

XC: Central Region
DONALDSON
Thompson
Rousseau
T. Herbst
Brown
MAJ. NORTON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CHARLES E. KIMBALL, et al.,)
)
) Plaintiffs,) CIVIL NO. 73-155
)
) v.) FINAL CONSENT DECREE AND ORDER
)
) JOHN D. CALLAHAN, et al.,)
)
) Defendants.)

It is ORDERED:

1. That the Agreement among the Klamath Indian Tribe, and the Klamath Game Commission; the Oregon Fish and Wildlife Commission, the Oregon Department of Fish and Wildlife, and the Oregon State Police; and also the United States of America as amicus curiae, to promote the sound and efficient management and conservation of fish and wildlife resources within the former Klamath Indian Reservation dated April 29, 1981, a copy of which is attached and made a part of this Judgment, is approved as a final settlement of the remaining issues in this case, and the terms and conditions of the Agreement are adopted as the Order of this court.

2. Nothing in this Order shall prevent any party hereto or any successor to such party from bringing any action necessary to enforce or secure the observance of the provisions of the Agreement

3. Each party shall bear its own costs.

DATED this 13th day of May, 1981.

Les J. Thomas
JUDGE

PRESENTED BY:

Don B. Miller (P 11)
DON B. MILLER, Native American
Rights Fund, Attorney for Plaintiffs
Klamath Indian Tribe and Klamath
Indian Game Commission

Donald R. Wharton (311)
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Attorney for United States of
America, Amicus Curiae

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8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 CHARLES E. KIMBALL, et al.,)
11 Plaintiffs,)
12 v.)
13 JOHN D. CALLAHAN, et al.,)
Defendants.)

CIVIL NO. 73-155
SETTLEMENT AGREEMENT

15
16 I.

17 INTRODUCTION

18 The Klamath Indian Tribe, and the Klamath Game Commission,
19 an agency of the Klamath Indian Tribe; and the Oregon Fish and
20 Wildlife Commission, The Oregon Department of Fish and Wildlife,
21 and the Oregon State Police, parties in the above-captioned
22 litigation; and the United States of America, amicus curiae,
23 wish to resolve the remaining issues in this case through the
24 following agreement.

25 / / /

/ / /

1 II.

2 PURPOSE OF THE AGREEMENT

3 The purpose of this Agreement is to promote the
4 sound and efficient management and conservation of fish
5 and wildlife resources within the areas comprising the
6 former Klamath Indian Reservation to ensure future use
7 of these resources by both Klamath Indians and
8 non-Indians. This Agreement is necessitated by the
9 rulings of the United States District Court of the
10 District of Oregon and those of the Ninth Circuit Court
11 of Appeals in the above-entitled action, wherein the
12 treaty rights of the Klamath Indian Tribe and its mem-
13 bers to hunt, trap and fish free of regulation by the
14 State of Oregon other than for conservation purposes
15 were confirmed, as was the sovereign authority of the
16 Tribe to regulate the exercise of those rights by its
17 members. Because of these rulings, the parties deem it
18 to be in their best interest to establish a cooperative
19 system.

20 More specifically, it is the purpose of this
21 Agreement to establish a cooperative management and
22 regulatory system through defining: 1) the management
23 and regulatory responsibilities of the parties; 2) the
24 scope and nature of the tribal treaty rights; 3) the
25 extent of the State's power to, and the conditions
5 under which it may, regulate treaty hunting, fishing

1 and trapping for conservation purposes; 4) the remedies
2 of the parties, and; 5) the continuing jurisdiction of
3 the Court. This Agreement shall not affect the general
4 police power of the State or of the United States on the
5 lands of the former reservation except as specifically
6 provided in this Agreement.

7 The Tribe is a sovereign government and is legally
8 empowered to represent its members in this Agreement.
9 This Agreement, therefore, shall be binding on all tri-
10 bal members, present and future.

11 The parties agree that the State's authority to
12 manage fish and wildlife resources, both on and off the
13 former reservation lands, shall not be affected except
14 as expressly provided by this Agreement.

15 III.

16 DEFINITIONS

17 A. "Tribe" - shall mean the Klamath Indian Tribe
18 which was signatory to the Treaty of October 14, 1864,
19 between the Klamath, Modoc and Yahooskin Band of Snake
20 Indians of Oregon and the United States.

21 B. "State" - shall mean the State of Oregon
22 acting through the Oregon Department of Fish and
23 Wildlife, an administrative agency of the State of
24 Oregon; the Department of Justice of the State of
25 Oregon; the Oregon State Police; and any successor agen-
26 cies or officials of the State of Oregon that may have

1 regulatory jurisdiction over the harvest of fish or
wildlife within the State of Oregon.

3 C. "The United States" - shall mean the United
4 States of America; the United States Department of the
5 Interior and agencies within that department; the
6 United States Department of Agriculture, Forest
7 Service; and the United States Department of Justice
8 and agencies within that department. The United States
9 is a party to the Agreement both in its capacity as
10 trustee for tribal treaty rights and as the proprietary
11 owner of much of the lands of the former reservation
12 upon which tribal treaty rights to hunt, fish and trap
13 are exercised.

15 D. "Reservation" - shall mean the area within the
16 boundaries described in Section V of this Agreement in
17 which members of the Klamath Indian Tribe may exercise
18 treaty hunting, fishing and trapping rights.

19 E. "Tribal Member" - shall mean a duly enrolled
20 member of the Klamath Indian Tribe who meets the tribal
21 membership requirements as set forth in Section IV A of
22 this Agreement.

23 IV

24 IDENTIFICATION OF TRIBAL MEMBERS AND

25 TRIBAL LICENSING REQUIREMENTS

26 A. Tribal Membership Requirements.

27 The hunting, fishing and trapping rights of the

1 Klamath Indian Tribe are tribal rights which may be exer-
2 cised by the individual members of the Tribe. The require-
3 ments for membership are determined by the Tribe and set
4 forth in the tribal constitution. Tribal membership pre-
5 sently includes:

6 1. All individuals whose names appear on the final
7 roll of the Tribe compiled by the Secretary of the
8 Interior pursuant to § 3 of the Act of August 13,
9 1954, 68 Stat. 718, and published in the Federal
10 Register on November 21, 1957; and

11 2. All decendants of those individuals whose names
12 appear on the final roll of the Tribe and who are
13 duly enrolled pursuant to the requirements of the
Tribe.

15 B. Identification of tribal members who may exercise
16 the tribal right.

17 1. Members of the Klamath Indian Tribe shall be
18 issued, for the purpose of exercising their treaty
19 hunting, fishing and trapping rights, a treaty per-
20 mit card by the Tribe which reflects at a minimum
21 the member's name, date of birth, tribal iden-
22 tification number, date of issue, and a picture of
23 the member. The Tribe shall provide an ongoing
24 opportunity for members to obtain a card.

25 2. Between the effective date of this Agreement and
October 1, 1981, the Klamath Tribe shall provide to

1 the Oregon State Police on a monthly basis an
2 updated list of all those tribal members who have
3 been cited to appear before the Klamath Tribal Court
4 for failure to have a valid treaty permit card in
5 their possession while hunting, fishing or trapping.
6 During this period, any tribal member hunting,
7 fishing or trapping without a valid treaty permit
8 card in possession shall be referred to the Klamath
9 Tribal Court for the first violation of the treaty
10 permit card requirements of this Section. After
11 October 1, 1981, any tribal member hunting or
12 fishing or trapping without a valid treaty permit
13 card in possession shall be deemed not to be exercising
14 tribal treaty reserved rights and shall be subject
15 to all applicable state laws.

16 3. The Klamath Indian Tribe and its agents are the
17 sole authorities for the issuance and revocation of
18 treaty permit cards and game tags.
19

20 V.

21 BOUNDARIES

22 The parties agree that the geographic area within which
23 this Court has held that the plaintiffs may exercise
24 treaty rights to hunt, fish and trap is the area within
25 the boundaries of the Klamath Indian Reservation as it
26 existed at the time of termination in 1954. However,

1 plaintiffs claim rights under the Treaty of 1864 to
2 hunt, fish and trap on additional lands outside the 1954
3 reservation boundary but within the 1864 Treaty reser-
4 vation boundary specifically: (i) the lands ceded by
5 the Tribe in the Agreement of June 17, 1901, and
6 ratified by Congress in the Act of June 21, 1906, 34
7 Stat. 367; and (ii) the unallotted lands exchanged by
8 the Secretary pursuant to the authority granted in the
9 same Act of June 21, 1906, 34 Stat. 367. These two
10 categories of land are collectively referred to as "the
11 ceded lands."

12 The parties have been unable to agree on whether
13 plaintiffs retain treaty rights to hunt, fish and trap
14 on the ceded lands. In a September 4, 1980 Memorandum
15 Opinion, the Court held that plaintiffs are not barred
16 by any agreement of counsel or this Court's JUDGMENT of
17 November 3, 1976, from raising this issue in this or any
18 subsequent proceeding. The question of the survival of
19 the Tribe's treaty rights to hunt, fish and trap on the
20 ceded lands is therefore presently unresolved and is not
21 affected by this Agreement.

22 Nonetheless, the parties to this action are, at this
23 time, desirous of entering into an Agreement which will
24 finally conclude this case without prejudicing in any
25 way the Tribe's ability to raise the issue of rights to
26 hunt, fish and trap on the ceded lands in a separate,

1 subsequent proceeding.

2 The parties therefore agree that the geographic area
3 within which this judgment applies is the Klamath Indian
4 Reservation as it existed in 1954 immediately prior to the
5 enactment of the Klamath Termination Act.¹ The parties
6 further agree that the question of the Tribe's treaty right
7 to hunt, fish and trap on any additional ceded lands is a
8 separate cause of action which may be litigated by the Tribe
9 in a separate law suit and the State of Oregon hereby agrees
10 to waive in any such action brought by the Tribe any defense
11 of res judicata, or collateral estoppel, but no other
12 defense. All other defenses are preserved and not waived
13 either expressly or by implication.

14 VI.

15 MANAGEMENT

16 A. Motor Vehicle Control

17 It is agreed that the control of motor vehicle traffic
18 in the former reservation area is important to the conser-
19 vation and management of the fish and wildlife resources
20 found thereon. It is therefore agreed that the Tribe will

21
22 ¹ The boundary of the former Klamath Indian Reservation to
23 which this Agreement applies is that boundary established by
24 the 1871 Mercer survey, later corrected by Thiel, and
25 approved by the General Land Office in 1888, and confirmed
6 by Congress in the Act of June 21, 1906, 34 Stat. 367;
comprising an area of approximately 1.196 million acres, as
generally outlined in the "Synopsis of the Klamath Tribal
Wildlife Management Code," 1979. The boundary to which this
Agreement applies does not include the ceded lands
described in paragraph one of this section.

1 cooperate in the management of motorized vehicle use on the
2 former reservation areas, and will be party to appropriate
3 agreements restricting the use of motorized vehicles. The
4 Tribe and the State shall adopt and enforce those regula-
5 tions issued by the United States Forest Service or agreed
6 to by other persons in control of land sufficient to
7 effectuate such agreements pursuant to their respective
8 authorities.

9 B. Habitat.

10 The protection and enhancement of fish and wildlife
11 habitat is essential to the continued welfare of these
12 resources. The parties therefore agree to cooperate
13 as fully as practicable in the exchange of information
14 regarding activities which could substantially alter habitat
15 and thereby affect fish and wildlife resources on the
16 reservation. This section applies to activities or proposed
17 activities affecting habitat which take place within or
18 outside the reservation boundaries described in Section V
19 which could significantly affect fish or wildlife resources
20 within those reservation boundaries; provided however, that
21 the parties have no obligation to obtain each other's con-
22 sent prior to adopting or implementing policies or positions
23 on any such activities.

24 C. Biological Data.

25 The parties agree that information on the biological
26 status of various species of fish and wildlife is an impor-

1 tant facet of sound management and therefore agree to cooperate
2 in the sharing of such information. The Tribe may assist in
3 the gathering of such information if it so desires.

4 D. Commercial Use Prohibited.

5 The Tribe shall adopt regulations which prohibit the
6 commercial use of fish and wildlife meat taken pursuant to
7 this Agreement, for so long as State regulations prohibit
8 such commercial use, provided, however, that nothing herein
9 shall prevent the Tribe from authorizing the barter or
10 exchange of fish and wildlife taken pursuant to this
11 Agreement between tribal members or with other tribes for
12 Indian noncommercial use. The Tribe will devise a system,
13 after consultation with the Oregon State Police, which will
14 adequately identify for enforcement purposes, fish and
15 wildlife being held or transported pursuant to this section.

16 VII.

17 TRIBAL REGULATION

18 (1) The Klamath Indian Tribe shall issue comprehensive
19 rules controlling the hunting, fishing and trapping activi-
20 ties of its members within the boundaries of the Reservation
21 in accordance with this Agreement.

22 (2) Members of the Tribe who violate tribal hunting,
23 fishing or trapping regulations on the Reservation shall be
24 subject to the jurisdiction of the Klamath Tribal Court.
25 Tribal members who go on private land without the consent of
26 the owner or occupant thereof will be subject to state

1 trespass law. Members of the Tribe who hunt, fish or trap
2 without a valid treaty permit card in possession shall be
3 presumed to not be in exercise of the Tribe's treaty-
4 reserved hunting, fishing and trapping rights.

5 (3) Members who violate tribal regulations when
6 hunting, fishing or trapping on the Reservation shall be
7 subject to prosecution in the Klamath Tribal Court. To the
8 extent permitted by applicable law, the Tribe shall adopt
9 and enforce adequate penalties.

10 (4) Members of the Tribe who violate applicable federal
11 laws or regulations when in the exercise of treaty rights on
12 the Reservation may be prosecuted in federal courts.

13 "Applicable federal law or regulations" means those laws and
14 regulations that would be applicable to the members of the
15 Klamath Tribe consistent with the decisions of the federal
16 courts confirming the retention of treaty hunting, fishing
17 and trapping rights by that Tribe. This Agreement shall not
18 be construed as resolving the issue of Klamath tribal
19 hunting, fishing and trapping rights within the Klamath
20 Forest National Wildlife Refuge. The United States and the
21 Tribe agree to use their best efforts to resolve this issue
22 within twelve (12) months after the effective date of this
23 Agreement.

24 (5) All Tribal hunting, fishing or trapping is prohi-
25 bited except as expressly authorized by the Tribe.

26 (6) The Tribe will consult with the State a reasonable