

Native American Rights Fund
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**Testimony of Donald R. Wharton, Attorney for the Klamath Tribes
In Support H.R. 3160, S. 46 for Repeal of The Klamath Tribe
Judgment Fund Act, Before the House Subcommittee for
Indigenous
Peoples of the United States
October 16, 2019**

Chairman Gallego, Ranking Member Paul J. Cook and members of the Subcommittee on Indigenous Peoples of the United States. 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 H.R. 3160, S. 46 which will repeal The Klamath Tribe: Judgment Fund Act of 1965, Pub. L. 89-224; 25 U.S.C. Sec 565 (The Judgment Fund Act). The Judgment Fund Act seriously compromises the Klamath Tribes sovereignty and mandates distribution of tribal funds, held in trust by the US Department of the Interior--Office of the Special Trustee for the benefit of the Klamath Tribes, 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 unilaterally 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, 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). 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more complicated process of determining which of the members were the so-called “withdrawn members” and which were the so-called “remaining members” isn’t germane to the consideration of H.R. 3160, S.46.

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 and/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, Pub. L. 89-224.

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, their heirs or legatees. (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.

A significant source of funds in the trust accounts came from the Klamath Tribes at the time of Termination. In order to sustain the Tribes’ claims against the United States in the Indian Claims Commission the Tribes, in 1958, deposited in a trust account \$350,000 to be held by the Secretary of the Interior to pay for the costs of litigation of those claims. The Judgment Fund Act expressly provided that any distribution to 2133 members of the Tribes would not include “funds heretofore or hereafter set aside for the purpose of paying the usual and necessary expenses of prosecuting claims against the United States.” (Sec. 1 of Pub. L. 89-224; 25 U.S.C. Sec 565). As a result, Tribal funds have accumulated in these accounts until litigation against the United States for recovery of mismanagement or misappropriation of tribal lands or assets have largely been completed. Those funds are presently subject to the Judgment Fund Act. At present they amount to approximately \$712,705.

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 almost immediately to have unintended and deleterious results. As time went by, 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 decide how tribal funds in these accounts can be allocated to members or other tribal priorities. Indeed, many tribal members – e.g. those enrolled after August 13, 1954 – 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 significant amounts of tribal funds going 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, resulting in diverting the majority of the funds to those costs. 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 Judgment Fund 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 decision making 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. H.R. 3160, S.46 provides that the funds are to be distributed directly to the Tribes for management as they deem best.

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. The Klamath Tribes strongly support H.R. 3160. S.46, a Bill for **Repeal of The Klamath Tribe Judgment Fund Act of 1965.**

Respectfully submitted,

/s/ Donald R. Wharton

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