

EASTERN BAND OF CHEROKEE INDIANS LAND
EXCHANGE ACT OF 2002

SEPTEMBER 3, 2003.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1409]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1409) to provide for a Federal land exchange for the environmental, educational, and cultural benefit of the American public and the Eastern Band of Cherokee Indians, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1409 is to provide for a federal land exchange for the environmental, educational, and cultural benefit of the American public and the Eastern Band of Cherokee Indians, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1409 provides a land exchange between the National Park Service and the Eastern Band of Cherokee Indians, whose reservation is located in western North Carolina. Land acquired by the tribe under this exchange would be used for the construction of a new educational campus for its youth.

Specifically, the bill provides for an exchange of approximately 143 acres of public land (called the “Ravensford Tract”) in the

Great Smoky Mountains National Park, for 218 acres of private land (called the “Yellow Face Tract”) owned by the Eastern Band of Cherokee Indians. The Ravensford Tract would be held in trust and included in the adjoining Cherokee reservation. The Yellow Face Tract consists of pristine land with high habitat value for certain endangered species, and would be preserved as part of the Blue Ridge Parkway, which it abuts. The Yellow Face Tract has been appraised at a higher value than the Ravensford Tract.

Ancestors of the Eastern Band have lived in an area comprising parts of seven eastern states, including land that is now the Great Smoky Mountains National Park. The present-day tribe consists of those Cherokees who were able to avoid forcible removal to Oklahoma over the Trail of Tears.

Today, the Eastern Band has an educational crisis. Almost 800 elementary school children on the Reservation attend classes in a dilapidated facility which has the capacity for only 480 students. The school and its temporary classrooms are located at a dangerous highway intersection in downtown Cherokee and parts of it have been condemned as unsafe.

At the Committee hearing on H.R. 1409, Principal Chief Leon Jones testified the most important issue facing the Eastern Band of Cherokee is the education of their children. Legislation to accomplish this land exchange is necessary for the tribe to construct a new school. Most of the tribe’s existing reservation is mountainous, and the Ravensford Tract has been identified by the tribe as being ideally suited for the construction of a new, safe educational campus. The terrain is flat, accessible, and located away from the dangerous intersection where the existing school is situated. With an existing road, the site formerly hosted a lumber mill.

The bill restricts development on the Ravensford Tract to that necessary for supporting school facilities. The Eastern Band plans to construct on the Ravensford Tract a new educational campus emphasizing traditional Cherokee values, including the preservation of the natural environment. Gaming on the property is specifically prohibited. Consistent with the Eastern Band’s conservation ethic, the bill contains language requiring the Park Service and the tribe to develop mutually agreed upon standards for the construction of the school so that it meets the tribe’s educational needs while any adverse impacts on natural or cultural resources are mitigated.

Though the tribe has already spent over \$1.5 million in studies and preparation for the land exchange, an environmental impact statement process undertaken by the National Park Service regarding the land exchange has been too lengthy, and there are major concerns as to its adequacy.

Cherokee student Cory Blankenship said before the Resources Committee in a hearing on H.R. 1409, “In the last decade, over 3.5 million acres nationwide have been placed under the protection of the National Park Service. We are asking only for 143 acres to help us build our schools and preserve our culture.”

On a historical note, the Cherokee people can stake a moral claim to the Ravensford Tract. In the 1940s, the parcel was supposed to be conveyed to the Cherokee as part of a deal in which the Indians gave up land so the government could build the Blue Ridge Parkway through their Reservation. But the Congress, for

reasons that are unclear, deleted this part of the deal after it was agreed to.

In managing public lands, Congress must weigh impacts of proposed land exchanges on the lands involved and the purposes served. In this case, there is almost no comparison. The benefit to the Eastern Band's children of what is the only feasible location for a new school campus far outweighs the impact to the public's interest in retaining the Ravensford Tract in the Great Smoky Mountains National Park. In fact, the National Park System as a whole gains a net benefit from the addition of the larger, pristine Yellow Face Tract to the Blue Ridge Parkway.

COMMITTEE ACTION

H.R. 1409 was introduced on March 20, 2003, by Congressman Charles Taylor (R-NC). The bill was referred to the Committee on Resources. On June 18, 2003, the Full Committee held a hearing on the bill. On July 15, 2003, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was 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 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. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 27, 2003.

Hon. RICHARD POMBO,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1409, the Eastern Band of Cherokee Indians Land Exchange Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 1409—Eastern Band of Cherokee Indians Land Exchange Act of 2002

H.R. 1409 would require the National Park Service (NPS) to exchange 143 acres of land (known as the Ravensford tract) within the Great Smoky Mountains National Park and the Blue Ridge Parkway for a 218-acre parcel (Yellow Face tract) owned by the Eastern Band of the Cherokee Indians. The bill also would authorize the NPS to execute cooperative agreements with the band to facilitate management of the Ravensford tract by providing training on resources preservation and interpretation.

CBO estimates that the federal government would not incur any significant cost to carry out the required land exchange, implement cooperative agreements with the Eastern Band of Cherokee Indians, or develop or administer the 218-acre addition to the park. We further estimate that enactment of the bill would not affect revenues or direct spending. For this estimate, CBO assumes that the properties to be exchanged would be determined by NPS to be roughly equal in value (less than \$700,000) although final appraisals of the two tracts have not been approved by the NPS. In any event, we do not expect that any equalization payments would be made to complete the land exchange. This estimate is based on information provided by the NPS and the Eastern Band of Cherokees.

H.R. 1409 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. This exchange would benefit the tribe, and any costs they would incur to comply with conditions included in the bill would be voluntary.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

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.

DISSENTING VIEWS

H.R. 1409—EASTERN BAND OF CHEROKEE LAND EXCHANGE

The history of the Cherokee people is one of amazing triumph against so many odds. It is a story of broken treaties and stolen lands. It is the story of a great Indian nation hunted by the U.S. Cavalry, split at the seams, and forced either to escape to the mountains or to trudge along on a death march to a strange land.

Between 1700 and 1838 the Cherokee Nation lost some 100,000 square miles of original territory to settlements of Europeans moving to this land. Yet those who were able to escape the Trail of Tears and live in the mountains of North Carolina stayed together and rebuilt their nation. Today the Eastern Band of Cherokee Indians is a vibrant Indian tribe with over 12,500 enrolled members. By all accounts, the Band is successful and hard working. The Band has asked Congress to approve a land swap so that it may have the space needed to build schools to better educate their children. I have nothing but respect for the Eastern Band and its admirable goals, however, at this time I must object to the further consideration of H.R. 1409.

There is no excuse for the condition of the education facilities found on many Indian reservations across this country. Far too often, Native Americans are forced to endure substandard housing, medical facilities and educational facilities that many Americans would find shocking.

However, it is not clear to me that carving out large chunks from the middle of our national parks, as H.R. 1409 would have us do, is the best solution to this problem. This legislation will create a 143-acre hole in the middle of the most visited national park in America.

Once the large construction project planned for this site is completed, visitors to Great Smoky Mountains National Park will no longer see a sprawling, green, undeveloped valley. Rather, they will see three massive buildings, roads, utility lines, and as many as six athletic fields, each with its own lighting system that will light up what used to be a dark night sky.

While it is not my contention that the children of the Eastern Band of Cherokee do not deserve such a beautiful and large educational complex, is the middle of a National Park really the only place it can be built?

Two groups, the National Park Service and a coalition of non-profit environmental groups are exploring this very question. The NPS is putting the finishing touches on an Environmental Impact Statement that will address the obvious impacts this planned construction will have on the Park's resources as well as the possibility of building the schools elsewhere.

The non-profit groups have also publicly pledged to work with the Tribe to find an alternative site.

And yet we are moving full steam ahead with this legislation, cutting off the NEPA process and abandoning any attempt to find a way to provide good schools for the Tribe without impacting a national treasure.

Such a move raises a variety of very serious concerns, not the least of which is the terrible precedent this legislation will set. I had hoped to work with the sponsor and the Tribe to address these concerns but have not received much cooperation.

Let me be clear that this Committee is not always so eager to jump to give land back to an Indian tribe in need. We were scheduled to mark up another bill the day H.R. 1409 was considered to distribute Indian Claims Commission judgment funds to the Western Shoshone Indians. The problem is that many Western Shoshone want their land back and have been fighting to regain at least some of their lost land for decades. That bill does not get them one step closer to that goal.

Is the need for land by the Western Shoshone to house their members from the desert sun or eke out a living grazing their cattle any less valid than the needs of the Eastern Band of Cherokee?

Of course not, but the land taken from the Western Shoshone is known to be extremely valuable to mining companies. Estimates put mining receipts from gold and other minerals in the tens of billions since the 1960's.

Will this Committee act to return that kind of value back to the Native Americans it was taken from? These inconsistencies are at least some of the issues that need to be resolved before either of these bills go before the full House for consideration.

Legislation of this magnitude, which will impact the most visited national park in the country in such a powerful and potentially negative way, must be considered very carefully.

At this point, I do not support the inclusion of H.R. 1409 on the House Suspension Calendar. It is my hope that, prior to any consideration of the bill on the House floor, some of the very real concerns with this bill will be addressed and that a solution which works both for the Tribe and the Park could be found.

I look forward to continuing to work with the Tribe and with the sponsor of this legislation.

NICK J. RAHALL II