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116TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 116-45

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

—
JUNE 10, 2019.—Ordered to be printed
—

Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 832]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which 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

The purpose of S. 832 is to nullify the Supplemental Treaty between the United States and the Confederated Tribes and Bands of Indians of Middle Oregon,¹ which was executed on November 15, 1865.

NEED FOR LEGISLATION

S. 832 will repeal and nullify the Supplemental 1865 Treaty between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon, thereby leaving the 1855 Treaty intact.

The Constitution grants powers to the President to negotiate treaties, which are subject to ratification by the Senate.² The Con-

¹In 1855, upon execution of the original 1855 Treaty these tribes were collectively referred to as the Confederated Tribes and Bands of Middle Oregon. In 1937, three Indian tribes, the Warm Springs, Wasco, and Paiute organized as the Confederated Tribes of the Warm Springs Reservation of Oregon by adopting a constitution and by-laws for tribal government under the *Indian Reorganization Act*.

²Article II, Section 2, Clause 2 of the United States Constitution.

stitutional authority to ratify treaties can also grant Congress the authority to abrogate treaties. The Supreme Court has held that when abrogating a treaty between the United States and an Indian tribe, Congress must do so explicitly.³

Congress is the only body with constitutional authority to nullify the Supplemental 1865 Treaty, ensuring that it does not have any legal effect.

BACKGROUND

1855 Treaty. In 1855, the Confederated Tribes of Warm Springs Tribe (Tribe) entered into a treaty with the United States government that ceded the Tribe's territorial interests in exchange for consideration that included a reservation and monetary compensation.

In addition to providing certainty of the Tribe's territorial interests, the 1855 treaty also contemplated certain off-reservation hunting and fishing rights; specifically, the right of the Tribe to fish "at all other usual and accustomed stations, in common with citizens of the United States," and "the privilege of hunting . . . on unclaimed lands, in common with citizens."

Supplemental 1865 Treaty. In 1865, the Superintendent of Indian Affairs for Oregon, J.W. Perit Hunting, drafted a supplemental treaty to amend the 1855 treaty. During a legislative hearing before the Committee on S. 832, Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior, John Tahsuda, testified that the Supplemental 1865 Treaty provided terms that created "unreasonable restrictions on the rights of the Warm Springs people."

The Supplemental 1865 Treaty with the Tribe contained provisions that led to the relinquishment of previously reserved off-reservation hunting and fishing rights, and physically restricted the Tribe to its reservation unless written permission was granted by the federal superintendent of Indian Affairs for Oregon to travel outside the boundaries of the reserve.

On June 20, 1997, the U.S. Forest Service produced a report that concluded, among other things, that the tribal leaders' signatures on the Supplemental 1865 Treaty were obtained by fraudulent means.

Actions by the State of Oregon. On January 31, 2019, Governor of the State of Oregon, Kate Brown, issued a formal policy to the Tribe regarding the Supplemental 1865 Treaty. In a letter to the Tribe, Governor Brown wrote to affirm that it will be the "[P]olicy of the office of the Governor . . . to regard the 1865 treaty as a nullity with no effect whatsoever." Governor Brown's letter provided that "[N]o state agency or official under . . . shall assert on behalf of the State that the fraudulent Huntington Treaty of 1865 has now, or ever has had, any legal effect whatsoever."

LEGISLATIVE HISTORY

On March 14, 2019, Senator Merkley introduced S. 832 with Senator Wyden co-sponsoring. The bill was referred to the Committee. On May 01, 2019, the Committee held a legislative hearing on the bill. Principal Deputy Assistant Secretary for Indian Affairs, John

³*Herrera v. Wyoming*, --U.S. --, No. 17-532 (May 20, 2019).

Tahsuda, testified the Department does not object to the bill. Councilman Ron Suppah from the Confederated Tribes of Warm Springs provided testimony in favor of the bill. On May 15, 2019, the Committee held a duly called business meeting to consider S. 832. No amendments were offered, and the bill was ordered to be reported favorably.

An identical companion bill, H.R. 1803, was introduced in the House of Representatives by Congressman Walden on March 14, 2019. The bill was referred to the Subcommittee on Indigenous Peoples of the United States, and on June 5, 2019 the Subcommittee held a legislative hearing on the bill.

In the 104th Congress, Senator Hatfield introduced an identical version of S. 832 on September 20, 1996. The bill was placed on the Senate Legislative Calendar, but no further action was taken on it.

SECTION-BY-SECTION ANALYSIS OF S. 832

Section 1. Nullification of Treaty

This section directs that the Supplemental Treaty concluded on November 15, 1865, and entered into pursuant to the Senate resolution of ratification dated March 2, 1867 (14 Stat. 751), shall have no force or effect.

COST AND BUDGETARY CONSIDERATIONS

Hon. JOHN HOEVEN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed 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.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 832 would nullify a treaty between the United States and the Confederated Tribes of Warm Springs, a federally recognized Indian tribe in the state of Oregon that was signed in 1865. According to the Department of the Interior the treaty has never been enforced. Based on that information, CBO estimates that enacting S. 832 would have no effect on the federal budget.

Bill #, 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 [Manager] on May 15, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

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

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 832.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 832 will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW

On February 6, 2019, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.