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H.R. 1913, VALUATION OF NON-TRIBAL INTEREST OWNERSHIP OF SUBSURFACE RIGHTS WITHIN THE BOUNDARIES OF THE ACOMA INDIAN RESERVATION

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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H.R. 1913, TO REQUIRE THE VALUATION OF NONTRIBAL INTEREST OWNERSHIP OF SUBSURFACE RIGHTS WITHIN THE BOUNDARIES OF THE ACOMA INDIAN RESERVATION

Thursday, September 13, 2001
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 2:12 p.m., in Room 1324, Longworth House Office Building, Hon. Barbara Cubin [Chairman of the Subcommittee] presiding.

STATEMENT OF THE HONORABLE BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. The legislative hearing by the Subcommittee on Energy and Mineral Resources will now come to order. The Subcommittee is meeting today to hear testimony on H.R. 1913 to require the valuation of nontribal interest ownership of subservice rights within the boundaries of the Acoma Indian Reservation and for other purposes.

Under Committee rule 4(g), the Chairman—well, since the Chairman is the only one here today, I will be the only one making the statement, but the record will be kept open for any other statements that the Members wish to put in.

Today the Subcommittee will take testimony on legislation introduced by our colleague from New Mexico, Mr. Skeen. H.R. 1913 is a bill to require the valuation of nontribal ownership of subsurface rights within the boundaries of the Acoma Indian Reservation followed by the identification of Federal lands of comparable value to be exchanged by the Secretary of Interior in return for these private minerals.

In a sense, this bill has been centuries in the making. The Pueblo Indians of Acoma have lived atop a mesa known as Sky City perhaps longer than any other village in America. When the United States and Mexico signed the Treaty of Guadalupe Hidalgo in 1848, the land claims of Acoma people and others were guaranteed to be respected. Indeed, in 1858 Congress specifically recognized an Acoma land claim including Sky City.

However, at that time the lands below and south of the mesa were not patented to the Pueblo of Acoma. Consequently, when the transcontinental railroad land grants were being made, the St. Louis and San Francisco Railway Company received title to alternate sections of public land, some of which lands were subsequently included within the boundaries of the Acoma Indian Reservation as set in 1928. The United States purchased the surface estate of these sections from the successor in interest to the railroad grant lands, but the mineral lands, together with the right of access to the private minerals, was reserved, creating today's split-estate posture.

I wish to thank Joe Skeen for attempting to correct what has become an untenable situation. The Acoma people revere the area below Sky City mesa which lies within their reservation and would certainly oppose exercise of the private mineral rights there. Yet the NZ Corporation has a legitimate right to explore and develop their reserved interests.

In a similar situation over a decade ago, the Department of Interior exchanged or purchased private mineral interests in the area immediately west of the Acoma Reservation which Congress placed into the El Malpais National Monument.

Basically the question now is this: if an exchange to acquire private rights was deemed necessary to protect the scenic and historic values for which a national monument was established, should we not also allow the Acoma people to acquire the private mineral rights within their reservation?

I want to thank our witnesses for coming today despite the terrible circumstances under which our Nation now finds itself. It would have been quite easy to cancel this hearing and promise to hold it later when our attention in Congress will be less diverted, but promises have been made and broken with the Acoma for too long.

And, I would like the terrorists responsible for Tuesday's carnage to understand that we will do our best to execute our duties as Congressman, and I, as Chairman of this panel, despite their heinous actions, I will recess this hearing if need be to vote for emergency funding to aid in the disaster as President Bush and Congress deem responsible. Otherwise, we will continue to do our jobs here and in the Resources Committee and attend to matters such as H.R. 1913.

I now would like to recognize the first witness, my good friend the Honorable Joe Skeen, who represents the Second District of New Mexico. Joe is one of the gentlemen in this Congress that I have followed and enjoyed his friendship ever since I came here. Joe's philosophy of government and States rights and public lands and private property rights are exactly what mine are, and I can say that Joe has taught me a lot through the years.

And, Joe, thank you for being here, and love to hear your testimony.

[The prepared statement of Mrs. Cubin follows:]

Statement of The Honorable Barbara Cubin, Chairman, Subcommittee on Energy & Mineral Resources

Today the Subcommittee will take testimony on legislation introduced by our colleague from New Mexico, Mr. Skeen. H.R. 1913 is a bill to require the valuation

of non-tribal ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, followed by the identification of federal lands of comparable value to be exchanged by the Secretary of the Interior in return for these private minerals.

In a sense, this bill has been centuries in the making. The Pueblo Indians of Acoma have lived atop a mesa known as Sky City perhaps longer than any other village in America. When the United States and Mexico signed the Treaty of Guadalupe Hidalgo in 1848, the land claims of the Acoma people, and others, were guaranteed to be respected. Indeed, in 1858, Congress specifically recognized an Acoma land claim, including Sky City.

However, at that time the lands below and south of the mesa were not patented to the Pueblo of Acoma. Consequently, when the transcontinental railroad land grants were being made, the St. Louis & San Francisco Railway Company received title to alternate sections of public land, some of which lands were subsequently included within the boundaries of the Acoma Indian Reservation as set in 1928. The United States purchased the surface estate of these sections from the successor in interest to the railroad grant lands, but the mineral rights, together with right of access to the private minerals, was reserved, creating today's split-estate posture.

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And, I'd like the terrorists responsible for Tuesday's carnage to understand that I will do my best to execute my duties as Chairman of this panel despite their heinous actions. I will recess this hearing, if need be, to vote for emergency funding to aid in the disaster as President Bush and Congress deem necessary and appropriate. Otherwise, we must continue to do our jobs here in the Resources Committee and attend to matters such as H.R. 1913.

I now turn to our Ranking Member, Mr. Kind, for any statement he may have.

STATEMENT OF THE HONORABLE JOE SKEEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. SKEEN. Thank you, Madam Chairman, Chairlady. I am not going to change things around a lot. I want to extend my warm regards to you for holding this hearing today, and I know how busy the Committee has been working on your major energy bill as well as countless other issues. The Acoma people who are here today will also be expressing their appreciation to you. I know late last year you made a commitment to work with me on this bill, and now that we have had at least a partial team in place at the Interior Department, and I think we can move forward.

The Acoma Pueblo comprises some 380,000 acres located 56 miles west of Albuquerque. The legislation deals with subsurface mineral rights of Acoma Pueblo trust lands. People of Acoma Pueblo, like many other Native American tribes, have sought to restore its reservation to its historic boundaries. Over 6,000 Pueblo members live on and around the Acoma Mesa, which was originally referred to as the ″Sky City.″ The older village lies 365 feet above the surrounding valley of the sparse, dry farmland with its mixture of

pinon and juniper trees. It is thought to be one of the oldest continually inhabited sites within the United States, first reported by Fray Marcos de Niza in 1539—now, that is a long time ago—and then visited by Francisco de Coronado's army in 1540.

In 1988, the Pueblo purchased a large ranch that adjoined their reservation, and subsequently the Secretary of the Interior took over 100,000 surface acres into trust for the Pueblo, and it became a permanent part of the reservation.

When Acoma purchased the ranch, the subsurface mineral rights were not part of the land transfer, and, as you know, this is not an uncommon practice where only the surface estate was sold from owner to owner. Much of this practice goes back to the settling of the West when the government awarded checkerboarded pieces of land to railroads in return for their building lines across the Nation, and the railroads then sold the land to finance their companies' activities, but kept the subsurface mineral estate.

Under this legislation the current owner of the subsurface estate would enter into an exchange agreement with the Bureau of Land Management, BLM, for equal valued Federal lands and rights. In return BLM would receive the subsurface rights within the Pueblo boundaries, which would be placed into trust by the Secretary of the Interior for the benefit of the Acoma Pueblo unifying both the surface and subsurface estate.

This legislation amounts to a win-win for all of the stakeholders involved. First, the Acoma Pueblo does not have to worry about the subsurface mineral rights holder attempting to exercise its rights. This legislation would give them the total control over their lands that they need and deserve under the trust responsibility of the United States. The current third-party owner of the subsurface mineral estate is made whole without having to exercise their rights and being placed in conflict with the Acoma Pueblo. And, finally, the public wins because excess Federal lands will go into the private sector and will be returned to the tax rolls.

The Acoma people are part of a proud Pueblo which provides New Mexico with a major portion of the rich cultural heritage which makes my State the Land of Enchantment.

In closing, I ask the Committee to do the right thing and to pass this legislation so that Acoma people can continue their journey to greatness.

[The prepared statement of Mr. Skeen follows:]

Statement of Honorable Joe Skeen, a Representative in Congress from the State of New Mexico

Madam Chairman, I want to extend my very warm regards to you for holding this hearing today. I know how busy the committee has been working on your major energy bill as well as countless other issues. The Acoma people, who are here today will also be expressing their appreciation to you. I know late last year you made a commitment to work with me on this bill and now that we have at least a partial team in place at the Interior Department I think we can move forward.

The Acoma Pueblo comprises some 380,000 acres located 56 miles west of Albuquerque. The legislation deals with the sub-surface mineral rights of Acoma Pueblo trust lands. The people of Acoma Pueblo, like many Native American tribes, have sought to restore its reservation to its historic boundaries. Over 6,000 Pueblo members live on and around the Acoma Mesa which was originally referred to as "Sky City". The older village lies 365 feet above the surrounding valley of sparse dry farmland with its mixture of pinon and juniper. It is thought to be one of the oldest

continually inhabited sites in the United States, first reported by Fray Marcos de Niza in 1539 and then visited by Francisco de Coronado's army in 1540.

The Spanish made the original land grant to the Pueblo of Acoma on September 20, 1689 and President Grant confirmed the grant by patent issued on November 19th, 1877. In l988, the Pueblo purchased a large ranch that adjoined their reservation and subsequently the Secretary of the Interior took over 100,000 surface acres into trust for the Pueblo and it became a permanent part of the reservation. This additional land is necessary as the Pueblo grows and prospers because of new economic activity.

When Acoma purchased the ranch the subsurface mineral rights were not part of the land transfer. This is not an uncommon occurrence in the West where only the surface estate is sold from owner to owner. Much of this practice goes back to the settling of the West when the federal government awarded checkerboarded pieces of land to railroads in return for their building lines across the nation. The railroads then sold the land off to finance their companies activities but kept the subsurface mineral estate.

Under this legislation, the current owner of the subsurface estate would enter into an exchange agreement with the Bureau of Land Management (BLM) for equal valued federal lands and rights. In return the BLM would receive the subsurface rights within the Pueblo boundaries which would be placed into trust by the Secretary of the Interior for the benefit of the Acoma Pueblo unifying both the surface and subsurface estate.

This legislation amounts to a win-win for all of the stakeholders involved. First, the Acoma Pueblo does not have to worry about the sub-surface mineral rights holder attempting to exercise its rights. This legislation gives them the total control over their lands that they need and deserve under the trust responsibility of the United States. The current third party owner of the sub-surface mineral estate is made whole without having to exercise their rights and being placed in conflict with the Acoma Pueblo. And finally the public wins because excess federal lands will go into the private sector and will be returned to the tax rolls.

Although the mineral rights in question are of an undetermined value due to the fact that very little oil and gas exploration or any other type of exploration has taken place on these lands. Total control over their land allows the Acoma people to engage in mineral exploration if they deem it appropriate. Such exploration will not occur without this legislation.

The Acoma people are part of a proud Pueblo which provides New Mexico with a major portion of the rich cultural heritage which makes my state the "Land of Enchantment". In closing I ask the committee to do the right thing and pass this legislation so the Acoma people can continue their journey to greatness.

Mrs. CUBIN. I would like to place into the hearing record testimony of Joe Sphar of the NZ Corporation. He was not able to attend because of our current national situation.

Mrs. CUBIN. Without objection, that will be so entered.

[The prepared statement of Mr. Sphar follows:]

Statement of Joe Dee Sphar, Director of Natural Resources, NZ Corporation

INTRODUCTION.

Madame Chairwoman and Members of the Subcommittee on Energy and Mineral Resources, my name is Joe Sphar. I am the Director of Natural Resources for the NZ Corporation. Thank you for this opportunity to testify on H.R. 1913. This legislation is very important to the NZ Corporation which currently holds some 67,710 acres of mineral rights within the Acoma Indian Reservation. These are rights originally granted to NZ's predecessor company by the United States but which cannot be developed without great conflict with a sovereign Indian nation. H.R. 1913 provides a practical solution that addresses the concerns and rights of NZ, as well as the concerns and rights of the Pueblo of Acoma.

ORIGIN NZ'S SEVERED MINERAL ESTATE.

NZ Corporation ("NZ"), f.k.a. New Mexico and Arizona Land Company, owns some 67,710 acres of mineral rights within the Acoma Reservation in Cibola County, New Mexico. NZ is a publicly traded company incorporated in the Territory of Arizona in 1908. Ultimately, NZ's mineral title traces to a Federal Charter of 1866 to the Atlantic & Pacific Railroad (Ch. 278, 14 Stat. 292) which provided a land grant from

the public domain as an inducement to build a railroad and telegraph line along the 35th Parallel. Portions of this great transcontinental rail line from the Rio Grande to the Colorado River were subsequently built across what are now the states of New Mexico and Arizona. Accordingly, NZ's parent corporation, the St. Louis & San Francisco Railway Company, was granted some 1.2 million acres in fee, including the subject acreage, for its part in the completed railroad construction near Acoma. Title to this railroad mineral estate is well established in law. (For a summary see Thomas E. Root, Railroad Land Grants from Canals to Transcontinentals, National Resources Law Section, American Bar Association Monograph Series, 1988).

During the early part of the 20th Century, a more socially sensitive and better informed Federal Government recognized the Acoma's traditional use and aboriginal occupancy of a much wider area in what is now Cibola County, New Mexico. However, much of this area had already been taken out of public domain status and deeded to the railroad parent of New Mexico and Arizona Land Company. In 1936, the Federal Government was able to purchase the conflicted lands from NZ. However, the purchase for reasons not presently known to NZ did not include the mineral rights, which were explicitly excluded along with access rights for exploration and development of the reserved mineral estate.

CONFLICTED RIGHTS.

Railroad land grants were made in a checkerboard pattern to insure that the Government lands would appreciate along with the newly created private railroad lands. Without passing judgement on the merits of the original plan, a secondary result throughout the western United States has been a management gridlock. Moreover, on a subsequently created Indian Reservation, the question of Native American sovereignty is brought to fore. From NZ' s view, a virtual taking resulted with the creation of the Acoma Reservation. The BIA policy is to always defer to Native American oversight. The inequity in this was acutely demonstrated in the mid–1970s when an oil company (CITGO) attempted for several years to explore at Acoma for oil and natural gas. The concept of deep drilling into the Earth (with all that this portends for Acoma spirituality) and the potential for desecration of secret religious sites on the surface was basically foreign and frightening to the religious leaders of Acoma society. The Acoma's refused all of Citgo's overtures to allow access to the NZ minerals and or lease the Acoma mineral estate checkerboarded with NZ's minerals. Then the Acomas unsuccessfully sued NZ for the minerals. (Pueblo de Acoma v. New Mex. & Az. Land Co., et al, U.S. District Court No. 82–155, JB, 1983). While affirming its title, NZ's access to the mineral estate remains effectively blocked by a wall of sovereignty. Yet, the Acoma people lack full sovereignty over their aboriginal lands.

PETITION TO CORRECT THIS ERROR OF HISTORY.

Not long after the lawsuit ended, NZ and the Acomas agreed to work together to redress their mutual problems. Clearly, their problems were created by the Federal Government in conflicting land grants. NZ has worked with four Governors of Acoma Pueblo on this topic over the years. Under the active leadership of several Acoma Governors, the Pueblo of Acoma is now petitioning the Congress to correct this error of history and make their aboriginal lands whole. Whether this movement is driven by desire for future mineral development, to attain final security for the tradition places and sacred sites or simply as a matter of justice is not known to NZ. One can reasonably assume all three motivations.

VALUATION OF THE MINERAL ESTATE.

Internal valuations of the mineral estate range from a minimum of $15 per acre to $25 per acre. This appraisal is based largely upon comparable Company dispositions of large and small mineral parcels in New Mexico and Arizona. It is also cognizant of the regionally better geologic prospects for petroleum on the subject mineral estate. The Company's extensive wildcat drilling on the Sierra Lucero to the east has proven that oil and gas is present in the area and may have been trapped in economic accumulations in superior reservoir rocks on the structurally higher flank of the Zuni Mountains as represented in large portions of the topic Acoma minerals.

Even in the absence of producing or defined mineral deposits, mineral rights are valuable and valued for their potential to create future wealth. This potential is commonly marketable even before discovery as mineral explorers typically pay bonuses and other leasehold payments to mineral right owners. This opportunity has been basically denied to both NZ and the Acoma because of the inherent conflicts of split estate ownership on lands in reservations status (basically beyond the reach of Federal Courts). The potential for future income, both leasehold and actual (roy-

alty income, for example) may be considered a speculative value residing in all mineral rights. Moreover, mineral rights are recognized as a real property right and the prospect of future exploration may engender a nuisance value from the view of the surface estate owner. In the case at hand, the geology is enhancing to the speculative value and the extraordinary religious tie of the surface owner to the land makes the nuisance factor highly salient. As to comparable sales, NZ has traded, sold or exchanged nearly 200,000 acres of mineral rights with the Federal Government in support of National Parks and Wilderness Areas. Prices ranged up to $27.40 acre (see accompanying Chart hereafter).

Just over ten years ago and just west of the Acoma Reservation, NZ relinquished some 119,000 acres to accommodate the El Malpais wilderness. NZ accepted $10 per acre (1989–90 dollars) for these minerals which are rather obviously of inferior petroleum potential. At the same time and by reference to geologic variables, NZ received $27.40 per acre for some 2240 mineral acres to accommodate the expansion of the Chaco Canyon National Park. The difference here from the $10 price for El Malpais was not so much the size of the transaction as the recognizable better potential for petroleum discovery on the Chaco minerals. Similarly, NZ received $15 per acre in trade value from the Government for its 57,000 acres of checkerboard minerals in Mohave County, Arizona in 1987. The price here was partly determined by the regional potential for gold discovery (speculative value).

Finally, NZ has for many years running been routinely selling mineral rights to its 40 acre recreational lot buyers for $25 per acre. A large number of such sales have been generated at this price, whether motivated by speculation or nuisance is not certain. Just last year, NZ sold one section (640 acres) in Cibola County for $30 per acre to a company hoping to site a business there.

Thus, when looking at either the speculative value or the real property, nuisance value the Company concludes that the mineral value for the 67,710 acres of fee minerals ranges from $15–25 per acre, or from a minimum of $1 million to $1.7 million. NZ would expect and presumably accept an independent mineral appraisal. Commercial appraisers have approximated the cost of such appraisal at $25,000. NZ would accept an equal value of BLM land from their excess lands list in the Cibola County or even elsewhere in New Mexico

DISPOSITIONS OF NZ FEE MINERALS

YEAR	NZ ACRES	BASIS OF TRADE	AREA
1987	17,000	ACRE FOR ACRE	EL MALPAIS
1988	57,000	$15/ACRE TRADE REAL ESTATE	MOJAVE TRACT/ 142 @ LK. HAVASU
1989	40, 000	$10/ACRE CASH	EL MALPAIS
1990	16,000	ACRE FOR ACRE	EL MALPAIS
1990	62,000	$10/ACRE TRADE REAL ESTATE	EL MALPAIS 305 @ LAS CRUCES
1990	2,240	$27.40/ACRE CASH	CHACO CANYON
In addition, NZ has made some 40 sales of small mineral lots (40 to 640 acres each) to individuals at prices ranging from $25 to $50/acre.			

CONCLUSION.

In the interests of equity and fairness, to both NZ and Acoma, I strongly urge this Committee to support passage of H.R. 1913. Thank you for this opportunity to testify on this important legislation.

Mrs. CUBIN. And I would like to apologize to the Acoma people that are here today for my mispronunciation.

Mr. SKEEN. You are doing very well. You should have heard us when we started out with this.

Mrs. CUBIN. Well, it is good to have you here, and I appreciate, Joe, your bringing this issue forward again. We did start talking about it last year, and I am sure that we will be able to move this legislation forward as soon as possible.

Mr. SKEEN. You are a very decent lady, and I appreciate it very much.

Mrs. CUBIN. Thank you very much. I don't have any questions, and I assume you have finished with everything you want to say.

Mr. SKEEN. I will always find a place where I have something to say and then don't overdo it.

Mrs. CUBIN. As my mother always said, when you have got the votes, shut up; right?

Mr. SKEEN. That is exactly right. Thank you so much.

Mrs. CUBIN. Thank you, Mr. Skeen.

The Chair now would like to call panel two to come forward to the table. The Honorable Cyrus J. Chino, Governor of the Acoma Pueblo of New Mexico; and the Honorable Neal A. McCaleb, Assistant Secretary of the Interior for Indian Affairs.

Mrs. CUBIN. The Chair now recognizes Governor Cyrus Chino to testify for 5 minutes. The timing light should be on the table and will indicate when your time has concluded. That yellow light means there is 60 seconds left. So, Governor Chino, if you would like to begin.

STATEMENT OF CYRUS J. CHINO, GOVERNOR OF THE ACOMA PUEBLO, NEW MEXICO

Mr. CHINO. Good afternoon and thank you, Madam Chairwoman and members of the Subcommittee on Energy and Mineral Resources. My name is Cyrus J. Chino. I am the Governor of the Pueblo of Acoma. On behalf of the Pueblo of Acoma, I thank you for this opportunity to testify in support of H.R. 1913. I am accompanied by council member Petuuche Gilbert, who is also the tribal's realty officer.

Before I continue, I would like to express on behalf of the people and government of the Pueblo of Acoma our great sorrow at the tragic events of this last week. We are praying for the victims, their families, and friends.

Acoma is an ancient and traditional people. We have occupied our lands and our old village, Acoma Sky City, for over a thousand years and still speak our native language and practice our traditional religion. We know from long experience that in order to preserve our culture, we must preserve our land and sovereignty.

I come before you here today to ask you that you support the passage of H.R. 1913. H.R. 1913 will correct an historic wrong against Acoma caused by the Federal Government, protect our sovereign and protect our sacred land and sacred sites from inappropriate development.

Today the NZ Corporation holds 67,710 acres of mineral rights within the Acoma Indian Reservation, including mineral rights near our ancient and central village, Acoma Sky City.

The map here is included in the testified statement that we are turning in, and there is a map there. In the dark shaded area are those areas that we are alluding to, that is, south of Acoma Sky City village on top of the mesa.

NZ serves a right of access to a large portion of the Acoma Indian Reservation, including areas of great spiritual importance and sensitivity. Acoma would oppose any such efforts by NZ, but in the end it might be a Federal court and not Acoma itself which would

decide what would happen on Acoma land. Acoma and NZ have come together to support this important legislation.

Let me briefly describe to you how Acoma lost its land. The Spanish and the Mexican Governments, prior to New Mexico's addition to the Union, fully recognized Acoma's territory. The United States promised in the Treaty of Guadalupe Hidalgo in 1848 to protect our Pueblo land, but when the transcontinental railroad was built, the United States gave a large portion of the Acoma's land to the railroad. The United States partially corrected this injustice by purchasing the surface rights to much of this land from NZ Corporation, but the subsurface still belongs to the NZ Corporation.

Benefits of H.R. 1913. H.R. 1913 will protect Acoma's sacred site by unifying the surface and subsurface estates at Acoma. The threat that Acoma sacred sites would be disturbed or destroyed would be eliminated. We can protect Mother Earth on our reservation as we know best how to do.

H.R. 1913 will restore Acoma's sovereignty over its own land.

H.R. 1913 will right the historic wrong of the taking of this land from Acoma and thus fulfill the Federal Government's trust responsibility to Acoma.

H.R. 1913 will also protect the interests of NZ Corporation, which feels that it has essentially lost the value of its land holdings underneath the Acoma Indian Reservation.

H.R. 1913 will eliminate the possibility of costly litigation, including litigation NZ against the United States for its fifth amendment taking of the value of its land and a result of the Federal Government recognizing an indignation to Acoma on those lands. For example, in establishing the El Malpais National Monument which lies immediately adjacent to Acoma, Congress specifically authorized the exchange of Federal and private mineral rights interests, which principally included NZ Corporation. In 1994, Assistant Secretary of Indian Affairs concluded that the only way to secure the land for Acoma was through a three-party land exchange involving the BLM, Bureau of Land Management. However, BLM has taken no action; so we need Congress to pass H.R. 1913 to get this done.

Conclusion. In the event the NZ Corporation believed that its right has been unduly encumbered while Acoma believes that its rights have been trampled upon, H.R. 1913 is a win-win solution to this problem. I urge this Committee to give its full support to passage of this important bill. Thank you for this opportunity to testify on this matter.

Mrs. CUBIN. Thank you, Governor.

[The prepared statement of Mr. Chino follows:]

Statement of Cyrus J. Chino, Governor, Pueblo of Acoma

I. INTRODUCTION

Madame Chairwoman and Members of the Subcommittee on Energy and Mineral Resources, my name is Cyrus J. Chino. I am the Governor of the Pueblo of Acoma. On behalf of the Pueblo of Acoma, I thank you for this opportunity to testify in support of H.R. 1913.

The Pueblo of Acoma is a federally recognized Indian tribe located an hour's drive west of Albuquerque, New Mexico. We are a traditional people. We have occupied our lands and our old village, Acoma Sky City, for over a thousand years. In fact, Acoma Sky City is the oldest continuously inhabited city in the United States. De-

spite 500 years of contact with European culture, the people of Acoma have retained their language, culture and spiritual traditions.

I come before you today to ask that you support passage of H.R. 1913. This legislation will redress an historical injustice against Acoma. It will also enable Acoma to protect fully our sacred heritage and to regulate appropriately development on our reservation lands. Finally, it will address the concerns of the NZ Corporation (formerly known as New Mexico and Arizona Land Company) which currently owns large portions of the subsurface estate at Acoma, including areas of great spiritual importance and sensitivity to Acoma. See Acoma Indian Reservation Map, Attachment A. H.R. 1913 is consistent with the Federal trust responsibility to American Indians as well as Congressional policy in the area of Indian lands management.

Specifically, H.R. 1913 would direct the Secretary of the Interior: (1) to determine the extent and value of the nontribal ownership of subsurface rights within the boundary of the Acoma Indian Reservation; (2) to negotiate, upon completion of that valuation, an exchange with any willing nontribal owners of such rights for rights in Federal land within New Mexico identified by the Bureau of Land Management as available for disposal and of approximately the same value; and (3) to hold the acquired interests in land within the boundaries of the Acoma Indian Reservation in trust for the Pueblo of Acoma.

II. HOW ACOMA LOST ITS ANCESTRAL LAND IN THE FIRST PLACE

Prior to 1848, the Spanish and Mexican governments controlled the Southwest and recognized Acoma's aboriginal area as Acoma's territory, protecting Acoma's rights throughout that area. In 1848, when the United States acquired New Mexico from Mexico it promised, in accordance with the Treaty of Guadalupe Hidalgo (1848), that the Pueblo Indian tribes and other property holders would by "respected in their property." Congress also specifically recognized certain Acoma land claims by the Act of December 22, 1858, 11 Stat. 374. which federal courts have subsequently held did not limit Acoma's title to only those lands recognized therein.

Notwithstanding these Congressional actions, in 1866 Congress issued a Federal Charter to the Atlantic & Pacific Railroad that provided for a land grant out of the public domain to support the construction of a transcontinental rail and telegraph line. Act of July 27, 1866, 14 Stat. 292. NZ's parent company, the St. Louis & San Francisco Railway Company received 1.2 million acres in fee, including large parts of what is now the Acoma Indian Reservation. Under the law, unextinguished Indian title lands could not be granted without "voluntary session" by the Tribe. However, U.S. land surveyors, in 1876 and, again in 1877, through mistake or bad intent, designated large amounts of tribal land, including land immediately below the mesa of Acoma Sky City, as within the public domain. This designation meant that the land was eligible for grant to the railroad company without first securing Acoma's permission.

In subsequent years, Congress recognized Acoma's larger land claims and acted to establish formally the Acoma Indian Reservation under Federal law. Part of the Acoma Indian Reservation was defined by the Act of May 23, 1928 (45 Stat.717). Subsequently, the United States purchased substantial land holdings from NZ, and took much of that land into trust for Acoma. However, for reasons unknown to Acoma, NZ was allowed to retain its subsurface rights on these lands.

As a result of this history, NZ holds 67,710 acres of subsurface rights within the Acoma Indian Reservation, including subsurface rights near Acoma Sky City.

III. NZ CLAIMS ACCESS RIGHTS TO MUCH OF THE ACOMA RESERVATION

When the United States acquired the surface rights from NZ, it provided the following exception for the subsurface rights:

> "...Excepting and Reserving to said party [NZ] of the first part and its successors and assigns, all oil, gas and mineral rights underlying or appurtenant to said lands, together with the right of ingress and egress and of prospecting, developing and operating said lands therefore and removing the same therefrom, subject to such reasonable conditions respecting ingress and egress and the use of the surface of said lands as may be deemed necessary by the Secretary of the Interior."

Based on this language, NZ asserts a right of access to large portions of the Acoma Indian Reservation, including areas of great spiritual sensitivity. While Acoma would oppose any such efforts by NZ, in the end it might be a Federal court, and not Acoma itself, which would decide what would happen on Acoma land.

Needless to say, this legal situation, arising initially out of Federal government action, puts Acoma and NZ into conflicting positions. NZ has a good faith legal claim to develop its subsurface assets; at the same time such development would likely affect Acoma sacred properties and would involve subsurface assets that rightfully

belong to Acoma in the first place. NZ believes that its rights have been unduly encumbered; while Acoma believes that its rights have been trampled upon. Both parties have come together to support a win-win solution H.R. 1913. This solution, of necessity, involves the party originally responsible for the loss of Acoma land—the Federal government.

IV. BENEFITS OF H.R. 1913.

H.R. 1913 will address, through a voluntary land exchange, a number of issues, including:

- *Protection of Acoma sacred sites.* By unifying the surface and sub-surface estate at Acoma, the threat that Acoma sacred sites could be disturbed or destroyed by mineral exploration and extraction activity would be eliminated. The threat also to certain sacred "viewscapes", especially from Acoma Sky City, and to certain pilgrimage routes, would also be removed. Essentially, in a manner consistent with the Federal trust responsibility, Acoma's sovereignty within the boundaries of the Acoma Reservation would be more fully recognized and strengthened.
- *Righting of an historic wrong through the restoration of resources properly belonging to Acoma.* The consolidation of Acoma's surface and subsurface estate would correct the historic injustice of the loss of these lands that had belonged to Acoma for at least a thousand years before their taking by the United States. Passage of H.R. 1913 would be an example of the Congress living up to the Federal trust responsibility in the best possible way.
- *Protection of the interests of the private holder of the subsurface.* NZ has expressed its belief that, through Federal action, it has essentially lost the value of these land holdings, thus raising the issue of a Fifth Amendment taking. H.R. 1913 would protect the economic interests of NZ in accessing the value of the land granted it by the United States by allowing NZ to get disposable BLM land of equivalent value elsewhere.
- *Maintenance of the same value of land under Federal legal title.* Since H.R. 1913 provides that the land exchanged from the BLM disposable land list would be of the same value as the subsurface acquired in trust by the United States for Acoma, there is no net loss of land value under Federal legal title.
- *Elimination of an unnecessary obstacle to economic development for both NZ and Acoma.* For NZ, the lost value of the subsurface at Acoma will be freed up for other economic activity. Although Acoma has no plans to develop its subsurface resources, by consolidating those resources into the Acoma reservation Acoma can better regulate such development if, at some future date, it would be appropriate and not destructive.
- *Elimination of the possibility of costly litigation.* Should NZ seek to develop its subsurface rights, there would likely be extensive ligitation, not only between Acoma and NZ, but also including the United States. H.R. 1913 would eliminate the risk of such litigation by establishing a voluntary land exchange process for resolving this conflict.

V. OTHER CONGRESSIONALLY AUTHORIZED LAND AND MINERAL EXCHANGES

Under a wide variety of circumstances, the U.S. Congress has provided for land and mineral exchanges. In the Indian area, Congress has repeatedly passed legislation providing for exchanges and purchases of land interests for the benefit of Indian tribes in a manner similar to H.R. 1913. Set forth below are brief descriptions of examples of relevant Congressionally authorized land exchanges.

- *El Malpais National Monument and National Conservation Area.* In establishing the El Malpais National Monument, which lies immediately adjacent to Acoma, Congress specifically authorized the exchange of Federal and private mineral interests. 16 U.S.C. Section 460uu–44. Subsequently, exchanges and payments were made at El Malpais National Monument which included NZ holdings. In the same legislation, Congress also authorized land exchanges with the Pueblo of Acoma. 16 U.S.C. Section 460uu–45.
- *107th Congress—Public Law 107–28.* Directs the Secretary of the Interior, acting through the Director of the Bureau of Land Management, to convey to the city of Carson City, Nevada, without consideration, all right, title, and interest of the United States to certain BLM property.
- *Umatilla Indian Reservation Consolidation.* Congress specifically authorized the Secretary of the Interior, for the purpose of effecting land consolidations between Indians and non–Indians within the reservation, to acquire by purchase, exchange or relinquishment any interests in land within the Umatilla Indian Reservation. 25 U.S.C. Section 463e.

- *Navajo–Hopi Land Settlement Act Land Exchanges.* The Navajo–Hopi Land Settlement Act authorized the Secretary to transfer certain land from the Bureau of Land Management to the Navajo Nation and, in order to facilitate such transfer, to exchange such lands for State or private lands of equal value or, if they are not equal, to equalize the values through the payment of money. 25 U.S.C. Section 640d–10.
- *General Law Providing for Exchanges of Private Lands included in Indian reservations for other lands.* 43 U.S.C. Section 149 specifically authorizes public-private land exchanges for Indian reservations established by executive order: "Any private land over which an Indian reservation has been extended by Executive order, may be exchanged at the discretion of the Secretary of the Interior for vacant, nonmineral, nontimbered, surveyed public lands of equal area and value situated in the same State or Territory."
- *Rhode Island Indian Claims Settlement Act.* Under this Act, Congress authorized the Secretary of the Interior to purchase "private settlement lands" as part of a settlement of aboriginal land claims and other matters. 25 U.S.C. Section 1707.
- *Rattlesnake National Recreational Area.* In establishing the Rattlesnake National Recreational Area, Congress authorized the Secretary of the Interior to acquire, by exchange, gift or purchase "non–Federal lands, interests, or any other property. . . ." 16 U.S.C. Section ll–3(a). The Secretary of the Interior is even authorized, in consultation with the Secretary of Agriculture, to make exchanges with the owners of private lands or interests in exchange for bidding rights for competitive coal lease sales. 16 U.S.C. Section 460 ll–3(b)–(e)
- *Chickasaw National Recreational Area.* Congress authorized the Secretary of the Interior to acquire land outside the boundary of the recreation area and exchange it for non–Federal lands within the boundaries. 16 U.S.C. Section 460hh–1.
- *Arapahoe National Recreation Area.* Congress authorized the Secretary of the Interior to acquire by exchange any non–Federal land, or interests therein, located within the Arapaho National Recreation Area. 16 U.S.C. Section 460jj–1(c).
- *Chattahoochee River National Recreation Area.* Congress authorized the Secretary of the Interior to acquire by exchange land within the recreation area. 16 U.S.C. Section 460ii–1(a).

VI. ACOMA EFFORTS TO UNIFY ITS SURFACE AND SUBSURFACE ESTATE

Since 1990, the Pueblo of Acoma and NZ have worked to resolve this issue. In 1990, the Acoma Tribal Council passed a resolution authorizing the tribal administration to negotiate with NZ and U.S. Department of Interior to acquire mineral rights within the reservation. Since then, each tribal administration has sought to complete such a negotiation.

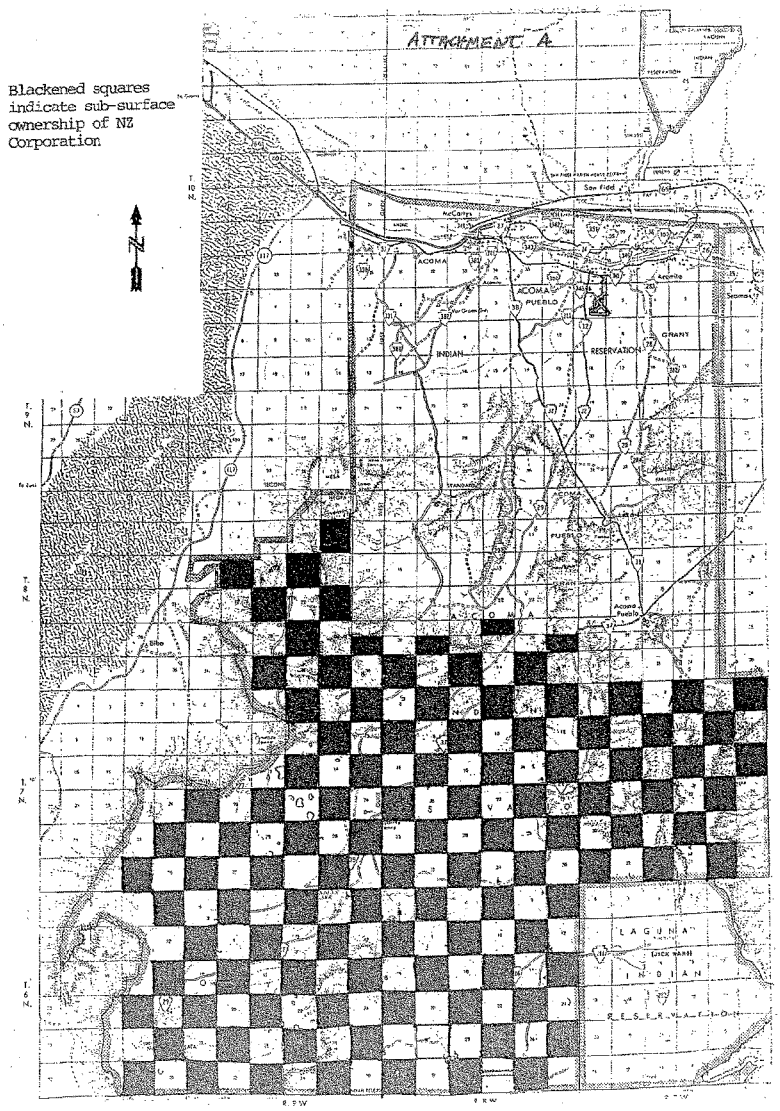
Notably, by letter dated March 3, 1994, Ada E. Deer, then–Assistant Secretary of Indian Affairs, wrote the Acoma Governor and stated: "[T]he only available way to secure an outright acquisition would be through the three party land exchange transaction between the BLM, the NZ Company and the Pueblo [of Acoma]. We will be making a written request to the Secretary of the Interior to direct the BLM to begin entering into negotiations regarding the three party land exchange transaction." See Attachment B.

Although officials at the Bureau of Land Management have indicated general support for the idea of transfer of rights, they have indicated to Acoma that an exchange would only be carried out if directed and authorized by the Congress. For this reason, Acoma now comes before the Congress asking that it pass H.R. 1913 and make the Acoma Reservation whole.

VII. CONCLUSION

H.R. 1913 is win-win legislation that addresses and corrects an historic wrong against the Pueblo of Acoma. I urge this Committee to give its full support to passage of this important bill. Thank you for this opportunity to testify on this matter.

[Attachments to Mr. Chino's statement follow:]


ATTACHMENT A
Blackened squares indicate sub-surface ownership of NZ Corporation
N
ACOMA
ACOMA PUEBLO
INDIAN
RESERVATION
GRANT
LAGUNA
INDIAN
RESERVATION

ATTACHMENT B

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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Honorable Reginald T. Pasqual
Governor, Pueblo of Acoma
P.O. Box 309
Acoma, New Mexico 87034

Dear Governor Pasqual:

This is a follow-up to our letter of September 29, 1993, regarding your request that the Department of the Interior purchase the mineral rights from the New Mexico and Arizona Land Company (NZ Company) for the people of the Pueblo of Acoma (Pueblo). We have now received the Albuquerque Area Director's findings and wish to provide you with our determination in this matter.

The Albuquerque Area Director has informed us that the purchase of mineral rights matter has come up several times over the past years. In 1934, NZ Company offered to sell over 116,000 acres to the Federal Government for the Laguna and Acoma Pueblos (Pueblos). Options to purchase NZ Company lands were included in the submission that stated all fluid and solid minerals underlying the lands would be reserved to the company. In May 1935, the land purchase was disapproved because of NZ Company's decision to reserve the mineral rights.

In November 1935, the proposed purchase was brought up again. In December 1935, NZ Company was asked if the reservation of mineral rights could be eliminated. In April 1936, NZ Company responded that mineral rights were reserved as a matter of policy in all land sales transactions. In July 1936, the subject surface lands were purchased with the mineral rights being reserved by NZ Company. The purchase was approved because of the necessity for the Pueblos to acquire more grazing land, and the only way was to purchase the subject land with reserved mineral rights.

More recently in February 1990, the NZ Company contacted the Area Office and indicated that they were reassessing their land/mineral ownership and were interested in pursuing ways in which the reserved mineral rights could be acquired for the Pueblo. The NZ Company thought one possible way to accomplish this goal was by a three party transaction whereby NZ Company would exchange its mineral estate under tribal lands for Bureau of Land Management (BLM) lands elsewhere in the state and then have BLM convey the mineral estate to the Pueblo. The major drawback to this approach was that such an exchange would benefit NZ Company and the Pueblo, but not BLM since it would only be losing land. The BLM indicated that the best approach would be to go before Congress and seek the necessary funds to purchase NZ Company's mineral estate outright for the Pueblo.

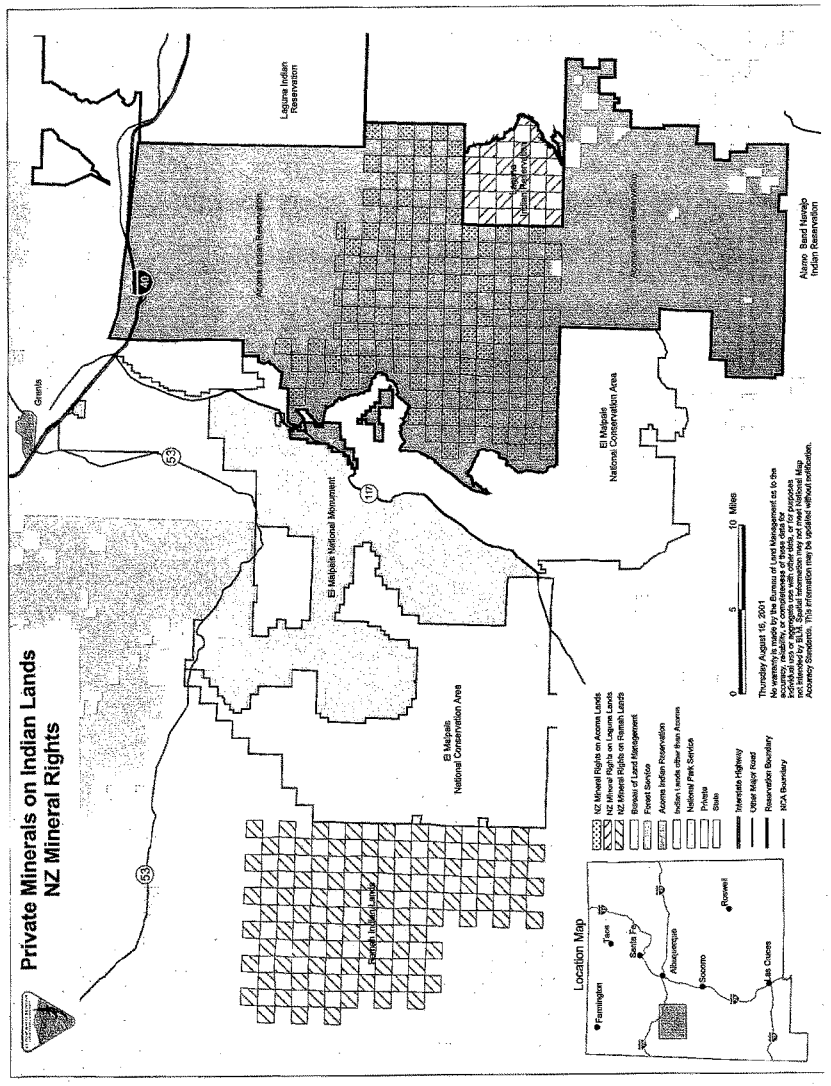
The NZ Company had the opportunity to sell its mineral interests at the time of the sale of the surface interests, but declined to do so because of company policy. However, times and laws have changed. Those mineral rights are now under an Indian reservation and subject to federal jurisdictional concerns; any attempt to develop the minerals must also address concerns of the surface owner (Pueblo) and National Environmental Policy Act mandates. In view of the surface land status, the Pueblo is the only logical entity to acquire those mineral rights.

However, the only available way to secure an outright acquisition would be through the three party land exchange transaction between the BLM, the NZ Company and the Pueblo. We will be making a written request to the Secretary of the Interior to direct the BLM to begin entering into negotiations regarding the three party land exchange transaction.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs


Private Minerals on Indian Lands
NZ Mineral Rights
Grants
Laguna Indian Reservation
Acoma Indian Reservation
Sandia Indian Lands
El Malpais National Monument
El Malpais National Conservation Area
Zuni Indian Reservation
Navajo Indian Reservation
Alamo Band Navajo Indian Reservation
Location Map
Farmington
Taos
Santa Fe
Albuquerque
Socorro
Roswell
Las Cruces
NZ Mineral Rights on Acoma Lands
NZ Mineral Rights on Laguna Lands
NZ Mineral Rights on Other Lands
Bureau of Land Management
Forest Service
Acoma Indian Reservation
Indian Lands other than Acoma
National Park Service
Private
State
Interstate Highway
Other Major Road
Reservation Boundary
NCA Boundary
0
5
10 Miles
Thursday August 16, 2001
No warranty is made by The Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data or for purposes not intended by BLM. Spatial information may not meet National Map Accuracy Standards. This information may be updated without notification.

Mrs. CUBIN. The Chair now wishes to recognize the Assistant Secretary McCaleb to testify for 5 minutes.

STATEMENT OF NEAL A. McCALEB, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. MCCALEB. Thank you, Madam Chairman and members of the Committee. Thank you for the opportunity to provide the administration's views on H.R. 1913, a bill which directs the Secretary to conduct a valuation and exchange of nontribal subsurface rights within the boundaries of the Acoma Pueblo Indian Reservation. The Department enthusiastically supports the goal of transferring the private mineral estate to the Acoma Pueblo.

Having said that, portions of our testimony suggest potential amendments to provide other methods to either facilitate or expedite this transfer in addition to a swap. That is not intended in any way to suggest that these are superior or even potentially as good, but simply to facilitate the potential transfer and provide alternative methods. These methods include the direct purchase of the mineral estate using transferrable bidding credits in addition to the land exchange option provided in the bill. We also recommend amendments to provide for a cost-sharing agreement if either an exchange or purchase takes place and to allow additional time to conduct the exchange.

I am not going to make a redundant statement. The history of this issue has already been more than adequately covered by Congressman Skeen and Governor Chino. I would like to point out that an historical background is in my submitted testimony. The nontribal interest ownership of the mineral estate within the boundaries of the Acoma Pueblo Indian Reservation is approximately 68,000 acres. The Bureau of Land Management (BLM) currently estimates that the mineral estate consists primarily of sand and gravel, but there may also be the potential for oil and gas in the area. The private mineral owners have estimated costs of an outright purchase, in lieu of an exchange, of their mineral estate within the reservation to be between a million and $1.7 million. It should be emphasized that no federally approved appraisal has been completed for the mineral estate interest, and it is possible that the actual value is less than their estimate.

The valuation and the exchange provided for in H.R. 1913 would result in considerable workload and costs for the BLM necessitated by the Federal Land Policy and Management Act, the National Environmental Policy Act, and other statutory and regulatory requirements. Such steps would include, but would not be limited to, appraisals, environmental reviews and clearances, public notices, coordination with other landowners, and adjudication procedures. The Bureau of Land Management land exchange results in costs of approximately $1 million for these kinds of activities, an amount close to the private mineral owners' estimate of the value for a direct purchase of their mineral estate within the reservation.

At this time it is also unclear as to whether or not an agreement on value can be reached between the mineral owner and the Secretary of Interior.

In the interest of time, Madam Chairman, I won't repeat what is in the printed testimony that elaborates on these points, but would be happy to answer any questions.

Mrs. CUBIN. Okay. Thank you very much, Mr. Secretary.

[The prepared statement of Mr. McCaleb follows:]

Statement of Neal McCaleb, Assistant Secretary - Indian Affairs, U.S. Department of the Interior

Madam Chairman and Members of the Committee, thank you for the opportunity to provide the Administration's views of H.R. 1913, a bill which directs the Secretary of the Interior to conduct a valuation and exchange of non-tribal subsurface rights within the boundaries of the Acoma Pueblo Indian Reservation.

The Department supports the goal of transferring the private mineral estate to the Acoma Pueblo. However, we suggest that the bill be amended to allow the Secretary to consider acquisition of the mineral estate through a direct purchase or by using transferable bidding credits (interest free), in addition to the land exchange option provided in the bill. We also recommend amendments to provide for a cost-sharing arrangement if either an exchange or purchase takes place; and to allow additional time to conduct an exchange.

Background

When the United States created the Acoma Pueblo Reservation, minerals within the reservation lands were already in private ownership. They were never transferred to the Acoma Pueblo. The Acoma Pueblo has stated that any desire by the owners of the mineral estate to begin exploration for minerals on the reservation would disrupt its traditional way of life. Leaders of the Acoma Pueblo have long expressed their desire to have their land rights intact and that includes both the surface and mineral estate.

The owner of the mineral estate has informed the Acoma Pueblo that a trade for land of equal value would be acceptable. An official appraisal of the mineral estate does not currently exist, and we have no knowledge of any such production on the private mineral estate on the Acoma Pueblo lands. The Bureau of Land Management (BLM) was approached by the Acoma Pueblo about a year ago to use its exchange process to acquire the non-tribal mineral interests within the Acoma Pueblo Reservation land. The BLM has responded to these requests by suggesting that the Acoma Pueblo seek Congressional authority for such a transaction.

Current Estimated Value

The non-tribal interest ownership of the mineral estate within the boundaries of the Acoma Pueblo Indian Reservation is approximately 68,000 acres. The BLM currently estimates that the mineral estate consists primarily of sand and gravel, but that there may be potential for oil and gas in the area. The private mineral owners have estimated costs of an outright purchase in lieu of an exchange of their mineral estate within the Reservation to be between $1 million and $1.7 million. It should be emphasized that no federally-approved appraisal has been completed for the mineral estate interests and it is possible that the actual value is less than this estimate.

BLM Land Exchange Process /Costs

The valuation and exchange provided for in H.R. 1913 would result in a considerable workload and costs for the BLM. As with any land exchange, the BLM must follow the processing and public involvement procedures as required by the Federal Land Policy and Management Act, the National Environmental Policy Act and other statutory and regulatory requirements. Such steps would include, but would not be limited to, appraisals, environmental reviews and clearances, public notices, coordination with other landowners, and adjudication procedures. The typical BLM land exchange results in costs of approximately $1 million an amount close to the private mineral owners' estimate of value for a direct purchase of their mineral estate within the Reservation. At this time, it is also unclear whether or not an agreement on value can be reached between the mineral estate owner and the Secretary of the Interior.

Proposed Amendments to H.R. 1913

The Department would like to work with the Committee to address the following concerns with the legislation as introduced.

- *Purchase Option*-Given that the anticipated cost to process this exchange may exceed the value of the property to be acquired, the Department recommends

amending the bill to provide the Secretary with the option to acquire the interests in the property through a direct cash purchase or through the granting of future federal lease bidding credits (interest free) in the amount of the value of the acquired mineral estate. This option would be in addition to consideration of the exchange option already provided for in the legislation. Under an outright purchase, or through the future federal lease or permit bidding credits (interest free), an exchange would not be necessary and there would be no disposal of federal estate. This action would take less time and potentially result in considerable net savings to the Federal Government.

- *Cost–Share*-The BLM and a land exchange proponent typically share in the costs of processing a land exchange. Currently, the introduced legislation does not provide for such a cost-sharing arrangement if an exchange is the final transaction that takes place. Under the introduced bill, the Secretary is required to negotiate and complete the land exchange transaction and incur all of the costs for such a transaction. The Department recommends that the bill be amended to provide for such a cost-sharing arrangement with the exchange proponent, the New Mexico and Arizona Land Company. We also recommend that it include provisions for the sharing of costs for the appraisal of the mineral estate.
- *Timetable*In addition, the introduced legislation does not provide a sufficient timetable for a land exchange transaction to take place. As land exchanges can sometimes take longer than two years to complete, the Department would recommend that the bill be amended to provide the Department with at least three years to complete any exchange.

Closing

Thank you Madam Chairman. I would be happy to answer any questions that you or other committee members may have.

Mrs. CUBIN. We have a vote going on right now, and I think I will go over and vote very quickly and come right back for a round of questioning. We just have one vote; so we are recessed for about 10 minutes.

[Recess.]

Mrs. CUBIN. The Subcommittee will please come to order. I am just going to ask a couple of questions, and then we do have some questions that we would like to submit to you for your response in writing. I am supposed to go to the Pentagon at 3 o'clock, and so that does cut down on the amount of time that we have for questions, but I did want to ask Governor Chino, I see that Ada Deere requested the Secretary of Interior Bruce Babbitt to direct the BLM to conduct this exchange.

Do you know what happened to that request?

Mr. CHINO. In answer I am going to yield to my realty officer, Mr. Petuuche Gilbert.

Mrs. CUBIN. Would you spell your name for the record, please, sir.

Mr. GILBERT. Yes. My first name is Petuuche, and that is spelled P-E-T-U-U-C-H-E, and Gilbert as it is normally spelled.

I didn't hear entirely the full question. If possible, would you repeat it for me?

Mrs. CUBIN. Yes. Ada Deere had requested that the previous Secretary of Interior Bruce Babbitt directed BLM to conduct this exchange. Do you know what happened to that request?

Mr. GILBERT. Nothing. This is a long-standing problem that the Pueblo of Acoma has been working on, and over the years we may have had these kinds of requests, and that was one of the requests to the BIA and the Secretary of Interior at that time to assist us on it. There was no action taken.

Mrs. CUBIN. I certainly sympathize with the need to eliminate the split estate and have the Acoma the right to preserve the land that is sacred to them and make sure that no exploration takes place there.

I don't care whether Mr. Gilbert or you, Governor Chino, answer this question. Would you give us some insight as to why you think the BLM and the Department of Interior have been reluctant to conduct this proposed exchange unless it is directed by Congress, or what are your opinions for the reasons for their reluctance?

Mr. CHINO. I would answer in this respect. There has not been any move in addressing this by the Federal Government, and, of course, there are so many years that we have come about addressing this, so in the same essence, the Federal Government did never make a move on it for some reasons that I am not cognizant of, and it was never communicated to us, and with Ada Deere's task, I have never seen anything come through in that respect.

Mrs. CUBIN. Assistant Secretary McCaleb, can you describe for me—well, first of all, I think in your testimony you said that it cost $1 million to $1.7 million for the BLM to do an exchange. I assume that is in New Mexico; is that correct?

Mr. MCCALEB. It actually is estimated by the BLM to cost $1 million; 1 to 1.7 was the estimated value of the mineral interests of NZ, but the $1 million is from BLM's experience on previous land exchanges.

Mrs. CUBIN. So that is countrywide, not necessarily New Mexico?

Mr. MCCALEB. Yes.

Mrs. CUBIN. Mr. Sphar's testimony reads that a formal appraisal of the private mineral estate of the Acoma Reservation would be about $25,000, and I would think a similar amount would be sufficient to value BLM lands that were selected for the exchange for a total of about $50,000. So how do you justify the statement that the total cost would be about a million dollars?

Mr. MCCALEB. Well, a big part of the cost is because we don't know what land is going to be exchanged at this point, and then a deeper study would follow. We might get by with an environmental assessment, which would be substantially less than a full-blown environmental impact statement. But without knowing the land that is involved, it is impossible to tell that, but we would have to satisfy the deeper requirement of the Federal Land Policy and Management Act.

Mrs. CUBIN. Well, certainly. That goes without saying.

I think in your testimony you said it takes 3 years to complete a land exchange. And why would that be when an environmental assessment is required, not an environmental impact statement? I wouldn't think that this exchange would be controversial; so why would an EIS even be required?

Mr. MCCALEB. First of all, it is not controversial.

Mrs. CUBIN. Yes. So—.

Mr. MCCALEB. But the need for a process under the Federal Land Policy and Management Act, a policy decision is still required.

Mrs. CUBIN. Sure, but—.

Mr. MCCALEB. The need for a policy decision would require public hearings.

Mrs. CUBIN. Wouldn't you agree with me that when a project or proposed exchange is controversial, that it is much more expensive in terms of public scoping, in terms of studies, because people are demanding more and more information? If this is not controversial, I don't understand the reluctance, the apparent reluctance, of the Department of Interior to just get going on this.

Now, I am certainly happy to do everything I can to get H.R. 1913 passed, but I really think it is nonsense. I think this is something that the Department should just be doing, and really it is kind of shameful that this has been going on so long and nothing has been done that these people have to end up coming here.

So as I said, I do have to go to the Pentagon, but I will submit some more questions both to you, Assistant Secretary, and to Mr. Sphar of the NZ Corporation, and I appreciate your answers, Mr. Gilbert and Governor, and we will hold the record open for your response to those questions.

[Response to questions submitted for the record follows:]

1. Response from Hon. Joe Skeen.
2. Response from Assistant Secretary Neal McCaleb
3. Response from Governor Cyrus J. Chino
4. Response from Joe D. Sphar

Questions from Representative Ron Kind for Representative Joe Skeen:

(1) According to their written statement, the Administration supports the goal of transferring the private mineral estate to the Acoma Pueblo. However, they suggest that the bill be amended to allow the Secretary to consider acquisition of the mineral estate through a direct purchase or by using transferable, interest free bidding credits, in addition to the land exchange option provided in the bill. What are your thoughts on this recommendation?

(2) The Administration also recommends amendments to provide for a cost-sharing arrangement if either an exchange or purchase takes place; and to allow additional time to conduct an exchange. What are your thoughts on these suggestions?

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COMMITTEE ON
APPROPRIATIONS
SUBCOMMITTEES:
Chairman
INTERIOR
AGRICULTURE, RURAL DEVELOPMENT,
FOOD AND DRUG ADMINISTRATION
AND RELATED AGENCIES
DEFENSE

Congress of the United States
House of Representatives

JOE SKEEN
2d District, New Mexico

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Las Cruces, NM 88005
(505) 527–1771

SUZANNE EISOLD
CHIEF OF STAFF

September 26, 2001

Daisy Minter
Clerk,
1616 Longworth HOB
Washington, DC

Responses to questions from Representative Ron Kind:

1. Although I cannot speak directly for the Acoma Pueblo or the current owner of the subsurface right, I think the options presented by the Department of Interior are reasonable and constructive and I would be willing to work with the Subcommittee on amendments if I can be assured that Acoma's ability to regain their subsurface estate would not be slowed down by the addition of these options.

2. I think the cost sharing suggestion is reasonable to the extent that it only refers to costs directly associated with appraisals and paperwork associated with the exchange. I think this issue should be subject to discussions with the subsurface owner to get their opinion as to what costs could be reasonably shared. I am willing to work with the Committee on this issue as well. I am concerned that federal agencies in the past have attempted to "pad" administrative costs in some cases.

NEAL A. McCALEB - ASSISTANT SECRETARY, INDIAN AFFAIRS

RESPONSES TO FOLLOW–UP QUESTIONS TO THE DEPARTMENT OF THE INTERIOR HEARING ON HR 1913, VALUATION & EXCHANGE OF NON–TRIBAL MINERAL RIGHTS WITHIN THE ACOMA INDIAN RESERVATION IN NEW MEXICO HOUSE RESOURCES SUBCOMMITTEE ON ENERGY AND MINERALS

Question 1. You state in your testimony that a typical BLM land exchange costs about $1 million. How many exchanges does BLM New Mexico complete in a typical year, who typically initiates the exchange, and what is the purpose of the exchanges?

Answer: BLM New Mexico is currently working on 9 land exchanges within the state. Each exchange may take 2 to 3 years to complete. Three of these ongoing exchanges are with the State of New Mexico. Typically, BLM New Mexico completes one or two exchanges per year; however, no exchanges were completed in fiscal year 2001.

Private exchanges are typically initiated by the landowner; most of the State exchanges are a joint effort between the BLM and the State of New Mexico; and some exchanges have been mandated by legislation. Most of the exchanges are for the purpose of acquiring private and State lands within Wilderness Study Areas and other special management areas, or in order to enhance BLM management of sensitive resources. In addition, one of the State exchanges currently being processed is for the purpose of acquiring State land within the Federal Law Enforcement Training Center at Artesia, New Mexico.

Question 2. Why does it take three years to complete a land exchange, especially when an environmental assessment, not an EIS is prepared? I wouldn't think that this exchange would be controversial, do you?

Answer: A land exchange is one of the more complex land transactions that is conducted by the BLM, since it involves both the disposal of federal land and the acquisition of non-federal land. The BLM must follow the processing and public involvement procedures required by the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), and other statutory and regulatory requirements. Such steps include, but are not limited to, land appraisals, environmental reviews and clearances, State Historic Preservation Office consultation for cultural resources, Fish and Wildlife Service consultation for threatened and endangered species, public notices, removal of title encumbrances and mining claims, possible cadastral surveys of property boundaries, coordination with adjacent landowners and existing authorized users, adjudication procedures, and potential protests and appeals. It is not known at this time what level of NEPA analysis would be required for this exchange, since the specific Federal lands involved in the exchange have not been identified and the public scoping process has not been initiated. Many land exchanges are controversial. The level of controversy for this exchange can only be determined after the specific federal lands involved in the exchange have been identified and the public involvement process is initiated.

Question 3. Can you describe for the Subcommittee the process whereby NZ Corporation's mineral rights were acquired in the El Malpais National Monument to the west of the Acoma Reservation? How much was the administrative cost to conclude that exchange or purchase? Who paid those costs, the government or the corporation, or were they shared?

Answer: The BLM has completed 3 land exchanges totaling 95,566 acres and 3 direct purchases totaling 40,935 acres to acquire NZ Corporation mineral rights in the El Malpais National Monument. The costs for these transactions have varied depending upon the complexity of the transaction. The administrative costs for the individual direct purchases have generally been less than $25,000, in addition to the purchase price of the mineral interests. These costs have generally been paid by the BLM. However, the BLM processing costs for the individual land exchange transactions are estimated to have exceeded $300,000 per transaction. The NZ Corporation provided some additional assistance and support for the land exchange transactions. However, due to the age of these exchanges, we do not have immediate access to the records and it is not known if the support was in services or in reimbursement for costs. It should be noted that the previous individual land exchange transactions have been for smaller acreage than the 67,700-acre acquisition addressed by HR 1913, and therefore the processing costs for these previous transactions may be less than an estimated cost for the proposed Acoma acquisition.

Question 4. Mr. Sphar's testimony reads that a formal appraisal of the private mineral estate in the Acoma Reservation would be approximately $25,000. I would think that a similar amount would be sufficient to value BLM lands selected for exchange, for a total of about $50,000. How do you justify the statement that total costs would be about $1 million?

Answer: As indicated previously, a land exchange is a complex land transaction that involves both the disposal of federal land and the acquisition of non-federal land. It is possible that the costs of an appraisal for the federal and non-federal lands involved in the land exchange may be in the range of $25,000 to $50,000. However, it is difficult to estimate the appraisal costs for the Federal lands or interests in land since the specific Federal lands have yet to be identified. The Federal land or interests in land to be exchanged may be a single large parcel, several parcels of various sizes, multiple scattered small parcels, or a variety of interests in land. These differences and appraisal complexities can have a significant impact on the costs of an appraisal. Also, appraisal costs are only a small part of the overall costs of a land exchange. Other costs include NEPA compliance, cadastral survey costs if necessary, hazardous material clearances, threatened and endangered species consultation, cultural resources clearances and consultation, removal of title encumbrances including mining claims, public notice procedures and responding to protests and appeals, and adjudication procedures. These total costs can exceed $1 million, especially for the larger and more complex land exchanges.

Question 5. You also state that a provision for cost sharing is necessary because otherwise the BLM will bear all the administrative costs of the exchange. I don't read that in the text of HR 1913, though. Does silence in the bill about cost-sharing override current policy and guidelines for BLM's exchanges which include cost sharing?

Answer: Land exchange regulations and BLM policies and procedures require the sharing of costs for processing of land exchanges. It may not be necessary to include specific language in HR 1913 that requires compliance with specific land exchange regulations (43 CFR 2200) and cost share provisions. However, to clarify the intent of HR 1913, we would recommend that language be included to require that any land exchange be processed in accordance with the provisions of existing regulations.

Question 6. I appreciate the Administration's willingness to work with the Committee to find a way to complete a buy-out by direct purchase. Have you asked the NZ Corporation about whether they would prefer a cash payment? Does the Administration support reprogramming to cover the cost of a cash buy-out?

Answer: The BLM has not discussed the option of a direct purchase with the NZ Corporation to acquire the mineral interests within the Pueblo of Acoma. However, in the past, the BLM has been successful in working with the NZ Corporation to acquire NZ mineral interests within El Malpais National Monument.

The Department of the Interior has received and is currently reviewing a request by Senator Bingaman for DOI to make a reprogramming request to the Appropriations committees of available Land and Water Conservation Fund (LWCF) monies for a direct purchase of the NZ Corporation's mineral interests. The Department is assessing whether the use of LWCF monies is an appropriate means for acquiring the NZ Corporation's mineral estate. It should be noted that thdre are over 150 ofthe 561 recognized tribes that may have similar private mineral estate in holdings. For example, in New Mexico, NZ holds 10,610 acres of mineral estate in the Pueblo of Laguna, and 55,610 acres of mineral estate within the Navajo Reservation. The use of LWCF monies for Acoma could therefore set a precedent that may not be in the public interest.

Question 7. The idea of bidding credits was used to purchase private minerals beneath the Mount St. Helens National Volcanic Monument in a bill passed by the 105'" Congress. There, the private mineral owner was amenable to this mechanism because that company actively bids on Gulf of Mexico oil and gas leases where bonus bids are often quite large. Am I correct that the bidding credits to be proffered in lieu of cash would be transferable - and thus have a market value close to their face value?

Answer: Although the BLM has not discussed the option of bidding credits directly with the NZ Corporation to acquire the mineral interests within the Pueblo of Acoma, bidding credits are transferable and are established at the value of the interests acquired.

Question 8. Would this exchange, in part, fulfill the trust responsibilities of the Secretary of the Interior toward the Pueblo of Acoma? If the mineral estate in question were to remain private and NZ Corporation decides to exercise their rights to access the subsurface to explore them, how would the Secretary react?

Answer: The land exchange would fulfill in part the trust responsibility of the Secretary. The land exchange or transfer is to correct an oversight of the Federal Government when it was granting the land to the Pueblo of Acoma. The Pueblo considers this land sacred and would consider any developmental activity on the property an intrusion. Pursuant to the Secretary's mineral leasing and development authority, leasing and or development of the subsurface minerals would not occur without the Pueblo's involvement.

If the mineral estate were to remain private, the Department could not preclude the NZ Corporation from developing the resource. The Department could assist the Tribe in reviewing NZ's proposal to develop the resource and ensuring that the plan complied with all pertinent environmental and cultural resources laws and regulations.

P.O. BOX 309
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PUEBLO OF ACOMA
OFFICE OF THE GOVERNOR

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September 26, 2001

Subcommittee on Energy and Mineral Resources
1626 Longworth House Office Building
Washington, DC 20515-6201

Attn: Daisy Minter, Clerk

Dear Chairwoman Cubin and Ranking Member Kind:

This letter is to respond to the follow-up questions presented by Representative Kind regarding Acoma's testimony on H.R. 1913 at the Subcommittee's hearing on September 13, 2001.

Representative Kind noted that the Bush Administration supports transfer of the mineral estate to Acoma, but had recommended certain amendments. He asked Acoma's position on each of these recommendations. The recommendations are set forth below, along with Acoma's response.

BLM Recommendation: To allow the Secretary to consider acquisition of the mineral estate through a direct purchase or by using transferable bidding credits (interest free).

As a general matter, Acoma has no preference with regard to what mechanism the Secretary uses to acquire the mineral estate so long as that mechanism is acceptable to the private mineral estate holder, NZ Corporation. However, BLM has testified that a direct purchase would take less time and would result in a considerable net savings to the Federal government. On this basis, direct purchase, so long as the funds are available, would be acceptable. We are confident

that the NZ Corporation would agree to direct purchase at a fair price as determined by an independent appraisal.

BLM officials have specifically told Acoma that there are unspent funds available within BLM's current budget for a direct cash purchase, but that no decision has been made to reprogram those funds for this purpose. It would be very important for Congress to direct BLM to reprogram such funds in a timely fashion. If the BLM requests such reprogramming, and Congress approves, the entire mineral rights transaction could be completed in less than six months.

Acoma is not knowledgeable about transferable bidding credits and would recommend asking the NZ Corporation whether such credits would be an acceptable means of compensation.

BLM Recommendation: In addition to the land exchange option provided in the bill, to provide for a cost-sharing arrangement if either an exchange or purchase takes place.

Acoma opposes a cost-sharing arrangement. The proposed land exchange is very different from those typically engaged in between the BLM and private parties. In this case, a prime impetus for the exchange is righting a very substantial historic injustice against the Pueblo of Acoma (and the NZ Corporation), which resulted from Federal government action. The lands/mineral estate at issue belonged to Acoma for centuries prior to the establishment of the United States. They were wrongly placed in the public domain by the United States and lost to the tribe without fault of Acoma. Restoring this land/mineral estate would fulfill the Federal government's trust responsibility to Acoma by ensuring the protection of critical Acoma sacred sites within the Acoma reservation. Similarly, NZ Corporation has testified that it has basically lost its rights due to Federal government action.

Because of the Federal government's principal role in creating the split estate on the Acoma Reservation, Acoma does not believe that it is appropriate for the

transaction costs to be borne by the non-Federal parties. It should be noted that Acoma and NZ have actively pursued resolution of this matter for over ten years and have each incurred very substantial (six figure) costs of their own.

Based on informal discussions with the NZ Corporation, we understand that while NZ opposes paying BLM transaction/processing costs, NZ is willing to pay some of the appraisal costs of the mineral estate if that appraisal is conducted by an independent appraiser.

Acoma does support, as described above, a direct purchase, which the BLM has testified would greatly reduce the Federal government's costs.

BLM Recommendation: To allow additional time to conduct an exchange.

Acoma has several problems with extending the two-year period in the legislation in which BLM is to acquire the mineral estate. First, Acoma does not believe that such an extension is necessary. We understand that a direct purchase of the mineral rights could be completed within six months, including the time needed to carry out an independent appraisal. We also understand that at El Malpais National Monument, where Congress authorized similar exchanges between the BLM and the NZ Corporation and which is immediately adjacent to Acoma, three exchanges/purchases were all completed in less than two years.

Second, Acoma has waited a very long time for the restoration of these lands/mineral estate. The Federal government, when it acquired the surface estate in trust for Acoma in the 1930's, only partially corrected the original injustice of the taking of Acoma's land. For the last eleven years, Acoma has actively sought to resolve this matter. In light of this history, Acoma urges that the Congress establish a timeline that will encourage BLM to act expeditiously.

I hope these responses are useful. If you require any further information, please do not hesitate to call. Thank you for your support of this very important legislation.

Sincerely,

Cyrus J. Chino

Cyrus J. Chino
Governor

MEMORANDUM

TO:	Barbara Cubin, Chairwoman, Subcommittee on Energy and Mineral Resources
FROM:	J.D. Sphar, NZ Corporation
RE:	Response to Energy and Mineral Resources Subcommittee's Questions on H.R. 1913
DATE:	October 1, 2001

This memorandum sets forth the questions you posed to me in your letter of September 20, 2001, along with NZ Corporation's responses. Should you or your staff have any further questions, please do not hesitate to contact me. On behalf of the NZ Corporation, thank you for your support of H.R. 1913.

1) H.R. 1913 specifies an exchange with those private parties holding interest in mineral resources within the Acoma Indian Reservation for interest in Federal land that is within the State of New Mexicio, is on BLM's disposal list, and of approximately equal value. DoI has proposed the bill be amended to allow the Secretary to consider other options. What are your thoughts on DoI's proposal to amend the bill?

NZ is amenable to the Department of the Interior proposal to add the option of a direct cash purchase if based upon a fair, independent appraisal. However, NZ remains willing to do a minerals-for-land exchange as previously proposed by BLM in other exchanges.

NZ opposes amending the bill to provide for cost-sharing of BLM's transactions costs. As described in J.D. Sphar's testimony before the Subcommittee, when the Acoma Indian Reservation was recognized and established by the Federal government there was a virtual taking of NZ's rights because of the difficulty in implementing those rights over tribal opposition. This was a federal action and NZ believes the Federal government should pay the costs of correcting it. NZ is willing, however, to pay half the cost of an independent appraisal of the value of NZ's holding at Acoma. BLM has stated that transaction costs would be greatly reduced if the direct cash purchase option was used.

Interior has also proposed extending the timeline for completing the land exchanges. Based on past experience with the BLM, NZ believes that two years is sufficient time to carry-out the land exchanges and/or purchases at Acoma. At the neighboring El

Malpais National Monument, three such transactions with BLM were completed in less than two years.

2) Would you briefly discuss the potential for the discovery of economic oil and gas deposits within the subject lands and have you conducted geophysical, seismic, surveys?

The NZ holdings at Acoma have greater potential for economic petroleum discovery than did NZ's former mineral holdings at El Malpais National Monument. The subject Acoma minerals are in a region of thick sedimentary rocks, the natural home of petroleum accumulations. The textbook requirements for commercial petroleum accumulations given such thick sedimentary strata are: relevant petroleum source rocks, resident reservoir rock (porosity and permeability essential), trap (including adequate sealing), and timing (essentially that the oil is mobilized after the trap forms). Drilling on adjacent lands, often stimulated by NZ, has revealed prolific shows (non-producible occurrences) of petroleum, both oil and natural gas, in basal Permo-Pennsylvanian age strata. Thus, an adequate proximal source of petroleum has been shown to exist at a time prior to the major structural events (folding and faulting) which are of Cenozoic Age. While reservoir quality rocks were spotty in the adjacent Lucero Basin area, there is sound geologic reasoning (Sherman Wengerd, 1959) suggesting that strata should become more clastic, hence porous and permeable, as one moves west (toward the beach) onto the subject lands. The potential for broad stratigraphic trapping of petroleum is also suggested as one moves up-dip toward the Zuni Highlands. CITGO (formerly Cities Service Oil and Gas) was able to run two reconnaissance seismic lines across the subject area. They found two anticlinal structures (most common form of trap) and were prepared to risk two wildcat wells in the area. CITGO was unable to assuage the fears of the Acoma Tribal Council as to the impact of such exploration on their sacred sites. The Acomas then sued NZ and the State of New Mexico for these minerals, which effectively ran CITGO off. Some years later after the lawsuit was settled in our favor, NZ was able to obtain a copy of the trace of the seismic interpretations showing the anticlines, but was unable to obtain the original data because CITGO was acquired by another company and their records were lost or discarded. None of the above discussion should lead one to the conclusion that the subject minerals are a "hot prospect" for petroleum exploration. They represent a new basin wildcat drilling opportunity, a high risk-high reward proposition, and one that would not be customarily undertaken without control of both NZ and Acoma petroleum rights.

3) In your testimony, concerning the valuation of the mineral estate, you discuss the concept of speculative value of the undiscovered mineral resources and the nuisance value. Would you please explain what nuisance value is and how it is considered in an appraisal?

The concepts of speculative value and nuisance value are generally not considered in real estate appraisal, but they are relevant to mineral estate appraisal. For example, a real estate appraiser cannot assign a "speculative" value to a residential tract because

it might someday be zoned commercial. Nor can a real estate appraiser recognize value based upon the potential for an adjacent land owner or owners to buy the subject property to prevent the current owner from creating a nuisance, or even because the adjacent owners already consider the subject property to contain or constitute a nuisance. However, it is common to purchase mineral rights even when there are no producing or delineated mineral resources (as measurable, for example, in tons or barrels). This is demonstrated on a regular basis with every Federal oil and gas lease sale across this country—not to mention the lucrative Gulf of Mexico sales, or the " potential value" of the ANWR exploration rights.

Attached is a list of relatively recent sales of mineral rights in Arizona to buyers of NZ's rural subdivision tracts. There are no delineated mineral resources here and the lands are somewhat less prospective for petroleum production than the Acoma minerals. These mineral sales have not even been solicited by NZ. I cited in my written testimony a specific case in the subject area where a buyer paid NZ $30 per acre for a section of minerals because they had to have a fee estate in order to permit a disposal project. I use the term "nuisance value" in my written testimony to account for the buyer's motivation for purchasing certain mineral rights. In the real world, there is a value to the mineral buyer in the case of split estates to extinguish the potential for future exigencies beyond one's control, and alternatively, to enjoy the right to assert full control. And in fact, the Acoma case, where we have secular mineral rights among sacred sites, would seem to be a pertinent large-scale example. The "nuisance" issue is often really a "control" issue.

4) The Administration's testimony on September 13, 2001, mentioned a possible option of "bidding credits" proffered by the Department of the Interior that NZ could use in lieu of a cash bonus in subsequent mineral lease auctions. This mechanism was used successfully to purchase the reserved private mineral estate beneath public lands included within the boundary of the Mt. St. Helens National Volcanic Monument. Would NZ be interested in exploring this mechanism if the bidding credits are transferable and of sufficient time duration?

While NZ would be interested in the direct cash purchase, we are not interested in bidding credits as compensation for the value of the Acoma minerals. NZ is a very small company. Such credits would have to be sold to others, presumably at substantive discounts and administrative costs.

MINERAL SALES

as of August 10, 2001
D:/My Documents/Misc Mineral Sales

DATE	GRANTEE	LOCATION	COUNTY	ACRES	PRICE Per Acre	$
9/28/88	Michael Scott & Barbara Ross	Tract 281,Unit 7,Sec19,T14N, R24E	Apache	40.09	$25	1,002.25
10/6/88	Winslow Development	Tracts 1@2,SW4,Sec13,T19N,R15E	Navajo	8.68	$50	434.00
12/18/89	Lilly V. Lee Trust	Lot 158, Sec. 35, T21N, R18W	Mohave	20.32	$25	508.00
3/1/90	Giant Industries	p/o se4,Sec 13,T19N, R15E	Navajo	**7.44**	$50	372.00
6/18/90	General Equities, Inc.	Parcel 59, Sec 19, T21N, R18W	Mohave	**20.00**	$25	500.00
8/31/90	John E. Patterson	Sec. 15, T21N, R18W	Mohave	**60.00**	$25	1,500.00
9/28/90	Calvin & Phyllis Varnon	Sec 24, T19N, R13W	Cibola	**640.00**	$10	6,400.00
3/21/91	Carolyn Keiser & Erik Revere	Parcel 163, Sec 33, T13N, R24E	Apache	**40.07**	$25	1,001.25
5/23/91	Leonard E. Blakesley	Lot 14,BlkM, Sec 29, T21N, R19W	Mohave	**2.36**	$25	59.00
9/20/91	William & Mary Comstock	Tract 250,Unit 8,Sec 12,T13N, R25E	Apache	**36.01**	$25	900.25
10/14/91	Robert & Rosalie McCray	Lot 60,Unit 2,Sec.9, T13N, R24E	Apache	**40.22**	$25	1,005.50
10/16/91	Charles W. Fouquet, Jr.	Lot 102, Unit3, Sec 11, T12N, R22E	Navajo	**42.27**	$25	1,056.75
11/25/91	The Ashton Co., Inc.	Lot 151,sw4Sec 23,T21N, R18W	Mohave	**40.20**	$25	1,005.00
12/17/91	William G. Wiederhold	Parcel 46,Sec33,T21N,R18W,sw4nw4	Mohave	**39.87**	$25	996.75
6/22/92	Lowdermilks & Phillips	Lot 177, Unit6,Sec 1,T13N, R24E	Apache	**37.08**	$25	927.00
6/22/92	Rebecca Bostow-Scales	Tract 273,Sec 18,T12N, R23E	Navajo	**40.00**	$25	1,000.00
6/30/92	Johnnie Jr. & Georgia White	Tract 19, Sec 25, T14N, R25E	Apache	**36.50**	$25	912.50
11/24/92	David & JoAnn Smith	Lot 468, Sec 5, T13N, R24E	Apache	**45.95**	$25	1,148.75
1/14/93	John & Patty Warnick	Lots 126,127,128,Sec 13,T13N, R24E	Apache	**112.40**	$25	2,810.00
2/17/93	Robert & Linda McQuate	Lot 455,Sec 29, T14N, R24E	Apache	**37.36**	$25	934.00
3/3/94	Ferguson Family Trust	Lot 69,Sec 11,T14N, R24E, s2s2se4	Apache	**40.93**	$25	1,023.25
3/11/94	Robert Neal Beausoleil	Lot 88, Sec 10, T14N, R24E nw4sw4	Apache	**37.70**	$25	942.50
6/7/94	Charles B. Felix/Fred Portillo	Tract 137,Sec 23,T12N, R23E	Navajo	**40.00**	$25	1,000.00
8/1/94	Scott Paper Co.	p/o Sec 13, T17N,R18W(west of I-40)	Mohave	**446.71**	$25	11,167.75
9/12/94	John & Jennifer Wicks	Lot 322,Unit9,Sec34&35, T14N, R25E	Apache	**39.17**	$25	979.25
8/31/94	Wallace & Shirley Huffman	Lot 330,Sec 34&35,T14N, R25E	Apache	**37.61**	$25	940.25
11/7/94	Terry & Patsy Smith	Lot 478, Sec 5, T13N, R24E	Apache	**38.43**	$25	960.75
11/14/94	Tokarski & Overhage	Lot 493, Sec 31, T13N, R25E	Apache	**38.35**	$25	958.75
8/7/95	Paul Henschel & Mathew M. Weber	Tract 466,Sec.5 T14N, R24E	Apache	**37.95**	$25	948.75
5/14/97	R.E.& Joyce Campbell	Lot 236, Sec 14& 15, T13N, R25E	Apache	**38.35**	$40	1,600.00
11/17/97	Goldstein Philippe Creation Sarl					9,000.00
7/15/98	Harold & Patti Schioldager	p/o Sec 23,T14N,R22E	Navajo	85.00	$25	2,125.00
5/11/99	J.Silver to K. Idso	NWNE Sec.5, T11N, R22E	Navajo	40.00	$25	1,000.00
7/22/99	* Virginia Fitzhugh & Diane Taylor	*NE 1/4 of NE 1/4 Sec.9 T11N, R22E	Navajo	40.00	$25	1,000.00
		*This property deeded back to NZ on 7/10/01				
9/30/99	Dana Myatt	Tr 1,Sec 17,T14N, R23E	Navajo	10.00	$25	250.00
1/24/00	Gary & Francoise Maricle	TR455, Sec 15, T14N, R25 E	Apache	36.40	$25	910.00
10/31/00	George & Deborah Warner	Tr 110, Secs 26 & 27, T15N, R24E	Apache	36.10	$25	902.50
11/30/00	Dyna Rock & Sand	Sec. 27		240.00	$25	12,000.00
6/12/01	Saul Arthur & Cara B. Dixon	TR 179, Sections 9&10, T15N, R24E	Apache		$25	
7/10/01	* Virginia Fitzhugh & Diane Taylor	NE 1/4 of NE 1/4 Sec.5 T11N, R22E	Navajo		$25	

Mrs. CUBIN. So, yes, I also am, with unanimous consent, and I am the only one unanimously here, submitting Mr. Kind's testimony for the record and questions as well that will be submitted to you for answers on this.

[The prepared statement of Mr. Kind follows:]

Statement of the Honorable Ron Kind, A Representative in Congress from the State of Wisconsin

Thank you, Madam Chairwoman. The Subcommittee meets today to consider H.R. 1913, a legislative proposal designed to consolidate ownership of the surface and subsurface-or the mineral estate of approximately 68,000 acres in the Pueblo of Acoma.

When the United States created the Acoma Indian Reservation, the mineral estate had already been deeded to a railroad company, as part of this country's Western expansion and construction of the transcontinental railroad.

"N Z"—the successor to the railroad company and current owner of the lands in question-is entitled to develop the mineral estate it owns. However, they recognize and appear sensitive to the objections of the Acoma people.

Understandably, the Acoma would prefer to see their Pueblo's ancient lands preserved and have objected to NZ's intention to explore for and develop mineral deposits within reservation boundaries.

Both parties have, it would appear, attempted to resolve the conflict amicably. And, I commend them both for their efforts. However, short of giving up their rights to the minerals, NZ cannot resolve the Acoma's concerns.

And, since the United States started the problem by deeding the Acoma's aboriginal land to the railroad, it seems only fair that Congresses authorize the proposed exchange.

In closing, I commend my friend and colleague, Joe Skeen, for his efforts on behalf of Native Americans, a campaign which has become a hallmark of his tenure here in Congress.

Mrs. CUBIN. So thank you all very much. I do apologize that we have had to cut this short, but we will do the work you have called on us to do, and we will work with you to see that your land is protected and that it gets off the dime, that something starts moving.

Thank you too, Mr. McCaleb, for your testimony.

Subcommittee is now adjourned.

[Whereupon, at 2:57 p.m., the Subcommittee was adjourned.]

○