

TREATIES ARE LIVING DOCUMENTS

It was 123 summers ago that delegations of Middle Oregon Indians and government officials gathered at Wasco on the Columbia River and signed a "paper" that permanently altered a way of life and structured Indian-white relations through the next century.

It was after just three days of discussion that 152 signatures were affixed to the 1855 Treaty with the Tribes of Middle Oregon, a document that has passed the many tests of time and exists today as a valid law of the land.

Along with hundreds of other treaties negotiated between the United States government and Indian tribes, this 1855 treaty and the rights it reserved have had to withstand countless challenges from private citizens, lawmakers and even the White House through the years.

The assertion of land claims and treaty rights in recent years has resulted in a growing anti-treaty sentiment nationwide, as reflected in proposed legislation, unfavorable court decisions, the formation of opposition groups and the statements of public officials. As natural resources become scarcer, tribal reserved lands, water and minerals look increasingly attractive to non-Indians.

"Modify the treaties," says Washington governor Dixy Lee Ray, whose home state has been a fishing rights battleground for the last decade. Her state has also produced two congressmen who have responded to the crisis by introducing legislation threatening to destroy or diminish treaties. While Meeds' H.R. 9951 would severely limit the Indian's unlimited right to water on or bordering reservations, Cunningham's H.R. 9054 would do away with treaties altogether.

At least one nationwide group has formed in opposition to treaty rights and the unique status of American Indians (Interstate Congress for Equal Rights and Responsibilities) and voters in Montana and Maine are also rallying against their Indian populations.

The federal courts are not the refuge they once were since issuing such recent decisions as Oliphant v. Suquamish Indian Tribe, which limited tribal jurisdiction on reservations. Even the White House appears to be a bit confused about how the

government's trust responsibility should be administered and to what extent treaty water rights exist.

With such uncertain commitment to Indian treaties and rights even at the highest governmental levels, it is vital that

what extent were certain provisions carried out? How have treaty points been interpreted in the years since?

Such background should serve to enhance understanding and appreciation of the Warm Springs Treaty as a living doc-

ument with the Indian Appropriations Act of 1871, the United States created as many types of treaties as it fashioned Indian policies. The Continental Congress sought friendship, thus making treaties of alliance. After the revolution treaties of conquest marked military victories over the Indians.

As settlers populated Indian lands, treaties of boundary became necessary to define and limit territories. A more aggressive way of accomplishing the same end was the treaty of land acquisition, common during the Jefferson administration. Manifest destiny was the watchword of treaty-makers in the early 1800's.

Andrew Jackson's removal policy dominated the mid-19th century and saw many treaties of exchange, whereby land in the west was offered in exchange for that occupied by eastern tribes.

The treaties of cession that formalized Indian-white relations in the far west operated on the same shuffling principle, a practical means of eliminating conflict by removing half the problem. The unhappy result was often the separation of Indians from their traditional lands and the tossing together of incompatible tribes on reservations.

Other less common types of treaties provided for the allotment of tribal lands to individual Indians, determined criminal and civil jurisdiction and direct-internal tribal affairs.

Treaty-making came to an end in 1871 as the nation gave up on separating Indians from whites and attempted to assimilate the dwindling minority.

The 1855 Treaty with the Middle Oregon Tribes is a treaty of cession wherein 10 million acres of territory claimed by five tribes and bands were sold to the government and 600,000 acres of unfamiliar land were reserved for the tribes' exclusive use, with certain rights to the ceded land also preserved.

The Warm Springs Treaty, like all Indian treaties, was negotiated by agents of the President of the United States and ratified by two-thirds of the Senate. Essentially, treaty-making with Indian tribes was done in the same manner as international treaties. Indian tribes were in fact foreign powers.

The status of tribes has

since become that of "dependent nations" but the treaties continue to be valid, providing the ground rules for relations between Indians and non-Indians and defining tribal rights. As Felix Cohen stated in his Handbook of Federal Indian Law, "Although treaty making itself is a thing of the past, treaty enforcement continues." (p.33)

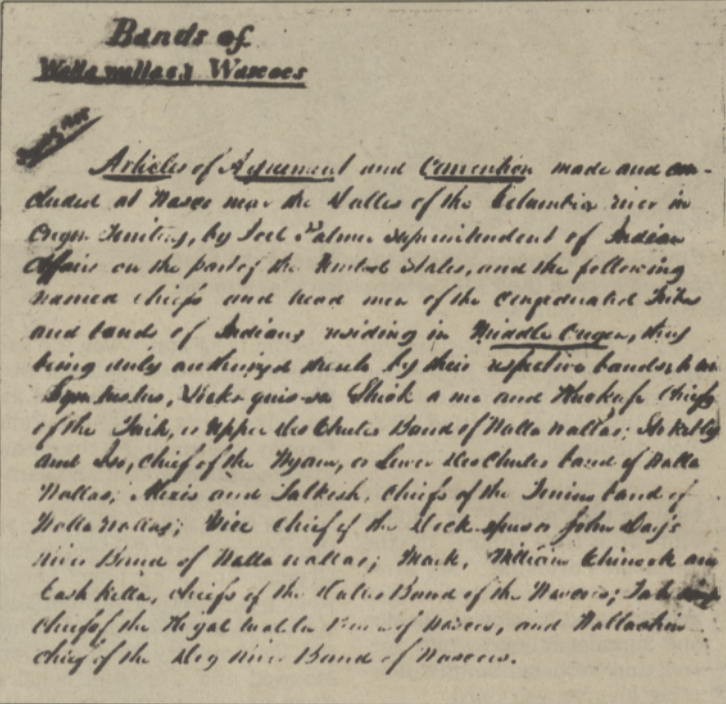
However, Congress has the power to enact legislation in conflict with treaties, meaning in effect that it can cancel treaties. The termination policy of the 1950's brought this power to bear on treaty tribes under the guise of mutual consent, which is the accustomed way of modifying treaties.

If treaties formed the bones of the present-day status of Indian tribes, then court interpretations have provided the flesh. It is in the courts that treaties have been kept alive and made relevant to changing times and circumstances. Adhering to the principle that ambiguities in treaties are resolved in favor of the Indians, federal courts have continually upheld specific treaty rights, establishing precedents for all tribes' relations with non-Indians.

So even though not every treaty guarantees to every tribe the same rights, certain universalities have developed through the years. For example, the trust or guardian relationship assumed by the federal government was not specified in the earlier treaties but has spread its protective wings over all tribes, coloring treaty interpretation.

When reviewing the Warm Springs Treaty it is useful to remember what it has in common with other treaties but also how it is unique as a local response to problems in the region Territory. Examination of the treaty cannot rest on the original words alone, however, but must bring to light later legislation, court interpretation, and national policy that have further defined the treaty, at times threatening it and at other times confirming it as a living document.

Next: Treaty grew from tension between settlers and Middle Oregon Indians.



Indian people understand the special relationship they have with the federal government, that they know their rights and the documents and decisions from which they flow. We all speak of "the treaty" and "treaty rights," putting much faith in words with which many of us are not all that familiar.

What is a treaty? Why did the U.S. government negotiate treaties with Indian tribes. What rights does a treaty reserve? Can a treaty be abrogated or modified? What are the specifics of the treaty of 1855 that created the Warm Springs Indian Reservation?

This series of articles will present and explain the Treaty With the Tribes of Middle Oregon (henceforth to be referred to as the Warm Springs Treaty). The text of the treaty will be printed word for word, a section at a time.

In addition to clarifying language and drawing attention to the points of particular interest, the accompanying articles will attempt to place the treaty in a historical and legal context.

How is the treaty a product of its time as well as a departure? In what manner and to

ument rather than relegate it to dusty files.

Every reader of the treaty might well have a different interpretation of its terms and provisions. Courts have devoted much time to resolving such disputed points. Thus the analysis presented here, although prepared with the assistance of tribal attorneys, authoritative texts, and local wisdom, may also be challenged.

Perhaps then the real examination will begin.

Treaties: An Overview

Treaty-making was one method used by the federal government to regulate economic and political relations between the native peoples of North America and the growing numbers of white settlers. Prior to the revolutionary war, treaties of commerce were frequently negotiated between the various colonizing nations and Indian tribes.

During the century-long treaty-making period which end-



NOTICE FROM: ELLEN SQUIEMPHEN Who ever borrowed my tractor tire, I wish it would be returned. Would appreciate it very much, really need it. Thank you.



"SHOW ME" PROGRAM SET

An informal "show-me" program will be presented by the Forest Service on the Clackamas Planning Unit at Estacada High School at 7:30 p.m., July 19 and Santiam High School at 7:30 p.m., July 26, according to Joel Dahlin, Estacada District Ranger, Mt. Hood National Forest.

The purpose of the show me program is to review the inventory and suitability analyses for a number of resources including timber and geothermal potential.

"This is another phase of the land management process on the 350,000 acre Clackamas Planning Unit begun in 1976," said Dahlin. "We're looking for feedback from the public on the approach taken thus far," he added.

The Clackamas Planning Unit lies within the southern portion of the Mt. Hood National Forest and the northern portion of the Willamette National Forest. Within its boundaries are the Bull of the Woods and Olallie Roadless (RARE II) areas.



LITTER PATROL - The Kah-Nee-Ta Highway should look a bit spiffier since the YCC (Youth Conservation Corps) crews hiked the length with their giant garbage bags. Jakeen Roth (above) said she was relieved to get off the trail maintenance detail in the reservation's high country where bugs and boredom got the best of her. But some were happy to get back to the cool woods for more trail work later in the week. Fencing for grazing studies will be another project for YCC workers. CDS Photo