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Title: Chairman

Comments: Attached are the Nez Perce Tribe's comments on the Sunrise Vegetation and Fuels Management Project Draft Environmental Assessment.

Thank you for the opportunity to provide comments on the Sunrise Vegetation and Fuels Management Project ("Project") Draft Environmental Impact Statement ("DEIS"). The Nez Perce Tribe ("Tribe") originally held staff-to-staff coordination meetings with the Forest in 2014 regarding this Project and submitted scoping comments on March 3, 2015. The proposed Project has evolved since 2015 and these comments reflect the current policy reviews and technical concerns of the Tribe.

The Umatilla National Forest ("Forest") is proposing actions to improve forest health, vigor, and resilience to fire, insects, and disease. The Project's actions include approximately 5,660 acres of intermediate cutting, 2,130 acres of regeneration cutting, and fuels treatments, including 14,060 acres of landscape prescribed burning. Approximately 39 miles of closed system road, 52 miles of seasonally open road, and 14 miles of temporary road would be used to implement the proposed Project. The Project addresses the need to: 1) move forest structure, species composition, and stand density toward historic range of variability, 2) move vegetation conditions toward historical and desired fire regimes, 3) provide sawlogs and wood fiber to augment regional and local economies, and 4) provide and manage for wildlife habitat to meet Forest Plan goals and management area standards and guidelines. Currently, forests are outside their historic pre-fire suppression conditions for species composition, structural diversity, stocking densities, and fuel loadings.

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As the Forest is aware, this Project is located entirely within the Tribe's aboriginal territory and is subject to the rights the Tribe reserved, and the United States secured, in its Treaty of 1855.<sup>1</sup> The Project is also located within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission,<sup>2</sup> and encompasses areas of cultural and spiritual significance to the Tribe.

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

After review of the DEIS, the Tribe recommends Alternative C to effectively meet the purpose and need of the Project while at the same time ensuring the retention of wildlife security areas, old forest distribution, connectivity, and snag habitat. The Tribe asks the Forest to address and consider suggestions and concerns the Tribe has articulated in the attached comments.

Thank you again for the opportunity to comment on the Sunrise Vegetation and Fuels Management Project. Tribal staff is happy to discuss these comments with Forest staff. You are welcome to contact Amanda Rogerson, Nez Perce Tribe Staff Attorney, at (208) 843-7355 or amandarH@nezperce.on with any questions or concerns.

NEZ PERCE TRIBE'S COMMENTS ON THE SUNRISE VEGETATION AND FUELS MANAGEMENT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
July 16, 2018

I. GENERAL COMMENTS

a. The Nez Perce Tribe's Interest in the Sunrise Vegetation and Fuels Management Project

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

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

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

Forest Service Manual 1563.8b ( 'FSM') specifically states that the Forest Service "shall administer lands subject

to off-reservation treaty rights in a manner that protects Indian tribes' rights and interests in the resources reserved under treaty." FSM 1563.03 further directs the Forest

Service, among other responsibilities, to "[i]mplement Forest Service programs and activities consistent with and respecting Indian treaty and other reserved rights and fulfilling the Federal Government's legally mandated trust responsibilities with Indian Tribes."

The Tribe recognizes the Project's needs but is concerned about undue impacts to resources during and after implementation of this Project.

## II. SPECIFIC RESOURCE COMMENTS

The Tribe's technical staff values the opportunity to comment on the proposed Project's DEJS and appreciates visiting the Project area and discussing the Project with Forest staff on June 21, 2018.

"*Linton v. United States*, 384 F. Supp. 312, 339-40, 403 (W.D. Wash. 1974).

"*See United States v. Cierco*, 480 U.S. 700, 707 (1987); *United States v. Alchell*, 463 U.S.

206, 225 (1983); *Nichols v. U.S.*, 316 U.S. 286, 296-97 (1942).

*Elliott Cohen*, *Handbook of Federal Indian Law* 221 (1982). *Serrano v. Mitchell*, 463 U.S. at 225.

*Secretary of Reclamation v. Galt*, 763 F.2d 1032 (9th Cir. 1985), *cert. denied*, 476 U.S. 1181 (1986).

*United States v. Galt*, 474 U.S. 1032 (1985).

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The Tribe recognizes the need to manage vegetation toward desired conditions and applaud the Forest's intent

to improve resource structure, function, and diversity. The Tribe supports and appreciates that the Project aims to move stand conditions towards historical condition and that the Project does not propose new ground disturbing activities in stream- or spring-associated wetlands during harvest and thinning operations. The Tribe also supports the proposed landscape prescribed burning and use of the existing road system to avoid the construction of any new, permanent roads.

#### a. Wildlife

The Tribe appreciates that the Forest evaluated the Project's impacts to invertebrate species. The Tribe supports implementation of Alternative C to minimize potential negative impacts on elk distribution and habitat quality, old forest distribution, connectivity, and snag habitat. The Tribe is concerned, however, about the scale of analysis with respect to road impacts on wildlife and wildlife habitat in light of the Project's actions, especially for elk (see subsequent comments). The Tribe asks the Forest to also estimate the amount of habitat (i.e., acreage) impacted by the Project for the Birds of Conservation Concern listed in the DEIS.

#### [bull] Elk

The Tribe is concerned that the DEIS evaluates impacts to summer range using the Habitat Effectiveness Index (Thomas et al. 1988) developed for winter range. This model considers open road densities, size, and spacing of cover and forage areas, quality and quantity of forage, and quality of cover. The DEIS, however, does not include quality and quantity of forage in the assessment of habitat effectiveness. Despite the fact that this model is outdated and does not account for livestock grazing and vehicle use on closed roads, OHV trails, and off-road, cross-country travel, the Tribe encourages the Forest to evaluate the full model, at a minimum. The Project's impacts should also be evaluated at the scale to which the actions will be implemented. Approximately 50% of the Project area is designated Inventoried Roadless Area, and when incorporated into road density calculations by Management Area ("MA"), it underestimates the actual road density where activities will occur. At this scale of analysis, it is difficult to adequately assess the Project's impacts to elk and other wildlife species. The Tribe is also concerned about Project impacts on elk and elk habitat in MA-C3A and asks that the Forest analyze area independent of MA-C3. In addition, the Tribe asks that the Forest evaluate the impact of increased use and distribution of livestock grazing on elk distribution and habitat across the Project area after implementation.

In addition, the Tribe asks that the Forest supplement the Thomas et al. 1988 approach with the best available science to evaluate the Project's impacts to elk and elk habitat. The analysis should account for the impacts of disturbance including motorized travel, silvicultural prescriptions, livestock grazing, and other activities on elk and elk habitat (see distance-band or analogous methods as well as recent research and recommendations described in Unsworth 1998; Rowland et al. 2000, 2001; Rumble et al. 2001; Wisdom et al. 2001; Dohmen 2006; Long et al. 2008, 2009; Friar et al. 2008; Naylor et al. 2009; McCorquodale et al. 2011; Cuiti et al. 2012; McCorquodale 2013; and Ranglack et al. 2017). Supplemental analyses may

include a distance band analysis which reports the percentage of security within distance bands for each alternative (see Rowland et al. 2000 and 2005).

#### b. Livestock Grazing and Range Conditions

The Tribe requests request that the DEIS include. show, and describe condition and trend and/or ecological site condition data for the allotments in the Project area. The Tribe strongly recommends that the Forest monitor upland ecological site conditions prior to, during, and after implementation. The Tribe recommends that the Forest defer livestock grazing in timber harvest and burn units until desired vegetative conditions have been met. The Tribe also asks that the analysis incorporate design or mitigation measures to limit possible concurrent activities that may spread noxious weeds, damage planted seedlings, or degrade resource conditions.

#### c. Roads

Because the Tribe is concerned about the association of new temporary roads with increased sedimentation, increased soil compaction and displacement, loss of security cover and old forest, and the establishment of invasive plant species, the Tribe favors Alternative C over Alternative B. The Tribe encourages the Forest to monitor roads and implement control measures when necessary.

Most of the actions and impacts from the vegetation treatments and roads (haul, temporary, and crossings) occur in the North Fork Asotin Creek subwatershed where steelhead populations are located. Furthermore, the construction of new temporary roads will not only remove and disturb old forest vegetation and soils, it may also serve as a new place for non-native, invasive plant species to establish and spread.

The amount of Maintenance Level 1 roads temporarily proposed to be open in Alternative B is

30.6 miles, with 24 stream crossings, versus 21.8 miles open in Alternative C, with 14 stream crossings. Temporary road construction of new roads is 7.9 miles and existing route of 5.8 miles, with 6 unchanneled ephemeral draws, in Alternative B versus 4.8 miles of new road and 3.6 of existing routes, with 2 unchanneled ephemeral draws, in Alternative C (Hydrology Report page 24). Cut and fill construction would be needed for about 2 miles of temporary roads (Hydrology Report page 36). Construction of temporary roads will cause direct impacts in the form of compaction and displacement of soils (Soils Report page 18).

There has been little physical road decommissioning (0.3 miles) in the North Fork Asotin Creek subwatershed other than blocking or camouflaging access points from main system roads (Hydrology Report page 13). The Tribe supports removing as much road and older road templates from the landscape as possible. The Tribe recommends decommissioning roads with a full recontour whenever possible.

d. Sediment, Water Yield, and Equivalent Clearcut Area ("ECA")

Alternative C has less ECA and would produce about half of the modeled sediment as Alternative

B. Therefore, the Tribe recommends Alternative C for better hydrologic and watershed conditions.

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WEPP modelling of all existing roads within the Project area estimates that erosion from road surfaces entering into stream channels is currently 1.5 tons of sediment per year from 58 crossings (Hydrology Report page 20).

There would be 6.1 miles of log haul on RHCA roads in Alternative B and 5.1 in Alternative C. Alternative B has almost twice the sediment (2.4 tons) produced by the haul road in North Fork Asotin subwatershed as Alternative C. The modeling results show a different ECA in Alternative B (23%) and Alternative C (17%) in the North Fork Asotin Creek (Hydrology Report page 25). Sediment modelling of 33 stream crossings on haul routes shows an increase from 1.5 tons to 3.2 tons from additional logging traffic (Hydrology Report page 34). The increase in ECA over existing conditions from this Project seems to be mostly from the vegetation treatments.

The most common sources of accelerated erosion rates associated with timber harvest are the development of roads and skid trails and the removal of ground cover by harvest activities, site preparation, and slash disposal operations or by high intensity fire effects under burn piles. The Tribe supports the Best Management Practices and project design criteria to protect soil resources and limit ground disturbance and sedimentation.

Changes in water yield and in peak flows have the potential to destabilize channels, causing increased erosion and sedimentation in channels. NMFS (USDA 1995) identified a 15% ECA as the lower limit threshold of concern for the Umatilla National Forest (Hydrology Report page 23). The combined effects of past actions, current actions, and actions proposed under Alternative B would result in ECA of 23.1% in North Fork Asotin and 22.0% in Lick Creek, exceeding the 20% level at which effects to water yield, peak flows, or timing of peak flows are measurable when combined with the Asotin Prescribed Burn Project, assuming all activities occurred at the same time (Hydrology Report page 41) which would not likely happen.

e. Soils

The Tribe favors Alternative C.

Detrimental soil conditions ("DSC") created by equipment traffic and landings would increase from 141 acres to 712 acres under Alternative B, or about 9% of treatment units and 2% of the Project area (Soils Report page 27). This is in contrast to the DSC under Alternative C, which would increase from 137 acres to 459 acres or about 9% of treatment units and 1 % of the Project area (Soils Report page 29). Alternative B has 8 units equaling 23 acres over 20% DSC; Alternative C has only 6 units and only 14 acres over 20% DSC (Table 16 Soils Report page 30).

The DEIS states that 2 units, 215 and 216 at 35% and 40%, currently exceed Forest Plan standards (over 20% threshold) and are proposed for mechanical thinning of 7 and 6 acres by mastication, respectively. Appendix E (Page 54-57) shows units 174 at 23%, unit 179 at 29%, unit 195 at 25%,

and units 230 and 231 at 24% and 26%, respectively. Regeneration units 230 and 231 (20 and 18 acres) are not proposed in Alternative C. Therefore, because the total units and acres of DSC area are twice as much in Alternative B as in Alternative C, the Tribe favors Alternative C. Sensitive

layout and implementation of ground-based yarding to protect soil conditions is highly recommended in units with over 20% DSC.

#### f. Monitoring

Forest-wide monitoring reports have not been published on the Forest's website since the 1991 - 2001 report which states, "riparian shrub impacts a concern (1993), most streams not meeting State temperature standards (2001), protection or mitigation likely needed to reduce potential impacts (1994), declining anadromous and resident fisheries (1991 -2001), cultural properties/sites lack of information and formal reviews (1992) and reviews not done on all districts (1996)." The Tribe would like to know if there have been any monitoring reports published since 2001 .

### III. CONCLUSION

The Tribe supports managing resource conditions for increased ecosystem function and resilience. The Tribe appreciates that the Project does not propose new ground disturbing activities in stream- or spring-associated wetlands during harvest and thinning operations. The Tribe also supports the proposed landscape prescribed burning and use of the existing road systems to avoid the construction of any new, permanent roads. After review of the DEIS, the Tribe recommends Alternative C to ensure the better hydrologic and watershed conditions and retention of wildlife security areas, old forest distribution, connectivity, and snag habitat.