

TESTIMONY OF  
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SOLICITOR  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE  
AND THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
ON S. 2018, THE "T'UF SHUR BIEN PRESERVATION TRUST AREA ACT"  
APRIL 24, 2002

**Introduction**

Mr. Chairman and members of the Committees, I appreciate the opportunity to be here today. I am William G. Myers III, Solicitor for the Department of the Interior. It is my pleasure to be here today to testify on behalf of the Department 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 the 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, I have attached some detailed comments to my testimony.

The Department looks forward to working with you, Mr. Chairman, the New Mexico delegation, and the other members of the Committees on this legislation. This concludes my testimony. I would be happy to answer any questions the Committees may have.

## Attachment

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

<u>Section</u>	<u>Comment</u>
Section 4(c)(3)	<p>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)(3)(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 should 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.</p>
Section 12	<p>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-</p>

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.