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*Nez Perce*

**WATER RESOURCES DIVISION**  
P.O. BOX 365 - LAPWAI, IDAHO - (208) 843-7368 - FAX (208) 843-7371

May 7, 2021

Mr. Gary Hess  
Regulatory and Stewardship Program Manager  
Forestry and Fire Division  
Idaho Department of Lands  
3284 W. Industrial Loop  
Coeur d'Alene, ID 83815

Electronically submitted: [rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov)

**RE: Nez Perce Tribe Water Resources Division's Comments Regarding Negotiated Rulemaking for IDAPA 20.02.01**

Dear Mr. Hess:

The Nez Perce Tribe's Water Resources Division (WRD) appreciates the opportunity to comment on the proposed rule revisions to IDAPA 20.02.01, commonly referred to as the "Shade Rule." These rule revisions are based on recommendations from the Idaho Forest Practices Advisory Committee (FPAC). They are intended to update and simplify the rule language in order to improve overall compliance and enhance water-quality protections.

**Background**

Since time immemorial, the Nez Perce Tribe ("Tribe") has occupied and used over 13 million acres of land now comprising north-central Idaho, southeast Washington, northeast Oregon, and parts of western Montana. Tribal members engaged in fishing, hunting, and gathering across their vast aboriginal territory. These activities still play a significant role in the culture, religion, subsistence, and commerce of the Tribe.

Salmon, steelhead, sturgeon, lamprey, and the cold, clean water upon which they depend are integral to the spiritual, physical, and economic health of the Tribe. Any activities that potentially threaten these important resources are of great concern to the Tribe.

## **Proposal**

The proposed revision to IDAPA 20.02.01, paragraph 030.07.e.ii eliminates the distinct tree retention requirements for the inner 0-25 ft (Relative Stocking (RS) 60), middle 25-50 ft (RS60), and outer 50-75 ft (RS10) Stream Protection Zones (SPZ). These three separate zones, each with its own tree retention requirements, would be replaced with the average RS43 tree retention across the entire 0-75 ft SPZ for Class I streams.

### **Maintaining RS 60 in the Inner RPZ**

Recent modeling by the EPA shows that applying an average RS43 can only mitigate shade loss across a 75-ft SPZ if the inner 25 ft is above RS40.<sup>1</sup> This confirms the importance of trees adjacent to the stream (0-25 ft) in providing shade. In 2013, Teply and McGreer found that at least 50% of the shadow cast by the entire riparian management zone is provided by the inner 0-25 ft zone.<sup>2</sup>

In addition to providing shade, stream-adjacent trees are also essential in stabilizing stream banks and reducing sediment loading, contributing organic matter to the food web, and providing a source of large woody debris that contributes to channel complexity.

Because of these factors, we recommend that a minimum RS60 be kept for the innermost SPZ (0-25 ft.).

### **Class II Stream Protections**

Essential protections for Class II streams were removed in the 2013-2014 rule revisions, apparently without any scientific rationale. These smaller streams constitute the food web base, receiving large amounts of energy inputs from leaves and insects. They also trap floodwaters, recharge groundwater supplies, and provide the coldest water available in riparian systems. Research from various sources indicates that as the climate shifts and temperatures rise, sources of cold-water refugia will become even more essential for aquatic organisms to thrive, especially salmonids. The 2020 Forest Practices Water Quality Audit recommended that FPAC work to establish minimum tree retention requirements for Class II streams, and we agree with that recommendation.

The lack of protections for Class II streams appears to be inconsistent with the terms in Section II.B.2 of the Snake River Basin Adjudication Mediator's Term Sheet, adopted on April 20, 2004, wherein the State of Idaho and the United States agreed to negotiate an Idaho Forestry

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<sup>1</sup> Draft Memorandum from: P. Leinenbach, R10 USEPA, To: H. Stone, IDEQ, and D. Brown, R10 USEPA; Estimated shade loss associated with a RS 60/10 harvest when the preharvest inner riparian zone RS is below the target (i.e., RS60) and outer riparian zone (i.e., 50' to 75') is harvest4ed to maintain a weighted average RS value of 43.3 for the entire riparian zone (i.e., 0 to 75'). November 23, 2020.

<sup>2</sup> Teply, M., and D. McGreer. 2013. Simulating the effects of forest management on stream shade in Central Idaho. West. J. Appl. For. 28: 37-45.

Program under Section 6 of the Endangered Species Act that would not vary materially from the terms specified in the Mediator's Term Sheet. The Mediator's Term Sheet states that Class IIa streams (non-fish bearing streams that contribute surface stream flow directly into a Class I stream) shall have a fifty-foot buffer zone adjacent to the main stem of Class IIa streams. Within that zone, a minimum of thirty-five trees per acre larger than 8 inches DBH will be retained. The lack of tree retention requirements for Class II SPZs also appears inconsistent with the Idaho Department of Environmental Quality's Potential Natural Vegetation TMDL methodology. These TMDLs use shade targets as a surrogate for numeric temperature criteria and are dependent upon achieving full shade on streams to meet water quality standards.

For these reasons, We recommend that all Class II streams receive protection through a minimum 50-foot buffer.

Thank you again for the opportunity to comment on the proposed rule. If you have any questions or would like to arrange a meeting, please contact Ken Clark, Water Resources Division Director, at (208) 843-7368, or by email at [kenc@nezperce.org](mailto:kenc@nezperce.org).

Sincerely,

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Ken Clark  
Director, Water Resources Division  
Nez Perce Tribe