

S. _____

To restore the lands of the National Bison Range to federal trust ownership for the benefit of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, and related purposes.

IN THE SENATE OF THE UNITED STATES

_____, 2016

Mr. _____ introduced the following bill, which was read twice and referred to the Committee on _____:

A BILL

To restore the lands of the National Bison Range to federal trust ownership for the benefit of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, and related purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Bison Range Transfer and Restoration Act of 2016”.

SECTION 2. DEFINITIONS.

- (a) The term “bison” means North American plains bison.
- (b) The term “Flathead Indian Reservation”, or “Reservation”, means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty

- of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.
- (c) The term “National Bison Range” means all lands which were acquired within the Flathead Indian Reservation under the provisions of the Act of May 23, 1908, 35 Stat. 267, as amended, as codified at 16 U.S.C. § 671.
 - (d) The term “Secretary” means the Secretary of the Department of the Interior.
 - (e) The term “Tribes” means the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation in the State of Montana.

SECTION 3. FINDINGS AND PURPOSES.

- (a) The Congress finds as follows:
 - (1) since time immemorial, Native American tribes have recognized bison as significant to their history, culture, religion, and ways of life;
 - (2) the Tribes, comprised of the Salish, Kootenai and Pend d’Oreille people, are a federally-recognized tribe for whom the Reservation was set aside under the 1855 Treaty of Hell Gate (12 Stat. 975);
 - (3) the National Bison Range was established under the Act of May 23, 1908 as a conservation measure during a time when the North American plains bison was in grave threat of extinction;
 - (4) the National Bison Range is located in the middle of the Flathead Indian Reservation on lands which were acquired by the United States in what was later held to be a taking under the Fifth Amendment of the Constitution (*Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Montana v. United States*, 437 F.2d 458, 465 (Ct.Cl. 1971)). The Tribes never consented to the removal of the land from Tribal ownership. *Id.* at 474;
 - (5) up until the time the National Bison Range was established, and since time immemorial, the Tribes used those lands for hunting, fishing, gathering, cultural, and many other purposes;
 - (6) the bison herd at the National Bison Range descends largely from a herd started and managed by Tribal members in the late nineteenth century;
 - (7) in the 1870’s, when slaughter resulted in the risk of bison extinction, a Pend d’Oreille man named Little Falcon Robe received approval from Tribal leaders to bring orphaned bison calves to the Reservation for purposes of starting a herd for subsistence and conservation purposes. Starting with just a few bison calves, the animals grew into a large herd under the stewardship of Tribal members who later included Michel Pablo and Charles Allard. The Reservation was the home of this free-ranging herd of bison for decades before the creation of the National Bison Range;
 - (8) when the Reservation was opened for homesteading, a free-ranging bison herd was no longer feasible, resulting in Tribal members selling the herd to off-Reservation interests;
 - (9) many of those same bison, or their descendants, were soon repurchased and brought back to the Reservation to form the original herd for the National Bison Range;

- (10) the Tribes have played a substantive role as conservation leaders, often in partnership with the National Bison Range;
- (11) the Tribes have demonstrated a long term commitment to responsible management of the lands and resources surrounding the National Bison Range and desire to carry out the purposes for which the Range was established by Congress;
- (12) the Tribes have extensive experience in wildlife and natural resources management, including, by way of example, the establishment and management of the country's first tribally-designated wilderness area (the 91,000 acre Mission Mountains Tribal Wilderness), as well as special management districts for large animals (Little Money Bighorn Sheep Management Area, Ferry Basin Elk Management Area) and the restoration and management of bighorn sheep populations, peregrine falcons and trumpeter swans on the Reservation;
- (13) the Tribes have a long history of successful partnerships with federal agencies on issues such as threatened and endangered species management, migratory waterfowl management, and wetland habitat management;
- (14) the Tribes have entered into past management-related agreements at the National Bison Range under the Tribal Self-Governance Act (25 U.S.C. § 458aa, *et seq.*);
- (15) the Tribes and the United States desire to build upon past and current partnerships, as well as honor and further the federal and tribal objectives of increasing tribal autonomy and tribal governmental capacity;
- (16) bison are no longer critically imperiled, as they were at the time the National Bison Range was established;
- (17) the facts and history regarding the federal government, the Tribes, the subject bison and lands, are exceptional circumstances that warrant action by Congress; and
- (18) the United States should hold title to the lands comprising the National Bison Range, with beneficial title of such land being restored to the Tribes for continued bison conservation and other wildlife and natural resource management purposes, as well as other non-conflicting purposes of the Tribes.

(b) The purposes of this Act include:

- (1) to acknowledge the Tribes' history, culture, and ecological stewardship with respect to the subject lands, bison, and other natural resources;
- (2) to ensure that the subject lands, bison, and other resources continue to be protected and enhanced;
- (3) to continue public visitation opportunities; and
- (4) to ensure a smooth transition for the subject lands, bison and other natural resources as the land is restored to federal trust ownership for the benefit of the Tribes.

SECTION 4. TRANSFER OF THE NATIONAL BISON RANGE LANDS TO THE UNITED STATES IN TRUST FOR THE CONFEDERATED SALISH AND KOOTENAI TRIBES.

(a) Notwithstanding any other provision of law, for the purposes of conserving bison, wildlife, and natural resources, and for the purposes of safeguarding the Tribes' interests in such resources, as well as the Tribes' traditional, cultural, and other interests, all of those lands

comprising the National Bison Range, including all natural resources, interests and appurtenances, are hereby transferred to again be held by the United States in trust for the benefit of the Confederated Salish and Kootenai Tribes. Such lands shall be part of the Flathead Indian Reservation and administered under the laws and regulations applicable to Indian trust lands.

(b) The United States hereby transfers to the Tribes, to own in fee, all of the United States' ownership of, and interests in, all buildings, structures, improvements and appurtenances located on the lands transferred under this Act. The United States may transfer to the Tribes any personal property owned by the United States and found on, or otherwise associated with, said lands at the time of enactment of this Act.

(c) The United States hereby relinquishes to the Tribes all interests the United States may have in the bison on the lands transferred under this Act.

(d) The lands transferred under this Act shall be managed exclusively by the Tribes, consistent with the purposes of this Act, solely for the care and maintenance of the bison, wildlife, and other natural resources, including designation or naming of said lands; provided, that the Tribes shall provide public visitation and education opportunities.

(e) The Secretary shall, notwithstanding any other provision of law, for the period of two years beginning on the date of enactment of this Act, cooperate with the Tribes in transition activities regarding the management of lands, bison and resources transferred under this Act, including, but not limited to, transfers to the Tribes of funds, personal property and equipment, or other resources deemed appropriate by the Secretary for performance of, or assistance with, those types of activities which the Secretary currently performs at the National Bison Range. Nothing in this subsection shall be interpreted to authorize the Secretary to retain ownership or control of any of the real or personal property transferred by this Act. The Secretary's cooperation with, and assistance to, the Tribes on transition activities under this Act shall not constitute major federal action for purposes of the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*).

(f) In order to reduce the impact on the counties in which the lands transferred by this Act are located, the Secretary shall make payments to Lake and Sanders Counties, from the funds identified in 16 U.S.C. § 715s, for the first five full fiscal years following enactment of this Act. Said payments shall be in the amount of:

- (1) for the first fiscal year, ninety percent of what each county would have received but for enactment of this Act;
- (2) for the second fiscal year, seventy-five percent of what each county would have received but for enactment of this Act; and

(3) for the third through the fifth fiscal years, fifty percent of what each county would have received but for enactment of this Act.

For the limited purposes of calculating payments to Lake and Sanders Counties pursuant to this subsection and the provisions of 16 U.S.C. § 715s, the lands transferred under this Act shall be treated as if they remained Refuge “fee area” as defined at 16 U.S.C. § 715s(g)(2).

(g) For the continued protection of the public, and as long as public visitation is required by federal law for the lands transferred by this Act, the Secretary shall provide the Tribes with funding sufficient to procure liability insurance covering tort actions filed by members of the public.

(h) Nothing in this Act shall be interpreted to relieve the United States of any of its obligations contained in Section 120(h)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)). The Tribes shall not be liable for any land, soil, surface water, groundwater, or other contamination, injury or damage resulting from the storage, disposal, release or presence of any hazardous substance, as defined under 42 U.S.C. § 9601(14), on any portion of the property conveyed by this Act on or before the date on which the property is transferred into federal trust ownership for the Tribes, unless the Tribes had been responsible for such storage, disposal, release or presence.

(i) The provisions of this Act are uniquely suited to address the distinct circumstances, facts, history, and relationships involved with the subject bison, lands and Tribes. These provisions are not intended, and shall not be interpreted, as precedent for any other situation regarding federal properties or facilities.

(j) The statutory provisions found in 16 U.S.C. § 671, as amended, are expressly superseded and repealed by this Act.

(k) No claims may be brought pursuant to 28 U.S.C. § 1491, 28 U.S.C. § 1505, or 5 U.S.C. §§ 701-708 *et seq.*, against the United States, its agencies, its officials, or its employees concerning the pre-transfer or post-transfer management of the lands and other property transferred under subsections (a) and (b).