

PROVIDING THE QUILEUTE INDIAN TRIBE TSUNAMI AND
FLOOD PROTECTION, AND FOR OTHER PURPOSES

FEBRUARY 3, 2012.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1162]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1162) to provide the Quileute Indian Tribe Tsunami and Flood Protection, and for other purposes, 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. OLYMPIC NATIONAL PARK — QUILEUTE TRIBE.

(a) DEFINITIONS.—In this section:

(1) MAP.—The term “Map” means the map entitled “Olympic National Park and Quileute Reservation Boundary Adjustment Map”, numbered 149/80,059, and dated June 2010.

(2) PARK.—The term “Park” means the Olympic National Park, located in the State of Washington.

(3) RESERVATION.—The term “Reservation” means the Quileute Indian Reservation, located on the Olympic Peninsula in the State of Washington.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(5) TRIBE.—The term “Tribe” means the Quileute Indian Tribe in the State of Washington.

(b) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress finds that—

(A) the Reservation is located on the western coast of the Olympic Peninsula in the State of Washington, bordered by the Pacific Ocean to the west and the Park on the north, south, and east;

(B) most of the Reservation village of La Push is located within the coastal flood plain, with the Tribe's administrative buildings, school, elder center, and housing all located in a tsunami zone;

(C) for many decades, the Tribe and the Park have had a dispute over the Reservation boundaries along the Quillayute River;

(D) in recent years, this dispute has intensified as the Tribe has faced an urgent need for additional lands for housing, schools, and other Tribe purposes outside the tsunami and Quillayute River flood zones; and

(E) the lack of a settlement of this dispute threatens to adversely impact the public's existing and future recreational use of several attractions in the Park that are accessed by the public's use of Reservation lands.

(2) PURPOSES.—The purposes of this Act are—

(A) to resolve the longstanding dispute along portions of the northern boundary of the Quileute Indian Reservation;

(B) to clarify public use and access to Olympic National Park lands that are contiguous to the Reservation;

(C) to provide the Quileute Indian Tribe with approximately 275 acres of land currently located within the Park and approximately 510 acres of land along the Quillayute River, also within the Park;

(D) to adjust the wilderness boundaries to provide the Quileute Indian Tribe Tsunami and flood protection; and

(E) through the land conveyance, to grant the Tribe access to land outside of tsunami and Quillayute River flood zones, and link existing Reservation land with Tribe land to the east of the Park.

(c) REDESIGNATION OF FEDERAL WILDERNESS LAND, OLYMPIC NATIONAL PARK CONVEYANCE.—

(1) REDESIGNATION OF WILDERNESS.—Certain Federal land in the Park that was designated as part of the Olympic Wilderness under title I of the Washington Park Wilderness Act of 1988 (Public Law 100-668; 102 Stat. 3961; 16 U.S.C. 1132 note) and comprises approximately 222 acres, as generally depicted on the Map is hereby no longer designated as wilderness, and is no longer a component of the National Wilderness Preservation System under the Wilderness Act (16 U.S.C. 1131 et seq.).

(2) LANDS TO BE HELD IN TRUST.—All right, title, and interest of the United States in and to the approximately 510 acres generally depicted on the Map as "Northern Lands", and the approximately 275 acres generally depicted on the Map as "Southern Lands", are declared to be held in trust by the United States for the benefit of the Tribe without any further action by the Secretary.

(3) BOUNDARY ADJUSTMENT; SURVEY.—The Secretary shall—

(A) adjust the boundaries of Olympic Wilderness and the Park to reflect the change in status of Federal lands under paragraph (2); and

(B) as soon as practicable after the date of enactment of this section, conduct a survey, defining the boundaries of the Reservation and Park, and of the Federal lands taken into and held in trust that are adjacent to the north and south bank of the Quillayute River as depicted on the Map as "Northern Lands".

(4) LAW APPLICABLE TO CERTAIN LAND.—The land taken into trust under this subsection shall not be subject to any requirements for valuation, appraisal, or equalization under any Federal law.

(d) NON-FEDERAL LAND CONVEYANCE.—Upon completion and acceptance of an environmental hazard assessment, the Secretary shall take into trust for the benefit of the Tribe certain non-Federal land owned by the Tribe, consisting of approximately 184 acres, as depicted on the Map as "Eastern Lands", such non-Federal land shall be designated as part of the Reservation.

(e) MAP REQUIREMENTS.—

(1) AVAILABILITY OF INITIAL MAP.—The Secretary shall make the Map available for public inspection in appropriate offices of the National Park Service. The Map shall also depict any non-Federal land currently owned by the Tribe which is being placed in trust under this section.

(2) REVISED MAP.—Not later than one year after the date of the land transaction in subsections (d) and (e), the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and Committee on Natural Resources of the House of Representatives a revised map that depicts—

(A) the Federal and non-Federal land taken into trust under this section and the Second Beach Trail; and

(B) the actual boundaries of the Park as modified by the land conveyance.

(f) JURISDICTION.—The land conveyed to the Tribe by this section shall be designated as part of the Quileute Reservation and placed in the following jurisdictions:

(1) TRUST LAND.—The same Federal, State, and Tribe jurisdiction as on all other trust lands within the Reservation, so long as the exercise of such jurisdiction does not conflict with the terms of the easement described in subsection (g) below.

(2) TRIBE JURISDICTION.—Park visitors shall remain subject to the jurisdiction of the Tribe while on the Second Beach parking lot, on those portions of the Second Beach Trail on the Reservation, and Rialto Spit, to the same extent that such visitors are subject to the Tribe's jurisdiction elsewhere on the Reservation.

(g) GRANT OF EASEMENT IN CONNECTION WITH LAND CONVEYANCE.—

(1) EASEMENT REQUIRED.—The conveyances under subsection (c)(2) shall be subject to the conditions described in this subsection.

(2) REQUIRED RIGHTS UNDER EASEMENT.—Any easement granted under this subsection must contain the following express terms:

(A) NO IMPACT ON EXISTING RIGHTS.—An easement shall not limit the Tribe's treaty rights or other existing rights.

(B) RETENTION OF RIGHTS.—The Tribe retains the right to enforce its rules against visitors for disorderly conduct, drug and alcohol use, use or possession of firearms, and other disruptive behaviors.

(C) MONITORING OF EASEMENT CONDITIONS.—The Park has the right, with prior notice to the Tribe, to access lands conveyed to the Tribe for purposes of monitoring compliance with any easement made under this subsection.

(3) EXEMPTION FOR SUBSECTION (d) LAND.—The non-Federal land owned by the Tribe and being placed into trust by the Secretary in accordance with subsection (d) shall not be included in, or subject to, any easement or condition specified in this subsection.

(4) REQUIRED TERMS AND CONDITIONS.—The following specified land areas shall be subject to the following easement conditions:

(A) CONDITIONS ON NORTHERN LAND.—Certain land that will be added to the northern boundary of the Reservation by the land conveyance, from Rialto Beach to the east line of Section 23, shall be subject to an easement, which shall contain the following requirements:

(i) The Tribe may lease or encumber the land, consistent with their status as trust lands, provided that the Tribe expressly subjects the conveyance or authorized use to the terms of the easement.

(ii) The Tribe may place temporary, seasonal camps on the land, but shall not place or construct commercial residential, industrial, or other permanent buildings or structures.

(iii) Roads on the land on the date of enactment of this Act may be maintained or improved, but no major improvements or road construction may occur, and any road improvements, temporary camps, or other uses of these lands shall not interfere with its use as a natural wildlife corridor.

(iv) The Tribe may authorize Tribe members and third parties to engage in recreational, ceremonial, or treaty uses of the land provided that the Tribe adopts and enforces regulations permanently prohibiting the use of firearms in the Thunder Field area, and any areas south of the Quillayute River as depicted on the Map.

(v) The Tribe may exercise its sovereign right to fish and gather along the Quillayute River in the Thunder Field area.

(vi) The Tribe may, consistent with any applicable Federal law, engage in activities reasonably related to the restoration and protection of the Quillayute River and its tributaries and streams, weed control, fish and wildlife habitat improvement, Quillayute River or streambank stabilization, and flood control. The Tribe and the Park shall conduct joint planning and coordination for Quillayute River restoration projects, including streambank stabilization and flood control.

(vii) Park officials and visitors shall have access to engage in activities along and in the Quillayute River and Dickey River that are consistent with past recreational uses, and the Tribe shall allow the public to use and access the Dickey River, and Quillayute River along the north bank, regardless of future changes in the Quillayute River or Dickey River alignment.

(viii) Park officials and visitors shall have access to, and shall be allowed to engage in, activities on Tribal lands at Rialto Spit that are consistent with past recreational uses, and the Tribe shall have access

to Park lands at Rialto Beach so that the Tribe may access and use the jetty at Rialto Beach.

(B) CONDITIONS ON SECOND BEACH TRAIL AND ACCESS.—Certain Quileute Reservation land along the boundary between the Park and the southern portion of the Reservation, encompassing the Second Beach trailhead, parking area, and Second Beach Trail, shall be subject to a conservation and management easement, as well as any other necessary agreements, which shall implement the following provisions:

(i) The Tribe shall allow Park officials and visitors to park motor vehicles at the Trail parking area existing on the date of enactment of this Act and to access the portion of the Trail located on Tribal lands, and the Park shall be responsible for the costs of maintaining existing parking access to the Trail.

(ii) The Tribe shall grant Park officials and visitors the right to peacefully use and maintain the portion of the Trail that is on Tribal lands, and the Park shall be responsible for maintaining the Trail and shall seek advance written approval from the Tribe before undertaking any major Trail repairs.

(iii) The Park officials and the Tribe shall conduct joint planning and coordination regarding any proposed relocation of the Second Beach trailhead, the parking lot, or other portions of the Trail.

(iv) The Tribe shall avoid altering the forested landscape of the Tribe-owned headlands between First and Second Beach in a manner that would adversely impact or diminish the aesthetic and natural experience of users of the Trail.

(v) The Tribe shall reserve the right to make improvements or undertake activities at the Second Beach headlands that are reasonably related to enhancing fish habitat, improving or maintaining the Tribe's hatchery program, or alterations that are reasonably related to the protection of the health and safety of Tribe members and the general public.

(vi) The Park officials, after consultation with the Tribe, may remove hazardous or fallen trees on the Tribal-owned Second Beach headlands to the extent necessary to clear or safeguard the Trail, provided that such trees are not removed from Tribal lands.

(vii) The Park officials and the Tribe shall negotiate an agreement for the design, location, construction, and maintenance of a gathering structure in the Second Beach headlands overlook for the benefit of Park visitors and the Tribe, if such a structure is proposed to be built.

(C) SOUTHERN LANDS EXEMPT.—All other land conveyed to the Tribe along the southern boundary of the Reservation under this section shall not be subject to any easements or conditions, and the natural conditions of such land may be altered to allow for the relocation of Tribe members and structures outside the tsunami and Quillayute River flood zones.

(D) PROTECTION OF INFRASTRUCTURE.—Nothing in this Act is intended to require the modification of the parklands and resources adjacent to the transferred Federal lands. The Tribe shall be responsible for developing its lands in a manner that reasonably protects its property and facilities from adjacent parklands by locating buildings and facilities an adequate distance from parklands to prevent damage to these facilities from such threats as hazardous trees and wildfire.

(h) EFFECT OF LAND CONVEYANCE ON CLAIMS.—

(1) CLAIMS EXTINGUISHED.—Upon the date of the land conveyances under subsections (d) and (e) and the placement of conveyed lands into trust for the benefit of the Tribe, any claims of the Tribe against the United States, the Secretary, or the Park relating to the Park's past or present ownership, entry, use, surveys, or other activities are deemed fully satisfied and extinguished upon a formal Tribal Council resolution, including claims related to the following:

(A) LAND ALONG QUILLAYUTE RIVER.—The lands along the sections of the Quillayute River, starting east of the existing Rialto Beach parking lot to the east line of Section 22.

(B) SECOND BEACH.—The portions of the Federal or Tribal lands near Second Beach.

(C) SOUTHERN BOUNDARY PORTIONS.—Portions of the Federal or Tribal lands on the southern boundary of the Reservation.

(2) RIALTO BEACH.—Nothing in this section shall create or extinguish claims of the Tribe relating to Rialto Beach.

(i) GAMING PROHIBITION.—No land taken into trust for the benefit of the Tribe under this Act shall be considered Indian lands for the purpose of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

PURPOSE OF THE BILL

The purpose of H.R. 1162, as ordered reported, is to provide the Quileute Indian Tribe tsunami and flood protection.

BACKGROUND AND NEED FOR LEGISLATION

The Quileute Indian reservation is located on the Olympic Peninsula along the Pacific Ocean in Washington State. It consists of approximately 880 acres and is home to about 375 residents. Most of the reservation is located within the flood zone and much of the tribal infrastructure, including their school, elder center, and housing, is within the tsunami zone. Recent tsunamis in the Pacific Ocean clearly demonstrate the risk faced by the Tribe and the need to move housing and infrastructure inland.

For the safety of this small tribe, legislation is needed to transfer a few hundred acres from the vast Olympic National Park to the Tribe. H. R. 1162 will provide the Quileute Indian Tribe with approximately 275 acres of land currently located within the Park and approximately 510 acres of land along the Quillayute River, also within the Park. 220 acres of the 785 acres proposed for transfer to the tribe are designated wilderness. This would allow them to move their school and other structures to safer land away from the frequent flooding and the tsunami risk that threaten the Tribe. There are no park-owned facilities or trails in the transferred land and there are few opportunities for park visitors.

To expedite passage of the key objective of the bill and allow it to move forward, the Committee on Natural Resources deleted an unrelated and controversial 4,000 acre wilderness designation from the bill. The Committee also added language barring the land being transferred from being used for gaming. These two changes removed potential obstacles that could have threatened timely passage of the bill.

COMMITTEE ACTION

H.R. 1162 was introduced on March 17, 2011, by Congressman Norman Dicks (D-WA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public Lands and the Subcommittee on Indian and Alaska Native Affairs. On September 15, 2011, the Subcommittee on National Parks, Forests and Public Lands held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on National Parks, Forests and Public Lands and the Subcommittee on Indian and Alaska Native Affairs were discharged by unanimous consent. Congressman Rob Bishop (R-UT) offered an amendment; the amendment was adopted by voice vote. Congressman Raúl Grijalva (D-AZ) offered amendment designated .976; the amendment was defeated by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

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 carrying 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. 1162—A bill to provide the Quileute Indian Tribe tsunami and flood protection, and for other purposes

H.R. 1162 would authorize the transfer of lands within and around the Olympic National Park in the state of Washington. H.R. 1162 would incorporate specified federal lands within the Olympic National Park and specified land owned by the Quileute Tribe into the Quileute Indian Reservation, held in trust by the federal government. Under the bill, easements and conditions would apply to certain specified lands, and the Quileute tribe would relinquish any claims against the federal government relating to past or present activities in the Olympic National Park.

Based on information from the Department of the Interior, CBO estimates that H.R. 1162 would have no significant impact on the federal budget. Enacting H.R. 1162 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1162 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by exempting some land from taxation by state and local governments, but CBO expects the cost of that mandate to be small and well below the annual threshold established in UMRA for intergovernmental mandates (\$73 million in 2012, adjusted annually for inflation). H.R. 1162 contains no private-sector mandates as defined in UMRA.

On January 12, 2012, CBO transmitted a cost estimate for S. 636, a bill to provide the Quileute Indian Tribe tsunami and flood protection, as ordered reported by the Senate Committee on Indian Affairs on July 28, 2011. The two pieces of legislation are similar, and their estimated costs are the same. H.R. 1162 does not include the redesignation of 4,100 acres of Olympic National Park to create the Olympic Wilderness. H.R. 1162 also prohibits gaming on lands taken into trust under the bill.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, 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. Based on information from the Department of the Interior, CBO estimates that H.R. 1162 would have no significant impact on the federal budget. Enacting H.R. 1162 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

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, as ordered reported, is to provide the Quileute Indian Tribe tsunami and flood protection.

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.

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.

ADDITIONAL VIEWS

The Quileute people and their reservation are in danger. We fully support providing the Tribe new federal land from Olympic National Park so they may relocate their facilities and their members to higher ground, away from the tsunami danger.

While we support passage of H.R. 1162, it is critical to note, however, that the legislation was impaired by an unnecessary, partisan amendment during consideration by the Natural Resources Committee.

As introduced, H.R. 1162 was the product of decades-long negotiations and represented a workable compromise between stakeholders. As part of that compromise, the legislation as introduced sought to balance the loss of park wilderness through the addition of new wilderness in another area. Through this compromise, the needs of the Tribe would have been well-served and the loss of wilderness and NPS land would have been mitigated.

Despite a hearing record free of any evidence of controversy regarding this legislation, the Majority felt compelled to adopt an amendment striking the new wilderness designation from the legislation. Further, the majority voted down an amendment offered by Subcommittee Ranking Member Grijalva to at least protect Olympic from a net loss of wilderness.

These votes are unjustified; they are based on narrow, ideological objections to wilderness, even within National Parks and even with strong, local support. During the same business meeting, the Committee approved legislation sponsored by Chairman Hastings (H.R. 2352) containing the “no-net-loss-of wilderness” protection for North Cascades National Park, also in Washington State, but apparently the Majority feels no need for consistency on this issue.

The Committee should have recognized H.R. 1162 as the grand bargain that it was and respected the work-product developed by its author, Mr. Dicks of Washington, the National Park Service and the Quileute Tribe, and supported this legislation without amendment. Instead, the Majority blundered into a difficult and potentially dangerous situation and substituted its judgment for those living and working in the area without evidence or justification.

Representative Dicks has introduced the wilderness designation within Olympic as a new, stand-alone bill (H.R. 3222). We believe that the Majority should move both H.R. 1162 and H.R. 3222 bills through the House immediately.

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