

**Written Testimony of Chairman Delores Pigsley
Confederated Tribes of Siletz Indians of Oregon
Before the Senate Committee on Indian Affairs
Legislative Hearing on S. 3123:**

**A bill to amend the Siletz Reservation Act to address the hunting, fishing, trapping, and
animal gathering rights of the Confederated Tribes of Siletz Indians
February 16, 2022**

My name is Delores Pigsley and I am Chairman of the Tribal Council for the Confederated Tribes of Siletz Indians. My tribe is a confederation of all the bands and tribes of western Oregon that were removed to the Siletz Reservation. If still intact, this reservation would be the largest in Oregon at over 1 million acres.

In 1954, Congress terminated federal recognition of the Siletz Tribe and all of its antecedent bands and tribes. In 1977, Congress restored federal recognition to Siletz. While we were the first tribe in Oregon to be restored, and the second in the nation, it came at a very high price.

Restoration by Congress

Siletz' restoration effort coincided with the Indian "fishing wars" on the Columbia River and in Washington State – where federal courts were upholding Indian treaty fishing rights. The Oregon Department of Fish & Wildlife ("ODFW") joined other states in asking Congress to overturn these court decisions at a national level. Similarly, ODFW opposed Siletz' restoration and insisted that the newly restored Siletz Tribe give up its hunting/fishing rights to become restored and to obtain a small reservation.

The original discussion draft of a Siletz Restoration Act circulated by the Tribe in 1975 would have restored tribal hunting/fishing rights. However, ODFW objected to this language and Siletz adopted neutral language that neither granted nor diminishes any tribal hunting right. This would have left any hunting/fishing right that survived termination unaffected. A year later, the House Report on the Siletz Restoration Act discussed this language:

*"Finally, the committee wishes to emphasize the intent of the legislation to be neutral on the question of hunting and fishing rights for the Siletz Tribe. If the Siletz Tribe had a treaty or other special hunting or fishing right which was terminated by the termination Act of August 13, 1954 (69 Stat. 724), this legislation does not restore such right. If the Siletz Tribe had such a special right prior to termination which survived the Termination Act, this legislation does not abrogate or impair such a right."*¹

At this point, ODFW accelerated its opposition to the Siletz Restoration Act – and insisted that Congress expressly extinguish any pre-existing hunting/fishing rights Siletz might still have. This would have engendered national tribal opposition; and what ODFW didn't achieve in the actual

¹ H.R. Report No. 623, 95th Congress, 1st Session; September 23, 1977; House Committee on Interior & Insular Affairs

Restoration Act, it achieved in the Consent Decree. Moreover, in 1976, ODFW even proposed alternative legislation that would have made individual Siletz Indians eligible for federal Indian benefits/services, but would not have restored the Siletz Tribe itself.

ODFW also objected to the restoration of a Siletz Reservation because of the State's fear of tribal exercise of sovereignty over its own land. The restoration act was eventually amended to eliminate the specific creation of a reservation for Siletz and did not itself restore any land to Siletz. Instead, the Restoration Act called for a two-year study followed by congressional action before a reservation could be created.

With changes made to accommodate ODFW, Congress passed the Siletz Restoration Act on November 18, 1977. The final legislative language on hunting/fishing reads:

“This Act shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to the tribe or any member of the tribe, nor shall it be construed as granting, establishing, or restoring a reservation for the tribe.”

Negotiating the Siletz Reservation Act

Following congressional restoration, the Siletz Tribe adopted a constitution, elected a tribal governing body and began focusing on establishment of a reservation so it could assume full status as a federally recognized tribe.

As parties negotiated the creation of a reservation for Siletz – the study of which was authorized in the Restoration Act – ODFW continued its demand for the extinction of the Siletz Tribe's hunting/fishing rights. It even suggested monetizing the Tribe's rights and having the federal government forcibly buy those rights and compensate tribal members.

Other state agencies appeared to agree on legislative language that included a neutrality clause that did not grant any new hunting/fishing rights but left any pre-existing hunting/fishing rights for future determination, if ever. The Oregon Attorney General had determined that the Siletz Tribe probably maintained pre-termination hunting rights on at least the land it still possessed at the time of termination. The AG wrote that while the Reservation Act (as drafted) would not create any new rights, “any pre-existing rights would continue to exist.”

Based on fear of constituent backlash, Rep. Les AuCoin (D-OR) blocked passage of the Reservation Act until ODFW agreed with the extent of Siletz hunting/fishing rights, giving it a veto over those rights. Siletz' hunting/fishing rights were essentially terminated. This ultimately led to Siletz being forced to a near-total extinguishment of its hunting/fishing rights as a condition to obtaining a small reservation.

The result was a hunting/fishing agreement between Siletz and the State of Oregon. It allows the Tribe to only take up to 200 salmon a year for cultural and subsistence purposes, and bans tribal members from exercising even these limited rights on the main-stem Siletz River because tribal members' presence and fishing might offend or anger non-Indian fishers. The agreement also

allows for the Tribe's annual harvest of up to 25 elk and up to 400 deer (minus the number of elk taken).

Federal Court Decree and Order

Siletz Tribe v. Oregon (Civil No. 80-422 [May 2, 1980]) was the result of a “friendly” lawsuit between the parties, which ODFW insisted on to make the Agreement it demanded beyond challenge. The court order/decreed enshrines the hunting/fishing agreement entered into between the State and Siletz Tribe (dated April 22, 1980). The original agreement was drafted by ODFW and makes it difficult or impossible to amend or overturn:

“[The Siletz Tribe and its members] are hereby permanently enjoined from asserting or prosecuting any claim for tribal [hunting/fishing rights] of said Tribe or its members other than as such rights are specified and limited by the terms of said Agreement.”

Siletz Reservation Act [P.L. 96-340 [1980]]

In addition to the court order/decreed, the hunting/fishing agreement with the State of Oregon was also codified into the Siletz Reservation Act passed by Congress later in 1980:

“The establishment of the Siletz Reservation or the addition of lands to the reservation in the future, shall not grant or restore to the tribe or any member of the tribe any new or additional hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, on such reservation beyond the rights which are declared and set forth in the final judgment and decree of the United States District Court for the District of Oregon, in the action entitled Confederated Tribes of Siletz Indians of Oregon against State of Oregon, entered on May 2, 1980. Those rights as declared and set forth in the May 2, 1980, final judgment and decree shall constitute the exclusive and final determination of all tribal rights to hunt, fish, or trap that the Siletz Tribe or its members possess.”

This provision impedes the Siletz Tribe from exercising any treaty hunting/fishing rights that it may possess and has never given up.

Recently the Governor of Oregon and ODFW have agreed that this original 1980 hunting/fishing agreement is unconscionable and contrary to the State's policy to acknowledge and recognize tribal rights. The State supports the Tribe's efforts to overturn the 1980 Agreement and replace it with a more equitable agreement.

Siletz Tribe's Legislative Request.

There are three components of the Siletz Tribe's effort to overturn its 1980 Consent Decree:

- 1. Rescinding Language in the Siletz Reservation Act that Incorporates the 1980 Consent Decree.**

The 1980 Siletz Reservation Act incorporates the Consent Decree into the legislation and states that it is the final statement of Siletz HFT&G Rights. This makes that legislation independent authority on the Tribe's HFT&G Rights, over and above the federal court Consent Decree. Therefore the Tribe needs to have this legislative language rescinded to overturn its 1980 Consent Decree. S. 3123 strikes the relevant provision from the 1980 Siletz Reservation Act, P.L. 86-340.

2. Replacing the 1980 HFT&G Agreement with A Different Arrangement.

The Siletz Tribe has already drafted a proposed replacement agreement – to be entered into with the State – and has been discussing the language of that draft with ODFW and various stakeholders. S. 3123 protects the interests of other parties by providing that the 1980 HFT&G Agreement does not go away until a new Agreement has been finalized and approved by ODFW.

3. Vacating the 1980 Federal Court Consent Decree.

Congress cannot directly overturn a previous federal court decree and judgment. The State of Oregon, the United States – as trustee for the Siletz Tribe, and the Siletz Tribe were parties to the original court decree and will have to approach the federal court together to vacate that decree. The Tribe is in discussions with the State and federal government to jointly petition the federal court to vacate the 1980 Consent Decree under FRCP 60(b)(6) and believes the State and federal government will support that effort, but that is ultimately the discretionary decision of those governments. S. 3123 provides only that **if** such a petition is filed, the federal court **can** consider that petition without first having to address technical legal obstacles such as res judicata that might limit the court's authority to entertain the joint petition. This limited legislative approach has been upheld by the Supreme Court in the 1980 *Sioux Nation* decision.

Support for legislation

The Siletz Tribe has been in active discussions with the State of Oregon regarding a potential replacement agreement. We believe that the State is supportive of this legislation and allowing a process for Siletz to determine its hunting and fishing rights.

We have also had extensive government-to-government discussions with the Confederated Tribes of Warm Springs, the Confederated Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of the Umatilla Indian Reservation regarding this legislation.

We are insistent that any replacement agreement after enactment respect the rights of other tribes and not negatively impact them.

The Siletz Tribe is deeply grateful to the support from our congressional delegation to right this historic wrong.