

ATTORNEY GENERAL
STATE OF MONTANA

Joe
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Steve Bullock
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

October 21, 2010

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FWP
REGION ONE

INTERAGENCY MAIL

Joe Maurier
Director
Department of Fish, Wildlife and Parks
Helena, MT 59620

Re: Confederated Salish & Kootenai Tribes
FWP Bird Hunting and Fishing Agreement

Dear Director Maurier:

Pursuant to Mont. Code Ann. § 18-11-105(2009), I hereby approve and enclose a fully executed original of the above-referenced contract with the Confederated Salish & Kootenai Tribes for the regulation of bird hunting and fishing on the Flathead Indian Reservation. Please file it in accordance with Mont. Code Ann. § 18-11-107 (2009).

If you have any other questions, please do not hesitate to call. Thank you.

Sincerely,

STEVE BULLOCK
Attorney General

SB:AH:ks

Enc.

10/22

C Legal - please file
Dave Rising
Ken McDonald
Bruce Rish
A-1

BIRD HUNTING AND FISHING ON THE FLATHEAD RESERVATION

**STATE-TRIBAL COOPERATIVE AGREEMENT BETWEEN
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE
FLATHEAD RESERVATION AND THE STATE OF MONTANA BY
AND THROUGH THE DEPARTMENT OF FISH,
WILDLIFE AND PARKS OF THE STATE OF MONTANA**

This Agreement is made pursuant to the provisions of the State-Tribal Cooperative Agreement Act, Sections 18-11-101 et seq., MCA, and Article VI, Section 1(c) of the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, which was approved by the Secretary of the Interior on October 28, 1935. The State of Montana, acting through its Department of Fish, Wildlife and Parks and the Confederated Salish and Kootenai Tribes are the parties to this Agreement.

RECITALS

A. The Treaty of Hellgate of July 16, 1855, 12 Stat. 975, of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation (hereafter "Tribes") states that:

The exclusive right of taking fish in all streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

Based in part upon this language the Tribes' claim the exclusive jurisdiction to license, regulate and control hunting and fishing activities throughout the Reservation.

B. The State of Montana (hereafter "State") claims the jurisdiction to license, regulate and control certain hunting and fishing activities engaged in by nonmembers on lands and waters within the exterior boundaries of the Reservation.

PURPOSE OF AGREEMENT

A. The parties agree that the Reservation fish and wildlife resources are finite, renewable natural resources that must be protected and managed in their natural habitat in a way that will enhance their ability to be self-sustaining.

B. The parties further agree that substantial resolution of the fundamental governmental and jurisdictional differences may be achieved by mutual consent of the Tribes and State. Without conceding any ultimate jurisdictional issues, the parties desire to negotiate a settlement of CV-90-49-M, Confederated Salish and Kootenai Tribes of the

Flathead Reservation v. State of Montana, and K.L. Cool Director, Department of Fish, Wildlife and Parks, so that all persons may be advised of the applicable fishing and hunting requirements on the Reservation.

AGREEMENT

I. NEGATIVE DECLARATION

Nothing in this agreement shall be deemed as a concession by either party as to the other party's jurisdictional claims or an admission of the same, or a waiver of the right to challenge such claims upon termination of the Agreement. Nothing in this Agreement shall prejudice the right of any individual to challenge the regulatory or adjudicatory jurisdiction of either party. Neither this Agreement nor the activities of the parties pursuant to this Agreement shall be utilized to affect the equitable or legal position of either party in any future litigation. Nothing in this Agreement shall be deemed as enlarging or diminishing the jurisdiction or authority of the State or the Tribes within the Reservation.

II. ACTIVITIES SUBJECT TO REGULATION

This Agreement shall be applied to all fishing and bird hunting activities engaged in by nonmembers of the Tribes on all lands and waters on the Reservation. It does not apply to any activities by members of the Tribes unless expressly so stated in this Agreement or in regulations promulgated pursuant to this Agreement.

III. TERM OF AGREEMENT

A. Effective Date. This Agreement is effective upon the date of the last signature of the parties to the Agreement.

B. Duration. This Agreement shall remain in effect until terminated pursuant to the terms of ARTICLE XII of this Agreement.

IV. FLATHEAD RESERVATION FISH AND WILDLIFE BOARD

The Tribes and the State agree to establish a cooperative management board for the development of cooperative management plans which include fishing and bird hunting regulations.

This Reservation Fish and Wildlife Board shall be established as follows:

A. Flathead Reservation Fish and Wildlife Board Membership. (Board). The Board's membership consists of seven representatives, three appointed by the Tribal Council and three appointed by the State's Governor. The seventh member must be an employee of the United States Fish and Wildlife Service and must be mutually agreed upon by the Tribal Council and the State's Governor. The Board's chairperson shall serve

a two-year term, with such position alternating biennially between a tribal representative and a state representative and with the Tribes' appointing the first such chairperson.

B. Technical Committees. The parties will establish a committee of fisheries biologists and a committee of wildlife biologists to make management recommendations to the Board. The Technical committees shall be staffed in equal numbers of Tribal and State biologists but this section shall not be applied in such a manner as to require either party to hire additional staff. The number of staff on these committees shall be determined by the Board. The Technical Committees shall report directly to the Board with their management and budget recommendations.

V. ESTABLISHMENT AND IMPLEMENTATION OF A RESERVATION PLAN

The biological Technical Committees shall develop proposed written cooperative resource management plans to ensure conservation practices and reasonable use of the Reservation fisheries and bird resources. The plans shall be presented to the Board for consideration and/or recommendations for change. When the plans have received the approval of the Board, the Board shall present them to the Tribal Council and the Fish, Wildlife and Parks Commission for final action. Plans will be developed on time tables that allow them to be used in the regulation setting process of Tribes and the State.

Should the Technical Committees have any unresolved disagreements they shall be referred to the Board for resolution. Should the Board fail to reach a consensus on proposed regulations, the matters shall be referred to the respective parties for consideration and possible recommendations. Should the matter remain unresolved the regulations in dispute will be referred to arbitration, as provided for in Section IX of this Agreement.

Uniform regulations for fishing and bird hunting will be referred to the Tribal Council and the Fish, Wildlife and Parks Commission for adoption as final fishing and bird hunting regulations, following an opportunity for public hearings and comment. The Technical Committees shall be responsible for conducting the public hearings, receipt of comments, and consideration of same in developing regulations to be recommended to the Board, who will, in turn make recommendations to the Tribal Council and the Fish, Wildlife and Parks Commission. The Tribal Council and the Fish, Wildlife and Parks Commission shall make every effort to agree on uniform regulations that will apply throughout the Reservation. The Council and Commission will adopt annually fish and bird hunting regulations for the Reservation.

VI. ENFORCEMENT

A. Definitions.

1. Indian Land. The term "Indian land" as used in this agreement means all land within the Reservation except non-Indian land and land owned by the United States on its own behalf.

2. Member. The term "member" or "members" as used in this agreement means Tribes and any person who is an enrolled member of the Tribes.

3. Non-Indian Land. The term "non-Indian land" as used in this agreement means land or a surface estate wholly owned by a non-Indian and located within the Reservation.

4. Non-member. The term "non-member" or "non-members" as used in this agreement means any person other than the Tribes or an enrolled member of the Tribes.

5. Person. The term "person" as used in this agreement means any individual, corporation, association, firm, joint venture, partnership, municipality, school district or board, state, agency or political subdivision of the state, or state-law created special or other district.

6. Wardens. The term "wardens" as used in this agreement means duly authorized and appointed state or tribal wardens and ex-officio wardens certified pursuant to this agreement.

B. Appointment of Wardens. Tribal wardens who are Montana Peace Officer Standards Training certified will be appointed as ex-officio State wardens in accordance with 87-1-503, MCA. The State agrees to provide such Tribal wardens the credentials of State wardens for the purposes of this Agreement. The State may also require tribal wardens to attend the Montana Law Enforcement Academy as soon as reasonably possible.

The Tribes agree to appoint state wardens as ex-officio tribal wardens and to provide Tribal enforcement credentials to State wardens who are Montana Peace Officer Standards Training certified. The Tribes may also require state wardens to attend the Indian Police Academy, or an equivalent federal training program approved by the Tribes as soon as reasonably possible.

The parties will notify each other of in-service training courses to be offered to their wardens and offer such training to officers of both parties at no charge to the non-sponsoring party.

Tribal wardens who are appointed as ex-officio State Wardens shall be authorized to issue State fish and game citations and shall participate fully in any proceeding to enforce such citations. State wardens who are appointed as ex-officio tribal wardens shall be authorized to issue Tribal fish and game citations and shall participate fully in any proceeding to enforce such citations.

C. Uniform Enforcement. The parties desire to provide for uniform management, regulation, and enforcement of the subject matter of the agreement in order to protect and enhance the wildlife resources contained upon Indian and non-Indian owned land within the exterior boundaries of the Reservation. Recognizing that cross-deputization of law enforcement personnel and uniform enforcement pursuant to this agreement is essential to the preservation and proper management of the wildlife resources on the Reservation, and in an effort to establish a stable law enforcement partnership between the Department and the Tribes, the parties agree that:

1. Wardens shall have authority to issue citations for fishing or hunting violations anywhere within the exterior boundaries of the Reservation.

2. Wardens shall issue citations to tribal court for any hunting or fishing violation alleged to have been committed by a member within the exterior boundaries of the Reservation.

3. Wardens shall issue citations to state court for any hunting or fishing violation alleged to have been committed by a non-member on non-Indian land.

4. Wardens shall issue citations to tribal court for any hunting or fishing alleged to have been committed on Indian land.

5. Nothing in this agreement shall be deemed to limit or alter the authority of wardens to enforce federal law.

D. State-Tribal Cooperative Agreements Act. This provision addresses statutory requirements contained in Montana's State-Tribal Cooperative Agreements Act, Sections 18-11-101 et seq., MCA.

1. The minimum training standards for all law enforcement officers acting under this Agreement are those certifications and training schools listed in paragraph VI. B of this Agreement.

2. Each party shall remain liable for the actions of their employees for purposes of this Agreement to the same degree that they are currently. Neither party assumes liability for employees of the other party.

3. The chain of command for the enforcement personnel of the parties shall not be changed by this Agreement. Tribal officers will continue to report to and be

accountable to superiors they now report to, as will the Department's personnel. It is the intent of the parties that necessary enforcement policy and personnel coordination will be determined and carried out by the Department's Warden Captain in Region 1 (Kalispell) and the Tribes' Chief Enforcement Officer. Day to day coordination will be carried out by each party's wardens.

VII. LICENSING

A. General. A Reservation license, and appropriate hunting and fishing stamps issued jointly by the Tribes and the State, shall be available to any person who is not a member of the Tribes for purchase and must be in the person's possession to lawfully fish or hunt birds on the Reservation. A Reservation license and appropriate Reservation and Federal hunting and fishing stamps are the only licenses required to lawfully engage in activities under this Agreement.

B. Resident Non-members. Any person who is not a member of the Tribes who has been a permanent resident of the Reservation for at least six months immediately prior to the date of application may purchase a Reservation resident license and appropriate stamps to lawfully hunt birds and fish on the Reservation. A valid Resident Reservation license shall be recognized by the State as a valid license to hunt birds and fish anywhere in the State.

C. Non-resident Non-member. Any person who is not a member of the Tribes who does not qualify as a resident of the Reservation pursuant to the terms of this section must purchase a Non-resident Reservation license and stamps to hunt birds and fish on the Reservation and that license will only be valid on the Reservation.

VIII. REVENUES FROM LICENSING AND ENFORCEMENT

The parties agree that the equivalent of all license revenues derived from the sale of Reservation permits, and an amount equal to all fines and restitution collected in State Court and Tribal Court for fish and wildlife violations within Reservation boundaries will be deposited with the Tribes as accrued, and in a manner acceptable to the parties' established accounting procedures. All such sums will be earmarked by the Tribes for their Reservation-wide fish and wildlife program and shall be kept in the Tribes special Conservation Account.

IX. DISPUTE RESOLUTION

A. Right to Arbitrate. All disputes between the parties concerning the interpretation, application, or violation of this Agreement, except disputes involving land ownership, shall be resolved as provided in this Article.

B. Procedure: Parties and Appointment of Arbitrators. The party desiring to initiate arbitration shall serve on the other party, by certified mail, return receipt requested, a written demand for arbitration setting forth (1) the nature of the dispute to be

resolved, (2) the claim of the party initiating arbitration with respect to such dispute, and (3) the name and address of one arbitrator selected by the party initiating arbitration. The other party shall have five (5) days after receipt of such demand to select a second arbitrator. If no second arbitrator is selected within the five-day period, then the sole arbitrator shall be the one selected by the party initiating the demands for arbitration. If within the five-day period the party receiving the demand for arbitration selects a second arbitrator by giving written notice of the arbitrator's name and address to the party initiating arbitration and to the first arbitrator by certified mail, then the two arbitrators so selected shall choose a third arbitrator within five (5) days after the receipt by the first arbitrator of notice of the selection of the second arbitrator. The third arbitrator shall be chosen from a pool of ten possible arbitrators, such list to consist of the names of five persons chosen by each arbitrator. If the two arbitrators cannot agree upon one of the listed arbitrators they shall each strike one arbitrator's name from the list and shall repeat this procedure with the remaining name being the duly selected third arbitrator. A flip of the coin shall determine which strikes the first name.

C. Procedure: Discovery. As promptly as practicable after their appointment, the arbitrators shall hold a preliminary meeting with the parties to determine the most expeditious method of assembling all pertinent evidence. The arbitrators, in their discretion, may require the parties to appear for depositions and produce documents, answer interrogatories and make admissions in accordance with the discovery procedure specified in the Federal Rules of Civil Procedure. Should any party fail to comply with any procedural order or requirement of the arbitrators, such failure may be given such weight as the arbitrators deem appropriate in the determination of the issue presented for arbitration.

D. Procedure: Decision. After presentation of the evidence, the matters in dispute shall be arbitrated by the three arbitrators, and the decision of the arbitrators, or a majority of them, shall be final. The arbitrators may include in their award a determination of responsibility for the expense of the arbitration. Prior to the making of the award by the arbitrators, neither party to this Agreement shall (except as specifically authorized herein) commence any lawsuit or other proceeding against the other party, if the subject of the lawsuit or proceeding arises out of any dispute or disagreement between parties relating to the matters set forth in this Agreement.

X. FINANCIAL SUPPORT FOR THE AGREEMENT

The parties do not believe that a budget dedicated to implementation of the Agreement will be necessary. Any costs arising out of this Agreement shall be shared equally by the parties. Each party shall pay for the costs of participation of its staff on the Technical Committees and its Representatives on the Board out of its budgeted appropriations.

XI. REAL AND PERSONAL PROPERTY ACQUISITION

The parties do not anticipate that real and personal property will have to be acquired, held or disposed of in order to administer this Agreement, since the activities anticipated are similar to the parties' present operations. Should such acquisition become necessary, the parties agree to amend this agreement to deal with such situations as they arise.

XII. TERMINATION

This Agreement may be terminated by either party upon 120 days of receipt by one party from the other of written notice, certified mail, of intent to terminate with or without cause, or as otherwise provided herein. On the date of termination all unsold hunting and fishing licenses shall be destroyed. All other property dedicated to the implementation of the Agreement will be returned to the party first providing it.

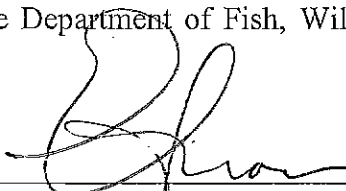
XIII. DEFENSE AND SEVERABILITY

A. Defense. The parties enter into this Agreement only after concluding its provisions are lawful. Should the legality of the Agreement or any provision thereof be challenged in any court prior to termination or notice of termination of the Agreement, the parties agree to use their best effort to jointly defend the enforceability of the Agreement and each of its provisions.

B. Severability. In the event this Agreement or any portion of this Agreement or any of the legislation enacted pursuant to this Agreement is found to be illegal or unconstitutional by a court of competent and final jurisdiction this Agreement shall be deemed to be terminated.

IN WITNESS WHEREOF, the Confederated Salish and Kootenai Tribes and the State of Montana, by and through the Department of Fish, Wildlife and Parks, hereby execute this Agreement.

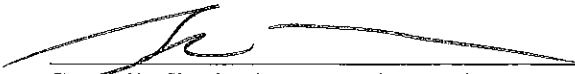
10-7-10
Date


Ernest T. Moran, Chairman
Confederated Salish and Kootenai Tribes
of the Flathead Indian Reservation, Montana

10-18-10
Date


Brian Schweitzer, Governor
State of Montana

10/20/2010
Date


Steve Bullock, Attorney General
State of Montana