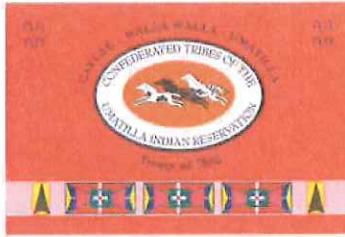


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**Testimony of the Confederated Tribes of the Umatilla Indian Reservation
on SB 839, Establishes Water Supply Development Account
before the Senate Committee on Environment and Natural Resources**

April 10, 2013

Good afternoon. My name is Eric Quacmpts and I am the Director of the Natural Resources Department for the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). I appreciate the opportunity to testify before the Committee providing our comments on SB 839. As the Committee knows, this bill is an outgrowth of the Columbia River Umatilla Solutions Task Force (CRUST), on which I had the honor to serve.

Before commenting directly on SB 839, I want to address important preliminary matters. The first of these is the paramount CTUIR interest in the settlement of its federal reserved water rights in the Umatilla River Basin. My principal role on the CRUST was to insure that future water supply projects under consideration by the Task Force did not use or impact the water resources and infrastructure needed to achieve a water rights settlement. The CTUIR has committed to a settlement that does not harm to Umatilla Basin water rights holders which is not an easy task in any basin but especially challenging in the Umatilla Basin. The CTUIR's interest and concerns in the CRUST process are the same under SB 839 – we want to ensure that any water supply project funded under the bill does not adversely affect our settlement efforts.

Second, is the fact that the CTUIR and other Oregon Tribes, such as the Confederated Tribes of the Warm Springs, have treaty reserved off-Reservation fishing rights and associated instream flow claims. These water rights are not adjudicated. And, given the time and cost of such adjudication or settlements, they may not be quantified for some time. Nonetheless, the CTUIR wants to insure that State funding does not support water supply projects that utilize water needed to satisfy these treaty based and federally reserved water rights.

Finally, I must express our frustration with the process that generated SB 839. The water policy work group that worked on the bill was initially led by consultants, then by the Governor's office. The legislative "straw dog" being developed was supposed to be consensus based, but it did not develop in that fashion from our view. Too often, bill language that was proposed by or important to the Tribe and accepted by the work group, was later changed or removed without explanation or work group involvement. The bill was drafted in a hurry up mode that did not permit sufficient time for the working group to vet language proposals or changes. The confused process that has produced this bill affects my testimony today, because as this testimony was prepared yesterday we were uncertain which draft of the bill we should be commenting on.

The CTUIR has numerous concerns that we want addressed in any final version of SB 839. Because I am uncertain what version of SB 839 is before the Committee today, let me identify the important Tribal principles that we want addressed in order that we can support the bill. Be aware that my comments are to the version of SB 839 posted on the Committee's website yesterday afternoon.

1. Add definition for the term "public benefit." Under Section 1 of the bill, the terms "economic benefit," "environmental benefit" and "social and cultural benefit" are defined. However, the bill refers to the term "public benefit" in key section as follows:
 - a. Section 5 – which requires an applicant for a loan or grant from the Water Supply Development Account to demonstrate that the project will have public benefits;
 - b. Section 6 – which requires the Water Resources Commission to adopt rules establishing a system for scoring and ranking projects for allocating loans and grants from the Water Supply Development Account, which system is to provide funding for projects having the "greatest public benefit;" and
 - c. Section 7 – which requires the Water Resources Department to develop the criteria for scoring and ranking projects so that grants and loans are made only to projects providing benefits "in each category of public benefit."

Accordingly, we propose that a definition of public benefit be included as a defined term under Section 1. We are aware that early drafts of the bill contained a public benefit definition which was removed at some point for some unknown reason. We propose that the definition of public benefit consists of the economic, environmental and social and cultural benefit as those terms are defined in Section 1.

2. We propose to revise Section 7 to ensure that the Water Resources Department criteria for ranking and scoring projects prevents utilization of water necessary to satisfy CTUIR federal reserved instream flow rights to support treaty reserved fishing rights. This Committee need look no further than the Umatilla River Basin for why this change is necessary. In the Umatilla, the once abundant salmon runs were destroyed because water supply projects diverted Umatilla River flows needed by salmon, steelhead and lamprey. We propose that the Department's criteria for ranking and scoring projects preclude loan and grant funds to projects that rely upon seasonally varying flows as defined in Section 1 and as established by the Department. Such seasonally varying flows must be protected to ensure that any CTUIR or other Tribal instream flow right is not adversely affected by projects funded by the Water Supply Development Account.
3. In Section 1 of the bill, the environmental benefit definition includes water conservation. In our view, water conservation only provides an environmental benefit to the extent the conserved water is dedicated to the restoration of stream flows and supports fish. Water conservation does not provide an environmental benefit when it is simply used for another consumptive purpose. Accordingly, the CTUIR proposes that water conservation only be considered as an environmental benefit in the event the conserved water is dedicated to restoring the natural hydrograph, floodplain function or supports native fish species.

4. The CTUIR strongly supports the requirement that the Water Resources Department be required to establish seasonally varying flows under the bill, and that such flows be determined for every season of the year and protected by the Department once established. Projects should not be funded from the Water Supply Development Account in the event that they rely upon protected seasonally varying flows for their water supply.
5. The CTUIR proposes to substitute the term “native fish species” for the term “state or federally listed sensitive, threatened or endangered fish species” in Sections 1, 8 and 11 of the bill. It makes little sense for the bill to define environmental benefit, or to impose other environmental requirements or restrictions, only when a project affects ESA-listed species. The CTUIR and all Oregon residents have an interest in avoiding adverse impacts to any native fish species.
6. I also want to express our support for provisions in the bill that include affected Tribe involvement to ensure that Tribal interests are included in the review of grant applications, the establishment of grant scoring criteria and in the review of loan or grant awards before they become final. The CTUIR appreciates this opportunity for Tribal involvement, and we intend to be fully engaged when our treaty interests may be impacted by a proposed project.

The CTUIR remains committed to working with the Water Resources Department and Umatilla Basin stakeholders to responsibly address demands for new water supply. The CTUIR supported HB 3369 and the establishment of the Umatilla Basin Water Commission to develop aquifer recharge projects to address the needs of farmers in the Basin’s critical groundwater areas who have been cut off from their groundwater supply. We have served on the Integrated Water Resources Strategy Policy Advisory Group and the CRUST. We signed the Declaration of Cooperation to ensure that any new water supply projects do not repeat the mistakes of the past by diverting water for agricultural purposes without regard to their impact to the environment or Tribal treaty rights. We look forward to working with the Committee, the Department and other stakeholders to revise SB 839 in a manner that meets the needs of all Oregon residents and honors the treaty rights of its first residents.