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THE KLAMATHS' PATH AFTER TERMINATION

By

Monika Nicole Bilka

Bachelor of Science, University of Oregon, Eugene, Oregon, 2003

Thesis

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Approved by:

Perry Brown, Associate Provost for Graduate Education

Dr. Len Broberg, Chair
Department of Environmental Studies

Dr. Dan Flores,
Department of History

Dr. David R. M. Beck
Department of Native American Studies

THE KLAMATHS' PATH AFTER TERMINATION

Chairperson: Dr. Len Broberg

During the 1950s, termination policy dominated federal Indian policy. Termination policy was an effort by the federal government to complete the assimilation process by ending the federal trust relationship it held with Native American tribes. US federal officials chose to terminate the trust relationship with tribes that they considered assimilated and wealthy. As many other historians have argued, termination history did not end in a positive way for tribes. Many tribes witnessed the social and economic collapse of their communities, as well as the loss of their tribal identity.

Although the Klamaths suffered from their termination experience, they faced a new path before them after termination. This new path resulted from conservation-based amendments to the tribes' termination act. The conservation-based amendments encouraged the federal purchase of most of the Klamaths' forested land. In 1970, the US denounced termination and in 1975 enacted self-determination policy, legislation that would allow tribes to assert their sovereignty without severing their federal trust relationship. The federal, rather than private, ownership of the Klamaths' former land offered the Klamaths a land-base on which they could practice their treaty rights and assert their sovereignty in the management of that land during the self-determination era. This study delves into the Klamaths' interests in their forested land prior to termination. Then, it illuminates the development of the conservation-based amendments. Last, the research follows the Klamaths down their new path to show how the tribes empowered themselves by taking advantage of self-determination policy, environmental law, and federal administrative procedures.

This thesis is dedicated to Grandma Dowie
and Grandpa Jackie Crume and to my parents,
who introduced me to southeastern Oregon.

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CHAPTER 1
INTRODUCTION

We flipped our lines into the Williamson River near its headwaters where the river emerges as a spring from the volcanic soil. My dad and Grandpa Jackie took me out to fish and to poke around the ponderosa pine forest near our home in southern Oregon every summer. I tightly gripped my pole and lightly held my line with my left pointer finger and thumb. With as much patience as I could muster at ten years old, I waited for a bite. The sweet aroma of ponderosa pines tickled my nostrils. As I shifted my footing, the pumice-flour soil, speckled with dry, orange ponderosa needles, crackled and compacted beneath me. I reeled in the line and cast it again toward the pool along the opposite bank. Grandpa Jackie and my dad each had found their own fishing nooks along the riverbank. They were casting, relaxing, and sharing the sweet summer air in the forest.

The Williamson is one of three main rivers that flow through the Upper Klamath River Watershed, a region that included the Klamath Indian Reservation at one time. After the Williamson's waters surface in the north-central end of the reservation, they flow south until they hit the basalt dike that dams the river. The dike forces much of the Williamson's water to spread across the land, creating the Klamath Marsh. Not all the water is dammed, though. Quite a bit bypasses the dam and continues southwest toward Klamath Lake. Just before reaching Klamath Lake, the Sprague River pours into the Williamson, increasing the discharge in the channel. The Sprague flows east to west, bisecting the reservation. Another river, the Sycann, carries water from the northeast side of the Klamath Reservation south to the Sprague River. This river, like the Williamson River, also morphs into a marsh and continues south through the ponderosas that stand along the riparian corridor like guardsmen. Grandpa Jackie knew these rivers well. He taught my dad where the best fishing holes were on each river. Then, he and my dad gave me this knowledge of the watershed.

Grandpa Jackie was my adopted grandpa. He had plenty of grandkids, but I was short in the way of grandpas. Jackie Crume, now passed, was a thin, gentle, aloof member of the Klamath Tribes. The Klamath Tribes are a confederated tribe consisting of the

Klamath, Modoc, and Yahooskin Band of Paiute Indians in southern Oregon. Prior to creation of their reservation, the ancestors of the Klamath Tribes inhabited more than 20-million acres of land throughout southern Oregon and northern California. The Klamath proper were composed of six main groups, which anthropologist Theodore Stern refers to as tribelets, dispersed throughout their territory. Some of the Klamath groups lived near Klamath Lake, while others lived farther east near the Williamson and Sprague rivers and near the marshes on the north end of their territory. The Klamath's diet depended mostly on fish from these water sources. The Klamaths lived a more stationary life compared to the Modocs. The fish in the lake and marshes offered the Klamaths stability year-round. They supplemented the fish with other foods, such as game, pond lily seeds, berries and tubers.¹

The Modocs lived south of the Klamaths, in present-day north-central California. The Modocs' territory consisted of a separate river, marsh, and lake system than the Klamath. The Modocs' diet included fish from Lower Klamath Lake, Tule Lake, Goose Lake and the Lost River. They, too, ate tubers, berries, and seeds. However, the Modocs' territory did not offer their people an adequate supply of fish year-round. They ate large amounts of game from the nearby shrub and timberlands.²

To the north and east of the Klamaths and Modocs lived multiple bands of the Northern Paiutes, including the Yahooskin Band. The environment of the Yahooskin resembled that of the Klamaths and Modocs. They subsisted on fish from rivers and lakes in lowland valleys, including the eastern side of Goose Lake, Summer Lake, and

¹ The Klamath Tribes use the plural form of their name to represent the three tribes included in their confederated tribe. The three tribes include the Klamath proper, the Modoc, and the Yahooskin Band of Paiute. Theodore Stern, "Klamath and Modoc," *Handbook of North American Indians, Plateau*, vol. 12, vol. ed., Deward E. Walker, Jr., general ed., William C. Sturtevant. (Wash., D.C.: Smithsonian Institution, 1998), 447-453. The Klamath and the Modoc spoke dialects of the Klamath language group.

Anthropologists classify the Klamath language in the Plateau Penutian family, Stern, 1998, 446. In a later footnote I discuss the controversy anthropologists have over the Yahooskin Band of North Paiutes. As far as their language is concerned, one can infer that the Yahooskin, who lived east of the Modoc and north and east of the Klamath probably spoke Western Numic, the language that other bands of Paiutes spoke within the same geographic region. The Western Numic language is part of the Uto-Aztecan family, see Catherine S. Fowler and Sven Liljeblad. "Northern Paiute," *Handbook of North American Indians, Great Basin*, vol. 11. vol. ed., Warren D'Azevedo, general ed., William C. Sturtevant (Wash., D.C.: Smithsonian Institution, 1986), 435.

² Stern, 1998, 447-453.

the Harney Valley. Aside from fish, the Yahooskin subsisted on roots, berries, seeds, and game.³

Tules, or cattails, blanketed the lake edges and marshes throughout the combined territory of the three Indian groups. They all utilized the tule. The Klamaths and Modocs constructed tule mats, baskets, walls for their summer dwellings, clothing, and footwear. The Northern Paiutes, and presumably the Yahooskins, used tules for housing, footwear, decoys, and clothing.

In the early 1800s, these tribes encountered non-Indians for the first time. When Peter Skene Ogden of the Hudson's Bay Company traveled through Klamath territory in 1826, one Klamath village hosted around 200 Indians who had met for trading. The Klamaths told Ogden that his party would meet larger populations of Indians as they traveled west on the Klamath River to the ocean. Stern argues that the Klamaths did most of their trading on the Willamette River and at a large trade center in The Dalles, Oregon, on the Columbia River. According to Stern, in the early-1800s, trappers first introduced the Klamaths to the trade center at The Dalles. This trade center became important for the Klamaths and Modocs. Both raided neighboring tribes and participated in a slave trade at The Dalles.⁴

By the late-1800s, the Klamath, Modoc, and Yahooskin groups would together agree with the federal government to move onto a reservation. Leaders of the Klamaths, Modocs, and Yahooskin Band of Paiute Indians met with Indian Office officials in

³ Fowler and Liljeblad, 439-443. Anthropological sources offer mixed opinions as to whom the Yahooskin name refers. Fowler and Liljeblad do not include the Yahooskin in their discussion of the Northern Paiute. Instead, they referred to that name in their synonymy section. By applying anthropological sources, they postulate that the Yahooskin Band of Paiutes was actually a group of Upland Klamaths or possibly a miss-named group belonging to another band of Northern Paiutes. They contend that Yahooskin, or Yahooskin, is not a Northern Paiute name. Furthermore, they argue that the only records that use that term are Indian Office records. None of the military records, prior to the establishment of the Indian Office, use that name. See Fowler and Liljeblad, 464-465. One should note, however, that the contemporary Klamath Tribes recognize the Yahooskin Band of Paiutes. Their acknowledgement of the Yahooskin is clearly evident on their tribal seal and in the name of their casino, Kla-Mo-Ya—Klamath, Modoc, and Yahooskin, respectively. Because this group of Indians is not clearly defined in anthropological literature, I based my decision to categorize the Yahooskin as Northern Paiutes living in the areas northeast and east of the aboriginal Klamath and Modoc on the Klamath Tribes' and the BIA's recognition of those people.

⁴ Klamath and Modoc, see Stern, 1998, 450-455. Yahooskin Band of Paiute, see Fowler and Liljeblad, 439-446. The Klamath were also part of a trade network with other tribes of the Klamath River region and Columbia River region. See, T. C. Elliot, "The Peter Skene Ogden Journals," *Oregon Historical Quarterly* 11 (June 1910), 211. Elliot provides editorial notes for the journal entries. Miss Agnes C. Laut copied the original journals in 1905 from the Hudson's Bay Company House, London, England. See also, Stern, "The Klamath Indians and the Treaty of 1864," *Oregon Historical Quarterly* 57 (Sept 1956), 229-273.

October of 1864 to sign a treaty. They gathered near the shallow, yet expansive Klamath Lake in southern Oregon. The 27 tribal headmen, who included La-Lake, Chil-o-que-nas, Blow, Mo-ghen-kas-git, Che-mult, Jackson, Keint-poos, Sky-te-ock-et, and Schon-chin, each with two strokes of ink ceded more than 20-million acres of their territory in southern Oregon and northern California. The estimated 1,200 to 2,000 members of the three groups of Indians left their vast high desert territories to reside on a two-million acre reservation in the heart of the Klamath peoples' pre-reservation homeland.⁵

Grandpa Jackie grew up in southern Oregon on the Klamath Reservation. My dad bought property down the road from Grandpa Jackie's house in the 1960s. They met after my dad found Grandpa Jackie's wife, Grandma Dowie, and their daughter Jola in a ditch. They had careened off the road in their car. My dad drove them home. Soon after this favor, my dad and Grandpa Jackie befriended each other. Grandpa Jackie shared his favorite fishing and hunting spots and places that were sacred to him and his family with my dad on the land he knew—the land that was his reservation.

By the time my dad moved to the Sprague River Valley, however, the Klamath Reservation no longer existed. In the 1950s, the Klamaths had participated in federal legislation that terminated their trust relationship with the federal government. The Klamaths had established their trust relationship with the federal government when the leaders of their tribes signed a treaty with the United States government. Through this agreement, the Klamaths became wards of the federal government, and the government assumed the role of trustee. As trustee, the federal government provided services for the tribes, such as healthcare and management of the tribes' forest. Until the 1950s, federal Indian policy encouraged the assimilation of Native Americans while they were under wardship status. In the 1950s, termination policy ended the Klamath Tribes' trust relationship with the federal government and, at least in the hopes of US policymakers, completed that tribe's assimilation process.

The Klamaths' termination process ended in 1961, only a couple of years before my dad bought land on the former reservation. During the process of this so-called

⁵ Stern, 1956, 229-273. *Treaty between the United States of America and the Klamath and Moadoc [sic] Tribes and Yahooskin Band of Snake Indians*, October 14, 1864, Statues at Large 16, 707-712. In this paragraph, I am referring to the Klamath proper, not the confederated Klamath Tribes.

“termination policy,” the US Forest Service took title to most of the tribal forest. That summer day in 1990 I was fishing in Winema National Forest. When Grandpa Jackie was a kid, that same place was within the boundaries of the one-million-acre Klamath Reservation forest. The Chief Forester of the Indian Office J. P. Kinney described the enormous opportunity for timber harvest offered by the Klamaths’ forest.

On the Klamath Reservation in southern Oregon, there was in 1910 the most extensive stand of western yellow pine (*Pinus ponderosa*) [sic] on any Indian reservation and one of the most favorable logging chances in the entire western pine region. This forest contained at that time not less than eight thousand million board feet of merchantable timber.⁶

An average logging truck today carries about 5,000 board feet of timber per load. Harvesting the 8,000,000,000 board feet of timber on the Klamath Reservation would have required 1,600,000 logging trucks, each loaded with 5,000 board feet, to haul the timber from the reservation. If placed end-to-end, the 1,600,000 logging trucks would have covered a distance of 15,000 miles, approximately three-quarters of the distance around the earth’s equator. At the beginning of the Klamaths’ termination process in 1954, the BIA estimated that the remaining forest held 4,000,000,000 board feet—still an enormous amount of timber.⁷

Not until I was 26 years old and starting my first semester of graduate school did I realize that the Klamath Reservation no longer existed. My exploration of my family’s experiences with Grandpa Jackie and Grandma Dowie in the Sprague River Valley led me to this discovery. I called my dad one night to ask him why the Klamath Reservation was not included in my Oregon atlas. He took a moment, chuckled, and told me he was not really sure. My dad participated in rodeos, fished the rivers, and hunted with Grandpa Jackie from the ‘60s through the ‘90s on land he swore was part of the reservation. My dad may have been partially right. About 135,000 acres of the former Klamath Reservation forest remained under the ownership of a minority of Klamath tribal members until the early ‘70s. I found this out in my searches on the internet and

⁶ Kinney, J. P. “Forest Management on the Klamath Reservation, 1910-1933,” In *Indian Forest and Range: A History of the Administrative and Conservation of the Redman’s Heritage*, (Wash., D.C.: Forestry Enterprises, 1950), 183. J. P. Kinney held his position as chief forester for the Indian Office from 1914-1933. He completed this volume in 1938, but did not publish it until 1950.

secondary sources that later led me to archival and government document research. My new understanding of the history where I grew up astounded me. I had not learned about the Klamaths' termination experience in the public school system.

When I was about four years old, my parents had moved from Sprague River, Oregon, in the boundaries of the former reservation, to Klamath Falls, a rural town about 25 miles southwest of the former Klamath Reservation boundary. Klamath Falls was a timber town. As this town developed in the early 1900s, so did its timber industry, which was dependent on Klamath Reservation timber. During the decade of the Klamaths' termination, the tribes' timber accounted for 25 percent of the available saw timber in Klamath County, a county in which 40 percent of the economy relied on timber and timber harvesting. Despite the significance of the reservation timber and termination policy to our region's history, I did not learn about either topic in the public schools. Perhaps, the story was too controversial for young ears. As I researched termination, I found that the policy resulted in hardship for the Klamath Tribes, and other tribes throughout the United States. Tribes that underwent termination experienced a collapse of social cohesion in their communities. The Klamaths experienced increased incidents of alcoholism and increased death rates. Grandpa Jackie and Grandma Dowie never talked about termination with my family. That makes sense. Termination had probably imposed emotional and social stress on them. Talking about it might have raised nostalgic feelings about their former reservation.⁸

That termination is laden with negative connotations is also reflected in the historiography of that subject. The literature on termination focuses mostly on the horrific social and economic outcomes tribes experienced during and after their termination processes. Law Professor Charles Wilkinson uses the Klamath Tribes' termination history to show how and why termination was a terrible policy for tribes in his book, *Blood Struggle: The Rise of Modern Indian Nations* (2005). Historian Donald Fixico focuses his early research on the roles of the pro-termination congressmen and

⁷ I estimated this from info that Professor Jim Burchfield, Department of Forestry at the University of Montana-Missoula, in the forestry department gave me. I am looking for a citable source for the average length of a logging truck and the average board feet it would contain.

⁸ I do not know if the Jackie or Dowie Crume supported termination policy. Furthermore, members who supported termination may not have expected the horrible social and economic outcomes of termination. Some of them may look back at their decision with regret.

government officials. He later argues that capitalistic pressures led to the termination of the Klamath Tribes in his volume, *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources* (1998).⁹

Patrick Haynal, an anthropologist, has dedicated most of his academic writing to the Klamaths' termination. In his master's thesis, "The Impact of Termination on the Klamath Sociocultural System," at San Diego State University, 1986, Haynal compares the Klamaths' and Menominee's abilities to regain restoration status after termination. He argues that the Klamath Tribes took 11 years longer to regain their federal status because federal laws had impacted the Klamaths in different and more detrimental ways. Haynal continued his study of the Klamath Tribes with a more positive perspective in his doctoral dissertation, "From Termination through Restoration and Beyond: Modern Klamath Cultural Identity," at the University of Oregon—Eugene, 1994. In this work, Haynal contends that during the post-termination decades the Klamaths started using transcultural techniques. The term, transcultural technique, refers to the way in which the Klamaths began using the dominant culture's legal system to their benefit. The Klamaths began lobbying politicians, filing suit, and taking advantage of the mass media. These actions allowed the Klamaths to reaffirm their subsistence treaty rights and their federal status as an Indian tribe. By regaining federal status, they could benefit from federal programs for tribes again.

Haynal's most recent publication, an essay titled "Termination and Tribal Survival: The Klamath Tribes of Oregon," explores the Klamaths' roles in termination and their rebuilding of the Klamath tribal community. Haynal chronicles events without an overarching argument. His focus on tribal records and informants, however, offers insight into the Klamaths' termination and self-determination experiences.¹⁰

⁹ For a thorough bibliographic essay on termination research pre-1984 see Donald Fixico, "Twentieth Century Federal Indian Policy," *Scholars and the Indian Experience*, ed. W.R. Swagerty, Bloomington: Indiana University Press, 1984. See Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Norton, 2005). For the roles of congressmen and government officials see Fixico, 1984, 136, Fixico, "Termination and Relocation: Federal Indian Policy in the 1950s" (Ph.D. diss., University of Oklahoma, 1980), and Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960*, (Albuquerque: University of New Mexico Press, 1986); and for his work on termination and capitalism, see Fixico, "Termination of the Klamath and Timberlands in the Pacific Northwest," in *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources*, (Boulder: University of Colorado Press, 1998), 79-102.

¹⁰ Patrick Haynal, "The Impact of Termination on the Klamath Sociocultural System" (master's thesis, Anthropology, San Diego State University, 1986), 280pp.; Haynal, "From Termination through Restoration and

Haynal's mentor, anthropologist Theodore Stern, centered his academic research on the Klamath Tribes. In his volume, *The Klamath Tribe: A People and Their Reservation* (1966), Stern covers the early period on the Klamath Reservation through the Klamaths' termination in the early-1960s. He concludes that both the reservation system and termination policy did not prepare the Klamaths for individual self-sufficiency. Instead, the BIA's program of directed change on the reservation led to cultural confusion among the Klamaths. After termination, the Klamaths were no longer regarded as Indian by the dominant society, nor did that society accept them as equals.¹¹

Other scholars, however, have looked for an uplifting side to such a despised policy. By taking a revisionist approach, Peter Iverson opened a new chapter in the termination historiography. In his essay, "Building toward Self-Determination: Plains and Southwestern Indians in the 1940s and 1950s," Iverson investigates how the termination era and the Plains and Southwestern Indian tribes' goals for economic self-sufficiency empowered those tribes. Iverson's revisionist approach to a period that many historians have categorized as deconstructive gives a fresh perspective to termination policy.¹²

Without discrediting the distressing social and economic outcomes termination posed for Klamath tribal members, we view of the Klamaths' termination history with a nuanced perspective. My research of their termination period suggests that conservation played an integral role in the Klamaths' termination process. Conservation refers to the definition linked with "wise use" of natural resources for economic and ecological reasons. Congress passed amendments to the Klamath Termination Act of 1954 that were predicated in conservation ideology. Therefore, I have chosen to refer to them specifically as conservation-based amendments. These amendments resulted in a new future, which the original act did not offer, for the Klamath's forest and for the Klamaths, themselves. The conservation-based amendments encouraged the federal purchase of most of the Klamaths' reservation forest, subsequently protecting the forest from private

Beyond: Modern Klamath Cultural Identity" (Ph. D. diss., Anthropology, University of Oregon, 1994), xiii+413pp.; Haynal, "Termination and Tribal Survival: The Klamath Tribes of Oregon," *Oregon Historical Quarterly* 101 (2000), 270-301.

¹¹ Theodore Stern, *The Klamath Tribes: a People and Their Reservation*, (Seattle: University of Washington Press, 1966), xv-xvi, 260, and the term "cultural confusion," 227.

¹² Peter Iverson, "Building toward Self-Determination: Plains and Southwestern Indians in the 1940s and 1950s," *Western Historical Quarterly* 16 (April 1985), 163-173.

purchase, fragmentation, and degradation in the future. In this way, the conservation-based amendments, which Congress passed in order to protect largely non-Indian conservation interests, actually established a land base on which the Klamaths would later assert their treaty rights and sovereignty.

The tribal forest is consistently at the forefront of the tension the Klamaths experience with the Bureau of Indian Affairs (BIA), the Department of the Interior, other federal agencies, Congress, and the intertribal conflicts that emerge. In the early 1900s, the tribes' forest became a source of wealth for the tribes and a staple of the timber industry that developed in the southern Oregon region. Through the 1950s, the forest maintained its importance to the economy of that region. More than that, many southern Oregon and northern California non-Indians depended on the forest for its ability to stabilize the watershed and provide habitat for game. Over the course of the 20th century, the forest had supported the Klamaths' subsistence and spiritual needs.

The Klamaths' story can best be understood in the context of the changing federal Indian policy throughout the 20th century. Historians have compared federal Indian policy with a pendulum that swings from assimilation on one side to cultural pluralism on the other. Although the Klamaths did not always agree with the current federal policy, they found their lives influenced by the prevailing policy of a given era. Likewise, the Klamaths retained an influential role in the development of federal Indian policy throughout most of the 20th century, as will become evident in this narrative. Therefore, each of the following chapters corresponds to a specific federal Indian policy period.¹³

Fifty years before my dad met Grandpa Jackie and Grandma Dowie, the prevailing federal Indian policy was that of allotting reservations. From the 1887 to 1934 the federal government followed allotment policy. The story of the Klamaths' 90-year struggle to earn management rights to their reservation forest began during this period. During this time, the Indian Office atomized many tribal reservation lands in an attempt to further assimilate Indians under allotment policy. Pro-allotment policymakers believed that communal property only hindered the assimilation process. However, the Indian Office set aside large amounts of forested land on many reservations in an effort to

conserve the forests and to provide a supplemental income for tribes whose land did not support farming and ranching, the two economic goals of allotment policy. The Klamath Indian Reservation was one such reservation. The Klamath Indian Reservation's high desert climate supported one of the most valuable stands of merchantable timber in the nation—about 1,000,000 acres of primarily ponderosa pine trees. As trustee for Indian tribes, the US government maintained the responsibility of safeguarding tribal resources. And as a federal agency they also had the responsibility to conserve national resources, such as forests. In the early 1910s, the Indian Office developed its own forestry division, which would manage the Klamaths' forest until 1961.¹⁴

Chapter two begins with the BIA's decision to set aside nearly one-million acres of forest for timber harvest as a communal benefit for the Klamath Tribes during the allotment period. From 1913-1933, the BIA managed the Klamaths' forest for timber production. This chapter explores the tribes' growing interest in their forest wealth and the simultaneous development of their frustration with the BIA's management of the forest and the reservation at large. During this policy era, the Klamath Tribes developed a keen interest in benefiting directly from their forest asset. Their interests manifested in the form of two factions by the end of the allotment period. One group argued for the continued communal benefit of the forest. On the contrary, the other faction contended that the Klamaths should allot their communal forest on a pro rata basis and end the Klamath Tribes' federal supervision.

Allotment policy did not prevail during the next decade. Like President Franklin D. Roosevelt's New Deal for America in the 1930s, the newly-appointed Commissioner of Indian Affairs, John Collier, developed what historians would refer to as the Indian New

¹³Laurence Kelly, "United States Indian Polices, 1900-1980," *Handbook of Native American Indians, History of Indian-White Relations*, volume ed. Wilcomb Washburn, general ed. William Sturdivant, vol. 4, (Wash., D.C.: Smithsonian Institution, 1988), 66-80.

¹⁴Alan S. Newell, Richmond Clow, and Richard N. Ellis, *A Forest in Trust: Three-quarters of a Century of Indian Forestry, 1910-1986*, Prepared for the U.S. Department of the Interior, Bureau of Indian Affairs, Division of Forestry, Wash., D.C. by Historical Research Associates, Missoula, MT, 1986, conservation and Indian forestry, see ch. 1, pp. 1-14, establishment of BIA forestry division, see ch. 2, p. 16; communal forests, ch.3 pp.1-2. Francis Paul Prucha suggests that the development of allotment policy was largely an outcome of citizens, motivated by their Protestant backgrounds, acting benevolently for the sake of the Indians. Allotment policy mirrored the ethics of Protestantism, individualism and hard work. Many of these evangelical-based groups met at a yearly conference in Lake Mohonk, New York, and referred to themselves with the title, "Friends of the Indian," see Prucha, "Federal Indian Policy in United States

Deal, or Indian Reorganization Act of 1934. Collier envisioned assimilating tribes as communities, rather than individually as allotment had. However, this era of Indian policy, from 1933 to 1953, did not turn out as Collier expected. Many tribes, including the Klamaths, rejected the Indian Reorganization Act.

During the Indian New Deal Era, the Klamaths developed intense factional conflicts, as did many tribes. Within tribes there often existed a portion of tribal members who embraced the tenets of allotment. However, those same tribes also included members who believed the IRA would offer their tribe a chance to protect their heritage and tribal culture. According to historian Graham Taylor, Collier's major flaw was his inability to recognize that tribes were not homogenous communities. They were, instead, diverse groups of people with different views.¹⁵

Chapter three is a study of the hearings that tribal faction leaders' participated in during the Indian New Deal era. Their testimonies and the bills they suggested in the years leading into and during this period are reflected in the Klamath Termination Act of 1954. The very requests the faction leaders made and their compromises to which they agreed would mirror the very sections of the act that Congress later amended for conservation purposes.

Because Grandpa Jackie and Grandma Dowie did not discuss termination with my parents or me, I do not know if they supported or opposed it. During the beginning of the termination era, the Klamaths' two factions remained in opposition. One faction strongly supported the termination bill that Congress passed, while the other supported terminating the federal trust relationship, but not as the Klamath Termination Act of 1954 required. What is clear from the historical evidence is that conservation became an integral factor in the Klamaths' termination process.

In chapter four, I explain how and why Congress added conservation-based amendments to the Klamath Termination Act of 1954. These conservation-based amendments offered a new future for the Klamaths' faction that promoted keeping the

History," In *Indian Policy in the United States: Historical Essays*, (Lincoln: University of Nebraska Press, 1981, 26-35.

¹⁵ John Collier expected that the Klamaths would support the IRA. He had been working closely with one of the Klamath leaders since the late-1920s. See Graham Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-1945*, (Lincoln: University of

tribal forest under Klamath ownership and management. However, decades would pass and other political and legal pieces of their history would need to develop first.

Termination would seem like the end of their tribe to many Klamaths in 1961. But leaders like Seldon E. Kirk maintained hope. Kirk wrote in a “Letter to the Klamath People”:

We have no power over what has been but we have it in our power to shape our future and the future of our children. Out of the discouragement, the bitterness of the past, and out of Termination, perhaps something good can be created. It is important that you and I work harder than ever so that we can continue to lift up our heads with pride, and if they were living today, our ancestors too, could be proud of us.¹⁶

During the decades that followed termination, the Klamaths realized Kirk’s vision. Self-determination became the antithesis of termination policy in the mid-1970s. Charles Wilkinson describes the nascence of the American Indian movement and the Self-Determination Movement that resulted in the shift in federal Indian policy in *Blood Struggle*:

Although an exact historical moment could never be determined for such a thing, the modern Indian movement had crystallized by the mid-1970s. The termination election at the Colville Reservation, the Menominee Restoration Act, congressional passage of self-determination legislation, and the Boldt decision in the Northwest fishing cases were both symbolic and deeply substantive—not isolated triumphs on individual issues but systemic advances that benefited tribes broadly. Together they represented new winds in Indian country and reached all three branches of the federal government. Together they announced that at last Indian tribes could shape their own futures.¹⁷

Unlike termination, which directly affected about 100 of the more than 500 federally-recognized tribes and bands of Indians, self-determination would be accepted by practically all tribal nations. The tribes that underwent termination would be able to restore their trust relationship and federal status through restoration policy. Grandma Dowie was in charge of organizing the Klamaths’ Restoration Powwow, which the tribes held every spring. As Wilkinson observed, self-determination was not only federal law, it was an internalized social movement fueled by American Indians, themselves. The

Nebraska Press, 1980), 32-33. For Taylor’s argument on factionalism within tribes during the Indian New Deal era, see 39-62.

¹⁶ Quote taken from Stern, 1966, 258.

¹⁷ Wilkinson, 2005, 177-178.

process of rebuilding tribal communities has been long, though, and often the means have required some creativity.¹⁸

In the 1960s and 1970s, mainstream America witnessed the beginning of the environmental movement. During these decades, Congress passed multiple environmental laws. The National Environmental Policy Act of 1969 and the Forest Service administrative appeals process in combination with self-determination policy became important political tools for the Klamath Tribes. They would use these policies to garner a management position for their former forest resources in the 1990s.

Chapter five will focus on how and why the Klamaths used their treaty rights, NEPA, the Forest Service administrative appeals process, and litigation to reaffirm a government-to-government consultation process with the USFS over the tribes' former reservation land. This period of the Klamath Tribes' history suggests that a nexus exists between environmental law and self-determination, which has empowered tribal nations.

Grandpa Jackie and Grandma Dowie fade into the background of this narrative. Although they influenced my life and my interest in the Klamaths' termination history, the story will focus on the political leaders of the tribes, which my friends were not. However, Grandpa Jackie and Grandma Dowie lived this history, as did many of the tribal members who are not mentioned in the following chapters. Keep in mind that the tribes are not merely the leaders that this history includes.

The Klamaths' history is developing in a positive direction. During the last few decades, the remaining members of the faction that believed in perpetuating the Klamaths' heritage have begun to realize their vision. Most historians have viewed the Klamaths' termination in a negative light. Without denying that these historians are correct, I seek to expand the historiography of termination policy and the greater historiography of federal Indian policy by analyzing the Klamaths' termination in the context of the conservation-based amendments to their termination act. The conservation-based amendments became a key feature of the Klamaths' history. This is not to say that the conservation-based amendments were the sole reason for the Klamaths' later success in rebuilding their tribes' heritage. Instead, the conservation-

¹⁸ David Getches et al. report that "more than 100" tribes underwent termination, Getches et al., *Case Materials on Federal Indian Law*, 4th ed. American Book Series (St. Paul, MN: West Group, 1998), 11.

based amendments should be understood as an outcome that offered the tribes' a new path. The Klamaths, with two paths before them, had the choice to influence their own future. When the powerful winds of self-determination, described by Wilkinson, reached the former Klamath Reservation in the mid-1960s, the Klamaths joined other Indian nations. They walked that new path that the conservation-based amendments offered. They fully embraced their rights to participate in environmental policy processes concerning land that the conservation-based amendments kept in federal ownership. Through their willingness to leave termination behind and lift their heads in the era of self-determination, the Klamaths have gained political ground.

CHAPTER 2
THE HALLS OF CONGRESS

The young couple strolled up the steps of the congressional building. Spring dew hung on tree leaves. The smell of the bustling East Coast city was probably much different than their sweet sage- and ponderosa pine-scented home in southern Oregon. This was their not their first trip to Washington, D.C. Later that day, Wade Crawford explained during a congressional hearing how he had “wandered the Halls of Congress” for about three years in an effort to change the way the Interior Department handled the Klamath Indian Reservation.¹⁹ Wade Crawford and his wife Ida Crawford were tribal delegates of the Klamath Tribes. The Klamaths had sent delegates to Congress for decades prior to this day in April of 1930. During the latter half of the allotment period, from 1916 to 1932, the Klamaths participated in more than 15 congressional hearings.

In an effort to illuminate tribal agency and tribal voices, this narrative incorporates congressional hearings that the Klamaths participated in from 1916 through the end of the allotment period in 1932. Through their testimonies we can learn how the Klamaths tried to earn their independence from the federal government through economic means. They repeatedly argued for strategies to Congress that would, in one way or another, allow the tribes to use the forest as capital for their economic independence as a tribe and as individuals.

Two interconnected themes emerge from these hearings. First, the Klamaths increasingly recognized the forest as a source of wealth—one that could help them achieve their goals of economic modernization and independence. Second, the tribes continuously struggled with the BIA over the management of this valuable asset. In this context, the Klamaths developed internal disagreements over how to pursue ending their BIA oversight and how to handle their jointly-held assets. This chapter is the story of their struggle with the BIA and their intratribal disagreements that surfaced at the end of the allotment period.

¹⁹ Wade Crawford’s quote taken from Senate Committee on Indian Affairs, *Incorporation of the Klamath Indian Corporation*, 25 and 29 April 1930, 8. Hereinafter referred to as “*Incorporation of the Klamath Indian Corporation*, 1930.” The title of the chapter is a paraphrased version of his comment during the hearing.

When Congress passed the General Allotment in Severalty Act of 1887, allotment became the national policy for assimilating American Indians into the mainstream.²⁰ This policy enabled the federal government to break up the communal land holdings of tribes by giving individual Indians parcels of reservation land. The privatization of Indian reservations simultaneously promised American Indians US citizenship and promoted the complete assimilation of Indians into a homogenous society. Additionally, the policy opened tribal land to non-Indians. Guiding this Indian reform program were the benevolent intentions of Protestant citizens. These citizens believed that the individualist ideas and work ethic of Protestantism were the answer to Indian assimilation. The policy rested on the assumption that each Indian could farm his land to support himself and his family.²¹

Allotment policy, however, did not offer a framework for tribes that lived on heavily-forested reservations with little arable farmland, like the Klamaths. A vast ponderosa pine forest covered almost half of their reservation their nearly two-million-acre reservation.

In the context of a developing national conservation ethic the Indian Office found that balancing their trust responsibility for the tribes and the pressure of conserving the national forests was not always a simple task.²² In 1909 the Bureau of Indian Affairs (BIA) established its own forestry division. The leading policy of this division was to manage Indian forests as communal assets for the tribes, instead of offering the surplus lands to non-Indians. Communal tribal lands opposed the tenets of atomizing tribal property and community. The BIA, however, justified its decision by arguing that the forest revenues would support tribal farming and ranching industries. Although the BIA instituted the policies for the benefit of tribes, the policies often resulted in hardship and frustration among tribal members.²³

Former Chief Forester of the Forestry Branch of the Indian Service J. P. Kinney included a detailed history of timber sales on the Klamath Reservation during the second half of the allotment period in his volume *Indian Forest and Range: A History of the Administration and Conservation of the Redman's Heritage* (1950). In his chapter titled "Forest Management on the Klamath Reservation, 1910-1933" he contends that his decisions regarding the sale of

²¹ Prucha, 1981, 26-35.

²² Newell et al., see ch. 1, pp. 1-14.

timber on the Klamath Reservation were “too conservative.” Insects destroyed an “enormous” amount of the tribes’ forest and they lost revenue when stumpage prices decreased due to the recession during this period. For these reasons, Kinney argues that the large amount of cutting on the Klamath Reservation between 1917 and 1933 should be viewed as beneficial decisions for the Klamaths.²⁴

Kinney’s essay also reveals the extent to which the non-Indian timber industry developed in response to the availability of Klamath timber. From 1920 to 1930, the Klamath Reservation timber was in such high demand that the prices rose abnormally higher in that region than in the rest of the Pacific Northwest. Kinney explains that this phenomenon resulted from two factors. First, “the lumber manufacturing facilities had been overbuilt in the Klamath Basin.” Second, he credits the forestry policies employed by the BIA’s forestry division. According to Kinney, they managed timber sales in such a way that benefited both the tribes and non-Indian timber contractors and that maintained the “principles of sound silvicultural practice.”²⁵

Anthropologist Theodore Stern’s ethnohistorical volume, *The Klamath Tribe: A People and Their Reservation* (1966), begins with the pre-reservation state of the Klamaths and ends with the dissolution of the Klamath Tribes in the early-1960s. He contends that money and the market economy altered the economic dynamics on the reservation during the allotment period. The Klamaths began receiving per capita payments from the sale of timber and revenue from leasing and selling their allotment properties. Stern argues that these funds resulted in the increased economic independence and the decreased responsibility of Klamaths. Depending on per capita payments and revenue from selling land did not constitute competency among tribal members. For this reason, Stern says, the BIA maintained their tight regulation of the reservation and tribal activity. Stern offers mostly the perspective of federal officials,

²³ Ibid, establishment of BIA forestry division, see ch. 2, p. 16; communal forests, ch.3 pp.1-2. See also, Kinney, 1950, 183, 218-252.

²⁴ Kinney, iv. Impacts of insects and Great Depression on Klamath Reservation timber sales, see Kinney, 202-203, 206-208, 213-214, 280-281.

²⁵ Ibid, 203.

and he has not consulted the congressional hearings as evidence for the Klamaths' side of the story during these decades.²⁶

Stern also argues that tribal factions existed throughout the allotment period. He explains that factions formed around a reservation boundary dispute at the turn of the century and again around the leasing of the tribal rangeland in the late-1910s and early-1920s. He scarcely covers the second half of the Klamaths' allotment period and briefly discusses factional disagreements during these years. He categorizes the Klamaths' factions as a rift between traditional and progressive ideology. In his analysis, he associates the progressives—mostly mixed bloods—with the “Lower End” of the reservation centered in the town of Chiloquin, Oregon. He contends that the traditionalists—mostly full bloods—lived in the “Upper End” of the reservation, near Sprague River, Oregon, a more rural location.²⁷ Stern argues throughout his volume that although the Klamaths comprised three distinct tribes prior to the reservation, the intermarriage of the groups and various political changes that took place during the early reservation years helped form a common identity among the tribal members. Therefore, factions likely did not develop around intertribal conflicts within the confederated tribes.²⁸

Stern's analysis parallels that of many scholars of the allotment period, including that of historian D. S. Otis, who wrote *The Dawes Act and the Allotment of Indian Lands* (1973). Otis contends that factional parties were common throughout Indian Country during the allotment period. Factions, Otis explains, represent “the fundamental fact that the allotment controversy was a struggle between two cultures. With the irresistible penetration of the white civilization, the conflict within the tribes crystallized into two factions, the half-breeds and the full-bloods, the young and the old, the ‘progressives’ and the ‘conservatives’”²⁹

²⁶ Stern, 1966, 150-154, 159. In 1952, Hiroto Zakoji completed a master's thesis titled, “Klamath Culture Change,” in which he focuses primarily on the pre-1900s on the reservation, not the years during which the tribal timber became a valuable commodity. See Hiroto Zakoji, “Klamath Culture Change,” (master's thesis, University of Oregon, 1953). Patrick Haynal's 1994 doctoral dissertation focuses on the post-termination effects on the Klamaths' tribal community and identity. Therefore, his research on the allotment period is mostly background information and is largely a synthesis of Zakoji's and Theodore Stern's research.

²⁷ Stern, 1966, 242.

²⁸ *Ibid.*, 94-96.

²⁹ Stern, 1966, 242. D.S. Otis, *The Dawes Act and the Allotment of Indian Lands*. Francis Paul Prucha, ed. and introduction. Norman, OK: University of Oklahoma Press, 1973, 95. Robert F. Berkhofer, Jr., also

Perhaps this description of factionalism that Stern and others employ is too simplistic for depicting the Klamaths' factions. By looking at the Klamaths' factions more closely, one can discern that the Klamaths' factional leaders took views that were the opposite of what one would expect when attempting to categorize the tribes' factions under a traditionalist-versus-progressive notion. For instance, Crawford, a mixed blood, supported incorporation, which would keep tribal assets communal and perpetuate the tribal community—a traditionalist perspective. His opponent Walker and Walker's fellow full-blooded supporters advocated the final settlement plan. This plan would privatize all the tribally-held assets and end the reservation—a progressive notion. Furthermore, some tribal members may not have supported Crawford or Walker. The existence of such a group may constitute another tribal faction. Therefore, unlike Stern, I argue that the traditional historical view of factions does not adequately depict the Klamaths more complicated factions during the latter years of the allotment era or the early years of the next policy era. The factions are less of a focus in this chapter than they are in the next chapter, which covers the decades prior to the Klamaths' termination act.³⁰

The hearings provide minimal evidence of Klamath factions forming around the grazing and rangeland leasing issues as Stern described. However, they do offer evidence of the tribal members' growing economic interest in the tribal forest. The Klamaths' economic interest in the forest seems to have been revived by the tribes' general intent to pursue economic and cultural modernization. The hearings also suggest that tribal members disagreed over how to manage their forest resource under allotment policy. During the latter half of the allotment period, some tribal members argued that the Indian Office should allot

speaks to the importance of factions in tribal politics. See Berkhofer, "The Political Context of a New Indian History," *The Pacific Historical Review* 40 (August 1971): 357-382.

³⁰ An increasing amount of literature provides evidence that the traditional historical argument for factionalism, which identifies only two factions within tribes, for instance the progressives and conservatives, is far too simplistic for analyzing tribal politics. See David Rich Lewis, "Reservation Leadership and the Progressive-Traditional Dichotomy: William Wash and the Northern Utes, 1865-1928," in *Ethnohistory* 38 (Spring 1991), 124-125. Lewis borrowed the term "middlemen" from Loretta Fowler, who studied the tribal politics of the Gros Ventres and the Arapahoe. See Fowler, "Political Middlemen and the Headman Tradition among the Twentieth-Century Gros Ventres of Fort Belknap Reservation," *Journal of the West* 23 (July 1984), 54-63. Lewis's argument is further influenced by Robert F. Berkhofer, Jr. See Berkhofer, "The Political Context of a New Indian History," *Pacific Historical Review* 40 (August 1971), 357-382; and Berkhofer, "Native Americans," in *Ethnic Leadership in America*, ed. John Higham (Baltimore, MD, 1978), 119-148. Also see Brian C. Hosmer, *American Indians in the Marketplace: Persistence and Innovation among the Menominees and Metlakatans, 1870-1920*, (Lawrence: University Press of Kansas, 1999), 40.

the communal forest. Others maintained that the communal forest should remain as a jointly-held tribal asset.³¹

The hearings contain mostly the voices of tribal delegates, a small amount of general council resolutions and meeting minutes, and some letters from tribal members. Because it is mostly the tribal delegates speaking for the tribes, we should think about who the delegates were. Each district on the Klamath Reservation voted for a representative to convey their interests in the tribal council, a separate group than the general council. These 12 to 14 elected tribal council members chose the delegates that represented the tribes in Washington, D.C. They chose both full bloods and mixed bloods, men, and a woman. Most of the delegates spoke very articulately. The delegates probably represented some of the most acculturated members of the Klamaths and economic leaders in the tribes. In the early hearings, the delegates included ranchers, farmers, and a real estate and insurance broker. From the mid-1920s to the early-1930s, the delegates were mostly owners of forested allotments. Furthermore, the delegates were probably individuals motivated by their own economic interests, and who shared similar interests with other tribal members, even though other tribal members may not have been as highly acculturated.³²

The latter half of the allotment period constitutes the nascence of the Klamath Tribes' 40-year quest for ending their federal supervision. During this period, the tribes' realized the high value of their forest assets. Yet, the BIA's supervision restricted the Klamaths from managing their forest themselves. Conservation-based amendments to the Klamaths' termination act in the 1950s would lay the ground work for the tribes to later realize their goal of forest management of their reservation forest lands. But it would take 90 years from the beginning of their timber industry for this to happen.

³¹ Stern briefly discusses the Klamaths' disagreements over the allotment of the tribal forest. See Stern, 1966, 155-159. I expand this discussion with evidence from congressional hearings in which the Klamaths participated.

³² Tribal council, see House Subcommittee of the Committee on Indian Affairs, *Klamath Indians of Oregon*, 68th Cong., 1st sess., 11 April 1924, 8-9. Hereinafter referred to as "*Klamath Indians of Oregon*." See, also, Stern, 1966, 237.

The Early Allotment Period

The Klamath Tribes, which had previously subsisted through fishing, hunting, and gathering, as well as raiding and trading, began the process of assimilation upon moving to the reservation.³³ Under assimilation policy the Klamaths began farming. However, the reservation did not offer a sufficient amount of agricultural land as required by assimilation policy. The Klamaths attempted farming on the limited arable land, but the high elevation, long winters, and drought conditions of southern Oregon proved difficult conditions to overcome. The land did support cattle ranching, though. Many Klamaths avidly ranched, and a few increased their herds to more than 300 head.

After the agency and tribes finished construction of the treaty-promised timber mill in 1870, some Klamaths began trading with and selling logs to non-Indians. Within only a few years, the BIA ended the Indians' venture because of an earlier Supreme Court decision, known as the Cook Decision (1873). The Cook Decision reinforced the legal argument that the resources on Indian land belonged to the United States. Therefore, this decision banned Indians from selling timber from their trust lands without permission from Congress. Policymakers believed that logging was not going to civilize the Indians. The yeoman farmer ideology permeated non-Indians' conceptions of Indian assimilation.³⁴

Following the passage of the General Allotment Act in 1887, the Indian agent on the Klamath Reservation began allotting land in 1895. Soon after he began allotment, a reservation boundary dispute postponed allotment until after Congress ratified the settlement in 1906. Klamaths selected allotments on lands ranging from those adequate

³³ Stern, 1956, "The Klamath Indians and the Treaty of 1864," *Oregon Historical Quarterly* 57 (Sept 1956), 229-273.

³⁴ The Indian agents reported the construction of the saw mill on the Klamath Reservation in passive voice. So, we can presume that both Indians and non-Indians working for the agency built it. See, O.C. Knapp, Captain U.S. Army, Indian Agent, Klamath Agency, Oregon, Report No. 20, 5 September 1870, in *Annual Report of the Commissioner of Indian Affairs*, 1870, 69; J. N. High, Indian sub-agent, Klamath Sub-agency, Report No. 12, 25 October 1871, in *Annual Report of the Commissioner of Indian Affairs*, 1871, 299. Cook Decision, see *United States v. Cook* (1873). Newell et al. offer an in-depth summary of the Cook Decision, the related case, and how the decision affected tribes on forested reservations, see Newell et al., 1-24—1-30. The Cook Decision affected other tribes such as the Menominees in Wisconsin. See David R. M. Beck, *The Struggle for Self-Determination: History of the Menominee Indians since 1854*, (Lincoln: University of Nebraska Press, 2005), 46; and Brian C. Hosmer, *American Indians in the Marketplace: Persistence and Innovation among the Menominees and Metlakatans, 1870-1920*, (Lawrence, Kansas: University of Kansas Press, 1999), 31.

for farming and ranching to marshlands and forested lands. In her study of the Nez Perces and Jicarilla Apaches during the allotment period, historian Emily Greenwald found that tribal members often chose allotments that did not conform to the government's plan for assimilation. She explains, "Indians chose allotments that made sense within their own environment, political, and cultural systems," rather than choosing those parcels best suited for farming.³⁵ On the Klamath Reservation, where farming and ranching lands were limited, early agents may have allowed allotments in the marshes and forests because it made their own jobs easier by reducing conflicts over the small amount of arable land. The agents' decisions to allot forested land led to tribal conflicts after the tribes recognized the market value of their forest resources. In 1910, the BIA closed the allotment roll to only those Klamaths born on or before 15 April 1910. Almost all of the non-timber allotments were spoken for, and the BIA had a plan for the surplus forested lands.³⁶

One year earlier, in 1909, the Southern Pacific Railroad Company had laid lines to the northern end of the reservation. Rail lines offered the southern Oregon community, including the tribes, a means by which they could transport their goods to larger, regional market. Even if the Klamaths wanted to sell their timber at this point, the 1873 Cook Decision restricted them.³⁷

In 1910, the same year the BIA closed the tribal roll, they set aside the nearly 1,000,000 surplus acres of forested lands to manage as a communal source of capital for the benefit of the Klamaths. With a benevolent venture in mind, the federal government planned to use the timber money as a supplemental income to cushion the increasingly unstable ranching economy on the reservation. The BIA used the revenue to fund their reservation administration and programs such as education and healthcare. The BIA cut and sold the Klamaths' timber as early as 1913.³⁸

³⁵ Emily Greenwald, *Reconfiguring the Reservation: The Nez Perces, Jicarilla Apaches, and the Dawes Act*, (Albuquerque, NM: University of New Mexico Press, 2002), 9.

³⁶ For closing of allotment rolls, see House Committee on Indian Affairs, *Allotments to Certain Klamath Indians*, 67th Cong., 4th sess., 15 December 1922, 6-7. Hereinafter referred to as "*Allotments to Certain Klamath Indians*." See also, Stern, 1966, 139. Stern (1966) briefly mentions that some Klamaths chose allotments in the Klamath Marsh because they still relied on the marsh for subsistence needs, 133.

³⁷ Railroad to Southern Oregon and Klamath Reservation, see Stern, 1966, 125; Kinney, 183-184; Senate Committee on Indian Affairs, *Indian Appropriation Bill, 1919*, 65th Cong., 2nd sess., 29 January 1918, 17. Hereinafter referred to as "*Indian Appropriation Bill, 1919*."

³⁸ Stern, 1966, 152-153.

Tribal Voices in the Halls of Congress

The relationship between the federal government and tribes has been a peculiar one. Treaties established two somewhat-contradictory relationships between the United States and American Indian tribes. On one hand, the US government recognized tribes as nations with their own sovereignty. On the other hand, the US government limited that sovereignty while establishing a trust relationship between the United States and tribes. In this way the federal government found itself responsible for the safety and well-being of tribes, where tribes were “wards” of the federal government. The duty of the BIA in the early-1900s was to complete the assimilation process of these wards and at the same time protect the wards’ assets. The government developed a very hesitant mindset toward allowing tribes to manage their own property. For tribes with very valuable assets, such as the Klamaths, the BIA made very conservative decisions. They not only managed the tribal forest for the Klamaths, they actively had to encourage assimilation policy and protect the forest for the benefit of the country. The hearings reveal this contradictory relationship between guardian and ward, which directly related to the Klamaths’ forest assets.³⁹

The Klamaths’ hearing testimonies began in 1916 when the Klamaths’ tribal delegates testified that the tribes were very dissatisfied with the BIA’s management of their reservation. Moreover, the tribes had not received any per capita payments from the timber sales, which the BIA had promised them. The Klamaths should have received them as early as 1913, when the federal government began harvesting and selling the tribal timber. Stern reports that the Klamaths began receiving per capita payments in 1913, but he does not cite evidence.⁴⁰

The per capita payments were important for many reasons, including support for the elderly members. In 1916, tribal member S. Fred Hendricks explained to the Senate Committee on Indian Affairs that the BIA’s restrictions on the timber money were hurting the “incompetents” or “old people.” Hendricks argued, “They need to be

³⁹ Francis Paul Prucha explores the “anomalous” treaties and how they designed a unique relationship between the United States and tribes. See Prucha, *American Indian Treaties: The History of a Political Anomaly*, (Berkeley: University of California Press, 1997), 1-22.

supported.” The tribal members could not help them because neither they nor the elders could “touch the money.”⁴¹ Hendricks was a successful rancher who lived near the Agency at the north end of Klamath Lake. He had traveled to Washington, D.C. to request that Congress make an appropriation from the tribal treasury fund. The Klamaths planned to use the money primarily to help the tribal elders, whom the rest of the tribe could not support in a “traditional” or a “modern” fashion under BIA policies. The tribes also argued that the per capita payments from their forest revenues would afford the Klamaths money for needed improvements of their property and for investments.

Not only did the Klamaths struggle to support their elders, the Klamaths had a hard time securing jobs within the tribal timber industry. The chief forester for the BIA, according to Hendricks, encouraged some tribal members to believe that they could have logging jobs if he opened up a certain tract for cutting. But when the tribal members brought their logging teams to the site, they worked for a short time before the person in charge of the logging laid them off and replaced them with non-Indians. When Hendricks inspected this particular work site with the reservation’s chief forester, they found that of 27 workers, only two were Klamaths. Hendricks said that he later realized how corrupt the agency was when he read in the local paper that the chief forester reported that the Klamath Indians were providing the labor for logging.⁴²

If the BIA was not going to allow the tribal members to share directly in the timber revenue, to manage the forest lands, or to work in the timber industry, the tribes wanted the federal government simply to buy the timber from the tribe outright. The delegates explained to the congressional committee in 1916 that the Klamaths did not want to sell their land, only the “dead and down and merchantable” timber that measured “down to 16 inches.”⁴³ The bill they presented to Congress, however, requested that the government sell “all of the tribal timber and timberlands.”⁴⁴ This discrepancy in the bill and the

⁴⁰ Stern’s explanation of the per capitas and how the Klamaths used them, see Stern, 1966, 152-153. Stern does not cite his source for this information.

⁴¹ Senate Committee on Indian Affairs, *Disposal of Tribal Timber and Timber Lands, Klamath Reservation, Oregon*, 64th Cong., 1st sess., 14 March 1916, 10. Hereinafter referred to as “*Disposal of Tribal Timber and Timber Lands*.”

⁴² *Ibid*, 9.

⁴³ *Ibid*, 8; see, also, 19.

⁴⁴ *Ibid*, 20. The delegates suggested at the hearing that they could use some of the stump lands as cattle range. Perhaps this is one hint that the delegates, who were ranchers, disagreed with the tribes’ general

testimonies of the delegates may suggest that differences of opinion about their land and how it should be handled may have existed.

What is really important at this point is that the Klamaths viewed their forest as a solution to their economic hardship they experienced under reservation life. They were devising their own plan to support their tribal members in the future. The Klamaths believed that the BIA's management of the reservation was not doing this. The tribes had given up many of their traditional economic means of survival as policymakers had hoped the tribes would do under assimilation policy. The Klamaths still hunted, fished, and gathered, but not to the same extent they had before. The tribal members understood that their economic freedom lay with their ability to reap the benefits of their forest resources. They wanted to show they could be self-supporting. But they could not do that under the present management of the BIA—especially if they were not receiving any of the timber revenue. As drastic as it may have sounded for the tribes to sell all of their valuable timber and forest land, it may have been the best answer they could come up with that would relieve them of their conditions under the supervision of the BIA.

The congressional testimonies of tribal delegates in 1918 reveal that the frustration of the Klamath people had grown. The BIA continued to manage the Klamaths' forest without granting the tribes any authority in the matter. The BIA had started administering per capita payments from timber sales, but if the Klamaths were to continue developing their cattle ranching industry, they needed more monetary support from the BIA. Hendricks and another tribal delegate, Harrison Brown, traveled back to Washington, D.C. and waited about 30 days to testify before Congress in 1918. This time the men requested that Congress appropriate \$200,000 dollars from the Klamaths' own treasury fund in the form of a loan. The delegates promised that the Klamaths would pay back the loan through the sale of their timber. The BIA expected that the timber on the reservation would bring the tribes an estimated \$75,000 dollars per year for the next fifteen years. Additionally, they estimated the reservation timber was worth about \$23,000,000 dollars in 1918.⁴⁵ These testimonies demonstrate that the Klamaths

decision. As ranchers, they might benefit if the tribes retained the cutover land; see 13-17. In a later hearing some tribal members argue that the cutover lands were not adequate for ranching; see *Allotments to Certain Klamath Indians*, 18.

⁴⁵ *Indian Appropriation Bill, 1919*, appropriation amount, 4; estimate of future timber revenue, 12.

were sure of the value of their forest assets and that they were willing to use their expected timber revenues as leverage for loans.

Each year, the tribal treasury fund accrued money from the sale of timber. In 1918, the Klamaths' treasury fund totaled \$95,000 dollars. What benefit was the money if the Klamaths could not use it? In describing the tribes' desire for the loan, Hendricks stated that the Klamaths wanted to use the money "for the purpose of aiding us in building homes, improving our allotments, purchasing stock, cattle, and for all other purposes necessary to enable us to become established in self-supporting industry on our allotments."⁴⁶ At this time many of the tribal members, especially the older ones, lived in traditional housing called wikiups. The term wikiup resembles the Klamath name for their summer home, *wu'kee'plops*. Ethnographer Leslie Spier explained that the elderly members of the tribes slept in the summer houses year-round because they could not climb into the winter subterranean lodges. Some Klamath families lived in one-room cabins, often with eight family members. The revenue from timber sales could provide the Klamaths with the means of modernization. However, the tribes could not access the money without permission from the BIA and Congress. And when they did ask for loans, they were asking for loans from their own tribal account.⁴⁷

Congress designed allotment policy to encourage farming and cattle ranching, not logging, among Indian tribes. The Klamaths situation was confusing because the agents in charge of allotting land on the Klamath Reservation had broken this policy and allowed some Klamaths to claim timbered lands and other non-agricultural lands. The current administrators found themselves in a bind.

As the BIA continued to manage the communal forest, tribal members devised ways they could reap benefits from the trees. When the tribes began to recognize the value of their forest, some allottees requested to exchange their original allotments for forested allotments. The department granted some of these early requests. Clayton Kirk, the secretary of the tribal council in 1922, explained this in a letter to Oregon Republican

⁴⁶ Ibid.

⁴⁷ Ibid, treasury fund, 9; wikiups, 24. For a thorough description of Klamath and Modoc housing structures, see Leslie Spier, *Klamath Ethnography*, edited by A. L. Kroeber and Robert H. Lowie,

Representative N. J. Sinnott. Six Klamaths, he wrote, upon “realizing the value of timbered lands, relinquished [their allotments] and secured lands that had nearly 3,000,000 feet of timber per quarter section. These the Indian Office did not hesitate to approve.”⁴⁸ But, the agency denied several tribal members’ requests for timbered allotments in the late-1910s and early-1920s, and they continued to approve others’ as late as 1921. However, some tribal members contested the continued allotment of their communal forest to other tribal members.⁴⁹

In the 1922 hearing, the agency explained why they would not allow the current allotment requests. They explained that Congress never intended the BIA to allot forested lands to Indians—that had been an accident. Additionally, the agency set aside the communal timber lands so that the tribal members benefited in common from the timber revenue. If the agency allotted the timber lands requested, they would set precedent and would be under pressure to continue allotting forested lands. Not only that, the agency forester had already sold the trees on that land, and the agency would not break the timber contracts. The BIA knew that they had allotted all of the range and farm lands on the reservation. But, by cutting the forest, they were going to clear land for farming and ranching. Then, the new allottees would have parcels of land within the same value range as other allottees, aside from those tribal members who already held title to forested allotments. The current BIA believed they were abiding by the by federal policy.⁵⁰

On the other hand, some of the Klamaths demanded that the BIA was “unfairly discriminating” against the allottees by denying their requests for forested allotments. Five tribal members questioned the agency’s actions in a letter to Representative Sinnott. “There is not reason or excuse whatever for the denial of these claims as they are all in the middle of the 19 timbered claims allowed.” They continued, “Why or by what sort of reason should one bunch of people get their timber claims allowed and another set of the

University California Publications in American Archeology and Ethnology, vol.30, (New York: Kraus Reprint Corporation, 1965, original pub. 1930), 197-205.

⁴⁸ *Allotments to Certain Klamath Indians*, 13. S. Fred Hendricks, a Klamath tribal delegate, testified in 1916 that some tribal members exchanged their range allotments for timbered allotments in the past, see *Disposal of Tribal Timber and Timber Lands*, 23.

⁴⁹ *Allotments to Certain Klamath Indians*, 9.

⁵⁰ *Ibid*, 11-14.

same people be denied claims and allotments in the same identical place in the forest?”⁵¹ The timber holdings of the 19 Klamaths mentioned ranged from 1,000,000 to 4,000,000 board feet each—sizable amounts of timber.⁵²

In response to the proposal of accepting stump lands for allotments, the tribal members argued that the stump lands were “worthless.” A group of five Klamaths wrote in a letter to Representative Sinnott explaining that Commissioner of Indian Affairs Charles Burke “does not understand the climatic and soil conditions on this reserve...you’ve lived in Oregon a long time; you know this reserve; you know that this land is worthless after the timber is off for any purposes, except reforestation; that it’s unfit for agriculture, and no grass whatever [sic].”⁵³ These tribal members wanted the forested allotments for investment purposes, because they were not suitable for ranching and farming. In a letter to Representative Sinnott, Klamath tribal member Chas. S. Hood explained the allottees’ plans for the forested allotments: “The object in the allottees filing on such timbered lands for allotments are for the purpose of getting the purchase price of the timber and to purchase them some suitable land here on the reservation for a home.”⁵⁴ Kinney’s report on the stumpage prices received for Klamath allotment timber supports the Klamaths’ reasoning behind acquiring forested allotments.⁵⁵

At this time, the Bureau had allotted land to 571 tribal members, and 600 tribal members, mostly minors, had not yet received allotments. Furthermore, some tribal members did not agree that the BIA should allot the communal forest lands. Five of them stated in a letter to their reservation agent that “the approval of such allotments would be a grave injustice to other Indians living on the reservation.”⁵⁶ The chairman of the tribal council, Seldon Kirk, and other council members sent a letter dated 5 May 1922 requesting Congress to allow only some of the forested allotments. He and other signatories of this letter believed that five of the total requests for allotments were valid because the allottees made them “at a time when timber values were not considered of

⁵¹ Ibid, 17.

⁵² Ibid, the timbered allotment in 1921, 9; tribal members’ letter, 16.

⁵³ Ibid, 18.

⁵⁴ Ibid, 15.

⁵⁵ Kinney, 189, 194.

⁵⁶ See *Allotments to Certain Klamath Indians*, 1922, allotment data, 22, and quote from letter, 25.

much value.”⁵⁷ Now that their forest held a high monetary value, the tribal members were trying to increase their direct benefit from the asset.

This hearing provides evidence that Klamath tribal members’ had developed economic motivation associated with their forest assets. Some of them tried to attain private ownership of the communal property. Owning forested allotments meant wealth and independence. On the other hand, some members opposed the continued allotment of the communal forests. A small number of tribal members succeeded in garnering forested lands and in benefiting from the sale of that timber, while others were not so lucky. The disagreements over allotting the communal forest foreshadowed the distinct Klamath factions that developed at the end of the period. As guardian of the tribal trust lands and resources, the BIA faced a balancing act—the tribal needs and wants on one side and conservation of the nation’s forests on the other. The BIA had the responsibility of helping all the tribal members on the reservation, not just a small percentage. They could not change errors that previous officials had made. And, they had the responsibility of safeguarding the forest resource. If they allotted more forested land, they ran the risk of having the allottees exploit the resource at a rate that might degrade the watershed.⁵⁸

The Klamaths increasingly lost faith in their trust relationship with the federal government. The tribes believed that they should benefit directly from the sale of *their* timber. According to tribal delegate Hood, the tribes were not benefiting to the extent they should have been. He explained, “The department has expended money from the timber sales year after year, or as fast as the money would accrue from the sales of the timber, without giving our people very much assistance.”⁵⁹ Hood was an off-reservation tribal member who moved back to the reservation during the allotment period. He worked as a local real estate broker and as a local representative for both the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin, and the Fidelity & Deposit Company of Maryland. He was one of the 300 members of the Klamath Tribes that the BIA had named competent, or capable of managing his own

⁵⁷ Ibid, 7-8.

⁵⁸ Newell et al., see ch. 1, pp. 1-14.

⁵⁹ *Klamath Indians of Oregon*, 19.

assets. Stern describes Hood as one of the “persons who had already made extensive adjustment to the larger society.”⁶⁰

The Klamaths did not understand why even those tribal members that the BIA recognized as competent did not receive some of the benefits of management and did not receive direct benefit from the revenue. Competency was supposed to speak to the Indians’ abilities to manage their own money and assets and to their high level of modernization. Furthermore, Hood believed that 300 more Klamaths could be declared competent, but “for various reasons” they had chosen not to pursue that status. One of the main reasons was that even if declared competent, “they [would] be denied even the right to handle their own personal assets due them from this reservation.”⁶¹ Why bother with the recognition of competency when it does not allow you or your tribe any further authority over your most valuable asset? If Hood’s estimate was correct, then almost all of the adult Klamaths were competent, just not formally declared so.

Many Klamaths had dedicated themselves to adopting aspects of Western culture. They found that, although they had made progress on the Western cultural scale, the Department did not recognize their progress as adequate for gaining the authority the Klamaths sought over their communal forest. The BIA’s policies, they argued, needed a facelift. Speaking before members of the House Committee on Indian Affairs in 1924, Levi Walker, a Klamath tribal delegate, stated the position of the tribes in response to the current policy. “We have outgrown what you might call ‘an Indian custom’ to a great extent.” Walker continued, “The laws which governed 40 or 50 years ago should not apply to the Klamath Indians.”⁶² If the point had not been made to the committee, the other tribal delegate, Hood, further clarified the tribal position:

⁶⁰ Ibid, 18. Chas. Hood was a descendant of a group of Modoc Indians, whom the US military moved to the Quapaw Reservation in Oklahoma in the late-1800s. The military transferred them east after they resisted living on the Klamath Reservation by fighting the US in the Modoc War near the Oregon-California Stateline. Stern gives the background on Hood’s connection to the Modocs, see Stern, 1966, 138-139. The federal government passed the ‘Competency Act’ of 1906, which established a competency commission. This commission visited reservations and judged the ability of tribal members to manage their own assets. In a sense, the commission was judging how assimilated tribal members were. A vote of competency for a tribal member meant that the federal government would take his/her allotment out of trust status. Therefore, tribal members who held competency status also could hold title to their allotment and could sell them to anyone. See Robert W. Young, “Historical Background for Modern Law and Order,” (Wash., D.C.: Bureau of Indian Affairs, Division of Law Enforcement Services, 1969), 15.

⁶¹ Ibid, 19.

⁶² Ibid, 17.

We believe the management extended to our people is absolutely wrong at the present time. It may have been a well arranged affair a number of years ago, to restrict the red man from exercising a share in the management of his personal estate—in the assets due him from the reservation—simply because he was considered incompetent; but at the present time we have some very intelligent people on this reservation....⁶³

The time had come, the Klamaths argued, when the BIA needed to relax its paternal control and allow the tribes to begin taking on the “responsibility of citizenship.”⁶⁴ Citizenship should let the Klamaths manage their own forest.

Into the Twenties the Klamaths continued to disagree with the BIA’s management of their reservation. By 1924 the BIA reported that the Klamaths had received multiple small per capita payments from their timber revenues, which totaled \$355 dollars. What is not clear from this hearing is what year the payments began. If the payments were stretched over a period of 10 years, as the Department official claimed, the each Klamath would have received an average of \$35.50 a year. The Department did not disperse the money yearly. Instead, Walker stated, they “received \$150 per capita at one time, \$80 another time, \$50 at one time, and \$75 at another time.” These payments, the Klamaths argued, were not enough to support their industrial efforts. Their further concerns about their grazing lands draw a clearer picture of their situation.⁶⁵

The Department granted lease contracts to non-Indian stockmen for the Klamaths’ communal grazing lands. According to the tribes’ General Council, by over-leasing the tribal rangeland to non-Indian shepherders, the Department had “practically and in effect driven the [Klamaths] out of the stock business.”⁶⁶ Furthermore, the BIA had argued that timber money doled to the tribal members would support and encourage investments in the ranching industry on the reservation. Without this money for cattle investments and without a range for cattle, the young tribal members interested in pursuing ranching could not achieve their goals.

The federal Indian policy that was written to help them make progress was, instead, hindering their advancement toward independence as a tribe and individuals. Moreover, the BIA had justified the communal timber operation on the reservation as means by

⁶³ Ibid, 19-20.

⁶⁴ Ibid, 17.

⁶⁵ Ibid, 10-11.

which the Klamaths as a whole could benefit, but this benefit had yet to be fully recognized by them. According to the Klamaths, the BIA had not allocated the timber money in a way that was helping their ranching industry, and the BIA's leasing practices were only making it that much harder for the tribal members to succeed.

The late-1920s and early-1930s represent the maturation of the tribes' goal to manage their own assets and to end what they understood as the BIA's restrictive and listless administration of their reservation. With their new tribal constitution and newly-established Business Committee, the Klamaths formalized their goals to manage their tribal assets. During these years, distinct factions developed among tribal members.⁶⁷

Factions Emerge

Klamath tribal member Wade Crawford emerged as a leader in the late-1920s, and he accepted the position as president of the Business Committee. He had acquired one of the limited forested allotments and was no stranger to the timber industry. His family owned multiple adjoining forested allotments. His father, William Crawford, was a mixed blood and a leading progressive who kept close connections with off-reservation tribal members. His father was also one of the first tribal delegates to visit Washington, D.C. in the late-1800s.⁶⁸ According to Stern, Wade Crawford, and his wife Ida, "drew their principal [political] strength from the Lower End and the absentee membership."⁶⁹ Wade Crawford's interest in the tribal forest assets surfaced in the late-1920s hearings. Wade Crawford's vested interest in the timber resources is apparent in his dedication as a witness in hearings for more than thirty years.

From 1930 to 1932, evidence of the tribal factions appeared as the Klamaths proposed two different plans for their tribes. The factions reflect the tribes' earlier disagreements over allotting the tribal forest versus keeping it a communal asset. The first plan, the final enrollment bill, was going to close enrollment for the Klamath Tribes, divide the tribally-held assets, and put the tribal members and their assets under state jurisdiction.

⁶⁶ Ibid, 6.

⁶⁸ Wade Crawford's and his family's allotments are discussed briefly in a hearing. See *Allotments to Certain Klamath Indians*, 17. Stern discusses tidbits about Wade Crawford's political experience, see Stern, 1966, 134, 138, 167, 169.

⁶⁹ Stern, 1966, 242.

Final enrollment basically meant privatizing all tribal assets and the end of the tribes as a political entity. A few months later the Klamaths introduced a tribal incorporation bill. This bill offered the tribes the ability to maintain their communal ownership of their jointly-held assets as a corporation. Wade Crawford supported both; maybe he wanted to be safe, since he may have believed that either option would be better than staying under the BIA's supervision. Another Klamath, Levi Walker, who appeared in earlier hearings, supported the final enrollment bill and argued against Wade Crawford's incorporation plan.⁷⁰

The Klamaths' wealth created many issues concerning enrollment. The timber money had drawn applicants for enrollment in the Klamath Tribes who otherwise would not have been interested. According to the Crawfords, some members who belonged on the rolls were not listed, while names appeared on the rolls that should not be on them. At a hearing on 26 February 1930, Wade and Ida Crawford and Luke Chester presented Congress with the final enrollment bill. The BIA, however, did not agree that the Klamaths were ready for such an endeavor.

The Interior had closed the rolls of about 84 tribes that it believed were prepared for that step. But tribes with extensive assets, like the Klamaths, required more planning. "There is no more reason for closing the roll to-day [sic] than there would have been 10 years ago," argued Assistant Commissioner of Indian Affairs J. Henry Scattergood. The Bureau simply did not know how to handle such large estates. "It is a great, big question as to what final disposition shall be made finally of these tribal assets, like the Klamath forest and the Menominee forest," explained Scattergood. The Bureau wanted to study these particular situations and decide them on the "merits of each case."⁷¹ The BIA had considered that tribes could transition from federal trusteeship into a corporation, joint-stock venture with incorporation, or even another type of trusteeship, but had not yet made a decision for the Klamaths' situation.⁷²

Only a few months later at a hearing Wade Crawford and his wife Ida Crawford testified for the tribe. They stated that the Klamaths had deliberated and had developed a

⁷⁰ Senate Committee on Indian Affairs, *Final Enrollment of the Indians of the Klamath Reservation*, 71st Cong., 2nd sess., 26 February 1930. Hereinafter referred to as "*Final Enrollment of the Indians of the Klamath Reservation*."

⁷¹ *Final Enrollment of the Indians of the Klamath Reservation*, 14-15.

new plan for their future. They wanted to incorporate. “[A]s Secretary Wilbur says, we need to give the Indians the advantages of modern organization and modern business,” argued Wade Crawford.⁷³ The incorporation bill, Wade Crawford contended, would allow the Klamaths to take the next step toward full citizenship—the management of their jointly-held tribal assets.

The Crawfords were not alone in lobbying for the incorporation bill. A highly enthusiastic member of the American Indian Defense Association, John Collier, supported their efforts. Collier believed in the rights of American Indians to gain authority over their assets. He wanted to help liberate them. In only a few years this man would become the commissioner of the Bureau of Indian Affairs. Despite the Crawfords’ support from some congressmen and Collier, Congress did not accept their plan for incorporation. The Crawfords found themselves testifying two years later for an identical bill.⁷⁴

Wade Crawford’s zealous leadership and the intentions of the Business Committee, which he headed, were put into question by Walker during a federal hearing in 1932. The BIA suggested that Congress pass a bill to allow the Department to renegotiate timber contracts with non-Indian contractors on the Klamath Reservation. Wade Crawford argued that the BIA was not acting in the interest of the Indians. Instead of renegotiating the contracts, he thought the BIA should freeze the contract prices and penalize those contractors who did not fulfill their agreements. The Depression caused a hardship for many people. He did not see any reason for changing the timber contracts, when the change would reduce the tribes’ revenue. Walker disagreed.⁷⁵

Stern explains that by siding with the Upper End, Walker affiliated himself with a group of tribal members that was composed mostly of full bloods and traditionalists. Tribal delegate Walker was a rancher, but like Wade Crawford, he owned forested land. Walker suggested to the congressmen that Wade Crawford and the Business Committee’s actions were not “in harmony” with the tribes in general. He argued that the timber

⁷² Ibid.

⁷³ *Incorporation of the Klamath Indian Corporation*, 1930, 7.

⁷⁴ For John Collier’s testimony see *Incorporation of the Klamath Indian Corporation*, 1930, 16-35. He also testified in the Klamaths’ second incorporation hearing in 1932.

⁷⁵ Senate Committee on Indian Affairs, *Revision of Timber Contracts with Indians*, 72nd Cong., 1st sess., 7 April 1932, 102-107. Hereinafter referred to as “*Revision of Timber Contracts with Indians*.”

contracts should be changed in favor of the non-Indian contractors. Later in the hearing, Walker admitted that he was involved in a timber contract on his privately-owned land and had been speaking personally about the subject. If the timber contracts were changed, he would have probably been able to make a quick profit or at least keep his working relationship with non-Indian contractors. Whether or not Walker or Wade Crawford was telling the truth did not matter. What was unfolding before Congress was evidence of discord among tribal members.⁷⁶

Disagreements among Klamath tribal members surfaced again in the Klamaths' second hearing for the incorporation of their tribal assets in 1932. This time, Walker, and both Crawfords testified. At this hearing, Walker explained that Wade Crawford had pursued the incorporation bill against the general interests of the tribes. "For several years, since 1929 or 1928, Mr. Crawford and his committee has [sic] been urging the passage of this bill. On the other hand, the people at large are not in sympathy with the plan."⁷⁷ Not only that, Walker described how Wade Crawford did not accommodate the concerns of people who opposed his views. "Because of different questions raised from the other side of the [h]ouse, Mr. Crawford got mad and he went out. Three times I know of he packed his papers and told his people he was not going to represent them."⁷⁸ Walker was determined to weaken Wade Crawford's vision for incorporation. He did not believe the Klamaths were ready for that kind of plan, but added that they welcomed "some change" in the current administration of their reservation. He explained, however, "I am not able to say that they want to make a radical change."⁷⁹ Stern, however, argues that Walker was one of the strongest supporters of the final enrollment bill.⁸⁰ Walker may have viewed the final enrollment and privatization of all tribal property as a safer end rather than allowing a tribal corporation to manage his share of the tribal assets.

Wade Crawford was frustrated with Walker's attack. He attempted to discredit Walker by relying on the Business Committee's resolution. "Mr. Walker has not carried

⁷⁶ Ibid.

⁷⁷ Senate Committee on Indian Affairs, *Klamath Indian Corporation*, 72nd Cong., 1st sess., 19 April 1932, 25. Hereinafter referred to as "*Klamath Indian Corporation*, 1932."

⁷⁸ Ibid, 44.

⁷⁹ Ibid, 46.

⁸⁰ Stern, 1966, 249.

out the resolution that he was instructed to as delegate after he was elected.”⁸¹ Wade Crawford later stated simply, “I am down here representing the tribe. I am not down here representing my own personal opinion about anything. I am merely submitting the resolutions that have been given me to express their wishes to the members of Congress and to the Interior Department.”⁸²

Historians Vine Deloria, Jr., and Clifford Lytle discuss the Klamaths’ incorporation bill and their final enrollment bill in their volume, *The Nations within: The Past and Future of American Indian Sovereignty* (1984). They describe how the opposing tribal members confused Congress. “Naturally the people in Congress were baffled at the sudden appearance of two groups of Indians each claiming to represent the true feelings of the tribe.” Furthermore, Deloria and Lytle explain, “Both proposals seemed radical in the context in which Congress understood Indians. People could not believe that Indians wanted to liquidate their lands or that they wanted to manage the lands themselves—and had devised a plan to do so.”⁸³ Deloria and Lytle probably were not informed about the Klamaths’ early attempt to sell all of their timber and forested land in 1916 or about the tribes’ earlier requests to manage it themselves throughout the 1920s. Still, their evaluation of the situation in which Congressmen found themselves is accurate. Congress was not about to enact a plan for tribes that had such opposing views. The BIA’s indecisive response to the Klamaths’ future may have only encouraged Congress to postpone their decision making.

Conclusion

Prior to these two hearings, the Klamaths had seemed pretty clear in their arguments before Congress. But their disagreements over how to manage their tribal forest seem to have weakened their position for incorporation or any other such plan. Had Wade Crawford taken too much control and lost sight of his responsibility to consider the views of all tribal members? Or did Walker simply state his personal opinion, as he admitted to doing during the earlier hearing? Perhaps both men acted with underlying personal and

⁸¹ *Klamath Indian Corporation*, 1932, 47.

⁸² *Ibid*, 48.

⁸³ Vine Deloria, Jr., and Clifford Lytle, *The Nations within: The Past and Future of American Indian Sovereignty*, (New York: Pantheon Books, 1984), 49.

economic motivations. Congress was probably unsure, and this only handicapped any further progress toward independence that at least some tribal members desired.⁸⁴

Most importantly, these hearings give voice and agency to the Klamath tribal members. They document the Klamaths' persistent attempts to modernize in an effort to gain economic independence. They show that the Klamaths' forest became the central focus of their argument for tribal and individual economic independence. The Klamaths were not disinterested owners of a valuable estate. Last, the hearings reveal the factionalism that later hindered their efforts in the next few decades.

The BIA struggled, too, with how to reduce the Klamaths' federal supervision. After the Klamaths' 1932 incorporation hearing, Congress left the Klamaths' future undecided. Keeping the tribes under the control of the BIA may have been easier for Congress and the Interior Department than trying to make a decision for the discordant Klamaths. For 17 years, Klamath delegates had argued for independence and tribal authority of their forest. At this hearing, Wade Crawford saw all this work lose importance under the weight of his argument with Walker. And Walker got what he wanted, more time for what he considered careful decision making and, perhaps, a chance to liquidate and privatize the tribal assets. Maybe Collier, the ambitious American Indian rights lobbyist, would help the Klamaths solve this disagreement the following year, upon accepting his appointment as the commissioner of the Bureau of Indian Affairs in 1933.

⁸⁴ *Revision of Timber Contracts with Indians*, 105.

CHAPTER 3
“PULLING IN THE SAME DIRECTION”⁸⁵

By the end of the allotment period, the Klamath Tribes had realized a very high demand for their forest resources. The local timber economy had developed largely due to the availability of timber from the Klamaths’ extensive ponderosa pine reserve. The Klamaths had also benefited. Tribal members received their shares of the revenue from the reservation timber industry in the form of per capita payments. However, the prevailing Great Depression stunted the Klamaths’ economy as well.⁸⁶

In the coming decades, the tribes faced a shift in federal Indian policy that had been foreshadowed by their rising leader, Wade Crawford, and his partnership with the soon-to-be commissioner of Indian affairs. Commissioner John Collier’s reform policy, the Indian Reorganization Act of 1934 (IRA) became the Bureau’s guiding policy. The IRA promoted the incorporation of tribes and their resources. Collier believed tribes would assimilate better as a group, rather than individuals, as policymakers had assumed with allotment policy. By incorporating, they would learn to run businesses and could slowly end their federal supervision. Another part of the IRA was the intention of the BIA to rebuild their land bases by reacquiring land they lost during the allotment period. The IRA, as many Klamaths later argued, did not help tribes like theirs, who already had a solid tribal land base. Instead, it inhibited their accepted goals of individual assimilation. In the early-1930s, Levi Walker and his supporters still advocated their final settlement bill that would distribute the tribes’ forest, the nearly 1,000,000 acres of land on the reservation, on a per capita basis to each tribal member. Perhaps the influence of this faction remained strong. The Klamaths voted against implementing the IRA on their reservation in the mid-1930s.

⁸⁵ The title of this chapter is from Boyd Jackson’s testimony in House Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Klamath Voluntary Withdrawal Act*, 83rd Cong., 1st sess., 30 July 1953, 9. Hereinafter referred to as “*Klamath Voluntary Withdrawal Act*.” In this statement he is referring to his collaboration with Wade Crawford. At this time, the BIA is also in agreement with the tribal factions leaders over how to end the tribes’ federal supervision.

⁸⁶ Kinney provides sufficient evidence that the timber industry of the Klamath Basin developed largely as result from the availability of Klamath Reservation timber. Many companies expanded their mill operations and created even more demand. Kinney describes how many companies in the Klamath Basin built mills under speculation that the BIA was about to put large tracts of timber up for bid. See Kinney, 183-216.

The Klamath Tribes entered the Indian New Deal era as a tribe split by factional disagreements over how to manage their forest in the future. This theme continued through the end of the Indian New Deal era. However, complex political shifting took place, blurring the decisiveness of the tribes before congressional committees. Crawford changed his stance on the future of the tribes and their forest resources many times during these two decades. Crawford's tribal opponents, led by full-blood Boyd Jackson, responded to the bills Crawford put forth in many different ways throughout the Indian New Deal era. And this opposition altered their views just as much as Crawford did.

Despite the factions' disagreements, the one thing they did agree on was that they wanted to end the federal supervision of their tribes and reservation. Their main disagreement was over how to accomplish this shared goal. The two decades that span the Indian New Deal era were, for the Klamath Tribes, an extensive deliberation over the future of their forest resources. Congressional hearings that the Klamath tribal faction leaders attended during the Indian New Deal era reveal the important influence this era had on the development of portions of the Klamath Termination Act that would later require conservation-based amendments.

The two scholars who have studied the Klamath Tribes during the Indian New Deal Era, from 1932-1953, have done so through an ethno-historical lens. Their arguments place the study of cultural change within the historical context of Indian policy and tribal life. Anthropologist Theodore Stern, argues that the Klamaths' tribal government "sensitively reflected the interplay of continued efforts by the Bureau of Indian Affairs to mold Indian life and the Indian reaction to those efforts."⁸⁷ In his chapter titled, "The Tribal Government," Stern explains that in the 1930s and 1940s Washington had become the "seat of decision" for the Klamaths. Despite the centralized power of the federal government, Stern contends, the Klamaths discussed and debated important issues, including the end of their federal supervision and the liquidation of their tribal assets.⁸⁸

Haynal, a former student of Stern, uses historical events to explain why cultural and identity changes among the Klamaths resulted from the termination process. Many of the

⁸⁷ Stern, 1966, 236.

⁸⁸ Ibid, 236-255.

historical events these scholars use to support their arguments also provide evidence for a narrative of the Klamaths' termination history viewed from the perspective of the tribal forest and their interest in managing it. Neither one of these scholars explains the significance of the Indian New Deal period on the future of the Klamaths' forest. Furthermore, they do not put this period into the context of the conservation-based amendments.⁸⁹

The Crawford Party and the Jackson Party

Before delving into the hearings of this era, one should first explore the intratribal conflicts among the Klamaths. This chapter does not focus on the factional disputes. However, the congressional testimonies of this period illuminate the tribal factional views. Moreover, the faction leaders' testimonies and proposed bills played a large role in sculpting the Klamaths' final termination legislation. An understanding of the leaders' backgrounds and the view-shifting that occurred helps make clear the development of the Klamaths' termination legislation and the later need for conservation-based amendments to the act.

The Klamath factions that surfaced at the end of the allotment period only became further exacerbated during the Indian New Deal era. Historian Graham Taylor argues that the fundamental assumptions of Collier's Indian Reorganization Act did not take the differences among tribal members into consideration. Most tribes did not consist of a homogenous, cohesive group. Inherent within most tribes were differences in the amount of assimilation one member had compared to another. Another important factor that influenced intratribal relations was the degree to which a tribal member was full blooded versus mixed blooded. As historian D. S. Otis explained, factionalism often developed between full bloods, who can usually be categorized as traditionalists, and mixed bloods, who normally adopt political views that historians describe as progressive.⁹⁰

As I explained in the last chapter, the progressive-conservative description does not adequately describe the Klamaths' factionalism during the late-1920s and early-1930s. Crawford, a mixed blood, advocated for traditionalist outcomes—keeping the tribal assets

⁸⁹ See specifically Stern's section, titled "The Course of Termination," *Ibid*, 249-252; and Haynal, 1994, 94-106.

communal by incorporating the reservation. On the other hand, his full-blooded opponent, Levi Walker, supported a progressive plan—a final settlement bill that would privatize the Klamaths’ communal assets and disband the reservation.⁹¹

The Klamaths actually exhibited atypical factions during the early part of the Indian New Deal era. Crawford, a mixed blood, supported incorporation, which would keep tribal assets communal and perpetuate the tribal community—a traditionalist perspective. His opponent Walker and Walker’s fellow full-blooded supporters advocated the final settlement plan. This plan would privatize all the tribally-held assets and end the reservation—a progressive notion. Midway through the Indian New Deal era, however, the leaders of these factions flip-flopped their political positions. Crawford began lobbying Congress for legislation that would divide up and allocate tribal assets on a per capita basis, and end the reservation all together. The other factional leader, who surfaced in the 1930s, Boyd Jackson, transitioned from an advocate of final settlement to a firm believer in keeping the reservation under tribal ownership. He came to view the heritage of the tribes as one of the most important factors of their future. To make matters even more confusing, the two factional leaders actually compromised with each other at the end of the Indian New Deal era, but their cooperation lasted only a short time.

Jackson had left the Klamath Reservation in 1911 for Arizona and other areas in the Southwest. He returned to the Klamath Reservation in 1925, only after receiving in the mail an application for a patent in fee for his allotment. Jackson probably remained on the reservation after returning in the mid-1920s. He began his political career on the reservation around the same time the Crawfords vigorously developed their plans for incorporating the tribe and reservation. Jackson had supported Levi Walker, and other full-blooded Klamaths, in his campaign for “final settlement” in the early-1930s. Not until Collier appointed Crawford as superintendent in 1933, though, did Jackson emerge as a vocal leader of the Klamaths.⁹²

⁹⁰ Taylor, 39-45. Otis, 95.

⁹¹ See my discussion in Chapter 2, 23.

⁹² House Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Emancipation of Indians*, 80th Cong., 1st sess., 8-11 April and 15 May 1947, 80. Hereinafter referred to as “*Emancipation of Indians*.” A patent in fee allowed tribal members to take full title of their allotment from the federal government. With full title, they could sell land to anyone they wished.

Jackson, too, came from a family of leaders, albeit, less directly than Wade Crawford. Boyd's father, Ike Jackson, lived a minimal political life compared to his half-brother and the uncle of Boyd, Henry Jackson. Henry Jackson rose as a political leader in the late-1800s. He and other Klamaths, including Crawford's father, lobbied Congress as early as the 1890s concerning the tribes' reservation boundary dispute. Much like his uncle, Boyd's followers resided in what Stern refers to as the "Upper End" of the reservation. The Upper End, or eastern part of the reservation including the Beatty and Sprague River communities, was home to mostly Modocs, Paiutes, and some Klamaths. These communities consisted of ranching operations that spread through the 11-mile-long Sprague River Valley, a valley which the sinuous Sprague River spreads across, erodes, and spills its banks over creating fertile terraces of meadow grass for grazing.⁹³

Unlike Crawford, Jackson seems to have held a more positive working relationship with the agency and BIA in general. Jackson rarely, if ever, ridiculed the Indian Service in the congressional hearings. As a member of the executive council, general council, and loan board he may have found it easier to keep his connections with the Bureau stable. Some of Jackson's positions required him to garner the superintendent's approval, something that would be hard to accomplish without a solid working relationship.

In general, Jackson spoke with less formality than Crawford and often in a circular fashion, which confused congressmen on many occasions. Jackson's conversation with a congressman in 1947 explains Jackson's interest in a political career rather than stock-raising. Jackson stated, "I am not in the stock business....I rather like this kind of work where they [opposing tribal faction leaders] can kick me around...I like to hear them razz me once in while, so I can come back at them. See."⁹⁴

Jackson became Crawford's political rival in the 1930s. As Stern noted, the two party leaders reversed their views for the future management of the tribal assets during the Indian New Deal era. As Stern explained: "From a long-range view, it is noteworthy that Crawford had turned from a plan for an enduring tribal cooperative to one directed to the piecemeal withdrawal of members who wished to sever tribal connections." Of Jackson

⁹³ Henry Jackson and William Crawford lobbying in Washington, D.C., see Stern, 1966, 167. The Upper End of the Klamath Reservation and full bloods, see Stern, 1966, 242

⁹⁴ Senate Subcommittee on Indian Affairs, *Klamath Indians, Oregon*, Part 1, 80th Cong., 1st sess., 13, 21, 26, and 28 March 1947, 146. Hereinafter referred to as "*Klamath Indians, Oregon*, Part 1."

and his party Stern briefly explains, “In their turn, the former advocates of final settlement had become the champions for the preservation of their tribal body.” This political shifting on the part of the faction leaders becomes apparent in the hearings of this period. Tracing the leaders’ views in the hearings only clarifies the development of the Klamaths’ termination act and why Congress would amend it for conservation reasons.⁹⁵

The Collier Era

After Collier accepted his appointment as the Commissioner of Indian Affairs, he appointed Crawford as the superintendent of the Klamath Reservation in 1933. Crawford’s political career seemed to be reaching its zenith. However, he soon found that many tribal members did not support him or Collier’s plan for reforming federal Indian policy.

Collier and Crawford, as a leader of the Klamaths, had lobbied Congress together since the late-1920s. Collier had come to believe that the Klamaths would accept his reform graciously. However, Crawford faced opposition on the reservation. When the time came for the Klamaths to vote on the IRA in 1935, the majority voted against the IRA. Crawford’s tower of hope collapsed. Collier began to question Crawford’s position as superintendent. The Klamaths that opposed Crawford’s leadership on the reservation submitted a petition to Collier that requested Crawford’s removal from office. In 1937, Collier dismissed Crawford. The Interior released a statement that explained the basis of Collier’s decision. Collier did not dismiss Crawford for being dishonest. Rather, he based his decision largely on the tribes’ “inharmonious relations” with Crawford.⁹⁶ Despite his dismissal, Crawford remained active in Klamath political affairs in the ensuing years. His efforts for incorporation faded.⁹⁷

Collier lasted only eight years after he dismissed Crawford. In 1945, the commissioner resigned. Collier’s departure from office marked the beginning of the end of the IRA. A new reform campaign advocated for a nuanced federal Indian policy, one

⁹⁵ Stern, 1966, 250. Stern does not elaborate on the importance of changing factional views. He simply points out that it happened.

⁹⁶ Senate Committee on Indian Affairs, *Dismissal of Wade Crawford, Superintendent Klamath Indian Reservation, Oreg.*, 75th Cong., 1 sess., 1, 2, 8 July 1937, 7.

that would end the federal trust relationship between the federal government and tribes in order to complete the assimilation process. From the national perspective, World War II had come to a close, and this only heightened xenophobia. Only two years later a BIA report deemed the Klamaths, and many other tribes, ready to end their federal trust relationship.

Congress, too, prepared for their abbreviated role in Indian affairs. In 1947, they downsized their role in Indian affairs from a full committee to a subcommittee of the Committee on Interior and Insular Affairs. Wyoming Democratic Senator Joseph C. O'Mahoney stated that this change came about because Congress expected that the handling of Indian affairs would become an "acute" responsibility. Congress expected that the time was near when tribes would be ready to end their trust relationship with the federal government.

After his fallout with Collier and his dismissal from his position as superintendent of the Klamath Reservation, Crawford gave up on the Klamath Tribes' ability to successfully incorporate the reservation. With Collier out of office, and the IRA losing recognition as the prevailing federal Indian policy, Crawford began submitting termination-like legislation to Congress again with intensified zeal. He found support from senators like Republican Senator Watkins of Utah and Senator Wayne Morse of Oregon, then a republican. The multiple bills Crawford introduced at the end of the Indian New Deal era become mirrored in the final Klamath Termination Act of 1954.⁹⁸

The Eve of Termination Policy

From 1946-1953 Crawford proposed three bills and discussed plans for other solutions for the Klamaths' federal supervision with the BIA and Congress. His plans, however, did not play-out smoothly. Crawford faced strong opposition from Jackson and his party. These two men had spent the previous decade in opposition with each other. They ironically had very similar goals—to end the federal supervision of their tribes. Their visions for how to do that were quite different, though. Their testimonies in the

⁹⁷ Klamaths vote against IRA, see Taylor, 32-33; Deloria and Lytle, 172.

⁹⁸ Senate Committee on Indian Affairs, *Klamath Indians, Removal of Restrictions*, Part 1, 79th Cong., 2nd sess., 1 August 1946, 14. Hereinafter referred to as "*Klamath Indians, Removal of Restrictions*."

hearings over Crawford's proposed bills elucidate the differences in each faction's interests. At the same time, their testimonies helped influence Congress's development of the Klamaths' termination legislation. What develops is a group of tribal members under Crawford who wanted to liquidate the reservation completely. They basically want to sell all of their land and timber on the market. The other faction led by Jackson argues that the tribes should retain their forest under tribal management when they end federal supervision. The future of the forest was, again, teetering.

Crawford had scrutinized the BIA's management of the tribal forest since the late-1920s. Bark beetles had killed many trees in the Klamaths' forest. Instead of cutting trees before they, too, became infested, the Indian Office left them and caused more damage to the remaining forest. In Crawford's eyes, the forest was simply capital. If he had the final decision, he would have cut the whole forest, sold it on the market, and split the money among the members or put it in the bank where it could accrue interest.⁹⁹

In 1946, Crawford proposed his bill, S. 1313, which would resemble the very section of the Klamaths' termination act that required conservation-based amendments. This bill called for the liquidation of the reservation assets. S. 1313 suggested that the federal government or private investor purchase the tribes land at the appraised value. Crawford did not see federal purchase as mandatory. He explained, "It is immaterial to us whether we sell our timber to the Government or to private concerns. Our timber is principally ponderosa pine. There is a wonderful market for it." He continued, "We could sell it all in 30 days. There would be no burden to the government at all."¹⁰⁰ After liquidation, the tribe would allocate the revenue collected on a per capita basis. The reservation would no longer exist. The Klamaths would no longer be under the net of federal supervision. They would not have their forest anymore, either. During a hearing on this bill Crawford clarified his perception of the forest as strictly an economic good for the market, "I would sell the entire forest on the reservation, which are tangible assets. There are hundreds of lumber companies that are looking for that timber. There is demand for it."¹⁰¹ Jackson

⁹⁹ *Klamath Indians, Removal of Restrictions*, 7-8.

¹⁰⁰ *Emancipation of Indians*, 91.

¹⁰¹ *Klamath Indians, Removal of Restrictions*, 7-8.

and his party were determined to avoid this outcome. Moreover, the Klamaths' general council voted down this liquidation bill.¹⁰²

The BIA did not support Crawford's plan for liquidation, either. The Interior opposed the plan for liquidation because it would leave nothing for the future Klamath tribal members. More importantly, the BIA contended that a better decision would be to continue their sustained-yield cutting on the reservation. The BIA's suggestion, however, did not satisfy Crawford or Jackson. Despite his ability to gain support from the General Council and the BIA, Crawford attempted another approach.

In March of 1947, Crawford reverted to a plan similar to that which his opposition had suggested in early-1930s. The bill he suggested, S. 1222, offered a plan for "final settlement." Final settlement also resembled S. 1313, a bill for liquidating tribal assets. He, then, suggested an amendment that would allow individual members to withdraw from the tribes. Rather than force all of the Klamaths to cut their connections with the tribes and their forest assets, those who wanted to could. Likewise, those tribal members who wanted to remain could remain.¹⁰³

Jackson gave his testimony before the Senate Subcommittee on Indian Affairs at this hearing in March of 1947. He did not discuss the possibility of withdrawal. Instead, he discussed his general view of emancipation for the Klamath Tribes. Contrary to Crawford, Jackson stressed the need for a slow and well-planned process for ending the Klamaths' federal supervision. As a leader of the Klamath Tribes, he explained that he would support the majority's decision. He knew that he could easily benefit monetarily by liquidating the tribal assets. "It is true that I, too, could clamor for an immediate emancipation...with the holdings that I have before me, I could realize a considerable sum of money. But that is not what I am standing for."¹⁰⁴

Jesse Lee Kirk, the chairman of the business council, supported keeping the tribal land base and forest. He made his first appearance before Congress during this hearing. Kirk explained why he disagreed with the proposal to liquidate the reservation. "...I had

¹⁰² Ibid, 12-13.

¹⁰³ Both Crawford and his wife, Ida Crawford, work together as a political team. She played a larger role in the 1920s in hearings than in the 1930s and 1940s. During the IRA era, she spent a lot of time introducing ideas to the tribal General Council, while Wade lobbied Congress. Ida Crawford and Wade Crawford wrote S. 1222 together, see Senate Subcommittee on Indian Affairs of the Committee on Public Lands, *Klamath Indians, Oregon, Part 2*, 80th Cong., 1st sess., 18,19,20, and 21, August 1947, 481.

one grandfather who was a signer of the treaty between the United States Government and the Klamath Indians, and three great uncles, and when I was a small boy I was told to ‘fight for and keep, if you possibly can, this vast estate that we are leaving to you.’”¹⁰⁵ This faction would later benefit from the conservation-based amendments to their termination act in the 1950s.

Jackson and Crawford next met with the House Subcommittee on Indian Affairs to discuss the issues surrounding the emancipation of Indians only a month after meeting with the Senate Subcommittee. Jackson’s discussion with the congressmen focused on the concept of withdrawal as a form of emancipation. Jackson’s view at this point was that those members who wanted to withdraw should have been able to do so. As he understood it, the members who chose to withdraw from the tribe would take their share of the assets in cash and not be connected with the Klamaths any longer. Jackson, himself, was not interested in withdrawing. Rather, he seems to have understood the withdrawal option as a compromise—a way for the majority of the tribe to keep their estate and function as a tribe, and allow the minority of members who were interested in leaving the tribes, to do so. Crawford and Jackson had both shown support for individual withdrawal. After further disagreements among the faction leaders, Congress would add this concept to the final termination bill at the very end of the second session of the 83rd Congress. The later outcome of the withdrawal election would encourage Congress to reevaluate their termination act. The final outcome would be the conservation-based amendments to the termination act in the mid-1950s.¹⁰⁶

At this hearing, Crawford made a comment that foreshadowed the uniqueness of the Klamath’s termination act. Crawford stated, “I believe there should be special legislation for each individual tribe. I believe that would be satisfactory to the Indians and to the county and the community that they live in, to the State and to the Federal Government.” Furthermore, he argued, “I believe that legislation could be worked out with every tribe, and I believe it should be done, and done now, in this Congress.”¹⁰⁷ The Klamaths’ termination act provides for specific procedures that no other tribes’ termination acts

¹⁰⁴ *Klamath Indians, Oregon*, Part 1, 156.

¹⁰⁵ *Ibid*, 161.

¹⁰⁶ *Emancipation of Indians*, 83.

¹⁰⁷ *Ibid*, 86.

include. In the act is the express interest of Congress to complete a hasty termination process. Congress ultimately amended the hurried nature of the Klamath Termination Act due to the need for more planning and conservation concerns.

The last two hearings probably provided Congress with hope that the two factional leaders were coming to a compromise. However, Congress received mixed signals from Assistant Commissioner William Zimmerman, Jr. Earlier in 1947, Zimmerman released his report that ranked each tribe's readiness for ending federal supervision. The Zimmerman Report listed the Klamaths in the group of tribes most ready for termination. His testimony about the Klamaths' readiness for termination in congressional hearings, however, was not so supportive. In a congressional hearing titled "*Welfare of the Klamath Indians*" Zimmerman explained, "I am not prepared to say that as to a majority of that tribe that all limitations or control should be removed. But I would heartily approve legislation which would give [the Klamaths] more control and more authority."¹⁰⁸ The BIA had reverted to incorporation, similar to the IRA's plan for tribes, which Crawford and Collier had advocated in the early 1930s. Under incorporation, the tribes would have less federal supervision, and gain more autonomy, but not completely end federal supervision, as Crawford had recently proposed.

Rather than continue discussion at this time on incorporation, the Senate Subcommittee on Indian Affairs traveled to Oregon in August of 1947 and continued hearings in Klamath Falls, Oregon, on Crawford's earlier bill, S. 1222. This bill provided the means for liquidating the reservation and distributing the assets among the current members of the tribe, as did an analogous bill, S. 1313. These bills both put the tribal land at stake for liquidation. They also would have forced all tribal members to end the Klamath Tribes and end their relationship with their tribally-held land.

The congressmen of the Senate Subcommittee on Indian Affairs listened to multiple tribal members discuss their views concerning S. 1222. The senators faced wide-ranging opinions. Representatives of the men and women, young and old, full bloods and mixed bloods in the tribes spoke in favor of liquidating the tribes' assets and ending federal

¹⁰⁸ House Subcommittee on Indian Affairs of the Committee on Public Lands, *Welfare of the Klamath Indians*, 80th Cong., 1st sess., 1 May and 17 June, 1947, 9. Zimmerman's testimony and questions about his report on tribes and their being ready for termination, see 3-9. Hereinafter referred to as "*Welfare of the Klamath Indians*."

supervision. At the same time, different members of these same demographic groups disagreed with liquidating the reservation and argued that the Klamaths should keep their forest, or at least take more time to plan and complete a proper appraisal of the estate before making any permanent decisions. Despite their disagreements about the way the federal trust relationship should end, tribal members generally agreed that the Klamath Tribes would benefit by ending the trust relationship.¹⁰⁹

In the context of the federal hearings and their interest in ending the trust relationship, both faction leaders viewed the forest resources as an economic good for the tribal members. Jackson discussed the option of establishing the Klamaths' forest as a national forest with a senator at the hearing. Jackson strongly opposed this alternative. "My feeling, in connection with our forests, has been that it should remain an asset belonging to the Klamath Tribes." He continued, "...I understand that our forest holding now—the cut-over timber we hold now, today—is second to none in the United States of America."¹¹⁰ He imagined a time in the future when the tribes would manage their forest as a tribe.¹¹¹

Crawford's initiative had once been for the incorporation of the tribes. However, he had changed his mind and, at this time, was still advocating the liquidation of the tribal assets and dissolution of the tribes. Crawford defended his reasoning behind his bill for liquidation, S. 1222: "The reason why we wrote the bill as it is, giving the Indians their individual rights—it would give them rights they wanted to live under, that they had always lived under until such Government control had been placed on them...."¹¹² This statement by Crawford represents the fundamental difference between Crawford and Jackson at this point in their political careers. Jackson still held on to the base argument of the IRA—that tribes can assimilate through community strengthening and self-government. Crawford was fighting for individual rights and saw the forest as the asset

¹⁰⁹ *Klamath Indians, Oregon*, Part 2, in general.

¹¹⁰ *Ibid*, 499.

¹¹¹ Jackson later changed his mind about federal purchase, after coming to the understanding that Congress would not repeal the Klamath Termination Act. At that point, he decided that federal purchase would be the most beneficial outcome for those Klamaths that still wanted to hunt and fish on their former reservation. Senate Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Amendments to the Klamath Termination Act of 1954*, Part 1, 85th Cong., 1st sess., October 2 and 4, 1957, 36-47.

¹¹² *Klamath Indians, Oregon*, Part 2, 482.

that the tribes could exploit in order to reach full citizenship. Crawford had latched onto the surge of reform that rejected the tenets of the IRA and reintroduced the idea of assimilating individuals.

At the closing of this hearing, Senator Watkins addressed both factions of the Klamath Tribes. “I would like to make a plea tonight,” he said. “Evidence had been heard from witnesses for and against the legislation. I’m absolutely convinced that you have the same objective that we have. We are agreed on that.” He continued assuredly. “And, I know you will never make progress, as a group, and as members, individually, unless you become united and work together; and that you forget jealousies and overcome these natural weaknesses that all flesh is heir to.” He concluded, “You can work together. You have great destiny.”¹¹³ Congress attempted to appease both belief systems when they formulated the Klamaths’ termination act. This became apparent in the actual wording of the legislation. The very section of the legislation that is influenced by the need to address both factions’ interests also led to the need for conservation-based amendments to the termination act.

Senator Watkins may have instigated cooperation between the two leaders when he made that “plea” for the Klamath Tribal members to combine forces. The very next hearing held 30 July 1953 over the Klamath Tribes’ federal supervision, the two leaders displayed atypical behavior toward each other and an uncharacteristic interest in working together. Crawford and Jackson both came to the hearing with the intention of discussing Crawford’s and Jackson’s final settlement bill, H.R. 3402. This bill encouraged voluntary individual withdrawal as a way of distributing individual shares of the tribal estate. The two tribal faction leaders had worked on this bill all winter after discussing it with the representatives of the BIA. At this hearing, however, the BIA officials had, again, reverted to their previous plan for the incorporation of the tribes and their assets.¹¹⁴

Although Crawford and Jackson were both surprised by the Interior’s last minute change, both leaders accepted the proposal. Crawford explained, “...I can not see too much objection to the idea of incorporating the Klamath Indians under the laws of Oregon. I know that as a corporation we will be successful in that State....” Even more

¹¹³ Ibid, 590.

important to Crawford was that the BIA, Congress, and the Klamaths were all working on the same plan. Crawford argued, “We don’t feel like we should work on an individual withdrawal and later come back here and talk about incorporating...[W]e don’t want to waste any time and we do not feel that we should be put off for 2 1/2 years to incorporate...”¹¹⁵ Jackson showed a similar approval of the BIA’s change of plans. He stated, “I do not have much to say, other than that I feel rather good that the Department has finally come out with something that expresses their position as to what we were driving at.” He then referred to the factions among the tribal members and their joint efforts at cooperating: “...[W]e have had some difference of opinion but we have finally decided that unless we got together and put our shoulders to the wheel as a unit, then only would we make progress.”¹¹⁶

By this time, the BIA had deliberated over how to handle ending federal supervision for a tribe that had such a valuable asset for four decades. Even though the BIA representative approached the hearing with incorporation of the Klamaths’ as their goal, the BIA representative showed interest in the withdrawal plan on which the tribal members had been working.

For the Klamaths, this hearing in July of 1953 marked the eve of termination policy. Only two weeks later, Congress passed House Concurrent Resolution 108, the legislation that enabled Congress to pass bills that would terminate tribes’ federal trust relationships. Resolution 108 explicitly listed the Klamath Tribes. Moreover, an urgent tone permeated the resolution. The document stated that the listed tribes should undergo termination policy “at the earliest possible time.”¹¹⁷

Developing the Klamath Termination Act of 1954

Almost a year later to the day that Congress passed Resolution 108, the House and Senate agreed on and passed the Klamath Termination Act of 1954. The Klamaths’

¹¹⁴ *Klamath Voluntary Withdrawal Act*, in general.

¹¹⁵ *Ibid*, 10.

¹¹⁶ *Ibid*, 9.

¹¹⁷ House of Representatives, Congressional Resolution No. 108, 83rd, 1953. Printed in many hearings records, including the Joint Subcommittees of the Committees on Interior and Insular Affairs, *Termination of Supervision over Certain Tribes of Indians*, Part 4, 83rd Cong., 2nd sess., III. Hereinafter referred to as “*Termination of Supervision over Certain Tribes of Indians*, Part 4.”

faction leaders had come to an agreement on both incorporation and final settlement with withdrawal only a month before Congress passed Resolution 108. But the tribes had a history of incongruous politics. Likewise, they had dealt with an indecisive BIA for decades. Now, both Crawford and Jackson felt pressure from Congress to formulate termination legislation in a hurry. This was the first time that Indian policy seemed to align with all the interested parties concerning the Klamaths' end of federal supervision. What becomes clearer in this single year is how the testimonies of the faction leaders and the bills they proposed for terminating their federal trust relationship coalesced into the Klamath Termination Act. From the perspective of the later conservation-based amendments, one can discern how this period was significant in determining the need for those amendments that became so important for the tribes during the era of self-determination.

After the July of 1953 congressional hearing, Jackson and Crawford went back to the reservation and studied the BIA's incorporation plan, S. 2745. However, together Jackson and Crawford came to the conclusion that incorporation would not benefit the Klamath Tribes as favorably as a cooperative would. By forming a cooperative, the tribes could avoid paying certain state and federal taxes required by a corporation. Crawford wrote the articles of association and bylaws for the cooperative organization. In mid-December, he and Jackson proposed the cooperative plan to the Executive Council. The next day at a meeting with the General Council, Jackson reversed his opinion. He and the majority of council members voted down the plan for a cooperative. Stern explains that most tribal members were surprised with the sudden collaboration between Jackson and Crawford. Furthermore, according to Haynal, Jackson rejected the cooperative plan in order to show his "general opposition to termination." Jackson, however, explained in a hearing in February 1954 that he was not opposed to terminating the tribes' federal supervision. Rather, he supported a more careful and slower process of termination than any plan had offered. In response to Jackson's decision, Crawford changed his attitude toward termination, again. Crawford no longer supported

incorporation or a cooperative. He now wanted to simply withdraw and take his assets in cash.¹¹⁸

Congress, again, faced the leaders in a state of polar opposition. Jackson advocated keeping the tribal land and resources under tribal ownership, while Crawford strongly promoted liquidation. Jackson stated at the February 1954 hearing on the Interior's termination bill, S. 2745, "[I]t is nothing new for this committee to know that I have stood for conservation and holding our homelands together over the years, and my ticket was to do everything I could to conserve the heritage of the Klamath Tribe."¹¹⁹ Jackson and his party chose to support the Interior's bill, S. 2745, under the condition of amendments that would lengthen the amount of time allowed for the Klamaths' termination process.¹²⁰

Crawford saw no reason why the Klamaths, who did not get along, should try to manage the reservation together. "I don't believe the [Klamath] Indians will ever get together in running their affairs as a tribe. I had hoped that they would," stated Crawford. He continued, "[T]he only solution is for Congress to pass a bill, S. 1222, which will put the Indians out on their own individually. And there is nothing wrong with that."¹²¹ The bill Crawford referred to was his liquidation bill, which he had proposed in 1947. This bill suggested that the federal government purchase the reservation from the Klamaths as a means for terminating the Klamaths' trust relationship and dividing up tribal assets. The kicker was that Crawford was well aware that the Klamaths' reservation forest was of vital importance to the region, both economically and ecologically. He argued that federal ownership of the Klamaths' reservation land would be "a good deal for the Indians and for our county and for everybody concerned [because] we have the watersheds of the two rivers which supply the water in southern Oregon and northern California." Crawford also advocated selective cutting practices for the forest, rather

¹¹⁸ Discussion on forming a cooperative, see *Termination of Supervision over Certain Tribes of Indians*, Part 4, 277. Stern, 251; Haynal, 104; *Termination of Supervision over Certain Tribes of Indians*, Part 4, 258-269.

¹¹⁹ *Termination of Supervision over Certain Tribes of Indians*, Part 4, 258.

¹²⁰ *Ibid*, Jackson's comments concerning the need for more time in the termination process, 259-264; S. 2745 with Jackson party amendments, 322-326. The Jackson party titled their amended version of bill S. 2745, "A BILL To provide for the *eventual* termination of the Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members, thereof, and for other purposes" [emphasis original].

¹²¹ *Ibid*, 295, 297-298.

than clear cutting, as a means of protecting the watershed. Moreover, he argued that if the Klamaths' forest became part of the national forest system, timber companies would still have access to the resource. Crawford, the very man who pursued liquidating the tribal assets, discussed the conservation issues and the benefit of federal purchase during this hearing. On the contrary, non-tribal testimonies showed little to no interest in conservation of the watershed and forest resources.¹²²

The Klamath Falls Chamber of Commerce, who would later advocate the conservation-based amendments to the Klamaths' termination act in the mid-1950s, submitted a written statement for this hearing record. Their statement did not discuss the conservation issues associated with the termination of the Klamaths and the possible liquidation of the tribes' reservation. The Chamber of Commerce's statement included a section-by-section report on the Interior's bill, S. 2745. Their report provided evidence that they were aware that if the Klamaths could not come to a decision about the future management of their reservation within three years from passing the act, the Interior would proceed with liquidating the tribes' assets, including their forest. Perhaps their attention to such details was slighted by the short amount of time they had to review the bill before commenting in the February hearing. The Chamber of Commerce explained that after receiving the bill, they had very little time to "give the bill as much investigation and study as it would ordinarily desire."¹²³ Yet, they still supported the measure, describing S. 2745 as a "fair bill and as well designed as possible to meet the complex problems involved in termination of Federal control."¹²⁴ Their attitude would change sharply soon after Congress passed the final version of S. 2745.

Both the House and Senate Subcommittees on Indian Affairs held a second hearing at the Klamath Agency, just west of the reservation in southern Oregon on 19 April 1954. The Joint Subcommittees wanted to hear tribal members' and the non-Indian locals' views on S. 2745. Both Crawford and Jackson attended this hearing, as did many other Klamath tribal members. Crawford, still advocating his earlier liquidation bill, S. 1222, argued that liquidation would allow the Klamaths to gain their citizenship in Oregon as

¹²² All of Crawford's quotes in *Termination of Supervision over Certain Tribes of Indians*, Part 4, 296-297.

¹²³ *Ibid.*, 231-233.

they wanted. Furthermore, he argued that the tribal land should be managed by the federal government and opened for public use. Crawford believed that the Joint Committees should urge the local newspaper to have an election for the local non-Indians, so that they could give their preference for federal, state, or private ownership of the reservation land in the future. Crawford further argued that the tribal members should be given a secret ballot vote on the same subject. He was sure that the majority of both referendums would support federal management.¹²⁵

Jackson did not discuss the future management of the reservation. Instead, he discussed the factionalism and how withdrawal would appease both tribal parties. Jackson explained that the factionalism was misleading. The two parties really wanted the same end—termination of the tribes’ federal supervision. “[W]hen all is said and done, two factions point to one goal in particular; and because of that, why should there be factions?”¹²⁶ The greatest difference between the two factions was their desired outcome after termination. Jackson had embraced the idea of individual withdrawal because both his party and Crawford’s would benefit.

After this hearing the stakeholders held informal meetings with federal officials. Those who attended the meetings were Jackson and the other tribal delegate, Crawford as the leader of the opposing party, both factions’ attorneys, representatives of the Secretary of Interior, the commissioner of Indian Affairs, and members of the Senate and House subcommittees. The local business officials, like the members of the Chamber of Commerce, were not present at the informal meetings. According to the House Report on S. 2745, the Klamaths’ 40-year interest in termination, the bills the tribes had presented in the past, and these meetings led to the Senate’s amended version of S. 2745.¹²⁷

The Senate Subcommittee’s alterations to S. 2745 extended the planning process for the Klamaths’ termination. Instead of allowing 18 months for studies, the new version

¹²⁴ Ibid, 233. The Chamber of Commerce requested amendments to the bill that would restrict the tribes’ fishing rights after termination and that would protect non-Indian agriculturists who benefited from the tribal irrigation project after termination.

¹²⁵ Joint Subcommittees of the Committees on Interior and Insular Affairs, *Termination of the Federal Supervision over Certain Tribes of Indians*, Part 4-A, 83rd Cong., 2nd sess., 19 April 1954, 90-91.

¹²⁶ Ibid, 91-92.

¹²⁷ House Committee on Interior and Insular Affairs, *Providing for the Termination of Federal Supervision over the Property of the Klamath Tribe of Indians Located in the State of Oregon and the Individual Members thereof*, 83rd Cong., 2nd sess., 1954, H. Rept. 2483, 6-7. Hereinafter referred to as “House Rept. 2483.”

gave the Klamaths two years. Rather than having two years to decide on a management plan and present it to the Secretary of the Interior, the new bill allocated three years for the tribes to decide. This bill, then, gave the Secretary one year after receiving the tribes' decision, which was to be decided by majority vote, to complete the termination procedures. As the original bill stated, the Secretary of the Interior would transfer the management of the tribes' assets to the tribes to handle them in the form of a "corporation or other legal entity organized by the tribe." Under the Senate version of S. 2745, the tribes reserved the rights to choose their own consultants for special studies and to decide, according to a majority vote, the final plan for their assets after termination. Last, the bill allowed for more planning and gave them an extra year to complete the process. This year extension was not exactly what Jackson had advocated in the previous hearings, but it reflects his requests for more planning time.¹²⁸

Similar meetings continued after the Senate passed the amended bill to the House. After the last of such informal meetings, the House, then, further amended the Senate version. The House amendments implemented the most drastic changes to the legislation. The first change to the Senate's version of S. 2745 was to section five of the act, the section that extended the planning time for termination and gave the tribes' authority in the outcome of their termination process. The House struck out all of section five in the Senate's bill. They replaced it with a directed plan for the Klamaths' termination process. Under the House version of S. 2745, the Klamaths no longer retained authority in planning their future for their assets. Instead, the Interior would hire non-tribal specialists to manage the tribes' termination process and, above all, to make decisions about the future management of the tribes' assets. Another important addition to this section was that of individual withdrawal, which both Crawford and Jackson advocated in earlier hearings. The tribal members could individually withdraw from the tribe and take with them their share of the tribal assets in cash. The tribes would pay off withdrawing members with cash garnered from liquidating the appropriate amount of

¹²⁸ Senate Committee on Interior and Insular Affairs, *Termination of Federal Supervision over Property of Klamath Tribe, Oregon*, 83rd Cong., 2nd sess., 1954, S. Rept. 1631, 1-13. Hereinafter referred to as "Senate Rept. 1631."

their assets. Those who remained would be subject to the plan suggested by the management specialists.¹²⁹

Aside from procedural changes to the termination process in the act, the new language had a rushed tone. The whole process was to take four years to complete. However, this bill read more like Resolution 108. Instead of giving the tribes three years to decide on their future management plan, the bill gave the management specialists one year to complete an appraisal of the tribal assets. “Immediately after the appraisal of the tribal property” the management specialists were to hold an election for the tribal members to choose their future after termination—to withdraw or to remain. After the completely new section five, the House added another new section, section six. The wording of this section also suggested the hurried nature of the House version: “It is the intention of Congress that all of the actions required by section 5 and 6 of this Act shall be completed at the earliest practicable time and in no event later than four years from the date of this Act.”¹³⁰ Not only did this wording carry the hasty essence of Resolution 108, it also paralleled Crawford’s current view toward the termination process.

The House proceeded to pass the bill and send it back to the Senate. The Senate concurred, and President Dwight Eisenhower signed S. 2745 into law on 13 August 1954.

Conclusion

The Klamath Termination Act of 1954, referred to as Public Law 587, mirrored many of the bills that the faction leaders presented in earlier hearings. The act also reflected many of the Jackson’s and Crawford’s comments during their testimonies, especially their factional conflicts. The Klamath Termination Act would lead to an intense uproar over conservation concerns in southern Oregon and northern California. Those conservation concerns, as we will see in the next chapter, would mold a new path for the tribal forest and the tribes’ future management of the forest.¹³¹

¹²⁹ S. Rept. 1631, in general. *Congressional Record*, Vol. 100, 83rd Cong., and 6 July 1954, 9717-9718.

¹³⁰ House Rept. 2483, 1-2; *Congressional Record*, Vol. 100, 83rd Cong., and 6 July 1954, 9717-9718 and 3 August 1954, 13119-13122.

¹³¹ *Klamath Termination Act of 1954, U.S. Statutes at Large* 68 (1954): 718-723.

CHAPTER 4
CONSERVATION TWIST IN THE KLAMATHS' TERMINATION

The Klamaths' reservation existed as a deeply-rooted economic and ecological component of southern Oregon and northern California. After 40 years of harvesting, more than four-billion board feet of timber remained in the Klamaths' tribal forest in the mid-1950s.¹³² The reservation timber provided 26 percent of the saw timber in Klamath County. The towering stand of ponderosas accounted for one quarter of the commercial forest area in the county, where 40 percent of the area's economy relied on timber harvest and production.¹³³ More than simply a wealth of timber, the Klamath Tribes' forest offered many other benefits to the non-Indians throughout southern Oregon and northern California.

Farmers in the southern end of the Klamath Basin depended on the Klamaths' land and resources for different reasons. The tribes' ponderosa pines stabilized the soil of a large portion of the Upper Klamath River Watershed. Many farmers that lived south of the reservation in southern Oregon and northern California had come to depend on the water storage capabilities of the massive forest and marshlands. Without continued conservation management of the forest, their irrigation water might dry up or their irrigation dams might fill with silt from the erosive forces of water over heavily cut timber lands.

Three rivers carved through the basalt bedrock and pumice soil within the reservation. On the north end of the reservation, two marshes supported millions of birds every year as they traveled the Pacific Flyway. The tribal marshes were two of many that spread across southern Oregon and northern California. For non-Indian hunters and sportsmen of Klamath County, the tribal marshland and forestland provided integral habitat for game in that region. When Congress passed the Klamath Termination Act of 1954, they

¹³² Secretary of the Interior News Release, September 18, 1956, University of Oregon, Special Collections and Archives, Klamath Management Specialists, Box 125, Vol. II, Management Plan Correspondence. Hereinafter this collection is referred to as "Klamath Management Specialists." See Senate Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Klamath Indian Tribe—Termination of Federal Supervision*, 84th Cong., 2nd sess., 21 May and 18 October 1956, 65. Hereinafter referred to as "*Klamath Indian Tribe—Termination of Federal Supervision*."

¹³³ Fred Seaton, Secretary of Interior, to Richard Nixon President of the Senate, 13 January 1958, Klamath Management Specialists, Box 125, Vol. II, Management Plan Correspondence.

failed to recognize the web of ecological and economic connections among the reservation, the rest of southern Oregon, and northern California. Perhaps that was because parties interested in the termination process had not given conservation concerns much attention during the congressional hearings that led to the development of the Klamath Termination Act. The Klamath County Chamber of Commerce did not send a representative to the Klamaths' pre-termination hearings. Instead, they submitted written statements that supported the Senate version of S. 2745.

The first year and a half after Congress passed the act, non-Indian locals began questioning the possible impacts of the Klamath Termination Act on their economy and the ecology of the region. On the other hand, Klamath tribal members questioned their future economic positions. Some were concerned that termination might weaken the regional economy that they were about to enter as private citizens. They would no longer have the support of their tribal per capita payments. Other tribal members worried that the conservation concerns might ruin their chance for termination and reduce the value of their portion of the assets.

Congress and the BIA faced a dilemma. They needed to get the tribes a fair price for their reservation, and, at the time, they had to protect the future economic and ecological integrity of reservation and the surrounding region. Congress held amendment hearings a few years after passing the act. Although conservation was not a concern of the original Klamath Termination Act, conservation played an integral role in the outcome of the Klamaths' experimental termination process.

Most of the published material on the termination of the Klamath Tribes covers the basic legislative history and social effects on the tribes. None of the research explains the significance of the conservation-based amendments to the act. Many historians emphasized the misconduct and devious incidents that still haunt the Klamath Tribes' termination history. Patrick Haynal explained the Klamath Tribes' roles in termination. Donald Fixico focused his research on the roles of the pro-termination congressmen and government officials. He later argued that capitalistic pressures encouraged the Klamath Tribes and other tribes to manage their tribes and tribal assets in the form of a corporation. Theodore Stern reported the immediate effects of termination of those

members who had lived on the reservation. He explained that both the reservation system and termination policy did not prepare the Klamaths for individual self-sufficiency. Both Haynal and Charles Wilkinson examined the post-termination effects on the Klamath Tribes. They have emphasized the tribes' abilities to unite toward the common goals of restoration and tribal self-sufficiency.¹³⁴

“The ‘Experiment’ that Failed”

In the 1940s and early-1950s, federal Indian policy experienced a progressive shift from the IRA to a policy that supported the end of federal supervision as means for completing assimilation. This shift prompted BIA officials to develop a plan for tribes like the Klamaths. Congress developed termination policy as a result.

The goal of Congress was to begin the termination process with the most assimilated tribes, which the BIA believed were ready to enter mainstream American culture. Many of the tribes chosen for termination, like the Klamaths, owned large land bases or natural resource capital.¹³⁵ Termination ironically removed these tribes from the very source of their wealth—their land. But, as the Klamaths' termination history exemplifies, some tribal members did not worry about that outcome and sought to live as individuals after termination.

Throughout the course of the Klamaths' termination, differences among the factions reformed and surfaced in the congressional hearings and in various discussions the Klamath faction leaders had with BIA officials. Both parties continually supported the general idea of termination, but each had a different view of how the legislation should

¹³⁴ For a thorough bibliographic essay on termination research pre-1984 see Donald Fixico, “Twentieth Century Federal Indian Policy,” *Scholars and the Indian Experience*, ed. W.R. Swagerty, Bloomington: Indiana University Press, 1984. For information on the roles of the Klamath Tribes see Patrick Haynal, Termination and Tribal Survival: The Klamath Tribes of Oregon. *Oregon Historical Quarterly*. 101 (2000): 270-301. Haynal's research is unique in that he uses a research technique adapted from William T. Hagan. Hagan argues that a “new Indian history” can be written by using tribal documents and writing with the perspective of the Indians. For more on Hagan, see Haynal, 2001, 275. For the roles of congressmen and government officials see Fixico, 1984, 136, Donald Fixico, “Termination and Relocation: Federal Indian Policy in the 1950s” (Ph.D. diss., University of Oklahoma, 1980), and Donald Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960*, Albuquerque: University of New Mexico Press, 1986. For Stern's argument see Theodore, Stern, *The Klamath Tribes: a People and Their Reservation*, (Seattle: University of Washington Press, 1966). For information on the tribes' goals of restoration and self-sufficiency see Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Norton, 2005).

¹³⁵ For multiple examples see Fixico, 1998.

work. Jackson's party argued for slowing down and carefully studying the termination process. Conversely, Crawford and his party basically wanted out of the tribe. During the termination process he continued to promote the rapid sale of the reservation forest resources. His view was concentrated on a snappy sale, a quick payoff, and a hasty end to the federal supervision.¹³⁶

The Klamaths' termination process probably did not satisfy either leader of the tribes. Congress deliberated over amendments to the Klamath Termination Act through the latter half of the 1950s. The whole process took Congress and the BIA seven years to complete. This may seem short, but it is a much longer timeframe than the required four-year process in the original Klamath Termination Act.

Termination policy did not last much more than decade and a half. Congress terminated about 100 tribes and bands of Indians before President Richard Nixon revoked termination policy in 1970.¹³⁷ This short-lived policy, however, negatively altered the lives of thousands of tribal members. Termination became known as the US government's "'experiment' that failed."¹³⁸

Klamath Termination Act and the "Meat of the Coconut"

The original six-page *Klamath Termination Act of 1954* included 26 sections. However, the most important section became section five. This was the section that the House completely rewrote prior to passing the bill in the final month of the 83rd Congress. Section five outlined the process by which the Klamath Tribes were to transfer out of federal supervision. Democratic Oregon Senator Richard Neuberger later referred to section five as the "meat of the coconut in the operation of termination."¹³⁹

Congress held hearings on the early version of S. 2754 in Klamath County, prior to the Senate and House changes. The Klamath Falls Chamber of Commerce agreed with this bill. However, in the 1956 amendment hearings the Klamath Falls Chamber of

¹³⁶ Senate Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Amendments to the Klamath Termination Act of 1954*, Part 1, 85th Cong., 1st sess., 2 and 4 October, 1957, Jackson's party, 36-47; Crawford's party, 125-127, 129. Hereinafter referred to as "*Amendments to the Klamath Termination Act of 1954*, Part 1."

¹³⁷ Kathleen Shaye Hill, (Manuscript). Klamath County Museum, Vertical Files, Restoration, Folder 152.

¹³⁸ Beth Bushy, "The 'Experiment That Failed' Is Over," *Herald and News*, 17 September 1986, Klamath County Museum, *Herald and News* vertical files.

¹³⁹ *Amendments to the Klamath Termination Act of 1954*, Part 1, 72.

Commerce stated that Congress had not consulted them before making last-minute changes to section five and passing it in August of 1954. Senator Neuberger found himself “perplexed” by this information; he was new to the Subcommittee on Indian Affairs and could not believe that Congress had failed to notify the leaders of Klamath Falls about the changes to the termination legislation. The House claimed that their representatives had met with the Klamath faction leaders and their attorneys, the BIA, and Senate representatives in informal meetings after the April 1954 hearing in Klamath County. Moreover, the House report stated that these informal discussions led to the changes they made to section five and other sections of S. 2745. The House reported that “participants” of these informal meetings came before the House Subcommittee on Indian Affairs and agreed to the House’s changes to S. 2745. Therefore, the Chamber of Commerce was probably not aware of the House version.¹⁴⁰

Section five of the original bill, S. 2745, afforded time for planning and studies for the termination process. However, as the Klamath Falls Chamber of Commerce described in an amendment hearing, the House version of section five that became part of the Klamath Termination Act “eliminated the period of further study and planning and substituted a crash program for the sale of tribal assets.”¹⁴¹ This was the section that refocused the Klamaths’ termination process on conservation issues.

Section five of the termination act passed by Congress first required the Secretary of the Interior to appoint three management specialists. This section outlined the management specialists’ many specific duties. Their general responsibilities included assisting the Klamath Tribes’ and managing the tribal assets during the termination process. A review of their duties provides an outline of this “crash program.”

Within a year of their appointments, the management specialists were to have an appraisal completed of the Klamath Tribes’ jointly-held assets, including their 800,000-acre forest. Immediately after the completion of the appraisal, section five of the act required the management specialists to hold a withdrawal election among the tribal members. During this election, the tribal members were to choose whether they would

¹⁴⁰ Klamath County Chamber of Commerce’s surprise to changes in section five and Senator Neuberger’s reaction, *Amendments to the Klamath Termination Act of 1954*, Part 1, 71-72, 150-151. House Rept. 2483, 7.

¹⁴¹ *Amendments to the Klamath Termination Act of 1954*, Part 1, 68.

remain in the tribe or withdraw and take their portion of the jointly-held assets in cash. The management specialists third set of duties required them to choose what portion of land the tribes should sell that would adequately pay off those members who chose to withdraw. Next, they were to sell this property and distribute the funds to the withdrawing members. This stipulation meant that the more tribal members who withdrew, the more land they would need to sell and transfer out of communal tribal ownership. The fourth provision in the act under section five allowed the management specialists to request studies and reports that the Klamath Tribes or Secretary of the Interior believed should be undertaken during the termination process. Rather than suggest that studies for the future sustained-yield management of the forest as the original termination bill had in section five, the House version of section five made no mention of conservation-based forestry practices. The last duty of the management specialists listed in section five required them to devise a management plan for the remaining members' assets. Therefore, the tribal members who chose to remain would not know the future management plan of their assets until after the withdrawal election.¹⁴²

On 9 May 1955, Thomas B. Watters, Eugene Favell, and William L. Phillips accepted their appointments as the management specialists of the Klamath Tribes' termination process. Watters, who had lived in Klamath Falls for about 30 years, chaired the committee. He was a former mayor of Klamath Falls and had experience in banking and estate management. Favell lived in Lakeview, Oregon, a rural community about 60 miles east of the Klamath Reservation. For more than 40 years, Favell worked in the land-appraisal and lumber-brokerage business. Watters and Favell were prime candidates for the management specialist positions. The third member, Phillips resided in Salem, Oregon. He had decades of experience in car sales and had recently worked in the real estate business. Less than a year in the position, Phillips resigned from the management specialists' team to take a position on Former Secretary McKay's political campaign. The BIA chose not to hire anyone to fill the empty position. Watters and Favell became the sole members of the management specialist team.¹⁴³

¹⁴² *Klamath Termination Act of 1954, U.S. Statutes at Large* 68 (1954): 718-719.

¹⁴³ *Klamath Indian Tribe—Termination of Federal Supervision*, date of management specialists' formal appointment, 1; for background on the specialists, 8.

Soon after accepting their appointments, the management specialists contracted the Stanford Research Institute to conduct a social and economic study on the Klamath Tribes and the region surrounding the Klamath Reservation. The study, which the Stanford Research Institute completed in April 1956, was supposed to provide the management specialists with data that would guide them through their duties during the termination process. When the management specialists opened the report for the first time, they faced a statement that would foreshadow the conservation-based amendments Congress later added to the Klamath Termination Act. On page one, they read: “The desirability of changes is particularly evident in the sale or disposition of timber resources and in the establishment and operation of a legal entity for the management of tribal property.”¹⁴⁴ The report offered very few specific suggestions for *how* the management specialists should try to change or amend the law.

The most alarming aspect of the Stanford Research Institute’s report was a preliminary survey of the amount of tribal members who planned to withdraw from the tribe during termination. According to section five of the termination act, the Klamaths would have to liquidate 70% or roughly one-half million acres of tribal land within two years from the termination act’s instatement in order to pay off the withdrawing members. When Jackson agreed to the Klamath Termination Act of 1954, his faction did not expect the majority of the tribal members to withdraw. The survey revealed that about 70% of the tribal members planned to withdraw.¹⁴⁵

Soon after the Stanford Research Institute released its report, the BIA acknowledged the problems within the Klamath Termination Act. Commissioner of Indian Affairs Glen Emmons and four other Bureau representatives met with three members of the Jackson party 17-18 September 1956 to discuss the termination process and what that party believed was the best future plan for the tribal forest. Jackson did most of the talking for his party at this meeting. He argued that the tribal members did not really understand the termination act and that they really needed more time to prepare for termination. But,

¹⁴⁴ Quote and info on purpose of Stanford Research Institute’s report see Stanford Research Institute, 1. Also see *Klamath Indian Tribe—Termination of Federal Supervision*, 55.

¹⁴⁵ Resulting sale of timber under Public Law 587, *Amendments to the Klamath Termination*, Part 1, 290; Senate Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Amendments to the Klamath Termination Act of 1954*, Part 2, 85th Cong., 2nd sess., February 3, 4, 5, 6, 7, and 11, 1958, 588. Jackson’s expectation of the withdrawal election, *Amendments to the Klamath Termination*, Part 1, 51-52.

Jackson and his party were not against termination in general. Jackson clearly remarked that he and his followers believed that Congress should not repeal the termination act. Jackson stated, “We are not saying that we want the law repealed, because I don’t know just how we would function. Just what course of administration could we possibly adopt other than going back to where we started from.”¹⁴⁶ Similar to the Crawfords, Jackson’s party desired to change the administration of their reservation. They were not willing to continue federal guardianship. At this meeting, his party advocated that the federal government buy the tribal forest. Last, Jackson wanted to know what plan would govern the remaining members.

Commissioner Emmons responded to Jackson with rhetorical questions. He did not understand how a plan for the remaining members could be made before the tribal members made their decisions to withdraw or remain. His words demonstrate his determination to follow the procedures outlined in the Klamath Termination Act. Commissioner Emmons explained:

Until that appraisal is made, you can’t have a referendum [withdrawal election]. Until the referendum is made, how in the world can any plan be worked out. If indication is that 20 per cent only are going to remain and 80 per cent want to go out, then that is going to require a different type of amendatory legislation even necessary possibly if only 20 per cent go out.¹⁴⁷

Commissioner Emmons was taking into account the very different outcomes that the withdrawal election might have. If most of the Klamaths elected to remain, then the BIA would be comfortable allowing the tribes to incorporate or form some other legal entity in order to manage their forest assets. However, if only a minority of Klamaths remained in the tribe, the BIA would suggest that a trustee take over the management of the remaining tribal members’ assets. Although Commissioner Emmons’ justification for future planning may have made sense from the BIA’s perspective, the Commissioner was not taking into account the influence that the unknown plan might have had on tribal members’ decisions to remain or to withdraw.

¹⁴⁶ Meeting Minutes of Conference, Commissioner Glen Emmons, other BIA officials, and Boyd Jackson, Jesse Kirk, Delford Lang at Multnomah Hotel, Portland, Oregon, September 17-18, 1956, University of Oregon Special Collections and Archives, Klamath Management Specialists, Vol. III, W. Miscellaneous Correspondence. Hereinafter referred to as “Multnomah Conference.”

¹⁴⁷ Ibid. Assistant Commissioner H. Rex Lee explained the BIA’s perspective on the order of the termination process in *Klamath Indian Tribe—Termination of Federal Supervision*, 45.

Jackson continued to argue for the importance of having a plan for the withdrawing members developed after the appraisal. "...[U]pon the completion of the these appraisals there also must be a cut-and-dried plan, organization, of some sort of legal entity and that is where this stop-gap amendment come in. It proposes to create that 'missing link,' we think, is not in the law now."¹⁴⁸ Jackson's party supported slowing down the termination with a stop-gap bill. A stop-gap bill would allow the tribes, the Interior, and the public to voice their concerns for amendments to the Klamath Termination Act.

The Stanford Research Institute's study, combined with others the management specialists conducted themselves, influenced their next plan of action. The management specialists suggested that Congress amend the Klamaths' termination act. In October of 1956 the Senate Subcommittee on Indian Affairs reconvened for a hearing in Klamath Falls, Oregon. At this hearing, Watters explained the management specialists' view of the Klamath Termination Act: "...[T]he information derived from the studies has led us to believe that the law, if carried out in its present form, will jeopardize both the long-term welfare of the Klamath Indians and the interests of the community in which they live."¹⁴⁹ The management specialists outlined seven proposals for amendments. The proposals included, state acquisition or federal acquisition of the tribal land, postponement of the termination deadlines, a sustained-yield requirement for any future owner of the tribal forest, a requirement that the federal government pay the withdrawing tribal members the extra value of the reservation above the price acquired for selling the forest under the sustained-yield requirement, and variations of these.¹⁵⁰

During this hearing, the management specialists confirmed their suggestion for the federal purchase of the entire reservation and for the required sustained-yield management of that forest. "After studying the basic qualities of each of the proposed methods we now believe that the most feasible method for terminating this trust responsibility is through the federal purchase of the Klamath tribal property by the Government," stated Watters at the hearing. He continued, "Such a purchase, if made, should be on a basis which recognizes our Government's great moral as well as its legal

¹⁴⁸ Multnomah Conference.

¹⁴⁹ *Klamath Indian Tribe—Termination of Federal Supervision*, 55.

¹⁵⁰ *Ibid*, 70-76.

obligation to the Klamath Indians.”¹⁵¹ Furthermore, they argued that the deadline for the Klamaths’ termination process should be extended.¹⁵² The management specialists, like Jackson, supported the stop-gap measure for the Klamaths’ termination process. Soon the Interior would support it also.

On 7 January 1957, Secretary of Interior Hatfield Chilson sent identical letters to the President of the Senate and the Speaker of the House. In this letter he spoke to the importance of the proposed stop-gap bill that Jackson had discussed with Commissioner Glen Emmons during their meeting in September of 1956. “...Inasmuch as it is the public interest that is involved, some form of public ownership comes to be the only reasonable approach.” Commissioner Emmons continued, “We therefore recommend that the sale of any part of the forest should be stopped for the reasonable time in order that Congress may consider further whether public acquisition by the Federal or State government will be authorized.”¹⁵³ The Senate and House passed this amendment bill to postpone the sale of the tribal land. In the extension period, Congress held hearings that unearthed the profound conservation concerns the Klamath Termination Act evoked among Klamath tribal members and non-Indians in northern California, southern Oregon, and throughout the State of Oregon.

Amendment Hearings

The congressional amendment hearings can be characterized by many themes because of the varied perspectives witnesses offered. First the Klamath tribal members, including members of both factions, and other tribal members who did not identify with either faction, participated in the hearings. Second, the BIA representatives argued for their role as guardian of the tribes as well as their responsibility to help conserve natural resources for the public good. Third, regional civic leaders, conservationists, local farmers, small and large regional timber companies, and timber and forestry associations, voiced their opinions. These are simply generalizations about the more than 150

¹⁵¹ Ibid, 55.

¹⁵² Ibid, 73.

¹⁵³ Hatfield Chilson, Secretary of the Interior, to Richard M. Nixon, President of the Senate, 7 January 1957, Management Specialists, Box 25, Vol. II. Chilson sent an identical copy of this letter to the House.

testimonies in the hearing records. Understanding the general arguments of these groups illuminates the need for conservation-based amendments.¹⁵⁴

Since their unexpected agreement before Congress in 1953, the factional leaders, Jackson and Crawford, had redeveloped opposing views. Jackson maintained his argument for more planning and a slower termination process. He and his supporters, Jesse Kirk, Elnathan Davis, and Dibbon Cook, continued to agree that federal purchase was the best option for their termination process. Federal purchase had three benefits. First, the federal purchase would secure a “fair, competitive market price” for the withdrawing members. Second, the remaining members would realize their future timber economy benefits. Conservation of the forest under federal purchase would curtail any flooding of the timber market that might have occurred if the land were sold to multiple private investors and clear cut. More supply than demand would reduce prices that remaining members could acquire by selling their timber resources.¹⁵⁵

However, other tribal members, especially members of the Crawford faction, gave alternative testimonies. Crawford was sure that the tribes would be better off if they dismantled the tribal government, sold their land, split their assets, and went their separate ways.¹⁵⁶ He had been fighting for withdrawal and termination legislation for decades. He and his followers argued that the Klamath Termination Act should not be amended. Crawford stated in the amendment hearing in October of 1957, “I favor carrying out Public Law 587.” The main reason Crawford said he objected to Senator Neuberger’s proposal for federal purchase was because he did not know what the assets were worth or what the federal government would pay for them. Crawford told Senator Neuberger, “I don’t care who buys [the reservation land]. We are interested in getting the most for it, but what I am afraid of in your bill here is...[that] I don’t know what our values are.”¹⁵⁷ Federal purchase would exclude private purchasers and, therefore, restrict the Klamaths from accepting the highest bid for their resources. Crawford had suggested federal purchase numerous times in previous congressional hearings. When he realized

¹⁵⁴ Some testimonies, like those from church groups focused on humanitarian issues rather than conservation issues. Since this essay is geared toward the conservation issues that arose during the Klamath termination process, I will not discuss these humanitarian arguments.

¹⁵⁵ *Amendments to the Klamath Termination Act of 1954*, Part 1, 36-47.

¹⁵⁶ *Ibid*, 125-127, 129.

¹⁵⁷ *Amendments to the Klamath Termination Act of 1954*, Part 1, 129.

that federal purchase might reduce the price the tribes might receive for their land, he opposed it. Opening the sale of the tribal lands to the public, would have increased competitive bids and resulted in larger revenue for the withdrawing members.¹⁵⁸

Not all members joined Crawford or Jackson. Many tribal members did not know who to trust or what termination really meant. Termination had become a nebulous concept and unfathomable to many members of the Klamath Tribes.¹⁵⁹

The BIA was very aware of the factional disagreements among the Klamath Tribal members, but still insisted that the termination of the tribes' supervision should continue. Under Secretary O. Hatfield Chilson expressed the Interior Department's view that the factionalism was "one of the difficult problems connected with termination of Federal supervision over the Klamath Tribe." He explained, "One faction desired, upon termination, that their share of the tribal assets should be paid or distributed to them as individuals, and the other faction desired to hold the tribal assets in communal ownership." Under Secretary Chilson argued that the best way to solve the problems associated with the Klamaths' termination act was to amend it in a way that benefited the tribal members and the local and regional non-Indian community.¹⁶⁰

The Interior Department fully recognized the economic and ecological impacts the Klamath Termination Act posed. They, too, saw the future of the Klamath Tribes' termination process influenced by conservation measures. Unlike Senator Neuberger, who favored the federal purchase of the entire reservation, the Interior suggested that the tribal forest land should first be offered to private investors. "If private industry will buy any of the forest at the same price that the United States would pay, but subject to an enforced sustained yield [sic] requirement, the conservation objective will be accomplished and a large Federal expenditure will be avoided."¹⁶¹

¹⁵⁸ Ibid, for Wade Crawford's testimony, 123-133.

¹⁵⁹ Haynal, 2000, 281. Hill (manuscript), Klamath County Museum. The existence of tribal members who might not have supported either faction may suggest that a third faction existed in the Klamath Tribes. Can we categorize them as members of a faction if they did not identify as factional members? Some tribal members may have been too busy to attend tribal council meetings and might have chosen to focus on their immediate responsibilities, such as providing their families with food, clothing, and shelter. An exploration of such a faction within the Klamaths could support the growing literature concerning the inadequacies of the traditional, dichotomous categorization traditionally employed by historians and anthropologists studying tribal factionalism. See footnote 30.

¹⁶⁰ *Amendments to the Klamath Termination Act of 1954*, Part 2, 320.

¹⁶¹ Ibid, 321.

Plenty of non-Indians at the hearings willingly discussed the conservation issues. A local group of farmers and ranchers who belonged to the Klamath Water Users Protective Association [KWUPA] sent a representative to the amendment hearing in October of 1957. KWUPA's resolutions clearly outlined their conservation interests for amending the Klamath Termination Act. The association estimated that in its final stage of development the Klamath Basin, south of the reservation, would support about 600,000 acres of farm and ranch land. The very source of their irrigation water was the Upper Klamath River Watershed, which the Klamath Reservation largely encompassed. They argued that the federal government, either the Forest Service, Bureau of Land Management, or another capable agency, should purchase and manage the reservation land under sustained-yield management. This plan would support the interests of the downstream agriculturalists whose livelihoods depended on the integrity of the Upper Klamath River Watershed.¹⁶²

However, not all of KWUPA's members fully supported the federal purchase of the tribal land. Members of the Tule Lake Irrigation District of the Klamath Project, a Bureau of Reclamation (BOR) farming and irrigation development in southern Oregon and northern California, testified separately from the other KWUPA representative. The Tule Lake Irrigation District is the most southern point of the reclamation project, which lies within northern California. They depended on the return flow of water for irrigation. Return flow is the water that comes originally from the Upper Klamath River Watershed. This water is used to irrigate reclamation land farther north in the project, and is, then, cycled through to the Tule Lake Irrigation District before it reenters the Klamath River system. These members of KWUPA contended that Congress should allow private purchase, "if at all possible."¹⁶³ The Tule Lake Irrigation District representative did not elaborate on why their district supported private purchase over federal purchase; however, they never directly stated that they completely opposed federal purchase, either.

The Klamath Falls Chamber of Commerce studied the Klamath tribal termination and conservation issues. They maintained that they normally did not support expanding the federal control of lands in their county, as their county was largely federally owned.

¹⁶² *Amendments to the Klamath Termination Act of 1954*, Part 1, 72-73.

¹⁶³ *Ibid*, quote, 119; complete statement of Tule Lake Irrigation District of KWUPA, 119-121.

They “slowly and painfully” derived, what they believed to be, a careful decision, despite that they were defying their fundamental view of promoting private ownership. “Either the Federal Government must take over this timber and operate it on sustained yield or this forest must disappear from the face of the earth....” The Chamber of Commerce based their decision on the risk of clear cutting that might occur if termination led to private purchase. Clear cutting would lead to an over supply of timber and saturate the local economy. Furthermore, clear cutting would affect run-off from the forest, creating further implications for the local farmers who depended on the forest for its water storage and water filtering capabilities. Moreover, they argued that clear cutting the enormous ponderosa pine forest would be a loss to the United States. Pine from the Klamaths’ forest supported the United States in WWI and WWII. If not clear cut, the forest had the capability of supporting the “Nation’s economy” for years to come. The only solution that they believed would protect both the timber and farming industries was federal purchase.¹⁶⁴

The Klamath Sportsmen’s Association was another group of citizens interested in conservation issues. The members of this organization believed that the reservation land should not pass into private ownership. Instead, they argued that it should be available to the public for hunting, fishing, and other recreational activities. This association was also concerned with the future management of the forest. The possibility of clear-cutting and poor forest management that might result under the Klamath Termination Act could lead to heavy erosion and to silted streams. Moreover, a clear-cut forest, they argued, would not provide cover and other necessary elements of habitat for game and wildlife. They believed the federal government should purchase the Klamath Reservation and manage the forest under sustained-yield management in order “to afford maximum protection to fisheries and wildlife.”¹⁶⁵

The Klamath Falls Citizens Committee (Citizens Committee), an adhoc group of locals, presented the Senate Subcommittee on Indian Affairs a petition for the federal purchase of the Klamath Reservation. They studied three future possibilities for the tribal

¹⁶⁴ Ibid, quote, 70; Klamath Falls Chamber of Commerce’s complete statement, 67-72. The Chamber of Commerce argued that the Klamaths should receive a fair price for their forested land. A saturated timber market would reduce sales and lower the amount of money the Klamaths could make from selling their forest.

land. Those possibilities included selling the land in small tracts to private individuals and selling all the land to the State of Oregon or to the federal government. The Citizens Committee decided “that the only solution that offers a fair return to the Klamath Indians and that will protect the watershed and economy of this area” was federal purchase. They understood that the federal government had experience in managing large forest tracts under sustained-yield management. Furthermore, they expected that private purchasers of small forest tracts would easily clear-cut the forest under Oregon laws. The Citizens Committee argued against the State of Oregon purchasing the land because of undisclosed economic and political issues. They had collected about 430 signatures from Klamath Falls locals and from citizens in the nearby communities of Medford, Ashland, and Bend, Oregon. The risk the Klamath Termination Act posed for the conservation of resources in southern Oregon had grown to a regional issue.¹⁶⁶

Senator Neuberger informed the regional timber businesses and associations of the controversy over the Klamath Reservation timber. He also solicited verbal and written testimonies from them. During the first amendment hearing in October of 1957, Senator Neuberger was disappointed at the lack of feedback he had received from the timber industry. He was surprised to find that the Western Pine Association (WPA) submitted a terse written testimony in which took no position on the Klamath timber issue as of October of 1957. His frustration is evident in his statement to the participants of the October of 1957 hearing, “[W]hen a great organization representing many lumber producers such as the Western Pine Association declines to submit their views, it seems to me that they have deliberately left a vacuum as to their own wishes and recommendations in this matter...” He further commented on need for the timber industry to participate in the amendment process during the hearings. “I doubt if there will be any opportunity other than these hearings at Klamath Falls or Portland for these views to be submitted.” The WPA had another chance to offer their perspective on the future management of the 800,000-acre Klamath forest during the February of 1958 hearing. Again, the WPA submitted a brief statement. They still had no definitive

¹⁶⁵ Ibid, quote, 73; Klamath Sportsmen’s Association resolution and testimony, 73-75.

¹⁶⁶ Ibid, quote, 65; Klamath Falls Citizens Committee petition and testimony, 64-67.

response to the amendment discussions. The one opinion they gave was their support for private rather than federal ownership.¹⁶⁷

A small amount of forestry and timber associations and companies submitted their suggestions for amendments. The American Forestry Association (AFA) made a point to submit a written statement that included their stance on the Klamath timber issue. Conservation of the Klamaths' natural resources and the economic futures of the regional economy were of utmost importance to the AFA. The AFA argued that the Klamath timber must be kept under sustained-yield management. They explained their point of view in a written statement during the October 1957 amendment hearings: "that the disposal of timber lands of the Klamath Indian Reservation should be made under such conditions as will assure sustained forest production and maximum permanent contribution to the economy of the area including the economy of the Indians themselves."¹⁶⁸ The AFA published a slew of articles about the Klamaths' termination and the related conservation issues between 1954 and 1961 in their journal, *American Forests*. During these years, they closely tracked the amendment hearings and the amending legislation proposed for the Klamath Termination Act. The AFA maintained their argument for the continued sustained-yield requirement of the Klamaths' forest in the amendment hearing held in February of 1958. The AFA also maintained their argument for private purchase over federal purchase of this land.¹⁶⁹

Another organization, the National Lumber Manufacturing Association (NMLA), offered their suggestions as well in the October of 1957 amendment hearings. The NMLA supported the public sale of the Klamath Reservation forest. Public sale to private individuals would increase Klamath County's tax base and allow the Klamath Tribes to receive the highest possible bid. Furthermore, the NMLA argued that federal purchase would restrict private individuals, including the Klamath Indians, from investing in timber resources in a region that is mostly federal owned. Unlike the AFA, the NMLA ardently opposed any sustained-yield requirement on privately-owned land.

¹⁶⁷ WPA comment and Senator Neuberger's response, *Amendments to the Klamath Termination Act*, Part 1, 9; *Amendments to the Klamath Termination Act*, Part 2, 570.

¹⁶⁸ *Amendments to the Klamath Termination Act*, Part 1, 564-565. They quoted this statement from their association's resolution.

¹⁶⁹ The *American Forest* journals with the most articles regarding the Klamath termination can be found in the years of the amendment hearings, 1957-1958.

The NMLA viewed federal oversight of private land as unnecessary and unjust in the sense that it would restrict private property rights.¹⁷⁰

Weyerhaeuser Timber Company, the largest timber company in the region, including Klamath, Lake, and Deschutes counties in Oregon gave both a verbal and written statement at the October of 1957 hearing. Weyerhaeuser sternly contended that sustained-yield management of the Klamath Reservation forest was vital for the health of the regional economy and watershed. They had implemented this conservation measure on their own lands for the last 50 years. Under this premise, they argued that federal purchase was not the only way to ensure the sustained-yield management of forest resources. Furthermore, Weyerhaeuser advocated the mandatory sustained-yield management of the forest tracts sold to private investors. In order to promote competitive bidding on tracts under the sustained-yield requirement, they suggested that the federal government pay the tribes the difference between selling without sustained-yield restrictions versus selling with sustained-yield restrictions. Last, Weyerhaeuser advocated that the federal government be allowed to bid on the Klamaths' forest land after the public sale ended. During the February of 1958 hearing, Weyerhaeuser reaffirmed their arguments.¹⁷¹

The Western Forest Industries Association (WFIA) based in Portland, Oregon, which WFIA represented small- and medium-sized timber companies, provided a verbal statement at both amendment hearings. During the October of 1957 hearing, their suggestion for the future management of the Klamaths' timber was different than any other forest or timber group that gave a statement. They offered a plan for the management of both the remaining and withdrawing Klamath tribal members' resources. WFIA's representative recommended that the Forest Service manage the remaining members' forest resources for them after termination. They also argued that the Forest Service should purchase and oversee the forest land that the Klamaths sell to payoff their withdrawing members. Not until the hearing in February of 1958 did the WFIA discuss

¹⁷⁰ Nils Hult, "NMLA Defense of P.L. 587," *American Forests* (August 1958), 4, 50-53. This is a published letter from Hult, chairman of the Committee on Forest Management of the National Lumber and Manufacturers Association (NMLA), to Representative Haley. See also, *Amendments to the Klamath Termination Act*, Part 2, 584-587.

¹⁷¹ *Amendments to the Klamath Termination Act*, Part 1, 156-161, 181. *Amendments to the Klamath Termination Act*, Part 2, 560-561.

the importance of sustained-yield forestry practices. The WFIA asserted, like others in the timber industry, that the large tracts required for sustained-yield management would be too large for the smaller timber companies in the region. Moreover, they argued that the government should not oversee the management of private land or sustained-yield purposes. Instead, they maintained that the Forest Service should simply purchase the whole reservation so that the agency could manage the whole forest under sustained-yield practices. This way, the private timber companies would be able to benefit from the sale of forest tracts in the forest, and the public would benefit from the Forest Service's multiple use management practices.¹⁷²

A couple of timber industry members, who had not testified in the October of 1957 hearing, commented on the Klamath forest and termination issue during the amendment hearing in February of 1958. Both supported the mandatory sustained-yield restriction on the Klamath Reservation forest. The Southern Oregon Conservation & Tree Farm Association did not comment whether they preferred federal or private purchase. However, the Car-Ad-Co Company, a small timber company in Klamath Falls, advocated the federal purchase of the Klamath Reservation forest. Like the WFIA and Weyerhaeuser, the Car-Ad-Co Company argued that the sustained-yield forest units would be too large for smaller timber companies to afford.¹⁷³

The range of voices at the hearings and the different viewpoints presented show how conservation management of the Klamaths' forestland and marshland became a crucial aspect for both economic and ecological reasons. The next question would become, "How will Congress handle this 'stubborn Klamath dilemma'?"¹⁷⁴

Amending the Klamath Termination Act

Congress made two conservation-based amendments to the Klamath Termination of 1954. The first amendment afforded the management specialists more time for the

¹⁷² *Amendments to the Klamath Termination Act*, Part 1, 99-104. *Amendments to the Klamath Termination Act*, Part 2, 429-432.

¹⁷³ *Amendments to the Klamath Termination Act*, Part 2, Western Forest Industries Association, 432; Car-Ad-Co Company, 567. Senator Neuberger referred to the WFIA in his *American Forests* article, see, Richard L. Neuberger, "Solving the Stubborn Klamath Dilemma," *American Forests* (April 1958), 40. WFIA's representative also confirmed that the members consisted of small- and medium-sized timber companies, see *Amendments to the Klamath Termination Act*, Part 1, 101.

¹⁷⁴ Neuberger, 20.

termination process and gave Congress a chance to study the conservation concerns that spawned from the original termination act. By slowing down the process, this amendment also reversed the need for the management specialists to liquidate the tribal property so quickly. The second amendment led to the future sustained-yield management of the Klamaths' forest and the federal purchase of most of that forest.

Congress reviewed two amendment bills that focused on conserving the tribal forestlands. These bills both suggested means for conserving the forested lands and for safeguarding the future of the Klamaths' marshes. The main difference between the two bills was who would be allowed to purchase the Klamaths' land during the termination process.

Senator Richard Neuberger presented the first bill, S. 2047. He remained adamant that the federal government should purchase the entire reservation from the Klamath Tribes. He argued that this plan would guarantee the conservation of the forest- and marshlands as public goods and at the same time offer the Klamath Tribes a "fair and generous price" for the Klamath Tribes. His bill did not offer any of the tribal land for sale to the public. Instead, S. 2047 required the federal purchase of the whole reservation at a price based on a professional appraisal and negotiated with the Klamath Tribes. In his article, "Solving the Klamath Dilemma" published in *American Forests*, Senator Neuberger boasted the support his bill had received from the Klamath Tribal Council, namely Jackson's party.¹⁷⁵

The Interior's bill presented a similar plan for the Klamaths' land. Their bill, S. 3051, recognized the importance of conserving the forest through sustained-yield cutting. They also supported federal purchase of the tribal land. However, the Interior maintained that the land first should be offered to the public in large enough tracts that would allow for mandatory sustained-yield management. The tribe would sell large tracts of land at their realization value. Realization value refers to the price the tribe would receive if they sold their land unrestricted on the open market. After the public sale period, the federal government could buy any remaining sustained-yield tracts. As for the Klamaths' marsh,

¹⁷⁵ Neuberger, 20. "Senator Richard Neuberger Reviews Status of Klamath Termination Legislation with Oregon State and Legislative Interim Committee on Indian Affairs," 11 April 1958, Management Specialists, Vol. III, W. Miscellaneous Correspondence. Hereinafter referred to as "Senator Richard Neuberger Reviews Status."

the Interior contended that the federal government should purchase the wetland and manage it as a national wildlife refuge.¹⁷⁶

Senator Neuberger did not oppose the Interior's bill, but he viewed it as the second-best option for the Klamaths' forest. After speaking with many of his fellow senators, he came to the conclusion that he would not get enough support from the Senate to pass his bill for the federal purchase of the whole reservation. He learned that the Senate was skeptical of the large sum of money needed for the federal acquisition of such a large estate. Therefore, he stated, "I think S. 3051, for all its imperfections, at least points the way to a permanent and fair solution of the Klamath problem – fair to the Indians in price, and fair to the non-Indian community in permanent protection of the forest, marsh and watershed resource."¹⁷⁷

As Senator Neuberger predicted, Congress passed the Interior's bill, S. 3051 in 1958. Because 78% of the Klamaths withdrew from the tribe, the management specialists liquidated approximately 78% of the jointly-held assets. As the Interior had wished, the passing of S. 3051 opened the tribal land for sale to private individuals. The amended termination law required that the new owner of the forest land manage their land under sustained-yield forestry practices.¹⁷⁸

Despite the open public sale of 11 large, sustained-yield forest tracts on the Klamath Reservation, the federal government purchased the greatest amount of Klamath Indian land. A private buyer purchased one sustained-yield tract totaling 91,541 acres. The Forest Service bought the remaining 10 sustained-yield tracts, which totaled 525,680 acres. With a majority of the forestland, the Forest Service established the Winema National Forest, which they named after a Modoc heroine. They added some of the most eastern portions of the forest to Fremont National Forest. The management specialists sold 84 miscellaneous "fringe units," equal to a total of 84,006 acres, to private buyers. The amended termination act also required the federal government to buy the Klamaths'

¹⁷⁶ *Amendments to the Klamath Termination Act of 1954*, Part 2, 321-324.

¹⁷⁷ Senator Neuberger and Oregon Republican Representative Wayne Morse proposed S. 2047 and S. 3051 to the Senate and the House of Representatives, respectively, see "Senator Richard Neuberger Reviews Status."

¹⁷⁸ Fixico, 131; "Status Report Klamath Termination 1958," Shaw Historical Library, Klamath Falls, Oregon, A. Harvey Wright Collection, box 1, folder 2.

marsh and manage it as a national wildlife refuge. The federal government, then, divided the newly liquidated assets and awarded each withdrawing Klamath about \$43,500 dollars in one lump sum. In August of 1961, the government completed the Klamaths' termination.

The remaining members retained their portion of the jointly-held tribal land. However, they did not reserve their rights to manage their land. Most of the members who remained were deemed incompetent because of disabilities or their statuses as minors or senior citizens. The United States National Bank in Portland, Oregon, managed the remaining members' assets—about 135,000 acres of forested land.¹⁷⁹

Conclusion

Congress and the BIA had deliberated for decades over how to end the Klamaths' federal supervision. As chapter three argued, the hearings during the Indian New Deal era reveal how the Klamaths' tribal factions, the BIA, and Congress influenced the development of the Klamath Termination Act. Soon after Congress passed the Klamath Termination Act of 1954, however, tribal members and local non-Indians bombarded Congress, the BIA, and the management specialists with economic and ecological concerns about the act. Because such a large percentage of the tribal members planned to withdraw, the Klamaths would have to liquidate complimentary amount of the reservation—presumably their forest. The tribes' nearly one-million-acre reservation included one of the largest stands of ponderosa pine trees in the nation and a marsh that was integral to birds that migrated on the Pacific Flyway. The tribal land, rich with natural resources, was as much a public good as it was a tribal resource. The sustained harvest of trees and the stability of the watershed were important to the continued success of the regional timber and agricultural economies.

Instead of continuing with the hasty termination program spelled out in the Klamath Termination Act of 1954, Congress spent three years amending the act for conservation reasons. The final conservation-based amendments to the act extended the Klamaths' termination period and led to the federal purchase and conservation of most of the tribes'

¹⁷⁹ Senate Subcommittee on Public Lands of the Committee on Interior and Insular Affairs. *Klamath Indian Forest*, 92nd Cong. 2nd sess., 16 June, 1972, 1.

former reservation. The outcomes of the conservation-based amendments, most notably the federal purchase and sustained-yield requirement, may not have seemed immediately like helpful outcomes for the Klamaths. However, in the decades following the termination era, the Klamaths developed ways to take advantage of the federal ownership of their former forest land.

CHAPTER 5
GAINING POLITICAL GROUND

When they signed a Memorandum of Agreement (MOA) with the US Forest Service in 1999, the Klamath Tribes garnered management rights for nearly 600,000 acres of their former reservation.¹⁸⁰ The MOA is a formal document that outlines the meaning of the Klamath Tribes' government-to-government relationship with the Forest Service. Not only does the MOA reconfirm the tribes' rights to protect their treaty resources as a sovereign nation, it reaffirms the mandatory responsibility of the Forest Service to protect the Klamaths' treaty rights within the agency's jurisdiction. The MOA explicitly outlines the Forest Service's substantive and procedural duties concerning their mandatory government-to-government relationship with the Klamath Tribes. The Forest Service maintained jurisdiction over most of the former tribal land since 1961, after the federal government completed the Klamaths' termination process. The Klamaths, who lost their federal recognition as an Indian tribe and who lost their highly-valuable forest land through the termination process in the 1950s, would gain political ground in the decades after termination. By the 1990s, they not only reaffirmed their many treaty rights, restored their federal recognition and guardianship, they acquired a management role over their former forest land. During these four decades, the Klamaths have benefited from the conservation-based amendments to their termination act. Understanding how they have benefited requires background on the coalescence of environmental policy and federal Indian self-determination policy.

One year after the federal government completed the Klamaths' termination process, natural historian Rachel Carson published *Silent Spring* (1962). Carson's book formed the foundation of a new social movement based on national environmental awareness. This movement pressured Congress to pass numerous environmental laws in the ensuing decades. The Klamaths took advantage of the National Environmental Policy Act of 1970 (NEPA) after the conservation-based amendments encouraged the federal purchase of most of their reservation forest. Congress wrote NEPA to encourage public participation

¹⁸⁰ "Memorandum of Agreement: The Klamath Tribes and the U.S. Forest Service," 19 February 1999, as amended 17 February 2005, unsigned copy in my possession. Hereinafter referred to as "1999 MOA."

and disclosure and to require federal agencies to consider how their projects might significantly harm the environment. However, NEPA was not the only environmental policy tool that the Klamath Tribes used to earn their management rights as a tribal sovereign nation. The Appeals Reform Act of 1992 provided the administrative process for the Klamaths to appeal Forest Service decisions concerning their former reservation forest under what is known as the Forest Service administrative appeals process (FS appeals process). Prior to 1992, the Forest Service had voluntarily created a public appeals process, which allowed public parties to participate in the agency's planning process. In 1992, the Forest Service attempted to abolish the rules that provided the framework for the public participation process. However, Congress passed the Appeals Reform Act of 1992 in order to require the Forest Service to continue following a similar public appeals process. Since the majority of the Klamaths' former reservation land remained under federal ownership after termination, the Klamaths could take advantage of both of NEPA and the FS appeals process.¹⁸¹

Many Native Americans who look back at the 1960s and 1970s remember the coalescence of the Pan-Indian Movement and the related activism associated with members of Red Power. The grassroots initiatives among tribal communities during these decades built the foundation for an important shift in federal Indian policy from termination to self-determination. The Indian Self-Determination and Indian Education Assistance Act of 1975 became the counterpoint of termination policy. Self-determination policy reassured tribes of their sovereignty and their simultaneous ward status created by their trust relationship. Sovereignty meant that tribal governments would be able to take responsibility for duties that the BIA had in the past. Sovereignty would ensure tribes' rights for government-to-government relationships with federal agencies. At the same time, the wardship status of tribes required federal agencies, like the Forest Service, to protect tribes' treaty rights.¹⁸²

¹⁸¹ *National Environmental Policy Act of 1969*, codified at *U.S. Code*, vol. 42, sec. 4321. Rachel Carson, *Silent Spring*, (Boston: Houghton Mifflin; Cambridge, Mass.: Riverside Press, 1962). *Forest Service Decisionmaking and Appeals Reform Act of 1992*, Public Law 102-381, codified as amended, *U.S. Code*, vol. 16 sec. 1612 (2000). Hereinafter referred to as "*Appeals Reform Act*." General history of the act can be found in "Case Summaries," *Environmental Law* 37, (2007), 819.

¹⁸² *Indian Self-Determination and Education Assistance Act of 1975*, *U.S. Statutes at Large* 60 (1975): 585.

Francis Paul Prucha describes how treaties became of utmost importance to tribes in the self-determination era:

The treaties, which reformers at the end of the nineteenth century considered an obstacle to the progress of Indians, have turned out, in the late twentieth century, to be one of the principal bastions of protection for the lands, the political autonomy, and the hunting and fishing rights of present-day reservation Indians.¹⁸³

This held true for the Klamaths. They bolstered their tribal resurgence with three federal court decisions in the 1970s that reaffirmed their treaty-promised water rights and their rights to hunting, fishing, gathering, and trapping on their former 860,000-acre reservation. Two decades later, the Klamaths combined those treaty rights with the NEPA process and the FS appeals process to garner management rights over their former reservation through their MOA with the Forest Service. The Klamaths' self-determination history suggests that a nexus exists, where self-determination policy intersects with environmental law, allowing Native Americans to empower themselves as no other social group can.¹⁸⁴

Historians and scholars of Native American studies have focused their research on both the general trends among American Indian communities and specific instances of tribal empowerment during the self-determination era. Books like Peter Iverson's *We Are Still Here: American Indians in the Twentieth Century* and Charles Wilkinson's *Blood Struggle: The Rise of Modern Indian Nations* document the collective accomplishments of tribes across the nation in the 20th century. Their research brings together the tribal goals of economic self-sufficiency, cultural renewal, and self-government into the tightly-braided strand of self-determination. Another such volume, *Trusteeship in Change: Toward Tribal Autonomy in Resource Management*, edited by

¹⁸³ Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly*, (Berkeley: University of California Press, 1994), 385.

¹⁸⁴ The first two decisions see *Kimball v. Callahan*, 492 F.2d (9th Cir. 1974), decision referred to in text as "Kimball I." See also, *Kimball v. Callahan*, 590 F.2d 768, (1979), decision referred to in text as "Kimball I" and "Kimball II." Kimball is a misspelling—should be "Kimbol." *United States v. Adair*, 478 F.Supp. 336 (1979), referred to in text as "Adair." I am not arguing that all tribes have benefited from environmental policy. Environmental policy has also had the effect of restricting tribes' treaty rights. And example of a tribe negatively impacted by environmental policy is the Makah, whose whaling rights have been restricted by the Endangered Species Act.

Richmond Clow and Imre Sutton, explores the need for trusteeship reform and the possible environmental and tribal benefits that might result.¹⁸⁵

Other scholars have honed their studies on Native American tribes and their forest resources. Native American studies scholars Lawrence Lesko and Renee Thakali focus on the “increased government-to-government relationships” tribes have with the US Forest Service. They use the Hopi Tribe’s experience to argue that through these relationships US Forest Service managers are realizing the benefits of traditional tribal knowledge and are incorporating this knowledge into contemporary forest management practices.¹⁸⁶ The Klamath Tribes’ history, although very different from the Hopi Tribe’s because of termination, actually parallels that of the Hopi in respect to recent developments concerning tribal forest management.

Patrick Haynal effectively demonstrates in his doctoral dissertation, “From Termination through Restoration and Beyond: Modern Klamath Cultural Identity,” how the Klamath Tribes have used the dominant culture’s legal system to their benefit by lobbying politicians, filing suit, and taking advantage of the mass media. These actions have allowed the Klamaths to reaffirm their subsistence treaty-rights and their federal status as an Indian tribe. Haynal, however, does not include the Klamaths’ participation in the NEPA process in his dissertation or in his later published essay titled, “Termination and Tribal Survival: The Klamath Tribes of Oregon.” My focus on the tribes’ use of the NEPA and FS appeals processes and litigation strengthens Haynal’s argument.¹⁸⁷

Effects of Termination on the Klamaths

Policymakers predicated termination policy on the idea that Indians would liberate themselves by fully assimilating into mainstream society, America’s “cultural melting

¹⁸⁵ Peter Iverson, *We Are Still Here: American Indians in the Twentieth Century*, (Wheeling, Ill.: Harlan Davidson, 1998); Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Norton, 2005); Richmond Clow and Imre Sutton eds., *Trusteeship in Change: Toward Tribal Autonomy in Natural Resource Management*, (Boulder: University of Colorado Press, 2001).

¹⁸⁶ Lawrence Lesko and Renee Thakali, “Traditional Knowledge and Tribal Partnership on the Kaibab National Forest with an Emphasis on the Hopi Interagency Management,” In *Trusteeship in Change: Toward Tribal Autonomy in Natural Resource Management*, Richmond Clow and Imre Sutton eds., (Boulder: University of Colorado Press, 2001), 281-301.

¹⁸⁷ Patrick Haynal, “From Termination through Restoration and Beyond: Modern Klamath Cultural Identity” (Ph. D. diss., Anthropology, University of Oregon, 1994); Haynal, “Termination and Tribal Survival: The Klamath Tribes of Oregon,” *Oregon Historical Quarterly* 101 (2000): 270-301.

pot.” For a policy that was written to liberate the Klamaths, termination did not accomplish its desired end. During the decades after termination, the Klamaths experienced increased alcoholism and health problems, and death rates that surpassed the national average. Termination not only ended federal programs for healthcare and education, the policy also erased the Klamaths’ legal and political status.¹⁸⁸

Moreover, Haynal contends that termination policy negatively affected some tribal members more than others. He explains that the Klamaths’ termination created three social groups among the Klamaths: the “withdrawing members,” the “remaining members,” and the “descendants.” The withdrawing members received their share of the tribal assets in cash, about \$43,500 each. They no longer held title to any of the former reservation land unless they had retained their allotted land.¹⁸⁹

The remaining members included tribal members who chose to remain members of the tribe and not take their shares of the tribal estate in cash. The majority of this group, however, included those members whom the federal government designated incompetent to manage their own affairs, such as minors or elderly members. The federal government transferred its trusteeship position to the US National Bank in Portland, Oregon. Under this plan, the remaining members still had no say in the management of their land.¹⁹⁰

By the end of the 1960s, the remaining members had each received about \$50,000 dollars from timber sales on their jointly-held 135,000 acres of forested land. Frustrated with the bank’s inability to protect the tribal members’ land from exploitation by non-Indian hunters and fishermen, the remaining members elected, by a close vote, to end their trust relationship with US National Bank in the early 1970s. Without consulting the remaining Klamaths, US Bank officials decided to liquidate the trust lands and divvy the money among the remaining members. Although some members wanted their share of assets as land, the bank rejected this proposition. In 1974, US National Bank sold the

¹⁸⁸ Haynal, 1994, 128-129; Haynal, 2000, 291.

¹⁸⁹ Haynal, 1994, 117-128; Haynal, 2000, 284-286. Haynal offers an expanded discussion of the three tribal groups that formed during the termination process.

¹⁹⁰ Ibid.

remaining members' 135,000 acres of forested land to the US Forest Service. The last of any of the Klamaths' tribally-held land had passed out of Klamath ownership.¹⁹¹

The descendants, those born after the BIA closed the Klamaths' roll in 1954, Haynal argues, probably suffered the most. This group of Klamath tribal members did not benefit directly from the liquidation of tribal assets. Not only that, termination restricted the descendants from benefiting from federal programs for Native Americans. They grew up during a confusing time, when federal policy put their identities in question and the political structure of the tribal government, which would have held their community together, was no longer functioning.¹⁹²

Haynal argues that termination did not directly restrict tribal governments from acting. However, by removing tribes from their land bases and their jurisdiction over a geographic area, termination policy rendered tribal governments seemingly useless. Haynal speaks to the importance of every culture maintaining a basic political system that manages authority and social norms and that provides the accepted action for violating those norms. The Klamaths' government had fulfilled the important role of sustaining a distinct culture and political identity different from the non-Klamaths living nearby. Without their tribal government, the Klamaths struggled to perpetuate their tribal culture from 1961 to 1975.¹⁹³

In the late-1960s, however, Klamaths established the Organization of the Forgotten American (OFA) in Klamath Falls, Oregon, a city 30 miles south of the central Klamath tribal community. Although the OFA did not constitute a governing body for the Klamaths, it did offer limited health programs for tribal members and provided an outlet for the Klamaths' voices in a tribally-distributed newsletter titled, *Mukluks Hemcunga*, or "Klamath Talk." This newsletter informed the Klamaths of social gatherings, allowed tribal members to express their artwork and poems in a public forum. Moreover, the newsletter informed the Klamaths about important political happenings. The OFA acted as a political body for the tribes. According to Haynal the presence of the OFA made it hard for the local and state governments to ignore the interests of the Klamath Tribes.

¹⁹¹ Remaining members, Haynal, 1994, 120-121, and Kirke Kickingbird and Karen Ducheneaux, "You Can Bank on Indians: The Klamaths," *One Hundred Million Acres*, foreword by Vine Deloria, Jr., (Macmillan Publishing Co., Inc.: New York, 1973), 176.

¹⁹² Haynal, 2000, 284-286.

Likewise, tribal interests around the nation were more pronounced as the self-determination movement emerged.¹⁹⁴

The Self-Determination Era

During the decades that followed the Klamaths' termination, Indian nations gained power on many levels. Native American communities around the United States provided the political momentum for the transition from termination to self-determination policy. Activism among members of the Red Power movement; conservative measures, such as tribes taking advantage of the Office Economic Opportunity grants; and tribal successes in federal court spurred the pan-Indian movement. Law professor and historian Charles Wilkinson refers to the empowerment of tribes during this time as "new winds" in Indian Country.¹⁹⁵

Despite termination and its negative impact on the Klamath tribal community, the Klamaths could also feel the "new winds in Indian country" that Wilkinson describes. After the state of Oregon arrested members of the Klamath Tribes in the early-1970s for hunting without state licenses on their former reservation, the Klamaths took the State of Oregon to federal court. They believed that termination did not end their treaty-promised rights to hunt, fish, and gather foods on the former reservation. The State of Oregon argued that after termination the tribal members were to be regarded as citizens of Oregon with no special tribal rights. The federal court split the case into two decisions. First, they needed to determine whether or not Congress intended to end the Klamaths' treaty rights. They decided, in effect, that Congress intended termination to end the federal responsibility, and, therefore, the support the Klamaths received through social programs created for Native Americans because of their political status as Indians. In no

¹⁹³ Haynal, 1994, 111-114.

¹⁹⁴ Formation of OFA, see Haynal, 1994, 114; Role of OFA in politics, Haynal, 1994, 115; and *Mukluks Hemcunga*, (Klamath Falls, OR: Organization of the Forgotten American), published April 1973-April 1983.

¹⁹⁵ See Wilkinson, *Blood Struggle*, 177-178. George Castile correlated the nascence of self-determination with the presidencies of Lyndon B. Johnson, Richard M. Nixon, and Gerald R. Ford. Castile does not disregard the role the Native Americans played in the transition from termination to self-determination policy. See George Pierre Castile, *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960-1975* (The University of Arizona Press: Tucson, 1998).

way, did Congress declare their intention to abrogate the Klamaths' treaty rights. The federal court made this decision in 1974 and named it *Kimball I*.¹⁹⁶

The court then evaluated the geographic extent to which the Klamaths' treaty rights were valid. The court decided that the Klamaths' treaty rights to fish, hunt, trap, and gather without state licenses applied to the boundaries of the former reservation just prior to termination in 1954. Since the Department of Agriculture managed most of the former reservation, the Klamaths would be guaranteed their treaty rights in that jurisdiction. Only with permission from the owner could the Klamaths practice their treaty rights on privately-owned land within their former reservation. Furthermore, the courts granted the Klamaths the sovereign right to manage their tribal members' use of the treaty-promised resources. The court finalized its decision in 1979, and referred to it as *Kimball II*.¹⁹⁷

Furthermore, *Kimball II* required the Klamaths and the State of Oregon to develop a wildlife management scheme that recognized the Klamaths' sovereignty within the former reservation boundaries. The State of Oregon had assumed the responsibility of managing wildlife within the reservation boundaries during those years between the tribes' termination in the 1960s and *Kimball II* in 1979. The Klamaths, the Oregon Fish and Wildlife Commission, and the Oregon Department of Fish and Wildlife came to an agreement in 1981. The formal document that outlines this agreement is the 1981 Consent Decree. This document established a formal agreement to support the Klamaths in their efforts to act as a sovereign nation as far as their treaty resources were concerned. The Consent Decree limited the rights of Oregon state agencies to prosecute tribal members for exercising their treaty rights to fish, hunt, and trap on the former reservation. Probably the most important aspect of the 1981 Consent Decree was that it explicitly recognized the sovereign rights and responsibilities of the Klamath Tribes, which would allow them to oversee the management of wildlife on the former reservation. Elwood Miller, Jr., a tribal natural resources technician, later explained the purpose of the Consent Decree: "Through the Consent Decree all parties mutually agreed to coordinate manage[ment] activities to meet natural resource concerns. The stated purpose of the agreement was: 'To promote the sound and efficient management and

¹⁹⁶ *Kimball v. Callahan*. See note 184.

¹⁹⁷ *Ibid*.

conservation of fish and wildlife resources within the areas comprising the former Klamath Indian Reservation to ensure future use of these resources by both the Klamath Indians and non-Indians.”¹⁹⁸

Since the 1981 Consent Decree, the Klamaths had collaborated with federal and Oregon state wildlife management agencies through the Interagency Technical Advisory Committee (ITAC). The Klamaths and government agencies organized ITAC in order to fulfill their duties and responsibilities required by the Consent Decree.¹⁹⁹ ITAC became a working group that developed and implemented methods for studying and managing wildlife within the former reservation. The Forest Service is not listed explicitly in the Consent Decree and did not participate in ITAC. However, as a government agency, the Forest Service must fulfill its fiduciary responsibility to protect tribal treaty rights. Moreover, the Forest Service recognized the 1981 Consent Decree by publishing it as an appendix to their forest plan for Winema National Forest (1990).

During the same year as *Kimball II*, the federal courts reaffirmed the Klamaths’ senior water rights. This case, *Adair*, is currently in the fourth phase. The water rights did not play a direct role in the Klamaths’ later NEPA participation, but they did bolster the tribes politically. During this decade, any political boost for the Klamaths was important to their overall morale after termination.²⁰⁰

Restoration of the Tribes’ Federal Status

Soon after the Klamaths reaffirmed their federal treaty rights for water and subsistence needs and their right to act as a sovereign over their members, they campaigned for the restoration of their federally-recognized tribal status and the reacquisition of their former reservation lands. They believed the land would be the center point of their full restoration and future economic self-sufficiency. The Klamaths

¹⁹⁸ 1981 Consent Decree in *Land and Resource Management Plan: Winema National Forest*, United States Department of Agriculture, Forest Service, Pacific Northwest Region, 1990, Appendix D, 4-7. Hereinafter referred to as “1981 Consent Decree.” Quote in Elwood Miller, Jr., to Lee Counce, chief forester, Winema National Forest, 25 November 1987, Chiloquin Ranger District, Chiloquin, Oregon, “Appeals History” vertical files.

¹⁹⁹ Portland Area Director, Bureau of Indian Affairs (unreadable signature) to John Buttrulle, regional forester, USFS, 8 December 1989, Chiloquin District Office, Chiloquin, Oregon, “Appeals History” vertical files.

²⁰⁰ *United States v. Adair*, full citation in note 184.

soon found, though, that reacquiring their former reservation would not be a simple task.²⁰¹

With support from Oregon Republican Representative Bob Smith, the Klamath Tribes initiated their plan for reinstating their trust relationship with the United States in the early 1980s. Representative Smith suggested that the Klamaths first focus solely on reestablishing their federal status as Native American tribe. In 1986, Congress redeemed the Klamaths' federal trust relationship and recognized them as a sovereign nation. The tribes still believed that restoration was only the beginning of their tribes' reestablishment. The rebuilding of their sovereignty would not be complete without their forest land.²⁰²

The Klamaths' forest represented monetary wealth, but the forest was also a primary source of food and medicine. Many tribal members still hunted and fished and collected plants on the former reservation. Moreover, many areas within the forest were considered sacred by the tribes. The Klamaths' ability to protect these foods, medicinal plants, and sacred grounds were vital to their cultural renewal. Prior to termination, the BIA managed the Klamaths' forest. Since termination and the conservation-based amendments to the Klamath Termination Act, the Forest Service owned most of the Klamaths' former forest land.²⁰³

NEPA and the Forest Service Administrative Appeals Process

While the Klamaths and other Native American tribes joined forces in the self-determination movement in the 1960s and 1970s, many other US citizens focused on developing environmental policies. Environmental degradation had become mainstream knowledge, which encouraged the public to pressure federal agencies to identify the

²⁰¹ Land reacquisition as central feature of restoration, see Pati O'Conner, "Bill Seeks Tribal Restoration," *Herald and News* (Klamath Falls, Or), 23 August 1985; Todd Kepple, "Klamath Tribes OK Plan to Seek Lands," *Herald and News* (Klamath Falls, Or), 5 December 1993.

²⁰² Senator Bob Smith and his suggestion to seek lands after regaining restoration status, see O'Conner, 23 August 1985. *Klamath Restoration Act of 1986*, Public Law 99-398, 99th Cong. (27 August 1986). Regaining forest land remains central issues to Klamaths, Kepple, 5 December 1993; O'Conner, 23 August 1985.

²⁰³ Elwood H. Miller, Jr., to Lee Coonce, Winema National Forest, 10 September 1987, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files. The Klamath Tribes explain the importance of the former reservation forest in terms of economic, cultural, and subsistence needs in many of their letters, appeals, and comments directed at the Forest Service. This is one of many examples.

effects of their actions on the environment and to include public participation in the federal decision-making process.

When Congress passed the National Environmental Policy Act in 1969, they couched the policy in terms of federal agency “good faith” and public disclosure. Federal agency “good faith” refers to an agency’s obligation to use their best judgment in adhering to the terms of NEPA. The public disclosure clause in NEPA illuminates the importance of informing the public of federal agency plans and decisions and, then, allowing the public to comment on those federal actions. These two fundamental aspects of NEPA became important to the Klamath Tribes, whose former reservation forest was managed mostly by the Forest Service. The Klamaths maintained subsistence rights to their former land, even that land that was under private ownership. However, they were guaranteed access to the federally-managed portion of their former reservation forest.²⁰⁴

NEPA requires federal agencies to study all “major Federal actions significantly affecting the human environment.”²⁰⁵ A major federal action might be a proposed timber sale, and the human environment affected could be a region in which the Klamath Tribes gather medicinal and dietary plants. According to NEPA, the Forest Service would have to issue an in-depth analysis, or an environmental impact statement (EIS), which would disclose the agency’s analysis of the proposed timber sale. This report must explain the environmental impacts of the timber sale, including those that cannot be avoided. Furthermore, the report must include alternatives plans for the proposed timber sale and must compare the projects’ short-term and long-term effects on the tribes’ use of that timber sale region. Last, the Forest Service would be required under NEPA to report the timber sale’s irreversible effects on resources.²⁰⁶

However, the Forest Service can circumvent their need for a full analytical report of the proposed timber sale. NEPA only requires the Forest Service to complete an EIS if the timber sale will *significantly* impact the human environment, for instance, substantially reducing a native wildlife population. Another qualifier of significance is if the proposed action may violate a federal law, such as a treaty right, which the Klamaths

²⁰⁴ Federal agency “good faith” and public disclosure, see Zygmunt J. B. Plater et al., *Environmental Law and Policy: Nature, Law, and Society*, 2nd ed., American Casebook Series, (St. Paul, MN: West Group, 1998), 612. *National Environmental Policy Act, U.S. Statutes at Large* 83, 102 (a-h).

²⁰⁵ *National Environmental Policy Act, U.S. Statutes at Large* 83 (1969) 853, Sec. 102(1-2)(a).

claimed in their appeals. When an agency is unsure if its project will significantly harm the environment, federal agencies can first complete an environmental assessment (EA). An EA is a succinct public document that should include evidentiary support for the agency's conclusion about the significance of impacts. In an EA, an agency will choose to either proceed with an EIS, or a finding of no significant impact (FONSI). Therefore, a FONSI requires no EIS. The Forest Service that managed the Klamaths' former reservation routinely completed EAs and released FONSI for timber sales and other decisions concerning forested land that was formerly within the Klamath Reservation boundary. They denied that their projects would compromise the tribes' treaty rights.²⁰⁷

As Lesko and Thakali explain, NEPA opened the door for tribes nationwide to engage in the forest management process with several federal agencies. By submitting substantive comments during the NEPA comment period for environmental assessments (EA), the Klamaths established their standing for appeals during the FS appeals process, the agency's established administrative dispute resolution process. Both NEPA and the FS appeals processes became integral to the Klamaths' later political victory that afforded them a right to participate in the Forest Services' forest management process at a higher level than the non-Indian public.²⁰⁸

The Forest Service's duty as a federal agency was to protect the Klamaths' subsistence treaty rights on former Klamath lands in the national forests. At the same time, self-determination was supposed to have modified the federal trust relationship in a way that would encourage tribal involvement as a sovereign nation in the management of their resources, especially those protected by their treaties. After participating in the timber sale planning process with the Forest Service under the auspices of tribal sovereignty and self-determination, the Klamaths were dissatisfied with the effort of the Forest Service to include them in the planning process. Within a year after restoring their

²⁰⁶ Determination of significance, see 40 CFR 1508.27. EIS, 40 CFR 1502.

²⁰⁷ EA at agency discretion, 40 CFR 1501.3(a) and 1508.27(10). Valerie M. Fogleman explores the evolution of threshold determinations associated with the extent to which projects meet the significant effects requirement of an EIS. See Fogleman, "Threshold Determinations under the National Environmental Policy Act," *Boston College Environmental Affairs Law Review* 15 (Fall 1997), 59-103. FONSI, 40 CFR 1508.13. Significance and possibility of violating federal law such as treaty, 40 CFR 1508.27(10).

²⁰⁸ Lesko and Thakali, 283-284; 36 CFR 215.1(b).

status as a federally-recognized tribe in 1986, the Klamaths began planning new tactics.²⁰⁹

The NEPA and the FS appeals processes offered the Klamaths another route. The 1981 Consent Decree did not outline procedures for how the Forest Service would include the tribes in the planning process. Furthermore, the Klamaths did not have any other established framework for their government-to-government consultation process with the Forest Service. The Klamaths believed that the Forest Service should include the tribes in the planning process prior to the NEPA and appeals processes so as to acknowledge the Klamaths' sovereignty. The Forest Service resisted the tribes' requests for such inclusion in the Forest Service's planning process. As the record below indicates, the Forest Service willingly met with the Klamaths and discussed the meaning of a government-to-government relationship many times over the course of a decade. But until the federal court mandated that the two parties formalize an agreement concerning the meaning of that relationship in 1996, the Forest Service continued to allow the Klamaths to participate in their planning process as any other public party could. In order to maintain influence in the Forest Service's decisions regarding the tribes' former forest, the Klamaths began commenting during the NEPA process and filing appeals in the FS appeals process. In this way, the Klamaths were able to formally cite their continued interest in the management of their former forest.

Any citizen can participate in the NEPA and FS appeals processes through a public comment period, but the agency only has to respond to comments made by parties with substantive claims. The Klamaths' basis for establishing standing, their right to appeal under the regulations of the FS appeals process, was dependent on two factors. First, the Klamaths cited their treaty rights guaranteed by their 1864 treaty. Second, the tribes had qualified themselves for the appeal process by participating in the NEPA process comment period for the sale under scrutiny.²¹⁰

²⁰⁹ David Getches et al provide a summary of changes in the federal-tribal relationship through legislation and case law in their volume, see multiple chapters. Despite that the Klamaths did not have federal recognition until 1986, they retained their treaty rights after termination and their sovereign right to manage their tribal members' taking of treaty resources, as the federal court decided in *Kimball I and Kimball II*.

²¹⁰ Parties with substantive claims, 40 CFR 1503.1 and 1506.6. Rebecca Craven, tribal attorney, to James Torrence, regional forester, Pacific Northwest Region, USFS, 1 July 1988, Chiloquin District Office, "Appeals History" vertical files. Craven refers to the forest appeals in 1987 as the first the Klamaths had

The Klamaths' appeals and their correspondence with the Forest Service unearth a discordant relationship between the Forest Service and the Klamath Tribes. Woven throughout this inharmonious relationship are the meanings of the federal trust responsibility, tribal sovereignty, and treaty rights. The Klamaths had a different understanding of a government-to-government consultation process than did the Forest Service officials. The Klamaths continual efforts to assert their treaty rights and sovereignty through the NEPA and FS appeals processes resulted in a negotiated government-to-government agreement in the form of an MOA between the two parties.

Two interconnected arguments the Klamaths made consistently from 1987 to 1999 demonstrate how the NEPA, FS appeals process, and self-determination nexus became a tool for tribal empowerment. The Klamaths' two main arguments against the Forest Service were that the agency failed to protect the tribes' treaty rights and that the agency was not providing the Klamaths with a meaningful government-to-government consultation process. These two interconnected arguments wrapped tightly around a common thread that links many of the tribes' NEPA comments and appeals. This common thread was the Klamaths' continual claim that the Forest Service failed to analyze, or to analyze correctly, the effects of multiple Forest Service actions on mule deer populations and habitat. The Klamath Tribes raised many other concerns such as the inadequacy of the Forest Service's EAs and EISs to address the impacts of their proposed actions on tribal sacred and cultural sites, fishing rights, and old growth stands. The consistency with which the tribes showed their concern for mule deer analysis in their appeals and the connection of mule deer to both tribal treaty rights and sovereignty makes the mule deer concern a prime example for explaining this history. More than that, the Forest Service recognized the mule deer as a management indicator species (MIS) in the Winema Forest Plan (1990). The Forest Service uses management indicator species to gauge forest health. Thus, the mule deer should have been a common focus of interest and planning of land management activities within the forest.²¹¹

filed since 1979. For standing requirement see, *National Environmental Policy Act, U.S. Code*, vol. 16, sec. 1612.

²¹¹ Mule deer as MIS, *Final Environmental Impact Statement: Land and Resource Management Plan; Winema National Forest*, United States Department of Agriculture, Forest Service, Pacific Northwest Region, Klamath County, Oregon, 1990, 4-127—4-131. MIS in federal regulations, 36 CFR 219.14(f).

The mule deer is an integral subsistence food for the Klamaths and protected under their treaty provisions. Not only that, the hunting of mule deer is an important part of the tribes' culture and spirituality, as are other subsistence needs that the Klamaths fulfill by practicing their treaty rights. The Klamaths described the connection of their treaty rights to spirituality in an appeal they filed with the Forest Service in 1988: "[E]xercise of treaty right includes a significant religious and spiritual component. Not only is the hunting and fishing right exercised for subsistence purposes, but it is also part and parcel of tribal members' spiritual existence which cannot be separated from the exercise of the hunting and fishing right itself."²¹² Klamath tribal member Don Gentry, the natural resources specialist for the tribes, argued for the importance of Klamaths to practice their treaty right to hunt in his affidavit included with another tribal appeal in 1991. Gentry maintained, "I hunt, fish, and gather primarily for my immediate family and father-in-law, and occasionally for other elders that are unable to perform these activities themselves." Gentry further explained, "I...have learned, through these activities, about the Klamath Tribes' cultural practices and the issues of great significance to our culture."²¹³ The Klamaths argued that possible significant effects to mule deer habitat could reduce mule deer populations and limit the ability of the Klamaths to depend on mule deer as a subsistence food and to pass on certain aspects of their culture.

During their extensive participation in both the NEPA and appeals processes, the Klamaths believed that the Forest Service was not taking into account the tribes' comments and concerns for their treaty resources, including mule deer. Klamath Natural Resource Technician Elwood Miller, Jr., clarified the tribal position in a letter to the

²¹² Klamath Tribes' notice of appeal of the Forest Service's John, Dice Crane, and Heron timber sales within the Winema National Forest, 10 November 1988, Chiloquin Ranger District, Chiloquin, Oregon, "Appeals History" vertical files.

²¹³ "Affidavit of Don Gentry", dated 9 September 1992, in the Klamath Tribes' appeal of the Forest Service's decision notice, EA, and FONSI for the Rosie timber sale, 11 September 1992, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files. As the Klamaths' explained in their appeal of the Forest Service's decision notice for the Winema National Forest Plan in 1991, "Subsistence activities continue to play a major role in the Tribe's culture." See Klamath Tribes' Notice of Appeal for the Forest Service's Decision Notice for the Winema National Forest Plan, 3 January 1991, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files. See also, "Affidavit of Gary Gentry," Klamath Tribes' notice of appeal and statement of reasons for the Forest Service's EA, decision notice, and FONSI for the Ford timber sale within Winema National Forest, 23 January 1996, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files.

Regional Forester in November, 1987, concerning the proposed Dice Crane and Heron timber sales:

Information collected by the Tribe is not being used to help develop alternatives to be used as a token gesture by the District and Supervisors [sic] office. The concerns in these sales are very real, important, and legitimate for the protection of the treaty. Cultural, spiritual and subsistence rights of the Klamath Tribe are a Treaty right [sic], however, the support of these rights by the United States Forest Service is questionable.²¹⁴

From the tribes' perspective, the Forest Service was listening to the Klamaths' concerns, but they were not implementing measures in their decisions that adequately addressed the needs of the tribes. However, as a federal agency, the Forest Service was charged with the responsibility to protect the tribes' treaty rights. Moreover, self-determination had promised tribal sovereignty. Sovereignty secured the Klamaths' rights to interact with federal agencies in a government-to-government manner.

Throughout the period of Klamath appeals over numerous Forest Service projects, the mule deer populations were declining in the region of the former reservation. The Klamaths were working in partnership with the Oregon Department of Fish and Game through the Interagency Technical Advisory Committee (ITAC). ITAC was an outcome of the 1981 Consent Decree. At times the Forest Service also participated in this technical group. However, on multiple occasions, they chose not to incorporate ITAC's scientific data or the group's models into their environmental assessments. In the latter part of the Klamaths' appeals history the Forest Service made an effort to work with ITAC. This effort, however, did not hold credibility when Klamaths saw that the Forest Service either improperly applied the model in an EA or chose not to apply any model to analyze a project's impacts on mule deer in their EA. At least one letter written by a state agency member of ITAC suggests that others shared in the Klamaths' early frustrations concerning the Forest Service's decision not to apply ITAC's mule deer model.²¹⁵

²¹⁴ Elwood Miller, Jr., to Jim Torrence, Pacific Northwest Region, USFS, 20 November 1987, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files. Miller submitted this letter in order to confirm the Klamath Tribes' formal appeal of the John and Stack Timber Sale proposals."

²¹⁵ Mule deer decline, *Land and Resource Management Plan: Winema National Forest*, United States Department of Agriculture, Forest Service, Pacific Northwest Region, 1990, 3-10. Failure of Forest service to use ITAC mule deer model, see Elwood Miller, Jr., Klamath Tribes Natural Resources Technician to Jim Torrence, United State Department of Agriculture, Klamath Tribes' appeal of the Stack and John timber sale proposals, 20 November 1987, Klamath Tribes' appeal of the Rosie timber sale, 11 September 1992,

Prior to the Klamaths' appeal of the Dice Crain and Heron timber sales, the tribes and at least one non-tribal member of ITAC, requested that the Forest Service apply ITAC's mule deer model in their EAs for the Winema and Fremont national forests. Ralph Opp, representing the Oregon Department of Fish and Wildlife, found the Forest Service's decision not to use the ITAC mule deer model discouraging. ITAC developed the model specifically for the Winema and Fremont national forests in an attempt to put "wildlife (mule deer primarily) into timber's language."²¹⁶ By not implementing the ITAC model in their analyses, Opp explained in his 12 October 1987 letter that the Forest Service was "going a long way to undermine the working relationship here in the [Klamath] Basin..."²¹⁷

After the tribes appealed the Forest Service's decision to implement the Dice Crane and Heron timber sales on 10 November 1988, they received a positive response from the Forest Service's reviewing officer. He found that "the timber sale EA's [sic] do not adequately analyze and describe cumulative effects on the mule deer herd" because the Forest Service did not analyze a large enough area to properly analyze this.²¹⁸ Similarly, the reviewing officer of the tribes' 4 October 1991 appeal of the Blue Ford EA found that "the Fremont National Forest did not sufficiently disclose information about the effects of this project to the mule deer population."²¹⁹ The Klamaths Tribes had effectively shown that the Forest Service had failed to analyze the impacts of their decisions on mule deer.

Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files; Ralph Opp, ODFW, to Lee Counce, Winema Forest Supervisor, 12 October 1987, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files; Bureau of Indian Affairs Portland Area Director, unreadable name, to John Butruille, Regional Forester, 8 December 1989, Klamath District Office, Klamath Falls, Oregon, "Tribes Info" vertical files; Meeting Notes, Meeting between the Klamath Tribes and the Forest Service, Oregon Institute of Technology, Klamath Falls, Oregon, 20 July 1992, notes taken by Jerry Haugen, Operations Research Analyst, Winema National Forest, Klamath District Office, Klamath Falls, Oregon, "Tribes Info" vertical files. Forest Service effort to work with ITAC, Kent N. Russell, District Ranger, to Elwood Miller, Klamath Tribes Natural Resources Director, 31 October 1996, Klamath District Office, Klamath Falls, Oregon, "Tribes Info" vertical files; Kent N. Russell, District Ranger, to Elwood Miller, Klamath Tribes Natural Resources Director, 31 July 1997, Klamath District Office, Klamath Falls, Oregon, "Tribes Info" vertical files.

²¹⁶ Opp to Counce, 12 October 1987, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files.

²¹⁷ Ibid.

²¹⁸ David Unger, Reviewing Officer, Associate Deputy Chief, National Forest System to Rebecca Craven, Attorney for Klamath Tribes, Native American Programs, 16 April 1990, Chiloquin District Office, "Appeals History" vertical files.

However, the reviewing officer of the Dice Crain and Heron timber sales argued that the Forest Service had the discretion to implement whichever mule deer model it wished. This comment supported the agencies earlier efforts to disregard the ITAC mule deer model and was inconsistent with the meaning of the 1981 Consent Decree and the Klamaths' rights to consult the Forest Service in a government-to-government relationship.²²⁰

Another problem with the Forest Service focusing primarily on NEPA issues associated with the environment, and not the tribal treaty rights or sovereignty, was that any public party could have made a substantial claim for the mule deer. What should have made the Klamaths' NEPA comments and appeals different from another public party was their status as a federally-recognized tribe with sovereignty and treaty rights. Any federal action that may threaten to violate a federal law, such as a treaty right, is considered by NEPA as significant to require an EIS rather than simply an EA. The Klamaths made this argument for numerous federal actions throughout their NEPA and FS appeals history. Yet, the Forest Service marginalized this claim in their internal policy review process as the decisions of the two reviewing officers exemplified.

Furthermore, tribal sovereignty constitutes the Klamaths' right for government-to-government relationships with all federal agencies, including the Forest Service. The Forest Service had a *Desk Guide to Tribal Government Relations: Tribal Relations Advisory Group, September 1991*. This document provided Forest Service staff with a brief history behind the required government-to-government relationship the Forest Service must hold with tribal nations. Despite containing a section on government-to-government relations subtitled "Process and Procedures," it provided no framework for tribal participation in a Forest Service planning process. This section did suggest that Forest Service staff interact with tribal governments in writing rather than by phone. This section additionally described the rights of tribal governments over those of the general public in the planning process. The document stated, "...Tribal Governments are

²¹⁹ Richard A. Ferraro, Reviewing Officer, Deputy Regional Forester, to Edmund Goodman, Attorney for the Klamath Tribes, Native American Programs, 7 May 1992, Chiloquin District Office, "Appeals History" vertical files.

²²⁰ David Unger, Reviewing Officer, Associate Deputy Chief, National Forest System to Rebecca Craven, Attorney for Klamath Tribes, Native American Programs, 16 April 1990, Chiloquin District Office, "Appeals History" vertical files.

not treated as part of the ‘public’ review and comment process and the associated procedures with time clocks also do not apply for treaty rights issues.”²²¹ However, the Forest Service lacked both a definition for the term “government-to-government relationship” and a framework for such relationships. This becomes more apparent as the Klamaths’ appeals history unfolds.

In the early-1990s, the Klamath Tribes and the Forest Service began discussing the meaning of a government-to-government relationship. The Klamath Tribes requested a formal meeting with the Forest Service to begin formulating a shared definition and plan for their government-to-government relationship. Representatives of the Klamath Tribes and the Forest Service met on 20 July 1992 in Klamath Falls, Oregon. This meeting provides evidence that the meaning of government-to-government relations was an issue plaguing the highest offices of the Forest Service. Bob Tippeconnic, representing the Forest Service chief, explained that a major factor influencing this disagreement between the Klamaths and the Forest Service was the Forest Service’s lack of defined policies for working with tribes as sovereign nations. Nancy Greybeal, Deputy Regional Forester, Region Six, concurred with Tippeconnic’s explanation. Greybeal further explained the difficulty associated with the agency’s efforts at recognizing tribes in a government-to-government relationship, rather than a ‘special interest group.’ The recorded summary of her comments states, “The shift from the notion of the Tribes as ‘special interest group’ is difficult for the agency and shouldn’t be expected to be smooth. The commitment to change exists, now we need to understand what the government-to-government relationship really means.”²²² Clarity of this term for the Forest Service and Klamath Tribes would take another seven years and include many more discussions, disagreements, and litigation.

Because the Forest Service did not have a formal policy that outlined the government-to-government relationship for working with the Klamaths, the tribes remained dependent on the NEPA and FS appeals processes. However, the Forest Service was in the process of changing their appeals process about the time the tribes met with the Forest Service to

²²¹ *Desk Guide to Tribal Government Relations: Tribal Relations Advisory Group, September 1991*, Pacific Northwest Region, 1991, 18.

²²² Meeting between the Klamath Tribes and the Forest Service, 20 July 1992, Klamath District Office, “Tribes Info” vertical files.

discuss government-to-government relations. In 1992, the Forest Service passed a rule that would eliminate the public appeals process from Forest Service projects for which the agency had completed an EA and released a FONSI. This rule eliminated the public review process NEPA intended. The rule received a negative reaction from the public and from policymakers. In response to public outcry concerning the undemocratic spirit of the rule, Congress passed the Forest Service Decisionmaking and Appeals Reform Act of 1992 (ARA) the same year. This act reinforced the duties of the Forest Service required by NEPA, essentially the right for public disclosure, public comment, and public appeal of Forest Service actions.²²³

The importance of the ARA is made clear in the case of the Klamath Tribes. Prior to 1992, the Klamaths had used the FS appeals process to comment on EAs and to appeal EAs and FONSI. By December of 1991, the Klamaths had appealed seven Forest Service EAs concerning projects within their former reservation. If Congress had upheld the Forest Service's rule to do away with public commenting on EAs for which the Forest Service released a FONSI, the Klamaths would not have been able to appeal many Forest Service actions, which they believed put their treaty rights in jeopardy. Furthermore, the ARA stabilized the nexus among environmental policy, the FS appeals process, and self-determination. The Klamaths could continue using the two administrative processes to assert their treaty rights and their sovereignty.²²⁴

While the Forest Service attempted to remove the ability of public parties to appeal their FONSI in the early-1990s, the Winema National Forest staff were writing a new forest plan. The Klamath Tribes commented on and appealed the Winema Forest Plan at all possible stages in the EIS and FS appeals process. The Klamaths raised many arguments concerning the draft EIS (DEIS), the final EIS (FEIS), the record of decision, and the Winema Forest Plan, itself. They contended that the Forest Service did not identify, analyze, and disclose the impacts of the management plan in an adequate manner. By doing that, the tribes argued that the Forest Service failed to analyze the impact of the forest plan on the tribes' treaty rights. The tribes wrote in their appeal,

²²³ *Appeals Reform Act, U.S. Code*, vol. 16, sec.1612.

²²⁴ "Appeals History Environmental Assessment, 1987-2004, Chiloquin Ranger District, Updated 30, 2004," given to me by Kevin Moore, timber program manager, Fremont-Winema National Forest, received

“The Klamath Tribe appreciates the Forest Plan’s recognition of the unique relationship between the Tribe and the Forest [Service]. However, the Tribe believes the Plan does not adequately protect the resources necessary for the exercise of these treaty rights.”²²⁵

The Forest Service’s response to the Klamaths’ concerns for their treaty rights indicates that they still recognized the Klamaths’ role in the planning process as parallel to any other interested public party. The Forest Service stated in its decision notice that the FEIS adequately analyzed the impacts of the forest plan on the Klamath Tribes. The Forest Service decided that the agency should further analyze impacts of Forest Service management on Klamath tribal treaty rights during the NEPA process on a project-by-project basis. “The Forest Plan and the ROD [record of decision] establish an appropriate framework for addressing tribal concerns during project-level decisionmaking....”²²⁶ In its “Native American Rights and Claims” section the Winema Forest Plan directs the local districts to recognize treaty rights and the agency’s obligation to protect those rights during the NEPA process. “The Forest [Service], through the NEPA process, will analyze, disclose and consider potential effects on the tribe,” the plan states. This section directs the district staff to “inform and invite participation from the Klamath Tribe in planning of resource management activities,” including an annual coordination meeting.²²⁷ These directives in the Winema Forest Plan did not provide the Klamaths with a sovereign role on a government-to-government level. Instead, they reaffirmed the need for the Klamath Tribes to continue using the NEPA and FS appeals processes—something they believed they could avoid through a relationship with the Forest Service that allowed them in on the planning process earlier than those for public interests.

The Klamaths and the Forest Service continued their discussions about government-to-government processes into the mid-1990s. These discussions, however, did not curb the Klamaths’ NEPA comments on and appeals of Forest Service projects. Rather than

on 7 March 2008. The Forest Service began managing the Fremont and Winema national forests as one forest in 2001.

²²⁵ Klamath Tribes’ appeal of the Forest Service’s record of decision approving the Winema National Forest Land and Natural Resource Management Plan and final environmental impact statement, 3 January 1991, Chiloquin Ranger District, Chiloquin, Oregon, “Appeals History” vertical files.

²²⁶ David G. Unger, Reviewing Officer for the Chief, USFS, to Tom J. Ball, Chairman, Klamath Tribe, Notice of Decision for the Klamath Tribes’ Appeal of the Winema National Forest Plan, 13 October 1993, Chiloquin Ranger Station, “Appeals History” vertical files.

²²⁷ *Land and Resource Management Plan: Winema National Forest*, United States Department of Agriculture, Forest Service, Pacific Northwest Region, 1990, 4-58.

realize improvement in their working relationship with the Forest Service, the Klamath Tribes' frustration with the Forest Service continued. The Klamaths met with Forest Service officials, again, on 18 April 1995 in a continued effort to agree on a policy directive for the Forest Service's government-to-government relationship with the Klamath Tribes. Modesto Jimenez, vice chairman of the Klamath Tribes, described what the Klamath Tribes sought in their government-to-government relationship with the Forest Service in a letter after the meeting. "Our basic concept of the government-to-government relationship is that the agency and the Tribes meet prior to any activities being planned, and look at the former reservation (and surrounding ecosystem) as a whole, and work out—cooperatively—policies and activities appropriate to that area..." wrote Jimenez.²²⁸

In 1996, fifteen years had passed since the 1981 Consent Decree and almost 10 had passed since the Klamaths had begun their intense dedication to NEPA commenting and the FS appeals process. Over the last decade, the Forest Service had either withdrawn or remanded only six of the Klamaths' 14 appeals by January of 1996. In not one of these instances had the reason for rethinking the project included recognition of the need for government-to-government consultation with the Klamath. In other words, the tribes' participation in the NEPA and FS appeals processes was changing the Forest Service's approach to meeting its duty to protect the tribes' treaty rights and acknowledge the Klamaths' sovereignty. In their 14th appeal, filed in January of 1996 for the Ford timber sale, the Klamaths described the reasoning behind their continued participation in the NEPA commenting and FS appeals processes.²²⁹

As has often been the case with timber sales authorized on the Winema National Forest, the Forest staff's failure to consult with the Tribes has forced the Tribes to appeal the timber sale in order to have any meaningful input into the decision...It appears that Forest staff take the position that it is simply easier to keep the Tribes out of the process until the last possible moment. As should be obvious by now, this only forces the Tribes into the unfortunate position of being an adversary in

²²⁸ Jimenez Medesto, Klamath Tribes Vice Chairman, to John Lowe, Regional Forester, Portland, OR, RE: Meeting with Klamath Tribes and Request for Policy Directive, 18 April 1995. This letter does not include meeting minutes. The letter documents the Klamaths Tribes' response to the discussions during the meeting.

²²⁹ The Forest Service remands or withdraws a decision when they determine through their administrative procedures that they need to rethink the decision.

the appeals process, rather than in the co-management position envisioned by the Consent Decree.²³⁰

In practice and despite the Forest Service's own *Desk Guide to Government Relations*, the Forest Service was still allowing the Klamaths to participate in the planning process only as the agency allowed any other public citizen or group. The Klamaths argued that if the Forest Service allowed the tribes to work collaboratively with the agency prior to the NEPA process, as the Consent Decree suggested, together they could reduce the need for the tribes to appeal Forest Service decisions.

A closer look at the Klamaths' Ford timber sale appeal explains why the Klamaths still believed that the Forest Service was not including them in the agency's planning process. The Forest Service created the Ford timber sale by splitting it from an earlier sale known as the Dorf timber sale. As the tribes explained in their appeal of the Ford timber sale, the Forest Service had created a "hybrid sale" by combining units included in previously proposed timber sales. Rather than complete a new EA for the newly-designated Ford timber sale, the Forest Service proceeded to send the Klamath Tribes a decision notice for the sale. By not completing a new EA for the "hybrid sale," the Klamaths argued that the Forest Service had breached the requirements of NEPA. The Klamath Tribes had commented on and appealed the Dorf timber sale. A new sale required a new EA or EIS. Aside from violating NEPA, the Klamaths contended that the Forest Service failed to consult the tribes before issuing their decision notice. By not consulting the Klamaths prior to signing their decision notice for this new sale, the tribes further argued that the Forest Service violated the tribes' rights for government-to-government consultation and the NEPA requirement for public disclosure and commenting.²³¹

The mule deer thread surfaces in the Ford timber sale much as it did in many of the tribes' earliest appeals in the late-1980s. In their Ford appeal, the Klamaths contended that the Forest Service was not addressing their treaty rights adequately because the Forest Service failed to analyze the impacts of the sale on mule deer populations. The

²³⁰ "Notice of Appeal and Statement of Reasons Filed by the Klamath Tribes against the Environmental Assessment, Decision Notice, and Finding of No Significant Impact Authorizing the Ford Timber Sale," 23 January 1996, Chiloquin District Office, Chiloquin, Oregon, "Appeals History" vertical files.

²³¹ Ibid.

tribes explained in bold-face type that the EA for the Dorf timber sale, which the Forest Service was using as their EA for the Ford timber sale, “explicitly states that no analysis of the impacts of this harvest on mule populations was conducted.” The tribes had raised their concerns for mule deer populations in appeals and discussions with the Forest Service for almost 10 years. According to the tribes’ appeal, the Forest Service contended that the timber sale would benefit mule deer in their decision notice for the Ford timber sale. The Klamaths argued, however, that if the Forest Service did not analyze the sale’s impacts (both positive and negative), they did not have evidence that the sale would be beneficial for mule deer.²³²

The NEPA and FS appeals processes were time consuming and expensive for the Klamaths, but they were the only way the tribes believed they could get the Forest Service to acknowledge, even partially, their concerns for their treaty rights and sovereignty. The Klamaths faced additional disagreement with other Forest Service decisions in 1995 and 1996 as well.

After Congress passed the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy That Occurred at Oklahoma City, and Recissions Act of 1995 (Recissions Act), the Klamaths found their treaty rights at stake, again. The Recissions Act allowed the Forest Service to speed the process of awarding timber contracts. One provision in the act “requires the release and harvesting, ‘notwithstanding any other provision of law,’ of ‘all timber sale contracts offered or awarded before [the Act’s enactment] in any unit of the National Forest system....’” This provision raised the question of whether or not the Recissions Act abrogated the Klamaths’ treaty rights. The Forest Service contracted eight timber sales under the Recissions Act.

The Klamaths believed the Forest Service violated the tribes’ sovereign rights to protect their treaty rights by not meaningfully consulting with the tribes before allowing the timber sales. The Klamath Tribes had used the NEPA and FS appeals processes for almost 10 years by 1996. Their efforts in these processes were not resulting in effective

²³² Ibid. The Forest Service’s appeals history record indicates that the Forest Service both implemented the sale and remanded the Ford sale on the same day, 23 January 1996. Whether they remanded the entire sale or just part of it is not clear from the records I have to review. See, “Appeals History Environmental Assessment, 1987-2004, Chiloquin Ranger District, Updated 30, 2004.”

changes in their interactions with the Forest Service. The Klamaths' NEPA and appeal record would come in handy, though. The FS appeals process offered another advantageous factor for the Klamaths—litigation. The ARA states that after a public party has exhausted all of its resources, the party can file suit against a federal agency for not complying with NEPA, or some other federal policy under the Administrative Procedures Act. After almost a decade spent commenting on and appealing timber sales and forest plans within their former reservation boundaries, the Klamaths packed their briefcases and took the Forest Service to federal court. The tribes brought with them their extensive NEPA and appeals record they had created over the last decade.²³³

Tribes v. U.S. and the 1999 Memorandum of Agreement

In 1996 the Klamath Tribes argued in federal court that the Recissions Act did not negate their treaty rights. They alleged that the Forest Service “breached its trust responsibility to ensure that the former reservation lands are managed so as to protect the tribes’ treaty rights,” when the Forest Service failed to participate in meaningful consultation with the tribes prior to awarding eight timber sales under the Recissions Act.²³⁴ Two corporate defendants, timber contract holders of the sales under discussion, argued that the Recissions Act invalidated the Klamaths’ treaty rights because of the section that nullified “any other provision of law.” The Forest Service disagreed with the corporate defendants. They not only argued that the Recissions Act did not abrogate the tribes’ treaty rights, they also contended that they “consistently and regularly consulted with the Klamath Tribes regarding the timber sales.” In doing so, the Forest Service argued that the agency had carried out its trust duties.²³⁵

²³³ *Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy That Occurred at Oklahoma City, and Recissions Act, U.S. Statutes at Large* 109 (1995):194. *Tribes v. U.S.*, 2 October 1996, Not reported in F. Supp.. See West Law, WL 924509 (D. Or.). Quotes are taken from the West Law case summary not the testimonies. 40 CFR 1500.3. This section explains that “Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969.” Mary H. O’Brien argues that the threat of litigation is the main factor that encourages agencies to comply with NEPA. See O’Brien, “NEPA as It Was Meant to Be: *NCAV v. Block*, Herbicides, and Region 6 Forest Service,” *Environmental Law* 20 (1990), 736-745. Party’s right to pursue litigation after exhaustion resources through administrative procedures, *U.S. Code*, vol. 5, sec. 704.

²³⁴ *Ibid.*

²³⁵ *Ibid.*

The main argument was really between the tribes and Forest Service over what constitutes “meaningful consultation.”²³⁶ The tribes did not deny that they met with Forest Service officials for meetings, fieldtrips, and other such consultation procedures. However, the tribes found that even after meeting with Forest Service officials the Forest Service planned projects that ultimately did not acknowledge the tribal interests in protecting their treaty rights. Furthermore, the tribes argued this was evidence that the Forest Service was not working with them in a government-to-government relationship.

The court sifted through the evidence and relied on previous decisions related to tribal treaty rights and sovereignty. The court agreed that the tribes are sovereign nations. But at the same time they are “domestic dependent nations,” that the United States owes a fiduciary responsibility—the protection of treaty rights. The court further held that as a federal agency, the Forest Service must follow through with this fiduciary responsibility and recognize the Klamaths as sovereign. The court also cited the Forest Service’s own policy written into the Winema National Forest Plan Appeal Decision, dated 13 October 1993. In this document the Forest Service acknowledged the tribes’ sovereignty by stating that a “determination of what constitutes compliance with treaty obligations should not be made unilaterally; rather, the Tribe’s view of the hunting, fishing, gathering, and trapping activities protected by the treaty must be solicited, discussed, and considered.” The Forest Service directly referred to its responsibility to protect tribal treaty resources by managing “habitat to support populations necessary to sustain Tribal use and non-Indian harvest.”²³⁷

In consideration of this legal history, the court decided in favor of the tribes’ request for a preliminary injunction for seven of the eight timber sales. The Forest Service could not proceed with the logging that would “effect [sic] wildlife resources within the Tribes’ former reservation, without ensuring, in consultation with the Klamath Tribes on a government-to-government basis, that the resources on which the Tribes’ treaty rights

²³⁶ Ibid.

²³⁷ Ibid. Quotes, David G. Unger, Reviewing Officer for the Chief, USFS, to Tom J. Ball, Chairman, Klamath Tribe, Notice of Decision for the Klamath Tribes’ Appeal of the Winema National Forest Plan, 13 October 1993, Chiloquin Ranger Station, Chiloquin, Oregon, “Appeals History” vertical files. See Getches et al., multiple chapters.

depend [would] be protected.”²³⁸ The court left development of an acceptable relationship concerning the management of the former reservation forest to the Klamaths and the Forest Service.²³⁹

Three years after their litigation, the Forest Service and the tribes completed a formal agreement that provides a framework for their federally-mandated government-to-government consultation process. The resulting 1999 MOA provides not only an explanation of the tribes’ and the Forest Service’s rights and duties, it clearly outlines the Forest Service’s trust obligation to ensure that they protect the Klamaths’ treaty resources.

The MOA describes the “procedural” and “substantive” responsibilities of the Forest Service to protect the Klamaths’ treaty rights. The MOA contains language very similar to that in the Winema National Forest Plan Appeal Decision. The Forest Service is required to seek out, discuss, and take into account the Klamaths’ concerns regarding Forest Service decisions that affect the tribes’ treaty-promised resources. This section recognizes the Forest Service’s procedural duties. The Forest Service’s substantive trust obligation is “to protect to the fullest extent possible the Tribes’ Treaty [sic] rights and the resources on which those rights depend.” Moreover, the MOA acknowledges the long-standing federal court decisions that have upheld this meaning of the federal trust relationship and treaty rights.²⁴⁰

Without the extensive record of their NEPA comments and their appeals, the Klamaths may not have been able to develop a strong argument for the court. The Klamaths realized that by commenting in the NEPA process and applying NEPA regulations in their appeals, they could protect their treaty rights.²⁴¹

Furthermore, in the MOA the Forest Service promises to consult with the tribes in the planning procedures prior to implementing the NEPA process. Under Section II(f) of the MOA, the parties acknowledge the sovereign status of the Klamath Tribes and what that

²³⁸ Ibid. Quotes, *Tribes v. U.S.*, 2 October 1996, Not reported in F. Supp., See West Law, WL 924509 (D. Or.).

²³⁹ The Klamaths did not stop appealing Forest Service projects during the three years it took the Klamaths and Forest Service to negotiate the 1999 MOA. They appealed eight more of the agency’s projects. See Appeal History, 1987-2004.

²⁴⁰ 1999 MOA.

²⁴¹ 1999 MOA. During informal conversations, two Forest Service officials explained that the 2005 MOA has only minor amendments. For this reason I have chosen to quote from the more recent document.

means in terms of the their government-to-government relationship with the Forest Service. In the past, the tribes had to wait until the NEPA comment period to participate in the Forest Service planning process like any other interested public party.

The parties recognize that as a sovereign government, the Tribes are more than simply another interested public. The Tribes and the Forest Service, as an agency of the federal government, work as cooperative governments in policy and management decisions that impact the sovereignty and other rights of the Klamath Tribes.²⁴²

By repeatedly taking part in the NEPA and FS appeals processes, the Klamaths developed a record of their involvement in the Forest Service's management process. This record exemplified the tribes' vested interest in the management of their former reservation land, and their intent to act as a sovereign nation and to protect their treaty rights. Moreover, the record showed that they exhausted all of their resources before filing suit.

Conclusion

The 1999 MOA on which the two parties agreed constitutes more than an acknowledgement of the importance of the cooperative agreement among the Oregon State wildlife agencies, the federal government, and the Klamath Tribes in the 1981 Consent Decree. The Consent Decree recognized the Klamaths' sovereign rights and established TAC, but it did not outline each party's duties in Klamaths' and Forest Service's government-to-government consultation process. The tribes' MOA with the Forest Service outlines a framework for tribal participation earlier in the planning process than non-Indian public parties.

For the first time in the history of their trust relationship with the federal government, the Klamath Tribes have established a position of authority over a large part of the land they accepted in their 1864 treaty. The Klamaths use of NEPA and the FS appeals processes suggests that there exists a connection between self-determination and environmental policy that empowers tribes in a way that other social groups can not realize. The conservation-based amendments offered the Klamaths a new path after termination. With tools like NEPA and the FS appeal process, the Klamaths guided

²⁴² Ibid.

themselves down that new path during the self-determination era. The Klamath Tribes have not reacquired their land at this point, but they have gained political ground.

CONCLUSION

The Klamaths' termination history is laden with negative meaning, and for good reasons. As Stern suggests, the termination program did not provide the necessary preparation for Klamaths to complete their assimilation into American society. According to Stern, "The Klamath situation was a consequence of a reservation become a holding operation, with a program that had ground to a halt." Through termination, the Klamaths lost their land base, a place to call home and a substantial part of their identity. Termination removed federal recognition of their tribe and probably further exacerbated the tribal members' "cultural confusion," a term Stern used to describe the effect of assimilation and reservation on the Klamaths cultural experience. After termination, many local non-Indians did not accept the Klamaths, nor did other tribes who viewed the Klamaths as "sell-outs." However, buried deep beneath the roots of personal pain and social and political unrest in which termination resulted are aspects of their history that later afforded the Klamaths hope for rebuilding their tribal nation.²⁴³

The self-determination movement and the parallel shift in federal Indian policy in the 1960s and 1970s fostered, among the Klamaths, a renewal of determination for rebuilding their community, even if it was only one political building block at a time. Haynal argues, the Klamaths successfully employed "transcultural techniques," the use of media, and the American political and legal system to re-establish their tribal culture. The reaffirmation of the Klamaths' treaty rights in federal court and the restoration of their federal trust relationship, as Haynal correctly explains, strengthened the Klamaths' culture and their political clout.²⁴⁴

The Klamaths could practice their treaty rights on their former reservation because most of it was under the jurisdiction of the Forest Service. Their federal trust relationship promised them the ability to practice their treaty rights on federal lands. During the termination process, the Forest Service purchased more than one-half million acres of the Klamaths' forested land. What would have been the meaning of their treaty rights if termination had transferred of all of their reservation lands into private ownership, as the

²⁴³ Stern, 1965, 266; "cultural confusion," 227.

²⁴⁴ Haynal, 1994, iv-vi.

original Klamath Termination Act required? For the Klamaths to access private land and practice their treaty rights requires permission from private owners. This is probably not easily attained. Furthermore, the Klamaths again relied on federal jurisdiction over their lands in the 1980s and 1990s. The federal purchase of most of the reservation forest during termination, then, became an important factor in the Klamaths' termination and self-determination history. Just how did this history unfold?

During the termination period, the Klamaths' termination transitioned from a discussion of citizenship and economic freedom for Klamath tribal members to a desperate congressional scramble to amend the Klamath Termination Act in light of conservation concerns in the region. The original Klamath Termination Act would have required the Klamaths to sell most of their nearly one-million-acre reservation forest on the open market without any conservation restrictions. Selling that many acres of prime ponderosa timber land probably would have resulted in a degraded watershed and a collapsed regional timber industry. In order to avoid this, Congress passed conservation-based amendments. The conservation-based amendments, as I have referred to them, mandated the sustained-yield management of any privately- or federally- purchased forest land. Moreover, they required the Klamaths to sell their forest tracts large enough to practice the required sustained-yield management in a practical manner. Congress further amended the Klamaths' termination act by allowing the Forest Service to purchase any of the large sustained-yield tracts that private investors did not buy. The outcome of Congress's conservation-based amendments was the private purchase of only one forest tract and the federal purchase of the remaining 10 tracts of the reservation forest.

Soon after the restoration of their federal status, the Klamaths began asserting their rights for a government-to-government relationship with the Forest Service, which managed the majority of their former reservation. The Klamaths participated in the NEPA and Forest Service administrative appeals processes from 1987 to 1996. In this way, the Klamaths developed a record that demonstrated their repeated attempts to work with the Forest Service in a government-to-government relationship. In 1996, the Klamaths sued the Forest Service. The Forest Services' internal review process had failed to acknowledge the imperative need for a government-to-government framework that both protected treaty rights and afforded the Klamaths a sovereign, or government-

level, position in the Forest Service's planning process. When the Klamaths participated in NEPA and the FS appeals process, they were taking advantage of rights that any citizen in the USA has. Their treaty rights and sovereignty, however, should have lent them a position above the rights of the average US citizen. The federal courts agreed with the tribes in 1996. The federal court enjoined seven of the eight timber sales until the Forest Service and the Klamaths came to a formalized agreement for their government-to-government relationship. Their 1999 MOA with the Forest Service marks a shift in the Klamaths' history. The MOA provided the Klamaths with a management position over their former reservation forest for the first time since the pre-reservation years. They could now assert their right as a sovereign and protect their treaty resources on which their culture and subsistence depend.

The nearly 90 years that this history spans demonstrate not only the struggle of a people, but it exemplifies the strong will of a people to resist federal policy that was meant to put an end to their tribes. Like their forest, the Klamaths experienced fragmentation, as witnessed in their factionalism and the three distinct groups created through termination, withdrawees, remainees, and descendants. Despite the fracturing and loss of federal recognition in the 1950s the Klamaths have remained a tribe. They still seek reacquisition of their former reservation forest. They want ownership and full management rights of their former land base. Until they can attain that goal, they have reached a victory that has redefined their political power and that has brought them that much closer to regaining the land they lost during termination.

When Grandma Chips, Grandma Dowie's mother, met me, my brother, and my mom for the first time in the early-1980s, she barely spoke a word. Just before we left Grandpa Jackie and Grandma Dowie's house, Grandma Chips gently grasped my mom's arm. My mom turned around and saw a paper grocery bag laying cut open on the floor. Grandma Chips pointed at the bag and then to my mom's foot. Grandma Dowie explained to my mom that she should take off her shoes and allow Grandma Chips to trace her foot. Then my mom was to allow Grandma Chips to trace both my brother's foot and mine. She had traced my dad's foot twenty years earlier.

Grandma Chips sewed a pair of beaded moccasins for all four members of my family. Mine are tiny leather slippers that fit in the palm of my hand now. The soft deer hide of the tiny moccasin exudes a natural fragrance, sweet and raw, like no other material. I rub my thumb on the base of the little shoe, slick to the touch from wear. And my fingers pass over the ridges of the beads Grandma Chips fastened to them about 26 years ago.

To me, the deer hide represents the intense meaning of a cultural resource. Over the last few decades, the Klamaths spent enormous amounts of energy protecting their treaty rights to hunt mule deer and to protect the mule deer species. The twist in their termination history provided them a path to do so. Without the conservation-based amendments, the original termination act may have led to the extreme fragmentation of the Klamaths' reservation forest, the degradation of the forest and watershed, and the inability of tribal members to practice their treaty rights. Moreover, if the forest had been under private ownership in the 1980s and 1990s, the Klamaths would not have been able to use the NEPA or FS appeals processes to assert their management rights for the forest resources.

By viewing the Klamaths' termination history in light of the conservation-based amendments to the Klamath Termination Act, we are not disregarding the hardship the Klamaths have experienced because of termination. Instead, we are illuminating the new path the conservation-based amendments created for the Klamaths in the decades following termination. This new path, the federal ownership of most of their former reservation, and the leverage provided by self-determination policy and environmental and administrative law afforded the Klamaths a land base on which they could continue to practice their treaty rights and to assert their sovereignty.

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