

Remaking a People, Restoring a Watershed:  
Klamath Tribal Empowerment through Natural Resource Activism, 1960-2014

by

Monika Bilka

A Dissertation Presented in Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Philosophy

Approved September 2015 by the  
Graduate Supervisory Committee:

Donald Fixico, Chair  
Paul Hirt  
Rebecca Tsosie

ARIZONA STATE UNIVERSITY

December 2015

© Monika Bilka

All Rights Reserve

## ABSTRACT

Natural resources management is a pressing issue for Native American nations and communities. More than ever before, tribal officials sit at the decision-making tables with federal and state officials as well as non-governmental natural resource stakeholders. This, however, has not always been the case. This dissertation focuses on tribal activism to demonstrate how and why tribal sovereignty, self-determination, and treaty rights protection are tied closely to contemporary environmental issues and natural resources management. With the Klamath Tribes of southern Oregon as a case study, this dissertation analyzes how a tribal nation garnered a political position in which it could both indirectly influence and directly orchestrate natural resource management within and outside of its sovereign boundaries. The Klamath Tribes experienced the devastating termination policy in the 1950s. Termination stripped them of their federal status as an Indian tribe, the government services offered to recognized tribes, and their 1.2-million-acre reservation. Despite this horrific event, the Klamaths emerged by the 2000s as leading natural resource stakeholders in the Klamath River Watershed, a region ten times larger than their former reservation. The Klamaths used tools, such as their treaty and water rights, and employed careful political, legal, and social tactics. For example, they litigated, appropriated science, participated in democratic national environmental policy processes, and developed a lexicon. They also negotiated and established alliances with non-governmental stakeholders in order to refocus watershed management toward a holistic approach that promoted ecological restoration.

This study applies spatial theory and an ethnohistorical approach to show how traditional values drove the Klamaths' contemporary activism. From their perspective, healing the land would heal the people. The Klamaths' history illuminates the active roles that tribes have had in the institutionalization of the federal self-determination policy as federal agencies resisted recognizing tribes and working with them in government-to-government relationships. Through their efforts to weave their interests into natural resource management with state, federal, and non-governmental stakeholders, the Klamaths took part in a much larger historical trend, the increased pluralization of American society.

## DEDICATION

To my mom and dad,

and to Jackie Crume, Dowie Crume, and Albert “Bert” Lawvor, Sr.

## ACKNOWLEDGMENTS

Mom and Dad, it is to you that I owe the greatest thanks. Your love, dedicated work ethics, your interests in history and anthropology, passions for eastern Oregon, and support sculpted me. The memories I have made with you in Sprague River and the nearby rivers, lakes, mountains, and tableland will forever influence who I am.

My acknowledgements would not be complete if I did not thank Mrs. G (Darlene Griffiths), my fourth grade instructor, for valuing my creativity and for introducing me to Edison Chiloquin, the Klamath Culture Camp, and Captain Jack's Stronghold. Dr. Eve Vogel and Dr. Patricia F. McDowell offered invaluable mentoring in archival research and field work, respectively. Dr. Gail Unruh's support through the McNair Scholars Program prepared me, a first generation college student, for my successful graduate school journey. At the University of Montana, faculty mentors, including Dr. Dave Beck, Dr. Len Broberg, Dr. Rich Clow, and Dr. Phil Condon, and peer mentors including the Rattlesnake 'Riting Group, particularly Dr. Greg Gordon, are owed thanks. Dr. Dan Flores's patience, creativity, and writing will continue to be an inspiration.

During my doctoral program at Arizona State University (ASU), many friends, colleagues, and faculty were central to my success. Thank you Dr. Leisl Carr Childers, Dr. Brianna Theobald, Farina King, Rio Hartwell, Dr. Stephanie McBride-Schreiner, Dr. Chelsea Mead, Dr. Sabrina Thomas, Dr. Dr. Kathryn Sweet, Laura Keller, Brad Debiase, and so many others that I want to list. As they introduced me to the spatial theory, Dr. Victoria Thompson and Dr. Susan Gray reshaped the way that I write and understand history through courses at ASU. Dr. Katherine Osburn's spunk and personal and academic advice have been invaluable. Professor Rebecca Tsosie offered crucial guidance from the legal perspective during my doctoral research. Dr. Paul Hirt demonstrated to me time and time again, even before I began my doctoral program, that he believed in me. And, throughout the process he read my writing with a critical eye and dedicated much time to mentoring me as I revised. I am not quite sure how to thank Dr. Donald Fixico, who during my final year in my Ph.D. program won ASU's prestigious Outstanding Doctoral Mentors Award. I may never be able to express fully the gratitude that I have for your dedicated mentoring.

This research could not have been conducted without the support of the Klamath Tribes Executive Council and many of the Tribes' members and their current and former staff. In particular, I owe great thanks to Chuck Kimbol, Sr., Jeff Mitchell, Craig Bienz, Don Gentry, Larry Dunsmoor, Garrick Jackson, Fernando Herrera, Perry Chocktoot, Betty Blackwolfe, Gary Frost, Vivian Kimbol, Will Hatcher, and Gordon Bettles. Other members of the local community offered significant support as I worked on this research. I would like to acknowledge a few who went out of their way to support me: Todd Kepple, Steve Kandra, Bill Tinniswood, and Rollie White.

Last, I thank my best friends and family. The walks, hikes, and playtime with my furry friends Vista, Casey, Isis, Ollie, and Rudy reminded me of that the simplest moments can be some of the most important ones. Sarah Cook, I lived vicariously through the images you sent me of your adventures in the Oregon Cascades and High Desert. They kept me grounded and connected to my home. Tian Boydston, the love you conveyed through your letters and phone conversations energized my confidence time and time again. Shaun Calvin, your love, compassion, and understanding are unmatched. Your contagious smile helped me destress on even the most busy and demanding days. Mom and Dad, I come back to you in my thanks. I cannot stress how important your support is to my success.

Funding from various generous and supportive organizations helped me access archives, complete and transcribe the oral history interviews, meet with Klamath Tribal Officials, and present and receive feedback on my dissertation research at academic conferences. The organizations and their awards are as follows: Western History Association, 2014 Walter Rundell Award; Southwest Oral History Association, 2014 Mini Grant; Max Millett Family Fund, Max Millett Research Travel Award, 2013, 2014; Graduate and Professional Student Association, Arizona State University, Graduate Research Support Grant, 2013; the School of Historical, Philosophical, and Religious Studies, Arizona State University, 2013 Archival Research Travel Grant; American Society for Ethnohistory, 2013 Conference Travel Award; Graduate Education, Arizona State University, Conference Travel Award, 2012, 2013; Graduate and Professional Student Association, Arizona State University, Conference Travel Award, 1/2013, 9/2013.

## TABLE OF CONTENTS

	Page
PREFACE.....	vi
CHAPTER	
1 INTRODUCTION.....	1
2 A CHANGING WORLD.....	26
3 EMERGING WITH A NEW PLAN: TREATY RIGHTS AND SOVEREIGNTY.....	52
4 THE CONFLUENCE OF TRADITIONAL KNOWLEDGES AND WESTERN SCIENCE.....	80
5 ASSERTING A TRIBAL FOREST MANAGEMENT VISION: ENVIRONMENTAL POLICIES AND A LEXICON.....	107
6 BUILDING RELATIONSHIPS: NEGOTIATION AND WATER RIGHTS.....	140
7 CONCLUSION.....	178
8 EPILOGUE.....	191
BIBLIOGRAPHY.....	196
APPENDIX	
A KLAMATH TRIBES APPROVAL LETTER.....	220
B ARIZONA STATE UNIVERSITY INSTITUTIONAL REVIEW BOARD APPROVAL.....	222

## PREFACE

I will never forget flipping open an Oregon atlas during my master's program to identify the boundaries of the Klamath Indian Reservation in southern Oregon and finding cartographic representations of national forest land instead. I had lived within what I thought was the Klamath Indian Reservation as a child, and into my adulthood had explored the ponderosa pine forests, high desert Tableland, and the numerous rivers with tribal members even after my family moved to a small town twenty-five miles southwest of the reservation. We all referred to the region as the reservation or "rez." After digging through local archives and reading secondary sources, I found that hidden behind the map of the national forest was a history not only about the dispossession of the Klamaths Tribes' land, but of the Tribes' current role as a sovereign entity in the management of natural resources in the region.

Grandpa Jackie and my dad became friends after my dad moved to the Klamaths' former reservation in the early-1960s, only a couple years after the federal government completed the Klamaths' termination process. The purpose of the termination policy was to complete tribes' assimilation processes by ending the federal trust relationship which guaranteed tribes funding for healthcare, education, and other social services. Western senators slated the Klamaths for termination with the Klamath Termination Act of 1954.<sup>1</sup> Policymakers targeted the Klamath Tribes because of their timber wealth. On paper, the Tribes appeared to be economically secure and, therefore, ready for completing their nearly one-century old assimilation process. The outcome would prove differently, perhaps in large part because termination transferred the very source of wealth, the Klamaths' forest, out of tribal ownership. Unknowingly, my dad, the son of Greek and Czechoslovakian immigrant families, participated in a wave of non-Indian migration to the Sprague River Valley and other parts of the former reservation as more and more Klamath land went up for sale during and after termination.

My parents introduced me to Grandpa Jackie in the early-1980s after they moved our family to the Sprague River Valley on the eastern part of the former Klamath Reservation. By the time that I really got to know Grandpa Jackie, wisdom had wrinkled his face. This was evident

---

<sup>1</sup> The Klamath Termination Act of 1954, Pub. L. No. 857, 68 Stat. 732 (1954).



especially when he smiled. I remember the bumpy, dusty ride in the '68 Ford pickup as we made our way home from trips to Klamath Falls and Chiloquin on the gravel-covered Drews Road. We would turn onto Drews Road where it meets the Sprague River, right outside the small town with the same name. The road immediately leads up the northern ridge of the Sprague River Valley toward the Tableland. As it cuts through the strikingly white wall of Chalk Mountain on the left, to the right is a grand view of the green irrigated river valley. Grandpa Jackie lived down Drews Road from us; his grandkids and great grandkids continue to live on his family's allotment adjacent to the Sprague. He and my dad took me to some of the best fishing spots on the Sprague right in Grandpa Jackie's backyard. Looking south from the bank of the river, tall ridges blanketed with ponderosa pines and brush enclose the valley. To the north, juniper, sagebrush, and ponderosas, along with houses, dot the ridge that levels off at the Tableland, a wide mesa that stretches for miles to the north toward the Klamath and Sycan marshes.

Sometimes Grandpa Jackie told me stories, and my dad continues to tell me stories that Jackie told him and about the days he spent with the Klamath elder. My dad and I still fish in the Upper End of the former reservation in the summers. On our drives out to the North Fork of the Sprague or to the Sycan River, I might learn about Council Butte or another place in the valley. On others, he would share his memories of Alice Chipps, a healer who could cure any ailment. Once in a while, he described stories of the mischievous and evil Little People.

Despite the stories that Grandpa Jackie and his wife Grandma Dowie, the granddaughter of Modoc War heroine Winema or Toby Riddle, shared, they never explained the story of termination to my dad or me. Having grown up in Klamath Falls, an agricultural and timber town about 25 miles south of Chiloquin, the western hub of the reservation, I did not learn about termination and how detrimental it was for the Klamath Tribes. One of my elementary school teachers talked about the money that Klamath tribal members received through the selling of their reservation forest to the Department of Agriculture, but did not teach the full context of the story. This is how many local non-Indians told the story; it was far from complete. During my childhood, locals did not discuss termination openly. Only after the Klamath Tribes emerged in the 2000s as

major natural resource stakeholders in the Klamath River Watershed, did the topic seem to be of importance to the local non-Indian community.

While I completed an intensive amount of archival and government documents research, the interviews are what brought this story to life. I interviewed a combined total of 22 Klamath tribal members and non-tribal members of the Upper Klamath Basin, and some folks who used to live there. At times they discussed contentious and heart-wrenching memories. Three men teared up during their interviews, and all three wanted to keep participating. So many times during their interviews and in conversations Klamath Tribal members and non-Indians involved in this history stressed to me that this research is very important. Because I have written about one of the most heated natural resource conflicts on the West Coast in the 21<sup>st</sup> century, I have worried that information in this study could be twisted or used negatively against the Klamath Tribes or another party. Tensions still exist. It is my hope that the information in this history will be used and referred to in respectful and ethical ways.

I approached this research both as an insider and an outsider. I am a southern Oregon local, who lived on the former reservation and continues to spend time there. I have friendships with members of the Klamath Tribes, yet, I am an outsider because I am not a tribal member. I cannot speak for the Klamath Tribes, although I have done my best to faithfully articulate the many perspectives of the tribal members who agreed to let me interview them for this history and of those who shared their perspectives in federal hearings, correspondence with federal and state agencies, and in oral history interviews with other researchers.

## CHAPTER 1

### INTRODUCTION

On the wall in the auditorium where the Klamath Tribes hold their Executive Council and General Council meetings, the tribe hung a larger than poster-size depiction of their history. This history is not what many people would expect; it is not written in paragraph form, nor is it a painting or drawing. Dr. Thomas Ball, a Klamath tribal member and former Assistant Vice President of Equity and Inclusion at the University of Oregon who specializes in Native American historical trauma, and Theresa O’Neill, Professor Emerita in medical and psychological anthropology, worked with the Klamath tribal community to develop the genogram.<sup>2</sup> Genograms generally are used for analyzing families’ collective historical trauma over many generations. During an Executive Council meeting I attended in November of 2012, Klamath tribal elder Charles “Chuck” Kimbol, Sr., a long-standing Klamath tribal activist, pointed to the wall hanging and told me to make sure that I looked at their history and considered it as I worked on my research. He suggested that I take a smaller paper copy of the wall hanging from the stack available outside the tribal secretary’s office. I followed his advice.

As I studied the Klamaths’ genogram, I could not help but notice the cyclical design. Rather than depict their historical events using a linear approach like Western history textbooks and historical monographs do, the Klamath Tribes envision their history as part of a cycle that begins with “Creation” and continues back toward “Creation.” What did it mean that through time the Klamaths’ history headed back toward creation? In the Klamath Tribes’ cultures, and other Native American cultures, creation is understood as a “continuous process,” as renewal.<sup>3</sup> Creation rests on renewal ceremonies. Aware of the movements of deer and the cyclical

---

<sup>2</sup> Tom Ball and Terry O’Neill, “The Klamath Tribes Historical Trauma Genogram,” The Klamath Tribes, paper copy in author’s possession.

<sup>3</sup> Leroy Little Bear, Forward to *Native Science: Natural Laws and Interdependence*, by Gregory Cajete (Santa Fe, NM: Clear Light Publishers, 2000), xi. Donald Fixico also stresses that Native Americans have a cyclical rather than linear understanding of the world and of their histories. See Fixico, *The American Indian Mind in a Linear World: American Indian Studies and Traditional Knowledge* (New York, NY: Routledge, 2003).

migrations of fish, the Klamaths participated in ceremonies, such as the C'waam Ceremony, that would guarantee the return of the animals' peregrinations. Each cycle would bring new fish up stream and would offer the Klamaths a continued source of life.

The genogram tells a story about a renewal process that their people are currently undergoing. For example, the beginning of the Klamath world is noted as "Creation" at the top of the circle-shaped genogram. The next event is their ancestors' use of tule sandals 13,200 years ago. This event is significant because the sandals provide physical archeological evidence of the long-standing tenure that the Klamaths have had in the region. The sandals signify presence.<sup>4</sup> The genogram notes that the Klamath, Modoc, and Yahooskin leaders signed their treaty in 1864 and reminds the onlooker that the same year, the federal government banned the Tribes' ceremonies. Much later in time, and farther along the curve of the genogram, the Klamaths cite their treaty rights case known as *Kimball v. Callahan* (1974), the restoration of their federal recognition in 1986, that they purchased their tribal health building in 1990, and that they opened their administration building in 2000. At this point on the circular diagram, the historical events cycle back toward "Creation." The story depicted on the genogram suggests that the Klamaths have done and are doing everything in their power to continue as a people, to maintain their cultures, and to protect the place that the creator designed for them. That is the way that their natural resource activism during the post-termination decades must be understood. The termination policy of the 1950s could have been the end of the Klamath Tribes. Congressmen wrote that settler colonial policy with the intention of completing the assimilation process and eliminating the tribal unit, but that did not happen.<sup>5</sup>

Within five decades, the Klamath Tribes made a significant transformation. They lost their federal recognition, government programs designed for Indian communities, and their 1.2-

---

<sup>4</sup> Hugh Brody and Julie Cruikshank both demonstrate how indigenous peoples use archaeological evidence to authenticate their presence. Hugh Brody, *Maps and Dreams* (New York: Pantheon Books, 1982); Julie Cruikshank, *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination* (Seattle: University of Washington Press, 2005).

<sup>5</sup> Patrick Wolfe, *Logics of Elimination: Colonial Policies on Indigenous Peoples in Australia and the United States*, University of Nebraska Human Rights and Human Diversity Series, vol. 2, n. 1 (2000).

million-acre reservation in 1961 through the federal termination policy. The Klamaths' termination process required Klamath tribal members to liquidate their tribally-held assets, shed their identities as members of an Indian tribe, and fully assimilate as individuals into mainstream society without attachment to a tribal nation. By the 2000s, however, they emerged as leading natural resource stakeholders in the Klamath River Watershed. One could argue that the answer is simple. The Tribes employed strategic natural resource activism. Between 1961 and 2010, the Klamath Tribes employed litigation, participated in environmental policy processes, integrated the natural sciences with traditional knowledges, formed alliances, and negotiated with natural resource stakeholders.<sup>6</sup> Through these tactics, the Klamaths garnered legal leverage that would allow them to influence the management of the 10-million-acre Klamath River Watershed, a region nearly ten times larger than their former reservation.

This history does not fit the declensionist narrative of tribal loss and U.S. settler colonial success. Of course, to some extent, periods of the Klamaths' history do. Yet, over the last fifty years, the Klamaths' experiences call for a reevaluation of how we think about and write settler colonial narratives, American Indian history, and U.S. history. Narratives framed with settler colonial theory often focus on settler colonial peoples, their ideas, and, subsequently, what they have *done to* indigenous peoples. As scholar Lorenzo Veracini argues in *Settler Colonialism: A Theoretical Overview* (2010), "It is important that we focus on settlers, on what they do, and how they think about what they do." Veracini's efforts are benevolent. The purpose of focusing on the settlers, he argues, is to avoid "understanding the settler as normative" because settler

---

<sup>6</sup> Currently The Climate Change and Traditional Knowledges Workgroup uses the plural form of "traditional knowledges" to recognize that there are many different kinds of Native knowledges and knowledge systems that should be defined only by the peoples they belong to. Rather than define indigenous knowledges, they describe them generally as "indigenous communities' ways of knowing that both guide and result from their community members' close relationships with and responsibilities to the landscapes, waterscapes, plants and animals that are vital to the flourishing of indigenous cultures." See Climate Change and Traditional Knowledges Workgroup, "The Ethics of Traditional Knowledge Exchange in Climate Change Initiatives," *EarthZine.org*, 31 July 2015, accessed 7 August 2015, <http://earthzine.org/2015/07/31/the-ethics-of-traditional-knowledge-exchange-in-climate-change-initiatives/>; Climate and Traditional Knowledges Workgroup, *Guidelines for Considering Traditional Knowledges in Climate Change Initiatives*, 2014, accessed 7 August 2015, <https://climatetkw.wordpress.com>.

colonialism is “not normal or natural.”<sup>7</sup> He makes an important point. Settler colonialism is constructed. Yet, by focusing on settlers and the process of settler colonialism, one runs the risk of missing part of the story, most importantly, the indigenous perspective.

The Klamath Tribes’ experiences demonstrate why historians and scholars who study American Indian and other indigenous communities should reassess settler colonial theory and narratives framed by it. In this story, it is not the Klamaths who resisted the power of federal and state officials. The federal and state officials and non-governmental stakeholders resisted the Klamaths’ sovereignty, and, in doing so, recognized the existence of it.

The Klamath Tribes have empowered themselves through careful strategies. They worked within the U.S. legal system and appropriated U.S. environmental policy rhetoric to argue for changing the way in which federal agencies viewed the Tribes, their treaty-protected resources, and the agencies’ relationships with the Tribes. The Klamaths won legal leverage and carefully negotiated relationships with many different water and other natural resources stakeholders in order to modify natural resources management approaches in ways that reflected tribal values. These measures altered stakeholders’, both tribal and non-tribal, access to natural resources. The Tribes’ strategies have physical outcomes on the landscape that reflect tribal values, such as leaving more water in Klamath Lake to maintain c’waam habitat. An important point to understand, however, is that while the Tribes influence natural resource management, they do so within the context of negotiations with other stakeholders. Non-tribal stakeholders and federal and state agencies continue to influence the management of the landscape as well. Through their proactive participation in natural resources management, the Klamaths did not transform the Upper Klamath River Watershed from a space that reflected U.S. settler colonial values to one that reflects only Klamath tribal values. Rather, the landscape has become increasingly composite, reflecting a diversified set of values for natural resource management.

---

<sup>7</sup> Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York, NY: Palgrave Macmillan, a division of St. Martin’s Press LLC, 2010), 15, 121 (note 48). Veracini builds this argument from Ava Baron, who contends that by focusing on women, men are considered the normative to which women are compared. See Ava Baron, “On Looking at Men’: Masculinity and the Making of a Gendered Working Class History,” in *Feminists Revision History*, Ann-Louise Shapiro, Ed., (New Brunswick, NJ: 1994), 146-171.

This amalgam occurred as a result of the Klamath Tribes' activism that, along with the activism of many other tribal nations and so-called minority groups since the mid-20<sup>th</sup> century, has encouraged a cultural shift toward pluralism within the American nation.

One way to analyze this shift is by studying natural resource conflicts, negotiations, and management with an ethnohistorical approach that explores the production of space.<sup>8</sup> Prior to first contact, the Klamath, Modoc, and Yahooskin Paiute each had their own cultural and spiritual ways of giving meaning to the natural world around them. The Creator provided them with cultural knowledge that imbued the spaces with meaning and reinforced a sense of cultural identity. The settler society introduced new ways of valuing the water, land, plants, and animals and reinforced these values through laws and violence. Despite these circumstances, many Klamaths maintained their "landscape of the mind."<sup>9</sup>

Historians generally describe history as change over time. The "spatial turn," a trend that matured in the 1970s, emphasized the spatial aspects of life, such as where people live in relationship to each other and how people give meaning to and order their physical environments. In *Postmodern Geographies* (1989), Edward Soja contends that by adhering to historicism, the projects of contextualizing human experiences in terms of time, we have limited ourselves from acknowledging the fundamental spatial processes that directly shape our lives.<sup>10</sup>

---

<sup>8</sup> Henri Lefebvre, *The Production of Space*, Donald Nicholson-Smith, trans. (Cambridge, MA: Blackwell, 1991, original published 1974), 260. Scholars who study spatial theory differ in their definitions of the terms "space" and "place." For example, Lefebvre describes space as something that is not only mental (in the imagination) or geometric. He stresses its social element and that people produce it. Space changes through time as peoples' relationships change and redefine the meaning of a given space. Geographer Yi-Fu Tuan distinguishes between place and space. Tuan argues that space is the distance between two points that humans experience through movement. On the other hand, Tuan contends that place is "bounded" and "static;" it is undifferentiated space to which people have given meaning. This study adapts Lefebvre's understanding of space as changing and something that can be produced, rather than simply a distance to points. See Yi-Fu Tuan, *Space and Place: The Perspective of Experience* (Minneapolis: The University of Minnesota Press, 1977), 17.

<sup>9</sup> Keith Basso, *Wisdom Sits in Places: Landscape and Language among the Western Apache* (Albuquerque: University of Albuquerque Press, 1996).

<sup>10</sup> Edward Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory* (New York: Verso, 1989). Soja, a Marxist geographer, is concerned with the power relationships inherent in giving time priority over space in historical analysis.

Scholars have folded together spatial theory with theories of colonialism and settler colonialism.<sup>11</sup> Their declensionist narratives, while telling of very real and intrusive colonial processes, are bent toward stories of the disempowerment of Native peoples. For example, in *The Resettlement of British Columbia: Essays on Colonialism and Historical Change* (1997), historical geographer Cole Harris describes how Europeans resettled the “New World,” building simplistic versions of their “Old World” societies, and in the process, displacing indigenous peoples.<sup>12</sup> The narrative is not about Native people, it is about the colonial society and its ability to reterritorialize Indigenous space. Similarly, in *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (2002), Harris focuses on the actions of the settler colonial society.<sup>13</sup> The Indigenous peoples do not make “Native space,” the settler colonial society does as it reorganizes Indigenous peoples onto reserves. One has to ask, what is “Native” about it? This narrative approach itself can be understood as part of a colonial process that disempowers Native people, even though Harris has benevolent intentions.<sup>14</sup>

What are needed are histories that acknowledge the colonial and settler colonial processes but that also give significant attention to Indigenous spatiality, how Indigenous peoples act on that spatiality, and how they reify it on the landscape despite the presence of a settler colonial spatiality. In *The Power of Place, The Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (2010), ethnohistorian Keith Thor Carlson, uses an ethnohistorical approach to illuminate how the Sto:lo, a First Nations community in the Lower Fraser River Watershed of British Columbia, maintained their identity through spatial knowledge even after the Canadian government overlaid their territory with the reserve system. The reserve system separated the Sto:lo’s communities like “islands in a sea,” as understood from the

---

<sup>12</sup> Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Historical Change* (Vancouver: UBC Press, 1997).

<sup>13</sup> Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002).

<sup>14</sup> Harris contends that Canada must recognize its colonial past and recognize a “politics of difference” that would include First Nations peoples. See Harris, *Making Native Space*, xxvii-xxviii.



European-based understanding of space.<sup>15</sup> Yet, the Sto:lo's epistemological knowledge allowed them to remain connected as some of their people could travel through tunnels that did not conform to European conceptions of space and time. While the Canadian government reorganized space, including separating the Sto:lo on reserves, the Sto:lo preserved their own spatiality defined by their worldview. In this example, the settler society did not eradicate the indigenous space; rather, both spaces continued to exist, even as the Canadian settler colonial society did not recognize the Sto:lo's spatiality.<sup>16</sup> Canadian officials could not "see" or understand the Sto:lo spatiality, but this did not keep the Sto:lo from interacting with the space in the way they knew it. The Klamaths had a similar experience, but through their activism have been able to work with state, federal, and non-governmental stakeholders to incorporate their values into natural resource plans and reify their spatiality on the landscape. How that has played out requires further discussion of spatial theory and the role than meaning making has in spatial processes.

The meanings that peoples assign spaces are fundamental for understanding how the politics of space, or place, play out and why societies physically transform spaces over time. This is true of the Klamath Tribes' history regarding natural resources management and of their myriad relationships and interactions with other natural resource stakeholders in the Klamath River Watershed. Peoples assign different meanings to spaces according to their worldviews. Geographer Yi-Fu Tuan argues that through the processes of meaning making and experience, people give significance to places.<sup>17</sup> For instance, the Klamath Tribes give spiritual meaning to

---

<sup>15</sup> Keith Thor Carlson, *The Power of Place, The Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010), 8.

<sup>16</sup> Carlson describes the two spatialities in the context of Benedict Anderson's notion of "imagined communities." In *The Power of Place, The Problem of Time*, Carlson writes, "Thus, tunnels and reserves give meaning to two distinct and competing imagined communities, but unlike the imagined communities studied by Benedict Anderson, these do not share an epistemological basis for their existence" (9). They are two conflicting ways of mapping space. See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006, orig. 1983).

<sup>17</sup> Tuan, *Space and Place*, 8, 179.

Crater Lake, Oregon through oral traditions. But, more than one group living in the Klamath River Watershed gives that place meaning, and other meanings conflict with the way in which the Klamaths give it meaning. This is because, as Geographer D. W. Meinig argues, imagination and meanings inform how someone or a cultural group sees a place. Some people might look at a forest and see timber and wealth, others might value it for recreational purposes, while others might see the forest as a sacred place.<sup>18</sup> These meanings define and are defined by relationships that peoples have with particular spaces and with other peoples. While environmental historian William Cronon does not discuss meaning explicitly in his analysis of colonial New England, he stresses that different cultural groups, European colonists and Indians, such as the Abenaki, make decisions regarding the land that alter its ecology in very different ways.<sup>19</sup>

A peoples' spatiality has its own history. Geographer Denis Cosgrove's study of fifteenth- and sixteenth-century Italian artwork, for example, suggests that a shift occurred in the way Westerners understood their relationships with the natural world.<sup>20</sup> During the late-sixteenth century, Italian painters adopted a new "way of seeing"—the landscape perspective, which is that of the outsider. Cosgrove contends that the emergence of early capitalism and scientific thought fostered the landscape way of seeing. Many of the U.S. Forest Service officials who managed the Klamaths' former reservation forest in the 1980s can be understood as operating from this "outsider" perspective. The agency's culture conditioned the employees to view the trees as timber to be sold on the market. The Klamaths have an "insider" perspective that defines who they are as a people and their relationship with the land, animals, plants, spirits, and other beings.

---

<sup>18</sup> D. W. Meinig, "Beholding the Eye: Ten Versions of the Same Scene," in *The Interpretation of Ordinary Landscapes: Geographical Essays*, D. W. Meinig (New York: Oxford University Press, 1979), 33-43. William Cronon focuses more on the ecological relationships the different peoples held with the land and the changes they induced on the landscape than the actual cultural specifics that informed their decision making, especially in his analysis of the Indian peoples. See William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York, NY: Hill and Wang, 2003, orig. 1983).

<sup>19</sup> Cronon, *Changes in the Land*, xv.

<sup>20</sup> Denis E. Cosgrove, *Social Formation and Symbolic Landscape* (London: Croom Helm, 1984).

The healing process they seek through ecological restoration is for their people and for their ancestral place. Klamath leaders articulated this perspective in their 2000 *General Report* that explained in large blue font on the first page: “When we heal the land, we heal the people.”<sup>21</sup>

One might ask how healing the land would heal the people? To begin, the word land is not literal; it is symbolic of the space that the Creator, whom the Klamaths refer to as Gmok’am’c, made for the Klamaths. The word land refers to the water, flora, fauna, sacred sites, and, perhaps, more than a non-tribal member can imagine. The phrase, “When we heal the land, we heal the people,” suggests a profound relationship between the Klamaths and the land, or really a multitude of relationships that the Klamath have with the various components of their world, for example, fish, deer, plants, and sacred sites. The word “people” refers to their tribal group, but should also be understood as other communities within the watershed. The Klamaths’ vision for watershed restoration is inclusive of the diverse peoples that live within the region. Their history is not about a singular relationship with the U.S. government or with the State of Oregon. The Klamath Tribes’ history is a narrative about the three-dimensional web of relationships that they have with many entities. These entities include the Creator, their ancestors, water sources, the plants and animals, minerals like obsidian as well as human agents, such as their fellow tribal members, federal and state officials, non-governmental stakeholders, and other tribes.<sup>22</sup>

The genogram, an artifact of the settler colonial period, emphasizes the changes that the settler society introduced to the Klamaths and their ancestral territory, changes that have resulted in traumatic experiences that the Klamaths may never forget. Prior to their first contact with whites, the Klamaths knew the idea of change very well. Their oral narratives discuss change and transformation as foundational experiences. The Klamaths’ relationship with a fish they call c’waam, for example, is based on the Creator’s decision to turn pieces of a giant snake into c’waam. The Klamaths’ origin stories describe the Creator transforming bones, service

---

<sup>21</sup> Klamath Tribes, *General Report*, 2002, folder 23, box 2, Margaret Szasz Collection, University of Oregon Special Collections and Archives.

<sup>22</sup> Donald Fixico, *Call for Change: The Medicine Way of American Indian History, Ethos, & Reality* (Lincoln: University of Nebraska Press, 2013).

berries, and animals into the three tribes. These transformations established spatial relationships between the Klamaths and their land. For example, the Klamaths are the people who see after the c'waam through ceremonies that ensure that the fish return. At base, the Klamaths are responsible for making sure that the c'waam remain part of the space that Gmok'am'c designed.

Meaning making is central to understanding how and why peoples try to manage natural resources in particular ways. The politics of space is tied directly to the meanings with which peoples imbue spaces. Henri Lefebvre's theory of the production of space stresses the role of politics. His theory is based on a Marxist framework that focuses on the relations among social classes in a capitalist system. Lefebvre contends that social relationships produce space and that as social groups transform their relationships, they attribute new meanings to a space that, in turn, modify the physical landscape.<sup>23</sup> Rather than thinking in terms of social classes, this study focuses on political relationships between the Klamaths and other governmental and non-governmental natural resource stakeholders; it investigates how the Klamaths have used legal and political strategies and tools to transform their relationships with U.S. Forest Service, U.S. Fish and Wildlife, and the Oregon Department of Fish and Wildlife officials as well as non-profit environmental organizations, farmers, and ranchers in the Upper Klamath River Watershed between 1960 and 2014. As the Tribes formed new legal and political relationships with non-Klamath tribal stakeholders, the consortium of stakeholders began to imbue the landscape with a shared set of meanings that reflected tribal values, the tribal values that the settler society had marginalized for nearly a century.<sup>24</sup> As the Klamaths used legal strategies to assert their sovereignty and treaty rights, the space increasingly resembled a variegated landscape representing U.S. settler colonial and Klamath tribal values.

Most Western spatial theories do not consider the roles of animals or other components of the landscape in shaping history. For example, Lefebvre emphasizes the importance of social,

---

<sup>23</sup> Lefebvre, *The Production of Space*, 70-71, 81, 321.

<sup>24</sup> Nicholas Buchanan's study of the Klamath Basin demonstrates how knowledge and authority play significant roles in way that natural resources are managed or "negotiated." See Buchanan, "Negotiating Nature: Expertise and Environment in the Klamath River Basin," (Ph.D. diss., MIT, 2010).

or human-to-human relationships. Many Native peoples, including the Klamaths, understand spaces not only in terms of their relationships with other humans, but through their long-standing relationships with animals and other non-human components of the landscapes, such as water. Approaching American Indian history from the “third dimension” in order to “see” the world through a Native people’s cultural lens allows one to grasp an understanding of all the relationships that a people maintain and how those relationships inform the production of space.<sup>25</sup>

Chapter one introduces the Klamaths’ spatiality through a deep-time discussion of oral traditions, archeological evidence, and ethnography. The chapter, then, tells the Klamaths’ recent traumatic history. From first white contact in 1825 through the termination period of the 1950s, the U.S. settler society marginalized the Klamaths’ spatiality through laws and natural resource management. The changes that the colonial society introduced weakened and, in some cases, ended the Klamaths’ relationships with components of the land, such as c’waam and c’iyaa’s (Chinook salmon, *Oncorhynchus tshawytscha*).<sup>26</sup> Settlers dug canals as early as the mid-1800s. Federal technocrats drained lakes at the turn of the 20<sup>th</sup> century, and private companies built dams on the Klamath River beginning in the 1910s. Using management approaches that developed out of a very different spatiality, the settler colonial society reordered the landscape, including restrictions on where and how the Klamaths could live. This limited the Klamaths’ abilities to maintain their relationships with the land as they had in the past. Through the termination policy in the 1950s and 1960s, pro-assimilationist policymakers boldly attempted to sever the Klamaths’ direct ownership of their territory and to erase the Klamaths’ identities as members of an Indian tribe. Continuing what the assimilation, boarding school, and allotment policies began, the termination policy induced traumatic cultural confusion among the Klamaths

---

<sup>25</sup> Fixico, *Call for Change*, 74.

<sup>26</sup> M. A. R. Barker, *Klamath Dictionary*, University of California Publications in Linguistics, vol. 31, (Millwood, NY: Kraus Reprint, 1981, original 1963), 91. Coho salmon (*Oncorhynchus kisutch*) and Chinook salmon both migrated upstream into the Upper Klamath River Watershed prior to the construction of COPCO Dam. The National Marine Fisheries Service listed the Klamath River Coho salmon as threatened in 1997.

as it ripped at their cultural and social fabric.<sup>27</sup> Many tribal members moved to cities through the federal Relocation Program in the 1950s, many others succumbed to early deaths due to drug use and accidents, and more and more non-Indians moved into the Klamaths' former reservation communities. These social changes limited the inter-generational relationships among the tribal members that are required for passing cultural knowledge.

As the loss of tribal members from relocations and from death stressed the community that remained, so did the harassment of Oregon Department of Fish and Wildlife (ODFW) and State Police officials who believed that the termination policy and the related Public Law 280 abrogated the Tribes' treaty rights. ODFW and the State Police cited and arrested Klamaths and confiscated their weapons when tribal members hunted without state licenses after termination. These situations raised questions about the Klamaths' safety and their ability to procure food but also about the integrity of their treaty rights and sovereignty. Did termination abrogate the Tribes' treaty rights and sovereignty as the State claimed? Had tribal members not questioned the states' actions, they may have never known.

Despite the trauma, pain, and confusion that the Klamaths experienced, some of their members kept a positive outlook and the energy to pursue what they believed to be true about their peoples' legal rights after termination. Klamath leaders took advantage of a tumultuous period in American history, when minority groups spoke bravely for their rights: civil rights, human rights, and treaty rights, among others. Chapter two is the beginning of the Tribes' renewal process; it shows how the Klamaths used litigation and their treaty to redefine themselves as a

---

<sup>27</sup> Theodore Stern describes the Klamaths' post-termination state as one of cultural confusion, especially among generation that was young during termination. See Theodore Stern, *The Klamath Tribe: A People and Their Reservation*, The American Ethnological Society, edited by June Helm, Monograph 41 (Seattle: University of Washington Press, 1965), xv-xvi, 227, 260. Numerous other documents report the social and cultural stress that termination caused among Klamaths. See Roberta Ulrich, *American Indian Nations from Termination through Restoration, 1953-2006* (Lincoln: University of Nebraska, 2010), xiii-xv, 66-68; Carol G. Grant, "Challenges of Federal Termination and Restoration among an Oregon Native American Tribe: An Ethnographic Study," (Ph.D. diss., University of Phoenix, 2006), 188-190; and Letter from the Klamath Tribe, signed by Gene Gentry and Kathleen Hill, Community Educators of the Klamath Restoration Committee, to Senator Mark O. Hatfield and Representative Bob Smith, dated July 1985, drawer 8, folder 152, vertical files, Klamath County Museum, Klamath Falls, Oregon. Hereinafter referred to as "Letter from the Klamath Tribe, July 1985, Klamath County Museum."

modern tribal nation with treaty rights and sovereignty even after going through termination.<sup>28</sup>

This period of the Klamaths' history parallels the Self-Determination Era. The beginning of the Self-Determination Era in the early-1960s marks the Native American self-determination movement and the slow shift in federal Indian policy from termination to self-determination. Self-determination refers to the sovereign rights of tribal nations to make decisions for themselves and to govern their people and resources. In 1975 Congress passed the Indian Self-Determination and Education Assistance Act and President Gerald Ford signed it into law.<sup>29</sup> This legislation transitioned federal Indian policy from that which focused on assimilation and the termination of the federal trust relationship with Indian tribes to a policy that encouraged tribes to take responsibility for their own affairs while maintaining trust relationships with the U.S. government.

Scholars debate how and why the Indian self-determination policy developed and the role of the American Indian self-determination movement in the process. For example, anthropologist George Pierre Castile and historian Thomas Clarkin argue that federal agency officials and U.S. presidents played integral roles in the shift toward self-determination policy.<sup>30</sup>

Other scholars, such as sociologist Joane Nagel and historian Sherry Smith, stress the importance of Indian activists' demonstrations, such as the Alcatraz Occupation in 1969.<sup>31</sup>

Historian Daniel Cobb contends that it was not just the leaders who made national headlines that

---

<sup>28</sup> Litigation has been central to many other tribes' struggles for treaty rights, sovereignty, and land rights. See Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press), 359-428. Prucha discusses both successes and losses for tribes in the courts. E. Richard Hart, ed., *Zuni and the Courts: A Struggle for Sovereign Land Rights* (Lawrence: University Press of Kansas, 1995). This edited volume offers a comprehensive overview of the Zuni's success in the federal courts during the latter half of the 20<sup>th</sup> century. The scholars who testified as the Zuni's expert witnesses wrote the chapters.

<sup>29</sup> Indian Self-determination and Education Assistance Act of 1975, 88 Stat. 2203, codified as amended, 25 U.S.C. sec 450-458 (1975).

<sup>30</sup> George Pierre Castile, *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960-1975* (Tucson: The University of Arizona Press, 1998) and *Taking Charge: Native American Self-Determination and Federal Indian Policy, 1975-1993* (Tucson: The University of Arizona Press, 2006); Thomas Clarkin, *Federal Indian Policy in the Kennedy and Johnson Administrations, 1961-1969* (Albuquerque: University of New Mexico Press, 2001).

<sup>31</sup> Joane Nagel, *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture* (New York: Oxford University Press, 1997) and Sherry Smith, *Hippies, Indians, and the Fight for Red Power* (New York: Oxford University Press, 2012).

deserve attention. He shows how local Indian leaders sought alternative means to fund community programs through the Office of Economic Opportunity grants rather than Bureau of Indian Affairs funding and, in doing so, fostered a political atmosphere in support of the self-determination policy.<sup>32</sup>

These studies add to our understanding of American Indian self-determination policy and the related social movement, but according to historian Paul Rosier, something is missing. In his December of 2013 essay "Modern America Desperately Needs to Listen," Rosier underscored the lack of and need for studies that analyze "Indians' contemporary environmental issues."<sup>33</sup> He argues that what is needed are studies that explain how and why Indian struggles for self-determination, sovereignty, and treaty rights protection are imbedded in the environmental issues for which they are fighting. My research does just that.

Rather than focus on how Native people sought grant funding and community management and pressured the BIA as Cobb does, my research analyzes how tribal leaders and their governments worked within the American legal system in powerful ways. Klamath leaders used the legal system to reaffirm their sovereignty, treaty rights, and water rights, and proceeded to employ these tools through legal, political, and scientific means that afforded them opportunities to influence wildlife, forest, and water management according to their tribal values.

In the early-1970s, the Klamaths litigated in order to affirm that they had not lost their treaty rights. Their decision to litigate led to another important legal interpretation of their treaty concerning their sovereignty. Mirroring the *Boldt* decision (1974) in Washington State, the *Kimball I* (1974) and *Kimball II* (1979) decisions interpreted the Klamath Tribes as a sovereign entity that had the right to oversee its tribal members' hunting, fishing, trapping, and gathering on

---

<sup>32</sup> Daniel Cobb, *Native Activism in Cold War America: The Struggle for Sovereignty* (Lawrence: University Press of Kansas, 2008).

<sup>33</sup> Paul Rosier, "Modern America Desperately Needs to Listen": The Emerging Indian in an Age of Environmental Crisis, *Journal of American History* (December 2013), 711-735. David Rich Lewis made an earlier call for scholars to explore Native Americans' roles in natural resource management. See Lewis, "Native Americans and the Environment: A Survey of Twentieth-Century Issues," *American Indian Quarterly*, vol. 19, no. 3 (1995), 423-450.



the public land within their former reservation boundaries.<sup>34</sup> The State balked at these decisions, attempted to resist the Klamaths' sovereignty, but succumbed by 1981 when Oregon State officials signed the Consent Decree.<sup>35</sup> This document defined a collaborative natural resource management relationship between the State of Oregon, the Klamath Tribes, and the U.S. government. The Klamaths did not take on this legal battle in order to simply reaffirm their treaty rights or to garner recognition of their sovereignty. They took on this contentious struggle to heal their relationships with the land, a process that required the federal and state recognition of their treaty rights and sovereignty. The Klamaths astutely recognized that they needed to work within the settler colonial legal system in order to effectively promote their landscape values in a way that would influence natural resource management within their former reservation.<sup>36</sup> Through the collaborative relationship with the State of Oregon, the Tribes could fulfill their calling as stewards of the place that Gmok'am'c created.

The Klamaths understand stewardship not only as their responsibility over the land but they tie it directly to their sovereignty.<sup>37</sup> Anthropologist Geyla Frank and legal and American Indian studies scholar Carole E. Goldberg assert that the Tule River Tribe of the Central Valley in California practiced not only political sovereignty, that which is defined by political recognition from outside entities, but also "cultural sovereignty." The Tule River Tribe defined its own cultural sovereignty and practiced it from within the tribe.<sup>38</sup> The Klamaths similarly practiced their cultural sovereignty, which in many ways is quite different than the Tule River Tribe's. More importantly,

---

<sup>34</sup> For *Kimball I*, see *Kimball*, 493 F. 2d 564 (9<sup>th</sup> Cir. 1974); *Kimball II*, see *Kimball v. Callahan*, 590 F. 2d 768, (9<sup>th</sup> Cir.1979). For *Boldt*, see *United States v. State of Washington*, 384 F. Supp. 312, (1974).

<sup>35</sup> Consent Decree, Civ. 73-155, printed in Land Use and Management Plan, Winema National Forest, Forest Service, United States Department of Agriculture, Northwest Region, 1990, appendix D, 4-8. Hereinafter referred to as "1981 Consent Decree."

<sup>36</sup> Jeff Mitchell, Monihiswaqs (Lead Negotiator, Klamath Tribes, Water Consultant), interviewed by author, Spring Creek, Collier State Park, Or., 30 July 2014.

<sup>37</sup> Don Gentry (Chairman, Klamath Tribes), interviewed by author, Chiloquin, Or., 9 July 2014.

<sup>38</sup> Geyla Frank and Carole E. Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries* (New Haven, CN: Yale University Press, 2010), 11.

in practicing their culturally-defined sovereignty, the Klamaths altered natural resources management and transformed the physical landscape on private and public lands outside of their sovereign territory of their former reservation (as defined by U.S. law).

Moreover, the idea of stewardship permeates the Klamaths' understanding of who they are as a people and their spatiality. They made many attempts to explain this perspective to federal and state agencies and congressional representatives. Larry Dunsmoor, a non-Indian who has worked for the Klamath Tribes Natural Resources Department since 1988 and in 2015 holds the position of Water Management Liaison, explained that "as a general rule they [the Klamath Tribes] understand that they have a fundamental responsibility to be stewards of the landscape and it's been denied them."<sup>39</sup> When Klamaths and their supporters make their argument for stewardship, they are not arguing that the Klamaths have all the answers for managing the environment because they are "ecological Indians."<sup>40</sup> Yet, their holistic view of the human and non-human components of the watershed and the interconnectedness of all things resonates with ecology. Indigenous scholar Gregory Cajete suggests that indigenous knowledges are not only on par with Western science, but that they encompass the Western sciences and are capable of working in tandem with them.<sup>41</sup> During the latter half of the 20<sup>th</sup> century, the Klamaths made significant efforts to appropriate Western sciences, such as biology, limnology, hydrology, and ichthyology. The Klamaths used the sciences to channel their holistic cultural perspectives onto the landscape and to assume a role as caretakers of the land alongside state and federal officials between the 1970s and 2010s. Nicholas Buchanan demonstrates in his doctoral study of the Klamath Basin how the authority of different kinds of knowledge, such science, influences stakeholders' abilities to participate in natural resources

---

<sup>39</sup> Larry Dunsmoor (Water Management Liaison, Klamath Tribes) interviewed by author, Klamath Falls, Or., 2 August 2013.

<sup>40</sup> Shepard Krech, III, *The Ecological Indian: Myth and History* (New York: W.W. Norton & Co., 1999).

<sup>41</sup> Gregory Cajete, *Native Science: Natural Laws and Interdependence* (Santa Fe, NM: Clear Light Publishers, 2000), 3.

management in the mid-2000s.<sup>42</sup> My research is in conversation with his as it analyzes the steps that the Klamaths took over many decades to garner the authority and political power that would allow them to participate meaningfully in natural resources management.

The Klamaths recognized that science and scientific data correlated with authority within the scientific community and in politics. In a bold attempt to build a successful collaborative relationship with the State of Oregon, the Tribes proactively hired a biologist, designed a wildlife management plan, and codified hunting and fishing regulations for their tribal members between their success in *Kimball v. Callahan* (1974, 1979) and the 1981 Consent Decree. Chapter three first explores how the Klamaths adopted science, worked in partnership with not only the ODFW but also the U.S. Fish and Wildlife Service (USFWS), and used science as a conduit for their traditional knowledge. Next, the chapter explains how the Tribes participated in the Endangered Species Act of 1973 (ESA) listing process and entered discussions with federal and state officials during the ESA regulatory process because of the valuable scientific data the Klamaths' scientists collected on endangered species.<sup>43</sup> Through their use of science, the Klamaths played a significant role in the USFWS's and ODFW's decisions to institute protective measures for the c'waam and q'apdo, two species of fish that are culturally and spiritually, not to mention, economically, significant to the Klamath Tribes. During ESA Section 7 consultations, the Klamaths' data on the fish and their hydrological modeling, along with the data of other scientists, informed how federal agencies, including the U.S. Bureau of Reclamation (USBR) and the U.S. Fish and Wildlife Service, would manage water in southern Oregon and northern California. Through their activist efforts, the Tribes increasingly influenced the management of fish and water on public and private land within and outside of the sovereign boundaries of their former reservation. Their scientific findings brought into question the long-standing authority of the USBR's technocrats and experts who had for nearly 100 years made decisions for how the Klamath Project would run. The Klamaths' biologists introduced data that

---

<sup>42</sup> Buchanan, "Negotiating Nature."

<sup>43</sup> Endangered Species Act, 16 U.S.C. sec. 1531 (1976).

would require the USBR to change their operations in order to protect fish and their habitat. The Klamaths succeeded in expanding their influence over the fish that Gmok'am'c created for them and over the water on which the fish depend.

As the Klamaths attempted to forge a government-to-government relationship with the USFWS, the agency took actions to hinder the Klamaths' efforts. U.S. Forest Service officials resisted the Klamaths' claims for sovereignty, interests in treaty rights protection, and requests for a co-management role with the agency. Chapter four argues that the Tribes took advantage of the National Environmental Policy Act of 1969 (NEPA) and Forest Service appeals process in order to garner a role in the management of their former reservation forest through a meaningful government-to-government relationship with the U.S. Forest Service between 1987 and 1999.<sup>44</sup> To communicate their needs to bureaucrats in the Forest Service, the Klamaths developed a lexicon that translated their traditional values into scientific jargon and environmental policy rhetoric. This lexicon encouraged conversation, but the agency was not willing to include the Klamaths in natural resource management decisions. The NEPA and Forest Service appeals process offered a forum in which the Klamaths could voice their opinions and document their decade-long effort to develop a meaningful relationship with the U.S. Forest Service. The NEPA and Forest Service appeals record allowed the Tribes to litigate and, in the end, garner a legally-described government-to-government relationship with the Forest Service that recognized the Klamaths' sovereignty, treaty rights within the former reservation under Forest Service jurisdiction, and their right as a sovereign nation to participate in the management of that territory prior to any public engagement processes, such as NEPA.

The Klamaths' history illuminates the active roles that tribes have had in the institutionalization of the federal self-determination policy. Through the Indian Self-Determination and Education Assistance Act of 1975 and the federal courts' nuanced interpretations of tribal sovereignty in decisions, such as *Kimball* (1974, 1979) and *Boldt* (1974), introduced new

---

<sup>44</sup> National Environmental Policy Act, Pub. L. No. 91-190, 83 Stat. 852 (1969).

expectations for how state and federal agencies should interact with modern tribal nations.<sup>45</sup> The self-determination policy recognizes tribes' sovereignty by allowing them to contract with the Bureau Indian Affairs and other federal agencies. Through the contracts, tribal nations, rather than federal agencies, manage funds and oversee programs in their communities. The *Kimball* and *Boldt* decisions recognized tribal sovereignty as they required federal and state agencies to work in collaboration with tribal nations when managing natural resources. Not all federal agencies complied with the shift in federal Indian policy. The Forest Service, for example, only conformed after the Klamath Tribes used federal environmental policy processes and, then, took the agency to court. Without the Klamaths' persistent approach, the Forest Service may have never agreed to construct a formal framework for including the Klamaths in forest management decisions that affect the Klamaths' sovereign territory in which they practice their treaty rights.

Narratives based on theories of colonial, settler colonial, and postcolonial frameworks most often portray Native nations as the resisters and national and state entities as the dominant parties in relationships with tribes. These narratives are limited in their ability to describe the complexity of such relationships.<sup>46</sup> Native communities are not always the entities that resist. The Klamaths' history shows that both state and federal agencies resisted the Klamaths' authority during the self-determination period. For example in chapter two, the State of Oregon resisted acknowledging the Tribes' treaty rights and sovereignty until the federal court system required state officials to recognize that the Klamaths did not lose their treaty rights or sovereignty through the termination process. In chapter four, the USFS resisted the Klamaths' court-affirmed

---

<sup>45</sup> Indian Self-determination and Education Assistance Act of 1975, 88 Stat. 2203, codified as amended, 25 U.S.C. sec 450-458 (1975). Charles Wilkinson provides numerous examples of tribes practicing self-determination and sovereignty through contract agreements with the federal government. See Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: W. W. Norton & Company, 2005), 319-321. For *Kimball I*, see *Kimball*, 492 F.2d (9th Cir. 1974). For *Kimball II*, see *Kimball*, 590 F.2d 768, (1979).

<sup>46</sup> Walter L. Hixson, *American Settler Colonialism: A History* (New York, NY: Palgrave Macmillan, 2013); Margaret Jacobs, *White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940* (Lincoln: University of Nebraska Press, 2009); James Belich, *Replenishing the Earth, The Settler Revolution and Rise of the Anglo World, 1783-1939* (New York, NY: Oxford University Press, 2009), 525-526; Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), 217-224.

sovereignty and the Tribes' right to work in a government-to-government relationship with the Service. The Klamaths never lost their treaty rights, but state and federal entities interpreted policies, such as Public Law 280 and the Klamath Termination Act of 1954, in their own favor.<sup>47</sup> In some states, Public Law 280 transferred criminal jurisdiction within Indian reservations to state governments. Many people assumed that the Klamath Termination Act abrogated the Tribes' treaty rights and sovereignty.

Settler colonial narratives describe how settler societies have changed Native people. The settlers are the agents. Settlers experience change over time, but it is due to their craftiness or to environmental influence. Have American Indian nations, communities, individuals, and organizations not shaped U.S. society? Historian Daniel Cobb's *Native Activism in Cold War America* (2008) demonstrates how American Indian activists infiltrated and reshaped the Office of Economic Opportunity and used what he calls "inside-outside" politics to transform Bureau of Indian Affairs policies. Out of this activism grew the self-determination policy.<sup>48</sup> Similarly, through their activism, the Klamaths not only devised a way in which they could participate in USFS management processes, the Tribes' actions helped transform the agency's culture and approach to management. The history of tribal participation in natural resources management is as much about tribal strategies as it is about cultural and social change in the United States. Historian Paul Hirt's *A Conspiracy of Optimism* (1994), argues that environmental non-governmental organizations, such as the Sierra Club, began challenging the USFS's timber-focused management as well as the agency's scientific and technologically based hubris.<sup>49</sup> By the 1980s, Service officials began debating and rethinking their traditional forest management approach in reaction to the environmental groups' pressures. Samuel Hays's *Wars in the Woods* picks up in

---

<sup>47</sup> P.L. 280, 18 U.S.C. sec. 1162; 25 U.S.C. sec. 1360; and 28 U.S.C. secs. 1321-1322; The Klamath Termination Act of 1954, Pub. L. No. 857, 68 Stat. 732 (1954).

<sup>48</sup> Cobb, *Native Activism in Cold War America*, see esp. Chap. 6.

<sup>49</sup> Paul Hirt, *A Conspiracy of Optimism: Management of the National Forests since World War Two* (Lincoln: University of Nebraska Press, 1994).

the final decades that Hirt's study covers.<sup>50</sup> Hays describes how citizen participation in USFS decision making reshaped the Service's management approach from one that emphasized timber production to one that increasingly embraced diverse values and, most importantly, an ecological approach. While Hirt and Hays offer valuable analyses of U.S. Forest Service practices and culture, they do not analyze what roles, if any, that Native American tribes have had in influencing U.S. Forest Service management since the 1970s. Not only environmental NGOs argued for an ecological approach to forest management. The Klamaths used the NEPA process to encourage the USFS to incorporate a holistic, or ecological, management approach that reflected the Tribes' culture and spirituality.<sup>51</sup> Through these narrative threads, one witnesses shifts in the cultures of state and federal agencies and a larger trend toward the democratization of natural resources management in the United States.<sup>52</sup>

Chapter six analyzes how the Klamath Tribes used their water rights and negotiation to participate with federal and state officials and non-governmental stakeholders, such as non-profit environmental organizations, farmers, and ranchers, in a watershed-scope management plan that reflected the Klamaths' vision for natural resource management, ecological restoration, and economic self-sufficiency. Decades of the Klamaths' activism culminated to a point in which the Tribes reached the status of leading water stakeholders within the Klamath River Watershed. Having been viewed by non-Indians, other tribes, and even some of their own members as a tribe that no longer existed in 1961, the Klamaths played a central role in the mid-2000s in negotiating

---

<sup>50</sup> Samuel Hays, *Wars in the Woods: The Rise of Ecological Forestry in America* (Pittsburg, PA: University of Pittsburg Press, 2002).

<sup>51</sup> The Hopi also used NEPA to integrate their traditional knowledge into USFS management. See 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 Resource Management*, edited by Richmond Clow and Imre Sutton (Boulder: University of Colorado Press, 2001), 281-301.

<sup>52</sup> Cody Ferguson, *This Land Is Our Land: Grassroots Environmentalism in the Late Twentieth Century* (New Brunswick, NJ: Rutgers University Press, 2015). The Klamaths used many different environmental policies and cultural resources policies. I focused on the Endangered Species Act and National Environmental Policy Act because they allowed for fleshed out analyses of the Tribes' interactions with agencies, and, in part, because of the availability of sources.

and designing a restoration plan for the Klamath River Watershed, a region ten times larger than their former reservation. In 2010, more than 40 stakeholder groups, including local governments and federal and state agencies, signed the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSAs). Reaching the transboundary agreements presented an extreme challenge, one fueled by a water conflict, a multitude of stakeholder interests, and resentment toward the Klamath Tribes for their involvement in the c'waam and q'apdo ESA listing fifteen years earlier. Without congressional approval, the agreements could not be fully executed. Over the next few years, more tensions arose when the State of Oregon completed its nearly 38-year-long water adjudication process and reported that the Klamath Tribes maintained senior water rights in the Upper Klamath River Watershed. With even more political leverage, the Klamaths turned to negotiation strategies in an attempt to work with the Upper Basin agriculturalists who avoided participating in the 2010 watershed agreements. In 2015, Senate Bill 133, which would formalize the watershed-scope restoration agreements, remains stalled in Congress.<sup>53</sup>

Despite that Congress has not passed this legislation, the agreements represent a major shift in natural resource management, particularly water management, in the Upper Klamath River Watershed. To understand this shift, why it occurred, and the role of the Klamaths' activism in this shift, I apply an ethnohistorical methodology. This approach is grounded in the understanding that different ways of seeing and valuing the land and different groups' interests in maintaining the meanings that they assign to the land result in the politics of space.<sup>54</sup> The politics of space drive historical change.

The Klamaths increasingly included themselves in the management of culturally and spiritually significant natural resources. They developed nuanced relationships with federal,

---

<sup>53</sup> Klamath Basin Water Recovery and Economic Restoration Act of 2015, S. 133, 114<sup>th</sup> Cong., (2015). Oregon Senators Ron Wyden (D) and Jeff Merkley (D) and California senators Barbara Boxer (D) and Dianne Feinstein (D) sponsored the bill.

<sup>54</sup> Neil Smith and Setha Low apply Lefebvre's theory. See Smith and Low "Introduction: The Imperative of Public Space," in *The Politics of Space*, eds. Setha Low and Neil Smith (New York: Routledge, 2006), 7. Lefebvre discusses the social space in terms of political power, see Lefebvre, *The Production of Space*, 151-152.



state, and non-governmental stakeholders that have allowed the Klamaths to channel their cultural and spiritual values into the natural resource management. This, in turn, allowed them to alter the course of natural resource management in not only their former reservation but within the larger Klamath River Watershed. The Klamaths have not “taken over” natural resource management or completely controlled it. They have worked within the settler colonial system in a ways that have allowed them to participate in decision-making that federal and state agencies and non-governmental stakeholders have excluded them from in the past.

One of the most difficult things to make sense of is the goal of elimination that settler colonialism theorists apply.<sup>55</sup> At many points, the Klamaths' history parallels this U.S. settler colonial initiative. President Grant's Peace Policy and the reservation policy of the 1860s and 1870s justified the hanging of Modoc leaders and the removal of other Modocs from California to Indian Territory (Oklahoma). The allotment and boarding school policies forced cultural change on Klamath individuals, and termination threatened to strip the Klamaths of their legal identity as Indians. Yet, the Klamaths and other tribes witnessed U.S. policies that did not focus on elimination, such as John Collier's Indian Reorganization Act of 1934, which gave land back to tribes and recognized tribal governments. The 1975 self-determination policy opened opportunities for tribes to shed the BIA's paternalistic control and to make decisions as sovereigns. However, U.S. settler colonial narratives so quickly victimize Native people and describe them as damaged, as powerless, as defeated. They often focus their analysis on the bureaucratic organizations that acted as conduits of settler colonial power, thought, and discourses. These studies are important because they unveil the programmatic character of the U.S. settler colonial process that has and continues to traumatize American Indian people through violent policies, murder, the taking of land and resources, the removal of children from their families, the sterilization of women between the 1930s and 1970s, among a host of other examples. Without losing the significance of the traumatic events that without a doubt wreaked havoc on Indian nations and resulted in posttraumatic stress disorder, or what some scholars

---

<sup>55</sup> Patrick Wolfe, “Logics of Elimination,” 2; Jacobs, *White Mother to a Dark Race*; Boyd Cothran, *Remembering the Modoc War: Redemptive Violence and the Making of American Innocence* (Chapel Hill: The University of North Carolina Press, 2014), 15-16.

have defined as postcolonial stress disorder, I tell a different story.<sup>56</sup> This history is about a Native community that continues to struggle with historical trauma, but that succeeds in remaking themselves as a modern tribal nation with sovereignty and influence over the management of natural resources within and outside of their 22-million-acre ancestral territory.

U.S. settler colonial processes still exist, but in this narrative federal courts recognize tribal sovereignty, the Tribes sit at decision making tables regarding natural resources, federal officials use Native traditional knowledges, and natural resource management plans increasingly reflect tribal values. This history reflects the increasing pluralization of U.S. society since the 1950s. Paralleling the African-American Civil Rights Movement and Women's Rights Movements, the American Indian Self-Determination Movement has transformed America. Institutionalized racism and sexism keep blacks and women from attaining the same pay and positions as white men; yet, to not recognize the positive changes and opportunities that blacks and women have afforded themselves through their activism would be a disservice them and to U.S. history. Just the same, we need to recognize that while modern Indian nations continue to struggle with U.S. settler institutions and laws, they have and continue to shape the United States into a more pluralistic society.

As the Klamaths seek to strengthen the c'waam populations, to bring salmon back to the Upper Basin, and to protect forest habitat for mule deer, they are engaging in a renewal process. These resources, and many others not discussed in this dissertation, define the Klamaths as a people and the space they have known for thousands of years. That space underwent many changes and transformation over time, including its very beginning. Oral traditions describe the transformations required as Gmok'am'c created the Klamaths' world. The Klamaths accept many of changes that the colonial society has introduced. Their tribal nation

---

<sup>56</sup> Thomas Ball, "Prevalence of Rates of Full and Partial PTSD and Lifetime Trauma in a sample of adult members of an American Indian Tribe" (Ph.D. diss., University of Oregon, 1998). The term postcolonial stress disorder might be better termed colonial stress disorder or settler colonial stress disorder. Ball would more than likely that the colonial or settler colonial process continues. Proponents for the recognition of this disorder seem to have adapted the term directly from posttraumatic stress disorder in order to draw attention to the relationships and similarities between the two kinds of disorders.

changed through time as their people underwent forceful assimilation processes and, in other cases, chose to acculturate and appropriate aspects of American culture. The Klamaths are a modern tribal nation. They envision a *Klamath* modernity, one that is forever guided by traditions and embracing of new opportunities.<sup>57</sup> They are a tribal nation that seeks to remove dams in order to renew historic salmon runs and to manage water to support growth among the diminishing c'waam populations. At the same time, the Klamath seek to develop a small diameter timber industry. The salmon and c'waam represent the renewal of continuity, while their efforts to establish a tribal timber industry rest in their ability as a tribe to accept change and appropriate new ways of supporting their people.

As their historical trauma genogram depicts, one of the Tribes' ultimate goals is to reacquire their reservation forest. Numerous attempts thus far have proven futile. The Klamaths, however, have not given up. They do everything in their power to keep going, to keep being Klamath, Modoc, and Yahooskin Paiute. This story is important for understanding natural resources management in the American West, federal and state adaptation to federal Indian policy changes, and tribal activist strategies. Yet, at base, it is also about the Klamaths' undying efforts to heal their people and the land and resources on which their culture, spirituality, livelihood, and identity depend. The Klamaths see it as their duty, their responsibility, to do all they can to protect their world that Gmok'am'c created. Their vision is inclusive of the many different peoples that today make up the Klamath River Watershed. In the 21<sup>st</sup> century, Klamath leaders have appropriated ecological restoration and view it as a means for healing themselves and the land, and for solving the contentious natural resource conflicts that have plagued the Klamath River Watershed for decades.

---

<sup>57</sup> Bruce Braun, *The Intemperate Rainforest: Nature, Culture, and Power on Canada's West Coast* (Minneapolis, MN: University of Minnesota Press, 2002), 97. Braun refers to a *Nuu-Chah-Nulth* modernity, a modernity that the Nuu-Chah-Nulth, rather than colonial society, defined. Philip Deloria, *Indians in Unexpected Places* (Lawrence: University Press of Kansas, 2004). Deloria argues that Native peoples sculpted Indianness, what it means to be Indian, as they participated in modernity at the same time that non-Indians also remolded themselves in modernity.

## CHAPTER 2

### A CHANGING WORLD

As she drove, she sang. As she sang, she cried. Klamath elder Betty Blackwolfe did not sing just any song. Her voice raised and lowered with a Klamath song for the well-being of Klamath Lake. She had not sung the Shaker healing verses for decades, but it was like the song longed to be heard by the lake.<sup>58</sup> Like many other Klamath tribal families during the 1950s, Blackwolfe's migrated from the rural reservation to an urban center through the federal relocation program, a program designed to catalyze the assimilation of reservation Indians. Between the 1950s and 1990s, she returned home to the Klamath region regularly to visit family and spend time at her family camp in the Klamath Marsh, a headwater source of the lake. Blackwolfe moved home to the former reservation to retire in 1999 after living in Portland, Oregon since her teens.

Over the two years that she had been living back in the Klamath region, she began to notice many landscape changes. Springs and seeps had dried up and Klamath Lake looked more turbid. She was aware that the fish had been in trouble for many years. In response to these changes, she prayed. "That is how I got my songs back. I was praying for the lake," Blackwolfe remembered.<sup>59</sup> She smiled as she sat at her kitchen table, her mind drifting to that memory and the healing song.

At the time that Blackwolfe moved to Portland with her family, the Klamath Tribes experienced one of the harshest assimilationist policies that the federal government implemented—the termination policy. Anxieties of all kinds plagued American society and politics during the post-World War Two decades, and the termination policy reflected many of them. McCarthyism, xenophobia, red scares, lavender scares, and federal overspending worried policymakers and American citizens alike. The U.S. had new shoes to fill as a Cold War global power and the image of a strong, unified nation to uphold. Policymakers, like Utah Senator Arthur Watkins (Rep), hoped that terminating the trust relationship between the Indian tribes and

---

<sup>58</sup> Betty Blackwolfe, (Klamath Elder, Former Member of Klamath Tribes Cultural and Heritage Committee), interviewed by author, Klamath Falls, Or., 1 August 2014.

<sup>59</sup> Ibid.

the federal government would be the last forceful step for the Klamaths and other Indians to assimilate fully into American society.<sup>60</sup> Treaties established, in some cases more than one hundred years earlier, stipulated that the federal government provide Native American tribes and communities with food, education, and healthcare in exchange for Indian land. Watkins and other politicians anticipated that terminating the trust relationship would cut federal spending and complete the assimilation of Native Americans into society, a process that had been in the works for more than a century. The relocation program that Blackwolfe's family participated in represented one more layer of the assimilation process as it encouraged Native people to sever ties with their reservation communities and move to urban centers.<sup>61</sup>

As Blackwolfe sang the guttural melody, she did so for the lake, animals, and the plants, but also for her people. She understood that the water in the lake connected to the marshes, rivers, creeks, and springs, and that the water offered a source of life for the Klamath people. Klamath oral traditions and the cultural practices taught her so. The lake's hypereutrophic status, evidenced by the high concentration of algal blooms, and the low populations of c'waam and q'apdo, signified the long history of parallel colonial changes that had damaged the natural system and, at the same time, hurt the Klamath Tribes. Between first contact with European explorers in the 1825 and the termination of their trust relationship in 1961, the Klamath, Modoc, and Yahooskin faced many landscape, social, cultural, and political changes. The spatiality they knew, such as their relationships to places on the landscape, to the underworld, with each other, and with the plants and animals transformed as the colonial society "produced" a new space based on a different worldview and values.<sup>62</sup> This new space reflected the devaluation of the Klamath Tribes' culture and of their authority as sovereigns and stewards of the land. At the same time, the new space reflected a different set of values on natural resources, which resulted in an altered natural environment. The world had changed before; change and transformation are

---

<sup>60</sup> Donald Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960* (Albuquerque: University of New Mexico Press, 1986), 76-77.

<sup>61</sup> *Ibid.*, 183.

<sup>62</sup> Lefebvre, *The Production of Space*, 260.

major themes of Klamath oral tradition. The colonial changes, however, did not reflect the world that Gmok'am'c, the Creator, intended.

The point of arguing that the colonial society simultaneously induced pain to the Klamath Tribes and damaged the natural environment is not to equate the Klamath Tribes with the natural environment so as to dehumanize them or view them as static parts of the landscape rather than historical actors. Colonial societies have actively sought this political agenda.<sup>63</sup> Rather, one must think in terms of the Klamath worldview. The Klamath ethos stresses interconnectedness. She or he must be willing to understand the interconnectedness of people with their natural surroundings and recognize that changes to a landscape affect humans, whether the Klamath Tribes or communities throughout the world. At the same time, limitations in the ability of a people to function according to their cultural practices can affect the way a watershed or forest functions. For example, Native Americans used fire in the Pacific Northwest for thousands of years prior to contact with European and American explorers. These human-induced fires shaped the forests that the explorers encountered. Through burning, Native communities propagated habitats suitable for culturally-significant flora and fauna.<sup>64</sup>

Tribal Chairman Chuck Kimbol explained the Klamaths' perspective in his written testimony to members of the Senate Subcommittee on Public Lands, National Parks, and Forests who convened for a federal hearing on 30 May 1988 in Bend, Oregon. He asked the congressmen to put more river segments within the Klamaths' ancestral territory under the protection of the Wild and Scenic Rivers Act of 1968.<sup>65</sup> He first stressed the centrality of the waterways to Klamath culture: "For over 14,000 years the Klamath people have lived, fished, and hunted on the Williamson, Sprague, and Sycan Rivers. Today, these rivers remain very important to our traditional way of life." The rivers, he explained, provide habitat for the c'waam,

---

<sup>63</sup> Bruce Braun explains how ecotourism companies in Canada designed tours that depicted the Nuu-Chah-Nulth First Nations people as something of the past despite that they continued to live on the very island on which the tours occurred. See Braun, "Landscapes of Loss and Mourning," in *The Intemperate Rainforest*, 109-157.

<sup>64</sup> Robert Boyd, *Indians, Fire, and the Land in the Pacific Northwest* (Corvallis: Oregon State University Press, 1999), general discussion of the Northwest, see 292; the Klamath, 261, 267.

<sup>65</sup> Wild and Scenic Rivers Act, 16 U.S.C. sec. 1271 (1968).

q'apdo, and trout and are a life source for mule deer and elk. He continued by stressing the reciprocal relationship of his people and the health of the water. Those rivers, he pointed out, "feed" Klamath Lake, and "The lake needs the water of the rivers to remain alive." Kimbol continued, "The animals need the flows in these rivers to stay alive. Our people need the rivers to keep our culture alive. They have been our way of life for thousands of years."<sup>66</sup> Kimbol's statement illuminates the profound relationships that the Klamath Tribes have with the water sources. The water sources provide life and are themselves alive and active in helping the Klamath Tribes maintain their culture.

Kimbol's testimony introduces an important temporal perspective. The Klamath Tribes, he argued, had lived in the southern Oregon and northern California region for more than 14,000 years. This *longue durée* perspective can in one way minimize the significance of the 190-year period that the Klamath, Modoc, and Yahooskin have interacted with members of the colonial society.<sup>67</sup> The colonial period accounts for only about one percent of these tribes' histories at most. At the same time, the *longue durée* or deep time view provides evidence of the significance of water resources to their cultures and the Tribes' abilities to overcome major changes to their places in which they lived. Tribal oral traditions and archaeological and ethnographic studies unfold the Klamaths' deep time history. The deep history contextualizes the Klamaths' abilities to face adverse change, including new situations during the colonial period. The period between first contact in 1825 and the completion of the Tribes' termination in 1961 introduced significant changes to the Klamath Tribes and their combined ancestral territory.

---

<sup>66</sup> *Omnibus Oregon Wild and Scenic Rivers Act of 1988: Hearings on S. 2148 to Amend the Wild and Scenic Rivers Act of 1968, and for Other Purposes*, 100<sup>th</sup> Cong., 234-236 (1988) (statement of Charles Kimbol, Klamath Indian Tribe, Chiloquin, Or.).

<sup>67</sup> Elliott West uses his hand and arm as a timescale to demonstrate just how short of an amount of time has passed since first contact, compared to the thousands of years that peoples lived on the Plains. See West, *The Contested Plains: Indians, Goldseekers, and the Rush to Colorado* (Lawrence: University of Kansas Press, 1998), 18. Inspired by the Annales School, Dan Flores stresses the importance of thinking from the perspective of the *longue durée*. See Flores, *The Natural West: Environmental History of the Great Plains and Rocky Mountains* (Norman: University of Oklahoma Press, 2001).

All three peoples, the Klamath, Modoc, and Yahooskin lived in a landscape of lakes, rivers, creeks, marshes, and springs prior to the reservation period. Ethnographer Samuel Gatschet noted the abundance of water sources both functioning and those that had dried up within the Klamath's, Modoc's, and Yahooskin's territories. He listed "Klamath Marsh, Upper and Lower Klamath Lakes, Rhett or Tule Lake, Clear or Wright Lake, Goose Lake, Abert Lake, Summer Lake, Silver Lake with Pauline Marsh. He further recognized that "several other depressions now filled with marshes and alkali flats show the existence of former water-basins."<sup>68</sup> Prior to the reservation, these three groups lived separately but had overlapping territories. The Klamath proper lived near Klamath Lake, Klamath Marsh, and along the Williamson and Sprague Rivers and nearby creeks. The 1864 treaty agreement designated this region as part of the Klamath Indian Reservation. The Modoc lived to the south in a region that included Tule Lake, Clear Lake, and the Lost River. The Yahooskin Paiute resided to the east of the Klamath and Modoc in a landscape of lakes that includes Goose, Silver, Warner, and Harney Lakes, and the Chewaukan, Sycan, and Klamath marshes.<sup>69</sup> So prominent are these lakes today that locals have historically referred to the southern Oregon and northern California region as the "Land of Lakes."<sup>70</sup>

Klamath and Modoc oral traditions suggest the profound spiritual and cultural significance of the water sources. Gatschet, who collected ethnographic data among the Klamath and Modoc during the 1880s, observed that all of the Klamath and Modoc "geogonic and creation myths are acting around the headwaters of the Klamath River and in the Lost River Valley, and the first man is said to have been created by their national deity, K'mukamtchiksh [the Creator], at the base of

---

<sup>68</sup> Albert S. Gatschet, *The Klamath Indians of Southwestern Oregon, Contributions to North American Ethnology in U.S. Geographical and Geological Survey of the Rocky Mountain Region*, vol. 2, part 1, J. W. Powell in Charge (Washington: Government Printing Office, 1890), xviii.

<sup>69</sup> Gatschet, vol. 2, part 1, xxxv.

<sup>70</sup> The Shaw Historical Library nested within the Oregon Institute of Technology Library in Klamath Falls, Oregon publishes a journal that focuses on the history of the "Land of Lakes." For example, see *Where Fortune Calls: Dreamers & Schemers in the Land of Lakes*, vol. 21 of *The Journal of the Shaw Historical Library* (2007).



the lofty Cascade Range, upon the prairie drained by Wood River.”<sup>71</sup> This prairie is adjacent to northern shore of Klamath Lake. In one version of the Klamath creation story, Gmok’am’c, the Creator, wakes up on a large body of water to find gopher and gopher’s house before the two partake in games that sculpt the mountains and rivers.<sup>72</sup> Perhaps, this oral tradition suggests that water composed the world before the creation of the three peoples. Other oral traditions discuss the relationships between the Klamath and Modoc people and animals that live in the water. For example, the creation of the c’waam describes how Gmok’am’c transformed a large snake that had been eating the Klamath people into fish that the Klamath call the c’waam. Gmukgumps did not simply create a fish, he established a source of life for the Klamaths.<sup>73</sup> Another oral tradition describes a spiritual nexus between the Klamath and fish. Klamath tribal member Dave Hill shared a story that Gatschet titled “Human Souls Metempsychosed into Fish.” This oral tradition explains that when Indians die, fish retain their souls. The human souls only exist in live fish and only under particular circumstances can Indians see the souls of the dead in the fish. The Indian spirit is, in a sense, embedded in the living fish; it lives on through the vessel of the fish’s corporeal flesh. “According to Hill,” Gatschet explained, “the Maklaks believe that the souls or spirits of the deceased pass into the bodies of living fish; they become inseparably connected with the fish’s body....”<sup>74</sup> This narrative adds depth to Kimbol’s testimony regarding the protection of rivers and the health of the lake as it underscores the interconnectedness of the Klamath with their place. If the Klamath understood that after death their ancestors’ souls resided the fish, the fish represented part of the Klamath community and tied the Klamath to the fish not only through culture and spirituality, but through identity. This Klamath narrative does not explain if only

---

<sup>71</sup> Gatschet, vol 2, part 1, xlii.

<sup>72</sup> Theodore Stern, “The Trickster in Klamath Mythology,” *Western Folklore* 12 no. 3, (July 1953): 164.

<sup>73</sup> Gordon Bettles (Former Cultural and Heritage Director, Klamath Tribes), interviewed by author, Eugene, Or., 18 July 2013; Lynn Schonchin, 19 October 2002, interview by Linc Kesler, in *Oral Narratives of the Klamath Termination: Individual Elders Reflect on Time and Cultural Change*, eds. Morrie Jimenez and Linc Kesler (Vancouver, BC: First Nations Studies Program, University of British Columbia, 2005).

<sup>74</sup> Gatschet, vol 2, part 1, 130.

certain fish or if all fish could carry Klamath souls. One must ask, however, what it would mean for the Klamath and Modoc to witness the loss of fish species or the reduction of fish populations? Would the loss of fish species or reduced fish populations reflect loss in the Klamath and Modoc communities?

Ethnographic and archaeological findings in the Klamath and Modoc region support the Klamath, Modoc, and Yahooskin's cultural and spiritual claims regarding their use of water sources and the animals and plants that rely on them. Archaeologist Luther Cressman excavated middens and house pits at Klamath camps along the Williamson and Sprague Rivers in the late-1940s and early-1950s. The Klamath lived at these camps prior to contact and after contact with European explorers in the early-1800s.<sup>75</sup> Preliminary analysis of the excavations revealed trout, sucker (c'waam, q'apdo, or yeen), minnow, and salmon bones.<sup>76</sup> In Cressman's final report, which he published in 1956, he gave special attention to the existence of salmon bones as he noted "It is clear...that salmon passed the falls at the south end of Klamath Lake and came up the Sprague River, probably to Kawaumkan Springs."<sup>77</sup> Gatschet's 1890 report and Spier's 1930 study support Cressman's findings as both of the ethnographers reported that the Klamath fished for trout, sucker, and salmon.<sup>78</sup>

Aside from fish, the Klamath, Modoc, and Yahooskin ate the seeds and bulbs of lake and marsh plants and hunted and trapped birds and both large and small animals. Cressman found evidence of extensive use of wocus, camas, and *ipos*, a root, in the Klamath camps on the Williamson and Sprague Rivers.<sup>79</sup> Gatschet recorded that the Klamath, Modoc, and Yahooskin

---

<sup>75</sup> Luther S. Cressman, *Klamath Prehistory: The Prehistory of the Culture of the Klamath Lake Area, Oregon*, Transactions of the American Philosophical Society, vol. 46, part 4 (Lancaster, PA: Lancaster Press, Inc., 1956), 382.

<sup>76</sup> *Ibid.*, 480-481.

<sup>77</sup> *Ibid.*, 481.

<sup>78</sup> Gatschet, vol. 2, part 2, 436 and vol. 2, part 1, xxv; Leslie Spier, *Klamath Ethnography*, University of California Publications in American Archaeology and Ethnology, vol. 30, edited by A. L. Kroeber and Robert H. Lowie (Berkeley: University of California Press, 1930), 147-155.

<sup>79</sup> Cressman, *Klamath Prehistory*, 388.

collected the seeds of wocus, a yellow-flowered lily that grew profusely in the marshes and at the edges of lakes.<sup>80</sup> The Klamath, Modoc, and Yahooskin all hunted small and large game animals and birds as well. Some of the long list of animals and birds include mule deer, elk, grizzly bear, ground hog, mink, duck, goose, blue crane, and redwing blackbird.<sup>81</sup>

The Klamath Tribes have an extensive tenure in the region. When Kimbol requested that Congress include more river segments in southern Oregon with the Omnibus Oregon Wild and Scenic Rivers Act of 1988, he asked the senators to recognize that the Klamaths had lived among the particular rivers, lakes, and animals for “over 14,000 years.”<sup>82</sup> The Klamath Tribes do not have migration stories and the Klamath language which consists of the Klamath and the Modoc dialects is a unique language family.<sup>83</sup> When Cressman and his team excavated the pit houses and middens in Klamath Country, they used the ash layer from the Mount Mazama eruption to date the soil horizon. The National Park Service manages the water-filled caldera that remained as Crater Lake National Park. The excavations required Cressman to dig below the Mazama ash layer. This provided evidence that the Tribes’ ancestors lived in the region prior to the eruption, which took place about 7,500 years ago. Comparing the excavated materials and soils layers in these digs with others in the region, Cressman estimated that the Klamath culture had been present in the region for at least 9,000 years.<sup>84</sup> Without these excavations, however,

---

<sup>80</sup> Gatschet, vol. 2, part 1, Klamath, Modoc, and Yahooskin Paiute use of wocus, xxii, xxxv, and profuse distribution of wocus, xxiii.

<sup>81</sup> Spier, *Klamath Ethnography*, 156-157. Cressman’s 1956 archaeological analysis suggests that the Klamath relied on fishing more than hunting and that hunting focused on small animals rather than larger ones. (If these excavations were completed at summer camps along the Sprague and Williamson rivers, it would make sense that the middens would contain higher percentages of fish than of other animals. However, Gatschet and Spier note the nomadic culture of the tribes. Perhaps, their non-summer camps would provide evidence that they relied on deer and other large game with greater intensity than Cressman argues. Gatschet specifically records that the Yahooskin “lived almost entirely from the products of the chase,” see Gatschet, vol. 2, part 1, xxxv. He seems to imply that the Yahooskin relied on hunting more than on other means for procuring food, but “the chase” could also include fishing.

<sup>82</sup> *Omnibus Oregon Wild and Scenic Rivers Act of 1988*, 234.

<sup>83</sup> Gatschet, vol. 2, part 1, lvii; Spier, *Klamath Ethnography*, 1.

<sup>84</sup> Cressman, *Klamath Prehistory*, 463. Cressman estimates the Mount Mazama eruption at about 6,500 years ago. Current geological studies estimate it at about 7,500 years ago. See

the Klamath had knowledge that their people had been in the region prior to the eruption of Mount Mazama.

An oral tradition explains the volcanic explosion and the formation of Crater Lake in the caldera that remained after the eruption. The story imbues the physical landscape with Klamath cultural meaning. More than that, the oral tradition is a testimonial to the Klamath's abilities to withstand major changes. Their homeland consisted of Basin and Range fault-block systems and the subduction zone below the Cascade Range, which have continued to shake the ground with violent earthquakes into the mid-1990s.<sup>85</sup> The Klamath oral tradition describes the eruption of Mount Mazama as a battle between gods. One god perched on Mount Shasta, a stratovolcano to the south, and the other stood atop an even larger stratovolcano to the north, referred to as Mount Mazama by non-Indians. From these locations, the gods and "all the spirits of earth and sky took part in the battle."<sup>86</sup> The Klamaths witnessed the eruption, describing it in this way: "Mountains shook and crumbled. Red-hot rocks as large as the hills hurtled through the skies. Burning ashes fell like rain. The Chief of the Below World spewed fire from his mouth."<sup>87</sup> Fire spread through the forests. To avoid the flames, the Klamath people "found refuge in the waters of Klamath Lake."<sup>88</sup> The people watched as G'mokam'c, the God from Above, with all of his power pushed Lao, the God from Below, into the large hole that developed during the battle.<sup>89</sup> Only his conical hat with a depression near its point, like those the Klamath wore, protruded

---

Charles R. Bacon and Marvin A. Lanphere, "Eruptive History and Geochronology of Mount Mazama and the Crater Lake Region, Oregon," *Geological Society of America Bulletin* 118, no. 11-12 (2006), 1331-1359.

<sup>85</sup> Charles R. Bacon et. al., "Late Quaternary Slip Rate and Seismic Hazards of the West Klamath Lake Fault Zone near Crater Lake, Oregon Cascades," *Geology* 27, no. 1 (Jan 1999), 43-46.

<sup>86</sup> Ella E. Clark, *Indian Legends of the Pacific Northwest* (Berkeley: University of California Press, 1963), 54.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Perry Chocktoot identifies the God from Above as G'mokam'c and the God from Below as Lao. Perry Chocktoot (Cultural and Heritage Director, Klamath Tribes), personal communication, Klamath Falls, Or., July 2013.

above the ground. Rain fell and filled the hole from which the god's hat remained lodged. The upper half of the God's hat continues to stand above the water-filled hole that is known commonly as Crater Lake, but that the Klamath and Modoc call Giwas. Settlers named the landform that represents the hat in the Klamaths' story Wizard Island.

The Klamath survived the eruption of Mount Mazama and continue to live in the region 7,500 years later. Their oral tradition describes the forests burning and lava reforming the landscape. The Klamath adapted to these changes as their current presence and the archaeological record demonstrate. They are a resilient people who have witnessed change and transformation. Change and transformation are part of the world that they knew before the colonial period.<sup>90</sup> Change continued into the colonial period, though it came in different forms and from new sources. Through their presence, the Klamaths imbued the space with meanings and developed their own spatiality that reflects their spirituality and cultural identity; it is this Klamath spatiality that settler colonial laws and meanings could not eradicate, but merely overlay.

Through oral traditions, the Klamaths maintained a "landscape of the mind," a catalogue or archive of their communities' histories, culture, and teachings.<sup>91</sup> This landscape of stories included knowledge from the Creator of the best practices for the landscape or as what one could understand as a natural resources guide.<sup>92</sup> The Klamaths, while not having a word or phrase for natural resources management, followed teachings of G'mokam'c, the Creator, when they made decisions about how many fish to catch, how many berries to pick, and what animals they should

---

<sup>90</sup> Leroy Little Bear argues that from the perspective of Native science "The only constant is change." See Little Bear, Forward in *Native Science: Natural Laws and Interdependence* by Gregory Cajete (Santa Fe, NM: Clear Light Publishers, 2000), xi.

<sup>91</sup> For a discussion of the "landscape of the mind," see Basso, *Wisdom Sits in Places*. Julie Cruikshank suggests that a landscape imbued with cultural meanings can be understood as a "kind of archive where memories can be stored." See Cruikshank, *Do Glaciers Listen?*, 11. Kevin Lynch discusses the notion of a "mental map" in Lynch, *The Image of the City* (Cambridge MA: MIT Press, 1960), 4.

<sup>92</sup> See Basso, *Wisdom Sits in Places*; Don Hann and Gordon Bettles, "House of the Rising Sun: Using the Ethnographic Record to Illuminate Aspects of Klamath Basin Rock Art," pp. 176-199, in *Talking with the Past: The Ethnography of Rock Art*, eds. James D. Keyser et. al. (Portland, OR: Oregon Archaeological Society, 2006), 183. Julie Cruikshank argues for the authority of Tlingit and Athapaskan speakers' knowledges of the Yukon's glacial landscape, see Cruikshank, *Do Glaciers Listen?*.

not kill.<sup>93</sup> Their oral traditions describe their people as developing out of these resources and as stewards of their local environment. Two Klamath oral traditions tell of the Creator placing items, such as bones, service berries, or animals, including skunks, on the landscape. Each item or animal designated the establishment of one of the three communities, the Klamath, Modoc, and Yahooskin, which share the Klamath tribal name today.<sup>94</sup>

In the Klamath and Modoc understanding of the world, animals did not simply live in the world, they existed prior to its creation and had fundamental roles in decision making for the world that the Klamath and Modoc would inhabit. Gmok'am'c held a council with the animals before creating the Klamath people. At this council, an argument between Garter Snake and Gopher established the length of human lives, the animals chose what they would look like in the new world, and a disagreement between Ant and Bear established the seasons.<sup>95</sup> The animals helped create the world for humans, and in this corporeal place the humans would be stewards of the animals as the C'waam Ceremony demonstrates. The Klamaths' reciprocal vision of humans and animals diverges significantly from the colonizers' hierarchical categorization of humans above animals, which is demonstrated in the Great Chain of Being.<sup>96</sup>

The Klamaths' creation stories and other oral traditions espouse the "third dimension" of their worldview. The Klamaths' "landscape of mind," existed as the phrase suggests—in the mind as memories and images, but it also existed in the landscape as the Klamaths "produced" and

---

<sup>93</sup> Perry Chocktoot, personal communication, July 2013. In *The Ecological Indian*, Shepard Krech, III, argues that it is anachronistic to assume that American Indians were conservationists. He shows that some tribes, particularly those in the Plains who hunted buffalo, may have practiced wasteful hunting. Is it fair to assume that all American Indian peoples followed such practices whether they fished, hunted, and/or gathered? Assuming that the values of the conservation ideal only exist within the American, or even Western, cultures is in itself ethnocentric. See Krech III, *The Ecological Indian*, 25-26.

<sup>94</sup> Theodore Stern, "The Trickster in Klamath Mythology," 164-165; Stern, *The Klamath Tribe*, 2. There are multiple versions of the Klamath Tribes' creation story.

<sup>95</sup> Stern, "The Trickster in Klamath Mythology," 165.

<sup>96</sup> The Tlingit- and Athapaskan-speaking peoples maintained similar reciprocal relationships with the non-human components of the Yukon landscape. They described the glaciers as sentient and responsive to human decisions. See Cruikshank, *Do Glaciers Listen?*, 18.

reproduced the space through cultural practices.<sup>97</sup> As they partook in the C'waam Ceremony, they reinforced the understanding of themselves as stewards of the fish and through the ceremony honored the spirits of the fish so that they would return the following year. Not practicing the renewal ceremony might have resulted in losing the fish, and without the fish, the Klamaths would not be the same people.<sup>98</sup> These oral traditions taught and continue to teach the Klamaths how to act, think, and behave like Klamaths; they reinforce a sense of cultural identity, and at the same time, their cultural identity reinforces their spatiality.<sup>99</sup>

One way that the colonial society marginalized the Klamaths' spatiality was by passing laws that limited or restricted the Klamaths' ability to interact with and act as stewards over key components of the space in which they and their ancestors lived for thousands of years. Through reservation policy during the late-1800s, U.S. society implemented major changes in the way that the Klamaths could use their ancestral space. The Klamath, Modoc, and Yahooskin leaders signed a treaty with the U.S. government in 1864, often referred to as the Treaty of 1864.<sup>100</sup> Through this agreement, the Native leaders ceded nearly 20 million acres of territory and agreed to move onto a two-million-acre reservation. The pre-reservation population of the Klamath and Modoc consisted of 1,200 to 2,000 people, with the Klamath equaling approximately double that of the Modoc.<sup>101</sup> Outside of the reservation, U.S. society gave new meanings to the landscape.

---

<sup>97</sup> Fixico, *Call for Change*; Basso, *Wisdom Sits in Places*; Lefebvre, *The Production of Space*, 16, 33, 260.

<sup>98</sup> Little Bear, Forward in *Native Science*, xi.

<sup>99</sup> Basso, *Landscape of the Mind*, xv, 63, 102.

<sup>100</sup> Treaty with the Klamath, etc., 1864, in Charles J. Kappler, comp., *Treaties, Indian Affairs: Laws and Treaties*, vol. 2 (Washington: GPO, 1904), 865-868.

<sup>101</sup> Stern, *The Klamath Tribe*, 5; Spier, *Klamath Ethnography*, 5. Pre-treaty population estimations for the Yahooskin are not available in the ethnographic literature. One of the issues that makes it difficult to estimate the number of Yahooskin even after the treaty signing and establishment of the reservation is the use of various names for the Yahooskin and other Paiute groups that may have also inhabited the reservation. Stern discusses the "Yahuskin Snakes," Walpapi Paiute, Warner Valley Paiute, and the Pit River Snakes. Another issue is that the records that reservation agents reported are not complete and are sometimes conflicting. See Stern, *The Klamath Tribe*, 84-85, 101, 299.

One of the greatest changes resulted from the reservation policy, which designated a significant portion of the three tribes' ancestral territories as land for non-Indians.

By 1905, when the Bureau of Reclamation (USBR) staked its claim for water in the Upper Klamath River Basin of Oregon and California, the U.S. military and Indian Office had relocated the Modocs and Klamaths from the region that the Bureau established as the Klamath Project. The 1864 treaty that Klamath, Modoc, and Yahooskin leaders signed with Oregon Superintendent of Indian Affairs J. W. Perit Huntington and Oregon Indian Agent William Logan gave the U.S. government formal rights to these tribes' ceded territories. The hanging of Modoc leaders, the relocation of Modoc families to Indian Territory (present-day Oklahoma) after the Modoc War of 1874, and other violent attacks encouraged other Indians to remain within the nascent reservation boundaries located 40 miles north of the fertile lands that would be established as the Klamath Project.<sup>102</sup> The USBR absorbed the private canals that homesteaders and early irrigation canals built within the Project and, and in 1905, "filed a notice of intent to appropriate all of the available water in the Klamath River and Lost River and the waters originating in California, within the Lost River and Clear Lake drainages."<sup>103</sup> The Bureau drained marshes and lakes and rechanneled water all in an effort to conserve water resources for use by agriculturalists in the project.

The folks that took these early steps in developing the Klamath Project and re-imagining and physically altering the water system did so with assumptions regarding water rights and the availability of water. Their intent to claim all of the water in the Upper Klamath River Watershed alone suggests that they assumed that the Klamath Tribes did not have water rights. Western water law's doctrine of prior appropriation, or first in time and first in right rules, justified the settlers' practices and assumptions regarding Indian water rights. Some Klamath tribal members

---

<sup>102</sup> Lynn Schonchin, interview in Kami Horton, *The Modoc War*, prod. Kami Horton, 57 min. 15 sec., Oregon Public Broadcasting, Oregon Historical Society, 2011, videodisc. See also Cothran, *Remembering the Modoc War*, 8-10. Ball cites many other violent attacks, see Ball, "Prevalence of Rates of Full and Partial PTSD," 48-56.

<sup>103</sup> Memorandum from Regional Solicitor, Pacific Southwest Region, to Regional Director, Bureau of Reclamation, Mid-Pacific Region, Subject: Certain Legal Rights and Obligations Related to the U.S. Bureau of Reclamation, Klamath Project for Use in Preparation of the Klamath Project Operations Plan (KPOP), 25 July 1995, Signed David Nawi, United States Department of the Interior, Office of the Solicitor, Sacramento, California. FOIA request, June 11, 2013.



had established cattle ranches along the Sprague, Sycan, and Williamson rivers within the reservation. They surely drew water from the nearby rivers and streams to grow grass for their cattle. Perhaps, because the Tribes were located north in the Basin and Klamath Lake produced enough water for USBR requirements the agency may not have worried about tribal water diversions.

United States water law was about to change. In 1908, the *Winters* decision offered a nuanced interpretation of Indian water rights. Through *Winters*, the Supreme Court interpreted that the Gros Ventre and Assiniboine's treaty reserved their water rights within the Fort Belknap Reservation in northern Montana without doing so explicitly. *Winters* held that the Gros Ventre and Assiniboine did not have to submit a claim for or have evidence of their prior use of the water in order to demonstrate their rights to it.<sup>104</sup> The *Winters* decision did not affect the Klamath region USBR until much later in the century, but it is important to introduce because it adds the necessary context for understanding the extent to which the Klamath USBR office disregarded Indian water rights in its early stages and through most of the 20<sup>th</sup> century. For the next 88 years, the USBR diverted any amount of water from the Upper Klamath Basin that their non-Indian contractors required to grow crops during the spring and summer.

The colonial society, with its experts and water engineering technologies, induced more changes to the water system that were detrimental to the Klamath Tribes. In 1918, the California and Oregon Power Company (COPCO) finished construction of the Copco I Dam on the Klamath River just below the Oregon-California Border. In 1925, the power company completed construction of a second dam, known as Copco II, about one quarter of mile downstream. These dams blocked Chinook, coho salmon, and steelhead from making spawning runs in the Upper Klamath River Watershed. The Klamath Tribes had depended on the salmon runs for subsistence, but could no longer fish for salmon after the dams blocked the fish from making their annual peregrinations. Working with ethnographer Leslie Spier's research on Klamath language

---

<sup>104</sup> *Winters v. United States*, 207 U.S. 564 (1908). Norris Hundley, Jr., examines the discreet differences between this Indian water law and prior appropriation and riparian rights. See Hundley, "The "Winters" Decision and Indian Water Rights: A Mystery Reexamined," *Western Historical Quarterly* v. 13, no. 1 (January 1982): 17-18.

and culture, Ethnographer M. A. R. Barker noted a particular location north of Klamath Lake along the Wood River that Klamath informants called "Salmon's-Place."<sup>105</sup>

In the late-1930s, the Klamath Tribes filed a complaint with the Bureau of Indian Affairs (BIA), requesting that the agency protect the Tribes' rights to fish for salmon. The Klamaths requested the construction of fish ladders on COPCO Dam I and COPCO Dam II. The BIA maintained a guardian status over the Klamaths through a trust relationship established through the Treaty of 1864.<sup>106</sup> This treaty established the trust relationship between the Klamath, Modoc, and Yahooskin and the U.S. government. The government took the responsibility of ensuring and protecting the Tribes' treaty rights in exchange for about 20 million acres of their combined ancestral territory. As guardian of the Tribes, the BIA filed suit with the U.S. Department of Justice, requesting that U.S. government force the hydroelectric company to add fish ladders to the dams. After many years, probably in the mid- to late-1940s, the Department of Justice dismissed the case.<sup>107</sup> This decision may have also reflected the political atmosphere of the Cold War period. Indians' participation in World War Two, as well as McCarthyism, the cultural melting pot mentality, and the debt the United States accrued from the war encouraged policymakers to formulate federal Indian policy that would end the trust relationship between tribes and the federal government. They sought to end federal programs for tribes in an effort to complete the assimilation process and reduce federal spending.<sup>108</sup>

In 1956, while in the midst of the termination process, the Klamaths filed suit a second time. The Department of Justice denied the case, claiming that the Tribes lacked evidence to

---

<sup>105</sup> M. A. R. Barker, *Klamath Texts*, University of California Publications in Linguistics, v. 30, (Millwood, NY: Kraus Reprint, 1981, original 1962), 194. Barker worked from Spier's 1930 *Klamath Ethnography*.

<sup>106</sup> Kappler, *Treaties*, 865-868.

<sup>107</sup> The testimony does not clarify exactly when the Justice Department dismissed the case. The witness explains that the Department denied the case "several years" after the case formally began in 1942. See U.S. Senate Subcommittee on Administrative Practice and Procedure of the Committee on Judiciary, *Federal Protection of Indian Resources Part 2*, 92<sup>nd</sup> Cong., 1971, 476.

<sup>108</sup> Fixico, *Termination and Relocation*, WWII as a process preparing Indians for assimilation, 44; McCarthyism, 77; federal government's interest in reducing spending after WWII, 49-50.

prove that salmon migrated into the Upper Klamath River Watershed prior to the construction of the first COPCO Dam. The Department made this decision even though Klamath tribal elders provided testimony and could point out where their salmon fisheries existed prior to the dam.<sup>109</sup>

The Klamaths caught other fish as well, and they were at least as important, if not more so, to the Klamaths, than salmon. The Klamaths called those fish the c'waam, q'apdo, and yeen. They are endemic species to the Upper Klamath River Watershed. During a period of famine, the Klamaths' Creator, Gmok'am'c, transformed a giant snake into the c'waam so that the Klamaths would have food. The c'waam represented life to the Klamaths and they practiced the First C'waam Ceremony every spring to honor the fish and encourage them to return the next year. Klamath elder Lynn Schonchin illuminated the Klamath ethos as he explained, "Our first sucker ceremony up here on the river, you took the first one and they would cremate it, and throw its ashes back in." "And by doing that," he continued, "it was releasing its spirit to the rest of those fish, so they could come up. In doing that, that brought us life."<sup>110</sup> Klamath elder Morrie Jimenez gesticulated, drawing the direction of the Williamson River in the air with his left hand, as he described his experiences of harvesting the sucker fish as a child in the 1930s and 1940s. "[T]he c'waam runs, the sucker runs, were annual celebrations," he explained. These celebrations took place "at varying portions of the Sprague River systems and the Williamson River system, which were the central core river systems...on our reservation, and a favorite gathering spot during that run was there just below Chiloquin." He described the location as the place "where the [Williamson] river bends away from Highway 97."<sup>111</sup>

Vivid memories fill Morrie's mind. With his mom, aunts, and grandmother, Morrie would watch as the c'waam ran upstream on the first day of their migration. The river glistened with sunlight. He recalls his grandmother saying, "Look down the river. What do you see?" He and his family could see the "fins of those big sucker fish because they were so deep in the water and they were coming up so profusely that you could see the backs, their backs glimmering in the sun

---

<sup>109</sup> *Federal Protection of Indian Resources Part 2*, 479.

<sup>110</sup> Schonchin, 19 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>111</sup> Morrie Jimenez, 27 August 2002, in *Oral Narratives of the Klamath Termination*.

and those fins glimmering in the sun.” The school of fish went “six, seven, eight feet deep...near the bank of the river.”<sup>112</sup> The Klamaths named a location near the mouth of the Williamson River where it pours into Klamath Lake, “Going Across with the Fin Showing,” which from Morrie Jimenez’s description easily could have referred to a location where the Klamaths witnessed c’waam, q’apdo, and yeen runs in the early spring.<sup>113</sup>

Through the 1930s and 1940s, Klamaths continued to fish for c’waam and other sucker species. Elder “Porky” Jimenez recounted how his mother and grandmother would “be out there all day long, cleaning ‘em and hanging ‘em up to dry. And they’d dry. We lived on sucker fish dried—dried, fried, and boiled and baked.”<sup>114</sup> The c’waam provided a source of sustenance and symbolized life, and the practice of celebrating and harvesting them, brought together the different generations of the Klamath community.

During Morrie Jimenez’s childhood, the c’waam, q’apdo, and yeen were plentiful, and they had been for decades if not centuries or even longer. Alterations in the landscape and society had already begun that would reduce the fishes’ habitats and stress their populations. Long before these elders were born, the federal government put the allotment policy into effect.<sup>115</sup> In an effort to turn the Klamath Tribes into agriculturalists, like their white settler neighbors to the south, the Indian Office divided up portions of the reservation into individual allotments that each Indian would tend—a practice that was mirrored throughout Indian Country during the progressive era. The U.S. Indian Service constructed the dam to divert water to Klamath allotments in 1914. The dam had a fish ladder, but still blocked the majority of migrating c’waam, q’apdo, and yeen, especially during low water years. The dam is one of the earliest major alterations to fish habitat.

The allotment policy, with its emphasis on transforming all Indians into agriculturalists, had other implications to the local ecology and the fish on which the Tribes depended, though the

---

<sup>112</sup> Ibid.

<sup>113</sup> Barker, *Klamath Texts*, 194.

<sup>114</sup> Ramon “Porky” Jimenez, 19 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>115</sup> Dawes Severalty Act, 24 Stat. 388 (1887).

Klamaths and state and federal scientists would not recognize the negative effects on the fish for decades. The land parceled into allotments included the fertile valley between Crater Lake and Agency Lake that encompassed the Williamson River Delta. Some Klamaths and white settlers grazed cattle and grew grains in this region. These European agricultural practices, including the draining of marshes along lake edges, in tandem with road building and the developing timber industry, coincide with the hyper eutrophication of Klamath Lake between about 1875 and today.<sup>116</sup>

Over time through the allotment policy, individual Klamaths sold their land to white ranchers and farmers. This resulted in more change to the ecology of the lake and delta system. Sometime before the mid-1950s, COPCO, the same company that built the dams on the Klamath River in 1918 and 1925, took possession of 7,000 acres of land known as the Williamson River Ranch. In 1955, Tulana Farms owned the property and reported in the local paper that they hoped to purchase the adjacent land. The U.S. Fish and Wildlife Service took possession of the adjacent tract after the owner passed away earlier in 1955. In an attempt to strike a deal with the USFWS, President of Tulana Farms Dick Henzel argued that by diking and draining the 4,100-acre, marsh-covered property, the ranch would produce more habitat for birds and, subsequently, more hunting for sportsmen.<sup>117</sup> What Tulana Farms did not realize was that the diking and draining of the Williamson River Delta and the adjacent marshland reduced habitat for the c'waam, q'apdo, and yeen larvae. When in their juvenile stages, these fish require cover and shallow water to hide from predators, habitat they found in the delta and other marshes.<sup>118</sup>

One year earlier, Congress passed the Klamath Termination Act of 1954. This policy, perhaps, induced some of the greatest changes to the Klamath Tribes since the reservation

---

<sup>116</sup> J. Platt Bradbury, et al., "The History of Recent Limnological Changes and Human Impact on Upper Klamath Lake, Oregon," *The Journal of Paleolimnology* 31 (2004), 151-165.

<sup>117</sup> "Tulana Seeks to Open More Public Hunting Area," *Herald and News* (Klamath Falls, Or.) 22 Sept 1952, in *Herald and News* Morgue, Klamath County Museum.

<sup>118</sup> U.S. Fish and Wildlife Service, "Revised Recovery Plan for the Lost River Sucker and Shortnose Sucker (*Deltistes luxatus* & *Chasmistes brevirostris*), First Revision of March 1993 Original, Pacific Southwest Region, USFWS, Sacramento, Ca., 22 January, 2013, vi.

period in the 1860s when the U.S. government pressured their ancestors to cede more than 20,000,000 acres and move onto the approximately two-million-acre reservation in southern Oregon. By 1954, the Klamath, Modoc, and Yahooskin Paiute had made the reservation their home; it offered a sense of security.<sup>119</sup> Covered in one of the largest ponderosa pine forests in the United States, the reservation provided an economic base from which tribal members earned per capita payments from timber sales. Tribal members relied on their rights to hunt, trap, fish, and gather for subsistence and their abilities to continue cultural practices and visit sacred places within this region. Termination revoked the Klamath Tribes' federal status as Indians, prohibited them from taking advantage of federal programs for Indian communities, and transferred most of their tribally-held forest out of Klamath ownership.

Summer on the Klamath Reservation meant the sweet odor of ponderosa pine pollen; its color, bright yellow, would dust the tops of cars or coat the nearby blue surface of Crater Lake with swirl designs. In the eastern portion of the reservation, remnants of the spring blooms of deep purple iris and pink wild onion would still speckle the high desert among the spicy sagebrush and ancient juniper. Despite the usual seasonal changes, termination policy ushered in drastic shifts in meaning to the Klamath Reservation in the summer of 1961, when the Department of Interior completed the Tribe's termination process. The ponderosa-covered Mount Yamsey, or "Home of the North Wind," remained in place and the c'waam would still swim up the Williamson River in the spring, but termination would redefine the reservation for the most part as public land managed for multiple uses by various state and federal agencies, not as a territory overseen for and by the Klamath Tribes. This significant shift in jurisdiction would be mean that anyone, not just tribal members, would be hunting the mule deer and catching the c'waam and rainbow trout within the former reservation.

Change came in other forms. Termination meant that the majority of Klamaths would not receive their timber payments and would be thrust into the suffering southern Oregon job market. The federal government ended the Tribes' healthcare programs. Perhaps, one of the most

---

<sup>119</sup> Morrie Jimenez, 20 August 2002, in *Oral Narratives of the Klamath Termination*.

detrimental effects of the bill was its' psychological impacts. The verbiage of the termination act encouraged Klamaths and non-Indians alike to question whether or not the Klamath tribal members were still Indian. The Klamath Termination Act explicitly states: "Members of the tribe who receive the money value of their interests in tribal property shall thereupon cease to be members of the tribe."<sup>120</sup> This sentence from the legislation epitomizes the assimilationist tactics deployed through termination and helps to explain why the policy left such deep emotional scars among the Klamaths and other tribes that experienced it. Gmok'am'c endowed the Klamaths with the responsibility of stewardship over their ancestral land. By the time of termination in the 1950s, the reservation signified the sole parcel of land that the Klamaths' had any say over. Private owners and county, state, and federal agencies had assumed jurisdiction over the rest of their ancestral territory and had physically adapted it to the settler society's needs. County, state, and federal agency officials excluded tribes from natural resource management decisions. The general assumption in American society during the first half of the 20<sup>th</sup> century was that tribes had their reservations and would not influence natural resource management outside of them. This perspective changed, but not before the termination policy transferred the majority of the Klamaths' land base out of their ownership.

Termination changed the Klamath community's social landscape and meaning of social space on the reservation in other perhaps more traumatic ways for the rest of the 20<sup>th</sup> century. Prior to termination, the Klamath General Council made decisions regarding large timber sales of their more than 600,000 acres of forest. During the Klamaths' termination process officials estimated that timber harvested from the Klamaths' reservation forest accounted for 25 percent of available saw timber in Klamath County.<sup>121</sup> The BIA distributed regular per capita payments to Klamath tribal members from the timber sales. Their timber money, it seems, provided a major part of the Klamath community's economic foundation. Standing at the eastern edge of Klamath Lake in a cream-colored polo shirt, brown slacks, and sunglasses in October of 2002, elder

---

<sup>120</sup> The Klamath Termination Act of 1954, Pub. L. No. 857, 68 Stat. 732; sec. 6(c) (1954).

<sup>121</sup> Monika Bilka, "The Klamaths' Path after Termination," (master's thesis, University of Montana, 2008), 6.

Modesto Jimenez looked out over the lake. Birds chirped as he turned to look behind him and pointed toward the former reservation. Modesto Jimenez explained what happened to the Klamaths' forest through the termination process and its economic importance to the Tribes: "Most of it went to federal forest, Fremont-Winema National Forest, and you look around here where there's not very many trees, but further up on the Reservation we had one of the richest Ponderosa pine stands in whole United States, worth millions."<sup>122</sup> Modesto Jimenez was not exaggerating. The Chief Forester of the Indian Office, J. P. Kinney described the immense economic opportunity in the Klamaths' forest. The Klamaths' reservation forest consisted of "the most extensive stand" of ponderosa pines (*Pinus ponderosa*) on "any Indian reservation and one of the most favorable logging chances in the entire western pine region." Kinney estimated that in 1910 the Klamath Reservation contained "not less than eight thousand million board feet of merchantable timber."<sup>123</sup> If someone could cut all of the timber Kinney described and load it into logging trucks today, which hold on average about 5,000 board feet of timber each, and, then, line the trucks up nose-to-end, they would reach about three-quarters of the way around the earth's equator. In 1954, at the beginning of termination, the Klamath Reservation still contained about half that amount of timber.<sup>124</sup>

Through the termination process, the federal government sold the Klamaths' reservation and paid any member who had voted to withdraw, a mere \$43,000 dollars. "Everybody thought \$43,000 dollars was a lot of money," recalled Lynn Schonchin. "You take \$43,000 dollars back then, it was. By the time you bought a home, got a car, furnished your home, it was time to go to work," he argued. The trouble, according to Lynn Schonchin, was that Klamaths faced discrimination in the regional economy. "...[T]here was some really heavy duty structural

---

<sup>122</sup> Modesto Jimenez, 19 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>123</sup> J. P. Kinney, "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.

<sup>124</sup> I used estimates of current logging truck lengths and load amounts to make this estimate. See Bilka, "The Klamaths' Path after Termination," 5.



discrimination within the employment market and our people,” he continued, “would apply for jobs, try to go to work and [be told] no, you're a rich Indian, you don't need a job.”<sup>125</sup>

More than that, some of these mills had closed prior to termination.<sup>126</sup> Morrie Jimenez's memory, however, demonstrates the instability of the timber economy, the major industry in the region of the Klamath Reservation where tribal members may have hoped to find work after termination. In the mid-1960s the unemployment rate among Klamaths was between 45 to 65 percent, according to Lynn Schonchin. By the late-1980s, the unemployment rate remained high, at 40 to 50 percent.<sup>127</sup>

Many Klamaths left during this period in search of opportunity. The federal Indian relocation program offered young Klamaths the chance to leave the reservation and attempt to create a new life in an urban area. Lynn Schonchin left with his family during termination. They used their termination money to search out opportunities and start a new life elsewhere in Oregon.<sup>128</sup>

While many Klamaths left their homeland in search of opportunity, many others remained in the community, but left prematurely due to alcohol- and drug-related deaths. The traumatic experience of being told by the federal government and other Indian communities, that he or she is no longer Indian, the inability to support their families economically, and, perhaps, in combination with the reduced access to the physical landscape where he or she practiced cultural rituals drove many Klamath tribal members toward alcoholism. The Klamath Alcohol and Drug Abuse Council reported that three-quarters of the Klamaths' deaths by 1977 had been related to alcohol or drug use.<sup>129</sup>

---

<sup>125</sup> Schonchin, 19 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>126</sup> Morrie Jimenez, 8 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>127</sup> Schonchin, 19 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>128</sup> *Ibid.*

<sup>129</sup> Letter from the Klamath Tribe, July 1985, Klamath County Museum; Ulrich, *American Indian Nations*, 66.

Death became a regular occurrence. Gerald Skelton, who was born after termination and took the position of tribal cultural resources director after the Tribes' restoration in 1986, reflected on the traumatic experience of living in a community where it seemed that everyone was dying. "What I remember growing up was going to a lot of funerals," he explained.<sup>130</sup> His grandparents and all five of his aunts died very young. Gerald Skelton's experience reflects the reality of Klamath mortality rates. In 1961, the year the federal government completed the Klamaths' termination process, the average age of Klamaths at death was 46. Within a decade, the average age at death was 39.5.<sup>131</sup>

Morrie Jimenez, who worked with tribal groups throughout Oregon and the West, found the Klamaths' and the greater Native American population's death statistics frightening and threatening. During the period between 1966 and 1980, Morrie Jimenez remembers reading the statistics: "Twenty-eight percent of our community died by age 25. Fifty-two percent of our community members were dying by age 40." He also remembered the terrifying feeling when he learned that the Klamaths' average age at death mirrored that of the greater American Indian population during that period. He questioned what this meant for him as he reached the age of 40.<sup>132</sup> Many Klamaths, including Lynn Schonchin, Gerald Skelton, and Elwood Miller, rightfully argued that termination stole a generation of their people. Klamath tribal member Dr. Tom Ball equated the termination of the Klamath people with genocide. The termination process inflicted an immense amount of stress on the Klamaths who experienced it, but as he and other tribal members argue, the historical trauma continues to impact the Klamaths born after the horrific experience.<sup>133</sup>

Outside pressures from the expanding pan-Indian community exacerbated confusion around the Klamaths' status. The word termination was laden with political meaning and many

---

<sup>130</sup> Originally quoted in Ulrich, *American Indian Nations*, xiii.

<sup>131</sup> *Ibid.*, 66.

<sup>132</sup> Morrie Jimenez, 22 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>133</sup> Ball, "Prevalence of Rates of Full and Partial PTSD," 62-63, 116.

Klamaths remember that members of other tribes called them “sell-outs,” and that other tribes did not invite them to all-Indian rodeos, powwows, and other events because of the Klamaths’ terminated status. These experiences dug at the wound that termination opened among the Klamaths. Klamath leaders Kathleen Hill and Gene Gentry described the trauma the Tribes experienced due to termination in a letter to Oregon Senator Mark O. Hatfield (Rep.) and Oregon Representative Robert “Bob” Smith (Rep.) in July of 1985. Their letter argued that “the stigma of being a terminated tribe, affected every member.”<sup>134</sup> They further explained, “Born prior to the 1954 termination or born after it, all of us have heard: ‘Hey, you guys aren’t Indians anymore!’ The pain of that remark rips at our hearts.”<sup>135</sup> Termination tore families apart and induced tensions among tribal friends as it left in its wake a distinct differences among tribal members. Those who “withdrew” or whose parents withdrew them would be known as “withdrawing” members, or, derogatorily as, those who chose to take cash in exchange for their land. Each of the 1,680 withdrawing members received about \$43,500. A second group, 474 Klamath tribal members who opted to “remain” within the tribe, to retain tribally-held land, and not take a cash settlement in 1961, adopted the nickname: “remaining” members. The remaining members lost their parcel of land in 1973 when U.S. Bank ended the trust, sold the land, and disbursed the profits of the sale to the “remaining” members. The remaining members each received a total of approximately \$283,000 dollars by 1980, more than four times the amount of money than the withdrawing members did.<sup>136</sup> The third group, those born after termination, grew up in a severely traumatized community, did not receive compensation for the forced sale of their Tribes’ land, and, had to make sense of their community’s pain and loss.<sup>137</sup>

Gentry and Hill’s words are filled with emotion. They illuminate the harshness of the termination policy and the historical context under which Congress passed it. At its foundation,

---

<sup>134</sup> Letter from the Klamath Tribe, July 1985, Klamath County Museum.

<sup>135</sup> Ibid.

<sup>136</sup> Patrick Haynal, “From Termination through Restoration and Beyond: Modern Klamath Cultural Identity,” (Ph.D. diss., University of Oregon, 1994), 122.

<sup>137</sup> Ibid., 126-128.

the termination policy was part of much longer historical effort by Anglo Americans to force Native peoples to conform to European or, what would overtime develop into American culture. The termination policy can be understood as a contemporary form of forced civilization, much like the allotment and boarding school policies at the turn of the 20<sup>th</sup> century. Termination reflected fear in American society, an aversion to pluralism that resonated throughout the nation during the post-WWII era.<sup>138</sup>

As the society, economy, ecology, and physical landscape around them transformed, the Klamaths held onto a culturally- and spiritually-defined vision of their ancestral place. The colonial society that reorganized and rebuilt the Klamaths' landscape did so without regard for the Tribes' understanding of the place. White settlers and their government overlaid the landscape with new meanings that reflected the non-tribal ways of seeing the world and of valuing resources. They used legal doctrines and laws to implement the changes. The establishment of the U.S. Bureau of Reclamation Klamath Project in 1905, the construction of dams on the Klamath River in 1918 and 1925, the diking of a river delta in the 1950s, the establishment of the reservation in 1864 to separate Indians from white settlers, the shipping of Modocs to Oklahoma in the late-1800s, and the termination of the Klamaths' trust relationship in the 1950s are telling examples of the colonial processes that introduced new ways of valuing and managing natural resources that marginalized the Klamaths' vision for the same place. This process was not a singular one affecting only the Klamaths. Settler societies in other parts of the world transformed indigenous spaces with new laws, structures, and restrictions, every step of the way, producing spaces with settler-specific meanings.

The colonial society attempted to modify the Klamath society and their place, and they succeeded to an extent. The settler society built canals, drained water sources, redistributed water flow, and dammed rivers. Simultaneously, the settler society applied policies that ceded extensive tribal land holdings, moved the Indians onto a reservation, attempted to assimilate them into American culture, and caused them to lose their reservation land and resources through the

---

<sup>138</sup> Fixico, *Termination and Relocation*.

termination policy—what policymakers expected to be the final step in the assimilation process. A settler colonial system of laws based on a cultural way of understanding the world introduced these changes to the Klamath Tribes and their territory. No matter the alterations that the settler colonial spatiality introduced, the Klamaths maintained their cultural and spiritual knowledge about their place. The Klamaths' spatiality is defined as their understanding of their relationship with the land, animals, and other components of the landscape, including other natural resource stakeholders, and their practices and stories that reinforce those relationships. The Klamaths' spatiality provided the foundation for the Klamaths' activism during the self-determination era. The Klamaths recognized in the decades after termination that they could rectify or at least modify the changes through the very system that induced them. The Klamaths merely needed to understand and work within that system. And, that is what they did.

## CHAPTER 3

### EMERGING WITH A NEW PLAN: TREATY RIGHTS AND SOVEREIGNTY

During the summer of 1961, when the Department of Interior completed the Klamaths' termination process, Tribal Chairman Seldon Kirk, stressed that giving up was not a possibility. He addressed the General Council with words that exuded optimism:

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.<sup>139</sup>

Within five years of Kirk's statement, a young man named Charles Kimbol, Sr., began digging into tribal council files that his wife's grandfather had saved. Kimbol searched for evidence that Congress did not abrogate the Klamaths' treaty rights during termination. Oregon officials assumed that Congress had done so. After the completion of termination, Oregon State Police officers arrested Klamaths for hunting and fishing without Oregon State licenses and confiscated their gear. Tribal Chairman Don Gentry remembers the intense and "ugly" situations that his fellow tribal members experienced: "Our people had pistols pointed at them" for hunting like they always had prior to termination.<sup>140</sup> This bullying did not last. Kirk foreshadowed the events that followed.

Between 1961 and 1981, Kimbol, with the support of other Klamath leaders, reaffirmed the Tribes' treaty rights and sovereignty in *Kimball v. Callahan* (1974, 1979) and demonstrated their sovereignty as they managed their tribal members' taking of fish and other wildlife.<sup>141</sup> Their treaty rights victories in the courts provided the impetus needed to reestablish their tribal government and required the formation of another government body, the Klamath Indian Game

---

<sup>139</sup> Originally quoted in Stern, *The Klamath Tribe*, 258. Kirk's statement also reflects a sense of Klamath responsibility that linked his peers to their ancestors and descendants, the present day to the past and the future. Kirk foreshadowed the path that Klamath leaders chose during the 50 years that followed. There is no access to the original source. See also, Bilka, "The Klamaths' Path after Termination," 12.

<sup>140</sup> Gentry, interview.

<sup>141</sup> *Kimball*, 492 F2d (9th Cir. 1974).

Commission. In the process of protecting their treaty rights and using their sovereignty to manage wildlife in cooperation with the State of Oregon, the Tribes garnered the ability to protect fish, animals, and plants significant to their culture and cultural identity. The treaty rights cases, while political, were also integral steps toward protecting tribal culture. In accomplishing this, the Klamath Tribes reinstated a commitment to their vision for their former reservation. This vision described the Tribes as a sovereign entity that governed its members and the natural resources within its former reservation despite their imposed terminated status.

Their history demonstrates the significance of natural resource management for tribes during the self-determination era. Treaty rights are a legal mechanism that describes a special relationship between Native peoples and natural resources that is tied to sovereignty and cultural identity. By dedicating themselves to reaffirming their treaty rights and to managing their treaty resources, the Klamaths began reestablishing themselves as a political entity that made decisions for themselves without the regular funding and programs afforded federally-recognized tribes. As this story focuses on the Klamath Tribes' successes regarding natural resource management, it in no way minimizes the devastating impacts of termination on the tribal community. Internal and external reports document severe increases in mortality rates, increased drug and alcohol abuse, and cases of post-traumatic stress disorder that developed among Klamath tribal members because of termination.<sup>142</sup>

This story flips the narrative of tribal activism as it describes the State of Oregon as resisting the Klamath Tribes' authority rather than portraying the Klamaths as the ones who resisted the more powerful state government. In doing so, this narrative offers a novel method for interpreting tribal-state and tribal-federal relationships. Studying the Tribes' treaty rights issues and associated natural resource activism uncovers a much more complex understanding of the termination policy than scholars have previously offered. Whereas scholars and non-scholars have depicted the termination policy as ending tribes' abilities to function and practice sovereignty, the Klamaths' history demonstrates the weaknesses of the legislation. Despite a

---

<sup>142</sup> Ulrich, *American Indian Nations*, 45-70; Ball, "Prevalence of Rates of Full and Partial PTSD"; Grant, "Challenges of Federal Termination."

period of confusion regarding their status after termination, the Klamaths maintained their treaty rights and sovereignty in new ways and restored functional tribal status long before the federal government officially re-recognized the Klamaths' tribal status in 1986.

From a national perspective, with the clamor for Civil Rights and Red Power activism for treaty rights, it appeared as though the Klamath Tribes dissolved their tribal status and lay dormant during the two decades after termination. This seems to have been true at the local level. A 1975 newspaper article titled "Klamaths Not Dead" suggests that locals assumed that the Klamaths no longer existed or functioned as a tribe.<sup>143</sup> What many non-Indians did not realize is that in the 1960s, a handful of Klamaths joined the ranks of the Red Power activists who, for example, staged fish-ins in the Pacific Northwest in 1964, and another handful joined the American Indian Movement, a group that organized militant demonstrations, like the Siege at Wounded Knee, South Dakota, in 1973. Still, other tribal members avoided a direct action approach during this period, but did not disappear into the supposed American melting pot.

Probing deeper into the Klamaths' experience brings a fuller story of Native activism to light. Across the United States, Native leaders practiced non-militant and non-direct activism during the 1960s and 1970s. The National Congress of American Indians (NCAI), a leading Indian organization, shifted their strategy from that of lobbying Congress to that of infiltrating and manipulating federal agencies in an effort to promote Indian self-determination.<sup>144</sup> Dibbon Cook, a respected Klamath tribal elder who did not withdraw from the tribe during termination, worked on the advisory committee for the NCAI meeting in Chicago in 1961. Vernon Jackson (Confederated Tribes of Warm Springs), Forest Gerard (Blackfeet), Helen Scheirbeck (Lumbee), and others joined the Task Force on American Indian Poverty. As members of this task force the Indian leaders took the responsibility of initiating the Community Action Program (CAP) of the

---

<sup>143</sup> Lee Juillerat, "Klamaths Not Dead," *Herald and News* (Klamath Falls, Or.), 2 March 1975, in *Herald and News* Morgue, Klamath County Museum. This article reports on the Klamaths' first General Council meeting since termination in March of 1975.

<sup>144</sup> Vine Deloria, Jr. (Standing Rock Sioux) and Dr. James Wilson (Oglala Lakota) both describe their activism as manipulation. They chose to "manipulate the federal system rather than confront it," as Deloria explained. Deloria is quoted in Cobb, *Native Activism in Cold War America*, 120. See also Cobb, *Native Activism in Cold War America*, 2, 102-103, and 120.



OEO in 16 locations within Indian reservations.<sup>145</sup> Dr. James Wilson (Oglala Lakota) and other Indian activists took jobs within the Office of Economic Opportunity in order to manage the allocation of funds and to show the BIA that Native people were capable of practicing self-determination.<sup>146</sup>

Klamath leaders used similar strategies to help their community without the assistance of the BIA. They established social programs without BIA funds, such the Klamath Alcohol and Drug Abuse, (KADA), to fend off the ill social effects of the termination policy.<sup>147</sup> They sent representatives to Washington D.C., filed suit against the State of Oregon and the federal government. Much like the demonstrators at Alcatraz or the National Indian Youth Council (NIYC) and lesser known Survival of the American Indian Association (SAIA) activists that staged fish-ins in Washington State to encourage the federal and state governments to recognize the needs of Indian people, the Klamaths implemented a different set of tactics, but they did so with similar intentions. They sought to reaffirm their treaty rights, practice their sovereignty, and protect their culture and Indian identity.<sup>148</sup>

One of the most effective ways in which the Klamaths empowered themselves in the wake of termination was by defending their treaty rights and sovereign right to manage natural (and cultural) resources within their former reservation boundaries. Prior to the completion of the Klamaths' termination in 1961, the BIA held a paternalistic position over the Klamaths' property, as it did with tribes throughout the nation.<sup>149</sup> The Klamaths began harvesting timber in the early-1870s, soon after the establishment of their reservation. The Indian Office halted Klamath tribal timber sales after the *Cook Decision* (1873) required congressional authorization for timber sales

---

<sup>145</sup> Ibid., 103-106.

<sup>146</sup> Ibid., 102-103.

<sup>147</sup> Haynal, "From Termination through Restoration and Beyond," 129.

<sup>148</sup> Gabriel Chrisman, "The Fish-In Protests at Franks Landing," *Civil Rights & Labor History Project*, University of Washington, accessed 27 July 2015, <http://depts.washington.edu/civilr/fish-ins.htm>.

<sup>149</sup> Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984).

on Indian lands.<sup>150</sup> In 1909, the Indian Office established its Forestry Division to manage Indian timber holdings. Even in this paternalistic relationship, the Klamaths practiced self-determination as their General Council voted on timber prices and their Business Council formalized and communicated this information to the BIA in the 1940s.<sup>151</sup> During this same period, the Klamaths lobbied Congress for legislation that would restrict non-Indians from hunting and fishing within the Tribes' reservation.<sup>152</sup> The Tribes solicited information from the state biologist regarding the populations of wildlife within the reservation and lobbied Congress for legislation that would allow the Tribes to write a game code for the conservation of wildlife within the reservation.<sup>153</sup> Prior to termination, the Klamaths clearly practiced their self-determination and asserted their sovereignty within the bounds of federal government's paternalistic restrictions. During the termination period and the post-termination period, the Klamaths recognized the significance of their treaty and treaty rights. Using their treaty as a legal tool in the courts, the Klamaths not only reaffirmed their

---

<sup>150</sup> *United States v. Cook*, 86 U.S. 591 (1873); Alan 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, 1-24 to 1-30.

<sup>151</sup> Memorandum, R. W. Taylor, Forest Supervisor, to Superintendent Courtright, Klamath Indian Agency, Klamath Agency, Oregon, 12 April 1946, folder "Fish and Wildlife," box 1 "Indian Affairs Papers," Boyd Jackson Papers, University of Oregon Special Collection and Archives; Telegram, William Zimmerman, Jr., Assistant Commissioner, to B. G. Courtright, Klamath Agency, Sent from Chicago, Ill. at 8:20 am on 3 April 1946 (Copy), folder "Fish and Wildlife," box 1 "Indian Affairs Papers," Boyd Jackson Papers, University of Oregon Special Collection and Archives.

<sup>152</sup> Tribes lobby Congress for protection of non-Indian fishing on reservation; see Notice of General Council's Election of Boyd Jackson and Levi Walker as Delegates of the Tribe and Instructions for Their Official Business in Washington, D.C. Klamath Indian Agency, United States Department of the Interior, Indian Service, Signed by Boyd J. Jackson, Levi Walker, and Josephine Pearson (Tribal Secretary), and B. C. Courtright, (Supt. Klamath Reservation), 15 September 1941, Official stamp and seal, series 2, box 4 "Delegates," Boyd Jackson Papers.

<sup>153</sup> Report from Federal Biologist, see Relative Abundance of Some Fish, Fur and Game on the Klamath Reservation, Signed Al W. Moore, Biologist, Wildlife Research on Public Lands, U.S. Fish and Wildlife Service, 31 July 1945, series 1 Indian Affairs Papers, folder "Fish and Wildlife," box 1, Boyd Jackson Papers. Moore reports that the suckers are "abundant" and "relished by many of the enrollees [Klamath tribal members]." Klamaths lobbied Congress regarding game code and conservation of wildlife, see Report on H.R. 2297, H.R. Rep. No. 79-380 (1945), folder "Fish and Wildlife," Series 1, box 1 "Indian Affairs," Boyd Jackson Papers; A Bill to Provide for the Conservation of Fish and Wildlife on the Klamath Reservation, in Oregon, and for Other Purposes, S. 654, 79<sup>th</sup> Cong. (1945), folder "Fish and Wildlife," Series 1, box 1 "Indian Affairs," Boyd Jackson Papers.

treaty rights during termination, but affectively reaffirmed their treaty rights and sovereignty in court after termination.

The Klamaths' treaty rights activism began prior to the completion of their termination and a decade prior to the Red Power movement of the 1960s. After Oregon officials tried to assume jurisdiction over the Klamaths' hunting, fishing, and trapping in the mid-1950s, the tribe sued the State of Oregon in a case known as *Klamath and Modoc Tribes v. Maison* (1956). The State of Oregon argued that Public Law 280, a law passed by Congress that would support the termination process by transferring federal jurisdiction over tribes to state governments, gave the State of Oregon jurisdiction over tribal hunting, trapping, and fishing within the Klamath Indian Reservation. Tribal members believed that they maintained their rights to walk through the ponderosa pines without a slip of paper from the state and to practice traditional hunting, trapping, and fishing practices that state regulations restricted non-Indians from using. The federal court upheld the Klamaths' special status as an Indian tribe and their rights to hunt, trap, fish, and gather within their reservation boundaries outside of state regulation.<sup>154</sup> The Klamaths had hunted and fished without state oversight within the reservation boundaries for nearly 90 years prior to Congress passing the Klamath Termination Act, and they would continue to do so during the termination process.

In 1961, five years after the *Maison* decision, the completion of the termination process ushered in the second wave of state threats to the Klamaths' treaty rights. Termination had settled a legal fog over the Klamaths effectively blurring the status of their rights as Indian people.<sup>155</sup> The Klamaths that withdrew knew they no longer could access federal programs for Indians, such as those for health care and education, but they were not clear about whether or not their members could legally function as a tribe. The Klamaths dissolved their General Council

---

<sup>154</sup> *Klamath & Modoc Tribes v. Maison*, 139 F. Supp. 634 (D.Or.1956).

<sup>155</sup> By making the decision to sue the State of Oregon, the tribes' initiated practices that would assist them in preserving their treaty rights, protecting cultural resources, and maintaining their sovereignty over the 50 years. In the decades immediately following their termination, the Klamaths may or may not have realized this.

in response to termination in 1961. They did not maintain a formal governing body that represented the Tribes as a political unit between 1961 and 1975.<sup>156</sup>

Outside pressures from the expanding pan-Indian community exacerbated confusion around the Klamaths' status. The word termination was laden with political meaning. Many Klamaths remember that members of other tribes called them "sell-outs" and did not invite them to all-Indian rodeos, powwows, and other events because of the Klamaths' terminated status. In this contentious political climate, where both non-Indians and other Indians challenged the Klamaths' Native identity, Oregon officials launched their second claim against the Tribes, arguing that termination ended the Klamaths' special status as Indians and, consequently, revoked their treaty rights. Between 1961 and 1973, State of Oregon officials confiscated some Klamath tribal members' hunting and trapping tools and fined them for not having state licenses.<sup>157</sup>

Many Klamaths studied the national political climate and tried to make sense of their Tribes' experiences after termination. Tribal leaders did not jump into a court battle with the State of Oregon immediately after termination. They needed time to get their bearings as a lot of political changes occurred during this period at the regional and national level. Alongside the African American Civil Rights Movement, Chicano Movement, and other rights activists, American Indians initiated an extensive pan-Indian movement for the protection of treaty rights and for self-determination. In the Klamaths' home region of the Pacific Northwest the National Indian Youth Council and Hollywood icons, including Marlon Brando and Dick Gregory, joined the ranks of tribes along the Columbia River in Washington State to stage fish-ins in 1964. About the same distance away to the south, the pan-Indian siege of Alcatraz in 1969 caught national attention and drew a handful of Klamath members.

---

<sup>156</sup> Haynal, "From Termination through Restoration and Beyond," 111-114. The remaining members of the Klamath Tribes maintained a committee, but their responsibilities were unrelated to the members who withdrew or who were born after the start of the Tribes' termination process in 1954.

<sup>157</sup> The records I have access to do not document how many times officials arrested tribal members or what dates the confiscations and arrests occurred.

Charles “Chuck” Kimbol, a Klamath elder and leader of the Tribes for 50 years, remembers the confusion that termination introduced to his community. Sitting across the table from me in a t-shirt that read “#1 Grandpa,” Kimbol lamented, “A lot of people took it at heart that we weren't Indians anymore. Well, that's not true.” With hindsight, he explained, “Termination was only the termination of federal supervision, that trust responsibility. Us as a tribe never ceased to exist.”<sup>158</sup> But this was not cut and dried to the Klamaths nor to non-Indian officials during the first fifteen years after termination. Driven by a sense of determination and hope, in 1965 Kimbol began digging through his wife’s father’s tribal records in search of proof that the Tribes maintained their treaty rights after termination. Kimbol was sure that termination had not abrogated their treaty rights, and he was determined to prove it. He just was not sure how. He questioned whether he should sue the federal government or another entity? Kimbol and some of his fellow tribal members looked the experiences of other Native communities to try to solve this challenge.

In order to retain their shared identity as the Klamath Tribes and the identity of their individual tribes as the Klamath proper, Modoc, and Yahooskin Paiute after termination, Klamath leaders realized that their membership would benefit from acknowledging the blossoming pan-Indian identity that fueled Indian demonstrators. While some Native people pointed out what made the Klamaths different from many other tribes—specifically, that the majority of Klamath tribal members chose to withdraw and lost their federal status as Indians—the Klamaths knew that other tribes had gone through termination. More than that, as the Klamaths examined the concerns fueling Native activism, such as the protection of treaty rights and the failure of the federal government to uphold treaty promises, they recognized that termination was simply one more issue to add to the list of detrimental settler colonial pressures. The Klamaths’ shared experience of interactions with the U.S. government meant that they had a lot in common with

---

<sup>158</sup> Charles Kimbol, Sr. (Klamath Tribal Council Member, former Chairman of Klamath Tribes), interviewed by author, Chiloquin, Or., 18 June 2013.

other tribes.<sup>159</sup> In 1968, the United States Supreme Court upheld that the Menominee Tribe, which had undergone termination, maintained their treaty rights.<sup>160</sup> The Klamath leaders kept abreast of events in Indian Country, and most likely they learned rather quickly about the Menominee's legal win.<sup>161</sup> That same year, the president, too, acknowledged the pan-Indian community. On 6 March 1968, President Lyndon B. Johnson gave the first presidential speech written specifically for Indians titled "The Forgotten Americans."<sup>162</sup> He denounced termination and advocated Indian self-determination, but did not suggest specific legislation to accomplish that.<sup>163</sup>

Kimbol had been working with Klamath tribal member Marie Norris and a few other tribal members on treaty rights and other issues. In a wheelchair for most of her adult life and, at this point, in her mid-fifties, Norris was a "woman of compassion, strength, and determination, always holding fast for what she believed was right."<sup>164</sup> Looking for options that would allow them to seek grant funding for educational, employment, and health services for the Klamath Tribes, Norris and her colleagues founded a non-profit organization in 1969. They based the Organization of the Forgotten American (OFA), a name inspired by President Johnson's "The Forgotten Americans" speech, in Klamath Falls, Oregon, a town about 30 miles south of the

---

<sup>159</sup> Through the termination policy, Congress ended the federal trust relationship with a total of 109 tribes, rancherias and individuals, a total of 16 of them were tribes, see Ulrich, *American Indian Nations*, 247.

<sup>160</sup> *Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968).

<sup>161</sup> "Restoration is Possible," *Mukluks Hemcunga*, (Klamath Falls, Or., Organization of the Forgotten American), Jan-Feb-Mar 1978, 5.

<sup>162</sup> Lyndon B. Johnson: "Special Message to the Congress on the Problems of the American Indian: "The Forgotten American," 6 March 1968. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, accessed 7 August 2015, <http://www.presidency.ucsb.edu/ws/?pid=28709>; Cobb, *Native Activism in Cold War America*, 152.

<sup>163</sup> Castile, *To Show Heart*, 68-70.

<sup>164</sup> "Marie G. Norris – 1920-1981 Founder – Organization of the Forgotten American," Issue dedicated to the memory of Marie G. Norris, *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American), August/September 1982, vol. 14, no. 1, 2.

former reservation. Leaders of the OFA searched for answers regarding the Klamaths' treaty rights debacle with the State of Oregon.

The OFA forged relationships with Native leaders throughout Indian Country and took advantage of their knowledge. In 1970, Native attorneys, who acquired their legal educations with the support of a special federal program, partnered with non-Indian lawyers to establish the Native American Rights Fund (NARF) in Boulder, Co. This organization became an integral source of knowledge and support for the Klamaths. The OFA reached out to NARF attorneys who suggested that the Klamaths sue the State of Oregon to reaffirm their treaty rights.<sup>165</sup> By 1973, when the Klamaths filed their treaty rights case, they did so during a brief window between the 1960s and 1980s when federal judges across the country interpreted treaties in favor of tribes.<sup>166</sup> The many rights-focused movements of the 1960s and 1970s may have encouraged the judges to take an open-minded approach toward these cases. However, the judges' reasoning suggests that they relied on the long-standing paternalistic view grounded in case law—that the federal government must uphold its responsibility of protecting its wards' treaty rights. Congress could abrogate a tribe's treaty, but they had to do so explicitly.<sup>167</sup> Despite the judges' paternalistic perspectives, in many cases the court decisions resulted in positive outcome for tribes. In 1968, only five years before the Klamaths filed their case, the Menominee reaffirmed their treaty rights despite their terminated status.<sup>168</sup> That same year, the Supreme Court upheld the Puyallup Tribe's right to use off-reservation fishing sites.<sup>169</sup> In 1970, tribes in Washington State began a court battle over their off-reservation fishing rights. In 1974, Federal District Court Judge George Boldt upheld the tribes' rights to fish in their usual and accustomed places off-

---

<sup>165</sup> Kimbol, interview.

<sup>166</sup> Prucha, *American Indian Treaties*, 385.

<sup>167</sup> *Ibid.*, 386. The courts relied on *Lone Wolf v. Hitchcock* (1903), when referring to Congress's ability to abrogate Indian treaties. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

<sup>168</sup> *Menominee*, 391 U.S. 404 (1968).

<sup>169</sup> *Puyallup Tribe v. Department of Game*, 391 U.S. 392 (1968).

reservation and interpreted the treaty language to mean that they could catch 50 percent of the harvestable fish.<sup>170</sup>

In this legal and political atmosphere in 1973, Chuck Kimbol, Stephen L. Lang, Allan Lang, Leonard O. Norris, Jr., and James Kirk, filed suit against the State of Oregon and found that it would be a long legal struggle. At first, the case must have seemed like a loss. The district court that reviewed the Klamaths' claims dismissed the case, arguing that the Klamaths lacked a substantive argument. Hope came when the Ninth Circuit Court reviewed the case and reversed the lower court's decision.

Circuit Court Judge Eugene A. Wright found that, for numerous reasons, the Klamaths had never lost their treaty rights or their rights to interact as a tribe and practice sovereignty. Judge Wright argued that the Menominee's treaty rights case, *Menominee v. United States* (1968), set a precedent for tribes that underwent termination. In that case, the Supreme Court relied on the Menominee's Court of Claims decision that the Menominee had not lost their treaty rights through termination and, therefore, could not claim damages for them. Wright applied this finding to the Klamaths as well. Congress had explicitly preserved the Klamaths' fishing rights in the act, stating "[n]othing [in the Act] shall abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under Federal treaty."<sup>171</sup> Oregon State officials had been adamant during the 1950s that Public Law 280 transferred jurisdiction over the Klamaths' hunting and fishing to the state. Judge Wright did not agree. He upheld *Maison* (1956) and pointed out that Public Law 280 explicitly states within "Indian Country" that "Nothing in this section . . . shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."<sup>172</sup> Therefore, the law that State officials relied on

---

<sup>170</sup> *United States v. State of Washington*, 384 F. Supp. 312 (1974). Francis Paul Prucha discusses the outcome of this case and the previously discussed cases. See Prucha, *American Indian Treaties*, 402-406.

<sup>171</sup> The Klamath Termination Act of 1954, Pub. L. No. 857, 68 Stat. 732, sec. 14(b) (1954).

<sup>172</sup> Public Law 280, 18 U.S.C. sec. 1162(b) (1953); *Maison*, 139 F. Supp. 634 (D.Or.1956).



to claim jurisdiction did just the opposite; it exempted the Klamath Tribes from state fishing and hunting regulations. The Klamath Termination Act protected the Klamaths' fishing rights explicitly, but did not discuss hunting and trapping rights. Judge Wright explained that historical and current evidence demonstrated the significance of those practices to Klamath tribal members. He and the other judges postulated that the treaty signers would not have chosen to give up their hunting and trapping rights as they represented fundamental Klamath tribal practices. The case brief also notes that the Klamaths had hunted, trapped, and fished without state regulation within the reservation for about 100 years.<sup>173</sup>

Judge Wright and the other judges' interpretation describes a tribe that continued to maintain its treaty rights and sovereignty continuously—from signing the treaty to the period after termination. The State of Oregon had illegally arrested the Klamaths and confiscated their hunting, fishing, and trapping tools. At this point, the State's actions could be understood as a misinterpretation rather than resistance. The experimental termination legislation perplexed many people, including some Klamaths and Dr. David Bunting, an assistant economics professor at Eastern Washington University who wrote four reports on the economic effects of termination on the Klamath Indian Reservation. Bunting, too, assumed that Congress abrogated the Klamaths' treaty rights after termination. In a letter to NARF attorney Charles Wilkinson in 1972, Bunting asked, "My understanding is that the termination eliminated all treaty rights for the Klamath. Otherwise, what does termination mean?"<sup>174</sup> Clearly, many people believed the word termination meant the end to all tribal rights.

*Kimball* / surprised State officials, and the attorney general did what he could to resist the Klamaths' authority.<sup>175</sup> In a local *Herald & News* article dated 12 Dec 1974, Oregon Wildlife

---

<sup>173</sup> *Kimball*, 492 F2d (9th Cir. 1974).

<sup>174</sup> David Bunting, Economics Professor, to Charles F. Wilkinson, Attorney, Native American Rights Fund, 3 January 1973, Correspondence on Edison Chiloquin v US Nat'l bank of Oregon Native American Rights Fund Position, Bunting and Trulove Papers, 1947-1973, University of Oregon Special Collections and Archives.

<sup>175</sup> "Wildlife Chief Expresses Uncertainty: Indian Fish, Game Rights," *Herald and News* (Klamath Falls, Or.) 8 Dec 1974, folder "Indians 12-6-74 - 4-3-75" in *Herald and News* Morgue, Klamath County Museum.

Commission Director John McKean called the court decision a “catastrophe.”<sup>176</sup> Whether justified or not, he worried that if the Klamaths hunted without regulations that they would decimate fish and deer populations and might start a commercial hunting enterprise that would cause the decline of regional deer herds. In *Kimball I*, regulation deferred to the State of Oregon when conservation management was necessary. Oregon Attorney General Lee Johnson, however, saw the clause as a means of resistance and ordered the Oregon Wildlife Commission to write conservation regulations that would restrict the Klamaths from practicing their sovereignty. But he did not stop there. Lee and other Oregon officials filed an appeal, but the Court of Appeals denied it. Johnson explained his perspective toward the Klamaths and their rights in a January 1974 *Herald & News* article: “I believe that most Americans feel that some recognition is due the Indians by virtue of their ancestral heritage. However, it is stupid to try to right past wrongs by relying on the historical anachronism that Indian tribes are foreign nations.”<sup>177</sup> Johnson could not grasp or, perhaps, accept, the idea that the Klamath Tribes were a sovereign, and he used any opportunity to resist their ability to function as one.

For the Klamath Tribes, the *Kimball I* decision reflected the Klamaths’ vision for their people as a sovereign nation whose members hunted, fished, and trapped wildlife according to tribally-determined, rather than state-mandated, methods and time schedules. By seeking guidance from NARF and suing the State of Oregon, the Klamaths reinstated themselves as a political entity that could function as a sovereign nation as it had prior to termination.

Reminiscing about this exciting period for the Klamaths, Kimbol explained in the summer of 2013 why the *Kimball v. Callahan* case was so important for the Klamath Tribes. Sitting in his office at the Klamath Tribes’ Administration Building, he raised his right hand and pointed his

---

<sup>176</sup> “Indians Seek McKean Meet,” *Herald and News* (Klamath Falls, Or.) 12 Dec 1974, folder “Indians 12-6-74 - 4-3-75” in Herald and News Morgue, Klamath County Museum.

<sup>177</sup> “Indians, Officials in Judicial ‘No Man’s Land,’” *Herald and News* (Klamath Falls, Or.) 2 February 1975, folder “Indians 12-6-74 - 4-3-75” in *Herald and News* Morgue, Klamath County Museum.

finger and stated: "Number one, it [*Kimball I*] started a process of reorganization."<sup>178</sup> Kimbol and his fellow tribal leaders understood *Kimball I* as an opportunity; the decision offered the Tribes a reason to reinstate their tribal government. As Kimbol explained, the Klamaths' "right to self-manage and self-regulate" required a governing body that could oversee the Tribes' fishing, hunting, and trapping, interact in a government-to-government way with the State of Oregon, and manage fish and wildlife within the former reservation. In the mid-1970s, the Klamaths did not receive federal funding for education, health, and other programs, as they would have if they had not gone through the termination process. This clearly did not stop the Klamaths from practicing self-determination and asserting their sovereignty as a tribal nation.

As state officials worried about the possible implications of *Kimball I*, a group of Klamaths initiated discussions regarding the establishment of a tribal wildlife commission and tribal hunting and fishing regulations. They formed a temporary 22-person Klamath Indian Fish and Game Commission and held their first meeting on 6 December 1974 at the OFA office. They scheduled three community meetings, which they held in Beatty, Klamath Falls, and Chiloquin the following week in order to garner tribal sentiment for a commission and regulations. The *Herald & News* reported that some tribal members at the Chiloquin meeting opposed the formation of a tribal wildlife commission. The vague statement in the article does not explain why, but later articles reported that Wade Crawford believed that establishing the commission and regulations was illegal, that Miller Anderson opposed cooperation between the Tribes and the state, and Melvin Chiloquin argued that the only Klamath who retained his hunting and fishing rights was Edison Chiloquin who chose not to sell his portion of the reservation for money.<sup>179</sup> Despite the pushback from tribal members at the Chiloquin meeting, the group moved ahead.

On 1 March 1975, Kimbol and his fellow leaders called the Tribes' first General Council meeting since 1961. Two hundred Klamaths participated. At this meeting, which Elnathan Davis

---

<sup>178</sup> Kimbol, interview.

<sup>179</sup> "Enthusiasm Rated High for Saturday Tribal Meet," *Herald and News* (Klamath Falls, Or.) 28 February 1975, folder "Indians 12-6-74 - 4-3-75;" and "Opposition To Game Commission Voiced," *Herald and News* (Klamath Falls, Or.) 25 March 1975, folder "Indians 12-6-74 - 4-3-75" in *Herald and News* Morgue, Klamath County Museum.

chaired, the General Council elected tribal officials to an interim Executive Council and “enthusiastically supported the efforts to restore full tribal status” to the Klamath Tribes.<sup>180</sup> Davis also explained why restoration was so important for the Klamaths. Their federally-recognized “[t]ribal status would...mean unity and [a] collective effort in creating jobs for Indians and ...would restore participation in federal services such as medical care, employment, and education.”<sup>181</sup> Davis stressed that restoration would support the Tribes’ effort to build unity among the tribal members as they worked in a collective effort to rebuild the infrastructure of their community. Evidence from later newsletters and other records suggests that in order to reacquire their federally recognized status, the Klamaths would need to demonstrate their unity as a tribal nation. Unity and collective action stand out as key ideas to Klamath leaders who recognized the opportunistic political atmosphere.

At the meeting, Robert “Bob” Bajorcas, a Klamath member and the Business Manager of the Shoalwater Tribe,<sup>182</sup> distributed a petition for the restoration of the Klamath Tribes’ federal recognition. Bajorcas planned to lobby Congress with the petition in hand in April of 1975. He explained to the council that the current Congress was sympathetic to Indian issues and that the Klamaths should take advantage of the supportive political climate; the Menominee successfully lobbied Congress and restored their federal status in 1973.<sup>183</sup> *Kimball I* catalyzed the Klamaths efforts to reestablish their tribe.

During the eight-hour-long General Council meeting in March of 1975, the Klamaths made integral organizational changes that would foster their future as a powerful natural resource stakeholder in the Klamath River Watershed. Holding the first General Council meeting since

---

<sup>180</sup> “Klamath Indian Council Held March 1, 1975,” *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten Americans) v. 3, no. 1, p.1.

<sup>181</sup> *Ibid.*

<sup>182</sup> See Shoalwater Bay Tribe’s website: <http://www.shoalwaterbay-nsn.gov/>. The tribe is composed of the Lower Chehelis and Chinookan peoples in southwestern Washington State.

<sup>183</sup> The Menominee successfully lobbied for the restoration of their federal recognition in 1973. See Menominee Restoration Act of 1973, 25 U.S.C. secs. 903-903(f), (1973).

termination alone evidenced the Tribes' interest and ability to operate as a sovereign unit.<sup>184</sup> Determined to shape the politics of natural resource management and to assert their court-affirmed treaty rights and sovereignty, the General Council elected an interim Executive Council, established the Klamath Indian Game Commission, and elected its members.<sup>185</sup> This 14-member tribal body developed tribal wildlife management regulations on which the General Council would vote, and they represented the Tribes in meetings with state and federal agencies concerning natural resource management and law.<sup>186</sup> In other words, it had an instrumental role in the Klamaths' practice of sovereignty. For example, by the time the OFA printed the January-March issue of *Mukluks Hemcunga*, the Klamath Indian Game Commission had initiated meetings with the Oregon Wildlife Commission and the Oregon State Police. These Klamath leaders requested that the Oregon Wildlife Commission close the former reservation to non-Indian hunters and fishermen and Oregon officials manage the region as "one game management unit." In discussions with the Oregon State Police, the Klamath Indian Game Commission sought options for establishing Klamath Indian game wardens.<sup>187</sup>

Despite the long-standing contentious relationship between the Tribes and state officials, Klamath leaders, such as Klamath Indian Game Commission Secretary and Treasurer Barbara Bravo, exuded a sense of optimism. In her January-March of 1975 *Mukluks Hemcunga* article, Bravo noted that "There is a definite need to have a workable, friendly relationship the Oregon Wildlife Commission and the Oregon State Police." After years of arrests and citations from

---

<sup>184</sup> Through *Kimball v. Callahan* (1974), the Klamaths reinforced their vision of political order. The *Kimball I* decision recognized the Klamaths as a sovereign nation that exercised treaty rights independent of state regulation, oversaw its members' taking of fish and wildlife, and shared the responsibility with the state of Oregon to manage wildlife. The federal court, however, did not have the authority to determine how State and tribal officials would share the responsibility of wildlife regulation. However, even after Judge Wright declared *Kimball I* in 1974, the Klamaths tried to work with State officials only to find that they would not cooperate. *Kimball*, 493 F. 2d 564 (9<sup>th</sup> Cir. 1974).

<sup>185</sup> Barbara Bravo, "Klamath Indian Game Commission," *Mukluks Hemcunga*, (Klamath Falls, Or., Organization of the Forgotten American) v. 3, no. 1, (February-March 1975), 1.

<sup>186</sup> "Klamath Indian Council Held March 1, 1975," *Mukluks Hemcunga*, (Klamath Falls, Or., Organization of the Forgotten American) v. 3, no. 1, p.1.

<sup>187</sup> Bravo, "Klamath Indian Game Commission," 1.

Oregon officials, the Klamaths took a hopeful and positive approach to their relationship with the state. She explained that “if attitudes at the meetings are any kind of indication, it is possible.”<sup>188</sup> Bravo’s concluding sentence suggests that the Klamath Indian Game Commission believed the Tribes could build working relationships with state agencies.

Next, the Klamath Indian Game Commission drafted a wildlife management plan, which they also referred to as a game code, a decision that demonstrated the Tribes’ dedication to managing wildlife within the former reservation. During the 1940s, the Tribes had tried to establish a wildlife code to conserve wildlife resources by limiting non-Indian fishing, hunting, and trapping within the reservation.<sup>189</sup> The post-termination wildlife management plan would signify “the efforts of our People to regain a measure of the independence and autonomy we once knew.”<sup>190</sup> Rather than restrict non-Indians from taking game within the former reservation, this wildlife code focused on tribal members’ hunting and fishing. In cooperation with the tribal biologist, the Klamath Indian Game Commission used a tag system to manage how many deer, pronghorn, elk, and bear, tribal members could take each season. This tag system relied on wildlife population data. In 1976, the Game Commission allowed tribal members to take 7.5 percent of the estimated 9,100 deer and, through biological research, determined that the combined Indian and non-Indian take of the deer herd living in the former reservation should be set at 22 percent of the total population that year.<sup>191</sup> In 1976, the Klamath Indian Game Commission closed the pronghorn, elk, and bear seasons to allow the populations to increase.<sup>192</sup> The Tribes also established an informal eight-person Judicial Committee, which would “operate

---

<sup>188</sup> Ibid.

<sup>189</sup> Report on H.R. 2297, H.R. Rep. No. 79-380 (1945); A Bill to Provide for the Conservation of Fish and Wildlife on the Klamath Reservation, in Oregon, and for Other Purposes, S. 654, 79<sup>th</sup> Cong. (1945), both in folder “Fish and Wildlife,” Series 1, box 1 “Indian Affairs,” Boyd Jackson Papers.

<sup>190</sup> Summary of Klamath Tribal Wildlife Management Plan 1976, folder 6, box 2, Szasz Collection.

<sup>191</sup> The available records do not indicate whether or not the Oregon Wildlife Commission followed the Klamath Indian Game Commission’s suggestions for restricting Indian and non-Indian take.

<sup>192</sup> Summary of Klamath Tribal Wildlife Management Plan 1976, Szasz Collection.

as an informal, all-Indian court” as described in a summary of the Klamath Tribal Wildlife Management Plan.<sup>193</sup> The Judicial Committee had the responsibility of setting fines (which could be as high as \$500), investigating tribal members’ possible violations of the code, and assigning a “fair penalty” when a tribal member was found guilty of a violation. The wildlife plan shows how the Tribes asserted their sovereignty and self-determination through natural resource management planning and regulation.

Tribal leaders looked outward for assistance in drafting a wildlife management plan. They hired their first biologist, Larry Safley, who had worked for the Game Commission of Tennessee for several years.<sup>194</sup> They sought help from attorneys, such as Charles Wilkinson, who at the time was a professor of law at the University of Oregon. He consulted the Klamath Indian Game Commission in-person and through letters as they wrote their wildlife management plan during the spring and summer of 1976.<sup>195</sup> In the letter that the tribal Game Commission attached to a draft of the wildlife management plan and circulated to Klamath tribal members, the Commission reminded their fellow members that “we have never ceased to be a Tribe. We have retained our unity and our will to fight for those few rights we still possess.”<sup>196</sup> The leaders reinforced a sense of togetherness and persistence to draw support for their plan from other tribal members.

What had seemed like a smooth path toward a collaborative relationship between the Klamaths and Oregon officials eroded during the year that followed Bravo’s optimistic 1975 article in the tribal newsletter. In a Draft Press Release dated 3 July 1976, the Klamaths stated: “In addition to being a tool for self-regulation, the Klamath Tribal Wildlife Management Plan has been

---

<sup>193</sup> Ibid.

<sup>194</sup> “Press Release, First Draft—July 15, 1976, Draft for discussion purposes only,” folder 7, box 2, Szasz Collection.

<sup>195</sup> Charles F. Wilkinson and Jack Love, University of Oregon School of Law, to “Game Commission Members,” 21 April 1976, folder 8, box 2, Szasz Collection; Charles F. Wilkinson, Professor of Law, University of Oregon, to Butch Crume, Chairman, Klamath Indian Game Commission (copied to all members of commission, Larry Safley, Mike Hanley, Daniel Isreal), June 9, 1976, folder 6, box 2, Szasz Collection.

<sup>196</sup> Summary of Klamath Tribal Wildlife Management Plan 1976, Szasz Collection.

written to show the State of Oregon the determination of the our People. The burden is now on the State of Oregon to make positive steps to prevent the extermination of what remains of the natural bounty of our ancestral domain.”<sup>197</sup> The Klamaths had developed their wildlife plan and code, which described specific prescriptions for tribal hunting, for example, as well as for non-Indian hunting. The Game Commission made it clear that they believed that the State of Oregon regulated wildlife in an irresponsible manner. The Klamath Wildlife Management Plan summary argued that “Since 1960 our deer population has dwindled from in excess of 30,000 to approximately 9,000 animals. Did we take those deer? No!” The tribal document further contended: “Poor management practices such as over-hunting, excessive roadbuilding, and inadequate law enforcement were responsible.”<sup>198</sup> The year 1960 marked the transfer of tribal reservation land to the jurisdiction of the State of Oregon for wildlife management and the U.S. Forest Service for forest (habitat) management. The Klamaths openly pointed fingers at the Oregon Department of Fish and Wildlife (ODFW) at the same time that they attempted to build a working relationship with the agency. These allegations may have upset Oregon officials. The ODFW had operated independently for a decade and half since termination and under the assumption that the Klamath Tribes no longer maintained treaty rights or sovereignty. The *Kimball I* decision had reaffirmed the Klamaths’ sovereignty, and the Tribes took full advantage of this legal recognition. The Klamaths’ may have come across as confrontational. However, their statement might be better understood as an attempt to justify their ability to participate in wildlife management decisions within the former reservation. The arguments they posed regarding the State of Oregon were most likely an attempt to destabilize the State’s authority as the entity most qualified to manage wildlife rather than simply an attack on the state. Even as the Klamaths made these contentious claims, they continued to seek a working relationship with the Oregon Wildlife Commission.

The Klamaths’ 15 July 1976 statement to the public suggests that they saw a press release as another forum in which they could encourage state officials into a working relationship.

---

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.



The Draft Press Release explained: “we call upon the State of Oregon to join with us in a cooperative effort to manage this important resource.”<sup>199</sup> Moreover, the State’s jurisdiction within the former reservation was a new experience as well. As of the *Kimball I* decision, both the Klamaths and the State of Oregon had jurisdiction to manage wildlife and to regulate fishing, hunting, and trapping. While the two entities governed different peoples, Oregon officials regulated non-Indians and the Tribes oversaw their members, they both managed the same wildlife. State and Klamath officials would be gathering data on the game species’ populations, habitats, and migration patterns. Both governing bodies would base their regulations on such scientific knowledge. The Klamaths suggested that the two entities should share this information: “It would be terribly wrong for the tribe and state to continue on separate paths in the management of this resource. Information-sharing is just another example of ways in which both the state and the tribe can benefit from a...cooperative effort.”<sup>200</sup> The Klamaths’ press release reveals the Tribes’ frustration with the State’s reluctance to collaborate in the management of wildlife within the former reservation.

The Tribes’ Draft Press Release further demonstrates the Klamaths’ strategy of destabilizing the State of Oregon’s authority while arguing for their own authority in wildlife management. For example, the press release describes the Tribes’ wildlife code as an “extremely exciting and sound” management plan based on “extremely detailed and sophisticated” biological data.<sup>201</sup> These self-praising words may come across as boastful; yet, the historical context is crucial for understanding why the Tribes used them. The federal government assigned itself a paternalistic role as the overseer of all Indian affairs under the assumption that tribes and Native peoples were not capable of managing their affairs and assets on their own. In the 1970s, the U.S. government began to transition toward the policy of tribal self-determination in which tribes began to assume responsibilities that the BIA had previously

---

<sup>199</sup> “Press Release, First Draft—July 15, 1976, Draft for discussion purposes only,” Szasz Collection.

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*

overseen, such as managing social programs and federal funds allocated to tribes under the trust relationship. By the 1970s, the State of Oregon operated for more than 100 years in a society that had not only attempted to wipe out tribal culture and traditional knowledges, but treated tribes as though they did not have the expertise in the scientific management of wildlife or other natural resources. In the 1940s, the U.S. government's paternalistic oversight restricted Klamath tribal leaders from independently writing and enforcing a wildlife code. They had to lobby Congress for legislation that would sanction their wildlife code. Furthermore, during the 1940s, the Klamaths did not have a biologist. They turned to the state biologists for wildlife data. By the mid-1970s, the Klamaths had hired a biologist and asserted their sovereignty through their wildlife plan. The Klamaths used the self-praising rhetoric in an effort to counteract the more than a century-long political and social climate that treated tribes and Native peoples as though they did not have the capacity to manage their own affairs, let alone, develop scientific or authoritative knowledge for use in managing tribal or public resources.

The state continued to resist the Klamaths' calls for a partnership. The most telling evidence for the State's resistance during this period were the decisions of Oregon officials independently and as members of the regulatory agencies to appeal the 1974 decision known as *Kimball I*. High-level state representatives, including Director of the Oregon Game Commission John McKean and Director of Oregon State Patrol and Oregon Game Enforcement Division Holly Holcomb filed the appeal. This struggle for state jurisdiction mirrored the efforts of Washington State and the State of Wisconsin as their officials attempted to restrict their local tribes' hunting and fishing rights and sovereignty. In their 1976 Draft Press Release, the Klamaths noted that "One of the saddest chapters in the history of the Northwest has been the failure of state wildlife agencies to cooperate with Indian tribes. Rather than work with us, they have chosen to fight us at every turn."<sup>202</sup> The Oregon State appeal of *Kimball I*, reinforced the Klamaths' analysis of relations between tribal and state governments in the Pacific Northwest regarding natural resource management during the 1960s and 1970s.

---

<sup>202</sup> Ibid.

The four claims that Oregon officials made in their appeal exemplify the severe extent to which they sought to limit the Klamaths' treaty rights and sovereignty. They argued that only Klamath tribal members who were included in the 13 August 1954 final roll and who did not withdraw maintained treaty rights. In other words, only the 474 members, who included disabled, elderly, and those deemed incompetent to manage their own affairs, could hunt, trap, and fish free of state regulation. The state further argued that any Klamath born after the 13 August 1954 roll did not retain treaty rights. According to the State's analysis, the 474 Klamaths who still had treaty rights, could only practice those rights on land within the former reservation that the federal government and private entities did not purchase during termination. During termination, the management specialists, who divided up the reservation land, allocated approximately 138,000 acres to the remaining members. The U.S. Forest Service and private investors purchased the majority of the former reservation (approximately 700,000 acres). The State's claim would only allow 474 Klamaths access to the 138,000 acres of land for practicing their treaty rights without state regulation. Last, Oregon officials argued that they had the authority to manage directly the Klamaths' taking of fish and game for conservation purposes.<sup>203</sup> In recent court decisions, such as *Puyallup (I, II, or III)* and *Boldt*, the courts decided in favor of allowing state agencies to supersede tribal authority when conservation measures were necessary.<sup>204</sup> The Klamaths did not fight this claim, most likely because of the *Puyallup* and *Boldt* decisions.

By the time the State of Oregon filed its second appeal in 1976, the Klamaths had established their official body to oversee game management and had drafted their wildlife management plan. The Klamath Indian Game Commission joined the suit as an appellee and submitted the Tribes' wildlife plan as an addendum to their brief. This bold move drew the attention of the Circuit Court Judges Goodwin and Anderson and District Court Judge Jameson, who reviewed the case. In the case summary, Judge Jameson explained that the judges found

---

<sup>203</sup> *Kimball*, 590 F.2d 768, (1979).

<sup>204</sup> *Ibid.*

the Klamaths' proposed guidelines for a working relationship with the state "commendable."<sup>205</sup> While impressed with the Klamaths' dedication to building a working relationship with the State of Oregon, the judges had no authority to sanction the Klamaths' plan.

The judges, however, reaffirmed the Klamaths' treaty rights and sovereignty in their opinion known as *Kimball II*. Even without the plan as a supplemental record, the court upheld that all tribal members on the 1954 final roll and their descendants could practice their treaty rights within the boundaries of the former reservation on public and private land where permitted. The State of Oregon had the authority to regulate tribal take only in the context of necessary conservation measures. Judge Jameson further explained that he and the other two judges hoped that the two parties would come to a formal agreement. If they did not, the district court would decide the extent of state authority in relationship with the Klamaths' sovereignty.<sup>206</sup>

By 1980 the Klamath Indian Game Commission had become an integral political entity not only because of its efforts to establish a partnership with the State of Oregon, but because its members represented a united front among the Tribes. Intra-tribal disagreements limited the effectiveness of the Executive Council who had only met quarterly for the last year or so. Tribal Chairman Lynn Anderson, who accepted his appointment a year earlier at age 34, resigned from his position 31 October 1980. Anderson, who taught in the local high school, submitted a letter to *Mukluks Hemcunga* in which he encouraged tribal members to work together and commended his staff and the Klamath Indian Game Commission for being "cooperative and effective."<sup>207</sup> An article that *Mukluks Hemcunga* editors reprinted from the Eugene *Registered Guard* reported the optimism among the tribal members interviewed. Despite the internal strife the Klamaths experienced, the article reassured readers that: "Tribal unity is coming, and the council has re-enrolled about 600 of the 2,300 eligible members of the tribe so far." The article further explained, "But the rebirth process is [a] slow and complex one filled with the disagreements that

---

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> "To: Members of the Klamath Tribe, Re: Resignation," *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American), Nov-Dec 1980, vol. 9, no. 1, 1.

occur in most political organizations.”<sup>208</sup> So as tribal members, including the governing body of the Tribes, struggled to agree and accomplish its regular tasks, the Klamath Game Commission signified the Klamaths’ unified goals for tribal self-determination and sovereignty.

With its Executive Committee in cahoots, the Klamath Indian Game Commission had entered discussions with the Oregon Game Commission, the Oregon State Police, and the U.S. government. The Tribes’ ultimate goal was to develop a cooperative plan for managing wildlife within the former reservation boundaries—the process that the court had encouraged in the *Kimball II* decision. On 13 May 1981 the District Court of Oregon finalized a Consent Decree, an agreement among the Klamath Tribes, State of Oregon, and federal government that recognized the Klamath Tribes’ sovereign right to manage the former reservation resources in a government-to-government relationship with the state and federal agencies.<sup>209</sup> The Klamaths had been striving for this monumental accomplishment for seven years. This brief document provided the State’s formal recognition of the Tribes’ sovereignty and treaty rights as well as a procedure for working in a government-to-government relationship with Oregon agencies. The purposes of the agreement were two-fold. The Consent Decree would “promote the sound and efficient management and conservation of fish and wildlife resources within the areas comprising the former Klamath Indian Reservation to ensure future use of these resources by both Klamath Indians and non-Indians,” by establishing a cooperative relationship between the Tribes and the State of Oregon. The document further stated: “More specifically, it is the purpose of this Agreement to establish a cooperative management and regulatory system....”<sup>210</sup> The Decree defined the regulatory and management responsibilities of each party, the “scope and nature” of the Tribes’ treaty rights, when and to what extent the State of Oregon could regulate tribal treaty

---

<sup>208</sup> “A Hard Fight for Survival,” *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American), Nov-Dec 1980, vol. 9, no. 1, 4. The newsletter editors note that the article was originally published in the *Register Guard* (Eugene, Or.) on 30 November 1980, sec. E.

<sup>209</sup> 1981 Consent Decree; Date of Consent and Decree, see Office of the Counsel to the President and Elena Kagan, “Klamath Tribes v. US,” Elena Kagan Collection, Clinton Digital Library, accessed 24 January 2014, <http://clinton.presidentiallibraries.us/items/show/27086>.

<sup>210</sup> Quoted from 1981 Consent Decree; Quotes also used in Office of the Counsel to the President and Elena Kagan, “Klamath Tribes v. US,” Elena Kagan Collection.

rights for conservation purposes, how the parties would solve conflicts, and “the continuing jurisdiction of the Court.”<sup>211</sup> Recognition of the Klamath Tribes’ sovereignty reinforced their goal of retaining a position of stewardship over the land. They could use their sovereignty to channel their cultural and spiritual values into natural resource management.

Treaty rights allow Native communities to put food on the table, and, just as important, they reinforce American Indian self-determination and independence as tribes regulate their members’ hunting, trapping, and gathering. When Klamath leaders fought in *Kimball I* for the rights of their tribal members to hunt, fish, and trap without state regulation, they sought to protect not only subsistence rights but also their spirituality and cultural practices. In a later appeal against proposed U.S. Forest Service resource development projects, the Klamaths argued that the “exercise of treaty rights 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.”<sup>212</sup> Don Gentry, a Klamath tribal member and a natural resources specialist for the Tribes explained in an affidavit associated with a tribal appeal to U.S. Forest Service actions in 1991 that through hunting, fishing, and gathering he “learned...about the Klamath Tribes’ cultural practices and the issues of great significance to our culture.”<sup>213</sup> Gentry’s statement suggests that the act of practicing treaty rights is a cultural process and one through which tribal members pass traditional knowledge to their younger generations.

During the Red Power Movement activists alerted the nation of the treaty rights issues. To mainstream Americans, treaty rights and the practice of them may have seemed universal—American Indians hunted, fished, and gathered and their treaties affirmed their rights to do so.

---

<sup>211</sup> Ibid.

<sup>212</sup> 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, “Appeals History” vertical files, Chiloquin District Office, Chiloquin, Or.

<sup>213</sup> “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, “Appeals History” vertical files, Chiloquin District Office, Chiloquin, Or.

But what is not often talked about is that Native peoples have culturally-prescribed ways of practicing treaty rights; they do not all hunt in the same ways or use the same fishing techniques. For example, the Klamaths traditionally have trapped wildlife with fire, nooses and dugout pits or by driving animals into mud.<sup>214</sup> They have oral traditions that relate themselves to the animals they hunt, trap, and fish. The Klamath Tribes designed their cultural practices in place among the animals and plants that lived in the Tribes' ancestral territories. The Klamaths had a lot at stake when the state threatened to regulate their hunting, trapping, fishing, and gathering. What the state and so many scholars since have referred to as natural resources were also cultural resources that helped the Klamaths reinforce their cultural identities as a confederated tribe and as individual tribes—the Klamath, Modoc, and Yahooskin Paiute. The Klamaths struggled to maintain their identities in the wake of termination, not only because they lost their federal status and members of other tribes called them sell-outs, but because the State of Oregon used a policy to restrict the Klamaths from practicing culturally-defined ways of hunting and fishing. Reaffirming their treaty rights in court and establishing the Klamath Indian Game Commission must be understood as a fundamental act in protecting the Tribes' cultures.

Rather than thrusting themselves into direct action, the Klamaths implemented passive tactics in comparison to fish-ins or other demonstrations. Their activist strategies induced significant positive change for their people and reshaped the landscape of natural resource politics in southern Oregon. When pursuing the protection of their treaty rights and sovereignty, they recognized the need for their presence in local natural resource management. They used the *Kimball I* decision as a springboard to reorganize their General Council, reinstate an Executive Council, and to establish their first tribal Game Commission. Even as the Executive Committee suffered from internal conflicts, the Klamath Indian Game Commission represented a united tribe. The Commission took proactive steps to reinforce the Tribes' sovereign rights to manage their cultural resources. They hosted meetings with Oregon officials, reported their goals and actions in the tribal newsletter, wrote a wildlife management plan, sought support from

---

<sup>214</sup> *Maison*, 139 F. Supp. 634 (D.Or.1956).

experts in federal Indian and natural resource law, formally requested that the State of Oregon work cooperatively with the Tribes, and jointly filed in *Kimball v. Callahan*. They did not stop there. With persistence, the Klamath Indian Game Commission negotiated the Consent Decree to establish a government-to-government relationship with the State of Oregon that the federal government also recognized and supported.

The Klamaths history suggests that we need to probe the decades following the passage of the Indian Self-Determination and Education Assistance Act of 1975 to understand the how tribal activism influenced the federal and state institutionalization of the self-determination policy.<sup>215</sup> This act did not alter immediately tribes' relationships with federal and state agencies. Prior to Congress passing this legislation, the Klamaths, for example, had already taken their treaty rights issues into their own hands when they filed *Kimball v. Callahan* (1974). After seven years of court battles and negotiations, they realized their goal of a formal working relationship with the State of Oregon. This was only the beginning. The Klamaths spent the next thirty years establishing similar relationships with federal agencies and participating in the management of their natural and cultural resources.

The Klamaths' experience suggests that there is a different way to understand the Indian-U.S. relationship during the termination and post-termination periods. Scholars generally organize their narratives with Native peoples resisting federal or state actions. Setting up a narrative this way insinuates that the federal government or state government had more power than the Native community. In such a narrative, the tribe is portrayed as having agency, but struggling to interact with the more powerful state or federal entity. In some cases this is true. However, in some cases it is not, and it is important to write Native American history so that it captures periods when tribes wield significant power and the state or federal government do what they can to resist tribal authority. This is what occurred during the two decades after the Klamaths' termination.

---

<sup>215</sup> Indian Self-determination and Education Assistance Act of 1975, 88 Stat. 2203, codified as amended, 25 U.S.C. sec 450-458 (1975).



The Klamaths transformed the meaning of their former reservation through their legal activism. Between the completion of the Tribes' termination process and the *Kimball* decisions, the State of Oregon attempted to maintain the former reservation as a space in which the Tribes had no sovereignty or treaty rights. The State attempted to treat the Klamaths as they would any non-Indian citizen that must obey state laws, purchase state licenses, and hunt and fish according to state designated seasons. The state issued tribal members tickets and confiscated their hunting and trapping tools and weapons. As a result of *Kimball v. Callahan*, the Klamaths redefined the former reservation as a space in which they still maintained jurisdiction as a sovereign nation. The Klamaths had established a legal and political presence as well as physical presence within former reservation. The Klamaths could influence management of the space as they took a stewardship role in collaboration with Oregon officials and biologists.

Klamath leaders and the General Council reshaped their Tribes' future. They worked with NARF to take advantage of a period in which the federal court system interpreted many treaties and redefined American Indian sovereignty in terms of treaty rights and collaborative relationships between tribes and state governments.<sup>216</sup> Through the *Kimball v. Callahan* case, the Klamaths launched themselves into the political arena where they began their 50-year ascendancy as leading natural resource stakeholders within the Klamath River Watershed. Through their efforts in the 1980s, the Klamaths would protect two culturally-significant fish species, and, in the process, begin to refocus state and federal management of water from an emphasis on agricultural uses to a more balanced approach that gave more attention to fisheries.

---

<sup>216</sup> Francis Paul Prucha discusses the significance of treaties in the courts during the latter half of the 20<sup>th</sup> century, see Prucha, *American Indian Treaties*, 385-408.

## CHAPTER 4

### THE CONFLUENCE OF TRADITIONAL KNOWLEDGES AND WESTERN SCIENCE

Gmok'am'c, the Creator of the Klamath, Modoc, and Yahooskin, was a shapeshifter. With a "leap of logic," explained Gordon Bettles, Klamath tribal member and Many Nations Longhouse Steward at the University of Oregon, we can understand Gmok'am'c as an enormous being, towering above the volcanic peaks of the Cascade Mountain Range. The Creator's height enabled him to peer easily across the 27-mile-long body of water known today as Klamath Lake in south central Oregon.<sup>217</sup> This lake is now home to the c'waam, or Lost River sucker (*Deltistes luxatus*), a fish endemic to the Upper Klamath River Watershed.

Years ago, a giant snake devoured many Klamath people. To protect the rest of the Klamaths, Gmok'am'c made himself into the size of a Klamath man and used his strength to kill the snake. With an obsidian knife, he sliced the snake into pieces, breaking its bones and tearing its flesh. The Creator threw the remains of the snake into the lake where the pieces, too, changed shape; they transformed into a fish the Klamaths call c'waam. Gmok'am'c provided a lesson through his actions. The very entity that had been killing the Klamath people would offer them life.<sup>218</sup> The Klamaths practice the First C'waam Ceremony to thank the Creator for the food, honor the fish and the life it gives them, and to encourage the fish to return annually. This is a responsibility that the Creator gave them.<sup>219</sup>

For hundreds, if not thousands, of years the Klamaths sustained themselves on c'waam. Klamath elder Morrie Jimenez reminisced about the collecting of c'waam that he participated in as a child during the 1930s and 1940s. The Klamaths honored, caught, and preserved the fish in a communal effort. Jimenez remembered his grandmother pointing at the numerous c'waam fins sticking out of the water as the fish made annual peregrinations up river to spawn.<sup>220</sup>

---

<sup>217</sup> Gordon Bettles, interview; Perry Chocktoot, (Cultural and Heritage Director, Klamath Tribes), interviewed by author, 15 July 2014.

<sup>218</sup> Ibid.

<sup>219</sup> Ibid.; Schonchin, interview, 19 October 2002, in *Oral Narratives of the Klamath Termination*.

<sup>220</sup> Morrie Jimenez, interview, 27 August 2002, in *Oral Narratives of the Klamath Termination*.

When Jimenez shared his memories of the c'waam in the early-2000s, tribal members and non-Indians could no longer fish for c'waam; they had not fished for them for more than 15 years. In 1986, the Klamath Tribes restricted their members from fishing for the c'waam and other suckers. In 1987, the Oregon Department of Fish and Wildlife (ODFW) had closed the c'waam and other sucker fishery to non-Indians, and in 1988, the United States Fish and Wildlife Service (USFWS) had added the c'waam and q'apdo, or shortnose sucker (*Chasmistes brevirostris*), to the endangered species list.

This cascade of closures and restrictions was not coincidence; it was tied to the Klamaths' activism. Since the *Kimball I* decision (1974), which reaffirmed the Tribes' treaty and sovereign rights to manage their tribal members' taking of wildlife, the Klamaths took proactive steps toward practicing these rights. They hired a biologist and developed a tribal game code and wildlife management plan. The Klamaths established a government-to-government relationship with the State of Oregon and formalized the 1981 Consent Decree that described how the two entities would cooperatively manage wildlife.

What happened next resulted from the Klamaths' decision to embrace scientific methods.<sup>221</sup> Through this decision, they established a complex relationship between their traditional knowledge and science. Cultural knowledge drove scientific investigations, and, at the same time, science offered the means for understanding the dire state of this culturally-significant species. As scientific experts of particular species, the Klamath Tribes' biologists entered endangered species policy discussions and decision making processes regarding not only the protection of two fish but of public and private water management outside of their former reservation. The ecology of the fish, its lifecycle, movement through the watershed, and habitat needs further enabled the Klamaths to extend their political influence outside of the sovereign boundaries of their former reservation. For 90 years, a settler colonial institution, the U.S. Bureau

---

<sup>221</sup> Buchanan describes the Klamath Tribes as “major producers of ecological knowledge.” He attempts to complicate what he depicts as a long-standing and inaccurate assumption that distinct lines delineate the authorities of certain kinds of knowledge, for example Native Americans with traditional knowledge, ecologists with scientific knowledge. See Buchanan, “Negotiating Nature,” 105, 277.

of Reclamation, managed water in the Upper Klamath Basin for agriculture without regard to the c'waam, q'apdo, and other wildlife. Through their activism, the Klamaths helped change this. They used traditional knowledge, science, and the Endangered Species Act of 1969 to reify their long-standing vision for the landscape as a c'waam and q'apdo fishery.

In order to grasp fully the complex relationship between science and Klamath traditional knowledge, one must back track to the late-1970s. Before the Klamaths signed the Consent Decree with the State of Oregon in 1981, they hired their first biologist. In the process of strengthening their nascent tribal government, Chuck Kimbol, Marie Norris, and other tribal members worked hard during this period to encourage a sense of unity and cultural identity. At the same time, by hiring a biologist, they introduced a knowledge base to their people, one that was not so easily trusted. The *Kimball Decision* (1974) along with the *Boldt Decision* (1974), while acknowledging tribal sovereignty and tribes' rights to engage in wildlife management with state agencies, also reinforced Eurocentric knowledge as both court decisions stressed conservation management and reflected the court's assumption that officials would use science to manage species. The Klamaths could have tried to avoid hiring a scientist. No law or court decision stipulated that they needed one. The Klamath leaders, Kimbol and other members who would form the Klamath Indian Game Commission, recognized that if they were going to have conversations with the State of Oregon about fish and other wildlife, they would have to do so through a language the state respected and that language was science.

The Klamaths first hired Larry Safley in 1976. Then, in 1979, the Klamath Tribes recruited a new biologist, a non-Indian named Craig Bienz, who had experience in developing wildlife management plans for the State of Michigan.<sup>222</sup> The young and eager Bienz, who earned his bachelors of science degree in biology at Alma College in Michigan and his masters of science in wildlife ecology from Northern Michigan University, accepted the position with the Klamaths and moved with his wife to Klamath Falls, Oregon, a rural town situated east of the Cascades in the southern Oregon high desert. New terrain surrounded Bienz. Tall and steep

---

<sup>222</sup> Bienz, interview.

fault block ridges and two volcanoes towered in the distance. Streams meandered through ponderosa and lodgepole pine forests, and hundreds of thousands of migratory birds visited during their long peregrinations on the Pacific Flyway. By hiring Bienz, the Klamaths set in motion a process that would facilitate the complex relationship between the Klamaths' traditional knowledges and science and that would garner the Tribes' a position of authority among scientists who studied desert fishes in the American West.

As Klamath tribal biologist, Bienz had numerous duties. For example, he assisted the Klamath Indian Game Commission with writing regulations and revising the wildlife management plan. After the 1981 Consent Decree, he collaborated on studies and shared scientific data with state and federal biologists. However, before Bienz could begin applying science to study species, he needed to know which flora and fauna had cultural significance to the Klamath Tribes. In other words, the Klamaths' knowledge of animals and plants directed Bienz's scientific studies in an indigenous manner. Bienz collected and synthesized the Klamath Tribes' cultural knowledge from numerous sources. Elders visited him in his office and invited him into their homes where they shared oral traditions and descriptions of cultural practices. Bienz learned the Klamath language so that he could understand the stories that elders shared with him and so he could grasp the profound cultural and spiritual meanings released through the spoken word. These sources animated the new landscape, providing him with a Klamath tribal lens with which he would study the flora and fauna. Reminiscing about the first couple years he worked for the Klamath Tribes, Bienz explained, "Ultimately...what people saw was the science, but what was ultimately driving it was the culture and those elders and their language, and their values, and the people themselves."<sup>223</sup> In collaboration, Bienz and members of the Klamath Tribes determined which animals and plants he should study and which ones he should study first. While mule deer were the primary species of interest, the importance of native fishes soon became evident.<sup>224</sup>

---

<sup>223</sup> Ibid.

<sup>224</sup> Bienz also focused on mule deer, a species for which the Klamaths voiced concern. See Draft Game Commission Wildlife Management Plan, no date (table of contents noted April 4, 1979), Szasz Collection.

Bienz also consulted nineteenth and twentieth century ethnographies. Ethnographies had a significant role in his and the Tribes' efforts to develop a strong understanding of the Klamath Tribes' cultural values and traditions. Like other Native peoples, many Klamath tribal members had grown up in boarding schools where matrons punished them for speaking their traditional language. During and after the termination process, many Klamath individuals and families relocated to urban areas in search of opportunities. These experiences dislocated some Klamath tribal members from the places where they could experience cultural practices and use their language. The trauma of termination resulted in increased drug and alcohol use and mortality rates, which further eroded the community and the cultural fabric that held it together. The cultural knowledge existed; however, tribal members had not been able to pass along the knowledge as effectively and thoroughly because assimilationist policies limited this inter-generational process.<sup>225</sup> Through the ethnographies, Bienz filled in knowledge gaps.

By 1981, when the Klamaths and the State of Oregon signed the Consent Decree, Bienz had been analyzing numerous fish species that the Klamath Tribes relied on for subsistence. During this same period, ichthyologists working for the U.S. Fish and Wildlife Service (USFWS) and various universities were studying desert fish in eastern Oregon, northern California, and Nevada. Often not recognized as majestic or economically valuable like the salmon or trout, these desert fish had received little attention from the scientific community. The newly-gathered data, however, suggested that the cui-ui, a fish endemic to Pyramid Lake, Nevada was not in good shape. At the same time, Bienz had begun researching the c'waam, q'apdo, and yeen (largescale sucker, *Catostomus snyderi*), fish endemic to the Upper Klamath River Watershed. Jack Williams, an ichthyologist charged with evaluating the statuses of fish under the Endangered Species Act of 1969, learned of Bienz's investigations. He was particularly interested in Bienz's

---

<sup>225</sup> Ulrich discusses the high mortality rate that stripped the Klamaths of a generation, see Ulrich, *American Indian Nations*, xiii-xv; for intergenerational place-making generally, see Robert R. Archibald, *A Place to Remember: Using History to Build Community* (Walnut Creek: Altamira Press, Division of Sage Publications, Inc., 1999).

work because the q'apdo and cui-ui were "sister species." They were two of a handful of fish in existence that shared the genus *Chastmistes*.<sup>226</sup>

While it did not carry the status of a trout or salmon fishery, the c'waam, q'apdo, and yeen fishery was popular among Indians and non-Indians, alike. The 24 to 30 inch adult creatures spent the majority of their lifecycle in lakes, such as the extensive 27-mile-long Klamath Lake that bordered the western boundary of the former Klamath reservation. Like salmon and trout, they make migratory spawning runs. Some c'waam, q'apdo, and yeen, travel to freshwater springs on the edge of Klamath Lake and its tributaries where they lay eggs in gravel beds. Others swim from Klamath Lake up one of the creeks or rivers within the former Klamath Reservation. Those that move up the Williamson River, then take "a right turn" into the Sprague River where they spawn in gravel bars.<sup>227</sup> Klamath tribal elder Morrie Jimenez gesticulated the movement of the fish, excitedly recounting what the large, dark-scaled fish looked like as he, his grandmother, and brothers watched the fish force their way upstream in the 1940s. They literally could see the fins of the suckers sticking out of the water. Their fins would breach as they swam in large schools with their "backs...and those fins glimmering in the sun as far downriver as you could see," explained Morrie Jimenez.<sup>228</sup>

In the 1980s, the state continued to manage the c'waam, q'apdo, and yeen fishery as a snag fishery. As the common name sucker suggests, the c'waam, q'apdo, and yeen have mouths that allow them to attach with suction to rocks and eat the algae that grows on them. Rather than flip in a lure or fly as one would use for trout, sportsmen anchored a hook and weight, often a spark plug, to a long line that they tossed across shallow riffles during the c'waam, q'apdo, and yeen spawning runs. They would literally "snag" the fish anywhere on its body and reel it to shore. Don McAfee, a newspaper reporter described excitement and sport of the sucker fishery, "Foul-hooked, the mullet put up a terrific battle, running up river and often jumping in the

---

<sup>226</sup> Jack E. Williams (currently Senior Scientist, Trout Unlimited; Staff Ichthyologist, U.S. Fish and Wildlife Service, 1980-1989), interviewed by author, Medford, Or., 8 July 2013.

<sup>227</sup> Ibid.

<sup>228</sup> Morrie Jimenez, interview, 27 August 2002, in *Oral Narratives of the Klamath Termination*.

air.” With no regulatory limit on these fish, McAfee suggested that “the possibility of catching a gunny sack full is good.”<sup>229</sup> McAfee’s article suggests that Indians and non-Indians alike enjoyed the fish smoked or canned; its bony skeleton and flesh, which reportedly resembles salmon or sturgeon, did not lend to frying.<sup>230</sup> Williams, the ODFW biologists, and the tribal biologists recognized that if the cui-ui were of any indication, the state would need to put restrictions the number of c’waam, and perhaps, the q’apdo and yeen that fishermen took.<sup>231</sup>

The cooperative relationship the Klamaths established with the State of Oregon provided the framework for their next significant step, collaboration with the ODFW on a study of the c’waam, q’apdo, and yeen. In 1983, Williams with the USFWS awarded the Klamath Tribes a grant of about \$3,000 dollars that allowed Bienz and the ODFW biologists to collect and analyze data on these fish.<sup>232</sup> ODFW biologist John Fortune’s Feb 21- March 20, 1983 monthly report explains that an “informal cooperative study” would begin in April. Fortune further noted, “The USF&WS, Klamath Indian Tribe and ourselves will begin looking at creel census, raidio [sic] tagging, and down stream [sic] fry movement.”<sup>233</sup> This entry is the first one in which the fish biologists reported working with the Klamath Tribes after the parties formalized the 1981 Consent Decree.

During the spring of 1984, the scientists continued this cooperative study. Fortune’s March 21 – April 20, 1984 record reveals how the scientists supported each other as they tried to understand the timing the of the c’waam, q’apdo, and yeen spawning habits. Fortune explained: “One ‘run’ of shortnose came up river in March and were virtually missed except a number of them were tagged by the tribal biologist in Chiloquin ladder. A second sun [sic] of shortnose

---

<sup>229</sup> Don McAfee, “Klamath’s Williamson River Runs Heavy with Mullet,” unknown newspaper, section “North by Northwest,” 10 May 1967 in folder “Hunting & Fishing & Studies May 10, 1966,” *Herald and News Morgue*, Klamath County Museum.

<sup>230</sup> *Ibid.*

<sup>231</sup> Williams, interview.

<sup>232</sup> Bienz, interview; Williams, interview; John Fortune, Monthly Report, Feb. 21 – Mar. 20, 1983, Oregon Department of Fish and Wildlife, Klamath District, Midland, Or., electronic copy in my possession.

<sup>233</sup> Fortune, Monthly Report, Feb. 21 – Mar. 20, 1983, electronic copy in my possession.



began entering our catches by April 16.”<sup>234</sup> Colder water temperatures in the river inhibited many fish from traveling upstream to the riffles in March that year. However, one run of c’waam, or shortnose sucker, moved upstream despite the 43 degree channel. They eluded the ODFW biologist, but caught the attention of Bienz when they reached Chiloquin Dam and fish ladder, obstructions that slowed and, under some circumstances, inhibited their annual migrations.<sup>235</sup>

While the biologists that gathered for regular informal meetings at the ODFW office were non-Indians, Bienz represented tribal interests. With his ability to speak the Klamath language, Bienz met with Klamath elders and learned their traditional ecological knowledge from the Klamath tongue.<sup>236</sup> He would not have been able to sit in that office and work with that group of scientists if the Klamath leaders had not taken the State of Oregon to court in the mid-1970s and adamantly fought for the Consent Decree. Furthermore, Fortune’s 1983 and 1984 records regarding the fish study refer to the Klamath Indian Tribe and tribal biologist, not Bienz, which suggests that the Fortune recognized that the tribal biologist, while a non-Indian, represented the Tribes.

Together, these scientists collected much-needed information about the fish. Prior to this three-year study, the scientific community knew little about the c’waam, q’apdo, and yeen. Late-19<sup>th</sup> century documentation of the species and ichthyologist Jim Andreasen’s 1976 dissertation provided important, yet limited, data about the fish species and their ecology.<sup>237</sup> These earlier reports focus on genetic traits and taxonomic classifications. In their early-1980s study, Bienz,

---

<sup>234</sup> John Fortune, Monthly Report, Mar. 21 – April 20, 1984, Oregon Department of Fish and Wildlife, Klamath District, Midland, Or., electronic copy in my possession.

<sup>235</sup> Ibid.

<sup>236</sup> Bienz, interview.

<sup>237</sup> Jim Knude Andreasen, “Systematics and Status of the Family Catostomidae in southern Oregon (Ph.D., diss., Oregon State University, 1976) UMI Dissertations Publishing, Proquest; The 19<sup>th</sup> centuries studies included E. D. Cope, “The Fishes of Klamath Lake, Oregon,” *American Naturalist* 13 (1879), 784-785; “A New Genus of Catostomidae,” *American Naturalist* 15 (1881), 59; and “On the Fishes of the Recent and Pliocene Lakes of the Western Part of the Great Basin, and of the Idaho Pliocene Lake,” in *Proceedings of the Academy of Natural Sciences* 35 (1883), 134-167. Nineteenth century studies cited from Kevin Stubbs and Rolland White, *Lost River* (*Deltistes luxatus*) and *Shortnose* (*Chasmistes brevirostris*) *Sucker Recovery Plan*, Prepared for Region 1, U.S. Fish and Wildlife Service, Portland, Oregon, 17 March 1993, in my possession.

Fortune, and Ziller collected data on the c'waam, q'apdo, and yeen populations. They found that the populations of the c'waam and q'apdo were especially low. These important findings introduced larger questions regarding c'waam and q'apdo propagation. Fortune and Ziller recognized in their April 21-May 20, 1986 monthly report, that "we have a long way to go before we can begin to understand why we are losing these species and how to improve their population size"<sup>238</sup> As the Klamaths' biologist worked with ODFW and USFWS biologists on this study, they built a data set and establishing themselves as a source of reputable scientific knowledge. They continued this process through their future reports and studies.

Bienz remembers the first seven years that he worked for the Klamath Tribes and the difficult process of building trust with the tribal members and their leaders. Like any community, the Klamath Tribes consisted of different personalities. Some Klamath tribal members fostered a close relationship with Bienz, while others maintained a critical eye on his efforts.

On an evening in the spring of 1986, Bienz attended the monthly meeting of the Klamath Indian Game Commission, a six member body appointed by the Klamaths' Executive Committee.<sup>239</sup> Other Klamath Tribes Natural Resources Department staff and interested tribal members attended the meeting. Bienz provided his scientific assessment on the population status of three species of fishes that had been a mainstay of the traditional culture and food the c'waam, q'apdo, and yeen. The fish were all mature adults, over thirty years in age, and there were no young fish to replenish the populations. These species, like other desert fish, evolved long life spans to combat the drought cycles that limited spawning habitat, available food, and other needs.<sup>240</sup> Scientists generally knew little about these fish, and the Klamath Tribes',

---

<sup>238</sup> John Fortune and Jeff Ziller, Monthly Report, April 21 – May 20, 1986, Oregon Department of Fish and Wildlife, Klamath District, Midland, Or., electronic copy in my possession.

<sup>239</sup> After establishing the Klamath Indian Game Commission (and before Bienz reported his findings regarding the c'waam, q'apdo, and yeen), the Klamath Tribes reduced the number of Klamath Indian Game Commission members from 14 to six, with one of the six serving as an ex-officio member.

<sup>240</sup> Craig Bienz, The Klamath Tribe, and Jeff Ziller, Oregon Department of Fish and Wildlife, "Status of Three Lacustrine Sucker Species (*catostomidae*)," 1987, Oregon Department of Fish and Wildlife, Midland, Or., electronic copy in my possession; Laurie Sada (Field Supervisor, USFWS), interviewed by author, Klamath Falls, Or., August 7, 2013.

ODFW's, and USFWS's biologists had begun to grasp only a limited understanding of these rare species. Relying on the knowledge he collected from elders and ethnographic sources that testified to the cultural significance of the fish to Klamath Tribes and the scientific knowledge that the fish populations had not produced viable juvenile or middle-aged fish for decades, Bienz strongly urged the Klamath Game Commission to close the fishery to tribal members.<sup>241</sup>

Bienz recalls the critical responses of the Klamath tribal officials. Some tribal officials even threatened to fire him. They did not believe that they needed to close the fishery. Perhaps the tribal members' own experiences of seeing the fish make recent spawning runs up the Williamson River triggered their reactions. However, more salient issues may have encouraged the tribal officials to argue for keeping the fishery open. In *Kimball II*, the federal court declared that if the Klamaths' taking of fish threatened conservation of the species, the ODFW would assume unilateral management of the fishery.<sup>242</sup> Tribal officials explained in a draft of their "Wildlife Management Plan" in 1976 that the plan had a crucial role in their efforts to operate as sovereign nation. The letter the tribal officials attached to the plan explains that the management plan demonstrated the Klamaths' efforts to practice independence, self-determination, and sovereignty.<sup>243</sup> The letter further stated: "We have hired our own Wildlife Biologist. We have our own Game Commission to manage our wildlife resources."<sup>244</sup> While the officials stressed the importance of their biologist in the Wildlife Management Plan summary, the biologist's suggestion to close the fishery may have come across as a threat to the Tribes' ability to assert their

---

<sup>241</sup> Bienz, interview.

<sup>242</sup> *Kimball*, 590 F.2d 768, (1979).

<sup>243</sup> Summary of Klamath Tribal Wildlife Management Plan, not dated, but presumably 1976, folder 6 "Wildlife Management Materials 1976-1992," box 2, Szasz Collection. Chuck Kimbol and Charles Wilkinson worked on a press release to announce the Klamath Wildlife Management Plan in July of 1976, see Memorandum, Charles F. Wilkinson, University of Oregon School of Law, to Klamath Indian Game Commission, Subject: Press Release on Management Plan, 15 July 1976, folder 7, box 2, Szasz Collection.

<sup>244</sup> "Draft Letter to Tribal Members and Summary of Tribal Game Plan," Created for forthcoming General Council meeting to vote on Game Commission Wildlife Management Plan, Draft – For Discussion Purposes Only, no date (General Council Meeting in July, 1976), folder 7, box 2, Szasz Collection.

independence and sovereignty.<sup>245</sup> The need for conservation of the fish could threaten the Tribes' autonomy and authority as the State of Oregon might take unilateral control of wildlife management and render the Tribes powerless. Furthermore, the Klamath Tribes had not yet fulfilled their goal of restoring their federal recognition. Congress reviewed the Klamath Restoration bill at the same time Bienz presented his study results.<sup>246</sup> This crucial bill would reinstate the Klamaths' federal recognition and services offered to tribes. The Klamath tribal officials had to contemplate the many tribal goals and the politics surrounding their sovereign right to manage the fish for which Bienz showed concern. Aside from these political concerns, Klamath leaders needed to consider the most fundamental issue—the fish offered the Klamaths life. Tribal members relied on these fish for subsistence. Closing the fishery would stress the Klamath community.

The Klamath Game Commission maintained an authoritative status within the Tribes and as a political entity in government-to-government relationships with the State of Oregon and federal agencies. Another level of authority, that of tribal elders, continued to influence tribal decision making. During the meeting of tribal officials and their biologist, three female elders joined unexpectedly. After the male tribal members expressed skepticism toward Bienz and his concerns, each of the three women spoke to the group. Bienz remembers that the women urged the Klamath Game Commission officials to listen to him. The women reminded the Klamath officials that their tribal culture stressed the importance of incorporating all available knowledge into their decision making. Bienz recalls how the women spoke to the Klamath Game Commission representatives, saying “our culture requires us to do exactly what he [Bienz] is telling you to do....You don't belong in this tribe if you can't live according to our values.” Bienz added, “And that's where people stood up for that culture and said ‘this is the way we do things, and he is giving you that information and you're not dealing with it appropriately.’ And they

---

<sup>245</sup> Bienz, interview.

<sup>246</sup> Klamath Indian Tribe Restoration Act of 1986, Pub. L. No. 99-398, 100 Stat. 849 (1986).

cussed those guys out, three old women. The tallest one was probably only five feet tall.”<sup>247</sup>

Soon after the meeting, the Klamath Tribes endorsed Bienz’s suggestion and closed the c’waam, q’apdo, and yeen fishery to Klamath tribal members. Contrary to their worries, the Klamath Tribes maintained their sovereign right to manage the fish and their members’ taking of the species. Through strategic lobbying and the resulting Klamath Restoration Act, they garnered federal recognition of their Tribes in August of 1986, only months after closing their tribal fishery.<sup>248</sup> Bienz continued to work for the Klamaths for another 13 years.

This story of the three female elders demonstrates another confluence of Klamath traditional knowledge and science. The women acted as cultural regulators who encouraged the Klamath Game Commission to practice the Tribes’ cultural sovereignty and to maintain their cultural system.<sup>249</sup> According to the three female elders, their culture emphasized the value of knowledge garnered from unfamiliar sources. In this case, a scientist offered the outside information that provided the Klamath Tribes with a nuanced way to see their world that was very much informed by traditional knowledge of it. They would incorporate the scientific data with their traditional knowledge to make decisions regarding the fish and the fishery.

A cascade of state and federal fishery management actions followed the Klamath Tribes’ decision to stop their tribal members from catching c’waam, q’apdo, and yeen. In 1987, the State of Oregon closed the public fishery for these species based on the report that their biologist co-authored with the Klamaths’ biologist and data that ODFW and Klamath Tribes’ biologists collected collaboratively. The USFWS maintained a continued interest in the Klamath Tribes’ and the ODFW’s efforts. As the Klamath Tribes and ODFW closed the tribal and public fisheries, Williams compiled scientific analyses to build an argument for adding the c’waam and q’apdo to the endangered species list in August of 1988.<sup>250</sup>

---

<sup>247</sup> Bienz, interview.

<sup>248</sup> Klamath Indian Tribe Restoration Act of 1986, Pub. L. No. 99-398, 100 Stat. 849 (1986).

<sup>249</sup> Frank and Goldberg, *Defying the Odds*, 11.

<sup>250</sup> Jack E. Williams, “Endangered and Threatened Wildlife and Plants: Determination of Endangered Status for the Shortnose Sucker and Lost River Sucker,” 53 Fed. Reg. 27130, (18

As described in the Endangered Species Act code, science informs the policy's regulatory and administrative processes. For example, the procedure for listing species calls for the best available scientific data.<sup>251</sup> When Williams added the c'waam and q'apdo to the endangered species list, he used historical scientific studies, the data produced by the Klamath Tribes' and ODFW's biologists, and other scientists.<sup>252</sup> How, then, do we explain the relationship between science and Klamath traditional knowledges in the context of the ESA? Bienz, who co-wrote the study on c'waam and q'apdo, worked closely with tribal elders to learn about the fish, where the Tribes fished for them, and what tools the tribal members used to catch them. He incorporated Klamath elders' knowledge into his scientific investigations. When he presented his studies to federal and state agency officials, however, he did not cite the tribal members as sources. The scientific community took a Eurocentric approach toward knowledge, as it generally regarded science with more reverence than other ways of knowing the world, such as Native American traditional knowledges. For centuries, scientists categorized Native American knowledges as superstition rather than intelligent observations and records.<sup>253</sup> Science offered unbiased data, unadulterated by cultural assumptions, while indigenous ways of knowing were strictly cultural and therefore laden with bias. Aware of the scientific community's own culture, Bienz knew he had to foster credibility with other scientists.<sup>254</sup> This required him to present his studies as though he had only relied on scientific data when, in fact, the Klamaths' cultural knowledge fueled and informed Bienz's investigations. While the USFWS Record of Decision to add the two fish to the ESA list cites the Klamaths' scientific knowledge, oral history reveals that

---

July 1988; Fortune and Ziller, Monthly Report, April 21 – May 20, 1986, Oregon Department of Fish and Wildlife.

<sup>251</sup> Rollie White, (currently Deputy State Supervisor, Oregon, USFWS; former ESA Analyst, Klamath Office, USFWS), interviewed by author, Portland, Or., 19 July 2013; Williams, interview; Endangered Species Act of 1973, 16 U.S.C. sec. 1533 (b) (1-2) (1982).

<sup>252</sup> Williams, "Endangered and Threatened Wildlife and Plants," 27130-27131.

<sup>253</sup> Cruikshank, *Do Glaciers Listen?*, 19-20; Buchanan, "Negotiating Nature," 105-104.

<sup>254</sup> Bienz, interview.

Klamath traditional knowledges informed the scientific data that the USFWS used to list the c'waam and q'apdo.

Adding the c'waam and q'apdo to the ESA list did not guarantee their protection. Once the USFWS lists a species, the Service and any federal agency whose action might harm an endangered species population, must follow the regulatory procedures of Section 7 of the ESA. The USFWS must hold a consultation process with federal agencies whose actions might harm endangered species populations.<sup>255</sup> For example, under this section of the ESA, the U.S. Bureau of Reclamation (USBR) is required to analyze the impacts its short-term and long-term operation plans have on the c'waam and q'apdo and report its findings in the form of a biological assessment. The USFWS, then, analyzes the USBR's biological assessment. The USFWS reports its findings in a biological opinion. The USFWS biological opinion might require an agency to implement reasonable and prudent alternative actions if the USFWS finds that the operations plan that the Bureau chose would jeopardize the endangered species. Such jeopardy findings fuel heated battles over natural resources management. Some of the American West's most heated battles regarding jeopardy findings have played out in the Upper Klamath Basin.

Only one decade earlier, the ESA earned a bad reputation among locals in the Klamath region when protections for the spotted owl drove the timber industry to a grinding halt. The timber industry was the leading sector of the regional economy, and agriculture took second place. As the ESA process for the c'waam and q'apdo began again in the 1990s, farmers and ranchers argued that they deserved to continue to receive water. The prior appropriation doctrine in Western water law as well as the federal government's decision to pump millions of dollars into the region to host a reclamation project helped justify the agriculturalists' perspective.<sup>256</sup> For

---

<sup>255</sup> The USFWS oversees terrestrial and freshwater species, while the National Marine Fisheries Service (NMFS) manages oceanic species, including anadromous fish.

<sup>256</sup> Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Oxford University Press, 1985), prior appropriation doctrine as justification for agricultural use, 88-89, and USBR as tool of U.S. imperialistic expansion for the purpose of developing the American West through agriculture and the harnessing of water resources, 186-188; irrigators understand that the USBR established water storage for agricultural use only, Dan Keppen, *The Klamath Project at 100: Conserving our Resources, Preserving our Heritage* (Klamath Falls, OR: Klamath Water Users Association, 2004), 19.

nearly 100 years farmers and ranchers in the Klamath Project had not questioned the availability of water.<sup>257</sup> In the 1992 growing season, the Section 7 consultation process would directly affect how much irrigation water they would receive, how productive their harvest would be or how many cattle they could support, and whether or not they would make enough profit to maintain their family businesses.

The ESA further mandates that the USFWS produces a recovery plan and designates critical habitat.<sup>258</sup> Recovery plans outline management protocols that focus on protecting and rejuvenating endangered or threatened species populations. The critical habitat designation describes a geographic region that encompasses habitat that is necessary for the species to survive. For the c'waam and q'apdo, this would include gravel beds near springs and in rivers for spawning as well as marsh areas at the perimeter of the lake that provide shelter for juvenile c'waam and q'apdo.

If the USFWS or any other federal agency does not adhere to the ESA regulations and procedures, outside parties can sue the agency. This is what occurred in the Klamath Basin within a few years of listing the c'waam and q'apdo as endangered. On November 12, 1991, the Oregon Natural Resources Council, an environmental organization known for its staunch litigation strategies that currently goes by the name of Oregon Wild, filed suit against the USFWS.<sup>259</sup> The ONRC called out the USFWS for failing to designate critical habitat and write a recovery plan for the c'waam and q'apdo. Through a settlement, the USFWS agreed to complete a final recovery

---

<sup>257</sup> Steve Kandra, (Retired Farmer, Klamath Project; former Director, Klamath Water Users Association), interviewed by author, Merrill, Or. and Tule Lake, Ca., 25 June 2014; Keppen, *The Klamath Project at 100*, 5.

<sup>258</sup> Critical habitat, see Endangered Species Act of 1973, 16 U.S.C. 1533 (b) (1988). Recovery Plan, see 16 U.S.C 1533 (f).

<sup>259</sup> Wendell Wood et al. v. Marvin Plenert, et al., Case No. 91-06496-TC (D. Or.), filed 12 November 1991, settled out of court.



plan by March 1, 1993 and publish a final critical habitat rule by November 29, 1994.<sup>260</sup> In January of 1992, the Service also began Section 7 consultations with the USBR.

In 1991, the USFWS complied with the court settlement and created a new post in Klamath Falls, Oregon. USFWS ESA analyst Rollie White oversaw Section 7 consultations in the Klamath Falls region through the mid-1990s. Prior to working for the USFWS Klamath Region, White consulted for The Nature Conservancy in Jordan Valley, Oregon. He had coordinated with a Bureau of Land Management biologist in the Lakeview Office who encouraged him to value tribal participation in natural resource management and to recognize that tribes held very different relationships than non-Indians with the natural resources, relationships grounded in profound cultural and spiritual meanings. White had also collaborated with Jack Williams of the USFWS and the Klamath Tribes before working in the Klamath Region.<sup>261</sup>

White explained that the purpose of Section 7 is to keep agency operations in check, to protect endangered species, and to have a plan that allowed for the intended benefits of the agency's operations.<sup>262</sup> The winter of 1991-1992 presented a challenge. The low water year meant that there would be less water available for irrigators in the project. Making decisions about how much water to keep in the lake and how much water to give agriculturalists was based on science, but was wrapped tightly into the regional politics. The Klamath Tribes wanted to keep enough water in the lake to support the c'waam and q'apdo larvae and juveniles, and the USBR sought to release the greatest amount of water possible from the lake for the farmers and ranchers south and east of the lake.

ESA Section 7 consultation technically occurs between the USFWS and the agency that is proposing an action, such as the USBR. Yet, because the ESA process relies on science and, specifically, the "best available science," this environmental policy offers scientists a seat at table

---

<sup>260</sup> U.S. Fish and Wildlife Service, "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Lost River Sucker and Shortnose Sucker," 76 Fed. Reg. 76339 (Dec. 7, 2011).

<sup>261</sup> White, interview.

<sup>262</sup> *Ibid.*

where analysis occurs and decisions regarding the operations of federal agencies and endangered species are made. During the consultation process, White relied on the Klamath Tribes. He turned to them, not because the USFWS maintained a trust relationship with the Klamaths, but because the Klamaths had produced scientific knowledge that would be integral for analyzing the impacts of the Klamath Project operations on the c'waam and q'apdo.<sup>263</sup> The Tribes' federal trust relationship, which they reestablished in 1986, allowed their leaders to meet with high-level USFWS and USBR officials. These high-level government-to-government interactions are not those in which scientific decisions are made. The lower-level federal employees—the biologists, hydrologists, and ESA analysts—make the recommendations for natural resources management.

By 1991, the Klamaths had a team of people working on fish and wildlife issues. Tribal member Don Gentry, who would accept the role of Klamath vice chairman and chairman in the 2010s, began his career with the Tribes as a natural resource technician who worked on fish research in the 1980s.<sup>264</sup> In the mid-to-late 1980s, the Klamaths hired more scientists. Around 1985, Jacob “Jake” Kann a limnologist began working for the Klamaths. Kann completed a doctoral study of Upper Klamath Lake and its water quality at the University of North Carolina, Chapel Hill, during his tenure with the Tribes.<sup>265</sup> In 1988, the Klamaths hired Larry Dunsmoor, a dedicated scientist and passionate supporter of the Tribes who continues to work for them in 2015.<sup>266</sup> When Dunsmoor began analyzing Upper Klamath Lake in 1988 as a tribal biologist, USBR management of the water storage and release of the water shifted the lake level drastically within a short period of time. This piqued his curiosity. “The natural fluctuation range for Klamath Lake is about two feet, and the managed fluctuation range is somewhere [between] five to six

---

<sup>263</sup> White, interview.

<sup>264</sup> Gentry, interview.

<sup>265</sup> Jacob Kann, “Ecology and Water Quality Dynamics of a Shallow Hypereutrophic Lake Dominated by Cyanobacteria (*Aphanizomenon flos-aquae*),” (PhD diss., University of North Carolina at Chapel Hill, 1998), UMI Dissertations Publishing, Proquest.

<sup>266</sup> Dunsmoor, interview.

feet. That's a big change," Dunsmoor explained. "We [the tribal scientists] started to look at the distribution of spawning areas and how they're affected by water level fluctuations," he stated, "and really the big thing for me has always been the availability and quality of habitats for the baby fish."<sup>267</sup> Through their scientists, the Klamath Tribes had collected a significant amount of data on the c'waam and q'apdo and had presented it in reports by the 1991-1992 winter.<sup>268</sup> Without their studies and data, they would not have participated in the USFWS's consultation with the USBR at the scientific level where decisions are made regarding the management of fish and water resources. While the USFWS retained the ultimate decision-making power during the Section 7 process, the USFWS scientists that managed the Section 7 procedures in the Klamath region made a concerted effort to meaningfully consult with the Klamath Tribes' biologists.

White pointed out the significance of science in the Section 7 process and the importance of the Klamaths' role in making scientific decisions. White explained, "if you are in a Section 7 consultation context, that is probably the most powerful position to be [in] because Section 7, these consultations, are all driven by science."<sup>269</sup> The Klamaths had amassed a significant amount of scientific knowledge about the c'waam and q'apdo that was valuable to the USFWS. Completing consultation is very difficult when there is limited information on a species. White assuredly stated that if "the Tribes hadn't been involved, I have no idea how we would have gone through all that stuff, because they had all the information."<sup>270</sup> The Klamaths not only developed scientific authority, they provided data on the fish populations that proved crucial for the ESA procedures.

---

<sup>267</sup> Ibid.

<sup>268</sup> Examples include Bienz and Ziller, "Status of Three Lacustrine Sucker Species (*catostomidae*)," Klamath Tribe Natural Resource Department. "Effects on Water Management in Upper Klamath Lake on Habitats Important to Endangered Catostomids," 1991; Larry Dunsmoor, "Laboratory Studies of Fathead Minnow Predation on Catostomid Larvae," Klamath Tribes Research Report KT-93-01, December 1993.

<sup>269</sup> White interview.

<sup>270</sup> Ibid.

The USBR had collected data on the water sources for nearly 100 years. From a hydrological point of view, this was a short amount of time, but it was all the USBR had to work with. As White began consulting with the USBR to quantify the water available for agricultural use, the amount available was so low that it was “off the charts.”<sup>271</sup> This was the lowest water year the USBR had recorded, and it was not even close to other low years. The USBR hoped to complete a long-term operations plan that winter, but found its scientists and analysts wrapped up in nearly monthly ESA Section 7 consultations with White because each month the drought got worse.<sup>272</sup>

During the consultations in the winter of 1991 and the spring of 1992, White and the other scientists focused consultation largely on the level of Upper Klamath Lake. The c’waam and q’apdo had relied on Upper Klamath Lake, Clear Lake, Gerber Reservoir, and Tule Lake as prime habitat. By the 1990s and into the early-2000s, Tule Lake could barely support a population of roughly 300 c’waam and q’apdo in large part due the USBR’s reclaiming of the land underneath much of the original lake. Clear Lake and Gerber Reservoir supported sizable populations of the species. Scientists focused on Upper Klamath Lake, one of the main storage basins for the Klamath Project and the most integral habitat for larval and juvenile c’waam and q’apdo.

Direct access to the records of the Section 7 consultation processes is limited. Sources, such as the administrative records for the 1992 and 1994 consultations as well the final biological opinions, however, provide evidence of the Klamath Tribes’ participation in the ESA consultation processes. For example, the 1992 Administrative Record Index notes a letter from Wayne White of the USFWS to Chuck Kimbol, Chairman of the Klamath Tribes dated 14 November 1991. The subject of this letter reads “Re: Pledge to involve Klamath Tribe biologist in consultation, even

---

<sup>271</sup> Ibid.

<sup>272</sup> “Consultation History for the Klamath Project,” in *Biological/Conference Opinion Regarding the Effects of Operation of the Bureau of Reclamation’s Klamath Project on the Endangered Lost River Sucker (Deltistes luxatus), Endangered Shortnose Sucker (Chasmistes brevirostris), Threatened Bald Eagle (Haliaeetus leucocephalus), and Proposed Critical Habitat for the Lost River/Shortnose Suckers*,” Klamath Falls Fish and Wildlife Office, April 2001, *Klamath Waters Digital Library*, Oregon Institute of Technology, accessed 5 May 2015, <http://digitallib.oit.edu/cdm/ref/collection/kwl/id/342>.

though Tribe not applicants.” In the Section 7 process, the applicant is the action agency, in this case the USBR. The farmers who held contracts with the USBR for irrigation purposes could not participate directly in consultation. This reference to the letter does not explain the reasoning behind the USFWS’s decision to include the tribal biologists, but the oral history testimonies and notations in the administrative records suggest that the tribal scientists, particularly the biologist, played an integral role because of the scientific knowledge he could and the other tribal scientists collected. Furthermore, the record lists multiple undated personal and oral communications with Bienz, Dunsmoor, and Kann, all Klamath tribal scientists. Seven of the eighteen USFWS personal and oral communications occurred with the Klamaths’ scientists. The final section of the 1992 Administrative Record suggests that the USFWS and the Klamath Tribes commented on the USBR’s biological assessment and that no other parties had the opportunity to do so.<sup>273</sup> The Klamaths’ biologists contributed information during the consultation process, which is demonstrated through the seven records listed. Example communications regarded “Information from Tribe’s research on Sucker Springs and loss of wetlands near Upper Klamath and Agency Lakes” on 31 March 1992 and “Reduced numbers of suckers in Upper Klamath Lake spawning runs” on 11 June 1992.<sup>274</sup>

If the Klamath Tribes had not taken initiative and collected the data on the c’waam and q’apdo, their biologists would not have participated in the Section 7 consultation process. “They [the Klamaths’ scientists] would have had no role at all, first of all,” White stressed. But that was not the only issue. The Klamaths’ data proved paramount to the consultation process. White further divulged that without that the Klamath tribal biologists’ data and studies, “we [the USFWS] wouldn’t have had information” to complete the consultations.<sup>275</sup> The Klamaths’ data was important because the consultations for the c’waam and q’apdo resulted in jeopardy determinations, which meant that the scientific analysis showed that the USBR’s operation plans

---

<sup>273</sup> Index to Administrative Record for 1992 Biological Opinion, U.S. Fish and Wildlife Service, Portland, Or., electronic copy in author’s possession.

<sup>274</sup> Ibid.

<sup>275</sup> White, interview.

would likely jeopardize a species' ability to exist in the wild. Jeopardy determinations are rare and they ignite natural resource politics; in the Klamath Basin they became the norm in the 1990s.<sup>276</sup> As much scientific data as possible is needed to build a strong case for a possible jeopardy determination. White warned, "[I]t's going to be hot and it's going to impact people. It's going to have real impacts."<sup>277</sup>

The USBR consultation process regarding the c'waam and q'apdo in the Klamath Basin did have real impacts. The consultations with the Klamath Region USBR were some of White's first. Four of the five of them between 1991 and 1992 were jeopardy biological opinions, which meant that the USFWS determined that the USBR operation plans would jeopardize the fish species' ability to survive.<sup>278</sup> Due to political pressure from the Klamath Project water users, the USBR officials did not want to make the decision to reduce flows significantly or halt them. In this political context, the USFWS required the USBR to reduce water flows to farmers within the federally-established Klamath Project for the first time in the Project's history. Not all irrigators in the Project have the same water rights. Some have more senior rights than others. Therefore, some farmers and ranchers received water the whole summer, while others received water for only part of the summer, or not at all.

Non-tribal water stakeholders reacted to the USBR's decision to restrict water flow in 1992. The Water Users Association tried to keep the USBR from shutting off the flow of water in the A Canal again. They filed suit against the USBR in 1997. They believed that they were third parties to the 1956 contract between the USBR and Pacificorp (formerly COPCO) that allowed the USBR to make water diversions from the Link River Dam for irrigation within the Klamath Project. The court upheld that the Project irrigators did not have what could be understood as standing, or a legal right, to sue Pacificorp or the USBR if their irrigation needs were not met.

---

<sup>276</sup> "ESA Basics: 40 Years of Conserving Endangered Species," U.S. Fish and Wildlife Service, January 2013, accessed 16 July 2015, [http://www.fws.gov/endangered/esa-library/pdf/ESA\\_basics.pdf](http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf); White, interview.

<sup>277</sup> White, interview.

<sup>278</sup> *Ibid.*

This is because under the contract, the irrigators are not considered primary beneficiaries. The water they receive is secondary to Pacificorp's need to release water downstream to generate power with the lower dams.<sup>279</sup> The irrigators appealed this decision, and in the resulting opinion in 1999, the Ninth Circuit Court of Appeals not only upheld the District Court's decision, but added that the USBR had the authority to manage water according to the ESA and the Klamaths' treaty rights.<sup>280</sup> This case demonstrates how the political relationship between the Klamaths and the farmers changed between the 1970s and 2000. For decades the farmers had used water with the expectation that they held equal or higher priority rights than the Klamath Tribes, which is evident in their attempt to sue for the recognition of these rights. The suit also exemplifies the farmers' attempt to maintain their influence over the physical landscape by protecting their ability to move water from Klamath Lake to their farms.

The USFWS Final Biological Opinion put forth particular measures, known as reasonable and prudent alternatives, which the USBR needed to follow in order to avoid jeopardizing the c'waam and q'apdo populations. With such low populations of larval and juvenile c'waam and q'apdo, scientists stressed the need to maintain habitat for the young fish. By regulating the level of Upper Klamath Lake, the scientists sought to maintain emergent vegetation along the edges of the lake as shelter where the young fish could hide from predators.<sup>281</sup> The 1992 Biological Opinion allowed the USBR to draw Upper Klamath Lake level to a minimum of 4,139 feet elevation during the 10-year operations plan period. Within that 10-year period, the USBR could lower the lake level to 4,137 feet no more than four of the 10 years. These management stipulations demonstrate the balancing act that White described as he and the other ESA analysts attempted to conserve the fish and keep the integrity of USBR operations for the farmers who contracted for irrigation water.

---

<sup>279</sup> Klamath Water Users Association v. Patterson, 15 F. Supp. 2d 990 (D. Ore., 1998).

<sup>280</sup> Klamath Water Users Protective Association v. Patterson, 204 F.3d 1206 (9<sup>th</sup> Circ., 1999, amended 28 January 2000).

<sup>281</sup> The 1993 Recovery Plan discusses c'waam and q'apdo larval and juvenile habitat needs. See Stubbs and White, *Recovery Plan*, 13-14.

The Klamaths kept a close eye on the USBR's management of Upper Klamath Lake. In 1995, they wrote White, who no longer worked as the ESA analyst in the Klamath Basin. They believed that the USBR misinterpreted a reasonable and prudent alternative in the 1992 Long-Term Biological Opinion that White consulted on. White admitted that the wording was "tricky" and could be difficult to interpret, but that it also seemed to present the USBR with a loophole.<sup>282</sup> The USBR operation year begins on October 1, following some of the hottest and driest months of the year. The reasonable and prudent alternative in question included a clause that allowed the USBR to begin their operation year in October with a lake level below the required threshold of 4139 ft. The year prior, say 1992, which ended in September, would be counted as one of the four compromised low level years. The following year, 1993, which began in October, would not count as a compromise year as long as the lake level met the required lake level in later months and did not drop below the threshold again in 1993. The Bureau interpreted the clause to mean that as long as lake levels in 1993, the second year, met the required lake levels, they would not have to count 1992, the previous year, as one in which they compromised the lake level. Under this interpretation, the USBR could allow for far more low-lake-level years than would be allowed by the correct interpretation of the alternative.<sup>283</sup>

The Klamaths had contacted the local USFWS office to address this issue, but the local officials sided with the USBR. Sure that they understood the intent of the document, the Klamaths contacted White for confirmation. "The Tribes dug me up," he explained.<sup>284</sup> They hoped he could back up their interpretation of the ESA alternative. White first contacted the lead author of the 1992 Long-term Biological Opinion, Kevin Stubbs, who had relocated to the East Lansing, Michigan USFWS office to confirm the Tribes' claim. Then, he emailed Steve A. Lewis, the Project Leader of the Klamath Basin Ecosystem Restoration Office on 19 April 1995 and

---

<sup>282</sup> White, interview.

<sup>283</sup> Email from Rollie White, USFWS, to Steve Lewis, USFWS, Copied to G. Miller, R. Peterson, and C. Schuler, Subject: "Concerns about the Bureau's 1995 Project Operations Report," 19 April 1995, USFWS, copy in author's possession.

<sup>284</sup> White, interview.



clarified the confusing, but very important wording.<sup>285</sup> The Klamath Tribes correctly interpreted the document, and the USBR would have to follow the regulations. The Klamaths took an active role in overseeing USBR and USFWS implementation of the regulatory requirements of the ESA process. Through their activism, the Klamaths demonstrated their dedication as stewards for the c'waam and q'apdo.

After 90 years of managing water in the Klamath Basin for primarily agriculture, the USBR changed the course of its water allocation in the 1990s. The agency diverted less water for agricultural use in order to leave more water in the reservoir for the c'waam and q'apdo. This shift in management reflected a different spatiality, one that placed value on the Upper Klamath River Watershed as a fishery. The nuanced management approach reflected the Klamath Tribes' spatiality. The Tribes understood that Gmok'am'c created the fish to provide them life. The USBR and USFWS officials may not have believed in Gmok'am'c, but they had to follow the ESA procedures for these two fish that are found only in the Upper Klamath Basin.

The ESA procedures required the federal agencies to analyze the geographical range of the fish species, a range that extended outside of the Klamaths' former reservation. *Kimball I* and *Kimball II* described the Klamaths' sovereign territory according the reservation boundaries in 1954. These political lines, however, are arbitrary to the c'waam and q'apdo. The fish swim through the water system at their own discretion seeking food, shelter, and spawning grounds. The western boundary of the Klamath Reservation signified an imaginary line that sliced through the c'waam and q'apdo habitat, dividing the adult and larval lake habitat outside of the reservation from the upriver spawning areas inside the reservation. Some of the fish rely on other bodies of water in the region that are outside of the former reservation, such as Clear Lake, Gerber Reservoir, and the Lost River. The USBR's intricate canal system also hosts the species. Therefore, the very fish the Klamath sought to protect spent much, if not all, of their lives outside of the reservation boundaries and outside of the Klamaths' sovereign territory.

---

<sup>285</sup> Email from Rollie White, USFWS, to Steve Lewis, USFWS, 19 April 1995, copy in author's possession.

The political lines did not stop the Klamaths from influencing the management of the fish. When the Klamaths and their biologists participated in the ESA listing procedures and the subsequent ESA consultation process, they recognized opportunities in the environmental law, opportunities that would allow them to influence natural resource management decisions outside of their sovereign space. In 1986, the Klamaths made their first sovereign move in protecting the fish when they closed the tribal c'waam and q'apdo fishery. They could not limit non-Indian fishing directly. Through the data they collected in their multi-year study with the ODFW and the relationships their biologists forged with the ODFW and USFWS biologists, the Tribes contributed to the processes of closing the non-Indian c'waam and q'apdo fisheries and in adding the two species to the federal ESA list. The Klamaths did not have the sole responsibility in accomplishing these steps. Aside from their Tribes' decision to close the c'waam and q'apdo fishery for tribal fishing, the Klamaths did not have a final say in other decisions regarding the management of the two fish species. The USFWS would make the final determination. However, through their activism, particularly their dedication to collecting and analyzing scientific data, collaborating with the ODFW and USFWS, and participating in the ESA process, the Klamaths helped reshape water and fish management in the Klamath Basin in a way that resonated with their long-standing cultural values.

The very habits of the fishes, their movements and lifecycles did not fit neatly into the federal government's political and spatial designations that constituted the Tribes' space and what was outside of the Klamaths' jurisdiction. The ESA designated what can be understood as a "third space" of management that crossed federal, state, private, and tribal boundaries to encompass the fishes' ecological space.<sup>286</sup> The Klamaths could not practice their sovereignty throughout this ecologically-defined space in the same way that they could within the jurisdiction of their former reservation. However, they took advantage of opportunities through the ESA, such

---

<sup>286</sup> Mark Fiege, "Private Property and the Ecological Commons in the American West," in *Everyday America: Cultural Landscapes Studies after J.B. Jackson*, edited by Chris Wilson and Paul Groth (Berkeley: University of California Press, 2003), 223. Fiege discusses the ecological commons as a "third space." He adapted this idea from geographer Edward Soja.

as providing data, models, and expert feedback through their biologists, which informed federal decisions regarding fish and water management.

The Klamaths maintained their cultural understanding of and vision for the Upper Klamath River Watershed—their spatiality—despite the drastic changes that the USBR imposed on the landscape. The USBR altered the physical geography of the Klamath Basin, draining lakes, constructing dams, digging canals, and reorganizing the dispersal of water across the land. Still, the Klamaths saw the place that Gmok'am'c created. Perhaps, only the Klamaths and a few of their supporters knew this spatiality as it did not inform how federal institutions managed natural resources in the Klamath Basin for most of the 20<sup>th</sup> century. In the 1980s and 1990s, however, this situation changed. The Klamaths maintained a vision for healing the land, and they found the tools to help them do it.

The Klamaths worked within the settler colonial system, using its legal mechanisms (the ESA) and authoritative knowledge base (science) to channel their cultural and spiritual values into natural resource management. This is key. The Klamaths remained immersed within this system. Evidence of the pluralization of U.S. society, however, becomes increasingly apparent. The USFWS represented an ally whose ecological values aligned with those of the Tribes and whose employees generally respected tribal knowledge and authority. This agency, while retaining legal jurisdiction and the ability to make final decisions regarding species management relied heavily on the Klamaths' scientific knowledge of the species under scrutiny.

Yet, the changes in management that the USFWS instated in the late-1980s and 1990s to protect the c'waam and q'apdo were, at base, administrative rulings. The USBR was far from aligned with the Klamath Tribes in terms of water management. Without the ESA administrative procedures that required the USBR to evaluate the effects of the Klamath Project on the fish, the USBR would have continued to divert water without any attention to the fish. While the Klamaths did not sway the institutional approach of the USBR, the Klamaths participated in a process that significantly altered the USBR's water management.

Only 25 years earlier, this tribal nation had faced termination, a settler colonial policy that threatened to strip the Tribes of their identity as Klamath, Modoc, and Yahooskin. Through their

activism, however, the Klamath Tribes succeeded in reestablishing themselves as a federally-recognized sovereign with different values and interests that are based on their spiritual and cultural beliefs. Through careful and astute hiring decisions, the Klamaths built a team of scientists, many who were non-Indian, who dedicated themselves to the study of the c'waam and q'apdo and other species important to the Klamaths' spirituality and culture. The Tribes introduced their spiritual and cultural knowledge and interests into state and federal natural resources management through their scientists. The United States has become a more pluralistic society in part because of the activism that Native peoples, like the Klamath Tribes, have employed as a means to include their values and visions of the world into natural resource management of public and private land.

During the 1990s, the Klamaths succeeded in another step of their renewal process. They did not have healthy c'waam and q'apdo populations, but they had helped initiate protective measures for the species and habitat restoration projects. Water moved across the landscape differently than it had for 90 years under the management of the USBR. The space increasingly resonated with the Klamaths' interests in recognizing the Upper Klamath Watershed as a c'waam and q'apdo fishery. The Klamaths helped influence this shift in water management through scientific investigations and collaboration with federal and state agencies. This shift reflected the increasing pluralization of American society during the latter half of the 20<sup>th</sup> century.

The Klamaths had more work to do. During the late-1970s through the 1990s, the Tribes faced other challenges in the arena of natural resource management. Much like the ODFW and, to an extent the USBR, the U.S. Forest Service (USFS) resisted the Klamaths' authority and implemented management decisions that threatened the Klamaths' treaty rights and sovereignty. Fueled by their traditional teachings and values for the land, Klamath leaders took advantage of other national environmental policies designed for the American public, not for Indian nations in particular. They would use these policies to restructure their relationship with the USFS in order to participate in the management of wildlife habitat and sacred places within their former reservation forest.

## CHAPTER 5

### ASSERTING A TRIBAL FOREST MANAGEMENT VISION: USING ENVIRONMENTAL POLICIES AND A LEXICON

In a meeting with Klamath tribal members during the late-1970s, the U.S. Forest Service (USFS) shared what they considered good news. The Service planned to protect from timber practices a small portion of Yamsay Mountain, a sacred place the Klamath Tribes referred to as the “Home of the North Wind.” After the meeting, a USFS official approached Tribal Chairman Morrie Jimenez to find out why the Tribal Council showed far less excitement and gratitude than the USFS employees expected. Jimenez explained to a USFS official that “he should not have expected ... elation” because the Tribal Council members had grown up in traditional Klamath culture and for this reason “it was difficult for them to remove that sliver from the mountain.”<sup>287</sup> To the Tribal Council members, Yamsay Mountain represented one piece of a much larger cultural landscape. The Klamath Tribes saw no logic in protecting one small section of Yamsay Mountain when the whole mountain, along with the forest and the relationships of the animals, plants, and the tribal members to it, held spiritual and cultural significance to the Tribes.

Since the completion of the Klamaths’ termination process in 1961, the USFS managed nearly 700,000 acres of the Klamaths’ former reservation as the Winema and Fremont national forests in southern Oregon. The USFS acquired jurisdiction of the Klamaths’ forest after Congress appropriated money for the U.S. government to purchase large forested tracts that private investors had not bought during the termination process. The Klamaths collaborated with the State of Oregon in the management of wildlife within this same territory. The Klamaths had worked hard to establish their cooperative relationship with the State of Oregon during the 1970s. In the 1980s and 1990s, they faced a similar challenge with the U.S. Forest Service. The USFS officials treated the Klamath Tribes as a public interest party rather than a sovereign nation in a government-to-government relationship. For decades prior to this period, the USFS operated without input from tribal nations or the public for that matter. The National Environmental Policy

---

<sup>287</sup> Morrie Jimenez, interview, 20 August 2002, *Oral Narratives of the Klamath Termination*.

Act of 1969 (NEPA) required the USFS and other federal agencies to begin allowing the public to comment on and appeal federal agency actions, such as timber sales, the construction of roads, and long-term plans.<sup>288</sup> The Native American self-determination activism in the courts introduced significant interpretations of treaties, treaty rights, and tribal sovereignty as exemplified in *Kimball* (1974) and *Boldt* (1974). These cases redefined tribes' relationships with state governments and the U.S. government as relationships between sovereign entities. By the 1980s, the USFS had not adjusted its policies to this interpretation of tribal sovereignty.

Determined to forge the government-to-government relationship with the USFS, the Klamath Tribes sought out means for formally sharing their perspectives on forest management with the Service. They turned to environmental policy and administrative processes. Klamath leaders recognized the need to learn federal agency policies, how federal agencies made decisions, and the way in which national environmental policies worked. Klamath leaders collected this information and put it in their "tool box," and honed their knowledge of it.<sup>289</sup> They used their keen understanding of the legal system to influence legal processes so "we could get our needs recognized" and "to further our goals in dealing with the needs of the land and resources," Jeff Mitchell, Klamath Tribes Lead Negotiator explained.<sup>290</sup> To garner the necessary knowledge for this strategy, tribal leaders again turned to NARF. By this time, NARF attorneys and the organization as a whole, had gained more than fifteen years of experience working on federal Indian law in the federal court system and through federal agency administrative policy processes, like NEPA. These attorneys knew how to work within the web of U.S. law and legal procedures. With NARF's support, the Klamaths found an opportunity in the NEPA and related USFS appeals processes. If the Tribes filed comments and appeals as an interested party, the USFS would have to respond to them. The NEPA and appeals processes did not require Forest Service officials to make decisions consistent with the claims that interested parties submitted,

---

<sup>288</sup> National Environmental Policy Act of 1969, 83 Stat., 102 (a-h), codified as 40 C.F.R. 1.3 (1973).

<sup>289</sup> Mitchell, interview.

<sup>290</sup> *Ibid.*

but the Klamaths believed that they could use the NEPA and appeals processes to voice their concerns to the USFS and, more importantly, to demonstrate that the USFS officials were not upholding their trust obligation to the Tribes. The Klamaths' Treaty of 1864 held the USFS accountable through a trust relationship.<sup>291</sup> Under the trust relationship, the Service must not take actions that threaten the Tribes' ability to practice treaty rights and the agency must also interact with the Klamaths and other tribes in relationships that acknowledge their sovereignty. As the Klamaths interacted with Service officials through these legal processes and met face-to-face with them in meetings, the tribal leaders found that USFS's organizational culture, which included assumptions about Native peoples, an emphasis on scientific training and rational thinking, and a long-standing practice of unilateral decision making, stifled Service employees' and the organization's ability to adapt to the practices required by nuanced interpretations of Native American sovereignty and treaty rights as they affected natural resources management. In an effort to reframe their needs and cultural positions in language that the Forest Service officials could understand, Klamath leaders developed a lexicon based on environmental policy rhetoric.

The Klamaths' history destabilizes the narrative of colonialism that describes weak tribal nations resisting ever powerful federal agencies. In this story, the Forest Service resisted the Klamaths authority as a sovereign nation and made decisions that threatened the Klamaths' treaty rights. The Klamaths held strong. Their leaders maintained their management vision for the forest that they based on cultural values and their current needs, and they developed a new set of strategies to assert their sovereignty and treaty rights.

Through environmental policy and administrative processes and informal requests for meetings, the Klamaths fostered a continued discussion with Forest Service officials regarding the Tribes' sovereign rights to participate in the agency's policy and decision making. Their conversation illuminates fundamental differences between the Klamath Tribes' and the USFS's management visions. The Klamaths based their claims for sovereignty and the protection of

---

<sup>291</sup> Kappler, *Treaties*, 865-868.

treaty resources on a combination of tribal traditions and cultural values, scientific analysis, and environmental and federal Indian policy, while the USFS justified their right to unilaterally manage the forest on congressional law. The Klamaths borrowed language and rhetoric from environmental policies, phrases they hoped would support their position and help Forest Service officials better understand the urgency of their requests. As the Klamaths discussed sovereignty and the fiduciary responsibility of the USFS officials, they participated in natural resource agencies' nationwide struggles to adjust to American Indian self-determination policy, which Congress enacted in 1975.<sup>292</sup> A sharp break from termination policy, self-determination policy allowed tribal nations to retain federal recognition while simultaneously assuming responsibilities for their tribes that the Bureau of Indian Affairs (BIA) previously handled.

During this period, the U.S. Forest Service experienced what might be understood as an institutional identity crisis. National environmental policies that encouraged public involvement in federal planning and federal Indian policy that mandated tribal participation in federal management threatened the agency's own authority and long-standing practice of unilateral decision making. As the agency resisted the Klamaths' requests, it dealt with internal conflict and a changing institutional culture.

Differences in spatial meanings fueled the conflict between the Forest Service and the Klamaths. The Klamaths imbued the forest with cultural meanings that reflected their 14,000-year tenure in the region. Through oral traditions, they understood themselves as stewards of the forest and as part of the forest. The canopy of ponderosa pines, the basalt outcroppings, and the wildlife all had cultural meaning that reinforced the Klamaths' cultural identity. Stories and memories shared from generation to generation and experiences in the forest taught Klamaths how to be Klamaths.

Different peoples can give culturally-particular meanings to the forest, and the Forest Service had a very different way of thinking about it.<sup>293</sup> Forest Service culture and federal policy

---

<sup>292</sup> Indian Education Assistance and Self-Determination Act of 1975, 25 U.S.C. 450 (1975).

<sup>293</sup> Meinig, "Beholding of the Eye," 33-43.



encouraged Service officials to see their organization as the sole manager of the vast timber resources. Service officials managed such uses as logging, grazing, camping, fire suppression, and wildlife habitat. Most importantly, only the Forest Service would make final decisions regarding the forest. The Klamaths, then, went head-to-head with an agency that did not leave room for the Tribes in their vision for forest management, which emphasized timber production and unilateral decision making. With determination and tools that included the NEPA, the USFS appeals forums, the lexicon, and support from NARF, the Klamaths changed this. The Tribes may not have been able to get Forest Service officials to comprehend the Tribes' spiritual and cultural meanings in the same way that tribal members understood them. However, the tribal leaders successfully transformed their relationship with the Forest Service from one in which they were subordinate to one in which they consulted the Forest Service in a government-to-government relationship regarding forest policy and management. This relationship helped reproduce a space that reflected the Klamaths' values and needs.<sup>294</sup> By incorporating the Klamaths' perspectives in to forest management, the Service would change the physical character of the forest. For example, the Service would not cut timber tracts that it would have cut without the influence of tribal interests, or the Service might manage for a wildlife species that is culturally significant to the Tribes.<sup>295</sup>

Assimilationist policymakers bent on reducing the federal budget and churning Native people into the cultural melting pot supported the termination policy.<sup>296</sup> The Klamath Termination Act of 1954 began a process that culminated in the loss of the Klamaths' federal status, all federal programs offered to them because of their status as Indians, and their remaining 1.2-million-acre reservation. Between the 1910s and 1961, Klamath tribal leaders tried to end BIA supervision

---

<sup>294</sup> Lefebvre, *The Production of Space*.

<sup>295</sup> The sources I have access to do not indicate how large in acreage or in board feet these planned sales were. This restricts my ability to estimate how many acres and board feet of timber the Klamaths kept the USFS from cutting.

<sup>296</sup> Fixico, *Termination and Relocation*.

over themselves and their forest resources.<sup>297</sup> Not until the termination policy of the 1950s and 1960s, did the BIA relinquish its oversight of the Klamaths' forest. Despite the tumultuous relationship between the Klamaths and the BIA, by 1961 the Bureau had not harvested trees within many of the Klamaths' sacred sites, such as Yamsay Mountain.

The USFS had the fiduciary responsibility to protect the Tribes' treaty rights and to acknowledge the Klamaths' sovereignty although the federal government did not formally recognize the Tribes during the 15 years following termination. Two federal court decisions, *Kimball I* (1974) and *Kimball II* (1979) reaffirmed Klamaths' treaty rights and sovereignty.<sup>298</sup> To what extent did the agency have to adjust management for tribal concerns? They did not know. The Department of Agriculture had not developed a policy for working with tribes by the late-1970s, let alone the mid-1990s. Furthermore, the Service had managed unilaterally federally-held forest reserves since 1905 under the Organic Act of 1897.<sup>299</sup>

The expansion of national environmental policy and the shift in federal Indian policy in the 1960s and 1970s further complicated the USFS's procedural duties. The emergence of national environmental legislation, such as the National Environmental Policy Act of 1969, established a democratic forum in which the interested public could voice concerns about federal agency actions that significantly affect the human environment. For federal agencies, this policy meant more paperwork, more staff, and extended timeframes for timber sales and other agency actions. Only six years later, Congress passed the Indian Self-Determination and Education Assistance Act of 1975.<sup>300</sup> This act formalized the goals of many Native leaders as it allowed tribes to assume responsibilities for their communities that the BIA previously supervised. In accordance with the self-determination policy, the BIA began to relinquish its duty as the middleman between tribes and federal agencies.

---

<sup>297</sup> Bilka, "The Klamaths' Path after Termination," 24-57.

<sup>298</sup> *Kimball*, 492 F.2d (9th Cir. 1974); *Kimball*, 590 F.2d 768, (1979).

<sup>299</sup> Organic Administration Act of 1897, 30 Stat. 34 (1897).

<sup>300</sup> Indian Self-determination and Education Assistance Act of 1975, 88 Stat. 2203, codified as amended, 25 U.S.C. sec 450-458 (1975).

Throughout the 1970s, the Supreme Court and other federal court decisions redefined tribal sovereignty, describing tribes as sovereign nations that interacted with state and federal agencies in government-to-government relationships. For example, in response to *Kimball I* (1974) and *Kimball II* (1979), the Klamath Tribes, the Oregon Department of Fish and Wildlife, and the US Department of Interior signed a Consent Decree in 1981. This agreement described the government-to-government relationship between the Klamath Tribes and the State of Oregon in which the two parties collaborated in the management of wildlife within the former reservation. The Klamaths sought a similar relationship with the USFS.

Between 1987 and 1998, the local, regional, and national USFS officials who oversaw the Klamaths' former reservation forest explained to the Klamath Tribes that the USFS and no one else made decisions regarding forest management. From the USFS officials' perspective, the agency managed a resource that at one time belonged to the Klamaths. The USFS officials aware of the sale of tribal land during the termination process and who adhered to Lockean ideals of property, struggled to understand the implications of the Klamath Tribes' treaty rights within the former reservation forest. The Klamaths no longer held title to the forest, but federal law reserved their rights to hunt, fish, trap, and gather within the former reservation. These same federal officials, who understood their statutory responsibility to manage the forest for the public good, had a difficult time adjusting to the federal policy shift toward American Indian self-determination, the congressional restoration of the Klamaths' federal status in 1986, and the Klamath Tribes' requests to participate meaningfully in the USFS's decision-making processes.

Willing to negotiate with the USFS, but faced with an agency conflicted about its new responsibility to the public and its changing relationship with tribal nations, Klamath leaders turned to the public participation features of environmental law. In 1987, one year after Congress restored the Tribes' federally-recognized status and the associated programs designed for Indian tribes, Klamath leaders, including their natural resources officials, launched themselves into the NEPA and Forest Service appeals processes. If the Forest Service would not work with the Tribes by choice, the Service would have to pay attention to the Klamaths' concerns once the

Tribes submitted them into the USFS's administrative processes. Through these tactics, the tribal leaders proactively voiced their concerns for forest management, treaty rights, and sovereignty.

With the support of their attorney and their own research, Klamath leaders and natural resources employees, such as Chuck Kimbol, Jeff Mitchell, Don Gentry, and Craig Bienz, understood that federal law mandated that the USFS comply with NEPA and the appeals processes. The U.S. Council on Environmental Quality (CEQ) outlined a general framework for NEPA, and federal agencies adapted the procedures to their administrative processes in order to fulfill CEQ requirements. For example, the USFS began the process by determining whether or not its proposed action, such as a timber sale, qualified for a categorical exclusion, that is, a project that does not significantly harm the environment and therefore does not require extensive environmental analysis. If the agency could not categorically exclude a project, they produced an environmental assessment (EA) or they began the more extensive environmental impact statement (EIS) process. The agency used an EA to determine whether or not a project might result in significant impacts to the human environment. The term "human environment" referred to both "the natural and physical environment and the relationship of people with that environment."<sup>301</sup> If USFS officials found that their project would not significantly affect the environment, then they produced a finding of no significant impacts and informed the public of its decision. On the other hand, when an agency determined through an EA that a project would have significant impacts, it began the much more complex and time-consuming EIS process. Perhaps, in order to avoid the demanding administrative procedures of an EIS, Winema and Fremont national forest officials asserted that their numerous timber sales would have no significant effects on the human environment, including the Klamath Tribes' treaty rights.

The EIS process forms the democratic heart of NEPA because it allows citizens to voice concerns about a proposed federal action and its possible environmental and social effects. However, because the Winema and Fremont national forest officials usually claimed that their actions would have no significant effects, the Klamaths rarely had access to the EIS process,

---

<sup>301</sup> Council on Environmental Quality of the Environmental Protection Agency, 40 C.F.R. 1508.14 (1986).

which required a public comment period of 90 to 120 days. By participating in NEPA, the Klamath Tribes and other parties qualified themselves to partake in the Forest Service administrative appeals process, which incorporates a 30-day appeal period. The appeals process serves as an internal review procedure. The public can file an appeal of a USFS decision, such as a finding of no significant impact (FONSI), final EIS, or record of decision.<sup>302</sup> The appeal requires a higher authority in the Service to evaluate a lower-level administrative judgment. Although the appeals process relies on agency discretion, it offers another avenue for the public to question the validity of the Forest Service's decision. Sometimes an appeal results in the Forest Service remanding its original decision back to the responsible officer for reconsideration. In the mid-1980s through the mid-1990s, local USFS officials repeatedly filed FONSI for their timber sale projects in the Klamaths' reservation, arguing that their actions would not significantly harm the human environment. In response, the Klamaths submitted appeals, borrowing rhetoric from NEPA to assert their claims for the protection of their treaty rights.

The poetic language of NEPA captures the essence of its writers' intentions—to acknowledge that humans have a relationship with the environment and, therefore, citizens should participate in the administrative processes for proposed “Federal actions significantly affecting the quality of the human environment.”<sup>303</sup> With idealistic language the law maintains that “it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations...to create and maintain conditions under which man and nature can exist in productive harmony.”<sup>304</sup>

In retrospect, this section of NEPA seems fanciful because it has not held weight in court. NEPA does not require federal agencies implement the least environmentally harmful projects. However, as a procedural policy, NEPA provides a forum for participating in agency decision-making processes to citizens, sportsmen, environmentalists, American Indians, and other

---

<sup>302</sup> Council on Environmental Quality of the Environmental Protection Agency, 40 C.F.R. 1501.1-1501.8 (1986).

<sup>303</sup> National Environmental Policy Act of 1969, 42 U.S.C. sec. 102(c) (1982).

<sup>304</sup> National Environmental Policy Act of 1969, 42 U.S.C. sec. 101(a) (1982).

interested parties. By participating in an agency's planning process, the citizens can share their knowledge and concerns about the environment; for the Klamaths and other Indians, this policy presented an opportunity to disclose concerns regarding treaty resources, forest management, and tribal sovereignty. The Klamath leaders developed a lexicon as they adopted the NEPA rhetoric to describe how USFS actions would significantly harm their relationships with forest animals. Take, for example, Tribal Chairman Elwood Miller's 1987 appeal to the Dice Crane and Heron timber sales. Miller argued, "In your decision notice you state; that there will be no significant effect on the quality of the human environment/we feel this is not true, you will be changing the environment of wildlife in this area that will change the human environment for the Tribe and its people."<sup>305</sup> In borrowing the phrase "human environment" from the National Environmental Policy Act, Miller explained that the forest is not simply a natural resource and habitat for mule deer and other animals; it is a human environment where the Klamaths practice their culture.<sup>306</sup> In other words, the Klamaths did not "visit" the ponderosa and lodgepole pine forest; they were part of it.

The Klamaths witnessed a decrease in mule deer herds, a species that they relied on for subsistence. The Tribes worried that the timber sales would reduce mule deer habitat and exacerbate their current subsistence issues.<sup>307</sup> But there was more. In the process of hunting mule deer and other wildlife, the Klamaths took part in cultural and spiritual practices. Without a sufficient mule deer herd, the Tribes would not be able to use the cultural practices and values that define them as Klamaths. From the Tribes' perspective, the NEPA language was not romantic; rather, it reflected real-life circumstances and concerns.

---

<sup>305</sup> Elwood H. Miller, Jr., Klamath Tribes Natural Resource Technician, to Lee Coonce, Winema National Forest, RE: Dice Crane and Heron Timber Sales and Associated Activities," 25 November 1987, "Appeals History" vertical files," Chiloquin Local Office, USFS, Chiloquin, Or.

<sup>306</sup> Council on Environmental Quality of the Environmental Protection Agency, 40 C.F.R. 1500.2 (e-f) (1986).

<sup>307</sup> The documentary evidence does not discuss specifics regarding mule deer population sizes during the period in which the Klamaths used NEPA and the USFS appeals processes.

The Klamath Tribes have hunted mule deer for thousands of years. Through the process of hunting, they practice cultural and spiritual knowledge and values as well as provide sustenance for their families. The Tribes' treaty rights limited tribal hunting to the former reservation, and the Klamaths worried that restricting the available habitat would reduce further the mule deer population that they could hunt within that territory. They believed this would threaten their abilities to feed their families and practice their culture. Klamath Tribal Natural Resources Technician Elwood Miller argued in one of the first appeals that the USFS did not comprehend the meaning of the Klamath Tribes' treaty rights and restored federal status, asserting in his 10 September 1987 appeal: "It is apparent that neither you nor your staff understand the Treaty Rights of the Tribe. Restoration of the Tribe brings the trust relationship into focus and...that you are responsible for protecting our subsistence and cultural needs."<sup>308</sup> Only one year earlier Congress passed the Klamath Restoration Act, which reinstated the Tribes' federal recognition and, as Miller explained, reestablished the trust relationship between the Klamaths and the USFS, a relationship that termination temporarily dissolved. Even before the Klamath Restoration Act, the federal government recognized in *Kimball I*, *Kimball II*, and the 1981 Consent Decree that the Klamaths maintained treaty rights within the former reservation boundaries. Federal law required the USFS to ensure the Klamaths' rights to practice treaty rights. The USFS officials argued that their management decisions took into consideration the Klamaths' treaty rights.

Many issues may have fueled this conflict. First, the professional forestry training that most USFS employees received in 1950s and 1960s focused on growing and harvesting commercial tree species for wood production. This narrow emphasis on timber marginalized other resources like soil, water, and wildlife and ignored the complex, interdependent nature of forest ecosystems.<sup>309</sup> The Tribes requested that the USFS apply an ecological approach.

---

<sup>308</sup> Elwood H. Miller, Jr., Klamath Tribes Natural Resource Technician, to Lee Coonce, Winema National Forest, "Appeal of John Timber Sale," 10 September 1987, "Appeals History" vertical files, Chiloquin Local Office, USFS, Chiloquin, Or.

<sup>309</sup> Hayes, *Wars in the Woods*, 8-9.

Articulating the growing public interest in ecological forest management as opposed to traditional commercial forestry, non-governmental organizations (NGOs) across the nation also faced resistance from the USFS.<sup>310</sup> In southern Oregon, the Oregon Natural Resources Council (ONRC) submitted a total of eight appeals to Forest Service actions within or near the Klamaths' former reservation forest in 1989 and 1990.<sup>311</sup> The available USFS records do not describe the ONRC's requests, but this citizen group is known for its emphasis on ecological management of natural resources.

Another issue may have been that the Klamath tribal leaders at that time envisioned a forest structure that did not actually benefit mule deer. Klamath tribal member and Natural Resource Department Director Will Hatcher reminisced about the Tribes' interactions with the USFS in the 1980s and 1990s. Three- to four-foot forest maps covered his office walls. Sitting back in his chair at his desk in blue jeans, Hatcher explained that some tribal members had and still have "a misperception on what quality habitat is and what healthy forests looked like...." He further explained, "What I attribute that to is most of our people have grown up in a forested condition that's basically out of balance." Trained in silviculture, Hatcher explained that prior to fire suppression, the ponderosa pine stands in the former reservation experienced regular low intensity fires that left many trees standing but cleared the understory and allowed for fresh growth of grasses and low shrubs, which offer forage for mule deer.<sup>312</sup> A team of scientists known as the Interdisciplinary Technical Advisory Committee (ITAC) supported the Klamaths' interests in analyzing the impact of USFS actions on mule deer from an ecological approach. A letter from ODFW District Biologist Ralph Opp to Lee Coonce, Winema National Forest Supervisor, suggests that the USFS chose not to incorporate ITAC's mule deer model. According to Opp, ITAC designed the model for the Winema and Fremont National Forests so that it could

---

<sup>310</sup> Ibid., 17, 20-24, 82-83.

<sup>311</sup> "Appeals History Environmental Assessment, 1987-2004, Chiloquin Ranger District, Updated 30, 2004," Klamath Falls Local Office, USFS, Klamath Falls, Or., copy in author's possession. The ONRC is now Oregon Wild.

<sup>312</sup> Will Hatcher (Klamath Tribal Member and Klamath Tribes Natural Resources Department Director), interviewed by author, Chiloquin, Or., 31 July 2013.



“speak to wildlife (mule deer primarily) needs in timber’s language.”<sup>313</sup> As they tried to maintain autonomy in forest management and fend off the pressure to adopt ecological management, the local USFS’s resistance to outside scientific knowledge and models mirrored circumstances in other USFS Regions throughout the nation.<sup>314</sup> Moreover, the Service reportedly developed a deep skepticism of the public and environmental citizen groups through its experience in the appeals process.<sup>315</sup> Perhaps, this attitude applied to tribal nations, which may have introduced a greater threat than citizen groups due to tribes’ treaty rights and, most importantly, sovereignty.

Klamath leaders wanted more than the protection of their treaty rights. They sought a direct role in the management of their former forest as they understood themselves as stewards of the forest, bestowed with that responsibility by Gmok’am’c, the Creator. More than that, *Kimball I* (1974) and *Kimball II* (1979) described the Tribes’ sovereign right to manage their tribal members’ hunting, fishing, and gathering and to manage wildlife within the former reservation in cooperation with the Oregon Department of Fish and Wildlife. In 1987, the Klamaths’ Natural Resources Department began filing NEPA comments and appealing USFS timber sales and forest management plans with the Winema and Fremont national forests. Throughout the Klamaths’ appeals history between 1987 and 1998, the Tribes’ leaders consistently addressed issues concerning mule deer habitat, old growth forest management, the cumulative impacts of timber sales, and the USFS’s failure to follow NEPA requirements in the context of the Service’s failure to protect the Tribes’ treaty rights and resources. The Klamaths argued that the USFS actions negatively impacted wildlife populations and habitats. They believed timber sales and other USFS management practices might have a negative effect on wildlife populations which could inhibit tribal members from hunting, trapping, fishing, and gathering, practices integral to subsistence and the perpetuation of their tribal culture. In the same appeals and related

---

<sup>313</sup> Ralph Opp, District Biologist, Klamath District, Oregon Department of Fish & Wildlife, to Lee Coonce, Forest Supervisor, Winema National Forest, 12 October 1987, “Appeals History,” Chiloquin District Office, USFS, Chiloquin, Or., copy in author’s possession.

<sup>314</sup> Hayes, *Wars in the Woods*, 83-84.

<sup>315</sup> *Ibid.*, 84.

correspondence, the Klamaths shifted their concerns from an emphasis on the USFS's fiduciary responsibility to protect their treaty rights to an argument for their sovereign right to consult with the USFS in a government-to-government fashion. Reflecting this shift in the appeals records, Hatcher argued, "Many of the appeals and litigation was not necessarily about the actual things that were happening on the ground." Rather, he explained, the USFS's lack of meaningful consultation with the Klamaths encouraged tribal leaders to file appeals.<sup>316</sup>

The Klamaths may have also been responding to the political and legal perspectives of the USFS at the local, regional, and national levels. As the Klamaths interpreted the legal meanings of their treaty rights, trust relationship with the USFS, and the Tribes' rights to manage their former forest, the USFS did the same. Memos like the one that attorney Jocelyn B. Somers of the Office of General Counsel for the Department of Agriculture sent to the USFS Indian Advisory Group on 3 October 1990 suggest that USFS employees of all ranks struggled to understand their relationships with the tribal nations. Did a tribe's sovereignty grant them a co-management position with the USFS? Somers maintained that only the USFS reserved the right under the Secretary of Agriculture to make forest management decisions. "Neither treaty, statute, nor inherent sovereignty provide the Northwest tribes a right to co-manage resources of the national forests with the Forest Service. The Forest Service has the ultimate authority and responsibility to make management decisions regarding resources of the national forest," Somers argued.<sup>317</sup>

In the same memo, Somers exposed how tribes' rights as sovereign nations and treaty rights might restrict USFS management decisions. Somers wrote, "However, as could consultation, cooperation, and coordination with any other governmental entity, this obligation could result in the narrowing of Forest Service management options, especially with regard to

---

<sup>316</sup> Hatcher, interview.

<sup>317</sup> Memorandum from Jocelyn B. Somers, Attorney, Office of General Counsel, to Indian Issues Advisory Group, Forest Service, US Department of Agriculture, Subject: Forest Service Relationship with Native Americans in Managing Resources on the National, 3 October 1990, Klamath Falls Local Office, USFS, Klamath Falls, Or.

tribal off-reservation hunting and fishing rights."<sup>318</sup> This meant that the USFS might have to choose an alternative timber sale if the one they originally wanted might threaten a tribe's ability to practice treaty rights. The USFS would not recognize tribes as co-managers, but tribal concerns and the fiduciary requirement for treaty rights protection might influence USFS management decisions. As Somers explained, this applied to Native American nations like the Klamath Tribes who practiced off-reservation treaty rights within national forest boundaries. The Tribes had an agenda. Their ultimate goal was to reacquire all or part of their former reservation forest. A second-best option would be co-management or the ability to collaborate in the management of their former forest. That way the Klamaths could participate in decisions regarding timber sales, forest thinning, stream restoration, habitat management, among other responsibilities.

The USFS continued to try to clarify its policy toward tribes. In a memo dated 16 September 1991, the Regional Forester John Butruille attempted to explain the significance of tribal sovereignty. He wrote, "The regulatory processes designed to assist in facilitating public review and comments do not apply to Indian tribes because they are sovereign governments, and not just part of the general public." Yet, in the same letter, he argued that the appeals process, which any public party could use, provided the means for addressing "all Indian trust resource concerns."<sup>319</sup> In other words, the USFS should regard Indian nations as separate from the public, but assume that the appeals process, which is designed for the public, would suffice as a forum to address the needs of sovereign tribal nations. That same month in 1991, the Pacific Northwest Region Tribal Relations Advisory Group distributed an informational policy document entitled "Desk Guide to Tribal Government Relations." In this guide, USFS officials recognized that Indian tribes had a different legal status than the general public. The guide's wording suggests that tribes should have had an alternative method for interacting with the USFS. The Tribal Relations

---

<sup>318</sup> Ibid.

<sup>319</sup> Nancy Graybeal to John F. Butruille, Regional Forester to Region Foresters, regarding Negotiated Settlements with Indian Tribes, 16 September 1991, Chiloquin Local Office, USFS, Chiloquin, Or.

Advisory Group wrote, "...Tribal Governments are 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."<sup>320</sup> As tribal nations with sovereignty, the guide explained, the USFS must work with tribes in a government-to-government relationship. Yet, the guide provided no protocol for the government-to-government relationship, and the local and regional foresters' confusion continued.

Through the process of teasing out the definition of government-to-government relationships between the USFS and tribal nations, the Department of Agriculture Office of General Counsel circulated a memo that warned officials not to use the term "co-management" when referring to the Service's relationship with tribes. Rather, the memo suggested alternative terms for describing the relationship, such as "partnership," "government-to-government," "technical and policy consultation," "cooperative planning," and "inter-disciplinary team membership."<sup>321</sup> Co-management, as Somers explained in 1990, would mean that two parties have an equal influence on forest management decisions. Congress may have granted the Secretary of Agriculture the duty of managing national forests, but tribal sovereignty, the U.S. government's fiduciary responsibility to Indian nations, and the federal policy shift toward government-to-government relationships with tribes complicated the USFS officials' roles as forest managers.

The Klamath tribal leaders urged the USFS to allow the Tribes to share the management responsibility of the forest as co-managers. The tribal leaders believed that as stewards of their ancestral lands for more than 14,000 years, their cultural knowledge and values offered a useful "alternative model" to those of federal agencies and that it should be incorporated into the Service's decision making. In a Draft Memorandum of Agreement (Draft MOA) concerning the sharing of the Klamaths' cultural knowledge with the Service, the Klamaths explained the holistic

---

<sup>320</sup> "Desk Guide to Tribal Government Relations: Tribal Relations Advisory Group, September 1991," Pacific Northwest Region, 1991, Klamath Falls Local Office, USFS, Klamath Falls, Or.

<sup>321</sup> Memorandum from Mary Jo Lavin, Deputy Regional Forester, U.S. Forest Service to Forest Supervisors and Directors, Subject: Co-Management, 16 January 1991, "Klamath Tribes" vertical file, Klamath Falls Local Office, USFS, Klamath Falls, Or.

perspective of their management strategy. The tribal leaders asserted: "In the Klamath worldview it is very difficult to separate the sense of place and cultural resource management from 'religion' management, 'environment' management, 'socio-economic' management, and management of 'archaeological materials.'"<sup>322</sup> Without stating it directly, the Klamaths maintained that they were as much a part of the forest as the trees or mule deer and that their role in the forest was that of overseeing its management. The intricate relationships among the Klamaths' accumulated cultural knowledge of the forest, mule deer, other animals, plants, and entities was a living indigenous system. The Draft MOA articulates this position: "It should be clear that without the opportunity to responsibly and authoritatively exercise this knowledge and these practices they shall be lost and the culture will be extinguished."<sup>323</sup>

While the existence of this document suggests that the USFS and the Klamath Tribes worked together, the Draft MOA offers a deeper view of the conflict between the ways the USFS and the Klamaths envisioned tribal culture. In the Draft MOA, the Klamaths stressed that their culture was not only trapped in the past at archaeological sites, but that their people who lived, worked, raised their children, and hunted in the forest practiced their culture in the present. Reflecting Miller's description of the forest as a human environment in the 1987 appeal, Tribal Chairman Charles Kimbol explained in the letter attached to the Draft MOA that "In addition to guaranteeing the protection of archaeological sites through information security, this MOA emphasizes a more holistic definition of cultural resources and the values of a management strategy that acknowledges their relationship to a living society."<sup>324</sup> Kimbol asked the USFS to shift their understanding of the Klamaths, their culture, and the forest. The Klamaths' culture did not only exist in the past and in material objects left in deserted locales throughout the ponderosa and lodgepole pine forest. Rather, the Klamaths' living society kept their culture alive as they

---

<sup>322</sup> Klamath Tribes and US Forest Service, Draft Memorandum of Agreement; sharing of cultural information, 5 May 1992, "Klamath Tribes" folder, vertical files, Klamath Falls Local Office, USFS, Klamath Falls, Or.

<sup>323</sup> Ibid.

<sup>324</sup> Charles Kimbol, Tribal Chairman, Klamath Tribes, to Bob Castaneda, Forest Supervisor, Winema National Forest, 5 May 1992, Klamath Falls Local Office, USFS, Klamath Falls, Or.

practiced it and shared it with their members within their ancestral homelands. At base, Kimbol urged the Forest Service to view the Klamaths as a modern tribal nation that continued to practice their culture in the forest. Forest Service employees placed the Klamaths' outside of modernity. They did this by stressing the importance of archeological sites as representing culture rather than recognizing that the Tribes continued to practice their culture in modernity as they hunted, fished, and conducted other culturally-significant activities.

As the USFS grappled with defining its relationship with tribes, the Klamaths requested a meeting with the agency. On 20 July 1992 the Klamath tribal leaders and USFS local, regional, and national level officials met "to discuss the purpose and importance of a government-to-government agreement between the Klamath Tribes and the United States." As the Klamaths used the NEPA and appeals processes, they believed that the USFS saw them only as another "special interest group" rather than a sovereign tribal nation.<sup>325</sup> Tribal Chairman Charles Kimbol explained that seeing the tribes as merely another interested party allowed the USFS to dismiss the Tribes' substantive claims for treaty rights protection. Evidence in the appeals process supports Kimbol's assertion. Numerous USFS responses to the Klamaths' appeals evaluate the Service's adherence to NEPA protocols not to the agency's commitment to protecting treaty rights. Even when national-level officials remanded local-level decisions in response to one of the Klamaths' appeals, the analyses focused on NEPA procedures. For example, on 10 November 1988 the Klamath Tribes appealed the Service's John, Dice Crane, and Heron timber sales. The Tribes argued that the USFS's decisions to allow these timber sales abrogated their treaty rights and violated the NEPA requirements. The national reviewing officer, Associate Deputy Chief David Unger, responded to the Tribes' appeal with a stay on 13 April 1990. The stay halted the timber sales until the local Winema Forest Supervisor amended the associated environmental assessment so that it included an analysis of the effects that the timber sales and other factors would have on mule deer herds. In the appeal response, Unger paraphrased the

---

<sup>325</sup> Meeting between the Klamath Tribes and the Forest Service, 20 July 1992, "Tribes Info" vertical files, Klamath Falls Local Office, USFS, Klamath Falls, Or. Hereinafter referred to as "1992 Meeting notes, USFS, Klamath Falls, Or."

Klamaths' appeal stating that the Tribes had argued that the USFS had not complied with NEPA procedures.<sup>326</sup> What is striking about Unger's understanding of the Tribes' appeal is that any interested party, an environmental group or sportsman's association, could have made such a claim. Nowhere in his response to the Tribes' appeal did he mention treaty rights.

According to federal law, the Forest Service must uphold its fiduciary responsibility to the Tribes, which means not allowing projects that abrogate or threaten to abrogate the Tribes' treaty rights. Unger should have at least noted the Klamaths' concerns, yet, he clearly chose not to address that issue. He treated the Klamaths as an interested public party rather than a tribal nation. This suggests that Unger did not understand their agency's responsibility to the Klamaths nor did they understand the Klamath legal rights and relationship with the forest. Yet, this occurred around the same time that Somers counseled the Forest Service on the meaning of "co-management." The Service was trying to protect their decision-making authority. Unger's response to the Klamaths' appeal in 1990 may reflect the agency's resistance to including the Tribes' in the agency's forest management decision making. By ignoring treaty rights claims, the Service could avoid acknowledging the Tribes' status as a tribal nation and just treat the Klamaths as they did any other group that filed an appeal. There is continuing evidence in the next couple years that the agency still did not know how to interact with the Klamaths in a government-to-government relationship.

The 1992 meeting uncovers the profound challenge that the USFS and other agencies faced as they wrangled with the notion of a government-to-government relationship with Indian tribes. Sometimes the officials debating Indian-U.S. relationships were both American Indian. During the 1992 meeting, Bob Tippeconnic, a Comanche who grew up on the White Mountain Apache Reservation in Arizona, representing the Chief Forester of the USFS in Washington, D.C., described the awkward position that the USFS confronted.<sup>327</sup> Until the 1990s, in most

---

<sup>326</sup> David Unger, Reviewing Officer, Associate Deputy Chief, National Forest System to Rebecca Craven, Attorney for Klamath Tribes, Native American Programs, 16 April 1990, "Appeals History" vertical files, Chiloquin Local Office, USFS, Chiloquin, Or.

<sup>327</sup> John Dougherty, "Star Gate," 16 June 1993, *Phoenix New Times Online*, accessed 7 August 2015, <http://www.phoenixnewtimes.com/news/star-gate-6425811>; Sarah Rambler, "Mount

cases the BIA represented tribes in relationships with the USFS. As tribes increasingly practiced self-determination and as federal laws like the Self-Determination Act of 1975 supported American Indian self-determination, federal agencies had to adapt.<sup>328</sup> In this meeting, the Klamath Tribes participated in a national-scope policy discussion regarding tribal sovereignty, a discussion that many federal agencies faced. Tippeconnic explained that the Bureau of Land Management, the National Park Service, among other agencies implemented policies for working with tribes. Other agencies, including the U.S. Fish and Wildlife Service, Environmental Protection Agency, and Department of Agriculture, including the USFS, were designing policies. Moreover, only a few days earlier the leaders of twelve undisclosed tribes met with President George H. W. Bush to discuss government-to-government relationships.

Deputy Regional Forester Nancy Graybeal assured the Klamath leaders that the USFS was in the process of a cultural shift and that over time the Service would become more open to sharing its management responsibility with tribes. Graybeal had a passion for forestry. In an undated forestry career brochure she described forestry as an art: "Forestry is the art and science of managing forests for multiple values and benefits. Once you learn the science of forestry, you become open to understanding the art."<sup>329</sup> The USFS had monopolized that science and art for decades within the national forests and in the 1990s faced the challenge of sharing that responsibility with sovereign tribal nations. Graybeal explained that, "The shift from the notion of the Tribes as a '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."<sup>330</sup> Kimbol understood the need for time, but stressed the

---

Graham Coalition Included in Notice of Intent to Sue U.S. Forest Service," 12 January 2011, *Arizona Silver Belt* Online, accessed 7 August 2015, [http://www.silverbelt.com/v2\\_news\\_articles.php?story\\_id=2264&page=77](http://www.silverbelt.com/v2_news_articles.php?story_id=2264&page=77). Both noted articles refer to Tippeconnic growing up on the White Mountain Apache Reservation.

<sup>328</sup> 1992 Meeting notes, USFS, Klamath Falls, Or.

<sup>329</sup> "Make a Difference in the Environment: Conserve Forest and Natural Resources: Choose Forestry," undated, Society of American Foresters brochure, accessed 7 August 2015, <https://www.safnet.org/fs/careerbro.pdf>.

<sup>330</sup> 1992 Meeting notes, USFS, Klamath Falls, Or.



Klamaths' interests for an agreement that would outline the Tribes' role in the USFS's forest management.

Kimbol and his fellow tribal representatives expressed a sense of urgency in their written statement that explained why they sought a government-to-government relationship with the USFS. Simply put, the agreement was “related to the survival of the Klamath peoples.”<sup>331</sup> The leaders created a metaphor, using language from the Endangered Species Act of 1969 (ESA). They argued that “the Klamath Tribe is an endangered culture.” Federal and state land managers, the tribal leaders explained, had degraded the Klamaths' natural system or “critical habitat.” In the ESA, “critical habitat” refers to the scientifically designated region required for a species to survive. The leaders further contended that the Tribes were “the carrier of a unique way of understanding and living in this place. This society and culture [the Klamaths'], and this system of knowledge is in danger of being lost forever to all humankind by the destruction of the relationship between the bearers of this knowledge and the environment of which it is a part.”<sup>332</sup> According to the Klamaths, a government-to-government relationship that resembled co-management would allow them to implement their special knowledge of the forest, which included their spiritual perspective. They hoped that in this stewardship position, they would assist the USFS in restoring mule deer herds, plant populations, and other forest resources. In restoring the natural environment, they would be fostering the Tribes' ability to practice its culture and maintain a viable community. During the discussion among tribal and USFS officials that followed, Tippeconnic of the Washington D.C. office described the agency's efforts to incorporate spirituality into forest planning. No matter how much dedication the agency gave to a spiritual approach, the fundamental issue was that non-Indians had an easier time understanding how treaty rights were important for maintaining culture than they had in comprehending how Native spirituality could inform management.<sup>333</sup> This relates back to the Tribes' interest in protecting

---

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid.

Mount Yamsay. Forest Service officials could easily apply science to study species that were important to the Tribes' cultural values. However, understanding why Klamath elders would want to protect a whole mountain from timber production required a different kind of education; it required knowledge of and respect for the Klamaths' worldview. Under such circumstances, protecting a mountain for spiritual reasons would not be a question but an innate decision.

After this day-long meeting, the two parties left with a plan to draft an agreement. The Klamaths continued to take an adversarial approach with appeals. Two years later, President Bill Clinton's 1994 executive memorandum called for all federal agencies to establish government-to-government relationships with Native American tribal governments.<sup>334</sup> This memorandum, while recognizing a serious need for such relationships, did not outline a method for pursuing them. The Klamaths' experiences with the USFS were not isolated and local. Through their activism, the Klamaths engaged in a national policy process that paralleled the experiences of other tribes and federal agencies across the nation.

On 18 April 1995, Klamath Tribes Chairman Marvin Garcia mailed two copies of an unsigned memorandum of agreement to Regional Forester John Lowe. This two-page memorandum addressed the Tribes' rights to gather firewood, tribal access to the forest, and tribal use permits, but did not offer a comprehensive plan for a government-to-government relationship between the two parties. This document suggests that the Tribes and the Service continued to coordinate at some level, but that the USFS lacked the ability to put into practice the Tribes desired government-to-government relationship. In a letter attached to Garcia's memorandum, Klamath Tribal Vice Chairman Jimenez Modesto articulated the Klamaths' expectations for a government-to-government relationship: "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

---

<sup>334</sup> President, Memorandum of April 29, 1994, 59 Fed. Reg. 85, (4 May 1994), accessed 16 July 2015, <http://www.epa.gov/tribal/pdf/president-clinton-94.pdf>.

whole, and work out—cooperatively—policies and activities appropriate to that area.”<sup>335</sup> At the time Jimenez wrote this letter, the USFS notified the Klamaths of timber projects only after the agency established a policy or planned a timber sale, and the notification the Tribes received was the same that the USFS disseminated to the public during the planning and analysis scoping period.

In August and September of 1996, Klamath Tribal Chairman Jeff Mitchell sent letters to Regional Forester Robert W. Williams and USFS Chief Jack Ward Thomas in an effort to renew the negotiation process for a government-to-government relationship. USFS Chief Thomas concurred with Mitchell’s request.<sup>336</sup> The two parties, however, did not negotiate a final agreement. That year, the Klamaths turned to litigation after the Forest Service failed to include the Tribes in a meaningful consultation regarding the sales.

The Service followed through with the eight salvage timber sales according to the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred in Oklahoma City, and Rescission Act of 1995 (The Rescission Act). This act allowed the USFS, to expedite any salvage timber sale contracts predating the legislation. Congress wrote the law in order to expedite salvage timber sales and increase federal profits. The legislation required the USFS to comply with NEPA and ESA requirements. The law simplified the environmental policy procedures by allowing agencies to combine the NEPA-required environmental assessment and ESA-required biological evaluation into one document.<sup>337</sup> Furthermore, the Rescission Act exempted such sales from the USFS administrative process, which meant that the USFS did not

---

<sup>335</sup> Modesto Jimenez, Klamath Tribal Chairman, to John Lowe, Regional Forester, 18 April 1995, United States Forest Service, “Klamath Tribes” folder, vertical files, Klamath Falls Local Office, USFS, Klamath Falls, Or.

<sup>336</sup> *Ibid.*; Draft letter from Jack Ward Thomas, Chief, US Forest Service, to Jeff Mitchell, Klamath Tribal Chairman, Executive Committee, Klamath General Council, no date, red folder, vertical files, Klamath Falls Local Office, USFS, Klamath Falls, Or.

<sup>337</sup> Rescission Act of 1995, Pub. L. No. 104-19, 109 Stat. 241 (1995).

have to hold a public appeals process.<sup>338</sup> The Klamaths had relied on this public forum to voice their concerns regarding the USFS's management of the Tribes' former reservation. Under the Rescission Act, the USFS officials approved eight timber sales within the Klamaths' former reservation forest during the following two years. According to the Klamaths, the USFS did not meaningfully consult with the Tribes regarding these timber sales, which according to Tribal Chairman Jeff Mitchell, "broke down" the Klamaths' and the Service's negotiations regarding a government-to-government consultation process.<sup>339</sup>

While the Rescission Act allowed the USFS to bypass the administrative appeals process that would have allowed public parties to submit appeals to Forest Service actions, the federal trust relationship between the Tribes and the USFS required the Service to avoid abrogating the Treaty of 1864. The Klamaths' Treaty of 1864 required federal agencies to uphold trust obligations and to recognize the Tribes' sovereignty.<sup>340</sup> The Rescission Act restricted the Service from abrogating any other law where it states: "The preparation, advertisement, offering, and awarding of such [salvage timber] contracts shall be performed utilizing subsection (c) and *notwithstanding any other provision of law...*"<sup>341</sup> Perhaps, because of the local and regional USFS offices' consistent decisions to treat the Klamath Tribes as a public interest group rather than a sovereign nation, the USFS simply moved forward with the eight timber sales instead of recognizing the Tribes' trust relationship and treaty as a previous law that could not be abrogated.

Under the Administrative Procedure Act of 1946, parties who have participated in NEPA, the USFS appeals, or other federal administrative process can litigate if they have

---

<sup>338</sup> Ibid.; 109 Stat. 244.

<sup>339</sup> Jeff Mitchell, Klamath Tribal Chairman, to Jack Ward Thomas, Chief, US Forest Service, Wash., D.C., 1 November 1996, Red Folder, vertical files, Klamath Falls Local Office, USFS, Klamath Falls, Or.

<sup>340</sup> Kappler, *Treaties*, 865-868; *Kimball*, 492 F.2d (9th Cir. 1974); *Kimball*, 590 F.2d 768, (1979). 1981 Consent Decree, Klamath Indian Tribe Restoration Act of 1986, Pub. L. No. 99-398, 100 Stat. 849 (1986).

<sup>341</sup> Rescission Act of 1995, Pub. L. No. 104-19, 109 Stat. 241 (1995). Emphasis in quote added by author.

exhausted all of their other options.<sup>342</sup> For nearly one decade the Klamaths had used the NEPA and appeals processes to share their concerns for their treaty rights and their rights to consult with the federal government at a level that recognized their court-affirmed sovereignty. The Klamaths argued in court that the USFS decisions to implement the eight timber sales under the Rescission Act demonstrated that the agency chose not to consult with the Tribes in a government-to-government fashion. The Tribes further contended that the sales would threaten their ability to practice their treaty rights.

Conversely, USFS officials maintained that they regularly consulted with Klamath representatives during meetings, field trips, and correspondence. The Klamaths had requested and organized many of these gatherings as a leadership strategy. The issue was that while the Tribes shared their concerns at the meetings, the USFS's final decisions did not reflect the tribal interests and needs. Klamath Tribal Chairman Modesto Jimenez had explained in a 1987 letter to Jim Torrence of the USFS Pacific Northwest Region that the USFS's meetings with the Klamaths seemed like a "token gesture" as the USFS did not incorporate the tribal data to develop alternative timber sale projects that would mitigate threats to treaty resources.<sup>343</sup> By 1996, the USFS still expected the Klamaths to consult with the USFS through the appeals process as any other interested public did rather than include Klamath Tribal representatives. This restricted the Klamaths from forest planning and the development of alternatives that would be analyzed through the NEPA process.<sup>344</sup>

The federal court reviewed the Klamaths' appeals record and the associated correspondence and meeting minutes and granted a preliminary injunction for seven of the eight timber sales. The Service could not pursue those sales until after they implemented a government-to-government consultation process that would warrant the protection of the

---

<sup>342</sup> Administrative Procedure Act of 1946, PL 79-404, 5 U.S.C. secs. 702, 704.

<sup>343</sup> Elwood Miller, Jr., Natural Resources Technician, Klamath Tribes, to Jim Torrence, Regional Forester, Pacific Northwest Region, U.S. Forest Service, Appeal of John and Stack Timber Sale Proposals, 20 November 1987, vertical files, Klamath Falls Local Office, USFS, Klamath Falls, Or.

<sup>344</sup> Hatcher, interview.

Klamaths' treaty rights. Over the next three years, Klamath leaders and USFS officials developed a framework for consultation. They completed a formal Memorandum of Agreement (MOA) on 19 February 1999.<sup>345</sup>

Unlike any other previous agreement between the Klamath Tribes and the USFS, the 1999 MOA mandated a detailed protocol for how the USFS would include the Klamath Tribes in the forest management process. The “overriding purpose” of the document was to formalize a government-to-government process that would “incorporate the Tribes as a cooperative government in the development of Forest Service policy, management and natural resource activities that may have an effect on the Tribes sovereign rights.”<sup>346</sup> The MOA further stated that the “parties acknowledge that the Forest Service, to the extent permitted by law, needs to incorporate the Tribes and Tribal policy and guidelines that affect treaty and trust resources fully into the development of plans and natural resource management activities, consistent with the U.S. trust responsibility.”<sup>347</sup> The USFS had made promises like these prior to the 1999 MOA, but never with an outlined framework for how the USFS would follow through with their obligation to the Tribes.

In two sections, the 1999 MOA described exactly how the USFS would fulfill these duties and how the Klamath Tribes would engage in this process. Perhaps, one of the most important guidelines set out in the MOA was the USFS's duty to recognize the Tribes as sovereign and not “another interested public.” This meant that rather than having to assume an adversarial approach through the NEPA and appeals processes, the Tribes would coordinate with the USFS prior to the NEPA and appeals processes. Coordination would take place in numerous ways. Within the first sixty days of each year, the Klamath tribal chairperson would meet with the Regional Forester to discuss natural resource management that might impact the Tribes' treaty

---

<sup>345</sup> “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.”

<sup>346</sup> *Ibid.*

<sup>347</sup> *Ibid.*

rights. The topics of these discussions might include “proposed changes to agency policy, standard and guidelines, management direction, forest plan revisions, and tribal proposals regarding these same issues.” This section of the 1999 MOA also explained that the Klamaths could request a meeting with national-level staff if necessary, but that the regional forester would try to resolve conflicts between the Klamaths and the USFS.<sup>348</sup>

Another section of the agreement described the local-level collaboration between the Tribes and the Service. The local forest and ranger district staff and the Klamaths’ natural resources and cultural resources staff would “share all information relevant to any decisions or activities” such as “preliminary determinations as to management activities as well as data collection and analysis.” This would take place during quarterly meetings or through writing between meetings prior to the public scoping period required by the NEPA. This section of the 1999 MOA described the importance of tribal input. The document states: “In its role as a sovereign government with sovereign rights, the Klamath Tribes are recognized as possessing the expertise and concern to initiate policy and/or standard and guideline direction.”<sup>349</sup> Much like the section that described the Tribes’ government-to-government coordination with the regional forester, this section underscored the Klamaths’ knowledge, interest in the forest, and its sovereign rights to incorporate it into forest management at the local level.

The 1999 MOA also mandated that Klamaths natural and cultural resource staff could partake in USFS working groups and interdisciplinary teams. The Forest Supervisor might appoint a working group to evaluate a proposal that the Klamaths submitted regarding forest management. The 1999 MOA guaranteed that any such working group would include “at least one” Klamath tribal representative. During the Service’s public scoping process required by the NEPA for any proposed action, the USFS organizes an interdisciplinary team to oversee project analysis and planning. Under the 1999 MOA guidelines, the Klamaths could appoint an unrestricted number of their staff members to the teams. The tribal staff members on these

---

<sup>348</sup> Ibid.

<sup>349</sup> Ibid.

teams had the critical role of sharing the Klamaths' data and information with USFS staff. Tribal information would be used "to assist the parties at arriving at a comprehensive understanding of the Tribes' issues and concerns, selections of the range of alternatives, alternative development, and resource effects analysis." The agreement further explained that the "Tribes' data and information shall be fully incorporated into the decision making analysis" for USFS projects.<sup>350</sup> These working groups and teams integrated tribal representatives directly into the Service's forest management process. Hatcher accepted the position as the Klamath Tribes' Forester only months after the tribal chairman signed the 1999 MOA. He described the "staff-to-staff relationship" as crucial and separate from the interactions of the tribal government with high-level Forest Service management. The staff-to-staff interactions allowed the Klamaths' scientists to participate directly in developing projects with Forest Service staff.<sup>351</sup>

Aside from the government-to-government and collaborative framework that the MOA offered, the Klamaths' decision to hire Hatcher may have significantly influenced the Tribes' shift away from using the appeals process. He believed that the Tribes' energy should be focused on the ground rather than in administrative appeals. Hatcher worked on Tonto National Forest in Arizona, the Klamath National Forest in California, and the Winema National Forest through the Chiloquin Ranger District in Oregon. While he had spent most of his years in the USFS as a technician; he worked for four years as a Forester. He understood both tribal and Service perspectives and concerns and had developed the skills to navigate interactions between the two entities.<sup>352</sup>

Since the 1999 MOA, the Klamaths have employed other strategies that have strengthened their ability to participate meaningfully in USFS management. They contracted with leading forestry scientists Norm Johnson, Jerry Franklin, and Debbie Johnson. These scientists

---

<sup>350</sup> Ibid.

<sup>351</sup> Hatcher, interview.

<sup>352</sup> Ibid.



wrote a forest management plan for the Tribes, which they completed in 2008.<sup>353</sup> The plan is based on ecological forestry. Referring to these scientists and the significance of their support, Hatcher quipped, “I got a hell of an arsenal with me.”<sup>354</sup> USFS management had been moving toward ecological management under pressure from the public and tribes.<sup>355</sup> Hatcher reported that one of the greatest impacts the Tribes’ Forest Plan has had in Forest Service planning is encouraging a shift from the management of limited forest stands to landscape-level management.<sup>356</sup> In 2011, the Klamaths entered a Master Stewardship Agreement with the USFS, Nature Conservancy, and the Lomakatsi Restoration Project. The agreement states that the “Klamath Tribes will serve as the senior partner with the Forest Service in this Master Stewardship Agreement” and refers to the Klamaths’ forest plan.<sup>357</sup> Through this agreement, the Tribes’ Natural Resource staff are “getting tribal concepts” from the Klamaths’ forest plan into USFS planning and implementation. Hatcher described how he works with The Nature Conservancy and Lomakatsi Restoration to make ground-level decisions about which trees can be cut and which cannot.<sup>358</sup>

The Klamaths’ activism played a significant role in their ability to garner a management position over their former reservation forest. They made a concerted effort to participate in USFS planning through the public forums offered in the NEPA and appeals procedures. After nine

---

<sup>353</sup> K. Norman Johnson, Jerry F. Franklin, Debora L. Johnson, *A Plan for the Klamath Tribes’ Management of the Klamath Reservation Forest*, May 2008, draft released in 2003. Copy in author’s possession.

<sup>354</sup> Hatcher, interview.

<sup>355</sup> Hayes describes how public pressure, particularly that of citizens groups, pressured the USFS to shift from commercial timber management to ecological management. See Hayes, *Wars in the Woods*.

<sup>356</sup> Hatcher, interview.

<sup>357</sup> Master Stewardship Agreement Between Klamath Tribes, Lomakatsi Restoration Project, The Nature Conservancy, And the USDA FOREST SERVICE, Fremont-Winema National Forest, FS Agreement No. 11-SA-11060200-017, signed September 2011, United States Forest Service, accessed 6 October 2015, <http://www.fs.fed.us/spf/tribalrelations/documents/agreements/KlamathTribesMasterStewardshipAgreement20110928.pdf>.

<sup>358</sup> Hatcher, interview.

years of appealing timber sales and forest plans, the Tribes litigated. The resulting court decision paralyzed USFS activities within the Klamaths former reservation boundaries. Deputy Regional Forester Graybeal had asked Klamath Tribal Chairman Charles Kimbol for more time in 1992. In 1996, the Tribes made it clear that they would wait no longer. The Service could not follow through with their timber sales until they agreed on a policy framework that incorporated the Klamath Tribes into the Service's decision-making prior to the NEPA and appeals processes. In 1999, the Klamaths established their long-awaited government-to-government relationship with the Service.

After Congress passed legislation that terminated the Klamaths' federal status, restricted the Tribes from accessing federal programs for Indians, and sold the majority of the Klamaths reservation to the USFS, the Klamaths developed strategies and employed tools in order to garner a management role over their treaty resources. The Klamaths' traditional cultural values and practices provided the foundational knowledge for their strategies, which they implemented through modern mainstream tools, such as the NEPA and appeals processes and litigation. In public policy forums the Klamaths argued for their alternative management vision, recognizing throughout the process that their knowledge of the forest differed from that of the USFS. Borrowing language from NEPA and the ESA, the Klamaths established a lexicon that they hoped would translate their cultural and spiritual concerns into a language the USFS might understand.

Often when scholars apply a colonialist understanding of Indigenous history, they describe landscapes and societies as though colonial processes have taken the place of Indigenous ones.<sup>359</sup> This approach, while attempting to demonstrate the oppressive nature of colonizing societies, veils the plurality of spatial views and complex power relations that coexist. The dominant society may not understand or accept a Native conception of the world, relationships, and economy, but Native peoples practice and pass on this knowledge, however restricted by the dominant society's laws and jurisdictions, and by limited resources. Recognizing that colonization does not eradicate Native spaces, but merely overlays them with new and, often, contradictory meanings, allows for a nuanced analysis of the relationships between Native and

---

<sup>359</sup> Harris, *Making Native Space*, xxi, xxiv; Harris, *The Resettlement of British Columbia*, xii.

non-Native societies, at the federal and non-government level. There has always been a Klamath space, one that the Klamaths know and can see. This narrative shows how the Klamaths made their space visible to U.S. Forest Service officials, who struggled to see beyond timber, roads, and game for sportsmen. Forest officials integrated the Klamaths' spatial meanings with those of the dominant society rather than pushing Klamath meanings out of sight and out of mind by privileging Eurocentric understandings of the forest over Klamath ones.

USFS officials simultaneously confessed their uncertainty as they attempted to devise a plan for government-to-government consultation. The USFS and other federal agencies adjusted to the U.S. government's policy of American Indian self-determination between the mid-1970s and late-1990s, and agencies did so at different rates and through various means. The U.S. Forest Service transformed from an agency focused on timber management to a broader approach that stressed multiple use and ecological interests beginning in the 1970s. The foresters trained in the 1940s and 1950s with a focus on timber management and unilateral decision making faced, resisted, and adjusted to new national environmental policies that allowed the public to inform forest management processes. Simultaneously, shifts in federal Indian policy introduced procedures that mandated that tribal nations participate directly in Forest Service planning processes. These policy changes challenged Forest Service officials who had made decisions without external influence since the early-1900s. New employees sensitive to cultural and public needs entered the Service and allowed for collaborative relationships between Native nations and the agency.

But the Forest Service was not simply confused. The Service outright resisted the Klamath Tribes' sovereign right to work with the agency in government-to-government relationship. The USFS succumbed to the Klamaths' activism after a federal court limited USFS activities until the Service formalized a detailed government-to-government process that included the Klamath Tribes in decision making. The resulting 1999 MOA, while not using "co-management" terminology, reflected the Klamaths' management vision—a vision that described the Klamaths as a "cooperative government" in the development and implementation of USFS policy and projects that might affect the Tribes' treaty rights. The Klamaths re-attained their

stewardship status through which they could mold USFS policy so that it supported their cultural and spiritual relationships with the flora, fauna, and other non-human components of the forest. By the late-1990s, the USFS had not written a detailed comprehensive policy for working with tribes. Rather, the Service wrote its Indian policy on a case-by-case basis, as exemplified in the Klamaths' history.

The Klamaths' activism situated their leaders in national-level discussions concerning the USFS's relationships with Indian nations. Through meetings that the Klamaths requested and correspondence with national-level USFS representatives, the Tribes engaged in policy debates regarding how tribes should practice their sovereign rights to manage treaty resources on public lands. The Klamaths' activism parallels that of other tribal leaders who met with national USFS officials and President George H. W. Bush in 1992. Therefore, the Klamaths' history illuminates the active roles that tribal leaders had in the development of USFS policy toward tribes and over public lands.

The Klamath Tribes worked within the U.S. legal system in ways that reshaped how the Forest Service managed the Klamaths' former reservation forest. One of the most significant changes in management may have been the inclusion of the Tribes' staff on the Service's interdisciplinary teams where tribal scientists could influence USFS management. Maps of southern Oregon after 1961 depict a region covered in national forest lands. What they fail to show are the major shifts in federal agency management that occurred between the 1970s and 2000s that allowed tribes to take an active role in natural resource decision making and the Native activism that drove these changes. While the map defines Fremont-Winema National Forest as a space managed by the Forest Service, in 1999 the Klamath Tribes began working directly with the U.S. Forest Service in a government-to-government relationship when making decisions regarding forest management.

This history, then, is also about the increasing pluralization of U.S. society during the late-20<sup>th</sup> century. This narrative begins with the Klamaths and U.S. Forest Service officials at odds. Each party has their own way of seeing the forest and understanding their own relationship and others' relationships to it. For years, the Forest Service resisted the Klamaths' vision for forest

management. Pressure from the Klamaths' activism that remade their relationship with the Service, U.S. executive policy that mandated the Service to work in a government-to-government relationship with the Klamaths, and cultural change within the Forest Service, transformed the local and regional Forest Service policy and approach for managing the Klamaths' former reservation. The Klamath reclaimed their space as they found ways to force the agency to uphold its trust responsibilities, which included treating the Klamaths as a sovereign nation and managing the former reservation forest to protect the Klamaths' treaty rights. This perspective destabilizes the colonial narrative that describes Native American societies as weak, helpless victims. Rather, this story demonstrates that the Klamaths, as a Native nation, never ceased to exist, continued to envision their society's cultural relationship with the forest, and found ways to make the settler society recognize and implement decision making that reflected the Klamath Tribes' values.

In the years following the 1999 MOA, the Klamaths did not file any appeals.<sup>360</sup> The two parties faced disagreements, but worked through them.<sup>361</sup> The Klamaths accomplished another of their management goals—that of sharing the responsibility of managing their treaty resources within their reservation, which delineated their sovereign boundaries. During their discussions with the USFS in the 1990s, the Klamaths shared their larger management vision as they encouraged the Service to consider not only the forest, but the surrounding region and watershed. During the two decades following the 1999 MOA, the Klamaths developed new tactics and borrowed mainstream tools to put into action their plans for watershed management. By the late-2000s, the Klamath Tribes would emerge as leading natural resource stakeholders in the Klamath River Watershed, a region that is ten times larger than their former reservation and outside of their ancestral territory.

---

<sup>360</sup> "Appeals History Environmental Assessment, 1987-2004, Chiloquin Ranger District, Updated 30, 2004," Klamath Falls Local Office, USFS, Klamath Falls, Or.

<sup>361</sup> Hatcher, interview.

## CHAPTER 6

### BUILDING RELATIONSHIPS: NEGOTIATION AND WATER RIGHTS

In 2001 non-Indian farmers and thousands of their supporters organized a protest in Klamath Falls, Oregon. These farmers had contracted with the U.S. Bureau of Reclamation (USBR) decades earlier for water from the Upper Klamath River Watershed to support their agriculturally-based livelihoods. That year, however, the Klamath Basin experienced a major drought.<sup>362</sup> The shortage of water combined with the federal court's reaffirmation of the Klamath Tribes' senior water rights, the fact that two of the Tribes' treaty-protected resources were on the endangered species list, and the coho salmon was listed as "threatened," forced the USBR to close the dam head gates. These farmers and their supporters protested by filling 50 white plastic buckets with water from Lake Ewauna, passing the buckets along a one-mile-long string of protestors and pouring the water into the A Canal, which transferred water to the Klamath Project farms in previous years.<sup>363</sup>

Something had changed. During the 1990s, events foreshadowed the 2001 water crisis. In 1992, Klamath Project farmers, for the first time questioned the availability of water after the USFWS required the USBR to reduce flows in order to protect the endangered c'waam and q'apdo. Third generation farmer in the Klamath Project Steve Kandra recalled a shift that took place in his lifetime, one that he will never forget.<sup>364</sup> Kandra is one of thousands of agriculturalists in the Klamath Basin that shared this experience. How could such a drastic change take place after nearly a century or longer of drawing water as needed from the watershed?

---

<sup>362</sup> Droughts in the Klamath Basin might last one year or multiple years, like the one at present which began in 2012 and continues to stress the Klamath River Watershed in 2015. The Upper Klamath Basin relies on snowpack and spring runoff. When the snowpack in the mountains is low, like the 2014-2015 winter, surface water is low and drought results. "2015 Klamath Basin Drought," *Oregon Water Science Center*, U.S. Geological Survey, accessed 28 July 2015, [http://or.water.usgs.gov/Klamath\\_drought/index.html](http://or.water.usgs.gov/Klamath_drought/index.html).

<sup>363</sup> John Bragg, "Bucket Brigade Plans Made," *Herald and News* (Klamath Falls, Or), 2 May 2001, accessed 12 December 2011, [http://www.heraldandnews.com/article\\_47072705-1f14-5c9e-b088-3d627e7c7a33.html#vmix\\_media\\_id=122642071](http://www.heraldandnews.com/article_47072705-1f14-5c9e-b088-3d627e7c7a33.html#vmix_media_id=122642071).

<sup>364</sup> Kandra, interview.

This crisis and seemingly intractable natural resources dispute has overshadowed the grassroots effort that resulted in three collaborative stakeholder agreements between 2010 and 2014 that together offer solutions for water management in the Klamath River Watershed. Conflict remains and can be traced to a faction within the Klamath Tribes, the Hoopa who live downriver, non-tribal irrigators, and non-tribal members of Klamath and Siskiyou counties, in Oregon and California, respectively. Still, these agreements illuminate the power the Klamath Tribes wield over natural resources in the watershed and the ability of disparate stakeholder groups to compromise in “one of the most contentious water wars in the west.”<sup>365</sup> With the leverage of their senior water rights, the Klamath Tribes transformed the way in which the State of Oregon and the USBR managed water in the Upper Klamath River Watershed. The Tribes also used their water rights to build alliances and agreements with irrigators that further influenced water management at a non-governmental level. The Tribes’ focus on restoring the watershed and the means they have used to do it has restructured not only management of water and other natural resources in the watershed, but the way in which the people in the watershed understand their social responsibility to each other. The Tribes helped initiate a new approach in Klamath River Watershed management that relies on trust and respect.

The grassroots, cooperative effort is a story of how a modern tribal nation empowered itself and of how a diverse community adjusted to tribal authority. This history is wrought with emotion, hardship, dedication, and transformation. What we can take from this is a lesson about the way we write narratives based on colonial theory, which most often discuss tribes as the resistors of colonial oppression. Reorient the story in a way that recognizes, as Kandra stated, that “the Klamath Tribes always had their rights” in order to watch scenes unfold in which federal, state, and non-governmental stakeholders resist the Klamaths’ power.<sup>366</sup> Colonial influence is

---

<sup>365</sup> “SHC in Action in the Klamath Basin,” *Strategic Habitat Conservation*, U.S. Fish and Wildlife Service, accessed 31 July 2015, <http://www.fws.gov/landscape-conservation/stories/SHC-in-Action-in-the-Klamath-Basin.html>. Matt Baun, Region 8 Public Affairs Officer, USFWS, made this statement about the water struggle in the Klamath River Watershed. “West” is spelled with a lowercase “w” in the original quote.

<sup>366</sup> Kandra, interview.

prevalent in this story; the Klamaths use colonial tools, such as science, the legal system, and Western cultural practices and the Klamath community struggles with poverty, unemployment and drug abuse issues residual from the reservation period and termination. This research is not intended to debunk settler colonial theory, but to encourage scholars to rethink the way they approach and write histories from that theoretical approach. Rather than see an oppressive state or federal agency or non-Indian community, watch as a federal agency folds under tribal authority, or a non-Indian community succumbs to a tribal nation's political power. Entities, which historical scholarship usually describes as the dominant societies, work hard to prove that tribes are wrong and that they do not have the legal rights that they claim. In the end, the Klamath Tribes prevailed and the resulting water management plan significantly reflects their vision for water and wildlife management not only within their former reservation, but the transboundary Klamath River Watershed, a region 10 times larger.

The Klamath Tribes maintained their own vision for their former reservation and the greater watershed and used the legal system to build leverage with their treaty rights and water rights. Through these means as well as their ability to keep an optimistic outlook and non-violent approach, members of the Klamath Tribes' Negotiation Team (KTNT), including Jeff Mitchell, Larry Dunsmoor, Don Gentry, and others, blazed a political path that required other stakeholders to participate in agreements that would reify the Klamaths' vision of the landscape. As they move forward with further negotiations in the mid-2010s, they continue to "produce a space" that reinforces their presence and active roles as stewards of it. A Klamath space always existed, and, through time, it changed as the Klamaths adapted their culture to the market-based economy, adjusted to and learned the U.S. legal system, expanded their understanding of culturally-significant species through scientific methods, and accepted that they would share their space with many other peoples who brought with them their own ways of valuing the space and its resources. As the Klamaths reinvented themselves as a modern tribal nation, their traditional values and the meanings with which they imbued the landscape informed the ways in which the Klamaths interacted with other stakeholders and argued for water and wildlife management. The context of the present day economy and the Tribes' interest in reaching a state of economic self-



sufficiency played a role in their vision for natural resources management. The Tribes have sought to purchase a 90,000-acre tract of their former reservation, a move that their ancestors would not have considered because of the very different historical context in which they lived. The modern Klamath leaders promoted the Klamath vision for the watershed and forests—one that reflected traditional values and the context of the economy, politics, and social relationships of the late-20<sup>th</sup> and early-21<sup>st</sup> centuries. The difference in the 2000s as compared to the previous decades is that not only federal and state agencies, but non-governmental water stakeholders, began to recognize the Klamaths' vision for the watershed and, through legal tools and mandates, were forced to accept it.

The history of the Klamath Water Crisis and the Klamaths' rise to a position of power in the 2000s, began long before the 2000s and before the termination process of the 1960s; it began with the white settlement of the region in the late-1800s and early-1900s. During the 1870s, settlers diverted water from the streams for agricultural use, though they had been pasturing livestock on unirrigated grasses prior to 1856.<sup>367</sup> The settlers had a different understanding of the land, the water, wildlife, and plants. They knew nothing of Gmok'am'c and the animals who helped him create the Klamaths and their space. The settlers gave their own meanings to locales, mountains, and even the Native people they encountered in the region. Manifest destiny justified the settler's migration west and further justified the later federal Indian policies that would define Native Americans as unfit for living in the white civilization and in need of assimilation to American culture on isolated reservations. For example, Acting Commissioner of Indian Affairs Charles Mix stressed to Oregon Indian Superintendent Perit Huntington that the reservation established for the Klamaths needed to include arable land so that the tribal people would fit the Jacksonian vision of American citizens. Mix stated: "The territory retained should also be adapted to grazing and agricultural pursuits, so that when in course of time they [the Klamath, Modoc, and Yahooskin] shall be reclaimed from their present wild and barbarous mode

---

<sup>367</sup> Bryant Williams (manager, Federal Land Bank, Klamath Falls, Or.), interview, 26 January 1972, no. 1, Oral History Collection, Klamath County Museum, Klamath Falls, Or.

of life, and induced to turn their attention to more civilized pursuits....”<sup>368</sup> Huntington and Mix and, most likely, some of the Indian leaders, agreed to a territory within the Klamaths’ homeland that encompassed a significant amount of rangeland and land suitable for farming but also a region of cultural and spiritual significance to the Klamaths, the largest of the three Indian groups.

With the Klamath, Modoc, and Yahooskin people restricted from more than 20 of their 22-million-acre ancestral territory, the expanding white society introduced water usage and water management techniques that produced a new space, physically altering it as the canals diverted water to crops that had never grown in the valley. In 1906, the Bureau of Reclamation began constructing the A Canal and draining Tule Lake. The Bureau first delivered irrigation water to the Klamath Project on 22 May 1907, which did not include the Klamath Tribes.<sup>369</sup> The non-Indian farmers needed power to pump the irrigation water through the recently created “organic machine.”<sup>370</sup> The construction of an energy-producing dam on the Klamath River inhibited the passage of salmon to the Upper Klamath River Watershed where the Klamaths lived on their reservation. When the Klamath Tribes sued in the Court of Claims to be repaid for the loss of salmon in the 1930s, the Department of Justice denied them, arguing that the Klamaths had no proof that the fish ever migrated to their homeland in the Upper Basin.

Non-Indian citizens and government officials made all of these changes to the region with the assumption that the Klamath Tribes did not retain water rights outside of their reservation. When they lost their reservation through the completion of the Klamath Termination Act process in 1961, members of the non-Indian society in southern Oregon and northern California, as well

---

<sup>368</sup> Chas. E. Mix, acting commissioner, Office of Indian Affairs, Department of Interior, to J.W.P. Huntington, Oregon Superintendent, Salem, Or., 22 June 1864, *Annual Report of the Commissioner of Indian Affairs, 1864*, No. 31, *HeinOnline*, 113.

<sup>369</sup> Maurice K. Strantz, *Reclamation Accomplishments, 1905-1953, Klamath Project, Oregon-California*, July 1953, Operation and Maintenance Division, Bureau of Reclamation, 7; Keppen, *The Klamath Project at 100*, 11-12; *Tule Lake, Lower Klamath Lake, and Upper Klamath National Wildlife Refuges: Hearing Before the Senate Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs on S. 1988*, 87<sup>th</sup> Cong., 23 February 1962 (Report submitted by Clinton P. Anderson, Chairman, Committee on Interior and Insular Affairs, U.S. Senate), 6.

<sup>370</sup> White, *The Organic Machine: The Remaking of the Columbia River* (New York, NY: Hill and Wang, Division of Farrar, Straus and Giroux, 1995), ix.

as state and federal officials, argued that the Klamaths did not retain treaty or water rights within their former reservation. The laws that the white society implemented and the way in which they treated the Klamaths suggests that the settler society assigned little value to the Klamath Tribes as a people; white society's spatiality figuratively and literally left limited room for the Klamaths on the landscape. More than that, the Department of Justice denied the Klamaths' spatial memories, their recollections of catching salmon in Upper Basin streams. Talk of salmon would cycle through this history once more in the 1960s and again in the 2000s, and in these later periods, it was not just the Indians interested in bringing salmon and steelhead back to the Upper Klamath River Watershed.

As it turned out, the Tribes were not the only people in the Upper Basin that missed the fish. A citizens group known as the Klamath Basin Advisory Council and supported by Oregon State Rep. George Flitcraft (Rep) led a campaign for the installation of fish ladders on all of the Klamath River dams to allow for the passage of salmon and steelhead into the upper watershed in the 1960s. Steelhead are technically a trout, not a salmonid, but like salmon, they migrate to the ocean unless they are locked in freshwater. The freshwater populations are known as rainbow trout. The grassroots group had worked on the anadromous fish issue for many years and was garnering more support, according to a report in the local paper on 26 October 1966.<sup>371</sup> Simultaneously, the Oregon Wildlife Commission circulated a petition for the fish ladders and conducted a feasibility study for the reintroduction of anadromous fish. In the late-1960s, California and Oregon fish and game agencies in cooperation with Pacific Power & Light, the current owner of the dams, planned an experimental reintroduction of steelhead and salmon to the Upper Klamath River Watershed. The group opted to test steelhead first.

The men who attempted the reintroduction hoped that the 55 steelhead would use the fish ladders on the J.C. Boyle and Keno dams to journey into the Upper Basin. They released the fish above the two COPCO dams, which still lacked opportunities for fish passage. With a nostalgic tone, the local paper reported that Paul Robbin of the Oregon Fish & Game Council who

---

<sup>371</sup> "Petitions On Fish Ladder Issue To Be Circulated Here," *Herald and News* (Klamath Falls, Or.) 26 October 1966, *Herald and News* Morgue, Klamath County Museum.

participated in the reintroduction was “a living link spanning this day and the time when the anadromous fish runs into the upper river were blocked by the construction of Copco Dam.”<sup>372</sup> Like the tribal elders, Robbin remembered when anadromous species swam into the Upper Klamath. The Klamaths, therefore, were not the only party with historical knowledge of salmon and steelhead in the Upper Klamath River Watershed. Robbin reportedly explained that “local people had been too busy ‘struggling to earn a living’ to protest blockage of the river when the dam was constructed early this century.”<sup>373</sup> Whether the Klamaths protested the dams is not clear from the available evidence. However, they were far from silent on the fish passage issue in the years following dam construction. The Klamaths filed claims for compensation only to listen as the Department of Justice told them that they had no proof the fish used the Upper Basin. Within a decade the Tribes read in local newspapers about the attempted reintroduction of steelhead. Imagine the frustration that tribal members must have experienced; it did not matter that they remembered the migrations of salmon and steelhead. On the positive side, non-tribal locals and scientists supported the Klamaths’ memories, which meant that state and federal bureaucrats could no longer argue that the fish never came up stream. The tribal community and members of the non-Indian community in the Upper Basin shared a common vision for the watershed as a fishery for steelhead and salmon. The Klamaths continued to fight for the fish. The fish were part of the Klamaths’ spatial memory and a source of subsistence. Now, they did so with evidence that others in the community authenticated the Klamaths’ claims.

Again in 1971, the Klamaths sought compensation from the U.S. government for the loss of salmon. One of the Klamaths’ attorneys argued during a U.S. Senate Subcommittee hearing that the Department of Justice had denied that case because of self-interest. If the federal government acquiesced to the Klamaths’ concerns, the Department would contradict prior

---

<sup>372</sup> “State Asks California To Provide Test Fish,” 21 Oct 1966; “Steelhead Plan for River Revealed,” 21 June 1967; “Historic Event: Steelhead Back,” 20 December 1970; “New Site Chosen for Fish,” 9 December 1970, all articles in *Herald and News*, (Klamath Falls, Or.) *Herald and News* Morgue, Klamath County Museum.

<sup>373</sup> “Historic Event: Steelhead Back,” *Herald and News*, (Klamath Falls, Or.) 20 December 1970, *Herald and News* Morgue, Klamath County Museum.

decisions regarding other tribes' similar claims.<sup>374</sup> The Klamaths had tried numerous times at this point to receive recognition of their losses, and while they hit yet another roadblock, they did not give up.

The federal officials' treatment of this issue offers a glimpse of the meaning that they gave the watershed, the water, the wildlife, and the people who lived in it. Following the reigning conservation ethic of the time, the USBR reclaimed land and diverted water for agricultural use and the Department of Justice determined that the private dams that generated power for agriculturalists were more valuable than tribal needs. The U.S. government could resist the Tribes' claims, but not forever.

This was due in part to case law that transformed federal Indian policy during the late-1960s and 1970s. The political climate focused on rights, whether African American civil rights, gay rights, Chicano rights, or, in the case of American Indians, treaty rights. A nation that had grown conservative during World War Two and the Cold War would watch as the Supreme Court overturned laws that had long institutionalized a race-based organization of society. In 1954 the Supreme Court overturned *Plessy v. Ferguson* (1896) to initiate the desegregation of schools in *Brown v. Board of Education* (1954). In 1974, the federal court system turned on its head the understanding of bureaucrats in Oregon and Washington State with two decisions that reinterpreted tribal sovereignty to acknowledge that tribal nations possessed the rights to manage off-reservation resources and their tribal members' taking of them.<sup>375</sup> In both Oregon and Washington, state bureaucrats staunchly had resisted tribal attempts to practice their treaty rights in territories designated in their treaties. Oregon officials, in particular, believed they had every reason to deny the Klamaths their treaty rights because the federal policy of termination had ended the tribe, or at least the Oregon officials believed it had. The nuanced federal court interpretation of the Klamaths' treaty in *Kimball v. Callahan* (1974, 1975) foreshadowed what Oregon State officials may have understood as an ominous future in which the Klamaths would

---

<sup>374</sup> *Federal Protection of Indian Resources Part 2*, 476-480.

<sup>375</sup> *Kimball*, 492 F.2d (9th Cir. 1974); *Kimball*, 590 F.2d 768, (1979).

not only hunt, fish, and gather without state licenses, but also make decisions regarding the management of the states' public natural resources.

In 1979, *United States v. Adair* stunned Oregon officials and locals alike. Judge Gus J. Solomon of the Ninth Circuit Court of Appeals upheld the Klamaths' water rights, explaining in his opinion that the Klamaths "are still entitled to as much water on the Reservation lands as they need to protect their hunting and fishing rights."<sup>376</sup> Oregon state officials argued that water rights were tied directly to land ownership and without a land base, the Klamaths did not retain their water rights. Yet, Indian water rights are different because as Judge Solomon explained, the Tribes' water rights are linked to their treaty rights.<sup>377</sup> Because the federal government defers water management to states, the State of Oregon adjudicated water rights in the Oregon half of the Klamath River Watershed. Oregon officials had started this process in 1975 after the USFS filed a water rights claim within the Klamaths' former reservation. The Klamaths filed suit in order to join the adjudication process, a process that would take nearly forty years and, again, would shake up local non-Indians' perceptions of their own and the Klamaths' water rights in the Upper Klamath Basin.

After the Endangered Species Act requirements resulted in curtailment of water in the Klamath Project in 1992, Klamath tribal leaders and Project farmers began discussing water management that would take into consideration the fish, and, subsequently, the Tribes' interests. The two parties worked out a plan for water management through an alternative dispute resolution process that the State of Oregon hosted. This process offered a period of hope for the parties.<sup>378</sup>

---

<sup>376</sup> *United States v. Adair*, Civ. no. 95-714 (D. Or. 1979). For further reading on the expert witnesses in *Adair*, see Buchanan, "Negotiating Nature," Part Two: Environmental Agency in *United States v. Adair et al.*

<sup>377</sup> *Ibid.*

<sup>378</sup> Gentry, interview; Becky Hyde (off-project rancher, Upper Klamath River Watershed; consultant and board member, Sustainable Northwest) interviewed by author, Beatty, Or., 8 July 2014; Dan Keppen, (executive director, Family Farm Alliance; former director, Klamath Water Users Association) interviewed by author, Klamath Falls, Or., 14 July 2014.

Testimony at federal hearings between the 1992 water reduction and the 2001 shutoff and crisis provide evidence of the tribal officials' and irrigators' efforts to work toward a solution that would benefit all parties and wildlife and a cooperative approach to solving the conflict over water. The Klamaths sought the restoration of the entire watershed, a plan that would allow many farmers and ranchers to maintain their farms, while offering others the option to retire lands out of agricultural use. This vision included the restoration of the c'waam fisheries and that of other animal and plant populations, including salmon, in both the Upper and Lower Klamath River Watershed. Allen Foreman represented the Klamath Tribes at these hearings. Local newspaper reporter, Lee Juillerat who had covered stories on the Klamath Tribes for years, later described Foreman as "assertive, conciliatory, compromising or bluntly direct" and as someone who, despite his intense demeanor, "always smiles."<sup>379</sup> Foreman's grandmother, Cindy Crume, a full-blooded Modoc, grew up in the vicinity of Tule Lake in California before the USBR drained it. He, on the other hand, grew up in Chiloquin, Oregon during the termination process. Foreman road in the All-Indian rodeo circuit for 13 years, completed two tours in Vietnam as a marine, and returned home with a Purple Heart before participating in the 1994 federal hearing and later accepting the position of tribal chairman in 1999. In 1994, he turned 47 years old. At a federal hearing on 6 July 1994, Klamath Tribal Chairman Allen Foreman stated, "At the broad, basin-wide level, the goal for everyone is a better balance between the mechanized, developed society on the one hand and on the other the natural world and the natural resources on which the society depends. On the local, human level the goal is a cooperative approach to finding the balance."<sup>380</sup> Foreman and other Klamath leaders hoped the parties could collaborate in order to avoid more tedious and costly litigation. Foreman further explained that the Klamaths' goals were to find a solution that would allow agriculture and wildlife to persist when he explained that "[t]he laws must

---

<sup>379</sup> Lee Juillerat, Klamath Tribes Leader Is Optimistic of the Basin's Future," *Herald and News* (Klamath Falls, Or.) 4 August 2003, accessed 7 August 2015, [http://www.heraldandnews.com/news/top\\_stories/klamath-tribes-leader-is-optimistic-of-the-basin-s-future/article\\_368c9856-faab-5a63-b29d-b0a3cb14db4c.html](http://www.heraldandnews.com/news/top_stories/klamath-tribes-leader-is-optimistic-of-the-basin-s-future/article_368c9856-faab-5a63-b29d-b0a3cb14db4c.html).

<sup>380</sup> *Klamath Basin Water Issues: Hearing Before the Subcommittee on Water and Power of the Comm. on Energy and Natural Resources*, 103<sup>rd</sup> Cong., 6 July 1994, (Statement of Allen Foreman, Chairman, Klamath Tribes), 30.

be changed, not to eliminate agriculture, not to alleviate [sic] fisheries above all, but to put all basin resources on an equal footing.”<sup>381</sup>

Foreman’s testimony reflected the Klamath leaders’ abilities to avoid victimizing themselves and to recognize that they, the agriculturalists, and other people in the Klamath River Watershed were part of a larger community, one that together faced the negative effects of past natural resource management practices. At a Senate hearing on 21 March 2001, Foreman spoke of the Tribes’ losses: “We no longer have the salmon runs that nourished us. They were extinguished in one heartbreaking act [damming the Klamath River].” He continued, “No one seemed to care at that time. Our sucker fisheries have been closed for a decade.”<sup>382</sup> Foreman further explained, “We do not want to see our friends and neighbors in the agricultural communities suffer. That is not what we are about. Sharing the benefits of nature’s bounty is one thing, but now we must also share the adversity caused by decades of ineffective resource management.”<sup>383</sup> The Klamath Chairman shared a sense of hope and optimism. He suggested that the Tribes, non-Indian agriculturalists, and other interested parties could work together to develop a plan for water management that met the needs of all stakeholders.

Foreman next described the Klamaths’ vision for natural resource management in the Klamath River Watershed. “The goal must be in restoring and sustaining a healthy and functioning system to support multiple uses. That has to be the long-term goal,” he proclaimed. Accomplishing restoration would require a plan that returned the 650,000 acres of forest land that the Klamaths lost through the termination process. This forest encompasses the three major tributaries of the Upper Klamath River Watershed. The Tribes’ vision also included a “program

---

<sup>381</sup> Ibid., 30.

<sup>382</sup> *Klamath Project: To Discuss Klamath Project Operations and Implementation of Public Law 106-498: Hearing Before the Senate Subcommittee on Water and Power of the Comm. on Energy and Natural Resources*, 107<sup>th</sup> Cong., 21 March 2001, (Statement of Allen Foreman, Chairman, Klamath Tribes), 23. Hereinafter referred to as “*Klamath Project*.”

<sup>383</sup> Ibid., 24. See also, *Water Management and Endangered Species Issues in the Klamath Basin: Oversight Field Hearing Before the Comm. on Resources U.S. House of Representatives*, 107<sup>th</sup> Cong., 16 June 2001, (Statement of Allen Foreman, Chairman, Klamath Tribes), 76-78. Hereinafter referred to as “*Water Management and Endangered Species Issues*.”



that fairly rewards the agricultural community for retiring land, so that the remaining lands can be sustainably farmed.” The Klamaths envisioned the participation of “all parties, including all downstream users and the downstream tribes.”<sup>384</sup> They had been participating in discussions with the Klamath Project irrigators, the farmers who receive water through USBR contracts, and independent farmers and ranchers within the Upper Klamath Basin. Many of these stakeholders held junior water rights compared to those of the Klamaths, which the *Adair* decision described as a “time immemorial” priority date. The Klamaths incorporated the information from these discussions into a water settlement proposal that would help protect the stakeholders with junior water rights. According to Foreman, “several years ago” the Klamaths had suggested to the State of Oregon, the Department of Interior, and the Water Users that the parties consider a “comprehensive Indian water rights settlement that addresses the underlying Basin water problems on a comprehensive ‘win-win’ basis.”<sup>385</sup> As evidenced in this federal hearing, the Klamaths were willing to work with other stakeholders, including the farmers with whom they had a long, contentious relationship. In this hearing, Foreman also foreshadowed what would come, a watershed-scope restoration and management plan.

At the same time that the Klamaths suggested a plan of action for restoration, the Water Users Association’s acknowledged the need for fisheries restoration in the Upper Klamath River Basin. While the Klamaths argued that the Water Users Association’s fisheries restoration plan contained “serious” factual errors, the Tribes showed optimism for the Water Users Association’s decision to support the Tribes’ efforts to restore the fisheries. “...[W]e are very pleased to see that the Water Users are joining the Tribes in recognizing that the fish are, in fact, in trouble, and that a comprehensive plan must be developed to restore the Klamath lake and its tributaries,” Foreman explained.<sup>386</sup> This is not to suggest that the Klamaths and the Water Users had formed a strong alliance; however, this alignment of interests reflects the Klamaths’ empowerment within

---

<sup>384</sup> *Klamath Project*, (Foreman), 24; *Water Management and Endangered Species Issues*, (Foreman), 77.

<sup>385</sup> *Klamath Project*, (Foreman), 28.

<sup>386</sup> *Ibid.*, 24.

political space and their ability to influence non-governmental stakeholders with very different interests in water usage to support the Tribes' vision for restoration of the Klamath River and its fisheries.

Klamath officials hoped this cooperative atmosphere would continue. They understood how confrontation through litigation and federal administrative processes, such as the NEPA and ESA procedures, could stifle working relationships between themselves and federal agencies. The alternative dispute resolution process had allowed tribal and non-Indian agricultural leaders to find common ground and work together. Yet, this relationship that the leaders fostered in the mid-1990s would begin to fall apart during the ESA consultation processes leading up the 2001 water year. The Project irrigators began questioning the role of the Klamath Tribes in USBR project planning. They used the Freedom of Information Act (FOIA) to request documentation of the ESA-related documents between the USBR and the Klamath Tribes, but the USBR did not provide it until a court order required the agency to hand over the memorandums.<sup>387</sup>

In 1997, the National Marine Fisheries Service added the southern Oregon and northern California coast coho salmon (*Oncorhynchus kisutch*) to the endangered species list as a "threatened" species.<sup>388</sup> The downstream tribes had a major stake in salmon restoration. The Klamath Tribes, who had many times fought for recognition of the loss of salmon to the upper basin, now had another arguing point for their holistic vision for the ecological restoration of the watershed. The coho listing added another level of complexity to water management in the Klamath River Watershed. The USBR would have to consider how its operations would impact endangered fish in both the upper and lower watershed. The outcome of the Section 7 consultations with the USFWS and NMFS resulted in shutting off the water to irrigators in order

---

<sup>387</sup> *Department of the Interior*, 532 U.S. 1 (2001). The USBR argued that exemption five of the FOIA relieved the agency of making interagency memoranda with the Klamath Tribes public. The court found that the Tribes did not constitute an interagency status as they are not a federal entity but a tribal nation. The court held that the USBR must make its records memoranda with the Klamath Tribes public.

<sup>388</sup> "Endangered and Threatened Species; Threatened Status for Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) of Coho Salmon," *Federal Register*, Vol. 62, no. 87, 6 May 1997, 24588-24609. This ESU is designated between the geographical boundaries of Cape Blanco in Curry County, Oregon, and Punta Gorda in Humboldt County, California.

leave water in the lake for c'waam and q'apdo habitat and water in the river downstream for salmon.<sup>389</sup>

When the USBR released its 2001 Operations Plan and the USFWS released its 2001 Biological Opinion of the USBR 2001 Operations Plan on 6 April 2001, the agriculturalists panicked. On 9 April 2001, the Klamath Irrigation District, Tule Lake Irrigation District, and the Klamath Water Users Association filed a suit against the U.S. government in a desperate attempt to enjoin the 2001 Operations Plan.<sup>390</sup> This operations plan forecasted reduced irrigation flows and, much worse, the complete shutoff of irrigation diversions. The plaintiffs argued that by not distributing water to the Project Irrigators, the USBR would violate its contracts with the farmers, despite that this was already a moot issue due to the fact that over the two previous years the District Court and Ninth Circuit Court of Appeals held that the ESA and the Klamath Tribes' trust relationship came before the irrigators' water rights.<sup>391</sup> The Water Users Association members could not believe that the court would put the Tribes and fish before agriculture.

During the previous 50 years, the public and tribal nations advocated for changes in U.S. law. The resulting laws provided for a more democratic approach toward natural resource management and the values that inform it. The Klamath Tribes' activism in the form of litigation, the appropriation of science, and the use of environmental policy procedures, among other strategies, forced the agencies to institutionalize the self-determination policy. Each agency that resisted the Tribes' sovereignty, experienced a lag, and who knows how long it would have taken for the agencies to adjust to the changing federal Indian policy if the Klamaths had not taken such a strong approach? The local government in the Klamath Basin and the non-governmental stakeholders, namely farmers and ranchers, could feel the policy changes, and they, too, resisted. They could see the physical changes on the landscape as the USBR kept water in the

---

<sup>389</sup> Buchanan, "Negotiating Nature," 204.

<sup>390</sup> *Kandra v. United States*, 145 Fed.Supp.2d 1192 (2001).

<sup>391</sup> *Klamath Water Users Protective Association*, 204 F.3d 1206 (9<sup>th</sup> Cir.,1999, amended 28 January 2000).

reservoirs and dried up the canal system, crops died, and fields lay fallow. The agricultural community had a hard time accepting this reality.

The USBR had delivered water to the farmers and ranchers, in many cases for three or more, generations. The farmers and ranchers identified themselves with the establishment of the Upper Klamath Basin economy based on agriculture and timber. Kandra's family had been in the region since the late-1880s, prior to the USBR Klamath Project. Christine Karas, the USBR ESA compliance specialist, who had worked on contentious ESA issues in other regions before accepting the position in Klamath Falls in 2002, pointed out an important difference between the agricultural community within the Klamath Project and the other regions that she served. The Klamath irrigators were family farmers and ranchers, not agribusiness.<sup>392</sup> In most families, all members worked on the farm or ranch. For some, it was their only income. No water meant no crop, which also meant no livelihood. Much of the non-Indian agricultural community pointed fingers at the USBR, the ESA, and the Klamath Tribes.<sup>393</sup> The farmers knew that the Klamath Tribes advocated for the listing of the fish as endangered. They also knew that the U.S. Fish and Wildlife worked closely with the Klamath Tribes.<sup>394</sup> The agricultural community did not participate in listing the c'waam, q'apdo, and yeen, nor did they fight the listing. At that time, they had no reason to worry about the fish. Williams, the young and optimistic USFWS biologist who formally listed the c'waam and q'apdo on the endangered species list explained 15 years later that he and the others who advocated for listing the fish had no idea that the listing would have such an effect on water management and politics in the Klamath Basin.<sup>395</sup> The agricultural community may have made the same assumption.

---

<sup>392</sup> Christine Karas (ESA compliance specialist, USBR; speaking as individual, not for USBR), interviewed by author, Klamath Falls, Or., 16 July 2014.

<sup>393</sup> Keppen, interview.

<sup>394</sup> Ibid.; Greg Addington (Executive Director, Klamath Water Users Association), interviewed by author, Klamath Falls, Or., 17 July 2014.

<sup>395</sup> Williams, interview.

The State of Oregon's water allocation plan did not have the flexibility to meet the needs of all water stakeholders as well as the local wildlife during a severe drought year. In 2001, farmers went without water. Waterfowl in the local wildlife preserves faced limited habitat due to reduced water flows according to Oregon water law. The Klamath Tribes, federal and state agencies, and environmental organizations hoped that the two endangered fish species populations would survive the low water year. This community faced a challenge: how would they manage the unpredictable and limited water system in a way that would meet the needs of the human and non-human communities? The Klamath Tribes believed that the answer required collaborative efforts. But collaborating would not be easy with stakeholders that held such strong animosity—often racially tinged—against the Tribes.

Natural resource conflicts like these can become violent and racially charged, which makes resolution more difficult. In December of 2001, three men belonging to a nearby ranching community drove through the hub of the Klamath Tribes community, a town called Chiloquin, Oregon. These three men fired 12-gauge shotguns at signs and portable toilets and yelled “sucker lovers” and other phrases. The three perpetrators did not represent the whole agricultural community. Less violent but still poignant affronts manifested, too. Jeff Mitchell, Lead Negotiator for the Klamath Tribes, remembered the hostile reaction that some non-Indians had toward the Tribes. Mitchell recalled, “Here I am in 2001 being told that I couldn't go into certain restaurants in Klamath Falls. My community got shot up in Chiloquin. People were being beat too and were being racially profiled.” He also remembered the “signs that were erected in the community that were racist and hateful.”<sup>396</sup> Local non-Indians posted signs and bumper stickers during the crisis that read “People Are More Important than Fish” and “Some Sucker Stole My Water.” The Klamath tribal community felt under attack. “It was just like the clock got turned back just overnight. It was back to feeling like we're right in the middle of the Modoc-Indian war again. There wasn't going to be any prisoners taken alive. It was a terrible time,” Mitchell explained.<sup>397</sup>

---

<sup>396</sup> Mitchell, interview.

<sup>397</sup> Ibid.

During the first few years that followed the 2001 Water Crisis, tensions remained high. Onlookers would have placed bets that the dire situation would remain an intractable natural resources dispute. Karas described the period as one of pain and stress. The water conflict pitted community members against each other. She explained, "...it was really sad and at that time I felt like the divisions were too large and there was just too much pain for people to come to some kind of an agreement."<sup>398</sup> This makes sense. From the agriculturalists' perspectives, the new approach to water management, one that valued fish, turned their world upside down. Historian Colin Calloway used this metaphor to describe the perspective of Indian nations from first contact through the Revolutionary War.<sup>399</sup> Colonists altered the landscape, introduced new ways of interacting, and carved out a system of laws based on very different values and ideologies. This time, a modern tribal nation shook, rattled, and turned upside down, the settler society. The Klamath Tribes and their rise to power represented a nuanced American West, one that paralleled the trend toward pluralism throughout the United States. A shift had taken place. No longer would one entity use a maverick approach, ignoring all other uses of water in the watershed. Members of the non-Indian community could no longer treat the Klamath Tribes as a non-entity. Through their activism, the Klamath Tribes had risen as a central player in the water dispute.

This is clear from the way in which the agricultural community reacted to the water shut-off. The water shut-off reified the Klamaths' vision of the space as a fishery. The Klamaths did not make the final decision to curtail water flows, but they had been longtime advocates for the fish and had worked very closely with the USFWS in the process of listing them and in the science that informed the ESA consultations between the USBR and the USFWS.<sup>400</sup> The farmers

---

<sup>398</sup> Karas, interview.

<sup>399</sup> Colin Calloway, *The World Turned Upside Down: Indian Voices from Early America* (Boston, MA: St. Martin's Press, 1994). Judith Y. Messier applies this same metaphor in her analysis of the Klamath Falls U.S. Bureau of Reclamation office. See Judith Y. Messier, "Conflict in the Klamath Watershed and a Relationship-Building Framework for Conflict Transformation," (Ph.D. diss., George Mason University, 2012), 356-358.

<sup>400</sup> Klamath Tribes' role in listing the c'waam and q'apdo on endangered species list, see Williams, interview; Klamath Tribes' role in ESA consultation process, see White, interview.

and ranchers resisted the changes every way they could. Aside from illegally releasing water from the headgates multiple times during the summer of 2001, the farming community established a fierce letter writing campaign that resulted in the largest influx of correspondence the USBR had seen in its history.<sup>401</sup> They did all of this in order to demonstrate their perception of power—that they held the paramount claim to water in the Upper Basin.

In the past the federal government, the state of Oregon, and the project farmers, among others, largely used water without regard for tribal water rights, fish and wildlife, and vegetation. Tribal treaty rights and endangered fish protections raised questions about different values regarding water use in the Upper Klamath River Basin. The Tribes' participation in water and fisheries management underscored the significant value of water as habitat for fish alongside the importance of water as an integral resource for farming. The reaffirmation of the Klamaths' treaty rights and sovereignty and the endangered fish protections forced the non-tribal community in the Upper Klamath River Watershed to view the space differently. This is not to say that the farmers suddenly believed that the fish needed protection, but the Tribes' treaty rights and the protection of endangered fish altered the way in which the farmers understood their political and economic relationship with water resources and with other stakeholders in the Klamath Basin. The Upper Klamath River Watershed clearly had become a contested space, and the case *Klamath Water Users Association v. Patterson* (2000), reflected the new meaning of the space, one that local non-Indian irrigators had a hard time accepting.<sup>402</sup> Farmers and ranchers relied on the watershed for agricultural production, while the Klamaths' livelihoods and culture depended on the ability to fish. Both parties valued the water for practical uses that were tied to profound historical, cultural, and political meanings.

The conflict in the Upper Klamath River Watershed was part of a much larger dispute over water management in the greater watershed and included more than 40 stakeholders. This transboundary watershed covers roughly 10 million acres, about half of which were in Oregon

---

<sup>401</sup> Keppen, interview.

<sup>402</sup> *Klamath Water Users Protective Association*, 204 F.3d 1206 (9<sup>th</sup> Cir., 1999, amended 28 January 2000).

and the other half in California. Numerous federal and state agencies, farmers and ranchers in the upper and lower watershed, four federally-recognized tribal nations and other unrecognized tribal communities, commercial salmon fishermen, recreational miners who searched out gold in the river substrate, a private entity known as Pacificorp which managed dams on the Klamath River, county governments, and many other groups had a stake in the water issue. They all had interests in how the state and federal agencies allocated water. The 2001 Water Crisis signified major changes in water management; the negotiations and agreements that followed represent a crucible in natural resource management in the Klamath River Watershed and the greater American West. Prior to 2001, federal and state entities made decisions regarding water in the Klamath River Watershed. During the decade following the 2001 Water Crisis, stakeholders established a new management approach from different, often competing perspectives. While many stakeholders participated, the Klamaths Tribes played a crucial role because of their cultural values, their holistic vision for natural resource management, and their legal status as a trustee of the U.S. government and as a sovereign nation with senior water rights in the Upper Klamath River Watershed.

Since the 1990s, Klamath leaders had advocated for the integrity of the agricultural community in the Upper Klamath Basin. They envisioned a space that had room for both the Tribes and agriculturalists. This approach to water management rested in their cultural values, which stressed the health of the whole system, including the human communities. Their leadership had no intention of erasing agriculture completely from the Upper Klamath Basin landscape. Yet, farmers, ranchers, owners and employees of tractor and feed stores, among other members of the agricultural community, lost trust in the USBR and any that they had in the Klamath Tribes prior to the shut-off. The Klamaths' scientists had garnered a seat in the consultation process because of their scientific data. Because of their trust relationship with the U.S. government and sovereign status, the Klamath Tribes' government consulted with the USFWS and USBR as well. While the Klamaths participated in consultation, they did not make the final decisions in the biological opinions. The USFWS made the final decisions in the ESA process. Still, agriculturalists recognized the Tribes' influence in a back-handed way. Keppen,



who represented the Klamath Water Users Association from 2001 through 2004, explained that from the perspective of the agricultural community at that time “the Tribes were seen as kind of being in bed with fishery agencies or having huge influence to fishery agencies, and to some degree that probably is true because they work very closely on research projects.”<sup>403</sup> Rumors spread that the Klamaths were attempting to use their influence to revert the watershed to a wilderness status. Mitchell argued that this simply was not true.

Perspectives and assumptions like this maintained the rift that kept stakeholders from cooperating. Mitchell explained, “I think a lot of the problems can be attributed to a lack of understanding of who we [the Klamath Tribes] are fundamentally, and...when people don’t understand something they fear it.” He continued, “I think the non-tribal community certainly didn’t understand the Tribes, and they didn’t understand us as a people. They didn’t understand our goals, our aspirations. They didn’t understand what we’re looking for. They assumed a lot.”<sup>404</sup> Determined to rebuild the relationships they had fostered with the irrigators in the 1990s through the alternative dispute resolution process, Mitchell visited people in Merrill and Malin, Or., and Tule Lake, Ca. He remembers walking into a room filled with farmers. They stared him down and asked if he had come alone.<sup>405</sup> Tense situations like this did not solve the water dispute, but they demonstrated that Mitchell was willing to reach out and that he would put himself on the line. Yet, two years would pass before meaningful conversations emerged.

In the summer and throughout the fall of 2003, stakeholder groups invited opposing stakeholders to their region of the watershed in order to educate each other about their values and needs in terms of water management. In the Upper Basin, the Klamath Tribes guided willing farmers and ranchers through the former reservation and along Klamath Lake where they explained the importance of fish habitat restoration and of building a strong tribal economy. Farmers and ranchers took Klamath tribal leaders on a tour of the Klamath Project to

---

<sup>403</sup> Keppen, interview.

<sup>404</sup> Mitchell, interview.

<sup>405</sup> Jeff Mitchell, informal discussion on day of interview, 30 July 2014, Spring Creek, Collier State Park, Or.

demonstrate their water needs, the relationship between waterfowl and agriculture, and what they had done to improve wildlife habitat. Upper Basin stakeholders also traveled downstream to witness the social, economic, and ecological needs of the Lower Klamath River Watershed communities.<sup>406</sup> The Klamaths had proposed a holistic approach to natural resource management in the past, which meant taking a watershed perspective. Klamath Tribal Chairman Allen Foreman explained in a federal hearing on 21 March 2001 that “The goal must be in restoring and sustaining a healthy and functioning system to support multiple uses.” He continued, “This is the stewardship for which we believe the creator [sic] expects of us all. Solutions need to involve all parties, including the downstream users and the downstream tribes.”<sup>407</sup> These field trips fostered a transition toward watershed-scope management as they encouraged stakeholders to understand the physical connectedness of the Upper Basin to the Lower Basin while learning more about other stakeholders’ needs.

Cooperative discussions, while limited to a small group of stakeholders in the Upper Basin, began in 2003 at the Shilo Inn in Klamath Falls, Oregon. Many of the participants had partaken in the field trips and showed interest in working collaboratively toward a solution to the water management issues in the Klamath River Watershed. These closed door meetings, which required an invitation and excluded the media, included Klamath tribal representatives, both Klamath Project and off-project irrigators and members of their associated non-profit organizations. In some cases, federal agency and local officials joined the meetings.<sup>408</sup>

The topics of these day-long meetings demonstrate the political leverage that the Klamaths held. The Tribes knew they needed to negotiate with these stakeholders because they were their greatest adversaries and there was an opportunity to get something in return because

---

<sup>406</sup> Lee Juillerat, “Tribes, Water Users Plan to Host Tours,” *Herald and News*, 22 September 2003, accessed 1 June 2015, [http://www.heraldandnews.com/news/top\\_stories/tribes-water-users-plan-to-host-tours/article\\_ce55e1ec-5c98-525d-be41-196bdf476cd3.html](http://www.heraldandnews.com/news/top_stories/tribes-water-users-plan-to-host-tours/article_ce55e1ec-5c98-525d-be41-196bdf476cd3.html)

<sup>407</sup> Klamath Project, (Foreman), 24.

<sup>408</sup> Dylan Darling, “Water Group Taking ‘Baby’ Steps toward Solution,” *Herald and News* (Klamath Falls, Or.) 20 January 2004, republished on *KlamathBasinWaterCrisis.org*, accessed 1 July 2015, <http://www.klamathbasincrisis.org/nhngroupbabysteps012004.htm>.

of the agricultural communities' dire situation. At the meetings, the stakeholders agreed to discuss four main issues: balancing water resources among stakeholders, returning land to the Klamath Tribes, restoring the watershed, and the certainty of irrigation water for agriculturalists. The Klamaths had worked hard to reaffirm federal and state recognition of their sovereignty and the federal trust relationship over the past 40 years. They had also reaffirmed their time immemorial water rights through the *Adair* decision in 1979. While the State of Oregon still had not adjudicated water claims with a pre-1909 priority date, the *Adair* decision suggested that the Klamaths would hold the most senior rights in the final adjudication report. Oregon officials would not finalize the adjudication until 2013. During the meetings in 2003 and 2004, the Tribes aimed at strengthening their economy through the reacquisition of their former forest or part of it, and they argued in favor of restoring the ecological integrity of the watershed. The Klamaths knew that reestablishing a forested land base would be difficult. Local non-Indians and environmental groups objected. Outside one Shilo meeting on 1 December 2003 that focused on the return of land to the Tribes, about 50 people protested.<sup>409</sup> Opponents posited a slew of arguments. Many people who opposed the land return contended that the Tribes should not receive land back because as one citizen argued: "It's land we [the American public] bought and paid for, and we have the documentation to prove it."<sup>410</sup> Congress did appropriate funds so that the U.S. Department of Agriculture could buy about 690,000 acres of the Klamaths' reservation forest in the early-1960s. However, many non-Indian locals have an oversimplified understanding of this truly complex story that is deeply-rooted in the settler colonial possession of the region prior to the establishment of the Klamath Project and the national assimilationist policies, including termination, which continued to dispossess Native peoples, including the Klamath Tribes, throughout the 20<sup>th</sup> century.

---

<sup>409</sup> Dylan Darling, "Reservation Deal Protested," *Herald and News* (Klamath Falls, Or.) 2 December 2003, accessed 31 July 2015, [http://www.heraldandnews.com/news/top\\_stories/reservation-deal-protested/article\\_bb56aea5-332c-50a1-a5ea-9f7f320c761c.html](http://www.heraldandnews.com/news/top_stories/reservation-deal-protested/article_bb56aea5-332c-50a1-a5ea-9f7f320c761c.html).

<sup>410</sup> *Ibid.*

The Shilo meetings allowed a small set of stakeholders, those that were willing to talk, listen, and generate ideas for watershed scope solutions to get to know each other. They began to develop an understanding of each other's needs and perspectives. They still lacked trust and, as some would argue, respect. Those things would come in time and, most importantly, by the stakeholders fulfilling promises and demonstrating that they were willing to give up something in an effort to find a balance in water management.

The time could not have been more ripe for watershed-scale negotiations in 2005. Wetter years relieved some tension among the stakeholders, the Shilo meetings allowed for members of some of the most adversarial groups to come together, and what would be known as the Chadwick sessions and watershed symposium in 2004 helped open discussions among a broader stakeholder group than the Shilo meetings allowed. Most importantly, four dams on the Klamath River came up for relicensing and the contract that guaranteed Klamath Project irrigators cheap power would expire. The Klamath leaders, among other stakeholders, saw opportunity in these circumstances. Under the authority of the Federal Power Act of 1920, hydroelectric dams on navigable rivers must be relicensed every 50 years by the Federal Energy Regulatory Commission (FERC). In the 1970s, Congress required FERC to consider other river uses and values besides hydropower when evaluating whether to relicense a dam. Consequently, dam relicensing hearings provided a forum for addressing multiple water-related issues by diverse water stakeholders.<sup>411</sup> The FERC hearings helped bring together an even more diverse group of stakeholders than attended the field trips and the Shilo meetings. The FERC hearings encouraged stakeholders to talk, but impromptu discussions at dinner and over beers after meetings helped form relationships that would get the stakeholders through the grueling negotiation processes and development of the Klamath Basin Restoration Agreement (KBRA)

---

<sup>411</sup> Hannah Gosnell and Erin Clover Kelly, "Peace on the River? Social-Ecological Restoration and Large Dam Removal in the Klamath Basin, USA," *Water Alternatives* 3, no.2 (2010): 379.

and the Klamath Hydroelectric Settlement Agreement (KHSA).<sup>412</sup> As they ate and drank together, they began to see each other as people, as neighbors.

During the water negotiations of the 2000s, the Tribes simultaneously fostered alliances with non-profit environmental organizations on restoration projects in the Upper Klamath River Watershed that allowed them to reify their vision for restoration on the physical landscape. During the early- to mid-20<sup>th</sup> century, farmers and federal agencies constructed dikes and drained marshlands in the Upper Klamath River Basin to create farmland. Such projects whittled the 350,000 acres of natural marshland in the region to less than 75,000 acres. The Nature Conservancy had purchased Tulana Farms, one of the most productive farmlands in the Upper Klamath River Basin, on the Williamson River Delta in 1996 with the primary goal of retiring most of the farmland and restoring the marshland habitat for c'waam larvae and juveniles and other wildlife. The Klamath Tribes partnered with The Nature Conservancy on these efforts, and in the fall of 2007, spectators watched as explosives blasted apart two miles of dikes of the northern portion of the delta.<sup>413</sup> The destruction of these dikes and the wetland restoration that followed transformed about 2,500 acres of farmland into marshland. In 2008, The Nature Conservancy, which spearheaded this project, removed the dikes on the southern portion of the Williamson River Delta, restoring another 2,500 acres of marshland.<sup>414</sup> Restoration of the delta increased the wetland's capacity to filter water and replanting vegetation provided more habitat for the juvenile c'waam and q'apdo.<sup>415</sup>

---

<sup>412</sup> Addington, interview; Mitchell, interview; Dunsmoor, interview. The full title of the KBRA is the Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities.

<sup>413</sup> "Chiloquin, Oregon: Dikes Blasted to Restore Oregon Marshland for Endangered Fish," *The Ojibwe News* (St. Paul, Minn.), 01 November 2007, *Ethnic NewsWatch*, 2.

<sup>414</sup> Jen Newlin, "Oregon: Beyond the Blasts: Reclaiming Wetlands in the Klamath Basin," The Nature Conservancy, accessed 6 November 2015, <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/oregon/our-priorities/beyond-the-blasts-reclaiming-wetlands-in-the-klamath-basin.xml>.

<sup>415</sup> "Research Snapshot – Evaluation of the Williamson River Delta Restoration Project," Klamath Falls Field Station, Western Fisheries Research Center, U.S. Geological Survey, accessed 31 July 2015, [http://wfrc.usgs.gov/fieldstations/klamath/rs\\_williamson\\_rd\\_restoration.html](http://wfrc.usgs.gov/fieldstations/klamath/rs_williamson_rd_restoration.html).

After years of conflict and a slow negotiation process, the Klamaths and other water users completed two interrelated agreements in February of 2010. The KBRA outlines a watershed-wide restoration plan and a water rights settlement in which the Klamaths will withdraw their past water rights claims (not give up their water rights completely) in exchange for a 90,000-acre portion of their former reservation forest. The other water agreement, known as the KHSA, concerns the long-term decommissioning and removal of four dams on the Lower Klamath River and restoration of salmon runs to the Upper Klamath River Watershed.<sup>416</sup>

These two settlements reflect the Klamaths' vision of the watershed. Both view the Klamath Basin as a whole system that includes humans, their economies, their cultures, the water bodies, the animals, and the relationships among the humans and the animals in the Klamath Basin. The restoration agreement and hydroelectric settlement recognize the long-standing relationship that the Klamaths have had with salmon, the c'waam, q'apdo, and other fish species. For instance, in a section titled "Sustainable Tribal Communities," the "Klamath Basin Restoration Agreement" explicitly describes this vision of the Klamath Basin:

Tribes have lived in the Klamath River Basin since time immemorial and are expected to continue doing so using sustainable resource-based economies. There are tribal fishing rights in various locations that have associated water rights for the fish to propagate and produce sufficient numbers for harvest. The Tribes, irrigators, and the United States have differed in administrative and judicial settings over the amounts of water needed for fish. This Agreement seeks to resolve these substantial differences and also to provide Tribes with both sustainable natural resources and sustainable communities.<sup>417</sup>

In the KBRA, the term "Tribes" with a capital "T" refers to the Klamaths in the upper watershed and the federally-recognized downstream tribes: the Karuk, Hoopa, and Yurok.

---

<sup>416</sup> "Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities," 18 February 2010, accessed 5 October 2011, <http://www.doi.gov/news/pressreleases/upload/Klamath-Basin-Restoration-Agreement-2-18-10.pdf>. Hereinafter referred to as the "Klamath Basin Restoration Agreement." "Klamath Hydroelectric Settlement Agreement, 18 February 2010, accessed 5 October 2011, <http://klamathrestoration.gov/sites/klamathrestoration.gov/files/Klamath-Agreements/Klamath-Hydroelectric-Settlement-Agreement-2-18-10signed.pdf>. Hereinafter referred to as the "Klamath Hydroelectric Settlement."

<sup>417</sup> "Klamath Basin Restoration Agreement," 3.

Similarly, the “Klamath Hydroelectric Settlement Agreement” represented the watershed as a space in which people live and to which they attribute different meanings. One of the major purposes of the hydroelectric settlement negotiations was to provide a forum to “ensure that the interests of the Indian tribes, environmental organizations, fishermen, water users [farmers and ranchers], and local communities were addressed.”<sup>418</sup> The central issue of the forum was, not *if*, but *how* the basin water stakeholders would address the restoration of fish species. Fish clearly had become a core symbol of this space, which reflected the Klamaths’ vision of the basin. The restoration agreement and hydroelectric settlement explicitly reflected the meanings that the Klamaths attributed to this space as a dynamic one in which all water stakeholders maintained relationships with fish and water. As watershed-based restoration agreements, the KBRA and KHSA would support the Klamaths’ interests in restoring not only the c’waam and q’apdo populations, but in returning salmon to the Upper Klamath River Watershed.

The restoration agreement and the water settlement demonstrate that the Klamaths’ influence over natural resources expanded from the extent of their former reservation, approximately 1.2 million acres, to the entire watershed, a region that covers nearly 10 million acres. The inherent movement of fish and flow of water throughout the watershed demanded that the water stakeholders look at the space as a dynamic whole. Physical changes to one part of the system, like dams, induced changes in another part of the system. Therefore, for the Klamaths to manage fish species within the former reservation, they and other stakeholders had to take into consideration that these fish used habitat outside of the former reservation. This meant that the Klamaths’ treaty rights would reach outside of the former reservation, because the reservation constituted only a portion of the water system in which the fish lived. The KBRA demonstrates that the stakeholders envisioned the space from the perspective of the flow of water and the movement of fish, a very different spatial value than the settler society intended when it dug irrigation canals, drained marshes, and constructed dams. The KHSA reflects this vision as it describes the proposed decommissioning and at least partial removal of four dams

---

<sup>418</sup> “Klamath Hydroelectric Settlement,” 2.

from the Lower Klamath River by 31 December 2020 in order “to enable a free-flowing Klamath River allowing volitional fish passage.”<sup>419</sup> Removal of the dams would allow for the restoration of the river’s natural rhythms and cycles.

The KBRA, a complex document, laden with formal legal language, describes a crucible in water management for the Klamath River Watershed, one in which stakeholders have relied on each other to give something up in an effort to reach a state of predictability and assurance. The Klamaths played a fundamental role in establishing interlinked relationships among the diverse and contentious stakeholders because of the political leverage they acquired through their activism during the previous 50 years. The Klamaths came to the negotiations with the senior, or highest priority, water rights in the Upper Klamath River Watershed and their trust relationship with the federal agencies, two things the project irrigators did not have. The Klamaths’ water rights included instream flow rights, which meant that they did not have to use the water for agriculture as Western water law demanded of non-tribal water rights holders. The instream flow rights allowed the Tribes to leave water in the rivers in order to protect culturally-significant species. They could also use them to barter with other stakeholders, a technique that is crucial for understanding the creation of the negotiated agreements and tightly woven relationships among stakeholders.

In their holistic approach to water management, the Klamaths stressed the ecological restoration of the watershed. They demonstrated this through their agreements with the Klamath Project irrigators. The KTNT understood that the irrigators needed water, and they made it clear throughout the 1990s and 2000s that they supported the existence of the non-Indian agricultural community. According to the ESA requirements for the c’waam, q’apdo, salmon, and other listed species, the Klamath Project irrigators would receive very little or no water during a severe drought year. This is because the Klamath Project irrigators’ rights link directly to the establishment date of the USBR in 1905 or later. The Klamaths also wanted to protect the wildlife and wetland habitat on the three wildlife refuges’ wetlands. Oregon water law subordinated the

---

<sup>419</sup> “Klamath Hydroelectric Settlement,” 47.



water rights of the three refuges because the federal government established them after 1905. The region includes many wildlife refuges, such as the Lower Klamath Wildlife Refuge and Tule Lake Wildlife Refuge, which includes land that the USFWS leases to Klamath Project irrigators. Through the KBRA, Klamath Project irrigators are guaranteed water on a yearly basis in exchange for ecological restoration and mitigation within the Klamath Project and as long as the project irrigators release water to the Tule Lake Refuge for wildlife use. The amount of water they receive and that which they must apply to land within the refuges depends on the season and the amount of water available.<sup>420</sup> This region of Lower Klamath Lake and Tule Lake used to include 187,000 acres of wetland habitat, which comprised “uncontrolled, alternately flooded, and dry areas of rangeland.”<sup>421</sup> These marshes, while reduced in size due to USBR reclamation of the land and other agriculturalists’ decisions to dike and drain the wetlands, still support hundreds of bird species that travel the Pacific Flyway. The 50,092-acre Lower Klamath Wildlife Refuge in California hosts a population of up to 1.8 million waterfowl. Depending on the time of year, someone visiting the refuge might view tundra swans, Sandhill cranes, bald eagles, shorebirds, among many other birds and wildlife.<sup>422</sup>

The stakeholders designed the KBRA in order to guarantee themselves what each of them valued—certainty and predictability.<sup>423</sup> The irrigators, and the Klamath leaders for that matter, wanted to avoid another water crisis. That incident caused a rift in the community. Through the negotiation process, the parties relied on each other to hold the promises they made. Each party also had to give something up in order for the agreement and negotiations to succeed. The Klamath leaders knew they needed to waive some of their water rights. The Tribes had the power to do this; it was their choice because they held the most senior rights in the upper

---

<sup>420</sup> “Klamath Basin Restoration Agreement,” 15.1.1-15.1.2, Appendix E-1.

<sup>421</sup> *Tule Lake, Lower Klamath Lake, and Upper Klamath National Wildlife Refuges* (Report by Anderson), 6.

<sup>422</sup> “Overview: Lower Klamath Wildlife Refuge,” U.S. Fish and Wildlife Service, accessed 28 July 2015, <http://www.fws.gov/refuges/profiles/index.cfm?id=81663>.

<sup>423</sup> Mitchell, interview; Addington, interview.

watershed. Waiving water rights was not the same thing as giving up water rights. The Tribes could still claim their waived water rights if they chose to.

Keppen, who has dedicated his career to agricultural communities, and most recently in the Klamath Basin, discussed the significance of the Klamath Tribes' role in negotiations. He explained, "everybody has to give something and so in this case, the Tribes agreed not to fully enforce their water rights....They can do that."<sup>424</sup> He elaborated, explaining that the Klamaths have the power to sell their water to the irrigators if they want to.<sup>425</sup> But they did not force the irrigators to buy water. The Klamaths' negotiators would consider that an adversarial approach, which would stifle relationships rather than foster them. Noting the Tribes' political leverage in the negotiation process, Keppen further explained that the Klamath leaders chose to give water to the irrigators rather than force them to go without the water between 2012 and 2014. Keppen stated, "There were times where the irrigation project could have lost a lot of water and they made their plea and the Tribes said, 'Well, here, you know, we can offer flexibility here, flexibility there.' Ultimately this resulted in at least 70,000 acre feet in one year that the Tribes could have held onto."<sup>426</sup> The Klamaths had made promises since the 1990s that they supported the non-Indian agricultural community. When it came time to prove it, the Klamaths established trust and respect with irrigators when they kept their promises. They chose not to use a winner-take-all approach. In this powerful position, the Klamaths directed water management in the Upper Basin. The Project irrigators were at the mercy of this modern tribal nation.

The stakeholders completed the first two settlement agreements before the State of Oregon completed its adjudication process for all of the pre-1909 water claims. The adjudication process was near. Only one more year would pass before the Oregon Water Resources Department announced its analysis of the water rights claims. Many non-Indian stakeholders had accepted that the Klamath Tribes held claim to the most senior rights. The settlement

---

<sup>424</sup> Keppen, interview.

<sup>425</sup> Ibid.

<sup>426</sup> Ibid.

agreements reflected this. The significance of the adjudication was that it quantified, or assigned a water amount, to each claimant's water. The final report reflected that the Klamath Tribes had never lost their water rights. Through their water rights claim they had attained even more influence over water management in the Upper Basin. During the first year that the Tribes had the quantified water right, they made a water call on 10 June 2013 for streams in the Upper Klamath River Basin. This water call required the State of Oregon to turn off irrigation water to junior water rights holders, mostly non-Indian ranchers within the former Klamath Reservation.<sup>427</sup> These ranchers had never experienced a water restriction, and only some of them showed interest in negotiating with the Klamath Tribes and other stakeholders in Shilo and FERC negotiation meetings. Some ranchers, like Becky Hyde, had worked collaboratively with the Klamaths and environmental non-profits in the past on ecosystem restoration and an agreement that placed her ranch under a conservation easement within the Tribes' former reservation.<sup>428</sup> Now, she and her ranching peers lacked the ability to provide water for their cattle and the grasses on which their cattle depended. Many of these ranchers, including Hyde, shipped their cattle elsewhere in response to the water shortage that resulted from the Klamaths' water call. Roger Nicholson, a rancher located South of Crater Lake near the Wood River and member of the Fort Klamath Critical Landowners Association and Sprague River Water Resources Foundation, chose to move cattle from the Upper Klamath River Basin to pastures in Washington after the Klamaths' senior water rights call resulted in shutting off water to the Nicholson's and other ranches in June of 2013.<sup>429</sup> The Klamaths made this call on water to "improve the health of aquatic resources, including fish and streams and Upper Klamath Lake."<sup>430</sup>

---

<sup>427</sup> Devin Schwartz, "WATER DEMAND: Shutoffs Coming after Irrigators, Tribes Call for Their Water Rights," *Herald and News* (Klamath Falls, Or.) 11 June 2013, A1, A3. Emphasis in original.

<sup>428</sup> Ann Adams, "Investing in a Sustainable Future – The Yainix Ranch," *Holistic Management in Practice* no. 90, (July/August 2003): 4-5.

<sup>429</sup> Roger Nicholson interview from "Klamath Basin Water Shut-off Protest July 1, 2013," video on *Youtube.com*, accessed on 2 July 2014, <https://www.youtube.com/watch?v=yhBnsIWaplc>.

<sup>430</sup> Schwartz, "WATER DEMAND," A3.

The Tribes and other stakeholders had attempted to collaborate with the Upper Basin off-project irrigators, but many of those irrigators avoided negotiations. The Klamaths' water call would be a wakeup call, according to the Klamaths' Tribal Chairman, Don Gentry, who explained: "Some folks haven't realized the reality of what we're facing." He continued, "After the calls are made it will initiate a better understanding of the water management issues we're facing."<sup>431</sup> For Upper Basin ranchers, like 63-year-old John Briggs, who had spent 30 years building and working his ranch. He protested for water along with other Upper Basin irrigators on 1 July 2013 in Klamath Falls, at the Fair Grounds, through the city streets, and at the Court House. The rally was not as extensive as that which took place in May of 2001, but the meaning behind the rally was just as intense. The ranchers felt threatened and scared. The situation they never believed could happen did happen. "This is my piece of the American Dream," Briggs explained of his ranch. "Every single president of the United States has talked about the American Dream. And mine was just taken away from me."<sup>432</sup> Rather than work toward an agreement that recognized the Klamath Tribes' senior water rights, many Upper Basin ranchers resisted. Only two weeks earlier on 14 June 2013, a group of irrigators provided testimony with the hope that Klamath County Circuit Court Judge Cameron Wogan would enjoin the adjudication and related water shutoffs. While Judge Wogan understood the desperation of the ranchers' situation, he explained that he had to follow the law and could not fulfill their request.<sup>433</sup>

At this point, the Klamath Tribes had the leverage through their water rights to mold the management of the far reaches of the Upper Basin according to their values. In 2013, the Klamaths played out the scenario after many ranchers in the Upper Basin dodged the Klamaths' attempts to cooperate. The Tribes did not have the intention to use a winner-take-all approach,

---

<sup>431</sup> Ibid.

<sup>432</sup> Samantha Tipler, "Ranchers Rally for Water: Protestors Say Their Livelihood Could Be Ruined By Shutoffs," *Herald and News* (Klamath Falls, Or.) 2 July 2013, A1.

<sup>433</sup> Ibid.

and they proved this over the following year.<sup>434</sup> Instead they negotiated with the Upper Basin irrigators. Those irrigators had little choice. With water rights junior to the Klamath Tribes and other water stakeholders, including most of the Klamath Project irrigators, the Upper Basin ranchers and farmers began to realize that they would need to talk with the Tribes. On 8 July 2013, Oregon Governor John Kitzhaber, Senators Ron Wyden (D-OR) and Jeff Merkely (D-OR), and Representative Greg Waldon (R-OR) announced the establishment of the Klamath River Basin Task Force. They invited 23 parties to participate including Chairman Don Gentry of the Klamath Tribes, and representatives of the downriver tribes, state water and wildlife agencies, Pacificorp, the Bonneville Power Administration, agriculturalists in the region, fishermen on the Lower Klamath, and nongovernmental environmental organizations. They assigned the Task Force the purpose of finding a scientifically-grounded solution for the most recent water issues in the Upper Basin that would be consistent with the KBRA and KHSA. The team's deadline was 10 September 2013. The ultimate goals of the Task Force were to devise a plan for increasing water flows by 30,000 acre-feet to Klamath Lake, formalize a strategy for riparian restoration of the Sprague, Williamson, and Wood river basins, and work out a negotiated settlement for water rights that followed the relevant environmental laws.<sup>435</sup> The bi-partisan support for these restoration initiatives reflects just how much the management initiatives for the watershed had refocused on fisheries.

Over the next year, Klamath tribal leaders met with willing Upper Basin irrigators and other stakeholders to negotiate a plan. On 4 March 2014, the parties announced the agreement, and on 18 April 2014, they signed it on the bank of Spring Creek, a tributary to the Williamson River. This 94-page document, formally titled the Upper Klamath Basin Comprehensive

---

<sup>434</sup> *Klamath Basin: Hearing Before the Subcommittee on Water and Power of the Comm. on Energy and Natural Resources to Hear Testimony on S. 2379, the "Klamath Basin Water Recovery and Economic Restoration Act of 2014,"* 113<sup>th</sup> Cong., 3 June 2014 (Statement of Richard M. Whitman, Natural Resources Policy Director for Oregon Governor John Kitzhaber), 24.

<sup>435</sup> "Sen. Wyden and Merkley, Rep. Walden, and Gov. Kitzhaber Form Klamath River Basin Task Force," *Ron Wyden Senator for Oregon*, accessed 9/8/2015, <http://www.wyden.senate.gov/news/press-releases/sens-wyden-and-merkley-rep-walden-and-gov-kitzhaber-form-klamath-river-basin-task-force>.

Agreement (UKBCA), outlined how the Klamath Tribes would make calls for water as long as the irrigators followed through with the necessary stream and riparian restoration on their properties.<sup>436</sup> The Tribes would allow for lower water flows along the reaches of rivers and creeks in ranches where the ranchers dedicated themselves to activities that would improve habitat for fish and other wildlife. In early June, Gentry explained to a newspaper reporter that the Tribes would make their water call according to the UKBCA. This meant that any water left over after the Tribes' water needs were met would go to the irrigators who were apart of the agreement. The Tribes planned to make full water calls on all streams that were not included in the agreement.<sup>437</sup>

On 24 June 2014, the Oregon water master had sent notices to less than 10 irrigators who drew water from Crooked, Sand, Scott, Jackson, Irving, and Deep creeks in order to comply with the water call the Klamath Tribes filed on 10 June 2014. The Tribes' call included the Williamson, Sycan, and Sprague Rivers, but the water master had not shut off water to those irrigators. Ranchers who diverted from those rivers had negotiated with the Klamath Tribes in the UKBCA.<sup>438</sup> Through this agreement, irrigators took on the responsibility of restoring riparian areas and streams in accordance with the Klamaths' vision, and by 24 June 2014, all three river levels met the requirements of the UKBCA. Even without congressional approval, the Klamaths and other stakeholders initiated the agreements in "good faith."

The Klamath Tribes' water call and the agreement they negotiated with Upper Basin irrigators shows how the Tribes are in the process of "re"-producing a space that conforms to their cultural and spiritual values. With their quantified water rights, they restricted the removal of water from streams for use on agricultural lands in the Upper Watershed. This allowed them to

---

<sup>436</sup> "Upper Klamath Basin Comprehensive Agreement," 18 April 2014. Digital copy in author's possession.

<sup>437</sup> Lacey Jarrell, "Water Shutoffs Begin in the Basin: Klamath Tribes Expected to Make Its 'Call' This Week," *Herald and News*, 10 June 2014.

<sup>438</sup> Lacey Jerrell, "Creeks Now under Tight Water Regulations: Five of the Six Creeks Called on Are Being Regulated for Maximum Volumes," *Herald and News* (Klamath Falls, Or.) 24 June 2014, A2.

keep instream flows high for the c'waam, q'apdo, yeen, trout, mule deer, and other wildlife.

Without having sought the quantification of their water rights through adjudication, a claim they submitted in 1975, they could not have shaped water management to this extent in 2014.

Despite the overwhelming support for the KBRA and other associated agreements from the more than 40 stakeholders and entities that signed it, there are some parties within the watershed that do not agree to it. These parties include the Hoopa on the Lower Klamath River, county governments on both sides of the Stateline, and some members of the Klamath Tribes.<sup>439</sup> On 19 January 2010, the Klamaths' ballots for the KBRA referendum vote totaled 700 in favor of the KBRA and 139 not in favor.<sup>440</sup> With a majority in support of the KBRA, tribal leaders signed the agreement. A 2014 *Klamath News* article reported that in 2012, Klamath tribal members "overwhelmingly supported" amendments to the KBRA. By 2014, the addition of the UKBCA required another referendum vote. This time, approximately 57 percent of the members that voted supported the UKBCA.<sup>441</sup> This agreement brought the off-project irrigators who drew water from major tributaries in the most northern reaches of the Upper Klamath River Watershed into KBRA and KHSA plan.

In 2014, a handful of Klamaths established a group named Honor the Treaty of 1864.<sup>442</sup> They began raising questions that echoed those that political scientist Daniel McCool asks in his

---

<sup>439</sup> A scientific report on water quality explains many reasons that the Hoopa do not agree with the settlement agreements, see Patrick Higgins, "KHSA and KBRA Likelihood of Meeting Hoopa Valley Tribe Klamath River Water Quality Standards," 20 July 2011, electronic copy in author's possession, 4-31; Scholarly assessment of the Hoopa's perspective, see John F. Dillon, "Stories Like a River: The Character of Indian Water Rights and Authority in the Wind River and Klamath-Trinity Basins, (Ph.D. diss., University of Arizona, 2013), 142-166; explanation for why County Commissioner Tom Mallams, other Klamath County commissioners, and Siskiyou County, California supervisors oppose the settlement agreements, see Tom Mallams (Klamath County Commissioner; Upper Klamath Basin Rancher), interviewed by author, Klamath Falls, Or., 8 July 2014.

<sup>440</sup> "Klamath Tribal Actions Taken That Led to Settlement of Water Issues Through the KBRA/KHSA," Klamath Tribes Administration, Chiloquin, Or., copy in author's possession.

<sup>441</sup> "Klamath Tribes Referendum (sic) Vote Passed: Klamath Tribal Council Is Pleased that Senate Bill 2379 Is Now Moving forward Regarding the KBRA, KHSA, and UKBCA," *Klamath News* (Chiloquin, Or.) vol. 30, no. 2 (2<sup>nd</sup> Quarter 2014), 1.

<sup>442</sup> "Dissenting Tribal Voices Locked Out of Klamath Land Transfer Discussion," *Last Real Indians*, accessed 3 July 2015, <http://lastrealindians.com/for-immediate-release-dissenting-tribal->

ominously titled book, *Native Waters: Contemporary Indian Water Settlements and The Second Treaty Era* (2002).<sup>443</sup> He argues that tribes should be careful so that they do not risk losing their water rights through water settlements just as their ancestors lost extensive amounts of land during the treaty era prior to the 1870s. Charles Wilkinson, Professor of Law and former NARF attorney who has assisted the Klamath Tribes since the 1970s, assessed the UKBCA. He argues that the settlement agreement is “reasonable, indeed, excellent, given the Tribes’ status as a sovereign water rights holder.”<sup>444</sup> Projecting into the future as though Congress enacted the necessary legislation to formalize the three-part water settlement, Wilkinson further applauded the Klamaths: “What the Tribes have done is the exact opposite of termination. It is full-scale self-determination.”<sup>445</sup> For some Klamaths, though, understanding the decades of work that it has taken to achieve this monumental moment in the Tribes’ history is challenging. One can easily look at these agreements and see that there is no immediate economic benefit for the Tribes, at least in the same way that the irrigators receive the immediate benefit of water for their crops. Another issue is that the Klamaths have wrestled with is nearly 200 years of losses—land, relatives, culture, language, fish...the list goes on. Many question how this three-part agreement can compensate for those losses.

The Klamaths will work through their internal conflicts. As a confederated tribal nation, they have negotiated tensions among their people many times. Fleeing Modoc from the newly-established reservation in the 1870s signaled one of the earliest reservation-era conflicts between the Klamath and Modoc. Heated debates between Boyd Jackson and Wade Crawford prior to and during the termination period caused rifts in the Tribes, but they managed to reestablish a sense of unity in the following decades. Some tribal members opposed restoration of the Tribes’

---

voices-locked-out-of-klamath-land-transfer-discussion%E2%80%8F/. This article does not provide a specific date for when the group formed.

<sup>443</sup> Daniel McCool, *Native Waters: Contemporary Water Settlements and the Second Treaty Era* (Tucson, AZ: University of Arizona Press, 2002).

<sup>444</sup> Charles Wilkinson, Distinguished Professor, Moses Lasky Professor of Law, to Chairman Gentry, printed in *Klamath News* (Chiloquin, Or.) vol. 30, no. 2 (2<sup>nd</sup> Quarter 2014), 5. Electronic copy of letter also in author’s possession.

<sup>445</sup> *Ibid.*, 8-9.



federal status in the 1980s. Again in the 2010s, some Klamaths worry that the agreements for the water settlement are not enough or that they might be detrimental for the Tribes. As their genogram depicts a cycle, these intra-tribal tensions, too, are cyclical. They arise when big changes are pending, such as termination, the establishment of the Klamath Indian Game Commission, or even restoration of the Tribes' federal status.

Prior to the 1990s, federal and state agencies focused water management in the Upper Klamath River Watershed on agricultural uses. This management strategy influenced the Lower Basin as well because the dams that generated power for the Klamath Project irrigators altered the natural flow of water downstream and blocked fish passage. The emphasis on agricultural water, which the settler society justified with manifest destiny and the assumption that the only appropriate use for water was irrigation, drove the settler society to transform the physical landscape dramatically to fit its purposes. These ideas justified the draining of Tule Lake and Klamath Straits, the construction of reservoirs, the rerouting water to the drained lake bed for farming, and construction of dams on the river. Technocrats transformed the Klamath River into an "organic machine," much like they had transformed the Columbia River to the north.<sup>446</sup>

During the 1990s, the Klamath Tribes began a process of repurposing the organic machine from a unit that pumped water for agriculture and power to one that supported fish populations in the upper and lower watershed. The transformation of watershed management rested in large part on the Klamaths' decades-long natural resource activism and their cultural values, which encouraged them to view the watershed holistically. Using their senior water rights as legal leverage, the Klamaths encouraged members of the agricultural community to negotiate rather than litigate. Tribal Chairman Allen Foreman had promised that the Klamath Tribes would advocate for a solution that allowed for agriculture. The Tribes' holistic perspective encouraged them to support other members of the watershed community, even those that acted in very hostile ways after the Water Crisis of 2001. This approach allowed the Klamaths to slowly build relationships with irrigators in the Upper Basin that they based on trust and respect. The test

---

<sup>446</sup> White, *The Organic Machine*, ix.

came when the Oregon Water Resources Department announced the Final Order of Determination for the adjudication process on 7 March 2013, in which the Klamaths had the most senior water rights.<sup>447</sup> Rather than use a winner-take-all approach and severely limit the amount of water that the Klamath Project irrigators would receive on a yearly basis, the Tribes have upheld their part of the KBRA negotiations even while the legislation required for formalizing it is stalled in Congress. For the Klamaths to receive any benefits described in the agreements, other than riparian and c'waam and q'apdo restoration, Congress first has to sanction the agreements through legislation. By holding to the agreements, the Tribes proved their dedication to their alliance with the project irrigators. They have used this strategy to reinforce the trust they have established with members of the agricultural community.

The Klamaths' alliances and partnerships with non-governmental stakeholders allowed the Tribes to initiate restoration efforts in the Upper Basin and reify their cultural meanings and values on the physical landscape. They influenced how much water the USBR could divert to the project irrigators, participated in the reestablishment of wetlands on the Williamson River Delta, and used their alliance with the Klamath Project irrigators to increase water flows to the National Wildlife Refuges in drought years. The KBRA and KHSAs reflected the Klamaths' interests in dam removal, the restoration of salmon and steelhead runs to the upper watershed, and the Klamaths' holistic view of the watershed.

Through their activism, the Tribes established collaborative government-to-government relationships with many federal and state entities by the 2000s. These relationships folded with their alliances and partnerships with non-governmental stakeholders helped them garner support for one of their main goals—the reacquisition of their former forest. Along with the ecological restoration of the watershed, the Klamaths sought a land base as part of their healing process as a people. The termination policy stripped them of their forested land, which had been their economic base. When they fought for the restoration of their federally-recognized status in the 1980s, they chose not to pursue the land base under the advice of Oregon congressional

---

<sup>447</sup> Brenda Bateman, "The Oregon Water Resources Department Completes Klamath River Basin Adjudication (1975-2013)," Press Release, 7 March 2013, Oregon Water Resources Dept., Salem, Or., electronic document in my possession.

representatives. As senior water rights holders, they garnered a position to negotiate for land. In 2014, Congress did not pass legislation to formalize the agreements. In 2015, at the time of this writing, the Klamaths continue to wait with the hope of reacquiring a portion, or perhaps more, of their former reservation forest.

The Klamaths' natural resource activism and the resulting natural resource management outcomes in the Klamath River Watershed suggest that the American West and the nation as a whole have gone through major changes. During the mid-20<sup>th</sup> century, federal and state agencies largely left out tribal nations and communities from natural resource decision-making on public land. Within 50 years, the Klamath Tribes inserted themselves into natural decision-making processes with stakeholders at the grassroots, state, and federal level. They worked with in the settler colonial system to channel their cultural and spiritual values onto the landscape. Their participation in natural resource management represents a larger shift toward pluralism in the United States, one that Native American activism instigated as tribal nations fought to protect their sovereignty, the natural environment, and their access to it.

## CHAPTER 7

### CONCLUSION

Natural resources, such as water, forests, and wildlife, are symbiotically connected to indigenous cultural identity, self-determination, and sovereignty. They are fundamental for subsistence and cultural practices and integral to economic self-sufficiency. While federal and state governments controlled the management of natural resources for nearly 100 years in some cases, the Klamaths' history suggests that a major shift has taken place. Through self-determination activism, tribal nations, have increasingly woven themselves into federal, state, and nongovernmental natural resources decision making. Doing so has not been easy. Tribes have faced much resistance from these parties. Despite this resistance, the Klamath Tribes used the natural resources management arena to practice self-determination, assert their sovereignty, and rebuild their nation. In the process, they simultaneously shaped federal, state, and nongovernmental natural resources management on public and private lands. The Klamaths successfully argued for an ecological, or holistic, approach that valued watershed restoration—a major shift from the historical focus on agricultural, timber, and power production. The inclusion of tribal perspectives reflects the pluralization of American society, but this must be understood in the context of tribal activism. The Klamaths took many proactive steps, tactics that may offer insights for other tribal nations and Indigenous peoples around the globe.

The Klamaths' interests in restoring fish populations, protecting mule deer habitat, and restoring the Klamath River Watershed are deeply rooted in their understanding of who they are as a people, their place in the world, and their ability to function as a healthy community, politically, physically, mentally, and economically. Their oral traditions convey a sense of place that reinforces their spirituality and cultural identity and describes the Klamaths as stewards of the fish, animals, water, and land. A Klamath oral tradition about the c'waam describes the fish as a source of life that the Klamaths must honor and protect. In order to fulfill their responsibility, the Tribes must have the means to make decisions regarding natural resource management. For the Klamaths, practicing stewardship is in itself an assertion of sovereignty and self-determination. Don Gentry, Chairman of the Klamath Tribes explained, "We are the people of this area....We

have a responsibility to look out for this area...[We recognize] that everything that allowed us to survive the ages to this time flows from this land, from everything the Creator placed here.”<sup>448</sup> Klamaths recognize a deep connection between the land and their people. Elder Chuck Kimbol made the clear argument to the USFS in the 1990s, that the Tribes were part of the land, not separate from it. Gentry further connected these ideas to sovereignty: “Those things are important to recognize when we talk about asserting our sovereignty and, basically, that’s a part of the reason why we ended up where we are now and where we’re trying to move to into the future.”<sup>449</sup> Environmental stewardship is about survival and that is one reason why it plays a significant role in the Tribes’ activism. Stewardship is also about planning for the Tribes’ future generations; it is tied directly to their ability to remake themselves as a political force and strong tribal nation. In these ways, healing the land is directly linked to healing the people.

Early on, the expanding U.S. settler colonial society stressed the Tribes’ relationships with the place that G’mokam’c made for the Tribes. By the mid-19<sup>th</sup> century, members of the settler society began enacting violence on the Klamath, Modoc, and Yahooskin Paiute people and grazing their livestock on the lush grasses that grew within the Klamath and Modoc territories.<sup>450</sup> Agriculturalists built canals as early as the 1860s, and by 1906, the Bureau of Reclamation had begun draining Tule Lake and wetlands in the Modoc’s ancestral territory.<sup>451</sup> Both actions moved or removed water from places within the Klamath Tribes’ landscape where the creator intended it be. Mirroring these environmental changes, the settler society moved and restricted the Klamath, Modoc, and Yahooskin peoples, actions justified by Eurocentric notions of manifest destiny and civilization. When the U.S. government required the three tribes to move to

---

<sup>448</sup> Gentry, interview.

<sup>449</sup> Ibid.

<sup>450</sup> Violence, see Cothran, *Remembering the Modoc War*, 18; grazing livestock, see Williams, Klamath County Museum Oral History.

<sup>451</sup> Early canals, see Keppen, *The Klamath Project at 100*, 11-12; *Tule Lake, Lower Klamath Lake, and Upper Klamath National Wildlife Refuges* (Report by Anderson), 6; Williams, Klamath County Museum Oral History. Draining of Tule Lake, see *Tule Lake, Lower Klamath Lake, and Upper Klamath National Wildlife Refuges* (Report by Anderson), 6.

the federally-designated reservation in 1864, the Klamaths, especially the Modoc and Yahooskin Paiute, could not access their ancestral territories, territories Gmok'am'c designed for them.<sup>452</sup>

The settler colonial society overlaid the Klamath, Modoc, and Yahooskin territory with a Eurocentric understanding of the world. This smothered and devalued the Klamaths' relationships with natural and cultural resources. The Eurocentric spatiality valued agricultural production and reified those values on the landscape through ditching, diking, and draining water sources. The emphasis on developing the American West through agriculture justified the removal of Indians from prime or, at least, promising agricultural areas. These colonial-induced changes restricted the Klamath Tribes from acting as stewards of their place. The Klamaths' spatiality still existed in the Klamaths' minds and was reflected in parts of the landscape, like the Tribes' reservation. But in many ways the landscape and the management approach that the settler society applied to it did not reflect the Klamaths' spatiality. Outside parties attached new meanings to the Klamaths' place and physically remolded it to the point in which it no longer functioned as a successful c'waam, qupto, and c'iyaal's fishery.

Through the assimilationist policy of termination, the ultimate settler colonial move, the U.S. government transferred the majority of Klamath tribal land out of the Tribes' ownership in 1961. This painful event continues to plague Klamath hearts.<sup>453</sup> Those Klamaths born prior to and those born after termination experience the historical trauma of termination and of the prior events noted on the genogram that hangs in their tribal administration building.<sup>454</sup> The younger generations still do not have a land base, but they hear stories of a time when the Tribes had one.

The Klamaths' activism during the post-termination years must be understood in the context in which the Klamaths see themselves and understand their past. Since termination, Klamath leaders have done everything in their power to repair their relationship with the land and resources they lost through the termination policy. The Klamaths have not yet reacquired their

---

<sup>452</sup> Gentry, interview.

<sup>453</sup> Letter from the Klamath Tribe, July 1985, Klamath County Museum.

<sup>454</sup> Ball and O'Neil, "The Klamath Tribes Historical Trauma Genogram."

land. However, they successfully have used activist strategies to weave themselves into federal, state, and non-governmental natural resource decision-making processes within their reservation and the larger Klamath River Watershed. The Klamaths' understanding of themselves as stewards of their ancestral landscape is what drives their proactive approaches.

While this history focuses on tribal activism through natural resource management, it certainly is not the only form of Klamath activism. In the 1970s, some Klamaths developed much-needed community programs and organizations like the Klamath Alcohol and Drug Abuse (KADA). Drug and alcohol related illness among members of the Klamath community skyrocketed in the years following termination. In the 1980s, other Klamaths established the Klamath Culture Camp at the site of Chief Chiloquin's camp on the Sprague River near present-day Chiloquin, Oregon. The current Klamath Cultural and Heritage Director Perry Chocktoot, continues the camp tradition of immersing Klamath youths in tribal culture. These examples point to the breadth in which Klamaths dedicated themselves to rebuilding and strengthening their community.

The Klamath Tribes' natural resources activism is connected directly to these social, cultural, and economic initiatives. Natural resources, such as water, fish, and mule deer are far from simply natural resources that are extracted, processed, and bought and sold in the marketplace. They are food that sustains the health of the tribal community. These resources are more than food, too. The fish and the mule deer are fundamental components of the place that the Creator designed for the Klamath Tribes. The place would not be the same without those animals, and the Klamaths would not be the Klamaths without those animals. The c'waam, for example, are fundamental for Klamath cultural identity. In the process of honoring the first c'waam, the Klamath practice and pass on their cultural understanding of who they are as a people to their younger generations. As the Klamath hunt mule deer, they fulfill a need for food in their community and share cultural knowledge about how to hunt, where to hunt, when to hunt, what to hunt, and how to interact with and treat the animals in the process. Passing on this Klamath, Modoc, and Yahooskin Paiute knowledge reinforces the cultural identities of these peoples. The Klamaths have struggled to develop their economy, but they have a plan for how

they can succeed. Furthermore, a land base will offer the Tribes the much-needed means for building a wood products-based economy, which their 2008 forest management plan explains.<sup>455</sup>

Perhaps, some tribal members and non-members might argue that natural resource activism has not been the most important of tactics. Some Klamaths and non-tribal members have pointed out that the natural resource initiatives have not been lucrative for the Tribes as a whole and have not returned the tribal forest to Klamath ownership. They are correct. However, Klamath leaders have had a much larger goal, really a much larger vision. Fueled by their cultural knowledge, Klamath leaders have asserted the Tribes' sovereignty and promoted its vision for natural resources management. Their goals have been to not only require the settler colonial society to recognize the Tribes as a sovereign political entity with management rights for the natural resources but also to encourage non-Indians to value the landscape in a way that resonates with the Klamaths' needs. From this perspective the Klamath leaders have accomplished a lot and their story has the potential to inspire and teach other indigenous communities who seek to heal their people, protect culturally-significant resources and places, and assert their sovereignty. While they worked within the settler colonial system, the Klamaths placed their cultural values at the center of their activist strategies. Every move they made, whether filing suit, hiring a biologist, participating in an environmental process, or negotiating with other natural resource stakeholders, the Klamaths practiced self-determination and sovereignty according to their worldview. Federal policies and laws limited the Tribes' ability to practice their sovereignty, but those laws could never fully eliminate it. In fact, this history shows how the Klamaths used the U.S. legal system to fulfill their culturally-defined responsibility as stewards of the land. As the Klamaths have, Indigenous peoples around the globe can devise ways to encourage or, perhaps, force, the "dominant" society to "see" the place as they do. This might require the appropriation of laws, policies, and ways of thinking in order to channel such ideas onto the landscape.

The Klamath Tribes reinvented themselves as a political entity that influences the management of natural resources that are significant to the Tribes. For example, right after

---

<sup>455</sup> Johnson, Franklin, and Johnson, *A Plan for the Klamath Tribes' Management*.



termination in the 1960s, the Klamaths could not sit at the table with officials of federal and state natural resource agencies, nor could any other Indian tribes. Not only did the termination process label the Klamaths as a non-entity, U.S. policymakers did not interpret federal Indian policy in a way that recognized tribal sovereignty and that would allow for tribes to work in government-to-government relationships with state and federal agencies. Federal Indian policy would shift in this direction, but only after much tribal activism between the 1960s and 1990s.

During the latter half of the 20<sup>th</sup> century, Native Americans used many different strategies in their confrontation with the settler colonial society. Some adapted tactics from other social movements. For example, the National Indian Youth Council (NIYC) and the Survival of the American Indians Association (SAIA) participated in fish-ins during the 1960s in Washington State to demonstrate the rights of local tribes to practice off-reservation treaty rights.<sup>456</sup> The American Indian Movement (AIM) similarly drew media attention to its protests, but did so through much more militant means, such as the occupation and takeover of the Bureau of Indian Affairs Headquarters in 1972 and the siege at Wounded Knee, South Dakota in 1973. Some Native activists flew under the national radar as they chose to work within the colonial system as they took jobs within the Office of Economic Opportunity in the 1960s and used grants and programs not designated for Indians to manipulate the Bureau of Indian Affairs into a program that allowed for American Indian self-determination.

The Klamaths' strategy focused on working within the colonial system. They paid close attention to what the colonial society valued and how its laws and knowledge systems worked. The Tribes used these systems to channel their values into landscape management so that it would function according to their spiritual and cultural understanding of it. For example, in the 1970s, Chuck Kimbol and other tribal members used the federal court system to reaffirm the tribes' treaty rights and sovereignty. They went head to head with Oregon State officials who claimed that the termination policy ended the Klamaths' treaty rights and that Public Law 280 transferred criminal jurisdiction within the Klamath Reservation from the federal government to

---

<sup>456</sup> Chrisman, "The Fish-In Protests at Franks Landing," <http://depts.washington.edu/civilr/fish-ins.htm>.

the State of Oregon. The Klamaths' decision to sue the state and the resulting case, *Kimball v. Callahan* (1974 and 1979), changed the trajectory of the Klamaths' history. Not only did the court hold that the Klamaths maintained their treaty rights through the termination process, the court held that the Klamaths never lost their sovereign right to manage their members' taking of wildlife and other cultural resources or the rights to manage the actual resources. In legal terms, this case flipped the State's perspective on its head. For the Klamaths, this case began the process of healing their people. The *Kimball I* and *II* decisions required Oregon officials to recognize that the termination process did not erase the Tribes, or their sovereignty and treaty rights. Through the court decisions, the Klamaths regained a management role for the resources within the sovereign boundaries of their former reservation and cooperative government-to-government relationship with the State of Oregon. The case must also be understood in Klamath terms. The *Kimball* decisions deeply resonated with the Klamaths' understanding of their Tribes' as stewards of the place that Gmok'am'c created for them. The Tribes could fulfill their destined role as they worked with the State of Oregon under the framework of the 1981 Consent Decree and through the government-to-government relationship that it described.

The *Kimball* case was only the beginning. Through this case, the Klamaths laid the groundwork for their future natural resource activism. They would find that the court's recognition of their treaty rights and sovereignty were not enough to accomplish their goals. State and federal agencies resisted the Klamaths' sovereignty. Getting to a position in which the Klamaths could practice stewardship over the natural environment, required decades of activism. Klamath leaders used their treaty of 1864, treaty rights, and sovereignty in tandem with litigation, science, environmental policies, a lexicon, negotiation, and alliance building to influence and participate directly in natural resource management. The Klamath Tribes increasingly molded natural resource management and reified their values on the landscape. One significant example is the shift in federal and state water management in the Upper Basin from a focus on agriculture to management for fish habitat in late-1980s and early-1990s.

Getting state and federal agencies to interact with the Klamath Tribes in a government-to-government fashion was not easy. The State of Oregon and some federal agencies resisted the

nuanced federal court interpretations of tribal sovereignty and the self-determination policy that Congress passed in 1975. Klamath tribal leaders attempted to work collaboratively with the agencies, but found that the agencies would rather maintain an adversarial relationship as long as they could. State and federal agencies felt threatened and resisted the Tribes' sovereign status until court orders required the agencies to recognize Klamaths' sovereignty. One could write this history as though the Klamaths' resisted the state and federal agencies. However, the federal court held that the Klamaths' maintained their sovereign status through termination. That means that the U.S. government recognized that the Tribes never "lost" their sovereignty. From this perspective, the Tribes did not resist the agencies' power; the agencies resisted the Klamaths' power. For this reason, this history should not be understood as postcolonial or post-settler colonial. Such narratives sculpt a totalizing story of indigenous resistance when in fact there are cases in which the state and federal agencies resisted tribal sovereignty.<sup>457</sup>

The Klamaths' story, while very much a local and regional history, resonates with national-level trends. As the U.S. settler colonial society continues to operate, it is changing. Federal agencies like the USFS have transformed over time. Since the 1970s, they have not only had to adjust to national environmental policy processes, but to changes in federal Indian policy. Indian activism, court decisions, and the 1975 Self-Determination Act remolded the U.S. government's paternalistic approach toward a policy that claimed to support tribes as they practiced self-determination and asserted their sovereignty. However, agencies lagged in institutionalizing these policy changes. Some, like the USFS, resisted tribal sovereignty. This required the Klamaths to use a public environmental process designed, not for tribal nations with sovereignty, but any interested public party. Klamath leaders took advantage of the public forums of the National Environmental Policy Act of 1969 (NEPA) and the U.S. Forest Service appeals processes to demand that the USFS recognize the Tribes' sovereignty and protect their treaty rights. They argued that the Service must uphold its obligations to recognize the Tribes in a government-to-government relationship and apply management practices that would conserve

---

<sup>457</sup> Kevin Bruyneel argues for understanding U.S.-indigenous relations in terms of a postcolonial indigenous resistance. See Bruyneel, *The Third Space of Sovereignty*, 217-224.

the Tribes' treaty protected resources, such as fish, deer, and edible plants. Almost 15 years after they began attempting to forge a meaningful government-to-government relationship with the Service, through a court order, the tribal nation reached a formal agreement with the agency in 1999. The resulting memorandum of agreement finally recognized the Tribes' sovereignty in a meaningful way and established their special relationship with the USFS.

The following decade brought more challenges, this time with non-governmental stakeholders. In 2001, tensions between the Klamath Tribes and the non-Indian agricultural community skyrocketed after the USFWS and the NFMS required the USBR to shutoff irrigation water to the Klamath Project in order to protect the c'waam, q'apdo, and Coho salmon according to ESA requirements. While the Klamaths did not make the final decisions to curtail the irrigation water in 2001, this moment symbolized a dramatic shift in natural resources management within the Upper Klamath Watershed, a change that reflected the Tribes' interests. The Klamaths stridently asserted their sovereignty through close partnerships with the USFWS and ODFW and other agencies. This aggravated agriculturalists who did not understand the trust relationship between the federal government and tribal nations or the legal status of treaty rights. Never before had the Klamaths asserted their sovereignty in this way with natural resource agencies and never before had the agriculturalists had to worry about water.

The Klamaths' strategic use of the NEPA, the ESA, litigation, and water rights claims, recast their tribal nation as a political force, which threatened many irrigators. Despite the hatred coming from some non-Indians in the community after the 2001 Water Crisis began, Klamath leaders looked for opportunities to form alliances and to negotiate with agriculturalists and other water stakeholders. Through their efforts, the Tribes and other stakeholders designed a crucible in water management and restoration, a watershed-scope approach that would attempt to balance water for the many watershed users, including wildlife and plants. This holistic approach, which valued wildlife and plant water consumption in addition to the needs of the many stakeholders in the watershed, promised to reify the Klamaths' vision for the watershed. The restoration of fish populations, the rerouting of water, the removal of dams, and the recognition that the Klamath Tribes must have a role in the management of the watershed exemplify how the

Klamaths redefined the space through their activism. The new meanings applied to the watershed shifted the way in which stakeholders would use it and how it would function. The settler colonial interests and the Klamaths' took form in a blended management approach.

The Klamaths' activism parallels significant changes in American history. The Klamaths began the process of rebuilding their nation in the wake of the termination policy and during the post-World War Two political and social unrest. African-American Civil Rights, Chicano, women's, environmental, and other activists transformed American politics and society. During this period and the decades that followed, American Indian self-determination activism, particularly that which focused on treaty rights and the protection of cultural resources, set in motion major shifts in the management of natural resources throughout the American West and the nation. While there were 109 cases of termination, many Native American communities did not undergo this policy. Yet, like the Klamaths, many tribal nations have off-reservation treaty rights, water rights, and sacred sites. Today, tribal leaders and representatives sit at the decision-making tables with state and federal officials, positions that they did not have only three to four decades ago. These significant shifts did not happen overnight, nor did they occur because of agencies' dedication to recognizing American Indian sovereignty, the federal trust relationship, and treaty rights. American Indian activism, like that of the Klamaths, redefined how federal and state agencies interact with tribal nations. The shift from a paternalistic relationship to a government-to-government relationship with federal and state agencies took, in some cases, more than decades to reach. In their efforts to solve the disputes over natural resources in the Klamath River Watershed and throughout the nation, the Klamaths, other tribes, and federal and state agencies continue to mold these relationships.

As tribal nations increasingly wove themselves into natural resource decision-making processes during the last four decades, they actively threaded their voices and values into discussions in which they previously had not been included. They proactively broadened the knowledge base and value system that informed water, wildlife, and plant management. Rather than watch as the world changed around them, Native Americans transformed America, making it increasingly pluralistic, as they fought to assert their sovereignty, practice self-determination, and

protect their treaty rights. In the process of remaking themselves and restoring the watershed, the Klamath Tribes took part in a process that changed not only their region, but also United States natural resources management.

Like the Klamaths, other modern tribal nations have successfully integrated their spatial understandings of the landscape into the settler colonial regime. In the Southwest, the Hopi established a working relationship with the USFS during the late-1990s that allowed their tribe to incorporate traditional ecological knowledge into national forest management.<sup>458</sup> In the Pacific Northwest, the Nez Perce implemented the gray wolf reintroductions in Central Idaho in 1995 with the USFWS. The Nez Perce took this position after the State of Idaho chose not to participate in this effort. That tribal nation recognized an opportunity in which they could help reestablish a culturally- and spiritually-significant species to their home place.<sup>459</sup> This is not to say that tribes have a significant role in all decisions or that all tribes have equal footing among themselves and with non-tribal entities. However, tribes have significantly stronger and more collaborative relationships with federal, state, and non-governmental stakeholders today than they did in the 1960s, or even in the 1990s, for that matter.

The implications of this analysis for American Indian history and United States history are many. The Klamaths' activism illuminates how indigenous peoples' relationships with the natural environment are related directly to the ways in which they understand their sovereignty and practice self-determination. From the Klamaths' perspective, sovereignty is not just political, but spiritual and tethered to their worldview. Furthermore, applying a spatial approach allows one to recognize the significance of the Klamaths' assertion of sovereignty on the physical landscape and in natural resource management planning. During the self-determination era, the Klamaths effectively altered the function of the landscape that the settler colonial society shaped with intricate plans and a very different worldview less than 100 years earlier. The Klamaths' history suggests that tribal natural resource activism has major implications for the future management of

---

<sup>458</sup> Lesko and Thakali, "Traditional Knowledge and Tribal Partnership on the Kaibab National Forest," 281-301.

<sup>459</sup> Patrick Impero Wilson, "Wolves, Politics, and the Nez Perce: Wolf Recovery in Central Idaho and the Role of Native Tribes," *Natural Resources Journal* 39 (Summer 1999): 543-564.

natural resources in the United States and for rethinking how we make sense of the settler colonial phenomenon. The Klamaths have proven that they are valuable and influential stakeholders in the 10-million-acre Klamath River Watershed. The political and legal position they have achieved reflects a new paradigm in Indian-U.S. government relations and Indian-non-governmental stakeholder relations that is defined by negotiation, collaboration, knowledge sharing, and the recognition of Indigenous peoples' relationships with the land. This paradigm shift took place across the nation as tribes asserted their sovereignty and self-determination in the theatre of natural resources management over the last five to six decades. This narrative does not have a clean and simple ending because the history continues to unfold.

During the 21<sup>st</sup> century, this paradigm in natural resources management has facilitated collaborative approaches for addressing climate change. This is crucial as indigenous peoples are more likely to be affected by climate change because of their close subsistence, cultural, and spiritual relationships with the environment.<sup>460</sup> Whereas scientists used to ignore or in some cases use but not cite Native knowledge, federal, state, and non-government scientists are making an effort to work with Native communities and actively incorporate and give credit to their contributions. Established in 2009, the Pacific Northwest Tribal Climate Change Network (PNWTCCN), for example, is a consortium of tribal and non-tribal researchers, scientists, and community members that conducts conference calls one day every month. As an employee of the University of Oregon with the title of Project Coordinator, Kathy Lynn, organizes and hosts webinars on such topics as the grants available to tribes for ecological restoration and the ethics of using Native knowledges and incorporating them with science. The U.S. Forest Service, U.S. Geological Survey, and University of Oregon provide funding for the network. In the 1980s and 1990s, the Klamath Tribes interacted with a much different USFS, one that would shirk at such requests. Even as Bob Tippeconnic explained in 1992, the USFS had the limited ability to approach forest management from a strictly Western scientific understanding. His words

---

<sup>460</sup> Rebecca Tsosie, "Indigenous People and Environmental Justice: The Impact of Climate Change," *University of Colorado Law Review* 78 (2007): 1628.

foreshadowed what would come—the transformation of USFS culture that would encourage the inclusion of tribal voices and knowledge, and subsequently, their spatialities.

The Klamath Tribes do not currently participate actively in the PNWTCCN; yet, they are working collaboratively with numerous stakeholders in ways that they had not only a one to two decades ago. They have many challenges and difficult decisions ahead and intra-tribal tensions to overcome. They are in a healing process as they continue to remake themselves and restore the ecological integrity of the watershed. Congress might not pass the bill that would formalize the KBRA, KHSAs, and UKBCAs. The Klamaths and the other stakeholders may need to devise an alternative strategy. What the Klamaths have done through their activism is put themselves in the position to influence the future of the watershed and to work collaboratively with other major water stakeholders in the process. The Klamaths, the other stakeholders, and the watershed are healing.



## CHAPTER 8

### EPILOGUE

As we drove south on Highway 97 from Chemult, Oregon in of June of 2015, I mapped out the boundaries of the former Klamath Reservation in my head and then aloud for my parents. There used to be a sign on the highway to designate the reservation. In the present day, the Fremont-Winema National Forest sign helps me draw the mental boundaries. A dense lodgepole pine forest mixed with ponderosas closed in on both sides of the highway. Blue skies met the tops of the trees and our car filled with the sweet, dry air.

When the Klamaths advocated for the restoration of their federal status in the 1980s, they did not have the legal or political leverage to reacquire the land they lost through termination. In their 1989 Comprehensive Needs Assessment, the investigators stressed the Klamaths' desire to have a tribal land base.<sup>461</sup> A section of the study's introduction explains, "It is hard to put into words the underlying hope the Klamath People have for reacquisition of some of the millions of acres that were ours in pre-contact and pre-Termination times." The authors quoted one anonymous tribal member's survey to make their point that the "restoration [of] a land base is most important to all of us."<sup>462</sup> Through their natural resource activism and decades-long efforts to remake themselves as a modern tribal nation, they acquired the political power necessary to bargain for land, a goal noted on their genogram: "200? Tribal Lands Restored."<sup>463</sup> For nearly a decade they had been negotiating the purchase of a 90,000-acre tree farm.

For a short time of our drive, we drove by the tree farm that the Klamaths had planned to purchase through the Klamath Basin Restoration Agreement (KBRA), if Congress passed the required legislation. The conservatives in Congress blocked the legislation, and the current bill,

---

<sup>461</sup> "The Klamath Tribes Comprehensive Needs Assessment Report and Analysis," Principal Investigators, Kathleen S. Hill (Klamath, Project Manager), Joseph C. Dupris, doctoral candidate (Cheyenne River Sioux, Economic & Community Development), Gerald L. Hill, Jr., M.D. (Klamath, Health & Human Services), January 1989, folder 3, box 2, Szasz Collection.

<sup>462</sup> The Klamath tribal member's survey is originally quoted in "The Klamath Tribes Comprehensive Needs Assessment Report and Analysis," Szasz Collection, 6. I added "[of]" in place of the preposition "for" in the original quote.

<sup>463</sup> Ball and O'Neil, "The Klamath Tribes Historical Trauma Genogram."

S. 133, remains idle.<sup>464</sup> The Klamaths hoped to strengthen their economy by managing this tract of their former reservation for small-diameter wood products. They had held a contract with the owner of the forest tract, Fidelity Financial, until the agreement expired in March of 2012. With the assistance of three Oregon State University researchers, the Tribes developed the Klamath Forest Management Plan in 2003, and they worked in collaboration with the USFS in a Master Stewardship agreement within the former reservation. In February of 2015, Fidelity National Financial Ventures, a Florida-based title company, sold the Mazama Forest to Whitefish Cascade Forest Resources, LLC, a Singapore-based corporation.

Through negotiations, the stakeholders had woven themselves into reciprocal relationships that hinged on many things, including the ability of the Klamaths to purchase the 90,000-acre forest. No forest for the Klamaths meant that the agreement could unravel. This would threaten the ability of the farmers and ranchers to receive irrigation water, for the downriver tribes to see the removal of dams and salmon restoration, and for the USFWS to maintain wetland habitat in the wildlife refuges. On 28 February 2015, the Klamath Tribes General Council passed a referendum that required their leaders to negotiate for an alternative tract that was at least as valuable as the Mazama Forest.<sup>465</sup> Tribal Chairman Don Gentry filed a Dispute Initiation Notice and a Notice of Impending Failure according to the KBRA's for a stakeholder group, when bargained-for benefits do not come to fruition. The KBRA's formal meet and confer process would allow the Klamath Tribes and other parties who signed the agreement to negotiate an alternative benefit for the Tribes.

Negotiations began immediately through the meet and confer process. The Klamath Tribes Negotiation Team (KTNT) began meeting with the U.S. Forest Service, Department of Interior, congressional staff, and their own constituents to discuss alternative tracts of land that

---

<sup>464</sup> Klamath Basin Water Recovery and Economic Restoration Act of 2015, S. 133, 114<sup>th</sup> Cong., (2015).

<sup>465</sup> Don Gentry, "A Letter from Klamath Tribal Chairman, Don Gentry, Regarding the April 25, 2015 General Council Meeting," *Klamath News* (Chiloquin, Or.) vol. 31, no. 2 (2<sup>nd</sup> Quarter 2015), 1; Lacey Jerrell, "Land for Klamaths Identified: Klamath Tribes, Forest Service Agree on Parcel to Replace Loss of Forest," *Herald and News* (Klamath Falls, Or.) 30 May 2015, A1, A3.

could be substituted for the Mazama Forest.<sup>466</sup> After receiving input from Klamath tribal members at large, elders, the Klamath Indian Game Commission, and the Klamath Tribes Cultural and Heritage Department, KTNT used this opportunity to negotiate for a similar-in-size tract of forest land that abuts the Klamath Marsh and includes culturally- and spiritually-significant sites. Through their dedicated activism, the Klamath Tribes had established a government-to-government relationship with the U.S. Forest Service; that relationship laid the groundwork for the federal agency's cooperative reaction to the formal notices that the Tribes filed in February of 2015.

Not all Klamath tribal members support the KBRA or the transfer of more than 90,000 acres of forest land to the Tribes. They want more land and money. A 5 June 2015 *Herald and News* article included statements from four Klamath tribal members who oppose the KBRA. Three of them live in the Portland, Oregon metropolitan area, about five hours by car from the former reservation. The article did not specify the residence of the fourth. Intra-tribal tensions reoccur in the Tribes' cyclical history. The Klamaths have overcome factionalism and disagreements among its tribal members on many occasions. As they have in the past, the Tribes will continue to work through those issues when they arise.

According to Tribal Chairman Don Gentry who advocates for the KBRA, there is more at stake. He explained in the same article that if the Tribes were to litigate for a final decree on their time immemorial water rights, they could lose not only the negotiating leverage they have at this point through the Oregon State Water adjudication, but they could be in the courts for another 10 to 20 years. Litigation is expensive. One year of litigation might cost the Tribes more than one million dollars.<sup>467</sup> Klamath leaders and staff, including Jeff Mitchell, Don Gentry, and Larry Dunsmoor among others, have chosen negotiation over litigation for this reason and because, as

---

<sup>466</sup> "2015 Timeline Regarding Land Acquisition," *Klamath News* (Chiloquin, Or.) vol. 31, no. 2 (2<sup>nd</sup> Quarter 2015), 3-5.

<sup>467</sup> Lacey Jerrell, "Tribal Members Speak Out Against Settlement: Some Opposition Says Land Deal Too Small," *Herald and News* (Klamath Falls, Or.) 5 June 2015, A1, A3.

they and non-tribal stakeholders agree, litigation is not a win-win situation.<sup>468</sup> Negotiation, on the other hand, allows every party to receive a benefit.

The handful of opposing tribal members also fears that the Tribes will lose more than they will gain. In particular, they worry that the Klamath Tribes will lose their treaty rights, including water rights.<sup>469</sup> The KBRA and related agreements took negotiators more than a decade to complete. These long and complex agreements describe how the Klamath Tribes are waiving or subordinating some of their water rights, rather than giving them up or selling them. By choosing to subordinate the Tribes' water rights, tribal leaders are allowing the agriculturalists to receive irrigation water that they would not receive during drought years according to the chronologically determined water adjudication. The subordination of water rights does not mean that the Tribes are relinquishing their rights; it means that while the agreement is in place, the Tribes' rights will allow the irrigators to use some of the water for irrigation that the Klamath Tribes could require to be left in the streams or lakes.

The Klamath Tribes retain the right to make calls on water to ensure that the proper amount of water is available for animals and plants. For example, on 1 June 2015, the Klamaths made a call for water under the regulations of the Oregon State adjudication process on the Klamath Marsh.<sup>470</sup> On 18 June 2015, the Tribes' call required the Oregon Water Master to cut off water use to irrigators who drew water from the Upper Williamson River in order to allow more water to flow into the Klamath Marsh for wetland habitat. The Klamaths' orchestration of water flows in the Upper Klamath River Watershed demonstrates the significant extent to which natural resource management in the American West and across the nation has changed since the early-

---

<sup>468</sup> Mitchell, interview; Gentry, interview; Dunsmoor, interview.

<sup>469</sup> Constituents of many different stakeholder groups who did not participate directly in the negotiation process have chosen to oppose the agreements. Greg Addington, who represents the Klamath Water Users Protective Association addressed irrigators in the Klamath Basin and asked them to simply read the agreement rather than make assumptions about it. Greg Addington, "The KBRA Is about More Than Dams," editorial, *Herald and News* (Klamath Falls, Or.) 9 July 2010.

<sup>470</sup> Watermaster District 17 – Klamath Basin Status, Oregon Water Resources Department, accessed 17 July 2015, [http://apps.wrd.state.or.us/apps/misc/dsb\\_area\\_status/Default.aspx?wm\\_district=17](http://apps.wrd.state.or.us/apps/misc/dsb_area_status/Default.aspx?wm_district=17).

1970s. In their efforts to practice their sovereignty and self-determination, tribes increasingly forged government-to-government relationships with state and federal agencies and alliances with non-governmental stakeholders through their activism. These relationships have fostered cooperation and negotiation that has further empowered tribal nations in natural resource decision-making processes.

Healing the watershed is about healing all of the people, animals, plants, water bodies, and many other components of it. On the pages of the KTNT's explanations regarding the water agreements in a 2014 issue of *Klamath News*, the newsletter editor printed in large red-hued font: "*naanok ?ans naat sat'waya naat ciwapk diceew'a.*" This Klamath statement translates as "We help each other; we live good."<sup>471</sup>

---

<sup>471</sup> Water Team, "Ho Winna... 'A Time of Change,'" *Klamath News* (Chiloquin, Or.) vol. 30, no. 2 (2<sup>nd</sup> Quarter 2014), 6.

## BIBLIOGRAPHY

### Primary Sources

#### Archival Sources

Bunting and Trulove Papers, 1947-1943. University of Oregon Special Collections and University Archives, Eugene.

Jackson, Boyd. Papers, not yet dated. University of Oregon Special Collections and University Archives, Eugene.

Klamath Tribes. Vertical Files. Klamath County Museum, Klamath Falls, Or.

Klamath Tribal Council Records, 1935-1958. University of Oregon Special Collections and University Archives, Eugene, Or.

Native Americans, FOIA Request 2006-0197-F (Segments 1, 2, 3). Clinton Presidential Library, Little Rock, Ar.

Szasz, Margaret Collection on the Klamath Indian Tribe, 1943-1992. University of Oregon Special Collections and University Archives, Eugene, Or.

#### Federal and State Agency Records

Administrative Record. Index related to *Bennett v. Spear* (1992). U.S. Fish and Wildlife Service. Portland, Or. Provided by Rollie White, Deputy State Supervisor, U.S. Fish and Wildlife Service, Portland, Or.

Administrative Record. Index related to *Bennett v. Spear* (1994). U.S. Fish and Wildlife Service. Portland, Or. Provided by Rollie White, Deputy State Supervisor, U.S. Fish and Wildlife Service, Portland, Or.

Monthly Reports and Agency Fish Studies, 1978-1989. Oregon Department of Fish and Wildlife Local Office, Midland, Or.

National Environmental Policy Act and Appeals Records, 1987-1998. Comments, Appeals, Correspondence, and Meeting Minutes. United States Forest Service, Chiloquin, Or.

Policy toward Indian Tribes and Klamath Tribes. Vertical Files and Appeals Records. United States Forest Service, Klamath Falls, Or.

White, Rollie email to Steve Lewis. Subject: "Concerns about the Bureau's 1995 Project Operations. Copied to G. Miller, R. Peterson, and C. Schuler. 19 April 1995. pp. 1-7. Provided by Rollie White, Deputy State Supervisor, U.S. Fish and Wildlife Service, Portland, Or.

#### U.S. and State Government documents

##### *Laws, Bills, and Resolutions*

Administrative Procedure Act of 1946, PL 79-404, 5 U.S.C. secs. 702, 704 (1946).

A Bill to Provide for the Conservation of Fish and Wildlife on the Klamath Reservation, in Oregon, and for Other Purposes, S. 654, 79<sup>th</sup> Cong. (1945).

Dawes Severalty Act. 24 Stat. 388 (1887).

Endangered Species Act of 1969, 16 U.S.C. secs. 1533(b)(1)(A), 1533(b)(2), 1536(a)(2), and 1536(c) (1973).

House Concurrent Resolution 108, 67 Stat. B122 (1953).

Indian Education Assistance and Self-Determination Act of 1975, 25 U.S.C. 450 (1975).

The Klamath Termination Act of 1954, Pub. L. No. 857, 68 Stat. 732 (1954).

Klamath Basin Water Recovery and Economic Restoration Act of 2015, S. 133, 114<sup>th</sup> Cong., (2015).

Klamath Indian Tribe Restoration Act of 1986, Pub. L. No. 99-398, 100 Stat. 849 (1986).

Menominee Restoration Act of 1973, 25 U.S.C. secs. 903-903(f), (1973).

National Environmental Policy Act of 1969, 83 Stat., 102 (a-h), codified as 40 C.F.R. 1500-1508.28 (1973).

Organic Administration Act of 1897, 30 Stat. 34 (1897).

P.L. 280, 18 U.S.C. secs. 1162; 25 U.S.C. secs. 1360; and 28 U.S.C. secs. 1321-1322 .

Wild and Scenic Rivers Act, 16 U.S.C sec. 1271 (1968).

### **Court Cases**

*Department of the Interior v. Klamath Water Users Protective Association* 532 U.S. 1 (2001).

*Kandra v. United States*, 145 Fed.Supp.2d 1192 (2001).

*Klamath & Modoc Tribes v. Maison*, 139 F. Supp. 634 (D. Or. 1956).

*Kimball v. Callahan*, 493 F .2d 564 (9<sup>th</sup> Cir. 1974).

*Kimball v. Callahan*, 590 F.2d 768, (9<sup>th</sup> Cir. 1979).

*Klamath Water Users Protective Association v. Patterson*, 15 F. Supp. 2d 990 (D. Ore., 1998).

*Klamath Water Users Protective Association v. Patterson*, 204 F.3d 1206 (9<sup>th</sup> Circ.,1999, amended 28 January 2000).

*Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968).

*U.S. v. Adair*, 478 F. Supp. 336 (D. Or. 1979).

*U.S. v. Adair*, 723 F. 2d 1394 (9th Cir. 1983).

*United States v. Cook*, 86 U.S. 591 (1873).

*United States v. State of Washington*, 384 F. Supp. 312, (1974).

*Wendell Wood et al. v. Marvin Plenert, et al.*, Case No. 91-06496-TC (D. Or.), filed 12 November 1991, settled out of court.

*Winters v. U.S.*, 207 U.S. 564 (1908).

### **Hearings**

*Federal Protection of Indian Resources: Administrative Practices and Procedures Relating to Protection of Indian Natural Resources, Part 2: Hearing Before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary*, 92<sup>nd</sup> Cong., 30 November 1971.

*Klamath Basin: Hearing Before the Subcommittee on Water and Power of the Comm. on Energy and Natural Resources to Hear Testimony on S. 2379, the "Klamath Basin Water Recovery and Economic Restoration Act of 2014,"* 113<sup>th</sup> Cong., 3 June 2014.

*Klamath Basin Water Issues: Hearing Before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources*, 103<sup>rd</sup> Cong., 6 July 1994.

*Klamath Project: To Discuss Klamath Project Operations and Implementation of Public Law 106-498: Hearing Before the Senate Subcommittee on Water and Power of the Comm. on Energy and Natural Resources*, 107<sup>th</sup> Cong., 21 March 2001.

*Omnibus Oregon Wild and Scenic Rivers Act of 1988: S. 2148, To Amend the Wild and Scenic Rivers Act of 1968, and for Other Purposes: Hearing Before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources*. 100<sup>th</sup> Cong., 3 May 1988, 20 May 1988, 1 June 1988, 26 July 1988.

*Oversight Field Hearing on the Endangered Species Act 30 Years Later: The Klamath Project Before the Subcommittee on Water and Power of the Committee on Natural Resources*, 108<sup>th</sup> Cong., 17 July 2004.

*Tule Lake, Lower Klamath Lake, and Upper Klamath National Wildlife Refuges: Hearing Before the Senate Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs on S. 1988*, 87<sup>th</sup> Cong. Report submitted by Clinton P. Anderson, Chairman, Committee on Interior and Insular Affairs.

*Water Management and Endangered Species Issues in the Klamath Basin: Oversight Field Hearing Before the Comm. on Resources U.S. House of Representatives*, 107<sup>th</sup> Cong., 16 June 2001.

### *Miscellaneous*

Bateman, Brenda. "The Oregon Water Resources Department Completes Klamath River Basin Adjudication (1975-2013)." Press Release, 7 March 2013, Oregon Water Resources Dept., Salem, Or. Electronic Copy in author's possession.

Consent Decree, Civ. 73-155. Printed in *Land Use and Management Plan*, Winema National Forest, Forest Service, United States Department of Agriculture, Northwest Region, 1990, appendix D, 4-8.



- Gatschet, Albert S. *The Klamath Indians of Southwestern Oregon*. Contributions to North American Ethnology in U.S. Geographical and Geological Survey of the Rocky Mountain Region, J. W. Powell in Charge. Washington: Government Printing Office, 1890.
- "Endangered and Threatened Species; Threatened Status for Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) of Coho Salmon." *Federal Register*, Vol. 62, no. 87, 6 May 1997.
- Memorandum from Regional Solicitor, Pacific Southwest Region, to Regional Director, Bureau of Reclamation, Mid-Pacific Region, Subject: Certain Legal Rights and Obligations Related to the U.S. Bureau of Reclamation, Klamath Project for Use in Preparation of the Klamath Project Operations Plan (KPOP). 25 July 1995, Signed David Nawi, United States Department of the Interior, Office of the Solicitor, Sacramento, California. FOIA request, June 11, 2013.
- Strantz, Maurice K. *Reclamation Accomplishments, 1905-1953, Klamath Project, Oregon-California*. Operation and Maintenance Division, Bureau of Reclamation, July 1953.
- Stubbs, Kevin and Rolland White, *Lost River (Deltistes luxatus) and Shortnose (Chasmistes brevirostris) Sucker Recovery Plan*. Prepared for Region 1, U.S. Fish and Wildlife Service, Portland, Oregon, 17 March 1993.
- Treaty with the Klamath, etc., 1864. In vol. 2 *Treaties of Indian Affairs: Laws and Treaties*, comp. Charles J. Kappler. Washington: Government Printing Office, 1904, 865-868.
- "Upper Klamath Basin Comprehensive Agreement." 18 April 2014. Digital copy in author's possession.
- U.S. Fish and Wildlife Service. "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Lost River Sucker and Shortnose Sucker." 76 Fed. Reg. 76339, Dec. 7, 2011.
- Williams, Jack E. "Endangered and Threatened Wildlife and Plants: Determination of Endangered Status for the Shortnose Sucker and Lost River Sucker." 53 Fed. Reg. 27130, 18 July 1988.
- U.S. Fish and Wildlife Service. "Revised Recovery Plan for the Lost River Sucker and Shortnose Sucker (*Deltistes luxatus* & *Chasmistes brevirostris*). First Revision of March 1993 Original, Pacific Southwest Region, USFWS, Sacramento, Ca., 22 January, 2013.
- Klamath Tribes and other Tribal Documents**
- "2015 Timeline Regarding Land Acquisition." *Klamath News* (Chiloquin, Or.) 2<sup>nd</sup> Qtr 2015, vol. 31, no. 2, 3-5.
- Ball, Tom and Terry O'Neil. "The Klamath Tribes Historical Trauma Genogram." The Klamath Tribes, paper copy in author's possession.
- Bienz, Craig S. The Klamath Tribe, and Jeffery S. Ziller, Oregon Department of Fish and Wildlife. "Status of Three Lacustrine Sucker Species (catostomidae)." 1987, 9 pp.

- Bravo, Barbara. "Klamath Indian Game Commission." *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American) February-March 1975, v. 3, no. 1, 1.
- Dunsmoor, Larry. "Laboratory Studies of Fathead Minnow Predation on Catostomid Larvae." Klamath Tribes Research Report KT-93-01, December 1993, 16 pp.
- Gentry, Don. "A Letter from Klamath Tribal Chairman, Don Gentry, Regarding the April 25, 2015 General Council Meeting." *Klamath News* (Chiloquin, Or.) 2<sup>nd</sup> Qtr 2015, vol. 31, no. 2, 1.
- "A Hard Fight for Survival." *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American), Nov-Dec 1980, vol. 9, no. 1, 4. The newsletter editors note that the article was originally published in the *Register Guard* (Eugene, Or.) on 30 November 1980, sec. E.
- Higgins, Patrick. "KHSA and KBRA Likelihood of Meeting Hoopa Valley Tribe Klamath River Water Quality Standards." 20 July 2011, electronic copy in author's possession.
- Johnson, K. Norman, Jerry F. Franklin, Debora L. Johnson. *A Plan for the Klamath Tribes' Management of the Klamath Reservation Forest*. May 2008, draft released in 2003. Paper copy in author's possession.
- "Klamath Indian Council Held March 1, 1975." *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten Americans) v. 3, no. 1, p.1.
- "Klamath Tribal Actions Taken That Led to Settlement of Water Issues Through the KBRA/KHSA." Klamath Tribes Administration, Chiloquin, Or., copy in author's possession.
- Klamath Tribe Natural Resource Department. "Effects on Water Management in Upper Klamath Lake on Habitats Important to Endangered Catostomids." 1991, 7 pp.
- "Klamath Tribes Referendum (sic) Vote Passed: Klamath Tribal Council Is Pleased that Senate Bill 2379 Is Now Moving forward Regarding the KBRA, KHSA, and UKBCA." *Klamath News* (Chiloquin, Or.) 2<sup>nd</sup> Qtr 2014, v. 30, no. 2, 1.
- "Marie G. Norris – 1920-1981 Founder – Organization of the Forgotten American." Issue dedicated to the memory of Marie G. Norris, *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American), August/September 1982, v. 14, no. 1, 2.
- "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.
- "Restoration is Possible." *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American), Jan-Feb-Mar 1978, 5.
- "To: Members of the Klamath Tribe, Re: Resignation." *Mukluks Hemcunga* (Klamath Falls, Or., Organization of the Forgotten American), Nov-Dec 1980, v. 9, no. 1, 1.
- Water Team, "Ho Winna... 'A Time of Change.'" *Klamath News* (Chiloquin, Or.) v. 30, no. 2 (2<sup>nd</sup> Quarter 2014), 6.
- Wilkinson, Charles, Distinguished Professor, Moses Lasky Professor of Law, to Chairman Gentry. Printed in *Klamath News* (Chiloquin, Or.) v. 30, no. 2 (2<sup>nd</sup> Quarter 2014), 5.

## Newspaper Articles

- Addington, Greg. "The KBRA Is about More Than Dams." Editorial, *Herald and News* (Klamath Falls, Or.), 9 July 2010.
- "Enthusiasm Rated High for Saturday Tribal Meet." *Herald and News* (Klamath Falls, Or.), 28 February 1975. Folder "Indians 12-6-74 - 4-3-75," in *Herald and News* Morgue, Klamath County Museum.
- "Historic Event: Steelhead Back." *Herald and News* (Klamath Falls, Or.) 20 December 1970. *Herald and News* Morgue, Klamath County Museum.
- "Indians, Officials in Judicial 'No Man's Land.'" *Herald and News* (Klamath Falls, Or.) 2 February 1975. Folder "Indians 12-6-74 - 4-3-75," in *Herald and News* Morgue, Klamath County Museum.
- "Indians Seek McKean Meet." *Herald and News* (Klamath Falls, Or.) 12 Dec 1974. Folder "Indians 12-6-74 - 4-3-75," in *Herald and News* Morgue, Klamath County Museum.
- Jerrell, Lacey. "Creeks Now under Tight Water Regulations: Five of the Six Creeks Called on Are Being Regulated for Maximum Volumes." *Herald and News* (Klamath Falls, Or.), 24 June 2014, A2.
- \_\_\_\_\_. "Land for Klamaths Identified: Klamath Tribes, Forest Service Agree on Parcel to Replace Loss of Forest." *Herald and News* (Klamath Falls, Or.), 30 May 2015, A1, A3.
- \_\_\_\_\_. "Tribal Members Speak Out Against Settlement: Some Opposition Says Land Deal Too Small." *Herald and News* (Klamath Falls, Or.) 5 June 2015, A1, A3.
- \_\_\_\_\_. "Water Shutoffs Begin in the Basin: Klamath Tribes Expected to Make Its 'Call' This Week." *Herald and News*, (Klamath Falls, Or.) 10 June 2014.
- Juillerat, Lee. "Klamaths Not Dead." *Herald and News* (Klamath Falls, Or.) 2 March 1975. *Herald and News* Morgue, Klamath County Museum.
- McAfee, Don. "Klamath's Williamson River Runs Heavy with Mullet." Unknown newspaper, section "North by Northwest," 10 May 1967. Folder "Hunting & Fishing & Studies," in *Herald and News* Morgue, Klamath County Museum.
- "New Site Chosen for Fish." *Herald and News*, (Klamath Falls, Or.) 9 December 1970. *Herald and News* Morgue, Klamath County Museum.
- "Opposition To Game Commission Voiced." *Herald and News* (Klamath Falls, Or.), 25 March 1975, folder "Indians 12-6-74 - 4-3-75." *Herald and News* Morgue, Klamath County Museum.
- "Petitions On Fish Ladder Issue To Be Circulated Here." *Herald and News* (Klamath Falls, Or.). 26 October 1966. *Herald and News* Morgue, Klamath County Museum.
- "State Asks California To Provide Test Fish." *Herald and News*, (Klamath Falls, Or.) 21 Oct 1966. *Herald and News* Morgue, Klamath County Museum.
- "Steelhead Plan for River Revealed." *Herald and News*, (Klamath Falls, Or.) 21 June 1967. *Herald and News* Morgue, Klamath County Museum.

Schwartz, Devin. "WATER DEMAND: Shutoffs Coming after Irrigators, Tribes Call for Their Water Rights." *Herald and News* (Klamath Falls, Or.) 11 June 2013, A1, A3. Emphasis in original.

Tipler, Samantha. "Ranchers Rally for Water: Protestors Say Their Livelihood Could Be Ruined By Shutoffs." *Herald and News* (Klamath Falls, Or.) 2 July 2013, A1.

\_\_\_\_\_. "Water Shutoffs to Continue: Judge Denies Temporary Stoppage of Klamath Basin Adjudication Enforcement." *Herald and News* (Klamath Falls, Or.) 15 June 2013, A1.

"Tulana Seeks to Open More Public Hunting Area." *Herald and News* (Klamath Falls, Or.) 22 Sept 1952. *Herald and News* Morgue, Klamath County Museum.

"Wildlife Chief Expresses Uncertainty: Indian Fish, Game Rights." *Herald and News* (Klamath Falls, Or.), 8 Dec 1974. Folder "Indians 12-6-74 - 4-3-75" in *Herald and News* Morgue, Klamath County Museum.

### **Oral History Interviews and Oral History Sources**

Addington, Greg (Executive Director, Klamath Water Users Association), interviewed by author, 17 July 2014, Klamath Falls, Or.

Bettles, Gordon (Former Cultural and Heritage Director, Klamath Tribes), interviewed by author, 18 July 2013, Eugene, Or.

Blackwolfe, Betty (Klamath Elder, Former Member of Klamath Tribes Cultural and Heritage Committee), interviewed by author, 1 August 2014, Klamath Falls, Or.

Bienz, Craig (Former Biologist, Klamath Tribes), interviewed by author, 1 August 2013, Klamath Falls, Or.

Chocktoot, Perry (Cultural and Heritage Director, Klamath Tribes), interviewed by author, July of 2013 and 15 July 2014, Klamath Falls, Or.

Dunsmoor, Larry (Water Management Liaison, Klamath Tribes), interviewed by author, 2 August 2013, Klamath Falls, Or.

Gentry, Don (Chairman, Klamath Tribes), interviewed by author, 9 July 2014, Chiloquin, Or.

Gowan, Amy (Tribal Government Relations Liaison, USFS), interviewed by author, 16 July 2013, Klamath Falls, Or.

Hatcher, Will (Klamath Tribal Member and Klamath Tribes Natural Resources Department Director), interviewed by author, 31 July 2013, Chiloquin, Or.

Haugen, Jerry (Former Employee, Fremont-Winema National Forest, USFS, 1988-2008), 9 July 2013 Klamath Falls, Or.

Herrera, Fernando (Klamath Tribal Member), interviewed by author, 31 July 2014, Klamath Falls, Or.

Hyde, Becky (Off-project rancher, Upper Klamath River Basin; consultant and board member, Sustainable Northwest), interviewed by author, 8 July 2014, Beatty, Or.

- Jimenez, Modesto. 19 October 2002, interviewed by Linc Kesler. In *Oral Narratives of the Klamath Termination: Individual Elders Reflect on Time and Cultural Change*, eds. Morrie Jimenez and Linc Kesler (Vancouver, BC: First Nations Studies Program, University of British Columbia, 2005).
- Jimenez, Morrie. 20 August 2002, interviewed by Linc Kesler. In *Oral Narratives of the Klamath Termination: Individual Elders Reflect on Time and Cultural Change*, eds. Morrie Jimenez and Linc Kesler (Vancouver, BC: First Nations Studies Program, University of British Columbia, 2005).
- Jimenez, Morrie. 22 October 2002, interviewed by Linc Kesler. In *Oral Narratives of the Klamath Termination: Individual Elders Reflect on Time and Cultural Change*, eds. Morrie Jimenez and Linc Kesler (Vancouver, BC: First Nations Studies Program, University of British Columbia, 2005).
- Jimenez, Morrie. 27 August 2002, interviewed by Linc Kesler. In *Oral Narratives of the Klamath Termination: Individual Elders Reflect on Time and Cultural Change*, eds. Morrie Jimenez and Linc Kesler (Vancouver, BC: First Nations Studies Program, University of British Columbia, 2005).
- Jimenez, Ramon "Porky." 19 October 2002, interviewed by Linc Kesler. In *Oral Narratives of the Klamath Termination: Individual Elders Reflect on Time and Cultural Change*, eds. Morrie Jimenez and Linc Kesler (Vancouver, BC: First Nations Studies Program, University of British Columbia, 2005).
- Kandra, Steve (Retired Farmer, Klamath Project; former Director, Klamath Water Users Association), interviewed by author, 25 June 2014 Merrill, Or. and Tule Lake, Ca.
- Karas, Christine (ESA Compliance Specialist, USBR; speaking as individual, not for USBR), interviewed by author, 16 July 2014, Klamath Falls, Or.
- Keppen, Dan (Executive Director, Family Farm Alliance; former director, Klamath Water Users Association), interviewed by author, 14 July 2014, Klamath Falls, Or.
- Kimbol, Sr., Charles (Klamath Tribal Council Member, former Chairman of Klamath Tribes), interviewed by author, 18 June 2013, Chiloquin, Or.
- Larson, Ron (ESA analyst, USFWS), interviewed by author, 6 August 2013, Klamath Falls, Or.
- Mallams, Tom (Klamath County Commissioner; Upper Klamath Basin Rancher), interviewed by author, 8 July 2014, Klamath Falls, Or.
- Mitchell, Jeff (Monihiswaqs, Klamath name) (Lead Negotiator, Klamath Tribes, Water Consultant), interviewed by author, 30 July 2014, Spring Creek, Collier State Park, Or.
- Sada, Laurie. (Field Supervisor, USFWS), interviewed by author, August 7, 2013, Klamath Falls, Or.
- Schonchin, Lynn. Interview in Kami Horton, *The Modoc War*, prod. Kami Horton, 57 min. 15 sec., Oregon Public Broadcasting, Oregon Historical Society, 2011, videodisc.
- \_\_\_\_\_. Interviewed by Linc Kesler, 19 October 2002. In *Oral Narratives of the Klamath Termination: Individual Elders Reflect on Time and Cultural Change*, eds. Morrie Jimenez and Linc Kesler (Vancouver, BC: First Nations Studies Program, University of British Columbia, 2005).

Tupper, Taylor. Interview in *The Modoc War*, prod. Kami Horton, 57 min. 15 sec., Oregon Public Broadcasting, Oregon Historical Society, 2011, videodisc.

White, Rollie (currently Deputy State Supervisor, Oregon, USFWS; former ESA Analyst, Klamath Falls Office, USFWS), interviewed by author, 19 July 2013, Portland, Or.

Williams, Bryant (Manager, Federal Land Bank, Klamath Falls, Or.), 26 January 1972, no. 1, Oral History Collection, Klamath County Museum, Klamath Falls, Or.

Williams, Jack E. (currently Senior Scientist, Trout Unlimited; Staff Ichthyologist, U.S. Fish and Wildlife Service, 1980-1989), interviewed by author, 8 July 2013, Medford, Or.

## Secondary Sources

### Books

Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006, orig. 1983).

Archibald, Robert R. *A Place to Remember: Using History to Build Community*. Walnut Creek: Altamira Press, Division of Sage Publications, Inc., 1999.

Barker, M. A. R. *Klamath Dictionary*. University of California Publications in Linguistics, vol. 31. Millwood, NY: Kraus Reprint, 1981, orig. 1963.

\_\_\_\_\_. *Klamath Texts*. University of California Publications in Linguistics, vol. 30. Millwood, NY: Kraus Reprint, 1981, original 1962.

Basso, Keith. *Wisdom Sits in Places: Landscape and Language among the Western Apaches*. Albuquerque: University of New Mexico Press, 1996.

Belich, James. *Replenishing the Earth: The Settler Revolution and the Rise of the AngloWorld, 1783-1939*. New York: Oxford University Press, 2009.

Blumm, Michael, C. *Sacrificing Salmon: A Legal and Policy History of the Decline of Columbia Basin Salmon*. Den Bosch, The Netherlands: BookWorld Publications, 2002.

Boelens, Rutgerd, David Getches, and Jorge Armando Guevara Gil. *Out of the Mainstream: Water Rights, Politics, and Identity*. Washington: Earthscan, 2010.

Boyd, Robert. *Indians, Fire, and the Land in the Pacific Northwest*. Corvallis: Oregon State University Press, 1999.

Braun, Bruce. *The Intemperate Rainforest: Nature, Culture, and Power on Canada's West Coast*. Minneapolis, MN: University of Minnesota Press, 2002.

Brody, Hugh. *Maps and Dreams*. Pantheon Books: New York, 1982.

Brooks, Karl Boyd. *Before Earth Day: The Origins of American Environmental Law, 1945-1970*. Lawrence: University of Kansas Press, 2009.

Brown, Michael. *Tsewa's Gift: Magic and Meaning in an Amazonian Society*. Tuscaloosa, AL.: University of Alabama Press, 2007, orig. 1985.

- Bruyneel, Kevin. *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations*. Minneapolis: University of Minnesota Press, 2007.
- Cajete, Gregory. *Native Science: Natural Laws of Interdependence*. Santa Fe, NM: Clear Light Publishers, 2000.
- Calloway, Colin. *The World Turned Upside Down: Indian Voices from Early America*. Boston, MA: St. Martin's Press, 1994.
- Carlson, Keith Thor. *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism*. Toronto: University of Toronto Press, 2010.
- Castile, George Pierre. *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960-1975*. The University of Arizona Press: Tucson, 1998.
- \_\_\_\_\_. *Taking Charge: Native American Self-Determination and Federal Indian Policy, 1975-1993*. Tucson: The University of Arizona Press, 2006.
- Clark, Ella E. *Indian Legends of the Pacific Northwest*. Berkeley: University of California Press, 1963.
- Clarke, Jeanne Nienaber and Daniel McCool. *Staking Out the Terrain: Power Differentials among Natural Resource Management Agencies*. Albany: State University of New York Press, 1985.
- Clarkin, Thomas. *Federal Indian Policy in the Kennedy and Johnson Administrations, 1961-1969*. Albuquerque: University of New Mexico Press, 2001.
- Clow, Richmond and Imre Sutton, eds. *Trusteeship in Change: Toward Tribal Autonomy in Resource Management*. Boulder: University Press of Colorado, 2001.
- Cohen, Fay. *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*. Seattle: University of Washington Press, 1986.
- Cornell, Stephen and Joseph Kalt. *What Can Tribes Do?: Strategies and Institutions in American Indian Economic Development*. Los Angeles, CA: American Indian Studies Center, University of California, Los Angeles, 1992.
- Cosgrove, Denis E. *Social Formation and Symbolic Landscape*. Madison: The University of Wisconsin Press, 1998, orig. 1984.
- Cothran, Boyd. *Remembering the Modoc War: Redemptive Violence and the Making of American Innocence*. Chapel Hill: The University of North Carolina Press, 2014.
- Cressman, Luther S. *Klamath Prehistory: The Prehistory of the Culture of the Klamath Lake Area, Oregon*. Transactions of the American Philosophical Society, vol. 46, part 4. Lancaster, PA: Lancaster Press, Inc., 1956.

- Cronon, William. *Changes in the Land: Indians, Colonists, and the Ecology of New England*. New York, NY: Hill and Wang, 2003, orig. 1983.
- Cruikshank, Julie. *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination*. Seattle: University of Washington Press, 2005.
- de Certeau, Michel. *The Practice of Everyday Life*. Berkeley: The University of California Press, 1984.
- Davis, Lynne, ed. *Alliances: Re/Envisioning Indigenous-Non-Indigenous Relationships*. Toronto: University of Toronto Press, 2010.
- Deloria, Philip J. *Indians in Unexpected Places*. Lawrence: University of Kansas Press, 2004.
- Erickson, Kirsten. *Yaqui Homeland and Homeplace: The Everyday Production of Ethnic Identity*. Tucson: University of Arizona Press, 2008.
- Feld, Steven, and Keith Basso, eds. *Senses of Place*. Santa Fe, N.M.: School of American Research Press, distributed by University of Washington Press, 1996.
- Ferguson, Cody. *This Land Is Our Land: Grassroots Environmentalism in the Late Twentieth Century*. New Brunswick, NJ: Rutgers University Press, 2015.
- Ffolliott, Peter, F. *Land Stewardship in the 21st Century: The Contributions of Watershed Management: Conference Proceedings, Tucson, Arizona, March 13-16, 2000*. Fort Collins, Co.: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, 2000.
- Fisher, Andrew. *Shadow Tribe: The Making of Columbia River Indian Identity*. Seattle: University of Washington Press, 2010.
- Fixico, Donald. *Call for Change: The Medicine Way of American Indian History, Ethos, and Reality*. Lincoln: University of Nebraska Press, 2013.
- \_\_\_\_\_. *The American Indian Mind in a Linear World: American Indian Studies and Traditional Knowledge*. New York: Routledge, 2003.
- \_\_\_\_\_. *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources*. Niwot, CO: University of Colorado Press, 1998.
- \_\_\_\_\_. *Indian Resilience and Rebuilding: Indigenous Nations in the Modern American West*. Tucson: The University of Arizona Press, 2013.
- \_\_\_\_\_. *Termination and Relocation: Federal Indian Policy, 1945-1960*. Albuquerque: University of New Mexico Press, 1986.
- Flores, Dan. *The Natural West: Environmental History in the Great Plains and Rocky Mountains*. Norman: University of Oklahoma Press, 2001.
- Ford, Lisa and Tim Rowse, eds. *Between Indigenous and Settler Governance*. New York: Routledge, 2013.



- Foster, Morris. *Being Comanche: A Social History of an American Indian Community*. Tucson: University of Arizona Press, 1991.
- Frank, Geyla and Carole E. Goldberg. *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*. New Haven, CN: Yale University Press, 2010.
- Freeman, David, M. *Implementing the Endangered Species Act on the Platte Basin Water Commons*. Boulder: University of Colorado Press, 2010.
- Garroutte, Marie Eva. *Real Indians: Identity and the Survival of Native America*. Berkeley: University of California Press, 2003.
- Geertz, Clifford. *The Interpretation of Cultures, Selected Essays*. New York: Basic Books, A Division of HarperCollins Publishers, 1973.
- Gill, Jerry H. *Native American Worldviews: An Introduction*. Amherst, NY: Humanity Books, an imprint of Prometheus Books, 2002.
- Goeman, Mishuana. *Mark My Words: Native Women Mapping Our Nations*. Minneapolis: University of Minnesota Press, 2013.
- Hauptman, Laurence. *The Iroquois Struggle for Survival: World War II to Red Power*. Syracuse, NY: Syracuse University Press, 1986.
- Harkin, Michael and David Rich Lewis, eds. *Native Americans and the Environment: Perspectives on the Ecological Indian*. Lincoln: University of Nebraska Press, 2007.
- Harris, Cole. *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*. Vancouver: UBCPress, 2002.
- \_\_\_\_\_. *The Resettlement of British Columbia: Essays on Colonialism and Historical Change*. Vancouver: UBCPress, 1997.
- Harvey, David. *Justice, Nature, and the Geography of Difference*. Oxford: Blackwell, 1996.
- Hart, E. Richard, ed. *Zuni and the Courts: A Struggle for Sovereign Land Rights*. Lawrence: University Press of Kansas, 1995.
- Hayden, Delores. *The Power of Place: Urban Landscapes as Public History*. Cambridge, Mass.: MIT Press, 1995.
- Hays, Samuel. *Wars in the Woods: The Rise of Ecological Forestry in America*. Pittsburg, PA: University of Pittsburg Press, 2002.
- Hirt, Paul. *A Conspiracy of Optimism: Management of the National Forests since World War Two*. Lincoln: University of Nebraska Press, 1994.
- Hixson, Walter L. *American Settler Colonialism: A History*. New York, NY: Palgrave Macmillan, 2013.

- Hoxie, Frederick. *This Indian Country: American Indian Activists and the Place They Made*. New York: Penguin USA, 2012.
- Jackson, John Brinkerhoff. *Discovering the Vernacular Landscape*. New Haven: Yale University Press, 1984.
- Jacobs, Margaret. *White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940*. Lincoln: University of Nebraska Press, 2009.
- Jacoby, Karl. *Crimes against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*. Berkeley: University of California Press, 2001.
- Jorgensen, Miriam, ed. *Rebuilding Native Nations: Strategies for Governance and Development*. Tucson: The University of Arizona Press, 2007.
- Keller Robert H. and Michael F. Turek. *American Indians & National Parks*. Tucson: University of Arizona Press, 1998.
- Keppen, Dan. *The Klamath Project at 100: Conserving our Resources, Preserving our Heritage*. Klamath Falls, OR: Klamath Water Users Association, 2004.
- Kosek, Jake. *Understories: The Political Life of Forests in Northern New Mexico*. Durham: Duke University Press, 2006.
- Krech, Shepard. *The Ecological Indian: Myth and History*. New York: W.W. Norton, 1998.
- LaDuke, Winona. *All Our Relations: Native Struggles for Land and Life*. Cambridge, MA: South End Press, 1999.
- Lawson, Michael. *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944-1980*. Norman: University of Oklahoma Press, 1982.
- Lefebvre, Henri. *The Production of Space*. Donald Nicholson-Smith, trans. Cambridge, Mass.: Blackwell, 1991.
- Light, Andrew, and Jonathan M. Smith, eds. *Space, Place, and Environmental Ethics*. Lanham: Roman & Litterfield Publishers, 1997.
- Low, Setha M. *On the Plaza: The Politics of Public Space and Culture*. Austin: University of Texas Press, 2000.
- Lynch, Kevin. *The Image of the City*. Cambridge MA: MIT Press, 1960.
- McCool, Daniel. *Command of the Waters: Iron Triangles, Federal Water Development, and Indian Water*. Berkeley: University of California Press, 1987.

- \_\_\_\_\_. *Native Waters: Contemporary Indian Water Settlements and the Second Treaty Era*. Tucson: University of Arizona Press, 2002.
- McGinnis, Michael Vincent, ed. *Bioregionalism*. New York: Routledge, 1999.
- McGuire, Thomas R., William B. Lord, and Mary G. Wallace, eds. *Indian Water in the West*. Tucson: University of Arizona Press, 1993.
- Meinig, Donald, ed. *The Interpretation of Ordinary Landscapes*. New York: Oxford University Press, 1979.
- Miller, Char. *Water in the West: A High Country News Reader*. Corvallis: Oregon State University Press, 2000.
- Nabokov, Peter and Lawrence Loendorf. *Restoring a Presence: American Indians and Yellowstone National Park*. Norman: University of Oklahoma Press, 2004.
- Nadasdy, Paul. *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon*. Vancouver: UBC Press, 2003.
- Nagel, Joane. *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture*. New York: Oxford University Press, 1997.
- Newell, Alan S., 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.
- Newson, Malcolm, David. *Land, Water, and Development: River Basin Systems and Their Sustainable Management*. New York: Routledge, 1992.
- Ostler, Jeffery. *The Lakotas and the Black Hills: The Struggle for Sacred Ground*. New York: Viking, Penguin Group, 2010.
- Prucha, Francis Paul. *American Indian Treaties: The History of a Political Anomaly*. Berkeley: University of California Press, 1994.
- \_\_\_\_\_. *The Great Father: The United States Government and the American Indians*. Lincoln: University of Nebraska Press, 1984.
- Radin, Paul. *The Trickster: A Study in American Indian Mythology*. London: Routledge and Paul, 1956.
- Relph, E. C. *Place and Placelessness*. London: Routledge & Kegan Paul, 1976.
- Rivera, Josae A. *Acequia Culture: Water, Land, and Community in the Southwest*. Albuquerque: University of New Mexico Press, 1998.
- Rosier, Paul. *Rebirth of the Blackfeet Nation, 1912-1954*. Lincoln: University of Nebraska Press, 2001.

- Sahlins, Marshall. *Islands of History*. Chicago: University of Chicago Press, 1985.
- Shepherd, Jeffrey. *We Are an Indian Nation: A History of the Hualapai People*. Tucson: The University of Arizona Press, 2010.
- Simpson, Audra and Andrea Smith. *Theorizing Native Studies*. Durham, NC: Duke University Press, 2014.
- Smith, Linda Tuhiwai. *Decolonizing Methodologies: Research and Indigenous Peoples*. 2<sup>nd</sup> ed. London: Zed Books Ltd., 2012.
- Smith, Sherry. *Hippies, Indians, and the Fight for Red Power*. New York: Oxford University Press, 2012.
- Soja, Edward. *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*. London: Verso, 1989.
- Spier, Leslie. *Klamath Ethnography*. University of California Publications in American Archaeology and Ethnography, edited by A. L. Kroeber and Robert H. Lowie, vol. 30. Berkeley: University of California Press, 1930.
- Stern, Theodore. *The Klamath Tribe: A People and Their Reservation*. The American Ethnological Society, edited by June Helm, Monograph 41. Seattle: University of Washington Press, 1965.
- Tuan, Yi-Fu. *Space and Place: The Perspective of Experience*. Minneapolis: The University of Minnesota Press, 2001.
- \_\_\_\_\_. *Topophilia: A Study of Environmental Perception, Attitudes and Values*. New York: Columbia University Press, 1990.
- Ulrich, Roberta. *American Indian Nations from Termination to Restoration, 1953-2006*. Lincoln: University of Nebraska Press, 2010.
- \_\_\_\_\_. *Empty Nets: Indians, Dams, and the Columbia River*. Corvallis: Oregon State University Press, 1999.
- Urton, Gary. *At the Crossroads of Earth and Sky: An Andean Cosmology*. Austin: University of Texas Press, 1981.
- Vansina, Jan. *Oral Tradition as History*. Madison: University of Wisconsin Press, 1985.
- Veracini, *Settler Colonialism: A Theoretical Overview*. New York, NY: Palgrave Macmillan, a division of St. Martin's Press LLC, 2010.
- Wadewitz, Lissa. *The Nature of Borders: Salmon, Boundaries, and Bandits on the Salish Sea*. Vancouver: UBC Press, 2012.

- West, Elliott. *The Contested Plains: Indians, Goldseekers, and the Rush to Colorado*. Lawrence: University of Kansas Press, 1998.
- Wilkins, David. *American Indian Politics and the American Political System*. Lanham, MD: Rowman & Littlefield, 2002.
- Wilkins, David and K. Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and Federal Law*. Norman: University of Oklahoma Press, 2001.
- Wilkinson, Charles. *Blood Struggle: The Rise of Modern Indian Nations*. New York: W. W. Norton & Company, 2005.
- White, Richard. *The Organic Machine: The Remaking of the Columbia River*. New York, NY: Hill and Wang, Division of Farrar, Straus and Giroux, 1995.
- Wohl, Ellen, E. *Disconnected Rivers: Linking Rivers to Landscapes*. New Haven: Yale University Press, 2004.
- Worster, Donald. *Rivers of Empire: Water, Aridity, and the Growth of the American West*. New York, NY: Oxford University Press, 1985.

#### **Journal Articles and Book Chapters**

- Adams, Ann. "Investing in a Sustainable Future – The Yainix Ranch," *Holistic Management in Practice* no. 90, (July/August 2003): 4-5.
- Axtell, James. "Ethnohistory: An Historian's Viewpoint." *Ethnohistory* 26, no. 1 (1979): 1-13.
- Bacon, Charles R. and Marvin A. Lanphere. "Eruptive History and Geochronology of Mount Mazama and the Crater Lake Region, Oregon." *Geological Society of America Bulletin* 118, no. 11-12 (Nov-Dec 2006): 1331-1359.
- Bacon, Charles, et al., "Late Quaternary Slip Rate and Seismic Hazards of the West Klamath Lake Fault Zone near Crater Lake, Oregon Cascades," *Geology* 27, no. 1 (Jan 1999): 43-46.
- Baron, Ava. "'On Looking at Men': Masculinity and the Making of a Gendered Working Class History." In *Feminists Revision History*, edited by Ann-Louise Shapiro, 146-171. New Brunswick, NJ: Rutgers University Press, 1994.
- Berkey, Curtis, G. "Rethinking the Role of the Federal Trust Responsibility in Protecting Indian Land and Resources." *Denver University Law Review* 83, (2005-2006): 1069-1081.
- Binnema, Theodore. "The Case for the Cross-National Comparative History: The Northwestern Plains as Bioregion," in Sterling Evans, ed., *The Borderlands of the American and Canadian Wests*, 17-41. Lincoln: University of Nebraska Press, 2006.

- Biolosi, Thomas. "Imagined Geographies: Sovereignty, Indigenous Space, and American Indian Struggle." *American Ethnologist* 32 no. 2 (May 2005): 239-259.
- Blumm, Michael, C. and Jane G. Steadman. Indian Treaty Fishing Rights and Habitat Protection: The *Martinez Decision* Supplies a Resounding Judicial Reaffirmation." *Natural Resources Journal* 49 (2009): 653-706.
- Blumm, Michael, C. and Marla Nelson. "Pluralism and the Environment Revisited: The Role of Comment Agencies in NEPA Litigation." *Vermont Law Review* 37 (2012-2013): 5-45.
- Bradbury, J. Platt, Steven M. Colman, and Richard L. Reynolds. "The History of Recent Limnological Changes and Human Impact on Upper Klamath Lake, Oregon." *The Journal of Paleolimnology* 31 (2004): 151-165.
- Carlson, Roy L. "Klamath Henwas and Other Stone Sculpture." *American Anthropologist, New Series* 61, no. 1 (February 1959): 88-96.
- Cope, E. D. "The Fishes of Klamath Lake, Oregon." *American Naturalist* 13 (1879): 784-785.
- \_\_\_\_\_. "On the Fishes of the Recent and Pliocene Lakes of the Western Part of the Great Basin, and of the Idaho Pliocene Lake." *Proceedings of the Academy of Natural Sciences* 35 (1883): 134-167.
- \_\_\_\_\_. "A New Genus of Catostomidae." *American Naturalist* 15 (1881): 59.
- Cronin, Amanda E. and David M. Ostergren. "Democracy, Participation, and Native American Tribes in Collaborative Watershed Management." *Society and Nature* 20, no. 6 (July 2007): 527-542.
- Egan, Michael. "Subaltern Environmentalism in the United States: A Historiographic Review." *Environment and History* 8, no. 1 (February 2002): 21-41.
- Fiege, Mark. "Private Property and the Ecological Commons in the American West," in *Everyday America: Cultural Landscapes Studies after J.B. Jackson*, edited by Chris Wilson and Paul Groth, 219-231. Berkeley: University of California Press, 2003.
- \_\_\_\_\_. "The Weedy West: Mobile Nature, Boundaries, and Common Space in the Western Montana Landscape." *Western Historical Quarterly* 36, no. 1 (Spring 2005): 22-47.
- Goodman, Ed. "Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Comanagement as a Reserved Right." *Environmental Law* 30 (2000): 279-362.
- Gosnell, Hannah and Erin Clover Kelly. "Peace on the River? Social-Ecological Restoration and Large Dam Removal in the Klamath Basin, USA." *Water Alternatives* 3, no.2 (2010): 361-383.
- Hann, Don and Gordon Bettles. "House of the Rising Sun: Using the Ethnographic Record to Illuminate Aspects of Klamath Basin Rock Art," pp. 176-199. In *Talking with the Past: The Ethnography of Rock Art*, edited by James D. Keyser et. al. Portland, OR: Oregon Archaeological Society, 2006.

- Haskew, David C. "Federal Consultation with Indian Tribes: The Foundation of Enlightened Policy Decisions, or Another Badge of Shame?" *American Indian Law Review* 24, no. 1 (1999-2000): 21-74.
- Harkin, Michael. "Ethnohistory's Ethnohistory." *Social Science History* 34, no. 2 (2010): 113-128.
- Hundley, Jr., Norris. "The 'Winters' Decision and Indian Water Rights: A Mystery Reexamined." *Western Historical Quarterly* 13, no. 1 (January 1982): 17-42.
- Jacobs, Jane M. "Authentically Yours: De-Touring the Map." in *Edge of Empire: Postcolonialism and the City*, 132-156. New York: Routledge, 1996.
- Lesko, Lawrence 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 Resource Management*, edited by Richmond Clow and Imre Sutton, 281-301. Boulder: University of Colorado Press, 2001.
- Lewis, David Rich. "Native Americans and the Environment: A Survey of Twentieth-Century Issues." *American Indian Quarterly* 19, no. 3 (1995): 423-450.
- Little Bear, Leroy. Forward to *Native Science: Natural Laws and Interdependence* by Gregory Cajete, ix-xii. Santa Fe, NM: Clear Light Publishers, 2000.
- Meinig, D. W. "Beholding the Eye: Ten Versions of the Same Scene." In Meinig, *The Interpretation of Ordinary Landscapes: Geographical Essays*, 33-43.
- Riggs, Christopher. "American Indians, Economic Development, and Self-Determination in the 1960s." *Pacific Historical Review* 69, no. 3 (2000): 431-463.
- Rosier, Paul. "Modern America Desperately Needs to Listen": The Emerging Indian in an Age of Environmental Crisis, *Journal of American History* (December 2013): 711-735.
- Smith, Neil and Setha Low. "Introduction: The Imperative of Public Space." In *The Politics of Space*, Edited by Setha Low and Neil Smith. New York: Routledge, 2006.
- Stern, Theodore. "The Klamath Indians and the Treaty of 1864," *Oregon Historical Quarterly* 57 (Sept., 1956): 229-273.
- \_\_\_\_\_. "The Trickster in Klamath Mythology." *Western Folklore* 12, no. 3 (July 1953): 158-174.
- Wolfe, Patrick. *Logics of Elimination: Colonial Policies on Indigenous Peoples in Australia and the United States. University of Nebraska Human Rights and Human Diversity Series*, vol. 2, n. 1 (2000).
- Wood, Mary Christina. "Indian Land and the Promise of Native Sovereignty: The Trust Doctrine Revisited." *Utah Law Review* (1994): 1471-1569.

Tsosie, Rebecca. "The Conflict between the 'Public Trust' and the 'Indian Trust' Doctrines: Federal Public Land Policy and Native Nations." *Tulsa Law Review* 39 (2003-2004): 271-311.

\_\_\_\_\_. "Indigenous People and Environmental Justice: The Impact of Climate Change." *University of Colorado Law Review* 78 (2007): 1626-1677.

\_\_\_\_\_. "The Indian Trust Responsibility: Protecting Tribal Lands and Resources through Claims of Injunctive Relief against Federal Agencies." *Tulsa Law Review* 39 (2003-2004): 355-368.

Wilkinson, Charles. "Indian Tribal Rights and the National Forests: The Case of the Aboriginal Lands of the Nez Perce Tribe." *Idaho Law Review* 34 (1997-1998): 435-463.

Wilson, Patrick Impero. "Wolves, Politics, and the Nez Perce: Wolf Recovery in Central Idaho and the Role of Native Tribes." *Natural Resources Journal* 39 (Summer 1999): 543-564.

*Where Fortune Calls: Dreamers & Schemers in the Land of Lakes*, vol. 21 of *The Journal of the Shaw Historical Library* (2007).

Whyte, Kyle, guest editor, "Environmental Justice in Native America: Special Issue." *Environmental Justice* 4, no. 4 (December 2001): inclusive.

### **Dissertations and Theses**

Andreasen, Jim Knude, "Systematics and Status of the Family Catostomidae in Southern Oregon." PhD diss., Oregon State University, 1976.

Ball, Thomas. "Prevalence of Rates of Full and Partial PTSD and Lifetime Trauma in a sample of adult members of an American Indian Tribe." PhD diss., University of Oregon, 1998.

Bilka, Monika. "The Klamaths' Path after Termination." MS thesis, University of Montana, 2008.

Buchanan, Nicholas Seong Chul. "Negotiating Nature: Expertise and Environment in the Klamath River Basin." PhD diss., MIT, 2010.

Dillon, John F. "Stories Like a River: The Character of Indian Water Rights and Authority in the Wind River and Klamath-Trinity Basins. PhD diss., University of Arizona, 2013.

Dunsmoor, Larry. "Relative Prey Importance and Availability in Relation to Smallmouth Bass Growth in Brownlee Reservoir, Idaho, with Notes on Dietary Indices." MS thesis, University of Idaho, 1990.

Grant, Carol G. "Challenges of Federal Termination and Restoration among an Oregon Native American Tribe: An Ethnographic Study." PhD diss., University of Phoenix, 2006.

Haynal, Patrick Mann. "From Termination through Restoration and Beyond: Modern Klamath Cultural Identity." PhD diss., University of Oregon, 1994.



Kann, Jacob. "Ecology and Water Quality Dynamics of a Shallow Hypereutrophic Lake Dominated by Cyanobacteria (*Aphanizomenon flos-aquae*).” (PhD diss., University of North Carolina at Chapel Hill, 1998.

Messier, Judith Y. "Conflict in the Klamath Watershed and a Relationship-Building Framework for Conflict Transformation.” PhD diss., George Mason University, 2012.

### **Online Sources**

#### **Online Archival Sources**

Kagan, Elena Collection. Clinton Digital Library, available at <http://clinton.presidentiallibraries.us/collections/show/34>. Last accessed 7 June 2015.

Reed, Bruce Subject File. William J. Clinton Presidential Library, Little Rock, Ar. Available at <http://www.clintonlibrary.gov/brucereedsubject.html>. Last accessed 10 May 2013.

Rasco, Carol Subject File. William J. Clinton Presidential Library, Little Rock, Ar. Available at <http://www.clintonlibrary.gov/191>. Last accessed 10 May 2013.

#### **Online U.S. and State Government Sources**

##### *Miscellaneous*

"2015 Klamath Basin Drought." *Oregon Water Science Center*, U.S. Geological Survey, accessed 28 July 2015, [http://or.water.usgs.gov/Klamath\\_drought/index.html](http://or.water.usgs.gov/Klamath_drought/index.html).

"Consultation History for the Klamath Project." In *Biological/Conference Opinion Regarding the Effects of Operation of the Bureau of Reclamation's Klamath Project on the Endangered Lost River Sucker (*Deltistes luxatus*), Endangered Shortnose Sucker (*Chasmistes brevirostris*), Threatened Bald Eagle (*Haliaeetus leucocephalus*), and Proposed Critical Habitat for the Lost River/Shortnose Sucker*. Klamath Falls Fish and Wildlife Office, April 2001. *Klamath Waters Digital Library*, Oregon Institute of Technology, accessed 5 May 2015, <http://digitallib.oit.edu/cdm/ref/collection/kwl/id/342>.

"ESA Basics: 40 Years of Conserving Endangered Species." U.S. Fish and Wildlife Service, January 2013, accessed 16 July 2015, [http://www.fws.gov/endangered/esa-library/pdf/ESA\\_basics.pdf](http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf).

Johnson, Lyndon B. Special Message to the Congress on the Problems of the American Indian: "The Forgotten American." 6 March 1968. *The American Presidency Project*. Online by Gerhard Peters and John T. Woolley, accessed 7 August 2015, <http://www.presidency.ucsb.edu/ws/?pid=28709>.

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.

"Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities." U.S. Department of Interior. February 18, 2010, pp. 371. Available at <http://www.doi.gov/news/pressreleases/upload/Klamath-Basin-Restoration-Agreement-2-18-10.pdf> .

"Klamath Hydroelectric Settlement Agreement. 18 February 2010, accessed 5 October 2011, available at <http://klamathrestoration.gov/sites/klamathrestoration.gov/files/Klamath-Agreements/Klamath-Hydroelectric-Settlement-Agreement-2-18-10signed.pdf>.

Master Stewardship Agreement Between Klamath Tribes Lomakatsi Restoration Project, The Nature Conservancy, And the USDA FOREST SERVICE, Fremont-Winema National Forest. FS Agreement No. 11-SA-11060200-017. Signed September 2011. United States Forest Service, accessed 6 October 2015, <http://www.fs.fed.us/spf/tribalrelations/documents/agreements/KlamathTribesMasterStewardshipAgreement20110928.pdf>.

Mix, Chas. E., acting commissioner, Office of Indian Affairs, Department of Interior, to J. W. P. Huntington, Oregon Superintendent, Salem, Or. 22 June 1864. *Annual Report of the Commissioner of Indian Affairs, 1864*, no. 31, *HeinOnline*.

"Overview: Lower Klamath Wildlife Refuge." U.S. Fish and Wildlife Service, accessed 28 July 2015, <http://www.fws.gov/refuges/profiles/index.cfm?id=81663>.

President, Memorandum of April 29 1994. 59 Fed. Reg. 85, (4 May 1994), accessed 16 July 2015, <http://www.epa.gov/tribal/pdf/president-clinton-94.pdf>.

"Research Snapshot – Evaluation of the Williamson River Delta Restoration Project." Klamath Falls Field Station, Western Fisheries Research Center, U.S. Geological Survey, accessed 31 July 2015, [http://wfrc.usgs.gov/fieldstations/klamath/rs\\_williamson\\_rd\\_restoration.html](http://wfrc.usgs.gov/fieldstations/klamath/rs_williamson_rd_restoration.html).

"Sen. Wyden and Merkley, Rep. Walden, and Gov. Kitzhaber Form Klamath River Basin Task Force." *Ron Wyden Senator for Oregon*, accessed 9/8/2015, <http://www.wyden.senate.gov/news/press-releases/sens-wyden-and-merkley-rep-walden-and-gov-kitzhaber-form-klamath-river-basin-task-force>.

"SHC in Action in the Klamath Basin." *Strategic Habitat Conservation*, U.S. Fish and Wildlife Service, accessed 31 July 2015, <http://www.fws.gov/landscape-conservation/stories/SHC-in-Action-in-the-Klamath-Basin.html>.

Watermaster District 17 – Klamath Basin Status, Oregon Water Resources Department, accessed 17 July 2015, [http://apps.wrd.state.or.us/apps/misc/dsb\\_area\\_status/Default.aspx?wm\\_district=17](http://apps.wrd.state.or.us/apps/misc/dsb_area_status/Default.aspx?wm_district=17).

### **Online Tribal Documents**

"Dissenting Tribal Voices Locked Out of Klamath Land Transfer Discussion." *Last Real Indians*, accessed 3 July 2015, <http://lastrealindians.com/for-immediate-release-dissenting-tribal-voices-locked-out-of-klamath-land-transfer-discussion%E2%80%8F/>.

### **Online Newspaper Articles**

Bragg, John. "Bucket Brigade Plans Made." *Herald and News* (Klamath Falls, Or), 2 May 2001, accessed 12 December 2011, [http://www.heraldandnews.com/article\\_47072705-1f14-5c9e-b088-3d627e7c7a33.html#vmix\\_media\\_id=122642071](http://www.heraldandnews.com/article_47072705-1f14-5c9e-b088-3d627e7c7a33.html#vmix_media_id=122642071).

"Chiloquin, Oregon: Dikes Blasted to Restore Oregon Marshland for Endangered Fish." *The Ojibwe News* (St. Paul, Minn.), 1 November 2007, 2, in *Ethnic NewsWatch*.

“Dissenting Tribal Voices Locked Out of Klamath Land Transfer Discussion.” *Last Real Indians*, accessed 3 July 2015, <http://lastrealindians.com/for-immediate-release-dissenting-tribal-voices-locked-out-of-klamath-land-transfer-discussion%E2%80%8F/>.

Darling, Dylan. “Reservation Deal Protested.” *Herald and News* (Klamath Falls, Or.) 2 December 2003, accessed 31 July 2015, [http://www.heraldandnews.com/news/top\\_stories/reservation-deal-protested/article\\_bb56aea5-332c-50a1-a5ea-9f7f320c761c.html](http://www.heraldandnews.com/news/top_stories/reservation-deal-protested/article_bb56aea5-332c-50a1-a5ea-9f7f320c761c.html).

Darling, Dylan. “Water Group Taking ‘Baby’ Steps toward Solution.” *Herald and News* (Klamath Falls, Or.), 20 January 2004, republished on *KlamathBasinWaterCrisis.org*, accessed 1 July 2015, <http://www.klamathbasincrisis.org/negotiations/nhngroupbabysteps012004.htm>.

Dougherty, John. “Star Gate.” *Phoenix New Times Online*, 16 June 1993, accessed 7 August 2015, <http://www.phoenixnewtimes.com/news/star-gate-6425811>.

Juillerat, Lee. Klamath Tribes Leader Is Optimistic of the Basin’s Future.” *Herald and News* (Klamath Falls, Or.) 4 August 2003, accessed 7 August 2015, [http://www.heraldandnews.com/news/top\\_stories/klamath-tribes-leader-is-optimistic-of-the-basin-s-future/article\\_368c9856-faab-5a63-b29d-b0a3cb14db4c.html](http://www.heraldandnews.com/news/top_stories/klamath-tribes-leader-is-optimistic-of-the-basin-s-future/article_368c9856-faab-5a63-b29d-b0a3cb14db4c.html).

Juillerat, Lee. “Tribes, Water Users Plan to Host Tours.” *Herald and News* (Klamath Falls, Or.) 22 September 2003, accessed 1 June 2015, [http://www.heraldandnews.com/news/top\\_stories/tribes-water-users-plan-to-host-tours/article\\_ce55e1ec-5c98-525d-be41-196bdf476cd3.html](http://www.heraldandnews.com/news/top_stories/tribes-water-users-plan-to-host-tours/article_ce55e1ec-5c98-525d-be41-196bdf476cd3.html).

Rambler, Sarah. “Mount Graham Coalition Included in Notice of Intent to Sue U.S. Forest Service.” *Arizona Silver Belt Online*, 12 January 2011, accessed 7 August 2015, [http://www.silverbelt.com/v2\\_news\\_articles.php?story\\_id=2264&page=77](http://www.silverbelt.com/v2_news_articles.php?story_id=2264&page=77).

### **Online Interview**

Nicholson, Roger. Interview from “Klamath Basin Water Shut-off Protest July 1, 2013.” Recording on *Youtube.com*, accessed on 2 July 2014, <https://www.youtube.com/watch?v=yhBnsIWaplc>.

### **Online Miscellaneous Primary Sources**

Climate and Traditional Knowledges Workgroup. *Guidelines for Considering Traditional Knowledges in Climate Change Initiatives*, 2014, accessed 7 August 2015, <https://climatetkw.wordpress.com>.

“Make a Difference in the Environment: Conserve Forest and Natural Resources: Choose Forestry.” Undated, Society of American Foresters brochure, accessed 7 August 2015, <https://www.safnet.org/fs/careerbro.pdf>.

Newlin, Jen. “Oregon: Beyond the Blasts: Reclaiming Wetlands in the Klamath Basin.” The Nature Conservancy, accessed 6 November 2015, <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/oregon/our-priorities/beyond-the-blasts-reclaiming-wetlands-in-the-klamath-basin.xml>.

### **Online Secondary Sources**

Chrisman, Gabriel. "The Fish-In Protests at Franks Landing." *Civil Rights & Labor History Project*. University of Washington, accessed 27 July 2015, <http://depts.washington.edu/civilr/fish-ins.htm>.

Climate Change and Traditional Knowledges Workgroup. "The Ethics of Traditional Knowledge Exchange in Climate Change Initiatives." *EarthZine.org*, 31 July 2015, accessed 7 August 2015, <http://earthzine.org/2015/07/31/the-ethics-of-traditional-knowledge-exchange-in-climate-change-initiatives/>.

APPENDIX A  
KLAMATH TRIBES APPROVAL LETTER



November 28, 2012

## The Klamath Tribes Tribal Council

Arizona State University  
School of Historical, Philosophical and Religious Studies  
Coor Hall, P.O. Box 874302  
Tempe, AZ 85887-4302


**Committee:**

Dr. Donald Fixico, Chair  
Dr. Rebecca Tsosie  
Dr. Paul Hirt

The Klamath Tribal Council is in support of Monika Bilka's doctoral research tentatively titled "A Spatial Analysis of Political Empowerment: The Klamath Tribes' Successful Use of Treaty Rights and Environmental Policy, 1960-2010." This dissertation research will explore how the Klamath Tribes have practiced their sovereignty and politically empowered themselves through natural resource management between the 1960s and 2000s. The Klamaths have employed many legal and political strategies and tools in order to participate extensively in the management of natural and cultural resources in the Klamath Basin. The Klamath Tribal Council approves Ms. Bilka's request to conduct interviews with Klamath tribal members. She demonstrates a deep interest and respect for Klamath Tribal history.

The Klamath Tribal Council invites Ms. Bilka to interview Tribal members who participated in natural and cultural resource decision-making processes and strategies as well as those who did not, but who as tribal members experienced these events. The Klamath Tribal Council approves Ms. Bilka's interviewing of Klamath Tribal members on the property owned by the Klamath Tribes, within the former reservation boundaries where the Klamath Tribes practice their sovereignty and land outside of such boundaries. Although, the Klamath Tribal Council cannot require any Tribal member to interview with Ms. Bilka, if they choose to interview it will be on a volunteer basis.

Thank you.

  
Gary Frost, Chairman  
The Klamath Tribes

Pc: Tribal Council

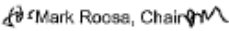
501 Chiloquin Blvd. - P.O. Box 436 - Chiloquin, Oregon 97624  
(541) 783-2219 - Fax (541) 783-2029



APPENDIX B

ARIZONA STATE UNIVERSITY INSTITUTIONAL REVIEW BOARD APPROVAL

**To:** Donald Fixico  
COOR

**From:**  Mark Roosa, Chair  
Soc Beh IRB

**Date:** 05/29/2013

**Committee Action:** **Exemption Granted**

**IRB Action Date:** 05/29/2013

**IRB Protocol #:** 1305009170

**Study Title:** A Spatial Analysis of Political Empowerment: The Klamath Tribes' Successful Use of Treaty Rights Policy, 1960-2010

The above-referenced protocol is considered exempt after review by the Institutional Review Board pursuant to Federal regulations, 45 CFR Part 46.101(b)(2).

This part of the federal regulations requires that the information be recorded by investigators in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects. It is necessary that the information obtained not be such that if disclosed outside the research, it could reasonably place the subjects at risk of criminal or civil liability, or be damaging to the subjects' financial standing, employability, or reputation.

You should retain a copy of this letter for your records.