

**Exhibit A**  
**PETITIONS TO REPEAL, OR**  
**ALTERNATIVELY, AMEND OAR 635-800-0300**

**Correspondence Received**

July 08, 2025

July 7, 2025

**VIA E-MAIL: ERIN.L.DONALD@DOJ.OREGON.GOV**

Oregon Fish and Wildlife Commission  
c/o Erin L. Donald, Senior Assistant Attorney General  
Oregon Department of Justice  
100 SW Market Street  
Portland, Oregon 97201

Re: Oregon Fish and Wildlife Commission Meeting, July 11, 2025  
The Dalles Civic Auditorium, 323 East 4th Street, The Dalles, Oregon 97058

Dear Commissioners:

On behalf of our clients the Confederated Tribes of the Warm Springs Reservation of Oregon (“Confederated Tribes of Warm Springs”), the Confederated Tribes of the Umatilla Indian Reservation (“CTUIR”), the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), and the Nez Perce Tribe (“NPT”), we submit this letter to the Oregon Fish and Wildlife Commission (“Commission”) in advance of its July 11, 2025 meeting. The sole agenda item for the Commission is to consider the petitions to repeal or, alternatively, amend OAR 635-800-0300 filed by each our clients in May 2024 (collectively, referred to as “Petitioner Tribes”). The Petitioner Tribes request that the Commission accept the petitions and direct the Oregon Department of Fish and Wildlife (“Department”) to initiate a rulemaking to amend OAR 635-800-0300.<sup>1</sup>

OAR 635-800-0300 (“Rule”) ostensibly authorizes members of the Confederated Tribes of the Grand Ronde Community of Oregon (“CTGR”) to take species managed by the Commission on off-reservation and non-trust lands. This authorization is granted under the terms and conditions of a Memorandum of Agreement between CTGR and the Department (“MOA”), which the Rule incorporates by reference. Despite the substantial objections from the Petitioner Tribes—primarily concerning the MOA’s overbroad geographic scope—the Commission adopted the rule on August 4, 2023, by a 4-3 split vote.

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<sup>1</sup> The Petitioner Tribes do not waive their petitions to repeal OAR 635-800-0300. The Petitioner Tribes recognize that outright repeal is an extraordinary measure and that amendments to OAR 635-800-0300 might be sufficient to resolve their concerns. Therefore, while this letter does not separately address repeal OAR 635-800-0300 in this letter, the Petitioner Tribes expressly incorporate by reference their petitions into this letter and maintain that repeal remains an open request.

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While the Petitioner Tribes could support a **properly scoped memorandum of agreement** for off-reservation and non-trust land hunting, fishing, trapping and gathering between CTGR and the Department, the current MOA's geographic scope is unacceptable.<sup>2</sup> It is objectionable because, among other reasons, it purports to grant CTGR the authority to cooperatively manage natural resources in areas of the State where the Petitioner Tribes possess treaty-protected rights to fish, hunt, and gather.<sup>3</sup> This further includes the Petitioner Tribes' federally adjudicated rights to co-manage those resources on a sovereign-to-sovereign basis as co-equals with the States.<sup>4</sup>

The Petitioner Tribes are particularly concerned about the risk of the MOA conflicting with their treaty-protected fishing, hunting, and gathering rights at traditional, cultural use, and usual and accustomed areas in ODFW Wildlife Management Units 15 (Willamette) and 16 (Santiam), including, but not limited, the main stem of the Columbia River, the Willamette River from the mouth to the top of Willamette Falls, and the Sandy River. Because of the broad geographic scope of the MOA and its language authorizing the CTGR to co-manage natural resources located on CTGR-owned fee lands anywhere in Oregon, the Confederated Tribes of Warm Springs and Confederated Tribes of the Umatilla Indian Reservation are also

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<sup>2</sup> The Commission is reminded that the Petitioner Tribes raised no objection to the memoranda of agreement entered into by the Department with the Confederated Tribe of the Coos, Lower Umpqua, and Siuslaw Indians, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians, and the Confederated Tribes of Siletz Indians.

<sup>3</sup> Each of the Petitioner Tribes' respective treaties were ratified by Congress and incorporated into federal law. In exchange for modest reservations, the Petitioner Tribes retained the right to fish at their traditional fishing grounds located outside these reservations. Conspicuous across their four separate and distinct treaties was inclusion of language that "secured" to each of the Petitioner Tribes "the right of taking fish" at "all" their "usual and accustomed fishing" areas, together with the "privilege of hunting [and] gathering roots and berries" on open and unclaimed lands. *See* Treaty of June 25, 1855, with the Tribes of Middle Oregon, 12 Stat 963, 965 (Warm Springs Treaty); Treaty of June 9, 1855, between the Cayuse, Umatilla, and Walla Walla Tribes and the United States, 12 Stat. 945, 947 (CTUIR Treaty); Treaty with the Yakamas, June 9, 1855, 12 Stat. 951, 953 (Yakama Treaty); Treaty of June 11, 1855 with the Nez Perces, 12 Stat 957, 959 (Nez Perce Treaty).

<sup>4</sup> In 1969, the United States District Court for the District of Oregon held in *United States v. Oregon* that the Petitioner Tribes have "an absolute right to [the] fishery," "are entitled to a fair share of the fish produced by the Columbia River system," and must be given "management priority [as a] co-equal." 302 F. Supp. 899, 911 899 (D.Or. 1969). This judgment was subsequently amended to define the Petitioner Tribes' "fair share" allocation as "50 percent" of the harvestable surplus of the spring Chinook salmon run up the Columbia River. *Sohappy v. Smith*, 529 F.2d 570, 571-73 (9th Cir. 1976). *United States v. Oregon* remains among the longest running federal district court cases in history because of its requirement calling for the establishment of a comprehensive plan, agreed to by both the States and the Petitioner Tribes, to co-manage Columbia River Basin fish harvests. The negotiation and effectuation of these management plans has consistently brought together the Petitioner Tribes and the states of Oregon, Washington, and Idaho, to carry out a coordinated, multi-sovereign partnership to ensure the continued protection of Columbia River fisheries.

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alarmed about CTGR hunting and gathering actions in areas proximate to or even *within* their respective reservations and within their treaty-ceded lands.

The Petitioner Tribes also have significant concern with an unambiguous provision of the MOA that purports to authorize co-management of natural resources on “[a]ll lands in Oregon owned in fee by Grand Ronde.” CTGR MOA, § 5a.iii. (emphasis added).<sup>5</sup> The plain language of this provision appears to support an absurd conclusion that CTGR could purchase fee lands in the Warm Springs Reservation, the Umatilla Indian Reservation, or any of the other seven (7) reservations in the State, and have the authority to co-manage the natural resources of those reservation lands. As another example, assume that CTGR purchases a large tract of land that includes riverfront property on the Deschutes River, which is in the heart of the Confederated Tribes of Warm Springs ceded lands. Would CTGR automatically become a co-manager of the natural resources of that property? The text of the MOA would appear to say yes.

Filed in May and June 2024, the Commission has delayed action on the petitions at the request of the Petitioner Tribes to allow leaders of the Petitioner Tribes to meet with CTGR leadership in an effort to find common ground on the MOA’s contentious geographic scope issue. The third (and last) of these meetings took place on June 4, 2025. It made clear that CTGR largely dismissed concerns regarding the MOA’s geographic scope. CTGR’s sole proposal to modify the MOA’s expansive and objectionable geographic reach—*establishing a seven mile buffer around the Warm Springs Reservation*—actually reinforces a primary concern of the Petitioner Tribes: CTGR interprets the MOA as authorizing co-management of natural resources on any land it owns in the State, even outside of the ODFW Wildlife Management Units identified in the MOA. The Petitioner Tribes hope the Department and the Commission do not share this interpretation, especially given it could extend to co-management within eight (8) other tribes’ reservations should CTGR acquire fee lands there.

The Petitioner Tribes also have growing concerns regarding MOA language that appears to formalize an arbitrary and artificial demarcation line at Bonneville Dam, asserting it as the limit of CTGR’s Columbia River co-management authority. *See* CTGR MOA, § 3d. This is exacerbated by geographic scope ambiguities within the MOA that appear to encompass all Oregon waters of the Columbia River while specifically excluding areas upriver of Bonneville Dam. *See* CTGR MOA, §§ 5a.i.a, 5a.ii. Taken together, these MOA provisions imply more than their plain language suggests.

After the Commission purported to adopt the Rule, the Petitioner Tribes became aware of the letter, dated September 12, 2014, from Curt Melcher, then the Deputy Director of the Department, to Reynold Leno, the then Chairman of the CTGR Tribal Council. A copy of the letter is enclosed. In the letter, Mr. Melcher stated, among other things:

“The ODFW shares the view that there is no treaty right for harvest of fish by the [Petitioner Tribes] downstream of Bonneville and has made no agreements to the contrary.”

(Emphasis added.) This letter is astonishing. Petitioner Tribes believe that the letter marks the first written assertion of the Department’s position that the Petitioner Tribes hold no treaty fishing rights below

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<sup>5</sup> The Commission is reminded that the CTGR MOA is an outlier in its inclusion of fee lands within its applicable geographic scope provision. No other memoranda of agreement entered into by the Department contains such expansive and unconstrained language.

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Bonneville Dam. The letter could also be read as a deliberate move by the Department to harm and undermine sovereign relationships among tribes by the Department essentially taking sides in on-going inter-tribal discourse regarding competing claims of tribal rights. The revelation of Mr. Melcher's letter, coupled with the MOA's language regarding the Columbia River and Bonneville Dam, strongly implies the Department could be leveraging the MOA as a means to erode the established scope of the Petitioner Tribes' adjudicated treaty-protected rights. Such actions will undoubtedly create confusion and introduce harmful ground-level conflict, potentially at the expense of *all* tribes and their members.

The notion that the Petitioner Tribes treaty fishing rights terminate at Bonneville Dam is ludicrous. Such a stance disregards the migratory nature of anadromous fish and the fact that the dam was constructed in the 1930s, long-after Petitioner Tribes' treaties were negotiated, signed, and ratified. In light of Mr. Melcher's letter and the Department's constructive efforts to unilaterally reshape the contours of their treaty-protected rights, the Petitioner Tribes are rightfully concerned that the Department might, in the future, interpret the MOA in an alarming way. This interpretation could authorize CTGR to co-manage natural resources on *any* of property it owns statewide **without regard for other tribes' treaty-protected reservation boundaries, ceded lands, or traditional, cultural use, and usual and accustomed areas**. Such an interpretation would be an intolerable result and strongly opposed by Petitioner Tribes.

For the foregoing reasons, the Commission should accept the petitions and direct the Department to initiate rulemaking to repeal or amend the Rule to address the concerns raised by the Petitioner Tribes in a manner that is respectful of *all* tribes' sovereignty. The Commission should further instruct the Department to organize a rulemaking process that aligns with accepted principles of tribal consultation, particularly those set forth in the United Nations' Declaration on the Rights of Indigenous Peoples ("UNDRIP"), adopted September 13, 2007. The Department should fashion a process that aims to consult and cooperate in good faith with each of the Petitioner Tribes in order to obtain their free, prior and informed consent before adopting and implementing any MOA that has the potential to affect their sovereign interests, including, but not limited to, their treaty-protected fishing, hunting, and gathering rights.

The principle of "free, prior, and informed consent" in UNDRIP is an important component of each of the Petitioner Tribe's right of self-determination that cannot be overlooked by the Department. *See also* ORS 182.164(d) (state agencies must develop and implement policy that promotes positive government-to-government relations between state and tribes). Appropriate consultation will take some time given the sovereign interests that are implicated by the MOA. The Petitioner Tribes, however, believe that a good process leads to good outcomes. They hope that the Commission agrees and takes action to direct the Department to remedy the flawed process that led to this problematic MOA.

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Thank you for your consideration.

Respectfully yours,

The Confederated Tribes of Warm Springs  
Reservation

DocuSigned by:  
*Josh Newton*  
4966264D079B41F...

Josh Newton

DocuSigned by:  
*Brent Hall*  
7BEFB34234B1470...

Brent H. Hall

The Confederated Tribes and Bands of the  
Yakama Nation

Signed by:  
*Marcus Shirzad*  
32E88B19EE8B41F...

Marcus Shirzad

The Confederated Tribes of the Umatilla  
Indian Reservation

Signed by:  
*Joe Pitt*  
67325D4B3A9462

Joe Pitt

Nez Perce Tribe

DocuSigned by:  
*Julie Kane*  
E6156B33E72E456

Julie Kane

- cc: Confederated Tribes of Warm Springs Tribal Council
- CTUIR Board of Trustees
- Yakama Nation Tribal Council
- NPT Tribal Council
- Shana Radford, Tribal Affairs Director, Office of the Governor
- Geoff Huntington, Senior Natural Resources Policy Advisor, Office of the Governor
- Rob Greene, Attorney for CTGR



# Oregon

John A. Kitzhaber, MD, Governor

## Department of Fish and Wildlife

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September 12, 2014

Reynold L. Leno  
Tribal Council Chairman  
The Confederated Tribes of Grand Ronde  
9615 Grand Ronde Rd  
Grand Ronde, OR 97347

Dear Chair Leno,

Thank you for your recent correspondence regarding fishing downstream of Bonneville Dam by Columbia River Inter-Tribal Fish Commission (CRITFC) member tribes. The State of Oregon has not taken any action that recognizes treaty fishing rights for the four Columbia River treaty tribes in this area. The agreements between the Oregon Department of Fish and Wildlife (ODFW) and these tribes clearly state that these agreements do not recognize any such rights. The ODFW shares the view that there is no treaty right for harvest of fish by the four Columbia River treaty tribes downstream of Bonneville and has made no agreements to the contrary.

The agreements are the result of negotiations between the tribes and ODFW to address recent late-timed passage of spring Chinook destined for areas within the CRITFC tribe's traditional fishing areas above Bonneville Dam. In order to allow fish to be harvested in more traditional time frames, ODFW and these tribes have reached agreement to allow for some harvest to occur immediately below Bonneville Dam, where fish are available at a time more similar to historic patterns. Harvest of fish at these locations is composed of Chinook destined to migrate to the traditional areas upstream of the dam, and all harvested fish are counted against the tribal allocation of upriver stock fish, as specified by the management agreement.

Thank you for your cooperation and involvement in protecting the resources of Oregon. The ODFW and the Confederated Tribes of the Grand Ronde have an excellent partnership and we look forward to building on that partnership in the future. Please don't hesitate to contact me if you have further questions or concerns on this or other issues.

Sincerely,

Curt Melcher  
Deputy Director, for Fish and Wildlife

c: Rob Greene, Tribal Attorney

*rec'd 9-16-14  
T Council  
Legal  
Gen Manager  
Natural Resources  
THPO  
Adulbrnds*



## The Confederated Tribes of the Grand Ronde Community of Oregon

*Umpqua Molalla Rogue River Kalapuya Chasta*

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July 7, 2025

Oregon Fish and Wildlife Commission  
Oregon Department of Fish & Wildlife  
4034 Fairview Industrial Drive SE  
Salem, Oregon 97302

*sent via email to:*  
[odfw.commission@odfw.oregon.gov](mailto:odfw.commission@odfw.oregon.gov)

Re: Petitions seeking repeal or amendment of Grand Ronde's Hunting & Fishing Rule –  
OAR 635-800-0300

Dear Commissioners:

The Warm Springs, Yakama, Nez Perce and Umatilla petitions seeking repeal or amendment of Grand Ronde's Hunting and Fishing Rule ("Petitions") should be denied. This letter explains why. In short, the Petitions merely rehash concerns already evaluated during the rule making process and fail to present new information or facts that demonstrate a change in circumstance justifying reconsideration of OAR 635-800-0300 ("Grand Ronde's Rule" or "Rule").

### **The Petitions Reassert the Same False Claims about Petitioners Treaty Rights as in 2023**

The Petitioners contend Grand Ronde's Rule conflicts with their reserved treaty hunting and fishing rights. It does not.

The arguments Petitioners are making today are the same ones made and considered by the Commission in 2023.<sup>1</sup> They are pursuing their Petitions because the vote to approve Grand Ronde's Rule was 4-3.<sup>2</sup> Since 2023, there have been changes on the Commission. Petitioners want another shot at getting a different outcome, which does not provide a valid basis for

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<sup>1</sup> Petitioners acknowledge already raising these same objections both orally and in writing to the Commission.

<sup>2</sup> Petitioners incorrectly claim that the Commission's vote on Grand Ronde's Rule was an error of law because the terms of some Commissioners had expired at the time they voted. As ODFW staff in their report correctly note, "Under Oregon law, the maximum length of a commissioner's term is four years, but commissioners are authorized to hold their office until their successor is elected and qualified. Action by a commission with holdover members is not invalid." See ORS 496.090.

reconsidering the Rule. In any event, as shown below, Petitioners do not have the rights they claim.

*Warm Springs Off-Reservation Hunting MOA.* In 2018, the Commission approved an MOA with Warm Springs regarding off-reservation hunting. Paragraph 11 of the MOA states “[a]ny off-reservation hunting activity not covered by this Agreement shall be conducted pursuant to state regulations.” Off-reservation hunting activity in the Santiam and Willamette units is not covered by the MOA. The map found on page 8 of Warm Springs’ MOA is attached as Exhibit 1. As such, any off-reservation hunting in these units is conducted pursuant to state regulations.<sup>3</sup>

*State of Oregon v. Kelly Sam, No. 140443723 (Multnomah Co. Cir. Ct., Mar. 19, 2015).* Mr. Sam an enrolled Yakama member, was arrested for catching smelt in the Sandy out of season and taking too many fish. The State of Oregon prosecuted him in Multnomah County.

*2014 ODFW Letter.* In September of 2014, ODFW sent a letter to Grand Ronde stating the following about off-reservation treaty fishing rights west of Bonneville Dam:

The State of Oregon has not taken any action that recognizes treaty fishing rights for the four Columbia River treaty tribes in this area. The agreements between the Oregon Department of Fish and Wildlife (ODFW) and these tribes clearly state that these agreements do not recognize such rights. The ODFW shares the view that there is no treaty right for harvest of fish by the four Columbia River treaty tribes downstream of Bonneville and has made no agreements to the contrary.

The letter is attached as Exhibit 2.

*2014 Study Commissioned by Oregon DOJ.* In 2014, Oregon DOJ hired Dr. Stephen Dow Beckham to research and prepare a *Report on the Indian Fisheries of the Sandy and Lower Willamette Rivers, Oregon: Tribal Distribution, Treaties, Adjudicated “Use and Occupancy,” Documented Use, and Related Subjects*. Dr. Beckham, without knowledge of an earlier report, prepared by E. Richard Hart (see below), concluded the Sandy watershed, lower Willamette, and Willamette Falls were the “use and occupancy” area of the Clackamas, Clowewalla, and Multnomah. He found no historical or anthropological evidence of any exercise of fisheries in that area by the Yakama, Warm Springs, Umatilla, or Nez Perce tribes. He also concluded that the Clackamas, Clowewalla, and Multnomah were removed to and became part of the Confederated Tribes of the Grand Ronde Reservation. A copy of Dr. Beckham’s report can be found online at the following link: [OneDrive-CTGRkm](#).

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<sup>3</sup> In reviewing this Warm Springs MOA, I noted the Commission approved amendments to it at the April 21, 2023, Commission meeting. A draft MOA and draft OAR are available on ODFW’s website. However, a signed copy of the MOA is not on the Secretary of State’s website. I spoke with Oregon DOJ attorney Erin Donald about this. She advised the 2023 amended MOA has not been signed by Warm Springs and the 2018 MOA is the current agreement between Warm Springs and Oregon.

*2004 Study Commissioned by Oregon DOJ.* Although Grand Ronde’s MOA excludes state lands at Willamette Falls, Petitioners nevertheless raise it as an issue and assert claims to it. In 2004, Oregon DOJ hired E. Richard Hart to prepare a report on usual and accustomed fishing rights at Willamette Falls. In the letter transmitting his study to DOJ, Mr. Hart stated “Everything indicates Clackamas had exclusive use and occupancy of Willamette Falls. Molala and Kalapuya also fished there. It’s my conclusion that those three tribes are the only tribes that could make a good claim. There is no indication that the Umatilla, Warm Springs, Nez Perce, or Yakama fished at the falls prior to 1855.” A copy of Mr. Hart’s report can also be found at [OneDrive-CTGRkm](#).

*Land Claims Litigated Before the Indian Claims Commission.* The land claims cases litigated before the Indian Claims Commission in the mid-20th Century by Petitioners, buttressed by their expert witnesses and tribal informants, identified no “use and occupancy” of lands, fisheries, hunting areas, or resources west of the Cascade Range. The tribes accepted the Findings of Fact and financial settlements in these cases. The acceptance of judgment funds was final. No appeal was permitted when the tribes accepted the funds. The matter was legally concluded. A map of the adjudicated claims areas is attached as Exhibit 3.

*Swindell Study.* In March 1941, John Collier, Commissioner of Indian Affairs, assigned attorney Edward G. Swindell, Jr. to make a careful study and check the various treaties, agreements, and acts of Congress, affecting the rights of the Indians to hunt and/or fish. The study was limited to the tribes with reserved fishing and hunting rights clauses. In July 1942, Swindell submitted his report of 483 pages. His report was based on two years of field interviews with informants from Nez Perce, Yakama, Warm Springs, and Umatilla who identified “usual and accustomed” fisheries, hunting areas, gathering areas, and grazing locations, often by tribal place name and specific location. Swindell was to establish use areas per the treaties of the Walla Walla Treaty Council and 1855 treaty with the Warm Springs tribes. Nowhere did Swindell’s informants identify locations west of Cascade Locks. Almost all the information was specific to the Columbia Plateau reservations or off-reservation resource areas in the Blue Mountains, Wallowas, and eastern slopes of the Cascade Range. Edward G. Swindell, Jr., Associate Attorney, U.S. Department of the Interior, *Report on Source, Nature and Extent of the Fishing, Hunting, and Miscellaneous Related Rights of Certain Indian Tribes in Washington and Oregon Together with Affidavits Showing Location of a Number of Usual and Accustomed Fishing Grounds and Stations*, July 1942. A copy of Mr. Swindell’s report can also be found at [OneDrive-CTGRkm](#).

Additional materials can be provided showing Petitioners do not possess the rights they claim, if requested.

Because Petitioners do not hold the rights they claim, the Rule does not infringe upon or create conflict with the treaty rights of another tribe and reconsideration of the Rule is unnecessary. Regardless, the Petitions fails to provide any factual evidence of a genuine conflict between Grand Ronde’s Rule and the treaty rights being asserted.

**The Petitions Fail to Present Evidence the Memorandum of Agreement under Grand Ronde’s Rule is Overbroad or Negatively Impacts Resources**

Petitioners reiterate their 2023 objections to the geographic scope of the MOA but fail to offer any new information or facts to support their claims. The fact is Grand Ronde has a significant connection to the geographic area covered by its MOA, the area is actually smaller than that covered in the MOAs of other tribes, and the MOA does not negatively impact resources.

*Grand Ronde’s Relationship to the MOA’s Geographic Area.* In January 1855, Joel Palmer, Oregon’s Superintendent of Indian Affairs, met with Willamette Valley tribes. The Willamette Valley Treaty was negotiated. It’s an agreement of the Kalapuya, Molala, and the Clackamas to cede their lands from the Columbia River south to the headwaters of the Willamette River and from the crest of the Coast Range on the west to the crest of the Cascade Range on the east. The Senate ratified the treaty on March 3, 1855. Two years later, an Executive Order (June 30, 1857) designated the Grand Ronde Reserve “particularly for the Willamette tribes, parties to [the] treaty of January, 1855.”

The Sketch Map of Oregon Territory, prepared to accompany the Willamette Valley Treaty, provides a view of Grand Ronde’s ceded lands (attached as Exhibit 4). The MOA’s geographic area is within these ceded lands. A map depicting this is attached as Exhibit 5. Most Grand Ronde tribal members live within or adjacent to the MOA’s geographic area.

*The MOA’s Geographic Area is Not Overbroad.* The size of a tribe’s geographic area, in relation to another tribe, shouldn’t matter. Reservations differ in size. Ceded land areas differ in size. Nevertheless, Grand Ronde’s Natural Resources Department ran a GIS program to calculate the square mileage of each western Oregon MOA:

Coquille	15,706
Cow Creek	15,704
CTCLUSI	13,883
Grand Ronde	8,544
Siletz	5,291

*Grand Ronde MOA’s Impacts on Resources.* Grand Ronde doesn’t issue enough tags or harvest enough to negatively impact resources:

1. Grand Ronde harvests less than 0.5% of the deer and elk harvested in the Santiam and Willamette Units combined.
2. The state issues 20,226 deer and elk tags for the Santiam and Willamette Units alone. Grand Ronde issues 545 deer and elk tags for the entire MOA area.
3. Grand Ronde’s MOA specifically does not allow an allocation of fish or any modification to the state season on the Columbia River. It falls under state allocations.

*Treaties: Rogue River 1853 & 1854 ~ Umpqua-Cow Creek 1853 ~ Chasta 1854  
Umpqua & Kalapuya 1854 ~ Willamette Valley 1855 ~ Molalla 1855*

### **Petitioners Concerns Were Addressed During the 2023 Rule Negotiations**

Grand Ronde's Rule, as adopted, already took into consideration the concerns raised by the Petitioners. Grand Ronde made changes to the MOA in 2023 in response to Petitioners objections.

In early 2023, after the Commission approved the Coquille Indian Tribe's Hunting & Fishing MOA, Grand Ronde requested a similar agreement. An initial meeting was held with ODFW's then-Director Curt Melcher and Davia Palmeri.

The geographic scope of the agreement was agreed to in principle; it included the Santiam, Willamette, Trask, Stott Mountain, and Wilson wildlife management units. Grand Ronde and ODFW agreed the MOA would exclude state lands at Willamette Falls – anticipating Petitioners would oppose their inclusion. Sensitive to other possible objections by Petitioners, Grand Ronde told ODFW it wanted to exclude any area on the Columbia River upriver of Bonneville Dam from the Santiam Unit.

The draft MOA and proposed administrative rule were published in the Secretary of State's Bulletin on April 25, 2023. Grand Ronde hosted two on-line forums to discuss the MOA. Petitioners were invited. Representatives from some Petitioner tribes attended. Grand Ronde Tribal Council members, Natural Resources Department Manager, Chief of Staff, and Tribal Attorney were panelists, available for questions.

ODFW offered government-to-government consultation on the MOA with Oregon's eight other federally recognized tribes. ODFW met with representatives from Warm Springs and Umatilla. The MOA was placed on the June 16, 2023, Commission agenda, along with MOAs for CTCLUSI and Siletz. Some Petitioner tribes testified against the MOA. The Commission moved consideration of it to its August 4, 2023, meeting to permit further discussion between ODFW staff, the Petitioners, and Grand Ronde.

Three times between the June and August Commission meetings, ODFW asked Grand Ronde to change its MOA:

1. In late June Grand Ronde agreed to several changes, including in the MOA's Columbia River language and its geographic area.
2. In July, Grand Ronde agreed to additional changes to Columbia River language.<sup>4</sup>

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<sup>4</sup> The 2023 ODFW staff report describes how the MOA language was changed to avoid issues. "The proposed Agreement includes Oregon waters of the Columbia River. The department, Commission, and Grand Ronde have heard concerns that this would impact fishing rights for members of the tribes subject to *US v. Oregon*. The department's intent is that any member of the Grand Ronde fishing under the terms of this agreement in the Columbia River would participate under the same requirements as a non-tribal, recreational participant in Columbia

3. In August, just before the Commission meeting, Grand Ronde agreed to change Section 6(f). Specifically, “Nothing in this Agreement shall be construed to establish, expand, adjudicate, diminish, waive, limit or otherwise affect ancestral, aboriginal, treaty, statutory, equitable or other rights of ~~the Tribe~~ any tribe.”

The Commission approved the MOA, as changed, at its August meeting. In other words, Petitioners’ concerns were thoughtfully considered in 2023, and no valid basis exists to revisit them again.

### **Grand Ronde Has Attempted to Address Petitioners’ Objections**

Despite the fact that Petitioners are reasserting the same arguments considered and addressed in 2023, Grand Ronde has made a concerted effort to resolve Petitioners’ concerns.

Elected representatives and staff of Petitioners and Grand Ronde met three times in 2025: January 28, March 12, and June 4. Grand Ronde responded to inaccurate and unsubstantiated statements about overharvesting with factual data and information about its MOA hunting and fishing activities. Grand Ronde responded to statements about conflict between hunters by reviewing its records and discussing this with its hunters. No conflicts have arisen. Grand Ronde made two proposals to Petitioners in the intertribal meetings this year:

1. Grand Ronde would share its previous year’s harvest statistics with Petitioners and meet annually with them to discuss and look for ways to expand hunting and fishing opportunities for all tribes.
2. Grand Ronde would prevent its hunters from hunting a roughly seven-mile area (or buffer) around the western side of the Warm Springs Reservation. In other words, removing an additional 218 square miles from the Santiam Unit. (This is an area Grand Ronde could map using identifiable roads and streams.)

These proposals were rejected.

Grand Ronde representatives concluded from these meetings that the underlying issue is Petitioners’ view that Grand Ronde people should not be able to use a tribal tag and license to hunt and fish on the western slopes of the Cascades or Willamette Valley – even though it is

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River fisheries – thereby creating no new opportunity that could affect *US v. Oregon*. A new section 3(d) was developed to clarify this intent. The effect of this section is that Grand Ronde will be able to issue licenses, tags, or other permits to harvest fish in the mainstem Columbia River, but it may only be for the exact same opportunities (limits, areas, times, methods, etc.) as non-tribal, recreational participants in Columbia River fisheries. Grand Ronde members would be restricted to one daily bag limit for all fish species from the Columbia River even if they possess tribal and state-issued licenses.” *Agenda Item Summary dated June 16, 2023, MOA with the Confederated Tribes of Grand Ronde*.

pursuant to an agreement with ODFW, which ODFW is authorized to make. Nothing short of excluding Grand Ronde members from an important part of their homelands will satisfy Petitioners.

The fact is that Petitioners believe Grand Ronde is inferior and less sovereign than them. Jon George, Grand Ronde's Tribal Council Secretary, attended the meetings with Petitioners. He kept notes. His notes record the following comment from Jeremy Takala of the Yakama Nation:

We have exclusive rights. Treaties [are the] law of the land.... Supersedes state law US v. Oregon/Washington.... UA [usual and accustomed] exclusive.... Give an inch, take a mile.... Why support Grand Ronde? Why does Grand Ronde need agreement with the state? Just go get a tag/license.

In other words, Grand Ronde people are second-class Indians. Petitioners' incorrect belief that they have exclusive and superior rights to Grand Ronde is not only misguided but should also be rejected by denying their Petitions.

### **A Dangerous Precedent**

If the Commission accepts the Petitions and opens rulemaking, it will set a dangerous precedent. The lands of western Oregon tribes sometimes overlap, and their histories are entwined. Grand Ronde and Siletz, for example, don't always agree. In 2010, Siletz unsuccessfully sued the Commission to invalidate Grand Ronde's hunting and fishing rule. *Confederated Tribes of Siletz Indians of Oregon v. Fish and Wildlife Commission*, 260 P.3d 705 (Or. Ct. App. 2011). Today the Grand Ronde and Siletz MOAs both include the Trask and Stott Mountain Units. Siletz and Grand Ronde have different views of the Coast Reservation's history and their connections to it. Should these disagreements intensify, petitions challenging each other's hunting and fishing rule could be used as a weapon.

Grand Ronde and Cow Creek share the 1853 Treaty with the Umpqua – Cow Creek Band. Grand Ronde and Cow Creek families are related. Grand Ronde and Cow Creek's Natural Resources and Cultural Resources Departments work collaboratively. But suppose the shared history and rights leads to a future dispute. Here too, the tribes should not be able to file petitions challenging each other's hunting and fishing rule as leverage in a dispute.

### **Grand Ronde Supports Non-Exclusive MOAs**

Grand Ronde supports a regime of non-exclusive tribal MOAs, including non-exclusive MOAs with Petitioners for the Santiam and Willamette Units. It also supports treaty rights. But where treaty rights are in dispute, it's an issue for the federal courts to resolve.

### **Final Thoughts**

The staff report submitted with Grand Ronde's MOA in 2023 said it "is intended to shape the government-to-government relationship between the department and Grand Ronde for many

ODFW Commissioners

July 7, 2025

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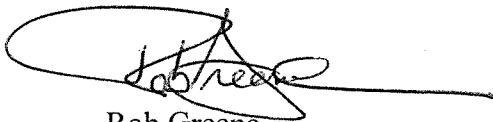
years.” Now, just two years into the MOA, when Grand Ronde has complied with the MOA’s terms and worked successfully with ODFW, it should not be upended. Grand Ronde hopes it is not placed in a position where it must seek legal redress for breach of its MOA or a Commission decision that is arbitrary and capricious.

ODFW and Grand Ronde have agreed to review the MOA every fifth year. That will be the time to assess the MOA and its impacts. In the meantime, implementation of the subsistence and ceremonial harvest portion of the MOA will occur in annual meetings between ODFW and Grand Ronde. There, harvest plans and harvest areas will be discussed. If there are resource issues or conflicts with other tribes or the public, they may be discussed in these meetings. Grand Ronde’s MOA should be allowed to work according to its terms. Petitioners’ false claim the Rule violates treaty rights should be addressed in federal court, if Petitioners are prepared to initiate such an action.

\* \* \*

In summary, the issues in the Petitions were already addressed during the original rule making process. Given the absence of new facts or developments warranting reconsideration, the Petitions should be denied.

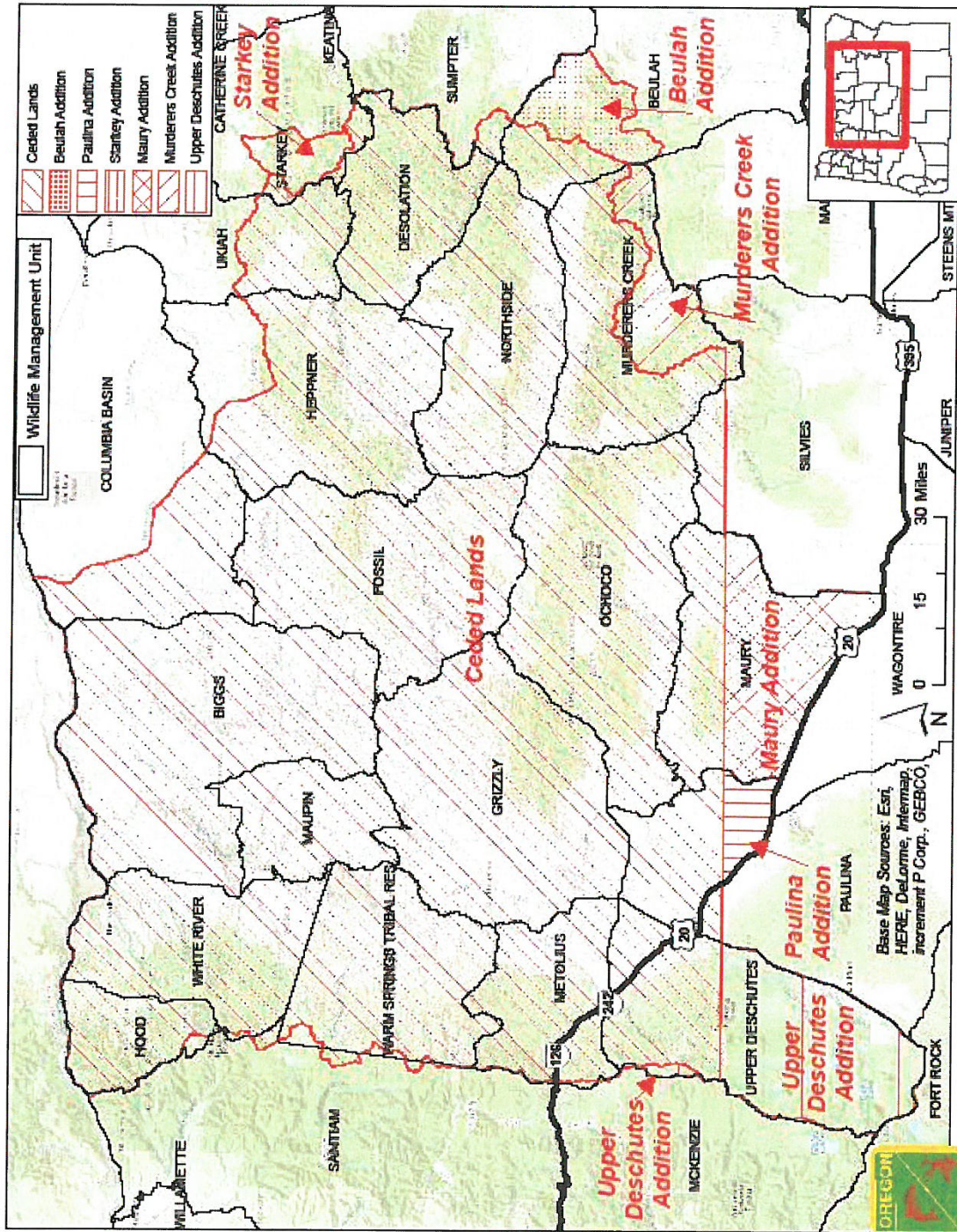
Respectfully submitted,



Rob Greene  
Tribal Attorney

Enclosures

cc: Tribal Council  
Debbie Colbert (via email to: Debbie.L.Colbert@odfw.oregon.gov)  
Davia Palmeri (via email to: Davia.M.Palmeri@odfw.oregon.gov)  
Erin Donald (via email to: Erin.L.Donald@doj.oregon.gov)  
Geoff Huntington (via email to: Geoff.Huntington@oregon.gov)



Attachment 1



# Oregon

John A. Kitzhaber, MD, Governor

## Department of Fish and Wildlife

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Salem, OR 97302-1142  
503-947-6044  
Fax: 503-947-6042  
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September 12, 2014

Reynold L. Leno  
Tribal Council Chairman  
The Confederated Tribes of Grand Ronde  
9615 Grand Ronde Rd  
Grand Ronde, OR 97347

Dear Chair Leno,

Thank you for your recent correspondence regarding fishing downstream of Bonneville Dam by Columbia River Inter-Tribal Fish Commission (CRITFC) member tribes. The State of Oregon has not taken any action that recognizes treaty fishing rights for the four Columbia River treaty tribes in this area. The agreements between the Oregon Department of Fish and Wildlife (ODFW) and these tribes clearly state that these agreements do not recognize any such rights. The ODFW shares the view that there is no treaty right for harvest of fish by the four Columbia River treaty tribes downstream of Bonneville and has made no agreements to the contrary.

The agreements are the result of negotiations between the tribes and ODFW to address recent late-timed passage of spring Chinook destined for areas within the CRITFC tribe's traditional fishing areas above Bonneville Dam. In order to allow fish to be harvested in more traditional time frames, ODFW and these tribes have reached agreement to allow for some harvest to occur immediately below Bonneville Dam, where fish are available at a time more similar to historic patterns. Harvest of fish at these locations is composed of Chinook destined to migrate to the traditional areas upstream of the dam, and all harvested fish are counted against the tribal allocation of upriver stock fish, as specified by the management agreement.

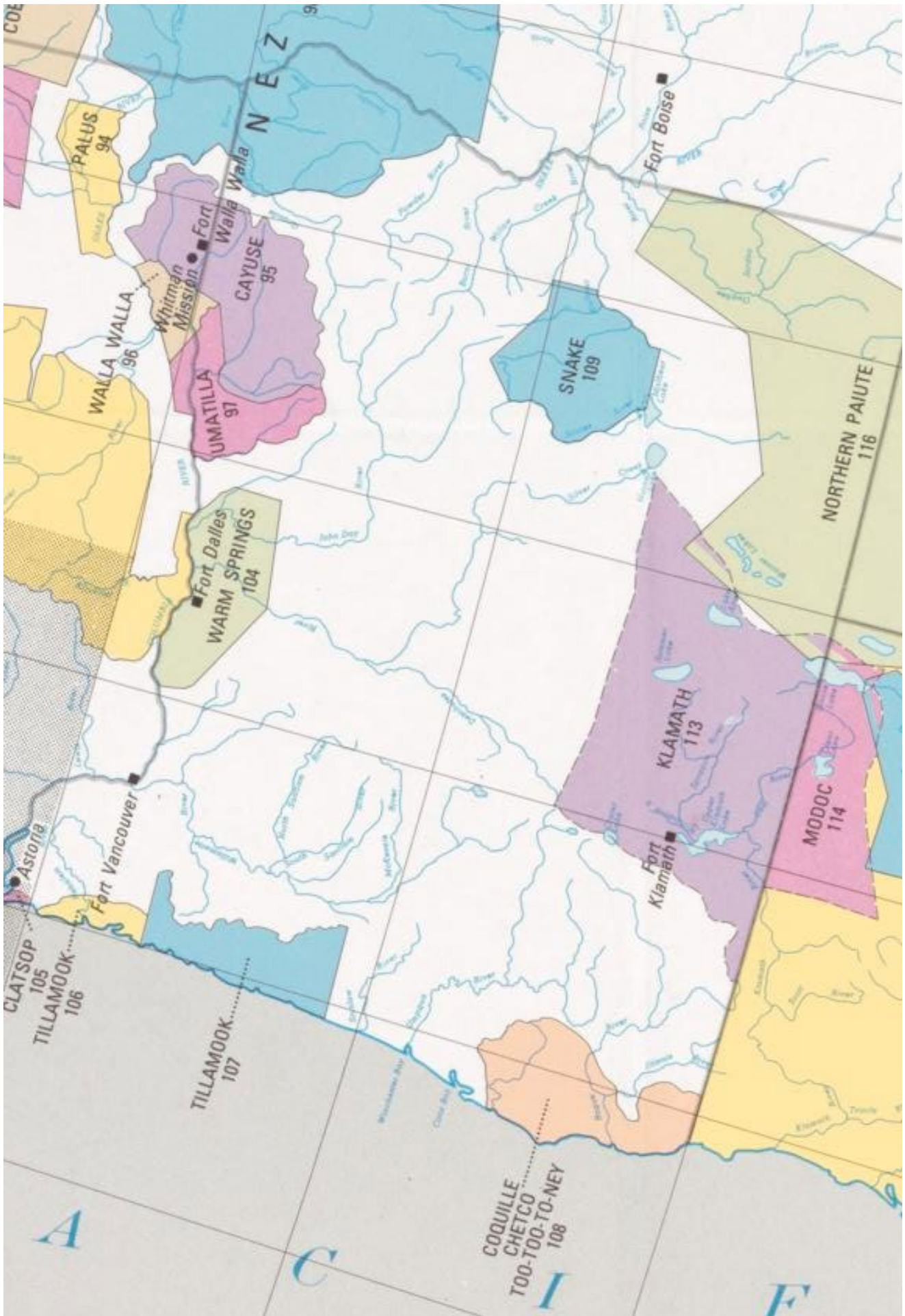
Thank you for your cooperation and involvement in protecting the resources of Oregon. The ODFW and the Confederated Tribes of the Grand Ronde have an excellent partnership and we look forward to building on that partnership in the future. Please don't hesitate to contact me if you have further questions or concerns on this or other issues.

Sincerely,

Curt Melcher  
Deputy Director, for Fish and Wildlife

c: Rob Greene, Tribal Attorney

*rec'd 9-16-14  
T Council  
Legal  
Gen Manager  
Natural Resources  
THPO  
Cedillo*







# The Confederated Tribes of Grand Ronde Hunting and Fishing area with Willamette Valley Treaty Ceded Lands

