



## **Ponderay Newsprint Company**

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December 14, 2018

U.S. Environmental Protection Agency  
EPA Docket Center  
Mail Code 28221T  
1200 Pennsylvania, Ave., N.W.  
Washington D.C. 20460

**RE: Docket ID No. EPA-R10-OAR-2017-0347, Federal Implementation Plan for the Kalispel Indian Community of the Kalispel Reservation, Washington; Redesignation to a PSD Class I Area**

I am writing on behalf of Ponderay Newsprint Company (“PNC”) to comment on the EPA proposal to approve the redesignation of lands within the Kalispel Indian Reservation as a PSD Class I area, 83 Fed. Reg. 54691 (Oct. 31, 2018) (“the Proposed Rule”). PNC owns and operates a newsprint mill on the west side of the Pend Oreille River, 0.8 miles from the nearest point of the Kalispel Reservation.<sup>1</sup> PNC employs 145 people, and is the second largest private employer in Pend Oreille County.

PNC has always been, and continues to be, committed to protection of our local air quality. PNC believes, however, that this redesignation could limit PNC’s ability to modernize operations at the mill, as well as opportunities for other businesses to locate in Pend Oreille County. PNC also contends that EPA’s proposal to approve this tribal action without careful analysis of its impacts on the local community undercuts fundamental goals of this Administration to better balance the costs and the benefits of new environmental regulation.

The Proposed Rule repeatedly takes the position that the Clean Air Act gives EPA no authority to consider the real world impacts of a tribal redesignation proposal.<sup>2</sup> PNC respectfully disagrees. EPA’s PSD rules and the Regulatory Flexibility Act impose procedural and substantive requirements that the Tribe and EPA have not satisfied here.

### **Executive Summary**

These comments address three significant deficiencies in the Kalispel Tribe’s Class I redesignation proposal and in EPA’s review of that proposal.

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<sup>1</sup> See aerial photo showing the locations of PNC and the Kalispel Reservation, Exh. 1 to these comments.

<sup>2</sup> See, e.g., 83 Fed.Reg. at 56492: “Congress generally established a narrow role for the EPA in reviewing state and tribal PSD redesignations.” See also 83 Fed.Reg. at 54694: “There is no requirement for a finding on what areas may be affected by a proposed redesignation or notice to such government in such areas.”

**First**, the Tribe refused to consult with the Pend Oreille County Board of Commissioners about the local impacts of its proposal, notwithstanding a formal consultation request from the County, and notwithstanding an EPA rule that required the Tribe to consult with local governments before submitting its proposal for EPA approval.

**Second**, EPA declined to review the adequacy of the Tribe's analysis of the economic and social impacts of designating a Class I area in heart of the County. The Tribe understated the real world impacts of its proposal, and EPA erroneously disclaims its responsibility to require an accurate disclosure.

**Third**, EPA has erroneously declined to analyze the impacts of the Proposed Rule on small entities including Pend Oreille County and PNC, in violation of the Regulatory Flexibility Act.

**PNC asks EPA to disapprove the Tribe's redesignation proposal, and to revise its interpretation of the criteria EPA applies in reviewing tribal Class I redesignation proposals.**

#### **A. Local Government Consultation**

40 CFR §§ 52.21(g)(2)(v) and (g)(4) provide that an Indian Governing Body shall not propose a PSD redesignation for EPA approval until it has consulted with "the elected leadership of local and other substate general purpose governments in the areas covered by the proposed redesignation." The Pend Oreille County Board of Commissioners specifically requested a government to government consultation with the Tribe, to address "concerns about the economic health of our community."<sup>3</sup> The Tribe declined to consult with the County and justified its refusal by explaining that the consultation obligation does not apply.<sup>4</sup> The County Commissioners of Bonner County, Idaho, located a few miles east of the Kalispel Reservation, had no opportunity to consult with the Tribe because the Tribe did not notify the County of its proposal.<sup>5</sup> In the Proposed Rule EPA announces its intent to ratify the Tribe's actions by opining that the consultation obligation applies only to local governments inside the reservation boundary. According to EPA the only local government inside the boundary of the Kalispel Reservation is the Kalispel Business Council. Accordingly, EPA maintains that the Tribe fulfilled the local government consultation obligation of 40 CFR §§ 52.21(g)(2)(v) by consulting with itself.<sup>6</sup>

The Proposed Rule is wrong on the facts and the law. The proposed Class I area lies entirely within the boundaries of Pend Oreille County. The County is a local government "in the area covered by the proposed redesignation," even if EPA construes that term to cover only local governments within the boundaries of the reservation.

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<sup>3</sup> Letter of April 7, 2017 from Pend Oreille County Board of Commissioners to Kalispel Tribe of Indians at 1, Exh. 2 to these comments.

<sup>4</sup> Letter of May 11, 2017 from Glen Nenema, Kalispel Business Council, to Acting Region 10 Administrator Michelle Pirzadeh at page 2, footnote 1, Exh. 3 to these comments.

<sup>5</sup> Comment letter of December 11, 2018 from the Bonner County Board of Commissioners to the docket for this rulemaking, Exh. 4 to these comments.

<sup>6</sup> 83 Fed.Reg. at 54694.

Even if the Reservation was not located in Pend Oreille County, PNC respectfully submits that EPA's proposed interpretation of 40 CFR § 52.21(g)(2)(v) undercuts its core purpose. The obvious intent behind a rule that mandates local government consultation prior to adoption of a PSD redesignation is to provide a forum for states and tribes considering such a measure to consider the views of local governments affected by the redesignation. EPA does not contend that the Kalispel proposal affects only residents of the Reservation. In other recent tribal redesignation approvals EPA confirmed that the tribe did consult with local governments, including counties near but not inside the reservation.<sup>7</sup> EPA should not construe § 52.21(g)(2)(v) here to nullify the local government consultation obligation.

EPA would violate 40 CFR 52.21(g) if it approved a tribal redesignation proposal in the face of evidence that a Tribe ignored a timely County consultation request. EPA's position conflicts with the goals of this Administration to regulate with care, to protect local economic growth opportunities and to carefully evaluate the trade-offs posed by new environmental restrictions. By ratifying a Tribe's refusal to meet with affected local governments EPA would undercut all of these goals. **EPA should reconsider the interpretation advanced in the Proposed Rule that nullifies the local government consultation requirement as applied to most tribal redesignation proposals, and reject the Kalispel proposal for non-compliance with the local government consultation requirement. See 40 CFR 52.21(g)(v).**

## **B. Economic, Social and Energy Effects Analysis**

40 CFR §§ 52.21(g)(2)(iii) and (g)(4) provide that a state or tribal redesignation proposal must include "a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed resignation . . ." This is one of the "procedural requirements" that an Indian Governing Body must satisfy prior to submittal of a redesignation proposal to EPA. 40 CFR 52.21(g)(4)(i). EPA must disapprove a proposed redesignation if the Administrator finds, after notice and comment, that these procedural requirements have not been satisfied. 40 CFR 52.21(g)(5).

In this case the Tribe submitted a "Technical Report" that purports to address the effects of the proposed redesignation.<sup>8</sup> The report is far from "satisfactory." The Technical Report devotes portions of five pages to socioeconomic impacts. *Id.* at 37-41. Section 4.4.1 begins with an erroneous statement that Class I redesignation will have no effect on existing sources unless they seek to expand their emissions. *Id.* at 37. This statement is false because the PSD program imposes burdens on states to ensure that increases in emissions of PSD pollutants after a "baseline date" do not consume all of the available growth increments authorized by the PSD rules. All sources of emissions, not just major industrial sources, consume increment. If the aggregate increase in emissions from vehicles, forestry, agriculture, industry and other sources since the baseline date exceeds the increment, the state must take regulatory action to reduce

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<sup>7</sup> "[T]he FCP Community developed a fact sheet and held a consultation meeting with federal, state and local governmental representatives to further explain and hear concerns regarding the proposed action, besides the required public hearing." 73 Fed.Reg. 23086, 23092 (April 29, 2008) (final rule approving Forest County Potawatomi Community Reservation as a non-Federal Class I area).

<sup>8</sup> The Technical Report is Entry 0013 in the EPA Docket for this rulemaking.

emissions to protect the increment. *See* 40 CFR 51.166(a)(3). Those burdens may fall on sources that have not increased their emissions, and do not propose to increase their emissions.

In Pend Oreille County, baseline dates for PM<sub>10</sub> and sulfur dioxide were established in 1979.<sup>9</sup> All emissions increases and decreases in those two pollutants since 1979 consume increment. Class I increments are much smaller than Class II increments. 40 CFR 52.21(c). The Tribe's Technical Report modeled the effects of two hypothetical energy projects on the Class I PM<sub>2.5</sub>, SO<sub>2</sub> and NO<sub>2</sub> increments, but the Tribe made no attempt to model the consumption of PM<sub>10</sub> and sulfur dioxide increments since 1979.<sup>10</sup> **The Report does not indicate whether emissions increases have consumed the available increment. As a result, the Report sheds no light on a key potential impact of the Proposed Rule. Instead, it provides false assurances that the redesignation will have no effects on existing sources unless they propose to increase emissions.**

The Technical Report also understates the levels of existing emissions in Pend Oreille County. For instance, the Report suggests that PNC accounts for all PM<sub>10</sub> emissions from point sources in Pend Oreille County, and that those emissions total 4 tpy. Technical Report, Table 14. Neither contention is accurate. PNC alone has permitted PM<sub>10</sub> emissions of about 25 tons per year. Other stationary sources operate in close proximity to the Reservation, including Pend Oreille Valley Railroad and Vaagen Brothers Usk mill.

PNC and Pend Oreille County representatives highlighted these errors to EPA Region 10 staff in several 2018 meetings. EPA's informal response was that EPA lacks authority to scrutinize the adequacy of a tribal government's impacts analysis. The Proposed Rule reflects this position. Instead of presenting an EPA finding that the Tribe's analysis does or does not satisfy the requirements of 40 CFR 52.21(g)(2)(iii), the Proposed Rule simply summarizes the points in the Technical Report, and recites the Tribe's conclusion that the Report adequately analyzes the economic and social impacts of the redesignation. 83 Fed.Reg. at 54694: "According to the supplemental analysis . . .," "the Technical Report concludes . . ."

The burden of determining that the analysis of economic and social effects is "satisfactory" lies with EPA, not the Tribe. This analysis is one of the "procedural requirements" against which EPA reviews tribal redesignation proposals under 40 CFR 52.21(g)(4)(i).

**PNC and the County notified Region 10 of the Technical Report deficiencies summarized above. By declining to consider the adequacy of the Tribe's analysis, the Proposed Rule abdicates one of EPA's core responsibilities in reviewing a tribal redesignation proposal. Instead of rubber stamping the Tribe's submittal, 40 CFR 52.21(g)(5) directs EPA to disapprove the proposed redesignation for failure to satisfy the procedural requirements listed in subsection (g)(4)(i).**

### **C. Small Business Economic Impacts**

The Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. ("the RFA"), requires EPA to include in each notice of proposed rulemaking an initial regulatory flexibility analysis that describes the

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<sup>9</sup> Washington Minor Source Baseline Dates, Exh. 5 to these comments.

<sup>10</sup> Technical Report, Appendix C, Section 4.

impact of the proposed rule on “small entities.” 5 U.S.C. § 603.<sup>11</sup> Section 605 exempts from this obligation a proposed rule as to which the head of the agency certifies that the rule will not, if promulgated, “have a significant economic impact on a substantial number of small entities.” Pend Oreille County, PNC and virtually every other business in the County are “small entities” within the RFA definition of that term. 5 U.S.C. § 601(3)-(7).

In the Proposed Rule EPA erroneously certified that the proposed action “will not impose any new requirements on small entities.” 83 Fed.Reg. at 54695. EPA based this certification on two false premises. First, EPA noted that PSD permitting requirements already apply throughout the County. *Id.* That is true, but the effect of a Class I designation is to increase the stringency of the PSD program in all areas in which state or federal rules require permit applicants to model the impact of a project on Class I increments. Washington’s PSD program requires analysis of a proposed project’s impacts on PSD increments in a Class I area 300 kilometers from the project.<sup>12</sup>

EPA then contends that “PSD permitting requirements only apply to the construction of new major stationary sources or major modifications to existing major stationary sources.” 83 Fed. Reg. at 54695. This contention obfuscates the effects of a Class I designation, for the reason discussed in Section B above. All increases in emissions of a PSD pollutant after the baseline date for that pollutant consume increment, and EPA and the states are responsible for imposing new regulatory measures if necessary to protect the increments. 40 CFR 51.166(a)(3). Those requirements would not regulate only major stationary sources, certainly not in Pend Oreille County where major stationary sources are few and far between. Any new controls would fall on the shoulders of “small entities.”

**EPA will lack any factual foundation to certify that the Proposed Rule will impose no new requirements on small entities until EPA models consumption of the PM10 and SO2 Class I increments in Pend Oreille County.** Section B of these comments shows why the Tribe must perform that analysis to satisfy the economic and social impact analysis requirements of 40 CFR 52.21(g)(2)(iii). The RFA subjects EPA to the same burden. It may be that a Class I designation will have no significant impacts on a substantial number of small entities. It would be arbitrary and capricious for EPA to make that certification until EPA knows whether its action will compel new controls on small entities to protect the Class I increments.

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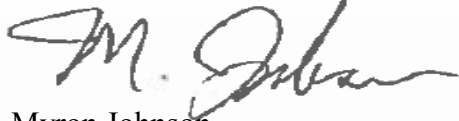
<sup>11</sup> Subection 603(b) specifies the content of an initial regulatory flexibility analysis.

<sup>12</sup> Washington Dept. of Ecology, Guidance on Washington State’s Prevention of Significant Deterioration Permitting Program at 35 (November 2017), <https://fortress.wa.gov/ecy/publications/documents/1702014.pdf>.

**D. Conclusion**

Thank you for carefully considering these comments. PNC contends that 40 CFR 52.21(g)(5) requires EPA to disapprove the proposed redesignation until the Tribe cures the procedural errors described above, and that the RFA requires EPA to determine whether any room for growth remains in Pend Oreille County before EPA certifies that the Proposed Rule will have no significant economic impacts on a substantial number of small entities.

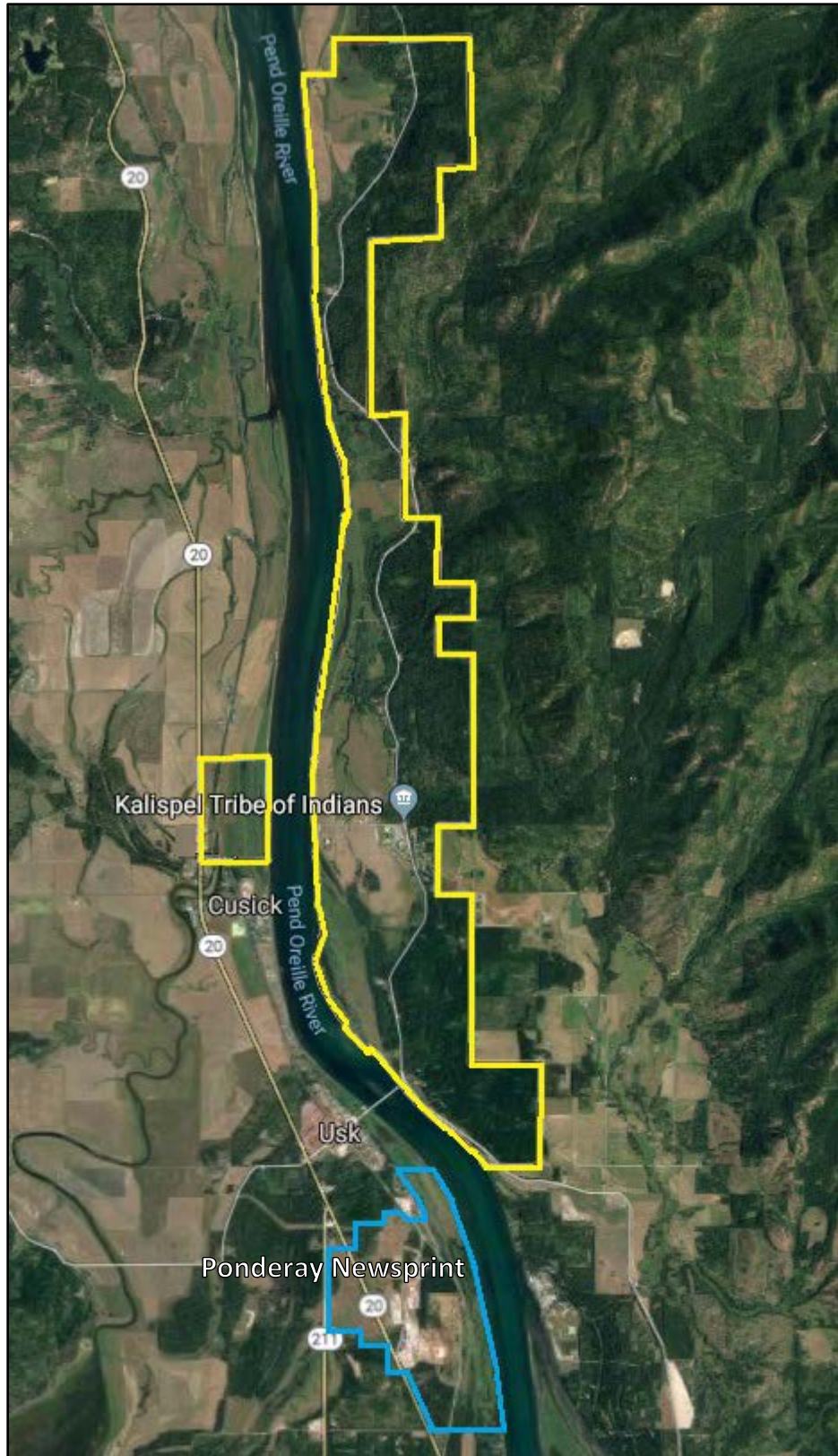
Sincerely,

A handwritten signature in black ink, appearing to read "M. Johnson", is written over a light gray rectangular background.

Myron Johnson  
Ponderay Newsprint General Manager

Cc: Assistant Administrator William L. Wehrum  
Region 10 Administrator Chris Hladick  
Rep. Cathy McMorris-Rodgers  
Pend Oreille County Commissioner Steve Kiss  
Bonner County Commission Chair Glen Bailey  
Washington Governor Jay Inslee  
Idaho Governor Butch Otter

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Ponderay Newsprint and Kalispel Reservation map





## *Pend Oreille County*

# *Board of Commissioners*

*Karen Skoog*  
District #1

*Mike Manus*  
District #2

*Stephen Kiss*  
District # 3

*Rhonda Cary*  
Clerk of the Board

Phone: 509-447-4119  
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E-mail: [commissionersoffice@pendoreille.org](mailto:commissionersoffice@pendoreille.org)

April 7, 2017

Kalispel Tribe of Indians  
Attn: Air Quality Comments  
PO Box 39  
Usk, WA 99180-0039

RE: Class I Redesignation Request

Dear Chairman Nenema:

Thank you for sending us a copy of the Technical Report prepared in support of a potential application by the Tribe to have your Reservation designated as a Class I area in accordance with the provisions of the Clean Air Act. Pend Oreille County shares your interest in protecting the environment, including the quality of our air, and we are pleased to note in the report that we currently enjoy excellent air quality. We look forward to working with the Tribe in the future to continue our successful efforts. As a result, we are formally requesting a government to government consultation with the Tribe and the Washington State Department of Ecology (ECY) before you submit your redesignation request to the Environmental Protection Agency (EPA). While we have learned a lot in the short time since we were informed of your plans, we still have many questions, and we would like to meet in order to better understand your proposal and how it would be implemented. Given the Department of Ecology's shared interest in maintaining our air quality and their role in permitting future development proposals, we would hope that you would invite them to join in our discussions.

In preparation for our meeting, we have organized our questions and comments regarding the Technical Report into the following categories:

1. Socioeconomic Analysis
2. Air Quality Standards
3. Impacts on Existing Businesses and Operations
4. Implementation

### **Socioeconomic Analysis**

In addition to the environmental health of our community, as elected leaders of all residents in the county, we are also extremely concerned about the economic health of our community. As a county government, we do not have the ability to acquire land or sponsor economic development projects in the Spokane urban area, and as result, we must rely on private investment in our county to generate the tax revenues necessary to maintain essential public services. Unfortunately, the Technical Report fails to address the perilous economic situation that the County faces. Simply stated, the current expense budget of Pend Oreille County is \$10,011,382 dollars a year, and our annual revenues are closer to \$9 million a year. Over the past four years the County's operating expenses have increased by over thirty percent and our tax revenues have increased by 2.05 percent. This is clearly not a sustainable situation and the County must actively attract new private investment if we are to sustain basic services.



In addition, we are concerned about the impression that the report included in Appendix B to the Technical Study, *The Economic Impact of Redesignation of the Kalispel Indian Reservation as a Class I Area under the Clean Air Act's Prevention of Significant Deterioration Program* (Power, 2017), gives the reader about the economic health of our community. Analyzing the economic impacts through the lens of a three county "Kalispel Reservation Economic Area" does not provide a clear picture of the economic conditions of Pend Oreille County. Spokane County, with nearly a half a million people and major urban center, is 37 times larger than Pend Oreille County, and as a result, the statistics from Spokane County completely dominate the picture when included with statistics from Pend Oreille County. Pend Oreille County is in fact one of the most economically distressed areas in the state with one of the highest unemployment rates and one of the lowest per capita income levels. Unfortunately, we have not experienced "significant economic vitality over the past 45 years" and real incomes in Pend Oreille County have not increased three-fold, jobs have not doubled, and the population has not increased by 80% as described in the Technical Report. In addition, it is important to note that the net labor earnings in 2014 of almost \$12.3 billion dollars, the investment income of \$4 billion, and the transfer payments of \$5 billion dollars that were cited in the report have nothing to do with Pend Oreille County. Furthermore, the assertion in the report that residents of Pend Oreille County can simply commute to Spokane County to work misses an important point, the concentration of jobs in Spokane County only exacerbates regional economic inequities, as it leads to a concentration of tax generating activities in Spokane County and a concentration of a public service demands in Pend Oreille County without the tax base to support it.

We respectfully request that an addendum to the report be added to the Tribe's application that specifically documents the economic conditions in Pend Oreille County, including the loss of timber jobs and the decline of the economic base of our community. We can provide more specific examples of how the Technical Report might give a reader a misimpression of the conditions in Pend Oreille County, and we'd welcome the opportunity to collaborate with the Tribe in preparing an appropriate addendum. Given that Tribal Vice Chair Ray Pierre is the Pend Oreille County Economic Development Council (EDC) Chair, another approach might be for the EDC to prepare the addendum for inclusion in the Tribe's application. Either way, the following link is an excellent source of information specifically about Pend Oreille County and the economic challenges that we face:

<https://esd.wa.gov/labormarketinfo/county-profiles/pend-oreille>

## **Air Quality Analysis**

Air quality regulations are complex and can be very difficult to understand. While the Technical Report contains a lot of information, in order for us to fully assess the air quality benefits and impacts associated with the effects of a potential Class I redesignation, we respectfully request that the Technical Report be revised or an addendum prepared and included in the Tribe's application that addresses the following:

- The Technical Report does not assess the availability of potential Class I or current Class II increments in the region. How much of the current Class II increment has been used? If the Class I redesignation is approved, how much of the Class I increment has been used or has it already been consumed? Without an understanding of the baseline conditions (before a potential Class I redesignation), it is impossible to determine what impact the Class I redesignation may have on existing facilities or future development proposals.
- The US National Ambient Air Quality Standards (NAAQS) are standards established by the United States Environmental Protection Agency under authority of the Clean Air Act (42 U.S.C. 7401 et seq.) that apply for outdoor air throughout the country. The primary standards are designed to protect human health, with an adequate margin of safety, including sensitive populations such as children, the elderly, and individuals suffering from respiratory diseases. The technical report does not compare the available monitoring data for PM<sub>2.5</sub> to the NAAQS. We request the report compare the current concentrations, future potential concentrations under the current Class II designation, and future potential concentrations under the proposed Class I redesignation to the applicable NAAQS.

- The report contains an evaluation of two hypothetical energy developments proposed for Deer Park, over 50 km away from the Reservation. A few examples of the same hypothetical energy developments located in Pend Oreille County would also be relevant and insightful and would not be overly burdensome to complete.
- The technical report does not quantitatively assess the effect Class I redesignation would have on the ability of a future development project to obtain the necessary air permits. It would be helpful to know where in Pend Oreille new development would least likely to exceed the Class I increments and where new development would be more likely to result in the Class I increments being exceeded. Screening-level, or refined, dispersion modeling of a few generic development projects in different locations/distances could help provide information on Class I increment consumption.

### **Impacts on Existing Businesses and Operations**

We are particularly concerned about the impacts that the redesignation could have on existing businesses in the County, especially on new investment to modernize their facilities and to expand their operations. We are pleased to read in the Frequently Asked Questions document provided by the Tribe that the redesignation will have no effect on Ponderay Newsprint's current operations. It appears however, that the complexity of the regulations could create opportunities for unintended adverse consequences. We are also concerned about the implementation of the Class I requirements and potential impacts on the County's practice of using sand to maintain safe roads in the winter, the possible closure of unpaved roads to County residents, and restrictions on prescribed burning or other management practices intended to promote the health of our forests.

We respectfully request that the Technical Report be revised or amended to more clearly address:

- Plans to provide regulatory clarity and long-term certainty to heavily capitalized industries that form the economic foundation of the county such as Ponderay Newsprint and Vaagen Brothers.
- Documentation confirming that the Class I requirements will not adversely affect the operations of the Teck Mine in Metaline Falls.
- Whether the Class I redesignation has any direct impact on permits issued to minor sources or for minor modifications to existing major PSD sources?

### **Implementation**

The proposed redesignation of the Reservation as a Class I Area will affect multiple governments, agencies, businesses, and other stakeholders. We believe a more detailed and comprehensive set of plans are needed in order for us to successfully implement and incorporate a new Class I Area. Clean air is a goal we share with the Tribe, but without more details on the proposed implementation, we are concerned that the potential negative effects of redesignation will overwhelm the potential positive effects.

We respectfully request that the Technical Report be revised or amended to more clearly address:

- Implementation: The Technical Report does not discuss how the Tribe will implement the Class I redesignation. Will Class I redesignation be through a Federal Implementation Plan (FIP) administered by the EPA or a Tribal Implementation Plan (TIP)? If Class I redesignation is through a FIP, how will that effect the administration of the Class I area and resolution of potential disagreements?
- Class I Boundary: The Technical Report contains maps of the Reservation and proposed Class I Area. It would be helpful if the Tribe would provide a more detailed map that clearly identifies of all lands that are, and are not, being proposed for Class I status. This would help reduce any uncertainty regarding which lands are proposed for Class I status.



- Coordination with Department of Ecology: The Technical Report does not include any discussions of how the Tribe would work with the Department of Ecology to implement Class I for the Reservation. Department of Ecology is responsible for implementing the Prevention of Significant Deterioration (PSD) program in Washington, of which Class I areas are a significant part. We believe it would be helpful for the Department of Ecology and the Tribe to define and outline in a collaborative manner the roles, responsibilities, process, guidance, and timelines necessary to implement, and assess impacts to, the new Class I Area. Otherwise, there could be significant delays and complications associated with issuing air permits.
- Tribal Resources and Expertise: The Kalispel Natural Resources Department (KNRD) is responsible for historic properties, fisheries, wildlife, water, and other natural resources. The KNRD has a very talented and dedicated staff. However, having Class I status for the Reservation will mean extra responsibilities and time commitments. We would like to have a better understanding of how the Tribe intends to meet these new responsibilities so we can determine how best to coordinate future permitting activities.
- Air Quality Related Values (AQRVs): The Tribe's Technical Report does not include a discussion of AQRVs and our conversations with the Department of Ecology indicate the Tribe does not intend to adopt AQRVs or develop Threshold Effect Levels (TELs) at this time. By not including a discussion of AQRVs or a statement that the Tribe does not intend to adopt AQRVs in the Technical Report, it creates a tremendous amount of uncertainty for existing and future potential facilities as well as permitting agencies. Inadequate implementation of Class I requirements, delayed permitting processes, and unclear compliance requirements are just some of the potential results of the AQRV uncertainty. We suggest that the Tribe's proposed redesignation submittal to EPA contains a statement that the Tribe does not intend to adopt AQRVs in the future or that the AQRVs are identified (and TELs defined) in the submittal. Otherwise, we request the Tribe describe a specific process, including proposed timelines, a process to ensure public and stakeholder input, and methods of dispute resolution for the establishment of future AQRVs (and TELs) in the EPA submittal

In closing, we would like to emphasize our intentions of meeting in good faith with the Tribe and in the ensuing government to government discussions of how best to achieve our mutual interests. We would also like to discuss with the Tribe strategies for making sure that residents and local governments that may be affected by the redesignation, have an opportunity to more fully understand and comment on the proposal. Please feel free to contact Commissioner Mike Manus at 509-671-1434 or our planning consultant Gregg Dohrn at [greggdohrn@comcast.net](mailto:greggdohrn@comcast.net) or 206-679-7507 if you have any questions or to set up our meeting.

Sincerely,

PEND OREILLE COUNTY  
BOARD OF COMMISSIONERS

  
Karen Skoog, Chair - *approved via email message*

  
Stephen Kiss, Vice-Chair - *approved telephonically*

  
Mike Manus, Commissioner



**RECEIVED ON:**

**MAY 15 2017**

**RAD**  
EPA Region 10  
Office of the Regional Administrator

Kalispel Tribe of Indians  
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Ulk, WA 99180  
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(509) 445-1705 fax  
www.kalispeltribe.com

May 11, 2017

Michelle Pirzadeh  
Acting Administrator, Region 10  
Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

**RE: Class I Redesignation of the Kalispel Indian Reservation**

Dear Ms. Pirzadeh:

On behalf of the Kalispel Business Council, the governing body of the Kalispel Tribe of Indians, I am submitting for EPA approval our proposal to redesignate the lands within the exterior boundaries of the original Kalispel Indian Reservation a Class I area under the Clean Air Act's Prevention of Significant Deterioration (PSD) program. The Tribe makes this request having complied with the applicable procedural requirements of 40 C.F.R. § 52.21, considered all written and oral comments received, and determined that Class I redesignation is necessary to advance the Tribe's sovereign interest in protecting Reservation air quality.

This proposal is a direct response to an imminent threat and consistent with the Tribe's longstanding efforts to protect our home from environmental pollution. In August of 2016, the Tribe learned that a Canadian corporation was interested in building a silicon smelter less than a mile upwind of our Reservation. The Tribe immediately and repeatedly requested detailed emissions information for the proposed smelter, but the only information we have received to date is a general estimate suggesting that the smelter will contribute up to 4,000 metric tons of nitrogen oxides and sulfur dioxide per year. The adverse environmental impacts caused by emissions from existing silicon smelters are well documented. Given the proximity of the proposed smelter to our Reservation and the documented adverse effects of particulates, nitrogen oxides, and sulfur dioxide on human health and the environment, the Tribe decided to take measures to protect our people and natural resources from industrial air pollution.

After exploring a variety of alternatives, the Tribe chose to pursue Class I redesignation of our Reservation under the Clean Air Act's PSD program. We made this decision because Class I redesignation is a proven way of protecting Reservation air quality without imposing new regulatory burdens on existing community businesses and the day-to-day activities that are integral to our rural way of life. The Tribe commissioned a Technical Report to help us understand the full range of impacts of Class I redesignation, and that analysis reinforced our

reasons for pursuing a more protective classification. The benefits of Class I redesignation include, but are not limited to:

- Reduction in future health problems for Kalispel people and members of the surrounding community.
- Enhanced protection for the health and cultural use of natural resources such as fish, wildlife, and plants.
- Increased worker productivity, higher property values, higher quality of life, and overall improved economic well-being with minimal, if any, damage to local economic vitality.

Based on the Technical Report's conclusion that Class I redesignation would substantially lower acceptable air pollution limits for new industrial sources on and near the Reservation without undercutting the socioeconomic gains that the Tribe and its community partners are working to create, the Tribe decided to formally pursue Class I redesignation of the lands within the exterior boundaries of our original Reservation. This effort involved meeting the applicable procedural requirements set forth in 40 C.F.R. § 52.21(g).<sup>1</sup> To demonstrate compliance with these requirements, I have attached copies of:

1. The 1914 Executive Order creating the federally recognized Reservation to which the Class I redesignation will apply;
2. The Certification of Public Hearing regarding the Tribe's redesignation proposal;
3. The notifications of the proposed redesignation, sent more than 30 days in advance of the public hearing, to affected States, Indian Governing Bodies, and Federal Land Managers;
4. The Tribe's Technical Report analyzing the health, environmental, economic, social and energy effects of the proposed redesignation; and
5. The public notice, issued more than 30 days prior to the public hearing, announcing the date and time of the public hearing, and the availability of and opportunity to comment on the Technical Report.

As a courtesy, the Tribe also provided advanced notice to our partners in local government and state agencies, issued a fact sheet and FAQ for interested parties, and conducted a Q&A following the public hearing.

Although the Tribe did not receive any formal consultation requests from affected States, Tribes, or Federal Land Managers, we did receive a number of public comments. The Tribe has carefully considered all of these comments and determined that we have met the procedural requirements necessary for EPA approval. We recognize that some of our neighbors have lingering concerns about the potential effects of Class I redesignation, but these concerns are unrelated to the applicable regulatory requirements.

By deciding to submit our Class I redesignation proposal for EPA approval at this time, the Tribe is not foreclosing further conversation on the public comments we have received. For instance,

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<sup>1</sup> 40 C.F.R. § 52.21(g)(2)(iv) and (v) do not apply, respectively, because the Tribe's Reservation does not include lands managed by another Federal Land Manager, and the Kalispel Tribe does not have political subdivisions like a state. Nor do 40 C.F.R. § 52.21(g)(3)(iii) and (iv) because the Tribe is seeking a more protective PSD designation.



we will be meeting with the Pend Oreille County Commissioners in the near future and reserve the right to submit an addendum to the Technical Report to address the Commissioners' desire to more particularly describe economic conditions specific to Pend Oreille County. We are also planning to invite EPA to participate in a community workshop with the Tribe and Department of Ecology in the hopes of addressing outstanding misconceptions regarding the scope of the PSD program and the potential for more burdensome regulation of daily activities such as woodstove use, road sanding, and field burning.

Thank you in advance for your prompt attention to the Tribe's proposal. Please contact Deane Osterman, Executive Director of the Kalispel Natural Resources Department, if you have any questions or need additional information. His phone number is (509) 447-7282.

Respectfully,

A handwritten signature in black ink, appearing to read "Glen Nenema". The signature is fluid and cursive, with the first name "Glen" and last name "Nenema" clearly distinguishable.

Glen Nenema  
Chairman, Kalispel Business Council



# **Bonner County**

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## **Board of Commissioners**

Glen Bailey

Jeff Connolly

Dan McDonald

December 11, 2018

RE: Docket ID No. EPA-R10-OAR-2017-0347, Kalispel Tribe of Indians application for Class 1 Airshed.

To whom it may concern,

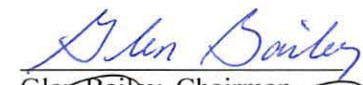
This letter is to inform you that Bonner County, Idaho has a number of concerns pertinent to the Kalispel Tribe of Indians application to the EPA to redesignate the airshed within the boundaries of the original Kalispel Indian Reservation a Class I air quality area:

As Bonner County Commissioners we have several concerns with this designation, starting with the fact that none of the Board of County Commissioners, nor was any other elected official from Bonner County, was ever contacted regarding this application. Considering no contact was made, this means that none of the potential impacts to Bonner County, were considered nor our concerns were addressed. The Redesignation Technical Report, section 1.2.2 lays out the procedural requirements, the third bullet stating "consult with local and other sub-state general purpose governments in the area (e.g., cities, counties, local agencies). This requirement was clearly not met.

The Redesignation Technical Report also states that "Forest products manufacturing has been a declining source of employment and income across the United States and Washington state for at least the last forty years." Yes, the timber industry has had its troubles in years past, however Bonner County continues to promote and build the local timber industry, laying the foundation for strong growth in the future. Manufacturing jobs also continue to rise in Bonner County, while falling throughout the rest of the state. Any new environmental restrictions would be detrimental to future industrial growth in Bonner County.

As Elected Officials in Bonner County we not only feel that the impact area should not include Bonner County, but also should not include the State of Idaho. This airshed redesignation is not in the best interest of Bonner County nor our State. Thank you for taking our comments into consideration.

Respectfully,

  
Glen Bailey, Chairman

  
Daniel McDonald

  
Jeff Connolly

County Name	FIPS Code	Local Authority	AQCR	Minor Source Baseline Date			
				TSP and PM10	PM2.5	SO2	NOx
Adams	001	Ecology Eastern Regional Office	062	03-02-1979	none	08-31-1979	02-20-1990
Asotin	003	Ecology Eastern Regional Office	062	03-02-1979	none	08-31-1979	02-20-1990
Benton	005	Benton Clean Air Authority	230	12-14-1977	09-15-2014	12-14-1977	02-11-1992
Chelan	007	Ecology Central Regional Office	227	03-20-1979	none	06-28-1981	none
Clallam	009	Olympic Region Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
Clark	011	Southwest Clean Air Agency	193	04-28-1992	none	04-28-1992	10-19-1988
Columbia	013	Ecology Eastern Regional Office	062	03-02-1979	none	08-31-1979	02-20-1990
Cowlitz	015	Southwest Clean Air Agency	193	04-28-1992	none	04-28-1992	10-19-1988
Douglas	017	Ecology Central Regional Office	227	03-20-1979	none	06-28-1981	none
Ferry	019	Ecology Eastern Regional Office	227	03-20-1979	none	06-28-1981	none
Franklin	021	Ecology Eastern Regional Office	062	03-02-1979	none	08-31-1979	02-20-1990
Garfield	023	Ecology Eastern Regional Office	062	03-02-1979	none	08-31-1979	02-20-1990
Grant	025	Ecology Eastern Regional Office	230	12-14-1977	09-15-2014	12-14-1977	02-11-1992
Grays Harbor	027	Olympic Region Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
Island	029	Northwest Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
Jefferson	031	Olympic Region Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
King	033	Puget Sound Clean Air Agency	229	02-02-1979	none	02-02-1979	03-26-1990
Kitsap	035	Puget Sound Clean Air Agency	229	02-02-1979	none	02-02-1979	03-26-1990
Kittitas	037	Ecology Central Regional Office	230	12-14-1977	09-15-2014	12-14-1977	02-11-1992
Klickitat	039	Ecology Central Regional Office	230	12-14-1977	09-15-2014	12-14-1977	02-11-1992
Lewis	041	Southwest Clean Air Agency	193	04-28-1992	none	04-28-1992	10-19-1988
Lincoln	043	Ecology Eastern Regional Office	062	03-02-1979	none	08-31-1979	02-20-1990
Mason	045	Olympic Region Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
Okanogan	047	Ecology Central Regional Office	227	03-20-1979	none	06-28-1981	none
Pacific	049	Olympic Region Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
<b>Pend Oreille</b>	<b>051</b>	<b>Ecology Eastern Regional Office</b>	<b>227</b>	<b>03-20-1979</b>	<b>none</b>	<b>06-28-1981</b>	<b>none</b>
Pierce	053	Puget Sound Clean Air Agency	229	02-02-1979	none	02-02-1979	03-26-1990
San Juan	055	Ecology Northwest Regional Office	228	08-23-1979	none	08-23-1979	11-22-1989
Skagit	057	Northwest Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
Skamania	059	Southwest Clean Air Agency	193	04-28-1992	none	04-28-1992	10-19-1988
Snohomish	061	Puget Sound Clean Air Agency	229	02-02-1979	none	02-02-1979	03-26-1990
Spokane	063	Spokane County Air Pollution Control Authority	062	03-02-1979	none	08-31-1979	02-20-1990
Stevens	065	Ecology Eastern Regional Office	227	03-20-1979	none	06-28-1981	none
Thurston	067	Olympic Region Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
Wahkiakum	069	Southwest Clean Air Agency	193	04-28-1992	none	04-28-1992	10-19-1988
Walla Walla	071	Ecology Eastern Regional Office	230	12-14-1977	09-15-2014	12-14-1977	02-11-1992
Whatcom	073	Northwest Clean Air Agency	228	08-23-1979	none	08-23-1979	11-22-1989
Whitman	075	Ecology Eastern Regional Office	062	03-02-1979	none	08-31-1979	02-20-1990
Yakima	077	Yakima Regional Clean Air Authority	230	12-14-1977	09-15-2014	12-14-1977	02-11-1992