



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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Idaho State Legislature

Federal Lands Interim Committee

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Testimony of the Nez Perce Tribe

Good Morning, I am Joel Moffett and I serve as the Vice-Chairman of the Nez Perce Tribal Executive Committee. I would like to thank Chairman Winder and Chairman Denney for the opportunity to provide comments on behalf of the Nez Perce Tribe to the Federal Lands Interim Committee. Like Idaho, the Nez Perce Tribe has a strong interest in the management of the federal lands in this region. In fact, 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 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 and why the Tribe is so involved in any decisions regarding the management of the nation's public lands.

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 Percés, 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 federal lands such as National Forests lying within our aboriginal territory and all of the National Forests where we retain treaty-reserved rights. It is well-established law that our treaty-reserved rights to use resources on “open and unclaimed lands” apply to federal lands such as 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 on federal lands – 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. 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 has strong concerns with any proposal that has the potential to transfer federal land management decisions out of federal 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 problems with this land management paradigm, the problems should first be addressed through a national dialogue 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 on land management advance at a regional level with respect to the Clearwater-Nez Perce National Forest.

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. Federal public lands are lands Indian tribes and their technical staff know as well as anyone in the nation, and their management participation – under any management scenario – must be acknowledged.

The Tribe is humble about the on-the-ground work we do on the public lands such as 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.