

# The Klamath Tribes Tribal Council

May 11<sup>th</sup>, 2026

The Honorable Bruce Westerman  
Chairman  
House Committee on Natural Resources  
202 Cannon House Office Building  
Washington, DC 20515

The Honorable Jared Huffman  
Ranking Member  
House Committee on Natural Resources  
2330 Rayburn House Office Building  
Washington, DC 20515

The Honorable Harriet Hageman  
Chairwoman  
Subcommittee on Water, Wildlife, and Fisheries  
1227 Longworth House Office Building  
Washington, DC 20515

The Honorable Val Hoyle  
Ranking Member  
Subcommittee on Water, Wildlife, and Fisheries  
1620 Longworth House Office Building  
Washington, DC 20515

## **Re: Legislative Hearing on H.R. 7287, H.R. 7331, H.R. 7515 and H.R. 8259**

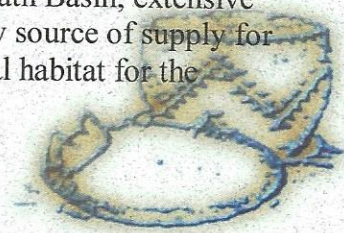
The Klamath Tribes submit the following comments for the record of the House Natural Resources Committee's Subcommittee on Water, Wildlife, and Fisheries hearing on Representative Cliff Bentz's H.R. 8259, the so-called "Federal Water Projects Improvement Act of 2026." The Klamath Tribes respectfully oppose this bill and urge Congress to work with the Tribes, as well as other Klamath Basin tribes, the irrigation community, and other stakeholders, on different legislation that would make real progress toward solving the crisis facing the Klamath Basin.

### Background

The Klamath Tribes are a federally recognized Indian tribe possessing governmental authority over their members and Indian lands and consist of three peoples who traditionally inhabited lands that now comprise parts of Southern Oregon and Northern California: the Klamath, the Modoc, and the Yahooskin Band of Snake Indians. The Tribes' headquarters are in Chiloquin, Oregon, in the heart of the Upper Klamath Basin.

Since time immemorial, the Klamath people have used the resources of the Klamath Basin for subsistence, cultural, ceremonial, religious, and commercial purposes. The Klamath Tribes' 1864 Treaty with the United States preserved hunting, fishing, trapping, and gathering rights for the Tribes and our members. These rights include, as part of the most senior water rights in the Klamath Basin, extensive rights in Upper Klamath Lake (UKL), a water body which also serves as a primary source of supply for the U.S. Bureau of Reclamation's Klamath Project (Project) and constitutes critical habitat for the c'waam (Lost River sucker) and koptu (shortnose sucker).

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C'waam and koptu, freshwater fish species native to lakes and rivers of the Klamath Basin, have sustained the Klamath Tribes' members since time immemorial and continue to play a central role in the Tribes' culture and spiritual practices. They are essential to the way of life of the Tribes' members, and the Tribes have a fundamental responsibility to protect them. Once one of the most important food-fish in the Upper Klamath Lake region, c'waam and koptu were caught by the thousands as a mainstay of the Klamath Tribes' diet.

Yet these species are now in an extremely precarious condition and at imminent risk of extinction, potentially from just a single catastrophic event. Recognizing their precipitously declining numbers, the Tribes suspended fishing for c'waam and koptu in 1986 and redoubled their efforts to ensure the conservation and recovery of these important species. In 1988, USFWS listed both species as endangered under the ESA, and designated UKL and its environs as their critical habitat in 2012. The Tribes now limit themselves to catching and releasing just two fish every year for ceremonial purposes, and a second generation of Tribal members is growing up knowing c'waam and koptu only through these annual ceremonies and the stories told by their elders and not through their own experience of harvesting, preparing, sharing, and consuming these vital components of their cultural and spiritual existence.

Without these treaty resources, the Tribes do not have the ability to live as Klamath people in accordance with our cultural, spiritual traditions, and healing properties of these treaty protected resources. Accordingly, the Klamath Tribes have a responsibility to steward and restore the c'waam and koptu, and other tribal treaty resources, for our current members and future generations.

The Klamath Tribes' responsibility has become increasingly heavy as we now deal with the effects of a loss of snowpack in the Klamath Basin that is compounding the long-term fallout from the construction of the Project and the century-plus habitat destruction and degradation that followed. The Endangered Species Act (ESA) is a critical component of the Tribes' unstinting efforts to ensure that the c'waam and koptu do not go extinct and eventually return to their treaty-promised abundance.

#### H.R. 8259 Risks Creating Uncertainty, Delay, and Further Litigation

H.R. 8259 ostensibly focuses on the process of ESA consultation rather than the substance of the outcomes of any given consultation. But the failures of the ESA in the Klamath Basin are failures of substance not of process. Since 2018, the federal agencies have been engaged in nearly permanent consultation that has resulted in the issuance of biological opinions (BiOps) in 2019, 2020, 2023, and 2024, with the current consultation targeting a new BiOp ahead of the spring/summer period of 2027. Those consultations have involved myriad opportunities for stakeholder outreach and input, including the stakeholders specifically identified in H.R. 8259. But the *outcomes* of those consultations have been problematic, largely due to Reclamation's consistent failure to abide by its ESA obligations. Layering new consultation requirements on top of this process, as H.R. 8259 would do, would not change this situation and would instead introduce even more touchpoints for potential litigation.

H.R. 8259 appears to be modeled at least in part on section 4004 of the 2016 Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016) (WIIN Act). The Central Valley Project and the Klamath Project are very differently situated, not least given the way tribal treaty rights are so deeply interwoven with ESA issues in the Klamath Basin. Yet even assuming this Central Valley Project-specific statute constitutes a reasonable template for further legislation impacting the Klamath Basin, H.R. 8259 departs from WIIN §4004 in multiple problematic ways.

- 1) WIIN §4004(1)(b) requires that a requesting water contractor "be informed by the action agency of the schedule for preparation of a biological assessment[.]" This is a straightforward mandate, compliance with which is readily discernable. H.R. 8259 §2(a)(1)(B), by contrast, would provide that a requesting water contractor is entitled to "engage with the action agency with respect to the preparation of the biological assessment." As a threshold matter, there is nothing in current law

that forecloses any direct communication between a water contractor (or any other interested stakeholder) and an action agency.

More significantly, H.R. 8259 §3(9)'s definition of the word "engage" ("to conduct direct written and in-person communications recognizing the unique interest of the contractor and promoting maximum candor and cooperation") opens up a minefield of potential Administrative Procedures Act litigation over the adequacy of any particular "engagement" – under either §2(a)(1)(B) or §2(a)(6), which deploys the term "engage" to similar effect. This risks cannibalizing limited resources from the vital work of ESA compliance, introducing additional delay into the ESA Section 7 consultation process, and affording water contractors a privileged seat at the biological assessment stage denied to tribes and other stakeholders. Nothing in WIIN §4004 was so dangerous.

- 2) H.R. 8259 §2(a)(2) has no analogue in WIIN §4004, creates the same litigation-inviting risks posed by H.R. 8259 §2(a)(1)(b), and also strives to put a thumb on the scales of several ongoing legal disputes in the Klamath Basin in a way that inappropriately elevates legal positions taken by Klamath Basin irrigators. The term "full delivery of water pursuant to a contract" is a specious term given that many Reclamation contracts, including in the Klamath Basin, have shortage and other provisions that make "full" delivery a context-dependent determination. Introducing this notion into federal law, therefore, is simply an invitation to delay and expense by inviting litigation over not just the substantive requirement to be imposed by §2(a)(2)(A) regarding the "legal authority" an agency may have to take an action but even over the question of what constitutes "full" delivery itself.
- 3) H.R. 8259 §2(a)(2) introduces another opportunity for mischief when it departs from the WIIN §4004 construct to introduce "the head of an action agency" as an actor with specific duties. It is unclear if this is intended to implicitly *require* the head of an action agency to be the one designing or adopting an action – something that has not been historical practice in the Klamath Basin – or if it means that the requirements of §2(a)(2)(A), (B), and (C), are only triggered *if* the decider is the head of the action agency. To the extent that it is intended to require all decision-making to come from the agency head, it introduces another level of bureaucratic complexity to the already often-fraught process of intra-agency decision-making, one likely to compound the delays that already attend the ESA consultation process. This serves no one.
- 4) While the language in H.R. 8259 §2(a)(2)(B) and (C) looks similar to WIIN §4004(a)(6)(A) and (B), it is important to note that the WIIN Act language is targeted to requiring *consulting* agencies (i.e. the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service as applicable) to provide water contractors information about the basis for reasonable and prudent alternatives. The obligation of the action agency, addressed in WIIN §4004(a)(5), is to "confer", and the WIIN language attaches no specific substantive or procedural obligations to that conferral. This lack of prescriptive strictures is wholly appropriate to the bespoke nature of proposed action development. H.R. 8259 §2(a)(2), by contrast, requires the head of an action agency not only to provide information but also to "engage" with the requesting water contractor. This specifically privileges water contractors in the development of the action ahead of tribes and all other stakeholders and again creates needless space for litigation over the character and sufficiency of such engagement.
- 5) Even where H.R. 8259 appears to be borrowing directly from WIIN § 4004, it introduces small language differences that raise questions about intent and generate opportunities for future conflict and litigation. Compare H.R. 8259 §§2(a)(2)(B) and 2(a)(7)(A) with WIIN §4004(a)(6)(A). All three relate to providing information about the relationship of any component of an action and the avoidance of jeopardy or adverse modification of critical habitat. But the WIIN Act language speaks of the two in the disjunctive: "how each component of the alternative

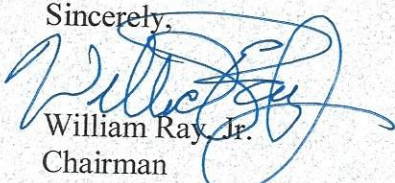
will contribute to avoiding jeopardy or adverse modification of critical habitat ....” The H.R. 8259 language, by contrast, adds additional verbiage including the word “destroying” before “adversely modifying” and speaks of the concepts of jeopardy and adverse modification in the conjunctive: “how each component of the agency action would contribute to avoiding jeopardizing the continued existence of any threatened species or endangered species and destroying or adversely modifying critical habitat”, suggesting perhaps that an alternative component is invidious if it does not accomplish both simultaneously. The same problem inheres to H.R. 8259 §2(a)(2)(C). In a similar vein, it is not clear whether and, if so, how the insertion of the word “Secretary” in H.R. 8259 §(2)(a)(5) is intended to differ from the use of the term “consulting agency” in WIIN §4004(a)(4), which it otherwise largely mirrors. No one is served by introducing such ambiguity into the law.

- 6) H.R. 8259 §2(a)(3) introduces another bureaucratic requirement absent from the analogous provision in WIIN §4004(a)(2), requiring the *head* of the action agency (rather than, as in the WIIN Act language, simply the action agency writ large) to inform water contractors of the schedule for preparation of a biological assessment (BA). The same issue is presented by the way H.R. 8259 §2(a)(6) departs from the analogous language in WIIN §4004(a)(5).<sup>1</sup> This sort of direct personal notice would also again privilege irrigators over tribes and all other stakeholders, who do not have an independent statutory basis for receiving such notice and, in the Klamath Basin at least, have often not been informed by Reclamation of its schedule for the preparation of BAs. Moreover, by elevating irrigators, H.R. 8259 undermines the government-to-government relationship the U.S. government holds with tribes. It is also likely to occasion delay. These problems recur in H.R. 8259 §§2(a)(4) and 2(a)(6), which elevates the requirement for the provision of various kinds of notice from an agency one, as in WIIN §§4004(a)(3) and 4004(a)(6), to a *secretarial* one.

The Klamath Tribes are also troubled by the absence of any savings clause in H.R. 8259 that would ensure the preservation of the substantive requirements of the ESA, Tribal water rights, and the federal trust responsibilities to Tribes. The absence of such language – which has been included in legislation such as 2025’s Klamath Basin Water Agreement Support Act, Pub. L. No. 118-246 – creates significant legal ambiguity and simply invites further litigation.

For all the reasons listed here, the Klamath Tribes urge you to oppose H.R. 8259. We remain committed to working with Congress, other Basin tribes, the irrigation community, and other stakeholders to solve the crisis facing the Klamath Basin. Doing so, however, requires collaboration with all parties involved. To that end, Congress should not inappropriately elevate irrigators over our own treaty rights and create new ambiguity around the ESA’s implementation in the Basin, as H.R. 8259 would do. We very much appreciate the opportunity to provide testimony on this bill and look forward to our continued partnership on these issues.

Sincerely,



William Ray, Jr.  
Chairman  
The Klamath Tribes

cc: The Honorable Senator Ron Wyden  
The Honorable Senator Jeff Merkley

<sup>1</sup> The more significant issue with the differences between H.R. 8259 §2(a)(6) and WIIN §4004(a)(5) is the introduction in H.R. 8259 of the “engagement” requirement discussed above.