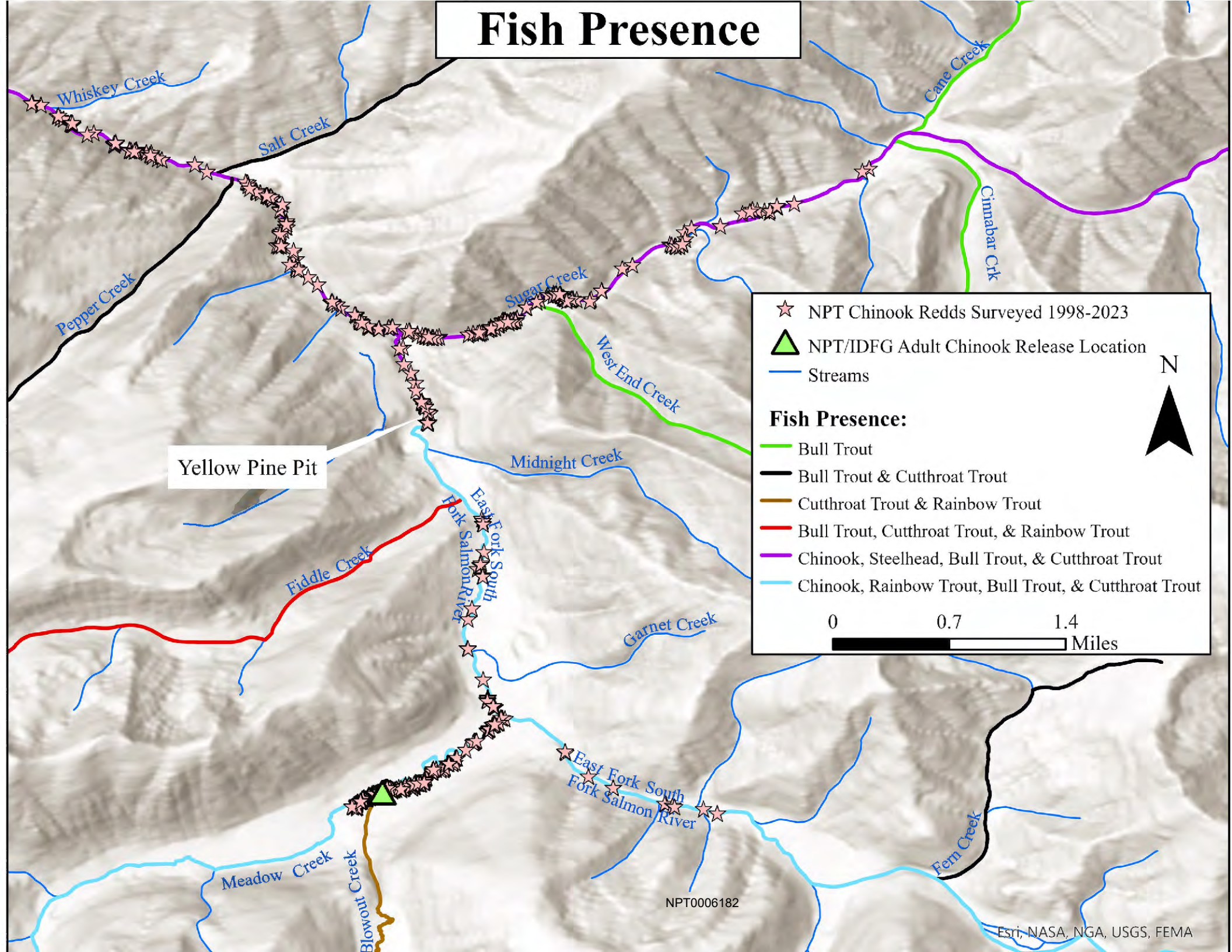
Summer Research Stipend, National Endowment for the Humanities, 1987.

Law-Related Education Committee of the Idaho Bar Foundation, 1982-1988; Chairman, 1984-1985.

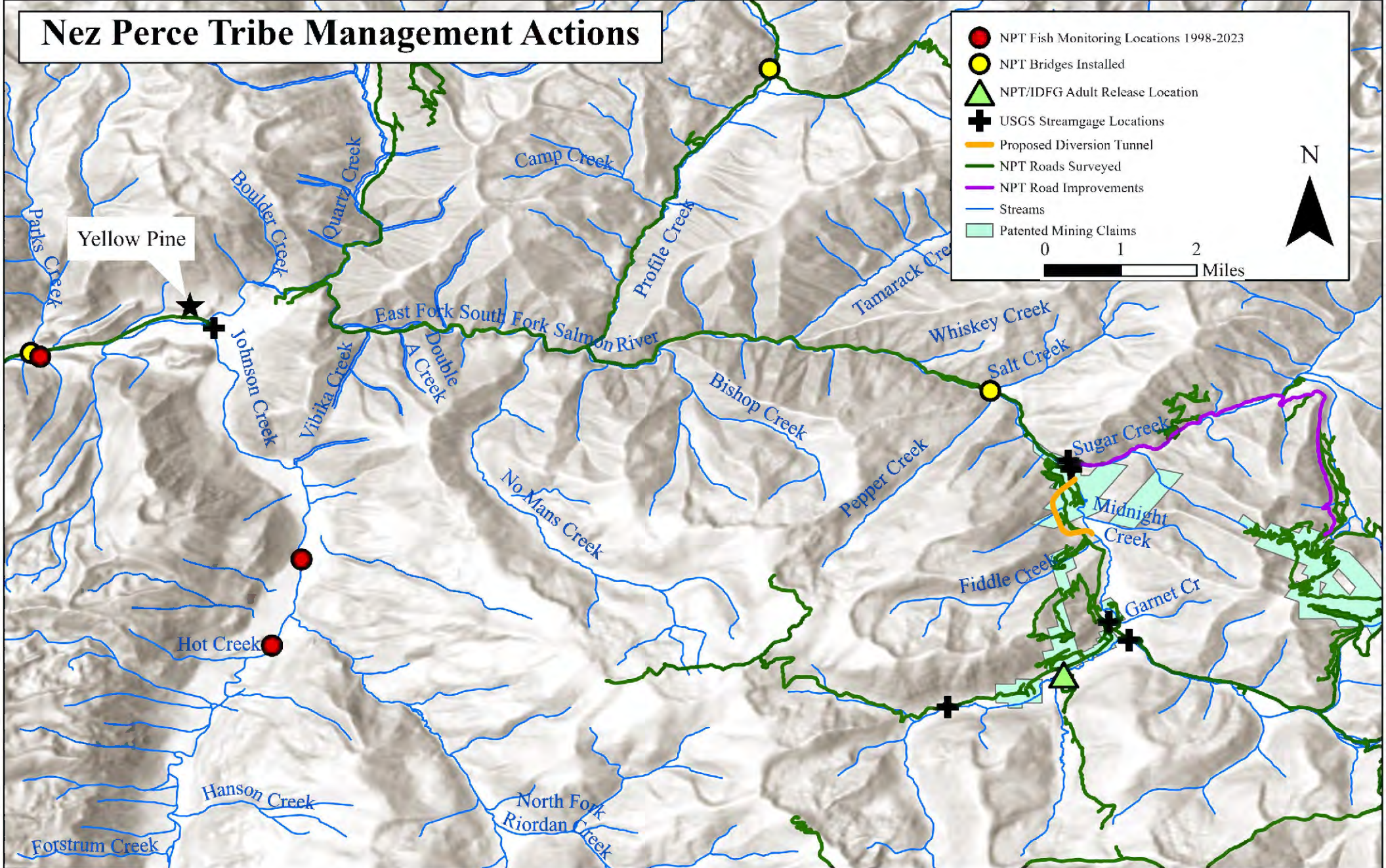
# Fish Presence



# Fish Presence



# Nez Perce Tribe Management Actions



- NPT Fish Monitoring Locations 1998-2023
- NPT Bridges Installed
- ▲ NPT/IDFG Adult Release Location
- ✚ USGS Streamgage Locations
- Proposed Diversion Tunnel
- NPT Roads Surveyed
- NPT Road Improvements
- Streams
- ▭ Patented Mining Claims

0 1 2 Miles

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