



National Park Service
U.S. Department of the Interior

BUFFALO NATIONAL RIVER
ARKANSAS

FINDING OF NO SIGNIFICANT IMPACT
PEPC 78896 – Cherokee Plant Gathering Agreement

Recommended:

Mark A. Foust
Superintendent, Buffalo National River

11-21-19

Date

Approved:

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Regional Director, DOI Unified Regions 3, 4, and 5

13 Dec 2019

Date

INTRODUCTION

The National Park Service (NPS) has prepared this Finding of No Significant Impact (FONSI) for the Cherokee Plant Gathering Agreement Environmental Assessment (EA) for the Buffalo National River (BNR). The statements and conclusions reached in this FONSI are based on documentation and analysis provided in the EA and associated decision file. To the extent necessary, relevant sections of the EA are incorporated by reference below.

The Buffalo National River is proposing to enter into an agreement with the Cherokee Nation to approve the gathering of plant parts, to include plants and plant parts from 76 species per 36 CFR 2.6, *Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes*. The NPS has a long-standing and unique relationship with the Cherokee Nation and other affiliated federally recognized Indian tribes through a shared commitment to stewardship of the land and resources. Many American Indian tribes have traditional associations with lands that predate the establishment of NPS units. These associations are through customary activities rooted in the traditions and history of the tribe and important to tribes' distinct culture. Some traditional associations include gathering or harvesting plants or plant parts for traditional purposes.

Under Alternative A, the No Action Alternative, plant harvesting activities would not be permitted for Native American traditional purposes. A small amount of on-site consumption would be available to anyone from the public as specified in the Superintendent's Compendium. Any harvest of plant materials in excess of this amount by anyone from the public, to include members of the Cherokee Nation, would not be lawful and would be subject to law enforcement action.

Alternative B, the removal of target species as an ethnographic resource, is the primary action considered in this EA. These species would be harvested at different times of year as the plant parts of focus reach their optimal time for harvest. The Cherokee Nation would carry out plant harvesting activities to include target species in the quantities during the optimal collection seasons outlined in Stouffle (2017). This activity would take place under terms specified in an agreement signed by BNR's Superintendent and the Cherokee Nation's Chairperson, and have the written concurrence of the NPS Regional Director. Harvest of these species by Cherokee Nation members would follow traditional techniques.

SELECTED ALTERNATIVE AND RATIONALE FOR THE DECISION

Selected Action

The NPS has selected Alternative B (hereinafter referred to as the "selected action"). The following actions could occur under the selected action.

Removal of target species as an ethnographic resource is the primary action considered in this EA. These species would be harvested at different times of year as the plant parts of focus reach their optimal time for harvest.

The August 2016 NPS rule, *Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes* (36 CFR 2.6) indicates that removing or disturbing plants or plant parts is prohibited, except when an established management framework for gathering certain plants or plant parts by federally recognized tribes for traditional purposes has been fully

analyzed. To align with the rule, the Cherokee Nation has requested to begin traditional harvesting of plant materials under this agreement with Buffalo National River (BNR).

Rationale

Alternative B has been selected because it would best accomplish the purpose and need by establishing a framework for allowing tribal members to harvest plant materials while considering the full environmental impacts; bring BNR management of plant harvest activities into alignment with 36 CFR 2.6; and maintain collaborative relationships between BNR and the Cherokee Nation that enriches public appreciation of the Cherokee Nation's cultural heritage along with BNR's resources and historical uses.

PLANT GATHER STIPULATIONS

The following stipulations would decrease the degree and/or extent of adverse impacts and would be implemented during the project:

Invasive Plant Species

- Seeds from invasive plants could be inadvertently spread during plant harvest activities on harvesters' clothing and tools. Information about known and relevant invasive plants and how to prevent their spread would be included in annual consultation materials provided to the Cherokee Nation.

Visitor Use and Experience

- Visitor Center staff would be briefed about the activities and given training for providing informed responses to any public inquiries about observed harvest activities.

Wildlife & Special Status Species

- No caves or mines would be entered by plant collectors during plant collection activities. This eliminates impacts to roosting Gray and Ozark Big-ear bats year-round and hibernating Indiana and Northern Long-eared bats during the period of August 15 through May 15 each year.
- Collection of bark from hardwood trees greater than 6" in diameter would not occur between March 15 and October 15 each year. This eliminates impacts to Northern Long-eared and Indiana bats during their pup rearing and foraging period.
- No vegetative material from Missouri Bladderpod would be collected as part of this project, nor will any Missouri Bladderpod be damaged by plant collectors. This eliminates impacts to this species.
- Collection of plant material from species which are tracked by Arkansas Natural Heritage Commission would not occur as part of this project. Accurate identification of greenbrier, trillium, and spiderwort species would be ensured before any of these are collected.
- Potential impacts to all federally-designated threatened or endangered species or species of concern would be re-assessed if any change in listing status occurs and

during the five-year agreement renewals to ensure that gathering activities are not impacting species listed after the completion of this EA.

- Potential impacts to all Arkansas listed or tracked species of conservation concern would be re-assessed if any change in listing status occurs and during the five-year agreement renewals to ensure that gathering activities are not impacting species listed after the completion of this EA.
- Participants would be provided an orientation and/or otherwise advised about sensitive species and their habitats to ensure those species and habitats can be avoided.

FINDING OF NO SIGNIFICANT IMPACT

The selected alternative will not result in significant adverse impacts. Two impact topics were carried forward for impact analysis: vegetation and wildlife, specifically special status species including 4 bats species and two mussel species.

CEQ regulations at 40 CFR Section 1508.27 identify ten criteria for determining whether the Selected Action will have a significant effect on the human environment. The NPS reviewed each of these criteria given the environmental impacts described in the EA and determined there will be no significant direct, indirect, or cumulative impacts under any of the criteria.

As described in the EA, the selected alternative has the potential for adverse impacts on the collection of target species, invasive plant species, visitor use and experience, and wildlife and special status species; however, no potential for significant adverse impacts was identified so long as certain stipulations are followed, including:

- Insuring that seeds from invasive plants aren't inadvertently spread during plant harvest activities by providing relevant information about known and relevant invasive plants and how to prevent their spread.
- Briefing Visitor Center staff about the activities, and providing them with training to respond to public inquiries about observed harvest activities.
- Insuring no caves or mines will be entered by plant collectors during plant collection activities.
- Restricting collection of bark from hardwood trees greater than 6" in diameter to October 16 through March 14.
- Not allowing the collection of any plants on federally or state protected species, and reassessing if any change in listing status occurs.
- Providing participants with orientation and information about sensitive species and their habitats to ensure those species and habitats can be avoided.

There will be no significant impacts on archeological resources or cultural landscapes, ethnographic resources, environmental justice, Indian trust resources and Sacred Sites, socioeconomics, or wilderness. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the NPS selected alternative will not violate any federal, state, or local environmental protection law.

In accordance with 36 CFR 800.2(c), Buffalo National River has concluded consultation with the Arkansas State Historic Preservation Officer and all of their tribal partners.

Buffalo National River has consulted with the United States Fish and Wildlife Service fulfilling the obligations of the Endangered Species Act of 1973.

CONCLUSION

As described above, the selected alternative does not constitute an action meeting the criteria that normally requires preparation of an environmental impact statement (EIS). The selected alternative will not have a significant effect on the human environment in accordance with Section 102(2)(c) of NEPA.

Based on the foregoing, it has been determined that an EIS is not required for this project and, thus, will not be prepared.

Attachment A: Errata and Response to Comments

Attachment B: Non-Impairment Determination



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**ATTACHMENT A: ERRATA AND RESPONSE TO PUBLIC COMMENTS
PEPC 78896 – Cherokee Plant Gathering Agreement**

The following errata and response to comments together with the Finding of No Significant Impact (FONSI) and the Environmental Assessment (EA) describe the final decision of the National Park Service for implementing the Buffalo National River Cherokee Plant Gathering Agreement.

ERRATA

These Errata describe two edits made to the June 25, 2019 Draft Cherokee Plant Gathering Agreement Environmental Assessment that was released for public review from August 2, 2019 through October 6, 2019.

- On page 28, under APPENDIX A, PLANTS IDENTIFIED FOR COLLECTION one species of plant was removed from line 76 of the identified species due to its inclusion on the Arkansas Department of Natural Heritage (ADHN) target list.
- The term “mitigation” was replaced with “stipulation” to more accurately reflect the nature of the actions.

RESPONSE TO COMMENTS

Response to public comments addresses substantive comments that were received during the public review period. Substantive comments are those that: “1) question, with reasonable basis, the accuracy of the information in the NEPA document; 2) question, with reasonable basis, the adequacy of the environmental analysis; 3) present reasonable alternatives other than those presented in the NEPA document; or 4) cause changes or revisions in the proposal.

Buffalo National River received nine pieces of correspondence from individuals and agencies during the public comment period of August 2, 2019 through October 6, 2019.

Of this total, six were non-substantive. Three correspondences provided substantive comments not covered in the EA. Below is a review of those comments, and responses to them.

Comment 1. Can the plants be collected from Forest Service or other federal lands?

- There are two main reasons why the National Park Service evaluated collections only on the Buffalo National River and not for other public lands adjacent to the Park. First, the United States Forest Service (USFS) has a nationwide programmatic agreement that covers all USFS land. The National Park Service wanted to ensure that we addressed the needs of each park individually. We created this environmental assessment to address the specific needs of the cultural and natural resources within the Buffalo National River. Second, evaluating collections on USFS land is beyond the scope of this Environmental Assessment. The purpose and need stated in the Buffalo Plant Gathering Environmental Assessment is to comply with the 36 CFR 2.6 rule. This rule specifically prohibits the National Park Service from adopting USFS rule. Lands managed by the United States Forest Service are not regulated by the 36 CFR 2.6 rule.

Comment 2. On October 4, 2019, the Arkansas Department of Natural Heritage (ADNH) sent an updated list of plant species that are protected in Arkansas. One of the target species for collection was on this list.

- The collection plan and EA have been updated as of October 9, 2019 to ensure that all species listed by the ADNH have been removed from the collected species list.

Comment 3. Federally Recognized Tribes noted that many plant species on the target species list are important for ceremonial, medicinal, or other traditional purposes.

- Stipulations have been included in the agreement to ensure that plant species are not over-harvested. These stipulations prevent the target plant species from being so heavily collected that the species will no longer thrive in the park. Therefore, the plants will be available to other federally recognized tribes should they enter into a plant gathering agreement with the park. Some of the stipulations include, only hand-held tools can be used for plant gathering (i.e. no mechanized equipment for harvesting), the agreement will be reassessed every five years to ensure that the plants are not being over-harvested, and all participants will receive an orientation to the agreement.



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**ATTACHMENT B: NON-IMPAIRMENT DETERMINATION
PEPC 78896 – Cherokee Plant Gathering Agreement**

By enacting the NPS Organic Act of 1916 (Organic Act), Congress directed the U.S. Department of the Interior and the National Park Service (NPS) to manage units "to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (54 U.S.C. 100101). NPS *Management Policies* 2006, Section 1.4.4, explains the prohibition on impairment of park resources and values:

"While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them."

An action constitutes impairment when its impacts "harm the integrity of park resources or values, including the opportunities that otherwise will be present for the enjoyment of those resources or values" (NPS 2006, Section 1.4.5). To determine impairment, the NPS must evaluate the "particular resources and values that will be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts. An impact on any park resource or value may constitute impairment, but an impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is:

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or

- identified in the park's general management plan or other relevant NPS planning documents as being of significance (NPS 2006, Section 1.4.5).

Fundamental resources and values for Buffalo National River are identified in the enabling legislation for the park and the Buffalo National River Foundation Document. Based on a review of these documents, the fundamental resources and values that are subject to the no-impairment standard include:

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system;
- any additional attributes encompassed by the specific values and purposes for which the park was established to include: Clean, Free-Flowing River, Physical and Biological Processes, Aquatic and Riparian Habitat, Geologic Resources, Cultural and Historic Resources, Wilderness Character

Accordingly, a non-impairment determination is made for each of these resources. Non-impairment determinations are not necessary for human health and safety or visitor use and experience because impairment findings relate back to park resources and values, and these impact topics are not generally considered park resources or values according to the Organic Act.

This non-impairment determination has been prepared for the selected alternative, as described in the Finding of No Significant Impact for the Buffalo National River Cherokee Plant Gathering Agreement.

Collection of target species

Under Alternative B, the Cherokee Nation would carry out plant harvesting activities to include target species in the quantities during the optimal collection seasons outlined in Stouffle (2017). Harvest of these species by Cherokee Nation members would follow traditional techniques. These general stipulations would be followed to reduce impacts to natural and cultural resources:

- Group sizes would be limited to a maximum of twenty people to reduce impacts to vegetation, soils and archeological materials. The party will split into smaller groups to harvest in areas at least 50 yards apart to reduce the concentration of impacts.
- No mechanized equipment would be authorized for use during harvest activities, except

for transportation purposes along public roads. Collection tools will be limited to hand tools, such as trowels, clippers, spades, etc., consistent with CFR 32:2.6.

- The intent of the harvest would be for traditional purposes, not for commercial purposes.
- Use of the park for harvesting activities would be limited to daytime hours.
- Non-tribal members could only participate for educational purposes, with prior notification given to BNR's designated point of contact. Gathering of plants or plant parts by non-tribal members is prohibited.
- Species which are tracked by Arkansas Natural Heritage Commission will not be impacted, because these species are eliminated from collection. The park will provide the Cherokee Plant Gatherers with accurate identification of greenbrier, trillium, and spiderwort species before any of these are collected.
- Potential impacts to all federally-designated threatened or endangered species or species of concern would be re-assessed if any change in listing status occurs and during the five-year agreement renewals to ensure that gathering activities are not impacting species listed after the completion of this EA.
- Potential impacts to all Arkansas listed or tracked species of conservation concern would be re-assessed if any change in listing status occurs and during the five-year agreement renewals to ensure that gathering activities are not impacting species listed after the completion of this EA.
- Participants would be provided an orientation and/or otherwise advised about sensitive species and their habitats to ensure those species and habitats can be avoided.
- All target species would be collected from the ground.
- Seeds from invasive plants could be inadvertently spread during plant harvest activities on harvesters' clothing and tools. This potential impact to invasive plant species in the park will not cause impairment because the park will provide information about known and relevant invasive plants and how to prevent their spread in the annual consultation materials provided to the Cherokee Nation.

BNR and Cherokee Nation representatives would consult annually to identify any emerging issues or improvements that could be made to the agreement to optimize protection of park resources while allowing for traditional harvest activities to occur. During annual consultation, anticipated demand and specific areas desired for harvesting would be discussed. Per the NPS rule, the agreement automatically expires after five years. Prior to the approval of a renewed agreement, this agreement will be reviewed by the Cherokee Nation and BNR to identify any potential areas for improvement.

It is expected that the selected alternative will have no measurable impacts to collections of target species.

Wildlife & Special Status Species

Buffalo National River is home to four species of bats and two species of mussel listed as threatened (T) or Endangered (E) by the U.S. Fish and Wildlife Service. The Indiana bat (*Myotis sodalis*) (E), Gray bat (*Myotis grisescens*) (E), Northern Long-eared bat (*Myotis septentrionalis*) (T), and the Ozark Big-ear bat (*Corynorhinus townsendii ingens*) (E) are all cave dwelling bats. The Indiana and Northern Long-eared bats roost in trees during the summer months, the other two species roost in caves year-round. The Snuffbox mussel (*Epioblasma triquetra*) (E) and the Rabbitsfoot mussel (*Quadrula cylindrica cylindrica*) (T) are known from the Buffalo River. The Buffalo River from the Cove (Cecil) Creek confluence (Erbie low water crossing) downstream to U.S. Highway 65 (Grinder's Ferry) and from Arkansas route 14

(Dillard's Ferry) downstream to the Leatherwood Creek confluence in the Lower Buffalo Wilderness was designated Critical Habitat for the Rabbitsfoot mussel in 2015 (70 FR 24691-24774). Also, According to the USFWS IPAC printout from 7/26/2018, the Missouri Bladderpod (*Physaria filiformis*) is found within one of the plant gathering areas.

There would be no impact to mussels and other aquatic fauna as the plant gathering would not occur within streams. There would be no impact to cave roosts for bats as there would be no plant gathering occurring within caves as there is a distinct lack of light and photosynthesis in caves. It is possible that some trees being used by cave bats for summer day roosts could be disturbed. The Special Use Permit (Under Gathering Agreement, Article III, C) will stipulate that no cutting of trees greater than 6" dbh is to occur, so it is unlikely that any roost trees will be lost by this activity. Some of the target species share a genus with special status plant species. Special care will be required, and mitigation methods followed to ensure that none of the special status plants are gathered. Additional stipulations to ensure no impacts to these resources are:

- Gray and Ozark Big-ear bats roost year-round in the park. Indiana and Northern Long-eared bats hibernate during the period of August 15 through May 15 each year. NPS will eliminate any potential impacts to this resource by not allowing plant collectors to enter caves or mines.
- Northern Long-eared and Indiana bats forage in the park during their pup rearing period, March 15 through October 15. This resource would not be impacted because collection of bark from hardwood trees greater than 6" in diameter would not occur between March 15 and October 15 each year.
- Missouri Bladderpod is found in the park. This resource would not be impacted, because no vegetative material from Missouri Bladderpod would be collected as part of this project, nor would plant collectors damage Missouri Bladderpod.

The Proposed Action may result in limited adverse impacts to wildlife and special status species. However, the broad geographic area of wildlife habitat within the park make it unlikely that impacts would exceed negligible levels. Harvesting is not expected to have an effect on target species' population levels.

Conclusion

In conclusion, as guided by this analysis, good science and scholarship, advice from subject matter experts and others who have relevant knowledge and experience, and the results of public involvement activities, it is the Superintendent's professional judgment that there would be no impairment of park resources and values from implementation of the selected alternative. The NPS has determined that implementation of the selected alternative would not constitute an impairment of the resources or values of Buffalo National River. This conclusion is based on consideration of the park's purpose and significance, a thorough analysis of the environmental impacts described in the EA, comments provided by the public and others, and the professional judgment of the decision maker guided by the direction of NPS *Management Policies 2006*.