

Tribes: Grand Ronde has no off-reservation treaty rights at gorge

(Continued from page 1)

Because of the vital role of the Columbia River and its fisheries to the Columbia River Tribes, these tribes were resolute in protecting their culture and livelihoods.

Indeed, the Warm Springs, Umatilla, Nez Perce Tribe, and Yakama Nation took action in 1977 to form the Columbia River Inter-Tribal Fish Commission (CRITFC), which provides a forum for the four tribes' coordinated management and enforcement of treaty Indian fisheries on the Columbia River.

When the Gorge Act legislation was first proposed in the mid-1980s, it was clear that the proposed legislation could have wide ranging impacts to the daily management of tribal interests and the treaty rights of the four Columbia River Tribes.

Accordingly, all four Columbia River Tribes participated in the drafting of the legislation to protect these interests.

The result was Congressional enactment of Gorge Act provisions that specifically recognize the off-reservation treaty rights and associated management authority of the four Columbia River Tribes.

We understand that the Confederated Tribes of Grand Ronde have asserted that they should be included as one of the "Indian Tribes" because, it claims, it has "ceded lands" within the Columbia River Gorge National Scenic Area. As explained above, providing special status to "Indian Tribes" within the Gorge Act was based on off-reservation treaty rights reserved to the four Columbia River Tribes, not the assertion of "ceded lands."

To explain, "ceded lands" are those lands that an Indian tribe ceded to the federal government in exchange for an exclusive use reservation and federal protection of other rights, both on- and off-reservation, in negotiated and ratified treaties.

Each of the four Columbia River Tribes has been judicially

determined to be the legal successors-in-interest to an 1855 treaty securing express off-reservation treaty fishing rights.

The Treaty with the Kalapuya, January 22, 1855, to which the Grand Ronde claims to be the successor-in-interest (although no court has so ruled), cedes title to some land located on the western edge of the National Scenic Area.

However, a critical distinguishing factor is that the Kalapuya treaty does not reserve any off-reservation treaty rights in the Columbia River or elsewhere.

Furthermore, in the 1988 act of Congress passing the Grand Ronde Reservation Act, PL 100-425, Congress expressly provided that the Reservation Act did not provide any off-reservation rights to the Grand Ronde.

Disregarding the fact that another Oregon tribe (Siletz) has claimed successor status under the Kalapuya treaty, accepting "ceded lands" as a basis for inclusion of Grand Ronde in the Gorge Act is not consistent with the reasons Congress originally included the four Columbia River Tribes in the Act.

Indeed, neither the Umatilla nor the Nez Perce Tribe has "ceded lands" as described in their 1855 treaties, within the boundaries of the National Scenic Area Act.

However, like Yakama and Warm Springs, these tribes' 1855 off-reservation treaty fishing rights attach to "all usual and accustomed stations" and "all usual and accustomed places", which extend beyond ceded area boundaries.

The inclusion of the Umatilla and Nez Perce illustrates that it is on the basis of off-reservation treaty rights, not on ceded land status, that Congress recognized the Columbia River Tribes' day-to-day management obligations and interests in the National Scenic Area and the need to protect the Columbia River Tribes rights and manage-

ment interests in the Gorge Act. Ceding title, without reserving express off-reservation treaty rights, does not afford a tribe with these management interests.

In addition, if the Gorge Act were to be amended in a way to recognize land use interests without associated reserved treaty rights, it would be difficult for the Columbia River Gorge Commission to manage the numerous tribal interests in the National Scenic Area.

It is well documented that a Native commerce focal point, relating back at least 10,000 years, was situated within the National Scenic Area, particularly at Celilo.

Many federally recognized tribes have such interests in the National Scenic Area; yet it was the intention of Congress in passing the Gorge Act not to recognize those interests in the implementation of the Gorge Act. That was left to the Columbia River Tribes that have day-to-day management interests in the National Scenic Area.

Last, it should come as no surprise that the Gorge Act was an intensely negotiated bill. It was highly controversial because of the "super-zoning" effect of the Act.

The Gorge Act includes a very delicately balanced negotiated settlement between environmental, recreational, cultural, and economic interests in the Gorge.

Indeed, despite some the claims of some advocacy groups, the Gorge Act is not intended to turn the National Scenic Area into a national park.

Rather, the Gorge Act has two co-equal goals: to encourage ongoing economic development in the National Scenic Area and to protect the scenic, natural resource, recreation, and cultural resources in the boundary.

Pervasive litigation over the meaning of the Gorge Act has been the norm, and interest groups are considering their

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options to request amendments of the Gorge Act to serve their constituents and donors.

A substantive opening, such as this, of the Gorge Act could provide a vehicle for such proposed amendments, which could upset the negotiated settlement that provided the very basis for passage of the Gorge Act.

Even as the four Columbia River Tribes supported the bill with the included protections, there was no Grand Ronde participation. It was the intent of Congress not to reopen the Act for any substantive purpose such as this. Indeed, recent proceedings at the Columbia River Gorge Commission had occasion to invite former congressional staffers and other local staff to discuss the intent of Congress in its passing of the Gorge Act.

The unanimous opinion of these experts was that, given the delicate balance struck by Congress, it was the intent of Congress to allow the Columbia River Gorge Commission to exercise its judgment in the implementation of the Act.

In light of this testimony and given the competing interests re-

lated to implementation of the Gorge Act—and the active litigation related to the same—it is the stated position of the Columbia River Gorge Commission that it does not support opening the Gorge Act.

In sum, the four Columbia River Tribes oppose the proposed amendment adding Grand Ronde to the Gorge Act for the following reasons:

- Congress had a well-considered rationale—the existence of off-reservation treaty rights and associated tribal management authority in the Gorge—that was the basis for the designation of the four Columbia River Tribes as the "Indian Tribes" under the Gorge Act;
- The Grand Ronde Tribe has no off-reservation treaty rights within the National Scenic Area, which was the underlying rationale for definition of "Indian Tribes" in the enactment of the Gorge Act;
- Grand Ronde has no associated daily fishery and land use management authorities stemming from off-reservation treaty rights that could be affected by the Gorge Act;
- The unadjudicated nature of the Grand Ronde "ceded lands" claims within the National Scenic Area;
- Opening the Gorge Act for a substantive amendment, such

as this, would be contrary to the Act's original intent and could lead to additional inconsistent amendments; and

• Including Indian tribes on the basis of claimed ceded lands or historic ties to the area, such as claimed by the Grand Ronde, could result in additional tribes seeking to be added to the Act, and would dilute the Columbia River Tribes rights and management responsibilities.

For the foregoing reasons, the unanimous position of the Columbia River Tribes is to oppose amending the Gorge Act to include the Grand Ronde as one of the "Indian Tribes" under the Act.

We appreciate your consideration of this joint letter.

Very truly yours,
Ron Suppah, Chairman, Tribal Council Confederated Tribes of the Warm Springs Reservation of Oregon; Antone Minthorn, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation; Samuel N. Penney, Chairman, Nez Perce Tribal Executive Committee; Ralph Sampson, Chairman, Tribal Council Confederated Tribes and Bands of the Yakama Nation.

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