

# Committee on Natural Resources

Rob Bishop, Chairman

Markup Memo

July 6, 2015

To: Natural Resources Committee Members

From: Subcommittee on Indian, Insular and Alaska Natives Staff (x6-9725)

Subject: Full Committee Markup on H.R. 2791 (DeFazio), "*Western Oregon Tribal Fairness Act*"

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## **H.R. 2791 (DeFazio), "Western Oregon Tribal Fairness Act"**

### **Summary of the Bill**

H.R. 2791 would place title to certain publicly owned forest lands in western Oregon in federal trust for the benefit of the Cow Creek Umpqua tribe and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. The bill would additionally provide that land held in trust for the benefit of the Coquille tribe (Oregon) shall be managed under federal law generally applicable to Indian forest lands rather than under the Northwest Forest Plan, which is applicable to lands owned for the benefit of the public.

### **Cosponsors**

Rep. Walden (OR-2)

### **Background**

Combining the provisions of three other bills (H.R. 1436, H.R. 1437, and H.R. 1438, each of which is sponsored by Rep. DeFazio with Walden as a cosponsor), H.R. 2791 benefits three recognized tribes in western Oregon by conveying publicly owned forest lands to two of them and to improve the management of forest lands currently held in trust for a third tribe. The provisions of H.R. 2791 were passed in the full House in the 113<sup>th</sup> Congress as part of larger measures. Two of the titles were also introduced as stand-alone bills in the 113<sup>th</sup> Congress; no hearing had been held on the stand-alone bills or the larger bills in which they were included.

H.R. 2791 was referred to the Subcommittee on Federal Lands and the Subcommittee on Indian, Insular, and Alaska Native Affairs. A title-by-title analysis follows.

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

Title I of 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. Similar language was previously passed in the House not only in H.R. 5701 but also in H.R. 1526, the Restoring Healthy Forests for Healthy Communities Act, which passed the House on September 20, 2013. Lands to be held

in trust under Title I 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 under Title I is currently part of the Oregon & California Railroad land grant, managed by the Bureau of Land Management. Under Title I, the Secretary is required to reclassify an equal acreage of public domain land located in the vicinity of the land given to tribe, as O&C land.

Land placed in trust for the tribe under Title I may not be used for gambling under the Indian Gaming Regulatory Act of 1988 (25 USC 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***

Currently, management of the Coquille tribe's forest lands are regulated as part of the Northwest Forest Plan, which is inconsistent with the management of other tribally-managed forests in the United States. 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 USC 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.

### ***Title III: Oregon Coastal Lands***

Title III of H.R. 2791 would place approximately 14,408 acres of public land, as depicted on a specific map, in trust for the benefit of the Confederated Tribes of the Coos, Lower Umpqua, and Siulaw Indians. Such lands would be subject to valid existing rights and certain other conditions, detailed below. A substantial portion of the lands to be placed in trust for the tribe are O&C Railroad grant lands. Under the bill, the Secretary of the Interior must identify equal acres of other public land in the vicinity and reclassify them as O&C lands.

Under the bill, lands placed in trust for the Coos tribe shall not be eligible for gambling under the Indian Gaming Regulatory Act of 1988, and timber harvested on them shall be subject to federal laws restricting the export of unprocessed logs.

In addition, with respect to lands transferred in trust to the tribe under Title III, the Coos tribe is required to consult with the Secretary of the Interior and other parties to develop agreements to honor existing reciprocal right-of-way agreements, to provide the Bureau of Land Management with administrative access rights, and to provide for the management of lands that had been acquired or developed under the Land and Water Conservation Fund Act of 1965 (54 USC Chapter 2003). The text of the bill does not appear to require the tribe or any party to sign any agreement or stipulate to any specific condition in the administration of its trust lands beyond the requirement to consult with the Secretary and other parties.

## Cost

In the 113<sup>th</sup> Congress, CBO provided a cost estimate for H.R. 1526, "Restoring Healthy Forests for Healthy Communities Act", which contained substantively identical provisions that are today included in Titles I and III of H.R. 2791.<sup>1</sup> In the CBO cost estimate for H.R. 1526, potential costs of the provisions to place certain public lands in trust for the Cow Creek and Coos tribes are not specifically separated from costs of other provisions in that bill. As a result, a reliable, specific cost estimate for H.R. 2791 will be provided when the bill is reported.

## Effect on Current Law

**Showing Current Law as Amended by HR 2791, as introduced**  
[text to be deleted is bracketed and highlighted in gray; new text is highlighted in yellow]

### Coquille Forest Restoration Act (25 U.S.C. 715 et seq.)

#### **§715c. 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) [25 U.S.C. 461 et seq.].

##### **(b) Lands to be part of 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 Coquille Forest**

###### **(1) Definitions**

In this subsection:

(A) the <sup>1</sup> 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 <sup>1</sup> term "Secretary" means the Secretary of the Interior.

(C) the <sup>1</sup> term "the Tribe" means the Coquille Tribe of Coos County, Oregon.

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<sup>1</sup> [http://www.cbo.gov/sites/default/files/hr1526\\_0.pdf](http://www.cbo.gov/sites/default/files/hr1526_0.pdf)

## **(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 September 30, 1996, until two years after September 30, 1996, 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,<sup>2</sup>

(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 September 30, 1996, 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 revested 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 subchapter, 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 <sup>3</sup> Interior, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest under applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act [16 U.S.C. 1531 et seq.], 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 <sup>4</sup>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 <sup>4</sup> 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 September 30, 1996, the Secretary may, upon a satisfactory showing of management competence and pursuant to the Indian Self-Determination Act [25 U.S.C. 450f 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.<sup>5</sup>

(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.<sup>5</sup>

(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 objectives and establishing a coordinated management framework. Further, provisions set forth in the MOA shall be consistent with federal<sup>1</sup> 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<sup>1</sup> or federal<sup>1</sup> 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;<sup>6</sup> *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.]

#### **(9)[(10)] State regulatory and civil jurisdiction**

In addition to the jurisdiction described in paragraph 7<sup>5</sup> 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;<sup>6</sup> *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.

#### **(10)[(11)] 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<sup>7</sup> 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<sup>1</sup> authority to do so under such law.

(E) Unless and except to the extent that the tribe<sup>1</sup> 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<sup>8</sup> 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 activities on the Coquille Forest lands, the tribe<sup>1</sup> may exercise such jurisdiction as its<sup>2</sup> agreed upon.

**(11)[(12)] Conflict between laws**

In the event of a conflict between Federal and State law under this subsection, Federal law shall control.