



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

August 11, 2009

Suzanne Rainville, Supervisor
Payette National Forest
800 West Lakeside Ave
McCall, ID 83638-3602

Dear Ms. Rainville,

I am writing in response to your letter requesting the Nez Perce Tribe list the people the Nez Perce Tribe has approved to work with the Payette National Forest on the development of the Southwest Idaho Ecogroup Land and Resource Management Plans Draft and Final Supplemental Environmental Impact Statement.

The Nez Perce Tribe, has authorized Rebecca Miles, Brooklyn Baptiste, Mike Lopez, Darren Williams, Keith Lawrence and Curt Mack, to work with you and your staff, offering comments and illuminating concerns of the Nez Perce Tribe as you work through the issues you will decide to develop the measures and analysis that will protect bighorn sheep on the Payette National Forest from the effects of disease transmission from domestic sheep.

Sincerely,

Samuel N. Penney

Samuel N. Penney
Chairman

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NEZ PERCE TRIBE
AND
USDA, FOREST SERVICE, PAYETTE NATIONAL FOREST**

This **MEMORANDUM OF UNDERSTANDING** is hereby entered into by and between the USDA, Forest Service, Payette National Forest, hereinafter referred to as the Forest Service, and the Nez Perce Tribe, hereinafter referred to as the Tribe.

A. PURPOSE:

The purpose of this Memorandum of Understanding is to provide a framework for cooperation to define the relationship and duties of the Forest Service and the Tribe, as a Sovereign and Cooperating Agency, in the Payette National Forest Bighorn Sheep Viability Supplemental Environmental Assessment and Amendment to the 2003 Forest Land and Resource Management Plan (LRMP).

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Forest Service is in the process of preparing a Bighorn Sheep Viability amendment to its 2003 LRMP. The Forest Service must assure that the Supplemental Environmental Impact Statement (SEIS) complies with the National Environmental Policy Act (NEPA) and other applicable statutes, regulations and Executive Orders. In addition, the Forest Service will produce the SEIS in accordance with established time frames and the terms of this agreement and in response to the March 2005 appeal instructions received from the Chief's Office.

The Tribe has requested, and the Forest Service has agreed to formal, confidential Consultation pursuant to special government-to-government relations and federal trust responsibilities to Native American Tribes outside the terms of this agreement. The Tribe has also requested, and the Forest Service has agreed to grant, cooperating agency status pursuant to 40 CFR 1501.6. The Nez Perce Tribe, a Sovereign, has treaty reserved rights including grazing rights to lands administered by the Payette National Forest within the Tribe's Treaty Territory. Authorities reserved through the Treaty of 1855, and the Tribe's appellant status with respect to this issue makes Tribal participation unique among Cooperating Agencies.

The States of Idaho and Oregon have requested, and the Forest Service has agreed to grant cooperating agency status pursuant to 40 CFR 1501.6. All Cooperating parties will be incited to the table concurrently.

The authority of the Forest Service to participate in this agreement is provided by the National Environmental Policy Act, 42 USC 4321 et seq. The authority of the States and Tribe to participate in this agreement is provided by 40 CFR 1501, 1506, and 1508.

In consideration of the above premises, the parties agree as follows:

C. FOREST SERVICE SHALL:

As Lead Agency:

1. Be responsible for preparation of, quality of, and content of the SEIS.
2. Provide the opportunity for the Tribe to review and comment on several items, including:
 - Analysis of the bighorn sheep data and habitat information;
 - Range of alternatives to be considered in detail;
 - Economic analysis and section of the environmental document.
3. Provide the opportunity for the Tribe to help develop adaptive management strategies that will be considered for the LRMP amendment.
4. Discuss with the Tribe preliminary elements of the LRMP planned amendment.
5. Consider, to the maximum extent possible and incorporate as appropriate, the information provided by the Tribe into the appropriate SEIS and planning documents.
6. Make the final decision on the content of all SEIS and planning documents.

D. THE TRIBE SHALL:

1. Provide technical specialists and policy expertise to assist the Forest Service in the further development and refinement of the SEIS alternatives and LRMP amendment, by supplying information regarding Tribal bighorn sheep management direction, protection the Nez Perce Treaty Rights, interests, and cultural needs including, but not limited to:
 - a. Bighorn sheep population and recovery goals to assure long-term viability and conservation.
 - b. Treaty reserved subsistence harvest and cultural needs.
 - c. Development of adaptive management strategies to maintain viability and recovery goals for current and future identified bighorn sheep populations.
 - d. Development of adaptive management strategies to maintain and enhance currently occupied and future potential bighorn sheep habitats.
 - e. Development of separation strategies, distances and the effects between bighorn sheep and domestic sheep of such strategies.
2. Complete a review and analysis of draft and final SEIS:

- a. Review and provide comments within 15 days of receipt for the provided sections of the draft supplemental environmental impact statement:
 - b. Review and comment within 15 days of receipt of analysis information and associated management direction considered in detail.
 - c. During the public review periods for the draft SEIS, provide the Forest Service with any comments or recommendations on those documents that the Tribe believes are useful.
 - d. The Tribe will provide, at any time, any other background information about the bighorn sheep viability analysis, bighorn sheep population management, or bighorn sheep habitat that the Tribe believes will be useful to the SEIS team.
 - e. Be available to discuss with the SEIS Team any documents or analysis provided by the Tribe.
3. Discuss concerns and work with the Forest Service until the final documents are prepared and completed.

E. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. The Forest Service and the Tribe agree to use their best efforts to meet the time frames established in this agreement, to work cooperatively, and to resolve differences as quickly as possible.
2. FREEDOM OF INFORMATION ACT (FOIA): Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
3. MODIFICATION: Modifications within the scope of this instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.
4. PARTICIPATION IN SIMILAR ACTIVITIES: This instrument in no way restricts the Forest Service or the Tribe from participating in similar activities with other public or private agencies, organizations, and individuals.
5. RESPONSIBILITIES OF PARTIES: The Forest Service and the Tribe and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
6. ESTABLISHMENT OF RESPONSIBILITY: This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

7. NON-FUND OBLIGATING DOCUMENT: Nothing in this MOU shall obligate either the Forest Service or the Tribe to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the Tribe will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
8. COMMENCEMENT/EXPIRATION/TERMINATION: This instrument is executed as of the date of last signature. If not terminated sooner, this agreement will end when the notice of availability for the final SEIS is published in the Federal Register or no more than five years from the date of execution. The Forest Service or the Tribe may terminate this agreement by providing a 60-day written notice of termination to the other party.
9. PRINCIPAL CONTACTS: Each participating entity has designated a liaison to act as the point of contact for the Forest Plan Amendment process. An entity may change its point of contact at any time by providing written notice to the other party. The principal contacts for this instrument are:

Forest Service Liaison:

Pattie Soucek
Interdisciplinary Team Leader
800 W. Lakeside
McCall, Idaho 83638-3602
208-634-0812
E-mail: psoucek@fs.fed.us

Tribal Liaison:

Keith Lawrence
Director, Wildlife Program
PO Box 305
Lapwai, ID 83540
208-843-2162
E-mail: keithl@bezperce.org

10. AUTHORIZED REPRESENTATIVES: By signature below, the Tribe certifies that the individuals listed in this document, as representatives of the Tribe, are authorized to act in their respective areas for matters related to this agreement.
11. SOVEREIGN AUTHORITIES: Nothing in this MOU shall be interpreted to diminish the sovereign authorities of the Nez Perce Tribe.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

For the Tribe:

Samuel N. Penny
HONORABLE SAMUEL N. PENNY, Chairman
Nez Perce Tribal Executive Committee

11-27-07
Date

Brooklyn D. Baptiste
BROOKLYN D. BAPTISTE, Secretary
Nez Perce Tribal Executive Committee

11-27-07
Date

For the Forest Service:

Suzanne C. Rainville
SUZANNE C. RAINVILLE, Forest Supervisor
Payette National Forest

1/9/08
Date

THE AUTHORITY AND FORMAT OF THIS INSTRUMENT
HAVE BEEN REVIEWED AND APPROVED FOR SIGNATURE

[Signature] 11/9/07
AGREEMENTS COORDINATOR DATE

RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and on behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, the Nez Perce Tribe successfully appealed the 2003 Payette National Forest Plan over bighorn sheep viability concerns; and

WHEREAS, the Chief of the Forest Service is requiring and the Payette National Forest is in the process of, amending its Forest Plan to assure long-term bighorn sheep viability across the forest; and

WHEREAS, the Nez Perce Tribe desires to recover bighorn sheep populations within the Payette National Forest for conservation, treaty harvest and cultural purposes; and

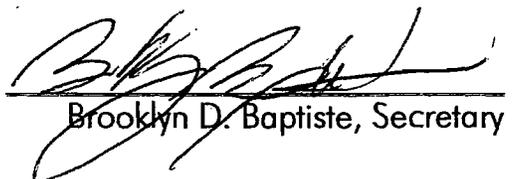
WHEREAS, the Nez Perce Tribe has requested and the Payette National Forest has agreed to formal consultation and cooperator status to work with the Nez Perce Tribe to amend the Forest Plan; and

NOW, THEREFORE BE IT RESOLVED, that the Nez Perce Tribal Executive Committee hereby authorizes the Memorandum of Understanding between the Tribe and the Payette National Forest for the purpose of consultation and formalizing cooperator status and to commit to work together to amend the Forest Plan to assure bighorn sheep recovery and viability across the forest.

CERTIFICATION

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee in Regular Session, August 14, 2007 in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its Members being present and voting.

BY:


Brooklyn D. Baptiste, Secretary

ATTEST:


Samuel N. Penney, Chairman