

PUBLIC LAW 109-94—OCT. 26, 2005

## OJITO WILDERNESS ACT

Public Law 109–94  
109th Congress

An Act

Oct. 26, 2005  
[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.

Ojito Wilderness  
Act.  
Native  
Americans.  
New Mexico.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

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

**SEC. 2. DEFINITIONS.**

In this Act:

(1) MAP.—The term “map” means the map entitled “Ojito Wilderness Act” and dated October 1, 2004.

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

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

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

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

16 USC 1132  
note.

(a) IN GENERAL.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), there is hereby designated as wilderness, and, therefore, as a component of the National Wilderness Preservation System, certain land in the Albuquerque District-Bureau of Land Management, New Mexico, which comprises approximately 11,183 acres, as generally depicted on the map, and which shall be known as the “Ojito Wilderness”.

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

(1) be filed by the Secretary with the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives as soon as practicable after the date of enactment of this Act;

(2) have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the legal description and map; and

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

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

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

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

(2) Any land within the boundaries of the wilderness area designated by this Act.

(e) **MANAGEMENT OF LANDS TO BE ADDED.**—The lands generally depicted on the map as “Lands to be Added” shall become part of the wilderness area designated by this Act if the United States acquires, or alternative adequate access is available to, section 12 of township 15 north, range 01 west, New Mexico Principal Meridian.

(f) **RELEASE.**—The Congress hereby finds and directs that the lands generally depicted on the map as “Lands to be Released” have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) and no longer are subject to the requirement of section 603(c) of such Act (43 U.S.C. 1782(c)) pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

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

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

(i) **WATER RIGHTS.**—

(1) **FINDINGS.**—Congress finds that—

(A) the land designated as wilderness by this Act is arid in nature and is generally not suitable for use or development of new water resource facilities; and

(B) because of the unique nature and hydrology of the desert land designated as wilderness by this Act, it is possible to provide for proper management and protection of the wilderness and other values of lands in ways different from those used in other legislation.

(2) **STATUTORY CONSTRUCTION.**—Nothing in this Act—

(A) shall constitute or be construed to constitute either an express or implied reservation by the United States of any water or water rights with respect to the land designated as wilderness by this Act;

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

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

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

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

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

(4) NEW PROJECTS.—

(A) WATER RESOURCE FACILITY.—As used in this subsection, the term “water resource facility”—

(i) means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures; and

(ii) does not include wildlife guzzlers.

(B) RESTRICTION ON NEW WATER RESOURCE FACILITIES.—Except as otherwise provided in this Act, on and after the date of enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the wilderness area designated by this Act.

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

(1) all forms of entry, appropriation, and disposal under the public land laws;

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

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

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

Deadline.

#### SEC. 4. LAND HELD IN TRUST.

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

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

(c) CONSIDERATION.—

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

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

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

(d) PUBLIC ACCESS.—

(1) IN GENERAL.—Subject to paragraph (2), the declaration of trust and conveyance under subsection (a) shall be subject to the continuing right of the public to access the land for recreational, scenic, scientific, educational, paleontological, and conservation uses, subject to any regulations for land management and the preservation, protection, and enjoyment of the natural characteristics of the land that are adopted by the Pueblo and approved by the Secretary: *Provided*, That the Secretary shall ensure that the rights provided for in this paragraph are protected and that a process for resolving any complaints by an aggrieved party is established.

Procedures.

(2) CONDITIONS.—Except as provided in subsection (e)—

(A) the land conveyed under subsection (a) shall be maintained as open space and the natural characteristics of the land shall be preserved in perpetuity; and

(B) the use of motorized vehicles (except on existing roads or as is necessary for the maintenance and repair of facilities used in connection with grazing operations), mineral extraction, housing, gaming, and other commercial enterprises shall be prohibited within the boundaries of the land conveyed under subsection (a).

(e) RIGHTS-OF-WAY.—

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

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

(B) the access for customary construction, operation, maintenance, repair, and replacement activities in any right-of-way issued, granted, or permitted by the Secretary.

(2) NEW RIGHTS-OF-WAY AND RENEWALS.—

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

(B) ADMINISTRATION.—Any right-of-way issued or renewed after the date of enactment of this Act located on land authorized to be acquired under this section shall be administered in accordance with the rules, regulations, and fee payment schedules of the Department of the Interior, including the Rio Puerco Resources Management

Plan that is in effect on the date of issuance or renewal of the right-of-way.

(f) JUDICIAL RELIEF.—

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

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

(3) EFFECT.—Nothing in this section—

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

(B) except as provided in paragraph (2), abrogates the sovereign immunity of the Pueblo.

Approved October 26, 2005.

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LEGISLATIVE HISTORY—S. 156 (H.R. 362):

HOUSE REPORTS: No. 109–149 accompanying H.R. 362 (Comm. on Resources).

SENATE REPORTS: No. 109–13 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 151 (2005):

July 26, considered and passed Senate.

Oct. 18, considered and passed House.

