

Senate Bill 1153

Senate Committee on Natural Resources

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

Testimony of William Ray, Jr.,
Chairman, The Klamath Tribes

Chair Golden and members of the Senate Committee on Natural Resources. My name is William Ray, Jr., the Chairman of the Klamath Tribes, and I offer this testimony on behalf of the Klamath Tribes regarding Senate Bill 1153 (SB1153). Like the Confederated Tribes of Warm Springs,¹ the Klamath Tribes have not yet taken an official position on SB1153. But I offer this testimony informed by our experience with Oregon's water rights transfer process. The Klamath Tribes believe that the introduction of SB1153 is an excellent start, as it has opened an important dialogue about the risks Oregon's current water rights transfer process poses to the Treaty rights and resources, as well as to the cultural resources and other vested rights of the State's federally-recognized tribes. Our Ambodat team (the Tribal department charged with protecting Treaty resources) has had to carefully review and analyze a number of water right transfers in the Klamath Basin. The existing process for Tribal participation is artificially limited and does not adequately recognize the government-to-government relationship with the Tribes, nor does it provide for an adequate scope of the factors to be considered in analyzing such transfers. Against this backdrop, the Klamath Tribes support advancing SB1153 to the Senate Rules Committee to allow this critical discussion to continue and, perhaps, evolve SB1153 into something that the Klamath Tribes can formally support.

¹ The Klamath Tribes have reviewed the written testimony submitted by Robert A. Brunoe, the Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon, and we agree with and incorporate those comments by reference here.

The federally recognized Klamath Tribes consist of Klamath, Modoc, and Yahooskin Band of Snake Indians who have resided in South-Central Oregon since time beyond memory. These Tribes are the signatories to the Klamath Treaty of 1864.² That Treaty is federal law and the “supreme law of the land” under Article VI, section 2, of the U.S. Constitution. The Treaty of 1864 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 Tribes are a governmental co-manager of many of the natural resources located in the state, including, but not limited to, water, fish, and wildlife.

Like many tribes across the United States, the Klamath Tribes were forced to give up vast tracts of our aboriginal land in exchange for a much smaller reservation that would serve as our permanent homeland. Part of the agreement for tribes in this situation, the United States Supreme Court has agreed, is that water rights associated with reservation land were also reserved. The federal courts have recognized that through the Treaty of 1864, in exchange for the cession of over 22 million acres of its aboriginal territory in Southern Oregon and Northern California, the Klamath Tribes reserved the rights to hunt, fish, trap, and gather on the lands reserved for the Tribes, and, further, that such reservation also included the instream flows necessary to support the exercise of those rights.³

Federal and state courts have recognized that the Tribes’ water rights include time-immemorial rights to sufficient instream flows and lake levels to support the fish, wildlife, and plants upon which the Tribes’ Treaty-based harvest rights depend.⁴ As described by the Ninth

² Treaty between the United States of America and the Klamath and Moadoc Tribes and Yahooskin Band of Snake Indians, Oct. 14, 1864, 16 Stat. 707, *reprinted in* 2 Charles J. Kappler, INDIAN AFFAIRS: LAWS AND TREATIES 865 (1904) (1864 Treaty).

³ See *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1984); *Kimball v. Callahan*, 493 F. 2d 564 (9th Circuit 1974); *Kimball v. Callahan*, 590 F. 2d 768 (9th Cir. 1979).

⁴ *United States v. Adair*, *supra*.

Circuit, rather than a right to withdraw water from a stream, the water rights for the protection of the Tribes' Treaty harvest rights consist "of the right to prevent other appropriators from depleting the streams [sic] waters below a protected level in any area where the non-consumptive right applies."⁵ Put simply, the Tribes' water rights are rights to maintain instream flows and lake levels, meaning that junior water rights holders can be prevented from diverting water if such diversions would result in flow or lake levels that would harm the Tribes' Treaty harvest rights.

The Tribes have spent over 40 years quantifying these and other of its water rights through the Klamath Basin Adjudication (KBA). With the issuance in 2014 of the Amended and Corrected Findings of Fact and Order of Determination, the Tribes finally obtained a ruling quantifying our surface water rights.⁶ This meant, for the first time, the Oregon Water Resources Department would enforce the Tribes' water rights against junior water rights holders, a vital tool to protect the water rights we had long possessed. Yet the State's current water right transfer law poses particular risk to the Tribe's Treaty-protected and KBA-adjudicated instream 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 instream flows that serve as important habitat for the Tribe's treaty-protected fish resources.

Senate Bill 1153 has the potential to serve as an important first step towards addressing the risk that water right transfers pose to the instream flows necessary to sustain our Treaty-protected resources in the State of Oregon. The Klamath Tribes ask that you vote to advance Senate Bill 1153 to the Senate Rules Committee so that this important legislative work can continue.

Thank you.

⁵ *Id.*

⁶ The Tribes also claim federal reserved and other rights to groundwater. Such rights, however, were excluded from the scope of the Klamath Basin Adjudication, which the State of Oregon chose to limit exclusively to surface water rights. *United States v. Oregon*, 44 F.3d 758, 768-69 (9th Cir. 1994).