

**WRITTEN TESTIMONY
OF
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CONFEDERATED TRIBES OF WARM SPRINGS
BEFORE THE
NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON INDIGENOUS PEOPLE OF THE UNITED STATES
UNITED STATES HOUSE OF REPRESENTATIVES
REGARDING H.R.1803
WEDNESDAY, JUNE 5, 2019**

Mr. Chairman and members of the Subcommittee, thank you for holding today's hearing and inviting me to testify on H.R.1803, which would nullify a fraudulent 1865 treaty with the Warm Springs Tribes. I want to thank Congressman Greg Walden for introducing this legislation in the House and the entire Oregon delegation for co-sponsoring it. I am personally honored to be here asking you to correct a historic wrong perpetrated against the Warm Springs people.

Historical Background

On June 25, 1855 a treaty was negotiated and signed between my tribe's Warm Springs and Wasco ancestors and the federal government, who sought to clear the land of Indians for settlement. Under the treaty, the Warm Springs and Wasco tribes relinquished approximately ten million acres of land, but reserved the Warm Springs Reservation for their exclusive use. Our land cession was one-sixth the current size of the State of Oregon. In the treaty the tribes retained their rights to harvest fish, game and other foods off the reservation in their usual and accustomed places.

The 1855 treaty was ratified by the U.S. Senate on March 8, 1859 – just three weeks after Oregon entered the Union. Since that time the 1855 treaty has served as the primary agreement between the Warm Springs Tribes and the U.S. government.

After the treaty signing, the tribes maintained their accustomed practice of traveling regularly to the Columbia River to harvest salmon. The continued presence of Indian people fishing along the Columbia at their usual and accustomed fishing sites, however, irritated the non-Indian settlers and prompted the then-Superintendent of Indian Affairs for Oregon, J.W. Perit Huntington, to pursue efforts to keep the Tribes away from the settlers.

To that end, Superintendent Huntington drew up a supplemental treaty and, on November 15, 1865, convinced the tribes of the Warm Springs Reservation to sign it. This treaty, called the Treaty with the Middle Oregon Tribes of November 15, 1865, was ratified by the U.S. Senate on March 2, 1867. According to its terms, the treaty prohibits the Indians from leaving the Warm Springs Reservation without the written permission of the Government and relinquishes all of the off-reservation rights so carefully negotiated by the tribes as part of the 1855 treaty.

Yet, the historical record demonstrates that the Indians of the Warm Springs Reservation neither complied with the 1865 treaty nor understood its provisions. In fact, U.S. Department of Justice affidavits taken from Warm Springs Indians present at both the 1855 and 1865 treaty signings show they understood the later treaty simply to provide a pass system for Indians leaving the reservation to exercise their off-reservation rights. They thought this merely distinguished them from hostile Indians that were raiding the area at the time.

Almost immediately following the signing of the 1865 treaty, the Indians from the Warm Springs Reservation continued to travel to the Columbia River to fish from their historic fishing sites. Warm Springs Agency agent John Smith wrote in his June 26, 1867, report to Superintendent Huntington that “as early as the 16th of May, 1866, the Indians began to visit the salmon fisheries in large numbers.” Reports by Agent Smith in subsequent years further document continued fishing on a substantial scale, and in a July 1, 1869, letter from Agent Smith to Superintendent A.B. Meacham—who replaced Huntington on May 15, 1869—Smith noted “the Indians said they did not understand the terms of the [1865] treaty”, that “they claim that it was not properly interpreted to them”, and that “they were led to believe the right of taking fish, hunting game, etc., would still be given them because salmon was such an essential part of their subsistence.” That same year, in a September 18, 1869 report regarding the Warm Springs Reservation to Superintendent Meacham, U.S. Army Captain W.M. Mitchell wrote:

“I also have to report, for the consideration of the proper authorities, that the Indians unanimously disclaim any knowledge whatever of having sold their right to the fishery at The Dalles of the Columbia, as stated in the amended treaty of 1865, and express a desire to have a small delegation of their head men visit their Great White Father in Washington, and to him present their cause of complaint.”

Official U.S. Government reports in subsequent years continue to note the Warm Springs Reservation Indian’s strong objection to the 1865 treaty, their continued and uninterrupted reliance on their fisheries on the Columbia River, and the fraudulent nature of the 1865 treaty signing. In the annual report, dated August 15, 1884, Warm Springs Agent Alonzo Gesner finds:

“on record what purports to be a supplementary treaty...which is beyond a doubt a forgery on the part of the Government in so far as it relates to the Indians ever relinquishing their right to the fisheries on the Columbia River; and as a matter of justice to the Indians, as well as to the Government, the matter should be made right and satisfactory to the Indians as soon as possible. ...All the Indians say emphatically that when the treaty was read to them no mention was made of their giving up the right to fish. All that was said was that they were to agree not to leave the reservation without getting passes...The fact is they were willfully and wickedly deceived.”

In 1886, Warm Springs Agent Jason Wheeler reported to the Commissioner of the Indian Affairs in Washington, DC, regarding the 1865 treaty that “if ever a fraud was villainously perpetrated on any set of people, red or white, this was, in my opinion, certainly one of the most glaring.” In 1887, Commissioner of Indian Affairs J.D.C. Atkins, in his annual report to the Secretary of the Interior, cited a recent War Department report by Gen. John Gibbons that:

“called attention to the oft-repeated, and I may say very generally credited, story of fraud in the treaty of 1865, whereby the Warm Springs Indians were, it is claimed, cheated out of their fishery by the Huntington treaty...Salmon, is material and of grave importance to them. It is their principal source of subsistence, and they never intended to part with it, but were cheated and swindled out of it by a cunning and unprincipled U.S. official. I would recommend your early attention to the matter upon the convening of Congress.”

These are the words of representatives of the American Government assessing this kind of a fraud perpetrated upon the Warm Spring Indians in the 1870's and 1880's. Yet as I testify here today, the 1865 treaty remains on the books. My tribe has never recognized it and the federal government has never sought to enforce it.

Executive Branch support for original 1855 treaty rights

The federal government has vigorously pursued federal court litigation affirming and enforcing the Tribe's original 1855 off-reservation treaty rights. In *United States v. Oregon*, for example, the U.S. Department of Justice prevailed in restraining agents of the State of Oregon from restricting Warm Spring's off-reservation fishing rights.

In a May 17, 1989 letter to then Oregon Congressman, Bob Smith, the Acting Deputy Assistant Secretary of Interior for Indian Affairs wrote that “In the view of the federal court decisions confirming the validity of the Warm Springs Tribe's 1855 Treaty rights, the 1865 agreement must be regarded as an historic anomaly which has no practical or legal effects on the nature and extent of the Tribe's 1855 treaty.”

In addition, a November 25, 1997, letter from the U.S. Forest Service Regional Director to the Warm Springs Tribal Council, affirmed that the agency it would deal with the Tribe only on the basis of the 1855 Treaty's off-reservation rights and not the 1865 treaty. The Forest Service letter enclosed an analysis it had performed, stating in part: “As a matter of policy, the Forest Service recognizes only the Treaty With The Tribes Of Middle Oregon, 1855.”

No Federal Government agency has ever asserted that the 1865 treaty was enforceable or had any legal effect.

State of Oregon rejection of 1865 treaty

The State of Oregon, like the Federal Government, has never attempted to enforce the 1865 agreement despite the State's adverse position to the Tribe in off-reservation treaty fishing rights litigation. See, *United States v. Oregon, supra*. . In 2019, Oregon's Governor issued a policy statement disavowing the 1865 agreement and affirming the 1855 Treaty's off-reservation rights, stating “it is the policy of the Office of the Governor of the State of Oregon that the fraudulent Huntington Treaty of 1865 is to be regarded as a nullity with no effect whatsoever.”

Oregon's Attorney General has also issued a formal legal opinion¹ concluding that the 1865 treaty is unenforceable as a matter of law.

Effect of Nullification of the 1865 Treaty

Because the 1865 treaty has never been enforced, its nullification would have no impact on the State of Oregon's rights or that of its citizens. Instead, the legislation before you would at long last correct a historic travesty. It would allow the Warm Springs Tribes to continue to exercise their 1855 off-reservation fishing, hunting, gathering and grazing rights without future fear of litigation or extortion.

As the late Senator Mark Hatfield said on the Senate floor in 1996, this legislation will "help the honor of the United States and dignity of a long-wronged people."

Thank you for allowing me to testify before the Subcommittee today and for your support of this historic legislation.

¹ February 20, 2019 Oregon Attorney General Opinion No. 8295