

TUOLUMNE ME-WUK LAND TRANSFER ACT OF 2008

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APRIL 29, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. RAHALL, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany H.R. 3490]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3490) to transfer administrative jurisdiction of certain Federal lands from the Bureau of Land Management to the Bureau of Indian Affairs, to take such lands into trust for the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria, 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. SHORT TITLE.**

This Act may be cited as the “Tuolumne Me-Wuk Land Transfer Act of 2008”.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria, California (referred to in this Act as the “Tribe”), is a federally recognized Indian tribe;

(2) 3 tracts of Federal lands managed by the Bureau of Land Management are adjacent to the Tuolumne Rancheria of California, a federally recognized Indian Reservation held in trust for the benefit of the Tribe;

(3) one such tract is a cemetery within which are buried the remains of ancestors of the Tribe and other Indians;

(4) another such tract is needed for use by the Tribe for a cultural center and other public uses of the Tribe;

(5) the remaining tract is needed for use by the Tribe for agricultural, housing, and open space needs;

(6) none of the foregoing 3 tracts are to be used by the Tribe for gaming purposes;

(7) certain parcels of lands adjacent to the Tuolumne Rancheria were taken into trust for the benefit of the Tribe; and

(8) 2 parcels of fee lands owned by the Tribe and adjacent to the Tuolumne Rancheria, commonly referred to as the "Thomas and Coenenburg properties", have been approved and are pending transfer into trust status by the Bureau of Indian Affairs for the benefit of the Tribe.

**SEC. 3. LANDS TO BE TAKEN INTO TRUST.**

(a) **IN GENERAL.**—

(1) **FEDERAL LANDS.**—Subject to valid existing rights, all right, title, and interest (including improvements and appurtenances) of the United States in and to the Federal lands described in subsection (b), immediately after the Secretary of the Interior has confirmed that the National Environmental Policy Act of 1969 has been complied with regarding the trust acquisition of those Federal lands, the Federal lands shall be declared to be held in trust by the United States for the benefit of the Tribe for nongaming purposes, and shall be subject to the same terms and conditions as those lands described in the California Indian Land Transfer Act of 2000 (title IX, Public Law 106-568; 114 Stat. 2868, 2921).

(2) **TRUST LANDS.**—Lands described in subsection (c) of this section that are taken or to be taken in trust by the United States for the benefit of the Tribe shall be subject to subsection (c) of section 903 of the California Indian Land Transfer Act of 2000.

(b) **FEDERAL LANDS DESCRIBED.**—The Federal lands described in this subsection, comprising approximately 66 acres, are as follows:

(1) Township 1 North, Range 16 East, Section 6, Lots 10 and 12, MDM, containing 50.24 acres more or less.

(2) Township 1 North, Range 16 East, Section 5, Lot 16, MDM, containing 15.35 acres more or less.

(3) Township 2 North, Range 16 East, Section 32, Indian Cemetery Reservation within Lot 22, MDM, containing 0.4 acres more or less.

(c) **TRUST LANDS DESCRIBED.**—The trust lands described in this subsection, comprising approximately 357 acres, are commonly referred to as follows:

(1) Thomas property, pending trust acquisition, 104.50 acres.

(2) Coenenburg property, pending trust acquisition, 192.70 acres, subject to existing easements of record, including but not limited to a non-exclusive easement for ingress and egress for the benefit of adjoining property as conveyed by Easement Deed recorded July 13, 1984, in Volume 755, Pages 189 to 192, and as further defined by Stipulation and Judgment entered by Tuolumne County Superior Court on September 2, 1983, and recorded June 4, 1984, in Volume 751, Pages 61 to 67.

(3) Assessor Parcel No. 620505300, 1.5 acres, trust land.

(4) Assessor Parcel No. 620505400, 19.23 acres, trust land.

(5) Assessor Parcel No. 620505600, 3.46 acres, trust land.

(6) Assessor Parcel No. 620505700, 7.44 acres, trust land.

(7) Assessor Parcel No. 620401700, 0.8 acres, trust land.

(8) A portion of Assessor Parcel No. 620500200, 2.5 acres, trust land.

(9) Assessor Parcel No. 620506200, 24.87 acres, trust land.

(d) **SURVEY.**—As soon as practicable after the date of the enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall complete fieldwork required for a survey of the lands described in subsections (b) and (c) for the purpose of incorporating those lands within the boundaries of the Tuolumne Rancheria. Not later than 90 days after that fieldwork is completed, that office shall complete the survey.

(e) **LEGAL DESCRIPTIONS.**—

(1) **PUBLICATION.**—On approval by the Community Council of the Tribe of the survey completed under subsection (d), the Secretary of the Interior shall publish in the Federal Register—

(A) a legal description of the new boundary lines of the Tuolumne Rancheria; and

(B) a legal description of the land surveyed under subsection (d).

(2) **EFFECT.**—Beginning on the date on which the legal descriptions are published under paragraph (1), such legal descriptions shall be the official legal descriptions of those boundary lines of the Tuolumne Rancheria and the lands surveyed.

## PURPOSE OF THE BILL

The purpose of H.R. 3490, as ordered reported, is to transfer administrative jurisdiction of certain federal lands from the Bureau of Land Management to the Bureau of Indian Affairs, to take such lands into trust for the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

H.R. 3490 would transfer approximately 66 acres of land from the Bureau of Land Management (BLM) to the Bureau of Indian Affairs (BIA) to be held in trust for the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria (Tribe). No gaming may be conducted on this land. In addition, approximately 357 acres of land will be deemed to be within the Tribe's reservation boundaries. The 357 acres is not being placed into trust by this legislation, as some of the land is already in trust for the Tribe and the remaining land is included in a pending fee to trust application before the BIA.

Located in the foothills of the Sierra Nevada, the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria (Tribe) resides approximately two hours east of Sacramento and one hour north of Yosemite National Park. Land was first acquired for the Tribe on October 25, 1910, pursuant to the Acts of June 21, 1906 and April 30, 1908. Executive Order 1517, dated April 13, 1912, set aside more land for the Tribe. Approximately 150 of the 400 tribal members live on the reservation in approximately 64 homes. Many of these homes are overcrowded, which is one of the reasons that this legislation was introduced. Deeming the additional land as part of the reservation will allow the Tribe to have access to various federal programs that authorize funds for projects located on-reservation.

The BLM land transferred in H.R. 3490 consists of three tracts and is adjacent to land held in trust for the Tribe or that is owned in fee by the Tribe (and part of the pending fee to trust application). One tract contains a cemetery where the Tribe has historically buried its ancestors and which will continue to be used as a cemetery, another tract would be used for a cultural center and other public uses, and the last tract would be used to satisfy agricultural, housing, and open space needs.

Approximately 60 acres of the other 357 acres that will be included in the reservation boundaries are already held in trust for the Tribe. The Tribe has submitted a land into trust application for the remaining 297 acres. This application has been approved by the Secretary of the Interior, but the decision is being challenged by a local resident because a right-of-way was erroneously excluded. As a result, the appeal is pending before the Interior Board of Indian Appeals. This legislation is not intended to interfere with that appeal. The land that is part of the pending application is zoned as residential and the Tribe intends to use the land for housing purposes. Although a resident is challenging the fee to trust application, the Board of Supervisors for the County of Tuolumne supports this legislation as does the Tuolumne Fire Protection District.

*California Indian Land Transfer Act, P.L. 106-568*

In 2000, approximately 3,525.8 acres of land were placed into trust for the benefit of various Indian tribes located in California. Gaming was explicitly prohibited on these lands under subsection (a) of that Act. In addition, subsection 903(c) of the California Indian Land Transfer Act provides that the lands that were transferred as part of that Act will be subject to the same laws relating to Indian land in the same manner as other lands held in trust for the Tribe.

H.R. 3490 prohibits gaming on the BLM land being transferred pursuant to this Act by subjecting the lands to subsection (a) of the California Indian Land Transfer Act. Both the BLM land and the 357 acres are subject to subsection 903(c) of the California Indian Land Transfer Act. Consequently, the land will be subject to the same laws relating to Indian land in the same manner as other lands currently held in trust for the Tribe.

*Indian Gaming Regulatory Act, 25 U.S.C. §2701 et seq.*

Enacted in 1988, the Indian Gaming Regulatory Act (IGRA) sets forth the regulatory framework for Indian gaming. It defines three classes of gaming (Class I, II, & III) and specifies the corresponding regulatory scheme for each class. IGRA also establishes the National Indian Gaming Commission (Commission) and specifies the powers and duties of the Commission.

Under IGRA, gaming may not be conducted on Indian lands placed into trust for a tribe after October 17, 1988. An exception exists, however, for land that is within or contiguous to the boundaries of the tribe's reservation on October 17, 1988. All of the lands mentioned in this bill are adjacent to the Tribe's existing reservation and the legislation deems the land to be within the Tribe's reservation.

While gaming is explicitly prohibited on the lands being transferred from the BLM, it is not prohibited on the additional 357 acres. Regardless of this legislation, however, gaming may be conducted pursuant to IGRA on the 60 acres of land already held in trust for the tribe because they are adjacent to the Tribe's reservation. Similarly, with or without this legislation, gaming may be conducted pursuant to IGRA on the lands that are part of the fee to trust application, provided the tribe provides additional information on the application, because they are also adjacent to the Tribe's reservation.

The Tribe, however, does not intend to conduct gaming on these lands as it has an existing casino that is more ideally located and is in the process of being expanded. Finally, the Tribe has already zoned the land for other uses, such as housing, and has conducted an environmental review for the alternative uses.

*Executive Order reservations, 25 U.S.C. §398d*

Because the Tribe's reservation was established by Executive Order, the Secretary of the Interior does not have the authority to change the boundaries of the reservation. Section 398d of Title 25 of the United States Code prohibits changes to the boundaries of a reservation created by an Executive Order without Congressional consent. Therefore, this legislation is necessary to have the lands deemed part of the reservation.

## COMMITTEE ACTION

H.R. 3490 was introduced by Representative George Radanovich (R-CA), on September 6, 2007. The bill was referred to the Committee on Natural Resources.

On April 9, 2008, the Committee conducted a legislative hearing on H.R. 3490. The full Committee on Natural Resources met to consider the bill on April 17, 2008. Chairman Nick J. Rahall, II (D-WV) offered an amendment in the nature of a substitute to clarify that the National Environmental Policy Act would apply to the BLM land transfer and to extend the amount of time the BLM would be required to complete a land survey. H.R. 3490 was ordered favorably reported, as amended, to the House of Representatives by unanimous consent.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 provides that the Act may be known as the “Tuolumne Me-Wuk Land Transfer Act of 2008”.

*Section 2. Findings*

Section 2 provides the Congressional findings relevant to the legislation including that, “one such tract is a cemetery within which are buried the remains of ancestors of the Tribe and other Indians.”

*Section 3. Lands to be taken into trust*

Section 3(a) provides that lands to be taken into trust will be transferred in compliance with the National Environmental Policy Act, and subject to all valid rights, title and interest. In addition, this section provides that lands to be taken into trust shall be managed in compliance with the California Indian Land Transfer Act of 2000 (Title IX, P.L. 106-568; 114 Stat. 2868, 2921). Finally, this section provides that gaming is prohibited on the lands to be transferred for the benefit of the Tribe by the BLM.

Section 3(b) provides the description of the BLM lands to be transferred and held in trust for the benefit of the Tribe.

Section 3(c) provides the description of the lands to be made a part of the Tuolumne Rancheria.

Section 3(d) provides that a survey of the lands addressed in this legislation be surveyed by the Office of Cadastral Survey of the BLM.

Section 3(e) provides for the publication, after approval of the tribal council, of the legal description of the lands surveyed and the new boundaries of the Tuolumne Rancheria. In addition, this section provides for the effective date of the new boundary lines of the Tuolumne Rancheria.

## 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.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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)(3)(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.

2. 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.

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 is to transfer administrative jurisdiction of certain federal lands from the Bureau of Land Management to the Bureau of Indian Affairs, to take such lands into trust for Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria.

4. Congressional Budget Office Cost Estimate. 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. 3490—Tuolumne Me-Wuk Land Transfer Act of 2008*

CBO estimates that implementing H.R. 3490 would cost less than \$500,000 over the 2009–2013 period, subject to the availability of appropriated funds. Enacting H.R. 3490 would not affect direct spending or revenues.

H.R. 3490 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 3490 would transfer 66 acres of land, currently administered by the Bureau of Land Management (BLM), to the Bureau of Indian Affairs (BIA) to be held in trust for the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria in California. According to information from the tribe, those lands would be used primarily for a cultural center and for housing and agricultural needs. The bill also would extend the boundaries of the tribe's reservation to include the conveyed BLM lands and other tribal-owned lands, provided that BLM completes a survey of certain land and that other conditions specified in the bill are met. Based on information from BIA and BLM, we estimate that federal spending to transfer the lands into trust and complete a land survey would cost less than \$500,000 over the 2009–2013 period, assuming the availability of appropriated funds.

In addition, according to the Department of the Interior, the BLM lands currently generate no receipts from mineral leasing or

other activities and are not expected to do so during the next 10 years. Therefore, CBO estimates that conveying the land would not affect offsetting receipts (a credit against direct spending).

The CBO staff contact for this estimate is Leigh Angres. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 3490 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

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.