

Exhibit A

**Supplemental Public Correspondence
Received as of July 11, 2025**

Brian McLachlan
Portland, Oregon
July 10, 2025

Oregon Fish and Wildlife Commission
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: Petitions Concerning Grand Ronde Tribal Memorandum of Agreement

Dear Commissioners and Director Colbert:

You're Playing with Fire.

The Grand Ronde MOA is like a lit match in a tinder dry forest. Handled improperly, it is poised to spark litigation that could severely impact our cherished Willamette River and other public recreational fisheries. For this reason, I urge you to accept the Columbia River Treaty Tribes' (CRTTs) petitions and direct the department to initiate rulemaking to amend or repeal OAR 635-800-0300.¹

If my rhetoric strikes you as over-the-top, perhaps you should recall what the CRTTs said when the Grand Ronde MOA came before the Commission in 2023.

- The Warm Springs Tribe said the MOA may trigger the Tribe to file federal litigation to judicially establish its asserted treaty fishing and hunting rights in Western Oregon, including on the lower Columbia and Willamette Rivers.²
- The Yakima Nation cited over a century of litigation defending its treaty rights to show the Commission the lengths it was willing to go to “ensure no law, rule or regulation is adopted that could diminish [its] people’s ability and opportunity to fish at [] usual and

¹ I hereby incorporate by reference and attach my testimony dated August 6, 2023. I also incorporate by reference all my other comments to the Commission concerning Western Oregon Tribal MOAs including comments related to the recent repeal of the 1980 Siletz Agreement. I have not attached these additional comments as they are quite voluminous and I do not anticipate Commissioners will have time to review them prior to the Commission’s July 11, 2025 meeting. They are all in the Commission’s meeting records and I can provide copies upon request.

² 7.27.23 letter from Confederated Tribes of Warm Springs to Oregon Fish and Wildlife Commission.

accustomed places, free from interference.” And the Nation asserted the MOA does just that.³

- The Columbia River Inter-Tribal Fish Commission, made up of the four Columbia River Treaty Tribes, bluntly warned the Commission that “ODFW, and the Commission by extension, is walking the State and the Treaty Tribes into protracted litigation regarding treaty-reserved fishing rights in the Willamette and lower Columbia rivers. For more than half a century, Oregon and the Treaty Tribes have consciously – sometimes actively – made a choice not to have that battle. It would be most unfortunate if hasty decisions led to a different result.”⁴

Have the Columbia River Treaty Tribes changed their positions? ODFW staff recently confirmed that federal litigation is an ongoing and open concern. I have seen no correspondence posted to ODFW’s webpage to date to negate this perspective.

If you doubt my concern about federal litigation, I encourage you to ask the CRTTs’ representatives directly if federal litigation to judicially establish fishing and hunting rights in Western Oregon is still on the table.

Litigation Risk

Some may argue my concerns are overblown because the CRTTs don’t have a strong legal claim to fishing and hunting rights in Western Oregon. For example, they may point out that the ancestors of the Grand Ronde Tribe occupied areas of the Willamette Valley and lower Columbia – including at Willamette Falls – and that up-river ancestors of the CRTTs visited downriver areas only seasonally and fished only with permission of, or kinship connection with, the local Tribe. Assuming for the sake of argument this factual scenario is accurate (and I do not mean to suggest it is or isn’t),⁵ given my understanding of applicable law,⁶ I am greatly concerned about a CRTT suit to establish usual and accustomed fishing and hunting rights. It is

³ 8.1.23 letter from Yakima Nation to Oregon Fish and Wildlife Commission.

⁴ 8.1.23 letter from Columbia Inter-Tribal Fish Commission to Oregon Fish and Wildlife Commission.

⁵ I have read some interesting historical accounts (including the journals of Lewis and Clark) and analysis that speak to these historical factual issues. I have not seen a thorough legal analysis of them.

⁶ My concerns are informed by my past professional experience. While employed by the United States Department of Justice, I served as lead trial attorney on a case involving claims of native fishing rights in federal waters. *See Native Village of Eyak v. Blank*, 688 F.3d 619 (9th Cir. 2012).

not in my interest to discuss the applicable case law nor further explore this issue here. Suffice to say, I would not invest this much time and effort if I did not foresee significant litigation risk. I thus strongly suggest you consult agency counsel for an objective evaluation of the litigation risks posed by CRTTs potential claims.

Potential Consequences

At present, the CRTTs harvest no or at most inconsequential amounts of salmon and steelhead bound for the Willamette or tributaries (like the Sandy River) of the lower Columbia. But if litigation to establish treaty fishing and hunting rights were successful, the CRTTs would be entitled to 50% of the available harvest under settled federal law. Due to the complex interplay of ESA authorized impacts, catch balancing, and non-selective Tribal fishing methods, this would likely result in a substantially greater than 50% loss of non-tribal opportunity and could severely curtail current lower river public fisheries.⁷

Do you think I'm exaggerating the potential impacts? Then please ask ODFW's Columbia River managers to model likely impacts to Oregon's recreational fisheries on the Willamette, Sandy, Clackamas, North and South Santiam, McKenzie, and lower Columbia should the CRTTs successfully establish usual and accustomed rights and be allocated 50% of the harvestable salmon and steelhead in those areas.⁸

In my view, you are putting Oregon precious public fisheries at risk and breaching your duties as public officials charged to act as trustees of Oregon's fish and wildlife for the benefit of all its citizens and to optimize the benefits of public recreational hunting and fishing.⁹

⁷On the Columbia River, Tribal Treaty fisheries are allocated substantially more ESA impacts – which impose limits to all fisheries – than are allocated to non-Treaty fisheries in order to balance respective harvest numbers and due to the differential impact rates of Treaty and non-Treaty fisheries. For example, the preseason 2025 Joint Staff Report concerning spring Chinook reported that Treaty fisheries would be managed under ESA impact limits over 4 times greater than those applicable to non-treaty fisheries. *See 2025 Joint Staff Report: Stock Status and Fisheries for Spring Chinook, Summer Chinook, Sockeye, Steelhead, and other Species*, 1.13.25, at 57. Applying a similar fishery management regime to the Willamette and elsewhere would undoubtedly significantly impact public fisheries there.

⁸ Any harvest or impacts allocated to the Grand Ronde, Siletz, or other Western Oregon Tribes under the MOAs would come out of the State's share.

⁹ *See* ORS 496.012 (ODFW statutory mandate providing wildlife to be managed to provide optimum recreational and aesthetic benefits for present and future generations of the citizens of the state and that the Commission shall represent the public interests of the State of Oregon); ORS 498.002 (Wildlife is the property of the State); *Simpson v. Department of Fish and Wildlife*, 242 Or App 287, 255 P3d 565 (2011) (State's property interest in wildlife is as a sovereign for the benefit of, and in trust for, the people).

In this regard it is important to recognize that you are dealing with this issue on a sovereign government to sovereign governments basis. Your statutory duty is to do what's in the best interests of the State of Oregon and its present and future citizens. *Id.* You have no mandate to do what's in the interest of a separate sovereign notwithstanding a laudable desire to "right the wrongs of the past."¹⁰

Will You Be Sued If You Do, and Sued If You Don't?

I have heard the concern raised that whatever path the Commission takes the State may be sued. While there is always the risk of a lawsuit, the litigation risks of the different paths presented to the Commission are as distinct as night and day.

I take the CRTTs' warnings of litigation seriously. Denying the petitions thus poses a substantial risk of triggering protracted federal litigation to establish usual and accustomed fishing and hunting rights which could momentarily impact the State's sovereign authority to manage fish and wildlife in Western Oregon and greatly diminish public fishing and hunting opportunities – forever!

On the other hand, if the Commission accepts the petitions, while this will understandably frustrate the Grand Ronde Tribe, it leaves little to sue about because accepting the petitions is not a substantive final agency action concerning the MOA. As the Agenda Item Summary indicates, it is merely a decision to commence a rulemaking process, the end result of which is yet to be determined. Thus, by accepting the petitions the Commission substantially reduces litigation risk and all parties remain able to negotiate instead of litigate.¹¹

¹⁰As I've stated before, I mean no disrespect to the Grand Ronde Tribe or its members and their interests in fishing and hunting in ancestral lands and waters. My comments here emanate from the CRTTs' opposition to the MOA and associated potential adverse impacts to public fishing opportunities in which I personally participate and deeply value.

¹¹The Commission should also recall that the MOA allows either party to unilaterally terminate the agreement without cause for any reason subject to a brief notice and confer period (a provision I was adamant be included in all Tribal MOAs). *See* Grand Ronde MOA §14.b. If the Commission were ultimately to decide to amend or repeal the MOA it can minimize litigation risk by following the steps set forth in the MOA and applicable rulemaking procedures. As for federal rights or related claims, the Grand Ronde's federal fishing and hunting rights are permanently defined in a separate long-standing agreement that is embodied in federal statute, a federal district court consent decree, and a separate state administrative rule not at issue here. The MOA expressly does not affect those federal rights in any way, nor would accepting the petitions at issue here. *See id.* §8.

Give Negotiations Another Chance

I have also heard it suggested that accepting the petitions and opening a rulemaking process is unlikely to lead to a resolution that leaves all parties happy. Perhaps so, but on the other hand, there is certainly the possibility that accepting the petitions will facilitate a resolution that all parties can at least live with while not endangering the State's sovereign and public trust interests in fish and wildlife in Western Oregon. You will never know unless you leave the door open for additional negotiations. And don't give up too soon – as frustrating as this can be, sometimes these issues take years to resolve. Rather than denying the petitions and slamming the door shut on further negotiations, I urge you to accept the petitions and thereby incentivize all parties to keep talking.

To this point, in addition to accepting the petition, I also encourage actively exploring formal mediation, facilitation, and/or dispute resolution alternatives (e.g., Oregon Consensus). While engaging in such a process may be difficult for an institution like the Commission, there is a state official and her staff who are well suited for it – Governor Kotek.

The Commission as an institution is ill-equipped to effectively engage in multi-lateral government to government negotiations. Governor Kotek undoubtedly recognizes the cultural and economic importance of public fishing and hunting to Oregon and its tens of thousands of hunters and anglers.¹² In addition to accepting the petitions, I urge the Commission to extend a formal request to Governor Kotek for her assistance in resolving this multi-lateral government to government matter.

Additional Notes:

Four Business Days to Prepare and Submit Public Comments Is Patently Unreasonable and Suggests the Commission Does Not Value Public Input

Pursuant to statute, the Commission is required to both invite and consider public comments in evaluating the petitions.¹³ Implicit in this statutory mandate is an obligation to provide the public

¹² Just in this year to-date, there have been over 58 thousand angler trips for spring Chinook on the lower Willamette River. *See* ODFW 2025 Weekly Willamette R. Chinook Fishery Summary dated 7.2.25.pdf. And thousands more Oregonians have ventured out fishing on the lower Columbia, Sandy, Clackamas, and other Western Oregon rivers for salmon and steelhead. For many of us, fishing and hunting is not “just a sport” but a deeply treasured part of who we are and our way of life.

¹³ ORS 183.390(2) (“If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule’s substantive goals in a way that reduces the negative economic impact on businesses.”) ORS 183.390(3)(b)

with a reasonable opportunity and period to evaluate the petitions and prepare and submit comments. The public comment period provided here – a mere 4 business days – is grossly deficient and if not an outright violation of the letter of the law, certainly contravenes the spirit of it.

- The agency delayed providing notice of the Agenda for the Commission’s July 11 meeting until Thursday, July 3 at 2:44 p.m. – the afternoon immediately prior to a 3-day holiday weekend over which many people had plans with family and friends to celebrate over the Independence Day weekend. Prior to this, the general public had no notice the Commission would take up the petitions at its July 11 meeting. Posting the agenda on the afternoon immediately preceding a holiday weekend left only 4 business days (Mon.-Thurs.) to prepare and submit written comments.
- On Thursday and through the weekend, the online Agenda failed to include pertinent attachments, namely the petitions themselves. Sometime on Monday I found the petitions finally appeared on the agency’s webpage.
- The online Agenda indicates the Commission will accept “No Public Comments.” Only by opening and carefully reading the Agenda Item Summary attachment did I realize that rather than accepting no public comments, the Commission would indeed accept written comments but not oral testimony. Were other citizens misinformed by this “No Public Comment” statement?
- The Commission, contrary to its usual practice and without explaining the reason for this deviation, will not allow oral testimony from the public on this agenda item. This, combined with the mere 4 business days allowed to submit written comments, makes it appear as though you would rather not have to deal with public comment at all on this matter notwithstanding that the Legislature expressly mandated that you invite and duly consider what the public has to say.

The Deficient Agenda Item Summary

The Agenda Item Summary states “The Grand Ronde MOA is an administrative agreement between the state and Grand Ronde to create hunting and fishing opportunities for members of the Grand Ronde under the state’s authority. It does not create, establish, expand, or recognize any rights for the Grand Ronde.” Actually, by its terms, the MOA is a legally enforceable agreement between the parties, and it thus creates contractual rights under State law. See MOA § 6. (And, as I have informed the Commission numerous times, I am especially concerned about the “rights” that may be created by the “conservation necessity” term included in the MOA.) What I believe the Agenda Item Summary should have said is that the MOA does not create any rights *under federal law*.

(in reviewing a petition, agency “shall consider” . . . [t]he nature of complaints or comments received concerning the rule from the public”) (emphasis added).

In addition the Agenda Item Summary fails to discuss the CRTTs' previous litigation warnings and the potential impact that such litigation could have on the State and public fishing and hunting stakeholders. I find this failure to discuss "the elephant in the room" to be a disservice to the Commission and, just as important, a disservice to Oregon's citizens, especially hunting and fishing stakeholders. As the Commission knows, the Agenda Item Summary serves not only to inform Commissioners of important context, aspects, and issues relating to its decisions, but also to inform and provide notice to the public so that citizens can provide informed input to the Commission, as is required here. Moreover, the Commission cannot fulfill its statutory duty to act in the best interests of the State and its citizens if the agency omits discussion of an undeniably pertinent and significant potential risk to the State. The Agenda Item Summary falls far short in this regard.

* * * *

Thank you for considering my comments.

Best regards,

Brian McLachlan

Brian McLachlan
Portland, Oregon
Aug. 6, 2023

Oregon Fish and Wildlife Commission
ODFW Director Curt Melcher
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: Testimony Regarding Proposed Grand Ronde Tribe Memorandum of Agreement

Dear Commissioners and Director Melcher,

For the record, below please find a written draft reflecting my oral testimony to the Commission on August 4, 2023. Due to the nature of live testimony, the words I spoke deviated slightly from the text below, while the structure and points of my message remained the same.

* * * *

Good afternoon Commissioners and Director Melcher. My name is Brian McLachlan. I live in Portland, Oregon.

As you know, I have provided lengthy and detailed comments identifying significant concerns regarding all of the Tribal MOAs. While some of my concerns have been addressed, which I appreciate, a number have not.

Nonetheless, I have not opposed the approval of any of the MOAs up to this point.

Unfortunately, the situation today is different.

The Columbia River Treaty Tribes vehemently oppose the proposed Grand Ronde MOA. And should you approve it, they have indicated in written correspondence that they are prepared to possibly commence litigation to establish usual and accustomed treaty hunting and fishing rights in Western Oregon.

But for the Columbia River Treaty Tribes' opposition, and the substantial risk their threatened litigation presents, I would not be testifying here today as I am.

But here we are.

The threatened litigation scares the heck out of me, undoubtedly more so because I have professional experience in this area.

I want to emphasize three points.

- 1. The threatened litigation poses an enormous risk to the State's public fisheries on the lower Columbia and Willamette Rivers.** If usual and accustomed rights were to be judicially validated, under settled law the Treaty Tribes would be entitled to up to 50% of the available harvest. This would likely result in substantially greater than a 50% reduction in the State's fishery due to the complex intersection of ESA authorized impacts, catch balancing, and Tribal fishing methods. You should ask ODFW staff, but based on the current Columbia River Management Agreement, the result would likely be around a two-thirds reduction in public fishery opportunity compared to what we enjoy today. In addition, any fish allocated to the Grand Ronde, Siletz, or other Tribes under the MOAs, would come from the State's share. This would decimate Oregon's public fisheries on the Willamette and lower Columbia.
- 2. Approval of the MOA would likely gravely injure the State of Oregon's co-management relationship with the Columbia River Treaty Tribes.** I cannot emphasize this enough. A healthy co-management relationship is essential to maintaining functional fisheries. All you need to do is to look to your sister State of Washington to see a dysfunctional and often acrimonious relationship between WDFW and some Puget Sound and Coastal Tribes and to see how negatively this has affected recreational and commercial fisheries there. I fear that approval of the MOA today over the Treaty Tribes' objection could seriously injure a good co-management working relationship on the Columbia River, and I do not want to see that relationship damaged.
- 3. The Commission has a legal duty, embodied in statute, to act in the best interests of the State and its citizens.** The Treaty Tribes' threat of litigation poses a substantial risk to the interests of the State, and to your statutory mandate to optimize public recreational benefits. You have no legal mandate or obligation to approve the Grand Ronde MOA today, and there is no circumstance that would prevent you from taking more time to work on an acceptable compromise. It is my firm view that a political solution is likely to better serve the interests of all parties than a judicial one. I strongly urge the Commission to pause, take no action on the MOA today, and renew efforts to reach an acceptable compromise with all stakeholders.

I mean no disrespect to any Tribes here today or their interests. I simply do not want to see this devolve into divisive litigation. I grew up in the Puget Sound region during the 1970s' fish wars – I do not want to see that difficult period revisited here.

Thank you for your time. I'd be happy to answer any questions.

EXHIBIT A

SUPPLEMENTAL PUBLIC CORRESPONDENCE

Received: July 8-11, 2025

**Subject: Protect the Memorandum of Agreement
with the Grande Ronde**

**31 individuals submitted the attached letter
(Letter & List Attached)**

BORISCH Roxann B * ODFW

From: zoe durrant <zoe.durrant.5cbfe@advocate-mail.com>
Sent: Wednesday, July 9, 2025 7:02 AM
To: ODFW Commission * ODFW
Subject: Protect The Memorandum of Agreement with the Grand Ronde

You don't often get email from zoe.durrant.5cbfe@advocate-mail.com. [Learn why this is important](#)

Oregon Fish and Wildlife Commission,

I am writing to encourage you to stand behind your commission's 2023 Memorandum of Agreement with the Confederated Tribes of Grande Ronde that expanded access to the Tribe's historical homelands for subsistence and ceremonial hunting.

This agreement was a long-overdue step to recognize Grand Ronde's sovereign rights and cultural traditions. This historic decision should not be reversed so hastily, especially at the behest of other tribes (many of which do not reside in Oregon) who have long antagonized the Grand Ronde at every turn for no other reason than their own enrichment.

The 2023 agreement has not only allowed the Tribe to carry out ceremonial and subsistence fishing and hunting (benefitting tribal members, their families, and their community, many of whom live away from the reservation) but also brings the Grand Ronde in line with other western Oregon tribes that already have similar agreements with the state.

The vote you took was legal, fair, and based on strong precedent. Considering the original agreement already requires a review by the Commission in 2028, revisiting it now would damage trust, undermine the state's relationship with tribes, and create unnecessary division.

This agreement does not interfere with any other tribe's treaty rights, and it deserves to stand.

I ask you to stay the course and deny petitions to reopen rulemaking on this issue.

Sincerely,

zoe durrant
312 SW Cherry St
Dallas, OR 97338
(541) 671-6609
zoedurrant@live.com

	From	Subject	Received SA...
Today	Cheyanne Fasana-Heidt	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Tyler Heidt	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	David Lewis	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Shannon Ham-Teixeira	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Deitz Peters	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Lisa Kleinschmit	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	James Hallicola	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Angella Schultz	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Lisa Schmid	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	SUSAN HOAGLAND	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Stephanie Rosas	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Melaina Catabay	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Alan Jeffers	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Valerie Alexander	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Joshua Gamel	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Erik Ryser	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Daniel Fox	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Jesse Norton	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	David Hazen	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Calvin Baxter	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Tracy Cooney	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Chadwick Gregg	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Hugh Ahnatook	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	David Reibach	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Sean Gardner	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Tyson Mercier	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Davin Yannick	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Barbara Hazen	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Niki Romani	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	Brett Daniels	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...
	zoe durrant	Protect The Memorandum of Agreement with the Grand Ronde	Wed 7/16/2... 7...