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TO REPEAL THE KLAMATH TRIBE JUDGMENT FUND ACT

MARCH 13, 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. 46]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 46) 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. 46, 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. This legislation provides 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 Tribes.[2]

As required by the 1954 Act, six months after passage, the Tribes submitted to the Secretary of the Interior a final roll consisting of 2,133 members.[3] Klamath tribal members on the final roll were separated into two groups: those who would receive their share of the tribal estate in cash from a liquidation of tribal assets (i.e. the "withdrawing members"), and those who would hold an undivided interest in the tribal estate to be managed by a private trustee (i.e. the "remaining members").[4] 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 [either remaining or withdrawing members] from sharing in the proceeds of tribal claims against the United States."[5]

On August 13, 1946, Congress passed the *Indian Claims Commission Act*, creating a special forum in which Indian tribes could seek damages against the Federal government for, among other things, the cessation of land for inadequate compensation.[6] Prior to the passage of the 1954 Act, the Klamath Tribes filed a claim with the Commission, the basis of which was unconscionable consideration paid for lands ceded by the treaty of October 4, 1864.[7] Otherwise known as "Docket 100," this claim was settled on January 31, 1964 for $2.5 million.[8]

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 funds to both "withdrawing" and "remaining" members of the Klamath Tribes.[9] In so doing, Congress required the Secretary of the Interior to make per-capita distributions to all living individuals listed on the August 13, 1954 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.[10] Like Docket 100, monies

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[2] *An 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.).

[3] 22 Fed. Reg. 9303 (November 21, 1957).

[4] *The Long Struggle Home: The Klamath Tribes' Fight to Restore Their Land, People and Economic Self-Sufficiency*, Native American Rights Fund Legal Review, Vol. 27, No. 1 at 5 (2002).

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

[6] *An 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).

[7] The 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.

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

[9] *Id. supra*, note 1.

[10] *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).

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 expenses and estimated costs of distribution.[11] 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 Tribes.[12]

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*.[13] 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. Thus, any future successful monetary claims by the Tribes against the United States would be subject to the Act's distribution terms, which make compliance cumbersome and expensive. This bill repeals the *Klamath Tribe Judgment Fund Act* in order to avoid unnecessary bureaucracy, ensure that tribal funds are distributed in accordance with traditional notions of tribal sovereignty, and for the Tribes to benefit from and use the funds on their own terms.

LEGISLATIVE HISTORY

In the 115th Congress, on May 24, 2017, Senator Merkley introduced S. 1223, the *Klamath Tribe Judgment Fund Repeal Act*, and the bill was referred to the Committee on Indian Affairs of the Senate. Senator Wyden was an original co-sponsor. No companion bill was introduced in the House of Representatives in the 115th Congress.

The Committee held a legislative hearing on S. 1223 on July 12, 2017. In testimony before the Committee, Mr. Tony Dearman, Director of the Bureau of Indian Education, on behalf of the Department of the Interior, stated that the Department could not take a position on S. 1223. He further stated that the Department needed to better understand the manner in which a blanket repeal of the *Klamath Tribe Judgment Fund Act* would affect its trust responsibility to the Tribe.[14] The Committee also received testimony from a Senior Attorney from the Native American Rights Fund, Mr.

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[11] *Id. supra* note 1.

[12] *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.).

[13] The Klamath Indian Tribe Restoration Act, Pub. L. No. 99–398, 100 Stat. 849 (1986).

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

Donald R. Wharton, on behalf of the Klamath Tribe, noting the Klamath Tribe's full support of S. 1223.[15]

COMMITTEE CONSIDERATION

In the 115th Congress, the Committee considered S. 1223 at a duly called business meeting on October 25, 2017. Senator Udall, on behalf of Senator Merkley, filed one amendment to the bill. The amendment, timely filed and duly considered by the Committee, would add a third section to the bill to clarify 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 of S. 1223. The text of the amendment was based on the Department of the Interior's technical drafting assistance. Following the business meeting, the Department of the Interior informed the Committee of its support for S. 1223, as amended.

In the 116th Congress, on January 8, 2019, Senator Merkley reintroduced the *Klamath Tribe Judgment Fund Act*. Senator Wyden is an original cosponsor. The bill, S. 46, is identical to the version favorably reported by the Committee, as amended, in the 115th Congress. On January 29, 2019, at a duly called business meeting, the Committee considered and reported S. 46 favorably, without amendment.

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, to disburse all remaining funds in trust accounts for legal fees and administrative expenses, as well as funds in per-capita trust accounts, to the Klamath Tribes.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated February 8, 2019, was prepared for S. 46:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 8, 2019.

Hon. JOHN HOEVEN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC 20510.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 46, the Klamath Tribe Judgement Fund Repeal Act.

[15] *Id.* (statement of Mr. Donald R. Wharton, Senior Attorney, Native American Rights Fund).

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. 46 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 $600,000 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. 46 will be enacted early in calendar year 2019, CBO estimates that the $600,000 in the fund would be disbursed directly to the government of the Klamath Tribe during fiscal year 2019.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for 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. 46 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. 46.

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.

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