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PECOS NATIONAL HISTORIC PARK LAND EXCHANGE ACT OF 2005

FEBRUARY 23, 2005.—Ordered to be printed

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

R E P O R T

[To accompany S. 47]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 47) to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 47 is to provide for a land exchange among the Pecos National Historical Park, the Santa Fe National Forest, and a private landowner in New Mexico.

BACKGROUND AND NEED

When the Pecos National Historical Park was redesignated in 1990, new lands were added and the scope and mission of the Park were greatly expanded. The Glorieta Unit of the Park, where this exchange is focused, protects key sites associated with the 1862 Civil War Battle of Glorieta Pass, a significant event that ended the Confederate attempt to expand the war into the West. More than half of the land in the Unit is privately owned, making public access, preservation of resources, and cooperation with private property owners difficult.

S. 47 proposes an equal-value exchange whereby the National Park Service would acquire a private inholding identified for pur-

chase in the July 1993 Land Protection Plan. The private landowner would acquire a parcel of land from the Santa Fe National Forest that adjoins other lands owned by the private party. The National Forest land to be acquired by the private landowner is identified in the Santa Fe National Forest Land and Resource Management Plan as suitable for exchange and is largely surrounded by the private landowner's lands. Because of the multi-agency nature of the exchange, there is no existing administrative authority for the exchange.

LEGISLATIVE HISTORY

S. 47 was introduced by Senator Bingaman for himself and Senator Domenici on January 24, 2005. A similar bill (S. 2622) was introduced by Senator Bingaman for himself and Senator Domenici in the 108th Congress. The Subcommittee on Public Lands and Forests held a hearing on S. 2622 on July 21, 2004 (S. Hrg. 108–714). S. 2622 was favorably reported by the Committee, with an amendment in the nature of a substitute, on September 28, 2004 (S. Rept. 108–373). A similar bill, S. 2848, was passed by the Energy and Natural Resource Committee in the 106th Congress (S. Rept. 106–429).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on February 9, 2005, by a voice vote of a quorum present, recommends that the Senate pass S. 47.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 defines key terms.

Section 3(a) directs the Secretary of the Interior to accept 154 acres of private land to be added to the Glorieta Unit of the Pecos National Historic Park and directs the Secretary of Agriculture to convey 160 acres of Santa Fe National Forest land to the private landowner.

Subsection 3(b) directs the Secretary of the Interior to grant the private landowner an easement for two water wells and water pipelines located in the Park.

Subsection 3(c)–(e) directs how valuation, appraisal and equalization shall be carried out.

Subsection 3(f) authorizes the Secretaries to add any requirements to the exchange or granting of easements they deem necessary to protect the interests of the United States.

Subsection 3(g) directs the timing of the exchange and requires the Secretaries to notify the authorizing committees when the exchange is completed.

Section 4 provides direction on how the acquired lands shall be managed, and provides for the development and transmittal of final maps.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

FEBRUARY 14, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 47, the Pecos National Historical Park Land Exchange Act of 2005.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 47—Pecos National Historical Park Land Exchange Act of 2005

CBO estimates that implementing S. 47 would not significantly affect the federal budget. The bill could affect direct spending (including offsetting receipts), but we estimate that any such effects would total less than $200,000. S. 47 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

S. 47 would authorize a land exchange among the Forest Service, the National Park Service (NPS), and a private landowner. In exchange for conveying to the Secretary of the Interior 154 acres of privately owned land within the Pecos National Historical Park in New Mexico, S. 47 would direct the Forest Service to convey to the private landowner 160 acres of land that lies within the boundary of the Santa Fe National Forest. As part of the exchange, the Secretary of the Interior would grant the private landowner an easement to access two existing water wells within the boundaries of the park. Based on information from the Forest Service and the NPS, CBO estimates that federal administrative costs to complete the exchange would total less than $100,000 over the 2006–2007 period, assuming the availability of appropriated funds. We also estimate that federal costs for land management would not change significantly under S. 47.

S. 47 specifies that the properties to be exchanged must be equal in value and, if differences in value are found, would authorize cash equalization payments between the federal government and the private landowner. Under the bill, the Secretary of Agriculture could retain and spend, without further appropriation, receipts from any such payments received from the private landowner. However, based on information from the agencies about the estimated value of the properties to be exchanged, CBO estimates that any cash equalization payments are not likely to exceed $200,000.

According to the Forest Service, the current management plan for the Santa Fe National Forest identifies the federal land to be conveyed as suitable for exchange. It currently generates no significant receipts and is not expected to do so over the next 10 years. Hence, we estimate that implementing the exchange would not significantly affect offsetting receipts (a credit against direct spending).

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 47.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 47.

EXECUTIVE COMMUNICATIONS

The view of the administration was included in testimony received by the Committee at a hearing on S. 2622, on July 21, 2004.

STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND THE ENVIRONMENT, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman, thank you for the opportunity to appear before you today to provide the Department's views.

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The bill would direct the Secretary of Agriculture to convey approximately 160 acres located in the Santa Fe National Forest in New Mexico to private landowners in exchange for 154 acres owned by the landowners within the Pecos National Historic Park that would be conveyed to the Secretary of the Interior.

The 160 acres of National Forest System land to be conveyed are located on top of Glorieta Mesa and have been identified in the Forest Plan as base for exchange; however, this land was recommended for exchange to facilitate the acquisition of other desirable property for National Forest purposes within the Santa Fe National Forest. The federal parcel is undeveloped and has relatively gentle topography.

The Department would not oppose the bill if amended to clarify several points. We have concerns regarding potential complications that could arise as this transaction proceeds and would like to understand the committee's intent as to how these should be resolved. We would like the opportunity to work with the committee, bill sponsors and the National Park Service on amendments to clarify expectations relative to the applicability of the National Environmental Policy Act and other applicable laws.

Although not specifically stated, the exchange would be subject to the National Historic Preservation Act of 1966 (NHPA). The National Forest System lands have not been surveyed for cultural resources. If, after survey, resources

are found, the exchange would be subject to Sec. 110(b) of NHPA, which would require that data recovery precede conveyance. The legislation should identify who would be responsible for the data recovery costs in the event resources are found.

Appraisals would be submitted only to the Secretary of the Interior for approval. We recommend an amendment to the legislation that requires joint approval by both the Secretaries of the Interior and Agriculture. If there is mutual valuation approval, we recommend the USDA and USDOI jointly and mutually secure a title policy, select an appraiser agreeable to both agencies, jointly develop appraisal instructions and jointly review and approve the appraisal.

We look forward to working with the Subcommittee, the sponsors, and the National Park Service on amendments to this bill to ensure that the final bill language reflects the needs and interests of all parties to the exchange.

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

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you to present the position of the Department of the Interior on S. 2622, a bill to provide for a land exchange at Pecos National Historical Park in New Mexico.

The Department supports this legislation with an amendment. A hearing on a similar bill, S. 2848 was held during the 106th Congress. At that time we supported the bill with several amendments. S. 2622 has taken into consideration those amendments as proposed. We do recommend minor changes to clarify financial responsibilities for the appraisals and completion of compliance documents. By making these changes, and clarifying the map, we believe the exchange could be easily accomplished. However, we defer to the U.S. Forest Service with respect to a determination that the lands they would convey are excess to their needs and available to be used as part of the proposed land exchange.

S. 2622 proposes an exchange among the U.S. Forest Service, National Park Service and a private landowner. The private landowner would convey 154 acres of land to the National Park Service at Pecos National Historical Park. The U.S. Forest Service would then convey 160 acres of federal land to the private landowner. Because the land already is within the boundary of the park and identified for purchase in the July 1993 Land Protection Plan, no boundary adjustment would be needed. As part of the exchanges the private landowner would be given an easement to allow access to two existing wells. The bill also allows for the Secretaries to establish additional terms and conditions on the exchange in order to protect the interest of the federal government.

We understand the U.S. Forest Service parcel proposed for the exchange is undeveloped. There are no public utilities within one half mile of the parcel and no environmental analysis has been completed on this parcel.

We propose minor changes to the language to ensure that all parties understand that the landowner will assume the cost of the appraisals and associated environmental compliance. The legislation must be clear that neither Secretary is responsible for those costs. The proposed amendment is attached to this testimony.

S. 2622 would continue the expansion of the park that was begun when lands were added to the boundary in 1990, and allow the National Park Service to more adequately and completely serve park visitors and protect park resources. This new bill also reflects the needs and interests of all of the parties to the exchange and should allow completion of the exchange in the most direct manner.

Pecos National Historical Park (NHP) was established in 1965 as Pecos National Monument and was redesignated in 1990. The park includes almost 7,000 acres in three units and tells the story of 12,000 years of human history. This story includes that of the people of the Pecos Pueblo who made their homes at a trading crossroads and the effects of Spanish colonization from the south and the movement westward along the Santa Fe Trail. In addition, Pecos NHP tells the story of one of the most interesting battles of the Civil War fought in the west, the Battle of Glorieta Pass. It is also home to a 20th century ranch that illustrates how important and critical this natural and cultural crossroads is to the history of America.

Of foremost importance in Pecos NHP is the Pecos River, one of only five in New Mexico that is free-flowing year-round. The mosaic of the riparian environment, high elevation forest, grasslands, and meadows sustains valuable and variable wildlife habitats and ecosystems that are prominent features and vital to the park's cultural landscapes.

When the park was redesignated in 1990, new lands were added and the scope and mission of the park were greatly expanded. The Glorieta Unit, divided into two subunits, each containing approximately three hundred acres, preserves sites of the Civil War action at Glorieta Pass. More than half of the land in these two units is privately owned, making public access, preservation of resources, and protection of property rights difficult. The lands proposed for exchange in S. 2622 are in the Canoncito subunit, the westernmost portion of the park.

That concludes my remarks. I would be happy to answer any questions you may have.

Proposed amendment: Page 6, line 3, strike all after "COSTS—" and insert "Before the completion of the exchange under this section, the Secretaries and the landowner shall enter into an agreement that states that the landowner shall pay the cost of the appraisals and associ-

ated environmental compliance documents. Additional costs of the exchange will be allocated in the agreement between the Secretaries and the landowner.".

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 47 as ordered reported.

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