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Title: Nez Perce Tribal Executive Committee Chairman
Comments: We Will be doing additional Submissions of attachments 3-13
October 21, 2024

Submitted electronically via portal: https://cara.fs2c.usda.gov/Public//CommentInput?Project=50516

Kelly Orr, Objection Reviewing Officer
Stibnite Gold Project
USFS Intermountain Regional Office
324 25th Street, Room 4403
Ogden, UT 84401

Re: Nez Perce Tribe's Objection to the Stibnite Gold Project Final Environmental Impact Statement and Draft Record of Decision

Dear Objection Reviewing Officer Orr:

The Nez Perce Tribe ("Tribe") hereby objects to the U.S. Forest Service's Final Environmental Impact Statement ("FEIS") and Draft Record of Decision ("DROD") for the Stibnite Gold Project ("Project"). The Tribe's objections are captured in this transmittal letter and the appended document and attachments, all of which are based on prior submitted comments and other information generated between the Tribe and United States during government-to-government interactions and communications, prior to the Forest Service's publication of a draft decision for the Project.

The Tribe's objections are organized around major Project deficiencies. The Tribe believes the Project, as currently designed, is foundationally flawed: It violates the Tribe's treaty-reserved rights within the Project site and fails to adequately mitigate the Project's staggering human and environmental impacts, including to the Tribe's treaty-reserved natural resources within the Project site. As a result, approving the Project will violate the Tribe's treaty-an action for which the Forest Service lacks legal authority.

The Forest Service's current proposal to approve the Project appears based on a gross misreading of the 1872 Mining Law. Contrary to the agency's apparent approach to the Project, the 1872 Mining Law neither confers on mining operators inviolate rights that supersede other federal laws nor prevents the Forest Service from denying a project if the project fails to comply with other federal law. The statute expressly prohibits mining activities on federal public lands that are inconsistent with other laws of the United States-including the Tribe's 1855 and 1863 treaties, which were signed and ratified before the 1872 Mining Law and which reserved to the Tribe property rights in the Project area that are protected under the Fifth Amendment.

As the Forest Service is aware, the Project is located entirely within the homeland of the Nez Perce people, the Nimíipuu, and within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission. On June 11, 1855, the United States entered into a treaty with the Tribe ("1855 Treaty"). In the 1855 Treaty, the Tribe reserved and the United States secured to the Tribe sovereign rights that the Nimíipuu have exercised since time immemorial, including the right to take fish at all usual and accustomed places and the rights to hunt, gather, pasture, and travel. The Tribe again reserved these sovereign rights in its 1863 Treaty with the United States.

The Tribe's treaty-reserved legal rights flow from its status as the original inhabitants and stewards of the land and facilitate the Tribe's extensive and widely-recognized work as a co-manager and partner restoring salmon, steelhead, lamprey, wolves, and bighorn sheep throughout its aboriginal territory. This work includes the Tribe's active implementation of fish habitat restoration and hatchery actions in Salmon River Basin where the Project is located.

The Tribe's 1855 and 1863 treaties are and remain the supreme law of the land with their terms guaranteed under Article VI of the U.S. Constitution and protected under the Constitution's Fifth Amendment. The Forest Service, as an agency of the United States, therefore, has a legal duty, enshrined in the U.S. Constitution and affirmed by numerous U.S. Supreme Court decisions, to ensure that its actions, including the Project, uphold the rights the Tribe reserved, and the United States secured, over 160 years ago.

The Forest Service's own assessment is that the Project will result in major impacts to the Tribe's treaty-reserved rights and resources, prohibiting or restricting Tribal treaty access for a generation or longer and harming lands and waters on which our salmon, steelhead, and other important life sources depend. Although the Forest Service has required some mitigation measures, they are underdeveloped, speculative, and inadequate. The fact remains that approval of the Project would allow Perpetua to move a portion of the East Fork South Fork Salmon River underground for at least 12 years, preventing Nez Perce Tribal access to this Usual and Accustomed Fishing Place. This Project action alone would be a direct violation of the Tribe's treaty-reserved right to fish. As a result, the Forest Service, as a representative of the United States-a signatory to the 1855 and 1863 Treaties-simply lacks legal authority to authorize the Project.

Numerous Biden Administration executive orders, memoranda, and secretarial orders, and the Forest Service's own recently released action plan on strengthening tribal consultations, commit to upholding tribal treaty rights and the nation-to-nation relationship. The Forest Service should therefore, without pause, faithfully and fully apply and uphold the terms of the 1855 and 1863 treaties when issuing a final decision for the Project. The Tribe believes that the Forest Service will remain in compliance with the Tribe's treaties and the 1872 Mining Law if it either selects the Project's no action alternative or withdraws its DROD for the Project.

The Tribe's treaties do not simply impose responsibilities on the United States. For the Nez Perce or Nimíipuu, the Tribe's reserved rights were and are inextricably linked to, and a guarantee of, the Nimíipuu's ability to preserve our culture and identity. Honoring our relationship to the fish and all animals and plants inhabiting the Tribe's cherished lands and waters of our homeland is fundamental to our identity and survival as Nimíipuu-and will always remain our sacred and privileged duty.

Sincerely,

Shannon F. Wheeler
Chairman