

Statement of The Honorable Cheryle A. Kennedy
Tribal Council Chairwoman
Confederated Tribes of Grand Ronde

Before the Committee on Indian Affairs
U.S. Senate

Hearing on S. 3126, a bill to amend the Grand Ronde Reservation Act

February 16, 2022

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, my name is Cheryle Kennedy and I am the Tribal Council Chairwoman of the Confederated Tribes of Grand Ronde (“Grand Ronde” or “Tribe”). Our Tribe is located on the Grand Ronde Reservation in Polk and Yamhill Counties within the State of Oregon.

Before I present my testimony, please let me take a moment to thank Senator Merkley for his generous introduction. Grand Ronde has worked with the Senator for many years now and both our Council and our tribal members are grateful for the long-standing partnership we have developed with him.

Grand Ronde appreciates the opportunity to testify today in support of S. 3126, which would amend the Grand Ronde Reservation Act to address hunting and fishing issues involving our Tribe. Before you is a similar bill that Grand Ronde also supports, S. 3123, which addresses the same hunting and fishing issues involving the Confederated Tribes of Siletz Indians (“Siletz”).

The objectives of these two bills are very simple. They would permit both Tribes to negotiate new hunting and fishing agreements with the State of Oregon. In place today are Grand Ronde and Siletz hunting and fishing agreements with the State that are more than 35 years old. These agreements have provisions in them that prohibit any amendments or

modifications. In other words, these are permanent agreements that cannot be changed. S. 3126 and S. 3123 simply authorize a process to permit Grand Ronde and Siletz to amend these older agreements and negotiate updated hunting and fishing arrangements that meet the needs of both the State of Oregon and the Tribes.

I am sure you are curious about why Grand Ronde and Siletz are the only Tribes in the country that are not able to negotiate hunting and fishing issues with the state in which their respective reservations are located. Here is the history.

In 1954, both Tribes were terminated by Congress, along with other tribes in western Oregon.¹ In the 1980's, Congress reversed itself and legislatively restored both Tribes. The Siletz were first, restored by the Siletz Indian Tribe Restoration Act in 1977.² Congress then passed the Grand Ronde Restoration Act in 1983.³ These two enactments restored Federal recognition to both Tribes and re-applied the Indian Reorganization Act and other federal laws of general applicability to both Tribes and their members.

Both the Siletz and Grand Ronde Restoration Acts required that the reservations for both Tribes would be re-established by subsequent Congressional legislation. After each Tribe developed a Reservation Plan with local and State input, Congress passed the Siletz Reservation Act in 1980,⁴ and the Grand Ronde Reservation Act in 1988.⁵ At the time that Congress was considering these measures, the State of Oregon demanded that each Tribe sign a permanent agreement with significant restrictions on their hunting and fishing rights. Only then would the

¹ Public Law 83-588 (Aug. 13, 1954), originally codified at 25 U.S.C. § 691, *et seq.*

² Public Law 95-195 (Nov. 18, 1977), originally codified at 25 U.S.C. § 711, *et seq.*

³ Public Law 98-165 (Nov. 22, 1983), originally codified at 25 U.S.C. § 713, *et seq.*

⁴ Public Law 96-340 (Sept. 4, 1980), originally codified at 25 U.S.C. § 711e note.

⁵ Public Law 100-425 (Sept. 9, 1988), originally codified at 25 U.S.C. § 713f note.

State support Congressional legislation to return to the Tribes a small part of their historic land base.

The Siletz signed its hunting and fishing agreement in 1980. Six years later, when faced with the alternative of either signing a restrictive hunting and fishing agreement or receiving no reservation land back, Grand Ronde leaders were left with no choice but to sign such an agreement. I was on the Tribal Council during this time and I agreed with other Tribal members who believed that this bargain with the State was one made with “a gun to our head.”⁶

For the record, let me now summarize the details of this unique hunting and fishing regulatory framework.

The Siletz Hunting and Fishing Agreement

The Siletz executed their Hunting and Fishing Agreement in April of 1980.⁷ This Agreement contained language in multiple provisions stating that this would be a permanent agreement that could not be amended, even if circumstances changed over time. This Agreement was approved by a Federal Court shortly thereafter and a Consent Decree was issued by the Court on May 2, 1980.⁸

This Agreement was also ratified through Section 4 of the Siletz Reservation Act, which incorporated the May 2 consent decree.⁹ Section 4 states that the Agreement and the consent 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.”¹⁰

⁶ Ron Karten, “Tribal Hunting & Fishing Rights,” at 8, *Smoke Signals* (Oct. 1, 2005).

⁷ Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping, and Gathering Rights of the Siletz Tribe and its Members (Apr. 22, 1980).

⁸ *Confederated Tribes of Siletz Indians of Oregon v. State of Oregon*, No. 80-433 (D. Or. May 2, 1980) (final decree & order).

⁹ Section 4 of Public Law 96-340 (Sept. 4, 1980).

¹⁰ *Id.*

The Grand Ronde Hunting and Fishing Agreement

When the Grand Ronde Reservation Act was under consideration by Congress in 1986, the same process was used to define the hunting and fishing rights of Grand Ronde and its members. The Grand Ronde Hunting and Fishing Agreement was executed by the Tribe in December of 1986.¹¹ Except for the geographical areas covered, the Grand Ronde Agreement is almost identical to the earlier Siletz Agreement. Like the Siletz, this Hunting and Fishing Agreement was approved by a Federal Court shortly thereafter and a Consent Decree was issued by the Court on January 12, 1987.¹²

Again, similar to Siletz, this Agreement was ratified through Section 2 of the Grand Ronde Reservation Act, also incorporating the January 12 Consent Decree.¹³ Section 2 of the Act states that the Grand Ronde Agreement and the Consent Decree “shall constitute the exclusive and final determination of all tribal rights to hunt, fish, and trap that the Confederated Tribes of the Grand Ronde Community of Oregon or its members possess.”¹⁴

The 1970’s and 1980’s were a time when Oregon Tribes and the State were frequently at odds on hunting and fishing issues. Oregon Tribes had achieved victories in several tribal hunting and fishing lawsuits and the State was frustrated with its losses in Federal courts. One example of the State’s hostility can be found in a 1975 news article about Siletz restoration legislation being considered by Congress.¹⁵ When asked about these efforts, Oregon State

¹¹ Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of the Grand Ronde Community of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping and Animal Gathering Rights of the Tribe and its Members (Dec. 2, 1986).

¹² *Confederated Tribes of the Grand Ronde Community of Oregon v. State of Oregon*, No. 8_-___ (D. Or. Jan. 12, 1987) (final decree & order).

¹³ Grand Ronde Reservation Act, Section 2, Public Law 100-425 (Sept. 9, 1988).

¹⁴ *Id.*

¹⁵ Pete Cornacchia, “Poor who?” *Eugene Register-Guard* (Nov. 25, 1975).

Wildlife Director, John McKean, responded by saying its “Circle the wagons, boys, here they come again.”¹⁶

Over several decades now, the Tribal-State relationship has improved dramatically. In particular, Grand Ronde has been recognized by the Oregon Department of Fish and Wildlife as an exceptional land manager and has worked diligently and successfully to restore critical wildlife habitat in western Oregon. And these accomplishments have been achieved while working under the unwieldy regulatory framework established in the Tribe’s 1986 agreement with the State. Every time we work with the State on a new initiative, our tribal attorneys must find a workaround to the 1986 Agreement—a time-consuming process. Likewise, the State is forced to enact regulations to implement new tribal arrangements, instead of simply amending a government-to-government agreement with the Tribe.

S. 3126 and S. 3123, Amendments to the Grand Ronde and Siletz Reservation Acts

In the opinion of Grand Ronde and Siletz, and as described above, both Tribes were forced into agreeing to the 1980 and 1986 Hunting and Fishing Agreements, in order to secure approval of their Reservation Acts. Circumstances have changed significantly over the past 35-40 years and the Tribes would like to have the ability to amend and modernize their hunting and fishing agreements with the State of Oregon. This can only occur if the Grand Ronde and Siletz Reservation Acts are amended.

The proposed legislation does not mandate or recommend specific hunting and fishing terms in any new agreements between the State and the Tribes. Instead, both bills would amend each Tribe’s Reservation Acts to permit these 1980 and 1986 Hunting and Fishing Agreements

¹⁶ *Id.*

to be replaced, amended, or otherwise modified through new government-to-government agreements between the Tribes and the State.

Once new hunting and fishing agreements are executed, the legislation contemplates that the State and the Tribes would return to Federal Court to request the termination or modification of the Consent Decrees currently in place. A provision of this bill facilitates that process.

The proposed legislation also states that these Reservation Act amendments do not alter or change the treaty rights of any other Indian Tribe.

Conclusion

On behalf of Grand Ronde, we hope the Members of the Committee on Indian Affairs will support both of these bills and vote them favorably out of Committee.

Thank you for the opportunity to present our Tribe's views on S. 3126 and S. 3123. I am happy to answer any questions that the Members of the Committee may have.