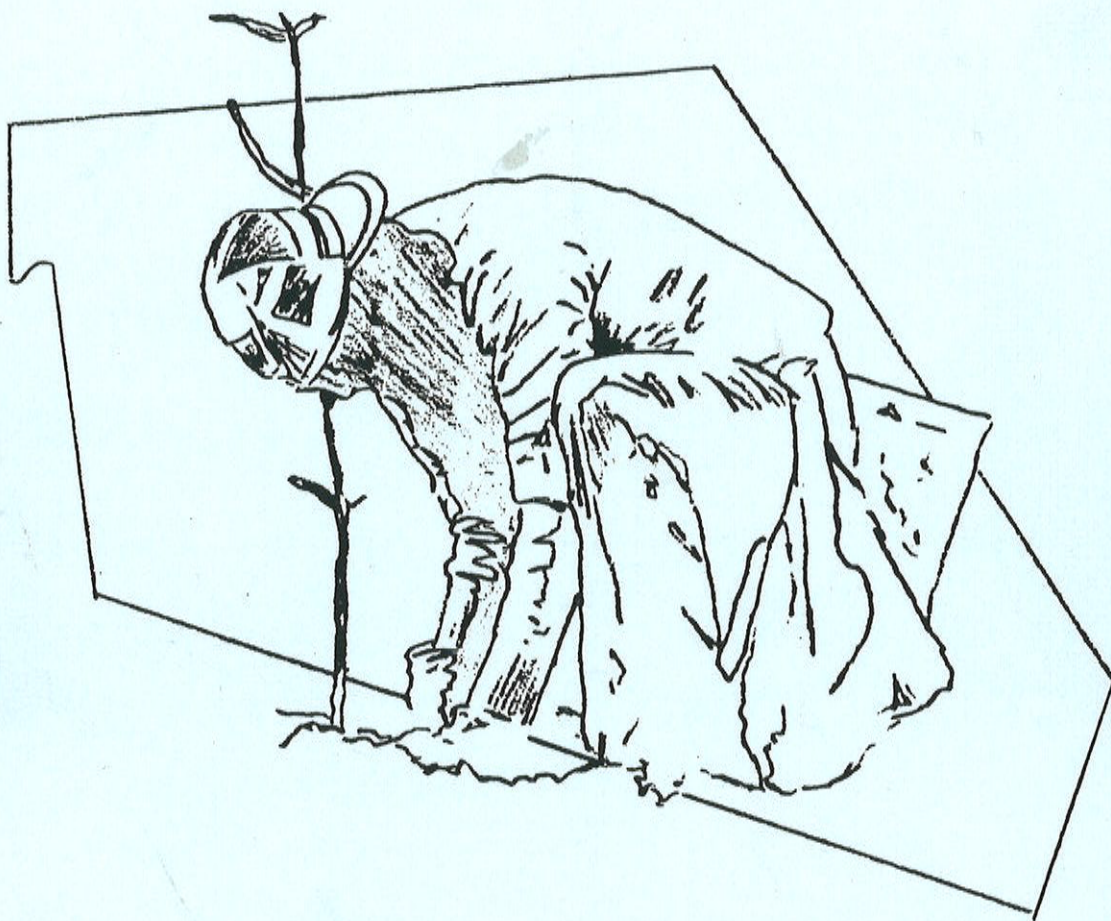


THE FORESTS OF THE NEZ PERCE

VOLUME 1



Forest Resource Management
on the
Nez Perce Reservation
1855 - 1988

THE FORESTS OF THE NEZ PERCE

Forest Resource Management
on the
Nez Perce Reservation
1855 - 1988

Prepared For:

The Nez Perce Tribe
Lapwai, Idaho

Submitted By:

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Missoula, Montana

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1991

This study is dedicated to the memory and work of

Rutger "Roger" A. van Houten

1944 - 1990

Roger A. van Houten, Forest Manager for the Nez Perce Tribe, passed away on February 7, 1990 in Lewiston, Idaho. He was given a Seven Drum funeral service and, at his request, his ashes were spread among a tribal unit he helped reforest following a wildfire.

Roger was a member of the Intertribal Timber Council's Board of Directors, the Society of American Foresters, and the American Forestry Association. In addition, he served the Lapwai community on the school district's Board of Trustees, including being chairman from 1981-1984.

Born on July 15, 1944, in Appeldorn, Netherlands, Roger graduated from high school in Caracas, Venezuela, in 1962. He received his Bachelor of Arts degree in 1969 and his Master's Degree in 1974 from the University of Montana. Before coming to the Nez Perce Tribe, Roger's work experience included forestry, education, and real estate.

Roger began work with the Tribe in 1979. He was instrumental in the Tribe's efforts to contract the forestry program, establish the Nez Perce Forest Products Enterprise, resurrect the Nez Perce firefighter program, and acquire 23,700 acres to add to the Tribe's land base.

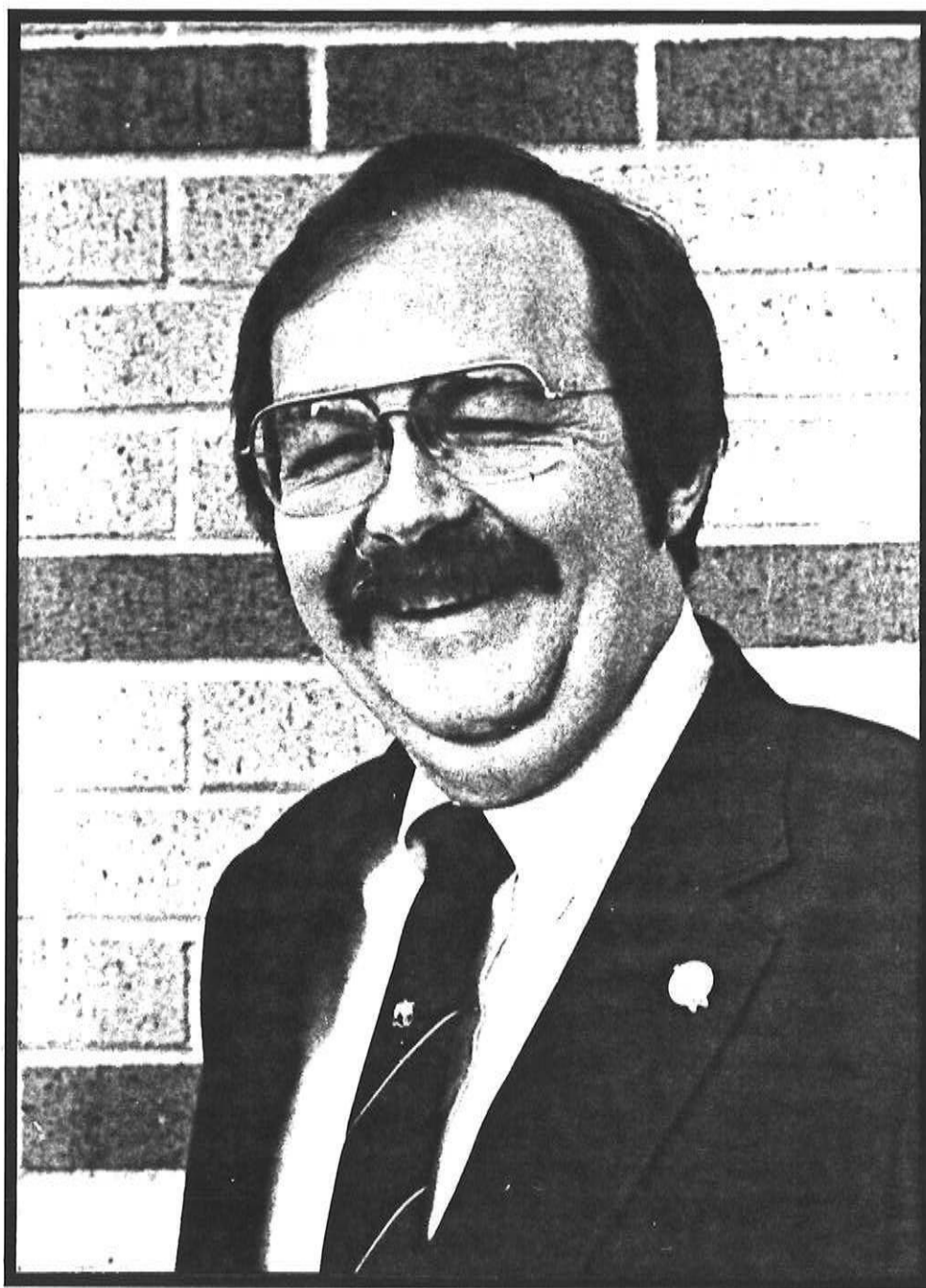
Roger will be dearly missed, but he will remain in the minds and hearts of those he touched, and he will always be in the land of the Nez Perce, where his efforts helped move the Tribe to be the leaders in managing their resources.

He is survived by his wife, Kathy, and their children, Michael, Karla, and Joanne.

This edited message, originally written by Jaime A. Pinkham, Forest Manager for the Nez Perce Tribe, was presented at the annual Intertribal Timber Council awards ceremony in Cherokee, North Carolina in April 1990.



Roger using an increment borer on what is thought to be the Alpine Reserve in 1983.



Robert J. Fort

PREFACE

This forest management history of the Nez Perce Indian Reservation was prepared under contract with the Nez Perce Tribe of Northern Idaho. Bureau of Indian Affairs regulations require that such histories be prepared as part of forest management plans mandated for the nation's timbered reservations. The document provides a historical perspective of forest management practices on the reservation and will enable forest managers to make better informed decisions about the future management of the reserve.

This study traces the evolution of the United States Government's trust responsibility to manage Indian forests in the best interest of the Nez Perce Tribe. It documents that relationship in a chronological pattern from the establishment of the reservation, through years of an increasing tribal role in managing the forest, until the Nez Perce Tribe assumed control of the program in 1987. In so doing, this history discusses a number of topics in various levels of detail. These include Nez Perce ethnohistory; national developments in Indian forest management practices and their impact on the reservation; the establishment of the Branch of Forestry and the evolution of its management goals and practices; timber sales and the history of logging and lumbering in the Pacific Northwest; harvesting techniques, forest development, land cessions and acquisitions, fire and pest control, environmentalism and non-commercial values of the forest; and the evolution of tribal involvement in the management of the forestry program.

A history of this kind must address several audiences and must wrestle with the illusive problem that any history confronts -- objectivity. We have attempted to prepare a document that can be read and understood by and provide useful information to forest managers, superintendents, and the general public. However, the resulting document may be too general for some and too technical for others. Nonetheless, we believe that it will enable forest managers to define and pursue management goals more confidently and will better inform the general public about the Nez Perce Indian Tribe and the local impact of its forest management program. Those seeking more detailed information on a particular subject can use the bibliography and footnotes to help locate the documents cited. The lay reader might have trouble conceptualizing the timber volumes as they are defined professionally. The basic unit of measurement has been "thousand board feet." A board foot is a unit one foot long, one foot wide, and one inch thick and is abbreviated "Ft. b.m." or "bd. ft." The working unit, which is generally one thousand board feet, is abbreviated "M bd ft.," "M.B.M.," or "M.B.F."

The problem of objectivity is not easy to conquer, especially given the limitations of budget and time. We have relied extensively on documents obtained at the National Archives in Washington, D.C. and Seattle; the Portland Area Office; the Northern Idaho Agency; the Nez Perce Tribal Office; and on interviews with BIA and tribal personnel to provide a picture of forest management on the reservation from 1855 to 1988. We acknowledge that written documents in and of themselves do not always provide a

complete or balanced picture of events, especially during times of controversy, and that interviews must be used with caution. In dealing with such periods of controversy, we tried to limit ourselves to statements and facts that directly pertain to management questions and help explain the direction that the forestry program has taken.

Some confusion might result from name changes over the years. For example, the Bureau of Indian Affairs was called the Indian Office or Office of Indian Affairs until the official name change in 1947, when the acronym "BIA" came into use. Employees often referred to the organization as the "Service," which was short for "Indian Service." The Branch of Forestry within the BIA originated as the Division of Forestry in 1910 and has had several name changes. In Washington, D.C., the forestry section has again been raised to "division" status, but it is common to refer to the organization as the Branch of Forestry at the agency level. Titles for foresters have been changed over the years, as well. The superintendent at the agency originally had the title of agent. Foresters in charge on the reservation have carried such titles as "senior forest ranger," "supervisor of forests," and the current, "forest manager."

ACKNOWLEDGEMENTS

Heritage Research Center, Ltd. and the authors are indebted to many individuals and organizations for help in preparing this history. These include the Nez Perce Tribe and forestry staff at Lapwai; BIA personnel at the Northern Idaho Agency, the Portland Area Office, and the Division of Forestry in Washington, D.C.; staff at the National Archives in Washington, D.C., and Seattle, Washington; and the library staffs at the University of Washington's Suzallo Library and the University of Montana's Maureen and Mike Mansfield Library.

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Chapter 1

ETHNOGRAPHY AND EARLY HISTORY

According to legend, the Nez Perce Indians have been in the Clearwater region since Coyote killed the monster and created all the tribes.¹ After making all the other tribes, Coyote took the blood from the monster's heart, mixed it with water, and sprinkled it up and down the valley to make the Ni Mii Pu² or the Nez Perce people. Because they were made from the blood of the heart, the Ni Mii Pu emerged brave and strong. Coyote preserved the heart and liver of the monster as isolated rocks in the Clearwater Valley between Kamiah and Kooskia, and thus they constitute part of the history of the people to act as reminders of their ancient ties to this land.³

Archaeologically, people have lived in this area for at least ten thousand years. The earliest inhabitants were organized into small groups living in rock shelters and probably in other temporary shelters that left behind no evidence. They were nomadic people, hunting mammoth and other large game, fishing, gathering freshwater mollusks, and collecting berries and other wild plant foods. Population numbers were low, with groups concentrating along the rivers. This pattern continued for four or five millennia. Sometime between five thousand to two thousand years ago, pit house villages began to appear and subsistence and lifeways began to resemble the ethnographic pattern for the historic Nez Perce. There was an increased reliance on fish and root crops while still using many other resources, such as deer, elk, antelope, mountain lion, small mammals, birds, and plant foods.⁴

¹Ella E. Clark, Indian Legends from the Northern Rockies (Norman: University of Oklahoma Press, 1966), pp. 27-30.

²The authors note that the spelling of Ni Mii Pu varies among historical sources. (e.g., Nimipoo and Ne Mee Poo.) Upon the advice of Nez Perce Tribal forestry officials given in June 1990, the authors selected Ni Mii Pu as the spelling for this study.

³Ibid., pp. 26-30; Alvin M. Josephy, Jr., "The People of the Plateau," in Nez Perce Country: A Handbook for Nez Perce National Historical Park, Idaho, National Park Service Handbook Number 121 (Washington, D.C.: U.S. Department of the Interior, 1983), p. 17.

⁴Kenneth M. Ames and Alan G. Marshall, "Villages, Demography and Subsistence Intensification on the Southern Columbia Plateau," North America Archaeologist, Vol. 2, Number 1 (1980-81), pp. 35-47; see David H. Chance, "Investigations into the Archaeological Potential of the Timbered Tracts Owned by the Nez Perce Tribe of Idaho," 1989, for a complete discussion of the prehistory of the Nez Perce Tribe; David G. Rice, The Windust Phase in Lower Snake River Prehistory, Report of Investigations No. 50, Laboratory of Anthropology (Pullman, WA: Washington State University, 1972), pp. 213-215.

The Nez Perce shared the Sahaptin language family along with the Walla Walla, Umatilla, Yakima, and Cayuse.⁵ Historically, the Nez Perce occupied most of central Idaho, northeast Oregon, and southeast Washington, from the Bitterroot Mountains in the east to the Blue Mountains in the west. This territory includes high, forested plateaus, fast moving mountain streams, wide rivers full of salmon, crystal clear lakes, narrow canyons, and open prairie. The area can be intensely cold in the winter and extremely hot in the summer. It is a land of diverse and rich natural resources.⁶ Early nineteenth century estimates placed the tribal population between 4,000 to 6,000 people (Lewis and Clark in 1805), while later estimates placed their numbers at 1,500 to 2,000. Today, over 2,871 people are members on the tribal Rolls.⁷

Ethnography

The Nez Perce lived in small villages along the rivers, with an egalitarian political organization and a relatively simple social structure that recognized individual freedoms and provided for maximum flexibility in the food quest. There was no head chief among the Nez Perce. Rather, the people were organized in a loose association of independent bands, each band identified with its principal winter village. The Nez Perce as a tribe probably gathered together once or twice a year, during the salmon runs or at the camas meadows. The basic unit was the family, with several families living together to form a village. Villages ranged in size from 30 to 200 individuals and were primarily winter residences. During the other seasons of the year the people left the villages in small groups to collect, fish, hunt, or otherwise exploit the local resources.⁸

Each village had a council made up of the male heads of each family and other prominent older males. The council discussed village issues; planned hunting, fishing, gathering, and other activities, and relations with other groups; and took whatever steps were necessary to maintain the village's general welfare. The council also selected a village headman who acted as the village spokesman, settled disputes, and oversaw the well-being of the village. This position was often hereditary but was not necessarily so. The headman was picked for his wisdom, generosity, diplomacy, oratorical skills, bravery, and age. The headman could not overrule the council and both headmen and council lead by their

⁵Robert F. Spencer and Jesse D. Jennings, et al., The Native Americans (New York: Harper and Row, 1965), p. 214.

⁶Alvin M. Josephy, Jr., The Nez Perce Indians and the Opening of the Northwest (New Haven: Yale University Press, 1971), pp. 14-16; Josephy, "The People of the Plateau."

⁷Nez Perce Tribe of Idaho, Nez Perce Tribal Research and Data Program, January 1990.

⁸Josephy, "The People of the Plateau," p. 22; Spencer and Jennings, The Native Americans, pp. 214-216.

example and wisdom. Compliance to their decisions could not be enforced on any individual.⁹

Villages that were located close together, along the same stream, or in the same valley, would organize themselves into bands. Bands selected a council and a headman, in much the same fashion as a village selected a headman and a council. Neighboring bands were organized into large, composite bands which also selected overall leaders and a council. The headman of the composite band had outstanding qualities, and it is these composite bands and their headmen, which became famous in the later history of the Nez Perce Indian Tribe. The largest group was centered around Kamiah, with others at Lapwai, the mouth of the Grand Ronde River, at the confluence of the Snake and Clearwater Rivers (Lewiston-Clarkston), in the Wallowa Valley and the Imnaha River in Oregon, and along the Salmon River around Whitebird.¹⁰

During the winters, the Nez Perce lived in their winter villages comprised of one or more lodges, in the canyons of the major rivers. Lodges were either double lean-tos or semi-subterranean longhouses covered with mats of reed and grass. The canyon location provided a more moderate winter climate, access to driftwood for fires, winter range for the horses, and early access to the salmon run and to collecting areas. All winter, the people survived mostly on the food collected and stored in the summer and fall. By late winter or early spring, provisions became scarce and sharing between individuals and groups was all-important.¹¹

With the arrival of spring, the people began to move out of the villages in smaller task groups to exploit the various resources as they became available. One of the first and most important was the salmon and other fish in the many rivers and lakes. The salmon runs occurred in early spring and again in the early fall, and many different groups from the Nez Perce and other tribes gathered at the weirs and fishing platforms along the rivers. Besides salmon, steelhead and chinook, the Nez Perce also fished for eel, blueback, sturgeon, whitefish, suckers, and trout.¹²

Also important for their reliability and nutritional value were camas and cous. Cous is a root that grows on the dry rocky canyon slopes at mid-elevation and is harvested in

⁹Josephy, "The People of the Plateau," pp. 22-29; Joseph J.S. Feathers, et al., These are the Nez Perce Nation, (Lewiston: Lewis-Clark Normal Press, 1970).

¹⁰Josephy, "The People of the Plateau," pp. 22-24.

¹¹Ibid., pp. 22-25; Ruthann Knudson, "Fish, Roots, Game, and Trade in the Columbia Plateau," Journal of Forestry (1980), pp. 542-545.

¹²Ibid.

early summer. It is high in calories and can be stored for great lengths of time after minimal drying and roasting.¹³

Camas is another root crop high in calories and nutrition. It is found in wet meadows at mid-elevations and comes into season in late summer and early fall. It is also easy to store once it has been dried and roasted. Camas and cous probably made up ninety percent of the vegetable portion of the traditional Nez Perce diet. A combination of fish and roots probably accounted for eighty to ninety percent of the total diet.¹⁴

Besides these three basic foods, the Nez Perce also hunted elk, deer, bear, beaver, antelope, mountain goat, wolf, coyote, rabbits, sheep and bison. The Nez Perce collected another three dozen vegetable foods, including pine nuts, sunflower seeds, wild onion, carrots, hawthorn, bitterroot, serviceberries, chokecherries, thornberries, blackberries, and huckleberries.¹⁵

Many of these resources were harvested on the forested lands occupied by the Nez Perce people. Elk, deer, bear, beaver, and wolf were hunted and trapped on forested lands, while pine nuts, huckleberries, camas, and other vegetable foods were gathered in these areas. They used wood for the construction of lodges, fish weirs, harpoons, spears, arrow shafts, bows, dugout canoes, log rafts, and traps for catching bears and other small animals; and as firewood.¹⁶

Among the Nez Perce, land was not "owned" by any one individual or even by a band. Rather, the land and its resources were held in common by all the people, with the individual bands having "rights of stewardship." "By improvements and regular and wise use of the resource locality, an individual gained a right to determine who used the improvements and disposed of the resource gathered there."¹⁷ Thus, among the Nez Perce, writes one individual, a person or band by living in an area and using its resources acquired the responsibility to care for the land and to use it wisely and to recognize the rights of others to its resources, especially in times of need.

¹³Knudson, "Fish, Roots, Game, and Trade," p. 544.

¹⁴Ibid., pp. 544-545.

¹⁵Ibid., p. 545.

¹⁶Stuart A. Chalfant, "Aboriginal Territory of the Nez Perce Indians," in Nez Perce Indians (New York: Garland Publishing Inc., 1974), pp. 4-106.

¹⁷Knudson, "Fish, Roots, Game, and Trade," p. 545.

Early History¹⁸

The written history of the Tribe begins on September 20, 1805 when Captain William Clark and six hunters of the Lewis and Clark expedition met an encampment of Nez Perce at Weippe Prairie. The people were collecting camas for the winter. The expedition spent two weeks with the Nez Perce before continuing their journey to the coast. They returned in May 1806 on their journey home, and stayed with the Nez Perce until the mountains were passable.

During their stay, Lewis and Clark established good, friendly relations with the people, a friendship with the whites that the Nez Perce would honor through numerous tests of character until the Nez Perce war of 1877. The Lewis and Clark Expedition also marked the beginning of continuing contact between the Nez Perce and white society. The knowledge of the Nez Perce carried by Lewis and Clark to the United States brought them to the attention of missionaries, fur traders, and gold seekers. The Lewis and Clark expedition enabled the United States to lay strong claims to the Northwest and bring it under American control.

The next whites to contact the Nez Perce were the traders and trappers of the Northwest Company, then the Hudson's Bay Company, and finally of the various American fur brigades. David Thompson was the first trader to contact the Nez Perce, although only indirectly. He traveled and traded through much of the Northwest and, in 1810 at Saleesh House near present day Thompson Falls, Montana, Thompson made the first written use of the name "Nez Perce," in his journal. Donald McKenzie made the first serious effort to trade with the Nez Perce. While with the Astorians in 1812, he constructed a trading post on the north side of the Clearwater River opposite the site of present-day Lewiston, Idaho. However, the outfit was sold to the Northwest Company during the War of 1812 because the post had failed by 1813. McKenzie returned to the area in 1816 and 1818 as a Northwestern representative, established Fort Nez Perce at the present site of Walla Walla, and introduced the fur brigade to the region. In the summer of 1826, some of the Nez Perce followed an American fur brigade to the rendezvous at Bear Lake on the Utah-Idaho line. This was the first rendezvous the Nez Perce people attended, but they would become regular participants at the annual events until the final gathering in 1840.

Of historical significance, the fur trade introduced the Nez Perce to European goods (blankets, metal pots, beads, guns, and gave them contact with Christianity. The interest in the white man's religion created by this exposure caused the Nez Perce to send four of their own representatives east to St. Louis in 1831 to ask for a missionary to instruct them. In 1836, Marcus and Narcissa Whitman, Henry and Eliza Spalding, and William Gray came

¹⁸This section is based on Josephy, The Nez Perce Indians and the Opening of the Northwest, pp. 3-627; and Josephy, "The People of the Plateau," pp. 45-157.

to the Northwest to establish the first missions. The Spaldings settled among the Nez Perce at Lapwai. In 1839, Asa Smith and his wife Sarah established a second mission at Kamiah. The mission at Kamiah did not last long but the Spalding mission had a lasting influence on the history of the Nez Perce people. Spalding built the first sawmill within the present reservation boundaries. Spalding's attempts to bring, at times forcefully, Christianity to the Nez Perce caused a rift within the Tribe that worsened and lasted into the twentieth century. Spalding gave political and economic advantage to those Nez Perce who supported him and rejected his detractors. One who benefitted was the Nez Perce named Lawyer who became one of Spaulding's closest allies and, through Spalding's influence, rose in importance within the Tribe.

Spalding left the Nez Perce after the Whitman massacre in November 1842 and the resulting Cayuse War. The Nez Perce stayed neutral during the conflict but the tension between those who wanted to fight the whites, mostly traditionalists, and those who wanted to help the whites, mostly Christian Nez Perce, aggravated the split started by Spalding.

In 1853, Washington Territory was created from portions of Oregon Territory, and Isaac I. Stevens became the appointed governor and Superintendent of Indian Affairs for the territory. Stevens also assumed responsibility for a survey party for the proposed northern transcontinental railroad route. The railroad, if built, aimed to encourage settlement in Washington Territory and the railroad could only be built if the Indians were quietly settled on reservations. For this reason, Stevens set out to conclude treaties with all the tribes in Washington Territory. On May 29, 1855, Stevens convened a council at Walla Walla with the Nez Perce, Cayuse, Walla Walla, Umatilla, Kamiakin of the Yakimas, and a few individuals from other Columbia River tribes.

After much argument and discord, a treaty was signed on June 11, 1855. The Nez Perce relinquished little land that they regarded as exclusively their own and were promised \$200,000 in improvements, goods, and services; and two schools, an agent and two teachers, a blacksmith, tin smith, gunsmith, carpenter shops, a sawmill, grist mill, and a hospital. The treaty also promised to employ ten persons on the reservation to maintain the buildings, and that the Christian Indian, Lawyer, as designated head chief, would receive \$500 for twenty years and a house and ten acres of land plowed by the United States Government. It also promised that no white men except the agent and his employees would be allowed on the reservation without the Tribe's permission. Although 56 headmen signed the treaty, many were dissatisfied with the way the treaty was negotiated and the rift between the Christian, pro-white Indians, and the non-Christian traditionalists was widened. The 1855 treaty became the basis for all future relations between the Nez Perce Indian Tribe and the Government. It was also the last time that the Tribe acted in unity.

The other tribes at the Walla Walla Council did not fare as well. The resulting discord among the Indians and the violation of treaty provisions by the whites resulted in the War of the Interior, fought from 1855 to 1858. Once again, the Nez Perce remained

neutral or on the side of the whites but many among the traditionalists wanted to fight alongside the other tribes. The rift between the Christian, pro-white, pro-treaty faction and the non-Christian, traditional, anti-treaty groups continued to widen. The situation was made worse by the Government's failure to ratify the treaty until 1859 and to provide any of the annuities or other funds until much later, if at all.

Although the treaty prohibited whites on the reservation, there was great interest among miners about the gold prospects in the Bitterroot Mountains on the east edge of the reservation. In 1860, Elias Pierce found gold on the North Fork of the Clearwater River and the northern and eastern portions of the reservation were soon swarming with prospectors. Indian Agent A.J. Cain concluded that the only way to avoid war was to renegotiate the treaty to allow mining in the district. For fifty thousand dollars, Lawyer and his followers sold that portion of the reservation north of the Clearwater River.

Soon after the treaty was signed on April 10, 1861, the town of Lewiston was founded at the mouth of the Snake River, on the south bank of the Clearwater River. At the same time, prospectors moved into areas in the southern portion of the reservation, the home of the anti-white opponents of Lawyer. Elk City was founded at this time. Not surprisingly, conflicts between miners and Indians were frequent. At the same time, tensions between the pro-white Lawyer faction, and the anti-white members of the Tribe grew, with the latter threatening war on the whites. And still the Government remained negligent in meeting the promises of the 1855 and 1861 treaties. In 1862, Fort Lapwai was established near Lapwai to maintain the peace.

In March 1863, Idaho Territory was created from Washington Territory. On May 25, 1863, a council was convened at Lapwai to negotiate a new treaty for the sale of additional reservation lands. Only Lawyer and the pro-white bands attended and signed the resulting treaty. The treaty sold 6,932,270 acres of Nez Perce land for \$265,000 and agricultural equipment, a sawmill, a schoolhouse, homes for the headmen, a blacksmith shop, and the salaries originally promised in the 1855 treaty. The treaty reduced the reservation to the present boundaries. The lands sold were those occupied by the anti-white, anti-Lawyer bands who were not represented at the council. From this time, these Nez Perce have been referred to as the non-treaty bands. Although the non-treaty Nez Perce could not be forced onto the new, smaller reservation until the treaty was ratified in 1867, whites started moving onto the land as soon as the treaty was signed. The resulting continuation of conflict between the non-treaty Nez Perce and whites deepened the discord between the treaty and non-treaty Indians. Trouble also continued for the treaty Nez Perce, with whites pressing-in on all sides and the Government either not making the agreed-on payments or the money being embezzled on its way to the Tribe.

The troubles between the whites and the non-treaty Indians finally erupted in the Nez Perce War of 1877. The bands led by Joseph, Ollokot, Looking Glass, and White Bird began a 1,700-mile trek across the mountains, through Yellowstone National Park, and on

to the Montana plains to look for friends and to escape to Canada. They fought nine battles with the United States Army and were finally captured less than 50 miles from sanctuary in Canada after the Battle of the Bearpaw. They were taken first to Kansas and then to Oklahoma, where they stayed until being allowed to go to the Colville Indian Reservation in Washington in 1888. A few were allowed to return to Lapwai at that time, while others returned later. Some still reside at Colville.

From the earliest times, the Nez Perce people retained and developed an attachment to the area in which they lived and to the resources the area generated. The land base of the area and its resources contributed heavily to the maintenance not only of tribal identity but to the Tribe's sustenance. The people have not only relied upon the land and its resources but honored the land. It was the attempt to force them from their aboriginal sites that ultimately led to the conflict of 1877.

As the white man pushed westward, the Nez Perce, like so many other tribes, found themselves in his path. Different values came into conflict as the Indian, essentially communitarian, could not reconcile his lifestyle with that of the white man. As a consequence, superior numbers ultimately overwhelmed the Indian, reducing his influence and making him an object of paternalistic concern. The Nez Perce, beginning at mid-century, soon felt the thrust of this westward expansion as they increasingly reached unfavorable treaty settlements and were forced to change their lifestyles.

Chapter 2

FORESTRY IN EARLY RESERVATION YEARS

Treaties, presidential proclamations, and congressional actions set the stage for most forestry-related activities on the Nez Perce Indian Reservation in the years from 1855 to 1900. Almost from the outset, the Tribe asserted its concern for maintaining control over its timber assets and insisted upon compensation for the large land cessions it made to the United States. These agreements established in United States law the rights of the Nez Perce Indians to the land and resources that were to be encompassed within the Nez Perce Indian Reservation. They also set into motion the processes by which the United States Government would administer reservation affairs and attempt to indoctrinate the Nez Perce people in the ways of white culture.

The 1855 Treaty

The negotiated settlement with Washington Territorial Governor Isaac Stevens became the first among the United States agreements with the Nez Perce Indians that was to have long-lasting effects. Stevens sought to secure Indian land cessions throughout the region in advance of a planned railroad and increased white settlement. The treaty negotiated by Stevens and the Nez Perce Indians in 1855 acknowledged an extensive homeland for the Nez Perce. It encompassed some 7,787,000 acres carved from an aboriginal land base claimed to have been almost twice that size.¹ Most importantly, the treaty provided for the Nez Perce exclusive rights to occupancy on those reservation lands - a treaty right soon taken away.

The most important aspect of the 1855 treaty, as it pertained to forestry, was the acknowledgement of the Indian right to occupancy and use of the lands specified within its provisions. No whites other than those employed by the "Indian Department" were to be allowed to settle upon the Nez Perce Indian Reservation without the expressed consent of the Tribe and the Government's Superintendent and Indian Agent. On behalf of the Government, Stevens secured the right to construct public highways through the reservation as needed for the "public convenience."²

¹*Nez Perce Tribe v United States* before The Indian Claims Commission, Docket No. 175, map exhibit prepared by the Bureau of Land Management, May 1967. File: Nez Perce Tribe, Lapwai, Idaho.

²Treaty with the Nez Perce, June 11, 1855, as cited in Charles J. Kappler, Indian Affairs: Laws and Treaties, (Washington, D.C.: Government Printing Office, 1943) Vol. II., p. 702.

In exchange for the large land cession, the United States promised the Nez Perce Indians various fishing, hunting, and gathering and pasturing rights; \$200,000 to be spent by the President for the benefit of the Tribe in such things as fencing farms, erecting houses, supplying provisions, and the remainder in annuities. Moreover, additional Government expenditures aimed to establish schools; build and staff carpenter, blacksmith, and gunsmith shops; and erect a hospital. To provide the Indians with suitable building materials, Article 5 of the treaty stated that the Government would erect one sawmill and one flour mill. Additionally, the Government was to provide a yearly salary of \$500 to the "head chief" of the Nez Perce Indian Tribe and a comfortable house on a 10-acre farm. Anticipating what was to become Government policy almost three decades later, the treaty also allowed the President to have surveyed lots upon the reservation that could be assigned to individual Indians or families as permanent home sites.³

Although the United States had an administrative official for dealing with tribes, including the Nez Perce Indians, in the region as early as 1842 and governors and ex officio superintendents for the Washington, Oregon, and Idaho regions through and beyond 1857, it was not until that year that it established a Nez Perce Agency (officially the "Washington East of Cascades Agency"). Richard H. Lansdale, residing at The Dalles, transferred to the position from the Flathead Agency in June 1857. One year later, Agent Andrew J. Cain replaced him and moved the Agency to Walla Walla and later to Lapwai.⁴

The United States Congress delayed ratification of the 1855 treaty until 1859. In the meantime, the Nez Perce Indians awaited the payments that had been promised to them. When the first payment arrived in 1862, the goods were of low quality and were insufficient to fulfill the demands of the Nez Perce leaders. Many among the Tribe were further angered by the white miners and settlers who were flocking onto the reservation in violation of treaty restrictions. In April 1861, Lawyer and 49 followers had signed an agreement with Agent Cain and Edward Geary, then Superintendent of Indian Affairs for Oregon and Washington. For a payment of \$50,000, Lawyer and his group permitted miners to prospect and develop the area north of the Clearwater River, reserving the region to the south for exclusive Indian occupancy. Following the agreement, the Government established a subagency at the old Spalding mission site near the mouth of Lapwai Creek. Not long afterward, a company of soldiers arrived at Lapwai, allegedly to help enforce the terms of the agreement. They established a post named Fort Lapwai not far from the Agency headquarters. Although Agent Cain and his successors made limited

³Ibid.

⁴Edward E. Hill, The Office of Indian Affairs, 1824-1880: Historical Sketches (New York: Clearwater Publishing Company, Inc., 1974), pp. 74, 76, 126-27, 129, and 198.

attempts to keep the whites off Indian land, by 1862 an estimated 18,000 whites occupied reservation lands in scattered mining districts, many located south of the Clearwater.⁵

The 1863 Treaty

Pressures to secure the gold-mining fields on the reservation for white prospectors and developers, and to diminish the potential for an outright war with the Indian people who were being displaced in violation of treaty terms, compelled Congress to appropriate funds in 1862 for the purpose of negotiating a new treaty and land cession with the Nez Perce Indians. It was difficult to negotiate a treaty when the United States Government had not fulfilled any of the obligations under the 1855 treaty. Government agents assured the Nez Perce negotiators that the old treaty payments would be made and that a new treaty would help the Government to protect the Nez Perce people. Finally, a group of Nez Perce headmen and chiefs executed a new treaty with the United States representatives on June 9, 1863.⁶

Under the 1863 treaty (not ratified until 1867), the United States agreed to pay \$262,500 and other compensation to help the Indians relocate onto the new reservation and establish themselves in agricultural pursuits. Part of the new agreement included a Government obligation to erect a saw and flour mill at Kamiah within one year after ratification of the treaty. An additional \$2,000 per year for 12 years and \$1,000 per year for an additional 3 years was to be appropriated to pay for employee housing, including purchase of saw-logs, nails, glass, and hardware. Total obligations incurred by the Government under the treaty amounted to \$352,394.94. For that amount, the Nez Perce Indians ceded 6,932,270 acres of land, promised their continuing friendship, and "renewed their acknowledgments of dependence upon the Government of the United States."⁷

The Indian Claims Commission later found that the Government's compensation was "grossly inadequate and unconscionable." In attempting to arrive at a more accurate appraisal of the ceded lands as of 1867, the commission established a figure of \$4,650,000. That included over 3 million acres of timber lands, more than 1 million acres of quality

⁵Josephy, Nez Perce Country, pp. 97-101.

⁶The Nez Perce Tribe of Indians, Petitioner, v. The United States of America, before the Indian Claims Commission, Docket No. 175-A, Findings of Fact, pp. 7-9. File: Nez Perce Tribe, Lapwai, Idaho.

⁷Ibid., p. 13; and Treaty with the Nez Perce, June 9, 1863, as referenced in Kappler, Vol. II, Treaties, p. 843.

agricultural lands, and more than 2 million acres of grazing lands, in addition to 21,000 acres of mineral lands.⁸

Article 8 of the 1863 treaty also acknowledged the Nez Perce concern for tribal timberlands remaining on the reservation. It stated that:

All timber within the bounds of the reservation is exclusively the property of the tribe, excepting that the U.S. Government shall be permitted to use thereof for any purpose connected with its affairs, either in carrying out any of the provisions of the treaty, or in maintaining of its necessary forts or garrisons.⁹

1868 Treaty Amendments: Sawmills and Logging

That same article was given prominence in 1868 when the Nez Perce Tribe requested amendments to the 1863 treaty. The amendments strove to provide allotments on the reservation for members of the Tribe then residing outside the new reservation boundaries. Article 2 of the amendments, however, annulled the Government's right to use the timber in maintaining forts or garrisons. The new agreement instead added that reservation timber would be protected by the military. The location, quantity, and price of harvested timber was to be determined beforehand, with written consent of the Tribe, Agent, and Superintendent.¹⁰ This treaty requirement caused considerable consternation to later administrators when Government desires went counter to the expressed will of the Nez Perce Indians.

The first sawmill that operated within the confines of what was to become the Nez Perce Indian Reservation was erected by missionary Henry Spalding circa 1840. Although Spalding's crude sawmill apparently was gone by the time the Government set up an agency on Lapwai Creek, the need for building material remained. Just as the sawmill was crucial to Spalding's mission administration and his attempts to acculturate the Nez Perce Indians, it also became a necessary feature of United States administration in the early years on the Nez Perce Indian Reservation. Agency employees constructed administrative shops and offices with lumber produced at the mill. The sawmill also gave many Nez Perce Indians lumber they needed to engage in farming and to develop their farm sites.

⁸*Nez Perce Tribe v USA*, Findings of Fact, p. 41.

⁹Treaty with the Nez Perce, 1863, Article 8, as referenced in Kappler, Vol II, Treaties, p. 843.

¹⁰Treaty with the Nez Perce, August 13, 1868, as cited in Kappler, Vol. II, Treaties, p. 1024.

The Government erected its first sawmill for the Nez Perce Agency on Lapwai Creek near the old Spalding Mission. Although the exact date of construction is unknown, it likely occurred after the congressional ratification of the Nez Perce treaty in 1859. The sawmill operated prior to July 1, 1863, when it appeared on an inventory of property transferred from Subagent John W. Anderson to Agent James O'Neill. Among a listing of mill materials were "2 lanterns, 6 mill picks, 1 grist mill, 1 mill saw, 24 w. (wood) composition boxes, and 1 saw mill."¹¹

Saw and grist milling machinery were located in the same building and were powered by water carried through a ditch, described in 1866 as "more than a mile long." It was an inefficient operation, requiring that the miller change belting and gearing when switching between the two mills. With the single water source, one mill constantly stood idle. Freezing water behind the dike and in the mill ditch made winter operation difficult. The 1866 report claimed that the mill race was so badly constructed that it required nearly one-sixth of the entire yearly time of the farm force to keep it in repair. When the mill operated for approximately two months in 1866, two men from the farm staff and four yoke of oxen were required to skid the sawlogs from the river to the mill and to haul the sawed lumber. The mill cut about ten thousand feet of boards that year, mostly for use in post and board fencing.¹²

The Clearwater River was used to transport logs for the Agency sawmill as early as 1863. Agent James O'Neill that year requested authority to purchase 20,000 feet of sawlogs situated in the river above the Agency. The logs had been cut by William Carlton and were floated to that location. O'Neill claimed that there was no other way to get needed sawlogs that season, when a considerable amount of lumber was still needed. The Agent did not state whether Carlton was white or Indian, nor did he say where the logs were cut.¹³

By 1866, the Agency had other arrangements for securing logs. When anyone brought sawlogs to the Agency sawmill, the Government sawed the logs for half of the lumber produced. An investigator declared at the time that the process cost the

¹¹ "Inventory of Property turned over to Supt. James O'Neill from J.W. Anderson at Nez Perce Agency", July 1, 1863, in Letters Received by the Commissioner of Indian Affairs from the Idaho Superintendency, 1863-1870. Microform No. 832, Record Group 75, National Archives, Washington, D.C.

¹² W.C. Downer to D.W. Cooley, Report of May 9, 1866, in Letters Received by the Commissioner of Indian Affairs from the Idaho Superintendency 1863-1870, Microform No. 832, Record Group 75, National Archives, Washington, D.C.

¹³ Letter, James O'Neill to Commissioner of Indian Affairs, September 19, 1863, in Letters Received by the Commissioner of Indian Affairs from the Idaho Superintendency 1863 - 1870, Microform 832, Record Group 75, National Archives, Washington, D.C.

Government nearly double the amount for logs than what it would have cost had the Agency secured its own logs. No mention was made of stumpage payments or consent from the Tribe for cutting on reservation lands. Possibly, these early experiences with Agency timber operations motivated the Nez Perce to secure treaty protection for their timber rights in the 1868 negotiations with the Government for amendments to the 1863 treaty. Allegedly, no future cutting could be done without consent from the Tribe's headman.¹⁴

By 1867, the treaty Nez Perce grew increasingly impatient with the Government's slowness in ratifying the 1863 treaty. President Andrew Johnson finally signed the document on April 20, 1867, following Senate ratification. The Civil War had commanded attention elsewhere, and the Agents at Lapwai told the Nez Perce that the Government would fulfill treaty obligations as soon as the war was over. With the war at an end, both the Nez Perce Agent and the Idaho Governor and ex officio superintendent argued to the Commissioner of Indian Affairs in 1867 that some of the treaty-subscribing chiefs and their bands would join the group of "hostiles" if there were any further delay in carrying out the stipulations of the treaty of 1863. The Superintendent of Indian Affairs for Idaho learned of the severity of the crisis when he travelled to Kamiah to review available water power and possible locations for the saw and grist mills promised by the 1863 treaty. Several of the chiefs confronted him, and he reported as follows:

They want to know if some "big war will not be again commenced to put off matters for a few years." I can truthfully say that these Indians will not be put off with promises any longer; some of the leading chiefs [Lawyer's chiefs too] will fight if they do not see something done for them soon. The non treaty side use these arguments [these promises and non-payments] to urge them on to committing some act, which when commenced will be hard for them to back out of.¹⁵

Thus began a concerted effort to get the sawmill and the grist mill that were promised to the Indians at Kamiah. Agent James O'Neill included a budget estimate of \$10,000 for the Kamiah mills in 1868. His successor, Robert Newell, noted that the Nez Perce Indians residing at Kamiah wanted to perform much of their own improvement work so that they could learn the process themselves, including the harvest of sawlogs. So, in advance of the sawmill, Agent Newell obtained 3 dozen small chopping axes, 18 crosscut

¹⁴W.C. Downer to D.W. Cooley, Report of May 9, 1866, in Letters Received by the Commissioner of Indian Affairs from the Idaho Superintendency 1863 - 1870, Microform 832, Record Group 75, National Archives, Washington, D.C.

¹⁵ D.W. Ballard Governor and ex officio Superintendent of Indian Affairs, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1867, pp. 248 - 250.

saws, 25 log chains, 25 yokes, and 2 large wagons suitable for hauling fencing and posts. In February 1869, the machinery for the grist mill and sawmill arrived at Lapwai. Two months later, the machinery was still in storage at the Agency and the Agent stated that the Indians at Kamiah asked almost daily when the mills would be set up. In May, the Agent selected a site, and in July obtained an estimate for erecting the mills.¹⁶

The Kamiah mills remained in crates at Lapwai when Lt. J.W. Wham replaced Newell as Nez Perce Agent on July 15, 1869. Wham immediately began to review the sites at Kamiah, and concluded that the mills should be erected on the south side of the Clearwater River, rather than on the north side location selected by his predecessor. Work on the mills began in October 1869, but Agent Wham had second thoughts about the reliability of water power and requested permission to install steam power. By November 30, the mill buildings were completed at Kamiah and awaited installation of the machinery. It was not until May 1870, however, that Wham's successor, David M. Sells, could report that the sawmill at Kamiah was in operation and the grist mill soon would begin.¹⁷

Despite the uncertain conditions surrounding the Government's relations with the off-reservation Nez Perce, considerable progress was made in building houses and developing Indian properties on the reservation. In 1871, for example, sawmills at both Lapwai and Kamiah operated. The one at Lapwai sawed approximately 63,000 board feet of lumber, and the Kamiah mill produced 30,000 feet of lumber. By 1873, new Agent John B. Monteith expressed concern that the sawmill at Lapwai needed repairs. As a result, there had been little building among the Indians. Still, the Government managed to build a church, a hospital, and a dispensary at Lapwai, and a church and boarding and lodging houses associated with the Government school at Kamiah. The following year (1874), Agent Monteith claimed that the Nez Perce built 10 houses with lumber from the mills and assistance from the Agency carpenter. Even at this early date, the Nez Perce secured income from forestry work. Near the Lapwai Agency, the Indians cut 350 cords of wood that they supplied to the contractor for Fort Lapwai, earning one dollar per cord. At Kamiah, the Indians cut about 300 sawlogs.

¹⁶Letters, James O'Neill and Robert Newell, Agents, to the Commissioner of Indian Affairs, Jan. 1, 1868, Oct. 20, 1868, Feb. 16, 1869, April 7, 1869, May 18, 1869, and July 13, 1869; in Letters Received by the Commissioner of Indian Affairs from the Idaho Superintendency 1863 - 1870, Microform 832, Record Group 75, National Archives, Washington, D.C.

¹⁷Agent Wham also requested a steam-powered mill for the Lapwai Agency because lack of water prevented that mill from operating about three months of the year. Letters, Agents Joseph W. Wham and David Sells to the Commissioner of Indian Affairs, July 15, August 20 and 22, October 1, November 3 and 30, and December 28, 1869, and February 5, April 30, and May 31, 1870, in Letters Received by the Commissioner of Indian Affairs from the Idaho Superintendency 1863 - 1870, Microform 832, Record Group 75, National Archives, Washington, D.C.

Operations at the Lapwai Agency came to a standstill in late 1874 until June 1875. William G. Langford had obtained a claim to the old Spalding mission site through an assignment from the American Board of Commissioners for Foreign Missions. Although the Government claimed that the missionaries had abandoned the property in 1847 without receiving title from the Nez Perce, Langford was able to secure assistance from local courts, and the sheriff helped Langford take possession after the Government failed to buy him out. While Langford was in possession, the Indians were denied access to the saw and grist mills at the Agency grounds, and Agency employees were evicted from their offices, schools, and shops. The mills remained closed from February through June, the time of year during which most of the water power was available and the season during which most lumber traditionally was produced. After Langford was ejected in June, Agent Monteith repaired the mills and ditches, but low water enabled operation of the mills for only about two hours per day. With the priority need assigned to the grist mill, the sawmill could not be operated. With the Lapwai mills down, the only sawing was at Kamiah, where the new mill cut 65,000 feet of lumber, with Nez Perce Indians providing most of the labor.¹⁸

Keeping the Agency sawmills in running condition proved to be a particular problem in the 1870s and 1880s. By 1876, the deplorable condition of the sawmill at Lapwai kept it from running at all, placing a double load onto the Kamiah mill. Agent Monteith supervised a thorough repair job on the Lapwai mill in 1877, but the job was completed too late in the season for any sawing to occur.¹⁹ Records indicated that the mill at Kamiah cut approximately 50,000 board feet of lumber, despite the outbreak of hostilities between the non-treaty Nez Perce and Government forces. When fighting approached to within 25 or 30 miles of Kamiah, James Lawyer and the Kamiah Indians escorted the Government employees to Lapwai and protected the Agency buildings upstream.

In 1878, little or no timber was sawed at the Lapwai mill because the Agent claimed difficulty in finding a competent sawyer, despite the fact that the Indians had cut nearly 400 sawlogs and transported them to the mill, where they expected to have them cut into material for housing and fences.²⁰ The following spring, Agency employees looked

¹⁸John B. Monteith, Agent, Annual Report of September 6, 1875, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1875, pp. 574, 626, 627, and 762.

¹⁹John B. Monteith, Agent, Annual Report of August 15, 1877, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1877, p. 477.

²⁰John B. Monteith, Agent, Annual Report of August 12, 1878, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the

on helplessly as the February flood on Lapwai Creek washed away the sawmill and the flour mill. According to a National Archives photograph legend, "The mill before the freshet (spring flood) stood nearly in front of the Agent's house."²¹ That location was near the creek by the old, wood-frame, Agent's house that still stands at the park site administered by the National Park Service.

In his 1880 annual report, new Nez Perce Agent Charles D. Warner reported the following:

They have built during the year, by their own efforts, with a cost to the government of about \$70, seven frame houses, furnishing all materials themselves except nails, window-sash and doors. Many more living at present in lodges would build houses were there a mill here (Lapwai) to saw timber. They are very anxious that such should be re-built, and in the interest of civilization I hope that the department will adopt such a course. They have no way to get wheat ground to flour short of the Kamiah mill, 65 miles away. They also have cut and rafted down the river 650 cords of wood, for which they have received on the average \$4 per cord, making some \$2,600 received this year. They also have fenced in many fields this year.... They have made during the year 2,096 rods of good rail fence.²²

Not only was the sawmill missing at Lapwai in 1880, but the Agent complained that the Kamiah mill was now in disrepair. Still, the Indians continued to improve upon their timber harvesting records of previous years. In 1880, they cut nearly 600 cords of wood and 30,000 feet of logs, for which they received \$4,800. They also constructed two frame and nine log houses during the year, the Agent claiming that more would build if they had the lumber.²³

Perhaps more importantly, 1880 was the date set for expiration of several provisions of the Stevens treaty of 1855. The annuities were abolished with the expirations, and the Agent claimed that he convinced the Nez Perce to back away from an intention to elect

Secretary of the Interior for 1878, p. 550.

²¹ Photo album in Record Group 75, number 75-IP-1-43, "Nez Perce Agency Idaho, 1879", National Archives, Washington, D.C.

²² Charles D. Warner, Agent, Annual Report of August 16, 1879, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1879, p. 163.

²³ Charles D. Warner, Agent, Annual Report of August 14, 1880, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1880, p. 188.

a new head chief and five subchiefs. There also was growing concern with white trespassers along the reservation's poorly marked boundaries, and discussion of encouraging the Nez Perce and other tribes to select lands in severalty. The hope, as expressed by the territorial governor in a report to the Commissioner, was that "a large portion of the Nez Perce Reservation, which embraces an extended area of valuable agricultural land, might be restored to the public domain."²⁴ Thus, the conflict of interest inherent in the territorial governor serving as ex officio superintendent of Indian affairs becomes evident.

The Government began construction on a new sawmill at Lapwai in 1881 and completed it the following year at a contracted cost of \$11,000.²⁵ In the meantime, the Kamiah mill had deteriorated. The sawmill at Kamiah needed a new boiler, an engine overhaul, and two new saws. Blaming the Kamiah Indians for not cooperating with repair work at the sawmill, the Agent termed the mill "useless" as of July 1883.²⁶

An Indian Office inspector also found fault with management at the Agency sawmill. He noted in 1882 that both Indians and the Agency sawyer purchased timber from individual Indians and then had it sawed at the Agency mill. They then sold the lumber produced on their own. The inspector noted that the practice might be allowed for the Indian operators, but it must stop where the Agency sawyer was concerned.²⁷ The practice was not reported in later inspections.

In these early years of Government administration few, if any, resources were committed to forest protection or development. With the focus on agriculture and acculturation, the forest on the reservation was looked upon as a resource to further those goals. Transportation and poorly marked boundaries made protection from trespass particularly difficult. Fire protection probably followed along logical lines -- if you spot a

²⁴Ibid., pp. 188 - 189. On the issue of tribal chiefs, it appears the agent was hasty in his assessment of success in ending the procedure. The annual report of the agent in 1883 states that the Commissioner dealt a blow to the "head-chieftainship" in that year by granting more authority to the agent instead of presenting matters to the Indians in council.

²⁵Robert Gardner, Report to the Secretary of the Interior, September 21, 1882, in Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs, Microfilm 1070, Reel 30, Record Group 48 and 75, National Archives, Washington D. C.

²⁶Charles E. Monteith, Agent, Annual Report of August 23, 1883, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1883, p. 115.

²⁷Robert Gardner, Report of Inspection at Nez Perce Agency, September 21, 1882, Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs 1873 - 1900, Microfilm 1070, Reel 30, Record Group 48 and 75, National Archives, Washington, D. C.

fire, try to put it out. There were no specialists dealing with the forests other than sawyers, who probably seldom got away from the mill and into the woods; and farmers, who focused on building houses, barns, and fences. In this context, the Nez Perce Agent in 1883 reported the first significant fires documented for the reservation.

In August 1883, Agent Charles Monteith reported that there had been "heavy fires" on the eastern portion of the reservation and in the mountains. The fires burned "thousands of acres of fine grazing lands," according to Monteith. He made no mention of timber losses, but the area involved would suggest that trees were burned as well.²⁸ Monteith mentioned no attempt to control the fires and no evaluation of causes.

An inspection in 1884 called attention to the trespass problem. Inspector William A. Newell received complaints from the "Indians in Council" that whites allowed their cattle to trespass on the reservation and that trespassers cut timber without the consent of the Indians. Agent Monteith told the inspector that it was impossible to prevent such incursions entirely and that he did the best that he could. The inspector recommended stricter enforcement and told the Indians that he would seek an investigation to protect the Tribe's rights.²⁹ If that investigation did occur, the results were not located. As late as 1888, the Nez Perce Agent lamented that it was nearly impossible to patrol almost 150 miles of exterior reservation boundary with a force of five policemen, when white settlers generally ignored Indian rights established by Government treaties.³⁰

The Indians in 1885 cut approximately 120,000 board feet of lumber at the Agency mills and cut an additional 450 cords of firewood.³¹ After high winds in February 1886 destroyed the flume that delivered the water to the mills at Lapwai, the mill remained closed until June 1887. While the mills at Kamiah were described as being in good condition, new Agent George W. Norris in 1887 said that it was necessary to operate them

²⁸Ibid., p.117.

²⁹William A. Newell, Report of December 4, 1884 as found in Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs, 1870-1900, National Archives Record Group 48 and 75, Microfilm 1070, reel 30.

³⁰George W. Norris, Agent, Annual Report of August 20, 1888, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1888 - 1889, p. 85.

³¹Charles E. Monteith, Agent, Annual Report of August 24, 1886, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1886, p. 658.

for only a small portion of the year.³² Following removal of Government troops from Fort Lapwai in 1884, the Agent in 1886 moved a school and part of the administrative staff to the old post, about four miles south of the Lapwai Agency that was on the Clearwater River near the mouth of Lapwai Creek. By 1890, the Agency's miller and sawyer occupied the house at the old Agency that formerly served the Agent as an office and a dispensary.³³ It was not until about 1904, however, that the Government officially moved the entire Agency administration to its present location at Lapwai (old Fort Lapwai).

A very broad perspective of the reservation forest was provided by Inspector Robert S. Gardner in 1887:

There is a belt of timber some 12 or 13 miles in breadth and extending across the upper portion of the reserve, containing a sufficiency of good timber to supply the wants of the Indians in lumber and wood for the next two hundred years, or more, and some portions of this timber utilized by the Indians for fuel, fencing, and having some manufactured into lumber at the agency sawmills, one at the Agency and one at Kamiah sub-agency, 65 miles distant.³⁴

In 1888, Agent George Norris gave the first indication of future pressures to be exerted upon the Indians to sell their timber. Said Norris:

The Indians have heretofore been allowed to cut timber and wood and raft it to a market outside the reservation; also, to convert it into lumber, at the agency mill, for the construction of fences and buildings. Applications now reach me from whites for leave to purchase and cut timber, dealing directly with the Indians, to which I am unable to consent. The standing timber

³²George W. Norris, Agent, Annual Report of August 15, 1887, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for fiscal year 1887, p. 155.

³³James H. Cisney, Report of Inspection at Nez Perce Agency, February 15, 1890, in Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs 1873 - 1900, Microfilm 1070, Reel 30, Record Group 48 and 75, National Archives, Washington, D.C.

³⁴Robert S. Gardner, Report of Inspection at Nez Perce Agency, September 28, 1887, in Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs 1873 - 1900, Microfilm 1070, Reel 30, Record Group 48 and 75, National Archives, Washington, D. C.

upon the reservation is valuable, and the income derivable, wisely expended, would go far to establish the Indians in their allotments.³⁵

Agent Norris cited the 1868 amendments to the treaty of 1863 that required written permission of the head chief of the Tribe, the Agent, and the Superintendent of Indian Affairs before any such sale could be effected.

It became apparent that sawing timber could prove profitable, and thus the Indian Service purchased two portable, steam sawmills for Fort Lapwai Agency in 1895. One of the mills was destroyed by fire in December 1906.³⁶

Allotments: 1887-1893

In the same paragraph of the 1887 report in which inspector Gardner said that the timber should last the Nez Perce 200 years, he added that it was to be hoped that the Nez Perce Indians in the near future would be allotted land in severalty. He observed that some of the Nez Perce Indians might then be able to establish "good sized farms and comfortable homes."³⁷

Allotments on Indian lands resulted from the Dawes Act of 1887. The well-intentioned legislation aimed to promote agriculture through independent land ownership. It was a natural follow-up to earlier attempts to acculturate Indians across the country. The Dawes Act (also known as the General Allotment Act) tried to sever tribal ties by allotting land "in severalty" and conferring citizenship upon Indians born within the territorial limits of the United States who were willing to establish a residence "separate and apart from any tribe of Indians" and adopt "the habits of civilized life."³⁸ All Indians receiving allotments also received citizenship. The Burke Act of 1906 changed the process so that citizenship was not conferred until patent to the land was issued.³⁹ In 1924, the

³⁵George W. Norris, Agent, Annual Report of August 20, 1888, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1888 - 1889, p. 85.

³⁶Letter, Jacob Breid, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, December 7, 1916, File: Ft. Lapwai (Nez Perce) 115649-1916-339 (127440), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

³⁷*Ibid.*

³⁸24 Statutes at Large, 338.

³⁹34 Statutes at Large, 182.

Government finally enacted legislation recognizing citizenship for all Indians born in the United States.

At the Nez Perce Indian Reservation, as on most others, the allotment process involved a census and land surveys prior to issuing land. Surveyors began work on Nez Perce boundaries in the autumn of 1887. By placing the eastern line of the reservation further west, they aroused controversy between the Agent and Indians who had used the land for many years under an earlier survey. The Agent insisted in 1888 that all of the exterior lines of the reservation be resurveyed and marked with monuments that should be updated as often as every five years.⁴⁰

The Government sent Special Agent Alice Fletcher to the Nez Perce Indian Reservation in 1889 to issue allotments. There was considerable bad feeling among many of the Nez Perce, who objected to white men who had married Nez Perce women coming quickly onto the reserve to select some of the finest lands. The Indians demanded that those selections should be made last. They received little cooperation from Agent Charles Monteith, who told them that "the 'severalty act' is law and must be obeyed; [and] that they must not procrastinate, but act quickly, and make their selections without delay."⁴¹ Agent Fletcher succeeded largely because she was able to convince a council of adult tribal members to select a nine-member committee to represent each of the reservation's larger population centers, to help her in gaining the confidence of the other Nez Perce. Author Alvin Josephy, Jr., has noted that this committee was forerunner to later forms of tribal governing bodies.⁴²

Special Agent Fletcher completed her work and closed her office on the Nez Perce Indian Reservation early in 1893 after issuing 1,905 allotments. The census, completed the year before, showed the Nez Perce Tribe to include 1,828 people. That number included 879 males and 949 females. Also, 307 school-aged children resided on the reservation.⁴³

⁴⁰George W. Norris, Agent, Annual Report of August 20, 1888, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1888 - 1889, p. 85.

⁴¹Charles E. Monteith, Agent, Annual Report of August 26, 1889 to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1890, p. 182.

⁴²Josephy, Nez Perce Country, p. 164.

⁴³Warren D. Robbins, Agent, Annual Report of August 31, 1892, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1892, p. 237. Also see 1893 Report, p. 138.

Throughout these allotment years, the Agent and his staff promoted agricultural development on the Indian farms. A large number of Indians cut posts and fenced their selections. Many built houses and out-buildings. The sawmills were crucial to these building efforts, and Agent Warren Robbins stated that fact.

The Indians are in great need of a portable sawmill, to go from place to place among them to saw the lumber that they, in a great many instances, are now compelled to haul many miles in order to place the slightest improvement upon their allotted lands. There are two stationary sawmills on this reservation, one located at this agency and the other at Kamiah, a settlement of the Indians some 65 miles distant from the agency. These mills lend but little aid to those Indians who live upward of 40 miles from either place in putting such improvements as dwelling houses, good barns, etc., upon their lands. Until a portable sawmill is furnished this reservation the Indians who live so far away will be very slow in improving their land. As this portable sawmill will be of great benefit and aid to these Indians, I respectfully urge and recommend the furnishing of the same.⁴⁴

In addition to those improvements, the Nez Perce continued to find economic benefit from timber work. Statistics for fiscal year 1892, for example, indicated that the Indians sawed 85,000 board feet of lumber at the reservation mills. A footnote stated that they "marketed" 75,000 feet of timber, not noting whether it was part of the above figure, or in addition to it. They also cut approximately 1,500 cords of fire wood.⁴⁵

While many Nez Perce elected to pursue farming, others did not. The final number of 2,009 allotments to the Indians totalled 175,026 acres. That left a large acreage of tribal agricultural and timberland uncommitted to private ownership, one of the motivating factors behind the allotment act.

The Nez Perce Agreement of 1893

The Government looked upon the unallotted lands on the Nez Perce Indian Reservation as "surplus" lands, suitable for settling by the many would-be white farmers. Accordingly, the Government sent three negotiators to meet with the tribal committee headed by Archie Lawyer. After four months of discussions, the Government finally secured an agreement whereby the Nez Perce representatives ceded about 542,000 acres

⁴⁴CIA, Annual Report, 1892 pp. 236 - 237.

⁴⁵Ibid., pp. 804 - 805.

for \$1,626,222. All but \$1 million was to be paid in per capita payments immediately upon ratification of the sale. The rest was scheduled for payment to the Tribe in installments.⁴⁶

Article II of the 1893 agreement excepted from the land cession the place known as "the boom" on the Clearwater River. Situated near the mouth of Lapwai Creek, the boom was the point at which the Nez Perce captured deadwood and cut timber floated from points above on the river. The agreement stipulated that the boom was reserved for the common use of the Tribe. It further guaranteed full right of tribal access to the boom and stipulated that any allotment made to James Moses, who then occupied the adjacent land, must be made so as not to interfere with that access.⁴⁷

The United States Senate ratified the Nez Perce agreement on August 15, 1894. President Grover Cleveland, on November 8, 1895, finalized the document. The Government issued trust patents to the allottees and made the initial payment. Only 10 days after the President closed the deal, he issued the proclamation opening the Nez Perce Indian Reservation to white settlers.⁴⁸

Nez Perce Agent S.G. Fisher painted a rosy picture of the reservation settlement:

With this princely sum of money, together with the fact that each living member of the tribe will soon hold a trust patent for 80 acres of the finest agricultural land in the West, together with a vast timber reserve to their common use, they are without doubt the wealthiest community in the State.⁴⁹

However, the reality was a loss of the land base that had provided security to the Nez Perce for centuries. Soon, whites outnumbered the Indian population on the reservation. While many Nez Perce developed their allotment farms and ranches, some leased their land to whites and tried to live off the income.

Superintendent Mattoon in 1905 reported 1,562 Nez Perce belonging to the reservation under his administrative authority. Nearly all had allotments -- either 80 acres of good agricultural land or a combination of agricultural and grazing land, the latter

⁴⁶Joseph, Nez Perce Country, p. 164.

⁴⁷Presidential Proclamation dated November 8, 1895 by Grover Cleveland, Article II, as published in the Annual Report of the Secretary of Interior for 1896, p. 469. Printed in 1897.

⁴⁸Joseph, Nez Perce Country, p. 165.

⁴⁹S. G. Fisher, Agent, Annual Report of August 8, 1895, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs as published in the Report of the Secretary of the Interior for 1895, p. 146.

acquired at the rate of two acres in lieu of each tillable acre. According to the view of the Superintendent, the Nez Perce had chosen their home tracts wisely. Most were within valleys through which a creek or river flowed. These were lined with timber that provided fuel and were fed by springs of pure water. Those allotments on the high plateau were yielding "enormous crops of wheat, oats, and barley...."⁵⁰ As Superintendent Mattoon viewed the situation, the effectiveness of the allotment system was being undermined by the policy of leasing Indian lands to white settlers. Although the white renters made substantial improvements on the land and paid from \$1.50 to \$3 per acre to the Indian owners, Mattoon felt that the Indians could do better by farming the lands themselves. For fiscal year 1905, the Government approved 304 leases of Indian lands on the reservation. Five hundred leases awaited approval in fiscal year 1906, with 98 percent scheduled for farm lands.⁵¹

The "trust" that allegedly protected Indian rights to the patents for 25 years faded quickly with the Burke Act of 1906, which allowed the Government to declare certain Indians "competent" and allowing the patent to go out of trust. In this way, many Nez Perce received clear title to their allotment land and were soon persuaded to sell to whites. By the 1960s, individual Nez Perce Indians owned only 57,062 acres compared to original allotment holdings of over 175,000 acres.⁵²

Meanwhile, by 1905, there was less conflict over road-building. Roads then under construction allowed travel through almost "any portion of the reservation." The Superintendent claimed that few Nez Perce opposed new roads and that many provided labor and teams to assist in building and improving roads.⁵³

The Timber Reserves: 1893-1909

One of the lasting benefits of the 1893 agreement was the creation of the Nez Perce tribal reserves. Article I of the agreement reserved for the Tribe 32,020 acres of timberland. Scattered around the reservation, these reserves were intended to supply fuel wood and construction timber for the Nez Perce allottees. When surveyed, they were numbered as "tribal units." The 72 resulting units were combined in various ways to produce 20 named reserves in 16 different townships. (See Appendix B.)

⁵⁰Ibid.

⁵¹Ibid., p. 200.

⁵²Joseph, Nez Perce Country, p. 165.

⁵³Ibid.

In 1897, Nez Perce Agent S.G. Fisher requested a survey of the timbered reserves to mark the boundaries and to identify agricultural lands in the groupings that might be exchanged for land with more timber. A surveyor completed the task by the end of November 1897, and recommended that 5,734 acres of land better suited to farming be exchanged for 5,750 acres thought to contain more timber. That would free the agricultural land for filing by prospective white settlers.⁵⁴

Agent Fisher concurred with the findings and added that there was urgent need for the exchange, since little saw timber remained on some of the other reserves. He estimated that, without the proposed exchanges, suitable saw timber from the several reserves would be exhausted within the following four to five years.⁵⁵

As a result of the request and recommendation, the General Land Office temporarily withdrew from entry the proposed exchange lands on January 20, 1898. Since the original timber reserves were selected by the Nez Perce in negotiations with the Government and subsequently ratified by Congress, officials in the Indian Office in Washington, D.C., decided that a similar process would have to be followed in order to make the exchanges.⁵⁶

However, disagreements among the Nez Perce tribal members and between the Tribe and the Department of the Interior about the disposition of these lands ultimately defeated these proposed land exchanges. Undercurrents of discontent continued to mark the relations between the Nez Perce and the Department of the Interior. As late as 1907, tribal members continued to contend that the timber reserves remained the property of the Tribe. According to Acting Indian Commissioner C.F. Larrabee, the Nez Perce felt that the "Government should allow them to do as they please" with the reserves. All, however, did agree that steps needed to be taken to conserve the timber lands and manage them wisely, all, of course, with "the future approval of the tribe." Larrabee noted that the Indians differed markedly about the disposition of these lands. Some tribal members held that the lands should be sold and sought to take advantage of the instant revenues. Other

⁵⁴Letter, J. O. Maxon, Surveyor, to S. G. Fisher, Agent, November 22, 1897. File: Fort Lapwai (Nez Perce) 22534-1909-307.4, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

⁵⁵Letter, S. G. Fisher, Agent, to the Commissioner of Indian Affairs, November 23, 1897. File: Ft. Lapwai (Nez Perce) 22534-1909-307.4, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

⁵⁶Letter, C. F. Hauke, Chief Clerk, OIA, to the Secretary of the Interior, April 30, 1909. File: Fort Lapwai (Nez Perce) 22534-1909-307.4, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

members, however, viewed the lands as potential allotments, thus providing steady income rather than one source of a large capital infusion.⁵⁷

Two years later, conflict over timber reserves continued to inflame bureaucratic passions. Withdrawal of certain sections of land from the tribal timber reserves and the replacement of those sections with others in 1897-1898 continued to provoke opposition from the Indians. Sufficient dissension over these actions forced the Office of Indian Affairs to conclude that further efforts to make the "exchange are useless." Accordingly, the Secretary of the Interior directed that the temporary withdrawal order for the proposed exchange lands be withdrawn.⁵⁸

The Department of the Interior took seriously its trust responsibilities which, in part, accounted for the conflict between the Nez Perce and the Office of Indian Affairs. Shortly after the conclusion of a cooperative agreement between the Secretary of Agriculture and the Secretary of the Interior in January 1908 for the management of forest and grazing lands on the nations' reservations (See below.), the Superintendent-in-Charge of the Nez Perce Agency requested that the Superintendent-in-Charge of the Bitterroot Forest Reserve, be authorized to investigate and report on the practicability of adapting the methods used by the latter in the protection of the Bitterroot Forest Reserve for the protection of the Nez Perce Forest reserve. The Commissioner of Indian Affairs informed the Nez Perce Superintendent-in-Charge that there were insufficient funds available to transfer the managerial techniques employed in the Bitterroot to the reservation. However, Commissioner Larrabee did inform Superintendent Lipps that the Secretary of the Interior had asked Congress for an additional appropriation in order to promulgate a plan of cooperation with the United States Forest Service. This, he hoped, would result in better "care and protection of timber on Indian reservations." However, money dictated whether or not the plan would be effected.⁵⁹

Apparently, Congress did provide the monies for Bitterroot National Forest personnel to survey Nez Perce timber reserves. By the end of September 1908, the survey of the timber lands was completed. In it, the forester found that on the 32,020 acres of reserved lands, the predominance of yellow pine characterized the nature of the lumber available. Over 95 million board feet of yellow pine dominated a mere 14,435,000 board

⁵⁷Letter, C.F. Larrabee to Secretary of the Interior, December 13, 1907. File: Ft. Lapwai (Nez Perce) 79510-1907-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁵⁸Letter, C.F. Hauke, Chief Clerk, OIA, to Secretary of the Interior, April 30, 1909, File: Fort Lapwai (Nez Perce) 31563-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁵⁹Letter, C.F. Larrabee to Oscar H. Lipps, April 29, 1908. File: Fort Lapwai (Nez Perce) 26705-1908-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

feet of Douglas-fir and other species. The reserve contained a total of 109,651,600 board feet of timber.⁶⁰ No question existed that in 1908 there existed a good market for mature timber at "remunerative prices." It was recommended that no timber be sold for less than \$2 per thousand board feet. Moreover, proper advertising of stumpage sales aimed to bring about \$2.50 per thousand.⁶¹ Some of the paternalism that characterized white-Nez Perce relations did, however, appear. The forester who performed the survey felt that:

Whether the timber should be sold on the stump and cut and removed by the purchaser is a matter deserving most careful consideration. There are many of the Nez Perce ... who are industrious and desirous of honorable employment. Many among them now work with their teams in various ways ... though I do not think any of them are competent to take charge of a logging proposition at this time. Under the direction of an experienced logger I am satisfied they would soon become efficient.⁶²

No question remained about the fact of trespass. Settlers adjoining the Nez Perce reservation regularly cut timber for all kinds of uses, especially heating fuel. In addition, white lessees of Indian allotments often obtained reserve timber for the purpose of "making improvement upon leased lands." While no charge had been made for the privilege, some question remained about the wisdom of such a policy.⁶³

Up to the time of the survey, Indians customarily cut "whatever timber they desired for their own use without permit of any kind." The surveyor viewed this as "undesirable." He noted the waste and extravagance of the methods used and that the "cut over areas are left in bad shape." Unsupervised cutting needed to be brought under control, and the surveyor recommended that when Indians needed timber, they should secure a permit from the officer in charge of timber lands "in a manner analogous to that now applied under the Free Use system of the National Forests."⁶⁴

Part of the 1908 survey entailed an analysis of grazing and agricultural uses of reservation lands. Controlled grazing needed emphasis because much of the timber

⁶⁰F.A. Fenn, Forest Supervisor, Clearwater National Forest, Report to Chief Forester, U.S. Forest Service, September 23, 1908. File: Fort Lapwai (Nez Perce) 80934-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁶¹Ibid.

⁶²Ibid.

⁶³Ibid.

⁶⁴Ibid.

reserves suffered from overgrazing. It was noted that "the demand for the use of these lands for grazing purposes is insistent...." Controlled access would prevent overgrazing of timber lands.⁶⁵

Grazing and the trespass of livestock belonging to white settlers exacerbated the strained relations between Nez Perce and white neighbors. Ambiguous fence laws tended to absolve the whites of responsibility for cattle on timber reserve lands and thus proved a "prolific source of friction between the whites and the Nez Perce tribe." If grazing continued on timber reserve lands, Indians had a preference right to it.⁶⁶

Allotments and Allotment Sales

Most of the lands established for allotment had already been distributed among members of the Nez Perce by 1908. Only about 20 members still remained without allotted timber lands.⁶⁷ Four tribal members sought lands on the Nez Perce Reservation. Yet, their children attended school at the Colville Indian Reservation in Washington, and it was recommended that they receive their allotments there.⁶⁸

From the time of the 1868 treaty, problems arose over definition of who or what constituted the "head of the Tribe." Under those treaty provisions, none of the timber could be harvested without the consent of the head of the Tribe, the local Agent, and the Superintendent of Indian affairs. As a result, the various attempts made to cut mature trees as well as lease agriculture and grazing lands met with Indian resistance. No longer was there a tribal chieftain who represented all of the Nez Perce. As a consequence, failure to exploit the available resource cost the Tribe an average of \$10,000 annually.⁶⁹

The problem had been thorny. The obvious way to handle it seemed the introduction of legislation in Congress that allowed the sale of dead and overmature timber from the reserves. This, in turn, would produce tribal income, and the Office of Indian

⁶⁵Ibid.

⁶⁶Ibid.

⁶⁷Ibid.

⁶⁸Letter, R.G. Valentine, Commissioner of Indian Affairs, to W.B. Heyburn, U.S. Senator, December 30, 1909. File: Fort Lapwai (Nez Perce) 102666-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁶⁹Ibid.

Affairs could unilaterally administer those timber lands "for the best interests of the tribe."⁷⁰

The Cooperative Agreement, 1908-1909

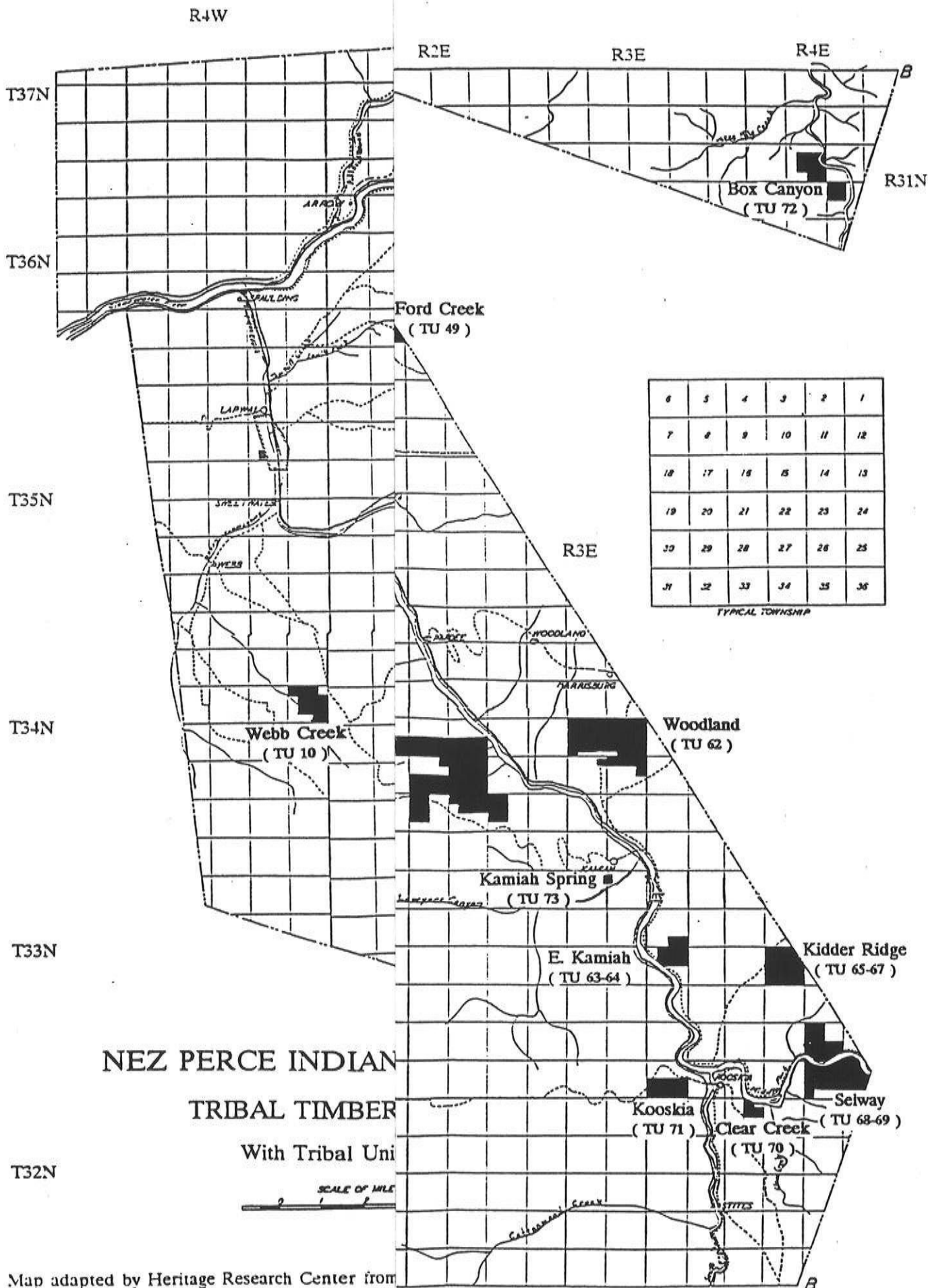
The conflict between the Indian Office and the Tribe over control of the reservation's forest lands was compounded by a January 22, 1908 cooperative agreement between the Secretaries of the Interior and Agriculture providing that the U.S. Forest Service manage the forest resources on the nation's Indian reservations. A political power struggle between the Secretary of Agriculture, Gifford Pinchot, and the Secretary of the Interior, Richard Ballinger, Secretary of the Interior, over the control of the nation's forest resources further compounded the conflict.

The agreement between the Office of Indian Affairs and the Forest Service for a cooperative forestry management plan that placed the Forest Service in charge of the management of reservation forests was signed on January 22, 1908. It was concluded in recognition that the Indian Office had failed to provide Indian reservations with adequate forest management. Before that date, the OIA had managed the forests on the reservations but had come under increasing criticism for its forest management policies. The Indian Office was criticized for a lack of trained forestry personnel on the reservations, inadequate funding, and the absence of an organized plan to protect reservation forests. Also the allotment process threatened to open the reservation forests to non-Indians eager to exploit its timber resources. In short, the forested reservations needed forest management plans and the staff to administer them.⁷¹

Frances Leupp, the Commissioner of Indian Affairs, recognized this need and called upon the U. S. Forest Service for assistance in 1908. The Office of Indian Affairs and the Forest Service hoped to provide better fire protection and timber sale management and signed the cooperative forest management agreement of January 1908. The agreement placed the Forest Service in charge of reservation forests under Department of the Interior guidelines. The Forest Service studied tribal forests, determined the best use of timber,

⁷⁰Ibid. See also Letter, C.F. Larrabee, Commissioner of Indian Affairs, to Superintendent, Fort Lapwai, Idaho, November 2, 1908. File: Fort Lapwai (Nez Perce) 73408-1908-339, Central Classified Files Record Group 75, National Archives, Washington, D.C.

⁷¹Alan S. Newell, Richmond L. Clow, Richard N. Ellis, A Forest in Trust: Three-Quarters of a Century of Indian Forestry, 1910-1986, prepared for the U.S. Department of the Interior, Bureau of Indian Affairs (Washington D.C., 1986) pp. 2-1 through 2-11.



supervised all cutting and timber sales, and adapted suggestions to the laws governing the reservations.⁷²

The response of the Nez Perce Tribe, the U.S. Forest Service, and the Office of Indian Affairs to the attempt at managing reservation forests on a cooperative basis revealed the distrust that existed between the Tribe and the Indian Office and the friction between the Department of the Interior and the Department of Agriculture over matters of personnel and land management. In fact, for all its good intentions, the act only seemed to increase tribal distrust for the Indian Service and government authority in general and failed to achieve the hoped for rationalization of the management of Indian forests.

Indian Resistance to the Cooperative Agreement

Throughout the period of negotiations for the cooperative agreement between the Office of Indian Affairs and the Forest Service for the administration of unallotted Nez Perce timber lands in Idaho, a consistent thread of tribal resistance to Forest Service management appeared. In June 1908, five tribal members expressed their disagreement about the cooperative agreement because it had been entered into without tribal consent. "Considering the many promises the Government has broken with us in the past," the letter stated, "we now have grave apprehensions that our timber lands will be taken away from us."⁷³

The Office of the Commissioner was quick to respond. Acting Commissioner Larrabee assured the Indians that it was not the "intention or desire of the Department [of the Interior] to deprive any Indian tribe of its lands...." He also assured the Nez Perce that the agreement with the Forest Service aimed to preserve the timber lands for Indian use and income. He especially noted that "promiscuous cutting" of timber had sadly depleted forests throughout the United States. In addition, the trust responsibility of the Department mandated wise management practices on these reserves. He concluded by stating that:

There is not the slightest reason for you or your people to have any apprehension that your timbered lands will be taken from you. The Indian reservations have not been turned over to the Forest Service to be included in the National Forest Reserves, as you seem to think. As trustee for Indian lands the Government is responsible for their protection, and it has been

⁷²Ibid.

⁷³Letter, George Moses, Joe Kentuck, Kip-kip-pal-ican, Henry Looking Glass, Jonah Hayes, and John Hill to Commissioner of Indian Affairs, June 10, 1908. File: Fort Lapwai (Nez Perce) 43380-1908-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

deemed wise to enter into this agreement in order that the forests may be protected and preserved for the use and benefit of the Indians.⁷⁴

Failure of the Cooperative Agreements

In the meantime, Office of Indian Affairs and the Forest Service proceeded with the implementation of the 1908 agreement on Nez Perce forest and grazing land. In January 1909, the Superintendent of the Nez Perce Reservation, the U.S. Forest Service District Forester, and the Supervisor of the Clearwater National Forest submitted to the Forest Service Office in Washington, D.C., a draft proposed cooperative agreement between the Forester of the Department of Agriculture and the Commissioner of Indian Affairs covering the future administration of unallotted lands on the Nez Perce Reservation. This draft agreement was based on conclusions and recommendations of a draft of a proposed act of Congress relating to these lands, together with a memorandum explaining their legal status and the necessity for the additional legislation proposed. It also was based on an explanatory report discussing the conditions of such lands and the methods of administration which were judged to be "necessary and advisable in the future."⁷⁵

According to the provisions of the proposed understanding between the Office of Indian Affairs and the Forest Service for the administration of the Nez Perce forest reserves, all unallotted lands would fall under the administrative purview of the United States Forest Service. The Forest Service had jurisdiction over "all matters pertaining to the sale, cutting, or free use of timber," as well as matters relating to grazing and agricultural use of Indian timber reserves. The immediate administration of these lands was to be under the District Forester of the Forest Service in Missoula, Montana, and the Supervisor of the Clearwater National Forest, Kooskia, Idaho, who was to act, "as far as

⁷⁴Letter, C.F. Larrabee to George Moses, et al, June 30, 1909. File: Fort Lapwai (Nez Perce) 43380-1908-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁷⁵Letter, Oscar H. Lipps, Superintendent, Nez Perce Reservation, F.A.Fenn, Supervisor, of the Clearwater National Forest, and W.B. Greeley, District Forester, Missoula, to Forester, Washington, D.C., January 9, 1909, with the following enclosures: Cooperative Agreement between the Indian Office and the Forest Service for the Administration of the Unallotted Nez Perce Timberlands, Idaho; A Bill to Regulate the Use and Occupancy of the Unallotted Lands of the Nez Perce Indians, and for Other Purposes; Memorandum: [Legal] Summary: Indians-Nez Perce Reservation [Right to Sell Timber, Leases of Unallotted Lands for Grazing and Agricultural Purposes; and Occupancy and Use under Permit]; Proposed Plan of Administration for the Nez Perce Timberlands. File: Fort Lapwai (Nez Perce) 5525-1909-339, Central Classified Files: Record Group 75, National Archives, Washington, D. C.

possible in cooperation with the Superintendent of the Nez Perce Reservation and with the Nez Perce tribal council."⁷⁶

Timber lands, the principal thrust of the agreement, were specifically defined for administrative purposes. For instance, all timber deemed dead, mature, or down must be advertised for 30 days before a sale could be granted. In addition, a minimum bid had to reflect the appraised value of the timber. The only exception to this was if a tribal member bid on the timber sale. Then the bid only required that the combined cost of logging and stumpage be covered by the bid. Dead and downed timber, however, could be cut into cord wood under contract with tribal members and sold at designated points, provided such activity did not exceed fifty cords. Additional free use of timber was reserved for members of the Tribe and for the Nez Perce Agency under special written permits. The cooperative agreement specifically excluded non-tribal members from free use "except in cases where the timber will be used for the permanent improvement of Nez Perce tribal or allotted lands."⁷⁷

Grazing and agricultural lands also fell under Forest Service jurisdiction, and many of the same rules applied. For example, leases had to be advertised for 30 days before they could be granted to the highest bidder. The caveat to all grazing and agricultural permits lay in that the forester needed to judge if such use would be "injurious to forest reproduction." Again, tribal members had priority over non-tribal members, provided the tribal member could meet the highest bid. In this there was a deviation from the practice for timber extraction.⁷⁸

Certain special privileges that involved the occupancy of reserve lands could be granted by the Forest Service. These generally involved rights-of-way for logging roads, tramways, and reservoirs. The Nez Perce Tribe required indemnification for any damage that might result from rights-of-way. Any timber lost as a result would be indemnified at current stumpage prices. An annual fee would be collected for all rights-of-way except for public roads.⁷⁹

⁷⁶Cooperative Agreement between the Indian Office and the Forest Service for the Administration of the Unallotted Nez Perce Timberlands, Idaho, File: Ft. Lapwai (Nez Perce) 5525-1909-B39, Central Record Group 75, National Archives, Washington, D.C.

⁷⁷Ibid.

⁷⁸Ibid.

⁷⁹Ibid.

Fire protection also occupied the joint agreement, which provided that an adequate number of rangers would be maintained, as well as necessary tools and supplies. A special fund established for that purpose would cover costs not to exceed \$4,000 per annum.⁸⁰

Inter-departmental cooperation made necessary some shifting of funds, and the cooperative agreement provided for such a contingency. Initially, the Commissioner of Indian Affairs would transfer \$2,000 from the Nez Perce Tribal Fund to the Forest Service for the costs of administration. Known as the "Nez Perce Timberland Fund," the monies would be placed at the disposal of the reservation Superintendent for transfer to the Forest Service. It was hoped that such a fund would grow as a result of leases, timber income, and rights-of-way. When such a balance reached \$17,000, the sum of \$15,000 could then be distributed on a per capita basis to tribal members.⁸¹

Provisions also appeared for the few remaining tribal members who had not yet received allotments. Under the cooperative agreement, the Secretary of the Interior would allocate such allotments from vacant public lands in designated tracts "which were included within the former limits of the Nez Perce Indian Reservation and were withdrawn from settlement by the Commission of the General Land Office on January 20, 1898." Conflicts that might arise between Nez Perce allottees and "bona fide white settlers" would then be adjudicated by the Secretary of the Department of the Interior.

Moreover, the Department of the Interior found itself juggling between its responsibility to the Nez Perce and white settlers on the reservation. The Secretary of the Interior would:

secure from the Nez Perce Indians a relinquishment of their claim or title to such tracts within the Nez Perce Timberlands as are now occupied by bona fide white settlers who have erected valuable improvements thereon, thereby enabling such white settlers to perfect title to such lands by conformity with the public land laws....⁸²

This, however, carried a proviso because equal areas of public land within the prescribed tracts needed to be available. If not, the Agreement implicitly provided for the displacement of white settlers.⁸³

⁸⁰Ibid.

⁸¹Ibid.

⁸²Ibid.

⁸³Ibid.

The proposed draft bill submitted to the Forest Service office specifically provided that the Secretary of the Interior be authorized to appoint an Agent with the legal authority to approve, on the behalf of the Nez Perce Tribe, leases of grazing, agriculture, and mining lands, contracts for the sale of timber, and all other contracts and permits of any nature whatever relating to the use and occupancy of said lands.⁸⁴

A letter that the District Forester sent to the Washington Office regarding the plan for the future administration of the Nez Perce timberlands, stressed that the lands were "wholly without protection" and in danger of serious damage from fire during the summer months, and were subject constantly to:

thefts of timber and stock range and the establishment of illegal rights-of-way for various purposes, often involving the destruction of considerable quantities of timber without remuneration of any character to the Nez Perce Indians.⁸⁵

The District Forester estimated that fully 15 percent of the timber as dying or overmature and steadily deteriorating in value and that the Tribe was losing about \$9,000 in annual income as a result. The District Forester also noted that Superintendent Fenn of the Clearwater National Forest had received many applications from white settlers for timber, stock range, and leases of agricultural tracts within these [Nez Perce] lands. These leases could not be legally granted and the "speedy establishment of administration along some such line as those recommended" was necessary "in justice to the white settlers and the community as a whole." Superintendent Lipps and Fenn strongly recommended that satisfactory arrangements be made by the Officer in Charge, to log timber under contract by the Nez Perce Indians and sold in the log or by the cord at designated points at prices sufficient to reimburse the cost of logging together with the appraised stumpage value. This would not only provide a means of profitable employment to tribal members, but also would provide "valuable education in the methods of conducting such work."⁸⁶

This package of material also was submitted on January 19 to the Office of Indian Affairs in Washington, D.C. Ten days later, it was forwarded to its Law Officer to determine if the proposed plan was possible, "in whole or in part, without further

⁸⁴Lipps, Fenn, and Greeley, A Bill to Regulate the Use and Occupancy of the Unallotted Lands of the Nez Perce Indians, and for Other Purposes, 1909. File: Ft. Lapwai (Nez Perce) 5525-1909--339, Central Classified Files Record Group 75, National Archives, Washington, D. C.

⁸⁵Letter, W. B. Greeley, District Forester, Missoula, to the Forester, Washington, D.C., January 9, 1909. File: Ft. Lapwai (Nez Perce) 5525-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁸⁶Ibid.

legislation." On February 22, 1909, the Superintendent of the Nez Perce Reservation indicated that he was receiving numerous applications for the purchase of railroad ties, wood, saw timber, grazing permits, and for leases on the agricultural lands on the reservation and that, without the plan, the Nez Perce Indians were losing about \$10,000 annually.⁸⁷

On April 3, the Indian Office responded to the Superintendent, stating that it did not consider the cooperative plan, under which it was proposed to administer the reservation lands, as practicable. The OIA stated that it saw no reason for any additional cooperative agreement and that the work could be satisfactorily handled under the agreement and existing regulations. This letter noted that the papers submitted on January 9 referred to a December 15, 1908 tribal meeting to consider the plan but failed to state if any action was taken. It also urged the Superintendent to request the Council to elect a headman of the Nez Perce Tribe, the only one within the Tribe who could consent to cutting or removing timber according to the terms of the Treaty of 1868. To fulfill the law of February 28, 1891 regarding grazing and the law of August 15, 1894 regarding farming, the Superintendent would have to request the Council to pass a resolution authorizing the Superintendent to lease, on behalf of the Indians, lands suitable for these purposes. The Indian Office informed the Superintendent, that if he were successful in having the Council take the actions that the Indian Office recommended, he was to submit his report to the District Forester in Missoula, who in turn would submit it to the Chief Forester "when the question of preparing regulations to put into effect the proposed plan of administration will be considered."⁸⁸

The Commissioner wrote the Chief Forester on April 9, stating that the Indian Office did not consider the cooperative agreement submitted by Fenn, Greeley, and Lipps as practical and enclosed a revised agreement, which diminished the authority of the Forest Service, for the Chief Forester to consider. However, he emphasized that the Indian Office saw no need for any cooperative agreement in addition to the general agreement concluded between the Indian Office and Forest Service in January 1908. He asserted that work could be conducted under it, it being only necessary to "prepare regulations under the laws applicable to this reservation to govern the timber sales and leases", with such regulations to be approved by the Secretary of the Interior. He added that the Superintendent-in-Charge of the Nez Perce Reservation had been instructed to call a council to elect a headman to approve sales and to obtain authorization for the Agency

⁸⁷Letter, Oscar Lipps, Superintendent, to Commission of Indian Affairs, February 22, 1909. File: Ft. Lapwai (Nez Perce) 16260-1909- 339, Central Classified Files, Record Group, Record Group 75, National Archives, Washington, D. C.

⁸⁸Letter, Commission of Indian Affairs, to Oscar H. Lipps, Superintendent, April 3, 1909. File: Ft. Lapwai (Nez Perce) 5525-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

to lease tribal lands suitable for grazing and farming. The Commissioner also stated that the January 9, 1909 plan for forest protection could be put into effect without waiting for Council approval and that the Indian Office was considering the question of appointing one deputy forest ranger and two assistant forest ranger as suggested in the joint January 9 report.⁸⁹

In response to this letter, the Chief Forester wrote the Commissioner on April 17, stating that the matter of redrafting a plan for the future administration of the Nez Perce timber lands had been taken up with the District Forester in Missoula. He also emphasized the importance of organizing a "protective force" on the Nez Perce Reservation in keeping with recommendations of the January 9 administrative plan and putting this force into effect no later than May 1, even though the "administrative details" of timber sales and leasing had not been resolved. The Chief Forester requested the Commissioner to authorize Superintendent Lipps to appoint the force recommended in the January 9 report. The men needed were to be selected for appointment by the Supervisor of the Clearwater National Forest, F.A. Fenn.⁹⁰

While a May 1 deadline was not met, by mid-June authorization was given for the appointment of a Deputy Forest Ranger at \$1100 per annum and two deputies at \$900 each. While these salaries would come from tribal funds administered by the Department of the Interior, they would be subject to the authority of the Forest Service. Citing the 1908 cooperative agreement as authority, the Chief Clerk of the Office of Indian Affairs emphasized the exclusive administrative authority of the Forest Service. He also noted that District Foresters had the pulse of local issues and would supervise directly the work of such a protective force. He enjoined the Nez Perce Superintendent that it was:

earnestly hoped that all concerned will work in perfect accord and that nothing will be left undone which will tend toward bringing about an effective administration.... Your hearty cooperation with the officers of the Forest Service is essential to the success of this work and the Office desires that you render every assistance at your command.⁹¹

⁸⁹Letter, Commission of Indian Affairs to the Forester, Forest Service, Washington, D.C., April 8, 1909. File: Ft. Lapwai (Nez Perce) 5525-1909-339, Central Classified Files Record Group 75, National Archives, Washington, D. C.

⁹⁰Letter, William L. Hall, Acting Forester, Washington, D. C., to CIA, April 17, 1909. File: Ft. Lapwai (Nez Perce) 20305-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁹¹Letter, Chief Clerk, Office of Indian Affairs, to O.H. Lipps, June 16, 1909. File: Ft. Lapwai (Nez Perce) 5525-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

In the meantime, an internal Indian Office memorandum expressed concern about the joint January 9 report and about the Forest Service role in managing Indian Forests in general. The memorandum stated that if the Forest Service were given the authority that their plan involved, "our superintendent in charge of the reservation would have little to say on any matters, and the control of the reservation would practically pass to the Forest Service."⁹² A May 14, 1909 memorandum prepared for the Chief Clerk by the Indian Office summarized the general course of events since January 1909, stating with regard to the 1909 plan, that the Indian Office had concluded that it would not be lawful or feasible for the Forest Officer to act in the capacity of Indian Agent. Timber sales and leasing could be done on the advice of the Forest Service but that they would have to be approved by representatives of the Indian Service, as required by law.⁹³

To complicate these involved proceedings further, the Superintendent encountered difficulties in approaching the Tribe to resolve matters necessary for the successful implementation of certain provisions of the 1909 plan, particularly in requesting the Council to select a tribal headman to consent to timber sales as provided for in the 1868 Treaty. Lapwai Superintendent Oscar Lipps noted that such a move would cause great resentment, since there had not been such a position for almost 30 years. Upon the advice of some of the more "progressive Indians," he felt that the Commissioner needed to be notified of this sentiment. Lipps noted that about two-thirds of the Nez Perce were Presbyterians. Church members considered the abolition of the head chieftainship a "great victory." Lipps cited strong opposition from the "better class of Indians" who would have nothing whatever to do with such an election.⁹⁴

To allay Superintendent Lipps' concerns, the Commissioner stated that Office of Indian Affairs believed that the requirements of the 1868 Treaty would be met if the Tribal Council would pass a resolution consenting to the sale of the timber and authorizing the Secretary of the Interior to dispose of such timber on the reservation and leasing timber reserves as might be suitable for grazing and leasing at his discretion. The beleaguered Superintendent responded that he, in fact, called for a Council meeting on

⁹²Memorandum, Office of Indian Affairs, Washington, D. C. May 3, 1909. File: Ft. Lapwai (Nez Perce) 5525-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁹³Memorandum, Office of Indian Affairs, Washington, D. C., for the Chief Clerk, May 14, 1909. File: Ft. Lapwai (Nez Perce) 5525-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁹⁴Letter, O.H.Lipps to Commissioner of Indian Affairs, May 18, 1909, File: Ft. Lapwai (Nez Perce) 5525-1909-339. Central Classified Files, Record Group 75, National Archives, Washington, D.C. Throughout the first half of 1909 the problem about a Head Chief seemed to preoccupy the Commissioner of Indian Affairs. Abundant correspondence exists in Record Group 75 that addresses that point.

June 23, which almost unanimously opposed the sale of any timber and the leasing of any of the reserve lands. He stated that:

the Tribe did not want the government to exercise any authority over these reserve lands more than to protect them from trespass and depredation, and many of them [the Council] expressed themselves as opposed to the Forestry Department having anything to do with the administration of their timberlands.⁹⁵

According to the Superintendent, the only way to obtain tribal consent to timber cutting and leasing was to circulate a resolution or petition authorizing the Secretary of the Interior and the Superintendent to act for the Tribe in these matters.⁹⁶ The Indian Office agreed, and the next month authorized the Superintendent to circulate such a petition "among the Indians" authorizing the Secretary of the Interior to mark and cut mature and dead and down timber to prevent loss, sell it to the highest bidder, and deposit the money to the credit of the Tribe, after deducting the necessary expenses.⁹⁷

Termination of the Cooperative Agreement of January 22, 1908

This complicated matter, which served only to exacerbate the relations between the Tribe and the Indian Office and the Federal Government in general, ended in July 1909 when the cooperative agreement between the Secretaries of Agriculture and the Interior was terminated due to politics of the Pinchot-Ballinger dispute and the two departments' differences in management tactics. The Forest Service regarded conservation as its key role, whereas the Office of Indian Affairs saw timber as a means for employing Indians and, on some reservations, for clearing land for agricultural development. Pinchot blamed Richard Ballinger, who was appointed Secretary of the Interior in March 1909 for the failure of the agreement. Pinchot believed that the cooperative agreement had provided reservation timber managers with much-needed forestry expertise. Ballinger, on the other hand, believed that the Department of the Interior should employ forestry experts within the Indian Service.⁹⁸

⁹⁵Letter, Oscar H. Lipps, Superintendent to Commissioner of Indian Affairs, June 24, 1909. File: Ft. Lapwai (Nez Perce) 51350-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

⁹⁶Ibid.

⁹⁷Letter, F. H. Abbott, Assistant Commissioner of Indian Affairs, to Oscar H. Lipps, Superintendent, July 20, 1909. File: Fort Lapwai (Nez Perce) 51350-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

⁹⁸Newell, et al, A Forest In Trust, pp. 2-6 through 2-11.

The steps toward termination of the agreement occurred in July 1909, when Commissioner Valentine prepared a list of personnel to work under the provisions of the agreement and be paid by the Indian Office's appropriation for 1909. Edward Finney, Ballinger's Assistant, who, like Ballinger, strongly opposed the cooperative agreement, rewrote the letter. He omitted any reference to the agreement and stated that the Indian Office should administer reservation foresters. Assistant Secretary Frank Pierce's signature of the latter, in essence, terminated the agreement, with both Ballinger and President Taft approving the action. Pierce notified the Commissioner and the Secretary of Agriculture of the agreement's termination on July 17, 1909.⁹⁹ Shortly thereafter, the Indian Office, in notifying the Superintendent that the agreement had been terminated, stated that the Department of the Interior was to assume "immediate direction and control of all timber work on Indian reservations." The forestry personnel recently appointed through selections made by the Forest Service were to be retained if their services were satisfactory.¹⁰⁰

Portable Sawmills

Timber cutting proceeded on the reservation as allotments were granted, as surplus lands were opened to settlement, as tribal reserves were created, and as the cooperative agreement for the management of forest lands was jettisoned in favor of the establishment of the Division of Forestry within the Indian Office. The harvesting was accomplished with the use of portable mills. The Nez Perce Indians did harvest actively from the timber reserves following ratification of the 1893 agreement. Article IV of the agreement stipulated that the United States would purchase for the use of the Nez Perce Indians two portable steam sawmills at a cost not to exceed \$10,000.

Agent S.G. Fisher reported in August 1897 that two stream sawmills furnished by the Government to the Tribe were "in almost constant operation sawing lumber for the Indians. The mills yielded almost 1,500,000 feet of lumber, most of which Agent Fisher classified as "rustic and flooring." He praised the mills as an inexpensive way for the Nez Perce to make permanent improvements to their allotments.¹⁰¹ The statistical segment of Fisher's report indicated that the Nez Perce sawed 250,000 feet of lumber and cut 230

⁹⁹Ibid.

¹⁰⁰Letter, John Francis, Jr., Acting Chief Clerk, Office of Indian Affairs, to Oscar H. Lipps, Superintendent, August 12, 1909. File: Ft. Lapwai (Nez Perce) 54022-1909-339, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

¹⁰¹S. G. Fisher, Annual Report of August 15, 1897, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs, as published in the Report of the Secretary of the Interior for 1897, pp. 132-133.

cords of wood through their own labor. They sold 30,000 feet of their sawed lumber, presumably to non-Indian settlers on or near the reservation.¹⁰²

Following purchase of the two portable sawmills, the Government representatives on the Nez Perce Reservation believed there was no need to maintain the Lapwai Agency and Kamiah sawmills. In March 1898, Indian Office Inspector N.J. McConnell learned that, just prior to President Grover Cleveland leaving office, the Agent at Lapwai had sold a grist mill and a sawmill with three acres of ground and the ditch conveying water to those mills at the old Agency grounds. Inspector McConnell suspected "collusion on the part of the clerks or at least one of them in bringing about the sale." Estimated at \$10,000 in value, the property sold for about \$1,100. While McConnell earlier had recommended sale of the Agency buildings and grounds and the removal to the Indian School at Fort Lapwai (the present Lapwai), he felt the sale price was unconscionable and asked the Secretary of the Interior to dismiss or transfer the clerk responsible. As a branch of the Northern Pacific Railroad approached the old Agency site, Inspector McConnell recommended that the remainder of the old Agency site be sold to fund a move to Fort Lapwai.¹⁰³

The two portable sawmills had a distinct advantage over the fixed mills at Lapwai Agency and Kamiah. By moving the portable sawmills onto the timber reserves, the difficult labor of hauling logs long distances was eliminated. By 1900, both mills operated on reserves about 25 miles from the Agency, demanding the attention of a Government-employed sawyer and an engineer, one-third of the total Government staff at Nez Perce Agency during that year.¹⁰⁴

In 1898, Agent S.G. Fisher reported that the two portable sawmills were in almost constant operation on the tribal timber reserves. The Indians produced nearly 1,300,000 board feet of lumber, from which they marketed 35,000 board feet. They also cut almost 600 cords of fuel wood.¹⁰⁵

¹⁰²Ibid., p. 501.

¹⁰³N. J. McConnell, Report of Inspection at Nez Perce Agency, March 17, 1898, in Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs, 1873-1900, Microfilm 1070, Reel 31, RG 48 and 75, National Archives, Washington, D.C.

¹⁰⁴C. T. Stranahan, Report of Inspection, Nez Perce Agency, August 10, 1900 in Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs, 1873-1900, Microfilm 1070, Reel 31, Record Group 48 and 75, National Archives, Washington, D. C.

¹⁰⁵Letter, Agent S. G. Fisher to the Commissioner of Indian Affairs, August 1, 1898, in the Annual Report of the Commissioner of Indian Affairs, as published in the Report of the Secretary of Interior for 1898, p. 148.

As both Indians and white settlers occupied farms on the reservation, they needed and demanded new and improved roads. Conflict did arise, although the Nez Perce Agent claimed that the county commissioners and road supervisors acted impartially between the whites and Indians in locating roads on the reservation. Sometimes parties resorted to the courts and a few people were arrested for either fencing county roads or cutting wire. The roads were even more critical as farmers on the reservation looked to market their crops and gain access to the Spokane and Palouse extension of the Northern Pacific Railway Company, which completed its line through the Agency and on to Lewiston, Idaho, in 1898.¹⁰⁶

By July 1905, F.G. Mattoon, Superintendent-in-Charge of Nez Perce Agency, could say that the two portable sawmills had manufactured millions of board feet of lumber from the tribal reserves since the mills were purchased shortly after the 1893 agreement. He estimated that the average cost to the Indians per thousand board feet of sawed lumber did not exceed \$4. The tribal reserves, then viewed as 16 different tracts, were so placed around the reservation that the Superintendent believed they could provide sufficient building material for all Nez Perce allotments.¹⁰⁷

Nez Perce men and "experienced mill men" joined together in 1911 to move the other mill from a site near Reubens to a location near Winchester that had more readily accessible saw timber.¹⁰⁸ The Agency mill had a 54-inch circular saw and an edger saw, which were not heavily used. In the summer of 1912, tribal members brought 100,000 board feet of yellow pine to the mill, of which approximately half was milled and the remainder left on skidways next to the mill.¹⁰⁹

In an effort to increase the use of the Agency sawmill, Acting Commissioner of Indian Affairs F.H. Abbott in 1912 permitted Mr. Edward Kash Kash, a tribal member, to operate the mill at his own expense. In return, Mr. Kash Kash agreed to make all necessary repairs, to dispose of mill waste adequately, and to provide fire protection for the property. He also agreed to mill logs brought in by other Indians. Mr. Kash Kash

¹⁰⁶Ibid.

¹⁰⁷F. G. Mattoon, Superintendent, Report of July 31, 1905, to the Commissioner of Indian Affairs in the Annual Report of the Commissioner of Indian Affairs, as published in the Report of the Secretary of Interior for 1905, p. 199.

¹⁰⁸Theodore Sharp, Superintendent of Ft. Lapwai Indian School, Annual Report Fiscal Year 1911. File: Ft. Lapwai (Nez Perce) Microfilm 1011, Reel 51, Record G 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁰⁹C.E. Dunston, Forest Examiner, Report on Proposed Sale of Timber, Nez Perce Indian Reservation, C. E. Dunston, Forest Examiner, 1912, File Ft. Lapwai (Nez Perce) 77662-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

assisted in moving the mill from Reubens to Winchester and intended to manufacture lumber for his own use at the mill. However, the operating agreement stipulated that he could mill lumber in excess of his own needs and sell the surplus only if he sold exclusively to Indians and paid a stumpage charge of \$3 per thousand board feet on the surplus.¹¹⁰

In 1910, Craig Mountain Lumber Company, owner of thousands of acres of timber lands within the Nez Perce Indian Reservation boundaries, set up a large sawmill near Winchester, the company's town, in direct competition with Fort Keogh. This mill had the capacity to process 250,000 feet of lumber per day. The company built a rail line in order to connect the mill and the town with the Northern Pacific Railroad and thus expand the market for Craig Mountain lumber.¹¹¹ Other private sawmills operated sporadically within the reservation's boundaries, but the size and longevity of the Craig Mountain Lumber Company's operation defined it as the primary timber operator on the reservation.

These actions substantially decreased use of the Agency sawmill. Forest guard James Stuart reported in 1915 that the mill was poorly used and should be moved closer to a population center and closer to the Camas Prairie Railroad branch line; in other words, back to Reubens. At Winchester, the mill was served by Craig Mountain Lumber Company's track, and the lumber company refused to haul lumber milled at the Agency mill or charged excessively for the service.¹¹² During fiscal year 1916, the mill processed a total of \$802 worth of lumber, fence posts, poles and cords of fire wood cut from unallotted land.¹¹³ Superintendent Breid noted in 1916 that the tribal sawmill was not well used, as many Nez Perce preferred to purchase lumber for the going price of \$15 to \$16

¹¹⁰Letter, F. H. Abbott, Acting Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, November 25, 1912. File: Ft. Lapwai (Nez Perce), 112753-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹¹Theodore Sharp, Superintendent of Ft. Lapwai Indian School Theodore Sharp, Annual Report, Fiscal Year 1910. File: Microfilm 1011, Reel 51, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹²Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, December 7, 1915, with accompanying Report by Forest Ranger James Stuart. File: Ft. Lapwai (Nez Perce), 137883-1915-339 (111466), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹³Otis B. Goodall, Supervisor of Indian Schools, Inspection Report of the Fort Lapwai School, Sanitorium, and Agency, Idaho, Section 8: Forestry, October 13, 1916. File: Ft. Lapwai (Nez Perce), 112636-1916-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

per thousand board feet from local mills rather than cut and haul logs to the Agency mill.¹¹⁴

In 1916, Mr. Kash Kash asked the Agency to reimburse him for \$392 worth of repairs that he had made while operating the Agency sawmill. Until the bill was settled, he refused to allow anyone else to operate the mill.¹¹⁵ Because of the dispute, Forest Ranger Stuart recommended that the mill be moved and the Superintendent recommended that it be sold. Stuart appraised the mill at \$1,200¹¹⁶ and Craig Mountain Lumber Company appraised it at \$1,000.¹¹⁷ Ranger Patrick Gray reported in 1920 that several unsuccessful attempts had been made to sell the Agency mill.¹¹⁸ However, sometime between 1920 and 1922, the Agency disposed of the mill. In 1922 Forest Inspector Creel noted that the reservation had no sawmill belonging to the Government, and added parenthetically that he had never seen "a government sawmill yet that paid, except perhaps when located and building for a new agency."¹¹⁹

The early history of the Nez Perce timber lands demonstrated the struggle between the Department of the Interior's sense of trusteeship and the Tribe's intention to manage its own affairs. Disagreement over the use of the reserved timber lands and allotments kept the Agency Superintendents in a constant state of correspondence with the Commissioner of Indian Affairs in various and often unsatisfying attempts to reach accommodation with the Tribe. In part, the Nez Perce came to accept the Office of Indian

¹¹⁴Jacob Breid, Superintendent of Ft. Lapwai Indian School, Annual Report Fiscal Year 1916. File Ft. Lapwai (Nez Perce), Microfilm 1011, Reel 51, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹⁵Letter, Jacob Breid, Superintendent of Nez Perce Indian School, to Commissioner of Indian Affairs, April 5, 1917. File: Ft. Lapwai (Nez Perce), 35699-1917-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹⁶Letter, James Stuart, Forest Ranger, to Jacob Breid, Superintendent of Nez Perce Indian School, April 16, 1918, File: Ft. Lapwai (Nez Perce), 41797-1918-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹⁷Letter, T. H. Tillotson to Jacob Breid, Superintendent of Ft. Lapwai Indian School, May 9, 1918, File: Ft. Lapwai (Nez Perce), 41797-1918-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹⁸Letter, Patrick Gray, Forest Ranger, to O. H. Lipps, Superintendent of Ft. Lapwai Indian School, December 20, 1920. File: Ft. Lapwai (Nez Perce), 400-1920-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹¹⁹H. M. Creel, Forest Inspector, Report, Ft. Lapwai School, September 20, 1922. File: Ft. Lapwai (Nez Perce), 77122-1922-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

Affairs as a trustee for its forestry resource. However, the cooperative agreement of 1908 between the Office of Indian Affairs and the U.S. Forest Service exacerbated the relations between the Tribe and the Indian Office, and unarticulated opposition found a clear voice, slowing the implementation of a commercial timber cutting program. Thus, as a new decade opened in 1910, some of the same issues that had plagued Indian-white relations under a reservation system persisted.

Chapter 3

MANDATE FOR TIMBER SALES, 1911-1929

The Establishment of the Branch of Forestry

The failure of the cooperative agreement of January 1908 meant that an alternative means would have to be found if the nation's reservation forests were to be properly managed. In fact, by the termination of the cooperative agreement in July of 1909, Congressional legislation had been passed creating a Division of Forestry within the Office of Indian Affairs and appropriating \$100,000 for that purpose. The establishment of this division on March 3, 1909 (35 Stat., 781-783) initiated a much needed forest management program within the Office of Indian Affairs and enabled the Department of the Interior to terminate the cooperative agreement with the Department of Agriculture. The legislation specifically authorized the Commissioner of Indian Affairs:

to take measures for the purpose of preserving living and growing timber, and removing dead timber, standing or fallen; to advise the Indians as to the proper care of forests, and to conduct such timber operations and sales of timber as may be deemed advisable.¹

Soon after the passage of this legislation, Interior Secretary Ballinger began to hire his own foresters, and Charles F. Hauke, Chief Clerk of the Indian Office, hired J. P. Kinney as Assistant Forester for the Forestry Division. The Forestry Division initially had a limited management role, and, for a time, its organizational structure, management philosophy, and timber cutting regulations remained undefined. This was due to power struggles within the Division between Kinney, the college-educated attorney and professional forester, and Joe Farr, General Superintendent of Logging in the Division, a long-time professional logger. The Division of Forestry originally was placed under the supervision of the Indian Office's Land Division. By 1912, though, the Indian Office separated the Forestry Division from the Land Office, and the head of the Division now reported directly to the Commissioner of Indian Affairs. Shortly after the separation, Kinney assumed control of the Indian Forest Service, although he continued to be paid as Assistant Forester, and the position of General Superintendent of Logging was placed under him. The Division hierarchy fully reflected Kinney's organizational ideas. Kinney was in charge of the Washington, D. C., office and all field offices. The organization also consisted of three Regional Foresters, who, in turn, were helped by Assistant Foresters on heavily forested reservations. Forest guards and rangers also were hired. By 1919, the

¹Charles J. Kappler, Indian Affairs: Laws and Treaties (Washington, D.C.: Government Printing Office, 1943) Vol III, p. 390.

Forestry Branch employed about 115 persons who were paid through annual Federal appropriations.²

As the framework of the new Branch of Forestry took shape, Congress passed laws and the Branch of Forestry under J.P. Kinney prepared regulations to remedy deficiencies in Indian Office timber cutting policy. The development of a forest management program on the forested reservations was retarded by the early restrictive timber cutting laws, such as the General Allotment Act of 1887 and the Dead and Down Act of 1889, that were designed to prevent exploitation of the Indian's timber resource. However, by the end of the century it was generally recognized that the absence of a general law authorizing the commercial sale of green timber on the Indian's reservations had created an unacceptable situation and tribal members, loggers, and government officials pressed for reform.³

Passage of the Congressional Act of June 25, 1910 (37 Stat. 855-857) authorized the Commissioner of Indian Affairs to regulate timber sales on any allotted and unallotted lands on Indian reservations in states other than Minnesota or Wisconsin, provided the proceeds were used for tribal benefit. This statute reversed a 1907 court decision that recognized the tribal right to cut timber without governmental consent. The law of June 1910 provided for the sale of mature, live timber on unallotted lands under regulations proscribed by the Secretary of the Interior with the proceeds to be used for the benefit of the Tribe. The law also allowed Indians to sell timber on any allotment held in trust with the proceeds paid to the allottee or disposed of for his benefit at the discretion of the Secretary of the Interior.⁴

Kinney also prepared a set of regulations to better manage timber sales in compliance with the new law in 1910. These regulations stipulated that the reservation Superintendent supervise all timber operations and approve sales under \$100 unless an Indian Forest Service employee was present. The Commissioner of Indian Affairs had to approve sales of more than that. The Division of Forestry also deducted ten-percent of the gross sales value of the timber to pay administrative costs and to protect the forest from fire and trespass. Kinney's regulations stressed conservative cutting and close supervision to ensure proper care of the forests.⁵

The Secretary of the Interior did not approve Kinney's initial set of regulations, but did accept those of 1911, which Kinney prepared after a trip to the west to inspect forests

²Newell, et al, A Forest in Trust, pp. 2-16 through 2-22.

³Ibid., pp. 2-13 through 2-14.

⁴Ibid., p. 2-15.

⁵Ibid., pp. 2-17 through 2-22.

on some Indian reservations. The revised regulations, which were prepared after Kinney's power struggle with Farr had been resolved in Kinney's favor, were similar to the 1910 regulations. They required that timber on allotted lands be sold in small, individual sales, rather than in large tribal sales. Any timber cut of less than \$25 in value, required a permit and approval of the Superintendent or Indian Service employee. This allowed Indians to cut small amounts of timber for their own use, while allowing the Superintendent to regulate the amount cut. Kinney established this measure in response to abuses he had witnessed on his inspection trip to the west, including stops at the Nez Perce and Coeur d'Alene Reservations. Kinney hoped that strict supervision of timber sales would prevent the illegal cutting and selling of timber on allotted lands under pretense of clearing lands for agricultural purposes. In addition, Kinney's conservative approach provided continual employment for Indians and maintained an ongoing source of income for educational programs. He believed that large tribal sales would quickly deplete forest reserves and put much of the money into accounts set aside by the Department of the Interior for tribal education and other activities designed to speed assimilation.⁶

Kinney addressed himself to other forest management problems as well. As of 1910, many reservations did not have fire prevention and suppression programs. In response, the Indian Office initiated a fire protection program. Kinney directed the construction of 1,500 miles of telephone lines, nearly 50 lookout cabins, and miles of fences and trails. Many reservations began operating fire patrols from May to November. The program lacked funding and manpower but received assistance in insect control. In 1911, the Forest Service agreed to perform all work necessary in controlling insect infestation according to methods of the Department of Agriculture's Bureau of Entomology. Trespass also was a consistent problem, one which Kinney witnessed on his trip to the west. In some instances, he recommended an end to timber sales until accurate estimates could be compiled and fair market value established for the timber illegally cut. Kinney's 1911 regulations tried to correct that and other violations by requiring the use of contracts on large cuts, permits for smaller cuts, and stricter supervision of sales. However, illegal timber cutting continued on many reservations.⁷

⁶Ibid, pp. 2-22 through 2-29.

⁷Ibid.

Timber Sales on the Nez Perce Reservation

Although the Indian Office now had its own Forestry Division and was legally authorized to allow and regulate the cutting of green timber for commercial use and benefit to the Indian tribes, there was still much local resistance to implementing this policy on the Nez Perce Reservation.⁸ Since 1895, when the Nez Perce timber reserve was established, the Superintendent had urged the Tribe to allow timber harvests and grazing leases within the boundaries of the reserves. The Nez Perce had "steadfastly" refused, believing that "any step to cut the timber, even under proper supervision, is simply a plan to secure control of their land, and they wish nothing done."⁹

In a theme often repeated during the next eight years, Superintendent Sharp of Fort Lapwai worried that, "The tribe sustain[ed] a heavy money loss yearly by refusing to dispose of the surplus timber."¹⁰ In 1911, J.P. Kinney, Field Forester for the Indian Service, directed Superintendent Sharp to begin "professional" management of the Nez Perce timber reserves, relying on the authority granted in the June 25, 1910 Congressional act and on financial exigency.¹¹

The program established was controversial at best. Timber sales from allotments proceeded smoothly. However, serious objections to the sale of timber from unallotted lands without tribal consent persuaded the Commissioner's Office to shelve plans for the sale until they could obtain consent. The dispute centered around jurisdictional questions of ownership and control of tribal resources, and the right to the proceeds generated by the sale of those resources. Reserve timber sales began in 1918, and in 1919 the Tribe consented to the sales, provided that half of the net profit would be distributed among tribal members on a per capita basis. The remaining 50 percent would be deposited to the Tribe's credit at the Treasury and would be used for their benefit by the Secretary of the Interior. Three large sales of timber from tribal reserves occurred between 1918 and 1925, in each case purchased by Craig Mountain Lumber Company of Winchester, Idaho.

⁸Memorandum, J. P. Kinney to Cato Sells, Commissioner of Indian Affairs, November 22, 1917. File Ft. Lapwai (Nez Perce) 68856-1917-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.; Newell, et al., A Forest In Trust, p. 2-15.

⁹Theodore Sharp, Superintendent of Ft. Lapwai School, Annual Report with Accompanying Special Information, Fiscal Year 1910. File: Ft. Lapwai (Nez Perce) Microfilm 1011, Reel 51, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁰Ibid.

¹¹Memorandum, J. P. Kinney, Assistant Forester, October 18, 1913. File: Ft. Lapwai (Nez Perce) 69280-1913-339 (131118), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

Professional forest management between 1910 and 1930 also involved the development of fire and trespass controls and the sale of mature timber.

Timber Reserves in 1910

The Nez Perce tribal timber reserves of 32,020 acres were divided into 26 plots, which ranged in size from one-quarter section to 7 sections. Allotments and homesteads were scattered among the plots. In 1910, Superintendent Sharp estimated that the tribal lands held 101 million board feet of timber and that allotted lands held an additional 10 million board feet of yellow pine, Douglas-fir, and larch. Some of the timber reserves were used by Nez Perce during the year as grazing lands for their cattle and horses. A small amount of timber was taken by individuals, church groups, and the Agency, to be used for construction purposes. One of the Christian congregations enclosed 1,750 acres of timber reserve land on Craig Mountain, to be used as a church summer camp.¹²

Until 1910, the National Forest Service protected the Nez Perce timber reserves against fires and trespassers. However, beginning with Fiscal Year 1910, the embryonic Forestry Division of the Indian Service assigned three foresters directly to the Nez Perce reserves. Two of the forest guards were Nez Perce and, thus, the program provided a small measure of forest stewardship to individuals within the Tribe.¹³ The forest guardian program cost approximately \$3,000 per year, a source of complaint to the Commissioner of Indian Affairs in later years. The Indian Service spent \$1,063 to purchase fire-fighting equipment, build four patrol cabins, and fence pastures for each cabin, and \$1,982.50 in salaries for the two Nez Perce guards during Fiscal Year 1910.¹⁴

The guards' duties typically fell within three categories: fighting fires, patrolling for trespassers, and, in later years, providing agricultural education to tribal members. The summer of 1910 followed a long drought, and extensive fires burned throughout the neighboring Clearwater and Bitterroot National Forest lands. The tribal timber reserves suffered two serious fires during the season: a 400-acre fire (250 acres within tribal timber reserve land) that destroyed an estimated 200,000 feet of timber and required the guards and 25 volunteers to put it out; and a second fire, reportedly started by arson, that burned 100 acres of Nez Perce land, destroyed 15,000 feet of timber, and required the help of 56

¹²Theodore Sharp, Superintendent of Ft. Lapwai Indian School, Annual Report Fiscal Year 1910. Microfilm 1011, Roll 51, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹³Ibid.

¹⁴Letter, C. R. Jefferis Superintendent of Ft. Lapwai Indian School to Commissioner of Indian Affairs, April 27, 1910. File: Ft. Lapwai (Nez Perce) 36378-1910-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

volunteers to extinguish it.¹⁵ In order to function as guards, the foresters were deputized as United States Marshals; otherwise, they did not have the authority to arrest or fine timber reserve trespassers.¹⁶ The Superintendent thoughtfully requested that the Indian Service provide badges for the forest guards.¹⁷

Tribal Reserve Timber Sales: 1911-1912 Negotiations

Before the passage of the June 25, 1910 Congressional act authorizing timber management through the regulation of timber sales on tribal reserves, the Nez Perce were able to maintain a level of control over their resources through the consent clause of the 1868 treaty. Backed by the general reservation timber law of 1910, Second Assistant Commissioner of Indian Affairs C.F. Hauke asked Superintendent Sharp to begin to manage Nez Perce timber lands so that they would provide "constant revenue" for the Tribe. The forests were to "be made to afford an income which may be used for the civilization and uplift of the Tribe as a whole."¹⁸

Superintendent Sharp responded to the Commissioner's Office in June 1911 by stating that a small timber sale of no more than \$1,000 would be sufficient to bring in the funds needed to renovate the relocated Agency sawmill. He did not advocate a larger sale because no timber had ever been sold from the Nez Perce timber reserves. He believed the Tribe would have no objection to a small sale of timber if the proceeds were used strictly for their benefit.¹⁹ On July 8, 1911, Second Assistant Commissioner Hauke directed Sharp to proceed with small timber sales. Sharp was authorized to advertise and

¹⁵Letter, Theodore Sharp Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, September 7, 1910. File: Ft. Lapwai (Nez Perce) 74266-1910-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁶Letter, C.F. Hauke's Chief Clerk of Office of Indian Affairs to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, June 4, 1910. File: Ft. Lapwai (Nez Perce) 44750-1910-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁷Letter, C. R. Jefferis Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, April 27, 1910. File: Ft. Lapwai (Nez Perce) 36378-1910-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D. C.

¹⁸Letter, C.F. Hauke, Second Assistant Commissioner of Indian Affairs, to Theodore Sharp Superintendent of Ft. Lapwai Indian School, February 23, 1911: File Ft. Lapwai (Nez Perce) 20448-1911-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁹Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, June 16, 1911: File Ft. Lapwai (Nez Perce) 54830-1911-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

accept bids on sales with a stumpage value of not more than \$250. He could also make contracts without advertising on sales of less than \$100. The Commissioner hoped that the revenue from small timber sales and grazing leases would begin to pay the salaries of forest guards and other administrative costs associated with forest supervision.²⁰

The Commissioner's Office heard nothing more about the Nez Perce forest reserves from Superintendent Sharp for months. In the meantime, they received a disturbing report from Oscar Lipps, Supervisor of Farming, who stated that the Nez Perce lost \$10,000 annually through improper forest management. He questioned whether the Indian Service had the legal authority to sell timber without the Tribe's consent. This question prompted the Commissioner, through J.P. Kinney, to describe the Government's legal justification for authorizing timber sales without tribal consent. Kinney interpreted the consent stipulation from the 1868 treaty as an effort to halt military waste and prevent the misuse of resources. Only the head chief was permitted to consent to a sale. As no head chief had been chosen for more than 30 years, the Indian Service functioned as administrator and granted consent for the Tribe. This reasoning gave the Commissioner full authority to sell timber from Nez Perce tribal reserves. Grazing leases, however, clearly required the Tribe's consent. Therefore, the Commissioner recommended that Superintendent Sharp develop a grazing permit system, which would circumvent the issue of tribal consent.²¹

Based on a March 26-27, 1912, council, the Nez Perce petitioned the Commissioner to wait for tribal consent before selling timber; but if a sale occurred, they asked that the revenue be paid to tribal members on a per capita basis. Sixteen tribal members signed the petition, including Mr. Edward Kash Kash, who later operated the tribal sawmill, and Forest Guards Jesse Paul and James Stuart. Sharp supported the idea of per capita payments and urged that the sale be advertised.²² George Peo-Peo-tah-lik, writing for the opposition, stated that many at the March council did not wish to have the timber sold.

²⁰Letter, C.F. Hauke, Second Assistant Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, July 8, 1911. File: Ft. Lapwai (Nez Perce), 54830-1911-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

²¹Letter, R. G. Valentine, Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, March 14, 1912. File: Ft. Lapwai (Nez Perce) 54830-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

²²Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, March 30, 1912. File: Ft. Lapwai (Nez Perce) 33236-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

He wondered if James Stuart, a proponent of the sale, had the authority to sell tribal timber without the Tribe's consent.²³

Assistant Forester Kinney further refined the Commissioner's position in an internal memorandum, which stated that Nez Perce who objected to the sale of timber held an "entirely unjustifiable position." Given that the Department of the Interior spent \$3,000 per year on administrative costs for the protection of Nez Perce timber reserves, and much more than that was lost annually through loss of sales, the Nez Perce could not object to sales made in an effort to recoup the management costs. He also expressed concern that per capita payments for land in the past had encouraged economic dependence, and worried that per capita payments of timber sale proceeds would do the same thing.²⁴

The Nez Perce convened another council on June 5, 1912, at which time the general council elected 12 commissioners or committeemen to represent the Tribe in timber sale talks. The general council strongly protested the Secretary of the Interior's intent to sell timber from the tribal reserve without Nez Perce consent; reiterated their acceptance of the treaties of 1868, 1891, and 1894 as law; and restated their belief that Congress was obliged to accept all provisions of pre-1871 treaties as law. The tribal committee requested that no timber be sold without their consent.²⁵

In the meantime, president Van Ostrand of Craig Mountain Lumber Company asked the Commissioner of Indian Affairs about the possibility of purchasing timber from the Nez Perce reserves.²⁶ By May 20, 1912, his company already had prepared a description of the sections of timber it wished to purchase, complete with maps and photographs.²⁷ A.K. Chittenden, the Office's Forester, compared a 1908 Forest Service

²³Letter, George Peo-Peo-tah-lik to Commissioner of Indian Affairs, March 28, 1912. File: Ft. Lapwai (Nez Perce) 31571-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

²⁴Memorandum, J. P. Kinney, April 17, 1912. File: Ft. Lapwai (Nez Perce), 54830-1911-339 (33236), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

²⁵Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, June 8, 1912 with enclosed Resolution of Nez Perce General Council, June 5, 1912. File: Ft. Lapwai (Nez Perce), 59546-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

²⁶Letter, F. H. Abbott, Assistant Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, June 24, 1912. File: Ft. Lapwai (Nez Perce), 59546-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

²⁷Letter, Craig Mountain Lumber Co. to President E. H. Van Ostrand, May 20, 1912, with enclosed Report on Indian Lands by J. S. Colwell. File: Ft. Lapwai (Nez Perce), 61123-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

report that covered the proposed purchase area with Van Ostrand's request and noted that the purchase should yield \$80,000. Chittenden recommended that Forest Examiner C.E. Dunston make a complete evaluation of the area and the lumber company's proposal.²⁸

Twelve tribal committee members met with Forest Examiner Dunston on July 9 and 10, at the request of the Nez Perce. The committee voted in favor of the proposed timber sale, provided that the proceeds would be distributed among the Tribe on a per capita basis. Superintendent Sharp relayed the results of this vote to the Commissioner of Indian Affairs, with a strong statement of support for the request of per capita payments. He urged the Commissioner to disburse funds into each tribal member's bank account. There, the funds would be able to earn 4.5 percent interest; whereas, if left in the United States Treasury, the funds would earn no interest for either the Tribe or individuals.²⁹

Dunston Report

Forest Examiner Dunston's report, completed in August 1912, described the topography and the forest composition in each of the reserves under study. He estimated that extracting the timber from each section would cost an average of \$5.17 per thousand board feet, including the piling and burning of brush for cleanup. Dunston concluded that \$3 per thousand board feet would be a reasonable sale price for the yellow pine. He asked that some timber be reserved from the sale in the vicinity of the Agency sawmill for future use by the Nez Perce. He estimated that, given the expense of clearing the cut-over land for agriculture, no agricultural lease fee should be charged until the fifth year of a lease.³⁰

J.P. Kinney fashioned sale regulations from Dunston's report and Forester Chittenden's recommendations. He lengthened the time period allowed for logging and deleted the requirement that the land be prepared for agriculture. Without these alterations, small mills in the vicinity could not have made competitive bids for the timber.

²⁸Letter, R.G. Valentine, Commissioner of Indian Affairs, to Charles E. Dunston, Forest Examiner, June 14, 1912, with enclosed Memorandum, Forester A. K. Chittenden, June 3, 1912. File: Ft. Lapwai (Nez Perce), 61537-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

²⁹Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, July 27, 1912. File: Ft. Lapwai (Nez Perce), 59546-1912-339 (76947), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

³⁰Dunston Report, 1912.

Neither Chittenden nor Kinney wanted to arrange a private sale for Craig Mountain Lumber Company.³¹

Kinney noted that the Nez Perce general council resolution of June 5, 1912, and the vote taken by the tribal committee during their July 9-10 meeting with Dunston, which opposed the sale without distribution of its proceeds to the Tribe on a per capita basis. In the absence of a written transcript or minutes for either council, the votes could not be considered as representative of the wishes of the Tribe. Kinney softened his earlier position that the Department of the Interior had the legal right to sell timber from the Nez Perce reserves regardless of opposition. He asked that an official council be called so that consent of the Nez Perce to a compromise might be obtained. He proposed that 50 percent of the net proceeds of the sale would be made available to tribal members on a per capita basis, with the remaining 50 percent available to the Secretary of the Interior to be used at his discretion.³²

Opposition to the Compromise

Reverend E.J. Conner, of the Methodist-Episcopal church, and Noah Bredell, president of the Tribal Commissioners, came to Washington, D.C., to discuss the proposed sale with J.P. Kinney on August 20-22, 1912. As representatives of the "Progressive Indians" they explained that, at the councils of June, July, and August, those who opposed the sale left the meetings after registering their disapproval. The Nez Perce who remained elected Conner and Bredell to represent them in Washington, D.C. They asked to be allowed to help set the price for the timber, suggesting \$6 per thousand board feet for easily accessible timber near the mills. They questioned the discretionary use of tribal revenue by the Secretary of the Interior and suggested that one-fourth or one-third of the proceeds would be more than enough money for the Indian Service to use for administrative costs. This meeting concluded with all agreeing that the Nez Perce were ready to allow the sale of timber and the leasing of grazing and agricultural land, provided that everyone could agree on a satisfactory distribution of the proceeds.³³

³¹Letter, A. K. Chittenden, Forester, to Commissioner of Indian Affairs, July 26, 1912. File: Ft. Lapwai (Nez Perce), 77662-1912-339 (76825), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

³²Memorandum, J.P. Kinney, Assistant Forester, August 9, 1912. File: Ft. Lapwai (Nez Perce), 83071-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

³³Statements of Rev. E. J. Connor and Noah Bredell to J. P. Kinney, August 20, 1912. File: Ft. Lapwai (Nez Perce), 54830-1911-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

The Commissioner's Office directed Superintendent Sharp to call a general council of the Nez Perce and attempt to gain their consent for a timber sale, provided they received 50 percent of the net proceeds. He was also asked to notify the four parties who intended to bid that the proposed sale was on hold while waiting for tribal consent.³⁴ A council was convened in the late fall, but due to the absence of a majority of the adult tribal members, no action was taken. The Nez Perce planned to call another council in February, when a binding vote would be taken on the timber sale question.³⁵ Members of the Reubens Commercial Club asked United States Representative Burton French to assist them in persuading the Secretary of the Interior to arrange for the sale of Nez Perce timber. They asked that the Tribe receive 75 percent of the sale proceeds and that the sale be limited to one section of timber at a time so that small mills could make competitive bids.³⁶

The tribal council convened on February 25-26, 1913. Of the 250 members present, 189 voted to sell no timber and allow no leases, 9 voted to sell timber, and 18 voted to have the land allotted to the heads of families. This vote was understood to be the final statement of the Tribe on the issue. However, the following day, 20 individuals signed a petition to the Commissioner asking that the council vote not be interpreted to mean that the timber should not be sold, but that a sale was acceptable provided that the proceeds would be distributed on a per capita basis. They insisted that the council had not been truly representative of the Tribe because many members from the northern portion of the reservation had been unable to attend the meetings.³⁷

Frustrated by the delay and the lack of clear support for the timber sale, the Commissioner once again directed Superintendent Sharp to offer the Nez Perce timber for

³⁴Letter, F.H. Abbott, Acting Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, October 2, 1912, File Ft. Lapwai (Nez Perce), 54830-1911-339, Central Classified Files, Record Group 75/Bureau of Indian Affairs, National Archives, Washington, D.C.

³⁵Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, January 2, 1913. File: Ft. Lapwai (Nez Perce), 54830-1911-339 (2483), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

³⁶Letter, Reubens Commercial Club, to Burton L. French, U.S. Representative, December 10, 1912. File: Ft. Lapwai (Nez Perce), 129476-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

³⁷Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, March 24, 1913 with enclosed petition on timber lands, dated February 27, 1913, and written report of the General Council, held February 25-26, 1913. File: Ft. Lapwai (Nez Perce), 54830-1911-339 (40611), Central Classified Files, Record Group 75. Bureau of Indian Affairs, National Archives, Washington, D.C.

sale, regardless of the opposition of the Tribe.³⁸ On July 14-17, 1914, the Nez Perce general council again rejected timber sales and leasing of agricultural or grazing land.³⁹ On February 18, 1915, the Nez Perce voted to send a delegation to Washington, D.C., to meet with the Secretary of the Interior to discuss the timber sale question.⁴⁰ Assistant Commissioner Merritt advised them not to come, as nothing appeared to have changed. All sides had discussed the issue thoroughly and the Department of the Interior believed that they had the legal authority to sell tribal timber without consent, though consent would be desirable. A sale would take place as soon as the lumber market improved.⁴¹

Timber sale negotiations consistently bogged down over the distribution of proceeds. Though a faction at each council meeting spoke in favor of timber harvests, linking harvests with the disbursement of proceeds resulted in repeated negative votes. If the Office of Indian Affairs had agreed to a distribution of the net profit on a per capita basis, as had happened following the sale of land in 1895, then timber sales probably would have started much sooner. Kinney's compromise disbursement gave 50 percent of the net profit to the Secretary of the Interior to be used at his discretion to benefit the Tribe.⁴² The Nez Perce clearly objected to the choices made by the Indian Service in the use of tribal funds. The Indian Service planned to use the money to make the Nez Perce forest program self-supporting; to support the tuberculosis sanatorium, the Agency, and education;⁴³ and to assist in paying for \$150,000 worth of highway construction across the reservation to Lewiston.⁴⁴

³⁸Letter, C.F. Hauke, Acting Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, April 5, 1913. File: Ft. Lapwai (Nez Perce), 54830-1911-339 (40611), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

³⁹Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to S.J. Maxwell, et al., October 3, 1914, File Ft. Lapwai (Nez Perce), 54830-1911-339, Central Classified Files, Record Group 75/Bureau of Indian Affairs, National Archives, Washington, D.C.

⁴⁰Letter, Stephen Reuben to Commissioner of Indian Affairs, February 18, 1915. File: Ft. Lapwai (Nez Perce), 23801-1915-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁴¹E.B. Merritt, Assistant Commissioner of Indian Affairs, to Stephen Reuben, March 3, 1915. File: Ft. Lapwai (Nez Perce), 54830-1911-339 (23801), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁴²Memorandum, J. P. Kinney, Assistant Forester, August 9, 1912.

⁴³Statements, E. J. Connor and Noah Bredell, August 20, 1912.

⁴⁴Letter, E. B. Merritt, Assistant Commissioner, to S. J. Maxwell, October 3, 1914.

Trespass and Forest Service Review, 1908-1916

Timber trespass persisted as a problem that caused considerable excitement on the Nez Perce Reservation, both among the Indians and their United States Government protectors. Periodically, throughout the period 1908-1916, Nez Perce Agency Superintendents acted upon complaints by Indian allottees who reported that white men were involved in cutting Nez Perce timber. In May 1908, for example, Superintendent Lipps reported investigating a complaint which involved cutting that not only was illegal but also was wasteful. He said that he saw 50 downed trees with but one or two 16-foot cuts taken from them, the rest being left to rot. The accused party was in the firewood business.⁴⁵

In another case that year, the Forest Supervisor of the Clearwater National Forest reported a situation in which the Nez Perce Electric Light Company required that a right-of-way be cleared. A contract was issued for that clearing, but the contractor then took the cut timber to sell as cordwood. Since most of the cutting took place on reserve lands, the local forester felt that the real culprit was the power company, since the contractor merely acted on company orders. The forester concluded that:

The two cases referred to above are flagrant in character and are well known and even if indictments and conviction are not secured the attempted action by the Government would have a most salutary effect in restraining people from indiscriminate trespass upon the property of the Nez Perce wars of the Government.⁴⁶

Two years later, the matter became increasingly more complex. Apparently, white and cross-breed renters of Indian allotments lands had secured permits to cut wood for fencing and fuel. The local agency superintendent granted permission. Some of the wood cut, however, became saw timber to be processed at a sawmill owned by a tribal member. "The waste of timber upon the lands," wrote an agent of the General Land Office, "has been appalling." Moves were made to bring about indictments against the long list of renters. But the District Attorney felt, in view of both written and oral permits granted

⁴⁵Letter, O.H. Lipps to Commissioner of Indian Affairs, April 27, 1908. File: Ft. Lapwai (Nez Perce) 30023-1908-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁴⁶Letter, F.A. Fenn, Forest Supervisor, Clearwater National Forest to The Forester, U.S. Forest Service, September 22, 1908. File: 66811-1908-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

by the Agent, that an indictment much less a conviction would be difficult to obtain.⁴⁷ Such activity raised "a question as to the right of the Government -- before a jury -- to recover the value of the timber so cut and removed and left upon the ground to decay and go to waste."⁴⁸ Explicit instructions, therefore, needed to be given in all areas of the reservation in order to recover any losses that the Tribe could suffer.⁴⁹ Six years later, the same issue continued to stir controversy among the branches of the Department of the Interior and the United States Forest Service. By 1916, the matter became enmeshed in differing interpretations of the 1894 statute that regulated the cutting of timber on Indian lands. In addition, different Federal employees engaged in interagency squabbling over jurisdiction in the matter.⁵⁰

1918-1926 Timber Sales to Craig Mountain Lumber Company

In 1915, Craig Mountain Lumber Company repeated its request to purchase timber from the tribal reserves. The Commissioner denied the request, claiming that the Nez Perce did not need the money and the timber was not deteriorating rapidly. As a result, a sale was not justified.⁵¹ By 1916, the company reportedly had cleared their own property, which adjoined tribal timber reserves, and wanted to purchase timber near their mill before they took up the rail tracks that served the mill.⁵² Thus, the Commissioner of Indian Affairs recommended in February 1918 that the timber be sold because Craig Mountain Lumber Company was willing to pay a good price for it.⁵³

⁴⁷Letter, Walter S. Byer, Special Agent, General Land Office, to Commissioner, General Land Office, Office of Indian Affairs, April 20, 1910. File: Ft. Lapwai (Nez Perce) 57223-1910-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁴⁸Ibid.

⁴⁹Ibid.

⁵⁰J.P. Kinney to Indian Office, May 1, 1916. File: Ft. Lapwai (Nez Perce) 46724-1916-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁵¹Letter, Cato Sells, Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, October 4, 1915. File: Ft. Lapwai (Nez Perce), 105407-1915-339, Central Classified Files, Record Group 75/Bureau of Indian Affairs, National Archives, Washington, D.C.

⁵²Letter, F. X. Salzman to Commissioner of Indian Affairs, October 30, 1916. File: Ft. Lapwai (Nez Perce), 115649-1916-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁵³Letter, Cato Sells, Commissioner of Indian Affairs, to Secretary of the Interior, February 16, 1918. File: Ft. Lapwai (Nez Perce), 5127-1918-339 (109900), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

The Nez Perce continued to oppose plans for a timber sale. At the tribal council held on January 22, 1917, the Nez Perce discussed the proposed sale of timber to Craig Mountain Lumber Company, and decided to take a final vote on the proposal at the next council. On April 18, 1917, the Tribe voted against the sale, 109 to 3. Some confusion resulted from the belief that a sale would grant them citizenship and require them to pay taxes. Based on the considerable opposition expressed by this vote, the Superintendent recommended deferring all timber sales until the Tribe consented.⁵⁴

J.P. Kinney resurrected the Interior Department's push to sell Nez Perce tribal timber in a memorandum to Commissioner Sells on November 22, 1917, in which he described the "duty of the Government, as trustees for the Indians, to cut clear and devote the lands to agricultural use for the benefit of the Nez Perce Indians." Kinney noted that "a very large percentage of the Nez Perce Indians have never farmed their allotments." However, due to the prevalence of the leasing system on the reservation, the clearing of tribal timber reserves would yield a "substantial income" from the sale of timber and a "large revenue" from the agricultural leases that would surely follow. He did not mention the Tribe's opposition to the sale.⁵⁵

Accordingly, Commissioner Sells advertised the sale of an estimated 30 million feet of yellow pine and 4 million feet of other timber on the Nez Perce Reservation. He set the minimum price at \$3.50 per thousand board feet for yellow pine and \$1 per thousand board feet for the other timber. Bids would be opened on April 24, 1918. Craig Mountain Lumber Company, the only bidder, submitted its bid on April 23, at the minimum rates.⁵⁶

A Nez Perce delegation asked the Commissioner of Indian Affairs to grant them a hearing at which they could state their concerns about the advertised sale. Assistant Commissioner Meritt advised them not to come. Silas Whitman, writing for the rejected delegation, then questioned what sort of title the Nez Perce had to the timber lands. He stated that, "if it be a fact that they own the title to the soil as well as the timber, then they cannot understand why they have not the right to have a voice as to the manner of

⁵⁴Letter, Jacob Breid, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, April 25, 1917. File: Ft. Lapwai (Nez Perce), 54830-1911-339 (43496), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁵⁵Memorandum, J. P. Kinney to Cato Sells, Commissioner, November 22, 1917. File: Ft. Lapwai (Nez Perce) 68856-1917-339, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

⁵⁶Proposal, Craig Mountain Lumber Co., Bid on Nez Perce Timber Sale, April 23, 1918, File Ft. Lapwai (Nez Perce), 37195-1918-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

its leases, and the sales made from time to time by the Government."⁵⁷ Assistant Commissioner Meritt responded that the Nez Perce did not own the fee title to the timber lands but that they did have the right of occupancy and that the timber was tribal property. Meritt stated that the United States Congress controlled all tribal lands and was responsible for managing them efficiently. Any proceeds that came from the sale of timber belonged to the Tribe and would be used for their benefit.⁵⁸

The Tribal Council made a last-minute appeal to the Board of Indian Commissioners for help in halting the sale. Chairman of the Board of Indian Commissioners George Vaux wired Interior Secretary Lane on April 12, 1918, to request a stay on the sale until the concerns of the Nez Perce tribal council could be heard.⁵⁹ On April 16, 1918, Silas Whitman again asked Assistant Commissioner Meritt to postpone the sale. Speaking for "all the prominent Indians of the Nez Perce Tribe," Whitman stated that the current, low timber prices would diminish the proceeds of a timber sale. Any sale at that time would "result in great sacrifice of one of the Tribe's most valuable assets."⁶⁰ The Assistant Secretary responded that very careful consideration already had been given to the case. If the Nez Perce would provide a written statement of their concerns, with evidence that it came from a "regularly constituted council," then the Department would consider their objections; otherwise, the sale would proceed as advertised.⁶¹

With a petition of consent in hand, dated April 26, 1918 and signed by 44 members of the Nez Perce Tribe, the Department of the Interior sold the timber.⁶² Not until June

⁵⁷Letter, Silas D. Whitman to Commissioner of Indian Affairs, March 6, 1918. File: Ft. Lapwai (Nez Perce), 54830-1911-339 (23313), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁵⁸Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Silas D. Whitman, March 30, 1918. File: Ft. Lapwai (Nez Perce), 54830-1911-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁵⁹Telegram, George Vaux, Jr., Chairman of Board of Indian Commissioners, to Franklin K. Lane, Secretary of the Interior, April 12, 1918. File: Ft. Lapwai (Nez Perce), 109900-1917-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁶⁰Letter, Silas Whitman to E.B. Merritt, Assistant Commissioner of Indian Affairs, April 16, 1918. File: Ft. Lapwai (Nez Perce), 33969-1918-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁶¹Letter, Assistant Secretary of the Interior to George Vaux, Jr., Chairman of the Board of Indian Commissioners, April 15, 1918. File: Ft. Lapwai (Nez Perce), 109900-1917-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁶²Memorandum, J. P. Kinney, April 20, 1921. File Ft. Lapwai (Nez Perce), 32586-1921-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

of the following year did the tribal council consent to the sale of timber from the tribal reserve lands in return for 50 percent of the net profit.⁶³

Unit 1 Sale

At the request of Superintendent Breid, Craig Mountain Lumber Company revised its bid to \$1.50 per thousand board feet for all trees other than yellow pine to take into account an increase in the price of larch and fir. The Office of Indian Affairs formally accepted their bid, the only one received, in May 1918.⁶⁴ Portions of seven sections were included in the sale, which covered an estimated 3,680 acres.⁶⁵ According to the contract, Craig Mountain Lumber Company was to begin logging within 60 days; however, a severe labor shortage caused by harvest time and the beginning of World War I prevented them from starting until October.⁶⁶

The lumber company asked that the contract be modified so that they would not be required to pile and burn debris, an expensive and inefficient procedure to use on land that later would be cleared for agriculture. Superintendent Breid agreed that the cleanup could be altered so that piling and burning would be done only on land to be reforested, and not on land slated for agriculture. The Supervisor of Forests-at-Large visited Fort Lapwai in March 1919 to inspect the timber sale and became alarmed at this modification to the contract. He agreed that the waste disposal methods stipulated in the contract fit reforestation plans better than agricultural land use, but he did not agree with the Superintendent's assumption of authority to alter the contract.⁶⁷

⁶³Proceedings, Nez Perce General Council, Lapwai, Idaho, June 3-5, 1919. File: Ft. Lapwai (Nez Perce), 51287-1919-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁶⁴Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Secretary of the Interior, May 11, 1918. File: Ft. Lapwai (Nez Perce), 109900-1917-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁶⁵The Nez Perce Timber Sale advertisement states that the sale was to cover Section 29, T34N, R2W; Section 36, T34N, R3W; Sections 16, 22, and the NW/4, SW/4, and SE/4 of Section 6, T33N, R2W; Section 1 and the N/2 of NW/4 and NW/4 of NE/4 of Section 12, T33N, R3W. Proposal, Craig Mountain Lumber Co., April 23, 1918.

⁶⁶Letter, E. H. Van Ostrand, President of Craig Mountain Lumber Co., to Jacob Breid, Superintendent of Ft. Lapwai Indian School, August 5, 1918. File: Ft. Lapwai (Nez Perce), 109900-1917-339 (67462), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁶⁷Letter, James Howarth, Supervisor of Forests at Large, to Commissioner of Indian Affairs, March 28, 1919. File: Ft. Lapwai (Nez Perce), 28785-1919-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

Craig Mountain Lumber Company asked for a price break on yellow pine due to an excessive amount of pitch in the wood, which prevented its use for higher grades of lumber. Supervisor Howarth strenuously objected to lowering the price, because yellow pine always had pitch in it and the company had surely taken this into account when they submitted their bid for the timber.⁶⁸

In November 1919, the lumber company asked that they be excused from paying for 300,000 feet of fir that had been left standing in a canyon in Section 29, Township 34 North, Range 2 West. They claimed that Mr. Salzman, the local lumberman in charge of the logging, had released them from cutting the fir. Previously, in March 1919, Supervisor Howarth gave them specific instructions regarding the logging methods they should use to cause a minimum of destruction on the immature trees which would be left. Contrary to their instructions, the company appeared to have left large fir standing in the canyon and to have cut small trees to be used for rail ties. Assistant Commissioner Meritt did allow some consideration for misinterpretation of instructions, but he required that they pay for 272,000 feet of pine and fir remaining in the canyon.⁶⁹

Craig Mountain Lumber Company requested permission to purchase timber from four allotments in September 1918. They estimated the total timber to be 1,310,000 board feet of yellow pine and offered \$4,600 for the wood. Chief Clerk Hauke at the Office of Indian Affairs granted the requests, contingent upon the company's agreement to purchase the wood at the same rate as agreed upon for timber from unallotted land and to pay for the timber according to actual scale measurements.⁷⁰ The Assistant Commissioner approved two more allotment sales to Craig Mountain Lumber Company in September 1919.⁷¹

Forest Ranger Patrick Gray reported in December 1920 that approximately half of the sale area had been logged. He had scaled 36,732,490 board feet and he estimated that the sale area held another 24 million board feet of standing timber. The company built

⁶⁸Ibid.

⁶⁹Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Oscar H. Lipps, Superintendent of Ft. Lapwai School, March 3, 1920. File: Ft. Lapwai (Nez Perce), 109900-1917-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁷⁰Letters, Four from C.F. Hauke, Chief Clerk of Office of Indian Affairs, to Jacob Breid, Superintendent of Ft. Lapwai School, October 1, 1918. File: Ft. Lapwai (Nez Perce), 79004-1918-339 (54127), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁷¹Telegram, E.B. Merritt, Assistant Commissioner of Indian Affairs to Jacob Breid, Superintendent of Ft. Lapwai Indian School, September 3, 1919. File: Ft. Lapwai (Nez Perce), 109900-1917-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

24 miles of track for the trains serving their mill. As part of the cleanup, 800 cords of limb and top wood were sold to woodcutters for 25 cents to 75 cents a cord.⁷²

The Unit 1 contract expired on June 28, 1923. Ranger Tom White made an inspection of the sale for the Commissioner of Indian Affairs in February 1924. He noted that the terms of the contract had been fulfilled except for brush disposal. Craig Mountain Lumber Company signed an agricultural lease with Superintendent Lipps on May 1, 1923, that excused them from burning and piling brush in favor of fencing, broadcast burning, and seeding 1,880 acres. White asked that the lease not be interpreted as a release of the company's waste disposal obligations, but that it be considered an alternate means of cleanup. He recommended that 600 acres of white fir with potential for reforestation be set aside from the broadcast burn and be subject to the contract's methods of brush disposal.⁷³ Another inspection by Forest Valuation Engineer Lee Muck in September 1924 revealed that the company had placed a three-wire fence around the area and had burned it in preparation for seeding.⁷⁴

Units 2 and 3 Sales

In 1923, Superintendent Lipps began to arrange for the sale of additional timber. Forest Ranger Patrick Gray evaluated the tribal reserves near Reubens and concluded that 6,420 acres of timber on Craig Mountain needed to be harvested. He recommended that 1.5 million board feet of fir in a deep canyon be reserved from the sale for the Nez Perce to use for cord wood and posts. He estimated that the proposed sale area would contain 65 million board feet of merchantable timber.⁷⁵ This acreage was divided into two units, based on the type and quality of timber available. The sales closed on August 2, 1923, and Craig Mountain Lumber Company purchased both units.

⁷²Letter, Patrick Gray, Forest Ranger, to O.H. Lipps, Supervisor of Ft. Lapwai Indian School, December 20, 1920. File: Ft. Lapwai (Nez Perce), 400-1920-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁷³Letter, Tom White, Ranger, to Commissioner of Indian Affairs, March 1, 1924. File: Ft. Lapwai (Nez Perce), 10420-1923-339 (18392), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁷⁴Letter, Lee Muck, Forest Valuation Engineer, to Commissioner of Indian Affairs, September 14, 1924. File: Ft. Lapwai (Nez Perce), 10420-1923-339 (70137), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁷⁵Letter, Patrick Gray, Forest Ranger, to O.H. Lipps, Superintendent of Ft. Lapwai Indian School, January 10, 1923. File: Ft. Lapwai (Nez Perce), 10420-1023-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

Unit 2 consisted of portions of Section 21 and all of Sections 22, 27, and 35 of Township 35 North, Range 2 West. The sale area covered approximately 2,040 acres and contained an estimated 30 million board feet of merchantable timber. For this, the lumber company paid \$3.80 per thousand board feet for yellow pine and \$1.50 per thousand board feet for other species. Any logging done after November 1927 would cost the company \$4.26 for yellow pine and \$1.68 for other trees. Ranger White reported in February 1924 that the company had clear-cut most of Section 35 and had two "jippo" loggers cutting and skidding for them in Section 27.

Brush disposal continued to be a problem, as it had with the Unit 1 sale. The Commissioner's Office agreed to lease Section 35 to the company for agricultural improvement and thus release them from the pile and burn portion of the contract. White asked that the company be compelled to broadcast burn the area so that the Government would not be responsible for any fires that might result from the slash.⁷⁶ However, before the broadcast burning began, a forest fire destroyed 160 acres of slash and young trees in Section 35. This removed the fire danger for the town of Reubens and guaranteed that the land would be turned to agriculture.⁷⁷ The brush disposal in Section 27 had not fared any better.

Unit 3, located near Craig Junction, comprised 4,040 acres in portions of Sections 4, 8, 9, 17, and 18 of T34N, R1W and sections 13, 14, 23, and 24 of Township 34 North, Range 2 West. Craig Mountain Lumber Company paid \$4.30 per thousand board feet for yellow pine and \$1.50 per thousand board feet for other timber. The cutting began in March 1925 and was finished by May 1926. The company cut a total of 33,803,120 board feet from the unit. At completion of the cutting, Craig Mountain Lumber Company had piled brush in accordance with the contract and had arranged for subcontractors to burn the waste with the Ranger's instructions. White noted that brush disposal cost the company an average of 34 cents per thousand board feet.⁷⁸ Ranger Gray objected to the company's request that their brush contractors be allowed to collect and sell the top and limb wood as partial payment for their work, rather than merely piling and burning the

⁷⁶Letter, Tom White, Forest Ranger, to Commissioner of Indian Affairs, March 1, 1924. File: Report to Indian Commissioner, 1924, Box 108, Correspondence and Miscellaneous, Forestry Subject Files, 1900-1952, Northern Idaho Agency, Record Group 75, Bureau of Indian Affairs, National Archives, Seattle Branch.

⁷⁷Letter, Lee Muck, Forest Valuation Engineer, to Commissioner of Indian Affairs, September 14, 1924. File: Ft. Lapwai (Nez Perce), 10420-1923-339 (70137), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁷⁸Letter, Patrick Gray, Senior Forest Ranger At Large, to Commissioner of Indian Affairs, May 9, 1926. File: Ft. Lapwai (Nez Perce), 10420-1923-339 (24270), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

wood. He stated that this wood belonged to the Nez Perce and that any wood taken from the sale area required a permit and the payment of appropriate fees.⁷⁹

As part of the contract, Fort Lapwai Agency furnished scalers to measure the logs as they were cut and to charge the company accordingly. Much of the scaling was done by forest guards. The salaries of these men were paid as part of the administrative cost of the sale. For a time in 1925, illness left the Agency's forester unable to work, and two Craig Mountain Lumber Company employees took over the scaling duties. Because the company was using the "hot logging" practice of loading logs as soon as they were skidded to the track, the scaler had no opportunity to measure logs that were piled and awaiting shipment. As the company expanded their mill work to a double shift, there were two loaders in operation several miles apart. A scaler had to stay with each loader or "jammer," and thus two scalers were required. Ranger Gray stated that, though the lumber company's scalers had carefully and accurately scaled the logs, they should be replaced with employees of the Agency because the arrangement was possibly "open to criticism."⁸⁰

Finances of the Sale

Ranger Gray noted that the Craig Mountain Lumber Company sales had been very satisfactory. The Indian Service received the highest stumpage price ever paid in that vicinity for the sale of timber from unit 3. The lumber company cut a total of 62,009,564 board feet from Unit 1, with an estimated value of \$191,791.28. Unit 2 produced 17,740,720 board feet with a value of \$65,296.08. Unit 3 produced 33,803,120 board feet, valued at \$144,627.72.⁸¹ As eight percent of the revenue was withheld for "Expense Account, Timber," and the administrative expenses of the sales averaged two percent of the profit, the Indian Service was pleased with the operation.⁸²

The Office of Indian Affairs and the Nez Perce Tribe had agreed to the deduction of expenses associated with the timber sale, and a 50/50 split of the remainder between the Tribe and the Department of the Interior. This deduction was further defined in 1919

⁷⁹Letter, Patrick Gray, Senior Forest Ranger, to Commissioner of Indian Affairs, June 12, 1925. File: Ft. Lapwai (Nez Perce), 45502-1925-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁸⁰Letter, Patrick Gray, Forest Ranger, to Commissioner of Indian Affairs, March 30, 1925. File: Ft. Lapwai (Nez Perce), 25502-1925-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁸¹J.P. Kinney, Indian Forest and Range, p. 169.

⁸²Letter, Patrick Gray, Senior Ranger At Large, to Commissioner of Indian Affairs, May 9, 1926. File: Ft. Lapwai (Nez Perce), 27049-1926-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

as an eight percent withholding from the proceeds of all timber or timbered land sales from allotted or reserve lands. Money in the timber expense account would be available to pay salaries and travel connected with timber administration on the Nez Perce Reservation.⁸³ Beginning with Fiscal Year 1928, the eight percent deduction was to be deposited in the Treasury as "Sundry Receipts" and allowable expenses would be reimbursed from the Treasury. These systems differed in that money placed in "Expense Account, Timber" was considered tribal money. It could be held for the Tribe at the Treasury or at an approved bank. This changed in July 1927, so that the deducted money was actually credited to the United States Treasury.⁸⁴

Per Capita Disbursements

By 1921, the Tribe had \$90,000 deposited to their credit from the Craig Mountain timber sale; \$45,000 was available for per capita distribution.⁸⁵ Superintendent Lipps noted in 1927 that three per capita payments had been made from the proceeds of the timber sales in the past five years. As no additional sales were planned in the near future, no additional per capita payments could be expected for many years.⁸⁶

Allotment Timber Sales

Timber sales from allotted land did not engender the opposition that proposed sales from tribal timber reserves did. Allotments were intended to provide agricultural self-sufficiency for the Nez Perce; thus, few of the allotments were forested. Following the passage of the June 25, 1910, Congressional act, the Superintendent was encouraged to find ways to insure that the timber on allotted lands would "contribute to the advancement

⁸³Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Jacob Breid, Superintendent of Ft. Lapwai Indian School, June 3, 1919. File: Ft. Lapwai (Nez Perce), 48221-1919-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁸⁴Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Oscar H. Lipps, Superintendent of Ft. Lapwai Indian School, April 8, 1927. File: Ft. Lapwai (Nez Perce), 3391-1926-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁸⁵Memorandum, J. P. Kinney, April 30, 1921. File: Ft. Lapwai (Nez Perce) 32586-1921-339, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

⁸⁶Oscar H. Lipps, Superintendent of Ft. Lapwai Indian School, Annual Report Fiscal Year 1927. File: Microfilm 1011, Roll 51, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

of allottees."⁸⁷ The Superintendent assisted individuals in arranging agricultural leases and in making timber sales.

In order to regulate the sale of timber from allotments, the Office of Indian Affairs compiled a set of guidelines for reservation superintendents, which became effective on June 29, 1911. Sales with a stumpage value of less than \$25 could be made with a permit, and no contract was required. Sales over \$25 required that a regular contract form be used. Sales over \$250 required the approval of the Office of Indian Affairs. Stumpage values over \$100 required advertising with posters and circulars; sales over \$1,000 required advertising in two statewide newspapers. Any expenses incurred by the sale were to be paid from the proceeds of the sale, prior to turning the money over to the allottee.⁸⁸ In 1912, the Office of Indian Affairs further regulated the clearing of allotted land by recommending that only small portions of a parcel should be cleared at one time in order to insure that the land would be cultivated after clearing.⁸⁹

Superintendent Sharp reported in October 1911 that four or five Nez Perce allottees were waiting for permission to sell timber from their allotments.⁹⁰ Of two contracts arranged in 1912, one sale area of 60 acres was expected to yield \$468 worth of timber. Mr. DeAtley, a local mill owner, purchased this wood.⁹¹ Another contract in 1912 also involved 60 acres, and the purchaser estimated that he would cut 350 cords of wood from this parcel at a price of \$1 per cord.⁹² The Agency's annual report for 1913 noted that

⁸⁷Letter, C.F. Hauke, Second Assistant Commissioner, to Theodore Sharp, Superintendent, February 23, 1911. File: Ft. Lapwai (Nez Perce) 20448-1911-339, Central Classified Files, Record Group 75, National Archives, Washington, D. C.

⁸⁸Letter, C.F. Hauke, Second Assistant Commissioner of Indian Affairs, to Theodore Sharp, Superintendent of Ft. Lapwai Indian School, October 28, 1911. File: Ft. Lapwai (Nez Perce), 90171-1911-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁸⁹Letter, F.H. Abbott, Assistant Commissioner of Indian Affairs, to Superintendent of Ft. Lapwai Indian School, April 1, 1912. File: Ft. Lapwai (Nez Perce), 26155-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹⁰Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, October 16, 1911. File: Ft. Lapwai (Nez Perce), 90171-1911-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹¹Allotment Timber Statement, Sale from Mary Reubens Jones to F. H. DeAtley, on June 30, 1912. File: Ft. Lapwai (Nez Perce), 20522-1912-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹²Letter, F.H. Abbott, Assistant Commissioner, to Theodore Sharp, Superintendent, April 1, 1912. File: Ft. Lapwai (Nez Perce) 26155-1912-339, Central Classified Files, Record Group 75, Bureau of Indian

several Nez Perce were clearing their allotments and cleaning up the cuts with stump pullers. One man and his son used a gasoline-powered wood sawyer to cut logs into firewood, which could then be sold in nearby towns for \$6 per cord.⁹³ A 1915 contract between Clydena Fogarty and Thomas Bailey allowed Bailey to cut and pile approximately 125 cords of wood from Fogarty's allotment, provided that Fogarty received one-half of the wood as payment.⁹⁴

The Indian Service authorized a series of allotment timber sales through the 1920s. Timber sold for \$1.50 to \$3 per thousand board feet, and cutters were required to leave stumps no more than 24 inches high, and use top wood to a diameter of 8 inches. Cord wood typically sold for \$1 per cord, and cutters were required to leave stumps no more than 12 inches high and use all wood to a diameter of 4 inches. These sales proceeded with little difficulty. In 1919, Superintendent Jacob Breid approved three successive timber sales of \$250 to Edward Choate and Claude Huffman from Annie Samuel's allotment. Breid did not advertise the sales, as regulations required. The Commissioner's Office reprimanded him for "direct violation of Departmental regulations"⁹⁵ and for intentionally using "irregular methods" to sell timber.⁹⁶ Occasionally, allotment timber was advertised for sale and bids were accepted. To the consternation of the Office of Indian Affairs, the sales failed because the allottees withdrew the timber. To ensure against this practice, the Assistant Commissioner directed Superintendent Lipps to obtain a signed power of attorney, in quadruplicate, so that the sales might proceed, provided the bids were satisfactory.⁹⁷

Affairs, National Archives, Washington, D. C.

⁹³Theodore Sharp, Superintendent of Ft. Lapwai Indian School, Annual Report Fiscal Year 1913, Microfilm 1011, Roll 51, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹⁴Letter, Theodore Sharp, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, March 3, 1915, with accompanying Timber Contract between Clydena Fogarty, allottee, and Thomas M. Bailey, dated February 6, 1915. File: Ft. Lapwai (Nez Perce), 27223-1915-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹⁵Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Jacob Breid, Superintendent of Ft. Lapwai Indian School, June 9, 1919. File: Ft. Lapwai (Nez Perce), 31659-1919-339 (47316), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹⁶Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Jacob Breid, Superintendent of Ft. Lapwai Indian School, June 10, 1919. File: Ft. Lapwai (Nez Perce), 27780-1919-339 (47122), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹⁷Letter, E.B. Merritt, Assistant Commissioner of Indian Affairs, to Oscar H. Lipps, Superintendent of Ft. Lapwai Indian School, April 27, 1920. File: Ft. Lapwai (Nez Perce), 36734-1920-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

In 1925, the Office of Indian Affairs approved an allotment timber sale from Mr. Homer Conditt to the Pederson-Strickfaden Lumber Company. The contractors provided a \$2,000 bond on their work, backed by Aetna Casualty and Surety Company of Wallace, Idaho. Pederson and Strickfaden deposited \$610, or one-half of the estimated value of the cut timber, before removing any logs. Scaling revealed that they owed an additional \$878 for the timber. The contractors asked that the due date be extended from May to August 1, 1926. Over the summer, a fire destroyed their sawmill, the newly-cut logs, and other assets. The contractors were unable to pay the remainder of the purchase price. Aetna refused to pay the outstanding balance on the timber sale, claiming that the contract had already been violated in many ways, so they were no longer obligated.⁹⁸ Prompted by the Federal courts, Mr. and Mrs. Pederson signed an unsecured note in 1928, declaring their intention to repay the debt. In 1931, they gave Mr. Conditt \$467 worth of lumber as partial repayment of the debt and accrued interest. Following a second fire that once again destroyed their mill and assets, the Pedersons offered to settle with Mr. Conditt's heirs for \$150 worth of lumber.⁹⁹ In 1939 the United States Department of Justice accepted this compromise and closed the case.¹⁰⁰

The Commissioner's Office rejected a contract for the sale of allotment timber from Moses Kywayputs to Claude Huffman in 1928 because the estimated value of the yellow pine timber alone was \$937, and any other species would be likely to place the value of the sale over \$1,000. Sales of this size required broader advertising in order to ensure that the allottee received the most competitive bid. Thus, the Superintendent was required to re-advertise the sale as though it would be over \$1,000.¹⁰¹

While legitimate sales often caused problems, trespass on reservation lands added to the complexity of forest administration. The most serious timber trespass incident occurred in 1927 on Charles Spaulding's allotment. Joseph Fruchtl made an informal

⁹⁸Letter, O.H. Lipps, District Superintendent, to Commissioner of Indian Affairs, March 3, 1927. File: Ft. Lapwai (Nez Perce), 39030-1925-339 (11853), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

⁹⁹Letter, A.G. Wilson, Superintendent of Ft. Lapwai Indian School, to Commissioner of Indian Affairs, June 22, 1939. File: Ft. Lapwai (Nez Perce), 39030-1925-339 (42161), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁰⁰Letter, Norman H. Littell, Assistant Attorney General, to Oscar L. Chapman, Assistant Secretary of the Interior, August 4, 1939. File: Ft. Lapwai (Nez Perce), 39030-1925-339 (51371), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁰¹Letter, C.F. Hauke, Acting Assistant Commissioner of Indian Affairs, to Oscar C. Upchurch, Superintendent of Ft. Lapwai Indian School, November 8, 1928. File: Ft. Lapwai (Nez Perce), 52477-1928-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

agreement with Spaulding to cut timber from Spaulding's allotment. The Superintendent took legal action against Fruchtl for timber trespass when it was discovered that the parties had no contract for the cut and Spaulding did not have a fee patent for his allotment. When asked to give statements, Spaulding and Fruchtl disputed the purchase price for the timber. The United States Attorney General's Office investigated the case, and the Superintendent required a deposit from the company that had milled Fruchtl's timber sufficient to cover the price of \$2 per thousand board feet on the wood.¹⁰² In the absence of scaling, all parties agreed to accept the mill's measurements as the basis for a settlement of \$2 per thousand board feet. Spaulding then received the money on deposit with the Superintendent.¹⁰³

Forest Guards/Scalers

Forest guards, under the supervision of a Forest Ranger, began their work on the Nez Perce Indian Reservation as protectors of the tribal timber reserves. Their original duties involved fighting fires and patrolling for trespassers. With the advent of timber sales to Craig Mountain Lumber Company, the guards and ranger reoriented their activities to timber sale administration. Three positions were consolidated into one scaler's position, with additional temporary help hired when needed. Superintendent Lipps noted in 1925 that the guard and ranger positions had been eliminated "some years ago" because they were not "urgent" and tribal funds, which paid the salaries of these individuals, needed to be conserved.¹⁰⁴

In 1929, the Commissioner of Indian Affairs asked each reservation's superintendent to submit a detailed description of their available fire-fighting equipment, personnel, and plans. Superintendent Upchurch responded from Lapwai on March 6, 1929, that:

The forested areas of the Nezperce [sic] Reservation are in small scattered units and we have very little merchantable timber remaining. All of these small forestry reserves are surrounded by farming communities and fires are promptly reported to this office and to our field man. All are accessible by good roads, telephone lines, etc. No look-outs or rangers are regularly

¹⁰²Letter, O.H. Lipps, District Superintendent in Charge, to W.H. Langroise, Assistant U.S. Attorney. File: Ft. Lapwai (Nez Perce), 39422-1927-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁰³Letter, Joseph M. Dixon, First Assistant Secretary of the Interior, to Attorney General, July 22, 1929. File: Ft. Lapwai (Nez Perce), 39422-1927-339 (35491), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

¹⁰⁴Oscar H. Lipps, Superintendent of Ft. Lapwai Indian Agency, Annual Report, Fiscal Year 1925. File: Ft. Lapwai (Nez Perce), 10462-1926-339, Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

employed, but our field man is constantly patrolling. An elaborate fire-fighting organization is not deemed necessary or justifiable in view of the small value of timber remaining. When fires occur, help and supplies are easily obtainable, and such fires as we have had in the past dozen years have been controlled with a minimum of expense. Much of the help we have had in combating fires has been voluntary on the part of neighboring farmers for their own protection.¹⁰⁵

Between 1910 and the beginning of the Great Depression in 1929, the administration of Indian forest lands experienced difficulties because of continued tensions between the Indians and the United States Forest Service. While the Indians tolerated the Office of Indian Affairs, the Forest Service continued to present some jurisdictional problems. Constantly, the Office of Indian Affairs felt constrained to conserve the monies derived from timber sales even though this meant that some reservation needs could not be funded. Moreover, private timber companies that sought to use reservation lands argued for price breaks on occasionally dubious grounds. Yet, the over-riding sentiment was a sense of stewardship on the part of the Department of the Interior. That stewardship would be tested under extreme economic conditions after 1929.

¹⁰⁵Letter, O.C. Upchurch, Superintendent of Ft. Lapwai Indian Agency, to Commissioner of Indian Affairs, March 6, 1929. File: Ft. Lapwai (Nez Perce), 5451-1929-339 (12544), Central Classified Files, Record Group 75, Bureau of Indian Affairs, National Archives, Washington, D.C.

Chapter 4

DEPRESSION-ERA FOREST MANAGEMENT

Between the years 1925 and 1945, the Forestry Branch of the Indian Service experienced significant and far-reaching changes in its organization and orientation.¹ These years witnessed the administration of J.P. Kinney, numerous evaluations of Indian Forestry during the late 1920s, expansion of conservation programs in the 1930s, the end of allotments with the Indian Reorganization Act in 1934, and an increase in timber sales during World War II.

Evaluation of Indian Forestry 1928-1933

Forest Management Under J.P. Kinney

One of the most notable features of Indian forest management during the 1920s was the leadership of J.P. Kinney, who created and administered Indian forestry programs as Chief Supervisor of Forests from 1914 to 1933. An example of Kinney's management style lies in the creation of Indian forest reserves during this time period. The reserves provided a means by which the Indian Office could counteract the process of land allotment, which Kinney saw as an unfair land policy and an unreasonable management tool. Kinney argued that the fractionalization of Indian land that occurred through allotment placed an inordinate burden on the coordinated management of Indian forest land; this, in turn, compromised and complicated the administration of Indian timber sales.

To make the allotted timber more manageable, Kinney's administration grouped individual allotments into timber units and, in essence, prohibited the sale of timber from any land not a part of a unit. The benefit of this management practice, administrators at the time argued, was that the collectivization of timber lands increased the value of the smaller, individual allotments by creating a larger, more voluminous timber area.² In 1933, Kinney was moved from the Forestry Division to become the project coordinator for the Civilian Conservation Corps-Indian Division (CCC-ID). During his tenure with the Indian Office, Kinney is received credit for professionalizing Indian forestry.³

¹Newell, et. al., A Forest in Trust, p. 3-1.

²Ibid., pp. 3-1 through 3-3.

³Ibid., p. 3-36.

Upchurch's 1928 Review of Nez Perce Reservation Administration

In the fall of 1928, Nez Perce Agency Superintendent, O.C. Upchurch, sent to Commissioner Charles Rhoads a report entitled "Indian Administration: Review of the Report of the Committee from the Institute for Government Research." In this 20-page document, Upchurch presented to the Commissioner the findings of committee meetings held at the Fort Lapwai Agency pertaining to the general condition of the Nez Perce people and their reservation. Upchurch asserted in the introductory section of his report that this review "represent[ed] the consensus of the opinion of 40 men and women, who are in daily contact with the lives and problems of the Nez Perce Indians...."⁴

Upchurch's report and the series of Nez Perce Agency committee meetings that proceeded the report ultimately were a product of a 1928 Institute for Government Research study, the conclusions of which were recorded by Lewis Meriam and others in The Problem of Indian Administration. In 1926 and 1927, the Meriam Commission, which was a panel of experts from various fields, traveled to several Indian reservations to study the health, economic, educational, and administrative condition of Indian peoples. According to historian Donald Parman, the study "revealed extreme problems on most reservations and numerous shortcomings in the Federal Government's conduct of Indian affairs."⁵ The purported shortcomings found by the Meriam Commission were summarized by Upchurch in his review:⁶

1. The physical equipment of the Indian Service was inferior "to accommodate properly an important activity of a great Government;"
2. The personnel of the Indian Service was "inadequate in number and inferior to [bring about] the speedy accomplishment of the objectives" of the United States Government; and
3. The Indian Bureau lacked cooperation and coordination within itself and with other Government departments.

Upchurch went on to describe the Commission's recommendations for overcoming the shortcomings. The present Indian Affairs structure, Upchurch summarized, should be

⁴O. C. Upchurch, Superintendent, "Indian Administration. Review of the Report of the Committee from the Institute for Government Research," November 17, 1928. File: Indian Administration Report, 1928 (Meriam Report), Box 35, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

⁵Donald L. Parman, "The Indian and the Civilian Conservation Corps," Pacific Historical Review 15 (February 1971), pp. 39-40.

⁶Upchurch, "Indian Administration," p. 3.

supplemented with a "highly paid, ... high class," technical staff, including personnel "to make the actual contact with the Indians." "[S]ufficient money," Upchurch went on to summarize, "should be appropriated to put the Indian Service on a basis creditable to the Government."⁷

Presumably as part of its economic and administrative assessment of Indian policy, the Meriam Commission specifically addressed the Office of Indian Affairs' Forestry Branch. According to one group of researchers, the Meriam Commission concluded that the Branch functioned generally well, but, nonetheless, had several problems.⁸ For example, the Commission found that the Indian Service Foresters were underpaid and that an inadequate number of Indians were employed in reservation forestry work.⁹

To counteract the former concern, the Commission recommended that the same qualifications applied to United States Forest Service employees be applied to Indian Service forestry employees. The Commission also recommended that the salaries of Indian Service Forestry Branch employees be upgraded to "secure and retain the service of competent men."¹⁰

The Commission was greatly concerned with its finding that too few Indians were engaged in reservation forestry work. It wrote that Indian unemployment was particularly distressing since the Indian Service's foremost objective, in the Commission's words, was "the social and economic advancement of the Indians."¹¹ The Commission evidently found several reasons for this problem. One was the increased mechanization of the timber industry; tribes and, therefore, Indian workers did not keep up with the technological advances of the trade.

Another, perhaps more troubling, reason for Indian unemployment cited by the Commission was the Forestry Branch's management practice of collecting individual Indian allotments into timber units.¹² This criticism ran directly contrary to Kinney's timber unit policy, which was designed to ease the management of Indian timber lands and therefore benefit the tribes. The Commission argued that this practice allowed individual Indians to gain profit from the sale of timber from their land, which they reasoned discouraged

⁷Ibid.

⁸Newell et al., A Forest in Trust, p. 3-7.

⁹Ibid, pp. 3-6 through 3-7.

¹⁰Ibid, p. 3-6.

¹¹Ibid, p. 3-7.

¹²Ibid.

initiative on the part of the Indians. To counteract this trend, the Commission recommended decreasing the number of allotments made and the consolidation of tribal natural resources into tribally controlled units.¹³

Evidently, the Meriam Commission's report immediately affected Indian administration. For example, Commissioner of Indian Affairs Charles Rhoads directed each agency to review the Meriam study and report to the Indian Office what salaries needed to be raised, what positions needed to be created, and what capital improvements needed to be made to put each agency, as Upchurch put it, "in line with the recommendations" of the Meriam Commission.¹⁴ It was to this call that Upchurch responded in November 1928.

To analyze what needed to be done to meet the Commission's recommendations on the Nez Perce Reservation, Upchurch convened a meeting of Nez Perce Agency employees in October 1928. In classic administrative style, he directed that the employees break into committees to examine the various components of the Meriam study. The committees formed and the chairmen of each committee were:¹⁵

Administration	W.N. Sickels, Assistant Superintendent
Economics	Walter Riesbol, Farmer
Education	Nannie B. Sayles, Teacher
Health	George O. Keck, Physician
Social Work	Lillian B. Lawyer, Seamstress

Between October 12 and November 17, 1928, the committees met to discuss the application of the Meriam Commission's conclusions to the Nez Perce people. Upchurch presented the conclusions of the committee meetings in narrative form, with a designated section for each committee.

The first section of the Upchurch report addressed "Administration," and it was in this section that passing mention was made of the Nez Perce forests. Upchurch began this section with a description, as he saw it and apparently as was reflected in the Meriam report, of the objective of the Indian Service. "It is universally agreed," Upchurch wrote, "that the objective of the Indian Service is to render Indians willing and competent to

¹³Ibid, pp. 3-7 through 3-8.

¹⁴Upchurch, "Indian Administration," p. 20.

¹⁵Ibid., p. 2.

assume and maintain a degree of citizenship and civilization compatible with the ordinary social standards."¹⁶

Upchurch went on to set the tone of his philosophy vis-a-vis the Government's activity in Indian affairs. The "paternalism" of the Government, Upchurch argued, had "pauperized" the Indian people.¹⁷ Upchurch cited as examples of paternalism the rationing of goods and the supervision of Indian economic activity. The most desirable objective of the Indian Service, Upchurch wrote, should be the gradual withdrawal of the "paternalistic supervision of the Government."¹⁸

On the Nez Perce Reservation, Upchurch claimed that the Government had already begun its withdrawal of supervision. He listed as examples of this law enforcement, education, and land management. Because no Indian courts existed on the reservation, Upchurch argued that law and order was carried out by State authorities, not Federal. Federal jurisdiction, Upchurch assured, "is of course observed on trust lands."¹⁹ Also, with education, Upchurch asserted that the Nez Perce were free from Federal Governmental intervention.

It was in this context that he described the land situation on the reservation. "The Government," he explained, "has withdrawn from the administration of the affairs of 282 patent-in-fee Indians, whose lands constitute thirty percent of the [Nez Perce] allotments."²⁰ Upchurch went on to describe the timber resources as he saw them at that time: "Practically all of the timber on the reservation has been sold and there is little or no need for the Government to exercise further supervision in that direction."²¹

Upchurch cited these examples as indications of the "growth of the Nez Perce Indians toward individual responsibility."²² Regarding the status of the Nez Perce timber, however, he may have understated the case, both with regard to the amount of timber available and the need for supervision. According to the 1928 Nez Perce Reservation forestry report, 31 million board feet of merchantable timber existed on 29 thousand

¹⁶Ibid., p. 4.

¹⁷Ibid.

¹⁸Ibid, p. 5.

¹⁹Ibid.

²⁰Ibid.

²¹Ibid.

²²Ibid.

acres.²³ The report did point out that the timber was scattered on several different tracts. This figure seems to agree with the amount of merchantable timber listed in Muck and Melis' 1931 sustained yield report.²⁴

Upchurch's statement indicated the direction he intended to take the reservation regarding the development of the timber resource during his tenure as Superintendent (1928-1932). Upchurch's 1928 review of the Meriam Commission's recommendations reflected his philosophy of timber resource management. He and his committee members concluded that, to bring the Nez Perce Reservation in line with the Meriam Commission's conclusions, an additional \$32,000 per year in salaries and \$79,000 in capital investments should be expended.²⁵ Noticeably absent from their list were forestry personnel or forestry equipment.

The Beginning of the Great Depression

In October 1929, stock market prices in the United States collapsed, marking the beginning of the Great Depression. During the initial months of the Depression, national economic decline was uneven, and occasional economic upsurges gave the Hoover administration false hopes. In fact, by March 1930, President Hoover optimistically declared that "all evidence indicates that the worst effects of the crash on unemployment will have passed during the next sixty days."²⁶ In June 1930, Hoover responded to a call for public works programs by stating that such measures were unnecessary and that the "depression is over."²⁷ By the end of his administration in March 1933, thousands of banks and businesses had failed and unemployment had risen to 23.6 percent.²⁸

By the time the stock market crashed in the fall of 1929, a state of depression already existed in rural America, especially in the agricultural and timber industries.

²³O. C. Upchurch, Superintendent, Annual Report 1928, August 8, 1928, p. 1. File: 1928, Narrative and Statistical Sections, Box 35, Annual Report, Ft. Lapwai, Northern Idaho, Record Group 75, National Archives, Seattle Branch.

²⁴Lee Muck, Assistant Director of Forestry, and Percy E. Melis, Assistant Forester, "The Status of Indian Forests in Relation to a National Program of Sustained Yield," September 15, 1931, p. 7. File: 4938-1931-General Services, Central Classified Files, Record Group 75, National Archives.

²⁵Ibid., p 20.

²⁶Gary D. Williams and William A. Babcock, The Yakima Indian Nation Forest Heritage. A History of Forest Management on the Yakima Indian Reservation, Washington (Missoula: Heritage Research Center, 1983), p. 133.

²⁷Ibid.

²⁸Ibid.

Throughout the mid-1920s, timber flooded an already saturated timber market. This overproduction created an imbalance of supply and demand, which, in turn, depressed timber prices. The cause of this overproduction, in part, rested in property taxes of standing timber on private land. On public and Indian lands, long-term performance bonds, advance deposits, and annual Government cutting requirements had the same effect by forcing cutting even when no market for the timber existed. The oversupply of timber ultimately caused the market to crash. Annual production dropped from an average of 40 billion board feet between 1907 and 1912 to 34 billion board feet between 1925 and 1930.²⁹ By 1931, with the beginning of the larger economic depression, production dropped even further to 16.5 billion board feet.³⁰

The Hoover administration responded to the supply-demand imbalance by drastically reducing timber harvests from public lands and Indian lands. In June 1930, Rhoads proclaimed to all Indian reservations that:

In conformity with the policy of the President to curtail the cutting of timber in public ownership during the current depression ... insofar as permissible under the laws enacted by Congress and existing contracts, no timber will be offered for sale except to permit the continuance of existing local operations relying upon such timber sales as their source of supply or where necessary to protect the economic interests of the Indians.³¹

Nez Perce Timber Sales, 1928 - 1940

The volume of timber harvested under contract during the Depression era was minimal at best. Annual reports from 1928-1940 record that only 125,040 board feet were cut from tribal lands and 631,461 board feet were harvested from allotted lands on the Nez Perce Reservation. In fact, during many years of this period, no commercial timber was cut at all. One caveat must accompany this assertion: no timber harvest data has been discovered for the years 1933-1937. However, no previous or subsequent documentation has been found that would indicate that any significant contract timber activity took place during these five years. Annual reports from these years do mention the cutting of some timber for posts and fire wood, but mostly for domestic use only.

²⁹Muck and Melis, "The Status of Indian Forests," p. 13.

³⁰Williams and Babcock, Yakima, p. 133.

³¹Ibid.

At least two different forces caused this timber cutting inactivity. First, the depressed rural economy provided the most likely reason for the radical decrease in timber cutting activity. The second reason probably stemmed from the perceptions of those who managed the Nez Perce forests. During these years, agency leadership repeatedly asserted that the reservation's timber was insignificant. Superintendent Upchurch in a 1928 report wrote that there "are no large bodies of timber remaining on the Nezperce [sic] Reservation.... [The] timber remaining is mostly valuable for wood, posts, etc."³² Again, in 1931, Upchurch asserted that, "All of the immediately available and accessible timber has been cut from the forested areas, and only an insistent market demand for lumber will make further logging operations of the small remaining areas a practical operation."³³ A few years after Upchurch wrote the above statement, James Overton, an agency forest ranger, argued that the "tribal lands have from 15 to 20 million feet of overmature timber that should be harvested in the near future...."³⁴

Also notable from this period is a series of allotted timber contracts made in 1929 that were approved but apparently not completed. In March and April of that year, Claude Huffman of Lewiston, Idaho, contracted with the Indian Office for 975,000 board feet of timber valued at \$2,437.50 from allotment numbers 1827, 1828, 1838, and 1850. There is no evidence that the sales were completed on allotment numbers 1827, 1828, and 1850, which included an estimated 750,000 board feet of timber. However, the 1930 annual report did report that 250,000 board feet, which was the estimated volume of three of the four contracts, had been cut under contract. Presumably, this timber was part of the Huffman contracts, although no evidence exists to confirm this.

In 1930, the contract involving allotment number 1838, with an estimated 225,000 board feet, became problematic. In April of that year, Superintendent Upchurch wrote to the Indian Office that the contractor, Claude Huffman, had cut about 600,000 board feet from the allotment in the contract. This timber trespass of nearly 375,000 board feet occurred, according to Upchurch, because the Agency scaler was watching the wrong allotment.³⁵

³²Upchurch, "Forestry Report, 1928" p. 2.

³³O. C. Upchurch, Superintendent, Annual Report for Forestry Branch of Indian Service, December 3, 1931. File: Annual Report, Fort Lapwai, 1931, Narrative Section w/ Photograph, Box 35, Northern Idaho Agency, Box 35, Record Group 75, National Archives, Seattle Branch.

³⁴James W. Overton, Forest Ranger, Narrative, Annual Report 1937, Northern Idaho Agency, 1937. File: Keens Tree Classification, 1930-1938, Box 0102, Forestry Subject Files, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

³⁵Letter, O. C. Upchurch, Superintendent, to the Commissioner of Indian Affairs, April 28, 1930. File: Ft. Lapwai (Nez Perce) 24032-1930-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

Shortly after the trespass was discovered, the contractor's mill burned, leaving him unable to use or pay for the logs cut. Ultimately, the Agency seized the timber, which amounted to 500,000 feet of pine and 82,000 of fir, and sold it to the Clearwater Timber Company.³⁶ Except for a sale of 250,000 board feet described above, none of this was recorded in the 1930 annual report.

Upchurch pointedly noted that, in addition to fire wood and post cutting, several Nez Perce Indians were involved in the timber industry. In 1929 and 1930, Upchurch stated that a "number of [Nez Perce] find employment in local industrial enterprises, [such as] the Clearwater Timber Company in their mills...."³⁷ Again in 1930, Upchurch stated that, although the principal employment in the area was agriculture, "a few" of the nine hundred men employed at Clearwater Timber were Indians.³⁸

Yet, infrequent sporadic cutting marked the Depression decade. The only contract timber sale from tribal lands during this time occurred in 1940. According to the 1940 Annual Report, the sale involved 125,040 board feet of fire-killed Ponderosa Pine near Orofino.³⁹

Muck's 1930 Nez Perce Grazing Report

In April 1930, the Indian Service's Forestry Branch, renamed the Division of Forestry and Grazing, took on the additional responsibility of managing the Nation's Indian rangeland. The new Division was directed to oversee on a national level 42 million acres of Indian rangeland and 7 million acres of commercial timberland.⁴⁰ As a result of this additional responsibility, Commissioner Rhoads in April of 1930 instructed Indian Office Associate Forester Lee Muck to coordinate an extensive national survey of grazing

³⁶Letter, O.C. Upchurch, Superintendent, to the Commissioner of Indian Affairs, May 21, 1930. File: Ft. Lapwai (Nez Perce) 27548-1030-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

³⁷O.C. Upchurch, Superintendent, Annual Report 1929, p. 21. File: Ft. Lapwai (Nez Perce) 38 Microfilm 1011, Roll 51, Record Group 75, National Archives, Washington, D.C.

³⁸O.C. Upchurch, Annual Report Year 1930, p. 10. File: Fort Lapwai 38, Microfilm 1011, Roll 51, Record Group 75, National Archives, Washington, D.C.

³⁹H.R. Wing, Project Manager, Annual Forestry and Grazing Report, FY 1940, Northern Idaho Agency, Lapwai, Idaho, pp. 2, 4. File: 339.3, Northern Idaho Agency, Lapwai, Idaho.

⁴⁰Newell, et al., A Forest in Trust, p. 3-8.

management related issues for the Indian Office.⁴¹ Ultimately, the task of conducting the survey for the Nez Perce jurisdiction fell to Muck himself and, in November 1930, he presented his recommendations to Rhoads in a document entitled "Working Plan Report of the Grazing Resources and Activities of the Former Nez Perce Reservation."

At the outset of his report, Muck asserted that the Nez Perce Reservation, because of the relative size of its reserves, was insignificant in relation to grazing. Nonetheless, Muck argued that because the Tribe's reserve acreage illustrated the economic situation of the region, a grazing management plan for the Nez Perce Reservation was appropriate.⁴² Muck's thesis regarding the reservation's grazing potential was clear: "Generally speaking, the Nez Perce area is far too valuable to be used solely for the wholesale production of beef cattle or mutton." Because of soil quality, mild climate, and annual rainfall, Muck wrote, the "region as a whole offers splendid opportunities for successful efforts in almost every phase of intensive agricultural activity."⁴³ Pure agriculture, Muck asserted, was the direction in which the Nez Perce reserves ought to be taken. With 98 percent of the allotments fenced and under some sort of agricultural activity, the development of the Nez Perce Reservation should focus on the development of dairy and crops, not stock cattle, Muck argued.⁴⁴

In addition to his agricultural use argument, Muck asserted that the present reserve lease policy should be reformulated. The existing policy of reserve leasing, Muck wrote, probably was justified because it provided a "substantial" income that was equally distributed among the Nez Perce people. However, in Muck's opinion, the reserves that were adequate for agricultural use would be better used if set aside as communal, free use grazing reserves and developed as general farming areas. Muck estimated that between 25 percent and 35 percent of the reserves in 1930 fell into that category.⁴⁵ Gradually, as the reserves became family farms, Muck went on to write, the reserves should be

⁴¹Letter, Lee Muck, Associate Forester, to the Commissioner of Indian Affairs, November 21, 1930. File: Portland Area Office-Nez Perce-Fort Lapwai, Grazing Report 1930, Record Group 75, National Archives, Seattle Branch.

⁴²Lee Muck, Associate Forester, "Working Plan Report of the Grazing Resources and Activities of the Former Nez Perce Reservation," November 21, 1930, p. 1. File: Grazing Report, 1930, Portland Area Office-Nez Perce-Fort Lapwai, Record Group 75, National Archives, Seattle Branch.

⁴³Ibid.

⁴⁴Ibid, p. 2.

⁴⁵Ibid., p. 24.

appropriated.⁴⁶ Muck closed his grazing report with a reassertion that the area was too valuable to produce range stock and ought to be developed as crop land.⁴⁷

Muck's analysis of the Nez Perce Reservation stands as a handy "snapshot" of the Nez Perce land as it was distributed in the fall of 1930. Table 4-1 lists Muck's 1930 calculations regarding the distribution of the Nez Perce lands.

Table 4-1
Muck's 1930 Analysis of Nez Perce Lands⁴⁸

Total Reservation Acreage

Nez Perce Reservation Acreage		756,968.00
Allotment Acreage	185,398.52	
Acreage Sold	542,074.00	
Old Agency Acreage	640.00	
Timber Reserves Acreage	32,020.00	
Reallotment Acreage		3,164.52
	-----	-----
TOTAL ACREAGE	760,132.52	760,132.52

Total Reservation Allotment Acreage

Acreage allotted to Nez Perce Indians		182,234.00
Acreage fee patented since allotments	53,382.30	
Acreage sold since allotments	38,140.84	
Acreage Inherited	62,095.10	
(Allotments remaining in trust)		
Acreage Original	21,726.60	
(Allotments remaining in trust)		
Acreage Reallotted to Nez Perce Indians		3,164.52
	-----	-----
TOTAL	185,398.52	185,398.52

⁴⁶Ibid., pp. 12, 25.

⁴⁷Ibid., p. 13. Muck also argued that in addition to his valuable land agreement, the Nez Perce were simply not stockmen, a "simple fact" that was confirmed with his figure that only 9.5 percent of the Nez Perce owned stock at the time of his report.

⁴⁸Ibid., p. 11.

Muck & Melis' 1931 Sustained Yield Report

Attempting to find solutions to the problems plaguing the timber industry, President Hoover appointed a Timber Conservation Board in 1930. Upon recommendations of the Board, the Hoover administration formulated a national policy of sustained yield forest management. Lee Muck, the Indian Office's Assistant Director of Forestry, and Percy E. Melis, an Indian Office Assistant Forester, argued that sustained yield as a management tactic sought "to develop a forest property into a normal business enterprise, with the income proportional to the investment."⁴⁹

Essentially, the style of forest management described as sustained yield sought to balance forest harvest with forest growth. Muck and Melis defined the policy as:

that practical business procedure which aims to perpetuate forest resources through conservative economic use. The principle objective sought, namely, the continued flow of a balanced volume of wood from forest to factory, is accomplished by regulating the cut in such a manner as to utilize a quantity of wood equal to the volume which is produced by the forest annually.⁵⁰

By the late 1920s, the total volume of timber produced in the United States had declined dramatically. As Muck and Melis noted in the fall of 1931, it:

"has been conclusively demonstrated during the past twenty-five years that the lumber industry can not maintain itself on an even keel under the highly competitive conditions which [exist], and that the forest wealth of the Nation will be liquidated without returning one dollar of realization to the industry unless regulatory measures are introduced."⁵¹

Sustained yield was believed to be the regulation that would bring about the needed stabilization of the industry.

Proponents argued that sustained yield would offer a great degree of relief to the suffering industry primarily in two ways. The first was financial; sustained yield would eliminate the overproduction problem endemic to cut-and-move logging operations, thus

⁴⁹Muck and Melis, "The Status of Indian Forests," 1931, p. 3.

⁵⁰Ibid.

⁵¹Ibid., p. 4.

bringing supply more into line with demand. The second way in which sustained yield would help the industry was by conserving the resource. Overproduction, vis-a-vis overcutting, promoted soil erosion and, therefore, a lower potential yield.

In 1931, as a part of the formulation of a national sustained yield policy, Commissioner Rhoads sought to determine the impact the policy would have on Indian forests by directing Lee Muck and Percy Melis to analyze "the position of Indian timberlands with respect to the proposed plan for the Nation."⁵² To that end but under severe time constraints, Muck and Melis collected and studied existing Indian forestry data that, nonetheless, allowed them to formulate a cogent scheme for incorporating Indian forests in a national plan.

On September 15, 1931, Muck and Melis sent to Rhoads a 55-page document, formally entitled "The Status of Indian Forests in Relation to a National Program of Sustained Yield," but more commonly known as the Muck-Melis Report. In the introductory section, the authors noted that, in compiling the report, they placed an emphasis on the "economic phases and business aspects" of sustained yield management and the relationship between the Indian timber and the particular region in which the timber was located. They commented that they chose not to focus on silvicultural considerations.⁵³

The report noted certain problems inherent in incorporating Indian forest lands into a national sustained yield plan. The problems focused on "the involved land status problem so common to Indian property" and "the necessity of liquidating capital values [i.e., timber] for the advancement of a dependent people."⁵⁴ In other words, the status of Indian land was somewhere between that of public and private forests. As Muck and Melis put it:

In classifying Indian [forests] as to its logical place in a national plan of forest management, [one must recognize] that it is in reality a private property administered in trust by the Federal Government, but with the wishes of the owners and their immediate welfare given a good deal of consideration.⁵⁵

⁵²Letter, Lee Muck, Assistant Director of Forestry, and Percy Melis to the Commissioner of Indian Affairs, September 15, 1931. File: 4938-1931-General Services, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

⁵³Muck and Melis, "The Status of Indian Forests," 1931, p. 1-2.

⁵⁴Ibid., pp. 4-5.

⁵⁵Ibid., p. 53.

In the concluding chapter, the authors strongly recommended the inclusion of the major Indian forests in the national sustained yield plan. The authors conceded that Indian forests and the volume of merchantable Indian timber were relatively insignificant when compared to the total United States timber stand. Nonetheless, they argued that Indian timber in some regions significantly affected the timber market of the particular region. Therefore, "the major commercial [Indian] forest properties [should] bear their full share of any restrictions as to volume produced or methods of cutting that may be made applicable to the regions in which these holdings form a part."⁵⁶ Muck and Melis also added that the Indian people would benefit from such a policy through timber sales and forest-related employment.

As part of their analysis, Muck and Melis singled out those reservations in which the Indian forests were of regional or national commercial importance. The authors reported that in 1931 there were approximately five million acres of merchantable Indian timber with 24.5 billion feet board measure. Of that amount, 90 percent was in the States of Washington, Oregon, Arizona, and Montana.⁵⁷ Idaho, according to the authors, held only 24,435 acres of merchantable Indian timber and the Nez Perce Reservation only 8,955 acres. A study of this data, the authors concluded, would "disclose the fact that of the fifty reservations [listed in the report], only fifteen contain a sufficient volume of merchantable timber to be classified as being of major importance insofar as a program of sustained yield ... is concerned."⁵⁸ In other words, the authors found that the Nez Perce Reservation could not for the purposes of their analysis be considered a major source of merchantable timber. The authors listed 15 reservations they considered to be of major importance to either the national or a regional economy. At the top of their list was the Klamath Reservation in Oregon, with a merchantable timber stand of 4.8 billion board feet. The last reservation listed was the Red Lake Reservation of Minnesota, with a stand of 54 million board feet. In comparison, the Nez Perce Reservation was reported by the authors to have 30 million board feet.⁵⁹

⁵⁶Ibid., pp. 53-54.

⁵⁷Ibid., pp. 6-8.

⁵⁸Ibid., p. 18.

⁵⁹Ibid., pp. 7, 18.

Depression Era Reforms

Indian Affairs Administration Under John Collier

In the spring of 1933, the United States Government developed a new attitude and philosophy in its relationship with American Indians. With the election of Franklin D. Roosevelt as President in the fall of 1932, traditional Indian values and tribal organizations gained a new credibility and acceptance on the Federal level.⁶⁰ In large part, this new attitude was reflected in the leadership of John Collier, who was appointed Commissioner of Indian Affairs in 1933 and served until 1945.

Before becoming Commissioner, Collier had been a strong critic of the Federal Government's Indian Service policy.⁶¹ Collier was especially disenchanted with the practice of allotment. Collier wrote in 1933 that, because of allotment and its "attendant evils," "the Indians have lost sixty-three million acres of their land, much of it the best, and are threatened with a loss of a large fraction of the remainder unless the allotment law is repealed."⁶² Ultimately, the allotment process was stopped through the Indian Reorganization Act of 1934.

In place of the system he criticized, Collier argued for a new Indian land policy, which he outlined in a 1933 article, "The Indians and Their Lands." Collier began his description of the new policy with the assumption "that the land is the great hope of the Indian." It would not be enough, Collier asserted, to stop the allotment process. The Indian Service, he wrote, must regain "large amounts of lost lands and in some cases [acquire] additional lands from other sources such as the public domain."⁶³

Collier's policy went on to address Indian forests, which he argued were best served when held tribally or communally. The present management practices, he asserted, were "handicapped" by several obstacles. The first was the allotment policy; the second was that Indians tended simply to live off the proceeds of timber sales and not attempt to develop employment for themselves and others on the reservations.⁶⁴ The management of Indian forest and grazing lands, Collier asserted, would best be left to Indian organizations.

⁶⁰Gary Williams, "Historical Background for Considering P.L. 93-638 Contracting," in Indian Forests-The Land, The People, The Future: Twelfth Annual National Indian Timber Symposium, University of Alaska, Fairbanks, Alaska, June 5-9, 1988, p. 158.

⁶¹Newell, et al., A Forest in Trust, p. 3-26.

⁶²John Collier, "The Indians and their Lands," Journal of Forestry Vol. 31 (1933), p. 905.

⁶³Ibid.

⁶⁴Ibid., pp. 907-908.

"[T]here is no reason," Collier wrote, "why Indians cannot become expert land managers and gradually take over the administration of their community forests, grazing ranges, and farm lands."⁶⁵

1934 Indian Reorganization Act

Many of the policy changes discussed by Collier in his 1933 article attained a legal framework the following year when Congress passed the Wheeler-Howard Act, also known as the Indian Reorganization Act (IRA). Essentially, the IRA repealed the Dawes Act of 1887, which established the Federal allotment policy. Moreover, as Collier had suggested in his 1933 article, the act granted to the tribal governments all surplus reservation lands.⁶⁶ In addition, the IRA provided for broader Indian self-rule and the preservation of Indian cultural freedoms.⁶⁷

Presumably as part of its proclamation of Indian self-rule, the IRA provided that each tribe could accept or reject the act. For a variety of reasons, the Nez Perce people rejected the act by a vote of 252 to 214.⁶⁸ Evidently, there existed a considerable amount of confusion as to the actual meaning of the act. Among other things, groups of Nez Perce feared that Government services would be cut, religious freedoms would be inhibited, or taxation would be implemented.⁶⁹ Because of these misunderstandings, the Nez Perce Tribe joined 77 other tribes in choosing not to adopt the act.⁷⁰

While rejection of the IRA made it difficult for the Tribe to broaden its self-governing powers, nonetheless, certain IRA policies went into effect. The allotment of land to individual Indians ceased and the reservation was closed to homesteading.⁷¹ Also, a "few unwanted or undesirable" parcels of land were granted back to the Tribe as a result of the IRA.⁷²

⁶⁵Ibid., p. 90.

⁶⁶Williams and Babcock, Yakima, pp. 137-138.

⁶⁷Joseph, Nez Perce Country, p. 170.

⁶⁸Ibid.

⁶⁹Ibid.

⁷⁰Williams and Babcock, Yakima, p. 138.

⁷¹Ibid.

⁷²Joseph J. S. Feathers, et al., These Are the Nez Perce Nation (Lewiston, Idaho: Lewis-Clark Normal Press, 1970), p. 70.

In addition, the IRA contained provisions addressing the management of Indian forestry and grazing. As argued by Collier in his 1933 article, the end of the allotment policy would clear the way for a comprehensive sustained yield management plan. Thus, the act incorporated Indian forest lands into a national sustained yield plan.

The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian Forestry units on the principle of sustained yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.⁷³

The IRA affected Indian administration in a profound and far-reaching way. In addition to the significant change in allotment policy and the legislative adoption of sustained yield, the IRA had a direct impact on other aspects of the relationship between the Government and the tribes. For example, the act directed the Indian Service's Indian hiring practices, an impact that continues to affect Indian policy.⁷⁴

Depression Era Indian Forest Regulations

The Indian Office's forest management regulations changed little, if any, between 1911 and 1936. The regulations, which were collections of Congressional laws and Indian Office instructions, addressed issues of an administrative nature, such as fire law, the sale of timber, and, in one case, the use of telegrams.

Generally, the regulations dealt with the bureaucratic process by which the Indian Office operated.⁷⁵ In some cases, however, the regulations directed changes in the Indian Agents' authority. For example, before June 1930, Agency supervisors had the authority to contract for timber sales only if the stumpage value in the contract did not exceed \$250.

⁷³Williams and Babcock, Yakima, p. 139.

⁷⁴Ibid.

⁷⁵E.g., "All [timber] contracts should be executed in quintuplicate and the proper symbol numbers entered on each copy." Department of the Interior, Office of Indian Affairs, Regulations and Instructions for Officers in Charge of Forests on Indian Reservations (Washington, D. C.: U. S. Department of the Interior, Office of Indian Affairs, June 29, 1927), p. 5.

In November 1930, the stumpage value under which a superintendent could contract was increased to \$1000.⁷⁶ In 1936, the amount again dropped to \$500.⁷⁷

A more significant change in the orientation of the Indian Office was expressed in the General Forest Regulations that were approved in early 1936. The regulations of 1911, 1918, and 1927 all began with this somewhat broad and bland charge: "The superintendent of each reservation will be expected and required to do all in his power to secure a wise and advantageous use of forest resources."⁷⁸ By comparison, the 1936 regulations began with a stronger statement of objectives that listed in more detail the kinds of activities judged important by the Indian Service. The policy statement in part read as follows:

The following objectives are to be sought in the management of Indian forests:

(a) The preservation of Indian forest lands in a perpetually productive state [through] effective protection, [prevention of clear cutting], and making adequate provision for new forest growth when the mature timber is removed.

(b) The regulation of the cut...so as to make possible continuous production and a perpetual forest business.

(c) The development of Indian forests by the Indian people for the purpose of promoting self-sustaining Indian communities....

(e) The preservation of the forest for scenic purposes along public highways...and whenever the recreational or aesthetic value of the forest seems to exceed its value for the production of forest products.

(f) The management of the forest [so that] regulating runoff and minimizing erosion [occurs].⁷⁹

The primary difference between these regulations and those which preceded them was a positive assertion in favor of forest preservation for other than economic purposes.

⁷⁶Forestry Circular, Jos. M. Dixon, First Assistant Secretary, November 6, 1930, Northern Idaho Agency, File: "By Laws and Etc," Box 207, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

⁷⁷Department of the Interior, Office of Indian Affairs, General Forest Regulations (Washington, D. C.: U. S. Department of the Interior, Office of Indian Affairs, April 23, 1936), p. 7.

⁷⁸Department of the Interior, Office of Indian Affairs, Regulations and Instructions for Officers in Charge of Forests on Indian Reservations, (Washington, D. C.: Department of the Interior, Office of Indian Affairs, June 29, 1927), p. 1.

⁷⁹Department of the Interior, 1936 Regulations.

These regulations seemed to recognize an inherent value that was not addressed in the previous regulations.

Emergency Conservation Work and the CCC-ID

Shortly after the passage of the Emergency Conservation Act in the spring of 1933, J.P. Kinney wrote that the act "afforded an unparalleled opportunity for the improvement of forest and range conditions" on Indian lands. Kinney argued that for 25 years before the act's passage, Indian lands had been managed conservatively, but without adequate Congressional support. The Emergency Conservation Act, which was part of President Roosevelt's early New Deal legislation, provided "new vistas" for Indians and their lands.⁸⁰

By the time Federal relief programs began rolling out of Washington, D.C. in the spring of 1933, the economic condition of American Indians was that of chronic poverty. According to a 1928 study, 46.8 percent of Indians had a per capita annual income of less than \$200.⁸¹ The collapse of the stock market and the onset of the Great Depression only acted to heighten Indian poverty; by 1933, the per capita annual income for Indians stood at \$81.⁸²

As part of the Emergency Conservation Act, Roosevelt and the Congress created the Civilian Conservation Corps (CCC) to provide relief employment to the Nation as a whole. However, as demonstrated in the economic statistics discussed above, reservations were especially in need of employment opportunities. Also, many reservations were in need of the kind of work carried out by the CCC -- especially forestry work, soil erosion control, and range improvements.⁸³ Therefore, even before the appointment of Indian advocate John Collier, Indian Service officials had hoped to build a place for Indian employment into the CCC.⁸⁴

Some Indian officials went so far as to lobby for a separate conservation corps program for Indians. Both Kinney and Harold Ickes, Roosevelt's Secretary of the Interior, argued for a CCC program that would fall under the jurisdiction of the Indian Office. One month after the creation of the CCC, Roosevelt approved such a program. Initially labeled Indian Emergency Conservation Work (IECW), President Roosevelt's Indian relief

⁸⁰J. P. Kinney, "E. C. W. on Indian Reservations," Journal of Forestry 31 (1933), p. 911.

⁸¹Donald L. Parman, "The Indian and the Civilian Conservation Corps," Pacific Historical Review 15 (February 1971), p. 39.

⁸²Ibid., p. 40.

⁸³Ibid.

⁸⁴Williams and Babcock, Yakima, pp. 139-140.

work program ultimately became known as the Civilian Conservation Corps-Indian Division (CCC-ID).

At the time, New Deal officials anticipated that during the first six months of operation, the CCC-ID would employ over 14,000 Indians and spend almost six million dollars on conservation.⁸⁵ CCC-ID work actually began on June 19, 1933 on the Fort Belknap Reservation in Montana. CCC-ID projects continued until the World War Two effort essentially drained the program of manpower and resources. CCC-ID work ceased on all reservations on July 10, 1942.⁸⁶ Table 4-2 provides a brief legal chronology of the CCC-Indian Division.

Table 4-2
*CCC-ID Chronology*⁸⁷

March 31, 1933	Enabling Act (48 Stat. 22). Provided unemployment relief.
April 12, 1933	CCC Director confirmed that FDR had approved Secretary Ickes recommendation that emergency conservation work by Indians be carried out on Indian lands and coordinated through the Indian Office.
May 15, 1933	Authorization from Interior Department to the Commissioner of Indian Affairs to proceed with a CCC-ID.
June 7, 1933	Executive Order 6160 provided for emergency conservation work on tribal lands with funds for such a program administered by the Commissioner of Indian Affairs.
June 19, 1933	Indian Emergency Conservation Work begins in Montana.
April 8, 1935	Legislation (49 Stat. 115) extending emergency conservation work.
February 9, 1937	Legislation (50 Stat. 8) extending emergency conservation work.
June 28, 1937	Legislation (50 Stat. 319) creating the

⁸⁵Williams and Babcock, *Yakima*, pp. 139-140; Parman, "The Indian and the CCC," pp. 40-41.

⁸⁶Department of the Interior, "Final Report of the Indian Emergency Conservation Work and Civilian Conservation Corps--Indian Division Program-1932 - 1942," Washington, D. C.: Department of the Interior Library, Number E 93 U88, p. 8.

⁸⁷*Ibid.*

"Civilian Conservation Corps" effectively renaming
ECW

July 2, 1942

Legislation (Pub. 647, 77 Congress) providing for the
discontinuation of the Corps.

July 10, 1942

All CCC-ID work stops on reservations.

Although they carried out essentially the same kind of work, several differences distinguished the CCC and the CCC-ID. For example, both married and unmarried men over the age of eighteen were eligible for CCC-ID employment. Also, only Indians were allowed to serve on CCC-ID projects. Rather than the United States Army, which operated the CCC camps, the Indian Office supervised the CCC-ID programs.⁸⁸

Another, perhaps more significant, difference between the two programs reflected a broader Federal policy regarding Indians. CCC-ID projects dealt only with Indian reservation lands, whereas CCC projects involved public lands. With the appointment of John Collier as Indian Commissioner, the Government took the position that Indian self-rule was a key to the improvement of Indian life. Collier saw the CCC-ID, which fell under his jurisdiction, as a tool to promote Indian revitalization. Through these emergency relief projects, Collier anticipated building Indian skills so that Indians who wished to remain on (or those who wished to leave) the reservations could improve local silvicultural and agricultural practices. Thus, the focus of CCC-ID projects was reservation land and not public land.⁸⁹

Within the few months of operation, Collier appointed J.P. Kinney as chief project planner and general production supervisor of the CCC-ID. The move was certainly a move down for Kinney, who had served as the Indian Office's Director of Forestry from 1914. Before becoming Commissioner, Collier was critical of Indian Service policy, and Kinney's demotion was likely as much a political move as a personnel change. Kinney was critical of Collier before and after Collier became Commissioner. Collier's early CCC-ID planning also included setting up CCC-ID regional offices, including one at Spokane.⁹⁰

⁸⁸Parman, "The Indian and the CCC," pp. 40-41.

⁸⁹Williams and Babcock, Yakima, p. 140; Parman, "The Indian and the CCC," p. 41.

⁹⁰Williams and Babcock, Yakima, p. 140; Parman, "The Indian and the CCC," pp. 42-43.

CCC-ID Work on the Nez Perce Reservation

At the outset of Roosevelt's administration, the economic condition of the Nez Perce Reservation evidently was worse than the national average. According to an economic survey dated 1933, the per capita annual income on the Nez Perce Reservation was \$12 lower than the national average of \$81. The survey listed 300 Indian families, including 1,009 Indian people living on the reservation at the time. The most significant income reported in the survey came from leased land, tallied at 56 percent of the total Indian income. By comparison, 27 percent was from employment wages and 10 percent from crops and livestock sold.⁹¹

Even with the apparent demand for Indian relief employment on the Nez Perce Reservation, emergency work funding on a significant scale was not requested until May 1935, almost two years after the creation of the emergency relief program. Emergency Conservation Work program activities did not begin on the reservation until the summer of 1935.⁹² Prior to that time, only \$2,000 of ECW funds had been spent on the Nez Perce Reservation for a limited amount of rodent control and fire fighting.⁹³

Once more significant funding was requested, appropriation followed relatively quickly. Following a request on May 11, 1935, of almost \$57,000 for 26 projects on the Nez Perce Reservation, the Office of Indian Affairs by May 28 had approved expenditure of \$56,000 for 25 projects on the Nez Perce Reservation and 6 projects on the other reservations under the jurisdiction of the Coeur d'Alene Agency.⁹⁴ In their appeal for this funding, officers of the Tribe argued "that the Indians on this Reservation should be given

⁹¹Coeur d'Alene Indian Agency, "Nez Perce Indian Reservation, Moscow, Idaho, Economic and Social Survey, 1933," pp. 1-4. File: Economic and Social Surveys, 1933, Box 207, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

⁹²Letter, A. G. Wilson, Superintendent, to the Commissioner of Indian Affairs, May 11, 1935, p. 1. Letter, Sidney L. Johnston, Associate Forester, to the Commissioner of Indian Affairs, October 8, 1935, pp. 1-2. File: CCC-ID, Box 1295, Forestry Branch, Regional Forester, Spokane, Portland Area Office, Forestry Branch, Record Group 75, National Archives, Seattle Branch.

⁹³Letter, Wilson to the Commissioner, May 11, 1935, p. 2.

⁹⁴Ibid., pp. 1, 10-16. Letter, Sidney L. Johnston, Associate Forester, to the Commissioner of Indian Affairs, July 3, 1936, p. 1. File: CCC-ID, Box 1295, Forestry Branch, Regional Forester, Spokane, Portland Area Office, Forestry Branch, Record Group 75, National Archives, Seattle Branch.

a chance to make improvements on land that they are directly interested in, instead of having to go to other reservations."⁹⁵

By late summer of 1935, the Agency's ECW organization, which became known as the CCC-ID in 1937, had taken shape. In early August, Harold Wing, who had been a forester for the Spokane Indian Reservation, was transferred to the Coeur d'Alene Agency to become the ECW project manager.⁹⁶ Wing remained project coordinator until the cancellation of the CCC-ID in 1942. Throughout his tenure, Indian Office officials praised him and his work as competent and efficient.

Because of its more central location, Lapwai was established as the Agency's ECW headquarters.⁹⁷ By the end of September 1935, 49 Nez Perce Indians were working on ECW projects, with the following administrative personnel:⁹⁸

Harold Wing: Project Manager
Lydia A. Maxwell: Accounting Clerk
James S. Maxwell: Junior Clerk
Wilber Anderson: Sub-Foreman

In its seven years of operation on the Nez Perce Reservation, the CCC-ID carried out a wide variety of conservation projects and improvements on tribal and some private Indian lands. However, CCC-ID correspondence often noted the difficulty faced in designing projects for the Nez Perce Reservation because of the scattered nature of the tribal reserves. Nonetheless, 14 reserves ultimately saw some sort of CCC-ID conservation and improvement work. (See Appendix H for a partial list of CCC-ID projects on the Nez Perce Reservation between 1935 and 1942.)

CCC-ID Timber Reconnaissance Survey

Although no documentation has been discovered that definitely describes the findings of the Timber Reconnaissance Survey, the survey evidently took place during 1937, 1938, and 1939. Two letters, from September 1937 and August 1938, offer a few details

⁹⁵Letter, Caleb Carter, President, Nez Perce Tribal Business Committee, and Sam Slickpoo, Secretary Nez Perce Tribal Business Committee, to the Commissioner of Indian Affairs, May 3, 1935, p. 1. File: CCC-ID, Box 1295, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Forestry Branch, Record Group 75, National Archives, Seattle Branch.

⁹⁶Letter, Johnston to the Commissioner, October 8, 1935, p. 2.

⁹⁷In 1937, when the Northern Idaho Agency was created, the Agency headquarters were also moved from Moscow to Lapwai.

⁹⁸Letter, Johnston to the Commissioner, October 8, 1935, pp. 2-3.

concerning the survey. Both letters were written to Commissioner Collier and CCC-ID Director Murphy, and reported the findings of routine inspections or investigations of CCC-ID projects on the Nez Perce Reservation.⁹⁹

The first letter, dated September 11, 1937, reported that the scale of the survey had been broadened to include allotted lands on which merchantable timber was expected to exist. Many of the allotted lands that were to be a part of the survey were located next to reservation reserves; a survey of which, the letter stated, had been completed the previous year. The author noted that the findings of the whole survey, with maps, would be assembled into an atlas that was expected to be completed by early 1938.¹⁰⁰

A second brief reference to the survey was made in a letter dated August 27, 1938. In it, the author reported that the timber survey was underway on the Nez Perce Reservation and that Harold Wing was supervising the work. The author commented that he believed that the greatest value of the survey maps would be in determining the potential locations of trails. This letter also confirmed that the survey resulted in timber volumes, as it stated that the "timber estimate itself is of value in determining the timber resources" of the reserves. Finally, the author noted that the completed maps appeared to be satisfactory.¹⁰¹

There also is evidence that the survey probably was completed in 1939. A CCC-ID inspection in July 1939 noted that the survey was 80 percent complete and that at least five CCC-ID enrollees had been working on the cruising and mapping of the tribal reserves.¹⁰²

Documents dating as late as 1981 refer to merchantable timber data that possibly was a product of this survey. However, documentation referencing amounts of board feet measured in past surveys and the years of those surveys is inconsistent and, therefore, not reliable in determining whether or not the numbers presented are the results of the CCC-ID survey. Nonetheless, documents from 1963 and 1981 offer clues that could pertain to the CCC-ID survey.

⁹⁹Letter, Sidney L. Johnston, Associate Forest Engineer, to the Commissioner of Indian Affairs, September 11, 1937; Letter, Harold G. Brown, Associate Forester, to the Commissioner of Indian Affairs, August 27, 1938. File: CCC-ID, Northern Idaho Agency, Box 1295, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

¹⁰⁰Letter, Johnston to the Commissioner, September 11, 1937, p. 3.

¹⁰¹Letter, Brown to the Commissioner, August 27, 1938, pp. 1-2.

¹⁰²Letter, N. P. Caywood, Associate Forest Engineer, to the Commissioner of Indian Affairs, July 13, 1939, p. 4. File: CCC-ID, Box 1295, Forestry Branch, Regional forester, Spokane, Portland Area Office, Forestry Branch, Record Group 75, National Archives, Seattle Branch.

The first of these documents is a 1963 newspaper article entitled "Nez Perce Timber Holdings Far Exceed Former Estimates." The article mentions "old Bureau of Indian Affairs inventories" that may be the CCC-ID survey. Those inventories recorded 40 million board feet of merchantable timber on the Nez Perce Reservation.¹⁰³ The second document, a 1981 analysis of Nez Perce forest management, alludes to a survey that purportedly was completed in 1943 and found 20 million board feet of merchantable timber on the reservation.¹⁰⁴

Although inconclusive, these references provide information that may pertain to the CCC-ID survey that evidently took place in the late 1930s. In any case, whether from the CCC-ID survey or from other subsequent surveys, between 20 million and 40 million board feet of merchantable timber was estimated to exist on Nez Perce lands during this time. Later surveys, however, concluded that the actual amount of merchantable timber on the reservation was considerably more than that estimated in the 1930s and 1940s.

Harold Weaver's 1938 Pine Beetle Survey

While initial concerns dealt primarily with the economic impact of Nez Perce forest reserves, entomological considerations also played a part in forest management in the late 1930s. In early July 1938, Indian Office Forester Harold Weaver conducted an investigation of the Nez Perce Reservation, looking for evidence of pine beetle infestation on the Tribe's timber reserves. The survey was funded, at least in part, through the CCC-ID.¹⁰⁵ Weaver inspected 10 reserves and found sporadic evidence of the beetle, but "nowhere did the writer observe anything that would indicate the presence of a serious epidemic."¹⁰⁶ Weaver included an outline of his findings.¹⁰⁷

¹⁰³"Nez Perce Timber Holdings Far Exceed Former Estimates," Lewiston (Ida.) Morning Tribune, May 11, 1963, p. 8.

¹⁰⁴Robert P. Latham, "An Analysis of the Adequacy of Forest Management on the Nez Perce Indian Reservation 1947-1980", (Stillwater, OK: Duck Creek Associates, 1981), p. 16. File: 600-02, Litigation Case File, *Nez Perce v. U. S.*, Docket 179A, U. S. Court of Claims, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Lapwai, Idaho.

¹⁰⁵Letter, Harold Weaver, Forest Assistant, to the Commissioner of Indian Affairs, July 18, 1938, p. 1, Box 1295, BIA Portland Area Office, Forestry Branch, Record Group 75, National Archives-Seattle Branch.

¹⁰⁶*Ibid.*, p. 4.

¹⁰⁷*Ibid.*, pp. 2-3.

<u>Reserve</u>	<u>Infestation</u>
Mission	Normal
Winchester	None
Talmaks	Normal
Cold Springs	Severe Epidemic
Reubens	Sporadic
Cavendish	Normal
Ahsahka	Scattered
Tramway	Scattered
Ford Creek	Scattered
Orofino	Scattered

Weaver concluded his report by stating that, even "if the beetle was in the severe epidemic status, expensive control work could hardly be justified, for by reason of the rugged topography and scattered stand the timber values are low."¹⁰⁸ Other than the above discussed timber survey, Weaver's survey was apparently the only other forest survey conducted during the years that the CCC-ID operated on the reservation.

Fire Control, 1930-1949

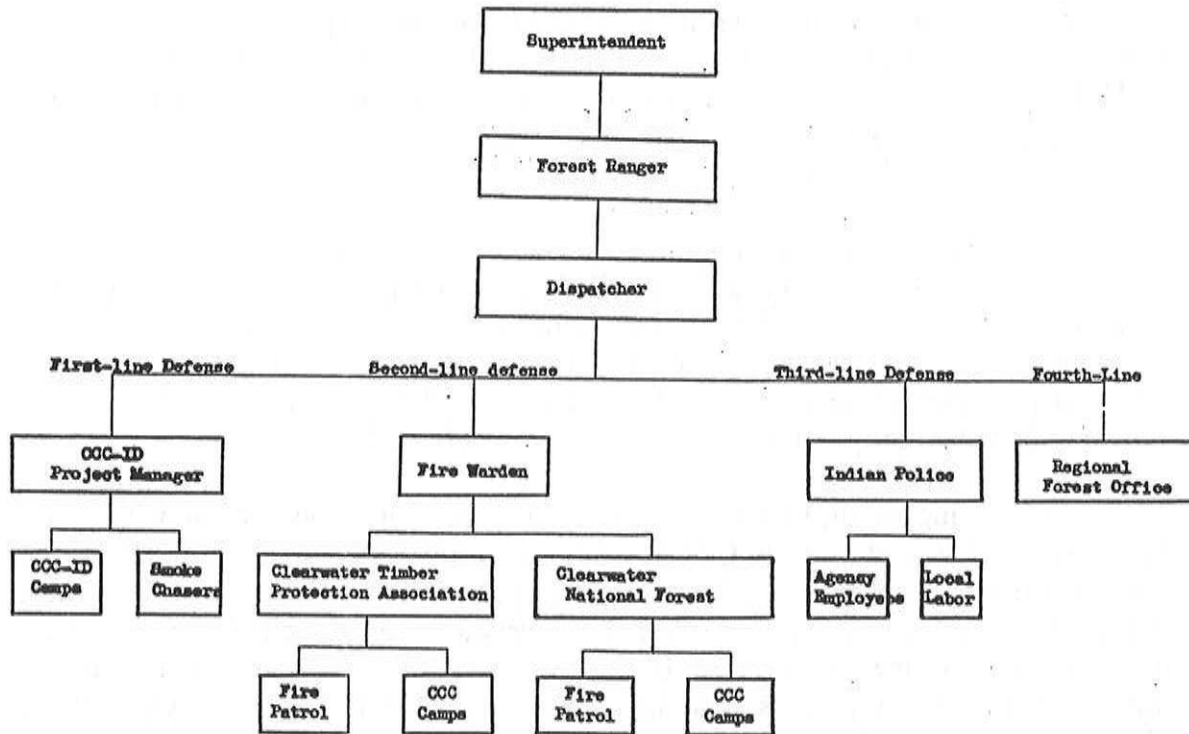
During much of this period, the Northern Idaho Agency CCC-ID carried out a significant, yet not exclusive, part in fire prevention and control on the Nez Perce Reservation. As listed above, several of the CCC-ID projects requested and funded related to fire presuppression (e.g., trail construction and roadside cleanup) and suppression. In fact, during its years of operation on the reservation, the CCC-ID leadership and crews were considered the reservation's "first line defense" in fire fighting.¹⁰⁹ Figure 4-1 illustrates the Nez Perce fire protective organization as described in the 1938 Fire Control Plan.¹¹⁰

¹⁰⁸Ibid., p. 4.

¹⁰⁹A. G. Wilson, Superintendent, and James W. Overton, Forest Ranger, "1938 Fire Control Plan, Northern Idaho Agency, Lapwai, Idaho," March 10, 1939, p. 14. File: 1938 Fire Control Plans, Box 101, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

¹¹⁰Ibid., p. 12.

Figure 4-1
1938 Nez Perce Fire Protective Organization



Before CCC-ID involvement, fire protection played a minor role in Agency concerns. In describing the Agency's fire protection, Superintendent Upchurch stated in the 1931 Annual Report that "we have no organized fire fighting system and the small liability of damage would scarcely justify the maintenance of any extensive organization."¹¹¹ Nonetheless, correspondence from that same year indicates that the Superintendent attempted to improve fire protection for the reservation by hiring an additional forestry employee to help in fire control.¹¹² The Indian Office denied the request, but it did

¹¹¹Upchurch, Annual Forestry Report 1931, p. 5.

¹¹²Letter, O. C. Upchurch, Superintendent, to the Commissioner of Indian Affairs, September 12, 1931. File: Fort Lapwai (Nez Perce) 52157-1931-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

compliment the Tribe's desire for better protection.¹¹³ Better protection, through a more complete organization, did not come until the mid-1930s, when the CCC-ID became involved in fire protection.

Another aspect of fire control on the reservation during this time was the development of fire control agreements between the Agency and the Clearwater National Forest, as well as between the Agency and the Clearwater Timber Protective Association (CTPA). These organizations provided support as "second line defense" in fire control. (See Figure 4-1.) The agreements were negotiated and evidently went into effect in 1938.¹¹⁴

The CTPA, a private organization, offered fire protection to State, county, some Federal, and private lands in the area. Before 1938, the CTPA periodically provided fire fighting services to the Agency in emergencies.¹¹⁵ By 1938, the CTPA delivered fire protection on all alienated lands on the reservation. The agreement with the Agency afforded the reservation a back-up or "second-line defense" via the CTPA, which would provide 150 fully equipped men to assist in fire fighting.¹¹⁶

This arrangement, with the CCC-ID acting as a first line defense with support from the Clearwater Forest and the CTPA, continued effectively from 1934 to 1942. However, the discontinuation of the CCC-ID program in July 1942 caused the Agency some concern. Writing on July 9, just eight days after the legislation was passed that ended the CCC-ID program and one day before CCC-ID work was scheduled to stop, Superintendent Wilson noted that the "fire season is now upon us and ... [the] fact that the CCC ID has been discontinued leaves this jurisdiction without funds or any kind for the suppression or presuppression of any fires."¹¹⁷ Wilson accompanied his urgent statement with an appeal

¹¹³Letter, C. J. Rhoads, the Commissioner of Indian Affairs, to O. C. Upchurch, Superintendent, October 1, 1931. File: Ft. Lapwai (Nez Perce) 52157-1931-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

¹¹⁴Wilson, "1938 Fire Control Plan," p. 8. Letter, James W. Overton, Forest Ranger, to Franklin Girard, Idaho State Forester, March 10, 1938. File: Northern Idaho Fire Reports, 1938-39, Box 101, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

¹¹⁵Letter, Theo Fohl, CTPA Secretary-Treasurer, to O. C. Upchurch, Superintendent, July 7, 1931. File: Ft. Lapwai (Nez Perce) 391998-1931-339, Record Group 75, National Archives, Washington, D.C.

¹¹⁶Wilson, "1938 Fire Control Plan," pp. 8, 12.

¹¹⁷Letter, A. G. Wilson, Superintendent, to the Commissioner of Indian Affairs, July 9, 1942. File: Ft. Lapwai (Nez Perce) 33842-1942-339, Central Classified Files, Record Group 75, National Archives, Washington, D.C.

for \$1,440 for the 1942 fire season.¹¹⁸ The annual report for 1942, which was submitted in August 1942, does not indicate whether or not the funds were made available to the Agency.¹¹⁹

An apparent consequence of the closure of the CCC-ID was the development of a cooperative agreement between the Agency and the State of Idaho. The agreement, dated July 22, 1942, directs the State to act as first line defense for fire on any Indian land,¹²⁰ which essentially was the task taken on by the CCC-ID before its discontinuation. This agreement continued until at least 1949.¹²¹

Collier's 1940 Assessment of the Status of Sustained Yield

As part of a 1940 Congressional study of United States forest conditions, John Collier presented a document, Forestry on Indian Lands, that, in his words, was "the most comprehensive and positive report dealing with all phases of Indian forestry and grazing problems that has ever been prepared by the Indian Service."¹²² The report, prepared by the Indian Office's Department of Forestry and Grazing, included a section that analyzed the status of Indian forests in relation to a national policy of sustained yield forest management.

As part of the IRA, the Secretary of the Interior was directed to operate and manage Indian forests through sustained yield management practices.¹²³ Evidently, little had been done by 1940, because Collier's report implied that Indian lands were still apart

¹¹⁸Ibid.

¹¹⁹Frank B. Lenzie, Regional Forester, Annual Forestry and Grazing Report [CY 1942], August 5, 1942, p. 4. File: Annual Forestry and Grazing Report, 1942, Box 099, Northern Idaho Agency, Forestry Subject Files, 1909-52, Record Group 75, National Archives, Seattle Branch.

¹²⁰A. G. Wilson, Superintendent, Cooperative Agreement Between the Department of the Interior and the State of Idaho for the Prevention and Suppression of Fires Occurring within the Boundaries of the State Forest Protective Districts in the State of Idaho, July 22, 1942. File: Fire Correspondence, 1942-43, Record Box 101, Forestry Subject Files, 1909-1952, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

¹²¹Archie Phinney, Superintendent, "Outline of Organizational Plan and Plan of Action for the Northern Idaho Indian Agency, Lapwai, Idaho," March 1949, p. 4. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

¹²²U. S. Department of the Interior, Forestry on Indian Lands (Washington, D. C., Government Printing Office, 1940), p. 34-b.

¹²³Williams and Babcock, Yakima, p. 139.

from a national sustained yield plan. Indian forests, Collier wrote, were "of sufficient extent and importance in certain ... regions to be well deserving of consideration in connection with a national [sustained yield] plan...."¹²⁴ Thus, Collier's 1940 analysis, like the 1931 Muck-Melis report, considered sustained yield as a potential management style for Indian lands.

Collier listed several problems that he saw in relation to the application of sustained yield to Indian lands. Indian lands, unlike United States forest lands, remained private property watched over in trust by the Government, which created a special set of circumstances in relation to sustained yield. Also, because Indian forests held limited industrial development potential, Indians depended more on income from stumpage than other groups. Therefore, any potential decrease in harvest because of a sustained yield plan could have a greater negative effect on Indians than other groups. Finally, Collier commented that, because local timber demands control smaller local saw mills, small Indian mills might be more greatly affected by a decrease in allowable cuts as a part of a national plan than other, larger mills.¹²⁵

These problems considered, Collier asserted that there could be no "question as to the desirability of having the Indian forests participate in such a program insofar as the character and distribution of the forests and the immediate welfare of the Indians will permit."¹²⁶ Collier concluded that, in early 1940 when the report was compiled, the Indian Service was not prepared to carry out a sustained yield policy. He argued that the Indian Service needed legislation which would allow the Service to engage in cooperative agreements with Federal and State agencies as a means of managing Indian forests effectively through sustained yield.¹²⁷ In essence, Collier argued that sustained yield as a tool for the management of Indian forests could not be viable in the near future.

The Effect of World War II on Forest Management

The Nez Perce Indian Reservation, like the rest of the Nation, was impacted by World War II almost immediately. Perhaps the greatest change caused by the war was the closure of CCC-ID projects. By the summer of 1942, just six months after the United States entered the conflict, the war effort had caused such a significant shift in the job

¹²⁴Department of the Interior, Forestry on Indian Lands, p. 70.

¹²⁵Ibid., pp. 73-74.

¹²⁶Ibid., p. 74.

¹²⁷Ibid., pp. 74-75.

market that relief employment simply was not needed, nor was it any longer economical. On July 2, 1942, Congress took steps to discontinue Civilian Conservation Corps work.

Significantly, the start of the war and the termination of the CCC-ID left the reservation without an organized fire-fighting system. Also, several legal measures were taken during this time as a means to protect the Nation's timber resource. For example, Congress directed the Department of the Interior to take measures to protect Indian forests and range lands, especially those within a few hundred miles of either coast.¹²⁸ Also, in March 1944, Congress granted the Departments of the Interior and Agriculture the authority to arrange cooperative sustained yield agreements for public lands. This allowed the various agencies to extend sustained yield management by creating regional sustained yield units.¹²⁹

The war also affected the Nation's timber industry. Like other raw materials, timber became an even more valuable and demanded commodity during the war. In fact, by weight, more timber than steel was consumed during the war years. The uses of the Nation's timber during the war effort were varied and many: the construction of barracks, ships, shipyards, docks, plants and housing, gunstocks, explosives and gunpowder, airplanes, and storage equipment.¹³⁰

Nez Perce War-Era Timber Estimates

As early as April 1942, just four months after the United States entered the war, Federal officials became concerned that there would be a "fairly serious shortage" of some western timber species for the war effort.¹³¹ As a result of this concern, the Indian Office requested that a timber volume survey be taken of western reservation timber, including that on the Nez Perce Reservation. The request specified that the species of greatest concern were the ponderosa pine, Douglas fir, and Engelmann spruce.¹³² Superintendent Wilson responded to the request in just three days, which implied that a new survey specifically for this request was not undertaken. There is no way to list the volumes he reported to the Indian Office, because only a mention of the response, not the document itself, could be located. Also, no documentation has been discovered indicting the source

¹²⁸Williams and Babcock, *Yakima*, p. 153.

¹²⁹*Ibid.*

¹³⁰*Ibid.*

¹³¹Letter, Carthon R. Patrie, Acting Regional Forester, to A. G. Wilson, Superintendent, April 27, 1942, p. 1. File: Forestry #2-Northern Idaho, December 2, 1941-July 23, 1945, Box 1225, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

¹³²*Ibid.*

of the volume. Presumably, the timber volume date came from the CCC-ID reconnaissance survey completed in the late 1930s.

Later that year, Wilson sent to the Commissioner of Indian Affairs a list of timber volumes by Nez Perce timber unit. The volumes presented by Wilson match, more or less, the volumes discussed in later sources.¹³³ Wilson's list offers a "snapshot" of the Nez Perce timber volumes at the outset of the World War II. Table 4-3 lists the volumes reported by Wilson in September 1942.

Table 4-3
*Nez Perce Tribal Timber Reserves*¹³⁴
(Volume BFM)

Reserve	Pine	Fir and Larch	Totals
Canvendish	7,000,000	8,000,000	15,000,000
Orofino, Gilbert G	7,500,000	3,500,000	11,000,000
Fords Creek	6,000,000	1,500,000	7,500,000
Reubens	2,000,000	500,000	2,500,000
Lookout	3,000,000	1,000,000	4,000,000
Air Port	3,500,000	1,500,000	5,000,000
Tramway	1,500,000	500,000	2,000,000
Mission	400,000	200,000	600,000
Slaughter House	1,600,000	-0-	1,600,000
Russell (Greer)	500,000	-0-	500,000
Alpine	1,000,000	-0-	1,000,000
Woodland	500,000	-0-	500,000
Kidder Ridge	2,700,000	-0-	2,700,000
West Kooskia	700,000	-0-	700,000
Selway	3,000,000	500,000	3,500,000
Box Canyon	1,000,000	-0-	1,000,000
Totals	41,900,000	17,200,000	59,100,000

¹³³See the discussion of the CCC-ID Reconnaissance Survey.

¹³⁴Letter, A. G. Wilson, Superintendent, to the Commissioner of Indian Affairs, September 30, 1942, p. 2. File: Forestry #2-Northern Idaho, December 2, 1941-July 23, 1945, Box 1225, Branch of Forestry, Regional Office, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

Nez Perce Timber Sales During the War Years, 1941-1946

Unlike the late 1920s and the 1930s, the early 1940s witnessed contract timber sales that encompassed several million board feet of Nez Perce tribal and allotted timber. From 1941 to 1946, over 14 million board feet of tribal timber and almost 4.5 million board feet of allotted timber was sold, which amounted to over \$38,000 for the Tribe and over \$10,600 for allottees. Table 4-4 illustrates the volumes cut and the corresponding receipts for the years 1941 to 1945.

*Table 4-4
Nez Perce War-Era Timber Sales
(Volume FBM)*

Year	Tribal	Allotted	Total
1941	-0-	100,910	100,910
1942	-0-	1,476,600	1,476,600
1943	7,450,020	255,000	7,705,020
1944	4,585,000	465,000	5,050,000
1945	2,171,000	2,147,000	4,318,000
Totals	14,206,020	4,444,510	18,650,530

Receipts (\$)

Year	Tribal	Allotted	Total
1941	-0-	227.05	6 227.05
1942	-0-	2,812.36	2,812.36
1943	17,092.74	503.38	17,596.12
1944	14,385.00	1,162.00	15,547.00
1945	6,891.00	5,939.00	12,830.00
Totals	38,368.74	10,643.79	49,012.53

The tribal timber sales that occurred during the time in which the United States was involved in the European and Pacific wars were the Cavendish sale, which began in 1943, and the Gilbert Grade sale, which began in 1944. Both contracts were completed in 1946. Two other sales were proposed during the war years, that involved the Fords Creek Unit

and the Kidder Ridge Unit.¹³⁵ Although a request was made to advertise the Kidder Ridge timber and the Nez Perce Business Committee authorized the sale, evidently no contract was negotiated for the Kidder Ridge timber²

¹³⁶. In all probability, the end of the war in August 1945 brought a drop in demand for lumber. However, a sale of the Fords Creek timber did take place. Between 1946 and 1947, 3,871,000 BFM was sold from the unit at a stumpage value of \$19,025.¹³⁷

The Cavendish Unit Timber Sale

Slightly more than a year after the United States entered the war, the Nez Perce Reservation entered into its first "war effort" timber sale. According to a report prepared in March 1943 by logging engineer Patrick Gray, Cavendish Unit timber was going directly into production for war purposes. Gray quoted a letter from the buyer:

It may interest you to know that operating in the Cavendish timber unit is ... [providing] the only Ponderosa Pine we could get now. We have important commitments of war orders for shell and ammunition cases specifying Ponderosa Pine, and your timber is now playing a real role in the war effort....¹³⁸

The Cavendish contract was approved by the Indian Office and the Nez Perce Tribal Business Committee on January 14, 1943. It provided that the buyer, Potlatch Forests, Inc., would cut an estimated 7 million board feet of ponderosa pine and 6 million board feet of fir. The purchase price was \$3 per thousand feet of ponderosa pine and \$1 per thousand feet of fir and other species. The agreement involved the Cavendish Unit

¹³⁵Letter, Patrick Gray, Logging Engineer, to the Commissioner of Indian Affairs, April 23, 1945, p. 3. File: Forestry #2-Northern Idaho, December 2, 1941-July 23, 1945, Box 1225, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

¹³⁶Letter, Thomas E. Norton, Forest Ranger, to Archie Phinney, Superintendent, March 5, 1945, p. 1. File: Forestry #2-Northern Idaho, December 2, 1941-July 23, 1945, Box 1225, Branch of Forestry, Region Forester, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

¹³⁷Thomas E. Norton, Annual Forestry and Grazing Report, CY 1946, p. 1; Thomas E. Norton, Annual Forestry and Grazing Report CY 1947, p. 1. File: Annual Forestry and Grazing Report, 1946-1947, Box 099, Forest Subject Files, 1909-52, Record Group 75, National Archives, Seattle Branch.

¹³⁸Patrick Gray, Logging Engineer, to the Commissioner of Indian Affairs, March 23, 1943, Report on the Timber Sales Activities, Northern Idaho Agency, p. 3. File: Report on Timber Sales-Patrick Gray, 1944-45, Box 99, Forestry Subject Files, 1909-1952, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

and an adjoining 160-acre allotment.¹³⁹ Ultimately, 9,218,020 board feet, at a stumpage value of \$21,341.74, was cut from the Cavendish Unit.

The Gilbert Grade Unit Timber Sale

The second tribal timber sale of the era involved the Gilbert Grade Unit. In February 1944, Gwen Maynard of Peck, Idaho, contracted to harvest an estimated 5 million board feet of ponderosa pine and an estimated 1 million board feet of fir and larch at \$3.85 per thousand feet for the pine and \$1.55 per thousand for the fir and larch.¹⁴⁰ The sale ultimately resulted in a cut of 5,745,000 board feet at a stumpage value of \$19,642.

According to a report written in April 1944, the logs from this cut were transported to a mill owned by the Riverside Lumber Company, which was located on the Orofino Tribal Reserve. The report stated that the lumber company intended to employ two shifts of workers. A five-year improvement lease was issued to the lumber company by the Agency apparently for the operation of the mill.¹⁴¹

*Table 4-5
Timber Volumes and Revenues
Cavendish and Gilbert Grade Timber Sales
1941-1946*

Unit	Year	Buyer	Volume (FBM)	Revenue (\$)
=====				
<u>Cavendish</u>	1943	Potlatch	7,450,020	17,092.74
	1944	"	1,347,000	3,272.00
	1945	"	242,000	507.00
	1946	"	179,000	470.00
			-----	-----
TOTALS			9,218,020	21,341.74
<u>Gilbert Grade</u>	1944	Maynard	3,238,000	11,113.00

¹³⁹Ibid.

¹⁴⁰Letter, Patrick Gray, Logging Engineer, to the Commissioner of Indian Affairs, April 7, 1944, Report on Timber Sales Activities, Northern Idaho Agency p. 3. File: Report on Timber Sales-Patrick Gray, 1944-45, Box 99, Forestry Subject Files, 1990-1952, Northern Idaho Agency, Record Group 75, National Archives, Seattle Branch.

¹⁴¹Ibid., p. 2.

1945	"	1,929,000	6,384.00
1946	"	578,000	2,145.00
TOTALS		5,745,000	19,025.00

Finally, during this era, approximately 4.5 million board feet was cut from allotted lands on the reservation with an accompanying income of \$10,643.79. (See Table 4-4.) In fact, during 1942, the first year of the war, the only timber sold from the reservation was that from allotted lands. Apparently, the administration of these sales did not negatively affect the administration of the tribal sales. In fact, in his reviews of timber sale activities during this time, Patrick Gray noted that the sales were being administered in a satisfactory manner and that "the interests of the Nez Perce Indians ... are being fully protected."¹⁴²

Gray repeated this compliment in 1944 and 1945. He went so far as to assert that "Superintendent Wilson and Ranger Norton are doing an effective job of forest management and are to be commended. The interests of the Indian owners are being fully taken care of."¹⁴³ The following year, he added praise for the new Superintendent, Archie Phinney.¹⁴⁴

The Indian Office Becomes the Bureau of Indian Affairs

Between the years 1946 and 1950, the Office of Indian Affairs was buffeted by serious criticism. A 1950 Interior Department report asserted that the Indian Office had suffered from a lack of leadership in the post-World War II years. The report claimed that, because William Brophy, Commissioner of Indian Affairs under President Roosevelt and President Truman, had taken ill early in his term, the Indian Office had been "headed by acting Commissioners ... who were ineffective executives."¹⁴⁵

These same years witnessed significant and accelerated organizational changes in the Indian Office. For example, in 1946, regional offices were created and, in 1947, the Indian Office officially became the Bureau of Indian Affairs. Shortly thereafter, six District offices replaced the regional offices. These sub-offices suffered from an

¹⁴²Letter, Grey to the Commissioner, March 23, 1943, p. 3.

¹⁴³Letter, Gray to the Commissioner, April 7, 1944, p. 5.

¹⁴⁴Letter, Gray to the Commissioner, April 23, 1945, p. 4.

¹⁴⁵Williams and Babcock, Yakima, p. 158.

inadequate delegation of authority and support from the Bureau. Finally, in September 1949, Area Offices were created by the Bureau, with direct line authority. This system, with the exception of minor bureaucratic changes, has remained in existence.¹⁴⁶

The Great Depression had a profound effect on timberlands on the Nez Perce Reservation. Demand for timber dropped, and New Deal programs were initiated on the reservation to cope with the problems of the 1930s. Significant administration changes also occurred, which facilitated coping with the effects of the Great Depression. The beginnings of World War II saw an increase in the demand for timber, the dismantling of some of the New Deal programs, and a return to increased economic activity on the Nez Perce Reservation. Following the war, more administrative changes aimed to make the governance of the reservation more efficient. In conformity with the Indian Reorganization Act of 1934, allotments ceased and timber lands became tribal property. In addition, more Indian governance of these lands began to assert itself. These actions would fall in line with the post-war attempts to reduce the size of the Federal bureaucracy.

¹⁴⁶Ibid.

Chapter 5

POST-WAR FORESTRY

National Developments in Indian Forestry, 1945-1960

After World War II, Federal agencies reorganized in order to reduce the size of the Federal bureaucracy and budget. The Reorganization Act of 1945 aimed to eliminate or combine agencies. The Bureau of Indian Affairs' office, which was moved to Chicago during the war, returned to Washington, D.C. Its authority was decentralized through the creation in 1948 of 11 Area Offices and numerous Field Offices to oversee Bureau operations in specific regions. Each of the three-tiered organizations (Central, Area, and Agency) was composed of a line officer and various staff officers. The Act of August 8, 1946 (Public Law 687) provided statutory authority to the Secretary of the Interior to delegate responsibilities, especially in timber sale administration, to the Commissioner of Indian Affairs. In 1950, the Division of Forestry and Grazing became the Branch of Forest and Range Management and in, 1954, was divided into the Branch of Land Operations and the Branch of Forestry.¹

These organizational changes fell short of enabling the Bureau to meet the numerous challenges awaiting it during the post-war period. The size of the Bureau staff did not dramatically increase and the Bureau foresters were forced to face the often conflicting goals of sustained yield management and maximizing the returns from stumpage revenue. This conflict proved a constant source of friction on the Nez Perce Reservation in the post-war period. There also was residual criticism of the Indian Reorganization Act by some tribes, who did not want to "accept the uncertainties of a federally sponsored corporate charter," and by some Congressional members, who were critical of the "perpetuation" of a large governmental bureaucracy unnecessarily supervising the Indians in the United States. The Hoover Commission Task Force on Indian Affairs, which was organized in the late 1940s, criticized the Bureau for not involving Indians more directly in the forestry programs and for not teaching and training the Indians in the concept of sustained yield management.²

The impetus toward the preparation of forest inventories and forest management plans that began before the war accelerated between 1941-1945, when BIA staff prepared management plans for all major Indian forests. These were designed to state formal goals for Indian forest management that emphasized the principles of sustained yield. Moreover, the plans aimed to develop an Indian economic resource base. More informal cutting or

¹Newell, et. al., A Forest in Trust, pp. 4-1 through 4-4.

²Ibid. pp. 4-4 through 4-8.

working plans were developed for Indian reservations without major timber resources. The pressure to cut more timber during the war necessarily resulted in updated and more complete forest inventories, since annual allowable cuts had been set at very conservative levels due to the lack of accurate inventory data. By 1959, over two-thirds of the Nation's reservation forests had been "inventoried and analyzed for the purpose of forest management planning." Much of this planning depended on aerial photography and the use of continuous forest inventory plots with which to analyze growth and calculate the annual allowable cut. Management plans, as they came to be defined during this post-war era, also included a fire protection plan, information about access roads to logging units, an analysis of personnel requirements needed to meet the plan's objectives, and of the forest's potential for multiple use.³

Between 1945 and 1960, BIA personnel had to deal with a number of administrative problems, some of which had troubled Bureau staff since the beginning of the forestry program. During the immediate post-war period, the Commissioner, Area Director, and Superintendent were delegated the authority to approve larger timber sales than they had in the past, and thus to improve the timber sale process. Many laws governing timber sales remained, however, that were a product of the unique fiduciary relationship of the Bureau to the tribes and that made the process complex and often put it at odds with effective forest management. The conflict over management of allotted and unallotted Indian lands and the contradictions between sustained yield principles and pressure on the Bureau to maximize timber sales and revenues proved particularly troublesome to the Bureau. After the war, the tribes became more aware of the value of the forest resource as a means of sustaining the Indian community, which increased the importance of finding solutions to these problems.⁴

Timbered allotments presented management problems because they were scattered holdings of 160 acres or less owned by several allottees interested more in timber income than in long-range forest management. Fee patents for allotted timber lands often restricted access to adjacent tribal trust lands, and the Bureau discouraged the practice of granting fee patents during the 1930s and 1940s. The Act of June 25, 1910, which restricted cutting to "mature" trees and "dead and down" timber, often frustrated Bureau attempts to manage the forest according to sustained yield principles, which required the application of such silvicultural techniques as individual tree selection and clearcutting for its success. Legislation permitting the harvesting of commercially mature timber and, hence, management of the forest on sound silvicultural principles, was not enacted until 1964.⁵ Other timber sale issues commanding national attention during the 1940s and 1950s

³Ibid. pp. 5-8 through 5-17.

⁴Ibid. pp. 4-18 through 4-20.

⁵Ibid. pp. 4-19 through 4-21.

involved generally unsuccessful attempts by the timber industry to persuade the Bureau to revise regulations governing stumpage appraisal and slash disposal.⁶

During the 1940s and 1950s, public agencies and private timber owners focused considerable attention on cooperative efforts to manage the Nation's forests. During this time, the Bureau signed a series of cooperative agreements with Federal, State, and private agencies in order to deal economically with the important problems of fire and pest control during a period in which the Bureau was forced to meet its forest trust responsibilities with limited funds and staff. For example, in the mid-1940s, the Bureau concluded cooperative disease control agreements with the Blister Rust Control Program of the State of Wisconsin, the United States Department of Agriculture Forest Service, and the Bureau of Entomology and Plant Quarantine, in order to coordinate the efforts to combat white pine blister rust on Federal lands, including the Menominee Indian Reservation, which had been infected with the disease since 1918.

In 1942, the Departments of Agriculture and Interior extended the cooperative fire control agreement that originally had been signed in 1913. The agreement provided for the Forest Service to contract certain services on Indian lands and for the Bureau to contract services on adjacent Forest Service lands. Similar fire control agreements were signed during this period with the National Parks Service, State Forestry Department, and private protective associations. In 1949, the Bureau agreed to a request from the Forest Service's Branch of State and Private Forestry for information on reforestation on Indian lands for use in the establishment of a nationwide reforestation program. In 1952, the Bureau cooperated with the Bureau of Land Management in establishing working relationships with the Forest Service experiment stations across the country. BIA foresters made extensive use of, and actually initiated, many of the studies conducted at these experiment stations.⁷

The Bureau was forced to operate with reduced budgets during the 1940s and 1950s, a period in which the Bureau was required to begin a rather abrupt termination of the Federal supervision of several Indian tribes that possessed significant timber resources. The movement toward termination of the trust relationship between the Bureau and the tribes began in Congress. In the early 1940s, Congress directed the Bureau to compile data to determine the relative readiness of the Nation's Indian reservations for terminating the trust relationship. Between 1947 and 1949, reports by Assistant Indian Commissioner William Zimmerman, the Hoover Commission Task Force on Indian Affairs, and Commissioner of Indian Affairs John R. Nichols recommended a gradual withdrawal of the trust relationship on reservations judged to be ready for self-government. The pressure by some members of Congress for immediate termination of Federal supervision, and the

⁶Ibid. pp. 4-21 through 4-26.

⁷Ibid. pp. 4-26 through 4-32.

appointment in 1950 of Dillion S. Myer, a terminator, as Commissioner of Indian Affairs, resulted in the passage of House Concurrent Resolution 108 in 1953. This policy statement called for the termination of all tribes in California, Florida, New York, and Texas, and a number of individual tribes in other States, such as the Flathead in Montana, the Klamath in Oregon, and the Menominee in Wisconsin.⁸

Termination bills for several reservations were introduced into Congress in 1954. Congress passed termination bills for the Klamath and Menominee Indians but failed to pass one for the Flathead Reservation. The Branch of Forestry served in an advisory capacity during the hearings on termination and was not openly critical of this policy, which was official Federal Indian policy into the 1960s. Local Branch of Forestry officials did criticize termination and the method of its introduction on the affected reservations. Implementation of the policy adversely impacted several tribes in the country, especially the Klamath Indians, who lost the benefit of one of the country's best-managed Indian forestry programs.⁹

Growing opposition by Indian tribes and their Congressional supporters, by States concerned about increased burdens on local government, and by those concerned about the readiness of the tribes for termination, reduced administrative and Congressional support for the termination movement by the mid-1950s. The Bureau continued to be criticized for not encouraging greater Indian self-reliance and was urged to develop the Indians' natural resources to achieve eventual Indian self-sufficiency. As a result, Congressional committees chaired by Earl Chudoff of Pennsylvania and Richard L. Neuberger of Oregon reviewed timber management policies of the BIA and other Federal agencies, beginning in 1955. The committees dealt with reorganization of the Branch of Forestry, budgetary matters, and changes in Bureau timber policy. The Committee's recommendation that all Federal commercial forests be consolidated under the jurisdiction of the Forest Service was defeated by opposition from the Bureau, based on its concern about its unique trust responsibility to the tribes, that often subordinated technical management practices to the general welfare of the Indian owners. The Bureau admitted that the Department of the Interior's timber management responsibilities on Indian lands could be transferred, but believed that the Department of the Interior's responsibility for managing these lands could not be transferred. The Bureau also pointed out that the confusion of land ownership on the reservations would not make consolidation more efficient or economical, and that Indian forest management would be only a small and presumably a relatively unimportant part of managing consolidated Federal timber lands. The opposition of the Forest Service to the transfer consolidation defeated the proposal.¹⁰

⁸Ibid., pp. 4-33 through 4-36.

⁹Ibid. pp. 4-36 through 4-47.

¹⁰Ibid. pp. 4-47 through 4-52.

The Chudoff Committee also recommended full development of Indian timber on a business-like basis, through the employment of better qualified staff paid with salaries competitive with those offered in private industry. The Committee recommended coordinating the construction of more and better access roads to timberlands by Federal agencies, and the appropriation of additional monies for that purpose over the next 10 years. The Bureau agreed to these recommendations, although noting the complexities of improving access to tribal timberlands due to the presence of fee patent lands and the difficulties of obtaining rights-of-way to small timber sale units. The Chudoff Committee's recommendation of more competitive salaries for Bureau staff was acted upon by the Bureau, the Department of Agriculture, the Civil Service Commission, forestry societies, and colleges, which studied pay scales and benefits for the purpose of improving employment opportunities. These efforts resulted in Bureau staff salaries being "brought into balance" with those of private industry in 1956.¹¹

The Chudoff Committee also addressed timber sale policy, stumpage appraisal, and Indian participation in the forestry program. The Committee was particularly concerned about reconciling long-term contracts with obtaining fair market value, and recommended that the Bureau revise its policy in order to sell timber on a short-term basis in low volumes with competitive bidding, and establish reappraisal policies for pricing Indian timber at fair market value, using comparable sales of non-Indian lands in the vicinity. The Bureau denied that these policy revisions were necessarily to the advantage of the Indians, but acknowledged the need to use the tribal timber as a means of providing revenue with which to create and sustain independent, self-sufficient Indian communities.¹²

Congressional criticism and the formation of an interagency task force drawn from Forest Service, Bureau of Land Management, and BIA personnel resulted in recommendations for the establishment of a more uniform basis for timber sales among the three Federal agencies, through the sale of timber at appraised prices, advertising sales of a given value for competitive bidding, and use of sealed rather than oral bids. These recommendations also resulted in the publication in 1959 of the new Bureau of Indian Affairs Manual and revised General Forest Regulations, the first major revision of BIA timber regulations since 1936. These regulations allowed an allottee with sole interest in an allotment to cut and sell timber from it under a special permit, and further responded to Congressional criticism by establishing a maximum five-year period for timber contracts. Management plans also were required to determine how to achieve the sale of the smallest volume of timber in the shortest period of time. The regulations also made available standard contract forms for large as well as small timber sales. The 1959 changes enabled the Secretary of the Interior to delegate his authority to the Commissioner of Indian

¹¹Ibid. pp. 4-47 through 4-54.

¹²Ibid. pp. 4-54 through 4-57.

Affairs for adjusting stumpage rates and for other matters related to timber sale contracts.¹³

Nez Perce Forest Management, 1945-1960

Events on the Nez Perce Reservation reflected, to a great extent, those that occurred in Indian forestry during the post-war period. Forest management primarily centered on managing timber sales and fire control. The Agency had to cope with increased demands for timber sales and increased tribal awareness about the value of the timber resource during a period of budgetary reductions, staffing shortages, dated inventory data and planning documents, and a political climate favoring the termination of the trust relationship between the Federal Government and the Nation's Indian tribes. One of the unforeseen results of these developments was the short-term existence of Indian logging operations, and the Nez Perce Tribe, for a time, considering assumption and then termination of the reservation's timber program.

Forest Management Planning

Because the Northern Idaho Agency did not supervise major, timbered reservations, it did not prepare forest management plans for the Nez Perce and Coeur d'Alene Reservations during the 1940s, when such plans were being prepared for some of the major Indian timber reserves. However, in March 1949, the Regional Director of the Portland Area Office requested from the Northern Idaho Agency a list of needed projects and budgets for surveys related to forest management, range management, forest protection, and wildlife management, so that the Regional Office could give them "detailed consideration and allocate approximately \$10,000 to the Agency in addition to its regular operating funds."¹⁴

The Superintendent responded by pointing to the acute need for survey work on agency reservations, including the Nez Perce. The Superintendent stated that a General Land Office survey was required for the reestablishment of the original survey, since several of its corners and lines had been destroyed and could no longer be located. As a result, boundaries for the Nez Perce and Coeur d'Alene Reservations were "in constant dispute." The report also noted that some of the fences put in by the CCC were not placed on the correct lines, which had been caused by poor surveys, poor corner markings,

¹³Ibid. pp. 4-57 through 4-59.

¹⁴Letter, E. Morgan Pryse, Regional Director, Portland Oregon, to Archie Phinney, Superintendent, Northern Idaho Agency, March 22, 1949. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

and a number of different surveys in rough country during the earlier days of contract surveys. Finally, the fences built by the CCC had not been maintained since they had been constructed.¹⁵

The Superintendent expressed the hope that the General Land Office would conduct the survey with no cost to the Bureau, and emphasized the importance of accurate surveys for effective forest protection and management. The Superintendent estimated the project cost at \$20,000 for the Nez Perce and Coeur d'Alene Reservations, to be accomplished over a number of years, but with "very good advantage" to forest management, range management, forest protection, and wildlife.¹⁶ The emphasis that the Agency placed on such a basic need as properly located and marked boundary lines and their importance for basic forest management is indicative of its basic lack of tools with which to manage effectively the Agency and its forest reserves.

The lack of updated, comprehensive data on the nature and volume of the reservation's timber precluded effective response to the demands by the regional office for periodic cutting schedules for the tribal timber reserves on the reservation. The Agency's forest managers were forced to rely on inventory data generated by the CCC in 1942, which estimated timber volumes at 59.1 million board feet. (See Chapter 4.) The Agency used this figure and the amount of timber harvested after that date to estimate current timber volumes and periodically to project cutting schedules, when called upon to do so. As a result, estimates and the resulting cutting schedules were conservative, to ensure that the Bureau managed the forest reserves in accordance with sustained yield principles.

In 1951, at the request of the Nez Perce Tribe, the Agency's forest manager submitted a cutting budget for the next 10 years, with a total estimated volume of just over 20 million board feet or an allowable cut of two million board feet per year. This budget was based on the 1942 inventory and was known to be conservative.¹⁷ In 1954, the forest manager prepared a cutting schedule for the reservation, again based on the CCC inventory of 1942 and also known to be conservative. The report estimated about 45 million board feet on tribal timber reserves, 25.3 million board feet of which was located on reserves from which no timber had been cut. The report also called for a first cut within three years on practically all of the reserves with an original stand of timber. The report recommended timber sales be concentrated on those reserves with the original stand

¹⁵Letter, Archie Phinney, Superintendent, Northern Idaho Agency, to Regional Director, U. S. Indian Service, Portland, Oregon, April 25, 1949. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

¹⁶Ibid.

¹⁷Latham, "Analysis of Nez Perce Forest Management" p. 16.

of timber, that the sale of allotment timber be secondary and based on actual need, and that a nominal fee be charged where timber appraisal was incidental to land sale.¹⁸ Despite the preparation of these cutting schedules, the Bureau lacked reliable data concerning timber volumes. In a 1956 memorandum from the Area Forester to the Commissioner, the former confessed that, even though it was known that all allotted lands had been cut over at least once between 1910 and 1950, there was no available information on original volumes, total depletion, or present volumes for either the tribal or allotted lands. No timber type maps or progress maps, showing the years when the tribal units or allotments were logged, were available.¹⁹ (See Chapter 6 for a detailed discussion of forest management problems confronting the Bureau in the late 1950s and the early 1960s.)

Staffing

These problems and those related to timber sales were largely attributable to the staffing shortages that plagued the Northern Idaho Agency during the period. In 1947, forest manager Thomas Norton complained to Superintendent Archie Phinney that the Agency did not have adequate personnel to begin to meet the demands for timber cutting on the Nez Perce and Coeur d'Alene Reservations during the immediate post-war period, which commanded high timber prices. Forest manager Norton claimed that, given adequate staff, 30 million board feet could sell "right now" at a price of \$120,000 and urged that something be done to make such a sale a reality.²⁰

In a 1948 letter, the Superintendent Phinney noted the existence of new Indian logging enterprises and complained that, unless the area office could provide the Agency with more forestry help, it would be impossible for the staff to consider any more sales. The problem was not volume, but the scattered nature of the tribal units and the impossibility of combining them into one logging operation.²¹ E. Morgan Pryse, the Regional Director, responded sympathetically with the Superintendent's problem and

¹⁸N. F. Caywood, "Report Relative to Nez Perce Tribal Timber Resources, and Recommended Cutting under Tribal Administration" September 17, 1954. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

¹⁹Wesley Rickard, "Mismanagement of the Nez Perce Indian Forest: A Preliminary Review of Documents", April 4, 1980. File: 600-02, Litigation Case, *Nez Perce Tribe v. United States*, Docket 179A, U. S. Court of Claims, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Lapwai, Idaho.

²⁰Letter, Thomas E. Norton, Forest Ranger, Northern Idaho Agency, to Archie Phinney, Superintendent, March 11, 1947. File: Portland Office Building #34, Swan Island, Box 0104, Northern Idaho Agency, Forestry Subject Files, 1909-1952, Record Group 75, National Archives, Seattle Branch.

²¹Letter, Archie Phinney, Superintendent, to Morgan E. Pryse, Regional Director, Office of Indian Affairs, July 5, 1948. File: Portland Office, Building #34, Swan Island, Box 0104, Northern Idaho Agency, Forestry Subject Files, 1909 - 1952, Record Group 75, National Archives, Seattle Branch.

agreed that no further timber sales should be attempted under such circumstances. Pryse also indicated that many of the other agencies were similarly handicapped and that the Indian Office was in no position to offer substantial aid in the near future.²²

By 1954, continued staffing shortages had resulted in a drop in timber revenue and increasing complaints from the Nez Perce Tribe about the status of timber sales program. The situation became desperate in June 1954, when tribal officials traveled to Portland to complain to the Regional Director about the lack of timber income. The Bureau, in turn, discussed personnel problems with the Tribe and suggested that the Tribe consider assuming some of the forest management responsibilities on the reservation. The Tribe apparently expressed some interest in assuming more managerial responsibility and directed the Agency's only forester to prepare a cutting plan for the reservation.²³

In August 1954, Frell M. Owl, the Superintendent, wrote to the Regional Director, complaining about staff shortages and requesting the assistance of an additional forester to aid the Agency forest manager to administer timber sales. He also noted that he was preparing budgets for fiscal year 1956 to induce the Nez Perce and Coeur d'Alene Tribes to cooperate in providing funds for the employment of an additional forester, who would spend his time proportionately on the reservations.²⁴

In September, the Agency forester submitted the cutting plan discussed above, which called for a five-year cutting plan of five million board feet per year and for sales to occur in a sales reserve area. The plan also referenced the Nez Perce Tribe's interest "in assuming the administration of their timber resources to the extent of hiring a forester." However, the Tribe reconsidered its position, because the Bureau again tried to persuade it to assume timber sale administration responsibilities during the spring of 1955. The Bureau suggested that the Tribe could perform the sale administration by using the 10-percent deductions from gross timber sale revenues charged by the Bureau to administer timber sales. The Bureau was willing to forego this percentage in order to enable the Tribe to assume timber sale responsibilities, but the Tribe refused to accept this

²²E. Morgan Pryse, Regional Director, Regional Office 3, to Archie Phinney, Superintendent, July 13, 1948. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Northern Idaho Agency, Box 1226, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

²³Latham, "Analysis of Nez Perce Forest Management" p. 21.

²⁴Frell M. Owl, Superintendent, Northern Idaho Agency, to Don C. Foster, Area Director, Portland Area Office, August, 25, 1954. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

proposal.²⁵ The Tribe held that, since it was the Secretary of the Interior's responsibility to manage the Tribe's timber resources properly, it was the Secretary's responsibility to provide funds and personnel necessary for proper management.²⁶

In late 1955, additional personnel were added at the Agency and a new cutting program was adopted. Still, the sale program lagged. The Tribe's brief consideration of assuming forest management responsibilities on the reservation in the 1950s foreshadowed events in the 1980s, when the Tribe assumed management of the timber program stemming, in part, from a long-term frustration with the staff shortages, which had adversely affected the timber sales program during the 1950s.

Timber Sales, 1947-1960

A program of timber sales at frequent intervals had been well established by the beginning of the period and, during the late 1940s, timber sales averaged over two million board feet per year. This amount was consistent with the annual cuts recommended in most of the cutting schedules prepared during the period. However, sales dropped precipitously in 1950 and were to exceed two million board feet only once more before 1960. A total of about 16.6 million board feet was harvested between 1947 and 1960 and brought only about \$160,000 in stumpage fees to the Tribe during the period. As noted, the Bureau was chronically understaffed and could not meet timber sales demands during the late 1940s, when stumpage prices were high. The annual cut for the period averaged only 1.3 million board feet.

Many of the timber sales during this period were to Indian logging contractors. The largest single timber sale during the period was from a tribal unit to Milton Broncheau, a member of the Nez Perce Tribe, for 1,015,000 board feet, which sold for \$6,015.54 in 1949. The second largest sale was from a tribal unit in Section 22, Township 33 North, Range 4 East, involving 951,430 board feet which was sold to Lynus Walker, also a member of the Tribe, in 1948 for \$3,639.86. Another was a 1948 sale in the Box Canyon-Kidder Ridge units to a group of Nez Perce Indians. The sale involved 693,020 board feet which sold for \$2,668.13. A sale to Art and James McConville in 1948 for \$4,100.84, involved 726,130 board feet logged from Section 12, Township 36 North, Range 1 East.

²⁵Latham, "Analysis of Nez Perce Forest Management", p. 21; Rickard, "Management on the Nez Perce Forest" n.p.

²⁶Memorandum, Harold Weaver, Area Forester, to Area Director, Portland, Oregon, November 26, 1954. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

During this period, the Bureau found itself frequently confronted with requests from Indian loggers seeking exemptions from Bureau regulations. The sale to the group of Nez Perce Indians was let under special procedures, with which the Tribe accepted less than the maximum price possible in order to assist a tribal member's logging operation. The Regional Director concurred in the waiving of advertising requirements to allow this to occur, although he was critical of the Superintendent for authorizing the sale of timber on the Box Canyon Reserve through the issuing of timber cutting permits without first requesting authorization for these sales from the Regional Director.²⁷

The Superintendent defended his actions related to the issuing of timber cutting permits to the members of the Clearwater Tribal Logging Project, stating that the enterprise displayed good logging methods and "intense seriousness" and by emphasizing the desirability of the Tribe operating such enterprises in order to earn income beyond stumpage fees paid to the Tribe. The Superintendent noted that other Indian groups recently had applied to the Agency for advice on how to start similar enterprises, and remarked that he could see no reason why mature timber on the reservation need ever be sold outright to the whites for only "the Stumpage consideration."²⁸

The sale to the McConvilles is another example. In June 1948, the Tribe approved a contract to James McConville for the sale of 650,000 board feet of timber on the tribal unit near Orofino, Idaho. The Ne mu poo Logging Company was formed with James McConville as president, Moffett Johnson as vice president, Elnora Townsend as treasurer, and Art McConville as woods foreman. The company sold the timber to the Buck Lumber Company of Orofino. However, logging was carried on in a "desultory" fashion, due to disagreements among members of the company caused by James McConville interfering with the orders of Art McConville, the logging boss. An agreement was reached whereby Art McConville was to continue in charge of the logging operation and James McConville would stop interfering with the woods operations. A certificate of completion dated August 10, 1949, was issued to and signed by James McConville.²⁹

²⁷Letters, E. Morgan Pryse, Regional Director, Portland, to Archie Phinney, Superintendent, Northern Idaho Agency, April 16 and April 27, 1948. File: 339.4, Forestry-General Supervision, Northern Idaho Agency, September 1946-November 1954, Box 1226, Branch of Forestry. Regional Forester, Spokane, Portland Area Office, Record Group, 75, National Archives, Seattle Branch; Letter, E. Morgan Pryse, Regional Director, Portland, Oregon, to Archie Phinney, Superintendent, Northern Idaho Agency, April 27, 1948. File: Forestry, General Supervision, Box Canyon, Box 1102, Branch of Forestry, General Subject Files, 1947-1966, Record Group 75, National Archives, Seattle Branch.

²⁸Letter, Archie Phinney, Superintendent, Northern Idaho Agency, to E. Morgan Pryse, District Director, Portland, Oregon, May 14, 1948. File: Box Canyon, Box 1102, General Subject Files, 1947-1966, Branch of Forestry, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

²⁹Letter, Patrick Gray, Forester, Northern Idaho Agency, to E. Morgan Pryse, Area Director, Portland, Oregon, March 3, 1950. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record G 75, National

However, in a January 30, 1950, letter to the Secretary of the Interior, James McConville complained of being treated unfairly, stating that Art McConville continued with the cutting operation until September 2, 1949, and that a new contract had been issued to Art McConville to continue the operation. The Agency forester denied these allegations in a March 3, 1950, letter to the Area Director and, with reference to James McConville's inquiry regarding preference rights and whether the office should advertise the timber on the reserve for competitive bids, stated that the wishes of the new tribal council should be considered before any decision was made and that Indians other than James McConville would be interested in obtaining contracts.³⁰ The Agency forester and Superintendent again denied that a new contract had been awarded to Art McConville in Section 12, Township 36 North, Range 1 East, stating that the Tribal Business Committee had not decided as of November 14, 1950, whether either of the McConville's should be awarded the timber sale.³¹ In 1953, James McConville was awarded a contract for cutting 666,550 board feet on the Orofino unit for \$6,507.77 in stumpage fees.

On March 17, 1951, Corbett B. Lawyer, a "full blood" Nez Perce Indian employed as a purchasing agent by a local lumber mill, requested the exemption of purchasing \$5,000 worth of merchantable timber without advertisement in accordance with Section 61.17 of the Code of Federal Regulations (CFR), Title 25--Indians.³² The Commissioner of Indian Affairs denied the request, stating that the purpose of Section 61.17 CFR Title 25 was "to assist Indians who wish to engage in timber cutting operations ... [and that] it was not intended that timber sales should be made under this section to Indians who act as agents for either Indian or non-Indian operators."³³ Lawyer also requested that the John Anderson allotment be advertised and that he, Lawyer, would accept mill scale, rather than scaling by a forest officer or authorized representative where the trees were cut, contrary

Archives, Seattle Branch.

³⁰Ibid.

³¹Memorandum, Robert W. Mezger, Forester, Northern Idaho Agency, to M. L. Robertson, Superintendent, November 14, 1950; Letter, M. L. Robertson, Superintendent, Northern Idaho Agency, to E. Morgan Pyse, Area Director, Portland, Oregon, November 14, 1950. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

³²Letter, Corbett B. Lawyer, Pataha Valley Lumber Company, Spalding, Idaho, to Oscar L. Chapman, Secretary of the Interior, March 17, 1951. File: Northern Idaho Agency, 339.4, September 1946-November 1954, General Supervision, Box 1226, Branch of Forestry, Regional Forester, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

³³Letter, D. S. Myer, Commissioner of Indian Affairs, to Corbett B. Lawyer, Lapwai, Idaho, May 4, 1951. File: Northern Idaho Agency, 339.4, Forestry, General Supervision, September 1946-November 1954. Box 1226, Branch of Forestry, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

to Bureau regulations, which was a common practice in northern Idaho at the time. The Bureau again denied this request, stating that, even though the practice might be acceptable to the allottee and the Indian contractor, the Bureau's trust responsibility precluded it from waiving the Bureau's scaling regulations.³⁴

Fire Control

There were 78 fires on the reservation between 1947 and 1960, which burned a total of 804 acres. The largest fire consumed 174 acres. The core of fire control management on the reservation between 1947 and 1960 was the cooperative agreements signed between 1942 and 1943 between the Northern Idaho Agency and the State of Idaho, the Clearwater Protective Association, and the Kaniksu National Forest, which provided for these agencies to supply the Northern Idaho Agency with fire suppression services at cost. However, these agreements did not provide for the cooperating agencies to be reimbursed for presuppression activities. The Northern Idaho Agency was entirely dependent on the cooperating agencies for all phases of fire protection on the Nez Perce, Coeur d'Alene, Kootenai, and Kalispel Reservations.³⁵

The Northern Idaho Agency maintained a small protective organization consisting of the forest officer, a guard at Kamiah, and a fire control aide at Lapwai. However it was still necessary for the Agency to rely heavily on cooperative agreements for many phases of fire protection, especially detection and some suppression, because of the "extremely scattered nature of the Indian lands." The Agency's organization was relatively inefficient because of unavoidable duplication of effort with other agencies and because of old and ineffective equipment.³⁶

In examining the period between 1939 and 1950, the Agency forester noted that 82 percent of the fires occurring during the period were on the Nez Perce Reservation, and involved 77 percent of the area burned and 87 percent of the total suppression costs. The Agency forester estimated annual reservation presuppression and suppression costs at \$2,998. Because of the scattered nature of the lands within the jurisdiction of the Agency, the forester recommended that fire protection on the forest and range lands of the Nez

³⁴Letter, M. L. Robertson, Superintendent, Northern Idaho Agency, to E. Morgan Pyse, Area Director, Portland, Oregon, September 2, 1951; Letter, Arthur Walker, signed for the Area Director, to M. L. Robertson, Superintendent, Northern Idaho Agency, September 22, 1953. File: Northern Idaho Agency, Forestry #3, September 17, 1946-November 26, 1954, Box 1226, Branch of Forestry, Regional Forester, Spokane, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

³⁵Robert W. Mezger, "Fire Control at Northern Idaho Agency", November 23, 1951, p. 1. File: Fire Correspondence, 1950-1952, Box 0102, Northern Idaho Agency, Forestry Subject Files, 1909-1952. Record Group 75, National Archives, Seattle Branch.

³⁶Ibid. pp. 1-2.

Perce, Coeur d'Alene, and Kootenai Reservations be contracted with the State, which had rapidly expanded its fire organization into a "well equipped, efficient organization" and had three well-equipped Protective District Headquarters within the boundaries of the Nez Perce Reservation. The State indicated a willingness to provide the Agency with better fire protection on a contracted basis than could be provided by the existing cooperative agreements. The Agency forester also noted that contracting with the State had the added advantage of releasing the small forestry staff at the Northern Idaho Agency from the pressure of fire control work during the fire season on the Nez Perce and Coeur d'Alene Reservations at its peak.³⁷ An agreement providing for this service was apparently signed with the State between 1953 and 1959.

Correspondence between the Agency and the State during the 1950s reveals that the cooperative agreements concluded in 1942-1943 were modified so that the State assumed a larger fire suppression role. In 1952, the Superintendent wrote to the State Forester, requesting that the State accept responsibility for all phases of fire control on Indian lands in Northern Idaho, noting that the existing agreements provided for actual suppression costs and that the Agency intended to abandon the small fire protection force it maintained during the fire season. The Agency estimated these costs at about \$3,000 annually (an average of \$.03 per acre) but had only \$1,200 available for presuppression. In a 1954 letter to the Commissioner of Indian Affairs, the Area Director noted that the existing cooperative agreement with the State was "one-sided, being from them [the State] to us [the Bureau]" and unsatisfactory for both parties. The letter noted that a new agreement tentatively approved by the State provided that the State would protect all Indian forest and grasslands, and that the Agency would pay \$1,000 annually in presuppression costs and would pay the actual costs of the suppression of fires on Indian lands.³⁸

This agreement presumably was approved by the State and the Bureau. In 1959, in view of the severity of the 1958 fire season and the anticipation that the 1959 season would be just as bad, the Agency also offered to the State the services of its forest manager and Agency foresters as additional overhead "should the fire emergency reach such a point where they can be utilized."³⁹ This offer apparently was accepted.

³⁷Ibid. pp. 3-5.

³⁸Letter, M. L. Robertson, Superintendent, Northern Idaho Agency, to Roger L. Guernsey, State Forester, January 31, 1952. File: 1948. Plans and General Correspondence, 1949, Northern Idaho Agency, Idaho, 1950-1951, July 1952. Letter L. P. Towle, Acting Area Director, to Commissioner of Indian Affairs, April 8, 1954. File: 52-10-9-339.12, Fire Protection, Northern Idaho Agency, Box 1170, Forestry Subject Files, 1947-1966, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

³⁹Letters, Harold J. Hayne, Acting Superintendent, to Roger E. Guernsey, State Forester, June 5, 1959; Harold J. Hayne, Acting Superintendent, to Roger L. Guernsey, December 22, 1959. File: 52-10-9-339.12, Fire Protection, Northern Idaho Agency, Box 1170, Forestry Subject Files, 1947-1966, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

Throughout the period between 1945-1960, attempts were made to reduce the size of large Government bureaucracies under guidelines set forth by the Hoover Commission. Often, the needs of the Indian forest lands suffered from conflicting objectives as staff reductions made it difficult to meet all of the requirements of stewardship. More and more, pressure was brought to bear to involve the Indians in the management of their own local affairs. In this way, it was argued, Federal expenditures could be reduced. As a result, staff problems often left planning merely at a theoretical stage rather than an applied one. New pressures in the 1960s, however, would result in a more effective implementation of forest management planning and increased Indian involvement in the forestry program.

Chapter 6

PLANNING FOR INTENSIVE FOREST MANAGEMENT

Forest management developments on the Nez Perce Reservation in the 1960s reflected, in part, those occurring on the national level during a decade that experienced a transition from abrupt termination to tribal political and economic development as the surest path to Indian self-determination. Key events in this effort on the Nez Perce Reservation were the reorganization of tribal government in 1961, tribal utilization of Federal funds (some of them anti-poverty) for forest and economic development projects (including land acquisition), a forest inventory and management plan, and an accelerated timber harvesting program to provide an increased and more reliable source of income to the Tribe with which to sustain these efforts.

National Developments in Indian Forestry, 1960-1970

Even though Federal termination policy failed in the 1950s, the idea of Indian self-determination remained a long-term goal of the Federal Government. The Executive Branch and Congress recognized that the interim retention of the trust relationship and Federal promotion of political and economic development for the tribes were indispensable if the Indians were to become self-sufficient as well as independent. Reports prepared by the Department of the Interior Task Force on Indian Affairs in 1961 and by the Commission on the Rights, Liberties, and Responsibilities of the American Indians in 1966, criticized the Federal goal of immediate termination as not in the Indians' best interest, and called for the maximum development of Indian resources in accordance with long-range plans. These reports recommended that the Indians initiate these development programs and that the Bureau provide the technical aid needed for successful long-term planning.¹

Developments effected by and affecting the Bureau's Branch of Forestry during the 1950s enabled the Bureau to respond nationally to the needs of the Indian tribes during the 1960s. Forest management plans that had been prepared for many of the Indian reservations during the 1950s and the early 1960s re-evaluated the annual allowable cut, often resulting in significant increases during an era of intensive forest management. Larger Bureau budgets, higher civil service grades for BIA foresters, and larger Bureau staffs, including fire control aides, provided the personnel to manage accelerated economic

¹Newell, et al., A Forest in Trust, pp. 6-1 through 6-12.

development programs and the intensive forest management programs needed to sustained them.²

Revisions in timber sale laws during the late 1950s and the 1960s also contributed to accelerated cutting programs and provided the tribes with a better opportunity to benefit from them. Revisions to general timber sale regulations in 1959 provided Bureau foresters with greater flexibility in selling reservation timber, and standard contract forms prepared the same year helped to expedite timber sales. More importantly, Public Law 88-301, passed in 1964 to amend the law of June 25, 1910, provided Bureau foresters with the statutory authority to implement the principles of sustained yield management that had been part of Bureau planning since the 1930s, and to harvest commercially mature as well as overmature timber from Indian forests. Fees could be deducted for administrative expenses. The Bureau could sell timber from Indian allotments with the approval of a majority rather than all of the allottees, and could sell timber for an owner if he or she could not be located. The law enabled Bureau foresters to establish a longer-term view of forest management by "incorporating the principles of sustained yield within its fiduciary responsibility to return the highest dollar value to the tribes." In the 1960s, increases in the annual allowable cut, made possible by the application of intensive forest management practices and the increased revenue generated from stumpage prices, enabled foresters to use their new statutory authority to prepare long-range economic development plans for reservations, now more intent on developing their natural resources for sustained economic growth.³

Intensive forest management practices were developed and applied to reservation forests during the 1960s in response to the imminent disappearance of a significant percentage of the Nation's virgin timber stands and the growing reliance of the Indians on timber income as a means of economic growth. Intensive forest management, involving the application of a variety of silvicultural techniques such as thinning and forestation to achieve maximum production of forest products from a timber unit, was viewed as the key to regenerating these stands at significantly greater growth rates in order to achieve a sustained yield and to increase tribal income through increased sales and the development of forest-related tribal enterprises.⁴

The Commissioner of Indian Affairs required the Area Directors to prepare 20-year development plans for their jurisdictions and for reservations with significant timber resources, and thus aid foresters in making the transition to intensive forest management. Harold Weaver, BIA Forester from the Central Office, was placed in charge of preparing

²Ibid.

³Ibid., pp. 5-5 through 5-7.

⁴Ibid., pp. 5-8; Williams and Babcock, Yakima, p. 239.

the 20-year forest development program reports, whose purpose was to identify projects necessary to achieve a more intensive management of the Nation's Indian forests and the staffing and funds needed to accomplish that work. Each plan provided a narrative description of the reservation forest and identified the most important commercial timber stands. Tasks were designated as recurring and nonrecurring and a description of the work and a budget was provided for each work item. Analysis of the reports prepared in the early 1960s revealed that much work was necessary, in the form of aerial photography, forestation, timber stand improvement, and pest control, before the Bureau could realize its goal of intensive forest management on a Nation-wide scale. Some of the reports considered recreation, fire control, and wildlife habitat in addition to timber harvesting.⁵

Weaver also prepared reports on the potential for intensive forest management on three reservations as supplements to reservation forest management plans. The reports considered Indian attitudes toward their forests and examined the potential benefits of intensive forest management to each tribe and their local economies. They also made recommendations for the implementation of intensive forest management and established objectives and policies related to timber sales, wildlife, and other forestry programs. These reports also attempted to estimate the cost of implementing intensive forest management on the three reservations examined. Weaver recommended employing Indians in intensive forest management programs such as thinning and reforestation, and improving forest management efficiency through tribal repurchase and consolidation of timber trust allotments.⁶

The anti-poverty programs of the early 1960s provided one source of funding with which to implement intensive forest management practices on the Nation's Indian reservations. Programs such as Accelerated Public Works and the Economic Development Act made funds available to the Department of the Interior and the Bureau of Indian Affairs, which were used to promote job opportunity and job training. The Economic Opportunity Act of 1964 assisted Indians by establishing Job Corps Centers on some reservations and by enabling tribal councils to apply for grant funding for local development programs and training programs for Indian youth. Small Business Administration loans also were made available to Indian-owned businesses. The technical and financial programs of the "War on Poverty" also assisted Indians in tribal enterprises based on forest products, although they did not provide sufficient funding for actual initiation of competitive forest products industries, such as tribal sawmills.⁷

⁵Newell, et al., A Forest in Trust, pp. 5-8 through 5-10; Williams and Babcock, Yakima, p. 239.

⁶Newell, et al., A Forest in Trust, pp. 5-12 through 5-15.

⁷Ibid., pp. 5-15 through 5-20.

The Accelerated Public Works (APW) program, authorized in 1960 by Public Law 87-657, provided funds to counties with high unemployment rates. Congress specifically appropriated APW funds for the Bureau in 1963 with which to develop Indian forests. APW funds were used on Indian reservations for a variety of forest improvement projects, including forest development work/timber stand improvement, hazard reduction and fire suppression, and timber access and protection roads, all of which were projects that offered short-term employment for work that could be accomplished within a year.⁸ The Area Redevelopment Act (75 Stat. 47) established the Area Redevelopment Agency, which identified Indian reservations as areas eligible for economic assistance. The Bureau designated 51 reservations as "Reservation Redevelopment Areas" and requested that they prepare Overall Economic Development Programs (OEDPs) to determine their eligibility for grants to fund feasibility studies for new reservation businesses, forest inventories, and mapping studies.⁹ The Public Works and Economic Act, passed in 1965, replaced the Area Redevelopment Agency with the Economic Development Administration, which provided grants for public works and development facilities, as well as planning and coordination to relieve unemployment in economically depressed areas. It designated Indian tribes as potential candidates for water, sewage, and community development projects, which were viewed as prerequisites for long-term economic growth.¹⁰

The anti-poverty programs of the 1960s provided short-term financial aid, job training, community organization assistance, and various kinds of funding for the tribes. They fell far short, however, of providing the funds and technical assistance to contribute significantly to the comprehensive development of Indian natural resources or to tribal self-determination. Other measures proposed at the national level in the 1960s foreshadowed strides taken toward Indian self-determination and natural resource development in the 1970s and the 1980s. For example, Community Action Programs established by the Economic Opportunity Act were designed to be developed and administered by those the programs served and, in many cases, provided the Indians new means for political and social participation. Also, in 1966, Senator George McGovern of South Dakota addressed the need for increased tribal participation in the management of their programs and the eventual establishment of Indian self-determination. Despite well-intentioned support, the Community Action Programs met local opposition and Congress failed to act on McGovern's proposals. An attempt in 1961 by Congress to pass a comprehensive Indian Resources Act, designed to encourage the establishment of Indian corporations and increase Indian management of reservation resources, was unsuccessful. The decade closed with President Lyndon Johnson stressing the need to end the plight of the Indian through establishing new means for achieving self-determination by providing them with a standard

⁸Ibid., pp. 5-21 through 5-22; Williams and Babcock, Yakima, pp. 241, 243.

⁹Newell, et al., A Forest in Trust, p. 5-22.

¹⁰Ibid., p. 5-23.

of living equal to that of the country as a whole, freedom of choice, and full participation in American life. Through Executive Order 11399, Johnson established the National Council on Indian Opportunity to coordinate the Federal programs established to help the Indian.¹¹

While national developments in BIA forestry centered on utilizing intensive forest management to generate significant amounts of income toward Indian economic self-sufficiency and ultimate political self-determination, the United States Bureau of the Budget issued a memorandum challenging the practice of large Federal investments in the Indian forestry program in all but seven of the Nation's reservations, and urged a marked reduction in the Federal investments in the forest management program. The BIA contracted with Cornell, Howland, Hayes and Merryfield (CH₂M) of Corvallis, Oregon, to evaluate the Indian forestry program in terms of the BIA trust responsibility, the economic and social contribution of the forestry program to the reservations, and its comparative cost to other Federal forestry programs. The CH₂M report examined the BIA forestry program as it affected the reservation forest and Indian people, and concluded that it had partially met the goals enunciated by President Johnson. The program had provided a major base to the Indian economy, contributing to the welfare of about one-third of Indians living on reservations. In so doing, it provided Indians with the freedom of choice to remain on the reservation. The report maintained that tribal forest products enterprises provided the best opportunity for the Indians to realize the full value of their timber resources. It also stated that the Bureau's cost of managing the timbered reservations was similar to that of owners of private forests and was significantly less than that on lands managed by the United States Forest Service and the Bureau of Land Management. The CH₂M report also stressed the important role played by forestry in tribal economic development programs, as tribes assumed a greater role in shaping these plans during the 1960s.¹²

During the decade of the 1960s, the immediate fear of termination was diminished by the general recognition of the United States Government that termination had been a failure and that economic development and continued adherence by the Bureau to its trust responsibility were necessary before the Indians could achieve a self-determination that would serve fully their interests. The anti-poverty programs provided only a first step toward this goal. However, the principals of intensive forest management that were increasingly applied to maximize economic returns to the tribes from the management of their forests contributed significantly to the Indians' confidence in a well-managed forest resource as an indispensable part of the drive toward greater self-determination on the Nation's timbered reservations.

¹¹Ibid., pp. 5-26 through 5-30.

¹²Ibid. pp. 5-31 through 5-34.

Nez Perce Forest Management, 1960-1970

Developments in Indian forestry on the Nez Perce Reservation reflected those that were occurring on the national level. The Agency and the Tribe took major steps toward achieving a forest resource managed according to sustained yield and intensive management principles, and toward more fully involving the Tribe in the management process. Much of this progress was the result of anti-poverty programs of the early 1960s, which made possible an inventory of the reservation's forest resource and the initiation of development work. The work was accomplished despite the unique nature of the Northern Idaho Agency and its reservation forest, and the problems inherent in implementing a comprehensive and coherent management program under such circumstances.

The 1958 and 1959 Agency annual reports provide a revealing overview of the problems that the Agency and the Branch of Forestry faced in managing the Indians' forest resource. The Branch of Forestry was responsible for managing between 53,000 and 55,000 acres of forest land on Indian trust property (tribal and allotted acreages) on small, widely scattered tracts on four different reservations. These lands were included in an area 250 miles long and 60 to 70 miles wide, which required time-consuming travel for Branch of Forestry personnel to perform their work.¹³ These inherent problems had been compounded in recent years by revised Bureau regulations, new methods of utilization, and an "increased awareness of the Indians, individually and collectively, toward their timber resource." According to the Forest Manager, this increased awareness on the part of the Indian owners "concern[ed] itself chiefly with the liquidation of the merchantable for the income to be realized."¹⁴

The Forest Manager maintained that staff shortages and the difficulty of managing timber tracts on a true sustained yield basis made all activities "directed toward better management, utilization and protection of the Indians' resources suffer as a consequence." To illustrate this problem, the Forest Manager pointed out that, in 1959, the Bureau had received timber sale requests on the Nez Perce Reservation involving 372 acres on 11 allotments and 7688 tribal acres. In addition to the numerous timber sale requests, the Branch of Forestry was responsible for timber appraisals related to each type of land transaction that included a sufficient volume of timber. Requests for permission to clear land for agricultural purposes also were being received constantly, but because they were

¹³Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Agency Annual Report, 1958. File: Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

¹⁴Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Agency Annual Report, 1958. File: Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

not concerned directly with timber management, they were processed only when time permitted.¹⁵

The 1958 and 1959 annual reports recognized the problems presented by allotment sales, but adopted somewhat differing approaches to the harvesting of allotment holdings. The 1958 report reviewed the cutting practices on the reservation since the 1920s, noting that much of it had occurred on allotments and, as a consequence, most of the allotments contained low volumes of small-sized sawlog material known as bull pine. Only a few allotments still contained substantial stands of yellow pine. The Forest Manager rejected the use of a woodlot style of management for the timbered allotments because it assumed that a resident owner was cropping the land and developing the woodlot for additional income. However, most of the Indian owners were not farmers, seldom resided on their allotments, and were interested only in converting merchantable timber on their allotments to cash. The fact that no attempt was made to provide any kind of management in conjunction with tribal lands rested on two basic points. First, the Bureau's program of conducting land sales or granting patents in fee upon application of the allottees limited the generalized management envisioned. Secondly, the dispersed location of the allotments in relation to other tribal lands made supervision difficult.¹⁶

In 1958, the Forest Manager recommended that the Agency process less allotment sales of young, thrifty pine and fir and, instead, concentrate more on the tribal lands of the Nez Perce Indians. The 1958 report recommended that the sale of timber from individual allotments be restricted to those stands which had a sufficient volume of yellow pine. The Agency would attempt to sell the timber from any allotments committed by reason of an executed power of attorney, a completed cruise, a previous sale attempt, or for a hardship case, but would carefully examine all future requests for timber sales for volume and condition before agreeing to the sale. However, in 1959, the Forest Manager recommended an accelerated program of supervised sales, or broad application and use of the special permit, in order to market all merchantable timber available and to reduce the per acre volume to a point that "no further concern need be given the allotments for several, perhaps many, years." The wishes of the allottees would govern the rate of permit applications. By this course of action, allottees who wished to realize a return from their existing resources, or to retain or even develop their timber resources, could do so.¹⁷

¹⁵Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Agency Annual Report, 1959. File: Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

¹⁶Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Annual Agency Reports, 1958 and 1959.

¹⁷Ibid.

The Forest Manager recommended that the woodlot type of management would be most appropriate for the tribal lands, where each tract of timber would be considered first alone, and then combined with the others to produce a program of total management most beneficial to the tribes. The report called for preparation of a management plan, utilizing the location and mapping of timber by type; and an inventory to provide volumes, stocking and stand conditions, yield tables, and information on growth rates and tables. Because much of the timber was on potential agricultural land, the report also recommended that the soil types be mapped and their possible productivity assessed, and that data be analyzed and judged in relation to the productivity of the timber stands then on the reservation. At this point, it would be possible to advise the tribal governing bodies on the best use of their land and to develop programs of stand improvement and planting where needed.¹⁸

The 1959 report also pointed to the need for the forestry staff to be "sufficient to permit parallel operations of an accelerated sales program and the development of a management plan for tribal timber holdings." The report estimated that it would take only about two years to prepare an inventory of tribal lands. The sale of allotment timber would take longer because it could only be done at the request of the allottees. The ability of the Bureau to accomplish timber sales soon after they were requested aimed to encourage the allottees to sell their timber, and then it would be possible to sell the timber from the approximately 300 allotments in about three to five years. A program like this for the timbered allotments would place most of the responsibility of forestry on a guardianship basis, with the only sales being made on a predetermined schedule of cutting and not based on the economic needs of the individuals and the tribes.¹⁹

The report cited other forest management problems on the reservation, such as access to tribal units and the need of the staff to spend a considerable amount of time cooperating with the Board of Realty in the matter of timber appraisals for the purposes of supervised land sales, gift transfers, negotiated sales, exchanges, and fee patents. Requests for clearing timber land for crop production were being received constantly by the Branch of Forestry, which made necessary the development of a procedure to handle the applications, since the leasing clerk, the Branch of Land Operations, and Forestry were involved, as well as the allottee and lessee. The lease provided for the clearing; Land Operations had to evaluate and make recommendations about the productivity of the land involved; and, if timber were growing on the site, the Branch of Forestry had to determine the best way to dispose of it.²⁰

¹⁸Ibid.

¹⁹Ibid.

²⁰Ibid.

The report noted the revised forestry regulations that had been approved by the Secretary of the Interior in 1959. These included the elimination of free use permits for the personal use of designated forest products by allottees and tribal members, and the adoption of a special permit to allow the owners of allotments to sell their own timber. However, the report noted that the requirements needed for approval and the amount of preparation and supervision required of the forestry staff, in addition to the workload of advertised timber sales, made it appear unlikely that much of the staff's time could be devoted to operations conducted under the revised regulations.²¹

Staffing problems at the Branch of Forestry continued in the 1960s, leading to growing frustrations and friction between the Tribe and the Bureau. The Nez Perce Tribe became increasingly dissatisfied with personnel problems at the Agency (which at that time had only two men in the Forestry Branch) and with the slow progress in timber sales and, in 1960, demanded that all their timber be sold and that the Tribe get out of the timber business. Studies of the situation made in 1956 and 1960 offered no solutions to the dilemma. The forest inventory, noted by the Forest Manager in the 1959 Agency annual report as a pressing need, simply could not be conducted because of a lack of funds and staff, and harvesting decisions had been based on volume estimates made in 1942, which generally were regarded as outdated and conservative.²² This situation had not changed by 1960, when the Area Director wrote to the Agency, suggesting a land classification report by a soils scientist from the Branch of Land Operations to show the area suitable for agricultural development and the areas suitable for continued timber production. He also recommended the preparation of a concurrent report by the Branch of Forestry showing the condition of the timber on each of the tribal reserves. The Area Director stated that, because there was insufficient funding available to obtain this information through detailed timber survey, the Area Office would detail personnel from its office to examine the tribal timber reserves.²³

For these reasons, upon the recommendation of the Sub-Committee on Forestry of the Advisory Committee on the Overall Economic Development Program, the Tribe resolved on February 13, 1962, to hire Ernest Wohletz, Dean of the College of Forestry of the University of Idaho, to commence work on a land and timber survey for the reservation forest. They provided for an initial outlay of \$5,000 for services to July 1, 1962, and for continuation beyond the present fiscal year in order to complete the survey and

²¹Ibid.

²²Latham, "Analysis of Nez Perce Forest Management", pp. 21-23.

²³Letter, Acting Area Director, Portland Regional Office, to William E. Ensor, Superintendent, Northern Idaho Agency, March 23, 1960. File: Northern Idaho Agency, 60-4-12-339.4, Forestry-General Supervision, Northern Idaho, Box 1045, Forestry Subject Files, Portland Area Office, Record Group 75, BIA, National Archives, Seattle Branch.

inventory.²⁴ On March 13, 1962, pursuant to the Plan of Operation, the Tribe contracted with Ernest Wohletz, for a sum of \$25,000, to conduct an inventory and classification of the forest land owned by the Tribe and of adjacent lands that could be of potential value to the Tribe in the formulation of a sound forestry program.²⁵ The contract was amended on April 9, 1962, to include standards and procedures for the inventory. These stated that the initial objective of the project was to provide an inventory of tribally owned timber sources, including data on timber volume and rates of growth, which could be used for planning the long-range management of the timber resource. The amendment stated that the inventory was not intended to provide inventory data in sufficient detail for the sale of timber on specific areas.²⁶ Work on the inventory proceeded in a generally satisfactory manner, except for some errors in measurements made at the survey plot because of the inexperience of the crew, a matter discussed at a June 11, 1962, informational meeting of the Tribal Timber Resource Committee. Despite this problem, those attending the meeting concluded that Wohletz and his associates be allowed to continue their survey under contract with the Tribe.²⁷

The Wohletz Plan, 1963

The plan prepared by Wohletz showed a total volume of 134 million board feet of tribal timber on the reservation and recommended an allowable annual cut of three million board feet. The plan recommended a partial or selective cutting program as "most applicable" to achieve the highest yield potential of the reservation forest lands, a cutting cycle of 10 to 20 years, and a rotation of 150 years.²⁸

The plan estimated tribal forest land at 18,730 acres, with an excellent growing stock capable of being readily adapted to a sustained yield management program. Predominant timber types were ponderosa pine and Douglas-fir, with minor amounts of grand fir, western larch, and western red cedar. The plan noted that ponderosa pine was the

²⁴Nez Perce Tribal Executive Committee, Resolution 62-64, February 13, 1962. File: 1107-01(3), March 19, 1962, Management/Inventory, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

²⁵Nez Perce Tribe of Idaho and Ernest Wohletz and Associates of Moscow, Idaho, Agreement (Contract No. 14-20-0500-1463), March 13, 1962. File: 1107-01c(3), March 19, 1962, Management/Inventory, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

²⁶Nez Perce Indians and Ernest Wohletz, Statement Concerning the Forest Inventory of the Nez Perce Tribal Forest Lands, April 9, 1962. File: 1107-01c(3), March 19, 1962, Management/Inventory, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

²⁷Nez Perce Tribe, Report on Special Meeting of Timber Resource Subcommittee, June 11, 1962. File: Nez Perce Tribe, Lapwai, Idaho.

²⁸Wohletz and Associates, "Inventory and A Management Plan for the Forest Lands of the Nez Perce Indian Tribe," (Moscow, Idaho, 1963), pp. 1-6. File: Nez Perce Tribe, Lapwai, Idaho.

predominant sawtimber species, that Douglas-fir was the more abundant in the reproduction and pole classes, and indicated the subsequent need to use silvicultural measures to favor pine over Douglas-fir. The average site index was set at 95. Normal yield tables indicated a mean annual increment potential for site index 95 over 600 board feet per acre, and the 1963 annual growth was put at 350 board feet per acre, although management was based on a more conservative 280 board feet per acre because of mortality inevitability and the need of management to be conservative. Growing stock volume was 7,413 board feet per acre, which was judged to be "rather satisfactory." The basal area per acre averages were 82.20 square feet, "a moderate stocking level but sufficient to provide a close to full growth potential." Ips beetles were the principal cause of tree mortality, resulting primarily from improper slash disposal, and could be effectively eliminated through good management. Total timber volume was estimated at 133,794,000 board feet.²⁹

The plan stated that it was desirable to build growing stock volume from the prevailing level of about 133 million board feet to about 152 million board feet, and the basal area from about 82 square feet per acre to about 105 square feet per acre. This could be done during the first cutting cycle or adjustment period of about 15 to 20 years by harvesting about three million board feet annually, or a rate of 167 board feet per acre per year. A flexible cutting cycle of 10 to 20 years was recommended to deal with the many different kinds of conditions occurring on the reservation. A rotation most appropriate for the 10- to 20-year cutting cycle was judged to be 150 years, during which time trees would grow to about 30 inches d.b.h. The plan called for moderate levels of growing stock or a yield of about 42,000 board feet per acre. Once proposed levels of growing stock were achieved (in about 10 years), annual yield was expected to increase to about 5.2 million board feet on a sustained basis and to increase even more through intensive management. Until that time and, given a cutting rate of 167 board feet per acre per year and a growth rate of 280 board feet per year, the plan recommended an annual harvest rate of three million board feet. The plan recommended that, at the end of the first 10-year cutting budget, a survey be conducted to appraise the growing stock and readjust the cut for the next 10-year period.³⁰

The plan pointed to the problem of restricted access to timbered areas due to lack of right-of-way and/or the existence of access roads, and recommended development of access to all areas as soon as practical, even if it necessitated building roads that could not be immediately amortized by logging. It also pointed to the need to exercise great care in partial cutting of the remaining stand during the cutting cycles.³¹

²⁹Ibid., pp. 1-3.

³⁰Ibid., pp. 3-5.

³¹Ibid., p. 5.

The Bureau evaluated the report in a letter from Area Director, Earl R. Wilcox, to the Commissioner of Indian Affairs on June 30, 1964, which also summarized previous evaluations of the plan made in meetings with Wohletz in the winter of 1964 and in a letter dated March 31, 1964, from Forester Lee B. Winner to Area Director Wilcox. The Bureau found that the field work had been done satisfactorily by a number of check cruises performed by the Bureau staff, and that the data on timber volumes were entirely satisfactory for the purpose of management planning. The Bureau also found that the work had been done at a reasonable cost to the Tribe. The Bureau noted that the consultant had prepared the report as a "conservative generalization defining one of several broad approaches possible to the analysis and application," and as a guideline for operation in case no further analysis of gathered data was contemplated by the management. In his meeting with Wohletz on March 31, 1963, Forester Winner made it clear that the actual responsibility for preparation of a management plan rested with the Bureau, and that the trust responsibility of the Bureau might very well mitigate many of the recommendations of the report, especially those written from the "conservative" point of view.³²

The Bureau's primary criticism of the report was its projected average annual growth rate of 350 board feet per acre, when the Portland Area Office program showed a projected annual growth rate starting in 1962 of only 294 board feet per acre, and an actual growth rate between 1952 and 1961, inclusive, of only 216 board feet per acre per year. Because Wohletz did not provide the Bureau with data on measured growth, the Bureau had no growth data with which to compare its own. (The Bureau explained the relatively large increase between its measured and projected growth in that the Nez Perce stands tended to be even-aged, averaging between 70 to 90 years in age, a growth period in which the rate of growth was rapidly accelerating, and that there was some question whether this rate of increase could be expected to continue unless intensive management practices were initiated.)³³

The Bureau also maintained that Wohletz's yield tables, which indicated that stands with a site index of 95 had a potential mean annual increment in excess of 600 board feet, were in excess of potential mean annual increment, even when expressed in volumes based on International (1/8 inch kerf) for all trees seven inches and greater in diameter breast high (d.b.h.). The Bureau review surmised that the Wohletz report had referenced between 600 and 700 board feet per acre, based on the International board foot volumes. However, on the basis of Scribner volumes in trees 12 inches and greater d.b.h., the

³²Letter, Earl R. Wilcox, Area Director, to Commissioner of Indian Affairs, June 30, 1964; Memorandum, Lee B. Winner to Area Director, March 31, 1964. File: 1107-01c(3), Management/ Inventory, March 19, 1962, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

³³Ibid.

periodic annual increment maximized at 540 board feet per acre per year and, on the same standard, mean annual increment culminated at less than 350 board feet per year.³⁴

On the other hand, the Bureau stated that the proposed rotation age of 150 years was too long for planning purposes and that, at that time, the rotation age should not extend beyond 100 years. The review also pointed out that, while the annual growth rate had been computed erroneously at 350 board feet per acre, management was based on the more conservative figure of 280 board feet per acre, which in turn had been reduced to an annual allowable cut based on 167 board feet per acre per year. The Bureau maintained that "such ultraconservatism can be condoned in the management of a property which is fundamentally, privately owned." They stated that the current allowable cut should not be less than the average annual growth of 294 board feet per acre per year, which the Bureau had projected for the ten-year period. Despite these criticisms, the Bureau found that the inventory had provided the basic field-collected data with which to prepare a satisfactory plan for developing the forest resource.³⁵

As a result of Branch of Forestry dot counting on aerial photos in 1969, timber volume estimates were revised upward to 22,799 acres of tribal lands with an estimated volume of 128,359,000 board feet, and 5,942 acres of allotted lands with a volume of 21,047,000 board feet, for a reservation total of 28,741 timbered acres with a total of 149,406,000 board feet. These figures reflected forest acreages cleared for farm lands, volumes cut on allotted and tribal lands, tribal purchases of allotments, and a growth rate of 280 board feet per acre per year.³⁶

Timber Sales

The Tribe pressed for all timber, with the exception of that on Unit 15 in the South Talmaks Unit, to be placed on the market in the early 1960s.³⁷ The preparation of the Wohletz plan was accompanied by repeated requests by the Tribe for increased timber sales, exceeding the annual allowable cut recommended by the Wohletz plan and accepted by the Bureau. However, it was not until 1965 that an effort was made to begin an annual

³⁴Ibid.

³⁵Ibid.

³⁶Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Agency Annual Report, 1969. File: Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

³⁷Letters, Commissioner of Indian Affairs, to Richard Halfmoon, Chairman, Nez Perce Tribal Executive Committee, March 18, 1960; Acting Area Director, Portland Area Office, to William Ensor, Jr. Superintendent, Northern Idaho Agency, March 23, 1960. File: 60-4-12-339.4, Forestry, General Supervision, Northern Idaho, Box 1045, Forestry Subject Files, 1947-1966, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

cut of three million board feet. Between 1960 and 1965, 4,930,000 board feet were cut, which was an annual average of 986,000 board feet per year, including tribal and allotted lands. Almost 2.5 million board feet of this amount was harvested in 1960, most of it during the sale of the Selway Reserve to Potlatch Forests, Inc., for \$63,301.19. During this period, the Bureau continued to be affected by staffing shortages and also refused to exceed the annual allowable cut, despite requests by the Tribe for increased sales and higher stumpage prices.³⁸

Between 1960 and 1969, a total of 19,916,000 board feet of timber with a value of \$407,000 in stumpage fees was sold to lumber companies in the North Idaho area. The Cold Springs Reserve, totalling 1,142,160 board feet sold to Carl E. Shively for \$22,858.20 in 1965, was the first large sale that began the effort to harvest three million board feet per year. This goal was achieved between 1967 and 1969. Between 1965 and 1969, 14,986,000 board feet of timber was sold, an average of 2,997,200 board feet per year. During the fall and winter of 1965 and the spring of 1966, cruising and marking of timber occurred on the Lookout Reserve, a unit totalling 9,126,770 board feet to be cut over three years, which was sold to Idaho Timber Company in 1966 for \$193,000. Logging operations were slowed by poor market conditions and extremely wet weather in 1966, and only 911,000 board feet were harvested that year. As a result, the annual allowable cut more than doubled in 1967 to 7,688,000 board feet. Logging on the Lookout Reserve was completed in 1968. Also in 1965, the Bureau began marking and cruising timber on the Gilbert Grade Reserve, with a timber volume of 1,149,000 board feet sold to Zain Wilcox of Peck, Idaho, in 1967 and completed in 1969. Allotted timber sales accounted for 4,688,000 board feet and \$76,681 in stumpage fees.³⁹ These figures from the period 1960-1969 dropped considerably from the 7.7 million board feet and \$110,600 in allotted timber sales between 1950 and 1959, reflecting the Bureau's intention to increase timber sales on tribal land.⁴⁰

In a letter to the Tribe in response to their inquiry about the present and future plans in tribal timber management and harvesting, the Agency Superintendent outlined the success of the timber cutting program in achieving the annual allowable cut recommended by the Wohletz inventory. He also pointed out that the Bureau had harvested timber in accordance with the priorities established by the inventory for the tribal timber units (e.g., Lookout Reserve and Cold Springs). The recommended harvesting was for Woodland

³⁸Latham, "Analysis of Nez Perce Forest Management," p. 24.

³⁹Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Annual Reports, Nez Perce Reservation, 1960-1969; and Timber Sale Data Cards, Nez Perce Reservation, 1960-1969. File: BIA, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

⁴⁰Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Agency Annual Reports, 1950-1959. File: Northern Idaho Agency, Lapwai, Idaho.

(Unit 62) and Alpine (Unit 50), and a salvage cut for Reubens Reserve (Unit 20) in the early 1970s, and then conducting an assessment of units in 1971 to determine priorities for the period between 1973 and 1977.⁴¹

The Tribe and the Forest

The Tribe not only involved itself in the forestry program by contracting with Ernest Wohletz for the preparation of a new inventory of tribal forestry lands and by pressing for an increased and accelerated cutting schedule, but also by viewing the forest resource as an integral and important part of the Tribe's long-term economic development and as a means of providing them with an avenue for greater self-determination. The Tribe became more active in handling its own affairs during the 1960s by reforming Nez Perce tribal government, including the Nez Perce Executive Committee and the tribal bylaws in 1961, and by acting on opportunities provided by legislation passed at the national level to assist the Nation's reservation Indians.

The Tribe initiated development planning in 1962 when it submitted its Provisional Overall Economic Development Plan to the Area Redevelopment Administration to qualify for Federal aid under anti-poverty programs, including the Community Action Plan for the reservation and the Accelerated Public Works program. Federal and tribal funds were used for conducting a number of surveys and feasibility studies, including the Wohletz inventory, during the 1960s. In addition to the forest inventory, the Tribe conducted a land use survey of reservation lands, accomplished by an Indian crew under Title I of the Higher Education Act, and a tribal cultural survey of the reservation in 1968. Representative of this newly defined sense of tribal purpose and direction was the publication in 1970 of These Are The Nez Perce Nation, a collection of monographs on the Nez Perce people prepared for the Nez Perce Tribe. The collection included essays on tribal prehistory and history; the results of housing, land use, and timber surveys on the reservation; conditions on the existing reservation; and tribal government.⁴²

The land use survey examined the reservation's tribal lands, unit by unit, and evaluated their potential for various kinds of development, including agriculture and grazing, timber, minerals, tourism, industry, and wildlife preservation. The summary of the land survey listed the programs that had been initiated on the reservation, most of which were the product of the anti-poverty legislation, in order to develop these economic resources. The summary stressed the need to promote industry on the reservation,

⁴¹Letter, Thomas H. St. Clair, Superintendent, Northern Idaho Agency, to Chairman Richard A. Halfmoon, Nez Perce Tribal Executive Committee, November 4, 1968, Lapwai, Idaho. File: Nez Perce Tribe, Lapwai, Idaho.

⁴²Feathers, et al., Nez Perce Nation, pp. 131-132.

including forest-related industries, and also pointed to the need for improved management of the forest resource.⁴³

One result of the land survey was the Tribe's decision in 1968 to establish a land acquisition program, utilizing \$1 million on deposit in the United States Treasury for the purchase of land within the exterior boundaries of the reservation which might be offered for sale from time to time. The Superintendent of the Northern Idaho Agency was requested to submit to the Nez Perce Executive Committee monthly reports on trust land offered for sale, and to provide comments on the manner in which such lands might fit into the tribal land purchase program. These reports on land sales were to be part of the regular order of business at each meeting of the Tribal Executive Committee. The basic purpose of the program was to acquire additional acreage under agricultural, industrial/commercial, and homesites classifications.⁴⁴

During the 1960s, the Tribe and the Bureau continued to place a priority on clearing timbered land for agricultural use. For example, in 1969, the Branch of Forestry marked a total of 1,060,000 board feet of timber on 300 acres in Tribal Units 29, 30, and 32 for land clearing, and the land was cleared in the early 1970s. A number of small land-clearing projects involving timber on allotted acreage were completed in 1969.⁴⁵

Forest Development

Intensive forest management was initiated, if not sustained, on the reservation during the 1960s in the form of the Agricultural Conservation Program administered by the Agricultural Stabilization and Conservation office, and forest development work under the Accelerated Public Works program. This latter Agency employed tribal members on a variety of forest improvement projects. In 1960, the Agency urged the adoption of the Agricultural Conservation Program (ACP) on the reservation timbered lands, actually conducting a field trip to examine the possibilities of adopting timber stand improvement practices for farm woodlots. The Forest Manager believed that many of the stands of timber growing on tribal reserves were well-suited to the adoption of practices that maintained or stimulated rapid growth on selected crop trees, "pruned to yield high value forest products in the years to come." The Forest Manager noted that the Bureau funds would probably not be allocated for the program, but believed that the Tribe and the

⁴³Ibid.

⁴⁴Nez Perce Tribe, Resolution 68-129, April 9 and 10, 1968. File: Nez Perce Tribe, Lapwai, Idaho.

⁴⁵Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Agency Annual Report, 1969. File: Northern Idaho Agency, Lapwai, Idaho; Letter, Forest Manager James A. Ross, Jr., Forest Manager, Northern Idaho Agency, to Mike Penny, EDA Planner, Nez Perce Tribal Office, March 20, 1975. File: 339.10, Nez Perce Tribal Inventory, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai.

Bureau should be made aware of a program of potential value to timbered allotments and tribal units.⁴⁶

The field trip that took place during the week of October 10-14, 1960, examined timber units and identified those in need of timber stand improvement work. These included Mission Creek Reserve, Reubens Reserve, Lookout Reserve, Talmaks Reserve, Cold Springs Reserve, Kidder Ridge Reserve, and Woodland Reserve. The report on the trip called for a "modern, complete inventory," which it recognized as dependent on "an adequate staff." The report also recommended that the Agency invite private company foresters or other company officials to examine these areas to determine if a market could be developed in order that young, but still merchantable, ponderosa pine could be commercially thinned and be included in the sales. ACP foresters then could examine these areas to determine if stand improvement programs could be developed after the harvest cuts were made.⁴⁷

There is no record of funds being spent on Agricultural Conservation Program timber stand improvement work on the Nez Perce Reservation. However, by 1963, Accelerated Public Works funds became available for forest development work. Funds were allocated only to Clearwater, Lewis, and Idaho Counties because Nez Perce County was not considered an area of depression in need of assistance. The program began at the Nez Perce Reservation in 1963, when \$47,000 was released to the Northern Idaho Agency for forest improvement work. A total of \$24,660 of this amount was appropriated to the reservation for timber stand improvement work, which employed 29 men in three work crews (two from Lapwai and one from Kamiah) for 10,000 man-hours between March 6 and June 20. Work included thinning 165.2 acres, and disposal of the thinning slash on Reubens, Winchester, Gilbert Grade, Woodland, and Ford Creek reserves. Thinning was performed on stands of young pine in order to reduce tree competition and promote the growth of sawtimber.⁴⁸

⁴⁶Memorandum, Fred N. B. Chase, Forest Manager, Northern Idaho Agency, to Chairman, Nez Perce Tribal Executive Committee, June 15, 1960; Memorandum, Fred N. B. Chase, Forest Manager, to Area Forester, Portland, June 25, 1960. File: Northern Idaho Agency. 60-4-12-339.4, Forestry General Supervision, Box 1045, Forestry Subject Files, 1947-1966, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

⁴⁷Memorandum, Lynn E. Hatch, Forester, Northern Idaho Agency, to Earl R. Wilcox, Area Forester, Portland, October 25, 1960. File: Northern Idaho Agency, 60-4-12-339.4, Forestry General Supervision, Box 1045, Forestry Subject Files, Portland Area Office, Record Group 75, National Archives, Seattle Branch.

⁴⁸Fred N.B. Chase, Branch of Forestry, Northern Idaho Agency, "Report of Accelerated Public Works Program, Fiscal Year 1963". File: 1101, Accelerated Public Works, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

The APW program on the reservation in 1964 allocated \$60,000 and employed 40 men for work on a variety of projects, including timber stand improvement, forest access and protection roads, forest range and recreation improvement, and forest land survey and inventory, and paid \$35,509 in salaries. Expenditures included \$6,724.63 for timber stand improvement; \$6,618.78 for timber access roads; \$41,836.35 for forest range and recreation improvement; and \$3,470.24 for forest land surveying and inventory. Timber stand work began on September 30, 1964, and ended on December 11, 1964, and included thinning on 105 acres and slash disposal on 78 acres in the Cold Springs and Mud Springs reserves. Tribal crews also improved roads on the reservation between December 12, 1963, and January 31, 1964. Work occurred on the Tramway, Ford Creek, Cavendish, Box Canyon, Woodland, and East Kamiah reserves. Many of the roads repaired were poorly maintained dirt roads or were mere vestiges of earlier roads, which were eroded and overgrown. Work consisted mostly of installing new culverts and cattleguards, and removing brush along 14 miles of roads and foot trails. Tribal crews also replaced 23 miles of forest range fencing constructed by the CCC. Work began on October 14, 1963, and ended on January 17, 1964, at a cost of \$29,407. Other work included surveying and re-establishing corners on three tribal reserves, including the Ahsahka-Orofino, Tramway, and Kooskia reserves, resulting in about 18 miles of random and true line location.⁴⁹

In the assessment of the Agency Forester, the APW program made available money and manpower to start, at least minimally, on the backlog of management problems that had been "sidetracked" for more pressing daily operations. These included timber sales preparation and administration, timber cutting under permits, cooperation with the Branch of Real Property Management, and the "myriad of other activities" on the reservation forest. As a result of the 1963 and 1964 programs, over 250 acres of young pine were treated to improve growth potential; access was improved into four reserves by the road improvements; and the grazing potential of 20 units was improved by the creation of adequate water resources, thinned timber stands, and fence construction to control and constrain grazing. The Agency assessed the program a success from the standpoint of providing employment and providing wages that were spent in local business and service firms. The program was judged to be less successful in terms of accomplishing project goals because the results only "scratched the surface of the backlog." For example, the 20-year development plan for the reservation recommended 1,000 acres of precommercial thinning by 1983, a figure expected to increase unless an annual project of 50 to 100 acres was undertaken. In summary, the report stated that the 1964 APW program had provided a good start but that a program designed for annual operation, if only for the summer, might be more effective from the forest management standpoint.⁵⁰

⁴⁹Fred. N. B. Chase, Forester, Northern Idaho Agency, "Nez Perce Reservation: Clearwater, Idaho, and Lewis Counties". File: 1101, Accelerated Public Works, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

⁵⁰Ibid.

Fire Control

There was comparatively little fire damage to the reservation forest during the 1960s, when a total of 62 fires consumed 1,009 acres. The worst year was 1963, when 398 acres burned. In 1967, a fire occurred in the Talmaks Reserve and the fire-damaged timber was salvaged in 1968. On July 1, 1969, the Bureau entered into a new fire protection agreement with the Idaho State Department of Public Lands, covering all forested and range lands under the jurisdiction of the Northern Idaho Agency. Under the new agreement, the Bureau paid a fixed rate per acre for all lands under protection, and the State assumed the actual cost of the fires. The agreement covered 27,668 tribal acres and 18,307 allotted acres. Of the total tribal and allotted acres, 28,741 were timbered and 17,234 were brush.⁵¹

During the 1960s, the Branch of Forestry began to implement intensive forest management and sustained yield programs on the reservation through the preparation of forest inventory and forest management plan and the initiation of forest development projects. Federal anti-poverty programs, such as APW, were used to fund part of the forest development effort. Timber harvesting increased with the calculation of an annual allowable cut of 3 million board feet per year, and harvesting shifted from allotment to tribal unit sales. Tribal participation in the forest management program increased through participation in APW projects, preparation of the land use survey, and the establishment of the land acquisition program. In these ways, the decade of the 1960s provided the prelude for a thrust toward Indian self-determination in the 1970s.

⁵¹Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Agency Annual Reports, 1966-1969. File: Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

Chapter 7

ERA OF SELF-DETERMINATION, 1970-1979

Indian Forestry at the National Level, 1970-1979

The Nez Perce forest management program made significant gains during the 1970s and 1980s through the efforts of the Nez Perce Tribe to achieve, in practice, the self-determination provided for in Federal legislation in the 1970s. Attempts to make the Nation's Indians more self-sufficient had suffered disastrous setbacks since the late 1800s. The Dawes Act, which was designed to convert the Indians to self-sufficient farmers, ignored their history and cultural heritage and, despite the honorable intentions of many associated with its passage, proved to be little more than a land grab and a major obstacle to efficient forest management. The Indian Reorganization Act of 1934, which was passed to remedy the errors of the Dawes Act, arrested the allotment process and looked to tribal organization and traditional Indian values as the means to achieve Indian self-determination. It also explicitly addressed the protection of the tribal forest reserves by requiring that they be managed according to the principles of sustained yield. These positive steps at the national level were, to a great extent, offset by the termination movement of the 1950s, which aroused understandable fears among Native Americans that their land base and cultural identity were once again threatened as the result of another effort by non-Indians to define Indian self-sufficiency according to their terms.¹

However, the movement for Indian self-determination was renewed in the 1960s and 1970s by a new assertion of tribal nationalism as expressed through Indian actions and abetted by renewed concern by the Congress, the Executive, and the Judiciary in protecting Indian rights and by increased Federal funding to the tribes.² Congress addressed these concerns by creating the Indian Policy Review Commission in 1975 to reform the dependent relationship between the Federal Government and the Indian people, and to examine the restoration of Indian lands and the development of Indian natural resources as a means of ending that dependency. This effort coincided with a request by Senator Henry Jackson, chairman of the Senate Committee on Interior and Insular Affairs, to the Comptroller General to review BIA efforts to develop Indian natural resources as a means of relieving national shortages in fuel, agricultural products, and timber. The General

¹Gary Williams, "Historical Background for Considering P. L. 93-638 Contracting," in Indian Forests-The Land, The People, The Future: Twelfth Annual National Indian Timber Symposium, University of Alaska, Fairbanks, Alaska, June 5-9, 1988, pp. 152-164.

²American Indian Policy Review Commission, Final Report: Report on Federal Administration and Structure of Indian Affairs, (Washington, D. C.: Government Printing Office, 1976), p. 72.

Accounting Office (GAO) and Indian Policy Review Commission reports of 1975 revealed that the BIA's system of exercising its trust responsibility had "perpetuated economic dependence," in part, by not effectively managing tribal timber resources. The reports called for improving the trust relationship between the Bureau and the tribes by making the tribes more independent and the Bureau more accountable to them in exercising its trusteeship.³

Pressure from the Indian tribes and the findings of these two reports resulted in the passage of the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638). The act was distinguished from other Indian legislation in the acknowledgement by Congress that it was enacted in response to the insistence of the Indian people and the tribes for "maximum participation in government programs and services to Indians." The act enabled tribes and Indian groups to contract directly for services that Government agencies had provided, without terminating the trust responsibilities of the Bureau.⁴

During this period, the Nation's Indian tribes were able to increase tribal authority in a number of areas, including the management of their forest resources, through a variety of successful court actions involving the Menominee, Mescalero Apache, and Quinault Tribes. In general, the Bureau responded to these decisions, Federal reports, and Congressional legislation by becoming more flexible in exercising its trust responsibility in the management of a number of Indian forest programs in various stages of development. It also reorganized the Bureau and Forestry Branch at the Central and Area Office levels to increase the tribal role in the management of their resource and to reduce that of the Bureau, short of terminating its trust responsibility.⁵

The Branch of Forestry initially responded to these changing circumstances by delegating more authority to Area Directors, Agency Superintendents, and the tribes, partly to accommodate the trend toward self-determination and intensified Indian criticism of Bureau management and, in part, to cope with Federal budget cuts. In late 1973, the Central Office staff was reduced from eight to one or two and, in 1974, the Indian Forestry Center, established in Denver in 1969 as an extension of the Central Office to coordinate the Bureau's intensive forest management program, was abolished. Staff reductions occurred at the Area and Agency offices largely through attrition and the loss of experienced administrators, and work loads increased. Limited budgets and staff reductions resulted in the Branch of Forestry emphasizing a program of timber sale management,

³Newell, et. al., A Forest In Trust, pp. 6-1 through 6-12.

⁴Williams, "93-638 Contracting," p. 162; Newell, et al., A Forest in Trust, p. 6-3.

⁵Newell, et al., A Forest in Trust, pp. 6-13 through 6-26.

which generated much-needed revenue, and neglected other programs essential for effective, long-term intensive forest management.⁶

However, the 1975 GAO and American Indian Policy Review Commission reports published resulted in Congressional action to improve the Indian forestry program. In 1977, Congress authorized and funded Public Law 94-373 to establish a 10-year program for reforestation and forest stand improvement work, and appropriated \$5.5 million in "add-ons" to eliminate the backlog of Forest Development work on the Nation's Indian reservations. In 1978, Congress established a separate timber sale add-on for all aspects of the forestry program, particularly timber harvesting; authorized 262 new positions for forest improvement work; and appropriated \$6.6 million for funding them.⁷

As a result of increased Congressional funding, the Bureau was able to increase the size of the Central Office and return to divisional status in 1979. The Bureau re-established a technical assistance office in 1981 (the Forestry Field Assistance Office) in Fort Collins, Colorado (renamed the Branch of Forest Resources Planning [BOFRP] and moved to Portland, Oregon, in 1983). Its staff of eight professional foresters has increased the Division's ability to offer a variety of forest inventory and management services.⁸

Cooperative agreements also aided the Indian forest management program by improving access to technical support. In 1978, Congress passed the Cooperative Forestry Assistance Act (92 Stat. 365), which authorized the Secretary of Agriculture to allocate funds for private forestry development (which included Indian forests), and has since provided the Bureau with a steadily increasing source of funding for insect and disease control. In 1977, the BIA Office of Trust Responsibilities appointed its first permanent representative to the Boise Interagency Fire Center (BIFC). As part of this general agreement, the Branch of Forestry appointed a representative to the National Wildfire Coordinating Group (NWCG). The BIFC provides the Bureau with direct fire management services and the NWCG with administrative and policy coordinating organization.⁹

The decisions of the Congress and the courts and the increased funding and staffing of the late 1970s enabled the Bureau and the tribes to take a closer and longer look at managing the forest resource during the 1980s. The principle of sustained yield was still the foundation of forest management planning, but the Bureau was no longer the sole

⁶Ibid, pp. 6-27 through 6-32.

⁷Ibid, pp. 6-32 through 6-33; Williams and Babcock, Yakima, pp. 291-292.

⁸Newell, et al., A Forest in Trust, pp. 6-36 through 6-37.

⁹Ibid., pp. 6-33 through 6-36.

party responsible for preparing forest management plans. The Bureau was expected to include the tribes in the planning process so that the plans would better reflect the unique Forest Development, economic, and social history of each reservation. Public Law 93-638 also made it possible for the tribes to contract with tribal firms and other forestry consultants to perform services, such as forest inventories, necessary for the preparation of the management plans. Management plans also reflected a greater concern for the environment and cultural history of the reservations. BIA regulations in the 1980s not only required management plan to contain a forest inventory and forest management plans, but also an environmental assessment and a forest management history, which came to be major budget items. The Branch of Forest Resource Planning became an indispensable part of the management process by providing the expertise needed to prepare multidiscipline plans, reflecting the new relationship between the Bureau and the tribes in that the BOFRP did not administer tribal forest programs as the Central Office had in the past.¹⁰

Other developments during the 1970's and 1980s contributed to greater Indian self-determination in the management of their forest resource. The Bureau policy of deducting administrative fees from timber land sales receipts to cover part of the costs of administering the forestry program was revised in 1972 to allow a reduction in the fees in proportion to the amount that the tribes contributed to their forest management programs. The new policy increased the Indians' stake in protecting their forests. Tribal forestry enterprises were established and Indian preference contracting was utilized to maximize profits generated by the forest resource and to increase Indian employment. The Native American Electronics Training Program (NAETP) and the Indian Forester Intern Program, established in the late 1970's and the early 1980s, increased the number of Indians in forestry and management programs.¹¹

By 1980, the involvement of several public agencies and private groups, the increased participation of the tribes in Indian forest management, and the increasingly sophisticated concepts and tools available for this purpose made necessary the use of a team approach, involving the tribes, Bureau personnel, and forestry experts from other public agencies and private industry to deal effectively with most forest management questions. Since 1979, the Intertribal Timber Council has been particularly effective in convening quarterly meetings and annual symposia involving a variety of experts to address Indian forest management issues and in securing Congressional funding for a variety of Indian forestry management programs.¹²

¹⁰Ibid, pp. 6-38 through 6-44.

¹¹Ibid, pp. 6-44 through 6-47

¹²Ibid, pp. 6-44 through 6-50.

Forest Management, 1970-1979

The Growth of Tribal Consciousness about Managing the Forest Resource

Before 1970, the Bureau of Indian Affairs was primarily responsible for the management of the Nez Perce Reservation forest management program, which had emphasized timber sales and fire protection. During the 1950s, the Nez Perce Tribe had urged the Bureau to market tribal timber in order to provide income for the Tribe, and even had considered assuming greater management responsibilities in order to aid a program beset by constant underfunding and staff shortages. By 1960, these frustrations had become so great that the Tribe at one point considered terminating the timber sales program altogether.¹³ However, events in the 1960s led the Tribe away from this extreme position and toward the assumption of greater forest management responsibilities. A reinvigorated played a greater role in directing its own economic development, based in part on more effective use of its timber resource. (See Chapter 6.) During the 1970s, Federal legislation and add-on appropriations provided the means for initiating a tribal forestry program through the preparation of a new forest inventory and the implementation of an intensive forest management program. (See below.) In the meantime, an accelerated timber sales program provide the Tribe with increased tribal revenues.

Timber Harvesting

During the 10-year period between 1964 and 1974, a volume of about 37.3 million board feet with a value of \$1.46 million was harvested from tribal lands. The average of 3.73 million board feet per year was slightly above the annual cut recommended in the Wohletz report.¹⁴ Between 1970 and 1980, a volume of 43,204,000 board feet with a value of \$2,938,754 was harvested, again exceeding, on average, the annual allowable cut. This was due to the need to harvest over 9 million board feet of fire-killed timber on the Cottonwood Creek and Star Mill Creek Logging Units, sold to Potlatch Corporation. The Forest Officer's reports for both units estimated that the timber would be merchantable for two years, but recommended that the ponderosa pine be logged right away so that the purchaser would not lose grade quality due to blue stain. The two sales were completed between 1974 and 1976. Total volumes amounted to 10,444,470 board feet with a value of \$496,751.¹⁵

¹³Latham, "Analysis of Nez Perce Forest Management," pp. 21-25.

¹⁴Latham, "Analysis of Nez Perce Forest Management," p. 24.

¹⁵Victor E. Sisson, Jr., Forest Officer's Report, Cottonwood Creek Logging Unit, Nez Perce Reservation, 1974, and Statement of Completion of Contract, 1976 File: 339.5, Cottonwood Creek Logging Unit, Fire Salvage Tribal and Allotments 750 and 751, Nez Perce Reservation, Northern Idaho Agency; Victor E.

Other major timber sales in the 1970's were the Alpine (1973-1975) and Cavandish Tribal Units (1977-1979). The former consisted of mature and overmature ponderosa pine, Douglas-fir, and white fir, amounting to 4,517,000 board feet valued at \$339,015 was sold to Riverside Lumber.¹⁶ The Cavandish Unit was offered for sale because the unit had experienced extensive bark beetle damage. The Cavandish Unit also experienced damage from Armillaria spp. root rot in the stands of Douglas-fir, so dead and dying trees were salvaged in the sale. The timber was harvested and the remaining trees were spaced to prevent further damage. The sale amounting to 9,587,250 board feet with a value of \$1,264,034.61 was sold to the Bennett Tree Farm.¹⁷

Preparation of a New Forest Inventory, 1975-1977

In 1975, Agency Forest Manager James A. Ross recommended that a new inventory be conducted in accordance with the recommendation of the Wohletz report. After the Wohletz inventory had been completed, a careful "dot-count" of all tribal forested acreage, which was made from new aerial photos taken for a fire protection contract with the Idaho Department of State Lands, revealed more acreage (22,667 acres) than was given in the Wohletz Report (18,730 acres). Excluding the 480-acre Talmaks Reserve campground from timber cutting left 22,187 acres of tribal timber land and 135,597,000 board feet available for harvesting. Ross stated that a new inventory also was needed because of the 6,000-acre Cottonwood Creek fire in 1973, which burned over 2,005 acres of tribal land, including 1,367 acres of tribal timber. In addition, 300 acres of timber land in Tribal Units 29, 30, and 32 had been converted to agricultural land, for a total reduction of 1,667 acres of timber-producing lands.

Other matters to be considered included better utilization standards, to make possible the harvesting of smaller timber and the utilization of materials formerly thought of as cull material, and "precommercial thinning." Because of the acreage discrepancy and the apparent use of average volumes per acre multiplied by total acreage to arrive at total

Sisson, Jr., Forest Officer's Report, Star Mill Creek Logging Unit, Nez Perce Reservation, 1974, and Statement of Completion of Contract, 1976. File: 339.5, Star Creek Logging Unit, Nez Perce Reservation, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

¹⁶Phil D. Bailey, Forest Officer's Report, Alpine Logging Unit, Nez Perce Reservation, 1972, and Statement of Completion of Contract, 1976. File: Alpine Logging Unit, Nez Perce Tribal Unit, 1976, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

¹⁷David B. Hayes, Forest Officer's Report, Cavandish Logging Unit, Nez Perce Reservation, 1977, and Statement of Completion of Timber Contract, 1979. File: Cavandish Reserve Logging Unit with Allotment 1869, Nez Perce Reservation, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

volume in the 1963 inventory, Ross recommended that a new inventory should list the acreage of timber by each tribal unit.¹⁸

In 1975, the Bureau initiated and funded and the Tribe conducted a continuous forest inventory (CFI) of all tribal reserves and forested allotments on the reservation, at a cost of \$20,000. Foresters hired by the Tribe conducted most of the survey between June 30, 1975, and July 1, 1976. As of 1976, all but 16 of the plots had been measured. In June 1977, 322 inventory plot tally cards for 1/5-acre plots on tribal and allotted lands were delivered to the Branch of Forestry, Portland Area Office, for ADP processing.¹⁹ The results of the inventory were used to determine timber volumes and the annual allowable cut for the 1982 Forest Management Plan.

Land Clearing

As the Bureau and Tribe worked to identify the extent of the reservation timber resource and to develop and implement a sustainable and reliable income-producing timber sales program, they also had to determine the relative emphasis that was to be placed on tribal land use. Generally speaking, there appears to have been an evolution during this period from the clearing of tribal timber lands for agriculture to the retention of these lands for timber harvesting. Historically, the Tribe had generated revenue from its land by clearing it of trees and farming and leasing it for agricultural purposes. Much of the land converted was in the shape of narrow fingers of timber and isolated clumps of trees surrounded by farm land. Some of the land cleared was converted from a stump farm probably created in the 1940 and 1950s by a tribal logging operation. Land often was converted from timber to agricultural uses because of farmers' complaints about needles, overhanging limbs and trees from Indian timber lands contiguous with agricultural area. Pressure for "creeping clearing" along field edges and agricultural spraying of land adjacent to timber eliminated trees or retarded their growth.²⁰

¹⁸Letter, James A. Ross, Jr., Forest Manager, Northern Idaho Agency, to Mike Penny, EDA Planner, Nez Perce Tribal Office, March 20, 1975, File: 339.10, Nez Perce Tribal Inventory, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

¹⁹James A. Ross, Jr., Agency Annual Report, Northern Idaho Agency, Nez Perce Indian Reservation, 1976, File: Northern Idaho Agency, BIA; "Proposal, Forest Inventory of Tribal and Allotted Trust Lands, Nez Perce Indian Reservation of Idaho, 1975," File: 339.10, Tribal Timber Inventory, Nez Perce, Northern Idaho Agency, BIA; Memorandum, Loren C. Dillon, Acting Superintendent, Northern Idaho Agency, to Area Director, Portland Area Office, Attention: Forestry, re: Nez Perce Reservation Forest Inventory Project, July 22, 1977. File: 1107-01P, July 1975 Forest Inventory, Nez Perce Tribe, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office; personal communication, Lester Tschannen to William A. Babcock, Missoula, Montana, April 3, 1990.

²⁰Letter, Victor E. Sisson, Jr., Lapwai, Idaho, to William A. Babcock, Missoula, Montana, February 21, 1991.

By the 1950s the Tribe initiated studies to examine the cost and benefits of converting land to agriculture and/or retaining it for timber harvesting. In 1957, at the request of tribal members, BIA Land Operations recommended cost/benefit estimates for clearing land for agricultural purposes and, in a 1968 letter addressed to the Tribe, discussed the possibility of converting selected timber and pasture lands to farming lands. In 1978, a University of Idaho Center of Native American Development prepared a report which addressed tribal farming and agricultural alternatives and the feasibility of grain on 2,300 acres of timberland that BIA Land Operations had identified as potential cropland. The report referred to forestry only in passing and recommended that only two of the ten tribal units should not be converted to agricultural land.²¹

However, subsequent studies emphasized more the value of the timber resource. A tribal report of 1980 concluded that, after considering clearing and conversion costs, it would take 17 years before agriculture would out-produce timber harvesting in terms of the revenue each returned to the Tribe.²² Also, the Agency Branches of Land Operations, Forestry, and the Nez Perce Tribe concurred that the highest and best use of the timber land burned in the 1973 Cottonwood Creek fire would be to keep the land in timber production. The Branch of Land Operations felt that much of the land was too steep to farm, so there would be too many fingers of timber and farm land to be practical for conversion to farm land.²³

Fire Control

Fire control on the reservation continued to be supplied by the State of Idaho and the Clearwater Protective Association. The cooperative agreement with the State was revised in 1969. Fire damage during the 1970's was slight, with the exception of the Cottonwood Creek fire. This fire broke out on August 16, 1973, and burned 6,393 acres of land within the reservation boundaries and 2,005 acres on tribal and allotted lands. The trust land burned consisted of 1775 acres in tribal units 17, 18, 19, and 21 and 230 acres on Allotments 750, 751, and 1801. The tribal timber lands were particularly hard hit. A major portion of the timber burned was a "well stocked merchantable stand of timber." Tribal Unit 17 (Lookout Reserve) had been logged between 1966 and 1969 and 9,126,770

²¹Memorandum, G.S. Simms, Forester, Flathead Indian Agency, through Richard C. Whitesall, Superintendent, Flathead Indian Agency, to Superintendent, Northern Idaho Agency, July 9, 1980. File: 102-01a(1)TRD 8-10, 7/9/80, Nez Perce Forestry Activities, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

²²Rutger A. Van Houten, "Land Clearing: A Brief History of Recent Land Clearing Proposals and a Look at Some of the Immediate Costs and Impacts to the Tribe" (no pagination), Lapwai, Idaho, July 9, 1980. File: Nez Perce Tribe, Lapwai, Idaho.

²³Sisson letter, February 21, 1991.

board feet of timber with a value \$215,521 was removed. Grass seeding after the logging also had made much of the area excellent grazing land, complete with improvements made on ponds, corrals, and fences. Because of the value of the land for both timber and grazing, the Bureau decided to carry out an extensive rehabilitation plan to restore it to the excellent timber and grazing unit that it once was.²⁴

Insects and Disease

During the early part of the 1970s, insect and disease control was not a major problem on the Nez Perce Indian Reservation. In 1971, an outbreak of Douglas-fir bark beetles was reported in the Dworshak Dam area, and some of the insects were suspected to be on Cavandish Unit 42. In 1972, an outbreak of Ips pini beetle in conjunction with the turpentine beetle was found on the Woodland Reserve Unit and, in 1973, a salvage cut was planned for the unit to begin in 1974. However, the trees were not purchased in 1974 because of a poor market. In 1975, despite continuing poor market conditions, a series of three Ips pini study test plots scheduled for March, July, and November were logged during the specific period, and the required treatments were carried out. A total of 120 acres were logged, and a total volume of 506,080 board feet of timber was cut.

In 1975, no major insect or disease areas were observed on tribal and allotted land. The mountain pine beetle infestation on Allotments 489 and 490 was inspected by an entomologist from the U.S. Forest Service, Pacific Northwest Forest Range Experimentation Station, Moscow, Idaho. The tract of timber was offered for sale, but no bids were received and plans were made to readvertise the sale in 1976. In 1976, considerable beetle damage was found on the Cavendish Reserve and a timber sale was planned for 1977 to harvest the damaged timber and space the trees to prevent further damage. Scaling began in 1977 and the contract was completed in 1979. A total of 9,587,250 board feet was harvested. There was considerable insect damage to other scattered stands of timber due to the dry season, and salvage plans were scheduled.²⁵

Forest Rehabilitation

The Bureau began the Cotton Wood Creek Rehabilitation Project in 1973 and was funded by BIA Fire Rehabilitation (8862) monies. A total of 1621 acres were planted on

²⁴James A. Ross, Jr., Supervisory Forester, Branch of Forestry, Northern Idaho Agency, "Rehabilitation-Cottonwood Creek Fire, Nez Perce Reservation" (no pagination), September 28, 1973. File: 1107-17a, Cottonwood Creek Emergency Rehabilitation #5518, Nez Perce Reservation, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

²⁵Bureau of Indian Affairs, Branch of Forestry, Annual Reports, Northern Idaho Agency, 1970-1978. File: Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

Tribal Units 17, 18, and 19 using Fire rehabilitation funds and an additional 54 acres were planted in 1988 using Forest Development funds (See below.)

The figure of 1621 acres includes the 248 acres replanted over several years following a 1975 plantation failure. About 1427 acres now contain planted trees.²⁶

The rehabilitation project began as a 5-year project, starting with soil stabilization, establishment of property boundaries, and fencing, followed by site preparation and tree planting. The project was completed 13 years later in 1988. A total of 1373 acres contained planted trees and 836 acres were certified with at least 300 crop trees per acre and growing freely above competing vegetation. Site rehabilitation began in 1973 when James A. Ross, Forest Manager traveled to the Wenatchee National Forest to discuss erosion control measures and gather information to prepare a Fire Rehabilitation Plan. In 1974, Grass mixture was aerially seeded on the burned area and a cadastral survey and fencing project redesignated the reserve boundaries which had been obliterated by the fire. The costs for the survey and fencing project was \$60,470.²⁷

Aerial seeding caused two regeneration problems: heavy grass sod and an increase in the mouse population. Herbicides were used to combat the grass prior to planting on 400 acres on the south side of Star Mill Creek at a cost of \$10,060. A total of 134,000 tree seedlings (Douglas-fir, Grand fir, and ponderosa pine) were acquired from the U.S. Forest Service, Coeur d'Alene Nursery, at Coeur d'Alene, Idaho. The seed source was non-specific, but were assumed to have been from the Nez Perce National Forest. The Nez Perce Tribe planted only 248 of the 590 acres scheduled for planting in 1975 because logging and slash disposal took longer than expected. The total per acre cost for the seedling acquisition, site preparation, and planting was \$185.59. The 1975 planting had only a 2 percent survival rate, which probably was due to the use of off-site stock, and the heavy mouse population caused by the aerial grass seeding. All of the 1975 planting was replanted in 1976 (51 Acres), 1981 (112) acres, and 1983 (85 acres).²⁸

In 1976, a private contractor site prepared five units using a three-foot-wide scalping blade mounted on a dozer blade, a method developed by Ted Grande on the Nez Perce National Forest. A private contractor also planted ponderosa pine seedlings from the from the Coeur d'Alene Nursery on four units (LO-76-1 through LO-76-4). Total per acre cost for site preparation, seedlings, and planting was \$100.11.²⁹

²⁶Victor E. Sisson, "1990 Lookout Reserve Rehabilitation Project Report: Nez Perce Indian Reservation, Northern Idaho Agency", 1990. File: Nez Perce Tribe, Lapwai, Idaho.

²⁷Ibid.

²⁸Ibid.

²⁹Ibid.

Tree planting was discontinued from 1977 and 1980 because of lack of tree seed and personnel. In 1979, a nursery contract was negotiated with Fantasy farms Nursery of Peck, Idaho, for providing ponderosa pine and Douglas-fir bareroot seedlings. In the fall of 1980, cones were collected from ponderosa pine and Douglas-fir trees in conjunction with the Nez Perce tribal forestry staff. The conifer seed source on 1,100 acres was from the surrounding tribal reserves, Reubens (3000 foot elevation) and Talmaks (4,000 foot elevation). The Coeur d'Alene Nursery did the extraction and storage. Fantasy Farms was the main contractor for the seedlings but seedling shortages occurred because of poor germination and a Diplodia pinea disease. These shortages were filled with seedlings from the University of Idaho (container) and the U. S. Forest services Coeur d'Alene Nursery. Container stock obtained from the Western Forest Systems of Lewiston, Idaho, also was use in the fall 1985 planting. Site preparation and road work were performed in 1980. "Buy Indian" and open market contracts were used to contract planting projects between 1981 and 1988.³⁰

A total of 1235 acres were planted during that time. Ponderosa pine was the predominant species planted. Douglas-fir was later mixed in with the pine from 1983 to 1985. Western white pine in small quantities was selectively planted in 1983 and 1985 planted. Site preparation was consisted mostly of machine scalping and slash burning by creating 3-foot by 3-foot scalps on the more level areas. In those areas where interplanting occurred on slopes 40 percent or greater, hand scalps 18 inches in diameter were made just before planting. The Nez Perce Tribe did the planting under By-Indian (PL 93-638) contracting between 1980 and 1988. Planting was done in the spring except in 1985 when the herbicide site preparation areas were planted in the fall. The planting ethos was auger for all years until 1984 when half of the acreage was hoedad planted and during all of 1985 and 1988, which was done mostly on steeper slopes.³¹

The acreage planted per year starting in 1981 was small to allow the Nez Perce Tribe and BIA forestry to develop a tree planting crew. As more planters were trained yearly acreages were increased. Also the "planting window" or period of time that tress could be planted and expected to survive, was narrow in the Lookout area because of the low elevation and south aspects. Generally speaking, after the 1975-76 the project proceeded well and without major survival failures as experienced in 1975-1976. This was probably because of the extra time spent collecting seed from local sources.³²

³⁰Ibid.

³¹Ibid.

³²Ibid.

The overall cost of the project was \$603,493.01. Of this cost, 54 percent was for direct planting and site preparation costs, 23 percent for site rehabilitation costs such as grass seeding and fencing, and 23 percent for overhead costs.³³ Although the fire rehabilitation work was funded with Fire Rehabilitation (8862) funds, from a management perspective, it was considered as part of the more general Forest Development program that commenced on the reservation in 1977.

Forest Development

The use of P.L. 93-638 contracting and the use of tribal crews in the forest rehabilitation work between 1975 and 1988 was indicative of the increased role of the Tribe in the forestry program during the 1970s and the 1980s. The tribal forestry program on the Nez Perce Reservation and many other reservation was actually made possible by the use of Congressional add-on funding for the elimination of the backlog of Forest Development work and for timber-sale related work on the nation's Indian reservations. The Northern Idaho Agency and the Nez Perce Tribe viewed the availability of these funds as a means of involving the Tribe more directly in the forest management program, particularly because the Northern Idaho Agency did not have sufficient existing staff to assume the program. The Nez Perce Tribal Reservation Development Committee met several times with James A. Ross, Jr., to develop the Public Law 93-638 contract for Forest Development work in fiscal year 1977-1978, and the Tribe assumed the program in 1977.³⁴

The ten-year Forest Development program prepared in 1977 called for tree thinning and tree planting projects on the Nez Perce and Coeur d'Alene reservations to be done under P.L. 93-638 contracting. The plan called for the establishment of tree seedlings on burned areas (Lookout Reserve) and for thinning overstocked stands in order to meet the objectives specified in CFR 141.3. The project was to include the precommercial thinning of about 2,000 acres and planting seedlings on 550 nonstocked acres on the Lookout Reserve within the Cottonwood Creek burn area and the Cavandish Reserve.³⁵

The Tribe hired a forestry technician, Roger van Houten, in 1977 to manage the thinning program under the P.L. 93-638 contract. His immediate goal was to lay out exterior boundaries of the thinning areas, determine the thinning acreage, count stems per

³³Ibid.

³⁴Memorandum, W.J. McDonald, Superintendent, Northern Idaho Agency, to Portland Area Director, Branch of Forestry, Alex Whistler, June 27, 1984, "Response to Portland Area Office's Memorandum of November 3, 1983, Entitled 'Removal of the Planting Backlog'" p. 2. File: Forest Development Add-on Funds, 8-12-18, Northern Idaho Agency, 102-01, BFA-20, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

³⁵Victor E. Sisson, Jr., "Ten Year Forest Development Plan, Nez Perce Reservation, Idaho," pp. 1-3, 1977. File: 1107-016(3), 71-5-24, Forest Management Plan for Northern Idaho, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

acre on a cut/leave basis, estimate costs, develop thinning contracts, and supervise contract compliance. The Nez Perce Tribal Reservation Development Committee and Forest Manager James A. Ross, Jr., met several times to develop the contract for the precommercial thinning, which stipulated that the Tribe would contract with individuals, provide lump-sum payments on a per-acre basis after work had been satisfactorily completed, and see that the contracts were advertised with competitive bidding in the local Indian community.³⁶

The establishment of the Tribal Forestry Department in 1977 made possible by Congressional approval and funding appropriation and by the enactment of PL 93-638 contracting making it possible for the Tribe to contract directly for services that the Bureau had provided, provided the Nez Perce Tribe with the means of assuming significantly greater control over its forestry program. This legislation and the long-standing tradition of Nez Perce resistance to government control, resulted in the Tribe assuming control of the forestry program in the 1980s.

³⁶Ibid.

Chapter 8

ERA OF SELF-DETERMINATION, 1980-1988

By 1980, the Nez Perce Tribe not only had become responsible for much of the reservation's forest development work through P.L. 93-638 contracting, but also was in the process of shaping its long-term economic development plans, which increasingly had come to recognize the value of its forestry resource. The Tribe assumed control of the timber marketing program in 1984 with the establishment of the Nez Perce Forest Products Enterprise, and, in 1987, it assumed control of the entire forestry program. The Tribe's wish to direct its forest management program did not come without conflict which was caused by several factors: long-standing frustration felt by both the Tribe and Bureau over funding and staffing shortages; competition between the Bureau and the Tribe for these limited funds and for the direction of the program; and the actual displacement of the Bureau by the Tribe as the P.L. 93-638 process proceeded.

These factors exacerbated honest differences held by the Tribe and the Bureau over the direction of the forestry program and intensified personality conflicts between certain members of the Tribal and Bureau forestry staffs. The Tribe's understandable wish to utilize the forestry resource as a major means to increase tribal income and bolster the economic development program often conflicted with the Bureau's equally understandable wish to fulfill its trust responsibility to manage the program according to the principles of sustained yield and other Branch of Forestry regulations. Extreme positions sometimes taken to secure political advantage tended to distort and magnify the issues over which the two sides differed. Neither side was completely right or wrong and it is probable that the honest differences over the direction of forest management on the reservation, coupled with the long-standing shortages of available funding for the implementation of increasingly complex management needs and requirements, resulted in the Tribe assuming total direction of the program sooner than it would have otherwise. As a result of this conflict, the program accomplishments effected by each party during the decade, given the funding limitations and the distractions of conflict, were overshadowed and, perhaps, not fully appreciated by the other.

Nez Perce Forest Management, 1980-1988

The Tribal Forest Mismanagement Suit, 1980-1981

The decade of the 1980s began with the Tribe seeking to recover economic losses that it alleged had occurred as the result of wrongs committed by the Bureau before August 13, 1946, and that continued after June 30, 1951 (Nez Perce Tribe v. United States, Docket No. 179-A, U.S. Court of Claims). The Tribe retained the law firm of Wilkinson,

Cragan and Barker of New York City to handle the case. The firm, in turn, retained Wesley Rickard, Inc., of Gig Harbor, Washington, to determine if there was a basis for a mismanagement claim and to provide an estimate of the damages that could result from such a claim.¹

Rickard used the Wohletz report and a BIA critique of it as a benchmark with which to view the sequence of events before and after the report's publication, and to contend that mismanagement had occurred in excess of \$2.2 million. He accepted the statement of these documents that the Nez Perce forest was "reasonably well stocked with age classes of growing stock adequate to support a program of regular harvest and regrowth subsequent to 1963" and that as "of 1963 there appears to have been no substantial remaining element of overmature timber." Rickard maintained that, from the early part of the century until 1980, harvesting and utilization of the Nez Perce timber should have occurred "much sooner than it did" and that the present growing stock should have been established sooner than it was. Rickard noted that, as of 1980, the government had not prepared an inventory, a management plan, or a marketing plan for the reservation; timber sale contracts appeared to have been insufficiently enforced; harvested stands had been handled improperly "with respect to the growing stock that remained after harvest"; and that, in some cases, the government had allowed Nez Perce timber to be sold for less than fair market value.²

Rickard adopted 70 years instead of 150 years as the maximum potential rotation and an average annual growth rate of 395 board feet per acre to derive an annual allowable cut of 7.4 million board feet instead of the 3 million board feet estimated in the Wohletz report. Calculating the deficits between 1940 and 1957 at \$10 per million board feet and those between 1958 and 1980 at an average of \$45 per million board feet yielded a value of about \$2.2 million alleged to have been lost by the Tribe during this 38-year period.³

The BIA Portland Area Office criticized the report for containing "very liberal and speculative" growth assumptions, a "very liberal" timber demand assumption, "liberal" stumpage price assumptions, unspecified cost assumptions, and a "very liberal"

¹Letter, Wesley Rickard, Gig Harbor, Washington, to Angelo A. Iadarola and John M. Facciola, Wilkinson, Cragan and Barker, Washington, D.C., April 4, 1980. File: Litigation Case File, *Nez Perce Tribe v. United States*, Docket 179A, U.S. Court of Claims, 600-02, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

²Rickard, "Nez Perce Mismanagement."

³Ibid.

recommended annual harvest.⁴ The Bureau also maintained that the existence of a well-stocked forest in 1963 meant that at least the management of the growing stock had been effective and that the absence of overmature timber resulted in the allocation of growth to younger, more vigorous trees but told nothing about the amount of older-aged trees in the stand. The Bureau also was critical of the intermingling of Scribner and International log rules in determining growth rates, and the use of 425 board feet per acre per year as a realistic growth rate.⁵

In 1981, the Land and Natural Resources Division of the Department of Justice contracted with Duck Creek Associates of Stillwater, Oklahoma, to prepare "an independent analysis of the adequacy of the forest management question."⁶ The report provided a brief overview of forest management on the reservation during the period in question and concluded that there was no evidence of mismanagement regarding the sale of timber at fair market value, the total volume cut, or land abuse. The report stated that, in comparing stumpage prices with lumber prices, "with some minor variations the trends in the past two price series moved together exactly in the manner that one would expect." Timber sale procedures were significantly elaborate "to elicit as much competition for the sale as possible and to ensure input from the Tribe and compliance by the purchaser." Foresters in 1980 would agree that more volume could have been cut, but to have done so at the time would have been imprudent. Annual cuts following the Wohletz report were very close to the volumes recommended. The report also asserted that, with regard to "the silvicultural/environmental aspects," there was "little to suggest abuse of the land."

***Tribal Perspectives on Comprehensive Planning, Economic Development,
and Forest Management Planning, 1970-1982***

The Tribe also investigated the option of, and then established, tribal s designed to promote economic growth through the utilization of the forest resource. In 1971, the Nez Perce Tribal Executive Committee adopted by Resolution 72-79 a "Plan of Operations for the Tribal Resource Development ," to be managed by three directors. In 1976,

⁴Memorandum, Bob Sassaman, Forest Economist, Portland Area Office, "Comments on Wes Rickard's Nez Perce Indian Forest Report (4-4-80)". File: 600-02, Litigation Case File, *Nez Perce Tribe v. United States*., Docket 179A, U.S. Court of Claims, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

⁵Memorandum, Ralph Gustavson, Forester, Portland Area Office, "Comments on Wes Rickard's Nez Perce Indian Forest Report (4-4-80)". File: 600-02, Litigation Case File, *Nez Perce Tribe v. United States* Docket 179 A, U. S. Court of Claims, Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

⁶Latham, "Analysis of Nez Perce Forest Management."

⁷Ibid., pp. 32-33.

Resolution 76-383 vested management in the Tribal Reservation Development Committee, renaming the program the "Nez Perce Tribal Resource and Forestry ." The objectives of the were to develop and improve watershed construction through spring development, laying drain tile, and improving existing ponds within the reservation. It also sought to improve future and existing campgrounds, tribal roads, and drainage ditches. Moreover, the Tribe hoped to clear timber stumpage for potential usage; to landscape recreational and business sites; and to upgrade tribal education, improve employment, and increase tribal income.⁸

By 1980, the Tribe's concept of the forest and its development as a key element of tribal economic health had broadened considerably. In that year, the Nez Perce Tribal Executive Committee submitted a proposal to the Portland Area Office for year-end monies to obtain data on reproduction and merchantable size timber not provided in either the 1962 or 1976 inventories, which was needed to prepare a comprehensive forest development program and a comprehensive forest management plan. In its application, the Tribe provided "position papers" on its forest management and environmental concerns. The paper on "General Forest Management Concerns," submitted by the Tribe in response to a request for public input into the forest management plan, addressed forest protection, range needs, minerals, soil and water, and timber. The paper recognized the need for timber harvest, but also called for "proper protection and consideration for all resources," and selection of alternatives that might be more costly in the short run but would have less impact to the environment and less cost for mitigation.⁹

In June 1981, the Nez Perce Tribe Executive Committee applied for a continuation from October 1, 1981, to September 30, 1982, of the Nez Perce Social and Economic Development Strategies (SEDS) grant to the Administration for Native Americans (ANA), U.S. Department of Health and Human Services. The Nez Perce Natural Resource Subcommittee was charged with the responsibility of overall implementation of the SEDS effort. The application included a statement of the relationship of timber resource management to the ongoing preparation of the Nez Perce Comprehensive Plan and the

⁸Nez Perce Tribe, Resolution 76-383, September 14-15, 1976; Nez Perce Tribe, "Nez Perce Tribal Resource and Forestry Enterprise Plan of Operation," August 10, 1976. File: 73-5-14, 339.6, Tribal Sawmills and Enterprises, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁹Letter, Silas C. Whitman, Nez Perce Tribal Executive Committee, to Vince Little, Area Director, Bureau of Indian Affairs, Portland Area Office, Portland, Oregon, August 14, 1980; Nez Perce Tribe, "Position Paper of the Nez Perce Tribe of Idaho", circa 1980. File: 1107-01C(3), 71-5-24, Forest Management Plan for Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office. BIA.

economic development of the Nez Perce Tribe.¹⁰ The SEDS proposal considered the development of tribal sovereignty as a "high priority" and a means for "tribal government capacity to provide for future self-determination policies."¹¹

The SEDS program application of Fiscal Year 1982 considered management planning under three headings -- Comprehensive Planning, Resource Management/Development, and Community Services Planning -- and recognized natural resources as critical to the economic development of the Tribe. The Tribe saw natural resources such as timber, land, and water as providing the means for revenue generation and employment opportunities. At the time, the land and timber resources were providing about 40 percent of the tribal budget under the annual allowable cut of 3.2 million board feet, and the Tribe believed that updating timber resource data was the key to increasing tribal timber revenue. Preliminary survey work between 1976 and 1980 showed a maximum annual sustained yield of about 6 million board feet on tribal lands, about 2 million board feet on allotted lands, and the potential to increase the percentage of tribal revenue from timber harvesting from 40 percent to 65 to 75 percent of the tribal budget.¹²

The grant application referred to the responsibility of the BIA to manage properly the resource for its owners. The Tribe and the Bureau would have to determine what management practices, such as harvest, timber stand improvement, and economic development, would devolve to each group. The Tribe was critical of the Bureau for what it regarded as "haphazard scheduling of timber sales and the lack of anticipating market trends," resulting in a "very erratic record of timber sale receipts." It was estimated that, at existing market prices and the anticipated increase in the annual allowable cut, the Tribe would be able to receive about \$787,500 per year from its timber sales. The proposal stated that the 1982 goal of the Nez Perce Tribal Executive Committee was to "provide an updated Forest Management Plan based on the concept of Sustained Yield (Sustained AAC) implementing the increased AAC as determined from preliminary research."¹³

By 1982, the Tribe had prepared a statement of its resources, organization, and goals in the "Nez Perce Tribe of Idaho: An Overview." At that time, the Tribe owned 35,397 acres and allottees owned 51,067 acres on the 756,985-acre reservation. Primary land usage on the reservation included agriculture (43 percent), timber (32 percent), and pasture (24 percent). Tribal revenue came from timber and stumpage fees (40 percent),

¹⁰Nez Perce Tribe of Idaho, Social and Economic Development Strategies (Lapwai, Idaho: Nez Perce Tribe, 1981). File: Nez Perce Tribe, Lapwai, Idaho.

¹¹Ibid., p. 1.

¹²Ibid., p. 2.

¹³Ibid., pp. 6, 9.

interest earned on trust fees (20 percent), land lease fees (30 percent), and investment earning. The Nez Perce Tribe of Idaho had an enrollment of 2,930 members, 1,671 of whom lived on the reservation. The unemployment rate was given at 42.4 percent and the per capita income at only \$1,531. About 70 percent of Nez Perce family units lived below the poverty level. The overview reviewed tribal organization, including the composition and function of the various committees, subcommittees, and tribal government branches (planning, , and administrative), and the roles of the BIA and the Indian Health Service (IHS). Tribal government planning branch elements included comprehensive planning, forest development, fisheries, economic development, community development (housing), and research/data planner (environmental).¹⁴

The overview considered economic development as the "focal point" in overall reservation development and outlined steps necessary to realize economic goals, from data gathering to the final preparation of a comprehensive plan. The primary goal was to provide a strong economic base that would create viable "profit centers" by providing for "the sound management and orderly development of the natural resources" of the Tribe.¹⁵ The forest resource figured prominently in the Tribe's plans for economic betterment and greater control over its own affairs, especially over ongoing and anticipated tribal s. The overview reviewed joint BIA/Nez Perce tribal efforts to market timber, protect the forest, and carry out recent or ongoing forest development projects, some of which the Tribe was contracting to the Bureau under P.L. 93-638. The importance of the forest resource to the Tribe was evident in the overview's treatment of the recession in the early 1980s, which affected tribal members more severely than the general population. This effect was especially evident in the area of employment, where Federal program budget cuts resulted in lay-offs in the tribal programs. The lumber industry slump resulted in local mill layoffs and shortened weeks affecting Indian employees with as many as 15 to 20 years seniority. Finally, the ripple effect of the damaged lumber economy impacted all businesses, especially retail sales.¹⁶

Northern Idaho Agency Forestry Program Review and Agency Response, 1981-1982

The Tribe's development of its forest management program not only involved articulating goals regarding tribal government, economic development, and forest management, but also concrete steps such as P.L. 93-638 contracting and requesting additional personnel to aid with the burden of the increased annual harvest anticipated by revised inventory figures. The Northern Idaho Agency's request for additional staff on

¹⁴Nez Perce Tribe, "Nez Perce Tribe of Idaho: An Overview", circa 1982, pp. 1-10. File: Nez Perce Tribe, Lapwai, Idaho.

¹⁵Ibid., pp. 7-9.

¹⁶Ibid.

behalf of the Tribe was denied, however, by the BIA Portland Area Office, pending a BIA program review to establish such a need and/or make recommendations for reassignment of personnel to other duties within the Branch of Forestry.¹⁷

The forestry program at the Northern Idaho Agency was reviewed between November 30 and December 4, 1981 by a team composed of BIA managers and staff from the Portland Area Office, the Warm Springs Agency, the Olympic Peninsula Agency, the Colville Agency, and the Yakima Agency. The team examined the Agency from the standpoints of forestry organization; inventories, management plans, and forest development; fires, insects, and disease; forest management deductions; and timber harvesting and forest development. The review team concluded that a system of management by objective should be installed in order to increase staff efficiency before the matter of staffing increases could be addressed properly. The program review and the Agency's response to it provide useful insights into forest management by the Agency and the Nez Perce Tribe on the reservation during the early 1980s. The review documented communication problems between the Tribe and the Agency staff, competition among reservations in the Northern Idaho Agency for funding and staff, and the relationship between the Agency and the Portland Area Office.¹⁸

The staff review maintained that there was insufficient direct contact between tribal committees and the Bureau forestry staff, noting that tribal goals were being conveyed to the Forest Manager through a tribal employee rather than through the Superintendent. The Bureau called for a closer trustee-tribal relationship, with the Agency acting as a "competent and involved consultant."¹⁹ An interview with Gordon High Eagle, the chairman of the Tribal Natural Resource Committee, revealed that the Tribe wanted more information about its timber resource and how it could be integrated into the Tribe's overall resource planning system. The review team stated that the Superintendent should take a more aggressive role in identifying tribal goals and objectives for the Forest Manager and assisting the Tribe in setting long- and short-term management goals. The

¹⁷Nez Perce Tribe, Resolution 81-543, August 25, 1981. File: 81-10-15-102-02, Forestry Program Review, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

¹⁸Memorandum, Office of the Area Director, Portland Area Office, Branch of Forestry, to Superintendent, Northern Idaho Agency, February 1, 1982. File: 102-02, Program Review, 83-09-21, OPM 15, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

¹⁹Bureau of Indian Affairs, "Northern Idaho Agency Forestry Program Review: Forestry Organization", prepared by Bob Harned, Forest Manager, Warm Springs Agency, December, 1981. File: 102-02, Program Review, OPM15, Northern Idaho Agency, 83-09-21, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

Forest management plan then being prepared could be used as a "tool to provide the Tribe with alternatives."²⁰

The review also found that the delegation of authority from the Bureau's Forest Manager to the forestry staff was difficult to trace, and that the position description and delegation of authority to Forester Thomas Roberts be revised by making Roberts Section Chief for the Nez Perce. The review team recommended that many of the Forest Manager's administrative duties and much of the forestry staff's paper work be transferred to the clerical staff. It also recommended that, in the absence of a written statement of goals and objectives, management by objective be implemented to determine if available manpower was being effectively utilized and if requests for additional personnel were justified. The evaluation team also recommended that the Bureau acquire permanent right-of-way to trust lands.²¹

The team reviewing forest inventory, management plans, and forest development found the continuous forest inventory work being done by Agency staff to be satisfactory, with the exception of the omission of data collected on stems of less than six inches in diameter. As a result, ingrowth data, an important component in the calculation of the annual allowable cut, was unavailable. The evaluation also pointed to other aids and inventories needed by the Agency, including a complete reservation road map with all forest roads; benchmark silvicultural prescriptions then being developed; additional soils surveys; and critical review of stand exams.²²

The review judged the draft forest management plan a "good plan," well-prepared, and that the process of its preparation was a means to involve "the tribal membership in hard decisions on the management of their land." The review recommended that the harvesting methods considered in the plan and the environmental assessment (selective cutting, no cutting, and clearcutting) should be expanded to include seed tree cuts and shelterwood cuts. The review also judged cutting schedules and timing of cuts to be "very satisfactory," except for the scheduling of allotment cutting. The report recommended that the Bureau continue to investigate the establishment of a forest landowners' association,

²⁰Ibid.

²¹Ibid.

²²Bureau of Indian Affairs, "Northern Idaho Agency, Forestry Program Review: Inventories, Management Plans, and Forest Development", prepared by William P. Donaghu, December 17, 1981. File: 102-02, OPM15, Program Review, 83-09-21, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

which would facilitate better scheduling of allotment sales as blocks and/or in conjunction with tribal sales, making them more cost effective.²³

Silvicultural programs, including timber stand improvement, site preparation, and reforestation, were progressing well, although funding was recognized to be a problem. The review recommended that available forest development funds for the Nez Perce and Coeur d'Alene Reservations be allocated on a project-need basis and not necessarily be split evenly every year, but that the allocations should balance over a five-year period. The review also recommended that stumpage deductions for forest development programs be discussed with each Tribe within the Agency.²⁴ The review team evaluating Nez Perce timber sales noted that forest management concepts were in the process of being updated and that new skills were being introduced in the form of contracted silvicultural and forest protection surveys, management specialists, and training at the University of Idaho.²⁵

Marketing practices being used were confined to prescribed standards and regulations and were judged to be appropriate for a small allowable cut forest such as the Nez Perce, with its non-contiguous, scattered land base. In general, low-intensity logging contractors had purchased most of the Nez Perce timber harvest, and marketing and prices received for tribal timber were very good. The report recommended upgrading sale package administration and increasing the logging unit sizes to help absorb fixed costs. The review regarded timber sale administration to be good, but stated that objectives were not clearly defined and that silvicultural alternatives had to be examined. The report recommended that the Agency compile a timber sale handbook to include more intensive management practices and alternative methods. Logging operations and contract compliance at the Kidder Ridge and Winchester Units were considered to be excellent. The review called for more consistent, streamlined field operations in sale preparation and the development of standard cruise instructions to ensure continuity as staff changes occurred and to prevent unnecessary work. Specifically, the review recommended the use of presale critical path scheduling and the development of sound prescriptions before marking.²⁶

²³Ibid.

²⁴Ibid.

²⁵Bureau of Indian Affairs, "Forestry Program Review, Northern Idaho Agency: Nez Perce Timber Sales", prepared by Bill Crowell, Timber Sales Officer, Olympic Peninsula Agency, December 10, 1981, and by Glen Lisle, Yakima Agency, December 8, 1981. File: 102-02, Program Review, 83-09-21, OPM15, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

²⁶Ibid.

The report also called for a thorough review of the forest stand condition and silvicultural alternatives on an even-aged forest about at rotation. The review maintained that, although slash disposal was complete (indeed, probably too complete), site preparation was not being completed. The lack of site preparation and close tree spacing had resulted in a light cutting regime and little or no reproduction. A long-range management objective had to be developed for these stands for volumes to increase. The economic losses that occurred through non-reforestation, and the effect that this had on the annual allowable cut, needed consideration.²⁷

The review addressed the issue of even-aged and uneven-aged management by stating that partial cuts were not achieving an all-aged forest, something that required group cuts taking 90 years to achieve. Although this was the most visually pleasing approach, it would result in the lowest rate of economic return. The review team recommended alternatives built around an even-aged system, using clearcut and shelterwood or seed tree methods that maximized income and growth and were the most cost-effective. The reviewers recognized that such an approach would be a radical departure from historic practices.²⁸

The Agency review team dealing with fire, insects and disease, and trespass found these matters generally satisfactory on the Nez Perce Reservation. The team concluded that the cooperative fire control agreement between the Agency and the State of Idaho for presuppression and suppression activities was "quite a bargain" at an annual cost of \$25,000. However, the report recommended that the Bureau reach an agreement with the Tribe about how to handle fire in the Congressional set-aside Talmaks Reserve area. The Bureau also had to develop a prescribed burning plan. The report found good cooperation between the Bureau, the University of Idaho, and the Forest Service, the latter two providing expertise in forest pest detection and management. The overall detection and control of insects and disease was considered aggressive, and the Agency's programs were judged to be working well. The review contended that the Agency did not have an effective answer to trespass, given the demand for firewood use and the diverse land ownership pattern, but that it had done an acceptable job of investigation.²⁹

The report found that the Northern Idaho Agency retained forest management deductions for one fiscal year before allowing tribes to incur obligations against them. In

²⁷Ibid., p. 6.

²⁸Ibid., p. 7.

²⁹Bureau of Indian Affairs, "Northern Idaho Agency Forestry Program Review: Fire, Insects and Disease, and Trespass" prepared by Clarence E. Holford, Supervisory Forester, Colville Agency, December 10, 1981. File: 102-02, Program Review, 83-09-21, OPM15, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

this way, the tribes knew the precise amount of funding due them. Ninety-six percent of the expenditures incurred by the Nez Perce Tribe was for items supporting the forestry program and four percent was for final payments on fencing and land surveying work. The results of P.L. 93-638 contracting were judged to be only marginal. A \$129,779 contract between the Tribe and the Bureau contained specific objectives, but delays in approving the contract had prevented the accomplishment of goals according to the contract schedule. In the words of the reviewer, "the Northern Idaho Agency gave up the opportunity to approximately \$130,000 in FY 1981 program funds to let the Nez Perce Tribe accomplish certain forest development activities," but with only marginal results. The report recommended the establishment of objectives and priorities that would use the available funds more effectively.³⁰

The Agency accepted some of the review team's criticisms and challenged others. The Agency stated that it had goals and objectives even though they were not written down, but that timber sales and forest development work had written schedules. The Agency also maintained that all forestry concerns were addressed to the Tribe, but that it was difficult to secure meetings with the Tribal Natural Resources Subcommittee. However, communication with Tribal Forester Roger van Houten was good and there was no animosity between the Bureau forestry staff and the tribal forestry staff or other tribal members. The Agency agreed to change the job description of the Northern Idaho Agency's Assistant Forest Manager. The Agency challenged the review team's assertion that much of the paper work being prepared by the forestry staff could be delegated to the clerical staff. Such paper work was required and necessary and consumed a disproportionate amount of staff time on the small reservation. The Agency had realized for some time that permanent rights-of-way had to be secured to tribal timber lands, but simply had lacked the funds to do so.³¹ With regard to the annual allowable cut and timber harvesting, the Agency pointed out that it had followed the guidelines for calculating the annual allowable cut provided by the Portland Area Office. The Agency also had intended to include a consideration of seed-tree cuts, shelterwood cuts, and clearcuts in the third draft of the management plan. It stood fast in its belief that 3,416 acres of tribal timber should have been included in the annual allowable cut computation, despite

³⁰Bureau of Indian Affairs, "Forestry Program Review, Northern Idaho Agency: Forest Management Deductions and Public Law 93-638 Contracting", prepared by Mike Farnsworth, Auditor, Portland Area Office, December 15, 1981. File: 102-02, Program Review, 83-09-21, OPM15, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

³¹Memorandum, Branch of Forestry, Northern Idaho Agency, to Area Director, Portland Area Office, re: Forestry Review Report, March 24, 1982. File: 81-10-15-102-02, Forestry Program Review, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

problems with unsecured rights-of-way, and that the acreage in the Lookout Reserve burn area should not be included.³²

The Agency asserted that the existing 50-50 split of forest development funds between the Nez Perce and Coeur d'Alene Reservations should continue in order to maintain program continuity. The primary need for a better forest development program was more funding. The Agency stated that the two tribes were seriously considering the use of stumpage deductions for forest development work as recommended by the review team. They also stated that it had followed the correct silvicultural prescriptions on the Winchester and Reubens logging units. The Agency noted that the Bureau had hired a consulting forester to prepare silvicultural prescriptions on ten stands on the Nez Perce Reservation and that two Bureau foresters were taking silvicultural training. The Agency also stated that it recognized the importance of surveys and base maps, but simply had not had the funding to do them over the years, despite requests made to the Portland Area Office.³³

The Agency agreed that timber sale sizes should be enlarged in light of the tentative increase in the annual allowable cut indicated by the inventories in the late 1970s. The Agency rejected the team's suggestion that minimum cutting requirements be eliminated in timber sale units because it might make the flow of tribal income less secure.³⁴

The Tribe regarded the Agency review as a waste of time and money because the central issue, the securing of additional personnel to aid with the burden of the increased annual harvest, was not addressed.³⁵

Forest Management Plan, 1982

The Tribe's efforts to update forest inventory and management procedures in the early 1980s took a major step forward when the Bureau hired Lester Tschannen to prepare a forest management plan for the Nez Perce Reservation, covering the period between January 1, 1981, to December 31, 1985. The plan, which was approved by the Tribal Executive Committee on June 22, 1982, incorporated new concerns about managing the whole forest by viewing the Nez Perce timberlands as "an important historic, religious, and

³²Ibid.

³³Ibid.

³⁴Ibid.

³⁵Memorandum, Nez Perce Tribe of Idaho, Nez Perce Planning Branch, to Area Director, Portland Area Office, Bureau of Indian Affairs, October 18, 1982, re: Issues and Concerns. File: 102-01a(1), TRD 8-10, Nez Perce Forest Activities, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

cultural tie to the forbearers of the present Nez Perce people," as well as "a solid economic foundation for the members of the Nez Perce Tribe."³⁶

The management goals and objectives, which were based on the objectives contained in Subchapter M, Chapter 141.3, Code of Federal Regulations, Title 25, reflected the concern by the Bureau and the Tribe for a sustained yield forest grounded in responsible silvicultural practices. It also emphasized the need of the Indians to develop their forests in order to promote self-sustaining communities and receive from their property not only the stumpage value, but also "the benefit of whatever profit it is capable of yielding and whatever labor the Indians are qualified to perform." The sale of tribal timber was to be competitive in accordance with good business practices. The preservation of the forest in its natural state and the recreational or aesthetic value of the forest to the Tribe was to exceed its value for the production of forest products. The importance of regulating runoff, minimizing erosion, and preserving and developing grazing, wildlife, and other values of the forest was explicitly recognized. Timber harvesting on tribal lands could not be authorized without prescribed practical methods of cutting based on sound silvicultural principles. Of particular significance, in view of the past emphasis that had been placed on conversion of timber lands to agricultural use, was the statement that timberland units should not be overgrazed, not only because of the grazing capabilities of the unit, but also for the future timber crop to be grown. The money derived from timber should greatly exceed grazing income from timber lands.³⁷

Based upon the inventory of 1977, the plan established the number of tribal and allotted harvestable acres at 22,257.82, and recorded net volumes of 222,505,973 board feet in 1975 and 242,436,861 board feet in 1981, up considerably from the Wohletz plan figures. Total net volume comparisons for 1975 and 1981 by species and tribal volume comparisons for 1962, 1975, and 1981 by species and the 18-year percentage increase are presented in Tables 8-1 and 8-2. (Tables 8-1 - 8-4 are taken from the 1982 Management Plan, pp. 14-16.)

³⁶Bureau of Indian Affairs, Northern Idaho Agency, Forest Management Plan, Nez Perce Reservation, Idaho, prepared by Lester Tschannen, Forester, Northern Idaho Agency, June 22, 1982. File: Bureau of Indian Affairs, Branch of Forestry, Northern Idaho Agency, Lapwai, Idaho.

³⁷*Ibid.*, pp. 23-24.

Table 8-1
Total Net Volumes for Tribal and Allotted Timber, 1975, 1981

Species	1975	1981
Ponderosa Pine	110,685,084	120,599,658
Douglas Fir	92,853,618	101,170,946
Grand Fir	16,594,993	18,081,483
Lodgepole Pine	715,623	779,725
Other	1,656,655	1,805,049
TOTAL	222,606,973	242,436,861

Table 8-2
Total Net Volumes for Tribal Timber, 1962, 1975, 1981

Species	1962	1975	1981	18-Year % Volume Increase
Ponderosa Pine	73,448,000	88,616,116	96,656,573	31.6%
Douglas Fir	47,379,000	74,339,981	81,085,113	71.1%
Grand Fir	10,855,000	13,286,197	14,491,701	33.5%
Lodgepole Pine	187,000	572,938	624,932	24.2%
Other	1,922,000	1,326,342	1,446,686	-24.7%
TOTAL	133,791,000	178,141,574	194,304,996	45.2%

Table 8-3
Annual Allowable Cut By Species

Species	Volume in Board Feet	Percentage by Species
Ponderosa Pine	3,845,652	50%
Douglas Fir	3,226,039	42%
Grand Fir	576,564	7%
Lodgepole Pine	24,863	0.3%
Other	57,668	0.7%
TOTAL	7,730,586	100%

Table 8-4
Annual Allowable Cut Summary

Component	Acres	(MMBM)
Tribal Uneven Age Cutover	17,819.94	6.1
Allotted Uneven Age Cutover	4,437.88	1.6
TOTAL	22,257.82	7.7

The plan proposed a number of management and silvicultural tasks to be accomplished between 1975 and 1985, including (1) protection of the forest from insects, disease and fire; (2) completion of the initial cut from the virgin areas of the tribal lands by removing overmature, damaged, diseased, and decadent timber; (3) performance of the initial cut in order to leave the residual stand in the best possible condition for placing it on a sustained yield basis; (4) continuation of harvesting of second growth stands at a rate compatible with the calculated cut of 7.7 million board feet; (5) increasing annual growth and allowable cut through intensive management; (6) salvage of mortality and impending mortality where feasible; (7) increasing precommercial thinning and mistletoe control to a sustained level of 300 acres annually; (8) eradication of the forest planting backlog of 1,972 acres; (9) pursuit of markets for unmerchantable material and thinning slash; (10) initiation and completion of the timber typing of the reservation forest; (11) management of the timber resource in agreement with other multiple use and environmental values; (12) making immediate allotment cutting during the next 10 years by programming the sales of two to three allotments each year; and (13) the establishment and maintenance of a permit and small timber sales program which would establish opportunities for Indian loggers.³⁸

Regulation figures designed to achieve the most efficient sustained yield production through controlling growth and calculating the removal of the growing stock were applied to the forest, which was to be managed according to the requirements of uneven-aged characteristics. The plan utilized the culmination of mean annual increment of 130 years for ponderosa pine for site index 95 (100-year base) measured in normal stands in board foot volumes, 11.6 inches d.b.h. and greater with Scribner Decimal C log rule, and assumed a lowering of merchantability standards to trees of 6.6 d.b.h., and an International log rule using 1/8-inch kerf. The plan recommended a rotation period of 100 years for the reservation until smaller trees could be utilized, at which time the rotation period would be reduced to 90 years. The plan also recommended a 20-year cutting cycle for the plan period to reduce site damage and logging costs and to ensure maximum stumpage income

³⁸Ibid., pp. 18-19.

over the long term. The Austrian formula was used to calculate the annual allowable cut of 365.6 board feet per acre per year, gross volume.³⁹

The plan differed greatly from the 1963 plan in the extent to which it addressed silvicultural practices as a means of producing "a more useful forest than nature [could] and ... in far less time." Silvicultural management through the use of regeneration activities, intermediate management projects, and protection programs provided the Tribe with the means to control species composition and stand density; protect sites; salvage natural losses; restock nonproductive areas; protect against damaging agents; control the length of rotation; and improve overall forest use. Silvicultural practices available for application to all stands on the Nez Perce Reservation included individual tree selection, group selection, seed tree, shelterwood, group shelterwood, and clearcut.⁴⁰

Some of the plan's major concerns included the percentages of nonstocked areas (23.4 percent) and 10- to 20-percent-stocked areas (35.5 percent) in 1980 and the significant change in species composition of the reproduction occurring between 1963 and 1980. Logged areas had been restocked with natural seedlings in most instances. The openings created by harvesting, however, had not resulted in an environment suitable for the reproduction of Douglas-fir and ponderosa pine. Ponderosa pine reproduction dropped 6.7 percent; Douglas-fir, 6.0 percent; and grand fir reproduction increased 11.0 percent between 1963 and 1980. This occurred because the condition of much of the harvested timber made necessary salvage harvest cuts instead of regeneration cuts, which left larger openings more favorable to intolerant species such as Douglas-fir and ponderosa pine. The plan recommended correcting this change in stand composition by future timber stand improvement work in about 3,000 acres needing removal of a considerable volume of sanitation material. Cutting could be modified to favor regeneration in addition to removing the salvage-type trees.⁴¹

The forest management plan also included action plans for forest development, forest protection, logging roads, access roads, right-of-way, land acquisition, permit program, sales policy, cutting budget, continuous forest inventory, stand examinations, and the Nez Perce inventory analysis. The forest development program had about 950 acres for site preparation and planting in addition to the rehabilitation work necessary to bring the Lookout reserve up to a "free-to-grow" status. Also, 277 acres in Tribal Unit 41 and 27 acres in Tribal Unit 34 required precommercial thinning in fiscal year 1982, then continued precommercial thinning at the rate of about 300 acres per year until 1987. Forest protection included insect and disease detection and control, trespass, and fire protection. July 1981 field examinations of timber on the reservation evaluated the identified diseases

³⁹Ibid., pp. 25-32.

⁴⁰Ibid., p. 37.

⁴¹Ibid., pp. 37, 40.

in terms of appropriate silvicultural treatment for specific units. The plan cited the annual aerial survey of insect and disease conditions, conducted on the reservation by personnel from the State of Idaho, and the requirement that all potentially destructive disease and insect outbreaks on Indian lands be examined by the State as effective means of detecting forest insects and disease. The three major sources of pest control funds included Federal pest control funds from the USDA Forest Service, and funds budgeted through the Tribal and Purchaser Timber Stand Improvement payments.⁴²

Timber and fire trespass had not been serious problems on the reservation. The reservation also had been free of major fires and was protected through cooperative fire protection agreements with the State of Idaho and the Clearwater-Potlatch Timber Protective Association. As a result of the successful attempts to keep the number and size of wildfires to a minimum, a buildup of forest fuels had occurred on the reservation. The plan recommended prescribed burning to deal with this problem, as well as to control insects and disease, remove undesirable vegetation, prepare seedbeds, and to aid seed scarification, species manipulation, and wildlife management.⁴³

The plan placed a priority on obtaining permanent access to six large tribal timber units (Kooskia, Clear Creek, Ford Creek, Selway, Orofino, and Box Canyon) containing 3,416 acres. Timber sales could not be made unless permanent or revocable rights-of-way could be guaranteed to the purchaser. The plan also urged the consolidation of tribal ownership to permit more efficient management of all tribal resources. Intermingled ownership presented right-of-way problems and complicated stumpage appraisals, logging road system design, fire suppression, and other management activities. The plan recommended that allotments be offered for sale at the request of the allottees, that the Nez Perce have the right of first refusal on their sales, and that persons with fee patent requests be asked to sell their land to the Tribe to prevent reducing the acreage owned by Indian people.⁴⁴

The plan provided statistics on the economic value of the forest to the Tribe between 1970 and 1980. During that period the Tribe sold 36.8 million board feet of timber for a total of \$2,591,585, which comprised 60 percent of the Tribe's gross income. Receipts from individual sales and permits totaled \$448,189.59 for 614 individuals during the same period.⁴⁵ Markets included sawmills located at Lewiston, Washington, and Clarkston, Craigmont, Kooskia, Orofino, Kamiah, and Grangeville, Idaho. A pulp mill and

⁴²Ibid., pp. 51-57.

⁴³Ibid., pp. 60-64.

⁴⁴Ibid., pp. 64-65.

⁴⁵Ibid., p. 104.

paper plant at Lewiston provided a market for pulp logs. The ports of Wilma, Lewiston, and Clarkston provided access to markets and other pump mills along the Snake River or for export to foreign countries. The unstable nature of the pulp log market made it necessary to have the logs marked and ready to go if pulp logs were to be marketed solely. The existing demand for sawlogs was moderate to poor and high mortgage rates were figured to hold demand down, but the long-term effect was viewed as upward because of the three-year depression in the housing market.⁴⁶

Although not specifically provided for in the management plan, the Branch of Forestry began conducting cultural resources surveys for each contracted timber sale in the early 1980s in compliance with Federal historic preservation laws. The Northern Idaho Agency was one of the first agencies in the Portland Area to require cultural resource surveys and clearance in advance of timber sales. David Chance, Research Scientist from the University of Idaho, contracted with the Bureau to perform the first series of surveys conducted in the early 1980s. By 1989, conducting the cultural resource surveys for contracted timber sales became a regular staff function of the Nez Perce Tribe.⁴⁷

Tribal Assumption of the Forest Management Program, 1982 - 1988

General Forestry Management Concerns: The Bureau and the Tribe, 1982-1986

The Tribe now had a comprehensive forest management plan that reflected its values concerning the forest and provided prescriptions and action plans for its sustained management. Unfortunately, the Tribe and the Bureau had insufficient staff and funds to carry out all programs outlined in it, according to an evaluation prepared by the Portland Area Office. Efficiencies that could have been achieved in the program by acting on recommendations made in the 1981/1982 program review proved insufficient to make up for the shortage in personnel. Additional staff was necessary to implement the major recommendations of the plan, such as increasing the annual allowable cut from 3.0 to 7.7 million board feet; establishing permanent rights-of-way over fee patent land blocking access to large portions of tribal and allotted timber; prescribed burning for timber stand improvement and hazard reduction; and forest development projects necessary to maximize growth. These programs included precommercial thinning and rehabilitation of diseased

⁴⁶Ibid., pp. 104, 106.

⁴⁷Letter, Victor E. Sisson, Lapwai, Idaho, to William A. Babcock, Missoula, Montana, February 21, 1991; Personal communication, Thomas C. Roberts, Nez Perce Tribal Forestry, Lapwai, Idaho, to William A. Babcock, Missoula, Montana, December 9, 1991.

stands, particularly Armillaria mellea root-infected areas, estimated to be 20 percent of the fir-type of acreage.⁴⁸

These and other issues became an increasing source of concern and contention between the Tribe and the Bureau. The Tribe, eager to assume complete control of the forest management program, became convinced that Bureau inefficiencies were responsible for management goals not being achieved and worked aggressively to assume greater responsibility for the direction and administration of the program. In an October 18, 1982, memorandum to the Portland Area Office, the Tribe addressed a number of concerns about the reservation, from comprehensive planning to forest management. The latter was a key component in the Tribe's effort to base its planning effort on development and management of its natural resources. By late 1982, the Nez Perce Planning Branch employed 19 persons, not counting seasonal employees, and consisted of Nez Perce Tribal Forestry, Nez Perce Fisheries Program, Nez Perce Economic Development Program, Nez Perce Community Development Block Grant (CDBG) Program, and Nez Perce Management Assistance Program. By 1982, the planning effort had been funded by a \$60,367 Administration for Native Americans (ANA) Social and Economic Development Strategies (SEDS) grant for the October 1, 1981, to November 30, 1982, budget period. The Tribe also submitted a \$365,326 grant application to Health and Human Services for a number of programs, including natural resources development and forestry management. Despite the Tribe's criticism of the Bureau, it saw the success of its planning efforts, including the forest and business development, as dependent on the technical expertise and trust responsibility provided by the Bureau.⁴⁹

Besides complaining about the lack of personnel to manage the expanded forest management program, the Tribe argued for greater flexibility in the forestry program, for less dependence on adhering strictly to Bureau procedures that the Tribe believed unnecessarily delayed timber sales and lost revenue for the Tribe, and for the need to retain administrative fees to carry out key parts of the forest management program. The Tribe also looked to P.L. 93-638 to provide the mechanism for obtaining lands for the tribes within the boundaries of the reservation and for transferring fee simple land to trust status.⁵⁰

⁴⁸Memorandum, Kenneth E. Engelbretson, Forester, Management Planning and Inventories, Portland Area Office, re: Implementation of Nez Perce Forest Management Plan, October 14, 1982. File: 102-01a(1)TRD8-10, 7/9/80, Nez Perce Forestry Activities, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁴⁹Memorandum, Nez Perce Tribe of Idaho, re: Issues and Concerns, October 18, 1982. File: 01a(1) TRD 8-10, Nez Perce Forest Activities, 7/9/80, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁵⁰Ibid.

The Agency responded by emphasizing its trust responsibility of seeing that the forest was managed in accordance with Branch of Forestry regulations. It acknowledged that its forest program review of 1981 had not addressed the question of additional staffing, but pointed out that, since the program review, one full-time position had been promised, starting in the spring of 1983, to work on timber sales and on acquiring rights-of-way on the Nez Perce and Coeur d'Alene reservations. The Bureau maintained that there was no reason to change sales standards without sufficient justification, especially when sales could be made with existing merchantability standards. The Forest Manager stated that he had delayed the Alpine Unit harvest because he honestly disagreed with some members of the Bureau and Tribal Forestry staffs about harvesting methods to be used.⁵¹ He was particularly concerned about getting reproduction reestablished following logging and planting trees in clearcuts.⁵² Accordingly, the Forest Manager hired a certified silviculturalist, whose recommendations to the Bureau and Tribal Forestry staffs were reviewed and accepted. The Forest Manager maintained that no time was lost, because other field work was being done in the meantime, which had to be accomplished before the sale could proceed. The Forest Manager stated that the Tribe had not discussed the timber delay issue with the Bureau before the Tribe's October 1982 memorandum, and suggested that regular meetings be held with the Bureau, tribal forest managers, and the Natural Resources Committee. The Agency Realty Office responded affirmatively to the tribal inquiry about whether or not P.L. 63-938 provided a mechanism for obtaining land on the Nez Perce Reservation and outlined the steps to be taken to transfer fee simple land to trust status.⁵³

The lack of communication between the Tribe and Bureau continued and disagreements between each resulted in a December 1983 meeting involving the Nez Perce Tribal Executive Committee, the BIA Branch of Forestry, Tribal Forestry, and the Natural Resource Committee at Sacajawea Lodge. The Tribe and its staff believed that forest management targets were not being met and that the program had not achieved the level that it could, given existing funding and staff. Between 1983 and 1986, communication between the Tribe and the Bureau, forestry staffs deteriorated, in part, because of a personality conflict between the Tribal and Bureau Forest Managers. This conflict unfortunately compounded the problems inherent in the Tribe working toward self-

⁵¹Memorandum, Victor E. Sisson, Jr., Branch of Forestry, Northern Idaho Agency, to Superintendent, Northern Idaho Agency, re: Nez Perce Issues/Concerns letter, November 30, 1982; Memorandum, Charles P. Mathes, Realty Officer, Northern Idaho Agency, to Superintendent, BIA, November 19, 1982. File: 102-01a(1)TRD 8-10, 7/9/80, Nez Perce Forest Activities, Bureau of Indian Affairs, Portland Area Office.

⁵²Sisson letter, February 21, 1991.

⁵³Sisson Memorandum, November 30, 1982.

determination through greater, and finally, total control of the forestry program, which the Bureau had long regarded as its trust responsibility.

Despite the December 1983 meeting, the Tribal Forestry staff maintained that as of 1986, matters had not changed and that the same problems existed between the Tribe and the Bureau.⁵⁴ Roger van Houten, the tribal Forest Manager, in a memorandum of May 29, 1986, to the Portland Area Office, complained that, even though Tribal Forestry had performed the logging, marketing, and the sales administration for the Alpine Logging Unit, the Bureau had not devoted itself in turn to the performance of other tasks. The Tribe also maintained that tribal personnel had performed most of the timber sales preparation field work. Tribal Forestry complained that the Bureau had promised the Tribe larger sales efforts year after year, but had not done so, blaming underfunding, understaffing, and insufficient time to prepare harvests for the Tribe. Scheduling had been inadequate and the Tribe had to pressure the Bureau for a commitment for a completion date. The memorandum also alleged that much tribal staff time had been expended without compensation by the Bureau. The Tribe alleged that such activities were a trust responsibility and that it should have received compensation for them. The Tribal Forestry alleged that Bureau services to allottees had been even worse, and that the management plan for allotted lands needed re-evaluation with owner involvement. Allottee timber sales were behind schedule and some land had "gone out of trust due to the lack of response and proper attention by the BIA." Tribal staff also complained that the Bureau had applied more stringent logging standards to the Tribe in the performance of its timber sale administration work than was required of other contractors on the Nez Perce or other reservations.⁵⁵

The Tribe also complained about the BIA administration of P.L. 93-638 work contracted by the Tribe. In forest development work, the Tribe complained that the Bureau staff insisted on redoing tribal work instead of just inspecting it or administering the contract. In inventory work, the Tribal Forestry stated that the BIA rewrote, altered, and amended a proposal prepared by the Tribe and ignored tribal wishes as expressed in the proposal. Tribal staff and even some of the Agency staff had to lobby the Portland Area Office for the project without the support of the Bureau Forest Manager. The Tribe also stated that the Bureau had not made sufficient use of tribal personnel in fire-suppression activities and was critical of Bureau interference with tribal agreements with

⁵⁴Memorandum, Rutger (Roger) van Houten, "Concerns of Nez Perce Tribe regarding BIA Forestry Program At Northern Idaho Agency," May 29, 1986. File: 81-10-102-02, Forestry Program Review, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁵⁵Ibid.

the Nez Perce National Forest regarding the use of organized fire crews and smokejumpers.⁵⁶

The Tribe criticized the Bureau's policy of requiring the Tribe to report individual expenditures for reimbursement of monies that legally belonged to the Tribe, questioning the need for detailed reporting for the return of timber sale deposits and the itemized statements for the forest management deductions. The Tribe contended that timber sales and eventual income were too late for optimum market conditions, were ill-conceived, and, therefore, might not realize the possible value of the timber for which the tribal marketing provided. Tribal Forestry staff maintained that proper planning could result in lower development costs and thereby increase tribal income. The Tribe alleged that poor planning had increased reforestation costs by altering scheduling (because seedlings were ordered one year ahead of an activity), had made tribal seasonal crew work more haphazard, and had made budgeting more difficult because revenue projections were not met.⁵⁷

The Northern Idaho Agency's Branch of Forestry responded to the memorandum of the Tribal Forestry staff, point by point, again stressing its trust responsibility to the Tribe for seeing that the forest was managed properly. The Bureau maintained that most of the problems referred to in that document involved poor communication and cooperation. The "antagonism" apparent in the tribal document was a major impediment to the development of a fruitful relationship, and failures to coexist were seldom the result of the failure of only one party. The Agency stated that the Tribal Forestry staff was not specific about its definition of a "decline in services." With regard to the Alpine Logging Unit timber sale, the Agency stated that tasks such as logging, marketing, sale administration, and related activities were the responsibility of the tribal staff as the purchaser representative and that additional time would not necessarily be made available to the Agency program because the Tribal purchased the sale. The Bureau also maintained that it had been limited in what time it could devote to timber sales administration until the Fire Rehabilitation Tree Planting Project on the Lookout Reserve was completed in 1985.⁵⁸

With regard to tribal timber sales, the Branch of Forestry stated that it was not clear what the Tribe believed it should be compensated for. The Bureau maintained that

⁵⁶Ibid.

⁵⁷Ibid.

⁵⁸Memorandum, Branch of Forestry, Northern Idaho Agency, re: Comments on "Concerns of Nez Perce Tribe Regarding BIA Forestry Program at Northern Idaho Agency," 1986. File: 81-105-102-02, Forestry Program Review, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office; Sisson letter, February 21, 1991.

tribal personnel on timber sales had been compensated by forest management deductions, which were supposed to go back into the forestry program.⁵⁹ P.L. 93-638 contracting was not intended to compensate a tribal program for current activities, but rather for services that had been provided by the Bureau, in addition to other functions provided by the program, unless the contract was viewed as a mechanism to replace reduced anticipated funding. The Branch of Forestry maintained that the Tribal Forestry staff's criticism of the allottee timber sales program lacked details, especially with regard to the charge that allottees had taken land out of trust status because of the Bureau's lack of response and attention. The Bureau also stated that it "assumed" that the management plan was "developed with landowner involvement, at least to the level satisfactory to the tribal government prior to its approval." The Agency also maintained that it was no more strict in enforcing Tribal logging sale standards than it was with other logging contractors, and in some cases was more lenient in relieving the Tribe of some contractual requirements.⁶⁰

The Bureau also asserted that, to fulfill its trust responsibility regarding forest development, forest inventory, and forest management, it had no choice but to cite the Tribe for what the Bureau regarded to be some deficiencies in these areas and that it was not trying to pick on tribal foresters in attempting to remedy these alleged problems. (See Forest Inventory and Forest Development sections below.) For the same reason, it had no choice but to insist that the Tribe report individual expenditures for reimbursement of monies that legally belonged to it.⁶¹ The Agency responded to tribal concerns about costs and benefits (timber sales too late for optimum market conditions, improper planning resulting in higher development costs, increased reforestation costs through inadequate scheduling, etc.) by attributing most of these problems to poor communication and cooperation and the development of an unnecessary adversarial relationship between the Tribe and the Bureau.⁶²

Tribal Assumption of Marketing Tribal Timber

The mutual sense of frustration between the Tribe and the Bureau resulted in the Tribe assuming control of the marketing program in 1984 and of the entire timber sales program in 1987. With regard to marketing, the Tribe was critical of the process whereby the Bureau sold timber contracts to the mills, who were responsible for cutting and

⁵⁹Letter, John R. Vitello, Bureau of Indian Affairs, Yakima Agency, Toppenish, Washington, to William A. Babcock, Missoula, Montana, January 25, 1991; Sisson letter, February 22, 1991.

⁶⁰Ibid.

⁶¹Sisson and Vitello letters.

⁶²Northern Idaho Agency, Comments on "Concerns of the Nez Perce Tribe."

removing the trees. The Tribe complained that under such a program "forest resources management was minimal." It also complained that because the mills were given contracts for a 3-year period, they chose to cut timber when market conditions best suited them, and that they, and not the Tribe, picked up any windfall profit to be realized. The Tribe also complained that under this system, it received income from timber sales irregularly.⁶³

The Tribe purchased the Alpine Logging Unit, consisting of 5,368,000 board feet under the form of a Special Allotment Timber Cutting Permit issued in 1983 on a one-time basis, to determine if it was feasible to establish a tribal for the purchase of tribal timber. The Tribal Forestry staff performed logging, marketing, sales administration, and all related activities for the Alpine sale. Having found the experience to be satisfactory, the Tribe established the Nez Perce Forest Products with a formal plan of operation for marketing timber, in accordance with the Code of Federal Regulations, by Tribal Resolution 85-15-A, dated October 17, 1984. According to its charter and by-laws, developed by representatives of the Northern Idaho Agency and the Nez Perce Tribe, the purposes and the objectives of the were to develop a management and financial system promoting the stable business growth of a forest products ; to provide employment opportunities for Nez Perce tribal members; to promote the best and fullest development and utilization of reservation timber resources on a sustained yield basis; and to encourage the establishment of privately or jointly owned tribal logging, construction, hauling, maintenance, supply, or other operations. The charter and the by-laws specifically empowered the to negotiate and execute contracts for management services, to enter into formal agreements with the Tribe and individual Indian owners for the purchase of tribal and allotted timber, to purchase other timber within the reservation, and to acquire timber "outside" but closely adjacent to the reservation.⁶⁴

For its part, the Bureau did not have the authority or the manpower to do the kind of marketing work performed by the . The Bureau continued to have the responsibility for sales preparation, including preparation of the Environmental Assessment, developing silvicultural prescriptions, unit layout and marking, until October 1, 1987.⁶⁵

The Agency continued to experience frustration in not being granted additional timber sales personnel that it and the Tribe had requested, which was the reason for the Agency

⁶³Mohsin Askari, "Tribal Enterprise", Lewiston Morning Tribune, December 6, 1987.

⁶⁴Northern Idaho Agency, Comments on "Concerns of Nez Perce Tribe Regarding BIA Forestry Program at Northern Idaho Agency," 1986. File: 81-10-15, 102-02, Forestry Program Review, Northern Idaho Agency; Memorandum, Office of the Area Director, Portland Area Office, to Superintendent, Northern Idaho Agency, October 31, 1983. File: Nez Perce Tribal Executive Committee, Resolution NP 85-15-A, October 17, 1984; Nez Perce Tribe, Charter and By-laws of the Nez Perce Forest Products Enterprise, October 26, 1984. File: Nez Perce Tribe, Lapwai, Washington.

⁶⁵Sisson letter, February 21, 1991.

review of 1981-1982. In a November 30, 1983, memorandum to the Portland Area Office, Victor Sisson, Acting Superintendent for the Northern Idaho Agency, complained that between 1979 and 1983, the agency had not been able to keep pace with the annual allowable cut of 7.7 million board feet recommended by the 1982 forest management plan, achieving an average of only 5,335,000 board feet during that time. Sisson stated that an additional forester position was necessary if this cutting schedule was to be achieved. The Bureau had not been able to scale any sale units, and the annual allowable cut for tribal timber had been achieved in 1982 and 1983 only because of the assistance of the Tribal Forestry staff.⁶⁶

In 1984, the Nez Perce Tribal Executive Committee requested Bureau and Tribal forestry departments to begin examinations of the Talmaks Reserve (Tribal Unit 14) for possible harvesting. On June 25, 1920, the Secretary of the Interior had ordered that the Talmaks reserve "be set aside as a permanent camping ground for the Nez Perce Indians." Because the land was set aside, it was not included in the management plan and no CFI plots had been established for inventory purposes.⁶⁷

Since the 1920s, there had been one salvage sale after a fire on the Talmaks Reserve. In 1984, Tribal Forestry proposed a low-intensity cutting of the Talmaks Reserve to harvest high-risk trees and conducted a preliminary reconnaissance of the proposed cutting area in February 1984. The Tribal Forestry Department report maintained that "some management of the reserve would have to take place, not only to sanitize the stands, but to perpetuate the forest." The Forestry Department's chief concern was mortality due to insects and disease. The report recommended selection combination cutting method.⁶⁸

In view of the sensitivity to timber harvesting in the Talmaks Reserve, Tribal Forestry sought approval by the Bureau, the Tribal Executive Committee, and the Talmaks Association for the sale, and clarification of the authority of the governing body and the Talmaks Association related to the reserve. The Agency branch of Forestry approved the sale and the Portland Area Office determined that the Talmaks Association had a written lease from the Tribe for the use of the reserve, but did not control it. However, the

⁶⁶Memorandum, Victor E. Sisson, Jr., Acting Superintendent, Northern Idaho Agency, to Branch of Forestry, Portland Area Office, re: Justification for one additional Forester position on the Nez Perce Reservation in addition to present FTE ceiling, November 30, 1983. File: Forest Development Add-on Funds 81-12-18, 102-1, BFA-20, Northern Idaho Agency, Bureau of Indian Affairs, Portland Area Office.

⁶⁷Nez Perce Tribal Forestry, "Preliminary Reconnaissance Report," Tribal Unit 14, February 1984, File: Tribal Forestry Department, Nez Perce Reservation, Lapwai, Idaho.

⁶⁸Nez Perce Tribal Forestry Department, "Preliminary Reconnaissance Report."

governing body failed to approve the sale because of opposition from the Talmaks Association and because of general tribal sensitivity about the reserve.⁶⁹

The Bureau, with assistance provide by the Tribal Forestry staff, was able, by 1988, to increase timber sales on the reservation to the point of attaining the average annual allowable cut. Between 1980 and 1988, 72,371,000 board feet were harvested with a value of \$4,498,846, and tribally purchased sales constituted a significant portion of those sales. The major timber sales of the 1980s were planned, prepared, and administered by BIA foresters, with assistance by Tribal Forestry due to the manpower shortages described. Table 8-5 includes some of the major sales for this period.

Table 8-5⁷⁰
Major Timber Sales, 1980-1988

Logging Unit	Dates	Board Feet	Value	Purchaser
Mason Butte (Special Allotment Timber Cutting Permit)	1984-1986	8,733,000 (two original cutting units were withdrawn)	\$670,575	Nez Perce Tribe
Cold Springs	1985-1986	1,146,000	57,300	Nez Perce Forest Products (NPFPE)
Ford Creek	1985-1987	4,398,000	155,423	NPFPE
Big Canyon	1985-1988	2,276,000	112,000	NPFPE
Ahsahka Grade	1986-1988	1,687,000	107,257	Dan Colbaugh Logging
Upper Riverside	1986-1991	2,171,000	122,790	NPFPE
Prairie Pine	1986-1989	3,275,000	125,500	NPFPE
Lower Riverside	1987-1989	4,214,000	335,338	NPFPE

The Tribe was able to market the timber at record delivered log prices, despite relatively weak markets during the mid-1980s. This was because thorough cruising planned and performed by the BIA with assistance in the tree measurements by tribal technicians, provided the Tribe with enough information to sell quality logs tailor-made to the

⁶⁹Personal Communication, Thomas C. Roberts, Nez Perce Tribal Forestry, to William A. Babcock, December 31, 1991.

⁷⁰Letter, Thomas C. Roberts, Nez Perce Tribal Forestry, to William A. Babcock, August 23, 1991.

purchaser's requirements. The also greatly promoted the employment of Indians in the timber industry.⁷¹

Initiation of New Timber Inventory and Management Plan

The Tribe, which was concerned about the areas of tribal ownership in which the allowable cut was to be harvested, submitted a proposal for an in-stand inventory of about 7200 acres with a budget of \$22,307.67 to the Portland Area Office on March 13, 1986. The proposal requested temporary plot information in addition to Continuous Forestry Inventory (CFI) data to determine an acceptable harvest level for the next forest management period.⁷² The Portland Area Office approved the idea of combining data from several types of inventories to refine calculation of the annual allowable cut and to enhance other management planning work for the reservation, but stated that more detail was needed for certain items in the proposal. The Area Office also stated that funding was not available for inventory work at the Area Office Branch of Forestry at that time. It recommended that the Tribe modify the FY 1986 P.L. 93-638 contract to include the work so that when funding became available from any source, the Tribe and the Bureau would be prepared to work immediately.⁷³

In response, the Tribe submitted in July 1986, a P.L. 93-638 recontract application to the Agency for the completion of an in-stand inventory, which was forwarded by the Acting Superintendent to the Area Office the same month. The Agency referred to the earlier request by the Area Office for additional detail and stated that it was unsure how the CFI inventory would be compared with the in-stand inventory. It stated that it would support the funding of the Tribe's inventory proposal but that a more detailed recontract application would be helpful for monitoring the contract based on stated deliverables and time schedules.⁷⁴ The Area Office concurred with the Agency, sharing its concern about the inventory proposal, especially the unresolved concerns detailed in the Bureau's April

⁷¹Mohsin Askari, "Tribal Enterprise", Lewiston Morning Tribune, December 6, 1987; Vitello letter. January 25, 1991.

⁷²Letter, Vincent P. Corrao, Tribal Forester, to George Smith, Area Forester, March 13, 1986. File: 1107-01(c), 1985 Nez Perce, Northern Idaho Agency, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁷³Memorandum, Assistant Area Director, Portland Area Office, to Superintendent, Northern Idaho Agency, April 23, 1986. File: 102-01a(2), TRD 8-2, 12/03/87, Nez Perce, P.L. 93-638, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁷⁴Letter, J. Herman Reuben, Chairman, Nez Perce Tribal Executive Committee, to Gordon Cannon, Acting Superintendent, Northern Idaho Agency, July 8, 1986; Memorandum, Branch of Forestry, Northern Idaho Agency, to Portland Area Director (Forestry) July 28, 1986. File: 102-01a(2), TRD 8-2, Nez Perce 1988, P.L. 93-638, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

23, 1986 memoranda to the Agency. It was particularly concerned that the Tribe explain how the annual allowable cut was to be calculated and how the outputs from the various inventories would be compared and synthesized for final computation of the reservation harvest level. The Area Office stressed that if the required information could not be obtained, the inventory project should be eliminated from the recontract proposal. The Agency forwarded a statement of its concerns and those of the Area Office to the Tribe in a letter of August 28, 1986.⁷⁵

In December 1986, the Agency informed the Nez Perce Tribal Executive Committee that the Central Office had approved funding of \$25,000 to complete an inventory analysis of the Nez Perce Continuous Forestry Inventory plot information but that the in-stand examination would not be funded with monies approved by the Central Office. Funds were still not available for it and could not be approved until the concerns about specifications, deliverables, and performance measures expressed by the Agency and the Portland Area Office were addressed.⁷⁶

The Tribal Forestry Department submitted a revised Proposal for Inventory for Forest Management Planning dated January 22, 1987 to the Portland Area Office. In February, the Portland Area Office reviewed the revised proposal, stating that it answered most of its questions and concerns and indicated its willingness to supply funding of \$22,500 for the project, pending approval of the Agency.⁷⁷ In December 1987, Robert Miller, visiting the reservation as part of a Forestry Contract Audit Team, observed that the FY P.L. 93-638 contract included \$25,000 of Forest Management Inventory and Planning Add-ons to prepare an inventory analysis and \$22,500 from the Area Office budget to perform an in-stand inventory and analysis of the data gathered. However there had been little work completed on them because the Area Office had not finished processing the 1985 CFI data. Miller recommended that the Branch of Forestry at the Portland Area Office

⁷⁵Memorandum, Assistant Area Director (Forestry), to Superintendent, Northern Idaho Agency, August 14, 1986; Letter, Acting Superintendent, Northern Idaho Agency, to Herman Reuben, Chairman, Nez Perce Tribal Executive Committee. File: 102-01a(2)TRD 8-2, 12/03/87, Nez Perce 1988, P.L. 93-638, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁷⁶Letter, Superintendent, Northern Idaho Agency, to Herman Reuben, Chairman, Nez Perce Tribal Executive Committee, December 1986?. File: 102-01a(2)TRD 8-2, 12/03/87, Nez Perce 1988, P.L. 93-638, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁷⁷Letter, Wilford Bowker, Assistant Area Director, Portland Area Office, to J. Herman Reuben, Chairman, Nez Perce Tribal Council, February 6, 1987. File: 1107-01e, Nez Perce Reservation In-Stand Inventory, 1/22/87, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

complete processing the 1985 CFI data as soon as possible to ensure that no further delay in the preparation of the Inventory Analysis document occurred.⁷⁸

For FY 1988, Tribe also requested \$25,000 in Forest Management Planning Add-on funding to pay for the preparation of a combined NEPA compliance document (EA) and an archeological overview for the reservation. The Central Office tentatively approved the request, pending the funding level for the year.⁷⁹

Land Acquisition

The Tribe made two purchases of land during the late 1980s that almost doubled the tribal timber land base and added significantly to the timber volumes that could be included in the annual allowable cut upon becoming trust lands. In December 1986, the Tribe purchased the Marek Ranch (Maloney Creek Reserve) outside the reservation boundary, to provide maximum timber harvest based on sustained yield management, and employment and revenue to the Tribe. The land comprised 7,846 acres (5,880 acres of which was timbered) and about 17,078,500 board feet of timber. Much of the timber purchased was less than 9 inches in diameter, which would fill a timber harvest gap identified in the forest management plan that would occur in about 15 years. Revenues to be generated by the purchase of the reserve were to be used to pay off loans before they were to be included in the Nez Perce Tribal Executive Committee (NPTEC) budget. The purchase price of \$900,000 was funded with \$125,000 equity from the Tribe, a \$250,000 economic development grant, and a \$550,000 bank loan to be paid off in 15 years.⁸⁰

The NPTEC arranged the loans for the acquisition of the Marek tract and designated the Natural Resources Subcommittee and the Tribal Forest Manager to include the Maloney Creek Unit in Nez Perce forest harvesting planning. The Tribe chartered the Nez Perce Forest Products to harvest and market the merchantable timber on the reserve. Initial management recommendations called for logging about 1 million board feet annually from areas needing overstory removal, seed tree or shelterwood cuts, commercial

⁷⁸Memorandum, Robert L. Miller, Jr., to Bud Miller, Forest Management Inventory and Planning Forester, Portland Area Office, re: Nez Perce FY 1988 P. L. 93-638 Forestry Contract, December 3, 1987. File: 102-01a(2)TRD 8-2, 12/03/1987, Nez Perce 1988, PL 93-638. Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.

⁷⁹Ibid.

⁸⁰Nez Perce Tribe, Management Plan: Maloney Creek Reserve, December 5, 1986; Thomas C. Roberts, Timber Inventory Data, Jack Marek Ranch near Town of Forest, Idaho, October 3, 1986. File: 1107-01i(1), File C, Marek Ranch, October 1986, Bureau of Indian Affairs, Branch of Forestry, Portland Area Office.