

Briefing Statement

Bureau: National Park Service
Issue: Applicability of Indian Treaty Hunting Rights
Park Site: Yellowstone National Park
Date: February 19, 2020

Key Points:

- In 2014, Wyoming charged Clayvin Herrera of the Crow Tribe with off-season hunting in Bighorn National Forest, which he claimed was a protected right under an 1868 treaty between the tribe and the U.S. government.
- The Supreme Court (*Herrera v. Wyoming*) decided on May 20, 2019, that the Crow Tribe's hunting rights under the 1868 treaty did not expire upon Wyoming's statehood in 1890. In addition, the Bighorn National Forest did not become "occupied" and entirely unavailable for treaty hunting when Congress created the national forest.
- This decision led to questions about Indian treaty hunting rights in Yellowstone National Park because the western portion of the 1868 Crow Reservation overlapped with the area set aside as the park on March 1, 1872. This overlap remained until the tribe agreed to sell that portion of the reservation to the federal government on June 12, 1880. Congress ratified this agreement in 1882, thereby removing all reservation lands from the park.
- On May 7, 1894, Congress enacted the Yellowstone National Park Protection Act to prohibit all hunting at any time of any bird or animal within the existing or future boundaries of the park.

Background:

- The 2019 Supreme Court decision indicated *Minnesota v. Mille Lacs Band of Chippewa Indians* (526 U. S. 172) established that the crucial inquiry for treaty termination is whether Congress has "clearly express[ed]" an intent to abrogate an Indian treaty right or whether a termination point identified in the treaty itself has been satisfied.
- In 1872, Congress clearly restricted the use of lands set aside for Yellowstone National Park as a public park for the benefit and enjoyment of people (16 USC 21 *et seq.*):
 - "That the tract of land in the Territories of Montana and Wyoming, ..., is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people; ..."
 - "That said public park shall be under the exclusive control of the Secretary of the Interior, ..."
- The 1894 Yellowstone National Park Protection Act (16 USC 26) indicated:
 - "That the Yellowstone National Park, as its boundaries are now defined, or as they may be hereafter defined or extended, shall be under the sole and exclusive jurisdiction of the United States;"
 - "That all hunting, or the killing, wounding, or capturing at any time of any bird or wild animal, except dangerous animals, when it is necessary to prevent them from destroying human life or inflicting and injury, is prohibited within the limits of said park; ..."

Current Status:

- The District Court in Seattle Washington ruled in 1984 (*United States v. Hicks*; 587 F.Supp. 1162) that the specific use of lands for Olympic National Park was inconsistent with hunting and, as a result, such lands were no longer considered open and unclaimed lands available for treaty hunting.
- In 1894, Congress clearly expressed its' intent to prohibit all hunting within the boundaries of Yellowstone National Park, "as they may be hereafter defined or extended." The District Court in Seattle Washington ruled in 1984 that similar language for Olympic National Park terminated any treaty hunting rights by tribes therein.
- Though Congress prohibited hunting in Yellowstone National Park in 1894, the recent Supreme Court decision raises complicated legal questions regarding Indian treaty rights and whether there is a just and valid claim. However, the Superintendent cannot open the park to hunting until Congress or the courts determine otherwise.
- The Superintendent may want to consider requesting an opinion from the Department of the Interior, Office of the Solicitor, to obtain legal advice regarding the following questions:

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