

Senate Bill 1153

Senate Committee on Rules

Informational Hearing, June 3, 2025, 1:00 p.m.

Testimony of Josh Newton

Attorney for the Confederated Tribes of Warm Springs

Good afternoon Chair Jama, Vice-Chair Bonham, and members of the Committee.

I am Josh Newton, an attorney representing the Confederated Tribes of the Warm Springs Reservation of Oregon. On March 25, 2025, the Tribe's Secretary-Treasurer/CEO, Robert A. Brunoe, testified to the Senate Committee on Natural Resources, advising that the Tribe had not yet taken a position on Senate Bill 1153 but that he believed that the bill opened essential legislative dialogue about the risks water right transfers pose to the State's federally-recognized Indian tribes. Mr. Brunoe testified in support of advancing SB 1153 to this Committee to allow the critical legislative discourse to continue and, hopefully, evolve into a bill that the Tribal Council for the Confederated Tribes of Warm Springs could formally support.

Since that hearing, the Tribe has authorized Michael Mason and me to represent it in connection with the amendments to SB 1153. The Tribe also asked Adell Amos, the Clayton R. Hess professor of law at the University of Oregon, for support based on her academic expertise in water law. Our charge has principally been to seek changes to the bill that focus on better protecting the risks posed by water right transfers to the Tribe's sovereign rights, privileges and interests in the waters of the state, including but not limited

to the Tribe's treaty-protected water rights. As Mr. Brunoe noted in his March 25 testimony, the Tribe is particularly, though not exclusively, focused on protecting its unadjudicated and undetermined tribal water rights.

The Tribe has also concentrated on enhancing the awareness of, and respect for, its sovereignty, including its status as a governmental co-manager of many of the waters in the State. Section 8 of SB 1153-5 is an important step in achieving that objective, particularly when paired with the conditioning authority in Section 10(1)(d) of the bill. If passed, SB 1153-5 will provide important legislative direction to the Water Resources Department to engage in consultation with Oregon tribes to “develop and enter into an intergovernmental agreement with the tribe that sets forth a consultation protocol for water right transfer applications in areas of the state that may affect the sovereign rights, privileges and interests of the tribe in the waters of this state * * *.” It will also allow the Water Resources Department, in consultation with a tribe, to condition a transfer with measures to avoid or minimize injury to the sovereign, rights, privileges and interests of a tribe in the waters of this state, including but not limited to treaty protected water rights.

As the bill has evolved, we have worked closely with Mr. Brunoe and provided periodic updates to Tribal leadership. We have also worked closely with the Legislative Water Caucus leadership, the Governor's office, and representatives of the League of Oregon Cities, the Special Districts Association of Oregon, Oregon Water Resources Congress, Oregon Association of Nurseries, the Oregon Farm Bureau, the Wild Salmon Center, WaterWatch of Oregon, and Trout Unlimited on this important legislation.

Based on this effort, we understand that there is consensus support for provisions of SB 1153-5 that relate to Oregon's tribes. This support includes the Tribe's understanding that there is still some clean-up work to do on the bill. For example, Section 10(3) needs to be corrected so that it applies only to conditions described in "Section 10(1)(e)" (underlined is added) of the bill; in addition, there are some additional, modest revisions to the Savings Clause in Section 19 of SB 1153-5. There may be other revisions needed, and the Tribe reserves an opportunity to raise those with the Governor's office as appropriate.

We have also participated in informal discussions with representatives from other Oregon tribes. I have no knowledge of any significant concerns that other Oregon tribes may have with the bill.

Based on those understandings, Mr. Brunoe, Mr. Mason and I are prepared to promptly advise and recommend to Tribal Council for the Confederated Tribes of Warm Springs that it formally support the bill. While not a comprehensive solution, SB 1153-5 is an important first step towards addressing the risks that water right transfers pose to the in-stream flows necessary to sustain and re-establish the Tribe's treaty-protected fisheries in the State.

Thank you.