



10-1984

Oregon Department of Fish and Wildlife v. Klamath Indian Tribe

Lewis F. Powell Jr.

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e
D
9/22

Altho cases in this Court
& in circuits are not ~~to~~ harmonious,
I do not think this case is C/W

PRELIMINARY MEMORANDUM

September 24, 1984 Conference
Summer List 17, Sheet 2

No. 83-2148

STATE OF OREGON,
DEPT OF FISH & WILDLIFE,
et al. *ok*

Cert to CA9 (Kilkenny,
Wallace, Canby)

v.

KLAMATH INDIAN TRIBE

Federal/Civil

Timely

1. SUMMARY: Petr argues that the CA9 erred in holding that
hunting and fishing rights of resp's members in certain
reservation lands survived resp's cession of those lands.

2. FACTS AND DECISION BELOW: Under the terms of a treaty
signed in 1864, the Klamath and Modoc Tribes and the Yahooskin
Band of Snake Indians ceded their claim to roughly 20 million

Deny -
Although there does appear to be some conflict among the decisions
of this Court and among CA8 and CA9 opinions, I am not as
convinced of the importance of the question raised by this case as
the writer of the memo is. I am not sure the factual situation
(see back)

acres of land in Oregon, California, and Nevada. They received in return a reservation of some 1.9 million acres located entirely within the state of Oregon. The treaty guaranteed the tribes "the exclusive right of taking fish in the streams and lakes, included in said reservation, and of gathering edible roots, seeds, and berries within its limits."¹

The United States commissioned surveys of the reservation lands in 1871 and 1888. These surveys erroneously excluded large tracts of land from the Klamath reservation. In 1896, the United States responded to complaints from tribal members by appointing a boundary commission to determine whether an error had in fact occurred. The commission concluded that over 621,000 acres had been excluded and that the value of the land, based on the quality of its soil and timber, its suitability for grazing, and the quantity of rock formations (but not its suitability for hunting and fishing), was 86.36¢ per acre. Based on the commission's report, the government negotiated an agreement with the Indians under which the tribes would "cede, surrender, grant and convey to the United States all their claim, right, title, and interest" to the excluded lands in return for the payment of \$537,007.07.² The agreement also provided that "nothing in this

¹Although the treaty mentioned only fishing and gathering rights, the parties are in agreement that the Indians' rights in the treaty lands included rights to hunt and trap as well as fish and gather.

²In 1969, the tribes received an additional \$4 million based on the Indian Claims Commission's determination that the consideration for the agreement had been unconscionable.

agreement shall be construed to deprive the said Klamath and other Indians of any benefits to which they are entitled under existing treaties, not inconsistent with the provisions of this agreement." The agreement did not explicitly mention hunting or fishing rights.

Following the ratification of the cession agreement in 1906, tribal members continued to exercise their rights to hunt, fish, and trap on the ceded lands free from regulation by the state. In March, 1982, the Klamath Tribe brought this action in the D. Ore. to enjoin the State of Oregon from interfering with the exercise of those rights. The tribe asserted that far from abrogating the Indians' hunting and fishing rights in the ceded lands, the agreement specifically preserved those rights by specifying that the tribe retained all treaty rights not inconsistent with the agreement. The state responded that the hunting and fishing rights recognized by the 1864 treaty attached to reservation lands; when the tribes renounced all claim to the lands in the 1901 agreement, the lands were removed from the reservation and the Indians therefore lost their right to hunt and fish on those lands free from state regulation.

Relying principally on the doctrine that treaties are to be construed favorably to Indian tribes and on Menominee Tribe v. United States, 391 U.S. 404 (1968), which held that an Indian tribe retained its hunting and fishing rights in former reservation lands even after the termination of the reservation, the district court held that the cession agreement did not affect the tribes' hunting and fishing rights. The court also noted

that neither the boundary commission that originally set the value of the land nor the Indian Claims Commission that subsequently awarded the tribes \$4 million in additional compensation, considered the value of the hunting and fishing rights in determining the value of the ceded land. The court took the failure to compensate the tribes for these rights as an indication of an intent not to extinguish them. Moreover, the court rejected the state's argument that the retention of hunting and fishing rights was inconsistent with the cession of title to the federal government. The CA9 affirmed based on substantially identical reasoning.

3. CONTENTIONS: Petr contends that this Court's precedents reveal that special rights held by Indians in reservation lands are extinguished when those lands are removed from the reservation, and Indian activities on such lands become subject to state regulation. Petr distinguishes this Court's holding in Menominee Tribe, supra, on the grounds that the Menominee Tribe retained its lands after the termination of the tribe's formal relationship with the federal government (which entailed termination of the "reservation" status of tribal lands). Here, by contrast, the Klamaths ceded their lands to the federal government altogether. The clause in the agreement reserving to the Klamaths all treaty rights not inconsistent with the agreement is of no avail to the tribe in this controversy, for the retention of hunting and fishing rights is inconsistent with the tribe's renunciation of all its "claim, right, title, and interest" in the ceded lands.

Petr also asserts that the CA9's decision is in conflict with the CA8's resolution of a substantially similar case. In Red Lake Band of Chippewa Indians v. Minnesota, 614 F.2d 1161 (CA8 1980), that court affirmed a district court's ruling that tribal rights to fish and hunt free from state regulation in lands removed from reservation boundaries were extinguished absent specific congressional recognition of such rights. Petr argues that this Court should grant cert to resolve the conflict.

Resp replies that Menominee Tribe and its progeny, which include CA9 decisions holding that members of the tribes involved in this litigation retain hunting and fishing rights in reservation lands terminated in 1954, are in fact controlling. Indeed, this is an easier case for the Indians than Menominee Tribe and its progeny, for those cases recognized that unless Congress specifically provided otherwise, tribal rights continued even after the reservation (and the tribe itself) was terminated altogether; here, the reservation was merely diminished, and "if tribal hunting and fishing rights survive termination, a fortiori, they survive diminishment." (Resp. Br. at 8.)

Resp also denies that there is a split in the circuits. The CA9's opinion is on all fours with both a decision of the CA7 and, significantly, with a CA8 decision that postdates Red Lake Band. See Lower Brule Sioux Tribe v. South Dakota, 711 F.2d 809 (CA8 1983), cert. denied, 104 S. Ct. 707 (1984). Moreover, Red Lake Band is distinguishable in that it involved not the retention of the right to hunt and fish free from state regulation in lands ceded to the federal government, but the very

different question of the right to enter privately held lands to hunt and fish. The Klamath Tribe does not attempt to assert any rights against private landowners; indeed, 99% of the lands at issue in this case remain in federal hands.

4. DISCUSSION & RECOMMENDATION: On the most basic level of analysis, the decision below seems somewhat odd. The 1864 treaty guaranteed the Tribe hunting and fishing rights "within [the reservation's] limits." The parties do not dispute that the cession agreement removed the ceded lands from the reservation's limits, and the agreement explicitly states that the tribe relinquishes all its rights and interests in the ceded territory. Similar language has been held by this Court to be sufficient to diminish a reservation and subject the ceded territory to state regulation. See Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977); DeCoteau v. District County Court, 420 U.S. 425 (1975). It is tempting to conclude that the cession agreement on its face abrogated the tribe's hunting and fishing rights in the ceded land.

However, hunting and fishing rights are not necessarily appurtenant only to reservation lands, see Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt, 700 F.2d 341 (CA7), cert. denied, 104 S. Ct. 53 (1983), and the tribe's argument that Menominee Tribe supports the decision below has considerable force. Even so, I'm not entirely convinced by resp's argument (accepted by the CA9) that Menominee Tribe is controlling in this case. Resp contends that if hunting and fishing rights survive termination of a reservation, they must

survive mere diminishment of the reservation. Although this syllogism has some appeal, it neglects that termination of a reservation as effected by the Menominee Termination Act and similar legislation does not entail the extinguishment of a tribe's right to its land, but rather the conveyance of reservation lands to a tribal corporation.³ Termination is primarily an adjustment in the tribe's relationship with the federal government rather than an abandonment of treaty rights. By contrast, the agreement between the Klamaths and the United States involved the relinquishment of all the tribe's claim to the lands involved.

Moreover, resp fails to mention that the outcome in Menominee Tribe was heavily dependent on the language of 18 U.S.C. §1162, which was passed by the same Congress that passed the Menominee Termination Act. §1162 provided that certain states (including Wisconsin and Oregon) could exercise general jurisdiction over "Indian country" within their borders. However, the statute also stated that "nothing in this section ... shall deprive any ... Indian tribe ... of any right, privilege, or immunity afforded under Federal treaty, agreement

³Termination may also involve the selling of some reservation lands and the distribution of the proceeds of the sale to tribal members who wish to end their formal affiliation with the tribe. Some lower courts have held that Menominee Tribe indicates that members of a terminated tribe retain hunting and fishing rights even in lands that have been sold during the termination process. See Kimball v. Callahan, 493 F.2d 564 (CA9 1974) (holding that Klamaths retain hunting and fishing rights in reservation lands sold pursuant to termination); Kimball v. Callahan, 590 F.2d 768 (CA9 1979) (same).

or statute with respect to hunting, trapping, or fishing" The Court concluded that §1162 must be considered in pari materia with the Menominee Termination Act, and that, so considered, it called for the preservation of hunting and fishing rights in all lands that were "Indian country" in 1954 notwithstanding the termination of their reservation status pursuant to the contemporaneously enacted Menominee Termination Act. See 391 U.S., at 410-411. Although §1162 also applies to "Indian country" in Oregon, it would not seem to mandate preservation of hunting and fishing rights in the lands at issue in this case, since (1) the statute ratifying the cession agreement in this case was passed roughly 50 years before §1162 and therefore need not be considered in pari materia with §1162, and (2) the ceded lands were no longer "Indian country" when §1162 was passed. Given the inapplicability of §1162, a strong argument can be made that the controlling precedent in this case is not Menominee Tribe, but DeCoteau v. District County Court, supra, which held that the state of South Dakota had jurisdiction over lands ceded to the federal government by the Sisseton and Wahpeton Sioux.

Resp is also simply wrong in asserting that Lower Brule Sioux Tribe indicates that the CA8 is not in conflict with the CA9. In fact, Lower Brule Sioux supports petr's position, not resp's. Lower Brule Sioux involved the question whether the Sioux retained their hunting and fishing rights in portions of their reservation taken by the federal government and inundated by dams built on the Missouri River. Although the CA8 held that the tribe did retain its fishing and hunting rights, this holding

was grounded on the court's finding that the acts of Congress taking the Indian lands for use in the reservoir projects (unlike the cession agreement between the Klamaths and the government in this case) did not remove the lands from the reservation.

Indeed, the court stated that "[i]f either Act disestablished the reservation boundaries, the application of state law on the land taken by that Act no longer would be preempted, and South Dakota would have jurisdiction to regulate hunting and fishing by tribal members on that land absent federal law preserving the Indians' treaty hunting and fishing rights." 711 F.2d, at 811.⁴

Resp's attempt to explain away the conflict between the decision below and the CA8's ruling in Red Lake Band is equally flawed. Although the lands in question in Red Lake Band were in private hands to a much greater extent than the lands in this case, the court did not merely rule that the tribe had lost its rights to enter private property when it ceded its land; rather, it held that the tribe had lost its hunting, fishing and gathering rights irrespective of whether exercise of those rights would entail entry on private property. The only possible

⁴Lac Courte Oreilles, supra, also relied on by resp as support for the notion that hunting and fishing rights survive cession of reservation lands, is similarly distinguishable. Lac Courte Oreilles involved the question whether rights explicitly retained by the tribe in lands ceded in 1837 and 1842 were extinguished by an 1854 treaty that did not explicitly reserve those rights (and, indeed, did not even mention the lands the lands ceded in 1837 and 1842). Here, by contrast, the rights retained in the 1864 treaty were rights in reservation lands, and the cession agreement explicitly stated that the tribe gave up all its rights in those lands.

distinction between this case and Red Lake Band is that the purpose of the cession agreement in Red Lake Band was at least in part to open up lands to white settlement, whereas the ceded lands in this case have remained almost entirely under federal control. Arguably, preservation of tribal hunting and fishing rights is inconsistent with white settlement but consistent with federal land management. However, given that the government's intent to open the land to settlement seems to have figured only slightly in the Red Lake Band court's reasoning, that case is fairly read as being in conflict with the CA9's decision in this case.

The question involved in this case is of some importance. The decision of the court below deprives the State of Oregon of the power to enforce its game laws against resp's members in a 621,000 acre area. As a matter of logic, the opinion also would suggest that resp tribe has exclusive fishing (and perhaps hunting) rights in that area, since the 1864 agreement, which is the basis of the rights asserted, guaranteed the tribe exclusive rights. (The tribe does not, however, claim exclusive rights.) The issue may also have importance beyond the boundaries of the ceded Klamath lands: presumably, other tribes have also ceded lands in which they once possessed hunting and fishing rights, and the CA9's reasoning calls into question the validity of state fish and game regulation in all such territories. Given the importance of the issue, the doubtfulness of some of the precedential support for the holding below, and the conflict

between the CA9's ruling and the CA8's holding in Red Lake Band,
I would recommend that the petition for certiorari be granted.

There is a response.

August 9, 1984

Nelson

Opin in petn.

presented by this case either will arise again or that
a decision in this case will have much future
importance, since the primary issue is the intent
of the 1906 cession agreement. The CA9 opinion sounds
reasonable and not without basis; I would
recommend denial. ✓

Lynda

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: OCT 1 1984

Recirculated: _____

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Denny
LTP
10/1*

1st DRAFT

SUPREME COURT OF THE UNITED STATES

OREGON DEPARTMENT OF FISH & WILDLIFE *v.*
KLAMATWH INDIAN TRIBE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 83-2148. Decided October —, 1984

JUSTICE WHITE, dissenting.

By a treaty with the United States signed in 1864, the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians ceded their claim to roughly twenty million acres of land in southern Oregon and northern California. They received in return a reservation of some 1.9 million acres located entirely within the State of Oregon. The treaty guaranteed the tribes "the exclusive right of taking fish in the streams and lakes, included in said reservation, and of gathering edible roots, seeds, and berries within its limits." Treaty between the United States of America and the Klamath and Moadoc Tribes and Yahooskin Band of Snake Indians, Oct. 4, 1864, 16 Stat. 707, 708 (1866).¹

Surveys of the Klamath reservation commissioned by the United States in 1871 and 1888 erroneously excluded large tracts of land from the reservation. In 1896, the United States responded to complaints from tribal members by appointing a boundary commission to determine whether an error had occurred and recommend an appropriate settlement. The commission ultimately concluded that 621,824 acres of Klamath land had been erroneously excluded and that the value of the land, based on its rock formations, the quality of its soil and timber, and its suitability for grazing, was 86.36¢ per acre. This government then entered into negotiations with representatives of the tribes, who eventually

¹ Although the treaty mentioned only fishing and gathering rights, the parties agree that the treaty also reserved for the Indians the right to hunt and trap on reservation land.

agreed to "cede, surrender, grant and convey to the United States all their claim, right, title, and interest" in the excluded lands in return for the payment of \$537,007.07.² The agreement, signed by the tribes on June 17, 1901 and ratified by Congress in 1906, further provided that "nothing in this agreement shall be construed to deprive said Klamath and other Indians of any benefits to which they are entitled under existing treaties, not inconsistent with the provisions of this agreement." Act of June 21, 1906, ch. 3504, 34 Stat. 325, 367-368. The agreement made no mention of fishing or hunting rights.

Between 1906 and 1982, the Klamaths evidently continued to hunt, fish, and trap on the ceded lands with little regard for the fish and game laws of the State of Oregon, and the State took no active measures to stop them. In March of 1982, however, the Klamaths filed this lawsuit in the United States District Court for the District of Oregon to enjoin state officials from regulating hunting and fishing by tribal members in the ceded lands. Ruling that the agreement of 1906 did not abrogate the Klamaths' hunting and fishing rights in the ceded territory, the district court granted summary judgment in favor of the Klamaths. The State appealed, and the Ninth Circuit affirmed. *Klamath Indian Tribe v. Oregon Dept. of Fish & Wildlife*, 729 F. 2d 609 (CA9 1984). The State then filed this timely petition for certiorari.

The State's argument throughout this litigation has been that the Klamaths gave up whatever hunting and fishing rights they may have had in the lands at issue when they ceded to the United States "all their claim, right, title, and interest" therein. The courts below rejected this argument on the grounds that the Klamaths' treaty-based hunting and fishing rights were distinct from their title to the land, and

² In 1969, the Indian Claims Commission determined that the consideration paid the Klamaths was inadequate and awarded them an additional \$4,152,992.80.

that the legislation ratifying the cession agreement not only contained no language specifically extinguishing those rights, but in fact provided that all rights not inconsistent with the cession agreement were to be preserved. The courts also found support in this Court's decision in *Menominee Tribe v. United States*, 391 U. S. 404 (1968), which held that the Menominee Tribe retained hunting and fishing rights in its treaty lands even after termination of their reservation status. Finally, both lower courts pointed out that in setting the valuation of the land, the boundary commission had not explicitly included in its calculations the value of the Indians' hunting and fishing rights.

The Ninth Circuit's conclusion that the Klamaths retained their hunting and fishing rights when they ceded "all their claim, right, title, and interest" in the 620,000 acres strikes me as somewhat curious. The treaty of 1864 specified only that the Klamath's had exclusive fishing and gathering rights within their reservation; accordingly, the suggestion that those rights survived the cession of reservation land and the Klamaths' renunciation of all their rights in the ceded lands is, on its face, dubious at best. The provision reserving all rights "not inconsistent" with the terms of the agreement provides only questionable support for the Ninth Circuit's ruling: retention of rights is hardly consistent with their surrender. To be sure, this Court has consistently held that treaties with Indian tribes are to be construed in favor of the Indians and that the abrogation of treaty rights is not to be lightly inferred, see *Washington v. Washington Fishing Vessel Ass'n*, 443 U. S. 658, 676 (1979); but the language of the cession agreement is not particularly ambiguous, and this Court has held similar language sufficient to diminish reservation boundaries and extinguish tribal rights in ceded lands. *Rosebud Sioux Tribe v. Kneip*, 430 U. S. 584 (1977). Standing alone, the cession agreement is not particularly supportive of the Ninth Circuit's position.

Nor does this Court's decision in *Menominee Tribe, supra*, dictate the result reached below. *Menominee Tribe* teaches that hunting and fishing rights in tribal lands survive the termination of the trust relationship between tribe and federal government and the consequent elimination of the "reservation" status of tribal lands. But a "terminated" tribe does not surrender its lands, as the Klamaths did here; rather, the tribe typically continues to manage its lands through a tribal corporation or trust. That members of a terminated tribe retain hunting and fishing rights in tribal lands has no direct bearing on the question whether tribal hunting and fishing rights are extinguished when a tribe cedes all its right, title, and interest in a tract of land.

That the Ninth Circuit's analysis is not unassailable might or might not be sufficient reason in itself to grant the State's petition for certiorari. What makes this case particularly worthy of this Court's attention, however, is that the Ninth Circuit's analysis is at odds with that employed by the Eighth Circuit in a similar case, *Red Lake Band of Chippewa Indians v. Minnesota*, 614 F. 2d 1161 (CA8 1980), *aff'g United States v. Minnesota*, 466 F. Supp. 1382 (D Minn 1979), *cert. denied*, 449 U. S. 905 (1980). *Red Lake Band* involved the question whether the hunting, fishing, and rice-gathering rights of the Red Lake Chippewas survived their agreement to "grant, cede, relinquish, and convey to the United States all [their] right, title, and interest in and to" certain former reservation lands. See 466 F. Supp., at 1384. Although the treaty did not mention the Indians' hunting, fishing, and gathering rights, the Eighth Circuit affirmed the district court's conclusion that the language of the cession agreement "was 'precisely suited' for relinquishment of the very rights the Band now claims it retained," *id.*, at 1385, and that the agreement thus sufficed to extinguish those rights in the ceded lands. Significantly, the *Red Lake Band* courts rejected the argument, found compelling by the Ninth Circuit, that *Menominee Tribe* commanded a contrary result.

Of course, *Red Lake Band* involved the construction of different treaties and the consideration of a different historical record from those at issue here. Nonetheless, the Ninth Circuit's reliance on *Menominee Tribe* and its holding that general language ceding all rights in reservation land is insufficient to extinguish hunting and fishing rights amount to a direct rejection of the analysis of the *Red Lake Band* courts. The conflict between the Circuits is thus a substantial one.

The question presented by this case is one of some importance: the decision below deprives the State of Oregon of full authority to enforce its fish and game laws in almost 1,000 square miles of its territory. The Ninth Circuit's decision at least debatable, and the conflict between the Ninth Circuit's reasoning and that of the Eighth Circuit on a question concerning Indian treaty rights—a subject in which this Court has traditionally taken great interest—indicates a need for guidance from this Court. I would grant the petition for certiorari.

Accordingly, I dissent from the denial of certiorari.

lgs October 1, 1984

*Gummy -
attach to
near of
mine
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so I can
see what
"Deny"*

MEMORANDUM TO JUSTICE POWELL

From: Lynda

Re: No. 83-2148 Oregon Department of Fish & Wildlife v. Klamath Indian Tribe

This case was originally scheduled for the September 24, 1984 Conference and was relisted for JUSTICE WHITE to dissent from the Conference's vote to deny cert.

JUSTICE WHITE primarily reiterates the arguments for a grant contained in the pool memo. He finds a conflict between CA9's interpretation of the treaty language here and CA8's interpretation of similar language in another treaty in Red Lake Band of Chippewa Indians v. Minnesota, 614 F.2d 1161 (CA8), cert. denied, 449 U.S. 905 (1980). He also disagrees with CA9's conclusion that its result was dictated by Menominee Tribe v. United States, 391 U.S. 404 (1968), and argues that CA8 read Menominee Tribe differently.

I recommend that you adhere to your previous vote, for the same reasons I recommended initially that you vote to deny. Red Lake Band involved the interpretation of a different treaty, one that did not contain the express reservation of benefits contained in the Klamath treaty. CA9's opinion was not without basis, and I am not convinced of the future importance of the issue.

April 30, 1985

83-2148 Oregon Department v. Klamath Indian Tribe

Dear John:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,

Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

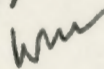
May 1, 1985

Re: 83-2148 - Oregon Dept. of Fish & Wildlife
v. Klamath Indian Tribe

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 1, 1985

No. 83-2148 Oregon Dept. of Fish and Wildlife
v. Klamath Indian Tribe

Dear John,

Please join me.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

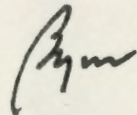
May 2, 1985

83-2148 - Oregon Department of Fish
and Wildlife v. Klamath Indian Tribe

Dear John,

I agree.

Sincerely yours,

A handwritten signature in dark ink, appearing to be "Stevens", written in a cursive style.

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 6, 1985

Re: No. 83-2148-Oregon Dept. of Fish and Wildlife v.
Klamath Indian Tribe

Dear John:

In due course I hope to circulate a dissent in this one.

Sincerely,

Jm.
T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

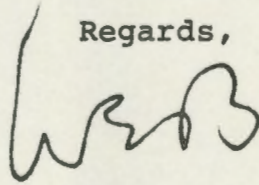
May 22, 1985

Re: No. 83-2148 - Or. Dept. of Fish & Wildlife v.
Klamath Indian Tribe

Dear John:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRS' or similar, written in a cursive style.

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

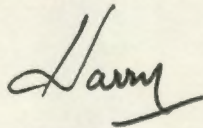
June 24, 1985

Re: No. 83-2148, Oregon Dept. of Fish & Wildlife
v. Klamath Indian Tribe

Dear John:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a long horizontal flourish extending to the right.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 24, 1985

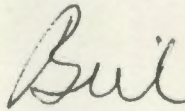
No. 83-2148

Oregon Department of Fish
& Wildlife v. Klamath Indian Tribe

Dear Thurgood,

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Marshall

Copies to the Conference

83-2148 Oregon Dept. of Fish & Klamath Indian Tribe (Annmarie)

LFP Out - letter 4/30/85

JPS for the Court 3/4/85

1st draft 4/30/85

2nd draft 5/29/85

Joined by WHR 5/1/85

SOC 5/1/85

BRW 5/2/85

CJ 5/22/85

WJB 6/24/85

HAB 6/24/85

TM dissenting

1st draft 6/24/85

1st draft 6/25/85

TM will dissent 5/6/85