

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

Before the Subcommittee for Indigenous Peoples of the United States
Committee on Natural Resources
U.S. House of Representatives

Hearing on S. 559, a bill to amend the Grand Ronde Reservation Act

April 27, 2022

Chair Fernandez, Acting Ranking Member Obernolte, and Members of the Subcommittee, my name is Cheryle Kennedy, and I am the Tribal Council Chairwoman of the Confederated Tribes of the Grand Ronde Community of Oregon (“Grand Ronde” or “Tribe”).

The tribes and bands confederated on the Grand Ronde Reservation signed seven (7) treaties with the United States between 1853 and 1855. These treaties were ratified by the U.S. Senate and today are binding on the Tribe and the United States. The Grand Ronde Reservation was established by these treaty arrangements and by the Executive Order of June 30, 1857.¹ The Reservation is located in Polk and Yamhill Counties in Oregon.

In 1954, the Tribe was terminated by Congress, along with other tribes in Western Oregon.² In 1983, Congress reversed itself and passed the Grand Ronde Restoration Act.³ This Act restored the Tribe’s federal recognition by reinstating its Indian Reorganization Act charter, as ratified by the Tribe in 1936.⁴ The Act also re-applied the Indian Reorganization Act to the Tribe, along with other federal laws and regulations of general applicability to Indian tribes and their members.⁵

¹ This Executive Order was signed by President James Buchanan and the Grand Ronde Reservation established by the Executive Order comprised 69,120 acres.

² Public Law 83-588 (Aug. 13, 1954), codified at 25 U.S.C. §§ 691, *et seq.*

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

⁴ 25 U.S.C. § 713b.

⁵ *Id.*

The Restoration Act required that the reservation for Grand Ronde would be re-established by subsequent Congressional legislation. After a reservation plan was developed, Congress passed the Grand Ronde Reservation Act in 1988.⁶

The Thompson Strip Survey Error

After this legislation was enacted, the U.S. Bureau of Land Management (“BLM”) detected a survey error on the Grand Ronde Reservation, dating back to 1871. A U.S. Deputy Surveyor, David Thompson, had incorrectly surveyed the east boundary of the Reservation, leaving an 84-acre area as unsurveyed.⁷ Until the survey error was discovered in 1988, the BLM treated this land as Oregon and California Railroad Grant Lands (“O&C Grant Lands”) and the agency permitted timber to be harvested by private timber companies. The land, however, was still held in trust for the Tribe by the United States.

After being informed of this survey error, the Tribe determined that this parcel—called the Thompson Strip—was unmanageable by Grand Ronde because of its narrow boundaries and the fact that it divided the ownership interests of several parties. The Tribe then sought a land exchange with the BLM as compensation for the loss of this land.

At the time, the Tribe valued the Thompson Strip at approximately \$2.3 million and initially requested the transfer of a 360-acre parcel of O&C Grant Lands adjacent to the Grand Ronde Reservation. The BLM and the Tribe eventually settled this matter by agreeing to the transfer of 240 acres of O&C Grant Lands as compensation for the Thompson Strip. The Tribe also agreed to relinquish its claims to the Thompson Strip.⁸

⁶ Public Law 100-425 (Sept. 9, 1988), 25 U.S.C. § 713f note.

⁷ This unsurveyed land was referred to as a “hiatus” by BLM surveyors.

⁸ See *infra* footnote 13, Statement of Mark Mercier, Chairman, Confederated Tribes of the Grand Ronde, at 98.

This BLM land transfer and the Tribe's extinguishment of its land claims were memorialized in an amendment to the Grand Ronde Reservation Act in 1994. This amendment was added to a broader Indian technical corrections bill and signed into law by the President on November 2, 1994.⁹

The Land Claims Drafting Error

In drafting the language to authorize this land exchange, the Interior Department developed broad language that relinquished any future claims of this type within the State of Oregon. BLM officials at the time expressed concern about the sweeping nature of this language, as it would preclude the Tribe from receiving any compensation (or participating in a future land transfer) should the BLM discover any additional survey errors within the exterior boundaries of the Grand Ronde Reservation.

Examples from BLM internal memoranda in 1994—obtained by the Tribe through a Freedom of Information Act request—include the following comments:

- “The Bill extinguishes all claims established by the Executive Order of June 30, 1857. This does not protect the Indian’s rights. This Bill should only apply to the Thompson strip because there may be other similar problems that we are not aware of at this time.”¹⁰
- “[S]ince there may be similar hiatus areas along this boundary further to the north, does the Tribe’s extinguishment of all claims pertain to any future situations, or only to the Thompson Strip?”¹¹

In agreeing to this land exchange in 1994, the intent of the parties was for Grand Ronde to relinquish its rights only to the Thompson Strip (and any claims for lost timber income). There was no intention by BLM or BIA officials involved in this land swap to extinguish the Tribe’s

⁹ Section 2 of Public Law 103-435 (Nov. 2, 1994), codified at 25 U.S.C. § 713f note, subsection (d).

¹⁰ Memorandum from Ron Scherler, U.S. Bureau of Land Management, June 17, 1994.

¹¹ Memorandum from Mike Gardner, U.S. Bureau of Land Management, to Fran Eickbush and Doug Wilcox, U.S. Bureau of Land Management, August 2, 1994.

land claim rights for the entire State of Oregon. These intentions are documented in a House legislative hearing before the Subcommittee on Native American Affairs held on July 22, 1994.¹²

In testimony before the Subcommittee, Grand Ronde Chairman Mark Mercier stated the following:

This bill amends the Grand Ronde Reservation Act by adding the new parcel to the existing reservation and relinquishes any claim that the Grand Ronde may have to the land that was incorrectly surveyed. Another section clarifies responsibility for payments to the O&C Counties.¹³

The Tribe's Congressman at the time, Rep. Mike Kopetski (D-OR), confirmed this understanding about the land exchange and the extinguishment of claims to the Thompson Strip:

Today, parts of the land are owned by 3 private timber companies and the Bureau of Land Management. To alleviate the obvious legal and management problems that arise from the rightful reclamation of their land, the tribe has proposed a land swap. Under this bill, the tribe will relinquish their claim to the 84 acres in exchange for a parcel of 360 acres of BLM land which is adjacent to the tribe's current reservation.¹⁴

Additionally, the section-by-section analysis on this legislation prepared for this 1994 House hearing by the Committee staff stated the following:

Subsection (a) provides that certain parcels of land described in the Bill ... are to be added to the Act which established the Grand Ronde reservation in Oregon. A new 'subsection' is to be added to the Act which provides that all claims to the land are extinguished and the U.S. and the Tribe are to equally share the liability for any lost revenues to any county because of the land transfer.¹⁵

¹² *Federal Recognition of Indian Tribes: Hearing on H.R. 2549, H.R. 4462 and H.R. 4709 Before the House Subcommittee on Native American Affairs of the House Committee on Natural Resources*, 103rd Congress, July 22, 1994.

¹³ *Id.*, Statement of Mark Mercier, Chairman, Confederated Tribes of the Grand Ronde, at 98.

¹⁴ *Id.*, Statement of Congressman Mike Kopetski (D-OR), at 91-92. At the time of the hearing, the BLM had not agreed to a land exchange involving 360 acres of land, which was the Tribe's initial bargaining position. After further negotiations, the Tribe and the BLM agreed to a swap of 240 acres of land as compensation for the loss of the Thompson Strip.

¹⁵ *Id.*, Section-By-Section Analysis of H.R. 4709, at 76. The intention of the parties to limit the extinguishment of claims to the Thompson Strip is also confirmed in the House Report to this legislation, issued on August 16, 1994. See House Report 103-704, at 6 (1994) ("Section 2 of the bill settles land claims of the Confederated Tribes of the Grand Ronde resulting from a survey error in the late 1800's. In exchange for the addition of 240 acres of Bureau of Land Management land to the Tribe's existing reservation, the Tribe relinquishes and [sic] claim to the land that was

Our Tribe discovered this Thompson Strip issue only recently, when working on another amendment to the Grand Ronde Reservation Act. While we are not aware of any specific new survey errors or land claim issues, we do want to be proactive about ensuring that the Tribe has the right to be compensated should another problem arise. As we re-acquire lands on and near our Reservation, my staff tells me that we occasionally find survey inconsistencies when title searches are conducted. We want to be prepared if and when additional errors are uncovered.

Summary of S. 559

The language in S. 559 is quite simple. It replaces the phrase “State of Oregon” with the phrase “the 84 acres known as the Thompson Strip.” By this language, the Tribe would only relinquish its claims to the Thompson Strip, which was the intent of the parties in our 1994 land exchange.

It is not Grand Ronde’s intention that this technical corrections amendment would be used to facilitate Indian gaming, or impact Grand Ronde treaty rights (or the treaty rights of any other Oregon tribe). For this reason, the proposed legislation would prohibit class II or class III gaming on any lands obtained by the Tribe as part of a land claim settlement. Additionally, this technical corrections amendment would not enlarge, confirm, adjudicate, affect, or modify any treaty right of a federally recognized Indian tribe.

One final point. Grand Ronde understands that a concern has been raised regarding the gaming prohibition language in Section 1 of S. 559. This concern involves whether Grand Ronde would be able to use any funds provided in a future land claim settlement to purchase land for gaming activities permitted under the Indian Gaming Regulatory Act (IGRA).

part of their historic reservation before the time the Tribe was terminated. In addition, the Tribe is responsible for payments, if any, to the Oregon and California Counties for future lost revenue from timber sales.”).

The language in Section 1 of this bill addresses this issue by prohibiting any real property *obtained* by Grand Ronde—as a part of a land claim settlement—to be ineligible for any type of gaming under IGRA.

The use of the word “obtained” is different than the original Senate bill in the 116th Congress, which only prohibited any real property *transferred* to the Tribe as a part of a land claim settlement.¹⁶ After introduction, Senator Ron Wyden requested that the term “transferred” be replaced with “obtained,” to ensure that the prohibition against gaming would also apply to any land purchased by Grand Ronde with land claim settlement funds. This language change occurred in the original Senate Committee markup on July 29, 2020, and it is the same language that has now passed the Senate twice, once by unanimous consent on December 20, 2020, and the second time on a voice vote on May 26, 2021.

To confirm and ratify Grand Ronde’s understanding and support for this gaming prohibition, Grand Ronde recommends the following language be inserted in the House Committee Report accompanying S. 559:

Under Section 1 of the bill, there is a prohibition on class II and class III gaming on any land obtained by the Tribes as part of a land claim settlement. It is the intent of the Committee that any real property transferred to, or otherwise obtained by, the Tribes, as part of a land claim settlement approved by the United States, including property purchased with Federal, State, or other funds granted as part of any land claim settlement, shall not be eligible, or used, for any class II or class III gaming (as those terms are defined in Section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)). This language is also intended to include and prohibit any application of the land claim settlement exception in Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719).

Grand Ronde believes that this clarification addresses the concern expressed above, and I want to ensure that the Tribe’s position is on the record for this Subcommittee hearing.

¹⁶ See Section 1 of S. 2716, introduced by Senators Jeff Merkley and Ron Wyden on October 28, 2019 (“Any real property *transferred* to the Tribes as part of a land claim settlement”) (emphasis added).

Conclusion

On behalf of Grand Ronde, we hope the Members of the Committee on Natural Resources will support this legislation and vote it favorably out of Committee.

Thank you for the opportunity to present our Tribe's views on S. 559. At the appropriate time, I am happy to answer any questions that the members of the Subcommittee may have.