

WOUNDED KNEE MASSACRE MEMORIAL AND
SACRED SITE ACT

SEPTEMBER 14, 2023.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3371]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3371) to direct the Secretary of the Interior to complete all actions necessary for certain land to be held in restricted fee status by the Oglala Sioux Tribe and Cheyenne River Sioux Tribe, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 3371 is to direct the Secretary of the Interior to complete all action necessary for certain land to be held in restricted fee status by the Oglala Sioux Tribe and Cheyenne River Sioux Tribe, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3371 would place approximately 40 acres of fee land located within the Pine Ridge Indian Reservation, into restricted fee status for the Oglala Sioux tribe and Cheyenne River Sioux tribe. Restricted fee land contains the same restrictions against alienation and taxation as land held in trust, but title is not held by the federal government. The land to be placed into restricted fee status is to be held as a Lakota sacred site and memorial. The memorial honors the more than 350 Indian men, women and children killed in the Wounded Knee Massacre in 1890, which occurred on and

near the land that would be placed into restricted fee status by the legislation.

Both the Oglala Sioux tribe and the Cheyenne River Sioux tribe are constituent tribes of the Great Sioux Nation, which the tribes refer to as “Oceti Sakowin,” meaning “Seven Council Fires” in the Lakota language. The Oceti Sakowin is composed of the Dakota (Santee), Lakota (Teton), and Nakota (Yankton). The names Dakota, Lakota, and Nakota mean “friends” or “relatives,” and together, the Dakota, Lakota, and Nakota are the “alliance of friends” or “alliance of relatives.”¹

The Great Sioux Nation and the United States signed the Treaty of Fort Laramie in 1868.² This treaty was ratified by the U.S. Senate and provided that a large land base, including western South Dakota was “set apart for the absolute and undisturbed use and occupation” of the Great Sioux Nation as a “permanent home.”³ In 1889, the Great Sioux Reservation was divided by the Act of March 2, 1889, into six separate reservations in North and South Dakota.⁴

The Pine Ridge Indian Reservation, established when the Great Sioux Reservation was divided in 1889, is home to the Oglala Sioux tribe, whose current tribal enrollment is approximately 46,855 members.⁵

The Cheyenne River Sioux tribe has approximately 26,404 tribal members.⁶ The Cheyenne River Indian Reservation was also established by the Act of March 2, 1889.

In 1889 and 1890, the Ghost Dance movement grew among the plains Indians.⁷ Many native people believed the Ghost Dance would return land back to the Indians, bringing about a renewal of Native society.⁸ Many danced for renewal and restoration of native people, land, and buffalo. The Ghost Dance was alarming to federal Indian agents, white settlers, and the United States Army, because the religious ceremony was misunderstood as threatening.⁹

On December 28, 1890, Chief Spotted Elk (Big Foot) and his Mnicoujou band were stopped by the U.S. Army’s Seventh Cavalry on their way to Pine Ridge.¹⁰ Major Samuel M. Whitside ordered Chief Spotted Elk and his people to camp near Wounded Knee Creek.¹¹ Chief Spotted Elk objected and told him that they were headed to Pine Ridge and would camp there.¹² Whitside refused and ordered them to camp at Wounded Knee overnight.¹³

¹ Frank Star Comes Out, Testimony Before the Committee on Natural Resources, Subcommittee on Indian and Insular Affairs, U.S. House of Representatives (Jun. 7, 2023).

² 15 Stat. 635.

³ Fort Laramie Treaty of 1868, 15 Stat. 635, arts. 2, 7.

⁴ Act of March 2, 1889, 25 Stat. 888.

⁵ Bureau of Indian Affairs, *Pine Ridge Agency*, <https://www.bia.gov/regional-offices/great-plains/south-dakota/pine-ridge-agency>.

⁶ Cheyenne River Sioux tribe Enrollment Office, *Enrollment Membership* (Aug. 16, 2023).

⁷ Veronica E. Velarde Tiller, *Tiller’s Guide to Indian Country*, 2nd ed. at 915.

⁸ Stephanie Hall, “James Mooney Recordings of American Indian Ghost Dance Songs, 1894,” Library of Congress, *Folklife Today* blog, Nov. 17, 2017. Available at: <https://blogs.loc.gov/folklife/2017/11/james-mooney-recordings-ghost-dance-songs/>.

⁹ See Louis S. Warren, “The Lakota Ghost Dance and the Massacre at Wounded Knee,” PBS, *American Experience*, Apr. 16, 2021. Available at: <https://www.pbs.org/wgbh/americanexperience/features/american-oz-lakota-ghost-dance-massacre-wounded-knee/>; Stephanie Hall, “James Mooney Recordings of American Indian Ghost Dance Songs, 1894,” Library of Congress, *Folklife Today* blog, Nov. 17, 2017. Available at: <https://blogs.loc.gov/folklife/2017/11/james-mooney-recordings-ghost-dance-songs/>.

¹⁰ Hall, *supra* note 8; Rex Alan Smith, *MOON OF THE POPPING TREES* Ch. 13 (1981).

¹¹ Smith, *supra* note 10.

¹² Smith, *supra* note 10.

¹³ Smith, *supra* note 10.

On the morning of December 29, 1890, under the direction of Colonel James W. Forsyth, the U.S. Army Seventh Cavalry soldiers disarmed the Lakota men and older boys, who were lined up in front of the armed soldiers.¹⁴ Black Coyote, a deaf man and the last to be disarmed, was seized by soldiers. A struggle ensued and a shot went off in the air.¹⁵ The U.S. Army Seventh Cavalry opened fire on Chief Spotted Elk's band and his members.¹⁶

General Nelson A. Miles, the commanding officer of the Military Division of the Missouri in the U.S. Army, later described the Wounded Knee massacre as “the most abominable, criminal military blunder and a horrible massacre of women and children.”¹⁷ Years later, General Miles told the Commissioner of Indian Affairs that the massacre was “most reprehensible,” “most unjustifiable,” and “worthy of the severest condemnation.”¹⁸

In Senate Concurrent Resolution 153 of the 101st Congress (Oct. 25, 1990), the United States Congress acknowledged the “tragedy” and “historical significance” of the Wounded Knee Massacre and expressed its “deep regret to the Sioux people and in particular to the descendants of the victims and survivors for this terrible tragedy.” Congress found that, on December 29, 1890, the United States Cavalry engaged in “armed conflict” against Sioux Indians gathered at Wounded Knee, “resulting in the tragic death and injury of approximately 350–375 Indian men, women, and children.”

In October 2022, the Oglala Sioux tribe and Cheyenne River Sioux tribe jointly purchased 40 acres of land where an old trading post was located. The 40 acres contains a portion of the area where the Wounded Knee Massacre took place. On October 21, 2022, both tribes signed a covenant, stating that this property shall be held and maintained as a memorial and sacred site without commercial development.¹⁹

H.R. 3371 would place these 40 acres into restricted fee status for both the Oglala Sioux tribe and the Cheyenne River Sioux tribe. The bill also confirms that the 40 acres will be subject to the civil and criminal jurisdiction of the Oglala Sioux tribe, and places restrictions on alienation and taxation of the land. In accordance with the tribe's mutual covenant prohibiting commercial development, gaming pursuant to the Indian Gaming Regulatory Act²⁰ will be prohibited.

COMMITTEE ACTION

H.R. 3371 was introduced on May 16, 2023, by Rep. Dusty Johnson (R–SD). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Insular Affairs. On June 7, 2023, the Subcommittee on Indian and Insular Affairs held a hearing on the bill. On June 13, 2023,

¹⁴Smith, *supra* note 10.

¹⁵Hall, *supra* note 8; Smith, *supra* note 10.

¹⁶Smith, *supra* note 10.

¹⁷General Miles Letter to Mary Miles, Jan. 15, 1891, *quoted in* Virginia Johnson, *THE UNREGIMENTED GENERAL: A BIOGRAPHY OF NELSON A. MILES* 294 (Boston, 1962).

¹⁸General Miles Letter to Commissioner of Indian Affairs, Mar. 13, 1917, *quoted in* Elain Goodale Eastman, *The Ghost Dance War and Wounded Knee Massacre of 1890–91*, *NEBRASKA HISTORY*, XXVI 39 (Jan.–Mar. 1945).

¹⁹“Covenant Between the Oglala Sioux tribe and the Cheyenne River Sioux tribe Concerning the Czywczynski Property at Wounded Knee” Oct. 21, 2022. Available at: https://republicans-naturalresources.house.gov/UploadedFiles/Covenant_Between_Oglala_and_Cheyenne_River_Sioux_Tribes.pdf.

²⁰25 U.S.C 2701 et seq.

the Committee on Natural Resources met to consider the bill. The Subcommittee on Indian and Insular Affairs was discharged from further consideration of H.R. 3371 by unanimous consent. The bill was then ordered favorably reported to the House of Representatives by unanimous consent.

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 on Indian and Insular Affairs held on June 7, 2023.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the bill as the “Wounded Knee Massacre Memorial and Sacred Site Act.”

Section 2. Definitions

Section 2 defines restricted fee status, provides the legal description for the land to be placed into restricted fee status; states both the Oglala Sioux tribe and Cheyenne River Sioux tribe are the tribes defined in statute.

Section 3. Land held in restricted fee status by the tribes

Section 3 requires that within one year, the Secretary of the Interior shall take all actions necessary to place the approximately 40 acres of land in restricted fee status so both the Oglala Sioux tribe and Cheyenne River Sioux tribe retain title to the land; subjects the land to tribal and federal laws relating to Indian land, including the 1868 Treaty, and recognizes that the covenant between the tribes preserving the land as a sacred site and memorial applies to the land; allows for existing encumbrances to continue; and in accordance with the covenant, prevents commercial development, including gaming, on the land.

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, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

| H.R. 3371, Wounded Knee Massacre Memorial and Sacred Site Act | | | |
|--|---|--|-------------------------|
| As ordered reported by the House Committee on Natural Resources on June 13, 2023 | | | |
| By Fiscal Year, Millions of Dollars | 2023 | 2023-2028 | 2023-2033 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | * | * | not estimated |
| Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034? | No | Statutory pay-as-you-go procedures apply? No | |
| | Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034? | No | Mandate Effects |
| Contains intergovernmental mandate? | | | Yes, Under Threshold |
| | | Contains private-sector mandate? | No |

* = between zero and \$500,000.

H.R. 3371 would direct the Department of the Interior (DOI) to place approximately 40 acres of land owned by the Oglala Sioux and Cheyenne River Sioux Tribes in restricted fee status. The two Tribes would retain ownership of the land, and the land could not be transferred without the consent of the Congress and the tribes. H.R. 3371 would limit the use of the land to a memorial and sacred site and prohibit commercial development and gaming activity as outlined in a covenant signed in October 2022. The bill also would require DOI to make any necessary corrections to the survey and legal description of the land. Using information from the department, CBO estimates that the administrative costs to implement H.R. 3371 would not be significant.

H.R. 3371 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). The bill would prohibit state and local governments from taxing land placed into restricted fee status for the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe. Reported information on the market value of the land indicates that those forgone revenues would be well below the annual intergovernmental threshold established in UMRA (\$99 million in 2023, adjusted annually for inflation).

The bill contains no private-sector mandates.

The CBO staff contact for this estimate is Julia Aman (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to direct the Secretary of the Interior to complete all action necessary for certain land to be held in restricted fee status by the Oglala Sioux Tribe and Cheyenne River Sioux Tribe, and for other purposes.

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 the Congressional Budget Office, H.R. 3371 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act. The bill would prohibit state and local governments from taxing land placed into restricted fee status for the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe. According to CBO, reported information on the market value of the land indicates that those forgone revenues would be well below the annual intergovernmental threshold established in the Unfunded Mandates Reform Act, which is \$99 million in 2023, adjusted annually for inflation. According to CBO, the bill contains no private-sector mandates.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

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

As ordered reported by the Committee on Natural Resources, H.R. 3371 would make no changes in existing law.