

APPENDIX G
GOVERNMENT-TO-GOVERNMENT CONSULTATION

INFORMATION RECEIVED FROM THE SHOSHONE-BANNOCK TRIBES'
NATURAL RESOURCES STAFF REGARDING THE FOUR RIVERS RMP

AUGUST 19, 2008

The Bureau of Land Management (BLM) and Native American Tribes have a unique relationship such that BLM must consult with federally-recognized tribes on a government-to-government basis to develop policies and solicit information. On August 19, 2008, John Sullivan and Jon Beck met with the Shoshone-Bannock Tribes' Natural Resources Staff (Chad Colter, Yvette Tuell, Danny Stone and Carolyn Smith) to discuss the Four Rivers RMP planning process and to solicit the Tribe's interests and concerns. The following Tribal concerns were discussed.

1. Bighorn sheep and domestic sheep should be separated because domestic sheep are passing disease to bighorns in Hells Canyon and the surrounding area wherever there are bighorns and domestic sheep sharing the same areas.
2. The Tribe requested GIS coverages of the sheep allotments in the FRFO planning area.
3. The FRFO should contact the "Upper Snake River Tribes" with scoping information.
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4. Goats and bighorn sheep are also a problem along the Weiser River (due to disease).
5. The Tribe would also like to see some interpretation in the Cascade RMP area because they have a presence there and want to maintain it.
6. **The Tribe wants their Snake River Policy elevated to a goal in the plan.** They also provided several other policy papers to the BLM personnel.
7. Ms. Tuell said that the Tribe will provide written scoping comments. After we receive their comments and process them into issues and alternatives, Ms. Tuell will help BLM set up a formal consultation with the Council to discuss how we addressed their concerns. She also said that we should consult again after the Draft Environmental Impact Statement (DEIS) comments are addressed and before the implementation plan.

THE POLICY OF THE SHOSHONE-BANNOCK TRIBES FOR MANAGEMENT OF SNAKE RIVER BASIN RESOURCES

November 1994
Resolution # GAME-94-1049

ISSUE DEFINITION

Beginning in 1989 and continuing through 2008, many non-Federal hydroelectric projects (Projects) within the Snake River Basin (Basin) will be reviewed under the Federal Energy Regulatory Commission relicensing process. In addition, subsequent to the listing of various salmon and snail species under the Endangered Species Act as well as the initiation of other conservation efforts, the Basin is being viewed, as never before, as a valuable resource contributing to the overall Pacific Northwest regional conservation framework. The Shoshone-Bannock Tribes support efforts to conserve, protect, and enhance natural and cultural resources within the Basin and therefore establish this policy to re-emphasize previous policy statements and provide new direction with regards to recently initiated Basin actions.

BACKGROUND AND INTRODUCTION

Since time immemorial, the Snake River Basin has provided substantial resources that sustain the diverse uses of the native Indian Tribes including the Shoshone-Bannock. The significance of these uses is partially reflected in the contemporary values associated with the many culturally sensitive species and geographic areas within the Basin. Various land management practices, such as the construction and operation of hydroelectric projects have contributed extensively to the loss of these crucial resources and reduced the productive capabilities of many resource systems. These losses have never been comprehensively identified or addressed as is the desire of the Shoshone-Bannock Tribes.

The Shoshone-Bannock Tribes reserved guaranteed continuous use Rights to utilize resources within the region that encompasses and includes lands of the Snake River basin. The Fort Hall Business Council has recognized the contemporary importance of these Rights and resources by advocating certain resource protection and restoration programs and by preserving a harvest opportunity on culturally significant resources necessary to fulfill inherent, contemporary and traditional Treaty Rights. However, certain resource utilization activities including the operation of federal and non-federal hydroelectric projects effect these resources and consequently, Tribal reserved Rights.

It has always been the intent and action of the Shoshone-bannock Tribes to promote the conservation, protection, restoration, and enhancement of natural resources during the processes that consider the operation and management of Federal projects and during the land management activities of other entities.

This policy re-emphasizes the Tribes previous policies with regards to these processes

and activities. However, the formal relicensing process for non-federal projects (Projects) as well as other recent undertakings that will consider the overall management of the Basin represent previously unavailable opportunities to comprehensively identify and address impacts to and losses of, resources affected by these Projects.

The importance of considering Tribal goals and objectives for effected resources is specifically recognized in the regulations outlining the federal relicensing process. The Fort Hall Business Council has established the following policy for the Basin in order to provide guidance in determining these goals and objectives. This direction is intended to be consistent with existing Tribal policy for participating in processes dealing with other land and water management activities.

STATEMENT OF POLICY

The Shoshone Bannock Tribes (Tribes) will pursue, promote, and where necessary, initiate efforts to restore the Snake River systems and affected unoccupied lands to a natural condition. This includes the restoration of component resources to conditions which most closely represents the ecological features associated with a natural riverine ecosystem. In addition, the Tribes will work to ensure the protection, preservation, and where appropriate-the enhancement of Rights reserved by the Tribes under the Fort Bridger Treaty of 1868 (Treaty) and any inherent aboriginal rights.

CONCLUSION

In addition to the ongoing efforts of the Tribes and its cooperating agencies, the relicensing process as well as recently initiated Basin recovery efforts provide a firm basis for striving to meet Tribal needs regarding resource conservation, protection, and enhancement. This policy will provide direction to Tribal staff for participating in regional processes as well as for the future development of resource and process specific Tribal plans and guidelines.

Tribal participation in the Project relicensing efforts will be used to identify the direct, indirect, and cumulative effects attributable to the construction, operation, and any proposed modifications of Project facilities. The Tribes expect the license applicant(s) and the Federal Energy Regulatory Commission, in consultation with the Tribes and agencies during the relicensing process, to identify alternative management strategies and develop mitigation measures to reduce or eliminate the identified impacts consistent with this Policy.

In combination with existing policy and direction, other natural and cultural resource management activities (typically those undertaken by the Tribes cooperating agencies) will be utilized to identify additional land management impacts within the Snake River Basin and will similarly identify alternative management strategies and apply mitigation measures consistent with this Policy.

All cooperating agencies will be expected to utilize all available means, consistent with their respective trust responsibility mandates, to protect Treaty rights and Tribal interests consistent with this Policy.

The Shoshone-Bannock Tribes' Position Regarding the Transfer of Federal Lands

July 2005

Introduction

The Shoshone-Bannock Tribes set forth the following position concerning any deposition, sale or transfer of federal lands, use rights or other rights in lands that may affect the Shoshone-Bannock Tribes' treaty rights as guaranteed by the Fort Bridger Treaty of July 3, 1868 and subsequent cession agreements. The Tribes oppose any federal land disposition, sales or transfers to private entities or state and local governments based on two fundamental reasons. First, the United States government entered into a solemn treaty with the Shoshone and Bannock tribal peoples in which the Tribes reserved certain off-reservation hunting, fishing and gathering rights which they continue to exercise on unoccupied lands of the United States. Subsequent to the 1868 Treaty, the Tribes ceded certain lands to the United States and reserved in the cession agreements certain communal rights for grazing and use of the public lands. Second, the United States, including its federal agencies, have a trust responsibility as established in the Fort Bridger Treaty and other federal laws, policies and executive orders to protect and preserve the rights of Indian tribes, and to consult with the Tribes prior to such land sales or transfers.

Treaty Guaranteed Rights

The Shoshone-Bannock Tribes ("Tribes") have reserved rights based on their Treaty of Fort Bridger of July 3, 1868. In the treaty negotiations, the Tribal leaders made it clear that they wished to continue to fish for salmon, hunt buffalo and elk, gather the plants and medicines and other cultural resources in their aboriginal areas within the United States, including but not limited to the present states of Idaho, Utah, Wyoming, Nevada and Montana. The Tribes ceded millions of acres of their aboriginal homelands in return for a much smaller reservation known as the Fort Hall Reservation. Accordingly, the Tribes in the Treaty reserved certain off-reservation hunting, fishing and gathering rights which they continue to exercise on unoccupied lands. These reserved treaty rights have been recognized and confirmed by the Idaho Supreme Court.

Following the Treaty of 1868, the United States sought further land cessions from the Tribes in the late 1880's. Under these cession agreements the Tribes reserved grazing and gathering rights on public or unoccupied lands. Today, Tribal members continue to graze their livestock on federal lands, and gather firewood, posts, poles, food and medicinal plants for traditional practices.

The disposition, sale or transfer of federal lands to a private entity or state and local governments adversely impacts the Shoshone-Bannock Tribes' guaranteed off-reservation treaty rights by diminishing the locations and access to areas where Tribal members exercise treaty rights. Tribal members, whose ancestors hunted, fished or gathered on aboriginal lands for thousands of years, are forced to relocate to other areas or cease the exercise of such treaty guaranteed rights. Tribal members grazing areas are also reduced by land transfers, depositions or sales and access for gathering may be severely limited. The transfer, patent or outright purchase of federal lands, and the extension of leases for mining on federal lands by private

businesses enable them to control access and use, which jeopardize access to certain Shoshone-Bannock traditional fishing, hunting and gathering areas, and grazing and plant material use.

Federal Trust Responsibility

It is well established that the United States has a solemn trust obligation to the Shoshone-Bannock Tribes. Under this obligation the United States has a special fiduciary responsibility to consider the best interests of the Shoshone-Bannock Tribes pursuant to the Fort Bridger Treaty. The United States assumed this responsibility when it entered into the Treaty with the Tribes. Today, most fundamentally, the modern form of the trust obligation is the federal government's duty to protect tribal lands and treaty resources, including the off-reservation rights the Tribes reserved. This duty to protect treaty resources includes preserving the integrity of lands upon which the resources are located.

The cultural resources located on many off-Reservation lands are essential to the culture and traditions of the Tribes. Importantly, these resources provide subsistence to a majority of Tribal families residing on the Fort Hall Reservation. Loss of the aboriginal lands because of federal land depositions, sale or transfers to private businesses and non-federal governmental agencies may be devastating to the Tribes and lead to irreversible cultural extinction of traditional practices. Loss of Tribal culture and traditions occur because Tribal identity depends heavily upon the socio-cultural ties that link individuals, families and groups to specific traditional and aboriginal territories and lands. The reservation of these aboriginal areas for hunting, gathering and fishing were contemplated by the Tribal leaders and reserved in the Fort Bridger Treaty. Accordingly, elimination of the federal lands through transfers severely impacts the subsistence food sources for Tribal members, severs the family and cultural ties to certain traditional lands, and restricts the use of cultural resources which are not found on the Fort Hall Reservation.

The federal trust obligations require a federal agency to carefully consider and investigate the effects of its actions on tribal interests and assess its obligation to tribes. The Tribes must not be treated like merely citizens. Instead, the federal land management agencies owe a duty to preserve and protect the Tribal resources by diligently discussing and considering the Shoshone-Bannock Tribal interests through consultation with the Tribes concerning any consideration of a transfer of lands located within the Tribes' aboriginal areas. Proposed land depositions, sales or transfers must consider appropriate mitigations to address reserved treaty rights, cultural resource laws and Tribal policy. Consultation is required by numerous federal laws, including Executive Orders 12875, 13007, 13084 and 13175.

The Shoshone-Bannock Tribes oppose any federal land depositions, sales or transfers that may adversely impacts natural and cultural resources and/or our reserved treaty rights of hunting, fishing and gathering on unoccupied lands of the United States. We certainly welcome the opportunity to work with any federal agency in transferring any federal lands to the Shoshone-Bannock Tribes to insure the Tribes' treaty rights are secured for future generations. If any federal agency or employee has any questions regarding the Shoshone-Bannock Tribes' position, please contact the Chairperson at 478-3700.

Shoshone-Bannock Tribes

Position Statement Regarding Developed Campgrounds on Federal Lands

GAME-06-0506

Issue

The Federal land managing agencies have approached the Shoshone-Bannock Tribes (Tribes) with numerous proposals to address recreational uses on federal lands, including stricter and more detailed management strategies to reduce and minimize recreational user impacts. These measures include providing reservation and lottery systems in developed for campground areas, requiring user fees for campground services, designating dispersed camping areas, and other measures. The Shoshone-Bannock Tribes set forth the following position on camping, a treaty right held by the Tribes' as reserved by the Treaty of Fort Bridger, July 3, 1868¹.

Background

Traditionally, the Shoshone and Bannock peoples were nomadic and migrated throughout the region to sustain their livelihoods. There was no understanding of "permanent settlement" until the United States forced them to the Fort Hall Reservation. Tribal elders have indicated that when Tribal members went camping, there was no real place where the people could NOT camp, and that Tribal members would customarily camp in areas as necessary.

Little has changed in terms of traditions, customs and language, regarding camping. In the Bannock and Shoshone languages, the word to camp is "no'vithe," which are two words put together. "No'o" means to carry, and "vithe or bithe" means to arrive; or to move, a temporary type of dwelling. Another word referring to camping is "nowea." All of these words refer to temporary lodging and moving from place to place, depending on the resources available.

Treaty Guaranteed Rights

The Tribes have reserved rights as set forth in the Treaty of Fort Bridger of July 3, 1868. In the treaty negotiations, Tribal leaders made it clear that they wished to continue to fish for salmon, hunt buffalo and elk, gather the plants and medicines and other cultural resources in their aboriginal areas. The Tribes relinquished millions of acres of their aboriginal homelands to the United States and retained a reservation known as the Fort Hall Reservation, and other federally recognized reserved rights. Accordingly, the Tribes retained off-reservation hunting, fishing, gathering rights and the right to camp, which they continue to exercise on unoccupied lands. That specific language states:

"ARTICLE 4. The Indians herein named agree, when the agency-house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied land of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

The Fort Bridger Treaty is a peace treaty, different and unique from other treaties with other tribes. Although the Tribes agreed to relinquish ownership of lands beyond the exterior boundaries of the Fort Hall Reservation, the Tribes retained subsistence rights to unoccupied lands of the United States. Contrary to other treaties, the Shoshone-Bannock Tribes' exercise of Treaty rights are not limited to "usual and accustomed areas" nor does the "in common with" language apply to the Fort

¹ 15 Stat. 673.

Bridger Treaty. These reserved treaty rights have been recognized and confirmed by the Idaho Supreme Court.²

The cultural resources located on many off-Reservation lands are essential to the culture and traditions of the Tribes. Notably, these resources provide subsistence to a majority of Tribal families residing on the Fort Hall Reservation. Tribal individuals, families and groups continue to travel to traditional and aboriginal territories and lands. Camping is intrinsic to these traditional activities.

Federal land developed campground reservation systems, lotteries and fees limit Tribal members' access to traditional camping and impair the exercise of their treaty reserved rights, by forcing Tribal members to compete against tourists and those who do not have a unique treaty right. Shoshone-Bannock Tribal member camping is not limited to developed campgrounds, nor is it limited to "usual and accustomed areas." The Shoshone-Bannock Tribes do not distinguish between recreational or dispersed camping, developed campgrounds or fee-based campgrounds.

Federal Trust Responsibility

It is well established that the United States has a solemn trust obligation to the Shoshone-Bannock Tribes. Under this obligation, the United States has a special fiduciary responsibility to consider the best interests of the Tribes pursuant to the Fort Bridger Treaty. Today, most fundamentally, the modern form of the trust obligation is the federal government's duty to protect treaty resources, which includes the off-reservation treaty rights reserved by the Tribes. This duty to protect treaty resources includes preserving the integrity of lands upon which the Tribal resources are located and the exercise of treaty rights.

Statement of Policy

The Shoshone-Bannock Tribes exercise inherent and reserved treaty rights within their own authorities and responsibilities. Federal land Developed Campground fees, reservation systems, and any other fee-based campground services shall not apply to the enrolled members of the Shoshone-Bannock Tribes, in accordance with Article IV of the Fort Bridger Treaty, on all unoccupied lands of the United States. The Treaty does not state, nor was it the intent of our leaders at the time of the signing of the treaty, to impose or restrict Tribal members from exercising off-Reservation rights to hunt, fish and gather, and the corresponding right to camp. Federal permitting requirements are contrary to the rights reserved by the Tribes in the Fort Bridger Treaty.

Conclusion

The Tribes will continue to work with federal land managing agencies in a cooperative relationship to co-manage the resources off reservation. The Tribes urge the individual federal land managing agencies to work directly with their contractors to ensure that this policy is upheld. The Tribes are always willing to offer education and informational services to the federal agencies regarding this policy.

In addition to other Tribal policies and direction, this policy shall apply to all federal agencies that own and manage federal lands and shall be utilized in the development of management strategies and implementation of federal actions. All cooperating agencies are urged to utilize all available means, consistent with their respective trust responsibility mandates, to protect Treaty rights and Tribal interests consistent with this Policy.

²State v. Tinno, 497 P.2d 1386 (Idaho 1972)

COMMENTS RECEIVED FROM THE SHOSHONE-PAIUTE TRIBES
DURING GOVERNMENT-TO-GOVERNMENT CONSULTATION

OCTOBER 16, 2008

The Bureau of Land Management (BLM) and Native American Tribes have a unique relationship such that BLM must consult with federally-recognized tribes on a government-to-government basis to develop policies and solicit information. Information, presented to the Shoshone Paiute Tribe at a monthly Wings & Roots meeting, dealt with the public scoping period for the new Four Rivers Resource Management Plan (RMP). At that time, BLM asked the Tribe for comments on possible RMP issues, to be given at a subsequent Wings & Roots meeting.

At the October 16, 2008 meeting, Ted Howard, Shoshone-Paiute Cultural Resources Director, presented BLM with the following comments.

1. Scoping Process Description

“It needs be pointed out in the RMP that the BLM has a unique relationship with Native American tribes, and that they have (legal) trust obligations to federally recognized tribes. The BLM must consult with federally recognized tribes on a govt-to-govt basis in the development of policies that have tribal implications, such as this RMP.”

2. Education and Public Safety

“It is important to educate the public and the land managers about the traditional use of the land. The Shoshone-Paiute Tribes prefer an ethnographic study to address the traditional use of the land, the resources. But it is important to the Shoshone-Paiute Tribes to point out the contemporary and ongoing uses of the land and the resources, and this is covered in an ethnographic study. This is very important to the Shoshone-Paiute Tribes because the BLM contractors usually reference old studies done by Julian Steward and others from decades ago. Besides, Julian Steward’s work is undergoing scrutiny because some scholars have discovered inaccuracies in Steward’s work. The most important point is that old studies do not address contemporary and ongoing uses by contemporary tribal members.”

3. General

“The Shoshone-Paiute Tribes prefer to be involved in the development of the Four Rivers RMP. As I have said before, this RMP will guide the land managers for the coming twenty years or more, in how to manage the resources in your area (our homelands). Many of us may not be here in the next twenty years. But it is our duty to develop a document that will protect the environment and the various forms of life that depends on us for their survival.

People are destroying the environment at an alarming rate, in their bid to exploit any resource they can to make a dollar. Tribal members have witnessed the destruction that has taken place in the last few decades. Many of the resources that were plentiful a few decades ago are now few, some may be nearing extinction.

We call this the Resources Management Plan (RMP). As many of you heard me say in past meetings, ‘it’s not the resources that needs managing, it’s the people that need management. The resources have always done well in the way the creator intended things to be, it’s when the people began changing things and disrespecting the resources and the environment that everything began to decline.’

So this RMP must be a lot more restrictive than the previous RMP. I know that the BLM manages public lands under the pretense of multiple-use. That does not work very well. People don't know how to respect anything. The animals and the other resources have suffered; they do not and cannot mix with people. It was different when there were few people out there, but not in this day and age.

My elders have always told me that it is up to us to speak for those that cannot speak for themselves, the mountains, the sun, the water, the animals, and all things that the creator put on this earth. I am speaking for all of creation today, I hope that we can leave something for the coming generations, it is our duty.”