

APPENDIX K2

TRIBAL GOVERNMENTS

This page intentionally left blank.

COMMENT(S)

RESPONSE(S)

T1

Confederated Tribes of the Umatilla Indian Reservation (CTUIR)

comment@boardmantohemingway.com

From: Audie Huber <AudieHuber@ctuir.org>
Sent: Thursday, March 19, 2015 4:28 PM
To: 'comment@boardmantohemingway.com'; 'Straub, Renee L (rstraub@blm.gov)'
Cc: Teara Farrow Ferman; Catherine Dickson; Carey Miller
Subject: Boardman to Hemingway Transmission Line Project Draft EIS.
Attachments: CTUIR DNR 3 19 15 Comments on Boardman to Hemingway Transmission Line Project.pdf

Please find attached the comments of the Confederated Tribes of the Umatilla Indian Reservation Department of Natural Resources regarding the Boardman to Hemingway Transmission Line Project DEIS.

If you have any problems with this transmission, please contact me at this e-mail or the numbers below. Thank you.

A

Audie Huber
 Intergovernmental Affairs Manager
 Department of Natural Resources
 Confederated Tribes of the Umatilla Indian Reservation
 46411 Timine Way
 Pendleton, Oregon 97801

(w) 541-429-7228
 (f) 541-276-3447
 (c) 541-969-3123

CONFIDENTIALITY NOTICE: The information contained in this e-mail is intended only for the use of the designated recipient(s) named above. This email, and any documents, files or previous e-mails attached to it, may be confidential. If you are not the intended recipient, you are hereby notified that you have received this transmittal in error, and that any review, dissemination, distribution or copying of the transmittal is STRICTLY PROHIBITED. If you have received this e-mail in error, please notify us immediately by telephone. Please contact the e-mail author at 1-888-809-8027. Thank you.

COMMENT(S)

RESPONSE(S)

T1	CTUIR (cont.)
-----------	----------------------

Confederated Tribes of the Umatilla Indian Reservation
 Department of Natural Resources Administration



46411 Timine Way
 Pendleton, OR 97801

www.ctuir.org ericquaempts@ctuir.org
 Phone 541-276-3165 Fax: 541-276-3095

March 19, 2015

Boardman to Hemingway Transmission Line Project
 P.O. Box 655
 Vale, OR 97918

Transmitted electronically to comment@boardmantohemingway.com and rstraub@blm.gov

RE: Boardman to Hemingway Transmission Line Project Draft EIS.

To whom it may concern:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to comment on the Bureau of Land Management (BLM) Draft Environmental Impact Statement and Land Use Plan Amendments for the Boardman to Hemingway Transmission Line Project, DOI-BLM-OR-V000-2012-016-EIS (DEIS). The CTUIR has worked with the BLM on this project for a number of years addressing the cultural resource and treaty rights impacts of the project and remains concerned that some of the alternatives unnecessarily endanger cultural resources and First Foods. The CTUIR DNR is deeply concerned about the Timber Canyon Alternative as this would adversely affect big game, critical sage grouse habitat, and cultural resources.

Based on information available in the DEIS and our meetings, the CTUIR DNR recommends the following alternatives in each Segment.:

Segment 1:

1. The Longhorn Alternative should be selected. The Horn Butte Alternative and the proposed route will impact more cultural and natural resources. Further, the Longhorn Variation will impact more cultural resources and intact habitat.

Segment 2:

2. The proposed route should be selected rather than the Glass Hill Alternative. Both alternatives will have impacts, but the proposed route introduces fewer new effects.

Segment 3:

3. The Flagstaff Alternative should be selected because that it parallels an existing transmission line. As noted above, the Timber Canyon Alternative is the worst possible choice for resource impacts.
4. The proposed route should be selected over the Burnt River Mountain Alternative based on landscape, previous disturbance, and reducing impacts to known cultural resources as well as minimizing effects to big game.

Segment 4:

5. The Tub Mountain Alternative should be selected over the proposed route or Willow Creek Alternative based on proximity to previous development.

Treaty June 9, 1855 ~ Cayuse, Umatilla and Walla Walla Tribes

T1a

T1b

T1a

T1b

Comments noted. The Timber Canyon Alternative was re-evaluated for the Final EIS to better identify potential impacts associated with this alternative. This route crosses mixed conifer forest, which also is of particular concern for the Forest Service. The Forest Service expressed concern about loss of forested habitat (and associated effects on wildlife habitat and timber products). In addition, this route is 19 miles longer than other routes in this segment. See Section 2.1.1.3 (Recommended Route-Variation Options) for further detail.

Comments and route preference noted.

COMMENT(S)

RESPONSE(S)

T1	CTUIR (cont.)
-----------	----------------------

CTUIR DNR Letter to BLM
 Subject: Boardman to Hemingway Transmission Line Project Draft EIS
 March 19, 2015
 Page 2 of 5

These alternatives will maximize beneficial uses, reduce degradation, and preserve important aspects of heritage under both Section 106 of the NHPA, 54 USC § 306108, and Section 101 of the National Environmental Policy Act, preserving “important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice[.]” 42 USC § 4331(b)(4).

As a procedural matter, the CTUIR will provide sensitive cultural resource information and must be withheld from public release under the National Historic Preservation Act, 54 USC § 307103(a) (formerly 16 USC § 470w-3). That material will be provided to Renee Straub of the BLM in a separate e-mail.

The DNR appreciates that the DEIS addresses First Foods, however the way the DEIS discusses First Foods it appears to limit the application of the concept to plants, leaving out the fish and wildlife CTUIR tribal members rely upon as well. In the Definitions section, First Foods are accurately defined as “Plant and animal resources gathered or cultivated by American Indians for subsistence, economic, medicinal, and ceremonial purposes that have important tribal historical, cultural, and religious value.” Page 5-7, line 20-22. However, in the Affected Environment the DEIS states “The one mile analysis area was also used for the analysis of first foods because these resources were analyzed within the context of the vegetation communities.” 3-105, line 35 and page 3-106, line 1. This remains true on the following pages when First Foods/Ethnobotanical Resources are lumped together on page 3-121, line 13 as well as the methodology for impacts to vegetation, in Section 3.2.3.6, pages 3-161-191. Our December 4, 2013 comments stated:

On page 3-212, on line 6, the direct effects of construction, operation and maintenance do not consider the impacts to big game. Is BLM considering the impacts to big game and mitigating for those impacts? The line impacts 82.8 miles of elk winter range. Impacts to elk during the winter in their security habitat through maintenance activities can have immediate and significant impacts to populations. Big game, including elk, mule deer and deer have special significance to the CTUIR as one of our first foods that tribal members rely upon for physical and cultural subsistence. The CTUIR DNR hopes that BLM incorporates into the analysis avoidance and mitigation of impacts to big game habitat. Please explain how BLM addresses direct, indirect and cumulative impacts to big game.

T1c [The oversight omitting big game and other fish and wildlife populations from the analysis of the impacts to First Foods fails to acknowledge the significance of fish, wildlife and big game to the CTUIR and tribal members. Please include references to the significance of big game as a tribal First Food throughout the Big Game section starting on page 3-239 similar to the language contained in the First Foods/Ethnobotanical section. The section discussing Tribal Wildlife Concerns on page 3-240, line 12-17 should be expanded to identify the significance of big game as one of the First Foods but the significance of fish and other wildlife should also include tribal

Treaty June 9, 1855 – Cayuse, Umatilla and Walla Walla Tribes

T1c [Comment noted. As requested, discussions of traditional foods resources have been added to Sections 3.2.3, 3.2.4, 3.2.5, and 3.2.13.

COMMENT(S)

RESPONSE(S)

T1	CTUIR (cont.)
-----------	----------------------

CTUIR DNR Letter to BLM
 Subject: Boardman to Hemingway Transmission Line Project Draft EIS
 March 19, 2015
 Page 3 of 5

concerns. If BLM needs assistance with the revisions to this language, the CTUIR can provide it at a later date.

T1d [The potential impact of the line to big game is highlighted in at least one alternative that has specific, direct, broad range impacts on big game, big game winter range and other wildlife habitat. The Timber Canyon Alternative is the route which is the least consistent with the protection of big game habitat. The alternative crosses approximately 25 miles of elk summer range habitat, approximately 35 miles of Elk Winter Range habitat, approximately 30 miles of mule deer winter range, approximately 27 miles of sage grouse general habitat and is on the border of approximately 30 miles of sage grouse priority/core habitat. No alternative has impacts as profound as the Timber Canyon Alternative. This alternative should not be chosen.

T1e [The DEIS does an inadequate job addressing how impacts to big game will be mitigated. Direct effects of construction will impact big game populations, but so will operation and maintenance activities. Any new roads should be restricted access to prevent additional public use and disturbance of wildlife, including both winter and summer range habitat.

Cultural Resources

This undertaking will adversely affect historic properties of religious and cultural significance to the CTUIR. The BLM has the opportunity to reduce those effects through the selection of appropriate alternatives.

T1f [The DNR appreciates the BLM cultural resource “sensitivity” ranking system and the explanation of it contained on page 3-804-5. However, it would have been preferable if BLM had worked with DNR in the development of the ranking system. As the DEIS notes, some sites are more sensitive than others, i.e. some sites “have strong cultural values to tribes and other ethnic groups.” The CTUIR would have liked to have engaged in discussion of site type and sensitivity. For example, this would have changed the ranking of rock images and rock features, which are properties of religious and cultural significance or TCPs. The CTUIR DNR disagrees with the ranking of lithic scatters without features or projectile points on the surface as low value. Until the site has been formally evaluated, one cannot know whether it has datable material or not. Further, the definitions are vague and it is unclear what exactly is included in “Task-specific sites”, which BLM assigned low-moderate sensitivity. If the specific task is sacred in nature, than surely it is more sensitive than that. Note that in the ranking, non-eligible historic trails are more sensitive than lithic scatters, quarries, and task-specific sites. We do not understand how the BLM arrived at that conclusion. Finally, the ranking of Paleoindian sites as the most significant type needs more explanation. Has BLM assessed the number of sites documented dating to various time periods within the Plateau and Great Basin?

T1g [The ranking system fails to take into account existing impacts, such as existing transmission lines and the route of Interstate 84. These are critical when assessing affects to integrity of setting, feeling, and association. If there already is a transmission line within the viewshed of a

Treaty June 9, 1855 – Cayuse, Umatilla and Walla Walla Tribes

T1d [Route preference noted. The potential effects of the B2H Project on big game species, is analyzed for all alternative routes considered (refer to Section 3.2.4.5 in the Final EIS). The Applicant has committed to design features and site-specific selective mitigation measures designed to minimize anticipated B2H Project effects to big game and other wildlife, including seasonal and spatial restrictions, creation of a Plan of Development that includes a Biological Resources Conservation Plan, and limiting new or improved accessibility to sensitive habitat.

T1e [Comment noted. The Applicant has committed to design features and site-specific selective mitigation measures designed to minimize anticipated B2H Project effects to big game and other wildlife, including seasonal and spatial restrictions, creation of a Plan of Development that includes a Biological Resources Conservation Plan, and limiting new or improved accessibility to sensitive habitat (refer to Section 3.2.4.5 in the Final EIS).

T1f [Comment noted. Site sensitivity rankings and descriptions have been modified based upon specific comments received from the CTUIR and were discussed during government-to-government consultation. Please refer to BLM Team internal meetings: Wings and Roots, October 21, 2015 and November 18, 2015.

T1g [See next page for response to T1g.

COMMENT(S)

RESPONSE(S)

T1	CTUIR (cont.)
-----------	----------------------

CTUIR DNR Letter to BLM
 Subject: Boardman to Hemingway Transmission Line Project Draft EIS
 March 19, 2015
 Page 4 of 5

T1g given historic property, the effects of another transmission line in the same viewshed is less than if the viewshed were intact. When considering the RLS data, the BLM determined to rank impacts from 0-250 feet as most severe, 250-750 feet as medium severe, and 750-5 miles as most severe. Speaking relatively, that is of course correct. However, the break at 750 feet is not intuitive. Please explain how this number was arrived at. BLM decided the overall assessment area is 26,400 feet. BLM put 1% of that area in the most severe category, 2% in medium, and 97% in least severe. The towers themselves will be tall and highly visible from quite a distance (presumably there's been an analysis as to exactly how far). We understand that the severity of impact will change over distance, but these categories appear arbitrary and do not seem reflective of actual impact.

T1h Chapter 3.2.8 discusses the PA and the cultural resource work that has been completed and will happen. The PA has not been signed. Based on meetings with the BLM, it appears to the DNR that aspects of the cultural resource work discussed in the EIS and PA are not being completed as outlined in the documents. The BLM is making agreements to move aspects of the reconnaissance level survey (RLS) to the intensive level survey (ILS). Please ensure that the EIS accurately reflects the work that is being done. In addition, the DNR expressed concerns about what will be addressed in the ILS and what will be addressed in the RLS; those concerns were not resolved prior to the issuance of the DEIS. Responses to cultural resource concerns have been slow; and it remains unclear how many issues have been or will be resolved prior to finalization of the EIS. This uncertainty prevents an adequate review of these documents.

As noted above, DNR will provide sensitive cultural resource information that is exempt from the Freedom of Information Act release to Renee Straub in a separate e-mail communication. This identifies specific site impacts of the alternatives.

T1i I refer the BLM back to CTUIR comments on the subject of the 15% sample and whether or not it is truly random. A random sample is not stratified by landownership. The EIS should accurately reflect what the BLM did to consider impacts to our cultural and historic heritage. The CTUIR has provided many comments over the last seven years meeting and working with Idaho Power and BLM. We expect that those comments we provided have been and will be considered in the final alternative selection.

T1j The Cultural Resources section ends with a list of mitigation measures, Section 3.2.8.9. None of these mitigation measures will address adverse effects to historic properties of religious and cultural significance to the CTUIR. This list includes preparation of National Register nominations. Evaluating sites for their eligibility for inclusion in the National Register is not mitigation; it is part of the section 106 process. It also lists "partnerships and funding for public archaeology projects." The CTUIR is opposed for excavating archaeological sites for recreational purposes. We provided many comments on this list in the PA in August 2012. In the August 2013 and January 2014 version, it was removed altogether. In the September 2014 version it was back. Please review our comments, address them with us, and change or remove the list.

Treaty June 9, 1855 – Cayuse, Umatilla and Walla Walla Tribes

T1g The methodology was not designed to account for existing impacts along a given alternative route. Impacts associated with existing infrastructure are identified and discussed qualitatively in the cultural resources analysis.

T1g These distance criteria are not tied specifically to the Reconnaissance Level Survey (RLS) data, these criteria are applied to all known sites within the 4 -mile-wide Class I literature review study corridor for the purposes of the EIS analysis. The revised analysis methodology has incorporated a fourth distance zone in order to further refine distance as a variable in the model. Revised distance zones are as follows: 0 to 250 feet; 251 to 750 feet; 751 to 1,000 feet; and 1,000 feet to 2 miles.

T1h The distance criteria are representative of distance zones established for the purposes of GIS analysis only. These distances in-and-of-themselves are not reflective of specific impacts on sites, they are simply a tool for use in the comparison of alternatives relative to the proximity of known sites to the centerline. When the distance and site sensitivity variables are combined in the model the resulting calculations can be used to identify potential initial impacts on cultural resources by alternative route.

T1h The EIS references all studies conducted that are pertinent to the NEPA process. Studies required as part of the EFSC process in Oregon or the Section 106 process may inform, but are not required under NEPA. Though often conducted parallel to NEPA these are separate actions required under separate laws. The Programmatic Agreement directs how Section 106 will be carried out (refer to Appendix I).

T1i Inability to access all private lands for survey made a completely random survey impractical. Reference to the 15 percent survey will be referred to as a 15 percent survey.

T1j Measures described in the EIS represent typical approaches to mitigation; however, site-specific mitigation will be developed as part of the Historic Properties Management Plan in compliance with Section 106 and in consultation with the tribes and consulting parties and in accordance with the Programmatic Agreement developed for the B2H Project.

COMMENT(S)

RESPONSE(S)

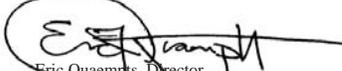
T1	CTUIR (cont.)
-----------	----------------------

CTUIR DNR Letter to BLM
 Subject: Boardman to Hemingway Transmission Line Project Draft EIS
 March 19, 2015
 Page 5 of 5

T1K [Finally, in our December 4, 2013 comments the CTUIR requested that the term “rock image” be used rather than “rock art.” Please replace the phrase “rock art” with “rock image” on pages 3-769 line 18, and 3-796 lines 3 and 10.

If you have any further questions, please contact Audie Huber, DNR Intergovernmental Affairs Manager at 541-429-7228.

Respectfully,



Eric Quaempts, Director
 Department of Natural Resources

Cc: Renee Straub, BLM [with enclosure]

T1K [The term “Rock Art” has been replaced as suggested.

COMMENT(S)

RESPONSE(S)

T2

The Shoshone-Bannock Tribes

comment@boardmantohemingway.com

From: Chad Colter <ccolter@sbtribes.com>
Sent: Thursday, March 12, 2015 4:42 PM
To: comment@boardmantohemingway.com
Subject: Comments to DEIS BOARDMAN TO HEMINGWAY - Shoshone-Bannock Tribes
Attachments: 031215_B2H_deiscomments_Shoshone Bannock Tribes.pdf

Attached please find comments from the Shoshone-Bannock Tribes regarding the DEIS for the Boardman to Hemingway Transmission line.
Thanks.

Chad Colter, Director Fish and Wildlife Department
Shoshone-Bannock Tribes

COMMENT(S)

RESPONSE(S)

T2

The Shoshone-Bannock Tribes (cont.)

The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION
PHONE: (208) 478-3700
(208) 237-0797



FORT HALL BUSINESS COUNCIL
PO BOX 306
FORT HALL, IDAHO 83203

March 12, 2015

Bureau of Land Management
B2H Project
P.O. Box 655
Vale, OR 97918

RE: Comments from the Shoshone-Bannock Tribes regarding the Boardman-Hemingway Transmission Line Draft Environmental Impact Statement.

The Shoshone-Bannock Tribes (Tribes) have reviewed the draft Environmental Impact Statement (EIS) for the proposed Boardman-Hemingway Transmission Line project (Project) and offer the following comments for consideration. The Tribes request that the Bureau of Land Management (BLM) consider the issues presented in this comment letter and respond in writing to the Tribes; indicating how the comments were evaluated and where changes, if applicable, were made for the final EIS and Record of Decision (ROD).

Consideration during the NEPA Process

The National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347, January 1, 1970) requires federal agencies to provide a process which results in a more comprehensive and strategic approach to decision-making; integrating environmental considerations into proposed federal actions to achieve a "productive harmony" among our various social, economic and environmental objectives. Tribal input is a necessary part of the NEPA process, helping federal agencies effectively consider Tribal rights and issues; prior to implementing an action. Without effective consultation, the Tribes often bear the burden of development activities or the adverse impacts from federal land management decisions, such as those likely to arise from the implementation of the Project. The Tribes input during this process is aimed at ensuring Tribal rights and interests are adequately represented in the final decision.

Tribal interests extend beyond the cultural and spiritual aspects of our lifestyles to the unique relationship the Tribes retain with the United States government. Various federal statutes and executive orders protect the Tribes cultural interests and treaty rights. The federal trust responsibility doctrine requires federal agencies to manage federal lands for the benefit of tribal rights and interests. Executive orders and federal law require meaningful government-to-government consultation with the Fort Hall Business Council, the governing body of the Shoshone-Bannock Tribes, when actions may affect Tribal rights

COMMENT(S)

RESPONSE(S)

T2

The Shoshone-Bannock Tribes (cont.)

Tribal Treaty Rights

The Shoshone and Bannock peoples' aboriginal lands cover a vast geographic area and encompass what are now known as the states of Idaho, Oregon, Nevada, California, Utah, Wyoming and Montana. Rivers which our people used included the Snake, Columbia, Missouri and the Colorado river systems, all of which provided past and current subsistence resources. These natural resources provided food, medicine, shelter, clothing and other uses and purposes, intrinsic to traditional practices. The riverine ecosystem was vital to support the lifestyles of the Shoshone and Bannock people who successfully utilized the resources. Hunting for deer, elk, rabbits, sage grouse and Snake River salmon was important, along with vital native plant resources, including, but not limited to, roots, such as "doza," camas, "yampa," bitterroot, sage, sagebrush, and berries. The natural resources provided food, medicine, shelter, clothing and other uses and purposes, intrinsic to traditional practices. Hunting for big game was important, along with vital native plant resources, including roots. The topography of this area required that the local native people use a network of trails that crisscrossed along rivers, mountain ridges and passes.

Various cultural sequences or phases, as set forth in archeological chronologies, all indicate continued cultural presence of the Bannock and Shoshonean groups, whose descendants now reside on the Fort Hall Reservation in southeastern Idaho. The earliest written records, by Lewis and Clark and other emigrants verify the presence of Shoshone and Bannock people as they traveled through this region. Fur trappers confirmed these reports of hunting and trading. Intertribal relationships included warfare and socializing, between Shoshone, Bannock and other tribes, such as the Flatheads and Blackfeet.

In June 1867, an Executive Order established the Fort Hall Indian Reservation, as a collective place to consolidate the various bands of Shoshones, Bannocks and even other tribes, from their aboriginal lands, clearing the way for European-American settlements, such as ranchers and miners who desired rich resources present on aboriginal lands. The United States then signed a treaty, the Treaty with the Eastern Shoshone and Bannock Indians in 1868 with Shoshone and Bannock headmen (commonly referred to as the "Fort Bridger Treaty"). The Fort Bridger Treaty of July 3, 1868 was the only treaty ratified by Congress between the Eastern Shoshone bands and the Bannocks. In the Treaty, the Shoshone and Bannock people expressly reserved off-reservation hunting, fishing and gathering rights on the unoccupied lands of the United States. The Fort Bridger Treaty (15 Stat 73) Article IV states:

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

Article IV reserved the right for the Tribes to maintain a cultural, social and spiritual link to our ancestral homelands. Over the past 140 years the Tribes have utilized these unoccupied lands to visit significant sites, hunt fish and wildlife for subsistence, gathered botanical species for medicine and food. In addition to the reserved Treaty rights, Tribal members also continue to

T2a

T2a

Comment noted. The BLM recognizes Tribal Inherent Rights and Treaty Rights as set forth in the Fort Bridger Treaty of 1868. Discussion of Treaty Rights have been expanded and clarified in the Final EIS to better reflect tribal perspectives with regard to the B2H Project area.

COMMENT(S)

RESPONSE(S)

T2	The Shoshone-Bannock Tribes (cont.)	
T2a	<p>exercise inherent rights including, but not limited to, visits to sacred sites or practice of traditional cultural practices. The Fort Hall Business Council is obligated to protect and preserve both Treaty rights and any inherent rights. The Tribes remain concerned that this Project has the potential to impact both Treaty and inherent rights, and the component resources which underlie those rights.</p>	
T2b	<p>Snake River Policy The Tribes stress the importance of initiating efforts to restore the Snake River system and affected unoccupied lands to a natural condition. Article IV of the Fort Bridger Treaty of July 3, 2868, reserved the right to hunt on the unoccupied lands of the United States and the Tribes work diligently to ensure the protection, preservation and enhancement of those rights for future generations. The Tribes management policies generally allow for supporting federal proposals that will improve or restore resource conditions. The Shoshone-Bannock Tribes Policy for Management of the Snake River Basin Resources states:</p> <p><i>The Shoshone Bannock Tribes (Tribes) will pursue, promote, and where necessary, initiate efforts natural condition. This includes the restoration of component resources to conditions which most closely represents the ecological features associated with a natural riverine ecosystem. In addition, the Tribes will work to ensure the protection, preservation, and where appropriate-the enhancement of Rights reserved by the Tribes under the Fort Bridger Treaty of 1868 (Treaty) and any inherent aboriginal rights.</i></p> <p>The lands and resources within the Project area are an important part of the Tribes' history, contemporary subsistence and cultural practices. The Project has the potential to impact cultural and natural resources within the Tribes' original territory. The proponent and BLM need to consider and implement specific strategies to ensure future generations of Tribal members will have the same unique opportunities to enjoy the natural landscape, gather resources and continue traditional cultural practices.</p>	<p>T2b Comment noted. The BLM recognizes Tribal Inherent Rights and Treaty Rights as set forth in the Fort Bridger Treaty of 1868. Discussion of Treaty Rights have been expanded and clarified in the Final EIS to better reflect tribal perspectives with regard to the B2H Project area.</p>
T2c	<p>Wildlife Resources The Tribes continue to hunt wildlife species in the Project area and formally request the BLM protect access and harvest opportunities from proposed Project development activities. Access to hunting areas is a vital component of the Treaty and inherent rights, any proposal to limit the ability to exercise reserved or inherent rights will be viewed by the Tribes as unacceptable. Accordingly, adverse modifications to wildlife habitat are also a significant concern for the Tribes and a re-evaluation of potential habitat mitigation measures should also be considered during the planning process.</p>	<p>T2c The BLM recognizes Tribal Inherent Rights and Treaty Rights as set forth in the Fort Bridger Treaty of 1868. Discussion of Treaty Rights have been expanded and clarified in the Final EIS to better reflect tribal perspectives with regard to the B2H Project area.</p>
T2d	<p>Migratory Waterfowl The Snake River plain, Columbia River Plateau and associated wetlands have been home to significant populations of numerous species of migratory waterfowl since time immemorial. The Tribes rely on robust populations of these species to continue contemporary subsistence and economic activities. The integrity of the migratory flyway is an issue that needs to be carefully examined in the final EIS and according mitigation measures need to be incorporated into the ROD for the Project. The Tribes are particularly concerned about the alignment for the Project</p>	<p>T2d Comment noted. The EIS was revised to include additional analysis of potential effects of the B2H Project on migratory birds. Also, the Applicant has committed to design features and site-specific selective mitigation measures designed to minimize anticipated B2H Project effects to migratory birds, including preconstruction surveys for sensitive species, seasonal and spatial restrictions, and avian-safe design standards. Refer to Section 3.2.4.5 in the Final EIS.</p>

COMMENT(S)

RESPONSE(S)

T2

The Shoshone-Bannock Tribes (cont.)

T2d | being perpendicular to the migratory flyway and its potential to disrupt utilization of available habitat in the Project area.

T2e | *Raptors*
The raptor species are of critical cultural importance to the Tribes that would be negatively impacted by the Project, and each alternative contains significant risks to the integrity of the species along the Project corridor. Golden eagles carry an especially high intrinsic value to the Tribes, so the Tribes request to be involved in the studies that may be necessary to determine eagle use of the area, including potential telemetry studies. Invasive methods that may result in undue stress to eagles must be avoided. The Tribes are particularly concerned about the corridor’s alignment alternatives that encroach near the Snake River and across the Columbia River Plateau because of the rich habitat values for raptors along the riverine corridors and their nesting habitat further upland.

T2f | *Sage Grouse and Sharp-Tail Grouse*
Sage Grouse is a significant species in the Shoshone and Bannock cultures. The tangible significance of Sage Grouse is illustrated in tribal traditional dance and ceremonial songs, which speak of the power the sage grouse possesses. The Sage Grouse is also a traditional subsistence resource and a part of the traditional diet of the Shoshone Bannock Tribes. On a broad cultural scale, the Sage Grouse is an integral component of the web of life and plays an important role in maintaining the balance of life. The Tribes do not support any proposals which would result in the short or long-term displacement of Sage Grouse, and urge the BLM to monitor habitat and populations to prevent adverse impacts from the proposed Project.

T2g | The Project is proposed to move through areas that are basically undisturbed and still provide substantial opportunities for recruitment and potential maintenance of these populations. Each of the alternatives poses a substantial risk, even with the assumption that these birds will behave in a similar fashion to sage-grouse in oil and gas developed areas. There is a very real potential that the construction of the Project will result in an irretrievable loss of habitat and an actual loss of native upland birds from the associated infrastructure and towers. The proposed mitigation should include reducing perching opportunities and other best management practices for upland birds; but the EIS offers little in the way of specific mechanisms to improve the transmission line.

Noxious and Invasive Species
In accordance with the Tribes’ Policy for Management of the Snake River Basin Resources, the Tribes urge the BLM to require active restoration of the native plant communities potentially affected by Project activities. Traditional, subsistence and medicinal plants the Tribal members rely upon have often been unduly compromised due to the introduction and invasion of non-native plants. The Tribes request a full restoration of any construction disturbance, utilizing only native plant species, and the proponent give specific management protocol for preventing the spread of noxious or invasive species during other Project activities; such as routine driving along trails for maintenance.

The Tribes are concerned about potential impacts to native botanical communities. Tribal elders and staff indicated concern over the removal of shrubs and brushes due to the tower construction.

T2e | The Applicant has committed to design features and site-specific selective mitigation measures designed to minimize anticipated B2H Project effects to eagles, including preconstruction surveys for sensitive species, seasonal and spatial restrictions, and avian-safe design standards. Additional analysis was added to the Wildlife section (Section 3.2.4) of the EIS to provide more detailed information on the potential impacts of the project on bald and golden eagles.

T2f | The Applicant has committed to design features and site-specific selective mitigation measures designed to minimize anticipated B2H Project effects on Greater Sage-Grouse, including creation of a Plan of Development that will include best management practices, preconstruction surveys of sensitive species, seasonal and spatial restrictions, perch deterrents, and avian-safe design standards. The B2H Project would be designed, sited, and implemented to adhere to a mitigation hierarchy that would result in a net conservation gain for Greater Sage-Grouse.

T2f | The Greater Sage-Grouse analysis has been revised for the Final EIS to include additional information on the potential direct and indirect effects from the B2H Project.

T2f | The Applicant has committed to design features and site-specific mitigation measures to minimize impacts to sensitive wildlife, including preconstruction surveys, seasonal and spatial restrictions for sensitive periods and habitats, minimization of timber and other vegetation clearing, spanning/avoiding sensitive features (e.g., water bodies), and a Plan of Development that includes a Biological Resources Conservation Plan. Refer to Section 3.2.4 in the Final EIS.

T2g | Comment noted. Idaho Power has committed to design features and site-specific selective mitigation measures designed to minimize anticipated B2H Project effects to Greater Sage-Grouse and other native upland birds, such as creation of a Plan of Development that includes best management practices for the B2H Project, installation of flight diverters and perch deterrents, and seasonal and spatial restrictions. A full listing of the design features and selective mitigation measures and their descriptions is included in the Final EIS. Also, the B2H Project will be designed, sited, and implemented to adhere to a mitigation hierarchy that will result in a net conservation gain for Greater Sage-Grouse in accordance with BLM’s Greater Sage-Grouse ARMPAs for Oregon and Idaho.

COMMENT(S)

RESPONSE(S)

T2	The Shoshone-Bannock Tribes (cont.)
-----------	--

A healthy community of native botanical species provides unique opportunities for Tribal members to continue to harvest wildlife and plant resources as a part of traditional, medicinal and subsistence activities, which Tribal people conducted from time immemorial. Botanical products are essential to the survival of Tribal culture, medicinal uses, language and continued traditional cultural practices. Traditional cultural practices surrounding the harvest of botanical species have a unique place in Tribal culture; as the gathering of botanical species often coincide with seasonal use patterns. Maintaining these patterns helps pass traditional knowledge to younger generations.

T2h

The Tribes would recommend including an analysis in the FEIS for a comprehensive vegetation management plan, developed by the BLM and the proponent, to reduce or eliminate the probable impacts to vegetation from the Project. At a minimum the Tribes would expect that a proposal for a large scale operation, such as the Project, would include a noxious weed control program and a native vegetation rehabilitation program within the area affected by operations and construction. Successful examples of noxious weed programs often include GIS modeling for weed spread, mechanical and chemical treatments, and transport vehicle cleaning stations for all vehicles entering the Project area. A rehabilitation project would focus on restoring those component vegetation resources in the project area where feasible. Replanting previously affected areas in the Project area with native species to increase the spatial structure of special status plants would help reduce the potential for the Project to adversely impact these resources. In reviewing the DEIS, the Tribes were concerned that these features were not adequately presented in the document, and would like to highlight the importance of resource planning for a project of this scope.

T2i

Visual Resources

The Tribes encourage transmission lines on private lands only, to protect Tribal rights and resources located on federal lands. The Tribes are concerned about the visual impacts from the 110 to 130 feet steel towers, which would alter the areas that are not within existing utility corridors. The value of the pristine open landscape is extremely high to the Tribes, must be protected from unsightly towers by constraining development to previously disturbed areas.

Habitat Mitigation Program

Assuming that approval to move forward with the Project is granted in the final EIS and Record of Decision, the Tribes formally request that an off-site mitigation program be required of the proponent to replace lost or disturbed fish and wildlife habitat along the corridor. For the purposes of the Project, the Tribes would recommend evaluating habitat impacts to big game, raptors, migratory waterfowl, small mammals, fish, and protected or sensitive species.

A clear example of this type of mitigation is already in effect across the Columbia River basin, funded by the Bonneville Power Administration. In Idaho, the Tribes are a partner in the Southern Idaho Wildlife Mitigation program, which was required by the Northwest Power Act, to mitigate for lost habitat from the construction, inundation and operation of the federal Snake River hydroelectric projects. The State of Idaho, Shoshone-Bannock Tribes, and Shoshone-Paiute Tribes each develop proposals for acquisition and protection of habitat designed to replace those lost habitat units; which may include acquisition of private property or conservation easements on available habitat. A similar program for the Project would result in complete

T2h

All required weed control and reclamation and rehabilitation activities would be documented in the Plan of Development in the Noxious Weed Management and the Reclamation, Revegetation, and Monitoring Framework Plans, which must be approved by BLM and cooperating agencies prior to issuance of the Record of Decision and right-of-way grant. The Plan of Development would be a condition of the Record of Decision and a stipulation of the right-of-way grant.

T2i

Comment noted.

COMMENT(S)

RESPONSE(S)

T2 The Shoshone-Bannock Tribes (cont.)

replacement, over the life of the Project, for lost or disturbed habitat, funded directly by the proponent.

T2j The Tribes would propose to use the habitat inventory, by target species, found in the EIS to set up a base assessment of potentially lost or disturbed habitat. That assessment would then be converted to a ledger of habitat units that the proponent would be required to replace throughout the project life. The Tribes recommend that a program, composed of the relevant fish and wildlife managers, be given access to program funds to identify replacement habitat, purchase conservation easements or property from willing sellers, and manage that habitat for the benefit of target species in perpetuity. Every habitat unit replaced would then be assessed against the ledger until the transmission line is completely mitigated. Although the proponent will assume that the moderate compensatory mitigation for the easement is enough to cover the externalized impacts to habitat, the Tribes maintain the position that if the corridor is approved a program must be developed to replace lost habitat units for each target species.

Cultural Resources

The Tribes have an expanded definition of cultural resources, utilizing a holistic perspective that encompasses plants, water, animals and humans, and the relationship existing between them. Cultural resources located along the Project corridor are highly significant because they directly contribute to the Shoshone and Bannock peoples' unique cultural heritage. Simply stated, a cultural resource is any resource of cultural character. Cultural resources are those social institutions, practices, beliefs, religious practices, sacred landscapes and objects, archaeological sites, natural resources and their use, intellectual property, oral traditions, language, historical documents and structures, secular and non-secular items are cultural resources. An expanded definition of cultural resources is warranted in the EIS to ensure all resources receive an inclusive analysis for project impacts.

T2k The EIS insufficiently characterizes cultural resources as only archeological resources, a typical 'stones and bones' analysis of impacts. Common impacts from project development to archaeological sites includes trampling, disturbing site stratigraphy, breakage of artifacts, soil erosion exposing buried artifacts for looting, and removal of artifacts. Unidentified archaeological sites and traditional cultural properties are at risk from the same impacts.

T2l In the event that the Project is ultimately approved in some form, the Tribes request that a cultural resource management plan should be developed, in consultation and concurrence with affected tribes for these BLM lands, and if possible, on private and state lands. If the BLM truly intends to include the Tribes in future preservation or data recovery efforts to promote effective management of cultural resources, then any agreements must include the tribes. An effective plan, with tribal participation, should address native plants, subsistence hunting and gathering, medicinal and ceremonial plants, petroglyphs, pictographs, and other traditional cultural properties which may be impacted by BLM land management. Interagency coordination may also be required between other federal land managers and local BLM field offices to avoid conflicting or duplicative management schemes for cultural resources.

Formal consultation between local Field Office, Tribal staff, and the Fort Hall Business Council is necessary to effectively address the control of confidential information. NHPA § 106

T2j Appendix D - Framework for Development of Compensatory Mitigation Plans for Biological Resources has been revised for the Final EIS as Appendix C to include additional details and information on the Compensatory Mitigation Plans.

T2k Comment noted. The EIS has been reviewed and a more thorough characterization of cultural resources as a suite of different sites types, traditional cultural properties and other locations of significance have been incorporated throughout the cultural resources discussions.

T2k The BLM would not prepare a project-specific Cultural Resources Management Plan; however, a Historic Properties Management Plan will be prepared to address cultural resources affected by the B2H Project. Site-specific mitigation will be developed as part of the Historic Properties Management Plan in compliance with Section 106 and in consultation with Native American tribes and consulting parties and in accordance with the Programmatic Agreement developed for the B2H Project.

T2l Per Stipulation IV.B of the Programmatic Agreement for the B2H Project "The BLM will consult with the parties to this agreement to seek ways to avoid or minimize adverse effects to historic properties. If historic properties cannot be avoided, subsurface investigation may be necessary for archaeological sites within the direct effect APE which may be adversely affected. Determination of the site boundaries in relation to the direct effect APE, and actual area of ground disturbance, may be undertaken through subsurface investigation to aid in developing alternative design and/or mitigation strategies. If adverse effects cannot be avoided, the BLM will consult with the parties to this agreement to determine appropriate mitigation measures to be detailed in the HPMP." Site-specific mitigation for the B2H Project will be developed in the Historic Properties Management Plan in compliance with Section 106 of the National Historic Preservation Act and in consultation with tribes and consulting parties.

COMMENT(S)

RESPONSE(S)

T2

The Shoshone-Bannock Tribes (cont.)

T2m

Consultation provides opportunity for Tribal input over how best to manage the cultural resources on BLM lands. To date, this Project has raised numerous ‘red-flags’ with the Tribal community regarding the irreversible loss of significant cultural resources. Any future consultation with the Tribes necessarily must include an in-depth discussion about the impacts and what can be ‘avoided’ through creative management strategies and what resources would be destroyed by development; in particular during the actual site selection for an approved route.

A cultural resource management plan should also include protocols for coordinating with tribes regarding inadvertent discoveries, burials, curation of Native American cultural materials, and Native American archeological sites. The Tribes would also need to be immediately notified if any cultural artifacts or human remains are uncovered or inadvertently discovered; with an immediate stop work order for construction activities. When necessary, Section 106 compliance needs to occur or the required NAGPA consultation is initiated with the Tribes. In such a situation, the Tribes request no work proceed until Tribal staff concurs/approves. The Tribes further request that qualified Tribal members be hired to assist in monitoring requirements for this Project.

We would also like to address the following issues from the DEIS in this comment letter to alleviate any confusion about our interests in the Project area:

Chapter 3 – Affected

T2n

- Pg. 3-760: “By the time of contact with Euro-American cultures in the early 1700s, the historically documented groups still present today were living in Northeast Oregon, including the Cayuse, Umatilla, Walla Walla, Nez Perce and Paiute.”
 - This sentence must include Shoshone and Bannock peoples. There are numerous historical documents that reference Shoshone and Bannock presence on the Bruneau, Boise, Malheur, Payette, and Weiser rivers well into the 20th century, even after the creation of the Fort Hall Reservation. The Shoshone-Bannocks presence in the lower Snake River is characterized by a compilation of historic documents summarized by Albers, Patricia . C., et al, 1998. The Rivers and Fisheries of the Shoshone-Bannock Peoples. American West Center University of Utah.
- Pg. 3-771: “On July, 1, 1868, the Bannocks and Paiute also signed a treaty, providing for resettlement on reservation lands (Michno 2003).” Not sure what treaty this is in reference to but if it’s about the Fort Bridger Treaty then it is definitely a wrong statement. On July 3, 1868, the Fort Bridger Treaty with the Eastern Band of Shoshones and the Bannock Indians was signed and later ratified and proclaimed in February 1869. President Andrew Johnson’s Executive Order signed June 14, 1867 created the Fort Hall Reservation. Bands of Shoshones and Bannocks from Boise, Bruneau, Lemhi and Montana Territory were also brought to the Fort Hall Reservation.
 - Suggested language - The Shoshone-Bannock Tribes were parties to numerous unratified and one ratified treaty in their history. The treaties of the Great Peace Commission were the last which Congress ratified. The Fort Bridger Treaty of 1868 is part of the Great Peace Commission’s work Gen. Christopher C. Augur is the Commission’s sole representative at Ft. Bridger, Utah Territory. Washakie speaks for the Eastern Shoshone and Taghee for the Bannocks. (Smoak, G. E.,

T2o

T2m

Comment noted. The BLM is preparing a Programmatic Agreement, Plan of Action in compliance with the Native American Graves Protection and Repatriation Act, and Historic Properties Management Plan for the B2H Project. These documents are being prepared in consultation with the tribes and will identify the various protocols and procedures for coordinating with the tribes and addressing cultural resource compliance issues under state and federal law.

T2n

Text has been edited as suggested: By the time of contact with Euro-American cultures in the early 1700s, the historically documented groups still present today were living in northeast Oregon, including the Shoshone and Bannock, Cayuse, Umatilla, Walla Walla, Nez Perce, and Paiute.

T2o

Text has been edited as requested.

COMMENT(S)

RESPONSE(S)

T2	The Shoshone-Bannock Tribes (cont.)
-----------	--

T20 | Ph.D., April 2004. The Treaty History of the Shoshone-Bannock Tribes.
Colorado State University Department of History)

T2p | **Cumulative Impacts of Energy Development**
Cumulative impacts to the area, if the Project is ultimately approved, may lead to additional energy development along the corridor; further increasing the potential to impact sensitive resources and Tribal rights. The cumulative impacts analysis for fish and wildlife, cultural resources and Treaty rights reveals substantial impacts to the Tribes in several key areas from this particular Project. Taken as a whole, the Project will increase the likelihood that irreversible and irretrievable impacts will occur to natural and cultural resources of importance to the Tribes. While it is important to reconcile energy needs with available resources, an analysis of the Project reveals impacts of serious magnitude to the Project area.

T2p | Simply driving through major transportation routes in Idaho and eastern Wyoming, it's apparent that a dramatic increase of wind farms and natural gas development is occurring, which may result in impacts to migratory birds, wildlife and especially to regional and local habitat. Major changes to the character of the land are being made, often with no analysis for those wind farms constructed on private lands. The purpose of an effective cumulative analysis is to account for those reasonable and foreseeable impacts from increasing the capacity of existing transmission lines; which in turn increases the demand for energy resources along the corridor from wind, hydroelectric, coal and natural gas.

Conclusion
The BLM has the discretion to approve, modify or deny the applicants request for a right-of-way for all Project activities. The Tribes request that the BLM heavily consider the comments submitted and earnestly develop a comprehensive mitigation program due to the significant adverse impacts to the environment. Understanding that the BLM is under a multi-use mandate, the Tribes remind and emphasize that the BLM also has a federal trust responsibility to the Tribes to manage lands under their jurisdiction in a manner which preserves and protects Treaty and cultural resources. By preserving the unique natural and cultural resources present in the Project area, without unnecessary additional structures or developments, the BLM is upholding and supporting those Tribal rights for future generations.

If you have any further technical questions regarding this submission, please call Cleve Davis, Environmental Coordinator at (208) 239-4552 or email at cbdavis@sbtribes.com. For policy questions on further consultation with the Fort Hall Business Council, contact Claude Broncho, Fish & Wildlife Policy Representative at 208-239-4563 or at cbroncho@sbtribes.com.

Sincerely,

Nathan Small, Chairman
Fort Hall Business Council, Shoshone-Bannock Tribes

T2p | Comments on the Draft EIS expressed that not enough information was provided in the Draft EIS to enable the reviewers to understand where impacts would occur and where mitigation would be applied to reduce impacts. Chapter 2, Section 2.5.1 of the Final EIS presents an explanation of the study and analysis approach employed for the B2H Project. Chapter 3 has been expanded to provide more description of the methods for used for analyzing effects associated with each resource (tiered to the overall approach). Chapter 3 also provides more information about the resources, mitigation applied to reduce impacts, and residual impacts on resources along each alternative route by segment, including cumulative effects.

ATTACHMENT**T2****The Shoshone-Bannock Tribes (cont.)****THE POLICY OF THE SHOSHONE-BANNOCK TRIBES
FOR MANAGEMENT OF SNAKE RIVER BASIN RESOURCES**

November 1994
Resolution # GAME-94-1049

ISSUE DEFINITION

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

BACKGROUND AND INTRODUCTION

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

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

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

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

ATTACHMENT**T2****The Shoshone-Bannock Tribes (cont.)**Shoshone-Bannock Tribes -- Snake River Policy

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

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

STATEMENT OF POLICY

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

CONCLUSION

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

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

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

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

ATTACHMENT**T2****The Shoshone-Bannock Tribes (cont.)****The Shoshone-Bannock Tribes' Position Regarding the
Transfer of Federal Lands**

July 2005

Introduction

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

Treaty Guaranteed Rights

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

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

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

ATTACHMENT

T2

The Shoshone-Bannock Tribes (cont.)

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

Federal Trust Responsibility

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

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

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

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

This page intentionally left blank.