



The Nez Perce Tribe Social Services Department

PO Box 365. Lapwai, Idaho 83540

208-843-2463

www.nezperce.org

jackiem@nezperce.org

May 13, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
Indian Affairs, U.S. Department of the Interior
1849 C Street NW, MS 3642
Washington, DC 20240

Re: TESTIMONY OF SUPPORT FOR PROPOSED ICWA REGULATIONS

Notice of Proposed Rulemaking—Regulations for State Courts and Agencies in Indian Child Custody Proceedings—RIN 1076-AF25—Federal Register (March 20, 2015)

Dear Ms. Appel:

“As a nation, we have done more to address child abuse in the past 30 years than occurred in the first 200 years of our history. Unfortunately, the obstacles that remain are nothing less than mountains.”

Victor Vieth of the National Child Protection Training Center wrote an amazing article regarding Child Abuse: ***A Call to End Child Abuse in the United States within 120 Years Unto the Third Generation.*** [Unto the Third Generation: A Call to End Child Abuse in the United States within 120 Years](#)

Trailblazers in the field of children and families recognize the volume of work this nation has tackled to address child abuse, they also know how much work needs to be done. Unfortunately, State and Tribal Child Welfare providers alike are treading through remnants of the Indian Adoption Project and Urban Relocation era.

The Indian Child Welfare Act was incepted through grassroots advocacy and action, 1978 was not long ago at all – as a matter of fact; I see, feel and live the results of pre Indian Child Welfare Act era. I was three years old when this federal law was created:

Among the earliest examples of intentional domestic transracial adoption was the Indian Adoption Project, which occurred between 1958 and 1967. The project was a collaboration between the Bureau of Indian Affairs and the Child Welfare League of America (CWLA) and

was designed to remove Indian children from their families on reservations in an effort to assimilate them into mainstream society ([Fanshel, 1972](#)).

In June 2001, Child Welfare League Executive Director Shay Bilchik legitimated Native concerns, formally apologizing for the Indian Adoption Project at a meeting of the National Indian Child Welfare Association. He put the [Child Welfare League of America](#) on record in support of the [Indian Child Welfare Act](#). “No matter how well intentioned and how squarely in the mainstream this was at the time,” he said, “it was wrong; it was hurtful; and it reflected a kind of bias that surfaces feelings of shame.”

My Mother, born in 1955, during the Indian Adoption Project, found herself in and out of Foster Care and orphanages in urban Washington state, her siblings were adopted out to non-Indians. My grandmother, found herself in urban Washington state, from the rural Colville Indian Reservation. Like many in the 1950's, my grandmother was not surrounded with support systems away from her family on the reservation to maintain and promote family wellbeing. My grandmother joined others in urban relocation. I am the first mother in three generations, at least, to have the opportunity to raise my children, without losing them to outside interests and lack of policy.

Social and economic bearing on American Indian families within the Relocation era and Indian Adoption Project ricochets today. The hurt and despair American Indian men and women experienced at the hands of policy makers cannot be repaired effortlessly; I am a granddaughter to an urban Indian and mindfully making inter-generational change.

Sherman Alexie describes this in his book Indian Killer:

“Despite all of the time he spent in Big Heart's, Wilson had never come to understand the social lives of Indians. He did not know that, in the Indian world, there is not much social difference between a rich Indian and a poor one. Generally speaking, Indian is Indian. A few who gain wealth and power as lawyers, businessmen, artists, or doctors may marry white people and keep only white friends, but generally Indians of different classes interact freely with one another. Most unemployed or working poor, some with good jobs and steady incomes, but all mixing together. Wilson also did not realize how tribal distinctions were much more important than economic ones. The rich and poor Spokanes may hang out together, but that doesn't necessarily mean the Spokanes are friendly with the Lakota or Navajo or any other tribe. The Sioux still distrust the Crow because they served as scouts for Custer. Hardly anybody likes the Pawnee. Most important, though, Wilson did not understand that the white people who pretend to be Indian are gently teased, ignored, plainly ridiculed, or beaten, depending on their degree of whiteness.” — [Sherman Alexie, Indian Killer](#)

As a service provider to the Nez Perce Tribe children and families, and as an American Indian woman, I am pleading with you to embrace the proposed federal ICWA regulations on behalf of American Indian children.

The Bureau of Indian Affairs recognizes 566 different American Indian Tribes throughout the United States. Each tribal government vary in size, infrastructure, treaty status, executive order, etc. and fluctuate with elections and time. Individual states and their compliance with any federal regulation vary and also fluctuate with election, time and size.

Since 1978 this law has been left open for interpretation. Due to the wide variance in services, infrastructure and compliance with the Indian Child Welfare Act, it is very important to establish and implement these federal regulations.

'This proposed rule would incorporate many of the changes made to the recently revised guidelines into regulations, establishing the Department's interpretation of ICWA as a binding interpretation to ensure consistency in implementation of ICWA across all States. This consistency is necessary to ensure that the goals of ICWA are carried out with each Indian child custody proceeding, regardless of the child welfare worker, judge, and State involved.' (**Federal Register** /Vol. 80, No. 54 / Friday, March 20, 2015 / Proposed Rules)

The United States Government has the opportunity to directly support or impair the safety of American Indian Children. When an American Indian child finds their courage and voice to disclose child abuse, or participate in the investigation --- we must be equipped with guidance and regulation to support this brave child. Tribal, State and Federal agencies must reduce system inflicted trauma, and not further victimize the child!

Removing a child from their environment, their home, their people, their school, community and culture induces system inflicted trauma. The system directly manipulates positive and healthy outcomes for a child. Neglecting the proposed ICWA regulations and guidance will pose significant regression for American Indian children in the United States.

The Indian Child Welfare Act of 1978 (ICWA) "protects the best interest of the Indian Child and promotes the stability and security of Indian tribes and families" (25 U.S.C. § 1902). Substantive ICWA regulations that provide rules for its implementation in state courts and by state and public agencies have never been issued. Without guiding regulations, ICWA has been misunderstood and misapplied for decades. This has, in turn, led to the unnecessary break up of Native families and placement instability for Native children. Native children and families and the agencies and courts that implement ICWA need and deserve the clarity that the proposed regulations provide.

The Nez Perce Tribe and other tribes across Indian Country do not have the financial resources or magical power to fight the states for jurisdiction of, or support of American Indian children.

Below is additional information and history supporting my stance regarding the proposed ICWA regulations and further advocacy for the American Indian Child.

TRIBAL CONSULTATION POLICY

The U. S. Department of Health and Human Services (HHS) and Indian Tribes share the goal to establish clear policies to further the government-to-government relationship between the Federal Government and Indian Tribes. True and effective consultation shall result in information exchange, mutual understanding, and informed decision-making on behalf of the Tribal governments involved and the Federal Government. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004 and 2009, and an Executive Order (EO) in 2000. The goal of this policy includes, but is not limited to, eliminating health and human service disparities of Indians, ensuring that access to critical health and human services is maximized, and to advance or enhance the social, physical, and economic status of Indians. To achieve this goal, and to the extent practicable and permitted by law, it is essential that Federally-recognized Indian Tribes and the HHS engage in open, continuous, and meaningful consultation.

SEQUESTRATION

The Nez Perce Tribe Social Services Department is the primary source of services for impoverished families on the Nez Perce Reservation. The program funding within this department were significantly reduced through sequestration.

For instance the Low Income Home Energy Assistance Program funding amounts for the Nez Perce Tribe have been reduced by \$69,937.00 from FY 2010 to FY 2014. Resulting in 164 homes not served due to this reduction. If two children are in every one of the 164 homes, 328 children, or 328 elders may be without home heating.

In 2014 of 21 children removed from their home by court order, 16 children were ages 0 to 5. They needed Early Head Start and Head Start services administered by the Office of Head Start.

Health and Human Services Office of Head Start are structuring Head Start programs to fail, to slowly transition from a social service program to education. Education programs do not offer holistic services for the child and family.

The entire intent of Head Start and its inception in 1965 is being defeated! The Nez Perce Tribe has reduced the amount of children served, as the program has suffered from sequestration. The Office of Head Start has issued unfunded mandates and structured nonfederal share to be ever difficult to meet. The Office of Head Start issues unfunded mandates, such as transportation. This drastically affected programs and are

directly felt by children. Now, how can they get to school, on time, or at all in a safe vehicle? The children may miss breakfast, without transportation, and now the U.S.D.A. Child and Adult Care food program will not reimburse for this meal missed, even though it was prepared for that child.

- Treaty Obligation – Articles 5 of the Nez Perce Treaty. Education, Health, Schools, Hospitals, etc.
- Two populations, Elders and Children are most vulnerable; services for Elders and Children have been cut.
- Bureau of Indian Affairs 638 contracts, have significantly been cut in funding for direct services and administrative support.
- Health and Human Services, Department of Interior, Department of Justice and Department of Education have significant impacts on the quality of lives and safety for Indian people on reservations.

Congressional action directly influences sovereign nations across this country. Tribes have been patient and cooperative during this period of sequestration. Tribes endured the shutdown of the federal government. The Nez Perce Tribe remains cooperative and obliges the conditions of the Treaty, as the Federal government should reciprocate.

CHILD SERVICES REDUCED to SEQUESTRATION on the NEZ PERCE RESERVATION

- Pre Natal Care and Education, through Indian Health and Office of Head Start (Early Head Start);
- Pre Natal to 5 years old early childhood social/education services (Head Start);
- Indian Health Services adequate funding to include Mental Health, preventative and primary health and dental care;
- Drug and alcohol prevention and intervention;
- Low Income Home Energy Assistance Program funding;
- Restore and Increase Older Indian Act services for Senior Citizens Congregate Meal site;
- Funded Mandates from Office of Head Start (transportation)
- Increase in Indian Child Welfare, family preservation and reunification services;
- Restore Bureau of Indian Affairs funding.

GRANDPARENTS RAISING GRANDCHILDREN

HHS SENIOR CITIZENS FEEDING PROGRAM

Congressional allocations for Older Americans are extremely low. This includes opportunity for grants, increases in funding and expansion of services. HHS knows the

numbers. More and more senior citizens require services, by demonstrating social or nutritional need. Health disparities, that Medicaid and Indian Health feel, children feel them too. Programs cannot offer special diabetic menus, more people are diabetic than not, yet we cannot offer meals that support healthy living. The nutritional guidelines are followed; menus are approved, for a non diabetic person.

The Nez Perce Tribe feeds approximately 140 people a day on the reservation, with a feeding budget of \$26,000. There are approximately 260 feeding days in one year. 36,400 meals are served a year. The program serves approximately 260 elders on the reservation. The Nez Perce Tribe has over 430 Nez Perce elders 55 and over within their service area of the congregate meal site. In the service area there is an additional 242 tribal members 55 and over, who are not being served. If these people came in to eat, there would not be enough. Elders are forced to choose between purchasing groceries or gas, eating their Senior Citizen delivered meal or giving it to their hungry grandchild.

Many households are multi-generational. Housing shortages and homelessness is a problem across the United States and severe in Indian Country. Many grandparents have homes and few live alone, adult children and their grandchildren more than ever live with grandparents. Grandparents are stepping in while parents are absent or unable to care for their children. Proposed regulations for the Indian Child Welfare Act will support these familial support systems for children while allowing children to remain in their communities and non offending families.

Also in 1978, congressional amendments included tribal sovereignty in The Older Americans Act, and creating Title VI, **Grants for Indian Tribal Organizations**. The purpose of Title VI was to promote the delivery of supportive and nutrition services to American Indians and Alaska Natives that are comparable to services offered to other older people under the Title III program. In establishing this new title, Congress identified findings about the needs of older Indians. The law stated the following:

- Older Indians are a rapidly increasing population
- Older Indians suffer from high unemployment
- Older Indians have a poverty rate estimated at 61 percent
- Older Indians have a life expectancy between 3 and 4 years less than the general population
- Older Indians lack sufficient nursing homes and other health and long-term care facilities
- Older Indians lack sufficient Indian area agencies on aging
- Older Indians frequently live in substandard and overcrowded housing and receive less than adequate health care

Congressional allocations and grant opportunities need to catch up to the growing amount of older Indians across the country. Today on the Nez Perce Reservation in Idaho, 21% of enrolled members are 55 and over. There are many other members of federally recognized tribes who are serviced by Title VI on the Nez Perce Reservation.

The Nez Perce Tribe contributes significantly to the Senior Citizen feeding program. Health and Human Services, please recognize the systems of care approach in overall health and human services. Medical, Mental Health, Nutrition, Home Energy, Safe Drinking Water, Access, Consistency.

FEDERAL OBLIGATION & STATE of IDAHO

Pass through money from federal agencies to states and lastly tribes vs. monies sent directly to tribes. Currently the Nez Perce Tribe receives direct federal funding, but why is HHS sending monies to states to distribute to tribes. How much of the whole dollar is received by the tribe?

Monies that the Nez Perce Tribe receives from the State of Idaho:

- Tribal TANF.
- State of Idaho Social Services Block Grant.
- Child Welfare monies from State of Idaho to Nez Perce Tribe Child Welfare.
- State of Idaho Department of Education U.S.D.A Child and Adult Care Food Program for Head Start Program(s).
- Approximately 13% of overall Nez Perce Tribe Child Welfare funding is from the State of Idaho.

Government to Government should not include a middle man. The Nez Perce Tribe and State of Idaho approach health and human services with different philosophies. The Nez Perce Tribe government has an intimate relationship with their citizens: elders, children, the adult and family. Our decisions today directly affect our future. The State of Idaho has a long standing approach to reduce or have minimal federal government interaction. Idaho Governor Butch Otter's 2015 State of the State Speech included: *'It's unfortunate that so many of our differences with the national government wind up in court. But in the absence of any federal consensus on a multitude of issues, too often the courts become the last refuge both for public policy disputes and safeguarding our freedoms.'*

Economic and financial independence is not possible without healthy individuals, this starts with safeguarding our children and natural resources. <http://www.hcn.org/wotr/who-are-the-true-idaho-conservatives>

ECONOMIC POLICIES & CHILDREN

The United States Government subsidies far extend Indian Tribes. Indian Nations take social and political beatings for their 'dependence' on the U.S. Government. May it be reminded that policy and subsidies benefit States and others, including farming subsidies, timber dollars from federal reserves, and other venues States benefit.

"Payments in Lieu of Taxes" (or PILT) are Federal payments to local governments that help offset losses in property taxes due to non-taxable Federal lands within their boundaries. The key law is Public Law 94-565, dated October 20, 1976. This law was rewritten and amended by Public Law 97-258 on September 13, 1982 and codified at [Chapter 69, Title 31 of the United States Code](#). The Law recognizes that the inability of local governments to collect property taxes on Federally-owned land can create a financial impact.

The Department of the Interior's (DOI) Office of the Secretary has administrative authority over the PILT program. In addition to other responsibilities, DOI calculates payments according to the formulas established by law and distributes the available funds. Applicable DOI regulations pertaining to the PILT program were published as a [final rule in the Federal Register on December 7, 2004](#)

Timber Dollars; the Nez Perce Tribe has vast acres of Timber in their ceded land, and within the boundaries of the reservation. Yet the Lapwai School District, which is houses nearly 83% of American Indian children in Ft. Lapwai on the Nez Perce Reservation, experience cut after cut. In 2014-2015 the district responded to a \$200,000 reduction in funding. Two levies were unsuccessful despite patron effort and Tribal constituent support. Lapwai Valley was the first integrated school system of its kind, Indian and Non-Indian students, in the U.S.

<https://news.google.com/newspapers?id=kShmAAAIBAJ&sjid=eS8MAAAIBAJ&pg=1391%2C6842862>

Where are the Timber Dollars through treaty obligation of Article 2 of 1863 and 1868 Treaties? *One Superintendent and two teachers at the school, at the Fort. The Fort is in Lapwai, Idaho.* Schools surrounding Lapwai, like Kamiah and Grangeville, Idaho reportedly receive significant greater timber dollars for operation and have few American Indian students.

ARTICLE 2. TREATY WITH THE NEZ PERCÉS, 1868. Aug. 13, 1868. | 15 Stats., 693. | Ratified Feb. 16, 1869. | Proclaimed Feb. 24, 1869.

It is further agreed between the parties hereto that the stipulations contained in the 8th article of the treaty of June 9th, 1863, relative to timber, are hereby annulled as far as the same provides that the United States shall be permitted to use thereof in the maintaining of forts or garrisons, and that the said Indians shall have the aid of the military authorities to protect the timber upon their reservation, and that none of the same shall be cut or removed without the consent of the head-chief of the tribe, together with the consent of the agent and superintendent of Indian affairs, first being given in writing, which written consent shall state the part of the reservation upon which the timber is to be cut, and also the quantity, and the price to be paid therefor.

1868 Treaty with the Nez Perce: <http://digital.library.okstate.edu/kappler/Vol2/treaties/nez1024.htm>

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The Department of Interior States that PILT payments are in addition to other Federal revenues (such as oil and gas leasing, livestock grazing, and timber harvesting) that the Federal Government transfers to the States. The DOI has distributed more than \$6.3 billion dollars in PILT payments to States (except Rhode Island), as well as the District of Columbia, Puerto Rico, Guam, and the Virgin Islands since these payments began in 1977.

638 CONTRACTS

Consistent cuts from the BIA in both funding and personnel available to 638 Contract holders and people in need, has left the Nez Perce Tribe with \$13,000 for direct services for foster children and adults in need through General Assistance. What is the future and intent of the BIA on the ground level? Of the whole dollar allocated to the Department of Interior's Bureau of Indian Affairs, what portion reaches the individual Indian in need?

In 2012 and 2013 during the 4th quarter, the Bureau of Indian Affairs did not have monies for Tribes for Welfare Assistance; this includes payment for children in foster care or General Assistance for impoverished Native American adults residing on reservation, looking for work.

Appropriate allocations to the BIA Division of Human Services must occur and 638 contract support. Note Bureau of Indian Affairs statement of intent:

Under the mission area of Serving Communities, the Human Services Program supports the Department's Strategic Goal to Advance Quality Communities for Tribes and Alaska Natives by improving welfare systems for Indian Tribes and Alaska Natives. Human Services consists of direct funding and activities related to [social services](#), [welfare assistance](#), [Indian child welfare](#), and program oversight.

In April of 2012 the Nez Perce Tribe offered Sue Settles a proposed budget amount sufficient to effectively service 40 children who were under the legal guardianship of the Nez Perce Tribe. The Nez Perce Tribe allocates dollars to serve its children and families, and without our most vulnerable population would suffer. The amount of budgets, grant applications and management of these multiple grants is considered 'piece meal' a program together. The management of these multiple programs deters from direct services to the actual person in need. The individual Indian.

TRUST RESPONSIBILITY

What is a treaty?

A treaty is a contract, a binding and legal agreement, between two or more sovereign nations. By signing treaties with Indian tribes, the United States acknowledged tribal sovereign status. When the architects of the American government created the Constitution, they explicitly recognized that treaties are the supreme law of the land, along with the Constitution itself.

What promises did the United States make in the treaties?

In return for the vast Indian holdings and resources, the United States made certain promises:

- Protection for Indians from attacks upon their lands (this protection included legal assistance).
- Health care
- Education
- Some monies
- Sovereignty and religious freedom
- Confirmation and protection of certain rights: self-government, fishing and hunting rights, and jurisdiction over their own lands

It is important to remember that these promises were made in honor. Also, they were, and still are, legally binding upon the U.S. by the 6th Article of the U.S. Constitution.

Treaties: Promises between governments

The Nez Perce Tribe, a government, and the United States; must carry out treaties as legally binding contracts. Contracts between sovereign nations that establish those nations' political and property relations. Article Six of the United States Constitution holds that treaties "are the supreme law of the land."

Treaties between Indian tribes and the United States confirm each nation's rights and privileges. In most of these treaties, the tribes gave vast amounts of land to the United States in exchange for protection, services, and in some cases cash payments, but reserved certain lands (reservations) and rights for themselves and their future generations.

Indian treaties have the same force now as on the day they were signed. Like the Constitution and Bill of Rights, treaties do not expire with time. It is the responsibility of Health and Human Services to understand treaty obligations, such as the Treaty of 1855 and 1863.

The trust relationship between Indian tribes and the United States government is well established in law. [The reserved rights of the tribes](#) have been litigated many times, going even before the Supreme Court on several occasions beginning in 1905.

What does "trust responsibility" mean?

Tribes have a unique status in the American system of government. They are neither foreign nation, nor exactly like states. Tribes are distinct political communities, defined in law as "domestic, dependent nations." In its 1831 *Cherokee Nation v. Georgia* decision, the Supreme Court described the obligation of the United States to tribes as that of a guardian to his wards. Subsequent court decisions have made it clear that the

agencies of the federal government are to be held to the most stringent “fiduciary” (trust) standards. With respect to salmon, it cannot be said that federal agencies have always met their trust responsibilities.

What is the citizenship status for tribal members?

Tribal members have dual citizenship. They are subject to tribal laws and authorities and can exercise sovereign rights reserved at the time their treaties were enacted.

All tribal people, since 1924, have also been citizens of the United States, subject to its laws and authorities, privileges and rights. Many tribal members have particularly distinguished themselves in wars the United States has participated in. In general, tribal people exhibit great respect for this land and their fellow American citizens.

It was partly in recognition of tribal people’s courage and valor in defense of this nation that American citizenship was bestowed, not as a replacement for but in addition to tribal membership.

Courtesy of: http://www.critfc.org/member_tribes_overview/treaty-q-a/

For any further information or clarification please contact me at jackiem@nezperce.org or 208 843 2463 ext, 4655 or cell 208 791 9727. Thank you for your time and advocacy for the children and people of the Nez Perce Tribe and American Indians. I offer significant gratitude for your time and consideration of this written testimony.

Sincerely,

***** ELECTRONIC SIGNATURE *****

Jackie McArthur
Manager

Unto the Third Generation: A Call to End Child Abuse in the United States within 120 Years

http://www.ndaa.org/pdf/unto_third_generation.pdf

Mr. Vieth graduated magna cum laude from Winona State University and received his juris doctor from Hamline University School of Law. In law school, he served as Editor received the American Jurisprudence Award for achievement in the study of Constitutional Law. From 1988 work on addressing child abuse in small communities. In 1997, he became a senior attorney with the American Prosecutors Research Institute later, was appointed director of that program. In 2003, APRI appointed him as director of the National Child Protection Training Center at Winona State University. Today, he oversees both of these national centers. He has authored

numerous articles on the subject of child abuse and domestic violence and lectures frequently around the country. He is a recipient of distinguished alumnus awards from both Winona State University and Hamline University School of Law and the young lawyers division of the American Bar Association named him one of "21 young lawyers leading us into the 21st century." For research, editing and substantive review, the author thanks the following: Grant Bauer, Barbara Boat, Jeff Brickman, Allison DeFelice, Robin Delany Holmes, Todd Kosovich, Nancy Lamb, Jim Luttrull, Christine Mennen, Sarah Murphy, John Myers, Charles Phipps, Bob Reece, George Ross, John Stirling, Rick Trunfio, Anne Graffam Walker, Mary Wennen, Dawn Doran Wilsey, Debra Whitcomb. The author is equally indebted to the more than 10,000 front line child protection professionals from all 50 states who have heard this paper delivered as a keynote address and who have offered their valuable input.

1855 Treaty with the Nez Perce:

<http://digital.library.okstate.edu/kappler/Vol2/treaties/nez0702.htm>

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1863 Treaty with the Nez Perce:

<http://digital.library.okstate.edu/kappler/Vol2/treaties/nez0843.htm>

TREATY WITH THE NEZ PERCÉS, 1855.

June 11, 1855. | 12 Stats., 957. | Ratified Mar. 8. 1859. | Proclaimed Apr. 29, 1859

Articles of agreement and convention made and concluded at the treaty ground, Camp Stevens, in the Walla-Walla Valley, this eleventh day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the Nez Percé tribe of Indians occupying lands lying partly in Oregon and partly in Washington Territories, between the Cascade and Bitter Root Mountains, on behalf of, and acting for said tribe, and being duly authorized thereto by them, it being understood that Superintendent Isaac I. Stevens assumes to treat only with those of the above-named tribe of Indians residing within the Territory of Washington, and Superintendent Palmer with those residing exclusively in Oregon Territory.

ARTICLE 1.

The said Nez Percé tribe of Indians hereby cede, relinquish and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit: Commencing at the source of the Wo-na-ne-she or southern tributary of the Palouse River; thence down that river to the main Palouse; thence in a southerly direction to the Snake River, at the mouth of the Tucanon River; thence up the Tucanon to its source in the Blue Mountains; thence southerly along the ridge of the Blue Mountains; thence to a point on Grand Ronde River, midway between Grand Ronde and the mouth of the Woll-low-how River; thence along the divide between the waters of the Woll-low-how and Powder River; thence to the crossing of Snake River, at the mouth of Powder River; thence to the Salmon

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River, fifty miles above the place known [as] the “crossing of the Salmon River;” thence due north to the summit of the Bitter Root Mountains; thence along the crest of the Bitter Root Mountains to the place of beginning.

ARTICLE 2.

There is, however, reserved from the lands above ceded for the use and occupation of the said tribe, and as a general reservation

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for other friendly tribes and bands of Indians in Washington Territory, not to exceed the present numbers of the Spokane, Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians, the tract of land included within the following boundaries, to wit: Commencing where the Moh ha-na-she or southern tributary of the Palouse River flows from the spurs of the Bitter Root Mountains; thence down said tributary to the mouth of the Ti-nat-pan-up Creek; thence southerly to the crossing of the Snake River ten miles below the mouth of the Al-po-wa-wi River; thence to the source of the Al-po-wa-wi River in the Blue Mountains; thence along the crest of the Blue Mountains; thence to the crossing of the Grand Ronde River, midway between the Grand Ronde and the mouth of the Woll-low-how River; thence along the divide between the waters of the Woll-low-how and Powder Rivers; thence to the crossing of the Snake River fifteen miles below the mouth of the Powder River; thence to the Salmon River above the crossing; thence by the spurs of the Bitter Root Mountains to the place of beginning.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said tribe as an Indian reservation; nor shall any 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; and the said tribe agrees to remove to and settle upon the same within one year after the ratification of this treaty. In the mean time it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner or claimant, guarantying, however, the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named. And provided that any substantial improvement heretofore made by any Indian, such as fields enclosed and cultivated, and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President of the United States, and payment made therefor in money, or improvements of an equal value be made for said Indian upon the reservation, and no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money or improvements of equal value shall be furnished him as aforesaid.

ARTICLE 3.

And provided that, if necessary for the public convenience, roads may be run through the said reservation, and, on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them, as also the right, in common with citizens of the

United States, to travel upon all public highways. The use of the Clear Water and other streams flowing through the reservation is also secured to citizens of the United States for rafting purposes, and as public highways.

The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

ARTICLE 4.

In consideration of the above cession, the United States agree to pay to the said tribe in addition to the goods and provisions distributed to them at the time of signing this treaty, the sum of two hundred thousand dollars, in the following manner, that is to say, sixty thousand dollars, to be expended under the direction of the President of the United States, the first year after the ratification of this treaty,

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in providing for their removal to the reserve, breaking up and fencing farms, building houses, supplying them with provisions and a suitable outfit, and for such other objects as he may deem necessary, and the remainder in annuities, as follows: for the first five years after the ratification of this treaty, ten thousand dollars each year, commencing September 1, 1856; for the next five years, eight thousand dollars each year; for the next five years, six thousand each year, and for the next five years, four thousand dollars each year.

All which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

ARTICLE 5.

The United States further agree to establish, at suitable points within said reservation, within one year after the ratification hereof, two schools, erecting the necessary buildings, keeping the same in repair, and providing them with furniture, books, and stationery, one of which shall be an agricultural and industrial school, to be located at the agency, and to be free to the children of said tribe, and to employ one superintendent of teaching and two teachers; to build two blacksmiths' shops, to one of which shall be attached a tin- shop and to the other a gunsmith's shop; one carpenter's shop, one wagon and plough maker's shop, and to keep the same in repair, and furnished with the necessary tools; to employ one superintendent of farming and two farmers, two blacksmiths, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades, and to assist them in the same; to erect one saw-mill and one flouring-mill, keeping the same in repair, and furnished with the necessary tools and fixtures, and to employ two millers; to erect a hospital, keeping the same in repair, and provided with the necessary medicines and furniture, and to employ a physician; and to erect,

keep in repair, and provide with the necessary furniture the buildings required for the accommodation of the said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

And in view of the fact that the head chief of the tribe is expected, and will be called upon, to perform many services of a public character, occupying much of his time, the United States further agrees to pay to the Nez Percé tribe five hundred dollars per year for the term of twenty years, after the ratification hereof, as a salary for such person as the tribe may select to be its head chief. To build for him, at a suitable point on the reservation, a comfortable house, and properly furnish the same, and to plough and fence for his use ten acres of land. The said salary to be paid to, and the said house to be occupied by, such head chief so long as he may be elected to that position by his tribe, and no longer.

And all the expenditures and expenses contemplated in this fifth article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said tribe, nor shall the cost of transporting the goods for the annuity-payments be a charge upon the annuities, but shall be defrayed by the United States.

ARTICLE 6.

The President may from time to time, at his discretion, cause to whole, or such portions of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said tribe as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on

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the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas in the year 1854, so far as the same may be applicable.

ARTICLE 7.

The annuities of the aforesaid tribe shall not be taken to pay the debts of individuals.

ARTICLE 8.

The aforesaid tribe acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens; and should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and the other Indians to the Government of the United States, or its agent, for decision, and abide thereby; and if any of the said Indians commit any depredations on any other Indians within the Territory of Washington, the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the said tribe agrees not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE 9.

The Nez Percés desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same; and therefor it is provided that any Indian belonging to said tribe who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE 10.

The Nez Percé Indians having expressed in council a desire that William Craig should continue to live with them, he having uniformly shown himself their friend, it is further agreed that the tract of land now occupied by him, and described in his notice to the register and receiver of the land-office of the Territory of Washington, on the fourth day of June last, shall not be considered a part of the reservation provided for in this treaty, except that it shall be subject in common with the lands of the reservation to the operations of the intercourse act.

ARTICLE 11.

This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, and the chiefs, headmen, and delegates of the aforesaid Nez Percé tribe of Indians, have hereunto set their hands and seals, at the place, and on the day and year hereinbefore written.

Isaac I. Stevens, [L. S.]
Governor and Superintendent Washington territory.

Joel Palmer, [L. S.]
Superintendent Indian Affairs.

ARTICLE 8 Treaty of 1863.

The aforesaid tribe acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens; and should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities. Nor will they make war on any other tribe except in self-defense, but will submit all matters of difference between them and the other Indians to the Government of the United States, or its agent, for decision, and abide thereby and if any of the

said Indians commit any depredations on any other Indians within the Territory of Washington, the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the said tribe agrees not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.