

THE COAST RESERVATION

*“A suitable selection shall be made by the President
for their permanent residence.”*

THE CHURNING VIOLENCE, AND THEN ALL-OUT WAR, THAT FOLLOWED the Table Rock Treaty of September 1853 did not constitute all the Indian history made in southern Oregon during 1854 and 1855. Indeed, the turmoil made policy decisions and diplomatic initiatives, embodied in treaties, all the more imperative. If it is true that whites were most often the aggressors, that fact took a back seat to Commissioner George Manypenny’s policy that, whoever might be at fault, Indians must be removed to permanent homes in remote areas to separate them from American settlement. To this formulation the commissioner added a new element. With so many tribes and bands, creating separate reservations for each would be inefficient. Instead, Indian peoples in western Oregon would be moved and confederated on just one reservation. In 1855, the Coast (or Siletz) Reservation was established. Two years later, a separate and smaller reservation, the Grand Ronde, was created on the eastern border of the Coast Reservation.

Joel Palmer drove the events from the federal side. In the early 1850s, he had played second fiddle to Joseph Lane, but the conflict at Battle Mountain in 1853 was Lane’s last military excursion, and the ensuing treaty at Table Rock marked his final face-to-face negotiations with tribal leaders. Lane continued to work on some Indian issues; as territorial delegate he pressed hard to move western Oregon tribes east of the Cascades and he supported reimbursement to Oregon citizens who suffered damage from conflicts with Indians. He directed

his efforts in Congress, however, primarily toward achieving statehood for Oregon, addressing the slavery question, and, not inconsequently, furthering his own political ambitions that would give him a place on the Democratic ticket in the presidential election of 1860. Commissioner Manypenny took a keen interest in western Oregon—after all, this was the proving ground for his new policy—but he was in distant Washington, D.C. Joel Palmer worked in Oregon and, for the most part, his decisions were the decisions of the United States of America.

Right or wrong, like him or not, the tall, strapping, and gregarious Palmer was as active and committed a public official as one will find. He was the principal person charged with carrying out Manypenny's policy—but it was Palmer's policy, too. It is hard to exaggerate his fixation on finding a "permanent home" for the tribes, separate from the whites. To him, only separation and stable land tenure could stem the violence and give tribes a chance to survive. He genuinely cared both for the dreams of the burgeoning numbers of American settlers and for the humanity of Indian people. He wanted Indians to have land and peace, and he unflaggingly rode rough wagon roads and trails across nearly all of western Oregon and to the Upper Klamath country beyond the Cascades in his quest to find the best place.

Still, many American citizens in Oregon comfortably incorporated the word "extermination" into their daily discourse. With that approach foreign to Palmer's thinking, the prevailing public opinion about him ranged from distrust to disdain and led to his downfall in 1856. Against this backdrop of conflict that made bilateral federal-tribal policy so essential, Joel Palmer was the architect of the system that removed Indians from the daily lives of western Oregon settlers, inflicted enormous pain and upheaval on the tribes, and held out the promise—if the promise could be kept—of a better future for Native people.



Palmer moved at a fast pace in his crusade to locate western Oregon Indians on separate reservations, away from the ever-increasing settlers. The Table Rock Treaty of 1853, signed in September, was followed several days later by the ratified treaty with the Cow Creek Band of Umpquas, which also provided for a temporary reservation, to be followed, if necessary, by a permanent home. In March 1854, Palmer signed a treaty with the Tualatin Band of Kalapuyas, promising them farm implements, clothing, other assorted goods,

and \$300 in cash. In exchange for its lands in the northern end of the Willamette Valley, near Portland, the tribe received no specific reservation, only the assurance of one in the future. As with so many of the Willamette Valley treaties, Congress never ratified it.

With the Oregon Coast and the Klamath country east of the Cascades much on his mind as the best locales for permanent reservations, Palmer set out with pack trains on exploratory visits to both. In April 1854, he reported on the profusion of coastal shellfish, crabs, and berries and noted that “Salmon and other fish in perpetual Succession visit the streams.” But he conceived of Indians as Jeffersonian farmers, not as the gatherers they had been for millennia. Accordingly he emphasized, because of the “dense forest” and narrow valleys, that only the more level uplands would “admit of cultivation and [have] a fertile soil.” Now, in his first visit to the area, he was “less favorably impressed” than he had expected to be with a 100-mile stretch of the north-central Coast as the permanent Indian homeland:

Between the Si us Slaw and Neachasna [the Salmon] a country enough to Settle all the Indians in the Willamette and Umpqua Valleys and on the Coast, but they would be required to live in Small communities, in Scarcely accessible valleys; and a great number of farmers, mechanics, teachers, and Agents would be required for their proper instructions and control.

In August, to examine the alternative site, Palmer ventured across the Cascades to the Upper Klamath River watershed, home of the Klamath Tribe. This could be the place to move some western Oregon tribes, who would presumably be interested in grazing and farming: “An abundance of nutritious grasses borders these lakes and Streams. . . . The Soil is rich and appears suited to the growth of cereals, and the usual production of the garden.” Klamath country, it followed, was “suited to the colonization of the Indians of the Willamette and Umpqua Valleys,” and, while those tribes had “expressed a decided opposition to removing east . . . their consent can now be easily obtained.” This was a curious statement because the valley tribes had been steadfast against the “east of the mountains” proposals from the beginning. The optimistic superintendent may have been caught up in his enthusiasm over the Klamaths’ agricultural potential. A year later, Palmer dispensed with the idea altogether.

Upon returning from Klamath country, Palmer received a noteworthy letter from Commissioner Manypenny. The United States now added a critical

element to the new Indian policy. The circumstances in Oregon, Manypenny ordered, required that large groups of tribes be confederated and coexist together: “It is of great importance . . . that . . . the numerous small bands of fragments of Tribes be united into tribes, and concentrated upon reservations as limited in number as possible.”

It is true that a kind of confederation had already been accomplished in the Table Rock Treaty, where three tribes were involved. That grouping in 1853, however, resulted from an ethnological confusion in which whites routinely referred to the linguistically distinct Takelma, Shasta, and Athapaskan tribes as “the Rogue River tribe” and so the treaty described them all as being a single tribe. Now, a year later, the United States made confederation into official policy, especially in the Pacific Northwest.

None of the tribes and bands wanted to confederate. They had built societies and governance around their own village systems and were separate peoples who often spoke different languages. Sometimes age-old grievances scarred relationships between tribes. None of this mattered to the United States. For the government, confederation was more efficient and less expensive and it became the predominant organizational device in Oregon, Washington, and other states as well.

With the policy of confederation now fully in force, Palmer went into a new round of treaty-making. He traveled to southern Oregon to negotiate a supplemental treaty with the three tribes on the Table Rock Reservation. The occasion lacked the high theatre of the year previous. Palmer came with a small company, and the tribal leaders, determined to hold the fragile peace, never threatened military action. But Tyees Joe, Sam, and John balked when Palmer proposed moving additional tribes and bands onto the Table Rock reserve. Divisiveness among the three tribes already on the reservation, they argued, “would be increased by the residence of strange Indians.” The Indian agent pressed on, reminding the tyees that the 1853 treaty made no allowance for schools, blacksmith shops, or a hospital; those and other benefits, including oxen, wagons, and clothing, would be provided if the additional Indians could be moved onto the reservation. In the end, Palmer prevailed. The new treaty, signed on November 15, 1854, gave unfettered federal authority to add tribes to the reservation—the ability, really, to redefine the basic natures of these societies by deciding with whom they would live.

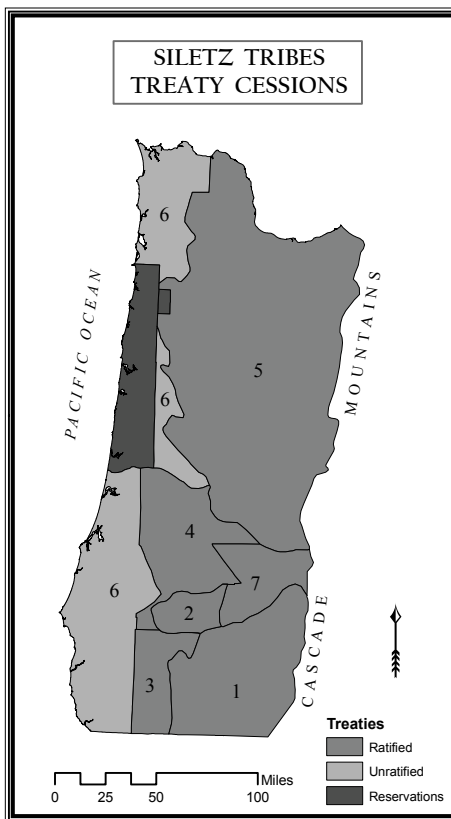
Palmer’s next order of business, which he accomplished three days later, was to bring new groups onto the Table Rock reserve and obtain land cessions from them. This treaty was negotiated downriver, at the mouth of the Apple-

gate River, with tyees from the Shasta bands from Deer Creek on the Upper Applegate; the Scotons, a Takelma village just below Galice Creek; and the Grave Creek Band of Takelmas. These groups strenuously objected to being amalgamated with the foreign tribes on the reserve, but to no avail. Palmer obtained signatures that both acceded to confederation and relinquished Native ancestral lands.

Palmer continued on, seeking to clear Indian title in western Oregon and consolidate tribes on temporary reservations, knowing that removal to still other lands would likely follow. He brought together Umpqua and Kalapuya bands of the middle Umpqua Valley and obtained a treaty that located them on a temporary reservation.

This agreement of November 29, 1854, gave the United States sweeping authority to add still more bands to the confederation created by the treaty and to move all of them to a permanent reservation.

Then Palmer made a major move, bringing together nearly all of the Willamette Valley tribes and bands in January 1855. Following his pattern, he obtained the cession of Kalapuyan, Chinookan, and Molala aboriginal land and required the tribes to confederate. As with all the tribes, Palmer acknowledged that his “most difficult task [was] to obtain their consent to leave their old homes.” But he had the force of empire on his side and persuaded



<i>Number</i>	<i>Treaty</i>	<i>Date</i>
1	Table Rock Treaty	Sept. 10, 1853
2	Cow Creek Treaty	Sept. 19, 1853
3	Chasta, Scoton, and Grave Creek Treaty	Nov. 18, 1854
4	Umpqua and Calapooia Treaty	Nov. 29, 1854
5	Kalapuya Treaty	Jan. 22, 1855
6	Unratified Coast Treaty	Aug. 11 - Sept. 8, 1855
7	Molala Treaty	Dec. 21, 1855

them to move to a temporary reservation with the promise that a permanent reserve would follow. This treaty, the largest single land acquisition from the tribes of western Oregon, secured for the United States 7.5 million acres (about 12 percent of Oregon), the entire Willamette Valley to the middle of the Columbia River. Settlement on those prized agricultural lands was now fully legal under American law. The tribes received about 3 cents per acre as compensation.

With this burst of treatymaking, save for the lands of the coastal tribes and a small southern band of Molalas, Joel Palmer had obtained Indian title to all of western Oregon. All of the reservations were temporary. These agreements, which were ratified by the Senate, were just the beginning of a removal to new lands and the confederation of diverse peoples. Still ahead lay the largest removal of all, probably to the Coast. Once treaties with the coastal tribes were signed, the final piece of the elaborate federal strategy would be put in place.



As Indian superintendent for the entire Oregon Territory, Joel Palmer had obligations elsewhere and, as of the early spring of 1855, could not immediately pursue his grand plan of treating with the coastal tribes and then locating all western tribes on one large reservation. Instead, working closely with the aggressive Isaac Stevens, both governor and superintendent of Indian Affairs for Washington Territory, Palmer traveled to the middle Columbia River on important business. American settlement along the Columbia did not come close to the relative boom in the Willamette Valley, but the region had excellent potential for farming. Also, there was some tension with the tribes, especially with Yakama Chief Kamiakin. It was time to negotiate treaties with the inland Columbia River tribes.

Stevens and Palmer negotiated four major treaties in May and June, obtaining tens of millions of acres from tribes and bands of the region and establishing the modern-day Warm Springs, Yakama, Umatilla, and Nez Perce reservations. Except for the Nez Perce, the mid-Columbia treaties all followed the prevailing policy of creating reservations of several confederated tribes and bands.

Upon his return in July, Palmer turned his full attention to the western Oregon tribes. He was gratified on one score. Before leaving for the mid-Columbia, he had resolved the central question plaguing him since taking

office: where should the western tribes be permanently located? He had become satisfied that they simply would not agree to go east of the mountains. The solution was the Coast Reservation he had imagined two years before, even before the Table Rock Treaty had been signed.

Palmer had taken decisive action. On April 17, 1855, he filed formal papers designating an Indian reservation of stupendous scope—from the divide between the Siuslaw and Umpqua rivers in the south to Cape Lookout in the north, a distance of 105 miles, reaching 23 miles inland in the south and 12 miles in the north. The reservation would be made permanent through treaties with the coastal tribes. The same day, Palmer wrote to Oregon newspapers and candidly explained his reasons for the proclamation, which closed the entire area to settlement by whites:

I would be pleased to have you call the attention of settlers particularly to this subject as it is one of great importance to the well being of these waning tribes, no less than to the maintenance of good order and morals in our community.

There may be found persons seriously objecting to the selection of a reservation in the district indicated. But the habits of the Coast Indians, their mode of subsistence and the absence of any natural facilities for sustaining life east of the mountains, argue strongly against their removal to the interior. . . . [N]o part of our line of Coast affords equal facilities for the Indians Reservation with so few attractions, for white settlements as this one selected.

In order to avoid any conflict of claims growing out of occupancy by settlers, I have deemed it best to give timely notice so that persons may not select claims within the tract described.

Three months later, Palmer could rightly conclude that setting aside the coastal lands had caused little stir. This is not to say he lacked detractors. The apparently unfounded allegation that he was sympathetic to the nativist, anti-immigrant Know Nothing movement hurt him with his own Democratic Party and caused him to think he might be removed from office. No one, however, doubted his ability, commitment, or energy.

And plenty of energy would be needed to persuade the Coast tribes to relinquish most of their land, confederate, and move to the new reservation. Since they were located along the whole Coast from the Columbia River to the California line, the negotiations would have to be done in stages and

would require elaborate advance planning. Goods—agricultural equipment, tools, kettles, clothing, blankets, beef, flour, and presents such as calicoes, beads, knives, hatchets, and tobacco—would have to be provided at five separate council sites. To do this, Palmer issued orders to accommodate deliveries to strategic coastal points: a shipment by steamer from the Willamette Valley to the mouth of the Columbia; the construction of a new trail for a pack train over the Coast Range to Tillamook Bay; a delivery by pack train to the mouth of the Umpqua; and shipment of goods, including two tons of flour, by steamer to Port Orford. As for his own travel, even though rivers and creeks would be running low in the summer, the rugged terrain would make his journey arduous. Still, we can doubt that Palmer much minded all this. He was a prodigious traveler and loved getting out of town on horseback to Oregon's backcountry. This would be especially true for the treaty tour, which he hoped would make his vision for western Oregon a reality.



Both sides of Joel Palmer's Indian policy showed through on this long-distance expedition. Fearful that Indian people might be annihilated altogether, he desperately wanted to give them a chance to survive and prosper. But, as an officer of the United States, he was bound to serve the American population and would be resolute in fulfilling that duty. He would establish by treaty the large reservation he declared on April 17 as a permanent Indian reserve, which he viewed as a fair and generous homeland. The tribes would cede to the United States of America all other land "from the middle of the channel of the Columbia River" to "the southern boundary of the Oregon Territory," and west of the summit of the Coast Range.

Knowing he would be holding five separate councils of tribes and bands that would be confederated by the treaty, Palmer took the unusual step of drafting in advance just one treaty that would be signed successively by tyees at each council site. No changes would be made. There would be talks, translated in the Chinook Jargon by John Flett, a Canadian Native employed by the United States as interpreter, who had participated in most of the western Oregon treaty convocations. Doubtless, Palmer and the handful of other federal officials would listen politely and give explanations. But Palmer would stand firm on the treaty he had composed. These councils would be signings, not negotiations.

Palmer's cavalcade of three pack trains set out on its lengthy journey down

the Coast in early August. The formal treaty proceedings commenced on August 11 with a council of northern tribes at Yaquina Bay. Forty-one tyees from four bands of Tillamook, Alsea, and Yaquina put their “X’s” on the document. Just six days later, Palmer and his men held council farther down the Coast at Coos Bay with leaders from the Coos, Siuslaw, and Lower Umpqua tribes. While there are no formal minutes from, and few reports on, these councils, we can be sure that the reaction of the Indian people on that day at Coos Bay reflected the sense of loss held by all the coastal tribes as, with no real choice, they submitted to land cession, confederation, and removal to new lands:

Some old Indians said after the treaty was signed, the Indians gathered on Tar Heel point and held a special ceremony. Old chiefs who had ruled their people with a firm but gracious hand said a few words. Then they bowed their heads and a medicine man called on the Great Spirit. The Indians buried a stone hatchet in the ground, and the waves beat a mournful dirge along the shore.

At the meeting with Coquille tyees on August 23, Palmer pressed a theme that he doubtless urged at all of the councils. The tribes would benefit by moving to the new reservation and being separated from the whites:

If we have a bad man who shoots an Indian, and Indian goes & sees the agent before he gets there the bad man has gone and we cannot get him. . . . They sometimes give them disease and it is spread among other of their people, it is bad—we know these things are so, we want to prevent this—we want to do them good & make them a people, it is for these reasons that our chief thinks it best to have a country of their own, where no whites will be allowed to live among them.

Palmer’s party then held council with the Tututnis and Chetcoes. “The council ground,” wrote Rodney Glisan, an army doctor, “was located in a beautiful myrtle grove on the south bank of the Rogue river, three miles from its mouth.” The Indians knew that the treaty convocations were monumental, historic events for their people, and the councils with coastal tribes were all well attended. On the Rogue River, for example, Dr. Glisan reported that 1,220 Indians gathered in the myrtle grove, where fifty-five Tututni and Chetco representatives affixed their marks.

The last of the councils for the 1855 treaty took place with bands of Upper Coquilles on September 8. Coquelle Thompson was a boy then and his father was one of the signatories. His account of the session includes this questioning of Joel Palmer:

“You say you take us Willamette. What kind of place?” “Well,” Julian Palmer say, “just like here, only more open place. The Willamette is a big river.” Question again from chief, “I want to know, any deer in there?” “Deer? Of course there’s deer in there. Lots of deer in there!” “Any fish in there?” “Oh yes! Lots of spring fish. All kinds of fish, just like you got here.” “Any eels?” “Oh yes! Lots of eels, Oregon City. Big falls there! Lots of eels, hang that way!”

. . . Oh everybody glad now. Indians ready to give up now, ready to go. “Any elk there?” “Oh yes, elk there! Everything you see here, everything there! Bear!” “Any berries there?” “Oh yes, everything you have here: strawberries, blackberries, salmonberries, everything you got here, just same there.” That’s all they want to know, you see. All leaders stand up before treaty people. They say, “We’ll go now, we give up now.” Oh Jerry Palmer clap his hands.

The exchange demonstrates the difficulties of language, the inadequacy of the Chinook Jargon as a vehicle for treaty negotiations, and the power differential between the federal and Indian sides. It is unclear why Palmer would have referred to the Willamette Valley, since the treaty calls for removal to the Coast Reservation. Perhaps he was misleading the questioner, or perhaps he was thinking of the additional area at Grand Ronde, adjacent to the Coast Reservation but in the valley, a plan that he would formally propose a few months later. Even then, though, tribal members would have no right to fish in the Willamette River or at Willamette Falls since those places were a good distance beyond the borders of the Grand Ronde site Palmer may have had in mind. And Coquelle Thompson was just six in 1855. Perhaps his memory, or his recollection of the account his father related to him, was faulty. Perhaps the Coquilles heard one conversation and Palmer another.

What we can be sure of is that any good faith and honorable intentions were choked off by the atmosphere for Indian-white relations in Oregon of the 1850s, which was afflicted by misunderstandings, distrust, a wide and deep cultural and language gap, and threats and fears of violence. Nonetheless, from one perspective the Coast Treaty of 1855, with all its imperfections,

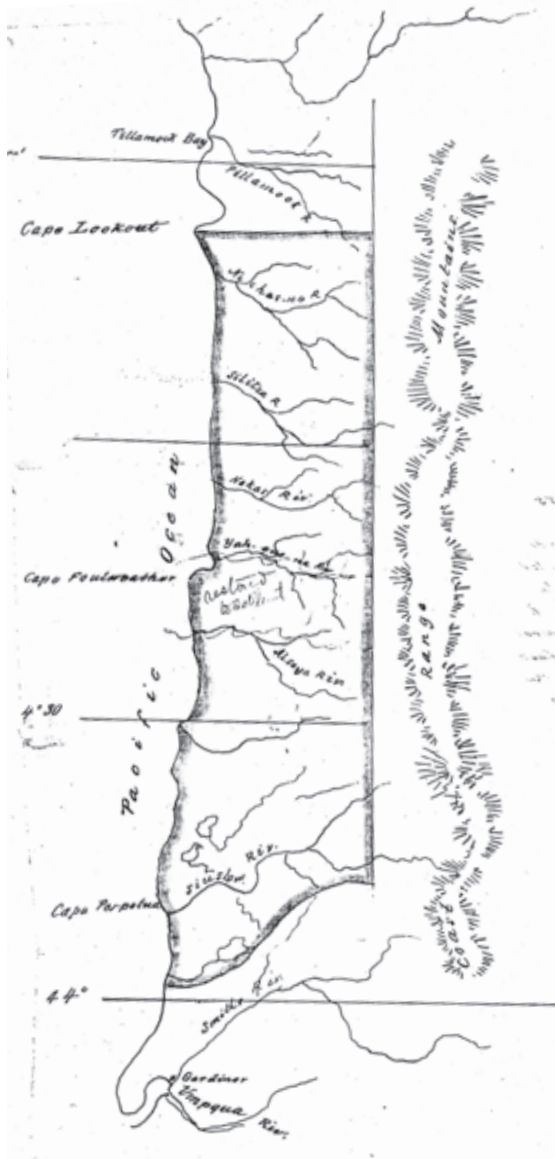
offered some hope. With the signing of the treaty by Palmer and tribal representatives and the presumed approval by the Senate, the tribes seemed to be assured of a large, magnificent, and permanently secured homeland. But the saga of Indian land rights on the Coast had only begun to be written.



Despite all the effort by Palmer and Indian leaders—and despite the congressional and administrative determination not to repeat the destabilizing mistakes of the past in failing to ratify Oregon treaties—Congress never ratified the 1855 Coast Treaty. This was not due to objections to Palmer’s plan for locating the coastal tribes on a permanent reservation or even to concerns about the size of the reservation. Instead, confusion wrought by rudimentary long-distance communications, the outbreak of the Rogue River War, and legal uncertainties over presidential power led, not to a ratified treaty, but to an executive order by President Franklin Pierce establishing a reservation nearly identical to the original April 17 reserve Palmer had proposed. When the Interior department received the Coast Treaty just a few days after the president signed the executive order, the Senate was in recess. Soon thereafter, the department submitted several treaties when Congress resumed business, but the Coast Treaty sat in the Interior department for fifteen months before it was sent to the Senate. Commissioner Manypenny reported that the treaty had been “overlooked.” The muddled process left in its wake a tangle of problems that would plague western Oregon Indians for generations.

Returning to his office in the Willamette Valley town of Dayton after negotiating the Coast Treaty, Joel Palmer, who had no way of knowing that time would be of the essence, waited nearly a month before sending the treaty and his report back to Washington on October 3, 1855. The treaty package literally went by slow boat, first by steamship to San Francisco and then by a three-to-four-week ocean journey from San Francisco to New York via the Panama railroad route, which had opened in 1855. Presuming that the trip from New York to the nation’s capital was accomplished in just a few days, mail from or to Oregon took between five weeks and three months.

Earlier in the year, in reporting on his declaration of the Coast Reservation on April 17, Palmer had asked for ratification of this set-aside land; he had been given basic instructions and accorded broad authority, but he had acted unilaterally and understandably wanted confirmation of this sweeping administrative action. In addition to the slow pace of the mail, two additional



Joel Palmer's original map of the Coast Reservation, developed in April 1855 in connection with his closing the area to homesteading by non-Indians and taking the initial step toward establishing it as a reservation for the exclusive use of the Coast, Willamette, Umpqua, and other tribes. President Pierce's executive order of November 9, 1855, establishing the Coast Reservation, was based on Palmer's request, which included this map.

months had been taken up by a malfunction: Palmer's letters had arrived, but he had sent the map in a "tin case," which had been delayed in transit. In the meantime, the Interior department advised Palmer to notify land officers to assume that the designation of Indian land was valid and that no settlements by whites should be authorized.

By September, the map of Palmer's April set-aside had arrived and the commissioner of the General Land Office recommended to the secretary of the Interior the creation of "a large reservation of land, for the Coast, Umpqua, and Willamette Tribes." The GLO commissioner, who had no way of knowing that out in Oregon Palmer had just obtained the last signatures on the Coast Treaty, further recommended that a presidential order be obtained.

Secretary McClelland then requested a full report from Commissioner Manypenny, who responded at some length on October 29. He reviewed

Oregon Indian policy and Palmer's request that his August 17 set-aside "be made a permanent Indian reserve." Manypenny then advised that "this course does not conflict with the uniform policy of the Government, and is in keeping with that pursued in the case of the treaties in Oregon already ratified." The commissioner emphasized that action on Palmer's request could not have been taken earlier "in the absence of the map." With the map now in Washington, however, and because "very great embarrassment must result to the service because this subject has not been determined," Manypenny agreed that the permanent reservation recommended by Palmer should be established, subject to later adjustments by treaty or legislation:

As therefore, the policy of concentrating the Indians upon one or more reservations, is that already adopted in the State of California, by Act of Congress, and I know no reason why the recommendation made by the Supt. is not the best in view of all the surrounding circumstances that can be devised, I respectfully recommend that the tract of land designated on the accompanying map from the General Land Office as that "proposed for Coast & Umpqua & Willamette Indians," be reserved from sale or settlement, and set aside for Indian purposes—subject however to such curtailment in dimensions as treaties here after to be made and ratified and a better knowledge of the requirements of the Indians may admit under the direction of Congress. It is only by some such action that the salutary provisions for treating with the Indians of Oregon for a cession of their lands to the United States, and their consequent concentration at any point can be carried into effect, without the delay of further legislation, if not war and bloodshed.

Having received Commissioner Manypenny's report, Secretary McClelland made his recommendation to the president on November 8:

Before submitting the matter to you I desired to have a more full report of the subject from the Indian Office, and the letter of the head of that Bureau, of the 29th ultimo . . . having been received and considered, I see no objection to the conditional reservation asked for, "subject to future curtailment, if found proper," or entire release thereof, should Congress not sanction the object rendering this withdrawal of the land from white settlement at this time advisable.

A plat marked A, and indicating the boundaries of the reservation,

accompanies the papers, and has prepared thereon the necessary order for your signature, should you think fit to sanction the recommendation.

The matter went to President Pierce's desk the following day. Because of the slow course of the mail, the officials in Washington still did not know that two months before, Joel Palmer and tribal leaders had executed the Coast Treaty, which called for a reservation very similar to the one referenced in the executive order. The treaty would arrive in Washington just five days after the secretary presented the executive order to the president, but by then the president had already signed the executive order:

November 9, 1855

The reservation of the land within denoted by blue-shaded lines is hereby made for the purposes indicated in letter of the Commissioner of the General Land Office of the 10th September last and letter of the Secretary of the Interior of the 8th November, 1855.

Frank'n Pierce

The executive order can be viewed in three different ways. First, and most likely, it can be understood as fulfilling the president's duties in the Oregon Indian treaties to provide "permanent" reservations if tribes are moved from their temporary reserves. Second, President Pierce's order could be viewed as a separate, stand-alone action, providing the kind of rights that attach to those executive orders not related to treaties. Third, the order might be read as creating a lesser kind of executive order reservation—one that is "conditional."

These distinctions have considerable legal consequences. Treaty land is fully owned by the tribe. It is not subject to unilateral action by a president; only Congress can remove land from the reservation. If treaty land is taken (Congress does have the power to abrogate Indian treaties), the tribe is entitled to full compensation under the Fifth Amendment to the Constitution.

Stand-alone executive orders, unrelated to treaties, are different. While Congress in the twentieth century granted important protections to executive order reservations, the courts had long upheld presidential rights to adjust reservation boundaries. As late as 1942, the U.S. Supreme Court ruled that executive order tribal land is "subject to termination at the will of either the executive or Congress." Unlike treaty land, if Congress does take executive order land, then it is not subject to compensation under the Fifth Amend-

ment. Finally, if the Coast Reservation were “conditional”—that is, temporary—then any tribal rights would be minimal, especially in the days before Congress took steps to give additional protections to executive order reservations.

The difference between reservations being altered by Congress or by a president acting alone would prove to be of great moment at Siletz. A decade after President Pierce created the Coast Reservation, President Andrew Johnson unilaterally—and probably illegally—signed an executive order divesting the tribe of 200,000 acres, about one-fifth of the reservation.

President Pierce based his order in part on Secretary McClelland’s brief and seriously flawed one-paragraph letter, which purported to accept Commissioner Manypenny’s recommendation for a “conditional” reservation. The commissioner, however, never used the term “conditional” and did not intend such a result. In addition, McClelland misquoted Manypenny’s letter, which nowhere described the proposed reservation as being “subject to curtailment, if found proper.” While Manypenny employed the term “proper” three times, he always tied it to whether the reservation should be established in the first place. McClelland’s combining of the two passages can be read as applying “if proper” in a different sense, to the curtailing—that is, termination—of the reservation. And, although he never made the claim, perhaps McClelland’s letter suggests that it is the president, not Congress, who decides when it is “proper” to remove land from the Coast Reservation.

Secretary McClelland’s letter to President Pierce was terse in the extreme and may have been written hastily. He almost certainly failed to think through the effect of the Oregon treaties, which did not allow the president the option of creating a “conditional” reservation. To some extent, that was understandable. The use of presidential executive orders to create Indian reservations was brand new at the time, having been used only three times, all earlier in 1855, to establish reservations in Michigan and Minnesota. None of them involved prior, ratified treaties.

But, whatever one may make of McClelland’s communication, there is no reason to believe that President Pierce was attempting to infringe on Congress’s authority over Indian treaties. The executive order never used the term “conditional” or asserted a presidential prerogative to abridge this reservation, which traces to promises in the Oregon treaties. Even treaty reservations can be altered or terminated, although it must be done by Congress, not by the president. That is why, in recommending a permanent reservation, Commissioner Manypenny was careful to qualify it in order to acknowledge congress-

sional authority under existing law: “subject, however, to such curtailment in dimensions as in treaties hereafter to be made and ratified . . . *under the direction of Congress.*”

In fact, while presidents had broad power to create executive order reservations, the special nature of the western Oregon treaties significantly narrowed that authority. The Table Rock Treaty of 1853 first implemented the policy of establishing a temporary reserve that the president could curtail if, and only if, “a suitable selection shall be made by the direction of the President of the United States for their permanent residence.” The Cow Creek Band of Umpqua Treaty included the same language, and the other five ratified treaties all promised those tribes that the president could move them from their temporary reservations only to permanent reservations.

Once the president was involved, then, the overriding law came from the ratified Oregon treaties. The high stakes, complexity, lack of direct Indian involvement, and the Interior department’s trust relationship to the tribes all make this a classic situation for applying the basic Indian law principle that ambiguities and uncertainties in treaties, statutes, and executive orders are interpreted in favor of the tribes. President Pierce’s executive order is properly understood as establishing a permanent treaty reservation, especially considering the controlling nature of the treaties and the text of the executive order itself, which never referred to any conditional or temporary status.

Within just three months after the executive order was signed, federal officials began conducting mass removals to the Coast Reservation. The original idea behind the reservation was that the Coast, Willamette Valley, and Umpqua Indians would be moved there, and many were. Then an exigency of the highest order arose. Although no one in Washington knew it, the Rogue River War had broken out with the massacre at Little Butte Creek a month before President Pierce signed the executive order. With the Takelma, Athapaskan, and Shasta people at the Table Rock Reservation in terrible jeopardy, Joel Palmer wrote Commissioner Manypenny that he was “satisfied of the futility of attempting a permanent Indian Settlement on the Table Rock Reserve and that its abandonment at once is the wiser course.” He proposed that the Table Rock tribes be removed to the Coast Reservation and that the initial plans to place the Willamette Valley tribes be changed. For them, he proposed a new land base, initially a temporary encampment and later, he hoped, a second and separate reservation—the Grand Ronde. Palmer then immediately carried out the removal of the people of the Table Rock tribes who remained peaceful under the protection of Fort Lane. After their march

north, they stayed at the Grand Ronde encampment until facilities were made available on the Coast, when most of them were moved to the Siletz River Valley within the Coast Reservation. At the close of the Rogue River War, they were joined by their fellow tribespeople from the upper- and mid-valley Rogue River country.

The establishment of the Grand Ronde Reservation in 1857 sheds light on the status of the Coast Reservation. Smaller at 69,000 acres and located at the headwaters of the Yamhill River on the west edge of the Willamette Valley, Grand Ronde was hand-in-glove with the neighboring Coast Reservation as a matter of policy. Grand Ronde was often called an “extension” of the Coast Reservation, and Palmer described it as “the key to the entrance of the Coast Reservation.” Grand Ronde was proposed mainly for Willamette Valley tribes, although this massive social reordering was anything but tidy: some individual Indians from the valley went to Siletz and some from the Coast and southern Oregon went to Grand Ronde.

By 1857, the Buchanan administration had come in with a new Indian commissioner and Interior secretary. Commissioner James Denver, a lawyer, had a long and diverse career in which, in addition to two separate stints as Indian commissioner and many years in law practice, he served as state senator and secretary of state of California, congressman, governor of Kansas (which then included Colorado, where the capital city was named after him), and brigadier general in the Union Army. In a detailed report, the commissioner recommended to Secretary Jacob Thompson the confirmation of the encampment at Grand Ronde as a permanent reservation. Denver reasoned that members of several tribes with ratified treaties already resided there and that “the treaty provisions with the Willamette tribes, as well as with the others above named, are such as clothe the President with the amplest power respecting the location of a reserve for their permanent home.”

The secretary approved the recommendation and forwarded it to President James Buchanan, with the provision that it be established “particularly for the Willamette tribes, party to the treaty of January, 1855.” The president proclaimed the Grand Ronde Reservation on June 30, 1857.

This treaty-based analysis invoked by President Buchanan was also the law when President Pierce created the Coast Reservation. That reservation was established for the Coast tribes, who did not have a ratified treaty, but also for the Willamette Valley and Umpqua tribes, who had four ratified treaties among them. The Molala signed a treaty for a permanent reservation in December 1855, and the Rogue River tribes, with their treaty promise of a

permanent homeland, if removed from Table Rock, were sent to the Coast Reservation.

Knowledgeable figures of the day treated the Coast Reservation as permanent. Commissioner Denver, in his report to the secretary of the Interior about the Grand Ronde executive order, set out the law and policy framework with sophistication. James Nesmith, who attended the Table Rock negotiations and was named superintendent of Indian Affairs for Oregon, wrote in 1858 that Palmer's initiatives for the Coast and Grand Ronde had together created "a permanent home for the Indians of the Willamette, Umpqua, and Rogue River valleys." The main architect of the Table Rock Treaty, Joseph Lane, who was by 1860 a U.S. senator, addressed the issue of white settlement on the Table Rock reserve. His bill, S.142, designed to clarify that homesteaders' rights to settle on the former Table Rock reserve should be confirmed, passed the Senate and was sent to the House, though it never went to a vote there. The text of Lane's bill explained with precision this important episode in Oregon history: how the Rogue River tribes were removed from Table Rock and now resided at Grand Ronde and Siletz, with rights to permanent residence there by virtue of treaty. Lane's bill stated that "the Indians inhabiting said tract temporarily set apart for their use were removed to the Grand Ronde and Siletz reserves, which had been selected for their permanent residence."



Ever since the arrival of white people in the Pacific Northwest and for many generations beyond, the legal rights of western Oregon Indians were no more substantial than a summer mist along the Oregon Coast. A leading instance is the failure of federal officials to acknowledge the truth that the Siletz Reservation was a permanent treaty reservation that could be altered only by the unequivocal direction of Congress. In a right world, that truth would have prevailed, not only because it was American law but also because it was born of the grit of Siletz ancestors, who, even as their leverage was slipping away, had the wisdom and determination to insist that their treaties include the right to a permanent reservation. But the world was not right, and in the wake of the treaties came the agonies of the ancestors' removal from their cherished homelands and, not long thereafter, the breakup of the magnificent reservation that had been promised to Siletz people forever.