



The Confederated Tribes of the Colville Reservation



Prepared Statement of the Honorable William Nicholson, II
Secretary, Colville Business Council
Confederated Tribes of the Colville Reservation

Legislative Hearing on H.R. 812, the “Indian Trust Asset Reform Act”

Subcommittee on Indian, Insular, and Alaska Native Affairs

April 14, 2015

The Confederated Tribes of the Colville Reservation (“Colville Tribes” or the “CCT”) appreciates this opportunity to provide testimony to the Subcommittee on the *Indian Trust Asset Reform Act*, H.R. 812. My name is William Nicholson and I serve as the Secretary of the Colville Business Council, the Colville Tribes’ governing body. I also serve as the Chair of the Colville Business Council’s Management and Budget Committee and am the CCT’s delegate to the Intertribal Timber Council.

The Colville Tribes has made securing passage of this bill one of its top legislative priorities. My testimony today will focus on how this bill, if enacted into law, will greatly assist in the Colville Tribes’ efforts to reopen one of our tribal sawmills. This will restore jobs that were previously lost during the housing downturn and will create new jobs on the Colville Reservation and in the surrounding communities.

Background on the Colville Tribes and its Forest Economy

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of twelve aboriginal tribes and bands from across eastern Washington State. The present day Colville Reservation is located in north-central Washington State and was established by Executive Order in 1872. The Colville Reservation covers approximately 1.4 million acres and its boundaries include parts of Okanogan and Ferry counties.

The CCT has more than 9,400 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest, and the second largest in the state of Washington. Approximately half of the CCT’s members live on or near the Colville Reservation. Of the 1.4 million acres that comprise the Colville Reservation, 922,240 acres are forested land.

Originally, the Colville Reservation consisted of nearly three million acres and included all of the area north of the present day Reservation bounded by the Columbia and Okanogan Rivers. This 1.5 million acre area, referred to as the “North Half,” was opened to the public

domain in 1891 in exchange for reserved hunting and fishing rights to the CCT and its members. A majority of the Colville National Forest and significant portions of the Okanogan National Forest are located within the North Half. Both forests are contiguous to the northern boundary of the Colville Reservation.

For decades, timber harvests have provided the backbone of the CCT's economy. The CCT has made considerable strides to diversify its economy during the past two decades yet timber remains our most abundant and valuable natural resource. Until the economic downturn and the housing market crash in 2008, the CCT operated two sawmills. One of these sawmills, Colville Indian Precision Pine ("CIPP"), was built in 1984 to process large diameter logs. The other, Colville Indian Power and Veneer ("CIPV"), manufactured dimensional lumber and veneer.

When both sawmills were operational, the CCT's forest products industry employed nearly 600 people and infused millions of dollars into the eastern Washington economy. Market conditions forced both CIPV and CIPP to close in 2009. This resulted in the loss of more than 350 jobs for an already-economically depressed rural area, not including the loss of the secondary jobs that the facilities supported, such as contract loggers and truck drivers.

As a consequence of the sawmill closures, timber harvest activity on the Colville Reservation came to a near standstill. Harvest levels dropped from an average of 78 million board feet per year to two million board feet in 2010. Replanting and other post-sale restoration activities in timber sale areas are funded by the proceeds of the timber sales. Extremely low timber prices meant that no funds were available for these activities or to support tribal programs or forest restoration projects.

With both sawmills closed, the CCT struggled to meet its contract obligations. The BIA has little flexibility to defer stumpage or other contract obligations and is also required to ensure fair market value for forest products harvested from trust lands. These regulations make it extremely difficult for sawmills in depressed markets to prosper, and were a contributing factor to the closure of both mills. The CCT's limited sawmilling capacity continues to impact its ability to manage its forests in a holistic manner to provide all the benefits desired by our tribal membership.

In 2012, the CCT settled a longstanding trust mismanagement lawsuit against the United States for \$193 million. A significant portion of that dollar figure was attributable to federal mismanagement of the CCT's timber resources. For example, in the course of developing our case it became apparent that many areas of the Colville Reservation consists of dense, overgrown, small diameter trees that increase the risk of wildfire and disease. Removing this smaller diameter material will require aggressive harvesting and treatments over the next two decades. It will also require a market—i.e., a viable sawmill to sell the material to—to make the treatments economically viable.

With the recovering timber market, the CCT recognizes the immediate need to get the forest back in balance and began exploring options to restore operation of both of its sawmills. In early 2013, the CCT was able to lease CIPV to a New York-based holding company, which

reopened the facility. The CCT is currently exploring options that would similarly allow a third party to lease and operate CIPP, however, we have encountered obstacles from the requirement that the Bureau of Indian Affairs (“BIA”) approve all tribal forest management decisions.

Authorizing Tribes to Carry Out Forest Management Activities Under the HEARTH Act Model

The BIA comprehensively regulates tribal forest management activities on Indian lands under the *National Indian Forest Resources Management Act* (“NIFMRA”). Under NIFMRA and the BIA’s implementing regulations, all aspects of on-reservation forest management require BIA approval, from the initial approval of the forest plan through the harvesting, valuation, and eventual sale of the timber. We work cooperatively with our local BIA foresters to ensure that these activities are completed in the shortest time possible.

Despite the CCT’s positive relationship with the BIA, the requirement that the BIA approve all forest management activities has and continues to present obstacles to getting CIPP back up and running. One of the CCT’s challenges to reopening CIPP is that the facility is antiquated and would require substantial upgrades to make the mill more efficient and economically viable. For an outside business, this would be a substantial capital investment. To recoup this investment would require a long-term arrangement and a guaranteed wood supply.

The BIA has been extremely hesitant to even consider signing off on these types of arrangements because of the perceived risk of liability should market conditions change or the deal otherwise not turn out as planned. In light of the trust settlements that the U.S. has entered into with the CCT and other tribes over the past few years, this risk averseness is understandable.

Nonetheless, providing tribes with the flexibility to enter into these or other arrangements on their own without the need to obtain BIA approval furthers the policy of Indian self-determination. This is especially true in the modern era where federal budgets have declined and tribes are essentially required to provide their own resources to maintain critical activities.

H.R. 812 Would Promote Job Creation

Title II of H.R. 812 establishes a demonstration project that authorizes tribes to enter into trust asset management agreements with the Secretary. Section 204(e) of that Title allows the Secretary to approve trust asset management agreements that incorporate by reference tribal regulations governing either surface leases or forest management activities under NIFMRA. This provision is substantively identical to the HEARTH Act of 2012, which allows tribes to execute surface leases with third parties without BIA approval. Like the HEARTH Act, the tribal leasing regulations have to be consistent with the federal regulations and provide for a tribal environmental review. Once the Secretary approves a trust asset management agreement that contains or references the tribal forest management regulations, any tribal activities carried out under those regulations would not require BIA approval. Importantly, and also like the HEARTH Act, the United States is not liable for any actions taken by a tribe under approved tribal forest management regulations.

With the new authority in section 204(e), the CCT could promulgate tribal regulations governing on-reservation timber sales and valuations that would allow us to enter into a longer term agreement with a third party that would allow that third party to make the financial investments necessary to reopen CIPP. An operational CIPP would create jobs not only for the facility itself, but would also create jobs that service the facility, such as contract loggers and truck drivers. Furthermore, an operational CIPP would allow the CCT to address its forest health issues by providing a market for the overgrown material that poses the greatest risk.

In addition to its on-reservation activities, the CCT has entered into agreements with both the Okanogan and Colville National Forests to carry out forest restoration and fuels reduction projects on those forest lands under the Tribal Forest Protection Act (“TFPA”). As with the on-reservation timber harvests, these TFPA projects will similarly require additional sawmilling capacity to make them economically viable. The TFPA projects will also require additional labor.

Unfortunately for the CCT, most of the experienced logging contractors on the Colville Reservation either retired or moved on to other endeavors during the economic downturn. The CCT has taken steps since the market has rebounded to encourage tribal members to pursue careers in logging and forestry. Still, all available tribal contractors are currently being utilized, and we have even struggled to secure non-tribal loggers. An operational CIPP will therefore provide employment and contracting opportunities for the entire region, not just on the Colville Reservation.

The Colville Tribes fully supports H.R. 812 and urges its swift passage. The bill promotes the fundamental concept that Indian tribes are in the best position to decide what is best for their own land and resources. In our case, it would help the CCT create jobs for the entire region and take care of our forests and our neighboring forests. Other tribes with timber resources would similarly benefit, especially in regions where the BIA is slower to process timber sales or where tribes lack a cooperative relationship with their BIA foresters.