

Calendar No. 400

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-191

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

JANUARY 6, 2020.—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. 317]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (H.R. 317) 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 with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of the bill, H.R. 317, is to provide congressional authorization for the U.S. Department of the Interior (DOI) to take land owned in fee by the Santa Ynez Band of Chumash Indians (Chumash Tribe or Tribe) into trust for the benefit of the Tribe.

BACKGROUND

The Chumash Tribe, a federally recognized Indian 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 their housing shortage. With the intent of filing an application to take Camp 4 into trust, the Chumash Tribe delivered a cooperative agreement to the County. After two years of negotiation with the County, in 2013, the Chumash Tribe filed a fee to trust application with the Bureau of

Indian Affairs (BIA) for Camp 4. Later that same year, the County rejected the government to government negotiations with the Chumash Tribe on the proposed cooperative agreement.

On December 24, 2014, the Bureau of Indian Affairs (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 in the Interior Board of Indian Appeals (IBIA) against the Regional Director's determination to take Camp 4 into trust. In an Order Dismissing Administrative Appeals, it stated that the Assistant Secretary—Indian Affairs, Kevin Washburn, exercised his authority under 25 C.F.R. § 2.20 to assume jurisdiction over Camp 4 and consolidated the appeals.¹

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 trust land acquisition. In good faith, the County suspended their Ad Hoc meetings to further negotiate the cooperative agreement with the Chumash Tribe. Then in 2017, the Chumash proposed a cooperative agreement that the County accepted.

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).² In response to the Decision, the County filed suit in the U.S. District Court for the Central District of California. Following these actions, the Chumash Tribe and the County entered into a memorandum of agreement (MOA) over Camp 4.

On October 13, 2017, the Chumash Tribal General Council voted to approve 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 and it is now considered effective.³

On November 1, 2017, the County sent a letter to Representative McCarthy expressing their support for H.R. 1491 in the 115th Congress. Within this letter, the County stated they "have reached a settlement resolving the County'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."⁴ Furthermore, the letter ends with, "the County encourages the Congress to enact [H.R. 1491] without delay."⁵

On February 13, 2019, the United States District Court for the Central District of California (Court) held that Lawrence Roberts who approved the Decision as Principal Deputy lacked the authority to do so, as his authority under the *Federal Vacancies Reform Act of 1998* (FVRA) expired. Additionally, the district court upheld that authority for these decisions are left to the Assistant Secretary, which Mr. Roberts automatically assumed on January 1,

¹ U.S. Dept. of the Interior, Bureau of Indian Affairs, Order Dismissing Administrative Appeals for *Kramer, et al. v. Principal Deputy Assistant Secretary—Indian Affairs* (July 14, 2017).

² *Id.*

³ 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).

⁴ Letter from Joan Hartmann, Chair, Santa Barbara Cnty. Bd. of Supervisors, to Rep. Kevin McCarthy, Majority Leader, U.S. H.R. (Nov. 1, 2017).

⁵ *Id.*

2016. Once the 210 days, authorized by the FVRA, as Acting Assistant Secretary expired on July 29, 2016, he was no longer able to make such decisions. The Court remanded the issue to the DOI in order for the Department to rectify the matter. The Court took no issue with the substance of the DOI decision, related environmental documents, or the fee-to-trust application's consistency with applicable Federal law. Within two weeks of the Court's decision, Assistant Secretary-Indian Affairs Tara Sweeney issued an opinion on February 25, 2019 that the fee-to-trust application was consistent with Department laws and regulations.⁶ She affirmed the Regional Director's 2014 Notice of Decision to place Camp 4 into trust and that pursuant to 25 C.F.R. § 2.6(c), her decision shall be considered final for the Department and effective immediately.

However, since the initial actions under the previous Administration, the California Condor has been listed under the *Endangered Species Act* and the already-listed Southwestern Willow Flycatcher had been discovered in the region. As a result, the DOI conducted additional environmental review of the proposed action of approving the fee-to-trust application's impact on these species. On May 23, 2019, the U.S. Fish and Wildlife Service concluded that the proposed action "is not likely to adversely impact" the newly listed species and that while both species are present in the region, neither is present on the Chumash property in question.⁷

NEED FOR LEGISLATION

The passage of H.R. 317 will allow the Chumash Tribe to build housing for their members who are currently living off the reservation or in overcrowded homes on the reservation. The land provides an opportunity for the Chumash Tribe to address the housing shortage it currently experiences. The bill would facilitate the housing development by waiving state law development limitations on the land. It would also prohibit, as a matter of Federal law, gaming on the land giving the County certainty on future land use.

LEGISLATIVE HISTORY

On January 8, 2019, Representatives Doug LaMalfa and Salud Carbajal introduced H.R. 317, the *Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019*. The bill was referred to the Subcommittee for Indigenous Peoples of the Committee on Natural Resources in the House of Representatives. There was no further action taken in the Committee on Natural Resources.

On April 29, 2019, Representative Van Drew moved to suspend the House rules and pass H.R. 317, as amended. The House proceeded with forty minutes of debate on the bill. At the conclusion of debate, the chair moved to suspend the rules. Representative Van Drew objected to the vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed.

⁶Ms. Sweeney was confirmed to the position of Assistant Secretary—Indian Affairs by the U.S. Senate on June 28, 2018.

⁷Memorandum from Christopher J. Diel, Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, Ventura, CA to Amy L. Dutschke, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, Sacramento, CA on *Request for concurrence on the Proposed Fee-To-Trust Land Acquisition for the Santa Ynez Band of Chumash Indians near the Town of Santa Ynez, Santa Barbara County, California* (May 23, 2019) (on file with the Committee).

The point of no quorum was withdrawn. The bill was passed under suspension of the rules and H.R. 317, as amended, was passed.

On April 30, 2019, the Senate received H.R. 317 and the bill was referred to the Committee on Indian Affairs. On June 11, 2019, Senators Feinstein and Harris sent a letter to Senators Hoeven and Udall asking the Committee to schedule a business meeting. On November 6, 2019, the Committee held a duly called business meeting to consider H.R. 317. One amendment in the nature of a substitute was timely filed by Senator Tom Udall.

The following changes were made in the substitute amendment:

- SECTION 3. REAFFIRMATION OF STATUS AND ACTIONS.

- The section title will be stricken and replaced with “LAND TAKEN INTO TRUST.”

- Subsection (a) will be stricken and replaced with a new subsection (a) that mandatorily acquires the land described in subsection (c) into trust for the benefit of the Tribe.

- Subsections (b) and (c) will be stricken.

- The affected subsections (d), (e), (f), (g), and (h) will be redesignated as subsections (b), (c), (d), (e), and (f).

- In the redesignated subsection (b), paragraph “(1) ADMINISTRATION.” is stricken and replaced with a new paragraph that provides for the land placed into trust for the Tribe to become a part of the Santa Ynez Indian Reservation and for the applicable federal laws and regulations to apply over the trust land.

The Committee passed H.R. 317 by voice vote and ordered the bill, as amended, to be favorably reported. At the time of filing the committee report to H.R. 317, there is no Senate companion bill.

115th Congress. 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 Subcommittee on Indian, Insular, and Alaska Native Affairs of the Committee on Natural Resources in the House of Representatives. The bill was co-sponsored by Representatives Cardenas, Cole, Cook, Correa, Denham, Knight, McClintock, Nunes, Ruiz, Torres, Valadao, Vargas, and Walters. The House Committee on Natural Resources 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. The next day, the Senate received H.R. 1491 which was referred to the Committee on Indian Affairs. The Committee held a legislative hearing on H.R. 1491 on April 25, 2018.

At the legislative hearing, committee members posed several questions to the Chumash Tribe on potential uses of the Camp 4 property and the agreement made between the Tribe and the County. The Tribe addressed these questions at the hearing and through written answers following the hearing provided further clarity on uses for the parcels to be taken into trust.⁸

⁸ A copy of these answers is on file with the Committee Clerk.

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 schedule a business meeting and give favorable consideration to the bill at the earliest convenience.

On June 13, 2018, the Committee duly called a business meeting to consider H.R. 1491. The bill was passed without amendment. On August 23, 2018, the bill was placed on the Senate Legislative Calendar under General Orders. No further action was taken on the bill.

114th Congress. On February 27, 2015, Representatives LaMalfa, Cole, Cook, Denham, McClintock, Nunes, Valadao, Cardenas, and McCollum introduced H.R. 1157, the *Santa Ynez Band of Chumash Mission Indians Land Transfer Act of 2016*.

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.

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

113th Congress. On October 23, 2013, Representatives LaMalfa, Cardenas, Denham, Ruiz, Valadao, and Garcia introduced H.R. 3313, the *Santa Ynez Band of Chumash Mission Indians Land Transfer Act of 2013*. 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 in the House of Representatives. No further action was taken on H.R. 3313.

SUMMARY OF THE BILL

The bill, H.R. 317, as amended, mandatorily acquires 1,427.28 acres of land into trust for the Chumash Tribe. H.R. 317 also makes the land taken into trust a part of the Chumash Tribe's reservation and removes certain California property restrictions on the land to allow for the Tribe's construction on the land. Included in the bill, is a prohibition on gaming activities on the land placed in trust.

SECTION-BY-SECTION ANALYSIS OF BILL, AS AMENDED

Section 1. Short title

This section cites the Act as the “Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019.”

Sec. 2. Findings

This section explains the Memorandum of Agreement that the Tribe and the County of Santa Barbara entered into regarding the 1,427.28 acres of land.

Sec. 3. Land to be taken into trust

This section places 1,427.28 acres of land located in Santa Barbara County, California and described in subsection (c) is taken into trust for the benefit of the Tribe subject to valid existing rights, contracts, and management agreements relating to easements and rights-of-way on the land.

Under subsection (b), the land taken into trust shall become a part of the Santa Ynez Indian Reservation and administered in accordance with the laws and regulations generally applied to land held in trust by the United States for an Indian Tribe. Additionally, this subsection removes any state restrictions on the land that would hinder the construction and building of future land use purposes.

Subsection (c) provides the legal description of the lands to be taken into trust.

Subsection (d) gives rules of construction regarding the land, water rights, rights-of-way, rights-of-use.

Subsection (e) describes that the land to be taken into trust under this Act shall not be used for gaming activities as a matter of claimed inherent authority or under any federal law, including the *Indian Gaming Regulatory Act*.

Subsection (f) provides for definitions used in the Act, including “Secretary” and “Tribe.”

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated November 20, 2019, was prepared for H.R. 317:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 20, 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. 317, the Santa Ynez Band of Chumash Indians Land Affirmation 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 #, Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019 As [Manager] on November 6, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
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
* = between zero and \$500,000.			

H.R. 317 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 in Santa Barbara County, California. Under the act, DOI would hold the title to that land for the benefit of that tribe. The act would prohibit certain types of gaming on those lands and would end any administrative appeals of DOI's decision about the property. CBO estimates that implementing the act would have no significant budgetary effects.

H.R. 317 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 Chumash Tribe. Information from Santa Barbara County about taxes and other receipts associated with the land indicates that those forgone revenues would total less than \$500,000 annually, below the annual public-sector threshold established in UMRA (\$82 million in 2019, adjusted annually for inflation).

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. 317 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 317.

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.

