

EXHIBIT 2
(635-41-600)
AGREEMENT

DIVISION 41

AMONG THE STATE OF OREGON,
THE UNITED STATES OF AMERICA
AND THE CONFEDERATED TRIBES OF
GRAND RONDE COMMUNITY OF
OREGON

TO PERMANENTLY DEFINE
TRIBAL HUNTING, FISHING, TRAPPING,
AND ANIMAL GATHERING RIGHTS
OF THE TRIBE
AND ITS MEMBERS

1. Parties and Definitions.

a. The following entities are the parties to the agreement and they shall be defined for the purposes of this agreement as follows:

i. "Tribe" shall mean the Confederated Tribes of the Grand Ronde Community of Oregon, as referred to in Public Law 95-165, 97 Stat. 1064 (currently codified at 25 U.S.C. §§ 713-713g), and all tribal members, present and future.

ii. "State" shall mean the State of Oregon acting through the Oregon Department of Fish and Wildlife, and administrative agency of the State of Oregon; the Department of Justice of the State of Oregon; the Oregon State Police; and any successor agencies or officials of the State of Oregon that may have regulatory jurisdiction over the harvest of fish or wildlife within the State of Oregon.

iii. "Department" shall mean the Oregon Department of Fish and Wildlife and any successor agencies that may have regulatory jurisdiction over the harvest of fish or wildlife within the State of Oregon.

iv. "The United States" shall mean the United States of America; the United States Department of the Interior and agencies within that department; and the United States Department of Justice and agencies within that department. The United States is a party to this agreement solely in its capacity as trustee for the Tribe and its members.

b. The term "cultural" shall describe the tribal fishing, hunting, or gathering rights and opportunities set forth in this agreement.

2. Statement of Purpose. This agreement has been negotiated because of the following factors:

a. The nature and extent of tribal hunting, fishing, animal gathering, and trapping rights are presently unknown. They have not been defined by any court. The question is exceedingly complex, involving numerous acts of Congress, executive orders, and treaties. There is disagreement about the Tribe's hunting and fishing rights. The Tribe contends that it possesses tribal hunting, fishing, trapping and animal gathering rights. The State, on the other hand, disagrees and presently enforces state law whenever the Tribe or its members hunt, fish, trap, or gather animals, contrary to any provision of the law.

b. Thus, in order to resolve this controversy and to promote sound and orderly management and conservation

of fish and wildlife resources, it is the desire of the parties to define, specifically and permanently, the nature and extent of the Tribe's rights.

3. Controlling Principles. This agreement shall be construed in accordance with the following principles:

a. This agreement shall fully and completely define the tribal hunting, fishing, trapping, and animal gathering rights, and no additional tribal rights shall hereafter exist except those which are specifically set forth in this agreement.

b. Any hunting, fishing, trapping, and animal gathering, including method, time, and place, which is conducted by the Tribe or its members and which is not specifically permitted by this agreement shall be subject to regulation under applicable state laws.

c. Resolution of questions regarding the existence or extent of any tribal right to gather plants is specifically excluded from this agreement.

d. The parties are determined to implement this agreement in a cooperative and positive manner. The parties intend to assist each other in the implementation of this agreement and to exchange among themselves all documents and other information concerning the implementation of this agreement.

e. All of the parties have negotiated this agreement voluntarily; have signed it free of any pressure, coercion or duress of any kind; and have been extensively advised by counsel, all of whom are intimately familiar with the legal issues addressed by this agreement. The parties have all had full access to all of the relevant facts, legislative history, and judicial precedent. The parties, therefore, intend this agreement to be the sole, exclusive statement of any tribal hunting, fishing, trapping, and animal gathering rights which the Tribe does possess and of those which it does not possess. The parties expressly intend that this agreement shall not be contested or reopened at any time.

f. The Tribe is a sovereign government and is legally empowered to represent its members in this agreement. This agreement, therefore, shall be permanently binding on all tribal members, present and future.

g. The parties agree that the State shall retain the sovereign authority to manage fish and wildlife resources under applicable provisions of Oregon law, both on and off any reservation, established for the Tribe, subject to the provisions of this agreement.

h. This agreement is based on the special circumstances surrounding the relationships of the parties and does not affect the rights of any persons, tribes, or groups who are not parties to this agreement.

4. Fishing Rights. In addition to those fishing rights or privileges accorded to citizens or licensees of the State under state law, the Tribe shall have the rights set forth in this paragraph.

a. The Cultural Fishery.

(1) Fishing by Tribal members shall be subject to all applicable state laws, except that a valid tribal license issued pursuant to this agreement may be used in lieu of a state fishing license within the following area:

Beginning at McMinnville; southwest on State Highway 18 to Salmon River; west along Salmon River to Pacific Ocean; north along Pacific Ocean coastline to the south shoreline at mouth of Tillamook Bay; east along south shoreline of Tillamook Bay; east along Wilson River to State Highway 6 at Lee's Camp; northeast on State Highway 6 to

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State Highway 8 near Gales Creek; southeast on State Highway 8 to State Highway 47 at Forest Grove; south on State Highway 47 to State Highway 99W; southeast on State Highway 99W to the McMinnville point of beginning. Cultural fishing is permitted in the Salmon River and its estuary to the Pacific Ocean, and in the Wilson River to Tillamook Bay.

(2) All fishing pursuant to this agreement shall occur only during the fishing seasons prescribed for all citizens in the geographic area described in section 4(a)1 above.

(3) All tribal fishing pursuant to this agreement shall be subject to all of the rights of landowners and tenants under state trespass laws and other applicable provisions of law.

b. **The Subsistence Supply.** In addition to the cultural right to fish set forth above, the Tribe shall have the right to receive, at its option, 4000 pounds annually of surplus salmon carcasses from a source to be determined by the Department. These fish shall be fit for human consumption and grade one fish shall be supplied if available. After the Department has sorted the surplus salmon and has determined which fish are available for consumption, the Tribe at its option may participate in the final selection of these fish. An authorized agent of the Tribe shall be responsible for pickup of salmon carcasses at an appropriate location or locations designated by the Department and reasonably convenient to the Tribe. The Tribe shall make all arrangements for the consumption of such fish, but such fish shall not be used for any commercial purpose.

c. **Prohibited Acts.** The following acts shall not be included within the Tribe's cultural fishing rights and are subject to regulation under applicable state or federal law:

(1) The taking of salmon, steelhead, or other game fish that require, now or in the future, a state tag, stamp or similar control over and above a state fishing license.

(2) Net fishing, including gill netting, and dip netting.

(3) The use of fish, or parts thereof, for commercial purposes.

(4) The taking of fish in a geographic area other than that established pursuant to this agreement.

(5) The taking of fish in violation of any of the limitations set forth in this section 4 or the licensing and tagging provisions as set forth in section 7 below.

5. **Hunting Rights.** In addition to those hunting rights or privileges accorded to citizens or licensees of the State under state law, the Tribe shall have the rights set forth in this paragraph.

(a) **Cultural Hunting.**

(1) The Tribe shall have the opportunity to harvest a total of 395 deer and elk (which total shall not include more than 45 elk) and 5 bear per year within the area described in section 4(a)(1) above. The parties acknowledge that the annual harvest may be less than 395 deer and elk and 5 bear and that there shall be no makeup of deer or elk or bear harvest in subsequent years. No state license shall be required for game taken pursuant to this section. Tribal hunting shall be subject to the State's right to regulate for conservation purposes.

(2) All hunting pursuant to this agreement shall occur only during deer and elk and bear seasons prescribed by the Department for all citizens in the geographic area described in section 4(a)(1), above. If the Department prescribes a controlled deer or elk season whereby participants must draw for permits, and all of the hunt will be within the geographic area described in section 4(a)(1), the Department shall provide

permits to the Tribe, at the Tribe's option, for the controlled hunt of up to 10 percent of the total controlled permits authorized for all citizens. If the section 4(a)(1) geographic area is only a percentage of a larger controlled hunt area, the Tribe shall be entitled to 10 percent of that percentage of the total permits issued. For instance, if the portion of the 4(a)(1) geographic area included in a controlled hunt is determined to be 47 percent of the total area designated for the controlled hunt, and 100 permits are available for the total hunt area, the Tribe's allocation will be calculated on 47 percent of 100, or 47, permits. Ten percent of 47 permits would yield five (5) controlled permits allocated to the Tribe (rounding 4.7 to the nearest whole number).

(3) The Tribe shall have no right to additional deer or elk permits under the landowner preference provisions of ORS 496.146(4).

(4) Permits issued to the Tribe for controlled hunts shall be valid only when used with an unused tribal tag. Thus, total harvest of deer and elk cannot exceed 395 animals, as provided for in section 5(a)(1). Weapons, antler regulations, methods, and other regulations for tribal hunting shall be the same as established by the State for all citizens.

(5) All tribal hunting pursuant to this agreement shall be subject to all of the rights of landowners and tenants under state trespass laws and other applicable provisions of law.

(6) All hunting pursuant to this section shall be in accordance with the licensing and tagging procedures set forth in section 7 below.

b. **Prohibited Acts.** The following acts shall not be included within the Tribe's cultural hunting rights and are subject to regulation under applicable state or federal law:

(1) The hunting of animals other than deer and elk and bear.

(2) The use of deer or elk or bear meat for commercial purposes.

(3) The taking of deer or elk or bear in a geographic area other than that described in section 4(a)(1), above.

(4) The taking of deer or elk or bear in excess of the number specified in this agreement.

(5) The taking of deer or elk or bear in violation of any of the limitations set forth in this section 5 or of the licensing and tagging provisions, as set forth in section 7 below.

6. **Trapping and Cultural animal Gathering.** In addition to those trapping and animal gathering rights or privileges accorded to citizens or licensees of the state under state law, the Tribe shall have the rights set forth in this paragraph. The Tribe shall have no tribal trapping rights. The Tribe and its members shall have the right to gather eels (lampreys) and fresh water mussels for non-commercial uses subject to the State's right to regulate for conservation purposes within the area described in section 4(a)(1), above. Gathering of sea anemones, rock oysters (piddocks) crawfish, and saltwater mussels by tribal members within, or in the ocean adjacent to, the area described in section 4(a)(1) shall be subject to all applicable state laws, except that upon request of the Tribe, the Department may issue special gathering permits which will provide the Tribe an opportunity to gather these animals for ceremonial and subsistence purposes. The Department shall designate the number of special gathering permits to be issued annually, the quantity of animals to be harvested, size limits, gear, degree of allowable removal, and area of harvest. A valid tribal license issued pursuant to this agreement may be used in lieu of any personal use state license that may be

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required for such gathering of the above listed species and clams.

7. Licensing and Tagging System. The Tribe and its members shall not exercise any of the tribal rights provided for in this agreement to harvest fish, deer, elk or bear (referred to as "animals" in this section), except pursuant to the terms of this section. Any person who has not complied fully with the provisions of this section shall be subject to prosecution under state law. Except for the provisions of this section, no state licenses or tags shall be required for animals taken pursuant to this agreement.

a. Every tribal member exercising tribal fishing or hunting rights shall have in possession a valid tribal license (containing at a minimum the member's name, photograph, and enrollment number). Every tribal member exercising tribal hunting rights shall also have in possession a valid tag issued pursuant to this section for the type of animal being sought.

b. The Department shall annually issue without charge to the Tribe 350 deer tags, 45 combination tags valid for taking either one deer or one elk, and 5 bear tags. The Tribe shall control the issuance of such tags to its members.

c. Whenever an animal is taken, the tag shall be promptly filled out by the tribal member and promptly affixed to the animal. The information listed on the tag shall be provided to the tribal office within a time period prescribed by the Tribe.

d. The Tribe shall keep accurate, current records concerning the number of animals taken and the persons to whom tags have been issued.

e. Any tribal member shall be subject to state regulation under state law if (1) the tribal member does not have a valid tribal license and a valid applicable tag in possession, (2) a tribal member has not properly filled out a tag and affixed it to the animal, or (3) a tribal member has not complied with all other state tagging, possession, and transportation regulations, so long as they are not inconsistent with this agreement.

f. All tribal records kept pursuant to this section shall be complete and current in all respects, and shall be subject to inspection by the State upon reasonable notice.

g. If the State believes that the tribal licensing and tagging system is inadequate in whole or in part, the State shall so notify the Tribe. The Tribe shall take necessary corrective measures. If the State believes that such corrective measures are inadequate, the State shall negotiate with the Tribe for the assumption of licensing and tagging responsibilities by the State. If agreement is not reached by the parties, the State may petition the United States District Court for an order directing that full control of licensing and tagging be assumed by the State until necessary corrective measures have been taken by the Tribe.

8. Relationship of this Agreement to the Establishment of a Tribal Reservation.

a. This agreement shall contain the exclusive definition of tribal hunting, fishing, trapping, and animal gathering rights. The creation of a tribal reservation, or the addition of lands to an existing reservation, shall not in any way add to or detract from the provisions of this agreement. All hunting, fishing, and trapping by the Tribe, on or off any tribal reservation or lands of any tribal member, shall be in accordance with the terms of this agreement.

b. This agreement does not imply any state position on proposals for designation of particular lands as a reservation. If a reservation is created, the State shall have the right, subject to the specific provisions of this agreement, to manage all fish and wildlife resources on the tribal reservation, in accordance with applicable provisions of Oregon law:

c. The Tribe intends to leave any reservation established open to the public for hunting and fishing and general recreation. The Tribe does not by this agreement waive any rights it may have to close all or part of such reservation when necessary in the future. If there is to be any closure, or partial closure, the Tribe shall consult with the Department before taking action. If the Tribe acquires any land containing any watercourse on which there is now a public right to float or fish from a boat, such public right shall be unaffected by the acquisition of such lands.

d. The Tribe reserves the right to regulate or prohibit the public's gathering of plants on any reservation established.

e. Whenever the Tribe plans to engage in any activity for which a permit would normally be required from the Department, the Tribe shall consult with the Department and meet the minimum standards established by the Department for such activities.

f. The Tribe agrees that it will meet minimum environmental standards established by state and local laws for resource development activities which may impact fish and wildlife habitat, including but not limited to water development, fill and removal, and timber harvesting. The parties recognize that the Tribe intends to use most of its lands identified in the Grand Ronde Reservation Plan dated November, 1985, for the purpose of harvesting timber. The Tribe shall conduct land use planning in an environmentally sound manner generally consistent with state and local land use goals as they relate to fish and wildlife habitat.

9. Effective Date of Agreement. No part of this agreement shall be effective until this agreement is approved by the United States District Court and merged into a final and permanent decree and order issued by such Court. If such action is taken by the Court, the provisions of this agreement shall go into effect immediately except that the provisions relating to the cultural fishery (section 4(a), above) and cultural hunting (section 5(a), above), and cultural animal gathering (section 6, above) shall go into effect 30 days after the Tribe notifies the State in writing of the establishment of its licensing and tagging procedures (section 7, above).

DATE SIGNED: November 29, 1986.

BY:

Don Barth, Chairman,
Oregon Fish and Commission
Wildlife Commission

DATE SIGNED: December 1, 1986.

BY:

Anne W. Squier
Assistant Attorney General
State of Oregon
Of Attorneys for Oregon
Department of Fish and Wildlife

George d. Dysart
Special Assistant United States Attorney

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United States Department of Justice

DATE SIGNED: December 1, 1986.

BY:

Mark Mercier, Chairman
Confederated Tribes of
the Grand Ronde Community of Oregon

DATE SIGNED: December 1, 1986.

BY:

Sande Schmidt, Attorney

Confederated Tribes of the
Grand Ronde Community of Oregon

DATE SIGNED: December 2, 1986.

BY:

Stanley Speaks
Portland Area Director
Bureau of Indian Affairs
Department of the Interior
United States of America