

House Subcommittee on Public Lands and Environmental Regulation
February 26, 2013
Oversight Hearing
on
“State Forest Management: A Model for Promoting Healthy Forests, Rural Schools, and Jobs”
Prepared Statement of
Silas Whitman, Chairman
Nez Perce Tribal Executive Committee

Thank you, Chairman Bishop and members of the Subcommittee on Public Lands and Environmental Regulation. I am Silas Whitman, Chairman of the Nez Perce Tribal Executive Committee. I appreciate this opportunity to provide brief testimony on what is the key underlying issue of this hearing: potential state management of National Forest lands.

All of us who manage our own forests and rangelands—from private companies to sovereigns like the State of Idaho and the Nez Perce Tribe – have valuable lessons to share about how we manage our lands to produce desired – and mandated – outcomes. Sometimes those outcomes are profits for shareholders in the case of private lands, or jobs and money to support schools in the case of state lands. The Nez Perce Tribe manages its lands to produce jobs and revenue for all forms of social services. But just as importantly, we manage our lands to benefit fish and wildlife habitat and healthy ecosystems. Balancing multiple interests is difficult, but the Tribe rejects the concept of a “zero sum” competition between providing social services and employment for our members and protecting fish and wildlife habitat. We’ve found that to avoid being forced to sacrifice one interest for another is to find ways to diversify economically. That too has been difficult, and we appreciate the understanding and support that Governor Otter has offered our efforts. We are encouraged that many of our neighbors in the rural communities in and around the Nez Perce Reservation have come to see the opportunities that exist to work with the Tribe – through our enterprises, our fisheries, watershed, and natural resources work, and the grants and contracts we administer. We are the third largest employer in the Lewiston, Idaho, area – behind Clearwater Paper Co. and the ATK corporation.

As managers of our own lands, we all have ideas and suggestions on ways the nation’s public lands might be strategically managed to achieve the nation’s mandates. In addition, the Nez Perce Tribe has a relationship with what are today this nation’s public lands that predates the existence of the United States itself. Further, the Nez Perce Tribe reserved rights – that the United States also secured to the Tribe -- in its 1855 Treaty that the Tribe exercises on these public lands. These rights are also the foundation for the Tribe’s role as a co-manager of its Treaty resources. We are committed to ensuring that the United States honors its Treaty obligations as it manages the nation’s public lands, and we have assumed an active role on the ground with the Forest Service as it carries out its mission.

For thousands of years, the Nez Perce people – *Nimiipuu* in our language – occupied a geographic area encompassing a large portion of what is today the inland Northwest United States. The territory occupied exclusively by the Nez Perce, over 13 million acres, stretched from the continental divide forming the present border between Idaho and Montana, to the Blue Mountains of northeast Oregon and southeast Washington. To give you an idea of the breadth of the even larger area our people utilized, this ranged from Celilo Falls on the Columbia to buffalo country in present-day Montana

and Wyoming.

Under the 1855 Treaty between the Nez Perce Tribe and the United States, the Tribe ceded to the United States aboriginal title to land encompassing most of present day Northeast Oregon, Southeast Washington and Central Idaho. Treaty with the Nez Perces, June 11, 1855, Article I (12 Stat. 957). In Article II of the Treaty, the Tribe reserved at that time an exclusive Reservation homeland over much of the same area.

Significantly, in Article III of the 1855 Treaty, the Tribe in key consideration for the land cession, reserved, “[t]he exclusive right of taking fish in all the streams where running through or bordering said reservation ... 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.” The subsequent 1863 Nez Perce Treaty with the United States reduced the size of the land reservation but otherwise preserved the 1855 Article III reserved rights. Preface and Article VIII (14 Stat. 647). The Nez Perce Tribe and its people continue to exercise their 1855 treaty-reserved rights, and to monitor, engage and co-manage cultural and natural resource issues, throughout Nez Perce treaty territory in the inland Northwest.

These facts are relevant here today because the Nez Perce people particularly exercise their treaty-reserved rights – and have a role as co-managers – on all of the National Forests lying within our aboriginal territory and all of the National Forests where we retain treaty-reserved rights. This includes eleven (11) National Forests – in Oregon, Washington, Idaho, Montana, and Wyoming. It is well-established law that our treaty-reserved rights to use resources on “open and unclaimed lands” apply to U.S. National Forests. E.g., State of Idaho v. Arthur, 74 Idaho 251, 261 P.2d 135 (1953) cert. denied, 347 U.S. 937 (1953). The U.S. Constitution in turn provides that United States treaties, such as the 1855 Nez Perce Treaty, are “the supreme law of the land.” U.S. Const., Article VI.

With this history and these long-held interests, the Nez Perce Tribe is naturally concerned when any proposal is made that could adversely affect the treaty-reserved activities of its members within U.S. National Forests – whether fishing, hunting, gathering plants or firewood, or pasturing animals. Indian tribes rely on the fact that they have a treaty-based, legally-established fiduciary relationship with the United States and its federal agencies. These are obligations the United States cannot subcontract away. The United States, in its treaty-based fiduciary relationship with Indian tribes, must recall that these rights were reserved – and secured to tribes – in consideration for the United States obtaining essentially all of the lands that now make up the Western United States, public and private.

The Tribe does not disagree with the testimony of others here today to the extent they question strategic land management decisions of the U.S. Forest Service. Where the Tribe respectfully differs is in any proposal that federal land management decisions could or should be transferred to state control. Federal public land, whether National Forest, National Park, or BLM range, is a part of the national heritage of all American citizens, across all states. It is the United States, through its executive agencies, that therefore should hold first responsibility for management and care of these lands. If there are strategic problems, they should first be addressed through the national dialogue that guided by our federal constitutional process, however messy that may be at times. Mindful of these national mandates, Senator Crapo’s championing of the Clearwater Basin Collaborative, which includes

representatives of sovereigns, industry, and the public, has helped this dialogue advance at a regional level with respect to the Clearwater-Nez Perce National Forest.

If in the end there are carefully considered co-management opportunities for our National Forests, Indian treaty-reserved rights – as a baseline – must be respected for the legal primacy they hold. And Indian tribes themselves must be included in any co-management discussion and resolution. The Tribe looks forward to a discussion of the natural land management role the Nez Perce Tribe – or other tribes in other areas—will play. The National Forests are lands Indian tribes and their technical staff know as well as anyone in the nation, and their management participation – under any federal co-management scenario – must be acknowledged.

The Tribe is humble about the on-the-ground work we do on the National Forests and our accomplishments. It should be understood, though, that the Tribe – working with the Bonneville Power Administration -- brings more watershed and fisheries restoration funding to the National Forests in our area than any other entity including the Forest Service itself. We have received national awards for our work in restoring fisheries habitat on National Forest lands, and have partnered with the Forest Service in monitoring big horn sheep and other wildlife to assist the Forest Service in managing these lands for these species. These are successes for the resources, for jobs, and most of all are successes for all who have an interest in the nation's public lands.

I thank you again for the opportunity to provide testimony and for your time and consideration of this statement.



Nez Perce Tribe Department of Fisheries Resources Management Work on National Forest Service System Lands

The Nez Perce Tribe's tie to the land is both legal and spiritual. The Nez Perce Tribe has been in this area since time immemorial and after westward expansion, entered into the Treaty of 1855. Multiple Forests within Regions 1, 4, and 6 of the US Forest Service have always recognized the special nature of their relationship and their trust responsibilities with the Nez Perce Tribe.

The mission of the USDA Forest Service is *"to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."* This melds well with the Nez Perce Tribe's Watershed Division which is *"one in which rivers and streams, the lifeblood in the veins of Nez Perce Country, and the ecosystems they support are healthy and valued. We envision a world in which the blood of life is treated with the utmost respect by all, and land management activities ensure a sustainable balance with healthy ecosystems; only then will salmon, and all life, once again thrive and the circle of life continue for all time."* As a consequence of these conditions, a natural partnership blending science and culture has developed between the Forest Service and the Nez Perce Tribe that focuses on the long-term health of these lands and the recovery of the aquatic resources.

The Tribe and the Forests both recognize that by working in close partnership this important work can progress faster and more efficiently than either party could accomplish separately. This restoration program results in improved natural resource conditions for the recovery of salmon and steelhead, as well as, presenting a positive vision of how agency mission and treaty trust responsibilities can be mutually achieved.

The Tribe's fisheries program, has worked with the Forests to develop mutual watershed scale priorities, collect field data, fund projects from a variety of sources, and monitor the implementation of those projects. The stewardship of these resources yield many kinds of benefits, related to resource conditions, harvest opportunities, local economic benefits, threatened species recovery, and improved conditions for the Tribe's cultural practices.

Watershed Division

At the strategic level, the Tribe and Forests have worked to develop a common set of restoration priorities at the watershed scale, so that scarce resources, such as funding, time, and available staff are focused in the places that are important to the Forests and the Tribe. This alignment provides for greater results from the combined efforts.

At a tactical level, the Tribe and the Forests have worked together through agreements to fund and implement a variety of projects. Over the past 17 years the Tribe has secured or helped secure funds from a variety of sources to implement a program aimed at watershed and aquatic restoration of the National Forests.

The watershed restoration partnership between the Tribe and Forest began in 1996 when the Nez Perce Tribe secured 6 Early-Action projects funded by BPA (Bonneville Power Administration) for a total of \$716,807 to be implemented on the Nez Perce and Clearwater National Forests.

From 1997 to 2011, the Forest and the Nez Perce Tribe's Watershed program partnership have implemented a program of over \$30 million. The major accomplishments include:

- replacement/removal of 102 aquatic organism passage barriers,
- 696 miles of roads decommissioned,
- 24 miles of road improvement,
- 3 miles of stream restoration,
- installation of 108 habitat enhancement structures,
- 266,856 trees planted (approx. 600 acres),
- 1,500 acres of noxious weed treatment,
- annual maintenance of 31 miles of riparian protection fence(protecting 1,115 acres of riparian area),
- And 18 miles of trail maintenance of the Nez Perce National Historic Trail.

In 2012, the Tribe implemented a watershed restoration program of \$6,176,777 in partnership with Regions 1, 4, and 6 of the Forest Service. The Forests contributed matching dollars in an amount of \$1,545,923. With this combined effort, accomplishments include:

- 85 miles of road decommissioning,
- replacement of 3 aquatic passage barriers,
- 1 mile of in-stream restoration consisting of 15 fish habitat structures and 115 acres of floodplain restoration,
- 7,591 trees planted,
- 5 acres of wetland restoration,
- annual maintenance of 31 miles of riparian protection fence(protecting 1,115 acres of riparian area),
- 18 miles of trail maintenance of the Nez Perce National Historic Trail,
- And 895 acres of noxious weed treatment.

Extensive inventory is conducted each year in preparation for future restoration, prioritizing the work for the next field season, and the development of five to ten year plans. In 2012, this work included:

- survey of 247 miles of road,
- survey of 129 culverts for aquatic organism passage,
- And 515 acres inventoried for weeds.

These numbers point out the important contributions the Nez Perce Tribe has made to the recovery of these important forest resources. It should be recognized that the Tribe's contribution to these resources span across 3 Regions in their efforts to improve watershed resources and help restore aquatic conditions conducive to recovery of native and anadromous fish.

The Nez Perce Tribe's Watershed Division works jointly with the Forests to secure funding and to complete watershed assessments aimed at developing a common strategic view of the management needs in a watershed, prior to a sustained cooperative restoration effort. This includes data collection such as road condition inventories, culvert fish passage inventories, and monitoring the effectiveness of our treatments. Development of consistent protocols,

coordinated sites, and a common information management system are examples of the integrated nature of the inventory and monitoring work.

Finally, before work is implemented, we work cooperatively to complete National Environmental Policy Act requirements including Endangered Species Act consultation and cultural resource surveys. Without the contributions of both the Tribe and the Forests, the amount of “on-the-ground” accomplishments that benefit NFS lands would be minimal.

The work accomplished by the Tribe in partnership with the Forests contributes to meeting Forest Service objectives aimed at assessing and restoring high-priority watersheds, maintaining riparian habitats within these watersheds, restoring and maintaining native plant (which includes edible and medicinal plants) and animal species diversity within the terrestrial and the aquatic ecosystem, and reducing the rate of species endangerment by contributing to species recovery. The Watershed Division works jointly with the Forests to develop a common understanding of the management needs and priorities in watersheds expected to be a focus of cooperative projects.

Research Division

Information on fish abundance and distribution is utilized by both the Nez Perce Tribe (NPT) and U.S. Forest Service for fishery and land management decisions. The Department of Fisheries Resources Management (DFRM) Research Division provides a lead role in the collection and dissemination of fish population status and trend data throughout the Snake River Basin, within four National Forests. Most of the field work being conducted by the DFRM Research Division is centered around estimating how many adult salmon and steelhead are returning to individual streams. Additional data collection targets how many juvenile salmon and steelhead are produced in nature and in hatcheries and how well those juveniles survive to adulthood. The Research Division provides data associated with 10 of the 39 spring/summer Chinook salmon populations, eight of the 24 steelhead populations, and on the single fall Chinook salmon population in the Snake River basin. We assist with data collection on two other spring Chinook populations and two bull trout populations. We lead the monitoring and evaluation on six hatchery programs and assist/collaborate on three others. Each one of these monitoring and evaluation efforts occurs partially or wholly on Forest Service managed lands.

On-the-ground data collection activities conducted during 2012 on Forest Service managed lands included:

- Juvenile steelhead and spring/summer Chinook salmon abundance estimation via rotary screw traps at four locations.
- Adult steelhead and spring Chinook salmon abundance quantification via temporary picket weirs at four locations.
- Adult spring/summer Chinook and bull trout abundance quantification via underwater video and dual imaging acoustic *sonar* at two locations.
- Adult steelhead and spring summer Chinook salmon abundance quantification via Passive Integrated Transponder (PIT) tag arrays at six locations. This relatively new technology requires very low profile structures that allow uninhibited fish movement



and have minimal visual impacts. Camouflaged PIT tag array reader and power source (upper picture) and in-stream array antennae (lower picture).

- Spawner distribution and index of abundance via redd counts were conducted on over 200 miles of rivers.

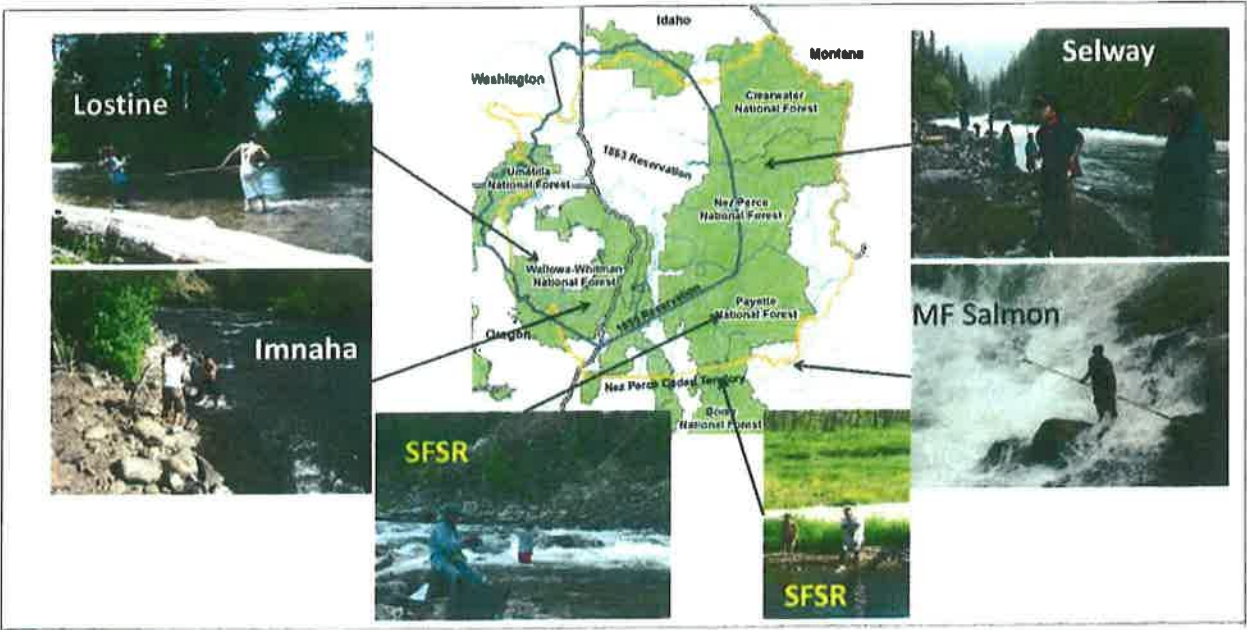
Formal coordination meetings are held annually with the Clearwater and Payette National Forests to avoid duplicative data collection, share results from past monitoring, and identify collaboration opportunities. We have arranged for the use of two Wallowa-Whitman National Forest guard stations to house field staff free of charge. In return, NPT provides the upkeep and maintenance of those buildings (something the Forest Service has not been able to afford in recent years).

In total the NPT DFRM Research Division conducts over \$2 million worth of research monitoring and evaluation within lands managed by the U.S. Forest Service that is mutually beneficial to the Tribe and Forest Service.

Harvest Division

The Nez Perce Tribe has quite possibly the largest number of tributary salmon and steelhead fisheries in the Snake River Basin which can often occur year-round across states of Washington, Oregon and Idaho. The Tribe has “usual and accustomed” fishing locations throughout the 13+ million acres that historically was exclusively used and occupied by the Tribe, including the major portions of the Snake, Tucannon, Imnaha, Grande Ronde, Salmon and Clearwater rivers and their drainages. These subbasin areas are partly or completely within specific National Forest System lands. The Tribe works to provide for healthy, self-sustaining fish populations that support meaningful harvest at its “usual and accustomed” fishing places. Fisheries on Snake River salmon and steelhead are typically designed consistent with the Tribe’s 1855 fishing rights and are implemented in consideration of the conservation or biological needs of the fish. Harvest staff plan fisheries based upon year-specific fish run size, timing and location, hatchery and natural escapement needs or brood requirements, and number of fish available for harvest. The Harvest Division collects and reports catch data pursuant to sampling designs, survey methods, and data collection techniques specifically tailored to tribal fishing.

In the past ten years the Tribe has had more opportunity to catch fish at key fishing areas than the preceding decade. Tribal members fish in areas and on fish populations that are benefited by the restoration activities the Tribe and the FS collaborates on. In 2011 and 2012, the Tribe and Payette NF agreed to provide access for Tribal families to reach “usual and accustomed” fishing place in South Fork Salmon River. Harvest monitors and Tribal members utilize roads, resources and camping areas in National Forests during fishing seasons.

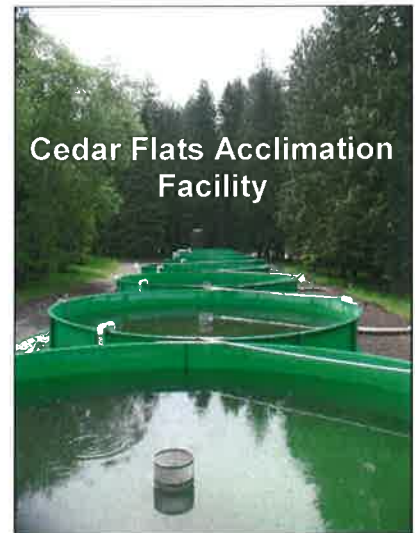


Production Division

The Department of Fisheries Resources Management (DFRM) Production Division utilizes hatchery artificial production to restore natural spawning populations and harvest opportunities in the Nez Perce Treaty Territory. The Division operates eight major production projects, including several hatcheries, to collect broodstock, produce/rear/acclimate/release 8 million juvenile fish (spring Chinook, fall Chinook, coho salmon, steelhead, and lamprey) in the Snake River basin annually. Many of these projects have facilities located on, or adjacent to, Forest Service land. Weirs like the one on Johnson Creek in the Payette Forest, are operated for collecting adult fish for broodstock,.



Acclimation facilities, like Cedar Flats on the Selway River and Pittsburg Landing on the mainstem Snake River are operated for growing fish a few months prior to their release and journey to the ocean with the intent that they will return to the watershed they were acclimated in for



harvest and natural spawning. Many of the fish released from these facilities are listed under the Endangered Species Act and are produced to prevent extirpation and restore the listed populations.

In 2012, the Tribe produced and/or released on or adjacent to Forest Service managed lands:

- 2.2 million spring Chinook
- 100,000 summer Chinook
- 600,000 coho
- 750,000 fall Chinook

Kooskia National Fish Hatchery on Clear Creek, operated by the Nez Perce Tribe, was host to the Forest Service Tri-Tribal Youth Camp in 2012. Approximately 40 junior high and high school age campers from the Nez Perce, Coeur d'Alene, and Spokane Tribes participated. Hatchery staff provided several hours of fisheries education.

