

Public Law 100-139
100th Congress

An Act

Oct. 26, 1987
[H.R. 1567]

To provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Tribe of Indians in United States Claims Court docket numbered 53-81L, and for other purposes.

Cow Creek Band
of Umpqua Tribe
of Indians
Distribution of
Judgment Funds
Act of 1987.
25 USC 712 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987".

SEC. 2. DEFINITIONS.

For the purposes of this Act—

- (1) The term "Secretary" means the Secretary of the Interior.
- (2) The term "tribe" means the Cow Creek Band of Umpqua Tribe of Indians, which was extended Federal recognition by the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712, et seq.).
- (3) The term "tribal member" means any individual who is a member of the Cow Creek Band of Umpqua Tribe of Indians within the meaning of section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c), as amended by section 5 of this Act.
- (4) The term "tribe's governing body" means the governing body as determined by the tribe's governing documents.
- (5) The term "tribe's governing documents" means either the By-Laws of Cow Creek Band of Umpqua Tribe of Indians which bear an approved date of 9-10-78 or those bylaws as amended or revised or any subsequent final governing document adopted pursuant to section 4 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712b), as amended by section 7 of this Act.
- (6) The term "tribal council" means the general membership of the Cow Creek Band of Umpqua Tribe of Indians convened in a meeting open to all tribal members.
- (7) The term "tribal elder" means any tribal member who reached 50 years of age on or before December 31, 1985, and whose name appears on the list compiled pursuant to section 4(b)(1)(A).

SEC. 3. JUDGMENT DISTRIBUTION PLAN.

Notwithstanding Public Law 93-134 (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to such Act, the judgment funds awarded in United States Claims Court docket numbered 53-81L shall be distributed and used in the manner provided in this Act.

SEC. 4. DISTRIBUTION AND USE OF FUNDS.

(a) **PRINCIPAL PRESERVED; NO PER CAPITA PAYMENTS.**—(1) The total judgment fund of \$1,500,000, less attorney's fees and loan with the Bureau of Indian Affairs for expert witness testimony during

the land claims case, shall be set aside as the principal from which programs under this Act will be funded. Only the interest earned on this principal may be used to fund such programs. There will be no per capita distribution of any funds, other than as specified in this Act.

(2) The Secretary shall—

(A) maintain the judgment fund in an interest-bearing account in trust for the tribe; and

(B) shall disburse funds as provided in this Act within thirty days of receipt by the Portland Area Director, Bureau of Indian Affairs, of a request by the tribe's governing body for disbursement of funds.

(b) ELDERLY ASSISTANCE PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of \$500,000 for an Elderly Assistance Program. The Secretary shall provide a one-time-only payment of \$5,000 to each tribal elder within thirty days after the tribe's governing body—

(A) has compiled and reviewed for accuracy a list of all tribal members who were 50 years of age or older as of December 31, 1985; and

(B) has made a request for disbursement of judgment funds for the Elderly Assistance Program pursuant to subsection (a) of this section.

(2) Payments of \$5,000 to tribal elders shall be made—

(A) to tribal elders by age in descending order, beginning with the oldest tribal elder, until the interest accumulated for one year on the \$500,000 has been depleted below the sum of \$5,000: *Provided*, That any interest remaining shall carry over to the following year for distribution hereunder in the next \$5,000 payment;

(B) on or before January 1 of succeeding years, and will continue to be made to tribal elders in descending order by age until the interest earned in such year on the \$500,000 has been depleted below the sum of \$5,000: *Provided*, That any interest remaining shall carry over to the following year for distribution hereunder in the next \$5,000 payment; and

(C) each year until every individual eligible for payment under this subsection has received a one-time-only payment of \$5,000: *Provided*, That when all payments have been completed, the principal sum of \$500,000 will be distributed to other tribal programs as provided in this Act and any remaining interest will be distributed to other tribal programs as determined by the tribe's governing body.

(3) If any tribal member eligible for an elderly assistance payment should die before receiving such payment, the money which would have been paid to that individual will be returned to the Elderly Assistance Program fund for distribution in accordance with this section.

(c) HIGHER EDUCATION AND VOCATIONAL TRAINING PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of \$100,000 for a Higher Education and Vocational Training Program. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and will be utilized to provide scholarships to tribal members pursuing college, university, or professional education or training. Tribal members seeking vocational training also will be funded from this program, although adult vocational training funding available through a contract with the Bureau of Indian Affairs

will be utilized first if an individual is eligible and there is sufficient funding in such program.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the higher education and vocational training program shall be increased to \$250,000.

(d) HOUSING ASSISTANCE PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of \$100,000 for a Housing Assistance Program for tribal members. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be added to any existing tribal housing improvement programs to supplement them or it may be used in a separate Housing Assistance Program to be established by the tribe's governing body. Such funding may be used for—

- (A) rehabilitation of existing homes;
- (B) emergency repairs to existing homes;
- (C) down payments on new or previously occupied homes; and
- (D) if sufficient funding is available in a given year, for purchase or construction of new homes.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the Housing Assistance Program shall be increased to \$250,000.

(e) ECONOMIC DEVELOPMENT AND TRIBAL CENTER.—(1) From the principal, the Secretary shall set aside the sum of \$250,000 for economic development and, if other funding is not available or not adequate, for the construction and maintenance of a tribal center. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be used for—

(A) land acquisition for business or other activities which would benefit the tribe economically or provide employment for tribal members: *Provided*, That at least 50 per centum of all individuals employed in a tribally operated business acquired or operated under this subsection shall be tribal members or their spouses as available and qualified: *Provided further*, That as new positions open or existing ones are vacated, preference will be given to tribal members or their spouses, but if insufficient numbers of qualified tribal members or their spouses are available to fill at least 50 per centum of the positions offered, nontribal members may be considered for employment;

(B) business development for the tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures which can be expected to produce profits for the tribe or to employ tribal members;

(C) reservation activities, including forest management, wildlife management and enhancement of wildlife habitats, stream enhancement, and development of recreational areas. The tribe's governing body shall determine what reservation activities will be funded from economic development funds under this subparagraph; or

(D) construction, support, or maintenance of a tribal center.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding available for economic development and tribal center shall be increased to \$400,000.

(f) MISCELLANEOUS TRIBAL ACTIVITIES.—(1) From the principal, the Secretary shall set aside the sum of \$50,000 for miscellaneous tribal activities as determined by the tribe's governing body. Interest

Business and
industry.

Conservation.

earned on such sum shall be disbursed annually in a lump sum to the tribe and may be used for—

(A) operating costs of the tribe's governing body, including travel, telephone, and other expenses incurred in the conduct of the tribe's affairs;

(B) legal fees incurred in the conduct of tribal affairs, tribal businesses or other tribal activities, recommended by the tribe's governing body and approved by the tribal council; or

(C) repayment to the Secretary of any funds provided by the Secretary under Bureau of Indian Affairs Contract Numbered POOC14207638.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for miscellaneous tribal activities shall be increased to \$100,000.

(g) **EVERGREEN PROPERTY; COLLATERALIZATION OF LOAN WITH BUREAU OF INDIAN AFFAIRS.**—(1) From the principal, the Secretary shall set aside the sum of \$315,000 as collateral on the property known as Evergreen. The interest from such amount shall be disbursed annually in a lump sum to the tribe and shall be utilized for payments on the loan property and for maintenance and upgrade of such property. If the tribe's governing body determines that the interest and income together are sufficient to pay off the loan more quickly, it may commit the full interest from \$315,000 to repayment of the loan until such time as loan payments are completed or the income from the property is sufficient to complete the loan payments.

(2) When the loan has been paid or the income from the property is sufficient to pay the loan, the principal amount of \$315,000 and any remaining interest generated from such sum shall be redistributed to the Housing Assistance Program, Higher Education and Vocational Training Program, and Economic Development and Tribal Center Program established under this section in such proportions as the tribe's governing body determines to be appropriate.

(h) **GENERAL CONDITIONS.**—The following conditions will apply to the management and use of the judgment funds by the tribe's governing body:

(1) No amount greater than 10 per centum of the interest earned on the principal may be used for the administrative costs of any of the above programs, except as provided in paragraph (2).

(2) No service area is implied or imposed under any program under this Act. If the costs of administering any program under this Act for the benefit of a tribal member living outside the tribe's Indian health service area are greater than 10 per centum of the interest earned thereon, the tribe's governing body may authorize the expenditure of such funds for that program, but in carrying out the program shall give priority to individuals within the tribe's Indian health service area.

(3) The tribe's governing body may at any time after enactment of this Act declare a dividend to tribal members from the profits from any business enterprise of the tribe. Prior to declaring or distributing dividends, however, the tribe's governing body must first take into consideration the effect of such declaration or distribution of dividends on future operating costs and proposed business expansions. Profits from business enterprises may also be distributed back into any of the programs

established under this section provided that future operating costs and proposed expansion costs are first set aside. Any such distribution back into the program under this Act shall be proportional to the percentage of principal then being allocated hereunder.

(4) Notwithstanding any other provisions of this Act, interest accrued on the principal prior to enactment of this Act shall as of the date of this Act be distributed under the tribal programs described in section 4 of this Act.

(5) The tribe's governing body shall adopt and publish in a publication of general circulation regulations which provide standards for the participation of individuals who are eligible for programs established pursuant to subsections (c) and (d) of this section.

(6) Benefits received pursuant to this Act shall be considered supplementary to existing Federal programs and their existence shall not be used by any Federal agency as a basis to deny eligibility in whole or in part for existing Federal programs.

(7) Any individual who feels he or she has been unfairly denied the right to take part in any program under subsections (b), (c), or (d) of this section may appeal to the Secretary. The Secretary shall provide payments pursuant to this section to any individual who the Secretary determines, after notice and hearing, has been unfairly denied the right to take part in such program.

(8) Notwithstanding any other provisions of this Act, no funds shall be disbursed pursuant to subsections (c) or (d) of this section until one year after enactment of this Act.

(i)(1) Any portion of the principal set aside under subsection (a) which remains after the allocations of the principal required under subsections (b), (c), (d), (e), and (f) have been made shall be allocated among the Housing Assistance Program, the Higher Education and Vocational Training Program, and the Economic Development and Tribal Center Program established under this section in such proportions as the tribe's governing body determines to be appropriate.

(2) If the total amount of the principal set aside under subsection (a) after amounts sufficient to pay attorney's fees and the loan described in subsection (a) have been deducted is insufficient to make all of the allocations of the principal required under subsections (b), (c), (d), (e), and (f), the portion of the principal which is required to be allocated to the purposes provided in subsections (c), (d), (e), and (f) shall be reduced in such proportions as the tribe's governing body determines to be appropriate.

SEC. 5. MEMBERSHIP ROLLS.

(a) Section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c) is amended to read as follows:

"SEC. 5. TRIBAL MEMBERSHIP.

"(a) Until such time as the Secretary of the Interior publishes a tribal membership roll as mandated in subsection (b) of this section, the membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed in the official tribal roll approved on September 13, 1980, by the tribe's Board of Directors, and their descendants. Following publication by the Secretary of the tribal membership roll mandated in subsection (b) of this section, the

membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed on such roll.

“(b) Within three hundred and sixty-five days after the enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the Secretary shall prepare in accordance with the regulations contained in part 61 of title 25 of the Code of Federal Regulations a tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians. Such roll shall include all Indian individuals who were not members of any other federally recognized Indian tribe on July 30, 1987 and who—

“(1) are listed on the tribal roll referred to in subsection (a);

“(2) are the descendants of any individuals listed pursuant to paragraph (1) born on or prior to enactment of this Act; or

“(3)(A) are the descendants of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 18, 1853; (B) have applied to the Secretary for inclusion in the roll pursuant to subsection (c); and (C) meet the requirements for membership provided in the tribe’s governing documents.

“(c) The Secretary shall devise regulations governing the application process under which individuals may apply to have their names placed on the tribal roll pursuant to paragraph 3 of subsection (b).

Regulations.

“(d) After publication of the roll in the Federal Register, the membership of the tribe shall be limited to the persons listed on such roll and their descendants: *Provided*, That the tribe, at its discretion, may subsequently grant tribal membership to any individual of Cow Creek Band of Umpqua ancestry who pursuant to tribal procedures, has applied for membership in the tribe and has been determined by the tribe to meet the tribal requirements for membership in the tribe: *Provided further*, That nothing in this Act shall be interpreted as restricting the tribe’s power to impose additional requirements for future membership in the tribe upon the adoption of a new constitution or amendments thereto as provided in section 7 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987.”

Federal Register, publication.

(b) TECHNICAL CORRECTION.—The Cow Creek Band of Umpqua Tribe of Indians Recognition Act is amended by striking out “Umpqua Tribe of Oregon” each place it appears and inserting in lieu thereof “Umpqua Tribe of Indians”.

25 USC 712, 712a.

SEC. 6. ELIGIBILITY OF NONTRIBAL MEMBERS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, any individual who is not a tribal member shall be eligible to participate—

(1) in the programs established under subsections (c) and (d) of section 4 of this Act if such individual—

(A) submits to the Secretary and to the tribe an application for participation in such programs which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251; and

(B) is certified by the Secretary as being within such group; and

(2) in the program established under subsection (b) of section 4 of this Act if such individual—

(A) submits to the Secretary and to the tribe, by no later than one hundred and eighty days after the date of enactment of this Act, an application for participation in such program which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251; and

(B) is certified by the Secretary as being within such group.

(b) **BASIS OF CERTIFICATIONS.**—In making certifications under subsection (a) of this section, the Secretary may use—

(1) records collected pursuant to Bureau of Indian Affairs Contract Numbered POOC14207638 that are made available to the Secretary by the tribe; and

(2) any other documents, records, or other evidence that the Secretary determines to be satisfactory.

SEC. 7. ORGANIZATION OF TRIBE; CONSTITUTION, BYLAWS AND GOVERNING BODY.

(a) **IN GENERAL.**—Section 4 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712b) is amended to read as follows:

“SEC. 4. (a) The tribe may organize for its common welfare and adopt an appropriate instrument, in writing, to govern the affairs of the tribe when acting in its governmental capacity. The tribe shall file with the Secretary of the Interior a copy of its organic governing document and any amendments thereto.

“(b) Not less than one year following enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the tribe’s governing body may propose a new governing document or amendments or revisions to the interim governing document, and the Secretary shall conduct a tribal election as to the adoption of that proposed document within one hundred twenty days from the date it is submitted to the Bureau of Indian Affairs.

“(c) The Secretary shall approve the new governing document if approved by a majority of the tribal voters unless he or she determines that such document is in violation of any laws of the United States.

“(d) Until the tribe adopts and the Secretary approves a new governing document, its interim governing document shall be the tribal bylaws entitled ‘By-Laws of Cow Creek Band of Umpqua Tribe of Indians’ which bear an ‘approved’ date of ‘9-10-78.’

“(e) Until the tribe adopts a final governing document, the tribe’s governing body shall consist of its current board of directors elected at the tribe’s annual meeting of August 10, 1986, or such new board members as are selected under election procedures of the interim governing document identified at subsection (d).”

Approved October 26, 1987.

LEGISLATIVE HISTORY—H.R. 1567:

- HOUSE REPORTS: No. 100-66 (Comm. on Interior and Insular Affairs).
- SENATE REPORTS: No. 100-157 (Select Comm. on Indian Affairs).
- CONGRESSIONAL RECORD, Vol. 133 (1987):
 - Apr. 27, considered and passed House.
 - Sept. 18, considered and passed Senate, amended.
 - Oct. 5, House concurred in Senate amendment.