

TESTIMONY
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
ON
H.R. 1028, THE “RETURN OF CERTAIN LANDS AT FORT WINGATE TO THE ORIGINAL
INHABITANTS ACT”

JULY 15, 2015

Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee, my name is Michael Smith and I am the Deputy Director for the Bureau of Indian Affairs (BIA) at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department on H.R. 1028, the “Return of Certain Lands At Fort Wingate to The Original Inhabitants Act.” The Department supports H.R. 1028, with an amendment.

Fort Wingate Property

The Fort Wingate property is an inactive U.S. Army installation located in New Mexico on lands withdrawn from the public domain and reserved for military use when the fort was established in 1870. The property is located east of Gallup, New Mexico, and near both the Pueblo of Zuni and Navajo Nation lands in New Mexico. The installation’s primary mission had been to store and dispose of explosives and military munitions. Fort Wingate closed in 1993, as a result of the Base Realignment and Closure (BRAC) Act. Following the closure, a survey determined that the installation contained approximately 20,700 acres of public domain lands, which are divided into 22 parcels. These lands have cultural and historical significance to the Navajo Nation and the Pueblo of Zuni.

The Department indicated that many of the parcels could be returned to its jurisdiction, upon satisfactory completion of environmental restoration and clearance of unexploded ordnance, with the intent of eventually transferring the lands into trust for the Navajo Nation and Pueblo of Zuni, upon agreement by the two tribes. Since 1990, the Army has been working with the Department, the U.S. Environmental Protection Agency, the New Mexico Environmental Department, the Navajo Nation, and the Pueblo of Zuni on the cleanup and return of withdrawn public domain lands at Fort Wingate.

Once the Army satisfactorily finishes environmental restoration activities on Fort Wingate parcels and an Environmental Site Assessment (ESA) is prepared, the Department of the Interior determines if the lands are suitable for return to the public domain. If suitable, the Department will revoke the military reservation. The Bureau of Land Management (BLM) has responsibility for processing withdrawal and transfer actions, including preparing the public land orders officially transferring jurisdiction over restored Fort Wingate lands to the BIA. To date, the

BLM has prepared public land orders, signed by the Assistant Secretary and Deputy Secretary, officially transferring over 5000 acres (Parcels 1, 15, and 17) of Fort Wingate lands. Those parcels are currently administered by the BIA. Recently, the BIA's Southwest Region completed the Environmental Site Assessment (ESA) for parcels, 4B, 5B, 8, 10A, and 25, and the BLM is considering a public land order to bring these parcels back to public domain.

The Department understands that the Zuni Tribe and the Navajo Nation met to negotiate a division of lands for the former Fort Wingate Depot Activity. This agreement is evidenced in this legislation and identified on the Map referenced in H.R. 1028. The Department welcomes H.R. 1028 as a means to fairly divide the former Fort Wingate Depot Activity between two tribes that have claimed the areas near and around the property as their respective historical lands.

H.R. 1028

H.R. 1028, the "Return of Certain Lands At Fort Wingate to The Original Inhabitants Act", in Section 3(a) and (b), would immediately declare lands to be held in trust for the Zuni Tribe and to the Navajo Nation. We note that in Section 3(a) and (b), the color reference is the same, "blue", for both the Zuni Tribe and the Navajo Nation lands. It would appear, in reference to the "Map" in the legislation, that Section 3(b) should refer to "depicted in green on the Map." This should be corrected if this is the intent.

The remaining subsections also declare that all lands of the former Fort Wingate Depot Activity (Depot) in McKinley County, New Mexico, that have been transferred to the Secretary of the Interior and depicted in blue on the Map referenced in the legislation, are to be held in trust for the Zuni Tribe as part of the Zuni Reservation, unless the Tribe elects to have specified parcels of those lands conveyed to it in restricted fee status. The legislation declares that lands of the former Fort Wingate Depot Activity that have been transferred to the Secretary and depicted in green on the Map referenced in the legislation, are to be held in trust for the Navajo Nation as part of the Navajo Reservation, unless the Navajo Nation elects to have specified parcels of those lands conveyed to it in restricted fee status. Currently, the legislation would place parcels 1, 15 and 17 in trust for the respective tribe according to the color of the parcel on the Map referenced in the legislation, and would require the Secretary to survey not only these parcels but also future lands taken into trust under the legislation, and to also establish boundaries based on the Map, as parcels are taken into trust pursuant to the legislation.

Section 4 retains necessary easements and access by subjecting the lands of the former Depot that are and will be held in trust or conveyed in restricted fee status to the respective tribe's reservation by the United States to such easements as the Secretary of the Army determines are reasonably required to permit access to lands of the former Depot for administrative, environmental cleanup, and environmental remediation purposes. H.R. 1028 also requires the lands of the former Depot, identified as parcel 1, to be held in trust subject to a shared easement for both tribes for cultural and religious purposes only. Additionally, the legislation identifies that the entire access road for the former Depot shall be held in common by both the Zuni Tribe and the Navajo Nation to provide for equal access to the former Depot. Finally, the legislation provides the Department of Defense (DOD) access to the Missile Defense Agency facility at the former Depot.

Under Section 5, after a parcel of land has been transferred or conveyed under section 3, the Zuni Tribe or the Navajo Nation shall notify the Secretary of the Army of the existence or discovery of any contamination or hazardous material on the land. Section 5 also retains the responsibility of the United States for cleanup and remediation of the former Depot according to a prior agreement between the Secretary of the Army and the New Mexico Environment Department and provides that neither tribe shall be liable for any damages resulting from the Department of the Army on the former Depot.

H.R. 1028 refers to a map evidencing the tribes' agreed upon division of specific parcels in the Fort Wingate property. The Department is aware both tribes, the Zuni Tribe and the Navajo Nation, have informally agreed to the land division evidenced in the referenced map, pursuant to discussions held between the two tribes on July 8, 2013. There are some parcels that are shared but not equally, 1, 2, 19, 22, 11 and 10A. The remaining parcels are divided as whole parcels between the two tribes.

The legislation references colors, blue and green, for the division on land between the tribes. We welcome the opportunity, in cooperation with the bill's sponsor, to create a legislative map for the purposes of this bill, and the BLM will develop a legal description for the purpose of transferring administrative jurisdiction.

The Department supports H.R. 1028 and would like to work with the Subcommittee on several technical issues.

This concludes my prepared statement. I will be happy to answer any questions the Subcommittee may have.