

109TH CONGRESS
1ST SESSION

S. 156

To designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2005

Mr. BINGAMAN (for himself and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ojito Wilderness Act”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) MAP.—The term “map” means the map en-
8 titled “Ojito Wilderness Act” and dated October 1,
9 2004.

1 (2) PUEBLO.—The term “Pueblo” means the
2 Pueblo of Zia.

3 (3) SECRETARY.—The term “Secretary” means
4 the Secretary of the Interior.

5 (4) STATE.—The term “State” means the State
6 of New Mexico.

7 **SEC. 3. DESIGNATION OF THE OJITO WILDERNESS.**

8 (a) IN GENERAL.—In furtherance of the purposes of
9 the Wilderness Act (16 U.S.C. 1131 et seq.), there is here-
10 by designated as wilderness, and, therefore, as a compo-
11 nent of the National Wilderness Preservation System, cer-
12 tain land in the Albuquerque District-Bureau of Land
13 Management, New Mexico, which comprise approximately
14 11,183 acres, as generally depicted on the map, and which
15 shall be known as the “Ojito Wilderness”.

16 (b) MAP AND LEGAL DESCRIPTION.—The map and
17 a legal description of the wilderness area designated by
18 this Act shall—

19 (1) be filed by the Secretary with the Com-
20 mittee on Energy and Natural Resources of the Sen-
21 ate and the Committee on Resources of the House
22 of Representatives as soon as practicable after the
23 date of enactment of this Act;

24 (2) have the same force and effect as if in-
25 cluded in this Act, except that the Secretary may

1 correct clerical and typographical errors in the legal
2 description and map; and

3 (3) be on file and available for public inspection
4 in the appropriate offices of the Bureau of Land
5 Management.

6 (c) MANAGEMENT OF WILDERNESS.—Subject to
7 valid existing rights, the wilderness area designated by
8 this Act shall be managed by the Secretary in accordance
9 with the Wilderness Act (16 U.S.C. 1131 et seq.) and this
10 Act, except that, with respect to the wilderness area des-
11 ignated by this Act, any reference in the Wilderness Act
12 to the effective date of the Wilderness Act shall be deemed
13 to be a reference to the date of enactment of this Act.

14 (d) MANAGEMENT OF NEWLY ACQUIRED LAND.—If
15 acquired by the United States, the following land shall be-
16 come part of the wilderness area designated by this Act
17 and shall be managed in accordance with this Act and
18 other applicable law:

19 (1) Section 12 of township 15 north, range 01
20 west, New Mexico Principal Meridian.

21 (2) Any land within the boundaries of the wil-
22 derness area designated by this Act.

23 (e) MANAGEMENT OF LANDS TO BE ADDED.—The
24 lands generally depicted on the map as “Lands to be
25 Added” shall become part of the wilderness area des-

1 ignated by this Act if the United States acquires, or alter-
2 native adequate access is available to, section 12 of town-
3 ship 15 north, range 01 west.

4 (f) RELEASE.—The Congress hereby finds and di-
5 rects that the lands generally depicted on the map as
6 “Lands to be Released” have been adequately studied for
7 wilderness designation pursuant to section 603 of the Fed-
8 eral Land Policy and Management Act of 1976 (43 U.S.C.
9 1782) and no longer are subject to the requirement of sec-
10 tion 603(c) of such Act (43 U.S.C. 1782(c)) pertaining
11 to the management of wilderness study areas in a manner
12 that does not impair the suitability of such areas for pres-
13 ervation as wilderness.

14 (g) GRAZING.—Grazing of livestock in the wilderness
15 area designated by this Act, where established before the
16 date of enactment of this Act, shall be administered in
17 accordance with the provisions of section 4(d)(4) of the
18 Wilderness Act (16 U.S.C. 1133(d)(4)) and the guidelines
19 set forth in Appendix A of the Report of the Committee
20 on Interior and Insular Affairs to accompany H.R. 2570
21 of the One Hundred First Congress (H. Rept. 101–405).

22 (h) FISH AND WILDLIFE.—As provided in section
23 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)),
24 nothing in this section shall be construed as affecting the

1 jurisdiction or responsibilities of the State with respect to
2 fish and wildlife in the State.

3 (i) WATER RIGHTS.—

4 (1) FINDINGS.—Congress finds that—

5 (A) the land designated as wilderness by
6 this Act is arid in nature and is generally not
7 suitable for use or development of new water re-
8 source facilities; and

9 (B) because of the unique nature and hy-
10 drology of the desert land designated as wilder-
11 ness by this Act, it is possible to provide for
12 proper management and protection of the wil-
13 derness and other values of lands in ways dif-
14 ferent from those used in other legislation.

15 (2) STATUTORY CONSTRUCTION.—Nothing in
16 this Act—

17 (A) shall constitute or be construed to con-
18 stitute either an express or implied reservation
19 by the United States of any water or water
20 rights with respect to the land designated as
21 wilderness by this Act;

22 (B) shall affect any water rights in the
23 State existing on the date of enactment of this
24 Act, including any water rights held by the
25 United States;

1 (C) shall be construed as establishing a
 2 precedent with regard to any future wilderness
 3 designations;

4 (D) shall affect the interpretation of, or
 5 any designation made pursuant to, any other
 6 Act; or

7 (E) shall be construed as limiting, altering,
 8 modifying, or amending any of the interstate
 9 compacts or equitable apportionment decrees
 10 that apportion water among and between the
 11 State and other States.

12 (3) STATE WATER LAW.—The Secretary shall
 13 follow the procedural and substantive requirements
 14 of the law of the State in order to obtain and hold
 15 any water rights not in existence on the date of en-
 16 actment of this Act with respect to the wilderness
 17 area designated by this Act.

18 (4) NEW PROJECTS.—

19 (A) WATER RESOURCE FACILITY.—As
 20 used in this subsection, the term “water re-
 21 source facility”—

22 (i) means irrigation and pumping fa-
 23 cilities, reservoirs, water conservation
 24 works, aqueducts, canals, ditches, pipe-
 25 lines, wells, hydropower projects, and

1 transmission and other ancillary facilities,
 2 and other water diversion, storage, and
 3 carriage structures; and

4 (ii) does not include wildlife guzzlers.

5 (B) RESTRICTION ON NEW WATER RE-
 6 SOURCE FACILITIES.—Except as otherwise pro-
 7 vided in this Act, on and after the date of en-
 8 actment of this Act, neither the President nor
 9 any other officer, employee, or agent of the
 10 United States shall fund, assist, authorize, or
 11 issue a license or permit for the development of
 12 any new water resource facility within the wil-
 13 derness area designated by this Act.

14 (j) WITHDRAWAL.—Subject to valid existing rights,
 15 the wilderness area designated by this Act, the lands to
 16 be added under subsection (e), and lands identified on the
 17 map as the “BLM Lands Authorized to be Acquired by
 18 the Pueblo of Zia” are withdrawn from—

19 (1) all forms of entry, appropriation, and dis-
 20 posal under the public land laws;

21 (2) location, entry, and patent under the mining
 22 laws; and

23 (3) operation of the mineral leasing, mineral
 24 materials, and geothermal leasing laws.

1 (k) EXCHANGE.—Not later than 3 years after the
 2 date of enactment of this Act, the Secretary shall seek
 3 to complete an exchange for State land within the bound-
 4 aries of the wilderness area designated by this Act.

5 **SEC. 4. LAND HELD IN TRUST.**

6 (a) IN GENERAL.—Subject to valid existing rights
 7 and the conditions under subsection (d), all right, title,
 8 and interest of the United States in and to the lands (in-
 9 cluding improvements, appurtenances, and mineral rights
 10 to the lands) generally depicted on the map as “BLM
 11 Lands Authorized to be Acquired by the Pueblo of Zia”
 12 shall, on receipt of consideration under subsection (c) and
 13 adoption and approval of regulations under subsection (d),
 14 be declared by the Secretary to be held in trust by the
 15 United States for the Pueblo and shall be part of the
 16 Pueblo’s Reservation.

17 (b) DESCRIPTION OF LANDS.—The boundary of the
 18 lands authorized by this section for acquisition by the
 19 Pueblo where generally depicted on the map as imme-
 20 diately adjacent to CR906, CR923, and Cucho Arroyo
 21 Road shall be 100 feet from the center line of the road.

22 (c) CONSIDERATION.—

23 (1) IN GENERAL.—In consideration for the con-
 24 veyance authorized under subsection (a), the Pueblo
 25 shall pay to the Secretary the amount that is equal

1 to the fair market value of the land conveyed, as
 2 subject to the terms and conditions in subsection
 3 (d), as determined by an independent appraisal.

4 (2) APPRAISAL.—To determine the fair market
 5 value, the Secretary shall conduct an appraisal paid
 6 for by the Pueblo that is performed in accordance
 7 with the Uniform Appraisal Standards for Federal
 8 Land Acquisitions and the Uniform Standards of
 9 Professional Appraisal Practice.

10 (3) AVAILABILITY.—Any amounts paid under
 11 paragraph (1) shall be available to the Secretary,
 12 without further appropriation and until expended,
 13 for the acquisition from willing sellers of land or in-
 14 terests in land in the State.

15 (d) PUBLIC ACCESS.—

16 (1) IN GENERAL.—Subject to paragraph (2),
 17 the declaration of trust and conveyance under sub-
 18 section (a) shall be subject to the continuing right
 19 of the public to access the land for recreational, sce-
 20 nic, scientific, educational, paleontological, and con-
 21 servation uses, subject to any regulations for land
 22 management and the preservation, protection, and
 23 enjoyment of the natural characteristics of the land
 24 that are adopted by the Pueblo and approved by the
 25 Secretary: *Provided*, That the Secretary shall ensure

1 that the rights provided for in this paragraph are
2 protected and that a process for resolving any com-
3 plaints by an aggrieved party is established.

4 (2) CONDITIONS.—Except as provided in sub-
5 section (f)—

6 (A) the land conveyed under subsection (a)
7 shall be maintained as open space and the nat-
8 ural characteristics of the land shall be pre-
9 served in perpetuity; and

10 (B) the use of motorized vehicles (except
11 on existing roads or as is necessary for the
12 maintenance and repair of facilities used in con-
13 nection with grazing operations), mineral ex-
14 traction, housing, gaming, and other commer-
15 cial enterprises shall be prohibited within the
16 boundaries of the land conveyed under sub-
17 section (a).

18 (e) RIGHTS OF WAY.—

19 (1) EXISTING RIGHTS OF WAY.—Nothing in
20 this section shall affect—

21 (A) any validly issued right-of-way or the
22 renewal thereof; or

23 (B) the access for customary construction,
24 operation, maintenance, repair, and replace-

1 ment activities in any right-of-way issued,
2 granted, or permitted by the Secretary.

3 (2) NEW RIGHTS OF WAY AND RENEWALS.—

4 (A) IN GENERAL.—The Pueblo shall grant
5 any reasonable request for rights-of-way for
6 utilities and pipelines over the land acquired
7 under subsection (a) that is designated as the
8 “Rights-of-Way corridor #1” in the Rio Puerco
9 Resource Management Plan that is in effect on
10 the date of the grant.

11 (B) ADMINISTRATION.—Any right-of-way
12 issued or renewed after the date of enactment
13 of this Act located on land authorized to be ac-
14 quired under this section shall be administered
15 in accordance with the rules, regulations, and
16 fee payment schedules of the Department of the
17 Interior, including the Rio Puerco Resources
18 Management Plan that is in effect on the date
19 of issuance or renewal of the right-of-way.

20 (f) JUDICIAL RELIEF.—

21 (1) IN GENERAL.—To enforce subsection (d),
22 any person may bring a civil action in the United
23 States District Court for the District of New Mexico
24 seeking declaratory or injunctive relief.

1 (2) SOVEREIGN IMMUNITY.—The Pueblo shall
2 not assert sovereign immunity as a defense or bar
3 to a civil action brought under paragraph (1).

4 (3) EFFECT.—Nothing in this section—

5 (A) authorizes a civil action against the
6 Pueblo for money damages, costs, or attorneys
7 fees; or

8 (B) except as provided in paragraph (2),
9 abrogates the sovereign immunity of the Pueb-
10 lo.

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