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Landmark case at half a century

After the time immemorial there are certain years of significance to the tribes:

The year 1805 when the Lewis and Clark expedition arrived at the tribes' Nixluidix trading area at the Columbia River. Eighteen-fifty-five when the tribes agreed to the Treaty. Nineteen-thirty-eight when the tribes adopted the Constitution and By-Laws, establishing the first Tribal Council.

And in more recent decades is the year 1969—one half-century ago.

It was in 1969 that federal Judge Robert Belloni in the law-

suit *Sobappy v. Smith*—with the combined *U.S. v. Oregon*—issued his decision. The dispute in the case—now called simply *U.S. vs. Oregon*—was in regard to the tribal share of the annual fisheries harvest.

The judge ruled in favor of the tribes and the U.S., which joined the suit against the state on behalf of the tribes. The judge ruled the tribes have a treaty right to a fair share of the harvest. As summarized:

Judge Belloni ruled that state regulatory power over Indian fishing is limited, because treaties between the United States and the

tribes in 1855 reserved the tribes' exclusive rights to fish in waters running through their reservations and at 'all usual and accustomed places, in common with the citizens of the United States.

The case established fundamental court precedent that exists in present day tribal fishing rights. Another aspect of the case:

The federal court in *U.S. v. Oregon* kept the case open—exercising continuing jurisdiction—as the parties worked toward implementing the ruling. The judge kept the continuing jurisdiction “because

there was no way to predict what future conditions or events might come into play that could require the parties to come back to court,” explained Mr. John Ogan, tribal attorney.

And the parties have made use of this continuing jurisdiction—asking the court to resolve questions and disputes as they arose—especially in the initial decades following the 1969 ruling. In addition, the *U.S. v. Oregon* management plans, including the 2019 plan, are made court orders.

See **U.S. v. Oregon** on page 9

2020 budget posting

The Tribal Council last week approved by motion the posting of the proposed 2020. District and General Council meetings can be expected later this month, or early November at the latest.

This was a challenging budget for Council, Management and Finance, with \$1.4 million in projected cuts. At their meeting last week, Council decided to keep the Senior Pension payment at the current level. This could be accomplished through an additional dividend payment from an enterprise.

As part of the budget process this year, Council asked departments to present cuts at various levels, from 10- to 30 percent. This required difficult decisions, to be discussed with the membership in the Secretary-Treasurer budget message, and at the upcoming community meetings.

The focus this year on reservation infrastructure needs—brought into focus by the summer water crisis—required discussion of how to address the water and wastewater systems, and the needs of solid waste disposal and sanitation.

Council members discussed at length the question of whether the tribes must charge customers for these services. The Tribal Council members agreed that monthly fees of \$15 each for water, sewer and trash pickup—for households that actually use these services—appears to be the viable option in moving forward.

This would be a completely new approach for the tribes. How to implement the idea will be a question for the coming months.

For flu season

Flu season is here, while Warm Springs Community Health offers help in combating the highly contagious illness.

Flu activity often begins to increase in October and November. At least one case has already been reported in Jefferson County.

Community Health recommends that most people get a flu shot in October; so now is a good time for the painless vaccination.

Community Health will be out in the community giving the flu shots. They were at the Senior Program earlier this week, and will be at the Warm Springs Academy Open House. The open house is this Wednesday evening, October 9 from 5:30 to 7:30, with dinner at 5:30.

Community Health is planning a visit to the Early Childhood Education Center on October 17, and to the Museum at Warm Springs the next day. In early November they will be at the Compensation and Benefits Fair.

Wolves add more pups

At least ten wolf pups were born this year to two separate packs in Central and Western Oregon. One of the packs—the White River—lives and dens on a remote part of the Warm Springs Reservation.

This summer the tribes' Branch of Natural Resources captured trail camera footage of wolves with the White River pack rearing six new pups.

This was a large litter, as usually two to four pups can be expected, said Austin Smith Jr., wildlife biologist with tribal Natural Resources.

Natural Resources this year is planning to place a tracking collar on one of the White River wolves, to better understand the pack's territory and travel habits.

The six pups born this year to the White River pack were



Adult and pups of the Indigo pack, photo captured by Oregon Fish and Wildlife.

its second litter, as these wolves just arrived in the area within the past couple of years.

Meanwhile, the Oregon Department of Fish and Wildlife reported recently that four pups had been born to the Indigo pack.

The Indigo pack ranges in Lane and Douglas counties. Another pack, the Rogue, lives in Jackson and Klamath counties. At least one additional lone wolf lives in Lake County.

More packs live in North-eastern Oregon.

Wolves in these areas of Oregon are protected under the Endangered Species Act.

Oregon's wildlife agency estimated the wolf population at the end of 2018 to be 137 individuals in 16 packs, with a total of 15 breeding pairs.

'Essential Understandings' looks at sovereignty

The Warm Springs Education Branch has developed the document that will guide the teaching of the tribal curriculum in the public schools of the region. The Warm Springs team—Culture and Heritage, elders and others giving input—also worked with the state Department of Education and other tribes in developing this initial work.

The document is called *Essential Understandings of Oregon Native Americans—Tribal History, Shared History*.

This is the introductory document that will lead to the curriculum to be taught in the public schools, in response to state and federal education laws requiring teachers to present a fair tribal perspective to all students.

The chapters in *Essential Understandings* include these topics:

Since Time Immemorial. Sovereignty. History. Tribal Government. Identity. Lifeways. Languages. Treaties with the United States. Genocide, Federal Policy and Laws.

Here is a look at the observations of *Essential Understanding 2*:

Sovereignty

Native American Nations exercise their inherent right to self-governance. This tribal sovereignty predates the existence of the U.S. government and the state of Oregon.

Tribal governments are separate and unique sovereign nations with powers to protect the health, safety and welfare of their citizens, and to govern their lands, air and water.

Background

Tribes interact independently in government to government relationships with other tribes, the federal government, states and counties. Tribes also interact with school districts, cities, businesses, non-profits, higher education institutions, and other non-governmental organizations.

It is important to note, however, that not all tribes choose to exercise all powers as a sovereign government. For example, a tribe might choose its own judicial system and court system due to capacity or financial restraints, and would instead choose to work with the county or state to provide those services in their area.

It is also important to note that the federal government still retains the ultimate authority or 'trustee' over all federally recognized tribes

and, more importantly, oversees and directs the necessary funding for key areas for tribes.

There are three types of sovereign governments in the United States: Federal government, state governments, and tribal governments:

The federal government derives its power from the People—its voting citizens.

State governments derive their sovereignty power from the U.S. federal government.

Tribal nations derive sovereignty from the people, the land, and their relationships; tribal sovereignty was not a gift from any external government, and though it is not defined by the constitution, it is recognized by the constitution.

See **SOVEREIGNTY** on page 9



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