

TO NULLIFY THE SUPPLEMENTAL TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE CONFEDERATED TRIBES AND BANDS OF INDIANS OF MIDDLE OREGON, CONCLUDED ON NOVEMBER 15, 1865

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JULY 9, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. GRIJALVA, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany S. 832]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 832) to nullify the Supplemental Treaty Between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon, concluded on November 15, 1865, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 832 is to nullify the Supplemental Treaty Between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon, concluded on November 15, 1865.

BACKGROUND AND NEED FOR LEGISLATION <sup>1</sup>

S. 832 nullifies the supplemental treaty of 1865 between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon.

The Warm Springs Confederated Tribes signed a treaty with the United States on June 25, 1855, under which the Tribes relinquished approximately ten million acres of land but kept the Warm Springs Reservation for their exclusive use as well as certain off-

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<sup>1</sup> Also see generally S. REP. NO. 116-45, at 1-2 (2019), <https://www.congress.gov/116/crpt/srpt45/CRPT-116srpt45.pdf> and *Hearing on H.R. 733, H.R. 1031, H.R. 1803, and H.R. 2961 Before the Subcomm. for Indigenous Peoples of the U.S. of the H. Comm. on Nat. Res.*, 116th Cong. (2019) (not printed) (written testimony of Ron Suppah, former Tribal Council Member, Confederated Tribes of Warm Springs), <https://docs.house.gov/meetings/II/II24/20190605/109569/HHRG-116-II24-Wstate-SuppahR-20190605.pdf>, of which the above text is largely excerpts.

reservation fishing, hunting, and gathering rights.<sup>2</sup> The off-reservation rights reserved in the 1855 treaty are nearly identical to the off-reservation rights reserved in ten other treaties negotiated with tribes in Oregon and Washington territories in 1854 and 1855. Those off-reservation treaty rights have been the subject of continuous federal court litigation for more than a century.<sup>3</sup>

After the treaty signing, the Tribes maintained their accustomed practice of traveling regularly to the Columbia River to harvest salmon. The continued presence of Indian people fishing along the Columbia at their usual and accustomed fishing sites, however, irritated non-Indian “settlers” and prompted the Superintendent of Indian Affairs for Oregon to pursue efforts to keep the Tribes away from the non-Indians. Ten years later, in 1865, a small number of Warm Springs members were fraudulently induced into signing a “supplemental” treaty that purportedly relinquished the 1855 treaty’s off-reservation rights and prohibited Warm Springs members from leaving the reservation without a written “permit” issued by the federal superintendent or agent-in-charge.<sup>4</sup>

The Indians of the Warm Springs Reservation neither complied with the 1865 treaty nor understood its provisions. Affidavits taken by the U.S. Department of Justice from Warm Springs Indians present at both the 1855 and 1865 treaty signings show they understood the later treaty simply to provide a pass system for Indians leaving the reservation to exercise their off-reservation rights. Additionally, the United States, the other party to the 1865 treaty, has consistently ignored the 1865 agreement and has on numerous occasions over the past 154 years enacted legislation affirming the Tribes’ 1855 off-reservation treaty rights.<sup>5</sup> It appears that no federal government agency has ever asserted that the 1865 treaty was enforceable or had any legal effect.

S. 832 corrects a wrong by nullifying and rejecting the fraudulent 1865 treaty.

#### COMMITTEE ACTION

S. 832 was introduced on March 14, 2019, by Senator Jeff Merkley (D–OR). On the same date, Representative Greg Walden (R–OR) introduced H.R. 1803, an identical companion bill. H.R. 1803 was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On June 5, 2019, the Subcommittee held a hearing on the House bill.

S. 832 was referred solely to the Senate Committee on Indian Affairs. On May 1, 2019, the Senate Committee held a hearing on the bill. On May 15, 2019, the Senate Committee met to consider the bill and ordered it, without amendments, to be reported favorably to the Senate. The Senate Committee reported the bill to the Sen-

<sup>2</sup> 12 Stat. 963, available at [https://www.fws.gov/pacific/ea/tribal/treaties/Tribes\\_Mid\\_or.pdf](https://www.fws.gov/pacific/ea/tribal/treaties/Tribes_Mid_or.pdf).

<sup>3</sup> See, e.g., *Washington v. Washington State Passenger Fishing Vessel Association*, 443 U.S. 658, 661–62 & n.2, 684–85 (1979), available at <https://tile.loc.gov/storage-services/service/ll/usrep/usrep443/usrep443658/usrep443658.pdf>.

<sup>4</sup> 14 Stat. 751, available at [https://www.fws.gov/pacific/ea/tribal/treaties/Middle\\_OR\\_Tribes1865.pdf](https://www.fws.gov/pacific/ea/tribal/treaties/Middle_OR_Tribes1865.pdf); see also Act of June 30, 1864, ch. 181, 13 Stat. 324 (1864), available at <https://www.loc.gov/law/help/statutes-at-large/38th-congress/session-1/c38s1ch181.pdf> (authorizing the President to negotiate with the Confederated Tribes of Middle Oregon “for the relinquishment of certain rights guaranteed” by the 1855 Treaty).

<sup>5</sup> E.g., 102 Stat. 2944, 1988 Columbia River Treaty Fishing In Lieu and Access Sites legislation; 123 Stat. 991, Sect. 1207, 2009 Wilderness Area Expansion Mount Hood National Forest.

ate on June 10, 2019. The Senate passed the bill, without amendment, by voice vote on June 27, 2019.

S. 832 was received in the House on June 28, 2019, and was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On February 12, 2020, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

#### HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider S. 832: legislative hearing by the Subcommittee for Indigenous Peoples of the United States held on June 5, 2019.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

<b>S. 832, an act to nullify the Supplemental Treaty Between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon, concluded on November 15, 1865</b>			
<b>As ordered reported by the House Committee on Natural Resources on February 12, 2020</b>			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 832 would nullify an 1865 treaty between the United States and the Confederated Tribes of Warm Springs, a federally recognized Indian tribe in Oregon. According to the Department of the

Interior the treaty has never been enforced. On that basis, CBO estimates that enacting S. 832 would have no effect on the federal budget.

On May 30, 2019, CBO transmitted a cost estimate for S. 832, a bill to nullify the Supplemental Treaty Between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon, concluded on November 15, 1865, as ordered reported by the Senate Committee on Indian Affairs on May 15, 2019. The two versions of the legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to nullify the Supplemental Treaty Between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon, concluded on November 15, 1865.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

#### EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

#### SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.