

## WESTERN OREGON TRIBAL FAIRNESS ACT

SEPTEMBER 8, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

### R E P O R T

[To accompany H.R. 2791]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2791) to require that certain Federal lands be held in trust by the United States for the benefit of certain Indian tribes in Oregon, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of H.R. 2791 is to require certain Federal lands be held in trust by the United States for the benefit of certain Indian tribes in Oregon.

#### BACKGROUND AND NEED FOR LEGISLATION

##### *Title I. Cow Creek Umpqua Land Conveyance*

The Cow Creek Umpqua Tribe and its reservation are located in Canyonville, Oregon, along Interstate 5. The Tribe was the second in the state to sign a treaty with the United States in 1853, a treaty ratified by the U.S. Senate in 1854. According to the Tribe, its ancestral lands included territory between the Cascade Mountains and the Coast Ranges in southwestern Oregon along the South Umpqua River and its primary feeder stream, Cow Creek.

The 1854 treaty with the Cow Creek outlined that the Tribe would cede 800 square miles of reservation land in exchange for \$12,000 for goods and services spanning several years; however, the stipulations of the treaty were never realized. In 1953 the United States formally terminated the Tribe through the Western

Oregon Indian Termination Act of 1954 (Public Law 588, Chapter 733, 68 Stat.724). This Act also terminated several other tribes in Oregon.

In the decades following the termination era, the Tribe continued to stay in its homelands. In 1982, federal recognition of the Tribe was restored by Congress by Public Law 97-391. By 1984 it had successfully negotiated a \$1.5 million settlement in the U.S. Court of Claims for tribal land lost in the treaty. The Tribe invested the settlement amount to establish an endowment fund and has only drawn interest annually from the endowment to provide education, housing, and economic development. Today the Tribe has approximately 4,471 acres of land held in trust. The Tribe has used this land to operate the tribal government and tribally-owned businesses, which include Umpqua Indian Foods, the Seven Feathers Casino and Resort, the Umpqua Business Center, and the K Bar Ranch. These enterprises are operated by an IRS Section 17 tribal charter corporation, the Umpqua Indian Development Corporation.

H.R. 2791 would place title to approximately 17,519 acres of public land in Oregon in trust for the benefit of the Cow Creek Umpqua tribe. Lands to be held in trust under this section are depicted on a specific map, and the conveyance of the land in trust shall be subject to valid existing rights. A substantial amount of the public land placed in trust for the tribe is currently part of the Oregon & California (O&C) railroad land grant, managed by the Bureau of Land Management. Under Title I, the Secretary of the Interior is required to reclassify as O&C land an equal acreage of public domain land located in the vicinity of the land given to the Tribe.

Land placed in trust for the Tribe may not be used for gambling under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 et seq.), and timber harvested from such land shall be subject to federal law restricting the export of unprocessed logs.

### *Title II. Coquille Forest Fairness*

The Coquille Indian Tribe is located in Coos Bay/North Bend, Oregon, on the along the southern coast.

After negotiating but failing to ratify a treaty with the Coquilles in the 1850s, the United States sought to forcibly relocate the Coquille people to the Coast (Siletz) reservation. A number of families, however, resisted relocation and stayed on their aboriginal lands. Others made escapes from their confinement on the Coast Reservation to return to their ancestral homelands. The homelands they returned to were in the process of irrevocable alteration.

Federal policies targeting the Coquille and other Oregon tribes continued to have negative impact on the Coquille people and culture. In 1954 as part of the a federal policy to terminate federal relations with a number of tribes, the United States terminated the federal recognition of the Coquille Indian Tribe through the Western Oregon Indian Termination Act of 1954.

In 1989, the Coquille Restoration Act (25 U.S.C. 715 et seq.) restored federal recognition of the Coquille Tribe and directed the Secretary of the Interior to develop a plan for the Tribe's self-sufficiency. The Secretary later adopted a plan that has as its self-described "cornerstone" the restoration of 59,000 acres of the Tribe's ancestral lands (25 U.S.C. 715b). For a multitude of reasons, the Secretary ultimately transferred only one tenth of the amount re-

quired by the Self-Sufficiency Plan (5,410 acres). These lands are referred to as the “Coquille Forest”.

The Coquille Restoration Act additionally provides that the Secretary of Interior, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest under applicable State and Federal forestry and environmental protection laws, subject to critical habitat designations under the Endangered Species Act and subject to the “standards and guidelines” of Federal forest plans on adjacent or nearby Federal lands.

Coquille tribal forestlands generate timber revenues that are an essential component of the Tribe’s and Congress’s goals of Coquille tribal self governance. Reasonably consistent and predictable timber revenues are critical for the successful planning and management of Tribal programs, as well as providing employment for Tribal members and members of the local community, in both direct and indirect ways.

Unlike other tribal trust forestlands in the United States, the Coquille tribal forestlands are statutorily required, pursuant to the Coquille Forest Act (25 U.S.C. 715c) to meet additional burdens of complying with the standards and guidelines of adjacent Federal lands. Essentially, adjacent federal land managers write most of the management prescriptions for the Coquille Forest.

This statutory requirement negatively impacts the Tribe by reducing the land available for timber harvest from 5,140 acres to 3,401 acres. In addition, the linkage to other Federal forestlands has invited repeated appeals and litigation against the Department of the Interior in attempts to block or severely restrict timber management on tribal forestlands. The delays and costs of these efforts directly impact the Tribe.

The problem is further compounded by the current revision of the management plan for Federal lands adjacent to the Coquille forest. If the Bureau of Land Management changes the management scheme for those adjacent lands, it could result in greater management restrictions on Coquille Forest lands.

Timber on tribal lands is generally subject to laws and regulations implemented by the Department of the Interior, including the National Indian Forest Resources Management Act (25 U.S.C. 3101 et seq.). Title II of H.R. 2791 would require Interior to manage the Coquille Forest in accordance with laws pertaining to the management of Indian trust land.

Without H.R. 2791, the Tribe must continue to manage its timber on an uneven playing field relative to other tribes, and the Tribe could expect reduced timber harvest from an already depressed level.

### *Title III. Oregon Coastal Lands*

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians are the aboriginal inhabitants of the central and south-central coast of Oregon. After initial contact with fur traders in the early 1800s, these tribes along the Oregon coast negotiated a treaty with the United States in 1855; however, the treaty was never ratified nor the terms fully realized. For the next 50 years many tribes in Oregon endured an uphill struggle.

In 1940, six acres were bestowed to the Tribes by a non-Indian; later these lands were placed into trust by the Department of the

Interior. These six acres, which constituted the Tribes' reservation, are located approximately 100 miles southwest of Eugene, Oregon.<sup>1</sup>

In 1954 the Tribes, along with several other tribes in Oregon, were terminated pursuant to Public Law 588, effective August 1956. However, in 1984 the Tribes' federal recognition was restored by Public Law 98-481. Under that Act, approximately 1.02 acres in Coos County, Oregon, and several other counties, were placed into trust for the establishment as a reservation for the Tribes. In 1998, Congress placed an additional tract of land into trust for the Tribes under Public Law 105-256.

Today, the Tribes have 153 acres held in trust by the United States. Over the years the Tribes have acquired land through donations and purchases, including 98 acres of restored land along Highway 126 in Florence, Oregon, where the Three Rivers casino is located.<sup>2</sup> H.R. 2791 would provide that seven tracts of land currently managed by the Bureau of Land Management, totaling 14,804 acres, be held in trust on behalf of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians.

The parcels transferred pursuant to H.R. 2791 are located in western Oregon's Coos, Douglas, Benton, and Lane Counties, and include tracts such as the Coos Head, Talbot Allotment, and Umpqua Eden parcels, which are of particular cultural significance to the Tribes, as well as areas such as the Lower Smith River and Tioga tracts managed for timber production.

H.R. 2791 combines the text of three other bills introduced in the 114th Congress, H.R. 1436, H.R. 1437 and H.R. 1438. In the 113th Congress, nearly identical portions of H.R. 2791 also passed the House of Representatives as part of H.R. 1526, Restoring Healthy Forests for Healthy Communities Act, as well as in H.R. 5701.

#### COMMITTEE ACTION

H.R. 2791 was introduced on June 16, 2015, by Congressman Peter A. DeFazio (D-OR). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs and the Subcommittee on Federal Lands. On July 8, 2015, the Natural Resources Committee met to consider the bill. The Subcommittees were discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent on July 9, 2015.

#### 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

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in car-

<sup>1</sup>Tiller's Guide to Indian Country, compiled by Veronica E. Valarde Tiller, 2005, at 885.

<sup>2</sup>Id.

rying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 2791—Western Oregon Tribal Fairness Act*

H.R. 2791 would convey federal lands in the state of Oregon to local Native American tribes. The legislation would transfer nearly 18,000 acres of federal land to the Cow Creek Band of Umpqua Tribe of Indians and more than 14,000 acres of federal land to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. H.R. 2791 also would amend how the federal government manages forest land held in trust for the benefit of the Coquille Tribe of Coos County, Oregon.

CBO estimates that implementing the legislation would have no significant effect on spending subject to appropriation. Enacting H.R. 2791 would affect direct spending; therefore, pay-as-you-go procedures apply. Under current law, the specified lands generate receipts to the Treasury from the sale of timber. Therefore, by conveying the land to the tribes, the bill would reduce offsetting receipts, which are treated as reductions in direct spending. However, based on information from federal agencies, CBO estimates that the forgone receipts would be insignificant for each year and less than \$500,000 over the 2016–2025 period.

H.R. 2791 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit the tribes.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Congressional Budget Office has indicated that the bill “would have no significant effect on spending subject to appropriation”; however, the bill could affect offsetting receipts, but any foregone receipts “would be insignificant for each year and less than \$500,000 over the 2016–2025 period.”

3. 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 require certain Federal lands be held in trust by the United States for the benefit of certain Indian tribes in Oregon.

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.

## COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## COMPLIANCE WITH H. RES. 5

**Directed Rule Making.** The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

**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.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**COQUILLE RESTORATION ACT**

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**SEC. 5. TRANSFER OF LAND TO BE HELD IN TRUST.**

(a) **LANDS TO BE TAKEN IN TRUST.**—The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: *Provided*, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984).

(b) **LANDS TO BE PART OF THE RESERVATION.**—Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the Tribe and shall be part of its reservation.

(c) **LANDS TO BE NONTAXABLE.**—Any real property taken into trust for the benefit of the Tribe under this section shall be exempt from all local, State, and Federal taxation as of the date of transfer.

(d) **CREATION OF THE COQUILLE FORREST.**—

(1) **DEFINITIONS.**—In this subsection:

(A) the term “Coquille Forest” means certain lands in Coos County, Oregon, comprising approximately 5,400

acres, as generally depicted on the map entitled "Coquille Forest Proposal", dated July 8, 1996.

(B) the term "Secretary" means the Secretary of the Interior.

(C) the term "the Tribe" means the Coquille Tribe of Coos County, Oregon.

(2) MAP.—The map described in subparagraph (d)(1)(A), and such additional legal descriptions which are applicable, shall be placed on file at the local District Office of the Bureau of Land Management, the Agency Office of the Bureau of Indian Affairs, and with the Senate Committee on Energy and Natural Resources and the House Committee on Resources.

(3) INTERIM PERIOD.—From the date of enactment of this subsection until two years after the date of enactment of this subsection, the Bureau of Land Management shall:

(A) retain Federal jurisdiction for the management of lands designated under this subsection as the Coquille Forest and continue to distribute revenues from such lands in a manner consistent with existing law; and,

(B) prior to advertising, offering or awarding any timber sale contract on lands designated under this subsection as the Coquille Forest, obtain the approval of the Assistant Secretary for Indian Affairs, acting on behalf of and in consultation with the Tribe.

(4) TRANSITION PLANNING AND DESIGNATION.—

(A) During the two year interim period provided for in paragraph (3), the Assistant Secretary for Indian Affairs, acting on behalf of and in consultation with the Tribe, is authorized to initiate development of a forest management plan for the Coquille Forest. The Secretary, acting through the Director of the Bureau of Land Management, shall cooperate and assist in the development of such plan and in the transition of forestry management operations for the Coquille Forest to the Assistant Secretary for Indian Affairs.

(B) Two years after the date of enactment of this subsection, the Secretary shall take the lands identified under subparagraph (d)(1)(A) into trust, and shall hold such lands in trust, in perpetuity, for the Coquille Tribe. Such lands shall be thereafter designated as the Coquille Forest.

(C) So as to maintain the current flow of revenue from land subject to the Act entitled "An Act relating to the re-vested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant land situated in the State of Oregon" (the O&C Act), approved August 28, 1937 (43 U.S.C. 1181a et seq.), the Secretary shall redesignate, from public domain lands within the tribe's service area, as defined in this Act, certain lands to be subject to the O&C Act. Lands redesignated under this subparagraph shall not exceed lands sufficient to constitute equivalent timber value as compared to lands constituting the Coquille Forest.

(5) MANAGEMENT.—The Secretary of Interior, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest under applicable State and Federal for-

estry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act, and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future. The Secretary shall otherwise manage the Coquille Forest in accordance with the laws pertaining to the management of Indian Trust lands and shall distribute revenues in accord with Public Law 101-630, 25 U.S.C. 3107.

[(A) Unprocessed logs harvested from the Coquille Forest shall be subject to the same Federal statutory restrictions on export to foreign Nations that apply to unprocessed logs harvested from Federal lands.

[(B) Notwithstanding any other provision of law, all sales of timber from land subject to this subsection shall be advertised, offered and awarded according to competitive bidding practices, with sales being awarded to the highest responsible bidder.]

(5) *MANAGEMENT.*—

(A) *IN GENERAL.*—*Subject to subparagraph (B), the Secretary, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest in accordance with the laws pertaining to the management of Indian trust land.*

(B) *ADMINISTRATION.*—

(i) *UNPROCESSED LOGS.*—*Unprocessed logs harvested from the Coquille Forest shall be subject to the same Federal statutory restrictions on export to foreign nations that apply to unprocessed logs harvested from Federal land.*

(ii) *SALES OF TIMBER.*—*Notwithstanding any other provision of law, all sales of timber from land subject to this subsection shall be advertised, offered, and awarded according to competitive bidding practices, with sales being awarded to the highest responsible bidder.*

(6) *INDIAN SELF DETERMINATION ACT AGREEMENT.*—*No sooner than two years after the date of enactment of this subsection, the Secretary may, upon a satisfactory showing of management competence and pursuant to the Indian Self-Determination Act (25 U.S.C. 450 et seq.), enter into a binding Indian self-determination agreement (agreement) with the Coquille Indian Tribe. Such agreement may provide for the tribe to carry out all or a portion of the forest management for the Coquille Forest.*

(A) *Prior to entering such an agreement, and as a condition of maintaining such an agreement, the Secretary must find that the Coquille Tribe has entered into a binding memorandum of agreement (MOA) with the State of Oregon, as required under paragraph 7.*

(B) *The authority of the Secretary to rescind the Indian self-determination agreement shall not be encumbered.*

(i) *The Secretary shall rescind the agreement upon a demonstration that the tribe and the State of Oregon are no longer engaged in a memorandum of agreement as required under paragraph 7.*

(ii) The Secretary may rescind the agreement on a showing that the Tribe has managed the Coquille Forest in a manner inconsistent with this subsection, or the Tribe is no longer managing, or capable of managing, the Coquille Forest in a manner consistent with this subsection.

(7) MEMORANDUM OF AGREEMENT.—The Coquille Tribe shall enter into a memorandum of agreement (MOA) with the State of Oregon relating to the establishment and management of the Coquille Forest. The MOA shall include, but not be limited to, the terms and conditions for managing the Coquille Forest in a manner consistent with paragraph (5) of this subsection, preserving public access, advancing jointly-held resource management goals, achieving tribal restoration objective and establishing a coordinated management framework. Further, provisions set forth in the MOA shall be consistent with federal trust responsibility requirements applicable to Indian trust lands and paragraph (5) of this subsection.

(8) PUBLIC ACCESS.—The Coquille Forest shall remain open to public access for purposes of hunting, fishing, recreation and transportation, except when closure is required by state or federal law, or when the Coquille Indian Tribe and the State of Oregon agree in writing that restrictions on access are necessary or appropriate to prevent harm to natural resources, cultural resources or environmental quality; *Provided*, That the State of Oregon's agreement shall not be required when immediate action is necessary to protect archaeological resources.

[(9) JURISDICTION.—

[(A) The United States District Court for the District of Oregon shall have jurisdiction over actions against the Secretary arising out of claims that this subsection has been violated. Consistent with existing precedents on standing to sue, any affected citizen may bring suit against the Secretary for violations of this subsection, except that suit may not be brought against the Secretary for claims that the MOA has been violated. The Court has the authority to hold unlawful and set aside actions pursuant to this subsection that are arbitrary and capricious, an abuse of discretion, or otherwise an abuse of law.

[(B) The United States District Court for the District of Oregon shall have jurisdiction over actions between the State of Oregon and the Tribe arising out of claims of breach of the MOA.

[(C) Unless otherwise provided for by law, remedies available under this subsection shall be limited to equitable relief and shall not include damages.]

[(10)] (9) STATE REGULATORY AND CIVIL JURISDICTION.—In addition to the jurisdiction described in paragraph 7 of this subsection, the State of Oregon may exercise exclusive regulatory civil jurisdiction, including but not limited to adoption and enforcement of administrative rules and orders, over the following subjects:

(A) management, allocation and administration of fish and wildlife resources, including but not limited to establishment and enforcement of hunting and fishing seasons,

bag limits, limits on equipment and methods, issuance of permits and licenses, and approval or disapproval of hatcheries, game farms, and other breeding facilities; *Provided*, That nothing herein shall be construed to permit the State of Oregon to manage fish or wildlife habitat on Coquille Forest lands;

(B) allocation and administration of water rights, appropriation of water and use of water;

(C) regulation of boating activities, including equipment and registration requirements, and protection of the public's right to use the waterways for purposes of boating or other navigation;

(D) fills and removals from waters of the State, as defined in Oregon law;

(E) protection and management of the State's proprietary interests in the beds and banks of navigable waterways;

(F) regulation of mining, mine reclamation activities, and exploration and drilling for oil and gas deposits;

(G) regulation of water quality, air quality (including smoke management), solid and hazardous waste, and remediation of releases of hazardous substances;

(H) regulation of the use of herbicides and pesticides; and

(I) enforcement of public health and safety standards, including standards for the protection of workers, well construction and codes governing the construction of bridges, buildings, and other structures.

**[(11)] (10) SAVINGS CLAUSE, STATE AUTHORITY.—**

(A) Nothing in this subsection shall be construed to grant tribal authority over private or State-owned lands.

(B) To the extent that the State of Oregon is regulating the foregoing areas pursuant to a delegated Federal authority or a Federal program, nothing in this subsection shall be construed to enlarge or diminish the State's authority under such law.

(C) Where both the State of Oregon and the United States are regulating, nothing herein shall be construed to alter their respective authorities.

(D) To the extent that Federal law authorizes the Coquille Indian Tribe to assume regulatory authority over an area, nothing herein shall be construed to enlarge or diminish the tribe's authority to do so under such law.

(E) Unless and except to the extent that the tribe has assumed jurisdiction over the Coquille Forest pursuant to Federal law, or otherwise with the consent of the State, the State of Oregon shall have jurisdiction and authority to enforce its laws addressing the subjects listed in subparagraph 10 of this subsection on the Coquille Forest against the Coquille Indian Tribe, its members and all other persons and entities, in the same manner and with the same remedies and protections and appeal rights as otherwise provided by general Oregon law. Where the State of Oregon and Coquille Indian Tribe agree regarding the exercise of tribal civil regulatory jurisdiction over ac-

tivities on the Coquille Forest lands, the tribe may exercise such jurisdiction as its agreed upon.

**[(12)]** *(11)* In the event of a conflict between Federal and State law under this subsection, Federal law shall control.

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