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### PREHISTORIC TRACKWAYS NATIONAL MONUMENT ESTABLISHMENT ACT

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FEBRUARY 16, 2007.—Ordered to be printed

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

### R E P O R T

[To accompany S. 275]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 275) to establish the Prehistoric Trackways National Monument 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 4, line 4, strike “5,367” and insert “5,280”.
2. On page 4, line 7, strike “June 1, 2006” and insert “January 25, 2007”.
3. On page 6, strike lines 3 through 7.
4. Beginning on page 9, strike line 18 and all that follows through page 10, line 4.
5. On page 10, strike lines 5 through 7 and insert the following:  
“(i) WATER RIGHTS.—Nothing in this Act constitutes an express or implied reservation by the United States of any water or water rights with respect to the Monument.”.

#### PURPOSE OF THE MEASURE

The purpose of S. 275 is to establish the Prehistoric Trackways National Monument near Las Cruces, New Mexico, to provide for the protection, scientific investigation, and public interpretation of significant Permian fossils and fossilized trackways.

#### BACKGROUND AND NEED

S. 275 establishes the Prehistoric Trackways National Monument to protect the prehistoric trackways discovered in the Robledo

Mountains outside Las Cruces. The trackways are series of fossilized footprints of amphibians, reptiles, and other animals predating the dinosaurs. The trackways are estimated to date back more than 280 million years. The site is located on public land administered by the Bureau of Land Management (BLM).

Las Cruces resident Jerry MacDonald discovered the trackways in the late 1980's. In 1990, Congress enacted legislation (title III of Public Law 101-578) directing the BLM to study the trackways site to assess the significance of the find and to recommend ways to protect the site. In 1994, scientists from the New Mexico Museum of Natural History & Science, the University of Colorado, and the Smithsonian Institution completed their study for the BLM (Paleozoic Trackways Scientific Study Report, December 15, 1994) and documented the significant scientific value of the find. The study characterized the site as containing "the most significant Early Permian tracksites" in the world. (The Permian period was the geologic period immediately preceding the time of the dinosaurs, covering approximately 40 million years and extending back 290 million years ago). Particularly owing to the quality of the specimens and the wide range of animals that had left their imprint there, the study found that the site was of immense scientific value. The study concluded, in part, "[t]he diversity, abundance and quality of the tracks in the Robledo Mountains is far greater than at any other known tracksite or aggregation of tracksites. Because of this, the Robledo tracks allow a wide range of scientific problems regarding late Paleozoic tracks to be solved that could not be solved before."

The bill would create a national monument of approximately 5,280 acres of BLM land and would encompass all of the significant trackway sites identified to date. The BLM would be directed to manage the monument to protect the trackways and to allow only other uses consistent with that mission. The bill also directs the Secretary of the Interior to provide for public education of the monument's paleontological resources, with priority given to exhibiting the resources in Doña Ana County.

#### LEGISLATIVE HISTORY

Senators Bingaman and Domenici introduced S. 275 on January 11, 2007. The Committee considered similar legislation in the 109th Congress, S. 3599, also sponsored by Senators Bingaman and Domenici. The Committee held a hearing on S. 3599 on September 27, 2006. No further action occurred during the 109th Congress.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on January 31, 2007, by voice vote of a quorum present, recommends that the Senate pass S. 275, if amended as described herein.

#### COMMITTEE AMENDMENTS

During the consideration of S. 275, the Committee adopted several clarifying amendments. The bill ordered reported by the Committee reflects a minor boundary adjustment to the national monu-

ment boundary to exclude approximately 90 acres along the southern boundary where a mineral materials site is located.

Amendment 1 reduces the acreage reference in the bill to reflect that adjustment.

Amendment 2 references the revised national monument boundary map.

Amendment 3 deletes paragraph 5(a)(3), which directed the Secretary of the Interior to manage public lands (administered by the Bureau of Land Management) adjacent to the monument in a manner that is consistent with the protection of the resources and values of the monument. The Committee approved the deletion of this language to avoid ambiguity it could create about BLM's management of nearby activities authorized under existing authorities. However, deletion of this paragraph should not be interpreted as a lessening of the BLM's responsibility to ensure that the monument's resources are protected.

Paragraph 5(a)(3) was intended to address an issue raised by the operation of a rock quarry known as Community Pit No. 1, which is located immediately adjacent to the monument's eastern boundary, surrounded on three sides by monument lands. The BLM's 1994 Paleontological Trackways Scientific Study Report identified continued quarrying operations as a significant threat to trackway resources, and recommended closure or relocation of the quarry. Despite that recommendation, quarry operations continued, and an environmental assessment prepared by the BLM in 2005 found that four of the trackway sites identified in the 1994 study had been covered by spoil from the quarry.

The Committee understands that the BLM will begin phasing out excavation activities at the quarry. In the interim, the Committee expects the BLM to ensure that activities at the quarry are conducted in a manner that is compatible with the designation of the national monument and the protection of its resources.

Amendment 4 deletes subsection 5(i), which clarified that designation of the monument did not affect the responsibilities of the State of New Mexico with respect to fish and wildlife management, while authorizing the Secretary of the Interior, in consultation with the State, to designate zones where, and establish periods when, hunting would not be allowed within the monument. The Committee views this subsection as unnecessary, since the State of New Mexico is responsible for the management of fish and wildlife within the State, a responsibility that is not altered by the designation of the monument. Furthermore, under its existing authorities, the BLM is able to close public lands for various reasons, including the health and safety of the public. This authority would continue to apply to public lands within the national monument and allow the agency to ensure that hunting does not occur in inappropriate areas, such as near public campgrounds or areas of high public use.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title, the "Prehistoric Trackways National Monument Establishment Act".

*Section 2* defines key terms used in the bill.

*Section 3* contains Congressional findings.

*Section 4(a)* establishes the Prehistoric Trackways National Monument and designates the purposes of the monument.

Subsection (b) references the map and gives a general description of the monument.

Subsection (c) requires the Secretary of the Interior (Secretary) to produce a map of the monument and make it available for public inspection at the appropriate BLM offices.

Subsection (d) authorizes the Secretary to make minor boundary adjustments to include additional paleontological resources discovered on adjacent public lands.

*Section 5(a)* requires the Secretary to manage the monument, as a part of the National Landscape Conservation System, in a manner that conserves, protects, and enhances the resources and values cited in the bill and in accordance with the Federal Land Policy and Management Act of 1976 and other applicable law.

Subsection (b) requires the Secretary to produce a management plan for the monument within 3 years of the date of enactment. The plan must describe appropriate uses of the monument, allow for continued scientific research during the development of the plan, and incorporate any decisions or information developed previously or during the pendency of the plan.

Subsection (c) limits uses of the monument to those that further the purposes of the designation, as outlined in the bill.

Subsection (d) requires the Secretary to provide for scientific research on and public interpretation of the resources within the monument, with a priority given to the local population and scientific community and grants authority to enter into cooperative agreements in order to carry out this directive.

Subsection (e) clarifies that the establishment of the monument does not alter the management status of administratively designated areas within the boundaries, and if there is a conflict between this Act and those designations, the more restrictive provision is applied.

Subsection (f) restricts non-emergency use of motorized vehicles to roads and trails designated for such use by the Secretary. The Secretary is specifically authorized to permit special recreation events, such as the "Chile Challenge," currently operating within the boundaries, so long as there is no harm to the paleontological resources.

Subsection (g) withdraws the mineral and geothermal resources from operation under the mining laws.

Subsection (h) allows the Secretary to continue grazing in areas within the monument where it currently is permitted, subject to applicable law and regulation.

Subsection (i) clarifies that the designation of the monument shall not act as an express or implied reservation of water rights.

*Section 6* authorizes the appropriation of such sums as are necessary to implement the bill.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at [www.cbo.gov](http://www.cbo.gov).

## 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 that would be incurred in carrying out S. 275. 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. 275.

## EXECUTIVE COMMUNICATIONS

Because S. 275 is similar to legislation considered during the 109th Congress, the Committee did not request Executive Agency views. The testimony provided by the Bureau of Land Management at the Subcommittee hearing on S. 3599 in the 109th Congress follows:

STATEMENT OF CHAD CALVERT, PRINCIPAL DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify in support of S. 3599, the Prehistoric Trackways National Monument Establishment Act. We are excited about the discovery of these important prehistoric trackways on Bureau of Land Management (BLM) managed land in New Mexico and agree with Senator Bingaman that we must permanently protect these exceptional resources.

## BACKGROUND

The Paleozoic trackways site is located on public land managed by the BLM in the Robledo Mountains in south-central New Mexico. The area is located within a sequence of sedimentary rocks representing a transition zone between marine and continental environments that existed during the early Permian period (280 million years ago). During times of higher sea level, limestone formed. The limestones contain a variety of invertebrate fossils. As the sea retreated, a tidal flat environment developed and sand, silt and clay dominated deposition. The sandy siltstones contain a variety of sedimentary structures, including raindrop impressions, mudcracks, and ripple laminations. These sandy siltstones are known to contain fossil tracks of land dwelling vertebrates which roamed New Mexico before the age of the dinosaurs.

In 1987, Las Cruces resident Jerry MacDonald discovered a major Paleozoic trackways area. Over the next few years, other significant sites were also discovered by MacDonald. The resources that have been found in the Robledos are considered by scientists who have examined them to be the largest, and scientifically, the most important Paleozoic fossil footprint discovery ever made in the western United States and possibly the world. The

trackways are extremely diverse and varied, and appear to represent a very broad spectrum of ancient animal life; including the 11 foot long, fin-backed Dimetrodon and the big headed amphibian Batrachichnus, as well as other reptiles, amphibians, insects and other invertebrates. They also represent not just an occasional footprint, but entire trackways where different animals had left a record of activity. This is considered the best locality in the world for early Permian tetrapod trackways.

In 1990, the Congress passed legislation sponsored by Senator Bingaman along with Senator Domenici and Representative Skeen which withdrew 736 acres around the trackway site and called for a study of the area. In 1993, the BLM using its resource management planning process designated 720 acres as a Research Natural Area (RNA). The study was completed in 1994 and gave a range of alternatives for protection, most of which were implemented, including an agreement BLM initiated with the New Mexico Museum of Natural History and Science to ensure professional curation of fossils. The Museum holds the largest collection of these important fossils to allow for scientific study and interpretation from around the world. In fact, the public is not able to access the collection on the Museum's website. As part of the BLM's ongoing planning process, additional protections for the area are being considered.

Jerry MacDonald's excavation and collection of material from the trackways site is now preserved in the New Mexico Museum of Natural History and Science, the Carnegie Museum, the Smithsonian, the Los Angeles County Museum, and the City of Las Cruces Natural History Museum.

S. 3599

The legislation before the Committee today would designate 5,367 acres of public land in Doña Ana County as the Prehistoric Trackways National Monument. The legislation's stated goal is to conserve, protect, and enhance the unique and nationally important paleontological, scientific, educational, scenic, and recreational resources and values of the area. We strongly support those goals and legislation to implement them. We would like the opportunity to work with Senator Bingaman, as well as Senator Domenici and the Committee staff, on amendments which we believe can improve the legislation.

Section 5(a)(3) of the bill directs the BLM to "manage public land adjacent to the Monument in a manner that is consistent with the protection of the resources and values of the monument." The intent of this provision is not clear, and it is not clear how the BLM would implement it. In addition, we would encourage the sponsor and the Committee to include within the monument boundaries all public lands intended for protection without setting up de facto buffer zones.

Section 5(d) of the bill gives priority to exhibiting and curating the resources from the monument in Doña Ana County, New Mexico. Many, if not most, of the significant specimen resources will remain in situ for study. Those that are removed for scientific purposes deserve the highest level of curation. At this time we are concerned that there may not be adequate facilities in Doña Ana County for curation at the level afforded by the excellent facility at the New Mexico Museum of Natural History and Science. It may be preferable for curation to take place at the museum in Albuquerque and then exhibition in Doña Ana County.

The legislation in section 5(g) withdraws the area from the land, mining, mineral leasing and minerals materials laws. We generally support this withdrawal in order to protect the important paleontological resources within the proposed monument. Within this area is a ten acre site on which a mineral materials operation has existed for a number of years. Continuation of this operation should not interfere with the protection of the resources within the monument and there is strong local demand for the rock produced from the mine.

While we strongly support the concept of protecting the Prehistoric Trackways, we believe a designation of the area as a National Conservation Area (NCA) is more appropriate. The title of "National Monument" may raise the expectation of the public that this area is similar to an area like the Kasha Katuwe Tent Rocks National Monument. The visual qualities found at Tent Rocks will not be replicated at the trackways site. An NCA would provide as much as or even more protection for the trackways than a National Monument, depending on the legislation written, and may be preferable.

Finally, we would like to clarify that the BLM does not regulate hunting on public lands, but may in some circumstances work cooperatively with the state to limit firearms in particular areas such as campgrounds or active excavation sites.

#### CONCLUSION

We want to express our deep appreciation to Senator Bingaman and Senator Domenici for introducing this legislation to protect the important Paleozoic Trackways in south-central New Mexico. It is critical that we protect these resources for future generations. We look forward to working cooperatively with the Committee to ensure their protection.

#### CHANGES IN 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. 275, as ordered reported.

