

Committee on Natural Resources

Rob Bishop, Chairman

Markup Memorandum

June 20, 2017

To: All Natural Resources Committee Members

From: Majority Staff, Subcommittee on Indian, Insular and Alaska Natives (x6-9725)

Markup: **H.R. 1306 (Rep. Peter A. DeFazio)**, To provide for the conveyance of certain Federal land in the State of Oregon, and for other purposes.
June 22 & 27, 2017; Room 1324 Longworth HOB

H.R. 1306 (DeFazio), “*Western Oregon Tribal Fairness Act*”

Summary of the Bill

H.R. 1306 benefits three recognized tribes in western Oregon by conveying publicly owned forest lands to two of them and to improve the management of forest lands currently held in trust for a third tribe. Specifically, the bill would place title to certain publicly owned forest lands in western Oregon in trust for the benefit of the Cow Creek Umpqua tribe and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. Additionally, the bill would provide that land held in trust for the benefit of the Coquille Tribe shall be managed under federal law generally applicable to Indian forest lands rather than under the Northwest Forest Plan, which is applicable to lands owned for the benefit of the public.

Cosponsors

Rep. Greg Walden (OR-2)

Background

The three tribes that benefit from the provisions of H.R. 1306 were originally recognized under various treaties or Acts of Congress. In the 1950’s and 1960’s, Congress enacted a number of laws to terminate the federal reservations and recognition of various tribes, including the Coos, Cow Creek, and Coquille tribes. The federal recognition of the tribes was later restored by Congress, and provision made for the acquisition of lands in trust for their benefit. The tribes however, do not possess the reservations that had originally been granted to them and there have been various efforts, including those represented in H.R. 1306, to increase their current land trust base.

Various iterations of H.R. 1306 have been considered multiple times in previous Congress. Nearly identical bills benefiting some or all of these tribes were passed by the House

twice in the 113th and once in the 114th Congresses.¹ Moreover, a nearly identical bill was included in S. 2012 (Sen. Murkowski), the North American Energy Security and Infrastructure Act of 2016, which stalled in a House-Senate conference at the end of the previous Congress.

H.R. 1306 was referred to the Subcommittee on Federal Lands and the Subcommittee on Indian, Insular, and Alaska Native Affairs. A title-by-title analysis follows.

Title I: Cow Creek Umpqua Land Conveyance

Title I of H.R. 1306 would place title to approximately 17,519 acres of public land in Oregon in trust for the benefit of the Cow Creek Umpqua Tribe. Lands to be held in trust under Title I are depicted on the first map, and the conveyance of the land in trust shall be subject to valid existing rights.

A substantial amount of the public land placed in trust for the tribe under Title I is currently part of the Oregon & California Railroad land grant (O&C Land), managed by the Bureau of Land Management. Under Title I, the Secretary is required to reclassify as O&C Land an equal amount of public domain land located in the vicinity of the land conveyed to the tribe.

Land placed in trust for the tribe under Title I may not be used for gambling under the Indian Gaming Regulatory Act of 1988 (25 USC §2701 et seq.), and timber harvested from such land shall be subject to federal law restricting the export of unprocessed logs.

Title II: Oregon Coastal Lands Conveyance

Title II of H.R. 1306 would place approximately 14,742 acres of public land, as depicted on a the second map, in trust for the benefit of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. Such lands would be subject to valid existing rights and certain other conditions, detailed below. A substantial portion of the lands to be placed in trust for the tribe is O&C Land. Under the bill, the Secretary of the Interior must identify an equal amount of other public land in the vicinity and reclassify them as O&C Land.

Under the bill, lands placed in trust for the Coos tribe shall not be eligible for gambling under the Indian Gaming Regulatory Act of 1988, and timber harvested on them shall be subject to federal laws restricting the export of unprocessed logs.

In addition, with respect to lands transferred in trust to the tribe under Title II, the Secretary of the Interior shall seek to consult with the Confederated Tribes an agreement to secure existing administrative access for other parties to honor existing forest management, timber and rock haul, road maintenance, wildland fire protection, cadastral surveys, and law enforcement activities. Additionally, administrative access rights to provide for the management of lands that had been acquired or developed under the Land and Water Conservation Fund Act

¹ See H.R. 5701 and H.R. 1526 (113th Congress) and H.R. 2791 (114th Congress).

of 1965 (54 USC Chapter 2003). The text of the bill does not appear to require the tribe or any party to sign any agreement or stipulate to any specific condition in the administration of its trust lands beyond the requirement to consult with the Secretary and other parties.

Title III: Amendments to Coquille Restoration Act

Title III puts management of the Coquille Tribe's trust lands on an equal footing with that of other tribes. Currently, management of the Coquille tribe's forest lands is subject to the standards and guidelines of forest plans for nearby and adjacent forest lands. Such a management scheme is inconsistent with that of other tribally-managed forests in the United States. Timber on tribal lands is generally subject to specific laws and regulations for the management of Indian trust assets, implemented by the Department of the Interior (DOI). Such laws include the National Indian Forest Resources Management Act (25 USC 3101 et seq.) and its implementing regulations. Title III of H.R. 1306 would require DOI to manage the Coquille Forest in accordance with only those laws pertaining to the management of Indian trust land.

Cost

In the 114th Congress, CBO provided a cost estimate for a nearly identical bill, H.R. 2971. The CBO estimated that the bill would have no significant effect on the federal budget.²

Effect on Current Law

Showing Current Law as Amended by H.R. 1306

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 5(d) of the Coquille Restoration Act Coquille Forest Restoration Act (25 U.S.C. 715 et seq.)

§715c. Transfer of land to be held in trust

(a) Lands to be taken in trust

The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: *Provided*, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.].

(b) Lands to be part of reservation

Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the Tribe and shall be part of its reservation.

(c) Lands to be nontaxable

² See House Report 114-254.

Any real property taken into trust for the benefit of the Tribe under this section shall be exempt from all local, State, and Federal taxation as of the date of transfer.

(d) Creation of Coquille Forest

(1) Definitions

In this subsection:

(A) the ¹ term "Coquille Forest" means certain lands in Coos County, Oregon, comprising approximately 5,400 acres, as generally depicted on the map entitled "Coquille Forest Proposal", dated July 8, 1996.

(B) the ¹ term "Secretary" means the Secretary of the Interior.

(C) the ¹ term "the Tribe" means the Coquille Tribe of Coos County, Oregon.

(2) Map

The map described in subparagraph (d)(1)(A), and such additional legal descriptions which are applicable, shall be placed on file at the local District Office of the Bureau of Land Management, the Agency Office of the Bureau of Indian Affairs, and with the Senate Committee on Energy and Natural Resources and the House Committee on Resources.

(3) Interim period

From September 30, 1996, until two years after September 30, 1996, the Bureau of Land Management shall:

(A) retain Federal jurisdiction for the management of lands designated under this subsection as the Coquille Forest and continue to distribute revenues from such lands in a manner consistent with existing law; and,²

(B) prior to advertising, offering or awarding any timber sale contract on lands designated under this subsection as the Coquille Forest, obtain the approval of the Assistant Secretary for Indian Affairs, acting on behalf of and in consultation with the Tribe.

(4) Transition planning and designation

(A) During the two year interim period provided for in paragraph (3), the Assistant Secretary for Indian Affairs, acting on behalf of and in consultation with the Tribe, is authorized to initiate development of a forest management plan for the Coquille Forest. The Secretary, acting through the Director of the Bureau of Land Management, shall cooperate and assist in the development of such plan and in the transition of forestry management operations for the Coquille Forest to the Assistant Secretary for Indian Affairs.

(B) Two years after September 30, 1996, the Secretary shall take the lands identified under subparagraph (d)(1)(A) into trust, and shall hold such lands in trust, in perpetuity, for the Coquille Tribe. Such lands shall be thereafter designated as the Coquille Forest.

(C) So as to maintain the current flow of revenue from land subject to the Act entitled "An Act relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant land situated in the State of Oregon" (the O&C Act), approved August 28, 1937 (43 U.S.C. 1181a et seq.), the Secretary shall redesignate, from public domain lands within the tribe's service area, as defined in this subchapter, certain lands to be subject to the O&C Act. Lands redesignated under this subparagraph shall not exceed lands sufficient to constitute equivalent timber value as compared to lands constituting the Coquille Forest.

(5) Management

The Secretary of ³ Interior, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest under applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act [16 U.S.C. 1531 et seq.], and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future. The Secretary shall otherwise manage the Coquille Forest in accordance with the

laws pertaining to the management of Indian Trust⁴ lands and shall distribute revenues in accord with Public Law 101–630, 25 U.S.C. 3107.

(A) Unprocessed logs harvested from the Coquille Forest shall be subject to the same Federal statutory restrictions on export to foreign Nations⁴ that apply to unprocessed logs harvested from Federal lands.

(B) Notwithstanding any other provision of law, all sales of timber from land subject to this subsection shall be advertised, offered and awarded according to competitive bidding practices, with sales being awarded to the highest responsible bidder.]

(5) Management.

(A) In General.—Subject to subparagraph(B), the Secretary, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest in accordance with the laws pertaining to the management of Indian trust land.

(B) Administration.

(i) Unprocessed Logs.—Unprocessed logs harvested from the Coquille Forest shall be subject to the same Federal statutory restrictions on export to foreign nations that apply to unprocessed logs harvested from Federal land.

(ii) Sales of Timber.—Notwithstanding any other provision of law, all sales of timber from land subject to this subsection shall be advertised, offered, and awarded according to competitive bidding practices, with sales being awarded to the highest responsible bidder.

(6) Indian Self-Determination Act agreement

No sooner than two years after September 30, 1996, the Secretary may, upon a satisfactory showing of management competence and pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.], enter into a binding Indian self-determination agreement (agreement) with the Coquille Indian Tribe. Such agreement may provide for the tribe to carry out all or a portion of the forest management for the Coquille Forest.

(A) Prior to entering such an agreement, and as a condition of maintaining such an agreement, the Secretary must find that the Coquille Tribe has entered into a binding memorandum of agreement (MOA) with the State of Oregon, as required under paragraph 7.⁵

(B) The authority of the Secretary to rescind the Indian self-determination agreement shall not be encumbered.

(i) The Secretary shall rescind the agreement upon a demonstration that the tribe and the State of Oregon are no longer engaged in a memorandum of agreement as required under paragraph 7.⁵

(ii) The Secretary may rescind the agreement on a showing that the Tribe has managed the Coquille Forest in a manner inconsistent with this subsection, or the Tribe is no longer managing, or capable of managing, the Coquille Forest in a manner consistent with this subsection.

(7) Memorandum of agreement

The Coquille Tribe shall enter into a memorandum of agreement (MOA) with the State of Oregon relating to the establishment and management of the Coquille Forest. The MOA shall include, but not be limited to, the terms and conditions for managing the Coquille Forest in a manner consistent with paragraph (5) of this subsection, preserving public access, advancing jointly-held resource management goals, achieving tribal restoration objectives and establishing a coordinated management framework. Further, provisions set forth in the MOA shall be consistent with federal¹ trust responsibility requirements applicable to Indian trust lands and paragraph (5) of this subsection.

(8) Public access

The Coquille Forest shall remain open to public access for purposes of hunting, fishing, recreation and transportation, except when closure is required by state¹ or federal¹ law, or when the Coquille Indian Tribe and the State of Oregon agree in writing that restrictions on access are necessary or appropriate to prevent harm to natural resources, cultural resources or environmental

quality; ⁶ *Provided*, That the State of Oregon's agreement shall not be required when immediate action is necessary to protect archaeological resources.

(9) Jurisdiction

(A) The United States District Court for the District of Oregon shall have jurisdiction over actions against the Secretary arising out of claims that this subsection has been violated. Consistent with existing precedents on standing to sue, any affected citizen may bring suit against the Secretary for violations of this subsection, except that suit may not be brought against the Secretary for claims that the MOA has been violated. The Court has the authority to hold unlawful and set aside actions pursuant to this subsection that are arbitrary and capricious, an abuse of discretion, or otherwise an abuse of law.

(B) The United States District Court for the District of Oregon shall have jurisdiction over actions between the State of Oregon and the Tribe arising out of claims of breach of the MOA.

(C) Unless otherwise provided for by law, remedies available under this subsection shall be limited to equitable relief and shall not include damages.]

(9)(10) State regulatory and civil jurisdiction

In addition to the jurisdiction described in paragraph 7 ⁵ of this subsection, the State of Oregon may exercise exclusive regulatory civil jurisdiction, including but not limited to adoption and enforcement of administrative rules and orders, over the following subjects:

(A) management, allocation and administration of fish and wildlife resources, including but not limited to establishment and enforcement of hunting and fishing seasons, bag limits, limits on equipment and methods, issuance of permits and licenses, and approval or disapproval of hatcheries, game farms, and other breeding facilities; ⁶ *Provided*, That nothing herein shall be construed to permit the State of Oregon to manage fish or wildlife habitat on Coquille Forest lands;

(B) allocation and administration of water rights, appropriation of water and use of water;

(C) regulation of boating activities, including equipment and registration requirements, and protection of the public's right to use the waterways for purposes of boating or other navigation;

(D) fills and removals from waters of the State, as defined in Oregon law;

(E) protection and management of the State's proprietary interests in the beds and banks of navigable waterways;

(F) regulation of mining, mine reclamation activities, and exploration and drilling for oil and gas deposits;

(G) regulation of water quality, air quality (including smoke management), solid and hazardous waste, and remediation of releases of hazardous substances;

(H) regulation of the use of herbicides and pesticides; and

(I) enforcement of public health and safety standards, including standards for the protection of workers, well construction and codes governing the construction of bridges, buildings, and other structures.

(10)(11) Savings clause, State authority

(A) Nothing in this subsection shall be construed to grant tribal authority over private or State-owned lands.

(B) To the extent ⁷ that the State of Oregon is regulating the foregoing areas pursuant to a delegated Federal authority or a Federal program, nothing in this subsection shall be construed to enlarge or diminish the State's authority under such law.

(C) Where both the State of Oregon and the United States are regulating, nothing herein shall be construed to alter their respective authorities.

(D) To the extent that Federal law authorizes the Coquille Indian Tribe to assume regulatory authority over an area, nothing herein shall be construed to enlarge or diminish the tribe's ¹ authority to do so under such law.

(E) Unless and except to the extent that the tribe¹ has assumed jurisdiction over the Coquille Forest pursuant to Federal law, or otherwise with the consent of the State, the State of Oregon shall have jurisdiction and authority to enforce its laws addressing the subjects listed in subparagraph 10⁸ of this subsection on the Coquille Forest against the Coquille Indian Tribe, its members and all other persons and entities, in the same manner and with the same remedies and protections and appeal rights as otherwise provided by general Oregon law. Where the State of Oregon and Coquille Indian Tribe agree regarding the exercise of tribal civil regulatory jurisdiction over activities on the Coquille Forest lands, the tribe¹ may exercise such jurisdiction as its⁹ agreed upon.

(11)[(12)] Conflict between laws

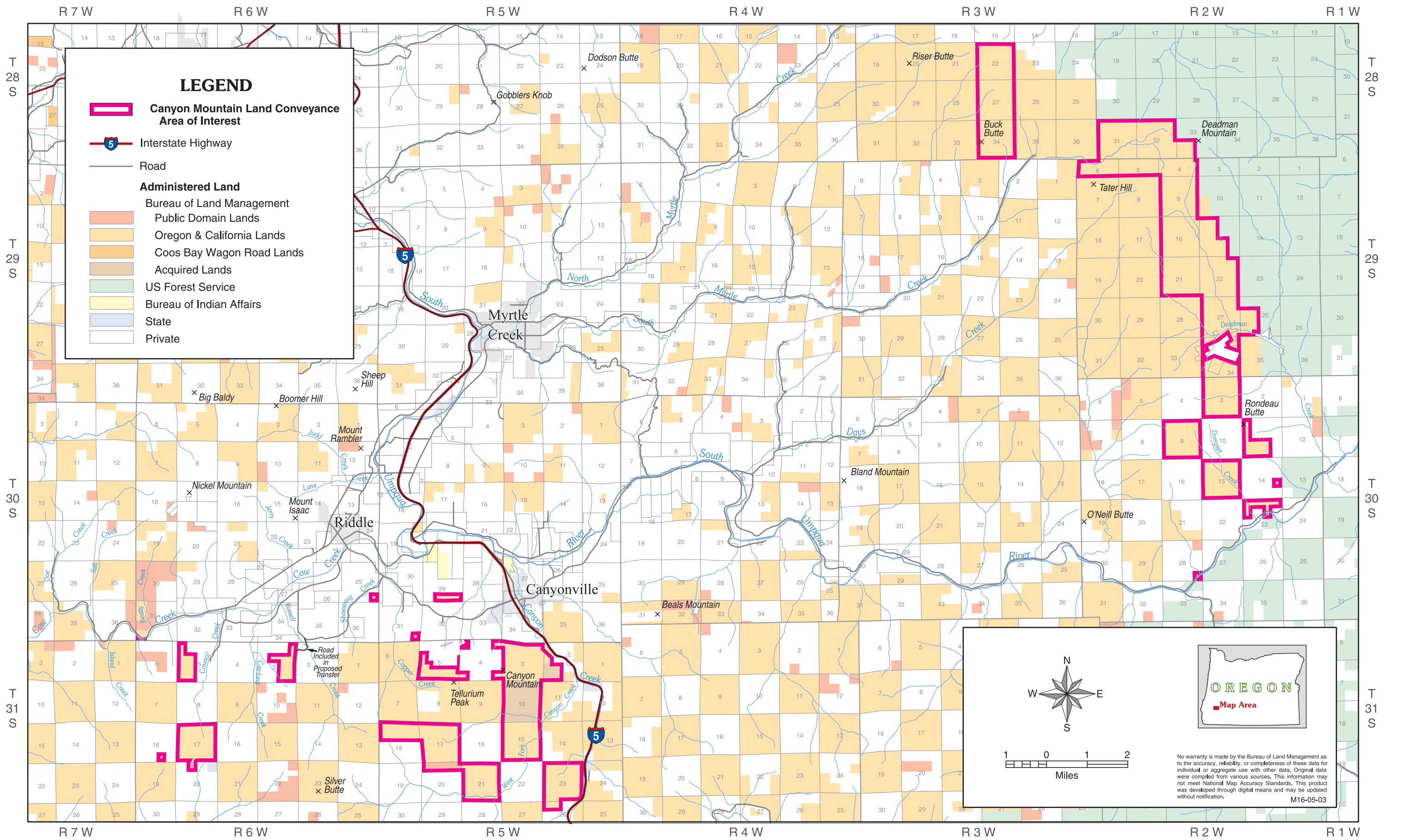
In the event of a conflict between Federal and State law under this subsection, Federal law shall control.



CANYON MOUNTAIN LAND CONVEYANCE

May 24, 2016

This map prepared at the request of Senator Ron Wyden



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Miles

OREGON
Map Area

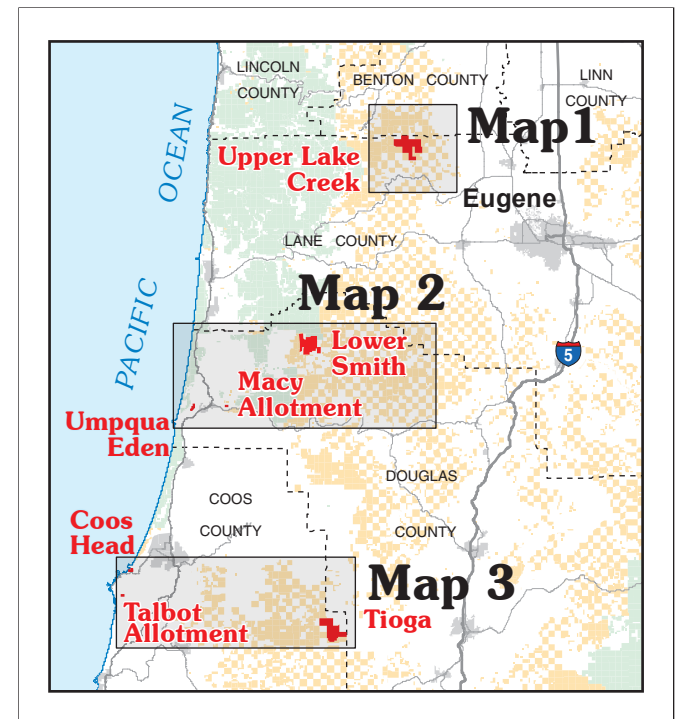
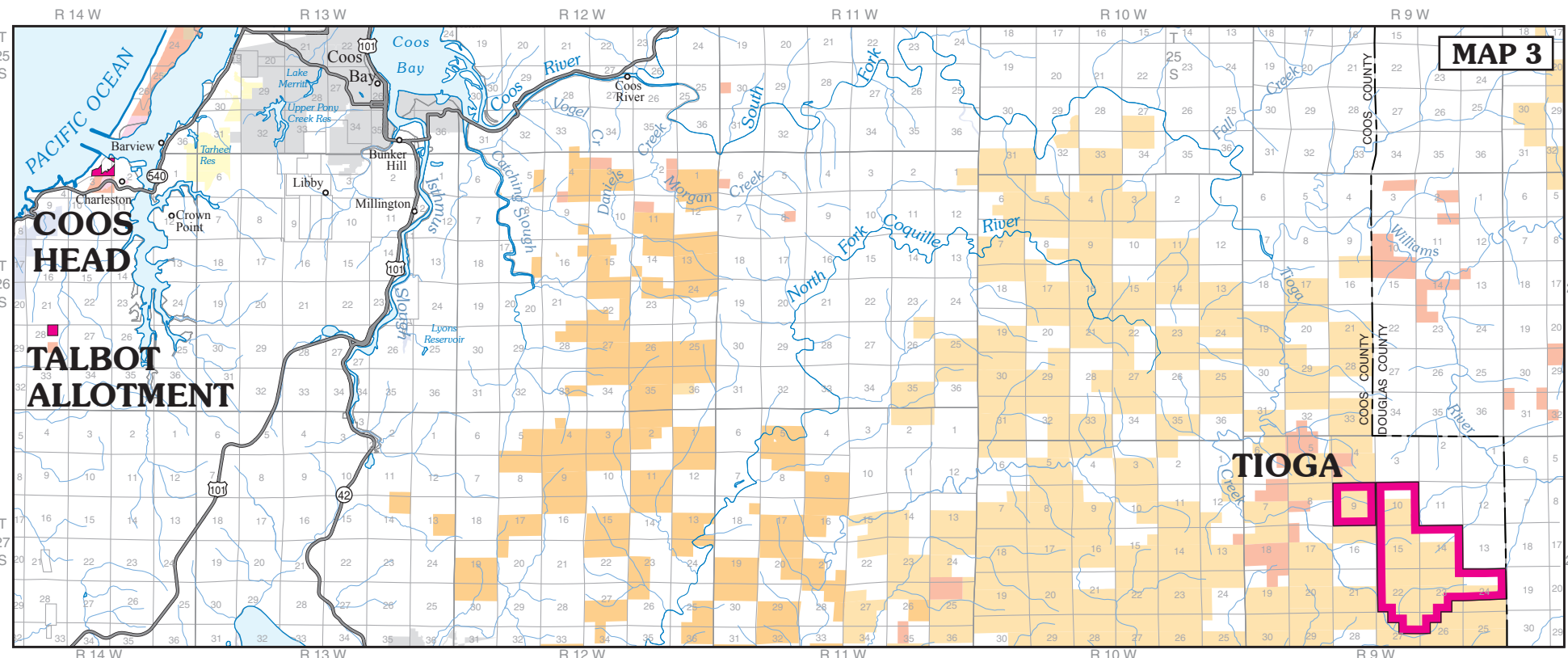
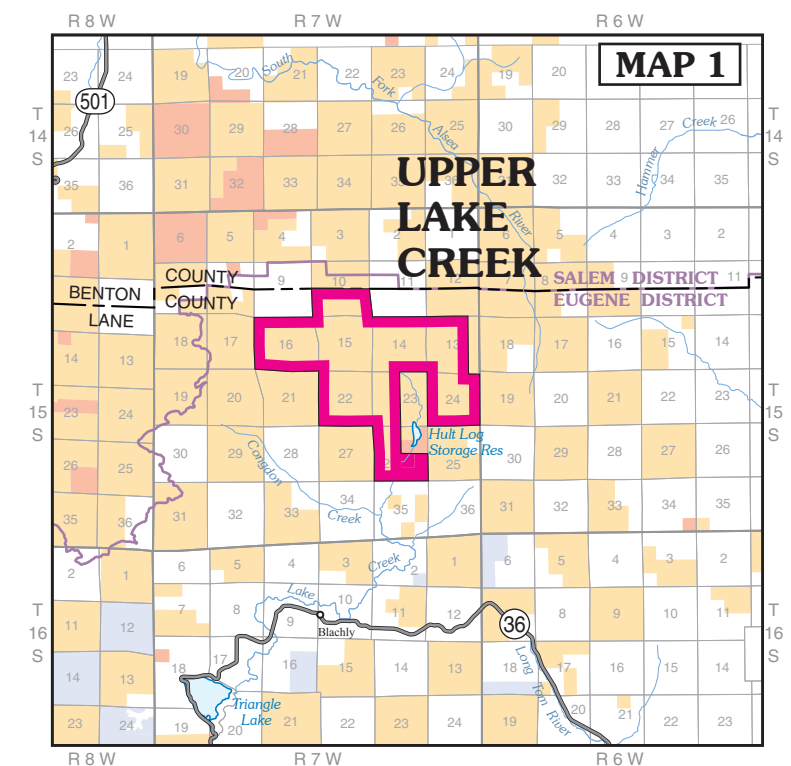
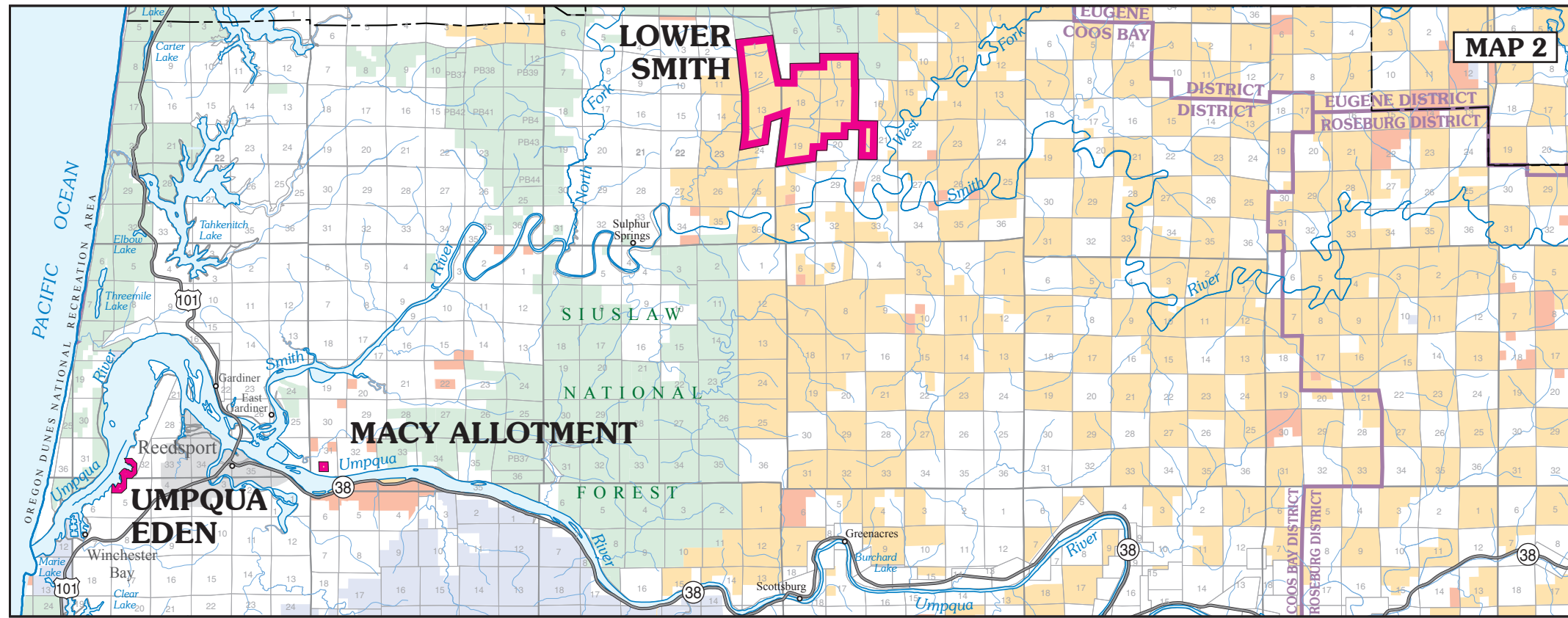
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M16-05-03



OREGON COASTAL LAND CONVEYANCE

July 11, 2016

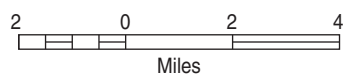
This map prepared at the request of Senator Ron Wyden



LEGEND

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|--|---------------------------|--|--------------------------|
| | Administered Land | | US Forest Service |
| | Bureau of Land Management | | Bureau of Indian Affairs |
| | Public Domain Lands | | Other Federal |
| | Oregon & California Lands | | State |
| | Coos Bay Wagon Road Lands | | Private |
| | Acquired Lands | | |

Oregon Coastal Land Conveyance Area Of Interest



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