

TO REAFFIRM THAT CERTAIN LAND HAS BEEN TAKEN
INTO TRUST FOR THE BENEFIT OF THE SAMISH IN-
DIAN NATION, AND FOR OTHER PURPOSES

DECEMBER 7, 2022.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6181]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6181) to reaffirm that certain land has been taken into trust for the benefit of the Samish Indian Nation, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following new text:

SEC. 1. REAFFIRMATION OF LAW.

The applicability of the Act of June 18, 1934 (25 U.S.C. 5101 et seq.; 48 Stat. 984, chapter 576) (commonly known as the “Indian Reorganization Act”) is reaffirmed for the Samish Indian Nation.

SEC. 2. NO IMPACT ON TREATY RIGHTS.

Nothing in this Act shall be interpreted as affecting treaty rights under the Treaty of Point Elliott.

Amend the title so as to read: A bill to reaffirm the applicability of the Act of June 18, 1934, to the Samish Indian Nation, and for other purposes.

PURPOSE OF THE BILL

The purpose of H.R. 6181 is to reaffirm the applicability of the Act of June 18, 1934, to the Samish Indian Nation.

BACKGROUND AND NEED FOR LEGISLATION

The Samish Indian Nation, now located in Washington, was forced from its ancestral homelands to reservations designated in the Treaty of Point Elliott signed in 1855. In addition to losing its original land base, the Nation also lost its federal recognition status in 1969, when the Bureau of Indian Affairs (BIA) made a clerical error and started treating the Nation as unrecognized—even though no formal determination had been made.

After lengthy litigation, the Nation regained its federal recognition status in 1996 and began restoring its land base through the federal fee to trust process administered by the Department of the Interior. However, the ability for the Nation to acquire further lands was hampered by the U.S. Supreme Court's 2009 *Carcieri v. Salazar* decision,¹ which held that the Secretary's authority to place land into trust under the Indian Reorganization Act applies only to tribal nations that were under federal jurisdiction in 1934.

In November 2018, the Department of the Interior approved the Nation's application to take 6.70 acres of undeveloped land at Campbell Lake South in Skagit County. This decision was the result of the BIA's nine-year review of the Nation's application and a corresponding *Carcieri* analysis. Soon after, however, the BIA determination became subject to litigation under claims that it conflicted with the *Carcieri* ruling.

In order to finalize this transfer of land and to prevent similar issues in the Nation's future fee to trust applications with the Department, H.R. 6181 would reaffirm the applicability of the Indian Reorganization Act to the Nation at large.

COMMITTEE ACTION

H.R. 6181 was introduced on December 8, 2021, by Representative Ruben Gallego (D-AZ). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On April 27, 2022, the Subcommittee held a hearing on the bill. On June 15, 2022, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Rep. Gallego offered an amendment in the nature of a substitute. The amendment in the nature of a substitute was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 24 yeas and 18 nays, as follows:

¹ 555 U.S. 379.

Date: June 15, 2022

**COMMITTEE ON NATURAL RESOURCES
117TH CONGRESS — ROLL CALL**

Bill / Motion: H.R. 6181

Amendment:

Disposition: Final Passage: H.R. 6181, as amended, was ordered favorably reported to the House of Representatives by a roll call vote 24 yeas and 18 nays.

	DEM. MEMBERS (26)	YEAS	NAYS	PRESENT
1	Ms. Brownley, CA	X		
2	Mr. Case, HI	X		
3	Mr. Cohen, TN	X		
4	Mr. Costa, CA	X		
5	Ms. DeGette, CO	X		
6	Mrs. Dingell, MI	X		
7	Mr. Gallego, AZ	X		
8	Mr. Garcia, IL	X		
9	Mr. Grijalva, AZ (Chair)	X		
10	Mr. Huffman, CA	X		
11	Ms. Leger Fernández, NM	X		
12	Mr. Levin, CA	X		
13	Mr. Lowenthal, CA			
14	Ms. McCollum, MN	X		
15	Mr. McEachin, VA	X		
16	Mrs. Napolitano, CA	X		
17	Mr. Neguse, CO	X		
18	Ms. Porter, CA	X		
19	Mr. Sablan, MP	X		
20	Mr. San Nicolas, GU	X		
21	Mr. Soto, FL	X		
22	Ms. Stansbury, NM	X		
23	Ms. Tlaib, MI	X		
24	Mr. Tonko, NY	X		
25	Ms. Trahan, MA	X		
26	Ms. Velázquez, NY			
	REP. MEMBERS (20)	Y	N	P
1	Mr. Bentz, OR		X	
2	Mrs. Boebert, CO		X	
3	Mr. Carl, AL		X	
4	Mr. Fulcher, ID		X	
5	Mr. Gohmert, TX		X	
6	Miss González-Colón, PR		X	
7	Mr. Graves, LA		X	
8	Ms. Herrell, NM			
9	Mr. Hice, GA		X	
10	Mr. Lamborn, CO		X	
11	Mr. McClintock, CA		X	
12	Mr. Moore, UT		X	
13	Mr. Oberholte, CA		X	
14	Mrs. Radewagen, AS		X	
15	Mr. Rosendale, MT			
16	Mr. Stauber, MN		X	
17	Mr. Tiffany, WI		X	
18	Mr. Webster, FL		X	
19	Mr. Westerman, AR (RM)		X	
20	Mr. Wittman, VA		X	
	TOTALS	24	18	
	<small>Total: 46 / Quorum: 15 / Report: 24</small>	YEAS	NAYS	PRESENT

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee for Indigenous Peoples of the United States held on April 27, 2022.

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, as well as clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 9, 2022.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6181, a bill to reaffirm that certain land has been taken into trust for the benefit of the Samish Indian Nation, and for other purposes.

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.

H.R. 6181, A bill to reaffirm that certain land has been taken into trust for the benefit of the Samish Indian Nation, and for other purposes			
As ordered reported by the House Committee on Natural Resources on June 15, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
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	*	not estimated
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 2033?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 6181 would affirm the status of approximately seven acres of land in the State of Washington that the Samish Indian Nation sought to place into trust with the Department of the Interior (DOI) in 2018; that transfer has not been finalized because of an administrative appeal filed by the Swinomish Tribe. Using information provided by the Bureau of Indian Affairs, CBO estimates that the administrative costs to implement H.R. 6181 would not be significant; any spending would be subject to the availability of appropriated funds.

The bill would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), by prohibiting state and local governments from taxing land taken into trust for the Samish Indian Nation. Information reported to DOI about taxes associated with the land indicates that those foregone revenues would total less than \$1,000 annually, which is far below the annual threshold established in UMRA (\$92 million in 2022, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Jon Sperl (for federal costs) and Rachel Austin (for mandates). 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 reaffirm the applicability of the Act of June 18, 1934, to the Samish Indian Nation.

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

According to CBO, the bill would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) “far below the annual threshold established in UMRA.” CBO’s full analysis is reproduced above.

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.

DISSENTING VIEWS

I strongly oppose H.R. 6181, the Samish Indian Nation Land Reaffirmation Act, as ordered reported by the Committee on Natural Resources.

H.R. 6181 is a trojan horse which proposes to overturn more than 40 years of federal court decisions. In 1979, Judge George Boldt determined that the Samish Indian Nation is not a successor to any tribe or band that participated in the 1855 Treaty of Point Elliott. The Samish Indian Nation has sought to overturn that decision ever since but have been rejected repeatedly by the courts. Judge Boldt's determination itself was affirmed by the Ninth Circuit Court of Appeals and the United States Supreme Court denied review. Despite this, the Samish Indian Nation again claimed successorship in litigation seeking federal recognition as an Indian tribe.

The federal district court repeatedly rejected its successorship claim because it had already been decided against the Samish Indian Nation. The Samish Indian Nation did not appeal those rulings. The court did, however, permit the Samish Indian Nation to pursue federal recognition independent of any claim to treaty successorship. The Samish Indian Nation successfully excluded other tribes from participating in its recognition proceedings on the grounds that its federal recognition would have no effect on treaty rights. Immediately after obtaining federal recognition in 1996, the Samish Indian Nation again sought to re-open the successorship question that Judge Boldt had decided against it in order to claim treaty fishing rights. The attempt to re-open the successorship issue was ultimately rejected by an en banc panel of the Ninth Circuit.

The Samish Indian Nation also sought to re-open its successorship claim in a case before the U.S. Court of Federal Claims. The court rejected any treaty-based claims because the Samish Indian Nation is not a successor to any tribe or band that participated in the Treaty of Point Elliott. The Samish Indian Nation did not appeal that ruling.

In 2019, the Bureau of Indian Affairs (BIA) Northwest Regional Director determined that the Samish Indian Nation was eligible to have land taken into trust on its behalf as a successor to a treaty tribe. The decision is not a final decision for the Department of the Interior. The decision is currently being appealed by the Swinomish Indian Tribal Community before the Interior Board of Indian Appeals.

In 2021, through another process, the Samish Indian Nation again sought to re-open its successorship claim in a case involving hunting rights under the Treaty of Point Elliott. The Ninth Circuit again rejected the Samish Indian Nation's successorship claim and the United States Supreme Court again denied review.

H.R. 6181 would “reaffirm” that the Indian Reorganization Act applies to the Samish Indian Nation in another veiled attempt to re-open its successorship claim. If enacted, H.R. 6181 would likely terminate the Swinomish Tribe’s appeal of the 2019 BIA decision before the Interior Board of Indian Appeals (IBIA) and be invoked by the Samish Indian Nation to claim that Congress had “re-affirmed” its status as a successor to a treaty tribe—despite the courts’ repeated rejection of that very claim. The savings clause in H.R. 6181 also does not necessarily prevent this because it does not specifically address the Samish Indian Nation’s successorship claim. H.R. 6181 is also not necessary to permit the Samish Indian Nation to have lands taken into trust on its behalf.

The obstacle presented by the *Carcieri* decision can easily be removed by legislation confirming that the Indian Reorganization Act applies to the Samish Indian Nation notwithstanding the “under federal jurisdiction” requirement in Section 19 of the Act. This is the approach taken in H.R. 4352, “To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes.” This was proposed by tribes from the State of Washington to address concerns with H.R. 6181, as reported. This proposal was not agreed to by the Samish Indian Nation. One interpretation of this objection lends evidence to the argument that something more than a tribe specific *Carcieri* fix is sought, such as “reaffirmation” of the Samish Indian Nation’s treaty successorship claim, through enactment of H.R. 6181.

The only issue before us is whether the Samish Indian Nation was under federal jurisdiction in 1934, as required by the *Carcieri* decision. Until the Regional Director’s 2019 non-final decision, there had been no determination of that question and there is nothing to reaffirm on that point. The question of whether the Samish Indian Nation was under federal jurisdiction in 1934 is a complex legal and factual question. If the Samish Indian Nation wants a conclusive decision on this question it should allow the appeals process to proceed through the IBIA and the courts, which are the appropriate bodies to resolve such questions, not Congress. If the Samish Indian Nation’s intent is to bypass the *Carcieri* decision so that lands can be taken into trust on its behalf now, it can opt for a clean *Carcieri* fix that does not attempt to affirm a disputed, non-final under-federal-jurisdiction determination that rests on a repeatedly rejected successorship claim.

For these reasons, I oppose H.R. 6181 as reported by the Committee on Natural Resources.

BRUCE WESTERMAN.

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