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115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-326

TO REAFFIRM THE ACTION OF THE SECRETARY OF THE INTERIOR TO
TAKE LAND INTO TRUST FOR THE BENEFIT OF THE SANTA YNEZ BAND
OF CHUMASH MISSION INDIANS, AND FOR OTHER PURPOSES

AUGUST 23, 2018.—Ordered to be printed

Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany H.R. 1491]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (H.R. 1491) to reaffirm the action of the Secretary of the Interior to take land into trust for the benefit of the Santa Ynez Band of Chumash Mission Indians, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE

The purpose of the bill is reaffirm the Secretary of the Interior's decision which placed in trust certain land which is located in the County of Santa Barbara, California, for the benefit of the Santa Ynez Band of Chumash Mission Indians.

BACKGROUND

The Santa Ynez Band of Chumash Mission Indians (Chumash Tribe), a federally recognized tribe, is located in the County of Santa Barbara (County), California. In 1901, 99-acres of land was used to establish the Santa Ynez reservation for the Chumash Tribe. Over time, the Chumash Tribe secured funding to build a limited number of homes on their reservation.

In 2010, the Chumash Tribe purchased 1,427.28 acres of land, known as Camp 4, to address its housing shortage. With the intent of filing an application for the Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior to take Camp 4 into trust, the Chumash Tribe delivered a cooperative agreement to the County. After two years of negotiations with the County, in 2013, the

Chumash Tribe filed a fee to trust application for Camp 4 with the BIA. Later that same year, the County ceased negotiations with the Chumash Tribe over the proposed cooperative agreement.

On December 24, 2014, the BIA Pacific Regional Director (Regional Director) issued a notice of decision to accept Camp 4 into trust for the Chumash Tribe. In 2015, eight appeals were filed with the Interior Board of Indian Appeals (IBIA) against the Regional Director's determination to take Camp 4 into trust. Assistant Secretary—Indian Affairs, Kevin Washburn, exercised his authority under 25 C.F.R. § 2.20 to assume jurisdiction over the Camp 4 determination and consolidated the appeals.

While awaiting appeal in the IBIA, in 2016, the Chumash Tribe submitted a revised cooperative agreement to the County that addressed the County's concerns with the Camp 4 acquisition. The County suspended its Ad Hoc meetings which had been held to discuss the cooperative agreement. The County then engaged in further negotiations regarding the cooperative agreement with the Chumash Tribe.

In 2017, the Chumash Tribe proposed a cooperative agreement that the County accepted and entered into a memorandum of agreement (MOA) over Camp 4. Pursuant to the MOA, the Tribe agreed to comply with the development proposal set forth in the final Environmental Assessment and Finding of No Significant Impact, including completing any required mitigation measures and refraining from constructing any buildings within 985 feet of Highway 154. The Tribe agreed to a limited waiver of its sovereign immunity and to dispute resolution procedures for the County to enforce the MOA, and committed to annual payments to mitigate the financial and public service impacts of the development. The MOA remains in effect until December 31, 2040.

Meanwhile, on January 19, 2017, the IBIA issued a decision (Decision) on the Camp 4 appeal that affirmed the Regional Director's determination, authorized the Regional Director to accept Camp 4 in trust for the Chumash Tribe, and stated that the Decision was final and in accordance with 25 C.F.R. § 2.20(c).¹ On July 13, 2017, Acting Assistant Secretary—Indian Affairs, Michael S. Black, dismissed all administrative appeals.² In response to the Decision, the County and other parties filed suit in the U.S. District Court for the Central District of California.³

On October 13, 2017, the Chumash Tribal General Council voted to approve entering the MOA with the County. On October 31, 2017, the County Board of Supervisors approved the MOA on Camp 4 and authorized its signing. Pursuant to 25 U.S.C. § 81, the Secretary of the Interior approved the MOA which is now considered effective.⁴ On November 1, 2017, the County withdrew its lawsuit against the Bureau of Indian Affairs over the Camp 4 trust acquisition.

On November 1, 2017, the County sent a letter to Representative McCarthy expressing its support for H.R. 1491. Within this letter, the County stated that it "reached a settlement resolving the Coun-

¹ Action by the Assistant Secretary—Indian Affairs on appeal, 25 C.F.R. § 2.20(c) (2017).

² Order Dismissing Administrative Appeals, *Kramer, et al. v. Principal Deputy Assistant Secretary—Indian Affairs* (AS-IA) (filed July 13, 2017).

³ *Id.*

⁴ 25 U.S.C. § 81 (1958), *amended by* Indian Tribal Economic Development and Contract Encouragement Act of 2000, Pub. L. No. 106-179, 114 Stat. 46, 46-7 (2000).

ty's related litigation . . . [and] no longer takes issue with the FONSI/Final EA or fee-to-trust decision, and supports the Tribe's pursuit of tribal housing and facilities development."⁵ Furthermore, the letter ends with, "the County encourages the Congress to enact [H.R. 1491] without delay."⁶

On April 24, 2018, Representative LaMalfa sent a letter to Senator Hoeven expressing his support for the timely passage of H.R. 1491. On June 4, 2018, Senators Feinstein and Harris sent a letter to Senators Hoeven and Udall expressing their appreciation for holding a legislative hearing on H.R. 1491 and asked that the Committee give favorable consideration to the bill at the earliest convenience. In addition, Representatives LaMalfa and Carbajal have issued letters to the Committee Chairman and Vice Chairman indicating support for advancing the bill.

NEED FOR LEGISLATION

The passage of H.R. 1491 will allow the Chumash Tribe to build housing for its members who are currently living off the reservation or in overcrowded homes on the reservation. With the purchase of Camp 4, the land provides an opportunity for the Chumash Tribe to address the housing shortage on its lands. The bill would facilitate the housing development by removing State of California Williamson Act restrictions which otherwise would have precluded development of Camp 4 until 2024. The bill would also prohibit, as a matter of federal law, gaming on Camp 4.

The legislation would assist in resolving years of litigation stemming from the land being taken into trust by the BIA. While the County has dismissed its lawsuit, there are still two pending cases in District Court, filed by Nancy Crawford-Hall/San Lucas Ranch, and Santa Ynez Valley Concerned Citizens.

The Chumash Tribe, the County, and others support the passage of H.R. 1491.

LEGISLATIVE HISTORY

On March 10, 2017, Representative LaMalfa introduced H.R. 1491, the *Santa Ynez Band of Chumash Indians Land Affirmation Act of 2017*, which was referred to the Committee on Natural Resources of the House of Representatives, Subcommittee on Indian, Insular, and Alaska Native Affairs. It is co-sponsored by Representatives Torres, Cook, McClintock, Denham, Ruiz, Vargas, Cárdenas, Knight, Cole, Nunes, Correa, Valadao, and Walters. The Committee on Natural Resources of the House of Representatives considered H.R. 1491 during a business meeting on July 26, 2017, and ordered the bill, as amended, to be reported by unanimous consent.

On November 28, 2017, the House of Representatives passed the bill, as amended, by voice vote. On November 29, 2017, the Senate received H.R. 1491 which was referred to the Committee on Indian Affairs (Committee). The Committee held a legislative hearing on H.R. 1491 on April 25, 2018, receiving testimony from the Administration, the Chumash Tribe, and a representative from the Santa Ynez Valley Coalition.

⁵Letter from Joan Hartmann, Chair, Santa Barbara Cnty. Bd. of Supervisors, to Rep. Kevin McCarthy, Majority Leader, U.S. H.R. (Nov. 1, 2017).

⁶*Id.*

At the legislative hearing, Committee members posed several questions to the Chumash Tribe about potential land uses of Camp 4 and the agreement made between the tribe and the local county. The Chumash Tribe addressed these questions at the legislative hearing and through post-hearing written answers which provided further clarity on the planned land use.⁷

114th Congress. On February 27, 2015, Representatives LaMalfa, Cole, Cook, Denham, McClintock, Nunes, Valadao, Cárdenas, and McCollum introduced H.R. 1157, the *Santa Ynez Band of Chumash Mission Indians Land Transfer Act of 2016* which is similar to the current bill before the Committee this Congress, H.R. 1491.

On June 4, 2015, Representative Torres was added as a co-sponsor. On June 10, 2015, Representative Vargas was added as a co-sponsor. On July 13, 2015, Representatives Knight and Walters were added as co-sponsors. On December 15, 2015, Representative Ruiz was added as a co-sponsor.

That bill was referred to the Committee on Natural Resources of the House of Representatives, Subcommittee on Indian, Insular, and Alaska Native Affairs (Subcommittee). The Subcommittee held a hearing on H.R. 1157 on June 17, 2015. The Committee on Natural Resources of the House of Representatives considered H.R. 1157 during a business meeting on July 12, 2016, at which the bill, as amended, was ordered to be reported by a roll-call vote of 29–1. The same day, the Subcommittee discharged H.R. 1157, as amended. The bill, as amended, was placed on the Union Calendar on September 6, 2016, where no further action was taken.

113th Congress. On October 23, 2013, Representatives LaMalfa, Cárdenas, Denham, Ruiz, Valadao, and Garcia introduced H.R. 3313, the *Santa Ynez Band of Chumash Mission Indians Land Transfer Act of 2013* which was similar to H.R. 1157 being considered this Congress.

On December 4, 2013, Representative Ruiz withdrew his co-sponsorship to the bill. On February 25, 2014, Representatives Cole, Cook, Negrete McLeod, and Vargas were added as co-sponsors. On April 10, 2014, Representative McCollum was added as a co-sponsor. On April 28, 2014, Representatives Nunes and Thompson were added as co-sponsors.

The bill, H.R. 3313, was referred to the Committee on Natural Resources of the House of Representatives. No further action was taken on H.R. 3313.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section sets forth the short title of the bill as the “Santa Ynez Band of Chumash Indians Land Affirmation Act of 2017”.

Sec 2. Findings

This section sets forth the following findings:

The first finding is the General Council of the Santa Ynez Band of Chumash Indians voted to approve the Memorandum of Agreement between the County of Santa Barbara and the Santa Ynez Band of Chumash Indians regarding the Camp 4 property. The

⁷ A copy of these answers are on file with the Committee Clerk.

Tribe's Chairman is authorized to sign the Memorandum of Agreement.

The second finding is the Board of Supervisors for the County of Santa Barbara approved the Memorandum of Agreement for the Camp 4 property. The Chair of the Board of Supervisors is authorized to sign the Memorandum of Agreement.

The third finding notes the Secretary of the Interior's approval of the Memorandum of Agreement, made pursuant to 25 U.S.C. § 81.

Sec. 3. Reaffirmation of status and actions

This section ratifies and confirms the U.S. Department of the Interior's action to place approximately 1,427.28 acres of land located in the County of Santa Barbara, California, into trust for the Santa Ynez Band of Chumash Indians.

This section ratifies and confirms the Secretary's actions to assume jurisdiction over the appeals relating to the fee-to-trust acquisition of approximately 1,427.28 acres of land located in the County of Santa Barbara, California.

This section ratifies and confirms the Secretary's decision to dismiss the administrative appeals relating to the fee-to-trust acquisition of approximately 1,427.28 acres of land located in the County of Santa Barbara, California.

This section confirms the land taken into trust for the Santa Ynez Band of Chumash Indians shall be considered a part of the Tribe's reservation and certain California state laws restricting land use shall not apply to the 1,427.28 acres.

This section provides for the legal description of the approximately 1,427.28 acres of land, or Camp 4, located in the County of Santa Barbara, California.

This section clarifies that any of the Tribe's claims to land, or interest in land, and water rights are not terminated by the enactment of the Act, and includes any existing right-of-ways or right-of-use issued, granted, or permitted prior to the date of enactment of the Act.

This section provides that the Tribe may not conduct, on the land described in this subsection (b) of this section, any gaming activities as a matter of claimed inherent authority or under any federal law, including the *Indian Gaming Regulatory Act*, and regulations promulgated by the Secretary or the National Indian Gaming Commission.

This section provides for definitions of the "Secretary" and the "Tribe".

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated June 28, 2018, was prepared for H.R. 1491:

JUNE 28, 2018.

Hon. JOHN HOEVEN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1491, the Santa Ynez Band of Chumash Indians Land Affirmation Act of 2017.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1491—Santa Ynez Band of Chumash Indians Land Affirmation Act of 2017

H.R. 1491 would affirm the decision made by the Department of the Interior (DOI) to take into trust approximately 1,400 acres of land owned by the Santa Ynez Band of Chumash Mission Indians (Chumash Tribe) in Santa Barbara County, California. Under the act, DOI would hold the title to that land for the benefit of the tribe. The act would prohibit certain types of gaming on those lands and end any administrative appeals of DOI's decision about this property. CBO estimates that implementing the act would have no significant budgetary effects related to holding the land in trust.

Enacting H.R. 1491 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1491 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 1491 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$80 million and \$160 million in 2018, respectively, adjusted annually for inflation).

The bill would impose an intergovernmental mandate by preempting the authority of state and local governments to tax land taken into trust for the Chumash Tribe. Information from Santa Barbara County about taxes and other receipts associated with the land indicates that such revenues total less than \$500,000 annually.

The bill also would impose an intergovernmental and private-sector mandate by eliminating the ability of public and private entities to appeal the federal government's decision to take land into trust for the benefit of the Chumash Tribe. By ratifying DOI's decision to take the land into trust, the bill would effectively extinguish any existing or future appeal of that decision. The costs of the mandates would be the value of forgone compensation and settlements associated with such appeals if they would have been successful under current law. However, because no monetary award is available for such challenges to the administrative procedures and decisions of the federal government, CBO expects that the mandate would impose no costs.

On September 20, 2017, CBO transmitted a cost estimate for H.R. 1491, the Santa Ynez Band of Chumash Indians Land Affirmation Act of 2017, as ordered reported by the House Committee on Natural Resources on July 26, 2017. The two versions of the legislation are similar, and CBO's estimate of their budgetary effects are the same.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 1491 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 1491.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite business of the Senate.