

## FOUNTAINHEAD PROPERTY LAND TRANSFER ACT

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JUNE 28, 2010.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
\_\_\_\_\_

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

### R E P O R T

[To accompany H.R. 1554]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1554) to take certain property in McIntosh County, Oklahoma, into trust for the benefit of the Muscogee (Creek) Nation, 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 “Fountainhead Property Land Transfer Act”.

#### SEC. 2. TRANSFER OF LAND; LAND INTO TRUST.

(a) **IN GENERAL.**—Immediately after completion of the survey required under subsection (b), the receipt of consideration and costs required under subsection (c), and satisfaction of all terms specified by the Secretary and the Secretary of the Army under subsection (d), administrative jurisdiction of the Property shall be transferred from the Secretary of the Army to the Secretary and the Secretary shall take the Property into trust for the benefit of the Tribe.

(b) **SURVEY.**—The exact acreage and legal description of the Property shall be determined by a survey satisfactory to the Secretary and the Secretary of the Army.

(c) **CONSIDERATION; COSTS.**—The Tribe shall pay—

(1) to the Secretary of the Army fair market value of the Property, as determined by the Secretary of the Army; and

(2) all costs and administrative expenses associated with the transfer of administrative jurisdiction of the Property and taking the Property into trust pursuant to subsection (a), including costs of the survey provided for in subsection (b) and any environmental remediation.

(d) **OTHER TERMS AND CONDITIONS.**—The transfer of administrative jurisdiction of the Property and taking the Property into trust shall be subject to such other terms and conditions as the Secretary and the Secretary of the Army consider appropriate to protect the interests of the United States, including reservation of flowage ease-

ments consistent with the Acquisition Guide Line for Flowage Easement for the Lake Eufaula project and other applicable policies for that project.

(e) DEFINITIONS.—For the purposes of this section:

(1) PROPERTY.—The term “Property” means, subject to valid existing rights, all right, title, and interest of the United States in and to the Federal land generally described as the approximately 18 acres of Federal land located in McIntosh County, Oklahoma, within the boundary of the Muscogee (Creek) Nation and located in Northwest Quarter of Section 3, Township 10 North, Range 16 East, McIntosh County, Oklahoma, at Lake Eufaula.

(2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(3) TRIBE.—The term “Tribe” means the Muscogee (Creek) Nation.

(f) GAMING.—Gaming pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) may not be conducted on the Property, except as provided under section 20(b)(1)(A) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(A)), notwithstanding the exception contained in section 20(a)(2) of that Act (25 U.S.C. 2719(a)(2)).

#### PURPOSE OF THE BILL

The purpose of H.R. 1554 is to take certain property in McIntosh County, Oklahoma, into trust for the benefit of the Muscogee (Creek) Nation, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

The Muscogee (Creek) Nation has over 69,000 enrolled citizens and is headquartered in east-central Oklahoma. As part of their effort to create a resort hotel and casino near Lake Eufaula, the Nation purchased the Fountainhead Lodge and 48 surrounding acres through a foreclosure auction in 2005. This property included a 188-room hotel, a recreational building, and some duplex cabins. A lease on 18 acres of land owned by the U.S. Army Corps of Engineers (Corps) came with the property.

Once a survey of the purchased property was completed, it was determined that the recreational building was located entirely on the Corps’ land. In 2006, representatives of the Creek Nation met with the Corps to discuss development of the property. The Corps suggested that the Corps transfer ownership of the leased land to the Creek Nation to assist in its future development as a resort.

Enactment of H.R. 1554, and approval of their recently filed trust application for the 48 acres purchased in 2005, would allow the Nation to move forward with their plans to build a destination hotel and casino near Lake Eufaula. The bill provides that provides that after completion of a survey, the receipt of consideration and costs and satisfaction of certain terms, the Secretary of the Army shall transfer administrative jurisdiction of certain property to the Secretary of the Interior, who shall take the property into trust for the benefit of the Nation. The legislation requires the Nation to pay fair market value for the property as well as all costs related to the transfer. This bill also provides that gaming may only be conducted on the property pursuant to section 20(b)(1)(A) of the Indian Gaming Regulatory Act.

#### COMMITTEE ACTION

H.R. 1554 was introduced by Rep. Dan Boren (D–OK) on March 17, 2009 and was referred to the Committee on Natural Resources. The Committee held a hearing on H.R. 1554 on April 21, 2010. Mr. George Skibine, Acting Principal Deputy Assistant Secretary for Indian Affairs, testified in support of this legislation but expressed concerns with the way the bill was drafted.

On June 16, 2010 the Committee met to consider H.R. 1554. Rep. Boren offered an amendment in the nature of a substitute that provides for the involvement of the Secretary of the Army in making certain decisions regarding the transfer of lands, which addressed the drafting concerns expressed by the Administration. The amendment in the nature of a substitute also clarifies that gaming is not allowed under Section 20(a)(2) of IGRA, known as the “Oklahoma exception.” The amendment in the nature of a substitute was agreed to by voice vote. H.R. 1554, as amended, was then favorably reported to the House of Representatives by voice vote.

#### 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 take certain property in McIntosh County, Oklahoma, into trust for the benefit of the Muscogee (Creek) Nation, and for other purposes.

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. 1554—Fountainhead Property Land Transfer Act*

H.R. 1554 would transfer 18 acres of land from the Army Corps of Engineers (the Corps) to the Department of the Interior (DOI) to be held in trust for the Muscogee Creek Nation. Based on information from the Corps, CBO estimates that implementing the legislation would increase offsetting receipts (a credit against direct spending) by about \$2 million.

Under the bill, the Muscogee Creek Nation would pay fair market value to the Corps for the purchase of 18 acres of land in Oklahoma, which would be held in trust by DOI. Based on information from the Corps, CBO estimates that the value of the affected land is about \$2 million. The bill also would require the tribe to pay all costs associated with transferring administrative jurisdiction of the land from the Corps to DOI.

According to the Corps, the affected land does not currently generate any receipts and is not expected to be sold or generate receipts over the next 10 years. Therefore, CBO estimates that implementing the legislation would increase offsetting receipts by about \$2 million.

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 1554 would increase offsetting receipts; therefore, pay-as-you-go procedures would apply. The net budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1554, THE FOUNTAINHEAD PROPERTY LAND TRANSFER ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON JUNE 16, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact ...	0	–2	0	0	0	0	0	0	0	0	0	–2	–2

H.R. 1554 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The bill would benefit the Muscogee tribe and any costs to the tribe would be incurred voluntarily.

The CBO staff contact for this estimate is Jeff LaFave. 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. 1554 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 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.

COMMITTEE CORRESPONDENCE



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
Washington, DC 20515

James L. Oberstar  
Chairman

John L. Mica  
Ranking Republican Member

David Reynolds, Chief of Staff  
Wendy W. McCarragher, Chief Counsel

June 28, 2010

James W. Cona II, Republican Chief of Staff

The Honorable Nick Rahall  
Chairman  
Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Rahall:

I write to you regarding H.R. 1554, a bill to take certain property in McIntosh County, Oklahoma, into trust for the benefit of the Muscogee (Creek) Nation.

H.R. 1554 contains provisions that fall within the jurisdiction of the Committee on Transportation and Infrastructure. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, I agree to waive consideration of this bill with the mutual understanding that my decision to forgo a sequential referral of the bill does not waive, reduce, or otherwise affect the jurisdiction of the Committee on Transportation and Infrastructure over H.R. 1554.

Further, the Committee on Transportation and Infrastructure reserves the right to seek the appointment of conferees during any House-Senate conference convened on this legislation on provisions of the bill that are within the Committee's jurisdiction. I ask for your commitment to support any request by the Committee on Transportation and Infrastructure for the appointment of conferees on H.R. 1554 or similar legislation.

Please place a copy of this letter and your response acknowledging the Committee on Transportation and Infrastructure's jurisdictional interest in the Committee Report on H.R. 1554 and in the *Congressional Record* during consideration of the measure in the House.

The Honorable Nick Rahall  
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I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

A handwritten signature in black ink that reads "James L. Oberstar". The signature is written in a cursive, flowing style.

James L. Oberstar, M.C.  
Chairman

cc: The Honorable Nancy Pelosi, Speaker  
The Honorable John L. Mica, Ranking Member  
The Honorable Doc Hastings, Ranking Member, Committee on Natural Resources  
The Honorable John Sullivan, Parliamentarian

NICK J. RAHALL, WV  
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**U.S. House of Representatives**  
**Committee on Natural Resources**  
 Washington, DC 20515

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TUDD YOUNG  
 REPUBLICAN CHIEF OF STAFF

June 28, 2010

JAMES H. ZIEM  
 CHIEF OF STAFF

**The Honorable James Oberstar**  
**Chairman**  
**Committee on Transportation and Infrastructure**  
**2165 Rayburn H.O.B.**  
**Washington, D.C. 20515**

Dear Mr. Chairman:


Thank you for your willingness to expedite floor consideration of H.R. 1554, a bill to take certain property in McIntosh County, Oklahoma, into trust for the benefit of the Muscogee (Creek) Nation.

I appreciate your willingness to waive rights to further consideration of H.R. 1554, notwithstanding the jurisdictional interest of the Committee on Transportation and Infrastructure. Of course, this waiver does not prejudice any further jurisdictional claims by your Committee over this legislation or similar language. Furthermore, I agree to support your request for appointment of conferees from the Committee on Transportation and Infrastructure if a conference is held on this matter.

This exchange of letters will be placed in the committee report and inserted in the Congressional Record as part of the consideration of the bill on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

With warm regards, I am

Sincerely,

  
 NICK J. RAHALL, II  
 Chairman  
 Committee on Natural Resources

