

## Calendar No. 738

107TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 107-321

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ESTABLISHING THE TUF SHUR BIEN PRESERVATION TRUST AREA WITHIN  
THE CIBOLA NATIONAL FOREST IN THE STATE OF NEW MEXICO TO RE-  
SOLVE A LAND CLAIM INVOLVING THE SANDIA MOUNTAIN WILDER-  
NESS, AND FOR OTHER PURPOSES

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OCTOBER 17, 2002.—Ordered to be printed

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Mr. INOUE, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 2018]

The Committee on Indian Affairs, to which was referred the bill (S. 2018) to establish the Tuf 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 in the nature of a substitute and recommends that the bill (as amended) do pass.

#### PURPOSE

The purposes of S. 2018 are to establish a unique area within the Cibola National Forest in New Mexico, entitled the Tuf 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 a 1748 land grant to the Pueblo from a representative 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.

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 U.S. District Court for the District of Columbia and in 1998, the district court issued an order that found the Department's actions were arbitrary and capricious, vacated the 1988 Interior Solicitor's opinion, and remanded the case to the Department for agency action consistent with the court's opinion. *Pueblo of Sandia v. Babbitt*, 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 of Sandia, 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 Solicitor's opinion. Upon dismissal, the Department proceeded with its reconsideration in accordance with the July 18, 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 the land 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.

While not identical to the Settlement Agreement, S. 2018 incorporates its necessary provisions. These provisions include: (1) the creation of the T'uf Shur Bien Preservation Trust Area (Area) with restrictions 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 manage-

ment 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 which the parties have agreed are preferable to further litigation.

#### LEGISLATIVE HISTORY

S. 2018 was introduced by Senator Bingaman on March 14, 2002, and was referred to the Committee on Energy and Natural Resources, with a sequential referral to the Committee on Indian Affairs. The Energy and Natural Resources Committee and the Indian Affairs Committee held a joint hearing on S. 2018 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. On October 8, 2002, the Committee on Indian Affairs ordered an amendment in the nature of a substitute to the bill reported by the Energy and Natural Resources Committee favorably reported to the full Senate.

#### COMMITTEE RECOMMENDATION

The Committee on Indian Affairs, by a majority vote of its members on October 8, 2002, recommends that the Senate pass an amendment in the nature of a substitute to S. 2018.

#### COMMITTEE AMENDMENTS

During the consideration of S. 2018, the Committee on Energy and Natural Resources adopted an amendment in the nature of a substitute. The substitute contained a number of changes that were designed to address the concerns raised during the April 24th joint hearing by parties whose interests are affected by the settlement of the Pueblo's land claim. Following report of the bill by the Committee on Energy and Natural Resources, the parties to the settlement agreed to additional changes to S. 2018, and the amendment in the nature of a substitute to S. 2018 reported favorably by the Indian Affairs Committee incorporates those further changes. All amendments made to S. 2018 in the Committee on Indian Affairs have been agreed by the Committee on Energy and Natural Resources.

A principal change in the substitute amendment reported by the Energy and Natural Resources Committee is the elimination of a provision that expressly ratifies and confirms the settlement agreement and management plan negotiated by the Pueblo of Sandia, 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 Tuf 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, hang 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 are to 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 by the Energy and Natural Resources Committee 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.

Other significant changes made by the Energy and Natural Resources Committee 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, the Energy and Natural Resources Committee added a subsection which 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 United States. There are other clarifying changes added in the substitute amendment reported by the Energy and Natural Resources Committee, which are explained in detail in the section by section analysis set forth below.

The amendment in the nature of a substitute to S. 2018 that was favorably reported by the Committee on Indian Affairs addresses two additional matters—the right of the Pueblo to hunt in certain designated areas, and authorization for an exchange of lands owned by the Pueblo for lands in the national forest system that are contiguous to the Pueblo's existing reservation.

#### SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the "Tuf Shur Bien Preservation Trust Area Act".

Section 2 contains one finding and sets forth the three purposes of the Act, which are to: (1) establish the Tuf Shur Bien Preservation Trust Area in the Cibola National Forest; (2) confirm the status of National Forest and Wilderness lands in the Trust area while resolving issues associated with litigation and the Interior Department Solicitors' opinions of December 9, 1988 and January 19, 2001; and (3) provide the Pueblo of Sandia, the parties involved in the litigation, and the public with a fair and just settlement of the Pueblo's claim.

Section 3 defines terms—"area", "crest facilities", "existing uses and activities", "Forest Service", "La Luz Tract", "Local Public Bodies", "Map", "Modified Uses or Activities", "New Uses or Activities", "Piedra Lisa Tract", "Pueblo", "Secretary", "Settlement Agreement", "Special Use Permit", "Subdivisions" and "Traditional and Cultural Uses".

The definition of "Area" has been changed to provide that "The term 'Area' means the Tuf Shur Bien Preservation Trust Area as depicted on the map, and excludes the subdivisions, Pueblo-owned lands, the crest facilities, and the special use permit lands as set forth in this Act."

The term "crest facilities" has been amended to add the words "along terrain" after the words "100 feet".

The definition of the term "subdivisions" has been changed to provide that "The term 'subdivisions' means the subdivisions of Sandia Heights Addition, Sandia Heights North Units I, II and 3, Tierra Monte, Valley View Acres, and Evergreen Hills, as well as any additional plats and privately-owned properties depicted on the map."

Section 4, subsection (a) establishes a new management area, named the "Tuf 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, which are to: (1) recognize and protect in perpetuity the Sandia Pueblo's rights and interests in and to the Area as specified in section 5(a) of S. 2018; (2) to preserve in perpetuity the Wilderness and National Forest character of the Area; and (3) to recognize and protect

in perpetuity the public longstanding use and enjoyment of 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 and incorporate the provisions of S. 2018 affecting management of the Area, including section 5(a)(3) and section 7 of S. 2018.

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

Subsection (d) defines the Area and provides a map reference. Subsection (d)(3)(B) has been changed to provide that "changes that may be necessary pursuant to section 9(b), 9(d), 9(e), 14(c) and 14(d) shall be made;".

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 the creation of the T'uf Shur Bien Preservation Trust Area shall not affect the boundaries of, or repeal or disestablish 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.

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 denies the Pueblo access for any traditional and cultural uses. The word "permanently" before the word "denies" has been removed from the subsection.

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. Subsection 7(a)(1)(A) has been changed to include the word

“proposed” after the word “including” and before the word “new”. Subsection 7(a)(3)(A) has been changed to provide that “Any person may file an action in the United States District Court for the District of New Mexico to challenge the Forest Service determinations of what constitutes a new or a modified use or activity.” Subsection 7(c)(2)(B) has been changed to provide that “If the parties are unable to resolve the disputes within 3 days, either party may file an action for immediate relief in the United States District Court for the District of New Mexico, and the procedural exhaustion requirements set forth above shall not apply.”

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

Subsection (b) allocates civil jurisdiction in the Area. Subsection 8(b)(3)(B) is amended to provide that the Pueblo shall have exclusive authority to regulate hunting and trapping conducted by Pueblo members as a traditional and cultural use within the Area, excluding that part of the Area contained within Sections 13, 14, 23, 24, and the northeast quarter of Section 25 of T12N, R4E, and Section 19 of T12N, R5E, N.M.P.M., Sandoval County, New Mexico, shall be regulated by the Pueblo in a manner consistent with the regulations of the State of New Mexico concerning types of weapons and proximity of hunting and trapping to trails and residences.

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 has been amended to provide that 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 upon the application of the Pueblo 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.

Subsection (b) excludes the Piedra Lisa inholding (approximately 160 acres) from the Area and provides that if the Secretary or the Pueblo acquires the Piedra Lisa tract, the tract is to be transferred to the United States and by virtue of this legislation is declared to be held in trust for the Pueblo by the United States and administered by the Secretary of the Interior subject to all limitations on use pertaining to the Area contained in this Act. The restriction contained in section 6(a)(4) is not to apply outside of the Forest Service System trails. The jurisdiction of the State of New Mexico and local public bodies over the Piedra Lisa tract and property interests are to continue in effect until the tract is acquired by the Secretary or the Pueblo.

Subsection (c) excludes certain facilities on the crest of Sandia Mountain from the Area and recognizes the pre-existing jurisdictional status of those lands, and clarifies that the Pueblo will have no civil or criminal jurisdiction for any purposes, including adjudicatory, taxing, zoning, regulatory or any other form or jurisdic-

tion, over the lands on which the crest facilities are located and property interests therein, and the laws of the Pueblo are not to apply to 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. The section further provides that 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 are to have the same status under this Act as the lands currently described in the special use permit. In addition, the section provides that 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 are to thereafter be included in the Area but only after final agency action that is no longer subject to any appeals.

Subsection (e) excludes the La Luz tract, owned by the Pueblo, from the Area and provides that upon application by the Pueblo, the tract is to 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 subject to all limitations on use pertaining to the Area contained in this Act. The restriction contained in section 6(a)(4) is not to apply outside of Forest Service system trails.

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 and provides that such lands are to be subject to the jurisdictional provisions of subsection (a) of section 9.

Subsection (h) requires the Secretary of the Interior to grant (1) 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 of 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, 7, 8, and 9, all Pueblo claims in and to lands in the Area.

Subsection (b) permanently extinguishes any Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to the subdivisions and property interests therein, as well as related boundary, survey, trespass, and monetary damage claims.

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 the management of the National Forest System.

Subsection (d) precludes anything in this Act, except as provided in subparagraph 8(b)(3), 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.

Subsection (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(a) authorizes the appropriation of funds necessary to carry out the provisions of the Act including those sums necessary to acquire ownership or other interest in lands within the external boundaries of the Area as authorized in subsection (d).

Section 14(b) authorizes the Secretary of Agriculture to accept contributions from the Pueblo or from other persons or governmental entities for the purpose of performing and completing a survey of the Area or otherwise for the benefit of the Area in accordance with the terms of the Act. Section 14(b) also requires the survey be completed within one year from the date of enactment of the Act.

Section 14(c) provides for a land exchange between the Pueblo and the Secretary of Agriculture of National Forest lands outside the Area and contiguous to the northern boundary of the Pueblo's

Reservation within sections 10, 11, and 14 of T12N, R4E, N.M.P.M., Sandoval County, New Mexico excluding Wilderness land, for lands owned by the Pueblo in the Evergreen Hills subdivision in Sandoval County contiguous to National Forest land, and the La Luz tract in Bernalillo County.

Section 14(c) also authorizes the Secretary of Agriculture to 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, notwithstanding section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716(b)).

Section 14(c) further provides that any funds received by the Secretary of Agriculture as a result of the exchange are to be deposited in the fund established under the Act of December 4, 1967, otherwise known as the Sisk Act (16 U.S.C. 484a) and are to be available to purchase non-Federal lands within or adjacent to the National Forests in the State of New Mexico.

Section 14(c) declares that all lands exchanged or conveyed to the Pueblo are to be held in trust for the Pueblo by the United States and added to the Pueblo's Reservation subject to all existing and outstanding rights. This land is to remain in its natural state and not be subject to commercial development of any kind.

Lands exchanged or conveyed to the Forest Service under the authority of section 14(c) are to be subject to all limitations on use applicable to the Area under the provisions of this Act.

The land exchange offer required to be made under the authority of section 14(c) is to be made within six months from the date of enactment of this Act and, if the exchange does not occur within that time frame, the Secretary of Agriculture must submit a report to the Senate Committee On Energy and Natural Resources and the House Committee on Resources explaining the reasons for the failure to make the offer and assessing the need for any additional legislation to effect the exchange. If additional legislation is not necessary, the Secretary is to proceed with the exchange pursuant to existing law.

Section 14(d)(1) authorizes the Secretary of Agriculture to acquire lands owned by the Pueblo within the Evergreen Hills Subdivision in Sandoval County or any other privately owned lands inside the exterior boundaries of the Area. The boundaries of the Cibola National Forest and the Area are to be adjusted to encompass any lands acquired pursuant to this section.

In the event the Pueblo acquires the Piedra Lisa tract, section 14(d)(2) requires the Secretary of Agriculture to compensate the Pueblo for the fair market value of the right of way established pursuant to section 9(i)(3) and the conservation easement established by the limitations on the use of the Piedra Lisa tract pursuant to section 9(b) of the Act.

Section 14(e)(1) directs the Secretary of Agriculture to reimburse the Pueblo, the County of Bernalillo, New Mexico, and any person who owns or has owned property within the exterior boundaries of the Area as designated on the map for the actual and direct costs incurred but not reimbursed as a result of their participation in the litigation or settlement of the Sandia Pueblo's claim to Sandia Mountain in the case of *Pueblo of Sandia v. Babbitt*, Civ. No. 94-2624 HHG (D.D.C.). Costs eligible for reimbursement under this section include dues or payments to a homeowner association for

the purpose of legal representation and other legal fees and related expenses.

Section 14(e)(2) limits reimbursement awards made under the terms of section 14(e) in lieu of awards of funds otherwise available under the Equal Access to Justice Act (24 U.S.C. 2412).

Section 14(e)(3) authorizes the Secretary of the Treasury to make reimbursement payments to qualifying individuals or entities under this section out of funds not otherwise appropriated.

Section 14(e)(4) requires that applications for reimbursement must be filed with the Department of the Treasury, Financial Management Service, Washington, D.C., no later than 180 days from the date of enactment of this Act.

Section 14(e)(5) limits a party to reimbursement of no more than \$750,000 and the total of all claims paid under the Act to no more than \$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 that 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 private 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 Tuf 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 estimated 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 <sup>1</sup>					
Estimated budget authority .....	3	0	0	0	0
Estimated outlays .....	3	0	0	0	0

<sup>1</sup> S. 2018 also would affect revenues and spending subject 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 par-

ties, 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 government. 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 receipt 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 cost: 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 established 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 legislature 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:

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 Tuf 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 Department 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 strayed 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 Lesly issued a new opinion which concluded that the 1859 survey of the Pueblo of Sandia's grant was erroneous. Mr. Lesly 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 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, 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 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)(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.

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(b).” 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:

TESTIMONY 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 negotiations 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 Bernalillo 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 Lesly conducted another review, and on January 19, 2001, issued a new opinion that reconsidered the Tarr Opinion's conclusion. Solicitor Lesly 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-title 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 governmental 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 develop-

ments 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.

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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 long-standing 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 within 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 for 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 manner, and we commend those efforts. Ultimately, a Settlement Agreement was reached in April 2000, but 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 comments 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 Tuf 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.

#### 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

\* \* \* \* \*

#### CORRECTION OF CONVEYANCE DOCUMENTS

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 other agency.*

\* \* \* \* \*

