

The SHOSHONE-BANNOCK TRIBES

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FISH & WILDLIFE DEPARTMENT
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August 7, 2015

Bureau of Land Management – Upper Snake Field Office
Upper Snake RMP Planning Team
1405 Hollipark Drive
Idaho Falls, ID 83401

Re: Shoshone-Bannock Tribes' Comments on the Interagency Management of Special Recreation Permits/Special Use Permits and Designated Camping within the Snake River Planning Area and Teton River Canyon Draft Environmental Assessment

The Shoshone-Bannock Tribes (Tribes) would like to thank Upper Snake Field Office of the Bureau of Land Management (BLM) for seeking Tribal input on the Interagency Management of Special Recreation Permits/Special Use Permits and Designated Camping within the Snake River Planning Area and Teton River Canyon Draft Environmental Assessment (Project). The Tribes' technical staff has reviewed the available information and now submits the following comments for your consideration during the environmental review process. The intent of the National Environmental Policy Act (NEPA) is to provide a process that uses a comprehensive and strategic approach to decision-making that integrates environmental considerations to achieve a "productive harmony" among various social, economic and environmental objectives. The Tribes expect the BLM to improve land management by fully considering, protecting and enhancing Tribal issues, rights and interests in the final Project decision and while implementing management activities. The following comment letter is intended to provide general background information regarding the Tribes' history and cultural tie to the landscape, while also providing specific comments about Project elements.

Background

The Tribes place a high value on the inclusion of pre-historic and historical data as an integral part of the environmental baseline. Including the Tribal history would inform the public, potential applicants and proponents, along with the land managers of the reserved rights, cultural resources, traditional cultural practices; all which have the potential to be impacted from federal land management decisions. Due to recent management actions impacting cultural resources and sites, the Tribes have made significant efforts to gain support from the Idaho Congressional Delegation to force federal agencies to improve and reinstate their efforts to protect cultural resources and sacred sites. In that light, the Tribes request BLM management considers the

Tribal values associated with preserving significant pre-historic and historical sites, and endeavor to avoid adverse impacts whenever possible.

The various bands of the Shoshone, Bannock and Paiute people traditionally roamed extensively throughout the Great Basin and Intermountain region. Prior to non-Indian settler's entry into the region, Indians utilized the rich natural resources, and enjoyed the cultural traditions and lifestyles unique to our people. The Tribes called their aboriginal territory, "*bia sokoppe*" the Shoshoni term referring to Mother Earth, or literally, "our big lands."

The Shoshone and Bannock peoples inhabited the upper reaches of the Snake River, including those lands within this planning area, from time immemorial. The Upper Snake River were rich in resources and formed the basis for a successful subsistence lifestyle and culture. An ethic of 'take only what you need' ensured resources would not be over harvested and future generations could enjoy traditional cultural practices. Applicable to this Project, fish, wildlife and botanical resources were hunted in the Snake River Planning Area and the Teton River watershed. Botanical resources were a staple as medicinal and subsistence resources, as were populations of fish and wildlife commonly found in abundance in the Upper Snake.

Increasing numbers of fur trappers, miners, ranchers, and non-Indian settlers occupied the lands within the Planning area, during the early to mid-nineteenth century. These early contacts with the Shoshone and Bannock peoples identified settlements and winter encampments throughout the Upper Snake field office, with large concentrations noted within the Blackfoot and Snake River drainages. "By the time Euro-Americans began to write about the upper Snake region in 1811, most of the Shoshone-Bannock populations in the area were fully equestrian peoples who traveled a wide territorial range." (Albers, 1998) By 1835, rival American and British fur companies depleted many of the Tribes' important subsistence resources. Beaver were brought to the edge of extinction; and, by 1840, bison had virtually disappeared from the Upper Snake River and its tributaries. Competition for resources by a growing population required the Shoshone and Bannock peoples to travel further for resources now absent from the Upper Snake region.

In June 1867, an Executive Order established the Fort Hall Indian Reservation, as a collective place to consolidate the various bands of Shoshones and Bannocks, from their aboriginal lands, clearing the way for European-American settlements, such as ranchers and miners who desired rich resources present on our native lands. At the end of the treaty making era and after numerous failed attempts to formulate agreements with the Tribes, the United States signed a peace treaty, the Treaty with the Eastern Shoshone and Bannock Indians in 1868 (commonly referred to as the "Fort Bridger Treaty"). The 1868 Fort Bridger Treaty (15 Stat 673) affirmed the reservation reserved by Executive Order in 1867 and provided for our subsistence lifestyle by reserving certain off-reservation use rights for the Tribes.

Article IV states:

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.

Snake River Policy

The Tribes stress the importance of initiating efforts to restore the Snake River system and affected unoccupied lands to a natural condition. The Shoshone-Bannock Tribes Policy for Management of the Snake River Basin Resources states:

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.

The land within and surrounding the Project Area is the Tribes' "Native Lands" our Tebiwa. From time immemorial our ancestors have utilized this area and we continue to return to these significant sites, to conduct traditional Tribal practices, to hunt fish and wildlife for subsistence, to gather plants for medicinal, ceremonial and food. The lands and resources under BLM management in the Upper Snake field office are an important part of the Tribes' history and contemporary subsistence and cultural practices. The management direction taken by this Project must consider and implement specific tribal goals to ensure our vision, reserved Treaty rights, and cultural resources are not impacted by economic driven recreational interests. As part of your Trust Responsibility to the Tribes, the BLM must consider and incorporate Tribal policies and positions developed to ensure future generations of Tribal members will have the same unique opportunities to enjoy the natural landscape, gather resources and continue traditional cultural practices.

Tribes' Fish and Wildlife Department Mission Statement

Consistent with the Tribes' Snake River policy, the Fish and Wildlife Department developed the following mission statement to provide additional guidance to Department personnel.

The mission of the Shoshone-Bannock Tribes Fish & Wildlife Department is to protect, restore, and enhance, fish and wildlife related resources in accordance with the Tribes' unique interests and vested rights in such resources and their habitats, including the inherent, aboriginal and treaty protected rights of Tribes members to fair process and the priority rights to harvest pursuant to the Fort Bridger Treaty of July 3, 1868 (15 Stat . 673).

The Department is guided by those statements, a collective Tribal vision for management, to create and implement programs for fish, wildlife and their habitats. Through holistic action implementation the Department engages each year in habitat restoration, vegetation management, technical consultation, production measures, research, monitoring and evaluation efforts for a variety of species. Using the best available science, traditional ecological knowledge, and integrated and innovative project planning the Department is able to deliver a

wide-array of technical expertise for fish, wildlife, and plants. Our expertise and proximity to the Planning Area make the Tribes' Fish and Wildlife Department a logical resource for project work or technical consultation/coordination on riverine management issues.

GENERAL COMMENTS

1.1 Background – The Tribes' pre-historic, historic and contemporary utilization for subsistence in the planning area are not mentioned in the document. Tribal interest and issues identified during the U of I Visitor Capacity Study are not identifiable. The Treaty reserved subsistence rights of the Tribes that are exercised throughout the planning area and the Trust Responsibility of the BLM to ensure these resources are protected and available to the Tribes deserves some mention in the Background section of this document.

SPECIFIC COMMENTS

- Pg. 72: The Pre-Contact resources within the APE are described as lithic and tool scatters, possible house depressions and rock shelters. These resources are eligible for listing on the NRHP under Criterion D, due to the potential for intact buried deposits that could lead to a better understanding of local and regional prehistory. **Comment** – Regardless of the NRHP's Criterion D, the Tribes would not support data recovery/removal or archival of our cultural resources.
- Pg. #18: Executive Orders 11990 and 11988 would be followed. Executive Order 11990, Protection of Wetlands, states that agencies would take action to minimize the destruction, loss or degradation of wetlands. Agencies would also work to preserve and enhance the natural and beneficial values of wetlands. Executive Order 11988, Floodplain Management, states that agencies shall take action to restore and preserve the natural and beneficial values served by floodplains. There are other Executive Orders that require consultation with Native American Tribes when cultural or Treaty reserved resources may be impacted by management actions. Please include the following: *Executive Order 12898, Environmental Justice; Executive Order 13175, Consultation and Coordination with Indian Tribes; and, Executive Order 13007, Indian Sacred Sites.*
- Pg. 101: #12. Flows controlled by releases at Palisades Reservoir affect all the resources along the South Fork from the Dam to the confluence. These effects are not known, they may have substantial impacts on the survival of existing cottonwood stands and limit future cottonwood recruitment. **Comment:** Some of the impacts of minimum (300 CFS – winter to maintain some assemblage of species and ecosystem function) and maximum (24,000 CFS – based on remaining available flood plain; impacts to private property above this level) flows out of Palisades Reservoir have been assessed by BOR. For the South Fork, Merigliano (1996)¹ recommended that peak flows of at least 36,000 cfs every 10 to 15 years on the South Fork of the Snake River were necessary for island-formation and cottonwood recruitment. Based upon water gauge data from the USGS on the Snake River near Blackfoot, the Fort Hall Bottoms has only experienced a flood regime greater than 36,000 cfs three times since 1910. These events occurred in June of 1918, 1976 (Teton Dam Flood), and 1997. Due to a lack of adequate flows on the Snake River, it is

¹ Merigliano, M.F. 1996. Ecology and management of the South Fork Snake River cottonwood forest. Bureau of Land Management, Boise, Idaho. Technical Bulletin 96-9.

likely that cottonwood recruitment and island formation has diminished. Thus, the Plan should also consider impacts of management downstream.

- The future of the cottonwood stands in the SFSR is questionable at best over the long-term due to private and government utilization of flows and encroachment into the floodplain. The BOR must take additional risk (contractual and flood risk) to ensure cottonwood survival in the long-term by allowing for flow above flood stage.
- Pg. 138: Chapter 6 – Environmental Assessment Prepares and Consultation and Coordination – BLM Technical staff and U of I met with SBT technical staff to discuss issues and participate in the Visitor Capacity Study. The Tribes view Technical Staff meetings to discuss specific issues as a part of the consultation process, but not formal government to government consultation.
- Federal Lands Recreation Enhancement Act (REA) stipulates a fee prohibition for any person who has a right of access for hunting or fishing privileges under specific provisions of law or treaty. It also stipulates a fee prohibition for any person who is engaged in the conduct of official Tribal government business. The current envelopes found at BLM fee sites do not have identified area where Tribal members can list Tribal ID numbers. This prohibition of fees must apply to all fee sites where REA authorities are applied for fee collection including the access to and use of river campsites. FS and BLM need to provide regular information and education to all camp host and recreation staff of REA prohibitions related to Tribal member or government activities. This is particularly important to members of the Tribes who have been stopped, questioned, and told to leave specific camping areas by third-party hosts. The BLM has an obligation to ensure its staff, or contractors, recognize the unique rights of the Tribes who may be present throughout the year in the Project Area.
- High use by outfitters and sportsmen has resulted in user conflicts along the South Fork corridor, with some outfitters being entitled to exclusive use of prime camping and fishing locations. The exclusive nature of outfitters in general pushes Tribal members away from the landscape in favor of commercializing the unique riverine resources. Outfitter and guides use this resource along with other groups, and should not be given preferential treatment over others. Specific policies should be developed to reduce user related conflicts and to promote a conservative use of riverine resources.
- The Plan should acknowledge the Fort Bridger Treaty of 1868 (15 Stat. 673), specifically Article IV. Development of recreation projects and activities can have a direct impact upon the Tribes' treaty reserved right to hunt, fish, and gather off the reservation through a variety of ways. The Tribes usually support federal land management that provides open spaces and landscapes with abundant populations of native fish, wildlife, and plant species. The BLM should take into consideration how the project will impact treaty rights, and do this by considering the existing levels of development. In other words, there will be a larger adverse impact upon Treaty Rights, if the development occurs in areas that are currently not developed and/or on federal land (unoccupied lands). If possible, mitigation to avoid and minimize impacts to Treaty Rights should be built into

the Plan. One of the best approaches to doing this would be to promote escape from personal/social pressure and enjoying nature, peace, and quite. As such, new campgrounds should not be developed and existing campground should only be improved and also accommodate use by Tribal members exercising off-reservation Treaty Rights.

In conclusion, the public domain you manage is tied directly to the Tribes' treaty reserved rights and it is our expectation that future generations of Tribal members will have the same unique opportunities to enjoy the landscape, gather native resources and continue traditional cultural practices. If you have any questions about these comments please contact Cleve Davis, Environmental Coordinator by email cbdavis@sbtribes.com or by phone (208) 239-4552. If there is policy level questions or to set up a consultation meeting with the Tribes, please contact Claude Broncho, Fish and Wildlife Policy Representative by email cbroncho@sbtribes.com or by phone (208) 239-4563.

Sincerely

A handwritten signature in blue ink, appearing to read "Blaine Edmo" followed by "for" and a small flourish.

Blaine Edmo, Chairman
Fort Hall Business Council, Shoshone-Bannock Tribes

RESOLUTION

WHEREAS, the Fort Hall Business Council has the ultimate authority to issue policy statements on behalf of the membership for the Shoshone-Bannock Tribes; and,

WHEREAS, the U.S. federal government has a trust responsibility to the Tribes to keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by the Shoshone-Bannock Tribes as may be presented for investigation under the provision of the 1868 Fort Bridger Treaty; and

WHEREAS, the most recent scientific evidence clearly shows: 1) that temperatures have increased in Idaho over the last century; 2) the timing of peak streamflows has advanced; stream temperature have increased and increased stream temperatures will limit distributions, migration, health and performance of Salmonids; 3) phenology has advanced and the average bloom dates are occurring earlier; 4) regional warming and drought stress may be the dominant contributors to increases in tree mortality and decline of aspen; 5) there has been substantial increases in wildfire frequencies and sizes on the Fort Hall Reservation and unoccupied lands of the United States; 6) warmer and drier summers will potentially cause yield reduction due to heat and drought stress or increase demands for irrigation water; 7) climate change and the spread of non-native species, including pests, is correlated; and 8) heat and drought stress can negatively affect forage production or directly affect the health of livestock; and

WHEREAS, the Tribes lack scientific information about the effects of climate change on ecological systems and the health and wellbeing of the Tribes; and

WHEREAS, projected changes in temperature, precipitation, hydrology, atmospheric deposition and ocean chemistry threaten not only the lands, resources, and economies of the Tribes, but also tribal homelands, ceremonial sites, burial sites, tribal traditions, and cultural practices that have relied on native plant, fish, and animal species since time immemorial;

NOW, THEREFORE, BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, the following formal policy statement regarding Climate Change is available for general release:

Shoshone-Bannock Tribes Climate Change Policy Statement

Global temperatures very likely exceed anything observed in the last 1,400 years and current levels of carbon dioxide are at concentrations unseen in the last three million years. Projected changes in temperature, precipitation, hydrology, and ocean chemistry threaten not only the lands, resources, and economies of the Shoshone-Bannock Tribes (Tribes), but also tribal homelands, ceremonial sites, burial sites, tribal traditions, and cultural practices that have relied on native plant, fish, and animal species since time immemorial. Therefore the Tribes recognizes that action must be taken to reduce greenhouse gas emissions, positive radiative forcing, and observed warming. The Tribes also recognizes a need for additional information to assess and convey uncertainties, identify actions to implement, develop decision support tools and climate projections, maintain and enhance healthy and resilient ecosystems, conserve water, and understand how climate change will impact the health and wellbeing of the Tribes. Therefore the Tribes will make efforts to mitigate the effects of human caused climate change through planning, consultation, education, and enforcement of Treaty Rights.

BE IT FURTHER RESOLVED, the Fort Hall Business Council is authorized to make policy statements on issues that affect the political integrity, economic security, health, or welfare of the Shoshone-Bannock Tribes.

Resolution No. ENVR-2014-0299,
Dated 02/25/2014,
Page 2.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat, 984) as amended, and under Article VI, Section 1 (a, g, r) of the Constitution and Bylaws of the Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho.

Dated this 25th day of February 2014.


Nathan Small, Tribal Chairman
Fort Hall Business Council

S E A L

CERTIFICATION

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 4 in favor, 2 absent (TB, EDD), and 1 not voting (NS) on the date this bears.


Lee Juan Tyler, Tribal Secretary
Fort Hall Business Council

ENVR-2014-0299

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

¹ 15 Stat. 673.

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

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.

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.