

118TH CONGRESS
1ST SESSION

S. 3310

To amend the Omnibus Public Land Management Act of 2009 to establish within the Mount Hood National Forest in the State of Oregon Indian Treaty Resources Emphasis Zones, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2023

Mr. WYDEN (for himself and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Omnibus Public Land Management Act of 2009 to establish within the Mount Hood National Forest in the State of Oregon Indian Treaty Resources Emphasis Zones, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wy’east Tribal Re-
5 sources Restoration Act”.

1 **SEC. 2. INDIAN TREATY RESOURCES EMPHASIS ZONES,**
 2 **MOUNT HOOD NATIONAL FOREST.**

3 (a) IN GENERAL.—Subtitle C of title I of the Omni-
 4 bus Public Land Management Act of 2009 (Public Law
 5 111–11; 123 Stat. 1007) is amended by adding at the end
 6 the following:

7 **“SEC. 1208. INDIAN TREATY RESOURCES EMPHASIS ZONES.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) NATIONAL FOREST.—The term ‘National
 10 Forest’ means the Mount Hood National Forest in
 11 the State.

12 “(2) RESERVATION.—The term ‘Reservation’
 13 means the reservation of the Tribe.

14 “(3) TRADITIONAL ECOLOGICAL KNOWL-
 15 EDGE.—The term ‘traditional ecological knowledge’
 16 means a body of observations, oral and written
 17 knowledge, practices, and beliefs that—

18 “(A) promotes environmental sustainability
 19 and the responsible stewardship of natural re-
 20 sources through relationships between humans
 21 and environmental systems;

22 “(B) is applied to phenomena across bio-
 23 logical, physical, cultural, and spiritual systems;

24 “(C) has evolved over millennia, continues
 25 to evolve, and includes insights based on evi-
 26 dence acquired through direct contact with the

1 environment and long-term experiences, as well
2 as extensive observations, lessons, and skills
3 passed from generation to generation; and

4 “(D) is owned by Indigenous people, in-
5 cluding Tribal Nations, Native Americans, Alas-
6 ka Natives, Native Hawaiians, and other Indig-
7 enous people.

8 “(4) TREATY.—The term ‘Treaty’ means the
9 Treaty between the United States and the confed-
10 erated tribes and bands of Indians in Middle Or-
11 egon, concluded at Wasco June 25, 1855 (12 Stat.
12 963).

13 “(5) TRIBE.—The term ‘Tribe’ means the Con-
14 federated Tribes of the Warm Springs Reservation
15 of Oregon.

16 “(6) ZONE.—The term ‘Zone’ means an Indian
17 Treaty Resources Emphasis Zone established under
18 subsection (b)(1).

19 “(b) ESTABLISHMENT.—

20 “(1) IN GENERAL.—There is established within
21 the area of the National Forest described in para-
22 graph (3) 1 or more zones, each of which shall be
23 known as an ‘Indian Treaty Resources Emphasis
24 Zone’, consisting of any area within the National
25 Forest with respect to which the Tribe and the Sec-

1 retary enter into a memorandum of understanding
2 under subsection (c)(1) to protect and enhance
3 Treaty resources or to protect the Reservation from
4 wildfire.

5 “(2) PURPOSES.—The purposes of a Zone
6 are—

7 “(A) to meet the trust responsibility of the
8 United States in protecting the exercise of off-
9 Reservation Treaty rights reserved by the Trea-
10 ty in the National Forest;

11 “(B) to ensure that land and resource
12 management priorities in the Zone maintain
13 and enhance resources, activities, and access re-
14 served by the Treaty;

15 “(C) to protect Treaty rights and re-
16 sources and the Reservation from wildfire,
17 drought, and insect and disease outbreaks in
18 the National Forest in accordance with the best
19 available science, including traditional ecological
20 knowledge;

21 “(D) to recognize and integrate traditional
22 ecological knowledge as an important part of
23 the best available science that is used in forest
24 and resource management areas within the
25 Zone;

1 “(E) to improve the technical under-
2 standing of Forest Service employees in the Na-
3 tional Forest with respect to the trust respon-
4 sibilities of the Federal Government (including
5 the application of those responsibilities to ongo-
6 ing forest management processes and prac-
7 tices);

8 “(F) to enable a co-management strategy
9 between the Forest Service and the Tribe; and

10 “(G) to conserve other values within the
11 Zone, including ecological, scenic, geological, cli-
12 mate, and indigenous cultural values.

13 “(3) SCOPE.—This section shall apply to any
14 area within the boundaries of the National Forest in
15 which the Tribe retains Treaty rights.

16 “(c) MANAGEMENT STRATEGY.—

17 “(1) MEMORANDUM OF UNDERSTANDING.—Not
18 later than 60 days after the date of enactment of
19 this section, the Secretary shall seek to enter into a
20 memorandum of understanding with the Tribe—

21 “(A) in addition to the Tribal consultation
22 process, to better fulfill the trust relationship
23 between the United States and the Tribe by en-
24 suring that the Forest Service includes the
25 Tribe in the land and resource management de-

1 cision-making process in a Zone to mitigate
2 against adverse effects on Treaty rights and
3 management of the resources on which the
4 Treaty rights depend; and

5 “(B) to cooperatively develop a manage-
6 ment strategy for the 1 or more Zones, includ-
7 ing guiding documents for the management of
8 the National Forest and ecosystems for Treaty
9 rights and resources within the Zones.

10 “(2) REQUIREMENTS.—A memorandum of un-
11 derstanding entered into under paragraph (1)
12 shall—

13 “(A) include an assessment of wildfire risk
14 to—

15 “(i) the Reservation from the Na-
16 tional Forest; and

17 “(ii) Treaty and cultural resources
18 within the National Forest;

19 “(B) provide that forest restoration and
20 management planning within a Zone includes,
21 and is guided by, reserved Treaty rights, and
22 the resources on which the Treaty rights de-
23 pend;

1 “(C) include requirements that no tem-
2 porary or permanent road shall be constructed
3 within a Zone, except as necessary—

4 “(i) to meet the requirements for the
5 administration of a Zone;

6 “(ii) to protect public health and safe-
7 ty;

8 “(iii) to respond to an emergency; or

9 “(iv) for the control of fire, insects, or
10 diseases, subject to such terms and condi-
11 tions as the Secretary determines to be ap-
12 propriate; and

13 “(D) to the maximum extent practicable,
14 to meet the purposes of this section, provide for
15 the retention of large trees, as appropriate for
16 the historic forest structure or promotion of
17 fire-resilient stands.

18 “(3) ROAD MAINTENANCE.—

19 “(A) IN GENERAL.—Subject to appropria-
20 tions, the Secretary shall maintain existing
21 roads determined by the Secretary, in consulta-
22 tion with the Tribe, to be necessary for author-
23 ized existing uses and the administration of a
24 Zone.

1 “(B) INCLUSION IN MEMORANDUM OF UN-
2 DERSTANDING.—The requirement under this
3 paragraph shall—

4 “(i) not expire; and

5 “(ii) be included in any memorandum
6 of understanding entered into under para-
7 graph (1).

8 “(4) WITHDRAWAL.—Subject to valid existing
9 rights, all public land within a Zone, and all land
10 and interests in land acquired by the United States
11 within a Zone, shall be withdrawn from—

12 “(A) all forms of entry, appropriation, or
13 disposal under the public land laws;

14 “(B) location, entry, and patent under the
15 mining laws; and

16 “(C) operation of the mineral leasing, min-
17 eral materials, and geothermal leasing laws.

18 “(5) DEADLINES.—To the maximum extent
19 practicable, the Secretary shall—

20 “(A) not later than the date that is 1 year
21 after the date of enactment of this section, rat-
22 ify a memorandum of understanding under
23 paragraph (1); and

24 “(B) not later than the date that is 3
25 years after the date of enactment of this sec-

1 tion, complete a management strategy for the 1
2 or more Zones.

3 “(d) REQUIREMENTS FOR IMPLEMENTATION.—In
4 carrying out this section, the Secretary shall, to the max-
5 imum extent practicable—

6 “(1) use all existing authorities available to the
7 Secretary, including, as applicable—

8 “(A) the Tribal Forest Protection Act of
9 2004 (Public Law 108–278; 118 Stat. 868);

10 “(B) the good neighbor authority under
11 section 8206 of the Agricultural Act of 2014
12 (16 U.S.C. 2113a);

13 “(C) title XXVI of the Energy Policy Act
14 of 1992 (25 U.S.C. 3501 et seq.);

15 “(D) the stewardship end result con-
16 tracting authority under section 604 of the
17 Healthy Forests Restoration Act of 2003 (16
18 U.S.C. 6591e);

19 “(E) section 102 of the Indian Self-Deter-
20 mination and Education Assistance Act (25
21 U.S.C. 5321); and

22 “(F) the authority to enter into contracts
23 with the Tribe to expedite projects, on request
24 by the Tribe, under section 8703 of the Agri-

1 culture Improvement Act of 2018 (25 U.S.C.
2 3115b);

3 “(2) develop a programmatic analysis for the
4 management strategy for the 1 or more Zones under
5 the National Environmental Policy Act of 1969 (42
6 U.S.C. 4321 et seq.);

7 “(3) pursue a programmatic biological assess-
8 ment to implement the actions analyzed under para-
9 graph (2) under section 7 of the Endangered Species
10 Act of 1973 (16 U.S.C. 1536); and

11 “(4) ensure compliance with all applicable laws
12 and regulations.

13 “(e) REVIEW OF MOU.—Not later than 5 years after
14 the date on which a memorandum of understanding is en-
15 tered into under subsection (c)(1), and not less frequently
16 than once every 5 years thereafter, the Secretary shall,
17 in coordination with the Tribe, review the accomplish-
18 ments of the memorandum of understanding to determine
19 if the memorandum of understanding shall be extended
20 or modified.

21 “(f) FUNDING AGREEMENT.—The Secretary shall de-
22 velop a funding agreement with the Tribe, including the
23 use of appropriated funding, to ensure that the Tribe, in
24 partnership with the Forest Service, has the capacity to

1 participate in designing, implementing, and monitoring
2 projects within a Zone.

3 “(g) MONITORING.—

4 “(1) IN GENERAL.—The Secretary shall enter
5 into an agreement with the Tribe under which the
6 Tribe may, at the discretion of the Tribe—

7 “(A) review and provide comments on any
8 land management prescriptions developed by
9 the Secretary for a Zone;

10 “(B) monitor—

11 “(i) the long-term effectiveness of res-
12 toration and management treatments of
13 actions carried out in a Zone; and

14 “(ii) any other action or lack of action
15 that is detrimental to the purposes of a
16 Zone; and

17 “(C) share any other information with the
18 Forest Service that the Tribe determines to be
19 necessary to further the purposes of a Zone.

20 “(h) MANAGEMENT OF CULTURAL FOODS OBLIGA-
21 TIONS.—

22 “(1) IN GENERAL.—If the management plan
23 described in section 1207(c) has not been developed
24 and implemented as of the date of enactment of this
25 section, the Secretary shall—

1 “(A) complete a management plan in ac-
2 cordance with that section not later than 180
3 days after the date of enactment of this section;
4 or

5 “(B) enter into a contract with the Tribe
6 to draft a management plan described in that
7 section pursuant to the authority of the Sec-
8 retary under the Indian Self-Determination and
9 Education Assistance Act (25 U.S.C. 5301 et
10 seq.).

11 “(2) DEFINITION OF CULTURAL FOODS.—For
12 purposes of the management plan described in para-
13 graph (1), the Secretary shall consult with the Tribe
14 to define the term ‘cultural foods’.

15 “(3) INCLUSION.—The management plan de-
16 scribed in paragraph (1) may be included in the
17 management strategy for the 1 or more Zones devel-
18 oped under subsection (c).

19 “(i) LAND AND RESOURCE MANAGEMENT PLAN.—
20 Any revisions or amendments to the land and resource
21 management plan applicable to the National Forest under
22 the Forest and Rangeland Renewable Resources Planning
23 Act of 1974 (16 U.S.C. 1600 et seq.) shall—

1 “(1) be made in consultation with the Tribe
2 and other Indian Tribes with historical or legal in-
3 terests in the National Forest;

4 “(2) be consistent with the management strat-
5 egy for the 1 or more Zones; and

6 “(3) within the 1 or more Zones, protect Treaty
7 rights and allow management of the resources on
8 which the Treaty rights depend.

9 “(j) EFFECT.—Nothing in this section—

10 “(1) enlarges, establishes, or diminishes the
11 current or future rights of any Indian Tribe, includ-
12 ing—

13 “(A) the exercise of hunting, fishing, gath-
14 ering, and pasturing of livestock rights in usual
15 and accustomed areas; or

16 “(B) Indian hunting, fishing, or gathering
17 activities conducted under an agreement with
18 the State;

19 “(2) provides any Indian Tribe with exclusive
20 use of any area within the National Forest; or

21 “(3) limits the Secretary from entering into a
22 separate agreement with other Indian Tribes with
23 treaty rights or a recognized legal interest in the
24 National Forest.

25 “(k) FUNDING.—

1 “(1) AUTHORIZATION OF APPROPRIATIONS.—
2 There is authorized to be appropriated to carry out
3 this section \$3,500,000 for each of fiscal years 2024
4 through 2028.

5 “(2) AUTHORITY TO USE OTHER FUNDS.—Sub-
6 ject to the availability of funds, and based on prior-
7 ities for the National Forest, the Secretary may use
8 existing funds of the Forest Service and Forest
9 Service program revenue generated from forest res-
10 toration activities to carry out the management
11 strategy for the 1 or more Zones in accordance with
12 subsection (b)(2).”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 of the Omnibus Public Land Management Act of 2009
15 (Public Law 111–11; 123 Stat. 991) is amended by insert-
16 ing after the item relating to section 1207 the following:

“Sec. 1208. Indian Treaty Resources Emphasis Zones.”.

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