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1st Session }

SENATE

{ REPORT
{ 116-67

TO TAKE LANDS IN SONOMA COUNTY, CALIFORNIA, INTO TRUST AS PART
OF THE RESERVATION OF THE LYTTON RANCHERIA OF CALIFORNIA,
AND FOR OTHER PURPOSES

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JULY 29, 2019.—Ordered to be printed
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Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany H.R. 1388]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which referred the bill (H.R. 1388) to take lands in Sonoma County, California, into trust as part of the reservation of the Lytton Rancheria of California, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill, H.R. 1388, is to provide congressional authorization for the U.S. Department of the Interior (DOI) to take land owned in fee by the Lytton Rancheria of California (Lytton Rancheria or Tribe) into trust for the benefit of the Tribe.

BACKGROUND

The Lytton Rancheria is a federally recognized Indian Tribe. In 1958, the Lytton Rancheria, along with 40 other Indian Tribes in California, were the subject of Congressional action that sought to end the reservation status for tribal lands and the trust relationship with the Federal government. After the passage of the *1958 California Rancheria Act*¹ and through a series of tragic land transactions that followed, the Lytton Rancheria lost all lands located on their traditional homelands.

In the late 1960s, the Federal government pivoted from assimilation and termination policies to a policy of tribal self-determination. As a result of this policy shift, Congress “restored” the federal

¹ California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, 619-21 (1958).

trust relationship with some Indian Tribes; others sought to restore this relationship through litigation.² In 1987, the Lytton Rancheria joined other Indian Tribes in a Federal lawsuit that challenged the termination of their federal statuses. In 1991, the Scotts Valley, Guidiville, and Lytton Rancherias settled the lawsuit and had their federal recognition statuses restored under the stipulated judgment.³

The settlement reached between the parties state that the termination of the Lytton Rancheria was illegal and that the descendants of the Tribe were entitled to the rights and benefits as individual Indians.⁴ While the settlement provided that the Tribe could organize under the *Indian Reorganization Act*, the agreement also assured nearby landowners, who intervened in the lawsuit, that the Lytton Rancheria would not conduct gaming in Alexander Valley except when in compliance with the County of Sonoma's general plan and the *Indian Gaming Regulatory Act* (IGRA).⁵ Since the court entered its judgment in 1991, the DOI has listed the Lytton Rancheria as a federally recognized Indian Tribe in the Federal Register each year such notices were issued between 1992 and 2018.⁶

To date, no land has been returned to the Lytton Rancheria resulting from the settlement or stipulated judgment. But in 2000, Congress passed the *Omnibus Indian Advancement Act*, which directed the Secretary of the Interior to take 9.5 acres of land in San Pablo, California into trust for the Tribe, declared those lands to be part of the Tribe's reservation, and deemed the land to be eligible for gaming under IGRA. The following year, Congress clarified that the provisions of IGRA, but not those relating to the land's eligibility for class III gaming, apply to future gaming on the San Pablo Property.⁷ Consequently, the small parcel of 9.5 acres that was taken into trust for the Tribe was used to build a Class II gaming operation. Because the Tribe does not have any additional trust lands available to house its membership, it is seeking legislative action.

LEGISLATIVE HISTORY

On February 27, 2019, Representative Jared Huffman introduced H.R. 1388, the *Lytton Rancheria Homelands Act of 2019*. The bill was referred to the Subcommittee for Indigenous Peoples of the United States of the Committee on Natural Resources in the House of Representatives. On March 26, 2019, the House of Representatives passed H.R. 1388, by a vote of 404–21.

²See *Amador County, California v. Salazar*, 640 F.3d 373, 375 (D.C. Cir. 2011) (discussing the 1983 stipulated order in *Hardwick v. United States*, No. C-79-1710 (N.D. Cal.)).

³*Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States of America*, No. C-86-3660-WWS (N.D. Cal. Mar. 15, 1991).

⁴According to the district court in *Artichoke Joe's*, the 1961 termination was illegal because Public Law 85-671 §3(c) required the federal government to “install or rehabilitate . . . irrigation or domestic water systems” before the land was distributed, or within a reasonable time after the land was distributed. *Artichoke Joe's California Grand Casino v. Norton*, 278 F.Supp.2d 1174, 1177 (E.D. Cal. 2003) (detailing the history of litigation and describing the settlement). The federal government never constructed the required water system improvements on the Lytton Rancheria's lands, according to the Tribe. *Id.*

⁵See *Artichoke Joe's*, 278 F.Supp.2d at 1177 (detailing the history of litigation and describing the settlement).

⁶The list is published each year pursuant to the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791, codified at 25 U.S.C. § 479a.

⁷Section 128 of the Department of the Interior and Related Agencies Appropriation Act of 2002, Pub. L. No. 107-63, 115 Stat. 414, 442 (Nov. 5, 2001) (“2001 Amendment”).

On March 27, 2019, the Senate received H.R. 1388 and the bill was referred to the Senate Committee on Indian Affairs (Committee). On June 11, 2019, Senators Feinstein and Harris sent a letter to Senators Hoeven and Udall requesting the Committee to schedule a business meeting and give favorable consideration to H.R. 1388 at the earliest convenience.

On June 19, 2019, the Committee held a duly called business meeting to consider H.R. 1388. No amendments were filed to the bill. The Committee passed H.R. 1388 by voice vote and ordered the bill to be favorably reported.

At this time, there is no Senate companion bill.

115th Congress. Representative Denham introduced H.R. 597, the *Lytton Rancheria Homelands Act of 2017* on January 20, 2017. The bill was referred to the Subcommittee on Indian, Insular, and Alaska Native Affairs of the Committee on Natural Resources in the House of Representatives. The House Committee on Natural Resources favorably reported the bill on June 27, 2017, without amendment. H.R. 597 was passed by the House of Representatives on July 11, 2017.

On July 12, 2017, H.R. 597 was received in the Senate and referred to the Committee. On April 25, 2018, the Committee held a legislative hearing on the bill. Following the legislative hearing on H.R. 597, the Lytton Rancheria and County agreed to further amend the memoranda of agreement to prohibit gaming in the county, in perpetuity, so long as the Lytton Rancheria is not involuntarily prohibited by governmental decision or action from operating its current casino located in San Pablo, California, pursuant to IGRA. The amended memoranda of agreement was ratified by the Lytton Rancheria and the County.

In addition, the Department of Justice sent comments to the Committee regarding provisions within the bill. These comments concerning the gaming restrictions, liabilities on the land, and other technical matters did not require amendments to the legislation. On July 11, 2018, the Committee held a duly called business meeting to consider H.R. 597. The bill was passed without amendment by the Committee and placed on the Senate Legislative Calendar under General Orders. No further action was taken on the bill.

114th Congress. The *Lytton Rancheria Homelands Act of 2015*, H.R. 2538, was introduced by Representatives Huffman and Denham on May 21, 2015 and referred to the Subcommittee on Indian, Insular and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives. Representative Thompson was added as a co-sponsor on June 9, 2015.

The House Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing on H.R. 2538 on June 17, 2015. On February 2, 2016, the House Subcommittee discharged the bill and the full Committee on Natural Resources considered H.R. 2538 during a mark-up session, at which the bill was ordered to be reported, as amended, by unanimous consent. On June 21, 2016, H.R. 2538 was placed on the Union Calendar where no further action was taken on the bill.

SUMMARY OF THE BILL

The bill, H.R. 1388, would place 511 acres of land into trust for the benefit of the Lytton Rancheria through a mandatory trust acquisition by the DOI. This fee land is located adjacent to the Town of Windsor, near the tribe's original homelands. The land, once it is held in trust for the Tribe, will assist in reestablishing a permanent homeland for the Lytton Rancheria, with housing, government facilities, and economic development opportunities, including viticulture. The legislation will also make the lands part of the Lytton Rancheria's reservation. H.R. 1388 includes a permanent gaming prohibition on the lands described in the legislation and on future trust acquisitions for the Tribe in the County.

The Lytton Rancheria has spent years negotiating with the County, local school district, and local fire department to form three memoranda of agreements that provide for the mitigation of any potential off-reservation impacts from the uses of the trust land.

On May 27, 2015, Governor Jerry Brown, Jr. sent a letter to Rep. Huffman supporting the *Lytton Rancheria Homelands Act of 2015*, a bill similar to H.R. 1388. Both the Lytton Rancheria Tribal Council and the County Board of Supervisors voted unanimously to support the memoranda of agreement and needed Federal legislation to take the lands into trust for the benefit of the Tribe.

NEED FOR LEGISLATION

Taking the land into trust, as described in H.R. 1388, would allow the Lytton Rancheria to rebuild their community by constructing homes and government facilities, expand economic development, and create areas to practice traditional and religious teachings.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section cites the Act as the "Lytton Rancheria Homelands Act of 2019."

Sec. 2. Findings

This section explains the history of Lytton Rancheria, a federally recognized Indian Tribe, and how they lost their trust status and homelands. Through litigation, the Lytton Rancheria and other Indian Tribes challenged the loss of their trust status. In a stipulated judgement, the court restored the Lytton Rancheria's trust relationship with the United States and held that the Tribe would have the "individual and collective status and rights" it had prior to its termination. The stipulated judgement expressly contemplated the acquisition of trust lands for the Lytton Rancheria.

Sec. 3. Definitions

This section provides for definitions used throughout the Act, including the term "County" to mean the Sonoma County, California; the term "Secretary" to mean the Secretary of the Interior; and the term "Tribe" to mean the Lytton Rancheria of California, a federally recognized Indian Tribe.

Sec. 4. Lands to be taken into trust

This section specifies the land that will be taken into trust; the land owned by the Tribe and depicted on the map titled “Lytton Fee Owned Property to be Taken into Trust,” dated May 1, 2015. The land to be taken into trust are part of the Lytton Rancheria’s reservation and shall be administered in accordance with the laws and regulations generally applicable to property held in trust by the United States for an Indian Tribe.

Sec. 5. Gaming

This section explains that the lands taken into trust under this Act are not eligible for gaming under the *Indian Gaming Regulatory Act*.

This section also provides for a permanent gaming prohibition on the Tribe for any future land into trust acquisitions in the County.

Sec. 6. Applicability of certain law

This section states the Memorandum of Agreement, and any addenda and supplement or amendment, entered into by the Lytton Rancheria and the County concerning the trust land is not subject to review or approval of the Secretary in order to be effective, including review or approval under (25 U.S.C. § 81).

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated July 12, 2019, was prepared for H.R. 1388:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 12, 2019.

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. 1388, the Lytton Rancheria Homelands Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

| Bill #, Lytton Rancheria Homelands Act of 2019 | | | |
|---|-------------|--|-----------------------------|
| As [Manager] on June 19, 2019 | | | |
| By Fiscal Year, Millions of Dollars | 2019 | 2019-2024 | 2019-2029 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Deficit Effect | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 0 | * | n.e. |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? | No | Contains intergovernmental mandate? | Yes, Under Threshold |
| | | Contains private-sector mandate? | No |
| n.e. = not estimated; * = between zero and \$500,000. | | | |

H.R. 1388 would take into trust, for the benefit of the Lytton Rancheria of California, a federally recognized Indian tribe, certain land located in the county of Sonoma, California. The act would specify certain prohibitions on gaming on the affected land, consistent with an existing memorandum of understanding between the tribe and the county.

Using information from the Bureau of Indian Affairs, CBO estimates that implementing H.R. 1388 would have no significant effect on the federal budget. CBO estimates that any change in the agency's administrative costs under the act, which would be subject to appropriation, would not exceed \$500,000.

H.R. 1388 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting state and local governments from taxing land taken into trust for the Lytton Rancheria. CBO estimates the costs of the mandate would be well below the threshold established in UMRA (\$82 million in 2019, adjusted annually for inflation).

The act contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Jon Sperl (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, 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. 1388 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 1388.

CHANGES IN EXISTING LAW

On February 6, 2019, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. 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 the business of the Senate.

