

**BEFORE THE SENATE COMMITTEE ON BUSINESS AND TRANSPORTATION
STATE OF OREGON**

**TESTIMONY OF RYAN JACKSON, CHAIRMAN, HOOPA VALLEY TRIBE
REGARDING SENATE BILL 1552**

February 14, 2018

Introduction

The Hoopa Valley Tribe respectfully provides this testimony in opposition to §§ 8 – 10 of SB 1552 concerning Klamath River Dams.¹ Section 9 of SB 1552 repeals certain provisions of law if the physical act of removing a Klamath River dam has not begun on or before December 31, 2018. Section 10 of SB 1552 abolishes certain established trust accounts and provides for disposition of funds which have been accumulating to cover the cost of dam removal. As described below, the December 31, 2018 deadline for removal of J.C. Boyle Dam, Copco 1, Copco 2 or Iron Gate Dam is unrealistic and defunding the undertaking in 2018 frustrates decades of work by affected parties to provide for removal of those obsolete dams in 2020.

Tribal Interest

The Hoopa Valley Tribe (“Tribe”) has a direct interest relating to proceedings involving the dams of the Klamath River. Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been the mainstay of the life and culture of the Hoopa Valley Tribe. The fishery was “not much less necessary to the existence of the Indians than the atmosphere they

¹ The Klamath River dams at issue in SB 1552 and in the Klamath Hydroelectric Settlement Agreement are the J.C. Boyle Dam, the Copco 1 Dam, the Copco 2 Dam, and the Iron Gate Dam. Other dams in the Klamath River system, including Link River Dam and Keno Dam are not proposed to be removed and will continue to be used for irrigation district purposes.

breathed.” *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)). The Hoopa Indians follow exacting cultural practices to protect individual runs of fish and to celebrate the bounty of the river that gives life to their people. The salmon fishery also holds significant commercial and economic value in the Hoopa culture and economies, and the Tribe holds property rights in the Klamath River Basin fishery. The lower twelve miles of the Trinity River and a stretch of the Klamath River flows through the Hoopa Valley Reservation. All migrating salmon from the Trinity River must pass through the Klamath River on their way to and from the Pacific Ocean.

The federal government established the Hoopa Valley Indian Reservation in 1864 pursuant to a statute that required the reservation be “located as remote from white settlements as may be found practicable.” Act of April 8, 1864, § 2, 13 Stat. 39, 40. The remote Hoopa Valley Reservation was determined to be a suitable homeland for two reasons. First, the reservation was established in the heart of the Tribe’s aboriginal lands, lands the Tribe had occupied since time immemorial and to which they were, and remain, fiercely devoted. Second, the reservation set aside sufficient resources of the Klamath and Trinity rivers for the Indians to be self-sufficient and achieve a moderate living based on fish. *See* Memorandum from John D. Leshy, Solicitor of the Department of the Interior to the Secretary of the Interior, 3, 15, 18-21 (Oct. 4, 1993) (hereinafter 1993 Solicitor Opinion), *cited with approval*, *Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996).

Klamath Hydroelectric Project Dam Proceedings

The Tribe is an active participant in the proceedings concerning the Klamath Hydroelectric Project. Because of the Tribe’s cultural and economic connection to the Klamath

Basin and its resources, and the Tribe's current involvement in FERC proceeding P-2082, the Hoopa Valley Tribe is familiar with the proceedings and agreements concerning removal of the Klamath River dams.

The Hoopa Valley Tribe has actively participated in the proceedings regarding the relicensing of the Klamath Hydroelectric Project, which includes the four Klamath River dams at issue in SB 1552. PacifiCorp's license to operate the Klamath Hydroelectric Project, originally issued by the Federal Power Commission in 1954, expired on March 1, 2006. Since license expiration, PacifiCorp has continued to operate the Project on the same terms of the 1954 license under the authority of annual licenses issued by FERC. PacifiCorp's application to re-license the Project is currently ordered held in abeyance by the Commission. Yet Project operations continue per the terms of a 1950s era license that fails to incorporate protective terms and conditions that would be required under current federal law. These continued operations on a long-expired and outdated license cause direct injury to the Hoopa Valley Tribe and the resources of the Klamath River.

On February 18, 2010, the United States, the States of Oregon and California and several dozen other parties, entered into the Klamath Hydroelectric Settlement Agreement ("KHSA"). That Agreement called for enactment of legislation to authorize the Secretary of Interior to perform certain tasks. It also provided for the funding of removal of the Klamath River dams, principally through passage of a California bond measure but also through PacifiCorp customer contributions and establishment and management of trust accounts. The Agreement provided for disposition of any unnecessary or unused funds from Oregon or California Klamath trust accounts. Removal of the dams was anticipated to occur in 2020. It was never anticipated that project removal could begin in 2018.

The provision in the KHSA requiring federal authorizing legislation stalled implementation of the Agreement until the federal and State governments and other parties amended the KHSA on April 6, 2016. The amended KHSA uses existing authority of the Federal Energy Regulatory Commission (“FERC”) and provides that the States of California and Oregon will make up to \$450 million available to the Klamath River Renewal Corporation (“KRRC”) for implementation of the amended KHSA. These funds are derived from customer surcharges imposed by orders of the California Public Utilities Commission and the Oregon Public Utilities Commission (“OPUC”) and the proceeds of a California State bond issue.

The surcharge funds are now committed to KRRC pursuant to funding agreements that provide the KRRC with certainty as to the amount and availability of these financial resources. On January 24, 2017, the OPUC approved a funding agreement for the distribution of the balance of the expected funds from the Oregon trust account. The Oregon funding agreement provides for the disbursement of funds over three phases of activities. Phase 1 encompasses start up activities, planning and regulatory work. Phase 2 involves development of the definite plan and the procurement of contractors for its implementation. Phase 3 is the implementation of the definite plan.

The KRRC has already initiated actions to obtain required regulatory approvals necessary to perform facilities removal. FERC, however, has not approved either the transfer of license to the KRRC or the KRRC’s proposed license surrender (dam removal) plan. *See* Amended KHSA § 7.1.9. The KRRC has filed requests for water quality certifications with the Oregon Department of Environmental Quality and the California Water Resources Control Board for the purposes of dam removal. Neither agency has approved a certification yet. Among other things, the KRRC is also seeking approval from the U.S. Army Corps of Engineers under Clean Water

Act § 404(a), 33 U.S.C. § 1344(a) and has begun discussions with the California Coastal Commission regarding compliance with the Coastal Zone Management Act. The KRRC is seeking easements or other rights-of-way from the U.S. Department of Interior's Bureau of Land Management for the purpose of access across federal lands to perform facilities removal. As provided in the amended KHSA, facilities removal is anticipated to occur in 2020.

Conclusion

Because of the complexity of regulatory approvals and other preparations for dam removal, it is inconceivable that the physical act of Klamath dam removal could begin during calendar year 2018. The authorized agencies—FERC and the Oregon and California water quality authorities—have not approved the dam removal preparations yet. Accordingly, the provision of SB 1552 which would repeal provisions of Oregon law and abolish the trust accounts if the physical act of removing a Klamath River dam has not begun on or before December 31, 2018, would frustrate the decades-long work of the States of Oregon and California and the federally recognized Indian tribes of the Klamath River Basin, which anticipate dam removal in 2020. These provisions would snatch defeat from the jaws of a major victory for the Klamath River. The Hoopa Valley Tribe respectfully requests that § 8, § 9 and § 10 of SB 1552 be deleted. Thank you for your consideration.