

Statement of The Honorable Michael Langley
Tribal Council Secretary
Confederated Tribes of the Grand Ronde Community of Oregon

Before the Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
U.S. House of Representatives

Hearing on H.R. 1722, the Grand Ronde Reservation Act Amendment of 2023

June 7, 2023

Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee, my name is Michael Langley, and I am the Tribal Council Secretary 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 rights and privileges under any Federal treaty, statute, or other Federal authority.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 Reservation Act was only approved after the State forced the Tribe into a hunting and fishing agreement that was ratified both in the legislation and in a judicial consent decree.

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 as worth 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

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.

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

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

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

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.

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 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

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.

equally share the liability for any lost revenues to any county because of the land transfer.¹⁵

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 other 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, our staff tells us 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 H.R. 1722

The language in H.R. 1722 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.

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 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.”).

H.R. 1722 was introduced by Congresswoman Andrea Salinas on March 22, 2023, and is co-sponsored by all of the other Members of the Oregon Congressional Delegation.

In the 118th Congress, a concern was raised regarding the gaming prohibition language in Section 1 of this legislation. This concern involved 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”). While this has never been an intention of the Tribe, language has been added to the current version of this bill to clarify that the gaming prohibition includes “any real property purchased with funds granted as part of any land claim settlement.”

H.R. 2839

During this hearing, the Subcommittee is also considering H.R. 2839, a bill to permit the Confederated Tribes of Siletz Indians of Oregon to negotiate new hunting and fishing agreements with the State of Oregon. This Siletz bill is similar to H.R. 2850, a bill to permit Grand Ronde to negotiate its own new hunting and fishing agreements with the State of Oregon.

Both bills seek to address the exact same inequity that occurred more than 35 years ago. When both Siletz and Grand Ronde were negotiating the terms of their respective Reservation Acts in the 1980’s, the State of Oregon sought to limit the hunting and fishing rights of both Tribes and their members. As mentioned earlier, Hunting and Fishing Agreements with the State of Oregon were executed with both Tribes as a condition of State support for their respective Reservation Acts. The Agreements have identical language and both contain multiple provisions stating that these Agreements are permanent and cannot be amended.¹⁶

¹⁶ Both Siletz and Grand Ronde Hunting and Fishing Agreements were approved by a Federal Court and are subject to a Consent Decree. Both Agreements were also ratified in the respective Siletz and Grand Ronde Reservation Acts passed in the 1980’s.

Federal legislation is required to permit both Tribes to negotiate new Hunting and Fishing Agreements with the State of Oregon. H.R. 2839 and H.R. 2850 amend each Tribe's Reservation Act to permit each Tribe to negotiate new Hunting and Fishing Agreements with the State of Oregon.

These bills do not mandate or recommend specific hunting and fishing terms between the State and the Tribes. Instead, the legislation merely authorizes a process for both Tribes to update their 1980's-era Agreements with the State.

The Siletz and Grand Ronde bills have been paired together and should remain that way because they involve the same Hunting and Fishing Agreements and authorize the same process of negotiation on these issues with the State of Oregon. Grand Ronde is deeply disappointed that the Siletz bill has been allowed to move forward with a Subcommittee hearing before the Grand Ronde bill has had the same opportunity.

Several Tribes in Oregon and Washington State have expressed opposition to the Grand Ronde bill, claiming that it will infringe on their respective Federal treaty rights to hunt and fish at their "usual and accustomed stations."

These treaty arguments are manufactured. With Senator Merkley's involvement—as the Senate sponsor of both bills—multiple provisions were added to the Grand Ronde and Siletz bills clarifying that these Hunting and Fishing Agreements with the State of Oregon will not impact the treaty rights of any other Tribe. These Agreements would also be executed only under State law. None of the parties involved currently have—or would have under this legislation—any authority to impact Federal treaty rights through Agreements that are drafted and executed under Oregon law.

Additionally, the Tribes in opposition are located east of the Cascade Range and have not established any “usual and accustomed stations” west of the Bonneville Dam on the Columbia River. These Tribes are free to negotiate their own Hunting and Fishing Agreements with the State, seek State fishing permits, and purchase fee simple land on the open market, as Grand Ronde and other Tribes have done. All of these activities are pursuant to Oregon State law and do not impact any Federal treaty or other legal or sovereign rights.

There is no reason to hold up the Grand Ronde bill for such frivolous reasons. The Grand Ronde and Siletz hunting and fishing bills should be paired again.

Conclusion

Thank you for the opportunity to present Grand Ronde’s views. We hope the Members of the Committee on Natural Resources will support H.R. 1722, the Tribe’s Thompson Strip legislation, and vote it favorably out of Committee.

At the appropriate time, I am happy to answer any questions that the Members of the Subcommittee may have.