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CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILING CAPTION: Rules Relating to the Confederated Tribes of the Warm Springs Hunting Agreement

EFFECTIVE DATE: 12/14/2018

AGENCY APPROVED DATE: 09/14/2018

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AMEND: 635-043-0140

RULE TITLE: Warm Springs Hunting Agreement

NOTICE FILED DATE: 07/16/2018

RULE SUMMARY: Rules and guidelines relating to the Confederated Tribes of the Warm Springs Hunting Agreement.

RULE TEXT:

(1) Tribal members of the Confederated Tribes of the Warm Springs Reservation are authorized to take wildlife under the terms and conditions in the Memorandum of Agreement Between the Confederated Tribes of the Warm Springs Reservation and the State of Oregon Regarding Off-reservation Hunting Subject to the 1855 Treaty with the Tribes of Middle Oregon, entered into by both parties in 2018, incorporated herein by reference.

(2) No additional tribal legal or treaty entitlement is created, conveyed or implied, nor is any existing agreement, treaty or court decree modified by the adoption of these rules or the above referenced Memorandum of Agreement.

STATUTORY/OTHER AUTHORITY: ORS 496.138, 496.146, 496.162

STATUTES/OTHER IMPLEMENTED: ORS 496.138, 496.146, 496.162

MEMORANDUM OF AGREEMENT BETWEEN THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION AND THE STATE OF OREGON REGARDING OFF-RESERVATION HUNTING SUBJECT TO THE 1855 TREATY WITH THE TRIBES OF MIDDLE OREGON

RECITALS

1. WHEREAS, the State of Oregon (hereinafter State) and the Confederated Tribes of the Warm Springs Reservation of Oregon (hereinafter Tribe or Warm Springs Tribe) are sovereign entities that desire to continue and advance their Government-to-Government relationship, and to exercise their respective sovereign authorities in a respectful and coordinated manner in the regulation of hunting in the state of Oregon; and,

2. WHEREAS, the Oregon Department of Fish and Wildlife ("ODFW"), pursuant to ORS 496.012 and ORS 496.146, has the legal obligation and authority to manage wildlife for the benefit of its present and future citizens, and as part of that obligation ODFW regulates the hunting of wildlife within state boundaries; and,

3. WHEREAS, the Warm Springs Tribe and the United States negotiated and executed a treaty, entitled "Treaty with the Tribes of Middle Oregon, June 25, 1855", ratified by the United States Senate on March 8, 1859 (12 Stat., 963) (hereinafter "1855 Treaty"); and,

4. WHEREAS, Article 1 of the 1855 Treaty provides that the privilege of hunting in common with the citizens of the United States on unclaimed lands outside the Warm Springs Reservation is secured to the Tribe; and,

5. WHEREAS, Article 5 of the Constitution and By-Laws of the Confederated Tribes of the Warm Springs Reservation of Oregon, provides the Tribal Council the authority to regulate the use of natural resources, including wildlife, by tribal members to protect and preserve this tribal resource; and,

6. WHEREAS, the State and Tribe desire to coordinate regulation of the hunting activities of their citizens and members respectively, for the benefit of both the tribal and non-tribal member public, and in accord with sound wildlife management science and principles for the benefit of the wildlife resource; and,

7. WHEREAS, the terms of the 1855 Treaty, and the hunting right reserved in Article I, provide a foundation for this Agreement, but the parties have not attempted to agree to the precise parameters of the Tribe's hunting rights under the terms of that Treaty and have reached a practical arrangement for the term of this agreement; and,

8. WHEREAS, the State parties agree to recognize the 1855 Treaty as the sole operative treaty document with respect to the Tribe's hunting rights.

NOW THEREFORE, the Parties agree that:

9. **Hunting and Species Covered.** This Agreement relates to hunting of big game species (pronghorn antelope, cougar, bear, mountain goat, bighorn sheep, deer, elk, and any other species that may subsequently be defined as "big game" by ODFW), furbearer species (beaver, bobcat, fisher, marten, mink, muskrat, river otter, raccoon, red fox, gray fox and any other species that may subsequently be defined as a "furbearer" by ODFW) and upland game birds (pheasant, grouse, partridge, quail, wild turkey and any other species that may subsequently be defined as an "upland game bird" by ODFW).

10. **Geographic Scope (Hunt Area).** Except as otherwise provided in this Agreement, this Agreement applies to Pine Creek Conservation Area and to the following public lands within the boundary described in Attachment 1 (the "Hunt Area"):

    a. Federal lands that are managed consistently with hunting activities;

    b. State lands, except state wildlife areas, that are managed consistently with hunting;

    c. State wildlife areas, during times when there is an ODFW season authorizing hunting of the same species. Where state wildlife areas, such as the Phillip W. Schneider Wildlife Area, are comprised of both state and federal lands, the unclaimed federal lands of that wildlife area are open for tribal hunting consistent with tribal regulation and any state or federal travel management provisions. State lands within the wildlife areas are only open for tribal hunting when there is an ODFW season authorizing hunting of the same species on the wildlife area.

11. **Hunting Outside of this Agreement.** Any off-reservation hunting activity not covered by this Agreement shall be conducted pursuant to state regulations.

12. **Federal law.** Nothing in this Agreement is intended to authorize hunting activities inconsistent with applicable federal law.

HUNTING REGULATION

13. Except as otherwise provided in this Agreement, the Tribe will regulate the hunting activities of its members as an attribute of its sovereignty, with respect to the species and within the geographic scope covered by this Agreement. The Tribe's regulation is subject to the State's ability to regulate where such regulation "is a reasonable and necessary conservation measure" that is "necessary for the perpetuation of a species" and meets each of the "conservation necessity standards" for state regulation as described in case law. *E.g. State v. Jim*, 81 Or App 189, 193 (1986).

14. Both parties agree to pursue regulations which address appropriate safety concerns such as shooting at night, use of artificial light and shooting from or across a public roadway.

15. **White River Wildlife Area Deer Hunt.** Both Parties agree to special hunting seasons on the White River Wildlife Area. The White River Wildlife Area will be open to Warm Springs Tribal hunting of mule deer during all authorized ODFW big game seasons. In addition, Tribal mule deer hunting may occur for up to five days during the break between statewide general archery season and the normal start of the annual rifle deer season. This hunt will allow for use of both archery and rifle equipment weapon and may, subject to the Parties' agreement each year, include take of antlerless deer.

16. **Pine Creek Conservation Area (PCCA).** The Tribe will regulate hunting by enrolled Warm Springs Tribal members on the PCCA, which is owned in fee title and managed by the Tribe. The Tribe will continue to provide opportunity to non-Tribal members in accord with the PCCA management agreement between the Tribe and the Bonneville Power Administration. Non-tribal member hunting on the PCCA is subject to all State regulation as well as any PCCA-specific requirements. The Tribe understands that Oregon State Police may be present on the PCCA to enforce state regulations as to non-tribal members and will make best efforts to coordinate any such presence with the on-site PCCA tribal staff.

17. **Special Management Consideration for Deer Hunting in the Metolius Wildlife Management Unit (WMU).**

a. The parties will manage total deer harvest for sustainable opportunity while maintaining herd management objectives for population size and buck ratios; section 21 provides for direct coordination if deer herd management by either party is a concern.

b. CTWS deer hunting with a rifle will end no later than the end of ODFW Cascade elk rifle season.

c. CTWS deer hunting after the close of the ODFW Cascade elk rifle season through the end of November is limited to primitive weapons (muzzleloader and archery) under hunting permit system (managed by CTWS).

18. **Travel Management Provision.** The Tribe agrees to adhere to all state and federal road and access restrictions, including but not limited to cooperative travel management areas (TMA) and winter range closures.

a. TMA and winter range closures identified in the 2018 ODFW Big Game regulations include, but are not limited to the Metolius Wildlife Refuge and Metolius Winter Range Closure in the Metolius WMU; Tumalo Winter Range in the Upper Deschutes WMU; Lower Deschutes TMA (Biggs WMU); Prineville Reservoir Wildlife Area (Maury and Ochoco WMUs); Rager TMA and South Boundary TMA (Ochoco WMU); Rimrock Springs Wildlife Area (Grizzly WMU); Murderers Creek-Flagtail TMA (Murderers Creek WMU); Camp Creek TMA (Northside WMU); Trail Creek TMA and McCarty Winter Range Closure (Starkey WMU); and Winter Range Closures on Phillip W. Schneider, White River and Bridge Creek Wildlife Areas.

b. Prior to proposing or agreeing to any additional or expanded road and access restrictions in the hunt area that affect federal or state-owned lands, ODFW will coordinate with the Tribe and seek its concurrence. If the parties do not concur, either party may invoke the Dispute Resolution provisions of this agreement.

19. **Special Circumstance Hunts.** The Tribe may occasionally authorize hunting within the Hunt Area outside of the traditional fall seasons for hardship, ceremonial or cultural purposes. These authorizations will be limited and will not impair conservation of the resource. The State and Tribe will develop a notice system whereby state ODFW and OSP officers will be made aware that the Tribe has permitted a special circumstance hunt.

20. **No Commercial Purposes.** Taking, use and disposal of wildlife will not be done for commercial purposes.

21. **Coordination and information sharing.** The Tribe and ODFW agree to good-faith coordination of hunting management activity. It is the intent of each party to communicate in a timely manner to share information necessary for the sound management of the resource. That coordination will include, at a minimum:

a. **Pre-season coordination**. Representatives of the Tribe and ODFW will meet each year by August 1 to exchange information regarding planned hunting regulations governing the Hunt Area for the upcoming year/season. The Tribe will share its hunting ordinance when adopted by Tribal Council, including any changes to the ordinance.

b. **Post-season coordination**. Representatives of the Tribe and ODFW will exchange information by May 1 regarding the initial and/or final harvest data from prior year's hunting in the Hunt Area.

c. **Other coordination regarding species management concerns.** In the event either the Tribe or ODFW has a concern regarding the management or status of any species covered in this Agreement, either party may request a meeting with the other. The other party will take into account the input of the party requesting the meeting in making future management decisions.

ENFORCEMENT

22. **Identification and Tags.** In order to aid the parties' mutual goal of avoiding enforcement confusion, Warm Springs members hunting pursuant to this Agreement will carry tribal identification and tribally-authorized hunting tags showing that the tribe has authorized hunting of that species and will present the same to law enforcement officers, peace officers and ODFW personnel upon request.

23. **Referral**. The State and the Tribe agree to select at least one District Attorney from a county within the Hunt Area and to seek to establish a referral agreement whereby alleged Warm Springs tribal member violations are referred to Warm Springs Tribal Court.

24. **No Precedent.** This Agreement is not intended to bind the Tribe or State beyond the term of the Agreement, nor to bind either party at any time regarding any matter other than hunting. This Agreement is not intended as precedent to prejudice either party's legal positions as to any matter in the future.

25. **Dispute Resolution.** In the case of any dispute between the parties regarding the interpretation or implementation of this Agreement, either party may initiate dispute resolution as follows:

a. The party asserting the existence of a dispute shall notify the other party in writing of the nature of the dispute. Within 14 days local ODFW and tribal staff shall meet to discuss the issue.

b. If the issue is not resolved between the state and tribal staff, within 30 days the agency's Director shall meet with the appropriate tribal representative in an attempt to resolve the dispute.

c. If the issue remains unresolved, within 45 days the persons described in section 30 (Point of Contact) shall meet to attempt to resolve the dispute.

d. If the dispute remains unresolved, the parties may engage in mediation, with a mediator to be agreed on by the parties, and any costs of mediation shared equally by the parties.

e. **Emergency.** In the event that either party believes the dispute concerns an imminent threat to public safety or wildlife, that party may invoke the process described in section 25.b. above, on 7 days notice, without first pursuing the previous dispute resolution step. If the issue remains unresolved, the persons described in section 30 (Point of Contact) shall meet within 15 days to attempt to resolve the dispute. If the issue still remains unresolved, the parties may engage in mediation as described in section 25.d. above.

f. **Termination.** If the mediation process is not successful or if the parties decide not to engage in mediation, either party may terminate this Agreement on 30days notice in writing to the other party (Point of Contact).

g. This Agreement is not intended to restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution. However, the process described above shall be the exclusive means of resolving disputes regarding this Agreement, unless otherwise agreed in writing by the parties.

26. **Stay of Prosecution.** In the event that a tribal member is cited by the State or local law enforcement for conduct the Tribe believes is consistent with this Agreement, at the Tribe's request the State will make efforts to have the prosecution stayed for a period of at least 90 days and the parties will attempt to resolve the issue pursuant to section 25 above.

27. **Effective Date.** This Agreement shall become effective when both the Oregon Fish and Wildlife Commission and the Warm Springs Tribe have adopted the necessary implementing rules and resolutions, and all parties have executed the Agreement.

28. **Term.** The term of this Agreement is ten years. This term begins on the date this Agreement is signed by all of the parties.

29. **Review and Modification of this Agreement.** The parties agree to review this Agreement in good faith once every three years, and to modify any of the terms of this Agreement if agreeable to both parties. All modifications of this Agreement must be made in writing and signed by all the parties.

30. **Points of Contact.** This is an agreement between sovereign governments. The Governor's Office is the point of contact for the State, and the Tribal Council is the point of contact for the Tribe. The Governor and the Tribal Council may delegate their point of contact responsibilities.

Date: 9/27/18

E. Austin Greene Jr., Tribal Chairman
Confederated Tribes of the Warm Springs Reservation

Date: 8/29/2018

Michael Finley, Chair
Oregon Fish and Wildlife Commission

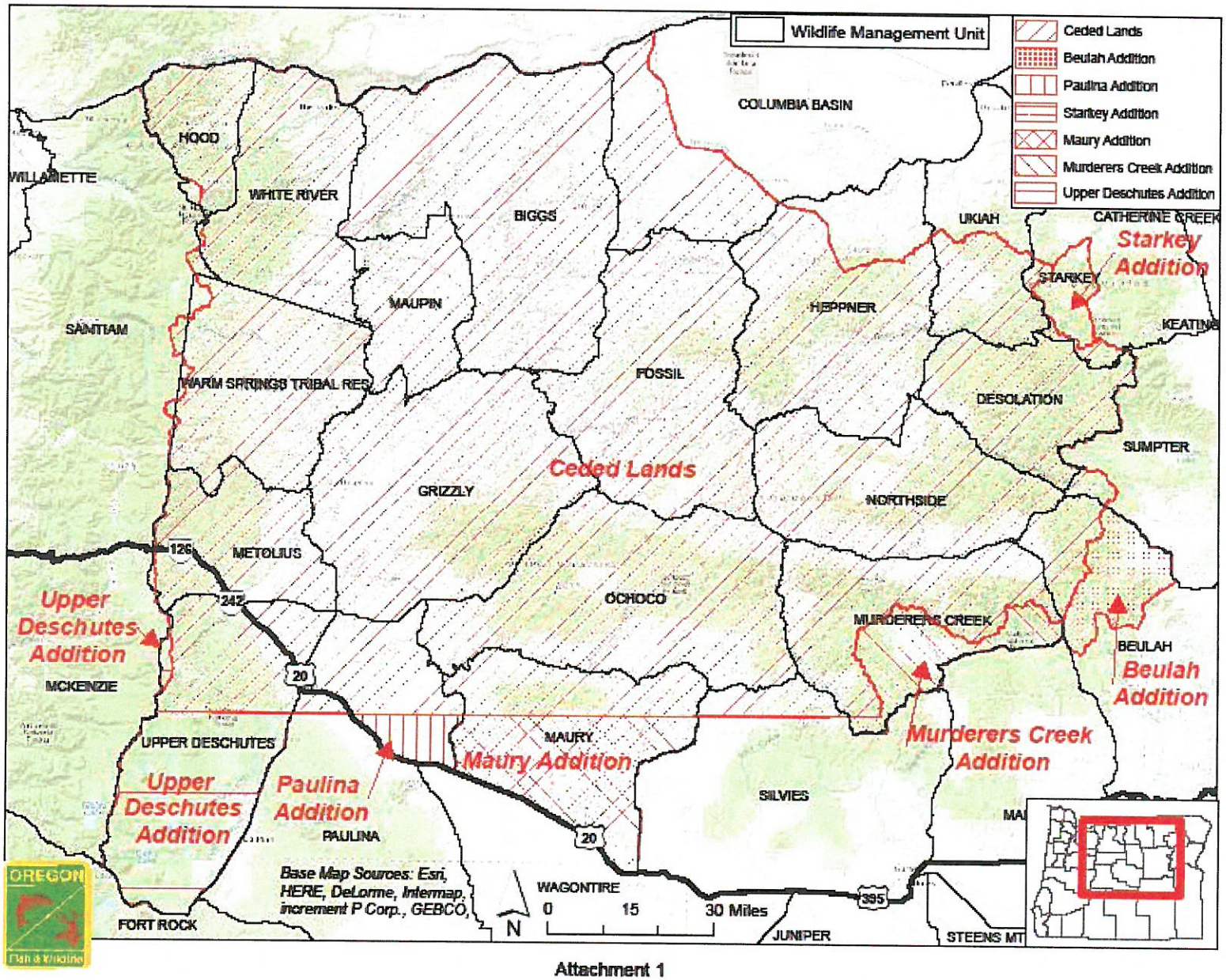
Memorandum of Agreement
Attachment 1

HUNT AREA as referenced in the MEMORANDUM OF AGREEMENT BETWEEN THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION AND THE STATE OF OREGON REGARDING OFF-RESERVATION HUNTING SUBJECT TO THE 1855 TREATY WITH THE TRIBES OF MIDDLE OREGON includes:

The ceded lands as described in Article 1 of the Treaty with the Tribes of Middle Oregon of June 25, 1855, with the following additions on the southwestern, southern, southeastern and northeastern boundaries:

1. The area labeled on map as the Upper Deschutes Addition that is on the western boundary of the Ceded Lands and north of 44 Degrees north latitude; and

2. Beginning at 44 Degrees north latitude northwest of Elk Lake on the Pacific Crest Trail; south on the Pacific Crest Trail to Hwy 58 southeast on Hwy 58 to Crescent Creek; northeast on Crescent Creek to Klamath Rd 61, east on Klamath Rd 61 to Hwy 97 at Crescent; northeast on US Hwy 97 to 44 degrees north latitude; east along 44 degrees north latitude to US Hwy 20; east on US Hwy 20 to Glass Buttes-Camp Cr Rd (GI Ranch Rd) near Glass Buttes; north on Glass Buttes-Camp Cr Rd (GI Ranch Rd) to Twelvemile Cr Rd; east on Twelvemile Cr Rd to Grindstone Cr Rd; northeast on Grindstone Cr Rd to 44 Degrees north latitude; east along 44 degrees north latitude to South Fork John Day River; southeast on South Fork John Day River to FR 3750 at Bear Cr; east on FR 3750 to FR 37; northeast on FR 37 to US Hwy 395; north on US Hwy 395 to Seneca; east on Logan Valley Co Rd (FR 16) to US Hwy 26 near Eldorado Pass; north on US Hwy 26 to Grant county line at Blue Mtn Summit; follow the Ceded Lands boundary north to FR 51; north on FR 51 to State Hwy 244; west on State Hwy 244 to where it intersects the Ceded Lands boundary at FR 21; westerly and southerly along the Ceded Lands boundary to the point of beginning.



Attachment 1