



Testimony of the Confederated Tribes of the Umatilla Indian Reservation
House Committee on Water, Oregon Legislative Assembly
HB 2244 February 10, 2021

Chair Helm and members of the House Committee on Water:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) appreciates the opportunity to provide the Committee with its views on, and support for, HB 2244. The CTUIR urges the Committee to approve this bill and prevent the abuse of the judicial process that deprives senior water rights holders – including the Klamath Tribe – from use of their water rights pursuant to a final order of the Oregon Water Resources Department (WRD).

Like Klamath, we have treaty reserved fishing rights which require protected instream flows. The Ninth Circuit Court of Appeals held that the Klamath Tribe's hunting and fishing water rights had a time immemorial priority date in the Adair decision in 1983. The CTUIR has a similar claim to instream flows to support its Treaty reserved fishing rights. Despite these Treaty and senior water rights, both the CTUIR and Klamath have experienced the loss of, or substantial reductions to, anadromous fish runs due to over-allocation of water for out-of-stream uses.

Oregon's water laws are based on the principle of prior appropriation. The water right holder with the oldest date of priority can demand the water specified in his or her water right. If there is a surplus beyond what is necessary to fulfill the senior right, the water right holder with the next oldest priority date can take what is available to satisfy needs under his or her right. This continues down the line until there is no surplus or until all rights are satisfied. Oregon law does not provide a preference for one kind of use over another. Oregon law needs to recognize and enforce the senior water rights Tribes reserved under their treaties with the United States.

The automatic stay of a final WRD order that accompanies the filing of a petition for judicial review under ORS 536.075(5) must be eliminated. It has been used against the Klamath Tribe perpetuating the violation of its senior rights to water. The automatic stay requires no bond nor any court determination that it is needed or is legally justified. Passage of HB 3430 will not preclude a stay in the Klamath Basin adjudication; ORS 539.180 allows for a stay provided that it is accompanied by a bond.

The CTUIR requests that the Committee vote to approve HB 2244 and send it on for a vote on the House floor.

Thank you for your time and consideration.