

116TH CONGRESS
1ST SESSION

H. R. 453

To take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 2019

Mr. FLEISCHMANN (for himself, Mr. DAVID P. ROE of Tennessee, Mr. HUDSON, Mr. COLE, and Mr. COOK) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, 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 “Eastern Band of Cher-
5 okee Historic Lands Reacquisition Act”.

6 **SEC. 2. LAND TAKEN INTO TRUST FOR THE EASTERN BAND**
7 **OF CHEROKEE INDIANS.**

8 (a) LANDS INTO TRUST.—Subject to such rights of
9 record as may be vested in third parties to rights-of-way

1 or other easements or rights-of-record for roads, utilities,
2 or other purposes, the following Federal lands managed
3 by the Tennessee Valley Authority and located on or above
4 the 820-foot (MSL) contour elevation in Monroe County,
5 Tennessee, on the shores of Tellico Reservoir, are declared
6 to be held in trust by the United States for the use and
7 benefit of the Eastern Band of Cherokee Indians:

8 (1) SEQUOYAH MUSEUM PROPERTY.—Approximately
9 46.0 acres of land generally depicted as
10 “Sequoyah Museum”, “Parcel 1”, and “Parcel 2”
11 on the map titled “Eastern Band of Cherokee His-
12 toric Lands Reacquisition Map 1” and dated April
13 30, 2015.

14 (2) SUPPORT PROPERTY.—Approximately 11.9
15 acres of land generally depicted as “Support Parcel”
16 on the map titled “Eastern Band of Cherokee His-
17 toric Lands Reacquisition Map 2” and dated April
18 30, 2015.

19 (3) CHOTA MEMORIAL PROPERTY AND TANASI
20 MEMORIAL PROPERTY.—Approximately 18.2 acres of
21 land generally depicted as “Chota Memorial 1” and
22 “Tanasi Memorial” on the map titled “Eastern
23 Band of Cherokee Historic Lands Reacquisition Map
24 3” and dated April 30, 2015, and including the
25 Chota Memorial and all land within a circle with a

1 radius of 86 feet measured from the center of the
2 Chota Memorial without regard to the elevation of
3 the land within the circle.

4 (b) PROPERTY ON LANDS.—In addition to the land
5 taken into trust by subsection (a), the improvements on
6 and appurtenances thereto, including memorials, are and
7 shall remain the property of the Eastern Band of Cher-
8 okee Indians.

9 (c) REVISED MAPS.—Not later than 1 year after the
10 date of a land transaction made pursuant to this section,
11 the Tennessee Valley Authority, after consultation with
12 the Eastern Band of Cherokee Indians and the Secretary
13 of the Interior, shall submit revised maps that depict the
14 land taken into trust under this section, including any cor-
15 rections made to the maps described in this section to the
16 Committee on Natural Resources of the House of Rep-
17 resentatives and the Committee on Indian Affairs of the
18 Senate.

19 (d) CONTOUR ELEVATION CLARIFICATION.—The
20 contour elevations referred to in this Act are based on
21 MSL Datum as established by the NGS Southeastern
22 Supplementary Adjustment of 1936 (NGVD29).

23 (e) CONDITIONS.—The lands taken into trust under
24 this section shall be subject to the conditions described
25 in section 5.

1 **SEC. 3. PERMANENT EASEMENTS TAKEN INTO TRUST FOR**
2 **THE EASTERN BAND OF CHEROKEE INDIANS.**

3 (a) PERMANENT EASEMENTS.—The following perma-
4 nent easements for land below the 820-foot (MSL) con-
5 tour elevation for the following Federal lands in Monroe
6 County, Tennessee, on the shores of Tellico Reservoir, are
7 declared to be held in trust by the United States for the
8 benefit of the Eastern Band of Cherokee Indians:

9 (1) CHOTA PENINSULA.—Approximately 8.5
10 acres of land generally depicted as “Chota Memorial
11 2” on the map titled “Eastern Band of Cherokee
12 Historic Lands Reacquisition Map 3” and dated
13 April 30, 2015.

14 (2) CHOTA-TANASI TRAIL.—Approximately 11.4
15 acres of land generally depicted as “Chota-Tanasi
16 Trail” on the map titled “Eastern Band of Cherokee
17 Historic Lands Reacquisition Map 3” and dated
18 April 30, 2015.

19 (b) REVISED MAPS.—Not later than 1 year after the
20 date of a land transaction made pursuant to this section,
21 the Tennessee Valley Authority, after consultation with
22 the Eastern Band of Cherokee Indians and the Secretary
23 of the Interior, shall submit to the Committee on Natural
24 Resources of the House of Representatives and the Com-
25 mittee on Indian Affairs of the Senate revised maps that
26 depict the lands subject to easements taken into trust

1 under this section, including any corrections necessary to
2 the maps described in this section.

3 (c) CONDITIONS.—The lands subject to easements
4 taken into trust under this section shall be subject to the
5 use rights and conditions described in section 5.

6 **SEC. 4. TRUST ADMINISTRATION AND PURPOSES.**

7 (a) APPLICABLE LAWS.—Except as described in sec-
8 tion 5, the lands subject to this Act shall be administered
9 under the laws and regulations generally applicable to
10 lands and interests in lands held in trust on behalf of In-
11 dian tribes.

12 (b) USE OF LAND.—Except the lands described in
13 section 2(a)(2), the lands subject to this Act shall be used
14 principally for memorializing and interpreting the history
15 and culture of Indians and recreational activities, includ-
16 ing management, operation, and conduct of programs of
17 and for—

18 (1) the Sequoyah birthplace memorial and mu-
19 seum;

20 (2) the memorials to Chota and Tanasi as
21 former capitals of the Cherokees;

22 (3) the memorial and place of reinterment for
23 remains of the Eastern Band of Cherokee Indians
24 and other Cherokee tribes, including those trans-
25 ferred to the Eastern Band of Cherokee Indians and

1 other Cherokee tribes and those human remains and
2 cultural items transferred by the Tennessee Valley
3 Authority to those Cherokee tribes under the Native
4 American Graves Protection and Repatriation Act
5 (25 U.S.C. 3001 et seq.); and

6 (4) interpreting the Trail of Tears National
7 Historic Trail.

8 (c) USE OF SUPPORT PROPERTY.—The land de-
9 scribed in section 2(a)(2) shall be used principally for the
10 support of lands subject to this Act and the programs of-
11 fered by the Tribe relating to such lands and their pur-
12 poses including—

13 (1) classrooms and conference rooms;

14 (2) cultural interpretation and education pro-
15 grams;

16 (3) temporary housing of guests participating
17 in such programs or the management of the prop-
18 erties and programs; and

19 (4) headquarters offices and support space for
20 the trust properties and programs.

21 (d) LAND USE.—The principal purposes of the use
22 of the land described in section 3(a)—

23 (1) paragraph (1), shall be for a recreational
24 trail from the general vicinity of the parking lot to
25 the area of the Chota Memorial and beyond to the

1 southern portion of the peninsula, including inter-
2 prelive signs, benches, and other compatible im-
3 provements; and

4 (2) paragraph (2), shall be for a recreational
5 trail between the Chota and Tanasi Memorials, in-
6 cluding interpretive signs, benches, and other com-
7 patible improvements.

8 **SEC. 5. USE RIGHTS, CONDITIONS.**

9 (a) FLOODING OF LAND AND ROADS.—The Ten-
10 nessee Valley Authority may temporarily and intermit-
11 tently flood the lands subject to this Act that lie below
12 the 824-foot (MSL) contour elevation and the road access
13 to such lands that lie below the 824-foot (MSL) contour
14 elevation.

15 (b) FACILITIES AND STRUCTURES.—The Eastern
16 Band of Cherokee Indians may construct, own, operate,
17 and maintain—

18 (1) water use facilities and nonhabitable struc-
19 tures, facilities, and improvements not subject to se-
20 rious damage if temporarily flooded on the land ad-
21 joining the Tellico Reservoir side of the lands subject
22 to this Act that lie between the 815-foot and 820-
23 foot (MSL) contour elevations, but only after having
24 received written consent from the Tennessee Valley

1 Authority and subject to the terms of such approval;
2 and

3 (2) water use facilities between the 815-foot
4 (MSL) contour elevations on the Tellico Reservoir
5 side of the lands subject to this Act and the adjacent
6 waters of Tellico Reservoir and in and on such
7 waters after having received written consent from
8 the Tennessee Valley Authority and subject to the
9 terms of such approval, but may not construct, own,
10 operate, or maintain other nonhabitable structures,
11 facilities, and improvements on such lands.

12 (c) INGRESS AND EGRESS.—The Eastern Band of
13 Cherokee Indians may use the lands subject to this Act
14 and Tellico Reservoir for ingress and egress to and from
15 such land and the waters of the Tellico Reservoir and to
16 and from all structures, facilities, and improvements main-
17 tained in, on, or over such land or waters.

18 (d) RIVER CONTROL AND DEVELOPMENT.—The use
19 rights under this section may not be exercised so as to
20 interfere in any way with the Tennessee Valley Authority's
21 statutory program for river control and development.

22 (e) TVA AUTHORITIES.—Nothing in this Act shall be
23 construed to affect the right of the Tennessee Valley Au-
24 thority to—

25 (1) draw down Tellico Reservoir;

1 (2) fluctuate the water level thereof as may be
2 necessary for its management of the Reservoir; or

3 (3) permanently flood lands adjacent to lands
4 subject to this Act that lie below the 815-foot (MSL)
5 contour elevation.

6 (f) RIGHT OF ENTRY.—The lands subject to this Act
7 shall be subject to a reasonable right of entry by the per-
8 sonnel of the Tennessee Valley Authority and agents of
9 the Tennessee Valley Authority operating in their official
10 capacities as necessary for purposes of carrying out the
11 Tennessee Valley Authority’s statutory program for river
12 control and development.

13 (g) ENTRY ONTO LAND.—To the extent that the
14 Tennessee Valley Authority’s operations on the lands sub-
15 ject to this Act do not unreasonably interfere with the
16 Eastern Band of Cherokee Indians’ maintenance of an ap-
17 propriate setting for the memorialization of Cherokee his-
18 tory or culture on the lands and its operations on the
19 lands, the Eastern Band of Cherokee Indians shall allow
20 the Tennessee Valley Authority to enter the lands to clear,
21 ditch, dredge, and drain said lands and apply larvicides
22 and chemicals thereon or to conduct bank protection work
23 and erect structures necessary in the promotion and fur-
24 therance of public health, flood control, and navigation.

1 (h) LOSS OF HYDROPOWER CAPACITY.—All future
2 development of the lands subject to this Act shall be sub-
3 ject to compensation to the Tennessee Valley Authority
4 for loss of hydropower capacity as provided in the Ten-
5 nessee Valley Authority Flood Control Storage Loss
6 Guideline, unless agreed to otherwise by the Tennessee
7 Valley Authority.

8 (i) PROTECTION FROM LIABILITY.—The United
9 States shall not be liable for any loss or damage resulting
10 from—

11 (1) the temporary and intermittent flooding of
12 lands subject to this Act;

13 (2) the permanent flooding of adjacent lands as
14 provided in this section;

15 (3) wave action in Tellico Reservoir; or

16 (4) fluctuation of water levels for purposes of
17 managing Tellico Reservoir.

18 (j) CONTINUING RESPONSIBILITIES.—The Tennessee
19 Valley Authority shall—

20 (1) retain sole and exclusive Federal responsi-
21 bility and liability to fund and implement any envi-
22 ronmental remediation requirements that are re-
23 quired under applicable Federal or State law for any
24 land or interest in land to be taken into trust under
25 this Act, as well as the assessments under paragraph

1 (2) to identify the type and quantity of any potential
2 hazardous substances on the lands;

3 (2) prior to the acquisition in trust, carry out
4 an assessment and notify the Secretary of the Inte-
5 rior and the Eastern Band of Cherokee Indians
6 whether any hazardous substances were stored on
7 the lands and, if so, whether those substances—

8 (A) were stored for 1 year or more on the
9 lands;

10 (B) were known to have been released on
11 the lands; or

12 (C) were known to have been disposed of
13 on the lands; and

14 (3) if the assessment under paragraph (2)
15 shows that hazardous substances were stored, re-
16 leased, or disposed of on the lands, include in its no-
17 tice under paragraph (2) to the Secretary of the In-
18 terior and the Eastern Band of Cherokee Indians—

19 (A) the type and quantity of such haz-
20 ardous substances;

21 (B) the time at which such storage, re-
22 lease, or disposal took place on the lands; and

23 (C) a description of any remedial actions,
24 if any, taken on the lands.

1 **SEC. 6. LANDS SUBJECT TO THE ACT.**

2 For the purposes of this Act, the term “lands subject
3 to this Act” means lands and interests in lands (including
4 easements) taken into trust for the benefit of the Eastern
5 Band of Cherokee Indians pursuant to or under this Act.

6 **SEC. 7. GAMING PROHIBITION.**

7 No class II or class III gaming, as defined in the In-
8 dian Gaming Regulatory Act (25 U.S.C. 2701 et seq.),
9 shall be conducted on lands subject to this Act.

○