

Senate Bill 1153

Senate Committee on Natural Resources

Public Hearing, March 25, 2025, 1:00 p.m.

Testimony of Robert A. Brunoe

Good afternoon Chair Golden and members of the Committee. I am Robert A. Brunoe, the Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon. The Tribe has not yet taken an official position on the Senate Bill 1153, but we believe that it has opened essential legislative dialogue about the risks that water right transfers pose to the State's federally-recognized Indian tribes. I am testifying today in support of advancing Senate Bill 1153 to the Senate Rules Committee to allow this critical discussion to continue and, perhaps, evolve into a bill that the Confederated Tribes of Warm Spring would formally support.

The Tribe is the legal successor in interest to the Indian signatories of the Treaty of June 25, 1855, with the Tribes of Middle Oregon. Our Treaty is federal law and the "supreme law of the land" under Article VI, section 2, of the U.S. Constitution.

The Treaty recognizes the Tribe as a sovereign entity, possessing inherent rights to provide for the general welfare of our people, including the right to manage natural resources for their benefit. The State of Oregon also recognizes the Tribe's sovereignty and that the Tribe is a governmental co-manager of many of the natural resources located in the state, including, but not limited to, water, fish, and wildlife.

Under the Treaty, our predecessors ceded the occupancy of our traditional lands to the United States. In exchange, they reserved the lands that became the Warm Springs Reservation for our exclusive occupation and use. We also reserved certain off-reservation rights to fish, hunt, gather, and pasture livestock. With respect to fish resources, the Treaty reserves to the Tribe the exclusive right to take fish “in the streams running through and bordering” the Warm Springs Reservation and at “all other usual and accustomed stations.” In addition to our Treaty rights, we are also co-owner and joint licensee of the Pelton Round Butte Hydroelectric Project, which has federal-license requirements to re-establish anadromous fisheries in the upper Deschutes River basin. The Tribe was also supporter of the Crooked River and Collaborative Water Security and Jobs Act of 2014.

The Treaty secures to the Tribe its “fair share of the fish produced by the Columbia River system.” Understanding that these rights would be “worthless without harvestable fish,” the Ninth Circuit has determined that the scope of our Treaty fishing rights includes protection of fish habitat to sustain those fish, this includes protecting in-stream flows.

In 1997, the Tribe entered into a water right settlement agreement with the State of Oregon and the United States. The settlement agreement is limited in geographic scope and protects certain in-stream flows in a portion of the Deschutes River basin. The balance of our Treaty-protected in-stream water rights, which include, but are not limited to, in-stream flow rights in the Hood River, John Day River, and the remainder of the Deschutes River basin have not been settled or adjudicated and, as result, are largely ignored by Oregon water law. For example, our Treaty-protected in-stream flow rights in the Crooked River

and Whychus Creek in the Deschutes River basin are outside the scope of the water right settlement agreement and have not been adjudicated under state law.

The State's current water right transfer law poses particular risk to the Tribe's Treaty-protected in-stream flow rights. The law currently allows water users to transfer, among other things, points of diversion and appropriation and places of use that can and do impact in-stream flows that serve as important habitat for the Tribe's treaty-protected fish resources. State water right transfer law, however, does not expressly recognize the existence of those rights, much less contain any mechanism for avoiding injury or harm to the rights.

Senate Bill 1153 has the potential to serve as an important first step towards addressing the risk that water right transfers poses to the in-stream flows necessary to sustain and re-establish our Treaty-protected fisheries in the State of Oregon. I ask that you vote to advance Senate Bill 1153 to the Senate Rules Committee so that this important legislative work can continue.

Thank you.