Supplementary Listing Record

NRIS Reference Number: SG100001053 Date Listed: 06/12/2017

Property Name: Yawwinma

County: Idaho State: ID

This Property is listed in the National Register of Historic Places in accordance with the attached nomination documentation subject to the following exceptions, exclusions, or amendments, notwithstanding the National Park Service certification included in the nomination documentation

Signature of the Keeper Date of Action

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Amended Items in Nomination:

Historic Name:
The Historic Name/Listing Name should be revised to delete the term *TCP (Traditional Cultural Property*. [Current National Register policy is to omit the use of such terms as, *Traditional Cultural Property, Traditional Cultural Place, or TCP* from the historic name unless that is how the property was historically referred to or known.]

Significance:
Eligibility under National Register Criterion D is not sufficiently justified at this time and is deleted. [While the property contains a known archaeological site and considerable ethnographic research has been conducted with respect to traditional tribal practices associated with the Rapid River corridor, information on the precise character of the specific (single) archaeological site was not provided, nor were specific research questions identified in association with the site. Likewise, the nomination provides little documentation for direct connection between specific ethnographic research themes and the nominated locations.

The IDAHO SHPO was notified of this amendment.

DISTRIBUTION:

National Register property file
Nominating Authority (without nomination attachment)

NPS Form 10-900 OMB No. 1024-0018

United States Department of the Interior
National Park Service

National Register of Historic Places Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in National Register Bulletin, *How to Complete the National Register of Historic Places Registration Form.* If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions.

1. Name of Property

Historic name: *Yáwwinma* TCP

Other names/site number: Rapid River

Name of related multiple property listing:
N/A
(Enter "N/A" if property is not part of a multiple property listing

2. Location

Street & number: 143 Rapid River Road
City or town: Riggins State: ID County: Idaho
Not For Publication: [ ] Vicinity: [X]

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended,

I hereby certify that this **X** nomination ___ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60.

In my opinion, the property **X** meets ___ does not meet the National Register Criteria. I recommend that this property be considered significant at the following level(s) of significance:

___national **_X_statewide** **___local**

Applicable National Register Criteria:

_X_A **___B** **___C** **___D**

Kenneth C. Reid, Ph. D — Deputy SHPO — 26 April 2017

Signature of certifying official/Title — **Date**

Idaho SHPO

State or Federal agency/bureau or Tribal Government

In my opinion, the property ___ meets ___ does not meet the National Register criteria.

Signature of commenting official: **Date**

Title : **State or Federal agency/bureau or Tribal Government**

4. National Park Service Certification

I hereby certify that this property is:

✓ entered in the National Register

___ determined eligible for the National Register

___ determined not eligible for the National Register

___ removed from the National Register

___ other (explain:) _____

Signature of the Keeper 6/12/2017 Date of Action

5. Classification

Ownership of Property

(Check as many boxes as apply.)

Private:	X
Public – Local	
Public – State	
Public – Federal	

Category of Property

(Check only **one** box.)

Building(s)	
District	
Site	X
Structure	
Object	

Number of Resources within Property
(Do not include previously listed resources in the count)

Contributing	Noncontributing	
	3	buildings
1		sites
		structures
		objects
1	3	Total

Number of contributing resources previously listed in the National Register 0

6. Function or Use

Historic Functions
(Enter categories from instructions.)
AGRICULTURE/SUBSISTENCE/fishing grounds
AGRICULTURE/SUBSISTENCE/food processing site
DOMESTIC /fishing camp/seasonal residence
PROCESSING/toolmaking site
LANDSCAPE/river

Current Functions
(Enter categories from instructions.)
AGRICULTURE/SUBSISTENCE/Spring Chinook fishing grounds
AGRICULTURE/SUBSISTENCE/food processing site
DOMESTIC/fishing camp/seasonal residence
PROCESSING/toolmaking site
LANDSCAPE/river
RECREATION AND CULTURE/campground and picnic area

7. Description

Architectural Classification
(Enter categories from instructions.)
N/A

Materials: (enter categories from instructions.)
Principal exterior materials of the property: N/A

Narrative Description
(Describe the historic and current physical appearance and condition of the property. Describe contributing and noncontributing resources if applicable. Begin with **a summary paragraph** that briefly describes the general characteristics of the property, such as its location, type, style, method of construction, setting, size, and significant features. Indicate whether the property has historic integrity.)

Summary Paragraph

Yáwwinma, or "Rapid River," is a traditional cultural property (TCP) located approximately four miles south of the town of Riggins, Idaho (Map 1). *Nimíipuu* (Nez Perce) families and fishermen continue to seasonally occupy the Lower *Yáwwinma* to fish for Chinook salmon using dip nets, gaffs, spears, and other traditional methods as they have for untold millennia for subsistence, religious, ceremonial, and commercial purposes. Nez Perce people use the terms *Yáwwinma* and "Rapid River" interchangeably to refer to the entire watershed. They conceive this watershed to be a single ecosystem and a living place. Nez Perce oral tradition, along with historic documentation, both verify Nez Perce use of the river, and testify to its long-term significance as a major Nez Perce fishery.

The TCP boundary includes two parcels along Rapid River and adjacent to Rapid River Road that are owned by the Nez Perce Tribe (Map 2 & 3). These parcels include many named fishing holes and known places that contribute to a pattern of use at this ancient fishery. More recently, *Yáwwinma* was also the site of an intense conflict between the Nez Perce Tribe and both the United States government and the State of Idaho to secure their right to take fish at all their usual and accustomed places as guaranteed in the Treaties of 1855 and 1863.

Nez Perce peoples view and value *Yáwwinma* as they have done for centuries. Despite its close proximity to a rural subdivision, the landscape's setting includes views of natural landforms, breezes from off the river, clear blue and cloudy skies, relatively dark night skies, and a sense of quiet and solitude reinforced by the sounds of mountain water, which can easily be heard at night from the lawn where tribal members camp during the Chinook fishing season immediately south of the parking lot. These qualities of the property's visual, auditory, and atmospheric setting contribute to the integrity of the site. They help convey a sense of continuity and connection to the first *Niimiipuu* and a shared reverence for Chinook salmon, as well as other cultural beliefs and traditional lifeways. Because of this, the Chinook fishery at *Yáwwinma* exemplifies an American Indian traditional cultural property with a high degree of historic integrity, and is therefore eligible for listing.

Narrative Description

For the purposes of this nomination, the boundaries of the *Yáwwinma* Traditional Cultural Property (TCP) are three small, noncontiguous parcels of private land recorded under two deeds owned by the Nez Perce Tribe. These areas include many of the primary, traditionally used fishing holes in this waterway, and encompass, or are directly adjacent to, some of the main places of conflict between the tribe and both the federal government and State of Idaho in 1979 and 1980. All three parcels are located on the banks of Rapid River in Township 24 North, Range 1 East, of Boise Meridian, in Section 32, in Idaho County, Idaho. These parcels represent an area of great significance to the Nez Perce Tribe, and remains a place important for Nez Perce gaff and dipnet fishing. The river runs along the edge of each of the three parcels which together form much of the traditional cultural use area.

The total area of the three small parcels encompasses 6.172 acres, all located on the banks of Rapid River. Parcel 1 is 3.35 acres in size, and incorporates the mouth of Rapid River at its confluence with the Little Salmon River. The Nez Perce Tribe purchased the parcel in 1993. Its legal description is T24N R1E Sec 32. This parcel includes a 150 meter section of Rapid River just above its confluence with the Little Salmon River. The waterway runs into the parcel from the east and continues northwest along the base of the northern ridge, starting just west of parcel 2 and stretching northwest as it runs under the Rapid River Road and Highway 95 bridges. Along this stretch are a number of popular fishing holes often used for dipnetting and gaffing. The shoreline of this parcel is characterized by a number of small trails and access points which lead down to popular fishing holes, a physical representation of a pattern of use in existence for centuries, if not millennia. Some of these trails descend steep slopes (15-20 foot) leading to the tops of the large boulders that line the onrushing channel at water level. Fisherman often stand on these boulders to fish, a strategy verified in oral tradition specific to Rapid River, and elsewhere. This parcel, including a Nez Perce Fishing Access point previously assigned Smithsonian site number 101H2784, also includes a National Register eligible archaeological site located near the southwest abutment of Rapid River Bridge along the west side of U.S. Highway 95 (Smithsonian site numbers 101H2782 and 101H2783).

Parcel 2 is actually two adjacent parcels of 2.752 and .08 acres which, together, form an area that stretches from the base of the northern ridge to the base of the southern ridge, a distance of approximately 200 meters. The waterway runs along the base of the southern ridge, before cutting over to the base of the northern ridge as it meets the Little Salmon River through parcel 1. The shoreline is similar to parcel 1, with verdant shrubs, small trees, and a variety of grasses all discussed further in the environmental section below. A public bridge over the river and a public two-lane dirt road connect the properties, which are less than half a mile apart.

Most importantly, these parcels constituting the nominated properties are linked to each other and to the Nez Perce people by the waters of *Yáwwinma* itself, a primary contributing resource to the TCP. These parcels, too, are directly associated with the activities transpiring during 1979 and 1980 between the Tribe and the federal government and the State of Idaho; many of the activities occurred on, or in close proximity to, these parcels of land.[1] These parcels help tell this important and unique story. More importantly still, they inform the narrative of Nez Perce land use, prehistorically and historically into the present era.

Without exception, the entire 27 miles of the upper *Yáwwinma* designated as a Wild and Scenic River retains its historic condition as prime natural habitat (i.e. wild). From the mainstem headwaters to the National Forest boundary and from the West Fork Rapid River headwaters in the Hells Canyon Wilderness boundary downstream to its confluence with the mainstem, the river remains free of manmade impoundments and generally inaccessible except by trail. The river's shorelines retain their primitive condition and the water carries on unpolluted. A team of investigators relying upon various experts, including consultation with the Nez Perce Circle of Elders, ranked the upper *Yáwwinma* as having "Outstandingly Remarkable Value" to the nation in six categories: (1) Traditional Use (Cultural), (2) Prehistoric Cultural Resources, (3) Historic Cultural Resources, (4) Scenery, (5) Fisheries, and (6) Water Quality. The investigators concluded that the Wild and Scenic River corridor "contains an accumulation of riverine archaeological and historic resources," including a possible prehistoric trail and an extensive prehistoric lithic scatter "eligible for the National Register of Historic Places."[2]

During the late winter, spring, and early summer, the river runs swiftly, giving rise to the waterway's current descriptive name: Rapid River. At this time, the water completely fills the waterway's steep-sloped, rocky banks, creating an impressive stretch of white water rapids that have pulled countless fisherman downstream. The river, fluctuating from 10 to 15 meters across depending on the season, is slowly entrenching further within its banks due to the strength of the flow. The depth can range from a meter in some sections, to 5 or more depending on the season, and the spot on the river. Some pools likely go much deeper still. Numerous large boulders alternate between partial and complete inundation along this stretch of the river, helping to make eddies and deeper pools for fish to rest. These pools often become popular places for fishing, gaffing or dipnetting the salmon as they rest before continuing their journey upstream. Various fishing holes, or plunge pools as they are sometimes called, are named and well-known fishing

[1] Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.
[2] "Appendix K, Wild Rapid River Resource Assessment," Hells Canyon National Recreation Area Comprehensive Management Plan FEIS, July 2003: 6.

sites within this stretch of the waterway. This views from the shoreline are impressive, with ridges jutting steeply up to either side for 500 meters or more before cresting.

Much of this area, the parcels included, have undergone some form of development. Rapid River Road, an access route from Highway 95, winds along the base of the north ridge opposite from the river. It allows access to the houses, Nez Perce fish hatchery, parking lots, and other facilities that have popped up over the last few decades. Although there are undeniable changes to this property because of development, the integrity and significance remain strong in the eyes of the Nez Perce people ascribing value to this TCP, as noted by the Nez Perce Circle of Elders above. Nez Perce continue to fish at their usual and accustomed places, and continue to value Rapid River as they have done stretching back into time immemorial.

Environmental Setting

Yáwwinma is a freestone river located in the Payette and Nez Perce National Forests of central Idaho. *Yáwwinma* is a tributary to the Little Salmon River, which enters the main Salmon River at the town of Riggins, Idaho. The mainstem *Yáwwinma* and West Fork *Yáwwinma* are steep gradient streams enclosed by narrow canyons with steep walls. Cover vegetation limits rock exposure on the river.

From the Seven Devils Range, *Yáwwinma* drops approximately 4,800 feet over the course of approximately thirty miles to an elevation of just less than 2,000 feet at its confluence with the Little Salmon River.[3] Strongly contrasting vegetation types, keyed mostly to aspect and elevation, inhabit the entire length of the wild river. They begin at the highest elevations with subalpine fir, Engelmann spruce, and lodge pole pine interspersed with small forb grass meadows. Timbered slopes within the river corridor give way to several stands of large, mature ponderosa pine. Native bunchgrass types occupy the river corridor on those southern aspects that lack stands of conifers. Mixed conifer species at the lower elevations include Douglas fir, grand fir, ponderosa pine, and western larch.

Steep, dry southern and western exposures host several low brushes and grasses: willow, serviceberry, ninebark, snowberry, ceanothus, fescue, wheatgrass, and pinegrass. Moist and cool areas support Elk sedge, huckleberry, meadow rue, mountain maple, pinegrass (*Calamagrostis fasciculata Kearney*), violet, alder, and beargrass. Lower elevation riparian areas of *Yáwwinma* also host a disconnected population of Pacific yew growing near the end of its southern range. Puzzling halimolobos (*Halimolobos perplexia perplexa*) is locally endemic in ponderosa pine /grassland communities ranging from 7,300 to 3,000 feet.

The river, which is the primary contributing resource to the property, is well delineated on both banks with a canopy of trees dominated primarily by indigenous Black Cottonwoods (Populus trichocarpa) and Mountain Alders (Alnus tennifolia). Sparse stands of gooseberry, elderberry, willow, and wild rose bushes also occupy both riverbanks along with nettles, dandelions, and various grasses, including native bunch grass, which also covers the steep hillside northwest of

[3] Appendix K, 2003: K-10

the river above the bed of the Old Seven Devils Road that borders the property northwest of the river. Plant and animal inventories in previous surveys also indicate the presence of lomatium, bitterroot, chokecherry, serviceberry, and hackberry, as well as the faunal presence of deer, bighorn sheep, elk, martin, and bear in addition to migratory and game birds. Rattlesnakes are commonly seen. Of critical importance is the seasonal presence of wild and hatchery Chinook along with ESA-threatened bull trout and steelhead.

The river's drainage is in the Wallowa terrane, whose rocks formed along the volcanic axis of a series of island arcs that were configured in the ancestral Pacific Ocean. Across the span of about 250 million years, this theory contends, these island arcs "traveled hundreds of miles on the back of one or more tectonic plates in the ancient Pacific Ocean to eventually dock on the North American continent approximately 120 million years ago."[4] Geologists have identified individual rocks within the *Yáwwinma* corridor as Doyle Creek and Martin Bridge Limestone. Basalt of the Columbia River Basalt Group (6-16 million years old) overlies the Doyle Creek and Martin Bridge Limestone, which means these *Yáwwinma* rocks have been "highly metamorphosed due to extensive faulting." Geologists commonly refer to them as "greenstone."[5]

As it did for the *Nimiipuu*, the *Yáwwinma* corridor serves as a migration passageway for the seasonal movement of animals from the Little Salmon into the Snake River drainage and Hells Canyon. The upper sections of the watershed offer key winter range for deer and elk, "elk security areas," big game migration routes, and summer range for bighorn sheep.[6] Over 75 species of birds inhabit the river corridor, including golden eagles, peregrine falcons, goshawks, white-headed and pileated woodpeckers, and the rare mountain quail whose status is now listed as a "species of special concern" by the U.S. Fish and Wildlife Service.[7] Rattlesnakes and bull snakes are commonly sighted on trails along with mule deer, white tail deer, and elk. Wolverines, pine martens, cougars, black bears, and bobcats also inhabit the corridor.

Non-Contributing Elements

Non-contributing features of the *Yáwwinma* TCP include three non-historic buildings: (1) a brick house with an attached double garage and cement pad; (2) a small open shed, located east of the house, and separated from the house by a private drive; and (3) a large shop in the shape of a rectangular half-dome just north of the shed. Shade trees and fruit trees surround the buildings—walnut, peach, maple, blue fir, apple, elm, and cherry. The shade trees line both Rapid River Road and each side of the private driveway.

[4] Appendix K, Wild Rapid River Resource Assessment," H*ells Canyon National Recreation Area Comprehensive Management Plan FEIS*, July 2003: 6.
[5] Ibid.
[6] Appendix K, 2003: K-9
[7] Species Fact Sheet, "Mountain Quail Oreotyx pictus." U.S. Wildlife Service, Oregon Fish and Wildlife Office: http://www.fws.gov/oregonfwo/Species/Data/MountainQuail/.

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing.)

[X] A. Property is associated with events that have made a significant contribution to the broad patterns of our history.

[ ] B. Property is associated with the lives of persons significant in our past.

[ ] C. Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.

[X] D. Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

[ ] A. Owned by a religious institution or used for religious purposes

[ ] B. Removed from its original location

[ ] C. A birthplace or grave

[ ] D. A cemetery

[ ] E. A reconstructed building, object, or structure

[ ] F. A commemorative property

[X] G. Less than 50 years old or achieving significance within the past 50 years

Areas of Significance
(Enter categories from instructions.)

Native American Ethnic Heritage

Period of Significance
Time immemorial to Present

Significant Dates
1855—Treaty with the United Sates
1863—Treaty with the United States
1877—War with the United States
1905—U.S. v Winans
1974—U.S. v. Washington (Boldt Decision)
1979-80—Conflicts between Nez Perce and State of Idaho
1981—State of Idaho v. Defendants (Reinholdt Decision)

Significant Person
(Complete only if Criterion B is marked above.)
N/A

Cultural Affiliation
Nez Perce Tribe

Architect/Builder
N/A

Statement of Significance Summary Paragraph (Provide a summary paragraph that includes level of significance, applicable criteria, justification for the period of significance, and any applicable criteria considerations.)

Yáwwinma is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A (Association with events that have made a significant contribution to the broad patterns of our history) because it is directly associated with the traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world.

In addition to these elements of significance that extend far back into time, the unique character

of the events that transpired in the late 1970s and early 1980s at Rapid River contribute to, and were a formative part of, recent Nez Perce Tribal history and Tribal infrastructure pertaining to Nez Perce treaty rights and fisheries management programs. This more recent significance, achieved within the past 50 years, complements and contributes to the longer narrative of Nez Perce practices, traditional activities, and uses at this important, unique, and long-standing Nez Perce fishery. Oral histories from tribal members emphasize the connection between fishing sites traditionally used by tribal member, such as Badger Hole and Jackson Hole, and sites associated with the conflicts of 1979 and 1980.[8] These sites are also associated with the properties within the nomination, as parcels currently owned by the Nez Perce Tribe.

Moreover, an examination of both *Nimíipuu* use of Rapid River and the tribe's conflict with the federal government and the State of Idaho to affirm and to protect tribal rights to the site reflect larger themes within federal policy regarding tribes, treaty rights struggles in the twentieth century, protests from groups such as the American Indian Movement, and issues of contested land use between different cultural groups in the American West.

Narrative Statement of Significance (Provide at least **one** paragraph for each area of significance.)

Areas of Significance

Rapid River is eligible under significance Criterion A for its association with the traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. It is a storied site intimately connected to the historical processes and events that have shaped and continue to influence Nez Perce culture and society today. The long-term significance of Rapid River is demonstrated through Nez Perce oral history, oral tradition, and the written record. The waterway is also an important part of larger movements across their traditional landscape. These movements, known as seasonal rounds, have been an integral part of what it means to be Nez Perce, informing their identity and worldviews today.[9] These seasonal movements and subsistence practices, among other traditional and ceremonial activities, are continually reinforced at Rapid River. As a traditional cultural place of great significance to the Tribe, numerous ethnographic stories and knowledge are connected to the nominated properties, and to the larger ethnographic landscape.

Finally, in addition to these two criteria of significance, the unique character of the events that transpired in the late 1970s and early 1980s make the nominated property eligible under Criteria Consideration G. These events occurring at Rapid River helped strengthen treaty rights in their usual and accustomed places, a right reserved in the 1855 and 1863 treaties with the United States government. The resolution from those events also significantly contributed to the development of the Tribe's organizational infrastructure as it pertains to fisheries management.

[8] Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016; and Syrveneas (Butch) McConville, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.

[9] 1977 Nez Perce Social Groups: An Ecological Interpretation. Ph.D Dissertation, Washington State University, Department of Anthropology. Pullman, Washington.

In particular, it directly influenced the formation of a Nez Perce Tribal Fisheries Program, and shaped the management of these resources for generations to come

These areas of significance, each holding value in their own right, complement each other and combine to shape the larger narrative surrounding Nez Perces' relationship with Rapid River. The following pages describe and further articulate Nez Perces' connection to this traditional cultural property.

Introduction

Nez Perce beliefs are grounded in the world around them, visible in their tribal history, and essential to Nez Perce tribal people who seek to maintain their culture's continuity and their collective and individual identity. As the Nez Perces explain, "We fish the same rivers our grandfathers fished long before the arrival of Columbus."[10] Additionally, the Nez Perces' struggles with the federal government and the State of Idaho over fishing/treaty rights and reservation boundaries demonstrate the continuity of Nez Perce traditional ways as an important aspect of Nez Perce culture and lifeways, matters the Nez Perce fought for in treaty discussions in the nineteenth century and in courtrooms in the twentieth century. Abrogation of American Indian treaty rights have been a contentious and near-continuous aspect of American legal systems since the nineteenth century, and examining the Nez Perce claims to Rapid River reveals broad patterns within U.S. history in terms of the nation-to-nation status American Indians hold and the federal government's and states' governments relationships with American Indian nations.

The Nez Perce place name for Rapid River is *Yáwwinma*, taken from the s-class verb yáw, "to be cold," or "cool."[11] *Yáwwinma* can be roughly translated from Nez Perce into English as Cold Creek or Cold River. The name itself denotes the nature of the stream, which is formed by snowmelt from the eastern side of *Sisé.quiymexs* (the Seven Devils Mountains) whose highest peaks rise well over 9,000 feet above sea level and preside over the deepest gorge in North America (*saqánma* or Hells Canyon). Josiah Pinkham, Nez Perce, retold a Coyote story that describes how the river received its name:

> "When I was young, some of the things that the older men in my family would talk about were early oral histories about why Rapid River was called *Yáwwinma* in Nez Perce language that translates to 'place of cold water,' from the Nez Perce terminology, which is freezing kind of a cold, freezing temperatures. So the story that I heard that was attributed to it was that Coyote was really fond of going down there and fishing, and he had a really good fishing spot or there were several spots that he would fish along and he would catch fish. And grizzly bear was watching him from afar and was like 'oh shoot, what is that skinny little runt doing down

[10] Nez Perce Tribe, *Treaties: Nez Perce Perspectives*, Lewiston, ID: Confluence Press, 2003, 2.
[11] Haruo Aoki. *Nez Perce Dictionary*, Berkeley: University of California Press, 1994, 939 and 942.

> there in that fishing spot. I should be down there, I'm Grizzly Bear, I like fish.' And so he acted upon that intention, and when down there, you know, and had words with him, they exchanged words, and Coyote said 'Well, you know, you can't just take this place from me, that's not right.' So eventually it came to like a little pushing match, Grizzly Bear went in there and he just used his weight and pushed Coyote out of the way. And he stuck his tail in there and he goes 'Ooh, *Yáwwinma*.' You know, he described that cold water, and so that's how it got its name *Yáwwinma*. And Coyote—and again this expresses the seasonal round—Coyote said 'well fine, you can fish here anyway. There's a lot more fish over in Chamberlain Basin.' And that's another place people would hit in that seasonal round, cuz that's where Coyote went."[12]

Because of their long-term use of the area, and the area's high level of significance to Nez Perce peoples, the Nez Perce Tribe purchased parcel 1 in 1993, and parcel 2 in 2010 which is legally classified as two separate but adjacent parcels held under a single Warranty Deed.[13] Although coming into Tribal ownership at this time, the purchase of these two parcels simply reinforced a pattern of use that had been in place for generations. These parcels are a part of a larger narrative of traditional fishing stretching far back into time.

The river and the steep hills that surround the lower *Yáwwinma* valley serve as visual reminders of creation stories that take place in the nearby Seven Devils Mountains. The old name for Rapid River Road was Seven Devils Road, so named because the *Yáwwinma* corridor has, from aboriginal times to the present, always provided the Nez Perce People with access trails into the Seven Devils high country from the Salmon River country around Riggins, and, consequently, from the Seven Devils high country into Hells Canyon, the ancestral location of several Nez Perce village sites now flooded by the dams.

[12] Josiah Pinkham, interviewed by Mario Battaglia and James Hepworth, Lapwai, ID, May 6, 2016.
[13] Acherman, Kathy. RE: Phone Conversation." Email from Idaho County Clerk, April 14, 2016. The deed was recorded on June 21, 2010.

Traditional use of Rapid River and salmon

To fluent speakers of Nez Perce, the indigenous place name for the river would also most likely have marked it as a salmon stream. Indeed, this cold water river still supports ancient runs of two anadromous (ocean going) species: (1) wild and hatchery-raised Chinook salmon (Oncorhunchus Tshawytscha) and (2) wild Redband Steelhead Trout (Oncorhunchus mykiss gairdneri). Chinook probably colonized the stream sometime near the end of the last glacial epoch approximately 11,000 years ago "when the distribution of the species became essentially continuous."14 Both species require cool, clean, highly oxygenated water for spawning and rearing, which, along with preferred gravels, makes *Yáwwinma* prime habitat for Chinook and steelhead.

The prehistoric ancestors of the people we now know as Nez Perce who visited Rapid River absolutely depended upon fish, and salmon in particular, for their economic survival.15 At least three additional species of food fishes—bull trout *('ís´lam*), west slope cutthroat trout (*wa´wá.lam*), and Rocky Mountain white fish (*címey*)—have also resided in *Yáwwinma* from prehistoric times to the present. Along with suckers and chiselmouth, these species have also played important, if lesser, roles in the traditional Nez Perce life for centuries. And so has a third anadromous species almost equally as valued for food as Chinook: the Pacific lamprey (*héesu*).[16]

Rapid River has been a continuously-used fishing site for the Nez Perce peoples of Idaho, Washington, and Oregon. In his examination of the importance of fishing to Nez Perce history and culture, anthropologist Alan Marshall refers to Rapid River as "a traditional fishing stream."[17] In Verne Ray's ethnographic field notes during his work with the tribe, one of his informants said, "Rapid River was *yawinma*, here about 4 miles from the mouth was a good fishing place."[18] The authors of the management plan for Hells Canyon National Recreation Area note the "strong connection between tribal members, Rapid River [yáwwinma] and the associated salmon fishery."[19] Oral accounts echo the importance of the site, and the Nez Perces note specific bands within their tribe who utilized the area, such as the White Bird band, which often wintered in the region surrounding present-day Riggins, Idaho, and stayed for the spring run.[20] According to one Nez Perce informant, Chief Whitebird had a ranch near Rapid River, called *tamsaspa* ("place of wild roses"), and it was near this site where a Nez Perce and a Snake

[14] Robert J. Behnke and Joseph R. Tomelleri, *Trout and Salmon of North America,* Chanticleer Press, 2002, 30.
[15] For more information on this topic, see Kenneth C. Reid and James D. Gallison, "The Nez Perce Fishery in the 19th Century: A Review of Historic, Ethnographic, Archaeological and Environmental Evidence," Rainshadow Research Project Report No. 25. Submitted to Idaho Power Company, October 1994; Alan Marshall, "Nez Perce Social Groups: An Ecological Interpretation," Doctoral dissertation. Washington State University, 1977; and Herbert Joseph Spinden, *American Anthropological Association Memoirs,* Kraus Reprint Corporation, Volume 2, Part 3, 1908.
[16] Lance Hebdon, interviewed by James Hepworth, October 13, 2015.
[17] Alan G. Marshall, "Fish, Water, and Nez Perce Life," *Idaho Law Review,* University of Idaho College of Law, Vol. 42, No. 3 (2006), 776.
[18] n.d. Field Notes on Nez Perce Boundaries and Land Use. In Verne Ray Papers, Nez Perce. Box 17, Gonzaga University, Foley Center Library, Special Collections Department, Spokane, Washington, page 107.
[19] Appendix K, "Wild Rapid River Resource Assessment," in "Hells Canyon National Recreation Area Comprehensive Management Plan" (2003), K-2.
[20] David A. Sisson, "Lower Salmon River Cultural Resource Management Plan," MA thesis, Oregon State University, 1984, 26.

(Shoshone) had a fight that resulted in the Snake cutting off the Nez Perce's nose.[21] During the Indian Claims Commission hearings in the 1950s and 1960s, ethnologist Stuart A. Chalfant identified Rapid River as one of the principal areas for Nez Perce fishing in the Salmon River drainage system.[22] Chalfant identifies two traditional Nez Perce trails that crossed the area near Rapid River, as well.[23] During the stand-off between the tribe and the State of Idaho in 1980—detailed further in this report—tribal members repeatedly noted that Rapid River was a traditional fishing area used by their ancestors.[24]

Although non-Indian residents of nearby Riggins claimed that they rarely saw Nez Perce fishers prior to the conflicts of 1979 and 1980, tribal members responded that Rapid River was "a significant tribal fishery but that the Indian began going there in fewer numbers as white settlers and gold prospectors entered the area."[25] Josiah Pinkham explained how the natural and traditional fishing season at Rapid River, prior to a state- regulated season, lasted over six weeks. In the twentieth century, Pinkham explains, families might only go there for a few days before they had caught enough fish to supply their family, and often people fished at night. Pinkham says when he went there as a child, prior to the 1980 standoff, he only remembers seeing a few other families; but, he explains, this was due to individuals and families using it at different times during that longer fishing season. Once the fishing season became more concentrated into a shorter period of time, naturally the visible numbers of fishers increased.[26] Wilfred Scott, who was chair of the Nez Perce Tribal Executive Council (NPTEC) during the stand-off, has similar memories, saying that many times when he and his family fished at Rapid River, it seemed that they were alone.[27] Katherine (Katsy) Jackson, Nez Perce, echoes this memory of twentieth century use, saying that in the 1940s and 1950s, she remembers most families fishing at Rapid River for short periods, although there were times when certain families would camp at the site for the entirety of the natural fishing season, sometimes for two months.[28] Another tribal member, Allison K. (A.K.) Scott, agrees and remembers feeling like he and his family had the site, which he described as "close to his heart," to themselves during their annual fishing trips.[29]

Other Nez Perce informants also note that throughout the twentieth century, tribal fishers continued to use the area. Sryveneas (Butch) McConville remembers his father going there frequently in the 1940s, before there were houses in the region. McConville said that a non-Indian challenged his fishing at Rapid River, and he responded, "I was here when there was

[21] Field Notes on Nez Perce Boundaries and Land Use, page 113.
[22] Stuart A. Chalfant, "Aboriginal Territory of the Nez Perce Indians," submitted as Defendants' Exhibit No. 24, Docket No. 175 for Indian Claims Commission, in *American Indian Ethnohistory: Indians of the Northwest: A Garland Series*, ed. David Agee Horr (New York: Garland Publishing Inc., 1974), 76.
[23] Chalfant, "Aboriginal Territory of the Nez Perce Indians," 90.
[24] David Johnson, "Officers cite but don't arrest six Nez Perce fishermen," *Lewiston Morning Tribune* (hereafter referred to as *LMT*), June 14, 1980, A1.
[25] Johnson, "What is Idaho Power's role in the controversy," *LMT*, June 29, 1980, A1.
[26] Josiah Pinkham interview
[27] Wilfred Scott, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 10, 2016.
[28] Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.
[29] Allison K. Scott, interviewed by Mario Battaglia, Lapwai, ID, May 16, 2016.

nothing here and now you're trying to kick me out."[30] Roderick Scott says that he fished with his father at Rapid River in the 1950s, too.[31] Echoing this long-standing assertion that Rapid River was a traditional fishery for the Nez Perce tribe, the regional newspaper, the Lewiston Morning Tribune, commented in 1980, "There isn't much debate about whether the Rapid River, four miles south of Riggins, is an ancestral fishing area for the Nez Perce Tribe."[32] Roderick Scott said simply of fishing at Rapid River, "We've been doing this forever. Since God put us here, we've been doing this forever."[33] Rapid River fit into a larger seasons round for the Nez Perces, and was one of the many connections between the people, their culture, and their landscape.

Pre-contact migrations

Fishing at sites such as Rapid River was just one part of the Nez Perces' traditional pre-contact annual cycle. The Nez Perces were seasonally migratory, utilizing different portions of their traditional territory, roughly 17 million acres and including areas in southeastern Washington, northeastern Oregon, western Montana, western Wyoming, and northern central Idaho.[34] This route was circular in nature and emphasized a larger understanding of the land and its resources.[35] In the early spring, the tribe travelled to the Snake, Columbia, and Salmon River valleys to catch salmon, fishing at a multitude of the river's tributaries including the Rapid River. Early root crop gathering supplemented these spring runs. As spring moved to summer, the tribe relied more on roots in higher elevation areas that ripened later, such as camas, bitterroot, kouse, and wild onion. Berries (ranging from chokeberries, hawthorn berries, and huckleberries) as well as pine nuts, and sunflower seeds added to the summer diet and preservation needs. Fall hunting, later root and berry crops, and the fall salmon runs finished out the tribe's food stores moving into winters.[36] The Nez Perces spent the winter months in different winter villages in the warmer river valleys.

In his anthropological field work with the Nez Perces, Eugene S. Hunn, found that fishing and gathering provided ninety percent of the food needs for the tribe.[37] This highlights the importance of fishing sites, not just during the spring or fall runs, but for the entire year. Because of the importance of fish to their diet, the Nez Perces naturally had numerous sites within their seasonal migrations. The Nez Perces' annual cycles highlighted the need for fish and put an emphasis on fishing sites and on major rivers and tributaries. As Josiah Pinkham noted, "It's

[30] Sryveneas (Butch) McConville interview.
[31] Roderick (Waddy) Scott, interviewed by Mario Battaglia and Nakia Williamson, Lapwai, ID, May 5, 2016. There are different spellings for Roderick's nickname. The *Lewiston Morning Tribune* spelled it "Waddy," whereas Roderick spells it "Waddo."
[32] Johnson, "What is Idaho Power's role in the controversy," *LMT*, June 29, 1980, A1.
[33] Waddy Scott interview.
[34] The Nez Perce Reservation and its location," available online at http://www.nezperce.org/rezinfo/npreservation.htm.
[35] Marshall, "Fish, Water, and Nez Perce Life," 779.
[36] Deward E. Walker, Jr., "Nez Perce," in *Handbook of North American Indians: Plateau*, vol. 12, ed. Warren L. D'Azevedo, Washington, DC: Smithsonian Institution, 1998, 420-421.
[37] Eugene S. Hunn, *Nch'i-Wàna "The Big River": Mid-Columbia Indians and Their Land*, Seattle: University of Washington Press, 1991, 118.

easier to say where didn't they fish, and the answer is, nowhere really." Pinkham explains that it is accurate to say Nez Perce have fished for something everywhere along the Rapid River.[38] Utilizing the resources of the land to sustain the tribe required a deep connection to the landscape and its cycles, and a knowledge of the constantly changing and evolving needs of tribal members.

Salmon and culture

Understanding the importance of Rapid River for the Nez Perce requires an understanding of salmon within the Nez Perce culture and their environment. As Levi Carson, a member of the Wallowa band of Nez Perce describes it, "I look around this valley and what built it—the trees, the animals, the people—and what I see is that it's all built on salmon DNA. We evolved with them. Our religion, our food, our trade: salmon DNA. We keep the salmon, keep bringing them back, we keep who we are. Self- determined. 'With no conditions attached,' just like the treaty says."[39] Water and salmon were essential to the lives and culture of the tribe. As the tribe notes, "The land and its water define the Nez Perce way. Over the course of thousands of years, nature has taught us how to live with her. This intimate and sacred relationship unifies us, stabilizes us, humbles us. It is what makes us a distinct people and what gives us our identity."[40]

For the Nez Perces, salmon is the foundation for nearly all aspects of their lives. As Carson noted in his comments interview, salmon is not just a food source for the Nez Perce; it is part of their religion, their way of life. Marshall echoed this view, noting that "The story of the Nez Perce is the story of fish, game, roots, water, and earth."[41] In pre-contact times, salmon provided up to half of the tribe's food supply and the tribe used all parts of the salmon to fully take advantage of this resource.[97] In telling stories about fishing for salmons as she grew up in the twentieth century, Katsy Jackson said that no part of the salmon was ever wasted. The heads, the tails, and the bones were all utilized for different purposes.[42]

To attain this vital food source, the fishers used equipment ranging from dip nets, spears, hooks, seines, and weirs, adapting their equipment and techniques to the conditions of the water and the location.[43] Salmon provided not only a food source for the Nez Perces throughout the year, but it was also a valuable trade item. Their extensive trade network included tribes from the Northern Plains region to the Pacific Coast, and dried salmon, salmon pemmican, and salmon items were three highly prized commodities that the Nez Perce used within these trading relationships.[44] As

[38] Josiah Pinkham interview
[39] Steven Hawley, *Recovering a Lost River: Removing Dams, Rewilding Salmon, Revitalizing Communities,* Boston: Beacon Press, 2011, 205.
[40] Department of Fisheries Resources Management Strategic Plan Ad Hoc Team, "Nez Perce Tribe Department of Fisheries Resources Management Plan 2013-2028." 2013, 5. Available online at http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf
[41] Marshall, "Fish, Water, and Nez Perce Life," 763.
[42] Katsy Jackson interview.
[43] Anthony Johnson, NPTEC chairman, testimony before the U.S. Senate Committee on Indian Affairs, July 20, 2004. Found in Gudgell, Moore, and Whiting, "The Nez Perce Tribe's Perceptive on the Settlement of Its Water Right Claim in the Snake River Basin Adjudication," 566.
[44] Ibid., 567

historian Joseph E. Taylor III notes, salmon is a ubiquitous food source in the Northwest, no less important for symbolic purposes for tribes as it was for sustenance. While Taylor conceded that the Nez Perce relied less heavily on salmon than tribes closer to the Pacific Ocean, he notes this had to do more with stream size and elevation, as both these made water levels fluctuate more severely for tribes further inland, such as the Nez Perce.[45] Even with this, Taylor notes that the Nez Perce "claimed at least fifty different fishing sites in the Snake River basin, each of which could produce between 300 and 700 salmon a day."[46] Rapid River is one of these sites, and as other sites have become compromised with increased non-Indian settlement, it has become one of the more significant ones, connecting pre-contact history to the present. Traditional Nez Perce stories reveal the cultural connections of salmon fishing, and also allow for major lessons to be imparted to different generations of Nez Perce. The connection between salmon fishing and life lessons is a common thread in Nez Perce history and culture.

One Nez Perce story highlights the importance of salmon to the tribe, as well as recognizes the importance of protecting the salmons' annual upstream migration. In the story "The Maiden and the Salmon," which Archie Phinney, Nez Perce, recounted in 1934, Salmon (who begins as a human) gives his wife (also human) instructions to return a part of his body to water if he is killed, or else he will not be able to regenerate. The Five Wolves decide to kidnap Salmon's wife, and have Rattlesnake bite Salmon to kill him. As he dies, a drop of Salmon's blood returned to the water and Salmon is able to be reborn. He set out to rescue his wife and avenge his murder. An elder helps him along the way, and he gives the elder a stream full of salmon as a token of appreciation. He also punishes Coyote who was planning to "ravage" the salmon. Salmon punishes him by instructing the salmon to avoid Coyote's river. He ultimately rescues his wife and kills four of the Wolves, but Salmon and his wife have to dive into the water to escape. He transforms both of them into fish and they swim free.[47] Taylor notes that this story highlights the importance of restoring salmon to the waters and protecting upstream migration as well as epitomizing the "cultural construction of salmon," within Nez Perce culture and tradition.[48]

Salmon as a whole represents an important aspect of Nez Perce culture and specific fishing sites were a major part of this. Josiah Pinkham relates a fishing story that is specifically tied to Rapid River:

> "The story that I heard when I was a young boy, and this is from one of my uncles, there was a point in time when the Nez Perces were encamped there [*Yáwwinma*]. And then they broke off and they wanted to go farther upstream. And there was an elderly couple that wanted to stay behind; they didn't want to embark and go with the rest of the Nez Perces, and so they chose to stay behind.

[45] Joseph E. Taylor, III, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis*, Seattle: University of Washington Press, 1999, 17.
[46] Taylor, *Making Salmon*, 20.
[47] Archie Phinney, "The Maiden and Salmon," in *Nez Percé Texts, Columbia University Contributions to Anthropology*, vol. 25, New York: Columbia University Press, 1934, 205-227.
[48] Taylor, *Making Salmon*, 31.

> They would carry on their daily activities. And, you know, the woman would cook food, the man would disappear down the river, and he'd go down and would be gaffing, or whatever. He would take his poles—he had a couple gaff poles he would take with him—and he wondered off one direction. And his wife, she was busy cooking, and finally she came to the point where she realized, 'Oh I need to call him in, the food's done cooking.' And she wandered out, calling for him, and she didn't hear anything back from him, so she went looking for him. And as she was going along, she would hear off in the distance, 'Ooh, touched one.' It sounds like his voice, so she cued in on him, and followed along a little bit more, and she heard, a little bit louder, 'Ooh, touched one.' And, walk along, and got a little bit louder. And pretty soon, you know, she could see him. What he did was he took off all of his clothing, and he waded out in the water, and got on top of this rock that was out in the middle of the stream. And he had his gaff pole, and he was reaching way over on this rock and trying to hook salmon like that. And he just couldn't get the right angle on it, and he just barely touched one like that trying to get the hook in it, and he would go, 'Ooh, touched one.' Like that. And she's looking at him, and she thinks, 'Oh, I know what to do.' And she found his other gaff pole laying on the side of the stream, and she, of course, took the hook off. And she was waiting for him, waiting for him to bend over like that. And he was just about to get one, and she reaches over and taps him on the tullets like that, you know. They're hanging down and 'Ooh, touched one,' she yells like that. And he turns around and she's says, 'Time to eat.'"[49]

During fishing seasons, different generations of Nez Perces fished side-by-side and stories such as "The Maiden and the Salmon" or the one Pinkham related were told to the younger generation. Fishing has both a practical side—it provided basic subsistence and provided a valuable trade commodity—and a symbolic side, captured in the process of fishing. Fishing for salmon is itself an integral part of the Nez Perce culture.

Throughout their history, it has been primarily males within the tribes who have acted as fishers. Marshall notes that the task groups that fish "are important for developing gender identity and demonstrating a man's ability to contribute to the community."[50]

This aspect has been a constant aspect for the tribe, continuing through the twentieth century and into the twenty-first. The Nez Perce utilized hook and line, spears, harpoons, dip nets, traps, and weirs. Constructing the larger traps and the weirs brought tribal members together, as this was a communal process. The process was "regulated by a fishing specialist," indicating the degree of cultural and natural resource knowledge the tribe employed for fishing.[51] Nez Perce informants in 2016 interviews frequently discussed being taught how to fish and how to make their own

[49] Josiah Pinkham interview.
[50] Marshall, "Fish, Water, and Nez Perce Life," 773.
[51] Walker, "Nez Perce," 421.

equipment (gaff poles and nets, for example) by their male elders.[52] Boys accompany male family members to traditional fishing spots to learn how to use and repair fishing equipment, and in this process they also learn about the various factors that shape successful fishing, such as water conditions, access to the best locations, and balancing the number of fishers with the numbers of salmon. These fishing expeditions are marked by males of the tribe sharing their knowledge of not only fishing, but of tribal ways, history, and culture. Marshall explains:

> "More broadly, they learn about the natural world and its spiritual dimensions through guided and independent exercises; the history of their family, community, and tribe through stories of past adventures and reminiscences of older men; what it means to be a man in a group of men, family, and community, and the myths which are the reference books of Nez Perce life."[53]

Identifying fishing as only within the male sphere is misleading, though, as women and girls were instrumental in the process. Women typically cleaned and dried the spring catch, as well as processed fish during hunting times while men were gone from the camps.[54] Hunn argued that women were instrumental in organizing all efforts regarding food, which required knowledge of both the timing of salmon runs as well as the best locations for fishing.[55] Robert McCoy comments in his work that "Timing and planning were crucial activities and constant awareness of changes in the environment was required in order for the seasonal round to be successful. Women, in particular, played an important role."[56] In the twentieth century, more women and girls from the tribe began fishing, as well. Katsy Jackson, a Nez Perce tribal member, discussed how women in her family always fished. She has a photograph of her grandmother fishing, wearing her wing dress - and standing in the river with her pole. Jackson rejects any notion that women fishing was not part of the traditional cultural way.

During the 1980 conflict, many of the Nez Perce cited for violating the state-imposed fishing ban were women.[57] A.K. Scott described women as integral during the entire standoff.[58] One man, whose daughter was half Nez Perce, wrote a letter to the editor in the Lewiston Morning Tribune, commenting that he took her to Rapid River so she could fish with her tribe and experience this traditional activity, as well as learn "the Indian views on nature; about the land (which should not be damaged), about the rivers (which should not be barricaded) and most importantly, about the native people (who are very strong when united towards a common goal)."[59]

[52] Josiah Pinkham interview; Waddy Scott interview; and Basil George, Jr., interviewed by Mario Battaglia and Nakia Williamson, Lapwai, ID, May 4, 2016.
[53] Marshall, "Fish, Water, and Nez Perce Life," 774.
[54] Robert McCoy, *Chief Joseph, Yellow Wolf and the Creation of Nez Perce History in the Pacific Northwest* (Routledge Press, 2004), 34-35.
[55] Hunn, *Nch'i-Wána*, 119-121.
[56] McCoy, *Chief Joseph*, 31.
[57] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[58] Allison K. Scott, interview.
[59] Eric J. Thompson, letter to the editor, *LMT*, July 13, 1980, D3.

In pre-contact times and extending to the present, women typically were responsible for taking the salmon harvest and turn it into various foods, such roasting it for immediate consumption, or preserving it (whether by freezing, canning, smoking, or drying it).[60] Going back to at least 2500 years ago, Columbia River Indians preserved salmon for winter consumption by breaking the meat into tiny pieces and pulverizing it before drying. Phinney's translation of "The Maiden and Salmon" refers to this method when Salmon instructs the Maiden to insure his return after his death.[61] Preservation of the salmon was important not only to provide food resources for the tribe during the lean winter months, but also to utilize it for trade.

The Nez Perce approach to salmon fishing demonstrates their understanding of the natural world and balance, as well. As the salmon runs began each year, Nez Perce fishers were required to wait a few days before starting their harvest. This benefitted fishers further upstream, as well as animals that also depended on salmon. Additionally, this waiting safeguarded future salmon numbers because it allowed for the annual spawning.[62] The Nez Perces made a conscious effort every season to leave some of the salmon in the river.[63] Nez Perce culture, like many other American Indian nations, stresses considering the effects of any action on the next generations. For the Nez Perce, then, one season's fishing was not more important than fishing for the entire tribe for the next seven generations. Even up to present times, the Nez Perce perspective "defines conservation as harvesting in a manner consistent with sustaining human uses of the salmon populations … for time periods equal to at least the next seven generations of humans. Thus, the tribal perspective on conservation includes the concept of indefinitely sustaining all species and life history types of salmon at levels of abundance sufficient to permit human uses."[64] Tribal elder and historian Allen Pinkham explains:

> "We utilized the salmon resource, we didn't deplete it. We utilized what was necessary to sustain our lifestyle and life ways, both spiritually and physically. Nobody does that anymore. Non-natives see only the salmon as a commodity that gets bought and sold. Not thinking about the survivability of that salmon as a species."[65]

The practical purposes of salmon catching are equaled by the religious or spiritual aspects of it. As Thomas (Tàtlo) Gregory said, "You have a relationship with those creatures. They're not just there…They have a spirit too."[66] Allen Slickpoo, Sr., Nez Perce elder, noted that "Salmon

[60] Marshall, "Fish, Water, and Nez Perce Life," 774
[61] Taylor, 1999, 24
[62] Nez Perce Tribe, *Treaties: Nez Perce Perspectives*, 8
[63] Allen V. Pinkham, Sr., "A Traditional American Indian Perspective on Land Use Management," *Landscape and Urban Planning*, Volume 36, Issue 2 (November 1996), 94.
[64] R Mundy, T. W. H. Backman, and J. M. Berkson, "Selection of Conservation Units for Pacific Salmon: Lessons from the Columbia River," in *Evolution and the Aquatic Ecosystem: Defining Unique Units in Population Conservation*, American Fisheries Society Symposium, vol. 17, 29.
[65] Pinkham, Sr., Allen V. "A Traditional American Indian Perspective on Land Use Management." Landscape and Urban Planning, 36, Issue 2 (November 1996): 96.
[66] Thomas (Tàtlo) Gregory, interviewed by Mario Battaglia, Lapwai, ID, April 29, 2016.

fishing was considered to be a sacred symbol identified in religious ceremonies."[67] One of the most important of these ceremonies was the *ka-oo-yit*, the ceremonial feast at the beginning of the fishing season. In this feast, the Nez Perce gave thanks to the Creator, and to the salmon for returning again. This ceremony, the Nez Perce believed, "helped to insure that the salmon would return the next year."[68]

These ties between the salmon and the Nez Perce spiritual beliefs did not vanish in the post-contact world. Writing in the late 1970s, Marshall commented that locating, catching, process, distributing, and consuming fish is still a significant part for the Nez Perce culture and its economy.[69] Orrin Allen, Nez Perce, says "I can remember that when the first salmon showed up, some of the elders would go down to the edge of the water and offer prayers of thanksgiving."[70] Emphasizing the connection between Nez Perce culture, religion, and salmon and water, Axtell explained:

> "According to our religion, everything is based on nature. Anything that grows or lives, like plants and animals, is part of our religion. The most important element we have in our religion is water. At all of the Nez Perce ceremonial feasts the people drink water before and after they eat.
>
> The water is a purification of our bodies before we accept the gifts from the Creator. After the feast we drink water to purify all the food we have consumed. The next most important element in our religion is the fish because fish comes from water."[71]

For the Nez Perces, there is no separating themselves out from their environment. They view the Earth as their mother, and all flora and fauna as part of her body. Protecting the Earth, then, takes on a heightened cultural value. Pinkham, a former tribal council member and chair of the Columbia River Tribal Fish Commission, said that streams and rivers are like veins, "just the same as veins in mother earth's body, the rivers that give her life."[72]

Cultural connections to Rapid River

The emphasis on salmon, fishing, and the fishing process as a whole denote the importance of traditional cultural fishing sites, such as Rapid River. The Nez Perce utilized the canyon in which Rapid River runs and the river itself for generations before non-Indians entered the area in the nineteenth century.

[67] Dan Landeen and Allen Pinkham, *Salmon and His People: Fish and Fishing in Nez Perce Culture*, Lewiston, ID: Confluence Press, 1999, 24.
[68] Landeen and Pinkham, *Salmon and His People*, 91.
[69] Marshall, "Fish, Water, and Nez Perce Life," 772.
[70] Landeen and Pinkham, *Salmon and His People*, 54.
[71] Ibid., 55
[72] Pinkham, "Traditional American Indian Perspective," 94.

There are significant cultural and spiritual connections for the Nez Perce tribe to this site. As Roderick Scott explained in a 2016 interview, the site is tied up with larger feelings. He says Rapid River signifies the respect and honor the tribe feels toward the larger world:

> "That old way, you might say that old way with the earth, having that respect, walking on it, different things, the Creator, the opportunity to do this, I can see, I can walk, I can run, I can swim, you know, I can taste, I can eat.
>
> All those things that God gave us, you know. As a human being, I can feel that. Not just there, but many places as I walk. And to have that feeling, that feeling there as I'm praying [at Rapid River] it makes it beautiful. Makes it beautiful…beyond the word beautiful, you know. There's something else, you know, beyond beautiful, sort of magical you know, feeling."[73]

An archaeological report on the region surrounding Rapid River, completed in 1970, stated that archaeological sites there indicated human use over a long period of time.[74] This study emphasized that this region contained an "extraordinary" amount of history for the Nez Perce.[75] In the 2003 Management Plan for Hells Canyon, the authors note that Rapid River and the area surrounding the river corridor hold importance to the Nez Perce for religious activities and fishing.[76] The plan stated that this made Rapid River of "outstandingly remarkable value" since the traditional uses at Rapid River offer a valuable cultural resource for the tribe.[77] Archaeological resources for the region are still difficult to find, and a 2015 report lays the blame for this on non-Indian use of the region in the twentieth century.

This report is a cultural resources inventory completed by the Idaho Power Company in anticipation of proposed modifications at the Rapid River Hatchery, and it included surveys for both the archaeological and historical resources found around the hatchery. The report said that any Nez Perce cultural resources were unlikely to be found through archaeological work due to the extensive landscape modification the area around the Hatchery had undertaken in post-contact years, including non-Indian ranching and the hatchery itself.[78]

The changing use of the area around Rapid River in the post-contact years echoes a larger theme in U.S. history. The story of non-Indians moving onto traditional Indian lands and reshaping the landscape is a common one in the American West. In the *twentieth* century, treaty rights and fishing sites took a lower priority than other concerns, such as providing electricity and irrigation

[73] Waddy Scott interview.
[74] Earl Swanson, Jr., "The Archaeological Resources Of The Salmon River Canyon: A Methodology Study to Develop Evaluation Criteria for Wild and Scenic Rivers," (Water Resource Institute, University of Idaho), 1.
[75] Ibid., 4
[76] Appendix K, "Wild Rapid River Resource Assessment," K-2.
[77] Ibid., K-3.
[78] Robert Jones and Jessica A. Dougherty, "Archaeological and Historical Survey Report, Archaeological Survey of Idaho: Cultural Resources Inventory for the Rapid River Fish Hatchery, Riggins, Idaho," prepared for Idaho Power Company, 2015, 9.

water, which came "at the expense of the fish."[79] Historian Richard White, in his study of the Columbia River, bemoans the commodification of the Columbia which reduced it to a machine that humans had both "literally and conceptually disassembled" in their quest to gain economic value from the river's resources.[80]

White's comments apply equally to the Snake River and its tributaries, including Rapid River. For the Nez Perce nation and its related bands, Rapid River was a traditional fishing site, associated with traditional cultural practices that ranged from religious to practical. The failure to find archaeological sources at Rapid River owes more to the changing nature of the region, as it became a contested site for the Nez Perces and non-Indians. Rapid River itself became part of a larger machine, to use White's terminology, once the Idaho Power Company had to mitigate for spawning losses due to dams elsewhere, detailed later in this report.

Nineteenth and twentieth century historical overview of the Nez Perce Tribe

Nez Perce history demonstrates successful utilization of their traditional territory's resources. Seasonal migrations allowed for the tribe, and different bands within it, to successfully utilize their territory at different parts of the year, but, as Josiah Pinkham emphasizes, "The Nez Perce were created right here. We have always been right here."[81] Allen Pinkham says that this "circular motion" throughout the Nez Perce territory allowed for the most efficient and effective use of their resources, and demonstrated a keen knowledge of the landscape, the needs of the people, and the changing weather.[82] In 1805, however, the arrival of non-Indians into their territory shifted the Nez Perces' history.

The Lewis and Clark expedition marked the beginning of a new era in Nez Perce history, as it began what was at first a slow trickle of non-Indian immigrants to the area.[83] The numbers of non-Indians increased as the nineteenth-century wore on, growing from an estimated twenty to thirty per year on Nez Perce lands to up to 1000 per year in the 1840s.[84] This heightened encroachment on Nez Perce land coincided with the growth (both in terms of physical size and power) of the United States, which affected how the U.S. government shifted in its dealings with tribal nations. As evidenced by contradictory policy and legal cases, the federal vacillated in its opinions of how to best deal with tribes, varying from blatant themes of military conquest to more subtle forms of cultural conquest. The changing relationships between the federal government and different Indian nations, and their lands, demonstrate this ongoing ambiguity and inconsistency throughout the nineteenth and twentieth centuries.

[79] Chuck Williams, "The Dammed Columbia," in *Western Water Made Simple*, ed. *High Country News* (Island Press, 1987), 68.
[80] Richard White, *The Organic Machine: The Remaking of the Columbia River* (New York: Hill and Wang, 1995), 110.
[81] Josiah Pinkham interview.
[82] Pinkham, "Traditional American Indian Perspective," 94.
[83] For more on the tribe's interactions with the expedition, please see Allen V. Pinkham and Steven R. Evans, *Lewis and Clark Among the Nez Perce: Strangers in the Land of the Nimiipuu*
(2015).
[84] Nez Perce Tribe, *Treaties*, 23.

Legal historians point to the 1787 "good faith" doctrine for how the federal government initially intended to deal with tribes. Article three of the 1787 Northwest Ordinance said in regard to the relationship between the federal government and tribes that "The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken without their consent." For a new nation, weakened by its recent fight for independence and financially tottering as it carved out its place in the world, continued wars with Indian nations was not the most feasible option. However, by the middle of the nineteenth-century, the U.S. had adopted a paternalistic tone with tribes, best highlighted in the 1831 Supreme Court decision Cherokee Nation v. Georgia, which referred to Indian tribes as wards of the federal government. Ideas of "manifest destiny" propelled more non-Indians to the American West, crowding onto tribal lands and leading to competition for finite resources. For the Nez Perce, as with other tribes, choices were limited in dealing with these trespassers, and often boiled down to diplomacy or war.

In 1855, under severe pressure from the federal government and because of increased non-Indian settlement on their lands and some divisions within the larger tribe, the Nez Perce agreed to a treaty with the U.S. The 1855 treaty negotiations that ultimately resulted in the creation of a reservation for the Nez Perce included representatives of the Umatilla, Yakama, and Nez Perce Nations. This 1855 treaty resulted in the Nez Perce ceding 7.5 million acres of their land, but the tribe also reserved specific rights, such as hunting, gathering, grazing, and fishing rights. The fishing rights noted that the Nez Perce could fish at all "usual and accustomed places" and did not specify that this was a right for only the land enclosed within the reservation.[85] Anthropologist Alan Marshall notes that the Nez Perce viewed the treaty as a recognition of the "sharing of access to the land." He continues that although treaty discussions did not include an extensive discussion of fish and water, this is more indicative of Nez Perce beliefs that fishing rights were "not negotiable."[86] The Nez Perce signed the treaty after being "threatened, cajoled, [and] begged."[87] In return for the land, the Territorial Governor of Washington, Isaac Stevens, promised many things. Jim Matt, a Nez Perce present at the treaty negotiations, said that these promises, most notably financial aspects and reservation boundaries, were never kept.[88]

A common aspect of Indian treaties with the federal government was that the U.S. would keep non-Indians off reservations. The 1855 treaty with the Nez Perce nation was no different in this regard; Article 2 said that the reservation was "for the exclusive use and benefit of" the Nez Perce tribe and no "white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent."[89] Chief Looking Glass was emphatic about this point in treaty discussions, clarifying multiple times that only Nez Perces were to be permitted on the land and

[85] Treaty with the Nez Perce, (June 11, 1855), 12 Stat. 957. Available online at http://www.ccrh.org/comm/river/treaties/nezperce.htm.
[86] Marshall, "Fish, Water, and Nez Perce Life," 792.
[87] Hawley, *Recovering a Lost River*, 188.
[88] Nez Perce Tribe, *Treaties*, 40.
[89] Treaty with the Nez Perce, (June 11, 1855), 12 Stat. 957. Available online at http://www.ccrh.org/comm/river/treaties/nezperce.htm.

that it was the federal government's responsibility to keep trespassers out.[90] This was another promise from the federal government that quickly evaporated. Examining nineteenth-century relationships between the federal government and Indian nations demonstrates one of the broad patterns of history in this regard: a dismissal of similar passages in negotiated treaties, especially when non-Indians discovered valuable resources on reservation land. For the Nez Perce, this pattern quickly played out with the discovery of gold.

In the spring of 1860, a small band of miners led by E.D. Pierce, trespassed onto the Nez Perce reservation. Upon the miners' discovery of gold, the Nez Perce treaty faded from the minds of non-Indians in the region. The Nez Perces turned to the federal government to enforce the reservation's boundaries and the treaty's stipulations. The reservation's agents and the army both attempted to stem the tide of invaders in ways that Dennis Baird, Diane Mallickan, and W.R. Swagerty, editors of *The Nez Perce Nation Divided: Firsthand Accounts of Events Leading to the 1863 Treaty*, called both "heroic and feeble at the same time."[91]

The agent wrote for additional assistance, but even prior to the gold rush on Nez Perce lands, the federal government had already disappointed the tribe in regards to upholding the treaty. Promised annuities never arrived and non-Indians settlers had already encroached on the land, and the tribe's agent, C.H. Mott wrote in 1859 that "We have taken from these people a country—some of which is as fine as ever the sun shone on; we have made millions of money by the bargains we compel them to accept, and yet refuse to comply with our portion of the contract."[92] During the autumn just the discovery of gold, A.J. Cain, the agent at Walla Walla Valley wrote to the Superintendent of Indian Affairs in a fairly prescient letter that the Nez Perces' growing concern over white encroachment could lead to conflict, noting that, "Should their [Nez Perce] minds ever become fully impressed with the idea that they are being deluded with false hopes by the government until whites should be too numerous for them to offer resistance, war would be inevitable."[93]

If the federal government could not keep white settlers from Nez Perce land prior to the glittering promise of gold on the land, why should the Nez Perce have assumed protecting reservation boundaries would become a priority when money came into play? Although the Superintendent of Indian Affairs, Edward R. Geary, noted that the "peace of the country" depended on preventing white encroachment on Indian land, the numbers continued to increase over the summer of 1860 after Pierce's discovery.[94] Geary wrote to the Nez Perce Agent Cain in August of that year, imploring the agent to "employ all the authority and means, with which you are invested in virtue of your office, to prevent all lawless forays among the Nez Perce within the limits of the Reservation," because the consequences would not only be disastrous for the tribe but also "to the lives and property of our citizens on the frontier…employ all the authority and

[90] Nez Perce Tribe, *Treaties*, 41.
[91] Dennis Baird, Diane Mallickan, and W.R. Swagerty, *Nez Perce Nation Divided: Voices from Nez Perce Country*,, Caldwell, ID: Caxton Press, 2004, 3.
[92] Ibid., 7.
[93] Ibid., 31.
[94] Ibid., 38.

means, with which you are invested in virtue of your office, to prevent all lawless forays among the Nez Perce within the limits of the Reservation."[95] Cain requested additional military assistance but the army arrived too late.[96]

Over the next year, the numbers of trespassers continued to increase dramatically. The non-Indians did not seem inclined to leave, and they built up permanent dwellings. The town of Elk City, Idaho, in the middle of the Nez Perce reservation, for example, increased from three "brush shanties" to twenty log cabins in only two weeks in the late summer of 1861.[97] Faced with intrusions and not seeing adequate assistance from the United States government—distracted by the Civil War—portions of the tribe negotiated a special agreement that allowed for limited mining on parts of the reservation.[98]

As the Senate debated on the merits of reducing the Nez Perce reservation and an accompanying $50,000 appropriation, Oregon Senator J.W. Nesmith bemoaned the unethical policies of the federal government that had led to this point, discussing how the Indians had been "quietly robbed of their patrimony" while distracted by the "florid eloquence" of those who promise them protection of their members and their land.[99] The Nez Perce tribe was well aware as they entered treaty negotiations in 1863 that their position was vulnerable in the wake of increased white settlement, and the recent past failures of the federal government to uphold its 1855 treaty likely did not instill great confidence in a new treaty. Nez Perce Chief Lawyer commented on the "bad faith" of the government in complying with earlier treaty provisions and noted that the majority of the tribe opposed ceding more land.[100] Lawyer reminded government representatives at the treaty negotiations that it was the United States, and not the Nez Perce, who had broken the 1855 treaty.[101]

Although various agents and the Superintendent of Indian Affairs noted in correspondence their despair over the encroachments, their words did not match the government's actions as the U.S. moved forward to take more Nez Perce land. On June 9, 1863, a new treaty proposed a reduction of Nez Perce land staggering in its magnitude. The treaty reduced the Nez Perce reservation from 7.5 million to 750,000 acres. The Nez Perce fought to preserve as many of their traditional ways as possible with this land cession, and argued forcefully to have hunting and fishing rights included in the treaty. In those negotiations, the tribe insisted on that the hunting and fishing provisions which the 1855 treaty had confirmed remained in place in this newest version.[102] As is clear in Nez Perce history and culture, the need for hunting and fishing extended beyond sustenance for the tribe, especially when it came to salmon fishing. Julia Davis, a contemporary

[95] Ibid., 43-45.
[96] Ibid., 61.
[97] Ibid., 121.
[98] Ibid., 141.
[99] Ibid., 179.
[100] Ibid., 313.
[101] Ibid., 336.
[102] Nez Perce Tribe, *Treaties*, 42.

Nez Perce, has said, "We need the salmon for our future and for our children. We need the salmon because it is part of our lives and part of our history."[103]

As the Nez Perce stipulated again in treaty discussion in 1863, fishing had a larger symbolism in Nez Perce life. Looking at how many of their traditional lifeways had already been compromised since white settlement had begun on their lands, the Nez Perces turned to one of the cornerstones of their tradition: salmon. Wanting this important bond between them and their ancestors protected, as a later tribal member said, the Nez Perce ensured that they kept their fishing rights during the 1863 treaty negotiations.[104] The Superintendent of Indian Affairs in Washington, Calvin H. Hale, promised at the treaty council that the federal government fully intended to "act with perfect justice towards" the Nez Perce and that the new limited lands of the reservation would provide for easier protection of the Nez Perces against trespassers.[105] The tribe's various chiefs attempted to procure a larger reservation, but repeatedly met with negative replies.

Although Chief Lawyer and fifty-one Nez Perces signed the treaty, leaders such as Joseph and White Bird refused to sign what many of the tribe still refer to as the "Steal Treaty."[106] In perhaps the biggest real estate bargain in its history, the United States gained over ninety percent of Nez Perce reservation lands for approximately eight cents per acre, as Hale was quick to brag.[107] Included in the lands taken from the Nez Perce were traditional fishing sites, such as those along Rapid River. One of the treaty's stipulations required that all Nez Perce bands move within the new reservation boundaries within a year. The divisions within the tribe, from those opposed to the treaty and those who accepted it, became more evident over the next few years, culminating in violence on Nez Perce land (as Indians and non-Indians alike died[108]) and ultimately a war between the non- treaty Nez Perce and the federal government in 1877.

The war between the United States and the Nez Perces came at a time of heightened anxiety in the American West. Following the deaths of Lt. Colonel George Custer and 263 of his soldiers at the Battle of Little Bighorn in June of 1876, the federal government, moved by the calls for vengeance from its citizens, pushed more aggressively to force Nez Perces who had refused to relocate to reservation lands to comply with the treaty of 1863. Following a council near Tolo Lake in 1877, the non-treaty bands reluctantly agreed to move to the reservation. However, three youthful members of the tribe murdered seventeen white immigrants along the Salmon River, in what later Nez Perce called a response to the "inequity, injustice, and absolute absurdity of this forced move from their beloved and rightful homeland."[109] The murders prompted a vindictive reaction from the U.S. military, which moved to forcefully ensure the "non-treaty" Nez Perces

[103] Landeen and Pinkham, *Salmon and His People*, 111.
[104] Ibid., 112.
[105] Baird, Mallickan, and Swagerty, *Nez Perce Nation Divided*, 348.
[106] Ibid., 42.
[107] Ibid., 419; and Alvin M. Josephy, Jr., *The Nez Perce Indians and the Opening of the Northwest*, abridged version, (Yale University, 1965), 406.
[108] Alvin M. Josephy, Jr., estimates more than 25 Nez Perces died in the years immediately following the treaty, and perhaps one or two non-Indians. Josephy, *Nez Perce Indians and the Opening of the Northwest*, 422.
[109] Nez Perce Tribe, *Treaties*, 48.

relocated to the reservation.[110] The military, under the command of General Oliver Howard, pursued bands of Nez Perces through Hells Canyon to White Bird Pass in the late spring of 1877.

The Nez Perces raised a white flag of truce outside of Chief White Bird's village, but Colonel David Perry ordered his troops to attack in what proved to be a major folly. The Battle of White Bird Canyon on June 17, 1877, resulted in two Nez Perces wounded and thirty-four U.S. soldiers dead.[111] Realizing that this battle was only the beginning, the non-treaty Nez Perces, led by Chief Joseph, began an 1100-mile trek to Canada with the hope of refuge there. As the federal troops chased after the Nez Perce over that summer and fall, the two groups clashed time and time again, reducing the numbers of Chief Joseph's followers from 800 to 431. Facing limited options, and only forty miles short of his goal of Canada, Chief Joseph reluctantly surrendered to protect his people.[112]

As Horace Axtell recalled, those who attempted to disavow the 1863 treaty and its stipulation that the Nez Perce be confined to a dwindling reservation were those "who wanted to hang onto old ways of the Indian culture: traditions and spirituality."[113] The 1863 treaty did not mention fishing rights, which had been explicitly outlined in the 1855 treaty. Article 8 of the 1863 treaty stated that "all the provisions of said treaty which are not abrogated or specifically changed by any article herein contained, shall remain the same to all intents and purposes as formerly," which the Nez Perces understood to mean that they retained all fishing rights in their "usual and accustomed places."[114]

The United States, under the guidance of General William T. Sherman, punished many of the warriors who had fought in the War of 1877 by removing them from their land, placing in Indian Territory (present-day Oklahoma) instead of the reservation in Idaho. Chief Joseph campaigned for seven years to have his people rightfully returned to their land, meeting with the President, the Interior Secretary, and other federal officials in the intervening years.[115] On May 22, 1885, 118 Nez Perces who had participated in the war and been exiled from their land finally returned to the Pacific Northwest[116]

The next few decades marked a period of transition for the Nez Perces. Confined to a small portion of their original homelands and cut off from many of their traditional cultural ways, fishing in their "usual and accustomed places" was not an easily achieved goal, as white settlement in northern Idaho continued. Federal policy regarding tribes also transitioned during

[110] For more information on the impetus behind this military mobilization and the Nez Perce response, please see Elliot West, *The Last Indian War: The Nez Perce Story* (2009).
[111] Greene, J. A. (2000). *Nez Perce Summer 1877: The U.S. Army and the Nee-Me-Poo Crisis.* Helena, MT: Montana Historical Society Press.
[112] Nez Perce Tribe, *Treaties*, 48.
[113] Ibid., 49.
[114] The 1863 Treaty can be viewed in its entirety at http://www.ccrh.org/comm/river/treaties/np63.htm
[115] Josephy, *Nez Perce Indians and the Opening of the Northwest*, 622.
[116] Ibid., 623.

this time, and federal agencies put more weight on assimilating natives into non-Indian culture. The focal point of this was the Dawes Act of 1887, which sought to transform American Indians into small farmers by breaking up the reservation land held in common by their tribe and allotting 160-acre plots to individuals. The remaining acreage was opened to non-Indian settlement and the 1895 "land rush" onto Nez Perce lands was the culmination of this new assimilation policy. The Dawes Act is largely recognized as a failed policy, resulting in the loss of approximately 90 million acres of Indian holdings and dramatically increasing poverty levels on reservations. For the Nez Perces, the story was much the same: by 1923, the superintendent of the Nez Perce Reservation recorded that tribal members only owned 100,000 acres of land, as compared to non- Indians' 650,000 acres.[117]

With a dwindling land claim, the Nez Perce tribe held up its treaty in an effort to protect other aspects of Nez Perce culture, but Nez Perce treaty rights regarding fishing were already under attack early on in the twentieth century. Nez Perce member Henry E-nah-la-lamkt noted in 1911 that any Nez Perce who wanted to fish, "even near his own home," had to apply for a game license. He continued, "Our people hold that in direct violation of their rights under the treaties and a confiscation of the principal part of the compensation they were to receive for their large cessions of land."[118] This inability to exercise their treaty rights came at a time when traditional ways of life by the Nez Perces were under attack. As the Dawes Act emphasized permanent dwellings and agriculture, Nez Perce agents and the federal government worked to end seasonal migrations, including those centered around fishing (whether for subsistence or for spiritual reasons). Agriculture proved a difficult task on much of the reservation, and this compounded larger issues facing the tribe during the allotment era (1887-1934). The tribe suffered from an increase in diseases at this time, most likely owing to a combination of increased contact with non-Indians and a decreasing ability to procure native foods—such as camas and salmon, specifically—to combat dietary diseases.[119]

Twentieth century changes and Rapid River

The federal government ended the allotment process in 1934. Its recognition of tribal autonomy and sovereignty, demonstrated through the "Indians' New Deal" and other programs of the 1930s, gave way in the post-war years to a renewed attack on traditional culture. Using terms such as "termination," the federal government moved in the 1950s to end treaty rights and tribal sovereignty. This dismissal of treaty rights and the larger rejection of traditional culture by non-Indians gave rise to a civil rights movement, largely headed by younger tribal members. The American Indian Movement (AIM) gained steam in the 1960s and 1970s, drawing attention to treaty abrogation, the failures of the federal government to protect tribal rights, and the continued attack on tribal culture and sovereignty. AIM's protests at Alcatraz and Wounded

[117] Elizabeth James-Stern, "The Allotment Period on the Nez Perce Reservation: Encroachments, Obstacles, and Reactions," in *American Indian: Past and Present*, ed. by Roger L. Nichols, 5th edition, University of Arizona, 1999, 200.
[118] Nez Perce Tribe, *Treaties*, 41.
[119] Ibid., 55.

Knee may have seemed far removed from Idaho, but by 1979, these fights came to Rapid River.

For the Nez Perce, Rapid River was a common fishing site throughout the twentieth century. Tribal informants talked about travelling there with their families and camping for an extended period of time during the salmon runs. Katsy Jackson and Butch McConville discussed camping in the vicinity, prior to the highway being constructed. They remember the area being completely open prior to this construction, allowing for more camping by tribal members.[120] Basil George, Jr., said that when he was a young child, in the late 1960s and early 1970s, the tribe often fished at night because that was when most of the salmon ran. Jason Higheagle Allen reiterated in a separate interview that nighttime fishing was the most successful.[121] A.K. Scott said he preferred fishing at night partially to feel alone and partially because it felt safer.[122] George recalled being able to shine a light on the water at night and see the backs of all these fish all throughout the river, which he said was just "unreal" for the numbers of fish there were.[123] Gordon Higheagle said he and two other friends went fishing at nighttime in 1971 and caught at least twenty fish in a half hour.[124]

The conflict at this traditional Nez Perce fishery resulted from the construction of dams along the Snake and Columbia Rivers and their effects on salmon, and it reflected larger growing tensions between Indians and non-Indians over fishing rights due to recent legal decisions, such as *Puyallup Tribe, Inc. v. Department of Game* (1968), *Sohappy v. Smith* (1969), and *U.S. v. Washington* (1974), more commonly known as the Boldt Decision. *Puyallup v. Department of Game* said that a state could regulate hunting and fishing on tribal lands if there were threats on propagation.[125] The next year in *Sohappy v. Smith*, the issue of conservation again was upheld by a court as a justification to limit tribal fishing, but this decision stated that a state had to regulate fisheries in a manner that guaranteed Indians a "fair and equitable share" of the catch.[126]

The Boldt Decision redirected attention to the language of the treaties themselves. This decision focused on the working of "usual and accustomed grounds" in many treaties, such as the in the 1855 treaty with the Nez Perce tribe. Judge Boldt said that "usual and accustomed grounds" were defined as all sites where tribes and tribal members had fished or hunted prior to the treaty.[127] Non-Indian fishers, including commercial fishers and sport fishers, protested Boldt's decision and David Wilkins and K. Tsianina Lomawaima explain in their book, *Uneven Ground: American Indian Sovereignty and Federal Law*, that this led to "violent and ugly"

[120] Highway 95 was essentially completed in the late 1930s, although work continued to improve certain portions over the next decade. For more information on the history of the construction, please see "North and South Highway bringing to reality old dreams of united Idaho," in the *Lewiston Morning Tribune*, May 3, 1936, 1
[121] Jason Higheagle Allen, interviewed by Mario Battaglia and Jim Hepworth, Lapwai, ID, May 6, 2016.
[122] Allison K. Scott interview.
[123] Basil George, Jr. interview.
[124] Gordon Higheagle, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 10, 2016.
[125] Stephen L. Pevar, *The Rights of Indians and Tribes*, 4th edition (Oxford University Press, 2012), 194.
[126] Landeen and Pinkham, *Salmon and His People*, 115
[127] Pevar, *Rights of Indians and Tribes*, 196.

confrontations between Indians and non-Indians in the 1970s. State agencies, Wilkins and Lomawaima continue, refused to enforce the ruling, and this left a "bitter legacy" throughout the West as "fish wars" dominated the fishing scene for the decade.[128] The events at Rapid River in 1979 and 1980 echo this.

These three court cases came during a time of increased protests over treaty rights, and specifically as different tribes and individual tribal members staged "fish-ins" at their usual and accustomed places to draw attention to broken treaties. Charles Wilkinson, American Indian legal historian, refers to the Boldt Decision as "the lighting strike" that changed everything. He notes that for tribes, "It wasn't just getting a fair share of the fish, but they had the right to act as sovereigns. These tribes really did not have working governments, certainly as far as the outside world was concerned. Afterward they set up courts, environmental codes and crack scientific operations – it gave them confidence."[129] Events at Rapid River did the same for the Nez Perces, reflecting this larger pattern.

Construction of dams and the Rapid River Fish Hatchery

For the Nez Perces, these legal decisions came in the wake of vast changes to their landscape and their fisheries as a result of dams built in the second half of the twentieth century. The federal government had considered constructing dams in Hells Canyon since the 1930s, in an effort to assist Idaho's agriculturally-based constituents with irrigation. Part of the same impetus as earlier reclamation acts to bring water to arid and semi-arid lands, the irrigation argument fell to the wayside after a proposal by the Corps of Engineers noted that the canyon was perhaps too isolated for much agriculture. Consequently, in the 1940s, the arguments for needing dams in Hells Canyon shifted. Proponents for dams argued that they would help develop the Snake River basin for maximum public benefits, providing flood control and hydroelectric power. Idaho Power Company became part of the negotiations over these dams in the early 1950s, and it proposed the construction of three low dams to help with flood control and power. Its proposal appealed to federal government officials because it would not use any federal funds, as a reclamation project would have.

Additionally, if the federal government built the dams and operated a power company, this would deny a private company this right. With fears of "creeping socialism" and Cold War anti-communism reaching a fever pitch in the 1950s, the discussions over Idaho Power's involvement took a different tone. President Eisenhower weighed in on the Hells Canyon project, believing that a federally-owned power company took the nation dangerously close to communism. Ultimately, in 1955, the Federal Power Commission (FPC) authorized Idaho Power to construct

[128] David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001), 238-239.
[129] Christi Turner, "Boldt ruling to let Natives manage fisheries is still vastly influential, 40 years later," *High Country News*, February 14, 2014, available online at https://www.hcn.org/blogs/goat/40-years-later-the-boldt-decision-legacy-still-being-laid.

the dams and control power in Hells Canyon.[130]

Idaho Power began the construction of the dams in the mid- 1950s. One of the goals was to "conquer, tame, and harness" the region.[131] There were a variety of clauses attached to Idaho Power's contract to build the dams, and one was dealing with the potential loss of salmon the dams created. The FPC required Idaho Power first to contribute $250,000 to the Interior Department for a study on this and to help devise a mitigation program. Additionally, Idaho Power had to "arrange to build and operate hatcheries, fish ladders, fish traps, and other means of fish transport across the dams and then pay for their operation and maintenance."[132]

Dams were part of a larger process that had, in the twentieth century, affected salmon runs in Idaho. Mining, farming, and ranching had all negatively impacted salmon numbers prior to Idaho Power's involvement. Additionally, going back to the nineteenth century, commercial harvesters had used ecologically-unsound methods to catch salmon.[133] In his article on salmon, Pat Ford discusses how non-Indians in Idaho, since the creation of the state in 1890, allowed for over-fishing to deplete salmon runs. He argues that this over-fishing coincided with the depletion of fish habitats due to settlement, irrigation, logging, grazing, and mining.[134] However, the dams in Hells Canyon demanded new attention to the salmon's population and the mitigation agreement Idaho Power entered into with the FPC addressed the loss of salmon. Early efforts to maintain salmon runs in Hells Canyon following the dams' construction failed within the first few years, and Idaho Power developed a hatchery program to help mitigate the unsuccessful runs.[135] These projects eliminated an estimated 50% of the salmon and steelhead habitation in Idaho.[136] Idaho Power built four hatcheries as a result of this: Oxbow Fish Hatchery (Oregon), Niagara Springs Fish Hatchery (Idaho), Pahsimeroi Fish Hatchery (Idaho) and Rapid River Fish Hatchery (Idaho).

The Rapid River Fish Hatchery (RRFH), built in 1964, was charged with artificially propagating spring Chinook salmon, steelhead, and fall salmon.[137] The Hatchery uses the water from Rapid River itself, and this provides a level of protection since this drainage became protected under 1968's Wild and Scenic Rivers Act. RRFH is now the "largest collection, spawning and rearing facility of spring Chinook in Idaho."[138]

Although Idaho Power owns the hatchery, the Idaho Department of Fish and Game operates it,

[130] Susan M. Stacy, *Legacy of Light: A History of Idaho Power Company*, (Boise, ID: Idaho Power Company, 1991), pgs. 135-148.
[131] Stacy, 152.
[132] Ibid., 153.
[133] Ibid., pgs. 206-207
[134] Pat Ford, "The View from the Upper Basin," in *Western Water Made Simple*, 87.
[135] 1Paul E. Abbott and Mark H. Stute, "Evaluation of Idaho Power Hatchery Mitigation Program," in (Idaho Power, 2003), 1. Available online at https://www.idahopower.com/pdfs/Relicensing/hellscanyon/hellspdfs/techappendices/Aquatic/e3104.pdf.
[136] Ford, "The View from the Upper Basin," 88.
[137] "Rapid River Hatchery," available online at http://fishandgame.idaho.gov/public/fish/?getPage=103.
[138] "Our Fish Story: Idaho Power's Fish Conservation Program," pamphlet from Rapid River Fish Hatchery (2013).

with the goal of producing three million spring Chinook smolts every year. This goal has changed since RRFH's beginnings, and a 2001 technical report for Idaho Power on the mitigation agreement notes that this is due to the "experimental nature" of the hatcheries.[139] Essentially, in the 1960s when the hatcheries began operation, no one was sure exactly how many smolts and returning salmon would be needed, but these numbers became more solidified by the late 1970s. Currently, between 100,000 and 1 million fish are transported to the Snake River and released below Hells Canyon dam. RRFH clip the adipose fin of each smolt from the hatchery to identify them as hatchery-produced fish. When adult salmon return to Rapid River, this identification marks them separately from the naturally reproduced population.[140] RRFH, built seven miles south of the town of Riggins at the base of the Seven Devils Mountains, is located within traditional Nez Perce fishing grounds.

In its first decade, RRFH suffered a series of setbacks in its propagation efforts. Various diseases, including a nitrogen disease, negatively affected the smolts and the returning salmon; in 1976 different state and federal fishery agencies, including the National Marine Fisheries Service, and Fish and Game Departments from Idaho, Oregon, and Washington, filed a Declaratory Order Amending and Supplementing Orders Prescribing Fish Facilities with the FPC. In this petition, these different agencies charged that the Idaho Power Company had failed to provide adequate mitigation for the losses of anadromous fish. In 1980, Idaho Power, the FPC, and the various agencies came to an agreement for future efforts, summarized in the Hells Canyon Settlement Agreement.[141] This agreement did not require any modifications for RRFH, but an important aspect to note regarding the negotiations and litigations over this agreement in the years between 1976 and 1980 is that the Nez Perce Tribe was not included in these discussions.

Nez Perce fishing at Rapid River, post-hatchery

It is within the context of the developing fish hatchery programs of the 1960s and 1970s, AIM's protests, and the growing awareness of treaty violations that the conflict between the Nez Perce Tribe and the State of Idaho is best viewed. In the second half of the twentieth century, various events and historical patterns directed the nation's attention to the fishing rights of tribes. For the Nez Perce, this played out in different ways. The tribe created its own Fish and Wildlife Commission in 1998, but decades before that, the tribe began paying a great deal of attention to protecting not only their treaty rights but also the sites that held spiritual, historical, and cultural connections for the tribe. With this, the tribe turned its attention to Rapid River, which the tribe defines as one of the "usual and accustomed" fishing places, pointing out that the White Bird and Looking Glass bands historically used this sites in the nineteenth century.[142] A.K. Scott remembers fishing at Rapid River to take fish to the centennial commemoration of the Nez Perce War of 1877, making the connection between the spiritual and cultural value of the site and the

[139] "Evaluation of Idaho Power Hatchery Mitigation Program," 4.
[140] "Rapid River Fish Hatchery Tour Information," pamphlet from Rapid River Fish Hatchery.
[141] "Evaluation of Idaho Power Hatchery Mitigation Program," 6-7.
[142] Nez Perce Tribe, *Treaties*, 78.

larger Nez Perce history.[143]

This site, though, had become contested because of the hatchery. Non-Indians began fishing there more in the 1960s and 1970s, and reacted negatively when members of the Nez Perce tribe fished there. Although the site is most remembered for the 1979 and 1980 stand-offs, tensions were rising for years before that, most notably as non-Indians grew angrier over tribal fishing rights. Conflict occurred in different ways, ranging from derogatory remarks non-Indians made about Nez Perces, to direct threats against tribal members.

One tribal member, Basil George, Jr., recalls an incident in 1978 when he was thirteen, where non-Indians shot at him, his step-father, and his cousin. According to George, the white men pulled up near the river at nighttime when George's group was fishing, and started making threats about killing Indians. Although these men did not see George and his group, the men started to load shells into their rifles and began firing randomly at spots along the river. George remembers the event as terrifying, as he, his father, and his cousin waded out into the bank, holding on to tree roots, shivering, and waiting for the men to leave. George said, "I was just scared, just cold, shaking in the water."[144] Gordon Higheagle related a story where he spent the day fishing at Rapid River in the early 1970s, catching approximately twenty fish. As he was driving home, he was pulled over and the officers demanded that he take out all of the fish and lay them out on the road so officers could count them. Higheagle questioned the officers on why he had to do this, since he had treaty rights to fish at the site, and he never received a true answer. Ultimately, the officers told Higheagle he could keep the fish and they drove away.[145] The purpose of this interaction was confusing to Higheagle at the time and remains so even now, but it emphasizes a larger harassment and provocation that echoes the general feeling of division between Indians and non-Indians, especially when it came to fishing rights. Incidents like these were vivid reminders to tribal members that non-tribal members resented tribal fishing rights. Tribal fishing rights became even more controversial when the returns of salmon diminished.

The 1979 conflict

The low returns of salmon to Rapid River and the hatchery there in the 1970s prompted a great deal of concern for Idaho Fish and Game. In 1979, the State of Idaho decided to close the Rapid River fishery in an effort, in its opinion, to protect the salmon. Nez Perces protested, saying that this was one of their "usual and accustomed" places to fish, emphasizing the traditional cultural value of the site. The State countered, saying the closure was a justified conservation method, necessary since there were too fish few returning to spawn.

Although survival rates for fish artificially spawned at Rapid River were higher that year—in May 1979, the Idaho Department of Fish and Game (IDFG) reported that there were 468,070 fish

[143] Allison K. Scott interview.
[144] Basil George, Jr. interview.
[145] Gordon Higheagle interview.

in the raceways, which marked a survival rate of 87%[146]—the adult salmon returning to Rapid River suffered from a nitrogen bubble disease. The Rapid River Hatchery reported a mortality rate of 32.4% for the trap overall, which was the second highest loss since the hatchery had opened fifteen years prior.[147]

By the late 1970s, those numbers had dropped substantially and the state stepped in. But closing the river to fishing provided a direct challenge to Nez Perce treaty rights. As Roderick Scott, a contemporary Nez Perce fisher who was one of the key participants in the 1980 standoff, explained, this was too much. After generations of Nez Perces seeing their land taken from them and from watching treaty rights being dismissed by non-Indians, the State of Idaho, and the federal government, a threatened closure on a traditional fishing site was too much for some individuals. Scott said, "You can close it for the sportsman, but you ain't gonna close it for us, you know, we have a right, the treaty says we have a right, you know."[148] His brother, A.K. Scott, who was a member of the Nez Perce Tribal Executive Council (NPTEC) in 1980 and also a key figure during the standoff, repeated this idea, noting it was important for Nez Perce fishers to "Never take anything for granted. Fishing and hunting…you never wanted to lose your right to do that."[149]

Aware that a closure could lead to conflict, the Department of Law Enforcement (DLE) became involved in the matter. According to Kelly Pearce, Director of DLE, on May 17, 1979, Joe Greenley, the Director of Idaho Fish and Game informed the DLE that, in Pearce's words, "militants on the Nez Perce Reservation did not intend to abide by any regulations imposed by the state upon the treaty rights to fish. A Fish and Game's intelligence report indicated that the militants were organizing opposition which includes the use of firearms against Fish and Game personnel or law enforcement personnel if an attempt was made to restrict the Nez Perce fishing rights."[150] To avoid an armed confrontation, Pearce said that the DLE urged the Nez Perce Tribal Executive Committee (NPTEC) to adopt a resolution that would essentially ban salmon fishing on Rapid River until 2,700 mature salmon passed through the trap. Twenty-seven hundred was the number of fish Idaho Power said was necessary to meet its Federal licensing requirements for installation of the dams on the Snake River.[151] NPTEC agreed to limit fishing until the 2,700 number had been reached, but it declined to issue a complete ban. The tribe repeatedly emphasized self-regulation during the conversations, and NPTEC said that tribal members would only fish on the weekends.

[146] Jerry Conley, director, Idaho Department of Fish and Game (IDFG), "Evaluation of Spring Chinook Salmon Emigration, Harvest and Returns to Rapid River Hatchery, 1979, and Report of Operations at Rapid River Hatchery," in Annual Performance Report: Report to Idaho Power Company (from 1 October 1978 to 30 September 1979), 1. Located at Idaho State Historical Society (ISHS) archives.
[147] Ibid., 2.
[148] Waddy Scott interview.
[149] Allison K. Scott interview.
[150] Kelly Pearce, Idaho Department of Enforcement, to Governor John Evans, Boise, Idaho, March 20, 1980. Located in John Evans collection, Rapid River box, Idaho State Historical Society archives (hereafter referred to as Evans collection).
[151] It is important to note that this number is somewhat fluid, allowing Idaho Power and Idaho Fish and Game to be flexible in its annual responses to changing fishing, harvesting, and environmental needs.

During the 1979 season, tensions remained high between tribal fishers and the IDFG, as well as between the tribe as a whole and non-Indian residents in Riggins. The regional newspaper reported on the "atmosphere of simmering hostility," that had resulted from the state's closure.[152] The Hatchery was located near a subdivision of homes, and the tribe's camp (100 feet from the Hatchery) was visible to residents. Pearce commented that "to say that tensions existed between the residents of the river subdivision and the Nez Perce is the understatement of the year."[153] He added that the non-Indian residents complained about the tribe littering, urinating and defecating in full view of residents, and "yelling, drum beating, horn honking" at night.[154] Riggins residents complained to the governor about this, as well. Richard Ziegler, a member of the board of directors for the Rapid River Homeowners Association, wrote that the residents were "asked to condone the petty thefts that occurred, listen to screaming, swearing, and the beating of drums throughout the night, and even have threats made against us and our homes."[155]

The state's closure went into effect on June 5, and both the tribe and state mobilized quickly. The state readied a SWAT team to combat what it saw as militant protests, a move the Tribe's Chairman, Wilfred Scott, called "chicken shit."[156] Twenty-nine tribal members camped at the Indian fishery that weekend, and the Governor said he wanted to compromise with the tribe. A.K. Scott said that he remembers about twenty officers coming into their camp and he said that this was the first time an IDFG officer pointed a gun at tribal members.[157] One of the options Governor Evans offered was to allow the tribe to police itself, but to allow for the arrest of a single Indian fisherman as a "token move."[158] The tribe rejected this compromise and the State Director of Law Enforcement said that he had ordered his officers to cite any Nez Perce who even stepped into the water; tribal members did not have to even catch a fish, but just show an intent to attempt to catch one.[159]

As tribal members argued that they held treaty rights and this the land surrounding Rapid River as well as the river itself was "sacred ground," as they told one *Lewiston Morning Tribune* reporter, the cultural clash and the divided opinions on treaty rights between tribal members and non-Indians became apparent.[160] One hatchery official said that although the tribe was viewing this as a political issue, it boiled down to a biological issue: "What they've got to remember is that the rights to nothing are still nothing."[161] The tribe was divided in its response to the closure—Gordon Higheagle, who was on NPTEC at the time, remembers that one of the concerns for the council was that tribal members had been raised in the ways of conservation and

[152] Johnson, "Showdown over salmon season likely," *LMT*, June 1, 1979, A1.
[153] Pearce to Governor Evans, Boise, Idaho, March 20, 1980. Located in Evans collection.
[154] Ibid.
[155] Richard Ziegler, Board of Directors, Rapid River Homeowners Association, to Governor John Evans, Boise, Idaho. Undated. Located in Evans collection.
[156] *Lewiston Morning Tribune*, "Fishing ban enforcement begins today," June 5, 1979, A1.
[157] Allison K. Scott interview.
[158] Johnson, "Negotiations to avert fishing clash intensify," *LMT*, June 6, 1979, A1.
[159] Ibid.
[160] Ibid.
[161] Ibid.

were not immune to worrying about low numbers— but they were united in the belief that the state did not have a place in telling tribal when they could or could not fish. Higheagle explains that tribal conservation of natural resources "was in the minds of a lot of people of course because they knew that the runs were only a couple of hundred…a lot of people felt that it was important, though, that they [the State] could not tell us not to fish."[162]

After a tense weekend at the fishery, the tribe removed itself from the area, holding up to its regulation that tribal members would only fish on weekends. The Interior Department and Governor Evans offered another compromise at this point: they guaranteed the Nez Perces 2,500 salmon between June and September once the 2,700 fish were trapped and that the tribe could have a "symbolic" tribal fishery the upcoming weekend, if they agreed to a complete closure after that.[163] On June 7, the NPTEC agreed to a compromise that allowed tribal members to fish on both June 9 and 10, in return for 2,500 "jack" salmon and carcasses of spawned salmon for ceremonial use and consumption for the elderly and poor within the Nez Perce community. With this, the State of Idaho and the Interior Department vowed to work with the tribe to support further restrictions of off-shore commercial salmon fishing in the Pacific Ocean. Silas Whitman, a NPTEC member, said he had gone into negotiations with three priorities: preservation of treaty rights, preservation of the salmon run, and a desire to avoid a violent confrontation.

Whitman said the fishery was "part of our way of life" and couldn't be compromised: "It goes a lot farther than people can fathom. It goes beyond their (the fish and game department's) bureaucratic circle."[164] Emphasizing the cultural importance of the Rapid River fishery, the tribe agreed to the compromise and that weekend (June 8-10), approximately 80 Nez Perces fished at the site, catching 53 fish.[165]

The compromise verged on collapse when ten tribal members fished on June 13, and two tribal members (Roderick Scott and Leroy Avery) were arrested. Roderick Scott later said when IDFG arrested him, he had probably a dozen salmon in the bed of his truck. He had a friend with him at the time, and decided not to fight back during the arrest. His friend was also arrested and he received $50 bail; Scott initially received a bail of $2,500 but when he went before Magistrate Judge George Reinhardt in Idaho County, the judge increased it to $75,000. Scott sat in jail for the remainder of the year, working with AIM and different attorneys to get his bail reduced. The next year, the bail dropped to $5,000 and he was released.[166] Scott remembers feeling estranged from the tribe during this, and that the political leaders would not help him make bail, including his brother Wilfred Scott, the chair of NPTEC. The divisions in the tribe over how to approach protecting fishing rights is an important aspect in the story of the stand-off, and it affected the official tribal response and the responses of some of the protest leaders.

Although officers arrested Scott, IDFG continued to complain about this violation of the truce,

[162] Gordon Higheagle interview.
[163] *Lewiston Morning Tribune*, "Evans offers plan to break fish impasse," June 7, 1979, A1.
[164] Johnson, "Nez Perces sign pact, clash averted," *LMT*, June 8, 1979, A1.
[165] *LMT*, "All's quiet (still) at Rapid River," June 10, 1979, B2.
[166] Waddy Scott interview.

with Greenley noting it was "an open violation of the agreement, it's a violation of their own tribal proclamation, and a violation of state and federal regulations." Wilfred Scott, though, said that the tribe as a whole intended to keep its end of the bargain, but "just like any other society, we can't control everybody."[167] An IDFG officer said that some of the Nez Perce fishers had displayed a small pistol in a threatening manner at the officers, but within a few days Fish and Game agreed with Scott that this was an isolated incident and not a premeditated plan from the tribe to dismiss the recent agreement.[168]

The state removed the fishing ban on June 26, but the conflict allowed for a larger conversation about the traditional cultural value of the fishery for the tribe. Non-Indians in the region joined in the conversation by writing letters to the editor at the *Lewiston Morning Tribune* and the paper itself provided commentary on the legal and cultural backing of the conflict. The majority of letters written supported the Nez Perces and reaffirmed the treaty rights of the tribe. For example, Ed Rieckelman, who was educated and trained in wildlife resources, took issue with the conflict being framed by the State of Idaho as only a biological one. Rather, he said, it was clearly a political issue and one about power: "The issue is not a question of whether the Indians have the right to possibly cause the final demise of a native salmon run. It is a question of whether the American government has the right to reverse the provisions of one of its treaties simply because biologists feel it is necessary to save the salmon."[169] The *Lewiston Morning Tribune* compared the salmon to the buffalo of the Great Plains in terms of cultural and historical importance for Pacific Northwest tribes. Allen Slickpoo, Nez Perce, noted that salmon and the cultural practice of fishing for them was "a significant part of our history and culture," while other tribal members talked about the ancient customs of the tribe when it came to fishing at Rapid River.[170]

In addition to the cultural and political ramifications of the Nez Perces' treaty rights being ignored, the tribe continually maintained in June of 1979 that the closure was not biologically necessary. When the state lifted the closure, state officials noted it was because the run was much larger than what state biologists had predicted. Wilfred Scott replied, "I hate to say we told them so, but we did," and he reminded the state that tribal fishermen and tribal biologists had predicted these higher numbers.[171] Greenley remarked that the state had "erred" in its estimates. Once the ban was lifted, the newspaper reported that 75 tribal members returned to Rapid River to fish at what the paper referred to as "the tribe's traditional Chinook salmon fishery."[172] Acknowledging the traditional cultural value of the fishing site, the paper reaffirmed Rapid River's importance to the Nez Perce Tribe, which the tribe maintained superseded the state's regulation.

The 1979 season ended without armed conflict, but it set the tone for the next year as it had left

[167] Rita Hibbard, "Rapid River truce on the verge of collapse," *LMT*, June 14, 1979, A1.
[168] Allen K. Short, "Four cited for fishing near hatchery," *LMT*, June 15, 1979, B1; and *LMT*, "Fishing arrests 'isolated incident,'" June 15, 1979, B1.
[169] Ed Rieckelman, letter to the editor, *LMT*, June 17, 1979, D2.
[170] Associated Press, "Salmon: A withering way of life for Indians," *LMT*, June 18, 1979, B1.
[171] Short, "Indian fishing ban is removed," *LMT*, June 27, 1979, A1.
[172] Short, "Ban lifted, Indian fishermen return to Rapid River," *LMT*, June 29, 1979, C1.

animosity between different groups unsettled. NPTEC's resolution for tribal self- regulation, as well as an Indian fishery allowed on the weekends, had been ignored by IDFG. The issue of self-regulation became a focal point during the 1979 season as well as the 1980 season. For the tribe, Rapid River had cultural value that went above conservation rulings and propagation arguments.

Additionally, the tribe argued that their treaty rights gave them access to Rapid River and a state law did not supersede this. A.K. Scott noted that, "We feel a treaty right is a property right, and it can't be taken away or diminished without due process." [173] The tribe sent a letter to Governor John Evans protesting the "flexing of the mighty muscles of the United States Government," the dismissal of treat rights, and the disregard of the tribe's sovereignty after the NPTEC had called for self-regulation.[174]

Even after IDFG lifted the ban in late June, Greenley expressed frustration over Indian fishing. IDFG recorded an average of 45 fish per day during the 76-day trapping period in June and July 1979. There were days of significantly higher counts, such as June 12 and 13, when 244 adult salmon were trapped. On June 28, Nez Perce tribal fishing reopened and IDFG recorded the immediate results. On June 28, 233 adult salmon and 14 jack spring Chinook were trapped; on June 29, "after Indian fishing resumed," only 28 adults and 9 jacks were trapped.[175] The "Draft Operating Plan for Rapid River Hatchery with Consolidation for Fishery and Hatchery Management" spelled it out specifically: "Attainment of brood fish in sufficient numbers for ongoing hatchery programs has been thwarted by the tribal fishery."[176] For IDFG, the connection was clear: Indian fishing had plummeted the numbers of salmon trapped, and this belief guided decisions for the 1980 season. From the tribe's perspective, IDFG acted unilaterally without any consultation; the tribe also rejected the premise that they "were one of the primary causes for the decline of the fishery."[177]

1980 standoff

The State of Idaho, IDFG, and the tribe debated over the winter of 1979 going into the spring of 1980 how to best deal with another conflict during the fishing season. Richard Ziegler from Rapid River Homeowners Association had his own suggestion: that the Hatchery be dismantled and Hells Canyon be utilized instead to breed fish. As the fishing season grew closer, the tribe started to hear murmurs of another closure. How to respond to this proposed closure for the next season divided the tribe. The "prevalent opinions" were that the tribe should avoid a public dispute with the state's decision and adhere to the closure. Another portion of the tribe, though, formed the Nez Perce Tribal Fishermen's Group (frequently referred to by both the state and the tribe as the Fishermen's Committee). A.K. Scott said that this was necessary since many of the NPTEC members did not want to get involved in the grassroots movement at Rapid River; the

[173] Johnson, "Showdown over salmon season likely," *LMT*, June 1, 1979, A1.
[174] Ibid.
[175] Jerry Conley, "Evaluation of Spring Chinook Salmon Emigration," 2
[176] Jerry Conley, "Draft Operating Plan for Rapid River Hatchery with Consolidation for Fishery and Hatchery Management," internal memo dated Oct. 15, 1980. Located in Evans collection.
[177] Nez Perce Tribe, *Treaties*, 79.

Fishermen's Committee, he said, was created by tribal members in response to incidences at Rapid River.[178] This group was a divisive aspect, and anthropologist Alan Marshall refers to it as both "a political party and associated faction" of Nez Perces who were "characterized as a bad element in an otherwise peaceful tribe."[179] The Fishermen's Committee rallied support, though, among the tribe as a whole and were able unseat several members of the NPTEC who had voiced their concerns over any potential confrontation with the State over Rapid River.

Worried about a confrontation, IDFG worked with the State of Idaho Department of Law Enforcement to monitor both the Fishermen's Committee (which the DLE referred to as the "Fishermen's Alliance") and NPTEC. In a memo to Governor Evans on May 6, 1980, Pearce reported on the May 2 election of Allison K. Scott, Brad Picard, and Walter Moffet to the Executive Committee. Pearce noted that these three were "leaders of or clearly aligned to the 'Fishermen's Alliance' on the Nez Perce Reservation. Confidential information clearly indicates that the 'Fishermen's Alliance' intends to take a 'hard-line' run on the exercise of treaty fishing rights." Pearce also discussed Roderick Scott for his 1979 arrest for a Fish and Game violation. Pearce wrote that Scott had assisted in getting A.K. Scott, Picard, and Moffet elected and that he was "looked upon by the militants and others as a 'defender of treaty fishing rights.' Roderick Scott also styles himself as a 'spiritual leader' of 'his people' meaning all inhabitants of the Reservation, more particularly the 'Fishermen's Alliance' group."[180] Overall, Pearce warned that the change in the NPTEC's leadership had decreased the possibility of any peaceful exercise of the tribe's fishing rights.[181]

There was a generational issue at play in this, reflective of the influence of AIM and a growing awareness of the tribe in general that protecting treaty rights was paramount. For the younger adults of the tribe, this meant putting in leadership that would fight more aggressively for treaty rights. As the chair of the Nez Perce Tribal Council, Michael J. Penney, noted about the election in May of 1980, "The younger members of the tribe really flexed their political muscles."[182] In his article on the Nez Perces and their connections to water and fish, anthropologist Alan Marshall discusses the divisions in this matter, noting that "NPTEC and many of its conservative supporters deplored this potentially violent confrontation."[183] While all tribal members agreed that the treaty rights needed to be protected, the manner in which to do so was a matter of disagreement; NPTEC worried that by having a more militant response to the situation, the tribe might face a backlash, whereas the Fishermen's Committee argued that a radical action, such as an closures of the river and dismissals of treaty rights, required a radical response. Gordon Higheagle said that NPTEC was working on other matters at the time that would protect treaty rights and provide economic development for tribal members, and the council worried that the manner in which the Fishermen's Committee was approaching Rapid River might negatively

[178] Allison K. Scott interview.
[179] Marshall, "Fish, Water, and Nez Perce Life," 776.
[180] Pearce memo to Governor Evans, May 6, 1980, 1. Located in Evans collection.
[181] Ibid.
[182] *LMT*, "Scott elected in upset of Nez Perce council," May 4, 1980, B1.
[183] Marshall, "Fish, Water, and Nez Perce Life," 776.

affect these other areas.[184]

Following the election, the threat of conflict became much more real to Pearce at the DLE. The next day he sent another memo to Governor Evans, in which he said that the Fishermen's Alliance, according to a confidential informant, had acquired two 50-caliber machine guns and ammunition.[185] Later that month, Roderick Scott became the chair of the Lapwai chapter of the Fishermen's Committee, and his confrontational approach the previous summer regarding treaty rights made his new position a point of concern for the state.[186]

On May 13, 1980, the NPTEC passed a resolution that reaffirmed the tribe's fishing rights under the 1855 treaty. The resolution stated that "the state had exceeded its authority by infringing upon" the 1855 Treaty and that IDFG officials "have no authority to interfere with Indian people fishing on Rapid River," and it reasserted the tribe's jurisdictional rights at the river.[187] Wilfred Scott said that some earlier proposals from the state, including opening a "symbolic" Indian fishery at Rapid River were unacceptable because they infringed on the tribe's sovereignty.[188] The differences between the 1855 and the 1863 treaties became a pointed conflict that spring. The tribe maintained that the 1855 treaty gave them full rights to Rapid River, as it was a traditional fishing site for the Nez Perces, therefore protected by the wording of the treaty. Judge Reinhardt, though, of Idaho County had ruled that the Treaty of 1863 changed the boundaries of the reservation to the point that Rapid River fell out of the "Indian country" designation, and that therefore the state had jurisdiction there.[189]

Both sides seemed eager to avoid another confrontation that spring, but a public meeting in mid-May between NPTEC and IDFG was tense and produced no results. In this meeting, Brad Picard said that the state needed to realize that it did not have jurisdiction over a tribal fishery.[190] The Fishermen's Committee escalated tensions further at the meeting, when Roderick Scott, who had spent 186 days in jail for fishing violations from the previous summer, predicted violence: "If you're going to continue to harass the Indian nations, people are going to die."[191] Scott was angry not just over a potential closure, but also because the state had recently installed a security fence and concrete barrier around the trap without consulting the tribe. Looking back, in 2016, Roderick Scott said he felt galvanized to action and prepared to give his life for this treaty right:

> "The only way you're gonna stop me from fishing is you're gonna have to shoot me. And they almost did, they were gonna kill me….It was like… having your elders in front of you, and you have Fish and Game coming in and start beating on them, literally beating on them, that's what I felt in my heart. That's what you're

[184] Gordon Higheagle interview.
[185] Pearce memo to Governor Evans, May 7, 1980. Located in Evans collection.
[186] *LMT*, "Nez Perce fisherman name chapter officers," May 24, 1980, B4.
[187] Nez Perce Tribal Executive Committee, "Resolution," NP 80-350, located in John Evans collection, Rapid River box, ISHS archives. (Image 3800).
[188] *LMT*, "Return of salmon renews Indian fishing rights issue," May 14, 1980, C1.
[189] Ibid.
[190] Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," May 15, 1980, C1.
[191] Ib*id.*

> doing with the salmon. You're gonna tell them--you can't sing that song, if you are, we'll shoot ya, if ya sing that song. It's like—whaaaa? Cuz the salmon, they bring the songs back to us, they bring the songs to us, the salmon. Very special, special, the salmon. They come back here to die."[192]

His brother, A.K. Scott, also noted that the standoff came after years of seeing their treaty rights ignored and said, "We decided to say we'll give the ultimate sacrifice for what we believe in…the traditional spirit of our sacred mother earth."[193] Another tribal member, Clifford Allen, said that the state was overreaching in its jurisdiction and that there needed to be a native member on the Fish and Game Commission to help with cultural differences. Fish and Game insisted that it did not blame the tribe for the low numbers of the spring run for the previous year—only 3,049 had been trapped in the spring 1979 season—and recognized that it was the dams, but the cause did not change the results and the tribe needed to be open to limited fishing.[194]

As the spring run began slowly in early June, tribal members reasserted their treaty rights to the Rapid River fishery. Over the following months, public discourse on the issue demonstrated an awareness of the stakes. The *Lewiston Morning Tribune* referred to Rapid River as "a symbol of federal treaty rights granted in perpetuity to Idaho's Nez Perce Indians."[195] In an editorial for the *Tribune*, Bill Hall said that the tribe had no other choice but to fish because "when the state presumptuously orders them to stop fishing—even for sound reasons of conserving the run—it unilaterally sacrifices the integrity of a treaty to the salvation of a fishery. It abuses clear Indian rights. Naturally, the Indians feel they must fish simply to prove they can—to affirm their challenged treaty rights."[196]

Other letters commented on the Nez Perce getting punished for the failures of conservation in other areas, specifically looking at the dams. As one letter writer wrote, "If we had listened to the Indians in the first place we wouldn't be having these problems now."[197] In a letter to the editor in early June, Allen Slickpoo, Senior, a Nez Perce tribal member, described Rapid River as one of the "usual and accustomed" places of the Nez Perce, and said he had been fishing there for years. He referred to the river as one of the "aboriginal streams" of the Nez Perce.[198] Slickpoo expressed worry, though, that another confrontation would weaken the tribe's rights if the state

[192] Waddy Scott interview
[193] Allison K. Scott interview.
[194] Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," *LMT*, May 15, 1980, C1. Conley and other state officials in Idaho potentially felt that Idaho was on the outside of river management programs in the 1970s. Non-Indian fishers in Idaho complained in the 1970s that management and allocation meetings for the Columbia and Snake Rivers excluded them, and the irony of being left out of these decisions in the midst of the tribe's treaty rights being ignore is apparent. As one observed noted, "Everybody else did to Idaho what Idaho and others did to the tribes earlier—shut them out." Ford, "The View from the Upper Basin," 90.
[195] Short, "Rapid River: Once a quiet stream, it's become a focal point for a political struggle," *LMT*, June 15, 1980, A1.
[196] Bill Hall, "This battle belongs in the courts," *LMT*, June 20, 1980, D1.
[197] Allen Slickpoo, Sr., letter to the editor, *LMT*, July 6, 1980, D2.
[198] Slickpoo, letter to the editor, *LMT*, June 1, 1980, D3.

became vindictive toward the tribe for asserting its rights. Another letter to the editor from a separate writer noted, "The issue at Rapid River is not the conservation of salmon but in reality is a further attempt to break a treaty…If the people allow the U.S. government to kill off native nations in the name of conservation and national sacrifice, then there is no future for you or your children."[199]

For the tribe, it was not just an issue of treaty rights being infringed upon in one isolated year; rather, it was the threat of continued abrogations and what this would mean for traditional cultural practices of the tribe. "How do they expect our children to learn how to fish," a member of the Fisherman's Committee asked, "if they keep closing the river to us?"[200] One of the leaders at the stand-off, Roderick Scott, echoed this thought in a 2016 interview, commenting, "They say if you don't use it, it will go away. If you don't use what the Creator's givin' you. Bye. Go away. Gotta have that perspective, you know."[201] John S. Wasson accused the state and IDFG of a "conspiracy" to "eradicate Nez Perce fishing (and hunting) rights," and tied the current issue in with larger historical trends of treaty abrogation.[202] The Fisherman's Committee stated in an ad they took out in the *Lewiston Morning Tribune* that the protests over fishing were due to the spiritual and cultural practices of the Nez Perce being infringed upon, practices that had been occurring at Rapid River "for eons with no conservation problems." The ad accused the State of Idaho and the federal government of using an alleged conservation issue as a as a thinly veiled excuse to break the treaty. The ad said that non- Indians had taken as much Nez Perce land as they could throughout history and "now they want our way of life also."[203]

Katsy Jackson said in a 2016 interview discussing arrests and citations during the conflict, "All we're doing is what comes natural, what we've done for years and years, and these guys come along with all their news and regulations. We used to fish all these creeks here without trouble."[204] She derided the State for ignoring how non-Indians violated fishing rules and instead only focused on Indian fishers, commenting sardonically that Fish and Game's just wanted to, "Catch them Indians! Stop them Indians. Too much fish. They're trespassing on their own land. They're taking their own fish."[205]
Jason Higheagle Allen described the Nez Perces' bewilderment over being cited for exercising their treaty rights, saying, "Well, it was confusing because it was our right to be there. Because I was thinking this is where we went a long time ago…before white people were even here."[206]
Roderick Scott, who had been arrested the year before for fishing and would be arrested again in 1980, shared Jackson's and Allen's beliefs that tribal members were being arrested for doing

[199] Carlotta Peltier, letter to the editor, *LMT*, July 27, 1980, D3.
[200] Short, "Rapid River: Once a quiet stream, it's become a focal point for a political struggle," *LMT*, June 15, 1980, A1.
[201] Waddy Scott interview.
[202] John S. Wasson, letter to the editor, *LMT*, June 25, 1980, D1.
[203] *LMT* advertisement, July 4, 1980, B4.
[204] Katsy Jackson ointerview.
[205] Ibid.
[206] Jason Higheagle Allen interview.

what they had always done and for acting within their treaty rights. He recalled in 2016 of his jail time in 1980:

> "I had to sit there for 90 days. To be locked up for something that you have done all your life is hard. When you know you can hunt, you know, in the Blue Mountains. Or anywhere, you know, in the ceded area of 1855, I mean, you know, come on. So that's hard to do. Sit there in the morning, wake up--What I've done all my life, what my dad taught me, what his dad taught him, ba, ba, ba, ba [expressing continuation of pattern]. It's hard. It's hard to understand that I went to jail for this. It was hard, a lot of things happened, lot of thing go through your mind, you know. It hurts, you know."[207]

Matters escalated within the first week of June when the state announced that there would be four state officers, four Idaho Bureau of Investigation officers, and four Fish and Game conservation officers stationed at Rapid River around the clock for the whole month, even before a fishing ban was in place. Officers moved in on Tuesday, June 3, preparing for a large contingent of Nez Perce fishers to come up that weekend.[208] Governor Evans met with the NPTEC on June 4, and Wilfred Scott said the tribe would regulate itself and follow its own conservation measures. Fish and Game had recommended a closure at this point, but Scott noted that the commission's biologists had underestimated what the return would be in 1979 and was skeptical with their 1980 predictions. He said that the tribe had set up an unofficial quota of ten salmon per family. In his discussions with the Governor, Scott also objected to the show of force that the state had sent in, saying that it only served to divide the two groups and intimidate the tribe. Looking back, Wilfred commented that "Law enforcement were there in force and they were armed to the teeth. They were in formation. Shoulder to shoulder, elbow to elbow."[209] Evans responded that the goal was to provide protection to "all parties" and help "maintain the peace and the tranquility of the fishery."[210]

The presence of officers continued to be a divisive issue as the summer wore on. The meeting with the tribe convinced Evans to not impose a fishing ban, and his press secretary said it was because he believed the tribe should regulate itself and that it should have more authority.[211] An editorial at the *Lewiston Morning Tribune* agreed, noting that if the tribe allowed for the state to regulate its fishing at one of its treaty-guaranteed "usual and accustomed" places, it would erode all treaty rights. The *Tribune* also criticized the federal government and the state for having violated the treaty before: "A contract is a contract, after all. The whites have long since taken full advantage of their parts of the bargain and the Nez Perce cannot be blamed now for taking advantage of theirs."[212]

[207] Waddy Scott interview.
[208] Johnson and Jay Shelledy, "Rapid River revisited," *LMT*, June 4, 1980, A1.
[209] Wilfred Scott interview.
[210] Johnson, "Tribe won't acknowledge fishing ban," *LMT*, June 5, 1980, A1.
[211] Johnson, "State won't close river to Indians," *LMT*, June 6, 1980, A1.
[212] Ladd Hamilton, "Trouble averted on the Rapid River," *LMT*, June 7, 1980, D1.

Over the first June weekend, June 6-8, tribal members fished at Rapid River, and two NPTEC-appointed fish monitors kept accounts of how many fish the tribe took.[213] Salmon numbers appeared to be good, with 150 returning on June 10, double the number from the day before.[214] Moving into the second week of June, the increasing salmon numbers and the governor's assurances that the tribe could exercise its treaty rights and self-regulate the Indian fishery eased pressures. On June 11, though, Jerry Conley, the new director of IDFG, announced an emergency order to completely close all fishing at Rapid River, effective June 12. Wilfred Scott later remembers Conley as a "hard-liner" whose goal was to "put the Nez Perce in their place."[215] Conley's argument was that "Not enough fish— particularly wild fish—are getting back to Idaho. Too many are caught downstream."[216] He justified dismissing the tribe's fishing rights in 1980 and ignoring the agreement the tribe had reached with the governor, saying said, "The situation has been so volatile and so changing that I basically took the responsibility on myself." NPTEC offered a compromise, similar to 1979, that the tribe would operate its fishery only on the weekends, but Conley refused saying that this would "decimate" the run. The failure of Conley to compromise, Wilfred Scott said, was going to set up a potentially violent conflict.

The tribe turned to the governor, who reversed his opinion from the week before. Evans said that the tribe had not communicated its plans for self-regulation and he now backed Conley.[217] Scott later noted, "I don't know who's breaking their word, whether the governor is breaking his word or Conley is breaking the governor's word."[218]

Emphasizing that the conservation goals of the state trumped the tribe's treaty rights, Conley based his closure on state conservation rights, most clearly articulated in *Puyallup Tribe, Inc. v. Department of Game* (1968), which said a state could regulate hunting and fishing on tribal lands if there were threats on propagation. And again in the *Puyallup* case, states can limit fishing for "conservation necessity." But in order for a state to do this, it has to pass three tests: the state has to show that the regulation is necessary for propagation, that the regulation is the "least restrictive means of achieving this goal," and the state must not discriminate against Indians—meaning it cannot say tribes cannot fish but non-Indians can.[219]

One of the tribe's arguments was that the state had not proved that a closure was necessary for propagation. This unilateral decision flew in the face of the tribe's own conservation goals and its sovereignty. A tribal perspective on conservation, the Nez Perces argued, was more encompassing than what IDFG believed, as it relied on the seven generations rule.[220] The Nez Perces still utilize this more comprehensive view in their management of salmon. They note that "Treaty fisheries must achieve a balance between conservation needs and perpetuating the run

[213] *LMT*, "Salmon get serious—150 return to Rapid River in a single day," June 11, 1980, C1.
[214] Ibid.
[215] Wilfred Scott interview.
[216] *High Country News, Western Water Made Simple*, Island Press, 1987, 91.
[217] Johnson, "Rapid River closed," *LMT*, June 11, 1980, A
[218] Johnson, "Sacred Water," *LMT*, September 14, 1980, D
[219] Pevar, *Rights of Indians and Tribes*, 199.
[220] Mundy, Backman, and Berkson, "Selection of Conservation Units for Pacific Salmon," 29.

with providing meaningful, desired annual harvest by the Nez Perce Tribe at all usual and accustomed fishing places."[221]

This divide between traditional Nez Perce conservation practices and the Fish and Game's opinion emphasized the cultural differences. The tribe argued that it had fished at Rapid River since time immemorial and knew best how to protect the salmon there. One Nez Perce tribal member, Robin E. Lagemann, wrote a letter to Conley emphasizing this difference, saying, "To suggest that they [the Nez Perce] do not understand ecological realities and interfere with its subtle balances which they were given as their sacred trust to preserve is no longer ignorance, but the sheerest arrogance. It is even more preposterous that state and federal governments (which are fundamentally foreign to this land and its people) claim more privileged knowledge when it is their very actions that have cause the spoliation of the earth, water and air."[222] The tribe also pointed continually to its treaty rights, noting them in different interviews with reporters from the *Lewiston Morning Tribune:* "Stripped of those rights, tribesmen told the Tribune, they are a nation robbed of its heritage."[223]

Local residents at Rapid River worried about what the closure and subsequent conflict would do in their area. The previous year, many residents had left their homes, citing safety concerns. Additionally, residents complained that the conflict the previous summer had resulted in disorder in their town. They had complained to the state about issues of littering, the lack of bathroom facilities for tribal members, and other problems. Additionally, "a constant source of irritation was the noise—yelling, drum beating, horn honking— through the nighttime hours."[224] Kelly Pearce, director of Idaho DLE, wrote to Governor Evans in advance of the 1980 conflict saying that he did not want to see a repeat of those issues.[225] Pearce recommended that facilities, such as portable toilets and dumpsters, be obtained to avoid these problems.[226] A.K. Scott later credited Pearce for helping to keep things as calm as they could be during the standoff.[227] After the state announced the closure, Riggins residents responded, and most emphasized that they would not leave their homes. One resident said as long as the tribe respected private property in the region, "I don't give a damn if they fish."[228]

While Wilfred Scott and some members of the NPTEC believed pursuing the matter in a legal court was the best choice, others on the council and in the tribe in general argued for a more militant course of action. The conflict brought many non-fishing Nez Perce to the site to help

[221] Department of Fisheries Resources Management Strategic Plan Ad Hoc Team, "Nez Perce Tribe Department of Fisheries Resources Management Plan 2013-2028," (2013), 27. Available online at http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf.
[222] Robin E. Lagemann, Riggins, ID, to Jerry Conley, September 29, 1980. 9-29-80 to Jerry Conley, Boise, ID. Located in Evans collection.
[223] Johnson, "Rapid River closed," *LMT*, June 11, 1980, A1.
[224] Pearce to Governor Evans, Boise, ID, March 20, 1980. Located in Evans collection.
[225] Ibid.
[226] Pearce memo to Governor Evans, May 6, 1980, 1. Located in Evans collection.
[227] Allison K. Scott interview.
[228] Johnson, "Confrontation won't drive out Rapid River homeowners," *LMT*, June 13, 1980, B1.

protest for fishing rights, as Katsy Jackson, a tribal member recalls.[229] Fishing rights and treaty violations rallied the younger members of the tribe, especially. Roderick Scott proclaimed he was ready to die for this cause, while Brad Picard said of the Fish and Game conservation officers and other law enforcement officers, "If they want war, we're ready."[230]

Over the second weekend of June, after the closure was in effect, approximately 40 to 45 Nez Perce camped at Rapid River, met by somewhere between 20 and 30 law enforcement officers.[231] Officers told tribal members that any fish caught would be confiscated. Basil George, Jr., remembers how his father had turned part of the bed of his Bronco into an insulated fish box and that during the conflict, Fish and Game officers climbed in and confiscated fish from inside this box.[232] Butch McConville protested this type of confiscation in his own way. In a 2016 interview, McConville recalled one incident specifically:

> "I gave up one fish, I gave up one fish and I told 'em, that's the last fish you're gonna get from me. Cuz we couldn't have 'em, see. So I give 'em that one I had, right down where he's at [Jackson Hole], went to those game wardens and cops, and whoever, and this is all the fish I got, tkkkt [sound of plopping it down]. But that's the last fish you're gonna get from me. I told him right there, so I took off down the creek."[233]

Katsy Jackson said that the officers did not just confiscate fish; she said that they confiscated poles and nets, too, and that they targeted the more vocal protestors: "I think they were taking everything from 'em. The ones that fought against them."[234]

The fishing ban might have elicited different responses from tribal members, but Idaho Fish and Game was emphatic about the consequences. Anyone who violated the ban would be cited for the first offense, and arrested the second time. Over the weekend, officers wrote 22 citations and arrested one fisher, Kenneth Oatman.[235] Most citations went to women over the weekend. In a 2016 ethnographic interview, Katsy Jackson was not surprised that women received so many citations. While she was not at the stand-off, she said tribal women were some of the first to agitate in those types of circumstances. She said women were probably "agitating the hell out of 'em [the Fish and Game officers]…because we're the ones that will stir up that deal if we have to." She said that many tribal women, such as Laura Major, were present at the stand-off.[236] Newspaper accounts focused more on the male involvement in the stand-off, never mentioning women by name. Jackson's statements on women's participation help provide details lacking

[229] Katsy Jackson interview.
[230] Johnson, "Rapid River standoff begins," *LMT*, June 13, 1980, A1.
[231] Johnson, "Officers cite but don't arrest six Nez Perce fishermen," *LMT*, June 14, 1980, A1; and Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[232] Basil George, Jr. interview.
[233] Syrveneas (Butch) McConville, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.
[234] Katsy Jackson interview.
[235] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1; and Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.
[236] Katsy Jackson interview.

from non-Indian sources that often concentrated on male leaders, such as Wilfred Scott. Scott responded to the citations and said that any tribal member cited over the weekend would receive support from the tribe, but he did not comment on how the tribe would respond to members who violated the tribe's self-imposed weekday ban.[237]

Tribal members complained about the excessive show of force, which included officers with sawed-off shotguns and riot guns.[238] The tribe said this "unnecessary display of force" equaled harassment of the tribe.[239] One Nez Perce man told the officers that "Power does not come from the guns or numbers but from the convictions of the people."[240] Roderick Scott commented in 2016 about the immense show of force:

> "It was like, the whole time I was down there, I had a tipi down there by the river, and they had a swat team there. About 30 of them there, with their automatic weapons, shields, you know, head gear, you know. And they came through camp there, down the river from the compound. They'd come down there every day to cite people, take some to jail. Fifty dollar bail, you know. It was like, I get pretty upset. And I tell 'em, you guys got to stop doing this shit. There's not a man amongst ya. If there's a man amongst ya, come over here and we'll get it on. You guys got guns, you guys are playing with them, you got guns, why don't you use them. All we have is our traditional fishing gear, that's all we have. And you guys have automatic weapons. You guys ain't me, you guys ain't men. You know, I'd get mad. I'd get mad. Got it, callin' them on. Go right to that dam, and I'd be fishing. You know, you come after me, I'm gonna gaff you. You're gonna have to shoot me, but they wouldn't shoot me."[241]

A.K. Scott remembers getting shot at by officers.[242] The Fish and Game officers sent observers into the nearby hills with spotting scopes to find any violators.[243] Butch McConville was at the stand-off and he said the whole conflict was "pretty spooky," knowing that snipers were watching for tribal fishers. He remembers thinking about this, "If he [any Fish and Game officer] shoots, don't miss, I'm gonna go after him."[244] This sentiment was most likely shared by other tribal fishers, which could have served to escalate tensions. Gordon Higheagle, a NPTEC member at the time of the standoff, remembers numerous executive committee meetings whose goal was to prevent the stand-off from escalating too far. He commented that the committee provided much behind-the-scenes work to keep matters as calm as possible, emphasizing to both tribal members and law enforcement officers that this fight would ultimately end up in the

[237] Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.
[238] Johnson, "Officers cite but don't arrest six Nez Perce fishermen," *LMT*, June 14, 1980, A1; and Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[239] Johnson, "A war of nerves," *LMT*, June 16, 1980, B1.
[240] Hawley, *Recovering a Lost River*, 201.
[241] Waddy Scott interview.
[242] Alison K. Scott interview.
[243] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[244] Butch McConville interview.

courtroom.[245]

With large numbers of officers at Rapid River, including a SWAT team, tribal protestors gave attention to security for their members, especially since children were there. A.K. Scott discussed setting up a campsite that kept women and men separate because of traditional Nez Perce practices during wartime. In an oral interview in 2016, Scott made comparisons between the stand-off and war, and many members of the Nez Perce tribe today refer to the standoff as the second Nez Perce War. "We separate the women's and men's camp out of respect," because that was custom in time of war.[246]

Tribal members employed different tactics during the stand- off. Some participants remember engaging in what they called "midnight raids" as a way to circumvent the fishing ban. Since the salmon typically ran better at night, this was an effective way to both avoid the Fish and Game officers who were watching with scopes from the hills and catch more fish. Butch McConville remembers participating in these midnight raids during the stand-off and he said tribal members would sneak in to the best spots where the fish were thickest.[247] Tátlo Gregory, heard from his elders about the midnight raids and in a 2016 interview, he commented about their effectiveness in eluding the officers. But, he added, "That's not right that they had to do that, but it goes to show the resilience, that 'hey, you could arrest me if you want, but you have to catch me."[248] A.K. Scott related a story about tensions between tribal members and officers that demonstrate how close to the surface violence always was. In this incident, Scott caught a fish and the officer attempted to take it away from him, so Scott's friend picked up a baseball bat and told the officer to leave the fish with Scott. Scott remembers looking around and seeing officers with guns trained on him, so he approached the matter more diplomatically, asking the officer to allow him to bless the fish with a prayer first. Following the prayer, Scott threw the fish back into the river, taking the officer's evidence from him.[249]

Those who were caught violating the fishing ban and were caught, they received written citations. As officers wrote citations to fishers, Venita Bybee, a ten year-old tribal member, commented on the traditional aspect of fishing for the tribe and tribal conservation practices and said, "We were here before the white men were. We should be telling you this stuff."[250] The tribe actively promoted a "fish-in" as an act of civil disobedience. In one instance, Vaughn "Sonny" Bybee handed his gaff pole to another fisher after he received his citation, and ten other tribal members took turns with it right in front of the officer writing Bybee his citation. The goal, according to tribal members, was to deluge the game department and the courts with paperwork and citations.[251]

[245] Gordon Higheagle interview.
[246] Allison K. Scott interview.
[247] Butch McConville interview.
[248] Tàtlo Gregory interview.
[249] Allison K. Scott interview.
[250] Johnson, "A war of nerves," *LMT*, June 16, 1980, B1.
[251] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.

The tribe observed its own self-imposed ban once the weekend was over. Conley publicly commended his officers for keeping the peace in an "unpredictable situation." He hoped that since the weekend was over, the tribe would abide by its self- regulation, but he commented that "It's questionable about how much control the tribe has over every single member."[252] He worried that tribal leaders would not be able to "control the more militant members."[253] The week passed quietly, but by Friday, June 20, only 1,000 adult salmon had passed into the hatchery's trap and Conley kept the ban in place. Tribal members traveled back to Rapid River Friday afternoon and set up two camps, one one-hundred yards from the trap and another a quarter mile downstream from the trap.[254] The state had, even prior to the complete ban on fishing, passed a resolution that prohibited any fishing within one-hundred yards of the trap, believing at this point on the river the salmon were the most vulnerable.[255] The camp nearest the trap featured a teepee with an upside-down American flag in front.[256] Katsy Jackson believes that the flag was the work of AIM members who travelled to the site to help the Nez Perce protestors.[257] AIM's presence at the standoff was an important recognition of the larger significance of the conflict, demonstrating unity over treaty rights. Wilfred Scott comments that their presence was important, but that AIM members stayed in the background and the Nez Perces took the lead at the site.[258]

On June 21, Conley and Wilfred Scott, along with other tribal leaders and state officials met again. This two-hour closed door meeting resulted in no changes, and Scott blamed Conley for setting up a conflict situation with a marked potential for violence.[259] Scott had again offered the compromise of the weekend fishery, but Conley refused. Scott encouraged tribal members to stage a non-violent protect, but that afternoon, Hailyn Minkey (a former Nez Perce tribal game warden) and conservation officers had a violent altercation the newspaper referred to as a "wrestling match."[260] Officers said they had seen tribal members drinking and with guns and knives in their camps. That night, 150 Nez Perces formed a ceremonial circle that night that further divided the two sides; for A.K. Scott, circles such as this one served as a reminder of the cultural value of the site. He said, "The main thing was that our ancestor were there…in the drum…in the healing and the eagles that were passing over…and the way the water ran."[261]

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[252] Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.
[253] *LMT*, "Rapid River confrontation expected to die down until weekend," June 17, 1980, B1.
[254] The location of second camp overlaps with Parcel 2 in the nomination. At the time of the conflicts, the Nez Perce Tribe did not own this parcel—it was not purchased until 2010—but oral histories indicate that tribal members camped on these lands. Roderick (Waddy) Scott, interviewed by Mario Battaglia and Nakia Williamson, Lapwai, ID, May 5, 2016; and Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.
[255] Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," *LMT*, May 15, 1980, C1.
[256] *LMT*, "Nez Perce fish-in may resume today," June 21, 1980, B1.
[257] Katsy Jackson interview.
[258] Wilfred Scott interview.
[259] The *LMT* said the meeting lasted two hours, but the *Spokane Daily Chronicle* said it lasted hours. *Spokane Daily Chronicle*, "Nez Perce Indians facing violations in fishing dispute," June 23, 1980; and Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.
[260] Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.
[261] Allison K. Scott interview.

Wilfred Scott encouraged tribal members that day to remain peaceful; he noted that the Nez Perce nation traditionally was not violent and he reminded Conley that Chief Joseph had led his people away to avoid conflict. But, Scott, added, "I think the days of running are over."[262] More citations and arrests followed the next day, Sunday, June 22. A seven year-old Nez Perce boy was one of the recipients of the citations and another man was arrested.[263]

Most tribal members left that evening, with only 20 of the 200 who had arrived Friday staying on. Nez Perce leaders continued to criticize the excessive show of force. Minkey later lamented, "I never thought I'd see the day when enforcement officers starting pointing guns at people for misdemeanors."[264] Tribal members also expressed dissatisfaction with that state's choice for the head of the state law enforcement operation, Bill Snow, a conservation officer for Fish and Game, whom one tribal member referred to as Conley's "mechanical puppet."[265] Brad Picard had, at a meeting earlier in the month, told Evans and Conley that Snow would be an unwelcome presence as he was already a controversial figure to the tribe. Snow, an ex-marine, proved to be a source of agitation as tribal members at Rapid River verbally attacked him. The tribe said, though, that this was a response to the "non-verbal taunt" of the officers: "the guns, shot guns and automatic rifles they carry."[266] The tribe continued to be critical of Snow's presence for the rest of the stand-off, believing his presence combined with the display of weapons and enforcement officers potentially provoked violence.[267] The *Tribune* agreed that the show of force was escalating issues, and in an editorial, Jay Shelledy said that if the state would ease off, the tribe would most likely follow.[268] Looking back twenty-five years later, tribal member Virgil Holt noted, "If a person on either side had done something crazy, Rapid River would have run red. There were some scuffles and clubbings, but that was about the size of it. We were ready to die if we had to."[269]

As the next week passed, the tribe began to prepare for the weekend fishery again. The Fisherman's Committee hosted a fundraiser that featured speakers focusing on treaty rights, as well as traditional Nez Perce dancing and drumming.[270] Approximately three dozen Nez Perce went to Rapid River to fish, a considerably lower number than the weekend before and a recognition of the tribe that salmon numbers at that point were down.[271] By the end of the weekend, only 1,156 had returned to the trap, as compared to the nearly 2,700 by the same time the year before.[272] Tensions remained high between the tribe and conservation officers, and the hatchery's superintendent said this was partially because the tribe had taken at least 500 salmon

[262] Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.
[263] Johnson, "Peace reigns, but arrests continue," *LMT*, June 23, 1980, B1.
[264] H. J. Minkey, letter to the editor, *LMT*, July 27, 1980, D3.
[265] Carlotta Peltier, letter to the editor, *LMT*, July 27, 1980, D3.
[266] Johnson, "Bill Snow: Cop on the spot," *LMT*, June 23, 1980, B1.
[267] Johnson, "The pent up anger of Nez Perce elder Leo Broncheau," *LMT*, June 30, 1980, B1.
[268] Shelledy, "Time to call it a season and go home," *LMT*, July 2, 1980, D1.
[269] Tim Woodward, "Nez Perce Honor 'Warriors' who Fought for Fishing Rights," *Idaho Statesman*, June 9, 2005. Available online at http://www.bluefish.org/warriors.htm.
[270] *LMT*, "Dancing, drum playing on program," June 26, 1980, C2.
[271] Bryan Abas, "Chinook count to fall below 2,700 required," *LMT*, June 29, 1980, B1.
[272] Ibid; and *LMT*, "Two Nez Perce, attorney arrested after fight at Rapid River hatchery," June 30, 1980, B1.

from the river, a number the tribe highly disputed, but Conley said was accurate.[273]

On Sunday morning, June 29, the hostility between tribal members and Officer Snow boiled over. Roderick Scott approached Snow for reasons unknown and the two had a physical altercation. Willard White, another tribal member, and Louis Gerwitz, the attorney advising the tribe on its treaty rights, approached, and at the end the three men were charged with obstructing an officer and assault and taken to the jail in Grangeville.[274] Looking back on that arrest on that day, Roderick Scott reiterated Wilfred Scott's statements that conflict was unavoidable. He said in a 2016 interview:

> "When they arrested me the second time, it was on a Sunday. They're all lined up, right by my tipi. And I told them, this is the day, this is the day you guys ain't coming through our camps any more. You're scaring the young ones. The only way you're gonna come through here again, you're gonna have to shoot me. You're not going past me, today's the day. And this guy was about from here, to you [4-5 feet], from me, standing there, Bill Snow, the leader of the pack. All these swat team behind him. This is the day, you're gonna have to shoot me, you ain't goin' through here no more. That's when he came after me—slow motion, it was just like it was in slow motion. That's when he tackled me, we went down. Whooooh, beatin' on him, clubbing me, put a baton in my mouth, raising me up, took me to jail again."[275]

Another nine tribal members were arrested Sunday for fishing.[276] A.K. Scott and other tribal members went to Grangeville during the hearing for the arrests for Roderick Scott, White, and Gerwitz, and A.K. related a story for how the tribe showed solidarity for the defendants. He said that prior to entering the courtroom, Nez Perces went into a law library across the hallway and gathered in a circle for a traditional song and prayer, led by Nez Perce elder Horace Axtell. Axtell asked A.K. what everyone should do in the courtroom. A.K. said the goals were to demonstrate that the judge and the attorneys did not have the power in the courtroom, and to fill up the courtroom with tribal members. When the judge came in, no Nez Perces stood. When Roderick Scott, Gerwitz, and White entered, all tribal members stood as a demonstration of solidarity.[277]

Conley heightened the tension the following week, leading up to the Fourth of July holiday. He made public comments, warning that the salmon were close to being on the threatened or endangered list and hinting that the tribe was responsible. He said the situation at Rapid River was becoming more unpredictable because "We're dealing with Indians who are drinking and who are, in some cases, involved in using drugs. We also have a problem with outside people—lawyers from the east— stirring up trouble by telling the Indians their rights. The situation every

[273] Abas, "Chinook count."
[274] *LMT*, "Two Nez Perce, attorney arrested," June 30, 1980, B1.
[275] Waddy Scott interview.
[276] *LMT*, "Indian fishermen appear in court," July 1, 1980, C3.
[277] Allison K. Scott interview.

week is very tense and I'm afraid that one of these times one of them (the Indians) is going to flip out and become a real problem."[278]

His remarks led to an even further deteriorating relationship between IDFG and the tribe, and the Governor stepped in to attempt to mediate. Following a phone conversation between the Governor, tribal leaders and their lawyer, Conley, and the Fish and Game Commission chair, Richard Schwarz, Evans agreed to the tribe's demand of lessening the show of force, as Don Watkins, an aide in the governor's office, said "The display of shotguns and other weapons by the state police is regarded by the tribe as an act of harassment that makes tribal members nervous."[279] Evans ordered the dozen heavily armed state troopers be removed from Rapid River to Riggins for the Indians' weekend fishery. This left up to twelve conservation officers at the site, but Evans said they would only carry side arms. Conley and Schwarz disagreed with the decision, emphasizing the necessity of the officers, but Evans had watched a video from the previous weekend of a confrontation between twenty-four troopers and conservation officers and the tribe and was alarmed by what he saw.[280] Another video, aired by in December of 1980 as part of a news story for "Idaho Times," showed three officers wrestling a man to the ground, while other armed officers and civilians, including children, stood in the background.

That weekend was markedly different from previous weekends. At any given point, only two conservation officers were present, and they were required to be accompanied by two Nez Perces to ensure that no intimidation occurred. Only three Nez Perce fishers were cited over the weekend.[281] By the end of the weekend, the state officers were removed from Riggins and sent back to Boise.[282]

The tribe pointed to the eased tensions with the large numbers of officers and weapons removed. Although Conley had blamed the tribe for hostilities in his comments the week before, the calming of the situation after Evans ordered officers removed indicated it was the other way around. The tribe took issue with Conley's efforts to vilify them, in his comments about the potential for a tribal member to "flip out," what could be perceived as veiled racism in his comments about tribal drinking, his pointed comments about "eastern outsiders" stirring up emotions regarding treaty rights, and in his inflated estimation of salmon the tribe had taken. Judy Thomas, Nez Perce, commented that Conley continued to stab the tribe in the back and was only using Rapid River as a way to make a name for himself. She also said the Nez Perces did not need an eastern lawyer to point out tribal rights; for that, Thomas said, "We have our treaties."[283] The *Tribune* also critiqued Conley's "inflammatory language," and said the real problem with "outsiders" was not the tribe's Massachusetts lawyer. Rather, as Ladd Hamilton wrote in an editorial, it was the outsiders from Idaho's capitol. He advised that state officials leave before "one of those outsiders from Boise could flip out and become a real problem."[284]

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278 Associated Press, "Chinook salmon may soon become endangered, Conley warns," *LMT*, July 2, 1980, C1.
279 Short, "Evans tells troopers to leave hatchery," *LMT*, July 4, 1980, A1.
280 Ibid.
281 *LMT*, "Joint patrols bring peace to Rapid River," July 6, 1980, B1.
282 *LMT*, "Rapid River situation tense, but quiet," July 7, 1980, B6.
283 Judy Thomas, letter to the editor, *LMT*, July 8, 1980, D1.
284 Ladd Hamilton, "How to get the Indians all stirred up," *LMT*, July 6, 1980, D1.

Following the removal of state troops and the decrease in conservation officers patrolling the area, a quiet atmosphere for the most part marked the fishery. The joint patrols of Nez Perce tribal members with conservation officers helped matters. The run slowly petered out by the middle of July, and as the run dwindled, fewer tribal members journeyed to Rapid River to participate in the weekend fishery.[285] By the second weekend of July, only 25-30 members came down for the Friday night fishing although these numbers jumped to over 100 the next night.[286] The next weekend, July 18-20, those numbers dropped back down to under 50.[287]

By the end of the spring run, IDFG reported that it was nowhere close to attaining the 2,700 fish needed for Idaho Power's mitigation requirements. The numbers hovered around 1,350 fish in the trap by mid-July, with an average of five to ten returning each day.[288] At the end of the season, Conley said that about 1,675 fish had been trapped at the hatchery.[289] The run and the stand-off might have been over by mid-summer, but the ramifications would continue to be felt for much longer, on both sides.

Through all of the debates that summer, the issue of conservation routinely came up as it intersected with treaty rights. In this way, Rapid River represents the convergence of two major historical patterns of the twentieth century: the rise of the environmental movement and the increased activism of tribes in light of over a century's worth of treaty violations. The environmental movement offered a critique of human actions and their effects on nature, while civil rights movements such as the American Indian Movement (AIM) heightened the consciousness of all Americans to the devastating effects of federal policies on tribes, especially in light of treaty- protected rights.

Rapid River offers an interesting case study on those two issues, since conservation was necessary because of human actions, specifically the dams. The 2,700 salmon, a number Conley and IDFG routinely used in their justifications to close the Indian fishery, were necessary from the state's perspective to sustain the salmon population, but the larger impetus was the legal mandate associated with Idaho Power Company's mitigation contract. As part of its mitigation agreement for causing the depletion of salmon runs in the Upper Snake River after the construction of the Hells Canyon Dam in the mid-twentieth century, Idaho Power Company built the Rapid River Fish Hatchery for the purpose of meeting its legal mandate. Idaho Power owns the hatchery, but the Idaho Department of Fish and Game operates it.[290] As part of Idaho Power's agreement with the National Ocean and Atmospheric Administration (NOAA) fisheries, Idaho Power had to collect a certain number spring chinook into its trap for breeding purposes. The tribe argued that this was an arbitrary number.[291] Further, the tribe noted that their rights

[285] *LMT*, "Conflict winds down; few fish return, 2 cited," July 13, 1980, C1.
[286] *LMT*, "One Nez Perce arrested, two cited at Rapid River," July 14, 1980, B1.
[287] *LMT*, "Rapid River situation quiet," July 21, 1980, B3.
[288] George Tway, Boise, ID, to Governor John Evans, Boise, internal memo, July 16, 1980. Located in Evans collection.
[289] "Idaho Times" report, December 1980.
[290] Appendix K, "Wild Rapid River Resource Assessment," K-7.
[291] Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.

should not be infringed upon since they had not caused the problems with the salmon run. Tribal members also noted that they "were conservationists long before [their] lands were taken."[292]

The dams had multiple negative effects on salmon. The federal government realized this, as well. In fact, in 1946 the Fish and Wildlife Service noted that,

> "A succession of dams between the ocean and a great part of the more important spawning grounds presents a combination of problems that cannot be looked upon so optimistically, in fact it appears that the losses incurred during the passage of fish upstream and downstream over the dams, plus the reduction of spawning and rearing areas and a general change in environmental conditions would be so serious as to make continued propagation in the head water tributaries virtually impossible."[293]

Additionally, the dams affected the nutritional value of salmon. The spawning trip for salmon is arduous, requiring them to swim up to 600 miles upstream, and much of their nutritional value already went to the eggs the females held. Combined with the added complication of dams and the energy expended in this regard, salmon faced a daunting reality.[294]

For the tribe, the declining numbers and deteriorating nutritional value meant traditional tribal practices regarding salmon were problematic, especially since the tribe routinely required salon for ceremonial and cultural purposes. Marshall describes the prominent role salmon played in historic Nez Perce culture as well as contemporary culture. He notes that salmon were necessary for funerals, memorial "giveaways" marking the first anniversary of someone's death, name-giving ceremonies, powwows, first salmon ceremonies used to mark adulthood, weddings, births, and ceremonial dinners.[295] Other fish cannot be substituted at these ceremonies, making a declining salmon run or a limited fishery challenging for the tribe's spiritual and cultural lifeways.[296]

As the tribe saw both its traditions and its treaty rights being dismissed by the closure, it emphasized that its own conservation methods would serve the tribe better than what it viewed as the arbitrary numbers for Idaho Power. The tribe noted that there had been boom years even after the dam's construction, such as in 1973 when over 17,000 returned.[297] The artificial breeding of salmon stock was also potentially an issue. In 1979, diseases spread quickly in the bred salmon. Over 18% of the salmon trapped at Rapid River had symptoms of nitrogen bubble disease, and between the trap and the pond at the hatchery, there was a 32.4% mortality of the salmon, the hatchery's second highest loss since its beginnings in 1979.[298] The tribe argued in

[292] Allen P. Slickpoo, Sr., letter to the editor, *LMT*, May 4, 1980, C3.
[293] House Subcommittee of the Committee on the Merchant Marine and Fisheries, Columbia River Fisheries: Hearings, 79th Cong., 2nd sess., August 14, 1946, 35-6.
[294] White, *The Organic Machine*, 51.
[295] Marshall, "Fish, Water, and Nez Perce Life," 767.
[296] Ibid., 769-770.
[297] Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.
[298] Conley, "Evaluation of Spring Chinook Salmon Emigration," 2.

1980 that the blame for the declining salmon numbers lay at the feet of Idaho Power, Fish and Game, and the State of Idaho. Steven Hawley, in his work on dams and their negative effects on salmon, notes that "The full consequences of a half-century's worth of dam building was quickly driving salmon toward extinction," resulting in the "scapegoating" of the Nez Perces by non-Indians.[299] A.K. Scott commented on the false divide that the IDFG had set up when Conley and others said that tribal fishers were going against conservationists.

Scott said, "All of our lives, we were conservationists. My father's teachings, my grandfather's teachings, lead us to where I am now with the issue." He noted that his generation and future generations will always pay attention to the environment because that is what sustains all life.[300] The Nez Perce Department of Fisheries Resource Management still uses this as a guiding principal in its management, noting that "Relative to this extensive area in which they [the Nez Perces] have always lived, the *Nimiipúu* have accumulated a deep repository of ecological knowledge and wisdom concerning the land, water, and other natural resources."[301]

In the midst of the 1980 stand-off, Idaho Power took a limited public role. While commenting that there were "legitimate concerns on all sides," it refused to say who had jurisdiction at Rapid River, the state or the tribe.[302] However, an inside source at the company told a *Tribune* reporter that the company was privately fuming over the feud and subsequent negative publicity.[303]

Conley evidently took pride in keeping the fishing ban in place all season, commenting to reporters how he had backed the governor down from ending the ban early.[304] He also believed his actions in refusing to negotiate with the tribe would serve the state better in the long run:

> "I think the Indians have a better understanding now than when we put a regulation in effect we mean to enforce it." "In the past, we (state officials) have wavered quite a bit regarding this problem. There was no wavering this year.
>
> The firmness we showed in enforcing our conservation regulation should help us work out a better agreement with the Nez Perce from now on…backing down… would have hurt our bargaining in the future. Firmness was important."[305]

His paternalistic tone did not sit well with the tribe or with some non-Indians in the area who complained about the "Gestapo tactics" used over the summer.[306] Conley and IDFG also received criticism for conducting their business in secrecy, violating the state's Open Meeting Law. In fact, the *Tribune* considered court action because of this. Had this happened, James Shelledy, the

[299] Hawley, *Recovering a Lost River*, pgs. 200-201.
[300] "Idaho Times" report, December 1980.
[301] Fisheries Management with a Nez Perce Point of View," from the Nez Perce Department of Fisheries Resource Management website, available at http://www.nptfisheries.org/Resources/SalmonCulture.aspx.
[302] Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.
[303] Ibid.
[304] Tway to Governor Evans, internal memo, July 16, 1980. Located in Evans collection.
[305] *LMT* and Associated Press, "Rapid River: Firm approach best, says Conley," *LMT*, July 8, 1980, A1.
[306] Keith and Kathleen West, letter to the editor, *LMT*, July 9, 1980, D1.

managing editor of the *Tribune*, asserted, all the decisions the IDFG had made regarding any fishing bans would be declared null and void while the court investigated.[307]

1981 court decision

Conley continually asserted over that fall and going into spring of 1981, when district court in Idaho County released its decision about the Rapid River arrests and citations, that his actions had been both legally correct and beneficial. He argued, for example, that the tribe had "enjoyed" over a month of fishing at Rapid River prior to the closure—dismissing that the spring run had not started during this month—and that "should have been adequate to prove a yearly exercise of their treaty rights."[308] He noted in his "Draft Operating Plan for Rapid River Hatchery" in October of 1980 the "social problems" that resulted from the different fishing groups and the "impasse" between the tribe and Fish and Game because of conflicting views on the fishery, as well as his belief that "attainment of brood fish in sufficient numbers for ongoing hatchery programs has been thwarted by the tribal fishery."[309] In an interview with "Idaho Times," he bemoaned that the Nez Perce, "Feel very strongly that it's their right, and their right only, to control their fishery, and they resist any temptation or any efforts by the state to have any type of control over an Indian fishery."[310]

Pre-trial hearings for the Nez Perce members arrested over the summer began in October of 1980. The tribe's defense attorneys began with challenging the state's jurisdiction at Rapid River, pointing out treaty rights. The lawyers also noted that through this process, the state had infringed on the tribe's religious practices.[311] This last point was timely, considering the passage of 1978's American Indian Religious Freedom Act. Additionally, the Nez Perce could look to the 1968 Indian Self-Determination and Education Act. Concerning this act, President Lyndon Johnson had said, "We must affirm the rights of the first Americans to remain Indians while exercising their rights as Americans."[312] The tribe's lawyer, Gerwitz, said that the court case was not ultimately going to change anything: "Nothing's going to be resolved by this. If they win, we go back to the river next year. If we win, we go back to the river next year because there is a treaty right in there. It's survival, its subsistence, it's staying alive for the Nez Perce people."[313]

Treaty rights, sovereignty, and religious freedom were all strong grounds upon which the Nez Perces could stand during the legal proceedings. In the midst of the pre-trial hearings, the state

[307] James E. Shelledy, *LMT*, to Jerry Conley, Boise, ID, July 21, 1980. Located in John Evans collection, Rapid River box, Idaho State Historical Society archives. (letter 3792).
[308] Jerry Conley, Boise, ID, to Judith A. Nielsen, President of YWCA Advisory Board, Pullman, WA, November 3, 1980. Located in Evans collection.
[309] Jerry Conley, "Draft Operating Plan for Rapid River Hatchery with Consolidation for Fishery and Hatchery Management," internal memo dated Oct. 15, 1980. Located in Evans collection.
[310] "Idaho Times," report, December 1980.
[311] "Nez Perce v. Idaho," *Columbia River Inter-Tribal Fish Commission Monthly News* newsletter, (vo. 3, no. 8: November 1980). Located in Evans collection.
[312] Lyndon Johnson, Special Message to the Congress on the Problems of the American Indian, "The Forgotten American," March 6, 1968. Available online at http://www.presidency.ucsb.edu/ws/?pid=28709.
[313] "Idaho Times" report, December 1980.

asked to pause the motions to negotiate with the tribe. The state wanted the negotiations to include Governor Evans, Fish and Game commissioners, members of NPTEC as well as the Fishermen's Committee, and lawyers from both sides. The governor refused to meet until all other parties had worked out "an agenda and procedure for negotiations," but the tribe refused, saying the governor needed to be there for all aspects. Without a meeting, the judge opted to continue the preliminary hearings.[314] The Governor's stipulation was most likely a result of a meeting he had with Schwarz and Conley on November 3. He was informed that the tribe would not negotiate overall unless the charges against all members were dropped.[315] Conley became defensive in how he was being portrayed, taking the time to write a letter to the Columbia River Inter-Tribal Fish commission Monthly Newsletter's editor, saying the newsletter's coverage of the pre-trial hearing only served to "further worse tribal-state relations" and would "polarize, instead of help to resolve, tribal-state positions."[316]

The trial for the 33 Nez Perce fishermen arrested for violating the state-imposed fishing ban took place in late spring 1981 in Grangeville, at the Idaho County Courthouse. A.K. Scott says that the trial brought together not just Nez Perces, but other tribes who traveled to Grangeville to show solidarity for traditional native ways and treaty rights. The cultural significance of Rapid River and the importance of this hearing can be seen in different ways, and the attendance of members from other tribes underscores that what happened at Rapid River echoes larger historical patterns. The threat to fishing rights for one tribe was not an isolated incident. Additionally, Scott said that medicine men and elders attended the court proceedings and offered traditional ceremonies prior to the hearings.[317]

For the March 1981 hearing, Magistrate Judge George Reinhardt presided. On March 2, Reinhardt dismissed all charges against the Nez Perce. The tribe's celebration over the dismissals was moderated by Reinhardt's justification. He stated in his written opinion that the state was legally allowed to close the Nez Perce fishery and that it had not violated treaty rights to do so. He believed that while the 1855 treaty had given the Nez Perce exclusive rights to the Rapid River site, the diminished boundaries of the 1863 treaty placed Rapid River into a shared-use zone by removing it from the reservation. He argued at that point because of this, the tribe had to fish "in common" with non-Indians. He further believed that the state's conservation concerns, regardless, trumped any treaty rights, citing *Puyallup Tribe, Inc. v. Department of Game* case (1968).
However, he said that while the state had attempted to meet with tribal leaders prior to the closure, these efforts "came too late and denied the Nez Perce an opportunity to participate in any meaningful way with the state relative to developing regulations which are clearly necessary

[314] "Nez Perce v. Idaho," *Columbia River Inter-Tribal Fish Commission Monthly News* newsletter, (vo. 3, no. 8: November 1980). Located in Evans collection.
[315] "Event brief," November 3, 1980. Located in Evans collection.
[316] Jerry Conley, Boise, ID, to Gary Kimble, *Columbia River Inter-Tribal Fish Commission*, Portland, OR, December 23, 1980. Located in Evans collection.
[317] Allison K. Scott interview.

if the spring Chinook salmon is to survive."[318] It was this last point upon which Reinhardt based his dismissals.

For the Nez Perces, the standoff at Rapid River was about treaty rights, and the subsequent court cases were a way for them to draw attention to the issue of treaty abrogation and its effects on their way of life.[319] Reinhardt's decision was clear that Rapid River was a "usual and accustomed place," but he believed that the reservation confined these places. In his memorandum opinion, he specifically noted that any sites outside of the reservation boundaries meant that tribes had to share them "in common" with non-Indians. Although he and the State of Idaho both agreed that Rapid River was a "usual and accustomed fishing ground" of the tribe, thus noting its traditional cultural value, he did not believe that the Nez Perce retained exclusive rights to the site. He also noted that the 1863 treaty, upon which he based many of his conclusions, did not specifically mention fishing rights. His emphasis on the 1863 treaty largely ignored that most tribal members had objected to it, becoming known as the "non-treaty" Nez Perces.

Reinhardt based much of his opinion on the *Puyallup Tribe v. Department of Game* in his opinion, citing similarities between this case and the Nez Perces' current conflict. That case had found that even though the Puyallup treaty had noted "exclusive" fishing rights, this did not free the tribe from fishing completely without restriction. With this, Reinhardt said, clearly the Nez Perces' "in common with" right allowed for restriction as well. The majority of his comments on the Nez Perce cases before him focused on the treaties and fishing rights, which ultimately he said could be regulated for conservation purposes. It was only within his final paragraph of his eleven-page opinion that he spelled out his reasons for dismissing the charges, commenting that the state had the "burden to attempt to develop an ongoing forum" with the tribe and it had failed to do so.[320]

Consequences and meanings of the legal opinion and of Rapid River standoff

As one later writer said, the state failing to consult with the tribe in the matter of closing the fishery reflects a larger paternalistic attitude that states inherited from the federal government, "but federal behavior where salmon are concerned goes far beyond the pale of benign neglect."[321] Wilfred Scott explained the main outcome that came from this decision was that it acknowledged implicitly that the State had not listened to tribal voices and did not have all the facts when it determined conservation purposes outweighed treaty rights. Scott said that the tribe had told the State that the run was not as threatened as the closure suggested. Scott said, "The state did not prove that conservation was necessary to close that fishery and because of that there's very few instances where closures for conservation can exist. One thing we all know is that one run will never be wiped out; if there's only three or four fish that come back, those that

[318] George Reinhardt, "Memorandum Opinion," *State of Idaho v. Vaughn Bybee, et. al.*, Idaho County, March 2, 1981.
[319] Johnson, "Sacred Water," *LMT*, September 14, 1980, D1.
[320] Reinhardt, "Memorandum Opinion."
[321] Hawley, *Recovering a Lost River*, 202.

come back that year might be wiped out," but those that come up in other runs later that season or in other years will continue it. The tribe, he continued, knew this but the State and its biologists did not listen that year.[322]

One of the issues that arose in the Rapid River conflict concerned modern technology. Some non-Indians stated their beliefs that the treaties of the nineteenth-century were essentially nullified by the tribe's use of modern fishing gear or by the changing needs of a society dependent on hydroelectric power. The *Central Idaho Star-News*, a newspaper located in McCall, implied that the eight hydroelectric dams on the Snake River eroded the rights of the tribe to catch salmon at Rapid River "as long as the river flows." The paper detailed how the dams had caused an 80% loss of salmon since its construction in 1964, and suggested that the negative effects of the dam might mean a reconsideration of treaty rights.[323] A non-Indian resident of Grangeville stated that the Nez Perce had benefited from "the technology of the white man," such as cars, and that they also used the hydroelectric power from the dams, therefore, the Nez Perce should not look to a century-old treaty.[324]

This dismissal of treaty rights because they seem antiquated or the idea that Indian culture and tools should remain static matches a larger theme in U.S. history. In her study of the division between Indian and non-Indian fishers in Idaho, Irene Shaver noted that these themes popped up repeatedly. One white fisher said about Indians fishing, "If they want to fish the same way that their ancestors did, I don't have a problem with it, because that's their right… But their ancestors didn't use aluminum boats, outboard motors and gill nets. That's where I have a problem with it."[325] Another fisher stated:

> "I feel like with modern technology they've got the same rights as I have. They come up here with spears and nets that the white men have brought up. I say, if you want to abide by the old rules, bring the Indian ponies up, make your spears out of rocks like you used to instead of bringing modern technology into it—the nets and everything. Make your nets out of sinew and come up here on your ponies. Instead of that, they come up here in new cars and they want the best of both worlds."[326]

In his study of dams and their impacts on salmon, Steven Hawley, said the Nez Perce experience in this matter mirrored larger national sentiments. He argued that one of the issues that led to the 1980 standoff was this belief from many non-Indians that if the treaty language of "in common with" meant that the tribe had to fish like non-Indians and follow the same regulations.[327]

[322] Wilfred Scott interview.
[323] *Central Idaho Star News*, "Indians fight fishing ban," June 26, 1980, A1.
[324] M.L. Wimer, letter to the editor, *LMT*, June 13, 1980, D1.
[325] Irene Shaver, "Conflict and the Formation of Inequity in Idaho's Salmon Fisheries: An Investigation of Indian/White Relations" (MA thesis, University of Idaho, 2010), 29.
[326] Shaver, "Conflict and the Formation of Inequity," 30.
[327] Hawley, *Recovering a Lost River*, 200.

Another issue at play for the Nez Perces, and for other tribes in the twentieth century, was a misunderstanding of treaty rights. Even the language that non-Indians used emphasized this misunderstanding. For example, the Star-News talked about the "fishing rights given to the Nez Perce Indian tribe in an 1855 treaty."[328] The Supreme Court has been clear, though, on what treaty rights are and are not. In *United States v. Winans* (1905), the Supreme Court said that treaties should be viewed "not [as] a grant of rights *to* the Indians, but a grant of rights *from* them."[329] (emphasis added).

Reinhardt's opinion is part of a larger pattern in Indian/non-Indian relations. Fishing rights were a contested area throughout the twentieth century. As Steven Pevar explains in his book, *The Rights of Indians and Tribes*, "Many non-Indians deeply resent Indian hunting and fishing rights, and few other areas of Indian law have created such bitter—and sometimes violent— rivalry and jealousy."[330] This conflict is heightened when other complicating factors are added in, such as conservation threats. For the Nez Perces, the threat to the salmon within their traditional fishing places was due to non-Indians—the dams and the commercial fishing in the Pacific—and the "scapegoating" of the Nez Perce was not warranted. Further, the Nez Perce believed that their limited fishing at that site did not threaten the propagation of the spring chinook, which therefore overrode the decision in the *Puyallup v. Department of Game* case.

The tension between Indian nations and state governments had been a hallmark of both the nineteenth and twentieth centuries, andthe Rapid River conflict provides more evidence to bolster historian Deborah A. Rosen's assertion that "The common goal of the state and federal governments with regard to Indians was control of Indians and Indian lands."[331] For the Nez Perce, the attack on their fishing rights epitomized this attack on their sovereignty and way of life: "Nez Perce tribal elders believe that one of the greatest tragedies of this century is the loss of traditional fishing sites and Chinook salmon runs on the Columbia River and its tributaries… The loss of the salmon mirrors the plight of the Nez Perce people."[332] One historian noted that the Nez Perce legal fights over fishing rights demonstrate the tribe's ongoing cultural persistence, but "although the Nez Perce have compelled several courts to acknowledge their treaty rights, they still look to the first Indian Law" for fishing, hunting, and gathering.[333] Although court decisions are an important aspect of protecting traditional cultural sites and practices, the tribe recognizes its own authority, looking to its own history, for protecting these sites.

The 1981 ruling did not end completely tensions between the tribe and the State of Idaho, specifically the Department of Fish and Game, nor did it end negotiations over the site in general. In April, Conley sent a letter to the tribe in which he said that he would take necessary

[328] Central Idaho *Star News*, "Indians fight fishing ban," June 26, 1980, A1.
[329] *United States v. Winans*, 198 U.S. 371 (1905).
[330] Pevar, *Rights of Indians and Tribes*, 186.
[331] Deborah A. Rosen, *American Indians and State Law: Sovereignty, Race, and Citizenship, 1790-1880* (University of Nebraska Press, 2007), 78.
[332] Landeen and Pinkham, *Salmon and His People*, 1.
[333] Clifford E. Trafzer, *Indians of North America: The Nez Perce* (Chelsea House Publishing, 1993), 103.

measures to "protect the resource," but he came short of saying he would close the fishery again.[334] In May of 1981, the tribe and the state began discussions about the salmon run. In mid-May, Dave Ortmann, a state fisheries biologist, estimated that 3,900 salmon would return to Rapid River during the spring season, 1,200 over the 2,700 mark the state had set. The state said in an informal agreement with the tribe that the tribe would have unrestricted treaty fishing until 50 fish were trapped, and two more weeks of unrestricted treaty fishing following that. In mid-May, the tribe informally agreed to regulate tribal fishing.[335] A few days later, the tribe announced that it would close treaty fishing within 100 feet of the trap, which the *Lewiston Tribune* called "a significant step toward reaching a settlement over treaty fishing rights."[336] Tensions were considerably lower in 1981, with only three conservation officers monitoring the trap. Non-Indian residents of the subdivision worked with the tribe to provide access to the river, as long as tribal members agreed not to camp on private property. A.K. Scott remembers many of the non-Indian residents as being very friendly to tribal fishers once they got to know them.[337] By the end of May, approximately 30-40 Nez Perces were camped at the river each day, as the two-week window for unrestricted treaty fishing closed.

Following this two-week period, representatives from the tribe, including A.K. Scott and Brad Picard, an attorney, and three members of the Columbia River Inter-Tribal Fisheries Council, met with IDFG on June 3. The tribe agreed to impose its own partial closure on treaty fishing, with no fishing during the week through June 12, open fishing for tribal members over that weekend, closure on Monday and Tuesday (June 15 and 16), with an Indian fishery on June 17 to commemorate the Nez Perce War of 1877. A.K. Scott said the negotiations were productive overall and that through them there was a spirit of cooperation.[338] By mid-June, numbers of returning salmon were still low, with only 821 chinook by June 17.[339] Tom Levendofske blamed cooler than usual weather and high water conditions for stalling the run.[340]

On June 18, Wilfred Scott, declared an immediate and total closure of tribal fishing. Scott wrote a notice to all tribal members on behalf of the executive council in which he said, "It is strongly felt that this action is mandatory for the future of the Rapid River fishery. The council does not feel that this action in any way relinquishes any of its lawful treaty rights, but instead strengthens our commitment to provide a fishery for our future and our children's future….All Nez Perce tribal members are requested to observe this closure action with honor and pride for our future."[341] This decision came after a closed door meeting between tribal negotiators and IDFH, with Jerry Conley present, and after a 45-minute meeting at Lapwai with only tribal members present. Conley commented that he hoped the negotiations between the tribe and state, which had

[334] Johnson, "Rapid River talks to resume," *LMT*, May 31, 1981, B1 and B10.
[335] *LMT*, "Both fish run and fish talks stalled," May 16, 1981, B1.
[336] Johnson, "Breakthrough in salmon fishing talks," *LMT*, May 20, 1981, A1.
[337] Allison K. Scott interview.
[338] Johnson, "Nez Perces impose own fishing ban," *LMT*, June 9, 1981, A1 and A4.
[339] *LMT*, "Salmon fishing negotiations resume," June 18, 1981, B4.
[340] *LMT*, "Rapid River salmon return remains low," June 16, 1981, B2.
[341] Johnson, "Nez Perces decide to stop fishing," *LMT*, June 19, 1981, A1.

occurred throughout the spring of 1981, marked a new era for the two groups, one marked by a sense of renewed trust and understanding.[342]

Lewiston Tribune editorial writer Bill Hall congratulated both sides for the resolution, but he chastised them for failing to do so the year before. He wrote that in 1980 tribal leaders had "allowed themselves to be stampeded and manipulated by their most belligerent members," while the IDFH had been "taken over by militaristic confrontationists who wanted to smash the opposition." He noted that the stand-off the year before, however, had served as a reminder that the fish run was "an original Indian resource and that the Nez Perces have, by legal right, an exceedingly large say in whether they will catch the fish, when they will catch the fish and how many."[343] By June 26, the closure was no longer necessary as 2,779 fish had returned.[344]

The 1981 season ended peacefully, but during it, the Nez Perces continually asserted their fishing rights and more members began participating more in treaty right discussions. In late June, over 100 Nez Perces traveled to Seattle and Olympia to participate in protests against recent bills two Washington legislators had introduced. Senator Slade Gordon, R-Washington, and Representative Don Bonkers, R-Washington, introduced these bills, referred to as the Steelhead Trout Protection Acts, to put salmon solely under state jurisdiction. Wilfred Scott did not participate in the protest, but he showed up as the protestors left Lapwai for the protest and he wished them luck on their journey.[345] Nez Perce tribal member Henry Hawkface was one of the members who went to Seattle to protest and he argued that these bills were intended only to strip away treaty rights.

Hawkface said the United States needed to acknowledge the weight and legality of treaties: "They make treaties with other countries and they honor them. No matter how old they (treaties) are, if the government signed it, the government should have to honor it."[346] These bills did not pass, but Gordon and others continued their efforts for the next few decades to erode treaty rights. Much of Gordon's political career in the 1970s through the 1990s became focused on ending treaty rights, but in 2000 he lost his final reelection bid. Different tribes worked together to successfully block his reelection that year, marking the "growing economic and political clout" of tribes, many of which had been galvanized by direct threats to their treaty rights.[347] The Nez Perces who participated in the protest against Gordon's proposed bill in 1981, made clear connections between the abrogation of their treaty rights and the larger national trend of dismissing Indian rights.

For the next few years, the tribe worked with IDFG to regulate fishing at Rapid River. Eager to avoid another standoff, in 1982, IDFG accepted the tribe's proposals that tribal members could catch 400 fish in unrestricted fishing at the beginning of the spring season, and then when the

[342] Ibid.
[343] Bill Hall, "For all sides, a round of applause," *LMT*, June 26, 1981, D1.
[344] *LMT*, "Hatchery reaches quota of salmon," June 26, 1981, B1.
[345] *LMT*, "Religion plays part in Indian protest," June 22, 1981, B1.
[346] Allison Arthur, "Fishing Rights: Indians fight steelheading restrictions," *LMT*, June 27, 1981, B1.
[347] Wilkins and Lomawaima, *Uneven Ground*, 248.

2,700 salmon the state deemed necessary for conservation efforts were in the trap, the tribe would have unlimited fishing access.[348] The tribe's active role in these negotiations as well as the IDFG's acceptance of tribal sovereignty in this regard marked a clear shift from pre-1980 relationships. The measured reaction of the IDFG in 1982, though, did not end attacks on treaty rights during years of low salmon returns, nor did it completely transform how non-Indians viewed Nez Perces fishing. Wilfred Scott related a story where non-Indians saw Nez Perce members fishing at Rapid River in the years following the stand-off. The non-Indian yelled things such as, "Get the hell out of here…Get off your river, you don't belong up here," and they shot bullets into the trees above the Nez Perces. No one was hurt in this incident, but Scott commented how easily someone could have been.[349]

In 1984 the salmon run again was low, and Fish and Game attempted to shut down fishing, specifically tribal members' gill-net fishing. Nez Perces and Shoshone-Bannocks, who IDFG included in their conclusions regarding blame for low numbers, responded that it was Fish and Game's fault for releasing diseased hatchery smolts back in 1983 and this was what truly caused the reduced run. This dispute did not escalate into a stand-off, as the 1979 and 1980 disputes had, and the Nez Perces worked with IDFG to reach an agreement on tribal and sport fisheries for Rapid River specifically in 1985. Regarding this agreement, Conley noted that, "We have, by and large, been able to work out our differences in state. Even so, we have a difficult time understanding each other."[350] His comment is a good reminder of the different perspectives regarding the Rapid River fishery; for the tribe, the area has significant cultural value in addition to the practical value (subsistence and commerce), and the misunderstanding and/or dismissals of these values led to the conflict.

The standoff in 1980 does not just demonstrate tensions between the tribal government and the State of Idaho; it reveals the conflict between non-Indian and Indian individuals which still exists today according to some tribal members. Katsy Jackson spoke in 2016 about how non-Indians (*soyapos*, in the Nez Perce language) litter the river every year in an attempt to dissuade Indian fishers. She remarked that *soyapos* throw mattresses and barbed wire, along with other items, into the river and that this hurts all fishers, Indian and non-Indian, as well as the fish. Jackson said, "When they trash our rivers like that, they're not just getting us, they're getting them own selves."[351]

Fishing at Rapid River has continued and increased since the standoff. While some tribal members currently catch fish to sell, harkening back to the trade of salmon in pre-contact times, commodifying the catch is questionable to some Nez Perces. Tátlo Gregory commented that:

> "It's not about money, or anything, I mean if we all come down to it, and we didn't have any money, the only reason to fish is to survive, eat, and trade. To get the things you do need. So, you know, it's really to keep that in mind, what it's

[348] *LMT*, "Tribe, state reach fishing agreement," June 3, 1982, C3.
[349] Wilfred Scott interview.
[350] Pat Ford, "The View from the Upper Basin," in *Western Water Made Simple,* 92.
[351] Katsy Jackson interview.

> really about. It's not about how many fish you catch, or how much money you made, you know. It's about respecting those fish, taking their body into yours, and providing for your family and your people. It's really what it's supposed to be about, taking care of those fish first."[352]

Josiah Pinkham echoes this, and notes that this adds to what he calls a "bottleneck" at the site during fishing season. The limited season time, as compared to the natural, traditional fishing season, concentrates numbers of fishers in a shorter time period. Adding to this, Pinkham says, is that some individuals have started to sell fish. When he was younger, he says the expectation was that each fisher would give fish away, but once you put a financial value to the fish, it brings in more people who need that economic activity. Pinkham says that this is a larger commentary on the economic pressures for some individuals.[353] Jason Higheagle Allen's memories echo this, as he explains that when he was a child, his elders taught him to give away the fish, "This is what we learn from our elders….When I was kid that is what I went fishing for was to bring her [his grandma] fish. So, she could process it and save it for funerals and giveaways." Allen continues, describing how he gave fish to elders and other community members for either traditional purposes or to help other tribal members. Now, though, Allen says he has become dependent on selling the fish he catches because he needs the financial remuneration.[354]

The conflict over Rapid River is one of the many factors that led to the Nez Perce tribe creating is Fish and Wildlife Commission in 1998. Gordon Higheagle said the end result of the Rapid River standoff was that the State of Idaho began recognizing more, if not fully, that the tribe needed and deserved a "seat at the table."[355] The stand-off escalated the tribe's push for its own management and allowed for it to bring in more people, Higheagle said, as well receiving funding.[356] Higheagle said that the stand-off resulted in more than just the development of fisheries management, but also that is was one of the factors responsible for developing more infrastructure in general for the tribe saying that it allowed the tribe to "see ourselves better."[357]

Josiah Pinkham argues that the standoff led to a profound change in the mentality of Idaho Fish and Game when it came to managing the fishery, and working with the tribe to manage it. As Pinkham said, "There's a new kid on the block, which is actually the oldest kid on the block we've got to deal with."[358] The tribe's Fish and Wildlife Commission is guided by traditional cultural practices and recognizes the strong connections between natural and cultural resources. The commission has the following duties under its auspices: "providing for the conservation, enhancement and management of the tribes' fish and wildlife resources and treaty rights; promulgating annual and seasonal fishing and hunting regulations; describing the manner and methods of taking fish and wildlife; the dissemination of information to the tribal public and the

[352] Tàtlo Gregory interview.
[353] Josiah Pinkham interview.
[354] Jason Higheagle Allen interview.
[355] Gordon Higheagle interview.
[356] Ibid.
[357] Ibid.
[358] Josiah Pinkham interview.

NPTEC; and providing ceremonial and subsistence salmon needs of the tribe."[359] Additionally, the tribe has a Department of Fisheries Resource Management (DFRM), which also utilizes the traditional resource management concepts the Nez Perces have practiced since time immemorial at their fisheries. In the DFRM's 2013-2028 resource management plan, one of the guiding management ideas is a recognition of the Nez Perces' history and use of the region, noting that the Nez Perces "have accumulated a deep repository of ecological knowledge and wisdom concerning the land, water, and other natural resources.[360] The DFRM's mission statement echoes this theme, stating:

> "The Nez Perce Tribe Department of Fisheries Resources Management will protect and restore aquatic resources and habitats. Our mission will be accomplished consistent with the Nimiipúu way of life and beliefs, which have the utmost respect for the Creator, for all species, and for the past, present, and future generations to come. Our mission will be consistent with the reserved rights stated within the Nez Perce Tribe's 1855 Treaty."[361]

The stand-off in 1980 ushered in a new era for the Nez Perces. The tribe became more active and vocal in managing their own resources, and the stand-off served as a reminder of the importance of protecting treaty rights in the face of a State and non-Indian neighbors who dismiss and discount treaty rights. Gordon Higheagle emphasized, too, the importance of how the tribe looked at the resources as a connected whole, and how this traditional view allowed for a more all-encompassing view towards "protecting the full gamut," instead of just focusing on one specific site.[362] Wilfred Scott agrees, noting that no one source is more important than other as they are all connected: "It's everything. All the animals, all the roots, the berries, the medicines. Everything is very important to the people. That's why I like to refer to the Nez Perce as 'the people.'"[363]

A.K. Scott said "Now, today, with all the fishery resources and management and everything came as a result of Rapid River…The resource is the most important thing."[364] At a ceremony held at the site in 2005 to commemorate the anniversary of the stand-off, Elmer Crow said, "What happened here 25 years ago didn't just change Nez Perce country. It changed the whole country. It was the beginning of co-management of the fisheries. Our Nez Perce fisheries department is a good example."[365] Gordon Higheagle, Frank Halfmoon, and others had already laid the groundwork for establishing the tribe as co-managers of fisheries, but the standoff sped up the creation of a Nez Perce fisheries department. Higheagle commented that this was the most

[359] "Nez Perce Tribe Fish and Wildlife Commission," available online at http://www.nezperce.org/official/fishanwildlifecommision.htm.
[360] "Nez Perce Tribe Department of Fisheries Resources Management Department Management Plan · 2013-2028," (2013), 6. Available online at http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf.
[361] Ibid.
[362] Gordon Higheagle interview.
[363] Wilfred Scott interview.
[364] Allison K. Scott interview.
[365] Woodward, "Nez Perce Honor 'Warriors' Who Fought for Fishing Rights."

positive result which came from the standoff.[366]

Josiah Pinkham explains the significance of the stand-off and its long term effects for the tribe:

> **"**Rapid River is sacred, the water is sacred there. But in all actuality, in a traditional Nez Perce mindset, it's as sacred as anywhere else. But activity focused there for a particular reason. Now that's not to say that the Nez Perce weren't fishing there before [the standoff], obviously, but there was a time frame before Rapid River's political fuse was lit, where there was a sparse—a more sparse—presence of Nez Perce individuals down there. Now one thing to clarify why might be the situation is that—a couple of things might be contributing to that economic activity changing over time. One, is that people were removed from there by misinterpretation of '63 treaty specifics. The other thing is that what's causing that activity to culminate over the years is that you put a hatchery in there. What does that do to the fish? You create somewhat of a bottle neck there. That type of a bottleneck will draw fisherman. People are starting moving in there because they know that that type of bottleneck is being created. Now, Rapid River hatchery went in '64' it goes in, things start to slowly pick up.
>
> Nez Perces are reconnecting with the landscape, if they are not already. Albeit, a given, that Nez Perces are already there, because I remember being there as a young boy. If you talk to some Nez Perces they might be like, 'Well I don't remember any Nez Perce around there; we were the only ones down there.' Not necessarily the case….Why the activity picked up is what needs to get your attention. And that's that, that was becoming a hot spot. People were going down there because the hatchery started to back things up, it was creating a bottleneck, fish were becoming a draw. And the other thing is that, this activity, this misinterpretation of off-reservation rights needed to be hashed out. You had to take that through the court system, and that [Rapid River] was the perfect place for that. So people were beginning to focus their energies there.
>
> They're basically saying, 'We're tired of having to do this. We need to get that right recognized. It's already there. These guys [Fish and Game officers/non-Indians/people in the court system/etc.] do not understand it, these outsiders do not understand it. We need to fight for this and get this recognized. It's no different than the *Arthur vs. U.S.* case only that was with hunting….So it starts to build up and you get more and more of a draw. And then pretty soon, BOOOM! The powder keg goes off, and all of those rights get recognized. So out of that comes all this fisheries activity that we are involved in now. I don't think we would have the fisheries program that we have today with hundreds of employees working for the Nez Perce Tribe if Rapid River didn't happen, because what that did to the bureaucratic mindset of Idaho Fish and Game is

[366] Gordon Higheagle interview.

pretty profound."[367]

Pinkham also discussed the symbolic aspect of fishing for contemporary Nez Perces, as it marks the continuity of the Nez Perce culture and ties current individuals even more strongly to their ancestors while keeping traditional customs alive. This is an important aspect when examining the traditional cultural value of the site.[368]

The site has been continuously used by the Nez Perce Tribe since time immemorial as one of their many fishing sites. The number of traditional fishing sites for the Nez Perces has declined since contact, due to Euroamerican encroachment, dam construction, and non-tribal fishing. All of this has elevated the importance of Rapid River for the Nez Perces; with fewer of their sites available to them and with a changing physical and social environment, Rapid River offers a distinctive opportunity. The river's location at the base of the Seven Devils Mountains has ensured that it remains very cold and still hospitable to salmon, which need that cold water to survive. Tribal members travel to Rapid River for the salmon run every year, and it offers them a chance to continue their traditional ways and pass them on to the next generation. Basil George, Jr., said that teaching the next generation is "The biggest satisfaction….It's part of who you are."[369] Katsy Jackson echoed this sentiment, saying, "That's what our old people taught us. It's always been there for us."[370]

The resource management guidelines that the DFRM follows are the consistent with the ideologies that members of the tribe stated during the Rapid River standoff, highlighting traditional use, cultural importance, and treaty rights. The continued use of Rapid River leading up to, during, and following the 1979 and 1980 conflicts demonstrate the site's importance. This importance has also increased in the last decade. Cultural Resource Program manager Nakia Williamson noted that because of the loss of other traditional Nez Perce fisheries, more tribal members are utilizing Rapid River.[371] The ongoing importance of the site is a lasting reminder of the traditional cultural values and activities associated with Rapid River. Examining the larger historical patterns provides evidence of the importance of this site which gives a more concrete example of treaty rights, treaty abrogation, and traditional cultural sites for tribes in the nineteenth and twentieth centuries.

Understanding the importance of Rapid River is more than just understanding treaty rights, tribal government/state government relationships, and conservation issues, though. The site offers a place in which the Nez Perces still connect with and continue with their traditional cultural practices. Being told by Idaho Fish and Game in 1980 that they could not keep any fish they caught offered a direct challenge to not only to Nez Perce treaty rights, but to Nez Perce culture and beliefs. Josiah Pinkham sums up the importance of Rapid River:

[367] Josiah Pinkham interview.
[368] Ibid.
[369] Basil George, Jr. interview.
[370] Katsy Jackson interview.
[371] Personal communication wih Nakia Williamson, Lapwai, April 15, 2016.

> "Keeping that fish is something that is very, very powerful because it represents your ability to keep your livelihood alive, tend to it, make sure your family is fed. And most of all, it's keeping up that relationship with that fish, and what it represents because that goes back to our very, very early stories about how the animal people come together, and they're talking about this great change that will be brought by this two-legged creature that wouldn't know how to feed itself, clothe itself, shelter itself, and the first one to come forth was salmon: 'I will give my entire body for these creatures because they are gonna need food. All that I ask is that they allow me to die in the place in which I was born so that my children can continue to carry on my way of life of traveling to far off places to gather up gifts to bestow upon them when they return.' That's what that is about. Keeping up that relationship with that generous creature because it honors its word, it comes back every single year. As long as we take care of it. That's worth fighting for."[372]

Conclusions:

Rapid River, or *Yáwwinma*, is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A for its association with traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. As described above, Rapid River shapes Nez Perce worldviews and is a central part of Nez Perce history. It is a significant part of Nez Perce seasonal rounds—movements across the landscape in concert with the seasons—and a place embedded within tradition patterns of fishing.

In addition to these elements of significance that extend far back into time, the unique character of the events that transpired in the late 1970s and early 1980s at Rapid River contribute to, and were a formative part of, recent Nez Perce Tribal history and Tribal infrastructure pertaining to Nez Perce treaty rights and fisheries management programs. In particular, these events directly influenced the formation of a Nez Perce Tribal Fisheries Program, and shaped the management of these resources for generations to come. This more recent significance, achieved within the past 50 years, complements and contributes to the longer narrative of Nez Perce practices, traditional activities, and uses at this important, unique, and long-standing Nez Perce fishery. Oral histories from tribal members emphasize the connection between fishing sites traditionally used by tribal member, such as Badger Hole and Jackson Hole, and sites associated with the conflicts of 1979 and 1980. These sites are also associated with the properties within the nomination, as parcels currently owned by the Nez Perce Tribe.

Moreover, an examination of both Nimíipuu use of Rapid River and the tribe's conflict with the federal government and the State of Idaho to affirm and to protect tribal rights to the site reflect

[372] Josiah Pinkham interview.

larger themes within federal policy regarding tribes, treaty rights struggles in the twentieth century, protests from groups such as the American Indian Movement, and issues of contested land use between different cultural groups in the American West.

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Cultural and/or Natural Resource Reports

Abbott, Paul E., and Mark H. Stute. "Evaluation of Idaho Power Hatchery Mitigation Program." Prepared for Idaho Power Company, 2003. https://www.idahopower.com/pdfs/Relicensing/hellscanyon/hellspdfs/techappendices/Aquatic/e31_04.pdf.

Clark, Dennis. "Criteria of Adverse Effect." In *Determination of Adverse Effect Rapid River Bridge and Associated Nez Perce Traditional Cultural Property/Rapid River Bridge South of Riggins/BR-4110 (130); Key NO. 7042/Idaho County, Idaho*. Idaho Transportation Department. July 7, 2003.

Conley, Jerry (Idaho Department of Fish and Game). "Evaluation of Spring Chinook Salmon Emigration, Harvest and Returns to Rapid River Hatchery, 1979, and Report of Operations at Rapid River Hatchery." in *Annual Performance Report: Report to Idaho Power Company* (from 1 October 1978 to 30 September 1979. Located at Idaho State Historical Society archives.

Department of Fisheries Resources Management Strategic Plan Ad Hoc Team. "Nez Perce Tribe Department of Fisheries Resources Management Plan 2013-2028." 2013. http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf

Fulton, Leonard. "Special Scientific Report—Fisheries No. 571." In *Spawning Areas and Abundance of Chinook Salmon (Oncorhynchus tshawytscha) in the Columbia River Basin*. Washington, D.C.: United States Fish and Wildlife Service, 1968.

Idaho Transportation Department. "Section H. Conclusions and Recommendations." In *Archaeological and Historic Survey: Rapid River Bridge South of Riggins, ITD3 BR-41109 (130) Key# 7042. 2002.*

Jones, Robert, and Jessica A. Dougherty. "Archaeological and Historical Survey Report, Archaeological Survey of Idaho: Cultural Resources Inventory for the Rapid River Fish Hatchery, Riggins, Idaho." Prepared for Idaho Power Company, 2015.

Reid,Kenneth C. and James D. Gallison. *The Nez Perce Fishery in the Nineteenth Century: A Review of Historic, Ethnographic, Archaelogical and Environmental Evidence*. Rainshadow Research Project Report No. 25. Submitted to the Idaho Power Company. October 1994.

Swanson, Jr., Earl. "The Archaeological Resources Of The Salmon River Canyon: A Methodology Study to Develop Evaluation Criteria for Wild and Scenic Rivers." Water Resource Institute. University of Idaho, 1970.

Wallowa-Whitman National Forest. "Wild Rapid River Resource Assessment," in "Hells Canyon National Recreation Area Comprehensive Management Plan." 2003.

Previous documentation on file (NPS):

____ preliminary determination of individual listing (36 CFR 67) has been requested
____ previously listed in the National Register
_____previously determined eligible by the National Register
_____designated a National Historic Landmark
____ recorded by Historic American Buildings Survey #_____
_____recorded by Historic American Engineering Record # _____
____ recorded by Historic American Landscape Survey # _____

Primary location of additional data:

____ State Historic Preservation Office
____ Other State agency
____ Federal agency
____ Local government
____ University
_X___ Other
Name of repository: _Nez Perce Tribe Cultural Resource Program_____

Historic Resources Survey Number (if assigned): _____

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10. Geographical Data

Acreage of Property _6.172_____

Use either the UTM system or latitude/longitude coordinates

Latitude/Longitude Coordinates (decimal degrees)
Datum if other than WGS84:_____
(enter coordinates to 6 decimal places)

Latitude: 45.477712 degrees **Longitude:** -116.193444 degrees

Verbal Boundary Description (Describe the boundaries of the property.)
From the Idaho County Assessor's Office:

Parcel 1,
Tax Number 148 (3.35 acres)

The following property situat [sic] in Idaho County, State of Idaho, to-wit: Township 24N, Range 1 East, Boise Meridian, Idaho County, Idaho Section 32; Tax N. 148 being a parcel of property lying within the NW¼ SE ¼ and the NE ¼ SE ¼ which is described relative to the Federal Aid project 0S-2500 (1) as follows:

Beginning at the South Quarter corner of said Section 32, which quarter corner lies South 89°43'46"E, 2,649.31 feet from the Section corner common to Sections 31, 32, 6 and 5; thence North 44°52"41' E, 1,862.04 feet to E.O.P. centerline station 27 plus 60; thence North 89°46'00" W, 29.81 feet along said centerline; thence North 0°14'00" E, 15 feet to the right of way line on the West side of U.S. Highway 95 at Station 27 plus 30.19, which is the real point of beginning; thence North 89°46'00" W, 25.19 feet along said right of way; thence North 0°14'00" E., 15 feet; thence North 89°46'00" W, 200 feet along the Northerly right of way line of the Rapid River Road; thence South 0°14'00" W, 10 feet along said right of way line; thence North 89°46'00" W, to the East bank of Rapid River; thence leaving the Rapid River Road right of way and following the East bank of Rapid River in a Northeasterly direction to where it intersects the West right of way line of U.S. High 95; Thence following the U.S. 95 West right of way line in a Southwesterly Direction back to the real point of beginning.

Parcel 2:
Two parcels held by the Nez Perce Tribe under a single deed comprise Parcel 2. The larger parcel completely encloses the second, smaller parcel.

Tax Number 123 (2.752 Acres)

A tract of land situated in the S ½ Sec. 32, T 24 N., R1 E., B.M. Idaho County, Idaho, more particularly described as follows:

Commencing at the South ¼ corner of said Sec. 32; thence N. 0°42'26" E. 1150.82 feet to a 5/8" x 30" rebar; thence S. 86°30'28" W. 175.52 feet; thence S. 80°39'23" W. 106.89 feet to the initial point of Rapid River subdivision No.1; thence 32.26 feet along the easterly boundary of said Rapid River Subdivision N. 1, and along the arc of a curve to the left having a central angle of 92°24'38", a radius of 20.00 feet and a long chord which bears S. 34°27'05" W. 28.87 feet; thence S. 11° 45'14" E. 104.02 feet to a point of curve; thence southwesterly 124,51 feet along the arc of a curve right having a central angle of 75°05'31", a radius of 95.00 feet and a long chord which bears S. 25°47'30"W. 115.78 feet; thence s. 63°20'16"W 180.00 feet; thence S.26°39'43E. 114,00 feet to a point on the left bank of Rapid River; thence leaving boundary of Rapid River Subdivision No.1 S.26°39'43"E. 60 feet, more or less, to a point on the right bank of Rapid River, thence southwesterly, along the right of Rapid River approximately by the following courses and distances;

S. 49° 14'30" W. 236.62 feet;

S. 64° 21' 01" W. 237.95 feet;

S. 74°28' 10" W. 237.16 feet;

S. 58° 37' 30" W. 441.18 feet;

S. 76° 15' 26" W. 189.42 feet;

S. 58° 35' 32" W. 127.71 feet

to a point on the south boundary of said Sec. 32: thence leaving river, N. 89° 53' 05" E. 686 feet to the point of beginning.

SAVING AND EXCEPTING therefrom the following described tract: Commencing at the S ¼ corner of Sec. 32, T.24N., R.1E., B.M. thence N. 0°42'26" E. 856.8 feet to the REAL POINT OF BEGINING; thence N.89°17' 34"W. 70.0 feet; thence S. 0°42'26" W. 50 feet to a point on the dike; thence S. 89°17'34" E. 70 feet; thence leaving dike N. 0°42' 26" E. 50 ft to the point of beginning.

Tax Number 176 (.08 Acres)

Commencing at the South quarter corner of Section 32, T24 N, Range 1 East, Boise Meridian; thence North 0° 42' 26" East, 856.8 feet to the real point of beginning; thence North 89° 17' 34"

West 70.0 feet; thence South 0° 42’ 26" West, 70 Feet; to a point on the dike; thence South 89° 17' 34" East, 70 " feet; thence leaving dike North 0° 42' 26’ 11” East, 50 feet to the point of beginning;

Boundary Justification (Explain why the boundaries were selected.)
For the purposes of this nomination, the boundaries of the *Yáwwinma* Traditional Cultural Property (TCP) are three small noncontiguous parcels of private land recorded under two deeds owned by the Nez Perce Tribe. Although the TCP boundary should include the Rapid River drainage (and Nez Perce Treaty fishing rights do include all this area, regardless of ownership), most of the surrounding property is private. The Idaho SHPO and Nez Perce Tribe agreed to limit the site boundary to parcels owned by the Tribe to minimize conflicts with neighboring landowners.

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11. Form Prepared By

name/title: _James Hepworth & Amy Canfield (contractors), and Patrick Baird & Mario Battaglio (Nez Perce Tribe)_
organization: _Nez Perce Tribe Cultural Resource Program_____
street & number: __P. O. Box 365_____
city or town: Lapwai_____ state: _ID_____ zip code: 83540____
e-mail__keithb@nezperce.org_____
telephone:__208-621-3851_____
date:____January 6, 2017_____

Additional Documentation

Submit the following items with the completed form:

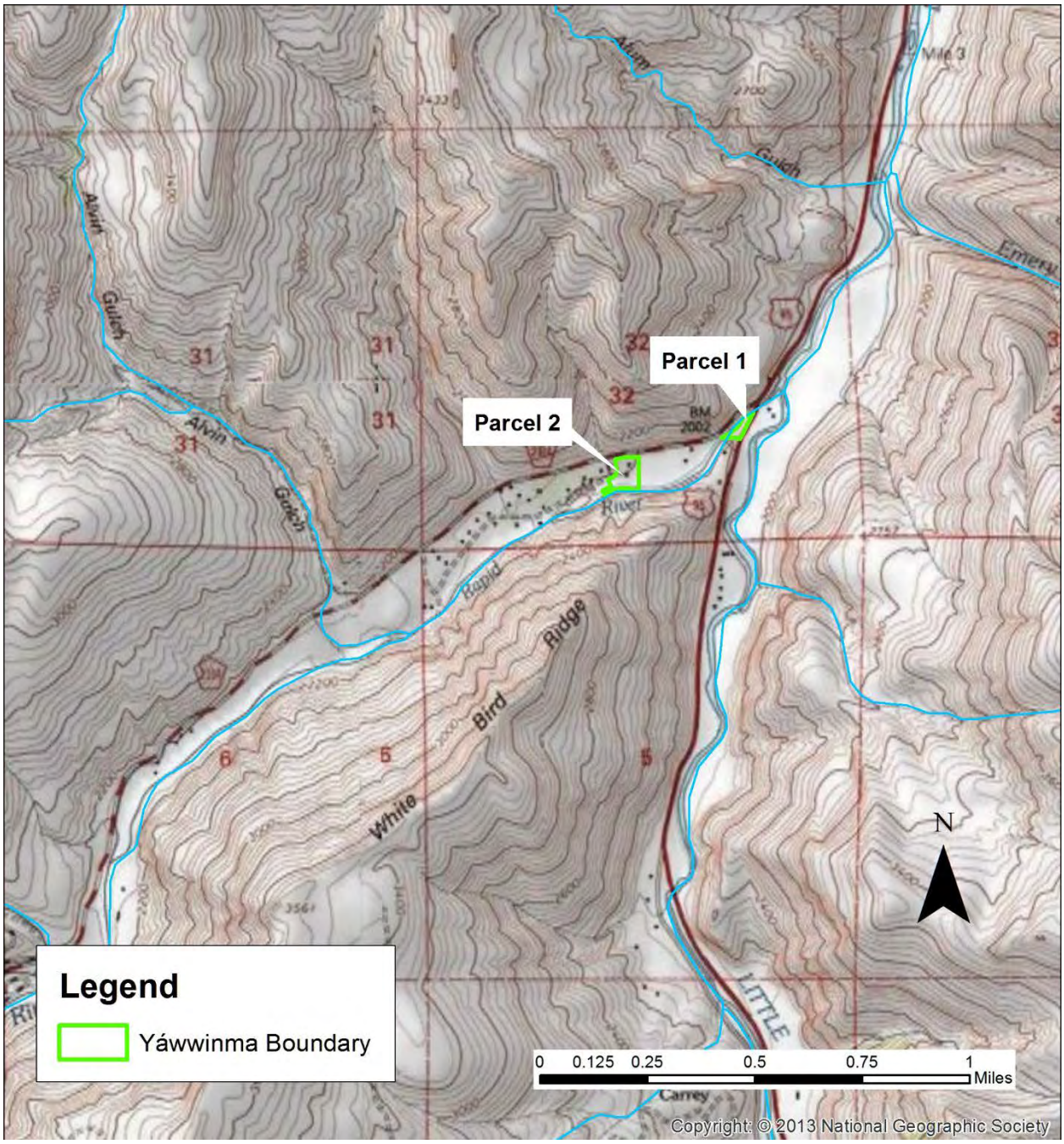
- **Maps:** An **electronic map** or **USGS map** or equivalent (7.5 or 15 minute series) indicating the property's location.

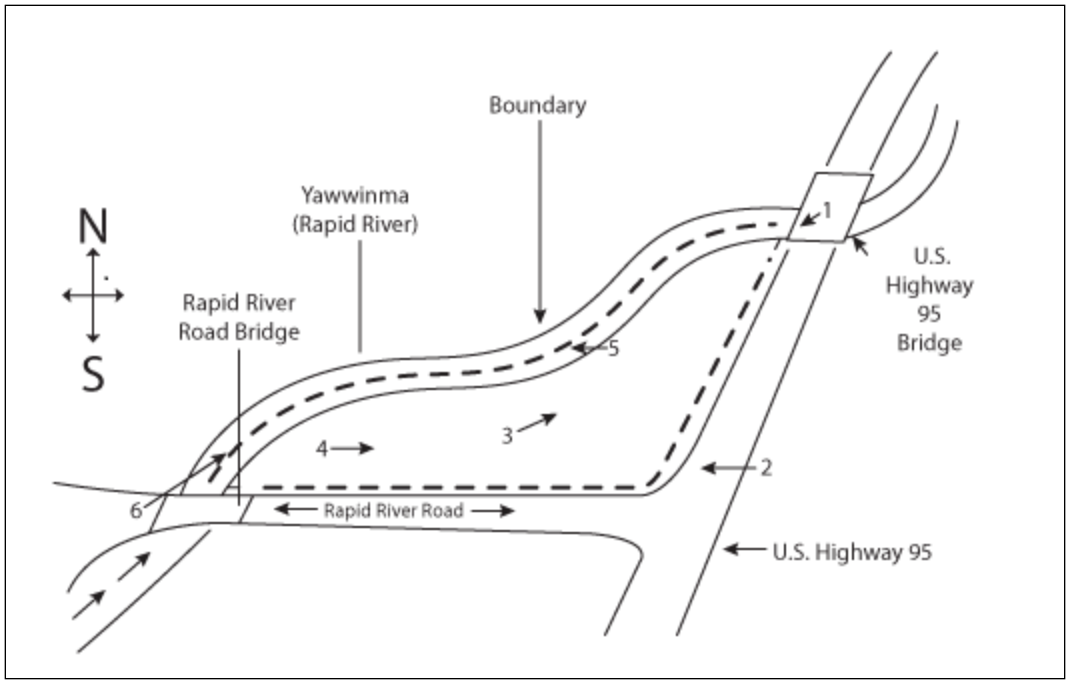
Map 1: Rapid River, *Yáwwinma* Traditional Cultural Property (TCP) general location.

Latitude: 45.477712 degrees
Longitude: -116.193444 degrees

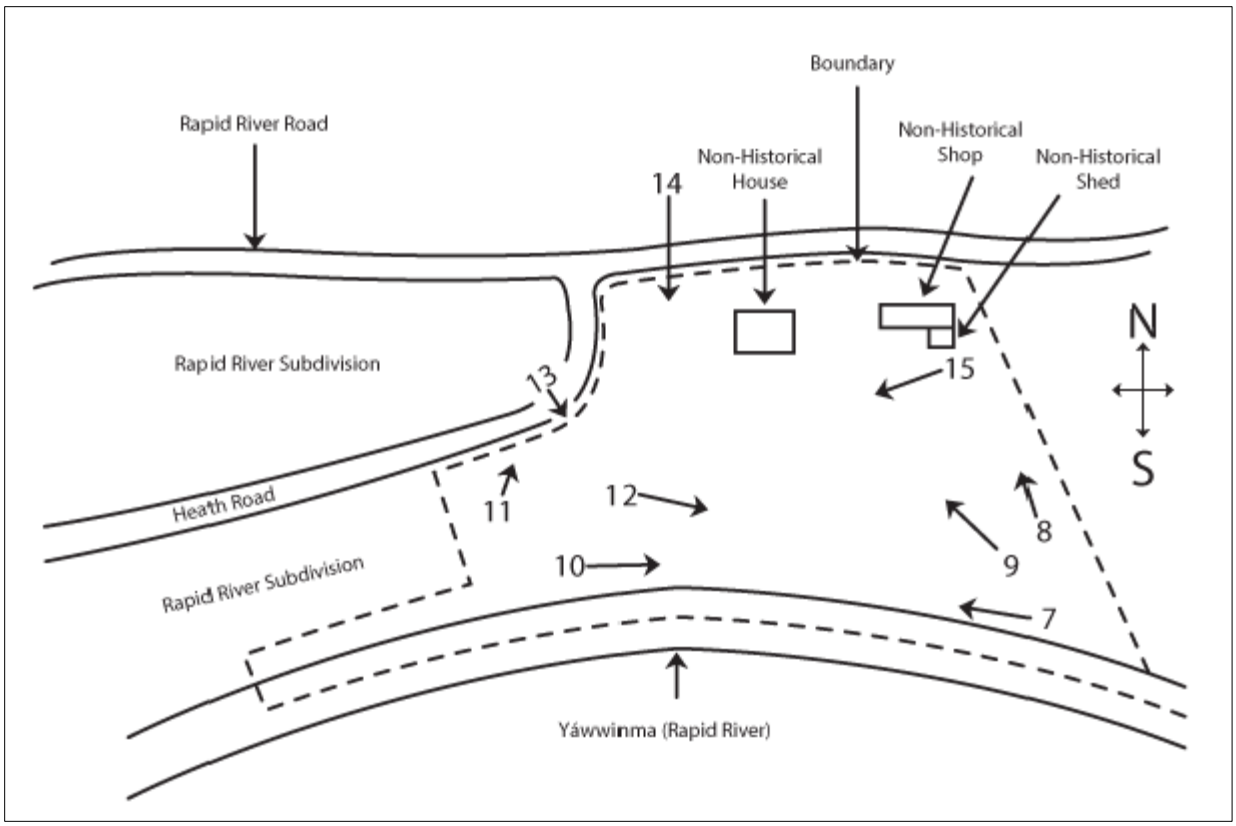
Map 2: *Yáwwinma* Traditional Cultural Property (TCP) parcel general locations

Map 3: *Yáwwinma* Traditional Cultural Property (TCP) parcel boundaries





Map 4 (above): Parcel 1, along US Highway 95.



Map 5 (above): Parcel 2, between Rapid River Road and Rapid River.

- **Additional items:** (Check with the SHPO, TPO, or FPO for any additional items.)

Photographs

Submit clear and descriptive photographs. The size of each image must be 1600x1200 pixels (minimum), 3000x2000 preferred, at 300 ppi (pixels per inch) or larger. Key all photographs to the sketch map. Each photograph must be numbered and that number must correspond to the photograph number on the photo log. For simplicity, the name of the photographer, photo date, etc. may be listed once on the photograph log and doesn't need to be labeled on every photograph.

Photo Information: 15 Photographs

Name of Property:	*Yáwwinma* (Rapid River Fishery Traditional Cultural Property)
Date:	May 23, 2016
City or Vicinity:	Riggins, Idaho
County:	Idaho County
State:	Idaho
Name of Photographer:	Jim Hepworth
Location of Original Digital Files:	Idaho State Historic Preservation Office 210 Main Street, Boise, ID 83702

ID_Idaho_County_Yáwwinma_0001

Photo 1 of 15 – View looking southwest

View of Rapid River from the U.S. Highway 95 bridge abutment at the northeastern most corner of Barter Town. White Bird Ridge in the background. The northwestern boundary of Barter Town extends to the middle of this streambed.

ID_Idaho_County_Yáwwinma_0002

Photo 2 of 15 – View looking west

Entrance to Barter Town from U.S. Highway 95 as viewed from across the road.

ID_Idaho_County_Yáwwinma_0003

Photo 3 of 15 – View looking northeast

A hilltop view of Barter Town.

ID_Idaho_County_Yáwwinma_0004

Photo 4 of 15 – View looking east

A hilltop view of Barter Town, looking toward U.S. Highway 95. To the right beyond the fence line is Rapid River Road, which parallels the property's southern boundary.

ID_Idaho_County_Yáwwinma_0005

Photo 5 of 15 – View looking southwest

A plunge pool at Barter Town (somewhat upstream).

ID_Idaho_County_Yáwwinma_0006

Photo 6 of 15 – View looking northeast

Looking downstream at Rapid River (Yáwwinma) at the northwestern boundary of Barter Town from Rapid River Road.

ID_Idaho_County_Yáwwinma_0007

Photo 7 of 15 – View looking west

Looking upstream at Rapid River from the southeastern boundary of the Rapid River House property.

ID_Idaho_County_Yáwwinma_0008

Photo 8 of 15 – View looking north-northwest

Looking along the fence line from the southeastern boundary of the Rapid River House property toward Rapid River Road at two non-historical buildings: a shed and a shop. Fisherman's tent visible center left in the photo.

ID_Idaho_County_Yáwwinma_0009

Photo 9 of 15 – View looking north-northwest

View of all three non-historical buildings from the southeastern boundary of the Rapid River House property. To the left is Rapid River House, and to the right the shed and shop.

ID_Idaho_County_Yáwwinma_0010

Photo 10 of 15 – View looking east

Looking downstream at Rapid River along the southern boundary of the Rapid River House property.

ID_Idaho_County_Yáwwinma_0011

Photo 11 of 15 – View looking north

View of the Heath Drive entrance from inside the Rapid River House property.

ID_Idaho_County_Yáwwinma_0012

Photo 12 of 15 – View looking east

Viewshed of dyke (to the right), powerlines (center), and White Bird Ridge (background).

ID_Idaho_County_Yáwwinma_0013

Photo 13 of 15 – View looking south-southeast

Rapid River House entry gate seen from Heath Road.

ID_Idaho_County_Yáwwinma_0014

Photo 14 of 15 – View looking south

An overlook of the Rapid River House property from Rapid Rapid River Road.

ID_Idaho_County_Yáwwinma_0015

Photo 15 of 15 – View looking southwest

Viewshed of White Bird Hill and Seven Devils Mountains as seen across the parking lot at Rapid River House.

Historic Photographs of the Rapid River Conflict (1979-1980)

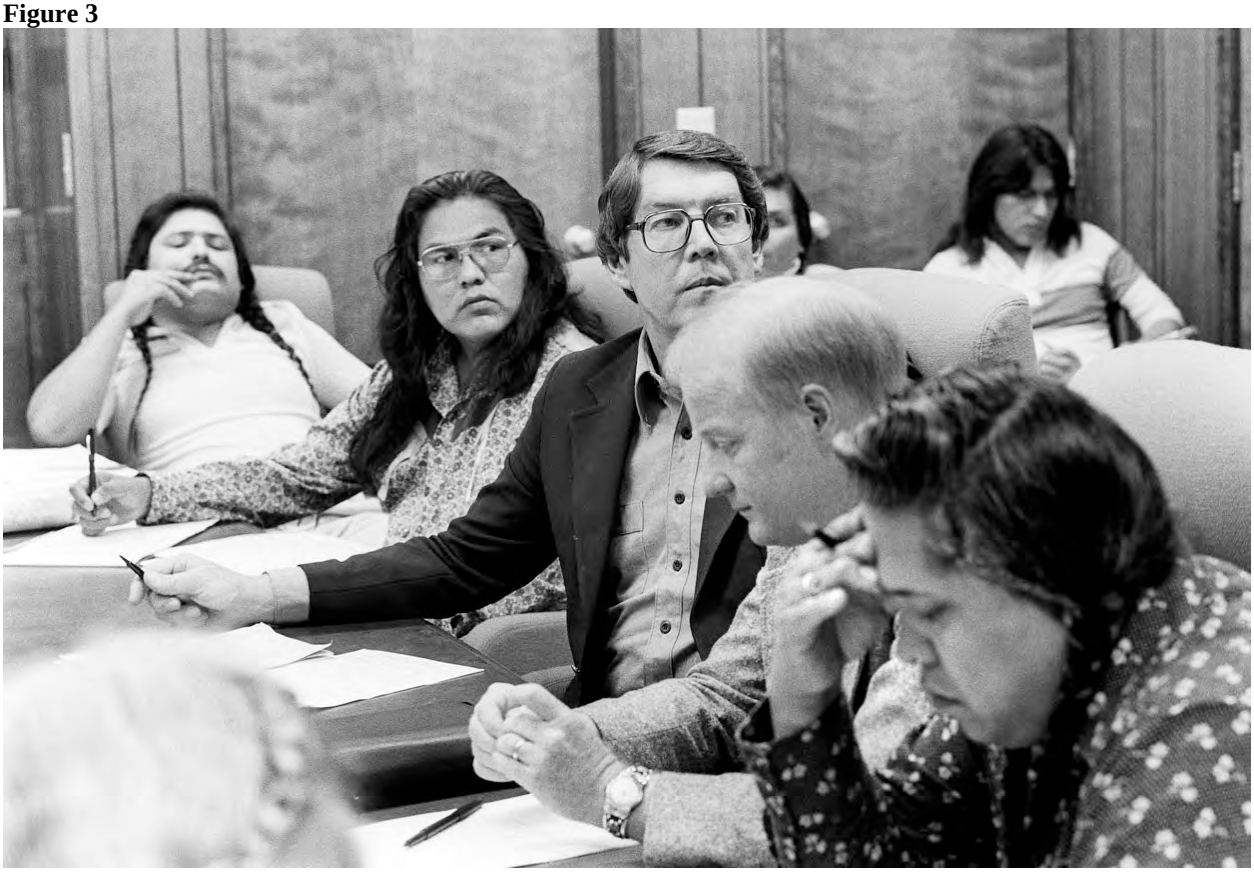
Figure 1:

Photographer: Dave Johnson
Publisher: *Lewiston Morning Tribune*
Date: June 1980
Subjects: (back row, left to right) Dave Holt, unknown, Jon Wapsheli, Mike Valley, Tim Weaver, Melvin "Coke" Marks, Greg Crow, Rachel [last name unknown], Didi [last name unknown], Sonny Bybee, Kim Rickman, [unknown] Charles Ellenwood, Becky Johnson, Jackie Johnson, Darryl Rickman, Allison K. Scott, Eugene Johnson, John Jabeth, Dwight Williams. (front row kneeling) Gary [last name unknown] and Joe Dance.

Figure 2

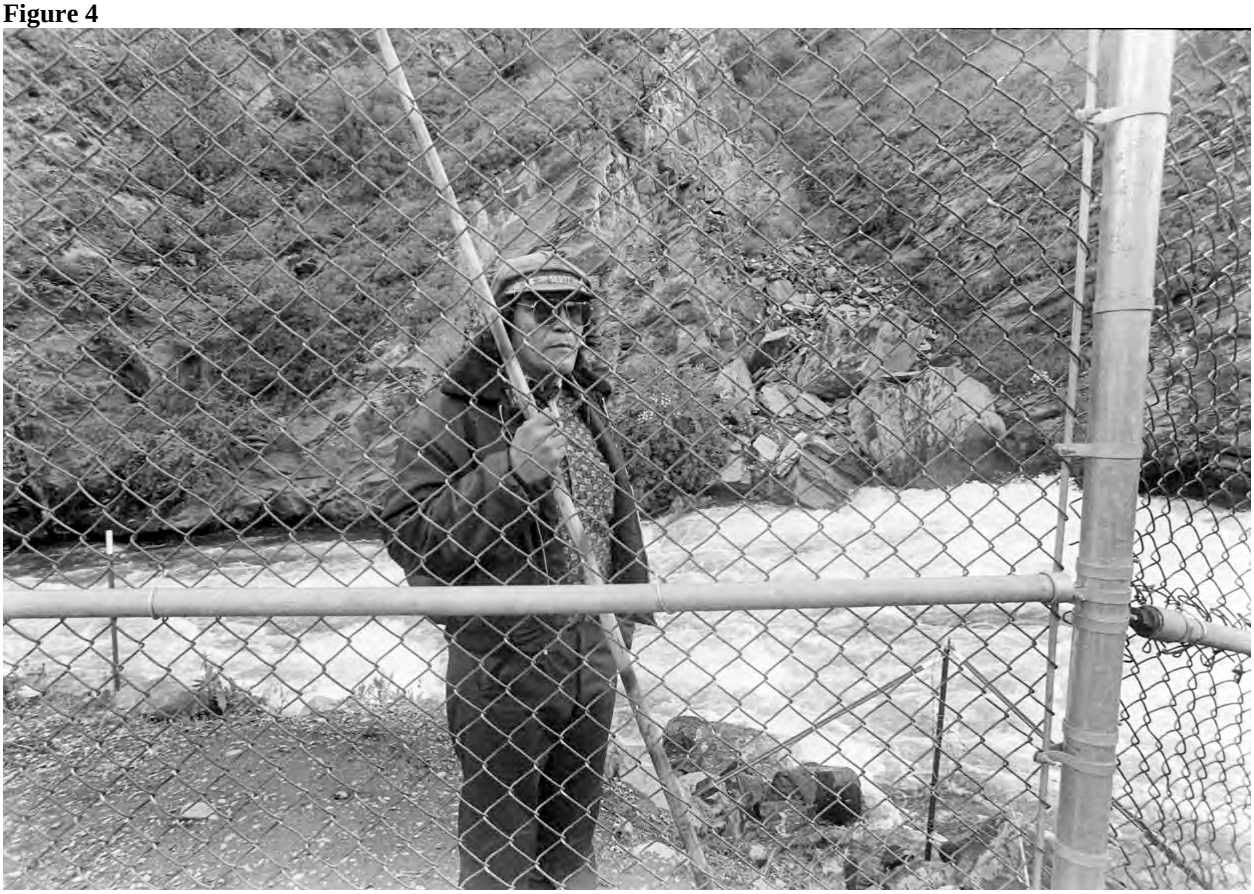
Photographer: Dave Johnson
Publisher: *Lewiston Morning Tribune*
Date: June 6, 1979
Subjects: Unknown

Figure 3



Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 5, 1980
Subjects: (back to front) Allison K. Scott, Governor John Evans, Jerry Conley, and [unknown]

Figure 4



Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 13, 1980
Subjects: Roderick Scott

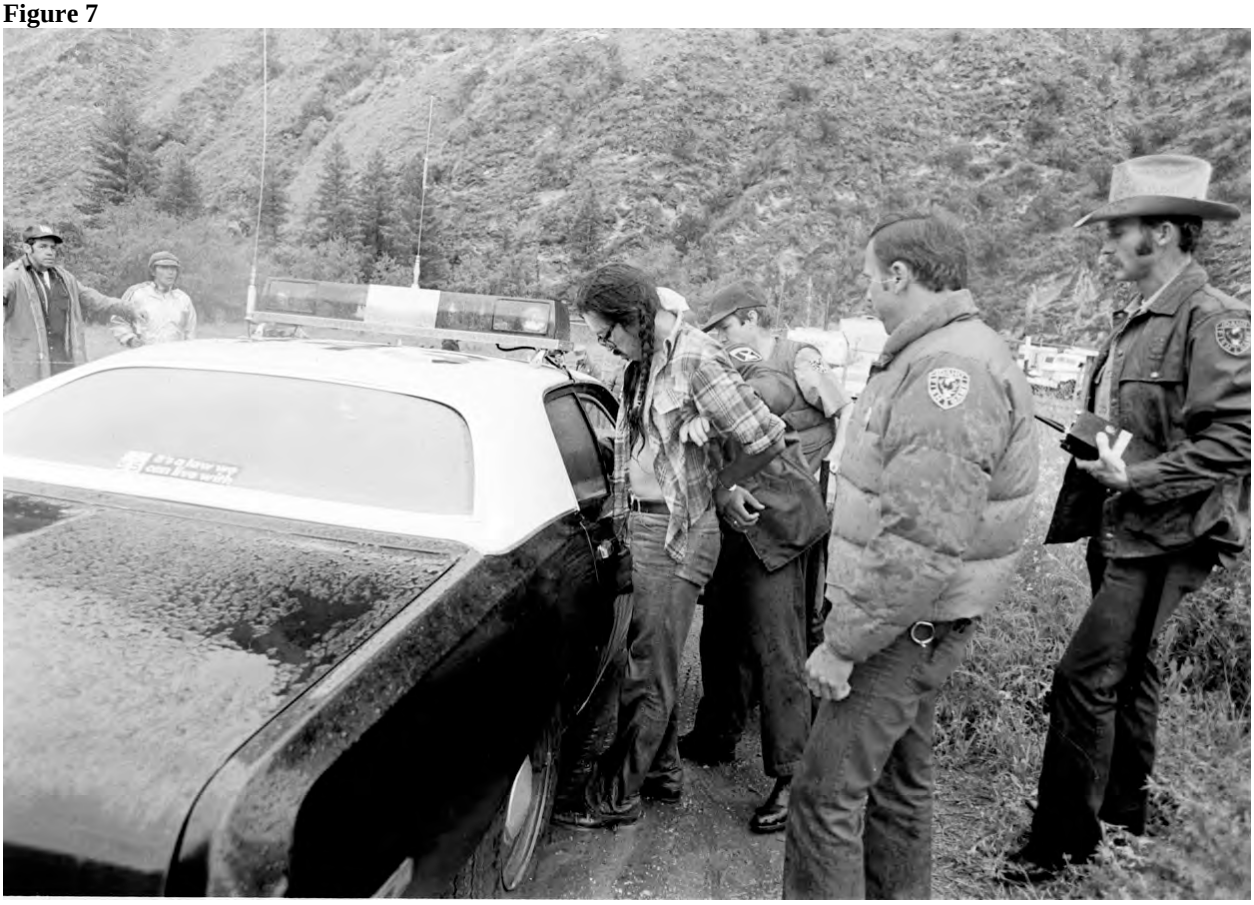
Figure 5

Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 14, 1980
Subjects: Lewis Gerwitz, A.K. Scott, and Bill Snow

Figure 6

Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 15, 1980
Subjects:

Figure 7

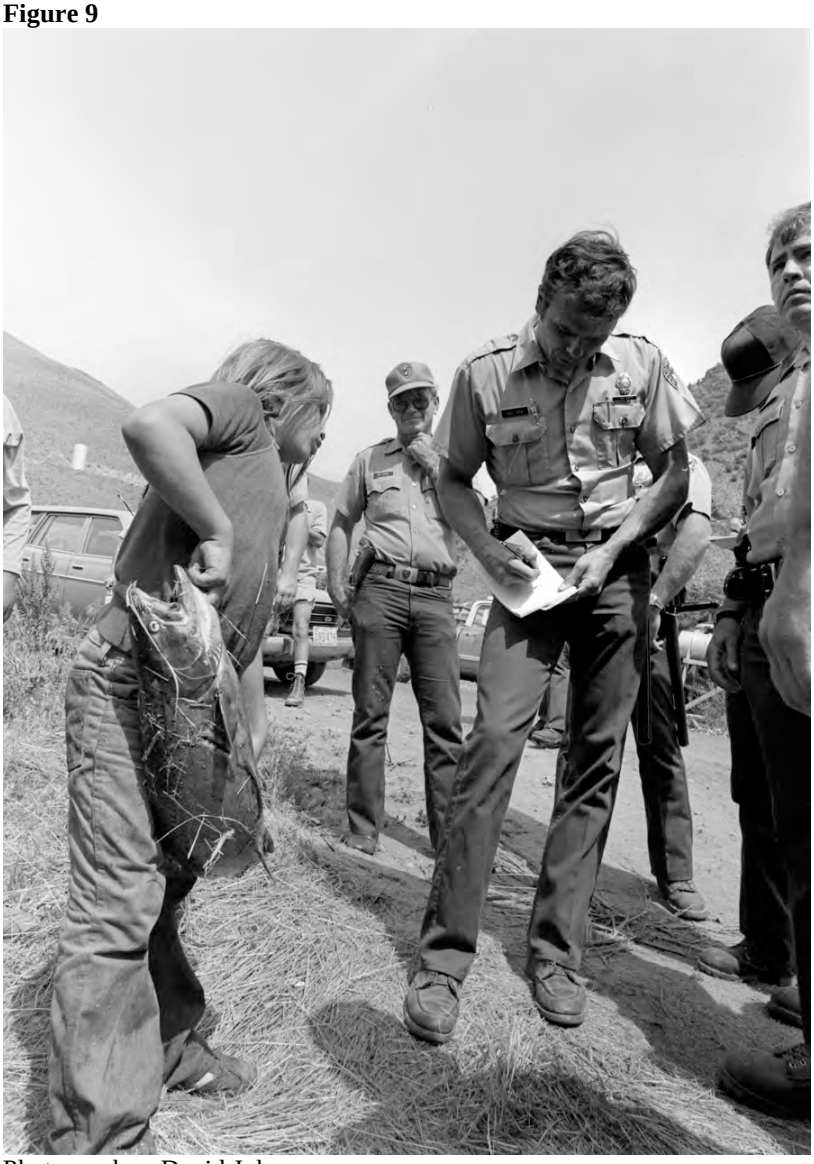


Photographer: Dave Johnson *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 16, 1980
Subjects: Kenneth Oatman (being placed in car) and Bill Snow (officer with hat)

Figure 8

Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 22, 1980
Subjects: (foreground) Allen Slickpoo

Figure 9



Photographer: David Johnson
Publisher: *Lewiston Morning Tribune*
Date: June 23, 1980
Subjects: (foreground) Jarrod Crow and Bill Snow

Figure 10

Photographer: *Tribune* staff
Publisher: *Lewiston Morning Tribune*
Date: June 1980
Subjects: Wilfred Scott

Contemporary Photographs of Rapid River Fishing

Figure 11

Nez Perce fisherman James Black Eagle of Kamiah with his dipnet standing in the Gravy Hole.

Photo taken by Jim Hepworth, June 23, 2010.

Figure 12

Nez Perce tribal member Victoria Mitchell completes a sweep with her dipnet on the lower Rapid River (Yáwwinma), not far from the tribal encampment at Rapid River House.

Photo taken by Jim Hepworth, June 11, 2016.

Figure 13

Summer 2016 Rapid River Youth Salmon Campers pose with the Walker Brothers on the lower Rapid River. The boys range in age from ten to fourteen. All five of these young men made their own spears and gaff hooks. They fished all day and much of the previous night.

Photo taken by Jim Hepworth, June 11, 2016

THE NEZ PERCE TRIBE
IS NOT RESPONSIBLE
FOR LOST OR STOLEN ITEMS
OR STRANDED TRAVELERS.

NEZ PERCE TRIBE
TREATY OF 1855

VEHICLES, TRAILERS, CAMPERS OR SIMILAR ITEMS
LEFT AT THIS SITE FOR AN EXTENDED PERIOD
WILL BE TOWED AT THE OWNER'S EXPENSE.
SMALLER ITEMS WILL BE SUBJECT TO DISPOSAL.

National Register of Historic Places
Memo to File

Correspondence

The Correspondence consists of communications from (and possibly to) the nominating authority, notes from the staff of the National Register of Historic Places, and/or other material the National Register of Historic Places received associated with the property.
Correspondence may also include information from other sources, drafts of the nomination, letters of support or objection, memorandums, and ephemera which document the efforts to recognize the property.

UNDERREPRESENTED COMMUNITY GRANTS PROGRAM
Draft Nomination Review Form

Grant Project Number: P15AP00002

Nomination Name: Yawwinma

Location: 143 Rapid River Road, Riggins vicinity, Idaho County, Idaho

Date Received by NRHP: 2/13/2017 **Date Review Completed:** 2/28/2017

NR Eligibility: YES Eligible, NR Criterion A

National Register of Historic Places – Preliminary Review Comments:

This review constitutes a preliminary review of a draft nomination being prepared by the Idaho SHPO associated with the Underrepresented Community Grants program. The comments being provided are general in nature and do not reflect a detailed technical review of the nomination.

The documentation presented in the Yawwinma nomination does an excellent job of outlining the important historic context for the traditional Native American use and value of the Rapid River fishery. The documentation in particular does an excellent job of overlaying the traditional cultural practices and beliefs of the Nez Perce tribe with regard to the historic fishery resources and the more political aspects surrounding the continued use and appreciation of those resources in more modern times. While certainly providing solid justification for National Register eligibility under Criterion A, the nomination is still very weak in its specific justification for the eligibility of the properties being nominated at this time. Both the Description and the Statement of Significance narratives need to be reinforced to better tie the identified themes to the land areas being nominated.

Description:
The narrative needs to further elaborate on the physical characteristics of the nominated property(s). The current discussion does a good job of noting the characteristics of the broader Rapid River corridor, but it provides little information with respect to the nominated areas. Among the items that may be worth discussing to some degree could include: the character of the river in these areas (how wide, how deep, what is the shoreline like, anything that makes these areas particularly suitable to traditional fishing—rapids, slow current, eddies, drop in elevation, fishing platforms or stones, fish population [see page 8.10]); the character of the shoreline flora in these areas; the condition of open areas inland from the river (hilly, flat, scrub, parking areas for access, camping areas, etc.); the views to surrounding mountains/hillsides, if important; the plung pool (?) noted in photographs. While there is the sense that the nominated properties are

just similar to the general conditions of the broader riverway, this is a nomination of specific parcels and there should be a clear description of the current character of these areas, as well as any information that might be available regarding their historic character if known.

At the location of the two parcels the river is...../ The shoreline along the parcels is marked by... Physical evidence of historic use can be seen in .....

Significance:
The nomination checks off the box for National Register Criterion D, but there is no discussion in the narrative regarding that criteria. Criterion D should probably be dropped unless additional documentation can be provided to justify its eligibility.

The introductory paragraphs should include a brief justification for the period of significance selected. How does the period specifically relate to the identified themes of traditional cultural practices and beliefs, and more directly how are the later significant dates specifically associated with particular themes and events of exceptional cultural, political and social importance to the tribe. Given the rather unique character of the events of the 1970s and 1980 with regard to treaty rights and fishery management, I would recommend that there be a highlighted justification statement for this period, which acknowledges the markedly different historic themes involved beyond just the normal ongoing practice of traditional activities. The era can be covered in the overall "time immemorial to present" period, but the unique activities so deeply discussed in the narrative disserve to be highlighted in the introduction. I would also recommend checking off Criteria Consideration G.

The narrative also has to provide additional information regarding the specific sites selected and at least hint at how they represent the themes outlined. Useful information might include, how long have the properties been under Native American ownership, at least long enough to have been the site of some traditional practices? Is there any record of historic tribal fishing from these locations? Are they just common riverside lots where somebody likely fished, or is there specific knowledge of historic fishing use and/or contemporary use by Nez Perce individuals, families, clans, entire tribe? Is there oral testimony on use of lands here? Are the areas maintained in use for the owners of the property only or any members of the tribe? Is there any connection between the events of 1979-1980 and these plots? If the specific events of the period occurred elsewhere that really needs to be noted and clarified, even if just in a footnote. The reader should not be lead to believe that the fishery confrontations took place on these lots, if they did not. Were the nominated sites at all connected to the events, as staging areas, nighttime fishing areas, camping areas, etc.? It's one thing to attribute the general significance of the riverway as a TCP to two known (?) fishing sites, but it is quite different to say that a specific event at a specific location can be conveyed by any riverfront location. The eligibility of the nominated sites may well be able to rest on their continuing traditional importance as active fishing locations carrying on long-held cultural practices, but there needs to be more clarity on whether the confrontations and successes of 1970-1980 occurred on these sites, or that those events are provided here simply to reflect the long-standing values the Nez Perce hold for all its fishing areas and traditions. This type of discussion should probably be presented up front early in the nomination as well as during the specific discussion of the events and activities associated with the significance of the properties. The reader should not have to wait until the verbal boundary justification to realize that most of the activities cited have a different connection to the

nominated areas (and for that matter that additional locations in the vicinity of the Rapid River corridor may actually have more direct associations to these events and could also be eligible under the themes identified.)

Photographic Documentation:
The Photographic Images log identifications do not appear to match those of the labeled photos in Section 9 or the maps. (For example Photo log #7 is actually the print noted as #5.) Please correct.
The historic photos of the tribe, government officials and activities could use better descriptions in the log to identify what was actually going on during the time the shots were taken. The 1970-1980 photos provide a great storytelling tool that could be greatly strengthened by proving clearer citations regarding what was going on and where the events were taking place.

If you have questions regarding these comments, please contact the National Register office directly at the number or e-mail listed below.

Paul R. Lusignan, Historian
(for) Keeper of the National Register
(202) 354-2229
Paul_lusignan@nps.gov

S:\nr\lusi\stlpg\URC Draft Nomination Comment Form-Yawwinma.

www.history.idaho.gov

Idaho • State Historical SOCIETY

C.L. "Butch" Otter
Governor of Idaho

Janet Gallimore
Executive Director

Administration and Membership and Fund Development
2205 Old Penitentiary Road
Boise, Idaho 83712-8250
Office: (208) 334-2682
Fax: (208) 334-2774

Idaho State Historical Museum
214 Broadway Avenue
Boise, Idaho 83702
Office: (208) 334-2120
Fax: (208) 334-4059

Idaho State Archives and Records Center
2205 Old Penitentiary Road
Boise, Idaho 83712-8250
Office: (208) 334-2620

Merle W. Wells Research Center
2205 Old Penitentiary Road
Boise, Idaho 83712-8250
Phone: (208) 327-7060
Open Tues.-Sat. 11am-4pm

State Historic Preservation Office and Archaeological Survey of Idaho
210 Main Street
Boise, Idaho 83702-7264
Office: (208) 334-3861
Fax: (208) 334-2775

Old Idaho Penitentiary
2445 Old Penitentiary Road
Boise, Idaho 83712-8254
Office: (208) 334-2844
Fax: (208) 334-3225

Statewide Historic Sites
- Franklin Historic Site
- Pierce Courthouse
- Rock Creek Station and Stricker Homesite

MEMORANDUM

TO: **Keeper of the National Register**

FROM: **Tricia Canaday - Idaho SHPO**

DATE: **February 26, 2016**

SUBJECT: **Enclosed NRHP Nomination**

The enclosed materials are being submitted for the following documents:

Yáwwinma
Idaho County, Idaho

1	Original signed front page of the NRHP nomination form
1	CD containing a true and correct .pdf copy of the nomination for the Yawwinma to the National Register of Historic Places
1	Electronic Image File CD with .tif (15) files
____	Other: _____

Comments:

The nomination on CD has google earth maps attached as part of the .pdf file.

This nomination was funded by a National Park Service Underrepresented Communities Grant.

If you have any questions about these documents, please contact me at 208-488-7462

National Register Nomination: ID_Idaho County_Yawwinma TCP

Changes and corrections to the original nomination submittal are listed below. If you have any questions, please contact Jamee Fiore at the Idaho SHPO (208) 488-7461.

- Page 1 – removed "Criterion D"
- Page 10 – Statement of Significance Summary Paragraph, Strike through has been removed.
    - *Yáwwinma* is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A (Association with events that have made a significant contribution to the broad patterns of our history) because it is directly associated with the traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. ~~Rapid River's long-term significance as a major Nez Perce fishery also makes it eligible under Criterion D (has yielded, or may be likely to yield, information important in prehistory or history) because of its wealth of ethnographic data thus far collected, and for its strong likelihood to yield further ethnographic as well as archaeological information important in Nez Perce prehistory and history.~~
- Page 11 – Areas of Significance Paragraph for Criterion D, Strike through has been removed.
    - ~~Rapid River is also eligible under Criterion D because of its demonstrated ability to yield abundant ethnographic data, and for its strong likelihood to continue to yield additional ethnographic as well as historical and archaeological information about Nez Perce prehistory and history.~~ As a traditional cultural place of great significance to the Tribe, numerous ethnographic stories and knowledge are connected to the nominated properties, and to the larger ethnographic landscape. ~~Furthermore, Rapid River, as a place long used by Nez Perce peoples, likely holds a wealth of archaeological data. Parcel 1 includes a National Register eligible archaeological site located near the southwest abutment of Rapid River Bridge along the west side of U.S. Highway 95 (Smithsonian site numbers 101H2782 and 101H2783). Nearby archaeological excavations also testify to the strong likelihood these properties can yield additional data important to the prehistory and history of the Nez Perce Tribe.~~
- Page 70 – Conclusions Paragraph, Strike through has been removed.
    - Rapid River, or *Yáwwinma*, is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A for its association with traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. As described above, Rapid River shapes

Nez Perce worldviews and is a central part of Nez Perce history. It is a significant part of Nez Perce seasonal rounds—movements across the landscape in concert with the seasons—and a place embedded within tradition patterns of fishing. ~~Rapid River's long-term significance as a major Nez Perce fishery also makes it eligible under Criterion D (has yielded, or may be likely to yield, information important in prehistory or history) because of its wealth of ethnographic data thus far collected, and for its strong likelihood to yield further ethnographic as well as archaeological information important in Nez Perce prehistory and history.~~

- Page 29 – Reference to the Battle of White Bird Canyon deaths, changed "Pass" to "Canyon," and changed "sixty-seven" to "thirty-four."
    - The Nez Perces raised a white flag of truce outside of Chief White Bird's village, but Colonel David Perry ordered his troops to attack in what proved to be a major folly. The Battle of White Bird ~~Pass~~ Canyon on June 17, 1877, resulted in two Nez Perces wounded and ~~sixty-seven~~ thirty-four U.S. soldiers dead.
- Page 29 – Footnote 111 – changed to the corrected reference
    - Greene, J. A. (2000). *Nez Perce Summer 1877: The U.S. Army and the Nee-Me-Poo Crisis.* Helena, MT: Montana Historical Society Press.
- Page 75 – Books, added new citation.
    - Greene, J. A. (2000). *Nez Perce Summer 1877: The U.S. Army and the Nee-Me-Poo Crisis.* Helena, MT: Montana Historical Society Press.

Idaho State Historical Society

MEMORANDUM

C.L. "Butch" Otter
Governor of Idaho

Janet Gallimore
Executive Director
State Historic
Preservation Officer

Administration and Membership and Fund Development
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Open Tues.-Sat. 11am-4pm

State Historic Preservation Office and Archaeological Survey of Idaho
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Old Idaho Penitentiary
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Office: (208) 334-2844
Fax: (208) 334-3225

Statewide Historic Sites
- Franklin Historic Site
- Pierce Courthouse
- Rock Creek Station and Stricker Homesite

TO: Keeper of the National Register

FROM: Jamee Fiore, Idaho SHPO

DATE: August 3, 2017

SUBJECT: Enclosed Updated NRHP Nomination

The enclosed materials are being submitted for the following nominated property:

Yawwinma TCP
Riggins Vicinity, Idaho County, Idaho

1	Original signed front page of the NRHP nomination form
1	CD containing true and correct .PDF copy of the nomination for the Yawwinma TCP to the National Register of Historic Places
	CD containing photos in .TIF format (0 photos)
	Other:

Additional comments:
Attached is a list of the updated/corrections made to the document. The reference to Criterion D has been removed and the White Bird Canyon death count has been corrected and cited.

If you have any questions about these documents, please contact me.

Jamee Fiore
National Register Coordinator
Idaho SHPO
210 Main Street
Boise, ID 83702
(208) 488-7461
Jamee.fiore@ishs.idaho.gov

National Register Nomination: ID_Idaho County_Yawwinma TCP

Changes and corrections to the original nomination submittal are listed below. If you have any questions, please contact Jamee Fiore at the Idaho SHPO (208) 488-7461.

- Page 1 – removed "Criterion D"
- Page 10 – Statement of Significance Summary Paragraph, Strike through has been removed.
    - *Yáwwinma* is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A (Association with events that have made a significant contribution to the broad patterns of our history) because it is directly associated with the traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. ~~Rapid River's long-term significance as a major Nez Perce fishery also makes it eligible under Criterion D (has yielded, or may be likely to yield, information important in prehistory or history) because of its wealth of ethnographic data thus far collected, and for its strong likelihood to yield further ethnographic as well as archaeological information important in Nez Perce prehistory and history.~~
- Page 11 – Areas of Significance Paragraph for Criterion D, Strike through has been removed.
    - ~~Rapid River is also eligible under Criterion D because of its demonstrated ability to yield abundant ethnographic data, and for its strong likelihood to continue to yield additional ethnographic as well as historical and archaeological information about Nez Perce prehistory and history.~~ As a traditional cultural place of great significance to the Tribe, numerous ethnographic stories and knowledge are connected to the nominated properties, and to the larger ethnographic landscape. ~~Furthermore, Rapid River, as a place long-used by Nez Perce peoples, likely holds a wealth of archaeological data. Parcel 1 includes a National Register eligible archaeological site located near the southwest abutment of Rapid River Bridge along the west side of U.S. Highway 95 (Smithsonian site numbers 101H2782 and 101H2783). Nearby archaeological excavations also testify to the strong likelihood these properties can yield additional data important to the prehistory and history of the Nez Perce Tribe.~~
- Page 70 – Conclusions Paragraph, Strike through has been removed.
    - Rapid River, or *Yáwwinma*, is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A for its association with traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. As described above, Rapid River shapes

Nez Perce worldviews and is a central part of Nez Perce history. It is a significant part of Nez Perce seasonal rounds—movements across the landscape in concert with the seasons—and a place embedded within tradition patterns of fishing. ~~Rapid River's long-term significance as a major Nez Perce fishery also makes it eligible under Criterion D (has yielded, or may be likely to yield, information important in prehistory or history) because of its wealth of ethnographic data thus far collected, and for its strong likelihood to yield further ethnographic as well as archaeological information important in Nez Perce prehistory and history.~~

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    - The Nez Perces raised a white flag of truce outside of Chief White Bird's village, but Colonel David Perry ordered his troops to attack in what proved to be a major folly. The Battle of White Bird ~~Pass~~ Canyon on June 17, 1877, resulted in two Nez Perces wounded and ~~sixty-seven~~ thirty-four U.S. soldiers dead.
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- Page 75 – Books, added new citation.
    - Greene, J. A. (2000). *Nez Perce Summer 1877: The U.S. Army and the Nee-Me-Poo Crisis.* Helena, MT: Montana Historical Society Press.

Supplementary Listing Record

NRIS Reference Number: SG100001053 Date Listed: 06/12/2017

Property Name: Yawwinma

County: Idaho State: ID

This Property is listed in the National Register of Historic Places in accordance with the attached nomination documentation subject to the following exceptions, exclusions, or amendments, notwithstanding the National Park Service certification included in the nomination documentation

Signature of the Keeper Date of Action

==========

Amended Items in Nomination:

Historic Name:
The Historic Name/Listing Name should be revised to delete the term *TCP (Traditional Cultural Property*. [Current National Register policy is to omit the use of such terms as, *Traditional Cultural Property, Traditional Cultural Place, or TCP* from the historic name unless that is how the property was historically referred to or known.]

Significance:
Eligibility under National Register Criterion D is not sufficiently justified at this time and is deleted. [While the property contains a known archaeological site and considerable ethnographic research has been conducted with respect to traditional tribal practices associated with the Rapid River corridor, information on the precise character of the specific (single) archaeological site was not provided, nor were specific research questions identified in association with the site. Likewise, the nomination provides little documentation for direct connection between specific ethnographic research themes and the nominated locations.

The IDAHO SHPO was notified of this amendment.

DISTRIBUTION:
National Register property file
Nominating Authority (without nomination attachment)

original nomination, signed, then replaced with new rewritten nomination

United States Department of the Interior
National Park Service

National Register of Historic Places Registration Form

5C-1653

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in National Register Bulletin, *How to Complete the National Register of Historic Places Registration Form.* If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions.

1. Name of Property

Historic name: *Yáwwinma* TCP

Other names/site number: Rapid River

Name of related multiple property listing:

N/A

(Enter "N/A" if property is not part of a multiple property listing

2. Location

Street & number: 143 Rapid River Road

City or town: Riggins State: ID County: Idaho

Not For Publication: [ ] Vicinity: [x]

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended,

I hereby certify that this **X** nomination ___ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60.

In my opinion, the property **X** meets ___ does not meet the National Register Criteria. I recommend that this property be considered significant at the following level(s) of significance:

___national **_X_statewide** **___local**

Applicable National Register Criteria:

_X_A **___B** **___C** **_X_D**

Kenneth C Reid 26 April 2017

Kenneth C. Reid, Ph. D **Deputy SHPO** **Date**

Signature of certifying official/Title

Idaho SHPO

State or Federal agency/bureau or Tribal Government

In my opinion, the property ___ meets ___ does not meet the National Register criteria.

Signature of commenting official: **Date**

Title : **State or Federal agency/bureau or Tribal Government**

original nomination, signed, then replaced with new rewritten nomination

4. National Park Service Certification

I hereby certify that this property is:

✓ entered in the National Register

___ determined eligible for the National Register

___ determined not eligible for the National Register

___ removed from the National Register

___ other (explain:) _____

Signature of the Keeper 6/12/2017 Date of Action

5. Classification

Ownership of Property

(Check as many boxes as apply.)

Private:	X
Public – Local	
Public – State	
Public – Federal	

Category of Property

(Check only **one** box.)

Building(s)	
District	
Site	X
Structure	
Object	

original nomination, signed, then replaced with new rewritten nomination

Yáwwinma Idaho County, ID
Name of Property County and State

Number of Resources within Property
(Do not include previously listed resources in the count)

Contributing	Noncontributing	
	3	buildings
1		sites
		structures
		objects
1	3	Total

Number of contributing resources previously listed in the National Register 0

6. Function or Use
Historic Functions
(Enter categories from instructions.)
AGRICULTURE/SUBSISTENCE/fishing grounds
AGRICULTURE/SUBSISTENCE/food processing site
DOMESTIC /fishing camp/seasonal residence
PROCESSING/toolmaking site
LANDSCAPE/river

Current Functions
(Enter categories from instructions.)
AGRICULTURE/SUBSISTENCE/Spring Chinook fishing grounds
AGRICULTURE/SUBSISTENCE/food processing site
DOMESTIC/fishing camp/seasonal residence
PROCESSING/toolmaking site
LANDSCAPE/river
RECREATION AND CULTURE/campground and picnic area

7. Description

Architectural Classification
(Enter categories from instructions.)
N/A

Materials: (enter categories from instructions.)
Principal exterior materials of the property: N/A

Narrative Description
(Describe the historic and current physical appearance and condition of the property. Describe contributing and noncontributing resources if applicable. Begin with **a summary paragraph** that briefly describes the general characteristics of the property, such as its location, type, style, method of construction, setting, size, and significant features. Indicate whether the property has historic integrity.)

Summary Paragraph

Yáwwinma, or "Rapid River," is a traditional cultural property (TCP) located approximately four miles south of the town of Riggins, Idaho (Map 1). *Nimíipuu* (Nez Perce) families and fishermen continue to seasonally occupy the Lower *Yáwwinma* to fish for Chinook salmon using dip nets, gaffs, spears, and other traditional methods as they have for untold millennia for subsistence, religious, ceremonial, and commercial purposes. Nez Perce people use the terms *Yáwwinma* and "Rapid River" interchangeably to refer to the entire watershed. They conceive this watershed to be a single ecosystem and a living place. Nez Perce oral tradition, along with historic documentation, both verify Nez Perce use of the river, and testify to its long-term significance as a major Nez Perce fishery.

The TCP boundary includes two parcels along Rapid River and adjacent to Rapid River Road that are owned by the Nez Perce Tribe (Map 2 & 3). These parcels include many named fishing holes and known places that contribute to a pattern of use at this ancient fishery. More recently, *Yáwwinma* was also the site of an intense conflict between the Nez Perce Tribe and both the United States government and the State of Idaho to secure their right to take fish at all their usual and accustomed places as guaranteed in the Treaties of 1855 and 1863.

Nez Perce peoples view and value *Yáwwinma* as they have done for centuries. Despite its close proximity to a rural subdivision, the landscape's setting includes views of natural landforms, breezes from off the river, clear blue and cloudy skies, relatively dark night skies, and a sense of quiet and solitude reinforced by the sounds of mountain water, which can easily be heard at night from the lawn where tribal members camp during the Chinook fishing season immediately south of the parking lot. These qualities of the property's visual, auditory, and atmospheric setting contribute to the integrity of the site. They help convey a sense of continuity and connection to the first *Niimiipuu* and a shared reverence for Chinook salmon, as well as other cultural beliefs and traditional lifeways. Because of this, the Chinook fishery at *Yáwwinma* exemplifies an American Indian traditional cultural property with a high degree of historic integrity, and is therefore eligible for listing.

Narrative Description

For the purposes of this nomination, the boundaries of the *Yáwwinma* Traditional Cultural Property (TCP) are three small, noncontiguous parcels of private land recorded under two deeds owned by the Nez Perce Tribe. These areas include many of the primary, traditionally used fishing holes in this waterway, and encompass, or are directly adjacent to, some of the main places of conflict between the tribe and both the federal government and State of Idaho in 1979 and 1980. All three parcels are located on the banks of Rapid River in Township 24 North, Range 1 East, of Boise Meridian, in Section 32, in Idaho County, Idaho. These parcels represent an area of great significance to the Nez Perce Tribe, and remains a place important for Nez Perce gaff and dipnet fishing. The river runs along the edge of each of the three parcels which together form much of the traditional cultural use area.

The total area of the three small parcels encompasses 6.172 acres, all located on the banks of Rapid River. Parcel 1 is 3.35 acres in size, and incorporates the mouth of Rapid River at its confluence with the Little Salmon River. The Nez Perce Tribe purchased the parcel in 1993. Its legal description is T24N R1E Sec 32. This parcel includes a 150 meter section of Rapid River just above its confluence with the Little Salmon River. The waterway runs into the parcel from the east and continues northwest along the base of the northern ridge, starting just west of parcel 2 and stretching northwest as it runs under the Rapid River Road and Highway 95 bridges. Along this stretch are a number of popular fishing holes often used for dipnetting and gaffing. The shoreline of this parcel is characterized by a number of small trails and access points which lead down to popular fishing holes, a physical representation of a pattern of use in existence for centuries, if not millennia. Some of these trails descend steep slopes (15-20 foot) leading to the tops of the large boulders that line the onrushing channel at water level. Fisherman often stand on these boulders to fish, a strategy verified in oral tradition specific to Rapid River, and elsewhere. This parcel, including a Nez Perce Fishing Access point previously assigned Smithsonian site number 101H2784, also includes a National Register eligible archaeological site located near the southwest abutment of Rapid River Bridge along the west side of U.S. Highway 95 (Smithsonian site numbers 101H2782 and 101H2783).

Parcel 2 is actually two adjacent parcels of 2.752 and .08 acres which, together, form an area that stretches from the base of the northern ridge to the base of the southern ridge, a distance of approximately 200 meters. The waterway runs along the base of the southern ridge, before cutting over to the base of the northern ridge as it meets the Little Salmon River through parcel 1. The shoreline is similar to parcel 1, with verdant shrubs, small trees, and a variety of grasses all discussed further in the environmental section below. A public bridge over the river and a public two-lane dirt road connect the properties, which are less than half a mile apart.

Most importantly, these parcels constituting the nominated properties are linked to each other and to the Nez Perce people by the waters of *Yáwwinma* itself, a primary contributing resource to the TCP. These parcels, too, are directly associated with the activities transpiring during 1979 and 1980 between the Tribe and the federal government and the State of Idaho; many of the activities occurred on, or in close proximity to, these parcels of land.[1] These parcels help tell this important and unique story. More importantly still, they inform the narrative of Nez Perce land use, prehistorically and historically into the present era.

Without exception, the entire 27 miles of the upper *Yáwwinma* designated as a Wild and Scenic River retains its historic condition as prime natural habitat (i.e. wild). From the mainstem headwaters to the National Forest boundary and from the West Fork Rapid River headwaters in the Hells Canyon Wilderness boundary downstream to its confluence with the mainstem, the river remains free of manmade impoundments and generally inaccessible except by trail. The river's shorelines retain their primitive condition and the water carries on unpolluted. A team of investigators relying upon various experts, including consultation with the Nez Perce Circle of Elders, ranked the upper *Yáwwinma* as having "Outstandingly Remarkable Value" to the nation in six categories: (1) Traditional Use (Cultural), (2) Prehistoric Cultural Resources, (3) Historic Cultural Resources, (4) Scenery, (5) Fisheries, and (6) Water Quality. The investigators concluded that the Wild and Scenic River corridor "contains an accumulation of riverine archaeological and historic resources," including a possible prehistoric trail and an extensive prehistoric lithic scatter "eligible for the National Register of Historic Places."[2]

During the late winter, spring, and early summer, the river runs swiftly, giving rise to the waterway's current descriptive name: Rapid River. At this time, the water completely fills the waterway's steep-sloped, rocky banks, creating an impressive stretch of white water rapids that have pulled countless fisherman downstream. The river, fluctuating from 10 to 15 meters across depending on the season, is slowly entrenching further within its banks due to the strength of the flow. The depth can range from a meter in some sections, to 5 or more depending on the season, and the spot on the river. Some pools likely go much deeper still. Numerous large boulders alternate between partial and complete inundation along this stretch of the river, helping to make eddies and deeper pools for fish to rest. These pools often become popular places for fishing, gaffing or dipnetting the salmon as they rest before continuing their journey upstream. Various

[1] Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.

[2] "Appendix K, Wild Rapid River Resource Assessment," Hells Canyon National Recreation Area Comprehensive Management Plan FEIS, July 2003: 6.

fishing holes, or plunge pools as they are sometimes called, are named and well-known fishing sites within this stretch of the waterway. This views from the shoreline are impressive, with ridges jutting steeply up to either side for 500 meters or more before cresting.

Much of this area, the parcels included, have undergone some form of development. Rapid River Road, an access route from Highway 95, winds along the base of the north ridge opposite from the river. It allows access to the houses, Nez Perce fish hatchery, parking lots, and other facilities that have popped up over the last few decades. Although there are undeniable changes to this property because of development, the integrity and significance remain strong in the eyes of the Nez Perce people ascribing value to this TCP, as noted by the Nez Perce Circle of Elders above. Nez Perce continue to fish at their usual and accustomed places, and continue to value Rapid River as they have done stretching back into time immemorial.

Environmental Setting

Yáwwinma is a freestone river located in the Payette and Nez Perce National Forests of central Idaho. *Yáwwinma* is a tributary to the Little Salmon River, which enters the main Salmon River at the town of Riggins, Idaho. The mainstem *Yáwwinma* and West Fork *Yáwwinma* are steep gradient streams enclosed by narrow canyons with steep walls. Cover vegetation limits rock exposure on the river.

From the Seven Devils Range, *Yáwwinma* drops approximately 4,800 feet over the course of approximately thirty miles to an elevation of just less than 2,000 feet at its confluence with the Little Salmon River.[3] Strongly contrasting vegetation types, keyed mostly to aspect and elevation, inhabit the entire length of the wild river. They begin at the highest elevations with subalpine fir, Engelmann spruce, and lodge pole pine interspersed with small forb grass meadows. Timbered slopes within the river corridor give way to several stands of large, mature ponderosa pine. Native bunchgrass types occupy the river corridor on those southern aspects that lack stands of conifers. Mixed conifer species at the lower elevations include Douglas fir, grand fir, ponderosa pine, and western larch.

Steep, dry southern and western exposures host several low brushes and grasses: willow, serviceberry, ninebark, snowberry, ceanothus, fescue, wheatgrass, and pinegrass. Moist and cool areas support Elk sedge, huckleberry, meadow rue, mountain maple, pinegrass (*Calamagrostis fasciculata Kearney*), violet, alder, and beargrass. Lower elevation riparian areas of *Yáwwinma* also host a disconnected population of Pacific yew growing near the end of its southern range. Puzzling halimolobos (*Halimolobos perplexia perplexa*) is locally endemic in ponderosa pine /grassland communities ranging from 7,300 to 3,000 feet.

The river, which is the primary contributing resource to the property, is well delineated on both banks with a canopy of trees dominated primarily by indigenous Black Cottonwoods (Populus trichocarpa) and Mountain Alders (Alnus tennifolia). Sparse stands of gooseberry, elderberry, willow, and wild rose bushes also occupy both riverbanks along with nettles, dandelions, and

[3] Appendix K, 2003: K-10

various grasses, including native bunch grass, which also covers the steep hillside northwest of the river above the bed of the Old Seven Devils Road that borders the property northwest of the river. Plant and animal inventories in previous surveys also indicate the presence of lomatium, bitterroot, chokecherry, serviceberry, and hackberry, as well as the faunal presence of deer, bighorn sheep, elk, martin, and bear in addition to migratory and game birds. Rattlesnakes are commonly seen. Of critical importance is the seasonal presence of wild and hatchery Chinook along with ESA-threatened bull trout and steelhead.

The river's drainage is in the Wallowa terrane, whose rocks formed along the volcanic axis of a series of island arcs that were configured in the ancestral Pacific Ocean. Across the span of about 250 million years, this theory contends, these island arcs "traveled hundreds of miles on the back of one or more tectonic plates in the ancient Pacific Ocean to eventually dock on the North American continent approximately 120 million years ago."[4] Geologists have identified individual rocks within the *Yáwwinma* corridor as Doyle Creek and Martin Bridge Limestone. Basalt of the Columbia River Basalt Group (6-16 million years old) overlies the Doyle Creek and Martin Bridge Limestone, which means these *Yáwwinma* rocks have been "highly metamorphosed due to extensive faulting." Geologists commonly refer to them as "greenstone."[5]

As it did for the *Nimiipuu*, the *Yáwwinma* corridor serves as a migration passageway for the seasonal movement of animals from the Little Salmon into the Snake River drainage and Hells Canyon. The upper sections of the watershed offer key winter range for deer and elk, "elk security areas," big game migration routes, and summer range for bighorn sheep.[6] Over 75 species of birds inhabit the river corridor, including golden eagles, peregrine falcons, goshawks, white-headed and pileated woodpeckers, and the rare mountain quail whose status is now listed as a "species of special concern" by the U.S. Fish and Wildlife Service.[7] Rattlesnakes and bull snakes are commonly sighted on trails along with mule deer, white tail deer, and elk. Wolverines, pine martens, cougars, black bears, and bobcats also inhabit the corridor.

Non-Contributing Elements

Non-contributing features of the *Yáwwinma* TCP include three non-historic buildings: (1) a brick house with an attached double garage and cement pad; (2) a small open shed, located east of the house, and separated from the house by a private drive; and (3) a large shop in the shape of a rectangular half-dome just north of the shed. Shade trees and fruit trees surround the buildings—walnut, peach, maple, blue fir, apple, elm, and cherry. The shade trees line both Rapid River Road and each side of the private driveway.

[4] Appendix K, Wild Rapid River Resource Assessment," H*ells Canyon National Recreation Area Comprehensive Management Plan FEIS*, July 2003: 6.
[5] Ibid.
[6] Appendix K, 2003: K-9
[7] Species Fact Sheet, "Mountain Quail Oreotyx pictus." U.S. Wildlife Service, Oregon Fish and Wildlife Office: http://www.fws.gov/oregonfwo/Species/Data/MountainQuail/.

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing.)

[X] A. Property is associated with events that have made a significant contribution to the broad patterns of our history.

[ ] B. Property is associated with the lives of persons significant in our past.

[ ] C. Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.

[X] D. Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

[ ] A. Owned by a religious institution or used for religious purposes

[ ] B. Removed from its original location

[ ] C. A birthplace or grave

[ ] D. A cemetery

[ ] E. A reconstructed building, object, or structure

[ ] F. A commemorative property

[X] G. Less than 50 years old or achieving significance within the past 50 years

Areas of Significance
(Enter categories from instructions.)

Native American Ethnic Heritage

Period of Significance
Time immemorial to Present

Significant Dates
1855—Treaty with the United Sates
1863—Treaty with the United States
1877—War with the United States
1905—U.S. v Winans
1974—U.S. v. Washington (Boldt Decision)
1979-80—Conflicts between Nez Perce and State of Idaho
1981—State of Idaho v. Defendants (Reinholdt Decision)

Significant Person
(Complete only if Criterion B is marked above.)
N/A

Cultural Affiliation
Nez Perce Tribe

Architect/Builder
N/A

Statement of Significance Summary Paragraph (Provide a summary paragraph that includes level of significance, applicable criteria, justification for the period of significance, and any applicable criteria considerations.)

Yáwwinma is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A (Association with events that have made a significant contribution to the broad patterns of our history) because it is directly associated with the traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. Rapid River's long-term significance as a major Nez Perce fishery also makes it eligible under Criterion D (has yielded, or may be likely to yield, information important in prehistory or history) because of its wealth of ethnographic data thus far collected,

and for its strong likelihood to yield further ethnographic as well as archaeological information important in Nez Perce prehistory and history.

In addition to these elements of significance that extend far back into time, the unique character of the events that transpired in the late 1970s and early 1980s at Rapid River contribute to, and were a formative part of, recent Nez Perce Tribal history and Tribal infrastructure pertaining to Nez Perce treaty rights and fisheries management programs. This more recent significance, achieved within the past 50 years, complements and contributes to the longer narrative of Nez Perce practices, traditional activities, and uses at this important, unique, and long-standing Nez Perce fishery. Oral histories from tribal members emphasize the connection between fishing sites traditionally used by tribal member, such as Badger Hole and Jackson Hole, and sites associated with the conflicts of 1979 and 1980.[8] These sites are also associated with the properties within the nomination, as parcels currently owned by the Nez Perce Tribe.

Moreover, an examination of both *Nimíipuu* use of Rapid River and the tribe's conflict with the federal government and the State of Idaho to affirm and to protect tribal rights to the site reflect larger themes within federal policy regarding tribes, treaty rights struggles in the twentieth century, protests from groups such as the American Indian Movement, and issues of contested land use between different cultural groups in the American West.

Narrative Statement of Significance (Provide at least **one** paragraph for each area of significance.)

Areas of Significance

Rapid River is eligible under significance Criterion A for its association with the traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. It is a storied site intimately connected to the historical processes and events that have shaped and continue to influence Nez Perce culture and society today. The long-term significance of Rapid River is demonstrated through Nez Perce oral history, oral tradition, and the written record. The waterway is also an important part of larger movements across their traditional landscape. These movements, known as seasonal rounds, have been an integral part of what it means to be Nez Perce, informing their identity and worldviews today.[9] These seasonal movements and subsistence practices, among other traditional and ceremonial activities, are continually reinforced at Rapid River.

Rapid River is also eligible under Criterion D because of its demonstrated ability to yield abundant ethnographic data, and for its strong likelihood to continue to yield additional ethnographic as well as historical and archaeological information about Nez Perce prehistory and

[8] Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016; and Syrveneas (Butch) McConville, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.

[9] 1977 Nez Perce Social Groups: An Ecological Interpretation. Ph.D Dissertation, Washington State University, Department of Anthropology. Pullman, Washington.

history. As a traditional cultural place of great significance to the Tribe, numerous ethnographic stories and knowledge are connected to the nominated properties, and to the larger ethnographic landscape. Furthermore, Rapid River, as a place long-used by Nez Perce peoples, likely holds a wealth of archaeological data. Parcel 1 includes a National Register eligible archaeological site located near the southwest abutment of Rapid River Bridge along the west side of U.S. Highway 95 (Smithsonian site numbers 101H2782 and 101H2783). Nearby archaeological excavations also testify to the strong likelihood these properties can yield additional data important to the prehistory and history of the Nez Perce Tribe.

Finally, in addition to these two criteria of significance, the unique character of the events that transpired in the late 1970s and early 1980s make the nominated property eligible under Criteria Consideration G. These events occurring at Rapid River helped strengthen treaty rights in their usual and accustomed places, a right reserved in the 1855 and 1863 treaties with the United States government. The resolution from those events also significantly contributed to the development of the Tribe's organizational infrastructure as it pertains to fisheries management. In particular, it directly influenced the formation of a Nez Perce Tribal Fisheries Program, and shaped the management of these resources for generations to come

These areas of significance, each holding value in their own right, complement each other and combine to shape the larger narrative surrounding Nez Perces' relationship with Rapid River. The following pages describe and further articulate Nez Perces' connection to this traditional cultural property.

Introduction

Nez Perce beliefs are grounded in the world around them, visible in their tribal history, and essential to Nez Perce tribal people who seek to maintain their culture's continuity and their collective and individual identity. As the Nez Perces explain, "We fish the same rivers our grandfathers fished long before the arrival of Columbus."[10] Additionally, the Nez Perces' struggles with the federal government and the State of Idaho over fishing/treaty rights and reservation boundaries demonstrate the continuity of Nez Perce traditional ways as an important aspect of Nez Perce culture and lifeways, matters the Nez Perce fought for in treaty discussions in the nineteenth century and in courtrooms in the twentieth century. Abrogation of American Indian treaty rights have been a contentious and near-continuous aspect of American legal systems since the nineteenth century, and examining the Nez Perce claims to Rapid River reveals broad patterns within U.S. history in terms of the nation-to-nation status American Indians hold and the federal government's and states' governments relationships with American Indian nations.

[10] Nez Perce Tribe, *Treaties: Nez Perce Perspectives,* Lewiston, ID: Confluence Press, 2003, 2.

The Nez Perce place name for Rapid River is *Yáwwinma*, taken from the s-class verb yáw, "to be cold," or "cool."[11] *Yáwwinma* can be roughly translated from Nez Perce into English as Cold Creek or Cold River. The name itself denotes the nature of the stream, which is formed by snowmelt from the eastern side of *Sisé.quiymexs* (the Seven Devils Mountains) whose highest peaks rise well over 9,000 feet above sea level and preside over the deepest gorge in North America (*saqánma* or Hells Canyon). Josiah Pinkham, Nez Perce, retold a Coyote story that describes how the river received its name:

> "When I was young, some of the things that the older men in my family would talk about were early oral histories about why Rapid River was called *Yáwwinma* in Nez Perce language that translates to 'place of cold water,' from the Nez Perce terminology, which is freezing kind of a cold, freezing temperatures. So the story that I heard that was attributed to it was that Coyote was really fond of going down there and fishing, and he had a really good fishing spot or there were several spots that he would fish along and he would catch fish. And grizzly bear was watching him from afar and was like 'oh shoot, what is that skinny little runt doing down there in that fishing spot. I should be down there, I'm Grizzly Bear, I like fish.' And so he acted upon that intention, and when down there, you know, and had words with him, they exchanged words, and Coyote said 'Well, you know, you can't just take this place from me, that's not right.' So eventually it came to like a little pushing match, Grizzly Bear went in there and he just used his weight and pushed Coyote out of the way. And he stuck his tail in there and he goes 'Ooh, *Yáwwinma*.' You know, he described that cold water, and so that's how it got its name *Yáwwinma*. And Coyote—and again this expresses the seasonal round—Coyote said 'well fine, you can fish here anyway. There's a lot more fish over in Chamberlain Basin.' And that's another place people would hit in that seasonal round, cuz that's where Coyote went."[12]

Because of their long-term use of the area, and the area's high level of significance to Nez Perce peoples, the Nez Perce Tribe purchased parcel 1 in 1993, and parcel 2 in 2010 which is legally classified as two separate but adjacent parcels held under a single Warranty Deed.[13] Although coming into Tribal ownership at this time, the purchase of these two parcels simply reinforced a pattern of use that had been in place for generations. These parcels are a part of a larger narrative of traditional fishing stretching far back into time.

The river and the steep hills that surround the lower *Yáwwinma* valley serve as visual reminders of creation stories that take place in the nearby Seven Devils Mountains. The old name for Rapid River Road was Seven Devils Road, so named because the *Yáwwinma* corridor has, from aboriginal times to the present, always provided the Nez Perce People with access trails into the

[11] Haruo Aoki. *Nez Perce Dictionary,* Berkeley: University of California Press, 1994, 939 and 942.
[12] Josiah Pinkham, interviewed by Mario Battaglia and James Hepworth, Lapwai, ID, May 6, 2016.
[13] Acherman, Kathy. RE: Phone Conversation." Email from Idaho County Clerk, April 14, 2016. The deed was recorded on June 21, 2010.

Seven Devils high country from the Salmon River country around Riggins, and, consequently, from the Seven Devils high country into Hells Canyon, the ancestral location of several Nez Perce village sites now flooded by the dams.

Traditional use of Rapid River and salmon

To fluent speakers of Nez Perce, the indigenous place name for the river would also most likely have marked it as a salmon stream. Indeed, this cold water river still supports ancient runs of two anadromous (ocean going) species: (1) wild and hatchery-raised Chinook salmon (Oncorhunchus Tshawytscha) and (2) wild Redband Steelhead Trout (Oncorhunchus mykiss gairdneri). Chinook probably colonized the stream sometime near the end of the last glacial epoch approximately 11,000 years ago "when the distribution of the species became essentially continuous."14 Both species require cool, clean, highly oxygenated water for spawning and rearing, which, along with preferred gravels, makes *Yáwwinma* prime habitat for Chinook and steelhead.

The prehistoric ancestors of the people we now know as Nez Perce who visited Rapid River absolutely depended upon fish, and salmon in particular, for their economic survival.15 At least three additional species of food fishes—bull trout *(ʻísʼlam*), west slope cutthroat trout (*waʼwá.lam*), and Rocky Mountain white fish (*címey*)—have also resided in *Yáwwinma* from prehistoric times to the present. Along with suckers and chiselmouth, these species have also played important, if lesser, roles in the traditional Nez Perce life for centuries. And so has a third anadromous species almost equally as valued for food as Chinook: the Pacific lamprey (*héesu*).[16]

Rapid River has been a continuously-used fishing site for the Nez Perce peoples of Idaho, Washington, and Oregon. In his examination of the importance of fishing to Nez Perce history and culture, anthropologist Alan Marshall refers to Rapid River as "a traditional fishing stream."[17] In Verne Ray's ethnographic field notes during his work with the tribe, one of his informants said, "Rapid River was *yawinma*, here about 4 miles from the mouth was a good fishing place."[18] The authors of the management plan for Hells Canyon National Recreation Area note the "strong connection between tribal members, Rapid River [yáwwinma] and the

[14] Robert J. Behnke and Joseph R. Tomelleri, *Trout and Salmon of North America,* Chanticleer Press, 2002, 30.
[15] For more information on this topic, see Kenneth C. Reid and James D. Gallison, "The Nez Perce Fishery in the 19th Century: A Review of Historic, Ethnographic, Archaeological and Environmental Evidence," Rainshadow Research Project Report No. 25. Submitted to Idaho Power Company, October 1994; Alan Marshall, "Nez Perce Social Groups: An Ecological Interpretation," Doctoral dissertation. Washington State University, 1977; and Herbert Joseph Spinden, *American Anthropological Association Memoirs,* Kraus Reprint Corporation, Volume 2, Part 3, 1908.
[16] Lance Hebdon, interviewed by James Hepworth, October 13, 2015.
[17] Alan G. Marshall, "Fish, Water, and Nez Perce Life," *Idaho Law Review,* University of Idaho College of Law, Vol. 42, No. 3 (2006), 776.
[18] n.d. Field Notes on Nez Perce Boundaries and Land Use. In Verne Ray Papers, Nez Perce. Box 17, Gonzaga University, Foley Center Library, Special Collections Department, Spokane, Washington, page 107.

associated salmon fishery."[19] Oral accounts echo the importance of the site, and the Nez Perces note specific bands within their tribe who utilized the area, such as the White Bird band, which often wintered in the region surrounding present-day Riggins, Idaho, and stayed for the spring run.[20] According to one Nez Perce informant, Chief Whitebird had a ranch near Rapid River, called *tamsaspa* ("place of wild roses"), and it was near this site where a Nez Perce and a Snake (Shoshone) had a fight that resulted in the Snake cutting off the Nez Perce's nose.[21] During the Indian Claims Commission hearings in the 1950s and 1960s, ethnologist Stuart A. Chalfant identified Rapid River as one of the principal areas for Nez Perce fishing in the Salmon River drainage system.[22] Chalfant identifies two traditional Nez Perce trails that crossed the area near Rapid River, as well.[23] During the stand-off between the tribe and the State of Idaho in 1980—detailed further in this report—tribal members repeatedly noted that Rapid River was a traditional fishing area used by their ancestors.[24]

Although non-Indian residents of nearby Riggins claimed that they rarely saw Nez Perce fishers prior to the conflicts of 1979 and 1980, tribal members responded that Rapid River was "a significant tribal fishery but that the Indian began going there in fewer numbers as white settlers and gold prospectors entered the area."[25] Josiah Pinkham explained how the natural and traditional fishing season at Rapid River, prior to a state- regulated season, lasted over six weeks. In the twentieth century, Pinkham explains, families might only go there for a few days before they had caught enough fish to supply their family, and often people fished at night. Pinkham says when he went there as a child, prior to the 1980 standoff, he only remembers seeing a few other families; but, he explains, this was due to individuals and families using it at different times during that longer fishing season. Once the fishing season became more concentrated into a shorter period of time, naturally the visible numbers of fishers increased.[26] Wilfred Scott, who was chair of the Nez Perce Tribal Executive Council (NPTEC) during the stand-off, has similar memories, saying that many times when he and his family fished at Rapid River, it seemed that they were alone.[27] Katherine (Katsy) Jackson, Nez Perce, echoes this memory of twentieth century use, saying that in the 1940s and 1950s, she remembers most families fishing at Rapid River for short periods, although there were times when certain families would camp at the site for the entirety of the natural fishing season, sometimes for two months.[28] Another tribal

[19] Appendix K, "Wild Rapid River Resource Assessment," in "Hells Canyon National Recreation Area Comprehensive Management Plan" (2003), K-2.
[20] David A. Sisson, "Lower Salmon River Cultural Resource Management Plan," MA thesis, Oregon State University, 1984, 26.
[21] Field Notes on Nez Perce Boundaries and Land Use, page 113.
[22] Stuart A. Chalfant, "Aboriginal Territory of the Nez Perce Indians," submitted as Defendants' Exhibit No. 24, Docket No. 175 for Indian Claims Commission, in *American Indian Ethnohistory: Indians of the Northwest: A Garland Series*, ed. David Agee Horr (New York: Garland Publishing Inc., 1974), 76.
[23] Chalfant, "Aboriginal Territory of the Nez Perce Indians," 90.
[24] David Johnson, "Officers cite but don't arrest six Nez Perce fishermen," *Lewiston Morning Tribune* (hereafter referred to as *LMT*), June 14, 1980, A1.
[25] Johnson, "What is Idaho Power's role in the controversy," *LMT*, June 29, 1980, A1.
[26] Josiah Pinkham interview
[27] Wilfred Scott, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 10, 2016.
[28] Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.

member, Allison K. (A.K.) Scott, agrees and remembers feeling like he and his family had the site, which he described as "close to his heart," to themselves during their annual fishing trips.[29]

Other Nez Perce informants also note that throughout the twentieth century, tribal fishers continued to use the area. Sryveneas (Butch) McConville remembers his father going there frequently in the 1940s, before there were houses in the region. McConville said that a non-Indian challenged his fishing at Rapid River, and he responded, "I was here when there was nothing here and now you're trying to kick me out."[30] Roderick Scott says that he fished with his father at Rapid River in the 1950s, too.[31] Echoing this long-standing assertion that Rapid River was a traditional fishery for the Nez Perce tribe, the regional newspaper, the Lewiston Morning Tribune, commented in 1980, "There isn't much debate about whether the Rapid River, four miles south of Riggins, is an ancestral fishing area for the Nez Perce Tribe."[32] Roderick Scott said simply of fishing at Rapid River, "We've been doing this forever. Since God put us here, we've been doing this forever."[33] Rapid River fit into a larger seasons round for the Nez Perces, and was one of the many connections between the people, their culture, and their landscape.

Pre-contact migrations

Fishing at sites such as Rapid River was just one part of the Nez Perces' traditional pre-contact annual cycle. The Nez Perces were seasonally migratory, utilizing different portions of their traditional territory, roughly 17 million acres and including areas in southeastern Washington, northeastern Oregon, western Montana, western Wyoming, and northern central Idaho.[34] This route was circular in nature and emphasized a larger understanding of the land and its resources.[35] In the early spring, the tribe travelled to the Snake, Columbia, and Salmon River valleys to catch salmon, fishing at a multitude of the river's tributaries including the Rapid River. Early root crop gathering supplemented these spring runs. As spring moved to summer, the tribe relied more on roots in higher elevation areas that ripened later, such as camas, bitterroot, kouse, and wild onion. Berries (ranging from chokeberries, hawthorn berries, and huckleberries) as well as pine nuts, and sunflower seeds added to the summer diet and preservation needs. Fall hunting, later root and berry crops, and the fall salmon runs finished out the tribe's food stores moving into winters.[36] The Nez Perces spent the winter months in different winter villages in the warmer river valleys.

[29] Allison K. Scott, interviewed by Mario Battaglia, Lapwai, ID, May 16, 2016.
[30] Sryveneas (Butch) McConville interview.
[31] Roderick (Waddy) Scott, interviewed by Mario Battaglia and Nakia Williamson, Lapwai, ID, May 5, 2016. There are different spellings for Roderick's nickname. The *Lewiston Morning Tribune* spelled it "Waddy," whereas Roderick spells it "Waddo."
[32] Johnson, "What is Idaho Power's role in the controversy," *LMT*, June 29, 1980, A1.
[33] Waddy Scott interview.
[34] The Nez Perce Reservation and its location," available online at http://www.nezperce.org/rezinfo/npreservation.htm.
[35] Marshall, "Fish, Water, and Nez Perce Life," 779.
[36] Deward E. Walker, Jr., "Nez Perce," in *Handbook of North American Indians: Plateau*, vol. 12, ed. Warren L. D'Azevedo, Washington, DC: Smithsonian Institution, 1998, 420-421.

In his anthropological field work with the Nez Perces, Eugene S. Hunn, found that fishing and gathering provided ninety percent of the food needs for the tribe.[37] This highlights the importance of fishing sites, not just during the spring or fall runs, but for the entire year. Because of the importance of fish to their diet, the Nez Perces naturally had numerous sites within their seasonal migrations. The Nez Perces' annual cycles highlighted the need for fish and put an emphasis on fishing sites and on major rivers and tributaries. As Josiah Pinkham noted, "It's easier to say where didn't they fish, and the answer is, nowhere really." Pinkham explains that it is accurate to say Nez Perce have fished for something everywhere along the Rapid River.[38] Utilizing the resources of the land to sustain the tribe required a deep connection to the landscape and its cycles, and a knowledge of the constantly changing and evolving needs of tribal members.

Salmon and culture

Understanding the importance of Rapid River for the Nez Perce requires an understanding of salmon within the Nez Perce culture and their environment. As Levi Carson, a member of the Wallowa band of Nez Perce describes it, "I look around this valley and what built it—the trees, the animals, the people—and what I see is that it's all built on salmon DNA. We evolved with them. Our religion, our food, our trade: salmon DNA. We keep the salmon, keep bringing them back, we keep who we are. Self- determined. 'With no conditions attached,' just like the treaty says."[39] Water and salmon were essential to the lives and culture of the tribe. As the tribe notes, "The land and its water define the Nez Perce way. Over the course of thousands of years, nature has taught us how to live with her. This intimate and sacred relationship unifies us, stabilizes us, humbles us. It is what makes us a distinct people and what gives us our identity."[40]

For the Nez Perces, salmon is the foundation for nearly all aspects of their lives. As Carson noted in his comments interview, salmon is not just a food source for the Nez Perce; it is part of their religion, their way of life. Marshall echoed this view, noting that "The story of the Nez Perce is the story of fish, game, roots, water, and earth."[41] In pre-contact times, salmon provided up to half of the tribe's food supply and the tribe used all parts of the salmon to fully take advantage of this resource.[97] In telling stories about fishing for salmons as she grew up in the twentieth century, Katsy Jackson said that no part of the salmon was ever wasted. The heads, the tails, and the bones were all utilized for different purposes.[42]

To attain this vital food source, the fishers used equipment ranging from dip nets, spears, hooks, seines, and weirs, adapting their equipment and techniques to the conditions of the water and the

[37] Eugene S. Hunn, *Nch'i-Wàna "The Big River": Mid-Columbia Indians and Their Land,* Seattle: University of Washington Press, 1991, 118.
[38] Josiah Pinkham interview
[39] Steven Hawley, *Recovering a Lost River: Removing Dams, Rewilding Salmon, Revitalizing Communities,* Boston: Beacon Press, 2011, 205.
[40] Department of Fisheries Resources Management Strategic Plan Ad Hoc Team, "Nez Perce Tribe Department of Fisheries Resources Management Plan 2013-2028." 2013, 5. Available online at http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf
[41] Marshall, "Fish, Water, and Nez Perce Life," 763.
[42] Katsy Jackson interview.

location.[43] Salmon provided not only a food source for the Nez Perces throughout the year, but it was also a valuable trade item. Their extensive trade network included tribes from the Northern Plains region to the Pacific Coast, and dried salmon, salmon pemmican, and salmon items were three highly prized commodities that the Nez Perce used within these trading relationships.[44] As historian Joseph E. Taylor III notes, salmon is a ubiquitous food source in the Northwest, no less important for symbolic purposes for tribes as it was for sustenance. While Taylor conceded that the Nez Perce relied less heavily on salmon than tribes closer to the Pacific Ocean, he notes this had to do more with stream size and elevation, as both these made water levels fluctuate more severely for tribes further inland, such as the Nez Perce.[45] Even with this, Taylor notes that the Nez Perce "claimed at least fifty different fishing sites in the Snake River basin, each of which could produce between 300 and 700 salmon a day."[46] Rapid River is one of these sites, and as other sites have become compromised with increased non-Indian settlement, it has become one of the more significant ones, connecting pre-contact history to the present. Traditional Nez Perce stories reveal the cultural connections of salmon fishing, and also allow for major lessons to be imparted to different generations of Nez Perce. The connection between salmon fishing and life lessons is a common thread in Nez Perce history and culture.

One Nez Perce story highlights the importance of salmon to the tribe, as well as recognizes the importance of protecting the salmons' annual upstream migration. In the story "The Maiden and the Salmon," which Archie Phinney, Nez Perce, recounted in 1934, Salmon (who begins as a human) gives his wife (also human) instructions to return a part of his body to water if he is killed, or else he will not be able to regenerate. The Five Wolves decide to kidnap Salmon's wife, and have Rattlesnake bite Salmon to kill him. As he dies, a drop of Salmon's blood returned to the water and Salmon is able to be reborn. He set out to rescue his wife and avenge his murder. An elder helps him along the way, and he gives the elder a stream full of salmon as a token of appreciation. He also punishes Coyote who was planning to "ravage" the salmon. Salmon punishes him by instructing the salmon to avoid Coyote's river. He ultimately rescues his wife and kills four of the Wolves, but Salmon and his wife have to dive into the water to escape. He transforms both of them into fish and they swim free.[47] Taylor notes that this story highlights the importance of restoring salmon to the waters and protecting upstream migration as well as epitomizing the "cultural construction of salmon," within Nez Perce culture and tradition.[48]

Salmon as a whole represents an important aspect of Nez Perce culture and specific fishing sites were a major part of this. Josiah Pinkham relates a fishing story that is specifically tied to Rapid

[43] Anthony Johnson, NPTEC chairman, testimony before the U.S. Senate Committee on Indian Affairs, July 20, 2004. Found in Gudgell, Moore, and Whiting, "The Nez Perce Tribe's Perceptive on the Settlement of Its Water Right Claim in the Snake River Basin Adjudication," 566.
[44] Ibid., 567
[45] Joseph E. Taylor, III, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis,* Seattle: University of Washington Press, 1999, 17.
[46] Taylor, *Making Salmon*, 20.
[47] Archie Phinney, "The Maiden and Salmon," in *Nez Percé Texts*, *Columbia University Contributions to Anthropology*, vol. 25, New York: Columbia University Press, 1934, 205-227.
[48] Taylor, *Making Salmon*, 31.

River:

> "The story that I heard when I was a young boy, and this is from one of my uncles, there was a point in time when the Nez Perces were encamped there [*Yáwwinma*]. And then they broke off and they wanted to go farther upstream. And there was an elderly couple that wanted to stay behind; they didn't want to embark and go with the rest of the Nez Perces, and so they chose to stay behind. They would carry on their daily activities. And, you know, the woman would cook food, the man would disappear down the river, and he'd go down and would be gaffing, or whatever. He would take his poles—he had a couple gaff poles he would take with him—and he wondered off one direction. And his wife, she was busy cooking, and finally she came to the point where she realized, 'Oh I need to call him in, the food's done cooking.' And she wandered out, calling for him, and she didn't hear anything back from him, so she went looking for him. And as she was going along, she would hear off in the distance, 'Ooh, touched one.' It sounds like his voice, so she cued in on him, and followed along a little bit more, and she heard, a little bit louder, 'Ooh, touched one.' And, walk along, and got a little bit louder. And pretty soon, you know, she could see him. What he did was he took off all of his clothing, and he waded out in the water, and got on top of this rock that was out in the middle of the stream. And he had his gaff pole, and he was reaching way over on this rock and trying to hook salmon like that. And he just couldn't get the right angle on it, and he just barely touched one like that trying to get the hook in it, and he would go, 'Ooh, touched one.' Like that. And she's looking at him, and she thinks, 'Oh, I know what to do.' And she found his other gaff pole laying on the side of the stream, and she, of course, took the hook off. And she was waiting for him, waiting for him to bend over like that. And he was just about to get one, and she reaches over and taps him on the tullets like that, you know. They're hanging down and 'Ooh, touched one,' she yells like that. And he turns around and she's says, 'Time to eat.'"[49]

During fishing seasons, different generations of Nez Perces fished side-by-side and stories such as "The Maiden and the Salmon" or the one Pinkham related were told to the younger generation. Fishing has both a practical side—it provided basic subsistence and provided a valuable trade commodity—and a symbolic side, captured in the process of fishing. Fishing for salmon is itself an integral part of the Nez Perce culture.

Throughout their history, it has been primarily males within the tribes who have acted as fishers. Marshall notes that the task groups that fish "are important for developing gender identity and demonstrating a man's ability to contribute to the community."[50]

This aspect has been a constant aspect for the tribe, continuing through the twentieth century and into the twenty-first. The Nez Perce utilized hook and line, spears, harpoons, dip nets, traps, and

[49] Josiah Pinkham interview.
[50] Marshall, "Fish, Water, and Nez Perce Life," 773.

weirs. Constructing the larger traps and the weirs brought tribal members together, as this was a communal process. The process was "regulated by a fishing specialist," indicating the degree of cultural and natural resource knowledge the tribe employed for fishing.[51] Nez Perce informants in 2016 interviews frequently discussed being taught how to fish and how to make their own equipment (gaff poles and nets, for example) by their male elders.[52] Boys accompany male family members to traditional fishing spots to learn how to use and repair fishing equipment, and in this process they also learn about the various factors that shape successful fishing, such as water conditions, access to the best locations, and balancing the number of fishers with the numbers of salmon. These fishing expeditions are marked by males of the tribe sharing their knowledge of not only fishing, but of tribal ways, history, and culture. Marshall explains:

> "More broadly, they learn about the natural world and its spiritual dimensions through guided and independent exercises; the history of their family, community, and tribe through stories of past adventures and reminiscences of older men; what it means to be a man in a group of men, family, and community, and the myths which are the reference books of Nez Perce life."[53]

Identifying fishing as only within the male sphere is misleading, though, as women and girls were instrumental in the process. Women typically cleaned and dried the spring catch, as well as processed fish during hunting times while men were gone from the camps.[54] Hunn argued that women were instrumental in organizing all efforts regarding food, which required knowledge of both the timing of salmon runs as well as the best locations for fishing.[55] Robert McCoy comments in his work that "Timing and planning were crucial activities and constant awareness of changes in the environment was required in order for the seasonal round to be successful. Women, in particular, played an important role."[56] In the twentieth century, more women and girls from the tribe began fishing, as well. Katsy Jackson, a Nez Perce tribal member, discussed how women in her family always fished. She has a photograph of her grandmother fishing, wearing her wing dress - and standing in the river with her pole. Jackson rejects any notion that women fishing was not part of the traditional cultural way.

During the 1980 conflict, many of the Nez Perce cited for violating the state-imposed fishing ban were women.[57] A.K. Scott described women as integral during the entire standoff.[58] One man, whose daughter was half Nez Perce, wrote a letter to the editor in the Lewiston Morning Tribune, commenting that he took her to Rapid River so she could fish with her tribe and experience this traditional activity, as well as learn "the Indian views on nature; about the land (which should not

[51] Walker, "Nez Perce," 421.
[52] Josiah Pinkham interview; Waddy Scott interview; and Basil George, Jr., interviewed by Mario Battaglia and Nakia Williamson, Lapwai, ID, May 4, 2016.
[53] Marshall, "Fish, Water, and Nez Perce Life," 774.
[54] Robert McCoy, *Chief Joseph, Yellow Wolf and the Creation of Nez Perce History in the Pacific Northwest* (Routledge Press, 2004), 34-35.
[55] Hunn, *Nch'i-Wána*, 119-121.
[56] McCoy, *Chief Joseph*, 31.
[57] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[58] Allison K. Scott, interview.

be damaged), about the rivers (which should not be barricaded) and most importantly, about the native people (who are very strong when united towards a common goal)."[59]

In pre-contact times and extending to the present, women typically were responsible for taking the salmon harvest and turn it into various foods, such roasting it for immediate consumption, or preserving it (whether by freezing, canning, smoking, or drying it).[60] Going back to at least 2500 years ago, Columbia River Indians preserved salmon for winter consumption by breaking the meat into tiny pieces and pulverizing it before drying. Phinney's translation of "The Maiden and Salmon" refers to this method when Salmon instructs the Maiden to insure his return after his death.[61] Preservation of the salmon was important not only to provide food resources for the tribe during the lean winter months, but also to utilize it for trade.

The Nez Perce approach to salmon fishing demonstrates their understanding of the natural world and balance, as well. As the salmon runs began each year, Nez Perce fishers were required to wait a few days before starting their harvest. This benefitted fishers further upstream, as well as animals that also depended on salmon. Additionally, this waiting safeguarded future salmon numbers because it allowed for the annual spawning.[62] The Nez Perces made a conscious effort every season to leave some of the salmon in the river.[63] Nez Perce culture, like many other American Indian nations, stresses considering the effects of any action on the next generations. For the Nez Perce, then, one season's fishing was not more important than fishing for the entire tribe for the next seven generations. Even up to present times, the Nez Perce perspective "defines conservation as harvesting in a manner consistent with sustaining human uses of the salmon populations … for time periods equal to at least the next seven generations of humans. Thus, the tribal perspective on conservation includes the concept of indefinitely sustaining all species and life history types of salmon at levels of abundance sufficient to permit human uses."[64] Tribal elder and historian Allen Pinkham explains:

> "We utilized the salmon resource, we didn't deplete it. We utilized what was necessary to sustain our lifestyle and life ways, both spiritually and physically. Nobody does that anymore. Non-natives see only the salmon as a commodity that gets bought and sold. Not thinking about the survivability of that salmon as a species."[65]

[59] Eric J. Thompson, letter to the editor, *LMT*, July 13, 1980, D3.
[60] Marshall, "Fish, Water, and Nez Perce Life," 774
[61] Taylor, 1999, 24
[62] Nez Perce Tribe, *Treaties: Nez Perce Perspectives*, 8
[63] Allen V. Pinkham, Sr., "A Traditional American Indian Perspective on Land Use Management," *Landscape and Urban Planning*, Volume 36, Issue 2 (November 1996), 94.
[64] R Mundy, T. W. H. Backman, and J. M. Berkson, "Selection of Conservation Units for Pacific Salmon: Lessons from the Columbia River," in *Evolution and the Aquatic Ecosystem: Defining Unique Units in Population Conservation*, American Fisheries Society Symposium, vol. 17, 29.
[65] Pinkham, Sr., Allen V. "A Traditional American Indian Perspective on Land Use Management." Landscape and Urban Planning, 36, Issue 2 (November 1996): 96.

The practical purposes of salmon catching are equaled by the religious or spiritual aspects of it. As Thomas (Tàtlo) Gregory said, "You have a relationship with those creatures. They're not just there…They have a spirit too."[66] Allen Slickpoo, Sr., Nez Perce elder, noted that "Salmon fishing was considered to be a sacred symbol identified in religious ceremonies."[67] One of the most important of these ceremonies was the *ka-oo-yit*, the ceremonial feast at the beginning of the fishing season. In this feast, the Nez Perce gave thanks to the Creator, and to the salmon for returning again. This ceremony, the Nez Perce believed, "helped to insure that the salmon would return the next year."[68]

These ties between the salmon and the Nez Perce spiritual beliefs did not vanish in the post-contact world. Writing in the late 1970s, Marshall commented that locating, catching, process, distributing, and consuming fish is still a significant part for the Nez Perce culture and its economy.[69] Orrin Allen, Nez Perce, says "I can remember that when the first salmon showed up, some of the elders would go down to the edge of the water and offer prayers of thanksgiving."[70] Emphasizing the connection between Nez Perce culture, religion, and salmon and water, Axtell explained:

> "According to our religion, everything is based on nature. Anything that grows or lives, like plants and animals, is part of our religion. The most important element we have in our religion is water. At all of the Nez Perce ceremonial feasts the people drink water before and after they eat.
>
> The water is a purification of our bodies before we accept the gifts from the Creator. After the feast we drink water to purify all the food we have consumed. The next most important element in our religion is the fish because fish comes from water."[71]

For the Nez Perces, there is no separating themselves out from their environment. They view the Earth as their mother, and all flora and fauna as part of her body. Protecting the Earth, then, takes on a heightened cultural value. Pinkham, a former tribal council member and chair of the Columbia River Tribal Fish Commission, said that streams and rivers are like veins, "just the same as veins in mother earth's body, the rivers that give her life."[72]

Cultural connections to Rapid River

The emphasis on salmon, fishing, and the fishing process as a whole denote the importance of traditional cultural fishing sites, such as Rapid River. The Nez Perce utilized the canyon in which

[66] Thomas (Tàtlo) Gregory, interviewed by Mario Battaglia, Lapwai, ID, April 29, 2016.
[67] Dan Landeen and Allen Pinkham, *Salmon and His People: Fish and Fishing in Nez Perce Culture*, Lewiston, ID: Confluence Press, 1999, 24.
[68] Landeen and Pinkham, *Salmon and His People*, 91.
[69] Marshall, "Fish, Water, and Nez Perce Life," 772.
[70] Landeen and Pinkham, *Salmon and His People*, 54.
[71] Ibid., 55
[72] Pinkham, "Traditional American Indian Perspective," 94.

Rapid River runs and the river itself for generations before non-Indians entered the area in the nineteenth century.

There are significant cultural and spiritual connections for the Nez Perce tribe to this site. As Roderick Scott explained in a 2016 interview, the site is tied up with larger feelings. He says Rapid River signifies the respect and honor the tribe feels toward the larger world:

> "That old way, you might say that old way with the earth, having that respect, walking on it, different things, the Creator, the opportunity to do this, I can see, I can walk, I can run, I can swim, you know, I can taste, I can eat.
>
> All those things that God gave us, you know. As a human being, I can feel that. Not just there, but many places as I walk. And to have that feeling, that feeling there as I'm praying [at Rapid River] it makes it beautiful. Makes it beautiful…beyond the word beautiful, you know. There's something else, you know, beyond beautiful, sort of magical you know, feeling."[73]

An archaeological report on the region surrounding Rapid River, completed in 1970, stated that archaeological sites there indicated human use over a long period of time.[74] This study emphasized that this region contained an "extraordinary" amount of history for the Nez Perce.[75] In the 2003 Management Plan for Hells Canyon, the authors note that Rapid River and the area surrounding the river corridor hold importance to the Nez Perce for religious activities and fishing.[76] The plan stated that this made Rapid River of "outstandingly remarkable value" since the traditional uses at Rapid River offer a valuable cultural resource for the tribe.[77] Archaeological resources for the region are still difficult to find, and a 2015 report lays the blame for this on non-Indian use of the region in the twentieth century.

This report is a cultural resources inventory completed by the Idaho Power Company in anticipation of proposed modifications at the Rapid River Hatchery, and it included surveys for both the archaeological and historical resources found around the hatchery. The report said that any Nez Perce cultural resources were unlikely to be found through archaeological work due to the extensive landscape modification the area around the Hatchery had undertaken in post-contact years, including non-Indian ranching and the hatchery itself.[78]

The changing use of the area around Rapid River in the post-contact years echoes a larger theme in U.S. history. The story of non-Indians moving onto traditional Indian lands and reshaping the landscape is a common one in the American West. In the *twentieth* century, treaty rights and fishing sites took a lower priority than other concerns, such as providing electricity and irrigation

[73] Waddy Scott interview.
[74] Earl Swanson, Jr., "The Archaeological Resources Of The Salmon River Canyon: A Methodology Study to Develop Evaluation Criteria for Wild and Scenic Rivers," (Water Resource Institute, University of Idaho), 1.
[75] Ibid., 4
[76] Appendix K, "Wild Rapid River Resource Assessment," K-2.
[77] Ibid., K-3.

water, which came "at the expense of the fish."[79] Historian Richard White, in his study of the Columbia River, bemoans the commodification of the Columbia which reduced it to a machine that humans had both "literally and conceptually disassembled" in their quest to gain economic value from the river's resources.[80]

White's comments apply equally to the Snake River and its tributaries, including Rapid River. For the Nez Perce nation and its related bands, Rapid River was a traditional fishing site, associated with traditional cultural practices that ranged from religious to practical. The failure to find archaeological sources at Rapid River owes more to the changing nature of the region, as it became a contested site for the Nez Perces and non-Indians. Rapid River itself became part of a larger machine, to use White's terminology, once the Idaho Power Company had to mitigate for spawning losses due to dams elsewhere, detailed later in this report.

Nineteenth and twentieth century historical overview of the Nez Perce Tribe

Nez Perce history demonstrates successful utilization of their traditional territory's resources. Seasonal migrations allowed for the tribe, and different bands within it, to successfully utilize their territory at different parts of the year, but, as Josiah Pinkham emphasizes, "The Nez Perce were created right here. We have always been right here."[81] Allen Pinkham says that this "circular motion" throughout the Nez Perce territory allowed for the most efficient and effective use of their resources, and demonstrated a keen knowledge of the landscape, the needs of the people, and the changing weather.[82] In 1805, however, the arrival of non-Indians into their territory shifted the Nez Perces' history.

The Lewis and Clark expedition marked the beginning of a new era in Nez Perce history, as it began what was at first a slow trickle of non-Indian immigrants to the area.[83] The numbers of non-Indians increased as the nineteenth-century wore on, growing from an estimated twenty to thirty per year on Nez Perce lands to up to 1000 per year in the 1840s.[84] This heightened encroachment on Nez Perce land coincided with the growth (both in terms of physical size and power) of the United States, which affected how the U.S. government shifted in its dealings with tribal nations. As evidenced by contradictory policy and legal cases, the federal vacillated in its opinions of how to best deal with tribes, varying from blatant themes of military conquest to

[78] Robert Jones and Jessica A. Dougherty, "Archaeological and Historical Survey Report, Archaeological Survey of Idaho: Cultural Resources Inventory for the Rapid River Fish Hatchery, Riggins, Idaho," prepared for Idaho Power Company, 2015, 9.
[79] Chuck Williams, "The Dammed Columbia," in *Western Water Made Simple*, ed. *High Country News* (Island Press, 1987), 68.
[80] Richard White, *The Organic Machine: The Remaking of the Columbia River* (New York: Hill and Wang, 1995), 110.
[81] Josiah Pinkham interview.
[82] Pinkham, "Traditional American Indian Perspective," 94.
[83] For more on the tribe's interactions with the expedition, please see Allen V. Pinkham and Steven R. Evans, *Lewis and Clark Among the Nez Perce: Strangers in the Land of the Nimiipuu*
(2015).
[84] Nez Perce Tribe, *Treaties*, 23.

more subtle forms of cultural conquest. The changing relationships between the federal government and different Indian nations, and their lands, demonstrate this ongoing ambiguity and inconsistency throughout the nineteenth and twentieth centuries.

Legal historians point to the 1787 "good faith" doctrine for how the federal government initially intended to deal with tribes. Article three of the 1787 Northwest Ordinance said in regard to the relationship between the federal government and tribes that "The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken without their consent." For a new nation, weakened by its recent fight for independence and financially tottering as it carved out its place in the world, continued wars with Indian nations was not the most feasible option. However, by the middle of the nineteenth-century, the U.S. had adopted a paternalistic tone with tribes, best highlighted in the 1831 Supreme Court decision Cherokee Nation v. Georgia, which referred to Indian tribes as wards of the federal government. Ideas of "manifest destiny" propelled more non-Indians to the American West, crowding onto tribal lands and leading to competition for finite resources. For the Nez Perce, as with other tribes, choices were limited in dealing with these trespassers, and often boiled down to diplomacy or war.

In 1855, under severe pressure from the federal government and because of increased non-Indian settlement on their lands and some divisions within the larger tribe, the Nez Perce agreed to a treaty with the U.S. The 1855 treaty negotiations that ultimately resulted in the creation of a reservation for the Nez Perce included representatives of the Umatilla, Yakama, and Nez Perce Nations. This 1855 treaty resulted in the Nez Perce ceding 7.5 million acres of their land, but the tribe also reserved specific rights, such as hunting, gathering, grazing, and fishing rights. The fishing rights noted that the Nez Perce could fish at all "usual and accustomed places" and did not specify that this was a right for only the land enclosed within the reservation.[85] Anthropologist Alan Marshall notes that the Nez Perce viewed the treaty as a recognition of the "sharing of access to the land." He continues that although treaty discussions did not include an extensive discussion of fish and water, this is more indicative of Nez Perce beliefs that fishing rights were "not negotiable."[86] The Nez Perce signed the treaty after being "threatened, cajoled, [and] begged."[87] In return for the land, the Territorial Governor of Washington, Isaac Stevens, promised many things. Jim Matt, a Nez Perce present at the treaty negotiations, said that these promises, most notably financial aspects and reservation boundaries, were never kept.[88]

A common aspect of Indian treaties with the federal government was that the U.S. would keep non-Indians off reservations. The 1855 treaty with the Nez Perce nation was no different in this regard; Article 2 said that the reservation was "for the exclusive use and benefit of" the Nez Perce tribe and no "white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the

[85] Treaty with the Nez Perce, (June 11, 1855), 12 Stat. 957. Available online at http://www.ccrh.org/comm/river/treaties/nezperce.htm.
[86] Marshall, "Fish, Water, and Nez Perce Life," 792.
[87] Hawley, *Recovering a Lost River*, 188.
[88] Nez Perce Tribe, *Treaties*, 40.

superintendent and agent."[89] Chief Looking Glass was emphatic about this point in treaty discussions, clarifying multiple times that only Nez Perces were to be permitted on the land and that it was the federal government's responsibility to keep trespassers out.[90] This was another promise from the federal government that quickly evaporated. Examining nineteenth-century relationships between the federal government and Indian nations demonstrates one of the broad patterns of history in this regard: a dismissal of similar passages in negotiated treaties, especially when non-Indians discovered valuable resources on reservation land. For the Nez Perce, this pattern quickly played out with the discovery of gold.

In the spring of 1860, a small band of miners led by E.D. Pierce, trespassed onto the Nez Perce reservation. Upon the miners' discovery of gold, the Nez Perce treaty faded from the minds of non-Indians in the region. The Nez Perces turned to the federal government to enforce the reservation's boundaries and the treaty's stipulations. The reservation's agents and the army both attempted to stem the tide of invaders in ways that Dennis Baird, Diane Mallickan, and W.R. Swagerty, editors of *The Nez Perce Nation Divided: Firsthand Accounts of Events Leading to the 1863 Treaty*, called both "heroic and feeble at the same time."[91]

The agent wrote for additional assistance, but even prior to the gold rush on Nez Perce lands, the federal government had already disappointed the tribe in regards to upholding the treaty. Promised annuities never arrived and non-Indians settlers had already encroached on the land, and the tribe's agent, C.H. Mott wrote in 1859 that "We have taken from these people a country—some of which is as fine as ever the sun shone on; we have made millions of money by the bargains we compel them to accept, and yet refuse to comply with our portion of the contract."[92] During the autumn just the discovery of gold, A.J. Cain, the agent at Walla Walla Valley wrote to the Superintendent of Indian Affairs in a fairly prescient letter that the Nez Perces' growing concern over white encroachment could lead to conflict, noting that, "Should their [Nez Perce] minds ever become fully impressed with the idea that they are being deluded with false hopes by the government until whites should be too numerous for them to offer resistance, war would be inevitable."[93]

If the federal government could not keep white settlers from Nez Perce land prior to the glittering promise of gold on the land, why should the Nez Perce have assumed protecting reservation boundaries would become a priority when money came into play? Although the Superintendent of Indian Affairs, Edward R. Geary, noted that the "peace of the country" depended on preventing white encroachment on Indian land, the numbers continued to increase over the summer of 1860 after Pierce's discovery.[94] Geary wrote to the Nez Perce Agent Cain in August of that year, imploring the agent to "employ all the authority and means, with which you are

[89] Treaty with the Nez Perce, (June 11, 1855), 12 Stat. 957. Available online at http://www.ccrh.org/comm/river/treaties/nezperce.htm.
[90] Nez Perce Tribe, *Treaties*, 41.
[91] Dennis Baird, Diane Mallickan, and W.R. Swagerty, *Nez Perce Nation Divided: Voices from Nez Perce Country*,, Caldwell, ID: Caxton Press, 2004, 3.
[92] Ibid., 7.
[93] Ibid., 31.
[94] Ibid., 38.

invested in virtue of your office, to prevent all lawless forays among the Nez Perce within the limits of the Reservation," because the consequences would not only be disastrous for the tribe but also "to the lives and property of our citizens on the frontier…employ all the authority and means, with which you are invested in virtue of your office, to prevent all lawless forays among the Nez Perce within the limits of the Reservation."[95] Cain requested additional military assistance but the army arrived too late.[96]

Over the next year, the numbers of trespassers continued to increase dramatically. The non-Indians did not seem inclined to leave, and they built up permanent dwellings. The town of Elk City, Idaho, in the middle of the Nez Perce reservation, for example, increased from three "brush shanties" to twenty log cabins in only two weeks in the late summer of 1861.[97] Faced with intrusions and not seeing adequate assistance from the United States government—distracted by the Civil War—portions of the tribe negotiated a special agreement that allowed for limited mining on parts of the reservation.[98]

As the Senate debated on the merits of reducing the Nez Perce reservation and an accompanying $50,000 appropriation, Oregon Senator J.W. Nesmith bemoaned the unethical policies of the federal government that had led to this point, discussing how the Indians had been "quietly robbed of their patrimony" while distracted by the "florid eloquence" of those who promise them protection of their members and their land.[99] The Nez Perce tribe was well aware as they entered treaty negotiations in 1863 that their position was vulnerable in the wake of increased white settlement, and the recent past failures of the federal government to uphold its 1855 treaty likely did not instill great confidence in a new treaty. Nez Perce Chief Lawyer commented on the "bad faith" of the government in complying with earlier treaty provisions and noted that the majority of the tribe opposed ceding more land.[100] Lawyer reminded government representatives at the treaty negotiations that it was the United States, and not the Nez Perce, who had broken the 1855 treaty.[101]

Although various agents and the Superintendent of Indian Affairs noted in correspondence their despair over the encroachments, their words did not match the government's actions as the U.S. moved forward to take more Nez Perce land. On June 9, 1863, a new treaty proposed a reduction of Nez Perce land staggering in its magnitude. The treaty reduced the Nez Perce reservation from 7.5 million to 750,000 acres. The Nez Perce fought to preserve as many of their traditional ways as possible with this land cession, and argued forcefully to have hunting and fishing rights included in the treaty. In those negotiations, the tribe insisted on that the hunting and fishing provisions which the 1855 treaty had confirmed remained in place in this newest version.[102] As is

[95] Ibid., 43-45.
[96] Ibid., 61.
[97] Ibid., 121.
[98] Ibid., 141.
[99] Ibid., 179.
[100] Ibid., 313.
[101] Ibid., 336.
[102] Nez Perce Tribe, *Treaties*, 42.

clear in Nez Perce history and culture, the need for hunting and fishing extended beyond sustenance for the tribe, especially when it came to salmon fishing. Julia Davis, a contemporary Nez Perce, has said, "We need the salmon for our future and for our children. We need the salmon because it is part of our lives and part of our history."[103]

As the Nez Perce stipulated again in treaty discussion in 1863, fishing had a larger symbolism in Nez Perce life. Looking at how many of their traditional lifeways had already been compromised since white settlement had begun on their lands, the Nez Perces turned to one of the cornerstones of their tradition: salmon. Wanting this important bond between them and their ancestors protected, as a later tribal member said, the Nez Perce ensured that they kept their fishing rights during the 1863 treaty negotiations.[104] The Superintendent of Indian Affairs in Washington, Calvin H. Hale, promised at the treaty council that the federal government fully intended to "act with perfect justice towards" the Nez Perce and that the new limited lands of the reservation would provide for easier protection of the Nez Perces against trespassers.[105] The tribe's various chiefs attempted to procure a larger reservation, but repeatedly met with negative replies.

Although Chief Lawyer and fifty-one Nez Perces signed the treaty, leaders such as Joseph and White Bird refused to sign what many of the tribe still refer to as the "Steal Treaty."[106] In perhaps the biggest real estate bargain in its history, the United States gained over ninety percent of Nez Perce reservation lands for approximately eight cents per acre, as Hale was quick to brag.[107] Included in the lands taken from the Nez Perce were traditional fishing sites, such as those along Rapid River. One of the treaty's stipulations required that all Nez Perce bands move within the new reservation boundaries within a year. The divisions within the tribe, from those opposed to the treaty and those who accepted it, became more evident over the next few years, culminating in violence on Nez Perce land (as Indians and non-Indians alike died[108]) and ultimately a war between the non- treaty Nez Perce and the federal government in 1877.

The war between the United States and the Nez Perces came at a time of heightened anxiety in the American West. Following the deaths of Lt. Colonel George Custer and 263 of his soldiers at the Battle of Little Bighorn in June of 1876, the federal government, moved by the calls for vengeance from its citizens, pushed more aggressively to force Nez Perces who had refused to relocate to reservation lands to comply with the treaty of 1863. Following a council near Tolo Lake in 1877, the non-treaty bands reluctantly agreed to move to the reservation. However, three youthful members of the tribe murdered seventeen white immigrants along the Salmon River, in what later Nez Perce called a response to the "inequity, injustice, and absolute absurdity of this

[103] Landeen and Pinkham, *Salmon and His People*, 111.
[104] Ibid., 112.
[105] Baird, Mallickan, and Swagerty, *Nez Perce Nation Divided*, 348.
[106] Ibid., 42.
[107] Ibid., 419; and Alvin M. Josephy, Jr., *The Nez Perce Indians and the Opening of the Northwest*, abridged version, (Yale University, 1965), 406.
[108] Alvin M. Josephy, Jr., estimates more than 25 Nez Perces died in the years immediately following the treaty, and perhaps one or two non-Indians. Josephy, *Nez Perce Indians and the Opening of the Northwest*, 422.

forced move from their beloved and rightful homeland."[109] The murders prompted a vindictive reaction from the U.S. military, which moved to forcefully ensure the "non-treaty" Nez Perces relocated to the reservation.[110] The military, under the command of General Oliver Howard, pursued bands of Nez Perces through Hells Canyon to White Bird Pass in the late spring of 1877.

The Nez Perces raised a white flag of truce outside of Chief White Bird's village, but Colonel David Perry ordered his troops to attack in what proved to be a major folly. The Battle of White Bird Pass on June 17, 1877, resulted in two Nez Perces wounded and sixty-seven U.S. soldiers dead.[111] Realizing that this battle was only the beginning, the non-treaty Nez Perces, led by Chief Joseph, began an 1100-mile trek to Canada with the hope of refuge there. As the federal troops chased after the Nez Perce over that summer and fall, the two groups clashed time and time again, reducing the numbers of Chief Joseph's followers from 800 to 431. Facing limited options, and only forty miles short of his goal of Canada, Chief Joseph reluctantly surrendered to protect his people.[112]

As Horace Axtell recalled, those who attempted to disavow the 1863 treaty and its stipulation that the Nez Perce be confined to a dwindling reservation were those "who wanted to hang onto old ways of the Indian culture: traditions and spirituality."[113] The 1863 treaty did not mention fishing rights, which had been explicitly outlined in the 1855 treaty. Article 8 of the 1863 treaty stated that "all the provisions of said treaty which are not abrogated or specifically changed by any article herein contained, shall remain the same to all intents and purposes as formerly," which the Nez Perces understood to mean that they retained all fishing rights in their "usual and accustomed places."[114]

The United States, under the guidance of General William T. Sherman, punished many of the warriors who had fought in the War of 1877 by removing them from their land, placing in Indian Territory (present-day Oklahoma) instead of the reservation in Idaho. Chief Joseph campaigned for seven years to have his people rightfully returned to their land, meeting with the President, the Interior Secretary, and other federal officials in the intervening years.[115] On May 22, 1885, 118 Nez Perces who had participated in the war and been exiled from their land finally returned to the Pacific Northwest[116]

The next few decades marked a period of transition for the Nez Perces. Confined to a small portion of their original homelands and cut off from many of their traditional cultural ways,

[109] Nez Perce Tribe, *Treaties*, 48.
[110] For more information on the impetus behind this military mobilization and the Nez Perce response, please see Elliot West, *The Last Indian War: The Nez Perce Story* (2009).
[111] Nez Perce Tribe, *Treaties*, 48.
[112] Ibid.
[113] Ibid., 49.
[114] The 1863 Treaty can be viewed in its entirety at http://www.ccrh.org/comm/river/treaties/np63.htm
[115] Josephy, *Nez Perce Indians and the Opening of the Northwest*, 622.
[116] Ibid., 623.

fishing in their "usual and accustomed places" was not an easily achieved goal, as white settlement in northern Idaho continued. Federal policy regarding tribes also transitioned during this time, and federal agencies put more weight on assimilating natives into non-Indian culture. The focal point of this was the Dawes Act of 1887, which sought to transform American Indians into small farmers by breaking up the reservation land held in common by their tribe and allotting 160-acre plots to individuals. The remaining acreage was opened to non-Indian settlement and the 1895 "land rush" onto Nez Perce lands was the culmination of this new assimilation policy. The Dawes Act is largely recognized as a failed policy, resulting in the loss of approximately 90 million acres of Indian holdings and dramatically increasing poverty levels on reservations. For the Nez Perces, the story was much the same: by 1923, the superintendent of the Nez Perce Reservation recorded that tribal members only owned 100,000 acres of land, as compared to non- Indians' 650,000 acres.[117]

With a dwindling land claim, the Nez Perce tribe held up its treaty in an effort to protect other aspects of Nez Perce culture, but Nez Perce treaty rights regarding fishing were already under attack early on in the twentieth century. Nez Perce member Henry E-nah-la-lamkt noted in 1911 that any Nez Perce who wanted to fish, "even near his own home," had to apply for a game license. He continued, "Our people hold that in direct violation of their rights under the treaties and a confiscation of the principal part of the compensation they were to receive for their large cessions of land."[118] This inability to exercise their treaty rights came at a time when traditional ways of life by the Nez Perces were under attack. As the Dawes Act emphasized permanent dwellings and agriculture, Nez Perce agents and the federal government worked to end seasonal migrations, including those centered around fishing (whether for subsistence or for spiritual reasons). Agriculture proved a difficult task on much of the reservation, and this compounded larger issues facing the tribe during the allotment era (1887-1934). The tribe suffered from an increase in diseases at this time, most likely owing to a combination of increased contact with non-Indians and a decreasing ability to procure native foods—such as camas and salmon, specifically—to combat dietary diseases.[119]

Twentieth century changes and Rapid River

The federal government ended the allotment process in 1934. Its recognition of tribal autonomy and sovereignty, demonstrated through the "Indians' New Deal" and other programs of the 1930s, gave way in the post-war years to a renewed attack on traditional culture. Using terms such as "termination," the federal government moved in the 1950s to end treaty rights and tribal sovereignty. This dismissal of treaty rights and the larger rejection of traditional culture by non-Indians gave rise to a civil rights movement, largely headed by younger tribal members. The American Indian Movement (AIM) gained steam in the 1960s and 1970s, drawing attention to

[117] Elizabeth James-Stern, "The Allotment Period on the Nez Perce Reservation: Encroachments, Obstacles, and Reactions," in *American Indian: Past and Present*, ed. by Roger L. Nichols, 5th edition, University of Arizona, 1999, 200.
[118] Nez Perce Tribe, *Treaties*, 41.
[119] Ibid., 55.

treaty abrogation, the failures of the federal government to protect tribal rights, and the continued attack on tribal culture and sovereignty. AIM's protests at Alcatraz and Wounded Knee may have seemed far removed from Idaho, but by 1979, these fights came to Rapid River.

For the Nez Perce, Rapid River was a common fishing site throughout the twentieth century. Tribal informants talked about travelling there with their families and camping for an extended period of time during the salmon runs. Katsy Jackson and Butch McConville discussed camping in the vicinity, prior to the highway being constructed. They remember the area being completely open prior to this construction, allowing for more camping by tribal members.[120] Basil George, Jr., said that when he was a young child, in the late 1960s and early 1970s, the tribe often fished at night because that was when most of the salmon ran. Jason Higheagle Allen reiterated in a separate interview that nighttime fishing was the most successful.[121] A.K. Scott said he preferred fishing at night partially to feel alone and partially because it felt safer.[122] George recalled being able to shine a light on the water at night and see the backs of all these fish all throughout the river, which he said was just "unreal" for the numbers of fish there were.[123] Gordon Higheagle said he and two other friends went fishing at nighttime in 1971 and caught at least twenty fish in a half hour.[124]

The conflict at this traditional Nez Perce fishery resulted from the construction of dams along the Snake and Columbia Rivers and their effects on salmon, and it reflected larger growing tensions between Indians and non-Indians over fishing rights due to recent legal decisions, such as *Puyallup Tribe, Inc. v. Department of Game* (1968), *Sohappy v. Smith* (1969), and *U.S. v. Washington* (1974), more commonly known as the Boldt Decision. *Puyallup v. Department of Game* said that a state could regulate hunting and fishing on tribal lands if there were threats on propagation.[125] The next year in *Sohappy v. Smith*, the issue of conservation again was upheld by a court as a justification to limit tribal fishing, but this decision stated that a state had to regulate fisheries in a manner that guaranteed Indians a "fair and equitable share" of the catch.[126]

The Boldt Decision redirected attention to the language of the treaties themselves. This decision focused on the working of "usual and accustomed grounds" in many treaties, such as the in the 1855 treaty with the Nez Perce tribe. Judge Boldt said that "usual and accustomed grounds" were defined as all sites where tribes and tribal members had fished or hunted prior to the treaty.[127] Non-Indian fishers, including commercial fishers and sport fishers, protested

[120] Highway 95 was essentially completed in the late 1930s, although work continued to improve certain portions over the next decade. For more information on the history of the construction, please see "North and South Highway bringing to reality old dreams of united Idaho," in the *Lewiston Morning Tribune*, May 3, 1936, 1
[121] Jason Higheagle Allen, interviewed by Mario Battaglia and Jim Hepworth, Lapwai, ID, May 6, 2016.
[122] Allison K. Scott interview.
[123] Basil George, Jr. interview.
[124] Gordon Higheagle, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 10, 2016.
[125] Stephen L. Pevar, *The Rights of Indians and Tribes,* 4th edition (Oxford University Press, 2012), 194.
[126] Landeen and Pinkham, *Salmon and His People,* 115
[127] Pevar, *Rights of Indians and Tribes*, 196.

Boldt's decision and David Wilkins and K. Tsianina Lomawaima explain in their book, *Uneven Ground: American Indian Sovereignty and Federal Law*, that this led to "violent and ugly" confrontations between Indians and non-Indians in the 1970s. State agencies, Wilkins and Lomawaima continue, refused to enforce the ruling, and this left a "bitter legacy" throughout the West as "fish wars" dominated the fishing scene for the decade.[128] The events at Rapid River in 1979 and 1980 echo this.

These three court cases came during a time of increased protests over treaty rights, and specifically as different tribes and individual tribal members staged "fish-ins" at their usual and accustomed places to draw attention to broken treaties. Charles Wilkinson, American Indian legal historian, refers to the Boldt Decision as "the lighting strike" that changed everything. He notes that for tribes, "It wasn't just getting a fair share of the fish, but they had the right to act as sovereigns. These tribes really did not have working governments, certainly as far as the outside world was concerned. Afterward they set up courts, environmental codes and crack scientific operations – it gave them confidence."[129] Events at Rapid River did the same for the Nez Perces, reflecting this larger pattern.

Construction of dams and the Rapid River Fish Hatchery

For the Nez Perces, these legal decisions came in the wake of vast changes to their landscape and their fisheries as a result of dams built in the second half of the twentieth century. The federal government had considered constructing dams in Hells Canyon since the 1930s, in an effort to assist Idaho's agriculturally-based constituents with irrigation. Part of the same impetus as earlier reclamation acts to bring water to arid and semi-arid lands, the irrigation argument fell to the wayside after a proposal by the Corps of Engineers noted that the canyon was perhaps too isolated for much agriculture. Consequently, in the 1940s, the arguments for needing dams in Hells Canyon shifted. Proponents for dams argued that they would help develop the Snake River basin for maximum public benefits, providing flood control and hydroelectric power. Idaho Power Company became part of the negotiations over these dams in the early 1950s, and it proposed the construction of three low dams to help with flood control and power. Its proposal appealed to federal government officials because it would not use any federal funds, as a reclamation project would have.

Additionally, if the federal government built the dams and operated a power company, this would deny a private company this right. With fears of "creeping socialism" and Cold War anti-communism reaching a fever pitch in the 1950s, the discussions over Idaho Power's involvement took a different tone. President Eisenhower weighed in on the Hells Canyon project, believing that a federally-owned power company took the nation dangerously close to communism. Ultimately, in 1955, the Federal Power Commission (FPC) authorized Idaho Power to construct

[128] David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001), 238-239.
[129] Christi Turner, "Boldt ruling to let Natives manage fisheries is still vastly influential, 40 years later," *High Country News*, February 14, 2014, available online at https://www.hcn.org/blogs/goat/40-years-later-the-boldt-decision-legacy-still-being-laid.

the dams and control power in Hells Canyon.[130]

Idaho Power began the construction of the dams in the mid- 1950s. One of the goals was to "conquer, tame, and harness" the region.[131] There were a variety of clauses attached to Idaho Power's contract to build the dams, and one was dealing with the potential loss of salmon the dams created. The FPC required Idaho Power first to contribute $250,000 to the Interior Department for a study on this and to help devise a mitigation program. Additionally, Idaho Power had to "arrange to build and operate hatcheries, fish ladders, fish traps, and other means of fish transport across the dams and then pay for their operation and maintenance."[132]

Dams were part of a larger process that had, in the twentieth century, affected salmon runs in Idaho. Mining, farming, and ranching had all negatively impacted salmon numbers prior to Idaho Power's involvement. Additionally, going back to the nineteenth century, commercial harvesters had used ecologically-unsound methods to catch salmon.[133] In his article on salmon, Pat Ford discusses how non-Indians in Idaho, since the creation of the state in 1890, allowed for over-fishing to deplete salmon runs. He argues that this over-fishing coincided with the depletion of fish habitats due to settlement, irrigation, logging, grazing, and mining.[134] However, the dams in Hells Canyon demanded new attention to the salmon's population and the mitigation agreement Idaho Power entered into with the FPC addressed the loss of salmon. Early efforts to maintain salmon runs in Hells Canyon following the dams' construction failed within the first few years, and Idaho Power developed a hatchery program to help mitigate the unsuccessful runs.[135] These projects eliminated an estimated 50% of the salmon and steelhead habitation in Idaho.[136] Idaho Power built four hatcheries as a result of this: Oxbow Fish Hatchery (Oregon), Niagara Springs Fish Hatchery (Idaho), Pahsimeroi Fish Hatchery (Idaho) and Rapid River Fish Hatchery (Idaho).

The Rapid River Fish Hatchery (RRFH), built in 1964, was charged with artificially propagating spring Chinook salmon, steelhead, and fall salmon.[137] The Hatchery uses the water from Rapid River itself, and this provides a level of protection since this drainage became protected under 1968's Wild and Scenic Rivers Act. RRFH is now the "largest collection, spawning and rearing facility of spring Chinook in Idaho."[138]

Although Idaho Power owns the hatchery, the Idaho Department of Fish and Game operates it,

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[130] Susan M. Stacy, *Legacy of Light: A History of Idaho Power Company*, (Boise, ID: Idaho Power Company, 1991), pgs. 135-148.
[131] Stacy, 152.
[132] Ibid., 153.
[133] Ibid., pgs. 206-207
[134] Pat Ford, "The View from the Upper Basin," in *Western Water Made Simple*, 87.
[135] 1Paul E. Abbott and Mark H. Stute, "Evaluation of Idaho Power Hatchery Mitigation Program," in (Idaho Power, 2003), 1. Available online at https://www.idahopower.com/pdfs/Relicensing/hellscanyon/hellspdfs/techappendices/Aquatic/e3104.pdf.
[136] Ford, "The View from the Upper Basin," 88.
[137] "Rapid River Hatchery," available online at http://fishandgame.idaho.gov/public/fish/?getPage=103.
[138] "Our Fish Story: Idaho Power's Fish Conservation Program," pamphlet from Rapid River Fish Hatchery (2013).

with the goal of producing three million spring Chinook smolts every year. This goal has changed since RRFH's beginnings, and a 2001 technical report for Idaho Power on the mitigation agreement notes that this is due to the "experimental nature" of the hatcheries.[139] Essentially, in the 1960s when the hatcheries began operation, no one was sure exactly how many smolts and returning salmon would be needed, but these numbers became more solidified by the late 1970s. Currently, between 100,000 and 1 million fish are transported to the Snake River and released below Hells Canyon dam. RRFH clip the adipose fin of each smolt from the hatchery to identify them as hatchery-produced fish. When adult salmon return to Rapid River, this identification marks them separately from the naturally reproduced population.[140] RRFH, built seven miles south of the town of Riggins at the base of the Seven Devils Mountains, is located within traditional Nez Perce fishing grounds.

In its first decade, RRFH suffered a series of setbacks in its propagation efforts. Various diseases, including a nitrogen disease, negatively affected the smolts and the returning salmon; in 1976 different state and federal fishery agencies, including the National Marine Fisheries Service, and Fish and Game Departments from Idaho, Oregon, and Washington, filed a Declaratory Order Amending and Supplementing Orders Prescribing Fish Facilities with the FPC. In this petition, these different agencies charged that the Idaho Power Company had failed to provide adequate mitigation for the losses of anadromous fish. In 1980, Idaho Power, the FPC, and the various agencies came to an agreement for future efforts, summarized in the Hells Canyon Settlement Agreement.[141] This agreement did not require any modifications for RRFH, but an important aspect to note regarding the negotiations and litigations over this agreement in the years between 1976 and 1980 is that the Nez Perce Tribe was not included in these discussions.

Nez Perce fishing at Rapid River, post-hatchery

It is within the context of the developing fish hatchery programs of the 1960s and 1970s, AIM's protests, and the growing awareness of treaty violations that the conflict between the Nez Perce Tribe and the State of Idaho is best viewed. In the second half of the twentieth century, various events and historical patterns directed the nation's attention to the fishing rights of tribes. For the Nez Perce, this played out in different ways. The tribe created its own Fish and Wildlife Commission in 1998, but decades before that, the tribe began paying a great deal of attention to protecting not only their treaty rights but also the sites that held spiritual, historical, and cultural connections for the tribe. With this, the tribe turned its attention to Rapid River, which the tribe defines as one of the "usual and accustomed" fishing places, pointing out that the White Bird and Looking Glass bands historically used this sites in the nineteenth century.[142] A.K. Scott remembers fishing at Rapid River to take fish to the centennial commemoration of the Nez Perce War of 1877, making the connection between the spiritual and cultural value of the site and the

[139] "Evaluation of Idaho Power Hatchery Mitigation Program," 4.
[140] "Rapid River Fish Hatchery Tour Information," pamphlet from Rapid River Fish Hatchery.
[141] "Evaluation of Idaho Power Hatchery Mitigation Program," 6-7.
[142] Nez Perce Tribe, *Treaties*, 78.

larger Nez Perce history.[143]

This site, though, had become contested because of the hatchery. Non-Indians began fishing there more in the 1960s and 1970s, and reacted negatively when members of the Nez Perce tribe fished there. Although the site is most remembered for the 1979 and 1980 stand-offs, tensions were rising for years before that, most notably as non-Indians grew angrier over tribal fishing rights. Conflict occurred in different ways, ranging from derogatory remarks non-Indians made about Nez Perces, to direct threats against tribal members.

One tribal member, Basil George, Jr., recalls an incident in 1978 when he was thirteen, where non-Indians shot at him, his step-father, and his cousin. According to George, the white men pulled up near the river at nighttime when George's group was fishing, and started making threats about killing Indians. Although these men did not see George and his group, the men started to load shells into their rifles and began firing randomly at spots along the river. George remembers the event as terrifying, as he, his father, and his cousin waded out into the bank, holding on to tree roots, shivering, and waiting for the men to leave. George said, "I was just scared, just cold, shaking in the water."[144] Gordon Higheagle related a story where he spent the day fishing at Rapid River in the early 1970s, catching approximately twenty fish. As he was driving home, he was pulled over and the officers demanded that he take out all of the fish and lay them out on the road so officers could count them. Higheagle questioned the officers on why he had to do this, since he had treaty rights to fish at the site, and he never received a true answer. Ultimately, the officers told Higheagle he could keep the fish and they drove away.[145] The purpose of this interaction was confusing to Higheagle at the time and remains so even now, but it emphasizes a larger harassment and provocation that echoes the general feeling of division between Indians and non-Indians, especially when it came to fishing rights. Incidents like these were vivid reminders to tribal members that non-tribal members resented tribal fishing rights. Tribal fishing rights became even more controversial when the returns of salmon diminished.

The 1979 conflict

The low returns of salmon to Rapid River and the hatchery there in the 1970s prompted a great deal of concern for Idaho Fish and Game. In 1979, the State of Idaho decided to close the Rapid River fishery in an effort, in its opinion, to protect the salmon. Nez Perces protested, saying that this was one of their "usual and accustomed" places to fish, emphasizing the traditional cultural value of the site. The State countered, saying the closure was a justified conservation method, necessary since there were too fish few returning to spawn.

Although survival rates for fish artificially spawned at Rapid River were higher that year—in May 1979, the Idaho Department of Fish and Game (IDFG) reported that there were 468,070 fish

[143] Allison K. Scott interview.
[144] Basil George, Jr. interview.
[145] Gordon Higheagle interview.

in the raceways, which marked a survival rate of 87%[146]—the adult salmon returning to Rapid River suffered from a nitrogen bubble disease. The Rapid River Hatchery reported a mortality rate of 32.4% for the trap overall, which was the second highest loss since the hatchery had opened fifteen years prior.[147]

By the late 1970s, those numbers had dropped substantially and the state stepped in. But closing the river to fishing provided a direct challenge to Nez Perce treaty rights. As Roderick Scott, a contemporary Nez Perce fisher who was one of the key participants in the 1980 standoff, explained, this was too much. After generations of Nez Perces seeing their land taken from them and from watching treaty rights being dismissed by non-Indians, the State of Idaho, and the federal government, a threatened closure on a traditional fishing site was too much for some individuals. Scott said, "You can close it for the sportsman, but you ain't gonna close it for us, you know, we have a right, the treaty says we have a right, you know."[148] His brother, A.K. Scott, who was a member of the Nez Perce Tribal Executive Council (NPTEC) in 1980 and also a key figure during the standoff, repeated this idea, noting it was important for Nez Perce fishers to "Never take anything for granted. Fishing and hunting…you never wanted to lose your right to do that."[149]

Aware that a closure could lead to conflict, the Department of Law Enforcement (DLE) became involved in the matter. According to Kelly Pearce, Director of DLE, on May 17, 1979, Joe Greenley, the Director of Idaho Fish and Game informed the DLE that, in Pearce's words, "militants on the Nez Perce Reservation did not intend to abide by <u>any</u> regulations imposed by the state upon the treaty rights to fish. A Fish and Game's intelligence report indicated that the militants were organizing opposition which includes the use of firearms against Fish and Game personnel or law enforcement personnel if an attempt was made to restrict the Nez Perce fishing rights."[150] To avoid an armed confrontation, Pearce said that the DLE urged the Nez Perce Tribal Executive Committee (NPTEC) to adopt a resolution that would essentially ban salmon fishing on Rapid River until 2,700 mature salmon passed through the trap. Twenty-seven hundred was the number of fish Idaho Power said was necessary to meet its Federal licensing requirements for installation of the dams on the Snake River.[151] NPTEC agreed to limit fishing until the 2,700 number had been reached, but it declined to issue a complete ban. The tribe repeatedly emphasized self-regulation during the conversations, and NPTEC said that tribal members would only fish on the weekends.

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[146] Jerry Conley, director, Idaho Department of Fish and Game (IDFG), "Evaluation of Spring Chinook Salmon Emigration, Harvest and Returns to Rapid River Hatchery, 1979, and Report of Operations at Rapid River Hatchery," in Annual Performance Report: Report to Idaho Power Company (from 1 October 1978 to 30 September 1979), 1. Located at Idaho State Historical Society (ISHS) archives.
[147] Ibid., 2.
[148] Waddy Scott interview.
[149] Allison K. Scott interview.
[150] Kelly Pearce, Idaho Department of Enforcement, to Governor John Evans, Boise, Idaho, March 20, 1980. Located in John Evans collection, Rapid River box, Idaho State Historical Society archives (hereafter referred to as Evans collection).
[151] It is important to note that this number is somewhat fluid, allowing Idaho Power and Idaho Fish and Game to be flexible in its annual responses to changing fishing, harvesting, and environmental needs.

During the 1979 season, tensions remained high between tribal fishers and the IDFG, as well as between the tribe as a whole and non-Indian residents in Riggins. The regional newspaper reported on the "atmosphere of simmering hostility," that had resulted from the state's closure.[152] The Hatchery was located near a subdivision of homes, and the tribe's camp (100 feet from the Hatchery) was visible to residents. Pearce commented that "to say that tensions existed between the residents of the river subdivision and the Nez Perce is the understatement of the year."[153] He added that the non-Indian residents complained about the tribe littering, urinating and defecating in full view of residents, and "yelling, drum beating, horn honking" at night.[154] Riggins residents complained to the governor about this, as well. Richard Ziegler, a member of the board of directors for the Rapid River Homeowners Association, wrote that the residents were "asked to condone the petty thefts that occurred, listen to screaming, swearing, and the beating of drums throughout the night, and even have threats made against us and our homes."[155]

The state's closure went into effect on June 5, and both the tribe and state mobilized quickly. The state readied a SWAT team to combat what it saw as militant protests, a move the Tribe's Chairman, Wilfred Scott, called "chicken shit."[156] Twenty-nine tribal members camped at the Indian fishery that weekend, and the Governor said he wanted to compromise with the tribe. A.K. Scott said that he remembers about twenty officers coming into their camp and he said that this was the first time an IDFG officer pointed a gun at tribal members.[157] One of the options Governor Evans offered was to allow the tribe to police itself, but to allow for the arrest of a single Indian fisherman as a "token move."[158] The tribe rejected this compromise and the State Director of Law Enforcement said that he had ordered his officers to cite any Nez Perce who even stepped into the water; tribal members did not have to even catch a fish, but just show an intent to attempt to catch one.[159]

As tribal members argued that they held treaty rights and this the land surrounding Rapid River as well as the river itself was "sacred ground," as they told one *Lewiston Morning Tribune* reporter, the cultural clash and the divided opinions on treaty rights between tribal members and non-Indians became apparent.[160] One hatchery official said that although the tribe was viewing this as a political issue, it boiled down to a biological issue: "What they've got to remember is that the rights to nothing are still nothing."[161] The tribe was divided in its response to the closure—Gordon Higheagle, who was on NPTEC at the time, remembers that one of the concerns for the council was that tribal members had been raised in the ways of conservation and

[152] Johnson, "Showdown over salmon season likely," *LMT*, June 1, 1979, A1.
[153] Pearce to Governor Evans, Boise, Idaho, March 20, 1980. Located in Evans collection.
[154] Ibid.
[155] Richard Ziegler, Board of Directors, Rapid River Homeowners Association, to Governor John Evans, Boise, Idaho. Undated. Located in Evans collection.
[156] *Lewiston Morning Tribune*, "Fishing ban enforcement begins today," June 5, 1979, A1.
[157] Allison K. Scott interview.
[158] Johnson, "Negotiations to avert fishing clash intensify," *LMT*, June 6, 1979, A1.
[159] Ibid.
[160] Ibid.
[161] Ibid.

were not immune to worrying about low numbers— but they were united in the belief that the state did not have a place in telling tribal when they could or could not fish. Higheagle explains that tribal conservation of natural resources "was in the minds of a lot of people of course because they knew that the runs were only a couple of hundred…a lot of people felt that it was important, though, that they [the State] could not tell us not to fish."[162]

After a tense weekend at the fishery, the tribe removed itself from the area, holding up to its regulation that tribal members would only fish on weekends. The Interior Department and Governor Evans offered another compromise at this point: they guaranteed the Nez Perces 2,500 salmon between June and September once the 2,700 fish were trapped and that the tribe could have a "symbolic" tribal fishery the upcoming weekend, if they agreed to a complete closure after that.[163] On June 7, the NPTEC agreed to a compromise that allowed tribal members to fish on both June 9 and 10, in return for 2,500 "jack" salmon and carcasses of spawned salmon for ceremonial use and consumption for the elderly and poor within the Nez Perce community. With this, the State of Idaho and the Interior Department vowed to work with the tribe to support further restrictions of off-shore commercial salmon fishing in the Pacific Ocean. Silas Whitman, a NPTEC member, said he had gone into negotiations with three priorities: preservation of treaty rights, preservation of the salmon run, and a desire to avoid a violent confrontation.

Whitman said the fishery was "part of our way of life" and couldn't be compromised: "It goes a lot farther than people can fathom. It goes beyond their (the fish and game department's) bureaucratic circle."[164] Emphasizing the cultural importance of the Rapid River fishery, the tribe agreed to the compromise and that weekend (June 8-10), approximately 80 Nez Perces fished at the site, catching 53 fish.[165]

The compromise verged on collapse when ten tribal members fished on June 13, and two tribal members (Roderick Scott and Leroy Avery) were arrested. Roderick Scott later said when IDFG arrested him, he had probably a dozen salmon in the bed of his truck. He had a friend with him at the time, and decided not to fight back during the arrest. His friend was also arrested and he received $50 bail; Scott initially received a bail of $2,500 but when he went before Magistrate Judge George Reinhardt in Idaho County, the judge increased it to $75,000. Scott sat in jail for the remainder of the year, working with AIM and different attorneys to get his bail reduced. The next year, the bail dropped to $5,000 and he was released.[166] Scott remembers feeling estranged from the tribe during this, and that the political leaders would not help him make bail, including his brother Wilfred Scott, the chair of NPTEC. The divisions in the tribe over how to approach protecting fishing rights is an important aspect in the story of the stand-off, and it affected the official tribal response and the responses of some of the protest leaders.

Although officers arrested Scott, IDFG continued to complain about this violation of the truce,

[162] Gordon Higheagle interview.
[163] *Lewiston Morning Tribune*, "Evans offers plan to break fish impasse," June 7, 1979, A1.
[164] Johnson, "Nez Perces sign pact, clash averted," *LMT*, June 8, 1979, A1.
[165] *LMT*, "All's quiet (still) at Rapid River," June 10, 1979, B2.
[166] Waddy Scott interview.

with Greenley noting it was "an open violation of the agreement, it's a violation of their own tribal proclamation, and a violation of state and federal regulations." Wilfred Scott, though, said that the tribe as a whole intended to keep its end of the bargain, but "just like any other society, we can't control everybody."[167] An IDFG officer said that some of the Nez Perce fishers had displayed a small pistol in a threatening manner at the officers, but within a few days Fish and Game agreed with Scott that this was an isolated incident and not a premeditated plan from the tribe to dismiss the recent agreement.[168]

The state removed the fishing ban on June 26, but the conflict allowed for a larger conversation about the traditional cultural value of the fishery for the tribe. Non-Indians in the region joined in the conversation by writing letters to the editor at the *Lewiston Morning Tribune* and the paper itself provided commentary on the legal and cultural backing of the conflict. The majority of letters written supported the Nez Perces and reaffirmed the treaty rights of the tribe. For example, Ed Rieckelman, who was educated and trained in wildlife resources, took issue with the conflict being framed by the State of Idaho as only a biological one. Rather, he said, it was clearly a political issue and one about power: "The issue is not a question of whether the Indians have the right to possibly cause the final demise of a native salmon run. It is a question of whether the American government has the right to reverse the provisions of one of its treaties simply because biologists feel it is necessary to save the salmon."[169] The *Lewiston Morning Tribune* compared the salmon to the buffalo of the Great Plains in terms of cultural and historical importance for Pacific Northwest tribes. Allen Slickpoo, Nez Perce, noted that salmon and the cultural practice of fishing for them was "a significant part of our history and culture," while other tribal members talked about the ancient customs of the tribe when it came to fishing at Rapid River.[170]

In addition to the cultural and political ramifications of the Nez Perces' treaty rights being ignored, the tribe continually maintained in June of 1979 that the closure was not biologically necessary. When the state lifted the closure, state officials noted it was because the run was much larger than what state biologists had predicted. Wilfred Scott replied, "I hate to say we told them so, but we did," and he reminded the state that tribal fishermen and tribal biologists had predicted these higher numbers.[171] Greenley remarked that the state had "erred" in its estimates. Once the ban was lifted, the newspaper reported that 75 tribal members returned to Rapid River to fish at what the paper referred to as "the tribe's traditional Chinook salmon fishery."[172] Acknowledging the traditional cultural value of the fishing site, the paper reaffirmed Rapid River's importance to the Nez Perce Tribe, which the tribe maintained superseded the state's regulation.

The 1979 season ended without armed conflict, but it set the tone for the next year as it had left

[167] Rita Hibbard, "Rapid River truce on the verge of collapse," *LMT*, June 14, 1979, A1.
[168] Allen K. Short, "Four cited for fishing near hatchery," *LMT*, June 15, 1979, B1; and *LMT*, "Fishing arrests 'isolated incident,'" June 15, 1979, B1.
[169] Ed Rieckelman, letter to the editor, *LMT*, June 17, 1979, D2.
[170] Associated Press, "Salmon: A withering way of life for Indians," *LMT*, June 18, 1979, B1.
[171] Short, "Indian fishing ban is removed," *LMT*, June 27, 1979, A1.
[172] Short, "Ban lifted, Indian fishermen return to Rapid River," *LMT*, June 29, 1979, C1.

animosity between different groups unsettled. NPTEC's resolution for tribal self- regulation, as well as an Indian fishery allowed on the weekends, had been ignored by IDFG. The issue of self-regulation became a focal point during the 1979 season as well as the 1980 season. For the tribe, Rapid River had cultural value that went above conservation rulings and propagation arguments.

Additionally, the tribe argued that their treaty rights gave them access to Rapid River and a state law did not supersede this. A.K. Scott noted that, "We feel a treaty right is a property right, and it can't be taken away or diminished without due process." [173] The tribe sent a letter to Governor John Evans protesting the "flexing of the mighty muscles of the United States Government," the dismissal of treat rights, and the disregard of the tribe's sovereignty after the NPTEC had called for self-regulation.[174]

Even after IDFG lifted the ban in late June, Greenley expressed frustration over Indian fishing. IDFG recorded an average of 45 fish per day during the 76-day trapping period in June and July 1979. There were days of significantly higher counts, such as June 12 and 13, when 244 adult salmon were trapped. On June 28, Nez Perce tribal fishing reopened and IDFG recorded the immediate results. On June 28, 233 adult salmon and 14 jack spring Chinook were trapped; on June 29, "after Indian fishing resumed," only 28 adults and 9 jacks were trapped.[175] The "Draft Operating Plan for Rapid River Hatchery with Consolidation for Fishery and Hatchery Management" spelled it out specifically: "Attainment of brood fish in sufficient numbers for ongoing hatchery programs has been thwarted by the tribal fishery."[176] For IDFG, the connection was clear: Indian fishing had plummeted the numbers of salmon trapped, and this belief guided decisions for the 1980 season. From the tribe's perspective, IDFG acted unilaterally without any consultation; the tribe also rejected the premise that they "were one of the primary causes for the decline of the fishery."[177]

1980 standoff

The State of Idaho, IDFG, and the tribe debated over the winter of 1979 going into the spring of 1980 how to best deal with another conflict during the fishing season. Richard Ziegler from Rapid River Homeowners Association had his own suggestion: that the Hatchery be dismantled and Hells Canyon be utilized instead to breed fish. As the fishing season grew closer, the tribe started to hear murmurs of another closure. How to respond to this proposed closure for the next season divided the tribe. The "prevalent opinions" were that the tribe should avoid a public dispute with the state's decision and adhere to the closure. Another portion of the tribe, though, formed the Nez Perce Tribal Fishermen's Group (frequently referred to by both the state and the tribe as the Fishermen's Committee). A.K. Scott said that this was necessary since many of the NPTEC members did not want to get involved in the grassroots movement at Rapid River; the

[173] Johnson, "Showdown over salmon season likely," *LMT*, June 1, 1979, A1.
[174] Ibid.
[175] Jerry Conley, "Evaluation of Spring Chinook Salmon Emigration," 2
[176] Jerry Conley, "Draft Operating Plan for Rapid River Hatchery with Consolidation for Fishery and Hatchery Management," internal memo dated Oct. 15, 1980. Located in Evans collection.
[177] Nez Perce Tribe, *Treaties*, 79.

Fishermen's Committee, he said, was created by tribal members in response to incidences at Rapid River.[178] This group was a divisive aspect, and anthropologist Alan Marshall refers to it as both "a political party and associated faction" of Nez Perces who were "characterized as a bad element in an otherwise peaceful tribe."[179] The Fishermen's Committee rallied support, though, among the tribe as a whole and were able unseat several members of the NPTEC who had voiced their concerns over any potential confrontation with the State over Rapid River.

Worried about a confrontation, IDFG worked with the State of Idaho Department of Law Enforcement to monitor both the Fishermen's Committee (which the DLE referred to as the "Fishermen's Alliance") and NPTEC. In a memo to Governor Evans on May 6, 1980, Pearce reported on the May 2 election of Allison K. Scott, Brad Picard, and Walter Moffet to the Executive Committee. Pearce noted that these three were "leaders of or clearly aligned to the 'Fishermen's Alliance' on the Nez Perce Reservation. Confidential information clearly indicates that the 'Fishermen's Alliance' intends to take a 'hard-line' run on the exercise of treaty fishing rights." Pearce also discussed Roderick Scott for his 1979 arrest for a Fish and Game violation. Pearce wrote that Scott had assisted in getting A.K. Scott, Picard, and Moffet elected and that he was "looked upon by the militants and others as a 'defender of treaty fishing rights.' Roderick Scott also styles himself as a 'spiritual leader' of 'his people' meaning all inhabitants of the Reservation, more particularly the 'Fishermen's Alliance' group."[180] Overall, Pearce warned that the change in the NPTEC's leadership had decreased the possibility of any peaceful exercise of the tribe's fishing rights.[181]

There was a generational issue at play in this, reflective of the influence of AIM and a growing awareness of the tribe in general that protecting treaty rights was paramount. For the younger adults of the tribe, this meant putting in leadership that would fight more aggressively for treaty rights. As the chair of the Nez Perce Tribal Council, Michael J. Penney, noted about the election in May of 1980, "The younger members of the tribe really flexed their political muscles."[182] In his article on the Nez Perces and their connections to water and fish, anthropologist Alan Marshall discusses the divisions in this matter, noting that "NPTEC and many of its conservative supporters deplored this potentially violent confrontation."[183] While all tribal members agreed that the treaty rights needed to be protected, the manner in which to do so was a matter of disagreement; NPTEC worried that by having a more militant response to the situation, the tribe might face a backlash, whereas the Fishermen's Committee argued that a radical action, such as an closures of the river and dismissals of treaty rights, required a radical response. Gordon Higheagle said that NPTEC was working on other matters at the time that would protect treaty rights and provide economic development for tribal members, and the council worried that the manner in which the Fishermen's Committee was approaching Rapid River might negatively

[178] Allison K. Scott interview.
[179] Marshall, "Fish, Water, and Nez Perce Life," 776.
[180] Pearce memo to Governor Evans, May 6, 1980, 1. Located in Evans collection.
[181] Ibid.
[182] *LMT*, "Scott elected in upset of Nez Perce council," May 4, 1980, B1.
[183] Marshall, "Fish, Water, and Nez Perce Life," 776.

affect these other areas.[184]

Following the election, the threat of conflict became much more real to Pearce at the DLE. The next day he sent another memo to Governor Evans, in which he said that the Fishermen's Alliance, according to a confidential informant, had acquired two 50-caliber machine guns and ammunition.[185] Later that month, Roderick Scott became the chair of the Lapwai chapter of the Fishermen's Committee, and his confrontational approach the previous summer regarding treaty rights made his new position a point of concern for the state.[186]

On May 13, 1980, the NPTEC passed a resolution that reaffirmed the tribe's fishing rights under the 1855 treaty. The resolution stated that "the state had exceeded its authority by infringing upon" the 1855 Treaty and that IDFG officials "have no authority to interfere with Indian people fishing on Rapid River," and it reasserted the tribe's jurisdictional rights at the river.[187] Wilfred Scott said that some earlier proposals from the state, including opening a "symbolic" Indian fishery at Rapid River were unacceptable because they infringed on the tribe's sovereignty.[188] The differences between the 1855 and the 1863 treaties became a pointed conflict that spring. The tribe maintained that the 1855 treaty gave them full rights to Rapid River, as it was a traditional fishing site for the Nez Perces, therefore protected by the wording of the treaty. Judge Reinhardt, though, of Idaho County had ruled that the Treaty of 1863 changed the boundaries of the reservation to the point that Rapid River fell out of the "Indian country" designation, and that therefore the state had jurisdiction there.[189]

Both sides seemed eager to avoid another confrontation that spring, but a public meeting in mid-May between NPTEC and IDFG was tense and produced no results. In this meeting, Brad Picard said that the state needed to realize that it did not have jurisdiction over a tribal fishery.[190] The Fishermen's Committee escalated tensions further at the meeting, when Roderick Scott, who had spent 186 days in jail for fishing violations from the previous summer, predicted violence: "If you're going to continue to harass the Indian nations, people are going to die."[191] Scott was angry not just over a potential closure, but also because the state had recently installed a security fence and concrete barrier around the trap without consulting the tribe. Looking back, in 2016, Roderick Scott said he felt galvanized to action and prepared to give his life for this treaty right:

> "The only way you're gonna stop me from fishing is you're gonna have to shoot me. And they almost did, they were gonna kill me….It was like… having your elders in front of you, and you have Fish and Game coming in and start beating on them, literally beating on them, that's what I felt in my heart. That's what you're

[184] Gordon Higheagle interview.
[185] Pearce memo to Governor Evans, May 7, 1980. Located in Evans collection.
[186] *LMT*, "Nez Perce fisherman name chapter officers," May 24, 1980, B4.
[187] Nez Perce Tribal Executive Committee, "Resolution," NP 80-350, located in John Evans collection, Rapid River box, ISHS archives. (Image 3800).
[188] *LMT*, "Return of salmon renews Indian fishing rights issue," May 14, 1980, C1.
[189] Ibid.
[190] Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," May 15, 1980, C1.
[191] Ib*id.*

> doing with the salmon. You're gonna tell them--you can't sing that song, if you are, we'll shoot ya, if ya sing that song. It's like—whaaaa? Cuz the salmon, they bring the songs back to us, they bring the songs to us, the salmon. Very special, special, the salmon. They come back here to die."[192]

His brother, A.K. Scott, also noted that the standoff came after years of seeing their treaty rights ignored and said, "We decided to say we'll give the ultimate sacrifice for what we believe in…the traditional spirit of our sacred mother earth."[193] Another tribal member, Clifford Allen, said that the state was overreaching in its jurisdiction and that there needed to be a native member on the Fish and Game Commission to help with cultural differences. Fish and Game insisted that it did not blame the tribe for the low numbers of the spring run for the previous year—only 3,049 had been trapped in the spring 1979 season—and recognized that it was the dams, but the cause did not change the results and the tribe needed to be open to limited fishing.[194]

As the spring run began slowly in early June, tribal members reasserted their treaty rights to the Rapid River fishery. Over the following months, public discourse on the issue demonstrated an awareness of the stakes. The *Lewiston Morning Tribune* referred to Rapid River as "a symbol of federal treaty rights granted in perpetuity to Idaho's Nez Perce Indians."[195] In an editorial for the *Tribune*, Bill Hall said that the tribe had no other choice but to fish because "when the state presumptuously orders them to stop fishing—even for sound reasons of conserving the run—it unilaterally sacrifices the integrity of a treaty to the salvation of a fishery. It abuses clear Indian rights. Naturally, the Indians feel they must fish simply to prove they can—to affirm their challenged treaty rights."[196]

Other letters commented on the Nez Perce getting punished for the failures of conservation in other areas, specifically looking at the dams. As one letter writer wrote, "If we had listened to the Indians in the first place we wouldn't be having these problems now."[197] In a letter to the editor in early June, Allen Slickpoo, Senior, a Nez Perce tribal member, described Rapid River as one of the "usual and accustomed" places of the Nez Perce, and said he had been fishing there for years. He referred to the river as one of the "aboriginal streams" of the Nez Perce.[198] Slickpoo expressed worry, though, that another confrontation would weaken the tribe's rights if the state

[192] Waddy Scott interview
[193] Allison K. Scott interview.
[194] Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," *LMT*, May 15, 1980, C1. Conley and other state officials in Idaho potentially felt that Idaho was on the outside of river management programs in the 1970s. Non-Indian fishers in Idaho complained in the 1970s that management and allocation meetings for the Columbia and Snake Rivers excluded them, and the irony of being left out of these decisions in the midst of the tribe's treaty rights being ignore is apparent. As one observed noted, "Everybody else did to Idaho what Idaho and others did to the tribes earlier—shut them out." Ford, "The View from the Upper Basin," 90.
[195] Short, "Rapid River: Once a quiet stream, it's become a focal point for a political struggle," *LMT*, June 15, 1980, A1.
[196] Bill Hall, "This battle belongs in the courts," *LMT*, June 20, 1980, D1.
[197] Allen Slickpoo, Sr., letter to the editor, *LMT*, July 6, 1980, D2.
[198] Slickpoo, letter to the editor, *LMT*, June 1, 1980, D3.

became vindictive toward the tribe for asserting its rights. Another letter to the editor from a separate writer noted, "The issue at Rapid River is not the conservation of salmon but in reality is a further attempt to break a treaty…If the people allow the U.S. government to kill off native nations in the name of conservation and national sacrifice, then there is no future for you or your children."[199]

For the tribe, it was not just an issue of treaty rights being infringed upon in one isolated year; rather, it was the threat of continued abrogations and what this would mean for traditional cultural practices of the tribe. "How do they expect our children to learn how to fish," a member of the Fisherman's Committee asked, "if they keep closing the river to us?"[200] One of the leaders at the stand-off, Roderick Scott, echoed this thought in a 2016 interview, commenting, "They say if you don't use it, it will go away. If you don't use what the Creator's givin' you. Bye. Go away. Gotta have that perspective, you know."[201] John S. Wasson accused the state and IDFG of a "conspiracy" to "eradicate Nez Perce fishing (and hunting) rights," and tied the current issue in with larger historical trends of treaty abrogation.[202] The Fisherman's Committee stated in an ad they took out in the *Lewiston Morning Tribune* that the protests over fishing were due to the spiritual and cultural practices of the Nez Perce being infringed upon, practices that had been occurring at Rapid River "for eons with no conservation problems." The ad accused the State of Idaho and the federal government of using an alleged conservation issue as a as a thinly veiled excuse to break the treaty. The ad said that non- Indians had taken as much Nez Perce land as they could throughout history and "now they want our way of life also."[203]

Katsy Jackson said in a 2016 interview discussing arrests and citations during the conflict, "All we're doing is what comes natural, what we've done for years and years, and these guys come along with all their news and regulations. We used to fish all these creeks here without trouble."[204] She derided the State for ignoring how non-Indians violated fishing rules and instead only focused on Indian fishers, commenting sardonically that Fish and Game's just wanted to, "Catch them Indians! Stop them Indians. Too much fish. They're trespassing on their own land. They're taking their own fish."[205]
Jason Higheagle Allen described the Nez Perces' bewilderment over being cited for exercising their treaty rights, saying, "Well, it was confusing because it was our right to be there. Because I was thinking this is where we went a long time ago…before white people were even here."[206]
Roderick Scott, who had been arrested the year before for fishing and would be arrested again in 1980, shared Jackson's and Allen's beliefs that tribal members were being arrested for doing

[199] Carlotta Peltier, letter to the editor, *LMT*, July 27, 1980, D3.
[200] Short, "Rapid River: Once a quiet stream, it's become a focal point for a political struggle," *LMT*, June 15, 1980, A1.
[201] Waddy Scott interview.
[202] John S. Wasson, letter to the editor, *LMT*, June 25, 1980, D1.
[203] *LMT* advertisement, July 4, 1980, B4.
[204] Katsy Jackson ointerview.
[205] Ibid.
[206] Jason Higheagle Allen interview.

what they had always done and for acting within their treaty rights. He recalled in 2016 of his jail time in 1980:

> "I had to sit there for 90 days. To be locked up for something that you have done all your life is hard. When you know you can hunt, you know, in the Blue Mountains. Or anywhere, you know, in the ceded area of 1855, I mean, you know, come on. So that's hard to do. Sit there in the morning, wake up--What I've done all my life, what my dad taught me, what his dad taught him, ba, ba, ba, ba [expressing continuation of pattern]. It's hard. It's hard to understand that I went to jail for this. It was hard, a lot of things happened, lot of thing go through your mind, you know. It hurts, you know."[207]

Matters escalated within the first week of June when the state announced that there would be four state officers, four Idaho Bureau of Investigation officers, and four Fish and Game conservation officers stationed at Rapid River around the clock for the whole month, even before a fishing ban was in place. Officers moved in on Tuesday, June 3, preparing for a large contingent of Nez Perce fishers to come up that weekend.[208] Governor Evans met with the NPTEC on June 4, and Wilfred Scott said the tribe would regulate itself and follow its own conservation measures. Fish and Game had recommended a closure at this point, but Scott noted that the commission's biologists had underestimated what the return would be in 1979 and was skeptical with their 1980 predictions. He said that the tribe had set up an unofficial quota of ten salmon per family. In his discussions with the Governor, Scott also objected to the show of force that the state had sent in, saying that it only served to divide the two groups and intimidate the tribe. Looking back, Wilfred commented that "Law enforcement were there in force and they were armed to the teeth. They were in formation. Shoulder to shoulder, elbow to elbow."[209] Evans responded that the goal was to provide protection to "all parties" and help "maintain the peace and the tranquility of the fishery."[210]

The presence of officers continued to be a divisive issue as the summer wore on. The meeting with the tribe convinced Evans to not impose a fishing ban, and his press secretary said it was because he believed the tribe should regulate itself and that it should have more authority.[211] An editorial at the *Lewiston Morning Tribune* agreed, noting that if the tribe allowed for the state to regulate its fishing at one of its treaty-guaranteed "usual and accustomed" places, it would erode all treaty rights. The *Tribune* also criticized the federal government and the state for having violated the treaty before: "A contract is a contract, after all. The whites have long since taken full advantage of their parts of the bargain and the Nez Perce cannot be blamed now for taking advantage of theirs."[212]

[207] Waddy Scott interview.
[208] Johnson and Jay Shelledy, "Rapid River revisited," *LMT*, June 4, 1980, A1.
[209] Wilfred Scott interview.
[210] Johnson, "Tribe won't acknowledge fishing ban," *LMT*, June 5, 1980, A1.
[211] Johnson, "State won't close river to Indians," *LMT*, June 6, 1980, A1.
[212] Ladd Hamilton, "Trouble averted on the Rapid River," *LMT*, June 7, 1980, D1.

Over the first June weekend, June 6-8, tribal members fished at Rapid River, and two NPTEC-appointed fish monitors kept accounts of how many fish the tribe took.[213] Salmon numbers appeared to be good, with 150 returning on June 10, double the number from the day before.[214] Moving into the second week of June, the increasing salmon numbers and the governor's assurances that the tribe could exercise its treaty rights and self-regulate the Indian fishery eased pressures. On June 11, though, Jerry Conley, the new director of IDFG, announced an emergency order to completely close all fishing at Rapid River, effective June 12. Wilfred Scott later remembers Conley as a "hard-liner" whose goal was to "put the Nez Perce in their place."[215] Conley's argument was that "Not enough fish— particularly wild fish—are getting back to Idaho. Too many are caught downstream."[216] He justified dismissing the tribe's fishing rights in 1980 and ignoring the agreement the tribe had reached with the governor, saying said, "The situation has been so volatile and so changing that I basically took the responsibility on myself." NPTEC offered a compromise, similar to 1979, that the tribe would operate its fishery only on the weekends, but Conley refused saying that this would "decimate" the run. The failure of Conley to compromise, Wilfred Scott said, was going to set up a potentially violent conflict.

The tribe turned to the governor, who reversed his opinion from the week before. Evans said that the tribe had not communicated its plans for self-regulation and he now backed Conley.[217] Scott later noted, "I don't know who's breaking their word, whether the governor is breaking his word or Conley is breaking the governor's word."[218]

Emphasizing that the conservation goals of the state trumped the tribe's treaty rights, Conley based his closure on state conservation rights, most clearly articulated in *Puyallup Tribe, Inc. v. Department of Game* (1968), which said a state could regulate hunting and fishing on tribal lands if there were threats on propagation. And again in the *Puyallup* case, states can limit fishing for "conservation necessity." But in order for a state to do this, it has to pass three tests: the state has to show that the regulation is necessary for propagation, that the regulation is the "least restrictive means of achieving this goal," and the state must not discriminate against Indians—meaning it cannot say tribes cannot fish but non-Indians can.[219]

One of the tribe's arguments was that the state had not proved that a closure was necessary for propagation. This unilateral decision flew in the face of the tribe's own conservation goals and its sovereignty. A tribal perspective on conservation, the Nez Perces argued, was more encompassing than what IDFG believed, as it relied on the seven generations rule.[220] The Nez Perces still utilize this more comprehensive view in their management of salmon. They note that "Treaty fisheries must achieve a balance between conservation needs and perpetuating the run

[213] *LMT*, "Salmon get serious—150 return to Rapid River in a single day," June 11, 1980, C1.
[214] Ibid.
[215] Wilfred Scott interview.
[216] *High Country News*, *Western Water Made Simple,* Island Press, 1987, 91.
[217] Johnson, "Rapid River closed," *LMT*, June 11, 1980, A
[218] Johnson, "Sacred Water," *LMT*, September 14, 1980, D
[219] Pevar, *Rights of Indians and Tribes*, 199.
[220] Mundy, Backman, and Berkson, "Selection of Conservation Units for Pacific Salmon," 29.

with providing meaningful, desired annual harvest by the Nez Perce Tribe at all usual and accustomed fishing places."[221]

This divide between traditional Nez Perce conservation practices and the Fish and Game's opinion emphasized the cultural differences. The tribe argued that it had fished at Rapid River since time immemorial and knew best how to protect the salmon there. One Nez Perce tribal member, Robin E. Lagemann, wrote a letter to Conley emphasizing this difference, saying, "To suggest that they [the Nez Perce] do not understand ecological realities and interfere with its subtle balances which they were given as their sacred trust to preserve is no longer ignorance, but the sheerest arrogance. It is even more preposterous that state and federal governments (which are fundamentally foreign to this land and its people) claim more privileged knowledge when it is their very actions that have cause the spoliation of the earth, water and air."[222] The tribe also pointed continually to its treaty rights, noting them in different interviews with reporters from the *Lewiston Morning Tribune:* "Stripped of those rights, tribesmen told the Tribune, they are a nation robbed of its heritage."[223]

Local residents at Rapid River worried about what the closure and subsequent conflict would do in their area. The previous year, many residents had left their homes, citing safety concerns. Additionally, residents complained that the conflict the previous summer had resulted in disorder in their town. They had complained to the state about issues of littering, the lack of bathroom facilities for tribal members, and other problems. Additionally, "a constant source of irritation was the noise—yelling, drum beating, horn honking— through the nighttime hours."[224] Kelly Pearce, director of Idaho DLE, wrote to Governor Evans in advance of the 1980 conflict saying that he did not want to see a repeat of those issues.[225] Pearce recommended that facilities, such as portable toilets and dumpsters, be obtained to avoid these problems.[226] A.K. Scott later credited Pearce for helping to keep things as calm as they could be during the standoff.[227] After the state announced the closure, Riggins residents responded, and most emphasized that they would not leave their homes. One resident said as long as the tribe respected private property in the region, "I don't give a damn if they fish."[228]

While Wilfred Scott and some members of the NPTEC believed pursuing the matter in a legal court was the best choice, others on the council and in the tribe in general argued for a more militant course of action. The conflict brought many non-fishing Nez Perce to the site to help

[221] Department of Fisheries Resources Management Strategic Plan Ad Hoc Team, "Nez Perce Tribe Department of Fisheries Resources Management Plan 2013-2028," (2013), 27. Available online at http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf.
[222] Robin E. Lagemann, Riggins, ID, to Jerry Conley, September 29, 1980. 9-29-80 to Jerry Conley, Boise, ID. Located in Evans collection.
[223] Johnson, "Rapid River closed," *LMT*, June 11, 1980, A1.
[224] Pearce to Governor Evans, Boise, ID, March 20, 1980. Located in Evans collection.
[225] Ibid.
[226] Pearce memo to Governor Evans, May 6, 1980, 1. Located in Evans collection.
[227] Allison K. Scott interview.
[228] Johnson, "Confrontation won't drive out Rapid River homeowners," *LMT*, June 13, 1980, B1.

protest for fishing rights, as Katsy Jackson, a tribal member recalls.[229] Fishing rights and treaty violations rallied the younger members of the tribe, especially. Roderick Scott proclaimed he was ready to die for this cause, while Brad Picard said of the Fish and Game conservation officers and other law enforcement officers, "If they want war, we're ready."[230]

Over the second weekend of June, after the closure was in effect, approximately 40 to 45 Nez Perce camped at Rapid River, met by somewhere between 20 and 30 law enforcement officers.[231] Officers told tribal members that any fish caught would be confiscated. Basil George, Jr., remembers how his father had turned part of the bed of his Bronco into an insulated fish box and that during the conflict, Fish and Game officers climbed in and confiscated fish from inside this box.[232] Butch McConville protested this type of confiscation in his own way. In a 2016 interview, McConville recalled one incident specifically:

> "I gave up one fish, I gave up one fish and I told 'em, that's the last fish you're gonna get from me. Cuz we couldn't have 'em, see. So I give 'em that one I had, right down where he's at [Jackson Hole], went to those game wardens and cops, and whoever, and this is all the fish I got, tkkkt [sound of plopping it down]. But that's the last fish you're gonna get from me. I told him right there, so I took off down the creek."[233]

Katsy Jackson said that the officers did not just confiscate fish; she said that they confiscated poles and nets, too, and that they targeted the more vocal protestors: "I think they were taking everything from 'em. The ones that fought against them."[234]

The fishing ban might have elicited different responses from tribal members, but Idaho Fish and Game was emphatic about the consequences. Anyone who violated the ban would be cited for the first offense, and arrested the second time. Over the weekend, officers wrote 22 citations and arrested one fisher, Kenneth Oatman.[235] Most citations went to women over the weekend. In a 2016 ethnographic interview, Katsy Jackson was not surprised that women received so many citations. While she was not at the stand-off, she said tribal women were some of the first to agitate in those types of circumstances. She said women were probably "agitating the hell out of 'em [the Fish and Game officers]…because we're the ones that will stir up that deal if we have to." She said that many tribal women, such as Laura Major, were present at the stand-off.[236] Newspaper accounts focused more on the male involvement in the stand-off, never mentioning women by name. Jackson's statements on women's participation help provide details lacking

[229] Katsy Jackson interview.
[230] Johnson, "Rapid River standoff begins," *LMT*, June 13, 1980, A1.
[231] Johnson, "Officers cite but don't arrest six Nez Perce fishermen," *LMT*, June 14, 1980, A1; and Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[232] Basil George, Jr. interview.
[233] Syrveneas (Butch) McConville, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.
[234] Katsy Jackson interview.
[235] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1; and Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.
[236] Katsy Jackson interview.

from non-Indian sources that often concentrated on male leaders, such as Wilfred Scott. Scott responded to the citations and said that any tribal member cited over the weekend would receive support from the tribe, but he did not comment on how the tribe would respond to members who violated the tribe's self-imposed weekday ban.[237]

Tribal members complained about the excessive show of force, which included officers with sawed-off shotguns and riot guns.[238] The tribe said this "unnecessary display of force" equaled harassment of the tribe.[239] One Nez Perce man told the officers that "Power does not come from the guns or numbers but from the convictions of the people."[240] Roderick Scott commented in 2016 about the immense show of force:

> "It was like, the whole time I was down there, I had a tipi down there by the river, and they had a swat team there. About 30 of them there, with their automatic weapons, shields, you know, head gear, you know. And they came through camp there, down the river from the compound. They'd come down there every day to cite people, take some to jail. Fifty dollar bail, you know. It was like, I get pretty upset. And I tell 'em, you guys got to stop doing this shit. There's not a man amongst ya. If there's a man amongst ya, come over here and we'll get it on. You guys got guns, you guys are playing with them, you got guns, why don't you use them. All we have is our traditional fishing gear, that's all we have. And you guys have automatic weapons. You guys ain't me, you guys ain't men. You know, I'd get mad. I'd get mad. Got it, callin' them on. Go right to that dam, and I'd be fishing. You know, you come after me, I'm gonna gaff you. You're gonna have to shoot me, but they wouldn't shoot me."[241]

A.K. Scott remembers getting shot at by officers.[242] The Fish and Game officers sent observers into the nearby hills with spotting scopes to find any violators.[243] Butch McConville was at the stand-off and he said the whole conflict was "pretty spooky," knowing that snipers were watching for tribal fishers. He remembers thinking about this, "If he [any Fish and Game officer] shoots, don't miss, I'm gonna go after him."[244] This sentiment was most likely shared by other tribal fishers, which could have served to escalate tensions. Gordon Higheagle, a NPTEC member at the time of the standoff, remembers numerous executive committee meetings whose goal was to prevent the stand-off from escalating too far. He commented that the committee provided much behind-the-scenes work to keep matters as calm as possible, emphasizing to both tribal members and law enforcement officers that this fight would ultimately end up in the

[237] Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.
[238] Johnson, "Officers cite but don't arrest six Nez Perce fishermen," *LMT*, June 14, 1980, A1; and Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[239] Johnson, "A war of nerves," *LMT*, June 16, 1980, B1.
[240] Hawley, *Recovering a Lost River*, 201.
[241] Waddy Scott interview.
[242] Alison K. Scott interview.
[243] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.
[244] Butch McConville interview.

courtroom.[245]

With large numbers of officers at Rapid River, including a SWAT team, tribal protestors gave attention to security for their members, especially since children were there. A.K. Scott discussed setting up a campsite that kept women and men separate because of traditional Nez Perce practices during wartime. In an oral interview in 2016, Scott made comparisons between the stand-off and war, and many members of the Nez Perce tribe today refer to the standoff as the second Nez Perce War. "We separate the women's and men's camp out of respect," because that was custom in time of war.[246]

Tribal members employed different tactics during the stand- off. Some participants remember engaging in what they called "midnight raids" as a way to circumvent the fishing ban. Since the salmon typically ran better at night, this was an effective way to both avoid the Fish and Game officers who were watching with scopes from the hills and catch more fish. Butch McConville remembers participating in these midnight raids during the stand-off and he said tribal members would sneak in to the best spots where the fish were thickest.[247] Tátlo Gregory, heard from his elders about the midnight raids and in a 2016 interview, he commented about their effectiveness in eluding the officers. But, he added, "That's not right that they had to do that, but it goes to show the resilience, that 'hey, you could arrest me if you want, but you have to catch me."[248] A.K. Scott related a story about tensions between tribal members and officers that demonstrate how close to the surface violence always was. In this incident, Scott caught a fish and the officer attempted to take it away from him, so Scott's friend picked up a baseball bat and told the officer to leave the fish with Scott. Scott remembers looking around and seeing officers with guns trained on him, so he approached the matter more diplomatically, asking the officer to allow him to bless the fish with a prayer first. Following the prayer, Scott threw the fish back into the river, taking the officer's evidence from him.[249]

Those who were caught violating the fishing ban and were caught, they received written citations. As officers wrote citations to fishers, Venita Bybee, a ten year-old tribal member, commented on the traditional aspect of fishing for the tribe and tribal conservation practices and said, "We were here before the white men were. We should be telling you this stuff."[250] The tribe actively promoted a "fish-in" as an act of civil disobedience. In one instance, Vaughn "Sonny" Bybee handed his gaff pole to another fisher after he received his citation, and ten other tribal members took turns with it right in front of the officer writing Bybee his citation. The goal, according to tribal members, was to deluge the game department and the courts with paperwork and citations.[251]

[245] Gordon Higheagle interview.
[246] Allison K. Scott interview.
[247] Butch McConville interview.
[248] Tàtlo Gregory interview.
[249] Allison K. Scott interview.
[250] Johnson, "A war of nerves," *LMT*, June 16, 1980, B1.
[251] Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.

The tribe observed its own self-imposed ban once the weekend was over. Conley publicly commended his officers for keeping the peace in an "unpredictable situation." He hoped that since the weekend was over, the tribe would abide by its self- regulation, but he commented that "It's questionable about how much control the tribe has over every single member."[252] He worried that tribal leaders would not be able to "control the more militant members."[253] The week passed quietly, but by Friday, June 20, only 1,000 adult salmon had passed into the hatchery's trap and Conley kept the ban in place. Tribal members traveled back to Rapid River Friday afternoon and set up two camps, one one-hundred yards from the trap and another a quarter mile downstream from the trap.[254] The state had, even prior to the complete ban on fishing, passed a resolution that prohibited any fishing within one-hundred yards of the trap, believing at this point on the river the salmon were the most vulnerable.[255] The camp nearest the trap featured a teepee with an upside-down American flag in front.[256] Katsy Jackson believes that the flag was the work of AIM members who travelled to the site to help the Nez Perce protestors.[257] AIM's presence at the standoff was an important recognition of the larger significance of the conflict, demonstrating unity over treaty rights. Wilfred Scott comments that their presence was important, but that AIM members stayed in the background and the Nez Perces took the lead at the site.[258]

On June 21, Conley and Wilfred Scott, along with other tribal leaders and state officials met again. This two-hour closed door meeting resulted in no changes, and Scott blamed Conley for setting up a conflict situation with a marked potential for violence.[259] Scott had again offered the compromise of the weekend fishery, but Conley refused. Scott encouraged tribal members to stage a non-violent protect, but that afternoon, Hailyn Minkey (a former Nez Perce tribal game warden) and conservation officers had a violent altercation the newspaper referred to as a "wrestling match."[260] Officers said they had seen tribal members drinking and with guns and knives in their camps. That night, 150 Nez Perces formed a ceremonial circle that night that further divided the two sides; for A.K. Scott, circles such as this one served as a reminder of the cultural value of the site. He said, "The main thing was that our ancestor were there…in the

[252] Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.

[253] *LMT*, "Rapid River confrontation expected to die down until weekend," June 17, 1980, B1.

[254] The location of second camp overlaps with Parcel 2 in the nomination. At the time of the conflicts, the Nez Perce Tribe did not own this parcel—it was not purchased until 2010—but oral histories indicate that tribal members camped on these lands. Roderick (Waddy) Scott, interviewed by Mario Battaglia and Nakia Williamson, Lapwai, ID, May 5, 2016; and Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.

[255] Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," *LMT*, May 15, 1980, C1.

[256] *LMT*, "Nez Perce fish-in may resume today," June 21, 1980, B1.

[257] Katsy Jackson interview.

[258] Wilfred Scott interview.

[259] The *LMT* said the meeting lasted two hours, but the *Spokane Daily Chronicle* said it lasted hours. *Spokane Daily Chronicle*, "Nez Perce Indians facing violations in fishing dispute," June 23, 1980; and Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.

[260] Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.

drum…in the healing and the eagles that were passing over…and the way the water ran."[261]

Wilfred Scott encouraged tribal members that day to remain peaceful; he noted that the Nez Perce nation traditionally was not violent and he reminded Conley that Chief Joseph had led his people away to avoid conflict. But, Scott, added, "I think the days of running are over."[262] More citations and arrests followed the next day, Sunday, June 22. A seven year-old Nez Perce boy was one of the recipients of the citations and another man was arrested.[263]

Most tribal members left that evening, with only 20 of the 200 who had arrived Friday staying on. Nez Perce leaders continued to criticize the excessive show of force. Minkey later lamented, "I never thought I'd see the day when enforcement officers starting pointing guns at people for misdemeanors."[264] Tribal members also expressed dissatisfaction with that state's choice for the head of the state law enforcement operation, Bill Snow, a conservation officer for Fish and Game, whom one tribal member referred to as Conley's "mechanical puppet."[265] Brad Picard had, at a meeting earlier in the month, told Evans and Conley that Snow would be an unwelcome presence as he was already a controversial figure to the tribe. Snow, an ex-marine, proved to be a source of agitation as tribal members at Rapid River verbally attacked him. The tribe said, though, that this was a response to the "non-verbal taunt" of the officers: "the guns, shot guns and automatic rifles they carry."[266] The tribe continued to be critical of Snow's presence for the rest of the stand-off, believing his presence combined with the display of weapons and enforcement officers potentially provoked violence.[267] The *Tribune* agreed that the show of force was escalating issues, and in an editorial, Jay Shelledy said that if the state would ease off, the tribe would most likely follow.[268] Looking back twenty-five years later, tribal member Virgil Holt noted, "If a person on either side had done something crazy, Rapid River would have run red. There were some scuffles and clubbings, but that was about the size of it. We were ready to die if we had to."[269]

As the next week passed, the tribe began to prepare for the weekend fishery again. The Fisherman's Committee hosted a fundraiser that featured speakers focusing on treaty rights, as well as traditional Nez Perce dancing and drumming.[270] Approximately three dozen Nez Perce went to Rapid River to fish, a considerably lower number than the weekend before and a

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261 Allison K. Scott interview.

262 Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.

263 Johnson, "Peace reigns, but arrests continue," *LMT*, June 23, 1980, B1.

264 H. J. Minkey, letter to the editor, *LMT*, July 27, 1980, D3.

265 Carlotta Peltier, letter to the editor, *LMT*, July 27, 1980, D3.

266 Johnson, "Bill Snow: Cop on the spot," *LMT*, June 23, 1980, B1.

267 Johnson, "The pent up anger of Nez Perce elder Leo Broncheau," *LMT*, June 30, 1980, B1.

268 Shelledy, "Time to call it a season and go home," *LMT*, July 2, 1980, D1.

269 Tim Woodward, "Nez Perce Honor 'Warriors' who Fought for Fishing Rights," *Idaho Statesman*, June 9, 2005. Available online at http://www.bluefish.org/warriors.htm.

270 *LMT*, "Dancing, drum playing on program," June 26, 1980, C2.

recognition of the tribe that salmon numbers at that point were down.[271] By the end of the weekend, only 1,156 had returned to the trap, as compared to the nearly 2,700 by the same time the year before.[272] Tensions remained high between the tribe and conservation officers, and the hatchery's superintendent said this was partially because the tribe had taken at least 500 salmon from the river, a number the tribe highly disputed, but Conley said was accurate.[273]

On Sunday morning, June 29, the hostility between tribal members and Officer Snow boiled over. Roderick Scott approached Snow for reasons unknown and the two had a physical altercation. Willard White, another tribal member, and Louis Gerwitz, the attorney advising the tribe on its treaty rights, approached, and at the end the three men were charged with obstructing an officer and assault and taken to the jail in Grangeville.[274] Looking back on that arrest on that day, Roderick Scott reiterated Wilfred Scott's statements that conflict was unavoidable. He said in a 2016 interview:

> "When they arrested me the second time, it was on a Sunday. They're all lined up, right by my tipi. And I told them, this is the day, this is the day you guys ain't coming through our camps any more. You're scaring the young ones. The only way you're gonna come through here again, you're gonna have to shoot me. You're not going past me, today's the day. And this guy was about from here, to you [4-5 feet], from me, standing there, Bill Snow, the leader of the pack. All these swat team behind him. This is the day, you're gonna have to shoot me, you ain't goin' through here no more. That's when he came after me—slow motion, it was just like it was in slow motion. That's when he tackled me, we went down. Whooooh, beatin' on him, clubbing me, put a baton in my mouth, raising me up, took me to jail again."[275]

Another nine tribal members were arrested Sunday for fishing.[276] A.K. Scott and other tribal members went to Grangeville during the hearing for the arrests for Roderick Scott, White, and Gerwitz, and A.K. related a story for how the tribe showed solidarity for the defendants. He said that prior to entering the courtroom, Nez Perces went into a law library across the hallway and gathered in a circle for a traditional song and prayer, led by Nez Perce elder Horace Axtell. Axtell asked A.K. what everyone should do in the courtroom. A.K. said the goals were to demonstrate that the judge and the attorneys did not have the power in the courtroom, and to fill up the courtroom with tribal members. When the judge came in, no Nez Perces stood. When Roderick Scott, Gerwitz, and White entered, all tribal members stood as a demonstration of solidarity.[277]

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271 Bryan Abas, "Chinook count to fall below 2,700 required," *LMT*, June 29, 1980, B1.

272 Ibid; and *LMT*, "Two Nez Perce, attorney arrested after fight at Rapid River hatchery," June 30, 1980, B1.

273 Abas, "Chinook count."

274 *LMT*, "Two Nez Perce, attorney arrested," June 30, 1980, B1.

275 Waddy Scott interview.

276 *LMT*, "Indian fishermen appear in court," July 1, 1980, C3.

277 Allison K. Scott interview.

Conley heightened the tension the following week, leading up to the Fourth of July holiday. He made public comments, warning that the salmon were close to being on the threatened or endangered list and hinting that the tribe was responsible. He said the situation at Rapid River was becoming more unpredictable because "We're dealing with Indians who are drinking and who are, in some cases, involved in using drugs. We also have a problem with outside people— lawyers from the east— stirring up trouble by telling the Indians their rights. The situation every week is very tense and I'm afraid that one of these times one of them (the Indians) is going to flip out and become a real problem."[278]

His remarks led to an even further deteriorating relationship between IDFG and the tribe, and the Governor stepped in to attempt to mediate. Following a phone conversation between the Governor, tribal leaders and their lawyer, Conley, and the Fish and Game Commission chair, Richard Schwarz, Evans agreed to the tribe's demand of lessening the show of force, as Don Watkins, an aide in the governor's office, said "The display of shotguns and other weapons by the state police is regarded by the tribe as an act of harassment that makes tribal members nervous."[279] Evans ordered the dozen heavily armed state troopers be removed from Rapid River to Riggins for the Indians' weekend fishery. This left up to twelve conservation officers at the site, but Evans said they would only carry side arms. Conley and Schwarz disagreed with the decision, emphasizing the necessity of the officers, but Evans had watched a video from the previous weekend of a confrontation between twenty-four troopers and conservation officers and the tribe and was alarmed by what he saw.[280] Another video, aired by in December of 1980 as part of a news story for "Idaho Times," showed three officers wrestling a man to the ground, while other armed officers and civilians, including children, stood in the background.

That weekend was markedly different from previous weekends. At any given point, only two conservation officers were present, and they were required to be accompanied by two Nez Perces to ensure that no intimidation occurred. Only three Nez Perce fishers were cited over the weekend.[281] By the end of the weekend, the state officers were removed from Riggins and sent back to Boise.[282]

The tribe pointed to the eased tensions with the large numbers of officers and weapons removed. Although Conley had blamed the tribe for hostilities in his comments the week before, the calming of the situation after Evans ordered officers removed indicated it was the other way around. The tribe took issue with Conley's efforts to vilify them, in his comments about the potential for a tribal member to "flip out," what could be perceived as veiled racism in his comments about tribal drinking, his pointed comments about "eastern outsiders" stirring up emotions regarding treaty rights, and in his inflated estimation of salmon the tribe had taken. Judy Thomas, Nez Perce, commented that Conley continued to stab the tribe in the back and was only using Rapid River as a way to make a name for himself. She also said the Nez Perces did not need an eastern lawyer to point out tribal rights; for that, Thomas said, "We have our

[278] Associated Press, "Chinook salmon may soon become endangered, Conley warns," *LMT*, July 2, 1980, C1.
[279] Short, "Evans tells troopers to leave hatchery," *LMT*, July 4, 1980, A1.
[280] Ibid.
[281] *LMT*, "Joint patrols bring peace to Rapid River," July 6, 1980, B1.
[282] *LMT*, "Rapid River situation tense, but quiet," July 7, 1980, B6.

treaties."[283] The *Tribune* also critiqued Conley's "inflammatory language," and said the real problem with "outsiders" was not the tribe's Massachusetts lawyer. Rather, as Ladd Hamilton wrote in an editorial, it was the outsiders from Idaho's capitol. He advised that state officials leave before "one of those outsiders from Boise could flip out and become a real problem."[284]

Following the removal of state troops and the decrease in conservation officers patrolling the area, a quiet atmosphere for the most part marked the fishery. The joint patrols of Nez Perce tribal members with conservation officers helped matters. The run slowly petered out by the middle of July, and as the run dwindled, fewer tribal members journeyed to Rapid River to participate in the weekend fishery.[285] By the second weekend of July, only 25-30 members came down for the Friday night fishing although these numbers jumped to over 100 the next night.[286] The next weekend, July 18-20, those numbers dropped back down to under 50.[287]

By the end of the spring run, IDFG reported that it was nowhere close to attaining the 2,700 fish needed for Idaho Power's mitigation requirements. The numbers hovered around 1,350 fish in the trap by mid-July, with an average of five to ten returning each day.[288] At the end of the season, Conley said that about 1,675 fish had been trapped at the hatchery.[289] The run and the stand-off might have been over by mid-summer, but the ramifications would continue to be felt for much longer, on both sides.

Through all of the debates that summer, the issue of conservation routinely came up as it intersected with treaty rights. In this way, Rapid River represents the convergence of two major historical patterns of the twentieth century: the rise of the environmental movement and the increased activism of tribes in light of over a century's worth of treaty violations. The environmental movement offered a critique of human actions and their effects on nature, while civil rights movements such as the American Indian Movement (AIM) heightened the consciousness of all Americans to the devastating effects of federal policies on tribes, especially in light of treaty- protected rights.

Rapid River offers an interesting case study on those two issues, since conservation was necessary because of human actions, specifically the dams. The 2,700 salmon, a number Conley and IDFG routinely used in their justifications to close the Indian fishery, were necessary from the state's perspective to sustain the salmon population, but the larger impetus was the legal mandate associated with Idaho Power Company's mitigation contract. As part of its mitigation agreement for causing the depletion of salmon runs in the Upper Snake River after the construction of the Hells Canyon Dam in the mid-twentieth century, Idaho Power Company built the Rapid River Fish Hatchery for the purpose of meeting its legal mandate. Idaho Power owns

283 Judy Thomas, letter to the editor, *LMT*, July 8, 1980, D1.

284 Ladd Hamilton, "How to get the Indians all stirred up," *LMT*, July 6, 1980, D1.

285 *LMT*, "Conflict winds down; few fish return, 2 cited," July 13, 1980, C1.

286 *LMT*, "One Nez Perce arrested, two cited at Rapid River," July 14, 1980, B1.

287 *LMT*, "Rapid River situation quiet," July 21, 1980, B3.

288 George Tway, Boise, ID, to Governor John Evans, Boise, internal memo, July 16, 1980. Located in Evans collection.

289 "Idaho Times" report, December 1980.

the hatchery, but the Idaho Department of Fish and Game operates it.[290] As part of Idaho Power's agreement with the National Ocean and Atmospheric Administration (NOAA) fisheries, Idaho Power had to collect a certain number spring chinook into its trap for breeding purposes. The tribe argued that this was an arbitrary number.[291] Further, the tribe noted that their rights should not be infringed upon since they had not caused the problems with the salmon run. Tribal members also noted that they "were conservationists long before [their] lands were taken."[292]

The dams had multiple negative effects on salmon. The federal government realized this, as well. In fact, in 1946 the Fish and Wildlife Service noted that,

> "A succession of dams between the ocean and a great part of the more important spawning grounds presents a combination of problems that cannot be looked upon so optimistically, in fact it appears that the losses incurred during the passage of fish upstream and downstream over the dams, plus the reduction of spawning and rearing areas and a general change in environmental conditions would be so serious as to make continued propagation in the head water tributaries virtually impossible."[293]

Additionally, the dams affected the nutritional value of salmon. The spawning trip for salmon is arduous, requiring them to swim up to 600 miles upstream, and much of their nutritional value already went to the eggs the females held. Combined with the added complication of dams and the energy expended in this regard, salmon faced a daunting reality.[294]

For the tribe, the declining numbers and deteriorating nutritional value meant traditional tribal practices regarding salmon were problematic, especially since the tribe routinely required salon for ceremonial and cultural purposes. Marshall describes the prominent role salmon played in historic Nez Perce culture as well as contemporary culture. He notes that salmon were necessary for funerals, memorial "giveaways" marking the first anniversary of someone's death, name-giving ceremonies, powwows, first salmon ceremonies used to mark adulthood, weddings, births, and ceremonial dinners.[295] Other fish cannot be substituted at these ceremonies, making a declining salmon run or a limited fishery challenging for the tribe's spiritual and cultural lifeways.[296]

As the tribe saw both its traditions and its treaty rights being dismissed by the closure, it emphasized that its own conservation methods would serve the tribe better than what it viewed as the arbitrary numbers for Idaho Power. The tribe noted that there had been boom years even

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[290] Appendix K, "Wild Rapid River Resource Assessment," K-7.

[291] Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.

[292] Allen P. Slickpoo, Sr., letter to the editor, *LMT*, May 4, 1980, C3.

[293] House Subcommittee of the Committee on the Merchant Marine and Fisheries, Columbia River Fisheries: Hearings, 79th Cong., 2nd sess., August 14, 1946, 35-6.

[294] White, *The Organic Machine*, 51.

[295] Marshall, "Fish, Water, and Nez Perce Life," 767.

[296] Ibid., 769-770.

after the dam's construction, such as in 1973 when over 17,000 returned.[297] The artificial breeding of salmon stock was also potentially an issue. In 1979, diseases spread quickly in the bred salmon. Over 18% of the salmon trapped at Rapid River had symptoms of nitrogen bubble disease, and between the trap and the pond at the hatchery, there was a 32.4% mortality of the salmon, the hatchery's second highest loss since its beginnings in 1979.[298] The tribe argued in 1980 that the blame for the declining salmon numbers lay at the feet of Idaho Power, Fish and Game, and the State of Idaho. Steven Hawley, in his work on dams and their negative effects on salmon, notes that "The full consequences of a half-century's worth of dam building was quickly driving salmon toward extinction," resulting in the "scapegoating" of the Nez Perces by non-Indians.[299] A.K. Scott commented on the false divide that the IDFG had set up when Conley and others said that tribal fishers were going against conservationists.

Scott said, "All of our lives, we were conservationists. My father's teachings, my grandfather's teachings, lead us to where I am now with the issue." He noted that his generation and future generations will always pay attention to the environment because that is what sustains all life.[300] The Nez Perce Department of Fisheries Resource Management still uses this as a guiding principal in its management, noting that "Relative to this extensive area in which they [the Nez Perces] have always lived, the *Nimiipúu* have accumulated a deep repository of ecological knowledge and wisdom concerning the land, water, and other natural resources."[301]

In the midst of the 1980 stand-off, Idaho Power took a limited public role. While commenting that there were "legitimate concerns on all sides," it refused to say who had jurisdiction at Rapid River, the state or the tribe.[302] However, an inside source at the company told a *Tribune* reporter that the company was privately fuming over the feud and subsequent negative publicity.[303]

Conley evidently took pride in keeping the fishing ban in place all season, commenting to reporters how he had backed the governor down from ending the ban early.[304] He also believed his actions in refusing to negotiate with the tribe would serve the state better in the long run:

> "I think the Indians have a better understanding now than when we put a regulation in effect we mean to enforce it." "In the past, we (state officials) have wavered quite a bit regarding this problem. There was no wavering this year.
>
> The firmness we showed in enforcing our conservation regulation should help us work out a better agreement with the Nez Perce from now on…backing down…

[297] Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.
[298] Conley, "Evaluation of Spring Chinook Salmon Emigration," 2.
[299] Hawley, *Recovering a Lost River*, pgs. 200-201.
[300] "Idaho Times" report, December 1980.
[301] Fisheries Management with a Nez Perce Point of View," from the Nez Perce Department of Fisheries Resource Management website, available at http://www.nptfisheries.org/Resources/SalmonCulture.aspx.
[302] Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.
[303] Ibid.
[304] Tway to Governor Evans, internal memo, July 16, 1980. Located in Evans collection.

would have hurt our bargaining in the future. Firmness was important."[305]

His paternalistic tone did not sit well with the tribe or with some non-Indians in the area who complained about the "Gestapo tactics" used over the summer.[306] Conley and IDFG also received criticism for conducting their business in secrecy, violating the state's Open Meeting Law. In fact, the *Tribune* considered court action because of this. Had this happened, James Shelledy, the managing editor of the *Tribune*, asserted, all the decisions the IDFG had made regarding any fishing bans would be declared null and void while the court investigated.[307]

1981 court decision

Conley continually asserted over that fall and going into spring of 1981, when district court in Idaho County released its decision about the Rapid River arrests and citations, that his actions had been both legally correct and beneficial. He argued, for example, that the tribe had "enjoyed" over a month of fishing at Rapid River prior to the closure—dismissing that the spring run had not started during this month—and that "should have been adequate to prove a yearly exercise of their treaty rights."[308] He noted in his "Draft Operating Plan for Rapid River Hatchery" in October of 1980 the "social problems" that resulted from the different fishing groups and the "impasse" between the tribe and Fish and Game because of conflicting views on the fishery, as well as his belief that "attainment of brood fish in sufficient numbers for ongoing hatchery programs has been thwarted by the tribal fishery."[309] In an interview with "Idaho Times," he bemoaned that the Nez Perce, "Feel very strongly that it's their right, and their right only, to control their fishery, and they resist any temptation or any efforts by the state to have any type of control over an Indian fishery."[310]

Pre-trial hearings for the Nez Perce members arrested over the summer began in October of 1980. The tribe's defense attorneys began with challenging the state's jurisdiction at Rapid River, pointing out treaty rights. The lawyers also noted that through this process, the state had infringed on the tribe's religious practices.[311] This last point was timely, considering the passage of 1978's American Indian Religious Freedom Act. Additionally, the Nez Perce could look to the 1968 Indian Self-Determination and Education Act. Concerning this act, President Lyndon Johnson had said, "We must affirm the rights of the first Americans to remain Indians while exercising their rights as Americans."[312] The tribe's lawyer, Gerwitz, said that the court case was

[305] *LMT* and Associated Press, "Rapid River: Firm approach best, says Conley," *LMT*, July 8, 1980, A1.
[306] Keith and Kathleen West, letter to the editor, *LMT*, July 9, 1980, D1.
[307] James E. Shelledy, *LMT*, to Jerry Conley, Boise, ID, July 21, 1980. Located in John Evans collection, Rapid River box, Idaho State Historical Society archives. (letter 3792).
[308] Jerry Conley, Boise, ID, to Judith A. Nielsen, President of YWCA Advisory Board, Pullman, WA, November 3, 1980. Located in Evans collection.
[309] Jerry Conley, "Draft Operating Plan for Rapid River Hatchery with Consolidation for Fishery and Hatchery Management," internal memo dated Oct. 15, 1980. Located in Evans collection.
[310] "Idaho Times," report, December 1980.
[311] "Nez Perce v. Idaho," *Columbia River Inter-Tribal Fish Commission Monthly News* newsletter, (vo. 3, no. 8: November 1980). Located in Evans collection.
[312] Lyndon Johnson, Special Message to the Congress on the Problems of the American Indian, "The Forgotten

not ultimately going to change anything: "Nothing's going to be resolved by this. If they win, we go back to the river next year. If we win, we go back to the river next year because there is a treaty right in there. It's survival, its subsistence, it's staying alive for the Nez Perce people."[313]

Treaty rights, sovereignty, and religious freedom were all strong grounds upon which the Nez Perces could stand during the legal proceedings. In the midst of the pre-trial hearings, the state asked to pause the motions to negotiate with the tribe. The state wanted the negotiations to include Governor Evans, Fish and Game commissioners, members of NPTEC as well as the Fishermen's Committee, and lawyers from both sides. The governor refused to meet until all other parties had worked out "an agenda and procedure for negotiations," but the tribe refused, saying the governor needed to be there for all aspects. Without a meeting, the judge opted to continue the preliminary hearings.[314] The Governor's stipulation was most likely a result of a meeting he had with Schwarz and Conley on November 3. He was informed that the tribe would not negotiate overall unless the charges against all members were dropped.[315] Conley became defensive in how he was being portrayed, taking the time to write a letter to the Columbia River Inter-Tribal Fish commission Monthly Newsletter's editor, saying the newsletter's coverage of the pre-trial hearing only served to "further worse tribal-state relations" and would "polarize, instead of help to resolve, tribal-state positions."[316]

The trial for the 33 Nez Perce fishermen arrested for violating the state-imposed fishing ban took place in late spring 1981 in Grangeville, at the Idaho County Courthouse. A.K. Scott says that the trial brought together not just Nez Perces, but other tribes who traveled to Grangeville to show solidarity for traditional native ways and treaty rights. The cultural significance of Rapid River and the importance of this hearing can be seen in different ways, and the attendance of members from other tribes underscores that what happened at Rapid River echoes larger historical patterns. The threat to fishing rights for one tribe was not an isolated incident. Additionally, Scott said that medicine men and elders attended the court proceedings and offered traditional ceremonies prior to the hearings.[317]

For the March 1981 hearing, Magistrate Judge George Reinhardt presided. On March 2, Reinhardt dismissed all charges against the Nez Perce. The tribe's celebration over the dismissals was moderated by Reinhardt's justification. He stated in his written opinion that the state was legally allowed to close the Nez Perce fishery and that it had not violated treaty rights to do so. He believed that while the 1855 treaty had given the Nez Perce exclusive rights to the Rapid River site, the diminished boundaries of the 1863 treaty placed Rapid River into a shared-use zone by removing it from the reservation. He argued at that point because of this, the tribe had to

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American," March 6, 1968. Available online at http://www.presidency.ucsb.edu/ws/?pid=28709.

313 "Idaho Times" report, December 1980.

314 "Nez Perce v. Idaho," *Columbia River Inter-Tribal Fish Commission Monthly News* newsletter, (vo. 3, no. 8: November 1980). Located in Evans collection.

315 "Event brief," November 3, 1980. Located in Evans collection.

316 Jerry Conley, Boise, ID, to Gary Kimble, *Columbia River Inter-Tribal Fish Commission*, Portland, OR, December 23, 1980. Located in Evans collection.

317 Allison K. Scott interview.

fish "in common" with non-Indians. He further believed that the state's conservation concerns, regardless, trumped any treaty rights, citing *Puyallup Tribe, Inc. v. Department of Game* case (1968).
However, he said that while the state had attempted to meet with tribal leaders prior to the closure, these efforts "came too late and denied the Nez Perce an opportunity to participate in any meaningful way with the state relative to developing regulations which are clearly necessary if the spring Chinook salmon is to survive."[318] It was this last point upon which Reinhardt based his dismissals.

For the Nez Perces, the standoff at Rapid River was about treaty rights, and the subsequent court cases were a way for them to draw attention to the issue of treaty abrogation and its effects on their way of life.[319] Reinhardt's decision was clear that Rapid River was a "usual and accustomed place," but he believed that the reservation confined these places. In his memorandum opinion, he specifically noted that any sites outside of the reservation boundaries meant that tribes had to share them "in common" with non-Indians. Although he and the State of Idaho both agreed that Rapid River was a "usual and accustomed fishing ground" of the tribe, thus noting its traditional cultural value, he did not believe that the Nez Perce retained exclusive rights to the site. He also noted that the 1863 treaty, upon which he based many of his conclusions, did not specifically mention fishing rights. His emphasis on the 1863 treaty largely ignored that most tribal members had objected to it, becoming known as the "non-treaty" Nez Perces.

Reinhardt based much of his opinion on the *Puyallup Tribe v. Department of Game* in his opinion, citing similarities between this case and the Nez Perces' current conflict. That case had found that even though the Puyallup treaty had noted "exclusive" fishing rights, this did not free the tribe from fishing completely without restriction. With this, Reinhardt said, clearly the Nez Perces' "in common with" right allowed for restriction as well. The majority of his comments on the Nez Perce cases before him focused on the treaties and fishing rights, which ultimately he said could be regulated for conservation purposes. It was only within his final paragraph of his eleven-page opinion that he spelled out his reasons for dismissing the charges, commenting that the state had the "burden to attempt to develop an ongoing forum" with the tribe and it had failed to do so.[320]

Consequences and meanings of the legal opinion and of Rapid River standoff

As one later writer said, the state failing to consult with the tribe in the matter of closing the fishery reflects a larger paternalistic attitude that states inherited from the federal government, "but federal behavior where salmon are concerned goes far beyond the pale of benign neglect."[321] Wilfred Scott explained the main outcome that came from this decision was that it acknowledged implicitly that the State had not listened to tribal voices and did not have all the

[318] George Reinhardt, "Memorandum Opinion," *State of Idaho v. Vaughn Bybee, et. al.*, Idaho County, March 2, 1981.
[319] Johnson, "Sacred Water," *LMT*, September 14, 1980, D1.
[320] Reinhardt, "Memorandum Opinion."
[321] Hawley, *Recovering a Lost River*, 202.

facts when it determined conservation purposes outweighed treaty rights. Scott said that the tribe had told the State that the run was not as threatened as the closure suggested. Scott said, "The state did not prove that conservation was necessary to close that fishery and because of that there's very few instances where closures for conservation can exist. One thing we all know is that one run will never be wiped out; if there's only three or four fish that come back, those that come back that year might be wiped out," but those that come up in other runs later that season or in other years will continue it. The tribe, he continued, knew this but the State and its biologists did not listen that year.[322]

One of the issues that arose in the Rapid River conflict concerned modern technology. Some non-Indians stated their beliefs that the treaties of the nineteenth-century were essentially nullified by the tribe's use of modern fishing gear or by the changing needs of a society dependent on hydroelectric power. The *Central Idaho Star-News*, a newspaper located in McCall, implied that the eight hydroelectric dams on the Snake River eroded the rights of the tribe to catch salmon at Rapid River "as long as the river flows." The paper detailed how the dams had caused an 80% loss of salmon since its construction in 1964, and suggested that the negative effects of the dam might mean a reconsideration of treaty rights.[323] A non-Indian resident of Grangeville stated that the Nez Perce had benefited from "the technology of the white man," such as cars, and that they also used the hydroelectric power from the dams, therefore, the Nez Perce should not look to a century-old treaty.[324]

This dismissal of treaty rights because they seem antiquated or the idea that Indian culture and tools should remain static matches a larger theme in U.S. history. In her study of the division between Indian and non-Indian fishers in Idaho, Irene Shaver noted that these themes popped up repeatedly. One white fisher said about Indians fishing, "If they want to fish the same way that their ancestors did, I don't have a problem with it, because that's their right… But their ancestors didn't use aluminum boats, outboard motors and gill nets. That's where I have a problem with it."[325] Another fisher stated:

> "I feel like with modern technology they've got the same rights as I have. They come up here with spears and nets that the white men have brought up. I say, if you want to abide by the old rules, bring the Indian ponies up, make your spears out of rocks like you used to instead of bringing modern technology into it—the nets and everything. Make your nets out of sinew and come up here on your ponies. Instead of that, they come up here in new cars and they want the best of both worlds."[326]

[322] Wilfred Scott interview.
[323] *Central Idaho Star News*, "Indians fight fishing ban," June 26, 1980, A1.
[324] M.L. Wimer, letter to the editor, *LMT*, June 13, 1980, D1.
[325] Irene Shaver, "Conflict and the Formation of Inequity in Idaho's Salmon Fisheries: An Investigation of Indian/White Relations" (MA thesis, University of Idaho, 2010), 29.
[326] Shaver, "Conflict and the Formation of Inequity," 30.

In his study of dams and their impacts on salmon, Steven Hawley, said the Nez Perce experience in this matter mirrored larger national sentiments. He argued that one of the issues that led to the 1980 standoff was this belief from many non-Indians that if the treaty language of "in common with" meant that the tribe had to fish like non-Indians and follow the same regulations.[327]

Another issue at play for the Nez Perces, and for other tribes in the twentieth century, was a misunderstanding of treaty rights. Even the language that non-Indians used emphasized this misunderstanding. For example, the Star-News talked about the "fishing rights given to the Nez Perce Indian tribe in an 1855 treaty."[328] The Supreme Court has been clear, though, on what treaty rights are and are not. In *United States v. Winans* (1905), the Supreme Court said that treaties should be viewed "not [as] a grant of rights *to* the Indians, but a grant of rights *from* them."[329] (emphasis added).

Reinhardt's opinion is part of a larger pattern in Indian/non-Indian relations. Fishing rights were a contested area throughout the twentieth century. As Steven Pevar explains in his book, *The Rights of Indians and Tribes*, "Many non-Indians deeply resent Indian hunting and fishing rights, and few other areas of Indian law have created such bitter—and sometimes violent— rivalry and jealousy."[330] This conflict is heightened when other complicating factors are added in, such as conservation threats. For the Nez Perces, the threat to the salmon within their traditional fishing places was due to non-Indians—the dams and the commercial fishing in the Pacific—and the "scapegoating" of the Nez Perce was not warranted. Further, the Nez Perce believed that their limited fishing at that site did not threaten the propagation of the spring chinook, which therefore overrode the decision in the *Puyallup v. Department of Game* case.

The tension between Indian nations and state governments had been a hallmark of both the nineteenth and twentieth centuries, andthe Rapid River conflict provides more evidence to bolster historian Deborah A. Rosen's assertion that "The common goal of the state and federal governments with regard to Indians was control of Indians and Indian lands."[331] For the Nez Perce, the attack on their fishing rights epitomized this attack on their sovereignty and way of life: "Nez Perce tribal elders believe that one of the greatest tragedies of this century is the loss of traditional fishing sites and Chinook salmon runs on the Columbia River and its tributaries… The loss of the salmon mirrors the plight of the Nez Perce people."[332] One historian noted that the Nez Perce legal fights over fishing rights demonstrate the tribe's ongoing cultural persistence, but "although the Nez Perce have compelled several courts to acknowledge their treaty rights, they still look to the first Indian Law" for fishing, hunting, and gathering.[333] Although court decisions are an important aspect of protecting traditional cultural sites and

[327] Hawley, *Recovering a Lost River*, 200.
[328] Central Idaho *Star News*, "Indians fight fishing ban," June 26, 1980, A1.
[329] *United States v. Winans*, 198 U.S. 371 (1905).
[330] Pevar, *Rights of Indians and Tribes*, 186.
[331] Deborah A. Rosen, *American Indians and State Law: Sovereignty, Race, and Citizenship, 1790-1880* (University of Nebraska Press, 2007), 78.
[332] Landeen and Pinkham, *Salmon and His People*, 1.
[333] Clifford E. Trafzer, *Indians of North America: The Nez Perce* (Chelsea House Publishing, 1993), 103.

practices, the tribe recognizes its own authority, looking to its own history, for protecting these sites.

The 1981 ruling did not end completely tensions between the tribe and the State of Idaho, specifically the Department of Fish and Game, nor did it end negotiations over the site in general. In April, Conley sent a letter to the tribe in which he said that he would take necessary measures to "protect the resource," but he came short of saying he would close the fishery again.[334] In May of 1981, the tribe and the state began discussions about the salmon run. In mid-May, Dave Ortmann, a state fisheries biologist, estimated that 3,900 salmon would return to Rapid River during the spring season, 1,200 over the 2,700 mark the state had set. The state said in an informal agreement with the tribe that the tribe would have unrestricted treaty fishing until 50 fish were trapped, and two more weeks of unrestricted treaty fishing following that. In mid-May, the tribe informally agreed to regulate tribal fishing.[335] A few days later, the tribe announced that it would close treaty fishing within 100 feet of the trap, which the *Lewiston Tribune* called "a significant step toward reaching a settlement over treaty fishing rights."[336] Tensions were considerably lower in 1981, with only three conservation officers monitoring the trap. Non-Indian residents of the subdivision worked with the tribe to provide access to the river, as long as tribal members agreed not to camp on private property. A.K. Scott remembers many of the non-Indian residents as being very friendly to tribal fishers once they got to know them.[337] By the end of May, approximately 30-40 Nez Perces were camped at the river each day, as the two-week window for unrestricted treaty fishing closed.

Following this two-week period, representatives from the tribe, including A.K. Scott and Brad Picard, an attorney, and three members of the Columbia River Inter-Tribal Fisheries Council, met with IDFG on June 3. The tribe agreed to impose its own partial closure on treaty fishing, with no fishing during the week through June 12, open fishing for tribal members over that weekend, closure on Monday and Tuesday (June 15 and 16), with an Indian fishery on June 17 to commemorate the Nez Perce War of 1877. A.K. Scott said the negotiations were productive overall and that through them there was a spirit of cooperation.[338] By mid-June, numbers of returning salmon were still low, with only 821 chinook by June 17.[339] Tom Levendofske blamed cooler than usual weather and high water conditions for stalling the run.[340]

On June 18, Wilfred Scott, declared an immediate and total closure of tribal fishing. Scott wrote a notice to all tribal members on behalf of the executive council in which he said, "It is strongly felt that this action is mandatory for the future of the Rapid River fishery. The council does not feel that this action in any way relinquishes any of its lawful treaty rights, but instead strengthens our commitment to provide a fishery for our future and our children's future….All Nez Perce

[334] Johnson, "Rapid River talks to resume," *LMT*, May 31, 1981, B1 and B10.
[335] *LMT*, "Both fish run and fish talks stalled," May 16, 1981, B1.
[336] Johnson, "Breakthrough in salmon fishing talks," *LMT*, May 20, 1981, A1.
[337] Allison K. Scott interview.
[338] Johnson, "Nez Perces impose own fishing ban," *LMT*, June 9, 1981, A1 and A4.
[339] *LMT*, "Salmon fishing negotiations resume," June 18, 1981, B4.
[340] *LMT*, "Rapid River salmon return remains low," June 16, 1981, B2.

tribal members are requested to observe this closure action with honor and pride for our future."[341] This decision came after a closed door meeting between tribal negotiators and IDFH, with Jerry Conley present, and after a 45-minute meeting at Lapwai with only tribal members present. Conley commented that he hoped the negotiations between the tribe and state, which had occurred throughout the spring of 1981, marked a new era for the two groups, one marked by a sense of renewed trust and understanding.[342]

Lewiston Tribune editorial writer Bill Hall congratulated both sides for the resolution, but he chastised them for failing to do so the year before. He wrote that in 1980 tribal leaders had "allowed themselves to be stampeded and manipulated by their most belligerent members," while the IDFH had been "taken over by militaristic confrontationists who wanted to smash the opposition." He noted that the stand-off the year before, however, had served as a reminder that the fish run was "an original Indian resource and that the Nez Perces have, by legal right, an exceedingly large say in whether they will catch the fish, when they will catch the fish and how many."[343] By June 26, the closure was no longer necessary as 2,779 fish had returned.[344]

The 1981 season ended peacefully, but during it, the Nez Perces continually asserted their fishing rights and more members began participating more in treaty right discussions. In late June, over 100 Nez Perces traveled to Seattle and Olympia to participate in protests against recent bills two Washington legislators had introduced. Senator Slade Gordon, R-Washington, and Representative Don Bonkers, R-Washington, introduced these bills, referred to as the Steelhead Trout Protection Acts, to put salmon solely under state jurisdiction. Wilfred Scott did not participate in the protest, but he showed up as the protestors left Lapwai for the protest and he wished them luck on their journey.[345] Nez Perce tribal member Henry Hawkface was one of the members who went to Seattle to protest and he argued that these bills were intended only to strip away treaty rights.

Hawkface said the United States needed to acknowledge the weight and legality of treaties: "They make treaties with other countries and they honor them. No matter how old they (treaties) are, if the government signed it, the government should have to honor it."[346] These bills did not pass, but Gordon and others continued their efforts for the next few decades to erode treaty rights. Much of Gordon's political career in the 1970s through the 1990s became focused on ending treaty rights, but in 2000 he lost his final reelection bid. Different tribes worked together to successfully block his reelection that year, marking the "growing economic and political clout" of tribes, many of which had been galvanized by direct threats to their treaty rights.[347] The Nez Perces who participated in the protest against Gordon's proposed bill in 1981, made clear

[341] Johnson, "Nez Perces decide to stop fishing," *LMT*, June 19, 1981, A1.
[342] Ibid.
[343] Bill Hall, "For all sides, a round of applause," *LMT*, June 26, 1981, D1.
[344] *LMT*, "Hatchery reaches quota of salmon," June 26, 1981, B1.
[345] *LMT*, "Religion plays part in Indian protest," June 22, 1981, B1.
[346] Allison Arthur, "Fishing Rights: Indians fight steelheading restrictions," *LMT*, June 27, 1981, B1.
[347] Wilkins and Lomawaima, *Uneven Ground*, 248.

connections between the abrogation of their treaty rights and the larger national trend of dismissing Indian rights.

For the next few years, the tribe worked with IDFG to regulate fishing at Rapid River. Eager to avoid another standoff, in 1982, IDFG accepted the tribe's proposals that tribal members could catch 400 fish in unrestricted fishing at the beginning of the spring season, and then when the 2,700 salmon the state deemed necessary for conservation efforts were in the trap, the tribe would have unlimited fishing access.[348] The tribe's active role in these negotiations as well as the IDFG's acceptance of tribal sovereignty in this regard marked a clear shift from pre-1980 relationships. The measured reaction of the IDFG in 1982, though, did not end attacks on treaty rights during years of low salmon returns, nor did it completely transform how non-Indians viewed Nez Perces fishing. Wilfred Scott related a story where non-Indians saw Nez Perce members fishing at Rapid River in the years following the stand-off. The non-Indian yelled things such as, "Get the hell out of here…Get off your river, you don't belong up here," and they shot bullets into the trees above the Nez Perces. No one was hurt in this incident, but Scott commented how easily someone could have been.[349]

In 1984 the salmon run again was low, and Fish and Game attempted to shut down fishing, specifically tribal members' gill-net fishing. Nez Perces and Shoshone-Bannocks, who IDFG included in their conclusions regarding blame for low numbers, responded that it was Fish and Game's fault for releasing diseased hatchery smolts back in 1983 and this was what truly caused the reduced run. This dispute did not escalate into a stand-off, as the 1979 and 1980 disputes had, and the Nez Perces worked with IDFG to reach an agreement on tribal and sport fisheries for Rapid River specifically in 1985. Regarding this agreement, Conley noted that, "We have, by and large, been able to work out our differences in state. Even so, we have a difficult time understanding each other."[350] His comment is a good reminder of the different perspectives regarding the Rapid River fishery; for the tribe, the area has significant cultural value in addition to the practical value (subsistence and commerce), and the misunderstanding and/or dismissals of these values led to the conflict.

The standoff in 1980 does not just demonstrate tensions between the tribal government and the State of Idaho; it reveals the conflict between non-Indian and Indian individuals which still exists today according to some tribal members. Katsy Jackson spoke in 2016 about how non-Indians (*soyapos*, in the Nez Perce language) litter the river every year in an attempt to dissuade Indian fishers. She remarked that *soyapos* throw mattresses and barbed wire, along with other items, into the river and that this hurts all fishers, Indian and non-Indian, as well as the fish. Jackson said, "When they trash our rivers like that, they're not just getting us, they're getting them own selves."[351]

[348] *LMT*, "Tribe, state reach fishing agreement," June 3, 1982, C3.
[349] Wilfred Scott interview.
[350] Pat Ford, "The View from the Upper Basin," in *Western Water Made Simple*, 92.
[351] Katsy Jackson interview.

Fishing at Rapid River has continued and increased since the standoff. While some tribal members currently catch fish to sell, harkening back to the trade of salmon in pre-contact times, commodifying the catch is questionable to some Nez Perces. Tátlo Gregory commented that:

> "It's not about money, or anything, I mean if we all come down to it, and we didn't have any money, the only reason to fish is to survive, eat, and trade. To get the things you do need. So, you know, it's really to keep that in mind, what it's really about. It's not about how many fish you catch, or how much money you made, you know. It's about respecting those fish, taking their body into yours, and providing for your family and your people. It's really what it's supposed to be about, taking care of those fish first."[352]

Josiah Pinkham echoes this, and notes that this adds to what he calls a "bottleneck" at the site during fishing season. The limited season time, as compared to the natural, traditional fishing season, concentrates numbers of fishers in a shorter time period. Adding to this, Pinkham says, is that some individuals have started to sell fish. When he was younger, he says the expectation was that each fisher would give fish away, but once you put a financial value to the fish, it brings in more people who need that economic activity. Pinkham says that this is a larger commentary on the economic pressures for some individuals.[353] Jason Higheagle Allen's memories echo this, as he explains that when he was a child, his elders taught him to give away the fish, "This is what we learn from our elders….When I was kid that is what I went fishing for was to bring her [his grandma] fish. So, she could process it and save it for funerals and giveaways." Allen continues, describing how he gave fish to elders and other community members for either traditional purposes or to help other tribal members. Now, though, Allen says he has become dependent on selling the fish he catches because he needs the financial remuneration.[354]

The conflict over Rapid River is one of the many factors that led to the Nez Perce tribe creating is Fish and Wildlife Commission in 1998. Gordon Higheagle said the end result of the Rapid River standoff was that the State of Idaho began recognizing more, if not fully, that the tribe needed and deserved a "seat at the table."[355] The stand-off escalated the tribe's push for its own management and allowed for it to bring in more people, Higheagle said, as well receiving funding.[356] Higheagle said that the stand-off resulted in more than just the development of fisheries management, but also that is was one of the factors responsible for developing more infrastructure in general for the tribe saying that it allowed the tribe to "see ourselves better."[357]

Josiah Pinkham argues that the standoff led to a profound change in the mentality of Idaho Fish and Game when it came to managing the fishery, and working with the tribe to manage it. As Pinkham said, "There's a new kid on the block, which is actually the oldest kid on the block

[352] Tàtlo Gregory interview.
[353] Josiah Pinkham interview.
[354] Jason Higheagle Allen interview.
[355] Gordon Higheagle interview.
[356] Ibid.
[357] Ibid.

we've got to deal with."[358] The tribe's Fish and Wildlife Commission is guided by traditional cultural practices and recognizes the strong connections between natural and cultural resources. The commission has the following duties under its auspices: "providing for the conservation, enhancement and management of the tribes' fish and wildlife resources and treaty rights; promulgating annual and seasonal fishing and hunting regulations; describing the manner and methods of taking fish and wildlife; the dissemination of information to the tribal public and the NPTEC; and providing ceremonial and subsistence salmon needs of the tribe."[359] Additionally, the tribe has a Department of Fisheries Resource Management (DFRM), which also utilizes the traditional resource management concepts the Nez Perces have practiced since time immemorial at their fisheries. In the DFRM's 2013-2028 resource management plan, one of the guiding management ideas is a recognition of the Nez Perces' history and use of the region, noting that the Nez Perces "have accumulated a deep repository of ecological knowledge and wisdom concerning the land, water, and other natural resources.[360] The DFRM's mission statement echoes this theme, stating:

> "The Nez Perce Tribe Department of Fisheries Resources Management will protect and restore aquatic resources and habitats. Our mission will be accomplished consistent with the Nimiipúu way of life and beliefs, which have the utmost respect for the Creator, for all species, and for the past, present, and future generations to come. Our mission will be consistent with the reserved rights stated within the Nez Perce Tribe's 1855 Treaty."[361]

The stand-off in 1980 ushered in a new era for the Nez Perces. The tribe became more active and vocal in managing their own resources, and the stand-off served as a reminder of the importance of protecting treaty rights in the face of a State and non-Indian neighbors who dismiss and discount treaty rights. Gordon Higheagle emphasized, too, the importance of how the tribe looked at the resources as a connected whole, and how this traditional view allowed for a more all-encompassing view towards "protecting the full gamut," instead of just focusing on one specific site.[362] Wilfred Scott agrees, noting that no one source is more important than other as they are all connected: "It's everything. All the animals, all the roots, the berries, the medicines. Everything is very important to the people. That's why I like to refer to the Nez Perce as 'the people.'"[363]

A.K. Scott said "Now, today, with all the fishery resources and management and everything came as a result of Rapid River…The resource is the most important thing."[364] At a ceremony

[358] Josiah Pinkham interview.
[359] "Nez Perce Tribe Fish and Wildlife Commission," available online at http://www.nezperce.org/official/fishanwildlifecommision.htm.
[360] "Nez Perce Tribe Department of Fisheries Resources Management Department Management Plan · 2013-2028," (2013), 6. Available online at http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf.
[361] Ibid.
[362] Gordon Higheagle interview.
[363] Wilfred Scott interview.
[364] Allison K. Scott interview.

held at the site in 2005 to commemorate the anniversary of the stand-off, Elmer Crow said, "What happened here 25 years ago didn't just change Nez Perce country. It changed the whole country. It was the beginning of co-management of the fisheries. Our Nez Perce fisheries department is a good example."[365] Gordon Higheagle, Frank Halfmoon, and others had already laid the groundwork for establishing the tribe as co-managers of fisheries, but the standoff sped up the creation of a Nez Perce fisheries department. Higheagle commented that this was the most positive result which came from the standoff.[366]

Josiah Pinkham explains the significance of the stand-off and its long term effects for the tribe:

> **"**Rapid River is sacred, the water is sacred there. But in all actuality, in a traditional Nez Perce mindset, it's as sacred as anywhere else. But activity focused there for a particular reason. Now that's not to say that the Nez Perce weren't fishing there before [the standoff], obviously, but there was a time frame before Rapid River's political fuse was lit, where there was a sparse—a more sparse—presence of Nez Perce individuals down there. Now one thing to clarify why might be the situation is that—a couple of things might be contributing to that economic activity changing over time. One, is that people were removed from there by misinterpretation of '63 treaty specifics. The other thing is that what's causing that activity to culminate over the years is that you put a hatchery in there. What does that do to the fish? You create somewhat of a bottle neck there. That type of a bottleneck will draw fisherman. People are starting moving in there because they know that that type of bottleneck is being created. Now, Rapid River hatchery went in '64' it goes in, things start to slowly pick up.
>
> Nez Perces are reconnecting with the landscape, if they are not already. Albeit, a given, that Nez Perces are already there, because I remember being there as a young boy. If you talk to some Nez Perces they might be like, 'Well I don't remember any Nez Perce around there; we were the only ones down there.' Not necessarily the case….Why the activity picked up is what needs to get your attention. And that's that, that was becoming a hot spot. People were going down there because the hatchery started to back things up, it was creating a bottleneck, fish were becoming a draw. And the other thing is that, this activity, this misinterpretation of off-reservation rights needed to be hashed out. You had to take that through the court system, and that [Rapid River] was the perfect place for that. So people were beginning to focus their energies there.
>
> They're basically saying, 'We're tired of having to do this. We need to get that right recognized. It's already there. These guys [Fish and Game officers/non-Indians/people in the court system/etc.] do not understand it, these outsiders do not understand it. We need to fight for this and get this recognized. It's no different than the *Arthur vs. U.S.* case only that was with hunting….So it starts

[365] Woodward, "Nez Perce Honor 'Warriors' Who Fought for Fishing Rights."
[366] Gordon Higheagle interview.

> to build up and you get more and more of a draw. And then pretty soon, BOOOM! The powder keg goes off, and all of those rights get recognized. So out of that comes all this fisheries activity that we are involved in now. I don't think we would have the fisheries program that we have today with hundreds of employees working for the Nez Perce Tribe if Rapid River didn't happen, because what that did to the bureaucratic mindset of Idaho Fish and Game is pretty profound."[367]

Pinkham also discussed the symbolic aspect of fishing for contemporary Nez Perces, as it marks the continuity of the Nez Perce culture and ties current individuals even more strongly to their ancestors while keeping traditional customs alive. This is an important aspect when examining the traditional cultural value of the site.[368]

The site has been continuously used by the Nez Perce Tribe since time immemorial as one of their many fishing sites. The number of traditional fishing sites for the Nez Perces has declined since contact, due to Euroamerican encroachment, dam construction, and non-tribal fishing. All of this has elevated the importance of Rapid River for the Nez Perces; with fewer of their sites available to them and with a changing physical and social environment, Rapid River offers a distinctive opportunity. The river's location at the base of the Seven Devils Mountains has ensured that it remains very cold and still hospitable to salmon, which need that cold water to survive. Tribal members travel to Rapid River for the salmon run every year, and it offers them a chance to continue their traditional ways and pass them on to the next generation. Basil George, Jr., said that teaching the next generation is "The biggest satisfaction….It's part of who you are."[369] Katsy Jackson echoed this sentiment, saying, "That's what our old people taught us. It's always been there for us."[370]

The resource management guidelines that the DFRM follows are the consistent with the ideologies that members of the tribe stated during the Rapid River standoff, highlighting traditional use, cultural importance, and treaty rights. The continued use of Rapid River leading up to, during, and following the 1979 and 1980 conflicts demonstrate the site's importance. This importance has also increased in the last decade. Cultural Resource Program manager Nakia Williamson noted that because of the loss of other traditional Nez Perce fisheries, more tribal members are utilizing Rapid River.[371] The ongoing importance of the site is a lasting reminder of the traditional cultural values and activities associated with Rapid River. Examining the larger historical patterns provides evidence of the importance of this site which gives a more concrete example of treaty rights, treaty abrogation, and traditional cultural sites for tribes in the nineteenth and twentieth centuries.

Understanding the importance of Rapid River is more than just understanding treaty rights, tribal

[367] Josiah Pinkham interview.
[368] Ibid.
[369] Basil George, Jr. interview.
[370] Katsy Jackson interview.
[371] Personal communication wih Nakia Williamson, Lapwai, April 15, 2016.

government/state government relationships, and conservation issues, though. The site offers a place in which the Nez Perces still connect with and continue with their traditional cultural practices. Being told by Idaho Fish and Game in 1980 that they could not keep any fish they caught offered a direct challenge to not only to Nez Perce treaty rights, but to Nez Perce culture and beliefs. Josiah Pinkham sums up the importance of Rapid River:

> "Keeping that fish is something that is very, very powerful because it represents your ability to keep your livelihood alive, tend to it, make sure your family is fed. And most of all, it's keeping up that relationship with that fish, and what it represents because that goes back to our very, very early stories about how the animal people come together, and they're talking about this great change that will be brought by this two-legged creature that wouldn't know how to feed itself, clothe itself, shelter itself, and the first one to come forth was salmon: 'I will give my entire body for these creatures because they are gonna need food. All that I ask is that they allow me to die in the place in which I was born so that my children can continue to carry on my way of life of traveling to far off places to gather up gifts to bestow upon them when they return.' That's what that is about. Keeping up that relationship with that generous creature because it honors its word, it comes back every single year. As long as we take care of it. That's worth fighting for."[372]

Conclusions:

Rapid River, or *Yáwwinma*, is eligible for nomination to the National Register of Historic Places as a Traditional Cultural Property (TCP) under Criterion A for its association with traditional beliefs of the Nez Perce Tribe regarding their origins, cultural history, and nature of the world. As described above, Rapid River shapes Nez Perce worldviews and is a central part of Nez Perce history. It is a significant part of Nez Perce seasonal rounds—movements across the landscape in concert with the seasons—and a place embedded within tradition patterns of fishing. Rapid River's long-term significance as a major Nez Perce fishery also makes it eligible under Criterion D (has yielded, or may be likely to yield, information important in prehistory or history) because of its wealth of ethnographic data thus far collected, and for its strong likelihood to yield further ethnographic as well as archaeological information important in Nez Perce prehistory and history.

In addition to these elements of significance that extend far back into time, the unique character of the events that transpired in the late 1970s and early 1980s at Rapid River contribute to, and were a formative part of, recent Nez Perce Tribal history and Tribal infrastructure pertaining to Nez Perce treaty rights and fisheries management programs. In particular, these events directly

[372] Josiah Pinkham interview.

influenced the formation of a Nez Perce Tribal Fisheries Program, and shaped the management of these resources for generations to come. This more recent significance, achieved within the past 50 years, complements and contributes to the longer narrative of Nez Perce practices, traditional activities, and uses at this important, unique, and long-standing Nez Perce fishery. Oral histories from tribal members emphasize the connection between fishing sites traditionally used by tribal member, such as Badger Hole and Jackson Hole, and sites associated with the conflicts of 1979 and 1980. These sites are also associated with the properties within the nomination, as parcels currently owned by the Nez Perce Tribe.

Moreover, an examination of both Nimíipuu use of Rapid River and the tribe's conflict with the federal government and the State of Idaho to affirm and to protect tribal rights to the site reflect larger themes within federal policy regarding tribes, treaty rights struggles in the twentieth century, protests from groups such as the American Indian Movement, and issues of contested land use between different cultural groups in the American West.

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Previous documentation on file (NPS):

____ preliminary determination of individual listing (36 CFR 67) has been requested
____ previously listed in the National Register
____previously determined eligible by the National Register
____designated a National Historic Landmark
____ recorded by Historic American Buildings Survey #_____
____recorded by Historic American Engineering Record # _____
____ recorded by Historic American Landscape Survey # _____

Primary location of additional data:

____ State Historic Preservation Office
____ Other State agency
____ Federal agency
____ Local government
____ University
_X___ Other
Name of repository: _Nez Perce Tribe Cultural Resource Program_____

Historic Resources Survey Number (if assigned): _____

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10. Geographical Data

Acreage of Property _6.172_____

Use either the UTM system or latitude/longitude coordinates

Latitude/Longitude Coordinates (decimal degrees)
Datum if other than WGS84:_____
(enter coordinates to 6 decimal places)

Latitude: 45.477712 degrees **Longitude:** -116.193444 degrees

Verbal Boundary Description (Describe the boundaries of the property.)
From the Idaho County Assessor's Office:

Parcel 1,
Tax Number 148 (3.35 acres)

The following property situat [sic] in Idaho County, State of Idaho, to-wit: Township 24N, Range 1 East, Boise Meridian, Idaho County, Idaho Section 32; Tax N. 148 being a parcel of property lying within the NW¼ SE ¼ and the NE ¼ SE ¼ which is described relative to the Federal Aid project 0S-2500 (1) as follows:

Beginning at the South Quarter corner of said Section 32, which quarter corner lies South 89°43'46"E, 2,649.31 feet from the Section corner common to Sections 31, 32, 6 and 5; thence North 44°52"41' E, 1,862.04 feet to E.O.P. centerline station 27 plus 60; thence North 89°46'00" W, 29.81 feet along said centerline; thence North 0°14'00" E, 15 feet to the right of way line on the West side of U.S. Highway 95 at Station 27 plus 30.19, which is the real point of beginning; thence North 89°46'00" W, 25.19 feet along said right of way; thence North 0°14'00" E., 15 feet; thence North 89°46'00" W, 200 feet along the Northerly right of way line of the Rapid River Road; thence South 0°14'00" W, 10 feet along said right of way line; thence North 89°46'00" W, to the East bank of Rapid River; thence leaving the Rapid River Road right of way and following the East bank of Rapid River in a Northeasterly direction to where it intersects the West right of way line of U.S. High 95; Thence following the U.S. 95 West right of way line in a Southwesterly Direction back to the real point of beginning.

Parcel 2:
Two parcels held by the Nez Perce Tribe under a single deed comprise Parcel 2. The larger parcel completely encloses the second, smaller parcel.

Tax Number 123 (2.752 Acres)

A tract of land situated in the S ½ Sec. 32, T 24 N., R1 E., B.M. Idaho County, Idaho, more particularly described as follows:

Commencing at the South ¼ corner of said Sec. 32; thence N. 0°42'26" E.

1150.82 feet to a 5/8" x 30" rebar; thence S. 86°30'28" W. 175.52 feet; thence S. 80°39'23" W. 106.89 feet to the initial point of Rapid River subdivision No.1; thence 32.26 feet along the easterly boundary of said Rapid River Subdivision N. 1, and along the arc of a curve to the left having a central angle of 92°24'38", a radius of 20.00 feet and a long chord which bears S. 34°27'05" W. 28.87 feet; thence S. 11° 45'14" E. 104.02 feet to a point of curve; thence southwesterly 124,51 feet along the arc of a curve right having a central angle of 75°05'31", a radius of 95.00 feet and a long chord which bears S. 25°47'30"W. 115.78 feet; thence s. 63°20'16"W 180.00 feet; thence S.26°39'43E. 114,00 feet to a point on the left bank of Rapid River; thence leaving boundary of Rapid River Subdivision No.1 S.26°39'43"E. 60 feet, more or less, to a point on the right bank of Rapid River, thence southwesterly, along the right of Rapid River approximately by the following courses and distances;

S. 49° 14'30" W. 236.62 feet;

S. 64° 21' 01" W. 237.95 feet;

S. 74°28' 10" W. 237.16 feet;

S. 58° 37' 30" W. 441.18 feet;

S. 76° 15' 26" W. 189.42 feet;

S. 58° 35' 32" W. 127.71 feet

to a point on the south boundary of said Sec. 32: thence leaving river, N. 89° 53' 05" E. 686 feet to the point of beginning.

SAVING AND EXCEPTING therefrom the following described tract: Commencing at the S ¼ corner of Sec. 32, T.24N., R.1E., B.M. thence N. 0°42'26" E. 856.8 feet to the REAL POINT OF BEGINING; thence N.89°17' 34"W. 70.0 feet; thence S. 0°42'26" W. 50 feet to a point on the dike; thence S. 89°17'34" E. 70 feet; thence leaving dike N. 0°42' 26" E. 50 ft to the point of beginning.

Tax Number 176 (.08 Acres)

Commencing at the South quarter corner of Section 32, T24 N, Range 1 East, Boise Meridian; thence North 0° 42' 26" East, 856.8 feet to the real point of beginning; thence North 89° 17' 34"

West 70.0 feet; thence South 0° 42' 26" West, 70 Feet; to a point on the dike; thence South 89° 17' 34" East, 70 " feet; thence leaving dike North 0° 42' 26' 11" East, 50 feet to the point of beginning;

Boundary Justification (Explain why the boundaries were selected.)
For the purposes of this nomination, the boundaries of the *Yáwwinma* Traditional Cultural Property (TCP) are three small noncontiguous parcels of private land recorded under two deeds owned by the Nez Perce Tribe. Although the TCP boundary should include the Rapid River drainage (and Nez Perce Treaty fishing rights do include all this area, regardless of ownership), most of the surrounding property is private. The Idaho SHPO and Nez Perce Tribe agreed to limit the site boundary to parcels owned by the Tribe to minimize conflicts with neighboring landowners.

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11. Form Prepared By

name/title: _James Hepworth & Amy Canfield (contractors), and Patrick Baird & Mario Battaglio (Nez Perce Tribe) _
organization: _Nez Perce Tribe Cultural Resource Program_____
street & number: __P. O. Box 365_____
city or town: Lapwai_____ state: _ID_____ zip code: _83540____
e-mail__keithb@nezperce.org_____
telephone: _208-621-3851_____
date:____January 6, 2017_____

Additional Documentation

Submit the following items with the completed form:

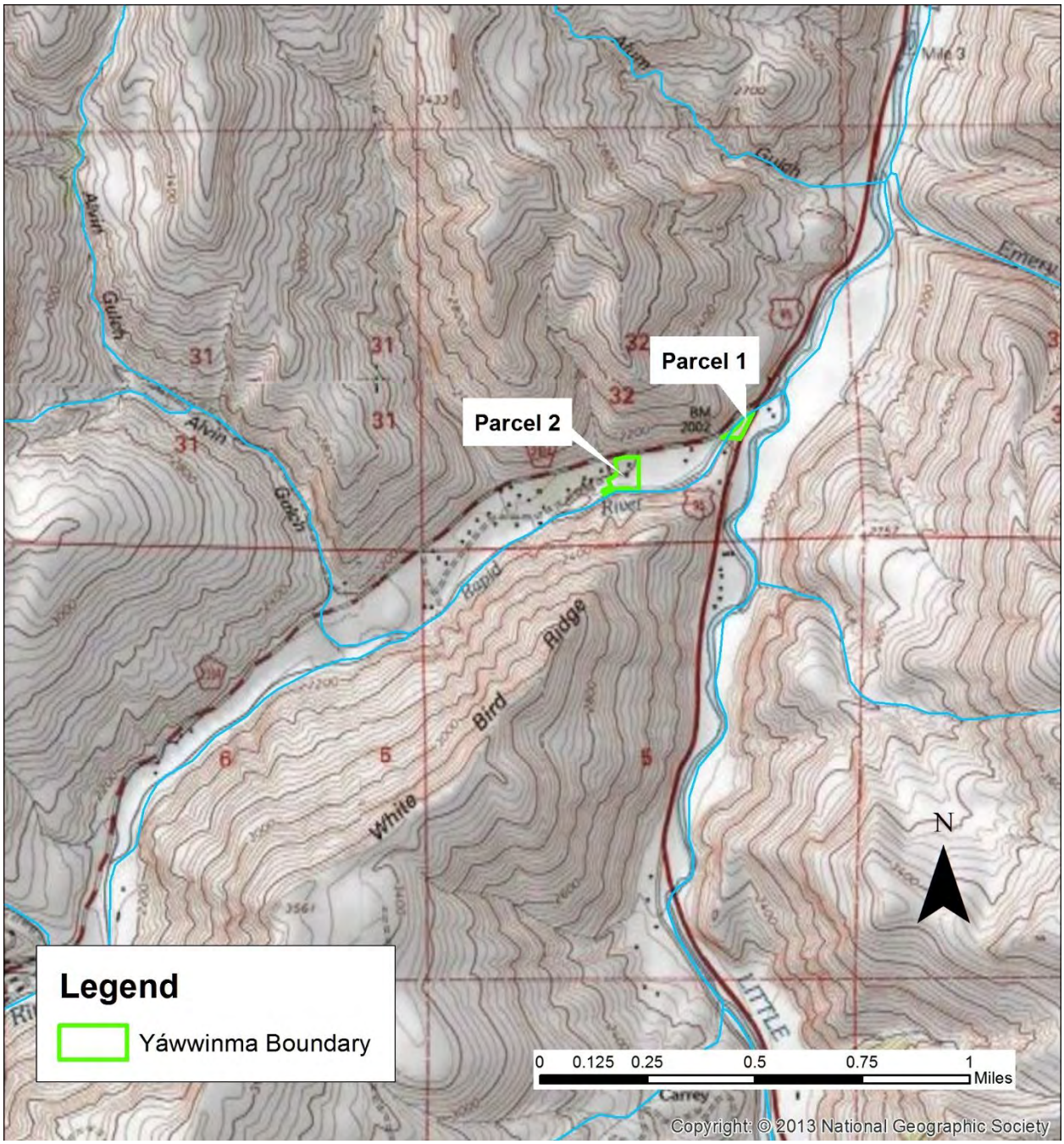
- **Maps:** An **electronic map** or **USGS map** or equivalent (7.5 or 15 minute series) indicating the property's location.

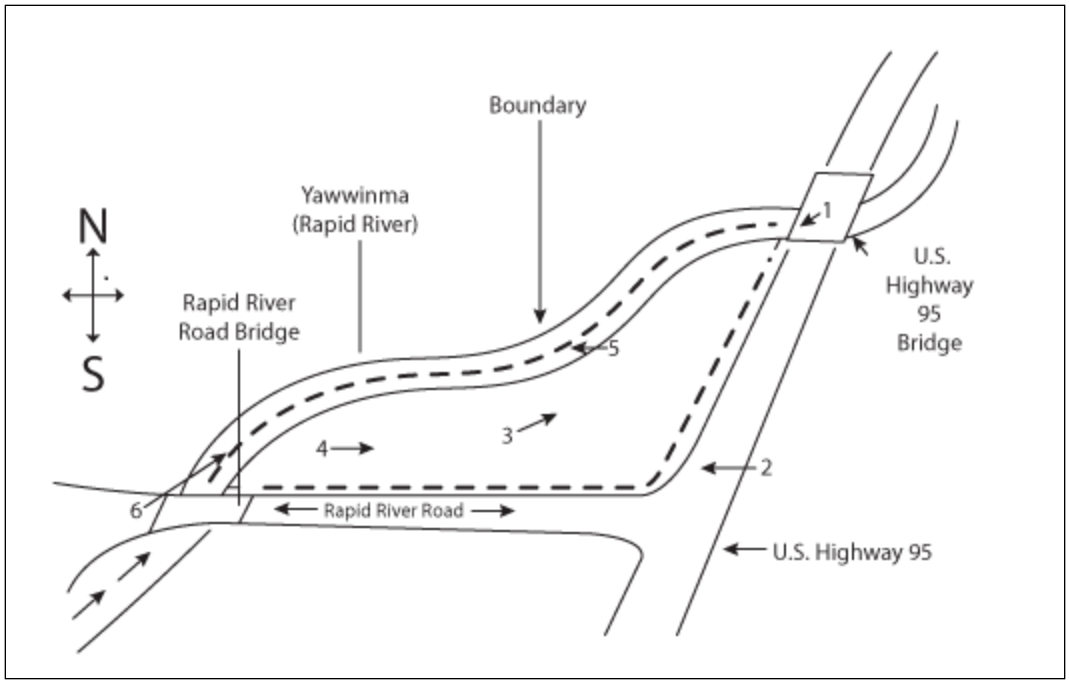
Map 1: Rapid River, *Yáwwinma* Traditional Cultural Property (TCP) general location.

Latitude: 45.477712 degrees
Longitude: -116.193444 degrees

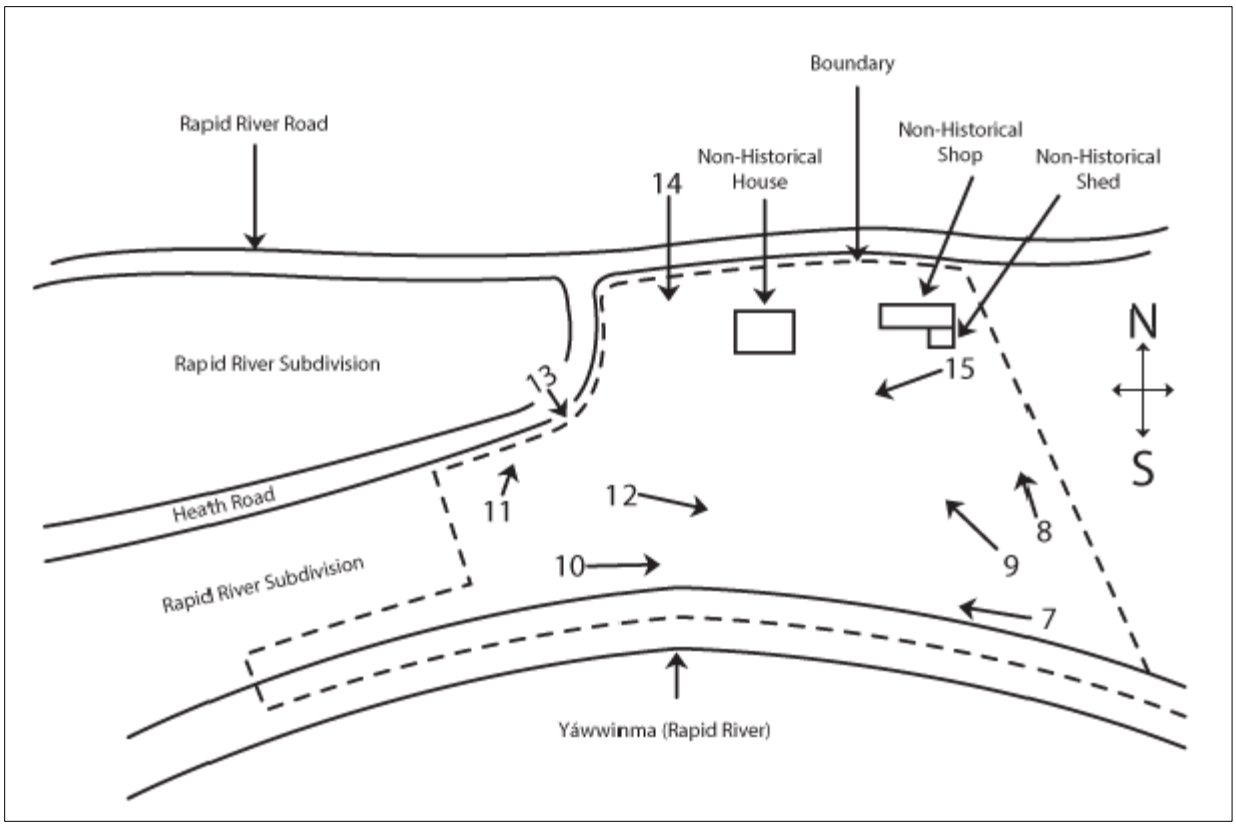
Map 2: *Yáwwinma* Traditional Cultural Property (TCP) parcel general locations

Map 3: *Yáwwinma* Traditional Cultural Property (TCP) parcel boundaries





Map 4 (above): Parcel 1, along US Highway 95.



Map 5 (above): Parcel 2, between Rapid River Road and Rapid River.

- **Additional items:** (Check with the SHPO, TPO, or FPO for any additional items.)

Photographs

Submit clear and descriptive photographs. The size of each image must be 1600x1200 pixels (minimum), 3000x2000 preferred, at 300 ppi (pixels per inch) or larger. Key all photographs to the sketch map. Each photograph must be numbered and that number must correspond to the photograph number on the photo log. For simplicity, the name of the photographer, photo date, etc. may be listed once on the photograph log and doesn't need to be labeled on every photograph.

Photo Information: 15 Photographs

Name of Property:	*Yáwwinma* (Rapid River Fishery Traditional Cultural Property)
Date:	May 23, 2016
City or Vicinity:	Riggins, Idaho
County:	Idaho County
State:	Idaho
Name of Photographer:	Jim Hepworth
Location of Original Digital Files:	Idaho State Historic Preservation Office 210 Main Street, Boise, ID 83702

ID_Idaho_County_Yáwwinma_0001

Photo 1 of 15 – View looking southwest

View of Rapid River from the U.S. Highway 95 bridge abutment at the northeastern most corner of Barter Town. White Bird Ridge in the background. The northwestern boundary of Barter Town extends to the middle of this streambed.

ID_Idaho_County_Yáwwinma_0002

Photo 2 of 15 – View looking west

Entrance to Barter Town from U.S. Highway 95 as viewed from across the road.

ID_Idaho_County_Yáwwinma_0003

Photo 3 of 15 – View looking northeast

A hilltop view of Barter Town.

ID_Idaho_County_Yáwwinma_0004

Photo 4 of 15 – View looking east

A hilltop view of Barter Town, looking toward U.S. Highway 95. To the right beyond the fence line is Rapid River Road, which parallels the property's southern boundary.

ID_Idaho_County_Yáwwinma_0005

Photo 5 of 15 – View looking southwest

A plunge pool at Barter Town (somewhat upstream).

ID_Idaho_County_Yáwwinma_0006

Photo 6 of 15 – View looking northeast

Looking downstream at Rapid River (Yáwwinma) at the northwestern boundary of Barter Town from Rapid River Road.

ID_Idaho_County_Yáwwinma_0007

Photo 7 of 15 – View looking west

Looking upstream at Rapid River from the southeastern boundary of the Rapid River House property.

ID_Idaho_County_Yáwwinma_0008

Photo 8 of 15 – View looking north-northwest

Looking along the fence line from the southeastern boundary of the Rapid River House property toward Rapid River Road at two non-historical buildings: a shed and a shop. Fisherman's tent visible center left in the photo.

ID_Idaho_County_Yáwwinma_0009

Photo 9 of 15 – View looking north-northwest

View of all three non-historical buildings from the southeastern boundary of the Rapid River House property. To the left is Rapid River House, and to the right the shed and shop.

ID_Idaho_County_Yáwwinma_0010

Photo 10 of 15 – View looking east

Looking downstream at Rapid River along the southern boundary of the Rapid River House property.

ID_Idaho_County_Yáwwinma_0011

Photo 11 of 15 – View looking north

View of the Heath Drive entrance from inside the Rapid River House property.

ID_Idaho_County_Yáwwinma_0012

Photo 12 of 15 – View looking east

Viewshed of dyke (to the right), powerlines (center), and White Bird Ridge (background).

ID_Idaho_County_Yáwwinma_0013

Photo 13 of 15 – View looking south-southeast

Rapid River House entry gate seen from Heath Road.

ID_Idaho_County_Yáwwinma_0014

Photo 14 of 15 – View looking south

An overlook of the Rapid River House property from Rapid Rapid River Road.

ID_Idaho_County_Yáwwinma_0015

Photo 15 of 15 – View looking southwest

Viewshed of White Bird Hill and Seven Devils Mountains as seen across the parking lot at Rapid River House.

Historic Photographs of the Rapid River Conflict (1979-1980)

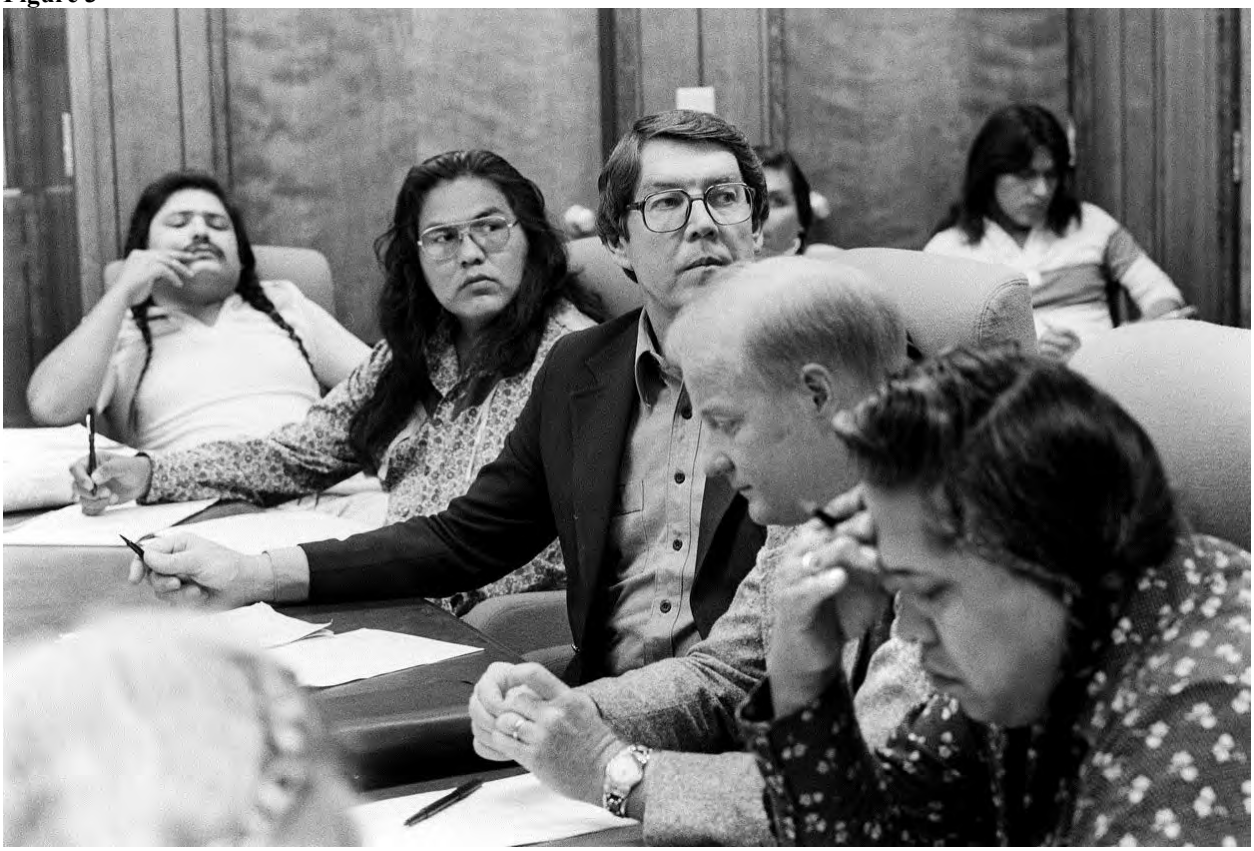
Figure 1:

Photographer: Dave Johnson
Publisher: *Lewiston Morning Tribune*
Date: June 1980
Subjects: (back row, left to right) Dave Holt, unknown, Jon Wapsheli, Mike Valley, Tim Weaver, Melvin "Coke" Marks, Greg Crow, Rachel [last name unknown], Didi [last name unknown], Sonny Bybee, Kim Rickman, [unknown] Charles Ellenwood, Becky Johnson, Jackie Johnson, Darryl Rickman, Allison K. Scott, Eugene Johnson, John Jabeth, Dwight Williams. (front row kneeling) Gary [last name unknown] and Joe Dance.

Figure 2

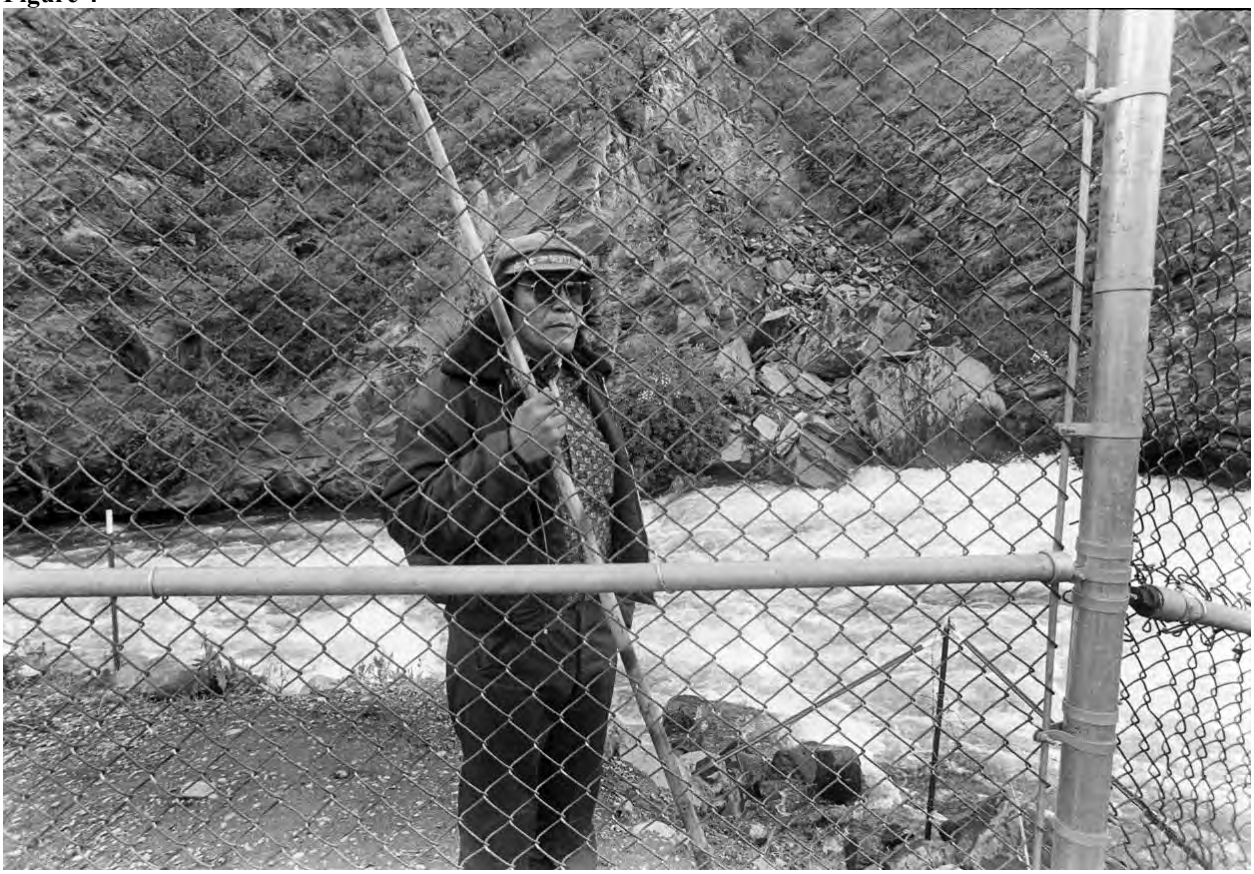
Photographer: Dave Johnson
Publisher: *Lewiston Morning Tribune*
Date: June 6, 1979
Subjects: Unknown

Figure 3



Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 5, 1980
Subjects: (back to front) Allison K. Scott, Governor John Evans, Jerry Conley, and [unknown]

Figure 4



Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 13, 1980
Subjects: Roderick Scott

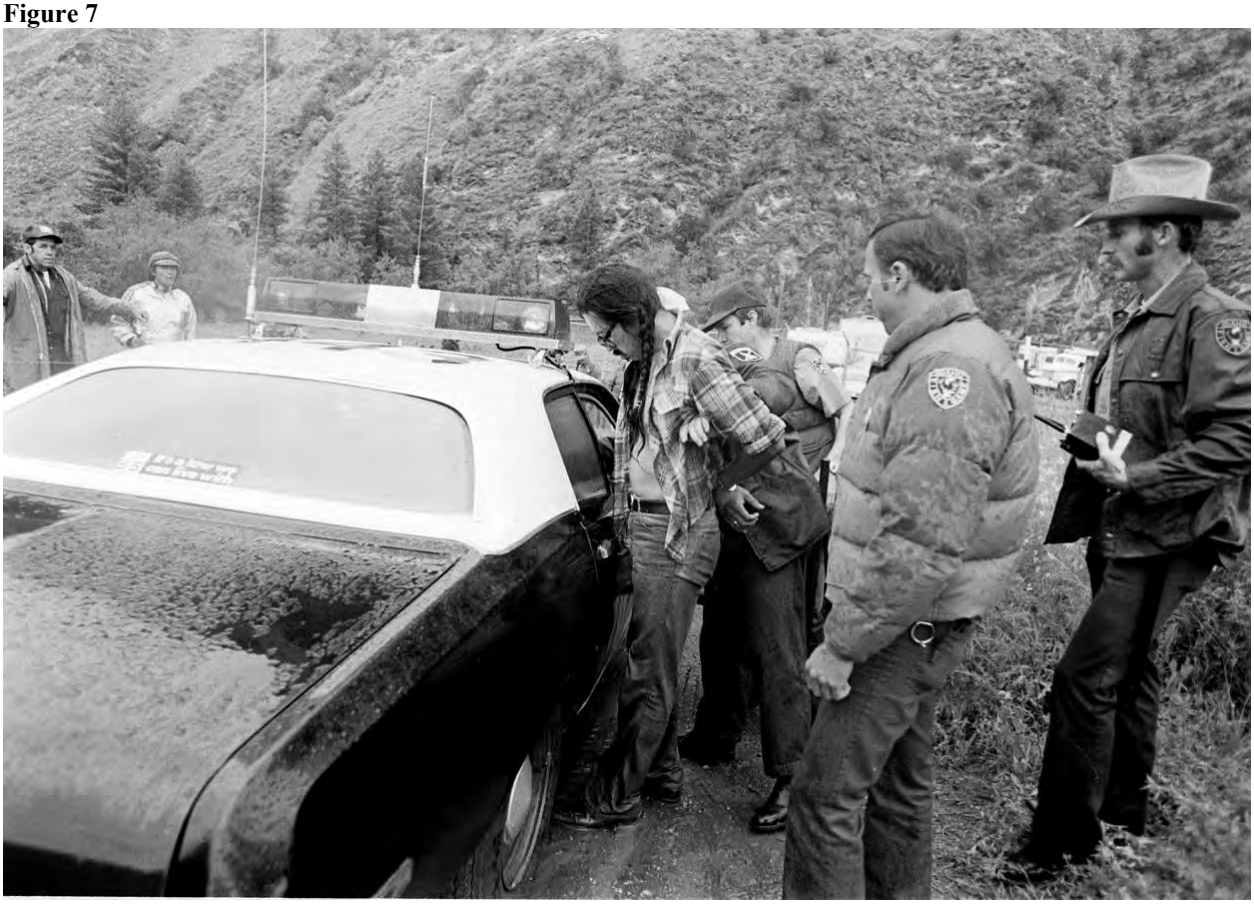
Figure 5

Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 14, 1980
Subjects: Lewis Gerwitz, A.K. Scott, and Bill Snow

Figure 6

Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 15, 1980
Subjects:

Figure 7



Photographer: Dave Johnson *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 16, 1980
Subjects: Kenneth Oatman (being placed in car) and Bill Snow (officer with hat)

Figure 8

Photographer: Steve *Thompson*
Publisher: *Lewiston Morning Tribune*
Date: June 22, 1980
Subjects: (foreground) Allen Slickpoo

Figure 9

Photographer: David Johnson
Publisher: *Lewiston Morning Tribune*
Date: June 23, 1980
Subjects: (foreground) Jarrod Crow and Bill Snow

Figure 10

Photographer: *Tribune* staff
Publisher: *Lewiston Morning Tribune*
Date: June 1980
Subjects: Wilfred Scott

Contemporary Photographs of Rapid River Fishing

Figure 11

Nez Perce fisherman James Black Eagle of Kamiah with his dipnet standing in the Gravy Hole.

Photo taken by Jim Hepworth, June 23, 2010.

Figure 12

Nez Perce tribal member Victoria Mitchell completes a sweep with her dipnet on the lower Rapid River (Yáwwinma), not far from the tribal encampment at Rapid River House.

Photo taken by Jim Hepworth, June 11, 2016.

Figure 13

Summer 2016 Rapid River Youth Salmon Campers pose with the Walker Brothers on the lower Rapid River. The boys range in age from ten to fourteen. All five of these young men made their own spears and gaff hooks. They fished all day and much of the previous night.

Photo taken by Jim Hepworth, June 11, 2016