

RECEIVED

MAY 1 1980

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

U. S. DISTRICT COURT,
DISTRICT OF OREGON

FILED

MAY 2 1980

RE. CLERK

BW

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

THE CONFEDERATED TRIBES OF SILETZ)
INDIANS OF OREGON,)

Plaintiff,)

and)

UNITED STATES OF AMERICA,)

Intervenor-Plaintiff,)

v.)

STATE OF OREGON,)

Defendant.)

CIVIL NO. 80-433

FINAL DECREE & ORDER

Based on the Findings of Fact and Conclusions of Law herein, entered this date, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of the Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping and Gathering Rights of the Siletz Tribe and Its Members dated April 22, 1980, a copy of which is attached hereto as Attachment A and hereby made a part of this Decree, is hereby approved as a final settlement of the claims and contentions of the Confederated Tribes of Siletz Indians of Oregon and of the United States of America as trustee for said Tribe and its members raised in the complaints filed herein, and the terms and conditions of said Agreement are hereby adopted as the Order of this court in this cause.

Indian Resources Sec.
MAY 05 1980

1 2. The State of Oregon, the Oregon Department of Fish and Wildlife,
2 the Department of Justice of the State of Oregon, the Oregon State Police, any
3 successor agencies or officials of the State of Oregon to said agencies and their
4 officers, agents, servants, employees, attorneys and any person acting under their
5 authority and direction are hereby permanently ordered and enjoined to carry out all
6 obligations agreed to on behalf of the State of Oregon and said agencies in said
7 Agreement.

8 3. The Confederated Tribes of Siletz Indians of Oregon, any successor
9 entity thereto, their members, and the United States of America as trustee for the
10 Confederated Tribes of Siletz Indians of Oregon and its members, any officer,
11 agent, servant, employee, or attorney of either thereof, and any persons in active
12 concert or participation with any of them who receive actual notice of this Order
13 by personal service or otherwise are hereby permanently enjoined from asserting or
14 prosecuting any claim for tribal hunting, fishing, trapping or gathering rights of
15 said Tribe or its members other than as such rights are specified and limited by the
16 terms and provisions of said Agreement.

17 4. Nothing in this Order shall prevent any party hereto or any successor
18 to such party from bringing any action necessary to enforce or secure the observ-
19 ance of the provisions of said Agreement.

1 5. Each party shall bear its own costs in this action.

2 DATED this 2nd day of May, 1980.

3
4 James M. Burris
5 JAMES M. BURRIS
United States District Judge

6 PRESENTED BY:

7 Sharon Gordon

8 SHARON GORDON
9 Attorney for the Confederated Tribes
of Siletz Indians of Oregon

10 George D. Dysart

11 GEORGE D. DYSART, Attorney for
United States of America

12 Beverly B. Hall

13 BEVERLY B. HALL
14 Assistant Attorney General
Attorney for State of Oregon

Handwritten signature or initials

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

TABLE OF CONTENTS

	<u>Page</u>
1. Parties	1
2. Statement of Purpose	1
3. Controlling Principles	2
4. Fishing Rights	4
a. The Cultural Fishery	4
b. The Subsistence Supply	6
c. Prohibited Acts	7
5. Hunting Rights	7
a. Cultural Hunting	7
b. The Subsistence Supply	9
c. Prohibited Acts	9
6. Trapping and Cultural Gathering	10
7. Licensing and Tagging System	10
8. Relationship of this Agreement to the Establishment of a Tribal Reservation	12
9. Effective Date of Agreement	13

1 because of the following factors:

2 a. The nature and extent of tribal hunting, fishing,
3 gathering, and trapping rights are presently unknown. They have
4 not been defined by any court. The question is exceedingly
5 complex, involving numerous acts of Congress, executive orders,
6 and treaties. Siletz hunting and fishing rights have been and
7 are now the subject of significant controversy. The Tribe
8 contends that it possesses tribal hunting, fishing, trapping and
9 gathering rights. The State, on the other hand, disagrees and
10 presently enforces state law whenever the Tribe or its members
11 hunt, fish, trap, or gather, contrary to any provision of the
12 law.

13 b. Thus, in order to resolve this controversy and to
14 promote sound and orderly management and conservation of fish
15 and wildlife resources, it is the desire of the parties to
16 define, specifically and permanently, the nature and extent of
17 the Tribe's rights.

18 3. Controlling Principles. This agreement shall be
19 construed in accordance with the following principles:

20 a. This agreement shall fully and completely define
21 the tribal hunting, fishing, trapping, and gathering rights, and
22 no special tribal rights shall hereafter exist except those
23 which are specifically set forth in this agreement.

24 b. Any hunting, fishing, trapping, and gathering,
25 including method, time, and place, which is conducted by the
26 Tribe or its members and which is not specifically permitted by

1 this agreement shall be subject to regulation under applicable
2 state laws.

3 c. The parties are determined to implement this
4 agreement in a cooperative and positive manner. The parties
5 intend to assist each other in the implementation of this agree-
6 ment and to exchange among themselves all documents and other
7 information concerning the implementation of this agreement.

8 d. All of the parties have negotiated this agreement
9 voluntarily; have signed it free of any pressure, coercion or
10 duress of any kind; and have been extensively advised by counsel,
11 all of whom are intimately familiar with the legal issues addressed
12 by this agreement. The parties have all had full access to all
13 of the relevant facts, legislative history, and judicial precedent.
14 The parties, therefore, intend this agreement to be the sole,
15 exclusive statement of any special hunting, fishing, trapping,
16 and gathering rights which the Tribe does possess and of those
17 which it does not possess. The parties expressly intend that
18 this agreement shall not be contested or reopened at any time.

19 e. The Tribe is a sovereign government and is legally
20 empowered to represent its members in this agreement. This
21 agreement, therefore, shall be permanently binding on all tribal
22 members, present and future.

23 f. The parties agree that the State shall retain the
24 sovereign authority to manage fish and wildlife resources, both
25 on and off the Tribe's reservation, subject to the provisions of
26 this agreement.

1 g. This agreement is based on the special circum-
2 stances surrounding the relationships of the parties and does
3 not affect the rights of any persons, tribes, or groups who are
4 not parties to this agreement.

5 4. Fishing Rights. In addition to those fishing rights
6 or privileges accorded to citizens or licensees of the State
7 under state law, the Tribe shall have the rights set forth in
8 this paragraph.

9 a. The Cultural Fishery.

10 (1) The Tribe shall have the opportunity to
11 harvest 200 salmon, regardless of size, per year from sites on
12 tributaries of the Siletz River according to the provisions of
13 this agreement. The parties acknowledge that actual annual
14 salmon harvest may be less than 200 salmon because of water
15 conditions, varying run sizes, and fishing effort. Furthermore,
16 the parties agree that there shall be no makeup of salmon harvest
17 in subsequent years if harvest is less than 200 salmon in any
18 single year. No state license shall be required for salmon
19 taken pursuant to this section.

20 (2) The only permissible means of harvest shall
21 be dip nets, spears, and gaffhooks. "Dip net" shall mean a net
22 with a mesh size no larger than 5 inches (measured from the
23 inside of one vertical knot to the outside of the opposite
24 vertical knot), attached to a hoop no larger than 4 feet in
25 diameter and attached directly to a handle; dip nets shall be
26 attended at all times. "Spear" shall mean a hand-propelled

1 barbed single or multiple point device attached directly to long
2 shaft; no multiple pointed spear shall have an overall width
3 greater than 8 inches. "Gaffhook" shall mean a large, strong,
4 single point hook attached directly to a handle.

5 (3) Harvesting by the Tribe shall occur only during
6 salmon runs as set forth herein. The tribal fishing season, up
7 to but not to exceed 60 days, shall be established by the Department
8 after consultation with the Tribe each calendar year during the
9 period of the more active part of the fall salmon run. All
10 tribal salmon fishing shall occur during those regular hours set
11 for salmon angling by the Commission. The establishment of any
12 special tribal fishing season is subject to the State's authority
13 to regulate for conservation purposes and for protection of
14 steelhead.

15 (4) The harvest of salmon shall be permitted
16 only at the following specific tributary locations:

17 (a) Euchre Creek Falls, which is a single
18 falls, and a site located approximately
19 between river mile 2.8 and 3.0 in
20 Section 11, T9S, R10W, W.M.;

21 (b) Dewey Creek Falls, which is a series of
22 falls located approximately between
23 river mile 0.4 and 0.5 in Section 7,
24 T10S, R10W, W.M.; and

25 (c) A single site on Rock Creek, as agreed
26 upon in writing by the Tribe and the

Department.

The Tribe and the Department may agree in writing upon replacement sites on tributaries of the Siletz River if fishing or management at any of the above sites becomes impractical. The Department shall manage, and where appropriate, enhance the salmon resource in each designated stream, consistent with sound principles of fishery science.

(5) All tribal fishing pursuant to this agreement shall be subject to all of the rights of private landowners and tenants under state trespass laws and other applicable provisions.

(6) All harvesting of salmon shall be in accordance with the licensing and tagging procedures set forth in section 7, below.

b. The Subsistence Supply. In addition]to the right to harvest salmon from tributaries of the Siletz River as set forth above, the Tribe shall have the right to receive, at its option, 4000 pounds annually of surplus salmon carcasses from a source to be determined by the Department. These fish shall be fit for human consumption and grade one fish shall be supplied if available. After the State has sorted the surplus salmon and has determined which fish are available for consumption, the Tribe may at its option participate in the final selection of these fish. An authorized agent of the Tribe shall be responsible for pickup of salmon carcasses at an appropriate location or locations designated by the Department and reasonably convenient to

(Section 4 cont'd)

1 the Tribe. The Tribe shall make all arrangements for the con-
2 sumption of such fish, but such fish shall not be used for any
3 commercial purpose.

4 c. Prohibited Acts. The following acts shall not be
5 included within the Tribe's special fishing rights and are
6 subject to regulation under applicable state or federal law:

7 (1) The taking of steelhead or game fish other than
8 salmon.

9 (2) Net fishing, including gill netting, except that
10 dip netting will be permitted as defined in this agreement.

11 (3) The use of fish, or parts thereof, for commercial
12 purposes.

13 (4) The taking of fish in a geographic area other
14 than those established pursuant to this agreement.

15 (5) The taking of fish in excess of the number speci-
16 fied in this agreement.

17 (6) The taking of fish in violation of any of the
18 limitations set forth in this section 4 or of the licensing and
19 tagging provisions as set forth in section 7 below.

20 5. Hunting Rights. In addition to those hunting rights
21 or privileges accorded to citizens or licensees of the State
22 under state law, the Tribe shall have the rights set forth in
23 this paragraph.

24 (a) Cultural Hunting.

25 (1) The Tribe shall have the opportunity to
26 harvest a total of 400 deer and elk per year; (which total shall

1 not include more than 25 elk) within the following two units, as
2 those units were defined as of the date at this agreement: The
3 Stott Mountain Management Unit and that portion of the Alsea
4 Management Unit which lies north of Oregon Highway 34 and west
5 of Oregon Highway 223. The parties acknowledge that the annual
6 harvest may be less than 400 animals and that there shall be no
7 makeup of deer or elk harvest in subsequent years. No state
8 license shall be required for game taken pursuant to this section.
9 Tribal hunting shall be subject to the State's right to regulate
10 for conservation purposes.

11 (2) All hunting pursuant to this agreement shall
12 occur only during deer and elk seasons prescribed by the State
13 for all citizens in the geographic area described in section 5(a)
14 (1), above. If the State prescribes a controlled deer or elk
15 season in the described geographical area whereby participants
16 must draw for permits, the State shall provide permits to the
17 Tribe, at the Tribe's option, for the controlled hunt of up to
18 10 percent of the total controlled tags authorized for all
19 citizens. Such permits for controlled hunts shall be valid only
20 when used with an unused tribal tag and shall be counted as part
21 of the 400 total tags issued pursuant to section 5. Weapons,
22 antler regulations, methods, and other regulations for tribal
23 hunting shall be the same as established by the State for all
24 citizens.

25 (3) All tribal hunting pursuant to this agree-
26 ment shall be subject to all of the rights of private landowners

1 and tenants under state trespass laws and other applicable
2 provisions.

3 (4) All hunting pursuant to this section shall
4 be in accordance with the licensing and tagging procedures set
5 forth in section 7 below.

6 b. The Subsistence Supply. In addition to the
7 Tribe's right to harvest deer and elk as set forth above, the
8 State shall make available to the Tribe, at the Tribe's option,
9 a substantial portion of the deer and elk carcasses received by
10 State agencies in Lincoln County. The State shall promptly
11 advise the Tribe of available carcasses. The Tribe shall be
12 responsible for pickup and any costs for processing.

13 c. Prohibited Acts. The following acts shall not be
14 included within the Tribe's special hunting and trapping rights
15 and are subject to regulation under applicable state or federal
16 law:

17 (1) The hunting or trapping of animals other
18 than deer and elk.

19 (2) The use of deer or elk meat for commercial
20 purposes.

21 (3) The taking of deer or elk in a geographic
22 area other than that described in section 5(a) (1), above.

23 (4) The taking of deer or elk in excess of the
24 number specified in this agreement.

25 (5) The taking of deer or elk in violation of
26 any of the limitations set forth in this section 5 or of the

1 licensing and tagging provisions, as set forth in section 7
2 below.

3 6. Trapping and Cultural Gathering. The Tribe shall have
4 no special trapping rights. The Tribe and its members shall
5 have the right to gather eels (lampreys), seaweed, and fresh
6 water mussels within Lincoln County for non-commercial uses
7 subject to the State's right to regulate for conservation pur-
8 poses. Gathering of sea anemones, rock oysters (piddocks), and
9 saltwater mussels by tribal members shall be subject to all
10 applicable state laws, except that upon request of the Tribe,
11 the Department may issue special gathering permits which will
12 provide the Tribe an opportunity to gather these animals within
13 Lincoln County for ceremonial and subsistence purposes. The
14 Department shall designate the number of special gathering
15 permits to be issued annually, the quantity of animals to be
16 harvested, size limits, gear, degree of allowable removal, and
17 area of harvest. A valid tribal license issued pursuant to this
18 agreement may be used in lieu of any personal use state license
19 that may be required for such gathering of the above listed
20 species and clams.

21 7. Licensing and Tagging System. The Tribe and its
22 members shall not exercise any of the special rights provided
23 for in this agreement to harvest salmon, deer, or elk (referred
24 to as "animals" in this section), except pursuant to the terms
25 of this section. Any person who has not complied fully with the
26 provisions of this section shall be subject to prosecution under

(Section 7 cont'd)

1 state law. Except for the provisions of this section, no state
2 licenses or tags shall be required for animals taken pursuant to
3 this agreement.

4 a. Every tribal member exercising tribal fishing or
5 hunting rights shall have in possession a valid tribal license
6 (containing at a minimum the member's name, photograph, and en-
7 rollment number) and a valid tag issued pursuant to this section
8 for the type of animal being sought.

9 b. The State shall annually issue without charge to
10 the Tribe 200 salmon tags, 375 deer tags, and 25 combination
11 tags valid for taking either one deer or one elk. The Tribe
12 shall control the issuance of such tags to its members.

13 c. Whenever an animal is taken, the tag shall be
14 promptly filled out by the tribal member and promptly affixed to
15 the animal. The information listed on the tag shall be provided
16 to the tribal office within a time period prescribed by the
17 Tribe.

18 d. The Tribe shall keep accurate, current records
19 concerning the number of animals taken and the persons to whom
20 tags have been issued.

21 e. Any tribal member shall be subject to state
22 regulation under state law if (1) the tribal member does not
23 have a valid tribal license and a valid applicable tag in pos-
24 session, (2) a tribal member has not properly filled out a tag
25 and affixed it to the animal, or (3) a tribal member has not
26 complied with all other state tagging, possession, and transportation

1 regulations, so long as they are not inconsistent with this
2 agreement.

3 f. All tribal records kept pursuant to this section
4 shall be complete and current in all respects, and shall be
5 subject to inspection by the State upon reasonable notice.

6 g. If the State believes that the tribal licensing
7 and tagging system is inadequate in whole or in part, the State
8 shall so notify the Tribe. The Tribe shall take necessary
9 corrective measures. If the State believes that such corrective
10 measures are inadequate, the State shall negotiate with the
11 Tribe for the assumption of licensing and tagging responsibilities
12 by the State. If agreement is not reached by the parties, the
13 State may petition the United States District Court for an order
14 directing that full control of licensing and tagging be assumed
15 by the State until necessary corrective measures have been taken
16 by the Tribe.

17 8. Relationship of this Agreement to the Establishment of
18 a Tribal Reservation.

19 a. This agreement shall contain the exclusive defini-
20 tion of tribal hunting, fishing, trapping, and gathering rights.
21 The creation of a tribal reservation, or the addition of lands
22 to an existing reservation, shall not in any way add to or
23 detract from the provisions of this agreement. All hunting,
24 fishing, trapping, and gathering by the Tribe, on or off any
25 tribal reservation or lands of any tribal member, shall be in
26 accordance with the terms of this agreement.

1 b. The State shall have the right, subject to the
2 specific provisions of this agreement, to manage all fish and
3 wildlife resources on the tribal reservation, in accordance with
4 applicable provisions of Oregon law.

5 c. The Tribe intends to leave its reservation open
6 to the public for hunting and fishing and general recreation.
7 The Tribe does not, however, waive any of its rights to close
8 all or part of the reservation when necessary in the future. If
9 there is to be any closure, or partial closure, the Tribe shall
10 consult with the Department before taking action. If the Tribe
11 acquires any land containing any watercourse on which there is
12 now a public right to float or fish from a boat, such public
13 right shall be unaffected by the acquisition of such lands.

14 d. Whenever the Tribe plans to engage in any activity
15 for which a permit would normally be required from the Department,
16 the Tribe shall consult with the Department and meet the minimum
17 standards established by the Department for such activities.

18 e. The Tribe agrees that it will meet minimum standards
19 established by state and local laws for resource development
20 activities including but not limited to water development, fill
21 and removal, and timber harvesting. The parties recognize that
22 the Tribe intends to use most of its reservation for the purpose
23 of harvesting timber. The Tribe shall conduct land use planning
24 in an environmentally sound manner generally consistent with
25 state and local land use planning goals.

26 9. Effective Date of Agreement. No part of this agreement

1 shall be effective until this agreement is approved by the
2 United States District Court and merged into a final and per-
3 manent injunction issued by such Court. If such action is taken
4 by the Court, the provisions relating to subsistence fish
5 (section 4(b), above) and subsistence game (section 5(b), above)
6 shall go into effect immediately; the provisions relating to the
7 cultural fishery (section 4(a), above), cultural hunting (section
8 5(a), above), and cultural gathering (section 6, above) shall go
9 into effect 30 days after the Tribe notifies the State in writing
10 of the establishment of its licensing and tagging procedures
11 (section 7, above). / / /

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 Date April 22, 1980

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Beverly Hall
Beverly Hall
Assistant Attorney General
State of Oregon

Arthur S. Bensell
Arthur S. Bensell, Chairman
Confederated Tribes of Siletz
Indians of Oregon

Sharon Gordon
Sharon Gordon
Charles F. Wilkinson
Don B. Miller
Attorneys, Confederated Tribes
of Siletz Indians of Oregon

Herbert Lundy
Herbert Lundy, Chairman
Oregon Fish and Wildlife
Commission

George D. Dysart
George D. Dysart, Attorney
United States Department of Justice

Doyce L. Waldrip
Doyce L. Waldrip
for Department of Interior
United States of America