

Tribal Matters in Oregon

Legislative Commission on Indian Services
And Fundamentals of Federal & State Tribal Law, Policies, and How
Oregon Approaches our Government-To-Government Relations.

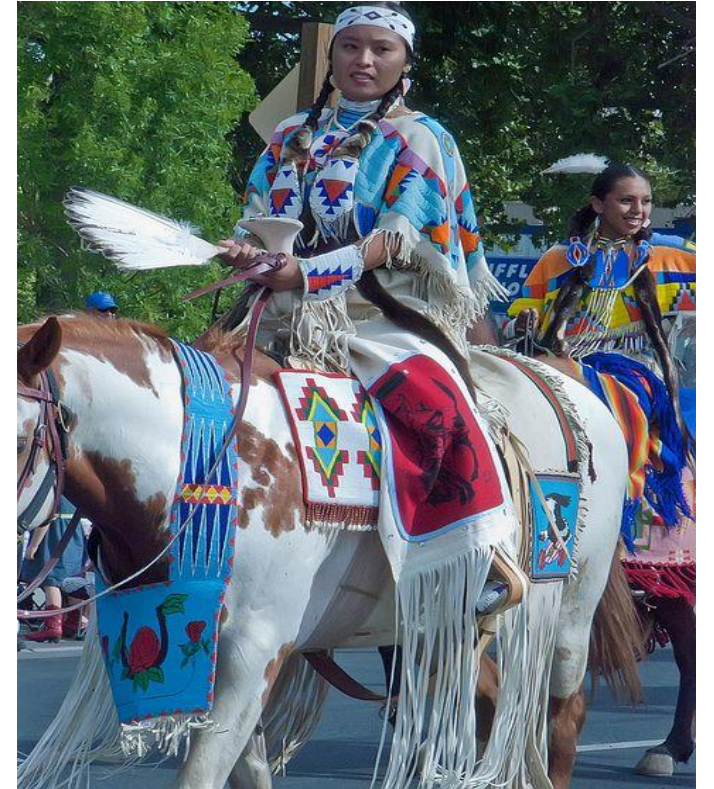
House Special Committee On
Modernizing the People's Legislature

March 3, 2021

Daniel P. Santos

Interim Director, Legislative Commission on Indian Services

Co-Chair of the Governor's Task Force
on Oregon Tribal Cultural Items



TIME IMMEMORIAL NATIVE AMERICANS IN OREGON

These "First Oregonians" have lived in villages by our rivers, lakes and coastlines for over 12,000 years.

For thousands of years Tribes and tribal people have raised their children, gathered for ceremonies, buried their dead, respected their sacred sites, explored and roamed these lands to hunt, fish and collect roots, berries and other cultural resources.

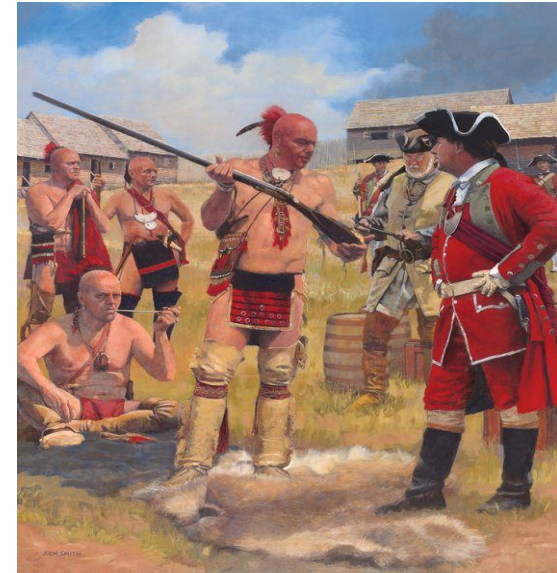
Mary Bradford, a basket maker and member of the Rogue River Tribe, 1902



THE FRENCH AND BRITISH RECOGNIZED TRIBES AS SOVEREIGN NATIONS



In the French and Indian War, both the French and the British colonists were helped by their Indian allies.



UNITED STATES CONSTITUTION

“We were a people, before ‘We the People’ ...”

Jefferson Keel – 20th President of the National Congress of American Indians, 2013

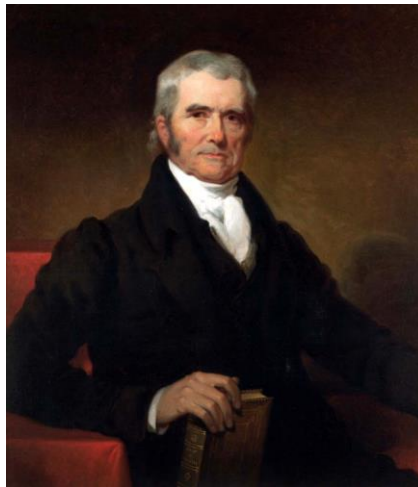
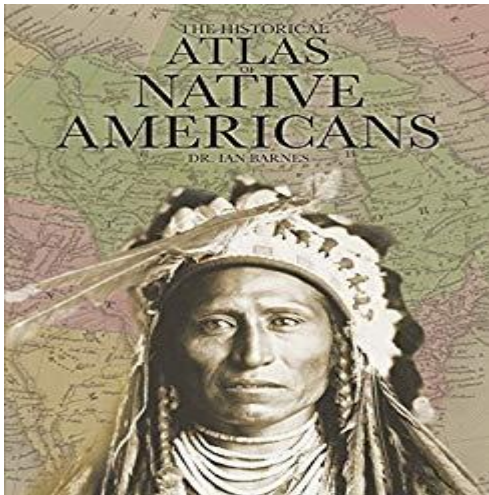


“The Congress shall the power to ... regulate commerce with foreign nations, and among the several states, and with **the Indian tribes.**” US Constitution, Article 1, Section 8

US SUPREME COURT DECISIONS

1832 – “Indian Nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil ... the very term “nation” so generally applied to them means a “a people distinct from other.”

Chief Justice John Marshall, *Worcester v. Georgia*, 31 (6Pet.) 515, 561 (1832)



TRIBAL NATIONS & OTHER AMERICAN GOVERNMENTS THROUGH HISTORY

1492 – 1828 Colonial Period - Colonial governments treated American Indian tribal nations as governments, setting the precedent for future relations. Following the Revolutionary War, the newborn United States worked with tribal nations on a government-to-government basis.

1828 - 1887 Removal, reservation, & treaty period - Seeking to obtain more Indian land, the government embarked on an aggressive military campaign throughout the West, relocating tribes to Indian reservations established through treaties, which required Indians to trade large tracts of land for the continued right of self-governance under the protection of the United States.

1887 – 1934 Allotment and assimilation period - Increasing desire for the land within reservations and the push to assimilate Indians led to the General Allotment Act of 1887 forcing conversion of communally held tribal lands into small parcels for individual Indian ownership; more than 90 million acres—nearly two-thirds of reservation land—were taken from tribes and given to settlers, most often without compensation to the tribes.

1934 – 1945 Indian Reorganization Period - The federal government, under the Indian Reorganization Act of 1934, ended the discredited policy of allotment; it began to restore Indian lands to tribes and attempted to help tribes reform their governments; The federal government created programs and projects to help rehabilitate Indian economic life.

TRIBAL NATIONS AND OTHER AMERICAN GOVERNMENTS THROUGH HISTORY

1945 – 1968 Termination Period - Congress decided to terminate federal recognition and assistance to more than 100 tribes creating economic disaster for many tribes, resulting in the loss of millions of acres of valuable natural resource land through tax forfeiture sales; federal policy emphasized the physical relocation of Indians from reservations to urban areas.

1968 – 2000 Self-Determination Period - A resurgence of tribal government involvement in federal policy development ended the termination era and prompted the development of a policy of self-determination and self-governance; policies emerged favoring tribal control over their destinies. Under the self-determination and self-governance acts, tribal governments managed many federal programs serving Indian people.

2000 – Present Nation-To-Nation Period - By the new millennium, tribal governments made substantial gains in self-governance; in 2000, President Clinton issued Executive Order 13175 for Consultation and Coordination with Indian Tribal Governments to strengthen the US government-to-government relationships; in 2009, President Obama affirmed President Clinton's earlier Executive Order and convened the first annual White House Tribal Nations Summit, committing the US government to the nation-to-nation relationship.

TRIBAL SOVEREIGNTY - NATIONS WITHIN A NATION

Sovereignty is a legal word for an ordinary concept - the authority to self-govern.

- Tribes have inherent sovereignty — they existed as governments before the U.S. existed and before the State of Oregon existed. The federal government did not create tribes or tribal sovereignty.
- Hundreds of treaties, along with the Supreme Court, the President, and Congress, have repeatedly affirmed that tribal nations retain their inherent powers of self-government.
- Tribal nations are located within the geographic borders of the United States, while each tribal nation exercises its own sovereignty.
- The Constitutional provisions, and subsequent interpretations by the Supreme Court, are today often summarized in three principles of U.S. Indian law:
 1. **Territorial sovereignty:** Tribal authority on Indian land is organic and is not granted by the states in which Indian lands are located.
 2. **Plenary power doctrine:** Congress, and not the Executive Branch, has ultimate authority with regard to matters affecting the Indian tribes. Federal courts give greater deference to Congress on Indian matters than on other subjects.
 3. **Trust relationship:** The federal government has a "duty to protect" the tribes, implying (courts have found) the necessary legislative and executive authorities to effect that duty.



FEDERALLY RECOGNIZED TRIBES

- An American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.
- Furthermore, federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. **At present, there are 573 federally recognized American Indian and Alaska Native tribes and villages.**
- Most of today's federally recognized tribes received federal recognition status through treaties, acts of Congress, presidential executive orders or other federal administrative actions, or federal court decisions.
- **In 1994, Congress enacted Public Law 103-454, the Federally Recognized Indian Tribe List Act (108 Stat. 4791, 4792), which formally established three ways in which an Indian group may become federally recognized:**
 1. By Act of Congress
 2. By the administrative procedures under 25 C.F.R. Part 83
 3. By decision of a United States court.



THE THREE GOVERNMENTS: TRIBES, FEDERAL, & STATE

It is the obligation of the federal government to protect tribal self-governance, tribal lands, assets, resources, and treaty rights, and to carry out the directions of federal statutes and court cases.

- As sovereign nations, federally recognized American Indian and Alaska Native tribes have a government-to-government relationship with the two other sovereign governing bodies of the United States: the federal and state governments.
- Through these modern and historic relationships, tribes, the federal government, and state governments are linked together in a unique relationship outlined in the US Constitution. It is the obligation of the federal government to protect tribal self-governance, tribal lands, assets, resources, and treaty rights, and to carry out the directions of federal statutes and court cases.
- **The essence of tribal sovereignty is the ability to govern and to protect and enhance the health, safety, and welfare of tribal citizens within tribal territory.** Tribal law, federal law, and state laws define the responsibilities, powers, limitations, and obligations between these sovereigns.



NINE FEDERALLY RECOGNIZED TRIBES OF OREGON

1. The **Burns Paiute**
2. The **Coquille** Indian Tribe
3. The Confederated Tribes of the **Coos, Lower Umpqua & Siuslaw**
4. The Klamath Tribes (Klamath, Modoc, Yahooskin)
5. The Confederated Tribes of Grand Ronde (Umpqua, Molalla, Rogue River, Kalapuya, Shasta)
6. The Confederated Tribes of Siletz (Clatsop, Chinook, Klickitat, Molala, Kalapuya, Tillamook, Alsea, Siuslaw/Lower Umpqua, Coos, Coquille, Upper Umpqua, Tututni, Chetco, Tolowa, Takelma, Galice/Applegate, and Shasta)
7. The **Cow Creek Band** of Umpqua Tribe of Indians
8. The Confederated Tribes of Warm Springs (Warm Springs, Wasco, Paiute)
9. The Confederated Tribes of the Umatilla Indian Reservation (Cayuse, Umatilla, Walla Walla)

Photo: Tribes of the Umatilla Indian Reservation Web Site



1975 LEGISLATIVE COMMISSION ON INDIAN SERVICES



- The Commission was created by statute in 1975 to advise the Legislative Assembly and other Oregon officials and agencies on the needs of American Indian people in the state.
- The thirteen members of the Commission are appointed to two-year, staggered terms of office. These appointments are made jointly by the Speaker of the House of Representatives and the President of the Senate and are based on nominations submitted by American Indian tribes and communities in designated areas of the state.
- All nine of the federally recognized Tribes in Oregon have a representative on the Commission.
- Two geographic areas are also represented on the Commission. These are the Portland Urban Area and the Willamette Valley area.
- Four legislative members, two senators and two representatives, are also seated on the Commission.

The specific statutory responsibilities of the Commission include:

- ❖ Compiling information about services for Indians;
- ❖ Developing and sponsoring programs to inform Indians of services available to them;
- ❖ Developing and sponsoring programs to make Indian needs and concerns known to the public and private agencies whose activities affect Indians;
- ❖ Encouraging and supporting these public and private agencies to expand and improve their services for Indians;
- ❖ Assessing programs of state agencies operating for the benefit of Indians and making recommendations to the appropriate agencies for improving those programs;
- ❖ Reporting biennially to the Governor and the Legislative Assembly on all matters of concern to Indians in Oregon.

GOVERNOR KITZHABER EXECUTIVE ORDER 96-30 (1996)

CREATING GOVERNMENT-TO-GOVERNMENT RELATIONS



- At the request of the Legislative Commission on Indian Services, Executive Order NO. EO – 96 – 30 was adopted “for the sole purpose of enhancing communication and mutual cooperation between the State of Oregon and the tribal governments.”
- On May 22, 1996 a signing ceremony was conducted where over two hundred tribal leaders, legislators, and citizens were present to witness Governor John A. Kitzhaber endorse the agreement which would direct state agencies to operate on a government to government basis with Oregon Tribes.

SENATE BILL 770 (2001)

- Oregon was the first state in America to adopt a formal legal government to government relationship with regional tribes through both executive action and legislation.
- At the request of the Legislative Commission on Indian Services, Senate Bill 770 was drafted to direct state agencies in government to government relations with Oregon tribes.
- Senate Bill 770, along with related state policies and laws, illustrates excellent state-tribal relations in Oregon.



SENATE BILL 770 (2001) - OREGON REVISED STATUTES 182.162-.168

Oregon's State Tribal Government-to-Government Law

- **GOAL:** To promote relations between the State of Oregon and Oregon's nine federally recognized tribes for the good of all Oregonians.
- **LEGISLATIVE DIRECTIVE:** State agencies need to take tribal interests into account when state agencies develop policies or implement programs that affect Tribal interests.
- **VEHICLE TO ACHIEVE THE GOAL:** Develop an on-going process for communicating with Tribal governments to understand their sovereign interests and to find out when it is reasonably possible for the State and a Tribe or Tribes to cooperate or coordinate in shared or overlapping areas of governmental responsibility. Effective communication may lead to increased efficiencies for all governments.

MINIMUM STATUTORY REQUIREMENTS

- A **POLICY** for each state agency that details their specific approach for promoting positive interaction with Tribes
- **ANNUAL TRAINING** for those who work with tribes
- **ANNUAL SUMMIT** for State and Tribal Leaders, key contacts and other to discuss mutual goals and assess the government-to-government process
- **ANNUAL AGENCY REPORT ON ACTIVITIES** with individual Tribes and other activities related to the government-to-government process. These reports are due each year by December 15th and are available for review on the CIS website early the following year:
<https://www.oregonlegislature.gov/cis>.



WHAT DOES IT MEAN TO BE A TRIBAL GOVERNMENT

- Tribal governments, like other governments, are responsible for the health, safety and welfare of their citizens or “members.”
- Tribal governments are separate and distinct from each other—just as the U.S. is separate from Canada and Oregon is separate from Washington
- Tribal governments do not pay taxes, just as federal, state, county and local governments do not pay taxes.
- Individual Indians in Oregon (with the very limited exception of those who live and work on a reservation) pay state taxes except for money earned from trust land.
- Tribes have elected, governing councils that adopt laws and ordinances (often called resolutions), and court systems and departments dealing with governmental services and programs: natural resources, cultural resources, education, health and human services, public safety, economic development and administration



ABOUT INDIANS IN OREGON

- Oregon's total "American Indian" population, according to the 2010 U.S. Census, included 109,223 people as "American Indian or Alaskan Native." Oregon's "American Indians" live in all 36 counties and are about 3% of Oregon's total population.
- In addition to members of the nine federally recognized tribes in Oregon, there are a significant number of enrolled members of many Tribes based outside of Oregon who also reside within our state.
- Indians residing in Oregon are Oregon citizens, U.S. citizens, as well as enrolled members of their tribal nation.
- The largest number of Indians in Oregon resides in the Portland Urban area. Over 200 tribes and bands across the U.S. have members living in the Portland urban area.
- About 875,000 acres, or 1.4% of land within Oregon's boundaries, are held in trust by the federal government or are reservation lands for the use of specific Indian tribes and tribal members
- Specific Oregon Tribes have ceded lands and areas of interest that are far beyond present day reservation boundaries



TOP TEN CONSIDERATIONS WHEN WORKING WITH TRIBES



- Respect and Act in a way that demonstrates your understanding that each Oregon Tribe is a distinct sovereign
- If it's a government-to-government matter, make sure you are dealing with an authorized Tribal representative for that issue
- If launching a new policy, program, or initiative, consider if a courtesy visit to Tribal Council is appropriate (you may obtain names or confirm with the Chair or Council who it is you should be dealing with and it will enable you to check if Council would like periodic status briefings, or updates)
- Understand that state-tribal relations is a relationship that needs to be built and maintained
- Expect things may take a little longer; be flexible
- Things change; keep in touch; keep up to date (elections; subscribe to tribal newspapers, make periodic visits by phone or to reservations)
- Know (and use) your state agency government-to-government key contact to help coordinate your agency's state-tribal interactions
- If you have limits (e.g., a deadline, budgetary constraints, statutory requirements, set by your Commission, lack of regulatory authority or anything else that may have an impact on your dealings with a Tribe or Tribe on a particular matter), try to communicate those limitations clearly and early
- Make clear what is your need or want from the Tribe (and by when)
- Check with the Legislative Commission on Indian Services for additional info, to get contacts and/or to discuss appropriate protocol and strategies

LEGISLATIVE COMMISSION ON INDIAN SERVICES AND OREGON FEDERALLY RECOGNIZED TRIBES WEBSITES

Legislative Commission on Indian Services Website:

<https://www.oregonlegislature.gov/cis>

Oregon Federally Recognized Tribes' Websites

Burns Paiute: www.burnspaiute-nsn.gov

Coos, Lower Umpqua & Siuslaw: www.ctclusi.org

Grand Ronde: www.grandronde.org

Siletz: <http://ctsi.nsn.us>

Umatilla: <http://ctuir.org>

Warm Springs: www.warmsprings.com

Coquille: www.coquilletribe.org

Cow Creek: www.cowcreek.com

Klamath: www.klamathtribes.org



PRESENTATION SOURCES

Nation Congress of American Indians,

http://www.ncai.org/resources/ncai_publications/tribal-nations-and-the-united-states-an-introduction

Office of the Governor, Tribal Cultural Items Task Force,

https://www.oregon.gov/gov/Pages/TCITF_aboutus.aspx

Oregon Legislative Commission on Indian Services,

<https://www.oregonlegislature.gov/cis/>

Secretary of State – Governor’s Records Guides,

https://sos.oregon.gov/archives/Pages/records/governors_guides.aspx

U.S. Department of Interior, Bureau of Indian Affairs,

<https://www.bia.gov/frequently-asked-questions>

Photo: Chief Joseph the Younger

