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PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO LAND TRUST

JUNE 9, 2003.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 246]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 246) to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 3, line 8, strike "New Mexico." and insert "New Mexico, as part of the Santa Clara Reservation.".

2. On page 4, line 18, strike "New Mexico." and insert "New Mexico, as part of the San Ildefonso Reservation.".

3. On page 6, strike line 19 and all that follows through page 9, line 12 and insert the following:

> "(a) APPLICABLE LAW.—The trust land shall be administered in accordance with laws generally applicable to property held in trust by the United States for Indian tribes.
>
> "(b) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (25 U.S.C. 331 note; commonly known as the "Pueblo Lands Act"):
>
> "(1) The trust land.
>
> "(2) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.
>
> "(3) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this

Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

"(c) USE OF TRUST LAND.—Subject to criteria developed by the Pueblos in concert with the Secretary, the trust land may be used only for traditional and customary uses or stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust. Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

"SEC. 6. EFFECT.

"Nothing in this Act—

"(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of any person or entity (other than the United States) in or to the trust land that is in existence before the date of enactment of this Act;

"(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land based on Aboriginal or Indian title that is in existence before the date of enactment of this Act;

"(3) constitutes an express or implied reservation of water or water right for any purpose with respect to the trust land; or

"(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.".

PURPOSE

The purpose of S. 246 is to place 4,484 acres of public lands in New Mexico, including mineral rights, in trust for the Pueblos of Santa Clara and San Ildefonso. Of this amount, 2,484 acres will be added to the Santa Clara Reservation and 2,000 acres will be added to the San Ildefonso Reservation.

BACKGROUND AND NEED

In 1988, the Bureau of Land Management (BLM) declared 4,484 acres of land in northern New Mexico as "disposal property." These lands are important ancestral homelands to the Pueblos of San Ildefonso and Santa Clara and the Pueblos have continued to assert claims to them over the years. San Ildefonso is negotiating a settlement of its Indian Claims Commission case—the last such case—and this transfer, while not directly connected to the settlement, will help facilitate a final resolution of the case.

The public land being transferred is almost entirely bordered by the land of the two Pueblos and land administered by the U.S. Forest Service, and access by the general public is limited. Due to the location of the land and the difficulty of managing it, the BLM declared the area as "disposal property." On February 15, 2002, the BLM published a notice in the Federal Register of the agency's intent to withdraw the minerals on the land in aid of legislation for the benefit of the two Pueblos.

At a hearing of the Subcommittee on Public Lands and Forests on February 27, 2003, the Department of the Interior testified generally in support of the legislation but expressed concerns about a claim that the Pueblo of San Ildefonso had on the Bureau of Land

Management related to Claim Docket No. 354. On May 8, 2003 the Department provided a response to a written question for clarification by Senator Craig stating, "Upon further review and a closer examination of the issue, the Department of the Interior has determined that no modification of bill language is needed. The Department supports S. 246 as introduced.

LEGISLATIVE HISTORY

S. 246 was introduced by Senators Domenici and Bingaman on January 29, 2003. A similar measure, H.R. 507, was introduced in the House of Representatives on the same day. The Subcommittee on Public Lands and Forests held a hearing on S. 246 on February 27, 2003. At its business meeting on May 21, 2003, the Committee on Energy and Natural Resources ordered S. 246, as amended, favorably reported. Senators Domenici and Bingaman sponsored a similar measure, S. 2893, during the 107th Congress. That bill was favorably reported by the Committee on October 4, 2002 and passed by the Senate as part of an amendment to S. 198 on November 19, 2002.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 21, 2003, by a voice vote of a quorum present, recommends that the Senate pass S. 246, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 246, the Committee adopted three amendments to clarify language.

SECTION-BY-SECTION ANALYSIS

Section 1 defines terms used in the Act.

Section 2(a) places approximately 2,484 acres of public land in Rio Arriba County, New Mexico in trust for the Pueblo of Santa Clara, New Mexico. Subsection (b) describes that land.

Section 3(a) places approximately 2,000 acres of public land in Rio Arriba and Santa Fe Counties, New Mexico in trust for the Pueblo of San Ildefonso, New Mexico. Subsection (b) describes that land.

Section 4 directs the Bureau of Land Management, Office of Cadastral Survey, to complete a survey to establish legal descriptions of the trust lands.

Section 5 provides self explanatory guidelines for administration of the trust land.

Section 6 provides a series of self explanatory disclaimers.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 246—A bill to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the state of New Mexico

CBO estimates that enacting S. 246 would not significantly affect the federal budget. The bill could affect direct spending, but we estimate that any such impact would be negligible. S. 246 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 246 would direct the Secretary of the Interior to take 4,484 acres of federal lands and interests into trust on behalf of two Indian tribes in New Mexico. The bill would require the Secretary to survey a portion of those lands to establish new boundaries of the tribes' reservations. Based on information from the Bureau of Land Management (BLM), we estimate that federal spending to complete that survey and transfer the lands into trust would not exceed $500,000, assuming the availability of appropriated funds.

Taking lands into trust for Indian tribes could result in forgone offsetting receipts (a credit against direct spending) if, under current law, the lands would generate income from programs to develop natural resources. According to BLM, however, the affected lands currently generate no significant receipts and are not expected to do so over the next 10 years. Further, the bill specifies that valid existing rights would not be affected by the proposed transfer of lands; hence, CBO estimates that any forgone offsetting receipts under S. 246 would be negligible.

On May 12, 2003, CBO transmitted a cost estimate for S. 523, the Native American Technical Corrections Act of 2003, as ordered reported by the Senate Committee on Indian Affairs on April 10, 2003. S. 523 contains a provision that is similar to S. 246, and our cost estimates of these provisions are the same.

The CBO staff contacts for this estimate are Jenny Lin and Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy 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. 246. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 246, as ordered reported.

EXECUTIVE COMMUNICATIONS

On, February 25, 2003, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 246. These reports had not been received at the time the report on S. 246 was filed. When the reports become available, the Chairman will request that they

be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows together with a subsequent clarification of the Administration's position provided on May 8, 2003:

STATEMENT OF JIM HUGHES, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to appear here today to discuss S. 246, a bill to provide that certain Bureau of Land Management land be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico. The Department generally supports S. 246, but would like to work with the Subcommittee to make some modifications.

The Department of the Interior generally support S. 246, but believes the Committee should consider modifications to the bill. The BLM has identified the approximately 4,480 acres described in the legislation as available for disposal. The BLM agrees that the adjacent Pueblos of Santa Clara and San Ildefonso would be appropriate holders of the land.

The two Pueblos have a long-standing interest in acquiring this parcel. The parcel is bordered on the north by the Santa Clara Pueblo, on the south by the San Ildefonso Pueblo, and on the west by National Forest lands claimed as aboriginal holdings by the two tribes. In 1988, the BLM's Taos Resource Management Plan identified the parcel as difficult and uneconomical to manage and determined it suitable for disposal. Currently there are no known resource permits, leases, patents or claims affecting these lands.

S. 246 would divide the parcel by conveying approximately 2,480 acres of BLM land to the Pueblo of Santa Clara and about 2,000 acres to the Pueblo of San Ildefonso. Again, the BLM believes the Pueblos would be appropriate owners of the land, and would support placing them in trust to be used for traditional and customary uses, or to be used for stewardship conservation for the benefit of the Pueblos. The Department is concerned however, while this legislation would convey land that is currently or has recently been the subject of a land claim, the bill does not settle any future claims for land managed by the BLM. The bill should be modified to include a provision for the Pueblo of San Ildefonso to relinquish any claim under Docket No. 354 in the United States Court of Federal Claims and a separate provision to waive any future claims by the Pueblo of Santa Clara with regard to these lands. This would provide finality to long standing land claims.

The Chairman, the Department looks forward to working with the Committee on these bills. Thank you for the opportunity to testify before you today. I would be pleased to answer any questions that you or the other members may have.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, May 8, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are responses to questions submitted following the February 27, 2003, hearing on S. 203, "To open certain withdrawn land in Big Horn County, Wyoming, to locatable mineral development for bentonite mining," and S. 246, "To provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico," prepared by the Bureau of Land Management.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

RICHARD CARDINALE
(For Jane M. Lyder, Legislative Counsel).

Enclosure.

QUESTION FROM SENATOR CRAIG

S. 246

Question. In your written testimony you seemed to imply you were concerned about any claim that the Pueblo of San Ildefonso had on BLM related to Docket No. 354. But during questioning, you seemed to imply that your concern was only related to that portion of Claim Docket No. 354 that is within the 4,480 acres included in S. 246, could you clarify your concern?

Answer. Upon further review and a closer examination of the issue, the Department of the Interior has determined that no modification of bill language is needed. The Department supports S. 246 as introduced.

CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 246, as ordered reported.

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