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SENATE

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TO REPEAL THE KLAMATH TRIBE JUDGMENT FUND ACT

APRIL 14, 2021.—Ordered to be printed

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

R E P O R T

[To accompany S. 314]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 314) to repeal the Klamath Tribe Judgment Fund Act, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE

The bill, S. 314, repeals Public Law 89-224, commonly referred to as the *Klamath Tribe Judgment Fund Act*.¹ The bill is intended to promote the Klamath Tribes' ability to exercise its sovereign authority and discretion over tribal funds, and would provide greater flexibility for the Klamath Tribes to access and use monies they were awarded following successful litigation against the United States.

BACKGROUND

On August 13, 1954, Congress passed Public Law 83-587, otherwise known as the Klamath Termination Act (1954 Act). The 1954 Act established procedures for the sale of a portion of the reservation land belonging to members of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians (collectively, "Klamath

¹*An Act to provide for the disposition of judgment funds of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, and for other purposes*, Pub. L. No. 89-224, 79 Stat. 897, 897-898 (1965) (codified at 25 U.S.C. § 565 et seq.).

Tribes”), and the termination of the Federal government’s trust relationship with the Klamath Tribes.²

As required by the 1954 Act, six months after passage, the Klamath Tribes submitted to the Secretary of the Interior a final roll consisting of 2,133 members.³ In addition to transferring rights in tribal property to the final enrollees, including their heirs and legatees, the 1954 Act specified that nothing would “prevent [members] from sharing in the proceeds of tribal claims against the United States.”⁴

On August 13, 1946, Congress passed the *Indian Claims Commission Act*, creating a special forum, the Indian Claims Commission, in which Indian tribes could seek damages against the Federal government for, among other things, the cessation of land for inadequate compensation.⁵ Prior to the passage of the 1954 Act, the Klamath Tribes filed a claim with the Indian Claims Commission, the basis of which was unconscionable consideration paid for lands ceded by the treaty of October 4, 1864.⁶ Otherwise known as “Docket 100,” this claim was settled on January 31, 1964 for \$2.5 million.⁷

On October 1, 1965, Congress passed Public Law 89–224, the Klamath Tribe Judgment Fund Act, which directed the distribution of the Docket 100 settlement along with “all other funds heretofore or hereafter deposited in the United States Treasury” to the credit of Klamath Tribes.⁸ In so doing, Congress required the Secretary of the Interior to make per-capita distributions of the funds resulting from Docket 100 to all living individuals listed on the August 13, 1954 final roll. The share of any deceased enrollee would be paid to his or her heirs and legatees pursuant to the 1954 Act.

In the years following the settlement of Docket 100, the Klamath Tribes were awarded three more judgments against the United States from the Indian Claims Commission for various claims including the mismanagement of tribal assets and unconscionable consideration paid for Reservation land.⁹ Like Docket 100, moneys from these judgments were distributed pursuant to the *Klamath Tribe Judgment Fund Act*.

Under the *Klamath Tribe Judgment Fund Act*, distributions would only occur after the United States deducted litigation ex-

²An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes, Pub. L. No. 83 587, 68 Stat. 718 (1954) (codified at 25 U.S.C. § 564 et seq.).

³22 Fed. Reg. 9303 (November 21, 1957).

⁴*Id. supra*, note 2 (codified at 25 U.S.C. § 564e(c)).

⁵An Act to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes, Pub. L. No. 79–726, 60 Stat. 1049 (1946). See generally An Act to authorize appropriations for the Indian Claims Commission for fiscal year 1977, and for other purposes, Pub. L. No. 94–465, 90 Stat. 1990 (1976) (providing for the eventual dissolution of the Indian Claims Commission).

⁶The Treaty of October 14, 1864, obligated the United States to pay less than \$300,000 for over one million acres of aboriginal land in southern Oregon and northern California.

⁷*Klamath and Modoc Tribes, et al. v. The United States of America*, 13 Ind. Cl. Comm. 41, Docket No. 100 (1964).

⁸*Id. supra*, n.1.

⁹*Klamath and Modoc Tribes and Yahooskin Band of Snake Indians v. The United States of America*, 21 Ind. Cl. Comm. 343, Docket No. 100–A (1969) (The Klamath Tribes were awarded \$4,162,992.80 for unconscionable consideration paid pursuant to a 1901 land-sale agreement); *Klamath and Modoc Tribes and Yahooskin Band of Snake Indians v. The United States of America*, 37 Ind. Cl. Comm. 2, Docket No. 100–C (1975) (The Klamath Tribes were awarded \$785,000 for claims involving grazing and rights-of-way); *Klamath and Modoc Tribes and Yahooskin Band of Snake Indians v. The United States of America*, 39 Ind. Cl. Comm. 262, Docket No. 100–B 1 (1977) (The Klamath Tribes were awarded \$18,000,000 for mismanagement of tribal funds and properties, primarily timber and ranch lands).

penses and estimated costs of distribution.¹⁰ On April 15, 1958, the Klamath Tribal Executive Committee passed a resolution authorizing the use of a \$350,000 reserve fund for the reimbursement of attorney expenses for the presentation of tribal claims. Any unused portion would remain in the U.S. Treasury to the credit of the Klamath Tribes.¹¹

On August 27, 1986, the Klamath Tribes' Federal trust relationship with the United States was restored with the passage of the *Klamath Indian Tribe Restoration Act*.¹² Nevertheless, the *Klamath Indian Tribe Restoration Act* did not restore the Klamath Tribes' former reservation lands, and efforts to regain their tribal land base continue to this day.

NEED FOR LEGISLATION

The *Klamath Tribe Judgment Fund Act* prescribes the method for distribution and use of any funds awarded to the Klamath Tribes from the U.S. Treasury (Klamath Treasury funds). Thus, any future successful monetary claims by the Klamath Tribes against the United States is subject to the Act's distribution terms, making compliance cumbersome and expensive. This bill repeals the *Klamath Tribe Judgment Fund Act*, enabling the Klamath Tribes to use the Klamath Treasury funds without the prescriptive method required by the *Klamath Tribe Judgment Act*, and eliminates the Secretary of the Interior's discretion to permanently keep the Klamath Treasury funds in the U.S. Treasury if the remaining balance is deemed "insufficient to justify a further distribution." With the repeal of the *Klamath Tribe Judgment Fund Act*, future distribution of funds would be made pursuant to the *Indian Tribal Distribution of Judgment Funds Use and Distribution Act*.¹³

LEGISLATIVE HISTORY

Senators Merkley and Wyden introduced S. 314, the *Klamath Tribe Judgment Fund Repeal Act*, on February 12, 2021. The Senate referred the bill to the Committee on the same day. The bill, S. 314, is identical to the version favorably reported by the Committee and passed by the Senate in the 116th Congress. On March 10, 2021, at a duly called business meeting, the Committee considered and reported S. 314 favorably without amendment.

116th Congress. On January 8, 2019, Senators Merkley and Wyden introduced S. 46, the *Klamath Tribe Judgment Fund Repeal Act*, and the bill was referred to the Committee. The bill, S. 46, is identical to the version favorably reported by the Committee, as amended, in the 115th Congress. On January 29, the Committee reported the bill without amendment and the bill passed the Senate without amendment by voice vote on June 27, 2019. On June 28, 2019, the bill was received in the House and referred to the Committee on Natural Resources. The bill was referred to the Subcommittee for Indigenous Peoples of the United States on July 3,

¹⁰*Id. supra* n.1.

¹¹*Id.* See also *Disposition of Klamath and Modoc Judgment Funds: Hearing before the Subcomm. on Indian Affairs of the H. Comm. on Interior and Insular Affairs*, 89th Congress (May 13, 1965). See also H.R. Rep. No. 89-889, at 1 (1965) (Comm. Rep.).

¹²*The Klamath Indian Tribe Restoration Act*, Pub. L. No. 99-398, 100 Stat. 849 (1986).

¹³*An Act to provide for the use or distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the Court Of Claims, and for other purposes*, Pub. L. 93-134, Oct. 19, 1973, 87 Stat. 466 (codified as amended at 25 U.S.C. 1401 et seq.).

2019. A legislative hearing was held on October 16, 2019 by the Subcommittee. No House companion bill was introduced.

115th Congress. Senators Merkley and Wyden introduced S. 1223, the *Klamath Tribe Judgment Fund Repeal Act*, on May 24, 2017. The Senate referred the bill to the Committee on the same day. The Committee held a legislative hearing on the bill on July 12, 2017. At that time, the Department of the Interior took no position on the bill, noting its wish to better understand the impact that a repeal of the *Klamath Tribe Judgment Fund Act* would have upon its trust responsibility to the Klamath Tribes.¹⁴ The Committee also received testimony from a Senior Attorney from the Native American Rights Fund (NARF), Mr. Donald R. Wharton, on behalf of the Klamath Tribes.¹⁵

At a duly called business meeting on October 25, 2017, one amendment to the *Klamath Tribe Judgment Fund Repeal Act* was timely filed and considered by the Committee. The amendment added Section 3 to the bill, clarifying that the Secretary of the Interior shall disburse the full balance of any remaining or reserve funds held in the U.S. Treasury to the Klamath Tribes as soon as practicable, after the date of enactment. The text of the amendment was based on the Department of the Interior's technical drafting assistance. The Department of the Interior subsequently informed the Committee of its support for the bill, as amended.

S. 1223 with an amendment passed the Senate by unanimous consent on March 22, 2018. On March 26, 2018, the bill was received in the House and referred to the Committee on Natural Resources. On March 27, 2018, the bill was referred to the Subcommittee on Indian, Insular and Alaska Native Affairs. No further action was taken.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 sets forth the short title of this bill as the “*Klamath Tribe Judgment Fund Repeal Act*.”

Section 2. Repeal

Section 2 contains a full repeal of Public Law 89–224, the *Klamath Tribe Judgment Fund Act*.

Section 3. Disbursement of remaining funds

Section 3 requires the Secretary of the Interior, as soon as practicable following enactment of this Act, to disburse the balance of any funds in trust accounts for remaining legal fees and administrative expenses, as well as funds in per-capita trust accounts as identified by the Secretary of the Interior, to the Klamath Tribes.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated March 19, 2021, was prepared for S. 314:

¹⁴*Legislative Hearing to Receive Testimony on S. 943, S. 1223, and S. 1285 Before the Senate Comm. on Indian Affairs*, 115th Cong. 115–76 (2017) (statement of Tony Dearman, Director, Bureau of Indian Education, U.S. Department of the Interior).

¹⁵*Id.*

MARCH 19, 2021.

Hon. BRIAN SCHATZ,
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. 314, the Klamath Tribe Judgement Fund Repeal Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 314, Klamath Tribe Judgement Fund Repeal Act			
As ordered reported by the Senate Committee on Indian Affairs on March 10, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
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	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 314 would repeal the Klamath Tribe Judgment Fund Act, which authorizes the Department of the Interior (DOI) to establish and maintain a fund to make payments to Klamath Tribe members to satisfy any judgments obtained by the tribe. The bill also would require any amounts remaining in the fund upon its closure to be disbursed to the Klamath Tribe.

Payments to certain tribal trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. Thus, the balances remaining in the Klamath Tribe Judgment Fund were previously recorded as federal budget authority and outlays at the time those funds were deposited into the fund. Accordingly, any subsequent disbursement of those funds would have no effect on the federal budget.

According to information provided by DOI, about \$660,000 remains in the fund. That money is slated to be paid to almost 200 members of the Klamath Tribe or to their next of kin, none of whom DOI has been able to locate. Assuming that S. 314 is enacted early in calendar year 2021, CBO estimates that those funds would be disbursed directly to the government of the Klamath Tribe during fiscal year 2021.

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

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. 314 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

Except as otherwise noted, the Committee has received no communications from the Executive Branch regarding S. 314.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. 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.