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108TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT 108–717

OJITO WILDERNESS ACT

OCTOBER 4, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3176]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3176) to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, 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. SHORT TITLE.

This Act may be cited as the "Ojito Wilderness Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) PUEBLO.—The term "Pueblo" means the Pueblo of Zia.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) STATE.—The term "State" means the State of New Mexico.

(4) MAP.—The term "map" means the map entitled "Ojito Wilderness Act" and dated September 8, 2004.

(5) WILDERNESS.—The term "Wilderness" means the Ojito Wilderness designated under section 3(a).

SEC. 3. DESIGNATION OF THE OJITO WILDERNESS.

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

(b) MAP AND LEGAL DESCRIPTION.—The map and a legal description of the Wilderness shall—

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

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

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

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

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

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

(2) Any land within the boundaries of the Wilderness.

(e) MANAGEMENT OF LANDS TO BE ADDED.—The lands generally depicted on the map as "Lands to be Added" shall become part of the Wilderness if the United States acquires, or alternative adequate access is available to section 12 of township 15 north, range 01 west.

(f) RELEASE.—The Congress hereby finds and directs that the lands generally depicted on the map as "Lands to be Released" have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) and no longer are subject to the requirement of section 603(c) of such Act (16 U.S.C. 1782(c)) pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

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

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

(i) WATER.—Nothing in this section shall affect any existing valid water right.

(j) WITHDRAWAL.—Subject to valid existing rights, the Wilderness, the lands to be added under subsection (e), and lands authorized to be acquired by the Pueblo as generally depicted on the map are withdrawn from—

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

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

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

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

SEC. 4. LAND HELD IN TRUST.

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

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

(c) CONSIDERATION.—

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

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

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

(d) PUBLIC ACCESS.—

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

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

(A) IN GENERAL.—The land conveyed under subsection (a) shall be maintained as open space, and the natural characteristics of the land shall be preserved in perpetuity.

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

(e) RIGHTS OF WAY.—

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

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

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

(2) NEW RIGHTS OF WAY AND RENEWALS.—

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

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

(f) JUDICIAL RELIEF.—

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

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

(3) EFFECT.—Nothing in this section—

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

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

PURPOSE OF THE BILL

The purpose of H.R. 3176 is to designate the Ojito Wilderness Study Area as wilderness, to take certain lands into trust for the Pueblo of Zia, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Ojito Wilderness Study Area (WSA), located in Sandoval County, New Mexico, represents an area of approximately 11,000 acres, which was recommended for wilderness designation by the Bureau of Land Management's (BLM) New Mexico State Office in 1991. The recommendation was based on its high-quality wilder-

ness values, extensive cultural resources, both archaic and several prehistoric sites, other cultural and paleontological features and the lack of resources conflicts in the area. H.R. 3176 would designate the entire Ojito WSA as wilderness, subject to valid existing rights, and would continue to permit grazing that was established before the designation.

H.R. 3176 would also transfer certain public lands (approximately 11,500 acres) located west of, and contiguous to, the main body of the Pueblo of Zia's current reservation, to trust status for the Pueblo of Zia to become part of the Pueblo's reservation. The purpose is to protect its religious and cultural sites in the area and to consolidate its land holdings. In 1978 and in 1986, the BLM transferred land to the Pueblo. H.R. 3176 would allow the Pueblo to acquire all right, title and interest (including mineral rights) to additional public land located adjacent to the reservation and the Ojito WSA. The transfer would be subject to valid existing rights and continuing right of the public to access the land for recreational, scientific, educational, paleontological and conservation uses, subject to regulations adopted by the Pueblo and approved by the Secretary of the Interior. The use of motorized vehicles off approved roads, mineral extraction, housing, gaming, and other commercial enterprises would be prohibited, and the Pueblo would be required to pay the Secretary fair market value for the lands.

COMMITTEE ACTION

H.R. 3176 was introduced on September 24, 2003, by Congressman Tom Udall (D–NM). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks, Recreation and Public Lands. On July 20, 2003, the Subcommittee held a hearing on the bill. On September 22, 2004, the Full Resources Committee met to consider the bill. The Subcommittee was discharged from further consideration of the bill by unanimous consent. Congressman Richard Pombo (R–CA) offered and withdrew an amendment that would have directed the Secretary of the Interior to release 844 acres of land located in the Chamisa WSA determined non-suitable for wilderness by the Bureau of Land Management. Congressman Tom Udall then offered an amendment in the nature of a substitute that made the following changes to the original text: (1) removed 42 acres from the original wilderness designation, due to an existing pipeline right-of-way; (2) clarified the grazing language; (3) added a water rights provision to address valid existing water rights; (4) addressed the mineral withdraw concern raised by the Administration; and (5) ensured private landowner access within the designated wilderness area. Congressman Pombo offered an amendment to the Udall amendment to strengthened the water rights provision. Following discussion on the amendment, Congressman Pombo withdrew the amendment. The Udall amendment was agreed to by voice vote. The bill, as amended, was ordered favorably reported to the Full Committee 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 Re-

sources' 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 revenues or tax expenditures. According to the Congressional Budget Office, enactment of H.R. 3176 would increase both offsetting receipts and direct spending, but it estimates "that the net change in direct spending would be negligible."

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:

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CBO estimates that implementing H.R. 3176 would have no significant impact on the federal budget. The bill would increase both offsetting receipts and direct spending, but we estimate that the net change in direct spending woul be negligible. Enacting H.R. 3176 would not affect revenues.

H.R. 3176 would designate 11,183 acres of land in New Mexico as the Ojito Wilderness and would authorize the Secretary of the Interior, under certain circumstances, to expand that wilderness to include 118 additional acres of land. The bill would direct the Secretary to take into trust, on behalf of the Pueblo of Zia, about 11,500 acres of federal land. All of the affected federal land would be withdrawn from programs to develop natural resources. According to the Bureau of Land Management (BLM), that land currently generates no significant income from such programs and is not expected to do so over the next 10 years. Hence, we estimate that the proposed changes would not significantly affect offsetting receipts (a credit against direct spending). Based on information from BLM, we also estimate that any increase in federal spending for land management, which would be subject to appropriation, would not exceed $500,000 a year.

In exchange for the Federal land to be taken into trust on behalf of the Pueblo of Zia, the Pueblo would pay to the Secretary the fair market value of that land as defined in the bill. The bill would authorize the Secretary to retain and spend amounts received from the Pueblo, without further appropriation, to acquire nonfederal property in New Mexico. Based on information form BLM, CBO estimates that the proposed transaction would increase offsetting receipts (a credit against direct spending) by up to $500,000 in 2005. We also estimate that those receipts would be largely offset by an increase in direct spending in the same year, resulting in a negligible net change in direct spending.

H.R. 3176 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Enacting this bill would benefit the Pueblo and would have no significant impact on the budgets of other state, local, or tribal governments.

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 to existing law.

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