

WESTERN STATES CONSTITUTIONAL RIGHTS, LLC

PRESS RELEASE

Energy Bill's Hidden Provisions Undermine Western and Rural U.S. Property Owners

The following press release is based on a recently prepared [memorandum of law and correspondences](#) dispatched to 13 members of Congress explaining the unconstitutionality of pending legislation discussed below.

Polson, Montana – September 14, 2016 – Energy and forest management are not generally assumed to be interrelated policies. Nevertheless, U.S. Senator Lisa Murkowski (AK-R) is pushing a massive 792-page Senate Energy bill incorporating more than 393 amendments covering these and other policy areas. The bill in question is No. S.2012 - the [North American Energy Security and Infrastructure Act of 2016](#), which many in Congress have not likely read. According to nonprofit Western States Constitutional Rights, LLC, S.2012 contains VERY harmful tribal government forest management provisions that could severely diminish the constitutionally protected rights of western and rural private property owners throughout the United States.

In an apparent “shell game” likely intended to disguise a hidden agenda and to confuse the American public, Congress is considering behind closed doors two versions of S.2012. It is understood that the Senate passed the Murkowski version *without* forestry measures in [April 2016](#), while the U.S. House of Representatives passed a second version *with* both forestry and tribal forest management measures in [May 2016](#), namely, H.R. 2647 – the [Resilient Federal Forests Act of 2015](#). H.R. 2647 was sponsored by Representative Bruce Westerman (AR-R) and [cosponsored by 11 Republicans and 2 Democrats](#). It seems H.R. 2647 was incorporated within the House version of S.2012 [via an amendment](#) adding new Title VII as part of [“Division B, Titles I-X”](#).¹

On September 8, 2016, the two versions of House/Senate S.2012 were submitted to a Congressional conference committee to be reconciled for ultimate passage by both chambers and signature into law by President Obama.

The House/Senate versions of S.2012 are problematic because their forestry measures embrace [European-style United Nations and Agenda-21-based sustainable forest management](#) and [United Nations Indigenous Peoples Rights policies](#) that would supersede the U.S. Constitution by implementing the [non-science-based climate change](#)-driven objectives of the [White House](#) and the U.S. [“Forest Service Strategic Energy Framework.”](#)

The Tribal Forest Management (“TFM”) provisions of House/Senate S.2012 are additionally problematic because they would [racially discriminate in favor of Native American tribes](#). This would be achieved by effectively recognizing *off-reservation aboriginal pre-European Settlement-era* land and water rights where none currently exist in national federal law,

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[consistent with the U.N. Declaration of the Rights of Indigenous Peoples](#), at the expense of all other Americans' constitutionally protected private property rights.

In particular, House/Senate S.2012s' TFM provisions would:

- Disturb U.S. constitutional federalism by supplanting States' effective authority & jurisdiction over their natural resources, as recognized by the Tenth Amendment of the U.S. Constitution, which are to be held in "[public trust](#)" for the benefit of each state's citizens;
- Provide Native American Tribes located near U.S. national forest and park lands with federal "[638](#)" [contracts](#) to manage, oversee and control such lands and appurtenant water resources for federal regulatory and other purposes, even though they are located way beyond the boundaries of Federal Indian reservations!;
- Enable Native American Tribes to treat "Federal Forest Lands," including U.S. National Forests and National Parks belonging to ALL Americans, as "Indian Forest Lands," merely by establishing that "the Federal forest land is located within, or mostly within, a geographical area that presents a feature or involves circumstances principally relevant to that Indian tribe." In other words, a tribe need show only that the forest lands are covered by an Indian Treaty, are part of a current or former Indian Reservation or were adjudicated (i.e., by the former [Indian Claims Commission](#)) to be part of a Tribal Homeland;
- Expand tribal political sovereignty and legal jurisdiction and control, especially over mountainous forest lands from which most of the waters emanate (i.e., snowpack) that are relied upon for downstream irrigation by farmers and ranchers located throughout the United States; and
- Enable tribes to impose further [federal fiduciary trust obligations](#) on the U.S. government to protect their religious, cultural and spiritual rights to fish, waters and lands located beyond the boundaries of Federal Indian Reservations by severely curtailing non-tribal members' constitutionally protected private water and land rights without paying "just compensation" as required by the Fifth Amendment to the U.S. Constitution.

The significance of the so-called federal fiduciary trust obligation was emphasized in a recently filed [federal lawsuit brought by the Hoopa Valley Tribe](#) of northern California against the U.S. Bureau of Reclamation ("BOR") and National Marine Fisheries Service. The legal action was brought, in part, to compel these agencies to uphold a claimed federal trust obligation to protect the tribe's alleged off-reservation aboriginal pre-European Settlement-era water and fishing rights in southern Oregon's Upper Klamath Lake and Klamath River, even though their Indian Reservation is located more than 240 miles southwest of the lake!! The [Yurok Tribe of northern California has indicated it would soon follow with its own lawsuit!](#) A 'win' would severely curtail the ability of Klamath Irrigation Project and Basin irrigators to exercise their water rights to secure much needed seasonal flows from the lake and river.

House/Senate S.2012s' TFM provisions, moreover, are problematic because, when combined with U.S. Senator Tester (MT-D)'s bill, No. S.3013 – the [Salish and Kootenai Water Rights Settlement Act of 2016](#), they would expand and codify into national federal law the off-reservation aboriginal pre-European Settlement-era water and fishing rights *claimed* by the

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Confederated Salish and Kootenai Tribes (“CSKT”) of the Flathead Reservation in northwestern Montana. Enactment of S.3013 into national federal law would create harmful national federal legal precedent that could then be used by other litigious tribes, such as the Hoopa Valley and Yurok tribes in northern California, to override both the public trust obligation as to waters that most western States, including [Montana](#), [Oregon](#) and [California](#), owe to their citizens, AND the constitutionally protected exclusive private property rights of western Americans which such states must uphold.

Finally, House/Senate S.2012s’ provisions would be even more problematic if they also incorporated the [Wyden-Merkley Amendment](#) (S.A. 3288) which facilitates federal funding and implementation of the highly controversial Interior Department-imposed Klamath Basin Agreements’ Tribal Water Rights Settlement. The individual Klamath Basin Agreements engendered collectively amount to a Tribal Water Rights Settlement not approved and enacted into federal law pursuant to Congress’ Constitutional authority under [Article I, Section 10](#) to approve or reject Interstate Compacts, and/or under [Article I, Section 8](#) to regulate commerce with Indian Tribes. They also effectively provide a federal and interstate template for greatly diminishing western and rural irrigators’ stated-based private property rights in favor of Native American tribes. To date, the BOR and [Wyden-Merkley Amendment promoters](#) have terribly misrepresented the benefits this settlement would provide, and have substantially understated the harms it would impose on, Klamath basin residents.

If the House-Senate Energy bill (S.2012) is passed and enacted into law containing the tribal forest management and Wyden-Merkley Amendment provisions now being considered, along with the recently introduced Salish and Kootenai Water Rights Settlement Act of 2016, Congress will have cleverly [handed over western and rural lands and waters to Native American tribes](#) in violation of the Fifth, Ninth, Tenth and Fourteenth Amendments to the U.S. Constitution.

This year is a critically important presidential and congressional election year in which the role and performance of government is being closely evaluated. *We the People* of the United States of America must show our indignation concerning the absence of transparency in Washington, D.C. by demanding Congress and State governments recognize that the private property rights of ALL Americans must be protected equally under the Constitution. Congress’ immediate withdrawal or modification of the omnibus energy bill would be a good first step in this direction.

¹ Other forestry bills containing similar tribal forest management provisions also were introduced during this session of Congress. These include U.S. Senator Steve Daines (MT-R)’ S.3014 – *The Tribal Forestry Participation and Protection Act of 2016*, and U.S. Senator Pat Roberts (KS-R)’ S.3085 – *The Emergency Wildfire and Forest Management Act of 2016*, the latter of which had been represented as being “related” to H.R. 2647. U.S. Representative Ryan Zinke (MT-R) was an original co-sponsor of H.R. 2647.

Western States Constitutional Rights, LLC is a Montana-based nonprofit entity the mission of which is to promote the protection of private property rights held by western United States property owners against reckless federal, state and local government laws, regulations and

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policies. Its members are irrigators, landowners and business owners located on or near the Flathead Irrigation Project situated within the Flathead Indian Reservation, and from other areas in northwestern Montana, but their concerns are widely shared by many citizens throughout the western and rural United States.

All media inquiries should be directed to [The Kogan Law Group, P.C.](#), NY, NY, Western States Constitutional Rights, LLC's legal counsel, at: 212-644-9240.