

COLT

COALITION OF LARGE TRIBES

Mandan, Hidatsa and Arikara Nations / Oglala Sioux Tribe / Navajo Nation / Sisseton Wahpeton Sioux Tribe / Blackfeet Tribe of Montana / Rosebud Sioux Tribe / Spokane Tribe / Cheyenne River Sioux Tribe / Ute Indian Tribe / Shoshone-Bannock Eastern Shoshone / Fort Belknap

Honorable Ryan Zinke, Secretary
Honorable John Tahsuda III, Principal Deputy Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Noel Francisco
Solicitor General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, Dc 20530

April 26, 2018

Dear Secretary, Zinke, Principal Deputy Assistant Secretary Tahsuda, and Solicitor General Francisco:

As signatories to the treaties, we write to insist on your assistance in defending the United States word. To defend the hunting rights preserved in the treaties signed between your government and several of the governments with membership in the Coalition of Large Land Based Tribes (COLT), the Treaties of Fort Laramie in 1851 and 1868, which included the Cheyenne, Sioux, Arapaho, Crow, Assiniboine, Mandan, Hidatsa, and Arikara Nations.

The case *Herrera v. Wyoming*, No. 17-532, is currently pending at the United States Supreme Court. This case concerns hunting rights that were reserved by, and continue to be exercised by, the treaty signers, and in this specific case by the Crow (Apsaalooke) tribe.

The Crow Tribe, along with several of us, made treaties with the United States at Fort Laramie in 1851 and 1868 and the Shoshone-Bannock Tribes signed the Fort Bridger Treaty of 1868 and those treaties preserve the right to hunt in aboriginal territory.

Specifically, in the 1868 Treaties the tribes reserved for themselves “the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts.” In the 150 years since that treaty, no act of Congress has abrogated or diminished that right.

These three key conditions – available game, on unoccupied Federal lands, and peace – continue to this day in several places. Including within the Big Horn National Forest lands at issue in *Herrera*.

Understanding this treaty right, in January 2014 Mr. Herrera took three elk while hunting in the Bighorn National Forest, unoccupied Federal lands adjacent to the Crow Reservation, just across the Montana state line in Wyoming, and in the heart of Crow hunting grounds for many generations prior to the time of the treaty. Many tribal families continue to rely on elk, deer, and other wild game for regular sustenance.

Despite our treaty rights, in September 2014 a Wyoming game warden cited Mr. Herrera for two misdemeanors, taking antlered game without a license and being an accessory to the same. The State insists, relying on a decision from the Tenth U.S. Circuit Court of Appeals and a 19th century U.S. Supreme Court decision (*Ward v. Race Horse*, 163 U.S. 504 (1896)) that has long-since been discredited, that the Crow lost their treaty-guaranteed hunting right when Wyoming was admitted to Statehood. This is not so. In *Montana v. United States*, 450 U.S. 544 (1981), the Supreme Court made reference to the Tribe's hunting rights on “unoccupied lands of the United States,’ viz., lands outside the reservation boundaries.” *Id.* at 559 n.7. More recently, the Court expressly stated that “**statehood by itself is insufficient to extinguish Indian treaty rights to hunt, fish, and gather on land within state boundaries.**” *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 205 (1999). Thus, not only does Wyoming's position find no support in any act of Congress, it also is wholly incompatible with the Supreme Court's decision in *Mille Lacs*.

On January 8, 2018, the Court invited the Solicitor General to file a brief in the case expressing the views of the United States. We have faith that you, as the principal executors of the United States' trust responsibility to the tribal signatories, and the principal guarantor of our treaty-reserved hunting rights, will ensure the United States faithful executes its promise and obligation, and file briefs in support of Mr. Herrera and the Tribe.

The Coalition of Large Tribes (COLT) Executive Director Legislative Affairs, will deliver said resolution to the COLT Congressional Delegations and proper Committees and work with them on said resolution; and

This letter was enacted at a duly called meeting of the Coalition of Large Tribes held in Albuquerque, New Mexico on April 26th, 2018, at which a quorum was present, with the letter approved unanimously.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell Begaye". The signature is fluid and cursive, with the first name "Russell" written in a larger, more prominent script than the last name "Begaye".

Russell Begaye – President Coalition of Large Tribes