

Calendar No. 24

109TH CONGRESS
1ST SESSION**S. 156****[Report No. 109–13]**

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

FEBRUARY 28, 2005

Reported by Mr. DOMENICI, with amendments

[Omit the part struck through and insert the part printed in *italie*]**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”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) MAP.—The term “map” means the map en-
4 titled “Ojito Wilderness Act” and dated October 1,
5 2004.

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

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

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

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

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

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

24 (1) be filed by the Secretary with the Com-
25 mittee on Energy and Natural Resources of the Sen-
26 ate and the Committee on Resources of the House

1 of Representatives as soon as practicable after the
2 date of enactment of this Act;

3 (2) have the same force and effect as if in-
4 cluded in this Act, except that the Secretary may
5 correct clerical and typographical errors in the legal
6 description and map; and

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

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

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

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

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

3 (e) MANAGEMENT OF LANDS TO BE ADDED.—The
4 lands generally depicted on the map as “Lands to be
5 Added” shall become part of the wilderness area des-
6 ignated by this Act if the United States acquires, or alter-
7 native adequate access is available to, section 12 of town-
8 ship 15 north, range 01 west, *New Mexico Principal Me-*
9 *ridian*.

10 (f) RELEASE.—The Congress hereby finds and di-
11 rects that the lands generally depicted on the map as
12 “Lands to be Released” have been adequately studied for
13 wilderness designation pursuant to section 603 of the Fed-
14 eral Land Policy and Management Act of 1976 (43 U.S.C.
15 1782) and no longer are subject to the requirement of sec-
16 tion 603(c) of such Act (43 U.S.C. 1782(c)) pertaining
17 to the management of wilderness study areas in a manner
18 that does not impair the suitability of such areas for pres-
19 ervation as wilderness.

20 (g) GRAZING.—Grazing of livestock in the wilderness
21 area designated by this Act, where established before the
22 date of enactment of this Act, shall be administered in
23 accordance with the provisions of section 4(d)(4) of the
24 Wilderness Act (16 U.S.C. 1133(d)(4)) and the guidelines
25 set forth in Appendix A of the Report of the Committee

1 on Interior and Insular Affairs to accompany H.R. 2570
2 of the One Hundred First Congress (H. Rept. 101–405).

3 (h) FISH AND WILDLIFE.—As provided in section
4 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)),
5 nothing in this section shall be construed as affecting the
6 jurisdiction or responsibilities of the State with respect to
7 fish and wildlife in the State.

8 (i) WATER RIGHTS.—

9 (1) FINDINGS.—Congress finds that—

10 (A) the land designated as wilderness by
11 this Act is arid in nature and is generally not
12 suitable for use or development of new water re-
13 source facilities; and

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

20 (2) STATUTORY CONSTRUCTION.—Nothing in
21 this Act—

22 (A) shall constitute or be construed to con-
23 stitute either an express or implied reservation
24 by the United States of any water or water

1 rights with respect to the land designated as
2 wilderness by this Act;

3 (B) shall affect any water rights in the
4 State existing on the date of enactment of this
5 Act, including any water rights held by the
6 United States;

7 (C) shall be construed as establishing a
8 precedent with regard to any future wilderness
9 designations;

10 (D) shall affect the interpretation of, or
11 any designation made pursuant to, any other
12 Act; or

13 (E) shall be construed as limiting, altering,
14 modifying, or amending any of the interstate
15 compacts or equitable apportionment decrees
16 that apportion water among and between the
17 State and other States.

18 (3) STATE WATER LAW.—The Secretary shall
19 follow the procedural and substantive requirements
20 of the law of the State in order to obtain and hold
21 any water rights not in existence on the date of en-
22 actment of this Act with respect to the wilderness
23 area designated by this Act.

24 (4) NEW PROJECTS.—

1 (A) WATER RESOURCE FACILITY.—As
2 used in this subsection, the term “water re-
3 source facility”—

4 (i) means irrigation and pumping fa-
5 cilities, reservoirs, water conservation
6 works, aqueducts, canals, ditches, pipe-
7 lines, wells, hydropower projects, and
8 transmission and other ancillary facilities,
9 and other water diversion, storage, and
10 carriage structures; and

11 (ii) does not include wildlife guzzlers.

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

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

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

3 (2) location, entry, and patent under the mining
4 laws; and

5 (3) operation of the mineral leasing, mineral
6 materials, and geothermal leasing laws.

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

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

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

23 (b) DESCRIPTION OF LANDS.—The boundary of the
24 lands authorized by this section for acquisition by the
25 Pueblo where generally depicted on the map as imme-

1 diately adjacent to CR906, CR923, and Cucho Arroyo
 2 Road shall be 100 feet from the center line of the road.

3 (c) CONSIDERATION.—

4 (1) IN GENERAL.—In consideration for the con-
 5 veyance authorized under subsection (a), the Pueblo
 6 shall pay to the Secretary the amount that is equal
 7 to the fair market value of the land conveyed, as
 8 subject to the terms and conditions in subsection
 9 (d), as determined by an independent appraisal.

10 (2) APPRAISAL.—To determine the fair market
 11 value, the Secretary shall conduct an appraisal paid
 12 for by the Pueblo that is performed in accordance
 13 with the Uniform Appraisal Standards for Federal
 14 Land Acquisitions and the Uniform Standards of
 15 Professional Appraisal Practice.

16 (3) AVAILABILITY.—Any amounts paid under
 17 paragraph (1) shall be available to the Secretary,
 18 without further appropriation and until expended,
 19 for the acquisition from willing sellers of land or in-
 20 terests in land in the State.

21 (d) PUBLIC ACCESS.—

22 (1) IN GENERAL.—Subject to paragraph (2),
 23 the declaration of trust and conveyance under sub-
 24 section (a) shall be subject to the continuing right
 25 of the public to access the land for recreational, see-

1 nic, scientific, educational, paleontological, and con-
 2 servation uses, subject to any regulations for land
 3 management and the preservation, protection, and
 4 enjoyment of the natural characteristics of the land
 5 that are adopted by the Pueblo and approved by the
 6 Secretary: *Provided*, That the Secretary shall ensure
 7 that the rights provided for in this paragraph are
 8 protected and that a process for resolving any com-
 9 plaints by an aggrieved party is established.

10 (2) CONDITIONS.—Except as provided in ~~sub-~~
 11 ~~section (f)~~ *subsection (e)*—

12 (A) the land conveyed under subsection (a)
 13 shall be maintained as open space and the nat-
 14 ural characteristics of the land shall be pre-
 15 served in perpetuity; and

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

24 (e) RIGHTS OF WAY.—

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

3 (A) any validly issued right-of-way or the
4 renewal thereof; or

5 (B) the access for customary construction,
6 operation, maintenance, repair, and replace-
7 ment activities in any right-of-way issued,
8 granted, or permitted by the Secretary.

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

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

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

1 (f) JUDICIAL RELIEF.—

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

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

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

10 (A) authorizes a civil action against the
11 Pueblo for money damages, costs, or attorneys
12 fees; or

13 (B) except as provided in paragraph (2),
14 abrogates the sovereign immunity of the Pueb-
15 lo.

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