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107TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 107–285

PUEBLO OF ACOMA LAND AND MINERAL CONSOLIDATION

NOVEMBER 13, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources, submitted the following

REPORT

[To accompany H.R. 1913]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1913) to require the valuation of nontribal interest ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PUEBLO OF ACOMA LAND AND MINERAL CONSOLIDATION.

(a) VALUATION.—Not later than 6 months after the date of the enactment of this section, the Secretary of the Interior shall determine the extent and the value of the nontribal interest ownership of the subsurface rights, including mineral rights, within the boundaries of the Acoma Indian Reservation.

(b) LAND EXCHANGES.—Upon completion of the valuation required by subsection (a), the Secretary shall, unless the Secretary exercises an option under subsection (c), negotiate an exchange with any willing sellers of interests in nontribal land (including interests in mineral or other surface or subsurface rights) within the boundaries of the Acoma Indian Reservation for interests in Federal land that is—

(1) located within the boundaries of the State of New Mexico;

(2) identified by the Bureau of Land Management as available for disposal; and

(3) of approximately the same value as the interest in land for which it is being exchanged.

(c) PURCHASE OPTION.—At the discretion of the Secretary, instead of a land exchange under subsection (b), the Secretary may acquire interests in nontribal land (including interests in mineral or other surface or subsurface rights) within the boundaries of the Acoma Indian Reservation through—

(1) direct cash purchase of the interests in nontribal land for the fair market value determined under subsection (a);

(2) issuance to any owner of the interests in nontribal land of a Certificate of Bidding Rights in such form and manner as provided for under regulations promulgated by the Secretary under provisions of the Act of February 25, 1920

99–006

(commonly known as the Mineral Leasing Act (30 U.S.C. 181 et seq.)) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) for mineral leasing and bidding rights equal to the fair market value determined under subsection (a).

(d) COST SHARING.—The costs of the valuation required under subsection (a) and any land exchange under subsection (b) shall be equally shared between the owners of the interests in nontribal land and the Secretary. This subsection shall apply to the cost of the valuation under subsection (a) even if the Secretary elects to exercise the options for acquisition under subsection (c).

(e) TIMELINE; LAND TAKEN INTO TRUST.—The Secretary shall complete such negotiations and exchanges not later than 3 years after the date of the enactment of this section and shall place interests in land within the boundaries of the Acoma Indian Reservation that are acquired under this section into trust for the Pueblo of Acoma.

PURPOSE OF THE BILL

The purpose of H.R. 1913 is to require the valuation of nontribal interest ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1913 would effect an exchange of approximately 67,000 acres of privately-owned subsurface rights (mineral rights) beneath lands within the Acoma Indian Reservation in New Mexico for lands or interests in lands to be identified by the Secretary of the Interior.

When the Treaty of Guadalupe Hidalgo was signed in 1848, the territory which includes New Mexico was ceded by Mexico to the United States, and the federal government agreed that the Pueblo Indian tribes, and other land owners, would retain their property rights. In 1858, Congress recognized specific land claims of the Pueblo of Acoma. However, in 1866 a federal charter to the Atlantic and Pacific Railroad provided for a land grant from the public domain as an incentive to build a railroad and telegraph line along the 35th parallel that included a large portion of what is now the Acoma Indian Reservation. Under the law, Indian title lands could not be granted without "voluntary session" by the tribe. Regardless, U.S. land surveyors in 1876 and 1877 designated large amounts of tribal land as public domain. Thus, the improperly designated lands were available to the railroad company in alternating sections along the railroad right-of-way, despite the claims of the Pueblo of Acoma leaders. The New Mexico and Arizona Land Company (the NZ Corporation) owns 67,710 acres of mineral rights beneath the Acoma Indian Reservation, as successor in interest to part of the railroad grants lands which passed to the NZ's parent corporation.

Under the National Recovery Act of June 16, 1933 (48 Stat. 200), the United States purchased 11 townships of land from NZ, a recognition of sorts that the Pueblo of Acoma had a legitimate claim to the lands granted to the railroad, either by mistake or by design. At the time of the purchase, it was NZ's policy (and common practice everywhere) to reserve all oil, gas and minerals, together with right of access for prospecting and developing mineral resources in the future. However, NZ now believed that the Pueblo of Acoma's "sacred connection and continuity with their land" would mean that NZ's split-estate mineral interests likely could never be sufficiently explored or developed.

For a decade or more, NZ and the Pueblo of Acoma have worked closely to remove private mineral rights, but are unable to proceed without the assistance of the federal government. The Acoma Tribal Council passed Resolution TC–May–30–90–2, titled: "Authorizing the Administration to Negotiate with the New Mexico and Arizona Land Company and the Department of the Interior to Acquire Mineral Rights Inside 11 Townships." The original intent of the resolution was for the Department of the Interior (DOI) to acquire the mineral estates with the purpose of reuniting the surface and mineral estates for the benefit of the Pueblo of Acoma. On March 3, 1994, Ada E. Deer, then Assistant Secretary of Indian Affairs of the Department of the Interior, wrote to the Acoma Governor that she was aware of the situation and would request the Secretary of Interior to direct the Bureau of Land Management (BLM) to begin a three party land exchange between the BLM, NZ Company, and Acoma Pueblo. To date, all efforts have failed to even initiate the process.

Should NZ assert its right of access to large portions of the Acoma Indian Reservation, including areas of great spiritual sensitivity, the Acoma would almost certainly oppose the effort. The result would be a federal court, not the Pueblo of Acoma people, would decide the fate of the Acoma land.

H.R. 1913 would reunite the severed mineral estate with the surface for the benefit of the Acoma. H.R. 1913 provides that the federal land exchanged for the private mineral estate would be from the BLM disposal land list and would be of the same value. The bill would provide for the protection of Acoma sacred sites, protect the interest of the private NZ Company, eliminate this split estate obstacle to development by both parties, and halt the possibility of litigation over NZ's rights to develop their property rights.

The Committee believes that nothing in this bill creates any precedent favoring a land exchange or purchase option for the situation addressed in H.R. 1913. The Committee agrees that any subsequent request for acquisition of nontribal interest ownership of subsurface rights, including mineral rights, within the boundaries of an Indian reservation shall be considered on a case by case basis.

COMMITTEE ACTION

H.R. 1913 was introduced on May 17, 2001, by Congressman Joe Skeen (R–NM). It was referred to the Committee on Resources and within the Committee to the Subcommittee on Energy and Mineral Resources and the Subcommittee on National Parks, Recreation and Public Lands. On September 13, 2001, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On October 17, 2001, the Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources and the Subcommittee on National Parks, Recreation and Public Lands were discharged from further consideration of the bill by unanimous consent. Congressman Jim Gibbons (R–NV) offered an amendment in the nature of a substitute to allow the Secretary of the Interior the option to directly purchase the subsurface estate, if funds are available and this is the most efficient manner to unify subsurface and surface estates within the Acoma reservation. The amendment was

adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office (CBO), enactment of H.R. 1913 could increase direct spending by a maximum of $1.7 million in 2002, but this would be offset by a corresponding decrease in direct spending in later years. Alternatively, CBO estimates that the bill could result in a loss of offsetting receipts from bonus bids of up to $1.7 million in 2002.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of Rule XIII of the rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 7, 2001.

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1913, a bill to require the valuation of nontribal interest in ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1913—A bill to require the valuation of nontribal interest in ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, and for other purposes

CBO estimates that enacting H.R. 1913 would increase direct spending by as much as $1.7 million in 2002, which could be offset by a corresponding decrease in direct spending in later years. Because the bill would affect direct spending (including offsetting receipts), pay-as-you-go procedures would apply. H.R. 1913 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 1913 would direct the Secretary of the Interior to estimate the value of about 67,000 acres of privately owned subsurface rights and then acquire those rights in exchange for cash, mineral leasing or bidding credits, or interests in other federal lands of approximately equal value. The NZ Corporation, which specializes in the development and sale of real estate, owns those subsurface rights, which lie beneath lands located within the boundaries of the Acoma Indian Reservation in New Mexico. Under the bill, once the Secretary acquires the corporation's subsurface rights, they would be taken into trust on behalf of the Pueblo of Acoma.

The corporation's subsurface rights are estimated to be worth between $1 million and $1.7 million. For this estimate, we assume that the Secretary would use cash to purchase the subsurface rights in 2002. According to Department of Interior (DOI), doing so would require the department to reprogram existing funds allocated to other land acquisition projects that are not expected to proceed this year. Hence, CBO estimates that using such funds to implement H.R. 1913 would increase direct spending by up to $1.7 million in 2002 as shown in the following table. That increase might be offset in subsequent years, but any such effects would likely depend on future legislation.

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGE IN DIRECT SPENDING					
Estimated Budget Authority	0	0	0	0	0
Estimated Outlays	2	0	0	0	0

Alternatively DOI could compensate the corporation with mineral leasing or bidding credits, which would result in forgone offsetting receipts from bonus bids when those credits are used to pay a winning bid to secure a federal oil or gas lease. CBO estimates that granting such credits as an alternative method to acquire the subsurface rights would result in a loss of offsetting receipts from bonus bids of up to $1.7 million in 2002—and this cost would not be offset in later years.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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