



## The Klamath Tribes Natural Resources Department

Date: September 28, 2020

Re: Forest Management Direction for Large Diameter Trees in Eastern Oregon

Dear Shane Jefferies, Ochoco Forest Supervisor:

On behalf of the Klamath Tribes Natural Resources Department, I would like to thank you for accepting the request below on the Forest Plan Amendments regarding the Interim Wildlife Standards and the 21" screens that the US Forest Service Pacific Northwest Regional Office. The Tribes' Natural Resource Department also sees the need to revise the 21" rule. In fact, my Department has worked with the Fremont-Winema National Forest to modify the 21" rule on two projects to allow for the harvest of larger white fir (Red Knight and East Hills).

My requests below are specifically for the portions of eastern Oregon where the Klamath Tribes' have Reservation and ceded lands on the Fremont-Winema, Deschutes, and Malheur National Forests (see attached map, titled Klamath Tribes Reservation and Ceded Lands).

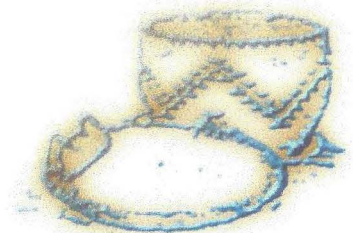
### Memorandum of Agreement between the Klamath Tribes and the US Forest Service

As the Klamath Tribes have shared with Regional Forester Glenn Casamassa, the Forest Service has a trust obligation to protect the Tribes' Treaty Rights and natural resources. That duty requires the Forest Service to incorporate the Tribes' knowledge and concerns into its projects. This duty is reinforced by and laid out in specific detail in the Memorandum of Agreement (MOA), negotiated and finalized in 1999 (and subsequently amended in 2005) as an outgrowth of the *Klamath Tribes v. United States* decision.<sup>1</sup>

The MOA acknowledges that the Forest Service has a duty to protect the Tribe's Treaty Rights and the resources on which those rights depend to the fullest extent possible. MOA § I(d). The MOA further establishes a mandatory government-to-government consultation process between the Forest Service and

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<sup>1</sup> Memorandum of Agreement Between the Klamath Tribes and the U.S. Forest Service, Klamath Tribes-USFS, Feb. 19, 1999, as amended Feb. 17, 2005.



the Klamath Tribes for decision-making in order to avoid adverse effects on the Tribes' Treaty Rights and resources.

As the MOA lays out, the Forest Service's trust obligation to the Tribes includes a procedural duty to consult with the Klamath Tribes "in the decision-making process to avoid adverse effects on Treaty resources." MOA §§ I(d)(1), II(a), IV. The MOA also specifies the Forest Service "has a substantive duty to protect to the fullest extent possible the Tribes' Treaty rights and the resources on which those rights depend." MOA §§ I(d)(2).

Critically, the MOA establishes a "government-to-government process to incorporate the Tribes as a cooperative government in the development of Forest Service policy, management and natural resource activities that may have an effect on the Tribes' sovereign rights...(and) to include the Klamath Tribes at the initiation, development and implementation stages of Forest Service policy and natural resource management decisions that may impact the Tribes sovereign rights..." MOA §§ II(a).

The MOA defines "Sovereign Rights of the Klamath Tribes" as including the Tribes' Treaty Rights. MOA § III. Furthermore, the MOA provides that the Forest Service shall incorporate the Tribes' policy and guidelines on treaty resources into the development of any Forest Service plans and natural resource activities.

The MOA states that "the following definitions shall apply to the terms and provisions of this MOA:

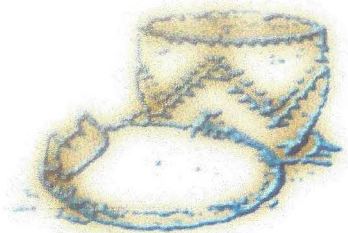
"Amendment" shall mean an amendment to a Forest Plan.

"Area Impacting the Tribes' Treaty Rights" shall mean the geographic area in which management activities may have an impact on the Treaty Rights or Trust Resources of the Klamath Tribes. This area shall be defined as follows: The former (1954) reservation lands and the lands ceded to the U.S. in the Treaty of 1864 (see attached map), and all lands used traditionally for hunting, gathering, fishing and trapping by Tribal members.

The MOA also requires that "the Tribes' view of the hunting, fishing, gathering and trapping activities protected by the Treaty must be solicited..." MOA §§ I(d)(1). For government-to-government coordination at the Regional level, within the MOA, the Forest Service acknowledges "that Regional issues regarding forest management, development of standards and guidelines, and revisions to the Forest Plans, shall be addressed between the Tribes and the Regional Forester at the earliest stage in their development." MOA §§ IV.

Given the MOA between the Klamath Tribes and the Forest Service, including the specifics outlined above, the Forest Service is obligated to work cooperatively with the Tribes. We are not required to request Cooperating Agency status (as noted in the EA, 4.1 Tribes).

Recent and On-going NEPA Projects on the Fremont-Winema NF





Specifically, the proposed amendments will revise a component of the US Forest Service Region 6 Interim Wildlife Standards (Eastside Screens) from 1995. Currently, the Eastside Screens “21-inch rule” greatly limits the harvest of live trees over 21 inches dbh.

The Klamath Tribes Natural Resources Department and the Fremont-Winema NF have cooperatively developed NEPA restoration projects for the Klamath Reservation forest for almost a decade. Since 2013, these projects have utilized the conservation of old trees as the foundation for forest conservation on those lands. NEPA-approved projects from this cooperative effort, which call for retention of trees over 150 years of age, now cover almost 500,000 acres:

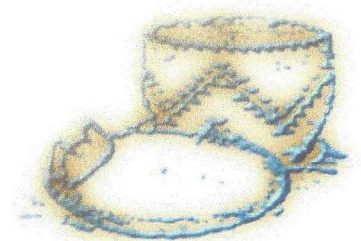
Fremont-Winema NF NEPA Project	Acres	Signed
Red Knight Restoration Project	32,000	09/19/2013
Bluejay Vegetation Restoration Project	65,000	05/20/2015
Lobert Restoration Project	97,500	08/21/2018
East Hills Project	132,500	10/29/2018
Bluemile Restoration Project	135,000	06/20/2020

We trust, and would like written reassurance, that whatever changes that are made in the 21” rule through plan amendment will not affect the cooperative agreements codified in the NEPA documents for these projects, including requiring retention of trees over 150 years of age.

Requests for the Forest Management Direction for Large Diameter Trees in Eastern Oregon preliminary Environmental Assessment

As I shared above, I support a modification of existing rule. My department has worked with the Forest Service to modify this rule on two projects to allow for the harvest of white fir >21” dbh (and <150 years old) where it was impacting Treaty Rights and Resources.

The proposed action put forth in the preliminary Environmental Assessment (EA) released in early August 2020 proposes replacing the existing 21” rule with a guideline that leaves it much more to the Forest Service’s judgment (at the Forest-level) as to which trees to cut and does not require that all old trees be left (2.2 Old Tree and Large Tree Guideline with Adaptive Management). The EA also includes an alternative to the proposed action. This alternative, called the “Old Tree Standard Alternative”, does require that all old trees (defined as trees estimated to be over 150 years of age) be kept. It also includes other useful management guidance.



In order to protect Treaty Rights and to support the Forest Service's trust obligations to the Tribes, I request that the Forest Service adopt the Old Tree Standard alternative (or an alternative that has the equivalent standard for protection of trees over 150 years) for all future projects that cut trees in the Klamath Tribes' Reservation lands and ceded lands (see attached map, titled Klamath Tribes Reservation and Ceded Lands).

On behalf of the Klamath Tribes Natural Resources Department, I request the EA adopt an old tree standard for the protection of, and avoidance of potentially impacting, the cultural, spiritual, hunting, fishing, trapping, gathering, and other traditional uses provided to the Tribes through the Klamath Treaty of 1864 on the Tribes' Reservation and ceded lands.

For guidance on the ecological framework of the dry forests of eastern Oregon, I have drawn upon the works of Drs. Jerry Franklin, Norm Johnson, and Trent Seager. The open letter they shared with us is attached as support of our requests to the Forest Service.

I thank you for your consideration of the points made in this letter, and I look forward to continued government-to-government consultation during the Forest Plans Amendment on Forest Management Direction for Large Diameter Trees in Eastern Oregon.

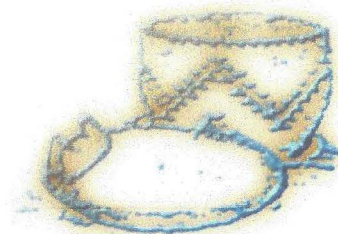
Respectfully,



/s/ Steve Rondeau

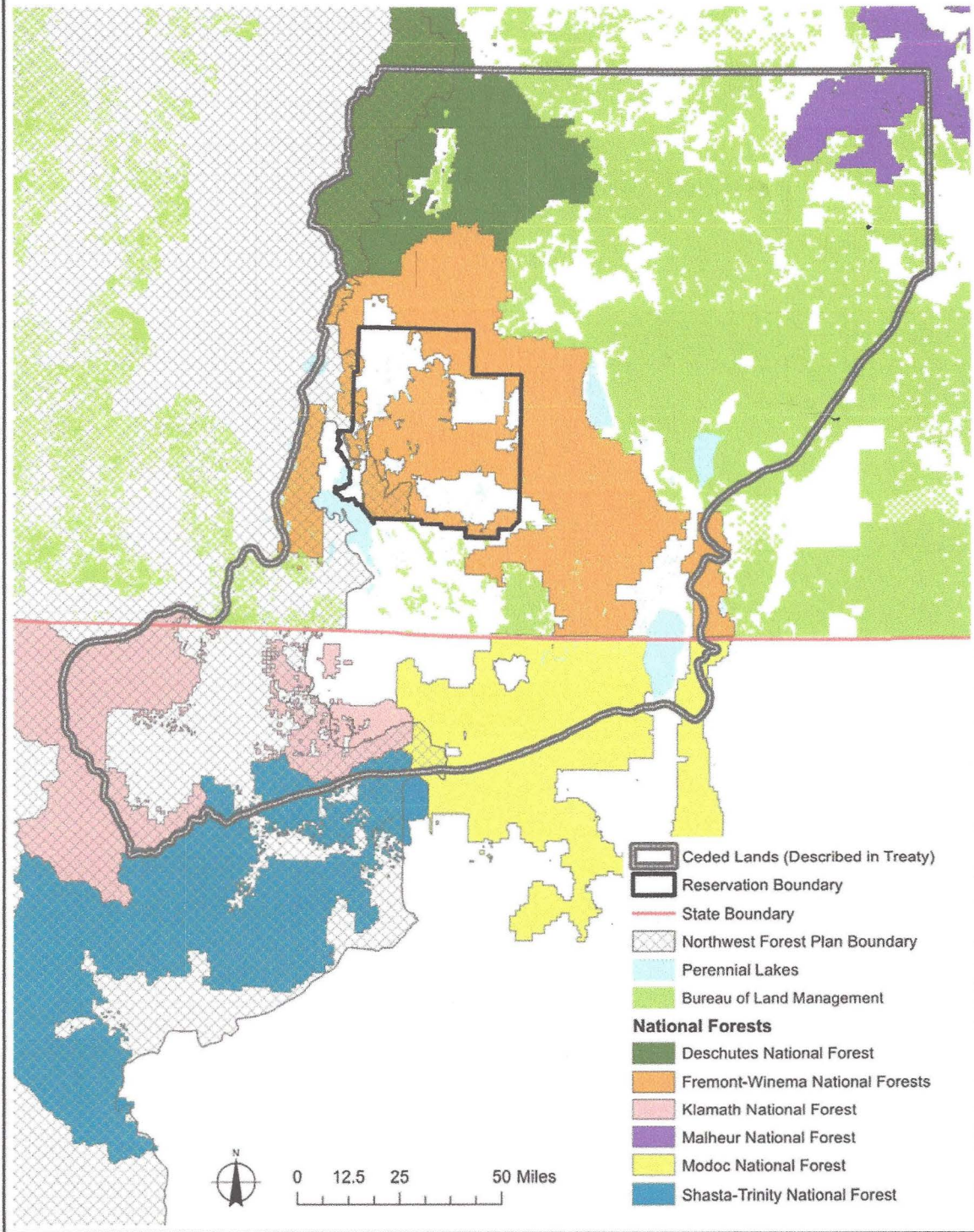
cc: Glenn Casamassa, Regional Forester, Pacific Northwest Regional Office  
Barry Imler, Forest Supervisor, Fremont-Winema National Forest.

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# The Klamath Tribes: Reservation and Ceded Lands



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