

Exhibit B

**Public Correspondence Received as
of March 11, 2025**

Brian McLachlan
Portland, Oregon
March 11, 2025

Oregon Fish and Wildlife Commission
ODFW Director Debbie Colbert
Oregon Department of Fish and Wildlife (ODFW)
4034 Fairview Industrial Drive SE
Salem, Oregon 97302
Via electronic mail to odfw.commission@odfw.oregon.gov

Re: Repeal of 1980 Siletz Agreement

Dear Commissioners:

I write with concerns and questions regarding the proposed action to repeal the 1980 Siletz Agreement (1980 Agreement) and replace it with the 2023 Siletz Agreement (2023 Agreement).

The 1980 Agreement was intended to finally settle and define the Siletz Tribe's hunting and fishing rights under federal law. It was incorporated into the Siletz Reservation Act, ODFW administrative rules, and a final consent decree and order issued by the United States District Court for the District of Oregon. Repeal of the 1980 Agreement will remove a barrier for the Tribe to potentially assert and pursue claims of federal hunting and fishing rights of an undetermined nature, extent, and magnitude.¹

The 2023 Agreement is a voluntary agreement between ODFW and the Siletz Tribe establishing a framework for the Siletz Tribe to manage and license limited subsistence and ceremonial harvest of fish and wildlife by tribal members. The agreement also sets out principles of cooperative wildlife resource management between the parties. ODFW entered into the 2023 Agreement pursuant to its authority under state law.²

In late 2023, Congress enacted Public Law 118-33, which allows the State and Tribe to replace, amend or modify the 1980 Agreement, but also mandates the agreement shall remain in effect until and unless the parties chose to do so. The statute also permitted the parties to request the federal district court to rescind or modify the consent decree. In October 2024, at the joint request of the parties, the court vacated the consent decree. In addition, it also vacated the 1980

¹ These comments reflect solely my personal perspective. The Commission should consult with agency counsel for legal advice.

² I have previously submitted comments concerning ODFW's agreements with western Oregon Tribes, including specifically regarding the 2023 Agreement, all of which I hereby incorporate by reference. *See* my written testimony and comments concerning Tribal agreements submitted to ODFW and the Commission dated June 14, 2022, November 26, 2022, December 7, 2022, and June 16, 2023. I can supply additional copies of these documents upon request.

Agreement and ordered the Commission to rescind the 1980 Agreement under state law. As discussed below, I contend these latter two actions run counter to Public Law 118-33.

I want to acknowledge from the onset the grave historical injustice done to ancestors of Siletz Tribal members, including coerced and forced removals from ancestral lands, broken promises, diminished reservations, unconscionable boarding schools, and the termination of federal recognition. Reconciling these past injustices with the realities of the present and the interests of tens of thousands of Oregonians who deeply value public hunting and fishing is a profound challenge. In outlining my concerns in this comment letter, I mean no disrespect to the Tribe or its members.

As discussed below, the repeal of the 1980 Agreement and consequential potential for the Siletz Tribe to assert and pursue hunting and fishing rights under federal law present substantial risks and uncertainties for the State and non-tribal Oregonians who engage in public hunting and fishing activities. While I appreciate all the time and effort each of you put forth in service to Oregon and the State's fish and wildlife, I question whether a commission of volunteers, rather than Legislators who are electorally accountable, should make this potentially profound decision.

I. Summary Points

- * Because the 2023 Agreement is already in place and being implemented, the primary effect of the proposed action – repeal of the 1980 Agreement (which Congress mandated to remain in effect until and unless replaced, amended or modified) – will be to remove a last barrier to allow the Siletz Tribe, if it chooses, to assert and pursue its federal hunting and fishing rights claims. The Tribe has suggested this may lead to negotiation of an additional agreement concerning those claims and, if negotiations fail, federal litigation. The nature, extent, and magnitude of the Tribe's claimed federal hunting and fishing rights are unknown. As such, they present substantial risks and uncertainties to the State's sovereign authority to regulate fish and wildlife and to recreational hunting and fishing and commercial fishing stakeholders. The Agenda Item Summary fails to adequately address this issue, depriving the Commission and public from fair notice and the information necessary to assess the potential implications of the proposed action.
- * The 2023 Agreement is flawed, especially its ill-defined, ambiguous and onerous harvest allocation standards. ODFW has represented to Oregonians that the 2023 Agreement is intended to be implemented in a manner that has negligible³ or at most minor impacts to non-tribal public fishing and hunting.⁴ But the terms of the

³ ODFW, Agenda Item Summary, MOA with the Confederated Tribes of Siletz Indians, June 16, 2023, at 4 (“The department expects [the 2023 Agreement] to result in a negligible reduction in revenue and a negligible change in the impact of hunting and fishing to existing fish and wildlife populations.”)

⁴ ODFW, Notice of Proposed Rulemaking, April 25, 2023, at 2-3.

The fiscal and economic impact . . . is expected to be positive in nature for Tribal members, while adhering to the State of Oregon's Wildlife policy ORS 496.012 [which

2023 Agreement do not say this, and the agreement’s harvest allocation standard conspicuously omits reference to the Oregon Legislature’s statutory mandate to manage fish and wildlife for optimum recreational benefits.⁵ Notwithstanding these flaws, if the 2023 Agreement is interpreted and implemented as ODFW represented with negligible or at most minor impacts to public hunting and fishing, then I believe it to be a fair reconciliation of competing interests and principles that enhances tribal sovereignty while remaining equitable to non-tribal Oregonians. However, because the 2023 Agreement is voluntary and either party may exit it without cause, it does not alleviate the risks associated with repealing the 1980 Agreement.

- * Although the October 2024 federal district court order and Agenda Item Summary likely leads the Commission and public to believe the Commission has no choice but to repeal the 1980 Agreement, I contend the court order conflicts with Public Law 118-33. The text of the statute evidences Congressional intent to leave the choice with the State and Tribe, and I suggest Oregon DOJ may move the court to amend its order to conform with the statute. Unfortunately, discussion of this issue in the Agenda Item Summary results in substantial confusion regarding the Commission’s authority and discretion to decide whether to repeal the 1980 Agreement.

II. Requests

Accordingly, I urge the Commission to:

- * Consult agency counsel regarding whether the court order conflicts with Public Law 118-13 and whether the Commission is required by the order to repeal the 1980 Agreement. Does the text of Public Law 118-33 indicate Congressional intent to revoke the State’s authority to exercise its discretion whether to replace, amend or modify the 1980 Agreement? I contend it clearly does not.
- * Ask the Siletz Tribe to confirm (1) that it agrees with ODFW’s interpretation and understanding the 2023 Agreement is intended to be implemented in a manner that results in negligible or at most minor impacts to public recreational hunting and fishing, and (2) that the Tribe is committed to the 2023 Agreement to define and guide its relationship with the State into the future.

includes the statutory mandate to provide “optimum recreational benefits”] * * * The public is likely to be minimally affected by the proposed rule. * * * It is not anticipated that overall fishing and hunting activities by tribal members will increase as a result of this rule, but it is possible that small reductions in opportunities for the general public to take species with limited population sizes may be created to accommodate tribal activities. Businesses that provide goods and services to hunters and anglers in the specified area are not expected to be impacted by the rule.

⁵ See ORS 496.012(6).

- * Ask the Siletz Tribe to describe the nature, extent, and magnitude of the federal fishing and hunting rights it claims and if, when, and how, it intends to assert and pursue those claims. For example, does the Tribe intend, as discussed below, to seek an additional agreement with ODFW (separate from the 2023 Agreement) to “work out” and “settle” its federal hunting and fishing claims?
- * Request agency counsel for an evaluation of the Tribe’s potential federal fishing and hunting rights claims, including an assessment of the potential impact on public fishing and hunting opportunities and to the State’s sovereign police power authority to regulate, manage, and allocate fish and wildlife harvest opportunities.
- * Inform and consult with the Oregon Legislature about the proposed action and the potential impacts, risks, and uncertainties surrounding the Siletz Tribe’s federal hunting and fishing rights claims.
- * Make a good faith effort to explore the possibility of negotiating an agreement to resolve the Siletz Tribe’s federal hunting and fishing rights claims prior to repealing or modifying the 1980 Agreement. Given the positive cooperative relationship that presently exists between the State and Tribe (as reported in the Agenda Item Summary), this could be an opportune time to engage in what may be a challenging discussion.
- * Continue to implement the 2023 Agreement **but pause consideration of this action** until the Commission has taken the steps outlined above and has thoroughly evaluated the potential risks, uncertainties, and implications of the proposed action (including risks associated with the Tribe’s assertion of federal hunting and fishing rights) and transparently informed Oregon’s citizens about the same so that stakeholders may provide informed comments to the Commission.

III. Discussion

- A. **Repeal and replacement of the 1980 Agreement with the 2023 Agreement removes a last barrier to allow the Siletz Tribe to assert federal hunting and fishing rights; to potentially negotiate an additional agreement with the State to implement those claimed rights; and, if a dispute arises, to litigate in federal court to establish those claimed rights under federal law.**

The Commission should consider the proposed action with “eyes wide open,” which demands asking difficult questions, critically evaluating potential risks and uncertainties, and publicly acknowledging the potential implications of your decision.

The principal effect of the proposed action would be to repeal the 1980 Agreement. The 2023 Agreement is already approved and being implemented by ODFW and the Tribe. The 1980 Agreement need not be repealed for the 2023 Agreement to remain in effect, nor is any substantive change proposed to the terms of the 2023 Agreement.⁶ The 2023 Agreement is

⁶ ODFW has reported to the Commission that (1) there is no conflict between the 1980 Agreement, which concerns settlement of the Siletz Tribe’s federal hunting and fishing rights claims, and the 2023 Agreement, which is a voluntary agreement under state law; (2) that an

intended to remain a voluntary agreement which, by its terms, either party may terminate and exit without cause at any time.

So what is the effect of repealing the 1980 Agreement? The primary substantive consequence appears to be to remove a barrier⁷ to allow the Siletz Tribe to assert federal hunting and fishing rights, to potentially negotiate an additional agreement (distinct from the 2023 Agreement) with the State to implement those claimed federal rights, and, if a dispute arises (e.g., regarding either the 2023 Agreement or negotiations regarding an additional agreement), to litigate in federal court to establish those claimed rights under federal law.

The Siletz Tribe itself has said in its December 2024 newsletter:

The new [2023] agreement also expressly acknowledged that **the Tribe can claim and establish its hunting, fishing, trapping and gathering rights under federal law and federal treaties.** Hopefully, the state and Tribe in the future can work out and settle the Tribe’s federal rights to hunt, fish, trap and gather, but **if an intractable dispute arises the Siletz Tribe is free to claim and establish those rights in an appropriate federal court action.** (emphasis added)⁸

This is concerning because of the uncertainty and risk it poses to State fish and wildlife management authority and public recreational fishing and hunting.⁹

Oregon court decision supports this conclusion; and (3) that the proposed action would not change anything concerning the 2023 Agreement. *See* Agenda Item Summary

⁷ As discuss below, pursuant to Public Law 118-33, Congress mandated the 1980 Agreement remain in effect unless and until replaced, amended, or modified. By its terms, the 1980 Agreement is a binding final settlement of the Siletz Tribe’s federal hunting and fishing rights. Because Congress has plenary authority over Tribal affairs and has mandated under federal law that the 1980 Agreement remain in effect until replaced, amended, or modified, the 1980 Agreement could potentially serve as an affirmative defense in litigation to claims of federal fishing and hunting rights different from those set forth in the 1980 Agreement itself. Hopefully, it will not come to that. Additional analysis is beyond the scope of these comments and the Commission should consult agency counsel regarding this issue.

⁸ Siletz News, Dec. 2024, p. 13, <https://ctsi.nsn.us/wp-content/uploads/2024/11/Siletz-News-December-2024.pdf>, visited 3.9.24.

⁹ Oregon Congressional Representative Les AuCoin expressed similar concerns in 1980 when he required final resolution of the Siletz Tribe’s federal fishing and hunting claims prior to moving forward a bill to establish a reservation for the Tribe: “No one knows if [the Siletz Tribe has] superior rights, what those rights may be, or how vast they may be”. Statement by Congressman Les AuCoin on Siletz Reservation Bill, May 2, 1980, Ex. 2 to Joint Stipulated Mot. to Vacate, U.S. Dist. Ct. OR, Case 3:80-cv-00433-AB, Doc. 1-3, filed 10/10/24.

Please know, my concern is not about Tribal fish and wildlife co-management or stewardship values; rather, it is rooted in allocation and scarcity. I know, as do you, that there are only so many salmon that can be caught and so many elk that may be harvested. Demand inevitably exceeds supply, resulting in scarcity and regulatory limits. And available numbers for many species exhibit long-term declining trends as a result of habitat degradation and a changing climate. Due to a limited supply, allocation to one distinct and exclusive group,¹⁰ here potentially the Tribe pursuant to claimed federal fishing and hunting rights, necessarily reduces the amount available for everyone else, including recreational anglers like me who are members of the general public.

In connection with approving the 2023 Agreement, ODFW affirmatively represented to the citizens of Oregon that the agreement would have “negligible” or at most minimal impacts on public hunting and fishing opportunities.¹¹ The current Agenda Item Summary (at 3) refers back to ODFW’s memoranda setting forth this expectation.

But the Agenda Item Summary utterly fails to discuss the implications of repealing the 1980 Agreement in terms of removing a barrier for the Tribe to potentially assert its claims of fishing and hunting rights under federal law. Indeed, even the Siletz News cited above provides a more forthright discussion of this potentiality. In this respect, the Agenda Item Summary fails to adequately address and inform the Commission and public of the risks, uncertainties, and implications of the proposed action.

So, what federal fishing and hunting rights do the Tribe claim? The 2023 Agreement sets forth a quite expansive but also vague assertion of rights and interest in the harvest, regulation and management of wildlife resources and habitat within ceded and traditional use area and within reservations.¹² The 1980 Agreement indicates the “nature and extent” of the Siletz Tribe’s

¹⁰ I use the word “exclusive” because the Tribe is a distinct sovereign political community, membership in which requires tribal ancestry. My understanding is that membership requires 1/16 or more Siletz blood quantum (see <https://ctsi.nsn.us/wp-content/uploads/2020/12/Constitution-04-17-2009.pdf>, visited 3.9.25) (e.g., one great, great grandparent). I defer to the Tribe to clarify this if my understanding is incorrect. In contrast, recreational anglers are an “inclusive group” because any person (including a Tribal member) who is willing to pay a modest license fee may participate in recreational fisheries under the same regulations as everyone else regardless of ancestry or other immutable characteristic such as race, skin color, sex, etc.

¹¹ See notes 4 and 5 above.

¹² The 2023 Agreement states: “The Siletz Tribe asserts an interest in wildlife resources, habitat and management reserved in treaties, statutes, Executive Orders or other authority”, at 1, and “an interest in the harvest, regulation and management of wildlife resources within territory ceded by various ratified and unratified treaties or based upon aboriginal title, within traditional harvest areas used by the tribes and bands outside ceded areas, and within the reservation(s) set aside by the federal government for the use of the Siletz Confederated Tribe or its constituent bands and tribes”, and that the Siletz Tribe’s wildlife resource hunting, fishing, trapping and gathering

claimed rights are “presently unknown”, have not been “defined by any court” and the question is “exceedingly complex, involving numerous acts of Congress, executive orders, and treaties” and the “subject of significant controversy.”¹³ Has the situation materially changed in the last 45 years?

Did the Agenda Item Summary inform the Commission (and public) as to the potential broad geographic extent of these claimed rights?¹⁴ What species are covered? Do the claimed rights involve commercial fisheries? What is the magnitude of these claimed rights – for instance, how much of the harvestable fish and wildlife does the Tribe claim? (5%, 25%, a “fair share” – which under Columbia River and western Washington Treaties amounts to 50%, something else?). How might the nature, extent and magnitude of claimed rights differ under treaty, executive order, or a theory of aboriginal title?

If the Siletz Tribe is able, through negotiation or litigation, to establish these claimed rights, what impact will be felt by the State and by public recreational anglers and hunters? Or, by commercial fishers and the small coastal businesses that serve them? Or by the communities that economically and culturally benefit from public fishing and hunting activities?

And if the Siletz Tribe decides to litigate, how likely is it to prevail? Has the Oregon Department of Justice evaluated potential legal claims and risks?

As public officials charged with acting in the State’s best interest, you have a duty to ask these questions, critically evaluate the associated risks and uncertainties, and transparently communicate the foreseeable implications and risks of your decisions to the public.

rights (“HFT&G rights”) have never been directly litigated, adjudicated or determined by any court in which the Siletz Tribe has been a party”, at 2.

¹³ The 1980 Agreement states:

The nature and extent of tribal hunting, fishing, 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. Siletz hunting and fishing rights have been and are now the subject of significant controversy. The Tribe contends that it possesses tribal hunting, fishing, trapping and 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, contrary to any provision of the law.

See OAR 635-041-0500 (attachment).

¹⁴ As to the potential geographic extent of claims, the Siletz website indicates Tribal “ancestors brought with them deep connections to more than 20 million acres of ancestral territory combined, including all of Western Oregon from the summit of the Cascade mountains to the Pacific and extending into what’s now SW Washington State and northern California.” <https://ctsi.nsn.us/>.

Ask yourself, have you each exercised your duty of due diligence and care to safeguard the interests of the State and its citizens in fish and wildlife? Is this action truly in the long-term best interests of Oregon's citizens as that interest is expressed in State statutes? Could approving the proposed action subsequently lead to litigation and court decisions that jeopardize or impair the Legislature's statutory policy that fish and wildlife are the property of the State and held in trust for all Oregon citizens?¹⁵ And should not the Legislature as elected representatives of the People be consulted given the proposed action may foreseeably give rise to actionable Tribal fishing and hunting claims that could impact or otherwise diminish Oregon's sovereign police power authority to regulate and allocate fish and wildlife?¹⁶

The Agenda Item Summary contends the "state and tribe now believe they are capable of and committed to management of fish and wildlife in a cooperative manner." While I do not question these present good intentions, I am also aware of over a century of controversy and litigation in the Northwest concerning Tribal hunting and fishing rights, which continue to this day.¹⁷ The Commission cannot proceed willfully blind to this historical experience nor remain intentionally naive as if the state/tribal relationship will forever be rosy. This relationship will surely be tested should the Siletz Tribe assert federal hunting and fishing rights that significantly impact non-tribal fishing and hunting interests.

I have no idea what the nature, extent, or magnitude of the Siletz Tribe's potential federal fishing and hunting claims are, whether the Tribe intends to pursue them now or in the future, the probability they may established under federal law, nor what their long-term impacts may be on Oregonians like me who deeply value, and are personally invested in, public recreational fishing

¹⁵ See ORS 498.002; *Simpson v. Department of Fish and Wildlife*, 242 Or App 287, 255 P3d 565 (2011) (the State's property interest in wildlife is as a sovereign for the benefit of and in trust for the people).

¹⁶ And if the Tribe were to establish a right to fish and hunt, would that right include an actionable interest in the conservation of habitat necessary to support wildlife, such as at issue in the "culverts" case in Washington State?

¹⁷ Noteworthy is the present conflict involving the Grand Ronde Tribal MOA and threats by the Columbia River Treaty Tribes to commence litigation to establish usual and accustomed rights on the Willamette which could in turn immensely negatively impact recreational fisheries there. Tribal fishing and hunting rights issues exist in the mid-west and other parts of the U.S., and there are indigenous fishing and hunting controversies in foreign countries as well. Controversies rooted in allocation (i.e., "who gets the fish") are endemic to fish and wildlife management and are certainly not unique to Tribal or indigenous claims. There are near constant negotiations and sometimes legal conflicts between user-groups (commercial vs. recreational fishers), other stakeholders (e.g., NGOs advocating for more salmon to reach spawning grounds), states (e.g., non-concurrence on Columbia River between Oregon and Washington regarding percent of harvest allocated above boarder), and nations (e.g., the Pacific Salmon Treaty – recall the blockage of an Alaskan ferry by Canadian fishers in 1997).

and hunting (or on those whose livelihoods depend on commercial fishing). I doubt you know either.

I don't mean to suggest the sun will not rise tomorrow, but I urge you to do your due diligence, carefully evaluate, and be publicly transparent about the foreseeable but uncertain and potentially substantial implications of the action you are poised to take.

B. The Flawed but Fair 2023 Agreement

A significant flaw in the 2023 Agreement is the ill-defined, ambiguous, and onerous terms comprising the allocation standard.

Framework for Harvest. The limits and areas of tribal ceremonial and subsistence harvest will be set annually or seasonally by mutual agreement of the Parties based on the best available scientific data of estimated availability, escapement goals, tribal needs, conservation necessity, and ODFW management goals such as those related to research, disease management or population enhancement.¹⁸

That's it. That one sentence is the operative harvest limit allocation standard in the 2023 Agreement.

The terms "availability" and "tribal needs" are not defined and are thus hopelessly ambiguous. And nowhere does the agreement adequately explain how "escapement goals" are to be determined such as whether the State may unilaterally establish them in management plans or whether the Tribe has a say in the manner. ODFW does not even have traditional "escapement goals" for many fish stocks potentially subject to tribal harvest.¹⁹

In contrast, the term "conservation necessity" is a defined legal term under federal law. In brief, it means the State cannot regulate and constrain Tribal fisheries without a clear and convincing showing that (1) regulation of non-tribal hunting and fishing is insufficient to meet conservation needs; (2) the agency's proposed tribal harvest limits are the least restrictive possible, (3) the agency's proposed tribal harvest limits do not discriminate against Tribal members, and (4) voluntary tribal measures are not adequate.²⁰ This is a quite high and onerous legal burden for the State to meet in terms of a Tribal harvest limit standard.

Finally, the standard makes reference to "ODFW management goals", but the examples included suggest a limited scope to that term and conspicuously do not reference ODFW's overarching

¹⁸ 2023 Agreement at 7.

¹⁹ See e.g., ODFW, Coastal Multispecies Management Plan at 167 (detailing abundance metrics in terms of "desired abundance", "low harvest threshold", and "critical abundance", none of which function as a traditional escapement goal defining harvestable surplus).

²⁰ See *State v. McCormack/Senter*, 21 Or App 551, 561-64 (2022).

statutory mandate to manage fish and wildlife to, among other things, provide “optimum recreational benefits.”²¹

Due to these inherent flaws, it was vitally important that ODFW expressly represented to Oregon’s citizens (and ODFW staff confirmed to me personally) that the 2023 Agreement was intended to have, and would be implemented in a manner that has, “negligible” or at most only minor impacts on public fishing and hunting opportunities. As long as this understanding is shared by the Tribe, and the agreement is implemented in this manner, then notwithstanding its flaws, the 2023 Agreement seems to present a reasonable and fair path forward.

It is important to note, however, that the 2023 agreement is voluntary and either party may exit the agreement without cause. It therefore does not alleviate the risks discussed above concerning repeal of the 1980 Agreement.

Once again, I request the Commission to publicly (1) confirm on behalf of ODFW this understanding, and (2) confirm with Siletz leadership that (a) the Tribe shares this interpretation and understanding of 2023 Agreement, and (b) is committed to the 2023 Agreement to guide and define the relationship between the State and the Tribe into the foreseeable future.

C. Does the Commission Even Have a Choice?

The Agenda Item Summary indicates the Commission has been ordered by a federal district court to rescind the 1980 Agreement.²² On its face, that’s what the court order says: “The Oregon Fish and Wildlife Commission shall take separate action under Oregon state law to rescind the 1980 Agreement as a state regulation.” The court’s order also unequivocally vacates the 1980 Agreement under federal law.²³

Unless I’m missing something, the court’s order conflicts with applicable federal law.

As discussed below, the order appears to conflict with Public Law 118-33 by restricting the Commission’s authority and discretion. In this regard, I am disappointed the Agenda Item Summary does not provide additional analysis or context so as to not mislead the Commission and public about the Commission’s discretion and authority to approve or reject the proposed action.

²¹ See ORS 496.012(6).

²² See Agenda Item Summary – Repeal 1980 Agreement between Oregon and Siletz Tribe – 3/14/2025 at 2 (“The proposed rule changes are in response to Case No. 3:80-cv-00433-AB, United States District Court, District of Oregon: Order Vacating Final Decree and Order dated October 30, 2024, which states that, “The Oregon Fish and Wildlife Commission shall take separate action under Oregon state law to rescind the 1980 Agreement as a state regulation.”)

²³ See Order Vacating Final Decree and Order, filed 10/30/24, Case No. 3:80-cv-00433-AB.

In general, a federal court may not issue an order inconsistent with federal law, nor order a state or state agency to take action absent a federal law requiring such action. Here, the pertinent federal law, Public Law 118-33, does not require the State or Commission to repeal the 1980 Agreement, but rather expressly mandates the 1980 Agreement to remain effective “until and unless” replaced, amended or modified by agreement of the State and Tribe.

In pertinent part, Public Law 118-33 states:

The Siletz Agreement shall remain in effect until and unless replaced, amended, or otherwise modified by 1 or more successor government-to-government agreements between the Confederated Tribes of Siletz Indians and the State of Oregon relating to the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of Siletz Indians.

P.L. 118-33.

The plain text of the law is direct and unambiguous – the 1980 Agreement shall remain in effect until and unless replaced, amended, or otherwise modified. Nothing in the law mandates the State or Commission to rescind the 1980 Agreement. The terms “until and unless” evidence that replacement, amendment, or modification was not mandatory but discretionary with the parties. A contrary reading would render the word “unless” meaningless and superfluous.

The immediately following section of Public Law 118-33 confirms this view:

The Siletz Agreement or any successor agreement entered into under paragraph (1) may be amended from time to time by mutual consent of the Confederated Tribes of Siletz Indians and the State of Oregon.

P.L. 118-33. The disjunctive “or” indicates a choice between either leaving the Siletz Agreement in place or replacing it with a successor agreement, and the permissive “may” indicates that amendment of the Siletz Agreement is not mandatory but at the discretion and mutual consent of the Tribe and State.

Thus, the governing federal law thus does not mandate that the Siletz Agreement be rescinded. To the contrary, it requires it to remain in place and effective until and unless the State and Tribe mutually agree to amend, modify, or replace it with a successor agreement.²⁴

²⁴ P.L. 118-33 also provided for the parties to request the United States District Court for the District of Oregon to rescind, overturn, modify, or provide relief under federal law from the consent decree. While the consent decree incorporated the 1980 Agreement, it is not the agreement itself, but rather a final judicial decree and order. As the statute’s text makes clear, Congress distinguished between these two in enacting P.L. 118-33, and, notwithstanding the status of the consent decree, mandated that the 1980 Agreement shall remain in effect until and unless replaced, amended or otherwise modified.

The 2023 Agreement – as approved by the Commission – did not replace the 1980 Agreement, as its terms expressly indicate:

The Parties acknowledge that this Memorandum of Agreement does not in any way, replace, amend or otherwise modify the ‘Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of the Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping, and Gathering Rights of the Siletz Tribe and its Members’ signed by the Parties and dated April 22, 1980.²⁵

To date, the Commission has not taken action to replace the 1980 Agreement with the 2023 Agreement. Indeed, that is precisely what the proposed action before you proposes to do.²⁶

So, here we are. The 2023 Agreement approved by the Commission expressly did not replace the 1980 Agreement. Yet, the federal court vacated the 1980 Agreement, notwithstanding that Congress in Public Law 188-33 unambiguously mandated the 1980 Agreement shall remain in effect until and unless replaced, amended or otherwise modified, none of which has occurred (at least to my knowledge). And, to add to the confusion, the court apparently commanded the Commission to rescind the 1980 Agreement as a state regulation – pursuant to what legal authority I do not know.

In my view, the court’s order runs counter to federal law by (1) vacating the 1980 Agreement and (2) by commanding the Commission to rescind the 1980 Agreement as a state regulation. This confusion appears to be the result of a joint motion from the Tribe, State, and the United States that misinformed the court.²⁷

²⁵ 2023 Siletz Agreement at 16.

²⁶ See Agenda Item Summary at 3 (“The effect of the new rule is to confirm, consistent with the process in Public Law 118-33, that the state and Siletz Tribe intend for the 2023 Agreement to be the successor agreement to the 1980 Agreement.”); see also draft amendment to OAR 635-800-050 (“The parties to the Siletz-ODFW 2023 Agreement intend for that Agreement to describe the Confederated Tribes of Siletz Indians’ hunting, fishing, trapping and animal gathering opportunities in Oregon, and for the Siletz-ODFW 2023 Agreement to be a voluntary successor to the “Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of the Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping, and Gathering Rights of the Siletz Tribe and its Members” entered into by the United States on April 22, 1980.”)

²⁷ While the parties’ joint motion accurately noted the 2023 Agreement did not “replace, terminate or change the 1980 Agreement”, and explained the parties were not asking the court to replace the 1980 Agreement with the 2023 Agreement, mot. at 8-9, it nonetheless erroneously represented that “[v]acating the Final Decree and Order shall have the effect as a matter of federal law of vacating the [1980 Agreement]”, mot. at 11. The motion also stated, “The Oregon Fish and Wildlife Commission will need to take separate action under state law to rescind the 1980 Agreement as a state regulation.” Mot. at 11. This representation, presenting Commission action as a *fait accompli* (which, if true, would render the Commission’s public meeting process

If the court's order is in conflict with federal law, as I contend, the straightforward remedy to restore the Commission's authority and discretion would be for Oregon DOJ to file a motion under FRCP 60 to correct or otherwise provide relief from the order.²⁸

But this is just my personal perspective. I strongly urge the Commission, before considering the proposed action, to consult with agency counsel to sort this mess out and determine (1) whether you are bound by court order to rescind the 1980 Agreement; (2) if so, why?; and (3) what can be done to restore the Commission's authority and discretion in this matter as provided for under the governing federal law, Public Law 118-33.

In addition, if the Agenda Item Summary does, in fact, provide a confusing or erroneous depiction of the Commission's authority and discretion – which I contend it does – you should consider how this has affected stakeholders who may have participated in the public process and offered comments or testimony but for being erroneously led to believe that the Commission was compelled by court order to rescind the 1980 Agreement. Why bother to testify if the Commission doesn't have a choice in the matter?

Notwithstanding the court's order, and what the Agenda Item Summary leads readers to believe, my view is that Public Law 118-33 provides the State with authority and discretion to choose whether or not to repeal the 1980 Agreement and replace it with the 2023 Agreement.²⁹ I urge the Commission to clarify this issue on the public record before proceeding least its decision be tainted by confusion over its authority and discretion.

* * * *

Whatever the Commission's decision is on the proposed action, my sincere hope is that the 2023 Agreement and the State/Siletz Tribe co-management relationship will lead to positive outcomes for the Siletz Tribe, for non-tribal hunters and anglers, and for the fish and wildlife we all cherish. I recognize the Siletz Tribe is culturally connected to its ancestral lands and waters and the fish and wildlife therein in ways I can never be. This is my and my family's home too. It is my hope we can all follow an equitable path forward.

Thank you for considering my comments.

disturbingly performative), may have contributed to the court's problematic mandate that the Commission "shall" rescind the 1980 Agreement.

²⁸ In my view, Oregon DOJ has a duty to zealously and competently defend the State's sovereign authority to make its own decisions regarding fish and wildlife management consistent with federal law.

²⁹As a separate concern, I question whether the State's discretion and authority has been, or even could be, lawfully delegated by the Oregon Legislature to the Commission to rescind and replace the 1980 Agreement with the 2023 Agreement.

From: Karen Olch <kayenta@efn.org>

Sent: Sunday, March 9, 2025 1:43 PM

To: ODFW Commission * ODFW <ODFW.Commission@odfw.oregon.gov>

Subject: public comment for commission meeting on March 14

You don't often get email from kayenta@efn.org. [Learn why this is important](#)

Dear Commissioners

As a European-American in Oregon, I want to say I fully 100% support the repeal of the 1980 agreement between ODFW and the Confederated Tribes of Siletz Indians. I support the First Nations peoples in having access to and use of their historic homelands for cultural, hunting and fishing purposes.

Thank you
Karen Olch
Eugene, Oregon
unceded territory of the Kalapuya Peoples