

## TRIBAL FOREST PROTECTION ACT OF 2004

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MAY 20, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. POMBO, from the Committee on Resources,  
submitted the following

### R E P O R T

[To accompany H.R. 3846]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3846) to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Tribal Forest Protection Act of 2004”.

#### SEC. 2. TRIBAL FOREST ASSETS PROTECTION.

(a) DEFINITIONS.—In this section:

(1) FEDERAL LAND.—The term “Federal land” means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) INDIAN FOREST LAND OR RANGELAND.—The term “Indian forest land or rangeland” means land that—

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

(B)(i)(I) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103)); or

(II) has a cover of grasses, brush, or any similar vegetation; or

- (ii) formerly had a forest cover or vegetative cover that is capable of restoration.
- (3) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (4) SECRETARY.—The term “Secretary” means—
  - (A) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and
  - (B) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.
- (b) AUTHORITY TO PROTECT INDIAN FOREST LAND OR RANGELAND.—
  - (1) IN GENERAL.—Not later than 120 days after the date on which an Indian tribe submits to the Secretary a request to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland) that meets the criteria described in subsection (c), the Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe pursuant to section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)), or such other authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3).
  - (2) ENVIRONMENTAL ANALYSIS.—Following completion of any necessary environmental analysis, the Secretary may enter into an agreement or contract with the Indian tribe as described in paragraph (1).
  - (3) ACTIVITIES.—Under an agreement or contract entered into under paragraph (2), the Indian tribe may carry out activities to achieve land management goals for Federal land that is—
    - (A) under the jurisdiction of the Secretary; and
    - (B) bordering or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe.
- (c) SELECTION CRITERIA.—The criteria referred to in subsection (b), with respect to an Indian tribe, are whether—
  - (1) the Indian forest land or rangeland under the jurisdiction of the Indian tribe borders on or is adjacent to land under the jurisdiction of the Forest Service or the Bureau of Land Management;
  - (2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe—
    - (A) poses a fire, disease, or other threat to—
      - (i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or
      - (ii) a tribal community; or
    - (B) is in need of land restoration activities;
  - (3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and
  - (4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).
- (d) NOTICE OF DENIAL.—If the Secretary denies a tribal request under subsection (b)(1), the Secretary may issue a notice of denial to the Indian tribe, which—
  - (1) identifies the specific factors that caused, and explains the reasons that support, the denial;
  - (2) identifies potential courses of action for overcoming specific issues that led to the denial; and
  - (3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.
- (e) PROPOSAL EVALUATION AND DETERMINATION FACTORS.—In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the Secretary may—
  - (1) use a best-value basis; and
  - (2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—
    - (A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or rangeland of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;

(G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

(f) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this Act—

(1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this Act; or

(2) invalidates any agreement or contract under that authority.

(g) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the Indian tribal requests received and agreements or contracts that have been entered into under this Act.

#### PURPOSE OF THE BILL

The purpose of H.R. 3846 is to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land.

#### BACKGROUND AND NEED FOR LEGISLATION

In the summer of 2003, 18 Indian reservations were invaded by wildfire from adjacent federal lands. Eleven of the fires occurred in Southern California, burning over 30,000 acres, killing 10 people, and consuming 130 homes. Two reservations were burned entirely to the ground. Unfortunately, this was not a first-time occurrence for the tribes.

In the past, several tribes have lost valuable land to wildfire that started on neighboring federal land. To help reduce the threat of future tragedies, the Tribal Forest Protection Act of 2004 sets up a process allowing Indian tribes to perform hazardous fuels reduction operations and other forest health projects on U.S. Forest Service and Bureau of Land Management lands adjacent to their own. This much-needed legislation is supported by the Intertribal Timber Council, Council of Energy Resource Tribes, Tule River Tribe of California, Viejas Band of Kumeyaay Indians of California, Mescalero Apache Nation of New Mexico, and the Jicarilla Apache Nation of New Mexico.

#### COMMITTEE ACTION

H.R. 3846 was introduced on February 26, 2004, by Chairman Richard W. Pombo (R-CA). The bill was referred primarily to the Committee on Resources and additionally to the Committee on Agriculture. Within the Committee on Resources, the bill was referred to the Subcommittee on Forests and Forest Health and the Subcommittee on National Park, Recreation and Public Lands. On April 21, 2004, the Forests Subcommittee held a hearing on the bill. On May 5, 2005, the Resources Committee met to consider the

bill. The two subcommittees were discharged from further consideration of the bill by unanimous consent. Mr. Pombo offered an amendment in the nature of a substitute making minor clarifying and technical changes. It was adopted by unanimous consent. The bill as amended was then ordered favorably reported to the House of Representatives by unanimous consent.

#### 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 Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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 carrying out this bill. However, clause 3(d)(3)(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.

2. 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.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. 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:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 12, 2004.*

Hon. RICHARD W. POMBO,  
*Chairman, Committee on Resources,  
House Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3846, the Tribal Forest Protection Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

ELIZABETH ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*H.R. 3846—Tribal Forest Protection Act of 2004*

CBO estimates that H.R. 3846 would have no significant impact on the federal budget. The bill would not affect direct spending or revenues. H.R. 3846 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 3846 would establish a process for the Secretaries of Agriculture and the Interior to enter into contracts or agreements with certain Indian tribes to carry out land management activities on federal lands adjacent to tribal forests or rangelands. The purpose of such projects would be to restore lands that pose a risk of fire, disease, or other threat to tribal lands. H.R. 3846 specifies criteria to be used by the secretaries in reviewing proposals from tribes.

Based on information from the Forest Service and Bureau of Land Management, CBO estimates that implementing H.R. 3846 would not significantly affect federal spending. Both agencies already work cooperatively with tribes to conduct land management projects on federal lands adjacent to tribal forests and rangelands. According to the agencies, the proposed changes to the process for selecting such projects would not significantly affect costs to implement them.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RESOURCES,  
*Washington, DC, May 19, 2004.*

Hon. BOB GOODLATTE,  
*Chairman, Committee on Agriculture, House of Representatives,  
Longworth House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I request your assistance in expediting the consideration of four bills, all of which were referred primarily to the Committee on Resources and additionally to the Committee on Agriculture: H.R. 1014, the Gateway Communities Cooperation Act; H.R. 2966, the Right-to-Ride Livestock on Federal Lands Act of 2003; H.R. 3247, the TRAIL Act; and H.R. 3846, the Tribal Forest Protection Act of 2004.

The Committee on Resources ordered all the bills favorably reported with amendments on May 5, 2004, either by voice vote or unanimous consent. I have forwarded copies of the reported texts to your staff.

Because of the limited number of days remaining in the 108th Congress and the importance of these bills to the authors and our Nation, I ask you not to insist on your additional referrals of the bills and allow the Committee on Agriculture to be discharged so that they may be voted on when the House of Representatives returns from its Memorial Day district work period. Of course, by agreeing to this request, you are not waiving jurisdiction over the bills, nor is this action to be construed as a precedent for other, similar legislation. In addition, I would support a request from the Committee on Agriculture to be represented on any conference on H.R. 1014, H.R. 2966, H.R. 3247 or H.R. 3846 or companion Senate bills, should a conference become necessary. Finally, I would include this letter and any response you might have in the Committee on Resources' bill reports for the four bills.

Thank you for your consideration of my request. I appreciate our continued excellent working relationship on forest issues and look forward to working with you again.

Sincerely,

RICHARD W. POMBO,  
*Chairman.*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON AGRICULTURE,  
*Washington, DC, May 20, 2004.*

Hon. RICHARD POMBO,  
*Chairman, House Committee on Resources, Longworth House Office  
Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your May 19, 2004 correspondence regarding H.R. 1014, the Gateway Communities Cooperation Act; H.R. 3247, the TRAIL Act; and H.R. 3846, the Tribal Forest Protection Act of 2004. As you are aware, the Committee on Agriculture was granted an additional referral of all these pieces of legislation.

Knowing of your interest in expediting this legislation, I will discharge H.R. 1014, H.R. 3247 and H.R. 3846 from further consideration by the Committee on Agriculture. I do so with the understanding that by discharging these bills the Committee on Agriculture does not waive any future jurisdictional claim over these or similar measures. In addition, in the event a conference with the Senate is requested on these matters, the Committee on Agriculture reserves the right to seek appointment of conferees, if it should become necessary.

Thank you very much for your courtesy in this matter and I look forward to continued cooperation between our Committees as we deal with these issues in the future.

Sincerely,

BOB GOODLATTE,  
*Chairman.*