

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. **This document is a draft.**

1. Name of Property

Historic name: Yáwwinma

Other names/site number: Rapid River

Name of related multiple property listing:

(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: Idaho County: Idaho

Not For Publication: Vicinity:

3. State/Federal Agency Certification

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

I hereby certify that this ___ 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 ___ meets ___ does not meet the National Register Criteria. I recommend that this property be considered significant at the following level(s) of significance:

___ national ___ statewide ___ local

Applicable National Register Criteria:

___A ___B ___C ___D

<p>_____ Signature of certifying official/Title:</p> <p>_____ State or Federal agency/bureau or Tribal Government</p>	<p>_____ Date</p>
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Name of Property

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

Date of Action

5. Classification

Ownership of Property

(Check as many boxes as apply.)

Private:

Public – Local

Public – State

Public – Federal

Category of Property

(Check only **one** box.)

Building(s)

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District	<input type="checkbox"/>
Site	<input checked="" type="checkbox"/>
Structure	<input type="checkbox"/>
Object	<input type="checkbox"/>

Number of Resources within Property

(Do not include previously listed resources in the count)

Contributing	Noncontributing	
_____	<u>3</u>	buildings
<u>1</u>	_____	sites
_____	_____	structures
_____	_____	objects
<u>1</u>	<u>3</u>	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

RELIGION/ ceremonial Chinook fishery

AGRICULTURE/SUBSISTENCE/food processing site

DOMESTIC /fishing camp/seasonal residence

PROCESSING/toolmaking site

LANDSCAPE/river

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RECREATION AND CULTURE/work of art (rock art)

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Current Functions

(Enter categories from instructions.)

AGRICULTURE/SUBSISTENCE/fishing grounds

RELIGION/ ceremonial Chinook fishery

AGRICULTURE/SUBSISTENCE/food processing site

DOMESTIC /fishing camp/seasonal residence

PROCESSING/toolmaking site

EDUCATION/annual youth fishing camp taught by tribal elders

LANDSCAPE/river

RECREATION AND CULTURE/campground and picnic area

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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 (aka "Rapid River," "Barter Town" and "Rapid River House") is located on two parcels of approximately three acres each along Rapid River and adjacent to Rapid River Road approximately four miles south of the town of Riggins, Idaho, and 153 miles north of Boise just off U.S. Highway 95. White Bird Canyon, a Nez Perce National Historical Park Site and the scene of the opening battle of the 1877 Nez Perce War with the United States, is approximately 30 miles away. Niimiipuu (Nez Perce) families (bands) and individual Nez Perce fishermen continue to seasonally occupy and reside on the grounds of the lower Yáwwinma to fish for Chinook salmon using dip nets, gaffs, spears, and other traditional means just as they have for untold millennia. Like their storied ancestors, contemporary Nez Perce people fish Yáwwinma for subsistence, religious, ceremonial, and commercial purposes on lands ceded to the tribe in the Treaty of 1855. Among other things, that treaty reserved to the Nez Perce

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people the exclusive right of taking fish in all streams running through or bordering the 1855 reservation boundaries, as well as the right to take fish at all their usual and accustomed places outside reservation boundaries. From aboriginal times to the present day, on the battlefield and in district court rooms and against considerable odds, the Nez Perce people have successfully defended from all adversaries their fishing grounds at Yáwwinma and their right to practice their traditional means of gathering Chinook salmon, one of their sacred foods. 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.

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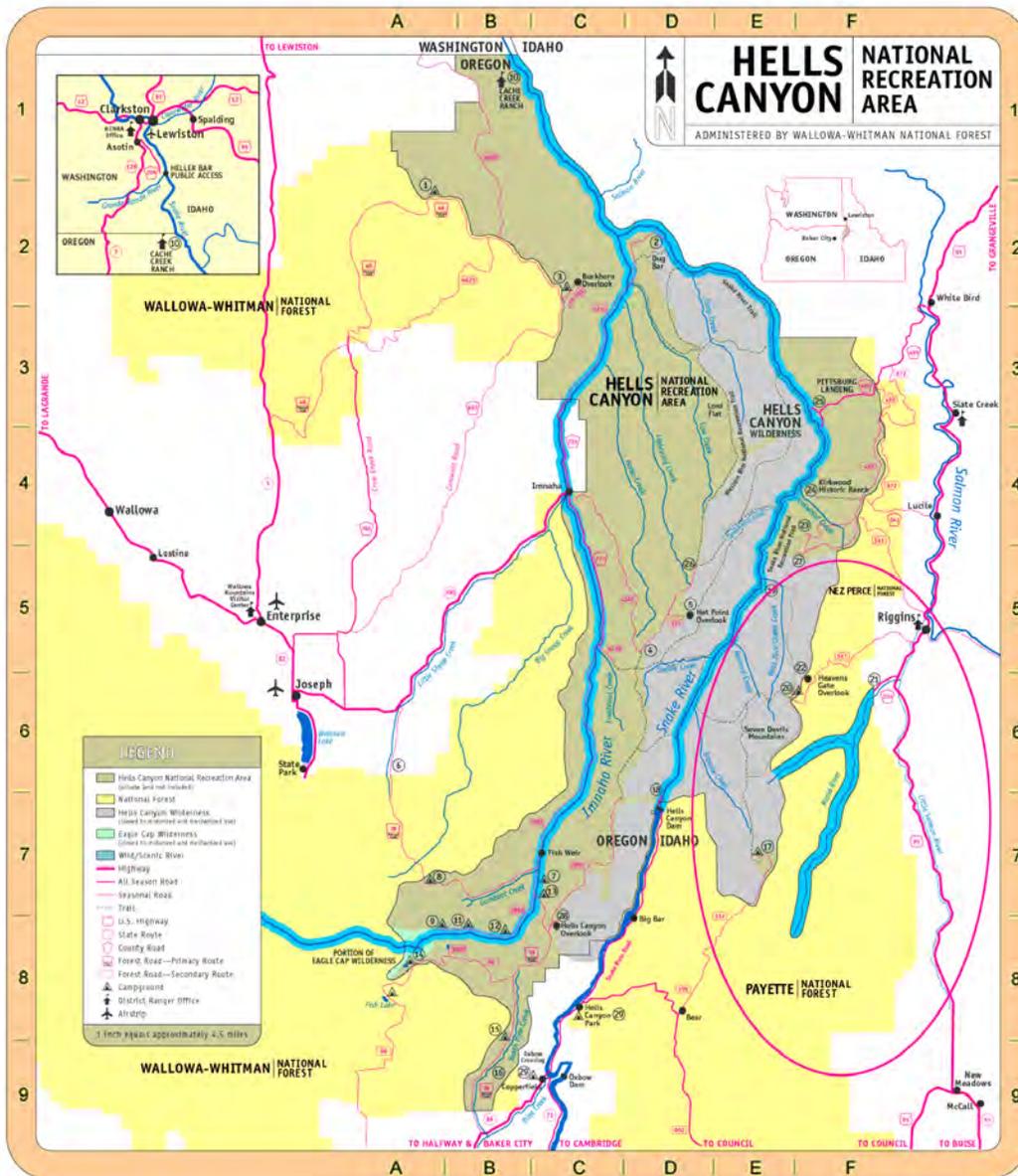


Figure 1. The red-lined oval on the right (F 5,6,7,8) marks the general area described in the nomination. The map is courtesy of U.S. Forest Service, Brian D. Harris, Public Affairs Officer, Payette National Forest, McCall, Idaho. Modified by Jim Hepworth and Brian Kolstad June 14, 2016. The insert at the top (E 2) shows the location relative to the tri-state region (Washington, Oregon, and Idaho).

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Narrative Description

Nez Perce Traditional Cultural Property Boundaries and Rapid River (Yáwwinma)

There is no linguistic or archeological evidence to support the idea that the ancestors of the Nez Perce people ever resided outside the Columbia basin where they once inhabited an original homeland of more than 17 million acres in Idaho, Oregon, Washington, and Montana. In so far as their unique and individual circumstances permit, traditional contemporary families still follow a long established seasonal subsistence migration that depends upon salmon.¹ In 1805 the Nez Perce were the most numerous tribe on the Plateau with over 70 permanent villages of various sizes depending upon the season.² Today, the Tribe is headquartered in Lapwai, Idaho, on a reservation of about 750,000 acres of which tribal members own approximately thirteen percent. Enrolled tribal membership totals about 3,500 people.

For the practical purposes of this nomination, it is important to understand that the literal boundaries of this Traditional Cultural Property (TCP) are restricted to three small noncontiguous parcels of private land recorded under two deeds owned by the Nez Tribe. These private properties lie outside the reservation and are referred to collectively as "Yáwwinma (Rapid River)." To informally distinguish them from each other for the purposes of identification and location, the Nez Perce fishermen and Nez Perce families who actually occupy these grounds each year during the Nez Perce Tribe's annual spring Chinook fishing season refer to them in English as "Barter Town" and "Rapid River House"³ (see figure 3). Nevertheless, for traditional Nez Perce people, the terms "Yáwwinma" and "Rapid River," which they use interchange-ably, refer to the entire watershed. They conceive this watershed to be a single ecosystem and a "living place."⁴

¹ Amalgamated facts in this paragraph derive principally from two sources: an overview entitled

² According to Walker, "permanent" villages ranged in size from "30 to 200 individuals, depending on the season and type of social grouping" (420).

³ Interview with Thomas Gregory/ Tatlo ("Ground Squirrel Jumping Up"), Nez Perce fisherman and language specialist employed by the Tribe's Office of Cultural Resources, 12 February 2016, Lapwai, Idaho.

⁴ Ibid. Tribal members Nakia Williamson and Josiah Pinkham frequently use the conventional ecological term "ridge top to ridge top" when speaking of the Yáwwinma (Rapid River)

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The total area of the three small parcels encompasses a mere 6.172 acres, all located on the banks of Rapid River in Township 24 North, Range 1 East, of Boise Meridian, in Section 32 of Idaho County, Idaho. (The Barter Town property contains one parcel 3.35 acres in size. "Rapid River House" contains two adjacent parcels of 2.752 and .08 acres each.) A public bridge over the river and a public two-lane dirt road connect the properties, which are within walking distance of each other and less than half a mile apart. Most importantly, these physical properties are intimately and irretrievably linked to each other and to the Nez Perce people by the waters of Yáwwinma (Rapid River) itself, which is the primary contributing resource to the TCP.



Figure 2. Yáwwinma (Rapid River) follows the tree line between the two properties. Google Earth Screenshot modified by Jim Hepworth and Brian Kolstad.

This river has provided the Nez People and their ancestors with physical, economic, cultural, and spiritual nourishment

watershed and the boundaries of the TCP. Both use the terms *Yáwwinma* and *Rapid River* interchangeably as does tribal elder Allen Pinkham.

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that has sustained them from aboriginal times to the present and which they hold to be sacred and essential to their cultural identity. Although traditional Nez Perce fishermen and their families agree that the conditional integrity of Yáwwinma (Rapid River) has been adversely affected over time by modern developments, in their eyes the relational integrity of Yáwwinma has nevertheless remained complete and intact. Here's how one Nez Perce spear fisherman recently put it: "The feeling I get when I think of [fishing for Chinook at] Yáwwinma is relief, like I belong there. The fish haven't changed. The end of my spear might be metal instead of bone, but I don't feel any shame in that. I have the same spiritual relationship with the fish that our people have always had. And we have the same obligations to take care of them. And they still take care of us."⁵

Just as it is important to understand, for practical purposes, the location of the literal boundaries of the TCP, it also equally imperative to understand that those boundaries are complicated by other property rights reserved by the Nez Perce in the Treaty of 1855 and subsequently retained by the Nez Perce in the so-called "Steal Treaty" of 1863 that deprived them of exclusive ownership of ninety percent of their aboriginal lands, including the entire Yáwwinma/Rapid River corridor. (The Indian Claims Commission estimated the size of the aboriginal Nez Perce home lands at 13,204,000 acres.)⁶ These additional property rights to Yáwwinma belonging to the Nez Perce, so often misunderstood and misinterpreted by non-Indians, merit description here for purposes of clarifying and contextualizing the Yáwwinma TCP boundaries and the Yáwwinma Chinook fishery. Too frequently, non-Indians mistake the purpose of the 1855 and 1863 treaties between the Nez Perce and the United States government as a granting of rights *from* the United States to the Nez Perce Tribe, especially when it comes to fishing, hunting, and gathering food in all the Tribe's usual and accustomed places outside reservation boundaries. Of course, the historical circumstances were in fact precisely the reverse. In the landmark case known as *U.S. v. Winans* (1905), the Supreme Court stated that the Treaty of 1855 "was not a grant of rights to the Indians" [from the United States] but a grant of rights *from* the Indians to the United States. Justice Joseph McKenna wrote that fishing for salmon was "'not much less necessary to the Indians than the atmosphere they breathed.'" The court ruled that the treaty rights of the Indians "included the imposition

⁵ Gregory/Tatlo Interview February 2016.

⁶ *Treaties: Nez Perce Perspectives*. (Lewiston, Idaho: Confluence Press, 2003) 4.

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of a 'servitude, a right in land' over lands necessary to access their traditional fishing sites"⁷ In addition to clarifying treaty law by establishing what has come to be known as the "reserved rights doctrine," this precedent setting case has been essentially important "in recognizing tribal proprietary rights to natural resources and in protecting tribal sovereignty" throughout the last century. Furthermore, U.S. v. Winans "reaffirmed the rule that Indian treaties should be interpreted as the Indians, the weaker party, would have understood [the treaties] and rejected claims that state ownership [or private ownership] of the riverbed foreclosed federally created treaty rights."⁸ What all this means in terms of the Traditional Cultural Property boundaries in the case of Yáwwinma is that the Nez Perce are entitled to utilize the entire length of Rapid River as well as to access the river over and across private property. It also means that Nez Perce fishermen are not subject to or governed by the same state and federal rules and regulations for fishing as non-tribal fishermen. In short, far from being restricted to fishing from their traditional stations on 6.172 acres of private property owned by the Nez Perce Tribe, Nez Perce tribal members are legally entitled to fish, hunt, gather, and camp throughout the entire Yáwwinma (Rapid River) corridor, as, in fact, they do.⁹

The Wild and Scenic River's Environmental Setting: Historic and Current Conditions

⁷ Blumm, Michael C. and James Brunberg, "'Not Much Less Necessary. . . Than the Atmosphere They Breathed': Salmon, Indian Treaties, and the Supreme Court—A Centennial Remembrance of United States v. Winans and Its Enduring Significance," *Natural Resources Journal* 489, Spring, 2006: 2.

⁸ Ibid, 2.

⁹ Interview with Jason Higheagle Allen on 18 April 2016, Lewiston, Idaho. Previous and subsequent recent interviews with tribal members also confirmed this fact. Such a fact would seem to make it common knowledge, although non-Indians, including some government officials interviewed for this nomination, downplayed and even denied it. Traditional cultural properties, however, can enjoy dormant periods. There is no practical benefit to be derived by any Nez Perce fisherman, for example, who wants to ply the waters of Lapwai Creek for Chinook salmon. The Lapwai Creek Chinook were extirpated long ago. The Snake River Coho salmon who also once spawned there were officially declared extinct in 1986. In 1997, the first Coho returned over Lower Granite Dam on the Snake as part of the Tribe's Clearwater Coho Restoration Program. In 2010 and 2011 technicians installed a fish weir in Lapwai Creek at Nez Perce National Historical Park's Spalding Site. The year 2015 boasted the second-ever Coho fishing season in recent memory.

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Yáwwinma (Rapid River) is a freestone river located in the Payette and Nez Perce National Forests of central Idaho. As previously noted, the entire river falls within the boundaries of the original reservation "set apart" and "marked out for the exclusive use and benefit" of the Nez Perce Tribe in Article 1 of the 1855 *Treaty with the Nez Percés*. Yáwwinma (Rapid River) is a tributary to the Little Salmon River, which enters the main Salmon River at the town of Riggins, Idaho. The mainstem Yáwwinma (Rapid River) and West Fork Yáwwinma (Rapid River) are primarily steep gradient streams enclosed by narrow canyons with steep walls. Cover vegetation limits rock exposure on the river. Geologists believe the river's drainage belongs to 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".¹⁰ Geologists have identified and defined individual rocks within the Yáwwinma (Rapid River) corridor as Doyle Creek and Martin Bridge Limestone. Basalt of the Columbia River Basalt Group (6-16 million years) 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."¹¹

The waters of Yáwwinma (Rapid River) hold incalculable cultural significance for the Nez Perce people. For one thing, the river originates in the snowmelt tributaries that drain the eastern-facing slopes of the Seven Devils Mountain Range whose highest peaks rise over 9,000 feet above sea level and preside over Hells Canyon, arguably the deepest gorge in North America. Several of the highest peaks of the Seven Devils Mountain Range (see **figure 3**) are the subject of their own Nez Perce creation story, which remains a vital part of the Nez Perce oral tradition.¹² The mountains remain a customary location for vision quests (as they were in historical times), and, most significantly, they figure prominently into the Nez Perce origin story concerning the creation of the Nez Perce people.¹³ From an

¹⁰ "Appendix K, Wild Rapid River Resource Assessment," *Hells Canyon National Recreation Area Comprehensive Management Plan FEIS*, July 2003: 6.

¹¹ Ibid.

¹² See Ella Clark, "The Creation of the Seven Devils Mountains," *Indian Legends of the Pacific Northwest* (Berkeley: University of California, 2003): 47.

¹³ In the creation story, Coyote ties himself to one or several of the Seven Devils Peaks in order to fool a swallowing monster who has been terrorizing and devouring the animal people. After

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estimated elevation of 6800 feet on the eastern slopes of the
Seven



convincing the monster to swallow him, Coyote first cuts out the monster's heart to free the animal people and then creates human beings (i.e. the various tribes of the region) from parts of the monster's body that he hurls in all directions. At first, Coyote forgets to create people for the place he has given himself where he has just killed the monster, but Fox reminds him. Using the bloody water with which he washes his hands, he sprinkles the land immediately around him to create the Nimiipu. On the surface the story would seem to have little to do with fishing except that it always begins with Coyote building a fish ladder and tearing down falls, often a reference to Celilo Falls on the Columbia where the Nez Perce fished communally and traded with other tribes. But the cordage Coyote uses to bind himself to the Seven Devils is most likely Indian Hemp, which was also used in net making, and the annual snows of the Seven Devils help form some of the region's best salmon streams, including Yáwwinma (Rapid River) and the main Salmon River. Moreover, Coyote's own migration route within the story helps to establish and recall the enormous territory covered by the Nez Perce during seasonal rounds in aboriginal times. All Nez Perce bands participated in this life-way, which always included fishing for salmon. A favored version of the story, collected by Nez Perce anthropologist Archie Phinney, appears in both English and Nez Perce Sahaptin in *Nez Perce Texts* (New York: AMS Press, 1969; reprinted from Columbia University Press, 1934) 18-30. Phinney was trained at Columbia University by Franz Boaz. He recorded his texts from his non-English speaking mother, Wayi'latpu, a Umatilla-Nez Perce with close blood ties to Chief Joseph.

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Figure 3. Seven Devils Peaks in the Seven Devils Mountains (*Sisé.quiymexs*). Hells Canyon Wilderness, Payette National Forest, Adams County, Idaho. Photo by Jim Hepworth, June 12, 2016. These peaks are part of a great Nez Perce origin landscape. Their snowfields supply water for Bridge Creek, which empties into the West Fork of Yáwwinma (Rapid River).

Devils Range, Yáwwinma (Rapid River) drops approximately 4800 feet over the course of approximately thirty miles to an elevation of just less than 2000 feet at its confluence with the Little Salmon River.¹⁴ 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 precedence 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 (Rapid River) 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 7300 to 3000 feet. This plant is known to occur in the upper sections of the river but it may also occur in lower ones. Appendix K of the *Hells Canyon National Recreation Area Comprehensive Management Plan* (2003) identifies the plant as "sensitive," meaning that it is particularly susceptible to human activity. Huckleberry and Pacific yew are both plants highly favored by the Nez Perce: huckleberry as one of several sacred foods essential for ceremonial uses and as a staple food in the traditional Nez Perce diet; Pacific yew is a preferred species for making one of two kinds of traditional Nez Perce bows. Service berries are also valued as traditional food.¹⁵

As it did for the aboriginal Nimiipuu (Nez Perce), the Yáwwinma (Rapid River) corridor serves as a migration passageway

¹⁴ Appendix K, 2003: K-10.

¹⁵ The first anthropologist to comment at length on Nez Perce diet was probably Herbert Joseph Spinden in "The Nez Perce Indians," *American Anthropological Association Memoirs*, Volume 2, Part 3: 227, 204.

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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 (K-9).¹⁶ 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.¹⁷ 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. The area also has the potential to harbor two species of extraordinary importance to the Nez Perce who have helped reintroduce them to the wild: wolves (recently delisted in Idaho) and grizzly bears (still ESA listed as threatened).¹⁸ Wolves may already roam the corridor, although no pack is known to reside there yet. Grizzly bears populate areas within 200 miles of Yáwwinma (Rapid River).

In the Nez Perce language, the word for Rapid River is a place name, "Yáwwinma," from the s-class verb stem yáw, meaning "to be cold" or "cool" (Aoki, 1994: 939). Roughly translated into English, Yáwwinma becomes "Coldwater River" or "Cold Creek." In the Nez Perce language, there is no mistaking the meaning of Yáwwinma. It exclusively denotes that body of water now known as "Rapid River, which flows into the Little Salmon River above Riggins, Idaho T24N R1E."¹⁹ To aboriginal and historical speakers, the word probably carried with it the same cultural connotations that mark it today as referring to a salmon stream.²⁰ Today it is known regionally and nationally for having cold, "exceptionally pure, clear, and/or clean water".²¹ As typical of other streams in this area, spring snowmelt

¹⁶ Appendix K, 2003: K-9.

¹⁷ Species Fact Sheet, "Mountain Quail *Oreotyx pictus*." U.S. Wildlife Service, Oregon Fish and Wildlife Office: <http://www.fws.gov/oregonfwo/Species/Data/MountainQuail/>.

¹⁸ For the first time, the federal government contracted an Indian nation to manage the recovery of an endangered species in 1995 when it turned over management responsibility for wolves in Yellowstone and central Idaho to the Nez Perce Tribe. The tribe's responsibilities included educating the public about wolves as well as tracking and studying several dozen wild canids that had been released on national forest lands. Despite bitter opposition and frequent legal challenges, the wolves flourished under the Nez Perce's unique brand of wildlife management, which blends traditional wisdom and modern science.

¹⁹ Aoki, Haruo. *Nez Perce Dictionary* (Berkeley: University of California Press, 1994): 942.

²⁰ Thomas Gregory /Tatlo interview, February 2016.

²¹ Appendix K, 2003: K-8

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produces the highest flows on Yáwwinma (Rapid River). These high water levels are then followed by gradual drops during the summer, fall, and winter regimes. Stream gauging records, however, suggest that Yáwwinma (Rapid River) streamflows fluctuate more slowly than those of other streams in the area. Investigators presume such relative stability in flows results from "the geological characteristics of the watershed, which provide for higher infiltration and greater groundwater storage than most other local streams." Consequently, the river provides "an aquatic habitat that is closer to optimum for salmonids"²² than other area streams. Relatively higher summer and fall flows also translate into lower summer water temperatures than those summer temperatures typical of streams at similar elevations.

These lower temperatures at lower elevations also result from three other factors: (1) "confined canyon/shading provided by the canyon walls"; (3) healthy forest and shrub layers that create "high quality riparian" conditions; and (4) a narrow river corridor, which means "less surface area to heat" than more conventional streams. Recorded daily temperatures for Yáwwinma (Rapid River) fall easily within expected limits for a "natural stream" and "closer to the optimum for salmonid spawning and rearing than other local streams."²³ By all accounts, sediment yield and sediment concentration remain "low during most of the year." They can nevertheless become "occasionally" quite high "in response to storms affecting the lower portions of the watershed," which are composed of "highly erodible breaklands that are prone to mass failure and undercutting by the stream." Still, these "relatively infrequent" events are fleeting and "short-lived," and it should be noted that Forest Service investigators concluded that "bank stability was greater than 95 percent throughout Rapid River."²⁴

As the largest and best aquatic stronghold within the Little Salmon River system, the upper Yáwwinma (Rapid River) qualifies as a "key area for the survival and recovery"²⁵ of three fish species listed as threatened under the Endangered Species Act (ESA): all three are of great cultural significance to the Nez Perce people: (1) Snake River spring/summer Chinook salmon, (2) steelhead, and (3) bull trout (often confused with Dolly Varden and Arctic Char). Other indigenous species of fish that inhabit the river include redband rainbow trout, westslope cutthroat trout, mountain whitefish, sculpin, and dace. An

²² Ibid, K-8.

²³ Ibid, K-8,

²⁴ Ibid: K-7.

²⁵ Ibid, K-8.

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exotic species, eastern brook trout, was introduced to the river in the last century, and the species now has a small, naturally producing population. The Idaho giant salamander and the spotted frog also inhabit the watershed.

Passage of the Hells Canyon National Recreation Act in 1975 added roughly 27 miles of Rapid River to the national Wild and Scenic River (WSR) system: (1) the mainstem Rapid River, from its headwaters in the Seven Devils Mountains to the National Forest Boundary, and (2) the West Fork from Hells Canyon wilderness boundary downstream to its confluence with the mainstem. The entire designated river is classified as wild: that is, "free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted." Wild Rapid River (Yáwwinma) also qualifies as a roadless area ("numbers 0412922 and 0117922), 80% of which is managed to maintain its undeveloped character."²⁶

Although the upper river and the Seven Devils Mountains are no longer the exclusive domain of the Nez Perce Tribe, various Nez Perce families and individual tribal members continue to hunt there (primarily for elk and deer), to gather plants there (especially huckleberries and service berries), and to camp in their usual and accustomed places as they and their ancestors have done for an unknown number of centuries. At the highest elevations, these forays are limited to late spring, summer, and early fall for obvious reasons related to heavy snowfalls and inclement weather.

Without exception, the entire 27 miles of the upper Yáwwinma (Rapid River) 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 (Rapid River) 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

²⁶ Ibid, K-1.

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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."²⁷

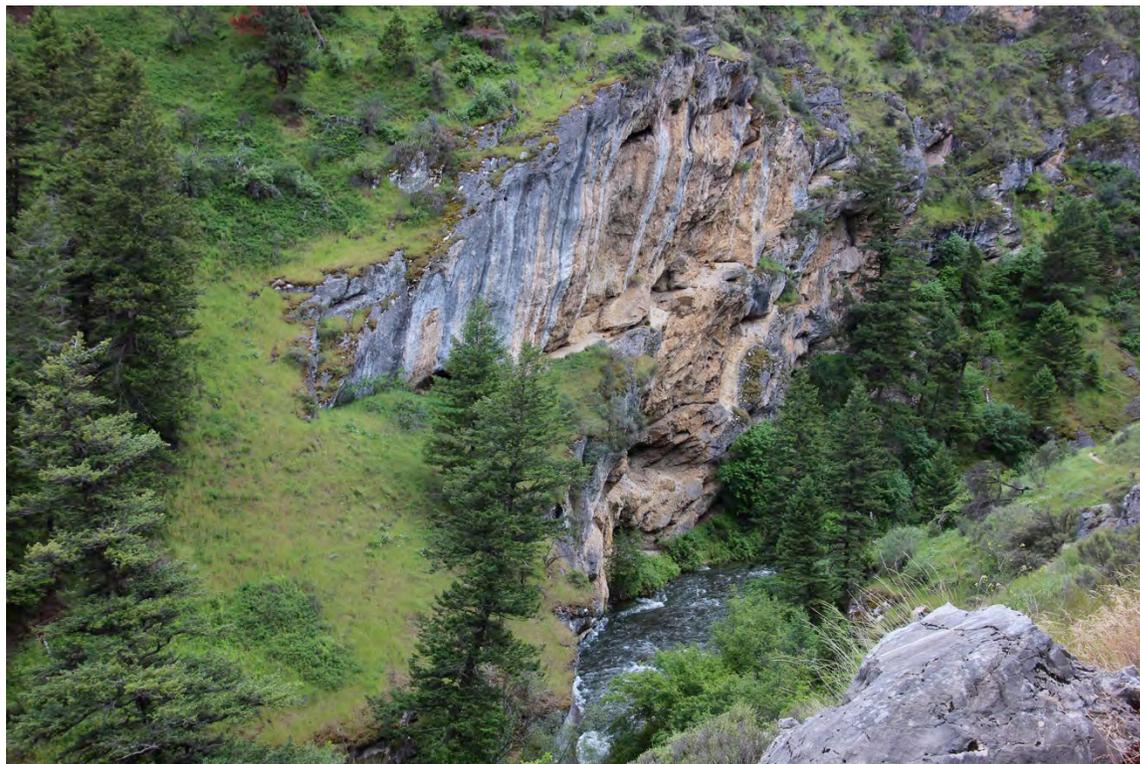


Figure 4. The Wild and Scenic upper Yáwwinma (Rapid River) as seen near the beginning of the Rapid River Trail. Photo by Jim Hepworth, May 2016.

The Lower River's Environmental Setting: Historic and Current Conditions

Although Nez Perce utilized the entire river corridor as they do today, it is possible and perhaps even probable that both the aboriginal and historic Nez Perce salmon fisheries on Yáwwinma (Rapid River) were concentrated on the lowest four miles of the river and that they were at their most intense—again, just as they are today—near Yáwwinma's confluence with the Little Salmon River. Whereas the terrain of the upper Yáwwinma corridor is characterized by steep gradients that generally limit viewsheds in the narrow canyon to interesting rock outcrops and the

²⁷ Ibid, K-3.

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diversity of the river's pools, cascades, and clear water, the terrain at the lower elevations of the river's last 3.5 miles remains relatively flat as the river makes its way along the terraces of the valley floor. The lower river might best be characterized by the various sets of rapids that gave it its English name, Rapid River. Until the last decades of the 19th century, these last few miles of riverine landscape consisted of meadows and marshes with ground too rocky to carry on much agricultural activity with exception of grazing. (To what extent the Nez Perce made use of these meadows as holding area for their famous horse herds in the 18th and 19th centuries is apparently unknown or known only to the Nez Perce.) The low elevation of the valley floor enables residents to enjoy a mild climate with temperatures now averaging annual highs of 65.3 degrees and lows of 41.3 degrees. The average rainfall is 16.88 inches, which is enough to provide some wild grasses for nearly year round grazing.²⁸



Figure 5. An open view of the lower Yáwwinma (Rapid River) below the fish hatchery as seen from Rapid River Road looking southwest. On the near bank, the river is missing its canopy of cottonwoods and alder, most likely due to a century of sheep and cattle grazing. To the left, White Bird Ridge retains its ancient shape. The Seven Devils Mountains occupy the background. Photo by Jim Hepworth, May 23, 2016.

²⁸ U.S. Climate Data, <http://www.usclimatedata.com/climate/riggins/idaho/united-states/usid0218>).

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At any rate, the gentle terrain of the lower Yáwwinma has probably always been more hospitable to human habitation on a seasonal basis than the rugged and precipitous terrain of the upper river with its more radical inclines in elevation that force the river into cascade/riffle complexes and pools, including a 500 foot high cascade/falls complex located about a quarter of a mile up the river's West Fork that is impassible to upstream fish migration. While the riverside trails on the upper Yáwwinma occasionally offer views of the craggy faces of the Seven Devils peaks in the distance, such views are generally uncommon and rare. Comparatively speaking, the last four miles of the river offer relatively "open" viewsheds of the small valley enclosed between dramatically inclined hillsides that rise sharply off the valley floor to elevations of 3500 feet or more on both sides of the river. From the valley floor, the open views of the surrounding hillsides remain much as they would have appeared in aboriginal times. The hillsides, covered year around in native bunch grass, generally retain the same shapes and unique landforms as they did 2,500 years ago.

Besides a hospitable riverine terrain and mild climate, there are other reasons as well to believe that the Nez Perce have always concentrated their seasonal Chinook fishery at Yáwwinma on the lowest few miles of the river and particularly on those traditional fishing stations nearest its confluence with the Little Salmon River. For one thing, like the Little Salmon River Yáwwinma was itself an important salmon fishery in aboriginal and historic times for at least three bands during their seasonal rounds: (1) the Gorge People of the Wallowa Band, (2) the Looking Glass Band, and (3) the White Bird Band.²⁹ For example, in his study, *Aboriginal Territory of the Nez Perce Indians*, Chalfont observes that the White Bird bands "often had their summer camp at Riggins," which is located a mere four miles from the mouth of Yáwwinma, and that the White Bird band "and other groups living on the Lower Salmon River" utilized the Little Salmon River area "for their main salmon catches."³⁰ In her examination of Nez Perce settlement patterns (1966), Madge Schwede located a prehistoric habitation site of unknown size and character at the "mouth of Rapid River on Little Salmon River, Sec. 32, T.24N. R.1E," which is the precise location of the present day Nez Perce Chinook fishery as well as the Tribe's

²⁹ Appendix K, 2003, K-2. See also Dan Landeen and Allen Pinkham, *Salmon and His People: Fish and Fishing in Nez Perce Culture* (Lewiston, Idaho: Confluence Press, 1999) 117.

³⁰ See Stuart Chalfont's *Aboriginal Territory of the Nez Perce Indians* (New York: Garland Publishing Company, 1974) 78.

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privately owned seasonal encampment grounds colloquially known as "Barter Town" and "Rapid River House" and collectively and formally known in the Nez Perce language as Yáwwinma. (In "Villages and Camp Settlements," Schwede labels this site number 258 and spells it *yawinma*.)³¹



Figure 6. Nez Perce fisherman James Black Eagle of Kamiah with his dipnet standing in the Gravy Hole, June 23, 2010. Jim Hepworth photo.

Still another reason the Nez Perce Chinook fishery has historically tended to congregate near the Yáwwinma's confluence with the Little Salmon River has to do with access to the fish themselves. Common knowledge among all serious fishermen reminds us that anadromous fish, especially salmon, tend to "stage" (or congregate) at the mouths of rivers, even small rivers the size of Yáwwinma and the Little Salmon. The mouth of any salmon river is predisposed to be a natural "hot spot." It is, after all, the

³¹ Schwede, Madge L. *An Ecological Study of Nez Perce Settlement Patterns*, Masters Thesis, (Pullman, Washington: Washington State University, 1966): 47. Deward Walker notes that "Individual villages were generally identified with small, lateral feeder streams that emptied into major tributaries" (*Handbook*, 425). The "Barter Town" property would thus seem to qualify as an ideal location for an aboriginal summer village, however small or large.

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first place on any given river where migrating salmon can be intercepted. Every individual fish that enters a river must do so at the river's mouth. At the very beginning of the spawning run, few fish (or no fish at all) will be present even in the best "holes" and "holding" and "resting" spots upstream from the river's mouth simply because it takes time for the fish to move from point A to point B. In very big rivers like the main Salmon, the fish may "stage" in the deepest holes near the mouths of its tributaries for days and weeks at time before circumstances motivate them to "run" upstream into their first and second order tributaries where they will build their redds and spawn in pairs, often in the same stretch of stream and on the same gravel beds where they were born. Lance Hebdon, the Endangered Species Act (ESA) Coordinator for the Idaho Department of Fish and Game who specializes in the study of wild salmon and steelhead, estimates that an average return of 2,000 adult Chinook salmon to Yáwwinma in historic times (pre-1805) is a reasonable assumption based on available facts.³² The chance to intercept hundreds of wild Chinook averaging somewhere between 10 and 25 pounds each, with fish frequently reaching weights of 45 or 50 pounds, would have easily drawn Nez Perce fishermen for many miles around in every direction to the mouth of Yáwwinma as soon as word got out that the fish had arrived.

Today, the "hot spot" nearest the confluence of Yáwwinma and the Little Salmon is known among Nez Perce fishermen as "The Gravy Hole" (See **Figure 6** above). "Gravy," of course, denotes the fat and juices that drip from cooking meat, and during Chinook season it is common to see Nez Perce people cooking or air-drying salmon nearby. In slang terms, "gravy" also refers to something advantageous or valuable that is received or obtained as a benefit beyond what is due or expected, which connotes the high esteem with which contemporary Nez Perce people hold the Chinook at Rapid River in an age in which their opportunities to fish for salmon have profoundly declined to the point of having reached (and hopefully passed) a state of crisis. And finally, in slang terms "gravy" also refers to profit or money easily attained as well as to money illegally or dishonestly acquired, a reference to the illegal trade in salmon at Yáwwinma conducted by non-Indians and Indians alike, which began at that unknown moment when the Yáwwinma Chinook fishery became monetized. Prior to that time, which began probably sometime in the late twentieth century, the Chinook taken at Yáwwinma by Nez Perce fishermen were rarely if ever traded for money. They could only be given away or exchanged for other

³² Lance Hebdon. "Appointment." Email message, February 16, 2016.

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traditional goods.³³ Indeed, beginning with the encroachment of the first non-Indians into the area after the 1877 war with the United States, particularly during the ranching eras and construction eras, the conditional integrity of the Yáwwinma Chinook fishery has suffered significant diminishment.

This diminishment in the fishery's conditional integrity can be directly traced to a number of factors, some of which are more important than others in terms of their adverse impact upon the unprotected lower river and the land around it as well as upon the fish themselves. The diminishment to the physical integrity of Yáwwinma perhaps began locally with the establishment of cattle and sheep ranches on the lower river in the late 19th century, but it continued with the construction of a federal highway through the Salmon River Mountains and the placement of the first bridge over Yáwwinma in 1926; these diminishments to the physical integrity of Yáwwinma were simultaneously accompanied by overfishing downriver from Riggins, Idaho, to the mouth of the Columbia by non-Indian "sport" and commercial fishermen throughout the nineteenth and twentieth centuries, overfishing on the Little Salmon River upstream from its confluence with Rapid River, the construction of hydroelectric dams on the lower Snake and Columbia Rivers commencing with Bonneville Dam in 1938 but proceeding to the completion of Lower Granite Dam in 1975. These adverse impacts and diminishments to the landscape and the wild Chinook fishery may have culminated in the construction of Idaho Power's Rapid River Fish Hatchery in 1964, the creation of two real estate subdivisions and the construction of dozens of houses and tiny "ranchettes" in 1972 and 1975, the rerouting of Rapid River Road (formerly known as Seven Devils Road), the placement of a bridge over Rapid River in 1978, and the replacement of the historic 1926 bridge over Rapid River on U.S. Highway 95 in 2004.

To accurately describe the physical integrity of Yáwwinma Chinook fishery today, we might start by describing and further comparing the historic and current conditions of the river and the fish themselves. In contrast to the estimated average return of 2,000 naturally spawning (i.e. wild) adult Chinook to

³³ Jason Higheagle Allen, who has fished commercially for salmon, suffered brief emotional breakdowns while explaining his views about "gifting" salmon and the sacred nature of fishing. Thomas Gregory, too, emphasized the gifting and reciprocal nature of the relationship between salmon and human beings throughout his interviews. In his video interview on May 6, 2016 in Lapwai, he commented specifically on the "greed" associated with poaching by non-Indians and overfishing by some tribal members at Rapid River. Self-regulation supplemented by monitors and headmen is the centuries-old Nez Perce tradition.

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Yáwwinma in historic times (prior to the arrival of Lewis and Clark on the Weippe Prairie in 1805), a mere 60 individual, naturally spawning adult Chinook returned to Yáwwinma two hundred years later in 2005.³⁴ Today, the upper Yáwwinma supports only a very sparse population of naturally spawning Chinook and even fewer wild steelhead. In fact, a return of 150 naturally spawning adult Chinook is counted as a success. What's more, genetically speaking, although the differences are minor and arguably benign, the adult Chinook that spawn in the upper reaches of Yáwwinma today are not an identical genetic match to the original fish who spawned there in aboriginal times.³⁵ An unknown degree of genetic mixing occurred in the early days of the hatchery. Current fisheries biologists have referred to the original run of Yáwwinma Chinook as "summer Chinook," which tend to spawn later than "spring Chinook," although the only true difference between them is the timing of their spawning runs. In general spring Chinook tend to spawn earlier (April to July) and to prefer larger rivers (the Columbia, the Snake, the Clearwater) than summer Chinook (late July to the end of October). In fact, in earlier times, the timing of the runs of both races overlapped. Regardless, naturally spawning Chinook are now restricted to the upper Yáwwinma above Rapid River Fish Hatchery. No known natural spawning whatsoever takes place in the lower river.³⁶

Why this should be so has everything to do with history of Idaho Power's construction of Rapid River Fish Hatchery, one of two of the most significant human developments to impact the condition of the landscape on the lower Yáwwinma in the last fifty years. The construction of the hatchery was a compulsory requirement mandated by the federal government as partial mitigation for the company's creation of the largest private hydroelectric dam complex in North America. Known as the Hells Canyon Complex, these three dams—Brownlee Dam (completed in 1959), Oxbow Dam (1961), and Hells Canyon Dam (1967)—destroyed forever the annual runs of millions of wild anadromous fish (Snake River spring and summer Chinook in particular) by permanently blocking access to their original spawning grounds

³⁴ Lance Hebdon. "Appointment." Email, October 20, 2015.

³⁵ Interview with Lance Hebdon, October 13, 2015. Hebdon refers to the aboriginal Chinook in both Rapid River and the Little Salmon River as "Summer Chinook." He and Idaho Power fisheries biologist Jim Chandler agree there were "probably" never any spring Chinook in either river until the 1960s, when Idaho Fish and Game personnel and Idaho Power crews trapped and transported spring Chinook broodstock to Rapid River Fish Hatchery from below Hells Canyon Dam.

³⁶ Interview with Ralph Steiner, Manager, Rapid River Fish Hatchery, March 2016.

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in southeastern Oregon and southern Idaho as far as away as Shoshone Falls in southern Idaho and Salmon Falls in Nevada.³⁷ The dams not only raised water temperatures and inundated crucial miles of spawning grounds behind the dams in Hells Canyon, they permanently and forever blocked access to hundreds more miles in spawning grounds in upstream tributaries to the main stem Snake River. In doing so, the dams also landlocked sturgeon and hastened the extirpation of Pacific Lamprey. (Dams previously built elsewhere had already extirpated Payette Lake sockeye salmon and Wallowa Lake sockeye.)



Figure 7. Hells Canyon Dam on the Snake River, the border between the states of Idaho and Oregon. Sam Bibee photo. July 8, 2007.

All three dams in the Hells Canyon Complex were built without fish ladders. They stand as a permanent barrier to hundreds of miles of once-prime spawning habitat in southern Idaho, southeastern Oregon, and northern Nevada.

In 1962, as planned partial compensation for these catastrophic losses of fish, just a year after the completion of Brownlee Dam and five years prior to the completion of Hells Canyon Dam (the last dam in the complex), Idaho Power purchased

³⁷ At 212 feet in height and with a rim over 1,000 feet in width, Shoshone Falls proved an obviously impassible barrier and the farthest inland reach for migratory sturgeon and spawning runs of Pacific salmon in the western United States. Yellowstone cutthroat are indigenous to the Snake River upstream but would qualify as exotic if introduced downstream. On a highway map, Shoshone Falls appear to be approximately 1,000 river miles from the mouth of the Columbia. The so-called “900 Mile Steelhead” and Chinook in the Salmon River system might travel slightly farther east to Stanley and the Pashimeroi but not in distance. Only the aboriginal Chinook and steelhead from Salmon Falls Creek in Nevada could possibly have traveled farther to spawn. Salmon Falls Creek is the first major tributary to enter downstream of Shoshone Falls. The 2000+ mile round trip that Pacific Salmon made to these waters in aboriginal and historic times is practically unrivaled anywhere in North America.

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fourteen acres on Rapid River from the Campbell Brothers Circle C Ranch of New Meadows. At the same time, they bought another twenty acres on the west side of river from author John Carrey.³⁸ Carrey notes that by 1960 the channel of the river had been moved from the west side of the meadow to the east side of the meadow and that Bill Smith, who came to the meadow in 1890, was the first to occupy the land on which the hatchery sits today. According to Carrey, Smith held the land "under squatter's rights" and employed the services of his nearest neighbors, "The Eddy Brothers and The Splawn's [sic]," to build a "large log corral for working horses and cattle," as well as "a log house, barn, and cellar."



Figure 8. Grover Meadow circa 1890 before it had acquired the name. Note that cattle (not sheep) are grazing in foreground. Two buildings (but no corral) are visible as well. A framed copy of this photo hangs in the entryway of the main office building of Idaho Power's Rapid River Fish Hatchery. The Rapid River Fish Hatchery now occupies this ground. The main channel of the river now flows on the opposite side of the valley.

³⁸ John Carrey is the principle author of *River of No Return* (Cambridge, Idaho: Backeddy Books, 2003) and *Snake River of Hells Canyon* (Cambridge, Idaho: Backeddy Books, 2003), both written with Cort Conley. The history of the hatchery recounted here, however, comes from Carrey's personal testimony typed on a standard sheet of paper and later put into a glass frame that now hangs in the foyer of the main hatchery office. The succession of the property's ownership that Carrey recounts was later generally confirmed in so far as possible back to an entry in a plat book labeled "USA" in cursive writing.

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And thus the first ranch on the hatchery property was established and occupied by Smith, who sold the ranch to Ben and Nelson Grover around the turn of the century. (Meanwhile, the Eddy Brothers and Splawns, sixteen of them in all, had been arrested, convicted, and sentenced to prison in 1892 for making counterfeit "five, ten, and twenty dollar gold pieces.") By bringing sheep into the area, the Grover Brothers also launched a range war with the cattlemen, which the sheepmen apparently won, since the place was used as lambing camp until the 1930s when Campbell brothers purchased it from Jay Rhodes. To Until then, it was known primarily as Grover Meadow. Idaho Power purchased the land in question in 1962 and completed the hatchery in 1964.

It is impossible to calculate the degree to which intensive livestock grazing adversely impacted the naturally spawning (wild) populations of now threatened species (Chinook, steelhead, bull trout) at Rapid River from the 1890s to 1964. Sheep and cattle grazing are notoriously incompatible with maintaining salmon habitat. Certainly, wild salmon and steelhead stocks throughout the entire river had already suffered dramatic declines by the 1950s.³⁹ Dams, hatchery construction, commercial fishing, poaching, sport fishing, and loss of habitat due to grazing were all contributing factors that led to the complete disappearance of spawning beds on the lower river after 1964.⁴⁰

³⁹ Lance Hebdon, "Appointment. Email, February 16, 2016. See also, for example, the graph on page 2 of Leonard Fulton's Special Scientific Report—Fisheries No. 571, *Spawning Areas and Abundance of Chinook Salmon (*Oncorhynchus tshawytscha*) in the Columbia River Basin* (Washington, D.C.: United States Fish and Wildlife Service, 1968). The graph visually records the dramatic decline in the Columbia River salmon catch between 1870 and 1962 from a high of 19.5 million kilograms in 1883 to a low around 2 million kilograms in 1962—i.e. from about 43 million pounds to less than 4.5 million pounds. In less than a century, the Columbia runs reached a state of crisis.

⁴⁰ Ibid. Hebdon attached to his email "A Survey of the Spring Chinook Salmon Spawning Utilization of Idaho Streams" completed by Forrest R. Hauk for the Idaho Fish and Game Department. The survey reported the presence of 69 salmon "nests" in the "lower end of the stream through the ranch area" and only three "nests" above the present location of the hatchery, all of three above the ranch area were near the mouth of the West Fork "below the falls" (3). Hebdon estimated production of at least 400 chinook" for Rapid River in the "mid-1950s pre-hatchery" era. A remnant wild Chinook population still prevailed in the "lower 24-mile section" of the Little Salmon River as indicated by 51 "spawning beds," with the reporter noting the scarcity of suitable gravels for spawning and the prevalence of medium to large rubble on the streambed. Whether or not the barrier falls near Smoky Boulder Road was then passable to salmon is uncertain. Anecdotal evidence from this period from non-Indian residents of Meadows Valley suggests Chinook were once present there in "living memory." By the time of the survey,

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The evolution of Grover Meadows from its undeveloped state prior to 1805 to its developed state as a ranch in the 1890s and from ranch into its final transformation as a privately owned corporate property in 1964 typifies the process of land acquisition on the lower river that preceded the loss of spawning beds for wild Chinook and steelhead. Although the land is no longer in the public domain or classified as open range, the effects of grazing are visible even to an untrained eye. Gone are the native grasses and most of the native plants that defined the meadow in the play of light and wind. True: cattle, sheep, and goats are now restricted to fenced pastures and to small lots on private ground. These fences prevent livestock from destroying the riparian zone along the river by overrunning and trampling banks and overgrazing forbs and grasses as they have in the past. Still, the rocky pasture ground is often bare or nearly bare in many places. Some pastures appear to be merely open feedlots rather than traditional grazing areas where the number of animals is limited to what the land can support. To what extent, if any, pasture irrigation has adversely affected spawning in the lower river by altering the river's ability to maintain minimum stream flows is also unknown. The ranchers that John Carrey cites who moved the river from the west side of Grover Meadow to the east side were decidedly not the last to relocate this small river to suit their personal desires. Indeed, the river now flows on both sides of Idaho Power's Rapid River Hatchery, which is located about three miles straight up Rapid River Road in Township 23 North, Idaho County, Idaho, and about four winding river miles from the river's mouth next to Highway 95 in Township 24.

Although owned and financed by Idaho Power, the Idaho Department of Fish and Game (IDFG) operates the hatchery, which was originally intended to artificially propagate spring Chinook Salmon, fall Chinook salmon, and steelhead.⁴¹ Some mixing of wild Rapid Chinook brood stocks with wild Snake River Chinook brood stocks captured below Hells Canyon Dam and transferred to the hatchery took place in the hatchery's first years of operation.

however, they had vanished. It remains uncertain when, precisely, natural spawning in the lower few miles of Rapid River ceased, but the habitat retains its ability to support re-colonization by non-hatchery fish. The term "Spring Chinook" in the title of the report appears to be a misnomer.

⁴¹ The plan to use Rapid River Hatchery as an experimental facility for the rearing of two stocks of Chinook and the propagation of steelhead may have simply succumbed to the unintended genetic mixing of wild summer Rapid River Chinook and Snake River spring Chinook from below Hells Canyon and to the completion of Idaho Power's Niagara Springs (1966) and Pahsimeroi (1967) hatcheries in southern Idaho. Both are devoted exclusively to steelhead propagation.

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It was not until the late 1960s that IDFG personnel began clipping the adipose fins of all hatchery reared Chinook in order to distinguish them from the "wild" Chinook that spawned naturally in the upper Yáwwinma. According to the hatchery's web page, the role and mission of Idaho Power's Rapid River Fish Hatchery is currently to produce approximately 3 million juvenile spring Chinook salmon ("smolts") a year. Yáwwinma (Rapid River) provides water for egg incubation, twelve early-rearing concrete raceways, six final-rearing ponds, one concrete holding pond, and one earthen holding pond for returning adult Chinook broodstock.

Hatchery-spawned Chinook spend two years in the rearing facilities before reaching a length of four to six inches, at which point the majority of the juveniles are released directly into Yáwwinma for their 600 mile journey to the Pacific. Anywhere from one to three years later, less than 1% percent of those same fish return from the Pacific to travel 600 miles back to Yáwwinma as adults weighing an average somewhere between ten and twenty pounds.⁴² To complete their arduous 1200 mile round trip, each Chinook must survive a gauntlet of freshwater predators that include eagles, hawks, herons, ospreys, kingfishers, gulls, mink, river otters, sea otters, sea lions, and bears, not to mention predatory freshwater fish like walleye and northern pike minnows. Neither are Chinook salmon safe once they reach the ocean where they are beset with additional predators. No animal predator, of course, is more efficient or more lethal to salmon than human beings, especially commercial fishermen who ply the rivers and oceans with nets. Four main stem dams on the lower Snake River and four main stem dams on the lower Columbia also add significantly to Chinook mortality rates, especially juveniles on their downstream migration.

Regardless, about a mile and a half downstream from Rapid River Fish Hatchery, the hatchery's fish trap prevents all returning adult Chinook salmon, including naturally spawning Chinook bound for the upper Yáwwinma, from migrating farther upstream without human assistance when trapping operations are in progress. During this time, the captured adult Chinook with clipped adipose fins are loaded into a truck with a 1,000 gallon tank and transported to holding ponds at the hatchery. Like bull trout and wild steelhead, wild Chinook with their adipose fins intact are separated from the hatchery adults and released directly into the river above the fish trap to spawn in the

⁴² Interview with hatchery manager Ralph Steiner, March 4, 2016. Steiner pointed out that a 1% return on 3 million juvenile fish would net 30,000,000 harvestable Chinook, which would easily break the record return of 17,000 adults.

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wild. When trapping operations are idle, the hatchery's fish trap, which is actually a velocity barrier, allows unimpeded passage for all species of fish, anadromous and residents alike. This feature is particularly helpful to the river's fluvial population of ESA threatened bull trout who migrate to Yáwwinma via the Little Salmon River from their primary residences in the main stem Salmon River.



Figure 9. Idaho Department of Fish and Game personnel transferring ESA-listed bull trout from the hatchery fish trap back into the river. Bull trout are highly predacious and tend to follow the Chinook run as it migrates upstream. Photo by Jim Hepworth, June 13, 2016.

Returns of artificially spawned hatchery Chinook to Yáwwinma (Rapid River) since the hatchery's construction have fluctuated dramatically from a low of 200 to a unique high of 17,000. The scarcity of both wild and hatchery adults available for harvest led to the complete closure of sport fishing on the Little Salmon River in 1975, 1976, 1979, 1980, 1981, 1982, 1983, 1984, 1989, 1991, 1994, 1995, 1996, 1999,⁴³ and, more importantly, to vigilantism waged against tribal fishermen on both Yáwwinma (Rapid River) and the Little Salmon rivers throughout the late 1960's through the early 1980s. As

⁴³ "Chinook sport harvest in Little Salmon River," n.d. Email attachment from Lance Hebdon February 2016.

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documented in detail elsewhere in this document, this scarcity of fish available for harvest led to a series of armed confrontations between Nez Perce tribal fishermen and Idaho State Police and Idaho Fish and Game officers that took place in 1979 and climaxed in 1980.⁴⁴ Many of the conflicts occurred on hatchery grounds and at the hatchery's fish trap. All of them took place on the lower Yáwwinma where tribal fishermen staged peaceful protests and "fish-ins" to exercise their treaty rights in the face of the State's blatant overreach of power. One result of the conflict was the dismissal of all charges against thirty-six Nez Perce defendants charged with "violating Idaho Fish and Game Department regulations relative to fishing for salmon on Rapid River during the summer of 1980." Another was the State of Idaho's forced compliance to develop an ongoing forum with the Nez Perce Tribe whereby the Tribe and the State participate together to determine the rule making processes for salmon fishing at Yáwwinma (Rapid River) and elsewhere. Some tribal fishermen⁴⁵ believe Judge Reinhard's 1980 decision was also directly responsible for the creation and expansion of the Nez Perce Tribe's Department of Fisheries Resource Management, which now operates with 200 employees on an annual budget of \$20 million.

Any narrative description of the lower Yáwwinma attempting to provide complete accuracy and establish a contextual setting for the TCP must include, in addition to a description of the hatchery, a second equally conspicuous feature of the landscape imposed upon it by non-Indians. On December 22, 1972, dozens of acres of prime salmon fishing and camping grounds along the lower Yáwwinma that were formerly the exclusive domain of the Nez Perce prior to 1863 officially became a housing tract known today as the Rapid River Subdivision. A second subdivision, contiguous with the first, was added in 1975. River terrace land that was formerly marshy meadows, then pasture and

⁴⁴ Some Nez Perce continue to refer to the 20th century confrontation between tribal fishermen and their families and the State as "The Second Nez Perce War." They like to remind non-Indians that even the 1877 war was waged in part to defend their freedom to fish and hunt in their homeland. From the time they met the Corps of Discovery in 1805 until 1877, the Nez Perce enjoyed a reputation as peacemakers and diplomats among other tribes and with non-Indians alike. To be sure, they had traditional enemies like the Blackfeet and The Shoshone-Bannocks (who sometimes attempted to encroach upon Rapid River). Walker notes that "Nez Perce was rapidly becoming the language of trade and diplomacy throughout the region" when Lewis and Clark arrived and that "the Cayuse language was already being lost in favor of Nez Perce" (*Handbook*, 425).

⁴⁵ Interview with Josiah Blackeagle Pinkham, Nez Perce fisherman and ethnographer, May 6, 2016.

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ranchland, with easy and hospitable access to the river and camping areas for Nez Perce fishermen and their families, became fractionalized and inhospitable. Private owners of this land, which until then had been limited to a few people, suddenly multiplied by scores. First forty-three lots (1972, Vogel song Subdivision No. 1) and then another twenty-seven additional lots (1975, Vogel son Subdivision 2) were sold to individuals, most of whom placed mobile homes on their lots or eventually constructed single family dwellings.⁴⁶ Homes in housing subdivisions, of course, also require private driveways, fences, sheds, and outbuildings along the with the subdivision's various streets, lanes, and cul de sacs. And, of course, wherever possible, lot owners built as close to the river's edge as legal restrictions would allow. In fact, although eight "setbacks" occur, all twenty-seven lots in Subdivision No. 2 can probably be described as "riverfront." The State of Idaho grants private ownership rights to these riverfront landholders all the way to the middle of the river, although it also (paradoxically) allows non-Indian sport fishermen to trespass the property below the river's high water marks for the purposes of recreational angling. Perhaps needless to say, established case law permits Nez Perce Tribal fishermen to access the river at any point along its meander below or above Rapid River Hatchery. Consequently, in Subdivision No. 2 the foot trails of Nez Perce fishermen follow and crisscross the river, which is bounded on its southeastern bank by a mountainside (White Bird Ridge) angling upwards at 45 degrees to an elevation of approximately 3200 feet at its highest point. Many native plants in this riparian zone vanished long ago. Yet at least in places, even in the subdivisions and all along the lower river's course, riverbanks retain healthy remnants of the natural canopy of black cottonwood, mountain alder, willow, serviceberry, chokecherry, and elderberry. Exotic willows are also common. Faunal presence occurs along the river in the subdivision, as it does throughout the lower Yáwwinma terrain, in the form of errant white tail deer, raccoons, skunks, porcupines, quail, and songbirds. Today, vigilante action and tensions between Nez Perce fishermen and non-Indian subdivision landowners appear to be on the wane from their climax in the mid-1980s and early 1990s when some Nez Perce elders can recall being shot at and physically threatened.

⁴⁶ This very brief history of Rapid River Subdivisions No. 1 and No. 2 is based on a visit to the Idaho County Assessor's Office in Grangeville, Idaho, in May of 2015 and on various telephone conversations with the Idaho County Assessor James Zenner and Clerk Caryl Frei beginning in January 2016. They also provided information regarding the location and history of the Tribe's Rapid River House and Barter Town properties.

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Recent interviews with tribal fishermen reveal that while tensions have eased significantly, verbal harassment and occasional attempts by property owners to "fence out" Nez Perce fishermen nevertheless endure. The tribe's purchase of a total of 6.172 acres of private property on the lower river below the two subdivisions has doubtless helped to the ease the remaining hostilities between Indians and non-Indians at Yáwwinma (Rapid River), but it has neither ended nor even precluded them by much.

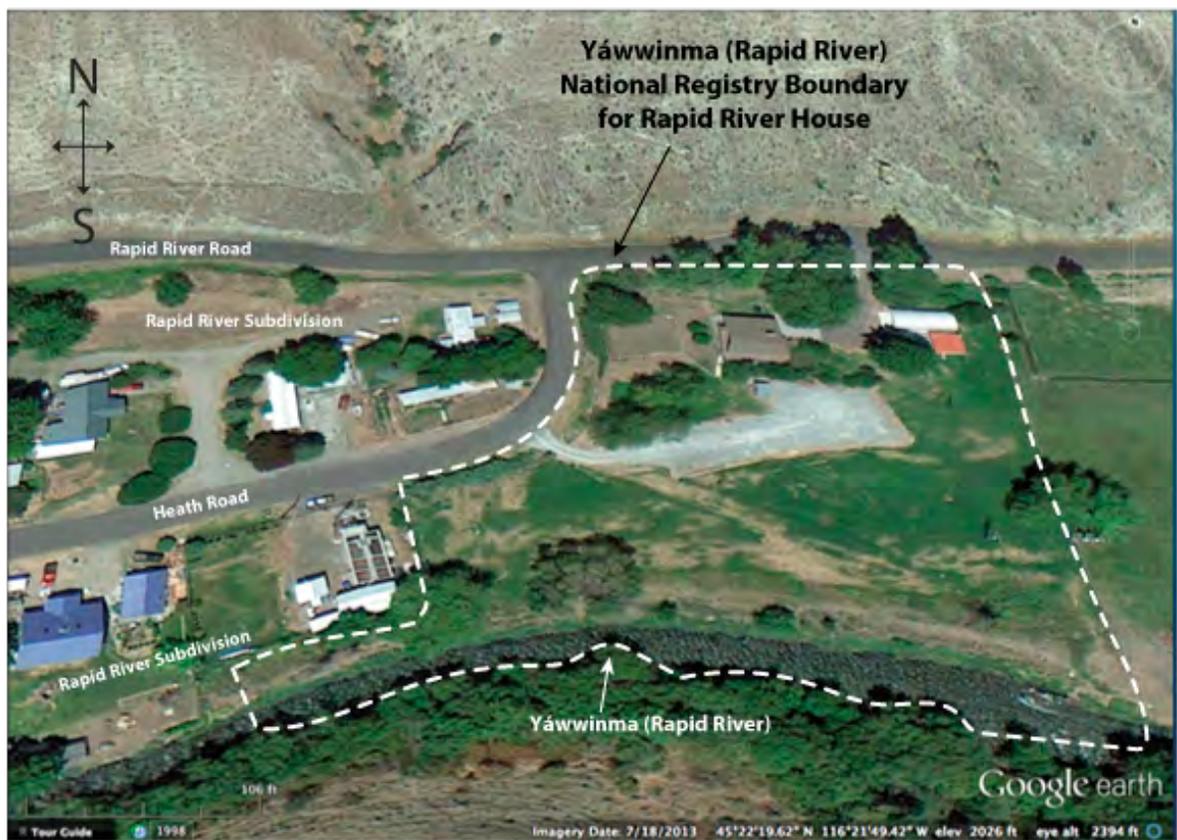


Figure 10. Two young tribal members attempt to gaff a Chinook in the Rapid River Subdivision. Chinook fishing in Rapid River is off limits to homeowners. Photo by Jim Hepworth, June 11, 2016.

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Rapid River House (2.832 acres)



Imagery Date 7/18/2013
23 Heath Dr, Riggins, ID 83549, USA
Latitude: 45.372117 | Longitude: -116.363728
Elevation: 2026 ft

Figure 11. The property at Rapid River House as seen in a Google Earth Screenshot modified by Jim Hepworth and Brian Kolstad, June 14, 2016. On Sunday, June 12, 2016, about twenty Nez Perce families were camped here, close to a hundred people in all, counting children. Nez Perce people have been camping and fishing in this tiny valley for thousands of years. Notice that the property borders two Rapid River subdivisions separated by Heath Road. The parking lot and three non-historical buildings (a house, domed shop, and red-roofed shed) are visible in the northeast corner of the property. Idaho law gives property owners along non-navigable rivers ownership of the stream bed to the middle of the river. Treaties, however, are the supreme law of the United States and permit the Nez Perce to access the river and the fish over private property.

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The western boundary of tribe's most recently acquired piece of private property, informally known to tribal members as "Rapid River House," abuts the eastern boundary of The Rapid River Subdivision at Heath Road. (As previously stated, the precise geographical location is Township 24N R1E Section 32 of Idaho County, Idaho.) The tribe prefers this property to be commonly accessed by automobile by traveling west for approximately half a mile after turning onto Rapid River Road from U.S. Highway 95. A left turn onto Heath Road from Rapid River Road and an immediate left turn off Heath Road lead directly to the tribe's parking lot through an opening in a chain-linked fence. Entrance to the parking lot is marked by a large white sign that reads in black capital letters: "THE NEZ PERCE TRIBE IS NOT RESPONSIBLE FOR LOST OR STOLEN ITEMS OR STRANDED TRAVELERS." Immediately below these words, the sign is imprinted with the tribe's logo, and below the logo (an image of Chief Joseph framed by two concentric circles) in small capital letters the sign reads, "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.

Two white signs fastened to a single post also easily identify the parking lot as tribal property. The first sign reads (in black capital letters separated by the tribal logo): PUBLIC PARKING/ (logo)/ PLEASE/ DO NOT PARK ON/ THE GRASS. The second sign reads in identical letters: ALCOHOL/ AND DRUGS/ (logo) / ARE/ PROHIBITED. Several parking spot barriers made of small logs border the gravel parking lot, which covers a generous open space of bare, level ground. Beyond the parking lot south toward the river lies a large open field of grass kept intentionally short by frequent cuttings but scattered in places near the river with stone fire rings of recent origin. Beyond the grass, a slight incline marks the river's nearest bank, which has been mostly shorn of trees and bushes by previous owners and invaded by exotic species, including the pernicious star thistle. Unlike the near bank, the far bank of the river is populated with young cottonwoods, alders, and some native bunch grass.

In the opposite direction, north of the parking lot, sit three non-historic buildings: (1) a brick house with an attached

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double garage and cement pad whose back yard immediately south of the house is overgrown with lilac and yellow rose bushes; (2) a small open shed, unused, 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. The house remains unoccupied twelve months of the year and is a non-contributing resource. So are the shop and the shed. Shade trees and fruit trees surround all three buildings—Walnut, elm, maple, blue fir, apple, peach, cherry. The shade trees line both Rapid River Road and each side of the private driveway. The private driveway is marked by the presence of a grey metal postal box with the address 143 Rapid River Rd printed in black on it side and a tribal sign that reads, "STAFF ENTRANCE / ONLY (logo) PLEASE USE / NEXT ENTRANCE. In so far as they provide welcome shelter from the hot sun during the annual Chinook fishing season, the trees surrounding the buildings are a contributing resource to the TCP.

The Nez Perce Tribe purchased these 2.832 acres of private property, which are legally classified as two separate but adjacent parcels held under a single Warranty Deed, in 2010.⁴⁷ Despite its close proximity to a rural subdivision, the landscape's setting includes views of natural landforms, breezes from off the river, clear blue skies 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 significance of the site. They help convey a sense of continuity and connection to the first Nimiipu (Nez Perce) and a shared reverence for Chinook salmon, not to mention a whole catalog of other cultural beliefs and traditional lifeways. The river and the steep hills that surround the lower Yáwwinma (Rapid River) 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 (Rapid River) 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.

⁴⁷ Acherman, Kathy. "RE: Phone Conversation." Email from Idaho County Clerk, April 14, 2016. The deed was recorded on June 21, 1010.

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White tail deer and California quail roam the property year round. American kestrels hunt the property in the spring, summer, and fall, as do red-tailed hawks, bats, swifts, and owls. These and other animals also contribute visual and auditory elements to the general ambiance of peace and solitude that pervade the property. The variety of fishes populating the stretch of river running through the property is typical of the entire lower river whose conditional integrity has remained intact despite the adverse impacts to the surrounding landscape throughout the late historical period. In addition to the transient presence of migratory Chinook, steelhead, and bull trout, the stretch of river forming this property's southernmost border hosts resident rainbow trout, whitefish, sculpin, and dace.

Yáwwinma (Rapid River) and its fish provide Nez Perce people with visual reminders of multiple stories in their oral tradition like "How Coyote Broke the Fish Dam at Celilo," "Ant and Yellow Jacket," "How Coyote Roasted Salmon," "Salmon and the Maiden," "How Eel Lost His Bones," and "Sucker and White Fish."⁴⁸ In the versions of "A Meeting Between Creator and the Animals" told by the late Elmer Crow, Thomas Gregory, Josiah Pinkham, and others, "Chinook Salmon is the first to raise his fin and volunteer to sacrifice himself" in order to feed the nearly helpless "New People [human beings] who are coming."⁴⁹ These stories and others still retain their power to teach and delight Nez Perce youngsters and elders alike when they gather on this property for the annual Rapid River Youth Salmon Camp each June. The stories emphasize two periods of significance for the Yáwwinma (Rapid River) TCP. The creation stories focus upon the mythic time before the arrival of human beings (Nimiipu), whereas other traditional stories in the tribe's oral tradition reference a historical period that begins considerably before the arrival of Lewis and Clark. Although funding has been precarious, the camp, which is offered free of charge to tribal youths in their sub-teens and older, is now in its fifth

⁴⁸ This list is only a few of the stories Thomas Gregory spoke of in connection with the youth camp during three hours of interview on February 12, 2016. Landeen and Pinkham (1999) have made the only comprehensive effort to gather all extant Nez Perce stories related to fishing from the tribe's oral tradition.

⁴⁹ Josiah Blackeagle Pinkham and Thomas Gregory both referred to Salmon being the "first to raise his fin" whenever the story came up during interviews. A video of the late Elmer Crow appears on the Tribe's Department of Fisheries Management website <<http://www.nptfisheries.org/Resources/SalmonCulture.aspx>>. The version of the story in Landeen and Pinkham names the animal character of Deer as the first to volunteer to sacrifice his body as food the "new" people.

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consecutive year. Camping and fishing gear is also provided on as needed basis along with meals and transportation to and from camp so long as parents and guardians sign consent forms. So far, No electronic items—cell phones, laptops, Ipads, Ipods—have ever been allowed at camp.

During the first year, "experts" from several departments within the Nez Perce Tribe instructed youngsters ten years and older in each of the following subject areas: the oral tradition and "traditional values in regard to fishing";⁵⁰ "fish species and the environment" (including habitat requirements for sustaining water quality); "different types" of traditional "fishing gear (including nets, gaff, and spear)"; "Nez Perce language"; fishing "methods and techniques"; and "Processing, curing, and preserving fish." Once students had finished their assignments and completed "all mentor fishing station demonstrations," camp organizers then asked adult tribal fishermen to "donate a day" of their own fishing at Rapid River, along with their cultural knowledge and skills, to "Niimiipuu youth." (Of course, some of these encounters between particular

⁵⁰ The list of subjects comes from the Facebook page of the Nez Perce Tribe Department of Fisheries Resource accessed February 7, 2016
<<https://www.facebook.com/NPTDFRM/posts/347231345403652>>.

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Figure 12. Summer 2016 Rapid River Youth Salmon Campers pose with the Walker Brothers on the river. The boys range in age from ten to fourteen. The boys made their own spears and fished all day and much of the previous night. Photo by Jim Hepworth, June 11, 2016.

campers and elders were prearranged.) Young campers were also offered the chance to share what they have learned with the volunteer mentors. Camps generally run no longer than four or five days. Although students must provide their own personal and hygiene items, the tribe provides all transportation to and from the camp, all daytime meals, all camping gear, and all fishing gear.

Jenny Hawker, a single mother and an undergraduate student at the University of Idaho, lavishly praised the camp and its instructors. "It made a huge difference for my son," she said during an informal interview in August of 2015. "I think it's especially important for boys whose fathers and grandfathers can't teach them to fish." She pointed out that "not all [Nez Perce] children come from traditional families," i.e. families that fish. Even in traditional Nez Perce families, she reflected, "sometimes" elders are in short supply. "And a boy's first fish is a big deal," she said, noting that "salmon give up

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their lives in order for people to live" and that custom and tradition usually dictate that the boy give up his first fish to "someone else." That "someone else," she said, is often a relative "like an uncle or a grandparent," but it can also be someone who is "unable to fish for themselves." Nez Perce families often celebrate a boy's "first salmon" with a special dinner, not just to honor the boy, she added, but to honor the fish.

Erik Holt, former chairman of the Nez Perce Tribe Fish and Wildlife Commission, helped to organize the first two camps (2012, 2013) with help from Thomas Gregory, whose primary responsibility is teaching Nez Perce language. Much to his surprise, Gregory has assumed the bulk of the burden since then. "We're kind of victims of our own success," he said in February of 2016. "We started out with twenty-seven kids the first year and funding that year came pretty easily. Then it grew to sixty kids the next year, and that's too many. The kids looked forward to camp all through the school year, and some of them were just too little. So we had to make some rules. One rule is that you have to be able to stand in the river, you have to be physically strong enough to fish." Campers no longer commute but spend the entire time on-site. "We camp the whole time," Gregory said, "It gives our young participants a more complete experience. We set up teepees or use makeshift tarps, whatever is necessary for them to sleep dry and warm. We cook over the fire, on little stoves. In 2014 we took them to Rapid River and Red River. They loved it."

Both Hawker and Gregory commented that there is no particular age universally acknowledged as the "right" or "proper" time for someone to learn to fish for salmon. "My brother Mark Wilson was nine years old when he gaffed a forty-two pound Chinook on the Rapid River," Simone Wilson recalled for the authors of *Salmon and His People: Fish and Fishing in Nez Perce Culture*. "The fish pulled him into the water, and he was swept downstream quite a ways before he was able to get to shore. He held onto the gaff the whole time and the fish was almost as big as he was."⁵¹ Jaime Pinkham, who comes from a highly regarded traditional family on the reservation and who has served on the boards of The Wilderness Society and American Rivers, did not learn to fish with traditional gear until he was an adult. "I had always heard about Rapid River and how it had been at the heart of the controversy that really helped propel the fishing rights issues of the Tribe into modern times," Jaime

⁵¹ Landeen and Pinkham, 1999: 120.

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began.⁵² "In 1990 I went to Rapid River with the idea of observing salmon being caught and taking photographs." While Jaime was taking pictures, one of the tribal technicians commented that "to really experience Rapid River" Jaime needed to "get out in the water and catch a salmon." The technician offered to loan Jaime his dip net. "I'll always remember that experience," Jaime quipped. "It was my first time ever dipnetting a salmon and when I finally caught one—I can't describe how exhilarating that was. I had previously caught salmon on a hook and line in Alaska, but this was totally different. This was how it was meant to be!"



Figure 13. Nez Perce tribal member Victoria Mitchell completes a sweep with her dipnet on the lower Yáwwinma (Rapid River), not far from the encampment at Rapid River House. Photo by Jim Hepworth, June 11, 2016.

Because of its close proximity to reservation towns like Lapwai (100 miles) and Kamiah (75 miles), Yáwwinma (Rapid River) is

⁵² Ibid, 118.

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probably the most easily accessible traditional Nez Perce Chinook fishery. It is also frequently among the first fisheries to open for ceremonial and subsistence fishing every spring. Given its accessibility, the timing of the run, and the increased numbers of Chinook returning to the river since its pre-hatchery days, Yáwwinma may be the place where a majority of young Nez Percés have taken their first salmon over the course of the last fifty years. Regardless, plenty of education and mentoring has always taken place at Yáwwinma. Families and individual tribal members of all band affiliations come from throughout the region to camp and fish there during the annual Chinook season and to renew their special bond to the place. As Thomas Gregory put it in a recent interview, "For some Nez Perce, Rapid River is the *only* place they get to fish." Of course, tribal members continue to fish the Clearwater, the Columbia, the Lochsa, the Selway, the Imnaha, the Grand Ronde, the Snake, and their tributaries, but the proximity of Yáwwinma, the relatively small size of the river, and the comparatively large number of returning hatchery fish each year make Rapid River arguably the most important salmon stream for non-commercial Nez Perce fishermen and their families who depend on it as a ceremonial and subsistence fishery. The river and the grounds of Rapid River House now literally belong to the Nez Perce Tribe, but traditional Nez Perce people would say just the opposite: *we belong to Yáwwinma*

Barter Town (3.35 Acres)

Barter Town is a prominent landscape of 3.35 acres adjacent to a series of rapids and plunge pools created by Yáwwinma (Rapid River) on its final descent to its confluence with the Little Salmon River located roughly 150 yards from Barter Town's northernmost legal boundary and just across the U.S. Highway 95 bridge. The Nez Perce Tribe purchased the property in 1993. It's legal description is T24N R1E Sec 32. Tribal fishermen can access the river from the Barter Town property by means of well-travelled trails on both riverbanks where they must carefully and cautiously descend steep (15-20 foot) inclines in order to spear, dipnet, tail, and gaff Chinook salmon from the tops of the boulders that line the onrushing channel at water level. Barter Town is part of the Nez Perce Fishing Access TCP previously assigned Smithsonian site number 101H2784. This parcel 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).

The river, which is the primary contributing resource to

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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 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. U.S. Highway 95 and the U.S. Highway 95 Bridge border the property's easternmost edge. Rapid River Road and the Rapid River Road Bridge bound the property's southwestern line. Both bridges abut the property and provide precarious, cramped, dark, almost subterranean access to the river for Nez Perce fishermen. Elsewhere, foot trails run parallel to the river on both sides.

Automobile access to Barter Town is from Highway 95 and prominently marked with a painted white arrow curving west on the surface of the highway's turning lane when approaching Barter Town from the north (see **Figure 14**). The arrow points to the entry way, which is also defined by an obvious opening between the end of the highway barrier that forms the easternmost boundary of the property and the fence that parallels Rapid River Road to create Barter Town's southern boundary. The terrain of Barter Town is rocky and uneven, which makes camping difficult. Upon breaching the short driveway entrance on level terrain, travelers almost immediately confront a raised berm of ground that appears to divide the property in half and is high enough to prevent any view of the river from the east at ground level. A small flat, wide enough to accommodate two vehicles, runs roughly northeast and southwest for length of the property. Barter Town is so named for the intense trade in freshly caught salmon that takes place on or near this flat during the tribe's annual spring Chinook season along with various other activities. According to Nez Perce fishermen, this contemporary place name also makes a direct allusion to the place of the same name in the 1985 post-apocalyptic film *Mad Max Beyond the Thunder Dome* starring Mel

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Gibson and Tina Turner.⁵³ In addition to being a descriptive name, Barter Town is also a prime example of Nez Perce humor and the dynamic vitality of the Nez Perce oral tradition.

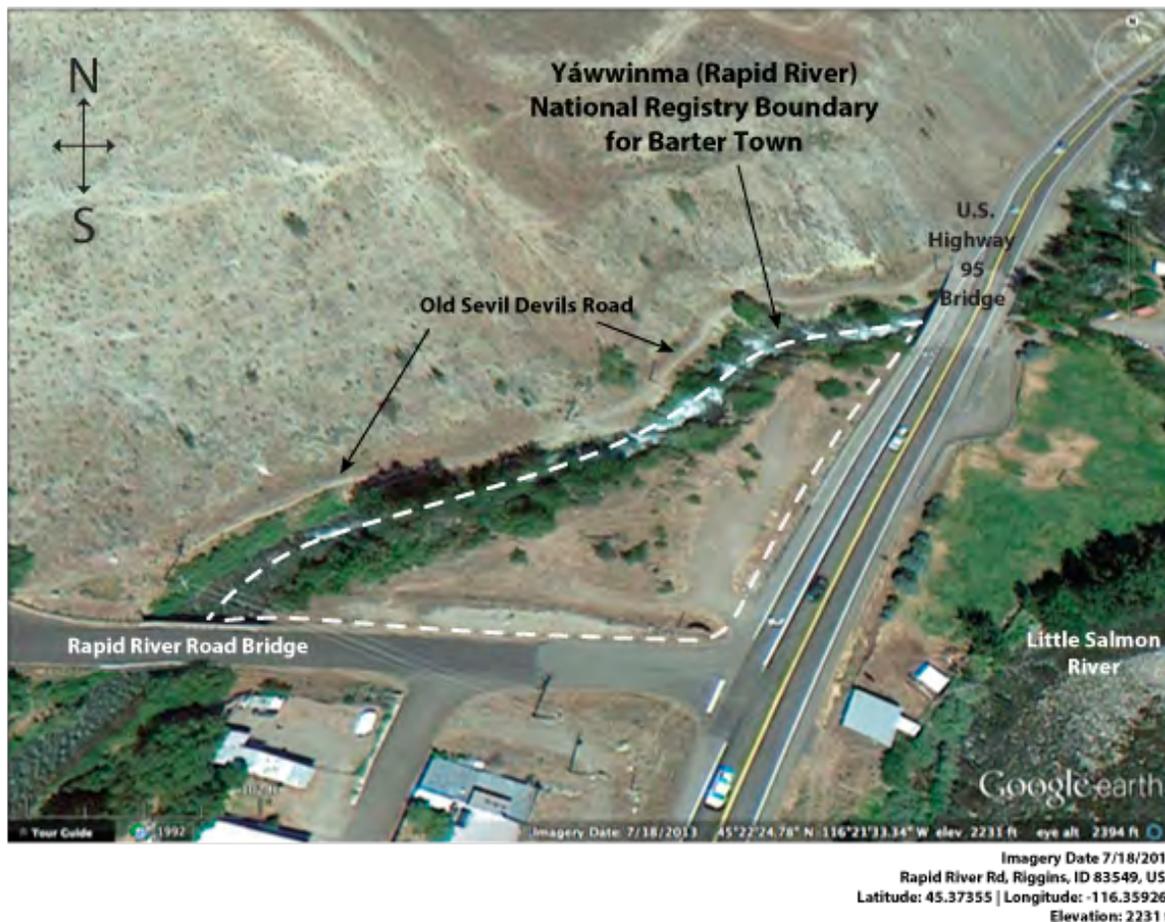


Figure 14. The Barter Town property as seen in a Google Earth Screenshot modified by Jim Hepworth and Brian Kolstad, June 14, 2016. Archeological evidence in the form of rock art found on the property indicates this traditional fishing access site has been in use "since time immemorial."

⁵³ Thomas Gregory /Tatlo. "Thanks and a Query." Email. May 17, 2016. In the 1986 cult classic, Barter Town is a city on the edge of the desert that retains technology but no civilization. The town is run by a character named Master Blaster and fueled by methane gas produced by pig feces. In his February 2016 interview, Tatlo also cited several contemporary Nez Perce names for classic Rapid River Chinook holes, including "Cow Pie Flats," "The Beaver Hole," "The Marsh," and "The Swamp."

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During the day, the flat at Barter Town often functions as a parking lot where tribal members can leave their vehicles, store their gear, prepare and eat meals, visit with each other, and, when tribal regulations permit, sell freshly caught Chinook salmon to non-Indians, local residents, and tourists. The opening and closing dates for tribal fishing season depend on the timing of the Chinook runs. Some years the fish have arrived as early as the end of April; other years, the fish are not to be found there until June. To insure the near equal distribution of Chinook among families, and especially to the sick and elderly, as well to guarantee enough fish for religious and first food ceremonies, the Nez Perce Tribe limits the opening days and weeks of the season at Rapid River exclusively to ceremonial and subsistence fishing. During years of abundant Chinook returns to Rapid River, The Tribe opens the river to its

⁵⁴ Thomas Gregory /Tatlo. "Thanks and a Query." Email. May 17, 2016. In the 1986 cult classic, Barter Town is a city on the edge of the desert that retains technology but no civilization. The town is run by a character named Master Blaster and fueled by methane gas produced by pig feces. In his February 2016 interview, Tatlo also cited several contemporary Nez Perce names for classic Rapid River Chinook holes, including "Cow Pie Flats," "The Beaver Hole," "The Marsh," and "The Swamp."

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members as commercial fishery. An unknown number of tribal fishermen depend heavily on the commercial fishery to supplement their annual incomes. Until recent times, however, according some elder fishermen, no Chinook were ever sold commercially at Rapid River and some tribal fishermen still regard the commercial sale of Chinook from Rapid River as shameful if not sacrilegious. "The Chinook at Rapid River are a gift to the Nimiipuu from the creator, not to be sold, only given away" (Jason Higheagle Allen). Also known as "king salmon," Chinook are the least abundant and by far the largest in size of the five species of North American Pacific salmon. Consequently, Rapid River Chinook often fetch good prices.

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Figure 15. Traditional Nez Perce fishermen often remove the gills of the Chinook they catch immediately upon capture to prevent spoilage and preserve the clean taste of the flesh. Because salmon do not feed during their spawning runs, their body cavities are empty, except for their hearts, livers, eggs, and sperm. Even the life of a single salmon is a precious gift involving blood sacrifice. Consequently, traditional Nez Perce fishermen treat salmon as gifts from the Creator. They keep the fish as clean and cold as possible by storing them on ice. All six of these Chinook were gifted to family members and friends within twenty-four hours of being caught. Jim Hepworth photo, June 23, 2010.

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During the Tribe's commercial Chinook season at Barter Town, fishermen and their families make and display a variety of signs advertising "Salmon For Sale" "Chinook For Sale," "Fresh Fish," and "Smoked Salmon." The signs are sometimes attached to vehicles or designed as sandwich boards that stand alone. The trunks of two large apricot trees located where the property abuts the U.S. 95 bridge sometimes provide space for the signs along with welcome shade. The trees are holdovers from the previous century and well past their prime. This area, as elsewhere above the river throughout the property, is a frequent tent site and sometimes a favorite daytime sleeping area, especially when the run is in its prime and fishermen are catching many if not most of their Chinook at night on both Yáwwinma (Rapid River) and the Little Salmon River. AS they also do at Rapid River House, throughout the day and into the evening, and sometimes late at night, individual fishermen and their families gather around cooking fires on small stoves and improvised ground hearths to eat, share news and fishing reports, and discuss strategy. Thus, Barter Town has long served as a kind of headquarters camp for the Nez Perce Chinook fishery at Yáwwinma. Tribal people camp on the property for days and weeks at a time, depending on the length of the Chinook season, so that the place functions as a small summer village where all sorts of activities take place, including courtships, gambling, singing, drumming, storytelling. That said, when the majority of the people are away and employed at fishing and fishing-related activities, the place can at times appear like a ghost town with seemingly empty vehicles, abandoned tents, abandoned camping and cooking spots, and only a couple of youngsters and a pet dog or two to patrol the premises. At such times, thin strips of salmon as red as blood can still be seen air drying in the sun on homemade or improvised racks. Like the ancient summer villages located at the mouths of other streams, during the late fall, winter, and very early spring Barter Town is literally abandoned. It is repopulated almost immediately as soon as word gets out that the Chinook have arrived.

Barter Town's location at the junction of U.S. 95 and Rapid River Road makes the Tribe's Chinook fishery something of a public event. The sight of a Nez Perce man or woman using both hands to carry a 40-inch long Chinook, still dripping with river water and weighing 25-30 pounds, is enough to slow traffic. Barter Town's intimate proximity in space and time to the confluence of Yáwwinma (Rapid River) and the Little Salmon River, and especially its nearness to "The Gravy Hole" where

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fishing can be almost constant during the day and the night, gives the place a remarkable historical continuity. While scholars might debate the precise age of "Barter Town" and Yáwwinma/Little Salmon confluence as a Chinook fishery, there is no doubt that Nez Perce People and their direct ancestors had been fishing the waters there for centuries prior to the placement of the first bridge across Rapid River in 1926. Prehistoric evidence for the fishery exists at the old bridge site in at least three forms.⁵⁵ A sparse lithic scatter was discovered here in 2002 before the 1926 bridge was replaced in 2004; at the same time, several large boulders near the confluence known to contain rock art from previous archeological surveys were relocated and reexamined. One is a boulder displaying a zig-zag pictograph made of red ochre, possibly portraying a snake. Other boulders contain petroglyphs in the form of small depressions known as cupules that have been pecked on the surfaces of the rocks. The Smithsonian site number for the cupules and pictograph is 101H2782. Neither the glyphs nor the pictograph were impacted during construction before or after the completion of the bridge.

Until the construction of federal Highway 95 in the 1920s, travel from any direction to the Nez Perce encampment grounds Yáwwinma (Rapid River) was limited to pack trails and a difficult and often impassable wagon road. The discovery of gold on the Nez Perce Reservation in 1860 and the signing of the 1863 treaty opened the region up to mining, most of which took place downstream in the mile-deep Salmon River Canyon at places like Lucille and Florence. Some lode mining—how much is difficult to tell—appears to have taken place on the upper Yáwwinma (Rapid River) with the alleged 1892 discovery there of copper and gold. Significant commercial extractions of mineral ores seem never to have been made, however, and exploration limited to two unsuccessful mines, the Utopia and the Oregon. Regardless, any major scars to the landscape seem to have healed over and no adverse affects linger to alter the viewsheds of the river or impede or the contemporary salmon fishery.⁵⁶ Any

⁵⁵ "Section H. Conclusions and Recommendations." *Archaeological and Historic Survey: Rapid River Bridge South of Riggins, ITD3 BR-41109 (130) Key# 7042*. Idaho Transportation Department. July 29, 2002. Unpaginated. The signature of the reporter is illegible.

⁵⁶ In her book, *Pioneer Days in Idaho County* (Caldwell, Idaho: Caxton, 1947), local historian Sister Alfreda Elsensohn puts the location of "the Utopia Mine" at five miles up Rapid River, which would place it in the Wild and Scenic River section about a mile above the spot of the current fish hatchery. She puts the location of the "Oregon Mine" at eight miles (367). She bases her belief that "The isolation of the district held back the development" of the mines on

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Figure 16. In this photo a Nez Perce fisherman makes use of a small scaffold on a hole at Barter Town. Scaffolds are rarely used, however. Most fishing is done from boulder tops or, more commonly, by wading. In this case, the low water and steep drop off make wading exceptionally dangerous. In July of 2010, the same year this photo was taken, Nez Perce elder Ralph Johnson drowned after slipping and being pulled into the river by his potential catch. All fishing was thereafter closed for twenty-four hours out of respect for the family.

Fishing stations at Yáwwinma are shared on a first-come/first served basis. Fishermen and their families generally treat each other with a high degree of respect and courtesy. Jim Hepworth photo, June 23, 2010.

“an introductory note to a book entitled *Poems of Idaho*, by Hannibal F. Johnson (364). The poem she includes, “A Trip to Rapid River,” makes reference to the miner’s plans to sink “tunnels” and “shafts,” but it makes no reference to placer mining or to prospecting on the river itself. Likewise, nothing substantial seems to have come of W.H. Purcell’s having interested “a number of Moscow and Spokane businessmen in what is known as the Rapid River Mining Co., Ltd.,” which appeared as an item in the *Idaho County Free Press of Grangeville* on August 4, 1910 (Elsensohn, 867).

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lingering adverse affects from the mines related to water quality or viewsheds would have precluded the river from listing in the nation's Wild and Scenic River System.⁵⁷

The adverse impact on the Yáwwinma Chinook and steelhead fishery from the old Seven Devils Road, U.S. Highway 95, and the 1926 bridge placement is also difficult to assess but results directly from road activities, not from mining. Construction may have somewhat modified and altered the placement of boulder top fishing stations along the river at Barter Town from the Rapid River Road Bridge all the way to the Gravy Hole and the confluence, a distance of about three football fields (330 yards). The construction date of the Seven Devils Road is unknown, although the old earthen roadbed, still nearly bare, is plainly visible beneath the incline of the rocky hillside on Barter Town's western boundary. Five power poles installed in 2010⁵⁸ now conspicuously occupy the roadbed for the length of the boundary. The land is privately owned. Because of it being level ground, the old roadbed used to be a favorite camping area for Nez Perce fishermen during the Chinook season. In at least one place, the installation of one power pole clearly parallels a bankside instability created by the construction of the old road. There, the roadbed, which was originally confined to a single lane, has shrunk to a passageway of perhaps six feet in width, and rocks perch precariously on the bank and on the hillside about twenty-five feet above the river. The place is a rockslide ready to happen. Fishermen are likely to avoid the spot as a point of access to the river and go around it on either side.

While some viewsheds at Barter Town are open and generous, especially looking east across U.S. Highway 95 and the Little Salmon River toward the distant Salmon River Mountains, the presence of the highway and bridge as well as the presence of Rapid River Road and its bridge, both of which border the property, adversely impact the audio/visual atmosphere of the fishery. Close to the highway, the sounds of traffic can overpower the sounds of birdsong and the onrush of the river plunging through its final descent toward the confluence. Occasionally the warm odors of freshly oiled pavement or whiffs of diesel and gasoline engine exhaust repress the cool, wind borne smells from the river and its various plants. Except for

⁵⁷ Ibid.

⁵⁸ Telephone interview, Steve Moser, Idaho Power Company executive, May 10, 2016.

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the river itself, the area of Barter Town, the U.S. 95 Bridge, and the confluence are completely disturbed landscapes. The ground of Barter Town consists of thin, densely compacted silt and sandy soil scattered with rocks and boulders and overgrown with grasses and bushes. Early road and bridge construction definitely altered the riverbed in the vicinity of the U.S. Highway 95 Bridge. Construction for placement of the bridge required deposits of fill on top of an already densely cobbled river terrace⁵⁹ formed by high water and occasional floods. Certainly the placement of the 1926 bridge adversely effected the access to the Tribe's traditional fishing sites on both sides of bridge, as happened again sixty-eight years later when the 2004 bridge replaced the 1926 bridge.⁶⁰

On the other hand, during the 1979-80 standoffs between Nez Perce Tribal fishermen and their families and armed Idaho State Police and Fish and Game officers, the old 1926 bridge became the scene of a civil rights protest during which the Indians blocked the bridge to traffic and "faced off law enforcement agencies." For this reason, the new bridge is a highly regarded site in recent Nez Perce history. According to Idaho Transportation Department records, although the standoff resulted in "the arrest of 31 Tribal members, it was successful in both expressing the Nez Perce frustration with governmental limitation to their fishing rights and ultimately in guaranteeing those rights. The incident further bolstered eventual federal legislation reinforcing regional Native American aboriginal fishing rights" (3).⁶¹

Although the 1926 highway bridge created a route across the river for automobiles, the narrow width of bridge could not safely accommodate two lanes of vehicular traffic and pedestrians. The roadway over the bridge had no shoulders. Consequently pedestrians crossed the bridge at their own risk. The 2004 bridge created wide shoulders for vehicular traffic and much safer pedestrian pathways across the river. The old bridge also had "substandard stream clearance for a 100 year flood."⁶² It had placed concrete fill material within the channel of Rapid

⁵⁹ "Section H. Conclusions and Recommendations." *Archaeological and Historic Survey: Rapid River Bridge South of Riggins, ITD3 BR-41109 (130) Key# 7042*. Idaho Transportation Department. July 29, 2002. Unpaginated.

⁶⁰ Clark, Dennis. "Criteria of Adverse Effect." 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: 7.

⁶¹ Ibid, 3.

⁶² Ibid, 7.

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River below the ordinary high water mark, which affected "sensitive fisheries habitats by altering" the river's natural condition.⁶³ The new bridge avoided that problem. It also improved river access "immediately upstream of the bridge at MP 191.6," and it established an "off highway Tribal fishing access" *underneath* the bridge by reshaping existing riprap to "facilitate an easier traversing of the channel underneath the bridge and in front of the abutment" (7).⁶⁴

While it is imperative to avoid underreporting the adverse impacts to this TCP's conditional integrity brought on by various developments that have diminished the conditional integrity of the fishery, it is equally imperative to report improvements to the status quo whenever and wherever they have occurred throughout the historic period. It is easy (and even just) to demonize Idaho Power for its intentional destruction of the great and unrivaled runs of Pacific salmon upstream of the Hells Canyon Complex. For many Nez Perce people, the loss was apocalyptic, and more than tragic, quite absolutely ruinous. Yet without the construction in 1964 of Rapid River Hatchery, the largest producer of Chinook in Idaho, there would in all likelihood simply be no Rapid River Chinook fishery for anyone to enjoy. Given the dramatic nature of the declines in the wild runs at Rapid River, the Yáwwinma Chinook might now be extinct. Although altered, the river channel at Barter Town is still twenty feet deep in places. Over the centuries, rock slides and high water floods have shifted the positions of the streambed and bankside boulders somewhat. The same is true for the effects of road and bridge construction. Still, whether gravels or boulders, they are the same ageless rocks they always were. On the banksides, small animals still live among them: water snakes, mice, moles, weasels, badgers. The riparian zone still supports dense hatches of midges and caddis and sparse hatches of mayflies and stoneflies. Standing on a flat boulder at water level with dip net in hand, no fisherman could possibly hear much beyond the sounds of cold mountain water plunging against basalt and granite, forming white water rapids, gurgling back eddies, and braided currents of every description. A fisherman would have to shout to be heard by another fisherman standing across the river from him. Here, nothing has changed in more than a thousand years, least of all the feel of a Chinook salmon hitting a dip net with the force of a lightning bolt followed immediately by a barrage of thunder. The cooling shade of the green canopy overhead is still composed of indigenous

⁶³ Ibid.

⁶⁴ Ibid.

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cottonwoods, alders, and willows. Beyond the canopy, the great blue dome of sky is still the same sky that White Bird knew—and Looking Glass, Twisted Hair, Joseph, Ollokot . . . “As I get older,” the late Nez Perce spiritual leader Horace Axtell once remarked in conversation, “just knowing Yáwwinma and the salmon are *there* makes me feel good!”



Figure 17. Thomas Gregory, Nez Perce language teacher and Salmon Youth Camp organizer, takes time out to do some fishing on his own during the 2016 season. Photo by Jim Hepworth.

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.)

- 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
-

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individual distinction.

- 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
- 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

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Period of Significance

Myth Age to present

Significant Dates

1855—Treaty with the United States

1863—Treaty with the United States

1877—War with the United States

1905—U.S. v Winans

1974—U.S. v. Washington (Boldt Decision)

1981—State of Idaho v. Defendants (Reinholdt Decision)

Significant Person

(Complete only if Criterion B is marked above.)

N/A

Cultural Affiliation

Nez Perce Indian 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 (Rapid River)⁶⁵ 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*

⁶⁵ The researchers acknowledge that Yáwwinma is the traditional name the Nez Perces use for Rapid River, but to avoid confusion (as most sources and records refer to the river by its non-Indian name of Rapid River), we have opted to refer to it by the more commonly used term. We have applied the same for the name of the Nez Perce people, using Nez Perce where appropriate instead of Nimiipúu.

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our history) because it is directly associated with the traditional beliefs of the Nez Perce Indian Tribe regarding their origins, cultural history, and nature of the world. Moreover, an examination of both Nez Perce (Nimiipúu) 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 20th 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.)

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 Percés explain, "We fish the same rivers our grandfathers fished long before the arrival of Columbus."⁶⁶ Additionally, the Nez Percés' 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 19th century and in courtrooms in the 20th century. Abrogations of American Indian treaty rights have been a contentious and near-continuous aspect of American legal systems since the 19th century, and

⁶⁶ Nez Perce Tribe, *Treaties: Nez Perce Perspectives* (Lewiston, ID: Confluence Press, 2003), 2.

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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".⁶⁷ 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 'Ooooh, 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."⁶⁸

⁶⁷ Haruo Aoki. *Nez Perce Dictionary* (Berkeley: University of California Press, 1994), 939 and 942.

⁶⁸ Josiah Pinkham, interviewed by Mario Battaglia and James Hepworth, Lapwai, ID, May 6, 2016.

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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 (*Oncorhynchus Tshawytscha*) and (2) wild Redband Steelhead Trout (*Oncorhynchus 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."⁶⁹ 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.⁷⁰ 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 (hé.su).⁷¹

Rapid River has been a continuously-used fishing site for the Nez Perce peoples of Idaho, Washington, and Oregon. The Nez Percés have used this area as one of their many fishing sites in the Northwest. 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."⁷² In Verne Ray's ethnographic field notes during his work with the

⁶⁹ Robert J. Behnke and Joseph R. Tomelleri, *Trout and Salmon of North America* (Free Press: Chanticleer Press, Ed., 2002), 30.

⁷⁰ For more information on this topic, please 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 the Idaho Power Company, October 1994; draft in possession of Kenneth C. Reid, Idaho State Historic Preservation Office archives); 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).

⁷¹ Lance Hebdon, interviewed by James Hepworth, October 13, 2015.

⁷² Alan G. Marshall, "Fish, Water, and Nez Perce Life," *Idaho Law Review* (University of Idaho College of Law), Vol. 42, No. 3 (2006), p. 776.

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tribe, one of his informants said, "Rapid river was yawinma, here about 4 miles from the mouth was a good fishing place."⁷³ 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."⁷⁴ 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.⁷⁵ 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.⁷⁶ 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.⁷⁷ Chalfant identifies two traditional Nez Perce trails that crossed the area near Rapid River, as well.⁷⁸ 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.⁷⁹

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

⁷³ 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.

⁷⁴ Appendix K, "Wild Rapid River Resource Assessment," in "Hells Canyon National Recreation Area Comprehensive Management Plan" (2003), pg. K-2.

⁷⁵ David A. Sisson, "Lower Salmon River Cultural Resource Management Plan" (MA thesis, Oregon State University, 1984), 26.

⁷⁶ Field Notes on Nez Perce Boundaries and Land Use, page 113.

⁷⁷ 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), Pg. 76

⁷⁸ Chalfant, "Aboriginal Territory of the Nez Perce Indians," pg. 90.

⁷⁹ David Johnson, "Officers cite but don't arrest six Nez Perce fishermen," *Lewiston Morning Tribune* (hereafter referred to as *LMT*), June 14, 1980, A1.

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the area.”⁸⁰ 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 20th 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.⁸¹ 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.⁸² Katherine (Katsy) Jackson, Nez Perce, echoes this memory of 20th 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.⁸³ 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.⁸⁴

Other Nez Perce informants also note that throughout the 20th century, tribal fishers continued to use the area. 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.”⁸⁵ Roderick Scott says that he fished with his father at Rapid River in the 1950s, too.⁸⁶ 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,

⁸⁰ Johnson, “What is Idaho Power’s role in the controversy,” *LMT*, June 29, 1980, A1.

⁸¹ Josiah Pinkham interview.

⁸² Wilfred Scott, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 10, 2016.

⁸³ Katherine (Katsy) Jackson, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.

⁸⁴ Allison K. Scott, interviewed by Mario Battaglia, Lapwai, ID, May 16, 2016.

⁸⁵ Katsy Jackson interview.

⁸⁶ 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.”

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"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."⁸⁷ 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."⁸⁸ Rapid River fit into a larger seasons round for the Nez Percés, 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 Percés' traditional pre-contact annual cycle. The Nez Percés 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.⁸⁹ This route was circular in nature and emphasized a larger understanding of the land and its resources.⁹⁰ 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, couse, 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.⁹¹ The Nez Percés spent the winter months in different winter villages in the warmer river valleys.

In his anthropological field work with the Nez Percés, Eugene S. Hunn, found that fishing and gathering provided ninety percent of the food needs for the tribe.⁹² 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 Percés naturally had numerous sites

⁸⁷ Johnson, "What is Idaho Power's role in the controversy," *LMT*, June 29, 1980, A1.

⁸⁸ Waddy Scott interview.

⁸⁹ "The Nez Perce Reservation and its location," available online at <http://www.nezperce.org/rezinfo/npreservation.htm>.

⁹⁰ Marshall, "Fish, Water, and Nez Perce Life," 779.

⁹¹ Deward E. Walker, Jr., "Nez Perce," in *Handbook of North American Indian: Plateau*, vol. 12, ed. Warren L. D'Azevedo (Washington, DC: Smithsonian Institution, 1998), 420-421.

⁹² Eugene S. Hunn, *Nch'i-Wàna "The Big River": Mid-Columbia Indians and Their Land* (Seattle: University of Washington Press, 1991), 118.

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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.⁹³ 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."⁹⁴ 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."⁹⁵

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."⁹⁶ 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

⁹³ Josiah Pinkham interview.

⁹⁴ Steven Hawley, *Recovering a Lost River: Removing Dams, Rewilding Salmon, Revitalizing Communities*, (Boston: Beacon Press, 2011), 205.

⁹⁵ Department of Fisheries Resources Management Strategic Plan Ad Hoc Team, "Nez Perce Tribe Department of Fisheries Resources Management Plan 2013-2028." (2013), pg. 5. Available online at <http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf>

⁹⁶ Marshall, "Fish, Water, and Nez Perce Life," p. 763.

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this resource.⁹⁷ In telling stories about fishing for salmons as she grew up in the 20th 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.⁹⁸

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.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ 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."¹⁰² 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.

⁹⁷ Anthony Johnson, Nez Perce Tribal Executive Committee (NPTEC) chair, testimony before the U.S. Senate Committee on Indian Affairs, July 20, 2004. Found in K. Heidi Gudgell, Steven C. Moore, and Geoffrey Whiting, "The Nez Perce Tribe's Perceptive on the Settlement of Its Water Right Claim in the Snake River Basin Adjudication," *Idaho Law Review* (University of Idaho College of Law), Vol. 42, No. 3 (2006), p. 565.

⁹⁸ Katsy Jackson interview.

⁹⁹ Johnson, NPTEC chair, 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," p. 566.

¹⁰⁰ *Ibid.*, p. 567.

¹⁰¹ Joseph E. Taylor, III, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis* (Seattle: University of Washington Press, 1999), p. 17.

¹⁰² Taylor, *Making Salmon*, p. 20.

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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. He is helped along the way by an elder, 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.¹⁰³ 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.¹⁰⁴

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 Percés 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 Percés, 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

¹⁰³ 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.

¹⁰⁴ Taylor, *Making Salmon*, pg. 31.

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him. And as she was going along, she would hear off in the distance, 'Ooooooh, 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, 'Ooooh, 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, 'Ooooooh, 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 tulleets like that, you know. They're hanging down and 'Ooooooh, touched one,' she yells like that. And he turns around and she's says, 'Time to eat.'"¹⁰⁵

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."¹⁰⁶

This aspect has been a constant aspect for the tribe, continuing through the 20th century and into the 21st. 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

¹⁰⁵ Josiah Pinkham interview.

¹⁰⁶ Marshall, "Fish, Water, and Nez Perce Life," p. 773.

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employed for fishing.¹⁰⁷ 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.¹⁰⁸ 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."¹⁰⁹

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.¹¹⁰ 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.¹¹¹ 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."¹¹² 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 dress¹¹³ and standing in the river with her pole. Jackson

¹⁰⁷ Walker, "Nez Perce," 421.

¹⁰⁸ Josiah Pinkham interview; Waddy Scott interview; and Basil George, Jr., interviewed by Mario Battaglia and Nakia Williamson, Lapwai, ID, May 4, 2016.

¹⁰⁹ Marshall, "Fish, Water, and Nez Perce Life," p. 774.

¹¹⁰ Robert McCoy, *Chief Joseph, Yellow Wolf and the Creation of Nez Perce History in the Pacific Northwest* (Routledge Press, 2004), 34-35.

¹¹¹ Hunn, *Nch'i-Wána*, pgs. 119-121.

¹¹² McCoy, *Chief Joseph*, 31.

¹¹³ The wing dress earned its name from the shoulders and cape-like sleeves of the dress which resembled a bird's wings. Following contact and the introduction of manufactured fabric,

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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.¹¹⁴ A.K. Scott described women as integral during the entire standoff.¹¹⁵ 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)."¹¹⁶

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 as roasting it for immediate consumption, or preserving it (whether by freezing, canning, smoking, or drying it).¹¹⁷ 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. (Taylor, 1999: 24) 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.¹¹⁸ The Nez Perces made a conscious effort every season to leave some of the

these dresses became more popular with tribal women. For more information on wing dresses, please see the Nez Perce National Historic Park's museum exhibit summary, available at https://www.nps.gov/museum/exhibits/nepe/exb/transportation_trade/NEPE392_Dress.html.

¹¹⁴ Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.

¹¹⁵ Allison K. Scott, interviewed by Mario Battaglia, Lapwai, ID, May 16, 2016.

¹¹⁶ Eric J. Thompson, letter to the editor, *LMT*, July 13, 1980, D3.

¹¹⁷ Marshall, "Fish, Water, and Nez Perce Life," p. 774.

¹¹⁸ Nez Perce Tribe, *Treaties: Nez Perce Perspectives*, pg. 8.

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salmon in the river.¹¹⁹ 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."¹²⁰ 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."¹²¹

The practical purposes of salmon catching are equaled by the religious or spiritual aspects of it. As Thomas Gregory, Nez Perce, said, "You have a relationship with those creatures. They're not just there...They have a spirit too."¹²² Allen Slickpoo Sr., Nez Perce elder, noted that "Salmon fishing was considered to be a sacred symbol identified in religious ceremonies."¹²³ 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

¹¹⁹ Allen V. Pinkham, Sr., "A Traditional American Indian Perspective on Land Use Management," *Landscape and Urban Planning*, Volume 36, Issue 2 (November 1996): pg. 94.

¹²⁰ PR Mundy, TWH Backman, and JM 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*, (AM. FISH. SOC. SYMP.), vol. 17, pg. 29.

¹²¹ Pinkham, "Traditional American Indian Perspective," pg. 96.

¹²² Thomas (Tátlo) Gregory, interviewed by Mario Battaglia, Lapwai, ID, April 29, 2016.

¹²³ Dan Landeen and Allen Pinkham, *Salmon and His People: Fish and Fishing in Nez Perce Culture*, (Lewiston, ID: Confluence Press, 1999), 24.

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believed, "helped to insure that the salmon would return the next year."¹²⁴

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.¹²⁵ 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."¹²⁶ 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."¹²⁷

For the Nez Percés, 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."¹²⁸

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. 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

¹²⁴ Landeen and Pinkham, *Salmon and His People*, 91.

¹²⁵ Marshall, "Fish, Water, and Nez Perce Life," p. 772.

¹²⁶ Landeen and Pinkham, *Salmon and His People*, 54.

¹²⁷ *Ibid.*, 55.

¹²⁸ Pinkham, "Traditional American Indian Perspective," pg. 94.

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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."¹²⁹

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.¹³⁰ This study emphasized that this region contained an "extraordinary" amount of history for the Nez Perce.¹³¹ 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.¹³² 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.¹³³ 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 20th 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

¹²⁹ Waddy Scott interview.

¹³⁰ 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), pg. 1.

¹³¹ Ibid., pg. 4.

¹³² Appendix K, "Wild Rapid River Resource Assessment," pg. K-2.

¹³³ Ibid., pg. K-3.

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had undertaken in post-contact years, including non-Indian ranching and the hatchery itself.¹³⁴

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 20th century, treaty rights and fishing sites took a lower priority than other concerns, such as providing electricity and irrigation water, which came "at the expense of the fish."¹³⁵ 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.¹³⁶

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 Percés 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."¹³⁷ 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

¹³⁴ 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, pg. 9.

¹³⁵ Chuck Williams, "The Dammed Columbia," in *Western Water Made Simple*, ed. High Country News (Island Press, 1987), 68.

¹³⁶ Richard White, *The Organic Machine: The Remaking of the Columbia River* (New York: Hill and Wang, 1995), 110.

¹³⁷ Josiah Pinkham interview.

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landscape, the needs of the people, and the changing weather.¹³⁸

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.¹³⁹ 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.¹⁴⁰ 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 19th and 20th 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.

¹³⁸ Pinkham, "Traditional American Indian Perspective," pg. 94.

¹³⁹ 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).

¹⁴⁰ Nez Perce Tribe, *Treaties*, pg. 23.

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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.¹⁴¹ 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."¹⁴² The Nez Perce signed the treaty after being "threatened, cajoled, [and] begged."¹⁴³ 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.¹⁴⁴

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."¹⁴⁵ Chief Looking Glass was emphatic about this point in treaty discussions, clarifying multiple times that only Nez Percés were to be permitted on the land and that it was the federal government's responsibility to keep trespassers out.¹⁴⁶ This was another promise from the federal government that quickly evaporated. Examining nineteenth-century

¹⁴¹ Treaty with the Nez Perce, (June 11, 1855), 12 Stat. 957. Available online at <http://www.ccrh.org/comm/river/treaties/nezperce.htm>.

¹⁴² Marshall, "Fish, Water, and Nez Perce Life," pg. 792.

¹⁴³ Hawley, *Recovering a Lost River*, pg. 188.

¹⁴⁴ Nez Perce Tribe, *Treaties*, pg. 40.

¹⁴⁵ Treaty with the Nez Perce, (June 11, 1855), 12 Stat. 957. Available online at <http://www.ccrh.org/comm/river/treaties/nezperce.htm>.

¹⁴⁶ Nez Perce Tribe, *Treaties*, pg. 41.

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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 Percés 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."¹⁴⁷

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."¹⁴⁸ 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 Percés' 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."¹⁴⁹

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

¹⁴⁷ Dennis Baird, Diane Mallickan, and W.R. Swagerty, *Nez Perce Nation Divided: Voices from Nez Perce Country*, (Caldwell, ID: Caxton Press, 2004), pg. 3.

¹⁴⁸ *Ibid.*, pg. 7.

¹⁴⁹ *Ibid.*, pg. 31.

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preventing white encroachment on Indian land, the numbers continued to increase over the summer of 1860 after Pierce's discovery.¹⁵⁰ 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 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."¹⁵¹ Cain requested additional military assistance but the army arrived too late.¹⁵²

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 1861.¹⁵³ 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.¹⁵⁴

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.¹⁵⁵ 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.¹⁵⁶ Lawyer reminded government

¹⁵⁰ Ibid., pg. 38.

¹⁵¹ Ibid., pg. 43-45.

¹⁵² Ibid., pg. 61.

¹⁵³ Ibid., pg. 121.

¹⁵⁴ Ibid., pg. 141.

¹⁵⁵ Ibid., pg. 179.

¹⁵⁶ Ibid., pg. 313.

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representatives at the treaty negotiations that it was the United States, and not the Nez Perce, who had broken the 1855 treaty.¹⁵⁷

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 would reduce 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.¹⁵⁸ 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 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."¹⁵⁹

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.¹⁶⁰ 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.¹⁶¹ 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

¹⁵⁷ Ibid., pg. 336.

¹⁵⁸ Nez Perce Tribe, *Treaties*, pg. 42.

¹⁵⁹ Landeen and Pinkham, *Salmon and His People*, pg. 111.

¹⁶⁰ Ibid., pg. 112.

¹⁶¹ Baird, Mallickan, and Swagerty, *Nez Perce Nation Divided*, pg. pg. 348.

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what many of the tribe still refer to as the "Steal Treaty."¹⁶² In perhaps the biggest real estate bargain in its history, the United States gained over 90% of Nez Perce reservation lands for approximately eight cents per acre, as Hale was quick to brag.¹⁶³ 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 died¹⁶⁴) 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."¹⁶⁵ 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.¹⁶⁶ 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

¹⁶² Ibid., pg. 42.

¹⁶³ Ibid., pg. 419; and Alvin M. Josephy, Jr., *The Nez Perce Indians and the Opening of the Northwest*, abridged version, (Yale University, 1965), 406.

¹⁶⁴ 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*, pg. 422.

¹⁶⁵ Nez Perce Tribe, *Treaties*, pg. 48.

¹⁶⁶ 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).

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wounded and sixty-seven U.S. soldiers dead.¹⁶⁷ 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.¹⁶⁸

As Horace Axtell later 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."¹⁶⁹ 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."¹⁷⁰

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 thoroughly 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.¹⁷¹ On May 22, 1885, 118 Nez Perces who had fought in the war and been exiled from their land finally returned to Lapwai.¹⁷²

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 this time, and federal agencies put more weight on

¹⁶⁷ Nez Perce Tribe, *Treaties*, pg. 48.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*, pg. 49.

¹⁷⁰ The 1863 Treaty can be viewed in its entirety at

<http://www.ccrh.org/comm/river/treaties/np63.htm>

¹⁷¹ Josephy, *Nez Perce Indians and the Opening of the Northwest*, pg. 622.

¹⁷² *Ibid.*, pg. 623.

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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 Percés, 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.¹⁷³

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 20th 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."¹⁷⁴ This inability to exercise their treaty rights came at a time when traditional ways of life by the Nez Percés 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.¹⁷⁵

20th 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,

¹⁷³ 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), pg. 200.

¹⁷⁴ Nez Perce Tribe, *Treaties*, pg. 41.

¹⁷⁵ *Ibid.*, pg. 55.

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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 abrogations, 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 20th 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 Sryveneas (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.¹⁷⁶ 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. James Higheagle Allen reiterated in a separate interview that nighttime fishing was the most successful.¹⁷⁷ A.K. Scott said he preferred fishing at night partially to feel alone and partially because it felt safer.¹⁷⁸ 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.¹⁷⁹ Gordon Higheagle said he and two other friends went fishing at nighttime in 1971 and caught at least twenty fish in a half hour.¹⁸⁰

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

¹⁷⁶ 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, pg. 1.

¹⁷⁷ Jason Higheagle Allen, interviewed by Mario Battaglia and Jim Hepworth, Lapwai, ID, May 6, 2016.

¹⁷⁸ Allison K. Scott interview.

¹⁷⁹ Basil George, Jr. interview.

¹⁸⁰ Gordon Higheagle, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 10, 2016.

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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.¹⁸¹ 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.¹⁸²

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.¹⁸³ 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" 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.¹⁸⁴ 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 lightning 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

¹⁸¹ Stephen L. Pevar, *The Rights of Indians and Tribes*, 4th edition (Oxford University Press, 2012), pg. 194.

¹⁸² Landeen and Pinkham, *Salmon and His People*, 115.

¹⁸³ Pevar, *Rights of Indians and Tribes*, 196.

¹⁸⁴ David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001), 238-239.

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crack scientific operations - it gave them confidence."¹⁸⁵ 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. The 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 the dams and control power in Hells Canyon.¹⁸⁶

Idaho Power began the construction of the dams in the mid-1950s. One of the goals was to "conquer, tame, and harness" the region.¹⁸⁷ There were a variety of clauses attached to Idaho Power's contract to build the dams, and one was dealing with the

¹⁸⁵ 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>

¹⁸⁶ For more information on the debate over Idaho Power, please see Susan M. Stacy's *Legacy of Light: A History of Idaho Power Company*, pgs. 135-148.

¹⁸⁷ Susan M. Stacy, *Legacy of Light: A History of Idaho Power Company* (Boise, ID: Idaho Power Company, 1991), pg. 152.

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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."¹⁸⁸

Dams were part of a larger process that had, in the 20th 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 19th century, commercial harvesters had used ecologically-unsound methods to catch salmon.¹⁸⁹ 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.¹⁹⁰ 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.¹⁹¹ These losses are estimated at eliminating 50% of the salmon and steelhead habitation in Idaho.¹⁹² Idaho Power built four hatcheries as a result of this: Oxbow Fish Hatchery (Oregon), Niagra 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.¹⁹³ 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

¹⁸⁸ Ibid., pg. 153.

¹⁸⁹ Ibid., pgs. 206-207

¹⁹⁰ Pat Ford, "The View from the Upper Basin," in *Western Water Made Simple*, 87.

¹⁹¹ Paul 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/e31_04.pdf.

¹⁹² Ford, "The View from the Upper Basin," 88.

¹⁹³ "Rapid River Hatchery," available online at <http://fishandgame.idaho.gov/public/fish/?getPage=103>.

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Scenic Rivers Act. RRFH is now the "largest collection, spawning and rearing facility of spring Chinook in Idaho."¹⁹⁴

Although Idaho Power owns the hatchery, the Idaho Department of Fish and Game operates it, 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.¹⁹⁵ 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.¹⁹⁶ 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 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, 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.¹⁹⁷ 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

¹⁹⁴ "Our Fish Story: Idaho Power's Fish Conservation Program," pamphlet from Rapid River Fish Hatchery (2013).

¹⁹⁵ "Evaluation of Idaho Power Hatchery Mitigation Program," pg. 4.

¹⁹⁶ "Rapid River Fish Hatchery Tour Information," pamphlet from Rapid River Fish Hatchery.

¹⁹⁷ "Evaluation of Idaho Power Hatchery Mitigation Program," 6-7.

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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 19th century.¹⁹⁸ 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 larger Nez Perce history.¹⁹⁹

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 Percés, 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."²⁰⁰ Gordon Higheagle related a story where he spent the day fishing at Rapid River in the early 1970s,

¹⁹⁸ Nez Perce Tribe, *Treaties*, 78.

¹⁹⁹ Allison K. Scott interview.

²⁰⁰ Basil George, Jr. interview.

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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.²⁰¹ The purpose of this interaction was confusing to Higheagle at the time and 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 few fish 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 in the raceways, which marked a survival rate of 87%²⁰²—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.²⁰³

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

²⁰¹ Gordon Higheagle interview.

²⁰² 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), pg. 1. Located at Idaho State Historical Society (ISHS) archives.

²⁰³ Ibid., pg. 2.

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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 Percés 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."²⁰⁴ 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."²⁰⁵

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."²⁰⁶ 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.²⁰⁷ The 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.

²⁰⁴ Waddy Scott interview.

²⁰⁵ Allison K. Scott interview.

²⁰⁶ 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).

²⁰⁷ 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.

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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.²⁰⁸ 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."²⁰⁹ 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.²¹⁰ 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."²¹¹

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 executive chair, Wilfred Scott, called "chicken shit."²¹² 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.²¹³ 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."²¹⁴ 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;

²⁰⁸ Johnson, "Showdown over salmon season likely," *LMT*, June 1, 1979, A1.

²⁰⁹ Pearce to Governor Evans, Boise, Idaho, March 20, 1980. Located in Evans collection.

²¹⁰ *Ibid.*

²¹¹ Richard Ziegler, Board of Directors, Rapid River Homeowners Association, to Governor John Evans, Boise, Idaho. Undated. Located in Evans collection.

²¹² *Tribune* staff, "Fishing ban enforcement begins today," *LMT*, June 5, 1979, A1 6-5-79 1A.

²¹³ Allison K. Scott interview.

²¹⁴ Johnson, "Negotiations to avert fishing clash intensify," *LMT*, June 6, 1979, A1.

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tribal members did not have to even catch a fish, but just show an intent to attempt to catch one.²¹⁵

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.²¹⁶ 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."²¹⁷ 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 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."²¹⁸

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.²¹⁹ On June 7, the NPTEC agreed to a compromise that allowed tribal members to fish on both June 9 and 10, in return for 2500 "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.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Gordon Higheagle interview.

²¹⁹ *Tribune* staff, "Evans offers plan to break fish impasse," *LMT*, June 7, 1979, A1.

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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."²²⁰ 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.²²¹

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 \$2500 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 \$5000 and he was released.²²² 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, 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."²²³ 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.²²⁴

²²⁰ Johnson, "Nez Perces sign pact, clash averted," *LMT*, June 8, 1979, A1.

²²¹ *Tribune* staff, "All's quiet (still) at Rapid River," *LMT*, June 10, 1979, B2.

²²² Waddy Scott interview.

²²³ Rita Hibbard, "Rapid River truce on the verge of collapse," *LMT*, June 14, 1979, A1.

²²⁴ Allen K. Short, "Four cited for fishing near hatchery," *LMT*, June 15, 1979, B1; and *Tribune* staff, "Fishing arrests 'isolated incident,'" *LMT*, June 15, 1979, B1.

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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."²²⁵ 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.²²⁶

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.²²⁷ 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."²²⁸ 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.

²²⁵ Ed Rieckelman, letter to the editor, *LMT*, June 17, 1979, D2.

²²⁶ Associated Press, "Salmon: A withering way of life for Indians," *LMT*, June 18, 1979, B1.

²²⁷ Short, "Indian fishing ban is removed," *LMT*, June 27, 1979, A1.

²²⁸ Short, "Ban lifted, Indian fishermen return to Rapid River," *LMT*, June 29, 1979, C1.

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The 1979 season ended without armed conflict, but it set the tone for the next year as it had left 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."²²⁹ The tribe sent a letter to Governor John Evans protesting the "flexing of the mighty muscles of the United States Government," the dismissal of treaty rights, and the disregard of the tribe's sovereignty after the NPTEC had called for self-regulation.²³⁰

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.²³¹ In a "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."²³² 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."²³³

1980 standoff

²²⁹ Johnson, "Showdown over salmon season likely," *LMT*, June 1, 1979, A1.

²³⁰ Johnson, "Showdown over salmon season likely," *LMT*, June 1, 1979, A1.

²³¹ Jerry Conley, "Evaluation of Spring Chinook Salmon Emigration," pg. 2.

²³² 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.

²³³ Nez Perce Tribe, *Treaties*, pg. 79.

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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 Fishermen's Committee, he said, was created by tribal members in response to incidences at Rapid River.²³⁴ This group was a divisive aspect, and anthropologist Alan Marshall refers to it as both "a political party and associated faction" of Nez Percés who were "characterized as a bad element in an otherwise peaceful tribe."²³⁵ 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 from Kelly Pearce 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'

²³⁴ Allison K. Scott interview.

²³⁵ Marshall, "Fish, Water, and Nez Perce Life," pg. 776.

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group."²³⁶ 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.²³⁷

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."²³⁸ In his article on the Nez Percés 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."²³⁹ 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 affect these other areas.²⁴⁰

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.²⁴¹ 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.²⁴²

On May 13, 1980, the NPTEC passed a resolution that reaffirmed the tribe's fishing rights under the 1855 treaty. The

²³⁶ Pearce memo to Governor Evans, May 6, 1980, pg. 1. Located in Evans collection.

²³⁷ Ibid.

²³⁸ *Tribune* staff, "Scott elected in upset of Nez Perce council," *LMT*, May 4, 1980, B1.

²³⁹ Marshall, "Fish, Water, and Nez Perce Life," 776.

²⁴⁰ Gordon Higheagle interview.

²⁴¹ Pearce memo to Governor Evans, May 7, 1980. Located in Evans collection.

²⁴² *Tribune* staff, "Nez Perce fisherman name chapter officers," *LMT*, May 24, 1980, B4.

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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.²⁴³ 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.²⁴⁴ 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.²⁴⁵

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.²⁴⁶ 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."²⁴⁷ 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

²⁴³ Nez Perce Tribal Executive Committee, "Resolution," NP 80-350, located in John Evans collection, Rapid River box, ISHS archives. (Image 3800).

²⁴⁴ *Tribune* staff, "Return of salmon renews Indian fishing rights issue," *LMT*, May 14, 1980, C1.

²⁴⁵ *Tribune* staff, "Return of salmon renews Indian fishing rights issue," *LMT*, May 14, 1980, C1.

²⁴⁶ Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," *LMT*, May 15, 1980, C1.

²⁴⁷ *Ibid.*

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my heart. That's what you're 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."²⁴⁸

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."²⁴⁹ 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.²⁵⁰

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."²⁵¹ 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

²⁴⁸ Waddy Scott interview.

²⁴⁹ Allison K. Scott interview.

²⁵⁰ 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.

²⁵¹ Short, "Rapid River: Once a quiet stream, it's become a focal point for a political struggle," *LMT*, June 15, 1980, A1.

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simply to prove they can—to affirm their challenged treaty rights.”²⁵²

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.”²⁵³ 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.²⁵⁴ Slickpoo expressed worry, though, that another confrontation would weaken the tribe’s rights if the state 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.”²⁵⁵

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?”²⁵⁶ 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.”²⁵⁷ 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.²⁵⁸ 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

²⁵² Bill Hall, “This battle belongs in the courts,” *LMT*, June 20, 1980, D1.

²⁵³ Allen Slickpoo, Sr., letter to the editor, *LMT*, July 6, 1980, D2.

²⁵⁴ Slickpoo, letter to the editor, *LMT*, June 1, 1980, D3.

²⁵⁵ Carlotta Peltier, letter to the editor, *LMT*, July 27, 1980, D3

²⁵⁶ Short, “Rapid River: Once a quiet stream, it’s become a focal point for a political struggle,” *LMT*, June 15, 1980, A1.

²⁵⁷ Waddy Scott interview.

²⁵⁸ John S. Wasson, letter to the editor, *LMT*, June 25, 1980, D1.

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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."²⁵⁹ 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."²⁶⁰ 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."²⁶¹ James Higheagle Allen described the Nez Percés' 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."²⁶² 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 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."²⁶³

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

²⁵⁹ *LMT* advertisement, July 4, 1980, B4.

²⁶⁰ Katsy Jackson interview.

²⁶¹ *Ibid.*

²⁶² Jason Higheagle Allen interview.

²⁶³ Waddy Scott interview.

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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.²⁶⁴ 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."²⁶⁵ Evans responded that the goal was to provide protection to "all parties" and help "maintain the peace and the tranquility of the fishery."²⁶⁶

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.²⁶⁷ 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."²⁶⁸

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.²⁶⁹ Salmon numbers appeared to be good, with 150 returning on June 10, double the number from the day before.²⁷⁰ Moving into the second week of

²⁶⁴ Johnson and Jay Shelledy, "Rapid River revisited," *LMT*, June 4, 1980, A1.

²⁶⁵ Wilfred Scott interview.

²⁶⁶ Johnson, "Tribe won't acknowledge fishing ban," *LMT*, June 5, 1980, A1.

²⁶⁷ Johnson, "State won't close river to Indians," *LMT*, June 6, 1980, A1.

²⁶⁸ Ladd Hamilton, "Trouble averted on the Rapid River," *LMT*, June 7, 1980, D1.

²⁶⁹ *Tribune* staff, "Salmon get serious—150 return to Rapid River in a single day," *LMT*, June 11, 1980, C1.

²⁷⁰ *Ibid.*

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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. One 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."²⁷¹ Conley's argument was that "Not enough fish—particularly wild fish—are getting back to Idaho. Too many are caught downstream."²⁷² 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." The 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.²⁷³ 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."²⁷⁴

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.²⁷⁵

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

²⁷¹ Wilfred Scott interview.

²⁷² As quoted in *High Country News, Western Water Made Simple* (Island Press, 1987), pg.

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²⁷³ Johnson, "Rapid River closed," *LMT*, June 11, 1980, A1.

²⁷⁴ Johnson, "Sacred Water," *LMT*, September 14, 1980, D1.

²⁷⁵ Pevar, *Rights of Indians and Tribes*, pg. 199.

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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.²⁷⁶ 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 with providing meaningful, desired annual harvest by the Nez Perce Tribe at all usual and accustomed fishing places."²⁷⁷

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."²⁷⁸ 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."²⁷⁹

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

²⁷⁶ Mundy, Backman, and Berkson, "Selection of Conservation Units for Pacific Salmon," pg. 29.

²⁷⁷ Department of Fisheries Resources Management Strategic Plan Ad Hoc Team, "Nez Perce Tribe Department of Fisheries Resources Management Plan 2013-2028," (2013), pg. 27. Available online at <http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf>.

²⁷⁸ Robin E. Lagemann, Riggins, ID, to Jerry Conley, September 29, 1980. 9-29-80 to Jerry Conley, Boise, ID. Located in John collection.

²⁷⁹ Johnson, "Rapid River closed," *LMT*, June 11, 1980, A1.

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irritation was the noise—yelling, drum beating, horn honking—through the nighttime hours.”²⁸⁰ 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.²⁸¹ Pearce recommended that facilities, such as portable toilets and dumpsters, be obtained to avoid these problems.²⁸² A.K. Scott later credited Pearce for helping to keep things as calm as they could be during the standoff.²⁸³ 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.”²⁸⁴

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 protest for fishing rights, as Katsy Jackson, a tribal member recalls.²⁸⁵ 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.”²⁸⁶

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.²⁸⁷ 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.²⁸⁸ Butch McConville protested this type of confiscation in his own way. In a 2016 interview, McConville recalled one incident specifically:

²⁸⁰ Pearce to Governor Evans, Boise, ID, March 20, 1980. Located in Evans collection.

²⁸¹ Ibid.

²⁸² Pearce memo to Governor Evans, May 6, 1980, pg. 1. Located in Evans collection.

²⁸³ Allison K. Scott interview.

²⁸⁴ Johnson, “Confrontation won’t drive out Rapid River homeowners,” *LMT*, June 13, 1980,

B1.

²⁸⁵ Katsy Jackson interview.

²⁸⁶ Johnson, “Rapid River standoff begins,” *LMT*, June 13, 1980, A1.

²⁸⁷ 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.

²⁸⁸ Basil George, Jr. interview.

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"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."²⁸⁹

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."²⁹⁰

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.²⁹¹ 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.²⁹² 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 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.²⁹³

Tribal members complained about the excessive show of force, which included officers with sawed-off shotguns and riot

²⁸⁹ Syrveneas (Butch) McConville, interviewed by Mario Battaglia and Jackie Jim, Lapwai, ID, May 3, 2016.

²⁹⁰ Katsy Jackson interview.

²⁹¹ 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.

²⁹² Katsy Jackson interview.

²⁹³ Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.

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guns.²⁹⁴ The tribe said this "unnecessary display of force" equaled harassment of the tribe.²⁹⁵ One Nez Perce man told the officers that "Power does not come from the guns or numbers but from the convictions of the people."²⁹⁶ 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."²⁹⁷

A.K. Scott remembers getting shot at by officers.²⁹⁸ The Fish and Game officers sent observers into the nearby hills with spotting scopes to find any violators.²⁹⁹ Butch McConville, Nez Perce, 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."³⁰⁰ 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

²⁹⁴ 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.

²⁹⁵ Johnson, "A war of nerves," *LMT*, June 16, 1980, B1.

²⁹⁶ Hawley, *Recovering a Lost River*, 201.

²⁹⁷ Waddy Scott interview.

²⁹⁸ Allison K. Scott interview.

²⁹⁹ Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.

³⁰⁰ Butch McConville interview.

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as calm as possible, emphasizing to both tribal members and law enforcement officers that this fight would ultimately end up in the courtroom.³⁰¹

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 collected 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.³⁰²

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.³⁰³ Another tribal member, Thomas (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.'³⁰⁴ 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.³⁰⁵

Those who were caught violating the fishing ban and were caught, they received written citations. As officers wrote

³⁰¹ Gordon Higheagle interview.

³⁰² Allison K. Scott interview.

³⁰³ Butch McConville interview.

³⁰⁴ Tátlo Gregory interview.

³⁰⁵ Allison K. Scott interview.

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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."³⁰⁶ 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.³⁰⁷

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."³⁰⁸ He worried that tribal leaders would not be able to "control the more militant members."³⁰⁹ 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. 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.³¹⁰ The camp nearest the trap featured a teepee with an upside-down American flag in front.³¹¹ Katsy Jackson believed that the flag was the work of AIM members who travelled to the site to help the Nez Perce protestors.³¹² 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

³⁰⁶ Johnson, "A war of nerves," *LMT*, June 16, 1980, B1.

³⁰⁷ Johnson, "Nez Perce stage fish-in, 12 more cited," *LMT*, June 16, 1980, A1.

³⁰⁸ Johnson, "Conley lauds law officers for 'control' at Rapid River," *LMT*, June 15, 1980, D1.

³⁰⁹ *Tribune* staff, "Rapid River confrontation expected to die down until weekend," *LMT*, June 17, 1980, B1.

³¹⁰ Johnson, "Give-and-take between tribe, Fish and Game, produces little progress," *LMT*, May 15, 1980, C1.

³¹¹ *Tribune* staff, "Nez Perce fish-in may resume today," *LMT*, June 21, 1980, B1.

³¹² Katsy Jackson interview.

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stayed in the background and the Nez Perces took the lead at the site.³¹³

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.³¹⁴ 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."³¹⁵ 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."³¹⁶

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."³¹⁷ 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.³¹⁸

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."³¹⁹ 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

³¹³ Wilfred Scott interview.

³¹⁴ The *LMT* said the meeting lasted two hours, but the *Spokane Daily Chronicle* said it lasted hours. *Spokane Daily Chronicle* staff, "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.

³¹⁵ Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.

³¹⁶ Allison K. Scott interview.

³¹⁷ Johnson, "Two sides meet but fail to find common ground," *LMT*, June 22, 1980, A1.

³¹⁸ Johnson, "Peace reigns, but arrests continue," *LMT*, June 23, 1980, B1.

³¹⁹ H.J. Minkey, letter to the editor, *LMT*, July 27, 1980, D3.

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member referred to as Conley's "mechanical puppet."³²⁰ 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."³²¹ 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.³²² 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.³²³ 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."³²⁴

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.³²⁵ 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.³²⁶ 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.³²⁷ 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.³²⁸

³²⁰ Carlotta Peltier, letter to the editor, *LMT*, July 27, 1980, D3.

³²¹ Johnson, "Bill Snow: Cop on the spot," *LMT*, June 23, 1980, B1.

³²² Johnson, "The pent up anger of Nez Perce elder Leo Broncheau," *LMT*, June 30, 1980, B1.

³²³ Shelledy, "Time to call it a season and go home," *LMT*, July 2, 1980, D1.

³²⁴ 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>.

³²⁵ *Tribune* staff, "Dancing, drum playing on program," *LMT*, June 26, 1980, C2

³²⁶ Bryan Abas, "Chinook count to fall below 2,700 required," *LMT*, June 29, 1980, B1.

³²⁷ *Ibid*; and *Tribune* staff, "Two Nez Perce, attorney arrested after fight at Rapid River hatchery," *LMT*, June 30, 1980, B1.

³²⁸ Abas, "Chinook count."

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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.³²⁹ 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."³³⁰

Another nine tribal members were arrested Sunday for fishing.³³¹ 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.³³²

Conley heightened the tension the following week, leading up to the Fourth of July holiday. He made public comments,

³²⁹ *Tribune* staff, "Two Nez Perce, attorney arrested," *LMT*, June 30, 1980, B1.

³³⁰ Waddy Scott interview.

³³¹ *Tribune* staff, "Indian fishermen appear in court," *LMT*, July 1, 1980, C3.

³³² Allison K. Scott interview.

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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."³³³

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."³³⁴ 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.³³⁵ 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.³³⁶ By the end of the weekend, the state officers were removed from Riggins and sent back to Boise.³³⁷

³³³ Associated Press, "Chinook salmon may soon become endangered, Conley warns," *LMT*, July 2, 1980, C1.

³³⁴ Short, "Evans tells troopers to leave hatchery," *LMT*, July 4, 1980, A1.

³³⁵ *Ibid.*

³³⁶ *Tribune* staff, "Joint patrols bring peace to Rapid River," *LMT*, July 6, 1980, B1.

³³⁷ *Tribune* staff, "Rapid River situation tense, but quiet," *LMT*, July 7, 1980, B6.

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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 Percés did not need an eastern lawyer to point out tribal rights; for that, Thomas said, "We have our treaties."³³⁸ 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."³³⁹

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.³⁴⁰ 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.³⁴¹ The next weekend, July 18-20, those numbers dropped back down to under 50.³⁴²

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

³³⁸ Judy Thomas, letter to the editor, *LMT*, July 8, 1980, D1.

³³⁹ Ladd Hamilton, "How to get the Indians all stirred up," *LMT*, July 6, 1980, D1.

³⁴⁰ *Tribune* staff, "Conflict winds down; few fish return, 2 cited," *LMT*, July 13, 1980, C1.

³⁴¹ *Tribune* staff, "One Nez Perce arrested, two cited at Rapid River," *LMT*, July 14, 1980,

B1.

³⁴² *Tribune* staff, "Rapid River situation quiet," *LMT*, July 21, 1980, B3.

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ten returning each day.³⁴³ At the end of the season, Conley said that about 1,675 fish had been trapped at the hatchery.³⁴⁴ 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 the Idaho Power Company's mitigation contract. As part of its mitigation agreement for causing the depletion of salmon runs in Hells Canyon after the construction of the Hells Canyon Dam in the mid-20th century, the 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.³⁴⁵ 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.³⁴⁶ 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."³⁴⁷

³⁴³ George Tway, Boise, ID, to Governor John Evans, Boise, internal memo, July 16, 1980. Located in Evans collection.

³⁴⁴ "Idaho Times" report, December 1980.

³⁴⁵ Appendix K, "Wild Rapid River Resource Assessment," pg. K-7.

³⁴⁶ Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.

³⁴⁷ Allen P. Slickpoo, Sr., letter to the editor, *LMT*, May 4, 1980, C3.

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The dams had multiple negative effects on salmon. The federal government realized this, as well. In fact, a 1946 piece from 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."³⁴⁸

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.³⁴⁹

For the tribe, the declining numbers and deteriorating nutritional value meant traditional tribal practices regarding salmon were problematic, especially since the tribe routinely required salmon for ceremonial and cultural purposes. Marshall describes the prominent role salmon played in historic Nez Perce culture as well as contemporary culture (in the late 1970s). 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.³⁵⁰ 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.³⁵¹

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.³⁵² The

³⁴⁸ House Subcommittee of the Committee on the Merchant Marine and Fisheries, *Columbia River Fisheries: Hearings, 79th Cong., 2nd sess., August 14, 1946, 35-6.*

³⁴⁹ White, *The Organic Machine*, pg. 51.

³⁵⁰ Marshall, "Fish, Water, and Nez Perce Life," p. 767.

³⁵¹ *Ibid.*, p. 769-770.

³⁵² Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.

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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 1979.³⁵³ 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 bridging was quickly driving salmon toward extinction," resulting in the "scapegoating" of the Nez Perces by non-Indians.³⁵⁴ 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.³⁵⁵ 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."³⁵⁶

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.³⁵⁷ However, an inside source at the company told a *Tribune* reporter that the company was privately fuming over the feud and subsequent negative publicity.³⁵⁸

Conley evidently took pride in keeping the fishing ban in place all season, commenting to reporters how he had backed the

³⁵³ Conley, "Evaluation of Spring Chinook Salmon Emigration," pg. 2.

³⁵⁴ Hawley, *Recovering a Lost River*, pgs. 200-201

³⁵⁵ "Idaho Times" report, December 1980.

³⁵⁶ "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>

³⁵⁷ Johnson, "What is Idaho Power's role in the controversy?" *LMT*, June 29, 1980, A1.

³⁵⁸ *Ibid.*

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governor down from ending the ban early.³⁵⁹ 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."³⁶⁰

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.³⁶¹ 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.³⁶²

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."³⁶³ 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

³⁵⁹ Tway to Governor Evans, internal memo, July 16, 1980. Located in Evans collection.

³⁶⁰ *Tribune* staff and Associated Press, "Rapid River: Firm approach best, says Conley," *LMT*, July 8, 1980, A1.

³⁶¹ Keith and Kathleen West, letter to the editor, *LMT*, July 9, 1980, D1.

³⁶² 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)

³⁶³ Jerry Conley, Boise, ID, to Judith A. Nielsen, President of YWCA Advisory Board, Pullman, WA, November 3, 1980. Located in Evans collection.

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thwarted by the tribal fishery."³⁶⁴ 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."³⁶⁵

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.³⁶⁶ 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."³⁶⁷ 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, it's subsistence, it's staying alive for the Nez Perce people."³⁶⁸

Treaty rights, sovereignty, and religious freedom were all strong grounds upon which the Nez Percés 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 the 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

³⁶⁴ 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.

³⁶⁵ "Idaho Times," report, December 1980.

³⁶⁶ "Nez Perce v. Idaho," *Columbia River Inter-Tribal Fish Commission Monthly News* newsletter, (vo. 3, no. 8: November 1980). Located in Evans collection.

³⁶⁷ 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>.

³⁶⁸ "Idaho Times" report, December 1980.

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hearings.³⁶⁹ 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.³⁷⁰ 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 worsen tribal-state relations" and would "polarize, instead of help to resolve, tribal-state positions."³⁷¹

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 Percés, 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.³⁷²

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

³⁶⁹ "Nez Perce v. Idaho," *Columbia River Inter-Tribal Fish Commission Monthly News* newsletter, (vo. 3, no. 8: November 1980). Located in John collection.

³⁷⁰ "Event brief," November 3, 1980. Located in Evans collection.

³⁷¹ Jerry Conley, Boise, ID, to Gary Kimble, *Columbia River Inter-Tribal Fish Commission*, Portland, OR, December 23, 1980. Located in Evans collection.

³⁷² Allison K. Scott interview.

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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."³⁷³ It was this last point upon which Reinhardt based his dismissals.

For the Nez Percés, 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.³⁷⁴ 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 Percés.

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 Percés' 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 Percés' "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.³⁷⁵

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

³⁷³ George Reinhardt, "Memorandum Opinion," *State of Idaho v. Vaughn Bybee, et. al.*, Idaho County, March 2, 1981.

³⁷⁴ Johnson, "Sacred Water," *LMT*, September 14, 1980, D1.

³⁷⁵ Reinhardt, "Memorandum Opinion."

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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."³⁷⁶ 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 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.³⁷⁷

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.³⁷⁸ 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 look to a century-old treaty.³⁷⁹

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

³⁷⁶ Hawley, *Recovering a Lost River*, 202.

³⁷⁷ Wilfred Scott interview.

³⁷⁸ *Star News* staff, "Indians fight fishing ban," *The Central Idaho Star News*, June 26, 1980, A1.

³⁷⁹ M.L. Wimer, letter to the editor, *LMT*, June 13, 1980, pg. D1.

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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."³⁸⁰ 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."³⁸¹

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.³⁸²

Another issue at play for the Nez Percés, and for other tribes in the 20th 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."³⁸³ 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."³⁸⁴ (emphasis added)

Reinhardt's opinion is part of a larger pattern in Indian/non-Indian relations. Fishing rights were a contested area throughout the 20th 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

³⁸⁰ 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), pg. 29.

³⁸¹ Shaver, "Conflict and the Formation of Inequity," pg. 30.

³⁸² Hawley, *Recovering a Lost River*, pg. 200.

³⁸³ Star News staff, "Indians fight fishing ban," *The Central Idaho Star News*, June 26, 1980, A1.

³⁸⁴ *United States v. Winans*, 198 U.S. 371 (1905).

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Indian law have created such bitter—and sometimes violent—rivalry and jealousy.”³⁸⁵ 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 19th and 20th centuries, and the Rapid River conflict provides more evidence to bolster historian Deborah A. Rosen’s assentation that “The common goal of the state and federal governments with regard to Indians was control of Indians and Indian lands.”³⁸⁶ 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.”³⁸⁷ 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.³⁸⁸ 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 measures to “protect the resource,” but he came short of saying he would close the

³⁸⁵ Pevar, *Rights of Indians and Tribes*, pg. 186.

³⁸⁶ Deborah A. Rosen, *American Indians and State Law: Sovereignty, Race, and Citizenship, 1790-1880* (University of Nebraska Press, 2007), pg. 78.

³⁸⁷ Landeen and Pinkham, *Salmon and His People*, pg. 1.

³⁸⁸ Clifford E. Trafzer, *Indians of North America: The Nez Perce* (Chelsea House Publishing, 1993), 103.

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fishery again.³⁸⁹ In May of 1981, the tribe and the state began discussions about the salmon run. In mid-May, Dave Ortmann, a fisheries biologist for the state, 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.³⁹⁰ 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."³⁹¹ 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.³⁹² 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 overall productive and that through them there was a spirit of cooperation.³⁹³ By mid-June, numbers of returning salmon were still low, with only 821 chinook by June 17.³⁹⁴ Tom Levendofsky blamed cooler than usual weather and high water conditions for stalling the run.³⁹⁵

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

³⁸⁹ Johnson, "Rapid River talks to resume," *LMT*, May 31, 1981, B1 and B10.

³⁹⁰ *Tribune* staff, "Both fish run and fish talks stalled," *LMT*, May 16, 1981, B1.

³⁹¹ Johnson, "Breakthrough in salmon fishing talks," *LMT*, May 20, 1981, A1.

³⁹² Allison K. Scott interview.

³⁹³ Johnson, "Nez Perces impose own fishing ban," *LMT*, June 9, 1981, A1 and A4.

³⁹⁴ *Tribune* staff, "Salmon fishing negotiations resume," *LMT*, June 18, 1981, B4.

³⁹⁵ *Tribune* staff, "Rapid River salmon return remains low," *LMT*, June 16, 1981, B2.

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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."³⁹⁶ This decision came after a close-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.³⁹⁷

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."³⁹⁸ By June 26, the closure was no longer necessary as 2,779 fish had returned.³⁹⁹

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 legislatures had introduced. Senator Slade Gordon, R-Washington, and Representative Don Bonkers, R-Washington, had introduced these bills, referred to as the Steelead 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.⁴⁰⁰ 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.

³⁹⁶ Johnson, "Nez Perces decide to stop fishing," *LMT*, June 19, 1981, A1.

³⁹⁷ *Ibid.*

³⁹⁸ Bill Hall, "For all sides, a round of applause," *LMT*, June 26, 1981, D1.

³⁹⁹ *Tribune* staff, "Hatchery reaches quota of salmon," *LMT*, June 26, 1981, B1.

⁴⁰⁰ *Tribune* staff, "Religion plays part in Indian protest," *LMT*, June 22, 1981, B1.

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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."⁴⁰¹ 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.⁴⁰² 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 2,700 salmon the state deemed necessary for conservation efforts were in the trap, the tribe would have unlimited fishing access.⁴⁰³ 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.⁴⁰⁴

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,

⁴⁰¹ Allison Arthur, "Fishing Rights: Indians fight steelheading restrictions," *LMT*, June 27, 1981, B1.

⁴⁰² Wilkins and Lomawaima, *Uneven Ground*, 248.

⁴⁰³ *Tribune* staff, "Tribe, state reach fishing agreement," *LMT*, June 3, 1982, C3.

⁴⁰⁴ Wilfred Scott interview.

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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."⁴⁰⁵ 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."⁴⁰⁶

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. Thomas 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."⁴⁰⁷

⁴⁰⁵ Pat Ford, "The View from the Upper Basin," in *Western Water Made Simple*, 92.

⁴⁰⁶ Katsy Jackson interview.

⁴⁰⁷ Tàtlo Gregory interview.

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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.⁴⁰⁸ James 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 give aways." 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.⁴⁰⁹

The conflict over Rapid River is one of the many factors that led to the Nez Perce tribe creating its 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."⁴¹⁰ 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.⁴¹¹ Higheagle said that the stand-off resulted in more than just the development of fisheries management, but also that it 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."⁴¹²

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."⁴¹³ The tribe's Fish and Wildlife Commission is guided by

⁴⁰⁸ Josiah Pinkham interview.

⁴⁰⁹ Jason Higheagle Allen interview.

⁴¹⁰ Gordon Higheagle interview.

⁴¹¹ Ibid.

⁴¹² Ibid.

⁴¹³ Josiah Pinkham interview.

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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."⁴¹⁴ 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."⁴¹⁵ 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."⁴¹⁶

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

⁴¹⁴ "Nez Perce Tribe Fish and Wildlife Commission," available online at <http://www.nezperce.org/official/fishanwildlifecommission.htm>.

⁴¹⁵ "Nez Perce Tribe Department of Fisheries Resources Management Department Management Plan · 2013-2028," (2013), pg. 6. Available online at <http://www.nptfisheries.org/portals/0/images/dfrm/home/fisheries-management-plan-final-sm.pdf>.

⁴¹⁶ Ibid., pg. 26.

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one specific site.⁴¹⁷ 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.'"⁴¹⁸ 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."⁴¹⁹ At a ceremony held at the site in 2005, to commemorate the twenty-fifth 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."⁴²⁰ 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.⁴²¹

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

⁴¹⁷ Gordon Higheagle interview.

⁴¹⁸ Wilfred Scott interview.

⁴¹⁹ Allison K. Scott interview.

⁴²⁰ Woodward, "Nez Perce Honor 'Warriors' who Fought for Fishing Rights."

⁴²¹ Gordon Higheagle interview.

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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 pretty profound."⁴²²

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.⁴²³

The site has been continuously used by the Nez Perce nation since time immemorial as one of their many fishing sites. The numbers of traditional fishing sites for the Nez Perces has declined since contact, due to white encroachment, dam construction, and non-tribal fishing. All of this has elevated the importance of Rapid River for the Nez Perces; with fewer of

⁴²² Josiah Pinkham interview.

⁴²³ Ibid.

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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."⁴²⁴ Katsy Jackson echoed this sentiment, saying, "That's what our old people taught us. It's always been there for us."⁴²⁵

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 manager Nakia Williams noted that because of the loss of other traditional Nez Perce fisheries, more tribal members are utilizing Rapid River.⁴²⁶ 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 19th and 20th 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 Percés 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 on 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,

⁴²⁴ Basil George, Jr. interview.

⁴²⁵ Katsy Jackson interview.

⁴²⁶ Conversation with Nakia Williams and researcher, Lapwai, April 15, 2016.

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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."⁴²⁷

⁴²⁷ Josiah Pinkham interview.

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Yáwwinma **DRAFT**

Idaho County, Idaho

Name of Property

County and State

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Yáwwinma DRAFT

Idaho County, Idaho

Name of Property

County and State

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Bibliography (Cite the books, articles, and other sources used in preparing this form.)

Yáwwinma DRAFT
Name of Property

Idaho County, Idaho
County and State

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
 - Other
- Name of repository: _____

Historic Resources Survey Number (if assigned): _____

10. Geographical Data

Acreage of Property 6.172

Use either the UTM system or latitude/longitude coordinates

Latitude/Longitude Coordinates

Datum if other than WGS84: _____
(enter coordinates to 6 decimal places)

Yáwwinma DRAFT

Idaho County, Idaho
County and State

Name of Property

- | | |
|--------------|------------|
| 1. Latitude: | Longitude: |
| 2. Latitude: | Longitude: |
| 3. Latitude: | Longitude: |
| 4. Latitude: | Longitude: |

Or

UTM References

Datum (indicated on USGS map):

NAD 1927 or NAD 1983

- | | | |
|----------|-----------|-----------|
| 1. Zone: | Easting: | Northing: |
| 2. Zone: | Easting: | Northing: |
| 3. Zone: | Easting: | Northing: |
| 4. Zone: | Easting : | Northing: |

Verbal Boundary Description (Describe the boundaries of the property.)

The boundaries for the nominated site (aka “Yáwwinma,” “Rapid River,” “Barter Town,” “Rapid River House”) are shown as broken lines on the accompanying map.

Yáwwinma **DRAFT**
Name of Property

Idaho County, Idaho
County and State



Imagery Date 7/18/2013
Rapid River Rd, Riggins, ID 83549, USA
Latitude: 45.372889 | Longitude: -116.359697
Elevation: 2065 ft

Verbal Boundary Description for Barter Town (Idaho County Assessor's Office)

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 NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ 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;

Yáwwinma DRAFT

Idaho County, Idaho

Name of Property

County and State

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.

Verbal Boundary Description for Rapid River House

Two parcels held by the Nez Perce Tribe under a single deed comprise the private property at Rapid River House. The largest parcel, listed immediately below, completely encloses the smallest parcel, which is listed second.

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;

Yáwwinma DRAFT

Idaho County, Idaho
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Name of Property

- 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.)

The boundary encloses sections of Yáwwinma (Rapid River) that have historically been part of the Nez Perce Tribe's annual subsistence and ceremonial Chinook fishery, which has maintained its historic integrity for centuries. The total area (6.172 acres) of land is privately owned by the Nez Perce Tribe and is occupied by tribal fishermen and their families throughout the Tribe's annual Chinook season, which, depending on the timing of the Chinook runs, usually begins in June.

11. Form Prepared By

name/title: _____
organization: _____
street & number: _____
city or town: _____ state: _____ zip code: _____

Yáwwinma DRAFT

Name of Property _____

e-mail _____

telephone: _____

date: _____

Idaho County, Idaho
County and State

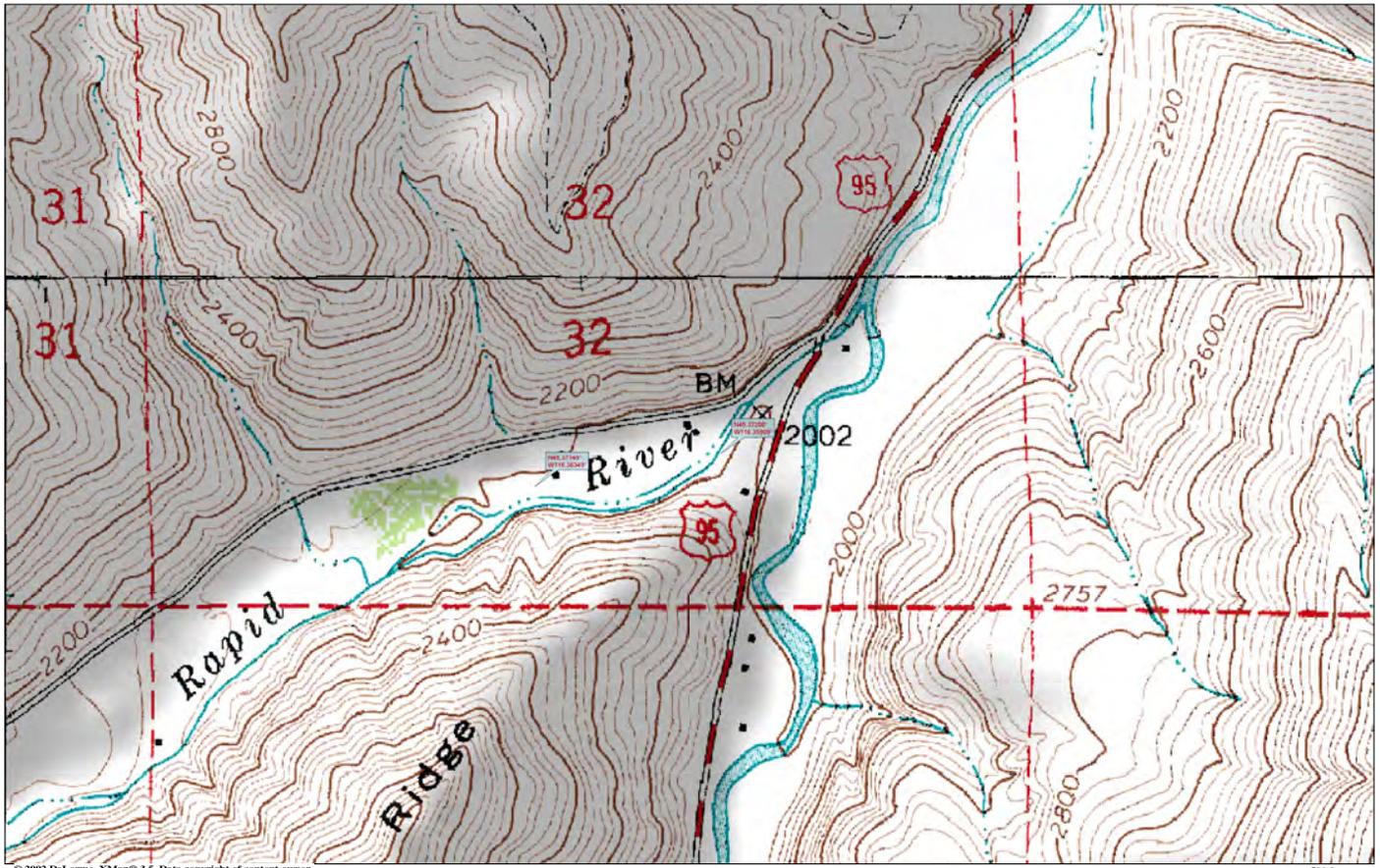
Additional Documentation

Submit the following items with the completed form:

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

Yáwwinma DRAFT
Name of Property

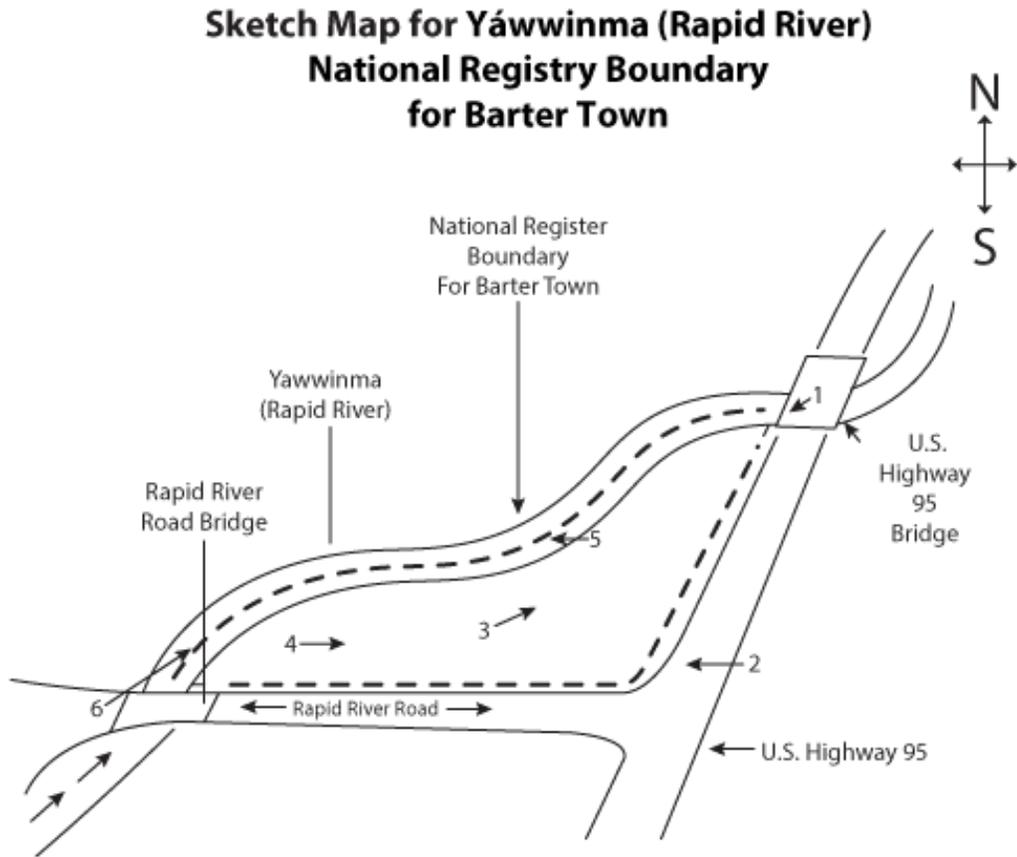
Idaho County, Idaho
County and State



© 2002 DeLorme, XMap® 3.5. Data copyright of content owner.
Scale: 1 : 6,400 Zoom Level: 15-0 Datum: WGS84 Map Rotation: 0° Magnetic Declination: 16.3°E

Yáwwinma **DRAFT**
Name of Property

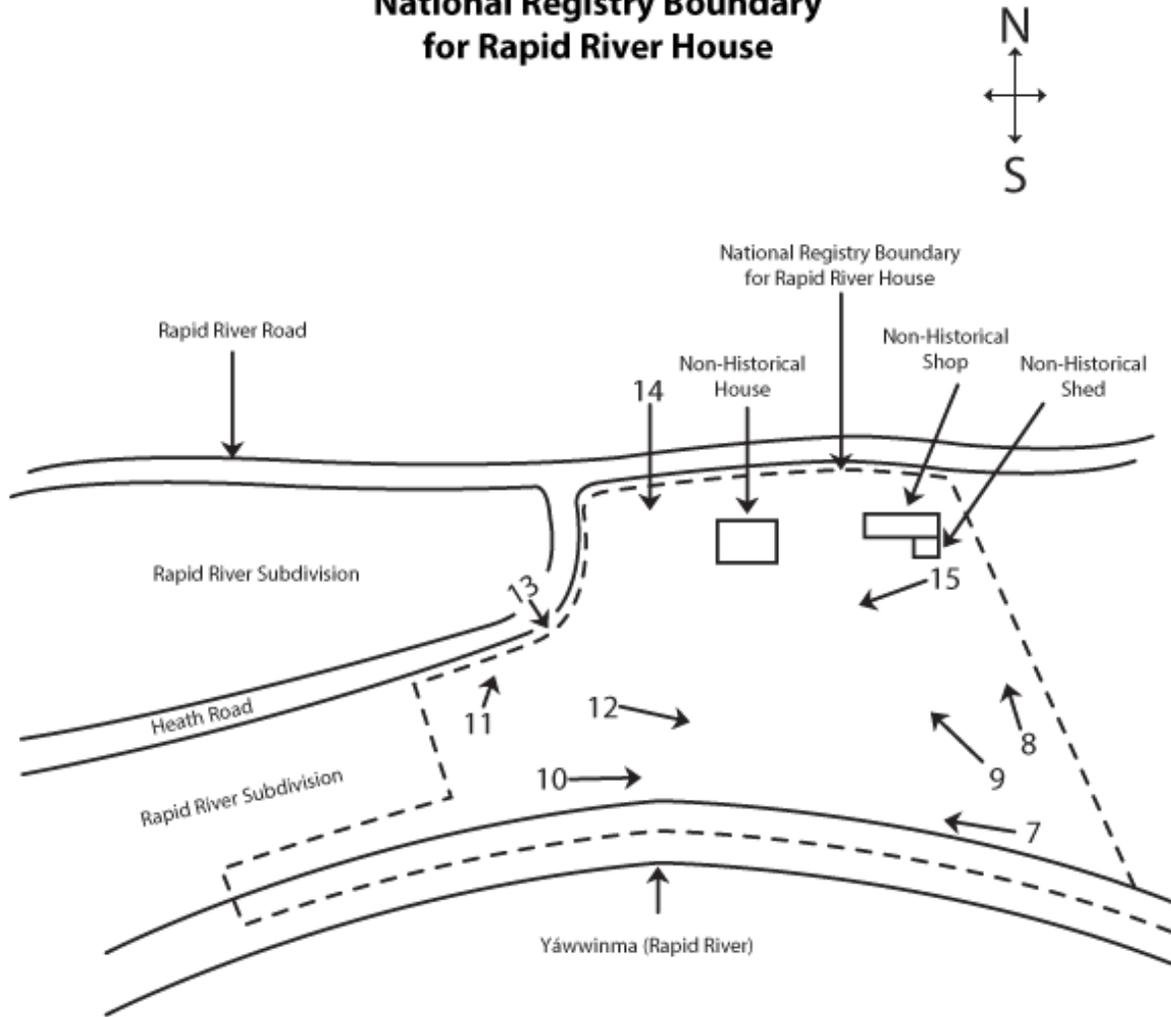
Idaho County, Idaho
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Yáwwinma **DRAFT**
Name of Property

Idaho County, Idaho
County and State

Sketch Map for Yáwwinma (Rapid River) National Registry Boundary for Rapid River House



Yáwwinma DRAFT

Name of Property

Idaho County, Idaho

County and State

- **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 Log

National Register of Historic Places Nomination Photograph Log

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

Photo #1

View of Yáwwinma (Rapid River) from U.S. Highway 95 Bridge abutment at the northeastern most corner of Barter Town. Camera facing southwest with White Bird Hill in the background. The northwestern boundary of Barter Town extends to the middle of this streambed.

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

Photo #2

Entrance to Barter Town from U.S. Highway 95 as viewed from across the road, camera facing west.

Yáwwinma DRAFT

Idaho County, Idaho

County and State

Name of Property

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

Photo #3

A hilltop view of Barter Town, camera facing northeast.

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

Photo #4

A hilltop view of Barter Town, camera facing east toward U.S. Highway 94. To the right beyond the fenceline is Rapid River Road, which parallels the property's southern boundary.

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

Photo #5

A plunge pool at Barter Town, camera facing southwest (somewhat upstream).

Name of Property: Yáwwinma (Rapid River)

Yáwwinma DRAFT

Idaho County, Idaho

Name of Property

County and State

City or Vicinity: Riggins, Idaho
County: Idaho County
State: Idaho
Name of Photographer: Jim Hepworth, SHPO Consultant
Date of Photograph: May 23, 2016
Location of Original Digital Files: Idaho State Historic Preservation Office
210 Main Street, Boise, ID 83702

Photo #6

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

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

Photo #7

Looking upstream at Yáwwinma (Rapid River) from the southeastern boundary of the Rapid River House property, camera facing west.

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

Photo #8

Yáwwinma DRAFT

Idaho County, Idaho

Name of Property

County and State

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, camera facing north and a bit west. Fisherman's tent visible center left in the photo.

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

Photo #9

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. Camera facing north and somewhat west.

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

Photo #10

Looking downstream at Yáwwinma (Rapid River) along the southern boundary of the Rapid River House property, camera facing east.

Name of Property: Yáwwinma (Rapid River)
City or Vicinity: Riggins, Idaho
County: Idaho County
State: Idaho
Name of Photographer: Jim Hepworth, SHPO Consultant
Date of Photograph: May 23, 2016
Location of Original Digital Files: Idaho State Historic Preservation Office

Yáwwinma DRAFT

Idaho County, Idaho

Name of Property

County and State

210 Main Street, Boise, ID 83702

Photo #11

View of Heath Drive entry gate from inside the Rapid River House property, camera facing north.

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

Photo #12

Viewshed of dyke (to the right), powerlines (center), and White Bird Hill (background), camera facing east.

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

Photo #12

Viewshed of dyke (to the right), powerlines (center), and White Bird Hill (background), camera facing east.

Name of Property: Yáwwinma (Rapid River)
City or Vicinity: Riggins, Idaho
County: Idaho County

Yáwwinma DRAFT

Idaho County, Idaho

Name of Property

County and State

State: Idaho
Name of Photographer: Jim Hepworth, SHPO Consultant
Date of Photograph: May 23, 2016
Location of Original Digital Files: Idaho State Historic Preservation Office
210 Main Street, Boise, ID 83702

Photo #13

Rapid River House entry gate seen from Heath Road, camera facing south and bit east.

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

Photo #14

An overlook of the Rapid River House property from Rapid Rapid River Road, camera facing south.

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

Photo #15

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

Upon acceptance of this draft, the following photos, all TIFF images, will be burned onto an archival disk.

Yáwwinma **DRAFT**
Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0001

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0002

Yáwwinma DRAFT

Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0004

Yáwwinma DRAFT

Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0005

Yáwwinma DRAFT

Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0006

Yáwwinma DRAFT
Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0007

Yáwwinma DRAFT
Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0008

Yáwwinma **DRAFT**
Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0009

Yáwwinma DRAFT
Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0010

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0011

Yáwwinma DRAFT

Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0012

Yáwwinma **DRAFT**
Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0013

Yáwwinma DRAFT
Name of Property

Idaho County, Idaho
County and State



ID Idaho County Yáwwinma 0014

Yáwwinma **DRAFT**
Name of Property

Idaho County, Idaho
County and State



ID_Idaho County_Yáwwinma_0015

Yáwwinma **DRAFT**
Name of Property

Idaho County, Idaho
County and State

National Register of Historic Places Nomination Historic Photographs

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.

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho
County and State

Figure 2



Photographer: Dave Johnson

Publisher: *Lewiston Morning Tribune*

Date: June 6, 1979

Subjects: Unknown

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho
County and State

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]

Yáwwinma **DRAFT**

Name of Property

Figure 4

Idaho County, Idaho
County and State



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

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho

County and State

Figure 5



Photographer: *Steve Thompson*

Publisher: *Lewiston Morning Tribune*

Date: June 14, 1980

Subjects: Lewis Gerwitz, A.K. Scott, and Bill Snow

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho
County and State

Figure 6



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

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho

County and State

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)

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho
County and State

Figure 8



Photographer: *Steve Thompson*

Publisher: *Lewiston Morning Tribune*

Date: June 22, 1980

Subjects: (foreground) Allen Slickpoo

Yáwwinma DRAFT

Name of Property

Figure 9

Idaho County, Idaho
County and State



Photographer: David Johnson

Publisher: *Lewiston Morning Tribune*

Date: June 23, 1980

Subjects: (foreground) Jarrod Crow and Bill Snow

Yáwwinma **DRAFT**

Name of Property

Idaho County, Idaho
County and State

Figure 10



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

Yáwwinma DRAFT

Name of Property

Idaho County, Idaho

County and State

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C.460 et seq.).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 100 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Office of Planning and Performance Management, U.S. Dept. of the Interior, 1849 C. Street, NW, Washington, DC.