HOUSE COMMITTEE ON
NATURAL RESOURCES
RANKING MEMBER BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder (Ken.Degenfelder@mail.house.gov)
Date: April 25, 2022
Subject: Hybrid Legislative Hearing on six bills

The Subcommittee for Indigenous Peoples will hold a hybrid legislative hearing on six bills: H.R. 437 (Rep. Young), To amend the Alaska Native Claims Settlement Act to exclude certain payments to Alaska Native elders for determining eligibility for certain programs, and for other purposes; H.R. 6063 (Rep. McCollum), To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes; Discussion Draft ANS to H.R. 6181 (Rep. Ruben Gallego, D-AZ), the Samish Indian Nation Land Reaffirmation Act; S. 314 (Sen. Merkley), the Klamath Tribe Judgment Fund Repeal Act; S. 559 (Sen. Merkley), To amend the Grand Ronde Reservation Act, and for other purposes; and S. 789 (Sen. Rounds), Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes (RESPECT) Act; on **Wednesday, April 27, 2022, at 1:00 p.m.** in 1324 Longworth House Office Building and via Cisco WebEx.

Republican members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

Member offices are requested to notify Ken Degenfelder (Ken.Degenfelder@mail.house.gov) no later than **4:30 p.m. on Tuesday, April 27, 2022**, if their Member intends to participate in person in the hearing room or remotely via his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- H.R. 437 would exclude certain payments to Alaska Natives aged 65 and older, from being used to determine eligibility for certain need-based federal programs.
- H.R. 6063 seeks to resolve the purported land claims of the Miami tribe as follows, it:
    - Confers exclusive jurisdiction over the tribe's claims in the Court of Federal Claims (CFC);

- Disallows the United States from asserting a defense against such claims based on statutes of limitation or laches;

- Gives the Tribe one year to file its land claim in the CFC; and

- Except for the claim against the United States in the CFC, extinguishes all other claims arising under any federal treaty, law, or agreement.

- Discussion Draft ANS to H.R. 6181 would reaffirm that the Indian Reorganization Act applies to the Samish Indian Nation.

- S. 314 would repeal the 1965 *Klamath Judgment Fund Act*, which provided for the disposition of judgment funds for the Klamath tribes and directs the Secretary of the Interior to disburse any balance of any funds to the Klamath Tribes.

- S. 559 would amend the Grand Ronde Reservation Act to reflect that the Grand Ronde tribe's extinguishment of land claims against the United States only applies to an 84-acre parcel of land, known as the Thompson Strip.

- S. 789 would repeal certain provisions related to the treatment of Indians, including provisions on hostile tribes, alcohol, work requirements, penalties for truancy, and placement of youth in reform school without the consent of a parent or guardian.

II. WITNESSES

PANEL I

- **Ms. Sheri Buretta**, Chairman of the Board, Chugach Corporation, Anchorage, AK *[Republican Witness]* (H.R. 437)
- **The Hon. Teri Gobin,** Chair, Tulalip Tribes, Tulalip, WA *[Republican Witness]* (H.R. 6181)
- **The Hon. Douglas Lankford**, Chief, Miami Tribe of Oklahoma, Miami, OK (H.R. 6063)
- **The Hon. Tom Wooten**, Chairman, Samish Indian Nation, Anacortes, WA (H.R. 6181)
- **The Hon. Donald Gentry**, Chairman, Klamath Tribes, Chiloquin, OR (S. 314)
- **The Hon. Cheryle Kennedy**, Chairwoman, Confederated Tribes of the Grand Ronde, Grand Ronde, OR (S. 559)
- **The Hon. Tamara St. John**, Representative, District 1, South Dakota House of Representatives, Sisseton, SD (S. 789)

III. BACKGROUND

H.R. 437, To amend the Alaska Native Claims Settlement Act to exclude certain payments to Alaska Native elders for determining eligibility for certain programs, and for other purposes (Rep. Young)

H.R. 437 would exclude amounts distributed or benefits provided to Alaska Native elders (aged 65+) from the Alaska Native Settlement Trust when determining eligibility for government benefits including housing, supplemental income and nutritional assistance.

The aboriginal land claims of Alaska Natives were settled in the *Alaska Native Claims Settlement Act* of 1971 (ANCSA).[1] Under the unique settlement, approximately 44 million acres of public land (in fee simple title) and nearly $1 billion were transferred to private corporations owned and organized by Alaska Natives.

When Congress enacted ANCSA, Section 29 articulated that no provisions of the Act would replace or diminish any obligations of the U.S. or Alaska to "protect and promote the rights or welfare of Natives."[2] In 1988, Congress amended ANCSA expanding section 29 to provide for the exclusion of the first $2,000 that any Alaska Native individual receives from a Native Corporation in determining eligibility of the recipient for supplemental nutritional assistance, financial assistance under the social security, and financial assistance or benefits, based on need, under any other Federal programs or federally-assisted programs.[3]

The 1988 amendments also authorized Alaska Native Corporations to establish Alaska Native Settlement Trusts "to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives."[4] The Settlement Trusts were a mechanism by which Native Corporations could take advantage of new tax benefits. Congress did not, however, exclude settlement trust benefits for determining eligibility of the recipient for government assistance programs.
According to several Alaska Native Corporations (ANCs), the discrepancy between Alaska Native Trust income and other income from ANCs can place many Alaska Native elders in the position of having to choose between accepting the settlement trust income or qualifying for government assistance programs. H.R. 437 would exclude amounts distributed or benefits provided to Alaska Native elders aged 65 and older from the Alaska Native Settlement Trust when determining eligibility for government benefits including housing, supplemental income and nutritional assistance.
Staff contact: Ken Degenfelder (x62090)

[1] 43 USC 1601 et seq.
[2] 43 USC 1601(c).
[3] 43 USC 1626(c).
[4] 43 USC 1629e(b).

H.R. 6063, To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes (Rep. McCollum)

The Miami Tribe of Oklahoma is located in Ottawa County, in the northeast corner of Oklahoma. The Tribe originated in what is now the State of Indiana, claiming its homelands as the Great Lakes regions of Ohio, Indiana, Illinois, and parts of Michigan and Wisconsin.[5] Through treaties with the United States, land cessions, and the implementation of the Indian Removal Act of 1830, the Tribe was removed to Kansas, and under a subsequent treaty, to Indian Territory (now the state of Oklahoma).[6]

In 2000, the Miami Tribe filed a lawsuit in federal court against homeowners and farmers in 15 counties of east-central Illinois, asserting the Tribe is the rightful owner of the entire Wabash River watershed in Illinois – about 2.65 million acres of land – arguing the land was granted to it under the Treaty of Grouseland of 1805.[7] The Tribe alleged the United States did not properly acquire title before the issuance of federal land patents to non-Indian landowners in Illinois.[8] The state of Illinois sought to intervene and dismiss the case. In its motion to dismiss, the state argued that the Tribe was never granted the 2.65 million acres of land at issue, and that such a lawsuit may be filed against only the United States and not against private landowners. The state also argued that, in proceedings of the Indian Claims Commission (ICC; discussed below), the Tribe stipulated that its ancestral holdings never extended west of western Indiana, creating the basis for the ICC's dismissal of the Tribe's claim to a small tract in Illinois.[9] In 2001, the Tribe voluntarily withdrew its lawsuit.

In the 107th Congress, H.R. 791 (Johnson-IL) was introduced to resolve the land claims of the Miami Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, and the Potawatomi Tribe of Kansas.[10] In 2002, the full Committee on Natural Resources held a hearing on this bill.[11] The Miami Tribe testified against the bill believing it was not a fair and equitable settlement of their claims. No further action occurred on H.R. 791.

Indian Claims Commission Act and Ancient Land Claims

Through the *Indian Claims Commission Act* (ICCA), Congress barred claims against the United States that pre-date August 13, 1946, and that were not filed before the Indian Claims Commission (ICC) by August 13, 1951. Section 12 of ICCA states: [12]

[5] Tiller's Guide to Indian Country, Third Edition (2015) Veronica E. Velarde Tiller. At 634.
[6] Id.
[7] Complaint for Possession of Indian Tribal Lands, Damages and Declaratory Judgment, *Miami Tribe v. Walden*, U.S. District Court for the Southern District of Illinois, filed 6/02/2000.
[8] Section 1(a), Findings, of H.R. 791 (Johnson of Illinois), 107th Congress, To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois.
[9] Memorandum in Support of the State of Illinois' Motion to Dismiss, *Miami Tribe v. Walden*, U.S. District Court for the Southern District of Illinois, filed 04/20/2001.
[10] https://www.congress.gov/107/bills/hr791/BILLS-107hr791ih.pdf.
[11] https://www.govinfo.gov/content/pkg/CHRG-107hhrg79494/pdf/CHRG-107hhrg79494.pdf
[12] Act of Aug. 13, 1946, ch. 959, §1, 60 Stat. 1049 et seq.

> "The Commission shall receive claims for a period of five years after the date of approval of this Act [August 13, 1946] and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, ***nor will such claim thereafter be entertained by Congress***."[13] [emphasis added]

Through the ICCA, Congress intended to vest the ICC with time-limited, exclusive jurisdiction to hear Indian tribes' and identifiable groups' pre-1946 claims against the United States. "The 'chief purpose of the [Act was] to dispose of the Indian claims problem ***with finality***.'"[14] Moreover, Congress intended "'the jurisdiction of the Commission ought to be broad enough ***so that no Tribe could come back to Congress ten years from now and say that it had a meritorious claim***.'"[15] These Congressional goals, as well as the plain wording of Section 12 of the ICCA, firmly establish that the ICC was the only tribunal with authority to adjudicate pre-1946 Indian tribal, and identifiable group, claims against the United States.

To ensure that it would leave no tribal or identifiable group claims against the United States outstanding, Congress vested the ICC with jurisdiction of unprecedented breadth to hear and determine all tribal and Indian identifiable group claims against the United States that existed as of August 13, 1946, including legal, equitable, and even moral claims or claims not otherwise cognizable in federal courts. Section 2 of the ICCA provided the ICC with jurisdiction over the following:

> (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive Orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by an existing rule of law or equity.

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[13] ICCA, § 12 (emphasis added); see also *Sioux Tribe v. United States*, 500 F.2d 458, 489 (Ct. Cl. 1974) ("The Act provides in no uncertain terms that any claim existing prior to August 13, 1946, must be filed within five years (i.e., before August 13, 1951), and if it is not filed within that period, it cannot thereafter be submitted to any court . . . for consideration. There is no doubt about the fact that Congress intended to cut off all claims not filed before August 13, 1951.").

[14] *United States v. Dann*, 470 U.S. 39, 45-46 (1985) (quoting 92 Cong. Rec. 5312 (1946) and H. R. Rep. No. 1466, 79th Cong., 1st Sess., 10 (1945)) [emphasis added].

[15] *Navajo Tribe of Indians v. New Mexico*, 809 F.2d 1455, 1465 (10th Cir. 1987) (quoting 92 Cong. Rec. 5312 (1946)) [emphasis added].

Concerns

H.R. 6063 is fundamentally a waiver of the United States' immunity from a suit that could have been, but was not filed, by the tribe during the period when ICCA claims were required to be filed. The Tribe was aware of the ICCA process, as it filed several claims – categorized as dockets in the ICC, which resulted in cash judgments for the Tribe and other tribes and identifiable groups of Indians. H.R. 6063 provides a means around the strict bar contained in the ICCA not only by authorizing the filing of a claim in the CFC, but by waiving any delay-based defense by the United States against such claims, including laches and the statute of limitation provided in the ICCA. In the past, Congress has resolved the kind of claims asserted by the Miami Tribe through the Congressional Reference process (where a case is referred by law to a court for consideration), which is under the jurisdiction of the Judiciary Committee.

In addition, H.R. 6063 could make the land eligible for gaming. Section 20 of the *Indian Gaming Regulatory Act of 1988* (Pub. L. 100-497) bans gaming on newly acquired trust lands, with certain exceptions. One of these exceptions is when land is acquired in settlement of a land claim.[16] Under the land claim exception, land acquired in trust through judgment or settlement of a land claim is automatically eligible for gaming, without the consent of the State or the federal government. In effect, the bill waives the United States' immunity from suit and removes the statutory bar on the Tribe's lawsuit in the CFC over its land claim in Illinois. ***Staff contact: Ken Degenfelder (x62090)***

Discussion Draft ANS to H.R. 6181, the Samish Indian Nation Land Reaffirmation Act (Rep. Gallego)

The Discussion Draft ANS to H.R. 6181 would reaffirm that the *Indian Reorganization Act* (IRA; Pub. L. 73-383)[17] applies to the Samish Indian Nation.

Formal recognition of the Samish Indian Nation was granted in modern times under unusual circumstances. The group petitioned the Bureau of Indian Affairs (BIA) in 1975 to recognize it. In 1987, the BIA denied acknowledgment of the Samish as an Indian tribe under its formal regulatory procedures.[18] The denial was vacated by a U.S. District Court in 1992[19] and in 1996 the BIA extended formal recognition to the Samish.[20]

On November 9, 2018, the BIA issued a decision to take approximately 6.7 acres of land into trust for the Samish tribe.[21] Accompanying that decision, the BIA NW Regional

[16] 25 U.S.C. 2719(b)(1)(B)(i).
[17] 25 USC 5101 et seq.
[18] https://narf.org/nill/bulletins/federal/documents/samish.pdf.
[19] https://caselaw.findlaw.com/us-federal-circuit/1580379.html.
[20] https://www.samishtribe.nsn.us/who-we-are/culture#:~:text=in%20April%201996%2C%20the%20Samish,a%20historical%20tribe%20in%201969.
[21] https://www.samishtribe.nsn.us/docs/default-source/council/campbell-lake-decision/approved-decision.pdf?sfvrsn=106e3681_4.

Director included a *Carcieri* analysis[22] because the Tribe was recognized after 1934.[23] In that analysis, the NW BIA Regional Director determined the tribe was under federal jurisdiction in 1934 but based that decision heavily on the rationale that the present-day Samish are the descendants of the Samish and Nuwhaha tribes, which were parties to the 1855 Treaty of Point Elliott. This is contrary to what federal courts have held for more than 40 years as legal precedent for determining certain treaty rights to successors to the 1855 Treaty of Point Elliot.[24]

Pursuant to the Department of the Interior regulations, the November 9, 2018, decision is subject to administrative appeal,[25] and on December 10, 2018, the Swinomish Tribe appealed the Department's decision. The case is currently pending before the Interior Board of Indian Appeals. In addition to the Swinomish, the Lummi Nation, Tulalip Tribes and Upper Skagit Indian tribe also oppose the 2018 decision.

H.R. 6181, as introduced, would ratify and confirm the NW BIA Regional Director decision to take the land into trust. Further complicating this action is the rationale used by the NW Regional Director. Four tribes within the State of Washington cite a concern that this could reopen treaty rights which were settled in *U.S. v. Washington*.[26] This would effectively result in a modification of individual tribes' established fishing areas.

The Discussion Draft ANS that has been proposed and that is the subject of the hearing purports to reaffirm that the IRA applies to the Samish tribe but does not effectively result in the tribe being considered under federal jurisdiction in 1934.

Concerns

While the Discussion ANS would not directly ratify the 2018 BIA decision and the accompanying *Carcieri* analysis as H.R. 6181, as introduced, would, the use of the word "reaffirmed" is ambiguous. "Reaffirmed" could be construed to mean that what is being "reaffirmed" by the amendment is the NW BIA Regional Director's determination, which incorporates the decision that the Samish tribe was under federal jurisdiction in 1934 as a successor to the treaty Samish and Nuwhaha, despite more than four decades of federal court decisions to the contrary.

If the intent of the Discussion ANS is to provide for a Carcieri fix for the Samish tribe, that could be accomplished by clear language that does not implicate the issues presented by H.R. 6181, as introduced, and invite new rounds of litigation. Congress has also not previously considered a Carcieri fix for a specific tribe.

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[22] https://turtletalk.files.wordpress.com/2018/11/2018-11-09-attachment-1-to-ftt-dec-samish-carcieri-analysis.pdf.
[23] *See* Carcieri v. Salazar (2009) which held that land may only be taken into trust by the federal government for tribes that were under federal jurisdiction in 1934, the date of enactment of the Indian Recognition Act.
[24] *See United States v. Washington*, 476 F. Supp. 1101, 1104; *Greene v. Lujan* (No. C89-645Z, W.D. Wash. Sept. 19, 1990); *Samish Indian Nation v. United States*, 58 Fed. Cl. 114, 120 (2003), *Snoqualmie Indian Tribe v. Washington*, 8 F.4th 853 (9th Cir. 2021).
[25] 25 C.F.R. 2.4.
[26] 520 F.2d 676 (1975); Cert. denied, 423 U.S. 1086 (1976).

Lastly, no member of the Washington congressional delegation is currently a cosponsor of this bill. One member of the Washington delegation who was a cosponsor in the 117th Congress requested to be removed as a cosponsor.[27] Congress can avoid intertribal disagreements surrounding settled treaty rights by simply placing the lands in trust.
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S. 314, Klamath Tribe Judgment Fund Repeal Act (Sen. Merkley)

S. 314 would repeal the 1965 *Klamath Judgment Fund Act*[28] which provided for the disposition of judgment funds for the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians (federally recognized as "Klamath Tribes" today). The bill also directs the Secretary of the Interior to disburse to the Klamath Tribe any balance of any funds that were set aside for legal fees, administration and per capita trust accounts.

In 1946, Congress enacted the ICC Act as a way for individual Indians or Indian tribes to seek damages against the federal government for a wide range of historical claims, including the cession of land for inadequate compensation.[29] Prior to the passage of the *Klamath Termination Act* in 1954,[30] the Tribe filed a claim with the ICC for inadequate compensation for lands ceded by an 1864 Treaty.[31] This case, "Docket 100", was settled in 1964 for $2.5 million.[32] In subsequent years, members of the Tribe were awarded three more judgments for related claims including mismanagement of tribal assets.[33] These judgment funds were deposited and distributed pursuant to the 1965 *Klamath Tribe Judgment Fund Act*, which authorized certain payments of judgments to Klamath Indians and their heirs, with a certain portion of these monies credited to the tribe.[34] None of the funds payable under the 1965 Act are subject to federal or State income tax. Distributions of the ICC awards to individual tribal members and their heirs at the time of the 1954 final termination of the tribes were to occur after the federal government deducted litigation expenses and estimated costs of distribution.

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[27] https://www.congress.gov/bill/117th-congress/house-bill/6181/cosponsors.
[28] P.L. 89-224, 25 U.S.C 565 et seq.
[29] 60 Stat. 1049.
[30] 68 Stat. 718 et seq.
[31] The Treaty of October 14, 1864, obligated the United States to pay less than $300,000 for over one million acres of land in southern Oregon and northern California.
[32] Klamath and Modoc Tribes, et al. v. The United States of America, 13 Ind. Cl. Comm. 41, Docket No. 100 (1964).
[33] 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).
[34] P.L. 89-224, 25 USC 565 et seq.

According to the Congressional Budget Office (CBO), this bill affects approximately $600,000 remaining in the Klamath Judgment Fund for approximately 200 tribal members or their next of kin that the Department of the Interior says it cannot locate.[35] The Klamath Tribe's request is that these remaining funds be transferred to the Tribe. S. 314 would fulfill this request and transfer these funds to the Klamath Tribe. It is unclear whether enactment of this bill might give rise to future claims against the U.S. from individuals who say they are entitled to these monies.

S. 559, A bill to amend the Grand Ronde Reservation Act, and for other purposes (Sen. Merkley)

S. 559 would amend the Grand Ronde Reservation Act to reflect that the Grand Ronde Tribe's extinguishment of land claims against the United States only applies to an 84-acre parcel of land, known as the Thompson Strip. The bill would also add a gaming prohibition for any future land awarded as part of a land claims settlement.

The Confederated Tribes of the Grand Ronde Community of Oregon were among several tribes in Western Oregon that entered into treaties with the United States in the 1850s.[36] In 1857, President James Buchanan established the Grand Ronde Reservation.[37] The reservation was more than 60,000 acres and today the Grand Ronde are treated by the federal government as a single tribe for federal purposes such as the delivery of services and benefits.

In 1988, Congress enacted the *Grand Ronde Reservation Act*.[38] This Act and subsequent acts created a reservation for the Tribe mostly within the boundaries of the former 1857 Grand Ronde Reservation in Polk and Yamhill Counties, Oregon. Today, the Tribe has a total of 10,311 acres of trust land. According to the Tribe, all but 259 acres of these lands are forested, and the tribe is actively engaged in timber management. The non-forested trust parcels host tribal buildings and housing, a casino, and other infrastructure.[39]

On October 31, 1988, the Bureau of Land Management (BLM) discovered that several surveying errors had been made along the southeast boundary of the Tribe's reservation. On the realization of the error, the BLM contacted the Tribe to correct the situation. In 1994, the Tribe and BLM agreed to a land transfer, which Congress included as part of a larger Indian technical corrections bill.[40]

While the Tribe received compensatory lands under this law, it was determined that the "extinguishment of claims" phrase used in the bill included all and potential future land claims within the State of Oregon, not just on the 84-acre Thompson Strip parcel. The

[35] https://www.cbo.gov/system/files/2019-02/s46.pdf.
[36] https://www.grandronde.org/history-culture/history/treaties/
[37] Executive Order Issued by James Buchanan (June 30, 1857).
[38] Public Law 100–425, 102 Stat. 1594., as amended by Pub. L. No. 100–581, Pub. L. No. 101–301, Pub. L. No. 102–497, Pub. L. No. 103–263, Pub. L. No. 103–435, and Pub. L. No. 105–256.
[39] Tiller's Guide to Indian Country, Third Edition (2015). Veronica E. Velarde Tiller. At 671.
[40] P.L. 103-435; 25 USC 713f note, subsection d.

Tribe contends that this was done in error and not intended to bar it from other potential land claims. S.559 would amend current law to reflect that the Tribe is only barred from bringing a future land claim on the 84-acre Thompson Strip parcel.

Concerns

While the bill contains a gaming prohibition on land that could be received as part of a land claim settlement, the prohibition does not extend to monetary awards from a land claim settlement that in turn could be used to purchase land for gaming purposes within the state of Oregon. The Grand Ronde Tribe could use the land claim settlement exemption under the *Indian Gaming Regulatory Act* (IGRA; Pub. L. 100-497)[41] that would not require consent of the Governor nor any nearby Indian tribes or other stakeholders. The Confederated Tribes of the Warm Springs and the Cowlitz Tribe have submitted letters to the Committee expressing these concerns. Lastly, according to the Grand Ronde Tribe, there are no known land claims the tribe intends to make. This raises the question as to why this legislation is needed.

S. 789, Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act (Sen. Rounds)

S. 789 would repeal eleven statutes enacted between 1862 and 1913 relating to Indians. From the mid-1800's to the mid-1900's which is often referred to as the "removal and reservations" and "allotment and assimilation" eras of federal Indian policy, the United States treated many tribes with aggression. In 1883, the Secretary of the Interior even stated that the goal of the Courts of Indian Offenses, which was established to prosecute Indians who participate in traditional ceremonies,[42] was to eliminate "heathenish practices" of Indians.[43] During the removal and assimilation periods, the federal government attempted to assimilate the Native Americans by disrupting traditional community structures and ways of life.

In light of modern federal Indian policy that recognizes the unique sovereign status of Tribal governments and supports a government-to-government relationship with the United States, the S. 789 formally repeals certain statutes that are antiquated and have been unenforced for decades.

IV. MAJOR PROVISIONS & ANALYSIS

H.R. 437, To amend the Alaska Native Claims Settlement Act to exclude certain payments to Alaska Native elders for determining eligibility for certain programs, and for other purposes (Rep. Young)

[41] 25 U.S.C. 2701 et seq.
[42] https://www.nlm.nih.gov/nativevoices/timeline/364.html.
[43] Cohen's Handbook of Federal Indian law. 2012 edition. §1.04.

Section 1. *Eligibility for Certain Programs.* Section 29(c) of ANCSA is amended to add an exemption of income, amounts received from an Alaska Settlement Trust by a Native or descendant of a Native who is 65 years of age or older**.**

H.R. 6063, To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes. (Rep. McCollum)

Section 1. Subsection (a). *Findings*. Provides that the Miami Tribe of Oklahoma claims to be the rightful owner of approximately 2.65 million acres of land in Illinois given to it under the Treaty of August 1, 1805 (7 Stat. 91), known as the Treaty of Grouseland. The treaty provided for land cessions by the Delewares (*sic*), Putawatimis (*sic*), Miamis, Eel River, and Weas tribes in the Indiana Territory (including the lands comprising the present-day States of Indiana and Illinois).[44] Congress also finds that lands in Illinois "reserved and guaranteed" to the Miami Tribe under the Treaty of Grouseland are now held by other persons and entities, and that Congress "desires to remove any cloud on title resulting from the Miami Tribe of Oklahoma's claim.…"

Subsection (b). *Jurisdiction Conferred on the United States Court of Federal Claims*. Confers exclusive jurisdiction over the Tribe's claims in the Court of Federal Claims (CFC); Disallows the United States from asserting any defense against such claims based on statutes of limitation or laches; Gives the Tribe one year to file its land claim in the CFC; Except for the claim against the United States in the CFC, all other claims arising under any federal treaty, law, or agreement are extinguished.

Discussion Draft ANS to H.R. 6181, the Samish Indian Nation Land Reaffirmation Act (Rep. Gallego)

Section 1. *Reaffirmation of Law*. Provides that the applicability of the Indian Reorganization Act is reaffirmed for the Samish Indian Nation.

S. 314, the Klamath Tribe Judgment Fund Repeal Act. (Rep. Merkley)

Section 1. *Short Title*.

Section 2. *Repeal*. Repeals PL 89-224 which is commonly known as the Klamath Judgment Fund Act.

[44] Article IV of the treaty provides that the Miami, Eel River, and Weas tribes, considering themselves one nation, shall have joint ownership "of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty."

Section 3. *Disbursement of remaining funds*. Directs the Secretary of the Interior to disburse any remaining balance of funds that were set aside pursuant the Klamath Judgment Fund.

S. 559, A bill to amend the Grand Ronde Reservation Act, and for other purposes.. (Sen. Merkley)

Section 1. *Grand Ronde Reservation Act Amendment*. Strikes "lands within the state of Oregon" and inserts "the 84 acres known as the Thompson Strip" and adds a gaming prohibition on lands received as part of a land claim settlement. This prohibition does not include money received as part of a land claim settlement that could be used to purchase land for gaming purposes.

Section 2. *Treaty rights of federally recognized tribes*. Provides that the Act shall not be construed to modify any treaty right of any Indian tribe.

S. 789, Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act

Section. 1. *Short Title.*
Section. 2. *Repeal of Certain Obsolete Laws Relating to Indians.*
Repeals:

- 25 U.S.C 72, which authorizes the President to abrogate treaties with Indian tribes that are hostile towards the U.S.
- 25 USC 127, which authorizes the withholding of treaty-stipulated payments if the tribe acts in hostility to the U.S.
- 25 USC 128, which mandates the withholding of goods or payments while an Indian tribe is at war with the U.S.
- 25 USC 129, which authorizes the Secretary of the Interior to withhold payments to tribes who hold non-Indians as captives.
- 25 USC 130, which authorizes the withholding of payments or goods while Indians are under the influence of or have access to alcohol.
- 25 USC 137, which authorizes the requirement that Indian males work before receiving their treaty payments.
- 25 USC 138, which mandates that no treaty payments be made if the chief violated any terms of the treaty.
- 25 USC 273, which authorizes the Secretary of the Army to assign an army officer with special duties related to Indian education.
- 25 USC 283, which authorizes the Secretary of the Interior to withhold rations or payments to any Indian family whose child failed to attend school in the preceding year.
- 25 USC 285, which authorizes the Secretary of the Interior to withhold payments owed to Osage children who failed to attend school in the preceding year.
- 25 USC 302, which authorizes the Secretary of the Interior to place Indian children in school without parental consent.

V. COST

H.R. 437 (Young)

A Congressional Budget Office (CBO) score for the legislation in the 117th Congress has not been completed.

H.R. 6063 (McCollum)

A CBO score for the legislation in the 117th Congress has not been completed.

Discussion Draft ANS to H.R. 1681 (Gallego)

A CBO score for the legislation in the 117th Congress has not been completed.

S. 314 (Merkley)

The CBO has estimated that S. 314 will have no effect on the federal budget.[45]

S. 559 (Merkley)

The CBO has estimated that S. 314 will have no effect on the federal budget.[46]

S. 789 (Rounds)

The CBO has estimated that S. 789 will have no effect on the federal budget.[47]

VI. ADMINISTRATION POSITION

H.R. 437 (Young)

Unknown, however DOI testified in support of a substantially similar bill in the U.S. Senate.[48]

H.R. 6063 (McCollum)

Unknown, however the Trump Administration's Department of Justice submitted a statement in opposition[49] and the DOI encouraged further investigation as the Tribe previously stipulated that their claims were confined to the state of Indiana.[50]

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[45] https://www.cbo.gov/system/files/2021-03/s314.pdf.
[46] https://www.cbo.gov/system/files/2021-03/s559.pdf.
[47] https://www.cbo.gov/system/files/2021-04/s789.pdf.
[48] https://www.doi.gov/ocl/s-2524.
[49] https://republicans-naturalresources.house.gov/uploadedfiles/u.s._department_of_justice_statement_for_the_record_on_hr396.pdf.
[50] https://republicans-naturalresources.house.gov/uploadedfiles/7.16.19_hnrc_lacounte_statement.pdf.

H.R. 6181 (Gallego)

Unknown.

S. 314 (Merkley)

Unknown. However, in the 115th Congress, DOI took no position on the legislation at a hearing in the U.S. senate.[51]

S. 559 (Merkley)

Uknown. However, in the 116th Congress, DOI noted that the Tribe had the opportunity to oppose the restriction on future land claims a chose not to and DOI did not support measures that would result in additional federal liability on extinguished claims.[52]

S. 789 (Rounds)

Unknown. However, DOI testified in support of this legislation in the 114th Congress.[53]

VII. EFFECT ON CURRENT LAW (RAMSEYER)

H.R. 437 (Young)

S. 314 (Merkley)

S. 559 (Merkley)

S. 789 (Rounds)

[51] https://www.congress.gov/115/chrg/CHRG-115shrg26823/CHRG-115shrg26823.pdf.
[52] https://www.congress.gov/116/chrg/CHRG-116shrg42357/CHRG-116shrg42357.pdf.
[53] https://www.indian.senate.gov/sites/default/files/upload/6.29.16%20Alletta%20Belin%20S.%202796.pdf.