



Native American Rights Fund

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Testimony of Donald R. Wharton, Counsel for the Klamath Tribes In Support S. 1223 To Repeal of The Klamath Tribe Judgment Fund Act Before the Senate Committee on Indian Affairs July 12, 2017

Chairman Hoeven, Vice Chairman Udall and members of the Senate Committee on Indian Affairs. My name is Donald R. Wharton. I represent the Klamath Tribes as an attorney with the Native American Rights Fund. This testimony is submitted in support of S. 1223 which will repeal The Klamath Tribe: Judgment Fund Act of 1965, Pub. L. 89-224 (The Judgment Fund Act). The Judgment Fund Act seriously compromises the Klamath Tribes sovereignty and mandates distribution of tribal funds in a manner detrimental to the best interests of the Tribes and its members. It is the last remaining vestige of the disastrous and ill-considered legislation that in 1954 terminated the government-to-government relationship between the Klamath Tribes and the United States. That relationship was restored on Aug. 27, 1986 by Pub. L. 99-398, by the Klamath Tribe: Restoration of Federal Supervision Act.

I. THE HISTORICAL CONTEXT OF THE JUDGMENT FUND ACT

The Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians (now Klamath Tribes) had their government-to-government status as a recognized Tribe terminated in 1954 by the Klamath Tribe: Termination of Federal Supervision Act, (Pub. L. 86-40; 68 Stat. 718). This unilateral act of the United States Congress was taken without the consent or support of the Klamath Tribal Government. The purpose of the Act was to terminate Federal supervision over the trust and restricted property of the Tribe, and to remove from individual members their status as members of a “recognized” tribe. As a result, the lands and other tribal property were monetized and distributed to individual members of the Klamath Tribes. In order to accomplish this a “final roll” of the members of the Tribe as of midnight August 13, 1954 was compiled (the 1954 enrollees). There were 2133 members on that roll. The more complicated process of determining which of the members were the so-called “withdrawn

members” and which were the so-called “remaining members” isn’t germane to the consideration of S.1223.

In addition to the reservation property of over 850,000 acres of prime timber and ranch lands, the Tribe also had pending before the now defunct Indian Claims Commission (ICC) lawsuits against the United States seeking compensation for the mismanagement or misappropriation of tribal assets; primarily timber and ranch lands. In the 1950’s, and until 1965, claims before the ICC and later the Court of Federal Claims which resulted in judgments against the United States were not paid to the Klamath Tribe until authorized and appropriated by Congress. As a result, Congress determined that it would be more efficient to adopt a “Judgment Fund Distribution Act” that would allow for any funds secured as a result of judgment against the United States and deposited in the United States Treasury to the credit of the Klamath Tribe to be distributed in accord with the specific requirements of that Act. Thus, Congress adopted the Judgment Fund Act on October 1, 1965.

The Judgment Fund Act provided for distribution of funds appropriated in satisfaction of judgments obtained by the Tribes, and all other funds deposited in the United States Treasury to the credit of the Klamath Tribes, to the 2133 people on the Final Roll. (Sec 4 of Pub. L. 89-224). All funds deposited in the Treasury regardless of the source (e.g., payments for rights-of-way, trespass damages, or other revenues, together with any interest accrued) were included in the application of the Act.

II. THE PROBLEM WITH THE JUDGMENT FUND ACT

The Judgment Fund Act’s limitation on distribution of funds to persons on the “final roll”, or to their heirs or legatees began to have unintended and deleterious results. As time went on, the 2133 members on the final roll began to pass on. Under the terms of the Judgment Fund Act, their share passed to their heirs or legatees. (Sec 2 of Pub. L. 89-224). Sometimes surviving spouses, sometimes children or other surviving relatives. Many of the people to whom shares passed were not Klamath tribal members, or even of Native American descent. As a result, distribution pursuant to the Judgement Fund Act has four impacts detrimental to the Tribes.

1. The Tribes have no ability to determine how tribal funds can be allocated to members or other tribal priorities. Indeed, many tribal members are ineligible to receive any part of the distribution of such funds, and the Tribes cannot designate any funds for general tribal benefit or development.
2. Because of inter-marriage with non-members the distribution of funds under the Act result in distribution of significant amounts of tribal funds to non-Indians and other non-members of the Tribes.
3. Distribution to the living 1954 enrollees, or their current heirs or legatees, requires a complicated process of identification and certification of each individual, necessitating an extraordinarily lengthy and extremely expensive process. The costs for distribution are deducted from the available funds, thus significantly reducing funds available for distribution.
4. Should there be funds in the account which the Secretary of the Interior determines are insufficient to justify further distribution – which could be substantial given the extraordinary cost of distribution – those funds must under the Act be returned to the Treasury of the United States; not held for the benefit of the Tribes.

The Judgment Fund Act did not contemplate the August 27, 1986 Klamath Tribe: Restoration of Federal Supervision Act, Pub. L. 99-398, which restored the government-to-government relationship between the Tribes and the United States. Restoration in part reinitiated the enrollment of tribal members born after the compilation of the 1954 Final Roll. It also reinvigorated the Klamath Tribes' Government which manages the affairs of the Tribes. Despite the restoration of many tribal powers the Judgment Fund Act disallows any tribal determination over the distribution of funds in the United States Treasury for the benefit of the Tribes or any members enrolled after August 13, 1954.

III. THE EFFECT OF REPEAL

Repeal of the Judgment Fund Act would resolve these concerns and allow the Tribes to determine the best use of funds presently in trust accounts for the benefit of the Klamath

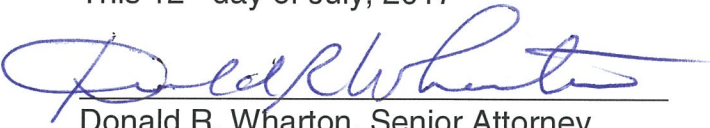
Tribes. In the absence of the Judgment Fund Act future distributions of funds appropriated in satisfaction of judgments from the United States Court of Federal Claims – there are no further claims before the ICC – would be made pursuant to the Indian Tribal Distribution of Judgment Funds Use and Distribution Act of October 19, 1973, 25 U.S.C. § 1401 (87 Stat. 466). That Act by its terms applies to any “Indian Tribe”, which includes the Klamath Tribes. It is presently unavailable to the Klamath Tribes because the 1965 Judgment Fund Act preempts its application.

IV. CONCLUSION

The repeal of this last vestige of the disastrous and ill-considered Termination Act of 1954 would be a welcome and necessary next step in respecting the sovereignty of the Tribes and returning the Klamath people to their former robust self-sufficiency.

RESPECTFULLY SUBMITTED

This 12th day of July, 2017



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