



**Testimony of the Confederated Tribes of the Umatilla Indian Reservation
on HB 4044 and 4064
before the House Committee on Agriculture and Natural Resources**

February 6, 2014

Good morning Chairman Witt and members of the Committee, my name is Eric Quaempts, and I am the Director of the Natural Resources Department of the Confederated Tribes of the Umatilla Indian Reservation (the CTUIR or Tribe). The CTUIR appreciates the opportunity to provide its comments on HB 4044 and 4064. The CTUIR is concerned about the potential impact of these bills on the Tribe's federally reserved water rights under its Treaty of 1855 and the *Winters* Doctrine, our ongoing water rights negotiations to settle CTUIR water rights in the Umatilla River Basin and on the joint CTUIR, State, Federal government and Umatilla Basin irrigation districts effort to restore stream flows and salmon to the Umatilla River under the Umatilla Basin Project Act. For these reasons, the CTUIR opposes HB 4044 and 4064.

The CTUIR executed a Treaty with the United States government on June 9, 1855, which Treaty established our Reservation homeland and reserved exclusive fishing rights within our Reservation and the right to fish at usual and accustomed fishing stations outside the Reservation. In *Winters v. United States*, 207 U.S. 564 (1908), the U.S. Supreme Court held that the Federal government reserved water rights necessary to satisfy the purposes for which an Indian reservation was established, which in the case of the CTUIR includes water rights for the Reservation homeland and instream flows to support salmon and other aquatic species.

The CTUIR is currently engaged in negotiations to settle our federally reserved water rights in the Umatilla River Basin. The negotiations involve the United States, the State, the Umatilla Basin irrigation districts and ditch companies and other stakeholders. We are making constructive progress in these negotiations which are important to the CTUIR and the Umatilla Basin so we can avoid the conflict experienced in the Klamath Basin. The negotiated settlement will establish CTUIR instream flow and out of stream consumptive use water rights in the Umatilla River that, when settled, need to be protected based upon the well established prior appropriation doctrine.

Our water rights negotiations seek to build on the success of the 1988 Umatilla Basin Project Act. Under that Act, the CTUIR, working closely with the State, the Federal government and Umatilla Basin irrigation districts, have restored stream flows and salmon in the Umatilla River in the past twenty years. The continued success of this effort requires that Umatilla River stream flows be protected from further diversion throughout most of the year, regardless of whether the diversion is of surface water or groundwater hydrologically connected to the surface water.

HB 4044 and 4064 would adversely affect these CTUIR and Umatilla Basin interests. The bills would impose substantial and costly additional requirements on the Oregon Water Resources Department when it exercises its statutory obligation to protect senior water rights (including those of the CTUIR) when acting on new water rights applications or groundwater permits. The bills are of particular concern in the Umatilla Basin, which has long been over appropriated, because of the extraordinarily high standard of proof (clear and

convincing evidence) OWRD must possess to support its finding that water is not available to satisfy the applicant or that conditions must be imposed to protect existing, senior water rights. The CTUIR is also concerned that the bills will require OWRD to incur extra time and increased cost in denying or limiting new water rights applications or groundwater permits based upon the absence of water supply or injury to a senior water right. The additional cost and personnel time will likely reduce the Department's ability to protect and enforce senior water rights in the Umatilla River Basin and the CTUIR water rights settlement that we are in the process of negotiating.

We do not believe that HB 4044 and 4064 would benefit the CTUIR, the residents of the Umatilla River Basin or the State of Oregon. We respectfully request that the Committee reject these bills. Thank you for the opportunity to present the views of the CTUIR on HB 4044 and 4064.