

LOSING THE LAND

“We want to hold this land. . . . I will not leave.”

IN THE EARLY YEARS OF THE RESERVATION, SILETZ PEOPLE STRUGGLED to adapt to a new land, the aggressive federal overseer, forced farming, the government school, church proselytizing, and tenancy in common with other tribes. Concurrently, they had to contend with familiar outside forces—the ones that the remoteness of the reservation was supposed to protect against. On the one hand, the westward movement had its high ideals. Americans now had an unparalleled opportunity as the government adopted homesteading policies that guaranteed free land across the American West. But westward expansion had its ugly side, and it was not just the miners at Jacksonville and the other camps. There were many other people and reasons to settle the Pacific Coast, Indian reservation or no.

Yaquina Bay began attracting the attention of shipping and Willamette Valley agricultural and recreational interests in the early 1860s. After the shipwreck at the shallow mouth of the Siletz in 1856, the BIA brought shipments into Yaquina harbor and then six miles upriver, to Depot Slough, which served as the unloading site for the reservation. Word of the Yaquina spread. It had a tricky, shifting channel, but was the only usable harbor on the central Oregon Coast. Enthusiasm spiked in 1863 with the Americans' realization of what the Alsea Tribe had always known: Yaquina Bay held excellent beds of oysters—small, but “thickly clustered” and “finely flavored.” Then an alert went out that the Yaquina sands held paying quantities of beach gold.

Illegal encroachment on Indian reservations plagued Indian tribes throughout the nineteenth century. At Siletz, where trespassers began to

move in soon after the reservation was proclaimed, the government took some steps in the early 1860s to discourage settlers and seekers of timber, gold, salmon, and oysters. Soldiers directed gold miners to leave the reservation, and Oregon Indian superintendent J. W. Petit Huntington notified the public that the reservation was closed to homesteading. Agent Ben Simpson, in an effort to cut down the oyster traffic, gave an exclusive harvesting permit to Winant & Company out of San Francisco. The \$1,000 fee was dedicated to agency programs.

The encroachments continued. In 1864, a group of valley men working some seventy-five mule teams opened up a passable wagon road from Corvallis to Yaquina Bay, and for the first time the central Coast became accessible to citizens of the Willamette Valley. By the summer of 1864, tourists from the valley were traveling to the Coast to enjoy the sights and sounds of crashing waves and the wealth of birds and other wildlife. Two mining outfits worked the sands, although the area was never as rich as advertised. Oceangoing vessels dropped off goods for transport to the valley by wagon, Winant & Company opened a general store to supplement its oyster business, and other buildings went up.

With unauthorized entries reaching alarming levels, the government took action to block outside access to the reservation. Richard Hillyer had brought his ship up from San Francisco and began harvesting oysters. When warned that Winant & Company had the exclusive oystering rights, Hillyer thumbed his nose and refused to stop. Ben Simpson called in Lieutenant Herzer from Fort Hoskins, who arrested Hillyer. Hillyer, however, had connections and telegraphed the commanding general in San Francisco, who overruled the lieutenant. When the general learned the facts, he withdrew his order but by then it was too late. Hillyer had loaded his vessel with oysters and headed back to San Francisco.

When Hillyer sued Agent Simpson in Oregon circuit court in Corvallis, the government moved to dismiss the case. Hillyer argued that the bay was “outside” the reservation, but from the government’s side the oysterman had attacked the very existence of the reservation. As Superintendent Huntington warned, “The reservation might as well be abandoned at once,” because allowing settlers “to locate upon the numerous bays and inlets of the Coast . . . will be practically the same as if the whole district were opened to settlement.” While the case was pending, the defiant Hillyer responded by returning in September for a quick oyster harvest protected by fifteen “roughs.” In November 1864, Judge Riley E. Stratton rejected Hillyer’s claim, finding that the gov-

ernment had the right to remove trespassers on the reservation. Huntington acted quickly, directing Simpson to “without delay cause the immediate ejection of all such persons, whether they are engaged in cutting timber, taking oysters, or cultivating the soil.”

Even as the government fought and won Hillyer’s suit, the ground was shifting dramatically under the Siletz Tribe. The new wagon road had opened the eyes of the non-Indians to the Yaquina Bay area and its ocean resources, sand beaches, prime forests, and potential as a port. Pressure quickly built to establish a townsite for settlers and businesses. This would give farmers in the central Willamette Valley—who currently took their produce to Portland and then had it shipped out the Columbia and down the Coast—a forty-five-mile direct route to the ocean at Yaquina harbor, saving four to six days. Oyster and salmon fishers would also benefit from the services afforded by a town.

The matter of opening Yaquina Bay to non-Indians for settlement came to the desk of Commissioner of Indian Affairs William Dole in the late summer of 1864. Dole advised the secretary of the Interior that such a proposal “should not be entertained except for the most urgent considerations.” But Dole wanted to hear more and requested the secretary to order a full report from Oregon superintendent Huntington, which the secretary did.

Huntington’s reply in December 1864 was a blockbuster. His reasoning closely tracked the arguments being made by A. D. Barnard, a Corvallis farmer who urged that a townsite be established at Yaquina Bay. But he went much further. Barnard argued that the meadows in and near Siletz gave ample land for farming, and the Siletz watershed offered good fishing and hunting. The tribes should be removed away from the settlers and the whites should have Yaquina Bay—and the entire watershed. Huntington emphasized the benefits to “the counties of Linn, Lane, and Benton, and part of Polk (the best agricultural district of the Pacific coast)” and enthused that “the thrifty town which must grow up at the head of navigation will be no mean source of wealth to the nation as well as to the State.”

Superintendent Huntington agreed but did not stop there. The southern boundary of the reservation should be moved more than fifty miles north, “somewhere between the Yaquina and Siletz.” The Oregon superintendent, supposedly the trustee for the Siletz Tribe and its members, had recommended to the Interior secretary—just ten years after the creation of the reservation and in the name of supporting shipping facilities at one medium-sized harbor—that two-thirds of the reservation be eliminated!

By this time, James Nesmith had won election as United States senator

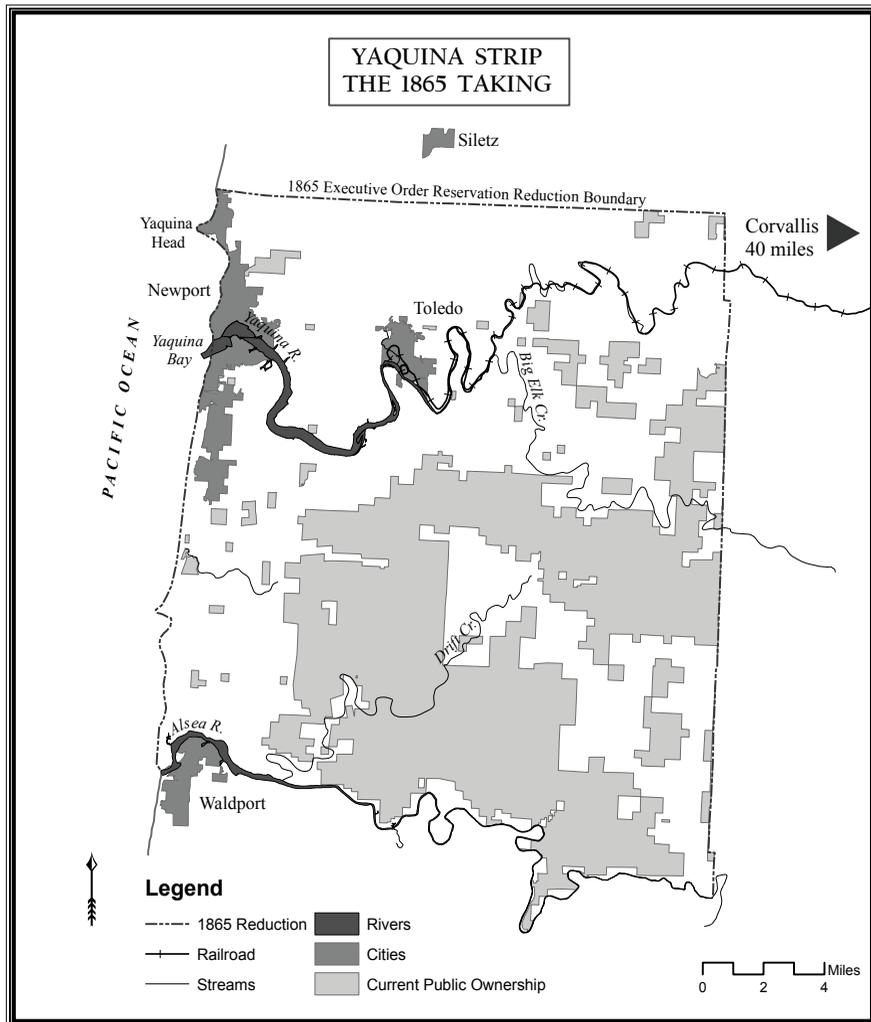
and chaired the Indian Affairs Committee. As a participant at the Table Rock Treaty negotiations in 1853 and superintendent of Indian Affairs for Oregon from 1857 through 1859, he knew the Siletz situation well. A veteran of the Rogue River, Cayuse, and Yakama wars, Nesmith never had much sympathy for Indians and was quick to respond to the desires of his non-Indian constituents. He cooperated closely with the Interior department in drafting papers to support a presidential executive order to open up the Siletz Reservation. In addition to recommending that the Yaquina watershed parcel be removed from the reservation, he wrote that “I also set forth in the memorial that there were no Indians on the strip proposed to be vacated.” This was untrue and, in light of his service as superintendent, it is hard to imagine that he believed it.

Secretary of the Interior James Harlan, assuring the president that Yaquina Bay was “a small and rugged portion of the reservation . . . not occupied or desired by the Indians,” recommended an executive order to President Andrew Johnson on December 20, 1865. The area to be removed ran from a point two miles south of the Siletz agency south to the Alsea River and then east to the reservation boundary near the crest of the Coast Range: twenty miles of the Coast and fifteen miles east to west. This was less than half the size recommended by Huntington, but it amounted to a full 200,000 acres, more than 300 square miles. On December 21, President Johnson signed the executive order:

The recommendation of the Secretary of the Interior is approved, and the tract of land within described [in the secretary’s recommendation] will be released from reservation and thrown open to occupancy and used by the citizens as other public land.

While the Siletz lacked the means to challenge the executive order in court, the president’s action was illegal and would probably have been struck down if the case had been properly litigated at that time.

The courts have been precise about mapping out the separation of powers between the Congress and the executive branch when it comes to Indian affairs in general and Indian treaties in particular. The Constitution lodges authority over Indian affairs in the Congress: under the Commerce Clause, Congress has power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The Supreme Court has described that authority as “plenary and exclusive.” Thus, if treaty rights are to be abridged, it must be done by Congress, not the president.



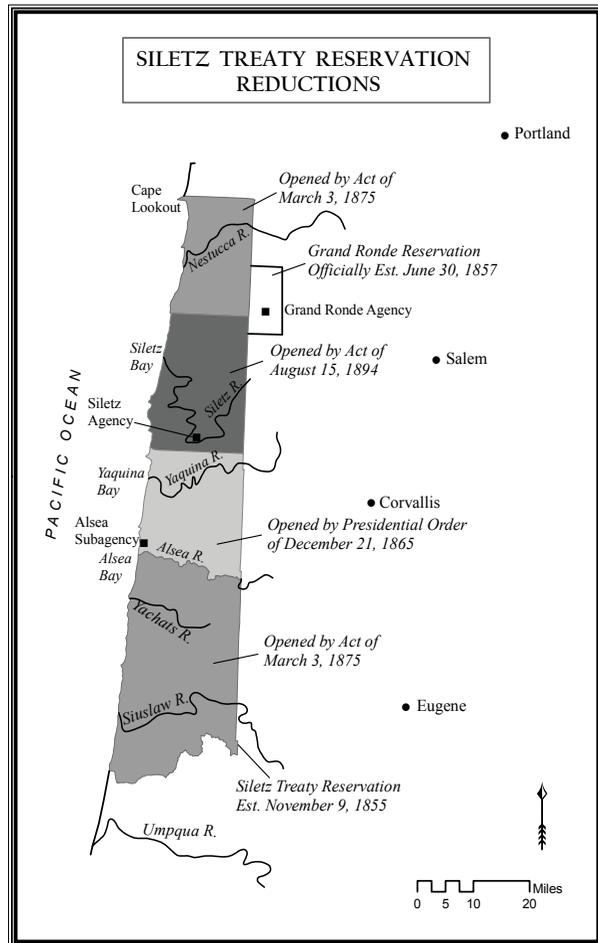
From the earliest days of the Republic, Supreme Court opinions and statutes have required that tribal lands can be sold or taken only with the approval of Congress. Early twentieth-century cases invalidated executive actions by the Interior department that allowed homesteading by non-Indians of reservation lands. In a major 1999 Supreme Court opinion, *Minnesota v. Mille Lacs Band of Chippewa Indians*, the Court struck down an 1850 executive order abrogating treaty hunting and fishing rights. Calling it “black letter law,” the Supreme Court began its analysis by quoting with approval a statement by the lower court: “The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”

Looking back on it, we can understand with some clarity what happened

in 1865. Both in Washington, D.C., and in Oregon, most federal officials had lost track of the direct connection between the ratified treaties at Table Rock and elsewhere and President Pierce’s 1855 executive order creating the Siletz Reservation. It wasn’t that the government was cavalier about Indian treaties. To the contrary, all three branches—while they knew Congress could break treaties—accepted the clear structure for altering treaties, which required going through Congress.

The practice of creating reservations by presidential executive orders, brand new in 1855, threw a monkey wrench into the recognition of Siletz rights. Federal officials correctly realized that stand-alone executive orders were different from treaties, which Congress—with express constitutional authority—had approved. People focused on the Siletz Reservation as tracing to an executive order and missed the central constitutional fact: *by treaty*, the western Oregon tribes could be moved off their temporary reservations only to a reservation “made by the direction of the President of the United States for their permanent residence.” Once President Pierce established the Siletz Reservation, Congress could change that treaty promise of a lasting homeland but a president could not.

Yet once again, as in the 1850s, hunger for land overrode all else. President Johnson’s executive order, void in law but not on the Oregon Coast, triggered a land rush at Yaquina Bay. Especially troubling were Senator Nesmith’s statement that “no Indians” lived at Yaquina Bay and Secretary Harlan’s assur-





With the area removed from reservation status in 1865, Nye Beach in Newport quickly became a favorite for tourists. *Courtesy of Oregon Historical Society, no. bb006164.*

ance to the president of the United States that Yaquina Bay was “not occupied or desired by the Indians.” To the contrary, “a large population lived full time at Yaquina Bay, gathering crab, oysters, clams, mussels, spearing flounder, and [harvesting] other native foods from the estuary. There were also 2 trails from the Siletz community for the people to come and gather foods.” Nonetheless, there was no attempt to gain tribal consent and perhaps find some acceptable middle ground, as Superintendent Huntington had recommended. Even Huntington, who had so strongly urged the opening of this part of the reservation, was outraged by the treatment of Indian people. As he wrote in 1867:

Upon this tract were located some Indians who had been encouraged to open farms, erect buildings, and establish themselves permanently. The effect upon them and upon the other Indians was most disastrous. They had all been promised protection in the possession of their lands, and that pro-

tection had hitherto been afforded them; but now the agent was powerless, and whites occupied the lands as they pleased. . . .

After the promulgation of the order by which the tract was thrown open to settlement, (which I may remark was very sudden, and gave no time for preparation on the part of the government or the Indians,) the whites rushed in upon the tract, seized upon the Indian farms, occupied their houses . . . by force, and immediately commenced the settlement of the country. The effect was deplorable. The Indians were dispossessed of their homes and property. . . . They were discouraged because they could not feel any assurance that they would be protected in any other settlement they might make. They had no incentive to labor. A part were induced by Agent Simpson to remove above (north of) the vacated tract, and are now opening farms near the Siletz agency, but they are doing so timidly and haltingly, and during a late visit to them I constantly met with the inquiry “when the whites were coming there to settle.” It is idle to expect any improvement in a people so harassed and discouraged. . . .

The whole treatment of the government towards these Indians has been full of bad faith.

Although their homes and canoes were either taken over by whites or destroyed, and other personal belongings similarly lost to them, the Indian people at Yaquina Bay never received any compensation.



The settlers moving to the Coast and their inland sympathizers allowed no respite for the Siletz people. In the spring of 1870, a petition circulated to throw open the entire reservation. Whites told tribal members that “it was useless for them to plant their crops, as they would be removed before they could harvest them.” The Indians, remembering how quickly the Yaquina land had been taken, were angry and scared. Some fled the reservation, and a cloud of gloom settled over those who remained.

Within months, the Oregon Legislative Assembly adopted a memorial to Congress calling for termination of the reservation. Citing the need for land for “agricultural and other purposes,” the legislature resolved that “it would be beneficial to both Indians and whites if both the [Siletz] reservation and [Alsea] sub-agency . . . could be vacated and the Indians removed to other reservations not immediately surrounded by American settlers, and all the

Indians in Oregon concentrated upon Klamath reservation, thereby saving a large amount to the Treasury of the United States.” Congress took no immediate action, but the ferment in Oregon continued.

In 1873, white settlers to the north circulated a petition calling for opening to settlement all reservation land north of the Salmon River, mostly in Tillamook country. To the south, similar efforts called for elimination of the lower one-fourth of the reservation, the Alsea sub-agency, which had been separated from the rest of the reservation by the 1865 executive order. Oregon Superintendent T. B. Odeneal gave his support to the proposal, throwing his weight behind the elimination of more than two-thirds of the already-reduced Siletz Reservation. Although Odeneal believed that removing the Indians to Siletz would “better the[ir] condition,” he did recommend that “their consent to the changes should of course be obtained.”

To look into the matter, Commissioner of Indian Affairs E. P. Smith directed a study and report by Inspector Edward Kemble of the Washington, D.C., office. The inspector, who had been tasked to assess Indian and non-Indian attitudes, went out to Siletz and convened a council, which 135 tribal members attended on a blustery December day. George Harney, chief of the Siletz confederated tribes and the nephew of Takelma tyees Lympy and George, spoke first:

A long time ago the whites defeated the Indians in battle and brought them here. They are still troubling us. They have taken a part of our reservation, and now want the rest. A year ago last fourth of July they killed one of our chiefs, and now want to drive us from our homes. The President believes in God; so do you, and so do I, and I would like the President to help Indians, and we want you to help us. . . .

I want the whites to stop troubling us about our land and about removing us. What have we done? We believe in God. We are trying to do good. Why should they want to drive us away? All that is sorry in my heart I tell you. I want you to tell President that the Indians desire to remain here. We do not want to be driven away. We were driven here, and now this is our home, and we want to stay.

Depoe Charlie, Joshua Band of Tututni, said this:

You told us not to speak about anything except great things. I am sorry for one thing; I am sorry to have you leave to day in this storm; I would like you to stay here to-day; will tell you one thing, and I want you to put it in your

heart. I don't want them to take this land from us; want you to keep this in your heart. You have a good heart; so have I. I think now we are beginning to do better. Church-members have come here and taught us, and now we are all trying to be good. Do you think it would be well for these bad white men to come and drive off good men both white and Indian?

William Strong, Tututni, spoke forcefully:

I am proud and glad to see you. . . . Have been waiting for you. Our agent told us you were coming. Am sorry you have to go away. It is a bad, stormy day. Was glad to hear you speak yesterday at church. Am glad you want to help the Indians. . . . Our present agent and employees are good people. There are bad people at Yaquina. . . . Now I want to be good. We want to hold this land. We all want it. After my chief was killed we did not try to get revenge. Now we don't want to leave. They may send soldiers, but I will not go. If they want to hang me they can do so, but I will not leave.

Kemble found "these Indians desirous, to a man, to retain their reservation."

He also went into Newport, the largest non-Indian town in the area, and was surprised by what he found. "The call for the removal of the Siletz," Kemble wrote, "was started by a handful of speculators two years ago as part of a scheme to invite settlement and capital into this part of Benton County. . . . There is now no agitation of the subject. The sensible portion of the little white community on the Yaquina, abating from the enthusiasm of last year, are disposed to regard the reservation rather as a help than as a hindrance." The inspector was reporting what farmers had already learned—that the Siletz made good workers at a low cost. On the Coast, where the heavy forests and steep terrain threw up so many obstacles to transportation, the Siletz "had put one thousand days' work on the roads in the vicinity of their reservation."

In his report, Kemble came down firmly against any reduction of the reservation. "Under all the circumstances, I can but advise the dismissal of the complaints against these Indians, and"—referring now to ratification of the 1855 Coast Treaty—"express the hope that the present Congress will not adjourn without confirming their right to the lands they now occupy."



Such was not the political mood in Oregon. Indian Affairs had fundamentally

changed since the Table Rock Treaty of 1853. Back then, the tribes actually outnumbered the Americans. Indian issues, along with achieving statehood and promoting settlement, were at the top of the political agenda. The delegation at Table Rock included two future U.S. senators, one who almost achieved that status, and the territory's leading jurist. The office of Indian superintendent was a political plum, as was the position of agent at Siletz. By the middle 1870s, Indian Affairs had gone from the main current in Oregon public policy to a side eddy. Over the course of a generation, the white population had increased several times over and Indian numbers had steadily declined, due partly to war, mostly to disease. The tribes lost their military capability and, their own economies smashed, lived in abject poverty with inadequate housing, insufficient food, and debilitating health problems. Non-citizens, they lacked the vote.

The center was gone. There were no moderating influences left. As a matter of social justice as well as strategy, Joe Lane and Joel Palmer had tried to find solutions that reflected the legitimate interests of the tribes as well as the Americans. Now the stage was left to men like John Hipple Mitchell and Ben Simpson.

The imposing and courtly Mitchell, who was first elected U.S. senator in 1872 and served four terms until his death in 1905, came to Oregon from California in 1860. A powerful attorney for railroad companies, including the Northern Pacific, he rose above allegations of bigamy to become a major figure in Oregon politics. "The one constancy of Mitchell's public and private career," historian William Robbins wrote, "was his unstinting belief that the interests of business and government were one." Late in his career Mitchell was indicted in the Oregon timber and land frauds—his supporters vigorously argued that the charges were politically motivated—and died in office while his conviction for bribery was on appeal.

After his eight years as Siletz agent, where he was known for handing out brutal punishments, Ben Simpson pursued his lofty political ambitions. He held the position of surveyor general of Oregon from 1872 through 1876 and eventually served six terms in the Oregon legislature. As agent, he opposed a break-up of the reservation in the 1860s, perhaps because it would cost him a job, but as surveyor general he was more than happy to assist Senator Mitchell in eviscerating the Siletz Reservation.

Simpson had business entanglements with developers eyeing the central Coast, as did two Oregon Indian superintendents, Alfred B. Meacham (1869–1872) and T. B. Odeneal (1872–1873). Their dream was to put through a Wil-



Ben Simpson, left, and Senator John Mitchell. After the 1865 Siletz Reservation reduction, Simpson, as surveyor general of Oregon, and Senator Mitchell teamed up and were relentless in pursuit of opening still more reservation land for settlement. They achieved their goal in 1875, when their efforts led to the removal of 700,000 acres from the reservation. *Courtesy of Oregon Historical Society, nos. bbo06241 (Simpson) and bao19648 (Mitchell).*

lamette Valley–Yaquina Bay railroad to complement the wagon road and to obtain the lucrative federal land grants that accompanied rail lines. Successive articles of incorporation were filed, with Odeneal a signer in 1867, Simpson and Meacham in 1871, and Simpson in 1872. With the sorry 1865 reduction offering precedent for still more takings of land and with petitions circulating to that end, federal and state officials in the late 1860s and 1870s should have avoided the specter of serious conflicts of interest and taken a hands-off stand toward railroad development, which plainly would spur pressure to open still more reservation land to settlement.

Learning of Inspector Kemble’s strong recommendation against a break-up of the reservation, Senator Mitchell moved quickly. In January 1874, he came out in favor of the large-scale reduction of the reservation, as urged by the Tillamook County petition and approved by Superintendent Odeneal. Simpson advised Mitchell on the issue the senator likely cared about most,

confirming that opening the big-tree forests “will greatly accommodate the whites as they can use the timber which the Indians have no use for.” John Fairchild, the agent at Siletz, had initially opposed the idea. He well knew of the tribal opposition, having been told by various chiefs “that all of them desired to remain” and that “they desired above all things to be let alone and allowed to die in the country the Government has given them.” Yet, he wrote Commissioner Smith that “there would be no difficulty in overcoming their objections.”

Mitchell brought his proposal, which would reduce the reservation by two-thirds, to the floor of the Senate in early 1875 as an amendment to an appropriations bill. It was a classic example of the disputes between western and eastern senators during the halcyon years of the westward expansion—Vernon Parrington called it “the great Barbeque”—with the western senators on the move and the easterners urging restraint. Senator William Boyd Allison of Iowa believed that the Indians in the north and south parts of the Siletz Reservation should not be removed “without their consent being first obtained.” John Sherman, senator from Ohio and a leading congressional figure on monetary policy and later secretary of the treasury, dug even deeper and saw the problem for what it was:

It is manifestly the purpose to disturb this Indian reservation in order to extend the white settlements over a portion of this reservation, a part of it having already been taken, and this mandatory provision requiring the removal of these two or three hundred Indians is to be carried out by money paid out of an appropriation made nominally for some other purpose, perhaps made for the education and support of these very Indians, which will be used in removing them forcibly against their will to some other portion of this same reservation. That is the way it appears to me.

Mitchell argued that his proposal would provide budget savings due to the closure of the Alsea sub-agency. As for Sherman’s concerns, he responded disingenuously or worse. His reference on the floor of the Senate to two inspections glossed over Kemble’s comprehensive report, which strongly recommended against reducing the reservation, and the fact that the second report mentioned the issue inconclusively and in passing:

I desire to say in answer to the honorable Senator from Ohio that he assumes that this whole proceeding, this recommendation of the Commis-

sioner of Indian Affairs and of the Secretary of the Interior has been without any investigation of the matter on the ground, without any reference to whether or not the consent of the Indians has been obtained. I will state for the benefit of the Senate that this matter has been investigated not only by the agents of the two reservations but by two Indian inspectors, and their reports are on file in the Indian Department, and upon them the Secretary of the Interior and the Commissioner based their recommendation.

Mitchell's proposal did pass, although Senator Allison's consent requirement was added to it: "Provided, that these Indians shall not be removed from their present reservation without their consent previously had."

The way in which "consent" was obtained is a textbook example of how western senators usually prevailed—one way or the other—in confrontations with their eastern colleagues over western lands. In notifying Siletz Agent John Fairchild of the amendment and charging him with obtaining the needed consent, Commissioner Smith made clear that the consent of the Indians was required, but he authorized Fairchild to use "such other inducements as will seem proper and reasonable."

Fairchild, however, hit brick walls in both the north and the south. At Tillamook, he called a council on the first of June. Joseph Duncan, one of the tyees, told him that "we all want to stay in our country and take up land like the whites. Our people all think alike on this subject." Fairchild poured on the pressure, warning that if they stayed "bad white men will debauch your women, and bring in bad diseases among you, and in many other ways work evil to you" and that "the orders of the Great chief in Washington cannot be disobeyed with impunity." The tyee of the Nestuccas, a band of Tillamook, refused to attend the meeting, but he knew of the consent provision and reportedly declared that "he would die before he would leave his country."

In the council at Alsea on June 17, the sentiment was the same. Fairchild explained to the tyees that he had been sent by Congress "to talk strait and true" in obtaining their consent, but warned that "all Indians must obey the laws of Congress." The tyees unanimously refused to give up their land. Their objections were forceful.

Tyee John, Siuslaw:

As long as I live on my land I am not sorry if I have nothing. My people have all the same mind as I have on this point. . . . I understand the Washington

Chief wants to send us money What for? I know the mind of my people They do not want money It is long since we had money and we no longer care for it I have only a little place and no money. Yet my heart is not sick. . . . At first, the whites promised many things The people will never do again as they once did sell their land If I was to talk many days I should say the same thing. . . . Gen Palmer gave us this country and I will never give it up That is all.

Tyee Joe Scott, Umpqua:

I have long had a sick heart on account of Mr Fairchild coming today. . . . Today I am in good heart because I see my words written down I don't want to do as Mr Fairchild advised Perhaps the Great Chief will make us poor but we don't want to do this thing We don't want it even talked about This was not always my Country

I am a driven man I will not give up my land on that account This is my Country now and no one has any right here

Tyee Jeff, Coos:

Yes it is like the whites had made us poor by driving us from our old country I have a heavy heart on account of the treaty we made with Gen Palmer (unratified) We came a long distance from that Country It was not a small Country we give the whites It was a large Country You see me Mr Fairchild today You do not see me have much property When we sold our land we never received any pay You do not see me with team or wagon I do not owe anybody anything but the Great Chief owes me a great deal for the Country we sold We have left two countries now [the Coos Bay and Fort Umpqua reserves] I think on that account the Great Chief will not insist on our leaving this Country.

In his report to Commissioner Smith, Fairchild concluded: "From their entire unanimity of sentiment and strong feeling on the subject, I doubt the possibility of their peaceful removal."

Then—one can surmise, through the intervention of Senator Mitchell—Ben Simpson got involved. Commissioner Smith made him a special agent to obtain the consent that Fairchild could not. In his instructions, Smith twisted the consent requirement in the statute, writing to Simpson that while the Indians "should not be coerced in their preference," the special

agent was to assure that they “understand that they are expected to comply.”

Simpson convened a second council at Alsea on August 24 and 25. He came on strong, telling the tyees of “the great importance of obeying the wishes of the Department” and “the necessity of complying.” When the tyees from Coos and Umpqua refused to consent, Simpson handed out beef and tobacco and adjourned the council for the day. The next day, as Simpson reported, the tyees continued to hold their ground, “though in a milder form than before.” Contrary to the June council and the normal formality for such gatherings, there was no transcript or detailed notes, and the summary report by Fairchild’s clerk, M. N. Chafeman, is the only other first-hand account of the tyees’ consent (or lack of it) at the August council: “Quite a number of the Indians spoke, all mildly declining to make the proposed change and stating that they preferred to stay where they were, some remarking that their fathers had lived upon salmon and grown old and died and that they were content to do likewise. Altogether, considering their circumstances and surroundings their contentment was remarkable.”

Agent Fairchild did not attend the council, deputizing Chafeman to act on his behalf. In his report to Commissioner Smith, Fairchild never reported the tyees’ statements, as related to Fairchild by his clerk, that the Alseas had “mildly declin[ed]” to move. Instead, he relied on information purportedly given by George Harney, Depoe Charlie, and William Strong, who attended the August council at the request of Simpson and Fairchild, to “notify” the Alseas and to “prepare their minds for the coming council.” Fairchild wrote to Commissioner Smith that southern tyees had told the three Siletz chiefs that “they expected to move to Siletz, but only wanted time to prepare themselves for the change.” This statement should be given great weight, Fairchild advised, because “being of the same race, and speaking the same language, [the Siletz chiefs’] opportunities for forming correct conclusions, are far greater than any white man could possibly have.” Based on those statements, Fairchild, as Simpson also urged, recommended that the government begin removing public property from Alsea and preparing Siletz for the arrival of the Alseas.

None of the three reports—from Simpson, Chafeman, or Fairchild—claimed that the Alseas had consented to move. The first two stated that their objections were “in a milder form than before” and that the Alseas all “mildly declin[ed]” to move from their lands, and Fairchild referred only to the views—never mentioned by Simpson or Chafeman—of the three Siletz chiefs. Correspondence other than the formal reports give a fuller picture. Simpson

and Fairchild were furious with Litchfield, the Alsea agent, who refused to apply the pressure that Simpson and Fairchild wanted. Simpson, frustrated with the Alseas' refusal to comply, wrote Senator Mitchell that "it was a terrible mistake making him one of the commissioners, as he is opposed to the removal of the Indians. He said he could not say to the Indians that it was best for them to go, when he did not believe it."

The resolution at Tillamook was at least as unsatisfactory. In mid-September Simpson went to Tillamook country to hold another council. Again, there was no transcript or detailed account. He described the outcome of three days of negotiations in a letter to Commissioner Smith:

On the third day however, after repeated meetings, they consented to abandon their country at once, and locate on Siletz reservation as defined by Law at the mouth of the Salmon River. To accomplish this result they were promised assistance from the Government. . . . That each head of a family of two would be allotted forty acres of Land . . . they would be furnished with lumber and nails for the erection of suitable houses and also the aid of one white man to assist in the construction of the same. It was further promised that they should be provided with plows and teams to break and cultivate their land and that they should have seed potatoes for the first years planting.

These promises, which finally induced the Tillamook to agree to move, turned out to be empty. The funds to provide assistance to the Tillamook were supposed to come from the Alsea agency, but George Litchfield, the agent at Alsea who had stalwartly represented the interests of Alseas in their unwillingness to move, refused to turn over the money. So the Tillamooks waited by the mouth of the Salmon River throughout the dead of winter, freezing and starving, their homeland already snatched up by eager white settlers.

Apparently Ben Simpson filed no official final report on his efforts with the two groups of tribes. We know only that Kappler's *Indian Affairs*, a congressional publication, has a cryptic footnote to the official text of the statute requiring consent: "Consent reported by Special Agent Simpson, October 28, 1875."

And so the 1875 statute went into effect, tearing away a full 700,000 acres from the Siletz Reservation. Unlike the 1865 executive order, there is no question that Congress had the power to act, but a serious question arises as to whether the administration complied with Congress's precondition to the

break-up that tribal consent be obtained. In a similar situation in the twentieth century, the California termination statutes had a precondition—that the BIA put in water facilities for the terminated rancherias. When, after many years, the agency failed to construct the facilities, the courts held that the termination statute had never gone into effect and was void. Under that reasoning, the failure to obtain meaningful consent might well have been a basis for overturning the 1875 statute. But this was a century earlier, and it was John Mitchell and Ben Simpson, not the Siletz people, who knew how to pull the levers of government.

The 1.1 million-acre reservation had been reduced to 225,000 acres. Some Coos, Lower Umpquas, and Siuslaws went to Siletz, but more remained in southern Oregon and, a century later, achieved separate federal recognition as a tribe. As for the Tillamooks, many members of the Nestucca Band, just north of the Salmon River, moved a short distance south to live within the remaining Siletz Reservation among their southern relatives. Farther north, some Tillamooks went to nearby Grand Ronde or Siletz, while others stayed in their aboriginal area but without any rights to land.



Toward the end of the nineteenth century, as the national campaign for assimilation picked up ever more speed, the federal government moved on the most central issue of all: land. The churches and schools were making inroads on traditional lifeways, but ties to the land permeated the Indian worldview, the assertedly primitive mindset that the radical reformers meant to erase. So long as American Indians remained land-based peoples, so long as they had their hunting and fishing grounds, so long as they worshipped at their traditional sacred sites, true assimilation would remain incomplete. With the passage of the landmark General Allotment Act in 1887, the Siletz found themselves caught in yet another raid on their reservation, this one even harder for them to judge than the others, laced as it was with apparent benefits, economic and legal traps, unintended consequences, and well-disguised greed.

The idea of providing Indians with allotments—80- or 160-acre parcels of land owned by individual Indians—had been put to work in a number of treaties but never on a comprehensive basis. Support grew among lawmakers for announcing allotment as a top-priority policy to cement assimilation in place. Congress could delegate authority to the Interior department, which could then establish allotments for reservations, tribe by tribe. Henry Dawes,

a well-regarded congressman who, like most Americans, believed that Indians would gain by abandoning their traditional cultures, took the lead. The General Allotment Act that resulted, and that was applied to many but not all tribes, is often called “the Dawes Act.”

Part of the context for the allotment statute was the surging interest in bringing scientific knowledge to the making of public policy. An influential group of social scientists, notably anthropologist Lewis H. Morgan, a proponent of “social Darwinism,” believed that human advancement took place in evolutionary stages of savagery, barbarism, and civilization. In their eyes—and in those days who would much disagree?—Indians were primitives who needed to move toward a civilized state. A stronger federal assimilationist policy was needed and special attention should be given to land: holding land in communal ownership was a hallmark of primitive societies, while more advanced, civilized societies prospered through basing their economies on private ownership of property.

Of the few members of Congress who followed Indian issues, almost all believed in allotment in some form. The major exception was Senator Henry Teller of Colorado, who stood stoutly against it:

If I stand alone in the Senate, I want to put upon the record my prophecy in this matter, that when thirty or forty years shall have passed and these Indians shall have parted with their title, they will curse the hand that was raised professedly in their defense to secure this kind of legislation, and if the people who are clamoring for it understood Indian character, and Indian laws, and Indian morals, and Indian religion, they would not be here clamoring for this at all.

Although he failed to come forward when the Interior department was imposing allotment plans on the Siletz and other Oregon tribes, Oregon Senator Joseph Dolph was convinced that Indians would sell or be tricked out of their allotments as soon as they received full land titles and that “we shall have a quarter of a million paupers, or more, on the hands of the Government.”

While most decision-makers in Washington, D.C., in the 1880s could not foresee the costs of allotment, one person saw what was coming with complete clarity. John Wesley Powell knew more about Indian people than any non-Indian in the country. The storied geologist-ethnologist had gained prominence by exploring the remote canyons and spending time with Indian societies of the American Southwest in the 1860s and 1870s; later he served at

the same time as director of both the U.S. Geological Survey and the Bureau of Ethnology. In the darkest episode of his career, Powell wholeheartedly supported and pushed allotment precisely because he understood the depth of Indians' relationship with the land. He knew that only by forcing Indians off the land could the radical reformers achieve the wholesale assimilation of Indians. In February 1888, Powell wrote this cynical, treacherous letter to Senator Henry Teller:

The Indian religion is localized. Every spring, creek and river, every valley, hill and mountain as well as the trees that grow upon the soil are made sacred by the inherited traditions of their religion. These are all homes of their gods. When an Indian clan or tribe gives up its land it not only surrenders its home as understood by civilized people but its gods are abandoned and all its religion connected therewith, and connected with the worship of ancestors buried in the soil; that is, everything most sacred to Indian society is yielded up.

He concluded by underscoring the ultimate consequence of allotment, that it would wrench away all that was sacred to Indian people: "Such a removal of the Indians [from their land] is the first step to be taken in their civilization."

Needless to say, with Manifest Destiny the political battle cry in the West, opening up the reservations resonated with the public. Many Indian reservations contained good farm land and held valuable mineral deposits or, like the Siletz, timber stands and fisheries. The lands and resources were not being made "productive" under the tribes, but they could be made so by the Americans.

Tribes nationally were no better equipped to influence Congress than the Siletz. The self-styled, East Coast-based Friends of the Indian directed the brunt of their criticism at BIA mismanagement, incompetence, and corruption rather than at the policy of assimilation and allotment. Many of these people, who saw themselves as representing Indians although most of them had no contact with tribes, concluded that the best approach was total assimilation, including breaking up the reservations and sacking the BIA. With virtually no other voices purporting to speak for the Indians' best interests, the allotment program never received the scrutiny it badly needed. With the warnings of Senators Teller and Dolph failing to gain traction, the bill went through Congress with little serious opposition.

The idea behind the General Allotment Act of 1887 was deceptively sim-

ple and seemingly innocuous: to make Indians into farmers by carving lands out of tribal reservations and providing every tribal member with an individual allotment—a plot of land, usually eighty acres. No new land would be brought into Indian ownership, since allotments were taken from tribal lands.

Tribal land is held in trust by the United States through the Interior department, meaning that it cannot be sold or taxed. Individual allotments were held in trust but, unlike tribal land, not indefinitely. Trust allotments remained in trust for twenty-five years—a period that the BIA had the power to shorten or lengthen—at which time the tribal member received a patent (the same as a deed). At that point, the tribal member held title in fee simple absolute (complete ownership) and the fee-patented land could be sold and taxed. This was a potential danger point. Most Indian people were unfamiliar with the world of land sales, property taxes, and liens, and Indians across the country lost millions of acres through fraudulent transactions and tax sales after their allotments passed out of trust. The warnings of Senators Teller and Dolph had all too much merit.

The tragedy played out at Siletz. The father of Gladys Bolton had an allotment east of Kernville on the Lower Siletz River. “It was beautiful land,” she recalled, but he was forced to sell it in order to afford heart medicine for his father. Eddie Collins grew up on his grandfather’s allotment land. When he returned from the army after World War II, “the allotment was no longer there”—his grandfather had lost it at a tax sale. “I would have liked to have kept the land myself, but I was overseas,” he said. Frank Simmons relates that his grandfather, Hoxie Simmons, had an allotment on scenic Rock Creek, a prime fishing spot for salmon and eels. Hoxie Simmons, a young man at the time, lost the land at a tax sale. In 2007, looking back, Frank Simmons explained that “many Siletz people lost their allotments as a result of failure to pay taxes. Siletz people were asked if they would pay property taxes and they would say yes, but they didn’t understand what they were getting themselves into.”

Frank Simmons’s point is understandable. Few people, inside or outside Washington, on or off the reservations, comprehended how the now-discredited allotment program would play out. For their part, Siletz people had been asking for allotments, for the land to be “divided” among the membership, at least since the early 1870s. For years, BIA and church people had harped on the virtues of private ownership. The Indians, knowing they would need to take on some white ways in order to function in society, could see some



A main Tututni headman by the late 1870s, William Strong stood firm against pressures to break up the reservation. He had a broad following among the Siletz, but the forces behind allotment would not relent: "It looks as though this will happen regardless of what the Indians say." *Siletz Tribal Collection*.

advantages in having their own parcels. It seemed safe and secure and a move away from their tormenter, the BIA. When Inspector Kemble came to Siletz on that stormy December day in 1873 to assess the Indians' view on opening the reservation, William Strong made his powerful stand: "We want to hold this land. . . . I will not leave." But he then added: "I want the land divided. . . . I want the land divided . . . so that we can do something." Several other speakers that day spoke of wanting the land "divided," and that sentiment continued into the 1890s, when the reservation was allotted.

In American language, policy, and law, "divided" meant "allotment," a term that carried much additional baggage. Did William Strong and his tribespeople really mean to have the family home available for sale? For it to be subject to property taxes? Did they really mean to pay cash for tax bills when their economy still relied so heavily on subsistence and barter? If some of them did understand and accept those ramifications of the word "divided," how many other Siletz people did?

And, for those who did accept sales and property taxes, how many thought of “divided” as including “surplus lands”?

The surplus lands provision was the most toxic of all the poison pills in the General Allotment Act. Like “divided,” in this setting “surplus” is an ultimate euphemism: since allotment meant that Indians would abandon their traditional ways and become farmers rather than hunters and gatherers, it followed logically that tribal hunting lands, fishing rivers, and sacred sites—most of them on reservation lands—would no longer be used. Those lands, therefore, would be “surplus to their needs” and would be eliminated from reservations at the time the allotments were made.

“Divided” and “surplus” were indeed large words. Allotment remade Indian country once again. When Congress enacted the statute in 1887, Indian landholdings nationally totaled about 140 million acres. By 1934, when Congress abandoned the discredited policy, tribal land holdings had plummeted to about 52 million acres, a loss of nearly 90 million acres, an area almost the size of Oregon and Washington combined. President Theodore Roosevelt called the Byzantine workings of allotment “a mighty pulverizing machine, to break up the tribal mass.”

By 1892, the Interior department had authority to issue trust allotments, but designating surplus lands and throwing them open for settlement by non-Indians required an agreement with the tribes and congressional approval. It was time to close the deal at Siletz. Three federally appointed commissioners came to the reservation on October 17, 1892, to reach a surplus lands agreement. Like Joel Palmer, when he negotiated with the Coast tribes in the summer of 1855, they came to dictate, not negotiate. Unlike Palmer, they did not include a shred of generosity or fairness in the terms they planned to impose.

The commissioners, former justice of the Oregon Supreme Court Judge Reuben Boise, William Odell, and H. H. Harding, met with tribal members in two well-attended councils on October 17 and 29, 1892. Detailed transcripts were prepared for both. A seven-member committee of tribal members then met privately with the commissioners on October 31; that meeting involved “long explanation and discussion,” but no transcript was taken. The tribal committee reached agreement with the commissioners, and 118 male tribal members signed the agreement (the tribal membership, including minors, was about 550). Although the commissioners and federal officials rationalized the tribal members’ ability to understand complicated business dealings by emphasizing their high degree of assimilation, half of



In his brief tenure as Siletz agent in the early 1870s, Joel Palmer urged the tribe to organize a government. George Harney, a Takelma and brother of Frances Johnson, became the first elected chief of the Siletz confederation. This photograph, with his first wife, Klamath Maggie, was taken in 1874, when a delegation of tribal leaders met with federal officials in Washington, D.C. *Siletz Tribal Collection.*

the signatories to the agreement gave their approval with “X” marks. Despite the importance and complexity of the land transaction, the tribe had no lawyer.

The seven-member tribal committee was a matter of some controversy. The transcript of the October 29 meeting states that the tribal members in attendance elected the committee. Hoxie Simmons, in his twenties at the time, later testified in a tribal claims case that the committee was appointed by the agent, T. Jay Buford. “Our agent instructed them,” Simmons said. “They do whatever he say.” He also said that two members of the Indian committee, George Harney and John Adams, did not want to sell the land: “They wanted to keep for the next generation, the last allotment, made for even little baby not born.” As for the rest of the membership, Simmons said that “some” wanted to sell but “not the people. They holler in the Indian language, ‘Keep the land, don’t sell it.’”

The commissioners knew what they wanted and did not intend to budge.

They reiterated that they were being “fair” and acting in “good faith.” They also talked tough. When Judge Boise said that the forest lands had “very little value,” George Harney disagreed, saying, “I think there is a good many timber on that land, and a good many timber is money.” Harding called Harney’s statements “rash” and threatened to “terminate this negotiation at once.” It was an effective threat. These were destitute people, and while many were reluctant to sell, they obviously wanted to receive a fair price. They knew, too, that the government had already taken most of the reservation without any payment at all and feared that terminating the meeting could lead to another uncompensated taking.

The three representatives of the United States repeatedly made statements they knew to be false. The commissioners refused to say how much surplus land they had in mind, probably because the large amount of land affected would alarm the Indians. When U. S. Grant, a tribal member, asked “We want to know how much land is left outside of the land that is allotted?” Odell responded, “We cannot tell because it is not all surveyed. We can only guess at it.” The commissioners never gave even an estimate. Yet, when they submitted their report to the secretary of the Interior a few weeks later, the number came easily: “The amount of land ceded is over 175,000 acres.” Later, the number was found to be about 179,000 acres—80 percent of the entire reservation.

At the councils, the commissioners hammered away at the supposedly low value of the land. “The Government does not think that these lands are of much value to you.” “The government does not buy these lands because they want them, or need them. They are buying to give away to the settlers, the same as their other public lands. . . . the Government will get nothing for them.” “They are of so little value that the Government has not even employed a surveyor to survey them, knowing that they could not sell them if they did.”

The official reports to the secretary and the Congress painted a very different, and much more accurate, picture. The commissioners wrote that the surplus lands were “densely timbered with good fir and cedar trees, and well watered with rapid running streams, which will furnish a good means of getting the timber and lumber out.” In his assessment, Commissioner of the General Land Office W. M. Stone advised the Interior secretary that, with “said lands . . . being generally valuable for the timber growing thereon,” the surplus lands should be sold to the public at “not less than \$2.50 per acre.” The agreement provided for a total payment to the tribe of \$142,000, or 80 cents

per acre. George Harney, speaking for the tribal members, requested \$1.25 per acre but the three commissioners held firm.

The enormous value of timber on the former Siletz Reservation soon became clear. Fraud on the western federal lands had been rampant throughout the nineteenth century, but it rose to its zenith in the rich timber forests of the Pacific Northwest in the 1890s and early 1900s. The usual ruse centered on “dummy homesteaders,” who claimed to be agricultural settlers. Hired by speculators, they had no intention of homesteading—especially in dense forests where farming was impossible—but they nevertheless (under penalty of perjury) filled out the necessary paperwork with the General Land Office. As soon as these bogus homesteaders received their patents, they turned them over to their corrupt sponsors.

The former Siletz tribal forest lands became a prime target for these racketeers precisely because they had such high value. Apparently, none of Senator John Mitchell’s ill-begotten transactions involved these lands—he preferred forests in the Cascades—but others of his ilk were hard at work on the Coast. The exposé on Oregon land fraud, *Looters of the Public Domain* by Steven A. Puter, dedicated a full chapter to the rampant fraud at Siletz. Several prosecutions ensued, although many of the patents were never revoked. Tens of thousands of acres of spruce-fir and cedar forests eventually passed into the hands of, and brought much profit to, timber companies.

The three commissioners, then, obtained exactly the surplus lands agreement they had aimed for from the beginning. In round numbers, the 225,300-acre reservation was carved up as follows:

1. 179,000 acres for surplus lands, to be thrown open for acquisition by non-Indians.
2. 43,000 acres for 551 individual allotments for tribal members living on the reservation. Later, in a separate development under section 4 of the General Allotment Act, 387 western Oregon Indians living off the reservation received allotments, not from the reservation but from federal public domain lands.
3. Five sections, or 3,200 acres, for a timber reserve for the tribe.
4. 700 acres for agency-related purposes—farmland, saw mill, and BIA and church buildings.
5. The total payment to the tribe amounted to \$142,000. Of this amount, \$100,000 would be deposited with annual interest at 5 percent, with the proceeds to be paid to members of the tribe in March of each year (with

slightly over 500 tribal members at the time, this annual payment would amount to approximately \$10 for each member). The remaining \$42,000 would also be deposited at 5 percent and \$75 would be paid out to adults annually until the fund was exhausted, which would occur in just a few years.

Congress approved the agreement in 1894.

At least the allotments remained. These parcels, located where Siletz families lived at allotment time, had become homes during the half century since the removals. Most of Upper Farm, Shasta Farm, and Lower Farm, for example, went into allotments. The story differed for each family as the twentieth century wore on. Some land was lost early, some remained family land for generations and a very small amount still is. Even when the allotments were lost, people often stayed in the area. This landscape, with all of the treachery wrought there, still had its rivers and creeks rich with salmon and eels; forests that held deer and roots, barks, and grasses for basketmaking; and the rugged, giving coastal shoreline with its mussels, oysters, smelt, crabs, and magnificence. The Siletz no longer owned it, but it had become their second homeland.



The year 1900 marked the all-time low point for the American Indian population. The accepted estimate of aboriginal populations before Europeans came is in the range of 5 to 7 million people. In 1900, after the diseases, wars, and removals, it had dropped to just 250,000, a loss of 95 percent or more. When Siletz tribal members had arrived after the removals, the 1857 reservation population was an estimated 2,700. By 1900, the population stood at about 500 people.

In spite of such depressing numbers, it may be that the turn of the century marked the point at which Siletz people began to rebound. At long last, although tuberculosis would be a problem into the 1940s, there was relative freedom from the European epidemics. The removals lay behind them. The salmon ran strong and game was plentiful. The clean, fresh coastal mist smelled and felt like home. Even with the many separate tribal histories, there was now a shared sense of culture, of being Siletz. Economic opportunities lay ahead: in particular, although one can doubt the rightness of their ownership of the forests, the timber companies would generate a decades-long



Son of Rogue River Johnny and his Coquelle wife, Sissy George, Archie Johnson was orphaned early. He was sent to Chemawa, where he helped clear the grounds for the new campus at Salem, and then to Carlisle Indian School in Pennsylvania, before returning to Siletz. He trained for spiritual power along the Upper Klamath River, under the teaching of his mother-in-law, Bessie Snelling. One of the last great Siletz canoe makers, he is pictured here in the mid-1960s at the approximate age of ninety, standing on the last canoe he ever constructed. *Siletz Tribal Collection*.

boom—and Siletz men made damn fine loggers. It was not enough, not nearly their due, and many wrongs would still be inflicted upon them, but at least, after the long run of endings, Oregon Coast Indians could now claim some beginnings.