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REPORT
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T'UF SHUR BIEN PRESERVATION TRUST AREA ACT

SEPTEMBER 17, 2002.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 2018]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2018) to establish the T'uf Shur Bien Preservation Trust Area within the Cibola National Forest in the State of New Mexico to resolve a land claim involving the Sandia Mountain Wilderness, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause in insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "T'uf Shur Bien Preservation Trust Area Act'.

SEC.2. FINDING AND STATEMENT OF PURPOSE.

(a) FINDING.—The Congress finds that in 1748, the pueblo of Sandia received a grant from a representative of the King of Spain, which grant was recognized and confirmed by Congress in 1858 (11 Stat. 374). In 1994, the Pueblo filed a lawsuit against the Secretary of the Interior and the Secretary of Agriculture in the U.S. District Court for the District of Columbia, Civil No. 1:94CV02624, asserting that federal surveys of the grant boundaries erroneously excluded certain lands within the Cibola national Forest, including a portion of the Sandia Mountain Wilderness;

(b) PURPOSES.—The purposes of this Act are to—

(1) establish the T'uf Shur Bien Preservation Trust Area in the Cibola National Forest;

(2) confirm the status of National Forest and Wilderness lands in the Area while resolving issues associated with the Pueblo's lawsuit and the opinions of the Solicitor of the Department of the Interior dated December 9, 1988 (M–36963; 96 I.D. 331) and January 19, 2001 (M–37002); and

(3) provide the Pueblo, parties involved in the litigation, and the public with a fair and just settlement of the Pueblo's claim.

SEC. 3 DEFINITIONS.

For purposes of this Act:

(1) AREA.—The term "Area" means the T'uf Shur Bien Preservation Trust Area as depicted on the map, and excludes the subdivisions and other privately and publicly owned lands as set forth in this Act.

(2) CREST FACILITIES.—The term "crest facilities" means all facilities and developments located on the crest of Sandia Mountain, including the Sandia crest Electronic Site; electronic site access roads; the crest House; the upper terminal, restaurant, and related facilities of Sandia Peak Tram Company; the Crest Observation Area; parking lots; restrooms; the Crest Trail (Trail No. 130); hang glider launch sites; and the Kiwanis cabin; as well as the lands upon which such facilities are located and the lands extending 100 feet to the west of each such facility, unless a different distance is agreed to in writing between the Forest Service and the Pueblo and documented in the survey of the Area.

(3) EXISTING USES AND ACTIVITIES.—The term "existing uses and activities" means uses and activities occurring in the Area on the date of enactment of this Act, or which have been authorized in the Area after November 1, 1995 but before the date of enactment of this Act.

(4) FOREST SERVICE.—The term "Forest Service" means the U.S. Forest Service.

(5) LA LUZ TRACT.—The term "La Luz tract" means that tract comprised of approximately 31 acres of land owned in fee by the Pueblo and depicted on the map.

(6) LOCAL PUBLIC BODIES.—The term "local public bodies" means political subdivisions of the State of New Mexico as defined in New Mexico Code § 6–5–1.

(7) MAP.—The term "map" means the Forest Service map entitled "T'uf Shur Bien Preservation Trust Area," dated April 2000.

(8) MODIFIED USES OR ACTIVITIES.—The term "modified uses or activities" means existing uses which are being modified or re-configured, but which are not being significantly expanded, including a trail or trailhead being modified, such as to accommodate handicapped access, a parking area being reconfigured though not expanded, or a special use authorization for a group recreation activity being authorized for a different use area or time period.

(9) NEW USES OR ACTIVITIES.—The term "new uses or activities" means uses or activities not occurring in the Area on the date of enactment of this Act, as well as existing uses or activities that are being modified such that they significantly expand or alter their previous scope, dimensions, or impacts on the land, water, air and/or wildlife resources of the Area. New uses and activities do not apply to new uses or activities that are categorically excluded from documentation requirements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), or to activities undertaken to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(10) PIEDRA LISA TRACT.—the term "Piedra Lisa tract" means that tract comprised of approximately 160 acres of land held in private ownership and depicted on the map.

(11) PUEBLO.—The term "Pueblo" means the Pueblo of Sandia in its governmental capacity.

(12) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, except where otherwise expressly indicated.

(13) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the Agreement of Compromise and Settlement dated April 4, 2000, between the United States, the Pueblo, and the Sandia Peak Tram Company.

(14) SPECIAL USE PERMIT.—The term "special use permit" means the December 1, 1993, Special Use Permit issued by the Forest Service to Sandia Peak Tram Company and Sandia Peak Ski Company, encompassing approximately 46 acres of the corridor presently dedicated to aerial tramway use, and approximately 945 acres of the ski area, as well as the lands described generally in Exhibit A to the December 31, 1993, Special Use Permit, including the maintenance road to the lower tram tower, water storage and distribution facilities, seven helispots, and the other lands described therein.

(15) SUBDIVISIONS.—The term "subdivisions" means the subdivisions of Sandia Heights Addition, Sandia Heights North Units I, II, and 3, Tierra Monte, and Evergreen Hills, as well as any additional plats and privately owned properties depicted on the map, exclusive of the property now owned or hereafter acquired by the Pueblo or the Forest Service in the subdivisions.

(16) TRADITIONAL AND CULTURAL USES.—The terms "traditional and cultural uses" and "traditional and cultural purposes" means ceremonial activities, including the placing of ceremonial materials in the Area, and the use, hunting, trapping or gathering of plants, animals, wood, water, and other natural resources, but only for non-commercial purposes.

SEC. 4. T'UF SHUR BIEN PRESERVATION TRUST AREA.

(a) ESTABLISHMENT.—The T'uf Shur Bien Preservation Trust Area is established within the Cibola National Forest and the Sandia Mountain Wilderness as depicted on the map:

(1) to recognize and protect in perpetuity the Pueblo's rights and interests in and to the Area, as specified in section 5(a) of this Act;

(2) to preserve in perpetuity the Wilderness and National Forest character of the Area; and

(3) to recognize and protect in perpetuity the public's longstanding use and enjoyment of the Area.

(b) ADMINISTRATION AND APPLICABLE LAW.—The Secretary, acting through the Forest Service, shall continue to administer the Area as part of the National Forest System and incorporate the provisions of this Act affecting management of the Area, including section 5(a)(3) and section 7.

(c) EXCEPTIONS.—

(1) Traditional and cultural uses by Pueblo members and members of other federally recognized Indian tribes authorized to use the Area by the Pueblo under section 5(a)(4) of this act shall not be restricted except by the Wilderness Act and its regulations as they exist on the date of enactment of this Act and by applicable federal wildlife protection laws as provided in section 6(a)(2) of this Act.

(2) To the extent that laws enacted or amended after the date of this act are inconsistent with this act, they shall not apply to the Area unless expressly made applicable by Congress.

(3) The use of the word "Trust" in the name of the Area is in recognition of the Pueblo's specific rights and interests in the Area, and does not confer upon the Pueblo the ownership interest that exists when the Secretary of the Interior accepts the title to land in trust for the benefit of an Indian tribe.

(d) AREA DEFINED.—

(1) The Area shall be comprised of approximately 9890 acres of land within the Cibola National Forest as depicted on the map.

(2) As soon as practicable after enactment of this Act, the Secretary shall file the map and a legal description of the Area with the Committee on Resources of the House of Representatives and with the Committee on Energy and natural Resources of the Senate. The map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia.

(3) Such map and legal description shall have the same force and effect as if included in this Act, except that

(A) clerical and typographical errors shall be corrected;

(B) changes that may be necessary pursuant to section 9(b), 9(d), and 9(e) shall be made; and

(C) to the extent the map and the language of this Act conflict, the language of the Act controls.

(e) NO CONVEYANCE OF TITLE.—The United States' right, title and interest in or to the Area or any part thereof shall not be conveyed to or exchanged with any person, trust, or governmental entity, including the Pueblo, without specific authorization of Congress.

(f) PROHIBITED USES.—Notwithstanding any other provision of law, no use prohibited by the Wilderness Act as of the date of enactment of this Act may occur in the Washington portion of the Area; nor may any of the following uses occur in any portion of the Area: gaming or gambling of any kind, mineral production, timber production, and new uses or activities to which the Pueblo objects pursuant to section 5(a)(3) of this Act. The Area is closed to the location of mining claims under the Mining Law of 1872 (30 U.S.C. § 22).

(g) NO MODIFICATION OF BOUNDARIES.—Nothing herein shall affect the boundaries of, or shall repeal or disestablish the Sandia Mountain Wilderness or the Cibola National Forest. Establishment of the Area does not in any way modify the existing boundary of the Pueblo grant.

SEC. 5. PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA.

(a) GENERAL.—The Pueblo shall have the following rights and interests in the Area:

(1) free and unrestricted access to the Area for traditional and cultural uses to the extent not inconsistent with the Wilderness Act and its regulations as they exist on the date of enactment of the Act and with applicable federal wildlife protection laws as provided in section 6(a)(2);

(2) perpetual preservation of the Wilderness and National Forest character of the Area under this Act;

(3) rights in the management of the Area as set forth in section 7, which include:

(A) the right to consent or withhold consent to new uses;

(B) the right to consultation regarding modified uses;

(C) the right to consultation regarding the management and preservation of the Area; and

(D) the right to dispute resolution procedures;

(4) exclusive authority, in accordance with its customs and laws, to administer access to the Area for traditional and cultural uses by members of the Pueblo and of other federally recognized Indian tribes; and

(5) such other rights and interests as are enumerated and recognized in sections 4, 5(c), 8, and 9.

(b) LIMITATION.—Except as provided in subsection (a)(4), access to and use of the Area for all other purposes shall continue to be administered by the Secretary through the Forest Service.

(c) COMPENSABLE INTEREST.—

(1) If, by an Act of Congress enacted subsequent to the effective date of this Act, Congressional diminishes the Wilderness and National Forest designation of the Area by authorizing a use prohibited by section 4(f) in all or any portion of the Area, or permanently denies the Pueblo access for any traditional and cultural uses in all or any portion of the Area, the United States shall compensate the Pueblo as if the Pueblo had held a fee title interest in the affected portion of the Area and as though the United States had acquired such interest by legislative exercise of its power of eminent domain, and the restrictions of sections 4(f) and 6(a) shall be disregarded in determining just compensation owed to the Pueblo.

(2) Any compensation made to the Pueblo pursuant to subsection (c)(1) does not in any way affect the extinguishment of claims set forth in section 10.

SEC. 6. LIMITATIONS ON PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA.

(a) LIMITATIONS.—The Pueblo's rights and interests recognized in this Act do not include:

(1) any right to sell, grant, lease, convey, encumber or exchange lands in the Area, or any right or interest therein, and any such conveyance shall not have validity in law or equity;

(2) any exemption from applicable federal wildlife protection laws;

(3) any right to engage in any activity or use prohibited in section 4(f); or

(4) any right to exclude persons or governmental entities from the Area.

(b) EXCEPTION.—No person who exercises traditional and cultural use rights as authorized in section 5(a)(4) of this Act may be prosecuted for a Federal wildlife offense requiring proof of a violation of a State law or regulation.

SEC. 7. MANAGEMENT OF THE AREA.

(a) PROCESS.—

(1) GENERAL.—

(A) The Forest Service shall consult with the Pueblo of Sandia not less than twice a year, unless otherwise mutually agreed, concerning protection, preservation, and management of the Area, including new and modified uses and activities in the Area and authorizations that are anticipated during the next six months and approved in the preceding six months.

(2) NEW USES AND ACTIVITIES.—

(A) If after consultation the Pueblo of Sandia denies its consent for a new use or activity within 30 days of the consultation, the Forest Service will not be authorized to proceed with the activity or use. If the Pueblo consents to the new use or activity in writing or fails to respond within 30 days, the Forest Service may proceed with the notice and comment process and the environmental analysis.

(B) Before the Forest Service signs a Record of Decision (ROD) or Decision Notice (DN) for a proposed use of activity, the Forest Service will again request Pueblo consent within 30 days of the Pueblo's receipt of the proposed ROD or DN. If the Pueblo refuses to consent, the activity or use will not be authorized. If the Pueblo fails to respond to the consent request within 30 days after the proposed ROD or DN is provided to the Pueblo, the Pueblo will be deemed to have consented to the proposed ROD or DN and the Forest Service may proceed to issue the final ROD or DN.

(3) PUBLIC INVOLVEMENT.—

(A) For proposed new and modified uses and activities, the public shall be provided notice of—

(i) the purpose and need for the proposed action or activity,

(ii) the Pueblo's role in the decision-making process, and

(iii) the Pueblo's position on the proposal.

Any member of the public may file an action in the United States District Court for the District of New Mexico to challenge Forest Service determinations of what constitutes a new or a modified use or activity.

(b) EMERGENCIES AND EMERGENCY CLOSURE ORDERS.—The Forest Service shall retain its existing authorities to manage emergency situations, to provide for public safety, and to issue emergency closure orders in the Area subject to applicable law. The Forest Service shall notify the Pueblo of Sandia regarding emergencies, public safety issues, and emergency closure orders as soon as possible. Such actions are not subject to the Pueblo's right to withhold consent to new uses in the Area as set forth in section 5(a)(3)(i).

(c) DISPUTES INVOLVING FOREST SERVICE MANAGEMENT AND PUEBLO TRADITIONAL USES.—

(1) GENERAL.—In the event that Forest Service management of the Area and Pueblo traditional and cultural uses conflict, and the conflict does not pertain to new or modified uses subject to the process set forth in subsection (a), the process for dispute resolution set forth in this subsection shall take effect.

(2) DISPUTE RESOLUTION PROCESS.—(A) When there is a dispute between the Pueblo and the Forest Service regarding Pueblo traditional and cultural use and Forest Service management of the Area, the party identifying the dispute shall notify the other party in writing addressed to the Governor of the Pueblo or the Regional Forester respectively, setting forth the nature of the dispute. The Regional Forester or designee and the Governor of the Pueblo or designee shall attempt to resolve the dispute for no less than 30 days after notice has been provided before filing an action in United States District Court for the District of New Mexico.

(B) DISPUTES REQUIRING IMMEDIATE RESOLUTION.—In the event of a conflict that requires immediate resolution to avoid imminent, substantial and irreparable harm, the party alleging such conflict shall notify the other party and seek to resolve the dispute within 3 days of the date of notification. If the parties are unable to resolve the dispute within 3 days, either party may file an action for immediate relief in federal court in New Mexico, and the procedural exhaustion requirements set forth above shall not apply.

SEC. 8. JURISDICTION OVER THE AREA.

(a) CRIMINAL JURISDICTION.—Notwithstanding any other provision of law, jurisdiction over crimes committed in the Area shall be allocated as follows:

(1) To the extent that the allocations of criminal jurisdiction over the Area under paragraphs (2), (3), and (4) of this subsection are overlapping, they should be construed to allow for the exercise of concurrent criminal jurisdiction.

(2) The Pueblo shall have jurisdiction over crimes committed by its members or by members of another federally recognized Indian tribe who are present in the Area with the Pueblo's permission pursuant to section 5(a)(4).

(3) The United States shall have jurisdiction over—

(A) the offenses listed in section 1153 of title 18, U.S. Code, including any offenses added to the list in that statute by further amendments thereto, when such offenses are committed by members of the Pueblo and other federally recognized Indian tribes;

(B) crimes committed by any person in violation of laws and regulations pertaining to the protection and management of National Forests;

(C) enforcement of federal criminal laws by general applicability; and

(D) any other offense committed by a member of the Pueblo against a non-member of the Pueblo. Any offense which is not defined and punished by federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State of New Mexico.

(4) The State of New Mexico shall have jurisdiction over any crime under its laws committed by a person not a member of the Pueblo.

(b) CIVIL JURISDICTION.—

(1) Except as provided in paragraphs (2), (3), (4), and (5), the United States, the State of New Mexico, and local public bodies shall have the same civil adjudicatory, regulatory, and taxing jurisdiction over the Area as they exercised prior to the enactment of this Act.

(2) The Pueblo shall have exclusive civil adjudicatory jurisdiction over—

(A) disputes involving only members of the Pueblo;

(B) civil actions brought by the Pueblo against members of the Pueblo; and

(C) civil actions brought by the Pueblo against members of other federally recognized Indian tribes for violations of understandings between the Pueb-

lo and that member's tribe regarding use or access to the Area for traditional and cultural purposes.

(3) The Pueblo shall have no regulatory jurisdiction over the Area with the exception of;

(A) exclusive authority to regulate traditional and cultural uses by the Pueblo's own members and to administer access to the Area by other federally recognized Indian tribes for traditional and cultural uses, to the extent such regulation is consistent with this Act; and

(B) The Pueblo shall have exclusive authority to regulate hunting and trapping in the Area by its members that is related to traditional and cultural purposes. Such authority shall not vest or continue until the Pueblo enacts and thereafter maintains and enforces regulations substantially similar to those of the State of New Mexico concerning seasons, game management, types of weapons, proximity of hunting and trapping to trails and residences, and comparable safety restrictions. Prior to adopting such regulations, the Pueblo shall provide the Forest Service and New Mexico game and Fish Department with notice and an opportunity to comment on the regulations. The Pueblo shall consult and exchange information with the New Mexico Game and Fish Department on a periodic basis to assist the Department with its ongoing responsibility to protect wildlife populations.

(4) The Pueblo shall have no authority to impose taxes within the Area.

(5) The State of New Mexico and local public bodies shall have no authority within the Area to tax the activities or the property of the Pueblo, its members, or members of other federally recognized Indian tribes authorized to use the Area under section 5(a)(4) of this Act.

SEC. 9. SUBDIVISIONS AND OTHER PROPERTY INTERESTS.

(a) SUBDIVISIONS.—The subdivisions are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other form of jurisdiction, over the subdivisions and property interests therein, and the laws of the Pueblo shall not apply to the subdivisions. The jurisdiction of the State of New Mexico and local public bodies over the subdivisions and property interests therein shall continue in effect, except that a tract comprised of approximately 35 contiguous, non-subdivided acres in the northern section of Evergreen Hills owned in fee by the Pueblo at the time of enactment of this Act, shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior. Such trust land shall be subject to all limitations on use pertaining to the Area contained in this Act.

(b) PIEDRA LISA.—The Piedra Lisa tract is excluded from the Area notwithstanding any subsequent acquisition of the tract by the Pueblo. If the Forest Service acquires the tract, it shall be included in the Area. Unless the Piedra Lisa tract is acquired by the Pueblo, the Pueblo shall have no civil or criminal jurisdiction over the tract and property interests therein, and the laws of the Pueblo shall not apply to the tract. Except as provided in subsection (e), the jurisdiction of the State of New Mexico and local bodies over the Piedra Lisa tract and property interests therein shall continue in effect. If the Forest Service acquires the tract, the jurisdictional provisions of section 8 of the Act shall apply.

(c) CREST FACILITIES.—The lands on which the crest facilities are located are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other from of jurisdiction, over the lands on which the crest facilities are located and property interests therein, and the laws of the Pueblo shall not apply to those lands. The pre-existing jurisdictional status of those lands shall continue in effect.

(d) SPECIAL USE PERMIT AREA.—The lands described in the special use permit are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory, or any other form of jurisdiction, over the lands described in the special use permit, and the laws of the Pueblo shall not apply to those lands. The pre-existing jurisdictional status of these lands shall continue in effect. In the event the special use permit, during its existing term or any future terms or extensions, requires amendment to include other lands in the Area necessary to realign the existing or any future replacement tram line, associated structures, or facilities, the lands subject to that amendment shall thereafter be excluded from the Area and shall have the same status under this Act as the lands currently described in the special use permit. Any lands dedicated to aerial tramway and related uses and associated facilities that are excluded from the special use permit through expiration, termination or the amendment process shall thereafter be included in the Area but only after final agency action no longer subject to any appeals.

(e) LA LUZ TRACT AND SUBSEQUENT ACQUISITION.—The La Luz tract now owned in fee by the Pueblo is excluded from the Area and shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior. if the Pueblo acquires the Piedra Lisa tract, the tract shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior. Such trust land shall be subject to all limitations on use pertaining to the Area contained in this Act. The restriction contained in section 6(a)(4) shall not apply outside of Forest Service System trails.

(f) EVERGREEN HILLS ACCESS.—The Secretary, consistent with section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210), shall ensure that Forest Service Road 333D, as depicted on the map, is maintained in an adequate condition consistent with the terms of section 1323(a) of the Alaska National Interest Lands Conservation Act (26 U.S.C. 3210).

(g) PUEBLO FEE LANDS.—Those properties not specifically addressed in subsection (a) or (e) of this section that are owned in fee by the Pueblo within the subdivisions are excluded from the Area and shall be subject to the jurisdictional provisions of subsection (a) of this section.

(h) RIGHTS-OF-WAY.—

(1) ROAD RIGHTS-OF-WAY.—(A) in accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the County of Bernalillo, New Mexico, in perpetuity, the following irrevocable rights of way for roads identified on the map in order to provide for public access to the subdivisions, the special use permit land and facilities, the other leasehold and easement rights and interests of the Sandia Peak Tram Company and its affiliates, the Sasndia Heights South Subdivision, and the Area:

(i) a right-of-way for Tramway Road;

(ii) a right-of-way for Juniper Hill Road North;

(iii) a right-of-way for Juniper Hill Road South;

(iv) a right-of-way for Sandia Heights Road; and

(v) a right-of-way for Juan Tabo Canyon Road (Forest Road No. 333).

(B) The road rights-of-way shall be subject to the following conditions:

(i) Such rights-of-way may not be expanded or otherwise modified without the Pueblo's written consent, but road maintenance to the rights of way shall not be subject to Pueblo consent;

(ii) The rights-of-way shall not authorize uses for any purpose other than roads without the Pueblo's written consent.

(iii) Existing rights-of-way or leasehold interests held by the Sandia Peak Tram Company and its affilates, shall be preserved and protected.

(2) UTILITY RIGHTS-OF-WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant irrevocable utility rights-of-way in perpetuity across lands to appropriate utility or other service providers serving Sandia Heights Addition, Sandia Heights North Units I, II, and 3, the special use permit lands, and Tierra Monte, including rights-of-way for natural gas, power, water, telecommunications, and cable television services. Such rights-of-way shall be within existing utility corridors as depicted on the map or, for certain water lines, as described in the existing grant of easement to the Sandia Peak Utility Company; provided that use of water line easements outside the utility corridors depicted on the map shall not be used for utility purposes other than water lines and associated facilities. Except where above-ground facilities already exist, all new utility facilities shall be installed underground unless the Pueblo agrees otherwise. To the extent that enlargement of existing utility corridors is required for any technologically-advanced telecommunication, television, or utility services, the Pueblo shall not unreasonably withhold agreement to a reasonable enlargement of the easements described above.

(i) FOREST SERVICE RIGHTS-OF-WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the Forest Service the following irrevocable rights-of-way in perpetuity for Forest Service trails crossing land of the Pueblo in order to provide for public access to the Area and through Pueblo lands:

(1) a right-of-way for a portion of the Crest Spur Trail (Trail No. 84), crossing a portion of the La Luz tract, as identified on the map;

(2) a right-of-way for the extension of the Foothills Trail (Trail No. 365A), as identified on the map; and

(3) a right-of-way for that portion of the Piedra Lisa North-South Trail (Trail No. 135) crossing the Piedra Lisa tract, if the Pueblo ever acquires the Piedra Lisa tract.

SEC. 10. EXTINGUISHMENT OF CLAIMS.

(a) GENERAL.—Except for the rights and interests in and to the Area specifically recognized in sections 4, 5, 8, and 9, all Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to lands within the Area, any part thereof, and property interests herein, as well as related boundary, survey, trespass, and monetary damage claims, are hereby permitted extinguished. The United States' title to the Area is hereby confirmed.

(b) SUBDIVISIONS AND PIEDRA LISA.—Any Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to the subdivisions and the Piedra Lisa tract and property interests therein, as well as related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished.

(c) SPECIAL USE AND CREST FACILITIES AREAS.—Any Pueblo right, title and interest of any kind, including aboriginal claims, and related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished in and to—

(1) the lands described in the special use permit; and

(2) the lands on which the crest facilities are located.

(d) PUEBLO AGREEMENT.—As provided in the Settlement Agreement, the Pueblo has agreed to the relinquishment and extinguishment of those claims, rights, titles and interests extinguished pursuant to subsection (a), (b) and (c) of this section.

(e) CONSIDERATION.—The recognition of the Pueblo's rights and interests in this Act constitutes adequate consideration for the Pueblo's agreement to the extinguishment of the Pueblo's claims in this section and the right-of-way grants contained in section 9, and it is the intent of Congress that those rights and interests may only be diminished by a future Act of Congress specifically authorizing diminishment of such rights, with express reference to this Act.

SEC. 11. CONSTRUCTION.

(a) STRICT CONSTRUCTION.—This Act recognizes only enumerated rights and interests, and no additional rights, interests, obligations, or duties shall be created by implication.

(b) EXISTING RIGHTS.—To the extent there exists within the Area at the time of enactment of this Act any valid private property rights associated with the Piedra Lisa tract or other private lands that are not otherwise addressed in this Act, such rights are not modified or otherwise affected by this Act, nor is the exercise of any such right subject to the Pueblo's right to the withhold consent to new uses in the Area as set forth in section 5(a)(3)(i).

(c) NOT PRECEDENT.—The provisions of this Act creating certain rights and interests in the National Forest System are uniquely suited to resolve the Pueblo's claim and the geographic and societal situation involved, and shall not be construed as precedent for any other situation involving management of the National Forest System.

(d) FISH AND WILDLIFE.—Except as provided in section 8(b)(3)(B), nothing in this Act shall be construed as affecting the responsibilities of the State of New Mexico with respect to fish and wildlife, including the regulation of hunting, fishing, or trapping within the Area.

(e) FEDERAL LAND POLICY AND MANAGEMENT ACT.—Section 316 (43 U.S.C. 1746) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) is amended by adding the following sentence at the end thereof: "Any corrections authorized by this section which affect boundaries of, or jurisdiction over, lands administered by another Federal agency shall be made only after consultation with, and the approval of, the head of such other agency."

SEC. 12. JUDICIAL REVIEW.

(a) ENFORCEMENT.—Suit to enforce the provisions of this Act may be brought to the extent permitted under chapter 7 of title 5, United states Code. Judicial review shall be based upon the administrative record and subject to the applicable standard to review set forth in section 706 of title 5, United States Code.

(b) WAIVER.—Suit may be brought against the Pueblo for declaratory judgment or injunctive relief under this Act, but no money damages, including costs or attorney's fees, may be imposed on the Pueblo as a result of such judicial action.

(c) VENUE.—Venue for any suit provided for in this section, as well as any suit to contest the constitutionality of this Act, shall lie only in the United States District Court for the District of New Mexico.

SEC. 13. EFFECTIVE DATE.

The provisions of this Act shall take effect immediately upon enactment of this Act.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS AND RELATED AUTHORITIES.—

(a) GENERAL.—There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act, including such sums as may be necessary for the

Forest Service to acquire ownership of lands within the external boundaries of the Area as authorized in subsection (d)

(b) CONTRIBUTIONS.—

(1) The Secretary is authorized to accept contributions from the Pueblo, or from other persons or governmental entities, to perform and complete a survey of the Area, or otherwise for the benefit of the Area in accordance with this Act.

(2) The Secretary shall complete a survey of the Area within one year of the date of enactment of this Act.

(c) LAND EXCHANGE.—In the event the Secretary purchases or otherwise acquires ownership of the Piedra Lisa tract, the Forest Service is authorized to transfer ownership of the Piedra Lisa tract to the Pueblo in exchange for lands of equal value owned by the Pueblo in fee within the subdivided portion of the Evergreen Hills subdivision or other land acceptable to the Secretary. Notwithstanding section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716(b)), the Secretary may either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership. Any such exchange or conveyance shall be executed in compliance with all applicable laws except that the Secretary shall retain, without further appropriation, any cash equalization payment received from the Pueblo for the acquisition of land to be added to the Cibola National Forest.

(d) LAND ACQUISITION.—The Secretary is authorized to acquire lands owned by the Pueblo within the Evergreen Hills Subdivision in Sandoval County or any other privately held lands inside of the exterior boundaries of the Area. The boundaries of the Cibola National Forest and the Area shall be adjusted to encompass any lands acquired pursuant to this section.

(e) REIMBURSEMENT OF CERTAIN COSTS.—

(1) The Pueblo, the County of Bernalillo, New Mexico, and any person who owns or has owned property inside of the exterior boundaries of the Area as designated on the map, and who has incurred actual and direct costs as a result of participating in the case of Pueblo of Sandia v. Babbitt, Civ. No. 94–2624 HHG (D.D.C.), or other proceedings directly related to resolving the issues litigated in that case, may apply for reimbursement in accordance with this section. Costs directly related to such participation which shall qualify for reimbursement shall be—

(A) dues or payments to a homeowner association for the purpose of legal representation; and

(B) legal fees and related expenses.

(2) The reimbursement provided in this subsection shall be in lieu of that which might otherwise be available pursuant to the Equal Access to Justice Act (24 U.S.C. 2412).

(3) The Secretary of the Treasury is authorized and directed to make reimbursement payments as provided in this section out of any money not otherwise appropriated.

(4) Applications for reimbursement shall be filed within 180 days of the date of enactment of this Act with the Department of the Treasury, Financial Management Service, Washington, D.C.

(5) In no event shall any one party be compensated in excess of $750,000 and the total amount reimbursed pursuant to this section shall not exceed $3,000,000.

PURPOSE OF THE MEASURE

The purposes of S. 2018, as ordered reported, are to establish a unique area within the Cibola National Forest in New Mexico, entitled the T'uf Shur Bien Preservation Trust Area, and to resolve the Pueblo of Sandia's claim of ownership of Sandia Mountain, an area within the Cibola National Forest that includes a portion of the Sandia Mountain Wilderness. S. 2018 would resolve the Pueblo's claim by recognizing certain specific rights and interests of the Pueblo while maintaining Federal ownership and management of the national forest and wilderness lands within the claim area.

BACKGROUND AND NEED

The basis for the Pueblo of Sandia's claim to Sandia Mountain is its interpretation of a 1748 land grant to the Pueblo from a rep-

resentative of the King of Spain. In 1848, at the end of the Mexican-American War, the United States entered into the Treaty of Guadalupe-Hidalgo with Mexico and thereby assumed control of a large part of the present American Southwest, including the area involving the Pueblo's 1748 land grant. As part of the Treaty, the United States agreed to protect the Spanish and Mexican land grants that were acknowledged before American tribunals. The Pueblo's grant was one of those so acknowledged and, accordingly, was recognized and confirmed by Congress in 1858 (11 Stat. 374).

While there is no issue as to the validity of the Pueblo's grant, a dispute does exist as to the location of its eastern boundary, as it was originally determined in an 1859 survey. That survey, carried out by an employee of the United States Government, fixed the eastern boundary along the top of a foothill on the western slope of Sandia Mountain, rather than along its crest. The Pueblo has asserted that the United States' interpretation of the grant at the time of the survey and the subsequent land patent are in error, and that the true eastern boundary is the crest of the Mountain (creating an additional area of approximately 10,000 acres of land).

In the early 1980's, in accordance with its claim, the Pueblo approached the Department of the Interior seeking a resurvey of the grant to locate the eastern boundary of the Pueblo along the crest of Sandia Mountain. In December 1988, the Solicitor of the Department of the Interior issued an opinion rejecting the Pueblo's claim. The Pueblo challenged the opinion in Federal district court and in 1998 the court issued an order that found the Department's actions arbitrary and capricious, vacated the 1988 opinion, and remanded the case to the Department for agency action consistent with the court's opinion. *Pueblo of Sandia* v. *Babbit,* Civ. No. 94–2624 (D.D.C., July 18, 1998). The order was appealed but appellate proceedings were stayed for more than a year while a settlement was being negotiated.

On April 4, 2000, a settlement agreement was executed between the United States, the Pueblo, and the Sandia Peak Tram Company. That agreement was conditioned on congressional ratification, and remains effective until November 15, 2002. In November, 2000 the Court of Appeals of the District of Columbia Circuit dismissed the appeal for lack of jurisdiction, holding that the District Court's remand order was not final because the Department of the Interior needed to first reconsider the 1988 opinion. Upon dismissal, the Department proceeded with its reconsideration in accordance with the 1998 order of the District Court. On January 19, 2001, the Solicitor issued a new opinion that concluded that the 1859 survey of the Sandia Pueblo grant was erroneous and that a resurvey should be conducted that places the eastern boundary of the grant at the crest of Sandia Mountain. Implementation of the opinion would remove approximately 10,000 acres of National Forest and Wilderness lands from Federal ownership and convey it to the Pueblo. The Department stayed the resurvey until after November 15, 2002, so that there would be time for Congress to enact legislation that would implement the settlement.

S. 2018, while not identical to the Settlement Agreement, incorporates it necessary provisions. These provisions include several that specifically benefit the Pueblo of Sandia: (1) The creation of the T'uf Shur Bien Preservation Trust Area ("Area") with restric-

tions on future development within the Area; (2) a right of the Pueblo to unrestricted access to the Area for traditional and cultural uses; (3) a right of the Pueblo to participate in management of the Area; (4) a compensable interest should Congress ever authorize prohibited uses in the Area or permanently deny the Pueblo access for traditional and cultural uses; (5) exclusive jurisdiction by the Pueblo over certain activities of its members and other Native Americans within the Area; (6) the non-discretionary right to have certain Pueblo-owned lands taken into trust by the United States; and (7) the ability to veto any new land management activities in the Area. In recognition of the Pueblo receiving these rights and interests in the Area, S. 2018 resolves with finality the Pueblo's claim to Sandia Mountain by extinguishing any and all claims related to the Area. The bill also (1) maintains public ownership and full access to the National Forest and Wilderness lands within the Pueblo's claim area; (2) clears title for existing landowners within the claim area; and (3) grants a number of rights-of-way over the Pueblo's existing land to protect private property interests and the public's ongoing use of the Area.

The relative rights and interests contained in S. 2018 represent a negotiated compromise of the Pueblo's land claim and are preferable to further litigation.

LEGISLATIVE HISTORY

S. 2018 was introduced by Senator Bingaman on March 14, 2002. The Full Committee held a joint hearing with the Indian Affairs Committee on April 24, 2002. At the business meeting on July 31, 2002, the Committee on Energy and Natural Resources adopted an amendment in the nature of a substitute and ordered S. 2018, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 31, 2002, by a voice vote of a quorum present, recommends that the Senate pass S. 2018, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 2018, the Committee adopted an amendment in the nature of a substitute. The substitute contains a number of changes that address concerns raised during the joint hearing by parties whose interests are affected by the settlement of the Pueblo's land claim.

A major change in the substitute amendment is the elimination of a provision that expressly ratifies and confirms the settlement agreement and management plan negotiated between the Pueblo, the United States, and the Sandia Mountain Tram Company. Several new subsections were added to incorporate several key provisions from those documents. Most significantly, a new section was added to address the Forest Service's management of the newly created T'uf Shur Bien Preservation Trust Area. Also, in section 3, new definitions were added for "existing uses and activities," "modified uses and activities," and "new uses or activities." These terms are important to determine the application of the Pueblo's

right to consent to, or deny consent to, new uses or activities within the Area. Examples of "existing uses or activities" include the following recreational activities: the La Luz Run, running, jogging, hand gliding, parasailing, back-country camping, meditation, spiritual renewal, religious observances, picnicking, cross-country skiing, trapping, interpretation education, hiking, biking, rock climbing, bird watching, wildlife viewing, walking, dog walking, bow hunting, snow shoeing, driving, skating, sledding, horseback riding, photography, painting, sketching, and geo-caching. Some recreational activities require special use authorizations and some do not. To the extent the Sandia Peak Tram Company requires access to lands not described in the December 1, 1993, Special Use Permit, but within the non-wilderness area adjacent to the tram line, for maintenance or equipment replacement, access to and use of those lands shall be deemed an "existing use." The Forest Service will retain its authority to regulate all existing uses and, where appropriate, to modify, suspend, or revoke all special use authorizations. "New uses or activities" may include: a new trail, trail head, road, picnic area, parking lot, or significant new structure or facility in support of these features; new recreation or other activities not occurring in the Area on the date of enactment of the Act but otherwise permissible in National Forest and wilderness areas; and new special use authorizations and new rights-of-way.

Several changes were also made so that S. 2018 more closely tracked the settlement agreement. In section 4, a provision providing the counties of Bernalillo and Sandoval with the same veto power as the Pueblo over new uses or activities was deleted. In section 9, a provision was inserted to direct the Secretary of the Interior, as a non-discretionary matter, to take a large undeveloped tract of land owned by the Pueblo into trust for its benefit. Finally, the substitute amendment deletes a provision directing the Forest Service to transfer to the Pueblo two small lots located in the subdivided portion of the Evergreen Hills subdivision but adds a subsection authorizing the transfer of the Piedra Lisa tract to the Pueblo should the Forest Service every acquire it from the existing owner.

Other significant changes include a provision that amends the Federal Land Policy and Management Act so that if one Federal agency seeks to correct a Federal land patent or other conveyance document that would affect the jurisdiction of another Federal agency, the affected agency must approve the correction. Finally, a subsection has been added that directs the Secretary of the Treasury to reimburse the parties and certain affected landowners involved with the *Pueblo of Sandia* v. *Babbitt* litigation for costs directly incurred as a result of the litigation and settlement of the Pueblo's land claim against the Federal Government. There are other clarifying changes added in the substitute amendment, which is explained in detail in the section by section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the "T'uf Shur Bien Preservation Trust Area Act".

Section 2 contains one finding and three purposes for the Act.

Section 3 defines terms used in the Act.

Section 4, subsection (a) establishes a new management area, named the "T'uf Shur Bien Preservation Trust Area ("Area"), totaling approximately 9,980 acres within the Cibola National Forest and the Sandia Mountain Wilderness in New Mexico. This subsection also sets forth the reasons for establishing the Area.

Subsection (b) states that the Forest Service shall continue to administer the Area as part of the National Forest System pursuant to all applicable law.

Subsection (c) provides exceptions and clarifications to the Forest Service's administration of the Area and are self-explanatory.

Subsection (d) defines the Area and provides a map reference.

Subsection (e) prohibits the United States from conveying or exchanging any portion of the Area without specific authorization by Congress.

Subsection (f) states that no use prohibited by the Wilderness Act (as of the date of enactment of this Act) may occur in the Wilderness portion of the Area; nor may gaming, mineral production, timber production, or any new uses or activities to which the Pueblo objects, occur anywhere in the Area. This subsection also closes the Area to the location of mining claims pursuant to the Mining Law of 1872.

Subsection (g) clarifies that nothing in this Act affects the boundaries of, or repeals, the Sandia Mountain Wilderness or the Cibola National Forest. In addition, this subsection clarifies that establishing the Area does not in any way modify the existing boundary of the Pueblo grant.

Section 5, subsection (a) sets forth the Pueblo's rights and interests in the Area and are self-explanatory.

Subsection (b) states that, except as provided in subsection 5(a)(4) relating to traditional and cultural use of the Area by the Pueblo, the Forest Service shall continue to administer access to and use of the Area for all other purposes.

Subsection (c) requires the United States to compensate the Pueblo if a future Act of Congress diminishes the wilderness and national forest designation of the Area by authorizing a use prohibited by section 4(f) or permanently denies the Pueblo access for any traditional and cultural uses.

Section 6, subsection (a) states that the Pueblo's rights and interests in the Area do not include the ability to sell, lease or exchange any lands in the Area; any exemption from applicable Federal wildlife protection laws; any right to engage in any activity or use prohibited in section 4(f); or any right to exclude persons or governmental entities from the Area.

Subsection (b) provides that no person who exercises traditional and cultural use rights as authorized in section 5(a)(4) may be prosecuted for a Federal wildlife offense requiring proof of a violation of a State law or regulation.

Section 7 provides generally for management of the Area by the Forest Service, including consultation with the public and the Pueblo, procedures for consent by the Pueblo, and resolution of disputes. The provisions are self-explanatory.

Section 8, subsection (a) allocates jurisdiction over crimes committed in the Area.

Subsection (9) allocates civil jurisdiction in the Area.

Section 9, subsection (a) excludes three subdivisions from the Area (totaling approximately 400 acres or about 4% of the Area). The subsection further clarifies that none of the Pueblo's jurisdiction extends over these private lands. Accordingly, the jurisdiction of the State of New Mexico and local public bodies continue in effect. An exception to the State's jurisdiction is made for a non-subdivided 35 acre tract of land owned in fee by the Pueblo in the Evergreen Hills subdivision. The Secretary of the Interior is directed to take this tract into trust for the Pueblo. No development is allowed, however, as the 35 acre tract is subject to all limitations on use pertaining to the Area contained in the Act.

Subsection (b) excludes the Piedra Lisa inholding (approximately 160 acres) from the Area unless it is subsequently acquired by the Forest Service.

Subsection (c) excludes certain facilities on the crest of Sandia Mountain from the Area and recognizes the pre-existing jurisdictional status of those lands.

Subsection (d) excludes certain lands described in an existing special use permit from the Area and recognizes the pre-existing jurisdictional status of those lands.

Subsection (e) excludes the La Luz tract, owned by the Pueblo, from the Area. The subsection also directs the Secretary of the Interior to take this trace of land into trust for the Pueblo. There is also a clause directing the Secretary to take the Piedra Lisa tract into trust for the Pueblo in the event it acquires that land. All land taken into tract pursuant to the subsection is subject to the limitations on use pertaining to the Area contained in the Act.

Subsection (f) recognizes a right of access that landowners in the Evergreen Hills subdivision have over Forest Service Road 333D. The subsection requires the Secretary of Agriculture to maintain the road in adequate condition in accordance with section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210).

Subsection (g) expressly recognizes that other Pueblo-owned lands within the subdivisions are excluded from the Area.

Subsection (h) requires the Secretary of the Interior to grant (l) irrevocable rights of way to Bernalillo County for identified roads with the condition that such rights of way may not be expanded without the Pueblo's written consent, and (2) irrevocable utility rights of way across Pueblo lands to service providers serving the subdivisions.

Subsection (i) requires the Secretary of the Interior to grant to the Forest Service irrevocable rights way for portions of identified trails that cross Pueblo land.

Section 10(a) permanently extinguishes, except for the rights and interests in and to the Area specifically recognized in sections 4, 5, 8, and 9, all Pueblo claims in and to lands in the Area.

Subsection (b) permanently extinguishes any Pueblo claims to the subdivisions and the Piedra Lisa tract.

Subsection (c) permanently extinguishes any Pueblo claims in and to the lands described in the special use permit and the lands on which the crest facilities are located.

Subsection (d) references that the Pueblo has agreed to the extinguishment of its claims pursuant to subsections (a), (b), and (c).

Subsection (e) states that the recognition of the Pueblo's rights and interests in this Act constitutes adequate consideration for the Pueblo's agreement to the extinguishment of the Pueblo's claims in this section and the right-of-way grants contained in section 9. Subsection (e) provides that it is the intent of Congress that those rights and interests may only be diminished by a future Act of Congress specifically diminishing such rights, with express reference to this Act.

Section 11, subsection (a) states that this Act recognizes only enumerated rights and interests, and clarifies that no additional rights, interests, obligations, or duties shall be created by implication.

Subsection (b) provides that this Act does not modify or affect any presently existing valid private property rights that are associated with private lands in the Area; nor are such rights subject to the Pueblo's right to withhold consent to new uses in the Area.

Subsection (c) states that this Act shall not be construed as precedent for any other situation involving management of the National Forest System.

Subsection (d) precludes anything in this Act, except as provided in subparagraph 8(b)(3)(B), to be construed as affecting the responsibilities of the State of New Mexico with respect to fish and wildlife, including the regulation of hunting, fishing, or trapping in the Area.

Subsection (e) amends the Federal Land Policy and Management Act to require that any corrections made to patents or documents of conveyance pursuant to 43 U.S.C. 1746, that affect lands administered by another Federal agency, first require the approval of the head of such other agency.

Section 12, subsection (a) provides that judicial review to enforce the provisions of this Act is allowed to the extent permitted under the Administrative Procedure Act.

Subsection (b) provides for a limited waiver of sovereign immunity against the Pueblo by allowing suits for declaratory judgment or injunctive relief under the Act.

Section (c) provides that venue for any suit shall lie only in the United States District Court for the District of New Mexico.

Section 13, states that the Act shall take effect immediately upon enactment.

Section 14, subsection (a) authorized the appropriations of such sums as may be necessary to carry out this Act, including the acquisition of land.

Subsection (b) requires the Secretary of Agriculture to complete a survey of the Area within one year of the date of enactment of this Act and states that the Secretary may accept contributions from the Pueblo or other persons to complete a survey of the Area.

Subsection (c) authorizes the Secretary of Agriculture to convey ownership of the Piedra Lisa tract to the Pueblo if the Secretary subsequently acquires the property. The conveyance shall take place through an exchange of land acceptable to the Secretary, although the Secretary may make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership.

Subsection (d) authorizes the Secretary of Agriculture to acquire lands owned by the Pueblo within the Evergreen Hills Subdivision

or any other privately held lands inside of the exterior boundaries of the Area.

Subsection (e) directs the Secretary of the Treasury to reimburse the Pueblo, county of Bernalillo, New Mexico, and any person who owns or has owned property inside of the exterior boundaries of the Area, for actual and direct costs incurred (and not otherwise reimbursed) due to participation in the litigation or settlement of the Sandia Pueblo's claim to Sandia Mountain. The reimbursement is limited to a maximum of $750,000 per party and, in total, may not exceed $3,000,000.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 21, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2018, the T'uf Shur Bien Preservation Trust Area Act.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 2018—T'uf Shur Bien Preservation Trust Area Act

Summary: S. 2018 would resolve a land dispute between the federal government and the Pueblo of Sandia, a federally recognized Indian tribe. CBO estimates that enacting S. 2018 would increase direct spending by $3 million in 2003 and governmental receipts by less than $500,000 a year. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

S. 2018 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The provisions of this bill are generally consistent with a settlement agreement signed by the Pueblo of Sandia and would impose no costs on the tribe other than those it would incur voluntarily as a party to the agreement.

Background and summary of major provisions: The underlying dispute giving rise to S. 2018 involves the Pueblo of Sandia's claim to roughly 10,000 acres of federal lands currently administered by the Forest Service as part of the Sandia Mountain Wilderness and Cibola National Forest in New Mexico. The tribe believes that the federal government mistakenly excluded those lands from the tribe's original land grant due to an inaccurate land survey conducted by the Department of the Interior in 1859. The tribe filed an action against the federal government in 1994. Several other parties, including local governments, private landowners, and a pri-

vate company subsequently became involved in that litigation. While the case was pending, all of the parties began to negotiate a settlement agreement which eventually was signed in April 2000, but only by the tribe, the federal government, and a private company.

S. 2018 would largely implement that settlement agreement. In doing so, the bill would extinguish the tribe's claims to the disputed lands. In exchange, the bill would establish the T'uf Shur Bien Preservation Trust Area on 9,890 acres of those lands. The Forest Service would retain ownership of the proposed area and continue to manage it as part of the national forest system, but S. 2018 would give the Pueblo of Sandia certain rights to use the area. In addition, the bill would direct the Forest Service to manage the proposed area in consultation with the tribe, establish a process for resolving disputes over land-use decisions, and specify other conditions for future management of the area. S. 2018 also would direct the Secretary of the Interior to take into trust on behalf of the Pueblo of Sandia certain lands currently owned by the Tribe. Finally, S. 2018 would provide up to $3 million in new direct spending authority for the Secretary of the Treasury to reimburse certain costs incurred by participants in court proceedings related to the land dispute.

Estimated cost to the Federal Government: The estimate budgetary impact of S. 2018 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN DIRECT SPENDING [1]					
Estimated budget authority	3	0	0	0	0
Estimated outlays	3	0	0	0	0

[1] S. 2018 also would affect revenues and spending subjects to appropriation, but CBO estimates that such effects would not be significant in any year.

Basis of estimate: For this estimate, CBO assumes that S. 2018 will be enacted by the end of fiscal year 2002. CBO estimates that the bill would increase direct spending by $3 million in 2003 and would have a negligible effect on governmental receipts (revenues). We also estimate that administrative costs of federal agencies would increase by less than $500,000 annually, assuming appropriation of the necessary amounts.

Direct spending

S. 2018 would authorize the Secretary of the Treasury to spend, without further appropriation, up to $3 million to reimburse parties to the lawsuit brought against the federal government by the Pueblo of Sandia for certain costs incurred to participate in that lawsuit. Based on information from the tribe and other eligible parties, CBO estimates that the Secretary would spend $3 million for such reimbursements in 2003.

S. 2018 specifies that any reimbursements made pursuant to the bill would be in lieu of amounts that might otherwise be paid under the Equal Access to Justice Act. That act authorizes the federal government, under certain circumstances, to reimburse legal fees and expenses of parties who successfully sue the federal gov-

ernment. Under current law, the tribe is the only party that might qualify for reimbursements under that act, but whether the tribe would receive such reimbursements and when that might occur is very uncertain. Hence, CBO assumes that any forgone spending under the Equal Access to Justice Act would be negligible, and we estimate that the net increase in direct spending under S. 2018 would total about $3 million.

Revenues

S. 2018 would authorize the Secretary of Agriculture to accept and use contributions from the Pueblo of Sandia or other non-federal entities for certain administrative activities and the general benefit of the proposed trust area. Based on information from the Forest Service, we estimate that any cash contributions, which are recorded on the budget as governmental receipts, would not be significant in any year.

Spending, subject to appropriation

Based on information from the Forest Service and the Department of the Interior, CBO estimates that those agencies would spend less than $500,000 a year to implement S. 2018, assuming appropriation of the necessary amounts. According to the Forest Service, designating the T'uf Shur Bien Preservation Trust Area and formalizing the process of consulting with the tribe on the management of lands within that area would not significantly affect the agency's costs to manage them. Likewise, the Department of the Interior expects that taking lands into trust on behalf of the tribe would not significantly increase federal costs.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table.

	By Fiscal Year, in Millions of Dollars—									
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in outlays	3	0	0	0	0	0	0	0	0	0
Changes in receipts	0	0	0	0	0	0	0	0	0	0

Intergovernmental and private-sector impact: S. 2018 contains no intergovernmental or private-sector mandates as defined in UMRA. The provisions of this bill are generally consistent with a settlement agreement signed by the Pueblo of Sandia, and would impose no costs on the tribe other than those it would incur voluntarily as a party to that agreement.

Estimate prepared by: Federal costs: Megan Carroll; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out

S. 2018. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. The bill creates certain rights and interests within an area of the Cibola National Forest for the benefit of Sandia Pueblo in return for a final and permanent resolution of the Pueblo's ownership claim to Sandia Mountain.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little additional paperwork would result from the enactment of S. 2018, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee on Energy and Natural Resources from the Department of the Interior setting forth Executive agency recommendations relating to S. 2018 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, May 1, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 2018, a bill to create the T'uf Shur Bien Preservation Trust Area ("Area") within the Cibola National Forest. S. 2018 would implement, with some modifications, the Agreement of Compromise and Settlement signed by the Pueblo of Sandia ("Pueblo"), the Sandia Peak Tram Company, and the United States on behalf of the Departments of Agriculture, Justice, and the Interior on April 4, 2000. The questions of ownership and use of approximately 10,000 acres in the Cibola National Forest have been the subject of debate for nearly 20 years in both the judicial and executive branches of government and among the affected parties. The Administration supports a legislative solution and is willing to work with the New Mexico delegation and members of the Committees to that end.

I have reviewed relevant portions of the record in both the Executive Branch and the Judicial Branch. I have recently taken the opportunity to look at the Area from both the ground and in the air and I have talked to representatives of the parties most affected by the legislative proposal. I quickly concluded what is perhaps obvious to the Committees; all sides are tired of litigating this matter and the non-federal parties are concerned about the uncertainty of the administrative process should the settlement agreement lapse in November 2002. I found broad support for a legislative solution. The following comments are offered in a spirit of reasonable compromise toward finality of the dispute.

Background

The Pueblo of Sandia claims the western face of Sandia Mountain, which is part of the Sandia Mountain Wilderness to the northeast from Albuquerque, New Mexico. The Pueblo of Sandia's claim is based on a 1748 land grant from Spain to the Pueblo and

an 1858 Act of Congress that confirmed the grant. The 1858 Act directed that a survey of the grant be made and a patent issued to the Pueblo. The survey was conducted in 1859 and a patent was issued in 1864. The Pueblo claims that approximately 10,000 acres were mistakenly excluded from the grant due to a survey error. This area is now part of the Cibola National Forest and the Sandia Mountain Wilderness and extends generally from the foothills to the crest of the main ridge of the Sandia Mountains.

In 1983, the Pueblo first approached the Department requesting a resurvey of their Spanish land grant and the issuance of a new patent claiming the eastern boundary of the grant had been incorrectly surveyed in 1859. In 1988, Solicitor Ralph Tarr issued an Opinion which found that no resurvey was warranted.

In 1994 the Pueblo sued the Department of the Interior and the Department of Agriculture, claiming that the Department of the Interior's refusal to resurvey the grant was arbitrary and capricious. The United States District Court for the District of Columbia vacated the Tarr Opinion and remanded the issue to the Department in 1998. An appeal was filed, but proceedings were stayed for over a year pending mediation efforts among the Pueblo, the Sandia Peak Tram Company, the United States, the City of Albuquerque, the County of Bernalillo, and the Sandia Mountain Coalition. These mediation efforts resulted in the April 2000 Agreement of Compromise and Settlement, which was signed by the Pueblo, the Sandia Peak Tram Company, and the United States (represented by the Departments of Agriculture, Interior, and Justice). In November 2000 the Court of Appeals of the District of Columbia dismissed the appeal on the grounds that it lacked jurisdiction because the District Court's decision was not a final decision.

On January 19, 2001, Solicitor John Leshy issued a new opinion which concluded that the 1859 survey of the Pueblo of Sandia's grant was erroneous. Mr. Leshy determined that a resurvey was warranted, but recommended that the Department conduct a resurvey of the grant only if the April 2000 Agreement of Compromise and Settlement was not ratified by Congress. The Agreement binds the parties until November 15, 2002, and will become permanent only through the enactment of legislation.

S. 2018

Pursuant to the terms of S. 2018, Congress would authorize the establishment of the Area within the Cibola National Forest and the Sandia Mountain Wilderness. Title to the Area would remain in the United States while granting unrestricted access to the Area to the members of the Pueblo or the members of any other federally recognized Indian tribe authorized by the Pueblo to enter the Area for traditional and cultural uses. In addition, the Sandia Mountain Wilderness would be preserved in perpetuity as part of the Cibola National Forest and continue to be administered by the Secretary of Agriculture through the Forest Service. Gaming, mineral, or timber production in the Area would be prohibited under the bill.

Under S. 2018, the Pueblo, as well as Bernalillo and Sandoval Counties, would have the right to give consent or withhold consent to new uses of the Area. The Pueblo would also be given the right to consultation regarding modified uses and would have exclusive

authority to administer access to the Area for traditional and cultural uses by its members or the members of any other federally recognized Indian tribe.

The legislation would also extinguish the Pueblo's claim of title to the Area and would therefore clear the titles of private landowners in the Area. S. 2018 would grant the Pueblo the right to compensation, as if it were an owner in fee, if a subsequent act of Congress were to diminish the wilderness and National Forest character of the Area.

S. 2018 grants irrevocable rights of way in perpetuity to the County of Bernalillo for roads in Sandia Heights South Subdivision and Juan Tabo Canyon and the Crest Spur Trail (which crosses the La Luz tract). Modification or expansion of the rights of way for those roads would be subject to the Pueblo's written consent. The Secretary of the Interior would be required to grant irrevocable rights of way in perpetuity across Pueblo lands in existing utility corridors for utilities providing services to the private landowners in the subdivisions on Sandia Mountain.

The aerial tramway, along with the crest facilities on Sandia Mountain, are excluded from the Area under the bill. Thus, the Pueblo would not have any civil, criminal, or administrative jurisdiction over the Area. However, the La Luz tract, which is owned by the Pueblo, would be transferred to the United States and held in trust for the Pueblo, subject to all limitations on use pertaining to the Area.

The bill would not provide for the United States to take into trust the property owned by the Pueblo in the Evergreen Hills subdivision, but instead directs the Secretary of Agriculture to convey NFS land within the subdivision to the Pueblo.

Conclusion

The United States, including the Department of the Interior, is bound by the existing Settlement Agreement until November 2002. It is the Department's view that the best way, and possibly the only way, to resolve this longstanding dispute is through legislation. To that end, we have attached some detailed comments on S. 2018.

An identical letter has been sent to the Senate Committee on Indian Affairs.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM G. MYERS III,
Solicitor.

ATTACHMENT

In addition to our letter, we are providing the following detailed comments:

Section and Comment

Section 4(c)(3)—Bernalillo and Sandoval Counties are provided the right to consent or withhold consent to new uses in the Area. This provision parallels the right given to the Pueblo in Section 5(a)(30(i). The Administration supports local governmental involvement in federal land management decisions. It is not clear, however, that either of the two counties would exercise this authority if given to them. If the authority to veto new uses remains in the bill, those uses would be defined with particularity in the legislation so that both the federal agency and the party exercising the right have some direction from Congress as to what is intended. A definition of new uses is contained in the Management Plan which is an attachment to the Settlement Agreement, and this would be a good place to start.

Section 12—The confusion and concern arising out of the lack of a definition of new uses, as discussed above, illustrate the concerns generally with Section 12. That section ratifies and confirms the Settlement Agreement and Management Plan. The Administration believes that it would be better to legislate all necessary provisions of the Settlement Agreement and the Management Plan and forego incorporating these documents by reference. Otherwise, the potential for protracted litigation could arise after good-faith efforts to reconcile the law, the Agreement, and the Plan fail.

Section 4(g)—The last sentence of this section could be clarified if rewritten to read, "Establishment of the Area does not in any way modify the existing boundary of the Pueblo grant as depicted on the map defined at Section 3(g)." This will eliminate any confusion as to the definition of the "boundary" which has been at the heart of the dispute for nearly twenty years.

Section 7(b)(3)(B)—This section is one of several sections that uses the phrase "traditional and cultural." Further definition of this phrase would be useful.

Section 14(d)—The first sentence regarding land acquisition is ambiguous because it could be read to encompass, for example, the La Luz tract, as "any other privately held lands within the Area." Under Section 8(e), the La Luz tract cannot be acquired by the Secretary of Agriculture because this tract is transferred to the United States to be held in trust for the Pueblo and to be administered by the Secretary of the Interior.

Other Comments—The Committee should consider a new section that would state that, except as provided by Section 5(c)(1), nothing shall be construed in this Act as a legislative exercise of the power of eminent domain.

Some parties have indicated that use of the term "Trust" in the title of the bill raises the question of whether the entire Area is to be held in trust by the United States, similar to the La Luz tract in Section 8(e). This clearly is not the intent, as explained in the Chairman's remarks at page S1940 of the March 14, 2002, *Congressional Record.* However, to address any concerns in this regard, either "Trust" should be removed from the title and similar references in the bill or the Chairman's explanation should be incorporated into the bill.

In addition, the testimony provided by the Department of Agriculture and the Department of Justice at the joint committee hearing follows:

STATEMENT OF NANCY BRYSON, GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Committees: My name is Nancy Bryson, General Counsel, Department of Agriculture. Thank you for the opportunity to testify today on S. 2018, the "T'uf Shur Bien Preservation Trust Area Act." This bill proposes to resolve the longstanding land title dispute of the Pueblo of Sandia with the Federal Government concerning rights arising under a 1748 land grant from the King of Spain and subsequently recognized by Congress. The Administration supports a legislative solution and is willing to work with the New Mexico delegation, and Members of the Committees to achieve that end.

The T'uf Shur Bien Preservation Trust Area, as designated by S. 2018, would consist of approximately 10,000 acres with the Cibola National Forest. Located a few miles northeast of Albuquerque, the claim area lies within both Bernalillo and Sandoval Counties. Much of the claim area also is within the Sandia Mountain Wilderness designated by the Congress in the Endangered American Wilderness Act of 1978 (P.L. 95–237). The area is one of natural beauty and solitude, and provides significant opportunities for public recreation. It also is an area of religious and cultural significance for Native Americans and others.

This title dispute has been ongoing for almost two decades during which time there have been opinions regarding title to the land by the General Counsel of the Department of Agriculture and the Solicitor of the Department of the Interior, as well as litigation in U.S. District Court. A decision remanding the matter to the Department of the Interior was appealed to the D.C. Circuit by the government on jurisdictional grounds.

Between 1998 and 2000, while the case was pending in the D.C. Circuit, a mediated effort to settle the Sandia land claim was undertaken among all parties to the litigation including the Pueblo, the Federal Government, a coalition of private landowners and recreation groups, the Sandia Peak Tram Company, Bernalillo County and the City of Albuquerque. All the parties worked hard in a good

faith effort to resolve this matter, and we commend those efforts. Ultimately, a Settlement Agreement was reached in April 2000, buy only among the Pueblo, the Sandia Peak Tram Company and the Federal Government. The City, the County, and the coalition had withdrawn from the negotiations.

With some modifications, S. 2018 essentially implements the 2000 Settlement Agreement. I will concentrate my remarks primarily in those areas where S. 2018 goes beyond the Settlement Agreement, where the provisions of the bill are unclear to us, or where S. 2018 can improve on the efforts made to date to resolve this dispute.

We see at least three areas in which the bill goes beyond the settlement based on our review to date. First there is a provision for a mandated land exchange within a certain time. The Settlement Agreement does not include such a provision and we do not think one is appropriate as existing land exchange mechanisms are available. Second, the bill adds management rights for Sandoval and Bernalillo Counties. We do not disagree with this. The Department of Agriculture strongly supports involving tribal, state, and local governments in land management decisions that affect them. However, we think the change does require an expansion of both the Settlement Agreement and the Management Plan.

In addition, the bill requires the Department to do a survey of the boundary area within 12 months. This new responsibility creates significant issues for the Department on which we would like to work with the Committee.

Our second comment is that it would be very helpful to have the legislative language expressly incorporate the Settlement Agreement and Management Plan rather than by reference. Although the United States generally supports incorporation of such settlements by reference, such incorporation creates the potential for conflict in this case where the language of the bill and the Settlement Agreement and Management Plan conflict. For example, the bill provides that the area will be managed under laws and regulations applicable to the National Forest System. These include the National Forest Management Act. The Settlement Agreement, however, specifically exempts the T'uf Shur Bien Preservation Trust area from the National Forest Management Act. This area will not be subject to NFMA, but rather to the procedural and substantive requirements established in the Settlement Agreement and Management Plan. The legislation needs to set forth these provisions very clearly, particularly given the potential for confusing, overlapping and sometimes conflicting management. The parties have all expressed their interest in limiting future litigation. We think the likelihood of this can be enhanced by resolving potential ambiguities in the legislation itself.

Finally, we believe the language in section 10(c) of the bill, clarifying that this Act is uniquely suited to resolve the Pueblo's claim, is a crucial element of any legislative

resolution. This agreement, however, should not be considered precedent for any other situation involving National Forest System lands.

Although this bill, if enacted, will resolve this particular dispute, it is important to emphasize that all settlements of Indian claims, including settlements that involve federal lands, must be ratified by Congress [pursuant to 25 U.S.C. 177]. Should Congress decide to delegate settlement authority regarding such claims to administration officials, however, the land management agency with jurisdiction over the land should have primary authority in determining whether the agency's lands would be conveyed as part of the settlement. We believe that with respect to National Forest System lands, responsibility should reside in the Department of Agriculture.

The Department of Agriculture would like to work with the Committee to finally resolve this matter. We would like to find a resolution that addresses the identified concerns, maintains the character and beauty of the Sandia Mountain Wilderness, and protects and preserves the cultural and religious values of the area.

This concludes my statement. I would be happy to answer any questions.

STATEMENT OF THOMAS L. SANSONETTI, ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee, I am Tom Sansonetti, Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. Thank you for the opportunity to testify before you today on S. 2018, Senator Bingaman's bill that would create the T'uf Shur Bien Preservation Trust Area within the Cibola National Forest and attempt to effectuate the settlement agreement entered into by the Pueblo of Sandia, the United States, and the Sandia Peak Tram company on April 4, 2000. This matter is of great importance to the Pueblo of Sandia, the people of the State of New Mexico, and the federal government. In my testimony today, I would like to give you some background on the history of the Pueblo's land claim and briefly discuss the settlement agreement.

BACKGROUND

The underlying dispute giving rise to the settlement agreement and S. 2018 addresses the Pueblo's claim to a 10,000 acre tract of land, now administered by the U.S. Forest Service as part of the Sandia Mountain Wilderness and Cibola National Forest. The Pueblo believes this tract of land was erroneously excluded from the government's recognition of the Pueblo's ancient Spanish land grant due to an inaccurate survey conducted by the Department of the Interior in 1859.

The Pueblo is located on the east side of the Rio Grande north of Albuquerque, New Mexico. In 1748, the Spanish colonial government granted a parcel of land to the Pueblo. An 1858 Act of Congress confirmed the grant and directed the Commissioner of the Land Office to conduct a survey to designate the exact boundaries of the parcel. An 1859 survey of the Pueblo Grant, known as the Clements survey, showed the eastern boundary along the top of a foothill on the western slope of Sandia Mountain, rather than on the crest of the mountain. In 1864, President Abraham Lincoln issued a patent to the Pueblo which adopted the metes-and-bounds description of the 1859 survey.

The Pueblo first contacted the Department of the Interior in 1983, contending that the 1859 survey had mistakenly set the wrong boundary, excluding about 10,000 acres, and that the 1864 patent was therefore erroneous. The Pueblo requested a resurvey of their land grant and the issuance of a new patent designating the true eastern boundary as the crest of the mountain. In December 1988, the Department of the Interior Solicitor Ralph Tarr issued an Opinion, in which Secretary Donald Hodel concurred, denying the Pueblo's claim that the eastern boundary of the grant should be resurveyed and located along the crest of the Sandia Mountain.

In 1994, the Pueblo filed an action against the Secretaries of the Interior and Agriculture in the U.S. District Court for the District of Columbia. The Pueblo sought an injunction requiring the Department of the Interior to correct the allegedly erroneous boundary.

In January 1995, several individual landowners and the Sandia Mountain Coalition, an unincorporated association of landowners living in subdivisions within the boundaries of the National Forest, moved for and were granted status as intervenor-defendants in the case. Two months later, the Pueblo amended its complaint to expressly disclaim any right, title, or interest in land held in private ownership within the disputed tract. The County of Bernalillo was also granted intervenor-defendant status, and the City of Albuquerque and the Sandia Peak Tram Company became involved as amicus curiae.

In July 1998, the district court issued an Opinion and Order setting aside the Tarr Opinion and remanding the matter to the Department of the Interior for further proceedings. The court found that the Department's decision not to resurvey the grant boundary was arbitrary and capricious because it accorded insufficient weight to the canon of construction that ambiguities should be construed in favor of Indians and because it over-emphasized the presumption of survey regularity.

Thereafter, in August and September 1998, the United States and the intervenor-defendants filed notices of appeal from the district court's decision with the D.C. Circuit. However, after the appeals were filed, all of the parties involved in the litigation decided to engage in a cooperative effort to resolve the case without further litigation.

In October 1998, the D.C. Circuit granted a motion to hold the appeals in abeyance pending these settlement negotiations.

Negotiations began in earnest in December 1998, when the federal agencies, and the Pueblo, County, Coalition, City, and Tram representatives inaugurated a formal mediation process with the assistance of a third-party mediator in New Mexico. Despite progress being made by the named parties in the lawsuit over the course of several months, in August 1999 the intervenor-defendants and the City of Albuquerque withdrew from the mediation process. Nonetheless, the named parties in the litigation—the Pueblo and the federal agencies—along with the Tram Company, continued the negotiation process which eventually produced a settlement agreement signed by the parties on April 4, 2000. In November of that year, the appeal was dismissed by the U.S. Court of Appeals for the District of Columbia Circuit for lack of appellate jurisdiction. This decision granted a conditional motion by the United States to dismiss its appeal, contingent upon the D.C. Circuit actually ruling that jurisdiction would not exist over an appeal being pressed solely by the intervenor-defendants.

Also in November 2000, the Pueblo renewed its petition to resurvey the boundary along the crest of the mountain, reiterating their lack of interest in the inholdings. In addition, the County of Benalillo and the Sandia Mountain Coalition contended that the Clements survey was erroneous in that the top of the foothill on the western slope of Sandia Mountain created too large of an area for the Pueblo. In response to these requests, Interior Solicitor John Leshy conducted another review, and on January 19, 2001, issued a new opinion that reconsidered the Tarr Opinion's conclusion. Solicitor Leshy concluded that the evidence showed that the Clements survey of the eastern boundary of the Pueblo's land grant was erroneous and should be set aside and, if necessary, a resurvey should be conducted. The Opinion acknowledged the settlement of the Pueblo's claim, which would obviate the need for a resurvey, and put in abeyance any implementation of the Opinion unless and until the Congress failed to pass legislation ratifying the settlement by November 15, 2002.

SETTLEMENT AGREEMENT

The Agreement of Compromise and Settlement among the Pueblo of Sandia, the Sandia Peak Tram Company, and the United States on behalf of the Departments of the Interior and Agriculture, would settle the Pueblo's land claim suit upon ratification by an Act of Congress. The Settlement addresses many other important issues pertaining to the management of relevant portions of the Cibola National Forest, as well as questions of access across Pueblo lands to privately owned areas in the vicinity of the claim area.

Some of the highlights of the settlement are as follows:

Creation of the T'uf Shur Bien Preservation Trust Area

- The claim area would be renamed the "T'uf Shur Bien (a Tiwa term meaning "Green Reed Mountain") Preservation Trust Area and would remain part of the Sandia Mountain Wilderness and the Cibola National Forest.
- The United States would retain title to the Area.
- The Area would be established for the following purposes: to recognize and protect the Pueblo's rights and interests in and to the Area; to preserve in perpetuity the wilderness and National Forest character of the Area; and to respect and assure the public's use and enjoyment of the Area.

Administration of the area by the Forest Service

- The Secretary of Agriculture would continue to administer the Area as wilderness and National Forest under the Wilderness Act, most federal wildlife-protection laws (including the Endangered Species Act), other laws applicable to the National Forest System, and an Area-specific management plan.
- Statutes (including their associated regulations) administered by the Forest Service, other than the Wilderness Act and applicable federal wildlife protection laws, do not apply to Pueblo traditional and cultural uses.

Pueblo rights

- The Pueblo's right of access to the Area for traditional and cultural uses, except for regulation by the Wilderness Act and applicable federal wildlife protection laws, as described above, would be compensable if violated.
- The Pueblo would have a compensable interest in the perpetual preservation of the wilderness and National Forest character of the Area. If Congress ever impaired this interest by authorizing uses, such as commercial mineral or timber production, that are banned from the Area by the ratifying legislation, the Pueblo again would be compensated as though it held a fee-interest in the affected portion of the Area.
- The Pueblo would have specified, non-compensable rights to participate in the management of the Area under the management plan.
- The Pueblo would have exclusive authority to administer access to the Area by other tribes for traditional and cultural uses.

Rights-of-way

- The private landowners, the general public, and the Forest Service must cross Pueblo land to reach the subdivisions and the claim area. As part of the settlement, the Pueblo would grant perpetual rights of way to the County and the Forest Service for roads, trails, and utilities across Pueblo lands adjacent to the Area.

Jurisdiction

• The ratifying legislation would provide a scheme for the exercise of government jurisdiction over the Area, recognizing roles for the United States, the State of New Mexico, and the Pueblo.

Extinguishment of claims

• The settlement would provide for the comprehensive and permanent extinguishment of the Pueblo's claims to: (a) Lands within the Area; (b) the subdivisions and other privately owned tracts; (c) the lands described in the Tram's special use permit; and (d) all crest facilities and developments such as the electronic site. The ratifying legislation would clear all titles, both of the United States and the homeowners.

Withdrawal option

• The settlement provides that either the Pueblo or the United States may withdraw from the Settlement Agreement if either House of Congress passes ratifying legislation that is deemed inconsistent with the terms of the Settlement Agreement in a manner that materially prejudices their individual interests.

CONCLUSION

The parties in this matter expended a great deal of time and effort to reach agreement and to produce a document which resolves many complex issues. The Administration supports a legislative solution and is willing to work with the New Mexico delegation and the members of the Committees to achieve that end.

This concludes my testimony. Mr Chairman, I look forward to working with you and other members of the Committees on this legislation and would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2018, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL LAND POLICY AND MANAGEMENT ACT

Public Law 94–579

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CORRECTION OF CONVEYANCE DOCUMENTS

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SEC. 316. The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where necessary in

order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands. *Any corrections authorized by this section which affect the boundaries of, or jurisdiction over, lands administered by another Federal agency shall be made only after consultation with, and the approval of, the head of such agency.*

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