

# Subcommittee on Indian, Insular and Alaska Native Affairs

Doug LaMalfa, Chairman

Hearing Memorandum

November 13, 2017

**To:** All Subcommittee on Indian, Insular and Alaska Native Affairs Members

**From:** Majority Committee Staff,  
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

**Hearing:** **Legislative hearing on H.R. 3225 (Rep. Peter DeFazio)**, To allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease to transfer certain lands.

**Wednesday, November 15, 2017, at 10:00 a.m. in 1324 Longworth HOB**

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## **H.R. 3225 (Rep. Peter DeFazio), “Oregon Tribal Economic Development Act”**

### **Summary of the bill**

H.R. 3225 was introduced by Rep. Peter DeFazio on July 13, 2017. H.R. 3225 would clarify that five federally recognized tribes in Oregon<sup>1</sup> can buy, sell, lease, or otherwise convey their non-trust (fee simple) owned land without approval from the federal government. According to the tribes, without clarification, an overly broad interpretation of the Indian Non-Intercourse Act<sup>2</sup> could potentially hamper economic development on existing tribal lands, even if they are not held in trust.

### **Cosponsors**

Rep. Greg Walden (R-OR)

### **Invited Witnesses**

*Mr. John Tahsuda III*

Acting Assistant Secretary – Indian Affairs

U.S. Department of the Interior

Washington, D.C.

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<sup>1</sup> Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community, the Confederated Tribes of Siletz Indians, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians.

<sup>2</sup> 25 U.S.C. §177.

*The Honorable Mark Ingersoll*

Chairman

Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

Coos Bay, OR

## **Background**

### ***Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians***

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians are the aboriginal inhabitants of the central and south-central coast of Oregon. After initial contact with fur traders in the early 1800s, these tribes along the Oregon coast negotiated a treaty with the United States in 1855; however, the treaty was never ratified nor the terms fully realized. For the next 50 years many tribes in Oregon endured an uphill struggle.

In 1940, six acres were bestowed to the tribes by a non-Indian; later these lands were placed into trust by the Department of the Interior. These six acres, which constituted the Tribes' reservation, are located approximately 100 miles southwest of Eugene, Oregon.

In 1954 the Tribes, along with several other tribes in Oregon, were terminated pursuant to the Western Oregon Termination Act,<sup>3</sup> effective August 1956. However, in 1984 the Tribes federal recognition was restored in October 1984.<sup>4</sup> Under that Act, approximately 1.02 acres in Coos County, Oregon, and several other counties, were placed into trust for the establishment as a reservation for the Tribes. In 1998, Congress placed an additional tract of land into trust for the Tribes.<sup>5</sup>

Today, the Tribes have 153 acres held in trust by the United States. Over the years the Tribes have acquired land through donations and purchases, including 98 acres of restored land along Highway 126 in Florence, Oregon, where the Three Rivers casino is located.

### ***The Indian Nonintercourse Act***

The Indian Non-Intercourse Act<sup>6</sup> (INIA), one of the earliest laws passed by the Congress after the ratification of the Constitution, reserves to the United States the exclusive right to acquire Indian lands. The Act was intended to protect Indian tribes by preventing the loss of their lands, except by treaty. It does so by preventing the transfer, sale, lease, or other conveyance of land owned by an Indian tribe to third parties without federal approval. This prohibition applies to both trust and fee lands, regardless of the source of money used to obtain the lands. Over the centuries, a number of acts of Congress providing for the acquisition, conveyance, and leasing of land in trust for Indians have had the effect of superseding the Non-Intercourse Act even though this Act has never been repealed.

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<sup>3</sup> Chapter 733, 68 Stat. 724.

<sup>4</sup> See P.L. 98-481.

<sup>5</sup> See P.L. 105-256.

<sup>6</sup> 25 U.S.C. § 177.

In recent years, the Non-Intercourse Act has generally not interfered with the ability of a tribe to buy, sell, or lease land that it owns in fee simple. However, there is precedent for tribes to seek legislation in Congress to waive the Non-Intercourse Act, as H.R. 3225 does, for transactions of non-trust land over an abundance of caution by both the tribal and non-tribal parties. In the 113<sup>th</sup> and 114<sup>th</sup> Congresses, similar bills were enacted into law, allowing the Miami Tribe of Oklahoma and the Fond du Lac Band of Lake Superior Chippewa to lease or transfer fee land the tribe owned.<sup>7</sup> In the 106<sup>th</sup> Congress, a bill was enacted into law, with a similar purpose, for the Lower Sioux Indian Community in Minnesota.<sup>8</sup> Congress has also enacted several other pieces of legislation authorizing several tribes to sell or mortgage specific lands.<sup>9</sup>

H.R. 3225 would expressly authorize five tribes in Oregon to have more control over land that the tribe owns in fee without further federal approval. The bill simply ensures that the Non-Intercourse Act does not interfere with the ability of the five tribes to convey fee land. The tribe has stated that without the clarity afforded by H.R. 3225, these tribes would have difficulty demonstrating clear title to land as well as securing financing, both of which are vital to executing important real estate transactions due to uncertainties raised by an old act of Congress.

### **Analysis & Need for Legislation**

As noted previously, while the Non-Intercourse Act has not generally interfered with a tribe's fee land dealings, the Non-Intercourse Act has generated a great deal of litigation throughout history which has resulted in several court decisions on the issue. Although the purpose of the Non-Intercourse Act is viewed by some as quite outdated, the U.S. Supreme Court in 2005 said it "remain[s] substantially in force today... [and] bars sales of tribal land without the acquiescence of the Federal Government."

H.R. 3225 would allow the aforementioned tribes<sup>10</sup> in Oregon to lease, sell, convey, warrant, or transfer all or any portion of interest in any real property not held in trust for the Tribe. The bill also states that the legislation does not authorize the Tribe to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in any real property held in trust.

### **Cost**

The CBO estimated that an identical bill, S. 1285 would have no effect on the federal budget.<sup>11</sup>

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<sup>7</sup> See P.L. 114-127 and P.L. 113-88.

<sup>8</sup> See P.L. 106-217.

<sup>9</sup> See P.L. 102-497, 106 Stat. 3255; P.L. 107-331, 116 Stat. 2834; P.L. 103-435, 108 Stat. 4566; P.L. 105-256, 112 Stat. 1896, P.L. 110-76.

<sup>10</sup> Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community, the Confederated Tribes of Siletz Indians, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians.

<sup>11</sup> <https://www.cbo.gov/publication/53151/>.

## **Administration Position**

On July 12, 2017, the Senate Committee on Indian Affairs held a legislative hearing<sup>12</sup> on S. 1285, an identical bill to H.R. 3225. During the hearing, the Administration testified in support of S. 1285.

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<sup>12</sup> Legislative Hearing to Receive Testimony on the Following bills: S. 943, S. 1223, and S. 1285; Senate Committee on Indian Affairs; July 12, 2017.