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# **Native American Tribal Lands and Federal Public Forestlands in Oregon**

by Andy Kerr<sup>1</sup>

## ***Abstract***

*Tribal lands have nearly as complex a history as Native American peoples themselves. This paper examines Native American tribal “ownership” of lands in Oregon from a singular perspective: the management of federal public lands. Federal public lands are or could be affected by (1) reserved treaty rights, (2) a special provision of law that applies to federal public forestlands that are adjacent to tribal forestlands, and (3) proposals to establish tribal reservation lands through transfer of federal public lands. From a conservation perspective, establishing tribal forests from private industrial timberlands is preferable to creation of tribal forests from federal public lands.*

## **Introduction**

There are nine federally recognized “tribes” (most are confederations of several tribes) in Oregon. It is important not to generally ascribe a particular conservation ethic—or lack thereof—to all of them. Each Oregon tribe has a distinct culture and a distinctive philosophy of land and resource management on reservation lands. Some tribal lands in Oregon are well managed, while others are not.

This paper details the tribes and their lands, discusses federal treaties and regulations that affect how tribal lands are managed, and looks at attempts under way by tribes to transfer management of federal public lands away from the Forest Service and/or the Bureau of Land Management. In general, the conservation community strongly favors the retention of federal public lands in public ownership; there are—either a matter of justice and/or in the public interest—alternative ways for the federal government to provide resources for the establishment or expansion of reservations.

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<sup>1</sup> Andy Kerr ([andykerr@andykerr.net](mailto:andykerr@andykerr.net)) is czar of The Larch Company ([www.andykerr.net](http://www.andykerr.net)), which has offices in Ashland, Oregon, and Washington, DC.

## The Tribes and Tribal Lands

Table 1 lists the Indian tribes and tribal lands in Oregon. As background, it helps to know something about the history of federal government policy regarding Native American tribes.

During what is known as the Allotment Era (1887–1944), Congress provided for ownership of individual parcels of reservation lands by individual tribal members rather than holding the lands in trust collectively for the benefit of the entire tribe. The result is that much of what were reservation lands within the Warm Springs and Umatilla Indian reservations are not in tribal ownership today. Don't let the solid color of those reservations on the State of Oregon Highway Map deceive you. Much of the land within the reservation boundary is not tribal land.

Most of the tribes in western Oregon were “terminated” during the Termination Era (1945–1960). Termination was a federal policy ostensibly to mainstream Native Americans into the larger American society. The policy was later ended and is generally regarded to have been disastrous to the affected peoples. From 1977 through 1986, early in the Tribal Self-Determination Era that continues today, terminated tribes in Oregon were “restored.” The federal statute that restored their official status directed the tribe to develop a self-sufficiency plan. Many tribes included restoration of a reservation as part of their plan. Congress responded in several cases by transferring certain federal public lands, mainly “public domain” lands managed by the Bureau of Land Management (BLM),<sup>2</sup> to the Bureau of Indian Affairs (BIA) to be held in trust for the tribe.

Tribal lands include not only lands that came as part of an original or restored reservation, but also any lands that the tribe has obtained by purchase or donation. It is important to note that tribal lands are *not* federal lands, even though they are held in trust by the federal government (specifically, the secretary of the interior through the BIA) for the benefit of the tribe.

<b>Table 1. Indian Tribes and Tribal Lands in Oregon</b>				
<b>Tribe</b>	<b>Tribal Status Restored</b>	<b>Enrolled Members</b>	<b>Land Base Acreage</b>	<b>Acreage/Enrolled Member</b>
Burns Paiute Tribe	1972	349	13,736	39.4
Confederated Tribes of Coos, Lower Umpqua, and Siuslaw	1984	953	415	0.4
Confederated Tribes of the Grand Ronde Community	1983	5,111	11,288	2.2
Confederated Tribes of Siletz Indians	1977	4,677	15,204	3.3
Confederated Tribes of the Umatilla Indian Reservation	NA	2,787	172,000	61.7
Confederated Tribes of the Warm Springs Reservation	NA	4,306	664,000	154.2
Coquille Indian Tribe	1989	919	7,043	7.7
Cow Creek Band of Umpqua Tribe of Indians	1982	1,536	1,840	1.2
Klamath Tribes	1986	3,669	566	0.2
<b>Total</b>		<b>24,307</b>	<b>886,092</b>	<b>36.5</b>
Source: Kate Brown, ed., “Oregon’s Indian Tribes,” in <i>Oregon Blue Book</i> (Salem, OR: Oregon State Archives, 2011), <a href="http://bluebook.state.or.us/national/tribal/tribal.htm">bluebook.state.or.us/national/tribal/tribal.htm</a>				

<sup>2</sup> Kerr, Andy. 2007. Transferring Western Oregon BLM Forests to the National Forest System. Larch Occasional Paper #2 The Larch Company, Ashland, OR. Available at [www.andykerr.net/downloads](http://www.andykerr.net/downloads).

## Federal Regulations and Management of Tribal Lands

For our very narrow purposes here, focusing on the management of federal public lands in Oregon, it is useful to know whether a tribe has a treaty with the United States. If so, the treaty usually retained the use of certain resources or areas, which can affect federal public land management; if not, a tribe cannot claim “treaty rights.” Only the Confederated Tribes of the Warm Springs Reservation and the Confederated Tribes of the Umatilla Indian Reservation have formal treaties, which were ratified by Congress in 1855. The treaties reserved to the tribes certain rights and interests in lands, including hunting, fishing and gathering.

Forested tribal lands are managed by the Bureau of Indian Affairs under the National Indian Forest Resources Management Act of 1990.<sup>3</sup> Additionally, the Tribal Forest Protection Act of 2004 has particular provisions that affect federal public land management.<sup>4</sup> Basically, it allows a tribe with reservation lands adjacent to federal public lands (Forest Service or Bureau of Land Management) to propose to the federal forest management agency an agreement or project to “restore” federal public lands. Whether such projects are ecologically beneficial or harmful will hinge on what kind of “restoration” is to take place.

For the most part, tribal lands are subject to the Clean Water Act and the Endangered Species Act, as are other nonfederal lands. The secretary of the interior has issued a formal order that details federal government and tribal obligations under the Endangered Species Act.<sup>5</sup> A unique case is that of the Coquille Tribal Forest in Coos County. In 1996, when Congress transferred BLM lands to the BIA to manage in trust for the Coquille Tribe, it provided:

*The Secretary of Interior, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest under applicable State and Federal forestry and environmental protection laws, **and subject to critical habitat designations under the Endangered Species Act, and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future.** The Secretary shall otherwise manage the Coquille Forest in accordance with the laws pertaining to the management of Indian Trust lands and shall distribute revenues in accord with Public Law 101-630, 25 U.S.C. 3107.*<sup>6</sup> [emphasis added]

If any or all of the Coquille Tribal Forest were deemed critical habitat for any species listed under the Endangered Species Act (for example, the northern spotted owl, the marbled murrelet, or the Oregon coast coho salmon), the provisions of the ESA pertaining to critical habitat would apply. Additionally, the Coquille Tribal Forest must be managed in the same manner as adjacent or nearby BLM lands, which are managed under the Northwest Forest Plan.

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<sup>3</sup> 25 U.S.C., Chapter 33, §3101-3120, [www.law.cornell.edu/uscode/html/uscode25/usc\\_sup\\_01\\_25.html](http://www.law.cornell.edu/uscode/html/uscode25/usc_sup_01_25.html).

<sup>4</sup> 25 U.S.C. 3115a. A copy of the statute can be downloaded at [www.fs.fed.us/spf/tribalrelations/documents/policy/statutes/public\\_law\\_108-278.pdf](http://www.fs.fed.us/spf/tribalrelations/documents/policy/statutes/public_law_108-278.pdf).

<sup>5</sup> [www.fws.gov/endangered/what-we-do/tribal-secretarial-order.html](http://www.fws.gov/endangered/what-we-do/tribal-secretarial-order.html)

<sup>6</sup> 25 U.S.C. 715C(d)(5).

## **Proposed New Reservations**

Several Oregon tribes are seeking additional reservation lands. The threats to federal public lands through transfer of management away from the Forest Service and/or the BLM appear at this time to be limited to a straight-up proposal by the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw in Curry County; a pseudo-reservation proposal by the Coquille Tribe; and perhaps a request by the Cow Creek Band to the federal government.

### **Confederated Tribes of Coos, Lower Umpqua, and Siuslaw**

In 2003, Senator Gordon Smith introduced legislation to transfer 62,865 acres of the Siuslaw National Forest in Douglas County to the CLUS Tribes.<sup>7</sup> One hearing was held in 2004. No further action was taken. The tribe is now seeking 10,000 acres of public domain lands managed by the BLM in Curry County.<sup>8</sup>

### **Confederated Tribes of the Grand Ronde Community**

Senators Jeff Merkley (D-OR) and Ron Wyden (D-OR) have introduced legislation that would allow the secretary of the interior to “accept title to any additional number of acres of real property located within the boundaries of the original 1857 reservation . . . comprised of land within the political boundaries of Polk and Yamhill Counties, Oregon, if such real property is conveyed or otherwise transferred to the United States by or on behalf of the Tribe.”<sup>9</sup> This provision does not involve transferring federal public lands to the tribe, but rather non-federal lands the tribe might acquire.

### **Coquille Indian Tribe**

Previously, the Coquille Indian Tribe sought to expand their Coquille Tribal Forest by asking that 59,914 acres of federal public forestlands in Coos County be transferred from the BLM to the BIA to be managed in trust for the tribe. The lands in question are known as the Coos Bay Wagon Road lands, which came back to the federal government after the wagon road company violated the terms of the federal land grant. (Another 14,633 acres of CBWR lands are in Douglas County, for a total of 74,547 acres.) The proposal didn’t get traction, so the tribe is currently proposing that management be transferred to the tribe and that it share revenues from timber sales with Coos County. If a formal reservation transfer or a transfer of management were accomplished, the results would be a severe loss of conservation values.

### **Cow Creek Band of Umpqua Tribe of Indians**

The Cow Creek Band is one of two of the five restored western Oregon tribes that have not received any federal public forestlands for the establishment of a reservation. In 2006, at the

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<sup>7</sup> S. 868 (108<sup>th</sup> Congress), Coos, Lower Umpqua and Siuslaw Restoration Amendments Act of 2003.

<sup>8</sup> [www.currypilot.com/News/Local-News/Tribes-seek-ownership-of-county-timberland](http://www.currypilot.com/News/Local-News/Tribes-seek-ownership-of-county-timberland)

<sup>9</sup> S. 356(112<sup>th</sup> Congress), To Amend the Grand Ronde Reservation Act, available at [thomas.loc.gov/home/thomas.php/](http://thomas.loc.gov/home/thomas.php/)

request of the Cow Creek Band, the Forest Service established a 9,461-acre Huckleberry Patch Special Interest Area on the Rogue-Umpqua Divide in the Umpqua and Rogue River–Siskiyou National Forests, memorializing the tribe’s historic use of this area as a spiritual gathering place and berry harvesting ground and ensuring that the place will be protected as such for future generations.<sup>10</sup> It is likely that the Cow Creek Band will soon officially seek to acquire tribal forestlands, through an effort to either obtain federal public forestland without charge or to acquire private timberlands from willing sellers with funds appropriated by Congress, or both.

## **Klamath Tribes**

In the early 2000s the Klamath Tribes sought to have 690,000 acres (1,078 square miles) of the Fremont-Winema National Forest transferred to reservation status, but they have now decided to seek federal funding to acquire nonfederal lands to restore their reservation.

Senators Jeff Merkley (D-OR) and Barbara Boxer (D-CA) have introduced legislation<sup>11</sup> that would implement the Klamath Hydroelectric Settlement Agreement (KBHSA)<sup>12</sup> and the Klamath Basin Restoration Agreement (KBRA).<sup>13</sup> If the legislation is enacted as introduced and the agreements executed, four hydroelectric dams on the Klamath River in Oregon and California would be removed. In addition, the parties to the agreements would give and get various considerations that they have mutually agreed to in the KBHSA and the KBRA. The Klamath Tribes obtained a provision in the agreement for \$21 million of federal funding “for the acquisition of the Mazama Forest Project.” The Mazama Forest covers 90,000 acres of timberlands that were formerly part of the Klamath Indian Reservation but ended up in private hands when the Klamath Tribes were terminated. The Trust for Public Land is assisting the Klamath Tribes in the effort to buy the Mazama Forest.<sup>14</sup> If the money is not secured, the Klamath Tribes have the right to withdraw from the KBRA. Their leverage is the resolution of water claims sought by other parties in the Klamath Basin.

## **Conclusion**

Proposals for the establishment of reservations are in the context of redressing past injustices and/or aiding a tribe toward self-sufficiency. While both are worthy goals, the best way for the federal government to provide resources to address these matters is to provide money directly, rather than reducing the federal public lands legacy that belongs to all Americans. If Congress decides that a tribe is due compensation, it should be in the form of a direct payment of cash,

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<sup>10</sup> See [www.cowcreek.com/tribal-services/natural-resources/lands/hucklerberry-patch](http://www.cowcreek.com/tribal-services/natural-resources/lands/hucklerberry-patch).

<sup>11</sup> S.1851 (112<sup>th</sup> Congress), Klamath Basin Economic Restoration Act of 2011, available at [thomas.loc.gov/home/thomas.php/](http://thomas.loc.gov/home/thomas.php/).

<sup>12</sup> Klamath Hydroelectric Settlement Agreement, available at [klamathrestoration.gov/sites/klamathrestoration.gov/files/Klamath-Agreements/Klamath-Hydroelectric-Settlement-Agreement-2-18-10signed.pdf](http://klamathrestoration.gov/sites/klamathrestoration.gov/files/Klamath-Agreements/Klamath-Hydroelectric-Settlement-Agreement-2-18-10signed.pdf).

<sup>13</sup> Klamath Basin Restoration Agreement, available at [klamathrestoration.gov/sites/klamathrestoration.gov/files/Klamath-Agreements/Klamath-Basin-Restoration-Agreement-2-18-10signed.pdf](http://klamathrestoration.gov/sites/klamathrestoration.gov/files/Klamath-Agreements/Klamath-Basin-Restoration-Agreement-2-18-10signed.pdf).

<sup>14</sup> See [www.tpl.org/what-we-do/where-we-work/oregon/mazama-forest.html](http://www.tpl.org/what-we-do/where-we-work/oregon/mazama-forest.html).



which the tribe can use to acquire nonfederal lands if it desires to regain a portion of former lands as a reservation for cultural and/or economic purposes.

At first glance, it may appear easier to convince Congress to transfer federal public lands to a tribe than to give a direct payment. The budgeting and accounting processes used by Congress consider only annual cash flow (with any money for a new project coming at the expense of some other federal expenditure) and not asset value (the balance sheet approach). But the federal public lands are assets that should not be liquidated to pay the federal government's operating expenses.

At second glance, it is politically very difficult to diminish the National Forest System. The approach adopted by the Klamath Tribes of eschewing the transfer of national forest lands but rather seeking federal funds to buy nonfederal lands is a more constructive and reasonable approach.

From a conservation perspective, the creation of tribal forests from federal public lands *downgrades* their conservation management, while establishing tribal forests from private industrial timberlands may be *upgrade* their conservation management. At worst, a tribe will manage land no more poorly than a profit-maximizing private entity, and at best, it will do better.

### **Acknowledgments**

I wish to thank Francis Eatherington of Cascadia Wild for her knowledge of and persistence in seeking improved conservation management for those federal public forestlands known locally as the Coos Bay Wagon Road lands.

### **Additional Resources**

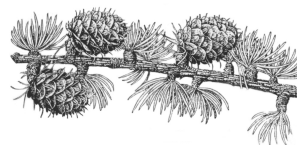
The singular perspective of this paper did not permit delving into such topics as the history of the tribes, their status as sovereign nations within the United States, and their interactions with state government. Please see these additional resources to learn more.

- 2011–2013 Oregon Directory of American Indian Resources, compiled by the State of Oregon Legislative Commission on Indian Services ([www.leg.state.or.us/cis/ODAIR/directory\\_entiretext.pdf](http://www.leg.state.or.us/cis/ODAIR/directory_entiretext.pdf))
- Wikipedia entry on federal Indian policy ([en.wikipedia.org/wiki/Federal\\_Indian\\_Policy](http://en.wikipedia.org/wiki/Federal_Indian_Policy))

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